

## Meadow river lane complaint 1<sup>st</sup> time

1. Exhibit 1
  - a. page 1: Narrative
  - b. Page 1: 3<sup>rd</sup> party locator findings
  - c. page 2 and 3: Pictures
  - d. page 4 and 5 google earth overview
  - e. page 6: third party locator email
2. Exhibit 2: Official filing by Avista/ELM in response to another incident of 3 unlocated gas lines that we unknowingly bored across and narrowly missed. Avista was fined and this was the response to the Utilities Commission.
  - a. on page 3 attempts to use the unlockable defense for 3 missed locates that we had bored under, which were not located at all. No triangle just a NO AVA
  - b. Page 3 bottom attempts to say that they do not have to locate the “first locate”
  - c. Page 4 says that “locating facilities is not a perfect science” and again goes to the unlocatable provision.
  - d. Page 4: 2<sup>nd</sup> to last paragraph states that they believe turning in Avista for failures to locate is “wasteful, petty, personal, and inconsistent with the safety Commission’s Mission which is to protect the people of Washington”
3. Exhibit 3: Darrell Moss employee of Avista
  - a. Page 1: believes that the Dig law safety committee does not recognize the unlocatable provision.
  - b. Page 2: States that if one of the parties Asserts the facility is not locatable Avista is in full compliance with the law.
4. Exhibit 4: Avista VP general counsel, Chief Ethics and compliance officer
  - a. Page 2: Ignores WAC 480-93-007 which states that Gas utilities are responsible for the actions of their contractors as if they did it.
  - b. Page 3: takes no responsibility for the dig law?
  - c. Page 3: Uses CRLJ 11 in another attempt to disregard the authority of the Dig law safety committee, the UTC and the process for dig law violations.

Conclusion: There seems to be a consistent theme from upper management that they do not want to take responsibility for locating their gas lines, and contempt for the Dig Law Safety Committee:

Attempting to hide behind the unlocatable provision in the law for a gas and electric Utility is extremely inappropriate.

In this case it resulted in Natural Gas blowing into the faces of my employees and could have been catastrophic had we hit the unlocated power line also.

# WUCC Complaint Form

## Requester Information

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Your Name:

Scot Hattenburg

Your Company:

M&L Construction Inc.

Your Phone Number:

15099914129

Your Email:

scot@mandlconstruction.net

Your Address:

4103 E Dalke Ave

Your City:

spokane

Your State:

WA

Your Zip:

99217

Was a locate requested from the call center?  Yes  No

Ticket Number:

22199775

Ticket Date:

05/09/2022

## Violation Information

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Alleged Violation/Damage:

RCW 19.122.030 Must call for marking two (2) full business days prior to digging.

Other

Section of Law Violated:

Failure to locate gas

Alleged Violation Date:

05/24/2022

Address of alleged violation:

23516 N Meadow river ln

City of Alleged Violation:

Colbert

State of Alleged Violation:

wa

Zip of Alleged Violation:

99003

## Case 22-020

Basic Description:

On 5/24 M&L Construction hit an unmarked natural gas line. It had a triangle indicating that it was unlocatable. On 5/25 M&L hired a third party locator to perform an incident investigation and determined that it was locatable with a 850 signal strength. So it was locatable.

Also there was a primary electric line in the same ditch that was unlocated and we narrowly missed it also.

## Allleged Violator

Company Name:

Avista Utilities

Company Phone Number:

509 489-0500

Company Email:

Greg.Hesler@avistacorp.com

Company Address:

Company City:

Spokane

Company State:

Washington

Company Zip:

99252

Names of Employees on Site:

scot hattenburg, cody anderson

## Other

Additional Information:

By submitting this form I acknowledge that the statements that I alleged are true and accurate to the best of my knowledge.

Narrative:

M&L Construction struck a gas line at 23516 N Meadow view Ln colbert wa on 5/24/22 approx. 8:00 am

An Unlocatable Triangle was placed in the vicinity of the service line that was Struck and not located.

The service line that was hit was locatable, but not located due to negligence

The service line was locatable.

