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Topeka, KS 66604-4027



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Jay Scott Emler, Chairman  
Shari Feist Albrecht, Commissioner  
Pat Apple, Commissioner

Sam Brownback, Governor

VIA CERTIFIED MAIL

**NOTICE OF PENALTY ORDER**  
17-DPAX-214-PEN

December 22, 2016

Justin Clements  
Kansas Gas Service, a Division of ONE Gas, Inc.  
7421 W 129th St  
Overland Park, KS 66213

This is a notice of penalty assessment for violations of the Kansas Underground Utility Damage Prevention Act (KUUDPA) discovered during investigations conducted over the past eight months by Kansas Corporation Commission Staff. For a full description of the violations and penalties please refer to the Order that is attached to this notice.

**IF YOU ACCEPT THE PENALTY:**

You have been assessed a \$6,000 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 hearing 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 Secretary at 1500 SW Arrowhead Road, Topeka, Kansas 66604, within fifteen (15) days from the date of service of this Penalty Order.

**IF YOU FAIL TO ACT:**

Pursuant to K.A.R. 82-14-6(j) and K.S.A. 77-529, failure to provide a request for a hearing within fifteen (15) days, or in the alternative to pay the civil assessment within twenty (20) days, will be considered an admission of noncompliance and result in the Penalty Order becoming a Final Order.

Respectfully,

Robert Vincent, S. Ct. #26028  
Litigation Counsel  
(785)271-3273

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

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

In the Matter of the Investigation of **Kansas**    )  
**Gas Service, A Division of ONE Gas, Inc., of**    )  
**Overland Park, Kansas,** Regarding            )  
Violation(s) of the Kansas Underground Utility    )  
Damage Prevention Act (KUUDPA) (K.S.A.    ) Docket No. 17-DPAX-214-PEN  
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).    )

**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. 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 or entity 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 \$1,000,000 for any related series of violations. *See* 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, Commission Staff (Staff) investigated the activities and operations of Kansas Gas Service, a Division of ONE Gas, Inc. (Respondent). *See* Report and Recommendation of Staff dated November 7, 2016, a copy of which is attached hereto as Attachment “A” and is hereby incorporated by reference. As a result of Staff’s investigations, Staff reports the following:

- a. On March 18, 2016, Staff performed an onsite inspection at 9866 Belmont Drive in Lenexa, Kansas. Staff’s investigation discovered locates were not provided by Respondent after being requested. Respondent’s failure to provide locates resulted in damage to a KGS plastic natural gas service pipe and lost work time for the excavator. No injuries or additional property damage occurred. Respondent was notified by a Notice of Probable Non-Compliance issued by Staff on April 15, 2016, citing the violation of K.S.A. 66-1806 as follows:

(a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities

of the operator in the area of the planned excavation by marking, flagging or other acceptable method.

Respondent responded to the Notice of Probable Non-Compliance. Respondent stated the damage resulted from the technician not reviewing maps to verify the existence of all gas piping in the area requesting locates. Respondent provided information detailing remedial action taken to prevent future incidents. Staff recommends a fine of \$500 for this violation.

- b. On March 24, 2016, Staff performed an onsite inspection at 8544 West 72nd Street in Overland Park, Kansas. Staff's investigation discovered that locates were not accurately provided by Respondent. Respondent's failure to provide accurate locates resulted in damage to a KGS plastic natural gas service pipe and lost work time for the excavator. No injuries or additional property damage occurred. Respondent was notified by a Notice of Probable Non-Compliance issued by Staff on April 15, 2016, citing the violation of K.S.A. 66-1806 as follows:

- (a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.

Respondent responded to the Notice of Probable Non-Compliance. Respondent stated a tracer wire was present at the site, but the locating technician used inaccurate locate-map measurements. Respondent

provided information detailing remedial action taken to prevent future incidents. Staff recommends a fine of \$500 for this violation.

- c. On March 29, 2016, Staff performed an onsite inspection at 7224 West 79th Street in Overland Park, Kansas. Staff's investigation discovered that locates were not provided by Respondent after being requested. Respondent's failure to provide locates resulted in damage to a KGS plastic natural gas service pipe and lost work time for the excavator. No injuries or additional property damage occurred. Respondent was notified by a Notice of Probable Non-Compliance issued by Staff on April 15, 2016, citing the violation of K.S.A. 66-1806 as follows:

(a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.

