

ELLEN F. ROSENBLUM
Attorney General



LISA M. UDLAND
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

June 13, 2023

PNW Flatwork, Inc.
Attention: Darin D. Honn
Registered Agent
Sussman Shank Registration Services, LLC
1000 SW Broadway, Suite 1400
Portland, OR 97205

James D. Fettig, President
PNW Flatwork, Inc.
P.O. Box 1381
Tualatin, OR 97062

Re: Violation of Oregon Utility Notification Center Rules
DOJ File No. 860140-GB0226-23 / Docket No. NC 406

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

On March 8, 2023, a representative from your company met with the 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**

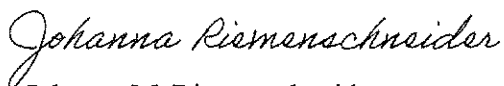
PNW Flatwork, Inc.
June 13, 2023
Page 2

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 within 20 days, 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 (503) 378-6115.

Sincerely,



Johanna M. Riemenschneider
Senior Assistant Attorney General
Business Activities Section

JMR:pjr/#753275659
Enclosures

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

3 NC 406

4 PUBLIC UTILITY COMMISSION OF
5 OREGON,

6 Complainant,

7 v.

8 PNW FLATWORK, INC,

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, Suite 100, Salem, Oregon 97301.

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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5.

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

(1) * * * [A]t least 2 full business days, but not more than 10 full business days before beginning an excavation, the excavator must notify the Oregon Utility Notification Center of the date and location of the proposed excavation, and the type of work to be performed.

6.

On or about August 29, 2022, Defendant violated OAR 952-001-0050(1), in that Defendant failed to notify the Oregon Utility Notification Center of a proposed excavation before commencing an excavation at or near 11781 SE Pleasant Valley Parkway, Happy Valley, Oregon.

7.

ORS 757.993 provides, in relevant part, that:

“* * * 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.”

8.

Defendant has not violated OUNC rules in the past.

9.

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

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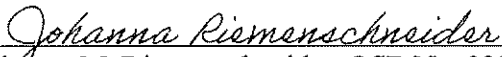
1 Complaint is deemed admitted, and a penalty will be imposed by default order in the amount of
2 \$1,000 for each violation alleged, for a total of \$1,000.

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DATED this 13th day of June 2023.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General


Johanna M. Riemenschneider, OSB No. 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 406

4 PUBLIC UTILITY COMMISSION OF
OREGON,

5 Complainant,

6 v.

7 PNW FLATWORK, INC.,

8 Defendant.

9
10 | STIPULATION FOR ENTRY OF ORDER

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

14 1.

15 A Complaint in this case is pending before the Commission charging the Defendant with
16 one violation of law, OAR 952-001-0050(1).

17 2.

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

20 3.

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

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26 ///

1 4.

2 The parties further agree that the Commission may enter an order assessing civil
3 monetary penalties 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 penalty (\$1,000) is suspended and will be waived with no further
8 penalties imposed for the violation alleged in the Complaint unless Defendant fails to
9 comply with all of the terms of this Stipulation and all of the rules adopted by the
10 Oregon Utility Notification Center (OUNC) under ORS 757.552 for a one-year period
11 following the date of the Commission's entry of an order.

12 C. Within 60 days of entry of the OPUC Final Order: Defendant must develop and
13 implement updated safety plan procedures (policy) that identify the workflow for
14 giving notice for proposed excavation work to the 811/One Call Center as required
15 by OAR Chapter 952. The policy must include but not limited to the following:

16 a. Description of the purpose of the policy and commitment thereof by
17 leadership, management, and employees.

18 b. Identification of types of notifications given to the 811/One-Call Center.

19 c. Identification of tasks assigned to participants by title or position and their role
20 and responsibilities in the workflow process.

21 d. Workflow must address the reassignment of tasks when Company
22 participants are unable to fulfill notification to the 811/One Call Center.

