



1500 SW Arrowhead Road
Topeka, KS 66604-4027

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

Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Susan K. Duffy, Commissioner

Laura Kelly, Governor

NOTICE OF PENALTY ORDER
22-DPAX-092-PEN

August 24, 2021

Greg Clarkson
AT&T
9615 N Rockwell
Oklahoma City, Oklahoma 73162

This is a notice of penalty assessment for violation(s) of the Kansas Underground Utility Damage Prevention Act (KUUDPA) and pipeline safety regulations adopted by the Kansas Corporation Commission. For a full description of the penalty please refer to the order attached to this notice.

IF YOU ACCEPT THE PENALTY: You have been assessed a \$500 penalty. You have twenty (20) days from the date of service of the Penalty Order to pay the fine amount. Checks shall be payable to the Kansas Corporation Commission. Payments shall be mailed to the Fiscal Division of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and shall include a reference to the docket number (22-DPAX-092-PEN) of this proceeding.

IF YOU CONTEST THE PENALTY: You have the right to request a hearing. A request for hearings must be made in writing, setting forth the specific grounds upon which relief is sought. You or an authorized representative from your company, may electronically file its request for hearing within fifteen (15) days from the date of service of this Penalty Order. If your company does not have access to the internet, you may request a hearing by submitting one original and seven copies of the request for hearing to the Executive Director at 1500 SW Arrowhead Road, Topeka, Kansas 66604, within fifteen (15) days from the date of service of this Penalty Order. A copy of the request for hearing must be provided to the Litigation Counsel, listed below.

IF YOU FAIL TO ACT: Pursuant to K.A.R. 82-14-6(i) and (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. **Failing to request a hearing or pay the civil assessment may result in further penalties.**

Respectfully,

/s/ Ahsan A. Latif

Ahsan Latif, S. Ct. No. 24709
Litigation Counsel
(785)271-3118
a.latif@kcc.ks.gov

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

Before Commissioners: Andrew J. French, Chairperson
 Dwight D. Keen
 Susan K. Duffy

)	
In the Matter of the Investigation of AT&T of)	
Oklahoma City, Kansas , In the Matter of the)	
Investigation of AT&T, Regarding Violations)	Docket No. 22-DPAX-092-PEN
of the Kansas Underground Utility Damage)	
Prevention Act and the Commission's)	
Regulations Pertaining to Natural Gas Pipeline)	
Safety.)	

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. REGULATORY FRAMEWORK

1. The Commission is authorized to enforce multiple frameworks regarding underground utility damage and natural gas pipeline safety.

A. Kansas Underground Utility Damage Prevention Act

2. 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.* 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 66-1814.

3. Pursuant to K.A.R. 82-14-6, 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.

4. The Commission is authorized to impose civil penalties and injunctive actions against any person or entity subject to and found in violation of KUUDPA, or any rule and regulation, or any order of the Commission. Each violation is subject to a civil penalty, not to exceed \$25,000, for each day the violation persists, with a maximum civil penalty of \$1,000,000 for any related series of violations.¹

B. Natural Gas Pipeline Safety

5. Pursuant to K.S.A. 66-1,150, *et seq.*, the Commission is authorized to adopt rules and regulations as may be necessary to conform with the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 60101, *et seq.*), as amended. The Commission has adopted such regulations.² These rules and regulations are applicable to:

(1) All public utilities and all municipal corporations or quasi-municipal corporations transporting natural gas or rendering gas utility service; (2) all operators of master meter systems, as defined by 49 C.F.R. § 191.3; (3) all operators of privately or publicly owned pipelines providing natural gas service or transportation directly to the ultimate consumer for the purpose of manufacturing goods or generating power; and (4) providers of rural gas service under the provisions of K.S.A. 66-2101 through 66-2106, and amendments thereto.³

6. Pursuant to K.S.A. 66-1,151, the Commission is authorized to impose civil penalties for violations of gas pipeline safety rules and regulations. Each violation is subject to a

¹ See K.S.A. 66-1812, K.S.A. 66-1,151 and amendments thereto; and, K.A.R. 82-14-6.

² For reference, the Commission's adoption of Natural Gas Pipeline Safety regulations may be found at K.A.R. 82-11-1 through K.A.R. 82-11-11. The Commission's Kansas Underground Utility Damage Prevention Act regulations may be found at K.A.R. 82-14-1 through K.A.R. 82-4-16.

