

1500 SW Arrowhead Road
Topeka, KS 66604-4027



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

Susan K. Duffy, Chair
Dwight D. Keen, Commissioner
Andrew J. French, Commissioner

Laura Kelly, Governor

NOTICE OF PENALTY ASSESSMENT

July 28, 2020

21-DPAX-030-PEN

Randel Davin
Davin Electric, Inc.
2131 NE Grantville Rd.
Topeka, Kansas 66608

This is a notice of penalty assessment against Davin Electric, Inc. for violation of the Kansas Underground Utility Damage Prevention Act (KUUDPA) discovered during an investigation conducted on March 11, 2020, by Kansas Corporation Commission Staff. For a full description of the violation(s) 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 (21-DPAX-030-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. The company must also 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 Executive Director at 1500 SW 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. Failing to request a hearing or pay the civil assessment may result in the Commission ordering further sanctions.

Respectfully,

Carly R. Masenthin, S. Ct. No. 27944
Litigation Counsel
(785)271-3361
c.masenthin@kcc.ks.gov

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

Before Commissioners: Susan K. Duffy, Chair
 Dwight D. Keen
 Andrew J. French

In the Matter of the Investigation of **Davin**)
Electric, Inc., of Topeka, Kansas, Regarding)
Violation(s) of the Kansas Underground Utility)
Damage Prevention Act (KUUDPA) (K.S.A.) Docket No. 21-DPAX-030-PEN
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).)

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 66-1814, *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.

II. ALLEGATIONS OF NONCOMPLIANCE

4. Pursuant to the above authority, on March 11, 2020 Commission Staff (Staff) investigated the activities and operations of Davin Electric, Inc. (Respondent). See Report and Recommendation of Staff dated July 7, 2020, a copy of which is attached hereto as Attachment “A”. As a result of this investigation, Staff reports the following:

- a. On March 11, 2020, Staff performed an onsite inspection at 1961 E 600 Rd in Lecompton, Kansas. No injuries or property damage occurred.
- b. Staff learned during its independent investigation that Respondent had not called Kansas One Call to obtain locate marks.
- c. On April 13, 2020, 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. 1804 (a), (c) and (e)

66-1804. Notice of intent of excavation. 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.

(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.

- d. On April 27, 2020, 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. 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 Davin Electric, Inc. failed to comply with this requirement of law warrants the assessment of a civil penalty.

7. Staff recommends the Commission issue Davin Electric, Inc. a civil penalty of \$500 for the 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. 66-1813, 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(d) and (e). 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. 1804(a), (c) and (e) by failing to obtain a locate ticket and failing to provide a notice of intent of excavation. As a result of this failure, Respondent damaged underground facilities of N/A.

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.

12. 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. A request for hearing must comply with the provisions of K.A.R. 82-1-232(b). Hearings shall be conducted in accordance with K.A.R. 82-1-230.

13. 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 in the alternative request a hearing within 15 days from the date of service of this Penalty Order, shall be considered an admission of the noncompliance allegations contained herein.

THE COMMISSION THEREFORE ORDERS THAT:

A. Davin Electric, Inc., of Topeka, Kansas, is hereby assessed a \$500 civil penalty for the violation of the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 through -1816.

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-mailing or mailing a copy of the request for hearing to the Litigation Counsel listed on the Notice of Penalty Assessment. 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 Executive Director at 1500 SW 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 the noncompliance allegations contained herein and result in a waiver of

Respondent's right to a hearing. A request for hearing must comply with the provisions of K.S.A. 82-1-232(b). Hearings shall be conducted in accordance with K.A.R. 82-1-230. 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. 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. *See* K.A.R. 82-1-228(d)(2); K.A.R. 82-1-202(a).

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 the date of service of this Order. Checks shall 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. The payment shall include a reference to the docket number (21-DPAX-030-PEN) of this proceeding.

E. 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.

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Keen, Commissioner; French, Commissioner

Dated: 08/06/2020



Lynn M. Retz
Executive Director

CRM

CERTIFICATE OF SERVICE

21-DPAX-030-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 08/06/2020.

RANDEL L. DAVIN, PRESIDENT
DAVIN ELECTRIC, INC.
2131 NE GRANTVILLE RD
TOPEKA, KS 66608

CARLY MASENTHIN, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
c.masenthin@kcc.ks.gov

/S/ DeeAnn Shupe

DeeAnn Shupe

ATTACHMENT “A”

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chair Susan K. Duffy
Commissioner Dwight D. Keen
Commissioner Andrew J. French

FROM: Josh Williams, Damage Prevention Special Investigator
Leo Haynos, Chief of Pipeline Safety
Jeff McClanahan, Director of Utilities

DATE: July 7, 2020

SUBJECT: **Docket Number:** 21-DPAX-030-PEN
In the Matter of the Investigation of Davin Electric Inc., 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) / JW-20-OC-1031

EXECUTIVE SUMMARY:

Staff is recommending a civil penalty be issued to Davin Electric Inc. (Davin) in the amount of \$500 for violation of KUUDPA. Davin did not provide a notice of intent to excavate prior to excavating on March 11, 2020, in Lecompton, Kansas. Failure to provide proper notice of intent before excavating is a violation of K.S.A. 66-1804. A Notice of Probable Noncompliance (PNC) was issued to Davin on April 13, 2020. Davin responded to the PNC within 30 days as required by K.A.R. 82-14-6 (c). A copy of the PNC and the response is included as Attachment I.

