

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

EATON ASPHALT PAVING CO., INC.)	
)	
_____)	CASE NO.
)	2021-00436
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

OPENING ORDER

Eaton Asphalt Paving Co., Inc. (Eaton) 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 Eaton for violation of the following provision of the Act:

KRS 367.4911(10) – When excavation or demolition is necessary within the approximate location of the underground facility, the excavator shall hand-dig or use nonintrusive means to avoid damage to the underground facility.

Based on its review of the Incident Report and being otherwise sufficiently advised, the Commission finds prima facie evidence that Eaton 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. Eaton shall submit to the Commission, via email sent to PSCED@ky.gov with the case number of this proceeding in the subject line of the message, 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.**

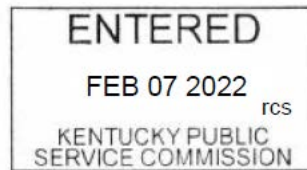
3. An individual may submit a response to the allegations contained in the Staff Incident Report without the representation of an attorney.

4. The Staff Incident Report 42965 in the Appendix to this Order is made a part of the record in this case.

5. **Please note that notice of a hearing to be held in this matter will be mailed to Eaton 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.**

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

By the Commission



ATTEST:

A handwritten signature in blue ink that reads "Linda C. Bridwell". The signature is written in a cursive style and is positioned above a horizontal line.

Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2021-00436 DATED FEB 07 2022

TWENTY-TWO PAGES TO FOLLOW

PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

KY PSC Investigator(s) Eric V. Tout Incident Date 8/11/2020 1:29:00 PM	Incident ID 42965 Report Submitted 9/4/2020 8:36:23 AM	Key 7691
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OPERATOR INFORMATION

Operator Duke Energy Kentucky, Inc. Phone (859) 206-4639 Incident Location 10800 Sam Neace Dr. Florence, KY 41042 Boone	Reported By Laura Mate Email Laura.Mate@duke-energy.com Locate Ticket Number 2007291440
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EXCAVATOR INFORMATION

Name of Excavator Jones, Danielle Phone 859-331-2303 Excavator Address Eaton Asphalt Paving Co., Inc. 136 E. Frogtown Rd Walton, KY 41094	Organization ID 0081812 Email DANIELLE.JONES@JRJNET.C Locate Ticket Number
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Damage Report (DR) Summary

The Operator reports that the Excavator damaged a properly marked gas main with a backhoe bucket during road construction.

The DR is included as Attachment 1.

DR Summary

Excavation Within 18" (Approximate Location)	Gas / Hazardous Liquids		Type Of Equipment Used	Cost of Damage	Amount Billed
	Contained	Released			
Yes	Yes	Yes	Mechanized / Backhoe	\$375.00	\$375.00

Locate Ticket (LT) Summary

Ticket #	Valid	Initial Date	Expiration Date (21 calendar days from Initial date)	Incident Date	# of Days Expired	Within Scope of Excavation
2007291440	Yes	07/29/20	08/19/20	08/11/20	0	Yes

The Locate Ticket(s) is/are included as Attachment 2.

INVESTIGATION

On 06/24/21 an attempt to contact the Excavator at 859-331-2303 resulted in the receptionist transferring the call to the Safety Department, Travis Roberts, wherein a voice message was left.

On 06/25/21 Mr. Roberts stated that research is warranted and he would call back by 06/29/21.

On 07/02 & 06/21 a follow-up call to Mr. Roberts resulted in a voice message being left.

On 07/06/21 the Operator, Duke's Ronys Nabors, provided the following documentation:

Invoice: Billing the Excavator \$7,468.26 for the damage.

Damage Investigative Findings w/ Photographs: Indicating Zack Magee On-Site Foreman stated, "We were excavating with the backhoe, we saw the marks. We hit the side of the gas service with the scoop. It was just simply had an accident". The report also indicates the incident location was marked accurately. The photographs support the incident location was marked accurately.

Payment Receipt: Indicating the Excavator paid \$5,488.00 for the damage.

Copy of Check: #00344858, \$5,488.00 from the Excavator.

On 07/08/21 contact was made with Mr. Roberts and Mr. Roberts was receptive to attending the Damage Prevention Course and paying the reduce penalty of \$250.00.

