

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

ORDER APPROVING UNANIMOUS SETTLEMENT AGREEMENT

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration. Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

I. BACKGROUND

1. Beacon Contracting LLC (Beacon) is an excavator as defined in K.S.A. 66-1802.
2. On June 8, 2023, Commission Staff (Staff) investigated the activities and operations of Beacon after damage to an Atmos PE gas service line was discovered at 14841 S. Black Bob Road, Olathe, Kansas.
3. On September 7, 2023, the Commission issued a Penalty Order to Beacon in this docket assessing a \$500.00 civil penalty.
4. On September 28, 2023, Beacon requested a hearing before the Commission.
5. On November 8, 2023, Philip Nonnemaker, Attorney for Beacon, and Ahsan A. Latif, Litigation Counsel for Staff, informally discussed the possibility of a settlement. During this

and subsequent discussions, the parties were able to reach mutually agreeable terms in anticipated settlement of the issues. It was agreed that Staff would subsequently reduce the terms to writing and forward the draft to Carrier's counsel for approval and signature.

6. On November 22, 2023, Staff filed a Joint Motion for Approval of Stipulated Settlement Agreement. The Unanimous Settlement Agreement is attached to this Order as Attachment A.

7. In the Unanimous Settlement Agreement, Staff agreed to reduce the \$500.00 civil fine to \$250.00 based upon the specific circumstances of the alleged violation as well as the Beacon's efforts to remediate the violation and attempts to ensure compliance. Beacon agreed to withdraw its Request for Hearing before the Commission and when applicable, comply with Kansas law governing the Kansas Underground Utility Damage Prevention Act ("KUUDPA"), as provided in K.S.A. 66-1801, *et seq.*, including the requirement to serve notice of intent of excavation at least two full working days before a scheduled excavation start date.

II. FINDINGS AND CONCLUSIONS

8. The Commission has jurisdiction and authority to administer and enforce KUUDPA, as provided in K.S.A. 66-1801, *et seq.* Likewise, K.S.A. 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.*

9. 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.

10. 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.

11. The Commission has the authority, pursuant to K.A.R. 82-1-237, to investigate an entity under the Commission's jurisdiction and issue an order on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

12. Pursuant to K.S.A. 66-1,152, a civil penalty may be compromised by the Commission. In determining the amount of the penalty or the amount agreed in compromise, the appropriateness of the penalty to the size of the business, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance shall be considered.

13. Kansas favors compromising and settling disputes when the agreement is entered into intelligently and in good faith.¹

14. The Commission has reviewed the Unanimous Settlement Agreement attached to the Joint Motion for Approval of Unanimous Settlement Agreement of the parties and concludes that the terms and provisions therein are an appropriate and reasonable disposition of this matter. The Commission therefore adopts and incorporates by reference the terms of the Agreement.

¹ See, *Bright v. LSI Corp.*, 254 Kan. 853, 858 (1994).

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Joint Motion for Approval of Unanimous Settlement Agreement entered into between Beacon Contracting, LLC and Transportation Staff is hereby granted. The terms of the Unanimous Settlement Agreement are approved and are hereby incorporated by reference.

B. Beacon Contracting, LLC's Request for Hearing is denied as moot.


C. The civil penalty is reduced from \$500.00 to \$250.00 based upon the specific circumstances of the alleged violation as well as the Beacon's efforts to remediate the violation and attempts to ensure compliance. Beacon Contracting, LLC shall submit payment to the Commission within thirty (30) days of this order.

D. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).²

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

Dated: 11/30/2023



Lynn M. Retz
Executive Director

AAL/DGC

² K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

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

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

UNANIMOUS SETTLEMENT AGREEMENT

This Unanimous Settlement Agreement (Agreement) is entered into by and between the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), and Beacon Construction LLC (Beacon). Its effective date will be the date the Commission enters an Order approving or amending the terms of the Agreement.

I. JURISDICTION

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.

4. The Commission has the authority, pursuant to K.A.R. 82-1-237, to investigate an entity under the Commission's jurisdiction and issue an order on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

5. Pursuant to K.S.A. 66-1,152, a civil penalty may be compromised by the Commission. In determining the amount of the penalty or the amount agreed in compromise, the appropriateness of the penalty to the size of the business, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance shall be considered.

II. BACKGROUND

6. Beacon Contracting LLC is an excavator as defined in K.S.A. 66-1,1802.

7. On June 8, 2023 Staff investigated the activities and operations of Beacon after damage to an Atmos PE gas service line was discovered at 14841 S. Black Bob Road in Olathe, Kansas.

