

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DEREK ENGINEERING, INC.)	
)	
_____)	CASE NO.
)	2019-00235
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

ORDER

A hearing was held before the Kentucky Public Service Commission (PSC) on August 9, 2019 at its offices at 211 Sower Boulevard, Frankfort, Kentucky, concerning the allegation that Derek Engineering, Inc. (Derek), violated KRS 367.4911(1)(a) and KRS 367.4911(10) when, on February 15, 2019, at approximately 1:52 p.m., at 721 Gagel Avenue, Louisville, Kentucky, it conducted excavation activities within the approximate location of an underground facility using mechanized equipment and thereby caused damage to an underground gas service line owned and operated by Louisville Gas and Electric Company (LG&E) which was used to serve the public.

KRS 367.4911(1)(a) requires that:

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.

KRS 367.4911(1) provides that:

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.

Derek filed a response to the initiating order, which was received and filed in the record on August 2, 2019, and also attended the hearing at which it was represented by attorney, David B. Blandford, Esq.

Testimony at the hearing was provided by PSC inspector, John E. Gowins, and Project Manager, Russell L. Gates, provided testimony on behalf of Derek. The evidence established that on or about February 15, 2019, Mike Lawson, a Derek employee, operated excavation equipment at the location referred to above. Prior to the excavation, Derek contacted the applicable notification protection center to provide notice of its intended work and its work schedule as required by KRS 367.4911(1)(a). Subsequent to notification, LG&E marked the location of its underground natural gas service line. There was no indication that more than one natural gas line existed within the area extending three feet on either side of the marked line. Due to unsuitable weather conditions, the excavation in the area was delayed beyond the 21-day period in the initial notification that Derek provided to LG&E. Locate requests are valid for 21 calendar days from the date of the initial request pursuant to KRS 367.4911(2). Although the excavation, which damaged the natural gas service line, occurred beyond the 21-day initial notification, there had been no disturbance of the marked area during that time.

Utilizing hand-digging techniques as required by KRS 367.4911(10), Derek located an underground natural gas line within the approximate area marked by LG&E. Believing the service line found to be the natural gas line owned by LG&E, Derek commenced excavation work by means of mechanical equipment. In so doing, Derek made contact

with and damaged the natural gas service line of LG&E, which contained natural gas at the time it was damaged. The service line first encountered by Derek was owned by a private resident and, therefore, is not subject to the requirements of KRS 367.4901 et sec.

FINDINGS OF FACT

The testimony presented at the hearing as well as the exhibits filed in the record establishes that:

1. Derek was, at the time the damage occurred on February 15, 2019, an excavator as defined by KRS 367.4903(4) who caused damage to a natural gas service line by means of excavation as defined by KRS 367.4903(2)(6). The natural gas service line was an underground facility owned and operated by LG&E to serve the public. The service line contained natural gas at the time it was damaged by Derek.

2. Derek failed to call the Kentucky contact center (One Call Center or Protection Notification Center) to obtain information about the approximate location of the damaged natural gas service line not less than two (2) nor more than ten (10) full working days prior to commencing work as required by KRS 367.4911(1)(a). A One Call request was made more than twenty-one days prior to the excavation. Locate requests are only valid for 21 calendar days from the date of the initial request pursuant to KRS 367.4911(2). Although the excavation was conducted more than 21 calendar days from the initial request, the area previously marked by LG&E had not been disturbed and a photograph filed as PSC Exhibit 1 clearly shows the surface markings as they existed immediately prior to excavation.

3. Derek's excavation work was not emergency work within the scope of KRS 367.4907 or the definition of "Emergency" as defined by KRS 367.4903(7).

4. The damage to the natural gas service line was not a result of a violation of KRS 367.4911(1)(a). Although a second locate request was required by KRS 367.4911(2), the original markings that located the line remained in place at the time of the excavation. Derek had no reason to believe that in addition to the LG&E service line that a private gas line was located within three feet from it and reasonably believed upon encountering the privately owned line that in fact the LG&E service line had been found. Inasmuch as the original LG&E gas line markings were in place at the time of the excavation, the failure to request a second location would not have served in any way to prevent the damage that occurred or made such damage less likely.

5. After exposing the privately owned line, Derek employed the use of mechanical equipment to complete its excavation work and, in so doing, damaged the natural gas service line of LG&E, which was approximately three (3) feet away from the privately owned line. In damaging the LG&E service line by using mechanized equipment Derek violated KRS 367.4911(10) that requires hand-digging or other nonintrusive means to avoid damage to underground natural gas facilities within the approximate area marked by LG&E.

CONCLUSIONS OF LAW

1. Derek violated KRS 367.4911(1)(a) by failing to provide the operator of an underground facility serving the public with notification of his intended work and work schedule not less than two (2) nor more than ten (10) full working days prior to commencing work. Although Derek clearly violated this statutory requirement, for

reasons above stated, such violation was not a cause of the damage to the LG&E natural gas service line.

2. KRS 367.4917(6) provides that the Public Service Commission shall have statewide authority to enforce civil penalties provided for in the statute for any violation that results in damage to an underground facility used to transport gas or hazardous liquid subject to the Federal Pipeline safety laws as set out in 49 U.S.C. Section 60101 et sec. As the Commission has found that Derek's violation of KRS 367.4911(1)(a) was not a cause of the damage to the LG&E service line, no penalty should be assessed against it by reason of such violation.

3. Derek violated KRS 367.4911(10) by conducting a mechanical excavation within the approximate location of an underground natural gas service line owned and operated by LG&E to serve the public. Derek was required to conduct its excavation by hand-digging or use nonintrusive means to avoid damage to the underground facility in question. KRS 367.4917(1) provides that an excavator who fails to comply with any provision of KRS 367.4911 shall be guilty of endangering underground facilities and may be subject to a fine of no more than \$3,000 for the third offense. The incident, which occurred on February 15, 2019, was Derek's third offense and subjects it to a potential fine of \$3,000.

4. KRS 367.4917(4) provides that any person who violates any provision of the act that involves damage to a facility containing any flammable, toxic, corrosive, or hazardous material or results in the release of any flammable, toxic, corrosive, or hazardous material shall be subject to a fine not to exceed \$1,000 for each offense. The

service line at the time it was damaged by Derek contained natural gas, thereby subjecting Derek to a potential additional fine of \$1,000.

5. Derek is, by reason of its failure to comply with the aforementioned provisions of the underground facility damage prevention act as hereinbefore set out is subject to a maximum fine of \$4,000.

6. That an unknown privately owned gas service line was located approximately three feet from the marked LG&E service line is a fact to be considered in mitigation of any penalty to be assessed against Derek and should substantially reduce what otherwise might be expected to result in a maximum penalty assessment.

IT IS THEREFORE ORDERED that:

1. Derek is assessed a civil penalty of \$1,500 for violation of KRS 367.4911(10) and an additional penalty of \$1,000 for violation of KRS 367.4917(4).

2. Derek shall pay a total of \$2,500 within 30 days of the date of this order by cashier's check or money order payable to the Kentucky State Treasurer and mailed or delivered to the office of the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky 40602.

By the Commission

Commissioner Talina Mathews did not participate in this case.



ATTEST:


Executive Director

David B Blandford
Derek Engineering, Inc.
734 W. Main St.
Suite 200
Louisville, KENTUCKY 40202