

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

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

In the Matter of Staff's Recommendation for)
Kansas Gas Service, a Division of ONE Gas,)
Inc., to Show Cause Why the Commission) Docket No. 21-KGSG-398-SHO
should not Impose Penalties for Violation of)
Natural Gas Pipeline Safety Regulations.)

ORDER APPROVING ALTERNATIVE TO CIVIL PENALTY

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. The Commission finds the following:

1. The Kansas Underground Utility Damage Prevention Act (KUUDPA), K.S.A. 66-1801 *et. seq.*, places requirements on excavators and operators when conducting excavation activities. In general, excavators are required to provide notice before excavating,¹ and operators are required to mark underground facilities once they receive notice from an excavator.²

2. On April 22, 2021, the Commission ordered Kansas Gas Service (KGS) to: (1) show cause why it should not be required to perform an assessment of its locator training program and modify its Operations and Maintenance (O&M) procedures to incorporate its damage prevention improvement plan regarding evaluation of contractor performance and; (2) show cause why it should not be assessed a civil penalty in the amount of \$90,000 for failure to follow its O&M procedures related to 54 instances of not providing timely and accurate locates of natural gas pipelines in calendar year 2020.³

¹ See K.S.A. 66-1804.

² See, K.S.A. 66-1806.

³ Order to Show Cause, pg. 4 (April 22, 2021).

3. On May 21, 2021 KGS filed a response to the Show Cause Order. KGS agreed that an audit and evaluation of its contractor, USIC was reasonable to identify and address locate issues.⁴ KGS proposed report to the Commission the results of the evaluation and to provide a Corrective Action Plan (CAP) to the Commission within six months.⁵ KGS also proposed that the civil penalty be reduced by \$27,000.⁶

4. On December 14, 2021, KGS filed a supplemental response to the Show Cause Order. KGS suggested that rather than amending its O&M procedures, changes should be made to its Master Service Agreement which would enhance its oversight over third party contractors.⁷

5. On April 18, 2022, Commission Staff (Staff) filed a Report and Recommendation (R&R). Staff noted that in the course of investigating the 21-398 docket, 57 additional violations of pipeline safety regulations had been found in calendar year 2021.⁸ Staff recommended that KGS be assessed an additional \$57,000 in civil penalties.⁹ Staff recommended that the \$57,000 in civil penalties be combined with the previous \$90,000 for a total penalty of \$147,000.¹⁰ Staff also states that after a reviewing KGS' training, evaluation and quality assurance program with respect to utility locating, modifications to KGS' O&M plan are not necessary.¹¹

6. On April 28, 2022, KGS filed a response to Staff's R&R. KGS agreed with Staff's R&R but requested further negotiations with Staff prior to a civil penalty being issued.¹²

⁴ Kansas Gas Service's Response to Show Cause Order, pg. 2 (May 21, 2021).

⁵ *Id.*

⁶ *Id.*

⁷ Supplemental Response to Show Cause Order, pg. 3 (December 14, 2021).

⁸ Notice of filing of Staff's Report and Recommendation, pg. 1 (April 15, 2022).

⁹ *Id.* at 5.

¹⁰ *Id.* at 7.

¹¹ *Id.*

¹² Response to Commission Staff's April 18, 2022 Report and Recommendation, pg. 3 (April 28, 2022).

7. On, August 8, 2023, Staff filed an updated R&R. Staff found that in calendar year 2022 there were 47 incidents of damage to natural gas infrastructure that were the result inaccurate locates by KGS.¹³ Staff recommended a penalty of \$1,000 per incident.¹⁴ Staff also recommended that the penalties for calendar year 2020-2022 be combined as follows:¹⁵

Calendar Year	No. of Violations	Penalty Amount
2020	54	\$54,000
2021	57	\$57,000
2022	47	\$47,000
Total	158	\$158,000

Staff proposed that the \$158,000 civil penalty be paid to Kansas technical colleges for the benefit of heavy equipment operation programs.¹⁶ KGS agreed with Staff's proposal, attached to Staff's August 8, 2023 R&R is a Compromise and Alternative to Civil Penalty (C&A).¹⁷

8. Under the proposed C&A, KGS will fund \$158,000 in grants to educational institutions which offer heavy equipment operator training programs that include training on KUUDPA and are located inside KGS' territory.¹⁸ The grants will be administered by Commission Staff using criteria specified in the C&A.¹⁹ Attached to the C&A is a copy of a letter that will be sent to eligible institutions informing them of the grant process as well as a copy of the grant application.²⁰

¹³ Notice of Filing of Staff's Report and Recommendation, pg. 2 (August 8, 2023).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 6.

¹⁷ Notice of Filing of Staff's Report and Recommendation, Attachment 2 Compromise and Alternative to Civil Penalty (C&A) (August 8, 2023).

¹⁸ C&A at 4.

¹⁹ *Id.* at 5-7.

²⁰ C&A, Exhibit A.

9. Under K.S.A. 66-1,152 the Commission may, consider a compromise between the person charged and Commission Staff in lieu of all or part of a civil penalty. This compromise requires the person charged to make payment for a project that is related to natural gas pipeline safety or underground utility damage prevention and benefits the industry or community as a whole. This C&A would fully address all KUUDPA-related civil penalties for KGS for calendar years 2020-2022.

10. The Commission finds that the proposed C&A meets the goals of K.S.A. 66-1,152 by supporting education and training for heavy equipment operators working under KUUDPA.

THEREFORE, THE COMMISSION ORDERS:

A. The Commission approves the Compromise and Alternative to Civil Penalty.

B. Any party may file for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).²¹

BY THE COMMISSION IT IS SO ORDERED.

French, Chair; Keen, Commissioner; Kuether, Commissioner

09/14/2023

Dated: _____



Lynn M. Retz
Executive Director

DGC

²¹ K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

21-KGSG-398-SHO

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 09/14/2023.

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/S/ KCC Docket Room

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