

1500 SW Arrowhead Road
Topeka, KS 66604-4027

Pat Apple, Chairman
Shari Feist Albrecht, Commissioner
Jay Scott Emler, Commissioner



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

Sam Brownback, Governor

VIA CERTIFIED MAIL

NOTICE OF PENALTY ORDER
17-DPAX-281-PEN

January 24, 2017

Justin Clements
Kansas Gas Service, a Division of ONE Gas, Inc.
7421 W 129th St
Overland Park, KS 66213

This is a notice of penalty assessment for violation of the Kansas Underground Utility Damage Prevention Act (KUUDPA) discovered during an investigation conducted on September 2, 2016, 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 service of the Penalty Order to pay the fine amount. Checks or Money Orders should be made payable to the Kansas Corporation Commission. Payments shall be mailed to the Fiscal Section of the Kansas Corporation Commission, 1500 SW Arrowhead Road, Topeka, Kansas, 66604, and shall include a reference to the docket number of this proceeding. Credit card payments may be made by calling the Fiscal Office at 785-271-3113.

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 must submit an original and seven copies of the request for hearing to the Commission's Secretary at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, within fifteen (15) days from the date of service of this Penalty Order.

IF YOU FAIL TO ACT:

Pursuant to K.A.R. 82-14-6(j) and K.S.A. 77-529, failure to provide a request for a hearing within fifteen (15) days, or in the alternative to pay the civil assessment within twenty (20) days, will be considered an admission of noncompliance and result in the Penalty Order becoming a Final Order.

Respectfully,

Robert Vincent, #26028
Litigation Counsel
(785)271-3173

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

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the Matter of the Investigation of **Kansas**)
Gas Service, a Division of ONE Gas, Inc., of)
Overland Park, Kansas, Regarding) Docket No. 17-DPAX-281-PEN
Violation(s) 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).

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, 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. 66-1815 and amendments thereto.

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 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. *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 September 2, 2016, Commission Staff (Staff) investigated the activity and operations of Kansas Gas Service, a Division of ONE Gas Inc., (Respondent). *See* Report and Recommendation of Staff dated December 28, 2016, a copy of which is attached hereto as Attachment "A" and is hereby incorporated by reference. As a result of this investigation, Staff reported the following:

- a. On September 2, 2016, Staff performed an onsite inspection at 2208 LaHoma Street in Wichita, Kansas. Staff's investigation discovered locates were not provided by Respondent after being requested. Because Respondent did not provide locates, damage to a service line at the aforementioned address occurred.
- b. No injuries or additional property damage occurred. Respondent was notified by a Notice of Probable Non-Compliance issued by Staff on September 20, 2016, citing the violation of K.S.A. 66-1806 as follows:

(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.

- c. Staff's Notice of Probable Non-Compliance notified 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 and to include identification of any errors contained in the Notice of Probable Non-Compliance.
- d. On November 4, 2016, Respondent responded to the Notice of Probable Non-Compliance. Respondent stated the address in question is served by two services, and one service was not located thus resulting in damage. Respondent provided information detailing remedial action taken to prevent future incidents. Staff recommends a fine of \$500 for this violation.

5. KUUDPA requires all operators to inform the excavator of the location of the operator's underground facilities at a given excavation site within a 48-inch tolerance zone. A locate is required to be completed within two working days after the day on which the excavator provided notice of its intent to excavate. Although KUUDPA allows an excavator to dig without locates being completed if the required marking time has expired, most excavators will wait for locates rather than take the risk of damaging underground facilities or endangering life and property. Postponing excavation because of the failure of utilities to complete locates for

excavators can result in costly downtime and scheduling problems, including but not limited to, cancelation of contracts.

6. Staff recommends the Commission issue 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

7. The Commission finds it has jurisdiction over Respondent 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 Respondent to be acting as an operator who operates Tier 1 facilities as defined in K.S.A. 66-1802.

8. The Commission finds Respondent violated Kansas law governing underground utilities, including various provisions of the Kansas Underground Utility Damage Prevention Act, as described above, and is therefore subject to sanctions or fines imposed by the Commission. Specifically, the Commission finds Respondent failed to comply with K.S.A. 66-1806 for the above listed incident.

9. The Commission finds a civil penalty is warranted due to Respondent's violation of the Kansas Underground Utility Damage Prevention Act. Accordingly, pursuant to K.S.A. 66-1812 and K.S.A. 66-1,151, the Commission concludes the Respondent shall be assessed a \$500 penalty for violation of the Kansas Underground Utility Damage Prevention Act.

