

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

In the Matter of the Complaint Against                     )  
KCP&L by Stephen and Karen                     )     Docket No. 15-KCPE-544-COM  
Gradwohl.                     )

**NOTICE OF FILING OF STAFF REPORT & RECOMMENDATION**

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) files the attached Report and Recommendation (R&R) and states as follows:

1. Staff hereby files the attached R&R analyzing the allegations set forth in the above-captioned Formal Complaint against Kansas City Power & Light Company (KCP&L). As a result of its investigation, Staff recommends the Commission find that KCP&L, for purposes of utility locating, is the operator of underground electric conductors that are upstream of its metering equipment. Staff further recommends the Commission find KCP&L did not provide accurate locates of the tolerance zone for the electric service in question as required under the Kansas Underground Utility Damage Prevention Act.

WHEREFORE Staff submits its Report and Recommendation for Commission review and consideration and for such other relief as the Commission deems just and proper.

Respectfully submitted,



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## REPORT AND RECOMMENDATION UTILITIES DIVISION

**TO:** Chair Shari Feist Albrecht  
Commissioner Jay Scott Emler  
Commissioner Pat Apple

**FROM:** Leo M. Haynos, Chief of Energy Operations and Pipeline Safety  
Jeff McClanahan, Director of Utilities

**DATE:** September 22, 2015

**SUBJECT:** 15-KCPE-544-COM: In the Matter of the Complaint Against Kansas City Power & Light by In the Matter of the Complaint by Stephen and Karen Gradwohl

### EXECUTIVE SUMMARY:

On May 15, 2015, Stephen and Karen Gradwohl (Complainants) filed a Complaint alleging Kansas City Power & Light (KCPL) failed to provide accurate underground utility locates for an excavator working at 11791 West 112<sup>th</sup> Street in Overland Park, Kansas. The excavator had a valid locate request as required by the Kansas Underground Utility Damage Prevention Act (KUUDPA). The Complainants allege the inaccurate locates led to the excavator damaging the underground electric conductors serving their building at the above address. The excavation damage occurred in June of 2014. In its answer, KCPL acknowledges providing utility locates for the line<sup>1</sup> but states the line is owned by the Complainants and, "the Company is not responsible for marking such line under the KUUDPA rules and is not responsible for any damage sustained to such line in the course of the incident referenced in the instant docket."<sup>2</sup> The Complainants request the Commission determine if KCPL is the operator of the service line in regards to the responsibility of providing utility locates under KUUDPA and if KCPL is liable for the \$10,200 repair of the electric service.

In this case, KCPL provided inaccurate locates of the underground service from the transformer to the Complainants' building. After conducting three onsite investigations of this site and reviewing KCPL's tariff, Staff concludes the electric conductors between the KCPL transformer and the Complainant's building are the property of the Complainants. However, the design of the electric service, the location of KCPL's metering equipment, and conditions in its tariff clearly demonstrate that KCPL has

<sup>1</sup> Para. 11, Answer of Kansas City Power & Light Company to Complaint and Motion to Dismiss.

<sup>2</sup> Para. 16, *ibid*.



exclusive control and operation of the energy flowing through the service line. In that regard, KCPL meets the definition of an operator under KUUDPA<sup>3</sup> which is defined as any person who owns *or operates* an underground facility.

Because KCPL meets the definition of an operator of the service line under KUUDPA, KCPL is required to provide accurate locates of underground service lines upon request. Therefore, Staff recommends the Commission find that KCPL, for purposes of utility locating under KUUDPA, is the “operator” of underground electric conductors that are upstream of its metering equipment. Staff further recommends the Commission find KCPL did not provide accurate locates of the tolerance zone for the electric service in question as required under KUUDPA.

### **BACKGROUND:**

Description of site: The Complainants’ building address is a commercial customer of KCPL that is provided electrical service through an underground distribution system. Attachment 1 provides a map of the electrical facilities in the vicinity of this building. Electric service to the building originates from a transformer located southwest of the building. The secondary electric system connects to a current transformer cabinet inside the office building. The current transformer is the property of KCPL and an integral component of the KCPL electric metering system. From the current transfer cabinet, an additional conductor runs through the building and is connected to the meter which is located on the outside of the building. The electric primary conductor for the area runs in utility easements located on the south and east sides of the building. Under the terms of its tariff, KCPL’s Point of Service to this building is located at the secondary taps on the transformer located southwest of the building.<sup>4</sup>