Respondent responded to the Notice of Probable Non-Compliance. Respondent stated the service was not present on maps the locating technician was using. Respondent provided information detailing remedial action taken to prevent future incidents. Staff recommends a fine of \$500 for this violation.

- d. On March 29, 2016, Staff performed an onsite inspection at 2415 North 35th Street in Kansas City, Kansas. Staff's investigation discovered that locates were not provided by Respondent after being requested. Respondent's failure to provide locates resulted in damage to a KGS

plastic natural gas service pipe and lost work time for the excavator. No injuries or additional property damage occurred. Respondent was notified by a Notice of Probable Non-Compliance issued by Staff on April 15, 2016, citing the violation of K.S.A. 66-1806 as follows:

(a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.

Respondent responded to the Notice of Probable Non-Compliance. Respondent stated the locating technician did not thoroughly research its maps to identify all piping in the locate request area. Respondent provided information detailing remedial action taken to prevent future incidents. Staff recommends a fine of \$500 for this violation.

e. On May 20, 2016, Staff performed an onsite inspection at 5636 Hayes Street in Merriam, Kansas. Staff's investigation discovered that locates were not accurately provided by Respondent. Respondent's failure to provide accurate locates resulted in damage to a KGS plastic natural gas service pipe and lost work time for the excavator. No injuries or additional property damage occurred. Respondent was notified by a Notice of Probable Non-Compliance issued by Staff on June 15, 2016, citing the violation of K.S.A. 66-1806 as follows:

(a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined

the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.

Respondent responded to the Notice of Probable Non-Compliance. Respondent stated a broken tracer-wire allowed tracer signals to leak over to a water line resulting in locate marks being off by 51 feet. Respondent provided information detailing remedial action taken to prevent future incidents. Staff recommends a fine of \$500 for this violation.

- f. On June 21, 2016, Staff performed an onsite inspection at 11010 West 57th Terrace in Shawnee, Kansas. Staff's investigation discovered that locates were not provided by Respondent after being requested. Respondent's failure to provide locates resulted in damage to a KGS plastic natural gas service pipe and lost work time for the excavator. No injuries or additional property damage occurred. Respondent was notified by a Notice of Probable Non-Compliance issued by Staff on July 15, 2016, citing the violation of K.S.A. 66-1806 as follows:

(a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.

Respondent responded to the Notice of Probable Non-Compliance. Respondent stated no markings were present at the damage site and the locating technician failed to locate the meter and verify the path of service.

Respondent provided information detailing remedial action taken to prevent future incidents. Staff recommends a fine of \$500 for this violation.

- g. On June 28, 2016, Staff performed an onsite inspection at 20096 Briar Street in Stilwell, Kansas. Staff's investigation discovered that accurate locates were not provided by Respondent. Respondent's failure to provide accurate locates resulted in damage to a KGS 2" diameter plastic natural gas main and lost work time for the excavator. No injuries or additional property damage occurred. Respondent was notified by a Notice of Probable Non-Compliance issued by Staff on July 15, 2016, citing the violation of K.S.A. 66-1806 as follows:

- (a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.

Respondent responded to the Notice of Probable Non-Compliance. Respondent stated that locating marks at the damage site were outside of the tolerance zone and that the locating technician had not applied the locating measurements correctly. Respondent provided information detailing remedial action taken to prevent future incidents. Staff recommends a fine of \$500 for this violation.

- h. On July 11, 2016, Staff performed an onsite inspection at 6520 Burnham Street in Merriam, Kansas. Staff's investigation discovered that accurate



locates were not provided by Respondent. Respondent's failure to provide accurate locates resulted in damage to a KGS steel natural gas service pipe and lost work time for the excavator. No injuries or additional property damage occurred. Respondent was notified by a Notice of Probable Non-Compliance issued by Staff on August 15, 2016, citing the violation of K.S.A. 66-1806 as follows:

(a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.

Respondent responded to the Notice of Probable Non-Compliance. Respondent stated locate marks were present at the damage site, but were incorrect. The locating technician had improperly utilized the locating equipment. Respondent provided information detailing remedial action taken to prevent future incidents. Staff recommends a fine of \$500 for this violation.

