ELLEN F. ROSENBLUM Attorney General



FREDERICK M. BOSS Deputy Attorney General

DEPARTMENT OF JUSTICE GENERAL COUNSEL DIVISION

May 10, 2019

Lucinda Moore State Maintenance Engineer Oregon Department of Transportation Maintenance and Operation Branch 455 Airport Road SE, Building K Salem, OR 97301

Kathryn Hoffberg, EIT Project Coordinator – Troutdale Construction Ofc ODOT Region 1, Crew 1819 999 NW Frontage Road, Suite 280 Troutdale, OR 97060

Re: Violation of Oregon Utility Notification Center Rules DOJ File No. 860140-GB0273-19 / Docket No. NC 392

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

On March 26, 2019, a representative from your company participated in a telephone conference with the Public Utility Commission of Oregon's safety staff to discuss an alleged rule violation. Based on that meeting and subsequent correspondence, I have prepared the enclosed documents to resolve this matter.

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 ODOT was charged with and requires that you Answer the allegation. Because you already reached an agreement with the safety staff, 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 safety staff, 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 supported by the safety staff. To finalize the settlement, you must sign the original Stipulation and mail it within 20 days of the date of this letter to:

Oregon Dept. of Transportation May 10, 2019 Page 2

Public Utility Commission of Oregon Administrative Hearings Division PO Box 1088 Salem OR 97308-1088

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 do not 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 you have questions regarding this matter, please contact Kevin Hennessy at (503) 378-6115.

Sincerely,

Johanna M. Riemenschneider Senior Assistant Attorney General Business Activities Section

JMR:pjr/# 9545984 Enclosures

cc: Bonnie Heitsch, AAG, Oregon Dept. of Justice, 1162 Court Street NE, Salem, OR 97301 Ted Miller, Region 1 Maintenance and Operations Manager, ODOT Region 1 John Sapp, Electrical Manager, ODOT

1	BEFORE THE PUBLIC UTILITY COMMISSION			
2	OF OREGON			
3	NC 392			
4	PUBLIC UTILITY COMMISSION OF			
5	OREGON,			
6	Complainant, COMPLAINT			
7	V.			
8	OREGON DEPARTMENT OF TRANSPORTATION,			
9	Defendant.			
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 Ste. 100, 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.			
23	4.			
24	OUNC adopted OAR 952-001-0070(1), which was in effect at all relevant times. The			
25	rule provides, in relevant part:			
26				
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1 2	(1) Except as provided in section (3) of this rule, within 2 business days (48 hours) after the excavator notifies the Oregon Utility Notification Center of a proposed excavation, the operator or its designated agent must:			
3	(a) Mark with reasonable accuracy all of its locatable underground			
4	facilities within the area of proposed excavation. All marks must indicate the name, initials or logo of the operator of the underground facilities, and the width			
5	of the facility if it is greater than 2 inches;			
6 -7	(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			
8				
9	(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 with AVR (Automated Viewer et al. 1997).			
10	Voice Response) must have a repeat option and a call back number to hear the information again.			
11	5.			
12	On or about September 9, 2018, Defendant violated OAR 952-001-0070(1) in that			
13	Defendant failed to mark with reasonable accuracy all of its locatable underground facilities or			
14	provide marks of its unlocatable underground facilities or notify excavator that none exist, in the			
15	area of a proposed excavation along the I-205 multi-use path at or near 4100 NE Maywood Place			
16	in Portland, Oregon.			
17	б.			
18	ORS 757.993 provides that:			
19	(1) Except as provided in subsection (2) of this section and in addition to all other			
20	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			
21	incur a penalty of not more than \$1,000 for the first violation and not more than \$5,000 for each subsequent violation.			
22	7.			
23	WHEREFORE, the Commission directs Defendant to file a verified answer to this			
24	Complaint within twenty (20) days from the date this Complaint is mailed to Defendant.			
25	If no verified answer or other written appearance raising a question of fact or law is filed			
26	with the Commission at its office in Salem, Oregon, within the 20-day period, the			
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1 allegations of the Complaint are deemed admitted, and civil penalties will be imposed in

2 the amount of 1,000.

