

Service Date: February 8, 2024

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-240052
PENALTY AMOUNT: \$2,500
Investigation # 8832

EMAIL SERVICE

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YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE

The Washington Utilities and Transportation Commission (Commission) believes that Archer Construction Inc. (Archer Construction or Company) violated Revised Code of Washington (RCW) 19.122.055(1)(a) by failing to notify the one-number locate service and causing 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, the One Call Center database, and communications with the Company. The documents reviewed identified a natural gas event that involved Archer Construction damaging a natural gas facility while excavating without a valid locate ticket.

The Commission reviewed findings and recommendations made by Staff and hereby notifies you that it is assessing a \$2,500 penalty (Penalty Assessment) against you on the following grounds:

- Alleged Violation:**
On July 14, 2023, Archer Construction was excavating at 2612 Summit Ave, Everett, Washington. While excavating, Archer Construction workers struck and damaged an underground Puget Sound Energy (PSE) natural gas facility. The Damage Information Reporting Tool (DIRT) report submitted by PSE on August 26, 2023 indicated that Archer Construction 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 July 14, 2023, Archer Construction was excavating with hand tools for site development when it struck a 1 1/8" PSE natural gas facility. The Gas First Response (GFR) report from PSE indicates the Company had previous locate tickets for the area but that there were no visible locate marks on the ground. The report from ELM states that Archer's locate ticket #23194250 was expired at the time of the damage. Staff communicated by email with the Company on January 22, 2024, and it acknowledged its locate tickets were expired at the time of the damage incident. Staff reviewed the One Call Center ticket database and verified there was no valid ticket for the time period of the damage incident.

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 Archer Construction 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, Archer Construction has submitted 152 requests to the One Call Center for locates. This demonstrates Archer Construction's knowledge of requirements and its responsibility to contact the one-number locate service before beginning excavation.

3. **Whether the company self-reported the violation.**

Archer Construction did not initially self-report the violation. The Commission became aware of the violation when PSE filed a DIRT report. The Company did file a DIRT report on January 8, 2024.

4. **The likelihood of recurrence.**

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

5. **The Company's previous violations and penalties.**

- **Warning Letter**

On September 20, 2022, the Commission mailed an Alleged Violation of Washington Dig Law warning letter to Archer Construction. The letter 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 Archer Construction on June 16, 2022 and

found the Company failed to submit requests to locate underground utilities before excavating.

- **Penalty Assessments**

On May 19, 2023, the Commission issued Archer Construction a Penalty Assessment of \$1,000 for one violation of RCW 19.122.055(1)(a). *See* DG-230351. Archer Construction accepted the conditional Penalty Assessment that required the Company to attend Dig Safe training and have no further Dig Law violations for 12 months. Archer Construction completed the Dig Safe training; however, this new damage incident occurred within 12 months of the previous Notice of Penalty service and will result in the suspended deferred penalty amount of \$800 being re-imposed in addition to any new Penalty Assessment.

The Commission has considered these factors and determined that it should penalize Archer Construction as follows:

- 1) \$2,500 penalty for one violation of RCW 19.122.055(1)(a) that occurred on July 14, 2023.

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 \$2,500 penalty amount due; 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 February 8, 2024.

/s/Michael Howard
MICHAEL HOWARD
Director, Administrative Law Division

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-240052 Investigation #8832

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 \$2,500 in payment of the penalty.
 OR Attest that I have paid the penalty in full through the Commission's payment portal.
2. **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.
3. **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.