

Approved: March 14, 2000

Date

Carl D. Holmes

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:10 a.m. on February 21, 2000 in Room 231-N of the Capitol.

All members were present.

Committee staff present: Lynne Holt, Legislative Research Department
Mary Torrence, Revisor of Statutes
Jo Cook, Committee Secretary

Conferees appearing before the committee: Terry Knight, Overland Trenching
Dave Schmidlein, Schmidlein Excavating
Leo Haynos, Kansas Corporation Commission
Dick Rohlf, Western Resources
Mike Rump, Kansas City Power & Light
Steve Johnson, Kansas Gas Service

Others attending: See Attached Guest List

Mary Torrence, Revisor, presented the committee report on **HB 2984** as passed on February 18, 2000.

Chairman Holmes announced that **SB 54 - Tenant access to television service** would be worked the following day.

Lynne Holt, Research Analyst, presented an overview of the One-Call System in Kansas (Attachment 1). Ms. Holt explained that the Kansas Underground Utility Damage Prevention Act established a system in which excavators could make one phone call to determine the location of various underground lines, pipes, conduits and other transporting facilities. The KCC is responsible for administering and enforcing the act. The Kansas One Call Center is a nonprofit corporation formed by utility companies. All utilities, except for owners of sewer, water, and oil and gas production lines must become members. The Center discharges its dispatch responsibilities after being contacted, at least two days, but not more than ten days, before the excavation date, by the excavator. The excavator informs them of the dig site and the utilities are then contacted to mark their underground facilities no sooner than two days before the date of excavation. Complaints are handled through the Kansas Corporation Commission's Office of Pipeline Safety.

HB 2983 - Underground utilities; application of damage prevention act; remedies for violation.

Appearing as the first proponent to the bill was Mr. Terry Knight, owner of Overland Trenching (Attachment 2). Mr. Knight explained that one of the greatest difficulties in doing his job was delays of operators because the lines hadn't been marked. He also felt that the definition of 'facility' needed to be expanded to include all fiber optic cable, cable television service and Internet providers. Additionally he felt that gas and water lines connected to more than one service should be marked.

Mr. Knight responded to questions from Rep. Alldritt, Rep. Sloan, Rep. Myers and Rep. Vining.

Mr. Dave Schmidlein, Schmidlein Excavating, testified in support of **HB 2983** (Attachment 3). Mr. Schmidlein stated that this bill will offer some means for the private contractors to recover damages caused by inaccurate marks or failure to mark underground facilities.

Mr. Schmidlein responded to questions from Rep. Alldritt, Rep. Sloan, Rep. Kuether, Rep. Myers, Rep. Vining, Rep. Krehbiel, Rep. Loyd and Rep. Dahl.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES in Room 231-N on February 21, 2000 at 9:10 a.m.

Leo Haynos, Chief of Pipeline Safety for the Kansas Corporation Commission, testified as an opponent to **HB 2983** (Attachment 4). Mr. Haynos explained that the Commission felt this was an issue that should be considered in an interim study. He explained that the purpose of the 'One Call' law is to protect the integrity of the underground utility infrastructure and to prevent the loss of life and property from excavating in areas with unseen dangers. As the amount of underground facilities increases, the potential for damages or outages also increases. Mr. Haynos then outlined proposed changes should this bill go forward.

Dick Rohlfs, Senior Manager of Regulatory Requirements for Western Resources, provided testimony in a neutral position on **HB 2983** (Attachment 5). He questioned several items in the bill, including the definition of underground facilities, what needs to be marked, who needs to be a member and what penalties, if any, should be included. He also encouraged an interim study on the bill.

Kansas City Power & Light's Senior Attorney Michael Rump provided written testimony in a neutral position on **HB 2983** (Attachment 6).

Mr. Steve Johnson, Executive Director of Corporate Relations for Kansas Gas Service testified in a neutral position on **HB 2983** (Attachment 7). Mr. Johnson explained that, if this bill passed, Kansas Gas Service would ultimately pay more for locating services and it would become increasingly difficult to find locate contractors to work in Kansas.

The conferees responded to questions from Rep. Loyd, Rep. Krehbiel, Rep. Holmes, Rep. McClure, Rep. Sloan, Rep. Dahl and Rep. Vining.

Chairman Holmes recessed the hearing on **HB 2983** until Tuesday, February 22, 2000.

Meeting adjourned at 10:55 a.m.

Next meeting will be on Tuesday, February 22, 2000 at 9:00.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 21, 2000

NAME	REPRESENTING
JO Long	UtiliCorp Limited Inc.
Chuck Hoag	Kansas Public Service / UCU
LEO HAYNOS	KANSAS CORPORATION COMMISSION
Janet Stubbs	Ks T.B.I.A.
DAVE SCHMIDTLEIN	SCHMIDTLEIN EXCAVATING, INC.
WALTER HENDRIX	CURB
Cynthia Smith	KOPL
Don & Miles	KEC
Paula Lentz	KCC
Larry Hallway	KCC
Young Smidge	SLO Bull.
Chris Orr	Western Resources
Terry KNIGHT	Overland Trenching Co.
BILL HAINSLIP	KCC
Tom Shimon	Kansas One Call
Wayne Babcock	GREAT PLAINS LOCATING SERVICE.
DOUG KENYON	GREAT PLAINS LOCATING SERVICE
Steve Preitzer	Great Plains Locating Service
Dick Rohlf	Western Resources
Susan Cunningham	KCC

February 18, 2000

To: House Utilities Committee
From: Lynne Holt, Principal Analyst
Re: Overview of One-Call System in Kansas

Background

The Kansas Underground Utility Damage Prevention Act established a system in which excavators could make one phone call and determine the location of underground gas and electric lines, telephone conduits, and facilities for transporting hazardous liquids. The Kansas Corporation Commission is responsible for administering and enforcing the act.

The Kansas act became law on July 1, 1993. The law was enacted in response to a federal requirement that each state adopt a one-call damage prevention program to receive federal aid for pipeline safety programs. For example, in CY 1998, the United States Department of Transportation provided \$279,450 or 45 percent of Kansas' pipeline safety program (budget was \$621,000). This budget funds the enforcement activities of the Kansas Corporation Commission staff.

What is the One Call Center?

The Kansas One Call Center, Inc. is a nonprofit corporation formed by utility companies which are required to be members (KSA 66-1805(a).) All utilities, except for owners of sewer, water, oil, and gas production lines, must become members. The One Call Center's operations are funded through assessments against member utilities. Utilities pay \$25 for yearly memberships. They also pay \$1.14 for each locate request the Center forwards to them. The Center receives no state funds but has applied and received federal grants in the past for special projects. Representatives from the member utilities serve on the Board of Directors and various operating committees. An employee from the Kansas Corporation Commission also serves on the Board.

The Kansas One Call Center, Inc. has two full-time employees and contracts with One Call Concepts, Inc., headquartered in Maryland, to receive calls, dispatch locate requests, and maintain proper records. One Call Concepts employs between 35 and 50 people depending on the work-load. Call volumes increase significantly during the summer. For nights, weekends, and holidays, One Call Concepts also uses an answering service it maintains in Minnesota to take emergency calls.

HOUSE UTILITIES

DATE: 2-21-00

ATTACHMENT 1

What Does the One Call Center Do?

The Center, through its contractual arrangement with One Call Concepts, discharges its dispatch responsibilities as follows. Excavators call the Center's toll free number at least two days but not more than ten days before the excavation date (KSA 66-1804(a).) They inform the Center staff when and where they plan to dig (KSA 66-1804 (b)). The Center records the information and alerts the utilities in the area of the dig site to mark their facilities. The utilities must mark their underground facilities no sooner than two days before the date of excavation (KSA 66-1806(a)). The notification requirements outlined above do not apply to public projects approved by a public agency, or to projects in which a city, county, state, or federal agency issues a permit that also requires the buried utility lines to be located and marked (KSA 66-1804(c)). See the enclosed diagram of how the one-call system works. This diagram is included in a report by the Division of Legislative Post Audit titled *Reviewing the One-Call System in Kansas* (August 1998).

