

1500 SW Arrowhead Road
Topeka, KS 66604-4027



20241114104459
Kansas Corporation
Commission
Phone: 785-271-3100
Fax: 785-271-3354
<http://kcc.ks.gov/>

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

Laura Kelly, Governor

NOTICE OF PENALTY ORDER
25-DPAX-195-PEN

November 14, 2024

Greg Clarkson
AT&T
9615 N Rockwill
Oklahoma City, OK 73162

YOU HAVE BEEN ASSESSED A PENALTY: This is a notice of penalty assessment for violation(s) of the Kansas Underground Utility Damage Prevention Act (KUUDPA) and pipeline safety regulations adopted by the Kansas Corporation Commission. You have been assessed a \$8,000 penalty. For a full description of the penalty please refer to the order attached to this notice.

IF YOU ACCEPT THE PENALTY: The assessed penalty is \$8,000. You have twenty (20) days from the date of service of the Penalty Order to pay the fine amount. Checks shall be payable to the Kansas Corporation Commission. Payments shall be mailed to the Fiscal Division of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and shall include a reference to the docket number (25-DPAX-195-PEN) of this proceeding.

IF YOU CONTEST THE PENALTY: You have the right to request a hearing. A request for hearings must be made in writing, setting forth the specific grounds upon which relief is sought. You or an authorized representative from your Company, may electronically file its request for hearing within fifteen (15) days from the date of service of this 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(i) and (j), failure to submit a written request for a hearing within fifteen (15) days or, in the alternative, to pay the civil assessment in twenty (20) days from date of service of this 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 Latif
Ahsan Latif, S. Ct. No. 24709
Litigation Counsel
(785) 271-3118
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 AT&T)
LLC Regarding Violations of the Kansas)
Underground Utility Damage Prevention Act) Docket No. 25-DPAX-195-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).)

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. REGULATORY FRAMEWORK

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.* K.S.A. 66-1815 grants the Commission full power and authority to adopt all necessary rules and regulations for carrying out the provisions of K.S.A. 66-1801 through 66-1814.

2. Pursuant to K.A.R. 82-14-6, 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 is authorized to impose civil penalties and injunctive actions against any person or entity subject to and found in violation of KUUDPA, or any rule and regulation, or any order of the Commission. Each violation is subject to a civil 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.¹

4. Pursuant to K.A.R. 82-1-237, the Commission has the authority to investigate a party under its jurisdiction and order a hearing on its own motion when the Commission believes the party is in violation of the law or any order of the Commission. K.A.R. 82-1-6(m) provides a show cause hearing may be held by the Commission when all other reasonable measures have failed to produce operator compliance, or when non-compliance presents an imminent danger to persons or property.

II. JURISDICTION OVER AT&T LLC

5. AT&T (“AT&T”) operates as a public utility pursuant to Commission-issued certificates of convenience and necessity.

6. AT&T is a statutorily defined Operator who owns or leases underground Tier 1 or Tier 2 facilities, as defined in K.S.A. 66-1802(k), (q), and (r), respectively. Pursuant to K.S.A. 66-1813, which authorizes the Commission to administer and enforce the KUUDPA, AT&T is subject to the Commission’s jurisdiction regarding compliance with KUUDPA’s obligations (e.g., K.S.A. 66-1806), and may be subject to penalties issued pursuant to K.S.A. 66-1812.

III. NONCOMPLIANCE

7. Commission Staff (Staff) investigated the activities and operations of AT&T from April 1, 2024, to May 23, 2024, regarding providing timely locate marks on its underground facilities within the time allowed by the state damage prevention laws of two business days. On October 1, 2024, Staff submitted its Report and Recommendation (R&R) attached hereto as Attachment “A” and incorporated herein by reference.²

¹ See K.S.A. 66-1812; K.A.R. 82-14-6.

² See Staff’s R&R (Oct. 1, 2024).

8. For the period of April 1, 2024, to May 23, 2024, Staff found during its investigations that AT&T failed to provide excavators with the location of the tolerance zone of the buried facilities within the time required on ten (10) separate occasions. The table below outlines the locate request number, the date the locate was called in, the date work was to begin, the date the non-response was called in, and Staff’s recommended penalty amount.

