

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: DG-190242
PENALTY AMOUNT: \$1,000
Investigation #7941**

Totem Electric of Tacoma, Inc.
2332 Jefferson Ave
Tacoma, WA 98402

UBI: 278-043-550
Phone: (253) 383-5022

The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.030 by failing to obtain a valid dig ticket prior to performing an excavation. RCW 19.122.055 states, in part, that any excavator who fails to notify a one-number locator service and causes damage to a hazardous liquid or gas facility is subject to a civil penalty of not more than \$10,000 for each violation.

Commission staff (Staff) conducted an investigation that included reviewing damage reports submitted by Puget Sound Energy (PSE), which identified a natural gas damage event involving Totem Electric of Tacoma, Inc. (Totem Electric or Company). Accordingly, the Commission hereby notifies you that it is assessing a penalty against you for \$1,000 on the following grounds:

On July 7, 2016, Totem Electric struck and damaged a PSE natural gas line while excavating at Freighter Pl SW, Port Orchard, Washington. The Company did not request a dig ticket from a one-number locator service to locate underground utilities before excavating. The Commission mailed an Alleged Violation of Washington Dig Law letter to the Company on September 22, 2016, which included detailed information about the requirements of Washington state's underground utility damage prevention act, and the possibility of penalties for each violation.

On October 4, 2018, Totem Electric was excavating at 16733 35th Ave SE, Bothell, Washington. While trenching for utility installation, Totem Electric employees struck and damaged an underground PSE gas facility. The Damage Information Reporting Tool report submitted by PSE on November 11, 2018, indicated that Totem Electric was excavating without a valid request to locate underground utilities. Totem Electric submitted a request to locate underground utilities for the site on July 30, 2018. That dig ticket expired on September 13, 2018, 21 days before the damage incident.

Staff recommends the Commission assess a \$1,000 penalty against Totem Electric for one violation of RCW 19.122.030(6) for failing to provide the required additional notice to a one-number locator service for continued excavation after the initial notice of excavation and request to locate utilities expired:

- No penalty for the violation of RCW 19.122.030(2) that occurred on July 7, 2016; and
- \$1,000 penalty for the violation of RCW 19.122.030(6) that occurred on October 4, 2018.

Staff's research and communication with Company management indicate that Totem Electric has a positive history of submitting utility locate requests, and that the violation appears to be the result of the Company's negligence rather than a lack of knowledge of the requirements of Washington's dig law. As part of the investigation, Staff contacted the safety officer and a crew foreman from Totem Electric, both of whom described the Company's commitment to safety, training that its employees have received, and Company policies and procedures intended to mitigate risk to the public and Company employees. Since its first damage incident, Totem Electric has submitted 388 requests to locate underground utilities in Washington. After considering all of the circumstances, Staff recommends that the Commission offer to suspend the \$1,000 the penalty amount for a period of one year subject to the condition that the Company incur no further violations of RCW 19.122 within 12 months of the date of this Notice.

The Commission agrees with Staff's recommendation and assesses a penalty of \$1,000, with an offer to suspend the entire \$1,000 penalty amount subject to the condition listed above. The Commission will waive the \$1,000 suspended penalty if the Company complies with the condition. If the Company fails to comply with the condition, the \$1,000 suspended penalty will become immediately due and payable, in addition to any new penalties that the Commission may 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 either or both of the violations did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at a hearing or in writing. Or, if there is a reason for either or both of the violations 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 hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request to contest the violations 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(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 \$1,000 penalty amount due; or
- Notify the Commission that you accept the offer to suspend, and ultimately waive, the entire \$1,000 penalty subject to the condition that Totem Electric incur no further violations of RCW 19.122 within 12 months of the date of this Notice; or
- Request a hearing to contest the occurrence of either or both of the violations; 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, P.O. 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 April 23, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-190242, Investigation # 7941

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 \$1,000 in payment of the penalty.
2. **Accept conditions.** I admit that the violations occurred and accept the Commission's offer to suspend, and ultimately waive, the entire \$1,000 penalty amount subject to the condition that Totem Electric incurs no further violations of RCW 19.122 within 12 months of the date of this Notice.
3. **Contest the violation.** 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.
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: _____ [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.”