

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MICHAEL KNOPF)	
)	
_____)	CASE NO.
)	2021-00352
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

ORDER

The Commission’s Division of Inspection (DOI) initiated this case against Michael Knopf on September 15, 2021,¹ for an alleged violation of the Underground Facility Damage Prevention Act (Act) set forth in KRS 367.4901 through KRS 367.4917. DOI alleged that on August 4, 2020, at 2515 Bradley Ave., Louisville, Kentucky 40217 Mr. Knopf violated KRS 367.4911(10) by “damag[ing] a correctly marked one-inch gas service [line] with a mini-track hoe [while] replacing a waterline.”² The Commission filed its proof of service upon Mr. Knopf on October 12, 2021.³ The United States Postal Service Return Receipt included with the opening Order sent to Mr. Knopf by certified mail was returned signed but undated.⁴ Mr. Knopf filed his Response on October 4, 2021,⁵ acknowledging the Commission’s jurisdiction over this matter and conceding that a gas line was damaged

¹ Opening Order (Ky. PSC Sept. 15, 2021).

² Opening Order (Ky. PSC Sept. 15, 2021), Appendix unnumbered page 2.

³ Notice of Filing (Ky. PSC Oct. 12, 2021).

⁴ See Notice of Filing (Ky. PSC Oct. 12, 2021).

⁵ Mr. Knopf’s Response (filed Oct. 4, 2021).

during his replacement of a water line on his property. However, in response, Mr. Knopf disputed that he violated the Act.⁶

The Commission conducted a formal hearing on October 29, 2021 at its offices located at 211 Sower Boulevard, Frankfort, Kentucky 40602. Mr. Knopf participated at the hearing by video conferencing technology. At the close of the hearing on October 29, 2021, DOI and Mr. Knopf agreed to submit this case to the Commission for a decision on the record.

TESTIMONY

The Commission first heard the testimony of DOI investigator, Mr. Eric Tout. Mr. Tout testified as to the contents of his Incident Report.⁷ DOI also introduced a copy of Mr. Tout's Incident Report.⁸ Mr. Tout acknowledged that Mr. Knopf requested a locate ticket of underground facilities located on his property prior to digging on his property.⁹ The locate ticket had not expired as of the time of the incident.¹⁰ As part of the Incident Report, DOI introduced one photograph showing yellow flags and yellow paint designating the location of the operator's natural gas line.¹¹ DOI introduced three additional photographs of Mr. Knopf's property after Mr. Knopf's excavation of the property.¹² Mr. Tout testified that the underground facility on Mr. Knopf's property was

⁶ Mr. Knopf's Response (filed Oct. 4, 2021).

⁷ Hearing Video Transcript (HVT) of the Oct. 29, 2021 Hearing at 09:42:00 a.m.

⁸ Notice of Filing (Ky. PSC Nov. 10, 2021), PSC DOI Exhibit 1.

⁹ HVT of the Oct. 29, 2021 Hearing at 09:46:00 a.m.

¹⁰ HVT of the Oct. 29, 2021 Hearing at 09:46:18 a.m.

¹¹ Notice of Filing (Ky. PSC Nov. 10, 2021), PSC DOI Exhibit 1, Attachment 3.

¹² Notice of Filing (Ky. PSC Nov. 10, 2021), PSC DOI Exhibit 1, Attachment 3.

damaged, and as a result of that damage, natural gas was released into the atmosphere.¹³

Mr. Knopf did not provide sworn testimony¹⁴ but did introduce two photographs showing where he replaced his water line. The photos were taken after he filled in the ground.¹⁵ Mr. Knopf also provided comment and argument before the Commission to support his case that he did not violate the Act. Notably, Mr. Knopf argued that the operator failed to sufficiently mark the location of its underground facility.¹⁶ Mr. Knopf stated that he did not see any markings behind (closer to the corner of his home) the pre-damage photograph.¹⁷ Mr. Knopf also noted that the post-damage photographs that DOI introduced did not accurately depict Mr. Knopf's property after he excavated his property to replace his water line. Rather, the excavated area appeared much larger because the operator of the underground facility had used their mechanized equipment to repair its damaged gas line before taking the photographs that DOI introduced at the hearing.¹⁸

LEGAL STANDARD

DOI has alleged that Mr. Knopf violated KRS 367.4911(10), which provided, at the time of the incident,¹⁹ in pertinent part:

¹³ HVT of the Oct. 29, 2021 Hearing at 09:45:20 a.m.

