

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

PENALTY ASSESSMENT: D-180667  
PENALTY AMOUNT: \$1,000  
Investigation # 7890

Roach Construction Company  
214 E. Walnut St.  
Genesee, ID 83832

UBI: 602-619-527  
Phone: (208) 285-1411

The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.040(2)(a) by failing to determine the precise location of a marked underground facility. 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 against you for \$1,000 on the following grounds:

On July 18, 2018, the Safety Committee heard the complaints for case 18-063 against Roach Construction Company (Roach Construction or Company) regarding a potential violation of the Washington state Dig Law, RCW 19.122, that occurred on June 4, 2018. The complainant in this case was Avista Corporation (Avista or Complainant). The Safety Committee determined that Roach Construction committed the following violation:

- One violation of RCW 19.122.040(2)(a) for failing to use reasonable care to avoid damaging underground facilities by not determining the precise location of underground facilities that had been marked at 535 SE South St, Pullman, Washington.

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

- \$1,000 penalty for one violation of RCW 19.122.030(6)(a).
- The opportunity to suspend \$800 of the penalty if Roach Construction commits no additional violations of RCW 19.122.030 within 12 months of issuance of a penalty assessment by the Commission.

Commission regulatory staff (Staff) reviewed the Safety Committee's decision and agrees with its conclusion. Staff found that Roach Construction committed one violation of RCW 19.122.040(2)(a). Staff based this decision on the following information provided by the Safety Committee:

On May 5, 2018, utility locate request #18189511 was created when Roach Construction submitted a request to locate utilities at 535 SE South Street, Pullman, Washington. The request was made for sewer replacement work being done by the Company. The ticket shows the “work to begin” date as May 12, 2018, and the ticket expiration date as June 23, 2018.

A locator arrived at the location on May 11, 2018, and completed marking Avista’s underground utilities for the ticket called in by Roach Construction.

On June 4, 2018, a worker for Roach Construction hit and damaged the marked underground gas pipeline in the work area. Avista arrived on site to fix the gas line and photographed the damage area, which showed that the yellow paint marking the gas line was barely visible. After Avista’s locator marked the underground utility, the lawn on the site had been mowed, making the marks difficult to see. According to documentation provided by Avista, the serviceman responding to the damage spoke with an employee of Roach Construction, who stated he did not see the marks. Avista determined the cause of the damage was due to the failure of Roach Construction to maintain the marks showing the location of the underground gas facility.

For this investigation Staff reviewed documents and information provided by the Safety Committee, Avista, and Roach Construction, as well as a review of the Damage Information Reporting Tool (DIRT) and one-call ticket databases.

Based on the results of Staff’s investigation, the Commission finds that Roach Construction violated RCW 19.122.040(2)(a) one time on June 4, 2018, by failing to determine the precise location of the marked underground gas line. The Commission agrees with the Safety Committee’s recommendation and assesses a \$1,000 penalty for the violation, with the offer to suspend, and ultimately waive, \$800 of the penalty on the condition that Roach Construction commits no violations of RCW 19.122 within 12 months of the date of this Notice. Due to the Company’s geographic location and the financial burden that arranging travel for Roach Construction employees may impose, the Commission will not require that training be part of the conditions of the penalty suspension that the Safety Committee recommended. 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 either or both of the violations did not occur, you may deny committing the violations and contest the penalty through evidence presented at a hearing or in writing. Or, 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 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
- Pay \$200 of the penalty and notify the Commission that you accept the offer to suspend, and ultimately waive, \$800 of the \$1,000 penalty subject to the following condition:
  - Commit no further violations of RCW 19.122.030 within twelve (12) months of the date of this Notice; or
- 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 February 4, 2019.

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

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
PENALTY ASSESSMENT D-180667, Investigation # 7890

**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. **Accept conditions.** I admit that the violation occurred and have enclosed \$200 of the penalty amount. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$800 of the penalty amount subject to the following conditions:
- Commit no further violations of RCW 19.122 within twelve (12) months of the date of this Notice.
3. **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.
4. **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.”