Number of Locate Requests

Over the past several years, the use of the Call Center has increased significantly. In 1993, there were 204,000 locate requests. In 1999, there were 447,000 locate requests. For each locate request, the Call Center notifies five utilities to mark their facilities. For example, in 1999, there were 2.3 million requests made for utilities to mark their facilities.

Emergency Notifications

When excavators damage any buried utility lines or other underground facility, they are required to notify the utility that owns those facilities. The utility must immediately send personnel to the site to temporarily or permanently repair the damage. If an electric line is cut or dangerous gases or fluids are escaping from a broken line, the excavator is supposed to immediately inform emergency personnel, as well. Emergency personnel refers to local police and fire officials (KSA 66-1810).

Complaints

The Commission's Office of Pipeline Safety is responsible for administering and enforcing the Kansas Underground Utility Damage Prevention Act. For the most part, the Commission's enforcement activities are in response to complaints received. In 1999, staff logged 96 complaints. Many complaints are resolved through phone calls. However, after staff investigates a complaint, staff may send letters of probable noncompliance to the presumed offending party on issues that require additional response. From 1997 through 1999, a total of \$72,000 in fines was assessed for violations of the act. Damages totaled over \$2.3 million in 1998 (see enclosed). The fines for pipeline safety and one call violations are allocated pursuant to KSA 66-1,155. Twenty percent of the amount received is credited

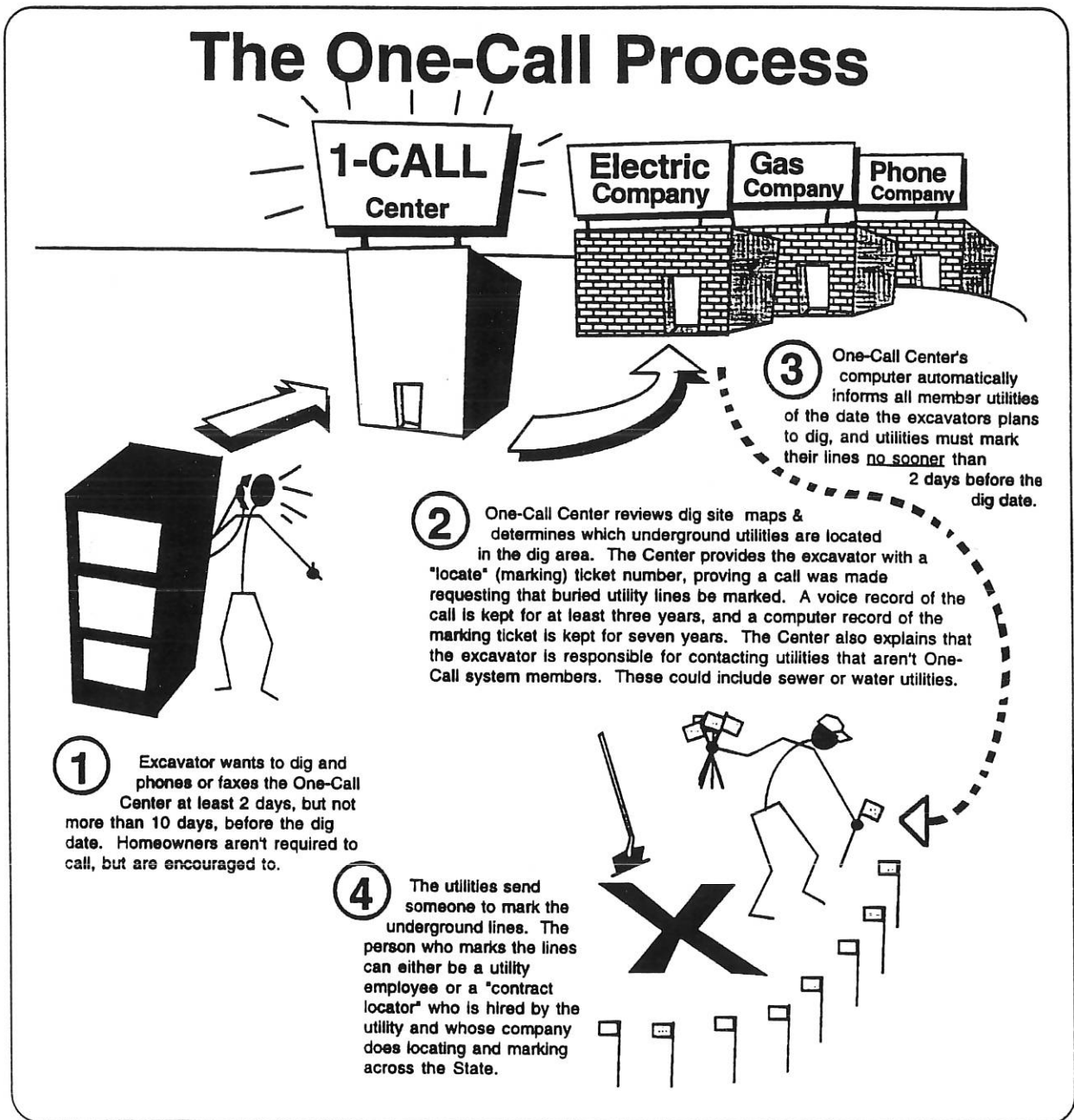
to the State General Fund and the balance is credited to the Gas Pipeline Inspection Fee Fund.

Below are examples of recent complaints concerning reported violations of the Kansas Underground Utility Damage Prevention Act.

- The Commission staff investigated a complaint against Burnett Construction, which was initiated by Kansas Gas Service. On September 22, 1999, the Commission issued an order fining Burnett Construction \$193,000 for various violations, including damaging a gas line, making unauthorized repairs, and failing to notify the gas company of damage and repair. The Commission supported the Hearing Examiner's recommendation that a total of \$193,000 be paid in fines, with all but \$50,000 of the penalty to be suspended for two years. If Burnett Construction or its employees remain free of any violations during that time period, the remaining portion of the penalty would be waived. The fine of \$50,000 has yet to be collected. In its order, the Commission noted: "Mr. Burnett was essentially laying time bombs" throughout Johnson County. However, one component of a penalty is to deter this kind of behavior in the future. Mr. Burnett is now out of business. The suspended portion of the fine should serve as a deterrent to other excavators that this kind of behavior will not be tolerated."
- On January 20, 2000, Overland Trenching Company (OTC) filed a formal complaint with the Commission, alleging that on 6,000 separate occasions Western Resources, Kansas Power & Light, Kansas Gas Service, Kansas City Power & Light, Greeley Gas Company, and United Cities Gas Company failed to mark in a timely manner various excavation sites. OTC claims that this failure has caused the company substantial economic hardship, endangered the safety of members of the public, including that of the company, and has unduly delayed the timely excavation of underground facilities without just or legal cause. In its filing, OTC requested the Commission to open an investigation of its complaint which alleges the violations spanned over a period between January 1, 1997 and December 31, 1999. The Commission subsequently initiated an investigation and staff has requested responses from utility companies subject to the complaint. OTC also indicated in its formal complaint that it had simultaneously commenced an action in Johnson County District Court, requesting civil damages and attorney fees.

During calendar year 1997, the One-Call Center in Wichita received approximately 400,000 calls, which generated about four times that many outgoing notifications to member utilities. Excavators who call the Center are protected from liability for damaging utility lines, so long as they observe the markings and a two-foot "tolerance" zone on either side of the marked lines.

