



1500 SW Arrowhead Road
Topeka, KS 66604-4027

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

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

Sam Brownback, Governor

NOTICE OF PENALTY ORDER
18-DPAX-277-PEN

January 23, 2018

Judy Jenkins
Kansas Gas Service, A Division of ONE Gas, Inc.
7421 W 129th St
Overland Park, Kansas 66213

This is a notice of penalty assessment for violation(s) of the Kansas Underground Utility Damage Prevention Act (KUUDPA) discovered during an investigation conducted on various, by Kansas Corporation Commission Staff. For a full description of the violation(s) and penalty please refer to the Order that is attached to this notice.

IF YOU ACCEPT THE PENALTY:

You have been assessed a \$5,000 penalty. You have twenty (20) days from the date of service of the Penalty Order to pay the fine amount. Checks should be payable to the Kansas Corporation Commission. Payments shall be mailed to the Fiscal Section of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and shall include a reference to the docket number of this proceeding.

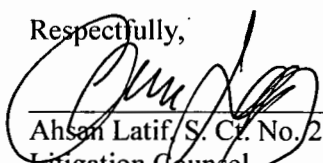
IF YOU CONTEST THE PENALTY:

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 may electronically file its request for hearing within fifteen (15) days from the date of service of this Penalty Order, and e-mail or mail a copy of the request for hearing to the Litigation Counsel listed below. If the company does not have access to the internet, it must submit an original and seven copies of the request for hearing to the Commission's Secretary at 1500 SW Arrowhead Road, Topeka, Kansas 66604, within fifteen (15) days from the date of service of this Penalty Order, and provide a copy to the Litigation Counsel listed below.

IF YOU FAIL TO ACT:

Pursuant to K.A.R. 82-14-6(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 and result in this Penalty Order becoming a Final Order where after the Commission may order further sanctions.

Respectfully,



Ahsan Latif, S. Ct. No. 24709
Litigation Counsel
(785)271-3118

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

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

In the Matter of the Investigation of **Kansas**)
Gas Service, A Division of ONE Gas, Inc. of)
Overland Park, Kansas, Regarding) Docket No. 18-DPAX-277-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,)
et seq.), 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, 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 66-1816, *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 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 several occasions Commission Staff (Staff) investigated the activities and operations of Kansas Gas Service, A Division of ONE Gas, Inc.. (Respondent). *See* Report and Recommendation of Staff dated December 20, 2017, a copy of which is attached hereto as Attachment "A" and is hereby incorporated by reference. As a result of these investigations, Staff reports the following:

- a. On July 12, 2017, Staff performed an onsite inspection at 15333 Riley Street, Overland Park, Kansas, wherein Bear Communications was excavating and hit Respondent's plastic natural gas service drop. Staff's investigation discovered locates were not accurately provided by Respondent. No injuries or additional property damage occurred. Respondent was notified by a Notice of Probable Noncompliance issued by Staff on August 14, 2017, citing the violation of K.S.A. 66-1806(a) 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.

Staff's Notice of Probable Noncompliance notified Respondent of the investigation results. The letter instructed Respondent to respond within thirty (30) days and to indicate whether it accepted or disagreed with the findings of Staff's investigation. The notice also requested Respondent to provide written explanation of the actions taken by it to prevent future KUUDPA violations. In the alternative, the Respondent could provide documentation explaining why it disagreed with the findings, including identification of any errors in the Notice of Probable Noncompliance. Respondent responded to the Notice of Probable Noncompliance. Respondent stated it agreed with the information contained in the Notice of Probable Noncompliance and as a result, also agreed with Staff's finding of fault. Staff recommends a fine of \$500 for this violation.

- b. On July 28, 2017, Staff performed an onsite inspection at SE 5th Street and Adams Street in Topeka, Kansas, wherein Rylie Equipment & Construction was excavating and hit Respondent's 2" diameter plastic natural gas main. Staff's investigation discovered locates were not provided by Respondent after being requested by the excavator. No injuries or additional property damage occurred. Respondent was notified by a Notice of Probable Noncompliance issued by Staff on August 16, 2017, citing the violation of K.S.A. 66-1806(a) 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.