³ K.S.A. 66-1,150(a).

civil 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.⁴

7. Pursuant to K.A.R. 82-1-237, the Commission has the authority to investigate a party under its jurisdiction and order a hearing on its own motion when the Commission believes the party is in violation of the law or any order of the Commission. K.A.R. 82-11-6(e) provides a show cause hearing may be held by the Commission when all other reasonable measures have failed to produce operator compliance, or when non-compliance presents an imminent danger to persons or property.

II. JURISDICTION OVER RESPONDENT

8. AT&T (Respondent) operates as a public utility pursuant to Commission-issued certificates of convenience and necessity.

9. Respondent is a statutorily defined Operator who owns or leases underground Tier 1 or Tier 2 facilities, as defined in K.S.A. 66-1802(k), (q), and (r), respectively. Pursuant to K.S.A. 66-1813, which authorizes the Commission to administer and enforce KUUDPA, Respondent is subject to the Commission's jurisdiction regarding compliance with KUUDPA's obligations (e.g., K.S.A. 66-1806), and may be subject to penalties issued pursuant to K.S.A. 66-1812.

10. Pursuant to K.S.A. 66-1,150, *et seq.* and K.A.R. 82-11-1, *et seq.*, Respondent's operation as a public utility renders it subject to the Commission's natural gas pipeline safety regulations.

III. ALLEGATIONS OF NONCOMPLIANCE

⁴ K.S.A. 66-1,151.

11. Commission Staff (Staff) investigated the activities and operations of Respondent regarding providing timely locate marks.⁵ As a result of this investigation, Staff found Respondent failed to timely provide the following locates:

- a. On February 2, 2021, Staff performed an onsite inspection around E Cleveland St. and Hillside St. in Pratt, Kansas. Staff's investigation discovered locates were not provided by Respondent after being requested. Because Respondent did not provide locates, damage to a 6 pair cable at the aforementioned address occurred. No injuries or additional property damage occurred.
- b. Respondent was notified by a Notice of Probable Noncompliance issued by Staff on February 2, 2021, 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.
- c. 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

⁵ See Report and Recommendation of Staff dated July 23, 2021, a copy of which is attached hereto as Attachment "A" and is hereby incorporated by reference.

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.

- d. On March 4, 2021, 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.

IV. DISCUSSION OF ALLEGATIONS OF NONCOMPLIANCE

A. KUUDPA

12. KUUDPA requires operators (*i.e.*, public utilities) to provide excavators a “tolerance zone” of the operator’s underground facilities in the planned excavation area by marking, flagging or other acceptable method.⁶ For natural gas public utilities, the “tolerance zone” is an area not less than 24 inches of the outside dimensions in all horizontal directions of an underground facility.⁷ Within two working days, beginning after the day on which the excavator provided notice of its intent to excavate, an operator must inform an excavator of the tolerance zone.⁸ If an operator has no facilities in the area of proposed excavation, the operator must notify the excavator no facilities are present before the excavation start date.⁹

B. Recommended Penalty

13. Staff’s Report and Recommendation discussed Staff’s rationale for recommending a penalty against Respondent. While KUUDPA allows an excavator to dig

⁶ See K.S.A. 66-1806(a).

⁷ See K.S.A. 66-1802(t).

⁸ See K.S.A. 66-1806(a).

⁹ See K.S.A. 66-1806(d)(1).

without locates if the required marking time has expired, most excavators will wait rather than risk damaging underground utilities or endangering life and property. Postponing excavation because of a failure to complete locates can result in costly downtime and scheduling problems including cancellation of contracts. Failing to provide accurate or timely locate marks has the potential for significant consequences to public safety. The absence of locate marks may give an excavator a false sense of security. Believing no underground utility facilities are present, the speed and force an excavator utilizes may result in greater damage. Staff's Report and Recommendation further details Respondent's culpability, history of noncompliance, and aggravating or mitigating circumstances. Ultimately, Staff recommended the Commission issue a civil penalty of \$500 against Respondent for violating KUUDPA and the Commission's pipeline safety regulations.¹⁰

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. The Commission finds it has jurisdiction over AT&T 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 and further subject to the Commission's natural gas pipeline safety regulations. Specifically, the Commission finds Respondent to be acting as an operator who operates Tier 1 facilities as defined in K.S.A. 66-1802.

15. The Commission finds Respondent violated Kansas law governing underground utilities, including provisions of the KUUDPA and the Commission's pipeline safety regulations, 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).

¹⁰ See Staff's Report and Recommendation.