Locate Request #	Date Locate Called In	Date Work Was to Begin	Date Non-Response Called In	Penalty Amount
24156462	April 1, 2024	April 3, 2024	April 5, 2024	\$1,000
24150534	March 28, 2024	April 1, 2024	April 8, 2024	\$1,000
24181560	April 12, 2024	April 17, 2024	April 18, 2024	\$1,000
24158507	April 2, 2024	April 5, 2024	April 12, 2024	\$1,000
24208931	April 25, 2024	April 30, 2024	May 3, 2024	\$1,000
24216095	April 30, 2024	May 3, 2024	May 6, 2024	\$1,000
24164967	April 4, 2024	April 9, 2024	Locates completed on April 8, 2024	n/a
24216122	April 30, 2024	May 3, 2024	May 6, 2024	\$1,000
24227519	May 6, 2024	May 9, 2024	May 15, 2024	\$1,000
24250839	May 16, 2024	May 21, 2024	Ticket cleared: No buried facilities	n/a
TOTAL				\$8,000

9. Staff issued a Notice of Probable Noncompliance to AT&T on the violations outlined above, a copy of which is attached hereto as Attachment “B” and hereby incorporated by reference. AT&T does not dispute eight of the ten violations, and its responses are included attached hereto as Attachment “C” and hereby incorporated by reference. AT&T contested two of the violations arguing they either provided locates within the allotted time or cleared the excavator as there were no buried utilities within the locate area. Staff does not recommend a penalty for the two violations AT&T contested.

IV. KUUDPA NONCOMPLIANCE VIOLATIONS

10. KUUDPA requires operators (i.e., public utilities) to provide excavators a “tolerance zone” of the operator’s underground facilities in the planned excavation area by marking, flagging or other acceptable method.³ Within two working days, beginning after the day on which the excavator provided notice of its intent to excavate, an operator must inform an excavator of the tolerance zone.⁴ If an operator has no facilities in the area of proposed excavation, the operator must notify the excavator no facilities are present before the excavation start date.⁵

11. By failing to provide locates within two working days, as set forth in paragraph 8, AT&T was in violation of K.S.A. 66-1806.

12. AT&T was not in compliance with the KUUDPA requirements as set forth in paragraph 10 above.

13. Staff’s Report and Recommendation set forth Staff’s findings for recommending a penalty against AT&T. While KUUDPA allows an excavator to dig without locates if the required marking time has expired, most excavators will wait rather than risk damaging underground utilities or endangering life and property. Postponing excavation because of a failure to complete locates can result in costly downtime and scheduling problems including cancellation of contracts. Failing to provide accurate or timely locate marks has the potential for significant consequences to public safety. The absence of locate marks may give an excavator a false sense of security. A lack of information and awareness that no underground utility facilities are present, the speed and force an excavator utilizes may result in greater harm and damage. Staff’s Report and Recommendation further details AT&T’s culpability, history of noncompliance, and aggravating or mitigating circumstances. Ultimately, Staff recommended the Commission issue a civil penalty

³ See K.S.A. 66-1806(a).

⁴ See K.S.A. 66-1806(a).

⁵ See K.S.A. 66-1806(d)(1).

of \$8,000 (\$1,000 for each violation) against AT&T for violating KUUDPA and the Commission's pipeline safety regulations.⁶

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. The Commission finds it has jurisdiction over AT&T 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 AT&T to be acting as an operator who operates Tier 1 facilities as defined in K.S.A. 66-1802.

15. The Commission finds AT&T violated Kansas law governing underground utilities, including provisions of the KUUDPA and the Commission's pipeline safety regulations, as set forth herein and the evidence included in the record, and is therefore subject to sanctions or fines imposed by the Commission. Specifically, the Commission finds AT&T failed to comply with K.S.A. 66-1806(a) for the above listed incident(s) as set forth in paragraph 8.

