



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

September 19, 2013

Roman E. Gillen, Registered Agent and
President
Consumers Power, Inc.
6990 SW West Hills Road
P.O. 1180
Philomath, OR 97370

Re: Violation of Oregon Utility Notification Center Rules
DOJ File No.: 860-501-GB0602-13 / Docket No.: NC 337

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

On August 27, 2013, 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 contain a Complaint and a Stipulation. The Complaint serves as a formal notice to you of the violation you were charged with and requires that you Answer the allegation. 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. If you had not reached an agreement with the OUNC Committee, filing an Answer would be your opportunity to admit or deny the allegation and, if denied, to ask for a formal hearing.

The Stipulation sets forth the terms and conditions of the agreement you reached with the OUNC Committee. To finalize the settlement, **you must sign the original Stipulation and mail it within 20 days of the date of this letter to:**

**Public Utility Commission of Oregon
Administrative Hearings Division
(Temporarily located at)
3930 Fairview Industrial Drive SE
PO Box 1088
Salem OR 97308-1088**

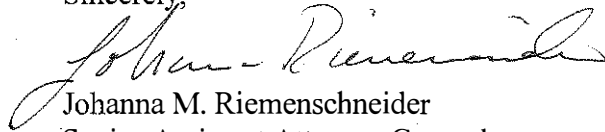
Consumers Power, Inc.
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You do not need to make payment until the Commission has approved the Stipulation. The Commission should issue an order adopting the Stipulation within 30 days of its receipt. Please retain the extra copy of the Stipulation for your files.

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.

Sincerely,



Johanna M. Riemenschneider
Senior Assistant Attorney General
Business Activities Section

JMR:jrs/#4570199
Enclosures

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

3 NC 337

4 PUBLIC UTILITY COMMISSION OF
5 OREGON,

6 Complainant,

7 v.

8 CONSUMERS POWER, INC., (an Oregon
9 cooperative),

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 offices temporarily at:

14 3930 Fairview Industrial Drive SE, P.O. Box 1088, Salem, Oregon, 97308-1088.

15 2.

16 At all times herein relevant, 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. “Excavation” and other relevant definitions are
24 contained in OAR 952-001-0010.

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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.

On or about May 1, 2013, Defendant violated OAR 952-001-0070, in that Defendant failed to locate and mark with reasonable accuracy all of its locatable underground facilities within the area of proposed excavation near Mile Post 4.85 on Five Rivers Road in Eugene, Oregon.

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 not violated OUNC rules in the past.

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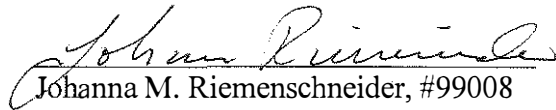
9.

WHEREFORE, the Commission directs Defendant to file a verified answer to this Complaint within twenty (20) days from the date this Complaint is mailed to 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 are deemed admitted, and a penalty will be imposed in the amount of \$1,000 for each violation alleged, for a total of \$1,000.

DATED this 19 day of September 2013.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General


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

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2 **OF OREGON**

3 NC 337

4 PUBLIC UTILITY COMMISSION OF
5 OREGON,

6 Complainant,

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8 CONSUMERS POWER, INC., (an Oregon
9 cooperative),

Defendant.

STIPULATION FOR ENTRY OF ORDER

10 The Public Utility Commission of Oregon, appearing by and through Johanna M.
11 Riemenschneider, Assistant Attorney General, and Consumers Power, 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 one violation of law, OAR 952-001-0070(1).

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
21 is willing for the Commission to enter an order finding that the violation was committed as
22 alleged in the Complaint.

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1 4.

2 The parties further agree that the Commission may enter an order assessing civil
3 monetary penalties against Defendant in the amount of \$1,000 under the following terms and
4 conditions:

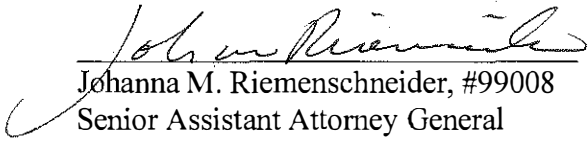
- 5 A. Defendant must sign and return this Stipulation within 20 days of the date it was
6 served upon (mailed to) Defendant.
- 7 B. \$200 becomes due and payable on or before the 30th day following the Commission's
8 entry of its order in this case.
- 9 C. Payment must be by money order made out to the Public Utility Commission of
10 Oregon, and the memo line of the money order must state the "NC" docket number
11 in the caption of this Stipulation.
- 12 D. Payment of the balance of the penalties (\$800) will be permanently suspended and no
13 further penalties will be imposed for the violation alleged in the Complaint unless
14 Defendant fails to comply with all of the terms of this Stipulation and all of the rules
15 adopted by the Oregon Utility Notification Center (OUNC) under ORS 757.552 for a
16 one-year period following the date of the Commission's entry of an order.
- 17 E. In the event that Complainant contends that Defendant has not complied with all of
18 the terms of this Stipulation and all OUNC rules for that one-year period,
19 Complainant may reopen this proceeding and petition for imposition of all or a
20 portion of the suspended penalties. In such case, Defendant is entitled to a hearing
21 and to be notified of the basis upon which Complainant contends that compliance has
22 not occurred.
- 23 F. Complainant's failure to enforce any provision of this Stipulation, or decision to
24 waive any violation or nonperformance of this Stipulation in one instance, will not
25 constitute a waiver by the Complainant of that provision, any other provision, or any
26 other violation or nonperformance in another instance.

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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 is deemed withdrawn.

DATED this 19 day of September 2013.


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

DATED this _____ day of _____ 2013.

Defendant / Representative (signature)

(Print Name)