

Service Date: August 12, 2024

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-240568

PENALTY AMOUNT: \$5,000

Investigation # 8929

SERVICE VIA EMAIL

Erika Hunter
Puget Sound Energy
PO Box 97034
Bellevue, WA 98009
Erika.Hunter@pse.com

UBI: 179-010-055

Phone: (206) 402-9142

YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE

The Washington Utilities and Transportation Commission (Commission) believes that Puget Sound Energy (PSE or Company) violated Revised Code of Washington (RCW) 19.122.030(4)(a) by failing to provide information to the excavator within two business days.

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 July 16, 2024, the Safety Committee heard case 24-067 filed by Quality Fence Builders (Complainant) against Puget Sound Energy (PSE) and determined that PSE violated RCW 19.122.030(4)(a) by failing to provide information to the excavator within two business days. 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:**

The Complainant states that PSE violated RCW 19.122.030(4)(a) on one occasion by failing to provide information to the excavator within two business days after notification that excavation was to begin May 30, 2024.

2. **Analysis:**

The alleged violation concerns RCW 19.122.030(4)(a), which states, in part, "that a facility operator must provide information to an excavator no later than two business days after the receipt of notice...or before excavation commences, at the option of the facility operator,

unless otherwise agreed by the parties.” The Complainant states that on May 24, 2024, Quality Fence Builders requested locates for 6520 S 228th Street, Kent, Washington for excavation that was to begin on May 30, 2024. The complaint states that the Company was notified on June 11, 2024, when PSE showed up to complete the locate, that the fence had been installed directly over a main power line.

The Safety Committee held a review on July 16, 2024, during which both the Complainant and PSE provided additional documentation. During the review, PSE stated that the technician called and left seven messages with “Melissa” between May 30, 2024, and June 7, 2024, at phone number (253) 939-8533. Staff reviewed the Washington One Call System and confirmed the name Melissa (Applegate) and phone number matched the one-call locate ticket that was requested by Quality Fence Builders (ticket # 24214124). At the review, Quality Fence Builders denied they received any messages from the technician, and there was no evidence presented to show that the Complainant agreed to an extension. PSE stated that the locate ticket was released to the technician on May 29, 2024, and the locate was completed on June 10, 2024. PSE also stated that the fence had been installed over the primary conductor at 6520 S. 228th Street, Kent, WA. Finally, during the review, PSE acknowledged that it was their responsibility to have the locates completed on time, and it did not meet that obligation.

The Safety Committee forwarded the Safety Committee Recommendation Letter to Staff citing the violation date as June 3, 2024. The Complaint also cited June 3, 2024, as the violation date. However, June 3, 2024, was the date the excavator showed up to begin the work. Staff determined that the date upon which the violation occurred was May 30, 2024, which was the work to begin date as cited on the one-call locate ticket #24214124. Thus, the actual violation date was May 30, 2024.

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 Quality Fence Builders workers, utility technicians, nearby homeowners, and the public, and it 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 PSE and its locators. Over the past 36 months (November 3, 2021-January 4, 2023), PSE has been penalized by the Commission on three occasions for violations of RCW 19.122.030. PSE is aware of the requirements to comply with the dig law but continues to have violations involving its locating practices.

3. **The likelihood of recurrence.**

The likelihood of recurrence depends on PSE's actions going forward and its ability to ensure that its contract locator's processes are sufficient to comply with the requirements of the dig law.

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

Penalty Assessments:

D-220826	01-04-2023	Penalty Notice \$5,000	RCW 19.122.030(3)(a)
D-210873	12-08-2021	Penalty Notice \$5,000	RCW 19.122.030(3)(a)
		Penalty Notice \$5,000	RCW 19.122.030(3)(a)
D-210732	11-03-2021	Penalty Notice \$5,000	RCW 19.122.030(3)(a)

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(3)(a).

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 August 12, 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-240568 Investigation # 8929

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.