COMMONWEALTH OF KENTUCKY BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:		
HEATH DUNIGAN)	
)))	CASE NO. 2022-00174
ALLEGED VIOLATION OF UNDERGROUND FACILITY DAMAGE PREVENTION ACT))	

INITIATING ORDER FOR ALLEGED 811 VIOLATION OF THE KENTUCKY UNDERGROUND FACILITY DAMAGE PREVENTION ACT

Heath Dunigan (Mr. Dunigan) 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 A hearing in this case shall take place on July 29, 2022.

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

¹ KRS 367.4901 through KRS 367.4917.

results in damage to an underground facility containing any flammable, toxic, corrosive, 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 Appendix A. In its Incident Report, Staff cites Mr. Dunigan 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. Dunigan violated the Underground Facility Damage Prevention Act. The Commission further finds that a formal investigation into the excavation damage incident shall be conducted.

IT IS THEREFORE ORDERED that:

- 1. Mr. Dunigan 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. Mr. Dunigan shall appear on July 29, 2022, at 9 a.m. Eastern Daylight Time, in the Richard Raff Hearing Room of the Commission's offices at 211 Sower Boulevard in Frankfort, Kentucky, for the purpose of presenting evidence concerning the alleged violation of the Underground Facility Damage Prevention Act.

- 3. The July 29, 2022 hearing shall be conducted via video conferencing.
- 4. Mr. Dunigan shall attend the hearing by using the following link: https://global.gotomeeting.com/join/308551245; information and instructions are attached to this Order as Appendix B.
- 5. Mr. Dunigan shall notify the Commission at least ten days prior to the hearing if Mr. Dunigan is unable to appear by video conferencing and will therefore appear in person.
- 6. 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.
- 7. An individual may submit a response to the allegations contained in the Staff Incident Report without the representation of an attorney.
- 8. The Staff Incident Report 43177, attached to this Order as Appendix A, is made a part of the record in this case.
 - 9. The July 29, 2022 hearing shall be recorded by video only.
- 10. Please note that notice of a hearing to be held in this matter will be mailed to Mr. Dunigan 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.

PUBLIC SERVICE COMMISSION
Chairman
Vice Chairman
Commissioner

JUN 16 2022 rcs
KENTUCKY PUBLIC SERVICE COMMISSION

ATTEST:

Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2022-00174 DATED JUN 16 2022

NINETEEN PAGES TO FOLLOW

PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

Investigator Eric Tout Incident ID 43177 Investigation 8170

Incident Date 11/7/2020 10:16:00 AM Report Submitted 11/10/2020

Operator Information

Benton Gas System City of

Operator Benton Reported By Brittany Canup

Phone (270) 703-1338 Email bcanup@bentongas.org

Incident Location 298 Grands Blvd Locate Ticket Number No bud call

Benton KY 42025

298 Grands Blvd

County Marshall

Excavator Information

Excavator Heath Dunigan Organization ID

Phone 270-703-2911 Email heathuky@gmail.com

Address 213 E 20th St Locate Ticket Number No bud call

Benton KY 42025

Damage Report (DR) Summary

Excavation Within18"	Gas Or Haza	rdous Liquids	Type Of Equipment Head	Cost of	Amount
(Approximate Location)	Contained	Released	Type Of Equipment Used	Damage	Billed
Expired Locate ticket (LT)	Yes	Yes	Mechanized/Backhoe	\$496.00	\$496.00

The Operator reports that the Excavator/Homeowner damaged a two-inch main, with a backhoe, digging a stump and the LT was expired.

The DR is include as Attachment 1.

INVESTIGATION

On 11/05/21:

 811, Carly Dunsmore, conducted a search from 09/01/20 thru 11/30/20 and no LTs were found for the incident location.

The 811 email is include as Attachment 2.

• The Operator, Benton Gas's Brittany Canup, did research, spoke to Benton Gas employees, whom stated that the LT was expired approximately two weeks, but provided no LT number.

On 11/10/21 an attempt to contact the Excavator at 270-703-2911 resulted in a message stating that this is Heath Dunigan of ProCare Home Inspections wherein a message was left.

On 11/16/21 Mr. Dunigan stated that a Locate Ticket (LT) was obtain, but sometime ago and he held no valid LT at the time of the incident. Mr. Dunigan was receptive to attending the Damage Prevention Course and paying the reduced penalty of \$100.00.

