

1500 SW Arrowhead Road
Topeka, KS 66604-4027



20240402103541
Kansas Corporation
Commission
Phone: 785.271-3100
Fax: 785.271-3354
<http://kcc.ks.gov/>

Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Annie Kuether, Commissioner

Laura Kelly, Governor

NOTICE OF PENALTY ORDER
24-DPAX-631-PEN

April 2, 2024

Jim Ley
FSG Electric
17780 W 99th St
Lenexa, KS 66219

This is a notice of a penalty assessment against FSG Electric (“FSG”) for a violation of the Kansas Underground Utility Damage Prevention Act (“KUUDPA”) and pipeline safety regulations adopted by the Kansas Corporation Commission. For a full description of the penalty please refer to the Penalty Order attached to this notice.

IF YOU ACCEPT THE PENALTY: FSG has been assessed a civil penalty in the amount of \$500. You have twenty (20) days from the date of service of the Penalty Order to pay the penalty. Payments shall be payable to the Kansas Corporation Commission and mailed to the Fiscal Division of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and shall include a reference to Docket Number 24-DPAX-631-PEN

IF YOU CONTEST THE PENALTY: **You have the right to request a hearing to challenge the Penalty Order.** A request for hearing must be made in writing, setting forth the specific grounds upon which relief is sought. You or an authorized representative of FSG, may electronically file its request for hearing within fifteen (15) days from the date of service of the Penalty Order. A copy of the request for hearing must be provided to the Litigation Counsel listed below.

IF YOU FAIL TO ACT: Pursuant to K.A.R. 82-14-6(j), failure to submit a written request for a hearing within fifteen (15) days from date of service of the Penalty Order will be considered an admission of noncompliance. **Failing to request a hearing or pay the civil assessment may result in further penalties.**

Respectfully,

/s/ Carly R. Masenthin

Carly R. Masenthin, S. Ct. No. 27944
Senior Litigation Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027
Phone: (785) 271-3265
Email: c.masenthin@kcc.ks.gov

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

Before Commissioners: Andrew J. French, Chairperson
 Dwight D. Keen
 Annie Kuether

In the Matter of the Investigation of FSG)
Electric, Regarding Violations of the Kansas)
Underground Utility Damage Prevention Act)
(KUUDPA) (K.S.A. 66-1801, et seq., and) Docket No. 24-DPAX-631-PEN
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).)

PENALTY ORDER

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (the “Commission”) on hearing of allegations against FSG Electric (“FSG”) for violating the Kansas Underground Utility Damage Prevention Act (“KUUDPA”) and pipeline safety regulations adopted by the Commission. Having examined its files and records and being otherwise duly advised in the premises, the Commission makes findings of fact and conclusions of law as follows:

I. FINDINGS OF FACT

1. Commission technical staff (“Staff”) submitted to the Commission’s Litigation Division Staff’s Report and Recommendation (including all Exhibits to it, the “R&R”), attached as **Attachment A** and incorporated by reference, on March 4, 2024 recommending a civil penalty of \$500 to be assessed against FSG due to FSG’s failure to provide a notice of intent prior to excavating at 5010 Speaker Road, Kansas City, Kansas (the “Excavation Site”).¹

¹ K.S.A. 66-1809(a) and K.A.R. 82-14-2(j)(7).

2. On October 31, 2023, Staff conducted an onsite investigation of the excavation operations of FSG at the Excavation Site. Staff found that a Kansas Gas Service (“KGS”) service line was damaged due to FSG’s failure to request locates.²

3. Staff subsequently issued FSG a notice of probable noncompliance (“PNC”) on November 1, 2023, notifying FSG of the investigation results.³

4. On November 27, 2023, Staff received a response from FSG. FSG agreed with Staff’s findings and advised Staff that the journeyman involved in the incident was prohibited from future excavation work and is undergoing re-training on FSG’s safety procedures.⁴

II. CONCLUSIONS OF LAW

5. The Commission has full power and authority under K.S.A. 66-1815(a) to adopt all necessary rules and regulations for carrying out the provisions of KUUDPA.

6. The Commission has authority under to K.A.R. 82-14-6(a) to 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.

7. Further, K.S.A. 66-1812, in part, states as follows:

Any person to whom [KUUDPA] applies, who violates any of the provisions contained in [KUUDPA], shall be subject to civil penalties...as set out in K.S.A. 66-1,151...and any remedies established in rules and regulations promulgated by the [Commission] in support of [KUUDPA].