23 e. Procedures in the policy that address the following:

24 i. Applicable Oregon Utility Notification Center OAR Chapter 952 safety
25 standards:

26 <https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=166>

1 ii. OR-OSHA Program Directive 303:

2 <https://osha.oregon.gov/OSHARules/pd/pd-303.pdf>

3 iii. Oregon One-Call Center manual for ITICnxt: [http://or.tryitic.com/wp-](http://or.tryitic.com/wp-content/uploads/sites/7/2021/08/ITICnxt-Full-Manual-Oregon-080621.pdf)

4 [content/uploads/sites/7/2021/08/ITICnxt-Full-Manual-Oregon-080621.pdf](http://or.tryitic.com/wp-content/uploads/sites/7/2021/08/ITICnxt-Full-Manual-Oregon-080621.pdf)

5 iv. Type of work and drawing tools to electronically premark/white line (Radius,
6 Route, Property Street and Other) and avoid over notification to 811/One Call Center.

7 v. CGA best practice - White lining 5.02

8 [https://bestpractices.commongroundalliance.com/5-Excavation/502-White-](https://bestpractices.commongroundalliance.com/5-Excavation/502-White-Lining#mainContentAnchor)

9 [Lining#mainContentAnchor](https://bestpractices.commongroundalliance.com/5-Excavation/502-White-Lining#mainContentAnchor)

10 vi. CGA best practice – Positive response 5.8

11 [https://bestpractices.commongroundalliance.com/5-Excavation/508-Positive-](https://bestpractices.commongroundalliance.com/5-Excavation/508-Positive-Response#mainContentAnchor)

12 [Response#mainContentAnchor](https://bestpractices.commongroundalliance.com/5-Excavation/508-Positive-Response#mainContentAnchor)

13 vii. CGA best practice – Documentation of Marks 5.11

14 [https://bestpractices.commongroundalliance.com/5-Excavation/511-Documentation-of-](https://bestpractices.commongroundalliance.com/5-Excavation/511-Documentation-of-Marks#mainContentAnchor)

15 [Marks#mainContentAnchor](https://bestpractices.commongroundalliance.com/5-Excavation/511-Documentation-of-Marks#mainContentAnchor)

16 viii. CGA best practice – Marking Preservation 5.17

17 [https://bestpractices.commongroundalliance.com/5-Excavation/517-Marking-](https://bestpractices.commongroundalliance.com/5-Excavation/517-Marking-Preservation#mainContentAnchor)

18 [Preservation#mainContentAnchor](https://bestpractices.commongroundalliance.com/5-Excavation/517-Marking-Preservation#mainContentAnchor)

19 f. Identification of technology or systems and methods used throughout the policy
20 that enables the completion of identified tasks.

21 g. Criteria for periodic review of effectiveness and identification of best practices.

22 D. Within 60 days of entry of the OPUC Final Order: Defendant must provide a copy of
23 the updated policy developed under Paragraph C to the Commission.

24 E. In the event that Complainant contends that Defendant has not complied with all of
25 the terms of this Stipulation and all OUNC rules for that one-year period,

26 Complainant may reopen this proceeding and petition for imposition of all or a

1 portion of the suspended penalties. In such case, Defendant is entitled to a notice and
2 hearing on the basis upon which Complainant contends that compliance has not
3 occurred.

4 F. Complainant's failure to enforce any provision of this Stipulation, or decision to
5 waive any violation or nonperformance of this Stipulation in one instance, will not
6 constitute a waiver by the Complainant of that provision, any other provision, or any
7 other violation or nonperformance in another instance.

8 5.

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

11 DATED this 13th day of June 2023.

12
13 Johanna Riemenschneider
14 Johanna M. Riemenschneider, OSB No. 990083
15 Senior Assistant Attorney General
16 Of Attorneys for the Public Utility Commission
17 of Oregon

18
19 DATED this _____ day of _____ 2023.

20 _____
21 Defendant / Representative (signature)

22 _____
23 (Print Name)
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25
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