

Service Date: February 6, 2018

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-180104
PENALTY AMOUNT: \$1,000

North Sky Communications, LLC
11818 SE Mill Plain Blvd., Suite 410
Vancouver, WA 98684

The Washington Utilities and Transportation Commission (Commission) believes you have violated Revised Code of Washington (RCW) 19.122.030(2) by failing to provide the required notice to a one-number locator service not less than two business days before excavating. RCW 19.122.070(1) states, in part, that violations of any provision of the chapter is subject to a civil penalty of not more than one thousand dollars for an initial violation and not more than five thousand dollars 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 penalty against you in the amount of \$1,000 on the following grounds:

The Safety Committee received a complaint against North Sky Communications, LLC (North Sky) regarding a potential violation of the Washington State Dig Law, RCW 19.122, for work performed in 2017. The complainant in this case was a private homeowner named Carl Mollnow.

On Jan. 31, 2018, the Safety Committee heard the complaint for case 17-050 against North Sky. The Safety Committee determined that North Sky committed the following violation:

- One violation of RCW 19.122.030(2) for failing to request locates prior to excavating

The Safety Committee recommended that the following penalty be assessed against North Sky:

- \$1,000 for one violation of RCW 19.122.030(2); and
- The opportunity to defer \$800 of the \$1,000 penalty if the North Sky regional manager, superintendent, director of safety, and the employee involved in the violation, all complete National Utility Contractor Association (NUCA) Dig Safe Training within 90 days of the issuance of a penalty assessment by the Commission.

Commission regulatory staff (Staff) reviewed the Safety Committee's determination and agrees with its decision. Staff found that North Sky committed one violation of RCW 19.122.030(2). Staff based this decision on the following information provided by the Safety Committee:

Case 17-050

The complainant, Mr. Mollnow, alleges that on Nov. 29, 2017, North Sky Communications failed to request utility locates prior to excavating to install a CenturyLink utility line at 5118 84th Ave. W, in University Place, WA. Mr. Mollnow alleges that the excavation area was marked in white paint but that the technician failed to request a locate through a one-number locator service prior to excavating and installing the new service line.

Staff investigated and found that no utility locate request was submitted by North Sky for this location. Staff determined that North Sky committed one violation of RCW 19.122.030(2) for failing to request locates prior to excavating.

Accordingly, Staff recommends a \$1,000 penalty, with an offer to suspend \$800 of the total penalty on the conditions that North Sky's regional manager, superintendent, director of safety, and the employee involved in the violation, attend NUCA Dig Safe Training within six months of the penalty assessment, and that the company commit no further violations of RCW 19.122 within the next 12 months.

Staff's research indicates that North Sky has a significant history of requesting utility locates and that the violation was the result of company negligence, not a lack of knowledge of the requirements of Washington State's Dig Law.

Pursuant to RCW 19.122.150(3), the Commission has considered the Safety Committee's determination and Staff's investigation, and the Commission adopts their recommendations. The Commission assesses a penalty of \$1,000 against North Sky for the single violation of RCW 19.122.030(2). The Commission also offers to defer \$800 of the penalty on the conditions that (1) North Sky's regional manager, superintendent, director of safety, and the employee involved in the violation, all complete NUCA Dig Safe Training within six months of the issuance of this penalty assessment; and (2) North Sky commits no further violations of RCW 19.122 within the next 12-months. The Commission will waive the suspended penalty amount of \$800 if North Sky complies with both conditions.

The information the Safety Committee and Staff provided to the Commission, if proved at a hearing and not rebutted or explained, is 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 assessment 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 concerning the violation require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If you admit the violation but believe there is a reason for the violation that should excuse you from the penalty, you may ask for mitigation (reduction) of this 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 for mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request.

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 his or her decision.

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

- Pay the \$1,000 amount due;
- Pay \$200 of the total penalty and notify the Commission that you accept the offer to suspend, and ultimately waive, \$800 of the penalty amount due on the conditions that North Sky's regional manager, superintendent, and director of safety, along with the employee involved in the violation, all complete NUCA Dig Safe Training within six months of the issuance of this penalty assessment; submit documentation of that attendance to the Commission within five (5) days of attending the training; and commit no further violations of RCW 19.122 within the next 12-months; or
- Request a hearing to contest the occurrence of any or all of the violation; 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 **within FIFTEEN (15) days** after you receive this notice. 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, Post Office Box 47250, Olympia, Washington 98504-7250.

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 Olympia, Washington, and effective February 6, 2018.

/s/ Gregory J. Kopta
GREGORY J. KOPTA
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-180104

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 \$1,000 in payment of the penalty; or

2. **Accept conditions.** I admit that the violation occurred and enclose \$200 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, \$800 of the penalty on the conditions that North Sky's regional manager, superintendent, and director of safety, along with the employee involved in the violation, all complete NUCA Dig Safe Training within six months of the issuance of this penalty assessment; submit documentation of that attendance to the Commission within five (5) days of attending the training; and commit no further violations of RCW 19.122 within the next 12-months; or

3. **Contest the violations.** 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.

4. **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: 2/22/18 [Month/Day/Year], at Vancouver, WA [City, State]

North Sky Communications
Name of Respondent (company) – please print

Tam O Balleja
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.”