The One-Call Process



1998 Operator Information Summary

Type of Facility	Miles of Underground Utilities	Locates Requested	Number of Dig-Ins	Total Damages
Cable TV <i>Percent of Total</i>	2,972 1.83%	134,650 9.26%	347 7.69%	\$102,648 4.37%
Electric <i>Percent of Total</i>	11,106 6.82%	290,638 19.99%	360 7.98%	\$254,301 10.83%
Gas <i>Percent of Total</i>	32,910 20.21%	350,782 24.13%	1,873 41.49%	\$977,175 41.63%
Other <i>Percent of Total</i>	4,212 2.59%	42,132 2.90%	9 0.20%	\$21,102 0.90%
Sewer <i>Percent of Total</i>	5,491 3.37%	113,595 7.81%	96 2.13%	\$41,189 1.75%
Telephone <i>Percent of Total</i>	98,466 60.48%	401,905 27.65%	1,767 39.14%	\$934,771 39.82%
Water <i>Percent of Total</i>	8,608 5.29%	120,385 8.28%	62 1.37%	\$16,271 0.69%
Grand Total:	162,801	1,453,750	4,514	\$2,347,458

Testimony Before the House Utilities Committee
Friday, February 18, 2000
Proponent of HB 2983
By Terry Knight

*Owner
Overland Irrigation*

Chairman Holmes and Members of the House Utilities Committee.

My name is Terry Knight and a life long resident of the State of Kansas. I appreciate the opportunity to appear before you today in support of House Bill 2983.

I am a utility contractor, or as described in the bill, an "excavator". I am having great difficulties in doing my job due to the delays of the operators. I have spoken with other excavators, in my area and they are having the same problems.

In the high tech era that we live today, the definition of "facility" needs to be expanded to include all fiber-optic cable, cable television service and the Internet providers. Also, gas and water lines, which are connected to more than one service need marked.

Kansas One Call is a service intended to prevent individuals from accidentally hitting underground lines when digging. When an operator fails to mark within the 48 hours, it causes my 30 Kansas employed workers to make repeated trips to the job site until the marking is complete. In turn, this hurts my company profits. When an operator marks incorrectly, it greatly increases the risk to the lives of my employees and the neighborhoods we are working in.

Attached to this testimony is a one week list of projects spanning the same week over three years, which my company has had problems due to either failure to mark or mismarking by the operators.

I encourage you to support House Bill 2983 and report is out favorably. I will gladly entertain any questions you may have.

HOUSE UTILITIES

DATE: 2-21-00

ATTACHMENT 2

Sample of Operator's non compliance of 66-1806

This report exclusively prepared for Chairman Holmes and the House Utilities Committee

			1-Call Ticket #:	Due Date:	Located Time:
7/8/97	Overland Park	12200 Noland Rd			
			182959	7/8/97	2:15 PM
7/9/97	Olathe	12201 S Summit			
			181460	7/7/97	5:00 PM
7/9/97	Olathe	11972 S Summit			
			183010	7/8/97	5:00 PM
7/9/97	Overland Park	12767 Woodward			
			180557	7/7/97	7:30 AM
7/9/97	Overland Park	11326 Mackey			
			180566	7/7/97	7:30 AM
7/9/97	Overland Park	12408 Russell			
			180581	7/7/97	7:30 AM
7/9/97	Overland Park	13102 Grandview			
			181484	7/7/97	5:00 PM
7/9/97	Overland Park	9500 Antioch			
			181458	7/7/97	5:00 PM
7/9/97	Overland Park	13290 W 112 Terr			
			183034	7/8/97	5:00 PM
7/9/97	Shawnee	4713 Melrose Ln			
			205803	7/29/97	3:15 PM
7/10/97	Leawood	4920 W 138			
			180420	7/7/97	7:30 AM
7/10/97	Olathe	2023 S Lindenwood Dr			
			182948	7/8/97	2:00 PM
7/10/97	Olathe	15623 S Acuff Ln			
			193861	7/17/97	3:45 PM
7/10/97	Olathe	14331 S Gallery			
			180449	7/7/97	7:30 AM
7/10/97	Olathe	15912 W 154			
			180611	7/7/97	7:30 AM
7/10/97	Olathe	12831 S Widmer			
			181462	7/7/97	5:00 PM
7/10/97	Olathe	15916 W 124 Cir			
			183193	7/9/97	7:30 AM
7/10/97	Olathe	15601 W 138			
			181478	7/7/97	5:00 PM
7/10/97	Olathe	1916 S Stagecoach Dr			
			181451	7/7/97	5:00 PM
7/10/97	Olathe	13208 W 132			
			186203	7/10/97	2:00 PM
7/10/97	Overland Park	14901 England			
			188021	7/11/97	3:45 PM
7/10/97	Overland Park	8514 W 149 Terr			
			190419	7/15/97	1:45 PM
7/10/97	Overland Park	12711 Connell			
			193878	7/17/97	3:45 PM
7/10/97	Overland Park	8574 Wedd			
			181472	7/7/97	5:00 PM
7/10/97	Overland Park	9403 W 148 Pl			
			217817	8/8/97	4:00 PM
7/10/97	Overland Park	8405 W 98 Cir			
			186129	7/10/97	5:00 PM
7/10/97	Overland Park	5805 W 145			
			194041	7/18/97	7:30 AM
7/11/97	Lenexa	8012 Gillette			
			180586	7/7/97	7:30 AM
7/11/97	Lenexa	10108 Gillette			
			186132	7/10/97	5:00 PM
7/11/97	Lenexa	7905 Park			
			186125	7/10/97	5:00 PM
7/11/97	Lenexa	15333 W 85			
			186122	7/10/97	5:00 PM
7/11/97	Overland Park	17115 Antioch Rd			
			190405	7/15/97	1:30 PM
7/11/97	Shawnee	12114 W 72 Terr			
			185717	7/10/97	5:00 PM

Monday, February 21, 2000

Sample of Operator's non compliance of 66-1806

This report exclusively prepared for Chairman Holmes and the House Utilities Committee

			1-Call Ticket #:	Due Date:	Located Time:
7/6/98	Olathe	9545 Woodland	190365	7/8/98	3:45 PM
			180162	6/29/98	2:15 PM
			170017	6/19/98	2:30 PM
			157695	6/10/98	3:30 PM
			143167	5/29/98	12:00 PM
			129965	5/19/98	5:00 PM
7/6/98	Olathe	426 S Kansas Ave	201558	7/17/98	11:30 AM
			190371	7/8/98	3:45 PM
			180166	6/29/98	2:15 PM
			170022	6/19/98	2:30 PM
			152480	6/5/98	5:00 PM
7/6/98	Olathe	805 N Stevenson	190373	7/8/98	3:45 PM
			180171	6/29/98	2:15 PM
			170029	6/19/98	2:30 PM
			157334	6/10/98	5:00 PM
7/6/98	Olathe	2609 W Poplar Cr	190375	7/8/98	3:45 PM
			180175	6/29/98	2:15 PM
			170031	6/19/98	2:30 PM
			158785	6/11/98	5:00 PM
7/6/98	Olathe	1656 N Hunter Dr	185090	7/2/98	3:00 PM
			180178	6/29/98	2:15 PM
			160600	6/12/98	5:00 PM
7/6/98	Olathe	13408 W 126	190386	7/8/98	3:45 PM
			174755	6/24/98	5:00 PM
7/6/98	Olathe	14409 W 123 Terr	190393	7/8/98	3:45 PM
			176465	6/25/98	5:00 PM
7/6/98	Olathe	1237 E 125	190398	7/8/98	3:45 PM
7/6/98	Olathe	1100 N Purdom	178472	6/26/98	5:00 PM
			190404	7/8/98	4:00 PM
7/6/98	Olathe	12523 S Hagan Ln	178446	6/26/98	5:00 PM
7/6/98	Olathe	9423 Falcon Ridge Dr	181529	6/30/98	5:00 PM
			183537	7/1/98	5:00 PM
7/6/98	Overland Park	12622 W 121	179654	6/29/98	5:00 PM
			190445	7/8/98	4:00 PM
7/6/98	Overland Park	14812 Newton	174742	6/24/98	5:00 PM
			190441	7/8/98	4:00 PM
7/6/98	Overland Park	14133 Barton	174727	6/24/98	5:00 PM
			190464	7/8/98	4:00 PM
7/6/98	Overland Park	13404 W 130	176447	6/25/98	5:00 PM
			190493	7/8/98	4:15 PM
7/7/98	Lenexa	8321 Quivira	179665	6/29/98	5:00 PM
			183425	7/1/98	5:00 PM
7/7/98	Lenexa	8017 Schweiger Dr	186802	7/7/98	7:30 AM
			186781	7/7/98	7:30 AM
7/7/98	Olathe	1508 Scarborough	190380	7/8/98	3:45 PM

