

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

In the Matter of a General Investigation	)	
Regarding Whether Electric Utilities Should	)	
Be Considered an "Operator" of Private	)	Docket No. 17-GIME-565-GIV
Underground Lines Under the Provisions of	)	
the Kansas Underground Utility Damage	)	
Prevention Act.	)	

**INITIAL COMMENTS OF MIDWEST ENERGY, INC.**

COMES NOW Midwest Energy, Inc. ("Midwest Energy") and, pursuant to the State Corporation Commission of the State of Kansas' ("Commission") July 27, 2017 Order Opening General Investigation ("Opening Order") and September 12, 2017 Order Setting Procedural Schedule and Designating Prehearing Officer ("Procedural Order"), submits its Initial Comments in response to the Commission's request for comments to aid it in determining whether electric utilities should be considered an "operator" of private underground lines under the Kansas Underground Utility Damage Prevention Act ("KUUDPA"). Opening Order at 1. For its Initial Comments, Midwest Energy states as follows:

**I. Background**

1. In its Opening Order, the Commission set out a series of questions designed to elicit comments on: (1) locate practices for customer-owned underground electric service lines; (2) determining the definition of the term "operator" found in the Kansas Underground Utility Damage Prevention Act ("KUUDPA"); and (3) ensuring the uniform application of KUUDPA when it comes to the obligation of Kansas electric utilities to provide utility locates for underground electric lines that were installed and owned by the customer, but are upstream of the utility company's meter facilities. Opening Order at 2. The issue of locate practices and, specifically, the obligation of Kansas electric utilities to provide utility locates for underground

electric lines that were installed and owned by the customer, but upstream of the company's meter facilities, arose in the context of Docket No. 15-KCPE-544-COM ("15-544 Docket"). In the 15-544 Docket, it became clear that Staff and industry interpreted the definition of "operator" as contained in KUUDPA differently, which affects whether Kansas electric utilities or customers are responsible to provide utility locates for customer-owned underground electric facilities.

2. Because a determination of how "operator" should be interpreted could or will be broadly applied across the electric industry in Kansas, and not confined to the 15-544 Docket, the Commission directed Staff to prepare a report and recommendation to assist in the determination of whether electric public utilities should be considered an "operator" of private underground electric facilities for purposes of locates. Opening Order at 1. As part of the report and recommendation, the Commission instructed Staff to provide a description of how other Kansas electric utilities and other states address the marking of private underground electric lines. Opening Order at 1.

3. In its May 24, 2017 Report and Recommendation attached to the Opening Order, Staff proposed a list of questions designed to guide the comments of interested parties on the issue of appropriate locate policies. Opening Order at 2. Such comments are due to be filed by October 12, 2017. Procedural Order at 2. Midwest Energy submits the following Initial Comments in response to the questions set out in the Commission's Opening Order.

## **II. Initial Comments**

### **A. Regarding underground electric service lines, how should the Commission interpret the term "operator" at K.S.A. 66-1802(j)?**

4. Pursuant to K.S.A. 66-1802(j), "operator" is defined as "any person who owns or operates an underground tier 1 or tier 2 facility, except for any person who is the owner of real

property wherein is located underground facilities for the purpose of furnishing services or materials only to such person or occupants of such property." The term "operator" should be given its plain meaning pursuant to the statute; that is, the person or entity who owns or operates the underground line or lines is the operator. Ownership of the line or lines is the crucial consideration. Hence, if a public utility owns the line, then the public utility is the operator. If, however, the line is privately owned, then the private owner is the operator.

**B. Should the utility service provider be required to provide locates for residential underground electric service up to the location of the customer meter or the building wall of the residence, whichever is further downstream?**

5. Consistent with Midwest Energy's tariffs, the utility service provider should be responsible only for the locate of the utility-owned underground facilities to the point of delivery. Specifically, in the Definitions section of Midwest Energy's tariff, Index 206, paragraph I, "Point of Delivery" is defined as: "The point where the Company supplied facilities physically connect to Customer supplied facilities, unless otherwise defined in the Electric Service Agreement." The key is ownership of the facilities, not the type, character, or location of the facilities, as suggested by the question. Similarly, KUUDPA operator responsibilities for marking facilities apply only to the public utilities' facilities and not to private lines.

