

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-151107
PENALTY AMOUNT: \$1,000

Seattle Public Utilities
700 5th Avenue #4900
Seattle, WA 98104

The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.030(3)(a) by failing to mark locatable underground facilities. The Commission also believes you have violated RCW 19.122.030(4)(b)(iii) by not providing copies of the best reasonable available records. RCW 19.122.070(1) states, in part, that violation of any provision of the chapter is subject to a civil penalty of not more than one thousand dollars for an initial violation and not more than five thousand dollars for each subsequent violation within a three-year period.

The Commission reviewed findings and recommendations made by the Washington State Dig Law Safety Committee (Safety Committee) and hereby notifies you that it is assessing a penalty against you in the amount of \$1,000 on the following grounds:

On Nov. 21, 2014, Flatiron Construction (Flatiron) submitted an utility locate request to the National Ticket Management System Washington One Call (One Call). The One Call utility locate requested that all existing utilities be located, to include all existing storm and sewer lines. In addition, Flatiron requested that Seattle Public Utilities (SPU) “put paint on the ground for all utilities.” Flatiron submitted the requests in accordance with RCW 19.122.030(2) prior to excavation to install a new sewer line.

Fourteen utility providers, including SPU, received notification from One Call with instructions to locate utility services within two business days in the area identified on Dig Ticket 14333767. According to both parties, SPU provided Flatiron with a map of its underground facilities, but SPU did not provide field marking of its facilities.

On Dec. 12, 2014, Flatiron filed a complaint with the Safety Committee. The complainant alleged that SPU refused to locate and “put paint on the ground” for their storm and sewer lines. Flatiron further alleged that it contacted SPU and requested a field meet and SPU denied the request. In addition, Flatiron alleged that the map provided by SPU was not accurate or to scale.

The Safety Committee found SPU violated RCW 19.122.030(3)(a) by failing to mark their locatable underground facilities, specifically manholes. The Safety Committee also found SPU violated RCW 19.122.030(4)(b)(iii) by failing to provide copies of the best reasonably available records.

The Safety Committee recommended that the Commission assess a \$1,000 penalty for the violation of RCW 19.122.030(3)(a), with the expectation that SPU will begin to mark its locatable facilities immediately. The Safety Committee further recommended SPU be issued a warning for the violation of RCW 19.122.030(4)(b)(iii), because its maps were upgraded, following Flatiron's complaint submittal, to provide the best reasonably available records.

Pursuant to RCW 19.122.150(3), the Commission has considered the Safety Committee's determination and partially adopts its recommendation. The Commission believes this is a serious offense and warrants the maximum penalty, as the Safety Committee recommends. Therefore, the Commission assesses a penalty of \$1,000. The Commission's ultimate objective, however, is to ensure compliance with the regulations it enforces, and thus the Commission will waive \$800 of the penalty for this first violation on the conditions that (1) SPU locator staff members attend "Dig Safe" training, provided through the National Utility Contractor's Association (NUCA), within 90 days of the date of this Penalty Assessment, and (2) SPU commits no further violations of RCW 19.122 within the next 12 months.

The information the Safety Committee provided to the Commission, if proved at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe the violations did not occur, you may deny committing the violation and contest the penalty assessment 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 concerning the violation require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If there is a reason for the violation that you think should excuse you from the penalty, you may ask for mitigation (reduction) of this 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 for mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request.

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 his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the total penalty amount of \$1,000,
- Contest the occurrence of the violation,
- Request mitigation to contest the amount of the penalty, or
- Notify the Commission that you accept the offer to suspend \$800 of the penalty on conditions that SPU pay the \$200 penalty, due and payable immediately, SPU locator staff members attend the “Dig Safe” training provided through NUCA within 90 days of this penalty assessment, submit documentation of that attendance within five days of attendance, and commit no further violations of RCW 19.122 within the next 12 months.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office 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 November 30, 2015.

GREGORY J. KOPTA
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-151107

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 and enclose \$1,000 in payment of the penalty.

2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below:

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. **Application for mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reasons set out below:

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. **Attend training.** I admit that the violation occurred and accept the Commission’s offer to suspend \$800 of the penalty on condition that SPU pay the \$200 penalty, due and payable immediately, SPU locator staff members attend the “Dig Safe” training provided through NUCA within 90 days of this penalty assessment, submit documentation of that attendance to the Commission within five (5) days of attending the training, and commit no further violations of RCW 19.122 within the next 12 months.

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.”