Monday, February 21, 2000

			1-Call Ticket #:	Due Date:	Located Time:
			175201	6/24/98	4:15 PM
			162715	6/15/98	5:00 PM
7/7/98	Olathe	2055 W Dennis Ave			
			214025	7/29/98	11:15 AM
			203521	7/20/98	3:15 PM
			190377	7/8/98	3:45 PM
			175195	6/24/98	4:15 PM
			162701	6/15/98	5:00 PM
7/7/98	Olathe	21191 W 126			
7/7/98	Olathe	1020 S Weaver Ave	174770	6/24/98	5:00 PM
			190388	7/8/98	3:45 PM
			174760	6/24/98	5:00 PM
7/7/98	Olathe	1012 S Lindenwood Dr			
			190400	7/8/98	3:45 PM
			0178479	6/26/98	5:00 PM
7/7/98	Olathe	1335 N Ridge Pkwy			
			190410	7/8/98	4:00 PM
			179683	6/29/98	5:00 PM
7/7/98	Olathe	616 N Lincoln			
7/7/98	Olathe	935 E Elizabeth	181508	6/30/98	5:00 PM
			184555	7/2/98	11:15 AM
			181547	6/23/98	5:00 PM
7/7/98	Olathe	14916 S Wyandotte Dr			
			184717	7/2/98	5:00 PM
7/7/98	Olathe	1425 Willow Dr			
			186795	7/7/98	7:30 AM
7/7/98	Overland Park	11421 Mullen			
			181571	6/30/98	5:00 PM
7/7/98	Overland Park	11001 W 131			
			183279	7/1/98	5:00 PM
7/7/98	Shawnee	7719 Alden			
			183522	7/1/98	5:00 PM
7/8/98	Lenexa	9710 W 91 Terr			
			183449	7/1/98	5:00 PM
7/8/98	Lenexa	9301 Widmer			
			188202	7/7/98	5:00 PM
7/8/98	Olathe	1508 Scarborough			
			190380	7/8/98	3:45 PM
			175201	6/24/98	4:15 PM
			162715	6/15/98	5:00 PM
7/8/98	Olathe	1012 S Lindenwood Dr			
			190400	7/8/98	3:45 PM
			0178479	6/26/98	5:00 PM
7/8/98	Olathe	1204 N Cooper			
			186788	7/7/98	7:30 AM
7/8/98	Overland Park	12810 Woodson			
			190451	7/8/98	4:00 PM
			174750	6/24/98	5:00 PM
7/8/98	Overland Park	12806 Woodson			
			190450	7/8/98	4:00 PM
			174743	6/24/98	5:00 PM
7/8/98	Overland Park	16401 Riggs			
			186785	7/7/98	7:30 AM
7/8/98	Overland Park	11559 Hardy			
			188214	7/7/98	5:00 PM
7/8/98	Overland Park	15004 Buena Vista			
			188170	7/7/98	5:00 PM
7/9/98	Olathe	14658 S Hagan			
			190364	7/8/98	3:45 PM
			180158	6/26/98	2:15 PM
			170014	6/19/98	2:30 PM
			152222	6/5/98	12:00 PM
			139220	5/27/98	1:00 PM
			127491	5/15/98	2:15 PM
			114112	5/6/98	5:00 PM

Monday, February 21, 2000

			1-Call Ticket #:	Due Date:	Located Time:
7/9/98	Olathe	1508 Scarborough	190380	7/8/98	3:45 PM
			175201	6/24/98	4:15 PM
			162715	6/15/98	5:00 PM
7/9/98	Olathe	21150 W 126 Terr	195682	7/13/98	3:00 PM
			183386	7/1/98	5:00 PM
7/9/98	Overland Park	12854 Sagamore	190341	7/8/98	3:00 PM
			174799	6/24/98	5:00 PM
7/9/98	Overland Park	12806 Woodson	190450	7/8/98	4:00 PM
			174743	6/24/98	5:00 PM
7/9/98	Overland Park	12839 Lamar Ave	190488	7/8/98	4:15 PM
			179676	6/29/98	5:00 PM
7/9/98	Overland Park	7738 W 148	195711	7/13/98	3:00 PM
			184667	7/2/98	5:00 PM
7/9/98	Overland Park	2669 W 131 Terr	188212	7/7/98	5:00 PM
7/9/98	Overland Park	9150 W 159	188162	7/7/98	5:00 PM
7/9/98	Overland Park	12729 Mohawk Cr	190041	7/8/98	5:00 PM
7/9/98	Overland Park	11433 Riley	190031	7/8/98	5:00 PM
7/9/98	Overland Park	13021 Pembroke	190008	7/8/98	5:00 PM
7/10/98	Olathe	1508 Scarborough	190380	7/8/98	3:45 PM
			175201	6/24/98	4:15 PM
			162715	6/15/98	5:00 PM
7/10/98	Olathe	128 N Buchanan	195679	7/13/98	3:00 PM
			184553	7/2/98	11:15 AM
			172946	6/23/98	5:00 PM
7/10/98	Olathe	12461 S Mullen Cr	188183	7/7/98	5:00 PM
7/10/98	Olathe	15759 S Stagecoach Dr	189998	7/8/98	5:00 PM
7/10/98	Olathe	14277 W 129 Terr	189985	7/8/98	5:00 PM
7/10/98	Olathe	16410 S Sunset	189938	7/8/98	5:00 PM
7/10/98	Olathe	1908 S Avalon Ln	189932	7/8/98	5:00 PM
7/10/98	Olathe	1402 Salem Ln	189909	7/8/98	5:00 PM
7/10/98	Overland Park	5620 W 134 Pl	195704	7/13/98	3:00 PM
			183233	7/1/98	5:00 PM
7/10/98	Overland Park	14108 Hauser	189868	7/8/98	5:00 PM
7/10/98	Shawnee	13201 W 77 Terr	190064	7/8/98	5:00 PM
7/13/98	Olathe	1602 E Elm	190382	7/8/98	3:45 PM
			175203	6/24/98	4:15 PM
			162725	6/15/98	5:00 PM
7/13/98	Olathe	20974 W 125	188188	7/7/98	5:00 PM
7/13/98	Olathe	12496 S Crest Cr	189914	7/8/98	5:00 PM
7/13/98	Olathe	21611 W 122 Terr	193560	7/10/98	5:00 PM

Monday, February 21, 2000

			1-Call Ticket #:	Due Date:	Located Time:
7/13/98	Olathe	12470 S Hallet			
7/13/98	Olathe	20323 W 94 Terr	193563	7/10/98	5:00 PM
7/13/98	Olathe	221 N Woodland	193567	7/10/98	5:00 PM
7/13/98	Olathe	16412 W 124	193575	7/10/98	5:00 PM
7/13/98	Overland Park	16010 Metcalf	193669	7/10/98	5:00 PM
7/13/98	Overland Park	8925 W 126 Terr	193609	7/10/98	5:00 PM
7/13/98	Shawnee	13205 W 75 Ct	193615	7/10/98	5:00 PM
			187584	7/7/98	10:45 AM
7/13/98	Shawnee	6370 Stevenson	145390	6/1/98	5:00 PM
			190320	7/8/98	3:30 PM
			179702	6/29/98	5:00 PM

