

JOHN R. KROGER
Attorney General



MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

May 17, 2011

City of Portland
Attn: Charles Walker
1120 SW 5th Avenue – Ste 800
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-GB0368-11 / Docket No.: NC 309

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

On April 27, 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
Attorney-in-Charge
Regulated Utility & Business Section

Enclosures
PAG/nal/#274500

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5.

OUNC adopted OAR 952-001-0080 which was in effect at all times herein relevant. The rule provides in relevant part:

Within ten (10) business days after a designer notifies the Oregon Utility Notification Center of a proposed project, the operator of the underground facilities shall:

(1) 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;

(2) Provide the excavator the best description available to the operator of the unlocatable underground facilities in the area of the proposed excavation including as-constructed drawings, or other facility maps that are maintained by the facility operator; or

(3) Contact the person requesting design information and agree on a time, prior to the beginning of the proposed project, for exchange of the information required under paragraph (1) or paragraph (2) of this rule.

6.

On or about February 16, 2011, defendant violated OAR 952-001-0080 in that the defendant failed to respond to notification requesting design information for its locatable underground facilities.

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. 10-194 entered on May 26, 2011.

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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 17th day of May, 2011.

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

3 NC 309

4 PUBLIC UTILITY COMMISSION OF
5 OREGON,

6 Complainant,

v.

7 CITY OF PORTLAND,

8
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 the City of Portland, the defendant herein, hereby stipulate as
12 follows:

13 1.

14 A Complaint in this case is pending before the Commission charging the defendant with
15 one violation of law, OAR 952-001-0080.

16 2.

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

19 3.

20 The defendant admits that the violation was committed as alleged in the Complaint and is
21 willing for the Commission to enter an order finding that the violation was committed as alleged
22 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 \$1,000 under the following terms and
26 conditions:

- 1 A. Defendant shall sign and return this stipulation within 20 days of the date it was 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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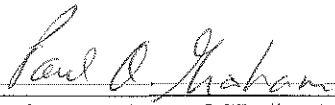
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5.

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 17th day of May, 2011.



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

DATED this _____ day of _____, 2011.

Representative for Defendant (signature)

(Print name)