

Approved: May 1, 2001

Date

Carl Dean Holmes

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:12 a.m. on March 13, 2001 in Room 526-S of the Capitol.

All members were present.

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

Conferees appearing before the committee: Leo Haynos, Kansas Corporation Commission

Others attending: See Attached List

Lynne Holt, Principal Analyst for the Kansas Legislative Research Department, distributed documents in response to questions raised from the previous day's hearing on **HCR 5013** (Copy available from KLRD).

Chairman Holmes announced there would be five bills up for debate on the House floor the following day, all of which were from the Utilities Committee.

Representative Annie Kuether distributed copies of articles from the March 12, 2001 edition of 'U.S. News & World Report' (Attachment 1).

HB 2521 - Kansas Underground Utility Damage Prevention Act revision

Prior to opening the debate on **HB 2521**, Chairman Holmes introduced Leo Haynos, who led the Task Force that drafted the language for the proposed legislation. Mr. Haynos distributed a detailed breakdown of each section of the bill, then explained the proposed changes and their intent (Attachment 2). The debate on **HB 2521** was opened and the Chairman distributed a list of 30 proposed amendments (Attachment 3). These amendments came from various conferee testimonies and were compiled by Mary Torrence, Revisor of Statutes. There was no action taken on the first two items listed and, due to time constraints, the debate will be continued at the next meeting.

Meeting adjourned at 10:53 a.m.

Next meeting will be Wednesday, March 14, 2001.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: March 13, 2001

NAME	REPRESENTING
Dan Ramlow	KS Contractors Assn
Dawn Jester	One Call Concepts, Inc.
LARRY ETHRIDGE	SW BELL
Jim Allen	EKO GA
LEO HAYNDS	KCC
Nancy Stumpness	Federico Assoc.
Jim TYLER	WESTERN RESOURCES
Tom Shimon	Kansas One Call
Robert Krehbiel	KIOGA
Bill HAYSUP	KCC
ARTHUR MALLE	KANSAS GAS SERVICE
Kelly Kuetala	City of Overland Park
Ken Peterson	KS Petroleum Council
BRUCE GRAHAM	KEPCO
Cynthia Smith	KEPL
Dave Holthaus	WR
Bob Totten	Ko Contractor Association
Tom DAN	KCC

3/10/01

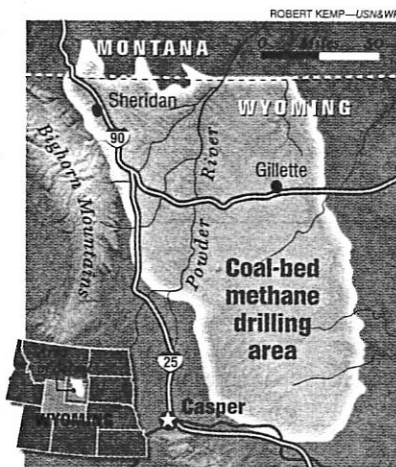
High stakes on the prairie

Energy companies in search of natural gas are raising a ruckus on the plains

BY MARIANNE LAVELLE

GILLETTE, WYO.—The Bush administration's drive to boost domestic energy production is already running into some unexpected roadblocks. Take, for example, the likely approval this month of a plan to construct 2,500 natural-gas wells on federal property in Wyoming's Powder River Basin. Using a relatively new technology to extract gas from shallow beds of coal, the wells would provide fresh sources of a commodity in critically short supply across America. But the drilling pits the burgeoning gas industry here against an unlikely, and implacable, opponent—ranchers. For more than a century, they have kept herds of cattle on this windblown prairie.

In his address to Congress last week, President Bush insisted that "we can produce more energy at home while protecting our environment, and we must." But the clash over drilling for coal-bed methane, or natural gas, in Vice President Dick Cheney's home state illustrates just how tough it will be to reduce America's reliance on foreign energy. There's been much focus on the environmental controversy over Bush's proposal to open the Arctic National Wildlife Refuge to oil drilling. But the Alaskan coast is just one of dozens of places across the country that hold the promise of rich energy stores, and where

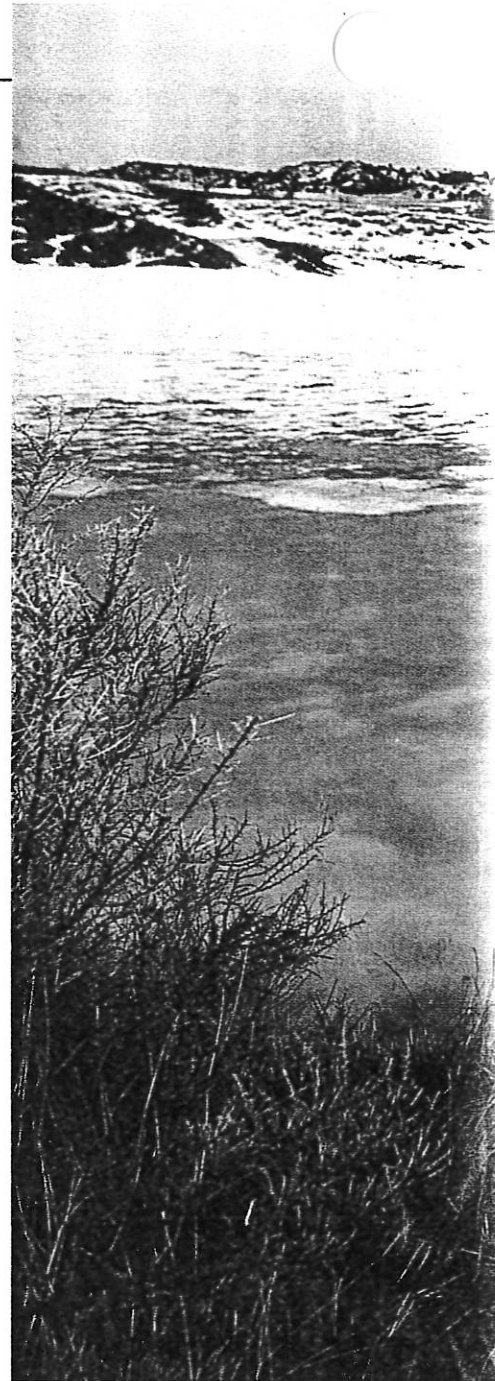


the cost of extraction includes the risk of damage to land, water or life above ground. Because of such concerns, the administration has not advocated drilling off Florida or California. But in the sparsely populated Powder River Basin here, gas producers want the administration to open up the federal lands that hold more than half the area's resources.

The trouble is, the wells already operating here produce a troublesome byproduct—billions of gallons of water, which floods ranches, harms the fragile soil on the basin's rolling hills, and drains drinking wells. "It's killed native grasses, I've had to build new [cattle] crossings. [The flooding has] cut into the heart of my ranch," says Ed Swartz, who runs 325 cattle near Gillette. "They keep saying, 'This is good water.' Well, I don't need their water."

Hot play. But the push to drill is huge. Wall Street analysts view the Powder River Basin as one of the nation's hottest energy "plays." The region's rich store of coal has long been known, but the natural gas locked in those deposits was thought to be unrecoverable until recent technological breakthroughs. Geologists' estimate of drillable gas in the basin has jumped from 1 trillion cubic feet in 1995 to 25 trillion cubic feet today—enough to satisfy the entire nation's natural-gas needs for a year.

The gas industry is swarming into the basin, which stretches from Gillette to the



foot of the Bighorn Mountains 80 miles to the west. Wyoming officials say 8,600 wells have been drilled since 1995, more than half last year, when natural gas wholesale prices hit an all-time high. Because the coal beds are less than 1,000 feet underground—compared with conventional gas deposits as deep as 20,000 feet—wells can be drilled with the same simple apparatus used for household water wells. That cuts the cost of a well from an average of \$800,000 for a conventional gas deposit to about \$60,000.

Profits, unsurprisingly, have soared. Last year, Western Gas Resources Inc. of Denver, the biggest producer here, saw profits jump 900 percent—from less than \$6 million to over \$56 million. Across the basin, ranchers fortunate enough to have

HOUSE UTILITIES

DATE: 3-13-01

ATTACHMENT 1



ROBBIE MCCLARAN—CORBIS SABA FOR US&WR

Bill and Marge West on their Wyoming ranch, which has been flooded by runoff from new gas wells.

● *"We have been ditching... the last two years. We just didn't dig deep enough."*

coal-bed methane under their fields are suddenly sitting on stacks of money. A popular T-shirt here reads, "I'm a methane millionaire."

But all the water produced by the drilling has dampened enthusiasm for the boom. Wyoming officials estimate that 375 million barrels of water surged from the ground last year, along with 145 billion cubic feet of gas. Each well produces about 12,000 gallons of water a day. Excess water is an unlikely problem around the

Powder River, which locals consider aptly named because it often slows to a trickle. The dusty floor of this sagebrush prairie has not taken well to the sudden deluge, especially in areas where the coal-bed water has a high salt content. Salty water, says Dennis Hemmer of the Wyoming Department of Environmental Quality, "tends to seal the soil so you can't grow your crops." Tom Darin, of the Wyoming Outdoor Council, says: "This is the biggest environmental threat the state has faced probably in decades."

Ditching and channeling. The enormous volume of water is forcing ranchers to change the way they work. Bill West and his wife, Marge, were appalled to find prime hay-growing fields flooded by water gushing from gas wells on a neighbor's

ranch. "We have been ditching and channeling the last two years" to control the flow of water, West says. "We just didn't dig deep enough."

Wyoming's Department of Environmental Quality is watching the water problem. It has delayed issuing some drilling permits and required producers to mitigate water damage. Some ranchers want companies to reinject the water into the ground, but state officials say that could cause pollution. And it could cost plenty: In an otherwise bullish report last year, Morgan Stanley Dean Witter warned, "Reinjection could materially change the play's economics."

