

1500 SW Arrowhead Road
Topeka, KS 66604-4027

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



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

Sam Brownback, Governor

VIA CERTIFIED MAIL

NOTICE OF PENALTY ORDER
15-DPAX-439-PEN

April 7, 2015

J. Warren
J. Warren Co., Inc.
3327 SE 21st St
Topeka KS 66607

This is a notice of penalty assessment for violation of the Kansas Underground Utility Damage Prevention Act (KUUDPA) discovered during an investigation conducted on November 14, 2014, 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 service of the Penalty Order to pay the fine amount. Checks or Money Orders should be payable to the Kansas Corporation Commission. Payments shall be mailed to the Fiscal Section of the Kansas Corporation Commission, 1500 SW Arrowhead Road, Topeka, Kansas 66604, and shall include a reference to the docket number of this proceeding. Credit card payments may be made by calling the Fiscal Office at 785-271-3113.

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 must submit an original and seven copies of the request for hearing to the Commission's Acting Secretary at 1500 SW Arrowhead Road, Topeka, Kansas 66604, within fifteen (15) days from the date of service of this Notice of Probable Noncompliance and Proposed Penalty Order.

IF YOU FAIL TO ACT:

Pursuant to K.A.R. 82-14-6(j), failure to pay or provide a written request for a hearing within fifteen (15) days or in the alternative, to pay the civil assessment in twenty (20) days, will be considered an admission of noncompliance and result in the Penalty Order becoming a final order.

Respectfully,

Andrew French, #24680
Litigation Counsel
(785)271-3361

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

Before Commissioners: Shari Feist Albrecht, Chair
Jay Scott Emler, Commissioner
Pat Apple, Commissioner

In the Matter of the Investigation of **J. Warren**)
Co., Inc., of Topeka, Kansas, Regarding)
Violation(s) of the Kansas Underground Utility)
Damage Prevention Act (KUUDPA) (K.S.A.) Docket No. 15-DPAX-439-PEN
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).)

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, Kansas law grants the Commission full power and authority to do all things necessary and convenient in its exercise of its authority and jurisdiction pursuant to K.S.A. 2014 Supp. 66-1815 and amendments thereto.

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 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 penalty, not to exceed \$25,000, for each day the violation persists, with a maximum civil penalty of \$500,000 for any related series of violations. 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 November 14, 2014 Commission Staff (Staff) investigated the activity and operations of J. Warren Co., Inc. (Respondent). See Report and Recommendation of Staff dated March 25, 2015, a copy attached hereto as Attachment "A". As a result of this investigation, Staff reports the following:

- a. On November 14, 2014, Kansas Gas Service notified Staff that Respondent was conducting excavation activities at 730 S. Kansas Avenue in Topeka, Kansas with a mini excavator to install traffic signals and caused damage to an underground KGS one-inch PE natural gas service line.
- b. Upon notification of the damage, Staff arrived on-site at 730 S. Kansas Avenue, and began an investigation. Staff learned from crew on-site that Respondent had not called Kansas One Call to inform them of the intent to dig and to obtain a locate ticket.
- c. On November 24, 2014, 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 to include identification of any errors in the Notice of Probable Noncompliance. The violation cited is as follows:

i. Failure of an excavator to serve notice of intent of excavation at least two (2) full working days, but not more than fifteen (15) calendar days before the scheduled excavation start date, on each operator having underground facilities located in the proposed area of excavation. This failure is a violation of K.S.A. 2014 Supp. 66-1804.

d. On December 10, 2014, Staff received a written response from Respondent to the Notice of Probable Noncompliance. In its response, Respondent agreed with the information contained in the Notice of Probable Noncompliance and as a result, also agreed with Staff's finding of fault.

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. 2014 Supp. 66-1802(c) and (d).

6. Staff also recommends the Commission issue a civil penalty of \$500 for the violation of the Kansas Underground Utility Damage Prevention Act as alleged.

III. CONCLUSIONS OF LAW

7. The Commission finds it has jurisdiction over J. Warren Co., Inc. (Respondent) because it is an excavator as defined in K.S.A. 2014 Supp. 66-1802.

8. The Commission finds Respondent violated Kansas law governing underground utilities, including various provisions of the Kansas Underground Utility Damage Prevention Act, and is therefore subject to sanctions or fines imposed by the Commission.

9. Respondent is hereby assessed a \$500 penalty for violation of the Kansas Underground Utility Damage Prevention Act.

THE COMMISSION THEREFORE ORDERS THAT:

A. J. Warren Co., Inc., of Topeka, KS 66607, is hereby assessed a \$500 civil penalty for the violation of the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 *et seq.*

B. Pursuant to K.S.A. 2014 Supp. 77-529, K.S.A. 66-118b, K.A.R. 82-1-215 and amendments thereto, any party may request a hearing on the above issues by submitting a written request, consisting of an original and seven (7) copies, setting forth the specific grounds upon which relief is sought, to the Commission's Acting Secretary, at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604 within fifteen (15) days from the date of service of this Order. If service is by certified mail, service is complete upon the date delivered shown on the Domestic Return Receipt. *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 Respondent's right to a hearing. Furthermore, 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. A corporation shall not be permitted to enter an appearance, except by its attorney.

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 date of service of this Order. Checks and Money Orders shall be payable to the Kansas Corporation Commission. For credit card payments, include type of card (Visa, MasterCard, Discover, or American Express), account number and expiration date. Payments shall be mailed to the Fiscal Section 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 of this proceeding.


E. Failure to pay the \$500 civil penalty within twenty (20) days of the issuance 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.

