

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CAG ENTERPRISES & CONCRETE)	
CONSTRUCTION, LLC)	
_____)	CASE NO.
)	2021-00359
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

ORDER

A hearing was held before the Kentucky Public Service Commission (Commission) on July 29, 2022, at its offices at 211 Sower Boulevard, Frankfort, Kentucky, concerning the allegation that CAG Enterprises & Concrete Construction, LLC (CAG) violated KRS 367.4911(1)(a) when, on February 23, 2021, at approximately 12:00 p.m. at 2143 Carnation Blvd., Lexington, Kentucky 40511, it conducted excavation activities within the approximate location of an underground facility using mechanized equipment, without first contacting the Kentucky Contact Center (811) to request locating of underground facilities, and thereby caused damage to an underground gas service line owned, operated, and used by Columbia Gas of Kentucky, Inc. (Columbia Kentucky) to serve the public. CAG was served with notice of the hearing,¹ but did not appear at the hearing.

Following a review of the record and the taking of testimony the Commission determined that CAG violated the Kentucky Underground Facility Damage Prevention Act

¹ See Notice of Filing Evidence of Successful Service of Process (filed July 25, 2022). The records of the United States Postal Service indicate that Chris Garten accepted delivery of the scheduling Order via certified mail on June 2, 2022.

set forth in KRS 367.4901 through KRS 367.4917 (hereinafter referred to as the “Act”), and that the violation resulted in damage to a plastic, one-inch natural gas service line, which contained natural gas at the time of the damage.

FINDINGS OF FACT

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

1. CAG, at the time the damage occurred on February 23, 2021, 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.

3. The service line contained natural gas at the time it was damaged by CAG, and one customer lost service as a consequence of the damage.

4. CAG failed to call 811 to request the marking of underground facilities not less than two nor more than ten full working days prior to commencing excavation work as required by KRS 367.4911(1)(a).

5. CAG’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.

6. There are no known mitigating factors which would merit the imposition of a civil penalty less than the maximum provided by law. This violation is CAG’s second violation of the ACT.

CONCLUSIONS OF LAW

1. CAG violated KRS 367.4911(1)(a) when it failed to call 811 to request the marking of underground facilities not less than two nor more than ten full working days prior to commencing excavation work as required.

2. As a consequence, in the course of excavation, CAG struck and damaged an underground facility containing natural gas that is owned, operated, and used by Columbia Kentucky to serve the public.

3. CAG is subject to a civil penalty of \$2,000 for this violation by operation of KRS 367.4917(1) and KRS 367.4914(4).

IT IS THEREFORE ORDERED that:

1. CAG Enterprises and Concrete Construction, LLC is assessed a civil penalty of \$2,000 for violation of KRS 367.4911(1)(a).

2. CAG Enterprises and Concrete Construction, LLC shall pay \$2,000 within 30 days of the date of service 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. Record of payment of the penalty assessed in this Order shall be made in the post-case correspondence file of this proceeding.

4. 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

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