

delivery and the building as a courtesy to the customers and the excavator. Such marking of privately owned underground facilities is not covered by KCP&L's contract with USIC; however, as a result of an informal agreement between KCP&L, Staff and USIC reached in 2010,⁴ USIC makes its best effort to mark private lines when it is already at a property marking KCP&L-owned lines.

2. Upon making contact with the privately-owned underground electric line, the excavator called Kansas One Call to report the contact, and in compliance with K.S.A. 66-1807, USIC responded to the call and returned to the Property to investigate the incident. USIC's investigation concluded that the contact occurred with a private line, not a KCP&L line.

3. As a result of the incident the Staff of the Commission ("Staff") issued a Probable Noncompliance ("PNC") to KCP&L alleging KCP&L was in violation of K.S.A. 66-1806 for failing to accurately mark the location of the electric line that was hit by the excavator. KCP&L responded by explaining that USIC had properly marked the KCP&L facilities at the Property and that the contact incident was not a violation of KUUDPA by KCP&L because the damage was to facilities owned by the customer.

4. As the Gradwohl Docket proceeded, Staff took the position that KCP&L was the "operator" of the privately-owned lines under KUUDPA because Staff believed KCP&L exercised functional control over the underground facilities and was in the best position to provide locate services. Staff argued that, as the operator, KCP&L had an obligation to accurately mark the lines which KCP&L failed to do, resulting in the contact incident. KCP&L disagreed that it was the operator under KUUDPA. KCP&L stated that, although it has been willing to voluntarily assist in marking privately-owned facilities when it has USIC at the

⁴ See **Attachment A**, which is a letter from KCP&L's counsel to Mr. Leo M. Haynos, dated October 25, 2010, in KCC Investigation #:6091.

location marking KCP&L-owned facilities, there is no legal obligation to do so under KUUDPA since KCP&L is not the “operator”. KCP&L explained that it has no maps, diagrams or control over the private facilities, and even when KCP&L gratuitously marks those facilities, the contractor still has the responsibility to work with the owner and take reasonable steps in the excavation process to make sure there is no contact with these private facilities.

5. Ultimately, the Commission found that there was insufficient evidence from Staff to support its assertion that the facilities had been inaccurately marked.⁵ As for the question of whether KCP&L was the “operator” under KUUDPA, the Commission decided to undertake a general investigation since the issue would likely impact other electric or gas utility companies and could have broader impact than what was apparent in the Gradwohl docket. The present generic docket was then opened for that purpose.

6. In the Commission’s 17-565 Order, certain questions were listed that the Commission requests the parties specifically address. They are identified as questions A through G, and will be discussed below in the order set out in the 17-565 Order.

II. COMMISSION QUESTIONS A. THROUGH G.

Question A. Regarding underground electric service lines, how should the Commission interpret the term “operator” at K.S.A. 66-1802(j)?

7. The Commission must interpret the term “operator” in accordance with the intent of the legislature. “The fundamental rule of statutory construction to which all other rules are subordinate is that the intent of the legislature governs if that intent can be ascertained. The legislature is presumed to have expressed its intent through the language of the statutory scheme

⁵ Final Order issued January 10, 2017, p. 7.

it enacted.”⁶ In determining the legislature’s intent, the Commission is to first look to the plain language of the statute. “When a statute is plain and unambiguous, we do not speculate as to the legislative intent behind it and will not read the statute to add something not readily found in it. We need not resort to statutory construction. It is only if the statute’s language or text is unclear or ambiguous that we move to the next analytical step, applying canons of construction or relying on legislative history construing the statute to effect the legislature’s intent.”⁷

8. The KUUDPA was first enacted in 1993 and includes K.S.A. 66-1801 through 66-1816. K.S.A. 66-1802(j) and (p) of the KUUDPA define “operator” and “tier 1 facility” respectively as

(j) “Operator” means any person who *owns or operates* an underground tier 1 or tier 2 facility, except for any person who is the owner of real property wherein is located underground facilities for the purpose of furnishing services or materials only to such person or occupants of such property. [Emphasis added]

(p) “Tier 1 facility” means an underground facility used for transporting, gathering, storing, conveying, transmitting or distributing gas, electricity, communications, crude oil, refined or reprocessed petroleum products or hazardous liquids.

This is the only definition of operator in the KUUDPA statute. It is clear that a utility is an operator of the underground facilities it owns; the ambiguity arises as to underground facilities owned by the customer. Staff has taken the position that the utility is the “operator” of such privately-owned facilities because the utility *operates* those facilities by transporting power over them and setting certain operational standards for public safety purposes that have an impact on those facilities.⁸

⁶ *Trees Oil Company v. State Corporation Commission, et al*, 279 Kan. 209, 228 (2005); *Double M Construction, Inc., v. State Corporation Commission*, 288 Kan. 268, 271-272 (2009).

⁷ *Double M Construction*, at 271-272, citing to *In re K.M.H.*, 285 Kan. 53, 79 (2007).

⁸ Commission Staff’s Post-Hearing Legal Brief filed October 5, 2016, p. 5; Commission Staff’s Brief on KUUDPA Responsibilities filed August 22, 2016, p. 6.

9. KUUDPA fails to provide the definition of “operator” beyond saying it is the person who “owns or operates” an underground system. It is clear what “owns” means - an entity holding legal title of the facilities falls under the definition - but it is not clear what “operates” means. The statute essentially uses the term being defined to define itself when it says “operator” is any person who “operates” an underground facility. This is obviously ambiguous and further statutory construction and analysis is necessary to determine the legislature’s intent.

(1) Rules of Statutory Construction:

a. *Legislative intention is to be determined from a general consideration of the entire act.*

10. How the term “operator” is referenced and used throughout KUUDPA must be considered in defining the term under K.S.A. 66-1802. As stated in *Kansas One-Call System, Inc. v. State of Kansas*, 294 Kan. 220, 233 (2012),

Under the general rules of statutory interpretation, “[v]arious provisions of an act *in pari materia* must be construed together in an effort to reconcile the provisions so as to make them consistent, harmonious and sensible.” [Emphasis added.] *Southwestern Bell Tel. Co. v. Beachner Constr. Co.*, 289 Kan. 1262, Syl. ¶4, 221 P.3d 588 (2009). “Additionally, legislative intent is to be determined from a general consideration of the entire act. An appellate court’s duty, as far as practicable, is to harmonize different statutory provisions to make them sensible.” *Dillon Real Estate Co. v. City of Topeka*, 284 Kan. 662, Syl.9, 163 P.3d 298 (2007).

11. A full reading of KUUDPA establishes that the term “operator” does not include a situation where the underground facilities are privately owned, and the utility company has no legal right to control such facilities similar to the control exercised by an owner (such as via a lease or management agreement). K.S.A. 66-1806(a) states,

(a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served

with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of *the underground facilities of the operator* in the area of the planned excavation by marking, flagging or other acceptable method. [Emphasis added.]

A utility's obligation to mark its underground facilities extends only to *the operator's* underground facilities. The facilities owned by a private party, and not leased or legally assigned to KCP&L in some manner, are not the "underground facilities of" KCP&L. It is not sensible to interpret the term "operator" under K.S.A. 66-1802(j) as broadly covering any facilities over which a utility's energy flows, when K.S.A. 66-1806 only requires the utility to be responsible for marking the subset of those facilities over which it actually has ownership rights. If an entity is not the operator of the line for purposes of marking the facilities under K.S.A. 66-1806, it is not the operator under the definition of that term in K.S.A. 66-1802.

12. Also, the definition of "operator" in K.S.A. 66-1802(j) contains an exclusion "for any person who is the owner of real property wherein is located underground facilities for the purpose of furnishing services or materials only to such person or occupants of such property." The legislature determined that the requirements of KUUDPA would not apply to private owners of underground facilities; however, the legislature did not transfer those obligations from the private owner to the utility, and the Commission cannot assume the authority to do that which the legislature clearly chose not to do. Administrative agencies such as the Commission, as creatures of statute, may only act within the scope of authority granted by their authorizing statutes.⁹

13. Additionally, K.S.A. 66-1810 requires an "operator" to immediately dispatch personnel to a location where contact with its underground facility occurs to provide necessary

⁹ *Kansas Industrial Consumers Group v. Kansas Corporation Commission*, 36 Kan.App.2d 83, 92 (2006) - "Administrative agencies such as the KCC are creatures of statute, and their power depends on the authorizing

temporary or permanent repair of the damage. If the utility is deemed to be the operator under KUUDPA of privately owned facilities, then this statute indicates the utility is responsible for repairing any damage to privately owned underground facilities regardless of the reason for the damage. If that were true, when an excavator fails to use reasonable care resulting in damage to a privately owned underground electrical line, the utility must use its personnel and resources to repair the damage. This would shift additional liability away from the excavator and owner to the utility and its customers, and make the utility responsible for repairing lines it does not own and did not damage – an unreasonable result. “The legislature is presumed to intend that a statute be given a reasonable construction, so as to avoid unreasonable or absurd results.”¹⁰

14. The term “operator” is not further defined in the Commission’s regulations, K.A.R. 82-14-1 through 82-14-6.¹¹ The regulations rely upon the definition above from the KUUDPA statute. K.A.R. 82-14-3(c) does require that each utility “file and maintain maps of *the operator’s underground facilities* or a map showing the operator’s service area with the notification center”. [Emphasis added.] KCP&L provides to the Kansas One Call notification center such service area maps indicating areas that contain KCP&L underground facilities, and the Company maintains and provides more detailed maps of its underground facilities to its locate contractor. KCP&L does not, however, provide maps of privately owned underground facilities to either the Kansas One Call center or to its locate contractor. KCP&L neither has nor maintains a database of the locations of such privately owned facilities, and has no authority to dictate where the lines will be located.

statutes; therefore, any exercise of authority claimed by an agency such as the KCC must come from the statute.” See also *Burdick v. Southwestern Bell Telephone Co.*, 9 Kan.App.2d 182, 186 (1984).

¹⁰ *Williams Natural Gas Co. v. State Corp. Com’n*, 22 Kan.App.2d 326, 333 (1996).

¹¹ Further, a regulation cannot expand the definition of the term beyond the scope of the legislative definition. “While a proper administrative regulation has the force and effect of law, if it goes beyond or conflicts with legislative authorization it is void.” *Amoco Production Co. v. Arnold*, 213 Kan. 636, 644 (1974)

15. If a public utility is considered the “operator” of privately-owned facilities, then K.A.R. 82-14-3(c) could require the utility to maintain maps and diagrams of all privately owned underground facilities up to the meter of each customer. As KCP&L neither owns or controls these underground facilities, such a definitional change would require changes to KCP&L’s tariffs to require customers with privately owned underground facilities to provide KCP&L with maps and diagrams of such private facilities and any changes to such facilities and KCP&L would need to develop and maintain a database or other storage system for these maps and diagrams as well as a process for ensuring all changes are recorded. At a minimum, it would be a massive undertaking that would take years to complete with little ability on the part of the Company to police or enforce. Expanding the definition of “operator” not only conflicts with the historical industry interpretation of operator under the statute, but also creates an expensive and impractical compliance requirement for utilities.

16. K.A.R. 82-14-3(f) further defines the responsibilities of a tier 1 facility operator to “[I]nform the excavator of the location of the tolerance zone of *the operator’s underground facilities* in the area described in the notice of intent to excavate”. “The operator’s underground facilities” can only mean the facilities the operator owns or has ownership rights to. The rules do not state that the utility (the tier 1 operator) must mark the location of privately owned underground facilities. Such a requirement would be inconsistent with the interpretation of the statute and rules that have been applied to date by utilities within the state. KCP&L’s locate contract with USIC provides only for marking KCP&L-owned facilities. The Company has no maps or diagrams of privately owned underground facilities to provide the locate contractor.

- b. *Words in common usage should be given their natural and ordinary meaning.*

17. In construing an ambiguity in a statute, “[w]ords in common usage should be given their natural and ordinary meaning.”¹² The term “operate” commonly means “to perform a function; exert power or influence”.¹³ There is an overriding element of control in this definition – something the utility does not have as regards facilities it does not own or for which it does not have some type of ownership rights. Certainly, KCP&L does not control the privately-owned facilities of its customers.

18. While an electric public utility may impose certain standards for the owner of a private underground line to follow to protect the public safety and the utility’s system, that does not rise to the level of exercising control or rights similar to ownership over those private facilities. KCP&L only has access to the customer’s privately-owned secondary conductors for purposes of maintaining metering integrity, restricting access to higher voltage primary equipment for safety reasons and for protecting other customers’ facilities from inadvertent damage. KCP&L personnel do not disconnect or energize customer owned secondary conductors unless instructed to do so by the customer or unless an emergent safety issue is identified or if it is necessary to disconnect the customer for non-payment. The rules safeguard the system and the public, but do not constitute KCP&L *controlling* the private facilities as an owner or operator would do. The customer continues to have control over how its private facilities are configured. Downstream of the point of delivery, the customer determines the path of the facilities and the use of the power because the power and the facilities used to carry it beyond that point belong to and are controlled by the customer. KCP&L does not control the design specifications for underground service lines.

¹² *Davis v. City of Leawood*, 257 Kan. 512, 517 (1995).

19. The rules in KCP&L’s tariffs impact the customer’s facilities only as necessary to ensure that the facilities of the customer, and the actions taken with those facilities by the customer, do not threaten the safety of KCP&L’s own facilities or its ability to provide power to other customers. Beyond those minimal restrictions, the customer has full functional control of where the line is located and whether a switch or disconnect is placed upon the line. Although the customer must coordinate with KCP&L if the customer wants to de-energize or re-energize his lines, doing so is for the purpose of ensuring the safety of KCP&L’s facilities as well as the customer’s. The customer still determines when those events are necessary and schedules with KCP&L when they are to occur.

c. *A word in a statute must be interpreted in the context of “the company it keeps” to avoid ascribing a meaning so broad that it is inconsistent with its accompanying words.*

20. KCP&L acknowledges that the statute uses the phrase “owner or operator”, and therefore, the term “operator” can encompass entities other than the actual legal owner of a facility. KCP&L submits that adding “or operates” to the statute was meant to include persons who have ownership rights and responsibilities for the facilities (perhaps through lease or management agreements) but are not actual owners of the facilities. The rules of statutory construction known as *noscitur a sociis* and *ejusdem generis* are applicable and support KCP&L’s interpretation.

21. Under the principle of *noscitur a sociis*, “a word is known by the company it keeps – to ‘avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress.’”¹⁴ “A word is

¹³ Merriam-Webster.com. Merriam-Webster, n.d. Web. 20 Sept. 2017.

