

Service Date: June 24, 2021

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-210358

PENALTY AMOUNT: \$5,000

Investigation # 8361

SERVICE VIA EMAIL

UBI: 179-010-055

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The Washington Utilities and Transportation Commission (Commission) believes that Puget Sound Energy (PSE or Company) has violated the 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 your underground facilities after receiving notice from the excavator to a one-number locator service. 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 May 19, 2021, the Safety Committee heard case 21-009 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 facilities. The Safety Committee recommended that the Commission impose a \$5,000 penalty.

Commission staff (Staff) agrees with the Safety Committee's findings of probable violation and agrees with the penalty recommendation.

Staff conducted an investigation that included observing the review hearing, listening to statements by Chris Hazenhauer, Kyle Edwards, and Jeff Horton as well as reviewing investigation reports and emails submitted by PSE, and Johansen Construction (JCC or Complainant).

On March 10, 2021, JCC was excavating at 4500 Talbott Rd, Renton, Washington. JCC had valid locates to begin excavation. After a period performing standard potholing procedures, the on-site PSE inspector raised concern about the accuracy of the locates. The PSE inspector indicated that it appeared the locate services had not been performed

properly and ran a tracer wire from the access box. JCC crew then uncovered an 8-inch high-pressure line eight feet east of the location marked by ELM, PSE's contracted locator service.

Staff's research also indicates PSE had 19 inaccurate locates in 2020, and although outside the statute of limitations, there is history with the Commission of a previous penalty assessment against PSE for inaccurate locates in 2017. PSE was assessed a \$5,000 penalty on March 24, 2021, for one violation of RCW 19.122.030(3)(a) by failing to provide the excavator with reasonably accurate information by marking the location of its underground facilities.

During the review hearing and in a written statement provided by PSE, the Company acknowledged that the locate services had been performed improperly during this incident. PSE reported on its continued efforts to improve communication with excavators and improve its process with ELM.

The Commission agrees with Staff's recommendation and assesses a penalty of \$5,000. 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; 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 June 24, 2021.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-210358, Investigation #8361

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.

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 provided 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 provided 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.”