

Avista Response

Avista was notified by M&L (Ray Hattenburg) via email (*slide 2*) at 7:58am on August 5, 2022, that their ticket at 8303 N Northview Ct had not been located by Avista. In M&L's documentation, they show an email (*slide 3*) notifying them at 12:00am on August 5, that Avista had not yet provided a positive response and a screen shot (*slide 3*) was taken at 6:46am showing they were aware of the situation then. According to the complaint form M&L starts working at 5:30am. Spokane City Noise Ordinances apply from 10pm to 7am, which applies to construction equipment. M&L called in a ticket (*slide 4*) on May 17, 2022 to install the gas service to this property, prior to calling it in again on May 2. M&L was able to wait 80 days and submit another locate request to perform this work but unwilling to call and wait 20 minutes for a locator, even though it caused "associated costs" that need recovering. M&L waited two and a half hours before notifying Avista of any issues, not allowing Avista or ELM to respond and limit any possible downtime. After being notified of the issue, ELM was on site to provide locate marks at 8:18am, twenty minutes after Avista was notified of the issue at 7:58am. The locator was finished by 8:38am.

Slide 2 – M&L Email

M&L emailed Avista claiming the general contractor had to pull their siding crew off the job so M&L could complete their work. When looking at ELM's locate photos, you can see the siding on the north and east sides of the home were complete and painters were onsite and painting at the time of the locate. M&L also mentioned rescheduling their work in the complaint for, meaning they did not dig on August 5, 2022. Avista documentation on slides 4 and 5 show the lines were marked on August 5, 2022 prior to M&L commencing excavation.

Slide 3 - Screenshot

M&L documented they were aware of a potential issue at 6:46 am, one hour and fifteen minutes before notifying Avista. M&L did not call or text message Avista or ELM to immediately inform us of the issue.

Slide 4 – Locate Requests

The locates requested by M&L construction for the site referenced in the complaint.

Slide 5-7 – Locate Photos Comparisons

As you can see in the original locate photos for M&L's May 17, 2022 request and their August 2 request, siding has been installed and painters were then painting.

Slide 8 – Gas Line Installed

The gas service M&L was digging the trench for was installed on August 11, 2022. Based on that information, you can determine M&L commenced excavation sometime between 8:38am on August 5, 2022, after Avista/ELM provided locate information, and August 12, 2022.


Case 22-062





M&L Construction vs. Avista Utilities
8303 N Northview Ct, Spokane, WA



Avista Supporting Documentation

Email from M&L (Ray Hattenburg)

[External] RE: detante

 ray@mlnorthwest.com

To  'Scot Hattenburg';  'Jon Cornelius';  Schultz, Brian;  'Will Wykes'

Cc  'Stephanie Hattenburg';  Proszek, Tyler

Fri 8/5/2022 7:58 AM

Reply Reply All Forward

Brian/Tyler

We have another locate that was due. Ticket #22340883. Address: 8303 N Northview Court

We mobilized our equipment to this job site. The general contractor pulled out the siding crew so we could work there this morning. Our guys showed up to work on-site and no locates again.

The problem as stated is that we now have costs associated with this no locate. Please let me know how I am to get paid. We now must take this to the Dig Safe Committee again.

At some point you guys need to have an honest conversation with legal and let them know that we need our claims paid and resolved.

I don't think it is ok for Avista's legal to smear M&L Constructions and Scot's name every time we have to take these claims to the Dig safe committee or to court. This is not OUR fault that we have these issue's. But yet Avista legal is flat out not on the same page as you Brian and Tyler.

With ELM not locating, it is putting M&L Construction and Scot's name in a real hard spot. We don't like to have to take these issues to the dig safe committee, but we are forced to do this because we cannot get reimbursed for our money lost.

We have 4-5 more issues that will go to the dig safe committee. I would assume that Avista getting fined for these ELM violations is getting old for all involved. I know that at our meeting we didn't want to discuss outstanding and future claims in regard to money, but this is all tied together.

If you have a solution for us, please let me know.

