

**Avista Corp.**

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Received
Records Management
Jun 11, 2024

Tuesday, June 11, 2024

Jeff Killip, Executive Director, and Secretary
Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

Re: Avista's Response to Docket D-240262 - Notice of Opportunity to Respond

Dear Mr. Killip:

In accordance with the Washington Utilities and Transportation Commission's (Commission) Notice of Opportunity to Respond issued in Docket D-240262 on June 3, 2024, regarding the matter of the penalty assessment against Avista Corporation. Avista Corporation submit the following comments.

The obligations of a facility operator under RCW 19.122.030 encompass providing the excavator with reasonably accurate information of the operator's locatable underground facilities by marking the facility's location **or** to provide information to the excavator of the operator's unlocatable, or identified but unlocatable, underground facilities, as to the facility's location. Unmapped facilities, while not explicitly mentioned in RCW 19.122, are a significant reality for facility operators and the excavation industry. The most pertinent language that could be construed to reference unmapped facilities would fall under the definition of "Unlocatable Underground Facilities" through "available information" and "includes, but not limited to" when describing a facility that is not identified and cannot be marked with reasonable accuracy.

Reasonable Accuracy is defined as, "location within twenty-four inches of the outside dimensions of both sides of an underground facility."

This information can be achieved by underground facility locating methods, as-built records and/or physical visual indicators, all of which require knowledge of the facility to employ such methods. In the case of unmapped underground gas facilities, without visual indications (gas meter, stub marker, valve can, etc.) or as-built/mapping records showing presence of the facility, it is not realistic to provide reasonably accurate information.

Locatable Underground Facility is defined as, “an underground facility which can be marked with reasonable accuracy.”

“Which **can be** marked with reasonable accuracy”. In order for a facility to be marked with reasonable accuracy, the operator must be aware of its existence and employ one of the methods listed above. It would be unreasonable to expect a facility operator to mark a facility with reasonable accuracy when the operator is unaware, and has no means to be aware, of the presence of said facility.

Unlocatable Underground Facility is defined as, “subject to the provisions of RCW 19.122.030, an underground facility that cannot be marked with reasonable accuracy using available information to designate the location of an underground facility. "Unlocatable underground facility" includes, but is not limited to, service laterals, storm drains, and nonconductive and nonmetallic underground facilities that do not contain trace wires.”

A facility that is unmapped with no physical indications or records is an excellent example of “an underground facility that cannot be marked with reasonable accuracy **using available information** to designate the location of an underground facility”.

Identified but Unlocatable Underground Facility is defined as, “an underground facility which has been identified but cannot be located with reasonable accuracy.”

The RCW in chapter 19.122.020 has intentionally defined unlocatable facilities associated with being identified, as opposed to unidentified. It would be reasonable to infer the intent of defining **identified** facilities that are unlocatable would be different from other unlocatable facilities such as service laterals, storm drains, nonconductive and nonmetallic facilities, or other situations such as **unidentified** facilities.

Under RCW 19.122.030 4(a-c), part of the responsibility of an operator, regarding unlocatable underground facilities, is to do one of three things no later than two full business days after receipt of the notice provided by the excavator or before the scheduled date of excavation:

1. Place a triangle indicating the presence of an identified but unlocatable facility;
2. Arrange a meet with the excavator at the worksite to provide additional information;
3. Provide the best available records of the known unlocatable.

In the case of unmapped facilities, the operator does not have any “best available records” to provide, or any indication that records should be provided. The best available information would be in the form of field markings left on site of the known facilities. “A facility operator’s good faith attempt to comply with subsection (3)(b) and (c) of this section: (i) Constitutes full compliance with the requirements of this section...” Addressing all known facilities by providing reasonably accurate marks for locatable facilities and one of the three available options for unlocatable facilities would reasonably be considered a **good faith attempt to comply with subsection (3)(b) and (c)**.

Under RCW chapter 19.122.030, “(5) An excavator must not excavate until all **known** facility operators have marked or provided information regarding underground facilities as provided in this section.”

Excavators are not held to an unreasonable standard based on unknown information that is not within their control. If they are not made aware of a facility operator having buried facilities in their dig area, they have no obligation to delay excavation until the operator has responded. To expect a facility operator to take actions based on unknown information but not have the same expectation of an excavator is inequitable.

Under RCW chapter 19.122.130, “(5) The safety committee may review complaints of alleged violations of this chapter involving practices related to underground facilities. Any person may bring a complaint to the safety committee regarding an alleged violation **occurring on or after January 1, 2013.**”

Almost all, and undoubtedly in this case, mapping errors are the result of since improved upon practices and years of records being kept and transferred to new companies or systems. This case involves a steel gas stub that was installed in the late 1950’s. Any mapping errors prior to January 1, 2013, that occur as the result of mapping practices or record keeping procedures inevitably lead to a future incident or discovery, but would still be the result of an action prior to January 1, 2013.

A determination that unmapped facilities installed prior to January 1, 2013, being a violation of RCW 19.122, in essence makes perfect mapping and records a requirement as well. Since the codes referenced in said chapter do not specifically speak to unmapped facilities in plain meaning, it is the objective of a ruling body to carry out the legislature’s intent. That was not the intent of the legislature as it would be impossible for facility operators to reasonably become fully aware of all their unknown facilities. If that was the legislature’s intention, there would have been provisions as to when all mapping and records must be updated to one-hundred percent accuracy. I urge the Commission to consider the consequences of requiring all facility operators to face dig law violations and resulting penalties for not having perfect records of facilities that could date back as early as the 1800’s.

Thank you for your considerations in this matter.

Regards,

/s/ Paul Kimball

Paul Kimball
Manager of Regulatory Compliance & Discovery
Avista Corporation