

MINUTES

SPECIAL COMMITTEE ON UTILITIES

September 15, 2006
Room 514-S—Statehouse

Members Present

Senator Jay Emler, Chairperson
Representative Carl Holmes, Vice-Chairperson
Senator Janis Lee, Ranking Minority Leader
Senator Pat Apple
Representative Annie Kuether
Representative Lynne Oharah
Representative Robert Olson
Representative Richard Proehl
Representative Mark Treaster

Staff Present

Mary Galligan, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Daniel Nibarger, Kansas Legislative Research Department
Bruce Kinzie, Office of the Revisor of Statutes

The Special Committee on Utilities was called to order by Senator Jay Emler, Chairperson, on Monday, September 15, 2006, at 10:00 a.m. in Room 514-S of the Statehouse.

Bruce Kinzie, Revisor of Statutes Office, reviewed a memorandum dealing with the legislative history of the Kansas Underground Utility Damage Prevention Act (KUUDPA) (Attachment 1).

Mary Galligan, Kansas Legislative Research Department, reviewed the Kansas Corporation Commission's 2001 excerpt entitled, "Review of the Kansas Underground Utility Damage Prevention Act" and "Kansas Corporation Commission Response to Specific Issues Listed in HR-6011" (Attachment 2).

She explained, among other things, that KUUDPA provides for the protection of buried utilities from damage associated with excavation activity near a facility. It also minimizes the chances of potential injury or death to the excavator from buried natural gas and electrical lines.

Leo Haynos, Chief of Gas Operations and Pipeline Safety for the Kansas Corporation Commission (KCC), provided background information on utilities that are exempt from KUUDPA and the KCC provisions for the inclusion of water, sanitary sewage, and oil and gas production lead lines

in KUUDPA. He testified that there are only three states – Kansas, West Virginia, and Vermont – which do not require water and sewer facilities to provide some type of locate services to excavators.

He stated that KCC staff believe facility exemptions contained in KUUDPA or Kansas One Call should require some form of participation by operators of water, sewer, oil and gas production, and gathering lines. Exempt facilities have no requirement to join One Call or provide locates, and excavators have no requirement under KUUDPA to notify One Call when excavating. He stated that 2006 SB 464 was amended to include operators of water facilities in the definition of facilities; however, the amendment was later removed. He informed the Joint Committee that exempt facilities do not have the ability to provide accurate locates of the tolerance zones for excavating because of the lack of accurate maps and the costs to install such things as a tracer wire. In addition to the accuracy problem, there is a legitimate concern that the cost of providing locates will exceed the benefit that the public would gain from exempt utilities. He told the Committee that in 2005, Johnson County Wastewater had one damaged water line per 6,500 locates requested and the City of Wichita had one damage per 2,200 locate requests.

Mr. Haynos presented KCC provisions for inclusion of water, sanitary sewage, and oil and gas production lead lines in KUUDPA. These provisions would create a three-tier facility system with a Tier I facility defined as any underground system used for conveying gas, electricity, communication, crude oil, petroleum products, or hazardous liquids including gas gathering lines subject to pipeline safety regulations. A Tier II facility is defined as a facility used for potable water or sanitary sewage and gas gathering lines not subject to pipeline safety regulations. A Tier III facility is defined as underground facility used for potable water or sanitary sewage with less than 500 customers.

The KCC provisions would require that if an exempt utility wanted to participate as a Tier II facility member in the Kansas One Call, it would be required to provide contact information, maps, and/or a description of areas in which underground facilities are located to the Kansas One Call. This information would be available to excavators. Excavators would not be responsible for any damages (provided they take reasonable steps to avoid damaging a buried facility) if the Tier I, II, and III operators receive notice from excavators and then the operators do not provide locates. In addition, if Tier I and II operators do not provide locates after receiving notice from excavators, then those excavators would be allowed to collect for any equipment downtime that is a direct result of damage. Moreover, all Tier II and III facility operators would be required to post signs every 1,000 feet when the facility is located in the right-of-way or common utility easement. Finally, all new facilities would be required to develop maps with a plus or minus two-foot accuracy for the location of lines by the year 2016 (Attachment 3).

Gregg Noland, Manager Technical Services for Westar Energy, testified that Westar has problems because of the exemption of water and sewer facilities from KUUDPA. He stated that contacting the right person for the location of water lines in emergencies and routine calls can be difficult in small rural communities and time consuming. He said that the lack of accuracy of locates is a problem resulting in excavated water lines which can cause lost productivity to the excavator and operator; excessive time to process damage claims; and disruption of utility services (Attachment 4).

Bob Totten, Public Affairs Director of the Kansas Contractors Association, informed the Committee that the Association supports a position requiring all water and sanitary sewer systems, as well as gas gathering lines, to participate in the One Call system. In addition, he said that the Association supports the idea that would require future water and sewage installations to be "locatable." He testified that the Association objected to the KCC provisions for the proposed changes to KUUDPA that would: exclude an excavator for damage to underground facilities when an operator chose not to mark the locate if the excavator takes reasonable steps to avoid damaging a buried facility and the provision that would require excavators and contractors to pay the cost of the locate updates after the second update.

He informed the Committee that under the KCC provisions, the excavator would not have to place a second call once that excavator contacted One Call; however, Mr. Totten says that liability to the excavator would still exist. He recommended that if the excavator does not have to make more than one call, then that excavator would not be liable for damages that occur. In addition, he said that in many cases an excavator needs to make several calls for a new locate, especially on long-term projects. The KCC provisions would allow a Tier I and Tier II operator to collect for any locating services if an excavator requests more than two updates ([Attachment 5](#)).

