

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

APR 16 2012

by
State Corporation Commission
of Kansas

In the Matter of the Investigation of **Bob**)
Bergkamp Construction Co., Inc. of)
Wichita, Kansas, Regarding the Violation of)
the Kansas Underground Utility Damage)
Prevention Act and the Commission's)
Authority to Impose Penalties and Injunctive)
Relief.)

Docket No. 12-DPAX-730-SHO

STAFF'S MOTION TO SHOW CAUSE

The Staff of the State Corporation Commission of the State of Kansas (Staff) presents the above-captioned matter to the Commission seeking to initiate a show cause proceeding against Bob Bergkamp Construction Co., Inc. (Respondent), for the purpose of obtaining a Commission order assessing civil penalties against Respondent for a violation of the Kansas Underground Utility Damage Prevention Act (KUUDPA). In support of its Motion, Staff states as follows:

1. Respondent is a Kansas-based excavation business operating as a corporation out of Wichita, Kansas.
2. On or about January 31, 2012, Respondent struck a Kansas Gas Service (KGS) high-pressure 8 inch steel pipeline with large dirt-moving equipment in Riley County, near Manhattan, Kansas, specifically north of the intersection of K-18 Highway and Country Road 418 (Stagg Hill Road).
3. During the excavating activities conducted by Respondent on January 31, 2012, Respondent's equipment made contact with an 8 inch steel pipeline operated by KGS Manhattan, resulting in the release of 4,504 MCF of natural gas into the atmosphere before repair. The total cost of repairs by KGS was \$29,000.
4. After reviewing the records of Kansas One Call, Respondent had a valid Kansas One-Call ticket at the time of the damage. The pipeline was properly marked by KGS, but the

equipment operator failed to exercise reasonable care while digging near the pipeline in that he only allowed 19” of cover from the marking (tolerance zone), rather than 24” of cover, violating K.S.A. 66-1809.

5. Based on Staff’s Report and Recommendation, Respondent is a professional excavator in the industry for over fifty years. With this experience, Respondent is very familiar with the requirements of KUUDPA and deals with Kansas One-Call on a daily basis. Likewise, Respondent is aware of the dangers and consequences of hitting underground utilities. A true and correct copy of Staff’s March 23, 2012, Report and Recommendation is attached hereto as “Attachment A”.

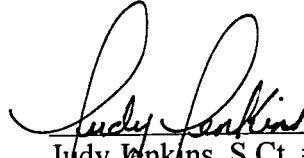
6. Therefore, Staff respectfully requests the Commission to order Bob Bergkamp Construction Co., Inc. to appear before the Commission to Show Cause as to why this Commission should not assess a civil penalty against its company in the amount of \$5,000, as recommended by Staff in its Report and Recommendation.

7. Staff requests this Commission to set the Show Cause proceedings commencing on June 14, 2012, at 9 a.m. in the First Floor Hearing Room at the Commission offices located at 1500 SW Arrowhead, Topeka, Kansas 66604.

8. Staff further requests the Commission to permit Respondent the opportunity to resolve this matter prior to hearing, by authorizing Commission Staff the ability to enter into a Stipulated Settlement Agreement, subject to Commission approval, in which Respondent would stipulate to the violations as alleged and agree to pay the civil assessment in the amount of \$5,000, for the violation of the KUUDPA, on or before the close of business on May 25, 2012.

WHEREFORE, for the reasons set forth above, Staff respectfully requests that the Commission grant this Motion to Show Cause against Bob Bergkamp Construction Co., Inc. for the purpose of the enforcement of the Kansas Underground Utility Damage Prevention Act.

Respectfully submitted,



Judy Jenkins, S.Ct. #23300
Litigation Counsel
Kansas Corporation Commission
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Topeka, Kansas 66604
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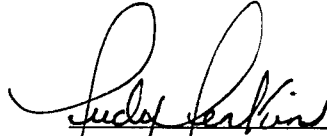
For Commission Staff

VERIFICATION

Docket No. 12-DPAX-730-SHO

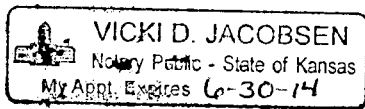
STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

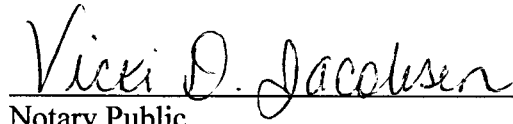
Judy Jenkins, of lawful age, being duly sworn upon her oath deposes and states that she is Litigation Counsel for the State Corporation Commission of the State of Kansas; that she has read and is familiar with the foregoing *Staff's Motion to Show Cause* and attests that the statements therein are true and correct to the best of her knowledge, information and belief.