16. The Commission finds a civil penalty is warranted due to AT&T's violation of KUUDPA. Specifically, the Commission finds AT&T shall be assessed an \$8,000 civil penalty for the violations set forth in the record.

17. The Commission finds and concludes AT&T shall be afforded an opportunity to request a hearing on the assessment of this civil penalty. Because the Commission is authorized to impose civil penalties and injunctive actions against any person or entity subject to and found in violation of KUUDPA, or any rule and regulation, or any order of the Commission, the Commission finds the hearing procedure adopted in the Commission's KUUDPA and procedural regulations shall control any subsequent hearings in this matter. Specifically, pursuant to K.A.R.

⁶ See Staff's Report and Recommendation.

82-14-6(j), the Commission finds and concludes AT&T shall have 15 days from the date of service of this Penalty Order to request a hearing on the matter. A request for hearing must comply with the provisions of K.A.R. 82-1-232(b). Hearings shall be conducted in accordance with K.A.R. 82-1-230.

18. Pursuant to K.A.R. 82-14-6(i), and (j), AT&T' failure to pay the assessed civil penalty within 20 days or, in the alternative, request a hearing within 15 days from the date of service of this Penalty Order shall be considered an admission of the noncompliance allegations contained herein.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. AT&T LLC, is hereby assessed an \$8,000 civil penalty for eight (8) violations of the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801, *et. seq.*

B. Pursuant to K.A.R. 82-14-6(j), AT&T LLC may request a hearing by electronically filing its request for hearing 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 allegations contained herein and result in a waiver of AT&T LLC's right to a hearing. A request for hearing must comply with the provisions of K.A.R. 82-1-232(b). Hearings shall be conducted in accordance with K.A.R. 82-1-230.

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 AT&T LLC does 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 shall be made payable to the Kansas Corporation Commission. Payments shall be mailed to the Fiscal Division of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604. The payment shall include a reference to the docket number (25-DPAX-195-PEN) of this proceeding.

E. Unless a hearing is requested, failure to pay the \$8,000 civil penalty within twenty (20) days from the date of service of this Penalty Order will result in further enforcement actions against AT&T LLC, 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: 11/14/2024



Lynn M. Retz
Executive Director

ATTACHMENT “A”

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

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

FROM: Suzanne Balandran, Public Service Administrator
Paul Owings, Deputy Chief Engineer
Jeff McClanahan, Director of Utilities

DATE: October 1, 2024

SUBJECT: Docket Number: 25-DPAX-195-PEN
In the Matter of the Investigation of AT&T 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 Staff's investigation in Case Number SB-24-OC-1001, Staff recommends a civil penalty in the amount of \$8,000 be assessed to AT&T LLC (AT&T) for violations of the Kansas Underground Utility Damage Prevention Act (KUUDPA). From April 1 thru May 22, 2024, AT&T failed to provide locates of its underground facilities within the time limits required by KUUDPA in Andover, Kansas and the surrounding area on eight occasions. Failure to inform the excavator of the tolerance zone within two working days is a violation of K.S.A. 66-1806. Staff issued a Notice of Probable Noncompliance (NPN) to AT&T on May 23, 2024. AT&T responded to the NPN on June 18, 2024, as required by K.A.R. 82-14-6(c).

ANALYSIS:

AT&T is an Operator of Tier 1 facilities as defined in K.S.A. 66-1802. Operators of Tier 1 facilities must inform excavators of the tolerance zone of the underground facilities by marking, flagging, or other acceptable method per K.S.A. 66-1806. Operators of Tier 1 facilities have two working days before the excavation scheduled start date assigned by the notification center to inform excavators of the location of their facilities per K.A.R. 82-14-3(f).

Staff performed an investigation and reviewed non-response tickets from April 1, 2024 thru May 22, 2024 for AT&T in a given region. Non-response tickets are initiated by excavators when a

member utility or operator fails to respond to a requested utility locate within the allotted time as specified above. Staff identified 10 non-response tickets and issued a NPN to AT&T on May 23, 2024. The NPN alleged that AT&T did not inform the excavator of the tolerance zone for its underground facilities within the required time frame which is a violation of KUUDPA.

