

1500 SW Arrowhead Road  
Topeka, KS 66604-4027



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

Dwight D. Keen, Chair  
Shari Feist Albrecht, Commissioner  
Jay Scott Emmer, Commissioner

Laura Kelly, Governor

**NOTICE OF PENALTY ASSESSMENT**  
**19-DPAX-364-PEN**

March 19, 2019

Blayne Martin  
Fremar Corporation  
7945 N Broadway  
Valley Center, Kansas 67147

This is a notice of penalty assessment against Fremar Corporation for violation of the Kansas Underground Utility Damage Prevention Act (KUUDPA) discovered during an investigation conducted on January 10, 2019, 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 (19-DPAX-364-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 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 and the Commission may order further sanctions.

Respectfully,

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

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

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

In the Matter of the Investigation of <b>Fremar</b>	)	
<b>Corporation, of Valley Center, Kansas,</b>	)	
Regarding Violation(s) of the Kansas	)	
Underground Utility Damage Prevention Act	)	Docket No. 19-DPAX-364-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 66-1814, *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 January 10, 2019 Commission Staff (Staff) investigated the activities and operations of Fremar Corporation (Respondent). See Report and Recommendation of Staff dated March 11, 2019, a copy of which is attached hereto as Attachment "A". As a result of this investigation, Staff reports the following:

- a. On January 10, 2019, Staff performed an onsite inspection at the intersection of N Chestnut Street and W 2nd Street in McPherson, Kansas. Staff's investigation discovered the Respondent caused damage to a Kansas Gas Service (KGS) main line. No injuries or additional property damage occurred.
- b. Staff learned during its independent investigation that Kansas One Call had not been called by Respondent to obtain locate marks.
- c. On January 15, 2019, 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:

**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 January 22, 2019, 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. 2018 Supp. 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 Fremar Corporation failed to comply with this requirement of law warrants the assessment of a civil penalty.

7. Staff recommends the Commission issue Fremar Corporation 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. 66-1801 *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. As a result of this failure, Respondent damaged underground facilities of Kansas Gas Service (KGS).

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. 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.*

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 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. Fremar Corporation, of Valley Center, Kansas, 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 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 to the Commission 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 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. 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).

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. 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 (19-DPAX-364-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.

F. 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.**

Keen, Chair; Albrecht, Commissioner; Emler, Commissioner

Dated: 03/19/2019



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Lynn M. Retz  
Secretary to the Commission

CRM/vj



## **ATTACHMENT “A”**



**REPORT AND RECOMMENDATION  
UTILITIES DIVISION**

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

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

**DATE:** March 11, 2019

**SUBJECT:** **Docket Number:** 19-DPAX-364-PEN  
In the Matter of the Investigation of Fremar Corporation 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-19-OC-1001

**EXECUTIVE SUMMARY:**

Staff is recommending a civil penalty be issued to Fremar Corporation (Fremar) in the amount of \$500 for violation of KUUDPA. Fremar did not provide a notice of intent to excavate prior to excavating on January 10, 2019, in McPherson, 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 Fremar on January 15, 2019. Fremar 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:

Excavation is the movement of rock or other material below the surface by a person engaging in excavation activities. Obtaining a valid One-Call ticket prior to this work greatly reduces the probability of causing damage to an operator's buried facility.

Reducing the risk of damage reduces the potential for significant consequences to life, property and public safety. Fremar was excavating the area for a new parking lot at the intersection of N. Chestnut St. and W. 2<sup>nd</sup> St. in McPherson, Kansas. Fremar did not update One-Call ticket #18550068 that had an excavation start date of November 29, 2018, and that was no longer valid after December 13, 2018. Fremar was excavating on January 10, 2019, 28 days after the locate request expired, and hit a Kansas Gas Service main line. Under KUUDPA, a locate request is valid for 15 calendar days. Fremar failed to comply with the requirement of the law and warrants the assessment of a civil penalty.

