

CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027



PHONE: 785-271-3100  
FAX: 785-271-3354  
<http://kcc.ks.gov/>

GOVERNOR JEFF COLYER, M.D.

SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

### NOTICE OF PENALTY ASSESSMENT

18-DPAX-507-PEN

June 7, 2018

Tim Schmidt  
Holdrege Irrigation, Inc.  
2011 4th Avenue  
Holdrege, Nebraska 68949

This is a notice of penalty assessment against Holdrege Irrigation, Inc. for violation of the Kansas Underground Utility Damage Prevention Act (KUUDPA) discovered during an investigation conducted in March and April 2018, 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 the date of service of the Penalty Order to pay the fine amount. Checks should be payable to the Kansas Corporation Commission. Payments shall be mailed to the Fiscal Division of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and shall include a reference to the docket number (18-DPAX-507-PEN) of this proceeding.

#### 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 may electronically file its request for hearing within fifteen (15) days from the date of service of this Penalty Order, and e-mail or mail a copy of the request for hearing to the Litigation Counsel listed below. If the company does not have access to the internet, it must submit an original and seven copies of the request for hearing to the Commission's Secretary at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, within fifteen (15) days from the date of service of this Penalty Order, and provide a copy to the Litigation Counsel listed below.

#### IF YOU FAIL TO ACT:

Pursuant to K.A.R. 82-14-6(i) and (j), failure to submit a written request for a hearing within fifteen (15) days or, in the alternative, to pay the civil assessment in twenty (20) days from the date of service of this Penalty Order, will be considered an admission of noncompliance and result in the Penalty Order becoming a Final Order and the Commission may order further sanctions.

Respectfully,

A blue ink signature of Robert E. Vincent, written in a cursive style.

Robert E. Vincent, S. Ct. No. 26028  
Senior Litigation Counsel  
(785)271-3273  
[r.vincent@kcc.ks.gov](mailto:r.vincent@kcc.ks.gov)

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

Before Commissioners:                Shari Feist Albrecht, Chair  
   Jay Scott Emler  
   Dwight D. Keen

In the Matter of the Investigation of <b>Holdrege</b>	)	
<b>Irrigation, Inc., of Holdrege, Nebraska,</b>	)	
Regarding Violation(s) of the Kansas	)	
Underground Utility Damage Prevention Act	)	Docket No. 18-DPAX-507-PEN
(KUUDPA) (K.S.A. 66-1801, <i>et seq.</i> , and	)	
K.A.R. 82-14-1, <i>et seq.</i> , 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, 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 66-1816, *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 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.

## **II. ALLEGATIONS OF NONCOMPLIANCE**

4. Pursuant to the above authority, in March and April 2018, Commission Staff (Staff) investigated the activities and operations of Holdrege Irrigation, Inc. (Respondent). *See* Report and Recommendation of Staff dated May 11, 2018, a copy of which is attached hereto as Attachment “A” and is hereby adopted and incorporated into this Order by reference. As a result of this investigation, Staff reports the following:

- a. On April 6, 2018, Staff performed an investigation based upon an excavating concern registered by Tallgrass Energy Partners in Long Island, Kansas. Staff’s investigation discovered that on March 28, 2018, Respondent was installing irrigation equipment near a Tallgrass pipeline. No injuries or property damage occurred.
- b. Staff learned during its independent investigation that Respondent had not provided Tallgrass Energy Partners with a notice of intent to excavate and Kansas One Call had not been called to obtain locate marks.
- c. On April 10, 2018, 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, including identification of any errors in the Notice of Probable Noncompliance. The violation cited is as follows:

K.S.A. 66-1804(a) and (e)

**66-1804. Notice of intent of excavation.** (a) Except in the case of an emergency, an excavator shall serve notice of intent of excavation at least two full working days, but no 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.

(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.

- d. On April 12, 2018, Staff received a written response from Respondent to the Notice of Probable Noncompliance. In its response, Respondent admitted to relying on the landowner to acquire a valid One Call ticket and notification of intent to dig. In Staff's opinion, Respondent's decision to delegate its responsibility to request locates to its customer led to the communications breakdown and near-miss involving a high pressure pipeline.

5. Based upon the available facts, Staff recommends the Commission find that at the time of the excavation alleged herein, Respondent was an excavator conducting excavation activities as defined in K.S.A. 66-1802(c) and (d). Additionally, based upon the available facts,

Staff recommends the Commission find Respondent failed to obtain a valid locate ticket and failed to serve notice of intent of excavation as Kansas law requires.

6. 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. KUUDPA requires the excavator to serve notice of intent of excavation at least two full working days before the scheduled excavation start date. Because providing proper and timely notice of intent and waiting the required amount of time is the most fundamental preventative measure an excavator takes, the fact that Holdrege Irrigation, Inc. failed to comply with this requirement of law warrants the assessment of a civil penalty.