- Avista (Tyler Prozek) said in a meeting with Jon Cornelius and us that the maps were wrong. So not unlocatable at all.
- However, M&L called an Avista employee who verified the maps were correct the day of the incident investigation so not sure why maps were blamed

This gas strike endangered the lives of my employees blowing gas and rocks into the excavator

- 1: there was a triangle present indicating an unlocatable gas line to the address at 23516, However the gas service that was struck feeds the adjoining property with a meter at 23502 N Meadowview Ln
- 2: the primary power was not located in the joint ditch 1 foot away from the struck gas line
- 3: We assumed the triangle was a gas stub with no idea it was a service to the neighbor.
  - A) 2 hours after the gas strike, they stubbed and capped.
    - 1) the neighbor called avista with no gas service
    - 2) Avista responded again and pointed out the gas meter that the hit service went to
- 4: M&L Construction then performed an incident investigation
  - A) Hired a 3rd party locator to perform the locate to see if it was unlocatable
    - 1) it was locatable with over 800 to 850 signal strengthConclusion was that the Avista locator failed state and federal procedures by not following OQ procedures and locating the service that was hit.
  - C) the service was locatable from the meter.

unlocatable Triangle



no power locates



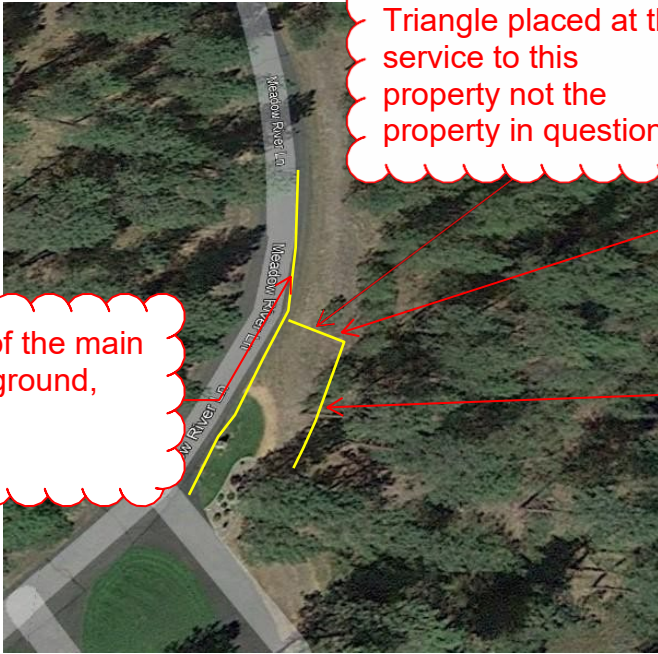


this was the gas hit

this was a service not a stub and tied into here.