Some compromises may be emerging. In many cases, gas producers now create makeshift reservoirs so ranchers can use

the outfall to water their cattle. Where gushers have dried up drinking-water wells, gas companies have dug new, deeper wells for ranchers. When cattle have drowned in ditches, or gotten stuck in the muddy soil, the companies have compensated the ranchers.

Meanwhile, gas producers have been buying up leases to the basin's mineral rights, the majority of which were retained by the federal government when it sold off surface land to settlers. But much of that investment sits idle—only one eighth of the wells in the basin have been drilled on federal property. New drilling has been blocked pending completion of an environmental impact study by the Department of Interior's Bureau of Land Management, due in 2002.

Impediments. The gas industry wants faster action. "We have been saying for years that the Rockies are less mature than other gas-producing areas and our day in the sun would arrive," says Paul Rady, outgoing chief executive officer of Pennaco Energy Inc., founded in 1998 purely to drill for coal-bed methane. (Marathon Oil Co. is purchasing Pennaco in a tender offer valued at \$500 million.) "But the irony," Rady adds, "is the Rockies are predominantly federal, so there are more impediments here than anywhere else."

In the next two weeks, the BLM is expected to ease those concerns with an interim decision permitting construction of 2,500 new wells on federal land. That will shortcut the 2002 study, but BLM says that natural gas under federal land—and potential federal royalties—are being sucked away by wells on surrounding private land. Environmentalists deplore the decision, saying the government should attempt to gain royalties for the drained gas instead of allowing new drilling.

The Bush administration gets little credit—or blame—for the decision on the new wells; it was well underway during the final months of the Clinton administration. But Interior Secretary Gale Norton, who has supported increased oil and gas development in the Rockies, will be the final arbiter. The study due next year will determine whether the gas industry can drill 50,000 wells on the 12,000 square miles of the basin by 2012 and discharge the accompanying water—600 million gallons a day at last year's rate. Juleanna Glover Weiss, spokeswoman for Vice President Cheney, says the administration won't discuss specific initiatives until the task force Cheney leads unveils a comprehensive energy plan in the coming weeks. But "he does know," she says, "that there is a balance that can be met." ●

1-3

LETTERS

California's energy mix

CANCELING CONSTRUCTION AND CLOSING a number of nuclear power plants in the 1970s and 1980s in order to save dollars and meet immediate needs only has come back to haunt us ["California Unplugged," January 29]. Here in California, not having these plants has made all the difference between importing vastly overpriced electricity and having our own source of stable power. Nuclear energy must be part of the mix to ensure that long-term reliable and environmentally friendly base-load generation is part of the mix for the next 50 years.

EDWARD (TED) L. QUINN
*Vice President, MDM Services
Laguna Niguel, Calif.*

ELECTRICITY IS THE CENTRAL NERVOUS system of our country. Its loss is disorienting and demoralizing at the least. Although many questions will be asked as the West evaluates and responds to this crisis, it should be pointed out that at least three nuclear-generating plants that could have contributed electrical-generating capacity were unavailable because of economic shutdown. As a result, a relatively small amount of money was saved at the expense of today's tremendous economic upheaval. Nuclear-generating plants are efficient and economical. They provide stable sources of low-cost power and, more important, generate no greenhouse gases. By comparison, estimated carbon-dioxide emissions in 1998 from California's non-nuclear electrical generation exceeded 50 million tons. Including nuclear in a balanced strategy of energy production will provide ample supplies of electricity with minimal impact on the environment.

WILLIAM HILL
Knoxville, Tenn.

Natural resources

AS A FREE-MARKET ADVOCATE, I WAS astounded to see Interior Secretary Gale Norton described as a "free-market environmentalist" ["A 'Conservative Conservationist,'" January 29]. Norton has spent her career assisting large corporations to increase profit margins through rapacious public subsidies that are an anathema to free marketeers. A polluter is almost always a fat cat who uses political clout to escape the discipline of the free market. Norton has been their good political friend. She has fought to provide underpriced resources and free public works to

the extractive industries on federal lands. She is a leader in the so-called property rights movement that advocates constitutional protection for the right to pollute and a champion of "self-audits" that give polluters immunity from prosecution. The most efficient use of resources and, therefore, the best environmental protection occur in a true free-market economy where producers pay the cost of bringing their products to market, including the costs of poisoned air and water and the full value of minerals and timber from our public lands. In a true free market, it's hard to get rich without enriching one's community. In contrast, Norton has been the advocate of pollution-based prosperity that enriches a wealthy few by making the rest of us poor. Her philosophy is inconsistent with the interior secretary's role as principal advocate for our nation's lands and wildlife on behalf of the American people.

ROBERT F. KENNEDY JR.
*Senior Attorney
Natural Resources Defense Council
White Plains, N.Y.*



READER SERVICES

- **Address letters for publication to:** Letters Editor, *U.S. News & World Report*, 1050 Thomas Jefferson Street NW, Washington, DC 20007-3837. Fax: (202) 955-2685. E-mail letters@usnews.com. Include full name, address, and daytime phone number. Letters may be edited.
 - **Advertising and corporate:** Call (212) 716-6800.
 - **Subscription services:** Write to *U.S. News & World Report*, PO Box 421197, Palm Coast, FL 32142-1197. E-mail usnews@palmcoastd.com or call (800) 436-6520 from within the United States or (904) 446-5110 from outside the United States.
 - **Back issues:** Call (410) 754-8219 or E-mail usnewsbi@aol.com.
 - **Reprints, permissions, and photos:** Write to Susan LeClair, *U.S. News & World Report*, 450 W. 33rd Street, 11th Floor, New York, NY 10001. Call (212) 916-8788, fax (212) 716-6984. E-mail reprints@usnews.com or permissions@usnews.com.
 - **U.S. News annual guides, maps, stylebooks, and more:** Call (800) 505-6129 or visit our Web site at www.usnews.com.
 - **U.S. News Classroom Program:** Discount subscriptions and classroom resources for educators. Call (800) 736-9623. Visit our Web site at www.usnewsclassroom.com.
 - **Privacy policy:** *U.S. News & World Report* may allow others to use its mailing list. If you do not want your name included, please contact Subscription Services by mail, E-mail, or phone.
- Visit our Web site at www.usnews.com.



1-4

3/10

Getting that clean thing

'Yes' to air-quality rules

BY SAMANTHA LEVINE

Thousands of lost jobs. Billions in added costs. An economic apocalypse? No, but some business leaders are forecasting disaster following a unanimous U.S. Supreme Court decision that upheld strict new federal air-quality rules.

The justices last week endorsed revised standards from the Environmental Protection Agency that lower the acceptable size of soot particles belched from cars and from power and manufacturing plants. The current limit of 10 microns in diameter will now drop to 2.5 microns—pretty small considering that 1,000 particles of the 10-micron bits could fit inside the pe-



Pollution from New Jersey smokestacks

● *EPA must consider health benefits.*

riod at the end of this sentence. The rules also dramatically tighten allowable levels of ground-level ozone, a major component of smog. The EPA projects that the stricter standards could annually save as many as 15,000 lives and reduce respiratory problems in children by some 250,000 cases.

But industry leaders view the regulations as tantamount to pulling the plug on the American economy. "The total cost of compliance for business would rival the

gross national product of Canada—\$720 billion," says Thomas Donohue, president of the U.S. Chamber of Commerce. Road builders fear nearly 1 million of their ranks could lose their jobs because areas that miss the new targets stand to forfeit federal transportation funding.

The justices held, however, that the EPA must only consider public health benefits, not financial costs, when setting standards.

The rules may take years to go into effect. The EPA still must defend parts of the standards in a lower court and design a new way to implement the ozone limits. Then states will have to come up with their own plans to meet the EPA goals.

Despite future wrangling, it is unlikely the rules will change. The EPA's new administrator, Christine Todd Whitman, supports them just as she did while governor of New Jersey. Pols don't expect the White House to raise a stink, either. President Bush made a big show of being a clean-air cheerleader during his campaign to counter claims that his home state of Texas harbors some of the country's dirtiest air. ●

**Before the House Utilities Committee
Comments by the
Staff of the Kansas Corporation Commission
March 13, 2001**

HOUSE BILL No. 2521

Layout of Bill 2521:

- Section 1 Title page for the Kansas Underground Utility Damage Prevention Act.
- Section 2 Lists definitions that apply throughout the bill.
- Section 3 Lists requirements for excavators.
- Section 4 Addresses how the Act would impact liability issues in civil court.
- Section 5 Addresses the repercussions for violating the Act.
- Section 6 Gives the KCC authority to enforce the Act.
- Section 7 Lists the requirements for the notification center.
- Section 8 Lists the requirements for Tier 1 operators
- Section 9 Lists the requirements for Tier 2 operators
- Section 10 Repeals the old law
- Section 11 Sets the effective date of the law at 1/1/2002

2-16-2001

AN ACT amending and supplementing the Kansas underground utility damage prevention act; amending K.S.A. 2000 Supp. 66-1801, 66-1802, 66-1803, 66-1811, 66-1812 and 66-1813 and repealing the existing sections; also repealing K.S.A. 2000 Supp. 66-1804, 66-1805, 66-1806, 66-1807, 66-1809 and 66-1810.

Be it enacted by the Legislature of the State of Kansas:

Section 1. TITLE PAGE

K.S.A. 2000 Supp. 66-1801 is hereby amended to read as follows:
66-1801.

(a) This act shall be known and may be cited as the Kansas underground utility damage prevention act.

Page 1, lines 19 through 22.

(b) *This act prescribes minimum requirements for operators of underground facilities, excavators and a notification center regarding requests for locating underground facilities and the subsequent locating of such facilities.*

Section 1 lists the title of the Act and it includes a scope of who is affected within the Act.

