

issue at the property that occurred on June 14, 2014. The letter noted that KCC Pipeline Safety staff had conducted an investigation of the incident on June 18, 2014, as provided by KUUDPA, and requested further information from the Company. A copy of the letter is attached hereto as **Attachment A**.

5. On August 22, 2014, following review of the information in the letter and investigation of the incident, KCP&L responded to Mr. Haynos in compliance with the Commission rule K.A.R. 82-14-6(c)¹ related to the Kansas Underground Utility Protection Act (“KUUDPA”), K.S.A. 66-1806, *Identification of location of facilities; duties of operator; liability of damages*. KCP&L’s investigation determined that the Company was in compliance with the requirements for marking its facilities upon request of excavators as provided under K.S.A. 66-1806. A copy of KCP&L’s response is attached hereto as **Attachment B**.

6. The results of KCP&L’s investigation were reported to Mr. Haynos as follows,

USIC Locating Inc. (KCP&L’s contractor) timely responded to both tickets associated with this address. The original ticket, #14232399, called for marking KCP&L facilities. As can be seen in the attached photos (taken by USIC when responding to the emergency ticket), USIC had correctly marked the KCP&L facilities. The two visible markings in the first attached photo (8:32:47 PM on 6/14/2014) correspond directionally with the two KCP&L conduits exposed by Duarte Irrigation as shown in the second attached photo (8:27:19 PM on 6/14/2014). In responding to the emergency ticket, #14248569, USIC did not mark anything additional noting that the facilities in question appeared to be private and not KCP&L facilities. The USIC responder noted that there was not a dig in or damaged cable at the time of his investigation.

¹ K.A.R. 82-14-6 regards procedures for investigation of possible violations of KUUDPA. K.A.R. 82-14-6(c) reads “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 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. KCP&L responded consistent with (1) above.

According to USIC's records, USIC correctly marked KCP&L's facilities at 11791 W 112th Street in Overland Park, Kansas. KCP&L has not been able to determine the reason for the differences between USIC's records and the KCC Staff's investigation.

7. On September 2, 2014, KCP&L received another letter from Mr. Haynos regarding the Tolerance Zone Investigation #6933. In that letter Mr. Haynos stated "[p]lease be advised that we have received and reviewed your letter of response. With receipt of this information, our investigation is complete at this time." A copy of this letter is provided as **Attachment C** hereto.

8. KCP&L has no record of Complainant contacting either its Customer Call Center or its Claims Department regarding the incident and damage claimed.

III. ANSWER TO COMPLAINT

9. Except as admitted or agreed herein, KCP&L denies each and every allegation, averment and statement in the Complaint.

10. KCP&L is without sufficient information to admit or deny the statements regarding Complainant's hiring of Duarte Irrigation to install a sprinkler system at the property.

11. KCP&L admits that Duarte Irrigation called Kansas One for line markings for KCP&L facilities at the property on June 4, 2014 resulting in Call Ticket #14232399. In compliance with K.S.A. 66-1806, USIC Locating Inc., KCP&L's locator contractor, timely provided accurate location markings in response to such Call Ticket. Additionally, Duarte Irrigation called Kansas One on June 14, 2014 for an emergency resulting in Emergency Call Ticket #14248569. In compliance with K.S.A. 66-1807, USIC timely responded to such Emergency Call Ticket. As noted in KCP&L's response

to the Commission's investigation of the incident, USIC did not mark anything additional as a result of the Emergency Ticket noting that the facilities in question appeared to be private and not KCP&L facilities.

12. KCP&L denies that KCC Pipeline Safety staff Ms. Christie Knight “*concluded* that the line was mismarked.” While KCP&L received a notice of “*Probable Noncompliance*” from the KCC Staff stating “[t]here were marks visible in the area and were out of tolerance by approximately 4 ft.”, the purpose of a notice of non-compliance is to allow the Company to provide additional information pursuant to K.A.R. 82-14-6(c)(1). Ms. Knight noted the apparent facts at the site but did not make a final determination; rather, the KCC requested additional information from KCP&L in order to make a final determination.

13. KCP&L does not have access to pictures that show that USIC's “markings were 4 feet away from the actual line.” Photos provided with KCP&L's response show that the KCP&L facilities were correctly marked.

14. KCP&L admits that the line hit by Duarte Irrigation was a private line. Responsibility for private lines falls to the owner of the line. KUUDPA operator responsibilities for marking facilities apply only to the Company's facilities and not to private lines. The following excerpt is from the Excavator's Manual available on the Kansas One Call website, www.KansasOneCall.com,

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.²

² Excavator's Manual, www.KansasOneCall.com, pa. 13.

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.³
[Emphasis as shown in materials.]

15. In further support that the damaged line was, in fact, a private line, KCP&L notes that the Company's report on this incident shows the damage occurring at approximately 12:05 p.m. on June 14, 2014. KCP&L assigned a Troubleman at 4:14 p.m. The KCP&L Troubleman was on site until 16:53 p.m., during which time the Troubleman "responded, made safe, and provided customer's electrician with splices to allow him to make temporary repairs." The private cable was repaired by the customer's private electrician at 11:45 p.m. KCP&L personnel returned at 12:21 a.m. to re-fuse and energize the transformer.

