

1500 SW Arrowhead Road  
Topeka, KS 66604-4027



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

Mark Sievers, Chairman  
Thomas E. Wright, Commissioner  
Shari Feist Albrecht, Commissioner

Sam Brownback, Governor

VIA CERTIFIED MAIL

**NOTICE OF PENALTY ORDER**  
14-DPAX-075-PEN

August 8, 2013

James Murphy  
Phoenix Renovation and Restoration, Inc.  
16250 Foster St  
Overland Park KS 66085

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 19, 2013, 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 785-271-3351.

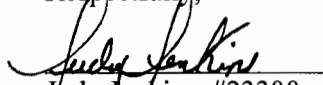
**IF YOU CONTEST THE PENALTY:**

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 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,

  
Judy Jenkins, #23300  
Litigation Counsel  
(785)271-3110

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

Before Commissioners: Mark Sievers, Chairman  
Thomas E. Wright, Commissioner  
Shari Feist Albrecht, Commissioner

In the Matter of the Investigation of **Phoenix** )  
**Renovation and Restoration, Inc., of** )  
**Overland Park, Kansas,** Regarding the ) Docket No. 14-DPAX-075-PEN  
Violation of the Kansas Underground Utility )  
Damage Prevention Act, and the )  
Commission's Authority to Impose Penalties )  
and/or Sanctions. )

**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. 2012 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 19, 2013 Commission Staff (Staff) investigated the activity and operations of Phoenix Renovation and Restoration, Inc. (Respondent). See Report and Recommendation of Staff dated July 24, 2013, a copy attached hereto as Attachment "A". As a result of this investigation, Staff reports the following:

- a. On April 19, 2013, Kansas Gas Service (KGS) notified Staff that Respondent conducted excavating activities at 8620 Cleveland Avenue in Kansas City, Kansas causing to damage to an underground Kansas Gas Service (KGS) 2-inch PE natural gas service line and resulting in blowing gas.
- b. Staff arrived on-site at 8620 Cleveland Avenue, and immediately began an investigation. Staff learned from KGS crew on-site that Respondent had not called Kansas One Call to inform of the intent to dig and obtain a locate ticket.
- c. On May 15, 2013, Staff mailed a Notice of Probable Noncompliance notifying Respondent of the investigation results. The letter instructed Respondent to respond, in writing, within thirty (30) days of receipt and to

indicate if the Respondent accepted the findings of the investigation and to provide to Staff details of any actions taken by Respondent to prevent future violations. In the alternative, the Respondent could provide documentation explaining why Respondent disagreed with Staff's findings and include the identification of any errors in the Notice of Probable Noncompliance. The violation cited in the Notice of Probable Non-Compliance 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 2012 Supp. 66-1804.

- d. On June 17, 2013, Staff received a written response from Respondent to the Notice of Probable Noncompliance. In its response, Respondent agreed with information contained in the Notice of Non-compliance and Staff's finding of fault.

5. Based upon the available facts, Staff recommends a civil penalty of \$500 for the violation of the Kansas Underground Utility Damage Prevention Act.

### III. CONCLUSIONS OF LAW

6. Based on the foregoing, the Commission finds it has jurisdiction over Phoenix Renovation and Restoration, Inc. (Respondent) because it is an excavator as defined in K.S.A. 2012 Supp. 66-1802.

7. The Commission also 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.

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

#### **THE COMMISSION THEREFORE ORDERS THAT:**

A. Phoenix Renovation and Restoration, Inc., of Overland Park, KS 66085, 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. 2012 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.**

Sievers, Chmn.; Wright, Com.; Albrecht, Com.

Dated: AUG 08 2013

  
ORDER MAILED AUG 09 2013

Kim Christiansen  
Executive Director

JJ

## **ATTACHMENT “A”**

1500 SW Arrowhead Road  
Topeka, KS 66604-4027



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Mark Sievers, Chairman  
Thomas E. Wright, Commissioner  
Shari Feist Albrecht, Commissioner

Sam Brownback, Governor

## REPORT AND RECOMMENDATION UTILITIES DIVISION

**TO:** Chairman Mark Sievers  
Commissioner Thomas E. Wright  
Commissioner Shari Feist Albrecht

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

**DATE:** July 24, 2013

**DATE SUBMITTED TO LEGAL:** JUL 24 2013

**DATE SUBMITTED TO COMMISSIONERS:** \_\_\_\_\_

**SUBJECT:** Docket Number: 14-DPA-X-075-PEN  
In the Matter of the Investigation of Phoenix Renovation and Restoration, Inc. of Overland Park, Kansas 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 Phoenix Renovation and Restoration, Inc (Phoenix) in the amount of \$500 for violation(s) of KUUDPA. The penalty is based on results of a Staff investigation following damage to a Kansas Gas Service (KGS) 2-inch PE natural gas main line at 8620 Cleveland Avenue in Kansas City, Kansas. There was no notice of intent to excavate provided to KGS and Kansas One-Call had not been notified. Failure to provide notice before excavating is a violation of K.S.A. 66-1803 and 66-1804(a). In addition, the excavator's failure to immediately inform emergency personnel of the municipality when the broken line resulted in dangerous gas escaping is a violation of K.S.A. 66-1810.