8. On September 7, 2023, the Commission issued a Penalty Order to Beacon in this docket assessing a \$500.00 civil penalty.

9. On September 28, 2023, Carrier requested a hearing before the Commission.

10. On November 8, 2023, Philip Nonnemaker, Attorney for Beacon, and Ahsan A. Latif, Litigation Counsel for Staff, informally discussed the possibility of a settlement. During this and subsequent discussions, the parties were able to reach mutually agreeable terms in

anticipated settlement of the issues. It was agreed that Staff would subsequently reduce the terms to writing and forward the draft to Carrier's counsel for approval and signature.

III. TERMS OF THE UNANIMOUS SETTLEMENT AGREEMENT

11. The parties agree that the Commission has jurisdiction and authority over this matter.

12. The parties also agree that adoption of this Agreement is in the public interest and that the Commission should approve the stipulations as set forth below.

13. Beacon agrees to conduct any future excavation projects subject to the Commission's jurisdiction in a safe manner.

14. Staff agrees to recommend to the Commission that this Agreement be approved. Staff further agrees that upon approval by the Commission this Agreement shall constitute a final resolution of this matter.

15. Pursuant to K.S.A. 77-504, the Carrier waives all rights to a hearing on, or appeal of the Invoice, and withdraws its request for a hearing previously filed herein.

16. Pursuant to K.S.A. 77-526, the Commission expressly reserves and maintains the right and authority to enforce the terms of this Agreement.

17. Pursuant to the Kansas Judicial Review Act, K.S.A 77-601 *et seq.*, Carrier waives all rights to a hearing on, or appeal of, this Agreement.

IV. MODIFICATION OF PENALTY ORDER

18. Staff agrees to reduce the \$500.00 civil fine to \$250.00.

19. Staff's recommendation for reduction of this civil assessment is based upon the specific circumstances of the alleged violation as well as the Beacon's efforts to remediate the violation and attempts to ensure compliance.

20. Beacon agrees to withdraw its Request for Hearing before the Commission.

21. Beacon shall, when applicable, comply with Kansas law governing the Kansas Underground Utility Damage Prevention Act (“KUUDPA”), as provided in K.S.A. 66-1801, *et seq.*, including the requirement to serve notice of intent of excavation at least two full working days before a scheduled excavation start date.

VI. RESERVATIONS

22. This Agreement fully resolves issues specifically addressed between the parties. The terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein.

23. The terms and provisions of this Agreement have resulted from negotiations between the signatories and are interdependent. In the event the Commission does not approve the terms of the Agreement in total, any party has the option to terminate this Agreement and, if so terminated, none of the signatories hereto shall be bound by, prejudiced, or in any way affected by any of the terms or provisions hereof, unless otherwise provided herein.

24. Unless (and only to the extent) otherwise specified in this Agreement, the signatories to this Agreement shall not be prejudiced, bound by, or affected in any way by the terms of this Agreement: (1) in any future Commission or court proceeding; (2) in any proceeding currently pending before the Commission under a separate docket; and/or (3) in this proceeding, if the Commission decides not to approve this Agreement in total or in any way conditions its approval of the same. This paragraph is not meant to limit future enforcement of this Agreement, should either party fail to fulfill all terms and provisions.

25. Unless (and only to the extent) otherwise specified in this Agreement, this Agreement does not prejudice or waive any party’s legal rights, positions, claims, assertions or

arguments in any proceedings in this docket, or any other proceeding before the Commission or in any court. If the Commission approves this Agreement in its entirety and incorporates the same into a Final Order in this docket, the parties agree to be bound by its terms and the Commission's Order incorporating its terms as to all issues addressed herein, and will not appeal the Commission's Order.

26. This Agreement shall be binding on all parties upon signing.

IN WITNESS WHERETO, Staff and Beacon Contracting LLC hereby execute and approve this Unanimous Settlement Agreement by subscribing their signatures below.

/s/ Ahsan Latif

/s/ Philip Nonnemaker

By:

Ahsan A. Latif, KS S. Ct. #24709
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Kansas Corporation Commission
1500 S.W. Arrowhead Road
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By:

Philip Nonnemaker, KS S. Ct. #15192
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Email: penlaw@sbcglobal.net
Attorney for 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
electronic service on 11/30/2023.

DON BISHOP
Beacon Contracting LLC
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/S/ KCC Docket Room
KCC Docket Room