VIOLATIONS

PIPELINE DAMAGE INVESTIGATION REPORT

KRS 367.4911(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.

of Offences

(Including this incident)

Excavator	Last Offence	Last Offence Incident	Revert to 1 st Offence Date	
	Incident #	Date	(Last Offence Date +365 Days)	
1 st	N/A	N/A	N/A	



Gas Excavation Damage Report

Benton Gas System City of Benton

Submitted 11/10/2020 Incident ID: 43177

Set back to Edit Staff Edit Print (PDFForm.aspx?Rpt=GasInvestigation&IG=43177) Reported By: Name: Brittany Canup Phone: (270) 703-1338 Email: bcanup@bentongas.org Gas Line Incident Occured: 11/7/2020 Date: Time: 10:16 AM Details: Reported Date: 11/10/2020 11:54 AM **Incident Location Address:** 298 Grands Blvd Location: Address: 298 Grands Blvd City: Benton State: ΚY County: Marshall 42025 Zip: Confirm Code: **Number of Customers out:** Was gas or hazardous liquids contained in the underground facility? Was gas or hazardous V liquids released into the 3/2020 atmosphere? Locate Request Ticket No.: No bud call Excavator: Home Owner **Excavator Address:** First Name: Heath Last Name: Dunigan 270-703-2911 Phone: Email: heathuky@gmail.com Address: 213 E 20th St

Benton

City:

State: ΚY

42025 Zip:

Confirm Code:

Excavation Damage: Other

Description of Incident Locate was called in but out of date. Hit gas 2" main with backhoe digging up stump.

Summary Information

11/10/2020

cause

Extent of the damage Gas blew for 14 mins

Cost of the damage

Amount billed to excavator

Full details such as the Hit gas 2" main with backhoe digging up stump.

\$496.00

Steps taken to prevent
Always call 811. After 21 days, always call another locate in.

\$496.00



Tout, Eric V (PSC)

From: Carly Dunsmore <cdunsmore@usa811.org>

Sent: Friday, November 5, 2021 8:58 AM

To: Tout, Eric V (PSC)

Cc: PSCrequest@kentucky811.org

Subject: Re: 43177

Good morning Eric,

We searchd between 9/1/2020 - 11-30-2020, but were unable to find any tickets submitted for address 298 Grands Blvd., in Marshall County. If you have any more information, please let me know and we will be happy to assist you further.

Thank you,

Carly Dunsmore Member Services P: 833-538-0923 F: 317-386-7820



On Fri, Nov 5, 2021 at 8:09 AM Tout, Eric V (PSC) < <u>ericv.tout@ky.gov</u>> wrote:

The Opertor indicates the Excavator was working on an epired ticket.

Please provide locate ticket for:

Incident Date: 11/7/2020

Operator: Benton Gas

Incident Location: 298 Grands Blvd., Benton

County: Marshall

Excavator: Heath Dunigan / Homeowner

Thanks,

Eríc V. Tout

Kentucky Public Services Commission

Division of Inspections / Damage Prevention

211 Sower Blvd., Frankfort, XY 40601

Office: 502-782-2622

Fax: 502-564-1582

SUPPLEMENTAL PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

Investigator Eric Tout Incident ID 43177 Investigation 8170

Incident Date 11/7/2020 10:16:00 AM Report Submitted 11/10/2020

Operator Information

Benton Gas System City of

Operator Benton Reported By Brittany Canup

Phone (270) 703-1338 Email bcanup@bentongas.org

Incident Location 298 Grands Blvd Locate Ticket Number No bud call

Benton KY 42025 298 Grands Blvd

County Marshall

Excavator Information

Excavator Heath Dunigan Organization ID

Phone 270-703-2911 Email heathuky@gmail.com

Address 213 E 20th St Locate Ticket Number No bud call

Benton KY 42025

SUPPLEMENT INVESTIGATION

On 11/23/21 a Demand Letter was sent to the Excavator.

The Demand Letter is included as Attachment 3.

On 12/17/21 the Excavator paid the penalty payment.

On 01/11/22 a Paid But No Attendance to the Damage Prevention Course letter was sent to the Excavator. The Paid But No Attendance Letter is included as Attachment 4.

