

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-191005
PENALTY AMOUNT: \$6,000
Investigation # 8121

UBI: 601 295 793
Phone: (509) 835-4600

CenturyLink Communications LLC
904 N. Columbus St.
Spokane, WA 99202

The Washington Utilities and Transportation Commission (Commission) believes that CenturyLink Communications LLC (CenturyLink or Company) has violated Revised Code of Washington (RCW) 19.122.030(4)(a) by failing to provide the information about CenturyLink's underground utilities to an excavator within two business days of a utility locate request. RCW 19.122.070(1) states, in part, that violations of any provision of the chapter are subject to a civil penalty of not more than \$1,000 for an initial violation and not more than \$5,000 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 of \$6,000 against you on the following grounds:

On December 3, 2019, the Safety Committee heard the complaints for case 19-091 against CenturyLink regarding alleged violations of the Washington state dig law, RCW 19.122, that occurred on October 16, 2019, and October 31, 2019. The complainant in this case was Specialty Services NW (Specialty Services). The Safety Committee determined that the Company committed the following violations:

- Two violations of RCW 19.122.030(4)(a) for failing provide information regarding the location of CenturyLink's underground utilities within two business days of the excavator's utility locate request.

The Safety Committee recommends that the Commission assess the following \$6,000 penalty against CenturyLink:

- \$1,000 penalty for one violation of RCW 19.122.030(4)(a) that occurred on October 16, 2019; and
- \$5,000 penalty for one violation of RCW 19.122.030(4)(a) that occurred on October 31, 2019.

Commission regulatory staff (Staff) reviewed the Safety Committee's recommendation and agrees with its conclusions. Staff found that CenturyLink violated RCW 19.122.030(4)(a) on two occasions. Staff based this decision on the following information provided by the Safety Committee:

First Violation

On October 11, 2019, Specialty Services submitted underground utility locate request #19451204 for 3928 W. Olympic, Spokane, Washington. Approximately 38 minutes after submitting the locate request, Specialty Services received an email from USIC, CenturyLink's contract locator, stating that the dig area was clear of CenturyLink utilities. On October 16, 2019, two full business days after the request, Specialty Services arrived to observe no CenturyLink markings on the ground despite a large phone pedestal within the outlined excavation area. Specialty Services called for another utility locate (#19459586) and received another email from USIC stating the area was clear of CenturyLink utilities. Specialty Services then contacted CenturyLink's locator, who returned to the site and marked the utilities inside of the excavation area. Photos show the result of the original request, which included no CenturyLink utility markings, and the marks made within the excavation area following the third time Specialty Services contacted CenturyLink on October 16, 2019. CenturyLink failed to mark its utilities within two business days of the original request as required by RCW 19.122.030(4)(a).

Second Violation

On October 26, 2019, Specialty Services submitted underground utility locate request #19473452 for 5718 S. Laurelcrest Ct., Spokane, Washington. Upon arriving at the site on November 1, 2019, four business days after the request, no CenturyLink marks were present near a phone pedestal within the proposed excavation area. Specialty Services contacted CenturyLink, who stated in an email that its locator had issues with its "screening department," and sent a locator out who found and marked additional CenturyLink utilities within the excavation area. Photos were submitted that depict the excavation area before and after the locator's second attempt to locate underground utilities, which indicate that during the locator's initial visit to the site, some CenturyLink utilities within the excavation area were not marked. CenturyLink failed to mark all of its known and locatable facilities within the marked excavation area within two business days as required by RCW 19.122.030(4)(a).

Staff recommends the Commission accept the Safety Committee's recommendation and assess a \$6,000 penalty against the Company for two violations of RCW 19.122.030(4)(a) for failing to provide required information about its underground utilities in response to a utility locate request within two business days, as follows:

- \$1,000 penalty for the violation of RCW 19.122.030(4)(a) that occurred on October 16, 2019; and

- \$5,000 penalty for the violation of RCW 19.122.030(4)(a) that occurred on October 31, 2019.

The Commission agrees with Staff's recommendation and assesses a penalty of \$6,000.

These facts, if not contested or if proved 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 that either or both of the violations did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for either or both of the violations 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 hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request to contest the violations 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 violations 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 notice to do one of the following:

- Pay the \$6,000 amount due;
- Request a hearing to contest the violation(s); or
- Request mitigation to reduce the amount of the penalty.

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 Lacey, Washington, and effective January 22, 2020.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT D-191005, Investigation # 8121

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 violations occurred and enclose \$6,000 in payment of the penalty.

2. **Contest the violation.** I believe that the alleged violation(s) 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. **Request mitigation.** I admit the violations, 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.

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.”