

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET D-170117
EARTHSCAPES NW, INC.	ORDER 01
in the amount of \$6,000	ORDER DENYING MITIGATION

BACKGROUND

- 1 On February 21, 2017, the Washington Dig Law Safety Committee (Safety Committee) filed with the Washington Utilities and Transportation Commission (Commission) its recommendation for penalties against Earthscapes NW, Inc. (Earthscapes or Company) for violations of RCW 19.122. The Safety Committee found that Earthscapes violated RCW 19.122.030(2) by failing to provide notice to a one-number locating service prior to commencing excavation on two occasions.
- 2 The Safety Committee recommended penalties of \$1,000 for the first violation and \$5,000 for the second violation, for a total penalty of \$6,000. The Safety Committee further recommended that Earthscapes' owners, managers, and residential-side employees be required to attend National Utility Contractor Association (NUCA) Dig Safe Training.
- 3 On April 17, 2017, the Commission issued a Penalty Assessment adopting the Safety Committee's recommendation and assessing a \$6,000 penalty against Earthscapes for two violations of RCW 19.122.030(2).
- 4 On May 1, 2017, Earthscapes filed an application for mitigation, admitting the violations and requesting the penalty be reduced. Earthscapes failed to provide any written explanation for the violations, as required.
- 5 On May 5, 2017, the Commission issued a Notice of Opportunity to File a Written Response (Notice). The Notice permitted the Company to file a written explanation of the circumstances that gave rise to the violations by May 12, 2017. To date, Earthscapes has not filed a response.
- 6 On May 19, 2017, Commission staff (Staff) filed a response recommending the Commission deny the Company's request for mitigation. In its response, Staff explained that Earthscapes has requested utility locates on 162 occasions since January 1, 2016. Accordingly, Staff believes that the violations resulted from negligence rather than

ignorance of the law. Staff further noted that Earthscapes could have faced penalties of up to \$41,000, but instead received a significantly reduced fine.

DISCUSSION AND DECISION

7 RCW 19.122.030(2) requires excavators to provide the required notice to a one-number locator service “not less than two business days and not more than ten business days before the scheduled date for commencement of excavation, unless otherwise agreed by the excavator and facility operators.” An excavator is prohibited from excavating “until all known facility operators have marked or provided information regarding underground facilities.”¹ Excavators who violate these provisions are subject to penalties of up to \$10,000 per violation.² Here, the Commission assessed reduced penalties of \$1,000 for the first violation and \$5,000 for the second violation.

8 The Commission considers several factors when entertaining a request for mitigation, including whether the company introduces new information that may not have been considered in setting the assessed penalty amount, or explains other circumstances that convince the Commission that a lesser penalty will be equally or more effective in ensuring the company’s compliance.³

9 Here, Earthscapes failed to introduce any new information that would warrant further mitigation of the penalty despite having two opportunities and more than six weeks to do so. Accordingly, we find that Staff’s recommendation to impose the \$6,000 penalty is appropriate, and conclude that the Company’s request for further mitigation should be denied. The Company must either pay the \$6,000 portion of the penalty that is not suspended or file jointly with Staff a mutually agreeable payment arrangement within 10 days of the effective date of this Order.

ORDER

THE COMMISSION ORDERS THAT:

10 (1) Earthscapes NW, Inc.’s request for mitigation is DENIED.

¹ RCW 19.122.030(5).

² RCW 19.122.055(1)(a).

³ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013) at ¶19.

- 11 (2) Earthscapes NW, Inc. is assessed a penalty of \$6,000. Earthscapes NW, Inc. must either pay the \$6,000 penalty or file jointly with Staff a proposed payment arrangement within 10 days of the effective date of this Order.
- 12 (3) Earthscapes NW, Inc.'s owners, managers, and residential-side employees must attend NUCA Dig Safe Training within 90 days of the effective date of this Order, and must provide documentation of attendance within 5 days of completion.

DATED at Olympia, Washington, and effective June 2, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website.