Sec. 2. DEFINITIONS

K.S.A. 2000 Supp. 66-1802 is hereby amended to read as follows: 66-1802. As used in this act:

Page 1, lines 25 through 31.

(a) "Damage" means:

- (1) Any impact or contact with an underground facility, or its appurtenances or its protective coating,, which requires repair;
- (2) any weakening of the support for the facility, or its protective housing, which requires repair; or
- (3) any failure to properly replace the backfill surrounding an underground facility.

The definition from the current statute is broken into 2 parts to make it more understandable. In addition a third part is added that spells out improper backfill can affect the integrity of the line. It clarifies that any action that affects the integrity of an existing facility is considered as damage to that facility.

Page 1, lines 32 through 35.

(b) "Emergency" means any condition ~~constituting~~ *which constitutes* a clear and present danger to life, health or property, ~~or a customer service outage which requires immediate corrections in order to assure continuity of service to a customer.~~

The change fully defines the term customer outage within the definition. The key point in the proposed change is that an emergency situation applies to a disruption in service and not to a delay in establishing new service.

Page 1, lines 36 through 43 and Page 2, lines 1 through 2.

(c) "Excavation" means any operation in which earth, rock or other material below the surface is moved or otherwise displaced by any means, ~~except~~ *with the following exceptions:*

(1) Tilling the soil, ~~or~~ *to a depth of less than 20 inches for normal agricultural purposes;*

(2) railroad or road and ditch maintenance that does not change the existing railroad grade, road grade and/or ditch flowline; *or*

(3) operations related to exploration and production of crude oil or natural gas, or both, *that do not take place in a public access right-of-way.*

breaks the definition into 3 parts in order to make the definition clearer. The exceptions are also added as line items for clarity. Exemptions for tilling are limited to agricultural tilling in order to distinguish between that activity and landscape activities which typically occur in areas congested with underground utilities. There is no exemption for landscape tilling. A depth limitation of 20 inches on agricultural tilling is proposed for the exception in order to protect large oil and gas transmission lines which may be located through rural agricultural areas but are typically more than 30 inches deep. With this limitation, any agricultural tilling at a depth greater than 20 inches would be considered "excavating" and would be required to have locates before digging.

2. The current statute exempts all excavation activities associated with oil and gas production from the requirements of the statute. The proposed changes would limit this exemption to those areas not located within a public access right-of-way. In other words, excavation activity related to oil and gas production would require locates if that activity was being performed within 75 feet of a public road. The 75 foot band on each side of the road is included in order to protect utilities running along the road in private right-of-way.

Page 2, lines 3 through 7.

(d) "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.

No change to this definition.

Page 2, lines 8 through 12.

(e) (1) "Facility" means any underground line, system or structure used for *transporting*, gathering, storing, conveying, transmitting or distributing gas, electricity, communication, crude oil, refined or processed petroleum, petroleum products ~~or~~, hazardous liquids,; *sewage, potable water or other liquids*.

adds those facilities that transport sewage, potable water, or other liquids. In effect, this proposal removes the exemption from the current statute for water and sewer facilities. The term transporting was also added to more clearly define pipeline functions.

Page 2, lines 13 through 18.

(2) Facility shall not include, ~~any~~ *the following*:

These lines list the exemptions to facilities separately from the body of the definition. They are described as follows:

Page 2, line 14.

(A) *Storm water sewers installed before January 1, 2002; or*

The proposed definition would include storm water sewers. Since very limited mapping exists for many storm water systems, the bill proposes that storm water sewers constructed before January 2002 be exempt from the requirements placed on locating facilities. That is, only newly constructed storm water sewers would be considered facilities under the proposed statute changes.

Page 2, lines 14 through 18.

(B) ~~production petroleum lead lines, salt water disposal lines or injection lines, which are located on unplatted land or but only if such lines are not located on platted land and are located outside of any public access right-of-way and more than one mile outside the corporate limits of any city.~~

Places additional limitations on the exemptions for production petroleum lead lines. These facilities will not be exempt when they are located within one mile of a city limits or when they are located within a public access right-of-way. Production petroleum lead lines located in these areas will be defined as facilities, and as such, will be required to become members of One Call. The reasoning is that oil and gas facilities located in congested underground areas represent a safety hazard to excavators and line damages are potential pollution sources.

Page 2, lines 19 through 22.

(f) "*Locatable facility*" means facilities for which the tolerance zone can be determined by the operator using generally accepted practices such as *as-built construction drawings, system maps, probes, locator devices and other types of proven technology for locating*.

Refers to operator being able to find the location of his facilities. All facilities are locatable if you dig long enough. The intent of this term is that the surface or horizontal location of the facility can be readily determined in order to meet the locating time constraints of providing locates within 2 working days.

Page 2, lines 23 through 27.

(g) "Marking" means the use of stakes, paint, *flags* or other clearly identifiable materials to show the field location of underground facilities, in accordance with ~~the resolution adopted August, 1984, resolutions of the utility location coordination council of the American public work association.~~

The term flags is added to the definition since it is a common marking method. The other change strikes the reference to dated standards, allowing the use of the current standard.

Page 2, lines 28 through 29.

(h) "Meet on site" means a meeting between a facility operator and excavator which occurs at the site of the proposed excavation.

This defines a common term used in facility locating. It is used in setting time requirements for locates.

(i) "Municipality" means any city, county, municipal corporation, public district or public authority located in whole or in part within this state which provides firefighting, law enforcement, ambulance, emergency medical or other emergency services.

Page 2, lines 34 through line 38.

(j) "Notification center" means the statewide communication system operated by an organization which has as one of its purposes to receive *and record* notification of planned excavation in the state from excavators and to disseminate such notification of planned excavation to operators who are members and participants.

slightly modifies the definition of what the notification center does.

(k) "Operator" means any person who owns or operates an underground facility, except for any person who is the owner of real property wherein is located underground facilities for the purpose of furnishing services or materials only to such person or occupants of such property.

Page 2, lines 43; Page 3, lines 1 through 10.

(l) "Preengineered project" means a public project ~~or a project~~ which is approved by a public agency *and, as part of its engineering and contract procedures:*

(1) The public agency responsible for the project, ~~as part of its engineering and contract procedures,~~ holds a meeting prior to the commencement of any construction work on such project in which all persons, determined by the public agency to have underground facilities located within the construction area of the project, are invited to attend and given an opportunity to verify or inform the public agency of the location of their underground facilities, if any, within the construction area ~~and where;~~

Rearranges the definition in the current statute to make it more readable.

Page 3, lines 11 through 13.

(2) the location of all known ~~and~~ underground facilities are duly located or noted on ~~the updated~~ engineering ~~drawing~~ drawings as specifications for the project; *and*

The task force felt it was necessary for preengineered projects to reflect any changes that may have occurred after the initial meeting. Therefore, the word updated is inserted.

Page 3, lines 14 through 17.

(3) additional meetings will be held in which all persons determined by the public agency to have underground facilities located within the construction area of the project are invited to attend if any changes to the engineering drawings occur after the initial meeting.

This change was added for the same reason as above. The intent is to make sure that any change orders to the project are passed on to all utilities in the area . In this way they can inform the project manager of any impact the changes may have on their facilities.

Page 3, lines 18 through 24

(m) "Permitted project" means a project where a permit for the work to be performed:

(1) Must be issued by a city, county, state or federal agency; and,

(2) has as a prerequisite to receiving such permit, a requirement that the applicant must locate all underground facilities in the area of the work and in the vicinity of the excavation and notify each owner of such underground facilities.

The change separates the current definition into subparts to make it more readable.

(n) "Person" means any individual, partnership, corporation, association, franchise holder, state, city, county or any governmental sub-division or instrumentality of a state and its employees, agents or legal representatives.

Page 3, lines 29 through 31

(o) "Platted land" means a tract or parcel of land that has been divided into two or more parts for the purpose of sale or building developments, including housing subdivisions.

This term is used in the exemption of petroleum lead lines. It attempts to clarify what areas are expected to become more congested with underground facilities and therefore would require oil and gas production facility participation.

Page 3, lines 32 through 35

(p) "Production petroleum lead line" means underground facilities used for production, gathering and preparation for delivery of hydrocarbon gas and/or liquids. Such facilities include underground lines associated with fuel and those associated with salt water disposal and injection.

Provides a definition of a production petroleum lead line. This term is also used in the current statute, but it was never defined.

Page 3, lines 36 through 38

(q) "Public access right-of-way" means any public street or highway and the contiguous area within 75 feet of each side of the right-of-way of such street or highway.

A newly defined term that is used in establishing the areas in which oil and gas production lines would need to be included in One Call. The 75 feet was added to each side of the existing road easement to allow for utilities that are on private ROW running parallel to the road.

25

Page 3, lines 39 through 43, Page 4 line 1

(r) "Reasonable care" means the precautions taken by excavators to conduct an excavation in a careful and prudent manner, including excavation by hand, to determine the precise location of an underground facility. Reasonable care includes, but is not limited to, maintaining a reasonable clearance between any marked underground facility and the cutting edge or point of any mechanized equipment.

this term is used in the current statute but not defined. It is the subject of continual interpretation. For the sake of clarity, the proposed definition defines the requirements of reasonable care when digging close to the existing facilities or within the tolerance zone. While it does not mandate hand digging when excavating within 24 inches of the facility, it does require the excavator to take as much precautions as necessary to avoid damaging the facility.

Page 4, line 2 through line 5

(s) "Tier 1 facility" means an underground facility used for transporting, gathering, storing, conveying, transmitting or distributing gas, electricity, communication, crude oil, refined or reprocessed petroleum, petroleum products or hazardous liquids.

This term supplies a subdivision for the definition of facility. A Tier 1 facility meets the definition of "facility" as defined in the current statute. It should be noted that this definition is used for clarity, and it does not preempt any of the exemptions listed in the definition of "facility".

