

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

EMM CONSTRUCTION OF KENTUCKY, LLC)	
)	
_____)	CASE NO.
)	2024-00038
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

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

(Se proporciona la traducción al español de este documento como anexo/apéndice C.)

EMM Construction of Kentucky, LLC (EMM Construction) 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 April 26, 2024.

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

¹ KRS 367.4901 through KRS 367.4917.

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, 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 EMM Construction 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 EMM Construction 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. EMM Construction 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. EMM Construction shall appear on April 26, 2024, 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 April 26, 2024 hearing shall be conducted via video conferencing.
4. EMM Construction shall attend the hearing by using the following link: <https://meet.goto.com/pscformalhearing/psc-damage-prevention-hearing>; information and instructions are attached to this Order as Appendix B.
5. EMM Construction shall notify the Commission at least ten days prior to the hearing if EMM Construction 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 54537, attached to this Order as Appendix A, is made a part of the record in this case.
9. The April 26, 2024 hearing shall be recorded by video only.
10. **Please note 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

ENTERED
MAR 05 2024
rCS
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2024-00038 DATED MAR 05 2024

THIRTY PAGES TO FOLLOW

PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

Investigator Eric Tout **Incident ID** 54537 **Investigation** 10831
Incident Date 3/21/2022 4:58:00 PM **Report Submitted** 4/11/2022

Operator Information

Operator Columbia Gas of Kentucky, Inc.
Phone (859) 537-2123 **Reported By** James Rice
Email JamesRice@NiSource.com

Incident Location 2786 Sullivans Tc Lexington KY 40511 **Locate Ticket Number** 2203120154

County Fayette

Excavator Information

Excavator Elfido Barrios **Organization ID** 1117420
 EMM Construction of KY, LLC
Phone 859-621-2404 **Email** emmconstruction49@gmail.com
Address 2050 Clays Mill Rd Lexington KY 40503 **Locate Ticket Number** 2203120154

Damage Report (DR) Summary

Excavation Within 24" (Tolerance Zone)	Gas Or Hazardous Liquids		Type Of Equipment Used	Cost of Damage	Amount Billed
	Contained	Released			
Yes	Yes	Yes	Mechanized/Not Specified	\$500.00	\$500.00

The Operator reports that the Excavator damaged a correctly marked one-inch gas service, with mechanized equipment installing conduit. A Legal Notice of Gas Line damage was sent to the Excavator.

The DR & Notice are included as Attachment 1.

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
2203120154	Yes	03/12/22	04/02/22	3/21/2022	N/A	Yes

The LT is included as Attachment 2.

INVESTIGATION

On 12/01/23, the Operator, Columbia's James Rice, provide the following documents:

- DR: Outlined in the DR Summary & Attachment 1.
- Three Photographs: Depicting the incident location. The photographs do not support the allegation the Excavator was excavating within tolerance zone of 24-inches. The photographs do indicate that the Excavator failed to maintain the marks due the spoil piles being placed on top of the markings.
- Invoice & Check: Indicating the Operator billed the Excavator \$1,109.15 and the Excavator paid the Operator \$964.23 for the damage repair.

Columbia's documents are included as Attachment 3.

A Past Due Notice was sent to the Excavator with a due date of 01/06/24.

The Past Due Notice is included as Attachment 4.

PIPELINE DAMAGE INVESTIGATION REPORT

On 12/11/23, the Excavator, EMM Construction of KY's Elfido Barrios, was receptive to attending the damage prevention course and paying the reduce penalty of \$250.00. Mr. Barrios requested a copy of the DR & Notices be emailed (emmconstruction49@gmail.com) to his daughter Magdalena Barrios. Ms. Barrios responded to Staff's email stating she and Mr. Barrios would review the information.

Mr. Barrios's email is included as Attachment 5.

VIOLATIONS¹

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

of Offences Within 365 Days

(Including this incident)

Excavator	Last Offence Incident #	Last Offence Incident Date	Revert to 1st Offence Date (Last Offence Date +366 Days)
1 st	See above	03/21/22	03/22/23

¹ A revision of the Underground Facility Damage Prevention Act took effect on January 1, 2022. All incidents of damage dated prior to January 1, 2022 will be reviewed under the former version of the Act

Attachment 1

Gas Excavation Damage Report

Columbia Gas of Kentucky, Inc.

