

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-180982
PENALTY AMOUNT: \$1,000
Investigation # 7887

Mike Faulkenberry
Director of Natural Gas
Avista Corporation
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The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.030(3)(a) by failing to provide an excavator with reasonably accurate information by marking the location of your underground facilities after receiving notice from the excavator to a one-number locator service. 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 October 31, 2018, the Safety Committee heard the complaints for case 18-074 against Avista Corporation (Avista) regarding a potential violation of the Washington state Dig Law, RCW 19.122 that occurred on July 25, 2018. The complainant in this case was M&L Construction (M&L). The Safety Committee determined that Avista committed the following violation:

- One violation of RCW 19.122.030(3)(a) for failing to provide an excavator with reasonably accurate information by marking the location of its underground facilities.

The Safety Committee recommended that a \$1,000 penalty be assessed against Avista for one violation of RCW 19.122.030(3)(a).

Commission regulatory staff (Staff) reviewed the Safety Committee's determination and agrees with its recommendation. Staff found that Avista committed one violation of RCW 19.122.030(3)(a). Staff based this decision on the following information provided by the Safety Committee:

M&L alleges that on July 25, 2018, it damaged an underground electricity line while excavating because Avista failed to mark the location of the underground facility within the work area outlined in white paint. On July 11, 2018, M&L submitted a request to locate underground utilities using a one-number locator service. This request was assigned dig ticket #18295245, and was valid between July 14, 2018, and August 25, 2018. A description of the work location on the submitted request indicated that the work area began at a utility pole located at 42994 S. Loon Lake Rd. in Loon Lake, Washington, and continued East. The request specified that the work area was marked with white paint as required by RCW 19.122.030(1)(a). On July 25, 2018, M&L damaged Avista's underground electric primary line while excavating in an area within the white-lined work area west of the utility pole mentioned on the dig ticket.

Photographs and documentation submitted by M&L and Avista were examined and considered by Staff. M&L submitted photographs taken on July 25, 2018, which show that the damage occurred approximately 10 feet west of the utility pole. The photographs also show that the damage occurred within the boundaries of the work area outlined with white paint by M&L at the time the dig ticket request was requested. The white marks indicating the work area began approximately 15 feet west of the referenced utility pole, and continued east down S. Loon Lake Road. The photographs also showed that when Avista's locator marked the work area with colored paint to indicate the presence of underground facilities, no marks were made in the white-lined work area to the west of the utility pole. Avista stated that it had properly marked the underground facilities per the description of the work area on the ticket, while M&L contested that Avista fully marked the work area because no locate marks were made within the work area west of the utility pole. The Safety Committee determined that Avista's locator should have marked the location of the underground facilities in the entire white-lined work area, and not just the area described on the dig ticket, and therefore did not provide accurate information of the location of the underground electric utility to M&L, violating RCW 19.122.030(3)(a).

Staff investigated this referral from the Safety Committee and agrees that Avista committed one violation of RCW 19.122.030(3)(a) by failing to provide an excavator with reasonably accurate information by marking the location of its underground facility.

For this investigation Staff reviewed documents and information provided by M&L, Avista, and the Safety Committee, as well as a review of the one-call ticket database.

Based on the results of Staff's investigation, the Commission finds that Avista violated RCW 19.122.030(3)(a) one time on July 25, 2018, by failing to mark its underground facility after receiving notice of excavation. The Commission assesses a \$1,000 penalty for the violation. 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 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 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 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
- 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 December 13, 2018.

RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-180982, Investigation # 7887

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. **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.

3. **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.”