- i. On July 13, 2016, Staff performed an onsite inspection at 5208 West 128th Street in Leawood, Kansas. Staff's investigation discovered that accurate locates were not provided by Respondent. Respondent's failure to provide accurate locates resulted in damage to a KGS 1-1/4" diameter plastic natural gas main and lost work time for the excavator. No injuries or additional property damage occurred. Respondent was notified by a

Notice of Probable Non-Compliance issued by Staff on August 15, 2016, citing the violation of K.S.A. 66-1806 as follows:

(a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.

Respondent responded to the Notice of Probable Non-Compliance. Respondent stated the locating technician had not completely marked the locate area to the end of the main. Respondent provided information detailing remedial action taken to prevent future incidents. Staff recommends a fine of \$500 for this violation.

- j. On July 27, 2016, Staff performed an onsite inspection at 11905 West 82nd Terrace in Lenexa, Kansas. Staff's investigation discovered that locates were not provided by Respondent after being requested. Respondent's failure to provide locates resulted in damage to a KGS plastic natural gas service pipe and lost work time for the excavator. No injuries or additional property damage occurred. Respondent was notified by a Notice of Probable Non-Compliance issued by Staff on August 15, 2016, citing the violation of K.S.A. 66-1806 as follows:

(a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities

of the operator in the area of the planned excavation by marking, flagging or other acceptable method.

Respondent responded to the Notice of Probable Non-Compliance. Respondent stated no marks were present at the damage site and the locating technician missed identifying the service line on its map. Respondent provided information detailing remedial action taken to prevent future incidents. Staff recommends a fine of \$500 for this violation.

- k. On August 4, 2016, Staff performed an onsite inspection at 7216 Grandview Street in Merriam, Kansas. Staff's investigation discovered that locates were not provided by Respondent after being requested. Respondent's failure to provide locates resulted in damage to a KGS steel natural gas service pipe and lost work time for the excavator. No injuries or additional property damage occurred. Respondent was notified by a Notice of Probable Non-Compliance issued by Staff on September 15, 2016, citing the violation of K.S.A. 66-1806 as follows:

(a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.

Respondent responded to the Notice of Probable Non-Compliance. Respondent stated the damaged service was not marked and a visible tracer wire was present at the location. Respondent provided information

detailing remedial action taken to prevent future incidents. Staff recommends a fine of \$500 for this violation.

1. On August 24, 2016, Staff performed an onsite inspection at 26310 West 174th Street in Gardner, Kansas. Staff's investigation discovered that locates were not provided by Respondent after being requested. Respondent's failure to provide locates resulted in damage to a KGS 2" diameter plastic natural gas main pipe and lost work time for the excavator. No injuries or additional property damage occurred. Respondent was notified by a Notice of Probable Non-Compliance issued by Staff on September 15, 2016, citing the violation of K.S.A. 66-1806 as follows:

(a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.

Respondent responded to the Notice of Probable Non-Compliance. Respondent stated the locating technician failed to completely mark the locate request area. Respondent provided information detailing remedial action taken to prevent future incidents. Staff recommends a fine of \$500 for this violation.

5. KUUDPA requires all operators to inform the excavator of the location of the operator's underground facilities at a given excavation site within a 48-inch tolerance zone. A locate is required to be completed within two working days after the day on which the excavator

provided notice of its intent to excavate. Although KUUDPA allows an excavator to dig without locates being completed if the required marking time has expired, most excavators will wait for locates rather than take the risk of damaging underground facilities or endangering life and property. Postponing excavation because of the failure of utilities to complete locates for excavators can result in costly downtime and scheduling problems, including but not limited to, cancelation of contracts.

6. Staff recommends the Commission issue Respondent a total civil penalty of \$6,000 for the violations of the Kansas Underground Utility Damage Prevention Act as alleged.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

7. The Commission finds it has jurisdiction over Respondent because it is an entity subject to the requirements of the Kansas Underground Utility Damage Prevention Act, which the Commission is required to administer and enforce pursuant to K.S.A. 66-1813. Specifically, the Commission finds Respondent to be acting as an operator who operates Tier 1 facilities as defined in K.S.A. 66-1802.

8. The Commission finds Respondent violated Kansas law governing underground utilities, including various provisions of the Kansas Underground Utility Damage Prevention Act, as described above, and is therefore subject to sanctions or fines imposed by the Commission. Specifically, the Commission finds Respondent failed to comply with K.S.A. 66-1806 for the above listed incidents.

