



1500 SW Arrowhead Road  
Topeka, KS 66604-4027

20230907110438  
Kansas Corporation  
Commission  
Phone: 785-271-3100  
Fax: 785-271-3354  
<http://kcc.ks.gov/>

Susan K. Duffy, Chair  
Dwight D. Keen, Commissioner  
Andrew J. French, Commissioner

Laura Kelly, Governor

**NOTICE OF PENALTY ASSESSMENT**  
**24-DPAX-211-PEN**

September 7, 2023

Don Bishop  
Beacon Contracting LLC  
120 SW 2nd St, Ste 206  
Lees Summit, Missouri 64063

This is a notice of penalty assessment against Beacon Contracting LLC for violation of the Kansas Underground Utility Damage Prevention Act (“KUUDPA”) discovered during an investigation conducted on June 8, 2023, by Kansas Corporation Commission Staff. For a full description of the violation(s) 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. Checks should 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, and shall include a reference to the docket number (24-DPAX-211-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 S.W. 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(j), failure to submit a written request for a hearing within fifteen (15) days 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,

/s/Ahsan A. Latif  
Ahsan Latif, S. Ct. No. 24709  
Litigation Counsel  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604-4027  
Phone: (785)271-3265  
Email: a.latif@kcc.ks.gov

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

Before Commissioners:      Susan K. Duffy, Chair  
   Dwight D. Keen  
   Andrew J. French

In the Matter of the Investigation of **Beacon**      )  
**Contracting LLC**, Regarding Violation(s) of      )  
the Kansas Underground Utility Damage      )  
Prevention Act (KUUDPA) (K.S.A. 66-1801,      ) Docket No. 24-DPAX-211-PEN  
*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).      )

**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 June 8, 2023 Commission Staff ("Staff") investigated the activities and operations of Beacon Contracting LLC ("Excavator"). See Report and Recommendation of Staff dated August 9, 2023, a copy of which is attached hereto as Attachment "A". As a result of this investigation, Staff reports the following:

- a. On June 7, 2023, Staff performed an onsite inspection at 14841 S Black Bob Rd in Olathe, Kansas. Staff's investigation discovered the Excavator caused damage to an Atmos PE gas service line. No injuries or additional property damage occurred.
- b. Staff learned during its independent investigation that the Excavator had not provided Atmos with a notice of intent to excavate and Kansas One Call had not been called to obtain locate marks.
- c. On June , 2023, Staff mailed a Notice of Probable Noncompliance notifying Beacon Contracting LLC of the investigation results. The letter instructed Beacon Contracting LLC to respond within thirty (30) days and to indicate

whether they accepted or disagreed with the findings of Staff's investigation. The notice also requested Beacon Contracting LLC to provide written explanation of the actions taken to prevent future KUUDPA violations. In the alternative, Beacon Contracting LLC could provide documentation explaining why they disagreed with the findings, including identification of any errors in the Notice of Probable Noncompliance. The violation cited is as follows:

**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. On July 7, 2023, Staff received a written response from Excavator to the Notice of Probable Noncompliance. In its response, Excavator did not address the violation of excavating without a valid locate ticket.

5. Based upon the available facts, Staff recommends the Commission find that at the time of the damage alleged herein, Beacon Contracting LLC was an excavator conducting excavation activities as defined in K.S.A. 66-1802(d) and (e). Additionally, based upon the available facts, Staff recommends the Commission find that Beacon Contracting LLC 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 Beacon Contracting LLC failed to comply with this requirement of law warrants the assessment of a civil penalty.

7. Staff recommends the Commission issue Beacon Contracting 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, Beacon Contracting LLC 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 Excavator to enforce the KUUDPA.

10. The Commission concludes Beacon Contracting LLC violated Kansas law governing underground utilities, including various provisions of KUUDPA, and is therefore subject to sanctions or fines imposed by the Commission. Specifically, the Commission finds Beacon Contracting LLC violated K.S.A. 66-1804 by failing to obtain a locate ticket and failing to provide a notice of intent of excavation. As a result of this failure, Beacon Contracting LLC damaged underground facilities of Atmos.

11. The Commission concludes Beacon Contracting LLC 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 Beacon Contracting LLC 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 Beacon Contracting LLC 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(j), Beacon Contracting LLC's failure to 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.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

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

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 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 Beacon Contracting LLC 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 S.W. 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 Beacon Contracting

LLC'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 Excavator.

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. The payment shall include a reference to the docket number (24-DPAX-211-PEN) of this proceeding.

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 Beacon Contracting LLC, including all sanctions, requirements, and penalties described above being enforceable without further action by the Commission.