¹⁴ *Yates v. U.S.*, 135 S.Ct. 1074, 1085 (2015).

given more precise content by the neighboring words with which it is associated”.¹⁵ In K.S.A. 66-1802(j), the word “operates” comes after and is joined in the phrase with the word “owns”, indicating that “operates” is intended to include situations related to or similar to ownership of the facilities, without requiring actual ownership by title.

22. The principle of *ejusdem generis* states: “Where general words follow specific words in a statutory enumeration, the general words are [usually] construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.”¹⁶ Again, the general and ambiguous term “operates” follows the specific term “owns”. The former must be read in the context of the latter. This doctrine of statutory construction supports KCP&L’s position that the term “operates” requires the person to possess some type of ownership rights to, or control of, the facilities.

23. As for the argument that the utility is somehow operating the private facilities by virtue of the fact that it delivers power using those facilities, this is not accurate. The utility delivers power to the point where the customer’s facilities interconnect with the utility’s system. KCP&L’s Commission-approved tariffs clearly state the line of demarcation between KCP&L’s owned and operated lines and the privately-owned lines that the customer must “furnish, install, own, operate and maintain”, is at the point of delivery, which is at the transformer. Thereafter, the power is owned by the customer and carried on the customer’s facilities. The customer may use the power at a location on its premises that is not immediately at the delivery point, and as such, the power travels over privately-owned facilities from the delivery point to the point of usage. That aspect of the arrangement belongs to – and is controlled by – the customer who

¹⁵ *Yates* at 1085, citing to *United States v. Williams*, 533 U.S. 285, 294; 128 S.Ct. 1830 (2008).

¹⁶ *Yates* at 1086.

owns the private facilities being used. Properly construed, the phrase “owns or operates” in the statute cannot be so broadly interpreted as to make the utility the operator of those private lines.

24. Transmitting power over the facilities owned by another entity does not grant to an electric public utility any ownership rights or responsibilities as regards those facilities. The Commission must recognize the difference between transmitting power over a line versus actually exercising the powers of ownership or legal control over such line. As an example, it is obvious that when KCP&L transmits its power over transmission lines owned by Westar and operated by SPP, KCP&L is not “operating” those transmission lines. The same analysis applies to the lines on private property owned by KCP&L’s customers.

25. KCP&L has been unable to find any legal authority defining “operator” to include an electric utility that transmits power over a line owned by another entity. Similarly, there is no legal authority that defines the word “operate” to include transmitting power over a line owned by another entity. In the Commission’s regulations for Natural Gas Pipeline Safety, Article 11, K.A.R. 82-11-1(v) defines “yard line” as “the buried, customer-owned, individually metered piping between the outlet of the meter and the outside wall of a residential premises.” K.S.A. 66-157a specifically places the responsibility for yard lines upon the utility – a provision not contained in Kansas statutes as to electric utility lines or companies. Additionally, in Article 3 of the Commission’s regulations for the Production and Conservation of Oil and Gas, K.A.R. 82-3-101(a)(48) defines “operator” as “a person who is responsible for the physical operation and control of a well, gas-gathering system, or underground natural gas storage facility.” This definition is consistent with KCP&L’s position that an entity needs to have rights and responsibilities that come from holding certain possessory interests in the property in order to be classified as an “operator”.

d. Penal statutes must be strictly construed.

26. Another rule of statutory construction states that “penal statutes should be strictly construed in favor of those subject to their application.”¹⁷ KUUDPA provides for penalties to be assessed against “operators” for violation of the Act.¹⁸ As such, it is a penal statute and ambiguous terms, such as “owns or operates” should be interpreted narrowly, in favor of those subject to their application. A broad interpretation that results in the Commission sweeping many entities under the definition of “operator” on facilities for which they have never been considered responsible in the past, and who reasonably read the KUUDPA statutes as not including them for this purpose, violates this rule of statutory construction.

e. Statutes should be construed in a manner that avoids unreasonable results.

27. When interpreting a law, “statutes should be construed to avoid unreasonable results, and a court will presume that the legislature does not intend to enact useless or meaningless legislation.”¹⁹ Interpreting KUUDPA in a way that holds an entity legally responsible for assets over which it does not possess a legal right to control is an unreasonable result.

(2) KCP&L’s Interpretation of the Term “Operator” Under the Statute is Supported by Other Sources.

28. The “Excavator’s Manual” available through the Commission’s website reflects the well-established manner in which situations involving privately-owned underground facilities are addressed. It makes clear that the owner of the underground facility (which includes an

¹⁷ *McCabe V. Duran*, 39 Kan.App.2d 450, 453 (2008).

¹⁸ *Double M Constr., Inc. v. State Corp. Com’n*, 288 Kan. 268, 272 (2009).

¹⁹ Staff Reply, p. 4, ¶10, citing to *Southwestern Bell Tel. Co. v. Beachner Constr. Co.*, 289 Kan. 1262, 1269 (2009).

entity with the legal rights of an owner, such as one who leases the facilities) is the party responsible for marking the facilities.²⁰ Section V states in bold,

Note: In some cases, the underground facilities belong to the owner of the property rather than to the utility. For example, the utility may own the pipe/conductor up to a meter at the edge of the property. The pipe/conductor from the meter to the house or out-buildings may belong to the home/property owner. Some members may locate these lines on the property even though they are owned by the home/property owner, while other members will not locate lines they do not own.

Section VI of the Excavator's Manual, entitled *Responsibilities of the Facility Owner*, emphasizes the limited responsibility of the utility by stating, "Please be aware that facility members are required to locate **only** those facilities which they own or operate." [Emphasis in original; citing to the definition of "operator" in KSA 66-1802.] In Section VII of the Manual entitled *Responsibilities of the Excavator* it states, "Each facility member is responsible for ensuring that **their facility** is properly marked." [Emphasis added.] The Excavator's Manual reflects the established understanding in the industry that the term "operator" does not include an entity that does not own or have ownership rights to the facilities at issue.

29. Consistent with the differentiation between utility-owned underground lines subject to KUUDPA and privately-owned lines, the Kansas One Call notification center email response to the excavator/homeowner after they file a locate ticket includes the following information: *The notified facility/utility operators will not mark privately owned underground lines. These include, but are not limited to, power or electric services, water and sewer pipes from the meter to buildings, invisible fencing, sprinkler systems, well and septic systems, etc.*

²⁰ See Section II, page 2, *Determining Who and When to Call* which states, "Kansas One-Call is the communications link **between the excavator and the underground facility owner(s)** in the state of Kansas. ... Underground facility markings and flagging are the responsibility of **the facility owner**." [Emphasis added.] A copy of the Excavator's Manual is attached hereto as **Attachment B**.

Some utility companies will locate private utility lines if requested. Please contact the property owner or local utility company directly for details. This information is also read back on the Interactive Voice Response (IVR) system that excavators/homeowners are transferred to if they call in their locate ticket by phone. Additionally, as set out above, the Excavator's Manual available on the Kansas One Call website informs excavators that some underground facilities belong to the owner of the property rather than to the utility, and the utility may or may not locate those lines. In addition, the promotional materials put out by Kansas One Call clearly state,

Please Note: The notified facility/utility owners **will not** mark privately owned underground lines. These include but are not limited to; power or electric service, water and sewer pipes from the meter to your home, invisible fencing, sprinkler systems, well and septic systems, etc.

Some utility companies will locate private utility lines if requested. Check with your local utility companies for details.²¹ [Emphasis as shown in materials.]

These other sources of information on the KUUDPA and how it has been implemented and enforced are consistent with KCP&L's position and interpretation of the utility companies' responsibilities under the KUUDPA as regards underground facilities not owned by the utility company.

30. Interpreting KUUDPA in a way that makes a utility the "operator" of privately-owned facilities up to the metering point of the premise rather than at the point of delivery when the meter is further downstream than the point of delivery, would result in different responsibilities for a utility depending upon the utility's design of service to commercial properties. The meter may be placed at the point of delivery on a commercial property - that is at

See also Section III, p.4, *Types of Calls Handled by Kansas One-Call* that reads, "[I]n this case, advance notice is being given to underground *facility owners* of planned excavation." [Emphasis added.]

²¹ *See* Kansas One Call brochure attached as **Attachment C**.

the transformer - or it may be placed at the building itself. KCP&L typically chooses to design service with the meter at the building rather than at the transformer. Some electric utilities in the state often install the meter for commercial properties at the transformer. If a utility is the “operator” of privately-owned facilities between the point of delivery and the metering point, KCP&L would be treated differently, and KUUDPA would be applied differently, to utilities in the state simply based on service design. Some utilities would be responsible under KUUDPA for privately-owned electric lines and other companies would not. This is discriminatory, and there is no evidence that such discrimination is reasonable or justified.

Question B. Should the utility service provider be required to provide locates for residential underground electric service up to the location of the customer meter or the building wall of the residence, whichever is further downstream?

- a. What is the risk to the customer of not providing locates under this scenario?**
- b. What is the risk/cost to the utility of being required to provide locates under this scenario?**

31. For most residential service, KCP&L owns the underground facilities to the meter, which is most often located at the building wall of the residence. As the owner, KCP&L is obligated to locate those underground facilities under KUUDPA. Where the residential customer has established a configuration at his property that results in some underground facilities being downstream of the meter – for example, the customer runs an underground line from his house to his barn – the customer is responsible for locating those private facilities. KCP&L assumes this question is attempting to address the latter situation where there are privately-owned underground facilities, even though they may be downstream of the meter and the building wall of the residence because of the nature of the location.

32. First, in answering this question, it is necessary to remember that the Commission, as an administrative agency, lacks the authority to expand the definition of the term “operator” beyond the scope of the definition established by the legislature.²² KUUDPA sets the legal obligations of the operator of underground facilities, and if an entity is not the operator, it does not have those legal obligations. If the Commission were to impose the owner/operator’s legal obligations on non-operators, it would conflict with the statutory scheme adopted by the legislature under KUUDPA.²³ The legislature could have stated in the statute that the public utility was responsible for marking all facilities, including privately-owned facilities, but it did not adopt such a sweeping application in the language of KUUDPA. If the Commission now orders such an expansion, it would directly conflict with the legislature’s determination that only the entities that own or operate the facilities are to be held statutorily responsible for locating those facilities.

33. Even if the Commission had the authority to revise the terms and application of KUUDPA by expanding its owner/operator obligations to non-operators, it is not in the public interest to do so. The legislative intent of KUUDPA is to protect facilities, excavators, and the public in general from damage and injury caused by underground excavation, but public safety is not enhanced by transferring liability for damages from excavators and the owners of private facilities to the customers of the electric public utilities.

34. KUUDPA requires utilities to mark their underground facilities so that excavators can safely dig in the affected area. It does not improve public safety to make the utility

²² “While a proper administrative regulation has the force and effect of law, if it goes beyond or conflicts with legislative authorization it is void.” *Amoco Production Co. v. Arnold*, 213 Kan. 636, 644 (1974)

²³ *Ruddick v. Boeing Co.*, 263 Kan. 494, 498 (1997) – “Administrative rules and regulations, to be valid, must be appropriate, reasonable, and not inconsistent with the law.”; *Hutchinson Human Relations Commission v. Midland Credit Management, Inc.*, 213 Kan. 308, 314 (1973) – “Generally speaking, a municipal regulation which simply adds to or complements state law may not be said to create a conflict therewith **unless the statute has limited the requirements to its own prescription**.” (Emphasis added.)

responsible for marking facilities owned by others for which the utility has no maps or diagrams, and over which it has no control or responsibility in terms of ownership, location, maintenance, operation or repair. While an owner might have maps or other information showing where its private facilities are located, the utility does not. And it does not improve the situation by making the utility simply file a map showing its service area, as dictated under K.A.R 82-14-3(c). Making the public utility responsible for marking privately-owned facilities serves to shift liability for inaccurate locates and damages caused thereby from the owner of private facilities to all of a utility company's customers; it does not equate to heightened public safety.

35. While a utility company may have more experience with the general locating process than a customer, it does not necessarily follow that the utility has more knowledge regarding the underground facilities at a location than the owner of the property at the location. The owner is more likely to be in possession of any maps or diagrams that may exist showing the actual location of the underground facilities. Additionally, the primary relationship for the excavation project is between the owner and the excavator. The owner's personal contacts are with the excavator hired to perform the work, and the excavator is fully aware (or should be) that underground lines must be marked in an area before digging commences. The excavator is in the best position to learn from the owner about any information the owner has regarding the location of any underground facilities. Further, the customer can use companies like USIC to perform the locating services on the privately-owned underground facilities, just as KCP&L has done in contracting with USIC for this service.

36. Public safety is better served by leaving the responsibility to locate privately-owned underground lines with the owner and excavator, both of whom are in the best position to ensure accurate markings are done. KUUDPA recognizes this by making the excavator

responsible for ascertaining the location of all underground facilities in the proposed area of the excavation (K.S.A. 66-1803), and for exercising reasonable care as may be necessary for the protection of any underground facility in and near the construction area when working in close proximity to any such underground facility (K.S.A. 66-1809). This duty goes beyond simply contacting Kansas One Call prior to excavating.

37. There is no risk to the customer of not requiring the utility to provide locates downstream of the point of demarcation as long as the excavator and the customer comply with the provisions of KUUDPA that place certain responsibilities on them. KUUDPA places responsibilities upon an excavator to exercise reasonable care for the protection of underground facilities when working in close proximity to such facilities.²⁴ This duty goes beyond simply calling the Notification Center before excavating. Where private lines are involved, the excavator needs to work with the property owner to identify the location of private facilities so as to meet its duty. As the Kansas Supreme Court explained in *Double M Construction, Inc.*, an excavator has a duty under KUUDPA to make sure his activities avoid underground facilities. “It appears sensible that the party actually undertaking the risk of excavation would be the party that must ascertain that no harm would result from the excavation.”²⁵ KUUDPA places responsibility on the excavator who will often be best situated to work with the property owner to locate the property owner’s private underground facilities.

38. Customers must also meet their obligations under KUUDPA and other Kansas law. They are the property owners of the underground facilities at issue and have an intrinsic and personal motivation to take action to protect their own property. The legislature did not exempt *all* private owners of facilities from KUUDPA. KUUDPA still covers property owners

²⁴ K.S.A. 66-1809.

