

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

Before Commissioners:

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

Received
on

FEB 27 2012

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.)

by
State Corporation Commission
of Kansas

Docket No. 12-DPAX-390-PEN

REQUEST FOR HEARING

COMES NOW Miller Paving & Construction, L.L.C. ("Miller Paving") by and through its attorney of record and for its Request for Hearing to the Penalty Order entered on February 10, 2012, states and alleges as follows:

1. Miller Paving is a Kansas Limited Liability Company that is authorized to transact business and has its principal place of business in Kansas City, Wyandotte County, Kansas.
2. On April 28, 2011, Miller Paving filed a Chapter 11 Bankruptcy in the United States Bankruptcy Court for the District of Kansas in Kansas City, Kansas in Case No. 11-21247-RDB. This bankruptcy case is still pending.
3. Miller Paving received the Penalty Order by certified mail on February 14, 2012 in the above-captioned matter. Although the Penalty Order and the letter attached to the Penalty Order state two different time frames for filing this Request, Miller Paving believes that this Request is timely.

4. Miller Paving denies all allegations of noncompliance with the Kansas Underground Utility Damage Prevention Act as set forth in K.S.A. 66-1801 *et seq.* as set forth in the Penalty Order.

5. Miller Paving disputes the proposed penalty of \$500.00 as set forth in the Penalty Order.

6. Miller Paving also denies receiving and/or having the letter given to the principals of Miller Paving dated June 13, 2011 to Scott Gray.

7. Miller Paving affirmatively states that Kansas One Call Ticket No. 11155407 may cover the area at issue regarding the damaged natural gas service line.

8. Miller Paving affirmatively states that it was not performing any "excavation" work as defined by K.S.A. 66-1802, when it damaged the natural gas service line because it was only saw cutting curb and gutter, which was not an operation in which earth, rock or other material below the surface is moved or otherwise displaced by any means.

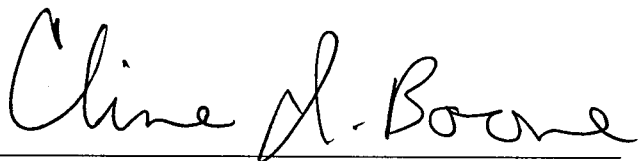
9. Miller Paving affirmatively states that the damage of the natural gas service line was unavoidable since it was located in the concrete curb and gutter. Further, the natural gas service line at issue pursuant to Overland Park Municipal Ordinances had to be relocated because of the City project for which Miller Paving was performing work because it was in conflict with the public project.

10. Most importantly, Miller Paving, at all relevant times, knew that a resident in the area of the damaged natural gas line immediately came outside moments after it occurred. This resident advised employees of Miller Paving that she had call 911 regarding the damaged natural gas line. As such, Miller Paving knew that it was not necessary to call 911 again. Instead, Miller Paving contacted Kansas Gas Service and was prepared and assisted in

timely exposing the damaged natural gas line so it could be pinched off as soon as possible. As a result of the same, Miller Paving does not believe that it violated K.S.A. 66-1810 as alleged.

WHEREFORE, Miller Paving & Construction, L.L.C. respectfully requests a hearing before the Kansas Corporation Commission regarding the Penalty Order that was entered on February 10, 2012 and for such further and other relief as the Commission deems just and proper.

Respectfully submitted:

By: 

Cline I. Boone KS #17710
P.O. Box 860743
Shawnee, Kansas 66286-0743
(913) 208-3012
Fax (913) 334-5284

**ATTORNEY FOR MILLER PAVING
& CONSTRUCTION, L.L.C.**

VERIFICATION

STATE OF KANSAS)
)
COUNTY OF WYANDOTTE)

K. Kevin James, Managing Member of Miller Paving & Construction, L.L.C., being of lawful age, having been first duly sworn on his oath, states that he is a Managing Member of Miller Paving & Construction, L.L.C. in this matter and that he has read the foregoing, and that the facts stated therein are true and correct to the best of his knowledge and belief.

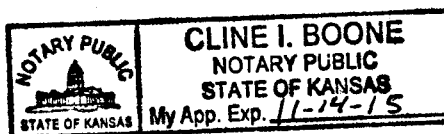
K. Kevin James
K. Kevin James, Managing Member
Miller Paving & Construction, L.L.C.

Subscribed and sworn before me this 24th day of February, 2012.

Cline I. Boone
NOTARY PUBLIC

My commission expires:

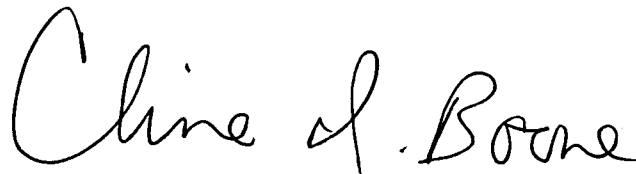
11-14-15



CERTIFICATE OF SERVICE

The undersigned hereby certifies the original and eight (8) copies of the above and foregoing was mailed to Patrice Peterson-Klein, Executive Director, Kansas Corporation Commission, 1500 SW Arrowhead Road, Topeka, Kansas 66604, via United States Mail, First Class, postage prepaid, on this 24th day of February, 2012, and a one copy was also mailed to the following:

Judy Jewsome
Litigation Counsel
Kansas Corporation Commission
1500 SW Arrowhead
Topeka, Kansas 66604
(913) 271-3110 / Fax: (785) 271-3354

A handwritten signature in cursive script that reads "Cline of Boone". The signature is written in black ink and is positioned above a horizontal line.

**Attorney for Miller Paving &
Construction, L.L.C.**