

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Before Commissioners: Mark Sievers, Chairman  
Ward Loyd  
Thomas E. Wright

In the Matter of the Investigation of **Bob** )  
**Bergkamp Construction Co., Inc., of** )  
**Wichita, Kansas,** Regarding the Violation of )  
the Kansas Underground Utility Damage ) Docket No. 12-DPAX-730-SHO  
Prevention Act and the Commission's )  
Authority to Impose Penalties and Injunctive )  
Relief. )

**ORDER TO SHOW CAUSE**

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, and being duly advised in the premises, the Commission finds and concludes as follows:

**I. JURISDICTION AND BACKGROUND**

1. K.S.A. 66-1813 grants the Commission the authority to administer and enforce the Kansas Underground Utility Damage Prevention Act (KUUDPA), K.S.A. 66-1801, *et. seq.* Pursuant to this authority, the Commission has jurisdiction over excavators, who are defined as “any person who engages directly in excavation activities within the state of Kansas . . .” K.S.A. 66-1802(m) clarifies this definition by explaining that a “person” is considered “any individual, partnership, corporation, association, franchise holder, state, city, county or any governmental subdivision or instrumentality of a state and its employees, agents or legal representatives.

2. The above docket arises from the events occurring on or about January 31, 2012, involving Bob Bergkamp Construction Co., Inc. (Respondent), who is a Kansas-based excavation business operating out of Wichita, Kansas.

3. On or about January 31, 2012, Respondent struck a Kansas Gas Service (KGS) high-pressure 8 inch steel pipeline with large dirt-moving equipment in Riley County, near Manhattan, Kansas, specifically north of the intersection of K-18 Highway and Country Road 418 (Stagg Hill Road).

4. During the excavating activities conducted by Respondent on January 31, 2012, Respondent's equipment made contact with an 8 inch steel pipeline operated by KGS Manhattan, resulting in the release of 4,504 MCF of natural gas into the atmosphere before repair. The total cost of repairs by KGS was \$29,000.

5. After reviewing the records of Kansas One Call, Respondent had a valid Kansas One-Call ticket at the time of the damage. The pipeline was properly marked by KGS, but the equipment operator failed to exercise reasonable care while digging near the pipeline in that he only allowed 19" of cover from the marking (tolerance zone), rather than 24" of cover, violating K.S.A. 66-1809.

6. On April 16, 2012, Commission Staff (Staff) submitted a motion to the Commission recommending that the Commission require Respondent to show cause as to why it should not pay a civil penalty of \$5,000 for its alleged violation of the KUUDPA. Staff's motion, including its Attachment, is incorporated herein by reference and made a part hereof as Attachment "1".

## II. FINDINGS AND CONCLUSIONS

7. The Commission finds that it has jurisdiction over Respondent because Respondent is an excavator pursuant to K.S.A. 66-1802(d).

8. The Commission finds that the investigation appears to show that Respondent committed one violation of the KUUDPA as defined by K.S.A. 66-1809(a), as follows:

(a) Upon receiving information as provided in K.S.A. 66-1806, and amendments thereto, an excavator shall exercise such reasonable care as may be necessary for the protection of any underground facility in and near the construction area when working in close proximity to any such underground facility.

9. The Commission concludes that pursuant to K.S.A. 66-1812 and K.S.A. 66-1,151, violations of the KUUDPA or rules or regulations adopted pursuant to the KUUDPA are subject to civil penalties not to exceed \$25,000 for each day that the violation occurred.

10. In its motion, Staff recommended a civil penalty of \$5,000 for the violation. (Staff's Motion, ¶ 6.) Staff's recommendation was based on the gravity of noncompliance, the severity of damage to the pipeline and experience of Respondent. (Attachment "A" to Staff's Motion, p. 2.)

11. The Commission further concludes that pursuant to K.A.R. 82-1-237, a hearing in regard to the violations at issue, as stated above, may be necessary and appropriate, and that Respondent may be required to appear before the Commission to show cause why this Commission should not take action, including, but not limited to, initiating a civil penalty in the amount of \$5,000 against Respondent for violation of the KUUDPA. At this time, a hearing is scheduled for June 14, 2012, to begin at 9 a.m. or as soon after as scheduling permits.