VIOLATION KRS 367.4911

(10) When excavation or demolition is necessary within the approximate location of the underground facility, the

excavator shall hand-dig or use nonintrusive means to avoid damage to the underground facility.

of Offences

(Including this incident)

Excavator	Last Offence Incident #	Last Offence Incident Date	Revert to 1st Offence Date (Last Offence Date +365 Days)
1 st	21095	10/17/18	10/17/19

Attachment 1

Gas Excavation Damage Report

Duke Energy Kentucky, Inc.

Submitted 9/4/2020 Incident ID: 42965

[Set back to Edit](#)[Staff Edit](#)[Print \(PDFForm.aspx?Rpt=GasInvestigation&IG=42965\)](#)

Reported By:

Name: Laura Mate
Phone: (859) 206-4639
Email: Laura.Mate@duke-energy.com

Gas Line Incident Occured:

Date: 8/11/2020
Time: 1:29 PM

Details:

Reported Date: 9/4/2020 8:27 AM

Incident Location Address:

Location: 10800 Sam Neace Dr
Address: 10800 Sam Neace Dr
City: Florence
State: KY
County: Boone
Zip: 41042

Confirm Code:

Number of Customers out: 1

Was gas or hazardous liquids contained in the underground facility?

Was gas or hazardous liquids released into the atmosphere? *

3/2020

Locate Request Ticket No.: 2007291440

Excavator: Contractor

Excavator Address:

First Name: Danielle
Last Name: Jones
Organization ID: 0081812
Company: EATON ASPHALT PAVING CO., INC.
Phone: 8593312303
Email: DANIELLE.JONES@JRJNET.COM

Address: 136 E Frogtown Rd
City: Walton
State: KY
Zip: 41094
Confirm Code: Y

Excavation Damage: Failure to use hand tools where required

Description of Incident Eaton Asphalt Paving Co., Inc. / Zack Magee / On-Site Foreman - "We were excavating with the backhoe, we saw the marks. We hit the side of the gas service with the scoop. It was just simply had an accident."

Summary Information

9/4/2020

Full details such as the cause Eaton Asphalt Paving was performing a roadway construction service for the Kentucky Transportation Cabinet near the above stated location. During the excavation process, Eaton Asphalt Paving came into contact with and thus damaged an accurately marked underground natural gas facility owned by Duke Energy Company. The affected underground gas main was accurately marked by USIC on August, 3rd, 2020 within locate ticket scope#2007291440, accurately placed locate marks were visible on-site during the damage encounter. Eaton Asphalt Paving Co., Inc. has failed to utilize precaution while excavating within a tolerance zone.

Extent of the damage Gas service damaged and required repair.
Cost of the damage \$375.00
Steps taken to prevent re-occurrence
Amount billed to excavator \$375.00

Attachment 2

NORMAL NOTICE

Ticket : 2007291440 Date: 07/29/2020 Time: 14:41 Oper: DANIELLE.JONES.K Chan:000

State: KY Cnty: BOONE City: FLORENCE
Subdivision:

Address :

Street : SAM NEACE DR

Location: START AT THE INTERSECTION OF KY536 AND SAM NEACE DR. TRAVEL NORTH
320FT ALONG SAM NEACE DR. LOCATE ON THE WEST SIDE OF THE ROAD.

:

Boundary: n 38.957758 s 38.955685 w -84.628795 e -84.627326

Work type : EXCAVATION

Done for : KYTC

Start date: 07/31/2020 Time: 15:30 Hours notice: 48/48 Priority: NORM

Ug/Oh/Both: U Blasting: NO Emergency: N

Duration : N/A Depth: 15 FEET

Company : EATON ASPHALT Type: CONT

Co addr : 136 EAST FROGTOWN ROAD

City : WALTON State: KY Zip: 41094

Caller : DANIELLE JONES Phone: (859)331-2303

Contact : BUTCH BURBERRY Phone:

Mobile : (859)250-0412

Email : DANIELLE.JONES@JRJNET.COM

Submitted date: 07/29/2020 Time: 14:41

Members: 0122 0130 0416 0516

* Responses are current as of 06/23/2021 02:27 PM

<u>Service Area</u>	<u>Utility Type(s)</u>	<u>Customer Service Contact</u>	<u>Positive Response</u>
TIME WARNER CABLE 0122	COMMUNICATIONS	TIME WARNER CABLE CUSTOMER SERVICE (800) 892-2253	Does conflict, underground facilities have been marked.
CINCINNATI BELL TELEPHONE COMPANY 0130	COMMUNICATIONS	CINCINNATI BELL CUSTOMER SERVICE (513) 566-5050	
DUKE ENERGY KENTUCKY INC 0416	GAS	DUKE ENERGY CUSTOMER SERVICE (800) 544-6900	Does conflict, underground facilities have been marked.
DUKE ENERGY KENTUCKY INC 0516	ELECTRIC	DUKE ENERGY CUSTOMER SERVICE (800) 544-6900	Does conflict, underground facilities have been marked.

Attachment 3



INVOICE



Please Make Check Payable to: Project Resources Group

Remit to: Project Resources Group, Inc. Attn. Damage Claims 5340 S. Quebec St., Suite 250S Greenwood Village, CO 80111 EIN: 84-1576547	Invoice # DK-446590 Date: October 13, 2020 Terms: Due Upon Receipt Conf. Code # TG7H6
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Responsible for Damages: Eaton Asphalt Paving Co., Inc. 136 E Frogtown Rd Walton, KY 41094
--

Date & Address Where Damage Occurred: 8/11/2020 10800 Sam Neace Dr Florence, KY 41042
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<u>Labor and Materials Costs:</u>			
	<u>Units</u>	<u>Unit Rate</u>	<u>Amount</u>
<i>Internal Labor Costs</i>			
Gas Sysms Opr Mech I	1.00	\$74.37	\$74.37
Gas Sysms Opr Mech III	1.00	\$74.37	\$74.37
Mechanic Operator I	1.00	\$73.51	\$73.51
Mechanic Operator III	3.00	\$55.80	\$167.40
Service Mechanic A	1.00	\$73.13	\$73.13
Mechanic III - C&M (12049)	1.00	\$35.79	\$35.79
Mobile Crane Operator OT	2.00	\$97.62	\$195.24
Gas Sysms Opr Mech I OT	2.00	\$97.57	\$195.14
Mechanic Operator II OT	6.00	\$89.10	\$534.60
Premise Mechanic OT	3.50	\$77.58	\$271.53
Gas Sysms Opr Mech III OT	5.00	\$97.57	\$487.85
Mechanic Operator II OT	5.00	\$88.85	\$444.25
Mechanic III - C&M (12049) OT	6.00	\$46.95	\$281.70
Mechanic Operator I OT	5.50	\$96.44	\$530.42
Mechanic Operator III OT	6.00	\$73.20	\$439.20
Service Mechanic A OT	5.00	\$95.94	\$479.70
Mechanic III - C&M (12049) OT	5.50	\$46.95	\$258.23
Emergency Call Out	1.00	\$250.00	\$250.00
Pickup 1/2 Ton 4x4	2.00	\$1.54	\$3.08
DRW 15-26K Utility, Stake, Flat, Dump 4x4	6.00	\$10.78	\$64.68
SRW Utility, Stake, Flat 4x4	6.00	\$4.80	\$28.80
Sport Utility - Compact 4x4	3.50	\$3.04	\$10.64
DRW 10-15K Utility, Stake, Flat, Dump 4x2	6.00	\$5.90	\$35.40
DRW 15-26K Utility, Stake, Flat, Dump 4x4	5.00	\$11.83	\$59.15
DRW 15-26K Utility, Stake, Flat, Dump 4x4	6.00	\$8.90	\$53.40
DRW 15-26K Utility, Stake, Flat, Dump 4x4	6.50	\$11.83	\$76.90
Pickup 1/2 Ton 4x4	6.00	\$4.20	\$25.20
Damage Investigation/Quality Control			<u>\$1,494.00</u>
Sub-Total			\$6,717.67
<i>Other Costs</i>			
Loss of Gas	1.00	\$317.79	<u>\$317.79</u>
Sub-Total			\$317.79
<i>Material Costs</i>			
Coupling; Pipe	2.00	\$38.52	\$77.04
Pipe; 6" IPS	3.00	\$5.64	\$16.92
Outlet; Pipe	4.00	\$84.71	<u>\$338.84</u>
Sub-Total			\$432.80
Invoice Total			<u>\$7,468.26</u> =====

