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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

OUNC 5-2025

CHAPTER 952

OREGON UTILITY NOTIFICATION CENTER

FILED

10/31/2025 4:14 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Temporary rule adding definition of “control over” to clarify responsibilities for operators with underground facilities.

EFFECTIVE DATE: 10/31/2025 THROUGH 02/28/2026

AGENCY APPROVED DATE: 07/17/2025

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Filed By:
Joshua Thomas
Rules Coordinator

NEED FOR THE RULE(S):

This temporary rule is being refiled because it was automatically rescinded due to an unrelated permanent rule change to the definitions section in 952-001-0010, but the effective date remains the same. This action was prompted by the Public Utility Commission of Oregon’s (PUC) Order #25-093, which ruled on complaint NC-405. Relating to responsibility for locating sewer laterals, the PUC order directed the Oregon Utility Notification Center to clarify its rules to address ambiguity in “control over underground facilities” within OAR 952-001-0010 (Definitions) and OAR 952-001-0070 (locating and marking requirements). Failure to address the ambiguity identified in the order has the potential to affect PUC enforcement of OUNC statutes and rules with respect to all underground facilities and all operator types.

Resolving this ambiguity is needed to affirm the legislative intent in adopting ORS 757.542 (1995) to shift responsibility from “owners” to “operators,” ensuring entities with expertise handle locating and marking rather than focusing on individual property owners, as affirmed in the inaugural OUNC rulemaking.

The goal of ORS Chapter 952 is preventing utility damage and protecting public safety. Clarifying the meaning of “control” as it corresponds to operational authority (e.g., service provision), aligns with the current regulatory approach, and Common Ground Alliance (CGA) Best Practices 21.0, which links control to operation, requires marking of operational or abandoned facilities and emphasizes the use of records (Best Practices 21.0 Chapter 4).

CGA also finds increasing risks when responsibilities are unclear across all facility types. In addition, ORS 757.557 (3) holds non-subscribing operators liable for all damages to their facilities if excavators follow protocol. This places an undue burden on those least equipped to manage it if applied to homeowners who don't join the OUNC as facility operators. Failure to clarify the obligations of operators under the OUNC statutes heightens public safety risks.

During the 180-day period that this temporary rule is active, we are soliciting involvement and engagement with key stakeholders to collaborate on a longer-term, lasting solution for a permanent rule change. A permanent definition would go into 952-001-0010 with the other definitions.

JUSTIFICATION OF TEMPORARY FILING:

This temporary filing is in the interest of public safety. As stated in the Oregon Public Utility Commission's (PUC) Order #25-093, "There will continue to be a lack of clarity in responsibility and thus a challenge for the PUC to enforce locate requirements for situations like the one presented here. Given the public safety implications, this raises significant concerns ... We urge OUNC to prioritize necessary revisions to clarify this ambiguity and enable effective enforcement."

Failure to address the ambiguity identified in the order has the potential to affect PUC enforcement of OUNC statutes and rules with respect to all underground facilities and all operator types. These temporary amendments will help ensure that facility operators (or their contract locators) with expertise continue to handle locating and marking rather than focusing on individual homeowners and property owners. During the 180-day period that this temporary rule is active, we are soliciting involvement and engagement with key stakeholders to collaborate on a longer-term, lasting solution for a permanent rule change.

Again, this temporary rule is being refiled because it was automatically rescinded due to an unrelated permanent rule change to the definitions section in 952-001-0010, but the effective date remains the same.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

NC-405, Order #25-093: <https://apps.puc.state.or.us/edockets/docket.asp?DocketID=23631>

OUNC Issue Summary #25-04-0048: attached



ISSUE SUMMARY

#25-04-0048

SUBJECT: Addressing recommendations in OPUC Order #25-093 (NC-405 sewer laterals complaint) to address implications for enforcement

DATE: April 11, 2025

PREPARED BY: Kevin Hennessy, Chief of Pipeline Safety, Public Utility Commission of Oregon
Josh Thomas, Executive Director, Oregon Utility Notification Center

COMMITTEE: Governance

OVERVIEW

In early 2022, a Portland resident was completing repairs in preparation to sell his house and requested a locate for a sewer lateral connecting to a city line in the public right of way. The City of Portland declined to locate the lateral and suggested that he register as a facility operator with the Oregon Utility Notification Center and locate it himself. After hitting a dead end, the homeowner filed a complaint (NC 405) with the Public Utility Commission of Oregon (PUC).

On March 7, 2025, the PUC issued a ruling (Order 25-093) on the complaint. The PUC denied penalties against the City of Portland's Bureau of Environmental Services (BES) and found that the OUNC's rules "... were not sufficiently clear as applied to the facts of the case." They encouraged the OUNC to clarify its rules to address ambiguity in "control over underground facilities" within OAR 952-001-0010 (15) (definition of "operator") and OAR 952-001-0070 (locating and marking requirements).

Changes to Oregon Administrative Rules (OAR) will be needed to address the concerns identified in the PUC order. Failure to address the ambiguity identified in the order has the potential to affect enforcement of OUNC statutes and rules with respect to all underground facilities and all operator types.