12. Respondent has until the close of business on May 14, 2012, to file its Answer or otherwise plead regarding the alleged violations.

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

(A) This Order to Show Cause is issued to require Bob Bergkamp Construction Co., Inc., of Wichita, Kansas to show cause why this Commission should not take action, including, but not limited to, assessment of a civil penalty in the amount of \$5,000 against Bob Bergkamp Construction Co., Inc., for one violation of the Kansas Underground Utility Damage Prevention Act. Bob Bergkamp Construction Co., Inc. has until May 14, 2012, to file its Answer or otherwise plead regarding the alleged violations.


(B) The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 2011 Supp. 77-529(a)(1).

(C) The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it may deem necessary and proper.

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

Sievers, Chmn; Loyd, Com.; Wright, Com.

Dated: APR 23 2012

  
ORDER MAILED APR 23 2012  
Patrice Petersen-Klein  
Executive Director

JJ

**ATTACHMENT "1"**

Jenkins

Received  
on

APR 16 2012

by  
State Corporation Commission  
of Kansas

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

In the Matter of the Investigation of **Bob** )  
**Bergkamp Construction Co., Inc. of** )  
**Wichita, Kansas, Regarding the Violation of** )  
the Kansas Underground Utility Damage ) Docket No. 12-DPAX-730-SHO  
Prevention Act and the Commission's )  
Authority to Impose Penalties and Injunctive )  
Relief. )

**STAFF'S MOTION TO SHOW CAUSE**

The Staff of the State Corporation Commission of the State of Kansas (Staff) presents the above-captioned matter to the Commission seeking to initiate a show cause proceeding against Bob Bergkamp Construction Co., Inc. (Respondent), for the purpose of obtaining a Commission order assessing civil penalties against Respondent for a violation of the Kansas Underground Utility Damage Prevention Act (KUUDPA). In support of its Motion, Staff states as follows:

1. Respondent is a Kansas-based excavation business operating as a corporation out of Wichita, Kansas.
2. On or about January 31, 2012, Respondent struck a Kansas Gas Service (KGS) high-pressure 8 inch steel pipeline with large dirt-moving equipment in Riley County, near Manhattan, Kansas, specifically north of the intersection of K-18 Highway and Country Road 418 (Stagg Hill Road).
3. During the excavating activities conducted by Respondent on January 31, 2012, Respondent's equipment made contact with an 8 inch steel pipeline operated by KGS Manhattan, resulting in the release of 4,504 MCF of natural gas into the atmosphere before repair. The total cost of repairs by KGS was \$29,000.
4. After reviewing the records of Kansas One Call, Respondent had a valid Kansas One-Call ticket at the time of the damage. The pipeline was properly marked by KGS, but the

equipment operator failed to exercise reasonable care while digging near the pipeline in that he only allowed 19" of cover from the marking (tolerance zone), rather than 24" of cover, violating K.S.A. 66-1809.

5. Based on Staff's Report and Recommendation, Respondent is a professional excavator in the industry for over fifty years. With this experience, Respondent is very familiar with the requirements of KUUDPA and deals with Kansas One-Call on a daily basis. Likewise, Respondent is aware of the dangers and consequences of hitting underground utilities. A true and correct copy of Staff's March 23, 2012, Report and Recommendation is attached hereto as "Attachment A".

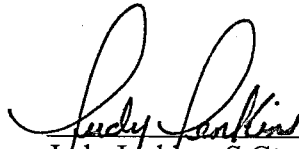
6. Therefore, Staff respectfully requests the Commission to order Bob Bergkamp Construction Co., Inc. to appear before the Commission to Show Cause as to why this Commission should not assess a civil penalty against its company in the amount of \$5,000, as recommended by Staff in its Report and Recommendation.