9. The Commission finds a civil penalty is warranted due to Respondent's violation of the Kansas Underground Utility Damage Prevention Act. Accordingly, pursuant to K.S.A. 66-1812 and K.S.A. 66-1,151, the Commission concludes the Respondent shall be assessed a \$6,000 penalty for violation of the Kansas Underground Utility Damage Prevention Act.

**THE COMMISSION THEREFORE ORDERS THAT:**

A. Kansas Gas Service, a Division of ONE Gas, Inc., is hereby assessed a \$6,000 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. 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 Secretary, 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 \$6,000 civil penalty against the Respondent.

C. Attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. For civil penalties exceeding \$500, a corporation shall appear before the Commission by its attorney, unless waived by the Commission for good cause shown and a determination that such waiver is in the public interest. *See* K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2); K.A.R. 82-1-202(a).

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 the date of service of this Order. Checks and Money Orders shall be payable to the Kansas Corporation Commission. For credit card

payments, include the 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 \$6,000 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.**

Emler, Chairman; Albrecht, Commissioner; Apple Commissioner

Dated: DEC 22 2016

  
\_\_\_\_\_  
Amy L. Green  
Secretary to the Commission

REV/vj

**Order Mailed Date**

**DEC 23 2016**

# **ATTACHMENT "A"**



**REPORT AND RECOMMENDATION  
UTILITIES DIVISION**

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

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

**DATE:** November 7, 2016

**SUBJECT:** **Docket Number:** 17-DPAX-214-PEN  
In the Matter of the Investigation of Kansas Gas Service, A Division of ONE Gas, 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 Kansas Gas Service, A Division of ONE Gas (KGS), in the amount of \$6,000 for 12 violations of KUUDPA that have occurred over the past eight months. The penalty is based on results of Staff investigations following 12 damages to KGS natural gas service and main lines in Johnson County/Wyandotte County in Kansas. Failure to provide the excavator with the location of the tolerance zone of the buried facility before excavation begins is a violation of K.S.A. 66-1806(a).

**BACKGROUND:**

KGS's failure to provide accurate locates resulted in damages to its natural gas facilities and lost work time for the excavators that damaged the lines. No injuries or property damage occurred as a result of these damages. The following table provides the date of the pipeline damage; the type of facility damaged; address where the damage occurred; and Staff's assertion of the cause of the damage along with Staff's recommended penalty amount for each of the damages.

<b>Date of Damage</b>	<b>Type of Facility Affected</b>	<b>Address Damage Occurred</b>	<b>Root Cause</b>	<b>Amount of Fine</b>
3/18/2016	Plastic Natural Gas Service	9866 Belmont Drive, Lenexa	Not Marked	\$500
3/24/2016	Plastic Natural Gas Service	8544 West 72nd Street, Overland Park	Inaccurate Maps Off by 15 feet	\$500
3/29/2016	Plastic Natural Gas Service	7224 West 79th Street, Overland Park	Not Marked	\$500
3/29/2016	Plastic Natural Gas Service	2415 North 35th Street, Kansas City	Not Marked	\$500
5/20/2016	Plastic Natural Gas Service	5636 Hayes Street, Merriam	Mis-Located off by 51 ft	\$500
6/21/2016	Plastic Natural Gas Service	11010 West 57thb Terrace, Shawnee	Not Marked	\$500
6/28/2016	2" Diameter Plastic Natural Gas Main	20096 Briar Street, Stilwell	Mis-Located off by 44 ft	\$500
7/11/2016	Steel Natural Gas Service	6520 Burnham Street, Merriam	Mis-Located off by 11 ft	\$500
7/13/2016	1-1/4" Diameter Plastic Natural Gas Main	5208 West 128th Street, Leawood	Mis-Located off by 24 ft	\$500
7/27/2016	Plastic Natural Gas Service	11905 West 82nd Terrace, Lenexa	Not Marked	\$500
8/4/2016	Steel Natural Gas Service	7216 Grandview Street, Merriam	Not Marked	\$500
8/24/2016	2" Diameter Plastic Natural Gas Main	26310 West 174th Street, Gardner	Not Marked	\$500

**TOTAL**

**\$6,000**

Notices of Probable Noncompliance (PNC) were issued to KGS on April 15, 2016; June 15, 2016; July 15, 2016; August 15, 2016; and September 15, 2016. KGS has responded to all of these PNCs as required by K.A.R. 82-14-6(c) and agrees with Staff's allegations as to the cause of the damage. KGS's response for each PNC is included in this memorandum as Attachment I.

