COMMONWEALTH OF KENTUCKY BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:		
WINTERS HEATING AND COOLING)))	CASE NO. 2022-00091
ALLEGED VIOLATION OF UNDERGROUND FACILITY DAMAGE PREVENTION ACT))	2022 00001

OPENING ORDER

Winters Heating and Cooling (Winters) has been named as a party to an investigation before the Kentucky Public Service Commission (Commission) for allegedly violating the Kentucky Underground Facility Damage Prevention Act (Act).¹

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 Act, 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,

¹ KRS 367.4901 through KRS 367.4917.

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.

Following receipt of a report of excavation damage to its underground gas pipeline from an operator, Commission Staff (Staff) conducted an investigation and prepared an Incident Report, a copy of which is attached to this Order as an Appendix. In its Incident Report, Staff cites Winters for violation of the following provision of the Act:

KRS 367.4911(1)(a) – 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.

Based on its review of the Incident Report and being otherwise sufficiently advised, the Commission finds prima facie evidence that Winters violated the Underground Facility Damage Prevention Act. The Commission further finds that a formal investigation into the excavation damage incident should be conducted.

IT IS THEREFORE ORDERED that:

- 1. Winters shall submit to the Commission, via email sent to PSCED@ky.gov with the case number of this proceeding in the subject line of the message, a written response to the allegations contained in the Staff Incident Report within 20 days of receipt of this Order.
- 2. Any partnership, corporation, or business entity (including a limited liability company) must be represented by an attorney licensed to practice law in Kentucky, and such representation includes the filing of papers with and appearances at hearings before the Commission.

3. An individual may submit a response to the allegations contained in the Staff Incident Report without the representation of an attorney.

4. The Staff Incident Report 43273 in the Appendix to this Order is made a part of the record in this case.

5. Please note that notice of a hearing to be held in this matter will be mailed to Winters once proof of service is received by the Commission. Parties who fail to appear after service will be subject to entry of a default judgment against them.

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PUBLIC SERVICE COMMISSION

Chairman

Vice Chailman

Commissioner

ENTERED

MAR 22 2022 rcs

KENTUCKY PUBLIC

ATTEST:

Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2022-00091 DATED MAR 22 2022

TWENTY PAGES TO FOLLOW

PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

Investigator Eric Tout Incident ID 43273 Investigation 8257

Incident Date 12/1/2020 1:51:00 PM Report Submitted 12/23/2020

Operator Information

Morgantown Natural Gas

Operator System Reported By Jerry Winters

Phone 2705267562 Email m.alfordmu@mediacombb.net

Incident Location 2577 Beaver Dam Rd Locate Ticket Number

Morgantown KY 42261

County Butler

Excavator Information

Excavator Jerry Winters Organization ID

Winters Heating And Cooling

Phone 270-543-5610 **Email**

Address 32 Matthew Crescent Rd Locate Ticket Number

Lewisburg KY 42256

Damage Report (DR) Summary

Excavation Within18"	Gas Or Hazar	dous Liquids	Type Of Equipment Used	Cost of	Amount
(Approximate Location)	Contained	Released		Damage	Billed
No call to 811	Yes	Yes	Mechanized/Not Specified	\$115.00	\$115.00

The Operator reports that the Excavator damaged a ¾ inch gas service with an excavator and failed to contact the KY Contact Center (811). The Operator reports that the Excavator indicated that he knew where the service was, due to previous markings, thought it was deeper and the Operator states the service was 16 inches deep.

The DR is included as Attachment 1.

INVESTIGATION

On 12/13/21 the Excavator, Winters Heating and Cooling Jerry Winters, stated that a Locate Ticket (LT) was obtained, but it expired before the incident date. Mr. Winters was receptive to attending the Damage Prevention Course and paying the reduced penalty of \$250.00.

VIOLATIONS

KRS 367.4911(1)(a) 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.

