

Service Date: June 18, 2024

## WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-240262  
PENALTY AMOUNT: \$5,000  
Investigation # 8892

#### 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 underground 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 April 11, 2024, the Safety Committee heard case 24-013 filed by M&L Construction (Complainant) against Avista and determined Avista violated RCW 19.122.030(3)(a) by failing to provide the excavator with reasonably accurate information by marking the location of its underground 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 March 20, 2024, at 8103 N. Howard Dr., Spokane, WA, Avista failed to accurately mark an underground natural gas facility.

2. **Analysis:**

The alleged violation concerns RCW 19.122.030(3)(a) which states, in part, that a facility operator must provide the excavator with reasonably accurate information by marking the location of its underground facilities. On March 20, 2024, the Complaint reported that it had a valid locate ticket #24082804 and was okay to begin excavation on March 12, 2024. On March 20, 2024, while conducting directional drilling and hand digging, it struck an unmarked steel natural gas line.

Avista reported that the line hit was an unmapped steel stub. The stub was believed to have been installed in 1958 or 1959. Avista explained it believed it did everything it could to locate its facilities; unfortunately, this steel stub was not on the maps.

On June 3, 2024, the Commission issued a notice of opportunity to comment in this docket, allowing Avista and other interested persons to comment on the facility operator's duties in these circumstances. After reviewing the comments filed in this docket from M&L Construction, Avista, and the Safety Committee, the Commission agrees with the Safety Committee that the law places a broad duty on facility operators for all locatable facilities. Under RCW 19.122.030(3)(a), a facility operator is obligated to provide an excavator with reasonably accurate information about the location of its locatable underground facilities by marking their location. "Reasonable accuracy" is defined in RCW 19.122.020(23) as being within twenty-four inches of both sides of an underground facility's outside dimensions. This imposes a broad responsibility upon the facility operator to mark the location of any locatable facilities, even if they are unmapped. The statutes provide limited exceptions for unlocatable underground facilities and service laterals in RCW 19.122.030(3)(b) and (c), providing a path for good faith compliance in those instances. However, these provisions do not apply in the case of a locatable facility, such as a steel gas stub. Given all of these statutory provisions considered together, Avista is wrong to suggest that good faith compliance with maps or observable physical signs on the surface are sufficient to discharge its duties. The specific definition of "reasonable accuracy" in RCW 19.122.020(23) also undermines any argument that a facility operator must merely make a reasonable attempt to locate facilities based on mapping or other surface indications.

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 does 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 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.

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

During the past approximately 36 months, the Commission has issued Avista 14 Penalty Assessments of \$5,000 each for violations of RCW 19.122.030 as follows:

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
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:

\$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](mailto: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 \(wa.gov\)](#).<sup>1</sup>

**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 June 18, 2024.

*/s/Michael Howard*  
MICHAEL HOWARD  
Director, Administrative Law Division

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<sup>1</sup> <https://www.utc.wa.gov/documents-and-proceedings/online-payments/make-payment-now>.

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
PENALTY ASSESSMENT D-240262 Investigation # 8892

**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.