²⁵ *Double M Construction*, at 275.

whose privately-owned facilities serve more than just themselves or their occupants. In other words, the legislature did not find that private property owners were incapable of ensuring that underground facilities are properly marked prior to excavation activity; it only found that the statutory duty should not apply to entirely private facilities. While the legislature intended for *someone* to locate private underground service lines, it did not place the responsibility on the public utilities. If that had been the intent, it certainly could have stated so in the language of the statute; but by not placing the responsibility upon the public utility, it did not leave a gap in protection. Private property owners have a personal interest in protecting their property from damage, even absent a statutory mandate to do so. Private owners may have access to the maps and diagrams of the electrical facilities installed, owned, operated and maintained by them, and they can provide those maps to the locate company at the time of service. As such, the private owner is actually in a better position to assure accurate locates of the facilities they own than is the utility. Companies that provide locating services, such as USIC, are available to excavators and property owners for hire to mark privately owned lines just as they are available to public utility companies like KCP&L.

39. As for the risk/cost to the utility if it is required to provide locates for privately-owned facilities, they could be substantial. Legally imposing the obligation on the utility to locate the lines means the utility will have to take some level of action to obtain whatever information might exist regarding the facilities and their configuration. To do this, the utility would have to rely on customers to provide updates whenever changes are made and require the creation of an electronic system so they can be used by the locator. It is unclear what recourse the utility would have if a customer does not provide a facility map. Gathering relevant information and creating a database would require a multi-year, massive undertaking with little

likelihood of ever achieving an effective, up-to-date, complete and accurate repository of customer maps.

40. There are other potentially costly consequences to requiring the utility be responsible for locating privately-owned underground facilities based upon the reasoning that the utility exercises control over energy in a private underground service line. A Commission decision that finds the utility to be the responsible party for private lines or the de-facto owner of electricity after it passes the tariff prescribed point of delivery exposes all Kansas electric utilities to civil litigation and damages from electricity-related accidents that do not involve the utilities' facilities. Additionally, it can increase customer confusion over who is responsible for general maintenance and replacement of these facilities, since it would be the customer for all purposes except for situations arising under KUUDPA.

Question C. For commercial customers, should the utility service provider be required to provide locates up to the building wall, the current transformer cabinet, or the customer meter, whichever is further downstream?

- a. What is the risk to the customer of not providing locates under this scenario?**
- b. What is the risk/cost to the utility of being required to provide locates under this scenario?**

41. Pursuant to KCP&L's tariffs, KCP&L's service arrangements with commercial customers usually entails KCP&L owning the underground facilities to the transformer (the point of delivery or demarcation), and the customer owning the facilities downstream of the transformer. KCP&L is not the owner or operator of those customer-owned facilities and, therefore, is not responsible under KUUDPA for locating those lines. As regards the Commission's question of whether KCP&L should be held responsible for marking those customer-owned lines even though KCP&L is not the owner or operator, KCP&L's comments

provided above under Question B are also applicable to this question. There are some additional factors to consider when the situation involves a commercial customer as opposed to a residential customer.

42. KCP&L has almost 30,000 existing Commercial and Industrial customers. If damage from contact occurs to a privately-owned underground facility, KCP&L does not have easements allowing it to go onto the customers' premises to repair or replace a damaged line. Obtaining such easements, or going onto the property without easements, exposes the utility to potential liability unprotected by KUUDPA. .

Question D. If it is required to locate customer-owned facilities, should the utility service provider only be required to locate those facilities to the boundaries of the common utility easement?

43. This question assumes the Commission can require a utility company that is not the "operator" of the facilities in question under KUUDPA to locate those facilities pursuant to KUUDPA; a premise with which KCP&L does not agree.²⁶ With that reservation stated, KCP&L will respond to the question.

44. Staff's survey of the practices in other states indicates that in Michigan, the utility is required to locate the customer's facilities but only to the edge of the utility easement.²⁷ Since the easement will likely not extend to the wall of the building, there is still a segment of underground conduit that will not be the responsibility of the utility to locate. Although Staff does not explain the underlying reason for the Michigan arrangement, it appears to be rooted in the fact that the utility does not have the legal right to go onto the property outside of its easement. The situation is similar in Kansas, as the utility would be trespassing if it were to go onto the property outside of its easement to perform the locates. It is not reasonable for the

²⁶ See comments under Question B.

Commission to impose a rule upon the utility that would result in the utility violating the property laws of Kansas.

45. Furthermore, this requirement is not practicable. It is very likely that the locator - USIC for KCP&L and other utility companies - will not know where each utility's easement ends.

46. Finally, this approach would increase confusion but public safety. If the utility is going to mark private lines, it is safer for them to mark all such lines and not just a segment of the private lines. As KCP&L has explained, it has been voluntarily marking the private lines of commercial customers under its gentlemen's agreement with Staff and that arrangement has worked well, as evidenced by the very minimal number of incidents under KUUDPA since the agreement was reached in 2010.

Question E. What is the liability of an operator in providing locate for customers installed-owned facilities?

47. Liability for damages caused by the inaccurate marking of an underground utility facility is based on negligence law. If an underground facility is marked incorrectly and damages ensue, the entity that did the locating is exposed to liability under the laws of negligence for those damages. The basic elements of negligence in Kansas that a plaintiff must prove in a civil action are: (1) a duty owed to the plaintiff, (2) breach of that duty, (3) causation between the breach of duty and the injury to the plaintiff, and (4) damages suffered by the plaintiff.²⁷ To establish the first two elements, a plaintiff must show that the defendant did not use "reasonable care" in doing an act; "reasonable care" being that which a reasonable person

²⁷ Staff Report and Recommendation dated May 24, 2017 ("Staff R&R"), page 4, attached to the Commission's *Order Opening General Investigation* issued July 27, 2017.

²⁸ *Shirley v. Glass*, 297 Kan. 888, 894 (2013).

would employ under the circumstances of a situation.²⁹ A plaintiff can rely upon a statutory obligation and breach thereof to establish that a defendant owed a duty and breached that duty.³⁰

48. If an entity is not the “operator” under KUUDPA, and thus had no statutory obligation to locate the lines, its actions are judged under a standard negligence analysis which requires a plaintiff to prove the existence of a duty and the breach of that duty. However, if the entity is the legal “operator” under KUUDPA, then a plaintiff can rely upon KUUDPA to prove these elements of a negligence claim. To further assist a plaintiff in a civil action, K.S.A. 66-1811 declares there to be a rebuttal presumption of negligence on the part of any entity who violates a provision of KUUDPA. In other words, being deemed the “operator” could expose the utility to a greater risk of liability than if the utility simply locates the lines on a gratuitous basis, as KCP&L has been doing for a number of years now.

Question F. If an operator is not required to provide locates of customer installed/owned facilities, should the operator be required to alert the customer to the fact that locating customer-owned facilities is the customer’s obligation?

49. If an entity is an “operator” under KUUDPA for purposes of the facilities in question, then it has the obligation to locate the facilities. KCP&L assumes this question is asking about a situation where the public utility is not the operator and does not gratuitously locate the lines for the customer when it marks its own facilities in response to a One-Call ticket.

50. There is nothing preventing a utility from notifying a property owner of the extent of the utility’s markings. However, the customer has already received this notice as a result of the One-Call process. As explained above, One-Call informs the customers that private lines may not be located by the utility and will be the responsibility of the customer to locate. If this

²⁹ *Id.*, at 898-899.

³⁰ *Id.*, at 901 – “[The plaintiff] may invoke statutory obligations in order to advance her arguments that the defendants owed her a duty of care and breached that duty.”

notice goes directly to the excavator, the excavator is responsible for communicating it to the property owner with whom the excavator is contracting.

Question G. What are the best practices that may be employed by an excavator to avoid damaging customer-owned facilities when no locate marks are present or the provided locate marks are of questionable accuracy?

51. In addition to the comments already provided above regarding the excavator's responsibilities, KCP&L points out that an excavator should be able to recognize a situation where the utility has not located lines all the way to the customer's building. An experienced excavator will become familiar with the practices of each utility. But even more important, a view of the property will reveal that the utility's markings terminate near the transformer and do not continue between the transformer and the building when there must be such lines because the building is receiving power. An excavator has a legal obligation to engage in a visual review of the location before digging, and must take responsibility for making sure all underground lines have been located before beginning the excavation work.

52. Staff states that on the part of the excavator, "the minimum KUUDPA obligations are to notify the facility operator of the planned excavation and to dig with care around the marked facilities."³¹ Digging with care means the excavator must take certain precautionary actions, which include pot-holing in situations where there is a question about the existence or location of underground facilities in the area the excavator is planning to dig.³² As stated earlier, the excavator's standard of care under KUUDPA go beyond just notifying Kansas One Call prior to excavating.

³¹ Staff R&R, page 6.

³² K.A.R. 82-14-1(n).

III. CLOSING

53. KCP&L appreciates the opportunity to provide these comments in the context of a generic proceeding, as the Commission's decisions on the questions at issue could have a serious impact on the operations of all electric utility companies in Kansas, as well as on the operations of the Kansas One-Call Center and those it serves. While it is always appropriate to remain vigilant in areas of public safety, the operation of the One-Call Center and the administration of KUUDPA by the Commission has been effective and efficient. Making major changes in how it is interpreted and applied, with the inevitable unforeseen and unintended consequences of such changes, is not necessary and will not serve the public interest.

Respectfully submitted,

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**COUNSEL FOR
KANSAS CITY POWER & LIGHT COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that foregoing *Initial Comments of Kansas City Power & Light Company* was electronically served on all parties of record on this 12th day of October, 2017.

/s/ Terri Pemberton

Terri Pemberton

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October 25, 2010

Mr. Leo M. Haynos
Chief of Pipeline Safety
Kansas Corporation Commission
1500 SW Arrowhead Drive
Topeka, Kansas 66604

Re: KCC Investigation #: 6091
Kansas City Power & Light Company ("KCP&L")

Dear Mr. Haynos:

This correspondence is in response to your letter dated September 22, 2010, regarding KCC Investigation #6091.

On September 15, 2010, KCP&L responded to your initial inquiry with a written explanation of events concerning an incident at Antioch Road and College Boulevard in Overland Park, Kansas, occurring on or about June 22, 2010. KCP&L concluded that it had complied with the provisions of K.S.A. 66-1806(a) by the manner in which it had located facilities under Kansas One Call ticket number 101793352. KCP&L had taken the appropriate steps to locate the 3-phase line, but for some reason, the line that was damaged had been separated from the other two. This is a highly unusual situation. The damage occurred on a section of the line between the meter and KCP&L's source, and as such, the damaged section was part of the facilities owned by the customer.

In your September 22, 2010 letter, you indicated that Staff believed KCP&L was obligated under the Kansas Underground Utility Damage Prevention Act ("KUUDPA") to provide locates for this type of facility configuration since KCP&L owns the electricity being conducted by the facilities, even though the actual facilities are owned by the customer. You asked KCP&L to respond to Staff's position.

On October 21, 2010, representatives of KCP&L participated in a conference call with you and other members of the KCC Staff. During that call, the parties discussed the

difficulties of accurately identifying the location of facilities that are not owned by the utility. KCP&L does not create or maintain diagrams of the service lines from the source to the meter which are not owned by the utility. Although KCP&L does not believe it is liable for the damage that occurred at this location, KCP&L has historically attempted to mark such facilities as part of its normal practice, even if they are owned by the customer. KCP&L stated to Staff that it would continue this practice in the future.

It is my understanding that KCP&L's representation regarding KCP&L's policy of marking such facilities addresses Staff's concern, and that this written memorialization of our agreement is sufficient to bring your investigation in this case, and the investigation in case #6105, to a close. As such, I will assume that there is nothing further you need from KCP&L on either of these matters. If I am in error, please contact me.

Sincerely,

Glenda Cafer
Counsel for KCP&L

cc: Denise Buffington, KCP&L

EXCAVATOR'S *Manual*



ATTACHMENT B



All Locate Requests
24 Hours a day, 365 days a year
www.kansasonecall.com

Wichita:
316.687.2470

Nationwide:
811

Statewide:
800.dig.safe • 800.344.7233

Disclaimer

This manual is designed to serve as a guide to assist excavators with the process of placing an excavation notice and safe excavation practices. It does not, in any way, take the place of the Kansas Underground Utility Damage Prevention Act (KUUDPA) the state statute, or any regulations developed by the Kansas Corporation Commission (KCC). Kansas One-Call has made every attempt to ensure that all information in this booklet is both accurate and true. However, none of the information contained in this booklet should be used for litigation purposes whatsoever.

**All information in this booklet is subject
to change without notice.**

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Political Party	Percentage
Democratic	85
Republican	15

11.

2

III.

TYPES OF CALLS HANDLED BY KANSAS ONE-CALL

Kansas One-Call accepts and processes three types of calls:

- Excavation or Demolition
- Design and Survey Requests for Planning Purposes
- Emergency Locate Requests

Excavation or Demolition Calls

Excavation calls are the most common. In this case, advance notice is being given to underground facility owners of planned excavation. State law requires that notice be given at least two full working days, but not more than 15 calendar days in advance of the beginning of the work.

Design/Survey Requests

A second type of call processed by Kansas One-Call is the design/survey request. In this case, excavation in the immediate future is not intended. Rather, a construction project is in the planning stage and information on the location of existing facilities is being sought. Kansas One-Call operators will process a planning notice generally the same way they would an excavation notice.

Emergency Requests

An **emergency** locate request is defined as an underground locate request where excavation or demolition must begin prior to the standard two full working days. Under state law, an emergency exists only when one or more of the following conditions are met:

- The unforeseen excavation which, if not performed, could threaten life or health.
- The excavation is required to repair or restore service.
- Excavation is required prior to the two working days in order to prevent property damage.
- An unstable condition exists which may result in any of the conditions listed above (for example, a leak in any service or main, or a fault in a primary or secondary wire or cable). When requesting an emergency request, inform the operator that an emergency situation exists and be prepared to explain which of the above conditions is in effect. The operator will prepare the request for immediate transmission and will issue a start date equal to the time the excavation is scheduled to begin.

Do Not declare an emergency request for any of the following:

- Installation of new utility service.
- Installation of a fence or deck.
- Planting of trees and/or landscaping.

- Installation of a sprinkler system.
- Road construction.
- Any other excavation that can wait for two working days.

IV.

PREPARING LOCATE REQUESTS

Kansas One-Call operators are professionally trained to obtain specific information concerning locate requests. The operators enter information into a computer terminal and, therefore, the order of the questions is preset. There is a definite reason for each question asked. Locate request processing is easy, if the caller is "prepared" to answer all questions. Preparation is the key. The best way to prepare a call is to use the following form to make sure all information is ready and available, before placing the call.

Location Request Form

Ticket No. _____

Please fill in the form below and be prepared before you call us. It could save you time, money, and protect you from personal injury, property damage, and costly downtime.

