



Portland General Electric Company

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Cece L. Coleman

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January 28, 2021

Via Electronic Filing

Public Utility Commission of Oregon
Attention: Filing Center
P.O. Box 1088
Salem, OR 97308-1088

Re: NC 395 - Complainant v. Portland General Electric Company

Dear Filing Center:

Enclosed for filing in the above-captioned docket is Portland General Electric Company's Answer.

Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "Cece L. Coleman".

Cece L. Coleman
Assistant General Counsel

CLC:kmb
Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

NC 395

PUC,

Complainant,

vs.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

PORTLAND GENERAL ELECTRIC
COMPANY’S ANSWER

INTRODUCTION

On January 8, 2021, a Complaint was filed by the Public Utility Commission of Oregon (“The Commission”) against Portland General Electric Company (“PGE”) to determine whether civil monetary penalties should be assessed as provided in ORS 757.993.

FACTS

On or about October 18, 2019 PGE received Oregon Ticket No. 19291906 (“Ticket”) requesting Underground facilities locates pertaining to an area “APROX .5 MILES NORTH ON NE LAUGHLIN RD FROM THE INTERSECTION OF HWY 240 THERE IS A GATE ON THE WEST SIDE OF NE LAUGHLIN ROAD. THIS IS WHERE WE WILL BE STARTING A NEW GRAVEL ROAD ENTRANCE . . .”, according to the Ticket received from the OUNC. In the absence of finding any white paint markings by the Excavator or other evidence of construction, PGE relied on the language contained in the Ticket and locates were performed by PGE or its contractor on October 21, 2019, near a gate just off to the West side of NE Laughlin

Road. Based on its understanding that the road would go “up the hill” and intersect on top of the hill, PGE appropriately marked “No PGE” for the requested area.

October 30, 2019, a PGE-owned primary line suffered damage from an Excavator’s grader on property adjacent to 17795 NE Laughlin Road in Yamhill, Oregon, resulting in an outage. PGE responded to the call and made a determination to abandon the damaged underground section of the primary line and install a new pole with aerial lines running to a new primary drop, to tie into the far side of the damaged line, in order to promptly restore service to the customer at that location.

Thereafter, a damage investigation was completed on or about October 31, 2019, and the root cause for the damage was attributed to the Excavator for digging beyond the requested area identified in the OUNC Ticket.

Following an informal complaint regarding charges PGE assessed to the Excavator for the restoration of services following his damage to PGE’s underground facilities, Staff conducted a further investigation pertaining to the Ticket and reached a different conclusion, which may be the basis for the filing of the Complaint in this docket, although, admittedly it is only speculation on the part of PGE since these facts do not align with those contained in the Complaint.

ANSWER

PGE hereby answers the Complaint. PGE denies any allegations not specifically admitted herein and reserves the right to supplement this Answer should the Complaint be amended. In addition, PGE reserves the right to amend its Answer or Affirmative Defenses if further information becomes evident during the course of additional investigation and discovery.

With respect to the numbered Paragraphs of the Complaint, PGE answers as follows:

Regarding Paragraph 1 of the Complaint: PGE admits that this docket was initiated by the Public Utility Commission of Oregon to determine whether civil monetary penalties should be assessed as provided in ORS 757.993. PGE further admits that, to the best of its knowledge, the Commission maintains its offices at 201 High Street SE, Ste. 100, Salem, Oregon.

Regarding Paragraph 2 of the Complaint: PGE admits that at all time herein relevant, PGE was doing business in the State of Oregon.

Regarding Paragraph 3 of the Complaint: PGE admits that Under ORS 757.993, the Commission has discretion to seek penalties for violations of rules adopted by the Oregon Utility Notification Center (“the OUNC”).

Regarding Paragraph 4 of the Complaint: PGE admits that *in accordance with* ORS 757.552, *the Board of Directors for* the OUNC has adopted rules that prescribe requirements for notification to the OUNC of excavation activity and marking of underground facilities for the purpose of preventing damage to such facilities. PGE further acknowledges that “Excavation”, “Operator” and other relevant definitions are contained in ORS 757.542 and OAR 952-001-0010.

Regarding Paragraph 5 of the Complaint: PGE admits that *the Board of Directors for* the OUNC has adopted OAR 952-001-0070, which is and has been in effect for some time, and PGE stipulates to the content of the rule as written in OAR 952-001-0070, but if the facts are as PGE suggests above, then PGE denies that the excerpt of the rule contained in the Complaint is the only part relevant to this proceeding, given that sections (8)(a) and (f) of OAR 952-001-0070 also have relevance.

Regarding Paragraph 6 of the Complaint: PGE denies that had any request or obligation to mark its locatable underground facilities in the area of a proposed excavation at or near the property adjacent to 19143 NE Laughlin Road in Yamhill, Oregon on or about October 30, 2019, or that it violated OAR 952-001-0071(1)(a) by failing to mark its locatable underground facilities in the area of a proposed excavation at or near the property adjacent to 19143 NE Laughlin Road in Yamhill, Oregon on or about October 30, 2019.

Regarding Paragraph 7 of the Complaint: PGE admits that the excerpt from ORS 757.993, contained in the Complaint, is true and accurate.

Regarding Paragraph 8 of the Complaint: PGE admits that on June 18, 2018, the Commission issued Order No. 18-222, in Docket NC 383, imposing a civil penalty for violation of OAR 952-001-0070(1).

AFFIRMATIVE DEFENSES

Without waiving the foregoing, PGE alleges the following affirmative defense:

The Complaint fails to state a claim against PGE for which relief may be granted, in that PGE had no request or obligation to mark its locatable underground facilities in the area of a proposed excavation at or near the property adjacent to 19143 NE Laughlin Road in Yamhill,

Oregon, on or about October 30, 2019. The Complaint simply states unsubstantiated factual allegations in paragraph 6; it does not state any legally cognizable claim or grounds for relief.

PGE reserves the right to amend its Answer or Affirmative Defenses if further information becomes evident during the course of additional investigation and discovery.

RELIEF REQUESTED

PGE respectfully requests that the Commission find for the Defendant and dismiss the Complaint.

DATED this 28th day of January, 2021.

Respectfully submitted,

PORTLAND GENERAL ELECTRIC COMPANY

/s/ Cece Coleman

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