On 01/14/22, via email, the Operator, Benton Gas System's Brittany Canup, stated that the following documents are all the information Benton Gas has regarding this incident:

- Leak / Service Call Report: Which has been outlined in Attachment 1 and the DR Summary.
- A Sheet of paper: Titled: Benton Gas System, Dated: 11/16/20, Name: Heath Dunigan, Acct. #: (blank), For: Heath Dunigan, Amount: \$496.40, By: JP. Hit gas main w/backhoe, Bill to: Heath Dunigan
- <u>Invoice:</u> Indicating the Excavator was bill \$496.40 for the repairs to the damaged gas line.

Benton Gas System's documents are included as Attachment 5.



Andy Beshear Governor

Rebecca W. Goodman Secretary Energy and Environment Cabinet



Commonwealth of Kentucky

Public Service Commission
211 Sower Blvd.
P.O. Box 615

Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

Kent A. Chandler Chairman

Amy D. Cubbage Vice Chairman

Marianne Butler Commissioner

November 23, 2021

Heath Dunigan 298 Grands Blvd. Benton KY 42025

Re: Violation of Kentucky Underground Facility Damage Prevention Act

Incident Number: 43177

DEMAND FOR PENALTY ASSESSMENT AND REMEDIAL MEASURES

Dear Mr. Dunigan:

The Kentucky Public Service Commission (Commission) received a report on November 10, 2020, regarding damage to a natural gas or hazardous liquid facility owned and/or operated by the Benton Gas System City of Benton. Under the Kentucky Underground Facility Damage Prevention Act (Act), KRS 367.4901 through KRS 367.4917, the Commission has jurisdiction to investigate and assess civil penalties for any violation of the Act that results in excavation damage to underground facilities used to transport gas or hazardous liquid subject to federal pipeline safety laws, 49 U.S.C. secs. 60101 et seq. The Commission regulates the safety of jurisdictional natural gas pipelines in the Commonwealth pursuant to KRS 278.495 and 49 CFR Parts 190, 191, 192 and 195.

Following receipt of the damage notification, Commission Staff (Staff) performed an investigation of the incident and prepared the attached incident report. Based on its investigation of the incident, Staff has determined that Mr. Dunigan committed the following violation(s) of the Act:

KRS 367.4911(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.

CIVIL PENALTY

Based on its investigation of this matter, Staff has determined that Mr. Dunigan should be assessed a penalty in the total amount of \$500.00, first offense, but that \$400.00 of the penalty should be suspended contingent upon Mr. Dunigan's completion of Damage Prevention training:

REMEDIAL MEASURE/TRAINING

A representative or Mr. Dunigan shall participate in a Damage Prevention training course. The Kentucky Public Service Commission will hold these classes online. Class dates have a limited capacity available on a first come-first served basis. To sign up for the class, go to https://psc.ky.gov/classSignUp. You will need your incident number: 43177 and assigned key: 8170 to sign-up for one of the available training dates. Please understand that this training will be required as a contingency for the reduced

penalty amount.

Within <u>30 days</u> of the date of this letter Mr. Dunigan should mail or deliver a cashier's check or money order <u>made payable to</u> the:

"Kentucky State Treasurer"

The check should be in the amount of \$100.00 mailed to: 211 Sower Boulevard, Frankfort, Kentucky 40602

Please include the Incident Number 43177 on the cashier's check or money order submitted for payment. Checks made payable to any other payee besides the Kentucky State Treasurer or without the Incident Number cannot be processed and will be returned, thus delaying the resolution of this matter.

KRS 367.4917 provides that a person who commits a violation of the Act shall be subject to a civil penalty not to exceed \$250 for the first violation, \$1,000 for the second violation within one year, and \$3,000 for the third and any subsequent violation. If the violation results in damage to an underground pipeline used to transport gas or hazardous liquid, the violator is subject to an additional civil penalty not to exceed \$1,000 per violation.

Payment of the proposed civil penalty and completion of the remedial measure will satisfy and resolve any and all claims against Mr. Dunigan for any violation of the Act arising out of the November 7, 2020 incident. Mr. Dunigan's payment of the proposed civil penalty will not be considered an admission by Mr. Dunigan that he/she willfully violated any provision of the Act.

If Mr. Dunigan does not pay the proposed civil penalty within 30 days of the date of this letter, the Commission will institute an administrative proceeding against Mr. Dunigan and hold a formal hearing during which Mr. Dunigan will have an opportunity to present evidence.

If you have any questions regarding this demand for remedial measures and penalty assessment, please contact Ashley Rhodes, Division of Inspections at 502-782-2578.