Chronology of excavation activity: A chronology of major events associated with this investigation is shown in Attachment 7. For some of the events noted in the attachment, Staff has included its observations in the chronology. Duarte Irrigation (Duarte) requested utility locates from One Call for the purpose of installing a lawn sprinkler system. After locates of the area were completed, Duarte began excavating but hit the electric service to the Complainant’s building. At Duarte’s request, Staff investigated the excavation site six days after the damage occurred. Staff observed the locate marks placed by KCPL’s locator to be approximately five feet from the damaged line. Attachment 2 is an aerial photo of the address in question on which Staff has superimposed the marks that were provided by KCPL for the excavator and were present during Staff’s initial investigation. After completing our initial investigation, Staff issued a notice of probable noncompliance (PNC) to KCPL for violation of the utility locating requirements. Staff’s findings were based on the distance between the buried facilities and the locate marks shown in Attachment 3. KCPL response to Staff’s PNC identifies the damaged conduits as KCPL property but then notes the locator investigating the

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<sup>3</sup> K.S.A. 66-1801 (j) “Operator” means any person who owns *or operates* an underground tier 1 or tier 2 facility, except for any person who is the owner of real property wherein is located underground facilities for the purpose of furnishing services or materials only to such person or occupants of such property. (Emphasis added.)

<sup>4</sup> Section 8.03, Underground Distribution Policy, KCPL General Rules and Regulations Applying to Electric Service.



damage had noted no KCPL property had been excavated and damaged. As shown in Attachments 2 and 4, the locate marks leading to the electric meter identified KCPL's conductors to be in a location where no damage had occurred. Because of the uncertainty as to the operator of the buried facilities or which facilities served the building, Staff elected to close its original investigation.

Upon receipt of this Complaint, Staff reopened this matter and conducted another investigation of the site accompanied by KCPL personnel and KCPL's contract locator in July of 2015. At that time, the locator was able to accurately locate the service line from the transformer to the Complainant's building. The original locate marks from the previous year's locate attempt were still visible and demonstrate the inaccuracy of the previous locates (see Attachment 5). During the July 2015 site visit, KCPL's locator also again provided inaccurate locates of a presumed KCPL conductor going to the electric meter on the side of the building (see Attachment 6). When questioned about the additional underground electric conductors, neither KCPL personnel nor the locators recognized the abnormal scenario depicted by the locate marks indicating two secondary conductors from two different transformers serving the same customer. Attachment 1 provides the actual wiring schematic for the building. It shows the conductors connecting the transformer (located southwest of the building) to the building to be the correct service. These lines were the ones inaccurately located by KCPL in 2014 that led to the damage.

### **ANALYSIS:**

KUUDPA requires an operator of an underground utility to provide locates of the tolerance zone of its buried facilities upon request from an excavator. The tolerance zone is defined as the horizontal distance within 25 inches of the outside diameter of the buried facility.<sup>5</sup> KCPL received a valid request for locates and performed locates of the buried electric facilities in the area scheduled for excavation. As discussed above, the KCPL locator failed to accurately locate the tolerance zone of the Complainant's electric service. The KCPL locator also added confusion to the locate request by indicating the presence of buried electric utilities where none existed.<sup>6</sup>

In its response to this Complaint, KCPL states that although locates markings were provided by KCPL, it was not obligated to do so by the KUUDPA because the line in question was a private utility line, not a Company-owned facility.<sup>7</sup> The KCPL tariff contains the definition of the point of demarcation between the utility and its customer and the following discussion on underground electric service:

#### **1.11 POINT OF DELIVERY;**

The point at which the Company's conductors and/or equipment (other than the Company's meter installation) make electrical connection with the Customer's installation, unless otherwise specified in the Customer's service agreement.

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<sup>5</sup> K.A.R. 82-14-1(r).

<sup>6</sup> See Attachments 1 and 2.

<sup>7</sup> Para. 16, Answer of Kansas City Power & Light Company to Complaint and Motion to Dismiss.

### 8.03 (A) UNDERGROUND SERVICE CONDUCTORS:

(1) In any area where the Company's existing primary and secondary distribution facilities are of underground construction, only underground service conductors to Commercial and Industrial Customer installations will be permitted.