Page 4, line 6 through line 9

(t) "Tier 2 facility" means an underground facility used for transporting, gathering, storing, convey, transmitting or distributing potable water or sewage, including storm sewers constructed on or after January 1, 2002.

This term supplies a subdivision for the definition of facility to distinguish those facilities used to transport potable water or sewage. It also includes storm sewers that are constructed after January 2002.

(u) "Tolerance zone" means the area within 24 inches of the outside dimensions in all horizontal directions of an underground facility.

Page 4, line 12 through line 14

(v) "Update" means an additional request from the excavator to extend the time period of the request for intent to excavate beyond the 15 calendar day duration of the request.

This term defines a common practice used to renew or change a request for facility locates.

Page 4, line 15 through line 17

(w) "Whitelining" means an excavator's act of marking the route or boundary of a proposed excavation site with white paint, white stakes or white flags.

Another term that is common to the locating industry. It is used to help the locator understand the exact area where digging is planned.

Page 4, line 18 through line 22

(x) "Working day" means every day *Monday through Friday beginning at 12:01 a.m., except Saturday, Sunday or a legally proclaimed local, state or federal holiday for the following officially recognized holidays: New Year's day, Memorial day, Independence day, Labor day, Thanksgiving day, the day after Thanksgiving day and Christmas day.*

This term changes the definition of a working day to clarify which holidays the call center is not fully staffed. The start time of the work day is defined at 12:01 am in order to give a clear and recognizable start time for the scheduling requirements of Sections 4, 8, and 9.

Sec. 3.

REQUIREMENTS FOR EXCAVATORS

K.S.A. 2000 Supp. 66-1803 is hereby amended to read as follows:
66-1803.

Page 4, line 24 through line 30

(a) *This statute prescribes minimum requirements for excavators regarding a request for locating underground facilities and subsequent excavating operations near or adjacent to such facilities.*

(b) An excavator shall not engage in excavation near the location of any underground facility without first having ascertained, in the manner prescribed in this *section*, a location of all underground facilities in the proposed area of the excavation.

Paragraphs (a) and (b) define the scope of Section 3.

Page 4, line 31 through line 43; Page 5, lines 1 through 2

(c) *Except in the case of an emergency, an excavator shall give notice of intent to excavate on each operator having underground facilities located in the proposed area of excavation as follows:*

Paragraph (c) describes how an excavator is to notify all operators of the location he is planning to excavate. The following discussions go into detail of Paragraph (c).

Page 4, line 34 through line 35

(1) *the notice of intent to excavate shall be given no earlier than 15 calendar days before the excavation is to begin.*

Current statute limits advance notice of intent to excavate to 10 working days. The bill would restrict the excavator from requesting locates more than 15 calendar days prior to the date an excavation is scheduled to begin. This addition of three to five working days will give the excavator more lead time to plan his work but would not allow the excavator to clog the system with work that is only tentatively scheduled. Calendar days are used instead of working days to make the effective date easier to calculate.

Page 4, line 36 through line 39

(2) The notice of intent to excavate shall be given no later than two full working days before the excavation is to begin. The two full working days do not include the day notice of intent to excavate is filed with the notification center.

A standard start and end time is provided for the time period in which an excavator must wait for locates to be completed. This method gives the waiting period for every ticket an easily recognizable start and end time. The start time is set to begin at the beginning of the working day following the day on which the request was made. The ending time of the waiting period is set as the beginning of the third working day after the day on which the request for locates was made. By definition, this time would be at 12:01 am of the third working day following the call requesting locates. This will allow an excavator to schedule a full day's work for the excavating crew without tracking unique excavation start times for each locate request.

Page 4, line 40 through line 42

(3) Notice of intent to excavate shall be given by notifying the notification center through communication methods approved by the center, including telephone and facsimile.

Updates the current statute to recognize new technology in the methods of making a locate request such as use of facsimile or future requests made over the internet.

Page 4, line 43; Page 5, line 1 through line 2

(4) For Tier 2 members of the notification center, notice of intent to excavate shall be given by directly notifying the operator at the telephone number provided by the notification center.

Requires the excavator to place a second call to a tier 2 operator using the number provided by the call center.

Page 5, line 3 through line 4

(d) The notice of intent to excavate or any subsequent updates shall be valid for 15 calendar days after the date the excavation starts.

This paragraph sets the ticket life for 15 calendar days. In order to keep a ticket active, an excavator must update the ticket on the 13th day after the scheduled start date. The update allows the operator to place new markers for those that may have been removed or erased, and it allows the operator to mark any new facilities that may have been installed over the last 15 days. The 15 day life extends the amount of time an excavator has to finish his work which should reduce the number of update locate requests. To ensure the "locate life" could be easily calculated, the ticket life is calculated in calendar days instead of working days.

28

Page 5, line 5 through line 19

(e) The notice of intent to excavate shall contain:

(1) the name, address and telephone number of the person giving the notice of intent of excavation;

(2) the name of the excavator;

(3) the date the excavation activity is to commence;

(4) the type of excavation being planned; and

(5) a description of the excavation, including;

(A) the street address, if available, and the location of the excavation at the street address;

(B) an accurate description of the excavation area using any available designations such as closest street, road, intersection or additional information as requested by the notification center; or

(C) the specific legal description down to the level of a quarter section, including longitude and latitude coordinates if possible, if the planned activity is outside the boundaries of any city;

This paragraph lists the requirements for the notice of intent to of excavation in a more readable manner than the existing statute. It also adds additional detailed language of what should be in the notice.

Page 5, line 20 through line 22

(f) The excavator shall have at the excavation site the description included in the notice of intent to excavate and the locate ticket number issued by the notification center.

This paragraph requires the excavator to have a copy of the locate ticket reference number and a copy of the description given to the call center at the site of the excavation. This requirement lessens the chance for communications errors between the excavator and clerical staff that may make the request for locates. It also provides an additional tool for enforcement by allowing KCC Staff inspectors to verify the excavator has a current locate request with the correct description of the excavation site.

Page 5, line 23 through line 28

(g) The person giving the notice of intent to excavate shall wheline the proposed excavation site when the description of the excavation location cannot be described with sufficient detail to enable the operator to ascertain the precise tract or parcel involved. If marking a proposed excavation site in that manner is impractical, an excavator or an operator may request a meet on site.

This paragraph requires the excavator to wheline the proposed excavation site if he can not provide sufficient instructions in his locate request to the call center. This practice enables the utility operator to clearly understand where the excavator is planning to dig and mark the facilities accordingly. Whelining is not required for all locate requests since many requests are straightforward and easily understood. The excavator is allowed to request an on-site meeting with the utility operator if, for some reason, whelining is impractical. By the same token the utility operator is also allowed to request an on-site meeting if they are unable to understand the area that has been outlined in white. The on-site meeting provides for additional communications between the two parties in situations where marking the utilities will be difficult to perform.

29

Page 5, line 29 through line 32

(h) If either party requests a meet on site as part of the description of the proposed excavation, the party requesting the meet shall document the meet on site and any subsequent meetings with a record signed by representatives of the excavator and the operator.

In order to ensure that the meet on site is understood by all parties, this paragraph requires the party requesting the meeting to maintain a written record of the meeting that documents who was at the meeting and that the locate instructions were properly understood.

Page 5, line 33 through line 35

(i) The notice of intent to excavate shall only describe an area in which the proposed excavation can reasonably be completed within 15 calendar days after the date on which excavation is scheduled to begin.

Limits the amount of area included in the locate request description to an amount of work that can reasonably be expected to be completed within the 15 day ticket life. This provision is expected to eliminate extremely large locate requests that must be repeatedly updated before the job is finished.

Page 5, line 36 through line 38

(j) No person shall make repeated requests for remarking, unless the request is due to circumstances not reasonably within the control of such person.

This paragraph prohibits an excavator from making repeated locate requests before the work is actually scheduled, the provisions of this paragraph should eliminate unnecessary locates for work that is not scheduled to begin.

Page 5, line 39 through line 41

(k) Except for the requirement to serve notice of intent to excavate as provided in subsections (c)(3) and (c)(4), the provisions of subsections (c) and (d) shall not apply to a preengineered project or a permitted project.

This paragraph repeats the requirements found in the current statute. It allows an exemption to the ticket life, (and subsequent updating), for preengineered projects and permitted projects.

Page 5, line 42 through line 43; Page 6, line 1 through line 4

(l) In the case of an emergency, notice of intent to excavate without the use of explosives shall be given to the notification center as soon as possible. However, excavation may commence prior to a response from the operator. any person providing a misrepresentation of an emergency excavation may be subject to the penalties provided in K.S.A. 2000 Supp. 66-1812, and amendments thereto.

This paragraph repeats the requirements for emergencies found in current statute. It waives the requirement of the excavator making a locate request in the event of an emergency. To protect against the abuse of this exemption, misrepresentation of an emergency is made a violation of the Act.

Page 6, line 5 through line 10

(m) Upon receiving information giving the approximate location of under ground facilities as provided in sections 8 and 9, and amendments thereto, and when there is evidence of the existence of underground facilities in and near the construction area, an excavator shall exercise such reasonable care as may be necessary for the protection of any underground facility, including, but not limited to:

This paragraph repeats the requirement for an excavator to use “reasonable care”; however, it then goes on to define specific examples of reasonable care.

Page 6, line 11 through line 12

(1) Reasonable steps necessary to properly protect, support and back-fill underground facilities.

This requirement clearly states that reasonable care goes beyond safe digging. It also includes protecting the existing facilities and the stability of the ground surrounding them. Damage can be caused by rocks or construction debris being placed on the facility while backfilling. Proper compaction of the soil around any facilities is also important. Poor compaction can lead to shifting soil conditions which have often resulted in catastrophic failures.

