

Service Date: March 3, 2023



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION
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March 3, 2023

WA State Dig Law Safety Committee
PO Box 734
Poulsbo, WA 98370

RE: Case 22-028 Avista Corporation vs. M&L Construction Inc.
Docket D-230006, Case No. 8669

Dear Committee Members:

This letter is to inform you the Washington State Utilities and Transportation Commission (Commission) has decided to not issue a Penalty Assessment against M&L Construction (M&L) as was recommended in the referral letter from the Committee regarding case 22- 028 on January 3, 2023. The reasons for this decision are as follows:

- Commission staff does not believe there is compelling or substantial evidence to prove M&L violated RCW 19.122.040(2)(a) *by failing to determine the precise location of a marked facility*. M&L provided evidence and an explanation regarding its initial hydro excavation and marking of the facility's precise location. What M&L failed to do, and acknowledges it failed to do, was pass on communications to the next crew. The circumstances, evidence, and admission, in this case, demonstrate that M&L had a failure in its internal communication processes, but it did not fail to initially *determine the precise location* of the Avista facility.
- Commission staff believes it is inappropriate to issue a penalty assessment to an excavator for damage caused to the facility wrap that, if not repaired, could cause future corrosion and leakage. In the interest of ensuring excavators continue to report these incidents, a Facility Operator should not seek punitive repercussions when an excavator reports damage to wrap or coating. In this case, Avista did not consider this incident as "excavation damage." Furthermore, Avista did not submit a DIRT report or work order, and it has not billed M&L for the incident.
- M&L Construction has no history of penalty notices from the Commission but would be advised to consider this letter a warning and ensure going forward that it follows all elements of the Dig Law including using reasonable care when digging around underground facilities. The Commission advises M&L to take advantage of the free online Dig Safe training [Dig Safe On-Line Training Registration](#).

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If you have questions or need further information regarding this decision, please let us know.

Thank you.

Scott Rukke
Pipeline Safety Director

cc. Scot Hattenburg, M&L Construction
Tyler Proszek, Avista Corporation