

Service Date: May 19, 2025

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-250199

PENALTY AMOUNT: \$4,000

Investigation # 9089

SERVICE VIA EMAIL

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YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE

The Washington Utilities and Transportation Commission (Commission) believes that Hero Fencing, LLC (Hero Fence or Company) violated Revised Code of Washington (RCW) 19.122.030(2) four times for failure to provide notice to a one-number locator service not less than two business days before the scheduled excavation date.

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.

On March 26, 2025, the Safety Committee heard case 25-016 filed by NW Natural Gas (NWN or Complainant) against Hero Fence and determined the Company violated RCW 19.122.030(2) four times for failure to provide notice to a one-number locator service not less than two business days before the scheduled excavation date. The Safety Committee recommended that the Commission impose a \$4,000 penalty.

Commission staff (Staff) reviewed the documents, reports, and communications with the Safety Committee and agreed with the Safety Committee's findings and recommendations.

The Commission hereby notifies you that it is assessing a \$4,000 penalty (Penalty Assessment) against you on the following grounds:

1. **Alleged Violation 1:**

The Complainant states that on February 17, 2025, Hero Fence excavated and did not call the One Call Center for locates.

Analysis: The complaint submitted by NWN documents that Hero Fence used a post-hole digger to excavate and install fence posts at 2804 North 49th Avenue, Camas, WA without a locate request. Further, NWN noted the Company was installing the fence near gas services and mains, and there were clear indications that gas and other underground utilities were in the dig area. NWN stated in the complaint that Hero Fence did not submit a locate request for the addresses until February 18, 2025. NWN personnel claimed it had documented on five occasions prior to this complaint that Hero Fence was advised of applicable dig laws. Still, the Company continued working without submitting a locate request. During the peer review, NWN stated that the reason for filing the complaint is that it has reached an impasse with Hero Fence of expectations. NWN and Hero Fence have spoken numerous times, and NWN has provided the Company with a booklet on calling for locates. NWN also stated that Hero Fence provided information about problems it was having with the 811 mobile app. NWN stated that it attempted to utilize the mobile app and found it was not working on an Apple device. NWN reported the issue to 811 but received “push back.” However, NWN noted there are other avenues for the Company to call in locate tickets.

2. **Alleged Violation 2:**

The Complainant states that on February 17, 2025, Hero Fence excavated and did not call the One Call Center for locates.

Analysis: The complaint submitted by NWN documents that Hero Fence used a post-hole digger to excavate and install fence posts at 2864 North 49th Avenue, Camas, WA without a locate request. Further, NWN noted the Company was installing the fence near gas services and mains, and there were clear indications that gas and other underground utilities were in the dig area. NWN stated in the complaint that Hero Fence did not submit a locate request for the addresses until February 18, 2025. NWN personnel claimed it had documented on five occasions prior to this complaint that Hero Fence was advised of applicable dig laws. Still, the Company continued working without submitting a locate request. During the peer review, NWN stated that the reason for filing the complaint is that it has reached an impasse with Hero Fence of expectations. NWN and Hero Fence have spoken numerous times, and NWN has provided the Company with a booklet on calling for locates. NWN also stated that Hero Fence provided information about problems it was having with the 811 mobile app. NWN stated that it attempted to utilize the mobile app and found it was not working on an Apple device. NWN reported the issue to 811 but received “push back.” However, NWN noted there are other avenues for the Company to call in locate tickets.

3. **Alleged Violation 3:**

The Complainant states that on February 17, 2025, Hero Fence excavated and did not call the One Call Center for locates.

