



DEPARTMENT OF JUSTICE  
GENERAL COUNSEL DIVISION

December 12, 2008

David Noe  
dba David Noe Designs  
879 Harbour Drive  
Portland OR 97217

Re: Violation of Oregon Utility Notification Center Rules  
DOJ File No.: 860-100GP0167-08 / Docket No.: NC 258

**PLEASE READ ALL DOCUMENTS CAREFULLY --  
DIRECT ALL CORRESPONDENCE TO THE PUBLIC UTILITY COMMISSION OF OREGON**

On November 21, 2008, a representative from your company met with the Oregon Utility Notification Center (OUNC) Enforcement Committee to discuss an alleged rule violation. At that meeting, an agreement was reached regarding penalties for the violation.

Enclosed are two sets of documents that formalize the allegation and the agreement. One set is made up of original documents. The other set is a set of copies for your files.

Please refer to the originals. The complaint simply serves as a formal notice to you of the violation you were charged with and requires that you submit an Answer to the **Public Utility Commission** responding to the allegation. You must serve your Answer on the Commission by mailing it to the Public Utility Commission of Oregon, Administrative Hearings Division, PO Box 2148, Salem, OR 97308-2148. Filing an answer would be your opportunity to admit or deny the allegation and, if denied, to ask for a formal hearing. Because you already reached an agreement with the OUNC Committee, you do not need to submit an answer. Instead, you need only sign and return the enclosed Stipulation in order to answer the Complaint.

The Stipulation sets forth the terms and conditions of the agreement you reached with the committee. **You must sign and return the Stipulation within 20 days of the date of this letter in order for it to be approved by the Public Utility Commission as a resolution to the pending Complaint. You need not make payment until the Commission has issued a final order in this matter.**

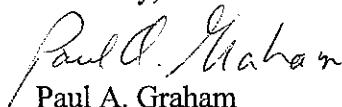
If for some reason you no longer agree to the terms of the Stipulation, you MUST FILE AN ANSWER TO THE COMPLAINT, admitting or denying the allegation.

If there is a discrepancy between the formal Stipulation and the agreement reached at the meeting that causes you concern, please contact Michael Thompson at (503) 378-6760.

Otherwise, please return the signed Stipulation to the Public Utility Commission of Oregon at the following address so this matter can be resolved:

Public Utility Commission of Oregon  
Administrative Hearings Division  
550 Capitol St NE – Suite 215  
PO Box 2148  
Salem OR 97308-2148

Sincerely,



Paul A. Graham  
Attorney-in-Charge  
Regulated Utility & Business Section

Enclosures  
PAG/nal/1181144

1                           **BEFORE THE PUBLIC UTILITY COMMISSION**  
2   **OF OREGON**

3   NC 258

4 PUBLIC UTILITY COMMISSION OF  
5 OREGON,

6                   Complainant,

COMPLAINT

7                   v.

8 DAVID NOE, dba, DAVID NOE DESIGNS,

9                   Defendant.  
10

11   1.

12               This proceeding is initiated by the Public Utility Commission of Oregon (hereinafter  
13 “Commission”) to determine whether civil monetary penalties should be assessed as provided in  
14 ORS 757.993. The Commission maintains its office at:

15                       550 Capitol Street NE – Suite 215, PO Box 2148, Salem, OR 97307-2148.

16   2.

17               At all times herein relevant, the defendant was doing business in this state.

18   3.

19               Under ORS 757.993, the Commission has discretion to seek penalties for violations for  
20 rules adopted by the Oregon Utility Notification Center (OUNC).

21   4.

22               Under ORS 757.552, OUNC has adopted rules that prescribe requirements for  
23 notification to OUNC of excavation activity and marking of underground facilities for the  
24 purpose of preventing damage to such facilities.

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5.

OUNC adopted OAR 952-001-0050 and 952-001-0090 which were in effect at all times herein relevant. The rules provide in part:

OAR 952-001-0050:

(1) \* \* \* [A]t least two (2) business days, but not more than ten (10) business days before commencing an excavation, the excavator shall notify the Oregon Utility Notification Center of the date and location of the proposed excavation, and the type of work to be performed.

OAR 952-001-0090:

\* \* \* \* \*

(4) If the excavator causes or observes damage to underground facilities, the excavator shall notify the operator of the underground facilities immediately. If the damage causes an emergency, the excavator shall also notify all appropriate local public safety agencies immediately by calling 911 and shall take reasonable steps to insure the public safety. The excavator shall not bury damaged underground facilities without the consent of the operator of the damaged underground facilities.