8. Under K.S.A. 66-1,151, “[a]ny person who violates any rule or regulation adopted pursuant to [KUUDPA], or any rule and regulation adopted by the [C]ommission...shall be subject to a civil penalty not to exceed \$25,000 for each violation for each day that the violation persists.”

² Staff R&R, p. 2 (Mar. 4, 2024).

³ See Exhibit 1 of Staff R&R.

⁴ See Exhibit 2 of Staff R&R.

9. FSG was operating as an excavator, as defined in K.S.A. 66-1802(e), during the incident at issue.

10. By failing to provide a notice of intent prior to excavating, FSG violated K.S.A. 66-1804.

11. Under K.A.R. 82-14-6(a), Staff was authorized to serve a PNC on FSG after Staff conducted their investigation regarding the damaged gas main.

12. FSG responded to Staff's PNC as required under K.A.R. 82-14-6.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. A civil penalty in the amount of \$500 is assessed against FSG Electric. for violating the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 *et seq.*, and the Commission's pipeline safety regulations adopted pursuant to K.S.A. 66-1,150 *et seq.*

B. Pursuant to K.A.R. 82-14-6(j), FSG Electric may request a hearing to challenge the allegations set forth in this Penalty Order by electronically filing its request for hearing with the Commission within fifteen (15) days from the date of service of this 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. Hearings will be scheduled only upon written request. Failure to timely request a hearing shall be considered an admission of noncompliance and result in a waiver of FSG Electric's right to a hearing. A request for hearing must comply with the provisions of K.A.R. 82-1-232(b).

C. Pursuant to K.A.R. 82-14-6(i), if FSG Electric does not request a hearing, payment of the civil penalty is due within twenty (20) days from the date of service of this Penalty Order. Payments shall be made payable to the Kansas Corporation Commission and mailed to the following address:

Fiscal Division
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604

The payment shall include a reference to Docket Number 24-DPAX-631-PEN.

D. 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 FSG Electric including all sanctions, requirements, and penalties described above being enforceable without further action by the Commission.

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

Dated: 04/02/2024



Lynn M. Retz
Executive Director

CRM

ATTACHMENT “A”

Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Annie Kuether, Commissioner

Laura Kelly, Governor

REPORT AND RECOMMENDATION UTILITIES DIVISION

TO: Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Annie Kuether, Commissioner

FROM: Suzanne M. Balandran, Assistant Supervisor of Pipeline Safety
Leo Haynos, Chief of Pipeline Safety
Jeff McClanahan, Director of Utilities

DATE: March 4, 2024

SUBJECT: **Docket Number:** 24-DPAX-631-PEN
In the Matter of the Investigation of FSG Electric 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).

EXECUTIVE SUMMARY:

As a result of the investigation in Staff Case Number CK-23-OC-1213, Staff recommends that a civil penalty in the amount of \$500 be assessed to FSG Electric (FSG) for violation(s) of the Kansas Underground Utility Damage Prevention Act (KUUDPA). On October 31, 2023, FSG did not provide a notice of intent to excavate prior to excavating at 5010 Speaker Road in Kansas City, Kansas. Failure to provide a notice of intent before excavating is a violation of K.S.A. 66-1804. Staff issued a Notice of Probable Noncompliance (PNC) to FSG on November 1, 2023, attached hereto as Exhibit 1. FSG responded to the PNC on November 27, 2023, as required by K.A.R. 82-14-6 (c), attached hereto as Exhibit 2.

ANALYSIS:

Rationale for Penalties:

A. Gravity of noncompliance:

Excavating without a One-Call ticket is considered a high-risk activity with the potential for significant consequences to public safety. FSG damaged a Kansas Gas Service (KGS)

service line with an excavator while installing conduit. Due to FSG's failure to request locates, Kansas Gas Service was unable to provide the location at which FSG would be required to carefully excavate to avoid damage to an underground facility at any depth. FSG failed to comply with the law and warrants the assessment of a civil penalty.

B. Culpability:

FSG is directly liable for its actions in failing to provide a notice of intent before excavating as required by Kansas law.

C. History of noncompliance:

Staff has not issued any other KUUDPA Notice of Probable Noncompliance to FSG in the past two years.

D. Response of excavator regarding noncompliance(s):

Response to the PNC as required by K.A.R. 82-14- 6(c) was received by Staff on November 27, 2023. FSG agreed with Staff's findings. FSG acknowledged that there was not a one call ticket and the line was not marked when the journeyman hit the line. The journeyman was prohibited from future excavation work and is undergoing full re-training on company safety procedures.

