

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: DG – 170657
PENALTY AMOUNT: \$16,000**

Rino Construction
P.O. Box 667
Maple Valley, WA 98038

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.

The Commission reviewed damage reports submitted by Puget Sound Energy (PSE), and information obtained from the One Call 811 database, and hereby notifies you that it is assessing a penalty against you in the amount of \$16,000 on the following grounds:

On Feb. 23, 2016, Rino Construction was using a mini track hoe to install electrical conduit at 221 Main Ave. South in Renton, Washington. While excavating, Rino Construction damaged a PSE 5/8" polyethylene gas line. The Damage Information Reporting Tool (DIRT) report submitted by PSE on April 13, 2016, indicated that a one-number locator service was not notified prior to excavation. Staff sent a technical assistance warning letter to Rino Construction on May 4, 2016, which included detailed information about the requirements of Washington state's dig law.

On Aug. 22, 2016, Rino Construction was performing an excavation for a new plat to install electrical conduit at 333 8th St. South in Kirkland, Washington. While excavating, Rino Construction damaged a PSE 1 1/8" gas stub. The DIRT report submitted by PSE on Oct. 10, 2016, indicated that a one-number locator service was not notified prior to excavation. Staff sent another technical assistance warning letter to Rino Construction on Oct. 19, 2016.

On Nov. 5, 2016, Rino Construction was performing excavation work to install electrical conduit at 1505 140th Ave. NE in Bellevue, Washington. While excavating, Rino Construction damaged a PSE 1/4" gas stub. The DIRT report submitted by PSE on Jan. 18, 2017, indicated that a one-number locator service was not notified prior to excavation.

Accordingly, Staff Recommends a \$16,000 penalty be assessed against Rino Construction for three violations of RCW 19.122.030(2), for failing to provide the required notice to a

one-number locater service not less than two business days before excavating. The breakdown of the recommended penalty is as follows:

- \$1,000 for the first violation of RCW 19.122.030(2), which occurred on Feb. 23, 2016;
- \$5,000 for the second violation of RCW 19.122.030(2), which occurred on Aug. 22, 2016; and
- \$10,000 for the third violation of RCW 19.122.030(2), which occurred on Nov. 5, 2016.

Staff's research indicates that Rino Construction has a positive history of requesting utility locates and that the violations were the result of company negligence, not lack of knowledge of the requirements of Washington state's Dig Law. Staff also based the recommended penalty amounts on the following two factors; (1) Rino Construction was previously provided two technical assistance letters regarding the dig law requirements; and (2) Rino Construction's lack of cooperation during staff's investigation.

The Commission agrees with Staff's recommendation and assesses a penalty of \$16,000

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 any or all of the violations did not occur, you may deny committing the violation(s) 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(s) 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 any or all of the violations but believe there is a reason for the violation(s) 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(s) 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 \$16,000 amount due; 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 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 Olympia, Washington, and effective June 5, 2017.

GREGORY J. KOPTA
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG – 170657

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 \$16,000 in payment of the penalty

2. **Contest the violations.** I believe that the alleged violations 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 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: _____ [Month/Day/Year], at _____ [City, State]

Name of Respondent (company) – please print
RCW 9A.72.020:

Signature of Applicant

“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.”