



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

August 5, 2016

Kenneth Faulkner, President
JR Faulkner Excavation II, Inc.
2660 NE Hwy 20 Ste. 610 #206
Bend, OR 97701

Kenneth Faulkner – Registered Agent
2660 NE Hwy 20 Ste. 610 #206
Bend, OR 97701

Re: Violation of Oregon Utility Notification Center Rules
DOJ File No. 860501-GB0461-16/ Docket No. NC 351

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

On June 27, 2016, 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**

JR Faulkner Excavation II, Inc.

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You do not need to make payment, if any is due, 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:mxg/7514969

Enclosures

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

3 NC 351

4 PUBLIC UTILITY COMMISSION OF
5 OREGON,

6 Complainant,

7 v.

8 JR FAULKNER EXCAVATION II, INC.,
(An Oregon corporation),

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 “reasonable accuracy” and
25 other relevant definitions are contained in OAR 952-001-0010.

26 ///

1 5.

2 OUNC adopted OAR 952-001-0050 and OAR 952-001-0090 which were in effect at all
3 times herein relevant. The rules provides in part:

4 OAR 952-001-0050:

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

8 OAR 952-001-0090:

9 (2) Once underground facilities have been marked, the excavator must:

10 (a) Maintain marks during the excavation period to ensure that the original marks
11 remain effective for the life of the project and can be re-established;

12 (b) Stop excavating in the vicinity of the underground facility and notify the
13 Oregon Utility Notification Center to have the route remarked as specified in
14 these rules, if prior to or during the excavation process, the marking or route of
any underground facility is removed or no longer visible; and

15 (c) Employ hand tools or other such non-invasive methods to determine the exact
16 location of the underground facility when excavation is to be made within the
reasonable accuracy zone.

17 6.

18 On three occasions, on or about April 14, 2016, April 22, 2016 and May 13, 2016,
19 Defendant violated OAR 952-001-0050(1), in that Defendant failed to notify the Oregon Utility
20 Notification Center of a proposed excavation before commencing excavations near or at the
21 following addresses: 17963 Chaparral Drive, Powell Butte, Oregon; 20835 Gateway Drive, Bend,
22 Oregon; 60867 Garrison Drive, Bend, Oregon. On or about April 12 2016, Defendant violated
23 OAR 952-001-0090(2)(c) in that Defendant failed to expose marked facilities by hand while
24 performing excavations near the following addresses: 20835 Gateway Drive, Bend, Oregon;
25 1071 NE Hudspeth Circle, Prineville, Oregon. On or about April 22, 2016, Defendant violated
26

1 OAR 952-001-0090(2)(a) in that Defendant failed to maintain marks near 20835 Gateway Drive,
2 Bend, Oregon.

3 8.

4 ORS 757.993 provides, in relevant part, that:

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

8 9.

9 Defendant has not violated OUNC rules in the past.


10 10.

11 WHEREFORE, the Commission directs Defendant to file a verified answer to this
12 Complaint within twenty (20) days from the date this Complaint is mailed to Defendant.
13 If no verified answer or other written appearance raising a question of fact or law is filed
14 with the Commission at its office in Salem, Oregon, within the 20-day period, the
15 allegations of the Complaint are deemed admitted, and a penalty will be imposed in the
16 amount of \$1,000 for each violation alleged, for a total of \$5,000.

17 DATED this 5th day of August 2016.

19 Respectfully submitted,

20 ELLEN F. ROSENBLUM
21 Attorney General

22 
23 Johanna M. Riemenschneider, #990083
24 Senior Assistant Attorney General
25 Of Attorneys for the Public Utility Commission
26 of Oregon

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

3 NC 351

4 PUBLIC UTILITY COMMISSION OF
OREGON,

5 Complainant,

6 v.

7 JR FAULKNER EXCAVATION II, INC.,
8 (An Oregon corporation),

9 Defendant.

STIPULATION FOR ENTRY
OF FINAL ORDER

10
11 The Public Utility Commission of Oregon, appearing by and through Johanna M.
12 Riemenschneider, Assistant Attorney General, and JR Faulkner Excavation II, Inc., the
13 Defendant herein, hereby stipulate as follows:

14 1.