Your ID# _____ Date: ____/____/____ Time: ____:____ AM-PM

Your Company Phone: _____ Person Calling: _____

Your Company Address: _____

Fax#: _____ Email Address: _____

Alternate Phone: _____ Alternate Person: _____

Assigned Start Date: ____/____/____ Time: ____:____ AM-PM

Duration: ____ Days Boring or Trenchless Excavation Yes or No?

Explosives Yes or No? Type of Work: _____

Work Being Done For: _____

County: _____ City: _____

Township: _____ Range: _____ Sect-Qtr: _____

Location: Latitude _____ Longitude _____

On what street, how far and what direction from nearest cross street, on what side of street? Or street address: _____

Following is a brief explanation of each question asked by Kansas One-Call center operators.

Caller Identification. Both state law and One-Call policies require the Center to determine the identification of the person calling in a locate request. Mailing address information is obtained so we can use the list to mail information from time to time. In order to speed the process of taking locate requests in the future, a caller identification number (not a billing account) is established for each caller.

The easiest way to bring up your caller information (if you have called in the past) is by giving the operator your caller ID number. If you do not have that information, the operator can find your information by your phone number. If an account has already been established, all of the information under “Caller ID” is supplied by the computer database. If you are calling the One-Call Center for the first time, the information will be obtained and an ID number will be assigned, so these questions do not have to be asked each time you call. Make a note of the caller ID number given by the operator in order to speed the processing of future locate requests.

- **Type of Request.** Kansas One-Call operators will not specifically ask what type of call is being placed. This generally becomes clear from the caller’s opening remarks. Your locate request will be coded into one of the following categories:
- **First Request.** This is the first time you have called to have underground lines located for this particular excavation or demolition job. Most requests fall into this category.
- **Design/Survey Request.** As explained earlier, this is a request for the location of underground lines at a site where work will be performed in the future. The location of lines is needed now for planning purposes.
- **Emergency.** The definition of emergencies was discussed in Section III.
- **Major Project.** A major project is one which will continue for a significant distance or length of time. The operator will get general information about the work to be done and the general location of the work in order to determine which members might have facilities along the path of the work. (**Note:** This category should rarely be used as most projects can be broken into smaller identifiable pieces which can be easily described).
- **Non-Response Request.** If a member has not responded to an earlier request, a second request for marking can be taken for the member(s) who did not respond. In these cases, the operator will ask for the ticket number assigned to the earlier request. If you do not remember or have lost the earlier ticket number, the operator will file another new request but it will take longer, another two working days. So, it is very important that you record the ticket number for every call you place with the call center.

- **Change of Information.** Should you discover that some information provided in an earlier request was incorrect (e.g. you gave the operator N. Maple and it should be S. Maple), or there is a change in marking instructions, it is imperative that you contact the One-Call center with the ticket number assigned to the earlier request and allow the utilities another two full working days notice.
- **Cancel Request.** Should something happen and your excavation/ demolition project is not going forward at this time, the locate request should be cancelled so members do not waste time locating underground lines unnecessarily.
- **Update.** If your work has not been completed within 15 calendar days from the start date of the prior request, you may re-validate the locate request. The operator will ask for the ticket number of the earlier request. Also, you must allow the facility owners another two full working days notice.
- **Relocate.** A request to have the lines remarked.
- **Work Date and Time.** When do you plan to begin work? The state law requires that advance notice be given at least two full working days, but not more than 15 calendar days, before the work begins. The operator will tell you when the two full working days will be up. If you request the lines be located in less than two full working days, the operator will take the locate information and it will be transmitted to the members in the area. Members will make every effort to locate their lines before you begin your work. However, you should be aware that the state law gives utilities two full working days to locate their underground lines. This information will be passed onto the Kansas Corporation Commission for possible action. Any damage done within these two full working days could lead to serious consequences.
- **Use of Explosives?** Will any type of explosives be used in the proposed excavation or job?
- **Duration?** How long will the excavation take?
- **Type of Work Being Done.** Field locators need to know the extent of the job. Operators, therefore, need to identify the specific reason for the work, not just the work method. For example, “installation of a sanitary sewer lateral” is much more helpful than “digging for a sewer line.”
- **Work Being Done For.** The identification of who the work is being performed for is another resource for obtaining additional information about the project. The customer’s name or the general contractor’s name is sufficient.
- **Trenchless Excavation.** Is any excavation performed in a manner that does not allow the excavator to visually observe the placement of the new facility. This term shall include underground boring, tunneling, horizontal augering, directional drilling, plowing, and geo-probing.

- **Work Location.** One-Call operators must get specific information concerning the location, within 300 ft. of the work to be done in order to determine which members are to be notified. The member utilities must be able to find the excavation site in order to locate their underground lines.
- **County.** Kansas One-Call takes locate requests in all 105 of the state's counties. In which county will the work be done?
- **City or Town.** If the work is to be done in a city, town or community, tell the operator. If the location is in a rural area, provide the closest city or town to the excavation site.
- **Address.** If the work site is in a city, town or community, the operator will ask for the specific street address of the location. Keep in mind that some streets are known only by their general name (Main) when in fact it is divided into N. Main and S. Main. Also keep in mind that there may be a Maple Street and a Maple Lane. A specific address shall be provided whenever possible. If a street address is not available, operators will ask for the following information:

- a) What is the name of the street;
- b) What side (N,S,E,W) of that street;
- c) Name of an intersecting street; and
- d) How far and in what direction is the site from the intersection.

The following are examples of the proper information when identifying the location of the job site:

- a) 1973 Industrial Blvd.
- b) On the east side of 19th Street, approximately 1/2 block north of Main Street.

Because different members might need to be notified for different locations, Kansas One-Call policies require that a separate locate request be filed for each job site. In other words, the installation of 15 sewer laterals will result in the filing of 15 separate locate requests. Large projects can be covered by one request provided the work is one continuous job and can be properly described on a single request form and is estimated to be completed within fifteen calendar days.

Rural Areas: In all areas, member service areas are determined by the geographic location (**within 300 feet**) of the job site. The processing of your request will be faster and more accurate if you can supply the latitude and Longitude or township, range, section and quarter-section of the site (legals). Since a section covers one square mile in area, the operator still needs to know the location of the site within the section. In this case, the following locations would be adequate:

- On North side of County Road #171, 200 ft. west of the intersection with County Road #93
- From the north city limits of Smithtown, take Highway #123 north 3 miles, turn east on county road #47, go 6 miles, then north on county road #85 for 1 mile. Job site is across from Friendship Baptist Church.

Another method to identify the work location is by **Latitude and Longitude**. With a GPS receiver, identify the degrees, minutes and seconds or the degrees in decimal form of your job site. The Kansas One-Call operator will also ask you which map projection your GPS unit is set to; NAD 27 or NAD 83. The Kansas One-Call operator will still require driving directions from the nearest town even if you know the lat/long or the legal's so the locator can arrive at defined location and mark your excavation area. The following is an example using a GPS receiver:

- I need to file a locate request using Latitude and Longitude. The Latitude is 35 degrees, 47 minutes and 53 seconds. The Longitude is 95 degrees, 22 minutes and 05 seconds. From the north city limits of Smithtown, take Highway #123 north 3 miles, turn east on county road #47, go 6 miles, then north on county road #85 for 1 mile. Job site is across from Friendship Baptist Church on the northwest corner of the intersection. I need the area marked in a 500 foot radius of the white flag or stake.

Marking Instructions. After identifying the location of the job site, Kansas One-Call operators will identify what portion of the job site is to be marked out. In identifying this area, the following guidelines should be considered:

- Right and left should **not** be used as directions since they are relative points of view.
- If the excavation is in a roadway, marking instructions could include:
 - a) Mark curb to curb.
 - b) Mark from lot line to lot line in the road right-of-way.
 - c) Mark from the center line of road to N,S,E,W lot line or curb.
- Kansas One-Call operators try not to use "mark the entire lot". Many lots are very large and are, therefore, difficult to mark. If possible, try to list the specific area to be marked.

The following are examples:

- a) Mark the west 20 feet of the lot.
- b) Mark from the front of the house to the curb.
- c) Mark the NW corner of the lot.
- d) Mark the area from the house north approximately 100 feet to the barn.
- e) Mark a 20 foot radius around the perimeter of the house.

- In all cases, Kansas One-Call is looking for a description of the area to be marked. Operators will **not** accept instructions to mark a particular facility (e.g., “mark the gas line at this address”).
- If the information seems incomplete, the operator will note that the information obtained is the best available. The locate request will be transmitted to members who may need additional information before locating their facilities.

Meet on Site - This type of request may be filed indicating that you wish to meet with the locator to define the excavation in more detail. This is considered a **special request** and allows the utilities **four working days** to mark the area. You will not be given a start date & time from the Kansas One-Call Operator. Please review the full Meet On Site language in the Kansas Administrative Regulations. (Section XII)

“DEFINITIONS”

- A. Center Lane(s) - In a four lane street, the two lanes at the center of the pavement.
- B. Cul de Sac Street - A local street open at one end with a special provision for turning around.
- C. Culvert - Any pipe or structure under a roadway/driveway to facilitate drainage of surface water.
- D. Curb Lane(s) - Traffic or parking lane immediately adjacent to the curb.
- E. Curb to Curb - The paved area of a road right-of-way between the two curblines.
- F. Curb to Property Line - The area between the curb and the front property line including terrace and/or sidewalk.
- G. Curblines - The point where the curb meets the edge of the street pavement.
- H. Easement - A right to use or control the property of another for designated purposes.
- I. Frontage Road - A local street or road auxiliary to and located on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.
- J. Front Lot Line - (Same as street right-of-way line) The property line adjacent to the street right-of-way.
- K. Highway - A public way for purpose of vehicular travel, including the entire area within the highway right-of-way.

- L. Intersection - The general area where two or more highways join or cross, within which are included the roadway and roadside facilities for traffic movements in that area.
- M. Interchange - A system of interconnecting roadways in conjunction with one or more grade separations providing for the movement of traffic between two or more roadways on different levels.
- N. Long Side - Indicates excavations on both sides of the pavement with probable bore of pavement.
- O. Lot Line - A line marking the legal limits of an individual's property.
- P. Lot Line to Lot Line - The area between the two side lot lines on private property or the entire road right-of-way.
- Q. Median - The portion of a divided highway separating the traveled ways for traffic in opposite directions.
- R. Parkway - The area between the edge of pavement and the sidewalk or property line if no sidewalk exists.
- S. Property Line - See Lot Line (O).
- T. Rear Lot Line(s) - Property lot line at the rear of the lot (area opposite street) that connects the two side lot lines.
- U. Right-of-Way - Dedicated street area bounded by two generally parallel lines called right-of-way lines. Another name for these lines is front property lines.
- V. Road - Highway in rural area
- W. Road Bore - See Long Side (N).
- X. Roadside - A general term denoting the area adjoining the outer edge of the roadway. Extensive area between the roadways of a divided highway may also be considered roadside.

Whitelined? Whenever possible, it is suggested that the proposed work area be identified with white paint, flags or stakes. This will provide locators with an accurate understanding of the proposed excavation area. When the location of proposed excavation is identified in this manner, the boundaries of the proposed site should be indicated in white to avoid conflict with the colors used to identify existing underground facilities. **See 66-1804 and the Kansas Administrative Regulations for more information.**

Meet on Site & Whitelining - Most locate requests can be explained to an operator over the phone. In situations where excavation projects are large and complicated, a meeting with utility locators can simplify an explanation of the project. One-Call operators will take a request for a meeting and will pass it along to the members. However, it should be understood that One-Call operators cannot schedule utility work crews. If the requested time is not convenient, the utility should contact the excavator to arrange a new time. Even if a meeting is requested, the operator still must be given sufficient information about the location and extent of the planned work for the center to be able to determine which members are to be notified. For example, suppose a caller says the work is to be done in the 500 block of Main Street and requests a meeting at 9 a.m. on Wednesday. At the meeting, the excavator explains that work also will be done on Oak and Maple running north from Main Street. Other members who might have facilities on Oak or Maple but not on Main might not have been notified of the job. If a meeting is requested, it should be set for the job site. Do not ask for a meeting at Fred's Café.

A meeting should be requested only when it seems impossible to explain the entire project over the phone. Many times, what seems to be a complicated project can be easily described over the phone if it is broken into several pieces. For example, instead of trying to describe a major project involving work on four streets, break the project down into four locate requests involving the work on each of the four streets. If the job site does not involve streets but rather, a complex route in an open field, it would be best to mark the route of the project with white stakes or paint. Ask the Kansas One-Call operator to "mark the staked route between the barn and a point approximately 1000 feet west". See 66-1804 (e) and the Kansas Administrative Regulations for more information on these topics.

V.

WHAT HAPPENS AFTER THE CALL IS MADE

After the operator completes the locate request, the ticket is processed by a computer at Kansas One-Call. The computer analyzes the address of the job site on the ticket. The computer determines which underground facility members have elected to receive the information based upon the address of the job site on the ticket. The computer then transmits the message to the members via various communications links. Some members receive the information through a direct phone conversation with the staff at the call center. The locate information is received at the utilities' mapping or screening departments. Trained personnel review the locate request in comparison with their maps and records. It is their









responsibility to decide whether or not the location of the work site is close to existing underground facilities. If the underground facility member has no underground facilities in the area of the proposed excavation they shall notify the excavator that it has no facilities in the area of proposed excavation. See KSA 66-1806 (a & b) Once it is determined that markings are required, the ticket is dispatched to a field locator who will locate and mark the excavation site with paint, stakes, and/or flags. Members generally mark facilities according to specific guidelines and color codes (see Section VI).

Note: In some cases, the underground facilities belong to the owner of the property rather than to the utility. For example, the utility may own the pipe/conductor up to a meter at the edge of the property. The pipe/conductor from the meter to the house or out-buildings may belong to the home/property owner. Some members may locate these lines on the property even though they are owned by the home/property owner, while other members will not locate lines they do not own.

VI.

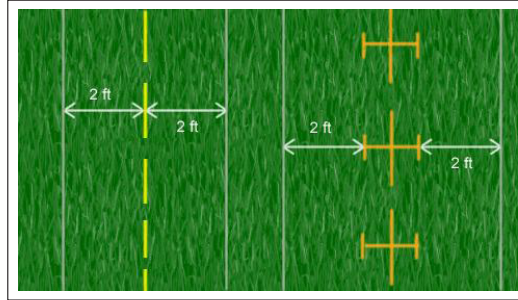
RESPONSIBILITIES OF THE FACILITY OWNER

After receiving and screening the locate request, each underground facility member will mark, in a reasonable manner, the location of facilities in the field in order to enable the excavator to easily recognize the location of buried facilities. Underground facility members will mark or otherwise identify facilities according to the following color codes.

