

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ANTONIO LOZANO	)	
	)	
_____	)	CASE NO.
	)	2021-00253
ALLEGED VIOLATION OF UNDERGROUND	)	
FACILITY DAMAGE PREVENTION ACT	)	

ORDER

A hearing was held before the Kentucky Public Service Commission (Commission) on October 29, 2021, at its offices at 211 Sower Boulevard, Frankfort, Kentucky, concerning the allegation that Antonio Lozano (Mr. Lozano) violated KRS 367.4911(1)(a) when, on April 21, 2020, at approximately 11:15 a.m. at 4173 Willow Lane, Lexington, KY 40516, he conducted excavation activities within the approximate location of an underground facility without first contacting the Protection Notification Center (811) and thereby caused damage to a one-inch underground natural gas service line owned and operated by Columbia Gas of Kentucky, Inc. (Columbia Kentucky) to serve the public. According to the Gas Excavation Damage Report submitted to the Commission by Columbia Kentucky, Mr. Lozano is the homeowner at the location of the excavation damage. Mr. Lozano did not appear at the hearing. Following a review of the record and the taking of testimony, the Commission determined that Mr. Lozano caused damage to a one-inch gas service with a backhoe after he failed to call 811 to request marking of underground facilities. The damage resulted in a temporary loss of service to one customer.

## FINDINGS OF FACT

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

1. Mr. Lozano, at the time the damage occurred on April 21, 2020, was 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) and (6).

2. The natural gas service line was an underground facility owned and operated by Columbia Kentucky to serve the public; it contained natural gas at the time it was damaged by Mr. Lozano, and as a result of the damage one customer lost service.

3. Mr. Lozano failed to call 811 to request marking of the approximate location of the damaged natural gas service line not less than two nor more than ten full working days prior to commencing work as required by KRS 367.4911(1)(a).

4. Mr. Lozano's 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.

5. Because the Commission's Division of Inspections (DOI) considered Mr. Lozano's status as the homeowner to be a mitigating factor in the civil penalty to be imposed, DOI assessed a civil penalty of \$500 for the violation, and suspended \$400 of the penalty pending Mr. Lozano attending a DOI training on underground facility damage prevention.

6. DOI's records indicate Mr. Lozano has not attended training.

7. A check in the amount of \$100 dated February 25, 2021, was submitted to the Commission with a notation indicating the check was in payment for this damage incident.

8. This violation is Mr. Lozano's first violation of KRS 367.4901 through KRS 367.4917.

#### CONCLUSIONS OF LAW

1. Mr. Lozano violated KRS 367.4911(1)(a) when he failed to call 811 to request marking of the location of any underground facilities within the area of planned excavation at least two and not more than ten full working days prior to commencing excavation.

2. As a consequence, the approximate location of a one-inch gas service owned and operated by Columbia Kentucky was not marked, and Mr. Lozano struck and damaged it while engaging in excavating activity with a backhoe.

3. Mr. Lozano is subject to a civil penalty of up to \$1,250 for this violation by operation of KRS 367.4917(1) and KRS 367.4914(4). However, because Mr. Lozano is the homeowner of the location where the damage occurred, a civil penalty of \$500 was assessed by DOI.

4. Mr. Lozano has paid \$100 of the \$500 civil penalty.

IT IS THEREFORE ORDERED that:

1. Antonio Lozano is assessed a civil penalty of \$500 for violation of KRS 367.4911(1)(a).

2. Antonio Lozano shall pay \$400 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 40602.

3. This case is closed and removed from the Commission's docket.

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 with 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.

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PUBLIC SERVICE COMMISSION

  
Chairman

\_\_\_\_\_  
Vice Chairman

  
Commissioner



ATTEST:

  
Executive Director

\*Antonio Lozano  
4173 Willow Ln  
Lexington, KENTUCKY 40516