15 A Complaint in this case is pending before the Commission charging the Defendant with
16 five violations of law, specifically three violations of OAR 952-001-0050(1) and two violations
17 of OAR 952-001-0090(2).

18 2.

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

21 3.

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

25 ///

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 \$5,000 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. \$1,000 becomes due and payable on or before the 30th day following the
8 Commission's entry of its order in this case.
- 9 C. Payment must be by **money order** made out to the **Public Utility Commission of**
10 **Oregon**, and the memo line of the money order must state the "NC" docket number
11 in the caption of this Stipulation.
- 12 D. Payment of the balance of the penalties (\$4,000) are suspended and the suspended
13 penalties will be waived and no further penalties will be imposed for the violations
14 alleged in the Complaint unless Defendant fails to comply with all of the terms of this
15 stipulation and all of the rules adopted by the Oregon Utility Notification Center
16 (OUNC) under ORS 757.552 for a one-year period following the date of the
17 Commission's entry of an order.
- 18 E. Defendant must contact the OUNC Speakers Bureau online at
19 www.digsafelyoregon.com or by calling (503) 232-1987 to arrange for and ensure
20 that all of defendant's employees that engage in excavation activity as a part of their
21 job duties, including but not limited to notifying the Oregon Utility Notification
22 Center of proposed excavations, attend a training session on Oregon excavation laws
23 within 45 days following the entry of the Commission's order.
- 24 F. Defendant must contact Bill Walker at Cascade Natural Gas (CNG) by email
25 William.Walker@cngc.com or by calling (541) 706-6290 and arrange for and ensure
26 that all of defendant's employees that engage in excavation activity as a part of their

1 job duties attend an operator safety presentation provided by CNG within 45 days
2 following the entry of a final order.

3 G. Defendant must take a blank copy of the Training Verification form attached to this
4 Stipulation as Attachment 1 to all required trainings scheduled under paragraphs 4.E.
5 and 4.F. above. Defendant must ensure that all of its employees attending a required
6 training sign a Training Verification form to verify attendance. A representative of
7 the organization providing the training (Instructor) must sign the Training
8 Verification Form to verify that each person listed on the form completed the training.
9 Defendant must return all completed training verification forms to Complainant at the
10 address on the Form within 10 days of the date of the last training session and in no
11 event later than 55 days following the date of the Commission's entry of an order in
12 this docket.

13 H. In the event that Complainant contends that Defendant has not complied with all of
14 the terms of this Stipulation and all OUNC rules for that one-year period,
15 Complainant may reopen this proceeding and petition for imposition of all or a
16 portion of the suspended penalties. In such case, Defendant is entitled to a hearing
17 and to be notified of the basis upon which Complainant contends that compliance has
18 not occurred.

19 I. Complainant's failure to enforce any provision of this stipulation, or decision to
20 waive any violation or nonperformance of this stipulation in one instance, will not
21 constitute a waiver by the Complainant of that provision, any other provision, or any
22 other violation or nonperformance in another instance.

23 ///

24 ///

25 ///

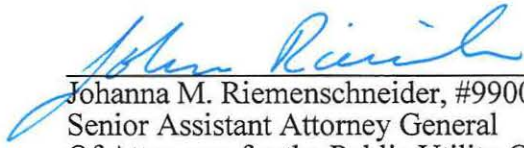
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5.

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 5th day of August 2016.



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

DATED this ____ day of August 2016.

Defendant / Representative (signature)

(Print Name)



Oregon Public Utility Commission
Training Verification

Docket NC 351

Instructions:

- Schedule training(s) outlined in Stipulation
Complete the Training Verification form on the day of the training
All attendees must print and sign their name on the Training Verification form
Instructor must date and sign the Training Verification form upon completion of training
Mail completed Training Verification form to the address below (retain a copy for your records)

Type of Training: (To be filled out and signed by the instructor)

- OUNC - Oregon Excavation Laws Instructor: Date:
Operator Safety Presentation Instructor: Date:
Other: Instructor: Date:

Table with 2 columns: Name (Printed), Name (Signed). Multiple empty rows for data entry.

Mail Completed form to:

Public Utility Commission of Oregon
Administrative Hearings Division
201 High St. SE, Ste. 100
PO Box 1088
Salem OR 97308-1088