

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TAYLOR BROTHERS HOLDING CO.)	
)	
_____)	CASE NO.
)	2021-00033
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

ORDER

A hearing was held before the Kentucky Public Service Commission (PSC) on April 23, 2021, at its offices at 211 Sower Boulevard, Frankfort, Kentucky, concerning the allegation that Taylor Brothers Holding Co. (Taylor Brothers) violated KRS 367.4911(2), (the Underground Facility Damage Prevention Act, hereinafter the "Act"), when on August 28, 2019, at approximately 5:40 p.m. at 2344 Amsterdam Road, Madonna Manor, Villa Hills, Kenton County, Kentucky, it conducted excavation activities within the approximate location of an underground facility using mechanized equipment and thereby caused damage to an underground gas service line owned and operated by Duke Energy Kentucky, Inc. (Duke Energy), which was used to serve the public. Taylor Brothers was operating on an expired dig ticket in violation of KRS 367.4911(2). Taylor Brothers was served with process and notified of the hearing date, place and time but failed to appear at the hearing to contest the allegations.

Eric Tout, an investigator employed by the Commission's Division of Inspections, testified that his investigation found that Taylor Brothers, was conducting excavation activities with a backhoe and in the process damaged a natural gas service line that

contained natural gas at the time the damage occurred. Mr. Tout's testimony was corroborated by Jim Collins, an employee of Duke Energy. Taylor Brothers was operating on an expired dig ticket and violated KRS 367.4911(10), which required an excavator to hand dig or use nonintrusive means when excavating within the approximate location of an underground facility.

The incident which is the subject of this action represents Taylor Brothers' second violation of the Act and by reason thereof subjects it to a potential civil penalty of \$2,000 by operation of KRS 367.4917(1) and (4).

FINDINGS OF FACT

The testimony presented at the hearing as well as the exhibits file in the record establish that:

1. Taylors Brothers was at the time the damage occurred on August 28, 2019, an excavator as defined by KRS 367.4903(4) who caused damage to a natural gas service line by means of excavation as defined by KRS 367.4903(2)(6). The natural gas service line was an underground facility owned and operated by Duke Energy to serve the public. The service line contained natural gas at the time it was damaged by Taylors Brothers.

2 Taylors Brothers' excavation work was not emergency work within the scope of KRS 367.4907 or the definition of "Emergency" as defined in KRS 367.4903(7), and no exception to the call requirement is applicable to this case.

3. Taylor Brothers in failing to conduct excavation operations while using nonintrusive means to avoid damage to the underground facility was a violation of KRS 367.4911(10).

4. The incident which is the subject matter represents Taylor Brothers' second violation of the Act.

5. There are no known mitigating factors which would merit the imposition of a fine less than the maximum provided by law.

CONCLUSIONS OF LAW

1. Taylor Brothers violated KRS 367.4911(10) by failing to hand dig or use nonintrusive means to avoid damage to the underground facility owned and operated by Duke Energy for use of the public while conducting excavation work within the approximate location of such facility. Nonintrusive excavating is defined by KRS 367.4903(13) as "excavation using hand tools or equipment that uses air or water pressure as the direct means to break up soil for removal by hand tools or vacuum excavations."

2. Taylor Brothers at the time it damaged the natural gas service line was conducting excavation activities. "Excavation" is defined by KRS 367.4903(6) as "any activity that results in the movement, placement, probing, boring, or removal of earth, rock, or other material in or on the ground by the use of any tools or equipment Forms of excavating include but are not limited to auguring, backfilling, digging, ditching, drilling, driving, grading, piling, pulling-in, ripping, scraping, trenching, and tunneling."

3. Taylors Brothers' work activities were within the approximate location of the natural gas service line at the time it caused the pipeline damage. Taylor Brothers was required to hand dig or use nonintrusive means to prevent damage to the pipeline while excavating within the approximate location of the service line.

4. The use by Taylor Brothers of mechanized equipment rather than hand digging or use of nonintrusive means as required within the approximate location of the service line was a substantial factor in causing damage to the natural gas pipeline.

IT IS THEREFORE ORDERED that:

1. Taylor Brothers is assessed a fine of \$2,000 for violation of KRS 367.4911(10) by operation of KRS 367.4917(1) and (2).

2. Taylor Brothers shall pay \$2,000 within 30 days of the date of this Order by cashier's check or money order payable to the Kentucky State Treasurer and mailed or delivered to the office of the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky 40601.

THIS IS A FINAL AND APPEALABLE ORDER OF THE PUBLIC SERVICE COMMISSION.

An application for a Rehearing may be filed with the Commission within 20 days after service of this Order as provided by KRS 278.400. Any appeal of this Order must be filed within the Franklin Circuit Court within 30 days after service of this Order or within 20 days after an application for Rehearing has been denied by failure of the Commission to act or, within 20 days after service of the final Order, as set out in KRS 278.410.

By the Commission



ATTEST:


Executive Director

Taylor Brothers Holding Co.
3769 Madison Pike
Fort Mitchell, KENTUCKY 41017