

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: D-141448
PENALTY AMOUNT: \$1,000**

BCA Directional Drilling LLC
11205 NE Hurleys Ln.
Newburg, OR 97132

The Washington Utilities and Transportation Commission (Commission) believes that you have committed one or more violations of the Revised Code of Washington (RCW) 19.122.030(3)(a) by not meeting the requirement of reasonable accuracy as defined in RCW 19.122.020(23). 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.

Commission staff reviewed findings and recommendations made by the Washington State Dig Law Safety Committee (Safety Committee). As a result, the Commission hereby notifies you that it has assessed penalties against you in the amount of \$1,000 on the following grounds:

On August 8, 2013, BCA Directional Drilling, LLC (BCA) submitted utility locate requests to the National Ticket Management System Washington One Call (One Call). BCA submitted the requests in accordance with RCW 19.122.030(2) prior to excavation to install a mainline fiber in Vancouver, WA.

Nine utility providers, including Qwest Corporation d/b/a/ CenturyLink QC (CenturyLink), received notification from One Call with instructions to locate utility services in the area identified on Dig Ticket 13207584 within two business days. CenturyLink, through its contract locator, Locating, Inc., located the utility's services.

On August 14, 2014, BCA began excavation and damaged underground telephone conduits/cables owned by CenturyLink. CenturyLink subsequently billed BCA for the damage. BCA disagreed with the charges, stating that CenturyLink did not properly mark its facilities, as required by RCW 19.122.030.

On May 14, 2014, the Safety Committee conducted a hearing with the Complainant, BCA, and the Respondent, CenturyLink. The Safety Committee found that CenturyLink violated RCW 19.122.030(3)(a) by not meeting the requirement of reasonable accuracy as defined in RCW 19.122.020(23). By simply placing a standard symbol for a duct, but failing to clearly identify the outer edges of the duct, CenturyLink did not provide reasonable accuracy for an excavator to understand the limits of the duct.

The Safety Committee also found that BCA violated two provisions within RCW 19.122. BCA violated RCW 19.122.040(2)(a) requiring an excavator to determine the precise location of underground utilities that are marked. In this case, BCA after locating an initial four-inch conduit, did not use reasonable care to look for additional potential conduits within the 24-inch tolerance zone allowed for utility markings, nor did it make contact with the facility operator for a locate of a duct when they only discovered one four-inch conduit. BCA also violated RCW 19.122.053(1) by failing to report the damage to the CenturyLink facilities within the required 45-days.

The Safety Committee recommended the commission issue a warning letter that identifies the violation(s) for both CenturyLink and BCA. The Safety Committee also recommended that both parties attend "Dig Safe" training provided by National Utility Contractors Association (NUCA). The Safety Committee also recommended that CenturyLink's contract locator, Locating, Inc., receive the same training.

Pursuant to RCW 19.122.150(3), the Commission considered the Safety Committee's recommendation but disagrees, in part, with the recommendation. The Commission believes this is a serious offense and warrants a penalty. Therefore, the Commission assesses a penalty of \$1,000. The Commission's ultimate objective, however, is to ensure compliance with the regulations it enforces, and thus the Commission will waive the penalty in its entirety on the conditions that (1) BCA attends "Dig Safe" training provided through NUCA; and (2) BCA commits no further violations of RCW 19.122.030 within the next 12 months.

This information, 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 violations did not occur, you may request a hearing to contest the penalty assessment. The Commission will grant that request only if material issues of law or fact require consideration of evidence and resolution in a hearing. A request for a hearing 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 there is a reason for the violations that you think should excuse you from the penalty, you may ask

for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. A 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. See RCW 80.04.405.

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 amount due;
- Notify the Commission that you accept the offer to waive the penalty on condition that you attend the “Dig Safe” training provided through NUCA and commit no further violations of RCW 19.122.030 within the next 12 months;
- Request a hearing to contest the occurrence of the violations; or
- Request mitigation to contest 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 August 28, 2014.

DENNIS J. MOSS
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-141448

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 \$_____ in payment of the penalty.
[] 2. Request for a hearing. I believe that the alleged violation did not occur for the reasons I describe below, and I request a hearing based on those reasons for a decision by an administrative law judge:
[] 3. Application for 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.
[] 4. Attend training. I admit that the violation occurred and accept the Commission's offer to waive the penalty on condition that I attend the "Dig Safe" training provided through NUCA, submit documentation of my attendance to the Commission within five (5) days of attending the training, and commit no further violations of RCW 19.122.030 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.”