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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

NC 82

PUBLIC UTILITY COMMISSION OF)	
OREGON,)	ORDER
)	
Complainant,)	
)	
v.)	
)	
TIMBERCRAFT HOMES, INC. (an)	
Oregon corporation),)	
)	
Defendant.)	

DISPOSITION: RECONSIDERATION GRANTED; RELIEF GRANTED.

On June 27, 2003, the Public Utility Commission of Oregon filed a complaint against defendant for a violation of OAR 952-001-0050, failing to notify the Oregon Utility Notification Center (OUNC) of a proposed excavation prior to excavating. Defendant was served with the complaint by mail at two addresses; one copy was returned, the other was not. In addition, defendant was sent a proposed stipulation, requiring him to complete an awareness class and pay a \$200 fine. That also was not returned. We entered a default order on August 25, 2003, ordering defendant to pay a \$1000 penalty. Order No. 03-510.

On September 3, 2003, defendant wrote a letter requesting reconsideration of Order No. 03-510. He stated that he had not received the earlier mailings but referred to an agreement made at an informal hearing, later memorialized in the stipulation. Defendant had taken an awareness class and wanted to know how to remit the \$200 fine that he had incurred.

We review the application for reconsideration for (1) new evidence that was unavailable and not reasonably discoverable before the order was issued; (2) a change in the law or agency policy since the date the order was issued; (3) an error of law

or fact in the order; or (4) good cause for further examination. OAR 860-014-0095(3). "Any of these grounds, if essential to the Commission's decision, constitutes sufficient reason to grant reconsideration." *In re PacifiCorp*, UE 121/ UE 127, Order No. 03-187 at 3.

Typically, service by first-class mail is acceptable in matters before the Public Utility Commission. OAR 860-013-0070. A party is responsible for responding to documents properly served and for the consequences of a default. *See Harp v. Loux*, 54 Or App 840, 636 P2d 976 (1981), *rev den*, 292 Or 589 (1982).

In this instance, defendant did not sign and return the stipulation at the appropriate time. However, he believed that an agreement had been reached, and he had begun satisfaction of the stipulation by taking an awareness class. He is also prepared to complete the terms of the stipulation by remitting the amount of the fine agreed upon. Because defendant has shown good cause to reconsider the original order, and there was no objection to granting relief to the defendant, we grant reconsideration and set aside Order No. 03-510. We further order defendant to complete the unsatisfied terms of the stipulation by paying the \$200 fine.

ORDER

IT IS ORDERED that:

1. Civil monetary penalties shall be assessed against Defendant in the amount of \$1,000.
2. Defendant shall pay the sum of \$200, due and payable within 30 days from the date of service of this order. Payment shall be by cashier's check or money order made out to the Public Utility Commission of Oregon, and the memo line of the cashier's check or money order shall state the "NC" docket number in the caption of this order.

3. Payment of the balance of the penalties (\$800) shall be suspended for a period of one year following entry of this order.

4. Complainant may reopen this proceeding and petition for imposition of all or a portion of the suspended penalties if Defendant has not complied with all OUNC rules for a period of one year following entry of this order.

Made, entered, and effective _____.

Lee Beyer
Chairman

John Savage
Commissioner

Ray Baum
Commissioner

A party may appeal this order to a court pursuant to applicable law.