

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

NC 142

PUBLIC UTILITY COMMISSION OF)
OREGON,)
)
Complainant,)
)
v.)
)
CRONES CONSTRUCTION INC.,)
(an Oregon corporation),)
)
Defendant.)

ORDER

**DISPOSITION: REQUEST FOR MITIGATION OF PENALTIES
DENIED; ORDER NO. 05-712 RESCINDED,
PENALTIES REDUCED; REFUND DUE.**

In response to a violation of OAR 952-001-0050, Failure to Call for Locates, Defendant and the Oregon Utility Notification Center (OUNC) Enforcement Committee entered into an agreement regarding penalties. The complaint and stipulation formalizing the agreement were filed by the Public Utility Commission of Oregon (Commission) on April 6, 2005, and served on the Defendant on April 19, 2005. The stipulation proposed that the Commission resolve the matter by assessing a \$1,000 penalty with \$200 due and payable, and \$800 suspended. Defendant was notified in the complaint that failure to answer or otherwise appear within 20 days after service of the stipulation would be deemed a default, and all material allegations would be deemed admitted, hearing waived, full penalties imposed, and the matter disposed of by appropriate order without further notice.

Defendant failed to file an answer or otherwise plead or appear within the specified time set forth in the stipulation. Consequently, on May 19, 2005, the Commission entered Order No. 05-712, assessing monetary penalties of \$1,000 on Defendant. On June 9, 2005, Defendant submitted payment for the monetary penalty in full, and requested a reduction of penalty in accordance with ORS 757.993(5), Petition for Mitigation.

Pursuant to ORS 757.993(5) the Commission may reduce a penalty if either (a) the Defendant admits to the violation alleged in the complaint and makes a timely request for reduction of the penalty; or (b) the Defendant submits to the Commission a written request for reduction of the penalty within 15 days from the date of the penalty order.

On August 5, 2005, Staff filed a Response to Petition for Mitigation. Staff states that mitigation is not available because Defendant failed to timely request mitigation under ORS 757.993(5). Staff reports that Defendant's request for reduction of penalty was received by the Commission on June 9, 2005, 24 days after the date of the penalty order. Nonetheless, Staff proposes that the Commission reopen this case, on its own motion, under ORS 756.568, and that the \$1,000 penalty be reduced, not to the \$200 specified in the penalty order, but to \$300 due to procrastination by Defendant.

The Commission concludes that the Defendant does not meet the requirements for mitigation under ORS 757.993(5). However, the Commission recognizes that Defendant has complied with the training requirement and paid the \$1,000 penalty. Consequently, the Commission adopts Staff's recommendation that Order No. 05-712 be rescinded and a new order be entered to reduce the penalty to \$300.

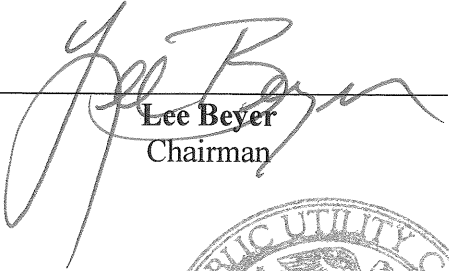
ORDER

IT IS ORDERED that:


1. Order No. 05-712 is rescinded and replaced with this order.
2. Civil monetary penalties in the amount of \$1,000 are assessed against Cronos Construction Inc. (an Oregon corporation), with \$300 due and payable, and \$700 suspended according to the terms of the stipulation, which was attached to Order No. 05-712 and is incorporated in this order by reference.

- 3. The Commission acknowledges receipt of \$1,000 from Crones Construction Inc. (an Oregon corporation), which is due a refund by the Oregon Utility Notification Center in the amount of \$700.

Made, entered, and effective AUG 08 2005.



Lee Beyer
 Chairman



John Savage
 Commissioner



Ray Baum
 Commissioner



A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.