Analysis: The complaint submitted by NWN documents that Hero Fence used a post-hole digger to excavate and install fence posts at 2884 North 49th Avenue, Camas, WA without a locate request. Further, NWN noted the Company was installing the fence near gas services and mains, and there were clear indications that gas and other underground utilities

were in the dig area. NWN stated in the complaint that Hero Fence did not submit a locate request for the addresses until February 18, 2025. NWN personnel claimed it had documented on five occasions prior to this complaint that Hero Fence was advised of applicable dig laws. Still, the Company continued working without submitting a locate request. During the peer review, NWN stated that the reason for filing the complaint is that it has reached an impasse with Hero Fence of expectations. NWN and Hero Fence have spoken numerous times, and NWN has provided the Company with a booklet on calling for locates. NWN also stated that Hero Fence provided information about problems it was having with the 811 mobile app. NWN stated that it attempted to utilize the mobile app and found it was not working on an Apple device. NWN reported the issue to 811 but received “push back.” However, NWN noted there are other avenues for the Company to call in locate tickets.

Alleged Violation 4:

The Complainant states that on February 17, 2025, Hero Fence excavated and did not call the One Call Center for locates.

Analysis: The complaint submitted by NWN documents that Hero Fence used a post-hole digger to excavate and install fence posts at 2896 North 49th Avenue, Camas, WA without a locate request. Further, NWN noted the Company was installing the fence near gas services and mains, and there were clear indications that gas and other underground utilities were in the dig area. NWN stated in the complaint that Hero Fence did not submit a locate request for the addresses until February 18, 2025. NWN personnel claimed it had documented on five occasions prior to this complaint that Hero Fence was advised of applicable dig laws. Still, the Company continued working without submitting a locate request. During the peer review, NWN stated that the reason for filing the complaint is that it has reached an impasse with Hero Fence of expectations. NWN and Hero Fence have spoken numerous times, and NWN has provided the Company with a booklet on calling for locates. NWN also stated that Hero Fence provided information about problems it was having with the 811 mobile app. NWN stated that it attempted to utilize the mobile app and found it was not working on an Apple device. NWN reported the issue to 811 but received “push back.” However, NWN noted there are other avenues for the Company to call in locate tickets.

During the peer review, Hero Fence acknowledged that it had been working with NWN to develop a plan for requesting locates. Hero Fence was utilizing the 811 mobile app, which provided the ability to make a locate request from the field. However, the 811 mobile app was not working with the addresses identified in the complaint, which NWN confirmed. Hero Fence provided a video which showed that the 811 mobile app was not allowing the locate request to process. Since the mobile app was not accepting the exact address, the locator would not know where to locate it. The Company attempted to contact 811 to address the issue with the mobile app, but it was unsuccessful. However, Hero Fence did not call 811 by phone to request the locates for the addresses. Hero Fence stated that it is the responsibility of the Company to have valid locate tickets. Further, the Company is developing a process to comply with the dig law.

Staff viewed the video provided by Hero Fence and confirmed the information that appeared to show that when the Company entered the street numbers and physical address, the website would only accept the street for the locate request and not include the numbers. Staff could not determine the reason for this issue, but did not find any location requests made by the Company for the addresses before February 18, 2025.

Staff conducted a search of the Washington One Call System database and found locate tickets #25057489, #25057533, and #25057503, which were called in on February 18, 2025, for 2864 N 49th Avenue, 2804 N 49th Avenue, and 2896 N 49th Avenue, Camas, WA, respectively. Staff did not find a valid locate request for 2884 North 49th Avenue, Camas, WA, and did not find locate requests for the addresses prior to February 18, 2025.

The Commission considered the following factors in determining the appropriate penalty amount for the violations:

1. **How serious or harmful the violations are to the public.**
These incidents could have been significantly more harmful to Hero Fence workers, utility technicians, nearby homeowners, and the public, and it could have resulted in severe injury and/or loss of property.
2. **Whether the violations are intentional.**
The violations do not appear to be intentional, but rather due to negligence by Hero Fence. Over the past 12 months Hero Fence has submitted 106 requests to the One Call Center for locates. This demonstrates Hero Fence's knowledge of the requirements of the Washington State Dig Law.
3. **The likelihood of recurrence.**
The likelihood of recurrence depends on the Company's actions going forward and its willingness to notify the one-number locate service every time before beginning excavation.
4. **The Company's previous Warning Letter.**
On December 19, 2023, the Commission mailed an Alleged Violation of Washington Dig Law letter to Hero Fence. The letter included detailed information about Washington state's underground utility damage prevention act, requirements for submitting utility locate requests before excavating, and the possibility of penalties for each violation. The Commission mailed the letter after receiving a report of damage caused by Hero Fence on September 4, 2023, that occurred because the Company failed to submit a request to locate underground utilities before excavating.