	WHITE - Proposed Excavation
	PINK - Temporary Survey Markings
	RED - Electric Power Lines, Cables, Conduit and Lighting Cables
	YELLOW - Gas, Oil, Steam, Petroleum or Gaseous Materials
	ORANGE - Communication, Alarm or Signal Lines, Cables or Conduit
	BLUE - Potable Water
	PURPLE - Reclaimed Water, Irrigation and Slurry Lines
	GREEN - Sewers and Storm Drain Lines

Underground facility members will use stakes, flags, paint or other suitable materials in varying combinations dependent upon the type of surface to be marked. These marks will be in sufficient quantity to clearly identify the routes of the facility. The markings may also include the initials of the underground facility owner.

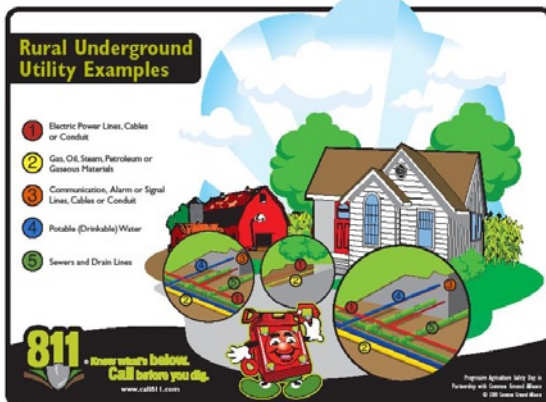
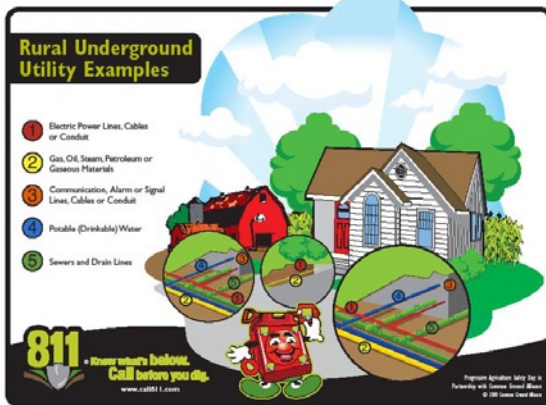
NOTE: LOCATION MARKINGS ARE ESTIMATES AND THE EXACT LOCATION MAY VARY BY UP TO 24 INCHES on either side of the marks. (See KSA 66-1802, P).



When the surface over the underground facility is expected to be destroyed, supplemental offset markings may be required. Such markings shall identify the direction and distance to actual facility.

Emergency locates are given top priority. Underground facility members shall make a reasonable effort to mark their facilities within two hours of receiving notification or before excavation is scheduled to begin, whichever is later. Underground facility members will, upon receiving a request through Kansas One-Call re-mark a job site. If the re-marking request is received within two working days of the original start date, members will re-mark facilities, generally within one working day.

Please be aware that facility members are required to locate **only** those facilities which they own or operate. (See the definition of “operator” in KSA #66-1802, J)



VII. RESPONSIBILITIES OF THE EXCAVATOR (AFTER MAKING THE CALL)

Many people believe that, by notifying Kansas One-Call of intended excavation, they have completed all of their responsibilities with respect to the locating process. This is not the case. Notifying Kansas One-Call is only the first step and there are several other responsibilities which need to be considered.

After the markings have been made, excavators are required to maintain a minimum clearance of two feet between a marked and unexposed utility underground facility and the cutting edge or point of any power-operated excavating or earth moving equipment. IF EXCAVATION IS REQUIRED WITHIN TWO FEET, HORIZONTALLY, OF ANY MARKING, THE EXCAVATION SHOULD BE PERFORMED WITH EXTREME CARE AND WITHOUT DAMAGE. (See KSA #66-1802, P and 66-1809.) Hand digging is recommended in these areas!

Excavators are cautioned that equipment may disturb the soil just by the nature of the equipment, or by weight and/or other characteristics of the equipment. If, during the course of excavation, a facility has been exposed, it is the excavator's responsibility to inspect and support these facilities prior to backfilling. The excavator also must ascertain if the facilities have been struck or damaged in any capacity, including being pulled on or “kinked.” **If damage of any kind is discovered or any suspicion of damage exists, it is the excavator's responsibility to immediately notify the facility owner directly (KSA #66-1810). The excavator must take any other action deemed necessary to protect persons and property and to minimize hazards until the arrival of the operator's personnel or emergency first responders arrive. In other words, stay on the job site. If the protective covering of an electrical line is penetrated or dangerous gases or fluids are escaping from a broken line, the excavator immediately shall inform emergency personnel (911) of the municipality in which such electrical short or broken line is located.**

Excavators should plan their work so as to minimize damage to markings. Repeatedly having to call for re-marks could be evidence of a violation for failure to excavate in a prudent manner. Many excavators mistakenly believe that Kansas One-Call is responsible for the actual markings of facilities. This is not the case. Kansas One-Call takes information from the excavator and relays it to the underground facility members. Each facility member is responsible for ensuring that their facility is properly marked. When one underground facility member indicates that

they have no facilities in conflict with a specific excavation, the excavator must realize that this does not mean that “Kansas One-Call” has cleared the site; nor does it mean that other facilities are not at that location. Excavators are reminded not to begin excavation until all underground facilities have been marked, including those that might be operated by facility owners not participating in Kansas One-Call.



Once the utility lines have been marked and you're ready to dig in the vicinity of utility lines...

- ✓ Use only rounded/blunt edged tools.



- ✗ Don't use axes, hand or powered posthole diggers, picks, mattocks, pry/probing bars or mechanized equipment, as these often result in damage.

- ✓ Keep the face of the shovel parallel with the utility line markings.



- ✓ If the utility line is visible, keep the face of the shovel parallel with the utility line and use all precautions when removing the soil from around the utility line.

- ✗ Don't be aggressive with digging close to utility lines.

- ✗ Don't pry against a utility line.
- ✗ Don't take for granted that a utility line will be at a certain depth.
- ✗ Don't assume an unmarked line is abandoned.
- ✗ Don't assume that a utility line that is uncovered will be the only one. There may be another line underneath or close by.



- ✗ Don't become frustrated if you do not encounter a utility line right away. Frustration can lead to carelessness and eventual damage to the utility line.



- ✗ Don't expose excessive lengths of a utility line.
- ✗ Don't leave utility lines exposed while unattended.
- ✗ Don't attempt to move underground utility lines.

VIII. REQUEST LIFEPSAN/REMARKING

Locate Request Lifespan: How long is a ticket valid? The state law states that excavators must give notice at least two full working days but not more than 15 calendar days before the work is to begin. If a project does not begin within 15 calendar days of the date of the locate request, or if work is interrupted for more than 15 calendar days, a new request needs to be filed with Kansas One-Call. As of Jan, 2003, the state law states that the notice of intent to excavate or any subsequent updates shall be valid for 15 calendar days after the excavation start date and such notice shall only describe an area in which the proposed excavation reasonably can be completed within the 15 calendar days. In order to keep the locate request valid for any excavation for any period longer than 15 calendar days, the excavator shall file an “update” with Kansas One-Call no later than the twelfth calendar day from the initial excavation start date.

Updates and Re-Marking: If lines need to be re-marked because work or weather has obliterated the original marks, you should call the One-Call Center with a “relocate” request and tell the operator that lines need to be re-marked and allow the facility owners another two full working days notice.

Keep in mind, state law now states that *“no person shall make repeated requests for remarking unless the request is due to circumstances not reasonably within the control of such person.”* In other words, updating a ticket repeatedly without any excavation taking place just to keep a ticket open or valid is now a **violation** of state law.

IX. DEPTH OF FACILITIES

Kansas One-Call does not have information on the specific location or depth of buried facilities. In fact, facility owners themselves frequently are reluctant to provide depth information to the caller. While it is true that most facility owners follow certain depth requirements or guidelines when installing lines, they have no control over depth variation caused by human intervention, weather, erosion or other circumstances. For example, suppose a facility is buried three feet below the surface in a given area. Following installation, a landscaper adds one foot to the top soil. In this case, the facility is now four feet deep. On the other hand, if the landscaper were to remove one foot of dirt, that facility would only be two feet below the surface. In addition to human intervention, the effects of weather, such as erosion, can affect the depth of underground facilities.

Save Time?!

Use the Internet to file your locates to
Kansas One-Call.
Call 1.800.344.7233 for more information.

X. REPORTING PROBLEMS

There are several problems which the excavator may encounter during the locating process. Kansas One-Call and the Kansas Corporation Commission will assist in the resolution of these problems. Following are some of the more commonly experienced problems, with a brief description of the proper procedures to follow.

Failure to Locate Facilities Prior to Start Date: If the start date and time arrives and one or more members has failed to mark the facilities or has marked the facilities incorrectly, you can call Kansas One-Call and file a “non-response” ticket. This second request will be sent to the members who did not mark their lines and did not contact you to say it has no facilities at the dig site. To ensure the safety of the excavation crews and the general public, you should not begin work until you are confident that all facilities have been marked correctly.

If a member company consistently fails to mark facilities prior to the start date after you have given at least two working days notice, a complaint can be filed with the KCC. KCC personnel will investigate the problem and assist in seeking a resolution. Kansas One-Call and the KCC are interested in the excavator’s concerns and will assist in any way possible to resolve problems. **You may contact the KCC by calling (800) 662-0027 to file a complaint.**

Legal Matters: Kansas One-Call maintains a complete record of all locate requests from excavators and of all dig notices to member operators. These records are kept for a minimum of five years. In addition, all phone calls regarding locate requests to and from the One-Call Center are recorded and the tapes are also kept for five years. Kansas One-Call can be of assistance in providing copies of these records in the case of a dispute. In some cases, there may be a fee involved in record retrieval. Kansas One-Call has various methods of searching for these records. The quickest method of obtaining a record is through the use of the ticket number assigned to the locate request. Records can be found from other

information, such as the date, the calling company and the excavation location, but the process is more difficult. The more information which can be supplied, the quicker the proper record can be found.

XI. Chapter 66. - Public Utilities Article 18. - Underground Utility Damage Prevention Act

With Changes Mandated by HB 2637 Statute 66-1802

Definitions. As used in this act:

- (a) “Damage” means any impact or contact with an underground facility, its appurtenances or its protective coating, or any weakening of the support for the facility or protective housing which requires repair.
- (b) “Emergency” means any condition constituting a clear and present danger to life, health or property, or a customer service outage.
- (c) “Excavation” means any operation in which earth, rock or other material below the surface is moved or otherwise displaced by any means, except tilling the soil for normal agricultural purposes, or railroad or road and ditch maintenance that does not change the existing railroad grade, road grade and/or ditch flowline, or operations related to exploration and production of crude oil or natural gas, or both.
- (d) “Excavator” means any person who engages directly in excavation activities within the state of Kansas, but shall not include any occupant of a dwelling who:
 - (1) Uses such dwelling as a primary residence; and
 - (2) excavates on the premises of such dwelling.
- (e) “Facility” means any sanitary sewer, underground line, system or structure used for transporting, gathering, storing, conveying, transmitting or distributing potable water, gas, electricity, communication, crude oil, refined or processed petroleum, petroleum products or hazardous liquids; facility shall not include, any stormwater sewers, production petroleum lead lines, salt water disposal lines or injection lines, which are not located on platted land or inside the corporate limits of any city.
- (f) “Locatable facility” means facilities for which the tolerance zone can be determined by the operator using generally accepted practices such as as-built construction drawings, system maps, probes, locator devices or any other type of proven technology for locating.
- (g) “Marking” means the use of stakes, paint, flags or other clearly

identifiable materials to show the field location of underground facilities, in accordance with the rules and regulations promulgated by the state corporation commission in the administration and enforcement of this act.

- (h) "Municipality" means any city, county, municipal corporation, public district or public authority located in whole or in part within this state which provides firefighting, law enforcement, ambulance, emergency medical or other emergency services.
- (i) "Notification center" means the statewide communication system operated by an organization which has as one of its purposes to receive and record notification of planned excavation in the state from excavators and to disseminate such notification of planned excavation to operators who are members and participants.
- (j) "Operator" means any person who owns or operates an underground tier 1 or tier 2 facility, except for any person who is the owner of real property wherein is located underground facilities for the purpose of furnishing services or materials only to such person or occupants of such property.
- (k) "Preengineered project" means a public project or a project which is approved by a public agency wherein the public agency responsible for the project, as part of its engineering and contract procedures, holds a meeting prior to the commencement of any construction work on such project in which all persons, determined by the public agency to have underground facilities located within the construction area of the project, are invited to attend and given an opportunity to verify or inform the public agency of the location of their underground facilities, if any, within the construction area and where the location of all known and underground facilities are duly located or noted on the engineering drawing as specifications for the project.
- (l) "Permitted project" means a project where a permit for the work to be performed must be issued by a city, county, state or federal agency and, as a prerequisite to receiving such permit, the applicant must locate all underground facilities in the area of the work and in the vicinity of the excavation and notify each owner of such underground facilities.
- (m) "Person" means any individual, partnership, corporation, association, franchise holder, state, city, county or any governmental subdivision or instrumentality of a state and its employees, agents or legal representatives.
- (n) "Production petroleum lead line" means an underground facility used for production, gathering or processing on the lease or unit, or for delivery of hydrocarbon gas and/or liquids to an associated tank battery, separator or sales facility. Production petroleum lead lines shall include underground lines associated with lease fuel and saltwater disposal and injection.