AT&T responded to each of the ten alleged non-responses on June 18, 2024, refer to Attachment A. For eight of the 10 responses, AT&T did not contest Staff's allegations of non-compliance. AT&T contested two of the violations arguing they either provided locates within the allotted time or cleared the excavator as there were no buried utilities within the locate area. Staff recommends the Commission penalize AT&T for each of the eight violations which were not contested. The following provides the rationale for the penalty:

Rationale for Penalties:

A. Authority:

The Commission has authority to issue civil penalties and injunctive relief to any person who violates KUUDPA per K.S.A. 66-1812. The Commission is required to administer and enforce KUUDPA per K.S.A. 66-1813.

B. Supporting Documents:

Attachment A includes AT&T's response to the NPN issued by Staff. The response contains Staff's allegation that AT&T did not inform the excavator of the tolerance zone for its underground utilities and lists the respective tickets for each of the ten allegations of noncompliance. Attachment A also includes AT&T's acknowledgement of the violation.

C. History of noncompliance:

Staff has issued four Notices of Probable Noncompliance for thirteen violations of KUUDPA to AT&T in the past two years.

D. Response of operator regarding noncompliance(s):

AT&T agreed with Staff's findings on eight locate tickets. AT&T acknowledged that the contract locator completed the locate requests after the due date of the locate ticket and upon receipt of the non-response ticket. A non-response ticket was requested by the excavator for each ticket that the operator has not completed the locate request by the ticket due date.

RECOMMENDATION:

Staff recommends a civil penalty of \$1,000 be assessed to AT&T for each of the eight offenses that were acknowledged by AT&T. A total penalty in the amount of \$8,000 is recommended for violating K.S.A. 66-1806 and K.A.R. 82-14-6(c).

ATTACHMENT “B”

NOTICE OF PROBABLE VIOLATION

CASE NO: SB-24-OC- 1001

Date of issuance: 05/22/2024

Company: AT&T

Regulation: 66-1806

66-1806 Identification of location of facilities; duties of operator

- (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 white lines 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.

Description:

KCC staff alleges AT&T did not inform the excavator of the tolerance zone for its underground facilities within two working days for the requested area for each of the ten locate requests listed below:

#24156462	#24150534	#24181560
#24158507	#24208931	#24216095
#24164967	#24216122	#24227519
#24250839		

Operator's Response to include the following information for each ticket number included in the description:

- Original due date
- Non-response ticket number(s)
- Due date of each non-response ticket
- Date each ticket was marked
- Reason for each non-response ticket
- Describe contact made to each excavator in response to ticket not being marked by original due date and documentation of excavator confirming contact made
- Number of tickets and number of non-response tickets for your company in Andover for the month of April

Operator's authorized signature: _____

Printed Name: _____

Job Title: _____

Phone: _____ Email: _____

ATTACHMENT “C”

June __, 2024

Leo Haynos
Chief Engineer
KCC/ Pipeline Safety
1500 SW Arrowhead Road
Topeka, Kansas 66604-4027

Subject: KCC Investigation # SB-24-OC-1001

Dear Mr. Haynos:

This letter constitutes AT&T’s response to the Notice of Probable Noncompliance (the “NPN”) issued in the above referenced KCC Investigation, dated May 22, 2024, and copied below.

Date of issuance: 05/22/2024

Company: AT&T

Regulation: 66-1806

66-1806 Identification of location of facilities; duties of operator

- (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 white lines 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.

Description:

KCC staff alleges AT&T did not inform the excavator of the tolerance zone for its underground facilities within two working days for the requested area for each of the ten locate requests listed below:

#24156462	#24150534	#24181560	#24158507	#24208931	#24216095
#24164967	#24216122	#24227519	#24250839		

AT&T’s Response:

Original locate request 24156462 was called in on 4/1/24 with work being conducted on 4/3/24. NON-RESPONSE was called in on 4/5/24 and was completed the same day as called in.

