20191010131313 Kansas Corporation Commission



Phone: 785-271-3100 Fax: 785-271-3354 http://kcc.ks.gov/

Laura Kelly, Governor

1500 SW Arrowhead Road Topeka, KS 66604-4027

Dwight D. Keen, Chair Shari Feist Albrecht, Commissioner Susan K. Duffy, Commissioner

October 10, 2019

Josh Beyrle JSB Landservices, LLC 4700 N 215th St W Colwich, Kansas 67030 NOTICE OF PENALTY ASSESSMENT 20-DPAX-156-PEN

This is a notice of penalty assessment against JSB Landservices, LLC for violation of the Kansas Underground Utility Damage Prevention Act (KUUDPA) discovered during an investigation conducted on March 27, 2019, by Kansas Corporation Commission Staff. For a full description of the violation and penalty please refer to the Order that is attached to this notice.

## IF YOU ACCEPT THE PENALTY:

You have been assessed a \$500 penalty. You have twenty (20) days from the date of service of the Penalty Order to pay the fine amount. <u>Checks should be payable to the Kansas Corporation Commission</u>. Payments shall be mailed to the Fiscal Division of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and shall include a reference to the docket number (20-DPAX-156-PEN) of this proceeding.

#### IF YOU CONTEST THE PENALTY:

You have the right to request a hearing. Requests for hearings must be made in writing, setting forth the specific grounds upon which relief is sought. The company may electronically file its request for hearing within fifteen (15) days from the date of service of this Penalty Order. The company must also e-mail or mail a copy of the request for hearing to the Litigation Counsel listed below. If the company does not have access to the internet, it must submit an original and seven copies of the request for hearing to the Executive Director at 1500 SW Arrowhead Road, Topeka, Kansas 66604, within fifteen (15) days from the date of service of this Penalty Order, and provide a copy to the Litigation Counsel listed below.

#### IF YOU FAIL TO ACT:

Pursuant to K.A.R. 82-14-6(i) and (j), failure to submit a written request for a hearing within fifteen (15) days or, in the alternative, to pay the civil assessment in twenty (20) days from the date of service of this Penalty Order, will be considered an admission of noncompliance and result in the Penalty Order becoming a Final Order. Failing to request a hearing or pay the civil assessment may result in the Commission ordering further sanctions.

Respectfully,

Carly R. Masenthin

Carly R. Masenthin, S. Ct. No. 27944 Litigation Counsel (785)271-3361 c.masenthin@kcc.ks.gov

# THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

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

In the Matter of the Investigation of JSB Landservices, LLC, of Colwich, Kansas, Regarding Violation(s) of the Kansas Underground Utility Damage Prevention Act (KUUDPA) (K.S.A. 66-1801, *et seq.*, and K.A.R. 82-14-1, *et seq.*), and the Commission's Authority to Impose Penalties and/or Sanctions (K.S.A. 66-1,151).

Docket No. 20-DPAX-156-PEN

## PENALTY ORDER

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). The Commission, being duly advised in the premises, and after having examined its files and records, finds and concludes as follows:

#### I. JURISDICTION AND BACKGROUND

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

2. In its enforcement of KUUDPA, pursuant to K.A.R. 82-14-6, as amended, the Commission may investigate an entity under the Commission's jurisdiction and order a hearing on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

3. The Commission shall impose civil penalties and injunctive actions against any person or entity subject to and found in violation of the provisions of KUUDPA, or any rule and regulation, or any order of the Commission. Each violation is subject to a civil penalty, not to exceed \$25,000, for each day that the violation persists, with a maximum civil penalty of \$1,000,000 for any related series of violations. *See* K.S.A. 66-1812, 66-1,151 and amendments thereto; and, K.A.R. 82-14-6.