Staff's Notice of Probable Noncompliance notified Respondent of the investigation results. The letter instructed Respondent to respond within thirty (30) days and to indicate whether it accepted or disagreed with the findings of Staff's investigation. The notice also requested Respondent to provide written explanation of the actions taken by it to prevent future KUUDPA violations. In the alternative, the Respondent could provide documentation explaining why it disagreed with the findings, including identification of any errors in the Notice of Probable Noncompliance. Respondent responded to the Notice of Probable Noncompliance. Respondent stated it agreed with the information contained in the Notice of Probable Noncompliance and as a result, also agreed with Staff's finding of fault. Staff recommends a fine of \$500 for this violation.

- c. On August 3, 2017, Staff performed an onsite inspection at 11169 Benson Street in Overland Park, Kansas, wherein Tight & Right Utilities, Inc. was excavating and hit Respondent's plastic natural gas service. Staff's investigation discovered locates were not accurately provided by Respondent. No injuries or additional property damage occurred. Respondent was notified by a Notice of Probable Noncompliance issued by

Staff on August 18, 2017, citing the violation of K.S.A. 66-1806(a) 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.

Staff's Notice of Probable Noncompliance notified Respondent of the investigation results. The letter instructed Respondent to respond within thirty (30) days and to indicate whether it accepted or disagreed with the findings of Staff's investigation. The notice also requested Respondent to provide written explanation of the actions taken by it to prevent future KUUDPA violations. In the alternative, the Respondent could provide documentation explaining why it disagreed with the findings, including identification of any errors in the Notice of Probable Noncompliance. Respondent responded to the Notice of Probable Noncompliance. Respondent stated it agreed with the information contained in the Notice of Probable Noncompliance and as a result, also agreed with Staff's finding of fault. Staff recommends a fine of \$500 for this violation.

- d. On August 15, 2017, Staff performed an onsite inspection at 6818 Mart Street in Overland Park, Kansas, wherein Johnson County Waste Water was excavating and hit Respondent's plastic natural gas service. Staff's investigation discovered locates were not accurately provided by

Respondent. No injuries or additional property damage occurred. Respondent was notified by a Notice of Probable Noncompliance issued by Staff on September 8, 2017, citing the violation of K.S.A. 66-1806(a) 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.

Staff's Notice of Probable Noncompliance notified Respondent of the investigation results. The letter instructed Respondent to respond within thirty (30) days and to indicate whether it accepted or disagreed with the findings of Staff's investigation. The notice also requested Respondent to provide written explanation of the actions taken by it to prevent future KUUDPA violations. In the alternative, the Respondent could provide documentation explaining why it disagreed with the findings, including identification of any errors in the Notice of Probable Noncompliance. Respondent responded to the Notice of Probable Noncompliance. Respondent stated it agreed with the information contained in the Notice of Probable Noncompliance and as a result, also agreed with Staff's finding of fault. Staff recommends a fine of \$500 for this violation.

- e. On September 5, 2017, Staff performed an onsite inspection at 12707 W 55th Street in Shawnee, Kansas, wherein Water District #1 of Johnson

County was excavating and hit Respondent's plastic natural gas service. Staff's investigation discovered locate marks were not provided by Respondent after being requested by the excavator. No injuries or additional property damage occurred. Respondent was notified by a Notice of Probable Noncompliance issued by Staff on September 14, 2017, citing the violation of K.S.A. 66-1806(a) 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.