Submitted 4/11/2022 Incident ID: 54537

[Set back to Edit](#)

[Staff Edit](#)

[Print \(PDFForm.aspx?Rpt=GasInvestigation&IG=54537\)](#)

Reported By:

Name: James Rice
Phone: (859) 537-2123
Email: JamesRice@NiSource.com

Gas Line Incident Occured:

Date: 3/21/2022
Time: 4:58 PM

Details:

Reported Date: 4/11/2022 10:30 AM

Incident Location Address:

Location:
Address: 2786 Sullivans Tc
City: Lexington
State: KY
County: Fayette
Zip: 40511
Confirm Code:

Number of Customers out:

Was gas or hazardous liquids contained
in the underground facility?

* 3/2020

Was gas or hazardous liquids released
into the atmosphere?

Locate Request Ticket No.: 2203120154

Excavator: Contractor

Excavator Address:

First Name: Elfido
Last Name: Barrios
Organization ID:
Company: EMM Barrios Masonry and Bobcat
Phone: 859-621-2404
Email: emmconstruction49@gmail.com
Address: 2050 Clays Mill Rd
City: Lexington
State: KY
Zip: 40503
Confirm Code: Y

Excavation Damage: Other insufficient excavation practices

Description of Incident EMM Barrios Masonry and Bobcat struck a plastic one inch natural gas service line with mechanized equipment.

Summary Information

4/11/2022

Full details such as the cause	EMM Barrios Masonry and Bobcat was working in an area with a locate ticket. While digging to install electrical conduit, EMM Barrios Masonry and Bobcat struck a plastic one inch natural gas service line with mechanized equipment causing damage to the accurately marked service line.
Extent of the damage	A plastic one inch natural gas service line was severed, and the service line was repaired.
Cost of the damage	\$500.00
Steps taken to prevent re-occurrence	CKY employees advised EMM Barrios Masonry and Bobcat of the KY 811 Dig Law, and to use caution within the tolerance zone of a marked facility.
Amount billed to excavator	\$500.00



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
psc.ky.gov

Kent A. Chandler
Chairman

Angie Hatton
Vice Chairman

Mary Pat Regan
Commissioner

November 1, 2023

Elfido Barrios, Registered Agent
EMM Construction of KY, LLC
2050 Clays Mill Rd
Lexington, KY 40503

Re: Violation of Kentucky Underground Facility Damage Prevention
Act Incident Number: **54537**

LEGAL NOTICE OF GAS LINE DAMAGE

Dear Mr. Barrios:

The Kentucky Public Service Commission (Commission) received the attached report on April 11, 2022, regarding damage by EMM Construction of KY to a natural gas facility owned and/or operated by the Columbia Gas of Kentucky, Inc. The Gas Excavation Damage Report (Damage Report) from Columbia Gas of Kentucky, Inc. indicates that on **March 21, 2022**, EMM Construction of KY violated the Underground Facilities Damage Prevention Act at 2786 Sullivans Tc., Lexington, KY 40511 by **excavating with mechanized equipment within the approximate location / tolerance zone of 24-inches**.

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.

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, 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.

Based upon the allegations contained in the Damage Report and the Commission's records of prior underground facility damage, Commission Staff has determined that:

1. This incident is the first incident of damage to an underground facility involving EMM Construction of KY within the past 365 days.
2. The statutory provision that EMM Construction of KY is alleged to have violated is:

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.

3. The civil penalty for this alleged violation is \$1,250.00

RESPONSE REQUIRED FOR RESOLUTION

There are three options you may choose from to resolve this violation. *Please select a method of resolution listed below:*

1. **Dispute the Alleged Violation:** EMM Construction of KY has the right to dispute the allegations made by Columbia Gas of Kentucky, Inc. If you have additional facts or evidence that you wish to provide to dispute the allegations made in the Damage Report, please contact Eric V. Tout, Division of Inspections at ericv.tout@ky.gov or 502-782-2622, prior to paying the civil penalty.

2. **Penalty Payment:** This incident may be resolved by EMM Construction of KY paying the full amount of the civil penalty listed above. *Payment of the penalty will not be considered an admission of willfully violating any provision of the Act.*

If EMM Construction of KY does not wish to dispute the alleged violation, EMM Construction of KY should submit payment, within 30 days of the date of this letter, in the amount of \$1,250.00.

3. **Training & Reduced Penalty:** If this letter indicates this is EMM Construction of KY's first alleged violation of the Act, EMM Construction of KY should register to attend a training course that if completed will **reduce the civil penalty amount due to \$250**. *Payment of the reduced penalty will not be considered an admission of willfully violating any provision of the Act.*

To register for the training course, go to <https://psc.ky.gov/classSignUp>. You will need your incident number: **54537** and assigned key: **10831** to register for the next available training date. Please understand that this training will be required as a contingency for the reduced penalty amount.