## ANALYSIS:

### Rationale for Penalties:

#### A. Gravity of noncompliance:

Once an excavator notifies underground utility operators of a planned excavation, each operator with facilities buried at that site must provide surface markings that indicate where the utilities are located within 24 inches of either side of the position of the buried facility. This 48 inch corridor is defined as the "tolerance zone". Failure in providing accurate locate marks depicting the tolerance zone is a high-risk activity with the potential for significant consequences to public safety. Inaccurate locates further serve to give the excavator a false sense of security by indicating the buried facilities are not in the vicinity of the excavation. This effect may result in the excavator causing even greater damage to the utility because of the speed and force with which excavation normally is performed in areas clear of underground obstacles. In these instances, KGS has stated the buried gas service and main lines were either not located or mis-located due to operator error or inaccurate maps. Providing accurate utility markings for the excavators is the fundamental measure a facility owner takes to prevent damage to its buried facilities. The fact that KGS failed to comply with this requirement of the law warrants the assessment of a civil penalty.

#### B. Culpability:

KGS is directly responsible for its actions in failing to provide accurate locates as Kansas law requires.

#### C. History of noncompliance:

Staff has issued a total of 94 KUUDPA PNCs to KGS in the past two years. These alleged violations were for similar issues regarding failure to provide timely and accurate locates.

#### D. Response of the utility operator regarding noncompliance(s):

KGS agreed with Staff's findings described in the PNCs. Four of the gas lines in question were marked using inaccurate maps for reference and seven were marked inaccurately due to oversights by the locators. For the remaining six gas lines in question, KGS personnel failed to provide locates requested by the excavator. In response to Staff's PNCs regarding inaccurate maps, KGS has created new service cards with updated measurements which will allow accurate locates of these facilities in the future. KGS has also counseled its locating personnel on how to read its maps and reminded the locator to use the tracer wire or curb etchings if they are available.

E. Aggravating/Mitigating Circumstances:

In the last two years, KGS has received 94 PNCs from Staff alleging failure to provide accurate and/or timely locates upon request. Staff recognizes that some of the inaccurate locates may be due to the increased work load placed on KGS locators by the ongoing aggressive build-out of underground telecommunications infrastructure in the Johnson County area. Therefore, Staff is recommending civil penalties only be applied to the most egregious violations of inaccurate locates. For the remainder, Staff is willing to accept KGS's documented remedial action as a satisfactory response to the PNCs. Given this accommodation for the abnormal work load, Staff has not determined any circumstances that would cause us to modify the recommended penalty amount of \$6,000.

**RECOMMENDATION:**

Staff recommends a civil penalty be issued to Kansas Gas Service, a Division of One Gas, in the amount of \$6,000 for violation(s) of KUUDPA:

- Failure of a facility owner to properly identify location of facilities is a violation of K.S.A. 66-1806, Identification of location of facilities; duties of operator; liability for damages.

Attachments

## ATTACHMENT I

### Notice of Probable Noncompliance- KCC #7336

*On 3/18/2016, Rylie Equipment damaged a KGS 3/4" PE gas service line while directional drilling conduit for ATT at 9866 Belmont Drive, Lenexa, Kansas. There was a valid One-Call ticket #16120501 with a due date of 3/17/2016. There were no marks present for the damaged service belonging to 9875 Belmont Dr. There was tracer wire present at the meter and at the damage site and is tonable. This is a violation of the Statute 66-1806 Identification of location of facilities; duties of operator; liability for damages. (a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.*

Operator Response: The operator and locate vendor (USIC) conducted a joint investigation of the damages at 9866 Belmont Drive, Lenexa, KS.

This damage was a result of the locate tech not reviewing the maps to verify the existence of all gas piping in the area requested to be located. The damage occurred on a long side service that was not located. The causes of the damage were reviewed with the tech with emphasis on reviewing maps for all facilities in the locate area and the need to verify all facilities were located.

Additionally, new measurements were obtained to verify the accuracy of the measurements shown on the service card for the damaged long side service. The measurements were found to be accurate. This service is and was locatable at the time of the damage.

