

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-160789
PENALTY AMOUNT: \$3,000

Pacific Utilities Contractors, Inc.
P.O. Box 110846
Tacoma, WA 98411

The Washington Utilities and Transportation Commission (Commission) believes you have violated Revised Code of Washington (RCW) 19.122.030(2) by failing to provide notice to a one-number locating service prior to performing an excavation. In addition, the Commission also believes you have violated RCW 19.122.050 by failing to notify the facility operator and the one-number locator service of the damage you caused and that you violated RCW 19.122.053 by not reporting damage to the Commission. 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 \$3,000 on the following grounds:

On Oct. 7, 2015, Pacific Utilities Contractors, Inc. (Pacific Utilities) was performing excavation work on the south side of 26th Ave. in Fife, WA. While excavating, Pacific Utilities damaged a storm water system located on the private property of Fife Portal, LLC (Fife Portal). Pacific Utilities proceeded to repair the broken facility and rebury it without notifying the facility owner or a one-number locator service. On Oct. 8, 2015, Pacific Utilities damaged a high pressure water main approximately 400 feet from the initial damage location and also struck another section of the storm water system. The property owner of Fife Portal was notified of the last two damage incidents, but did not learn about the first incident until approximately January 2016.

Pacific Utilities had been contracted to install a telephone mainline for CenturyLink under the existing sidewalk in the city right-of-way on 26th Ave. Pacific Utilities submitted a locate request on Sept. 21, 2015, for a construction site located on the south side of 26th Ave. in Fife. Pacific Utilities indicated on the locate request that the excavation area would be marked in white. From the information provided, staff could not determine the actual layout of the white markings and Pacific Utilities could not confirm that the entire boundary was marked in white paint. The area where Pacific Utilities initially struck Fife Portal's storm water facility, and then

proceeded to hit a high pressure water main, was located on Fife Portal's private property. No locates were requested on the private property.

On April 9, 2016, Fife Portal filed a complaint with the Safety Committee. The complainant alleged that Pacific Utilities committed multiple violations of RCW 19.122. The main issues were that Pacific Utilities failed to request locates from a one-call locator service prior to beginning work, and that they failed to report damages to the facility operator, a one-number locator service, and the Commission.

The Safety Committee found that Pacific Utilities violated RCW 19.122.030(2) by failing to provide notice to a one-number locating service prior to performing an excavation and violated RCW 19.122.050 by failing to notify the facility operator and the one-number locator service of the resulting damage. The Safety Committee recommended that the Commission assess a \$1,000 penalty for each of these violations. The Safety Committee also found that Pacific Utilities violated RCW 19.122.053 by not reporting damage to the Commission using the Damage Information Reporting Tool (DIRT) report form. The Safety Committee recommended that the Commission assess a \$1,000 penalty for this violation with a stipulation that the \$1,000 be deferred if Pacific Utilities agrees to send staff, including but not limited to the on-site work crew and management, to National Utility Contractor's Association (NUCA) "Dig Safe" Training.

Pursuant to RCW 19.122.150(3), the Commission has considered the Safety Committee's determination and adopts its recommendation. The Commission assesses a penalty of \$3,000, but will suspend \$1,000 of that penalty on the conditions that (1) Pacific Utilities field crew involved in the excavation, including company management, attend "Dig Safe" training provided through NUCA, within six months of the date of this Penalty Assessment; and (2) Pacific Utilities commits no further violations of RCW 19.122 within the next 12 months. The Commission will waive the suspended penalty amount of \$1,000 if Pacific Utilities complies with both conditions. The information the Safety Committee provided to the Commission, if not contested or 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 any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty assessment 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 concerning the violation(s) 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 you admit any or all of the violations but believe there is a reason for the violation(s) that 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 \$3,000 amount due;
- Pay \$2,000 of the total penalty and notify the Commission that you accept the offer to suspend, and ultimately waive, \$1,000 of the penalty amount due on condition that Pacific Utilities' employees attend the "Dig Safe" training provided through NUCA within six months 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.
- 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 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 July 28, 2016.



GREGORY J. KOPTA
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-160789

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 \$3,000 in payment of the penalty

2. **Contest the violations.** I believe that the alleged violations 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.

4. **Attend training.** I admit that the violation occurred and enclose \$2,000 in payment of the penalty. I also accept the Commission’s offer to suspend, and ultimately waive, \$1,000 of the penalty on the condition that Pacific Utilities’ employees attend the “Dig Safe” training provided through NUCA within six months 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.”