If the excavator would like to pay via electronic payment, please contact Andrea Wise at andrea.wise@ky.gov or (502) 782-2656 to have a digital invoice issued. If submitting payment by mail, please send a cashier's check or money order, made payable to **Kentucky State Treasurer**, to the address listed below.

**Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602**

Please include the Incident Number 54537 on the cashier's check or money order submitted for payment or any email request for invoice.

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.

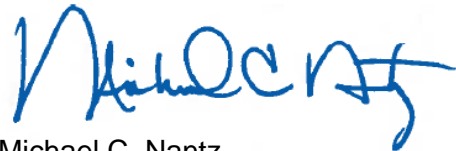
ADMINISTRATIVE PROCEEDING

If EMM Construction of KY does not, **within 30 days** of the date of this letter, pay the proposed civil penalty in full, or complete the course and pay the reduced penalty, or provide the Division of Inspections with additional information that relieves EMM Construction of KY of responsibility for the damage, the Commission will institute an administrative proceeding against EMM Construction of KY.

The Administrative Proceeding will include a formal hearing in front of the Commission, during which EMM Construction of KY will have the opportunity to present evidence, call witnesses, and cross examine witnesses called by the Division of Inspections. Failure to participate in these proceedings may result in a default judgement against EMM Construction of KY for the full amount of the proposed civil penalty. Pursuant to Kentucky law, **all business entities, including limited liability companies, must be represented at the administrative proceeding by legal counsel licensed to practice law in Kentucky.**

If you have questions regarding the Administrative Proceeding, please contact the attorney representing Division of Inspections at 502-791-0493 or jnorricanfield@ky.gov.

Sincerely,



Michael C. Nantz
Director, Division of Inspections

Attachment

Attachment 2

Kentucky 811

Ticket no	2203120154	Type	NORMAL CALL
Request date	03/12/22 03:48 pm		
Start date	03/16/22 12:01 am		
Expiration date	04/02/22 11:59 pm		

Excavator information

Excavator name	E M M BARRIOS MASONRY AND BOBCAT CONTRACTORS		
Address	2050 CLAYS MILL ROAD LEXINGTON, KY 40503		
Company phone	859-621-2404		
Requested by	ELFIDO BARRIOS	Phone	859-621-2404
On-site name	ELFIDO BARRIOS - CELL	On-site phone	859-621-2404
Contact email	EMMCONSTRUCTION49@GMAIL.COM		

Excavation information

Type of work	INSTALL ELECTRIC		
Depth (ft)	3	Explosives	N
Area marked	U		
Job name/number			
Work done for	FRONTIER CONSTRUCTION		

Location information

County	FAYETTE	City	LEXINGTON
Address/street	SULLIVANS TRCE		
Nearest intersecting street	KEARNEY CREEK LN		
Location of work	LOCATE ENTIRE PROPERTY FOR THE ADDRESSES 2761 AND 2780 SULLIVANS TRCE		