16. The Commission finds a civil penalty is warranted due to Respondent's violation of KUUDPA and the Commission's pipeline safety regulations. Specifically, the Commission finds Respondent shall be assessed a \$500 civil penalty.

17. The Commission finds and concludes Respondent shall be afforded an opportunity to request a hearing on the assessment of this civil penalty. Because the Commission is authorized to impose civil penalties and injunctive actions against any person or entity subject to and found in violation of KUUDPA, or any rule and regulation, or any order of the Commission, the Commission finds the hearing procedure adopted in the Commission's KUUDPA and procedural regulations shall control any subsequent hearings in this matter. Specifically, 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. A request for hearing must comply with the provisions of K.A.R. 82-1-232(b). Hearings shall be conducted in accordance with K.A.R. 82-1-230.

18. 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, in the alternative, request a hearing within 15 days from the date of service of this Penalty Order shall be considered an admission of noncompliance allegations contained herein.

THE COMMISSION THEREFORE ORDERS THAT:

A. AT&T, is hereby assessed a \$500 civil penalty for the violating the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801, *et. seq.* and the Commission's natural gas pipeline safety regulations adopted pursuant to K.S.A. 66-1,150, *et seq.*

B. Pursuant to K.A.R. 82-14-6(j), Respondent 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-mailing or mailing 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, Respondent 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 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 allegations contained herein and result in a waiver of Respondent's right to a hearing. A request for hearing must comply with the provisions of K.A.R. 82-1-232(b). Hearings shall be conducted in accordance with K.A.R. 82-1-230.

C. Attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record.

D. Pursuant to K.A.R. 82-14-6, if Respondent does not request a hearing, the payment of the civil penalty is due in twenty (20) days from the date of service of this Order. Checks shall be made payable to the Kansas Corporation Commission. Payments shall be mailed to the Fiscal Division of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604. The payment shall include a reference to the docket number (22-DPAX-092-PEN) of this proceeding.

E. Unless a hearing is requested, failure to pay the \$500 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.

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Duffy, Commissioner

Dated: 08/24/2021



Lynn M. Retz
Executive Director

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ATTACHMENT “A”

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chairperson Andrew J. French
Commissioner Dwight D. Keen
Commissioner Susan K. Duffy

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

DATE: July 23, 2021

SUBJECT: Docket Number: 22-DPAX-092-PEN
In the Matter of the Investigation of AT&T 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) / JW-21-OC-1011

EXECUTIVE SUMMARY:

Staff is recommending a civil penalty be issued to AT&T in the amount of \$500 for a violation of KUUDPA. The penalty is based on results of a Staff investigation following a damage to an AT&T cable drop in Pratt, Kansas, on February 2, 2020. 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). A Notice of Probable Noncompliance (PNC) was issued to AT&T on February 11, 2021. AT&T responded to the PNC within 30 days as required by K.A.R. 82-14-6 (c). A copy of the PNC and the response is included 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. These surface markings must be within 24 inches of either side of the position of the buried facility. This 48 inch corridor is defined as the "tolerance zone". Locating the buried facilities prior to the work greatly reduces the probability of causing damage to a buried facility and the potential for significant

consequences to life, property and public safety. The excavator was installing new gas service at E. Cleveland St. and Hillside St. in Pratt, Kansas, when the damage occurred. AT&T's failure to provide accurate locates resulted in a damage to its telecommunications facilities and lost work time for the excavators that damaged the lines. AT&T failed to comply with the requirements of the law and warrants the assessment of a civil penalty.

B. Culpability:

AT&T 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 21 KUUDPA PNCs to AT&T in the past two years. These violations were for similar no locating or inaccurate locating issues.

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

AT&T responded to the PNC as required by K.A.R. 82-14-6(c). AT&T agreed with Staff's allegations as to the cause of the damage. AT&T acknowledged that the excavator was incorrectly notified that the area was clear of facilities.

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 AT&T in the amount of \$500 for violation(s) of K.S.A. 66-1806(a).

Attachment

Attachment 1

1500 SW Arrowhead Road
Topeka, KS 66604-4027



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

Andrew J. French, Chairman
Dwight D. Keen, Commissioner
Susan K. Duffy, Commissioner

Laura Kelly, Governor

**Greg Clarkson
AT&T
9615 N Rockwell**

February 11, 2021

KCC Investigation #: JW-21-OC-1011

Oklahoma City, OK 73162

Subject: Pipeline Investigation

Dear Greg Clarkson:

Pursuant to K.S.A. 66-1801, et. Seq. the Kansas Corporation Commission (KCC) has jurisdiction and authority to investigate and to issue civil penalties for violations of the Kansas Underground Utility Damage Prevention Act (KUUDPA).

