

Service Date: January 12, 2024

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-230967
PENALTY AMOUNT: \$10,000
Investigation # 8836

SERVICE VIA EMAIL

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

UBI: 328-000-223
Phone: (509) 495-8620

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) and (RCW) 19.122.030(3)(a).

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 November 14, 2023, the WA State Dig Law Safety Committee (Safety Committee) heard case 23-093 filed by M & L Construction (Complainant) against Avista and determined Avista violated RCW 19.122.030(4)(a) by failing to provide the excavator with information by marking the location of its facilities within two business days on September 11, 2023. The Safety Committee recommended that the Commission impose a \$5,000 penalty.

On November 14, 2023, the Safety Committee heard case 23-099 filed by M & L Construction against Avista and determined Avista violated RCW 19.122.030(3)(a) by failing to provide the excavator with reasonably accurate information marking the location of its facilities on September 26, 2023. The Safety Committee recommended that the Commission impose a \$5,000 penalty.

Commission staff (Staff) conducted an investigation that included reviewing the supporting documents and reports and observing the review process.

The Commission reviewed the findings and recommendations made by the Safety Committee and hereby notifies you that it is assessing a \$10,000 penalty (Penalty Assessment) against you on the following grounds:

Alleged Violation 1: Avista violated RCW 19.122.030(4)(a) on one occasion by failing to provide the excavator with information by marking the location of its underground facilities within two business days from the date of notice, on September 11, 2023.

Analysis:

On September 12, 2023, Complainant had a valid locate ticket to excavate at 8110 N. Panorama Dr. in Spokane. Ticket #233040117 was valid from August 23, 2023 through October 7, 2023. When Complainant arrived on site to begin excavation, it was unable to determine the location of some Avista underground facilities based on the system of dots the locator used to mark the facilities on the ground. The Complainant contacted the locator for assistance and an ELM locate technician responded. After hearing from the Complainant that the locate dots used were not sufficient for determining where the facilities were, the technician left and did not communicate any further information to the Complainant. The Complainant had to stop excavation and contact Avista directly and explain that the locate technician had left the site and the locate marks were still incomplete. During the review, the Complainant explained and demonstrated using photographs that the dots were unclear, too far apart, and confusing. This left its crew trying to guess the location of the underground. Avista provided supporting documents and statements indicating it fulfilled its obligation to mark the facilities by the due date and argued there is nothing in the law that specifically identifies how marking with dots should be applied. Avista argued that it met its obligation.

The Safety Committee reviewed RCW 19.122 definition of “marking” and noted that it is “the use of stakes, paint or other clearly identifiable material to show the field location of underground facilities.” The Committee determined that based on the evidence provided, the locate dots were confusing, unclear, and not completed on September 11, 2023. Staff reviewed the One Call Center database and determined there was a valid ticket and locates were due to be completed on August 23, 2023. Staff observed the review panel process, reviewed the documents submitted, and agreed with the Safety Committee’s finding that the locates were incomplete.

Alleged Violation 2: Avista violated RCW 19.122.030(3)(a) on one occasion by failing to provide the excavator with reasonably accurate information by marking the location of its underground facilities on September 26, 2023.

Analysis:

On September 26, 2023, Complainant was excavating with a valid locate ticket #23368320 at 7811 N. Panorama Dr. in Spokane, when it struck an Avista underground electrical facility. The Complainant was performing directional drilling three feet from the nearest electrical locate mark when the strike warning on the drill was activated. The Complainant notified Avista of the strike and Avista sent a locate technician to the site the next day. The technician determined that an electrical line and vault had been missed during the locate process. Avista did not disagree with this complaint and accepted responsibility for the violation of missing a locatable underground facility.

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.**
 These incidents 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 violations do not appear to be intentional, but rather due to negligence by Avista and its locators. Over the past 36 months (December 21, 2020-December 21, 2023), Avista has been penalized by the Commission on thirteen occasions for violations of RCW 19.122.030. Avista is aware of the requirements to comply with the dig law but continues to incur violations involving its locating 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 36 months, the Commission has issued Avista thirteen Penalty Assessments of \$5,000 each for violations of RCW 19.122.030 as follows:

D-230858	TBD	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
D-200814	3-18-21	Penalty Notice \$5,000	RCW 19.122.030(3)a

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

- 1) \$5,000 penalty for one violation of RCW 19.122.030(4)(a)
- 2) \$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 violations did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for any or all the violations 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(s) 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(s) 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 \$10,000 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 January 12, 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-230967 Investigation # 8836

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, am 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 \$10,000 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.