16. Complainant requests a determination of who "operates" the line in question and who is liable for the cost to repair the line. Based upon the foregoing information, the line in question was a private utility line, not a Company-owned facility. Therefore, the Company is not responsible for marking such line under the KUUDPA rules and is not responsible for any damage sustained to such line in the course of the incident referenced in the instant docket.

³ See Kansas One Call brochure attached hereto as **Attachment D**.

IV. MOTION TO DISMISS COMPLAINT

17. The procedural requirements for filing a Complaint as set forth in K.A.R. 82-1-220, provides that formal complaints filed with the Commission shall:

- (1) fully and completely advise each defendant and the commission as to the provisions of law or the rules, regulations or orders of the commission that have been or are being violated by the acts or omissions complained of, or that will be violated by a continuance of acts or omission;
- (2) set forth concisely and in plain language the facts claimed by the complainant to constitute such violations; and
- (3) state the relief sought by the complainant.

18. While Complainant does not provide within its Complaint “the provisions of law or the rules, regulations or orders of the commission that have been or are being violated” by KCP&L, KCP&L assumes that Complainant is claiming that the Company violated Kansas statute K.S.A. 66-1806, as defined in the Notice of Probable Noncompliance issued to the Company by the KCC. That statute states,

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 had whitelined the excavation site, an operator served with noticed, 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.

As noted in its response to the Commission on August 22, 2014, KCP&L disagrees that it is in violation of K.S.A. 66-1806 for the reasons set forth in **Attachment B** and the facts set forth in this Answer. The Commission received and reviewed the information KCP&L provided in response to the Notice of Probable Noncompliance, did not take further action against the Company, and closed the investigation. The Commission did not find KCP&L in violation of the statute.

19. KCP&L has followed the requirements of its tariffs and all Commission rules, regulations and Orders in the manner in which it has addressed the Complaint.

20. KCP&L has addressed each of the allegations regarding violation of these provisions of law, rules, regulations and orders of the Commission and has shown that no violation has occurred.

21. KCP&L has complied with its tariffs, Kansas statutes, and all Commission rules, regulations and Orders. For the reasons set forth herein, KCP&L requests the Commission find there is no basis for the allegations in the Complaint and dismiss it accordingly.

22. The Commission does not have the statutory authority to order KCP&L to pay money damages to the Complainant.

WHEREFORE, KCP&L respectfully submits for Commission consideration this Answer to the Complaint, and moves the Commission for an order dismissing the Complaint with prejudice, and for any such further relief the Commission deems appropriate.

Respectfully submitted,

/s/ Roger W. Steiner

Robert J. Hack (KS #12826)

Telephone: (816) 556-2791

E-mail: Rob.Hack@kcpl.com

Roger W. Steiner (KS #26159)

Telephone: (816) 556-2314

E-mail: Roger.Steiner@kcpl.com

Kansas City Power & Light Company

One Kansas City Place

1200 Main Street – 16th Floor

Kansas City, Missouri 64105

Facsimile: (816) 556-2787

ATTORNEYS FOR KANSAS CITY
POWER & LIGHT COMPANY

VERIFICATION

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

The undersigned, Mary Britt Turner, upon oath first duly sworn, states that she is the Director, Regulatory Affairs of Kansas City Power & Light Company, that she has reviewed the foregoing Answer, that she is familiar with the contents thereof, and that the statements contained therein are true and correct to the best of her knowledge and belief.

Mary Britt Turner
Mary Britt Turner
Director, Regulatory Affairs
Kansas City Power & Light Company

Subscribed and sworn to before me this 11th day of June 2015.

Karen M. Smith
Notary public

My commission expires:

April 16, 2016



KAREN M. SMITH
My Commission Expires
April 16, 2016
Jackson County
Commission #12446957

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above was electronically served, hand-delivered or mailed, postage prepaid, this 11th day of June, 2015 to:

ANDREW FRENCH, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027

STEPHEN AND KAREN GRADWOHL
11791 W. 112TH STREET
OVERLAND PARK, KS 66210

/s/ Roger W. Steiner

Roger W. Steiner

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



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

Shari Ford Albrecht, Chair
Jay Scott Enler, Commissioner
Pat Apple, Commissioner

Sam Brownback, Governor

Christy Davis
Kansas City Power & Light
Po Box 418679
Kansas City, MO 64131

July 15, 2014

Subject: Tolerance Zone Investigation

KCC Investigation #: 6933

Dear Christy Davis:

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

On 6/18/2014, the Kansas Corporation Commission's Pipeline Safety staff (Staff) conducted an investigation into excavation activities as allowed by KUUDPA. As a result of our investigation, Staff has identified probable noncompliance(s) with KUUDPA committed by your company. The description of the probable noncompliance(s) is on the attached form(s).

Kansas law requires a written response to any Notice of Probable Noncompliance (K.A.R. 82-14-6(c)). After you have reviewed our findings, please respond 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.

