

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENNETH GIBSON)	
)	
_____)	CASE NO.
)	2020-00082
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

OPENING ORDER

Kenneth Gibson (Mr. Gibson) has been named as a party to an investigation before the Kentucky Public Service Commission (Commission) for allegedly violating the Kentucky Underground Facility Damage Prevention Act (Act).¹

Pursuant to KRS 278.495(2), the Commission has jurisdiction to regulate the safety of natural gas facilities in Kentucky and to enforce minimum federal pipeline safety standards. Under the Act, the Commission has authority to investigate and assess civil penalties for any violation of the Act that results in excavation damage to an underground facility used to transport natural gas or hazardous liquid subject to federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.* Any person who violates any provision of the Act is subject to assessment of a civil penalty in the amount of \$250 for the first offense, no more than \$1,000 for the second offense within one year, and no more than \$3,000 for the third and any subsequent offense. Additionally, any person whose violation of the Act results in damage to an underground facility containing any flammable, toxic, corrosive,

¹ KRS 367.4901 through KRS 367.4917.

or hazardous material or results in the release of any flammable, toxic, corrosive, or hazardous material is subject to an additional penalty of up to \$1,000.

Following receipt of a report of excavation damage to its underground gas pipeline from an operator, Commission Staff (Staff) conducted an investigation and prepared an Incident Report, a copy of which is attached to this Order as an Appendix. In its Incident Report, Staff cites Mr. Gibson for violation of the following provision of the Act:

KRS 367.4911(1)(a) – Each excavator, or person responsible for an excavation, planning excavation or demolition work shall, not less than two (2) full working days nor more than ten (10) full working days prior to commencing work, notify each affected operator of the excavator's intended work and work schedule. Contacting the applicable protection notification centers shall satisfy this requirement.

Based on its review of the Incident Report and being otherwise sufficiently advised, the Commission finds prima facie evidence that Mr. Gibson violated the Underground Facility Damage Prevention Act. The Commission further finds that a formal investigation into the excavation damage incident should be conducted.

IT IS THEREFORE ORDERED that:

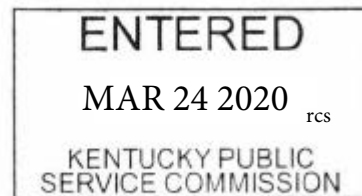
1. Mr. Gibson shall submit to the Commission, at PSCED@ky.gov, a written response to the allegations contained in the Staff Incident Report within 20 days of receipt of this Order.
2. Any partnership, corporation, or business entity (including a limited liability company) must be represented by an attorney licensed to practice law in Kentucky, and such representation includes the filing of papers with and appearances at hearings before the Commission.
3. The Staff Incident Report 31571 in the Appendix to this Order is made a part of the record in this case.

4. Please note that notice of a hearing to be held in this matter will be mailed to Mr. Gibson once proof of service is received by the Commission. Parties who fail to appear after service will be subject to entry of a default judgment against them.

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By the Commission

Commissioner Talina Mathews did not participate in this case.



ATTEST:

A handwritten signature in blue ink, consisting of stylized initials and a surname, positioned above a horizontal line.

Executive Director

Case No. 2020-00082

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2020-00082 DATED MAR 24 2020

SEVEN PAGES TO FOLLOW

PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

KY PSC Investigator(s)	Incident ID 31571
Incident Date 5/17/2019 2:45:00 PM	Report Submitted 5/20/2019 7:04:44 AM

OPERATOR INFORMATION

Operator Atmos Energy Corporation	Reported By Anthony Stallins
Phone (270) 779-4849	Email anthony.stallins@atmosenergy.
Incident Location 10049 South 45, Wingo (Paducah) 10049 KY Rt 45 S Wingo, KY 42088	Locate Ticket Number N/A
Graves	

EXCAVATOR INFORMATION

Name of Excavator Gibson, Kenneth	Organization ID
Phone 270-804-6171/270-519-0396	Email N/A
Excavator Address PO Box 197 Wingo, KY 42088	Locate Ticket Number

INCIDENT

Locate Ticket Summary						
Ticket #	Valid	Initial Date	Expiration Date (21 calendar days from Initial date)	Incident Date	# of Days Expired	Within Scope of Excavation
None	N/A	N/A	N/A	N/A	N/A	N/A

Excavation Summary			
Excavation Within Tolerance Zone	Type Of Equipment Used	Cost of Damage (Per Operator)	Amount Billed (Excavator)
N/A	Non-mechanized	\$1038.00	\$1038.00

The operator reports that Mr. Gibson building a deck, hit a 3/4" PE service with posthole diggers. Mr. Gibson did not have a locate ticket. Sue Alexander/Kenneth Gibson homeowners.

