

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

LOUISVILLE GAS AND ELECTRIC COMPANY)	
_____)	
ALLEGED FAILURE TO COMPLY WITH COMMISSION)	CASE NO. 91-095
REGULATIONS)	

O R D E R

On April 2, 1991, the Commission initiated this investigation to determine whether Louisville Gas and Electric Company ("LG&E") should be subject to the penalties prescribed in KRS 278.992 for the probable violations of 807 KAR 5:022, Section 13(8)(a), Section 13(8)(b)(5), and Section 13(8)(b)(6). The probable violations arose from a gas explosion which occurred on January 18, 1990 at 3602 Taylorsville Road, Louisville, Kentucky. LG&E filed a response to the April 2, 1991 Order, and an informal conference was held at the Commission's offices on April 19, 1991.

LG&E and the Commission Staff entered into a Stipulation Of Facts ("Stipulation"), which was filed on July 31, 1991. See Appendix A, attached hereto and incorporated herein by reference. The Stipulation contains the following: 1) a recitation of all material facts relevant to the incident; 2) an acknowledgement that no facts are in dispute; 3) a waiver by LG&E of any right to an evidentiary hearing; and 4) a schedule for LG&E to file a brief on the existence of violations of Commission regulations. In

accord with the Stipulation, LG&E submitted a brief on August 14, 1991.

Based on a review of the Stipulation and being otherwise sufficiently advised, the Commission finds that the Stipulation is reasonable and should be accepted as a full and complete resolution of the facts in this proceeding.

The April 2, 1991 Order noted two probable violations of Commission regulations. Both probable violations arise from Commission Regulation 807 KAR 5:022, Section 13(8)(a), which provides in pertinent part that, "each operator of a buried pipeline shall carry out in accordance with this subsection a written program to prevent damage to that pipeline by excavation activities." The regulation further specifies the minimum requirements of such a damage prevention program. In Section 13(8)(b)(5), the utility must:

[P]rovide for temporary marking of buried pipelines near excavation activity before, as far as practical, activity begins.

In addition, Section 13(8)(b)(6), mandates that the damage prevention program:

[P]rovide for frequent inspection of pipeline an operator has reason to believe could be damaged by excavation activities to verify the integrity of the pipeline. . . .

LG&E was cited for its alleged failure to both carry-out a written program for the temporary marking of buried pipeline in the area of excavation activities and to inspect as frequently as necessary to verify the integrity of a customer service line that was pulled by a backhoe during excavation activity.

LG&E argues that customer-owned gas service lines are not "pipelines," and therefore do not need to be temporarily marked as required by Section 13(8)(b)(5). LG&E bases this argument on the Commission's definition of pipeline, which does not expressly mention customer service lines, and the claim that the customer service lines are not used for the transportation of gas.

The Commission finds no merit in this argument. A gas "service line" is defined in 807 KAR 5:022, Section 1(1)(u) as "a distribution line that transports gas from a common source of supply to: customer meter or connection to a customer's piping, whichever is farther down stream; or connection to a customer's piping if there is no customer meter." Further, "distribution line" is defined by Section 1(1)(e) as "a pipeline other than a gathering or transmission line." And finally, the definition of pipeline, as set forth in 807 KAR 5:022, Section 1(1)(p), provides as follows:

"Pipeline" means all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenances attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.

By reading these three definitions, it is clear that a service line is a distribution line, and a distribution line is a specific type of pipeline. The service line at issue in this case transported gas from a common source of supply to the customer's meter at 3602 Taylorsville Road. Consequently, this service line was a pipeline and was required to be temporarily marked prior to excavation activities.

LG&E also argues that it did not knowingly violate the Commission's regulations and, therefore, should not be penalized. In support of its argument, LG&E cites the Commission's September 17, 1990 Order in Case No. 89-257.¹ In that case, the Commission stated that a penalty may be imposed for failure to comply with a regulatory requirement "if the Commission finds that the utility knew or, with the exercise of reasonable diligence, should have known that the violation existed."