#### II. ALLEGATIONS OF NONCOMPLIANCE

4. Pursuant to the above authority, on March 27, 2019 Commission Staff (Staff) investigated the activities and operations of JSB Landservices, LLC (Respondent). See Report and Recommendation of Staff dated September 30, 2019, a copy of which is attached hereto as Attachment "A". As a result of this investigation, Staff reports the following:

- a. On March 27, 2019, Staff performed an onsite inspection at 408 S Twin Pines Avenue in Haysville, Kansas. Staff's investigation discovered the Respondent caused damage to a Kansas Gas Service (KGS) 3/4" PE gas service line with a skid steer while grading for a drain system. No injuries or additional property damage occurred.
- b. Staff learned during its independent investigation that Respondent had not provided Kansas Gas Service (KGS) with a notice of intent to excavate and Kansas One Call had not been called to obtain locate marks.
- c. On March 29, 2019, Staff mailed a Notice of Probable Noncompliance notifying Respondent of the investigation results. The letter instructed Respondent to respond within thirty (30) days and to indicate whether Respondent accepted or disagreed with the findings of Staff's

investigation. The notice also requested Respondent to provide written explanation of the actions taken by Respondent to prevent future KUUDPA violations. In the alternative, the Respondent could provide documentation explaining why Respondent disagreed with the findings, including identification of any errors in the Notice of Probable Noncompliance. The violation cited is as follows:

#### K.S.A. 66-1804(a) & (e)

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 no 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.
(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.

- d. The Notice of Probable Cause was sent after March 29, 2019 on two different dates (April 10, 2019 and August 21, 2019) as a result of the notices being returned to the Kansas Corporation Commission as "unclaimed."
- e. Staff has not received a written response from Respondent in violation of K.A.R. 82-14-6. Pursuant to K.A.R. 82-14-6(e), failure to respond to the Notice of Probable Noncompliance within 30 days shall constitute an admission to all factual allegations made by the Commission Staff and may be used against the Respondent in future proceedings.

5. Based upon the available facts, Staff recommends the Commission find that at the time of the damage alleged herein, Respondent was an excavator conducting excavation activities as defined in K.S.A. 2018 Supp. 66-1802(c) and (d). Additionally, based upon the available facts, Staff recommends the Commission find Respondent failed to obtain a valid locate ticket and failed to serve notice of intent of excavation as Kansas law requires.

6. Excavating without locates and without ascertaining the location of all underground facilities is considered a high-risk activity with the potential for significant consequences to public safety. KUUDPA requires the excavator to serve notice of intent of excavation at least two full working days before the scheduled excavation start date. Because providing proper and timely notice of intent and waiting the required amount of time is the most fundamental preventative measure an excavator takes, the fact that JSB Landservices, LLC failed to comply with this requirement of law warrants the assessment of a civil penalty.

7. Staff recommends the Commission issue JSB Landservices, LLC a civil penalty of \$500 for the violation of the Kansas Underground Utility Damage Prevention Act as alleged.

#### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. Pursuant to K.S.A. 66-1813, the Commission has jurisdiction and authority to administer and enforce the KUUDPA.

9. The Commission finds during the incident described in Staff's Report and Recommendation, Respondent was an excavator conducting excavation activities as defined in K.S.A. 66-1802(d) and (e). Accordingly, the Commission finds it has jurisdiction over Respondent to enforce the KUUDPA.

10. The Commission concludes Respondent violated Kansas law governing underground utilities, including various provisions of KUUDPA, and is therefore subject to

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sanctions or fines imposed by the Commission. Specifically, the Commission finds Respondent violated K.S.A. 66-1804(a) & (e) by failing to obtain a locate ticket and failing to provide a notice of intent of excavation. As a result of this failure, Respondent damaged underground facilities of Kansas Gas Service (KGS).

11. The Commission concludes Respondent shall be assessed a civil penalty, pursuant to K.S.A. 66-1812, in the amount of \$500 for violation of the Kansas Underground Utility Damage Prevention Act.

12. The Commission finds and concludes Respondent shall be afforded an opportunity to request a hearing on the assessment of this civil penalty. Pursuant to K.A.R. 82-14-6(j), the Commission finds and concludes Respondent shall have 15 days from the date of service of this Penalty Order to request a hearing on the matter. A request for hearing must comply with the provisions of K.A.R. 82-1-232(b). Hearings shall be conducted in accordance with K.A.R. 82-1-230.

13. Pursuant to K.A.R. 82-14-6(i), and (j), the Commission finds and concludes Respondent's failure to pay the assessed civil penalty within 20 days, or in the alternative request a hearing within 15 days from the date of service of this Penalty Order, shall be considered an admission of the noncompliance allegations contained herein.