THE COMMISSION THEREFORE ORDERS THAT:

A. Kansas Gas Service, a Division of ONE Gas, Inc., 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.S.A. 77-529, K.S.A. 66-118b, K.A.R. 82-1-215 and amendments thereto, a party may request a hearing on the above issues by submitting a written request, consisting of an original and seven (7) copies, setting forth the specific grounds upon which relief is sought, to the Commission's Secretary, at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604 within fifteen (15) days from the date of service of this Order. If service is by certified mail, service is complete upon the date delivered shown on the Domestic Return Receipt. 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. Furthermore, this Penalty Order will become a Final Order assessing a \$500 civil penalty against the 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. *See* 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 within twenty (20) days from the date of service of this Order. Checks and Money Orders shall be payable to the Kansas Corporation Commission. For credit card payments, include the type of card (Visa, MasterCard, Discover, or American Express), account

number and expiration date. Payments shall be mailed to the Fiscal Section 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 of this proceeding.

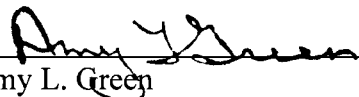
E. Failure to pay the \$500 civil penalty within twenty (20) days of the issuance of this Penalty Order will result in enforcement action against Respondent, including all sanctions, requirements, and penalties described above being enforceable without further action by the Commission.

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.

Apple, Chairman; Albrecht, Commissioner; Emler Commissioner

Dated: JAN 24 2017



Amy L. Green
Secretary to the Commission

RV/vj

Order Mailed Date

JAN 25 2017

ATTACHMENT “A”

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



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

Jay Scott Emler, Chairman
Shari Feist Albrecht, Commissioner
Pat Apple, Commissioner

Sam Brownback, Governor

REPORT AND RECOMMENDATION UTILITIES DIVISION

TO: Chairman Jay Scott Emler
Commissioner Shari Feist Albrecht
Commissioner Pat Apple

FROM: Suzanne Balandran-Gonzales, Public Service Administrator
Leo Haynos, Chief of Pipeline Safety
Jeff McClanahan, Director of Utilities

DATE: December 28, 2016

SUBJECT: Docket Number: 17-DPA-X-281-PEN
In the Matter of Kansas Gas Service, A Division of ONE Gas Inc., Regarding the Violation 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:

Staff is recommending a civil penalty be issued to Kansas Gas Service (KGS) in the amount of \$500.00 for a violation of KUUDPA. On September 2, 2016, a contractor damaged an unmarked KGS gas line at 2208 LaHoma St. in Wichita, Kansas. A brief timeline of events is attached (Attachment I). KGS had not provided accurate markings for the tolerance zone of its buried facilities. There was a valid notice of intent to excavate provided to KGS prior to the damage occurring. Failure to provide proper locates upon request is a violation of K.S.A. 66-1806. Staff issued a Notice of Probable Noncompliance (PNC) to Kansas Gas Service on September 20, 2016. KGS responded to Staff's PNC on November 4, 2016, and agreed with Staff's findings. A copy of the PNC to KGS and the response from KGS is attached (Attachment II).

ANALYSIS:

Rationale for Penalties:

A. Gravity of noncompliance:

Once an excavator notifies underground utility operators of a planned excavation, each operator with facilities buried at that site must provide surface markings that indicate where the utilities are located within 24 inches of either side of the position of the buried facility. This 48 inch corridor is defined as the “tolerance zone”. Failure in providing accurate locate marks depicting the tolerance zone is a high-risk activity with the potential for significant consequences to public safety. Inaccurate locates further serve to give the excavator a false sense of security by indicating the buried facilities are not in the vicinity of the excavation. This effect may result in the excavator causing even greater damage to the utility because of the speed and force with which excavation normally is performed in areas clear of underground obstacles. Regarding this PNC, KGS has stated locates were not provided for the buried gas line. Providing timely, proper and accurate markings for the excavators is the fundamental measure a facility owner takes to prevent damage to its buried facilities. The fact that Kansas Gas Service failed to comply with this requirement of the law warrants the assessment of a civil penalty.

B. Culpability:

Kansas Gas Service is directly responsible for its actions in failing to provide accurate locates as Kansas law requires.

C. History of noncompliance:

Staff has issued other KUUDPA PNC’s to Kansas Gas Service in the past two years. Some of these violations were for similar inaccurate locating issues.

D. Response of the utility operator regarding noncompliance(s):

KGS responded to the current PNC and agreed with Staff’s findings. KGS has re-trained its locating personnel on how to read facility maps, use tracer wire if it is available, and to locate the entire scope of the ticket.

E. Aggravating/Mitigating Circumstances:

Staff has not determined any circumstances that would cause modification of the recommended penalty amount of \$500.

