

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-190758  
PENALTY AMOUNT: \$11,000  
Investigation # 8013

UBI: 313 005 741  
Phone: (425) 783-1000

Snohomish County PUD  
2320 California Street  
Everett, WA 98201

The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.030(3)(a) by failing to provide reasonably accurate information as to the location of underground utilities within two business days of receipt of an excavator's utility locate request. 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 penalty of \$11,000 against you on the following grounds:

On September 3, 2019, the Safety Committee heard complaints for cases 19-049, 19-050, and 19-060 against Snohomish County PUD (SnoPUD) regarding alleged violations of the Washington state dig law, RCW 19.122, that occurred on August 24, 2018, December 27, 2018, and June 13, 2019, respectively. The complainant in this case was Austin's Lend-A-Hand. The Safety Committee determined that the SnoPUD committed the following violations:

- Three violations of RCW 19.122.030(3)(a) for failing to provide reasonably accurate information as to the location of underground utilities within two business days of receipt of an excavator's utility locate request.

The Safety Committee recommends that the Commission assess the following \$11,000 penalty against SnoPUD:

- \$1,000 penalty for one violation of RCW 19.122.030(3)(a) that occurred on August 24, 2018; and
- \$5,000 penalty for one violation of RCW 19.122.030(3)(a) that occurred on December 27, 2018; and

- \$5,000 penalty for one violation of RCW 19.122.030(3)(a) that occurred on June 13, 2019.

Commission regulatory staff (Staff) reviewed the Safety Committee's determination and agrees with its conclusions. Staff found that SnoPUD violated RCW 19.122.030(3)(a) on three occasions. Staff based this decision on the following information provided by the Safety Committee:

### **First Violation**

On August 20, 2018, Austin's Lend-A-Hand submitted utility locate request #18362799 for 472 Lehman Dr., Camano Island, Washington. On August 24, 2018, Austin's Lend-A-Hand arrived at the jobsite and discovered a lack of SnoPUD underground utility markings on the ground within the identified excavation area. Austin's Lend-A-Hand contacted SnoPUD's contracted locator, who was dispatched to the site, and subsequently located and marked additional underground utilities within the excavation area. Photographs and documentation submitted to the Safety Committee by both parties support the allegation, and Staff's subsequent investigation concluded that SnoPUD failed to mark all of its underground locatable facilities within two business days of the excavator's request, and therefore did not provide reasonably accurate information to the excavator in regards to the location of its underground utilities.

### **Second Violation**

On December 20, 2018, Austin's Lend-A-Hand submitted utility locate request #18536674 for 832 New Morning Rd., Camano Island, Washington. On December 27, 2018, Austin's Lend-A-Hand arrived at the jobsite and discovered a lack of SnoPUD underground utility markings on the ground within the identified excavation area. Austin's Lend-A-Hand contacted SnoPUD's contracted locator, who was dispatched to the site, and subsequently located and marked underground utilities within the excavation area. Photographs and documentation submitted to the Safety Committee by both parties support the allegation, and Staff's subsequent investigation concluded that SnoPUD failed to provide any information to the excavator as to the location of its underground utilities in the excavation area within the required two business days of the locate request.

### **Third Violation**

On June 5, 2019, Austin's Lend-A-Hand submitted utility locate request #19235521 for 495 Tillicum Way, Camano Island, Washington. On June 13, 2019, Austin's Lend-A-Hand arrived at the jobsite and discovered a lack of SnoPUD underground utility markings on the ground within the identified excavation area. Austin's Lend-A-Hand contacted SnoPUD's contracted locator, who was dispatched to the site, and subsequently located and marked additional underground utilities within the excavation area. Photographs and documentation submitted to the Safety Committee by both parties support the allegation, and Staff's subsequent

investigation concluded that SnoPUD failed to provide reasonably accurate information to the excavator as to the location of its underground utilities in the excavation area within the required two business days of the locate request.

Staff recommends the Commission accept the Safety Committee's recommendation and assess an \$11,000 penalty against SnoPUD for three violations of RCW 19.122 for failing to provide the required notice to a one-number locator service not less than two business days before excavating, as follows:

- \$1,000 penalty for the violation of RCW 19.122.030(3)(a) that occurred on August 24, 2018; and
- \$5,000 penalty for the second violation of RCW 19.122.030(3)(a) that occurred on December 27, 2018; and
- \$5,000 penalty for the third violation of RCW 19.122.030(3)(a) that occurred on June 13, 2019.

The Commission agrees with Staff's recommendation and assesses a penalty of \$11,000.

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 that any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for any or all of 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 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 his or her decision.

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

- Pay the \$11,000 amount due;
- Request a hearing to contest the violation(s); 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, Post Office 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 September 18, 2019.

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

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
PENALTY ASSESSMENT D-190758, Investigation # 8013

**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 violations occurred and enclose \$11,000 in payment of the penalty.

2. **Contest the violation.** I believe that the alleged violation(s) did not occur for the reasons I describe below:

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 violations, but I believe that the penalty should be reduced for the reasons set out below:

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.”