Staff's Notice of Probable Noncompliance notified Respondent of the investigation results. The letter instructed Respondent to respond within thirty (30) days and to indicate whether it accepted or disagreed with the findings of Staff's investigation. The notice also requested Respondent to provide written explanation of the actions taken by it to prevent future KUUDPA violations. In the alternative, the Respondent could provide documentation explaining why it disagreed with the findings, including identification of any errors in the Notice of Probable Noncompliance. Respondent responded to the Notice of Probable Noncompliance. Respondent stated it agreed with the information contained in the Notice of Probable Noncompliance and as a result, also agreed with Staff's finding of fault. Staff recommends a fine of \$500 for this violation.

f. On September 5, 2017, Staff performed an onsite inspection at 8859 Inkster Street in Lenexa, Kansas, wherein Jarrett Enright was excavating and hit Respondent's 2" diameter plastic natural gas main. Staff's investigation discovered locate marks were not provided by Respondent after being requested by the excavator. No injuries or additional property damage occurred. Respondent was notified by a Notice of Probable Noncompliance issued by Staff on October 18, 2017, citing the violation of K.S.A. 66-1806(a) 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.

Staff's Notice of Probable Noncompliance notified Respondent of the investigation results. The letter instructed Respondent to respond within thirty (30) days and to indicate whether it accepted or disagreed with the findings of Staff's investigation. The notice also requested Respondent to provide written explanation of the actions taken by it to prevent future KUUDPA violations. In the alternative, the Respondent could provide documentation explaining why it disagreed with the findings, including identification of any errors in the Notice of Probable Noncompliance. Respondent responded to the Notice of Probable Noncompliance. Respondent stated it agreed with the information contained in the Notice of

Probable Noncompliance and as a result, also agreed with Staff's finding of fault. Staff recommends a fine of \$500 for this violation.

- g. On September 13, 2017, Staff performed an onsite inspection at 2002 W 72nd Street in Prairie Village, Kansas, wherein Eric Weidemann was excavating and hit Respondent's steel natural gas service. Staff's investigation discovered locates were not accurately provided by Respondent. No injuries or additional property damage occurred. Respondent was notified by a Notice of Probable Noncompliance issued by Staff on November 14, 2017, citing the violation of K.S.A. 66-1806(a) 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.

Staff's Notice of Probable Noncompliance notified Respondent of the investigation results. The letter instructed Respondent to respond within thirty (30) days and to indicate whether it accepted or disagreed with the findings of Staff's investigation. The notice also requested Respondent to provide written explanation of the actions taken by it to prevent future KUUDPA violations. In the alternative, the Respondent could provide documentation explaining why it disagreed with the findings, including identification of any errors in the Notice of Probable Noncompliance.

Respondent responded to the Notice of Probable Noncompliance. Respondent stated it agreed with the information contained in the Notice of Probable Noncompliance and as a result, also agreed with Staff's finding of fault. Staff recommends a fine of \$500 for this violation.

- h. On September 13, 2017, Staff performed an onsite inspection at 5039 Glenwood Avenue in Mission, Kansas, wherein The Peterson Company was excavating and hit Respondent's plastic natural gas service. Staff's investigation discovered locate marks were not provided by Respondent after being requested by the excavator. No injuries or additional property damage occurred. Respondent was notified by a Notice of Probable Noncompliance issued by Staff on November 14, 2017, citing the violation of K.S.A. 66-1806(a) 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.

Staff's Notice of Probable Noncompliance notified Respondent of the investigation results. The letter instructed Respondent to respond within thirty (30) days and to indicate whether it accepted or disagreed with the findings of Staff's investigation. The notice also requested Respondent to provide written explanation of the actions taken by it to prevent future KUUDPA violations. In the alternative, the Respondent could provide

documentation explaining why it disagreed with the findings, including identification of any errors in the Notice of Probable Noncompliance. Respondent responded to the Notice of Probable Noncompliance. Respondent stated it agreed with the information contained in the Notice of Probable Noncompliance and as a result, also agreed with Staff's finding of fault. Staff recommends a fine of \$500 for this violation.