6. Midwest Energy's position is consistent with literature published by Kansas One Call. Kansas One Call's Excavator's Manual (attached hereto as Attachment A), designed to serve as a guide to assist excavators with the process of placing an excavation notice and safe excavation practices, states:

Note: In some cases, the underground facilities belong to the owner of the property rather than to the utility. For example, the utility may own the pipe/conductor up to a meter at the edge of the property. The pipe/conductor from the meter to the house or out-buildings may belong to the home/property owner. Some members may locate these lines on the property even though they are



owned by the home/property owner, while other members will not locate lines they do not own.

Kansas One Call Excavator's Manual, p. 13.

7. Additionally, the Excavator's Manual states:

Please be aware that facility members are required to locate **only** those facilities which they own or operate. (See the definition of "operator" in KSA #66-1802, J)

Kansas One Call Excavator's Manual, p. 14 (emphasis in the original).

8. Further, Kansas One Call's Safe Digging Tips brochure (attached hereto as Attachment B) states:

Please Note: The notified facility/utility owners **will not** mark privately owned underground lines. These include but are not limited to: power or electric service, water and sewer pipes from the meter to your home, invisible fencing, sprinkler systems, well and septic systems, etc.

Some utility companies will locate private utility lines if requested. Check with your local utility companies for details.

Safe Digging Tips, p. 2 (emphasis in the original).

**a. What is the risk to the customer of not providing locates under this scenario?**

9. The risk to the customer when it assumes responsibility for locating its privately-owned line or lines is that it could incur outages and/or damage to its facilities. This is no different than in the case where the utility is responsible for locating its underground lines. Moreover, a customer could incur more damage if the utility attempts to locate privately-owned facilities than if the customer itself is responsible for locates because, arguably, the customer has knowledge regarding the location of the lines, whereas the utility does not. Midwest Energy notes that contract locate companies will provide locates for individual consumers. In addition, as stated in the above-quoted Kansas One Call Safe Digging Tips brochure, Midwest Energy is willing to locate privately-owned underground electric lines, but only upon request.

10. Further, to the extent Midwest Energy is either requested or required to perform work on customer- or privately-owned facilities, the costs are the customer's responsibility. Midwest Energy's tariffs at Index 251, paragraph N., states: "The Company will charge for all materials furnished and for all work done on the Customer's premises beyond the equipment owned and installed by the Company. This includes trouble calls not occasioned by negligence on the part of the Company, repair of electric appliances, and any other work or service requested and authorized by Customer."

**b. What is the risk/cost to the utility of being required to provide locates under this scenario?**

11. The risk/cost to the utility if required to provide locates to privately-owned underground electric lines includes added labor cost, increased insurance cost, and increased liability, which is indeterminable. In addition, a customer could incur more damage if the utility attempts to locate privately-owned facilities than if the customer itself is responsible for locates because, as noted above, the customer has knowledge regarding the location of the lines, whereas the utility does not.

**C. For commercial customers, should the utility service provider be required to provide locates up to the building wall, the current transformer cabinet, or the customer meter, whichever is further downstream?**

12. Consistent with Midwest Energy's tariffs, the utility service provider should be responsible only for the locate of the utility-owned underground facilities to the point of the delivery. Specifically, in the Definitions section of Midwest Energy's tariff, Index 206, paragraph I, "Point of Delivery" is defined as: "The point where the Company supplied facilities physically connect to Customer supplied facilities, unless otherwise defined in the Electric Service Agreement." The key is ownership of the facilities, not the type, character, or location of the facilities, as suggested by the question. Similarly, KUUDPA operator responsibilities for

marking facilities apply only to the public utilities' facilities and not to private lines. Additionally, as set out in paragraphs 6-8 above, Midwest Energy's position is consistent with guidance documents provided by Kansas One Call.

**a. What is the risk to the customer of not providing locates under this scenario?**

13. The risk to the customer when it assumes responsibility for locating its privately-owned line or lines is that it could incur outages, damage to their facilities, and/or the potential for lost revenue. This is no different than in the case where the utility is responsible for locating its underground lines. Moreover, a customer could incur more damage if the utility attempts to locate privately-owned facilities than if the customer itself is responsible for locates because, arguably, the customer has knowledge regarding the location of the lines, whereas the utility does not. Midwest Energy notes that contract locate companies will provide locates for individual consumers. In addition, as stated in the above-quoted Kansas One Call Safe Digging Tips brochure, Midwest Energy is willing to locate privately-owned underground electric lines, but only upon request.

14. Further, to the extent Midwest Energy is either requested or required to perform work on customer- or privately-owned facilities, the costs are the customer's responsibility. Midwest Energy's tariffs at Index 251, paragraph N., states: "The Company will charge for all materials furnished and for all work done on the Customer's premises beyond the equipment owned and installed by the Company. This includes trouble calls not occasioned by negligence on the part of the Company, repair of electric appliances, and any other work or service requested and authorized by Customer."



