

ELLEN F. ROSENBLUM
Attorney General



FREDERICK M. BOSS
Deputy Attorney General

**DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION**

August 29, 2018

CT Corporation System, Registered Agent
PacifiCorp
780 Commercial Street SE, Suite 100
Salem, OR 97301

David Lucas
PacifiCorp
825 NE Multnomah, Suite 2000
Portland, OR 97232

Stefan A. Bird, President
PacifiCorp
825 NE Multnomah, Suite 2000
Portland, OR 97232

Re: Violation of Oregon Utility Notification Center Rules
DOJ File No. 860140-GB0423 -18/ Docket No. NC 386

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

On June 26, 2018, a representative from your company participated in a telephone conference with the Public Utility Commission of Oregon's Enforcement Committee to discuss an alleged rule violation. At that meeting, an agreement was reached regarding the alleged rule 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 Enforcement 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 Enforcement 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 Enforcement 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
PO Box 1088
Salem OR 97308-1088**

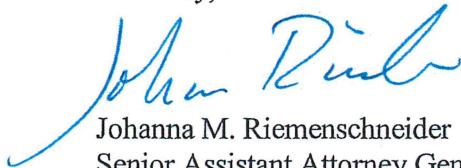
PacifiCorp
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The Commission should issue an order adopting the Stipulation within 30 days of its receipt. Please retain the extra copy of the Stipulation for your files.

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, or a default order may be issued.

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

Enclosures
JMR:pjr/#9056047

1 5.

2 OUNC adopted OAR 952-001-0070(1), which was in effect at all times herein relevant.

3 The 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. Acceptable notifications must
17 include locate request call back information and if done with AVR (Automated
18 Voice Response) must have a repeat option and a call back number to hear the
19 information again.

20 6.

21 On or about May 9, 2018, Defendant violated OAR 952-001-0070(1) in that Defendant
22 failed to mark with reasonable accuracy all of its locatable underground facilities or provide
23 marks of its unlocatable underground facilities or notify excavator that none exist, in the area of
24 a proposed excavation at or near 1856 Stewart Road and near Lower River Road in Grants Pass,
25 Oregon.

26 7.

ORS 757.993 provides that:

(1) Except as provided in subsection (2) of this section and in addition to all other
penalties provided by law, 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.

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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 civil penalty will be imposed in the amount of \$1,000.

DATED this 29 day of August 2018.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

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

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

3 NC 386

4 PUBLIC UTILITY COMMISSION OF
 OREGON,

5 Complainant,

6 v.

7 PACIFICORP,

8 Defendant.

STIPULATION FOR ENTRY OF FINAL
ORDER

10 The Public Utility Commission of Oregon, appearing by and through Johanna M.
11 Riemenschneider, Assistant Attorney General, and PacifiCorp, the Defendant herein, hereby
12 stipulate as follows:

13 1.

14 A Complaint in this case is pending before the Commission charging the Defendant with
15 a violation of OAR 952-001-0070(1), and proposing a civil penalty of \$1,000.

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

23 ///

24 ///

25 ///

26 ///

1 4.

2 The parties further agree that the Commission may enter an order assessing a civil
3 monetary penalty 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. Payment of the civil penalty (\$1,000) is suspended and will be waived and no further
8 penalties will be imposed for the violation alleged in the Complaint unless Defendant
9 fails to comply with all of the terms of this Stipulation and all of the rules adopted by
10 the Oregon Utility Notification Center (OUNC) under ORS 757.552 for a one-year
11 period following the date of the Commission's entry of an order adopting this
12 Stipulation. The Commission also imposed but suspended a \$1,000 civil penalty
13 under Order No. 18-223, and the terms of that Order are incorporated by reference in
14 this Stipulation. Accordingly, the parties have agreed to the suspension and possible
15 waiver of total penalties of \$2,000 subject to the terms of this new Stipulation.

16 C. On or before the 60th day following the Commission's entry of its order in this
17 docket, to fulfill Order No. 18-223 and this stipulation, Defendant must provide a
18 current plan or procedure (policy) that results from Defendant's internal review of its
19 procedures for responding to notifications from the OUNC and addresses the
20 Company's workflow for marking underground facilities, investigating and
21 troubleshooting damages to underground facilities. The policy must include, though
22 it is not limited to the following:

23 (1) Description of the purpose of the policy and commitment thereof by leadership,
24 management, and employees;

25 (2) Identification of notifications and types of responses for marking underground
26 facilities;

- 1 (3) Identification of tasks assigned to participants by title or position and their roles
2 and responsibilities in the workflow process;
3 (4) Identification of the technology or systems and methods used throughout the
4 policy that enables the completion of identified tasks; and
5 (5) Criteria for periodic review of effectiveness and identification of best practices.

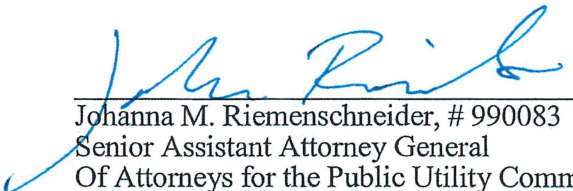
6 D. In the event that Complainant contends that Defendant has not complied with all of
7 the terms of this Stipulation and all OUNC rules for that one-year period,
8 Complainant may reopen this proceeding and petition for imposition of all or a
9 portion of the suspended penalty. In such case, Defendant is entitled to a hearing and
10 to be notified of the basis upon which Complainant contends that compliance has not
11 occurred.

12 E. Complainant's failure to enforce any provision of this Stipulation, or decision to
13 waive any violation or nonperformance of this Stipulation in one instance, will not
14 constitute a waiver by the Complainant of that provision, any other provision, or any
15 other violation or nonperformance in another instance.

16 5.

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

19 DATED this 21 day of August 2018.

20
21 
22 Johanna M. Riemenschneider, # 990083
23 Senior Assistant Attorney General
24 Of Attorneys for the Public Utility Commission
25 of Oregon

26 DATED this _____ day of _____ 2018.

Defendant / Representative (signature)

(Print Name)