



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

April 27, 2010

City of Portland
Attn: Bill Ryan, Chief Engineer
1120 SW 5th Avenue
Portland OR 97204

City of Portland
Office of Management & Finance
Risk Management
1120 SW 5th Avenue – Room 709
Portland OR 97204

Re: Violation of Oregon Utility Notification Center Rules
DOJ File No.: 860-100-GP0060-10 / Docket No.: NC 288

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

On April 2, 2010, 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.**

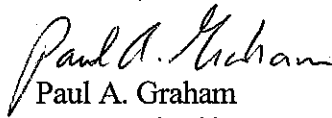
If for some reason you no longer agree to the terms of the Stipulation, you **MUST FILE AN ANSWER TO THE COMPLAINT**, admitting or denying the allegation.

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/#1994050

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

3 NC 288

4 PUBLIC UTILITY COMMISSION OF
5 OREGON,

6 Complainant,

7 v.

8 CITY OF PORTLAND,

9 Defendant.

COMPLAINT

10 1.

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

14 550 Capitol St NE – Suite 215, PO Box 2148, Salem, OR 97308-2148.

15 2.

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

17 3.

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

20 4.

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

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5.

OUNC adopted OAR 952-001-0070 which was in effect at all times herein relevant. The rule provides in relevant part:

(1) * * * [W]ithin two business days (48 hours) after the excavator notifies the Oregon Utility Notification Center of a proposed excavation, the operator or its designated agent shall:

(a) Mark with reasonable accuracy all of its locatable underground facilities within the area of proposed excavation. All marks shall indicate the name, initials or logo of the operator of the underground facilities, and the width of the facility if it is greater than two (2) inches;

(b) Provide marks to the excavator of the unlocatable underground facilities in the area of proposed excavation, using the best information available including as-constructed drawings or other facility records that are maintained by the facility operator; or

(c) Notify the excavator that the operator does not have any underground facilities in the area of the proposed excavation. Acceptable notifications must include locate request call back information and if done using an AVR (Automatic Voice Response) must have a repeat option and call back number to hear the information again.

6.

During the period of January through February 2010, defendant violated OAR 952-001-0070(1) in that the defendant failed to locate and mark with reasonable accuracy all of its locatable underground facilities within the area of proposed 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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Defendant has violated OUNC rules in the past.

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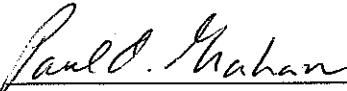
9.

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 of \$1,000.

DATED this 27th day of April, 2010.

Respectfully submitted,

JOHN R. KROGER
Attorney General



Paul A. Graham, OSB #77190
Assistant Attorney General
Of Attorneys for the Public Utility Commission
of Oregon

- 1 A. Defendant shall sign and return this stipulation within 20 days of the date it was served
2 upon (mailed to) defendant.
- 3 B. \$1,000 shall be permanently suspended and no further penalties shall be imposed for the
4 violation alleged in the Complaint unless defendant fails to comply with all of the rules
5 adopted by the Oregon Utility Notification Center (OUNC) under ORS 757.552 for a one
6 year period following date of the Commission's entry of a final order.
- 7 C. Defendant shall contact the OUNC Speakers Bureau online at www.digsafelyoregon.com
8 or by calling **(503) 232-1987** to arrange for and attend a training session on Oregon
9 excavation laws within 45 days following the entry of a final order.
- 10 D. In the event that complainant contends that the defendant has not complied with all
11 OUNC rules for that one year period, complainant may reopen this proceeding and
12 petition for imposition of all or a portion of the suspended penalties. In such case
13 defendant shall be entitled to a hearing and to be notified of the basis upon which
14 complainant contends that compliance has not occurred.

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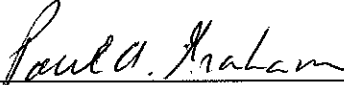
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5.

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 27th day of April, 2010.



Paul A. Graham, OSB #77190
Assistant Attorney General
Of Attorneys for the Public Utility Commission
of Oregon

DATED this _____ day of _____, 2010.

Representative for Defendant (signature)

(Print name)