



CITY OF
PORTLAND, OREGON
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December 4, 2023

VIA EMAIL - puc.filingcenter@puc.oregon.gov

Public Utility Commission of Oregon

ATTN: Filing Center

201 High Street SE, Suite 100

P.O. Box 1088

Salem, OR 97308-1088

Re: NC 405 - In the Matter of Public Utility Commission of Oregon v. City of
Portland

Dear Filing Center:

The City of Portland respectfully submits its Reply Testimony regarding NC 405.

Sincerely,

/s/ Eric Shaffner

Eric Shaffner
Deputy City Attorney

ES/ks

CITY OF PORTLAND

COP EXHIBIT 600

REPLY TESTIMONY

December 4, 2023

1 **Q. What is your name, occupation, and business address?**

2 A. My name is Justin Buchanan. I am a Maintenance Supervisor for the Bureau of
3 Transportation (“PBOT”), City of Portland. My business address is 2929 N Kerby Avenue in
4 Portland.

5 **Q. What is the nature of your work for the City in the context of this matter?**

6 A. I hold the position of Utility Locates Supervisor, overseeing the PBOT group responsible for
7 performing utility locates of City infrastructure.

8 **Q. The Administrative Law Judge in this matter provided this request to the Oregon
9 Utility Notification Center (“the OUNC”):**

10 **Please explain the actions an operator is expected to take in response to a
11 One Call System notice for a situation in which the municipality is the
12 operator but does not have knowledge of any facilities nor the ability to
13 locate any underground facilities in question.**

14 **In his staff testimony in response to that request, Mr. Kevin Hennessy testified as
15 follows, in part:**

16 **If the municipality does not know whether there are any of its utility system
17 underground facilities in the proposed excavation area in the Locate
18 Request, the best practice is to respond to the Locate Request by providing
19 marks indicating “unlocatable facilities” in the proposed excavation area.**

20 **The municipality must place the markings using the best information
21 available to it, including as-constructed drawings or other facility records.**

22 **Marking “unlocatable facilities” will put the excavator on notice that there
23 may be underground facilities in the proposed excavation area. . . .¹**

24 **Does that answer correspond with your understanding of the meaning of the term
25 “unlocatable facilities?”**

26 ¹ Staff Exhibit 300 at 1, ll. 20-23, and 2, ll.1-3.

1 A. No. In my view, the procedures in the Oregon Administrative Rules pertaining to
2 “unlocatable” facilities are not relevant to a situation in which an operator does not know
3 whether it operates facilities in a proposed excavation area or even when the operator does
4 not know whether there are any facilities in the area. According to my experience and
5 training, an “unlocatable” facility is one that the operator knows exists—and knows its
6 approximate location—but that, because of its material composition, depth, or other factors,
7 cannot be traced from the surface using current locating technology.

8 My reading of the Oregon Administrative Rules supports that interpretation as well.
9 OAR 952-001-0010(27) defines such facilities as those “that cannot be marked with
10 reasonable accuracy” In addition, OAR 952-001-0010(21)(b) defines “response” as
11 meaning, in part, a notification to the excavator “that there are unlocatable underground
12 facilities in the area” (emphasis added). And, for example, OAR 952-001-010 requires
13 an operator to maintain records showing the location of “unlocatable” abandoned and out-of-
14 service facilities.

15 My understanding of the requirement in OAR 952-001-0070(1) is for an operator to
16 mark affirmatively its locatable facilities, mark affirmatively its unlocatable facilities,² or
17 notify the excavator that the operator has no facilities in the proposed excavation area. I
18 believe the scenario presented in the Administrative Law Judge’s request would fall into the
19 third category.

20
21
22
23 ² There is some ambiguity in the rules about an operator’s obligations with regard to its
24 unlocatable facilities. OAR 952-001-0090(1) requires an excavator to wait until a “response”
25 from each operator has been received (or until two days have passed), and OAR 952-001-
26 0010(21) defines “response” as, in part, “action taken by operators of underground facilities to . .
27 . (b) [n]otify the excavator that there are unlocatable underground facilities in the area of the
28 proposed excavation” By contrast, OAR 952-001-0070(1)(b) requires an operator to
29 “[p]rovide marks to the excavator of the unlocatable underground facilities in the area of
30 proposed excavation” The City’s practice is to provide marks of its unlocatable facilities.