

**NOTICE OF PENALTY ORDER**  
**25-DPAX-303-PEN**

March 6, 2025

Jill Schmitz  
Utility Solutions of Kansas, LLC  
1645 S West Street  
Wichita, KS 67213

This is a notice of a penalty assessment against Utility Solutions of Kansas, LLC, LLC (“Utility Solutions”), for a violation of the Kansas Underground Utility Damage Prevention Act (“KUUDPA”) and pipeline safety regulations adopted by the Kansas Corporation Commission. Utility Solutions has been assessed a civil penalty in the amount of \$500. For a full description of the penalty please refer to the Penalty Order attached to this notice.

**IF YOU ACCEPT THE PENALTY:** You have twenty (20) days from the date of service of the Penalty Order to pay the penalty. Payments shall be payable to the Kansas Corporation Commission and mailed to the Fiscal Division of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and shall include a reference to Docket Number 25-DPAX-303-PEN.

**IF YOU CONTEST THE PENALTY:** You have the right to request a hearing to challenge the Penalty Order. A request for hearing must be made in writing, setting forth the specific grounds upon which relief is sought. You or an authorized representative of Utility Solutions, may electronically file its request for hearing within fifteen (15) days from the date of service of the Penalty Order. A copy of the request for hearing must be provided to the Litigation Counsel listed below.

**IF YOU FAIL TO ACT:** Pursuant to K.A.R. 82-14-6(j), failure to submit a written request for a hearing within fifteen (15) days from date of service of the Penalty Order will be considered an admission of noncompliance. **Failing to request a hearing or pay the civil assessment may result in further penalties.**

Respectfully,

/s/ Ahsan A. Latif

Ahsan A. Latif, S. Ct. No. 24709

Litigation Counsel

(785) 271-3118

[ahsan.latif@ks.gov](mailto:ahsan.latif@ks.gov)

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

Before Commissioners:     Andrew J. French, Chairperson  
                                  Dwight D. Keen  
                                  Annie Kuether

In the Matter of the Investigation of **Utility**     )  
**Solutions of Kansas, LLC**, Regarding     )  
Violations of the Kansas Underground Utility     )  
Damage Prevention Act (KUUDPA) (K.S.A.     )     Docket No. 25-DPAX-303-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”) for consideration and determination. Having examined its files and records, the Commission finds and concludes:

**I. JURISDICTION**

1.     The Commission has jurisdiction to administer and enforce the Kansas Underground Utility Damage Prevention Act (“KUUDPA”), as provided in K.S.A. 66-1801, *et seq.*<sup>1</sup> The Commission has full power and authority to adopt all necessary rules and regulations for carrying out the provisions of KUUDPA, including imposing civil penalties and injunctive relief against any person or entity subject to and found in violation of KUUDPA, or any rule, regulation, or order of the Commission.<sup>2</sup>

2.     K.S.A. 66-1802 defines excavation as “any operation in which earth, rock or other material below the surface is moved or otherwise displaced by any means.” Utility Solutions of Kansas, LLC (“Utility Solutions”) operates where earth, rock, or other materials below the surface

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<sup>1</sup> See K.S.A. 66-1813.

<sup>2</sup> See K.S.A. 66-1812 and K.S.A. 66-1815.

is moved or otherwise displaced by any means and therefore is an excavator in Kansas as defined by K.S.A. 66-1802.<sup>3</sup> Therefore, Utility Solutions is subject to the Commission's jurisdiction regarding compliance with KUUDPA's obligations and may be subject to civil penalties and injunctive relief.

### **III. NONCOMPLIANCE**

3. On August 6, 2024, Commission Staff ("Staff") conducted an onsite investigation of the excavation operations of Utility Solutions at the excavation site of 518 W 50<sup>th</sup> Ct. S. in Wichita, Kansas.

4. On August 14, 2024, Staff subsequently issued a PNC to Utility Solutions notifying Utility Solutions that it violated K.S.A. 66-1809(a) when it failed to exercise such reasonable care as may be necessary for the protection of any underground facility in and near the construction area when working in close proximity to any such underground facility.

5. Staff determined in its investigation that Utility Solutions failed to use reasonable care when excavating in the tolerance zone of an underground main line on August 6, 2024, in violation of K.S.A. 6-1809(a).<sup>4</sup> The PNC notes "one acceptable means of reasonable care is the use of hand tools when potholing (exposing) marked underground utilities." Staff determined that Utility Solutions damaged a Kansas Gas Service 2" PE gas main line with a mini excavator while installing a new water service, but it could not determine the estimated cost of damage.