The Commission notes that the above-cited case involved the application of KRS 278.990, whereas the present case involves KRS 278.992. This latter statute applies exclusively to gas pipeline violations, and expressly provides that, "any person who violates any regulation adopted and filed pursuant to KRS Chapter 13A by the public service commission governing the safety of pipeline facilities or the transportation of gas . . . shall be subject to a civil penalty. . . ." The very language of the statute negates the argument that a penalty can be imposed only when the utility either knew or should have known that a violation existed. In fact, the "knew or should have known" standard is applicable only when a statute requires that an act be done willfully. However, even assuming the application of this standard, LG&E's actions still constitute a violation because LG&E's policy was to not temporarily mark customer-owned service lines. A plain reading of

¹ Case No. 89-257, Meade County Rural Electric Cooperative Corporation and Brandenburg Telephone Company, Inc.'s Alleged Failure to Comply With Commission Regulations.

the Commission's regulation discloses that service lines must be temporarily marked, and LG&E clearly should have known this. Further, LG&E failed to inspect a pipeline that a backhoe operator had reason to believe could be damaged.

LG&E also argues that it did not fail to carry out a damage prevention program providing for frequent inspection of pipelines. The crux of LG&E's argument is that the excavation work was performed by a contractor, and the contractor failed to notify LG&E that the service line had been pulled. Despite these facts, LG&E's utilization of a contractor does not shield LG&E from liability. LG&E is responsible for the acts and omissions of its contractors. The contractor's knowledge of the disturbance of a service line, and its negligence in failing to report such a disturbance, is imputed to LG&E.

LG&E finally argues that should the Commission determine that a violation has occurred, certain mitigating circumstances should be considered. Those circumstances include LG&E's allegations that the violations did not contribute to the accident and that LG&E exhibited good faith in revising its excavation procedures. The Commission finds neither of these arguments to be persuasive in this case. As to the cause of the accident, LG&E's failure to temporarily mark the service line as required was a major contributing factor. Had the service line been properly marked, the likelihood of this accident occurring would have been greatly reduced, if not eliminated. While the Commission does recognize that LG&E was cooperative in revising its damage prevention program and excavation procedures after the explosion, these

actions are far outweighed by the gravity of the violations and the serious damage to life and property resulting from the violations.

In summary, the Commission finds that LG&E violated 807 KAR 5:022, Section 13(8)(a), Section 13(8)(b)(5), and Section 13(8)(b)(6). At the time these violations occurred, KRS 278.992 provided that a civil penalty cannot exceed \$1,000 per day for each violation. Based on the circumstances cited above, the Commission assesses a penalty of \$2,000.

IT IS THEREFORE ORDERED that:

1. LG&E be and it hereby is assessed a civil penalty of \$2,000 for its violations of 807 KAR 5:022, Section 13(8)(a), Section 13(8)(b)(5), and Section 13(8)(b)(6).

2. The penalty shall be paid by LG&E within 30 days of the date of this Order by certified check or money order made payable to Treasurer, Commonwealth of Kentucky. Said check or money order shall be mailed or delivered to the Office of General Counsel, Public Service Commission, 730 Schenkel Lane, P. O. Box 615, Frankfort, Kentucky 40602.

Done at Frankfort, Kentucky, this 1st day of November, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

ATTEST:


Executive Director

Commissioner

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUL 31 1991

PUBLIC SERVICE
COMMISSION

In the Matter of:

LOUISVILLE GAS AND ELECTRIC COMPANY)

ALLEGED FAILURE TO COMPLY WITH COMMISSION)
REGULATIONS)

CASE NO. 91-095

STIPULATION OF FACTS

By Order dated April 2, 1991, the Commission initiated this investigation to determine whether Louisville Gas and Electric Company ("LG&E") should be subject to the penalties prescribed in KRS 278.992 for the probable violations of 807 KAR 5:022, Section 13(8)(a), Section 13(8)(b)5, and Section 13(8)(b)6. The Order arose from an accident which occurred on January 18, 1990 at 3602 Taylorsville Road in Louisville, Kentucky. Pursuant to the procedural schedule established by the April 2, 1991 Order, LG&E filed a response and an informal conference was held at the Commission's offices on April 19, 1991.

LG&E and the Commission Staff ("Staff") have agreed that the Commission's determination is one which requires the application of the respective administrative regulations to the facts, and that the facts are not in dispute. A hearing would thus serve no productive purpose. Within 14 days of the filing of this Stipulation, LG&E may, if it desires, submit a memorandum setting forth its position with respect to the question of the existence of violations of the above-mentioned Commission regulations.