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4	DATED this 10^{10} day of May 2019.
5	Respectfully submitted,
6	ELLEN F. ROSENBLUM
7	Attorney General
8	M. Rimile
9	Johanna M. Riemenschneider, # 990083
10	Senior Assistant Attorney General Of Attorneys for the Public Utility Commission
11	of Oregon
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1	BEFORE THE PUBLIC UTILITY COMMISSION				
2	OF OREGON				
3	NC 392				
4	PUBLIC UTILITY COMMISSION OF OREGON,				
5	Complainant, STIPULATION FOR ENTRY OF FINAL ORDER				
6	v.				
7 8	OREGON DEPARTMENT OF TRANSPORTATION,				
9	Defendant.				
10	The Public Utility Commission of Oregon, appearing by and through Johanna M.				
11	Riemenschneider, Assistant Attorney General, and Oregon Department of Transportation, the				
12	Defendant herein, hereby 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 civil penalties 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 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.				
23	4.				
24	The parties further agree that the Commission may enter an order assessing a civil				
25	monetary penalty against Defendant in the amount of \$1,000 under the following terms and				
26	conditions:				
Page	 STIPULATION FOR ENTRY OF FINAL ORDER (NC 392) JMR:pjr/#9545984 				

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1	A.	Defendant must sign and return this Stipulation within 20 days of the date it was
2		served upon (mailed to) Defendant.
3	B.	Payment of the civil penalty (\$1,000) is suspended and the penalty shall be waived
4		with no further penalties imposed for the violation alleged in the Complaint unless
5		Defendant fails to comply with all of the terms of this Stipulation and all of the rules
6		adopted by the Oregon Utility Notification Center (OUNC) under ORS 757.552 for a
7		one-year period following the date of the Commission's entry of an order.
8	C.	On or before the 60 th day following the Commission's entry of its Order in this
9		docket, Defendant must file in this docket a current plan or procedure (policy) that
10		identifies the company's workflow for marking underground facilities, investigating
11		and troubleshooting damages to underground facilities. The policy may contain the
12		information included in Defendant's correspondence of March 26, 2019 and must
13		include, though it is not limited to the following:
14		(1) Description of the purpose of the policy and commitment thereof by leadership,
15		management, and employees;
16		(2) Identification of notifications and types of responses for marking underground
17		facilities;
18		(3) Identification of tasks assigned to participants by title or position and their roles
19		and responsibilities in the workflow process;
20		(4) Identification of the technology or systems and methods used throughout the
21		policy that enables the completion of identified tasks; and
22		(5) Criteria for periodic review of effectiveness and identification of best practices.
23	D	. In the event that Complainant contends that the Defendant has not complied with all
24		of the terms of this Stipulation and all OUNC rules for that one year period,
25		Complainant may reopen this proceeding and petition for imposition of all or a
26		portion of the suspended penalty. In such case, Defendant shall be entitled to a

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1	hearing and to be notified of the basis upon which Complainant contends that
2	compliance has not occurred.
3	E. Complainant's failure to enforce any provision of this Stipulation, or decision to
4	waive any violation or nonperformance of this Stipulation in one instance, will not
5	constitute a waiver by the Complainant of that provision, any other provision, or any
6	other violation or nonperformance in another instance.
7	5.
8	This Stipulation is conditioned upon final approval of its terms by the Commission. If
9	the Stipulation is not accepted in its entirety, it is deemed withdrawn.
10	
11	DATED this 10^{41} day of May 2019.
12	Johan Rund
13	Johanna M. Riemenschneider, # 990083
14	Senior Assistant Attorney General Of Attorneys for the Public Utility Commission
15	of Oregon
16	DATED this day of May 2019.
17	
18	Defendant / Representative (signature)
19	
20	(Print Name)
21	
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