

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MARCUS HENSLEY - ALLEGED VIOLATION OF)	
UNDERGROUND FACILITY DAMAGE)	CASE NO.
PREVENTION ACT)	2019-00236

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 Marcus Hensley (Mr. Hensley) violated KRS 367.4911(1)(a) and KRS 367.4911(10) on August 3, 2018 at 4830 Kollman Avenue, Taylor Mill, Kentucky, 41015 when, while operating a backhoe he severed a natural gas service line which was an underground facility owned and operated by Duke Energy Kentucky, Inc. to serve the public. The initiating order further alleged that Mr. Hensley conducted the aforementioned excavation operation without making a line location request to the One Call Center within twenty-one calendar days of the excavation and that he conducted excavation operations by means of a backhoe within the approximate location of the aforesaid underground facility when required by KRS 367.4911(10) to hand dig or use non-intrusive means when excavating in the area of the pipeline so as to avoid damage to it.

Mr. Hensley filed a response to the initiating order by document dated July 22, 2019 which was received and filed into the record on July 26, 2019. Mr. Hensley also attended the hearing and testified. Mr. Hensley admitted to the investigator during the

course of the investigation and during his testimony at the hearing that he had committed both violations.

FINDINGS OF FACT

The testimony presented at the hearing as well as the entire record including exhibits filed therein, establish that:

1. Mr. Hensley was at the time the damage occurred on August 3, 2018 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) and (6). The natural gas service line was an underground facility owned and operated by Duke Energy Kentucky, Inc. to serve the public. The service line contained natural gas at the time it was damaged by Hensley..

2. Mr. Hensley 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).

3. Mr. Hensley failed, when conducting excavation operations to hand dig or use non-intrusive means to avoid damage to the underground facility in violation of KRS 367.4911(10).

4. Mr. Hensley's excavation work was not emergency work within the scope of KRS 367.4907 or the definition of "Emergency" as defined in KRS 367.4903(7) and no exception to the call requirement is applicable to this case.

5. Mr. Hensley was offered the opportunity to mitigate his potential penalty of one thousand two hundred and fifty dollars (\$1,250) by making a payment to the Kentucky State Treasurer in the amount of one hundred dollars (\$100) and attending a damage prevention training course to be held at the offices of the PSC at 211 Sower Boulevard in Frankfort, Kentucky on February 4, 2019. Mr. Hensley made the payment of one hundred dollars (\$100) but failed to attend the February training and was provided a second opportunity to attend PSC training on May 6, 2019 but once again failed to do so. Mr. Hensley stated that illness and subsequent death of his mother caused him to miss these two opportunities for training.

6. The offer of mitigation of the potential maximum penalty involved both paying a reduced fine of one hundred dollars (\$100) and attending training and Mr. Hensley failed to fulfill its obligation by failing to attend training on two prior occasions.

7. Mr. Hensley's excavation work was not emergency work within the scope of KRS 367.4907 or the definition of "Emergency" as defined in KRS 367.4903(7) and no exception to the call requirement is applicable to this case.

8. There are no known mitigating factors which would merit the imposition of a fine less than the maximum provided by law. Mr. Hensley testified at the hearing that if given the opportunity to attend PSC sponsored training on September 9, 2019 at one o'clock p.m. that he would do so with the understanding that any penalty assessed against him in this proceeding over and above the amount previously paid by him would be vacated.

CONCLUSIONS OF LAW

1. Marcus Hensley violated the requirements of 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) working days prior to commencing work.

2. Marcus Hensley further violated the requirements of KRS 367.4911(10) when he undertook excavation activities using a backhoe within the approximate location of an underground facility, to wit, a natural gas service line owned and operated by Duke Energy Kentucky, Inc. to serve the public, rather than by hand digging or using non-intrusive means to avoid damage to the underground facility

3. 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 two hundred fifty dollars (\$250) for the first offense.

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 one thousand dollars (\$1,000) for each offense.

5. Marcus Hensley by reason of his failure to comply with the applicable provisions of Underground Facility Damage Prevention Act as hereinbefore set out, is subject to a maximum fine of one thousand two hundred fifty dollars (\$1,250) less the amount previously paid by him in the sum of one hundred dollars (\$100).

IT IS THEREFORE ORDERED that:

1. Marcus Hensley is assessed a fine of one thousand two hundred fifty dollars (\$1,250) less the sum of one hundred dollars (\$100) previously paid by him for violations of KRS 367.4911(10) for failure to hand dig or use non-intrusive means to avoid damage to the underground facility of Duke Energy Kentucky, Inc. and for his failure to provide Duke Energy Kentucky, Inc. with notification his intended work and work schedule not less than two (2) nor more than ten (10) working days prior to commencing work.

2. Marcus Hensley shall pay one thousand one hundred fifty dollars (\$1,150) by cashier's check or money order payable to the Kentucky State Treasurer and mailed or delivered to the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, KY 40602 within thirty (30) days of the date of this order.

3. The Kentucky Public Service Commission will hold a damage prevention training course at its offices located at 211 Sower Boulevard, Frankfort, KY on September 9, 2019 beginning at 1:00 o'clock p.m. and lasting until approximately 3:00 o'clock p.m. Eastern Daylight Time. If Marcus Hensley attends the above training course the additional one thousand one hundred fifty dollars (\$1,150) assessed against him in numerical paragraph 2 of this order will be vacated.

By the Commission



Commissioner Talina Mathews did not participate in the deliberations or decision concerning this case.

ATTEST:


Executive Director

Marcus Hensley
4830 Kollman Avenue
Taylor Mill, KENTUCKY 41015