The following factual matters are submitted for the Commission's consideration in rendering its decision in this investigation.

1. Due to the reconstruction of access ramps to the Watterson Expressway at Taylorsville Road, LG&E was required to relocate certain buried gas mains. This relocation work was being performed by an LG&E contractor, Southern Pipeline, Inc. ("SPL"). While SPL was an independent contractor, LG&E provided an on-site inspector to verify the integrity of the pipeline involved in the excavation activity.

2. LG&E also contracted with Heath Consultants ("Heath") to locate all LG&E owned gas facilities. Specifically, Heath was required to electronically locate all LG&E owned buried gas transmission, distribution, and control facilities. It was LG&E's policy at this time to identify the approximate location of customer-owned service lines by locating the stop box and yellow markings painted along the curb or by using electronic locators. It was not LG&E's policy to temporarily mark customer-owned service lines.

3. On January 18, 1990, SPL was excavating in the public right-of-way in front of 3602 Taylorsville Road for the purpose of relocating a two inch steel gas main. The residence's original gas service line was located in a direct line with LG&E's curb box. The original gas service line had been disconnected and replaced with a new one which was routed to a different location at that residence. LG&E had no record of the replacement of the this service line.

4. The curb box at 3602 Taylorsville Road had been located and marked by Heath. Prior to beginning excavation activities, SPL located and staked the original customer owned service line, although it did not place paint markings on that line. SPL's standard practice was to then have the backhoe operator carefully remove the soil in three to four inch layers, while operating the backhoe at an appropriate low power setting until the service line is found. In accordance with this practice, SPL found the original service line and, believing that this was the active service line, proceeded with the excavation.

5. SPL accidentally disturbed the active service line by hooking the backhoe bucket under the line. After completing the excavation in the area of 3602 Taylorsville Road, the backhoe operator left the site without notifying the LG&E inspector that the customer service line had been disturbed. The LG&E inspector was present at the general job site at all times during the excavation activities, but was unaware of damage to the customer service line at that specific location.

6. Approximately two hours after the service line was disturbed, Mr. Marshall Wilson, a resident of 3602 Taylorsville Road, returned and entered through the front door. Gas from the damaged customer service line had migrated into the residence. Shortly after Mr. Wilson entered the house, an explosion occurred and he was seriously injured. The LG&E inspector in the area shut off the gas supply shortly after the accident. LG&E immediately commenced an investigation to determine the cause of the accident.

7. On January 18, 1990, LG&E had in effect a Damage Prevention Program, which is attached hereto as Exhibit A, aimed at preventing damage to LG&E's underground facilities and protecting the public from injury. At that time, it was not LG&E's practice under the Damage Prevention Program to actually place temporary markers such as paint markings on service lines which are owned by the customer rather than LG&E. Since the accident at 3602 Taylorsville Road, LG&E has modified its practices so that it now both locates and places temporary markers on customer service lines in excavation areas. In addition, LG&E now provides special instruction to its contractors regarding their obligation to notify LG&E of any disturbance to service lines owned by customers.

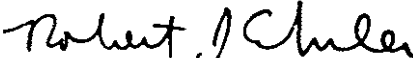
8. The Commission's April 2, 1991 Order found that a prima facie case had been made that LG&E violated 807 KAR 5:022, Section 13(8)(a) and Section 13(8)(b)5, by failing to carry out a written program which provides for the temporary marking of buried pipelines in the area of excavation activity to prevent damage to the pipelines, and violated 807 KAR 5:022, Section 13(8)(a) and Section 13(8)(b)6, by failing to carry out a written program for the frequent inspection of the service line at 3602 Taylorsville Road to verify its integrity during excavation activities. It is LG&E's position that there have been no violations of the aforementioned Commission regulations because customer service lines are not "pipelines" within the meaning of 807 KAR 5:022, Section 1(p), and consequently, such provisions are not applicable to customer service lines. LG&E further contends that, although

its inspector did not specifically perform an inspection at 3602 Taylorsville Road in the two hour interval after the customer service line was disturbed, a program of frequent inspection had been conducted for the job site.