## Notice of Probable Noncompliance-KCC #7338

*On 3/24/2016, Cat5 Construction damaged a KGS 7/8" PE gas service line while directional drilling conduit for the Shawnee Mission School District Fiber Project at 8544 W 72nd St in Overland Park, Kansas. There was a valid One-Call ticket #16124881 with a due date of 3/19/2016. Locate marks were present and indicated as being marked by measurements. These marks were off the damaged pipe approximately 15 ft. This is a violation of the Statute 66-1806 Identification of location of facilities; duties of operator; liability for damages. (a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.*

Operator Response: The operator and locate vendor (USIC) conducted a joint investigation of the damages at 8544 W. 72<sup>nd</sup> St., Overland Park, Kansas.

This investigation found that there was a locate wire for this service. The wire was connected to the riser and by connecting to the riser, this service located accurately. The locate tech was not aware of the wire. The locate tech used measurements. The measurements were found to be inaccurate. New measurements were obtained and a new service card was made and is now available to locators when locating this service line. Locate balls or near surface markers are now being installed at damage locations for locate verification purposes and their existence is indicated on the maps so the techs have knowledge this added tool.

## Notice of Probable Noncompliance-KCC #7341

*On 3/29/2016, the KCC Staff performed an audit on One-Call ticket #16107056 for Sunshine Underground during a damage investigation at 7224 W 79th St in Overland Park, Kansas. There were locate marks present on the main line; however, there were no marks on the damaged 1-1/4" PE gas service line being a long side service to 7221 W 79th St. This line was within the scope of the requested area on the ticket. There was tracer wire present at the damage site as well as at the meter. This is a violation of the Statute 66-1806 Identification of location of facilities; duties of operator; liability for damages. (a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.*

Operator Response: The operator and locate vendor (USIC) conducted a joint investigation of the damages at 7224 W. 79<sup>th</sup> St., Overland Park, Kansas.

The locate ticket for this area requested the marking of the north right of way of W. 79<sup>th</sup> Street beginning at Metcalf and continuing west to the east side of Marty. The damage occurred to a long side service feeding 7221 W 79<sup>th</sup> Street. The damaged service facility was not present on the map the locate tech was using. This business area was on the south side of W 79<sup>th</sup> Street, outside the locate area requested, so the locate tech did not attempt to locate the service. The service to 7221 W 79<sup>th</sup> Street did have a working locate wire which located the service accurately from the meter to the main. New measurements were obtained and the service card was updated. Mapping was provided information to show this service on the map. USIC locate techs now have the information to accurately locate this service.





Notice of Probable Noncompliance-KCC #7351

*On 4/13/2016, Rodriguez Mechanical damaged a KGS 3/4" PE gas service line with a mini excavator while installing water service at 2415 N 35th St in Kansas City, Kansas. There was a valid One-Call ticket #16165203 with a due date of 4/9/2016. Locate marks present on the main line; however, there were no marks on the damaged 3/4" PE gas service line. This line was within the scope of the requested area on the ticket. There was tracer wire present at the damage site as well as at the meter and was tonable. This is a violation of the Statute 66-1806 Identification of location of facilities; duties of operator; liability for damages. (a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.*

Operator Response: The operator and locate vendor (USIC) conducted a joint investigation of the damages at 2415 N. 35<sup>th</sup> St., Kansas City, Kansas.

The investigation that the locate tech did not thoroughly research his map to identify all piping in the locate request area. The tech believed that the damaged service was outside the locate request area so did connect to the tracer wire to verify its' location in relation to the dig area.

The tech was brought back to the site and retrained on never assuming the location of a service line. It was expressed that the tech should always connect to facilities near the locate area to verify whether it is inside the locate request area before determining the need for locating or not locating that service.

New measurements were obtained along with locate ball(s) and/or near surface markers being placed with their existence being noted on the map. A new service card was generated with the new measurements and is available to locate techs for verification of locates in the future. The

## KCC Notice of Probable Noncompliance - #7365

*On 5/20/2016, Glas, LLC damaged a KGS ¾" PE gas service line with a backhoe while installing a sanitary sewer service at 5636 Hayes St in Merriam, Kansas. There was a valid One-Call ticket #16227868 with a due date of 5/11/2016. Locate marks were present with tracer wire at the damage site. These marks were off the damaged pipe approximately 51 ft. The service damaged belonged to 7648 Hayes and locator did tone this service after consulting maps and service cards. This is a violation of the Statute 66-1806 Identification of location of facilities; duties of operator; liability for damages. (a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.*

### Operator Response:

The operator and locate vendor (USIC) conducted a joint investigation of the damages at 5636 Hayes St. in Merriam, Kansas.

