

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-230516
PENALTY AMOUNT: \$1,000
Investigation # 8718

EMAIL SERVICE

City of Kent – Public Works Department
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YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE

The Washington Utilities and Transportation Commission (Commission) believes that the City of Kent Public Works Department (City of Kent or City) violated Revised Code of Washington (RCW) 19.122.055(1)(a) by failing to notify the one-number locate service and caused damage to an underground gas facility.

RCW 19.122.055(1)(a) states, in part, that excavators who fail to notify a one-number locator service and cause damage to an underground gas facility are 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, investigation reports, a review of the One Call Center database, and communications with the City. The documents reviewed identified a natural gas event that involved the City of Kent damaging a natural gas facility while excavating without a valid locate ticket.

The Commission reviewed findings and recommendations made by Commission staff and hereby notifies you that it is assessing a \$1,000 penalty (Penalty Assessment) against you on the following grounds:

1. **Alleged Violation:**

On November 21, 2022, the City of Kent was excavating at 728 E. Dean St., Kent, Washington. While excavating, the City of Kent workers struck and damaged an underground Puget Sound Energy (PSE) natural gas facility. The Damage Information Reporting Tool (DIRT) report submitted by PSE on January 1, 2023, indicated that the City of Kent was excavating without a valid request to locate underground utilities.

2. Analysis:

The alleged violation concerns RCW 19.122.055(1)(a), which states, in part, that an excavator must contact the one-number locate center before beginning excavation. On November 21, 2022, City of Kent workers were working on a drainage catch basin when they struck and damaged a PSE 5/8" natural gas service line. The PSE Gas First Responder (GFR) report states that on September 15, 2022, the City of Kent had submitted a request for locates, resulting in ticket #22411953, which expired on October 30, 2022. The GFR report also states that the responders did not observe any locate marks on the ground.

Staff communicated with the City of Kent, which explained that it believes PSE failed to locate the line and mark facilities. Staff reviewed the One Call Center ticket database and found ticket #22411953, which was valid from September 21, 2022, through October 30, 2022. Staff also reviewed tickets #22503790 and #22503808, both of which were valid from November 21, 2022, through January 5, 2023. The damage occurred on November 21, 2022, which means the ticket was requested on the date of the damage. The report from ELM Utilities Services (ELM) also states that a locate was requested after the damage occurred. There was no valid ticket at the time of the damage incident. Staff reminded the City of Kent that it needs to maintain valid tickets, and if the City believes a Facility Operator failed to locate or was inaccurate with a locate, it can file a complaint with the Washington State Dig Law Safety Committee.

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 Company workers, utility technicians, nearby homeowners, and the public, and could have resulted in severe injury and/or loss of property.

2. Whether the violation is intentional.

The violation appears to be due to negligence rather than a lack of knowledge of Washington state's dig law. Over the past 12 months, the City of Kent has called in 597 requests to the One Call Center for locates. This demonstrates the City's knowledge of its requirements and responsibility to contact the one-number locate service before beginning excavation.

3. Whether the company self-reported the violation.

The City of Kent did not self-report the violation. The Commission became aware of the violation when PSE filed a DIRT report following the damage incident.

4. The likelihood of recurrence.

The City of Kent's likelihood of recurrence depends on the City's actions going forward and its willingness to notify the one-number locate service before beginning excavation.

5. The Company's previous violations and penalties.

On September 19, 2022, the Commission mailed Alleged Violation of Washington Dig Law letters to the City of Kent. The letters included detailed information about Washington

State's underground utility damage prevention act, requirements for submitting utility locate requests before excavating, and the possibility of penalties for each violation. The Commission mailed the letter after receiving a report of damage caused by the City of Kent on May 23, 2022, at 26808 37th Ave S., Kent, WA that occurred because the City failed to submit a request to locate underground utilities before excavating.

The Commission has considered these factors and determined that it should penalize the City of Kent as follows:

- \$1,000 penalty for one violation of RCW 19.122.055(1)(a) with an offer to suspend an \$800 portion of the penalty for one year, and then waive it, subject to the conditions that:
 - 1) City supervisors and field crew responsible for excavation complete Dig Safe Training provided through the National Utility Contractors Association (NUCA) within 90 days of this Penalty Assessment;
 - 2) The Company must submit documentation of that attendance to the Commission; and
 - 3) The Company must not commit any further violations of RCW 19.122 within 12 months of the date of this Penalty Assessment.

These facts, if proven 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 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 \$1,000 penalty amount due; or
- Pay \$200 and notify the Commission that you accept the offer to suspend an \$800 portion of the penalty amount subject to the following conditions:
 - The City of Kent management and the field crew responsible for excavation must complete NUCA Dig Safe Training (<https://utc-9183.quickbase.com/db/bpkt6vndh>) within 90 days of service of this Penalty Assessment; and
 - **The Company must submit documentation of that attendance to the Commission;** and

- The City of Kent must not incur any additional violations of RCW 19.122 within 12 months of the date of this Penalty Assessment; or
- Request a hearing to contest the occurrence of the violations; 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, PO 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 July 24, 2023.

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

¹ <https://www.utc.wa.gov/documents-and-proceedings/online-payments/make-payment-now>.

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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:
 Enclose \$1,000 in payment of the penalty.
OR Attest that I have paid the penalty in full through the Commission's payment portal.
2. **Accept conditions.** I admit that the violation occurred and enclose \$200 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$800 penalty amount subject to the following conditions:
- Company management must attend Dig Safe training provided through NUCA within 90 days of service of this Penalty Assessment; and
 - The Company must submit documentation of that attendance to the Commission; and
 - The Company must not commit any further violations of RCW 19.122 within twelve (12) months of the date of this Notice.
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 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.