

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PRODIGY CONSTRUCTION CORPORATION, INC.	)	CASE NO.
– ALLEGED VIOLATION OF UNDERGROUND	)	2019-00168
FACILITY DAMAGE PREVENTION ACT	)	

ORDER

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 Kentucky Underground Facility Damage Prevention Act (Act), KRS 367.4901 through KRS 367.4917, 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, 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.

On September 12, 2018, Louisville Gas and Electric Company reported to the Commission, pursuant to KRS 367.4909(4), excavation damage to its underground gas

pipeline, located at 9600 Loamborne Boulevard, Louisville, Kentucky.<sup>1</sup> Commission Staff (Staff) conducted an investigation and determined Prodigy Construction Corporation, Inc. (Prodigy), had violated the Kentucky Underground Facility Damage Prevention Act<sup>2</sup> by failing to hand-dig in the approximate location of the underground facility.

On November 19, 2018, Staff sent a Demand Letter to Prodigy in which it cited Prodigy for the violation and set forth a civil penalty of \$1,250, of which \$1,000 was suspended contingent upon Prodigy's completion of Damage Prevention training conducted at the Commission's offices. A copy of the Demand Letter is attached to this Order as Appendix A.

On January 11, 2019, the Commission received a check for \$250 from Prodigy.<sup>3</sup> However, no one from Prodigy attended Damage Prevention training held at the Commission's offices on February 4, 2019, and May 6, 2019.

The Commission initiated this proceeding following Prodigy's failure to attend either the February 4, 2019 or the May 6, 2019 training. Following a hearing held on August 9, 2019, the Commission entered an Order on August 22, 2019, indicating this case would be dismissed upon proof of Prodigy's attendance at Damage Prevention training at the Commission's offices.

On September 9, 2019, a representative of Prodigy attended Damage Prevention training at the Commission's offices.<sup>4</sup>

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<sup>1</sup> See Pipeline Damage Investigation Report, Incident # 20913, filed as an Appendix to Commission's July 9, 2019, Initiating Order.

<sup>2</sup> 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.

<sup>3</sup> Receipt, Jan. 11, 2019, Attached as Appendix B.

The Commission finds that Prodigy has addressed to its satisfaction the probable violations cited by Staff in connection with the September 12, 2019 incident. The Commission further finds that the Commission's investigation of the incident should be closed.

IT IS THEREFORE ORDERED that:

1. Prodigy's payment of Staff's proposed penalty and completion of remedial measures required by Staff is accepted and resolves all alleged violations of KRS 367.4901 through 367.4917 as well as any penalty that could be assessed under KRS 367.4917, arising out of the September 12, 2019 incident.

2. Prodigy's payment of Staff's proposed penalty and attendance at Damage Prevention Training is not an admission by Prodigy that it willfully violated any provision of KRS Chapter 367 or any administrative regulation promulgated pursuant thereto.

3. The Commission's investigation of the September 12, 2018 incident is closed and the hearing scheduled for October 25, 2019, is canceled.

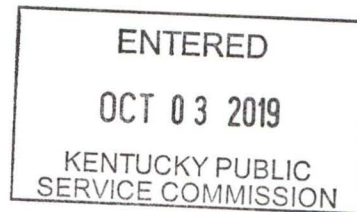
4. This case is closed and removed from the Commission's docket.

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<sup>4</sup> See Attendance Sheet, filed Sept. 12, 2019.

By the Commission

Commissioner Talina Mathews did not participate in this case.



ATTEST:

  
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Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2019-00168 DATED **OCT 03 2019**

TWO PAGES TO FOLLOW



Matthew G. Bevin  
Governor

Charles G. Snavelly  
Secretary  
Energy and Environment Cabinet

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**Public Service Commission**  
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Michael J. Schmitt  
Chairman

Robert Cicero  
Vice Chairman

Talina R. Mathews  
Commissioner

November 19, 2018

Mr. Sean Mattingly, Project Manager  
Prodigy Construction Corporation, Inc.  
11106 Decimal Drive  
Louisville, KY 40229

Re: Violation of Kentucky Underground Facility Damage Prevention Act  
Incident Number: **20913**

### **DEMAND FOR PENALTY ASSESSMENT AND REMEDIAL MEASURES**

Dear Mr. Mattingly:

The Kentucky Public Service Commission (Commission) received a report on September 12, 2018 regarding damage to a natural gas or hazardous liquid facility owned and/or operated by the Louisville Gas & Electric Company (LG&E). 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 Prodigy Construction Corporation (Prodigy) committed the following violation(s) of the Act:

#### **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.

### **CIVIL PENALTY**

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 within one year. 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 on its investigation of this matter, Staff has determined that Prodigy is subject to assessment of a civil

penalty for failing to comply with KRS 367.4911, first offense, plus an additional penalty for damaging underground facilities used to transport natural gas or hazardous liquid. Staff finds that Prodigy should be assessed a penalty in the total amount of \$1,250, but that \$1,000 of the penalty should be suspended contingent upon completion of the following remedial measures.

#### REMEDIAL MEASURES

- A representative of Prodigy shall attend a Damage Prevention training course to be held at the offices of the Commission, 211 Sower Blvd. in Frankfort, Kentucky, 40602 on February 4, 2019. The course will begin at 1:00 p.m. and conclude at 3:00 p.m.

If Prodigy does not wish to contest the proposed penalty, Prodigy should mail or deliver a cashier's check or money order made payable to the "**Kentucky State Treasurer**", within 30 days of the date of this letter, to:

Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40602

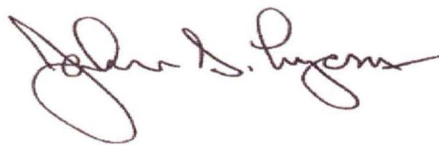
Please include the Incident Number **20913** on the cashier's check or money order submitted for payment.

Payment of the proposed civil penalty and completion of the remedial measure will satisfy and resolve any and all claims against Prodigy for any violation of the Act arising out of the August 15, 2018 incident. Prodigy's payment of the proposed civil penalty will not be considered an admission by Prodigy that it willfully violated any provision of the Act.

If Prodigy does not pay the proposed civil penalty within 30 days of the date of this letter, the Commission will institute an administrative proceeding against Prodigy and hold a formal hearing during which Prodigy will have an opportunity to present evidence and show cause why it should not be assessed penalties under KRS 367.4917 as a result of the August 14, 2018 incident.

If you have any questions regarding this demand for remedial measures and penalty assessment, please contact Michael Nantz, Damage Prevention Coordinator, Division of Inspections at 502-782-2602.

Sincerely



John S. Lyons  
Deputy Executive Director  
Kentucky Public Service Commission

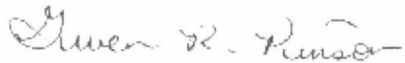
APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2019-00168 DATED **OCT 03 2019**

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIPT OF PAYMENT

This is to acknowledge receipt of check 1378 for \$1,000.00 payable to Kentucky State Treasurer on August 9, 2019 from PREMIER UNDERGROUND LLC. The check represents payment of penalty as set out in the Demand Letter of November 19, 2018 - Incident #20812.



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Gwen R. Pinson  
Executive Director  
Dated August 9, 2019



Sean Mattingly  
Prodigy Construction Corporation, Inc.  
11106 Decimal Drive  
Louisville, KENTUCKY 40229