

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: D-180344
PENALTY AMOUNT: \$1,000**

Tammy L. Wilfong
c/o Verizon
7000 Weston Parkway (629)
Cary, NC 27603

The Washington Utilities and Transportation Commission (Commission) believes you have violated Revised Code of Washington (RCW) 19.122.030(3)(a) for failing to provide reasonably accurate information of your locatable underground facilities. 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 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 May 23, 2018, the Safety Committee heard the complaint for case 17-053 against Metro Fiber Systems of New York d/b/a Verizon Business (Verizon or Company) regarding one potential violation of the Washington state Dig Law, RCW 19.122, that occurred in 2017. The complainant in this case was Titan Earthwork, LLC (Titan). The Safety Committee determined that Verizon committed the following violation:

- One violation of RCW 19.122.030(3)(a) for failing to provide reasonably accurate information by marking the location of all its underground facilities.

The Safety Committee recommended that the following \$1,000 penalty be assessed against Verizon:

- Case 17-053, \$1,000 penalty for one violation of RCW 19.122.030(3)(a);

Commission regulatory staff (Staff) reviewed the Safety Committee's determination and agrees with its conclusion. Staff found that Verizon committed one violation of RCW 19.122.030(3)(a).

Case 17-053

Titan Earthwork alleges that on June 6, 2017, one of its installation crews encountered and damaged an unlocated Verizon fiber line while performing an excavation at 120 Lenora St.,

in Seattle, WA. Titan Earthwork claims it was working under an active dig ticket and believes that the damage incident was the result of Verizon failing to provide reasonably accurate locate marks of a second fiber line that was unmarked. Prior to excavating, Titan Earthwork physically located a Verizon fiber line that was inside the tolerance zone (24 inches) of the painted utility marks. Once Titan Earthwork began excavating, it encountered and damaged a different Verizon fiber line that had not been properly located.

Staff investigated this referral from the Safety Committee and found that a proper utility locate request was submitted by Titan Earthwork on May 12, 2017, with work to begin on May 17, 2017. After Titan Earthworks physically located the initial Verizon fiber line, it assumed that it was safe to proceed. Staff found no evidence of any marks or additional information that indicated the presence of the second fiber line.

Staff relied upon the information provided by Titan Earthwork to the Safety Committee for this investigation. Verizon did not have a company representative attend the Safety Committee review on April 18, 2018, and did not directly provide any documents to either the Safety Committee or Staff, despite several requests and outreach by Staff.

Staff's investigation concurred with the Safety Committee's recommendation. Accordingly, Staff recommends the Commission assess a \$1,000 penalty against Verizon for one violation of RCW 19.122.030(3)(a) for failing to provide reasonably accurate information of its underground facilities.

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 \$1,000 against Verizon for one violation of RCW 19.122.030(3)(a).

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 violation 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 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 you admit the violation but believe there is a reason for the violation 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 \$1,000 amount due; or
- Request a hearing to contest the occurrence of any or all 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 **within FIFTEEN (15) days** after you receive this notice. 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, Post Office Box 47250, Olympia, Washington 98504-7250.

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 23, 2018.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-180344

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 \$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 (**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.

3. **Request mitigation.** I admit the violations, 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 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.”