BACKGROUND

Oregon's dig law language was changed in 1995 from "facility owner" to "facility operator." There was general agreement that locating laterals within the public right of way (ROW) are the facility operator's responsibility, and acknowledgement that property owners do not have the requisite skill, equipment, knowledge or unfettered access to perform locates in the ROW.

The Oregon Department of Justice (DOJ) has previously issued a memo about sewer laterals that is included in our Standards Manual. Key takeaways include:

- The vast majority of cities (and sewer districts) are willing to locate sewer laterals.
- There have been a handful that refused in the past. Cities in the latter category claimed that it is the responsibility of the homeowners.

- The owner in fact has no administrative or operational control over the lateral in the public right-of-way. That part of the lateral is controlled and operated by the city.
- The part of the lateral on private property ... is the responsibility of the owner because the owner does have the operational and administrative control of that piece of it.

The DOJ memo concluded that "... a city or sewer district operating a sewer system is responsible for marking the sewer laterals that are in the public right-of-way. Those in control of an underground utility/facility are responsible, not those who happen to have legal title for those facilities."

IMPLICATIONS AND CONSIDERATIONS

Since the Oregon Utility Notification Center was not a party to the complaint, it cannot appeal the PUC ruling. While the PUC ruling does not impact the advice in the aforementioned 2014 memo from the DOJ, it does create an urgent need to consider additional temporary and permanent rulemaking due to broad implications.

Issues raised by the ruling ripple across OAR Chapter 952, impacting excavator duties (OAR 952-001-0050), operator emergency cooperation (OAR 952-001-0060), design coordination (OAR 952-001-0080), duties of reasonable care (OAR 952-001-0090) and system abandonment (OAR 952-001-0100). Resolving this ambiguity is needed to affirm the legislative intent in adopting ORS 757.542 (1995) to shift responsibility from "owners" to "operators," ensuring entities with expertise handle locating and marking rather than focusing on individual property owners, as affirmed in the inaugural 1997 OUNC rulemaking (Order No. 97-001, appendix B).

The goal of ORS Chapter 952 is preventing utility damage and protecting public safety. Clarifying the meaning of "control" as it corresponds to operational authority (e.g., service provision), aligns with the current regulatory approach (e.g., ORS 757.005) and Common Ground Alliance (CGA) Best Practices 21.0, which links control to operation, requires marking of operational or abandoned facilities and emphasizes the use of records (Best Practices 21.0 Chapter 4).

CGA also finds increasing risks when responsibilities are unclear across all facility types. In addition, ORS 757.557 (3) holds non-subscribing operators liable for all damages to their facilities if excavators follow protocol. This places an undue burden on those least equipped to manage it if applied to homeowners who don't join the OUNC. Failure to clarify the obligations of operators under the OUNC statutes heightens public safety risks.

Without clarity, this identified ambiguity risks:

1. **Safety Hazards:** Unlocated and marked facilities, including abandoned ones; increase excavation damage risks.
2. **Inefficiency:** Burdening individual homeowners with locating and liability defies chapter 952's intent, CGA standards and ORS 757.557 subscription mandate.
3. **Confusion:** Uncertainty disrupts compliance and reinforcement across chapter 952 for all operators.

PROPOSED RULE CHANGES

The OUNC should define “control” or “control over” in OAR chapter 952-001-0010 to align with chapter 952, the PUC, CGA Best Practices 21.0 and recommendations, ensuring operators with expertise handle locates and OUNC subscription for all underground facilities.

To address this gap within Chapter 952, we propose:

1. Add OAR 952-001-0010 (XX) Definition of “Control Over”

Proposed Text:

“Control over” means operational or administrative authority to provide or have provided utility service through underground facilities, including but not limited to authority to offer utility service via underground facilities, manage utility service delivery, manage a collection of records of underground facility locations, or direct compliance with any applicable utility service standards, whether or not a particular underground facility is in service or is an out-of-service facility. For underground facilities in the public right of way or utility easement, and the purposes of notification as defined in OAR 952-001-0010 (17) and (23), underground facilities used or previously used to deliver utility service include abandoned facilities unless the operator has physically removed the abandoned facilities. When ownership of underground facilities or associated real property is held by any other party, for purposes of compliance with ORS 757.542 to 757.562 and implementing rules, control over the underground facilities is held by the entity providing or having provided the utility service via the underground facilities regardless of ownership.”

Rationale:

- Defines “control over” broadly for all utilities and types, reflecting the PUC’s view (Order No. 25-093, CGA Best Practice 21.0 - Chapter 4 and 1997 OUNC intent to leverage operator expertise over individual owners).

2. Amend OAR 952-001-0070 (1)

Current Text:

(1) Except as provided in section (2) of this rule, within two full business days following the day an excavator notifies the Oregon Utility Notification Center of a proposed excavation, the operator or its designated agent must:

(a) Mark within 24 inches of the outside lateral dimensions of both sides of all its locatable underground facilities within the area of proposed excavation. All marks must indicate the name, initials or logo of the operator of the underground facilities, and the width of the facility if it is greater than 2 inches;

(b) Provide marks to the excavator of the unlocatable underground facilities in the area of proposed excavation, using the best information available including as-constructed drawings or other facility records that are maintained by the facility operator; or

(c) Notify the excavator that the operator does not have any underground facilities in the area of the proposed excavation ...