The investigation found that there was a tracer wire with this service that the tech hooked to and got a poor signal. The tech followed this signal which went outside the scope of the ticket. The investigator also hooked to this wire and got the same poor signal, The investigator attempted to remove additional sheathing from the wire and as he pulled on the wire, the wire pulled out of the ground. It was uncovered and found to have been broken below ground. Sheathing was removed from the below ground wire end that, when connected to, produced a good tone and located accurately to the damage site. It is believed the poor signal bled over to a water line, resulting in the facility being followed running to a location outside the scope of the ticket, resulting in marks being 51' off. A KGS person spliced additional wire to terminate the wire above ground. USIC took additional steps to train the tech on how to handle situations like this in the future.

Measurements were available that accurately followed the service line. Additional measurements were obtained giving more reference points to verify the location of the service.

## KCC Notice of Probable Noncompliance - #7379

*On 6/21/2016, Water Dist. No. 1 of Johnson county damaged a KGS 7/8" PE gas service line with a backhoe while making a repair to a broken water main at 11010 W 57<sup>th</sup> Ter in Shawnee, Kansas. There was a valid One-Call ticket #16313261 with a due date of 6/21/2016. There were no marks present for the damaged service belonging to 5725 Reeder. This is a violation of the Statute 66-1806 Identification of location of facilities; duties of operator; liability for damages. (a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.*

Operator Response: The operator and locate vendor (USIC) conducted a joint investigation of the damages at 11010 W 57<sup>th</sup> Ter. in Shawnee, Kansas.

The USIC investigator observed there were no markings at the damaged site upon arrival. Further investigation found that the locate tech failed to locate the meter for the long side service and did not verify the path of the service.

USIC brought the tech back to the damage site and retrained on how to perform a thorough visual scan ensuring that the Tech has been trained to hook up to every service while close to the dig area in order to verify all pipeline facilities are out of the path of excavation.

## KCC Notice of Probable Noncompliance - #7381

*On 6/28/2016, A-1 Trenching damaged a KGS 2" PE gas main line with a mini excavator while installing a primary electric service at 20096 Briar St in Stilwell, Kansas. There was a valid One-Call ticket #16320088 with a due date of 6/28/2016. There were marks present, however these marks were approximately 44 ft from the damaged pipe. This is a violation of the Statute 66-1806 Identification of location of facilities; duties of operator; liability for damages. (a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.*

Operator Response: The operator and locate vendor (USIC) conducted a joint investigation of the damages at 20096 Briar St., Stilwell, Kansas.

The USIC investigator observed there were marks at the site of the damage that were outside of the tolerance zone of the main location. Additional investigation revealed the locate tech had not applied the measurements correctly and no wire was available.

The locate tech was brought back to the damage site and retrained on utilizing all measurements provided and applying those measurements correctly.

## KCC Notice of Probable Noncompliance - #7390

*On 7/11/2016, the KCC Staff performed an audit on One-Call ticket #16332522 for Westland Construction during a damage investigation at 6520 Burnham St in Merriam, Kansas. There were locate marks present on the main line, however the marks on the damaged KGS 1" Steel gas service line were off by approximately 11 ft. This is a violation of the Statute 66-1806 Identification of location of facilities; duties of operator; liability for damages. (a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.*

Operator Response: The operator and locate vendor (USIC) conducted a joint investigation of the damages at 6520 Burnham St., Merriam, Kansas.

The USIC investigator noted that marks for the KGS main were on site. The service line marks were found to be present but incorrect. Further investigation led the USIC investigator to determine the locate tech had not properly hooked up the equipment used for locating the service which led to the marking error.

The USIC Tech was brought back to the damage site and retrained on proper hookup processes in order to obtain accurate locations of all facilities in the described excavation area.

## KCC Notice of Probable Noncompliance - #7392

*On 7/13/2016, Schatz Underground damaged a KGS 1-1/4" PE gas main line while directional drilling for an ATT Light Gig drop at 5208 W 128<sup>th</sup> St in Leawood, Kansas. There was a valid One-Call ticket # 16339050 with a due date of 7/8/2016. There were marks present and indicating a dead end. These marks did not show the correct length of the dead end stopping at the edge of the driveway when in fact, the main carried on across the driveway approximately 24 ft. This is a violation of the Statute 66-1806 Identification of location of facilities; duties of operator; liability for damages. (a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.*

Operator Response: The operator and locate vendor (USIC) conducted a joint investigation of the damages at 5208 W 128<sup>th</sup> St., Leawood, Kansas.