Thank you

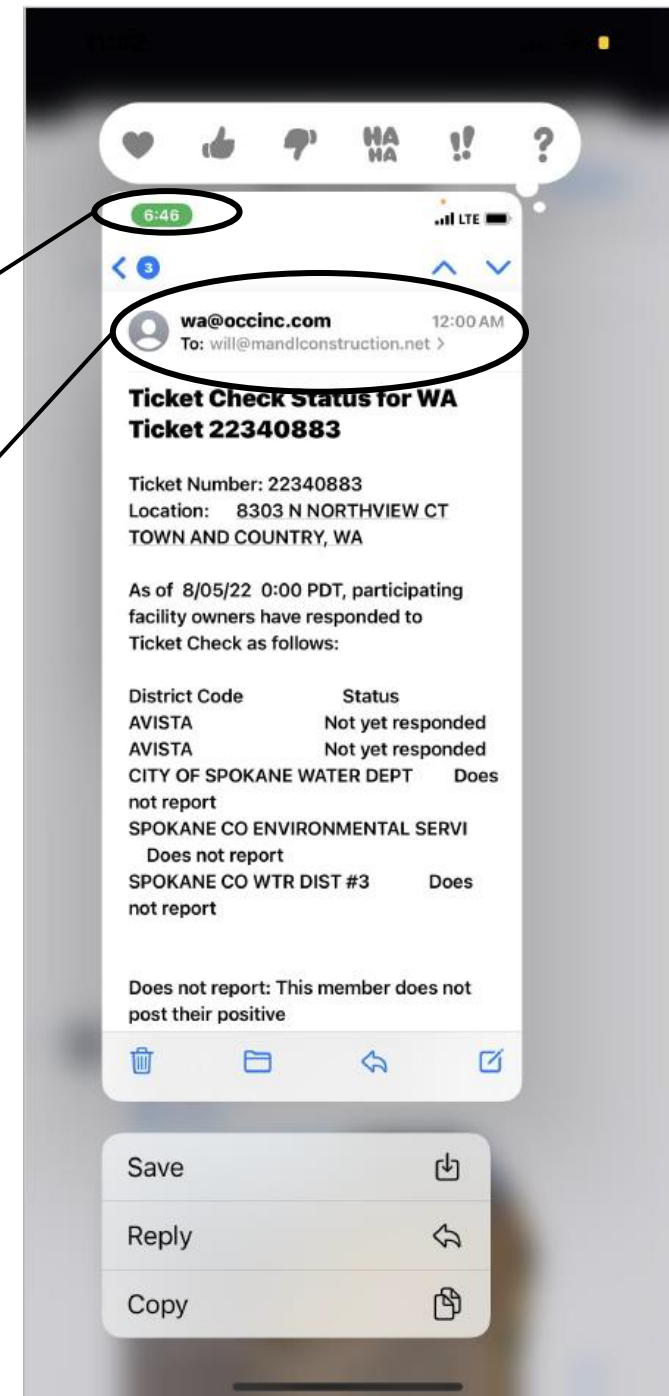
M&L Construction Inc.
Ray Hattenburg-VP
509-482-0175

Had Avista/ELM been notified at the time M&L was aware of the situation, we would have been on site in twenty minutes and had marks down within forty minutes and limited possible “downtime” or “rescheduling”.

Screenshot of Notification

Screen shot taken at 6:46am the day the notification was sent to M&L, August 5, 2022

Notification sent to M&L from the call center informing them Avista had not yet entered a positive response



Locate Requests

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Washington Ticket#: 22216748 2 FULL BUSINESS DAYS
Send To: AVSP101 Seq No: 175 Map Ref:

Transmit Date: 5/17/22 Time: 10:46 AM
Original Call Date: 5/17/22 Time: 10:46 AM Type: WEB
Work to Begin Date: 5/20/22 Time: 12:00 AM

Caller Information
-----
Company : M&L CONSTRUCTION Type : CONTRACTOR
Contact Name: WILL WYKES Phone: (509)993-0548
Alt. Contact: RAY HATTENBURG Phone: (509)939-8942
Best Time : Fax : (509)482-1764
Address : 4103 DALKE AVE; SPOKANE, WA 99217
Caller Email: will@mandlconstruction.net

Dig Site Information
-----
Type of Work: INSTALL GAS SERVICE, GRADING
Work Being Done For: OWNER