Monday, February 21, 2000

Sample of Operator's non compliance of 66-1806

This report exclusively prepared for Chairman Holmes and the House Utilities Committee

			1-Call Ticket #:	Due Date:	Located Time:
7/6/99	Lenexa	17627 W 111 Terr	990214086	7/6/99	1:15 PM
			990202540	6/24/99	2:45 PM
			990189332	6/15/99	2:45 PM
7/6/99	Lenexa	15214 W 86	990253556	8/4/99	1:45 PM
			990238981	7/23/99	1:00 PM
			990226178	7/14/99	3:30 PM
			990215505	7/6/99	1:00 PM
			990204063	6/25/99	5:00 PM
7/6/99	Lenexa	17619 W 111 Terr	990210368	7/1/99	11:00 AM
7/6/99	Lenexa	17622 W 111 Terr	990210061	7/1/99	5:00 PM
7/6/99	Lenexa	9151 Acuff Ln	990212460	7/2/99	5:00 PM
7/6/99	Lenexa	17614 W 111 Terr	990212844	7/2/99	5:00 PM
7/6/99	Olathe	14645 S Hallet	990233158	7/20/99	1:45 PM
			990219831	7/9/99	1:45 PM
			990209043	6/30/99	2:45 PM
			990196772	6/21/99	2:00 PM
			990183524	6/10/99	5:00 PM
7/6/99	Olathe	14705 S Symphony Ct	990212464	7/2/99	5:00 PM
7/6/99	Overland Park	11429 Carter	990212455	7/2/99	5:00 PM
7/6/99	Stanley	13720 Flint	990221727	7/12/99	1:00 PM
			990210844	7/1/99	1:15 PM
			990198706	6/22/99	2:30 PM
			990185406	6/11/99	1:45 PM
			990170856	6/2/99	1:15 PM
			990157460	5/21/99	5:00 PM
7/6/99	Stanley	14332 Flint	990210857	7/1/99	1:15 PM
			990198741	6/22/99	2:45 PM
			990185269	6/11/99	5:00 PM
7/6/99	Stanley	12108 Noland Rd	990217681	7/8/99	1:15 PM
			990207149	6/29/99	1:00 PM
			990195148	6/18/99	5:00 PM
7/6/99	Stanley	4348 W 132	990209205	6/30/99	5:00 PM
7/6/99	Stanley	9619 W 124	990210341	7/1/99	5:00 PM
7/6/99	Stanley	14004 Hayes	990210351	7/1/99	5:00 PM
7/6/99	Stanley	12805 Bluejacket	990210354	7/1/99	5:00 PM
7/6/99	Stanley	14108 Garnett	990281487	8/25/99	2:45 PM
			990266208	8/13/99	1:45 PM
			990251644	8/3/99	1:45 PM
			990237356	7/22/99	1:45 PM
			990223554	7/13/99	1:15 PM
			990212338	7/2/99	5:00 PM
7/6/99	Stanley	15747 Horton Ln	990212760	7/2/99	5:00 PM
7/6/99	Stanley	8205 W 144 Pl	990212773	7/2/99	5:00 PM

Monday, February 21, 2000

			1-Call Ticket #:	Due Date:	Located Time:
7/6/99	Stanley	15219 Dearborn			
7/6/99	Stanley	12005 Noland Rd	990212785	7/2/99	5:00 PM
7/6/99	Stanley	8903 W 149	990212807	7/2/99	5:00 PM
7/7/99	Lenexa	19005 W 116	990212816	7/2/99	5:00 PM
			990253554	8/4/99	1:45 PM
			990238978	7/23/99	1:00 PM
			990226177	7/14/99	3:30 PM
			990215503	7/6/99	1:00 PM
			990204158	6/25/99	2:15 PM
			990189169	6/15/99	1:30 PM
			990174934	6/4/99	12:30 PM
7/7/99	Lenexa	17654 W 111 Terr	990163210	5/26/99	5:00 PM
			990219812	7/9/99	1:45 PM
			990209030	6/30/99	2:30 PM
7/7/99	Olathe	1037 N Crest Dr	990196741	6/21/99	5:00 PM
			990221722	7/12/99	1:00 PM
			990210834	7/1/99	1:00 PM
			990198700	6/22/99	2:30 PM
7/7/99	Olathe	12524 S Logan	990185265	6/11/99	5:00 PM
			990251608	8/3/99	1:30 PM
			990237299	7/22/99	1:30 PM
			990223505	7/13/99	1:15 PM
			990212559	7/2/99	2:15 PM
			990200749	6/23/99	3:00 PM
7/7/99	Olathe	1012 N Marion	990187064	6/14/99	5:00 PM
			990223506	7/13/99	1:15 PM
			990212561	7/2/99	2:15 PM
			990200750	6/23/99	3:00 PM
7/7/99	Olathe	21240 W 125 Terr	990187086	6/14/99	5:00 PM
			990227862	7/14/99	1:15 PM
			990215510	7/6/99	1:00 PM
			990204169	6/25/99	2:30 PM
7/7/99	Olathe	9630 S Monticello Rd	990190689	6/16/99	5:00 PM
			990217639	7/8/99	1:15 PM
			990205501	6/28/99	11:45 AM
7/7/99	Olathe	401 N Chestnut	990193432	6/17/99	5:00 PM
			990213607	7/6/99	10:30 AM
7/7/99	Overland Park	11416 King Ln	990206932	6/29/99	5:00 PM
			990212542	7/2/99	2:00 PM
7/7/99	Shawnee	7321 Richards Dr	990200713	6/23/99	5:00 PM
			990221714	7/12/99	1:00 PM
			990210818	7/1/99	1:00 PM
			990198690	6/22/99	2:15 PM
7/7/99	Stanley	11934 Noland Rd	990185171	6/11/99	5:00 PM
			990214122	7/6/99	1:15 PM
			990202564	6/24/99	2:45 PM
7/7/99	Stanley	12108 Noland Rd	990189118	6/15/99	5:00 PM
			990217681	7/8/99	1:15 PM
			990207149	6/29/99	1:00 PM
7/7/99	Stanley	14004 Hayes	990195148	6/18/99	5:00 PM
			990210351	7/1/99	5:00 PM
7/7/99	Stanley	15747 Horton Ln			
7/7/99	Stanley	15219 Dearborn	990212760	7/2/99	5:00 PM

