

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-240229
PENALTY AMOUNT: \$2,500
Investigation # 8875

EMAIL SERVICE

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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 (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 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 City of Kent. 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 Staff and hereby notifies you that it is assessing a \$2,500 penalty (Penalty Assessment) against you on the following grounds:

1. **Alleged Violation:**

On November 30, 2023, the City of Kent was excavating at 302 West Gowe Street, Kent, Washington. While excavating, 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 8, 2024, indicated that the City of Kent was excavating without a valid request to locate underground utilities on November 30, 2023, at approximately 9:02 a.m.

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. According to PSE's Gas First Response (GFR) report, on November 30, 2023, at approximately 9:02 a.m., the City of Kent was excavating with hydro vacuum equipment

(VAC truck). During the excavation, while trying to cut through a tree root, one of the workers cut through a 5/8" PSE natural gas service line. Additionally, the GFR report detailed that the City of Kent was digging without a valid locate ticket. PSE stated that they did not treble bill the City of Kent. The ELM report confirmed the damage, and that City of Kent was digging without a valid locate permit. Further, the ELM report documented that the City of Kent called in a locate request (#23473910) after they damaged the gas line.

Staff communicated with the City of Kent via email on March 26, 2024. The City of Kent stated that on November 30, 2023, they were performing hydro excavation to gain access to a storm drain line. The City of Kent further stated that as they excavated, they located tree roots, fiber/power, and a gas line along with a storm line. While cutting an exposed tree root, the City of Kent cut the gas line that had been surrounded by the tree root. The City of Kent stated that the gas line appeared to go at an angle opposite of the tree root but made a turn and followed the tree root down the curb line. Once the excavator realized the gas line had been cut, PSE was called to shut off the gas and perform the repair. The City of Kent did not have a valid locate ticket at the time of the damage. The City of Kent provided a locate ticket (#23473910) that was called in on November 30, 2023, at 10:10 a.m., which was after the damage occurred. The City of Kent confirmed the locate ticket provided was for the location of the damage. Also, the City of Kent provided an Incident Report that was dated December 5, 2023, in which they admitted causing the damage and that they did not have a valid locate ticket.

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 City of Kent workers, utility technicians, nearby homeowners, and the public, and it 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 submitted 500 requests to the One Call Center for locates. This demonstrates the City of Kent'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.**
The City of Kent did not self-report the violation. The Commission became aware of the violation when PSE filed a DIRT report.
4. **The likelihood of recurrence.**
The likelihood of recurrence depends on the City of Kent'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 19, 2022, the Commission mailed an alleged violation of Washington Dig Law letter to the City of Kent. 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 the City of Kent on May 23, 2022, that occurred because the Company failed to submit a request to locate underground utilities before excavating.

- **Penalty Assessment**

On July 24, 2023, the Commission issued the City of Kent a Penalty Assessment of \$1,000 for one violation of RCW 19.122.055(1)(a) for damage that occurred on November 21, 2022, at 728 E Dean St, Kent, WA (DG-230516). This penalty currently has an \$800 portion suspended for one year subject to conditions. One of the conditions includes that the City of Kent must not commit any further violations of RCW 19.122 within 12 months of the date of the penalty assessment.

The Commission has considered these factors and determined that it should penalize the City of Kent \$2,500 (Penalty Assessment) for one violation of RCW 19.122.055(1)(a).

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 violation; 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 April 30, 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
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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, 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.