



DEPARTMENT OF JUSTICE  
GENERAL COUNSEL DIVISION

March 16, 2016

Steve Gaschler, Public Works Director  
City of Troutdale,  
Water Department  
219 E. Historic Columbia River Hwy.  
Troutdale, OR 97060

Edward H. Trompke  
City Attorney, Troutdale  
Jordan Ramis, PC  
2 Centerpointe Drive, 6th Floor  
Lake Oswego, OR 97035

Re: Violation of Oregon Utility Notification Center Rules  
DOJ File No. 860501-GB0166-16 / Docket No. NC 348

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

On January 15, 2016, a representative from your city 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 of the violation charged 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  
201 High St. SE, Ste. 100  
PO Box 1088  
Salem OR 97308-1088**

City of Troutdale  
March 16, 2016  
Page 2

**You do not need to make payment, if any is due, 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 Kevin Hennessy at (503) 378-6115.

Sincerely,



Johanna M. Riemenschneider  
Senior Assistant Attorney General  
Business Activities Section

JMR:mxg/#7158773  
Enclosures

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

3 NC 348

4 PUBLIC UTILITY COMMISSION OF  
5 OREGON,

6 Complainant,

7 v.

8 CITY OF TROUTDALE,

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 at:

14 201 High Street SE, P.O. Box 1088, Salem, Oregon, 97308-1088.

15 2.

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

18 3.

19 Under ORS 757.552, OUNC has adopted rules that prescribe requirements for  
20 notification to OUNC of excavation activity and marking of underground facilities for the  
21 purpose of preventing damage to such facilities. “Excavation”, “operator” and other relevant  
22 definitions are contained in ORS 757.542 and OAR 952-001-0010.

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26 ///

1 4.  
2 OUNC adopted OAR 952-001-0070, which was in effect at all times herein relevant. The  
3 rule provides in relevant part:

4 (1) Except as provided in section (3) of this rule, within 2 business days  
5 (48 hours) after the excavator notifies the Oregon Utility Notification Center of a  
6 proposed excavation, the operator or its designated agent must:

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

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

15 (c) Notify the excavator that the operator does not have any underground  
16 facilities in the area of the proposed excavation. \* \* \*

17 \* \* \* \* \*

18 5.  
19 On or about September 10, 2015, Defendant violated OAR 952-001-0070(1) in that  
20 Defendant failed to mark with reasonable accuracy all of its locatable underground facilities or  
21 provide marks of its locatable underground facilities, in the area of a proposed excavation near I-  
22 84 North Frontage Road, Troutdale, Oregon.

23 6.  
24 ORS 757.993 provides, in relevant part, that:  
25 “\* \* \* every person who violates or who procures, aids or abets in the violation of  
26 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.”

27 7.  
28 Defendant has not violated OUNC rules in the past.

29 ///


1 8.

2 WHEREFORE, the Commission directs Defendant to file a verified answer to this  
3 Complaint within twenty (20) days from the date this Complaint is mailed to Defendant.  
4 If no verified answer or other written appearance raising a question of fact or law is filed  
5 with the Commission at its office in Salem, Oregon, within the 20-day period, the  
6 allegations of the Complaint are deemed admitted, and a penalty will be imposed in the  
7 amount of \$1,000 for each violation alleged, for a total of \$1,000.

8  
9 DATED this 16<sup>th</sup> day of March, 2016.

10 Respectfully submitted,

11 ELLEN F. ROSENBLUM  
12 Attorney General

13   
14 Johanna M. Riemenschneider, #990083  
15 Senior Assistant Attorney General  
16 Of Attorneys for the Public Utility Commission  
17 of Oregon  
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26



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 30<sup>th</sup> 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 penalty (\$800) will be suspended and no further  
13 penalties will be imposed for the violation alleged in the Complaint unless Defendant  
14 fails to comply with all of the terms of this Stipulation and all of the rules adopted by  
15 the Oregon Utility Notification Center (OUNC) under ORS 757.552 for a one-year  
16 period following the date of the Commission's entry of an order.
- 17 E. Defendant must contact the OUNC Speakers Bureau online at  
18 [www.digsafelyoregon.com](http://www.digsafelyoregon.com) or by calling (503) 232-1987 to arrange for and attend a  
19 training session for Steve Gaschler on Oregon excavation laws within 45 days  
20 following the entry of the Commission's order.
- 21 F. In the event that Complainant contends that Defendant has not complied with all of  
22 the terms of this Stipulation and all OUNC rules for that one-year period,  
23 Complainant may reopen this proceeding and petition for imposition of all or a  
24 portion of the suspended penalties. In such case, Defendant is entitled to a hearing  
25 and to be notified of the basis upon which Complainant contends that compliance has  
26 not occurred.

1 G. Complainant's failure to enforce any provision of this Stipulation, or decision to  
2 waive any violation or nonperformance of this Stipulation in one instance, will not  
3 constitute a waiver by the Complainant of that provision, any other provision, or any  
4 other violation or nonperformance in another instance.

5 5.

6 This Stipulation is conditioned upon final approval of its terms by the Commission. If  
7 the Stipulation is not accepted in its entirety, it is deemed withdrawn.

8  
9 DATED this 16<sup>th</sup> day of March, 2016.

10  
11   
12 Johanna M. Riemenschneider, #990083  
13 Senior Assistant Attorney General  
14 Of Attorneys for the Public Utility Commission  
of Oregon

15 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

16  
17 \_\_\_\_\_  
Defendant / Representative (signature)

18  
19 \_\_\_\_\_  
20 (Print Name)