#### THE COMMISSION THEREFORE ORDERS THAT:

A. JSB Landservices, LLC, of Colwich, Kansas, is hereby assessed a \$500 civil penalty for the violation of the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 through -1816.

B. Pursuant to K.A.R. 82-14-6(j) and amendments thereto, any party may request a hearing by electronically filing its request within fifteen (15) days from the date of service of this

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Penalty Order, and e-mailing or mailing a copy of the request for hearing to the Litigation Counsel listed on the Notice of Penalty Assessment. If the company does not have access to the internet, it must submit an original and seven copies of the request for hearing to the Executive Director at 1500 SW Arrowhead Road, Topeka, Kansas 66604, within fifteen (15) days from the date of service of this Penalty Order, and provide a copy to Litigation Counsel. Hearings will be scheduled only upon written request. Failure to timely request a hearing shall be considered an admission of the noncompliance allegations contained herein and result in a waiver of Respondent's right to a hearing. A request for hearing must comply with the provisions of K.S.A. 82-1-232(b). Hearings shall be conducted in accordance with K.A.R. 82-1-230. Furthermore, if a request for hearing is not filed, this Penalty Order will become a Final Order assessing a \$500 civil penalty against Respondent.

C. Attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. For civil penalties exceeding \$500, a corporation shall appear before the Commission by its attorney, unless waived by the Commission for good cause shown and a determination that such waiver is in the public interest. *See* K.A.R. 82-1-228(d)(2); K.A.R. 82-1-202(a).

D. Pursuant to K.A.R. 82-14-6, if you do not request a hearing, the payment of the civil penalty is due in twenty (20) days from the date of service of this Order. Checks shall be payable to the Kansas Corporation Commission. Payments shall be mailed to the Fiscal Division of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604. Credit card payments can be made by calling the Fiscal Office at 785-271-3351. The payment shall include a reference to the docket number (20-DPAX-156-PEN) of this proceeding.

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E. Unless a hearing is requested, failure to pay the \$500 civil penalty within twenty (20) days from the date of service of this Penalty Order will result in enforcement action against Respondent, including all sanctions, requirements, and penalties described above being enforceable without further action by the Commission.

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

# BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner 10/10/2019 Dated:

Lynn M. Ref

Lynn M. Retz Executive Director

CRM/vj

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# **ATTACHMENT "A"**

Utilities Division 1500 SW Arrowhead Road Topeka, KS 66604-4027

Dwight D. Keen, Chair Shari Feist Albrecht, Commissioner Susan K. Duffy, Commissioner Phone: 785-271-3220 Fax: 785-271-3357 http://kcc.ks.gov/

Kansas Corporation Commission

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Laura Kelly, Governor

# REPORT AND RECOMMENDATION UTILITIES DIVISION

- TO: Chair Dwight D. Keen Commissioner Shari Feist Albrecht Commissioner Susan K. Duffy
- **FROM:** Josh Williams, Damage Prevention Special Investigator Leo Haynos, Chief of Pipeline Safety Jeff McClanahan, Director of Utilities
- **DATE:** September 30, 2019
- **SUBJECT:** Docket Number: <u>20-DPAX-154-PEJ</u> In the Matter of the Investigation of JSB Land Service regarding Violations of the Kansas Underground Utility Damage Prevention Act (KUUDPA) (K.S.A. 66-1801, *et seq.*, and K.A.R. 82-14-1 through 82-14-5) and the Commission's Authority to Impose Penalties and/or Sanctions (K.S.A. 66-1,151) / JW-19-OC-1067

# **EXECUTIVE SUMMARY:**

Staff is recommending a civil penalty be issued to JSB Land Service (JSB) for \$500 for violation of KUUDPA. JSB did not provide a notice of intent to excavate prior to excavating on March 27, 2019, in Haysville, Kansas. Failure to provide proper notice of intent before excavating is a violation of K.S.A. 66-1804. A Notice of Probable Noncompliance (PNC) was issued to JSB on April 02, 2019. JSB did not respond to the PNC within 30 days as required by K.A.R. 82-14-6 (c). A copy of the PNC is included as Attachment I.

