

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Dwight D. Keen, Chair
 Shari Feist Albrecht
 Susan K. Duffy

In the Matter of the Adoption of Policies)
Related to Electric Service in KUUDPA)
Penalty Dockets and Electronic Receipt of) Docket No. 20-DPAX-121-MIS
Responses to Notices of Probable)
Noncompliance.)

ORDER AUTHORIZING USE OF ELECTRONIC SERVICE

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). Having reviewed its files and records and being duly advised in the premises, the Commission makes the following findings and conclusions:

I. BACKGROUND

1. The Commission has jurisdiction and authority to administer and enforce the Kansas Underground Utility Damage Prevention Act (KUUDPA), as provided in K.S.A. 66-1801 *et seq.* Likewise, K.S.A. 66-1815 grants the Commission full power and authority to adopt all necessary rules and regulations for carrying out the provisions of K.S.A. 66-1801 through 66-1814.

2. K.A.R. 82-14-6(a) requires Notices of Probable Noncompliance in KUUDPA penalty dockets to be served by hand delivery or registered mail.

3. On August 20, 2019, the Commission issued an Order Rescinding Penalty Assessment in Docket No. 20-DPAX-030-PEN. The Commission determined the Notice of Probable Violation issued in the docket had been improperly served.¹

¹ See Order Rescinding Penalty Assessment, Docket No. 20-DPAX-030-PEN (Aug. 20, 2019) (030 Order).

II. WAIVER OF COMMISSION REGULATIONS

4. The Commission has reviewed its regulation regarding service of the Notice of Probable Noncompliance in KUUDPA actions. Additionally, the Commission has reviewed its regulation regarding responses to Notices of Probable Noncompliance.

5. The Commission believes waiving the hand delivery/registered mail service requirement of K.A.R. 82-14-6(a) and allowing electronic service of a Notice of Probable Noncompliance is in the public interest. Electronic service of Notices of Probable Noncompliance promotes administrative efficiency and reduces administrative expense. Additionally, permitting electronic service of Notices of Probable Noncompliance is consistent with Commission action taken in Docket No. 14-GIMX-280-MIS (14-280 Docket). In the 14-280 Docket, the Commission found there had been multiple proceedings in which parties to a docket agreed to electronic service of documents and waived their right to a follow-up signed, original hard copy as provided in K.A.R. 82-1-216(a)(6).² Likewise, the Commission found electronic service, without a follow-up original, hard copy, lent itself to a more efficient practice before the Commission and was in the public interest.

6. K.A.R. 82-14-6(c) requires recipients of Notices of Probable Noncompliance to respond by mail. The Commission believes waiving the mailing requirement for responses to Notices of Probable Noncompliance is in the public interest. A review of KUUDPA actions indicate Operators and Excavators routinely correspond with Commission Staff via electronic mail. Enabling recipients to provide required responses by electronic mail will promote administrative efficiency and reduce costs borne by those required to provide a response. While the Commission will allow these responses to be provided electronically, a response must still

² Amended Order Authorizing Use Of Electronic Service, Docket No. 14-GIMX-280-MIS, p. 2 (Jul 31, 2014).

contain a signature if required by Commission regulation. Signed acknowledgments or proposals may be included as attachments to an electronically provided response.

III. FINDINGS AND CONCLUSIONS

7. Pursuant to K.A.R. 82-1-202 the Commission may waive the requirements of any Commission regulation if good cause is shown and if it is in the public interest to do so.

8. The Commission finds and concludes waiving the hand delivery/registered mail service requirement of K.A.R. 82-14-6(a) and allowing electronic service of a Notice of Probable Noncompliance is in the public interest. The Commission will require that, in the event a Notice of Probable Noncompliance served electronically is not responded to within the requisite timeframe, Staff shall serve a copy of the Notice of Probable Noncompliance via registered mail or hand delivery. In this event, calculating the time to respond shall begin from the date the Notice of Probable Noncompliance is served via registered mail or hand delivery.

9. The Commission finds and concludes waiving the mailing requirement for responses to Notices of Probable Noncompliance of K.A.R. 82-14-6(c) is in the public interest. Recipients of a Notice of Probable Noncompliance shall be permitted to electronically mail their responses. A response must still contain a signature if required by Commission regulation. The Commission authorizes the use of electronic signatures if required.

10. Pursuant to K.S.A. 77-415, the Commission may establish precedential orders binding upon parties to future proceedings. The Commission finds and concludes this Order shall be precedential, and the Commission will make this order available on its website where all orders designated as precedent are maintained.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Notices of Probable Noncompliance issued pursuant to K.A.R. 82-14-6(a) may be served electronically.

B. If a response to an electronically served Notice of Probable Noncompliance is not received within the required timeframe, Staff shall serve a copy of the Notice of Probable Noncompliance via registered mail or hand delivery. In this event, calculating the time to respond shall begin from the date the Notice of Probable Noncompliance is served via registered mail or hand delivery.

C. Responses to Notices of Probable Noncompliance required by K.A.R. 82-14-6(c) may be made electronically. A response must still contain a signature if required by Commission regulation. The Commission authorizes the use of electronic signatures if required.

D. This order is deemed precedential pursuant to K.S.A. 77-415(b)(2). This order may be relied upon in any subsequent adjudication.

E. The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 77-529(a)(1).

F. The Commission retains jurisdiction over the subject matter and parties for the purpose of issuing such further order, or orders, as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: 09/17/2019



Lynn M. Retz
Executive Director

CRM

CERTIFICATE OF SERVICE

20-DPAX-121-MIS

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 09/17/2019.

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/S/ DeeAnn Shupe

DeeAnn Shupe