Monday, February 21, 2000

			1-Call Ticket #:	Due Date:	Located Time:
7/7/99	Stanley	8903 W 149	990212785	7/2/99	5:00 PM
7/7/99	Stanley	15223 Dearborn	990212816	7/2/99	5:00 PM
7/8/99	Lenexa	13317 W 104	990213835	7/6/99	5:00 PM
7/8/99	Olathe	623 N Canyon Dr	990215381	7/7/99	5:00 PM
			990227858	7/14/99	1:15 PM
			990215507	7/6/99	1:00 PM
			990204166	6/25/99	2:30 PM
			990191310	6/16/99	12:30 PM
			990177212	6/7/99	2:45 PM
			990165340	5/27/99	1:15 PM
			990151510	5/18/99	1:30 PM
			990137541	5/7/99	1:15 PM
7/8/99	Olathe	26164 W 109	990124726	4/28/99	5:00 PM
			990223509	7/13/99	1:15 PM
			990212566	7/2/99	2:15 PM
7/8/99	Olathe	12965 W Wildrose Ln	990200695	6/23/99	5:00 PM
			990219841	7/9/99	1:45 PM
			990209125	6/30/99	5:00 PM
7/8/99	Shawnee	7321 Richards Dr	990221714	7/12/99	1:00 PM
			990210818	7/1/99	1:00 PM
			990198690	6/22/99	2:15 PM
			990185171	6/11/99	5:00 PM
7/8/99	Stanley	5304 W 161	990219875	7/9/99	1:45 PM
			990205507	6/28/99	12:00 PM
			990193381	6/17/99	12:30 PM
			990179123	6/8/99	5:00 PM
7/8/99	Stanley	5012 W 158	990231624	7/19/99	1:45 PM
			990217673	7/8/99	1:15 PM
			990205509	6/28/99	12:00 PM
			990192276	6/17/99	7:30 AM
7/9/99	Olathe	23709 W 95	990216950	7/8/99	5:00 PM
7/9/99	Stanley	5806 W 130	990215471	7/7/99	5:00 PM
7/9/99	Stanley	13769 Pembroke Cr	990216966	7/8/99	5:00 PM
7/12/99	Lenexa	10706 W 101	990219598	7/9/99	5:00 PM
7/12/99	Olathe	16748 W 156	990223499	7/13/99	1:15 PM
			990212548	7/2/99	2:00 PM
			990200737	6/23/99	3:00 PM
			990187429	6/14/99	1:45 PM
			990172904	6/3/99	1:45 PM
7/12/99	Olathe	15122 W 157 Terr	990161156	5/25/99	5:00 PM
			990223504	7/13/99	1:15 PM
			990212554	7/2/99	2:15 PM
			990200742	6/23/99	3:00 PM
			990187438	6/14/99	2:00 PM
			990173000	6/3/99	5:00 PM
7/12/99	Olathe	14645 S Hallet	990233158	7/20/99	1:45 PM
			990219831	7/9/99	1:45 PM
			990209043	6/30/99	2:45 PM
			990196772	6/21/99	2:00 PM
			990183524	6/10/99	5:00 PM
7/12/99	Olathe	15680 S Apache	990219832	7/9/99	1:45 PM
			990209044	6/30/99	2:45 PM
			990196773	6/21/99	2:00 PM

Monday, February 21, 2000

			1-Call Ticket #:	Due Date:	Located Time:
7/12/99	Olathe	20865 W 111	990183541	6/10/99	5:00 PM
			990271611	8/18/99	1:45 PM
			990257014	8/6/99	1:30 PM
			990242535	7/27/99	1:15 PM
			990229847	7/16/99	1:00 PM
			990214092	7/6/99	1:15 PM
			990201279	6/24/99	8:00 AM
7/12/99	Olathe	16734 W 155 Terr	990219842	7/9/99	1:45 PM
			990209130	6/30/99	5:00 PM
7/12/99	Olathe	15172 W 153 Terr	990219846	7/9/99	1:45 PM
			990209147	6/30/99	5:00 PM
7/12/99	Olathe	17681 W 157	990219848	7/9/99	1:45 PM
			990209158	6/30/99	5:00 PM
7/12/99	Olathe	19091 W 163 Terr	990233167	7/20/99	1:45 PM
			990219849	7/9/99	1:45 PM
			990209163	6/30/99	5:00 PM
7/12/99	Olathe	14955 W 154	990223518	7/13/99	1:15 PM
			990212495	7/2/99	5:00 PM
7/12/99	Olathe	15380 S Darnell	990227869	7/14/99	1:15 PM
			990213743	7/6/99	5:00 PM
7/12/99	Olathe	17508 W 157 Ct	990220275	7/9/99	3:45 PM
			990215799	7/7/99	5:00 PM
7/12/99	Olathe	15690 S Apache	990229852	7/16/99	1:00 PM
			990215455	7/7/99	5:00 PM
7/12/99	Olathe	16261 W 158	990257018	8/6/99	1:30 PM
			990242543	7/27/99	1:15 PM
			990229853	7/16/99	1:00 PM
			990215456	7/7/99	5:00 PM
7/12/99	Olathe	15776 S Madison Dr	990219614	7/9/99	5:00 PM
7/12/99	Olathe	14599 S Constance	990219618	7/9/99	5:00 PM
7/12/99	Stanley	13103 Earnshaw	990214134	7/6/99	1:15 PM
			990202696	6/24/99	5:00 PM
7/13/99	Olathe	12713 Richards	990223498	7/13/99	1:15 PM
			990212546	7/2/99	2:00 PM
			990200736	6/23/99	3:00 PM
			990187427	6/14/99	1:45 PM
			990172879	6/3/99	1:45 PM
			990159687	5/24/99	5:00 PM
7/13/99	Olathe	1361 N Harvey Cr	990216927	7/8/99	5:00 PM
7/13/99	Overland Park	11420 W 114	990221634	7/12/99	5:00 PM
7/13/99	Overland Park	11673 Rosehill Rd	990221638	7/12/99	5:00 PM
7/13/99	Stanley	14860 Robinson	99092247	4/2/99	12:45 PM
			99078586	3/24/99	12:30 PM
			99055517	3/3/99	5:00 PM
			990227880	7/14/99	1:15 PM
			990215527	7/6/99	1:15 PM
			990204179	6/25/99	2:30 PM
			990191326	6/16/99	12:30 PM
			990177265	6/7/99	3:00 PM
			990111279	4/16/99	12:45 PM
7/13/99	Stanley	14108 Belinder			

Monday, February 21, 2000

2-10

			1-Call Ticket #:	Due Date:	Located Time:
			99092257	4/2/99	1:00 PM
			99078615	3/24/99	12:30 PM
			99055442	3/3/99	5:00 PM
			990227883	7/14/99	1:15 PM
			990215538	7/6/99	1:15 PM
			990204183	6/25/99	2:30 PM
			990191331	6/16/99	12:30 PM
			990177240	6/7/99	3:00 PM
			990111288	4/16/99	12:45 PM
7/13/99	Stanley	15432 Iron Horse Cr			
			990239010	7/23/99	1:00 PM
			990227891	7/14/99	1:15 PM
			990214114	7/6/99	1:15 PM
			990202558	6/24/99	2:45 PM
			990189192	6/15/99	1:45 PM
			990174883	6/4/99	5:00 PM
7/13/99	Stanley	4454 W 150 Terr			
			990235302	7/21/99	1:15 PM
			990221736	7/12/99	1:00 PM
			990210849	7/1/99	1:15 PM
			990198714	6/22/99	2:30 PM
			990185049	6/11/99	5:00 PM
7/13/99	Stanley	13234 Reeder			
			99026009	2/4/99	9:00 AM
			990217676	7/8/99	1:15 PM
			990207146	6/29/99	1:00 PM
			990194984	6/18/99	5:00 PM
7/13/99	Stanley	12108 Noland Rd			
			990217681	7/8/99	1:15 PM
			990207149	6/29/99	1:00 PM
			990195148	6/18/99	5:00 PM
7/13/99	Stanley	8019 W 146 Terr			
			990258612	8/9/99	12:45 PM
			990244905	7/28/99	2:15 PM
			990231650	7/19/99	1:45 PM
			990217717	7/8/99	1:30 PM
			990206979	6/29/99	5:00 PM
7/13/99	Stanley	13717 Flint			
			990223580	7/13/99	1:30 PM
			990212803	7/2/99	5:00 PM
7/13/99	Stanley	13216 King			
			990215337	7/7/99	5:00 PM
7/13/99	Stanley	11309 W 138			
			990215341	7/7/99	5:00 PM
7/13/99	Stanley	11020 W 122			
			990216956	7/8/99	5:00 PM
7/13/99	Stanley	14717 Delmar			
			990258613	8/9/99	12:45 PM
			990244907	7/28/99	2:15 PM
			990231652	7/19/99	1:45 PM
			990216970	7/8/99	5:00 PM



204 N.E. RICE RD.
TOPEKA, KANSAS 66616-1642

Re: House Bill 2983

February 21, 2000

Dear Honorable Committee Representatives:

Our Company, Schmidtlein Excavating, Inc., is a Topeka, KS Company. We encourage you to strongly consider this proposed legislation, legislation which will offer some means for us as private Contractors to recover our damages caused by inaccurate underground facility marks, or failure to mark underground facilities. Such damages could include, but may not be limited to:

- A) Crew/overhead costs for "stand-by time" after/during a damaged underground facility event due to inaccurate marks or lack of marks.
- B) Crew/overhead costs for lost time due to markings not being completed timely.
- C) Contractual liquidated damages resulting from late completion due to inaccurate or lack of markings.
- D) Crew, including equipment repair costs for damage resulting from inaccurate or lack of marks.