**b. What is the risk/cost to the utility of being required to provide locates under this scenario?**

15. The risk/cost to the utility if required to provide locates to privately-owned underground electric lines includes added labor cost, increased insurance cost, and increased liability, which is indeterminable. In addition, a customer could incur more damage if the utility attempts to locate privately-owned facilities than if the customer itself is responsible for locates because, as noted above, the customer has knowledge regarding the location of the lines, whereas the utility does not. Further, unlike residential customers, a commercial or industrial customer could attempt to recover lost revenue as a result of an inaccurate locate by the utility, which could be significant.

**D. If it is required to locate customer-owned facilities, should the utility service provider only be required to locate those facilities to the boundaries of the common utility easement?**

16. As an initial proposition, a utility service provider should not be required to locate customer-owned facilities. However, to the extent such an obligation is imposed on the utility service provider, the utility should only be required to locate the facilities to the boundaries of the utility easement.

**E. What is the liability of an operator in providing locates for customer installed/ owned facilities?**

17. If "operator" is given the plain meaning as set out in the statute, and as described by Midwest Energy in paragraph 4 above, then the customer itself would provide the locates for its own privately-owned/installed facilities, and any and all liability would be the responsibility of the customer. If, however, the utility service provider is required to locate customer installed/owned facilities, the utility service provider should be held harmless from all associated damages, lost revenue, injury, and any other monetary claims.

**F. If an operator is not required to provide locates of customer installed/owned facilities, should the operator be required to alert the customer to the fact that locating customer-owned facilities is the customer's obligation?**

18. This question assumes that in all cases, the operator is the utility service provider, which defies a reasonable interpretation of the definition of "operator" in K.S.A. 66-1802(j). An "operator" is defined as the owner or operator of the underground facilities and ownership is a requisite component. When the question references "customer installed/owned facilities," the operator is necessarily the customer. Therefore, in the above scenario, the operator and customer/owner are one in the same, so notification is not required. If, however, the operator is always the utility service provider, as the question implies, then the utility service provider could, to the extent a locate request is received<sup>1</sup> and/or upon request by the customer/owner, either locate the underground facilities or notify the customer of its obligation to handle all locates.

**G. What are the best practices that may be employed by an excavator to avoid damaging customer-owned facilities when no locate marks are present or the provided locate marks are of questionable accuracy?**

19. The best practice to be employed by an excavator in order to avoid damaging customer-owned facilities when no marks are present is to not dig, and notify the customer of its responsibility to locate the facilities it owns. For locate marks of questionable accuracy, the best practice is to require the owner/operator to locate the facilities and then hold the owner/operator responsible for inaccurate marks.

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<sup>1</sup> This question assumes the utility received a locate request. Privately-owned underground service lines may not be in a utility locate polygon. If it is not in the polygon, the utility will not receive the locate request. There are two basic reasons a private line might not be in an electric utility polygon: (1) the service is fed from an overhead utility line; and/or (2) the service line extends beyond the utility polygon. To the extent the utility receives a locate request, the utility could notify the customer of its obligation to locate its privately-owned facilities.



WHEREFORE, Midwest Energy, Inc. respectfully submits its Initial Comments for consideration in the above-captioned docket.

Respectfully submitted,



Susan B. Cunningham

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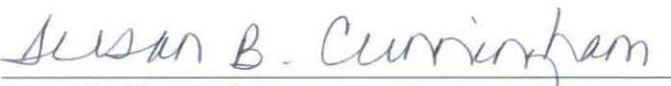
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**VERIFICATION**  
**(K.S.A. 53-601)**

STATE OF KANSAS            )  
  ) ss.  
COUNTY OF SHAWNEE    )


I, Susan B. Cunningham, being of lawful age, hereby state that I have caused the foregoing Initial Comments of Midwest Energy, Inc. to be prepared, that I have read and reviewed the Initial Comments, and that the contents thereof are true and correct to the best of my information, knowledge and belief.

  
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Susan B. Cunningham

Executed on the 12<sup>th</sup> day of October, 2017

**CERTIFICATE OF SERVICE**

A true and correct copy of the above and foregoing Initial Comments of Midwest Energy, Inc. was electronically served on this 12<sup>th</sup> day of October, 2017, to the persons appearing on the Commission's service as last modified on September 8, 2017.

  
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Susan B. Cunningham