**BY THE COMMISSION IT IS SO ORDERED.**

Duffy, Chair; Keen, Commissioner; French, Commissioner

Dated: 09/07/2023



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Lynn M. Retz  
Executive Director

AAL



# **ATTACHMENT “A”**

1500 SW Arrowhead Road  
Topeka, KS 66604-4027



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

Susan K. Duffy, Chair  
Dwight D. Keen, Commissioner  
Andrew J. French, Commissioner

Laura Kelly, Governor

## REPORT AND RECOMMENDATION UTILITIES DIVISION

**TO:** Susan K. Duffy, Chair  
Dwight D. Keen, Commissioner  
Andrew J. French, Commissioner

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

**DATE:** August 9, 2023

**SUBJECT: Docket Number:** 24-DPAX-211-PEN  
In the Matter of the Investigation of Beacon Contracting LLC, 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) Staff Case No. CK-23-OC-1100.

### **EXECUTIVE SUMMARY:**

Staff is recommending a civil penalty be issued to Beacon Contracting LLC (Beacon) in the amount of \$500 for violation(s) of the Kansas Underground Utility Damage Prevention Act (KUUDPA). On June 7, 2023, Beacon did not provide a notice of intent to excavate prior to excavating at 14841 S Black Bob Rd in Olathe, 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 Beacon on June 22, 2023. Beacon responded to the PNC within 30 days as required by K.A.R. 82-14-6 (c). A copy of the PNC and the response is included as Exhibit 1.

## **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. This excavator damaged an Atmos line with a concrete stake while installing curbs. Because Beacon never requested locates, the utility operator was unable to provide the location at which Beacon would be required to carefully excavate to avoid damage to an underground facility at any depth. Beacon failed to comply with this requirement of the law and warrants the assessment of a civil penalty.

B. **Culpability:**

Beacon is directly responsible for its actions in failing to provide a notice of intent before excavating as Kansas law requires.

C. **History of noncompliance:**

Staff has issued 1 other KUUDPA Notice of Probable Noncompliance to Beacon 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 July 7, 2023. Beacon denied responsibility for noncompliance due to the inadequate depth of the service line. In its response, Beacon did not address the violation of excavating without a valid locate ticket.

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 issued to Beacon in the amount of \$500 for violation of K.S.A. 66-1804.

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



EXHIBIT 1

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

Susan K. Duffy, Chair  
Dwight D. Keen, Commissioner  
Andrew J. French, Commissioner

Laura Kelly, Governor

**Don Bishop**  
**Beacon Contracting LLC**  
**120 SW 2nd St Ste 106**  
**Lees Summit, MO 64063**

**June 20, 2023**

**KCC Investigation #: CK-23-OC-1100**

**Subject: Pipeline Investigation**

**Dear Don Bishop:**

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 June 8, 2023, 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 Beacon Contracting LLC. 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**  
**[kccpipelinesafety@kcc.ks.gov](mailto:kccpipelinesafety@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**  
**[l.haynos@kcc.ks.gov](mailto:l.haynos@kcc.ks.gov)**

Company: Beacon Contracting LLC

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 6/7/2023, KCC Staff was notified of excavation work resulting in a damage that occurred to an Atmos gas line around the area of 14841 S Black Bob Rd in Olathe, Kansas. Atmos alleges Beacon Contracting LLC was excavating without a One-Call ticket when an Atmos PE gas service line was damaged with a concrete stake while installing curbs in a parking lot. 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: 06/08/2023  
Inspected By: CK

**BEACON**  
  
**CONTRACTING LLC**  
P.O. BOX 1927  
LEE'S SUMMIT, MO 64063  
Phone: 816-524-4230  
Fax: 816-524-4240

7/7/23

Attn: Leo Haynos – Chief Engineer  
Company: Kansas Corporation Commission  
Phone: 785.271.3278  
Email: [l.haynos@kcc.ks.gov](mailto:l.haynos@kcc.ks.gov)

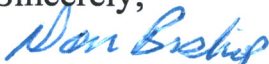
Dear Leo,

I offer this response to your letter dated 6/20/23, KCC Investigation #CK-23-OC-1100.

Option 1) Submit written explanation, a statement of denial, or other materials contesting the allegations.

Beacon was working as a concrete subcontractor for Strickland Construction on the Church of the Harvest property. Our role was to form and pour concrete curb and sidewalk. This incident occurred while forming curb for a subsequent concrete pour. As you can see from the attached picture the 30” steel stake was projecting 11-1/4” +/- above the 2 X 12 (11-1/4”) dimension lumber. That would leave 8” +/- of the steel stake protruding into the soil subgrade. Based on that scenario it appears that the damaged Atmos gas line in question was buried at an insufficient depth of 8” below finish grade. Please consider this explanation and picture documentation as Beacon Contracting’s denial of responsibility for noncompliance. Thank you in advance for your consideration in this important matter.

Sincerely,



Don Bishop – CEO  
Beacon Contracting, LLC

**CERTIFICATE OF SERVICE**

24-DPAX-211-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 09/07/2023.

Don Bishop  
Beacon Contracting LLC  
120 SW 2nd  
Ste 206  
Lees Summit, MO 64063  
dbishop@beaconcontracting.com

AHSAN LATIF, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
a.latif@kcc.ks.gov

/S/ KCC Docket Room  
KCC Docket Room