The Commission has considered these factors and agrees with the Safety Committee's findings of probable violations and penalty recommendation, as follows:

- **First Violation:** \$1,000 penalty for one violation of RCW 19.122.030(2) that occurred on February 17, 2025, at 2804 North 49th Avenue, Camas, WA.

- **Second Violation:** \$1,000 penalty for one violation of RCW 19.122.030(2) that occurred on February 17, 2025, at 2864 North 49th Avenue, Camas, WA.
- **Third Violation:** \$1,000 penalty for one violation of RCW 19.122.030(2) that occurred on February 17, 2025, at 2884 North 49th Avenue, Camas, WA.
- **Fourth Violation:** \$1,000 penalty for one violation of RCW 19.122.030(2) that occurred on February 17, 2025, at 2896 North 49th Avenue, Camas, WA.

The total penalty amount is \$4,000 penalty for the four violations of RCW 19.122.30(2) with an offer to suspend a \$3,200 portion of the penalty for one year, then waive it, subject to the conditions that:

- 1) Company owners, project managers, and field crew responsible for excavation complete Dig Safe Training provided through the National Utility Contractors Association (NUCA) within 90 days of this Penalty Assessment;
- 2) The Company must submit documentation of training completion to the Commission; and
- 3) The Company must not commit any further violations of RCW 19.122 within 12 months of the date of this Penalty Assessment.

These facts, if proven 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 violations did not occur, you may deny committing the violations and contest the penalty through evidence presented at a hearing or in writing. Or, if there is a reason for the violations 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 a hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request to contest the violations 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 violations 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 Penalty Assessment to do one of the following:

- Pay the \$4,000 penalty amount due; or
- Pay \$800 and notify the Commission that you accept the offer to suspend a \$3,200 portion of the penalty amount subject to the following conditions:

- Company owners, project managers, and field crew responsible for excavation must complete NUCA Dig Safe Training (<https://utc-9183.quickbase.com/db/bpkt6vndh>) within 90 days of service of this Penalty Assessment; and
- **The Company must submit documentation of training completion to the Commission;** and
- The Company must not incur any additional violations of RCW 19.122 within 12 months of the date of this Penalty Assessment; or
- Request a hearing to contest the occurrence of the violations; or
- Request mitigation to reduce the amount of the penalty.

Please indicate your selection on the enclosed form and submit it electronically through the Commission's web portal at <https://efiling.utc.wa.gov/Form> **within FIFTEEN (15) days** after you receive this Penalty Assessment. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, Washington 98504-7250.

If you wish to make your payment online, please use this link: [Make a Payment Now \(wa.gov\)](#).¹

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

DATED at Lacey, Washington, and effective May 19, 2025.

/s/Connor Thompson
CONNOR THOMPSON
Interim Director, Administrative Law
Division

¹ <https://www.utc.wa.gov/documents-and-proceedings/online-payments/make-payment-now>.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-250199 Investigation # 9089

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, 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 violations occurred and:
- ☐ Enclose \$4,000 in payment of the penalty.
- OR ☐ Attest that I have paid the penalty in full through the Commission's payment portal.
- ☐ 2. **Accept conditions.** I admit that the violations occurred and enclose \$800 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$3,200 penalty amount subject to the following conditions:
- ☐ Company management and field crew responsible for excavation must complete Dig Safe training provided through NUCA within 90 days of service of this Penalty Assessment; and
 - ☐ The Company must submit documentation of training completion to the Commission; and
 - ☐ The Company must not commit any further violations of RCW 19.122 within twelve (12) months of the date of this Notice.
- ☐ 3. **Contest the violations.** I believe that the alleged violations 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.
- ☐ 4. **Request mitigation.** I admit the violations, 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 or she makes a materially false statement which he or she 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 or her 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.