

Service Date: January 21, 2025

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-240979
PENALTY AMOUNT: \$1,000
Investigation # 9069

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 M & L Construction, Inc. (M & L or Company) violated Revised Code of Washington (RCW) 19.122.040(2)(a) by failing to use reasonable care to avoid damaging underground facilities by failing to determine the precise location of underground facilities which have been marked.

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 December 5, 2024, the Safety Committee heard case 24-096 filed by Avista Corporation (Avista or Complainant) against M & L and determined M & L violated RCW 19.122.040(2)(a) by failing to use reasonable care to avoid damaging underground facilities by failing to determine the precise location of underground facilities which have been marked. The Safety Committee recommended that the Commission impose a \$1,000 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 \$1,000 penalty (Penalty Assessment) against you on the following grounds:

1. Alleged Violation:

The Complainant states that on June 11, 2024, M & L failed to use reasonable care while excavating at 11911 N Stevens Ct., Spokane, and damaged an Avista natural gas service line because it failed to determine the precise location before beginning excavation.

2. **Analysis:**

The alleged violation concerns RCW 19.122.040(2)(a) which states in part that an excavator must use reasonable care to avoid damaging underground facilities by determining the precise location of underground facilities which have been marked. The Complainant states that M & L caused damage to a gas service line when it used mechanical equipment within the tolerance zone. The Complainant provided photos that demonstrate the gas line had been accurately located and marked and showed the severely bent gas line in the excavation site.

During the review, M & L acknowledged its mistake and explained that the employee operating the backhoe was parked on top of the yellow line and did not realize they were that close.

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 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 appears to be due to negligence rather than a lack of knowledge of Washington State's Dig Law. M & L has extensive knowledge and experience regarding the requirements of the Washington State Dig Law.

3. **The likelihood of recurrence.**

The likelihood of recurrence depends on the Company's actions going forward and its willingness to use reasonable care during all excavation activities.

4. **The Company's previous Warning Letter.**

On October 15, 2018, the Commission mailed an Alleged Violation of Washington Dig Law letter to M & L. The letter included detailed information about Washington state's Underground Utility Damage Prevention Act, requirements for submitting utility locate requests before excavating, and the possibility of penalties for each violation.

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

- \$1,000 penalty for one violation of RCW 19.122.040(2)(a) with an offer to suspend an \$800 portion of the penalty for one year, and then waive it, subject to the condition that the Company must not commit any further violations of RCW 19.122 within 12 months of the date of this Penalty Assessment.

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 \$1,000 penalty amount due; or
- Pay \$200 and notify the Commission that you accept the offer to suspend an \$800 portion of the penalty amount subject to the following condition:
 - The Company must not incur any additional violations of RCW 19.122 within 12 months of the date of this Penalty Assessment; 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 January 21, 2025.

/s/ James E. Brown II
JAMES E. BROWN II
Acting 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-240979 Investigation # 9069

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 \$1,000 in payment of the penalty.
- OR Attest that I have paid the penalty in full through the Commission's payment portal.
2. **Accept conditions.** 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 following condition:
- The Company must not commit any further 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 (**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.
4. **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.