

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CLEAR CHOICE FACILITY MAINTENANCE, LLC)	
)	
_____)	CASE NO.
)	2019-00279
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

ORDER

A hearing was held before the Kentucky Public Service Commission on September 27, 2019, at its offices at 211 Sower Boulevard, Frankfort, Kentucky, concerning the allegation that Clear Choice Facility Maintenance, LLC (Clear Choice), violated KRS 367.4911(1)(a) and KRS 367.4911(10) on September 30, 2018, at approximately 7:32 a.m., at 2753 Bentwood Drive, Independence, Kentucky, when 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 Duke Energy Kentucky, Inc. (Duke), which was used to serve the public.

Although Clear Choice was served with process and the initiating Order, it failed to file an answer to the allegations asserted against it and failed to appear at the scheduled hearing.

Testimony of the Investigator established that Clear Choice failed to notify Duke of its intended work and work schedule not less than two full working days nor more than ten full working days prior to commencing work. Clear Choice did not call or otherwise contact the Protection Notification Center and provide the above-required information and

caused the damage to the underground facility at the above location by contact with mechanized equipment.

FINDINGS OF FACT

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

1. Clear Choice was at the time the damage occurred on September 30, 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)(6). The natural gas service line was an underground facility owned and operated by Duke to serve the public. The service line contained natural gas at the time it was damaged by Clear Choice.

2. Clear Choice 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 nor more than ten full working days prior to commencing work as required by KRS 367.4911(1)(a).

3. Clear Choice'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.

4. Clear Choice 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).

5. There are no known mitigating factors that would merit the imposition of a fine less than the maximum provided by law. This violation is Clear Choice's first offense.

CONCLUSIONS OF LAW

1. Clear Choice violated the requirements of KRS 367.4911(1)(a) by failing to provide Duke, the operator of the underground facility serving the public, with notification of its intended work and work schedule not less than two nor more than ten full working days prior to commencing work.

2. 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 \$250 for the first offense.

3. KRS 367.4917(4) provides that any person who violates any provision of the Underground Facility Damage Prevention Act (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.

4. Clear Choice is, by reason of its failure to comply with the applicable provisions of the Act as hereinbefore set out, subject to a maximum fine of \$1,250.

IT IS THEREFORE ORDERED that:

1. Clear Choice Facility Maintenance is assessed a fine of \$1,250 (for violation of KRS 367.4911(10) and KRS 367.4911(1)(a)).

2. Clear Choice Facility Maintenance shall pay \$1,250 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.

THIS IS A FINAL AND APPEALABLE ORDER OF THE PUBLIC SERVICE COMMISSION.

An application for a rehearing may be filed with the Commission within 20 days after service of this Order as provided by KRS 278.400. Any appeal of this Order must be filed with the Franklin Circuit Court within 30 days after service of this Order or within 20 days after an application for rehearing has been denied by failure of the Commission to act or, within 20 days after service of the final Order, as set out in KRS 278.410.

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By the Commission

Commissioner Talina Mathews did not participate in this case.

ENTERED
OCT 02 2019
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2019-00279

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