

Service Date: September 30, 2024

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

Received
Records Management
Oct 14, 2024

PENALTY ASSESSMENT: DG-240675
PENALTY AMOUNT: \$5,000
Investigation # 8938

EMAIL SERVICE

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YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE

The Washington Utilities and Transportation Commission (Commission) believes that North Sky Communications LLC (North Sky Communications or Company) violated Revised Code of Washington (RCW) 19.122.055(1)(a) by failing to notify the one-number locate service and causing damage to an underground gas facility.

RCW 19.122.055(1)(a) states, in part, that excavators who fail to notify a one-number locator service and cause damage to an underground gas facility are subject to a civil penalty of not more than \$10,000 for each violation.

Commission staff (Staff) conducted an investigation that included reviewing damage reports, investigation reports, the One Call Center database, and communications with the Company. The documents reviewed identified a natural gas event that involved North Sky Communications damaging a natural gas facility while excavating without a valid locate ticket.

The Commission reviewed findings and recommendations made by Staff and hereby notifies you that it is assessing a \$5,000 penalty (Penalty Assessment) against you on the following grounds:

1. **Alleged Violation:**

On June 4, 2024, North Sky Communications was excavating at 10th South Hayford Road, Airway Heights, Washington. While excavating, North Sky Communications workers struck and damaged an underground Avista Corporation (Avista) natural gas facility. The Damage Information Reporting Tool (DIRT) report submitted by Avista on July 9, 2024, indicated that North Sky Communications was excavating without a valid request to locate underground utilities.

2. **Analysis:**

The alleged violation concerns RCW 19.122.055(1)(a), which states, in part, that an excavator must contact the one-number locate center before beginning excavation. Staff communicated with Avista via email on August 19, 2024, explaining that North Sky Communication was over 700 feet away from the dig area as described on their locate ticket (#24193393). Avista stated the Company would not be treble charged. According to the ELM report submitted by Avista, North Sky Communication was excavating at 10 South Hayford Road, Airway Heights, WA, on June 4, 2024, when it struck and damaged a 4" gas main that was 400' feet outside the excavation area as described on the ticket. Avista provided a Damage Report & Excavator Details report. The report noted that North Sky Communications damaged a 4" gas main while digging for communication. The report also documented that the Company called in a locate ticket the day after the damage; however, in an email from North Sky Communications on September 10, 2024, the Company denied that another ticket was requested for the damage location. The discrepancy in the distance as noted in the ELM report and Avista's response is due to ELM estimating the damage location to the closest edge of the call center polygon. Avista was referencing the distance from the damage location to the described area in the locate request, which stated North Sky Communications was only digging to the cell tower.

Staff reviewed the One Call ticket center database and located ticket #24193393, which was called in by North Sky Communications on May 13, 2024, and expired on June 27, 2024. The locate ticket identified the marking instructions to locate "150 FEET EITHER SIDE OF THE ROUTE MARKED IN WHITE PAINT-MARK FROM HANFORD RD WEST TO CELL TOWER THREW NEW RIGHT OF WAY. MARK FOLLOWING THE ROUTE W FOR 582 FEET. DRIVING DIRECTIONS: FROM THE INTERSECTION OF S HAYFORD RD AND W 12TH AVE, HEAD WEST FOR 26 FT, HEAD N FOR 5 FEET TO THE BEGINNING OF THE ROUTE." The damage sketch provided by Avista compared with the polygon on locate ticket #24193393 confirms the damage was outside the scope of the ticket. North Sky Communications called in two locate requests on June 5, 2024 (#24233157 and #24233158), which was after the damage date, and the polygons on each ticket did not cover the location of the damage.

Staff communicated with North Sky Communications. In an email on September 5, 2024, the Company admitted to causing the damage, and that the crews were working beyond the excavation area designated on the locate ticket (#24193393). North Sky Communications stated that after learning about the damage, all underground crews working in the Rathdrum field office were assigned to retrain for trenching and excavation (T&E). The Company provided sign-in sheets, certification cards, and T&E Presentation copies. In addition to the T&E training, North Sky Communications registered the underground crews to attend Dig Safe training through Washington State National Utility Contractors Association's (NUCA) website.

The Commission considered the following factors in determining the appropriate penalty amount for the violation:

1. **How serious or harmful the violation is to the public.**

This incident could have been significantly more harmful to North Sky Communications workers, utility technicians, nearby homeowners, and the public, and it could have resulted in severe injury and/or loss of property.

2. **Whether the violation is intentional.**

The violation appears to be due to negligence rather than a lack of knowledge of Washington State's Dig Law. Over the past 12 months, North Sky Communications has submitted 500 requests to the One Call Center for locates. This demonstrates North Sky Communications' knowledge of requirements and its responsibility to contact the one-number locate service before beginning excavation.