Judy Jenkins, S.Ct. #23300
Litigation Counsel
The State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 16th day of April, 2012.





Notary Public

My Appointment Expires: 6-30-14

ATTACHMENT "A"

1500 SW Arrowhead Road
Topeka, KS 66604-4027



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Mark Sievers, Chairman
Ward Loyd, Commissioner
Thomas E. Wright, Commissioner

Sam Brownback, Governor

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chairman Mark Sievers
Commissioner Ward Loyd
Commissioner Thomas E. Wright

STATE CORPORATION
COMMISSION

MAR 26 2012

FROM: Daniel Ostahowski *D.O.*
Leo Haynos

PATRICE PETERSEN-KLEIN
EXECUTIVE DIRECTOR

DATE: March 23, 2012

DATE SUBMITTED TO EXECUTIVE DIRECTOR: 3/26/12

DATE SUBMITTED TO LEGAL: 3/27/12

DATE SUBMITTED TO COMMISSIONERS: _____

SUBJECT: Recommendation to require Bob Bergkamp Construction Co, Inc to Show Cause why it should not be penalized for violation of the Kansas Underground Utility Damage Prevention Act

EXECUTIVE SUMMARY

On January 31, 2012, Bob Bergkamp Construction Co, Inc (Bob Bergkamp Construction) struck a Kansas Gas Service (KGS) high-pressure 8" steel pipeline with large dirt-moving equipment in Riley County near Manhattan, KS. No injuries or fatalities resulted, and ignition of the gas did not occur, but it is estimated that 4,504 MCF of natural gas was released. Total costs incurred by KGS were over \$29,000. After reviewing the records of Kansas One Call, Inc., Bob Bergkamp Construction had a valid Kansas One-Call ticket at the time of the damage. The pipeline was properly marked by Kansas Gas Service at the time of the damage but the equipment operator failed to exercise reasonable care while near the pipeline. Staff concludes this is a violation of K.S.A. 66-1809. Therefore, Staff is recommending the Commission initiate a Docket to require Bob Bergkamp Construction to show cause why their Company should not be fined for failure to comply with the Kansas Underground Utility Damage Prevention Act (KUUDPA). Because of the severity of the consequences of this damage and the fact that no attempt was made to avoid hitting a clearly marked facility, Staff recommends the Commission impose a civil penalty in the amount of \$5,000, as allowed by K.S.A. 66-1812.

BACKGROUND

Bob Bergkamp Construction was hired by Kansas Department of Transportation (KDOT) as a contractor for K-18 highway construction west of Manhattan. The scope of their project is very large; from Miller Parkway in Manhattan all the way to Ogden. The specific site of this incident is north of the intersection of K-18 Highway and Country road 418 (Stagg Hill Road).

The damaged pipeline was operated by the KGS Manhattan division and was 8" steel operating at 150 psig. It is a part of the main feed into Manhattan from the west, but gas is able to feed both ways along the line since the system is set up in a loop configuration. The pipeline is constructed of 40' pipe sections coupled together using Dresser-type mechanical couplings.

The machine that did the damage is a paddle scraper, a large piece of equipment that uses paddles to collect dirt and move it elsewhere. There were actually two of these paddle scrapers coupled together and the rearward machine hit the pipeline. The pipe was struck and held by the paddle scraper, pulling apart at the couplings on each end of a pipe section and dragged 100 yards caught in the scraper to where the machines stopped.

Since gas could feed both ways in KGS's system configuration, 150psig gas was blowing out of both ends of the open pipe. Emergency responders were quick on the scene and briefly shut down traffic on K-18 highway and diverted flights to Manhattan Regional Airport to prevent the public from passing through the gas plume. To stop the flow of gas, KGS closed emergency valves at regulator stations on either side of the damage site. Following the damage, one hour and twenty three minutes passed before the gas was shut off, resulting in 4,504 MCF of natural gas escaping to atmosphere. This is such a large volume of gas that this event meets the definition of a natural gas incident by pipeline safety regulation 49 CFR § 191.3 since more than 3,000 MCF of gas was released unintentionally. Four customers (three commercial and one residential) were without service for four hours while repairs to the pipeline were being made. Emergency response costs for KGS total \$1,232, property damage and repair costs total \$4,868 and the gas lost was valued at \$22,900; for a total loss to KGS of \$29,000.