Original locate request 24150534 was called in on 3/28/24 with work being conducted on 4/1/24. NON-RESPONSE was called in on 4/8/24 and was completed the same day as called in.

4/11/24 12:30:19.662	4/11/24 12:31:38.955	Status	Johnson, Al	no	AT&T Tel KS ATT301	26	200	Marked - Paint and Flag (Closed)
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Original locate request 24181560 was called in on 4/12/24 with work being conducted on 4/17/24. NON-RESPONSE was called in on 4/18/24 and was completed the same day as called in.

Original locate request 24158507 was called in on 4/2/24 with work being conducted on 4/5/24. NON-RESPONSE was called in on 4/12/24 and was completed the same day as called in.

4/12/24 12:02:50.816	4/12/24 12:03:00.289	Status	Wallace, Chad	no	AT&T Tel KS ATT301	1	1	Marked - Paint and Flag (Closed)
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Original locate request 24208931 was called in on 4/25/24 with work being conducted on 4/30/24. NON-RESPONSE was called in on 5/3/24 and was completed the same day as called in.

5/3/24 13:31:00.000	5/3/24 13:31:50.500	Status	Macy, Chance	no	AT&T Tel KS ATT301	30	1	Marked - Paint and Flag (Closed)
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Original locate request 24216095 was called in on 4/30/24 with work being conducted on 5/3/24. NON-RESPONSE was called in on 5/6/24 and was completed the same day as called in.

5/6/24 17:16:00.000	5/6/24 17:16:23.622	Status	Veltz, Shawn	no	AT&T Tel KS ATT301	1	100	Marked - Paint and Flag (Closed)
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Original locate request 24164967 was called in on 4/4/24 with work being conducted on 4/9/24. The locate was completed on the 4/8/24 and billed on the 4/8/24 prior to the due date.

4/8/24 14:06:34.261	4/8/24 14:06:45.867	Status	Felt, Anthony	no	AT&T Tel KS ATT301	24	1	Not Marked - Excavation Onsite Clear (Closed)
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Original locate request 24216122 was called in on 4/30/24 with work being conducted on 5/3/24. NON-RESPONSE was called in on 5/6/24 and was completed the same day as called in.

5/6/24 17:13:59.680	5/6/24 17:13:59.680	Status	Veltz, Shawn	no	AT&T Tel KS ATT301	15	100	Marked - Paint and Flag (Closed)
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Original locate request 24227519 was called in on 5/6/24 with work being conducted on 5/9/24. NON-RESPONSE was called in on 5/15/24 and was completed the same day as called in.

5/15/24 10:10:00.000 5/15/24 10:10:57.814 Status Macy, Chance no AT&T Tel KS ATT301 17 1 Marked - Paint and Flag (Closed)

Original locate request 24250839 was called in on 5/16/24 with work being conducted on 5/21/24. The ticket was cleared as there are no buried facilities in conflict for the members on the locate request. All utilities were confirmed to be ran overhead.

Pursuant to Kansas Corporation Commission regulation 82-14-2 (Excavator requirements) subsection (d) “Each notice of intent of excavation shall include the name and telephone number of the individual who will be representing the excavator.” On some tickets there is communication with the excavator to extend the requested due date. Although that communication did occur, the newly agreed upon date in some cases was not met.

Please contact me should you have any questions or need additional information.

Respectfully,

Greg Clarkson

Sr Admin Environ Health & Safety Manager/Damage Prevention, OK - KA
9615 N Rockwell Ave
Oklahoma City OK, 73162
405-317-5348

CERTIFICATE OF SERVICE

25-DPAX-195-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 11/14/2024.

Greg Clarkson, SR. ADMIN ENVIRON HEALTH & SAFETY
MANAGER
AT&T
9615 N Rockwell
Oklahoma City, OK 73162

PATRICK HURLEY, CHIEF LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
patrick.hurley@ks.gov

AHSAN LATIF, LITIGATION COUNSEL
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1500 SW ARROWHEAD RD
TOPEKA, KS 66604
ahsan.latif@ks.gov

/S/ KCC Docket Room
KCC Docket Room