



7421 West 129th Street  
Overland Park, KS 66213

20150904144129  
Filed Date: 09/04/2015  
State Corporation Commission  
of Kansas

September 4, 2015

**VIA ELECTRONIC TRANSMISSION**

Ms. Neysa Thomas  
Acting Executive Director  
Kansas Corporation Commission  
1500 S.W. Arrowhead Road  
Topeka, KS 66604

Re: In the Matter of the Investigation of Kansas Gas Service, A Division of ONE Gas, 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). (Docket Number 16-DPAX-070-PEN)

Dear Ms. Thomas:

Enclosed please find the *Petition For Review And Consideration Of Issues Not Resolved In This Docket Or Reconsideration For The Purpose Of Further Review* for filing in the above-referenced matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Walker Hendrix".

Walker Hendrix

WH/sef  
Encl.

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

In the Matter of the Investigation of Kansas Gas     )  
Service, A Division of ONE Gas, Inc., of            )  
Overland Park, Kansas, Regarding Violations of    )  
the Kansas Underground Utility Damage            ) Docket No. 16-DPAX-070-PEN  
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).                )

**PETITION FOR REVIEW AND CONSIDERATION OF ISSUES NOT  
RESOLVED IN THIS DOCKET OR RECONSIDERATION FOR THE  
PURPOSE OF FURTHER REVIEW**

COMES NOW, Kansas Gas Service, a Division of ONE Gas, Inc., and in accordance with K.S.A. 77-527 and 528, 66-118b and K.A.R. 82-1-235, seeks an opportunity to present and discuss issues regarding the proliferation of locate activity brought on by the rapid installation of fiber networks in the Greater Kansas City area. In support of the petition, it is stated:

1. Kansas Gas Service is a natural gas public utility operating in the State of Kansas pursuant to certificates of convenience and necessity issued by the Commission. Kansas Gas Service’s principal place of business in the state of Kansas is located at 7421 West 129<sup>th</sup> Street, Overland Park, Kansas 66213.

2. On August 20, 2015, the Commission issued an order assessing penalties against Kansas Gas Service in response to citations identified by the Commission Staff in its Report and Recommendation dated July 27, 2015. The total assessment was \$7500.00 for fifteen violations of the Kansas Underground Utility Damage Prevention Act (“KUUDPA”) related to timely locates of its underground natural gas facilities. Kansas Gas Service does not dispute the occurrences giving rise to the citations, but did respond to the Notices of Probable Non-

Compliance by indicating that there were extenuating circumstances related to the proliferation of locate activity brought on by unusually high construction activity related to fiber network expansion in Johnson and Wyandotte Counties, Kansas. Additionally, excavators were contacted regarding anticipated delays in providing locates, and the locate contractor received verbal acknowledgements and assent from the excavators that there would be a need for additional time to mark the affected gas facilities. Remedial action was taken by expanding the staffing levels of the contract locator, as more fully discussed below. No hearing is requested.

3. As noted in the Staff Report and Recommendation, Kansas Gas Service did attribute the delay in marking facilities to the high level of locate activity related to the aggressive build out of fiber telecommunication infrastructure in the Johnson and Wyandotte Counties, Kansas, area. The delay was caused by the rush of work to keep up with the substantial number of locates being processed to accommodate the high volume of requests being processed by the notification center.

4. The increased amount of excavation activity dates back to 2013 when Google announced its installation of Google Fiber in the Kansas City area. This activity was compounded by the initiation of the Lite Gig fiber network being installed by AT&T in Kansas City, Kansas, as a competitive venture to offset the Google Fiber system. The construction activity tied to these networks hit a new peak in 2015 that was accentuated by high ticket volumes brought on by the build out as well as better weather. Monthly ticket volumes increased by as much as 72%, giving rise to significant enhancements of locate staffing by Kansas Gas Service's contractor, United States Infrastructure Corporation (USIC), increasing as much as 125% for a single month.

5. USIC is the most prominent locate contractor in the Kansas City area and provides locate services to a number of utilities in Johnson and Wyandotte Counties. Locate volume has increased over time and has given rise to some operational problems resulting from excavators flooding the notification center with large numbers of requests at various times when new areas of infrastructure development give rise to a large accumulation of locate tickets. As it is apparent that all the locate requests cannot be completed in the fifteen day window set out in KUUDPA, unnecessary work is created and because of the competing interests and resources available for processing, not all the locates can be completed within the two working day time frame normally applicable to routine locates. Tickets are not always renewed because KUUDPA prohibits repeated requests that are not within the control of the excavator; so a practice has developed where new locates are requested for those locations where a ticket has lapsed, modified to some extent and adjusted for some variation in the area to be marked. This activity adds to the number of locate requests and compounds an already difficult situation. K.S.A. 66-1804 suggests some limitation on the number of locate requests as the locate notices “shall only describe an area in which the proposed excavation reasonably can be completed within 15 calendar days.” As a practical matter, there were more locate requests being made than will result in completed work projects.