unlocated 15kva power

5/24/2202  
23516 n meadow river ln  
Colbert washington

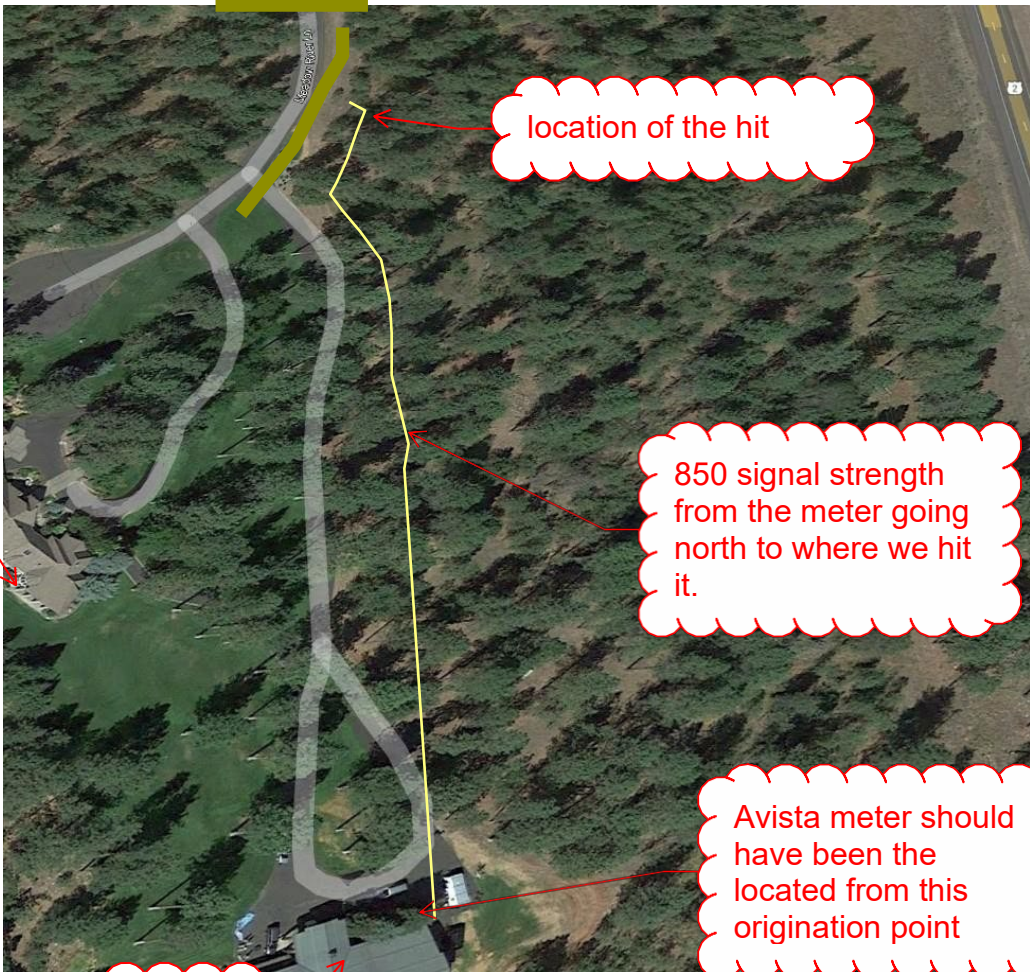


Triangle placed at the service to this property not the property in question

hit gas with triangle and then found unlocated power

locate of the main on the ground,

we hit this gas line with the excavator



House

location of the hit

850 signal strength from the meter going north to where we hit it.

Avista meter should have been the located from this origination point

"shed"





**scot**

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**From:** Bill Kulisek <bill.kulisek@utilitiesplusllc.com>  
**Sent:** Wednesday, May 25, 2022 3:10 PM  
**To:** scot  
**Subject:** RE: 23516 N Meadow river Ln

Regarding the Gas line locate: Hooked up at the "shed" and gas located excellent all the way back to the main. Hooked up at the house and Gas located all the way past the damaged gas line. Hooked up at a stub 500' to the north, and gas located to house, did not locate to the "shed". My findings are that the trace wire is faulty where the service to the "shed" connects to the main.

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**From:** scot <scot@mandlconstruction.net>  
**Sent:** Tuesday, May 24, 2022 4:01 PM  
**To:** Bill Kulisek <bill.kulisek@utilitiesplusllc.com>  
**Cc:** 'Stephanie Hattenburg' <stephanie@mandlconstruction.net>; 'ray' <ray@mandlconstruction.net>  
**Subject:** FW: 23516 N Meadow river Ln

Bill,  
The address of the unlocatable is at 23516 N Meadow River Ln, the gas line that was not located is located here. Gate code is #9963 if you could locate from the meter out it would help me prove it was not unlocatable. Give me a shout when you are able to get there.

5/24/2202  
23516 n meadow river ln



hit gas with triangle and then found unlocated power

we found this gas line with the excavator and killed the gas to the residence

gas hit here with an unlocatable triangle and no locates on the ground to the meter

locates on the ground



approximate unlocated route

same property, different meter

Avista meter should have been the located from this origination point

*Scot W. Hattenburg* 509-991-4129

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
NOTICE OF PENALTIES INCURRED AND DUE  
FOR VIOLATIONS OF LAWS AND RULES**

PENALTY ASSESSMENT: D-210605  
Investigation # 8474  
UBI: 328-000-223

**Contest of Violation**

**Basis for Violation:**

On October 20, 2021, the Safety Committee heard cases 21-019, 21-020 and 21-023 against Avista and determined Avista violated RCW 19.122.030(3)(a) by failing to provide the excavator with reasonably accurate information by marking their location. The Safety Committee recommended that the Commission impose a \$5,000 penalty.

During the review, Avista acknowledged its contractor ELM failed to accurately locate its lines as requested in ticket #21205186 on June 4, 2021.