ANALYSIS:

Rationale for Penalties:

A. Gravity of noncompliance:

Excavating without a valid One-Call ticket is considered a high-risk activity with the potential for significant consequences to public safety. This excavator was excavating for electrical work near a pipeline at 1961 E. 600 Rd. in Lecompton, Kansas. Though Davin had previously obtained a One-Call ticket, #19478499, the due date was October 10, 2019. The One-call ticket was only valid for 15 days and expired on October 24,

2019. Because Davin failed to obtain a valid One-call ticket prior to excavating, the utility operator was unable to provide the location at which Davin would be required to carefully excavate to avoid damage to an underground facility . Davin failed to comply with this requirement of the law and warrants the assessment of a civil penalty.

B. Culpability:

Davin is directly responsible for its actions in failing to acquire a One-Call ticket as Kansas law requires.

C. History of noncompliance:

Staff has issued one other KUUDPA Probable Noncompliance to Davin in the past two 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 on April 27, 2020. In its response, Davin admitted to not obtaining a One-Call ticket before excavating.

E. Aggravating/Mitigating Circumstances:

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

RECOMMENDATION:

Staff recommends a civil penalty be issued to Davin Electric Inc. in the amount of \$500 for violation(s) of K.S.A. 66-1804.

Attachment



"Complete Commercial —Industrial Wiring"

Randy Davin
Owner

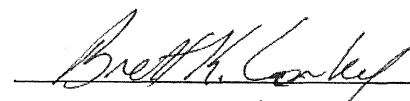
2131 NE Grantville Road ■ Topeka, Kansas 66608 ■ Phone (785) 234-2350 ■ Fax (785) 234-1513 ■ E-mail davin@davinelectric.com

4/27/2020

Mr Haynos,

This response is in regards to the KCC Investigation #JW-20-OC-1031 that was brought to Davin Electric's attention. On March 11th Davin Electric was doing a startup of a gas detection system at Pinnacle Propane just South of Lecompton Ks. The gas detection system is provided from Detect Service Corp out of the State of Texas. Detection sensors had been installed under specified tanks in the yard tied into a control panel in the electrical building and communications from the electrical building had been ran to the front office by the road. The initial conduit installation had been done months prior on the one call ticket #19478499. Once Detect Service Corp sent a representative to the site for startup it was discovered that an additional conduit would need to be ran from the electrical building to the front office. This is when the one call ticket should have been updated but we failed to do so knowing that the rep from Detect Service Corp was only onsite for a limited amount of time. Davin Electric then proceeded to excavate this line in with the approval of Pinnacle Propane directly on top of the existing conduits that were installed prior since we could still see the path of the previous excavation. During the excavation process a representative Enterprise Products Partners LP who owns a terminal on the South side of the property became aware of the excavation and asked that excavation be ceased. It was at this time that Davin Electric's operator stopped excavation and contacted our office to see how to proceed. It was our decision to call in and ask for an emergency locate but during the call we were told by one call that our situation was not considered to be an emergency. Pinnacle Propane had been contacted by Davin Electric of the stoppage situation and sent a representative to the site whom then had a conversation with the representative from Enterprise. After their discussion the representative told the excavator from Davin Electric that we were not on any land or easement of Enterprise Products Partners and asked us to proceed with the excavation. Enterprise Products Partners was aware that we would proceed and asked that they could witness the remainder of the excavation and the backfill. The remaining excavation and backfill was completed that day with Enterprise Product Partners witnessing all remaining work, no existing utilities were ever exposed or damaged. Davin Electric prides itself in doing all installations within the codes and regulations of all governing bodies and will continue to learn and grow from any errors made regarding these codes and regulations that apply in our industry.

Please feel free to contact our office if any other information is needed on this matter.


Brett K. Conley, Vice President

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



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

Susan K. Duffy, Chair
Shari Feist Albrecht, Commissioner
Dwight D. Keen, Commissioner

Laura Kelly, Governor

Brett Conley
Davin Electric Inc.
2131 NE Grantville
Topeka, KS 66608

April 13, 2020

KCC Investigation #: JW-20-OC-1031

Subject: Pipeline Investigation

Dear Brett Conley:

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 March 11, 2020, 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 Davin Electric Inc.. 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.

Kansas Corporation Commission
Pipeline Safety Section
1500 SW Arrowhead Road
Topeka, KS 66604-4027
kccsafetyresponse@kcc.ks.gov

Please feel free to contact me directly if you have questions or concerns.

