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Attorney General



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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
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**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 (1) Except as provided in section (3) of this rule, within 2 business days
2 (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
5 name, initials or logo of the operator of the underground facilities, and the width
of the facility if it is greater than 2 inches;

6 (b) Provide marks to the excavator of the unlocatable underground
7 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 (c) Notify the excavator that the operator does not have any underground
9 facilities in the area of the proposed excavation. Acceptable notifications must
10 include locate request call back information and if done with AVR (Automated
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 6.

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
21 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.

22 7.

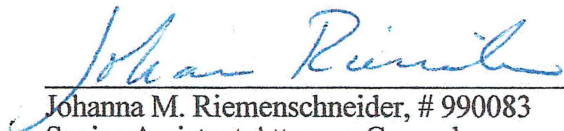
23 WHEREFORE, the Commission directs Defendant to file a verified answer to this
24 Complaint within twenty (20) days from the date this Complaint is mailed to Defendant.
25 If no verified answer or other written appearance raising a question of fact or law is filed
26 with the Commission at its office in Salem, Oregon, within the 20-day period, the

1 allegations of the Complaint are deemed admitted, and civil penalties will be imposed in
2 the amount of \$1,000.

3
4 DATED this 10th day of May 2019.

5 Respectfully submitted,

6 ELLEN F. ROSENBLUM
7 Attorney General

8 
9 Johanna M. Riemenschneider, # 990083
10 Senior Assistant Attorney General
11 Of Attorneys for the Public Utility Commission
12 of Oregon

- 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 60th 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

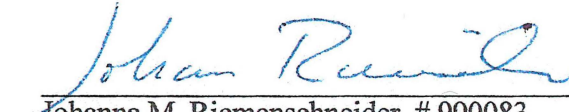
1 hearing and to be notified of the basis upon which Complainant contends that
2 compliance has not occurred.

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 10th day of May 2019.

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

18 DATED this _____ day of May 2019.

19 _____
20 Defendant / Representative (signature)

21 _____
22 (Print Name)
23
24
25
26