Comments

Map Coord

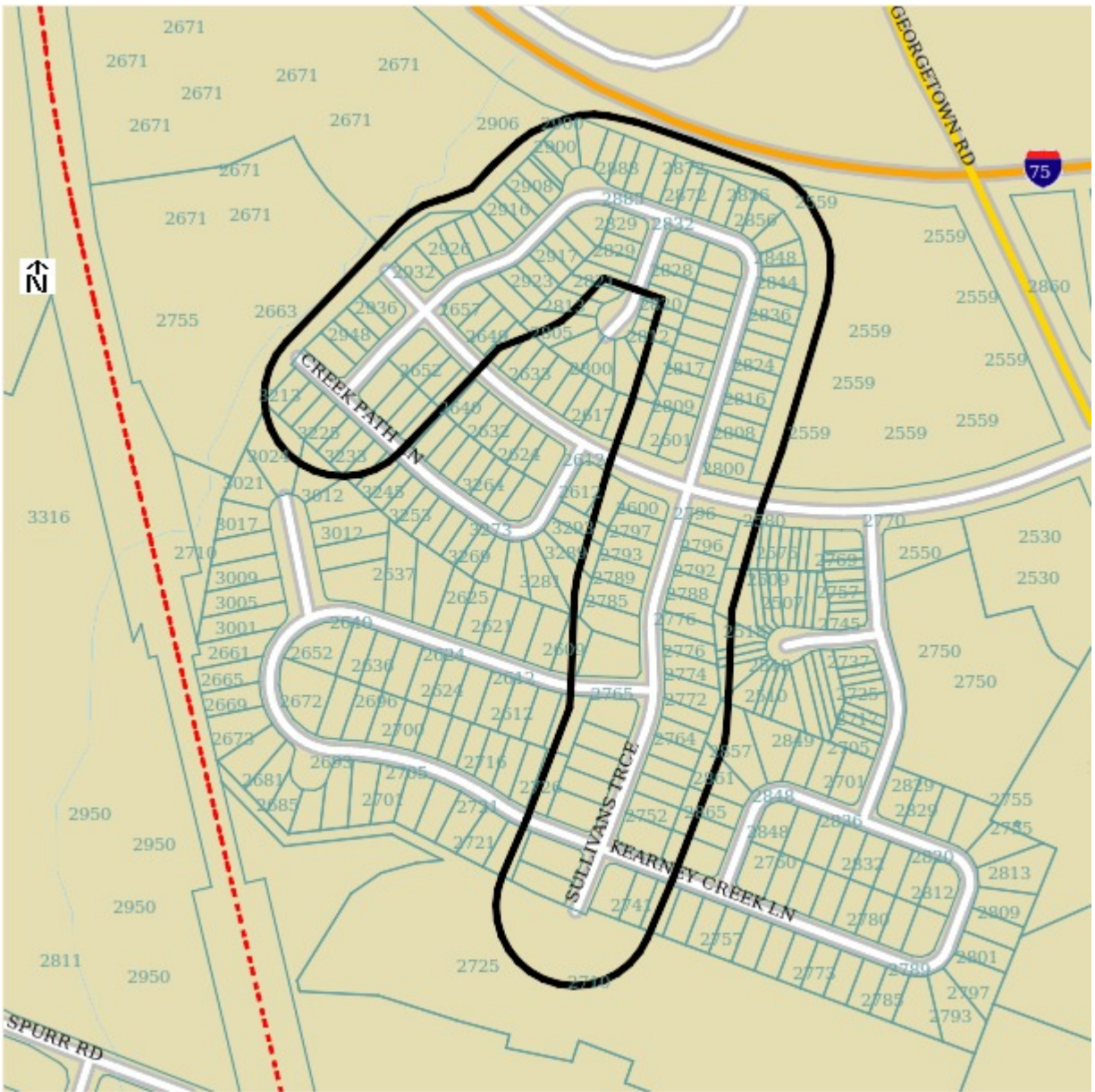
NW Lat 38.1127688	Lon -84.5259048	SE Lat 38.1067310	Lon -84.5209176
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Members notified

Company name	District	Type	Status
LEXINGTON URBAN CNTY GOV	0200	S	No Conflict - The KY811 member has no facilities in the area of excavation described.
INSIGHT COMMUNICATIONS	0237	TV	Marked - The approximate location has been marked. File a 2ND NOTICE with KY811 if marks are not complete and accurate. (2022/03/15 11:51

KENTUCKY UTILITIES	0326	E	MARKED MAIN LINES IN REAR ONLY PUTTING METER ON SIDE OF HOUSE PER BARRIOS) Marked - The approximate location has been marked. File a 2ND NOTICE with KY811 if marks are not complete and accurate. (2022/03/15 11:51
KENTUCKY AMERICAN WATER CO	0370	W	MARKED MAIN LINES IN REAR ONLY PUTTING METER ON SIDE OF HOUSE PER BARRIOS) Marked - The approximate location has been marked. File a 2ND NOTICE with KY811 if marks are not complete and accurate.
METRONET FIBER NETWORK	0700	COMMUNICATIONS	MARKED MAIN LINES IN REAR ONLY PUTTING METER ON SIDE OF HOUSE PER BARRIOS) Marked - The approximate location has been marked. File a 2ND NOTICE with KY811 if marks are not complete and accurate. (2022/03/15 11:51
COLUMBIA GAS	2621	PIPELINE	MARKED MAIN LINES IN REAR ONLY PUTTING METER ON SIDE OF HOUSE PER BARRIOS) Marked - The approximate location has been marked. File a 2ND NOTICE with KY811 if marks are not complete and accurate.
WINDSTREAM KENTUCKY INC	WINKY	TEL	MARKED MAIN LINES IN REAR ONLY PUTTING METER ON SIDE OF HOUSE PER BARRIOS;) Marked - The approximate location has been marked. File a 2ND NOTICE with KY811 if marks are not complete and accurate. (2022/03/15 11:51

Map



Attachment 3

Tout, Eric V (PSC)

From: Rice \ James \ D <jamesrice@nisource.com>
Sent: Friday, December 1, 2023 2:36 PM
To: Tout, Eric V (PSC)
Subject: RE: 54537, 3/21/2022, 2786 Sullivans Tc., EMM Construction of KY
Attachments: 2786 Sullivans Tc - Lex - Other insufficient excav pract.pdf; KY22-1027 Claim invoice.pdf; KY22-1027 Claim letter.pdf; Payment Received & Verified_Redacted.pdf; 2786 Sullivans Tc - Pics.pdf

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

This Message Originated from Outside the Organization

This Message Is From an External Sender.