6. The fiber network build outs are also occurring during times when normal construction activity is high. USIC has responded to the increased activity levels by adding personnel. In 2015, USIC created a special Project District where the build out activity is occurring and has increased administrative support in 2015 by a million dollars and added 60 technicians to the Project District at a cost of four million dollars during 2015. When compared to other parts of Kansas, the ticket volume in the Kansas City area has grown to astronomical

levels and is at times 50 to 60% higher than volumes in Wichita, Kansas, which is a comparable urban area. Activity level in Johnson Count increased by more than 5,000 tickets in some months during 2015 as compared to already high levels in 2014. During the 2015 timeframe, staffing levels at USIC increased from over 60% for some months to 125% in March 2015, which is normally the most active months coming out of the winter. Staffing increases have outpaced higher ticket volumes. However, it should be noted that activity levels for the build outs ebb and flow as areas are completed and a transition is made to new areas of development. This variation in activity with some months being very high and other months leveling off make it impossible to forecast the staffing necessary to meet this fluctuating demand.

7. USIC added training sessions during 2015 to accommodate the increased number of technicians at a cost of \$50,000.00 and increased the number of technicians by 11 at a cost of \$750,000.00 over and above previously mentioned higher expense levels for 2015. Weekend work has occurred resulting in rising costs for USIC.

8. Kansas Gas Service does not seek special treatment as a consequence of the high ticket volumes experienced in conjunction with the fiber build out. This growth and development in our communication and data transfer capabilities is a very positive economic benefit to Kansas communities. But, this period of construction activity is unusual and unprecedented. There is no overall system for normalizing ticket requests and activity levels. USIC, together with Kansas Gas Service, has developed an action plan to respond to this situation. Some of the fines and penalties set forth in the Order of August 20, 2015, were brought on by high ticket volumes, aggressive development strategies, limitations in the KUUDPA and excavator activity designed to compound the situation as a result of overflowing and redundant ticket requests. In this regard, Kansas Gas Service requests your consideration

and review of the unusual circumstances that have given rise to some of the citations set forth in the Order.

9. Additionally, Kansas Gas Service indicated that the excavators were contacted to notify them that there would be a delay in completing the referenced locates. The excavators accepted the need for the delay, and under K.S.A. 66-1806 (a), this would have been a basis for excusing the timeliness in marking the gas facilities affected by the Commission's order, as the parties reached an agreement for extending the time to make the locates. Notwithstanding, the Commission Staff concluded that no agreement was reached, as the excavators recorded non-response to the locate tickets issued for the jobs in question. Although non-response was recorded with respect to the delay in making the locates, this occurred because the excavators as a matter of course replied to the situation by issuing non-response notices to the call center to identify the delay and to hasten dispatch, but not necessarily to undermine the work outs that were underway.

10. Kansas Gas Service does appreciate the Commission Staff's efforts in this regard and the understanding that citations have been limited to those situations it regards as excessive. Kansas Gas Service and its contractor, USIC, have attempted to address this situation in a responsible way and seek relief that might be granted as a result of the unprecedented activity giving rise to the volume of locate tickets that are being processed in conjunction with the implementation of Google Fiber and Lite Gig. The Commission Staff has proposed a fine of \$500.00 per violation, which is within the discretion set forth in K.S.A. 66-1,151. Kansas Gas Service's principal reason for filing the Petition for Review and/or Reconsideration is to expand the issues for review to take into account the extraordinary ticket volumes and to recognize the hardship created by this workload. Also, because responsible efforts were made to contact the

excavators to avoid expense on their part and to reach understandings and agreements with regard to working out the time period for making the locates, extenuating and mitigating factors would seem to negate the imposition of a fine or penalty in this docket.

WHEREFORE, Kansas Gas Service seeks review of the circumstances that have impacted high ticket volumes in Johnson and Wyandotte Counties, Kansas, and request reconsideration without a hearing to permit additional consideration of the unusual construction activity giving rise, in part, to the infractions that are set forth in the Oder of August 20, 2015 and for such other relief as the Commission deems appropriate.



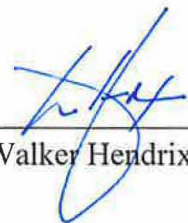
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Walker Hendrix #08835  
7421 West 129<sup>th</sup> Street  
Overland Park, Kansas 66213  
ATTORNEY FOR KANSAS GAS  
SERVICE, A DIVISION OF ONE GAS, INC.

**VERIFICATION**

STATE OF KANSAS        )  
  ) ss:  
COUNTY OF JOHNSON    )

Walker Hendrix, of lawful age, being first duly sworn upon oath, deposes and states:  
That he is an attorney for Kansas Gas Service, a Division of ONE GAS, Inc.; that he has read the  
above and forgoing Petition for Review and that the statements therein contained are true  
according to his knowledge, information and belief.

  
\_\_\_\_\_  
Walker Hendrix

Subscribed and sworn before me this 4<sup>th</sup> day of September, 2015.

  
\_\_\_\_\_  
Notary Public



My Appointment Expires: 06/05/18

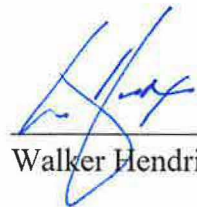


**CERTIFICATE OF SERVICE**

I Hereby Certify that on this 4<sup>th</sup> day of September, 2015, a true and correct copy of the above and foregoing Petition for Review was deposited in the United States mail, first-class postage prepaid, or sent by e-mail transmission, properly addressed to:

ANDREW FRENCH, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604-4027

LEO HAYNOS, CHIEF OF GAS OPERATIONS AND PIPELINE SAFETY  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
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\_\_\_\_\_  
Walker Hendrix