

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-200749
PENALTY AMOUNT: \$1,000
Investigation # 8226

SERVICE VIA EMAIL

Zayo
1060 Hardees Dr.
Suite H
Aberdeen, MD 21001
george.huss@zayo.com

Phone: (443) 250-1816

The Washington Utilities and Transportation Commission (Commission) believes that Zayo (Company) has violated Revised Code of Washington (RCW) 19.122.030(4)(a) by failing to provide information to an excavator regarding its underground utilities within the required two business days of receipt of notice of excavation. 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 \$1,000 penalty against you on the following grounds:

On August 11, 2020, the Safety Committee heard the complaints for case 19-084 against Zayo regarding an alleged violation of the Washington state dig law, RCW 19.122, that occurred on August 28, 2019. The complainant in this case was R&D Construction (R&D). The Safety Committee determined that the Company committed one violation of RCW 19.122.030(4)(a) by failing to mark its underground utilities within two business days of receipt of a notice of excavation, as required.

The Safety Committee recommends the Commission assess a \$1,000 penalty against Zayo for one violation of RCW 19.122.030(4)(a). The Safety Committee further recommends the Commission offer to suspend an \$800 portion of the \$1,000 penalty amount if Zayo 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 Zayo violated RCW

19.122.030(4)(a) on one occasion. Staff based this decision on the following information provided by the Safety Committee:

On August 23, 2019, R&D submitted utility locate request 19371731 for 514 S. L St., Tacoma, using the one-call notification service. The request was dispatched to all affected facility operators, which included Zayo's contracted utility locator, Stake Center. On August 28, 2019, two business days later, R&D received a voicemail from Stake Center stating that it had not yet marked the jobsite, but that it would have it done by the next day. R&D called the locator and did not agree to the extension of the two-business day requirement because it had already deployed equipment and a work crew to the jobsite. Stake Center did not arrive to mark the site until more than two business days after receipt of the utility locate request had transpired.

Staff recommends the Commission accept the Safety Committee's recommendation and assess a \$1,000 penalty against the Company for one violation of RCW 19.122.030(4)(a).

Staff's research indicates that the Company has no prior enforcement action taken against it, and that the violation was not intentional. After considering all of the circumstances, Staff concurs with the Safety Committee's recommendation that the Commission should offer to suspend \$800 of the total penalty amount for a period of one year subject to the condition that the Company commits no further violations of RCW 19.122 within 12 months from the date of this Notice.

The Commission agrees with Staff's recommendation and assesses a penalty of \$1,000 with an offer to suspend \$800 of the total penalty amount subject to the condition above. The Commission will waive the suspended penalty amount of \$800 if the Company complies with the condition. If the Company commits any additional violations within 12 months of the penalty Notice, the \$800 suspended penalty amount will become immediately due and payable, in addition to any new penalties that the Commission may assess for additional violations.

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 the violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Alternatively, 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 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 notice to do one of the following:

- Pay the \$1,000 amount due; or
- Pay \$200 of the total penalty amount and notify the Commission that you accept the offer to suspend, and ultimately waive, the remaining \$800 of the penalty amount subject to the condition that Zayo must not commit any additional violations of RCW 19.122 within twelve (12) months of the date of this Notice; or
- Request a hearing to contest 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 Lacey, Washington, and effective October 5, 2020.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT D-200749, Investigation # 8226

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 condition.** I admit that the violation occurred and enclose \$200 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$800 penalty amount subject to the condition that Zayo must not commit any additional 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.”