(2) Locate requests are valid for twenty-one (21) calendar days from the day of the initial request.

of Offences

(Including this incident)

Excavator	Last Offence Incident #	Last Offence Incident Date	Revert to 1st Offence Date (Last Offence Date +365 Days)
1 st	N/A	N/A	N/A



Gas Excavation Damage Report

Morgantown Natural Gas System

Submitted 12/23/2020 Incident ID: 43273 Set back to Edit Staff Edit Print (PDFForm.aspx?Rpt=GasInvestigation&IG=43273) Reported By: Name: Jerry Winters 2705267562 Phone: Email: m.alfordmu@mediacombb.net Gas Line Incident Occured: 12/1/2020 Date: Time: 1:51 PM Details: Reported Date: 12/10/2020 6:50 PM Incident Location Address: Location: Address: 2577 Beaver Dam Rd City: Morgantown State: $\mathsf{K}\mathsf{Y}$ County: Butler 42261 Zip: Confirm Code: Number of Customers out: Was gas or hazardous liquids contained in the underground facility? Was gas or hazardous liquids released into the 3/2020 atmosphere? Locate Request Ticket No.: Excavator: Contractor **Excavator Address:** First Name: Jerry Last Name: Winters Organization ID: Company: Winters Heating And Cooling Phone: 270-543-5610

Email:

Address: 32 Matthew Crescent Rd

City: Lewisburg

State: ΚY 42256 Zip:

Confirm Code:

Excavation Damage: No notification made to the One

Call Center

Description of Incident

excavator

Contractor cut 3/4 inch PE service line. Line was cut with excavator. Contractor, Jerry Winters, said they knew the line was there by old marks but thought line would be deeper. Line was 16 inches deep. There was no one call

notification.

Summary Information

12/23/2020

Contractor cut 3/4 inch PE service line. Line was cut with excavator.

Full details such as the Contractor, Jerry Winters, said they knew the line was there by old marks but cause thought line would be deeper. Line was 16 inches deep. There was no one

call notification.

Replaced 16" peace of 3/4" PE. Pressure checked line from cut to house. Extent of the damage

Cost of the damage \$115.00

Steps taken to prevent Told contractor that 811 one call was a state law and if he was digging in the re-occurance area again to notify 811 and Morgantown Utilities (natural gas)

Amount billed to \$115.00

https://psc.ky.gov/ORS/GasIncident.aspx?IG=43273&U=30012780

SUPPLEMENTAL PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

Investigator Eric Tout Incident ID 43273 Investigation 8257

Incident Date 12/1/2020 1:51:00 PM Report Submitted 12/23/2020

Operator Information

Morgantown Natural Gas

Operator System Reported By Jerry Winters

Phone 2705267562 Email m.alfordmu@mediacombb.net

Incident Location 2577 Beaver Dam Rd Locate Ticket Number

Morgantown KY 42261

County Butler

Excavator Information

Excavator Jerry Winters Organization ID

Winters Heating And Cooling

Phone 270-543-5610 **Email**

Address 32 Matthew Crescent Rd Locate Ticket Number

Lewisburg KY 42256

SUPPLEMENTAL INVESTIGATION

On 12/21/21 a Demand Letter was sent to the Excavator.

The Demand Letter is included as Attachment 2.

On 01/25/22 a Past Due and No Attendance Letter was sent to the Excavator which was delivered on 02/03/22.

The Past Due and No Attendance Letter is included as Attachment 3.

On 02/09/22 the Operator, Morgantown Natural Gas System's Mark Alford, stated that the Excavator was billed, but has not paid for the damage repairs. Mr. Alford provide the following documents:

- Gas Leak and Repair Report: Which have been outlined in Attachment 1 and the DR Summary.
- Two Photographs: Depicting the incident/damage location.

The documents are included as Attachment 4.