(a) If the Company's transformer is on the Commercial or Industrial Customer's premises or at his property line, the Commercial or Industrial Customer shall furnish, install and own the concrete pad for the Company's transformer and the Company will terminate, at its expense, the underground primary and secondary conductors to its transformer. The Commercial or Industrial Customer shall furnish, install, own, operate and maintain, at his expense the underground service conductor from the Company's transformer to the Customer's load facilities.

As noted above, the rules and regulations of KCPL's tariff state that the customer shall furnish, install, own, operate and maintain buried utilities for any conductor downstream of the transformer. However, under other portions of KCPL's tariff, the company exercises a high degree of operational control over the facilities. For example, the customer is not able to de-energize those conductors for maintenance without the assistance of KCPL and any unauthorized work done to the metering components could be considered tampering by the KCPL tariff. Furthermore, Staff notes the metering point, at which custody of the purchased electricity transfers to the customer, occurs well past the point of delivery. In other words, the customer owns the secondary conductors while KCPL owns (and controls) the energy within those conductors.

The primary intent of KUUDPA is to minimize the risks associated with digging near energized facilities. Because accurately locating buried utilities is a matter of public safety, Staff considers it to be good public policy to require the entity with access to the conductors, controlling the energy flowing in the conductors, and the most knowledge regarding locates to be the one providing such a crucial safety service. While KCPL's tariff defines specific responsibilities between the company and its customers for service related purposes, it does not delineate responsibilities for purposes of KUUDPA. Because the tariff shows that both the customer and KCPL exercise control of the facilities and because Staff believes the utility is in the best position to provide locate services, Staff recommends KCPL should be considered the operator of such facilities under KUUDPA. In addition, the statutory definition of an "operator" in KUUDPA supersedes the terms and conditions of a public utility's tariff when determining responsibilities under that statute.

As the operator of the underground service line, KCPL is required to provide accurate locates of such lines upon request. In this case, KCPL is in violation of K.S.A. 66-1806(a) because it did not provide an accurate locate. Regarding liability for the repair of the service line, Staff does not believe the Commission has the authority to assign liability and award equitable damages. However, when damages are shown to occur as a result of a violation of KUUDPA, there is a rebuttable presumption of negligence on the part of the violator in a civil action in Kansas courts.<sup>8</sup>

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<sup>8</sup> K.S.A. 66-1811(a).