Page 6, line 13 through line 17

(2) If the proposed excavation will use an excavation technique, such as boring or cable plowing, that does not allow the excavator to visually observe the placement of the new facility, a reasonable attempt, by pot holing or hand digging before the excavation begins, to determine the depth of any facilities located in and near the proposed excavation site.

This paragraph applies to excavation techniques in which the excavator is not able to visually observe the placement of a new facility as it crosses or runs very close to an existing utility. The most prominent type of excavation to which these requirements would apply is commonly known as trenchless technology which includes boring and horizontal drilling. The proposed requirements would mandate that the excavator make a reasonable attempt to verify the exact location of the underground facility that he plans to cross during excavation. This verification will be accomplished by digging a small hole known as a “pothole” over the existing utility along the path of the proposed excavation. In this way, the excavator will exercise reasonable care by assuring that he is not interfering with the integrity of the existing facilities.

Page 6, line 18 through line 19

(3) Reasonable steps to maintain the markings that indicate the location of underground facilities throughout the excavation period.

This paragraph requires the excavator to maintain existing locate marks as a part of reasonable care. This would include not covering the marks with spoilage during the excavation. Not only does maintenance of the marks help in determining accuracy of the locates, it provides the excavator with a means of determining the tolerance zone of the marked facility as the excavation approaches that site.

Page 6, line 20 through line 22

(n) An excavator using a trenchless excavation technique shall meet minimum operating guidelines as prescribed in rules and regulations adopted by the state corporation commission pursuant to this act.

This paragraph provides for the Kansas Corporation Commission to develop regulations that define minimum operating guidelines for excavators using trenchless excavation techniques. Because operating horizontal boring equipment is a complex process, minimum operating standards are required this type of equipment. Since directional drilling technology is still advancing at a rapid pace, regulations are considered a more efficient means of addressing the training and operating requirements for this technology.

Page 6, line 23 through line 26

(o) Excavation activity may begin two working days after the day on which the notice of intent to excavate has been given or when all facilities in and near the proposed excavation site are marked by the operator, whichever occurs sooner.

This paragraph identifies the amount of time an excavator must wait after giving notice until excavation may begin. As stated in paragraph (c)(2) of this section, this time interval is defined as two working days beginning on the first working day after the day on which the notice of intent to excavate was given. However, if all utilities are marked prior to the end of the time interval, the excavator would be allowed to begin digging before that time period expired.

Page 6, line 26 through line 29

If a meet on site is requested, the excavation activity may begin two working days after the meet on site has occurred or when all facilities in and near the proposed excavation site are marked by the operator, whichever occurs sooner.

This paragraph requires the excavator to wait up to 2 days after the meet on site before beginning excavation. This allows the operator additional time to schedule the meet on site and to perform the markings. Potentially, the excavator would be required to wait up to 4 working days if a meet on site was requested.

Page 6, line 30 through line 33

(p) Notwithstanding the lack of accurate information provided by an operator pursuant to sections 8 and 9, and amendments thereto, no excavator shall proceed in an excavation activity that results in gross negligence or willful and wanton disregard of underground facilities.

If an excavator waits the required time period and the utility operator fails to mark their facilities, the excavation may begin. However, this paragraph requires the excavator to proceed with appropriate caution and to not disregard the possibility that underground utilities may be present.

Page 6, line 34 through line 35

(q) When any contact with or damage to any underground facility occurs, the excavator shall immediately inform the operator.

As in the current statute, an excavator is required to inform the utility operator in the event that any contact or damage to an underground facility occurs.

2-12

Page 6, line 36 through line 40

(r) If contact with or damage to any underground facility results in penetration of the protective covering of an electrical line or in the release of dangerous gases or fluids, the excavator immediately shall inform emergency personnel of the municipality or area in which the electrical short or broken line is located and

As in the current statute, any damage that results in an immediate safety hazard requires the excavator to immediately contact emergency personnel.

Page 6, line 40 through line 42

take any other action as may be reasonably necessary to protect persons and property and to minimize the hazards until arrival of the operator's personnel or police and fire departments.

Requires the excavator to remain at the site and take reasonable steps to minimize the hazard. In other words, the excavator could not leave the scene of the accident until the appropriate personnel were present. Reasonable steps to minimize the hazard might include notifying nearby residences of the accident or controlling traffic at a reasonable distance from the accident.

Sec. 4.

IMPACT OF THE ACT ON LIABILITY ISSUES IN CIVIL COURT

K.S.A. 2000 Supp. 66-1811 is hereby amended to read as follows:
66-1811.

Page 7, line 1 through line 5

(a) In a civil action in a court of this state when it is shown by competent evidence that personal injury, death or other damages, ~~including damage to any underground facilities,~~ occurred as a result of a violation of this act, there shall be a rebuttable presumption of negligence on the part of the violator.

The intent of this change is to infer that a rebuttable presumption of negligence applies to all damages that are a result of a violation of this Act. This statement would apply not only to damages suffered by utilities as a result of violations on the part of excavators, but it also applies to damages suffered by excavators as a result of utility operators failing to comply with the act.

Page 7, line 6 through line 8

(b) The provisions of subsection (a) shall not apply if the operator whose underground facilities are damaged fails to participate in the notification center.

This paragraph is carried over from the current statute. The intent is that operators can not use the term "rebuttable presumption of negligence" in an attempt to recover damages from an excavator if the operator is not participating in the notification center.

2-13

Page 7, line 9 through line 15

~~(c) In no event shall~~ *If an excavator uses reasonable care while excavating, the excavator shall not be responsible for any associated damage that occurs as a result of damage to underground facilities if such damage was caused by the failure of the operator to correctly and properly mark the location of the tolerance zone of the damaged facility within the time requirements set out in subsection (c) of section 8 and subsection (d) of section 9, and amendments thereto.*

This paragraph addresses liability of an excavator for damages that occur as a result of a tier 1 or tier 2 operator's failure to accurately mark the facility location. If an excavator complies with the requirements of Section 3 and uses reasonable care but still damages a facility that was not properly marked, this paragraph states that the excavator will not be liable for any damages associated with the damage to underground facility. An example of associated damages would be spoilage of food because of an electricity outage. If the electric facility was not marked properly and cut by an excavator, the excavator could not be held liable for any damage caused by the power outage. Similarly, damage to a street from a broken water line could not be charged against the excavator if the excavator had met the provisions of Section 3.

Page 7, line 16 through line 21

(d) If an excavator uses reasonable care while excavating, the excavator shall not be responsible for any associated damage that occurs as a result of damage to underground facilities if the underground facility damage was caused by the operator of tier 2 facilities electing to not locate such facilities as allowed by subsection (d)(3) of section 9, and amendments thereto.

This paragraph addresses liability of an excavator for damages that occur as a result of a tier 2 operator's election to not mark the tier 2 facility location. Although failure to locate facilities after being notified is a violation for an operator of Tier 1 facilities, operators of water and sewer utilities, (tier 2), are not held to the same requirements. In order to protect the excavator, this paragraph makes the statement that an excavator, having duly notified the tier 2 operator and using reasonable care, will not be held responsible for damages associated with damage to a tier 2 facility if that operator elects to not perform locates of their facilities.

Page 7, line 22 through line 26

(e) Nothing in this act is intended to limit or modify the provisions of:

- (1) K.S.A. 60-258a, and amendments thereto; or*
- (2) the national electrical safety code, which would otherwise be applicable.*

This language is carried over from the current statute.

Sec. 5. REPERCUSSIONS FOR VIOLATIONS OF THE ACT
K.S.A. 2000 Supp. 66-1812 is hereby amended to read as follows:
66-1812.

Page 7, line 28 through line 32

Any person to whom this act applies, who violates any of the provisions contained in this act, shall be subject to civil penalties and injunctive relief as set out in K.S.A. 66-1,151, and amendments thereto, *and any remedies established is rules and regulations adopted by the state corporation commission pursuant to this act.*

This proposed paragraph allows the Corporation Commission to develop regulations that will streamline the process for assessing penalties for violations to the Act. The intent of this paragraph is to give the Commission an enforcement tool that allows for rapid resolution of small infractions to the Act. Current practice requires a show cause hearing for each penalty assessed for violations of this Act. This procedure can typically take from two to three months to complete. The proposed change will allow the Commission to establish a schedule of fines for common violations. Should the alleged violator protest the assessment, they would still have the right to a hearing as allowed under K.S.A. 66-1,151.

Sec. 6 KCC AUTHORITY TO ENFORCE THE ACT
K.S.A. 2000 Supp. 66-1813 is hereby amended to read as follows:
66-1813.

Page 7, line 34 through line 37

(a) This act shall be administered and enforced by the state corporation commission ~~of the state of Kansas.~~

(b) *The state corporation commission shall adopt rules and regulations to administer and enforce the provisions of this act.*

This section places the requirement in statute for the Corporation Commission to develop rules and regulations to enforce the provisions of the Act.

New Sec. 7. REQUIREMENTS FOR THE NOTIFICATION CENTER

Page 7, line 38 through line 43; Page 8, line 1 through line 14

(a) This act recognizes the establishment of a single notification center for the state of Kansas.

(b) The notification center shall provide prompt notice of any proposed excavation to each affected operator that is a tier 1 member of the the notification center and has facilities recorded with the notification center in the area of a proposed excavation site.

This paragraph establishes the requirements for the notification center

(c) The notification center shall also provide the excavator with the name and telephone number of each operator that is a tier 2 member and has facilities recorded with the notification center in the area of the proposed excavation.

(d) The notification center shall maintain for a period of four years a suitable record to document the receipt of notices of intent to excavate, including:

- (1) An audio record of each notice of intent to excavate; and
- (2) a written or electronic version of the notification sent to each operator that is a tier 1 member.