# ANALYSIS:

Rationale for Penalties:

A. Gravity of noncompliance:

Excavating without a valid One-Call ticket is considered a high-risk activity with the potential for significant consequences to public safety. This excavator was performing grade work at 408 S. Twin Pines Ave. in Haysville, Kansas. Because JSB never requested locates, the utility operator was unable to provide the location at which JSB would be required to carefully excavate to avoid damage to an underground facility at any depth.

JSB failed to comply with this requirement of the law and warrants the assessment of a civil penalty.

## B. Culpability:

JSB is directly responsible for its actions in failing to acquire a One-Call ticket as Kansas law requires.

# C. History of noncompliance:

Staff issued one KUUDPA Probable Noncompliance(s) to JSB in the past two years.

## D. <u>Response of excavator regarding noncompliance(s)</u>:

Response to the PNC as required by K.A.R. 82-14- 6 (c) was never received by staff before the 30 days expired. On May 8, Staff spoke with JSB regarding the overdue response to the PNC. JSB indicated they would respond. A follow up letter was emailed to JSB on May 16, 2019, and no response was received. A second follow up letter was sent via certified mail on August 21, 2019. This letter was returned as "unclaimed" and "unable to forward". As per K.A.R. 82-14-6 (e), failure to mail a timely response to a notice of probable noncompliance is considered an admission to all factual allegations made by commission staff.

## E. Aggravating/Mitigating Circumstances:

Staff has not determined any circumstances that would cause modification of the \$500 recommended penalty amount.

# **RECOMMENDATION:**

Staff recommends a civil penalty be issued to JSB Land Service in the amount of \$500 for violation(s) of K.S.A. 66-1804.

Attachment



Phone: 785-271-3100 Fax: 785-271-3354 http://kcc.ks.gov/

Laura Kelly, Governor

1500 SW Arrowhead Road Topeka, KS 66604-4027

Dwight D. Keen, Chair Shari Feist Albrecht, Commissioner Jay Scott Emler, Commissioner

> Josh Beyrle JSB Land Service 4700 N. 215th Street West Colwich, KS 67030

Subject: Pipeline Investigation

Dear Josh Beyrle :

Pursuant to K.S.A. 66-1801, et. Seq. the Kansas Corporation Commission (KCC) has jurisdiction and authority to investigate and to issue civil penalties for violations of the Kansas Underground Utility Damage Prevention Act (KUUDPA).

On March 27, 2019, the Kansas Corporation Commission's Pipeline Safety Staff conducted an investigation into excavation activities which are believed to involve your company. As a result of this investigation, Staff has identified possible violations committed by JSB Land Service. The findings of this investigation are described on the attached form(s).

Kansas law, K.A.R. 82-14-6(c), requires the recipient of this notice to provide a written response to any Notice of Probable Noncompliance. After reviewing the findings, please respond in at least one of the following ways:

- 1) Submit written explanation, a statement of general denial, or other materials contesting the allegations;
- 2) Submit a signed acknowledgement 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.

Pursuant to K.A.R. 82-14-6(e), failure to respond within 30 days to this 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

Please return the evaluation form(s) with any supporting documentation within thirty (30) days of receipt of this report to the address or email below. Any response submitted by email must include an electronic signature and date.

Kansas Corporation Commission Pipeline Safety Section 1500 SW Arrowhead Road Topeka, KS 66604-4027 kccsafetyresponse@kcc.ks.gov

Please feel free to contact me directly if you have questions or concerns.

Sincerely,

Leo Haynos /s/ Chief Engineer (785) 271-3278 I.haynos@kcc.ks.gov March 29, 2019

KCC Investigation #: JW-19-OC-1067

# PROBABLE NONCOMPLIANCE

Investigation: JW-19-OC-1067

#### Company: JSB Land Service

Division:

#### **Regulation:**

#### 66-1804 (a) & (c) Notice of intent of excavation.

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.

(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.

#### **PROBABLE NONCOMPLIANCE DESCRIPTION:**

On 03/27/2019, JSB Land Services did not notify One-Call prior to excavating at 408 S Twin Pines Ave Haysville, KS 67060. JSB Land Services damaged a KGS 3/4" PE gas service line with a skid steer while grading for a drain system. After performing a search in the One-Call database no ticket was found for this area by this contractor during this time frame for the work that was being performed prior to the damage.

