

NOTICE OF PENALTY ORDER
25-DPAX-301-PEN

February 11, 2025

Benjamin Franklin Plumbing
Jonathan Thorne, Registered Agent
2825 Kellogg Dr.
Wichita, Kansas 67211

This is a notice of a penalty assessment against Benjamin Franklin Plumbing (“Benjamin Franklin”) for a violation of the Kansas Underground Utility Damage Prevention Act (“KUUDPA”) and pipeline safety regulations adopted by the Kansas Corporation Commission. Benjamin Franklin Plumbing 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-301-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 Benjamin Franklin 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 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 Benjamin)
Franklin Plumbing Regarding Violations of the)
Kansas Underground Utility Damage)
Prevention Act (“KUUDPA”) (K.S.A. 66-) Docket No. 25-DPAX-301-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 KUUDPA, including imposing civil penalties and injunctive relief against any person or entity subject to and found in violation of KUUDPA, or any rule, regulation, or order of the Commission.²

2. K.S.A. 66-1802 defines excavation as “any operation in which earth, rock, or other material below the surface is moved or otherwise displaced by any means.” Benjamin Franklin Plumbing (“Benjamin Franklin”) operated where earth, rock, or other materials below the surface

¹ See K.S.A. 66-1813.

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

were moved or otherwise displaced by any means and therefore is an excavator in Kansas as defined by K.S.A. 66-1802. Therefore, Benjamin Franklin 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 September 11, 2024, Commission Staff ("Staff") conducted an onsite investigation of the excavation operations of Benjamin Franklin at the excavation site of 401 North Marmaton Road in El Dorado, Kansas.

4. On September 19, 2024, Staff subsequently issued a Notice of Probable Noncompliance ("PNC") to Benjamin Franklin notifying Benjamin Franklin of the results of Staff's investigation.³ Staff notified Benjamin Franklin that it violated K.S.A. 66-1809(a) when it failed to exercise 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.⁴

5. Staff determined in its investigation that Benjamin Franklin failed to take the precautions necessary to excavate in a careful and prudent manner when working within a tolerance zone because Benjamin Franklin did not use nonintrusive means while working near marked facilities in the tolerance zone.⁵ Staff determined that Benjamin Franklin damaged a Kansas Gas Service PE gas service line with a mini excavator while repairing sewer service.⁶

³ K.A.R. 82-14-6(a); and *See* Exhibit 1 of Attachment A to this Order.

⁴ Exhibit 1 of Attachment A to this Order.

⁵ Staff's Report and Recommendation, Utilities Division (Jan. 24, 2025) ("Staff's R&R" or "R&R").

⁶ *Id.*

6. On October 14, 2024, Benjamin Franklin responded to Staff's PNC as required by K.A.R. 82-14-6(c).⁷ Benjamin Franklin's response agreed with Staff's findings as made in its investigation.⁸

7. On January 24, 2025, Staff submitted to the Commission's Litigation Division a Report and Recommendation ("R&R") including attachments which is made a part hereof and incorporated by reference herein as Attachment A.⁹ Staff found that Benjamin Franklin was directly responsible for its actions in failing to exercise reasonable care while excavating as required by K.S.A. 66-1809(a).¹⁰ Staff noted that it had issued one other PNC for violations of KUUDPA to Benjamin Franklin in the last three years.¹¹ Staff recommended a civil penalty of \$500 be assessed against Benjamin Franklin for its failure to exercise reasonable care while excavating on September 11, 2024, in violation of K.S.A. 66-1809(a).¹²

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. 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 KUUDPA.

9. The Commission finds that Benjamin Franklin was operating as an excavator, as defined in K.S.A. 66-1802, during the incident at issue.

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

⁷ See Exhibit 1 of Attachment A to this Order.

⁸ *Id.*

⁹ See fn. 5.

¹⁰ Staff's R&R, p. 2.

¹¹ *Id.*

¹² *Id.*

11. The Commission finds that by failing to exercise 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, Benjamin Franklin violated K.S.A. 66-1809(a).

12. The Commission finds that the penalty amount recommended by Staff is necessary to correct Benjamin Franklin's violation.

13. The Commission concludes that Benjamin Franklin violated K.S.A. 66-1809(a) and that Staff's recommendation that Benjamin Franklin be assessed a \$500 civil penalty is just and reasonable.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. A civil penalty in the amount of \$500 is assessed against Benjamin Franklin Plumbing 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), Benjamin Franklin 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 result in a waiver of Benjamin Franklin'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(i), if Benjamin Franklin 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-301-PEN.

