

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: DG-180386
PENALTY AMOUNT: \$3,500**

Ryatt Construction, LLC
9414 Stone Ave. N
Seattle, WA 98103

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, and hereby notifies you that it is assessing a penalty against you in the amount of \$3,500 on the following grounds:

On Jan. 24, 2018, Ryatt Construction, LLC (Ryatt Construction or Company) was working at 7510 15th Ave. NW in Seattle, Washington. While excavating, Ryatt Construction hit and damaged a 5/8" PSE natural gas stub. PSE reported that after Ryatt Construction hit the stub, it proceeded to crimp the stub with tape, cover it up with plywood, and backfill it with rock. The improperly repaired line was underground for approximately 40 minutes prior to being shut off by PSE gas responders. Staff investigated and found that Ryatt Construction submitted a utility locate request on Jan. 24, 2018, which is the same day the damage incident occurred.

On Aug. 18, 2017, Ryatt Construction was working at 1938 10th Ave. W in Seattle, Washington. While excavating, Ryatt Construction hit and damaged a newly installed 2" PSE natural gas main. PSE reported that the 2" main had been installed approximately one month prior to the date the damage occurred, and the reason it was hit was because Ryatt Construction was excavating on an expired locate ticket from approximately six months earlier. Staff investigated and found that the most recent utility locate request submitted by Ryatt Construction for the damage location was on Feb. 15, 2017, which ultimately expired on April 1, 2017. Staff sent a technical assistance warning letter to Ryatt Construction on Oct. 17, 2017, which included detailed information about the requirements of Washington state's dig law.

Staff previously sent Ryatt Construction a technical assistance warning letter on Feb. 20, 2015, as the result of a reported damage incident without valid locates that occurred on Dec. 3, 2014. This letter included the same detailed information about the requirements of Washington state's dig law.

Staff found that Ryatt Construction committed two violations of RCW 19.122.030(2) by failing to request utility locates on two occasions. Staff recommends the Commission assess a \$3,500 penalty for these two violations, as follows:

- \$1,000 penalty for the first violation of RCW 19.122.030(2), which occurred on Aug. 18, 2017; and
- \$2,500 for the second violation of RCW 19.122.030(2), which occurred on Jan. 24, 2018.

Staff also recommends that Ryatt Construction 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.

Staff's research indicates that Ryatt Construction has a significant 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.

The Commission agrees with Staff's recommendation and assesses a penalty of \$3,500.

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 the violations but believe there is a reason for any or all of 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 \$3,500 amount due;
- 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 May 11, 2018.

/s/ Rayne Pearson

RAYNE PEARSON

Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-180386

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 \$3,500 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

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.”