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<sup>3</sup> K.S.A. 66-1802(e) provides: "'Excavator' means any person who engages directly in excavation activities within the state of Kansas but shall not include any occupant of a dwelling who: (1) Uses such dwelling as a primary residence; and (2) excavates on the premises of such dwelling."

<sup>4</sup> K.S.A. 66-1809(a) states "... an excavator shall exercise such reasonable care as may be necessary for the protection of any underground facility in and near the construction area when working in close proximity to any such underground facility".

6. On or after September 26, 2024, Staff received a response from Utility Solutions that did not dispute Staff's finding.<sup>5</sup>

7. On January 24, 2024, Staff submitted to the Commission's Litigation Division a Report and Recommendation ("R&R") including attachments which is made a part hereof and incorporated by reference as **Attachment A**.<sup>6</sup> Staff found that Utility Solutions was directly responsible for its actions in failing to excavate in a careful and prudent manner when working within the tolerance zone as required by K.S.A. 66-1809(a).<sup>7</sup> Staff's R&R recommended a civil penalty of \$500 be assessed against Utility Solutions for its failure to exercise reasonable care on August 6, 2024, in violation of K.S.A. 66-1809(a).<sup>8</sup>

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

8. The Commission finds it has full power and authority under K.S.A. 66-1815(a) to adopt all necessary rules and regulations for carrying out the provisions of KUUDPA.

9. The Commission finds that Utility Solutions was operating as an excavator, as defined in K.S.A. 66-1802, during the incident at issue.

10. The Commission finds that, pursuant to K.A.R. 82-14-6(a), Staff was authorized to serve a PNC on Utility Solutions after Staff conducted an investigation regarding damage to a gas service line.

11. The Commission finds that Utility Solutions did not exercise reasonable care or use nonintrusive means to assure there was not a conflict between underground facilities and excavation activity in the tolerance zone at 518 W 50<sup>th</sup> Ct. S. in Wichita, Kansas.

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<sup>5</sup> . Staff's Report and Recommendation, Utilities Division (Dec. 19, 2024), Attachment 1 ("Staff's R&R" or "R&R").

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

12. The Commission finds that Utility Solutions responded to the PNC as required by K.A.R. 82-14-6(a) and did not dispute Staff's findings.<sup>9</sup>

13. The Commission finds that the penalty amount recommended by Staff is necessary to correct Utility Solutions' violation.

14. The Commission finds that Utility Solutions violated K.S.A. 66-1804(a) and should be assessed a \$500 civil penalty. The Commission concludes Utility Solutions' assessed civil penalty is just and reasonable.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

A. A civil penalty in the amount of \$500 is assessed against Utility Solutions Exterior Solutions for violating the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 *et seq.*, and the Commission's pipeline safety regulations adopted pursuant to K.S.A. 66-1,150 *et seq.*

B. Pursuant to K.A.R. 82-14-6(j), Utility Solutions may request a hearing to challenge the allegations set forth in this Penalty Order by electronically filing its request for hearing with the Commission within fifteen (15) days from the date of service of this Penalty Order, and e-mailing or mailing a copy of the request for hearing to the Litigation Counsel listed on the Notice of Penalty Assessment. 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 Utility Solutions' right to a hearing. A request for hearing must comply with the provisions of K.A.R. 82-1-232(b).

C. Pursuant to K.A.R. 82-14-6(i), if Utility Solutions does not request a hearing, payment of the civil penalty is due within twenty (20) days from the date of service of this Penalty

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<sup>9</sup> K.A.R. 82-14-6(e).

Order. Payments shall be made payable to the Kansas Corporation Commission and mailed to the following address:

Fiscal Division  
Kansas Corporation Commission  
1500 S.W. Arrowhead Road  
Topeka, Kansas 66604

The payment shall include a reference to Docket Number 25-DPAX-303-PEN.

D. Unless a hearing is requested, failure to pay the \$500 civil penalty within twenty (20) days from the date of service of this Penalty Order will result in enforcement action against Utility Solutions, including all sanctions, requirements, and penalties described above being enforceable without further action by the Commission.