2-15

(e) Upon request, a copy of the record documenting notice of intent to excavate shall be furnished by an operator or by the notification center to the state corporation commission or to the person giving the notice of intent to excavate. **These paragraphs replace and update the requirements for the notification center that are listed in 66-1805 of the current statute. In addition to recognizing the existence of a single statewide notification center, the proposal specifies requirements for the center in notifying the utilities of each request for locates and in maintaining records that document the receipt of each notice to excavate.**

Page 8, line 15 through line 17

(f) The notification center shall establish and maintain a quality control program that assures adequate training of employees receiving and recording notices of intent to excavate.

Since the notification center is the main link in the communication between excavators and utility operators, a properly trained staff is crucial. This paragraph requires the center to maintain a quality control program to insure adequate training for their employees that receive and record the notice of intent to excavate.

(g) This section shall be part of and supplemental to the Kansas underground utility damage prevention act.

New Sec. 8.

REQUIREMENTS FOR TIER 1 OPERATORS

Page 8, line 20 through line 23

(a) This statute prescribes minimum requirements for operators of tier 1 facilities regarding their responsibilities to mark the location of their facilities for the area described in the notice of intent to excavate.

The first paragraph of Section 8 sets the scope of the section as the requirements for operators of tier 1 facilities. The requirements in this statute include the requirements for operators found in 66-1805, 66-1806, and 66-1810 of the current statutes.

Page 8, line 24 through line 33

(b) Each operator of a tier 1 facility shall become a tier 1 member of the notification center. Tier 1 membership shall require the operator to:

(1) File and maintain with the notification center accurate maps of the operator's underground facilities or a map showing the operator's service area;

(2) file and maintain current operator telephone contact numbers that can be accessed on a 24-hour-per-day basis; and

(3) pay costs incurred by the notification center for maintaining an accurate database of tier 1 members' facilities and disseminating information regarding those facilities to excavators.

This section lays out the tier 1 operator's responsibilities in providing current data to the call center and in covering the call center's operating costs. These requirements codify the current policies of the notification center.

2-16

Page 8, line 34 through line 36

(c) Within two working days, beginning on the first working day after an excavator has filed a notice of intent to excavate, an operator of tier 1 facilities, unless otherwise agreed between the parties, shall:

This paragraph denotes the required deadline by which the operator must answer the locate request. As noted in the discussion of excavator requirements, the proposed statute clearly defines the locating time interval as starting on the first working day after the day the locate request is received. From that point, the duration of this interval is two business days. This clear definition is expected to improve the locator's efficiency in scheduling his work in addition to allowing up to 16 more hours to perform the locate.

Page 8, line 37 through line 40

(1) inform the excavator of the location of the operator's underground facilities in the area described in the intent to excavate; or

(2) notify the excavator that the operator has no facilities in the area described in the notice of intent to excavate.

After receiving a locate request, the operator must perform one of two tasks: If he has facilities in the area listed in the intent to excavate, he must mark them. If he does not have facilities in the excavation area but he is listed by the call center as having utilities in the area, he must notify the excavator if the operator has no facilities at the site of proposed excavation. This procedure, commonly known as positive response, assures the excavator that the utility operator has cleared the site for excavation.

Page 8, line 41 through line 43; Page 9, line 1 through 6

(d) The operator of a tier 1 facility shall inform an excavator of the location of such facility by marking the location of the facility by flags, paint or other acceptable methods. If a tier 1 facility has outside dimensions of eight inches or larger, the operator of the facility shall mark the facility in such a way that the tolerance zone of the facility can be easily determined by the excavator. If a tier 1 facility has outside dimensions of less than eight inches, the operator of the facility shall mark the facility such that the location of the facility can be easily determined by the excavator.

This paragraph describes the requirements of the how the operator must mark their facilities. The proposal requires marking of the tolerance zone only for those facilities that are over eight inches in diameter. Current statute requires the operator to mark the tolerance zone, (24 inch zone from each side of the outside dimension of the facility), for each locate request. When this requirement is performed in a congested right-of-way, the resultant collage of overlapping paint marks and flags becomes difficult for the excavator to interpret. Therefore, marking the tolerance zone is only required if the facility has outside dimensions of eight inches or larger. When underground utilities are less than this dimension, the standard 24 inches from the paint mark or flag is considered sufficient for determining the tolerance zone. However, for larger facilities, the excavator must be made aware of the facility dimensions in order to determine when hand digging or reasonable care is necessary.

2-17

Page 9, line 7 through 10

(e) If the description listed in the notice of intent to excavate requests a meet on site, the operator of a tier 1 facility shall attend a meeting on a mutually agreed schedule but will have two working days after the meet on site to complete marking the area.

This paragraph requires the operator to attend an on-site meeting if requested by the excavator, subject to the conditions listed in the proposed Section 3, paragraph (g). However, the operator will have an additional two working days after the meeting to mark utilities at the excavation site.

Page 9, line 11 through 16

(f) If an operator of a tier 1 facility has no underground facilities in the area of a proposed excavation, such operator, before the excavation start date, shall notify the excavator that the operator has no facilities in the area of proposed excavation. The notice shall be made by telephone, facsimile, marking the area all clear or other means that may be developed for such purposes.

This paragraph describes how the operator will provide positive response as required in the paragraph (c) of this section.

Page 9, line 17 through 22

(g) If an excavator, within two working days after the initial identification of the location by the operator, notifies the notification center that the identifiers have been improperly removed or altered, the operator shall make a reasonable effort to reidentify the location within one working day after the operator receives actual notice from the notification center.

This paragraph incorporates the language from the current statute. It requires the operator to make a reasonable effort to respond to an excavator's request for updated marks should the original marks become altered before the excavation is complete.

Page 9, line 23 through 27

(h) If an operator of a tier 1 facility receives a request to locate the operator's facilities in an emergency, the operator shall make a reasonable effort to identify the location of the operator's facilities within two hours after receiving the request or before excavation is scheduled to begin, whichever is later.

This paragraph requires the operator to respond within two hours after receiving an emergency locate request or before the start of the scheduled excavation, whichever is later. In some cases, an excavator may not need immediate locates but will schedule work to repair customer outages earlier than the normal two business day waiting period. The flexibility included in the proposal, will allow the utility operator to schedule emergency locates to meet the needs of the excavator and yet reduce the need of standby locators to respond to all emergency requests within two hours.

Page 9, line 28 through 31

(i) Upon receiving notice from an excavator of any contact with or damage to an underground facility, the operator shall immediately dispatch personnel to the location to provide necessary temporary or permanent repair of the damage.

This paragraph, adopted from current statute, incorporates the requirements for operators to respond to facility damage or contact when notified by the excavator.

Page 9, line 32 through 34

(j) Each operator of a tier 1 facility shall file an incident of damage report with the state corporation commission as provided in rules and regulations adopted by the commission pursuant to this act.

This paragraph requires the operator to file an incident of damage report with the Corporation Commission. Mandatory reporting of facility damage is necessary in order to judge the effectiveness of the program and to determine which areas of the statute require additional enforcement actions. The specifics on the content of the report and its frequency will be included in regulations. If specific issues are identified in the future, a regulation on reporting requirements can be more easily altered to obtain whatever information would be necessary to evaluate the program's effectiveness.

Page 9, line 35 through 36

(k) All facilities installed on or after January 1, 2002, by an operator of a tier 1 facility shall be locatable.

This paragraph requires all new facilities installed by a Tier 1 operator to be "locatable". That is, the operator must construct new facilities in such a way that they can determine its location after it has been buried. Although previously installed facilities would be difficult to retrofit with locating tracer wire or as-built maps, the task force believes all new facilities should be constructed to accommodate accurate locating. Therefore, the proposed paragraph requires all facilities constructed after January 1, 2002 to be constructed in this fashion.

(l) This section shall be part of and supplemental to the Kansas underground utility damage prevention act.

New Sec. 9.

REQUIREMENTS FOR TIER 2 OPERATORS

Page 9, line 39 through 41

(a) This statute prescribes minimum requirements for operators of tier 2 facilities regarding their responsibilities for compliance with the Kansas underground utility damage prevention act.

This paragraph lists the scope of Section 9 as it relates to the requirements for operators of tier 2 Facilities. As listed in Section 2 paragraph (b)(20), a tier 2 facility is defined as an underground line that transports potable water, sewage, or storm runoff. For storm sewers, the proposed statute would only apply to those built after January 2002. This section is seen as a compromise that gives excavators knowledge of potential underground facilities at a minimum cost to these type of utilities. By requiring the excavator to call, this proposal also provides a level of protection for these facilities that they do not have under the current statute.

2-19

Page 9, line 42 through 43

(b) Each operator of a tier 2 facility shall become either a tier 1 or tier 2 member of the notification center. Tier 2 membership shall require the operator to:

Paragraph (b) requires the operator of a tier 2 facility join the One Call center. However, it gives the tier 2 operator the option of joining under the same terms as a tier 1 member, or as a tier 2 member. Regardless of which membership option a tier 2 operator selects, the locating options, listed in paragraph (c) of this section, for a tier 2 operator remain the same. That is, the tier 2 operator has the option of electing to not perform facility locates provided that he informs the excavator of his intentions.

Page 10, line 2 through 4

(1) File and maintain with the notification center accurate maps of the operator's underground facilities or a map showing the operator's service area;

A tier 2 member must file and maintain maps of their underground facilities with the call center. These maps must supply enough information so that the call center can identify when a tier 2 member's facilities are potentially located at a proposed excavation site. This type of underground facility maps are required for operators of both Tier 1 and Tier 2 facilities.

Page 10, line 5 through 6

(2) file and maintain current operator telephone contact numbers that can be accessed on a 24-hour-per-day basis; and

This subparagraph requires the tier 2 member to maintain current telephone contact numbers with the call center. As with tier 1 members, these numbers must be available on a 24 hour basis in order to receive emergency locate requests.

Page 10, line 7 through 9

(3) pay costs incurred by the notification center for maintaining an accurate database of tier 2 members' facilities and disseminating information regarding those facilities to excavators.