6.

On or about September 10, 2008, defendant violated OAR 952-001-0050(1) in that the defendant did not notify the Oregon Utility Notification Center before commencing an excavation. On the same occasion, defendant also violated OAR 952-001-0090(4) by failing to notify operator of damage to the underground facility.

On or about September 12, 2008, defendant violated OAR 952-001-0050(1) a second time by failing to notify the Oregon Utility Notification Center before commencing an excavation.

7.

ORS 757.993 provides, in relevant part, that:

“\* \* \* every person who violates or who procures, aids or abets in the violation of any rule of the Oregon Utility Notification Center shall incur a penalty of not more than \$1,000 for the first violation and not more than \$5,000 for each subsequent violation.”

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8.

Defendant has not violated OUNC rules in the past.

9.

WHEREFORE, the Commission directs the defendant to file a verified answer to this complaint within twenty (20) days from the date this complaint is mailed to the defendant. If no verified answer or other written appearance raising a question of fact or law is filed with the Commission at its office in Salem, Oregon, within the 20-day period, the allegations of the complaint shall be deemed admitted, and a penalty shall be imposed in the amount of \$1,000 for each violation alleged, for a total \$3,000.

DATED this 12<sup>th</sup> day of December, 2008.

Respectfully submitted,

HARDY MYERS  
Attorney General



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Paul A. Graham, OSB #77190  
Assistant Attorney General  
Of Attorneys for PUC Staff

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

NC 258

PUBLIC UTILITY COMMISSION OF OREGON,

Complainant,

v.

DAVID NOE, dba, DAVID NOE DESIGNS,

Defendant.

STIPULATION FOR ENTRY OF FINAL ORDER

The Public Utility Commission of Oregon, appearing by and through Paul A. Graham, Assistant Attorney General, and David Noe Designs, the defendant herein, hereby stipulate as follows:

1.

A Complaint in this case is pending before the Commission charging the defendant with three violations of law, OAR 952-001-0050 and OAR 952-001-0090.

2.

Both parties to this proceeding are willing to forego further processing of that Complaint and further are willing to resolve this matter on the basis of this stipulation.

3.

The defendant admits that the violations were committed as alleged in the Complaint and is willing for the Commission to enter an order finding that the violations were committed as alleged in the Complaint.

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The parties further agree that the Commission may enter an order assessing civil monetary penalties against the defendant in the amount of \$3,000 under the following terms and conditions:

- A. Defendant shall sign and return this stipulation within 20 days of the date it was served upon (mailed to) defendant.
- B. \$200 for each violation, for a total of \$600, which shall become due and payable on or before the 30<sup>th</sup> day following the Commission’s entry of a final order in this case.
- C. Payment shall be by company check made out to the Public Utility Commission of Oregon, and the memo line of the cashier’s check or money order shall state the “NC” docket number in the caption of this stipulation.
- D. Payment of the balance of the penalties (\$2,400) shall be permanently suspended and no further penalties shall be imposed for the violations alleged in the Complaint unless defendant fails to comply with all of the rules adopted by the Oregon Utility Notification Center (OUNC) under ORS 757.552 for a one year period following the date of the Commission’s entry of a final order.
- E. Defendant shall contact the OUNC Speakers Bureau online at [www.digsafelyoregon.com](http://www.digsafelyoregon.com) or by calling (503) 232-1987 to arrange for and attend a training session on Oregon excavation laws within 45 days following the entry of a final order.
- F. In the event that complainant contends that the defendant has not complied with all OUNC rules for that one year period, complainant may reopen this proceeding and petition for imposition of all or a portion of the suspended penalties. In such case defendant shall be entitled to a hearing and to be notified of the basis upon which complainant contends that compliance has not occurred.

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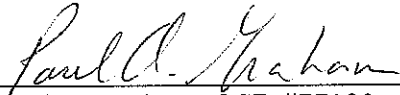
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5.

This stipulation is conditioned upon final approval of its terms by the Commission. If the stipulation is not accepted in its entirety, it shall be deemed withdrawn.

DATED this 12<sup>th</sup> day of December, 2008.

  
\_\_\_\_\_  
Paul A. Graham, OSB #77190  
Assistant Attorney General  
Of Attorneys for PUC Staff

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Representative for Defendant (signature)

\_\_\_\_\_  
(Print name)