

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**NOTICE OF PENALTIES INCURRED AND DUE
FOR VIOLATIONS OF LAWS AND RULES**

PENALTY ASSESSMENT: D-200813

PENALTY AMOUNT: \$5,000

Investigation # 8244

SERVICE VIA EMAIL

Puget Sound Energy
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The Washington Utilities and Transportation Commission (Commission) believes that Puget Sound Energy (PSE) has violated Revised Code of Washington (RCW) 19.122.030(3)(a) by failing to provide the excavator with reasonably accurate information by marking the location of its underground utilities. RCW 19.122.070(1) states, in part, that violations of any provision of the chapter are subject to a civil penalty of not more than \$1,000 for an initial violation and not more than \$5,000 for each subsequent violation within a three-year period.

The Commission reviewed findings and recommendations made by the Washington State Dig Law Safety Committee (Safety Committee) and hereby notifies you that it is assessing a \$5,000 penalty against you on the following grounds:

On September 15, 2020, the Safety Committee heard case 19-087 against PSE and determined the Company violated RCW 19.122.030(3)(a) by failing to provide the excavator with reasonably accurate information by marking the location of its underground utilities. The Safety Committee recommended that the Commission impose a \$1,000 penalty for the violation of RCW 19.122.030(3)(a). The Safety Committee further recommended the Commission suspend an \$800 portion of the penalty subject to the condition that PSE incur no additional violations of RCW 19.122 within 12 months of the date of the order.

Commission staff (Staff) agrees with the Safety Committee findings of probable violation but disagrees with the penalty recommendation. Staff based this decision on the following information and investigation.

Staff conducted an investigation that included reviewing damage reports, investigation reports, and emails submitted by Johansen and PSE. These documents identified a natural gas line that was mislocated by 4.5 feet. No damage occurred to the line.

Johansen alleges that, when responding to locate ticket #19372927, PSE failed to accurately locate its underground utilities, resulting in a near-miss to a 6" natural gas line. The 6" natural gas line was found to be 4.5 feet from the locate marks.

In an email exchange between PSE and the Safety Committee dated September 8, 2020, PSE acknowledged that the locate referenced was inaccurate.

Staff's research also indicates PSE had 19 reports of missed or inaccurate locates in 2020. Further, on July 15, 2019, the Commission issued a warning letter to PSE regarding a violation of RCW 19.122.030(3)(a), and on January 18, 2017, the Commission assessed a \$2,000 penalty against the Company in Docket D-161231 for failing to provide reasonably accurate underground gas facility markings.

Due to the pattern of missed and inaccurate locates, staff recommends locate supervisors and locators under contract with PSE involved with this violation attend locator training within 90 days of this notice.

Staff would also like to remind Puget Sound Energy of the requirements in 49 C.F.R 192 and WAC 480-93 related to the Company's responsibility for contractors, locating facilities, and facility maps.

The Commission agrees with Staff's recommendation and assesses a penalty of \$5,000 and requires that all locators and locator supervisors under contract with PSE that were involved with this violation attend locator training by Monday, June 21, 2021.

These facts, if not contested or if proved at a hearing and not rebutted or explained, are sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe the violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Or, if there is a reason for the violation that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of the penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request to contest the violation or for mitigation of the penalty must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. *See* RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation or application for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of their decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the \$5,000 penalty amount due and agree to provide the Commission with proof of locator training attendance within 10 days of completion; or
- Request a hearing to contest the occurrence of the violation; or
- Request mitigation to reduce the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission may then sue you to collect the penalty.

DATED at Lacey, Washington, and effective March 24, 2021.

/s/ Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-200813, Investigation # 8244

PLEASE NOTE: You must complete and sign this document and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed.

I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements:

1. **Payment of penalty.** I admit that the violation occurred and enclose \$5,000 in payment of the penalty. I will submit proof of completion of locator and locator supervisor training within 10 days of completion.
2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below (**if you do not include reasons supporting your contest here, your request will be denied**):
- a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.
- OR b) I ask for a Commission decision based solely on the information I provide above.
3. **Request mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reasons set out below (**if you do not include reasons supporting your application here, your request will be denied**):
- a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.
- OR b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: _____ [Month/Day/Year], at _____ [City, State]

Name of Respondent (Company) – please print

Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony.”