- i. On November 14, 2017, Staff performed an onsite inspection at 3209 W 86th Street in Leawood, Kansas, wherein Mac's Fence Company was excavating and hit Respondent's 4" diameter plastic natural gas main. Staff's investigation discovered locate marks were not provided by Respondent after being requested by the excavator. No injuries or additional property damage occurred. Respondent was notified by a Notice of Probable Noncompliance issued by Staff on November 16, 2017, citing the violation of K.S.A. 66-1806(a) 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.

Staff's Notice of Probable Noncompliance notified Respondent of the investigation results. The letter instructed Respondent to respond within thirty (30) days and to indicate whether it accepted or disagreed with the findings of Staff's investigation. The notice also requested Respondent to

provide written explanation of the actions taken by it to prevent future KUUDPA violations. In the alternative, the Respondent could provide documentation explaining why it disagreed with the findings, including identification of any errors in the Notice of Probable Noncompliance. Respondent responded to the Notice of Probable Noncompliance. Respondent stated it agreed with the information contained in the Notice of Probable Noncompliance and as a result, also agreed with Staff's finding of fault. Staff recommends a fine of \$500 for this violation.

- j. On November 14, 2017, Staff performed an onsite inspection at 3209 W 86th Street in Leawood, Kansas, wherein K & E Flatworks was excavating and hit Respondent's plastic natural gas main and service. Staff's investigation discovered locate marks were not provided by Respondent after being requested by the excavator. No injuries or additional property damage occurred. Respondent was notified by a Notice of Probable Noncompliance issued by Staff on November 16, 2017, citing the violation of K.S.A. 66-1806(a) 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.

Staff's Notice of Probable Noncompliance notified Respondent of the investigation results. The letter instructed Respondent to respond within

thirty (30) days and to indicate whether it accepted or disagreed with the findings of Staff's investigation. The notice also requested Respondent to provide written explanation of the actions taken by it to prevent future KUUDPA violations. In the alternative, the Respondent could provide documentation explaining why it disagreed with the findings, including identification of any errors in the Notice of Probable Noncompliance. Respondent responded to the Notice of Probable Noncompliance. Respondent stated it agreed with the information contained in the Notice of Probable Noncompliance and as a result, also agreed with Staff's finding of fault. 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, cancellation of contracts.

6. Staff recommends the Commission issue a total civil penalty of \$5,000 for the above-described violations of the Kansas Underground Utility Damage Prevention Act as alleged.

III. CONCLUSIONS OF LAW

7. The Commission finds it has jurisdiction over Kansas Gas Service, A Division of ONE Gas, Inc. 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(a) for the above listed incident(s).

9. The Commission finds a civil penalty is warranted due to Respondent's violation(s) 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 \$5,000 penalty for violations of the Kansas Underground Utility Damage Prevention Act.

10. The Commission concludes Respondent shall be assessed a civil penalty, pursuant to K.S.A. 66-1812, in the amount of \$5,000 for violations of the Kansas Underground Utility Damage Prevention Act. The Commission finds and concludes Respondent shall be afforded an opportunity to request a hearing on the assessment of this civil penalty. Pursuant to K.A.R. 82-14-6(j), the Commission finds and concludes Respondent shall have 15 days from the date of service of this Penalty Order to request a hearing on the matter. Pursuant to K.A.R. 82-14-6(i), and (j), the Commission finds and concludes Respondent's failure to pay the assessed civil penalty within 20 days or request a hearing within 15 days from the date of service of this Penalty Order

shall be considered an admission of noncompliance. To ensure uniformity and consistency among Commission proceedings, the Commission finds and concludes any hearing on this matter before the Commission shall be conducted in a manner consistent with the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.*

THE COMMISSION THEREFORE ORDERS THAT:

A. Kansas Gas Service, A Division of ONE Gas, Inc., is hereby assessed a \$5,000 civil penalty for the violations of the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 *et seq.*

B. Pursuant to K.A.R. 82-14-6(j) and amendments thereto, any party 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-mail or mail a copy of the request for hearing to the Litigation Counsel listed on the Notice of Penalty Assessment. If Respondent does not have access to the internet, it must submit an original and seven copies of the request for hearing to the Secretary to the Commission at 1500 SW Arrowhead Road, Topeka, Kansas 66604, within fifteen (15) days from the date of service of this Penalty Order, and provide a copy to Litigation Counsel. 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 \$5,000 civil penalty against Respondent. Any hearing on this matter before the Commission shall be conducted in a manner consistent with the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.*

C. On January 11, 2018, this Penalty Order was mailed via certified mail, return receipt number 70161970000105744615. Service of this Order is complete upon the date delivered shown on the Domestic Return Receipt.

