

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

VIA CERTIFIED MAIL

**NOTICE OF PENALTY ORDER**

15-DPAX-180-PEN

November 4, 2014

Matthew J. Bowen, Jr.  
Superior Bowen Asphalt Company, L.L.C.  
PO Box 9669  
Kansas City MO 64134

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 16, 2014, 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 785-271-3113.


**IF YOU CONTEST THE PENALTY:**

You have the right to request a hearing. Requests for hearings must be made in writing, setting forth the specific grounds upon which relief is sought. The company must submit an original and seven copies of the request for hearing to the Commission's 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 or 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,

  
Robert A. Fox, #10260  
Chief Litigation Counsel  
(785)271-3118

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

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

In the Matter of the Investigation of **Superior**           )  
**Bowen Asphalt Company, L.L.C., of Kansas**           )  
**City, Missouri,** Regarding Violation(s) of the           )  
Kansas Underground Utility Damage           )  
Prevention Act (KUUDPA) (K.S.A. 66-1801,           )  
*et seq.*, and K.A.R. 82-14-1 through 82-14-5),           )  
and the Commission's Authority to Impose           )  
Penalties and/or Sanctions (K.S.A. 66-1,151).           )

Docket No. 15-DPAX-180-PEN

**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. 2013 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 16, 2014 Commission Staff (Staff) investigated the activity and operations of Superior Bowen Asphalt Company, L.L.C. (Respondent). See Report and Recommendation of Staff dated October 24, 2014, a copy attached hereto as Attachment "A". As a result of this investigation, Staff reports the following:

- a. On April 16, 2014, an Atmos dispatcher notified Staff that Respondent was conducting excavation activities at 7732 State Avenue in Kansas City, Kansas while preparing site for asphalt with a front loader, the excavator caused damage to an underground Atmos Energy 1-1/4 inch PE natural gas line, resulting in six (6) outages of service at the above address feeding a small strip mall facility and no injuries.
- b. Upon notification of the damage, Staff arrived on-site at 7732 State Avenue, and began an investigation. Staff learned from crew on-site that Respondent had not called Kansas One Call to inform them of the intent to dig and to obtain a locate ticket.
- c. On May 15, 2014, Staff mailed a Notice of Probable Noncompliance notifying Respondent of the investigation results. The letter instructed

Respondent to respond within thirty (30) days and to indicate whether Respondent accepted or disagreed with the findings of Staff's investigation. The notice also requested Respondent to provide written explanation of the actions taken by Respondent to prevent future KUUDPA violations. In the alternative, the Respondent could provide documentation explaining why Respondent disagreed with the findings to include identification of any errors in the Notice of Probable Noncompliance. The violation cited 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. 2013 Supp. 66-1804.

d. As of October 27, 2014, Staff has not received a written response from Respondent in violation of K.A.R. 82-14-6.

5. Based upon the available facts, Staff recommends the Commission find that at the time of the damage alleged herein, Respondent was an excavator conducting excavation activities as defined in K.S.A. 2013 Supp. 66-1802(c) and (d).

6. Staff also recommends the Commission issue a civil penalty of \$500 for the violation of the Kansas Underground Utility Damage Prevention Act as alleged.

### III. CONCLUSIONS OF LAW

7. The Commission finds it has jurisdiction over Superior Bowen Asphalt Company, L.L.C. (Respondent) because it is an excavator as defined in K.S.A. 2013 Supp. 66-1802.

8. The Commission 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.

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

#### THE COMMISSION THEREFORE ORDERS THAT:

A. Superior Bowen Asphalt Company, L.L.C., of Kansas City, MO 64134, 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. 2013 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.

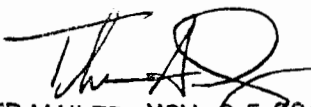
E. Failure to pay the \$500 civil penalty within twenty (20) days of the issuance of this Penalty Order will result in enforcement action against Respondent, including all sanctions, requirements, and penalties described above being enforceable without further action by the Commission.

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.**

Albrecht, Chair; Emler, Com.; Apple Com.