The USIC investigator found that the 1-1/4" main had been damaged under the driveway at this address. It was determined that the locate Tech had not completely marked the area to the end of the main which lead to the damage. KGS killed the main to a point within one foot of the last service on this main.

The tech was given a verbal warning for 1<sup>st</sup> offense and remedial training on print identification to ensure all connecting services within the scope of the ticket are identified and marked accurately. USIC Leadership Team placed the Tech on the audit list to ensure discrepancy is corrected consistently.

## KCC Notice of Probable Noncompliance - #7396

*On 7/27/2016, Foosco damaged a KGS ¼" PE gas service line while directional drilling conduit for an ATT fiber at 11905 W. 82<sup>nd</sup> Ter. in Lenexa, Kansas. There was a valid One-Call ticket #16358854 with a due date of 7/20/2016. There were no marks present on this service. Tracer wire was at the damage site and did tone. This is a violation of the Statute 66-1806 Identification of location of facilities; duties of operator; liability for damages. (a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.*

Operator Response: The operator and locate vendor (USIC) conducted a joint investigation of the damages at 11905 W. 82nd St., Leawood, Kansas.

Damage occurred to a KGS ¼" PE gas service. The USIC investigator observed there were no marks along the damaged service. There is a functioning locate wire on this service that provides an accurate locate. USIC determined the locate tech missed seeing the service line on the map. The tech did not perform a visual scan looking for indications of the existence of other gas facilities, such as a meter.

The locate tech was brought back to the damage site and retrained on print reading and performing a quality visual scan. Additionally, the tech received training on doing a comparison of the physical locate made with the information included on the map.

This tech is no longer with USIC.

## KCC Notice of Probable Noncompliance - #7405

*On 8/4/2016, The KCC staff performed an audit on One-Call ticket #16356474 for City of Merriam during a damage investigation at 7216 Grandview St. in Merriam, Kansas. There were locate marks present on the main line, however, the marks on the damaged KGS 1-1/4" steel gas service line to 7215 Grandview St. were not present. There was a tracer wire at the riser and did tone. This is a violation of the Statute 66-1806 Identification of location of facilities; duties of operator; liability for damages. (a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.*

Operator Response: The operator and locate vendor (USIC) conducted a joint investigation of the damages at 7216 (7215) Grandview St., Merriam, Kansas.

Damage occurred on a 1-1/4" gas service going to 7215 Grandview St. in Merriam, KS. It was discovered during an audit performed by the KCC investigator, the main had been marked but the damaged service had not been marked. There was a functioning locate wire with the damaged service which was visible above ground at the riser.

The locate tech was given documented coaching and remedial training/auditing by the USIC Supervisor and Damage Investigator. Additionally, USIC will continue to monitor tickets closed by this tech to ensure the additional training was effective and is being followed.



## KCC Notice of Probable Noncompliance - #7415

*On 8/24/2016, Weidenmann, Inc. damaged a KGS PE gas main line with a mini excavator while repairing a forced sewer main at 26310 W 174<sup>th</sup> St in Gardner, Kansas. There was a valid One-Call ticket #16425061 with a due date of 8/24/2016. There were no marks present on this main line. Tracer wire was at the damage site. This is a violation of the Statute 66-1806 Identification of location of facilities; duties of operator; liability for damages. (a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.*

Operator Response: The operator and locate vendor (USIC) conducted a joint investigation of the damages at 26310 W. 174<sup>th</sup> St., Gardner, Kansas.

USIC investigation determined that the locate tech did not completely mark the locate request area. A stake placed by the excavator was not identified by the locate tech. The USIC supervisor brought the tech back to the damage site and coached him on ensuring the entire requested area is completely located. The coaching also included information on following up locates to ensure the entire requested area is located and to ask questions if there is any concern about the completeness of the locate.

There is a working wire with this main that accurately tones out the main.

**CERTIFICATE OF SERVICE**

17-DPAX-214-PEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on DEC 22 2016.

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/s/ DeeAnn Shupe  
\_\_\_\_\_  
DeeAnn Shupe

**Order Mailed Date**

**DEC 23 2016**