The work in question was performed by One Call Locators, Ltd., d/b/a ELM Locating and Utility Services ("ELM"), in its capacity as an independent contractor of Avista. In that capacity, ELM respectfully contests the conclusions of the Safety Committee in this instance.

**Basis for Contest:**

Avista's acknowledgement has been taken out of context. **ELM did not fail to accurately locate Avista's lines as requested in ticket #21205186 on June 4, 2021 prior to the relevant excavation.**

The original locate was completed by ELM locate technician, Ryan Weaver, on May 12<sup>th</sup> and he identified three Avista lines crossings from the median to the south side of the street. He used Avista prints which provided reasonably accurate information to ELM.

he marked the gas clear.

Excavation was started by M&L (the excavator) with a directional drill under the lines that ELM had located.

located as clear nothing in the way not located

While M&L was directional boring, Avista, in an abundance of caution (looking at its maps), contacted ELM to check for a 4" gas line in an area in which M&L had not yet reached.

ELM met with M&L, explained the situation, and working together, M&L waited for ELM to check for a the 4" gas line.

We had already bored and installed 2-6" lines under the non-located gas line and had piloted a third time under it when Jay Arragon stopped us because the gas line was "NOT" located

ELM came right out to the locate area, reopened the ticket at 8:23am (immediately after speaking with the Avista inspector) and located the 4" line. The ELM locator closed the ticket at 9:37am.

M&L continued its directional boring, the 4" gas line having been identified. The excavation was completed safely and without any damage to an Avista line.

**Summary of Statutory compliance:**

The basis for the fine is RCW 19.122.030(3)(a) for failing to provide the excavator with reasonably accurate information by marking their location. But that factual statement is not correct. The 4" gas line, initially not located, was in fact located prior to M&L excavating across that 4" gas line. It was located based on information provided by Avista.

Reference is directed to RCW 19.122.030(2) which provides:

(2) An excavator must provide the notice required by subsection (1) of this section to a one-number locator service not less than two business days and not more than ten business days before the scheduled date for commencement of excavation, **unless otherwise agreed by the excavator and facility operators**. If an excavator intends to work at multiple sites or at a large project, the excavator must take reasonable steps to confer with facility operators to enable them to locate underground facilities reasonably in advance of the start of excavation for each phase of the work.

Here, M&L was notified, in an abundance of caution, that ELM was going to confirm whether a 4" gas line was present. M&L agreed to wait while ELM checked for the 4" gas line. This shows an agreement with the excavator as is contemplated by the Statute. RCW 19.122.030(2)

Attention is also directed to RCW 19.122.030 (4)(C).

another attempt to use the unlocatable provision as a "get out of Jail free card" Instead of due diligence.

(c) 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, and no person may be found liable for damages or injuries that may result from such compliance, apart from liability for arranging for repairs or relocation as provided in RCW 19.122.050(2);

ELM submits that the current fact situation is a terrific example of Avista, ELM and M&L working together for the public good. They worked together to second check whether the 4" gas line was marked prior to being intersected by M&L's directional bore.

There is no requirement in the statute that ELM's first locate is dispositive of its One Call obligations. Such an approach would be an artificial "gotcha" which would ignore the actual intent of the statute which is that Avista and this Safety Commission are entrusted protect your home and business prior to excavations in the State of Washington. RCW 19.122.010 (intent).

lack of due diligence, by saying that there is no requirement in the law to locate correctly the first time

again tries to use the unlocatable provision that they should not be held responsible to accurately locate their gas line.

Locating facilities is not a perfect science and this is why RCW 19.122.030 (4)(C) provides for good faith compliance. There is no better example of good faith working together than the manner in which ELM and Avista worked together with M&L to protect the public during this excavation.

**Why Are We Before the Commission:**

ELM submits it is relevant as to why this matter is even before the Safety Commission as all the Avista lines were ultimately located (in agreement with the excavator) prior to excavation and there was no damage to an Avista line. It unfortunately requires an explanation of the past history between the excavator and Avista. M&L is owned by Scot Hattenburg, and he does not like Avista, and has taken every opportunity for years to threaten, sue and harass Avista (and ELM as its locate partner). Here is the relevant portion of the most recent email from Mr. Hattenburg to ELM:

*On Oct 28, 2021, at 6:01 PM, [scot@mlnorthwest.com](mailto:scot@mlnorthwest.com) <[scot@mandlconstruction.net](mailto:scot@mandlconstruction.net)> wrote:*

*Richard,*

*... I will say if you don't pay, I will take all of them to small claims. I will blow it up with all the emails that I have sent regarding dig safety and the gaslighting that Avista has done, because you don't care.*

*I am tired of dealing with your gross negligence. I will advocating for treble fines approaching \$100,000 with the Washington state dig law safety committee.... I am just done and don't want my employees or the public killed because of your negligence.*

***I just want A LOCATE!!!!!!!!!!!!***

The reality is that in this situation all Avista lines were ultimately located prior to excavation. The public was protected and there was no damage.

