



1500 SW Arrowhead Road
Topeka, KS 66604-4027

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

20250401113302
Kansas Corporation
Commission
Phone: 785-271-3100
Fax: 785-271-3354
<http://kcc.ks.gov/>

Laura Kelly, Governor

NOTICE OF PENALTY ORDER
25-DPAX-356-PEN

April 1, 2025

Oscar Luna
O & O Construction, LP
2843 North Mascot Street
Wichita, Kansas 67204

This is a notice of a penalty assessment against O & O Construction, LP (“O & O”) for a violation of the Kansas Underground Utility Damage Prevention Act (“KUUDPA”) and pipeline safety regulations adopted by the Kansas Corporation Commission. O & O has been assessed a civil penalty in the amount of \$500. For a full description of the penalty, please refer to the Penalty Order attached to this notice.

IF YOU ACCEPT THE PENALTY: You have twenty (20) days from the date of service of the Penalty Order to pay the penalty. Payments shall be made 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 25-DPAX-356-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 O & O 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 the date of service of the Penalty Order will be considered an admission of noncompliance. **Failing to request a hearing or to pay the civil assessment may result in further penalties.**

Respectfully,
/s/ Madisen K. Hane
Madisen K. Hane, S. Ct. No. 30292
Litigation Counsel
(785) 271-3288
Madisen.Hane@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 O&O)
Construction Regarding Violations of the)
Kansas Underground Utility Damage)
Prevention Act (“KUUDPA”) (K.S.A. 66-) Docket No. 25-DPAX-356-PEN
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).)

PENALTY ORDER

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (“Commission”) for consideration and determination. Having examined its files and records, the Commission finds and concludes:

I. JURISDICTION

1. The Commission has jurisdiction to administer and enforce the Kansas Underground Utility Damage Prevention Act (“KUUDPA”), as provided in K.S.A. 66-1801, *et seq.*¹ The Commission has full power and authority to adopt all necessary rules and regulations for carrying out the provisions of the KUUDPA, including imposing civil penalties and injunctive relief against any person or entity subject to and found in violation of the KUUDPA, or any rule, regulation, or order of the Commission.²

2. K.S.A. 66-1802(d) defines ‘excavation’ as “any operation in which earth, rock, or other material below the surface is moved or otherwise displaced by any means.” O & O Construction, LP (“O & O”) operated where earth, rock, or other materials below the surface were

¹ See K.S.A. 66-1813.
² See K.S.A. 66-1812 and K.S.A. 66-1815.

moved or otherwise displaced by any means and therefore acted as an excavator within the state of Kansas as defined by K.S.A. 66-1802(e). Therefore, O & O is subject to the Commission's jurisdiction regarding compliance with KUUDPA's obligations and may be subject to civil penalties and injunctive relief.

II. NONCOMPLIANCE

3. On August 29, 2024, Commission Pipeline Safety Staff ("Staff") conducted an onsite investigation of the excavation operations of O & O at the excavation site of 1686 South Elpyco Street in Wichita, Kansas.

4. On September 3, 2024, Staff subsequently issued a Notice of Probable Noncompliance ("PNC") to O & O notifying O & O of the result of Staff's investigation, a copy of which is attached hereto as **Exhibit 1**. Staff notified O & O that it violated K.S.A. 66-1804(a) when it failed to serve notice of intent of excavation at least two full working days but not more than 20 calendar days before the scheduled excavation start date, on each operator having underground tier 1 facilities located in the proposed area of excavation. Staff subsequently re-sent this PNC to O & O via registered mail on December 12, 2024.

5. O & O failed to submit a response to Staff's PNC as required by K.A.R. 82-14-6(c). The failure of a party to submit a timely response within thirty (30) days to a PNC constitutes an admission to all factual allegations contained within the PNC.³

6. On March 11, 2025, Staff submitted its Report and Recommendation ("R&R") regarding the above-captioned docket, which is incorporated herein by reference and attached hereto as **Attachment A**. Staff ultimately recommended that the Commission find that O & O violated K.S.A. 66-1804(a) on August 29, 2024, when it failed to timely serve notice of intent to

³ See K.A.R. 82-14-6(e).

excavate prior to excavating.⁴ Therefore, Staff recommended that the Commission assess a civil penalty of \$500 against O & O.⁵

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. The Commission finds it 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 the KUUDPA.

8. The Commission finds that O & O was operating as an excavator, as defined in K.S.A. 66-1802(e), during the incident at issue.

9. The Commission finds that, pursuant to K.A.R. 82-14-6(a), Staff was authorized to serve a PNC on O & O after Staff conducted an investigation regarding damage to a gas service line.