D. 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 Benjamin Franklin, 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: 02/11/2025



Abigail D. Emery
Acting Secretary to the Commission

MKH

ATTACHMENT “A”

**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: January 24, 2025

SUBJECT: Docket Number:
In the Matter of the Investigation of Benjamin Franklin Plumbing. 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-1093, Staff recommends that a civil penalty in the amount of \$500 be assessed Benjamin Franklin Plumbing (Benjamin Franklin), for violation(s) of the Kansas Underground Utility Damage Prevention Act (KUUDPA). Benjamin Franklin violated K.S.A. 66-1809 by failing to exercise such reasonable care as may be necessary for the protection of any underground facilities, when excavating in close proximity to any such facility, near 401 N. Marmaton Rd, in El Dorado, Kansas. Staff issued a Notice of Probable Noncompliance (PNC) to Benjamin Franklin on September 19, 2024. Benjamin Franklin responded to the PNC on October 14, 2024, as required by K.A.R. 82-14-6 (c). Staff's PNC including Benjamin Franklin's response to the PNC is included as Exhibit 1.

ANALYSIS:

Rationale for Penalties:

A. **Gravity of noncompliance:**

If an excavator does not take precautions necessary to excavate in a careful and prudent manner when working within the tolerance zone, then damage can occur. Kansas

regulations state that excavating with reasonable care shall include using nonintrusive means to assure there is not a conflict between underground facilities and excavation activity in the tolerance zone. Staff contends the excavator must also expose the facility at intervals as often as necessary throughout excavation as a fundamental means of providing reasonable care while excavating. This excavator damaged a Kansas Gas Service (KGS) PE gas service line with a mini excavator while repairing sewer service. Because Benjamin Franklin did not use nonintrusive means while working near marked facilities in the tolerance zone, Benjamin Franklin failed to use reasonable care as required by the law, and therefore warrants a civil penalty.

B. Culpability:

Benjamin Franklin is directly liable for its actions in failing to use exercise reasonable care while excavating as required by Kansas law.

C. History of noncompliance:

Staff has issued one Notice of Probable Noncompliance for violations of KUUDPA to Benjamin Franklin in the last three years.

D. Response of excavator regarding noncompliance(s):

Response to the PNC as required by K.A.R. 82-14- 6(c) was received by Staff. Benjamin Franklin agreed with Staff's findings as is documented in Attachment 1.

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 Benjamin Franklin in the amount of \$500 for violating K.S.A. 66-1809.

EXHIBIT 1

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



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

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

Laura Kelly, Governor

**Jonathan Thorne
Benjamin Franklin Plumbing
2825 E. Kellogg Dr.**

September 13, 2024

KCC Investigation #: JW-24-OC-1093

Wichita, KS 67211

Subject: Pipeline Investigation

Dear Jonathan Thorne:

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 September 11, 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 Benjamin Franklin Plumbing. 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: Benjamin Franklin Plumbing

Division: Wichita

Regulation:

66-1809 (a) 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.

PROBABLE NONCOMPLIANCE DESCRIPTION:

On 09/11/2024, Benjamin Franklin Plumbing failed to use reasonable care when excavating in the tolerance zone of an underground gas service line at 401 N Marmaton Rd. in El Dorado, Kansas. Benjamin Franklin Plumbing damaged a Kansas Gas Service 3/4" PE gas service line with a mini excavator while repairing a sanitary sewer service. There was a valid One-Call ticket #24463054 with a due date of 09/11/2024. Locate marks were present and within tolerance. One acceptable method of reasonable care is to pothole (expose) the marked facility completely by hand prior to using machines for excavation.

OPERATOR'S RESPONSE: (Attach verification if needed)

The findings are accurate.

Operator's Authorized Signature: *[Signature]* General Manager Date: 10/10/24

| | |
|---------------------------|----------------------|
| PIPELINE SAFETY USE ONLY: | |
| Date reviewed: _____ | Date reviewed: _____ |
| Chief: _____ | Inspector: _____ |

Inspection Type: One Call Inquiry/Complaint
Date Inspected: 09/11/2024
Inspected By: JW

CERTIFICATE OF SERVICE

25-DPAX-301-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 02/11/2025.

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

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
ahsan.latif@ks.gov

Jonathan Thorne, OWNER
Benjamin Franklin Plumbing
2825 E Kellogg Dr.
Wichita, KS 67211
info@benfranklinwichita.com

/S/ KCC Docket Room
KCC Docket Room