

Service Date: February 22, 2023

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-230007

PENALTY AMOUNT: \$5,000

Investigation # 8670

SERVICE VIA EMAIL

UBI: 328-000-223

Avista Corporation
337 North Post St.
Spokane, WA 99201
Brian.schultz@avistacorp.com

YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE

The Washington Utilities and Transportation Commission (Commission) believes that Avista Corporation (Avista) 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 its locatable 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 December 20, 2022, the Safety Committee heard case 22-038 filed by M&L Construction Inc. (Complainant) against Avista and determined Avista violated RCW 19.122.030(3)(a) by failing to provide the excavator with reasonably accurate information by marking the location of their locatable underground facilities. The Safety Committee recommended that the Commission impose a \$5,000 penalty.

Commission staff (Staff) conducted an investigation that included reviewing documents, reports, and emails submitted by the Safety Committee, and a review of the One-Call center database.

1. Analysis

The alleged violations concern RCW 19.122.030(3)(a), which states, in part, that a Facility Operator must provide the excavator with reasonably accurate information by marking the location of its underground facilities.

2. **Violation**

The Complainant states that on July 7, 2022, the Company cored asphalt for two hours looking for the location of an Avista gas line. After not finding the gas line, the Company called Avista who then responded to the location and found the line ten feet away from where the line had originally been marked as located.

In a written response to the Complainant on July 25, 2022, Avista acknowledged that the original locate marks were not accurate and reassured the Complainant that the locator has received additional training.

During the past 24 months, the Commission has issued Avista seven Penalty Assessments of \$5,000 each, for violations of RCW 19.122.030, and two new pending Penalty Assessments.

5-26-22	Penalty Notice \$5,000	RCW 19.122.030(3)a
3-29-22	Penalty Notice \$5,000	RCW 19.122.030(3)a
3-29-22	Penalty Notice \$5,000	RCW 19.122.030(3)a
12-28-21	Penalty Notice \$5,000	RCW 19.122.030(3)a
9-23-21	Penalty Notice \$5,000	RCW 19.122.030(4)a
9-23-21	Penalty Notice \$5,000	RCW 19.122.030(3)a
3-18-21	Penalty Notice \$5,000	RCW 19.122.030(3)a

Staff would 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 considered the following factors in determining the appropriate penalty amount:

1. **How serious or harmful the violation is to the public.**

This incident could have resulted in severe injury or harm to the excavators or the public and could have resulted in additional undue expenses and hardship.

2. **Whether the violation is intentional.**

The violation does not appear to be intentional, but due to negligence by Avista and its locators. Over the past 24 months, Avista has been penalized by the Commission on seven occasions for violations of RCW 19.122.030. This indicates it is aware of the requirements to comply with the dig law but does not appear to be making significant progress to improve its practices.

3. **Whether the company self-reported the violation.**

Avista did not self-report the violation. The Commission became aware of the violation after the Complainant filed a complaint with the Safety Committee.

4. **The likelihood of recurrence.**

The likelihood of recurrence depends on Avista's actions going forward, and its ability to ensure that its contract locator and its contract locator's processes are sufficient to comply with the requirements of the dig law.

The Commission has considered these factors and agrees with the Safety Committee's findings of probable violation and penalty recommendation, as follows:

\$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 their locatable underground facilities on July 7, 2022.

These facts, if proven 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 a 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 at <https://efiling.utc.wa.gov/Form> **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. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, Washington 98504-7250.

If you wish to make your payment online, please use this link: [Make a Payment Now \(wa.gov\)](#).¹

¹ <https://www.utc.wa.gov/documents-and-proceedings/online-payments/make-payment-now>.

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

DATED at Lacey, Washington, and effective February 22, 2023

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT D-230007 Investigation #8670

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:
 Enclose \$5,000 in payment of the penalty.
OR Attest that I have paid the penalty in full through the Commission's payment portal.
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 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: _____ [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 or she makes a materially false statement which he or she 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 or her 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.