

Service Date: February 4, 2025

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-240960

PENALTY AMOUNT: \$2,500

Investigation # 9058

EMAIL SERVICE

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YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE

The Washington Utilities and Transportation Commission (Commission) believes that Automatic Door and Gate Company (Automatic Door and Gate 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 Automatic Door and Gate 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 October 10, 2024, Automatic Door and Gate was excavating at 9656 Blake Place Edmonds, Washington. While excavating, Automatic Door and Gate workers struck and damaged an underground Puget Sound Energy (PSE) natural gas facility. The Damage Information Reporting Tool (DIRT) report submitted by PSE on November 21, 2024, indicated that Automatic Door and Gate 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 October 10, 2024, Automatic Door and Gate was excavating at 9656 Blake Place Edmonds, Washington, when it damaged a PSE gas line. The Gas First Response (GFR) report submitted by PSE states that the Company was digging without locates and that they left the scene of the incident before providing information to the PSE response personnel. Staff exchanged emails with PSE, which provided further information. According to PSE, when the PSE First Responder arrived at the incident, the First Responder had some initial contact with the Company, but then the Company left the site and did not provide any information about who they were or how they could be contacted. PSE reported that its staff spoke with the homeowner who provided the information that Automatic Door and Gate Company had been hired by them to install a gate. PSE reported that its staff followed up with the Company and explained the Dig Law requirements to request locates before beginning excavation. PSE reported it will be assessing treble damages.

On December 19, 2024, and December 31, 2024, Staff sent emails to the Company requesting further information regarding the incident. On January 6, 2025, staff called the Company and office staff stated they would relay the message to return the Staff call. Later that day, Staff received an email response from the Company owner stating, “we did not cut a gas line.” Staff replied to the Company and explained that the information received from PSE described that Automatic Door and Gate had excavated without locates and damaged a gas line. Staff also asked the Company if had requested locates for that job site. The Company responded to the email stating, “I do not know anything about this.”

On January 10, 2025, Staff spoke by phone with the homeowner at the address where the damage occurred, and they explained they had hired Automatic Door and Gate to install a gate for them. According to the homeowner, on the day the Company showed up and started excavating, they came to the front door and told the homeowner to call PSE because a gas line had been hit. The homeowner explained that when PSE arrived at the site, they observed PSE and the Company get into some kind of argument, and then the Company left. The homeowner explained that several days later the Company showed up and finished the job as if nothing had happened.

Staff reviewed the One Call Center ticket database and did not find a locate ticket for Automatic Door and Gate for the address in question prior to or after the damage occurred. PSE reported having advised the Company it needed to submit a locate request as required by the Dig Law. Staff reviewed the Washington Secretary of State and Department of Revenue websites and determined that Automatic Door and Gate has been in business since 1994. Staff found no history of the Company ever requesting locates in the One Call Center database.

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 Automatic Door and Gate workers, utility technicians, nearby homeowners, and the public, and it could have resulted in severe injury and/or loss of property. Additionally, the Company did not report the damage to PSE or to the One Call Center as obligated under RCW 19.122.050(1).
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. On June 3, 2016, the Commission mailed a Warning Letter to Automatic Door and Gate explaining its requirements and obligations to comply with the Dig Law. There is no history of the Company ever submitting requests to the One Call Center for locates. The Company did intentionally avoid contacting PSE and instead made it the responsibility of the homeowner. Further, the Company was intentionally uncooperative with the PSE responders when it left the scene without providing information. Finally, the Company was not cooperative with Staff during the investigation when attempts were made to obtain clarifying information.
3. **Whether the company self-reported the violation.**

Automatic Door and Gate did not self-report the violation as required in RCW 19.122.050(1) to the One Call Center or to PSE but instead only notified the homeowner. Additionally, RCW 19.122.053(1) and (3) requires that an excavator who observes or causes damage to an underground facility report the damage to the Commission. Automatic Door and Gate Company never self-reported the damage into DIRT and did not notify the One Call Center or PSE.
4. **The likelihood of recurrence.**

The likelihood of recurrence is significantly high due to there being no historical records of the Company ever utilizing the One Call system and no records of the Company completing Dig Safe training. The Company has been in business since 1994 and has been issued a Warning Letter regarding a previous Dig Law violation. Additionally, the Company has denied any knowledge of any incident and has been uncooperative during the investigation. The likelihood of recurrence could be mitigated based on the Company's actions going forward, if it is willing to notify the one-number locate service every time before beginning excavation and successfully completing Dig Safe Training.
5. **The Company's previous violations and penalties.**

On June 3, 2016, the Commission mailed an Alleged Violation of Washington Dig Law letter to Automatic Door and Gate. 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 Automatic Door and Gate on March 1, 2016, that occurred because the Company failed to submit a request to locate underground utilities before excavating.

The Commission has considered these factors and determined that it should penalize Automatic Door and Gate as follows:

- \$2,500 penalty for one violation of RCW 19.122.055(1)(a) with an offer to suspend an \$2,000 portion of the penalty for one year, and then waive it, subject to the conditions that:
 - 1) Company 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 training completion 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 \$2,500 penalty amount due; or
- Pay \$500 and notify the Commission that you accept the offer to suspend an \$2,000 portion of the penalty amount subject to the following conditions:
 - The Company management and 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 training completion to the Commission;** and
 - The Company 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 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 February 4, 2025.

/s/ James E. Brown II
JAMES E. BROWN II
Acting 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-240960 Investigation # 9058

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. **Accept conditions.** I admit that the violation occurred and enclose \$500 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$2,000 penalty amount subject to the following conditions:
- o Company management and field crew responsible for excavation must complete Dig Safe training provided through NUCA within 90 days of service of this Penalty Assessment; and
 - o The Company must submit documentation of training completion to the Commission; and
 - o 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.