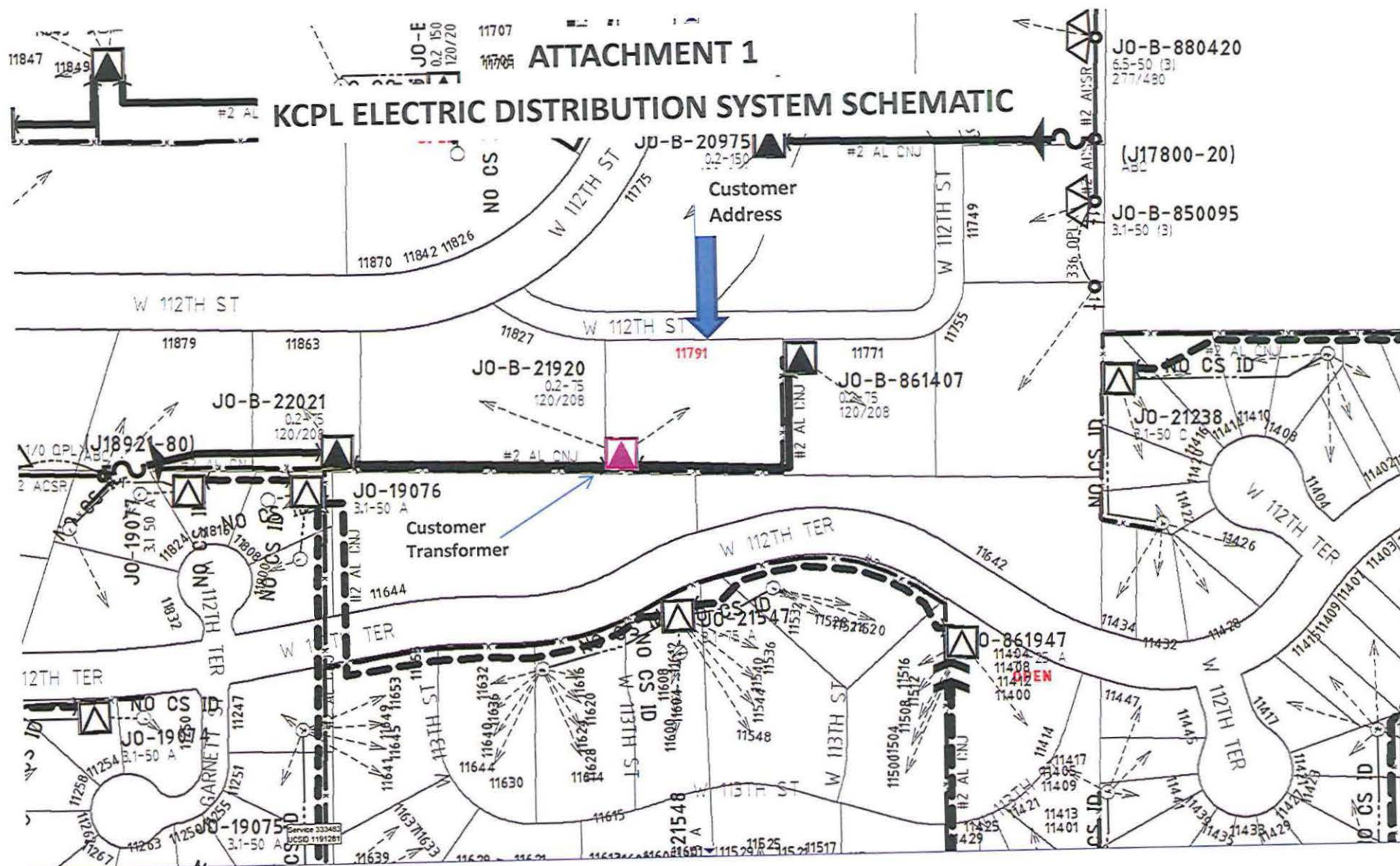
## **CONCLUSION**

In conclusion, the legislative intent of KUUDPA was to protect facilities, excavators, and the public in general from damage and injury. The definition of operator provided by KUUDPA must be interpreted within the context of public safety. To that end, Staff contends KCPL is the operator of underground secondary conductors upstream of its meter for all customers it serves. Therefore, it is responsible for providing locates for those lines upon request. In the subject Complaint, KCPL failed to provide accurate locates as required by KUUDPA which resulted in damage to the secondary electric conductors. The Complainant's request for the Commission to determine payment for repairs of damage caused by the excavator is beyond the jurisdiction of the Commission.