Yet, in response to the approximate 1-hour delay (to which M&L agreed to wait), Avista received an invoice for M&L and August 12, 2021 demand letter from its outside counsel for \$15,195.20. A copy is attached. As to the genuineness of this claim, it is noted that while the delay was just over an hour, M&L is claiming 46 hours for "investigation and documentation" in an amount of \$4,638.90. Please note how they use the Safety Commission to justify its demand. (letter page 2). **Believes the dig safe committee to be wasteful and petty personal.... when they dont locate the gas**

Unfortunately for everyone, including the public, M&L is using the Safety Commission in a manner that is wasteful, petty, personal, and inconsistent with the Safety Commission's **Mission** which is to protect the people of Washington by ensuring that investor-owned utility and transportation services are safe, available, reliable, and fairly priced.

**In other words, the fact ELM did not initially locate the 4" gas line is being used as part of a scheme to "game" the One Call system for personal profit.** Allowing this fine to stand will

Now they admit they did not locate the 3 crossings?

just empower M&L in a situation in which it was otherwise in agreement with Avista to wait a short time while it was determined whether there was a 4" gas line. In fact, once so notified, it had a statutory duty to wait as "the excavator must take reasonable steps to confer with facility operators to enable them to locate underground facilities reasonably in advance of the start of excavation for each phase of the work." RCW 19.122.030(2).

Even though in agreement with Avista and ELM, M&L has created an invoice and is attempting to use the threat of reporting this matter to this Safety Commission as a way to threaten Avista to pay an unjustifiable demand.

For the foregoing reasons, ELM respectfully submits that this Contest of Violation result in the \$5,000 fine against Avista being set aside.

I am Lead Investigator at ELM and I review all disputed invoices, the associated paperwork and photographs. I am responsible for maintaining ELM's materials related thereto. In the normal scope of my responsibilities, I reviewed the facts related to this locate and am the most knowledgeable ELM employee as to this locate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jerry Beukelman". The signature is fluid and cursive, with a large initial "J" and "B".

Jerry Beukelman

Service Date: December 28, 2021

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

PENALTY ASSESSMENT: D-210605  
PENALTY AMOUNT: \$5,000  
Investigation # 8474

SERVICE VIA EMAIL

UBI: 328-000-223

Avista Corporation  
337 North Post St.  
Spokane, WA 99201  
[Brian.schultz@avistacorp.com](mailto:Brian.schultz@avistacorp.com)  
[Linda.burger@avistacorp.com](mailto:Linda.burger@avistacorp.com)

The Washington Utilities and Transportation Commission (Commission) believes that Avista Corporation (Avista) has violated the Revised Code of Washington (RCW) 19.122.030(3)(a) by failing to provide the excavator with reasonably accurate information by marking the location(s) 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.

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 \$5,000 penalty (Penalty Assessment) against you on the following grounds:

On October 20, 2021, the Safety Committee heard cases 21-019, 21-020 and 21-023 against Avista and determined Avista violated RCW 19.122.030(3)(a) by failing to provide the excavator with reasonably accurate information by marking their location. The Safety Committee recommended that the Commission impose a \$5,000 penalty.

Commission staff (Staff) conducted an investigation that included reviewing documents, reports, emails submitted by the Safety Committee, and the One-Call center database, and observed the review process. During the review, Avista acknowledged it failed to accurately locate its lines as requested in ticket #21205186 on June 4, 2021. During the past 12 months, the Commission has issued Avista three Penalty Assessments of \$5,000 each for violations of RCW 19.122.030.

Staff agrees with the Safety Committee's findings of probable violation and agrees with the penalty recommendation.