9. The Staff maintains that the customer service line is a "service line," as defined in 807 KAR 5:022(1)(u), which is a distribution line that transports gas from a common source of supply to a customer meter or connects to a customer's piping, whichever is farther downstream, and a "distribution line" is defined by 807 KAR 5:022, Section 1(1)(e), as a pipeline, other than a gathering or transmission line. The Staff's position is that a customer service line transports gas from a main to the customer meter or customer's piping, whichever is farther downstream, and, therefore, the customer service line is a pipeline as defined by 807 KAR 5:022, Section 1(p).


If this Stipulation of Facts is not adopted in its entirety, LG&E and Staff reserve their respective rights to withdraw from it and require that a hearing be held on any and all matters involved herein, and in such event, the terms of this agreement shall not be deemed binding upon the parties hereto.

Both LG&E and Staff agree that the foregoing Stipulation of Facts is reasonable, is in the public interest, and should be adopted in its entirety by the Commission.



Robert J. Ehrler
Counsel for Louisville Gas
and Electric Company

7/23/91
Date



Richard G. Raff
Counsel for Staff of the
Public Service Commission
of Kentucky

7/31/91
Date

Effective April 1, 1983

11.0 DAMAGE PREVENTION PROGRAM

11.1 Purpose

The purpose of this program is to provide a framework to aid in avoiding damage to LG&E's buried pipelines by "excavation activities." "Excavation activities" includes excavating, boring, blasting, tunneling, backfilling, the removal of above ground structures by either explosive or mechanical means, and other earth moving operations.

11.2 Program Requirements

- (A) Maintain a current list of excavators who normally engage in excavation activities in the service area.
- (B) Provide notification to the public and to the excavators of the following:
 - (1) The programs existence and purpose.
 - (2) How to learn the location of underground pipelines before excavation activities begin.
- (C) Provide for receiving and recording notification of planned excavation activities.
- (D) Provide for response to notification of a planned excavation stating whether pipelines are in the area and if so describe the characteristic marking which will designate the location of the pipeline.
- (E) Provide temporary marking of buried pipelines in the area of excavation.
- (F) Provide for inspection of any pipeline the excavator believes may be damaged due to excavation activities.

11.3 Program Implementation

(A) Maintain a list of excavators who normally do work in the area of LG&E's pipelines. The list shall contain name and address of the company, person, or organization, the telephone number and the contact person's name. The list may contain the following types of excavators.

- (1) Utilities - electric, telephone, water, gas.
- (2) Pipeline companies
- (3) Government & municipal departments or authorities such as sewage, highway and roads, street lighting, traffic control, and permit personnel.
- (4) Contractors of all types:
 - (a) Plumbers
 - (b) Road and paving
 - (c) Demolition
 - (d) Pile driving
 - (e) Building and Development
 - (f) Dredging

The excavators list may be compiled from several sources:

- (1) Company approved contractor list
- (2) Existing one call system
- (3) Telephone directories
- (4) Contractor associations
- (5) Inquiries of utility, contractor & governmental organizations concerning appropriate contact persons and pertinent information about excavators in the service area.

(Note: This requirement is fulfilled by
subscribing to the one call system
Call Before 'U' Dig)

(B) Public notification of the Damage Prevention Program is accomplished in several ways.

- (1) The one call system provides the bulk of the notification with:

- (a) radio announcements
 - (b) advertisements in the yellow pages
 - (c) periodic mailing to current contractors
 - (d) participation in relevant seminars and speaking engagements
- (2) LG&E provides notification with:
- (a) bill inserts
 - (b) using 'BUD' stamps on construction drawings
- (C) The Company will accept phone calls as well as participate in Before 'U' Dig one call system to receive notification of pending excavation activities. If gas is not in the area in question, the appropriate drafting section will make a return call. If gas is in the area the notice is turned over to the appropriate construction section.
- (D) The Company shall provide temporary marking of pipelines should they be in the excavation area. This service should be done as far in advance of excavation as possible. The locating and marking will be handled by the appropriate construction section.
- (E) The Company also must provide for inspection of any pipeline which the excavator has reason to believe was damaged due to excavation activities including a leak survey in the case of blasting. This inspection would be handled by the appropriate construction section.
- (F) The Company will keep written record of call-ins by excavators and the Company responses. These records are kept by the responding sections.