### BACKGROUND:

On April 19, 2013, Phoenix damaged a KGS 2-inch PE natural gas main line at 8620 Cleveland Avenue in Kansas City, Kansas. Phoenix was excavating for a driveway replacement. The damage resulted in blowing gas at the above address with no injuries or ignition. There were no customers without natural gas service. A brief timeline of events is attached (Attachment I). A Notice of Probable Noncompliance was issued to Phoenix on May 15, 2013 (Attachment II). On



June 17, 2013, Phoenix responded to the Notice of Probable Noncompliance as required by K.A.R. 82-14-6(c) (Attachment III).

## **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 to excavate is the most fundamental preventative measure an excavator takes, the fact that Phoenix failed to comply with this requirement of the law warrants the assessment of a civil penalty.

After rupturing the gas main, Phoenix immediately notified KGS and took action to evacuate the area adjacent to the leak, but Phoenix did not immediately notify emergency personnel as required by K.S.A. 66-1810. Staff considers failure to notify 9-1-1 to be a serious infraction of KUUDPA but is not recommending a penalty for this violation based on the response of Phoenix described below.

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

Phoenix is directly responsible for its actions in failing to provide notice of intent to excavate as Kansas law requires.

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

Staff has issued no other KUUDPA Notices of Probable Noncompliances to Phoenix in the past two years.

#### **D. Show of good faith effort by the excavator in resolving noncompliance(s):**

Staff believes that Phoenix's response to our Notice of Probable Noncompliance shows a good faith effort in resolving the KUUDPA violation. However, Phoenix's response does not address the fact that notice of intent to excavate was not provided. Staff concludes that there is no extenuating circumstance in this case to mitigate the recommended penalty for failure to provide notice of intent to excavate. Therefore, Staff recommends a civil penalty be issued due to the gravity of the noncompliance.

#### **E. Mitigating Circumstances:**

Following the damage, Phoenix failed to call emergency personnel as required by K.S.A. 66-1810. K.S.A. 66-1810 describes three actions that an excavator must perform when a gas line is damaged: immediately inform emergency personnel, immediately inform the facility operator, and then "take any other action as may be reasonably necessary to protect persons and property and to minimize hazards until arrival of the operator's personnel or emergency first responders." Phoenix's response states that "immediately Kansas Gas Service was notified on their emergency number and dispatched to the scene. Phoenix personnel on site were notifying the homeowner and helping the homeowner evacuate the area and notifying other residences within proximity of the rupture." The response further details that Phoenix asked the KGS first responder if it was necessary to call 9-1-1, was told "no" by the KGS employee, and relied on this advice in deciding to

not notify 9-1-1 of the blowing gas situation. Staff notes the alleged KGS response does not comport with the requirements of KUUDPA. Phoenix successfully completed two of the three actions required by K.S.A. 66-1810, and Staff finds that Phoenix's actions taken after the damage by evacuating the area and contacting KGS's emergency number were appropriate to protect persons, property and minimize hazards. Because of the confusion caused by the KGS first responder and the steps taken by Phoenix to minimize hazards, Staff does not recommend increasing the recommended penalty amount above \$500.

**RECOMMENDATION:**

Staff recommends a civil penalty be issued to Phoenix Renovation and Restoration, Inc. 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.
- Failure of an excavator to immediately inform emergency personnel of the municipality when a broken line results in escaping dangerous gas is a violation of K.S.A. 66-1810, Contact with or damage to facility; procedure.

