

Service Date: August 7, 2024

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-240566
PENALTY AMOUNT: \$5,000
Investigation # 8928

SERVICE VIA EMAIL

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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(3)(a) by failing to provide the excavator with reasonably accurate information by marking the location of its 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.

On July 16, 2024, the Safety Committee heard case 24-043 filed by M&L Construction Inc. (M&L or Complainant) against Avista and determined Avista violated RCW 19.122.030(3)(a) by failing to provide the excavator (Complainant) with reasonably accurate information by marking the location of its facilities. The Safety Committee recommended that the Commission impose a \$5,000 penalty.

Commission staff (Staff) reviewed the documents, reports, and communications with the Safety Committee and agreed with the Safety Committee's findings and recommendations.

The Commission hereby notifies you that it is assessing a \$5,000 penalty (Penalty Assessment) against you on the following grounds:

1. **Alleged Violation:**

The Complainant states that on May 14, 2024, Avista failed to determine the location of an underground facility with reasonable accuracy at 205 W Florence, Spokane, WA.

2. **Analysis:**

The alleged violation concerns RCW 19.122.030(3)(a), which states, in part, that a facility operator will provide the excavator with reasonably accurate information by marking the location of its facilities. On May 6, 2024, M&L Construction requested a locate ticket for Fairwood and West Florence Avenue, Spokane, WA. On May 13, 2024, M&L Construction potholed the location and found an unmarked gas line that was later determined by Avista to be a live gas line. M&L Construction was exposing lines for a directional boring project using a hydrovac when they exposed a power line, which had been marked, but also found an unmarked gas line touching the secondary power. M&L Construction stated that the gas line had not been located. During the complaint review, M&L Construction provided pictures which showed the power locates but no gas locates. Other photographs provided by M&L Construction showed the exposed, unlocated gas line.

During the Safety Committee review, Avista provided a Supporting Documentation Narrative and stated that the stub which was discovered by M&L Construction was unmapped at the time of the locate and excavation. Avista claimed that there was no way for them or ELM to know about the unmapped gas line prior to excavation because the stub was installed prior to the 1970's. Avista stated that they take these types of instances seriously and are constantly working to ensure its mapping database is as complete as possible.

Staff reviewed the Washington One Call Center database and confirmed a valid locate ticket had been requested, and the location of facilities to be marked was within the excavation area identified by M&L Construction. Staff also confirmed through a Google Map search that the location identified in the locate ticket is located in front of 205 W Florence Avenue which was the address used by the Safety Committee as the location of the violation.

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 M&L Construction 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 does not appear to be intentional, but rather due to negligence by Avista and its locators. Over the past 36 months (August 19, 2021– July 16, 2024), Avista has been penalized by the Commission on fourteen occasions for violations of RCW 19.122.030. Avista is aware of the requirements to comply with the dig law but continues to have violations involving its locating practices.

3. **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.

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

Penalty Assessments:

D-240262	6-18-24	Penalty Notice \$5,000	RCW 19.122.030(3)a
D-230967	1-12-24	Penalty Notice \$10,000	RCW 19.122.030(4)a
			RCW 19.122.030(3)a
D-230858	1-12-24	Penalty Notice \$5,000	RCW 19.122.030(4)a
D-230098	4-17-23	Penalty Notice \$5,000	RCW 19.122.030(4)a
D-230100	4-17-23	Penalty Notice \$5,000	RCW 19.122.030(4)a
D-230099	4-17-23	Penalty Notice \$5,000	RCW 19.122.030(4)a
D-230005	3-13-23	Penalty Notice \$5,000	RCW 19.122.030(3)a
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

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 for one violation of RCW 19.122.030(3)(a).

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 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, 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 August 7, 2024.

/s/ Michael Howard
MICHAEL HOWARD
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-240566 Investigation # 8928

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 and:
 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. **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.
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.
- 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.