Dated: NOV 04 2014

  
ORDER MAILED NOV 05 2014  
Thomas A. Day  
Acting Executive Director

RAF

## **ATTACHMENT “A”**

**REPORT AND RECOMMENDATION  
UTILITIES DIVISION**

**TO:** Chair Shari Feist Albrecht  
Commissioner Jay Scott Emler  
Commissioner Pat Apple

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

**DATE:** October 24, 2014

**SUBJECT: Docket Number:** 15-DPAX-180-PEN  
In the Matter of the Investigation of Superior Bowen Sitework Division of Kansas City, Missouri, 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 Superior Bowen Sitework Division (Superior Bowen) in the amount of \$500 for violation(s) of KUUDPA. The penalty is based on results of a Staff investigation following damage to an Atmos Energy (Atmos) natural gas service line in Kansas City, Kansas. There was no current notice of intent to excavate provided to Atmos and Kansas One-Call had not been notified by this excavator. Failure to provide notice before excavating is a violation of K.S.A. 66-1803 and 66-1804(a).

**BACKGROUND:**

On April 16, 2014, Superior Bowen damaged an Atmos 1-1/4-inch PE natural gas service line at 7732 State Avenue in Kansas City, Kansas, while preparing site for asphalt with a front loader. The damage resulted in six outages of service at the above address feeding a small strip mall facility and no injuries. A brief timeline of events is attached (Attachment I). A Notice of Probable Noncompliance was issued to Superior Bowen on May 15, 2014 (Attachment II). To date, Superior Bowen has not responded to the Notice of Probable Noncompliance as required by K.A.R. 82-14-6(c).



## **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 and waiting the required amount of time to excavate of two full working days after notification is made, is the most fundamental preventative measure an excavator takes, the fact that Superior Bowen failed to comply with this requirement of the law warrants the assessment of a civil penalty.

#### **B. Culpability:**

Superior Bowen is directly responsible for its actions in failing to wait the required amount of time prior to excavating as Kansas law requires.

#### **C. History of noncompliance:**

Staff has issued no other KUUDPA Notices of Probable Noncompliance to Superior Bowen in the past two years.

#### **D. Response of excavator regarding noncompliance(s):**

Staff believes that Superior Bowen's lack of response to the Notice Of Probable Noncompliance does not show a good faith effort by Superior Bowen in resolving KUUDPA violation(s).

#### **E. Aggravating/Mitigating Circumstances:**

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

## **RECOMMENDATION:**

Staff recommends a civil penalty be issued to Superior Bowen Sitework Division 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:**

- 4/16/2014                      At approximately 9:58 a.m., Staff received an email notification from Atmos dispatcher, indicating a damaged line at 7732 State Avenue in Kansas City, Kansas.
- Staff arrived on-site at approximately 10:40 a.m. and subsequently conducted an on-site investigation of the excavation site described above. Staff learned from conversations on-site with Superior Bowen that notification was not made to Kansas One Call for a ticket prior to excavating. This was later confirmed through research of the Kansas One Call database that there, in fact, was no Kansas One Call ticket obtained by Superior Bowen at this address prior to.
- Upon completion of the investigation and research, Staff determined that Superior Bowen had been excavating without a valid locate request and had violated KUUDPA.
- 5/15/2014                      Staff issued Superior Bowen a Notice of Probable Noncompliance for violating KUUDPA as stated above.
- 10/21/2014                      Staff has not received Superior Bowen's response to the Notice of Probable Noncompliance as required by K.A.R. 82-14-6(c).

## ATTACHMENT II

### **PROBABLE NONCOMPLIANCE**

KCC Investigation#:6898

COMPANY: **Superior Bowen Sitework Division** 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.

(e) The notice of intent of excavation shall contain the name, address and telephone number of the person filing the notice of intent, the name of the excavator, the date the excavation activity is to commence and the type of excavation being planned. The notice shall also contain the specific location of the excavation.

#### PROBABLE NONCOMPLIANCE DESCRIPTION:

On 4/16/2014, Superior Bowen Sitework Division damaged an Atmos 1-1/4" PE gas service line with front loader type equipment while preparing site for asphalt at 7732 State Ave in Kansas City, Kansas. There was no current One-Call ticket found in the One-Call database prior to the damage for this excavator. 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. (e) The notice of intent of excavation shall contain the name, address and telephone number of the person filing the notice of intent, the name of the excavator, the date the excavation activity is to commence and the type of excavation being planned. The notice shall also contain the specific location of the 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: 4/16/2014  
Inspection type: No Locates- Excavator

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

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
ROBERT A. FOX, CHIEF LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		
MATTHEW J. BOWEN, JR., PRESIDENT SUPERIOR BOWEN ASPHALT COMPANY, L.L.C. 11030 HICKMAN MILLS DR PO BOX 9669 KANSAS CITY, MO 64134		

ORDER MAILED NOV 05 2014

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.