Report Suspicious

Good afternoon Eric,

See attached.

-james

From: Tout, Eric V (PSC) <ericv.tout@ky.gov>
Sent: Thursday, November 30, 2023 10:28 AM
To: Rice \ James \ D <jamesrice@nisource.com>
Subject: 54537, 3/21/2022, 2786 Sullivans Tc., EMM Construction of KY

USE CAUTION: This email was sent from an external source. Think before you click links or open attachments. If suspicious, please forward to security@nisource.com for review.

Hello James,

Please send repots, photos pre & post, 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



PSC Gas Excavation Damage Report

Excavation Damage Occurred

Date: 03/21/2022

Time: 4:58 PM

JO #: 22-9874303-00

Incident Location

Address: 2786 Sullivans Tc

City: Lexington

County: Fayette

Zip: 40511

Cust. Lost: 1

Was gas released into the atmosphere? Y

Locate Request Ticket Number: 2203120154

Excavator Information

Excavator Type: Contractor

First Name: Elfido

Last Name: Barrios

Company: EMM Barrios Masonry and Bobcat

Phone: 859-621-2404

Email: emmconstruction49@gmail.com

Address: 2050 Clays Mill Rd

City: Lexington

State: KY

Zip: 40503



Incident Details

KY PSC - Cause of Damage: Other insufficient excavation practices

Columbia DIMP Root Cause: Excavator Error/Exercise reasonable care

Description of Incident: EMM Barrios Masonry and Bobcat struck a plastic one inch natural gas service line with mechanized equipment.

Full details such as the cause: EMM Barrios Masonry and Bobcat was working in an area with a locate ticket. While digging to install electrical conduit, EMM Barrios Masonry and Bobcat struck a plastic one inch natural gas service line with mechanized equipment causing damage to the accurately marked service line.

Extent of the damage: A plastic one inch natural gas service line was severed, and the service line was repaired.

Cost of the damage: \$500

Steps taken to prevent re-occurrence: CKY employees advised EMM Barrios Masonry and Bobcat of the KY 811 Dig Law, and to use caution within the tolerance zone of a marked facility.

Amount billed to excavator: \$500



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SECURED BY
ADT
800.ADT.
ADT



LUMBER
84
LUMBER
84LUMBER.COM

MARK
↓

MARK
↓



DAMAGE



Columbia Gas/NiSource

INVOICE

CLAIM NO.: KY22-1027

JOB ORDER NO.: 22-9874303-00

DATE: April 19, 2022

MRA ACCOUNT NUMBER: 21182399-000-001-3

PAYMENT DUE 28 DAYS FROM ABOVE DATE
PLEASE MAKE REMITTANCE PAYABLE TO:

EMM Construction, Inc.
2050 Clays Mill Rd
Lexington, Kentucky 40503

Columbia Gas / NiSource
3101 N. Ridge Rd. E.
Lorain, Ohio 44055
ATTN: Damage Prevention Support

AMOUNT DUE

\$1,109.15

PLEASE CUT HERE AND RETURN TOP WITH PAYMENT

Itemization of the charges for the damages which occurred on 03/21/2022 in the vicinity of 2786 Sullivans Tc, Lexington, Kentucky 40511.

ITEMS	AMOUNT
Labor	\$464.08
Materials	\$6.00
Equipment	\$634.43
Gas Loss	\$4.28
Contracted Fees	\$0.00
Taxes	\$0.36
TOTAL EXPENSE	\$1,109.15

Notes:

If you have any questions regarding this bill, please contact Nicole Gillette,
Facility Damage Coordinator, at (440)420-2717.



Know what's below.
Call before you dig.

Columbia Gas/NiSource

INVOICE

CLAIM NO.: KY22-1027

JOB ORDER NO.: 22-9874303-00

DATE: April 19, 2022



**Columbia Gas of Kentucky, Inc.
Damage Prevention Support**

3101 N Ridge Road E
Lorain, Ohio 44055

04/19/2022

(440)420-2717

EMM Construction, Inc.
2050 Clays Mill Rd
Lexington, Kentucky 40503

Re: Our Claim: KY22-1027

Gentlemen,

Enclosed is our damage claim invoice in the amount of \$1,109.15, which is the expense our company incurred as the result of your contact with our facilities, located in the vicinity of 2786 Sullivans Tc, Lexington, Kentucky 40511. Our reports indicate that our facilities were damaged on 03/21/2022, due to failure to exercise reasonable care.