- (o) "Platted land" means a tract or parcel of land which has been subdivided into lots of less than five acres for the purpose of building developments, including housing developments, and for which a surveyor's plat has been filed of record in the office of the register of deeds in the county where the land is located.
- (p) "Tier 1 facility" means an underground facility used for transporting, gathering, storing, conveying, transmitting or distributing gas, electricity, communications, crude oil, refined or reprocessed petroleum, petroleum products or hazardous liquids.
- (q) "Tier 2 facility" means an underground facility used for transporting, gathering, storing, conveying, transmitting or distributing potable water or sanitary sewage.
- (r) "Tier 3 facility" means a water or wastewater system utility which serves more than 20,000 customers who elects to be a tier 3 member of the notification center pursuant to this subsection. The operator of a tier 3 facility shall:
 - (1) Develop and operate a locate service website capable of receiving locate requests;
 - (2) publish and maintain a dedicated telephone number for locate services;
 - (3) maintain 24-hour response capability for emergency locates; and
 - (4) employ not less than two individuals whose primary job function shall be the location of underground utilities. Operators of tier 3 facilities shall make either such website or contact information available to the notification center. The notification center shall collect and charge a fee of \$500 a year for each tier 3 facility. No other fee, charge or cost shall be assessed to a tier 3 facility by the notification center. Tier 3 members shall be subject to all provisions of 66-1804, 66-1805, 66-1806 and amendments thereto.
- (s) "Tolerance zone" means the area ~~within~~ not less than 24 inches of the outside dimensions in all horizontal directions of an underground facility, except that a larger tolerance zone for a tier 1, 2, or 3 facility may be established by rules and regulations adopted under K.S.A. 2007 Supp. 66-1815, and amendments thereto. An operator of a water or wastewater facility may elect to use a tolerance zone for such water or wastewater facility in which tolerance zone means the area not less than 60 inches of the outside dimensions in all horizontal directions of an underground water or wastewater facility upon notification of the excavator, except that a larger tolerance zone may be established by rules and regulations adopted under K.S.A. 2007 Supp. 66-1815, and amendments thereto.
- (t) "Update" means an additional request from the excavator to extend the

time period of the request for intent to excavate beyond the 15 calendar day duration of the request.

- (u) "Whiteline" means the act of marking by the excavator the route or boundary of the proposed excavation site with white paint, white stakes or white flags.
- (v) "Working day" means every day, Monday through Friday beginning at 12:01 a.m., except for the following officially recognized holidays: New Year's day, Memorial day, Independence day, Labor day, Thanksgiving day, the day after Thanksgiving and Christmas.

Statute 66-1803

Excavator's duty to ascertain location of facilities.

An excavator shall not engage in excavation near the location of any underground facility without first having ascertained, in the manner prescribed in this act, a location of all underground facilities in the proposed area of the excavation.

History: L. 1993, ch. 217, S. 3; July 1

Statute 66-1804

Notice of intent of excavation.

- (a) Except in the case of an emergency, an excavator shall serve notice of intent of excavation at least two full working days, but not more than 15 calendar days before the scheduled excavation start date, on each operator having underground tier 1 facilities located in the proposed area of excavation.
- (b) An excavator may serve notice of intent of excavation at least two full working days, but not more than 15 calendar days before the scheduled excavation start date, on each operator of tier 2 facilities located in the proposed area of excavation.
- (c) The notice of intent to excavate or any subsequent updates shall be valid for 15 calendar days after the excavation start date and such notice shall only describe an area in which the proposed excavation reasonably can be completed within the 15 calendar days.
- (d) No person shall make repeated requests for remarking unless the request is due to circumstances not reasonably within the control of such person.
- (e) The notice of intent of excavation shall contain the name, address and telephone number of the person filing the notice of intent, the name of the excavator, the date the excavation activity is to commence and the type of excavation being planned. The notice shall also contain the specific location of the excavation.
- (f) The person filing the notice of intent to excavate shall, at the request of the operator, whiteline the proposed excavation site when the

description of the excavation location cannot be described with sufficient detail to enable the operator to ascertain the location of the proposed excavation.

- (g) The provisions of this section shall not apply to a preengineered project or a permitted project, except that the excavators shall be required to give notification in accordance with this section prior to starting such project.

Statute 66-1805

Notification center.

- (a) This act recognizes the establishment of a single notification center for the state of Kansas. Each operator who has an underground facility shall become a member of the notification center.
- (b) For operators of tier 1 facilities or operators of tier 2 facilities that desire notification in the same manner as operators of tier 1 facilities, the notification center shall provide prompt notice of any proposed excavation to each affected operator that has facilities recorded with the notification center in the area of a proposed excavation site.
- (c) For operators of tier 2 facilities that desire direct contact with the excavator, the notification center shall provide the excavator with the name and contact information of the affected operator that has facilities recorded with the notification center in the area of the proposed excavation.
- (d) Notification, to operators as defined in subsection (b) shall be given by notifying the notification center by telephone at the toll free number or by other communication methods approved by the notification center. The content of such notification shall be as required by K.S.A. 2001 Supp. 66-1804, and amendments thereto.
- (e) Notification to operators as defined in subsection (c) may be given by notifying the operator of tier 2 facilities using the contact information provided by the notification center. The content of such notification shall be as required by K.S.A. 66-1804, and amendments thereto.
- (f) Each operator who has an underground facility within the state shall be afforded the opportunity to become a member of the notification center on the same terms as the original members.
- (g) A suitable record shall be maintained by the notification center to document the receipt of notices from excavators as required by this act.
- (h) A suitable record shall be maintained by operators of tier 2 facilities that desire direct contact with the excavator pursuant to subsection (c) to document the receipt of notices from excavators.
- (i) The notification center shall charge and collect an annual membership fee in the amount of \$25 from each tier 2 facility member.
- (j) The notification center shall charge a referral fee to tier 2 facility

members in an amount no more than 50% of the referral fee rate charged to tier 1 facility members.

- (k) Upon request of the operator, the person filing the notice of intent to excavate shall whitenline the proposed excavation site prior to locates being performed.
- (l) The notification center established pursuant to this section shall be and is hereby deemed to be a public agency and shall be subject to the provisions of the open records act, K.S.A. 45-215 et seq., and amendments thereto, and the open meetings act, K.S.A. 75-4317 et seq., and amendments thereto, except that the notification center or board of directors, or successor managing organization shall not disseminate, make available or otherwise distribute data or information provided by an operator of a tier 1, 2 or 3 facility unless such dissemination, making available or distributing is necessary for the state corporation commission or the notification center to carry out legal duties or specific statutory duties prescribed under this chapter.
- (m) On and after July 1, 2009, the notification center's board of directors shall include two members from tier 2 facilities and 1 member from tier 3 facilities.
- (n) The notification center shall prepare an annual report which describes the activities of such center. An annual audit of the notification center shall be conducted by an independent certified public accountant. The notification center shall provide copies of such reports to each member of the notification center and shall be subject to the open records act, K.S.A. 45-215, et seq., and amendments thereto.
- (o) The notification center shall solicit proposals for operation of the notification center not more than every five years which shall be awarded in an open meeting by the board of directors of the notification center. The bidding process prescribed by this subsection shall be subject to the open records act, K.S.A. 45-215 et seq., and amendments thereto.
- (p) The notification center shall conduct a cost of service audit not more than every five years or as otherwise requested by the board of directors of the notification center or a majority of the members of such center.

Statute 66-1806

Identification of location of facilities; duties of operator; liability for damages.

- (a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitenlined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking,

flagging or other acceptable method.

- (b) If the operator of tier 2 facilities cannot accurately mark the tolerance zone, such operator shall mark the approximate location to the best of its ability, notify the excavator that the markings may not be accurate, and provide additional guidance to the excavator in locating the facilities as needed during the excavation.
- (c) The operator of tier 2 facilities shall not be required to provide notification of the tolerance zone for facilities which are at a depth at least two feet deeper than the excavator plans to excavate but does have to notify the excavator of their existence.
- (d) If the operator of a tier 1 facility has no underground facilities in the area of the proposed excavation, such operator, before the excavation start date, shall notify the excavator that it has no facilities in the area of proposed excavation by telephone, facsimile, marking the area all clear or by other technology that may be developed for such purposes.
- (e) If the excavator notifies the notification center, within two working days after the initial identification of the tolerance zone by the operator, that the identifiers have been improperly removed or altered, the operator shall make a reasonable effort to reidentify the tolerance zone within one working day after the operator receives actual notice from the notification center.
- (f) If the excavator has provided notice to an operator pursuant to K.S.A. 66-1804, and amendments thereto, and the operator fails to comply with subsections (a), (b) or (c) or notifies the excavator that it has no underground facilities in the area of the planned excavation, the excavator may proceed and shall not be liable to the operator for any direct or indirect damages resulting from contact with the operator's facilities, except that nothing in this act shall be construed to hold any excavator harmless from liability to the operator in those cases of gross negligence or willful and wanton conduct.
- (g) For economic damages in any civil court of this state, failure of an operator to inform the excavator within two working days of the tolerance zone of the underground facilities of the operator in the manner required by subsection (a) of K.S.A. 2001 Supp. 66- 1806, and amendments thereto, shall not give rise to a cause of action on the part of the excavator against an operator, except that nothing in this act shall be construed to hold any operator harmless from liability in those cases of inaccurate marking of the tolerance zone, gross negligence or willful and wanton conduct. Such failure may subject an operator to civil penalties as determined by the state corporation commission.
- (h) Any person claiming that an operator has failed to inform the excavator within two working days of the tolerance zone of the underground facilities of the operator shall file a complaint with the state corporation

commission requesting enforcement of subsection (a) within one year of becoming aware of the violation.

- (i) All tier 1 facilities installed by an operator after January 1, 2003, shall be locatable.
- (j) All tier 2 facilities installed by an operator after July 1, 2008, shall be locatable.

Statute 66-1807

Emergency excavations.

- (a) In the case of an emergency which involves danger to life, health or property or which requires immediate correction in order to continue the operation of an industrial plant or to assure the continuity of public utility service, excavation, maintenance or repairs may be made without using explosives, if notice and advice thereof, whether in writing or otherwise are given to the operator or notification center as soon as reasonably possible.
- (b) If an operator receives a request to locate its facilities for an emergency condition, such operator shall make a reasonable effort to identify the location of its facility within two hours of receiving notification or before excavation is scheduled to begin, whichever is later.
- (c) Any person providing a misrepresentation of an emergency excavation may be subject to the penalties set out in K.S.A. 2001 Supp. 66-1812, and amendments thereto.

History:

Statute 66-1808

Application of other laws.

This act shall not be construed to authorize, affect or impair local ordinances, resolutions or other provisions of law concerning excavating or tunneling in a public street or highway or private or public easement.

History: L. 1993, ch. 217, S. 8; July 1.

Statute 66-1809

Excavator's duty to exercise reasonable care.

- (a) Upon receiving information as provided in K.S.A. 2001 Supp. 68-1806, and amendments thereto, an excavator shall exercise such reasonable care as may be necessary for the protection of any underground facility in and near the construction area when working in close proximity to any such underground facility.
- (b) An excavator using a trenchless excavation technique shall meet minimum operating guidelines as prescribed in rules and regulations developed and adopted by the state corporation commission in support of this act.

History:

Statute 66-1810

Contact with or damage to facility; procedure.

When any contact with or damage to any underground facility occurs, the operator shall be informed immediately by the excavator. Upon receiving such notice, the operator immediately shall dispatch personnel to the location to provide necessary temporary or permanent repair of the damage. If the protective covering of an electrical line is penetrated or dangerous gases or fluids are escaping from a broken line, the excavator immediately shall inform emergency personnel of the municipality in which such electrical short or broken line is located and take any other action as may be reasonably necessary to protect persons and property and to minimize hazards until arrival of the operator's personnel or emergency first responders.

History:

Statute 66-1811

Effect of violation of act, liability for damages; application of other laws.

- (a) In a civil action in a court of this state when it is shown by competent evidence that personal injury, death or other damages, including damage to any underground facilities, occurred as a result of a violation of this act, there shall be a rebuttable presumption of negligence on the part of the violator.
- (b) In no event shall the excavator be responsible for any damage to underground facilities if such damage was caused by the failure of the operator to correctly and properly mark the location of the tolerance zone of the damaged facility.
- (c) Nothing in this act is intended to limit or modify the provisions of:
 - (1) K.S.A. 60-258a, and amendments thereto; or
 - (2) the national electrical safety code, which would otherwise be applicable.

History:

Statute 66-1812

Violation of act, civil penalties and injunctive relief.

Any person to whom this act applies, who violates any of the provisions contained in this act, shall be subject to civil penalties and injunctive relief as set out in K.S.A. 66-1,151, and amendments thereto, and any remedies established in rules and regulations promulgated by the state corporation commission in support of this act.

History:

Statute 66-1813

Administration and enforcement by corporation commission.

This act shall be administered and enforced by the state corporation commission of the state of Kansas. *History: L. 1993, ch. 217, S. 13; July 1.*

Statute 66-1814

Severability.

If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

History: L. 1993, ch. 217, S. 14; July 1.

Statute 66-1815

Providing for rules and regulations.

- (a) The state corporation commission shall have 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, and amendments thereto.
- (b) This section shall be part of and supplemental to the Kansas underground utility damage prevention act.

XII.

Kansas Administrative Regulations Article 14. - Kansas Underground Utility Damage Prevention Act

82-14-1. Definitions. The following terms as used in the administration and enforcement of the Kansas underground utility damage prevention act, K.S.A. 66-1801 et seq. and amendments thereto, shall be defined as specified in this regulation.

- (a) “Backreaming” means the process of enlarging the diameter of a bore by pulling a specially designed tool through the bore from the bore exit point back to the bore entry point.
- (b) “Commission” means the state corporation commission of Kansas.
- (c) “Drill head” means the mechanical device connected to the drill pipe that is used to initiate the excavation in a directional boring operation. This term is sometimes referred to as the drill bit.
- (d) “Excavation scheduled start date” means the later of the start date stated in the notice of intent of excavation filed by the excavator with the notification center or the start date filed by the excavator with a tier 2 member or tier 3 member.

- (e) “Excavation site” means the area where excavation is to occur.
- (f) “Locatable” has the meaning of that word as used in “locatable facility,” which is defined in K.S.A. 66-1802 and amendments thereto. In addition to the requirements for locating underground facilities, as specified in K.S.A. 66-1802 and amendments thereto, the operator shall be able to locate underground facilities within 24 inches of the outside dimensions in all horizontal directions of an underground facility using tracer wire, conductive material, GPS technology, or any other technology that provides the operator with the ability to locate the pipelines for at least 20 years.
- (g) “Locate” means the act of marking the tolerance zone of the operator’s underground facilities by the operator.
- (h) “Locate ball” means an electronic marker device that is buried with the facility and is used to enhance signal reflection to a facility detection device.
- (i) “Meet on site” means a meeting between an operator and an excavator that occurs at the excavation site in order for the excavator to provide an accurate description of the excavation site.
- (j) “Notice of intent of excavation” means the written notification required by K.S.A. 66-1804 and amendments thereto.
- (k) “Notification center,” as defined in K.S.A. 66-1802 and amendments thereto, means the underground utility notification center operated by Kansas One-Call, inc.
- (l) “Pullback operation” means the installation of facilities in a directional bore by pulling the facility from the bore exit point back to the bore entry point.
- (m) “Pullback device” means the apparatus used to connect drilling tools to the facility being installed in a directional bore.
- (n) “Reasonable care” means the precautions taken by an excavator to conduct an excavation in a careful and prudent manner. Reasonable care shall include the following:
 - (1) Providing for proper support and backfill around all existing underground facilities;
 - (2) using nonintrusive means, as necessary, to expose the existing facility in order to visually determine that there will be no conflict between the facility and the proposed excavation path when the path is within the tolerance zone of the existing facility;
 - (3) exposing the existing facility at intervals as often as necessary to avoid damage when the proposed excavation path is parallel to and within the tolerance zone of an existing facility; and
 - (4) maintaining the visibility of the markings that indicate the location of underground utilities throughout the excavation period.
- (o) “Tier 1 member” means any operator of a tier 1 facility, as defined

in K.S.A. 66-1802 and amendments thereto, or any operator of a tier 2 facility, as defined in K.S.A. 66-1802 and amendments thereto, that elects to be a tier 1 member of the notification center pursuant to K.A.R. 82-14-3.