E. Aggravating/Mitigating Circumstances:

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

RECOMMENDATION:

Staff recommends a civil penalty be assessed to FSG Electric in the amount of \$500 for violating K.S.A. 66-1804.

PROBABLE NONCOMPLIANCE**Investigation: CK-23-OC-1213****Company: FSG Electric****Division:****Regulation:****66-1804 (a) & (e) 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 10/31/2023, KCC Staff was notified of excavation work resulting in a damage that occurred to a KGS gas line around the area of 5010 Speaker Rd in Kansas City, Kansas. KCC alleges FSG Electric damaged a KGS 1-1/4" PE gas service line with an excavator while digging to repair a power issue. There was no One-Call ticket in the database for this excavator at this address 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: 10/31/2023

Inspected By: CK

From: [Leo Haynos \[KCC\]](#)
To: [SafetyResponse](#); [Christie Knight \[KCC\]](#)
Subject: FW: NAS Gas Line: KCCI #: CK-23-OC-1213
Date: Monday, November 27, 2023 3:11:10 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[FSG Excavation Procedures \[Safety Handbook Final\].pdf](#)
[file_654168b9a9aef.pdf](#)
Importance: High

From: Jim Ley <jim.ley@fsgi.com>
Sent: Monday, November 27, 2023 3:02 PM
To: Leo Haynos [KCC] <l.haynos@kcc.ks.gov>
Cc: Steve Frank <steve.frank@fsgi.com>; Bashar Marawi <bashar.marawi@fsgi.com>; Brooke McCoy <brooke.mccoy@fsgi.com>
Subject: NAS Gas Line: KCCI #: CK-23-OC-1213
Importance: High

This is an EXTERNAL EMAIL. Think before clicking a link or opening attachments.

Mr. Leo Haynos,

Attached and below is our summarized description and response to the event noted.

Location:

- North American Services – New Construction
- 5010 Speaker Road
- Kansas City, Kansas

Event:

September 2023:

- FSG installed underground PVC conduit for a light pole power.
- After FSG installed this conduit, Miller Pipeline installed the 1 ¼" gas line above the FSG conduit.

10/30/23:

- FSG began pulling wire through the PVC conduit for light pole power. The wire pull stopped after something underground caused the pulling head to stop. The wire was pulled out and a 'fish tape' was used to determine the point of jamming below grade.

10/31/23:

- The FSG Foreman and GC Superintendent were made aware of potential damage below grade to the FSG conduit.
- Without FSG authorization or One call notice, another FSG Journeyman electrician aware of the blocked conduit, took it upon himself to borrow a mini excavator from another sub-contractor onsite to dig and expose the conduit. Upon use of the excavator, the journeyman hit the unmarked gas line, immediately stopped working and notified his Foreman and the GC. The FSG Foreman and GC then notified Kansas Gas and the Fire Department. It was determined that the installing contractor for the Gas line, Miller Pipeline, installed it directly over the FSG conduits, damaging the FSG conduits underneath and covering them up without notifying FSG.
- Regardless of damage by others, the FSG journeyman disregarded strict FSG policy within our Published Safety Manual. This journeyman was aware of the policy with his signatures previously on file confirming he had reviewed and understood the training and policy. Attached is a section from the FSG Safety Manual. Section SMS-13 Excavation and Trenching Procedure and APX-013A Excavation Trenching Checklist were to be completed prior to any excavation which was not done. This journeyman has been formally reprimanded in writing for disregarding company policy, causing a potential life safety event, and avoiding established safety protocols. He has been directed that he is not allowed to excavate under any conditions. He is also undergoing a full re-training from our Safety Manager. Any further violations will be immediate termination from our company. FSG had an active sub-contract with a licensed excavation contractor on this site for all underground work. The excavation contractor was not onsite during this period of time and the journeyman made a personal decision against company policy without the knowledge or permission our Safety or Project Managers.

We take safety very seriously and apologize for the actions of this individual. Please let me know if I can further assist with anything from this event.

Thank-you,



Jim Ley

FSG Kansas City | Director of Construction Operations

Office: 913.422.8400

Mobile: 816.805.1792

www.fsg.com



CERTIFICATE OF SERVICE

24-DPAX-631-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 and electronic service on 04/02/2024.

Jim Ley, DIRECTOR OF CONSTRUCTION OPERATIONS
FSG Electric
17780 W 99th St
Lenexa, KS 66219
jim.ley@fsgj.com

CARLY MASENTHIN, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
c.masenthin@kcc.ks.gov

/S/ KCC Docket Room
KCC Docket Room