If you have insurance to cover this type of damage claim, please forward the enclosed damage claim invoice and envelope to your insurance carrier for payment. Then please advise our department of your insurance company's name and address so that we can follow the matter to a conclusion. In the event you are not insured, your check, draft or money order in the above amount is hereby requested. To insure proper credit to your account, please remit the top portion of the damage claim invoice, along with your payment, in the enclosed pre-addressed envelope.

If you wish to discuss this matter further, please contact the undersigned.

Sincerely,

Nicole Gillette
Facility Damage Coordinator
ngillette@nisource.com

Enclosure

NiSource, Inc.

KY22-1027

Coordinator Nicole Gillette
Status Litigated

Damager: EMM Construction, Inc.

GENERAL

DIS Account Number	WMS Job Order	Distribution Plant Inspection F
21182399-000-001-3	22-9874303-00	D303810

TIMELINE

Damage Date	Operations Date	Last Payment
03/21/2022	03/28/2022	09/26/2023
Received Date	Bill Date	Closed Date
03/31/2022	04/19/2022	In Progress

LITIGATED

Weltman Weinberg & Reis

Phone Number	Cell Phone	Fax
614-801-2600		614-801-2603

Email

jgrime@weltman.com

Address

3705 Marlane Drive

City	State	Zip
Grove City	Ohio	43123

Attachment 4



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
psc.ky.gov

Kent A. Chandler
Chairman

Angie Hatton
Vice Chairman

Mary Pat Regan
Commissioner

December 7, 2023

Elfido Barrios, Registered Agent
EMM Construction of KY, LLC
2050 Clays Mill Rd
Lexington, KY 40503

Re: Violation of Kentucky Underground Facility Damage Prevention
Act Incident Number: **54537**

Past Due Notice

Dear Mr. Barrios:

This is a reminder that your account is now past due. Attached is the Notice of Gas Line Damage and the Damage Report that was previously sent to you for the above Incident, which our records indicate as **UNRESOLVED**.

If EMM Construction of KY does not, **within 30 days** of the date of this letter, pay the proposed civil penalty of **\$1,250.00** in full, or complete the course and pay the reduced penalty of **\$250.00**, or provide the Division of Inspections with additional information that relieves EMM Construction of KY of responsibility for the damage, the Commission will institute an administrative proceeding against EMM Construction of KY. Please refer to the attached Notice of Gas Line Damage for instructions to schedule training and/or submit payment.

Once a referral to the Commission is made for the Administrative Hearing, 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 demand for remedial measures and penalty assessment, please contact Eric V. Tout, Division of Inspections at ericv.tout@ky.gov or (502) 782-2622.

Sincerely,

Michael C. Nantz
Director, Division of Inspections

Attachment

Attachment 5

Tout, Eric V (PSC)

From: EMM Construction LLC <elfido@emmconstructionllc.us>
Sent: Monday, December 11, 2023 11:12 AM
To: Tout, Eric V (PSC)
Subject: Re: 54537, 3/21/2022, 2786 Sullivans Tc., Lexington, EMM Construction of KY

This Message Originated from Outside the Organization

You have not previously corresponded with this sender.

Report Suspicious

Thank you for your email. I will look at this with Elfido.
Thank you .

On Mon, Dec 11, 2023 at 10:59 AM Tout, Eric V (PSC) <ericv.tout@ky.gov> wrote:

Hello Magdalena Barrios,

Elfido Barrios requested I send this email to you. Mr. Barrios stated EMM Construction of KY was receptive to attending the Damage Prevention Course and paying the reduced penalty of \$250.00 regarding the above noted incident (See Attach 1...). The Legal Notice of Gas Line Damage (See Attach 1...) includes the instructions on how to sign up for the course and make the penalty payment. I will note the KY Public Service Commission will institute an administrative proceeding against EMM Construction of KY if a representative of EMM Construction of KY has not sign up for the course and paid the reduce penalty by 01/06/24 (See Attach 4...)

If you have questions do not hesitate in contacting me.

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



**SAFETY IS IN YOUR HANDS.
EVERY DIG. EVERY TIME.**

NOTICE OF CONFIDENTIALITY

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APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2024-00038 DATED MAR 05 2024

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 Andrea Wise, Commission Division of Inspections: Andrea.Wise@ky.gov or 502-782-2656.