This subparagraph requires the tier 2 operator, who elects to join the call center as a tier 2 member to pay the costs incurred by the call center for maintaining the mapping database and additional telephone time required to inform the excavator of the tier 2 contact numbers. The call center estimates this cost will be \$0.20 per locate request compared to the tier 1 member cost of \$1.14 per locate request. The cost differential is due to the costs incurred by the call center for keeping records of tier 1 member calls. For all operators, there will also be additional charges to load the facility map into the call center database and a charge for periodic updates to the database to keep the Tier 2 maps current.

2-20

Page 10, line 10 through 14

(c) Upon receiving a request from an excavator to locate facilities, a tier 2 member shall:

(1) Maintain, for a period of four years, a record for each excavator request received, including the notification center locate reference number; and

For tier 2 members, the excavator must request locates directly from a tier 2 member. This paragraph requires a tier 2 operator, who elects to join the call center as a tier 2 member, to document the receipt of the request and maintain records of that request for a period of 4 years. In other words, the tier 2 member must perform similar record keeping requirements that the call center does for the tier 1 member. This record will allow the operator and/or KCC staff to track excavating activity in the vicinity of the tier facilities, and it should help resolve any disputes that may occur after the excavation is complete.

Page 10, line 15 through 16

(2) assign a unique facility reference number for each excavator request.

The requirement for the tier 2 operator to assign a reference number to each locate request serves as a receipt to the excavator. It acknowledges the fact that the excavator has met his requirements to place a second call to the tier 2 member. In most cases, a call to a tier 2 member will be preceded with a call to the notification center. It is possible that the tier 2 operator can simply add a letter or number to the call center ticket number for the number assigned to the excavator.

Page 10, line 17 through 18

(d) Within two working days, beginning on the first working day after being notified of an intent to excavate, an operator of tier 2 facilities shall:

This paragraph sets out the requirements for operators of tier 2 facilities when responding to facility locate requests. Paragraphs (b) and (c) of Section 9 list requirements for operators of tier 2 facilities if they elect to join the call center as tier 2 members. The language of this paragraph applies to all operators of tier 2 facilities, regardless of their election to join the call center as tier 1 or tier 2 members.

Page 10, line 19 through 21

(1) Inform the excavator of the location of the operator's underground facilities in the area described in the intent to excavate, unless otherwise agreed between the parties;

This paragraph requires the tier 2 operator to provide locates that are accurate to within 24 inches of horizontal location of their facilities unless the excavator and operator agree to an alternative solution.

Page 10, line 22 through 23

(2) notify the excavator that the operator has no facilities in the area described in the notice of intent to excavate; or

This paragraph repeats the positive response requirements of the tier 1 operators. By responding to the excavator that no facilities are present at his dig site, the excavator is assured that the utility operator has cleared the site for excavation. To minimize the number of positive response requirements, the mapping data provided to the call center should be as accurate as possible.

Page 10, line 24 through 26

(3) notify the excavator that the operator has facilities in the area described in the notice of intent to excavate but elects to not locate these facilities.

The alternative allowed in this paragraph lets the tier 2 operator elect to not provide marks for a locate request. However, the tier 2 operator must inform the excavator of his decision. Providing locate marks that are inaccurate sometimes results in more expensive downtime and damage repairs than digging without marks. With knowledge of an underground facility but no locate marks, excavators tend to proceed with extreme caution, often using another worker to watch for the facility as digging progresses. On the other hand, excavators with locate marks plan their work accordingly and operate at a normal pace. If the marks are inaccurate, the excavator has no knowledge of the line until damage has occurred.

Page 10, line 27 through 35

(e) The operator of a tier 2 facility shall inform an excavator of the location of such facility by marking the location of the facility by flags, paint or other acceptable methods. If a tier 2 facility has outside dimensions of eight inches or larger, the operator of the facility shall mark the facility in such a way that the tolerance zone of the facility can be easily determined by the excavator. If a tier 2 facility has outside dimensions of less than eight inches, the operator of the facility shall mark the facility such that the location of the facility can be easily determined by the excavator.

This paragraph repeats the requirements listed in the tier 1 operator section describing how the operator must mark their facilities. The proposal requires marking of the tolerance zone only for those facilities that are over eight inches in diameter. When underground utilities are less than this dimension, the standard 24 inches from the paint mark or flag is considered sufficient for determining the tolerance zone. However, for larger facilities, the excavator must be made aware of the facility dimensions in order to determine when hand digging or reasonable care is necessary.

Page 10, line 36 through 41

(f) If an excavator, within two working days after the initial identification of the location by the operator, notifies the notification center that the identifiers have been improperly removed or altered, the operator shall make a reasonable effort to reidentify the location within one working day after the operator receives actual notice from the notification center.

If a tier 2 operator has provided marks for their facility, this paragraph requires them to provide additional marks to the excavator if the excavator notifies them that the marks have been removed or altered. This requirement is adopted from the current statute.

Page 10, line 42 through 43; Page 11, line 1 through line 3

(g) If an operator of a tier 2 facility receives a request to locate the operator's facilities in an emergency, the operator shall make a reasonable effort to comply with the provisions of subsection (d)(1) or (d)(3) within two hours after receiving the request or before excavation is scheduled to begin, whichever is later.

Similar to the requirements for Tier 1 operators to provide emergency locates, this paragraph requires a Tier 2 operator to make a reasonable effort to provide locates within two hours of receiving notice of the location of their facilities. However, an operator of Tier 2 facilities is given the option of informing the excavator that they will not provide locates at the proposed dig site.

Page 11, line 4 through line 6

(h) Each operator of a tier 2 facility shall file an incident of damage report with the state corporation commission as provided in rules and regulations adopted by the commission pursuant to this act.

This paragraph requires a Tier 2 operator to file an incident of damage report with the Corporation Commission. As in the case of Tier 1 operators, mandatory reporting of facility damage is necessary in order to judge the effectiveness of the program and to determine which areas of the statute require additional enforcement actions. Again, the reporting requirement should be included in regulations rather than statute in order to more easily adjust the specific filing requirements.

Page 11, line 7 through line 8

(i) All facilities installed on or after January 1, 2002, by an operator of a tier 2 facility shall be locatable.

This paragraph requires all new facilities installed by a tier 2 operator after January 2002 to be "locatable". That is, the operator must construct new facilities in such a way that they can determine its location after it has been buried. Although constructing facilities in this manner is not a common practice for water and sewer utilities, the task force believes all new facilities should be constructed to accommodate accurate locating. The task force recognizes that the cost of tracer wire installed with plastic facilities may be a burden for some operators. Therefore the term "locatable" includes accurate mapping which can easily be accomplished during the time of construction. In order to avoid the very expensive costs of "retrofitting" previously buried facilities with tracer wire or accurate maps, this requirement applies only to new facilities constructed after the law becomes effective.

(j) This section shall be part of and supplemental to the Kansas underground utility damage prevention act.

Sec. 10.

REPEAL OF EXISTING STATUTE

K.S.A. 2000 Supp. 66-1801, 66-1802, 66-1803, 66-1804, 66-1805, 66-1806, 66-1807, 66-1809, 66-1810, 66-1811, 66-1812 and 66-1813 are hereby repealed.

Sec. 11.

EFFECTIVE DATE OF NEW STATUTE

Page 11, line 14 through line 15

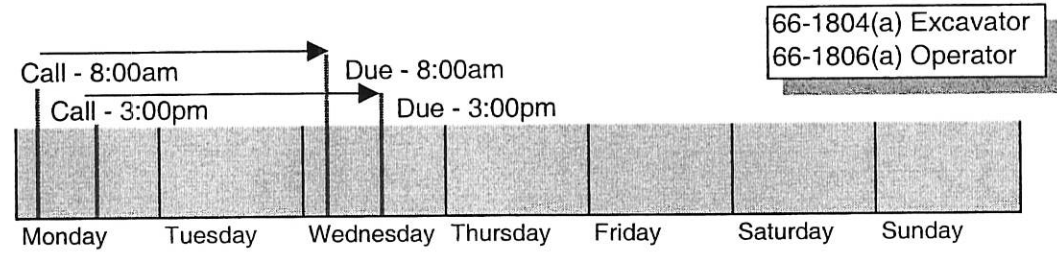
This act shall take effect and be in force from and after January 1, 2002, and its publication in the statute book.

The effective date for this bill is scheduled for January 1, 2002. Besides being the beginning of a calendar year, it also occurs during a time when excavation work is less active than the summer months. A transition at this time will afford the KCC a greater opportunity to educate both excavators and operators of the pending changes.