- \$5,000 penalty for one violation of RCW 19.122.030(3)(a) for failing to provide the excavator with reasonably accurate information by marking the location of underground facilities.

The Commission agrees with Staff's recommendation as described above.

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 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 **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, PO Box 47250, Olympia, Washington 98504-7250.

**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 Lacey, Washington, and effective December 28, 2021.

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



WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT D-210605, Investigation #8474

**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 \$5,000 in payment of the penalty.
2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below (if you do not include reasons supporting your contest here, your request will be denied):

Avista's acknowledgement has been taken out of context. Avista did **not** fail to accurately locate its lines as requested in ticket #21205186 on June 4, 2021 **prior to the relevant excavation**. See attached detailed explanation.

- 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 provided above.

3. **Request mitigation.** I admit the violations, 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 provided 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: 1/10/2022 [Month/Day/Year], at Lafayette, Co [City, State]

Jerry Benkelman  
Name of Respondent (Company) - please print

[Signature]  
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."

“Darell Moss” All:

In anticipation of today’s meeting, which I will not be able to attend, a few individuals have asked for input regarding “downtime” claims. The following are my personal thoughts and opinions regarding claims for costs incurred as a result of a violation of RCW 19.122.030. **Please note that these are my personal thoughts and opinions and in no way set forth a statement or position on behalf of Avista Corporation d/b/a Avista Utilities and are not meant to provide a legal analysis, opinion or position and may not be used or relied on for such.**

these thoughts are also reflected in action from ELM, and Greg Hesler  
Please see exhibit 2 and exhibit 3.

First, in reviewing the Washington Dig Laws, I have been unable to find any reference to a “downtime” claim. As far as my research shows, the term “downtime” is not used or defined in the Washington Dig Laws. RCW 19.122.030(7) does allow for the recovery of “reasonable compensation ... for costs incurred...” These costs would be limited to actual, provable costs under applicable law. In order to recover under 19.122.030(7), the claimant must establish both civil liability on the part of the facility operator (as that term is defined in RCW 19.122.020(11)), arising from a violation of RCW 19.122.030(4), and the claimant must also establish the amount of the reasonable costs incurred as a result of said violation.

With respect to civil liability, the actions or decisions of the dig-board safety committee in reviewing a complaint do not establish civil liability for an alleged violation of RCW 19.122.030. Rather, actual, credible, relevant, and legally admissible evidence must be provided establishing a violation of RCW 19.122.030, and, the constitutional rights of due process must be met for all parties involved. It is my position that the actions of the dig-board safety committee do not satisfy, in any way, a party’s constitutional rights of due process. Further, among other things, it is my understanding that the dig-board safety committee does not recognize or apply the provisions of RCW 19.122.030(4)(c). Part of proving civil liability must include the application of the language in RCW 19.122.030(4)(c). If the evidence shows that the facility operator (as that term is defined in RCW 19.122.020(11)), made a good faith attempt to comply with the provisions of RCW 19.122.030, the facility operator is deemed to be in full compliance with the requirements of RCW 19.122.030 and therefore not liable for any damages or ***injuries*** that may have been sustained. See RCW 19.122.030(4)(c)(i).

Wow tell that to the families with loss.

Darrel Moss from Avista believes everything can be unlocatable see Avista and ELM response exhibit (1)

With respect to actual, provable costs, those costs must be reasonable (as required by the statute), and the claimant must demonstrate that they took steps to mitigate their costs. It has been my experience that many claims for costs are not reasonable and the claiming party has not taken steps to mitigate their costs. Further, many of these claimants believe that all they have to do is sent an invoice for their alleged “downtime” and the facility operator must pay that invoice. First, I will never pay just an invoice for alleged costs. Second, I will require actual evidence establishing the reasonable costs allowed under the statute.

n establishing both civil liability and actual, provable costs, some of the evidence I believe is necessary includes, but is not necessarily limited to:

- (1) A written statement of what occurred for each identified incident:
- (2) The names, addresses and telephone numbers of persons who witnessed each incident, or who may have any information regarding the incident;
- (3) The locate number for each incident;
- (4) Photographs of the white marks placed as a part of the submission of the locate ticket;
- (5) Photographs showing that the facility operator failed to comply with the provisions of RCW 19.122.030(4), by not reasonably accurately marking locatable\* underground service facilities (\*the statute requires proof that the underground service facility was locatable and this may be a matter of dispute in establishing a violation of RCW 19.122.030(4), if one of the parties asserts the underground service facility was not locatable, i.e., if not locatable, there is no violation of RCW 19.122.030(4));
- (6) A statement of any discussions or conversations between the excavator and facility operator regarding the locate ticket for the incident, the locates, or lack thereof, on the ground or any issues related to the locates for the locate ticket for the incident;
- (7) Records setting forth the basis for the amounts set forth in the document you provided to Avista and how those amounts were calculated, including;

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IN THE DISTRICT COURT OF SPOKANE COUNTY WASHINGTON  
SMALL CLAIMS

M&L CONSTRUCTION INC., )  
 ) No. 2262908  
Plaintiff, )  
 ) **ANSWER TO COMPLAINT**  
vs. )  
 ) (Clerk's Action Required)  
GREG HESLER, d/b/a AVISTA )  
CORPORATION )  
 )  
Defendant. )

TO: SPOKANE COUNTY CIVIL COURT CLERK

AND TO: PLAINTIFF M&L CONSTRUCTION, INC.

COMES NOW Defendant, Gregory C. Hesler and, for answer to Plaintiff's Complaint,  
states the following:

Mr Hessler is the registered agent, and chief compliance officer ..... including dig law.

I am the Vice President, General Counsel, Corporate Secretary and Chief  
Ethics/Compliance Officer for Avista Corporation ("Avista"). I am a W-2 employee of the  
Company. Avista is not a d/b/a that belongs or is registered to me in any respect. Avista is  
lawfully incorporated in the State of Washington, and is publicly traded on the New York  
Stock Exchange, with roughly 72.44mm shares outstanding. It is owned by the shareholders

DEFENDANT'S ANSWER TO  
PLAINTIFF'S COMPLAINT - 1

1 who hold its stock, overseen by a Board of Directors, and comprised of just over 1,800  
2 employees.

3 Plaintiff has attempted to sue me, individually, alleging violations of R.C.W.  
4 19.122.030. As this Court is undoubtedly aware, R.C.W. 19.122.030 *et seq.* sets forth a  
5 statutory regime governing excavation, underground facilities, and utility-locate requirements,  
6 which is collectively, and commonly, referred to as the Washington "Dig Law."

7 I have no ~~personal involvement~~, nor direct oversight of, ~~activities undertaken by~~  
8 Avista with respect to Washington's Dig Law. In fact, to the extent that Plaintiff's claims  
9 allege a failure to properly locate underground facilities, they are more properly directed  
10 towards third parties, with whom Avista contracts to respond to and perform locate requests in  
11 accordance with the Dig Law.  
12

13  
14 Plaintiff is aware of these distinctions. In the past, Plaintiff has filed small claims  
15 actions against Avista, which claims have either been resolved or addressed on the merits.  
16 *See, e.g., M&L Construction Inc. v. Avista Corporation*, Case No. CV28-22-3065, First  
17 Judicial District Court, State of Idaho, County of Kootenai, Small Claims Department; *M&L*  
18 *Construction, Inc. v. Avista Corp.*, Case No. CV28-19-7579, First Judicial District Court,  
19 State of Idaho, County of Kootenai, Small Claims Department.

20 More recently, however, Plaintiff has changed tactics, attempting to give their  
21 complaints greater gravitas by suing individual employees of Avista, in their individual  
22 capacities. Examples include the following:  
23

- 24 • *Scott Hattenburg d/b/a M&L Construction v. Linda Burger d/b/a Avista*  
25 *Utilities*, Small Claims Case #2262810, Spokane County District Court;

- 1 • *M&L Construction v. Greg Hesler, d/b/a Avista Corp*, Small Claims Case #2262908, Spokane County District Court;
- 2 • *M&L Construction v. Greg Hesler, d/b/a Avista Corp*, Small Claims Case #2262909, Spokane County District Court; and
- 3 • *Scot W Hattenburg, d/b/a M&L Construction, Inc. v. Greg Hesler, d/b/a Avista Corporation*, Small Claims Case #2262910, Spokane County District Court

4 As chief compliance officer he should have involvement maybe thats why their contractor does not care to locate.

5 To be clear, in my role at Avista, I have no personal involvement in, or direct  
6 knowledge of, the alleged violation of R.C.W. 19.122.030 that is the subject of Plaintiff's  
7 Complaint. I have never performed a locate, am not responsible for performing locates for  
8 Avista, and have never been in a position at Avista that would require me to respond to a  
9 locate request. Quite frankly, I am not qualified to do so.