Dig Site Location
-----
County : SPOKANE State: WA
Place : TOWN AND COUNTRY
Address: Street: N NORTHVIEW CT
Nearest Intersecting Street: N NORTHVIEW RD

Location of Work: MARK ENTIRE PROPERTY.
: FROM THE INTERSECTION OF N NORTHVIEW CT AND N NORTHVIEW RD, HEAD SOUTHWEST
: ON N NORTHVIEW RD FOR 9 FT. TURN RIGHT ONTO N NORTHVIEW CT FOR 124 FT TO
: THE SITE ON THE SW SIDE OF THE STREET.
Remarks: AREA MARKED IN WHITE PAINT
Type of Excavator: CONTRACTOR
Directional Drilling: NO
Type(s) of Excavation Equipment: BACKHOE / TRACKHOE

Map Twp: 26N Rng: 43E Sect-Qtr: 19-SW
Map Twp: 26N Rng: 42E Sect-Qtr: 24-SE

Excavation Coordinates for # Polygons: 1
Poly 1: NW Lat: 47.733595 Lon: -117.430841 SE Lat: 47.733227 Lon: -117.429398

Additional Members Notified:
-----
District Company MarkingConcern CustService Repair
AVSP201 AVISTA (888)728-9343 (800)227-9187 (800)227-9187
SPOKAN02 CITY OF SPOKANE WATER DEP (509)625-7800 (509)625-7800 (509)625-7800
SPUT01 SPOKANE CO ENVIRONMENTAL (509)459-9330 (509)710-9024 (509)710-9024
SPWD01 SPOKANE CO WTR DIST #3 (509)536-0121 (509)536-0121 (509)536-0121
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M&L locate called in on May 17, 2022, to install gas service.

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Washington Ticket#: 22340883 2 FULL BUSINESS DAYS
Send To: AVSP101 Seq No: 7 Map Ref:

Transmit Date: 8/02/22 Time: 7:35 AM
Original Call Date: 8/02/22 Time: 7:41 AM Type: WEB
Work to Begin Date: 8/05/22 Time: 12:00 AM

Caller Information
-----
Company : M&L CONSTRUCTION Type : CONTRACTOR
Contact Name: WILL WYKES Phone: (509)993-0548
Alt. Contact: RAY HATTENBURG Phone: (509)939-8942
Best Time : Fax : (509)482-1764
Address : 4103 DALKE AVE; SPOKANE, WA 99217
Caller Email: will@mandlconstruction.net

Dig Site Information
-----
Type of Work: INSTALL GAS SERVICE
Work Being Done For: HOMEOWNER

Dig Site Location
-----
County : SPOKANE State: WA
Place : TOWN AND COUNTRY
Address: 8303 Street: N NORTHVIEW CT
Nearest Intersecting Street: N NORTHVIEW RD

Location of Work: MARK ENTIRE PROPERTY.
Remarks: AREA MARKED IN WHITE PAINT
Type of Excavator: CONTRACTOR
Directional Drilling: NO
Type(s) of Excavation Equipment: BACKHOE / TRACKHOE

Map Twp: 26N Rng: 43E Sect-Qtr: 19-SW
Map Twp: 26N Rng: 42E Sect-Qtr: 24-SE

Excavation Coordinates for # Polygons: 1
Poly 1: NW Lat: 47.733586 Lon: -117.430841 SE Lat: 47.733199 Lon: -117.429393