B. Culpability:

Fremar 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 no other KUUDPA Probable Noncompliance(s) to Fremar 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 January 22, 2019. In this response, Fremar admitted to not obtaining an updated One-Call ticket.

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 Fremar Corporation in the amount of \$500 for violation(s) of K.S.A. 66-1804.

# ATTACHMENT 1

PROBABLE NONCOMPLIANCE

Investigation: JW-19-OC-1001

Company: FREMAR CORPORATION

Division:

## Regulation:

66-1804 (a) & (c) Notice of intent of excavation.

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 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 1/10/2019, Fremar Corporation was excavating existing concrete to replace a parking lot at the intersection of N Chestnut St and W 2nd St. in McPherson, Kansas. After performing a search in the One-Call database no ticket was found for this area by this contractor at the time the work was being done. There was a One-Call ticket #18550068 with a work to begin date of 11/29/2018 for the area but was expired.

## 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: 01/14/2019

Inspected By: JW

**Josh Williams**

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**From:** Blayne Martin <bmartin@fremarcorp.com>  
**Sent:** Tuesday, January 22, 2019 1:45 PM  
**To:** SafetyResponse  
**Cc:** Leo Haynos  
**Subject:** RE: JW-19-OC-1001 - NPV Investigation Letter - FREMAR CORPORATION - 2019 - KGS - Mcpherson - 01/10 - 1525  
**Attachments:** Incident\_Explanation.pdf; On-site\_Photos.pdf; Original\_One-Call\_Ticket.pdf

EXTERNAL EMAIL. Think before clicking links or opening attachments.

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Leo,

Please find the following attachments. If anything seems to run together or if you have any questions feel free to contact me

Thanks,

Blayne Martin - Project Manager  
7945 N Broadway  
Valley Center, KS 67147  
Cell: 316-285-3029  
Office: 316-832-9227

-----Original Message-----

From: Leo Haynos <kccsafetyresponse@kcc.ks.gov>  
Sent: Thursday, January 17, 2019 3:04 PM  
To: Blayne Martin <bmartin@fremarcorp.com>; kccsafetyresponse@kcc.ks.gov  
Subject: JW-19-OC-1001 - NPV Investigation Letter - FREMAR CORPORATION - 2019 - KGS - Mcpherson - 01/10 - 1525

On 01/14/2019, the Kansas Corporation Commission's Pipeline Safety conducted an investigation into excavation activities which are believed to involve your company. As a result of this investigation, Staff has identified possible violations of the Kansas Underground Utility Damage Prevention Act (KUUDPA). The findings of this investigation are described in the attached letter.

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.

Please return the evaluation form(s) with any supporting documentation within thirty (30) days of receipt of this email to the address or email below. All email responses must be electronically signed and dated.

Kansas Corporation Commission  
Pipeline Safety Section



Fremar Corporation  
7945 N Broadway Valley Center, KS  
316-932-9227  
bmartin@fremarcorp.com

Kansas Corporation Commission Pipe Line Safety Section  
1500 SW Arrowhead Road Topeka, KS 66604-4027

Dear Recipient,

I am submitting this letter pertaining to KCC Investigation #: JW-19-OC-1001. On January 14<sup>th</sup>, 2019 at the McPherson Hospital located at 1000 Hospital Dr McPherson, KS 67460.

Fremar had completed the original McPherson Hospital project while keeping an up to date Kansas One Call ticket. The original ticket being No. 18022916 with the latest update ticket No. of 18550068, this ticket was to encompass the entire property. The locator had only marked where the actual work was being performed per the original drawings at this time. Fremar was issued a change order several weeks after the original project was completed, being required to remobilize back to the site. I had forgotten to re-update my one-call ticket in this time period while the original ticket had already expired. The following paragraph explains the incident -

Once this change order was complete the hospital director informed us to remove an additional entrance (January 14<sup>th</sup> 7:45AM). At this point in time the operator observed there were no paint markings on the existing concrete or around the approximate dig-site (photos attached). He began removing the existing concrete and then onto the excavation process for the overall required removal depth of 14" below existing elevations. The gas line was hit at approximately 11" from existing.

