

1500 SW Arrowhead Road
Topeka, KS 66604-4027



20240402104607
Kansas Corporation
Commission
Phone: 785.271-3100
Fax: 785.271-3354
http://kcc.ks.gov/

Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Annie Kuether, Commissioner

Laura Kelly, Governor

NOTICE OF PENALTY ORDER
24-DPAX-638-PEN

April 2, 2024

Tim LaForce
9669 Lackman Rd
Lenexa, KS 66219

This is a notice of penalty assessment for violation(s) of the Kansas Underground Utility Damage Prevention Act (KUUDPA) and pipeline safety regulations adopted by the Kansas Corporation Commission. For a full description of the penalty please refer to the order attached to this notice.

IF YOU ACCEPT THE PENALTY: You have been assessed a \$1,000 penalty. You have twenty (20) days from the date of service of the Penalty Order to pay the fine amount. 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, and shall include a reference to the docket number (\$1,000) of this proceeding.

IF YOU CONTEST THE PENALTY: You have the right to request a hearing. A request for hearings must be made in writing, setting forth the specific grounds upon which relief is sought. You or an authorized representative from your Company, may electronically file its request for hearing within fifteen (15) days from the date of service of this Penalty Order. A copy of the request for hearing must be provided 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 date of service of this Penalty Order will be considered an admission of noncompliance. **Failing to request a hearing or pay the civil assessment may result in further penalties.**

Respectfully,

/s/ Carly R. Masenthin

Carly R. Masenthin, S. Ct. No. 27944
Senior Litigation Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027
Phone: (785) 271-3265
Email: c.masenthin@kcc.kansas.gov

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

Before Commissioners: Andrew J. French, Chairperson
 Dwight D. Keen
 Annie Kuether

In the Matter of the Investigation of)
Consolidated Communications d/b/a Everfast)
Fiber Networks Regarding Violations of the) Docket No. 24-DPAX-638-PEN
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).

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

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.* K.S.A. 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.

2. Pursuant to K.A.R. 82-14-6, 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 is authorized to impose civil penalties and injunctive actions against any person or entity subject to and found in violation 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 the violation persists, with a maximum civil penalty of \$1,000,000 for any related series of violations.¹

4. Consolidated Communications d/b/a Everfast Fiber Networks (“Everfast”) operates as a public utility pursuant to Commission-issued certificates of convenience and necessity.

5. Everfast is a statutorily defined Operator who owns or leases underground Tier 1 or Tier 2 facilities, as defined in K.S.A. 66-1802(k), (q), and (r), respectively. Pursuant to K.S.A. 66-1813, which authorizes the Commission to administer and enforce KUUDPA, Everfast is subject to the Commission’s jurisdiction regarding compliance with KUUDPA’s obligations (e.g., K.S.A. 66-1806), and may be subject to penalties issued pursuant to K.S.A. 66-1812.

II. ALLEGATIONS OF NONCOMPLIANCE

6. Commission technical staff (“Staff”) submitted to the Commission’s Litigation Division Staff’s Report and Recommendation (including all Exhibits to it, the “Staff’s R&R”), attached as Attachment A and incorporated by reference, on March 14, 2024 recommending a civil penalty of \$1,000 to be assessed against Everfast due to Everfast’s failure to provide locates at W. 91st in Overland Park, Kansas (the “Excavation Site”) of their underground utilities within the time limits required pursuant to K.S.A. 66-1806.²

7. On December 6, 2023, Staff received a complaint due to Everfast’s failure to provide locates within two working days. The complaint was reported seven days after the excavation start date.³

8. Staff subsequently issued Everfast a notice of probable noncompliance (“PNC”) on December 8, 2023, notifying Everfast of the investigation results.⁴

¹ See K.S.A. 66-1812; K.S.A. 66-1,151; K.A.R. 82-14-6.

² Staff’s R&R, p. 1 (Mar. 14, 2024).

³ See Exhibit 1 of Staff’s R&R.

⁴ *Id.*

9. On December 22, 2023, Staff received a response from Everfast agreeing with Staff's findings.⁵

10. KUUDPA requires operators (i.e., public utilities) to provide excavators a "tolerance zone" of the operator's underground facilities in the planned excavation area by marking, flagging or other acceptable method.⁶ Within two working days, beginning after the day on which the excavator provided notice of its intent to excavate, an operator must inform an excavator of the tolerance zone.⁷ If an operator has no facilities in the area of proposed excavation, the operator must notify the excavator no facilities are present before the excavation start date.⁸

11. By failing to provide locates within two working days, Everfast Communications was in violation of K.S.A. 66-1806.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. The Commission finds it has jurisdiction over Consolidated Communications d/b/a Everfast Fiber Networks because it is an entity subject to the requirements of the Kansas Underground Utility Damage Prevention Act, which the Commission is required to administer and enforce pursuant to K.S.A. 66-1813. Specifically, the Commission finds Everfast to be acting as an operator who operates Tier 1 facilities as defined in K.S.A. 66-1802.