D. 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).

E. 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 the date of service of this Order. A check shall be made payable to the Kansas Corporation Commission. Payments shall be mailed to the Fiscal Section of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604. The payment shall include a reference to the docket number of this proceeding.

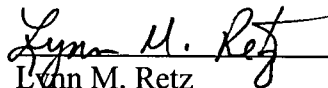
F. Unless a hearing is requested, failure to pay the \$5,000 civil penalty within twenty (20) days from the date of service of this Penalty Order will result in enforcement action against Respondent, including all sanctions, requirements, and penalties described above being enforceable without further action by the Commission.

G. 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.

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: JAN 23 2018



Lynn M. Retz
Secretary to the Commission

AAL/vj

Order Mailed Date

JAN 24 2018

ATTACHMENT "A"

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

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

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

DATE: December 20, 2017

SUBJECT: **Docket Number:** 18-DPAX-277-PEN
In the Matter of the Investigation of Kansas Gas Service, A Division of ONE Gas, 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:

Staff is recommending a civil penalty be issued to Kansas Gas Service, A Division of ONE Gas (KGS), in the amount of \$5,000 for ten violations of KUUDPA that have occurred over the past six months. The penalty is based on results of Staff investigations following ten damages to KGS natural gas service and main lines in Johnson, Shawnee and Wyandotte Counties in Kansas. Failure to provide the excavator with the location of the tolerance zone of the buried facility before excavation begins is a violation of K.S.A. 66-1806(a).

BACKGROUND:

KGS's failure to provide accurate locates resulted in damages to its natural gas facilities and lost work time for the excavators that damaged the lines. No injuries or property damage occurred as a result of these damages. The following table provides the date of the pipeline damage; the type of facility damaged; address where the damage occurred; and Staff's assertion of the cause of the damage along with Staff's recommended penalty amount for each of the damages.

Date of Damage	Type of Facility Affected	Address Damage Occurred	Root Cause	Amount of Fine
7/12/2017	Plastic Natural Gas Service	15333 Riley St, Overland Park	Inaccurate Locate	\$500
7/28/2017	2" Diameter Plastic Natural Gas Main	SE 5th St & Adams St, Topeka	Not Marked	\$500
8/3/2017	Plastic Natural Gas Service	11169 Benson St, Overland Park	Inaccurate Locate	\$500
8/15/2017	Plastic Natural Gas Service	6818 Mart St, Overland Park	Inaccurate Locate	\$500
9/5/2017	Plastic Natural Gas Service	12707 W 55th St, Shawnee	Not Marked	\$500
9/5/2017	2" Diameter Plastic Natural Gas Main	8859 Inkster St, Lenexa	Not Marked	\$500
9/13/2017	Steel Natural Gas Service	2002 W 72nd St, Prairie Village	Inaccurate Locate	\$500
9/13/2017	Plastic Natural Gas Service	5039 Glenwood Ave, Mission	Not Marked	\$500
11/14/2017	4" Diameter Plastic Natural Gas Main	3209 W 86th St, Leawood	Not Marked	\$500
11/14/2017	Plastic Natural Gas Main & Service	3209 W 86th St, Leawood	Not Marked	\$500
TOTAL				\$5,000

Notices of Probable Noncompliance (PNC) were issued to KGS on August 14, 2017; August 16, 2017; August 18, 2017; September 8, 2017; September 14, 2017; October 18, 2017; November 14, 2017; and November 16, 2017. KGS has responded to all of these PNCs as required by K.A.R. 82-14-6(c) and agrees with Staff's allegations as to the cause of the damage. KGS's response for each PNC is included in this memorandum as Attachment I.

