

Service Date: May 9, 2024

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

Received
Records Management
May 24, 2024

PENALTY ASSESSMENT: D-240184
PENALTY AMOUNT: \$5,000
Investigation # 8879

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 Potelco, Inc. (Potelco or Company) violated Revised Code of Washington (RCW) 19.122.030(2) by failing to provide notice to a one-number locator service not less than two business days before beginning excavation.

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 7, 2024, the Washington State Dig Law Safety Committee (Safety Committee) heard case 23-118 filed by Snoqualmie Pass Utility District (SPUD or Complainant) against Potelco and determined Potelco violated RCW 19.122.030(2) by failing to provide notice to a one-number locator service not less than two business days before beginning excavation. The Safety Committee recommended that the Commission impose a \$5,000 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 \$5,000 penalty (Penalty Assessment) against you on the following grounds:

1. Alleged Violation(s):

The Complainant states that on December 13, 2023, Potelco excavated a hand hole at 210 Olson Dr, Snoqualmie Pass, and did not wait two business days before beginning excavation.

2. **Analysis:**

The alleged violation concerns RCW 19.122.030(2) which states, in part, that an excavator must provide notice to a one-number locator service not less than two business days before beginning excavation. The Complainant reported that on December 13, 2023, it received an emergency locate request for 210 Olson Dr, Snoqualmie Pass, from Potelco. When the Complainant arrived on site, there was no crew from Potelco, and it found a bucket over the manhole Potelco dug. During the review process, Potelco explained that it believed there was an emergency situation due to weather conditions involving heavy rain and snow, and the possibility those conditions could impact service to customers.

The review panel considered the emergency exemptions as outlined in RCW 19.122.031(1)(a) and the definition of “emergency” per RCW 19.122.020(5) and determined there was no “clear and present danger to life or property, or a customer service outage.” The review panel took into consideration that the Complainant reported there was a pattern of behavior by Potelco of abusing or misusing “emergency” locate requests due to poor planning on their part. The review panel also believed that the possibility of poor conditions did not constitute a “clear and present danger.”

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

1. **How serious or harmful the violation is to the public.**

This incident could have been significantly more harmful to Potelco workers, utility technicians, nearby homeowners, and the public, and could have resulted in severe injury and/or loss of property.

2. **Whether the violation is intentional.**

The violation does not appear to be intentional, but rather due to negligence by Potelco. Over the past 12 months, Potelco has submitted 11,085 requests to the One Call Center for locates. This demonstrates Potelco’s knowledge of requirements and its responsibility to contact the one-number locate service before beginning excavation. The Commission has issued multiple previous Penalty Assessments to Potelco for violations of RCW 19.122.

3. **Whether the company self-reported the violation.**

Potelco did not self-report the violation. The Commission became aware of the violation after the Complainant filed a complaint with the Safety Committee.

4. **The likelihood of recurrence.**

The likelihood of recurrence depends on Potelco’s actions going forward, and its ability to comply with the requirements of the dig law. Potelco is advised to limit the use of an “emergency” excavation for such a time that there is a “clear and present danger to life, property or loss of customer service.”

5. **The Company's previous violations and penalties.**

- **Warning Letter**

- On March 27, 2017, the Commission mailed an Alleged Violation of Washington Dig Law letter to Potelco. 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.

- **Penalty Assessments**

- On October 9, 2018, the Commission issued Potelco-Infrasource a Penalty Assessment of \$3,500 for one violation of RCW 19.122.030(2) in docket DG-180733.
- On August 19, 2020, the Commission issued Potelco-Infrasource a Penalty Assessment of \$5,000 for one violation of RCW 19.122.055(1)(a) in docket DG-200433.
- On December 6, 2021, the Commission issued Potelco-Infrasource a Penalty Assessment of \$2,500 for one violation of RCW 19.122.055(1)(a) in docket DG-210853.
- On December 9, 2022, the Commission issued Potelco-Infrasource a Penalty Assessment of \$2,500 for one violation of RCW 19.122.055(1)(a) in docket DG-220885.

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

- \$5,000 penalty for one violation of RCW 19.122.030(2)

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 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 a 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 Penalty Assessment 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 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 9, 2024.

/s/Michael Howard
MICHAEL HOWARD
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-240184 Investigation # 8879

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 violation occurred and:
 Enclose \$5,000 in payment of the penalty.
 OR Attest that I have paid the penalty in full through the Commission's payment portal.
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 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.