7. Staff recommends the Commission issue Holdrege Irrigation, Inc. a civil penalty of \$500 for violation of the Kansas Underground Utility Damage Prevention Act as alleged.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

8. Pursuant to K.S.A. 66-1801 *et seq.*, the Commission has jurisdiction and authority to administer and enforce the KUUDPA.

9. The Commission finds during the incident described in Staff's Report and Recommendation, Respondent was an excavator conducting excavation activities as defined in K.S.A. 66-1802(c) and (d). Accordingly, the Commission finds it has jurisdiction over Respondent to enforce the KUUDPA.

10. The Commission concludes Respondent violated Kansas law governing underground utilities, including various provisions of KUUDPA, and is therefore subject to sanctions or fines imposed by the Commission. Specifically, the Commission finds Respondent violated K.S.A. 66-1804(a) and (e) by failing to obtain a locate ticket and failing to provide a notice of intent of excavation.

11. The Commission concludes Respondent shall be assessed a civil penalty, pursuant to K.S.A. 66-1812, in the amount of \$500 for violation of the Kansas Underground Utility Damage Prevention Act. The Commission finds and concludes Respondent shall be afforded an opportunity to request a hearing on the assessment of this civil penalty. Pursuant to K.A.R. 82-14-6(j), the Commission finds and concludes Respondent shall have 15 days from the date of service of this Penalty Order to request a hearing on the matter. To ensure uniformity and consistency among Commission proceedings, the Commission finds and concludes any hearing on this matter before the Commission shall be conducted in a manner consistent with the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.* Pursuant to K.A.R. 82-14-6(i), and (j), the Commission finds and concludes Respondent's failure to pay the assessed civil penalty within 20 days or request a hearing within 15 days from the date of service of this Penalty Order shall be considered an admission of noncompliance.

**THE COMMISSION THEREFORE ORDERS THAT:**

A. Holdrege Irrigation, Inc., of Holdrege, Nebraska, 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.A.R. 82-14-6(j) and amendments thereto, any party may request a hearing by electronically filing its request within fifteen (15) days from the date of service of this Penalty Order, and e-mail or mail a copy of the request for hearing to the Litigation Counsel listed on the Notice of Penalty Assessment. If the Respondent does not have access to the internet, it must submit an original and seven copies of the request for hearing to Secretary to the Commission at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, within fifteen (15) days from the date of service of this Penalty Order, and provide a copy to Litigation Counsel. 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. Any hearing on this matter before the Commission shall be conducted in a manner consistent with the Kansas Administrative Procedure Act, K.S.A. 77-501, *et seq.* Furthermore, if a request for hearing is not filed, this Penalty Order will become a Final Order assessing a \$500 civil penalty against Respondent.

C. On June 7, 2018, this Penalty Order was mailed via certified mail, return receipt number 70161970000105746015. Service of this Order is complete upon the date delivered shown on the Domestic Return Receipt.

D. Attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. For civil penalties exceeding \$500, a corporation shall appear before the Commission by its attorney, unless waived by the Commission for good cause shown and a determination that such waiver is in the public interest. K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2); K.A.R. 82-1-202(a).

E. Pursuant to K.A.R. 82-14-6, if you do not request a hearing, the payment of the civil penalty is due within twenty (20) days from the date of service of this Order. Checks shall be made payable to the Kansas Corporation Commission. Payments shall be mailed to the Fiscal Division 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 (18-DPAX-507-PEN) of this proceeding.

F. 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

Respondent, including all sanctions, requirements, and penalties described above being enforceable without further action by the Commission.

G. 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; Keen, Commissioner

Dated: 06/07/2018



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Lynn M. Retz  
Secretary to the Commission

REV/vj



## **ATTACHMENT “A”**

# STATE OF KANSAS



CORPORATION COMMISSION  
UTILITIES DIVISION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027

PHONE: 785-271-3220  
FAX: 785-271-3357  
<http://kcc.ks.gov/>

GOVERNOR JEFF COLYER, M.D.

SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

## REPORT AND RECOMMENDATION

### UTILITIES DIVISION

**TO:** Chair Shari Feist Albrecht  
Commissioner Jay Scott Emler  
Commissioner Dwight D. Keen

**FROM:** Robert Jackson, Damage Prevention Special Investigator  
Leo Haynos, Chief of Pipeline Safety  
Jeff McClanahan, Director of Utilities

**DATE:** May 11, 2018

**SUBJECT: Docket Number:** 18-DPAx-507-P6N

In the Matter of the Investigation of Holdrege Irrigation, 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). / RJ-18-OC-1037

#### **EXECUTIVE SUMMARY:**

Staff is recommending a civil penalty be issued to Holdrege Irrigation (Holdrege), in the amount of \$500 for a violation of KUUDPA. Holdrege failed to provide a notice of intent to excavate prior to excavating in Norton County, Kansas, on March 28, 2018. Failure to provide proper notice of intent to excavate before excavation begins is a violation of K.S.A. 66-1804 (a) & (e). A Notice of Probable Noncompliance (PNC) was issued to Holdrege on April 10, 2018. Holdrege responded to this PNC as required by K.A.R. 82-14-6(c) on April 19, 2018. A copy of the PNC and Holdrege's response is included as Attachment I.