Sincerely,

Leo Haynos /s/
Chief Engineer
(785) 271-3278
l.haynos@kcc.ks.gov

PROBABLE NONCOMPLIANCE

Investigation: JW-20-OC-1031

Company: Davin Electric Inc.

Division:

Regulation:

66-1804(c) Notice of intent of excavation

Notice of intent 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.

PROBABLE NONCOMPLIANCE DESCRIPTION:

On 03/11/2020, Davin Electric Inc, failed to notify One-Call to update their existing One-Call ticket at 1961 E 600 Rd. in Lecompton, Kansas. Davin Electric Inc. were excavating near an Enterprise Products pipeline while performing electrical work when the incident occurred. There was a One-Call ticket #19478499 with a due date of 10/10/2019. There was no update ticket found in the One-Call database for this company within this area prior to the incident.

OPERATOR'S RESPONSE: (Attach verification if needed)

Operator's Authorized Signature: _____ Date: _____

PIPELINE SAFETY USE ONLY:

Date reviewed: _____ Date reviewed: _____
Chief: _____ Inspector: _____

Inspection Type: One Call Inquiry/Complaint

Date Inspected: 03/11/2020

Inspected By: JW

PROBABLE NONCOMPLIANCE

Investigation: JW-20-OC-1031

Company: Davin Electric Inc.

Division:

Regulation:**66-1804(c) Notice of intent of excavation**

Notice of intent 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.

PROBABLE NONCOMPLIANCE DESCRIPTION:

On 03/11/2020, Davin Electric Inc, failed to notify One-Call to update their existing One-Call ticket at 1961 E 600 Rd. in Lecompton, Kansas. Davin Electric Inc, were excavating near an Enterprise Products pipeline while performing electrical work when the incident occurred. There was a One-Call ticket #19478499 with a due date of 10/10/2019. There was no update ticket found in the One-Call database for this company within this area prior to the incident.

OPERATOR'S RESPONSE: (Attach verification if needed)

Operator's Authorized Signature: _____ Date: _____

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

Inspection Type: One Call Inquiry/Complaint

Date Inspected: 03/11/2020

Inspected By: JW



"Complete Commercial - Industrial Wiring"

Randy Davin

Owner

2131 NE Grantville Road Topeka, Kansas 66608 Phone (785) 234-2350 Fax (785) 234-1513 E-mail davin@davinelectric.com

4/27/2020

Mr Haynos,

This response is in regards to the KCC Investigation #JW-20-OC-1031 that was brought to Davin Electric's attention. On March 11th Davin Electric was doing a startup of a gas detection system at Pinnacle Propane just South of Lecompton Ks. The gas detection system is provided from Detect Service Corp out of the State of Texas. Detection sensors had been installed under specified tanks in the yard tied into a control panel in the electrical building and communications from the electrical building had been ran to the front office by the road. The initial conduit installation had been done months prior on the one call ticket #19478499. Once Detect Service Corp sent a representative to the site for startup it was discovered that an additional conduit would need to be ran from the electrical building to the front office. This is when the one call ticket should have been updated but we failed to do so knowing that the rep from Detect Service Corp was only onsite for a limited amount of time. Davin Electric then proceeded to excavate this line in with the approval of Pinnacle Propane directly on top of the existing conduits that were installed prior since we could still see the path of the previous excavation. During the excavation process a representative Enterprise Products Partners LP who owns a terminal on the South side of the property became aware of the excavation and asked that excavation be ceased. It was at this time that Davin Electric's operator stopped excavation and contacted our office to see how to proceed. It was our decision to call in and ask for an emergency locate but during the call we were told by one call that our situation was not considered to be an emergency. Pinnacle Propane had been contacted by Davin Electric of the stoppage situation and sent a representative to the site whom then had a conversation with the representative from Enterprise. After their discussion the representative told the excavator from Davin Electric that we were not on any land or easement of Enterprise Products Partners and asked us to proceed with the excavation. Enterprise Products Partners was aware that we would proceed and asked that they could witness the remainder of the excavation and the backfill. The remaining excavation and backfill was completed that day with Enterprise Product Partners witnessing all remaining work, no existing utilities were ever exposed or damaged. Davin Electric prides itself in doing all installations within the codes and regulations of all governing bodies and will continue to learn and grow from any errors made regarding these codes and regulations that apply in our industry.

Please feel free to contact our office if any other information is needed on this matter.

Brett K. Conley, Vice President

CERTIFICATE OF SERVICE

21-DPAX-030-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 _____.

RANDEL L. DAVIN, PRESIDENT
DAVIN ELECTRIC, INC.
2131 NE GRANTVILLE RD
TOPEKA, KS 66608

CARLY MASENTHIN, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
c.masenthin@kcc.ks.gov

/S/ DeeAnn Shupe

DeeAnn Shupe