

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MICHAEL CULLUM)	
_____)	
ALLEGED VIOLATION OF UNDERGROUND)	CASE NO.
FACILITY DAMAGE PREVENTION ACT)	2019-00165
)	
)	

ORDER

Pursuant to KRS 278.495(2), the Kentucky Public Service Commission (Commission) has jurisdiction to regulate the safety of natural gas facilities in Kentucky and to enforce minimum federal pipeline safety standards. Under the Kentucky Underground Facility Damage Prevention Act (Act), KRS 367.4901 through KRS 367.4917, 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, 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 from an operator of a report of excavation damage to its underground gas pipeline, 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 Michael Cullum 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 Michael Cullum 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. Michael Cullum shall submit to the Commission a written response to the allegations contained in the Staff Incident Report within 20 days of the date of this Order.
2. Michael Cullum shall appear on September 27, 2019, at 9 a.m. Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard in Frankfort, Kentucky, for the purpose of presenting evidence concerning the alleged violation of the Underground Facility Damage Prevention Act, and showing cause why it should not be subject to the penalties prescribed in KRS 367.4917(1) and (4) for this alleged violation.

3. A person shall not file a paper or appear at a hearing on behalf of, or otherwise represent, a partnership, corporation, or business entity (including a limited liability company) or another person unless the person is an attorney licensed to practice law in Kentucky.

4. The September 27, 2019 hearing shall be recorded by videotape only.

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

6. This Order shall be served via certified mail, return receipt accepted, to Michael Cullum, 500 10th Avenue, Dayton, Kentucky, 41074.

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By the Commission

ENTERED
AUG 27 2019
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2019-00165 DATED **AUG 27 2019**

ONE PAGE TO FOLLOW

PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

KY PSC Investigator(s) John Lyons	Incident ID 20994
Incident Date 9/1/2018 12:11:00 PM	Report Submitted 9/28/2018 1:15:01 PM

OPERATOR INFORMATION

Operator Duke Energy Kentucky, Inc. Phone (513) 287-2594 Incident Location 500 10th St, Dayton, KY 500 10th Ave Dayton, KY 41074 Campbell	Reported By Laura Mate Email Laura.Mate@duke-energy.com Locate Ticket Number
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EXCAVATOR INFORMATION

Name of Excavator Michael Cullum Phone 859-866-3786 Excavator Address 500 10th Ave Dayton, KY 41074	Organization ID Email Locate Ticket Number
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Operator reports homeowner did not call 811 before digging in yard with bobcat and damaged 1" gas service line.

Investigator Lyons phoned Mr. Michael Cullum on February 26, 2019. An explanation of the reason for the call, the Public Service Commission's duty and authority is to investigate damages to natural gas pipelines and what Duke had reported to the Commission was provided to Mr. Cullum.

Mr. Cullum said that he had been in contact with Duke and that no one had ever told him about violations of the Underground Facility Damage Prevention Act (KRS 367.4901-4917). Investigator Lyons explained that only the operator had to report damages to the Commission and that Duke probably does not normally mention the Commission's roll in the matter. Further, the Commission had no part in the repair cost that Duke was charging him.

Mr. Cullum acknowledged that he had not called 811 for a line locate prior to the excavation which involved the removal of a wall built by the previous homeowner. Investigator Lyons explained that this was a violation of KRS 367 and that first time offender resolution options included: 1) payment of a partial civil penalty and attendance of a damage prevention training at the offices of the Commission; 2) payment of the full penalty amount; or 3) he could request an administrative hearing in front of the Commission if he disagreed with Commission staff's determination of the violation. Investigator Lyons inadvertently misstated the penalty amount as \$1,250 when it is actually \$500 for a homeowner. Option 1 would therefore be a partial payment of the \$500 penalty in the amount of \$100, \$400 which would be suspended upon attendance of the May 6, 2019, Damage Prevention training in Frankfort, Kentucky. Option 2 would be full payment of the \$500 penalty and no requirement to attend the training, with Option 3 he could request an administrative hearing in front of the Commission if he disagreed with Commission staff's determination of the violation. Mr. Cullum, requested that the options be put in a letter and sent to him, to which Commission staff agreed.

Violation(s)

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.

Michael Cullum
500 10th Avenue
Dayton, KENTUCKY 41074