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 to provide 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 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. In these instances, KGS has stated the buried gas service and main lines were either not located or mis-located due to operator error or inaccurate maps. Because providing 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 KGS failed to comply with this requirement of the law warrants the assessment of a civil penalty.

B. Culpability:

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

C. History of noncompliance:

Staff has issued a total of 133 KUUDPA PNCs to KGS in the past two years. These alleged violations were for similar issues regarding failure to provide timely and accurate locates.

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

KGS agreed with Staff's findings described in the PNCs. For all ten gas lines in question, KGS personnel failed to provide locates of the tolerance zone as requested by the excavator. KGS has counseled its locating personnel on how to read its maps and reminded the locator to use the tracer wire or curb etchings, if they are available, or to contact the KGS office for assistance.

E. Aggravating/Mitigating Circumstances:

In the last two years, KGS has received 133 PNCs from Staff alleging failure to provide accurate and/or timely locates upon request. Staff recognizes that some of the inaccurate locates may be due to the increased work load placed on KGS locators by the ongoing aggressive build-out of underground telecommunications infrastructure in the Johnson County area. Therefore, Staff is recommending civil penalties only be applied to the most egregious violations of KUUDPA. For the remainder, Staff is willing to accept KGS's documented remedial action as a satisfactory response to the PNCs. Given this accommodation for the abnormal work load, Staff has not determined any circumstances that would cause us to modify the recommended penalty amount of \$5,000.

RECOMMENDATION:

Staff recommends a civil penalty be issued to Kansas Gas Service, a Division of One Gas, in the amount of \$5,000 for violation(s) of K.S.A. 66-1806,

Attachments

Attachments I

CK-17-OC-1098 NOPV Response

KCC Description:

On 8/3/2017, KGS did not correctly mark their facilities at 11169 Benson St in Overland Park, Kansas. Tight & Right Utilities Inc. damaged a KGS 7/8" PE gas service line boring with a missile for the Google Fiber Project. There was a valid One-Call ticket #17352001 with a due date of 8/3/2017. Locate marks were present and marked by curb etchings. The marks were approximately 13 ft from where the damage occurred.

Operator Response:

The operator investigated the damage. USIC used curb etchings and measurements that were incorrect. This service did not have a wire attached. KGS repaired the line, fixed the etching and installed marker pins to assist with locating in the future.

CK-17-OC-1105 NOPV Response

KCC Description:

On 8/15/2017, KGS did not correctly mark their facilities nor did they fully mark the scope of the ticket at 6818 Marty St in Overland Park, Kansas. Johnson County Waste Water damaged a KGS 3/4" PE gas service line with a mini excavator while repairing a sanitary sewer main. There was a valid One-Call ticket #17373019 with a due date of 8/15/2017. Locate marks were present and indicated as being clear with no conflict.

Operator Response:

The Operator investigated the damage. USIC locator did not mark the facilities in the area of the planned excavation. The USIC locator was counseled of this damage and reminded to review maps when locating. The line was repaired and marker pins were installed to assist with locating in the future.

CK-17-UN-1186 NOPV Response

KCC Description:

On 7/12/2017, Staff conducted an audit on ticket #17296245 and found the KGS service to 15333 Riley St in Overland Park, Kansas had been mis-marked at the time the ticket was due on 6/27/2017. This service was within the scope of the ticket, had tracer wire at the meter, and toned correctly. The marks were approximately 17 ft off.

Operator Response:

The operator investigated the damage. KGS crews were able to locate the service. The USIC locator was given verbal coaching and additional training.