- (p) “Tier 2 member” means any operator of a tier 2 facility, as defined in K.S.A. 66-1802 and amendments thereto, that elects to be a tier 2 member of the notification center.
- (q) “Tier 3 member” means any operator of a tier 2 facility, as defined in K.S.A. 66-1802 and amendments thereto, that meets the requirements for a tier 3 facility, as defined in K.S.A. 66-1802 and amendments thereto, and elects to be a tier 3 member of the notification center.
- (r) “Tolerance zone” has the meaning specified in K.S.A. 66-1802 and amendments thereto. The tolerance zone shall not be greater than the following:
 - (1) 25 inches for each tier 1 facility; and
 - (2) 61 inches for each tier 2 facility.
- (s) “Trenchless excavation” means any excavation performed in a manner that does not allow the excavator to visually observe the placement of the new facility. This term shall include underground boring, tunneling, horizontal auguring, directional drilling, plowing, and geoprobing. (Authorized by and implementing K.S.A. 2008 Supp. 66-1815; effective Jan. 19, 2007; amended P-_____.)

82-14-2. Excavator requirements. In addition to the provisions of K.S.A. 66-1804, K.S.A. 66-1807, K.S.A. 66-1809, and K.S.A. 66-1810 and amendments thereto, the following requirements shall apply to each excavator:

- (a) If an excavator directly contacts a tier 2 member or a tier 3 member, the excavation scheduled start date shall be the later of the following:
 - (1) The excavation scheduled start date assigned by the notification center; or
 - (2) two full working days after the day of contact with the tier 2 member or tier 3 member.
- (b) Unless all affected operators have provided notification to the excavator, excavation shall not begin at any excavation site before the excavation scheduled start date.
- (c) If a meet on site is requested by the excavator, the excavation scheduled start date shall be no earlier than the fifth working day after the date on which the notice of intent of excavation was given to the notification center or to the tier 2 member or tier 3 member.
- (d) Each notice of intent of excavation shall include the name and telephone number of the individual who will be representing the excavator.

- (e) Each description of the excavation site shall include the following:
 - (1) The street address, if available, and the specific location of the proposed excavation site at the street address; and
 - (2) an accurate description of the proposed excavation site using any available designations, including the closest street, road, or intersection, and any additional information requested by the notification center.
- (f) If the excavation site is outside the boundaries of any city or if a street address is not available, the description of the excavation site shall include one of the following:
 - (1) An accurate description of the excavation site using any available designations, including driving directions from the closest named street, road, or intersection;
 - (2) the specific legal description, including the quarter section; or
 - (3) the longitude and latitude coordinates.
- (g) An excavator shall not claim preengineered project status, as defined in K.S.A. 66-1802 and amendments thereto, unless the public agency responsible for the project performed the following before allowing excavation:
 - (1) Identified all operators that have underground facilities located within the excavation site;
 - (2) requested that the operators specified in paragraph (g)(1) verify the location of their underground facilities, if any, within the excavation site;
 - (3) required the location of all known underground facilities to be noted on updated engineering drawings as specifications for the project;
 - (4) notified all operators that have underground facilities located within the excavation site of the project of any changes to the engineering drawings that could affect the safety of existing facilities; and
 - (5) complied with the requirements of K.S.A. 66-1804(a), and amendments thereto.
- (h) If an excavator wishes to conduct an excavation as a permitted project, as defined in K.S.A. 66-1802 and amendments thereto, the permit obtained by the excavator shall have been issued by a federal, state, or municipal governmental entity and shall have been issued contingent on the excavator's having met the following requirements:
 - (1) Notified all operators with facilities in the vicinity of the excavation of the intent to excavate as a permitted project;
 - (2) visually verified the presence of the facility markings at the excavation site; and
 - (3) complied with the requirements of K.S.A. 66-1804(a) and amendments thereto.

- (i) If the excavator requests a meet on site as part of the description of the proposed excavation site given to the notification center, the tier 2 member, or the tier 3 member, then the excavator shall document the meet on site and any subsequent meetings regarding facility locations with a record noting the name and company affiliation for the representative of the excavator and the representative of the operator that attend the meeting. The excavator shall keep this record for at least two years. This documentation shall include the following:
 - (1) Verification that the description of the excavation site is understood by both parties;
 - (2) the agreed-upon excavation scheduled start date;
 - (3) the date and time of the meet on site; and
 - (4) the name and company affiliation of each attendee of the meet on site.
- (j) Each excavator using trenchless excavation techniques shall develop and implement operating guidelines for trenchless excavation techniques. At a minimum, the guidelines shall require the following:
 - (1) Training in the requirements of the Kansas underground utility damage prevention act;
 - (2) training in the use of nonintrusive methods of excavation used if there is an indication of a conflict between the tolerance zone of an existing facility and the proposed excavation path;
 - (3) calibration procedures for the locator and sonde if this equipment is used by the excavator;
 - (4) recordkeeping procedures for measurements taken while boring;
 - (5) training in the necessary precautions to be taken in monitoring a horizontal drilling tool when backreaming or performing a pullback operation that crosses within the tolerance zone of an existing facility;
 - (6) training in the maintenance of appropriate clearance from existing facilities during the excavation operation and during the placement of new underground facilities;
 - (7) for horizontal directional drilling operations, a requirement to visually check the drill head and pullback device as they pass through potholes, entrances, and exit pits; and
 - (8) emergency procedures for unplanned utility strikes.
- (k) If any contact with or damage to any underground facility or the facility's associated tracer wire, locate ball, or associated surface equipment occurs, the excavator shall immediately inform the operator. (Authorized by K.S.A. 2008 Supp. 66-1815; implementing K.S.A. 66-1803 and K.S.A. 66-1809; effective Jan. 19, 2007; amended P-_____.)

- 82-14-3. Operator requirements.** In addition to the provisions of K.S.A. 66-1806, K.S.A. 66-1807, and K.S.A. 66-1810 and amendments thereto, the requirements specified in this regulation shall apply to each operator.
- (a) Each operator shall inform the notification center of its election to be considered as a tier 1 member, tier 2 member, or tier 3 member.
 - (b) Unless otherwise agreed to between the notification center and the operator, any operator of a tier 2 facility may change its membership election once every calendar year by informing the notification center of the operator's intention on or before November 30 of the preceding calendar year.
 - (c) Each tier 1 member shall perform the following:
 - (1) File and maintain maps of the operator's underground facilities or a map showing the operator's service area with the notification center; and
 - (2) file and maintain, with the notification center, the operator's telephone contact number that can be accessed on a 24-hour-per-day basis.
 - (d) Each tier 2 member shall perform the following:
 - (1) Establish telephone or internet service with the ability to receive notification from excavators on a 24-hour-per-day basis;
 - (2) file with the notification center updated maps of the operator's underground facilities or a map showing the operator's service area;
 - (3) file with the notification center the operator's current telephone contact number or numbers that can be accessed on a 24-hour-per-day basis;
 - (4) file with the notification center the operator's preferred method of contact for all referrals received from the notification center; and
 - (5) maintain for at least two years all information provided by the excavator pursuant to K.A.R. 82-14-2(e) and (f).
 - (e) Each tier 3 member shall perform the following:
 - (1) File with the notification center updated maps of the operator's underground facilities or a map showing the operator's service area;
 - (2) file with the notification center the operator's current telephone contact number or numbers that can be accessed on a 24-hour-per-day basis;
 - (3) file with the notification center the operator's preferred method of contact for all referrals received from the notification center;
 - (4) maintain for at least two years all information provided by the excavator pursuant to K.A.R. 82-14-2(e) and (f);
 - (5) develop and operate a locate service web site capable of receiving locate requests;
 - (6) publish and maintain a dedicated telephone number for locate services;

- (7) maintain 24-hour response capability for emergency locates; and
- (8) employ at least two technically qualified individuals whose job function is dedicated to the location of underground utilities.
- (f) Except in cases of emergencies or separate agreements between the parties, each operator of a tier 1 facility shall perform one of the following, within the two working days before the excavation scheduled start date assigned by the notification center:
 - (1) Inform the excavator of the location of the tolerance zone of the operator's underground facilities in the area described in the notice of intent of excavation; or
 - (2) notify the excavator that the operator has no facilities in the area described in the notice of intent of excavation.
- (g) Except in cases of emergencies or separate agreements between the parties, the operator of a tier 2 facility shall perform one of the following within the two working days before the excavation scheduled start date assigned by the notification center or the tier 2 member or tier 3 member, whichever is later:
 - (1) Mark the location of its facilities according to the requirements of subsections (m) and (n) in the area described in the notice of intent of excavation and, if applicable, notify the excavator of the operator's election to require a tolerance zone of 60 inches; or
 - (2) inform the excavator that the operator's underground facilities are expected to be at least two feet deeper than the excavator's planned excavation depth and that the location of its facilities will not be provided for the affected tier 2 facilities.
- (h) Each operator of a tier 2 facility that notifies an excavator of its election to require a tolerance zone of 60 inches shall record and maintain the following records of the notification for at least two years:
 - (1) The name of the excavator contacted for the notification of a 60-inch tolerance zone;
 - (2) the date of the notification; and
 - (3) a description of the location of the excavation site.
- (i) Each operator of a tier 2 facility that notifies an excavator of its election not to provide locates for its facilities that are expected to be two feet deeper than the excavator's maximum planned excavation depth shall record and maintain the following records of the notification for at least two years:
 - (1) The name of the excavator notified that the operator will not provide locates;
 - (2) the excavator's maximum planned excavation depth;
 - (3) the date of the notification; and
 - (4) a description of the location of the excavation site.
- (j) If the operator of a tier 2 facility is unable to provide the location of

- its facilities within a 60-inch tolerance zone, the operator shall mark the approximate location of its facilities to the best of its ability, notify the excavator that the markings could be inaccurate, remain on site or in the vicinity of the excavation, and provide additional guidance to the excavator in locating the facilities as needed during the excavation.
- (k) Each tier 2 facility constructed, replaced, or repaired after July 1, 2008 shall be locatable. Location data shall be maintained in the form of maps or any other format as determined by the operator.
- (l) The requirement to inform the excavator of the facility location shall be met by marking the location of the operator's facility and identifying the name of the operator with flags, paint, or any other method by which the location of the facility is marked in a clearly visible manner.
- (m) In marking the location of its facilities, each operator shall use safety colors substantially similar to five of the colors specified in the American national standards institute standard no. Z535.1-2002, "American national standard for safety color code," not including annex A, dated July 25, 2002 and hereby adopted by reference, according to the following table:

Facility Type	Color
Electric power distribution lines and transmission lines	Safety red
Gas distribution and transmission lines, hazardous liquid distribution and transmission lines	Safety yellow
Telephone, telegraph, and fiber optic system lines; cable television lines; alarm lines; and signal lines	Safety orange
Potable water lines	Safety blue
Sanitary sewer main lines	Safety green

- (n) If the facility has any outside dimension that is eight inches or larger, the operator shall mark its facility so that the outside dimensions of the facility can be easily determined by the excavator.
- (o) If the facility has any outside dimension that is smaller than eight inches, the operator shall mark its facility so that the location of the facility can be easily determined by the excavator.
- (p) The requirement to notify the excavator that the tier 1 operator has no facilities in the area described in the notice of intent of excavation shall be met by performing one of the following:
 - (1) Marking the excavation site in a manner indicating that the operator has no facilities at that site; or
 - (2) contacting the excavator by telephone, facsimile, or any other means of communication. Two documented attempts by the

operator to reach an excavator by telephone during normal business hours shall constitute compliance with this paragraph.

- (q) If the notice of intent of excavation contains a request for a meet on site, the operator shall meet with the excavator at a mutually agreed-upon time within two working days after the day on which the notice of intent of excavation was given.
- (r) After attending a meet on site, the operator shall inform the excavator of the tolerance zone of the operator's facilities in the area of the planned excavation within two working days before the excavation scheduled start date that was agreed to at the meet on site.
- (s) Any operator may request that the excavator whitenline the proposed excavation site.
- (t) If the operator requests that the excavator whitenline the excavation site, the operator shall have two working days after the whitelining is completed to provide the location of the tolerance zone.
- (u) If the operator requests that the excavator use whitelining at the excavation site, the operator shall document the whitelining request and any subsequent meetings regarding the facility location for that excavation site. The operator shall maintain records of the whitelining documentation for two years after the excavation scheduled start date. The documentation shall include the following:
 - (1) A record stating the name and contact information of the excavator contacted for the request for whitelining;
 - (2) verification that both parties understand the description of the excavation site;
 - (3) the agreed-upon excavation scheduled start date; and
 - (4) the date and time of the request for whitelining.
- (v) Each operator that received more than 2,000 requests for facility locations in the preceding calendar year shall file a damage summary report at least semiannually with the Kansas corporation commission. The report shall include information on each incident of facility damage resulting from excavation activity that was discovered by the operator during that period. For each incident, at a minimum the following data, if known, shall be included in the report:
 - (1) The type of operator;
 - (2) the type of excavator;
 - (3) the type of excavation equipment;
 - (4) the city or county, or both, in which the damage occurred;
 - (5) the type of facility that was damaged;
 - (6) the date of damage, specifying the month and year;
 - (7) the type of locator;
 - (8) the existence of a valid notice of intent of excavation; and
 - (9) the primary cause of the damage.

- (w) The damage summary report for the first six months of the calendar year shall be due on or before August 1 of the same calendar year. The damage summary report for the last six months of the calendar year shall be due on or before February 1 of the next calendar year. (Authorized by K.S.A. 2008 Supp. 66-1815; implementing K.S.A. 66-1806, as amended by L. 2008, ch. 122, sec. 8; effective Jan. 19, 2007; amended P-_____.)