We have compiled some statistics for you to ponder. We had 2,390 tickets to the One Call Center in 1999. During that same time period we had 76 "hits" that damaged underground facilities, of which:

- 16 of these (or 21%) were our responsibility
- 57 of these (or 75%) were not our responsibility, due to inaccurate or lack of marks
- 3 of these (or 4%) were questionable, as to responsible party

Most of our Company's activities were involved with installation of Red Water Main Replacement for the City of Topeka. During the 1999 year, we installed approximately 20 miles of Red Water work.

In discussing this with our foreman, we have APPROXIMATED the following statistics:

20 miles of pipe installed with an underground facility located an average of 30 LF apart results in 3,520 tolerance zones we were responsible for. This is 14,080 LF of tolerance zone we had to protect. To have had 76 "hits" on underground facilities. Thus, only .45% of tolerance zones we protected were damaged by our fault.

We typically call in our locates 2 to 5 days in advance of beginning work. We realize it is impractical to locate more than 2-3 days in advance, but we are conscious of the facility owners and their contract locators difficulty in scheduling their personnel. We have the same problems of our own. We make every attempt to have locates only for work we practically complete in 2-5 days from ticket number/date. Projects such as building work, which can require several years completion, present a more difficult challenge. Typically, we may be into and out of such a project daily, weekly or possibly months between activities. Typically, we allow locates to lapse if we are inactive on such a project for more than one month.

In summary, we want to thank you for your serious consideration in this legislation. Hopefully, this will not only provide some relief to Excavators, but also create fairness in the current law.

Do not hesitate to contact me should you have any questions.

Sincerely,

David J. Schmidtlein
Schmidtlein Excavating, Inc.

HOUSE UTILITIES

DATE: 2-21-00

ATTACHMENT 3

**Before the House Utilities Committee
Comments by the
Staff of the Kansas Corporation Commission
February 21, 2000**

House Bill 2983

Thank you, Mr. Chairman. I am Leo Haynos, Chief of Pipeline Safety for the Kansas Corporation Commission, and I'm appearing today on behalf of the Staff of the KCC to discuss the proposed changes to the Underground Utility Damage Prevention Act contained in House Bill 2983. It is our recommendation that the important issues raised in this bill be considered more fully in an interim study. This act, commonly known as the One Call law, establishes rules for three categories: excavators, operators of underground utilities, and the notification center. Of course, the purpose of the law is to protect the integrity of the underground utility infrastructure and to prevent the loss of life and property from excavating in areas with unseen dangers. As the amount of underground facilities increases, the potential for significant damages or outages also increases. Therefore, a well founded and appropriate law dealing with these issues is of the utmost importance - not only in Kansas but nationwide.

The KCC is the governmental agency that administers these rules for Kansas. On the surface, this law appears fairly straightforward. Excavators are required to give two days notice to the utilities before beginning to dig, and utilities must mark their facilities within this time period. However, once the logistics of getting the utilities marked, keeping proper records, using reasonable care when digging and other factors are

considered, the process becomes much more complex. Today, I would like to comment on the changes proposed in House Bill 2983 and try to provide insight on these changes from the perspective of the agency charged with administering the law.

The first change that is listed occurs in the definition of “facility” found in K.S.A. 66-1802(e). This is located on lines 31 through 34 of the bill. The proposed changes identify fiber optic cable, cable television service, and internet service as facilities. The definition of facility as it presently reads includes any underground system used for conveying or transmitting communication. I would interpret the word communication to include fiber optic cable, cable television service, and internet services. In fact, we require operators of these types of facilities to comply with the One Call law. I believe that using a generic term such as “communication” is an appropriate method of including all types of communication. I believe it would be more appropriate to use specific language to establish exceptions to the definition.

The next change that I wish to discuss is found in K.S.A. 66-1802(i) which is located on page 2, lines 8 through 17 of the bill. Subsection (i) provides a definition of what is an operator. The present definition establishes an exclusion for the persons that not only own the underground facilities and are the only users of the utility, but they also own the property on which the facilities are located. I believe the intent of the present definition exempts owners from the requirement of marking their own facilities because they would control access to their property and would be responsible for any damages to their property.

From a KCC perspective, I have two concerns with the proposed changes listed in subsection (i). First of all, line 13 on page 2 mentions water facilities. I would point out that water and sewer facilities are not included in the definition of a facility as listed in K.S.A. 66-1804(e). If the intent of this paragraph is to include water and sewer utilities, I believe it would be better addressed in K.S.A. 66-1804(e), the definition of a facility. Next, as I read the proposed change, the “operator” of water and gas lines on a person’s property would be defined as the utility (i.e. the distribution system) that is connected to the customer’s piping. For gas and electric buried facilities, it is the position of KCC Staff that the utility should locate customer-owned buried lines from the meter to the building wall. Our reasoning is that public safety must be maintained and the local distribution company has the technology available for remote sensing of these lines and is the best provider of that service. I will note that distribution companies do not have as-built drawings of customer installations and there are cases where the customer facilities may be difficult to locate. In these cases, the distribution company’s “best guess” may be detrimental to the safety of the excavator since it could give an inaccurate locate and a false sense of security. The excavator may think he is clear to dig and be directly above a gas or electric line.

The third change I wish to address is located at the top of page 3, line 2. The proposed change adds language that includes the state, subdivision, or instrumentality of the state as operators. In the past, it has been the position of KCC Staff to require all entities that operate underground facilities to be members of the notification center. The only exception was for entities that had complete control of the access to excavating on their

utility easements or right-of-way. For example, we apply this exception to the Kansas Department of Transportation where they would have control of access along the interstate or turnpike. Our basis for this interpretation is found in K.S.A. 66-1802(k) which defines a permitted project. A permitted project exempts an excavator from calling the notification center if he is required to get a permit before he digs and the permit requires him to locate all utilities in the area where he will work and also requires him to notify each utility in the area before he begins work. It is our understanding that KDOT requires this permitting process in areas such as the turnpike where they would control access. Therefore, we do not feel it is necessary for them to be members of the notification center. In a way, it is analogous to the property owner who would control access to digging on his property. The key here is the control of access by a permitting process. All other government entities that own underground facilities and do not have a permitting process in place should be members of the notification center.

The fourth change that I wish to address is the new language proposed by the bill that establishes provisions for redress to excavators or operators that are damaged because of violations of the law. This section is found at the bottom of page 3 and the top of page 4 of the bill. As I mentioned in my opening remarks today, after safety concerns, the costs associated with damage to underground utilities is the second highest concern addressed by damage prevention laws on a national level. On the other hand, the excavator also can suffer damages if utilities fail to provide timely and accurate marks for their facilities. Not only does the excavator risk the safety of his employees and equipment, but he also

faces lost revenue due to equipment downtime while waiting on locates or waiting on repairs to damaged facilities.

The proposed subsection (b) found at the bottom of page 3 proposes a penalty amount the operator can recover if a utility is damaged. Damages to utilities generally happen as a single occurrence. Rather than stipulating damages for each day of a violation, the Committee may wish to consider wording that addresses each individual incident of violation.

