

JOHN R. KROGER
Attorney General



MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

April 11, 2011

John E. Johnson, Registered Agent
Mountain-Pacific Construction, Inc.
2633 Old Midland Rd
Klamath Falls OR 97603

Re: Violation of Oregon Utility Notification Center Rules
DOJ File No.: 860100-GB0264-11 / Docket No.: NC 308

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

On March 16, 2011, 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.**

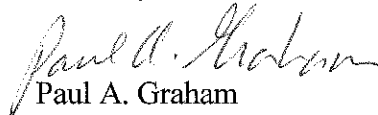
If for some reason you no longer agree to the terms of the Stipulation, you MUST FILE AN ANSWER TO THE COMPLAINT, admitting or denying the allegation.

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
Assistant Attorney General
Business Activities Section

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

3 NC 308

4 PUBLIC UTILITY COMMISSION OF
OREGON,

5 Complainant,

COMPLAINT

6 v.

7 MOUNTAIN-PACIFIC CONSTRUCTION,
8 INC. (an Oregon corporation),

9 Defendant.

10 1.

11 This proceeding 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 Street NE – Suite 215, PO Box 2148, Salem, OR 97307-2148.

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

OAR 952-001-0050:

(1) * * * [At] 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 November 18, 2010, 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.

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.”

8.

Defendant has violated OUNC rules in the past resulting in Order No. 11-038 entered on January 27, 2011.

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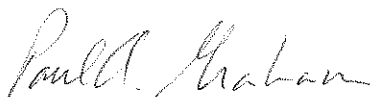
9.

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 \$2,000.

DATED this 11th day of April, 2011.

Respectfully submitted,

JOHN R. KROGER
Attorney General



Paul A. Graham, #77190
Attorney-in-Charge
Of Attorneys for the Public Utility Commission
of Oregon

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

3 NC 308

4 PUBLIC UTILITY COMMISSION OF
OREGON,

5 Complainant,

6 v.

7 MOUNTAIN-PACIFIC CONSTRUCTION,
8 INC. (an Oregon corporation),

9 Defendant.

STIPULATION FOR ENTRY OF FINAL
ORDER

10 The Public Utility Commission of Oregon, appearing by and through Paul A. Graham,
11 Assistant Attorney General, and Mountain-Pacific Construction, Inc., the defendant herein,
12 hereby stipulate as follows:

13 1.

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

16 2.

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

19 3.

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

23 4.

24 The parties further agree that the Commission may enter an order assessing civil
25 monetary penalties against the defendant in the amount of \$2,000 under the following terms and
26 conditions:

- 1 A. Defendant shall sign and return this stipulation within 20 days of the date it was
2 served upon (mailed to) defendant.
- 3 B. For the first violation, \$200 shall become due and payable on or before the 30th day
4 following the Commission entry of a final order in this case.
- 5 C. For the second violation, because defendant was aware of the underground facilities
6 and the damage caused by the first violation, \$200 shall become due and payable on
7 or before the 30th day following the Commission's entry of a final order in this case.
- 8 D. Payment shall be by money order made out to the Public Utility Commission of
9 Oregon, and the memo line of the cashier's check or money order shall state the
10 "NC" docket number in the caption of this stipulation.
- 11 E. Payment of the balance of the penalties (\$1,600) shall be permanently suspended and
12 no further penalties shall be imposed for the violations alleged in the Complaint
13 unless defendant fails to comply with all the terms of the this stipulation and all of the
14 rules adopted by the Oregon Utility Notification Center (OUNC) under ORS 757.552
15 for a two year period following the date of the Commission's entry of a final order.
- 16 F. Defendant shall contact the OUNC Speakers Bureau online at
17 www.digsafelyoregon.com or by calling (503) 232-1987 to arrange for and attend a
18 training session on Oregon excavation laws within 45 days following the entry of a
19 final order.
- 20 G. In the event that complainant contends that the defendant has not complied with all of
21 the terms of this stipulation and all OUNC rules for that one year period, complainant
22 may reopen this proceeding and petition for imposition of all or a portion of the
23 suspended penalties. In such case defendant shall be entitled to a hearing and to be
24 notified of the basis upon which complainant contends that compliance has not
25 occurred.
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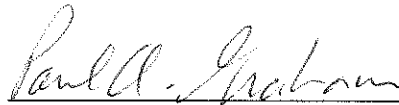
5.

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 11th day of April, 2011.

Respectfully submitted,

JOHN R. KROGER
Attorney General



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

DATED this _____ day of _____, 2011.

Representative for Defendant (signature)

(Print name)