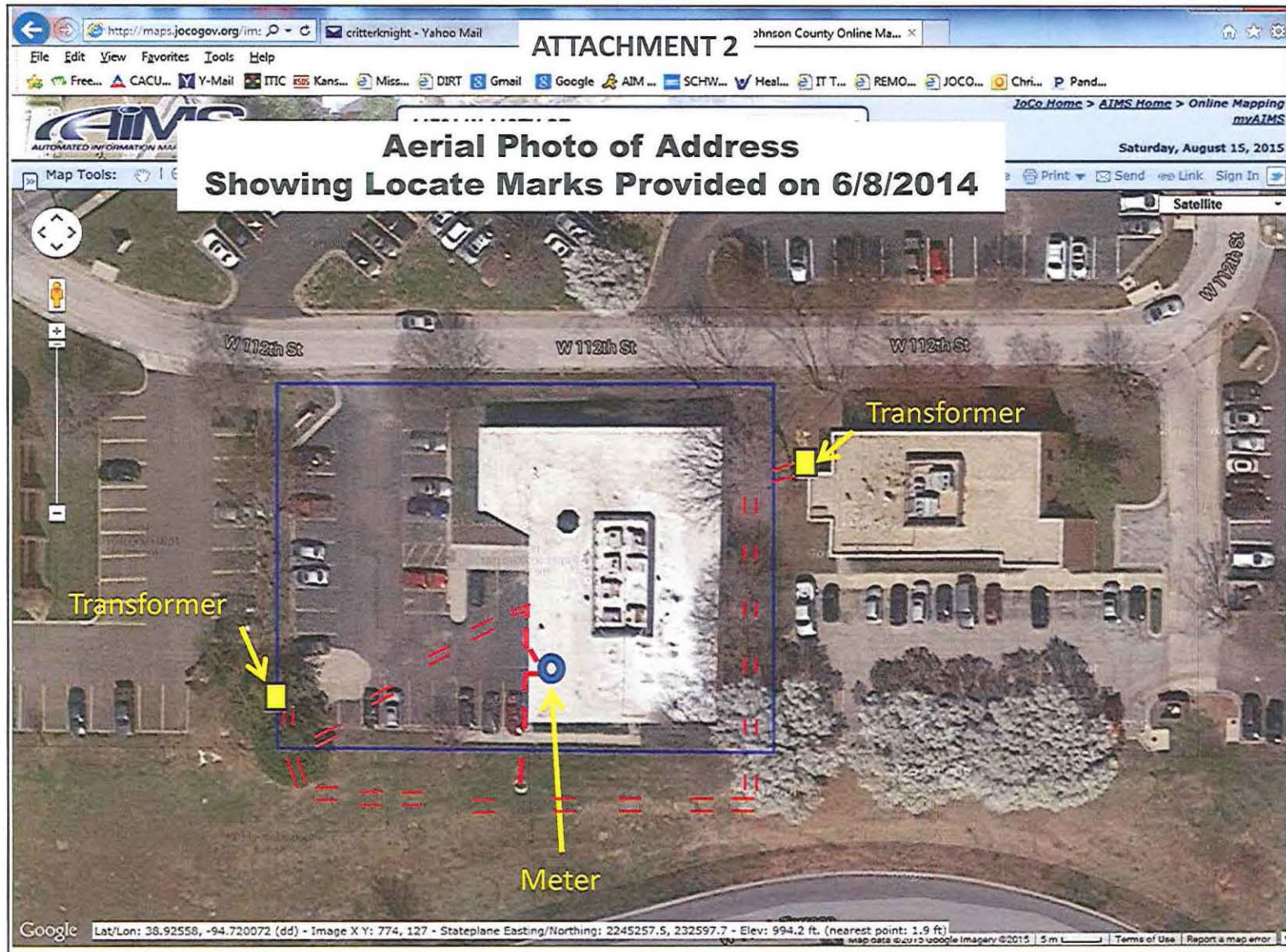
## **RECOMMENDATION:**

Staff recommends the Commission find that KCPL, for purposes of utility locating, is the operator of underground electric conductors that are upstream of its metering equipment. Staff further recommends the Commission find KCPL did not provide accurate locates of the tolerance zone for the electric service in question as required under KUUDPA.

