

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

In the Matter of the Investigation of)
Beacon Contracting LLC, Regarding)
Violation(s) of the Kansas Underground)
Utility Damage Prevention Act (KUUDPA)) Docket No. 24-DPAX-211-PEN
(K.S.A. 66-1801, *et seq.*, and K.A.R. 82-)
14-1, *et seq.*), and the Commission's)
Authority to Impose Penalties and/or)
Sanctions (K.S.A. 66-1,151).)

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

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), by and through its counsel, Ahsan A. Latif, and Beacon Construction LLC (Beacon), by and through its counsel, Philip Nonnemaker, file this Joint Motion requesting the Commission issue an Order approving the attached Unanimous Settlement Agreement. In support of this Motion, Staff and Carrier state as follows:

1. On June 8, 2023 Staff investigated the activities and operations of Beacon after damage to an Atmos PE gas service line was discovered at 14841 S. Black Bob Road in Olathe, Kansas.
2. On September 7, 2023, the Commission issued a Penalty Order to Beacon in this docket assessing a \$500.00 civil penalty.
3. On September 28, 2023, Carrier requested a hearing before the Commission.
4. On November 8, 2023, Philip Nonnemaker, Attorney for Beacon, and Ahsan A. Latif, Litigation Counsel for Staff, informally discussed the possibility of a settlement. During this and subsequent discussions, the parties 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 Carrier's counsel for approval and signature.

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

6. Should the Commission accept the terms of the attached Unanimous 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 Beacon Contracting LLC request this Joint Motion be granted, and that the attached Unanimous Settlement Agreement be approved.

Respectfully Submitted,

/s/ Ahsan Latif

/s/ Philip Nonnemaker

By: _____
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Authority to Impose Penalties and/or)
Sanctions (K.S.A. 66-1,151).)

UNANIMOUS SETTLEMENT AGREEMENT

This Unanimous Settlement Agreement (Agreement) is entered into by and between the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), and Beacon Construction LLC (Beacon). 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, 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.

4. The Commission has the authority, pursuant to K.A.R. 82-1-237, to investigate an entity under the Commission's jurisdiction and issue an order on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

5. Pursuant to K.S.A. 66-1,152, a civil penalty may be compromised by the Commission. In determining the amount of the penalty or the amount agreed in compromise, the appropriateness of the penalty to the size of the business, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance shall be considered.

II. BACKGROUND

6. Beacon Contracting LLC is an excavator as defined in K.S.A. 66-1,1802.

7. On June 8, 2023 Staff investigated the activities and operations of Beacon after damage to an Atmos PE gas service line was discovered at 14841 S. Black Bob Road in Olathe, Kansas.

8. On September 7, 2023, the Commission issued a Penalty Order to Beacon in this docket assessing a \$500.00 civil penalty.

9. On September 28, 2023, Carrier requested a hearing before the Commission.

10. On November 8, 2023, Philip Nonnemaker, Attorney for Beacon, and Ahsan A. Latif, Litigation Counsel for Staff, informally discussed the possibility of a settlement. During this and subsequent discussions, the parties 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 Carrier's counsel for approval and signature.

III. TERMS OF THE UNANIMOUS SETTLEMENT AGREEMENT

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

12. 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.

13. Beacon agrees to conduct any future excavation projects subject to the Commission's jurisdiction in a safe manner.

14. Staff agrees to recommend to the Commission that this Agreement be approved. Staff further agrees that upon approval by the Commission this Agreement shall constitute a final resolution of this matter.

15. Pursuant to K.S.A. 77-504, the Carrier waives all rights to a hearing on, or appeal of the Invoice, and withdraws its request for a hearing previously filed herein.

16. Pursuant to K.S.A. 77-526, the Commission expressly reserves and maintains the right and authority to enforce the terms of this Agreement.

17. Pursuant to the Kansas Judicial Review Act, K.S.A 77-601 *et seq.*, Carrier waives all rights to a hearing on, or appeal of, this Agreement.

IV. MODIFICATION OF PENALTY ORDER

18. Staff agrees to reduce the \$500.00 civil fine to \$250.00.

19. Staff's recommendation for reduction of this civil assessment is based upon the specific circumstances of the alleged violation as well as the Beacon's efforts to remediate the violation and attempts to ensure compliance.

20. Beacon agrees to withdraw its Request for Hearing before the Commission.

21. Beacon shall, when applicable, comply with Kansas law governing the Kansas Underground Utility Damage Prevention Act (“KUUDPA”), as provided in K.S.A. 66-1801, *et seq.*, including the requirement to serve notice of intent of excavation at least two full working days before a scheduled excavation start date.

VI. RESERVATIONS

22. This 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.

23. 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.

24. 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.

25. Unless (and only to the extent) otherwise specified in this Agreement, 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. If the Commission approves this Agreement in its entirety and incorporates the same into a Final Order in this docket, the parties agree 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.

26. This Agreement shall be binding on all parties upon signing.

IN WITNESS WHERETO, Staff and Beacon Contracting LLC hereby execute and approve this Unanimous Settlement Agreement by subscribing their signatures below.

/s/ Ahsan Latif

/s/ Philip Nonnemaker

By:

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CERTIFICATE OF SERVICE

24-DPAX-211-PEN

I, the undersigned, certify that a true copy of the attached Motion has been served to the following by means of electronic service on November 21, 2023.

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/S/ Kiley McManaman
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