

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

PENALTY ASSESSMENT: D-190754

PENALTY AMOUNT: \$3,000

Investigation # 7996

UBI: 600 184 764

Phone: (509) 226-0333

Eller Corporation  
7902 North Starr Rd.  
Newman Lake, WA 99025

The Washington Utilities and Transportation Commission (Commission) believes that Eller Corporation (Eller or Company) has violated Revised Code of Washington (RCW) 19.122.030(6)(c) by failing to provide additional notice of excavation to facility operators of excavation extending beyond 45 days, and RCW 19.122.040(2)(a) by failing to use reasonable care to avoid damaging 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 \$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 of \$3,000 against you on the following grounds:

On September 4, 2019, the Safety Committee heard the complaints for case 19-022 against Eller regarding alleged violations of the Washington state dig law, RCW 19.122, that occurred on April 4, 2019. The complainant in this case was Avista Corporation (Avista). The Safety Committee determined that the Company committed the following violations:

- One violation of RCW 19.122.030(6)(c) for failing to submit an additional underground utility locate request for continued excavation after the expiration of a previous locate request.
- One violation of RCW 19.122.040(2)(a) for failing to use reasonable care to avoid damaging underground facilities by determining the precise location of marked facilities.

The Safety Committee recommends that the Commission assess the following \$6,000 penalty against Eller:

- \$1,000 penalty for one violation of RCW 19.122.030(6)(c); and
- \$5,000 penalty for one violation of RCW 19.122.040(2)(a); and

- The opportunity to suspend \$5,000 of the penalty amount if the owner and field staff of Eller Corporation complete National Utility Contractor Association (NUCA) Dig Safe Training within 6 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 agrees with its conclusions. Staff found that Eller violated RCW 19.122 on two occasions. Staff based this decision on the following information provided by the Safety Committee:

### **First Violation**

On December 6, 2018, Eller submitted dig ticket #18520752, requesting to have underground utilities located at 11813 E Broadway, Spokane Valley, Washington. This request expired on January 20, 2019. On April 4, 2019, Eller damaged an underground ¾-inch steel natural gas line while excavating. Eller did not have a valid dig ticket at the time the damage occurred because it had failed to submit a new utility locate request after its previous request expired, 74 days before the damage incident. Staff's investigation and review of the one-call dig ticket notification database found that Eller requested no additional dig tickets for the damage incident location after the request it submitted on December 6, 2018.

### **Second Violation**

Photos submitted by Avista in support of its allegations depict faint yellow natural gas paint marks at the damage site, which were painted on the ground by Avista at the time of the original utility locate request in December 2018 and were still visible when Eller damaged the gas line in April 2019. Eller used a backhoe during its excavation around the marked utility, demonstrating that it did not use reasonable care to avoid damaging the gas facility, nor did it determine the precise location of the utility before using heavy equipment to excavate around the location of the marked facility. As a result, the backhoe's bucket snagged the gas line and pulled it, kinking the line and pulling a nearby house's gas meter away from the house, releasing natural gas against its foundation and causing alarm for the homeowner, who notified Avista of a strong smell of gas and the nearby construction. Avista's emergency response crew arrived, made the location safe, performed repairs, and documented the damage incident.

On May 13, 2019, the Commission issued a penalty assessment against Eller in docket DG-190245 for two similar violations of RCW 19.122 that occurred in June 2017 and October 2018. The penalty assessment offered, and Eller accepted, the opportunity to suspend a portion of the penalty on condition that Eller commit no additional violations for 12 months and complete training. Because the order was issued on May 13, 2019, after the April 4 violations occurred, they do not violate the conditions imposed by that order. As such, the conditions still apply and the penalty remains suspended. In light of the fact that the Company was afforded

leniency in Docket DG-190245 for first-time violations Staff recommends the Commission not offer additional leniency here. Typically, the Commission assesses penalties for dig law violations and suspends them subject to conditions only for first-time violations. Subsequent violations are subject to escalated enforcement action, which is appropriate here.

The Committee recommends the Commission assess a \$6,000 penalty and suspend a \$5,000 portion thereof subject to certain conditions. Because these are repeat violations, Staff recommends the following penalties for the violations that occurred on April 4, 2019:

- \$1,000 for the violation of RCW 19.122.030(6)(c); and
- \$2,000 for the violation of RCW 19.122.040(2)(a).

The Commission agrees with Staff's recommendation and assesses a penalty of \$3,000.

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 any or all of the violations did not occur, you may deny committing the violation(s) 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 violations 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;
- Request a hearing to contest the violation(s); 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 October 7, 2019.

*/s/ Rayne Pearson*

RAYNE PEARSON

Director, Administrative Law Division

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
PENALTY ASSESSMENT D-190754, Investigation # 7996

**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 violation.** I believe that the alleged violation(s) 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.

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.”