#### **OPERATOR'S RESPONSE:** (Attach verification if needed)

Operator's Authorized Signature:

Date:

PIPELINE SAFETY USE ONLY:	
Date reviewed:	Date reviewed:
Chief:	Inspector:

Inspection Type: One Call Inquiry/Complaint Date Inspected: 03/27/2019 Inspected By: JW Utilities Division 1500 SW Arrowhead Road Topeka, KS 66604-4027

Dwight D. Keen, Chair Shari Feist Albrecht, Commissioner Susan K. Duffy, Commissioner

> Josh Beyrle JSB Land Service 4700 N 215<sup>th</sup> St. W Colwich, KS 67030

Phone: 785-271-3220 Fax: 785-271-3357 http://kcc.ks.gov/

Laura Kelly, Governor

April 10, 2019

KCC Investigation #: JW-19-OC-1067

Subject: Follow up to Notice of Probable Noncompliance

Dear Josh Beyrle:

On March 27, 2019, an investigation was conducted by the Pipeline Safety Staff of the Kansas Corporation Commission in connection with excavation site at 408 S Twin Pines Ave. in Haysville, Kansas. As a result of the investigation, Staff issued a Notice of Probable Noncompliance (PNC) to your company on March 29, 2019. As of this date, a response has not been received. A copy of the original letter and the associated PNC are attached to this letter. Kansas regulation K.A.R. 82-14-6(c) required your response to Staff's PNC within 30 days of receipt.

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

(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.

(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.

(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.

Please return the evaluation form(s) with any supporting documentation and signature within five (5) days of receipt of this report to the address or email below. Any response submitted by email must include an electronic signature and date.

Kansas Corporation Commission, Attn. Pipeline Safety 1500 SW Arrowhead Road Topeka, Kansas 66604 -4027 kccsafetyresponse@kcc.ks.gov

Please feel free to contact me directly if you have questions or concerns. Sincerely,

Leo Haynos /s/ Chief Engineer (785) 271-3278 <u>l.haynos@kcc.ks.gov</u>



Utilities Division 1500 SW Arrowhead Road Topeka, KS 66604-4027

Dwight D. Keen, Chair Shari Feist Albrecht, Commissioner Susan K. Duffy, Commissioner

> Josh Beyrle JSB Land Service 4700 N 215<sup>th</sup> St. W Colwich, KS 67030

Phone: 785-271-3220 Fax: 785-271-3357 http://kcc.ks.gov/

Laura Kelly, Governor

August 21, 2019

KCC Investigation #: JW-19-OC-1067

Subject: Follow up to Notice of Probable Noncompliance

Dear Josh Beyrle:

On March 27, 2019, an investigation was conducted by the Pipeline Safety Staff of the Kansas Corporation Commission in connection with excavation site at 408 S Twin Pines Ave. in Haysville, Kansas. As a result of the investigation, Staff issued a Notice of Probable Noncompliance (PNC) to your company on March 29, 2019. As of this date, a response has not been received. A copy of the original letter and the associated PNC are attached to this letter. Kansas regulation K.A.R. 82-14-6(c) required your response to Staff's PNC within 30 days of receipt.

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

(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:

Submit written explanations, a statement of general denial, or other materials contesting the allegations;
 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.

(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.

(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.

Please return the evaluation form(s) with any supporting documentation and signature within five (5) days of receipt of this report to the address or email below. Any response submitted by email must include an electronic signature and date.

Kansas Corporation Commission, Attn. Pipeline Safety 1500 SW Arrowhead Road Topeka, Kansas 66604 -4027 kccsafetyresponse@kcc.ks.gov

Please feel free to contact me directly if you have questions or concerns. Sincerely,

Leo Haynos /s/ Chief Engineer (785) 271-3278 Lhaynos@kcc.ks.gov





# **CERTIFICATE OF SERVICE**

20-DPAX-156-PEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of

first class mail/hand delivered on \_\_\_\_\_10/11/2019

JOSH BEYRLE, OWNER JSB LANDSERVICES LLC 4700 N 215TH ST W COLWICH, KS 67030-9608 jsbcompany@yahoo.com CARLY MASENTHIN, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604 Fax: 785-271-3354 c.masenthin@kcc.ks.gov

/S/ DeeAnn Shupe DeeAnn Shupe