



DEPARTMENT OF JUSTICE  
GENERAL COUNSEL DIVISION

January 13, 2012

Gary A. Zellner, Registered Agent  
R & G Excavating, Inc.  
39300 Montgomery Drive  
Scio OR 97374

Re: Violation of Oregon Utility Notification Center Rules  
DOJ File No.: 860-100-GB0844-11 / Docket No.: NC 318

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

On December 20, 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,



Johanna M. Riemenschneider  
Assistant Attorney General  
Business Activities Section

Enclosures  
JMR/nal/#3151194



1 OUNC adopted OAR 952-001-0090 which was in effect at all times herein relevant. The  
2 rule provides in relevant part:

3 2) Once underground facilities have been marked, the excavator shall:  
4 (c) Employ hand tools or other such non-invasive methods to determine the  
5 *exact* location of the underground facility when excavation is to be made  
6 within the reasonable accuracy zone.

6 6.  
7 On or about August 30, 2011, defendant violated OAR 952-001-0090 in that the  
8 defendant failed to expose marked facilities by hand while performing an excavation.

9 7.  
10 ORS 757.993 provides, in relevant part, that:

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

14 8.  
15 Defendant has not violated OUNC rules in the past.

16 9.  
17 WHEREFORE, the Commission directs the defendant to file a verified answer to this complaint  
18 within twenty (20) days from the date this complaint is mailed to the defendant. If no  
19 verified answer or other written appearance raising a question of fact or law is filed with the Commission  
20 at its office in Salem, Oregon, within the 20-day period, the allegations of the


21 ///  
22 ///  
23 ///  
24 ///  
25 ///  
26 ///

1 complaint shall be deemed admitted, and a penalty shall be imposed in the amount of \$1,000 for each  
2 violation alleged, for a total \$1,000.

3 DATED this 13<sup>th</sup> day of January, 2012.

4 Respectfully submitted,

5 JOHN R. KROGER  
6 Attorney General

7   
8 Johanna M. Riemenschneider, OSB #99008  
9 Assistant Attorney General  
10 Of Attorneys for the Public Utility Commission  
11 of Oregon  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26



- 1 A. Defendant shall sign and return this stipulation within 20 days of the date it was served upon  
2 (mailed to) defendant.
- 3 B. \$200 shall become due and payable on or before the 30<sup>th</sup> day following the Commission's  
4 entry of final order in this case.
- 5 C. Payment shall be by money order made out to the Public Utility Commission of Oregon,  
6 and the memo line of the money order shall state the "NC" docket number in the caption of  
7 this stipulation.
- 8 D. Payment of the balance of the penalties (\$800) shall be permanently suspended and no further  
9 penalties shall be imposed for the violation alleged in the Complaint unless defendant fails to  
10 comply with all of the terms of this stipulation and all of the rules adopted by the Oregon  
11 Utility Notification Center (OUNC) under ORS 757.552 for a one year period following the  
12 date of the Commission's entry of a final order.
- 13 E. Defendant shall contact the OUNC Speakers Bureau online at [www.digsafelyoregon.com](http://www.digsafelyoregon.com) or  
14 by calling (503) 232-1987 to arrange for and attend a training session on Oregon excavation  
15 laws within 45 days following the entry of a final order.
- 16 F. In the event that complainant contends that the defendant has not complied with all of the  
17 terms of this stipulation and all OUNC rules for that one year period, complainant may  
18 reopen this proceeding and petition for imposition of all or a portion of the suspended  
19 penalties. In such case defendant shall be entitled to a hearing and to be notified of the basis  
20 upon which complainant contends that compliance has not occurred.

21 ///  
22 ///  
23 ///  
24 ///  
25 ///  
26 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

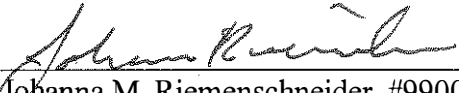
5.

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 13<sup>th</sup> day of January, 2012.

Respectfully submitted,

JOHN R. KROGER  
Attorney General

  
\_\_\_\_\_  
Johanna M. Riemenschneider, #99008  
Assistant Attorney General  
Of Attorneys for the Public Utility Commission  
of Oregon

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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

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