## KCPL ELECTRIC DISTRIBUTION SYSTEM SCHEMATIC









ATTACHMENT 3  
Photo of Damage Location and Marks



Photo of Measurement Between Damage Location and Marks

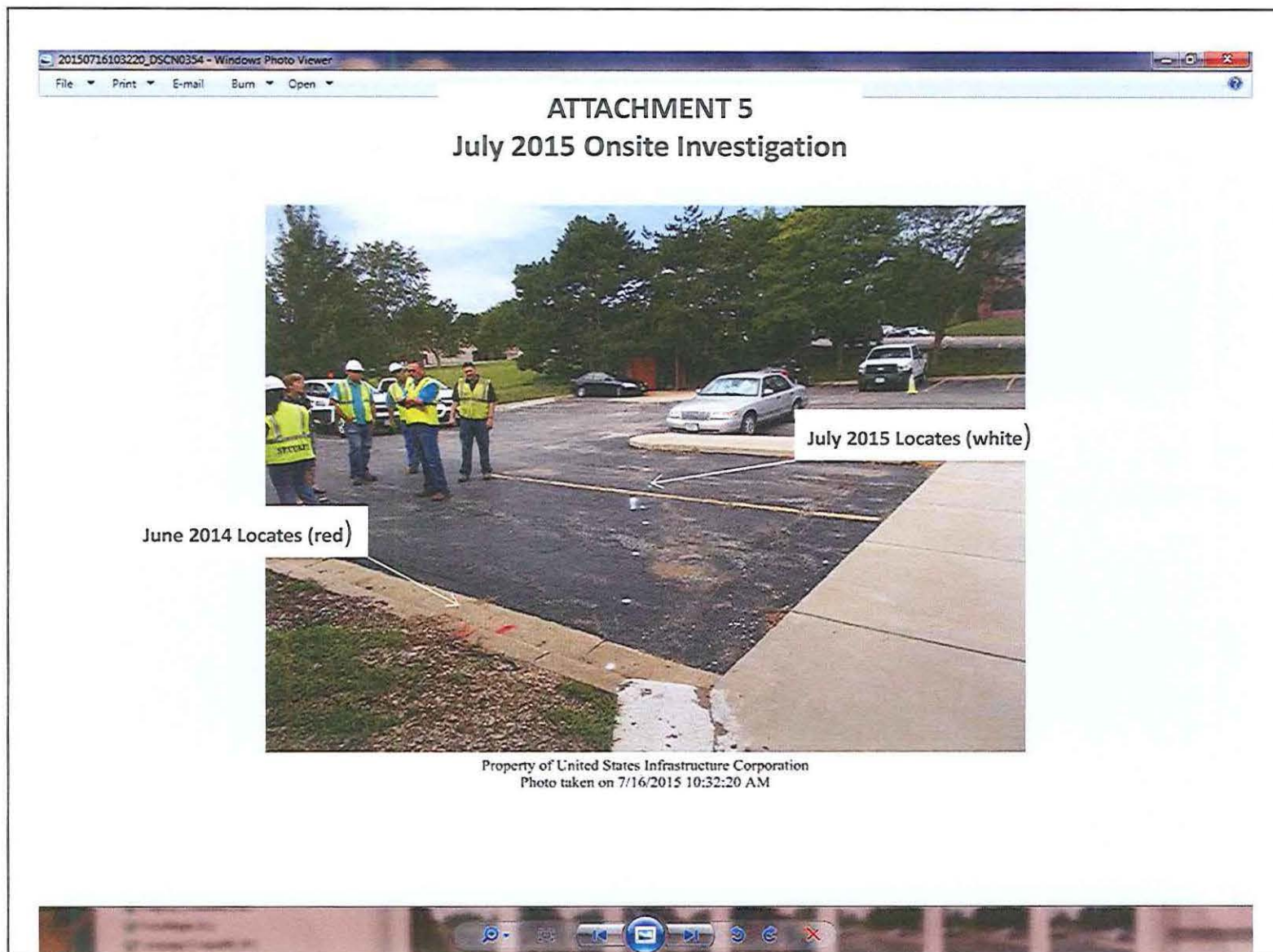




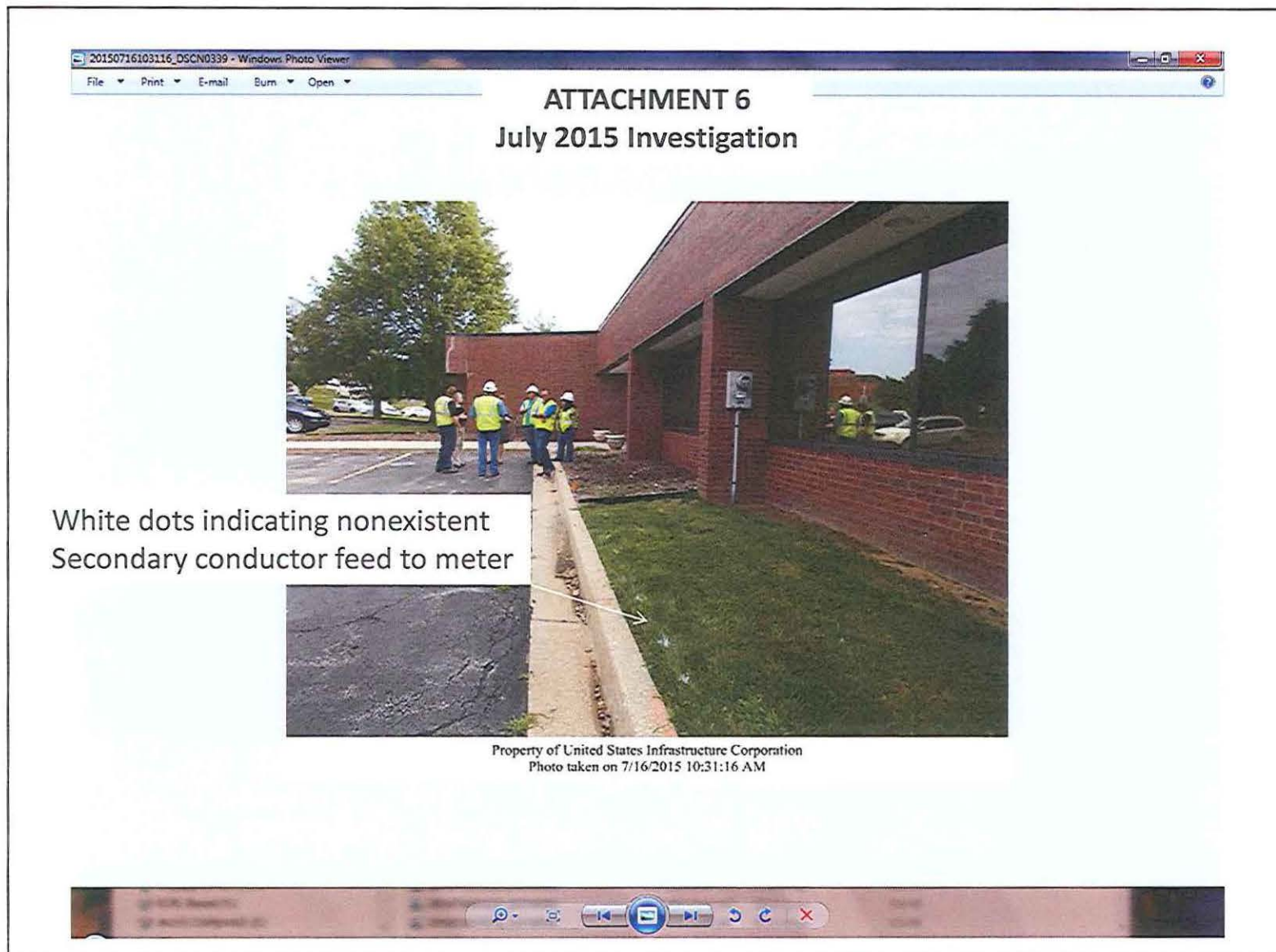
**ATTACHMENT 4**  
**Photo of Original Locate Marks**



