

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

In the Matter of the Investigation of J & J Lawn)
Care, LLC of Wichita, Kansas, Regarding)
Violation(s) of the Kansas Underground Utility)
Damage Prevention Act (KUUDPA) (K.S.A. 66-) Docket No. 20-DPAX-322-PEN
1801, et seq., and K.A.R. 82-14-1 through 82-14-)
6), and the Commission's Authority to Impose)
Penalties and/or Sanctions (K.S.A. 66-1,151).)

RESPONSE TO J&J LAWN CARE LLC'S LETTER REQUESTING HEARING

The Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission," respectively), hereby files its Response to J&J Lawn Care LLC's Letter Requesting Hearing in the above captioned matter.

I. BACKGROUND

1. On August 14, 2019, Commission Staff investigated the operation of J&J Lawn Care, LLC ("Respondent") where Staff performed an onsite inspection at 7618 E Donegal St in Wichita, Kansas. The investigation discovered the Respondent caused damage to a Kansas Gas Service (KGS) 2" PE main line while performing irrigation work. No injuries or additional property damage occurred.¹

2. On August 15, 2019, a Notice of Probable Noncompliance (PNC) was issued to Respondent.² The PNC notified Respondent of possible violations of Kansas Underground Utility Damage Prevention Act (KUUDPA) violations.³ The PNC also notified Respondent of its duty to

¹ Penalty Order Docket No. 20-DPAX-322-PEN at 2 (Feb. 4, 2020).

² Notice of Probable Noncompliance (Aug. 15, 2019).

³ *Id.*

make a written response to the PNC pursuant to K.A.R. 82-14-6(c). Respondent did not respond to the PNC.⁴

3. On February 4, 2020, The Commission issued a Penalty Order and Notice of Penalty Assessment against Respondent.⁵ A \$500 penalty was assessed against Respondents for violating K.S.A. 66-1804(a) & (e).⁶

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 exactor, 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.

4. On February 24, 2020, Respondent filed a letter with the Commission admitting to the violation detailed in the Penalty Order and requested a hearing by phone.⁷

II. RESPONSE

5. The Respondent has already admitted to the violation by not responding to the PNC. The PNC clearly states pursuant to K.A.R. 82-14-6(c) recipients of the a PNC must provide a written response by either:

- a. Submitting written explanation, a statement of general denial, or other materials contesting the allegations;
- b. Submitting a signed acknowledgement of Commission Staff's findings of noncompliance; or by

⁴ Penalty Order.

⁵ *Id.*

⁶ *Id.* at 3.

⁷ J&J Lawn Care LLC Letter Requesting Hearing (Feb. 24, 2020).

- c. Submitting a signed proposal for the completion of any remedial action that addresses the Commission Staff's findings of noncompliance.

The Respondent was also notified by the PNC that pursuant to K.A.R. 82-14-6(e), failure to respond within 30 days shall constitute an admission to all factual allegations made by the Commission Staff and may be used against the Respondent in future proceedings.⁸

6. Respondent did not respond to the PNC.⁹ On September 24, 2019, a follow up letter was sent to Respondent via certified mail requesting a response. Confirmation of receipt of the follow up letter by the Respondent was received. Respondent did not respond to the follow up letter.¹⁰

7. The facts of this Docket have remained the same throughout. Respondent did not provide KGS with a notice of intent to excavate and Kansas One Call had not been called to obtain locate marks. This is a violation of K.S.A. 66-1804(a) & (e) and Respondent does not dispute this fact.¹¹

8. Based on the entire set of facts and circumstances, it is clear Respondent has violated K.S.A. 66-1804(a) & (e), admitted to the violation, and offered no mitigating facts as to why it should not be penalized for the violation.

⁸ *Id.*

⁹ Staff Report and Recommendation, Docket No. 20-DPAX-322-PEN (Jan. 9, 2020).

¹⁰ *Id.* at 2.

¹¹ J&J Lawn Care LLC Letter Requesting Hearing.

WHEREFORE, Staff respectfully requests the Commission deny Respondents request for hearing.

Respectfully submitted,



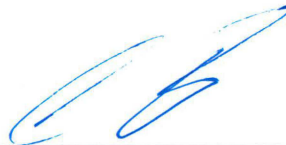
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ATTORNEY FOR COMMISSION STAFF

STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

VERIFICATION

Cole Bailey, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the Kansas Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Response To J&J Lawn Care LLC'S Letter Requesting Hearing*, and attests that the statements contained therein are true and correct to the best of his knowledge, information and belief.



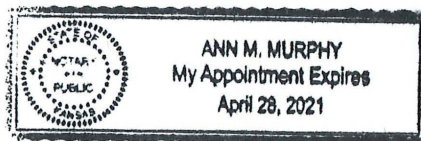
Cole Bailey
Litigation Counsel
State Corporation Commission of the
State of Kansas

Subscribed and sworn to before me this 18th day of March, 2020.



Ann Murphy

My Appointment Expires: 4-28-21




CERTIFICATE OF SERVICE

20-DPAX-322-PEN

I, the undersigned, certify that a true and correct copy of the above and foregoing Response To J&J Lawn Care LLC'S Letter Requesting Hearing was served via electronic service this 18th day of March, 2020, to the following:

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