

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-220111
PENALTY AMOUNT: \$5,000
Investigation # 8495

SERVICE VIA EMAIL

UBI: 328-000-223

Avista Corporation
1411 E. Mission Ave. MSC-10
Spokane, WA 99202-1902
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The Washington Utilities and Transportation Commission (Commission) believes that Avista Corporation (Avista) has violated the Revised Code of Washington (RCW) 19.122.030(3)(a) by failing to provide the excavator with reasonably accurate information by marking the location of its 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 \$5,000 penalty (Penalty Assessment) against you on the following grounds:

On February 9, 2022, the Safety Committee heard case 21-045 against Avista and determined Avista violated RCW 19.122.030(3)(a) by failing to provide the excavator with reasonably accurate information by marking the location of its underground utilities. The Safety Committee recommended that the Commission impose a \$5,000 penalty.

On September 23, 2021, the Complainant submitted a locate request, ticket #21440305, for E. Day Mt. Spokane Rd, Spokane. On October 6, 2021, the Complainant reports that while it was potholing another facility owner notified them there was a 4-inch gas main in the dig zone. The Complainant states they stopped work immediately and contacted the locators who had performed the locates. The Complainant reported that the original locator failed to notice the entire white lining of the dig zone and missed locating a section of a 4-inch main owned by Avista.

Commission staff (Staff) conducted an investigation that included reviewing documents, reports, emails submitted by the Safety Committee, and the One-Call center database. Staff's investigation concluded that Avista had failed to accurately mark the location of its underground facilities.

During the past 12 months, the Commission has issued four Penalty Assessments against Avista for \$5,000 each for violations of RCW 19.122.030.

Staff agrees with the Safety Committee's findings of probable violation and agrees with the recommendation to assess a \$5,000 penalty for one violation of RCW 19.122.030(3)(a) for failing to provide the excavator with reasonably accurate information by marking the location of its underground utilities on October 6, 2021.

The Commission agrees with Staff's recommendation and assesses a \$5,000 penalty for one violation of RCW 19.122.030(3)(a).

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 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
- 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 file it with the Washington Utilities and Transportation Commission, at records@utc.wa.gov, **within FIFTEEN (15) days** after you receive this Penalty Assessment.

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 March 29, 2021.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-220111, Investigation #8495

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 \$5,000 in payment of the penalty.

2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below (**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 provided above.

3. **Request mitigation.** I admit the violations, 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 provided 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.”