Subsection (c) of the proposed addition to K.S.A. 66-1812 is found on page 4 of the bill. This paragraph provides a remedy for an excavator that suffers damages because of an operator's failure to provide timely and accurate locates. In this case, damages tied to a time frame such as \$500 per day are reasonable since violations by utilities generally result in costly delays for the excavator. Utility violations of the One Call law are almost exclusively the result of inaccurate markings or markings not made within two working days. These violations are due in part to poorly trained or insufficient manpower to do the locating. However, the actions and methods of excavators when requesting locates can often be the cause of the utilities not getting the facilities marked within two days.

For example:

- Consider the case where we have two weeks of rainy weather during the summer digging season. Because excavating work is not getting done, the utilities can expect to be overwhelmed with locate requests on the first dry day after the rain stops;

- Natural disasters can result in a large amount of emergency locates which will backlog the system;
- Requesting emergency locates when no true emergency exists can backlog the system;
- Requesting an area to be located that is so large the excavation work can not possibly be completed within 10 days. The locator is then required to return and remark an area several times. For example some fiber optics installations may list 50 miles of area for a ticket request;
- Poor scheduling of work such that a locate request is continually updated. In some cases utilities have remarked facilities for 2 months (every 10 days), before excavation even began.

I believe the penalty provided in K.S.A. 66-1812(c) would serve as an incentive to the utilities to assure better compliance. However, I would recommend that the penalty be tempered by addressing extenuating circumstances similar to above listed issues. For a large metropolitan area such as Wichita or Johnson County, a utility can expect approximately 6,000 requests for locates per month. With this volume of locate requests, once a backlog of occurs, it becomes very difficult to get caught up.

In conclusion, I wish to state that my intent in discussing these concerns regarding the proposed legislation is not to be critical of the effort your committee is undertaking in modifying the damage prevention law. From the perspective of the administrating agency, there are several areas in which the statute can be altered to make it more

effective, and I believe House Bill 2983 has identified some of the problem areas. However, I hope that I have been able to convey to you the complexity of the logistics of satisfactorily handling 6,000 to 10,000 locate requests per day on a statewide basis.

An attempt to address these same issues was recently completed by the U.S. Department of Transportation in its Common Ground study. This study was conducted by a team of regulators, excavators, and utilities to develop a list of recommended best practices for underground utility damage prevention. For example, the study recommends several practices such as white lining, positive response, and training procedures for locators. The KCC staff encourages adoption of these practices. We are working with two of the largest utilities to improve their response time and accuracy to locates and we have been involved in the pilot program for a practice called positive response. This practice allows excavators to use the internet or a phone to check and see if their request has been filled by the locators.

For your consideration, I would propose that this committee place this bill on interim study. With input from all of the stakeholders in this law in conjunction with the Common Ground study results, I believe we could improve the Kansas Underground Utility Damage Prevention Act to the point that it not only is a more effective law for Kansas, but could possibly serve as a model One Call law for the nation.

Thank you. I will stand for any questions from the Committee.

Comments of
Dick F. Rohlfs
Senior Manager, Regulatory Requirements
Western Resources, Inc.
On
House Bill No. 2983
February 21, 2000

Chairman Holmes and members of the committee, my name is Dick Rohlfs. I am Senior Manager, Regulatory Requirements at Western Resources. Thank you for letting Western Resources present comments to you today on House Bill 2983. Western Resources is in favor of an interim study committee or a generic proceeding at the Kansas Corporation Commission. The proposed bill contains many issues that would best be served by an interim study committee. These include:

1. What is the definition of underground facilities? The proposed language adds fiber-optic cable, cable television and internet service. Questions have been raised for the need to include water and sewer facilities.

2. What needs to be marked? The proposed bill added language requiring customer-owned facilities be marked by the distribution system feeding into a customer-owned gas or water line. This language is troublesome since it requires knowledge of facilities that are not owned by the operator.

3. Who needs to be a member? All owners that have underground facilities should be a member. Care should be taken in drafting any language that includes customer-owned facilities. These customer-owned facilities should be excluded.

4. What penalties, if any, should be included in the bill? Should there be exemptions to penalties? If penalties are deemed necessary there should be exemptions for inclement weather, emergency conditions, force majeure, and unreasonable locate requests.

Again thank you for permitting Western Resources to present comments on this bill and I encourage the Committee to favorably consider an interim study committee to research this matter.



**House Utilities Committee
 Testimony
 on
 House Bill No. 2983
 Kansas Underground Utility Damage Prevention Act
 February 21, 2000**

The amendments proposed by Bill No. 2983 change certain definitions and impose civil penalties for violations of the Kansas Underground Utility Damage Prevention Act.

K.S.A. 66-1813 gives the Kansas Corporation Commission (KCC) authority to enforce and administer the Act. The KCC staff is familiar with the Act and its implementation, and KCPL concurs with the suggestion of the KCC that the Legislature should defer action on this bill and undertake a comprehensive review of the Act.

KCPL Experience

KCPL has experienced a significant increase in the number of requests to locate underground facilities. From 1998 to 1999 this increase was about 25 percent. Part of this increase and the resulting overload of the system to locate and mark underground facilities can be attributed to excavators who request more locates than they can reasonably work within the guidelines of the Act.

When an excavator requests a locate, KCPL is obligated to respond. Nothing prevents an excavator from calling in locate requests which they do not or cannot work within 10 days of location and marking. This practice not only increases KCPL's costs but contributes to the overload of locate requests. Any review of the Act should take these circumstances into consideration.

As proposed, the civil penalty/damages under Sections 3(b) and (c) of the bill is not necessarily related to or caused by any violation of the Act. There should be some connection if a penalty is to be imposed.

Definitions of existing Act and proposed amendments

The Act currently has a definition of damage, K.S.A. 66-1802(a), which is limited to physical damage to underground facilities. This is not consistent with the civil penalty/damage provisions in Sections 3(b) and (c) of the bill, which indicates actual damages may be recovered.

*Michael A. Rump
 Senior Attorney*

Kansas City Power & Light Company is the second largest investor-owned electric utility in the State of Kansas, serving a population of over 1 million people in portions of 23 counties in northeastern Kansas, northwestern Missouri, and across the Kansas City metropolitan area. One of the nation's first electric utilities, KCPL has been providing reliable and economical energy to its customers for more than a century. Today, KCPL is a leading provider of energy and related products and services in the Kansas City metropolitan area and nationwide.

**Kansas House of Representatives
Utilities Committee**

HB2983 - Underground Utilities Damage Prevention

With Comments of Kansas Gas Service
February 21, 2000

Chairman Holmes and members of the Committee:

My name is Steve Johnson. I am Executive Director of Corporate Relations for Kansas Gas Service and I am here to give a few comments about HB 2983.

As you might imagine, Kansas Gas Service, is integrally involved in the location and excavation of underground utilities. We must deal in this environment every day we conduct business. We are in constant discussions with other utilities, municipalities, excavators, the Kansas Corporation Commission, Kansas One-Call, contractors, and the public in general. The location and excavation of our facilities and everyone else's is a major cornerstone in our resolve to operate our system safely.

This bill proposes to revise several areas which will affect our business and probably our costs of doing business in the State. If this bill were passed as proposed, Kansas Gas Service would experience the following:

- we would ultimately pay more for locating services, and
- it will become more and more difficult to find locate contractors to work for us or any other utility in Kansas.

Even though Kansas Gas Service feels that the inclusion of the water and sewer utility in the Legislation is helpful, we would urge that an interim study be implemented including all affected parties, to work out a detailed, equitable solution for the areas this bill is attempting to address. We continue to support Kansas One-Call and the KCC's efforts in these areas.

Thank you for the opportunity to address the committee. I will be happy to answer any questions you may have.

HOUSE UTILITIES

DATE: 2-21-00

ATTACHMENT 7