82-14-4. Notification center requirements. In addition to the provisions of K.S.A. 66-1805 and amendments thereto, the executive director of the notification center shall ensure that the following requirements are met:

- (a) Notice shall be provided to each affected operator of a tier 1 facility of any excavation site for which the location has been requested pursuant to K.S.A. 66-1804(e), and amendments thereto, and K.A.R. 82-14-2 (e) or (f) if the affected operator is a tier 1 member and has facilities recorded with the notification center in the area of the proposed excavation site.
- (b) If the affected operator is a tier 2 member and has a facility recorded with the notification center in the area of the proposed excavation, the notification center shall provide the excavator with the name of the tier 2 member and contact information for the tier 2 member.
- (c) If the affected operator is a tier 3 member and has facilities recorded with the notification center in the area of the proposed excavation, the notification center shall provide the excavator with the name of the tier 3 member and the preferred method of contact for the tier 3 member.
- (d) Notice provided by the notification center directly to the operators of tier 2 facilities of any excavation site shall be deemed to meet the requirements of subsections (b) and (c) if the operator agrees to the method of notification.
- (e) A record of receipts for each notice of intent of excavation shall be maintained by the notification center for two years, including an audio record of each notice of intent of excavation, if available, and a written or electronic version of the notification sent to each operator that is a tier 1 member.
- (f) A copy of the notification center's record documenting the notice of intent of excavation shall be provided to the commission or to the person giving the notice of intent of excavation, upon request.
- (g) A quality control program shall be established and maintained by the notification center. The program shall ensure that the employees receiving and recording the notices of intent of excavation are adequately trained. (Authorized by K.S.A. 2008 Supp. 66-1815; implementing K.S.A. 66-1805, as amended by L. 2008, ch. 122, sec. 7; effective Jan. 19, 2007; amended P-_____.)

Tier 3 member notification requirements. In addition to meeting the requirements of K.A.R. 82-14-3(e), each tier 3 member shall ensure that the following requirements are met:

- (a) A record of receipts for each notice of intent of excavation shall be maintained for at least two years, including an audio record, if available, of each notice of intent of excavation and a written or electronic version of the notification.
- (b) A copy of the tier 3 member's record documenting the notice of intent of excavation resulting in a response from the member shall be provided to the commission or to the person giving the notice of intent of excavation, upon request.
- (c) A quality control program shall be established and maintained. The program shall establish procedures for receiving and recording the notices of intent of excavation. (Authorized by K.S.A 2008 Supp. 66-1815; implementing K.S.A 66-1802, as amended by L. 2008, ch. 122, sec. 5; effective Jan. 19, 2007; amended P-_____.)

82-14-6. Violation of act; enforcement procedures.

- (a) After investigation, if the commission staff believes that there has been a violation or violations of K.S.A. 66-1801 et seq. and amendments thereto or any regulation or commission order issued pursuant to the Kansas underground utility damage prevention act and the commission staff determines that penalties or remedial action is necessary to correct the violation or violations, the commission staff may serve a notice of probable noncompliance on the person or persons against whom a violation is alleged. Service shall be made by registered mail or hand delivery.
- (b) Any notice of probable noncompliance issued under this regulation may include the following:
 - (1) A statement of the provisions of the statutes, regulations, or commission orders that the respondent is alleged to have violated and a statement of the evidence upon which the allegations are based;
 - (2) a copy of this regulation; and
 - (3) any proposed remedial action or penalty assessments, or both, requested by the commission staff.
- (c) Within 30 days of receipt of a notice of probable noncompliance, the recipient shall respond by mail in at least one of the following ways:
 - (1) Submit written explanations, a statement of general denial, or other materials contesting the allegations;
 - (2) submit a signed acknowledgment of commission staff's findings of noncompliance; or
 - (3) submit a signed proposal for the completion of any remedial action that addresses the commission staff's findings of noncompliance.

- (d) The commission staff may amend a notice of probable noncompliance at any time before issuance of a penalty assessment. If an amendment includes any new material allegations of fact or if the staff proposes an increased civil penalty amount or additional remedial action, the respondent shall have 30 days from service of the amendment to respond.
- (e) Unless good cause is shown or a consent agreement is executed by the commission staff and the respondent before the expiration of the 30-day time limit, the failure of a party to mail a timely response to a notice of probable noncompliance shall constitute an admission to all factual allegations made by the commission staff and may be used against the respondent in future proceedings.
- (f) At any time before an order is issued assessing penalties or requiring remedial action or before a hearing, the commission staff and the respondent may agree to dispose of the case by joint execution of a consent agreement. The consent agreement may allow for a smaller penalty than otherwise required. The consent agreement may also allow for nonmonetary remedial penalties. Upon joint execution, the consent agreement shall become effective when the commission issues an order approving the consent agreement.
- (g) Each consent agreement shall include the following:
 - (1) An admission by the respondent of all jurisdictional facts;
 - (2) an express waiver of any further procedural steps and of the right to seek judicial review or otherwise challenge or contest the validity of the commission's show cause order;
 - (3) an acknowledgment that the notice of probable noncompliance may be used to construe the terms of the order approving the consent agreement; and
 - (4) a statement of the actions required of the respondent and the time by which the actions shall be completed.
- (h) If any violation resulting in a notice of probable noncompliance is not settled with a consent agreement, a penalty order may be issued by the commission no sooner than 30 days after the respondent has been served with a notice of probable noncompliance.
- (i) The respondent shall remit payment for any civil assessments imposed by a penalty order within 20 days of service of the order.
- (j) The respondent may request a hearing to challenge the allegations set forth in the penalty order by filing a motion with the commission within 15 days of service of a penalty order. The respondent's failure to respond within 15 days shall be considered an admission of noncompliance.
- (k) An order may be issued by the commission to open a formal investigation docket regarding any potential noncompliance with the Kansas underground utility damage prevention act, and amendments

thereto, or any regulations or orders pursuant to that act. If the commission finds evidence that any party to the investigation docket was not in compliance, a show cause order may be issued by the commission. If a show cause order is issued during the course of a formal investigation, the staff shall not be required to issue a notice of probable noncompliance. (Authorized by K.S.A 66-106 and K.S.A 66-1812; implementing K.S.A 66-1812; effective P-_____.)

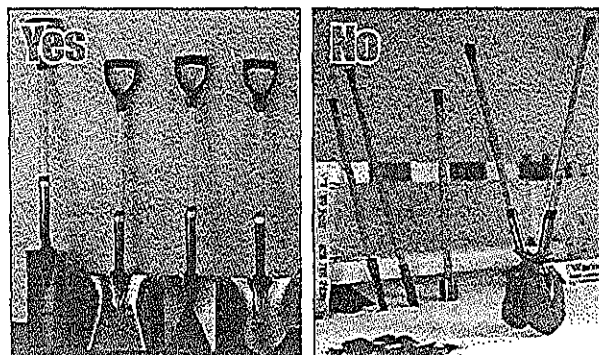
DIG SAFELY
KANSAS ONE-CALL
8100 E 22nd ST N BLDG 2300
WICHITA KS 67226



Know what's below.
Call before you dig.

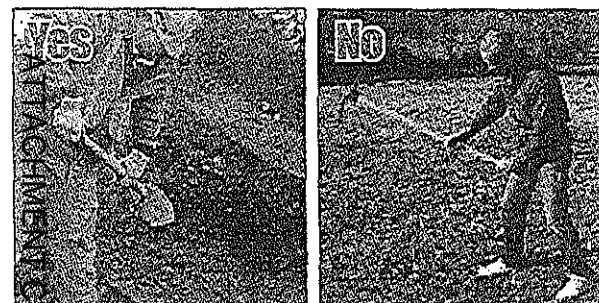
Once the utility lines have been marked
and you're ready to dig in the vicinity
of utility lines...

- ✓ Use only rounded/blunt edged tools.



- ✗ Don't use axes, hand or powered posthole diggers, picks, mattocks, pry/probing bars or mechanized equipment, as these often result in damage.

- ✓ Keep the face of the shovel parallel with the utility line markings.

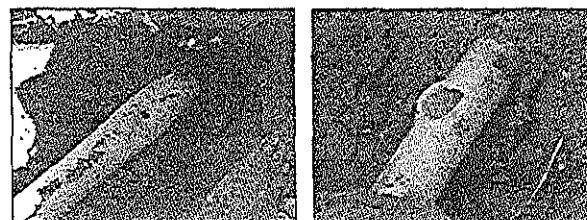


- ✓ If the utility line is visible, keep the face of the shovel parallel with the utility line and use all precautions when removing the soil from around the utility line.
- ✗ Don't be aggressive with digging close to utility lines.

- ✗ Don't pry against a utility line.
- ✗ Don't take for granted that a utility line will be at a certain depth.
- ✗ Don't assume an unmarked line is abandoned.
- ✗ Don't assume that a utility line that is uncovered will be the only one. There may be another line underneath or close by.



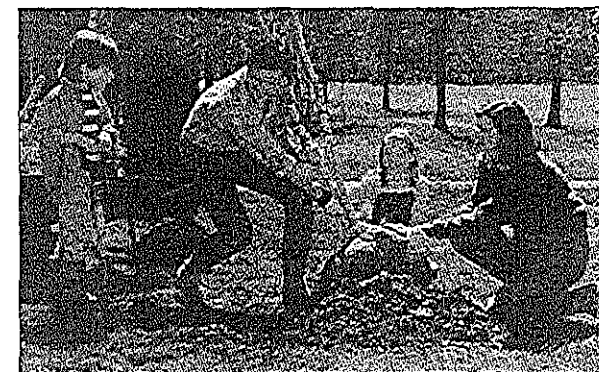
- ✗ Don't become frustrated if you do not encounter a utility line right away. Frustration can lead to carelessness and eventual damage to the utility line.



- ✗ Don't expose excessive lengths of a utility line.
- ✗ Don't leave utility lines exposed while unattended.
- ✗ Don't attempt to move underground utility lines.



Safe Digging Tips



800-DIG-SAFE
KansasOneCall.com

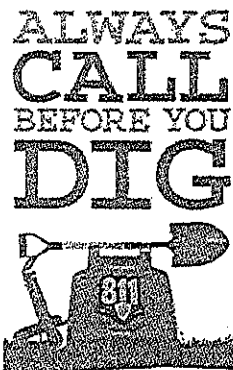


Know what's below.
Call before you dig.

Always contact Kansas One Call first!
Phone 800-DIG-SAFE or simply dial '811'
or visit us at www.kansasonecall.com

1 CALL Before You Dig before planting trees, putting in fences or other activities that require you to dig a hole, please review these "Best Practices" designed to help protect you from injury and expense. For more information, go to www.call811.com.

2 WAIT Two Full Working Days after contacting Kansas One Call for the utility companies to visit your dig site to mark the approximate location of their underground utility lines. See the chart below.



Call Timeline:

	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu
Mon		1	2	ok							
Tue			1	2	ok						
Wed				1	2	ok					
Thu					1	2	ok				
Fri						1	2	ok			
Sat							1	2	ok		
Sun								1	2	ok	

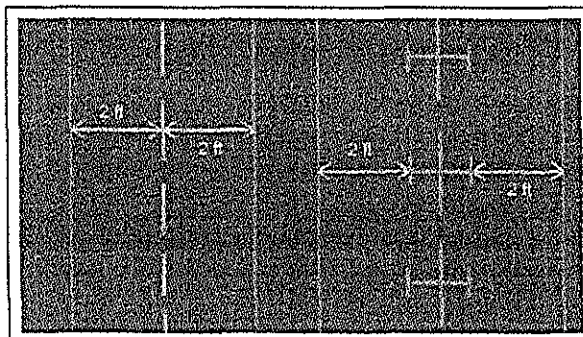
[Shaded Box] Date of the call - does not count.
 [Hatched Box] Waiting period for locates, includes weekends and holidays.
 [White Box] Date when digging may begin.

Locates are valid for 15 calendar days

3 RESPECT the Marks! The utility companies will use colored flags or paint to indicate the approximate location of their underground utilities. To assist the utility company, you may mark the area of excavation with white paint or white flags.

[White Box]	WHITE - Proposed Excavation
[Pink Box]	PINK - Temporary Survey Markings
[Red Box]	RED - Electric Power Lines, Cables, Conduit And Lighting Cables
[Yellow Box]	YELLOW - Gas, Oil, Steam, Petroleum Or Gaseous Materials
[Orange Box]	ORANGE - Communication, Alarm Or Signal Lines, Cables Or Conduit
[Blue Box]	BLUE - Potable Water
[Purple Box]	PURPLE - Reclaimed Water, Irrigation And Slurry Lines
[Green Box]	GREEN - Sewers And Drain Lines

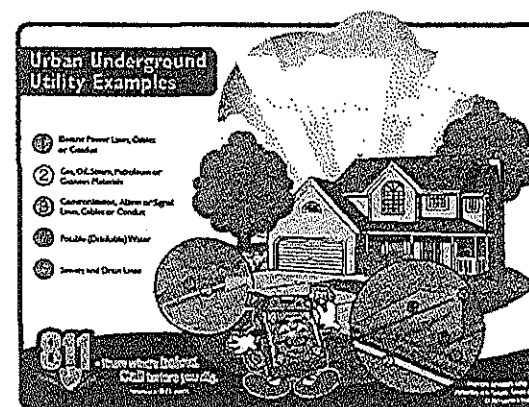
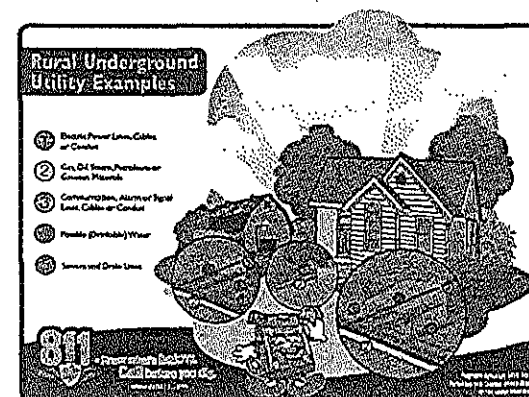
4 Dig With Care! The paint and flags placed by the utility company indicate the approximate location of their facilities, which may be anywhere in a 2 foot (24") tolerance zone on either side of the line of paint or flags.



Please Note:

The notified facility/utility owners **will not** mark privately owned underground lines. These include but are not limited to; power or electric service, water and sewer pipes from the meter to your home, invisible fencing, sprinkler systems, well and septic systems, etc.

Some utility companies will locate private utility lines if requested. Check with your local utility companies for details.



Call 800-DIG-SAFE or dial '811'