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://meet.goto.com/pscformalhearing/psc-damage-prevention-hearing>

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

Mac OS X 10.9 (Mavericks) – mac OS Big Sur (11)

Linux/Ubuntu (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

APPENDIX C

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2024-00038 DATED MAR 05 2024

EIGHT PAGES TO FOLLOW

ESTADO DE KENTUCKY
ANTE LA COMISIÓN DE SERVICIOS PÚBLICOS

Concerniente:

EMM CONSTRUCTION OF KENTUCKY, LLC)	
)	
_____)	CASO NO.
)	2024-00038
PRESUNTA INFRACCIÓN DE LA LEY DE)	
PREVENCIÓN DE DAÑOS EN INSTALACIONES)	
SUBTERRÁNEAS)	

ORDEN DE INICIACIÓN POR LA PRESUNTA INFRACCIÓN DE TIPO 811 DE LA LEY
DE PREVENCIÓN DE DAÑOS EN INSTALACIONES SUBTERRÁNEAS DE
KENTUCKY

EMM Construction of Kentucky, LLC (EMM Construction) ha sido implicado como parte de una investigación ante la Comisión de Servicios Públicos de Kentucky (Comisión) por la presunta infracción de la Ley de Prevención de Daños a Instalaciones Subterráneas de Kentucky (la Ley).² Una audiencia sobre este caso tendrá lugar el 26 de abril de 2024.

Conforme a la norma KRS 278.495(2), la Comisión tiene jurisdicción para regular la seguridad de las instalaciones de gas natural en Kentucky y para hacer cumplir las normas federales mínimas de seguridad de las tuberías. En virtud de la Ley, la Comisión tiene autoridad para investigar y evaluar las sanciones civiles por cualquier infracción de la Ley que resulte en daños de excavación a una instalación subterránea utilizada para transportar gas natural o líquidos peligrosos sujetos a las leyes federales de seguridad de tuberías, 49 U.S.C. §. 60101 *et seq.* Toda persona que infrinja cualquier disposición

² KRS 367.4901 a KRS 367.4917.

de la Ley está sujeta a la imposición de una sanción civil por un importe de 250 dólares por la primera infracción, no más de 1,000 dólares por la segunda infracción en el plazo de un año, y no más de 3,000 dólares por la tercera infracción y las siguientes. Además, cualquier persona cuya infracción de la ley provoque daños en una instalación subterránea que contenga cualquier material inflamable, tóxico, corrosivo o peligroso, o que provoque la liberación de cualquier material inflamable, tóxico, corrosivo o peligroso, está sujeta a una sanción adicional de hasta 1,000 dólares.

Tras recibir un informe de daños por excavación en su gasoducto subterráneo por parte de un operador, el personal de la Comisión (el Personal) llevó a cabo una investigación y preparó un Informe de Incidentes, cuya copia se adjunta a esta Orden como Apéndice A. En su Informe de Incidentes, el Personal cita a EMM Construction por la infracción de la siguiente disposición de la Ley:

KRS 367.4911(10) - Cuando sea necesario excavar o demoler dentro de la ubicación aproximada de la instalación subterránea, el excavador deberá cavar a mano o utilizar medios no intrusivos para evitar daños a la instalación subterránea.

Basándose en su revisión del Informe de Incidentes y estando suficientemente informada, la Comisión encuentra pruebas prima facie de que EMM Construction violó la Ley de Prevención de Daños a Instalaciones Subterráneas. La Comisión considera, además, que debe llevarse a cabo una investigación formal sobre el incidente de los daños causados por la excavación.

POR LO TANTO SE ORDENA que:

1. EMM Construction deberá presentar a la Comisión una respuesta por escrito a las alegaciones contenidas en el Informe de Incidencia del Personal en un plazo de 20 días a partir de la recepción de esta Orden a través de un correo electrónico

enviado a PSCED@ky.gov con el número de caso de este procedimiento en el asunto del mensaje.

2. EMM Construction comparecerá el 26 de abril de 2024, a las 9 a.m., hora estándar del este, en la sala de audiencias Richard Raff de las oficinas de la Comisión en 211 Sower Boulevard en Frankfort, Kentucky, con el fin de presentar pruebas relativas a la supuesta violación de la Ley de Prevención de Daños a Instalaciones Subterráneas.

3. La audiencia 26 de abril de 2024 se llevará a cabo por videoconferencia.

4. EMM Construction deberá asistir a la audiencia utilizando el siguiente enlace: <https://meet.goto.com/pscformalhearing/psc-damage-prevention-hearing>; la información y las instrucciones se adjuntan a esta Orden como Apéndice B.

5. EMM Construction notificará a la Comisión, al menos diez días antes de la audiencia, si EMM Construction no puede comparecer por videoconferencia y, por lo tanto, comparecerá en persona.

