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on
APR 20 2012
State Corporation Commission
of Kansas

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

In the Matter of Investigation of Miller Paving)
& Construction, LLC, of Kansas City,)
Kansas, Regarding the Violation of the Kansas)
Underground Utility Damage Prevention Act,) Docket No. 12-DPAX-390-PEN
and the Commission's Authority to Impose)
Penalties and/or Sanctions.)

**JOINT MOTION FOR APPROVAL OF
STIPULATED SETTLEMENT AGREEMENT**

The Staff of the State Corporation Commission of the State of Kansas (Staff) and Miller Paving & Construction, LLC (Respondent) file this Joint Motion requesting the Commission issue an order approving the attached Stipulated Settlement Agreement. In support of its Motion, Staff and Respondent state as follows:

1. On May 18, 2011, the Johnson County Emergency Management informed Staff via email, that Respondent was conducting excavation activities with a concrete saw, at or near 5707 W. 98th Street in Overland Park, Kansas, causing damage to an underground KGS 7/8" natural gas service line.
2. Staff conducted an investigation and learned that Respondent was performing said excavation activities at the time of the damage to the underground facility prior to contacting Kansas One Call and obtaining a locate ticket.
3. On or about February 10, 2012, Staff filed a Penalty Order with the Commission requesting a civil assessment in the amount of \$500.00.
4. On or about February 27, 2012, Respondent filed a formal request for a hearing in this matter.

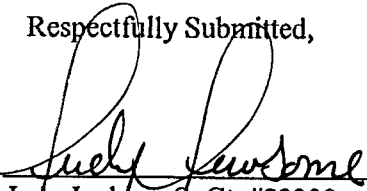
5. On or about March 15, 2012, Staff Counsel, Judy Jenkins and Respondent's Legal Counsel, Cline I. Boone informally discussed the possibility of a settlement. During the informal discussions, Staff and Respondent were able to reach mutually agreeable terms in anticipated settlement of the issues. It was agreed that Staff would subsequently reduce the terms to writing and forward the draft to Respondent for approval and signature.

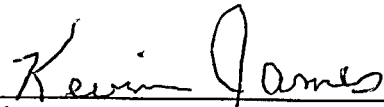
4. The resulting signed Stipulated Settlement Agreement is attached hereto as Attachment "A" and is hereby incorporated by reference. This Agreement resolves all issues raised in this proceeding between Staff and Respondent. The parties believe that the Agreement represents a reasonable and fair resolution of this matter and that the Commission should approve the Agreement.

5. Should the Commission accept the terms of the attached Stipulated Settlement Agreement, the parties waive their respective rights to cross-examine witnesses and present oral arguments or written briefs to the Commission. The parties also waive their rights to request reconsideration of the Commission order approving the Agreement and waive their rights to seek judicial review of said order.

WHEREFORE, for the reasons set forth herein, Staff and Miller Paving and Construction, LLC request this Joint Motion be granted, and that the attached Stipulated Settlement Agreement be approved.

Respectfully Submitted,

By: 
Judy Jenkins, S. Ct. #23300
Litigation Counsel
Kansas Corporation Commission

By: 
Kevin James
Miller Paving & Construction, LLC
7150 Kaw Drive

1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: 785-271-3181
Fax: 785-271-3167
Attorney for Commission

Kansas City, KS 66111
Phone: 913-334-5579
Fax: 913-334-5284

Respondent

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Investigation of Miller Paving &)
Construction, LLC of Kansas City, Kansas,)
Regarding the Violation of the Kansas Underground) Docket No. 12-DPAX-390-PEN
Utility Damage Prevention Act, and the Commission's)
Authority to Impose Penalties and/or Sanctions.)

STIPULATED SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement (Agreement) is entered into by and between the Staff of the Corporation Commission of the State of Kansas (Staff) and Miller Paving & Construction, LLC (Respondent). Its effective date will be the date the Commission enters an order approving or amending the terms of the Agreement.

I. JURISDICTION

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, Kansas law grants the Commission full power and authority to do all things necessary and convenient in its exercise of its authority and jurisdiction pursuant to K.S.A. 2010 Supp. 66-1815 and amendments thereto.

2. The Commission has the authority, pursuant to K.A.R. 82-14-6 and 82-1-237 (2003), as amended, to 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 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 penalty, not to exceed \$25,000, for each day the violation persists, with a maximum civil penalty of \$500,000 for any related series of violations. K.S.A. 66-1812, 66-1,151 and amendments thereto; and, K.A.R. 82-14-6.

4. The Commission has the authority to compromise any civil penalty pursuant to K.S.A. 66-1,152.

II. BACKGROUND

5. Pursuant to the above jurisdiction and authority, on or about May 18, 2011, (Staff) received notice of a damaged underground utility facility and immediately followed up with an investigation. As a result of the investigation, Staff reported the following:

6. On May 18, 2011, the Johnson County Emergency Management informed Staff via email, that Respondent was conducting excavation activities with a concrete saw, at or near 5707 W. 98th Street in Overland Park, Kansas, causing damage to an underground KGS 7/8" natural gas service line.

7. Staff's investigation revealed that Respondent was performing said excavation activities prior to contacting Kansas One Call and obtaining a locate ticket.

8. Staff also learned that the Respondent did not personally contact emergency personnel of the municipality in which the broken line is located and provide information regarding the damaged gas line.