¹⁴ Mr. Knopf appeared before the Commission without counsel.

¹⁵ Notice of Filing (Ky. PSC Nov. 10, 2021), Knopf Exhibit 1.

¹⁶ HVT of the Oct. 29, 2021 Hearing at 10:09:20 a.m.

¹⁷ HVT of the Oct. 29, 2021 Hearing at 10:09:30 a.m.

¹⁸ HVT of the Oct. 29, 2021 Hearing at 10:14:50 a.m.

¹⁹ Our legislature has since amended this statute. However, the Commission is using the version of the statute in effect at the time of the incident.

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.

The version of the Act in effect at the time of this incident further defined “approximate location” as being:

For underground metallic facilities and underground nonmetallic facilities with metallic tracer wire, a distance not to exceed the combined width of the underground facility plus eighteen (18) inches measured from the outer edge of each side of the underground facility[.]²⁰

The Act also sets forth the civil penalties allowable for any violation of the Act. KRS 367.4917(1) provides that “[a]n excavator who fails to comply with any provision of KRS 367.4911 [...] may be subject to a civil penalty of two hundred fifty dollars (\$250) for the first violation[.]”

KRS 367.4917(4) allows for an additional penalty not to exceed \$1,000 for any violation that results in damage to an underground facility containing flammable, toxic, corrosive, or hazardous material or results in the release of flammable, toxic, corrosive, or hazardous material.

DISCUSSION AND FINDINGS

As referenced above, Mr. Knopf does not dispute that an underground facility was damaged.²¹ Rather, Mr. Knopf disputes that he violated KRS 367.4911(10) as alleged. Mr. Knopf timely requested a locate ticket from the 811 call center on June 27, 2020.²² This

²⁰ KRS 367.4903(11)(a).

²¹ Mr. Knopf’s Response (filed Oct. 4, 2021)(“Michael Knopf also does not dispute that the gas line was damaged.”).

²² HVT of the Oct. 29, 2021 Hearing at 09:46:18 a.m.

locate ticket was still valid as of the time of the incident on August 4, 2020. As the complainant, DOI bears the burden to demonstrate that Mr. Knopf violated the Act. The photographs introduced at the hearing do not establish with sufficient clarity that the damaged gas line was within 18 inches of the utility's yellow markings.

In considering the four photographs that DOI introduced at the hearing, the Commission finds that the photograph taken before the excavation does not sufficiently capture any of the gas line painted markings located close enough to the area that was subsequently damaged to support DOI's allegation that the approximate location of the gas line was properly marked, at least not enough to definitively state that Mr. Knopf violated the Act. The post damage photos include pylons that DOI alleges show where line markings were placed, but no yellow paint marking is evident in the photos, only white markings, and a yellow flag that does not appear in the pre-damage photo. Mr. Tout conceded during his testimony that he had no other photographs that depicted the gas line markings before August 4, 2020 incident.²³ The numbers on the ruler in the post-damage photo cannot be read. Accordingly, the Commission finds that DOI has not satisfied its burden to show that Mr. Knopf violated KRS 367.4911(10) at his property on August 4, 2020.

CONCLUSIONS OF LAW

1. Mr. Knopf did not violate the requirements of KRS 367.4911(10) by failing to hand-dig or use nonintrusive means to avoid damage to the underground facility on his property.

²³ HVT of the Oct. 29, 2021 Hearing at 10:01:20 a.m.

2. Mr. Knopf is not liable for an imposition of any fine or civil penalty as a matter of law because the Commission has not found that he violated KRS 367.4911(10).

IT IS THEREFORE ORDERED that:

1. This case against Mr. Knopf is hereby DISMISSED WITH PREJUDICE.
2. This case is closed and removed from the Commission's docket.

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.

PUBLIC SERVICE COMMISSION

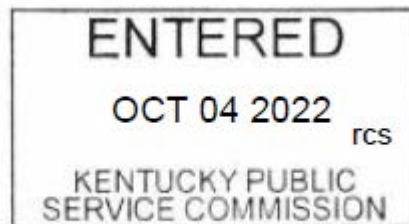


Chairman

Vice Chairman



Commissioner



ATTEST:



Executive Director

*Michael Knopf
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Louisville, KENTUCKY 40217