

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

NC 140

PUBLIC UTILITY COMMISSION OF)
 OREGON,)
)
 Complainant,)
)
 v.)
)
 JOHN RICE EXCAVATION, INC.,)
 (an Oregon corporation),)
)
 Defendant.)

ORDER

**DISPOSITION: REQUEST FOR RECONSIDERATION DENIED;
REQUEST FOR MITIGATION OF PENALTIES
DENIED; ORDER NO. 05-709 RESCINDED;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 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. 05-709, assessing monetary penalties of \$1,000 on Defendant. On June 27, 2005, the Commission received the stipulation from Defendant, which the Commission treated as a request for reconsideration under OAR 860-014-0095.

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 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. 05-709, 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 paid the \$1,000 penalty. Consequently, the Commission adopts Staff's recommendation that Order No. 05-709 be rescinded and a new order entered to reduce the penalty to \$300. A review of the Commission's records indicates that Defendant has not completed the training compliance as set forth in the stipulation. The Commission regards fulfillment of the training compliance more important than the penalty provision.

ORDER

IT IS ORDERED that:

1. Order No. 05-709 is rescinded and replaced with this order.

2. Civil monetary penalties in the amount of \$1,000 are assessed against John Rice Excavation, 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. 05-709, and is incorporated in this order by reference.
3. Defendant shall contact the OUNC Speakers Bureau to arrange for and attend a training session on Oregon excavation laws within 45 days following the entry of this order.
4. The Commission acknowledges receipt of \$1,000 from John Rice Excavation, Inc. (an Oregon corporation), \$700 of which will be refunded by the Oregon Utility Notification Center following Defendant's completion of training.

Made, entered, and effective AUG 25 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.