Additional Members Notified:
-----
District Company MarkingConcern CustService Repair
AVSP201 AVISTA (888)728-9343 (800)227-9187 (800)227-9187
SPOKAN02 CITY OF SPOKANE WATER DEP (509)625-7800 (509)625-7800 (509)625-7800
SPUT01 SPOKANE CO ENVIRONMENTAL (509)459-9330 (509)710-9024 (509)710-9024
SPWD01 SPOKANE CO WTR DIST #3 (509)536-0121 (509)536-0121 (509)536-0121
```

M&L locate called in on August 2, 2022, to install gas service.

Locate Photos. ELM on site.



Ticket: 22340883.0 Timestamp: 8/5/2022 8:19:52 AM



Ticket: 22340883.0 Timestamp: 8/5/2022 8:19:56 AM

Left photo shows **timestamp** of ELM locator on site at 8:19am on August 5th. Note: the right photo shows **painters on site** and working - **there is no paint on the east wall of the house at 8:19am**

Locate Photos. Siding Complete. Painting Work.



Trench area for new gas line

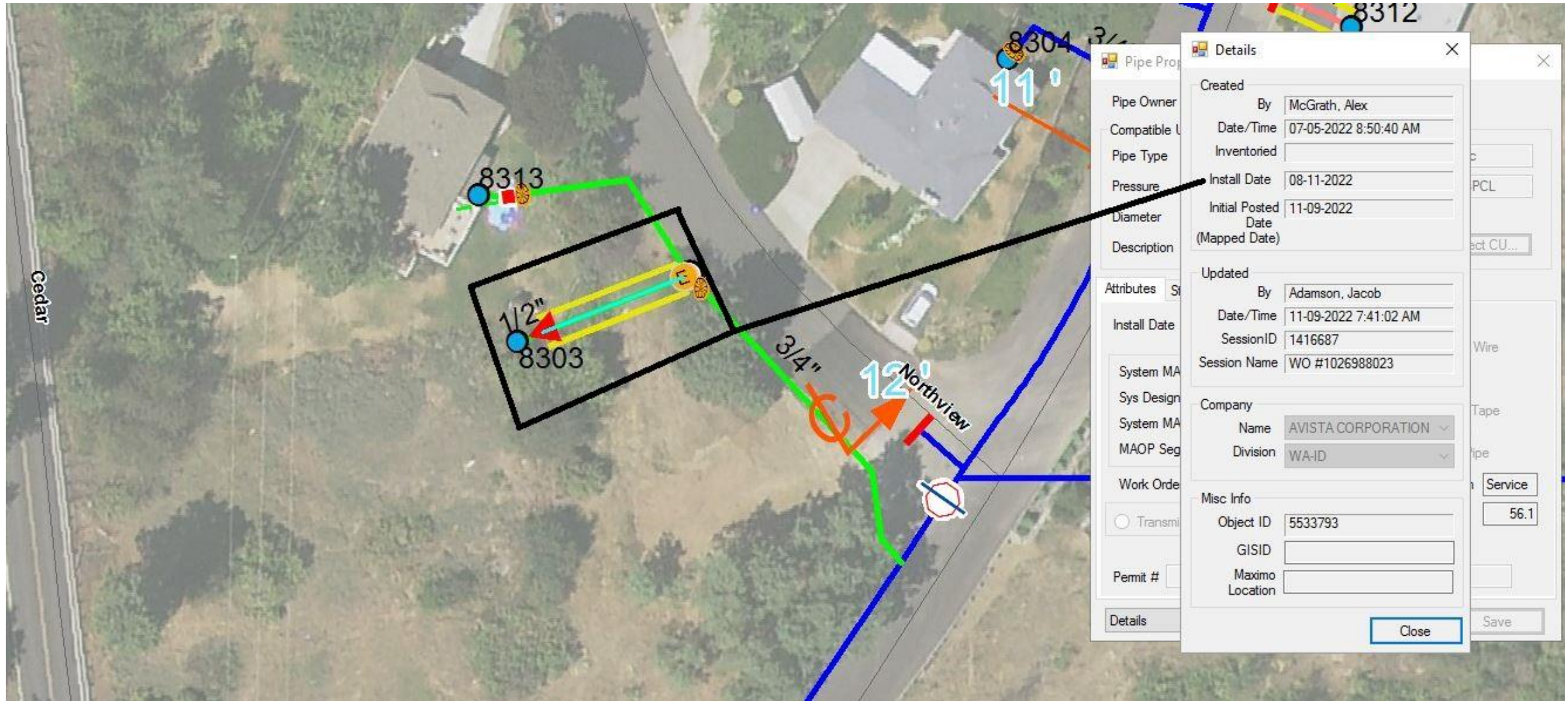
Ticket: 22340883.0 Timestamp: 8/5/2022 8:38:20 AM



Ticket: 22340883.0 Timestamp: 8/5/2022 8:27:02 AM

Left photo shows ELM completing the locate request, siding is on, and painting is happening (**new paint on the east side of the house at 8:38am**). Right photo is approx. location of where the trench ended: on the wall behind the transformer.

Gas Line Installed



The gas line was installed on August 11, 2022. Excavation happened between 8:38am on August 5, 2022, and August 12, 2022, after the locate marks were provided.

“At the option of the facility operator”

RCW 19.122.030 Section 4 states:
“A facility operator must provide information to an excavator pursuant to subsection (3) of this section no later than two business days after the receipt of the notice provided for in subsection (1) of this section or before excavation commences, at the option of the facility operator, unless otherwise agreed by the parties.”

This clause appears to indicate that so long as locates were provided prior to excavation commencing, an operator has fulfilled its duty.

M&L did not commence excavation until after locates were provided.

RCW 19.122.030 Excavator and facility operator duties before excavation. (1) (a) Unless exempted under RCW 19.122.031, before commencing any excavation, an excavator must mark the boundary of the excavation area with white paint applied on the ground of the worksite, then provide notice of the scheduled commencement of excavation to all facility operators through a one-number locator service.