10 as head legal counsel and head of corporate ethics this shows negligence

11 As mentioned, this is not the first occasion that Plaintiff has attempted to sue  
12 employees of Avista in their individual capacity for purported actions or inactions on behalf  
13 of Avista (or more accurately, third parties with whom Avista contracts to respond to and  
14 complete locate requests). At present, I am personally the subject of three such small claims  
15 complaints, Cause Nos. 2262908; 2262909; and 2262910. In each case, Plaintiff has directed  
16 his claims against an improper party, and has failed to properly state a claim upon which relief  
17 can be granted.

18 again they are denying responsibility.

19 Plaintiff's claims are subject to CRLJ 11, which provides, in pertinent part, as follows:

20 The signature of a party or of an attorney constitutes a certificate by the party  
21 or attorney that the party or attorney has read the pleading, motion, or legal  
22 memorandum, and that to the best of the party's or attorney's knowledge,  
23 information, and belief, formed after an inquiry reasonable under the  
24 circumstances; (1) it is well grounded in fact; (2) is warranted by existing law  
25 or a good faith argument for the extension, modification, or reversal of  
26 existing law or the establishment of new law; (3) is not interposed for any  
27 improper purpose, such as to harass or to cause unnecessary delay or needless

28 these are claims that went to the safety committee and Avista admitted to and certified by the AG

1 increase in the cost of litigation; and (4) the denials of actual contentions are  
2 warranted on the evidence or, if specifically so identified, are reasonably base  
3 don a lack of information or belief. . . . If a pleading, motion or legal  
4 memorandum is signed in violation of this rule, the court upon motion or upon  
5 its own initiative may impose upon the person who signed it, a represented  
6 party, or both, an appropriate sanction, which may include an order to pay to  
7 the other party or parties the amount of reasonable expenses incurred because  
8 of the filing of the pleading, motion, or legal memorandum, including a  
9 reasonable attorney fee.

10 CRLJ 11.

11 Plaintiff is aware that their Complaint should be directed against either Avista  
12 Corporation or the third parties with whom it contracts to provide locate services, rather than  
13 towards individual employees of Avista. As mentioned, Plaintiff has properly filed  
14 complaints against Avista in the past and is no stranger to the judicial process. Moreover, at  
15 the small claims trial of *Scott Hattenburg d/b/a M&L Construction v. Linda Burger d/b/a*  
16 *Avista Utilities*, Small Claims Case #2262810, Mr. Hattenburg was advised by the Court on  
17 this subject, and voluntarily withdrew his complaint as a result. Nonetheless, he has not  
18 taken action to withdraw the present proceeding. Plaintiff's tactic of naming individual  
19 employees of Avista serves no legitimate purpose and marks both a clear and intentional  
20 violation CRLJ 11.

21 **WHEREFORE**, having fully answered Plaintiff's Complaint to the extent possible at  
22 this time, Defendant prays for relief as follows:

23 1. That Plaintiff's claims and causes of action against Defendant be dismissed  
24 with prejudice and in their entirety;

25 2. That Defendant be awarded its costs, disbursements and attorney's fees as  
26 allowed by law; and

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3. For such other and further relief as the Court deems just and equitable.

DATED this 2<sup>nd</sup> day of August, 2022.

By:   
\_\_\_\_\_  
Gregory C. Hesler, WSBA No. 34217



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 02 day of August, 2022, I caused to be served a true and correct copy of the foregoing **DEFENDANT'S ANSWER TO COMPLAINT**, by the method indicated below and addressed to the following:

Scot Hattenburg  
M&L Construction, Inc.  
PO Box 6311  
Spokane, WA 99217  
[scot@mlnorthwest.com](mailto:scot@mlnorthwest.com)

- U.S. MAIL
- DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FACSIMILE)
- E-MAIL



Scott Kennedy

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DEFENDANT'S ANSWER TO  
PLAINTIFF'S COMPLAINT - 6