

Service Date: March 18, 2021

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-200814

PENALTY AMOUNT: \$5,000

Investigation # 8245

SERVICE VIA EMAIL

Avista Corporation
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The Washington Utilities and Transportation Commission (Commission) believes that Avista Corporation (Avista or Company) has 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 your underground facilities after receiving notice from the excavator to a one-number locator service. 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 against you on the following grounds:

On September 15, 2020, Safety Committee heard case 20-024 against Avista and determined the Company violated RCW 19.122.030(3)(a) by failing to provide the excavator with reasonably accurate information by marking its location. The Safety Committee recommended that the Commission impose a \$1,000 penalty. The Safety Committee further recommended the Commission suspend, and ultimately waive, an \$800 portion of the penalty subject to the condition that Avista incur no additional violations of RCW 19.122 within 12 months.

Commission staff (Staff) agrees with the Safety Committee's findings of probable violation but disagrees with the penalty recommendation. Staff based this decision on the following information and investigation.

Staff conducted an investigation that included reviewing damage reports, investigation reports, and emails submitted by Avista, ELM Services, and Halme. These documents identified a natural gas event that involved Halme damaging an unlocated natural gas line.

On May 7, 2020, Halme was excavating at 428 S. Neyland, Liberty Lake, Washington. While digging a trench for a water line, Halme struck a natural gas line owned by Avista.

The Damage Information Reporting Tool (DIRT) report submitted by Halme on June 10, 2020, indicates Halme had a valid locate ticket and ELM Locate Services had failed to accurately mark Avista's underground gas line. Staff's investigation of this damage incident determined that Halme had a valid dig ticket for the excavation, and the damage incident was a result of Avista's failure to accurately locate its underground gas lines. Halme reported that this was the third failed locate on the project.

Staff's research also indicates Avista had 11 incidents of missed or inaccurate locates in 2020. Further, in December 2018, the Commission assessed penalties against Avista in Dockets DG-180982 and DG-180666 for violations of RCW 19.122 because Avista failed to accurately locate its underground facilities, which resulted in damage.

Staff recommends that the Commission assess a \$5,000 penalty against Avista for one violation of RCW 19.122.055 for failing to provide the excavator with reasonably accurate information by marking its location.

Due to the pattern of missed and inaccurate locates, staff recommends locate supervisors and locators under contract with Avista involved with this damage incident attend locator training within 90 days of this notice.

Staff would also like to remind Avista Corporation of requirements in 49 C.F.R 192 and WAC 480-93 related to the Company's responsibility for contractors, locating facilities, and facility maps.

The Commission agrees with Staff's recommendation and assesses a penalty of \$5,000 and requires that all locators and locator supervisors under contract with Avista that were involved with this violation attend locator training within 90 days of receiving this notice.

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 notice to do one of the following:

- Pay the \$5,000 penalty amount due and agree to provide UTC with proof of locator training attendance within 10 days of completion; 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, P.O. 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 Lacey, Washington, and effective March 18, 2021.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-200814, Investigation #8245

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. I will submit proof of completion of locator and locator supervisor training within 10 days of completion.

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 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."