Staff conducted a search of the Kansas One-Call database and found many tickets for Bob Bergkamp Construction along K-18. They had broken their project down into many smaller parts to help with the locating process. The ticket valid at the time of damage was #12015557. However, Bob Bergkamp Construction had called in for this ticket to be updated on 1/30/2012, and KGS' contract locator marked the pipeline for the updated ticket on 1/30/2012. When the damage occurred, the marks near the scene were only one day old. Staff's investigation confirmed that the marks were indeed visible near the area of damage but there were no marks over the pipeline since the scrapers had just removed that dirt en route to the damage.

After investigation, Staff issued a notice of probable non-compliance (KCC Investigation #6333) to Bob Bergkamp Construction for failing to use reasonable care while excavating. Staff received a reply on 2/10/2012 admitting fault in the event and detailing the retraining held with their employees. Their response explained that there was miscommunication between the scraper operators and the foreman over where the scrapers should be working. There was only 19" of cover remaining over the pipeline where it was damaged, as their previous excavation had

removed some cover already and the line was not checked for depth before the machines passed over.

ANALYSIS

An investigation by Staff indicates that Bob Bergkamp Construction did not exercise reasonable care while working near KGS' pipeline. The KUUDPA defines a tolerance zone of 24" on each side of a marked utility. Inside this tolerance zone, reasonable care must be taken to avoid contact with the facility. Working with large dirt-moving equipment like Bob Bergkamp Construction does, there is little opportunity to hand-dig, so probing is usually done prior to excavating to verify depth of cover over a facility. No probing was done at this location prior to excavation. Therefore Staff concludes that Bob Bergkamp Construction is in violation of K.S.A. 66-1809 listed below:

K.S.A. 66-1809: Excavator's duty to exercise reasonable care.

(a) Upon receiving information as provided in K.S.A. 2001 Supp. 68-1806, and amendments thereto, an excavator shall exercise such reasonable care as may be necessary for the protection of any underground facility in and near the construction area when working in close proximity to any such underground facility.

In recommending this penalty, Staff considered the following items in reaching the conclusion that a penalty of \$5,000 is appropriate.

Gravity of noncompliance:

Bob Bergkamp Construction is an excavator subject to Commission jurisdiction under KUUDPA. As a direct result of Bob Bergkamp Construction's failure to exercise reasonable care while excavating, a large amount of natural gas was released to the atmosphere, natural gas service was lost to customers, highway and airport transportation was disrupted and KGS incurred a cost of over \$29,000. As a professional excavator, Bob Bergkamp Construction is very familiar with the requirements of KUUDPA and deals with Kansas One-Call on a daily basis. Being in the industry for over fifty years, they are also very aware of the dangers and consequences of hitting underground utilities, especially pipelines. Based on the severity of this pipeline damage, the disruptions it caused, and the experience the excavator has with the KUUDPA, Staff believes this violation warrants a \$5,000 civil penalty allowed by statute.

Culpability:

As a professional excavator, Bob Bergkamp Construction is directly responsible for obeying and adhering to the requirements of KUUDPA.

History of violations and noncompliance:

Staff has no knowledge of any other instances of Bob Bergkamp Construction failing to comply with KUUDPA.

RECOMMENDATION

Staff is recommending the Commission initiate a docket to require Bob Bergkamp Construction to show cause why their company should not be fined for failure to comply with the Kansas Underground Utility Damage Prevention Act (KUUDPA). Because of the severity of the consequences of this damage, Staff recommends the Commission impose a civil penalty in the amount of \$5,000, as allowed by K.S.A. 66-1812.

cc: Patrice Petersen-Klein, Executive Director
Jeff McClanahan, Acting Director of Utilities
Teresa McLinn
Brenda Schirmer

EXHIBIT 1 – PHOTOGRAPHS OF INCIDENT SCENE

Exhibit 1-1: Section of pipe damaged by Bob Bergkamp Construction. This whole piece was removed from the pipeline by the paddle scraper machine.



Exhibit 1-2: Damage scene after pipeline repair. K-18 is behind the tree line.



Exhibit 1-3: Paddle scraper machine that damaged pipeline.



CERTIFICATE OF SERVICE

12-DPAX-730-SHO

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Staff's Motion to Show Cause was placed in the United States mail, postage prepaid, or hand-delivered this _____ day of April, 2012, to the following:

Jim Snook, CHIEF EXECUTIVE OFFICER
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Vicki Jacobsen