Please Make Check Payable to: Project Resources Group

For questions regarding this invoice, please contact: Tracey Foushi, (720) 250-9834 or via email tfoushi@prgconsulting.net

Damage Investigation Findings

PRG CLAIM:	DK-446590	
DATE OF OUTAGE:	08/11/2020	11:00 AM
NOTIFICATION:	08/11/2020	01:30 PM
ARRIVAL:	08/11/2020	02:30 PM
LOCATION:	10800 Sam Neace Dr, Florence, KY 41042	
LOCATE TICKET:	2007291440	
INVESTIGATOR:	Christopher Hogle	

SUMMARY

On Tuesday, August 11, 2020, I was notified by Duke Energy about damage at 10800 Sam Neace Dr, Florence, KY 41042. Duke Energy's Underground Facilities were damaged at the above stated location by a Backhoe.



STATEMENTS

Eaton Asphalt Paving Co., Inc. / Zack Magee / On-Site Foreman - *"We were excavating with the backhoe, we saw the marks. We hit the side of the gas service with the scoop. It was just simply had an accident."*

DETERMINATION

It has been determined that on August 11th, 2020 Eaton Asphalt Paving was performing a roadway construction service for the Kentucky Transportation Cabinet near the above stated location. During the excavation process, Eaton Asphalt Paving came into contact with and thus damaged an accurately marked underground natural gas facility owned by Duke Energy Company. The affected underground gas main was accurately marked by USIC on August, 3rd, 2020 within locate ticket scope#2007291440, accurately placed locate marks were visible on-site during the damage encounter. Eaton Asphalt Paving Co., Inc. has failed to utilize precaution while excavating within a tolerance zone.

Law(s): **KRS 367.4911**

Excavator or person responsible for excavation to notify operator of work schedule -- Responsibilities of excavator. (10) When excavation or demolition is necessary within the approximate location of the underground facility, the excavator shall hand-dig or use nonintrusive means to avoid damage to the underground facility.



ROOT CAUSE

Failure to properly expose and protect underground facilities

0416 00133 KUPIa 07/29/2020 15:21:27 2007291440-00A NORM NEW GRID

NORMAL NOTICE

Ticket : 2007291440 Date: 07/29/2020 Time: 14:41 Oper: DANIELLE.JONES.K
Chan:000

State: KY Cnty: BOONE City: FLORENCE
Subdivision:

Address :

Street : SAM NEACE DR

Location: START AT THE INTERSECTION OF KY536 AND SAM NEACE DR. TRAVEL NORTH
320FT ALONG SAM NEACE DR. LOCATE ON THE WEST SIDE OF THE ROAD.

:

Boundary: n 38.957758 s 38.955685 w -84.628795 e -84.627326

Work type : EXCAVATION

Done for : KYTC

Start date: 07/31/2020 Time: 15:30 Hours notice: 48/48 Priority: NORM

Ug/Oh/Both: U Blasting: NO

Emergency: N

Duration : N/A

Depth: 15 FEET

Company : EATON ASPHALT Type: CONT

Co addr : 136 EAST FROGTOWN ROAD

City : WALTON State: KY Zip: 41094

Caller : DANIELLE JONES Phone: (859)331-2303

Contact : BUTCH BURBERRY Phone:

Mobile : (859)250-0412

Email : DANIELLE.JONES@JRJNET.COM

Submitted date: 07/29/2020 Time: 14:41

Members: 0122 0130 0416 0516



446590 - Investigator1.jpeg



446590 - Investigator2.jpeg



446590 - Investigator3.jpeg



446590 - Investigator4.jpeg



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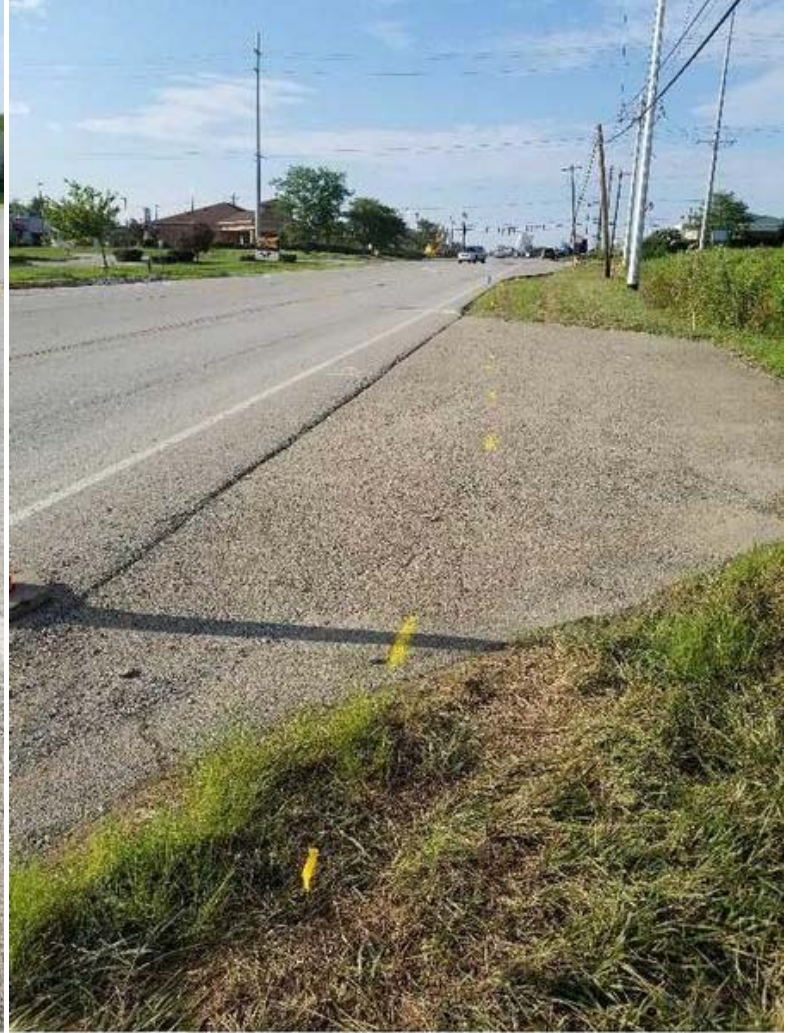


446590 - Investigator34.jpeg



Property of United States Infrastructure Corporation
Photo created on 08/03/2020 08:58:54 AM EDT

446590 - Locate Pre-Dig1.jpeg



Property of United States Infrastructure Corporation
Photo created on 08/03/2020 08:57:32 AM EDT

446590 - Locate Pre-Dig2.jpeg



PAYMENT RECEIPT

Damaged Party: Duke Energy Kentucky PO Box 603088 Charlotte, NC 28260-3088	Invoice#: DK-446590 Invoice Date: 10/13/2020 Invoice Total: \$5,488.00 Conf Code: TG7H6
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Responsible for Damages: Eaton Asphalt Paving Co., Inc. 136 E Frogtown Rd Walton, KY 41094
--

Date & Address Where Damage Occurred 08/11/2020 10800 Sam Neace Dr Florence, KY 41042

Payment Receipt Details: Receipt #: 32872 Payment Date: 12/12/2020 Payment Amount: \$5,488.00 Payment Type: Check Received By: Project Resources Group, Inc. Payment Status: Close Total Paid: \$5,488.00 Balance Due: \$0.00
--

Project Resources Group, Inc.
5690 DTC Blvd., Suite 600E
Greenwood Village, CO 80111

EATON ASPHALT PAVING COMPANY INC
136 E FROGTOWN ROAD
WALTON KY 41094

HUNTINGTON BANK
COVINGTON, KY

73.19
421

Check No. 00344854

VOID AFTER 180 DAYS

PAYEE	DATE	CHECK AMOUNT
462416	11/30/2020	\$*****5,488.00

FIVE THOUSAND FOUR HUNDRED EIGHTY EIGHT AND 00/100*****

PAY TO THE ORDER OF PROJECT RESOURCES GROUP
ATTN: DAMAGE CLAIMS
5340 S. QUEBEC ST. SUITE 250S
GREENWOOD VILLAGE CO 80111

Beth A. Baker

⑈00344854⑈

Eaton Asphalt Paving Co., Inc.
136 East Frogtown Road
Walton, KENTUCKY 41094

*Eaton Asphalt Paving Co., Inc.
11641 Mosteller Rd.
Cincinnati, OHIO 45241