To conclude, Fremar and myself understand we mistakenly failed to have our One Call ticket up-to-date and subsequently hit a line we didn't know was there. The line however remained unmarked for the original project's entirety. Lastly, the line was determined to be too shallow to complete the work required.

Best Regards,

**Blayne Martin**

PROJECT MANAGER

## Kansas One Call

Ticket No:	18022916	2/5 - 18042047
Original Call Date:	STANDARD	2/19 - 18054876
Op:	01/22/18 07:54 am	3/5 - 18078768
Work to Begin Date:	Op: webocr18	3/14 - 18080026
Op:	01/25/18 12:15 am	4/2 - 18126713
Op:	ksjessi	7/10 - 18157476
Op:		8/10 - 18179041
Op:		5/14 - 18240995
Op:		5/29 - 18235811
Op:		6/11 - 18260756
Op:		6/25 - 18286940
Op:		7/9 - 18310450
Op:		7/23 - 18336443
Op:		8/10 - 18362640
Op:		8/20 - 18387449
Op:		9/4 - 18413149
Op:		9/10 - 18436380
Op:		10/1 - 18463237
Op:		10/15 - 18486440
Op:		10/24 - 18510315
Op:		11/12 - 18533725
Op:		11/20 - 18550068

Caller Information  
 Company Name: FREMAR CORPORATION  
 Fax Phone:  
 Contact Name: BLAYNE MARTIN  
 Phone: 316-832-9227  
 Alt. Contact: HUNTER MARTIN  
 Alt. Phone: 316-619-1953  
 Caller Address: 7945 N BROADWAY N BROADWAY VALLEY CENTER, KS 67147  
 Contact Email: bmartin@fremarcorp.com

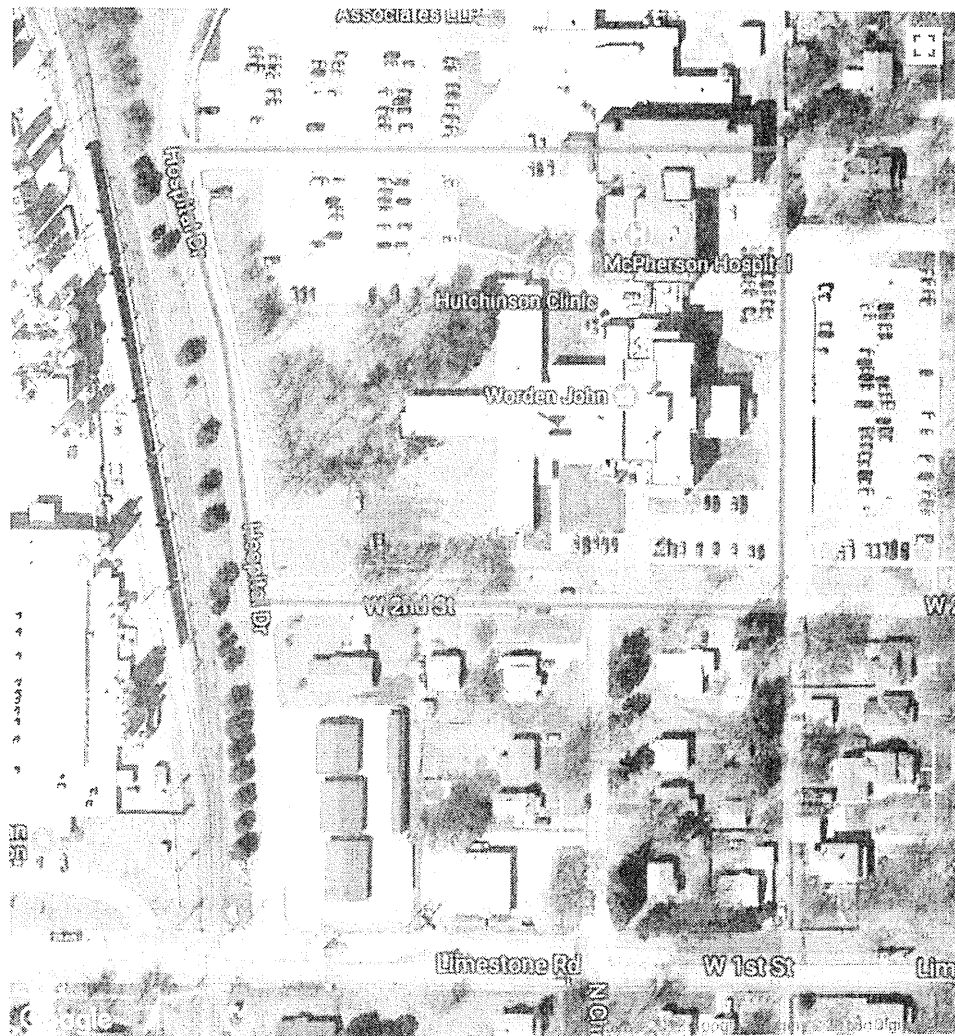
DIG SITE INFORMATION  
 Type of Work: NEW BUILDING ADDITION  
 Explosives: N  
 Duration: 6-8 MONTHS  
 Trenchless Excav: N  
 Work Being Done For: HUTTON CONSTRUCTION

