

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

Before Commissioners: Mark Sievers, Chairman
 Ward Loyd
 Thomas E. Wright

In the Matter of the Investigation of **Miller Paving & Construction, LLC** of Kansas City, Kansas,)
Regarding the Violation of the Kansas Underground Utility Damage Prevention Act, and the Commission's Authority to Impose Penalties and/or Sanctions.) Docket No. 12-DPAX-390-PEN

ORDER APPROVING STIPULATED SETTLEMENT AGREEMENT

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration. Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

I. BACKGROUND

1. On or about May 18, 2011, (Staff) received notice of a damaged underground utility facility and immediately followed up with an investigation.
2. On May 18, 2011, the Johnson County Emergency Management informed Staff via email, that Respondent was conducting excavation activities with a concrete saw, at or near 5707 W. 98th Street in Overland Park, Kansas, causing damage to an underground KGS 7/8" natural gas service line.
3. Staff's investigation revealed that Respondent was performing said excavation activities prior to contacting Kansas One Call and obtaining a locate ticket.
4. Staff also learned that the Respondent did not personally contact emergency personnel of the municipality in which the broken line is located and provide information regarding the damaged gas line.

5. On or about February 10, 2012, the Commission granted a Penalty Order against Respondent addressing the alleged violations of the KUUDPA.

6. On or about March 15, 2012, Staff Counsel, Judy Jenkins and Respondent's Legal Counsel, Cline I. Boone informally discussed the possibility of a settlement. During the informal discussions, Staff and Respondent were able to reach mutually agreeable terms in anticipated settlement of the issues. As a result of the informal discussions, Staff and Respondent were able to reach mutually agreeable terms in anticipated settlement of the issues.

7. The parties signed a Stipulated Settlement Agreement and submitted a Joint Motion for its approval to the Commission on April 20, 2012. In the Stipulated Settlement Agreement, Respondent stipulates to the violations as set out in the Commission's Penalty Order issued on February 10, 2012.

8. Pursuant to the Agreement, Respondent further agrees "to contact the Kansas One Call notification center prior to conducting any excavation activities to include (but not limited to) moving or displacing earth, rock or other material with the aid of a concrete saw or like tool as provided in K.S.A. 66-1802 and 66-1803."¹

9. Likewise, Staff has agreed to recommend the Commission waive the \$500 civil penalty assessed in the February 10, 2012 Penalty Order.²

10. Finally, the parties have agreed that the Stipulation and Agreement constitutes a reasonable and fair resolution of the outstanding issues raised in this proceeding.³

¹ Joint Motion for Approval of Stipulated Settlement Agreement, Attachment "A", page 3, ¶ 15, Docket No. 12-DPAX-390-PEN, April 20, 2012.

² Id, at ¶ 16.

³ Id. at ¶ 13.

II. FINDINGS AND CONCLUSIONS

11. The Commission concludes that settlements are favored by the law. *Bright v. LSI Corp.*, 254 Kan. 853, 869 P.2d 686 (1994). A settlement of issues, all or part, with or without unanimous agreement, will be entertained by the Commission.

12. The Commission further concludes that pursuant to the Kansas Underground Utility Damage Prevention Act⁴, the Commission is given full power, authority to adopt all necessary rules and regulations for the carrying out the provisions of and the enforcement of the act.⁵ Any person, who violates any of the provisions contained in the act, shall be subject to civil penalties and injunctive relief as set out in K.S.A. 66-1,151, and amendments thereto, and any remedies established in rules and regulations promulgated by the Commission.⁶ Further, the Commission has the authority to investigate a party in accordance with K.A.R. 82-1-237.

13. The Commission has reviewed the Stipulated Settlement Agreement attached to the Joint Motion for Approval of Stipulated Settlement Agreement of the parties and concludes that the terms and provisions therein are an appropriate and reasonable disposition of this matter. The Commission therefore adopts and incorporates by reference the terms of the Agreement.

THE COMMISSION THEREFORE ORDERS THAT:

A. The Joint Motion to Approve the Stipulated Settlement Agreement entered into by Miller Paving & Construction, LLC and Staff is hereby granted. The terms of the Stipulated Settlement Agreement are approved and are hereby incorporated by reference.

B. The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was received in which to petition the Commission for

⁴ K.S.A. 2011 Supp. 66-1801, and amendments thereto.

⁵ K.S.A. 2011 Supp. 66-1815 and 66-1813.

⁶ K.S.A. 66-1812.


reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 2011 Supp. 77-529(a)(1).

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chmn.; Loyd, Com.; Wright, Com.

Dated: MAY 01 2012


ORDER MAILED MAY 01 2012
Patrice Petersen-Klein
Executive Director

JYJ

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

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
CLINE I. BOONE CLINE I. BOONE ATTORNEY AT LAW PO BOX 860743 SHAWNEE, KS 66286-0743		
JUDY JENKINS, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604-4027 ***Hand Delivered***		

ORDER MAILED MAY 01 2012

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.