

1500 SW Arrowhead Road
Topeka, KS 66604-4027



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

Mark Sievers, Chairman
Thomas E. Wright, Commissioner
Shari Feist Albrecht, Commissioner

Sam Brownback, Governor

VIA CERTIFIED MAIL

NOTICE OF PENALTY ORDER

August 8, 2013

Gordon Taylor
Taylor Mechanical, Inc.
PO Box 2064
Lee's Summit MO 64063

This is a notice of penalty assessment for violation of the Kansas Underground Utility Damage Prevention Act (KUUDPA) discovered during an investigation conducted on April 25, 2013, 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 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 785-271-3351.

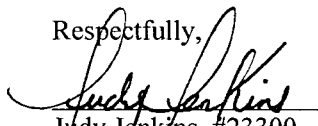
IF YOU CONTEST THE PENALTY:

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 Executive Director at 1500 SW Arrowhead Road, Topeka, Kansas 66604, within fifteen (15) days from the date of service of this Notice of Probable Noncompliance and Proposed Penalty Order.

IF YOU FAIL TO ACT:

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

Respectfully,


Judy Jenkins, #23300
Litigation Counsel
(785)271-3110

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

Before Commissioners: Mark Sievers, Chairman
Thomas E. Wright, Commissioner
Shari Feist Albrecht, Commissioner

In the Matter of the Investigation of Taylor)
Mechanical, Inc., of Lee's Summit, Kansas,)
Regarding the Violation of the Kansas) Docket No. 14-DPAX-029-PEN
Underground Utility Damage Prevention Act,)
and the Commission's Authority to Impose)
Penalties and/or Sanctions.)

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. 2012 Supp. 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 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.

II. ALLEGATIONS OF NONCOMPLIANCE

4. Pursuant to the above authority, on April 25, 2013 Commission Staff (Staff) investigated the activity and operations of Taylor Mechanical, Inc. (Respondent). See Report and Recommendation of Staff dated 7/8/2013, a copy attached hereto as Attachment "A". As a result of this investigation, Staff reports the following:

- a. On April 25, 2013, Atmos Energy notified Staff that Respondent conducted excavating at 1000 Rogers Road in Olathe, Kansas and damaged an underground Atmos Energy 1-1/4 inch PE natural gas line, resulting in blowing gas.
- b. Staff arrived on-site at 1000 Rogers Road, and immediately began an investigation. Staff learned from Atmos's Damage Investigator that Respondent had not called Kansas One Call to inform of the company's intent to dig and to obtain a locate ticket. Staff later confirmed this fact through research of the Kansas One Call database.
- c. On May 15, 2013, Staff mailed a Notice of Probable Noncompliance notifying Respondent of the investigation results. See document attached hereto as Attachment "B". The letter instructed Respondent to respond, in writing, within thirty (30) days and to indicate if the Respondent accepted Staff's findings of the investigation and to provide details of any actions

taken by Respondent to prevent future violations. In the alternative, the Respondent could provide written documentation explaining why Respondent disagreed with the findings to include the identification of any errors in the Notice of Probable Noncompliance. The violation cited in the Notice of Probable Non-Compliance is as follows:

- i. Failure of an excavator to serve notice of intent of excavation at least two (2) full working days, but not more than fifteen (15) calendar days before the scheduled excavation start date, on each operator having underground facilities located in the proposed area of excavation. This failure is a violation of K.S.A. 2012 Supp. 66-1804.
 - d. On June 10, 2013, Staff received Respondent's response to the Notice of Probable Noncompliance. See document attached hereto as Attachment "C". In its response, Respondent agreed with the information contained in the Notice of Probable Non-compliance and provided information regarding the steps Respondent implemented to confirm safe digging.
5. Based upon the available facts, Staff recommends a civil penalty of \$500 for the violation of the Kansas Underground Utility Damage Prevention Act.

III. CONCLUSIONS OF LAW

6. Based on the foregoing, the Commission finds it has jurisdiction over Taylor Mechanical, Inc. (Respondent) because it is an excavator as defined in K.S.A. 2012 Supp. 66-1802.

7. The Commission also finds Respondent violated Kansas law governing underground utilities, including various provisions of the Kansas Underground Utility Damage Prevention Act, and is therefore subject to sanctions or fines imposed by the Commission.

8. Therefore, Respondent is hereby assessed a \$500 penalty for violation of the Kansas Underground Utility Damage Prevention Act.