DIG SITE LOCATION  
 County: MCPHERSON  
 Place: MCPHERSON  
 Address:  
 Street: HOSPITAL DR  
 Intersecting Street: 2ND ST  
 Location of Work: LOCATE AND MARK ALL UTILITIES WITHIN THE FOLLOWING DESCRIBED AREA. THE POINT OF BEGINNING WILL BE THE INTERSECTION OF HOSPITAL DR AND 2ND ST. FROM THE POINT OF BEGINNING TRAVEL NORTH ON HOSPITAL DR FOR 475 FT TO THE FIRST ENTRANCE, GO EAST 630 FT, SOUTH 475 FT, BACK WEST 545 FT TO THE POINT OF BEGINNING. INCLUDE ALL EASEMENTS AND RIGHT OF WAYS.  
 Remarks: CALLER REQUESTS AREA BE MARKED WITH PAINT AND FLAGS  
 Map Twp: 19S  
 Rng: 3W  
 Sect-Qt: 20-SE  
 Map Coord NW Lat: 38.3789120  
 Lon: -97.6724589  
 SE Lat: 38.3776210  
 Lon: -97.6702702

MEMBERS NOTIFIED

District	Company Name	Business Hrs Web	Status
ATT401	ATT DISTRIBUTION	800-778-9140	Not yet responded
COXMP01	COX COMMUNICATIONS	800-778-9140	Not yet responded
KANGAS7	KANSAS GAS SERVICE	800-778-9140	Not yet responded
MCPHERD1	MCPHERSON BPU	620-245-2560	Not yet responded
MCPHERD3	CITY OF MCPHERSON PUBLIC WORKS	620-241-3592	Not yet responded
MUTTEL01	MUTUAL TELEPHONE CO	620-897-6200	Does not participate in Ticket Check

Legend: ☐ Locate Polyline  
 Lat/Lon  
 38.379297 -97.607497





## CERTIFICATE OF SERVICE

19-DPAX-364-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 03/20/2019.

BLAYNE MARTIN, PROJECT MANAGER  
FREMAR CORPORATION  
7945 N BROADWAY  
VALLEY CENTER, KS 67147  
bmartin@fremarcorp.com

AHSAN LATIF, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
Fax: 785-271-3354  
a.latif@kcc.ks.gov

/S/ DeeAnn Shupe  
\_\_\_\_\_  
DeeAnn Shupe