



**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

May 8, 2018

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Re: Violation of Oregon Utility Notification Center Rules  
DOJ File No. 860140-GB0313-18/ Docket No. NC 384

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

On March 7, 2018, a representative from your company participated in a telephone conference with the Public Utility Commission of Oregon's Enforcement Committee to discuss an alleged rule violation. At that meeting, an agreement was reached regarding the alleged rule 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  
PO Box 1088  
Salem OR 97308-1088**

PacifiCorp  
May 8, 2018  
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, 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  
Senior Assistant Attorney General  
Business Activities Section

Enclosures  
JMR:pjr/#8904739



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OUNC adopted OAR 952-001-0070(1), which was in effect at all times herein relevant.

The rule provides in relevant part:

(1) Except as provided in section (3) of this rule, within 2 business days (48 hours) after the excavator notifies the Oregon Utility Notification Center of a proposed excavation, the operator or its designated agent must:

(a) Mark with reasonable accuracy all of its locatable underground facilities within the area of proposed excavation. All marks must indicate the name, initials or logo of the operator of the underground facilities, and the width of the facility if it is greater than 2 inches;

(b) Provide marks to the excavator of the unlocatable underground 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

(c) Notify the excavator that the operator does not have any underground facilities in the area of the proposed excavation. Acceptable notifications must 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.

6.

On or about January 14, 2018, Defendant violated OAR 952-001-0070(1) in that Defendant failed to mark with reasonable accuracy all of its locatable underground facilities or provide marks of its unlocatable underground facilities or notify excavator that none exist, in the area of a proposed excavation at or near the intersection of SW 4<sup>th</sup> Avenue and SW Hall Street in Portland, Oregon.

7.

ORS 757.993 provides that:

(1) Except as provided in subsection (2) of this section and in addition to all other penalties provided by law, 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.

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1           WHEREFORE, the Commission directs Defendant to file a verified answer to this  
2 Complaint within twenty (20) days from the date this Complaint is mailed to Defendant.  
3 If no verified answer or other written appearance raising a question of fact or law is filed  
4 with the Commission at its office in Salem, Oregon, within the 20-day period, the  
5 allegations of the Complaint are deemed admitted, and civil penalties will be imposed in  
6 the amount of \$1,000.

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DATED this 8<sup>th</sup> day of May 2018.

Respectfully submitted,

ELLEN F. ROSENBLUM  
Attorney General

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



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 and no further  
8 penalties will be imposed for the violation alleged in the Complaint unless Defendant  
9 fails to comply with all of the terms of this Stipulation and all of the rules adopted by  
10 the Oregon Utility Notification Center (OUNC) under ORS 757.552 for a one-year  
11 period following the date of the Commission's entry of an order adopting this  
12 Stipulation.

13 C. On or before the 60<sup>th</sup> day following the Commission's entry of its order in this docket,  
14 Defendant must provide a current corrective action plan that results from Defendant's  
15 internal review of its procedures for responding to notifications from the OUNC.

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

22 E. Complainant's failure to enforce any provision of this Stipulation, or decision to  
23 waive any violation or nonperformance of this Stipulation in one instance, will not  
24 constitute a waiver by the Complainant of that provision, any other provision, or any  
25 other violation or nonperformance in another instance.


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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 8<sup>th</sup> day of May 2018.

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

DATED this \_\_\_\_\_ day of May 2018.

\_\_\_\_\_  
Defendant / Representative (signature)

\_\_\_\_\_  
(Print Name)