Katherin Steinbacher, Director of Business Development for BRB Contractors, testified in support of requiring participation by all operators of underground facilities, including municipalities, rural water districts, and private oil and gas companies in KUUDPA or Kansas One Call. She said that by including them there would be an improvement in the risk allocation process whereby currently a contractor's bid takes into account contingencies for costs related to the encounter of unknown, unmarked underground utilities. She said the KCC's plan to expand KUUDPA would be the first step in improving this process ([Attachment 6](#)).

Pat Shelley, Associated Builders and Contractors Heart of America Chapter, stated that the organization supports the inclusion of water and sewer facilities in KUUDPA ([Attachment 7](#)).

George Melling, Claims and Risk Manager, Kansas Gas Service, a Division of ONEOK, Inc., testified in support of the inclusion of water and sewer facilities in KUUDPA. He said in some areas of Kansas, excavators must make multiple calls to obtain information regarding location of all buried facilities. As a result, some excavators do not make all the calls, resulting in damage to underground facilities and creating a potential risk and service interruptions to the public ([Attachment 8](#)).

Todd Wallin, Kansas Area Manager for NPL Construction, informed the Committee that NPL, in laying underground natural gas pipelines, sometimes drills through sewer laterals because they are not marked. He said the damage may go undetected for years until a problem results and then there is potential for disaster. He recommended that all sewer laterals be marked with a locator wire or locator balls or other means, so that they can be found. Also an entity receiving revenue from sewer laterals should be responsible for locating them, and anyone utilizing sewer cleaning devices should call Kansas One Call before cleaning to make sure the sewer lateral is not in conflict with a natural gas line ([Attachment 9](#)).

John Federico provided testimony submitted by Dave Holtwick on behalf of the Home Builders Association of Greater Kansas City. He stated that the Home Builders support the provision to include water utilities under KUUDPA ([Attachment 10](#)).

Tom Shimon, Executive Director of Kansas One Call System, told the Committee that Kansas One Call is the communications link between the excavator and the underground facility owner. The service One Call provides is free to the excavator or home owner with the facility owner paying the cost on a per ticket basis. He said the multi-call system that exists today is very inefficient with the excavator calling the One Call center and then calling those entities that are non-members who may be difficult to locate. He stated that One Call received over 465,000 locate requests statewide. He recommended that if the Kansas Legislature changes the provisions of KUUDPA to remove the exemptions, it be completed over a three-year period or less ([Attachment 11](#)).

Testimony from Atmos Energy was submitted by Ron Gaches, who testified that Atmos Energy supports inclusion of water and sewer utilities under the authority of the One Call system ([Attachment 12](#)).

Corey D. Peterson, Executive Vice-President of the Associated General Contractors of Kansas, Inc., submitted written testimony in support of the provisions that would require exempt utilities be part of KUUDPA ([Attachment 13](#)).

Darci Meese on behalf of Water District No. 1 of Johnson County (WaterOne) Kansas, testified in opposition to the mandatory participation for all utilities in KUUDPA. She said the current exemption for public water supply facilities exists, in part, because underground water facilities do not present the same health and safety issues as do other underground facilities. In addition, mandatory participation will result in a substantial increase in expenses to the ratepayers without providing any benefit or enhanced service. She stated that excavators call WaterOne directly for locate information and in Johnson County it is mandatory to call One Call as well as WaterOne. She said they had 7,608 locate requests since May 2005, with one hit line per 92 locate requests. She objected to the KCC provision that would require Water One to become a full participant of One Call by 2016. In addition, she said the provision that would require signage every 1,000 was impractical and would be a security concern. She recommended that stricter penalties be placed on excavators who damage water lines and have not called One Call ([Attachment 14](#)).

Kim Winn, Director of Policy Development and Communications for the League of Kansas Municipalities, testified the League supports mandatory participation in One Call for gas and electric utilities and the voluntary participation by water and sewer facilities.

She said that data on 522 contacted cities shows that 251 are members of One Call and 271 have chosen not to join. Of those 271 cities that are not currently members, there are only nine with a population in excess of 10,000 people and 235 cities are small utilities with a population of less than 1,000 people. She testified that the League objects to mandatory participation mainly because it is an unfunded mandate and would force smaller communities to pay an even higher price in the form of utilities or property taxes.

She stated that in the KCC provisions, a Tier II facility would mandate every facility serving over 500 customers to be under KUUDPA. She said this would be a financial burden to small cities. In addition, she said that if excavators are exempt from liability, then that would go contrary to tort law which allows for comparative negligence where the courts review action of both parties involved and assign a percentage of liability to each party ([Attachment 15](#)).

Elmer Ronnebaum, General Manager of the Kansas Rural Water Association, stated that the Association chose not to support mandatory participation in One Call because many communities have only one staff person or even someone who is part-time or a volunteer which creates a time problem in identifying all the locate requests that are generated ([Attachment 16](#)).

Edward Cross, Executive Vice-President, Kansas Independent Oil and Gas Association, submitted written testimony ([Attachment 17](#)).

Committee discussion ensued. The Committee directed staff to research how the Kansas Department of Health and Environment looks at its water and sewage systems – does KDHE require permits and mapping to determine their location?

Also, the Committee questioned why there is a discrepancy between KCC and Water One testimony dealing with the number of locates requested compared to the number of damages reported. Leo Haynos' testimony stated that in 2005 there was one damaged water line per 6,500 requests; whereas, Water One testimony indicated that there was one damage per 92 locate requests.

Leo Haynos was asked to report to the Committee on new technologies currently being used to locate water and sewer lines such as GPS and tracer wires. He also was asked to provide cases dealing with liability.

The next meeting is scheduled for November 27-28, 2006.

Prepared by Dennis Hodgins

Approved by Committee on:

November 27, 2006

(date)