7. Staff requests this Commission to set the Show Cause proceedings commencing on June 14, 2012, at 9 a.m. in the First Floor Hearing Room at the Commission offices located at 1500 SW Arrowhead, Topeka, Kansas 66604.

8. Staff further requests the Commission to permit Respondent the opportunity to resolve this matter prior to hearing, by authorizing Commission Staff the ability to enter into a Stipulated Settlement Agreement, subject to Commission approval, in which Respondent would stipulate to the violations as alleged and agree to pay the civil assessment in the amount of \$5,000, for the violation of the KUUDPA, on or before the close of business on May 25, 2012.

WHEREFORE, for the reasons set forth above, Staff respectfully requests that the Commission grant this Motion to Show Cause against Bob Bergkamp Construction Co., Inc. for the purpose of the enforcement of the Kansas Underground Utility Damage Prevention Act.

Respectfully submitted,



---

Judy Jenkins, S.Ct. #23300  
Litigation Counsel  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, Kansas 66604  
(785)271-3181 (Telephone)  
(785)271-3167 (Facsimile)  
[j.jenkins@kcc.ks.gov](mailto:j.jenkins@kcc.ks.gov) (Email)

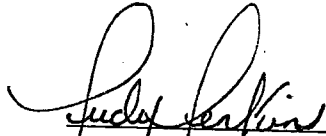
For Commission Staff

**VERIFICATION**

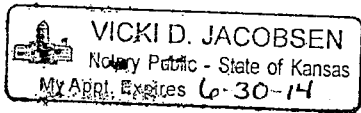
**Docket No. 12-DPAX-730-SHO**

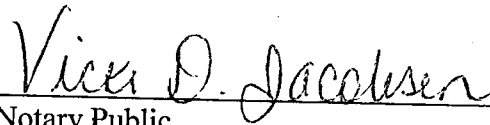
STATE OF KANSAS                    )  
  ) ss.  
COUNTY OF SHAWNEE            )

Judy Jenkins, of lawful age, being duly sworn upon her oath deposes and states that she is Litigation Counsel for the State Corporation Commission of the State of Kansas; that she has read and is familiar with the foregoing *Staff's Motion to Show Cause* and attests that the statements therein are true and correct to the best of her knowledge, information and belief.

  
\_\_\_\_\_  
Judy Jenkins, S.Ct. #23300  
Litigation Counsel  
The State Corporation Commission  
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of April, 2012.



  
\_\_\_\_\_  
Notary Public

My Appointment Expires: 6-30-14

**ATTACHMENT "A"**



1500 SW Arrowhead Road  
Topeka, KS 66604-4027

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

Mark Sievers, Chairman  
Ward Loyd, Commissioner  
Thomas E. Wright, Commissioner

Sam Brownback, Governor

**REPORT AND RECOMMENDATION  
UTILITIES DIVISION**

**TO:** Chairman Mark Sievers  
Commissioner Ward Loyd  
Commissioner Thomas E. Wright

STATE CORPORATION  
COMMISSION

MAR 26 2012

**FROM:** Daniel Ostahowski *D.O.*  
Leo Haynos

PATRICE PETERSEN-KLEIN  
EXECUTIVE DIRECTOR

**DATE:** March 23, 2012

**DATE SUBMITTED TO EXECUTIVE DIRECTOR:** 3/26/12

**DATE SUBMITTED TO LEGAL:** 3/27/12

**DATE SUBMITTED TO COMMISSIONERS:** \_\_\_\_\_

**SUBJECT:** Recommendation to require Bob Bergkamp Construction Co, Inc to Show Cause why it should not be penalized for violation of the Kansas Underground Utility Damage Prevention Act