10. The Commission finds that by failing to serve notice of intent of excavation at least two full working days but not more than 20 calendar days before the scheduled excavation start date, on each operator having underground tier 1 facilities located in the proposed area of excavation, O & O violated K.S.A. 66-1804(a).

11. The Commission finds that the penalty amount recommended by Staff is necessary to correct O & O's violation.

12. The Commission concludes that O & O violated K.S.A. 66-1804(a) and that Staff's recommendation that O & O be assessed a \$500 civil penalty is just and reasonable.

⁴ Report and Recommendation, Utilities Division, Docket No. 25-DPAX-356-PEN, p. 2 (March 11, 2025) ("Staff's R&R" or "R&R").

⁵ *Id.*

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. A civil penalty in the amount of \$500 is assessed against O & O Construction, LP 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), O & O may request a hearing to challenge the allegations set forth in this Penalty Order by electronically filing its request for a 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 will result in a waiver of O & O'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(j), if O & O 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 25-DPAX-356-PEN.

A. 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 O & O, 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: 04/01/2025



Celeste Chaney-Tucker
Executive Director

MKH

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, Public Service Administrator
Paul Owings, Chief of Pipeline Safety
Jeff McClanahan, Director of Utilities

DATE: March 11, 2025

SUBJECT: Docket Number: 25-DPAX-356-PEN
In the Matter of the Investigation of O & O Construction 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 Case Number JW-24-OC-1085, Staff recommends that a civil penalty in the amount of \$500 be assessed to O & O Construction, LP (O & O) for violation(s) of the Kansas Underground Utility Damage Prevention Act (KUUDPA). O & O failed to request locates of underground facilities prior to excavation at 1686 S. Elpyco St. in Wichita, Kansas. Failure to provide a timely notice of intent before excavating is a violation of K.S.A. 66-1804. Staff issued a Notice of Probable Noncompliance (PNC) to O & O, dated August 30, 2024, and sent on September 3, 2024. The PNC was resent via registered mail on December 12, 2024. O & O did not respond to the PNC, as required by K.A.R. 82-14-6 (c). The PNC 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 was excavating in the near vicinity of a Kansas Gas Service service line. Because O & O did not request locates prior to excavating, the utility operator was unable to provide the location at which O & O would

be required to carefully excavate to avoid damage to an underground facility at any depth. O & O failed to comply with the law and warrants the assessment of a civil penalty.

B. Culpability:

O & O is directly responsible 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 Notices of Probable Noncompliance for violations of KUUDPA to O & O.

D. Response of excavator regarding noncompliance(s):

Response to the PNC as required by K.A.R. 82-14-6(c) was not received by Staff. The failure of a party to submit a timely response within 30 days to a Notice of Probable Noncompliance constitutes an admission to all factual allegations made by the commission staff, as per K.A.R. 82-14-6(e).

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 O & O Construction, LP in the amount of \$500 for violating K.S.A. 66-1804.

EXHIBIT 1

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

Laura Kelly, Governor

**Oscar Luna
O & O Construction
2843 N Mascot St
Wichita, KS 67204**

August 30, 2024

KCC Investigation #: JW-24-OC-1085

Subject: Pipeline Investigation

Dear Oscar Luna:

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 August 29, 2024, 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 O & O Construction. 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.

kccsafetyresponse@kcc.ks.gov

**Kansas Corporation Commission
Pipeline Safety Section
1500 SW Arrowhead Road
Topeka, KS 66604-4027**

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

Sincerely,

**Paul Owings /s/
Deputy Chief Engineer
(785) 271-3141
p.owings@kcc.ks.gov**

Company: O & O Construction

Division:

Regulation:

66-1804 (a) Notice of intent of excavation; requirements.

(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 20 calendar days before the scheduled excavation start date, on each operator having underground tier 1 facilities located in the proposed area of excavation.

PROBABLE NONCOMPLIANCE DESCRIPTION:

On 08/29/2024, O & O Construction did not notify One-Call prior to excavating at 1686 S Elpyco St. in Wichita, Kansas. O & O Construction damaged a Kansas Gas Service 1 1/4" BS gas service line with a mini excavator while digging next to a building. 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: 08/29/2024

Inspected By: JW

CERTIFICATE OF SERVICE

25-DPAX-356-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 04/01/2025.

MADISEN HANE, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
madisen.hane@ks.gov

Oscar Luna, OWNER
O & O Construction
2843 N Mascot St
Wichita, KS 67204

/S/ KCC Docket Room
KCC Docket Room