



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

May 3, 2018

CT Corporation, Registered Agent
Portland & Western Railroad, Inc.
780 Commercial Street SE, Suite 100
Salem, OR 97301

Jason Sims
Portland & Western Railroad, Inc.
3220 State Street, Suite 200
Salem, OR 97301

James Irvin, President
Portland & Western Railroad, Inc.
3220 State Street, Suite 200
Salem, OR 97301

Re: Violation of Oregon Utility Notification Center Rules
DOJ File No. 860501-GB0241-18 / Docket No. NC 381

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

On February 22, 2018, a representative from your company having met with Public Utility Commission of Oregon's Enforcement Committee to discuss an alleged rule violation, reached an agreement 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**

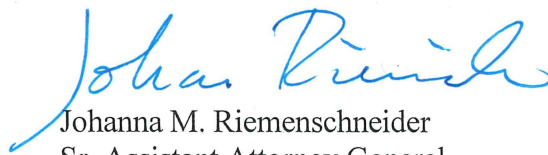
The Commission should issue an order adopting the Stipulation within 30 days of its receipt. Please retain the extra copy of the Stipulation for your files.

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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.

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
Sr. Assistant Attorney General
Business Activities Section

JMR:pjr /#8784766
Enclosures

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

3 NC 381

4 PUBLIC UTILITY COMMISSION OF
5 OREGON,

6 Complainant,

7 v.

8 PORTLAND & WESTERN RAILROAD,
9 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, 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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5.

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

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

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

6.

On or about August 17, 2017, Defendant violated OAR 952-001-0090(2)(c), in that Defendant failed to expose marked facilities by hand while performing an excavation at or near 4th Street, Harrisburg, 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

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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 3rd day of May 2018.

4 Respectfully submitted,

5 ELLEN F. ROSENBLUM
6 Attorney General

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8 
9 Johanna M. Riemenschneider, #990083
10 Sr. Assistant Attorney General
11 Of Attorneys for the Public Utility Commission
12 of Oregon
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1 4.

2 The parties further agree that the Commission may enter an order assessing a civil
3 monetary penalty 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 civil 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. Defendant must contact the OUNC Training Bureau online at
13 www.digsafelyoregon.com/resources/speakers-training/ or by calling (503) 232-1987
14 to arrange for and ensure that all of Defendant's employees that engage in excavation
15 activity as part of their job duties, including but not limited to notifying OUNC of
16 proposed excavations, attend a training session on Oregon Excavation laws within 45
17 days following the entry of the Commission's final order.

18 D. Defendant must take a blank copy of the Training Verification form attached to this
19 Stipulation as Attachment 1 to all required trainings under Paragraph 4.C above.
20 Defendant must ensure that all of its employees attending a required training sign a
21 Training Verification Form to verify attendance. A representative of the organization
22 providing the training (Instructor) must sign the Training Verification Form to verify
23 each individual listed on the Training Verification Form completed the training.
24 Defendant shall return all completed Training Verification Forms to Complainant at
25 the address on the Form within 10 days of date of the last training session and in no
26

1 event no later than 55 days following the date of the Commission's entry of an order
2 in this docket.

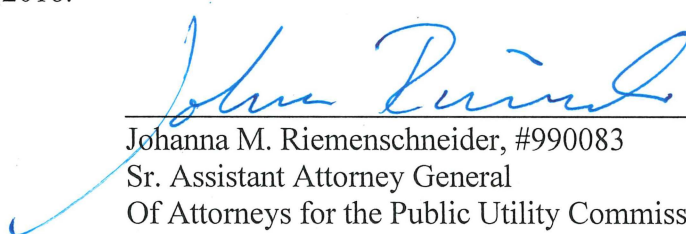
3 E. In the event that Complainant contends that Defendant has not complied with all of
4 the terms of this Stipulation and all OUNC rules for that one-year period,
5 Complainant may reopen this proceeding and petition for imposition of all or a
6 portion of the suspended penalties. In such case, Defendant is entitled to a notice and
7 hearing on the basis upon which Complainant contends that compliance has not
8 occurred.

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

13 5.

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

16 DATED this 3RD day of May 2018.

17
18 
19 Johanna M. Riemenschneider, #990083
20 Sr. Assistant Attorney General
21 Of Attorneys for the Public Utility Commission
22 of Oregon

23 DATED this _____ day of May 2018.

24 _____
25 Representative for Defendant (signature)

26 _____
(Print name)



Oregon Public Utility Commission Training Verification

Docket NC

381

Instructions:

- Defendant:
 - 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
 - Have instructor date and sign the Training Verification form upon completion of training
 - Defendant **must** mail completed Training Verification form to the address below (*retain a copy for your records*)
- Instructor:
 - Date and sign the Training Verification form upon completion of training

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

☐ OUNC – Oregon Excavation Laws ☐ Operator Safety Presentation ☐ Other:

Instructor Print Name: _____

Instructor Signature: _____ Date: _____

Name (Printed)	Name (Signed)

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