Attachments

## ATTACHMENT I

### **Timeline:**

- 4/19/2013                      At approximately 1:26 p.m., Staff received an email notification from a KGS Dispatcher, indicating a damaged line at 8620 Cleveland Avenue in Kansas City, Kansas.
- Staff arrived on-site at approximately 2:04 p.m. and subsequently conducted an on-site investigation of the excavation site described above. Staff learned from conversations on-site with KGS's Damage Investigator that Phoenix had not made notification to Kansas One Call for a ticket prior to excavating. This was later confirmed through research of the Kansas One Call database that there was in fact, no Kansas One Call ticket obtained by Phoenix at this address.
- Upon completion of the investigation and research, Staff determined that Phoenix had been excavating without a valid locate request and had violated KUUDPA.
- 5/15/2013                      Staff issued Phoenix a Notice of Probable Noncompliance for violating KUUDPA as stated above. A Probable Noncompliance for violating K.S.A. 66-1810 was also issued, failure to notify emergency personnel when dangerous gases are escaping from a broken line.
- 6/17/2013                      Staff received Phoenix's response to the Notice of Probable Noncompliance as required by K.A.R. 82-14-6(c).

## ATTACHMENT II

### **PROBABLE NONCOMPLIANCE**

KCC Investigation# 6657

COMPANY: **Phoenix Renovation and Restoration, Inc** 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 4/19/2013, Phoenix Renovation and Restoration, Inc damaged a KGS 2" PE gas main with a bobcat skid loader while removing and replacing a driveway at 8620 Cleveland Ave in Kansas City, Kansas. There was no One-Call ticket found in the One-Call database. 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: **4/19/2013**  
Inspection type: **No Locator- Excavator**

**PROBABLE NONCOMPLIANCE**

KCC Investigation# 6657

COMPANY: Phoenix Renovation and Restoration, Inc DIVISION:

**REGULATION:****66-1810. Contact with or damage to facility; procedure; notification requirements.**

When any contact with or damage to any underground facility occurs, the operator shall be informed immediately by the excavator. Upon receiving such notice, the operator immediately shall dispatch personnel to the location to provide necessary temporary or permanent repair of the damage. If the protective covering of an electrical line is penetrated or dangerous gases or fluids are escaping from a broken line, the excavator immediately shall inform emergency personnel of the municipality in which such electrical short or broken line is located and take any other action as may be reasonably necessary to protect persons and property and to minimize hazards until arrival of the operator's personnel, emergency medical responders or first responders.

History: L. 1993, ch. 217, § 10; L. 1998, ch. 78, § 2; L. 2002, ch. 41, § 7; L. 2010, ch. 119, § 18; Jan. 15, 2011.

**PROBABLE NONCOMPLIANCE DESCRIPTION:**

On 4/19/2013, Phoenix Renovation and Restoration, Inc damaged a KGS 2" PE gas main with a bobcat skid loader while removing and replacing a driveway at 8620 Cleveland Ave in Kansas City, Kansas. There was no call made to 911 after the gas main was damaged and escaping gas was occurring. This is a violation of the Statute K.S.A. 66-1810. Contact with or damage to facility; procedure; notification requirements. When any contact with or damage to any underground facility occurs, the operator shall be informed immediately by the excavator. Upon receiving such notice, the operator immediately shall dispatch personnel to the location to provide necessary temporary or permanent repair of the damage. If the protective covering of an electrical line is penetrated or dangerous gases or fluids are escaping from a broken line, the excavator immediately shall inform emergency personnel of the municipality in which such electrical short or broken line is located and take any other action as may be reasonably necessary to protect persons and property and to minimize hazards until arrival of the operator's personnel, emergency medical responders or first responders.

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: 4/19/2013  
Inspection type: Complaint

### ATTACHMENT III

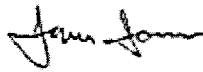
Investigation #6657 location: 8620 Cleveland Ave Kc. Ks.

Date May 29, 2013

To Whom It May Concern.

On April 19, 2013 there was a gas line that was improperly installed and it was ruptured. Immediately Kansas Gas service was notified on There emergency number and dispatched to the location. Phoenix personnel on site were notifying the homeowner and helping the homeowner evacuate the area and notifying other residence within proximity of the rupture. During this process a gas service employee came on site with a meter checking the gas levels, at this time myself and the homeowner asked if we needed to call 911, the gas service employee stated "no", "we are not in any danger the gas levels are safe." "You did the right thing by calling Kansas gas service emergency number." "Now I need you to move your bobcat and truck out of the way, the backhoe will be here any minute." Kansas gas service arrived fixed the rupture and lowered the line to the proper depth. The Kansas gas service employee that fixed the line stated. "I can't believe how they bent that line without kinking it to get it up that high." These are the facts to this situation.

Sincerely, James Jones. 05/29/13



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IN RE: DOCKET NO. 14-DPAX-075-PEN

DATE AUG 08 2013

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

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
JUDY JENKINS, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		
JAMES MURPHY, PRESIDENT PHOENIX RENOVATION AND RESTORATION, INC. 16250 FOSTER ST OVERLAND PARK, KS 66085		

ORDER MAILED AUG 09 2013

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.