9. On or about June 13, 2011, Staff mailed a "Notice of Probable Noncompliance" to Respondent notifying Respondent of the results of the investigation and requesting a written response from Respondent. Staff's records indicate a written response was not received.

10. On or about February 10, 2012, the Commission granted a Penalty Order against Respondent addressing the alleged violations of the KUUDPA.

11. On or about March 15, 2012, Staff Counsel, Judy Jenkins and Respondent's Legal Counsel, Cline I. Boone informally discussed the possibility of a settlement. During the informal discussions, Staff and Respondent were able to reach mutually agreeable terms in anticipated settlement of the issues. It was agreed that Staff would subsequently reduce the terms to writing and forward the draft to Respondent for approval and signature.

III. TERMS OF THE STIPULATED SETTLEMENT AGREEMENT

12. The parties agree that the Commission has jurisdiction and authority over this matter.

13. The parties also agree that adoption of this Agreement is in the public interest and that the Commission should approve the stipulations as set forth below.

14. Respondent stipulates to the facts and alleged violations as cited in the Penalty Order, filed on February 10, 2012, which is hereby incorporated by reference.

15. Additionally, Respondent agrees to contact the Kansas One Call notification center prior to conducting any excavation activities to include (but not limited to) moving or displacing earth, rock or other material with the aid of a concrete saw or like tool as provided in K.S.A. 66-1802 and 66-1803.

16. Staff agrees to recommend to the Commission that this Agreement be approved and the \$500 civil assessment in this matter be waived.

17. Staff further agrees that upon approval by the Commission, and barring default proceedings pursuant to K.S.A. 77-520, as described in ¶13 above, this Agreement shall constitute a final resolution of this matter.

IV. RESERVATIONS

18. This Stipulated Settlement Agreement fully resolves issues specifically addressed between the parties. The terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein.

19. The terms and provisions of this Agreement have resulted from negotiations between the signatories and are interdependent. In the event the Commission does not approve the terms of the Agreement in total, any party has the option to terminate this Agreement and, if so terminated, none of the signatories hereto shall be bound by, prejudiced, or in any way affected by any of the terms or provisions hereof, unless otherwise provided herein.

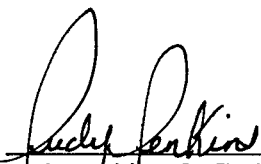
20. Unless (and only to the extent) otherwise specified in this Agreement, the signatories to this Agreement shall not be prejudiced, bound by, or affected in any way by the terms of this Agreement: (1) in any future Commission or court proceeding; (2) in any proceeding currently pending before the Commission under a separate docket; and/or (3) in this proceeding, if the Commission decides not to approve this Agreement in total or in any way conditions its approval of the same. This paragraph is not meant to limit future enforcement of this Agreement, should either party fail to fulfill all terms and provisions.

21. This Agreement does not prejudice or waive any party's legal rights, positions, claims, assertions or arguments in any proceedings in this docket, or any other proceeding before the Commission or in any court.

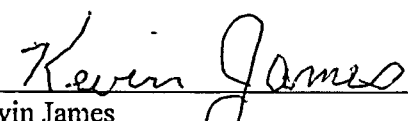
22. If the Commission approves this Agreement in its entirety and incorporates the same into a final order in this docket, the parties intend to be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein, and will not appeal the Commission's order.

23. This Stipulated Settlement Agreement shall be binding on all parties upon signing.

IN WITNESS WHERETO, the parties have executed and approved this Stipulated Settlement Agreement by subscribing their signatures below.

By: 

Judy Jenkins, S. Ct. #23300
Litigation Counsel
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: 913-371-7167
Fax: 785-271-3167
Attorney for Commission

By: 

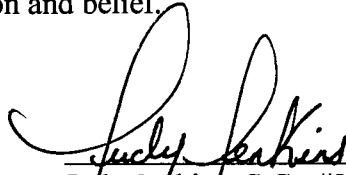
Kevin James
Miller Paving & Construction, LLC
7150 Kaw Drive
Kansas City, Kansas 66111
Phone: 913-334-5579
Fax: 913-334-5284
Respondent

VERIFICATION

Docket No. 12-DPAX-730-SHO

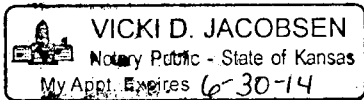
STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

Judy Jenkins, of lawful age, being duly sworn upon her oath deposes and states that she is Litigation Counsel for the State Corporation Commission of the State of Kansas; that she has read and is familiar with the foregoing *Joint Motion for Approval of Stipulated Settlement Agreement* and attests that the statements therein are true and correct to the best of her knowledge, information and belief.



Judy Jenkins, S.Ct. #23300
Litigation Counsel
The State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 20th day of April, 2012.



Vicki D. Jacobsen
Notary Public

My Appointment Expires: June 30, 2014

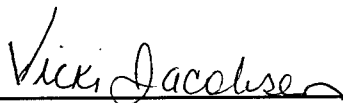
CERTIFICATE OF SERVICE

12-DPAX-390-PEN

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Joint Motion for Approval of Stipulated Settlement Agreement was placed in the United States mail, postage prepaid, or hand-delivered this 23rd day of April, 2012, to the following:

CLINE I. BOONE
CLINE I. BOONE ATTORNEY AT LAW
PO BOX 860743
SHAWNEE, KS 66286-0743
Fax: 913-334-5284

JUDY JENKINS, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027
Fax: 785-271-3167
j.jenkins@kcc.ks.gov
Hand Delivered



Vicki Jacobsen