RECOMMENDATION:

Staff recommends a civil penalty be issued to KGS in the amount of \$500 for violation(s) of K.S.A. 66-1806.

ATTACHMENT I

Timeline:

- 9/2/16 At approximately 8:00 AM, Staff received email notification from Kansas Gas Service, regarding an excavator damaging their facility at 2208 LaHoma St. in Wichita, Kansas.
- Staff arrived on-site at approximately 8:45 AM and subsequently conducted an on-site investigation. Staff observed KGS had not provided valid markings of the tolerance zone for the line that was damaged. The line was damaged the day before by the contractor but was not noticed until the homeowner found the leak the next morning.
- 9/20/16 Staff issued PNC #7436 to Kansas Gas Service for not having a locate mark on the gas line hit by the contractor at 2208 LaHoma St. in Wichita, Kansas.
- 11/4/16 Kansas Gas Service replied to PNC #7436 agreeing with KCC staffs finding of no locate on the damaged line.

ATTACHMENT II



Kansas Gas Service..

A Division of ONE Gas

Bill Haislip
Regulatory Compliance Specialist
200 E. 1st Avenue
Topeka, KS 66603
P: 785-431-4272
E: bill.haislip@onegas.com

November 4, 2016

Mr. Leo Haynos
Chief of Pipeline Safety and Energy Operations
Kansas Corporation Commission
1500 SW Arrowhead Rd.
Topeka, Kansas 66604-0427

RE: KCC Notice of Probable Noncompliance - KCC No. 7436

Dear Mr. Haynos,

Please find attached the Operator's Response to KCC's Notice of Probable Noncompliance Notice No. 7436, referencing a location at or near: 2208 LaHoma St., Wichita, KS.

If you have any questions, please contact me at: (785) 431-4272.

Sincerely,

Bill Haislip
Kansas Gas Service

Encl: Operator Response - KCC No. 7436

PROBABLE NONCOMPLIANCE

KCC Investigation# 7436

COMPANY: Kansas Gas Service

DIVISION: Wichita

REGULATION:

66-1806 Identification of location of facilities; duties of operator; liability for damages.

(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 whittened 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. Contact with the operator's facilities, except that nothing in this act shall be construed to hold any excavator harmless from liability to the operator in those cases of gross negligence or willful and wanton conduct.

PROBABLE NONCOMPLIANCE DESCRIPTION:

On 9/1/16 KCC staff conducted an investigation at 2208 LaHoma St. in Wichita Kansas where a contractor hit a KGS service drop with a boring machine installing a new electric service. The line was hit on 9/1/16 but not reported until 9/2/16 by the home owner. The contractor was not aware of the damage. The gas line was not located. There was a valid OneCall ticket #16443938. This is a violation of 66-1806 above.

OPERATOR'S RESPONSE: (Attach verification if needed)

SEE ATTACHED

Operator's authorized signature: Bill HarkinDate: 11/9/2016**PIPELINE SAFETY USE ONLY**Date Reviewed: _____ Date Reviewed: _____
Supervisor: _____ Inspector: _____

Inspected by: Jackson

Date Inspected: 9/2/2016

Inspection type: No Locates- Operator

KCC Notice of Probable Noncompliance-KCC #746

On 9/2/2016 KCC staff conducted an investigation at 2208 LaHoma St. in Wichita, Kansas where a contractor hit a KGS service drop with a boring machine installing a new electric service. The line was hit on 9/1/2016 but not reported until 9/2/2016 by the homeowner. The contractor was not aware of the damage. The gas line was not located. This is a violation of the Statute 66-1806 Identification of location of facilities; duties of operator; liability for damages. (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 whittled 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.

Operator Response: The operator and locate vendor (USfC) conducted a joint investigation of the damages at 2208 LaHoma St., Wichita, Kansas.

This address has two services, one for the house and one for the garage. Both services have a meter. The service for the garage was not identified. The garage service thus was not located and as a result was damaged. The garage service has a functioning locate wire and the functionality was verified after the piping damage was repaired.

USfC supervision performed training with the locate tech at the site of the damage stressing the need to review maps and perform a visual inspection of the requested locate area to ensure all facilities in the requested area had been identified and marked.

CERTIFICATE OF SERVICE

17-DPAX-281-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 **JAN 24 2017**.

ROBERT VINCENT, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
r.vincent@kcc.ks.gov

JUSTIN CLEMENTS, KCC LIAISON FOR KGS
KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC.
7421W 129TH ST
OVERLAND PARK, KS 66213-2634
Fax: 785-271-3013
justin.clements@onegas.com

/S/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date
JAN 25 2017