Andy Beshear Governor

Rebecca W. Goodman Secretary Energy and Environment Cabinet



Commonwealth of Kentucky

Public Service Commission
211 Sower Blvd.
P.O. Box 615

Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

Kent A. Chandler Chairman

Amy D. Cubbage Vice Chairman

Marianne Butler Commissioner

December 21, 2021

Jerry Winters
Winters Heating And Cooling
32 Matthew Crescent Rd.
Lewisburg KY 42256

Re: Violation of Kentucky Underground Facility Damage Prevention Act

Incident Number: 43273

DEMAND FOR PENALTY ASSESSMENT AND REMEDIAL MEASURES

Dear Mr. Winters:

The Kentucky Public Service Commission (Commission) received a report on December 23, 2021, regarding damage to a natural gas or hazardous liquid facility owned and/or operated by the Morgantown Natural Gas System. 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 Jerry Winters doing business as Winters Heating And Cooling committed the following violation(s) of the Act:

KRS 367.4911(1)(a) 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.

(2) Locate requests are valid for twenty-one (21) calendar days from the day of the initial request.

CIVIL PENALTY

Based on its investigation of this matter, Staff has determined that Mr. Winters should be assessed a penalty in the total amount of \$1,250, first offense, but that \$1,000 of the penalty should be suspended contingent upon Mr. Winters's completion of Damage Prevention training:

REMEDIAL MEASURE/TRAINING

A representative or Mr. Winters shall participate in a Damage Prevention training course. The Kentucky Public Service Commission will hold these classes online. Class dates have a limited capacity available on a first come-first served basis. To sign up for the class, go to

https://psc.ky.gov/classSignUp. You will need your incident number: 43273 and assigned key: 8257 to sign-up for one of the available training dates. Please understand that this training will be required as a contingency for the reduced penalty amount.

Within <u>30 days</u> of the date of this letter Mr. Winters should mail or deliver a cashier's check or money order **made payable to** the:

"Kentucky State Treasurer"

The check should be in the amount of \$250.00 mailed to: 211 Sower Boulevard, Frankfort, Kentucky 40602.

<u>Please include the Incident Number 43273 on the cashier's check or money order submitted</u> <u>for payment.</u>

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. 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.

Payment of the proposed civil penalty and completion of the remedial measure will satisfy and resolve any and all claims against Mr. Winters for any violation of the Act arising out of the December 1, 2021 incident. Mr. Winters's payment of the proposed civil penalty will not be considered an admission by Mr. Winters that it willfully violated any provision of the Act.

If Mr. Winters does not pay the proposed civil penalty within 30 days of the date of this letter, the Commission will institute an administrative proceeding against Mr. Winters and hold a formal hearing during which Mr. Winters will have an opportunity to present evidence.

If you have any questions regarding this demand for remedial measures and penalty assessment, please contact Ashley Rhodes, Division of Inspections at 502-782-2578.

Sincerely,

Nancy J. Vinsel General Counsel

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Attachment





Andy Beshear Governor

Rebecca W. Goodman Secretary Energy and Environment Cabinet



Commonwealth of Kentucky

Public Service Commission
211 Sower Blvd.
P.O. Box 615

Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

Kent A. Chandler Chairman

Amy D. Cubbage Vice Chairman

Marianne Butler Commissioner

January 25, 2022

Jerry Winters Winters Heating and Cooling 32 Matthew Crescent Rd. Lewisburg KY 42256

Re: Violation of Kentucky Underground Facility Damage Prevention Act

Incident Number: 43273

30 Days Past Due & No Attendance Remedial Measure/Training

Dear Mr. Winters:

Attached is the demand letter and investigation report for the above Incident. Our records indicate that a reduced penalty of \$250.00 **has not been paid** and **no representative** has attended the Remedial Measure/Training to receive this reduced penalty. Attendance is required for the penalty reduction to apply.

REMEDIAL MEASURE/TRAINING

A representative of Winters Heating and Cooling shall participate in a Damage Prevention training course. The Kentucky Public Service Commission will hold these classes online. Class dates have a limited capacity available on a first come-first served basis. To sign up for the class, go to https://psc.ky.gov/classSignUp. You will need your incident number, 43273 and this key 8257 to sign-up for one of the available training dates. Please understand that this training will be required as a contingency for the reduced penalty amount.