Proposed Revision:

“(1) Except as provided in section (2) of this rule, within two full-business days ~~following the day~~ **after** an excavator notifies the Oregon Utility Notification Center of a proposed excavation **under OAR 952-001-0050 and a ticket number is provided**, ~~the~~ **each** operator or its designated agent **who received notice** must:

(a) Mark within 24 inches of the outside lateral dimensions of both sides of all ~~its~~ locatable underground facilities **over which it has control**, within the area of proposed excavation. All marks must indicate the name, initials or logo of the operator of the underground facilities, and the width of the facility if it is greater than 2 inches; **or**

(b) Provide marks to the excavator of the unlocatable underground facilities **over which it has control** within the area of proposed excavation, using the best information available including as-constructed drawings or other facility records that are maintained by the facility operator **or records that are reasonably available to the operator**; or...”

Rationale:

- Links to “control over” definition, aligning with CGA Best Practice 21.0, Chapter 4 and the PUC's operational focus, fitting -0070's structure in supporting -0050, -0060, and -0080.
- Applies to all utility types per CGA Best Practice 21.0 and addressing the risks of excluding operator types
- Ensures -0070 (2) exception applies, balancing risks.

EXPECTED OUTCOMES

- **Clarity:** Operators with control locate all facilities, fitting chapter 952 and CGA best practices 21.0, eliminating individual property owner burdens under ORS 757.557 (3).
- **Safety:** reduce damage risks aligned with CGA initiatives and -0050's process across all utility types.
- **Alignment:** rules reflect the 1995 intent, the 1997 reasoning and rule adoption, PUC's “control,” CGA best practices within Chapter 952 scope.
- **Balance:** expertise is leveraged without ownership confusion, supporting ORS 757.557 (1) - OUNC subscription

RECOMMENDATIONS

Because the ambiguity addressed in the PUC ruling has implications for the enforcement of OUNC statutes and rules with respect to all underground facilities and all operator types, this matter should be prioritized in the interest of public safety. PUC and OUNC staff recommend that the OUNC Board of Directors:

1. Convene Governance Committee with invited stakeholders to define “Control Over” within Chapter 952, informed by the PUC, DOJ, and CGA Best Practices, and ensuring consistency across OAR 952-001-0050, -0060, -0080, -0090, and -0100, as well as ORS 757.542 and 757.557.
2. Expedite a rulemaking process to adopt the aforementioned amendments. Staff recommends concurrently initiating a temporary and permanent rulemaking process.

PROPOSED MOTION

Move to refer Issue Summary #25-04-0048 to the Governance Committee to initiate emergency rulemaking to address the concerns identified in PUC Order 25-093 to eliminate ambiguity in ‘control over’ underground facilities and clarify operator responsibilities for all underground facilities.

ADOPT: 952-001-0011

RULE TITLE: Temporary rule adding definition of “control over” to clarify responsibilities for operators with underground facilities.

RULE SUMMARY: This temporary rule change and related amendment clarifies the definition of "control over" in response to the Public Utility Commission of Oregon’s (PUC) Order #25-093, which ruled on complaint NC-405. Relating to responsibility for locating sewer laterals, the PUC order directed the Oregon Utility Notification Center to clarify its rules to address ambiguity in “control over underground facilities” within OAR 952-001-0010 (Definitions) and OAR 952-001-0070 (locating and marking requirements). Failure to address the ambiguity identified in the order has the potential to affect PUC enforcement of OUNC statutes and rules with respect to all underground facilities and all operator types.

Please note that this is being refiled under a new OAR number because unrelated permanent changes to definitions in 952-001-0010 were causing this temporary change to be automatically rescinded. Despite the new filing to address this problem, the original end date for the previous temporary filing has been maintained and is unchanged.

RULE TEXT:

As used in 952-001-0010 through 952-001-0100:

"Control over" means operational or administrative authority to provide or have provided utility service through underground facilities, including but not limited to authority to offer utility service via underground facilities, manage utility service delivery, manage a collection of records of underground facility locations, or direct compliance with any applicable utility service standards, whether or not a particular underground facility is in service or is an out-of-service facility. For underground facilities in the public right of way or utility easement, and the purposes of notification as defined in OAR 952-001-0010 (17) and (23), underground facilities used or previously used to deliver utility service include abandoned facilities unless the operator has physically removed the abandoned facilities. When ownership of underground facilities or associated real property is held by any other party, for purposes of compliance with ORS 757.542 to 757.562 and implementing rules, control over the underground facilities is held by the entity providing or having provided the utility service via the underground facilities regardless of ownership.

STATUTORY/OTHER AUTHORITY: ORS 183.757

STATUTES/OTHER IMPLEMENTED: ORS 757.552



ISSUE SUMMARY

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Josh Thomas, Executive Director, Oregon Utility Notification Center

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PROPOSED MOTION

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