

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against AVISTA CORPORATION d/b/a AVISTA UTILITIES in the amount of \$5,000	DOCKET D-220230 ORDER 01 DENYING MITIGATION
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BACKGROUND

- 1 On May 26, 2022, the Washington Utilities and Transportation Commission (Commission), in response to a determination of fault by the Washington State Dig Law Safety Committee (Safety Committee), issued a Penalty Assessment against Avista Corporation d/b/a Avista Utilities (Avista or Company) in the amount of \$5,000 for one violation of RCW 19.122.030(3)(a). The Penalty Assessment alleges that the Company failed to provide reasonable accurate information to an excavator by marking the location of its underground facilities.
- 2 On June 8, 2022, Avista filed an application for mitigation, requesting a decision based on the information provided. In its application, the Company acknowledged that it was found responsible by the Safety Committee for its failure to accurately mark the location of its underground facilities, but alleges that the excavator should be held partially responsible for being “frequently difficult to communicate with, confusing in their locate ticket dig area descriptions” and “inconsistent in following their project phasing on large tickets.” Avista states that the excavator thus creates significant barriers to Avista’s ability to complete tickets in a timely and accurate manner.
- 3 On June 13, 2022, Commission staff (Staff) filed a response recommending the Commission deny the Company’s request for mitigation. Staff states that Avista did not provide any new information or supporting evidence beyond what was provided to the Safety Committee when it originally determined that Avista was at fault. Staff states that the issues raised in Avista’s mitigation request would be better addressed through mediation with the excavator or separately in a complaint, rather than in this Penalty Assessment docket.

DISCUSSION AND DECISION

- 4 RCW 19.122.030(3)(a) requires facility operators to “provide reasonably accurate information by marking [the] location” of its underground facilities. In order to provide such information to excavators, companies must know the locations of their facilities or be able to locate them effectively. Facility operators who violate these provisions are subject to penalties of up to \$10,000 per violation.¹ Here, the Commission assessed a reduced penalty of \$5,000 for the violation, which is the Company’s sixth violation in two years.
- 5 The Commission considers several factors when entertaining a request for mitigation, including whether the company introduces new information that may not have been considered in setting the assessed penalty amount, or explains other circumstances that convince the Commission that a lesser penalty will be equally or more effective in ensuring the company’s compliance.²
- 6 We find that Avista failed to introduce any new information that would warrant further mitigation of the penalty. Facility operators that fail to provide excavators with accurate underground utility locates create a serious risk of damage to equipment and infrastructure and create a safety hazard. Under Washington law, facility operators are responsible for locating and identifying their facilities, without exception, regardless of how difficult that task may seem. Accordingly, we agree with Staff’s recommendation and conclude that the Company’s request for mitigation should be denied.

ORDER

THE COMMISSION ORDERS THAT:

- 7 (1) Avista Corporation d/b/a Avista Utilities’ request for mitigation is DENIED.

¹ RCW 19.122.055(1)(a).

² Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013) at ¶19.

- 8 (2) Avista Corporation d/b/a Avista Utilities is assessed a penalty of \$5,000.

DATED at Lacey, Washington, and effective July 15, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AMANDA MAXWELL
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website.