#### **BACKGROUND**

Tallgrass Energy L.P. (Tallgrass) contacted Pipeline Safety Staff (Staff) via email regarding Holdrege digging a trench approximately 8 feet from a Tallgrass Pipeline transmission main without requesting locates. A copy of Tallgrass' allegation is attached to this Report and Recommendation as Attachment II. In response to the PNC, Holdrege acknowledged

performing the excavation for the landowner. Holdredge claimed the landowner who had hired Holdredge had agreed to obtain a One Call ticket for the excavation work to be done by Holdredge. In this case, however, neither the landowner nor Holdredge requested locates. The Tallgrass gas transmission line was not marked at the time of excavation, and a One Call ticket was not issued to Holdredge.

## ANALYSIS:

### A. Gravity of noncompliance:

Excavating without ascertaining the location of all underground facilities is considered a high-risk activity with the potential for significant consequences to public safety. KUUDPA requires the excavator to serve notice of intent of excavation at least two full working days before the scheduled excavation start date. Holdrege, acting as the excavator, failed to provide proper notice of intent to excavate. This warrants the assessment of a civil penalty.

### B. Culpability:

Holdrege is directly responsible for its actions in failing to provide accurate locates as Kansas law requires.

### C. History of noncompliance:

Staff has issued no other KUUDPA PNC to Holdrege in the past two years.

### D. Response of the excavator regarding noncompliance(s):

Holdrege agreed with Staff's findings described in the PNC. Holdrege personnel failed to acquire a valid Kansas One-call ticket in their name. Holdrege acknowledged relying on the landowner to acquire a valid One Call ticket to avoid the "double up" of tickets and not cause discrepancies. In Staff's opinion, Holdredge's decision to delegate its responsibility to request locates to its customer led to the communications breakdown and the near-miss of an accident on a high pressure pipeline. Staff notes K.S.A. 66-1802(d) defines the term excavator as the entity that is *directly* performing an excavation. Under the provisions of KUUDPA, the excavator is the entity required to provide notice of excavation.

### E. Aggravating/Mitigating Circumstances:

Staff has not determined any circumstances that would cause modification of the penalty amount of \$500.

**RECOMMENDATION:**

Staff recommends a civil penalty be issued to Holdrege Irrigation in the amount of \$500 for violation(s) of KUUDPA.

Attachments

E-MAILED APR 18 2018

PROBABLE NONCOMPLIANCE

Investigation: RJ-18-OC-1037  
Kansas Corporation Commission

Company: Holdrege Irrigation

Division:

APR 18 2018

## Regulation:

66-1804 (a) &amp; (c) 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 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.

## PROBABLE NONCOMPLIANCE DESCRIPTION:

On 4/6/18, KCC Staff investigated a concern registered by Tallgrass Energy Partners (Tallgrass). The incident occurred on 3/28/18. Documentation and photos were sent with the concern and staff verified the information with Holdrege Irrigation (Holdrege). Holdrege was installing irrigation equipment without a OneCall ticket in the vicinity of a Tallgrass pipeline near Long Island, KS. Holdrege failed to obtain a valid OneCall ticket as required. This is a violation of 66-1804 (a) & (c) above.

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

See Attached Letter

Operator's Authorized Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## PIPELINE SAFETY USE ONLY:

Date reviewed: \_\_\_\_\_

Date reviewed: \_\_\_\_\_

Chief: \_\_\_\_\_

Inspector: \_\_\_\_\_

Inspection Type: One Call Inquiry/Complaint

Date Inspected: 04/02/2018

Inspected By: RJ

# HOLDREGE



## IRRIGATION

**HOLDREGE**  
2011 4<sup>th</sup> Avenue  
Holdrege, NE 68949  
308-995-4000

**LEXINGTON**  
75498 435 Road  
Lexington, NE 68850  
308-324-2121

**ALDA**  
3868 60th Road  
Alda, NE 68810  
308-384-7224

**RAVENNA**  
35665 Pine Road  
Ravenna, NE 68869  
308-452-3111

April 12, 2018

To Whom It May Concern:

On 4-6-18 Holdrege Irrigation employees were working under the guidance of Terry Nelson of Husky Hogs on a project under his control. Terry had sent in a One Call on this site and all utilities were clearly marked. Sara from Tall Grass was also on site during the initial excavation.

