

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

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

In the Matter of the Investigation of Charlie    )  
Brunker Excavating, Inc., of Ottawa, Kansas,    )  
Regarding Violation(s) of the Kansas            )  
Underground Utility Damage Prevention Act    ) Docket No. 14-DPAX-564-PEN  
(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).            )

**DEFAULT ORDER**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed its files and records and being fully advised of all matters of record, the Commission makes the following findings:

**I. Background**

1. On June 12, 2014, the Commission issued a Penalty Order against Charlie Brunker Excavating, Inc., of Ottawa, Kansas for violations of the Kansas Underground Utility Damage Prevention Act (KUUDPA). As a consequence of the cited violations, the Commission assessed a \$500 civil penalty against Charlie Brunker Excavating, Inc.<sup>1</sup>

2. Charlie Brunker Excavating, Inc. submitted a Request for Hearing that was filed July 1, 2014. On July 1, 2014, Staff filed a Notice of Hearing in this matter. Staff's Notice set this matter for hearing on October 1, 2014, at 9:30 a.m.

3. On October 1, 2014, at 9:30 a.m. the Commission convened the hearing. Mr. Robert Fox appeared on behalf of Staff. Charlie Brunker Excavating, Inc. did not appear. At the

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<sup>1</sup> Penalty Order, ¶ A.

hearing, the Commission found that Charlie Brunner Excavating, Inc., had requested the hearing, notice was proper, and to hold the hearing at that time and place.

4. The record shows that neither Respondent nor any representative on behalf of Respondent appeared at the hearing held on October 1, 2014, at 9:30 a.m. As a result, the Commission found the Respondent to be in default for failure to appear and participate pursuant to K.S.A. 2013 Supp. 77-520.

## **II. Jurisdiction**

5. 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. 2013 Supp. 66-1815 and amendments thereto.

6. 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.

7. 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.

### **III. Discussion**

8. K.S.A. 2013 Supp. 77-520 governs default actions within administrative proceedings. The statute provides, in part:

- (a) If a party fails to attend or participate in a pre-hearing conference, hearing, or other stage of an adjudicative proceeding, the presiding officer may serve upon all parties written notice of a proposed default order, including a statement of the grounds.

9. K.S.A. 2013 Supp. 77-520 also provides that the proposed default order shall become final seven days after service of the proposed default order unless the party against whom it was issued submits a written request that the proposed default order be vacated and states the grounds relied upon. K.S.A. 2013 Supp. 77-520(b) - (c).

### **IV. Findings and Conclusions**

10. The Commission finds and concludes that Charlie Brunker Excavating, Inc., did not attend the October 1, 2014 hearing, and is found to be in default.

11. The Commission further finds and concludes that the violations identified and penalties assessed in the June 12, 2014 Penalty Order are reasonable, supported by the record, and will be upheld.

### **THEREFORE, THE COMMISSION ORDERS:**

- A. Charlie Brunker Excavating, Inc., of Ottawa, KS is found to be in default.
- B. Pursuant to the initial Penalty Order, Charlie Brunker Excavating, Inc., of Ottawa, KS is hereby assessed a \$500 civil penalty for violation of the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 *et seq.*
- C. Pursuant to K.S.A. 2013 Supp. 77-520, this order serves as notice to Charlie Brunker Excavating, Inc. of the Proposed Default Order. Charlie Brunker Excavating, Inc. may

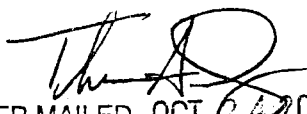
file a written motion requesting that the Proposed Default Order be vacated, stating the grounds relied upon, within seven days after service of this proposed order. If no motion is filed, this order will become a Final Order of Default. If a motion to vacate is filed within seven days, the Commission will either vacate the Proposed Default Order or issue a Final Order of Default.

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

**BY THE COMMISSION IT IS SO ORDERED.**

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: OCT 23 2014

  
ORDER MAILED OCT 24 2014  
Thomas A. Day  
Acting Executive Director

VJ/mf

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

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
CHARLIE BRUNKER, PRESIDENT CHARLIE BRUNKER EXCAVATING, INC. 3775 TENNESSEE RD OTTAWA, KS 66067		
ROBERT A. FOX, CHIEF LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		

ORDER MAILED OCT 24 2014

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.