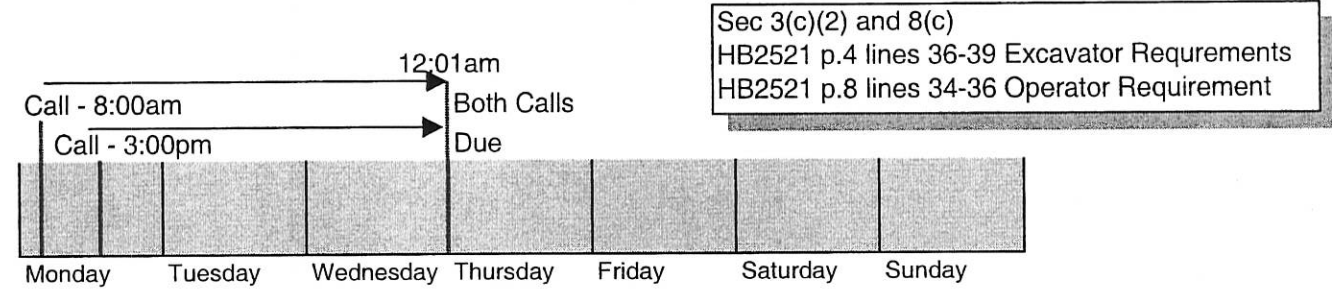
2-23

Excavation Site Locate Windows - Minimum Notification Existing Statute VS Proposed Statute

Existing Statute - Minimum Required Notice



New Statute - Minimum Required Notice



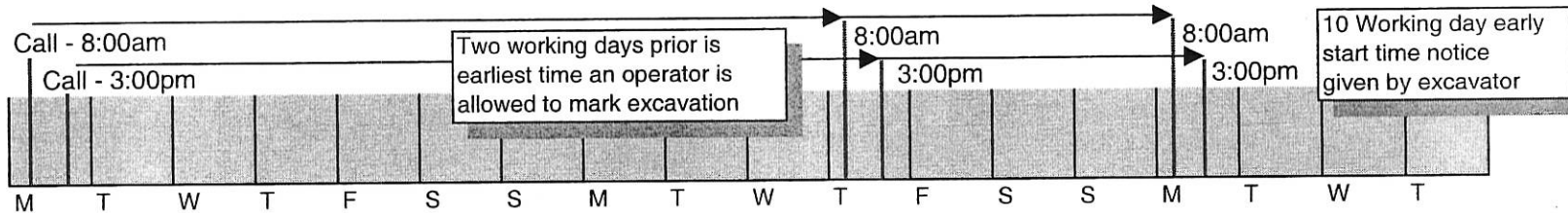
Each scenario is based on an 8:00am and a 3:00pm call requesting locates

52-2

Excavation Site Locate Windows - Early Notification - Existing Statute VS Proposed Statute

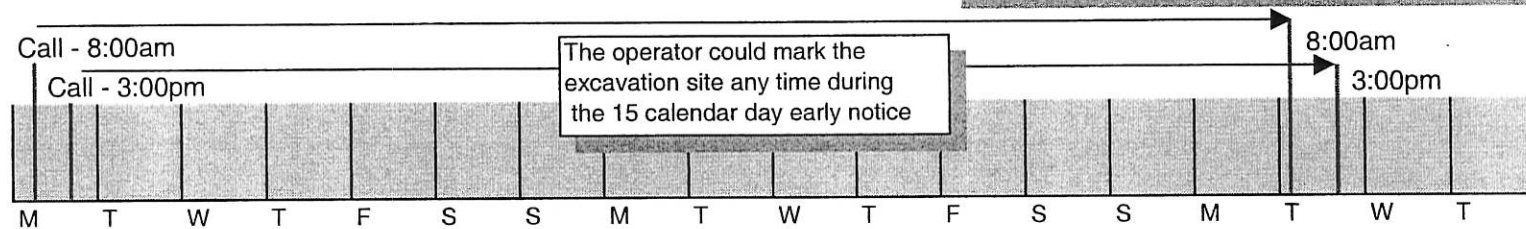
Existing Statute - Maximum Early Notice

66-1804(a) Excavator
66-1806(a) Operator



New Statute - Maximum Early Notice Sec 8(c)

Sections 3(c)(1); 3(o) and 8(c)
HB 2521 p.4 Lines 34-35 Excavator requirements
HB 2521 p.6 Lines 23-29 Excavator requirements
HB 2521 p.8 Lines 34-36 Operator requirements



Each scenario is based on an 8:00am and a 3:00pm call requesting locates

PROPOSED AMENDMENTS TO H. B. 2521

- p. 1, l. 25: (a) “Damage to an underground facility” means . . . [Terry Knight, contractor]
- p. 1, l. 43-
p. 2, l. 2: (3) operations related to exploration and production of crude oil or natural gas, or both, ~~that do not take place in a public access right-of-way.~~ [KIOGA]
- p. 2, l. 8-12: (e)(1) “Facility” means any underground line, system or structure used for transporting, gathering, storing, conveying, transmitting or distributing gas, electricity, communication, crude oil, refined or processed petroleum, petroleum products or hazardous liquids; ~~sewage, potable water or other liquids.~~ [LKM]
- p. 2, l. 13-15: (2) Facility shall not include ~~the following: (A) Storm water sewers installed before January 1, 2002; or (B) any~~ production petroleum . . . [LKM]
- p. 2, l. 14-18: . . . ~~or (B) production petroleum lead lines, but only if such lines are not located on platted land and are located outside of any public access right-of-way and more than one mile outside the corporate limits of any city which are used in the production of natural gas, but only if such lines are located outside any public access right-of-way or are clearly marked in a manner sufficient to provide notice of their location; or (C) other production petroleum lead lines located on unplatted land or outside the corporate limits of any city.~~ [KIOGA]
- p. 2, l. 14-18: . . . ~~or (B) production petroleum lead lines, but only if such lines are not located on platted land and are located outside of any public access right-of-way and more than one mile outside the corporate limits of any city~~ [BP]
- p. 2., l.18: add a new exemption: (C) facilities used to convey communications or electricity to street lights or traffic control devices or used to provide utility service to a public rest area facilities if: (i) Such facilities are owned and operated by a public entity; (ii) the easement where such facilities are located is owned or controlled by the public entity; and (iii) an excavator, before excavating in the easement, is required to obtain from the public entity a permit which requires, at a minimum, that the excavator comply with the provisions of this act at the proposed excavation site [KDOT]
- p. 2, l. 26: change “work” to “works” [technical - staff]
- p. 3, l. 11: insert space after “(2)” [technical - staff]
- p. 3, l. 29-31: (o) “Platted land” means a tract or parcel of land which has been ~~divided into two or more parts~~ subdivided into lots of less than ½ acre for the purpose of sale or building developments, including housing developments, and for which a surveyor’s plat has been filed of record in the office of the register of deeds in the county where the land is located. [KIOGA]

HOUSE UTILITIES

DATE: 3-13-01

ATTACHMENT 3

p. 3, l. 36-38: (q) “Public access right-of-way” means any ~~public street or highway and the contiguous area within 75 feet of each side of the right-of-way of such street or highway~~ federal highway, state highway, county road or township road, and the right-of-way associated with such highway or road. [KIOGA]

or

(q) “Public access right-of-way” means any ~~public street or highway and the contiguous area within 75 feet of each side of the right-of-way of such street or highway~~ federal highway, state highway or major collector county road, as designated by the department of transportation, and the right-of-way associated with such highway or road. [KIOGA; BP]

p. 4, l. 15: change “as” to “an” [technical - staff]

p. 4, l. 34: change “the” to “The” [technical - staff]

p. 5, l. 3-4: (d) The notice of intent to excavate or any subsequent updates shall be valid for 15 calendar days after the date the ~~excavation starts~~ scheduled excavation start date. [KCC staff]

p. 5, l. 10: (4) the type and depth of excavation being planned . . . [KRWA]

p. 5, l. 12: change “the” to “The” [technical - staff]

p. 5, l. 14-16: (B) an accurate description of the excavation area using any available designations such as closest street, road, intersection or additional information as requested by the notification center at the request of the operator . . . [KRWA]

p. 5, l. 23-26: (g) The person giving the notice of intent to excavate shall whitenline the proposed excavation site when requested by the operator or ~~when the description of the excavation location cannot be described with sufficient detail to enable the operator to ascertain the precise tract or parcel involved . . .~~ [new language, KRWA; stricken language, technical - staff]

p. 6, l. 2: change “any” to “Any” [technical - staff]

p. 6, l. 6: change “under ground” to “underground” [technical - staff]

p. 6, l. 13-17: (2) If the proposed excavation will use an excavation technique, ~~such as boring or cable plowing,~~ that does not allow the excavator to visually observe the placement of the new facility, the excavator shall make a reasonable attempt, by pot holing or hand digging before the excavation begins, to determine the depth of visually determine that the excavation for the new facility will not interfere with any facilities located in and near the proposed excavation site. [KCC staff]

32

- p. 6, l. 23-29: (o) Excavation activity may begin ~~two working days after the day on which the notice of intent to excavate has been given on the scheduled excavation start date~~ or when all facilities in and near the proposed excavation site are marked by the operator, whichever occurs sooner. ~~If a meet on site is requested, the excavation activity may begin two working days after the meet on site has occurred or when all facilities in and near the proposed excavation site are marked by the operator, whichever occurs sooner.~~
- p. 7, l. 31: change “is” to “in” [technical - staff]
- p. 7, l. 42: strike first “the” [technical - staff]
- p. 8, l. 8: (1) ~~An audio~~ A record of each notice of intent to excavate . . . [Kansas One-Call System]
- p. 8, l. 11-14: (e) Upon request, a copy of the record documenting notice of intent to excavate shall be furnished by an operator or by the notification center to the state corporation commission ~~or to the person giving the notice of intent to excavate.~~ [Kansas One-Call System]
- p. 8, l. 34-36: (c) Within two working days, beginning on the first working day after an excavator has filed a notice of intent to excavate or before the scheduled excavation start date, an operator of tier 1 facilities, unless otherwise agreed between the parties, shall . . . [KCC staff]
- p. 10, l. 2-9: (1) File and maintain with the notification center accurate maps of the operator’s underground facilities or a map showing the operator’s service area;
(2) file and maintain current operator telephone contact numbers that can be accessed on a 24-hour-per-day basis; and
(3) pay costs incurred by the notification center for maintaining an accurate database of tier 2 members’ facilities and disseminating information regarding those facilities to excavators. [KRWA]
- p. 10, l. 17-18: (d) Within two working days, beginning on the first working day after being notified of an intent to excavate or before the scheduled excavation start date, an operator of tier 2 facilities shall . . . [KCC staff]
- p. 10, l. 36-41: (f) If an excavator, within two working days after the initial identification of the location by the operator of a tier 2 facility, notifies ~~the notification center~~ such operator that the identifiers have been improperly removed or altered, ~~the~~ such operator shall make a reasonable effort to reidentify the location within one working day after ~~the~~ such operator receives actual notice from the notification center. [KCC staff]