



**DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION**

December 31, 2015

Dianna Norris-Registered Agent
Frank R. Norris Contracting, Inc.
2504 Neville Ln.
Medford, OR 97501

Frank R. Norris Contracting, Inc.
PO Box 3464
Central Point, OR 97502

Re: Violation of Oregon Utility Notification Center Rules
DOJ File No.: 860501-GB0669-15 / Docket No.: NC 342

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

On October 16, 2015, 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
201 High St. SE, Ste. 100
PO Box 1088
Salem OR 97308-1088**

Frank R. Norris Contracting, 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 Kevin Hennessy at (503) 378-6115.

Sincerely,



Johanna M. Riemenschneider
Senior Assistant Attorney General
Business Activities Section

JMR:mme/#6953769

Enclosures

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

3 NC 342

4 PUBLIC UTILITY COMMISSION OF
 5 OREGON,

6 Complainant,

7 v.

8 FRANK R. NORRIS CONTRACTING, INC.,
 (an Oregon corporation),

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 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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26 ///

1 5.

2 OUNC adopted OAR 952-001-0050, which was in effect at all times herein relevant. The
3 rule provides in relevant part:

4 (1) * * * [A]t least two (2) business days, but not more than ten (10)
5 business days before commencing an excavation, the excavator shall notify the
6 Oregon Utility Notification Center of the date and location of the proposed
7 excavation, and the type of work to be performed.

8 6.

9 OUNC also has adopted OAR 952-001-0090(4), which provides:

10 (4) If the excavator causes or observes damage to underground facilities,
11 the excavator must notify the operator of the underground facilities immediately.
12 If the damage causes an emergency, the excavator must also notify all appropriate
13 local public safety agencies immediately by calling 911 and must take reasonable
14 steps to insure the public safety. The excavator must not bury damaged
15 underground facilities without the consent of the operator of the damaged
16 underground facilities.

17 7.

18 Sometime prior to June 19, 2015, Defendant violated OAR 952-001-0050(1), in that
19 Defendant failed to notify the Oregon Utility Notification Center of a proposed excavation
20 before commencing an excavation and violated OAR 952-001-0090(4) by failing to notify the
21 operator of underground facilities after causing or observing damage to such facilities near 16
22 Terra Linda Court in Eagle Point, Oregon.

23 8.

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.”

9.

Defendant has not violated OUNC rules in the past.

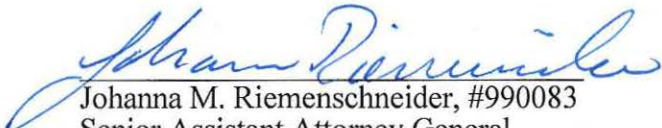
10.

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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 \$2,000.

8
9 DATED this 31 day of December 2015.

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

3 NC 342

4 PUBLIC UTILITY COMMISSION OF
OREGON,

5 Complainant,

6 v.

7 FRANK R. NORRIS CONTRACTING, INC.,
8 (an Oregon corporation),

9 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 Frank R. Norris Contracting, Inc., 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 two violations of law, OAR 952-001-0050(1), and OAR 952-001-0090(4).

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

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4.

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

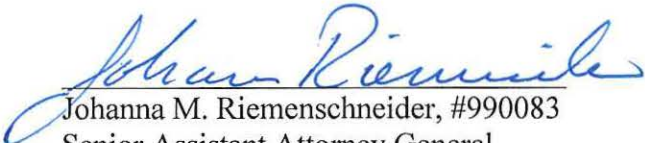
- A. Defendant must sign and return this Stipulation within 20 days of the date it was served upon (mailed to) Defendant.
- B. \$400 becomes due and payable on or before the 30th day following the Commission's entry of its order in this case.
- C. Payment must be by **money order** made out to the **Public Utility Commission of Oregon**, and the memo line of the money order must state the "NC" docket number in the caption of this Stipulation.
- D. Payment of the balance of the penalties (\$1,600) will be suspended and no further penalties will be imposed for the violation alleged in the Complaint unless Defendant fails to comply with all of the terms of this Stipulation and all of the rules adopted by the Oregon Utility Notification Center (OUNC) under ORS 757.552 for a one-year period following the date of the Commission's entry of an order.
- E. Defendant must contact the OUNC Speakers Bureau online at www.digsafelyoregon.com or by calling **(503) 232-1987** to arrange for and attend a training session on Oregon excavation laws within 45 days following the entry of the Commission's order.
- F. In the event that Complainant contends that Defendant has not complied with all of the terms of this Stipulation and all OUNC rules for that one-year period, Complainant may reopen this proceeding and petition for imposition of all or a portion of the suspended penalties. In such case, Defendant is entitled to a hearing and to be notified of the basis upon which Complainant contends that compliance has 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 31 day of December 2015.

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

16 DATED this ____ day of _____ 2015.

17 _____
18 Defendant / Representative (signature)

19 _____
20 (Print Name)