**EXECUTIVE SUMMARY**

On January 31, 2012, Bob Bergkamp Construction Co, Inc (Bob Bergkamp Construction) struck a Kansas Gas Service (KGS) high-pressure 8" steel pipeline with large dirt-moving equipment in Riley County near Manhattan, KS. No injuries or fatalities resulted, and ignition of the gas did not occur, but it is estimated that 4,504 MCF of natural gas was released. Total costs incurred by KGS were over \$29,000. After reviewing the records of Kansas One Call, Inc., Bob Bergkamp Construction had a valid Kansas One-Call ticket at the time of the damage. The pipeline was properly marked by Kansas Gas Service at the time of the damage but the equipment operator failed to exercise reasonable care while near the pipeline. Staff concludes this is a violation of K.S.A. 66-1809. Therefore, Staff is recommending the Commission initiate a Docket to require Bob Bergkamp Construction to show cause why their Company should not be fined for failure to comply with the Kansas Underground Utility Damage Prevention Act (KUUDPA). Because of the severity of the consequences of this damage and the fact that no attempt was made to avoid hitting a clearly marked facility, Staff recommends the Commission impose a civil penalty in the amount of \$5,000, as allowed by K.S.A. 66-1812.

## BACKGROUND

Bob Bergkamp Construction was hired by Kansas Department of Transportation (KDOT) as a contractor for K-18 highway construction west of Manhattan. The scope of their project is very large; from Miller Parkway in Manhattan all the way to Ogden. The specific site of this incident is north of the intersection of K-18 Highway and Country road 418 (Stagg Hill Road).

The damaged pipeline was operated by the KGS Manhattan division and was 8" steel operating at 150 psig. It is a part of the main feed into Manhattan from the west, but gas is able to feed both ways along the line since the system is set up in a loop configuration. The pipeline is constructed of 40' pipe sections coupled together using Dresser-type mechanical couplings.

The machine that did the damage is a paddle scraper, a large piece of equipment that uses paddles to collect dirt and move it elsewhere. There were actually two of these paddle scrapers coupled together and the rearward machine hit the pipeline. The pipe was struck and held by the paddle scraper, pulling apart at the couplings on each end of a pipe section and dragged 100 yards caught in the scraper to where the machines stopped.

Since gas could feed both ways in KGS's system configuration, 150psig gas was blowing out of both ends of the open pipe. Emergency responders were quick on the scene and briefly shut down traffic on K-18 highway and diverted flights to Manhattan Regional Airport to prevent the public from passing through the gas plume. To stop the flow of gas, KGS closed emergency valves at regulator stations on either side of the damage site. Following the damage, one hour and twenty three minutes passed before the gas was shut off, resulting in 4,504 MCF of natural gas escaping to atmosphere. This is such a large volume of gas that this event meets the definition of a natural gas incident by pipeline safety regulation 49 CFR § 191.3 since more than 3,000 MCF of gas was released unintentionally. Four customers (three commercial and one residential) were without service for four hours while repairs to the pipeline were being made. Emergency response costs for KGS total \$1,232, property damage and repair costs total \$4,868 and the gas lost was valued at \$22,900; for a total loss to KGS of \$29,000.

Staff conducted a search of the Kansas One-Call database and found many tickets for Bob Bergkamp Construction along K-18. They had broken their project down into many smaller parts to help with the locating process. The ticket valid at the time of damage was #12015557. However, Bob Bergkamp Construction had called in for this ticket to be updated on 1/30/2012, and KGS' contract locator marked the pipeline for the updated ticket on 1/30/2012. When the damage occurred, the marks near the scene were only one day old. Staff's investigation confirmed that the marks were indeed visible near the area of damage but there were no marks over the pipeline since the scrapers had just removed that dirt en route to the damage.

After investigation, Staff issued a notice of probable non-compliance (KCC Investigation #6333) to Bob Bergkamp Construction for failing to use reasonable care while excavating. Staff received a reply on 2/10/2012 admitting fault in the event and detailing the retraining held with their employees. Their response explained that there was miscommunication between the scraper operators and the foreman over where the scrapers should be working. There was only 19" of cover remaining over the pipeline where it was damaged, as their previous excavation had

removed some cover already and the line was not checked for depth before the machines passed over.