13. The Commission finds Everfast violated Kansas law governing underground utilities, including provisions of the KUUDPA, as described above, and is therefore subject to sanctions or fines imposed by the Commission. Specifically, the Commission finds Everfast failed to comply with K.S.A. 66-1806 for the above listed incident.

⁵ See Exhibit 2 of Staff's R&R.

⁶ See K.S.A. 66-1806(a).

⁷ See K.S.A. 66-1806(a).

⁸ See K.S.A. 66-1806(d)(1).

14. The Commission finds a civil penalty is warranted due to Everfast's violation of KUUDPA. Specifically, the Commission finds Everfast shall be assessed a \$1,000 civil penalty.

15. The Commission finds and concludes Everfast shall be afforded an opportunity to request a hearing on the assessment of this civil penalty. Because the Commission is authorized to impose civil penalties and injunctive actions against any person or entity subject to and found in violation of KUUDPA, or any rule and regulation, or any order of the Commission, the Commission finds the hearing procedure adopted in the Commission's KUUDPA and procedural regulations shall control any subsequent hearings in this matter. Specifically, pursuant to K.A.R. 82-14-6(j), the Commission finds and concludes Everfast 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.

16. Pursuant to K.A.R. 82-14-6(i), and (j), Everfast'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.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Consolidated Communications d/b/a Everfast Fiber Networks is hereby assessed a \$1,000 civil penalty for violating the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801, *et. seq.*

B. Pursuant to K.A.R. 82-14-6(j), Consolidated Communications d/b/a Everfast Fiber Networks may request a hearing by electronically filing its request for hearing 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. Hearings will be scheduled only upon written request. Failure to timely request a hearing shall be considered an admission of noncompliance allegations contained herein and result in a waiver of Everfast's right to a hearing. 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.

C. Pursuant to K.A.R. 82-14-6, if Consolidated Communications d/b/a Everfast Fiber Networks does 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 made 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 (24-DPAX-638-PEN) of this proceeding.

D. Unless a hearing is requested, failure to pay the \$1,000 civil penalty within twenty (20) days from the date of service of this Penalty Order will result in enforcement action against Consolidated Communications d/b/a Everfast Fiber Networks, including all sanctions, requirements, and penalties described above being enforceable without further action by the Commission.

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

Dated: 04/02/2024



Lynn M. Retz
Executive Director

CRM

ATTACHMENT “A”

Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Annie Kuether, Commissioner

Laura Kelly, Governor

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Annie Kuether, Commissioner

FROM: Suzanne M. Balandran, Assistant Supervisor of Pipeline Safety
Leo Haynos, Chief of Pipeline Safety
Jeff McClanahan, Director of Utilities

DATE: March 14, 2024

SUBJECT: **Docket Number:** 24-DPAX-638-PEN
In the Matter of the Investigation of Consolidated Communications d/b/a Everfast Fiber Networks 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).

EXECUTIVE SUMMARY:

As a result of the investigation in Staff's Case Number CK-23-UN-1186, Staff recommends that a civil penalty in the amount of \$1000 be assessed to Consolidated Communications d/b/a Everfast Fiber Networks (Everfast) for violation(s) of the Kansas Underground Utility Damage Prevention Act (KUUDPA). Everfast failed to provide locates of its underground facilities within the time limits required by K.S.A. 66-1806 at W. 91st in Overland Park, Kansas. Failure to provide locates of their underground utilities within two working days is a violation of K.S.A. 66-1806. Staff issued a Notice of Probable Noncompliance (PNC) to Everfast on December 8, 2023, attached hereto as Exhibit 1. Everfast responded to the PNC on December 22, 2023, as required by K.A.R. 82-14-6 (c), attached hereto as Exhibit 2.

ANALYSIS:

Rationale for Penalties:

A. **Gravity of noncompliance:**

Excavating without a One-Call ticket is considered a high-risk activity with the potential for significant consequences to public safety. Everfast did not provide the location at which the excavator could carefully excavate to avoid damage to an underground facility at any depth. Everfast failed to comply with the law and warrants the assessment of a civil penalty.

B. **Culpability:**

Everfast is directly liable for its actions in failing to provide a notice of intent before excavating as required by Kansas law.

C. **History of noncompliance:**

Staff has not issued other Notices of Probable Noncompliance for violations of KUUDPA to Everfast.

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. Everfast agreed with Staff's findings. Everfast acknowledged that the line was not marked by its contract locator in the timeframe required by KUUDPA.

E. **Aggravating/Mitigating Circumstances:**

Staff has not determined there to be any circumstances that would cause modification of the \$1,000 recommended penalty amount.

RECOMMENDATION:

Staff recommends a civil penalty be assessed to Everfast Fiber Networks in the amount of \$1,000 for violating K.S.A. 66-1806.