Sincerely,

Nancy J. Vinsel General Counsel

nancy of Vinsel

Attachment





Andy Beshear Governor

Rebecca W. Goodman Secretary Energy and Environment Cabinet



Commonwealth of Kentucky

Public Service Commission
211 Sower Blvd.
P.O. Box 615

Frankfort, Kentucky 40602-0615

Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

Kent A. Chandler Chairman

Amy D. Cubbage Vice Chairman

Marianne Butler Commissioner

January 11, 2022

Heath Dunigan 298 Grands Blvd. Benton KY 42025

Re: Violation of Kentucky Underground Facility Damage Prevention Act

Incident Number: 43177

No Attendance Remedial Measure/Training

Dear Mr. Dunigan:

Attached is the demand letter and investigation report for the above Incident. Our records indicate that a reduced penalty of \$100.00 has been <u>paid</u>, but no representative has attended the Remedial Measure/Training to receive this reduced penalty. Attendance is required for the penalty reduction to apply.

REMEDIAL MEASURE/TRAINING

A representative or Heath Dunigan shall participate in a Damage Prevention training course. The Kentucky Public Service Commission will hold these classes online. Class dates have a limited capacity available on a first come-first served basis. To sign up for the class, go to https://psc.ky.gov/classSignUp. You will need your incident number, 43177 and this key 8170 to sign-up for one of the available training dates. Please understand that this training will be required as a contingency for the reduced penalty amount.

If we do not hear from you within 10 days from the date of this letter this matter will be referred to the Commission for an Administrative Hearing to be held at the Commission's offices.

Once a referral to the Commission is made, any partnership, corporation, or business entity (including a limited liability company) must be represented by an attorney licensed to practice law in Kentucky. Thank you for your prompt attention to this matter.

If you have any questions regarding this notice or if you find that these requirements have been met, please contact Ashley Rhodes, Division of Inspections at 502-782-2578.

Sincerely,

Nancy J. Vinsel General Counsel

nancy of Vinsel





Tout, Eric V (PSC)

Brittany Canup
 bcanup@bentongas.org> From:

Friday, January 14, 2022 10:21 AM Sent:

Tout, Eric V (PSC) To:

RE: 43177, 11/7/2020, 298 Grands Blvd., Benton, Heath Dunigan **Subject:**

Attachments: SKM_C284e22011409180.pdf

CAUTION PDF attachments may contain links to malicious sites. Please contact the COT Service Desk ServiceCorrespondence@ky.gov for any assistance.

Here is all the info I have.

From: Tout, Eric V (PSC) <ericv.tout@ky.gov> **Sent:** Friday, January 14, 2022 5:36 AM To: Brittany Canup
 bcanup@bentongas.org>

Subject: 43177, 11/7/2020, 298 Grands Blvd., Benton, Heath Dunigan

Hello Brittany,

Please send repots, photos, invoices and payment info (copy of check) if paid.

Thanks, Eric V. Tout **Kentucky Public Services Commission** Division of Inspections / Damage Prevention 211 Sower Blvd., Frankfort, KY 40601

Office: 502-782-2622 Fax: 502-564-1582



BENTON GAS

201 Main Street • Benton, KY 42025 (270) 527-3717

emailed 11/10/20

LEAK / SERVICE CALL REPORT

Received by C Y Phone Radio In Person Other			
Date 11-7- 20 20 Time 10:16 aug			
Customer Name Meath Duniques Acct No			
Address 298 Grands BIVd Phone No.			
Leak: Inside Building Outside			
Dispatched:			
Date 11-7 20 20 Time 10:16 AM/PM			
Investigation Assigned to Classification			
Assigned as immediate action required? Yes V No []			
Investigation:			
Date 1(-7- , 20 20 Time 10: 20 AM) PM			
Investigation by Chais Leak found? Yes No 🗆			
Flame Pack? Yes No Leak Grade: 1 2 3			
Location of Leak 298 Grands BLUD (cut 2 main) Time 10:20 AM/PM			
Leak detected by: Odor □ Noise Other □ Flame Pack □			
Leak reported by: Public ☐ Customer Survey Crew ☐ Other ☐			
Atmospheric Corrosion: Good 🗍 Bad 🗍			
Service Request: Hit Gas maim 2"- with backhoe			
dissing Stamp. Locate was out of			
& Check locate			
Scheduled Time. AM PM Date: Hit with Backboe			
Dispatched to: Date Kenouing a Stump Time			
Meter Status: Locked Unlocked Meter No			
Repair Report: 1= Short Lyco 2"/ hole l'long 14' wide			
Diew For 14 min End of main			
Made Sufe 10: 2 am / 2 men-trucks + track mach.			
Heath Durigan			
X 2/3 E 20th - F Ber for KY 42025 \$25,40			
Amount $270 - 703 - 2911$ Leak Leak Labor \$132.50			
415000			
Damaged Line Other 2 Trucks 390,00			
HEAT			
Otistomer Signature Date Time total \$496.40			
\$ 496.40			
Work Done By Date Time			
VYOIR DOILE DY			