## **ANALYSIS**

An investigation by Staff indicates that Bob Bergkamp Construction did not exercise reasonable care while working near KGS' pipeline. The KUUDPA defines a tolerance zone of 24" on each side of a marked utility. Inside this tolerance zone, reasonable care must be taken to avoid contact with the facility. Working with large dirt-moving equipment like Bob Bergkamp Construction does, there is little opportunity to hand-dig, so probing is usually done prior to excavating to verify depth of cover over a facility. No probing was done at this location prior to excavation. Therefore Staff concludes that Bob Bergkamp Construction is in violation of K.S.A. 66-1809 listed below:

### **K.S.A. 66-1809: Excavator's duty to exercise reasonable care.**

*(a) Upon receiving information as provided in K.S.A. 2001 Supp. 68-1806, and amendments thereto, an excavator shall exercise such reasonable care as may be necessary for the protection of any underground facility in and near the construction area when working in close proximity to any such underground facility.*

In recommending this penalty, Staff considered the following items in reaching the conclusion that a penalty of \$5,000 is appropriate.

#### **Gravity of noncompliance:**

Bob Bergkamp Construction is an excavator subject to Commission jurisdiction under KUUDPA. As a direct result of Bob Bergkamp Construction's failure to exercise reasonable care while excavating, a large amount of natural gas was released to the atmosphere, natural gas service was lost to customers, highway and airport transportation was disrupted and KGS incurred a cost of over \$29,000. As a professional excavator, Bob Bergkamp Construction is very familiar with the requirements of KUUDPA and deals with Kansas One-Call on a daily basis. Being in the industry for over fifty years, they are also very aware of the dangers and consequences of hitting underground utilities, especially pipelines. Based on the severity of this pipeline damage, the disruptions it caused, and the experience the excavator has with the KUUDPA, Staff believes this violation warrants a \$5,000 civil penalty allowed by statute.

#### **Culpability:**

As a professional excavator, Bob Bergkamp Construction is directly responsible for obeying and adhering to the requirements of KUUDPA.

#### **History of violations and noncompliance:**

Staff has no knowledge of any other instances of Bob Bergkamp Construction failing to comply with KUUDPA.

## RECOMMENDATION

Staff is recommending the Commission initiate a docket to require Bob Bergkamp Construction to show cause why their company should not be fined for failure to comply with the Kansas Underground Utility Damage Prevention Act (KUUDPA). Because of the severity of the consequences of this damage, Staff recommends the Commission impose a civil penalty in the amount of \$5,000, as allowed by K.S.A. 66-1812.

cc: Patrice Petersen-Klein, Executive Director  
Jeff McClanahan, Acting Director of Utilities  
Teresa McLinn  
Brenda Schirmer

EXHIBIT 1 – PHOTOGRAPHS OF INCIDENT SCENE

Exhibit 1-1: Section of pipe damaged by Bob Bergkamp Construction. This whole piece was removed from the pipeline by the paddle scraper machine.



Exhibit 1-2: Damage scene after pipeline repair. K-18 is behind the tree line.



Exhibit 1-3: Paddle scraper machine that damaged pipeline.



**CERTIFICATE OF SERVICE**

12-DPAX-730-SHO

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Staff's Motion to Show Cause was placed in the United States mail, postage prepaid, or hand-delivered this \_\_\_\_\_ day of April, 2012, to the following:

Jim Snook, CHIEF EXECUTIVE OFFICER  
Bob Bergkamp Construction Co., Inc.  
3709 South West Street  
Wichita, KS 67217  
Fax: 316-522-5296  
jsnook@bergkampconstruction.com

JUDY JENKINS, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027  
Fax: 785-271-3167  
j.jenkins@kcc.ks.gov  
\*\*\*Hand Delivered\*\*\*

  
\_\_\_\_\_  
Vicki Jacobsen

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

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
Jim Snook, CHIEF EXECUTIVE OFFICER Bob Bergkamp Construction Co., Inc. 3709 South West Street Wichita, KS 67217		
JUDY JENKINS, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604-4027 ***Hand Delivered***		

ORDER MAILED APR 23 2012

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.