Holdrege Irrigation takes a lot of pride and effort in maintaining our employee's safety and we are very strict on never digging without a One Call ticket. When we started working under Terry Nelson we both agreed that for the safety of our employees and the knowledge Terry had for the projects, Terry would be in charge of all the One Calls so that we would not double up and cause any discrepancies with the locators.

We at Holdrege Irrigation have done a considerable amount of trenching and digging for Terry Nelson and we have not had any issues with the jobs not being called in or any issues with any of the utilities. Terry has been very good to work with and keeps us up to date on all the utilities and he coordinates the utility personal to be onsite if necessary.

I appreciate the concern and will continue to use all information to increase our employee's safety.

Thank You,

Tim Schmidt  
Holdrege Irrigation, Inc.

Kansas Corporation Commission

APR 18 2018

Utilities Division



Attachment II

**Robert Jackson**

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**From:** Ubben, Richard <richard.ubben@tallgrassenergyllp.com>  
**Sent:** Thursday, March 29, 2018 3:24 PM  
**To:** Robert Jackson  
**Cc:** Beckman, Sarah; Ubben, Richard  
**Subject:** Holdrege Irrigation No Locate Ticket  
**Attachments:** IMG\_0043.JPG; IMG\_0045.JPG

This is an EXTERNAL EMAIL. Think before clicking a link or opening attachments.

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Robert,

Here was work that was done yesterday by Holdrege Irrigation out of Holdrege Nebraska that was working in Norton County KS. They did the work without a One Call and was about 8 ft from our transmission main and about 2 foot from the tap coming from the main going to the meter. I talked to a supervisor at Holdrege Irrigation and told him that a ticket was required to dig in Kansas. He said he understood that but, the land owner was supposed to take care of that for them. I then told him that the excavator not the landowner is required to request their own ticket and I was going to inform you of what happened. As you read below there was no ticket called in.

Robert they were lucky that they didn't get into our line. Can you look into this as a possible violation? Give me a call if you would like to discuss.

Thanks

Company: Holdrege Irrigation

Website: <http://www.holdregeirrigation.com/>

Phone # 308-995-4000

Person I spoke to: Todd Everett

County: Norton

GPS: 39.90039, -99.64575

**Richard Ubben**  
**Damage Prevention Supervisor**  
**Office #785-543-3016 EXT-226**  
**Cell# 785-470-7270**



---

**From:** Beckman, Sarah  
**Sent:** Thursday, March 29, 2018 2:41 PM  
**To:** Ubben, Richard <richard.ubben@tallgrassenergyllp.com>  
**Subject:** Holdrege Irrigation No Locate Tk

On Wednesday, March 28, 2018 I arrived at the southeast corner of E13 Rd and Rd H to observe the Midwest Energy crew install 2 posts to extend the East side of an existing barricade. Upon my arrival I discovered that someone, other than the Midwest Energy crew, had already dug a trench from the East side of the barricade going South. The Trench had two 2" poly pipes sticking out of it. The only valid ticket I had for that location was for the Midwest Energy barricade. Tyler Burns and Andrew Black, with Midwest Energy, verified that they didn't dig the trench and they hadn't received any locates for that area since Prairie Land Electric submitted a ticket for the power South of the barricade in late January. Tyler said that the work was for Terry Nelson.

Later, after Midwest Energy was done digging the post hole for the barricade, a Holdrege Irrigation employee came over to talk to Tyler. I asked the guy if he was the one that dug the trench and he said "yes". Tyler said that he had already asked the guy why they were digging without a ticket and he told Tyler that in Nebraska they don't have to call in tickets.

Terry Nelson who is the land owner and had hired Holdrege Irrigation called me later that afternoon concerned that the Holdrege Irrigation crew was going to get in trouble. He said he told the crew that he would take care of submitting all locates so they didn't need to. I then informed Terry as I have numerous times in the past that the crew or person doing the excavation must call in their own ticket and he can not do that for them.

*Sarah J. Beckman*

Line Patroller | Tallgrass Energy  
105 E. Quail Rd | Phillipsburg KS, 67661  
T:785-543-3016 Ext: 231 | M: Cell phone: 785-533-1311  
Email: [sarah.beckman@tallgrassenergyllp.com](mailto:sarah.beckman@tallgrassenergyllp.com)



**CERTIFICATE OF SERVICE**

18-DPAX-507-PEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on 06/08/2018.

TIM SCHMIDT, PRESIDENT  
HOLDREGE IRRIGATION, INC.  
2011 4TH AVE  
HOLDREGE, NE 68949

ROBERT VINCENT, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604-4027  
Fax: 785-271-3354  
r.vincent@kcc.ks.gov

/S/ DeeAnn Shupe

DeeAnn Shupe