BENTON GAS SYSTEM

201 Main Street Benton, Kentucky 42025

DATE
NAME MATTER LANGUET
ACCT. #
FOR MET CONTRACTOR
AMOUNT \$ 496 40
BY:BENTON GAS SYSTEM
Hit 2" Gas Main w/backhoe
DETACH AND RETURN BOTTOM I
BILL TO

Heath Dunigan



BENTON GAS SYSTEM 201 MAIN STREET BENTON KY 42025 (270)527-3717

INVOICE

DATE

NO

11/9/20

559

BILL TO: Heath Dunigan 213 E. 20th St. Benton, KY 42025

DATE	CHARGES	TOTAL
11-07-20	Service Fee Material Equipment Gas Loss Labor Trucks (2)	\$150.00 \$ 54.00 \$ 45.00 \$ 25.40 \$132.00 \$ 90.00

Hit 2" Gas Main w/backhoe

DETACH AND RETURN BOTTOM PORTION WITH YOUR PAYMENT

BILL TO

Heath Dunigan

TOTAL DUE

\$496.40

AMT PAID

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2022-00174 DATED JUN 16 2022

TWO PAGES TO FOLLOW

Information and Instructions for Hearing

You are required to attend a formal hearing with the Kentucky Public Service Commission. Please note the hearing is scheduled in the **Eastern Time Zone**, and the hearing date and time are on the Order that accompanied these instructions.

You are **strongly encouraged** to download the GoToMeeting app now and be ready for your hearing. If you cannot appear via video using this app, at least ten days prior to your scheduled hearing you must call the Commission's offices at the number provided below. You will receive instructions on appearing in person in the Richard Raff Hearing Room of the Commission's offices at 211 Sower Boulevard in Frankfort, Kentucky at the time and date of your scheduled hearing.

Please direct any questions to Ashley Rhodes, Commission Division of Inspections. <u>AshleyB.Rhodes@ky.gov</u> or 502-782-2578.

To download the GoToMeeting app go to:

https://global.gotomeeting.com/install/258846301

On the day of your hearing using your computer, tablet, or video enabled smartphone. Access the proceeding at:

https://global.gotomeeting.com/join/308551245

More information about using GoToMeeting can be found at:

GoToMeeting - Attendee Quick Start https://www.youtube.com/embed/8VaHHVP0FCU?autoplay=1&showinfo=0&controls=0&rel=0

GoToMeeting - How to Join a Meeting https://www.youtube.com/embed/Ojl1q_sPrP0?autoplay=1&showinfo=0&controls=0&rel=0

Technical Requirements for Using GoToMeeting Operating System:

Windows 7 – Windows 10

Appendix B Case No. 2022-00174 Mac OS X 10.9 (Mavericks) – mac OS Big Sur (11)

Linux/Ubunto (Web App only)

Google Chrome OS (Web App only)

iOS 11 - iOS 13

Android OS 5 (Lollipop) – Android 10

Web Browser: (Applies to Web App only)

Google Chrome v72 or newer

Microsoft Edge v77 or newer

Internet Connection:

Computer: 1 Mbps or better (broadband recommended)

Mobile device and Chromebook: 3G or better (WiFi recommended for VoIP)

Software:

GoToMeeting desktop app (JavaScript enabled)

GoToMeeting app from the Apple Store, Google Play Store, or Windows Store

Hardware:

2GB of RAM (minimum), 4GB or more of RAM (recommended)

Webcam device*

Microphone and speakers** (USB headset recommended)

Mobile Device:

iPhone 5 or newer

iPad 3rd gen or newer

Note: * You MUST have a camera on your device or connected to your device to appear at the hearing.

** Most devices have built-in speakers, but you will get better audio quality while connected via VoIP if you use a headset

*Heath Dunigan 298 Grands Blvd. Benton, KENTUCKY 42025