3. **Whether the company self-reported the violation.**

North Sky Communications did not self-report the violation. The Commission became aware of the violation when Avista filed a DIRT report.

4. **The likelihood of recurrence.**

The likelihood of recurrence depends on the Company's actions going forward and its willingness to notify the one-number locate service every time before beginning excavation. North Sky Communications has approximately 90 employees within the state of Washington who engage in excavation. According to Washington Search and Status, North Sky Communications requested 19,431 locates between September 17, 2014, and September 17, 2024. North Sky Communications received three warning letters and three penalties during this time. When North Sky Communications learned of the damage, it took proactive steps to educate its employees on safe practices for excavation and trenching. Also, North Sky Communications signed up the employees for Dig Safe Training which is provided by the NUCA. Based on the low incident rate relative to the volume of North Sky Communications operations, the immediate and proactive response to the damage, and the ongoing commitment to safety and compliance, it is recommended to penalize the Company \$5,000 with an offer to suspend \$4,000 subject to the stated conditions.

5. **The Company's previous violations and penalties.**

- **Warning Letter**

On March 27, 2017, February 23, 2016, and February 20, 2015, the Commission mailed Alleged Violations of Washington Dig Law letters to North Sky Communications. The letters included detailed information about Washington State's Underground Utility Damage Prevention Act, requirements for submitting utility locate requests before excavating, and the possibility of penalties for each violation. The Commission mailed the letters after receiving reports of damages caused by North Sky Communications on January 17, 2017, December 1, 2015, and December 1, 2014, respectively, that occurred because the Company failed to submit requests to locate underground utilities before excavating.

- **Penalty Assessments**

- On April 6, 2021, the Commission issued North Sky Communications a Penalty Assessment of \$10,000 for one violation of RCW 19.122.055(1)(a). *See* DG-210184.
- On August 7, 2019, the Commission issued North Sky Communications a Penalty Assessment of \$5,000 for one violation of RCW 19.122.055(1)(a). *See* DG-190624.
- On February 6, 2018, the Commission issued North Sky Communications a Penalty Assessment of \$1,000 for one violation of 19.122.030(2). *See* D-180104, which was referred by the Safety Committee.

The Commission has considered these factors and determined that it should penalize North Sky Communications as follows:

- \$5,000 penalty for one violation of RCW 19.122.055(1)(a) with an offer to suspend a \$4,000 portion of the penalty for one year, and then waive it, subject to the conditions that:
 - 1) Company supervisors and field crew responsible for excavation complete Dig Safe Training provided through the National Utility Contractors Association (NUCA) within 90 days of this Penalty Assessment;
 - 2) The Company must submit documentation of that attendance to the Commission; and
 - 3) The Company must not commit any further violations of RCW 19.122 within 12 months of the date of this Penalty Assessment.

These facts, if proven 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 the violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Or, if there is a reason for the violation 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 a hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request to contest the violation 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 their decision.

You must act within 15 days after receiving this Penalty Assessment to do one of the following:

- Pay the \$5,000 penalty amount due; or
- Pay \$1,000 and notify the Commission that you accept the offer to suspend a \$4,000 portion of the penalty amount subject to the following conditions:

- North Sky Communications management and field crew responsible for excavation must complete NUCA Dig Safe Training (<https://utc-9183.quickbase.com/db/bpkt6vndh>) within 90 days of service of this Penalty Assessment; and
- **The Company must submit documentation of that attendance to the Commission;** and
- North Sky Communications must not incur any additional violations of RCW 19.122 within 12 months of the date of this Penalty Assessment; 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 submit it electronically through the Commission's web portal at <https://efiling.utc.wa.gov/Form> **within FIFTEEN (15) days** after you receive this Penalty Assessment. 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, PO Box 47250, Olympia, Washington 98504-7250.

If you wish to make your payment online, please use this link: [Make a Payment Now \(wa.gov\)](#).¹

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection.

DATED at Lacey, Washington, and effective September 30, 2024.

/s/ James E. Brown II
JAMES E. BROWN II
Acting Director, Administrative Law Division

¹ <https://www.utc.wa.gov/documents-and-proceedings/online-payments/make-payment-now>.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-240675 Investigation # 8938

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, 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:
[] Enclose \$5,000 in payment of the penalty.
OR [] Attest that I have paid the penalty in full through the Commission's payment portal.
- [] 2. **Accept conditions.** I admit that the violation occurred and enclose \$1,000 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$4,000 penalty amount subject to the following conditions:
- o North Sky Communications management and field crew responsible for excavation must attend Dig Safe training provided through NUCA within 90 days of service of this Penalty Assessment; and
 - o The Company must submit documentation of that attendance to the Commission; and
 - o North Sky Communications must not commit any 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 (**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.
- [] 4. **Request mitigation.** I admit the violation, 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 or she makes a materially false statement which he or she 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 or her 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.