INVESTIGATION

Mr. Gibson has no previous violations.

December 27, 2019

- Called 270.804.6171 spoke to Mr. Gibson. He acknowledged responsibility for the violation by not calling 811. He works on the river and was currently on the boat, so he asked me to email him (kg906920@gmail.com) the options and he would discuss with his girlfriend.

January 7, 2020 received an email from Mr. Gibson agreeing to the reduced penalty and remedial measure.

VIOLATION

KRS 367.4911 (1) (a) Each excavator, or person responsible for an excavation, planning excavation or demolition work shall, not less than two (2) full working days nor more than ten (10) full working days prior to commencing work, notify each affected operator of the excavator's intended work and work schedule. Contacting the applicable protection notification centers shall satisfy this requirement.

Gas Excavation Damage Report

Atmos Energy Corporation

Submitted 6/13/2019 Incident ID: 31571

[Set back to Edit](#)[Staff Edit](#)[Print \(PDFForm.aspx?Rpt=GasInvestigation&IG=31571\)](#)

Reported By:

Name: Anthony Stallins
Phone: (270) 779-4849
Email: anthony.stallins@atmosenergy.com

Gas Line Incident Occured:

Date: 5/17/2019
Time: 2:45 PM

Details:

Reported Date: 5/20/2019 7:04 AM

Incident Location Address:

Location: 10049 South 45, Wingo (Paducah)
Address: 10049 KY Rt 45 S
City: Wingo
State: KY
County: Graves
Zip: 42088

Confirm Code:

Number of Customers out: 1
Locate Request Ticket No.: N/A
Excavator: Home Owner

Excavator Address:

First Name: Kenneth
Last Name: Gibson
Phone: 270-804-6171/270-519-0396
Email: N/A
Address: PO Box 197
City: Wingo
State: KY
Zip: 42088
Confirm Code: Y

Excavation Damage: No notification made to the One Call Center

Description of Incident Cut 3/4" PE service line. One off. No injuries. No locate ticket.

Summary Information

6/13/2019

Full details such as the cause	Sue Alexander/Kenneth Gibson homeowners. Mr. Gibson building a deck, hit a 3/4" PE service with posthole diggers. Mr. Gibson did not have a locate ticket.
Extent of the damage	Damage pipe was replaced and service restored.
Cost of the damage	\$1,038.00
Steps taken to prevent re-occurrence	Will invite Mr. Gibson to the next Atmos Energy Damage Prevention/KY 811 Dig Law Training in Paducah.
Amount billed to excavator	\$1,038.00

Gowins, John E (PSC)

From: Gowins, John E (PSC)
Sent: Friday, December 27, 2019 9:50 AM
To: kg906920@gmail.com
Subject: Incident # 31571

Mr. Gibson,

As we discussed by telephone this morning, the options to resolve the violation are:

1. 1. PSC sends a demand letter with a \$500 civil penalty, but we agreed to suspend \$400 of it provided you or a representative attends a two-hour damage prevention training to be held on February 3, 2020, at the offices of the Kentucky Public Service Commission at 211 Sower Blvd, Frankfort KY;
2. 2. PSC sends a demand letter with a \$500 civil penalty, no one has to attend training, but the full \$500 civil penalty is due; or
- H 3. You have the legal right to request a hearing before the commissioners regarding this matter. Please let me know which option you prefer.

Thanks.

John E. Gowins
Consumer Complaints Investigator II
Division of Inspections
Kentucky Public Service Commission
502.782.2656

Gowins, John E (PSC)

From: Kenneth Gibson <kg906920@gmail.com>
Sent: Tuesday, January 7, 2020 2:57 PM
To: Gowins, John E (PSC)
Subject: Re: FW: Incident # 31571

Yeah I have I've decided to go to the class on February 3 where do I go and what time

On Tue, Jan 7, 2020, 1:46 PM Gowins, John E (PSC) <john.gowins@ky.gov> wrote:

Mr. Gibson,

I would like to know if you have had time to review this information and make a decision.

Thanks.

From: Gowins, John E (PSC)
Sent: Friday, December 27, 2019 9:50 AM
To: kg906920@gmail.com
Subject: Incident # 31571

Mr. Gibson,

As we discussed by telephone this morning, the options to resolve the violation are:

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2. PSC sends a demand letter with a \$500 civil penalty, no one has to attend training, but the full \$500 civil penalty is due; or
3. You have the legal right to request a hearing before the commissioners regarding this matter.

Please let me know which option you prefer.

Thanks.

John E. Gowins

Consumer Complaints Investigator II

Division of Inspections

Kentucky Public Service Commission

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*Kenneth Gibson
P.O. Box 197
Wingo, KENTUCKY 42088