On February 2, 2021, the Kansas Corporation Commission's Pipeline Safety Staff conducted an investigation into excavation activities which are believed to involve your company. As a result of this investigation, Staff has identified possible violations committed by AT&T. The findings of this investigation are described on the attached form(s).

Kansas law, K.A.R. 82-14-6(c), requires the recipient of this notice to provide a written response to any Notice of Probable Noncompliance. After reviewing the findings, please respond in at least one of the following ways:

- 1) Submit written explanation, a statement of general denial, or other materials contesting the allegations;
- 2) Submit a signed acknowledgement of Commission Staff's findings of noncompliance; or,
- 3) Submit a signed proposal for the completion of any remedial action that addresses the Commission Staff's findings of noncompliance.

Pursuant to K.A.R. 82-14-6(e), failure to respond within 30 days to this Notice of Probable Noncompliance shall constitute an admission to all factual allegations made by the Commission Staff and may be used against the respondent in future proceedings.

Please return the evaluation form(s) with any supporting documentation within thirty (30) days of receipt of this report to the address or email below. Any response submitted by email must include an electronic signature and date.

Kansas Corporation Commission
Pipeline Safety Section
1500 SW Arrowhead Road
Topeka, KS 66604-4027
kccsafetyresponse@kcc.ks.gov

Please feel free to contact me directly if you have questions or concerns.

Sincerely,

Leo Haynos /s/
Chief Engineer
(785) 271-3278
l.haynos@kcc.ks.gov

PROBABLE NONCOMPLIANCE

Investigation: JW-21-OC-1011

Company: AT&T

Division:

Regulation:

66-1806 (a) Identification of location of facilities; duties of operator;

66-1806 Identification of location of facilities; duties of operator;

(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.

PROBABLE NONCOMPLIANCE DESCRIPTION:

On 02/02/2021, Northern Pipeline Construction damaged a AT&T 6 pair cable while installing new gas service in the vicinity of E Cleveland St. and Hillside St. in Pratt, Kansas. There was a valid One-Call ticket #21038781 with a due date of 01/30/2021. During the course of the investigation it was determined AT&T failed to provide locate marks for the cable line which were within the scope of the One-Call ticket.

OPERATOR'S RESPONSE: (Attach verification if needed)

Operator's Authorized Signature: _____ Date: _____

PIPELINE SAFETY USE ONLY:

Date reviewed: _____ Date reviewed: _____
Chief: _____ Inspector: _____

Inspection Type: One Call Inquiry/Complaint

Date Inspected: 02/02/2021

Inspected By: JW

March 4, 2021

Mr. Leo Haynos
Chief Engineer
KCC/ Pipeline Safety
1500 SW Arrowhead Road
Topeka, Kansas 66604-4027

Subject: KCC Investigation #: JW 21 OC 1011

Dear Mr. Haynos:

This letter constitutes AT&T's response to the Notice of Probable Noncompliance issued in the above referenced KCC Investigation on February 11, 2020.

On January 27, 2021, AT&T received locate request **21038781**, for Northern Pipeline Construction at 302 E Cleveland St, in Pratt, Kansas. The locate request had a due date of January 30, 2021. Based upon review of its cable records, AT&T incorrectly determined that it had no facilities in conflict with the dig area. AT&T closed the ticket and, on January 27, 2021, sent the contractor an email stating there were no facilities in the area, and it was clear to dig. AT&T regrets the error and the inconvenience caused by the error.

Please contact me should you have any questions.

Respectfully,

Greg Clarkson
Sr Admin Environ Health & Safety
Manager/Damage Prevention, Oklahoma-Kansas
9615 N Rockwell Ave
Oklahoma City OK, 73162

405-317-5348

Signed: ***Greg Clarkson***

CERTIFICATE OF SERVICE

22-DPAX-092-PEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of
first class mail and electronic service on 08/24/2021.

Greg Clarkson, SR. ADMIN ENVIRON HEALTH & SAFETY
MANAGER
AT&T
9615 N Rockwell
Oklahoma City, OK 73162

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
a.latif@kcc.ks.gov

/S/ DeeAnn Shupe
DeeAnn Shupe