

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-200204
PENALTY AMOUNT: \$1,000
Investigation # 8163

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The Washington Utilities and Transportation Commission (Commission) believes that Triple S Excavating (Triple S or Company) has violated Revised Code of Washington (RCW) 19.122.030(2) by failing to request a dig ticket prior to excavating. 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 \$1,000 penalty against you on the following grounds:

On February 12, 2020, the Safety Committee heard the complaint for case 20-005 against Triple S regarding alleged violations of the Washington state dig law, RCW 19.122, which occurred on January 7, 2020. The complainant in this case was Columbia Rural Electric Association (Columbia REA). The Safety Committee determined that the Company committed the following violations:

- One violation of RCW 19.122.030(2) for failing to submit an underground utility locate request through a one-number call service no less than two business days prior to excavating on January 7, 2020; and
- One violation of RCW 19.122.030(5) for excavating before all known utilities were located by facility operators on January 7, 2020.

The Safety Committee recommends that the Commission assess the following \$2,000 penalty against Triple S:

- \$1,000 penalty for the violation of RCW 19.122.030(2); and
- \$1,000 penalty for the violation of RCW 19.122.030(5); and
- The opportunity to suspend \$1,800 of the penalty amount if the owner and field staff of Triple S complete National Utility Contractor Association

(NUCA) Dig Safe Training within 12 months of the date of this Notice, and the Company incurs no additional dig law violations within 12 months of the date of this Notice.

Commission regulatory staff (Staff) reviewed the Safety Committee's determination and decision based on the following information provided by the Safety Committee:

On January 6, 2020, Columbia REA was notified by the one-call locating service of Triple S's intent to excavate at 205 Champagne Way, Walla Walla, Washington. Columbia REA arrived at the site to mark utilities on January 7, 2020, and discovered that Triple S had already begun excavation, and that the excavation came within approximately 12 inches of Columbia REA's underground high voltage electric facility.

Staff's investigation reached the same conclusion regarding the violations; however, the violations cited by the Committee both arose from the same incident that occurred on January 7, 2020. Although the Company violated both statutes, Staff recommends a single penalty because both violations were part of the same event, and both were the result of the Company's failure to wait two full business days before excavating. Accordingly, Staff recommends a penalty for one violation of RCW 19.122.030(2), as follows:

- \$1,000 penalty for the violation of RCW 19.122.030(2) that occurred on January 7, 2020.

Staff does not recommend the Commission accept the Safety Committee's recommendation to suspend a portion of the penalty due to the Company's history of penalties assessed for violations of RCW 19.122.

The Commission agrees with Staff's recommendation and assesses a penalty of \$1,000.

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 the violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for any or all 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 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 notice to do one of the following:

- Pay the \$1,000 amount due;
- Request a hearing to contest the violation; 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 July 28, 2020.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT D-200204, Investigation # 8163

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. **Request 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.

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.”