

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

NC 143

PUBLIC UTILITY COMMISSION OF)
OREGON,)
)
Complainant,)
)
v.)
)
JAMES GRIFFITHS EXCAVATING, INC.,)
(an Oregon corporation),)
)
Defendant.)

ORDER

**DISPOSITION: REQUEST FOR RECONSIDERATION DENIED;
REQUEST FOR MITIGATION OF PENALTIES
DENIED; ORDER NO. 05-713 RESCINDED;
PENALTIES REDUCED.**

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 would be deemed a default, and all material allegations would be deemed admitted, hearing waived, 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. Consequently, on May 19, 2005, the Commission issued Order No. 05-713, assessing monetary penalties of \$1,000 on Defendant. On June 13, 2005, Defendant submitted a letter requesting reconsideration of the penalty order.

Pursuant to OAR 860-014-0095(3), the Commission may grant an application for rehearing or reconsideration if the applicant shows that there is (a) new evidence which is essential to the decision and was unavailable before issuance of the order, (b) a change in the law or agency policy since the date the order was issued, (c) an error of law or fact in the

order which was essential to the decision, or (d) good cause for further examination of a matter essential to the decision.

Pursuant to ORS 757.993, the Commission may reduce any penalty if (a) the Defendant admits to the alleged violation 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 Reconsideration. Staff states that reconsideration is not available because Defendant fails to meet any requirements for reconsideration under OAR 860-014-0095(3).

Staff also contends that Defendant is not eligible for mitigation of the \$1,000 penalty imposed by Order No. 05-713 because Defendant failed to seek mitigation within the 15 days allowed by ORS 757.993. Staff reports that Defendant's petition is more than 15 days beyond the May 19, 2005 date of the 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 Defendant does not meet the requirements for reconsideration under OAR 860-014-0095(3), nor the requirements for mitigation of penalty under ORS 757.993(5). However, the Commission recognizes that Defendant has complied with the training requirement. Consequently, the Commission adopts Staff's recommendation that Order No. 05-713 be rescinded and a new order entered to reduce the penalty to \$300.

ORDER

IT IS ORDERED that:

1. Order No. 05-713 is rescinded and replaced with this order.

2. Civil monetary penalties in the amount of \$1,000 are assessed against James Griffiths Excavating, Inc. (an Oregon corporation), with \$300 due and payable within 30 days from the date of service of this order, and \$700 suspended according to the terms of the stipulation, which was attached to Order No. 05-713, and is incorporated in this order by reference. (Mail payment to: Public Utility Commission of Oregon, PO Box 2153, Salem, OR 97308.)

Made, entered, and effective AUG 10 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.