If we do not hear from you within 10 days from the date of this letter this matter will be referred to the Commission for an Administrative Hearing to be held at the Commission's offices.

Once a referral to the Commission is made, any partnership, corporation, or business entity (including a limited liability company) must be represented by an attorney licensed to practice law in Kentucky. Thank you for your prompt attention to this matter.

If you have any questions regarding this notice or if you find that these requirements have been met, please contact Ashley Rhodes, Division of Inspections at 502-782-2578.

Sincerely

Nancy J. Vinsel General Counsel

nancy of Vinsel





Mailer: Kentucky Public Service Commission

Date Produced: 02/07/2022

ConnectSuite Inc.:

The following is the delivery information for Certified Mail™/RRE item number 9214 8901 9403 8364 8058 62. Our records indicate that this item was delivered on 02/03/2022 at 12:55 p.m. in LEWISBURG,

KY 42256. The scanned image of the recipient information is provided below.

Signature of Recipient:

Gern Winters

Address of Recipient:

32 MAHMEN CrasiRA

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely, United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

This USPS proof of delivery is linked to the customers mail piece information on file as shown below:

JERRY WINTERS WINTERS HEATING AND COOLING 32 MATTHEW CRESCENT RD LEWISBURG KY 42256-8491

Customer Reference Number: C3194370.18577642

Return Reference Number Incident 43273



Return address:

KENTUCKY PUBLIC SERVICE COMMISSION 211 SOWER BLVD FRANKFORT KY 40602

MAILING DATE: 01/27/2022 DELIVERY DATE: 02/03/2022

Recipient address:

JERRY WINTERS
WINTERS HEATING AND COOLING
32 MATTHEW CRESCENT RD
LEWISBURG KY 42256-8491

USPS CERTIFIED MAIL



9214 8901 9403 8364 8058 62

USPS Tracking Label Number: 9214 8901 9403 8364 8058 62

USPS Tracking History	Location	Date / Time
PRE-SHIPMENT INFO SENT USPS AWAITS ITEM	FRANKFORT,KY 40602	01/27/2022 15:19
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OUT FOR DELIVERY	LEWISBURG,KY 42256	02/01/2022 07:40
NO AUTHORIZED RECIPIENT AVAILABLE	LEWISBURG,KY 42256	02/01/2022 12:42
DELIVERED LEFT WITH INDIVIDUAL	LEWISBURG,KY 42256	02/03/2022 12:55

CUSTOM 1:



Tout, Eric V (PSC)

From: Mark <m.alfordmu@mediacombb.net>
Sent: Wednesday, February 9, 2022 11:35 AM

To: Tout, Eric V (PSC) **Subject:** line cut info

Attachments: 2577 Beaver Dam Rd Pic. 2.JPG; IMG_0103.JPG; 2577 BD Rd Cut Line Report.pdf

CAUTION PDF attachments may contain links to malicious sites. Please contact the COT Service Desk <u>ServiceCorrespondence@ky.gov</u> for any assistance.

Attached is the information requested. We did bill for the cut but never received payment. If you need anything else let me know.

Mark Alford Morgantown Utilities Sent TO PSC 12-10-2020

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INVOICE

Morgantown Utilities

Water, Sewer, and Gas

INVOICE #120120 DATE: DECEMBER 23, 2020

PO Box 417-1308 South Main St Morgantown, KY 42261 Phone 270-526-3623 Fax 270-526-2093 morgantownutilities@mediacombb.net

Randell Gaskey, Superintendent

TO Jerry L. Winters DBA
Winters Heating & Cooling
32 Matthew Crescent Rd
Lewisburg, KY 42256-8491

LOCATION	JOB	PAYMENT TERMS	DUE DATE
2581 Beaver Dam Rd	Repair cut natural gas service lines	30 Days	January 23, 2021