Albrecht, Chair; Emler, Commissioner; Apple Commissioner

Dated: APR 07 2015



ORDER MAILED APR 08 2015

Neysa Thomas
Acting Secretary

AF

ATTACHMENT “A”

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

REPORT AND RECOMMENDATION UTILITIES DIVISION

TO: Chair Shari Feist Albrecht
Commissioner Jay Scott Emler
Commissioner Pat Apple

FROM: Barry Flohrschutz, Pipeline Safety Inspector
Kristin Casarona, Natural Gas & Pipeline Operations Analyst
Leo Haynos, Chief of Energy Operations & Pipeline Safety
Jeff McClanahan, Director of Utilities

DATE: March 25, 2015

SUBJECT: **Docket Number:** 15-DPAX-439-PEN
In the Matter of the Investigation of J Warren Company, Inc. of Topeka, Kansas, 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:

Staff is recommending a civil penalty be issued to J Warren Company, Inc. (J Warren) in the amount of \$500 for violation(s) of KUUDPA. The penalty is based on results of a Staff investigation following damage to a Kansas Gas Service (KGS) natural gas pipeline in Wichita, Kansas. There was no notice of intent to excavate provided to any utilities and Kansas One-Call had not been notified. Failure to provide notice before excavating is a violation of K.S.A. 66-1803 and 66-1804(a).

BACKGROUND:

On November 14, 2014, J Warren hit and damaged a KGS one-inch PE natural gas service line at 730 S. Kansas Avenue in Topeka, Kansas, while excavating with a mini-excavator to install traffic signals. The damage resulted in one outage of service and no injuries. A brief timeline of events is attached (Attachment I). A Notice of Probable Noncompliance was issued to J Warren on November 24, 2014 (Attachment II). The Response to the Notice of Probable Noncompliance was received as required by K.A.R. 82-14-(c) on December 10, 2014 (Attachment II).

ANALYSIS:

Rationale for Penalties:

A. Gravity of noncompliance:

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. Because providing proper and timely notice of intent to excavate is the most fundamental preventative measure an excavator takes, the fact that J Warren failed to comply with this requirement of the law warrants the assessment of a civil penalty.

B. Culpability:

KUUDPA requires the person directly performing an excavation to request utility locates at least two full working days prior to beginning excavation. Staff's investigation determined J Warren provided no such notice. The fact that J Warren was directly performing the excavation work without a valid locate request leads Staff to the conclusion that J Warren is directly responsible for its actions in failing to provide proper and timely notice of intent to excavate as Kansas law requires.

C. History of noncompliance:

Staff has issued no other KUUDPA Notices of Probable Noncompliance to J Warren in the past two years.

D. Response of excavator regarding noncompliance(s):

J Warren responded to the current Notice of Probable Noncompliance and agreed with Staff's findings. In its response, J Warren states its personnel failed to request locates due to an internal miscommunication.

E. Aggravating/Mitigating Circumstances:

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

RECOMMENDATION:

Staff recommends a civil penalty be issued to J Warren Company, Inc. in the amount of \$500 for violation(s) of KUUDPA:

- Failure of an excavator to properly serve notice of intent to excavate is a violation of K.S.A. 66-1804, Notice of intent of excavation.

Attachments

ATTACHMENT I

Timeline:

- 11/14/14 At approximately 11:12 a.m., Staff received an email notification from Kansas Gas Service indicating an excavator had damaged its natural gas service line at 730 S. Kansas Avenue in Topeka, Kansas.
- Staff subsequently conducted an on-site investigation of the excavation site described above. Staff learned J Warren did not have a valid Kansas One-Call ticket for the excavation work it was performing.
- Upon completion of the investigation and research, Staff determined that J Warren had been excavating without obtaining a valid locate request and had violated KUUDPA.
- 11/24/14 Staff issued J Warren a Notice of Probable Noncompliance for violating KUUDPA as stated above.
- 12/10/14 Staff received J Warren's response to the Notice of Probable Noncompliance as required by K.S.A. 82-14-6(c).

ATTACHMENT II

PROBABLE NONCOMPLIANCE

KANSAS CORPORATION COMMISSION
REGULATORY DIVISION

COMPANY: J Warren Company, Inc.

DIVISION:

DEC 10 2014

REGULATION:

66-1804 Notice of intent of excavation.

UTILITIES DIVISION

(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.

(c) The notice of intent to excavate or any subsequent updates shall be valid for 15 calendar days after the excavation start date and such notice shall only describe an area in which the proposed excavation reasonably can be completed within the 15 calendar days.

(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.

History: L. 1993, ch. 217, § 4; L. 2002, ch. 41, § 2; L. 2008, ch. 122, § 6; July 1, 2009.

PROBABLE NONCOMPLIANCE DESCRIPTION:

On 11/14/2014, J Warren Company, Inc. Damaged a 1-inch KGS gas service line with a mini-excavator while installing street lights at 730 S Kansas Ave. in Topeka, Kansas. There was no locate request found in the One-Call database or otherwise prior to excavation. This is a violation of the Statute K.S.A. 66-1804 Notice of Intent of excavation, (a), (c), and (e) as noted above.

OPERATOR'S RESPONSE: (Attach verification if needed)

I thought we had valid locates. I had asked our office Manager to call in locates on Kansas Ave. from 7th St to 8th St. Apparently he forgot to call them in. I didn't realize we didn't have valid locates because there were locate marks present.

Operator's authorized signature: J. Warren

Date: 12/9/14

PIPELINE SAFETY USE ONLY

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

Inspected by: Flohrschutz

Date inspected: 11/14/2014

Inspection type: No Locates- Excavator

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET
TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
J. WARREN, PRESIDENT J. WARREN CO., INC. 3327 SE 21ST STREET TOPEKA, KS 66607		
ANDREW FRENCH, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		

ORDER MAILED APR 08 2015

The Docket Room hereby certified that on this _____ day of _____, 20_____, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.