

Service Date: September 23, 2021

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-210636

PENALTY AMOUNT: \$5,000

Investigation # 8383

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 the Revised Code of Washington (RCW) 19.122.030(4)(a) by failing to provide the excavator information by marking the location of its underground facilities no later than two business days after receipt of the notice provided from the excavator. 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 August 11, 2021, the Safety Committee heard case 20-024 against Avista and determined the Company violated RCW 19.122.030(4)(a) by failing to provide the excavator with information by marking the location of its locatable underground facilities within two business days and did not have an agreement with the excavator otherwise. The Safety Committee recommended that the Commission impose a \$5,000 penalty.

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

Staff conducted an investigation that included reviewing documents, reports, and emails submitted by the Safety Committee. Staff also reviewed the one-call center ticket database. These documents identified that the Complainant (Complainant or Company) had a valid locate that was due on June 15, 2021. When the Company arrived to begin work on June 16, 2021, the locates for gas and electricity had not been completed. Avista explained during the Safety Committee review that the original locating technician had difficulties locating the gas during the locate process. Avista indicated that the technician had

documented in their records that they extended the due date for the ticket. However, Avista failed to communicate the need for an extension on the ticket due date to the excavator.

The Commission is assessing a concurrent penalty against Avista for a violation of RCW 19.122.030(4)(a) based on another referral from the Safety Committee on August 11, 2021.

This Commission issued a \$5,000 penalty against Avista for a violation of RCW 19.122.030(3)(a) on March 18, 2021.

The Commission issued two penalties against Avista for \$1,000 each in December 2018 for violations of RCW 19.122.030(3)(a).

Staff recommends that the Commission assess a \$5,000 penalty against Avista for one violation of RCW 19.122.030(4)(a) for failing to provide the excavator information by marking the location of their underground facilities no later than two business days after receipt of the notice provided from the excavator.

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.

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; 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 September 23, 2021.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-210636, Investigation #8383

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**):

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 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 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: _____ [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.”