

Service Date: April 17, 2023

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-230100

PENALTY AMOUNT: \$5,000

Investigation # 8692

SERVICE VIA EMAIL

UBI: 328-000-223

Avista Corporation
337 North Post St.
Spokane, WA 99201
Brian.schultz@avistacorp.com

YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE

The Washington Utilities and Transportation Commission (Commission) believes that Avista Corporation (Avista or Company) violated Revised Code of Washington (RCW) 19.122.030(4)(a) by failing to provide the location information of its underground utilities to an excavator no later than two business days after receipt of notice.

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.

On February 15, 2023, the Safety Committee heard case 22-062 filed by M&L Construction (Complainant) against Avista and determined Avista violated RCW 19.122.030(4)(a) by failing to provide the location information of its underground utilities to an excavator no later than two business days after receipt of notice. The Safety Committee recommended that the Commission impose a \$5,000 penalty.

Commission staff (Staff) conducted an investigation that included reviewing documents, reports, and communications with the Safety Committee and all parties involved.

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:

1. Alleged Violation(s):

The Complainant reported it had a valid locate request for 8303 N Northview Ct., Spokane, WA. The locates were due to be completed by 12:00 a.m. on August 5, 2022. The Complainant states that on August 5, 2022, it arrived on the jobsite at 5:30 a.m. to begin work and the Avista gas locates were not complete.

2. **Analysis:**

The alleged violation concerns RCW 19.122.030(4)(a), which states, in part, that a facility operator must provide the location information of its underground utilities to an excavator no later than two business days after receipt of notice. M&L asserts its request for locates was not completed by Avista on time, which resulted in lost work hours. Avista claims M&L received notification that Avista had not completed the locates on time, but M&L proceeded to the job site anyway. Avista further asserted that it was not obligated to have the locates complete within 48 hours based on RCW 19.122.030(4)(a)(1), which states, in part, that a facility operator must provide information as to the location of its underground utilities to an excavator no later than two business days after receipt of notice, or before excavation commences, at the option of the facility operator, unless otherwise agreed by the parties. The Committee disagrees with Avista's interpretation of 19.122.030(4)(a)(1) and affirmed that a facility operator is obligated to comply with the 48-hour requirement *unless* otherwise agreed by both parties. In this case, there was no agreement between M&L and Avista to delay the completion of the locate request. Staff agrees with the Committee's interpretation and agrees with the Committee's finding that a violation occurred.

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 caused severe harm to employees, or the public, and could have resulted in additional undue expenses and hardships.

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

The violation does not appear to be intentional, but rather due to negligence by Avista and its locators. Over the past 24 months (March 2021-March 2023), Avista has been penalized by the Commission on nine occasions for violations of RCW 19.122.030. Avista is aware of the requirements to comply with the dig law but does not appear to be making significant progress to improve its practices.

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

Avista did not self-report the violation. The Commission became aware of the violation after the Complainant filed a complaint with the Safety Committee.

4. **The likelihood of recurrence.**

The likelihood of recurrence depends on Avista's actions going forward, and its ability to ensure that its contract locator and its contract locator's processes are sufficient to comply with the requirements of the dig law.

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

During the past 24 months, the Commission has issued Avista nine Penalty Assessments of \$5,000 each for violations of RCW 19.122.030 as follows:

D-230005	3-13-23	Penalty Notice \$5,000	RCW 19.122.030(3)a
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D-230007	2-22-23	Penalty Notice \$5,000	RCW 19.122.030(3)a
D-220230	5-26-22	Penalty Notice \$5,000	RCW 19.122.030(3)a
D-220112	3-29-22	Penalty Notice \$5,000	RCW 19.122.030(4)a
D-220111	3-29-22	Penalty Notice \$5,000	RCW 19.122.030(3)a
D-210605	12-28-21	Penalty Notice \$5,000	RCW 19.122.030(3)a
D-210636	9-23-21	Penalty Notice \$5,000	RCW 19.122.030(4)a
D-210635	9-23-21	Penalty Notice \$5,000	RCW 19.122.030(4)a
D-200814	3-18-21	Penalty Notice \$5,000	RCW 19.122.030(3)a

Staff would like to remind Avista of the requirements in 49 C.F.R 192 and WAC 480-93 related to the Company's responsibility for contractors, locating facilities, and facility maps.

The Commission has considered these factors and agrees with the Safety Committee's findings of probable violation and penalty recommendation, as follows:

- \$5,000 Penalty Assessment for one violation of RCW 19.122.030(4)(a) failing to provide the location information of its underground facilities to an excavator no later than two business days after receipt of notice.

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
- Request a hearing to contest the occurrence of the violations; 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, P.O. 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 April 17, 2023.

/s/Rayne Pearson
RAYNE PEARSON
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 D-230100 Investigation # 8692

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 eighteen, 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.
- Attest that I have paid the penalty in full through the Commission's payment portal.
OR
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.
- b) I ask for a Commission decision based solely on the information I provide above.
OR
3. 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.
- 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: 04/18/2023 [Month/Day/Year], at Spokane, Wa [City, State]

Tyler Proszek
Name of Respondent (Company) - please print

Tyler Proszek
Digitally signed by Tyler Proszek
Date: 2023.04.18 07:13:49 -0700
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.