Property of United States Infrastructure Corporation  
Photo taken on 6/8/2014 8:26:50 AM







Attachment 7  
Excavation and Damage Investigation Chronology

Date/ Time	Description
June 4, 2014	Duarte Irrigation requested locates to install a lawn sprinkler system with the excavation scheduled start date set at June 7, 2014.
June 8, 2014	USIC, contract locator for KCPL, provided locates of electric conductors up to the building. The locates were performed one day past the required due date. Photos of the locates done at that time incorrectly show two service drops serving the customer. <sup>1</sup>
June 14, 2014/ approx. 11:00am	Duarte damaged the secondary electric conductor serving 11791 West 112 <sup>th</sup> Street.
June 14, 2014/ 12:05 pm	KCPL is alerted to a loss of service at 11791 West 112 <sup>th</sup> Street indicating two customers had lost service.
June 14, 2014/ 5:31 pm	Duarte called for emergency locates indicating an electric power line had been damaged.
June 14, 2014/ 8:27 pm	Contract locator employed by KCPL arrived on site to provide additional locates of buried utilities. The locator did not re-mark anything but noted that the facilities in question appeared to be private and not KCPL facilities. The locator also noted there was not a dig in or damaged cable at the time of their investigation; however, photo taken by locator corresponds to other photos of damaged conduit.
June 18, 2014	Duarte notifies Staff of damage and requests Staff to investigate.
June 18, 2014	Staff conducts on-site investigation and concludes KCPL is at fault for providing inaccurate locates with marks approximately 2 feet beyond the allowed tolerance.
July 15, 2014	Staff issued a probable noncompliance to KCPL alleging KCPL was in violation of K.S.A. 66-1806.
August 25, 2014	KCPL responds to Staff's allegation and states the line in question
September 2, 2014	Staff closed its investigation into the matter because of uncertainty over the ownership of the damaged facility and the locate marks showing two different paths for electrical conductors serving the building in question.
May 15, 2015	Complainants file complaint requesting Staff investigate KCPL's failure to provide accurate locates.
July 16, 2015	Staff, KCPL personnel, and KCPL contract locator meet on site. Locator demonstrates the ability to accurately mark the service line from the transformer to the building. Original locate marks from one year earlier demonstrate the inaccuracy of the marks. Locator also incorrectly indicates an additional service drop to the building meter. <sup>2</sup>

<sup>1</sup> Response to Staff DR 1, USIC photos June 8, 2014.

<sup>2</sup> Response to Staff DR1 USIC photos July 16, 2015



## CERTIFICATE OF SERVICE

15-KCPE-544-COM


I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Staff Report & Recommendation was served vial electronic service this 28th day of September, 2015, to the following:

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