QTY	DESCRIPTION	UNIT PRICE	LINE TOTAL
1 Ea.	¾ "Stab fitting	\$19.02 each	\$19.02
1.5 Ft	¾" IPS yellow gas tubing	.38 per ft	.40
2 Hrs.	2 Manpower	\$24.00 per Hr.	\$96.00
i gas locate w	as not called to 811 before the dig.	SUBTOTAL	\$115.42
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				-		-		-	PER	[]	Other	Iansinp De	riect	-	
Inform	ation:		-					-	-	LJ	Other			-	T
Pipe	Size	3/4"	(X)	1	()	2	()	-	3	()	1	1/1			
Pipe Mat	THE PERSON NAMED IN COLUMN	PE	(X)	Steel	DEPARTMENT OF THE OWNER, THE PARTY OF THE PA	-	1	EFV	3	Yes	[]	()	6	()	
Coating:		Enar	Anti-meniate Personal Property		Wra	pped	()	and the local division in which the local division is not the local division in the loca	lvar	nized	()	Other	[]		
Pipe Con	dition		Excelle		()	American description of the last	ood	()	A STATE OF THE PERSON NAMED IN	Fair	()	Poor	()	0	
Corrosi	on Infor	mation:						1	,	I QII	()	P001	()		
	Protection		Yes	[]	No	[]	Pipe S	oil Re	ead	ing			Wall -	Thickness	
													vvaii	I III CKII E 33	
Coupon 1	aken	Yes	[]	No	[]		Anode	es Ins	tall	ed #	0	Anod	е Туре		
External	Conditon		Excel	ent	()	G	ood	()	1	Fair	()	Danu	()	D'1 D 11	
					()	01	Jou	()		ган	()	Poor	()	Pit Depth	
nternal (Condition	PERSONAL DESIGNATION OF THE PERSON OF THE PE	Excel	lent	()	G	ood	()		Fair	()	Poor	()	Pit Depth	
	Repair C	oating 1						Repa	ir Co	pating 2					
Deth Cov	or	1	ft		1		0 - 11 0 4								
Soil Cond	STATE OF THE PERSON NAMED IN COLUMN	Sand	ft ()	-	-	particular designation of the least of the l	Soil Mo	-	-	Dry	(X)	Wet	()	Damp	()
WITH THE PERSON NAMED IN	Inform	WHEN THE RESIDENCE OF THE PARTY	()	Clay	(X)	Loam	()	Oth	er		0				
Repar Me	THE PROPERTY OF THE PROPERTY O	The second second second second	unling			D			-	40/04	10000				
repai ivie	etnoa:	Col	upling	S		Date I	Repaired	1	_	12/01	/2020	Repaired	By:	Troy L	awrence
Discriptio	n of Rep	air			Adde	d pie	ce of 3	/4 in	ch F	E with	count	ings. Air	tested li	ne at 100 p	ci
										_ ******	. 55401	991 711	tested II	lie at 100 p	31
t Infor	mation		Length	of Pip	e:	16 i	nches	Te	est T	уре			Test	Medium	Air
Test Start	Date	12/1,	/20	Time	2:44	1PM	Start Pr	essure	e	100	Psi	Pressure	e lost	0	
						-		_	-		. 51				

Test End Date	12/01/	2020	Time	3:00	PM End Pres		nd Pressure		lbs	Amount	Lost	0
Operating Press	ure	3	5	Psi	Re	ason fo	or loss:					
Other:	and the same of th						-				T	
Other Informait	on:	Winte	ers, sa	aid the	ey kne	ew the	line was	s there	by ol	cut with d marks k current o	out thou	or. Contractor, Jerry ght the line would be icket
Cleared By:							and the same of th			_		





Jerry Winters WINTERS HEATING AND COOLING 32 Matthew Crescent Rd. Lewisburg, KENTUCKY 42256