(b) If boundary marking required by (a) of this subsection is infeasible, an excavator must communicate directly with affected facility operators to ensure that the boundary of the excavation area is accurately identified.

(3) Upon receipt of the notice provided for in subsection (1) of this section, a facility operator must, with respect to:

(a) The facility operator's locatable underground facilities, provide the excavator with reasonably accurate information by marking their location;

(b) The facility operator's unlocatable or identified but unlocatable underground facilities, provide the excavator with available information as to their location; and

(c) Service laterals, designate their presence or location, if the service laterals:

(i) Connect end users to the facility operator's main utility line; and

(ii) Are within a public right-of-way or utility easement and the boundary of the excavation area identified under subsection (1) of this section.

(4) (a) A facility operator must provide information to an excavator pursuant to subsection (3) of this section no later than two business days after the receipt of the notice provided for in subsection (1) of this section or before excavation commences, at the option of the facility operator, unless otherwise agreed by the parties.

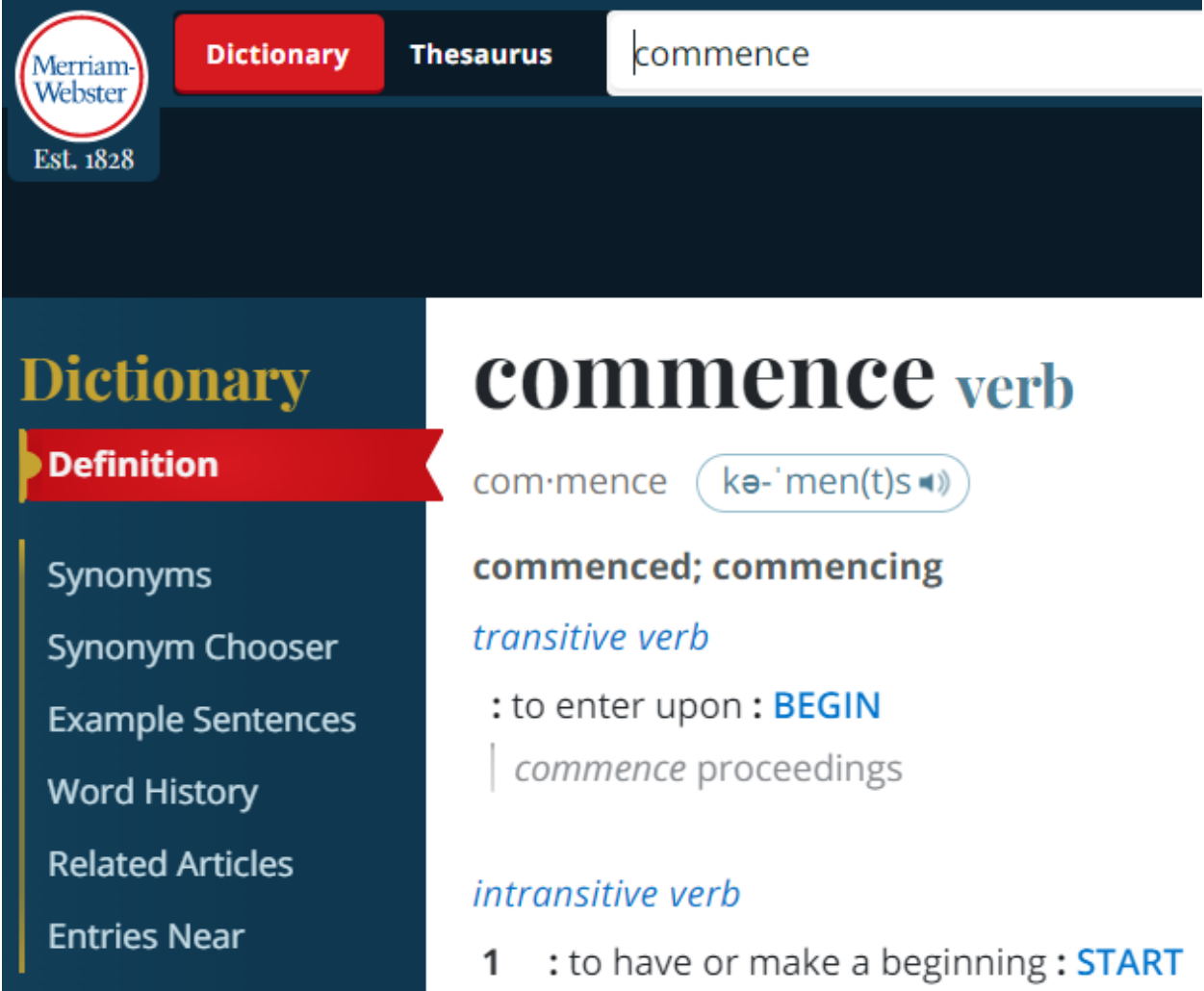
“Excavation” and “Commence”

RCW 19.122.020 Section 8 defines “excavation” as:

“ ‘Excavation’ and ‘excavate’ means any operation, including the installation of signs, in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means.”

“Commence” is defined as to begin or start.

M&L did not “commence excavation” until after locates were provided as documented in their complaint.



The screenshot shows the Merriam-Webster website interface. At the top, there is a search bar with the word "commence" entered. Below the search bar, the word "commence" is displayed in a large, bold font, followed by the part of speech "verb". The pronunciation is given as "com·mence" with a phonetic key "kə-'men(t)s" and a speaker icon. Below the pronunciation, the past tense "commenced" and the present participle "commencing" are listed. The definition is provided as "to enter upon : BEGIN" with an example sentence "commence proceedings". The intransitive verb definition is "to have or make a beginning : START". On the left side of the page, there is a navigation menu with options: "Dictionary", "Definition", "Synonyms", "Synonym Chooser", "Example Sentences", "Word History", "Related Articles", and "Entries Near".

In Other Words: Duties of an Operator under 19.122.030 4(a)

Locate marks of all Avista locatable facilities were provided on site and documented by ELM at the time the locate was completed. *Slide 5-6, electric photos.*

The locate marks were provided prior to excavation commencing. *Slide 5-6, electric photos.*

“unless”. The first two obligations were not altered by an agreement by the parties.

<p>“A facility operator must</p>	<p>provide information to an excavator pursuant to subsection (3) of this section...</p>	<p>...no later than two business days after the receipt of the notice provided for in subsection (1) of this section <u>OR</u> <u>BEFORE EXCAVATION COMMENCES,</u></p>	<p><u>unless</u> otherwise agreed by the parties.”</p>
	<p>Avista Complied ✓</p>	<p>Avista Complied ✓</p>	

Slide 9-11

According to RCW 19.122.030, it is the operator's option to provide information to the excavator no later than two business days **OR before excavation commences**. Again, subsection 4(a) states "at the option of the facility operator".

Conclusion

This issue happened on August 5. Avista and M&L participated in a listening session on July 20 (two weeks before) to discuss areas where Avista appeared to be lacking in quality and on-time performance. Both M&L and Avista committed to better communication with each other to resolve these issues before bringing them as complaints to the committee. M&L emailing Avista to mention an issue that could have been rectified, but more so to threaten alerting the safety committee, is not a collaborative or productive way to work together. Avista also made a commitment to M&L, as well as Jon Cornelius, to make changes and adjustments to our damage prevention program that would result in better quality and on-time performance. This issue occurred during that process, and we are absolutely seeing positive results of changes we've made.