



Kansas Underground Utility Notification Center Board Presses Forward

Recently, I was appointed to the Kansas Underground Utility Notification Center (KUUNC) Board of Directors. David Rinaldi, manager at Leavenworth RWD 7 was also appointed; we were nominated by the Kansas Rural Water Association.

I think it's important that KRWA members learn about the new Notification Center. And I want to use this article as one avenue to provide an update.

The Notification Center was created as the "official" agency that will control the locate services for notifications of excavation. That service is temporarily being provided in the interim by Kansas One Call (KOC).

The KUUNC Board met at the Kansas Corporation Commission (KCC) for the second time on May 2. The directors discussed several different topics but focused on the creation of bylaws for the new organization. Through the discussions it became clear that some clarification was needed about the KUUNC before bylaws could be finalized and adopted. The new legislation that was written and passed into law is so general that it does not specify if the KUUNC is a "State Agency". The Law, K.S.A. 66-1805(l) specifically states as follows:

The Notification Center was created as the "official" agency that will control the locate services for notifications of excavation. That service is temporarily being provided in the interim by Kansas One Call.

"The Notification Center established pursuant to this section shall be and is hereby deemed to be a public agency and shall be subject to the provisions of the open records act . . ."

Five questions

Leo Haynos, Chief of Pipeline Safety for the KCC, was in attendance at the May 2 meeting. Leo's recommendation to the Board was to identify and submit specific questions to the KCC for clarification. The Board agreed to submit five questions to the KCC.

Question #1: Is the KUUNC any part of State government? If so, where does KUUNC fit in the structure of the State and/or KCC?

As a public agency, the Board realizes that it is subject to the Kansas Open Meetings and Open Records Acts, but there are several other issues that are

unresolved without determining its status. Arguably, the most important is the availability of legal counsel. Is the KUUNC able to utilize the Kansas Attorney General's office for opinions? And, if the AG's counsel is not available, what funds does the new Board utilize to retain legal counsel? Currently, membership dues by cities, RWDs and others continue to be collected by KOC. But the KOC is a private, non-profit corporation comprised of voluntary-only members. State law prohibits transferring KOC money to the KUUNC. Thus, the new Notification Center Agency has no funds for legal advice or basic clerical services.

Question 2: What is the date that the KUUNC will be allowed to charge the statutory fees to Kansas operators given the fact a significant number have already paid the 2013 membership fees to KOC? During the board meeting, I asked if the fees were supposed to be paid to the new agency upon adoption of the law, or if they could start being collected after the Supreme Court ruling that clarified the position of KOC. One other board member suggested that those fees were to be paid to the new Agency upon its formation. This is logical, but when is the date of formation? The KCC appointed the new Board on

February 20, 2013. However, the first meeting was on March 7, and as of the time of this publication, the Board still has not adopted bylaws. If the KCC determines that membership dues should have been paid to the KUUNC as of any previous date, how are those funds to be transferred from KOC? If the KCC determines that the money that has already been paid to KOC is to remain with KOC, will the KUUNC be required to bill the membership again for dues that have already been paid? I don't imagine that this proposal will be acceptable to many utilities in Kansas.

Question #3: Based on statute language, is each operator who has underground facilities expected to request membership in KUUNC or are current members of KOC (KOC), the interim operator, automatically considered to be members of KUUNC? There seems to be a lack of consensus among KUUNC Board members about this issue. When legislation was passed, it was deemed that all utilities shall be members of the Notification Center. So utilities started the process of enrolling with KOC.

Some Board members believe that current members of KOC are therefore automatically members of the KUUNC. Others on the Board suggest that KOC members are only KOC members and that all utilities in Kansas need to go through another membership enrollment process with the KUUNC.

Most were unaware of the lawsuit that KOC filed against the State which challenged the KOC status. Many utilities had already become members of KOC when the Supreme Court ruled that KOC was not the Notification Center. But, those utilities were unaware of that ruling and probably would not have become members of both a voluntary locate service and the mandatory Notification Center. Some Board members believe that current members of KOC are therefore automatically members of the KUUNC. Others on the Board suggest that KOC members are only KOC

members and that all utilities in Kansas need to go through another membership enrollment process with the KUUNC. This would require refiling a membership form or agreement, resubmitting a map of the utilities' notification area, re-enrolling in ITIC or IMAP, the online notification service, probably paying a second membership dues and other enrollment requirements. Thus, the question has been posed to the KCC for clarification. I think that members of the Board would like the transition to be as seamless as possible for the utility operators of Kansas. Requiring those members to go through the process again would certainly not be "seamless".

Question #4: Since the KCC appointed KOC to be the interim operator by means of a January 9, 2013 Order, is KUUNC now considered to be the oversight board for KOC or does the KCC retain such oversight? KOC is the interim operator of the call center, located in Wichita. One Call Concepts (OCC) is the contractor that carries out the day-to-day duties in the call center. OCC also sends out bills to utilities for



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services and trains members how to use the online applications. OCC is contracted by KOC to provide those services. Previously, the KCC provided oversight to the KOC in regulatory instances however KOC was largely left alone to carry out the managerial operations of the call center. KOC is governed by a board that is subject to voting members as are most boards here in Kansas. Now, however, there is a new board in the chain of command. The KUUNC Board has been appointed by the KCC and charged with providing notification services to excavators in Kansas. However, K.S.A. 66-1813 states that “this act shall be administered and enforced by the state corporation commission of the state of Kansas.” This hierarchy and their intended duties will need to be specified before this question from the KUUNC can be answered by the KCC. It seems that by law, the KCC is still the oversight commission, however, arguably, the intention of the Kansas Legislature was to create a stand-alone agency to oversee and operate the Notification Center.

Question #5: Given the fact that KUUNC currently does not have staff or startup funds it is difficult to obtain legal guidance, generate, mail and collect payments as per the statute. Is there assistance available from another State agency or was it envisioned that this task could be accomplished by KOC as the interim operator under guidance from the KUUNC? Due to the lack of funds available to the KUUNC, this question was also posed to the KCC. The lack of funds for the KUUNC has been a frustration for me and other Board members. As an employee of Kansas Rural Water Association, I am accustomed to having resources at my disposal including postage, materials, information, legal assistance and technical advice from experts in water, wastewater and many other arenas. I am grateful that the KRWA General Manager and the Board of Directors have approved of my enlisting the advice of KRWA’s legal counsel, the spending of Association time and using KRWA resources to help the KUUNC progress toward its legislative-intended purpose. KRWA's

mission is “To provide leadership, education, and technical assistance to public water and wastewater utilities to enhance the public health and to sustain Kansas' communities.” I think the generosity that KRWA has shown to the new KUUNC Board though my efforts exemplifies KRWA’s mission statement. KRWA counsel’s suggestions on the formulation of the KUUNC’s bylaws have been critically important.

The KUUNC will meet again after the KCC addresses and answers the five questions. I encourage all members and utilities to contact one of the KUUNC Board members with questions, comments or concerns and possibly, consider attending future meetings in order to participate and make notification services in Kansas the best possible service it can be.

Pete Koenig is GPS/GIS Mapping Coordinator at KRWA where he has been employed since 2004. He also has worked on KAN STEP projects and has been involved in other Association activities.



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