



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

December 5, 2018

Keith Sweeney, President and Registered Agent
Sweeney Excavating, Inc.
67157 Harrington Loop Road
Bend, OR 97703

Re: Violation of Oregon Utility Notification Center Rules
DOJ File No. 860140-GB0535-18/ Docket No. NC 390

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

On September 12, 2018, you participated in a telephone conference 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**

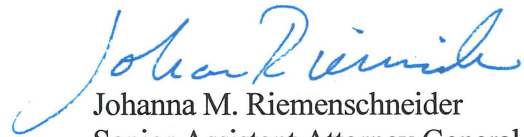
The Commission should issue an order adopting the Stipulation within 30 days of its receipt. Please retain the extra copy of the Stipulation for your files.

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.

Keith Sweeney
December 5, 2018
Page 2

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/#9173832
Enclosures

1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OF OREGON**

3 NC 390

4 PUBLIC UTILITY COMMISSION OF
5 OREGON,

6 Complainant,

7 v.

8 SWEENEY EXCAVATING, 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 relevant times, 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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1 5.

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

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

7 6.

8 On or about July 27, 2018, Defendant violated OAR 952-001-0050(1), in that Defendant
9 failed to notify the Oregon Utility Notification Center of a proposed excavation before
10 commencing an excavation at or near 5 SW Taft Avenue in Bend, Oregon.

11 7.

12 ORS 757.993 provides, in relevant part, that:

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

16 8.

17 Defendant has not violated OUNC rules in the past.

18 9.

19 WHEREFORE, the Commission directs Defendant to file a verified answer to this
20 Complaint within twenty (20) days from the date this Complaint is mailed to Defendant. If no
21 verified answer or other written appearance raising a question of fact or law is filed with the
22 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 5th day of December 2018.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General



Johanna M. Riemenschneider, #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 390

4 PUBLIC UTILITY COMMISSION OF
OREGON,

5 Complainant,

6 v.

7 SWEENEY EXCAVATING, INC.,

8 Defendant.

STIPULATION FOR ENTRY OF ORDER

9
10 The Public Utility Commission of Oregon, appearing by and through Johanna M.
11 Riemenschneider, Senior Assistant Attorney General, and Sweeney Excavating, Inc., the
12 Defendant herein, hereby stipulate as follows:

13 1.

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

16 2.

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

19 3.

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

23 ///

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26 ///

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 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 administrative rules
10 adopted by the Oregon Utility Notification Center (OUNC) under ORS 757.552 for a
11 one-year period following the date of the Commission's entry of an order.
- 12 C. Defendant must contact Cody Cox at Cascade Natural Gas (CNG) by email
13 Cody.Cox@cngc.com or by calling (541) 706-6281 and arrange for and ensure that
14 Defendant and all of Defendant's employees that engage in excavation activity attend
15 an excavation safety presentation provided by CNG within 45 days following the
16 entry of the Commission's order.
- 17 D. Defendant must take a blank copy of the Training Verification form attached to this
18 Stipulation as Attachment 1 to all required trainings scheduled under paragraph 4.C.
19 above. Defendant must ensure that Defendant and all of its employees attending a
20 required training sign a Training Verification form to verify attendance. A
21 representative of the organization providing the training (Instructor) must sign the
22 Training Verification form to verify each person listed on the form completed the
23 training. Defendant must return all completed Training Verification forms to
24 Complainant at the address on the Form within 10 days of the date of the last training
25 session and in no event later than 55 days following the date of the Commission's
26 entry of an order in this docket.


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

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

10 5.

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

13 DATED this 5th day of December 2018.

14
15 
16 Johanna M. Riemenschneider, #990083
17 Senior Assistant Attorney General
Of Attorneys for the Public Utility Commission
of Oregon

18 DATED this _____ day of December 2018.

19
20 _____
Defendant / Representative (signature)

21 _____
(Print Name)

22
23
24
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**Oregon Public Utility Commission
Training Verification**

Docket NC 390

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**