

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-180666
PENALTY AMOUNT: \$1,000
Investigation # 7888

Mike Faulkenberry
Director of Natural Gas
Avista Corporation
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Spokane, WA 99202

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The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.030(3)(b) by failing to provide an excavator with available information regarding the location of Avista's identified but unlocatable underground facility. 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.

The Commission reviewed findings and recommendations made by the Washington State Dig Law Safety Committee (Safety Committee) and hereby notifies you that it is assessing a penalty against you in the amount of \$1,000 on the following grounds:

On July 18, 2018, the Safety Committee heard the complaints for case 18-064 against Avista Corporation (Avista) regarding a potential violation of the Washington state Dig Law, RCW 19.122, that occurred on June 11, 2018. The complainant in this case was Hattenburg Excavating, Inc. (Hattenburg). The Safety Committee determined that Avista committed the following violation:

- One violation of RCW 19.122.030(3)(b) for failing to provide an excavator with available information as to the location of Avista's identified but unlocatable underground facility.

The Safety Committee recommended that the following \$1,000 penalty be assessed against Avista:

- \$1,000 penalty for one violation of RCW 19.122.030(3)(b).
- The opportunity to suspend \$1,000 of the penalty if Avista commits no additional violations of RCW 19.122.030(3)(b) within 12 months of the date the Commission issues a penalty assessment.

Commission regulatory staff (Staff) reviewed the Safety Committee's recommendation and agrees with its conclusion and recommended penalty, but declines to offer an opportunity

to suspend \$1,000 of the penalty on the condition that Avista commits no additional violations of RCW 19.122.030(3)(b) within 12 months. Staff based this decision on the following information provided by the Safety Committee, Avista, Hattenburg, and a review of the one-call ticket database:

On June 4, 2018, dig ticket #18233160 was generated when a subcontractor of Avista submitted a request to have underground utilities located at 39929, 39941, and 39938 North Shore Dr., Loon Lake, Washington. The request was made for a facility relocation project being done for Avista. The facilities were being relocated so they would not interfere with a construction project being done by Hattenburg at 39938 North Shore Dr. Hattenburg submitted an additional request to have underground utilities located at 39938 North Shore Dr. on June 6, 2018, which was assigned dig ticket #18238188.

A locator arrived at the location on June 6, 2018, to locate the underground utilities. The locator was unable to locate Avista's gas pipeline in the area, and so notified Avista. Avista replied that it would not be able to shut off the service until June 11. On June 7, 2018, while on-site to mark electric facilities, another attempt was made by Avista's locator to locate the gas facility in connection with the June 4 ticket. This attempt at locating the facility was also unsuccessful, and approximately 200 feet of the gas facility remained unlocated.

On June 8, 2018, a locator arrived on site to mark the facilities for Hattenburg's June 6 dig ticket, and again could not locate a portion of the gas facility. Hattenburg was notified via voicemail and email that there was an un-locatable gas facility, and that at an unknown time in the future a lead tech would go to the site to try to locate it, and that Avista would be on-site on June 11 to relocate the gas services to the three addresses listed on the June 4 ticket, which included the address on Hattenburg's June 6 dig ticket. On June 8, the lead tech searched Avista records for additional information about the gas facility that had not been located. Records were found, but they did not include any dimensional information to assist in determining the location of the pipeline, and were not shared with Hattenburg.

The lead tech locator arrived on site on June 11, 2018, and notified Hattenburg that the services and the main lines in front of each of the properties to which Avista's services connect were not locatable, but the tech nevertheless marked areas where he received a signal with his locating equipment. That same day, the locator and Avista contacted another locating company that came to the site on June 12, 2018, and was able to locate and mark the gas facilities using ground-penetrating radar equipment.

Based on the results of Staff's investigation, the Commission finds that Avista violated RCW 19.122.030(3)(b) one time by failing to provide information to Hattenburg regarding the location of its identified but unlocatable facilities. Avista's locators did not partially mark or provide records regarding the gas pipeline until three business days after Hattenburg's request to have underground utilities located. Avista was made aware the facility was difficult to locate on the same day Hattenburg requested the facility be located, but failed to employ additional locating techniques or provide information regarding the facility to Hattenburg until three business days after Hattenburg's request, and failed to complete the location until four days after the request. The Commission assesses a \$1,000

penalty for the violation. These facts, if not contested or if proved 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 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 his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the \$1,000 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 send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission may then sue you to collect the penalty.

DATED at Olympia, Washington, and effective December 20, 2018.

/s/ Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT D-180666, Investigation # 7888

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 \$1,000 in payment of the penalty.

2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below:

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:

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 makes a materially false statement which he 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 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.”