

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT D-220230 Investigation #8533

**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 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**):

Although Avista was found responsible for this violation, M&L has also contributed to the violation occurring and should be held partially responsible. M&L is frequently difficult to communicate with, confusing in their locate ticket dig area descriptions, and is inconsistent in following their project phasing on large tickets after the tickets have been called in. All these items create significant barriers to completing tickets on time and with 100% accuracy and coverage. Please see the attached document for further detail.

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: 06/08/2022 [Month/Day/Year], at Spokane, Wa [City, State]

Tyler Proszek

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.”

## Case: 22-002 Request for Mitigation - Additional Documentation

The history between M&L Construction ("M&L"), M&L's owner, Scot Hattenburg ("Scot"), and Avista ("we", "our", "us") is well documented. This incident is the result of tension and confusion between Avista, ELM and M&L. ELM is a subcontractor of Avista.

M&L started this project by calling in a lengthy locate request (21460306) on 10/05/2021: "STARTING AT THE INTERSECTION OF CEDAR AND MONTGOMERY ON THE NORTH SIDE OF MONTGOMERY CROSSING THE INTERSECTION GOING DOWN CEDAR ON THE WEST SIDE OF THE STREET FOR 5000 FEET TO ENOCH RD AND CROSSING ENOCH RD. LOCATE BOTH SIDES OF STREET". The locate request stated to go down the west side of the street, then contradicted that by requesting locates on both sides of Cedar. There was minimal white paint on site but what was there was only on the west side of Cedar.

Scot told the first locator to locate 300 feet into the properties stating that he wanted right of way-to-right of way. The locator notated that and projected the ticket for further completion. The second locator asked for further clarification and Scot kept changing the distance from center line saying it was at least a 100-foot right of way. The locator consulted with the Stevens County engineer, who stated that the right of way was 30 feet from center line. After the locator relayed the information from Stevens County to Scot, Scot told the locator to just mark to the front of the houses (the houses were about 250-300 feet from the street) to make sure everything was located. The locator said that you cannot just make up a dig area as you go, and it needs to be established so the locator can know where to stop locating. The locate request also stated the work was being done for Inland Power and Light ("IPL"), rather than for Avista. ELM being IPL's subcontractor in addition to Avista's, spoke with IPL to see if IPL would clarify what it was paying M&L to do. IPL said it did not hire M&L to do any work at that site. No digging was done on that ticket.

M&L then called in two tickets (21516115 and 21516121) within minutes of each other on 11/11/2021 asking for locates to be done on the southeast corner of the intersection of Cedar and Enoch, north to Montgomery. There is no southeast corner at that intersection, however, there is a northwest corner, a southwest corner, and an east side of a T. Ticket 21516115 also stated that M&L planned to dig 7000 feet in one day rather than phasing the project. This time the work was being done for Knight Com. The second ticket (21516121) asked for locates on the east side from Enoch to Montgomery. The locator thought the tickets confused east and west since the locator knew where M&L had planned to dig from the previous/original ticket. The same locator from the original request did these tickets and did not want to confront Scot after the previous interaction went so poorly. There was no change in the white paint from the original locate request 37 days prior, which served as confirmation to dig on the west side.

Then, M&L called in two more tickets (21565219 and 21565224) on 12/29/2021, stating, "PLEASE LOCATE A 200FT RADIUS OF THIS INTERSECTION. THE WORK WILL BE ON THE EAST SIDE SETTING A VAULT ON THE 4" SWEEPS THAT ARE ON THE SOUTH SIDE OF THE GATE ENTRANCE. PLEASE LOCATE ENTIRE INTERSECTION. AREA MARKED IN WHITE PAINT". This clearly explained what M&L planned to do, where M&L planned to do it, and physical items for the locators to reference to know where the vaults were being placed. The 12/29/2021 tickets were located with no issues.

Finally, to wrap up the project, M&L called in a ticket (22044042) for the east side of Cedar from Montgomery to 6<sup>th</sup> St to set hand holes. That dig area covered over 11,000 feet. The first locator

called for phasing and Scot said M&L would not be starting that week, but ELM would need to mark every utility crossing starting at Enoch, going south to 6<sup>th</sup> St. The locator noted the dig area was not marked in white paint. Another locator spoke with Scot, wondering why they needed the entire east right of way to place hand holes. Scot said they only had nine locations. The locator located all utilities in six of the nine locations that day and the other three were clear of utilities.

In this case, when M&L was clear, consistent, and approachable, ELM located their tickets with no problems. When M&L was vague, confusing, and curt, ELM had trouble understanding what to locate and meeting M&L's needs.