6. **Cualquier sociedad, corporación o entidad comercial (incluyendo una sociedad de responsabilidad limitada) debe ser representada por un abogado con licencia para ejercer la abogacía en Kentucky y dicha representación incluye la presentación de documentos y las comparecencias en las audiencias ante la Comisión.**

7. Un individuo puede presentar una respuesta a las alegaciones contenidas en el Informe de Incidentes del Personal sin la representación de un abogado.

8. El Informe de Incidentes del Personal 54537, que se adjunta a esta Orden como Apéndice A, forma parte del expediente de este caso.

9. La audiencia 26 de abril de 2024 se grabará únicamente por vídeo.

10. **Tenga en cuenta que las partes que no comparezcan después de la notificación estarán sujetas a que se asiente una sentencia en rebeldía contra ellos.**

COMISIÓN DE SERVICIOS PÚBLICOS

Presidente

Vicepresidente

Comisionado/a

HACE CONSTAR:

Director/a Ejecutivo/a

APÉNDICE A

APÉNDICE DE UNA ORDEN DE LA COMISIÓN DE SERVICIOS
PÚBLICOS DE KENTUCKY EN EL CASO No. 2024-00038 FECHADO

TREINTA PÁGINAS A SEGUIR

APÉNDICE B

APÉNDICE DE UNA ORDEN DE LA COMISIÓN DE SERVICIOS PÚBLICOS DE KENTUCKY EN EL CASO No. 2024-00038 FECHADO

Información e instrucciones para la audiencia

Se le obliga a asistir a una audiencia formal con la Comisión de Servicios Públicos de Kentucky. Tenga en cuenta que la audiencia está programada en la **huso horario del este**, y que la fecha y la hora de la audiencia figuran en la Orden que acompaña a estas instrucciones.

Se le recomienda encarecidamente que descargue la aplicación GoToMeeting ahora y esté preparado para su audiencia. Si no puede comparecer por vídeo utilizando esta aplicación, debe llamar a las oficinas de la Comisión al número que se indica a continuación al menos diez días antes de la audiencia programada. Recibirá instrucciones para presentarse en persona en la sala de audiencias Richard Raff de las oficinas de la Comisión en el 211 Sower Boulevard en Frankfort, Kentucky, a la hora y fecha de su audiencia programada.

Sírvase dirigir cualquier pregunta a Andrea Wise, División de Inspecciones de la Comisión: Andrea.Wise@ky.gov o 502-782-2656.

Para descargar la aplicación GoToMeeting vaya a:

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

El día de su audiencia utilizando su computadora, tableta o teléfono inteligente con capacidad de vídeo. **Acceda al procedimiento en:**

<https://meet.goto.com/pscformalhearing/psc-damage-prevention-hearing>

Puede encontrar más información sobre el uso de GoToMeeting en GoToMeeting - Inicio rápido del asistente

<https://www.youtube.com/embed/8VaHHVP0FCU?autoplay=1&showinfo=0&controls=0&rel=0>

GoToMeeting - Cómo unirse a una reunión

https://www.youtube.com/embed/Ojl1q_sPrP0?autoplay=1&showinfo=0&controls=0&rel=0

Requisitos técnicos para utilizar GoToMeeting

Sistema operativo:

Windows 7 – Windows 10
Mac OS X 10.9 (Mavericks) – Mac OS Big Sur (11)
Linux/Ubuntu (sólo aplicación web)
Google Chrome OS (sólo aplicación web)
iOS 11 - iOS 13
Android OS 5 (Lollipop) - Android 10

Navegador web: (Sólo se aplica a la aplicación web)

Google Chrome v72 o más reciente
Microsoft Edge v77 o más reciente

Conexión a Internet:

Computadora: 1 Mbps o superior (se recomienda la banda ancha)
Dispositivo móvil y Chromebook: 3G o superior (se recomienda WiFi para VoIP)

Software:

Aplicación de escritorio de GoToMeeting (con JavaScript activado)
La aplicación GoToMeeting de Apple Store, Google Play Store o Windows Store

Hardware:

2 GB de RAM (mínimo), 4 GB o más de RAM (recomendado)
Dispositivo de cámara web*
Micrófono y altavoces** (se recomiendan auriculares USB)

Dispositivo móvil:

iPhone 5 o más reciente
iPad de 3ª generación o más reciente

Nota: * Para comparecer en la audiencia, ES PRECISO tener una cámara en su dispositivo o conectada a él.

** La mayoría de los dispositivos tienen altavoces incorporados, pero obtendrás una mejor calidad de audio mientras estés conectado por VoIP si utilizas unos auriculares.

*EMM CONSTRUCTION OF KENTUCKY, LLC c/o
2050 Clays Mill Road
Lexington, KENTUCKY 40503