THE COMMISSION THEREFORE ORDERS THAT:

A. Taylor Mechanical, Inc., of Lee's Summit, MO 64063, 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. 2012 Supp. 77-529, K.S.A. 66-118b, K.A.R. 82-1-215 and amendments thereto, any 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 Executive Director, 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 Respondent.

C. Attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. A corporation shall not be permitted to enter an appearance, except by its attorney.

D. Pursuant to K.A.R. 82-14-6, if you do not request a hearing, the payment of the civil penalty is due in twenty (20) days from date of service of this Order. Checks and Money Orders shall be payable to the Kansas Corporation Commission. For credit card payments, include 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.

Sievers, Chmn.; Wright, Com.; Albrecht, Com.

Dated: AUG 08 2013


ORDER MAILED AUG 09 2013

Kim Christiansen
Executive Director

JJ

ATTACHMENT “A”

1500 SW Arrowhead Road
Topeka, KS 66604-4027



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

Mark Sievers, Chairman
Thomas E. Wright, Commissioner
Shari Feist Albrecht, Commissioner

Sam Brownback, Governor

REPORT AND RECOMMENDATION UTILITIES DIVISION

TO: Chairman Mark Sievers
Commissioner Thomas E. Wright
Commissioner Shari Feist Albrecht

FROM: Christie Knight, Damage Prevention Special Investigator *CK*
Leo Haynos, Chief of Pipeline Safety *LH*
Jeff McClanahan, Director of Utilities *JM*

DATE: July 3, 2013

DATE SUBMITTED TO LEGAL: 7/8/13

DATE SUBMITTED TO COMMISSIONERS: 8-1-13

SUBJECT: Docket Number: 14-DPAX-029-PEN
In the Matter of the Investigation of Taylor Mechanical, Inc of Lee's Summit Missouri
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 Taylor Mechanical, Inc (Taylor) in the amount of \$500 for violation(s) of KUUDPA. The penalty is based on results of a Staff investigation following damage to Atmos Energy's (Atmos) 1-1/4-inch PE natural gas service line at 1000 Rogers Road in Olathe, Kansas. There was no notice of intent to excavate provided to Atmos and Kansas One-Call had not been notified. Failure to provide notice before excavating is a violation of K.S.A. 66-1803 and 66-1804(a).

BACKGROUND:

On April 25, 2013, Taylor damaged an Atmos 1-1/4-inch PE natural gas service line at 1000 Rogers Road in Olathe, Kansas. Taylor was excavating to combine two water services. The damage resulted in blowing gas at the above address with no injuries or ignition. There was one customer without natural gas service. A brief timeline of events is attached (Attachment I). A Notice of Probable Noncompliance was issued to Taylor on May 15, 2013 (Attachment II). On June 13, 2013, Taylor responded to the Notice of Probable Noncompliance as required by K.A.R. 82-14-6(c) (Attachment III).

ANALYSIS:

Rationale for Penalties:

A. Gravity of noncompliance:

Excavating without locates and without ascertaining the location of all underground facilities is considered a high-risk activity with the potential for significant consequences to public safety. Because providing proper and timely notice of intent to excavate is the most fundamental preventative measure an excavator takes, the fact that Taylor failed to comply with this requirement of the law warrants the assessment of a civil penalty.

B. Culpability:

Taylor is directly responsible for its actions in failing to provide notice of intent to excavate as Kansas law requires.

C. History of noncompliance:

Staff has issued no other KUUDPA Notices of Probable Noncompliances to Taylor in the past two years.

D. Show of good faith effort by the excavator in resolving noncompliance(s):

Staff believes that Taylor's response to our Notice of Probable Noncompliance shows a good faith effort in resolving the KUUDPA violation. Taylor admits fault for the damage and states that he is sending payment for the invoice. Taylor's response indicates that he is confused between Staff's Notice of Probable Noncompliance and an invoice evidently received from Atmos for the damage costs. Staff did not invoice Taylor for the damage and has not received any payment from Taylor, but rather requested his response to the Notice of Probable Noncompliance. Staff concludes that there is no extenuating circumstance in this case to mitigate the recommended penalty. Therefore, Staff recommends a civil penalty be issued due to the gravity of the noncompliance.

E. Aggravating Circumstances:

Staff has not determined any circumstances that would cause us to consider increasing the recommended penalty amount above \$500.

