



**DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION**

January 26, 2023

Shawna Marie Butterfield, Registered Agent
Fiber Com LLC
15681 S. Foster Creek Lane
Oregon City, OR 97045

Re: Violation of Oregon Utility Notification Center Rules
DOJ File No. 860140-GB0448-22 / Docket No. NC 404

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

On October 24, 2022, a representative from your company met with the Public Utility Commission of Oregon's Enforcement Committee to discuss an alleged rule violation. At that conference, 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 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
P.O. Box 1088
Salem, OR 97308-1088**

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, or a default order may be issued.

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January 26, 2023
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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,

/s/ Johanna M. Riemenschneider

Johanna M. Riemenschneider
Sr. Assistant Attorney General
Business Activities Section

JMR:pjr /#593825341
Enclosures

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

3 NC 404

4 PUBLIC UTILITY COMMISSION OF
5 OREGON,

6 Complainant,

7 v.

8 FIBER COM LLC,

9 Defendant.

COMPLAINT

10
11 1.

12 This proceeding is initiated by the Public Utility Commission of Oregon (hereinafter
13 "Commission") to determine whether civil monetary penalties should be assessed as provided in
14 ORS 757.993. The Commission maintains its offices at:

15 201 High Street SE, P.O. Box 1088, Salem, Oregon 97308-1088

16 2.

17 At all times herein relevant, Defendant was doing business in this state.

18 3.

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

21 4.

22 Under ORS 757.552, OUNC has adopted rules that prescribe requirements for
23 notification to OUNC of excavation activity and marking of underground facilities for the
24 purpose of preventing damage to such facilities. "Excavation" and other relevant definitions are
25 contained in OAR 952-001-0010.

26 ///

1 5.

2 OUNC adopted OAR 952-001-0090 which was in effect at all times herein relevant. The
3 rule provides in relevant part:

4 Delay of excavation until Response from Facility Operators; Duty of Excavator to use
5 Reasonable Care; Damage to Facilities

6 (3) Once underground facilities have been marked, the excavator must:

7 (c) Employ hand tools or other non-invasive methods either to determine the
8 exact location of the underground facility or down to 24 inches beyond the
9 depth of intended excavation within 24 inches of the outside dimensions
10 of a marked underground facility.

11 6.

12 On or about April 28, 2022, Defendant violated OAR 952-001-0090(3)(c), in that
13 Defendant failed to properly determine the exact location of a marked underground natural gas
14 facility in the direct area of drill travel while performing an excavation at or near 106 S. Drift
15 Creek Road in Junction City, Oregon.

16 7.

17 ORS 757.993 provides, in relevant part, that:

18 “* * * every person who violates or who procures, aids or abets in the violation of
19 any rule of the Oregon Utility Notification Center shall incur a penalty of not
20 more than \$1,000 for the first violation and not more than \$5,000 for each
21 subsequent violation.”

22 8.

23 Defendant has not violated OUNC rules in the past.

24 9.

25 WHEREFORE, the Commission directs Defendant to file a verified answer to this
26 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

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1 allegations of the Complaint are deemed admitted, and a penalty will be imposed in the
2 amount of \$1,000 for each violation alleged, for a total of \$1,000.

3 DATED this 26th day of January 2023.

4 Respectfully submitted,

5 ELLEN F. ROSENBLUM
6 Attorney General

7 */s/ Johanna M. Riemenschneider*

8

Johanna M. Riemenschneider, OSB No. 990083
9 Sr. Assistant Attorney General
10 Of Attorneys for the Public Utility Commission
of Oregon

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

3 NC 404

4 PUBLIC UTILITY COMMISSION OF
OREGON,

5 Complainant,

6 v.

7 FIBER COM LLC,

8 Defendant.

STIPULATION FOR ENTRY OF FINAL
ORDER

9 The Public Utility Commission of Oregon, appearing by and through Johanna M.
10 Riemenschneider, Sr. Assistant Attorney General, and Fiber Com LLC, the defendant herein,
11 hereby stipulate as follows:

12 1.

13 A Complaint in this case is pending before the Commission charging the Defendant with
14 one violation of law, OAR 952-001-0090(3)(c).

15 2.

16 Both parties to this proceeding are willing to forego further processing of that Complaint
17 and further are willing to resolve this matter on the basis of this Stipulation.

18 3.

19 The Defendant admits that the violation was committed as alleged in the Complaint and
20 is willing for the Commission to enter an order finding that the violation was committed as
21 alleged in the Complaint.

22 4.

23 The parties further agree that the Commission may enter an order assessing a civil
24 monetary penalty against Defendant in the amount of \$1,000 under the following terms and
25 conditions:

- 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. \$200 becomes due and payable on or before the 30th day following the Commission's
4 entry of its order in this case.
- 5 C. Payment must be by money order made out to the Public Utility Commission of
6 Oregon, and the memo line of the money order must state the "NC" docket number
7 in the caption of this Stipulation.
- 8 D. Payment of the balance of the penalties (\$800) is suspended and will be waived with
9 no further penalties imposed for the violations alleged in the Complaint unless
10 Defendant fails to comply with all of the terms of this Stipulation and all of the rules
11 adopted by the Oregon Utility Notification Center (OUNC) under ORS 757.552 for a
12 one-year period following the date of the Commission's entry of an order.
- 13 E. Defendant must update company policy and create a pre-excavation checklist for
14 crews to review before and during safety meetings. The defendant must submit a
15 copy of the updated company policy to Commission Staff on or before the 30th day
16 following the Commission's entry of its order in this case.
- 17 F. In the event that Complainant contends that Defendant has not complied with all of
18 the terms of this Stipulation and all OUNC rules for that one-year period,
19 Complainant may reopen this proceeding and petition for imposition of all or a
20 portion of the suspended penalties. In such case, Defendant is entitled to a notice and
21 hearing on the basis upon which Complainant contends that compliance has not
22 occurred.
- 23 G. Complainant's failure to enforce any provision of this Stipulation, or decision to
24 waive any violation or nonperformance of this Stipulation in one instance, will not
25 constitute a waiver by the Complainant of that provision, any other provision, or any
26 other violation or nonperformance in another instance.

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5.

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

DATED this 26th day of January 2023.

/s/ Johanna M. Riemenschneider

Johanna M. Riemenschneider, OSB No. 990083
Sr. Assistant Attorney General
Of Attorneys for the Public Utility Commission
of Oregon

DATED this _____ day of _____ 2023.

Representative for Defendant (signature)

(Print name)