Please feel free to include any supporting documentation with your responses and return the signed and dated evaluation form(s) with the requested information within thirty (30) days of receipt of this report to:

Kansas Corporation Commission, Attn. Pipeline Safety
1500 SW Arrowhead Road
Topeka, Kansas 66604-4027
Fax: (785) 271-3357

Pursuant to K.A.R 82-14-6(c), failure to respond within 30 days to the 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.*

If you have any questions, please call me at the number listed below.

Sincerely,

Leo M. Haynos
Chief of Pipeline Safety
(785) 271-3278

COMPANY: **Kansas City Power & Light**

DIVISION:

REGULATION:

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 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.

PROBABLE NONCOMPLIANCE DESCRIPTION:

On 6/14/2014, Duarte Irrigation damaged a KCPL secondary line while installing a sprinkler system at 11791 W 112th St in Overland Park, Kansas. There was a valid One-Call ticket #14232399 with a due date of 6/7/2014. There were marks visible in the area and were out of tolerance by approximately 4 ft. This is a violation of the **Statute K.S.A. 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 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.**

OPERATOR'S RESPONSE: (Attach verification if needed) _____

Operator's authorized signature: _____ Date: _____

PIPELINE SAFETY USE ONLY

Date Reviewed: _____ Date Reviewed: _____
 Supervisor: _____ Inspector: _____

Inspected by: **Knight**
 Date inspected: **6/18/2014**
 Inspection type: **Tolerance Zone**



Roger W. Steiner
Corporate Counsel
Telephone: 816-556-2314
Fax: 816-556-2787
Roger.Steiner@kcpl.com

August 22, 2014

Leo M. Haynos
Chief of Pipeline Safety
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027

Re: KCC Investigation #6933
Kansas City Power & Light Company ("KCP&L")

Dear Mr. Haynos:

This letter is in response to your letter dated July 15, 2014 (received July 23, 2014). In that letter you indicate that on June 14, 2014, Duarte Irrigation damaged a secondary line belonging to Kansas City Power & Light Company ("KCP&L") while installing a sprinkler system at 11791 W 112th Street in Overland Park, Kansas.

Investigation #6933 references One-Call ticket #14232399 with a due date of June 7, 2014. The possible non-compliance description indicates that a KCP&L secondary line was damaged, there were marks visible in the area but that those marks were out of tolerance by approximately four feet. Additionally, you state that "*This is a violation of Kansas Statute 66-1806. **Identification of location of facilities; duties of operator; liability for damages.***"

KCP&L has investigated this incident and has determined the following:

USIC Locating Inc. (KCP&L's contractor) timely responded to both tickets associated with this address. The original ticket, #14232399, called for marking KCP&L facilities. As can be seen in the attached photos (taken by USIC when responding to the emergency ticket), USIC had correctly marked the KCP&L facilities. The two visible markings in the first attached photo (8:32:47 PM on 6/14/2014) correspond directionally with the two KCP&L conduits exposed by Duarte Irrigation as shown in the second attached photo (8:27:19 PM on 6/14/2014). In responding to the emergency ticket, #14248569, USIC did not mark anything additional noting that the facilities in question appeared to be private and not KCP&L facilities. The USIC responder noted that there was not a dig in or damaged cable at the time of his investigation.

Mr. Leo M. Haynos
August 22, 2014
Page 2

According to USIC's records, USIC correctly marked KCP&L's facilities at 11791 W 112th Street in Overland Park, Kansas. KCP&L has not been able to determine the reason for the differences between USIC's records and the KCC Staff's investigation.

Please contact the undersigned with any comments or concerns.

Sincerely,



Roger W. Steiner

RWS/naw/enclosures



Property of United States Infrastructure Corporation
Photo taken on 6/14/2014 8:32:47 PM



Property of United States Infrastructure Corporation
Photo taken on 6/14/2014 8:27:19 PM

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



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

Shari Feist Albrecht, Chair
Jay Scott Emler, Commissioner
Pat Apple, Commissioner

Sam Brownback, Governor

**Christy Davis
Kansas City Power & Light
PO Box 418679
Kansas City, Mo 64131**

9/2/2014

Subject: Tolerance Zone Investigation

KCC Investigation #: 6933

Dear Christy Davis:

On 6/18/2014, an investigation by Kansas Corporation Commission inspector, Knight, revealed you were in probable non-compliance of the Kansas Underground Utility Damage Prevention Act. A probable non compliance requesting your response was then issued by our office on 7/15/2014.

Please be advised that we have received and reviewed your letter of response. With receipt of this information, our investigation is complete at this time. This correspondence will remain on file, however, for future reference.

It is Staff's intent to maintain an open dialogue with your company regarding One-Call compliance. The importance of maintaining the integrity of the One-Call program and confidence in the system for both excavators and utilities is a must. Public safety cannot be compromised.

If you have any questions or need additional information regarding the Underground Utilities Damage Prevention Act, please do not hesitate to call me at the number listed below.

Sincerely,

Leo M. Haynos
Chief of Pipeline Safety
(785) 271-3278

ATTACHMENT C

Page 1 of 1