RECOMMENDATION:

Staff recommends a civil penalty be issued to Taylor Mechanical, Inc in the amount of \$500 for violation(s) of KUUDPA:

- Failure of an excavator to properly serve notice of intent to excavate is a violation of K.S.A. 66-1804, Notice of intent of excavation.

Attachments

ATTACHMENT I

Timeline:

- 4/25/2013 At approximately 8:03 a.m., Staff received an email notification Johnson County Emergency Management System, as well as notification from an Atmos Dispatcher, indicating a damaged line at 1000 Rogers Road in Olathe, Kansas.
- Staff arrived on-site at approximately 9:30 a.m. and subsequently conducted an on-site investigation of the excavation site described above. Staff learned from conversations on-site with Atmos' Damage Investigator that Taylor had not made notification to Kansas One Call for a ticket prior to excavating. This was later confirmed through research of the Kansas One Call database that there was, in fact, no Kansas One Call ticket obtained by Taylor and they had not called in a notice since January 2, 2013, at this address.
- Upon completion of the investigation and research, Staff determined that Taylor had been excavating without their locate request being valid and had violated KUUDPA.
- 5/15/2013 Staff issued Taylor a Notice of Probable Noncompliance for violating KUUDPA as stated above (Attachment II).
- 6/13/2013 Staff received Taylor's response to the Notice of Probable Noncompliances as required K.A.R. 82-14-6(c) (Attachment III).

ATTACHMENT “B”

ATTACHMENT II

PROBABLE NONCOMPLIANCE

KCC Investigation# 6690

COMPANY: Taylor Mechanical, Inc

DIVISION:

REGULATION:

66-1804 Notice of intent of excavation.

(a) Except in the case of an emergency, an excavator shall serve notice of intent of excavation at least two full working days, but not more than 15 calendar days before the scheduled excavation start date, on each operator having underground tier 1 facilities located in the proposed area of excavation.

(b) An excavator may serve notice of intent of excavation at least two full working days, but not more than 15 calendar days before the scheduled excavation start date, on each operator of tier 2 facilities located in the proposed area of excavation.

PROBABLE NONCOMPLIANCE DESCRIPTION:

On 4/25/2013, Taylor Mechanical, Inc damaged an Atmos 1-1/4" PE gas service line with a mini excavator while excavating an existing water service to be combined both buildings at 1000 N Rogers Rd in Olathe, Kansas. There was no updated One-Call ticket found in the One-Call database. The last ticket #13000438 called in on 1/2/2013. This is a violation of the Statute K.S.A. 66-1804 Notice of intent of excavation. (a) Except in the case of an emergency, an excavator shall serve notice of intent of excavation at least two full working days, but not more than 15 calendar days before the scheduled excavation start date, on each operator having underground tier 1 facilities located in the proposed area of excavation. (b) An excavator may serve notice of intent of excavation at least two full working days, but not more than 15 calendar days before the scheduled excavation start date, on each operator of tier 2 facilities located in the proposed area of excavation.

OPERATOR'S RESPONSE: (Attach verification if needed) _____

Operator's authorized signature: _____

Date: _____

PIPELINE SAFETY USE ONLY

Date Reviewed: _____ Date Reviewed: _____
Supervisor: _____ Inspector: _____

Inspected by: Knight
Date inspected: 4/25/2013
Inspection type: No Locates- Excavator

ATTACHMENT "C"

ATTACHMENT III

Taylor Mechanical, Inc.

P.O. Box 2064 Lee's Summit, MO. 64063
INTERNET ADDRESS: taylormech@sbcglobal.net

Gordon Taylor -President
Phone: 816-743-9900
Fax: 816-743-9908

June 10, 2013

To: Leo M. Haynos

From: Taylor Mechanical, Inc.

Re: No Locates- Excavator Investigation

Taylor Mechanical, Inc. received invoice number 175668 today via email and is responding to KCC Investigation number 6860. I was informed by the job superintendent there were no gas lines in the vicinity and the need for a One-Call ticket was not necessary. However, I do take full responsibility for the excavation and am sending in a payment of \$685.42 to cover the invoice.


6/10/13
Gordon Taylor / Date

KANSAS CORPORATE COMMISSION
JUN 13 2013
UTILITIES DIVISION

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET
TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
JUDY JENKINS, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		
GORDON TAYLOR, PRESIDENT TAYLOR MECHANICAL, INC. PO BOX 2064 LEE'S SUMMIT, MO 64063		

ORDER MAILED AUG 09 2013

The Docket Room hereby certified that on this ____ day of _____, 20____, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.