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

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

Dated: 03/06/2025



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Abigail D. Emery  
Acting Secretary to the Commission

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## **ATTACHMENT “A”**

## REPORT AND RECOMMENDATION UTILITIES DIVISION

**TO:** Andrew J. French, Chairperson  
Dwight D. Keen, Commissioner  
Annie Kuether, Commissioner

**FROM:** Suzanne M. Balandran, Public Service Administrator  
Paul Owings, Chief of Pipeline Safety  
Jeff McClanahan, Director of Utilities

**DATE:** January 24, 2024

**SUBJECT: Docket Number:**  
In the Matter of the Investigation of Utility Solutions of Kansas, LLC. 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:**

As a result of the investigation in Case Number JW-24-OC-1072, Staff recommends that a civil penalty in the amount of \$500 be assessed Utility Solutions of Kansas, LLC (Utility Solutions), for violation(s) of the Kansas Underground Utility Damage Prevention Act (KUUDPA). Utility Solutions violated K.S.A. 66-1809 by failing to exercise such reasonable care as may be necessary for the protection of any underground facilities, when excavating in close proximity to any such facility, near 518 W. 50<sup>th</sup> Ct. S., Wichita, Kansas. Staff issued a Notice of Probable Noncompliance (PNC) to Utility Solutions on August 14, 2024. Utility Solutions responded to the PNC on September 26, 2024, as required by K.A.R. 82-14-6 (c). The response to the PNC is included as Exhibit 1.

### **ANALYSIS:**

#### **Rationale for Penalties:**

##### **A. Gravity of noncompliance:**

If an excavator does not take precautions necessary to excavate in a careful and prudent manner when working within the tolerance zone, then damage can occur. Kansas



regulations state that excavating with reasonable care shall include using nonintrusive means to assure there is not a conflict between underground facilities and excavation activity in the tolerance zone. Staff contends the excavator must also expose the facility at intervals as often as necessary throughout excavation as a fundamental means of providing reasonable care while excavating. This excavator damaged a Kansas Gas Service (KGS) PE gas main while installing water service with a mini excavator. Because Utility Solutions did not use nonintrusive means while working near marked facilities in the tolerance zone, Utility Solutions failed to use reasonable care as required by the law, and therefore warrants a civil penalty.

B. Culpability:

Utility Solutions is directly liable for its actions in failing to use exercise reasonable care while excavating as required by Kansas law.

C. History of noncompliance:

Staff has issued two Notices of Probable Noncompliance for violations of KUUDPA to Utility Solutions in the last two years.

D. Response of excavator regarding noncompliance(s):

Response to the PNC as required by K.A.R. 82-14- 6(c) was received by Staff. Utility Solutions agreed with Staff's findings as is documented in Attachment 1. Utility Solutions acknowledged they made a mistake.

E. Aggravating/Mitigating Circumstances:

Staff has not determined there to be any circumstances that would cause modification of the \$500 recommended penalty amount.

**RECOMMENDATION:**

Staff recommends a civil penalty be assessed to Utility Solutions in the amount of \$500 for violating K.S.A. 66-1809.

Attachment

## **Exhibit 1**



PROBABLE NONCOMPLIANCE

Investigation: JW-24-OC-1072

Company: Utility Solutions of Kansas LLC

Division:

Regulation:

66-1809 (a) Excavator's duty to exercise reasonable care.

(a) Upon receiving information as provided in K.S.A. 2001 Supp. 68-1806, and amendments thereto, an excavator shall exercise such reasonable care as may be necessary for the protection of any underground facility in and near the construction area when working in close proximity to any such underground facility.

PROBABLE NONCOMPLIANCE DESCRIPTION:

On 08/06/2024, Utility Solutions failed to use reasonable care when excavating in the tolerance zone of an underground main line at 518 W 50th Ct S in Wichita, Kansas. Utility Solutions damaged a Kansas Gas Service 2" PE gas main line with a mini excavator while installing new water service. There was a valid One-Call ticket #24399727 with a due date of 08/08/2024. Locate marks were present and within tolerance. One acceptable method of reasonable care is the use of hand tools when potholing (exposing) marked underground utilities.

OPERATOR'S RESPONSE: (Attach verification if needed)

Our Crews operate on different machines, job sites, in various terrains and conditions, and we demand the most care and safe practices from them. However, they sometimes make mistakes. They handled the hit line quickly, correctly, and safely.

Operator's Authorized Signature:

Date:

9/26/2024

PIPELINE SAFETY USE ONLY:

Date reviewed: \_\_\_\_\_

Date reviewed: \_\_\_\_\_

Chief: \_\_\_\_\_

Inspector: \_\_\_\_\_

Inspection Type: One Call Inquiry/Complaint

Date Inspected: 08/06/2024

Inspected By: JW



## **CERTIFICATE OF SERVICE**

25-DPAX-303-PEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of first class mail and electronic service on 03/06/2025.

Isaiah Ast, OWNER  
Utility Solutions of Kansas, LLC  
1645 S West St  
Wichita, KS 67213

MADISEN HANE, LITIGATION COUNSEL  
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/S/ KCC Docket Room  
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KCC Docket Room