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



EXHIBIT 1

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

Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Annie Kuether, Commissioner

Laura Kelly, Governor

Tim LaForce
Consolidated Communications DBA Everfast Fiber Networks
9669 Lackman Rd

December 08, 2023

KCC Investigation #: CK-23-UN-1186

Lenexa, KS 66219

Subject: Pipeline Investigation

Dear Tim LaForce:

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 December 6, 2023, 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 Consolidated Communications DBA Everfast Fiber Networks. 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**

Company: Consolidated Communications DBA Everfast Fiber Network Division: Lenexa

Regulation:**66-1806 (a) Identification of location of facilities; duties of operator;**

66-1806 Identification of location of facilities; duties of operator;

(a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.

PROBABLE NONCOMPLIANCE DESCRIPTION:

On 12/6/2023, KCC received a complaint for ticket #23644610 due for work to begin 11/30/2023. This ticket was reported 7 days and 9 hours and 46 minutes after the excavation start date for the Metcalf Ave street rehab project from W 91st St to W 99th St in Overland Park, Kansas. Prior to the excavation start date, the Operator failed to provide locates for underground facilities.

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 Compliance Inspection

Date Inspected: 12/06/2023

Inspected By: CK

From: [Tim LaForce](#)
To: [SafetyResponse](#); [Christie Knight \[KCC\]](#)
Cc: [Kevin Crossley](#); [Peter Lynch](#)
Subject: RE: CK-23-UN-1186 - NPV Investigation Letter - Consolidated Communications DBA Everfast Fiber Networks - 23644610W - Everfast Fiber Network - Overland Park - 12/6 - 13:31
Date: Friday, December 22, 2023 4:04:05 PM
Attachments: [image001.png](#)
[Late Ticket Violation Investigation Form \(1\) \(1\).pdf](#)
[Re CK-23-UN-1186 - NPV Investigation Letter - Consolidated Communications DBA Everfast Fiber Networks - 23644610W - Everfast Fiber Network - Overland Park - 126 - 1331.msg](#)

This is an EXTERNAL EMAIL. Think before clicking a link or opening attachments.

Ms. Balandran and KCC Members,
Please find the attached response from Everfast Fiber Networks contract locator in relation to CK-23-UN-1186 NPV Investigation Letter.
Please let me know if you need anything else.
Respectfully,

Tim LaForce | Outside Plant & Facilities
D: 913-322-9953 | C: 913-710-3460
tim.laforce@everfastfiber.com | osp@everfastfiber.com



Notice: This electronic mail transmission may contain confidential information and is intended only for the person(s) named. Any use, copying or disclosure by any other person is strictly prohibited. If you have received this transmission in error, please notify the sender by email.

From: Suzanne Balandran <kccsafetyresponse@kcc.ks.gov>
Sent: Thursday, December 14, 2023 2:24 PM
To: Tim LaForce <tim.laforce@everfastfiber.com>; kccsafetyresponse@kcc.ks.gov; c.knight@kcc.ks.gov
Subject: CK-23-UN-1186 - NPV Investigation Letter - Consolidated Communications DBA Everfast Fiber Networks - 23644610W - Everfast Fiber Network - Overland Park - 12/6 - 13:31

You don't often get email from kccsafetyresponse@kcc.ks.gov. [Learn why this is important](#)

On 12/06/2023, 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 1500 SW Arrowhead Road
Topeka, KS 66604-4027 kccsafetyresponse@kcc.ks.gov

LATE TICKET VIOLATION INVESTIGATION

REPORT #

STATE

DATE OF INCIDENT

TICKET #

UTILITY

DATE OF RECEIPT

DATE ON NOTICE

NOTICE RECEIVED FROM

DATE RESPONSE DUE

TICKET DUE DATE

TICKET DUE TIME

DATE CLOSED

TIME CLOSED

ON TIME

IF RESCHEDULED, RESCHEDULE DATE

RESCHEDULED TIME

METHOD OF RESCHEDULING

INVESTIGATOR

DATE OF INVESTIGATION

Please provide details, including attachments of documentation, that validate that the ticket was completed on time or rescheduled properly. If late, detail the reasons, i.e. project volume, update ticket, capacity, etc.

Please provide relevant background on the contractor who submitted the complaint, i.e. requests for excessive footage, unwarranted emergencies, lack of communication/coordination, and consistent complaints.

Please describe any additional data needed to contest the potential violation, including specific area, date range, contractor, etc.

CERTIFICATE OF SERVICE

24-DPAX-638-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 04/02/2024.

Tim LaForce, OUTSIDE PLANT & FACILITIES
Consolidated Communications
D/B/A Everfast Fiber Networks
9669 Lackman Rd
Lenexa, KS 66219
tim.laforce@everfastfiber.com

CARLY MASENTHIN, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
c.masenthin@kcc.ks.gov

/S/ KCC Docket Room
KCC Docket Room