CK-17-OC-1113 NOPV Response

KCC Description:

On 9/5/2017, KGS did not mark their facilities nor did they fully mark the scope of the ticket at 12707 W 55th St in Shawnee, Kansas. Water District No1 of Johnson County damaged a KGS 3/4" PE gas service line with a probe bar while probing to find their water main. There was a valid One-Call ticket #17402859 with a due date of 8/31/2017. Locate marks were present; however there were no marks on this long-side service.

Operator Response:

The operator investigated the damage. USIC failed to mark the long side service and was called back out to the site. The locate technician missed the service due to a poor scan of a service location map. Kansas Gas Service installed marker pins at the location to assist with future locates.

CK-17-OC-1114 NOPV Response

KCC Description:

On 9/5/2017, KGS did not mark their facilities nor did they fully mark the scope of the ticket at 8859 Inkster St in Lenexa, Kansas. Jarrett Enright damaged a KGS 2" PE gas main line with a mini excavator while installing conduit for a secondary electric service. There was a valid One-Call ticket #17404892 with a due date of

9/1/2017. There were no locate marks present and indicated as being clear with no conflict.

Operator Response:

The operator and USIC investigated the damage. USIC failed to locate this line and placed all clear, no conflict marking on the ground. The USIC locate technician was brought back to the site and retrained on checking maps and looking for the wire and available measurements.

CK-17-OC-1117 NOPV Response

KCC Description:

On 9/13/2017, KGS did not correctly mark their facilities at 2002 W 72nd St in Prairie Village, Kansas. Eric Weidemann, a homeowner, found a KGS 1-1/4" Steel gas service line with a trencher while installing conduit for the secondary electric service. There was a valid One-Call ticket #17402671 with a due date of 9/7/2017. Locate marks were present and indicated as being in a straight line. The found service was approximately 15 ft from where the marks.

Operator Response:

The operator and USIC investigated the damage. It was discovered that the locate technician was attempting to locate a yard line downstream of our meter while their locating instrument was attached to the upstream side of the meter. The technician was retrained on how to properly locate a yard line.

CK-17-UN-1220 NOPV Response

KCC Description:

On 9/13/2017, Staff conducted an audit on ticket #17397664 and found the KGS service to 5039 Glenwood Ave in Mission, Kansas had not been marked at the time the ticket was due on 8/29/2017. This service was within the scope of the ticket, had tracer wire at the meter, and toned correctly.

Operator Response:

USIC investigated the damage and discovered that the entire scope of the locate ticket was not marked. USIC coached the technician to mark the entire ticket or obtain a signed documentation of scope change from the contractor if applicable.

CK-17-OC-1134 NOPV Response

KCC Description:

On 11/13/2017, KGS did not mark their facilities at 3209 W 86th St in Leawood, Kansas. K & E Flatwork damaged a KGS tap on a 4" PE gas main line with a skid loader while grading to install a driveway. There was a valid One-Call ticket #17521431 with a due date of 11/8/2017. There were no locate marks present and indicated as being marked.

Operator Response:

USIC and KGS investigated the damage. USIC did not locate the gas facilities. USIC's technician worked out of Wichita and was unfamiliar with the territory. The technician was taken back out to the site and coached on marking all facilities. The technician was also reminded to contact their supervisor with any issues.

CK-17-UN-1263 NOPV Response

KCC Description:

On 11/14/2017, Staff conducted an audit on ticket #17530192 and found the KGS service and main at 3209 W 86th St in Leawood, Kansas had not been marked at the time the ticket was due on 11/11/2017. These facilities are within the scope of the ticket and could be toned correctly.

Operator Response:

USIC and KGS investigated the damage. USIC did not locate the gas facilities. USIC's technician worked out of Wichita and was unfamiliar with the territory. The technician was taken back to the site and coached on marking all facilities. The technician was also reminded to contact their Supervisor with any issues.

CERTIFICATE OF SERVICE

18-DPAX-277-PEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of
JAN 23 2018
first class mail/hand delivered on _____.

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/S/ DeeAnn Shupe
DeeAnn Shupe

Order Mailed Date
JAN 24 2018