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WASH. UT. & TP. COMM

Service Date: April 18, 2018

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-180312
PENALTY AMOUNT: \$1,000

Michael Swope
Swope Excavating & Construction, LLC
22015 SE 358th St.
Auburn, WA 98092

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 19.122.055(1)(a) states, in part, that any excavator who fails to notify a one-number locator service and causes damage to a underground gas utility is subject to a civil penalty of not more than ten thousand dollars for each violation.

Commission pipeline safety staff (Staff) reviewed damage reports submitted by Puget Sound Energy (PSE) and information obtained from the One Call 811 database. Based on Staff's review, the Commission hereby notifies you that it is assessing a penalty against you in the amount of \$1,000 on the following grounds:

On December 29, 2017, Swope Excavating & Construction, LLC (Swope Excavating or Company) was using a track hoe to excavate at 3108 S Massachusetts St. in Seattle, Washington. While digging, Swope Excavating ~~damaged a~~ PSE gas line when it bent and pulled up a steel casing. PSE reported Swope Excavating did not have a valid locate ticket prior to beginning work. Staff investigated and found that the only utility locate request submitted was by a different contractor, Greg's Concrete Construction, on November 28, 2017. Staff determined that Swope Excavating failed to submit its own utility locate request prior to excavating.

LOCATED &
EXPOSED

THE STEEL CABING WAS SO SHALLOW THAT IT HAD BENT AROUND ROOTS SWOPE CUT OUT AND PREPPED FOR PSE'S PROPER INSTALLATION OF THEIR UTILITY

Staff found that Swope Excavating committed one violation of 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. Staff recommends the Commission assess a \$1,000 penalty against Swope Excavating for one violation, as follows:

- \$1,000 penalty for one violation of RCW 19.122.030(2), which occurred on December 29, 2017.

Staff's research indicates that Swope Excavating has an insignificant history of requesting utility locates and that the violation may be the result of the Company's lack of knowledge of the requirements of Washington state's Dig Law. Considering these circumstances, Staff recommends that the Commission offer to suspend the \$1,000 penalty for a period of one year subject to the conditions that (1) Swope Excavating field crews involved in excavation, including Company

management, attend Dig Safe training provided through the National Utility Contractors Association (NUCA), within 12 months of the date of the Penalty Assessment; and (2) Swope Excavating commits no further violations of RCW 19.122 within the next 12 months.

The Commission agrees with Staff's recommendation and assesses a penalty of \$1,000 with an offer to suspend the full \$1,000 penalty amount subject to the conditions that (1) Swope Excavating management and all crews complete NUCA Dig Safe Training within 12 months of this Notice, and (2) Swope Excavating commits no further violations of RCW 19.122 within one year of this Notice. The Commission will waive the suspended penalty amount of \$1,000 if Swope Excavating complies with both conditions. If Swope Excavating fails to comply with either of these conditions, the \$1,000 deferred penalty will become immediately due and payable, in addition to any new penalties that the Commission might assess for additional violations.

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 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; or
- Notify the Commission that you accept the offer to suspend, and ultimately waive, the full \$1,000 penalty amount due subject to the conditions that all Swope Excavating employees, including management, attend the Dig Safe training provided through NUCA within 12-months of this Notice; 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 year; or
- Request a hearing to contest the occurrence of any or all of the violation(s); 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 April 18, 2018.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-180312

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

2. **Accept conditions.** ~~I admit that the violation occurred.~~ ~~I also accept the Commission's~~ offer to suspend, and ultimately waive, the full \$1,000 penalty amount on the conditions that all Swope Excavating employees, including management, attend the Dig Safe training provided through NUCA within 12-months 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 year.

I DO NOT ADMIT THAT THE VIOLATION OCCURRED, BUT I
UNDERSTANDING AND KNOWING THAT THIS GOVT. IS FOR
CORPORATIONS, BY BUREAUCRATS, OF THE RICH

3. **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.

4. **Request mitigation.** I admit the violations, 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: 06/08/2018 [Month/Day/Year], at KING COUNTY, WA [City, State]

MICHAEL SWOPE
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.”

