

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENTUCKY FRONTIER GAS, LLC	)	CASE NOS.
	)	2019-00280
_____	)	2019-00309
	)	2019-00314
ALLEGED VIOLATION OF UNDERGROUND	)	2019-00315
FACILITY DAMAGE PREVENTION ACT	)	2019-00316
	)	2019-00317
	)	2019-00318
	)	2019-00319
	)	2019-00320
	)	2019-00321
	)	2019-00322
	)	2019-00323
	)	2019-00324

ORDER ON PETITION FOR REHEARING

Case Nos.
2019-00315
2019-00316
2019-00323
2019-00324

Kentucky Frontier Gas, LLC (Frontier) has requested rehearing and reconsideration of four of the above thirteen cases all of which were consolidated for hearing¹ and subsequently for entry of a final decision in one order.² The cases which are the subject of Frontier's petition for rehearing are 2019-00315, 2019-00316, 2019-00323 and 2019-00324. Frontier asserts that while these four cases alleged separate and distinct violations of the Underground Facility Damage Prevention Act (the "Act") that

¹ See Commission order dated November 6, 2019.

² See Commission orders dated February 11, 2020, and February 12, 2020.

in fact there were only two violations but four incidents of pipeline damage. The Commission in its final order assessed civil penalties in the thirteen consolidated cases in the total amount of \$37,000. This amount included \$3,000 in each of the above referenced cases which are the subject of Frontier's petition. Frontier claims that since there were only two violations of its duty to mark the location of its underground natural gas pipelines, that it should not have been assessed four civil penalties and that the total penalty assessment should be reduced by \$6,000.

A review of the records reveals that the Division of Inspections appears to have filed the four separate cases referred to above as a result of four separate incidents of excavation damage to two of Frontier's pipelines. The fact that the four incidents of damage resulted from two rather than four failures on Frontier's part to mark the location of its lines apparently went unnoticed at the time the cases were initiated. Frontier filed responses to each of the four cases but apparently failed to notice or at least point out in its pleading that there were only two rather than four line locate requests.³ Prior to the evidentiary hearing held in these cases on November 8, 2019, the parties entered into stipulations of fact upon which these and seven of the other cases were to be solely decided.⁴ Those stipulations did not inform the Commission of the facts raised for the first time in Frontier's petition for rehearing. Post hearing briefs filed by the parties did not address that issue.

³ See Frontier responses filed in Case Numbers 2019-00315, 2019, 2019-00316, 2019-00323, and 2019-00324.

⁴ Joint stipulation of fact filed in the record of each of the cases on November 8, 2019. See also agreement of counsel for the respective parties that the subject cases were to be decided solely upon the joint stipulations at V.T.H. at 9:10:53 a.m. to 9:11:15 a.m.

Frontier did not request a hearing to present additional evidence in support of its position, and the evidentiary record upon which the parties agreed a decision would be rendered supports the Commission's order and penalty assessment. An examination of the inspection reports applicable to each of the subject cases, however, supports Frontier's position that there were only two locate requests applicable to the four cases. The alleged violation of Frontier in each of the four cases was limited to its failure to mark the location of its pipelines as required by KRS 367.4909(6) and KRS 367.4909(9). The stipulation of agreed facts notwithstanding, Frontier should not be subjected to an excessive penalty by reason of an oversight which resulted in documents contained in the case file not being placed into evidence.

IT IS THEREFORE ORDERED as follows:

(1) Frontier's petition for rehearing in Cases 2019-00315, 2019-00316, 2019-00323, 2019-00324 is granted.

(2) Cases 2019-00315 and 2019-00316 represent only one violation of the Act rather than two violations. Cases 2019-00323 and 2019-00324 likewise represent only one rather than two separate violations of the Act.

(3) Case Number 2019-00316 and Case Number 2019-00324 are hereby dismissed with prejudice and penalty assessments levied against Frontier by the Commission's order of March 3, 2020 are hereby vacated.

(4) The Commission's order dated March 3, 2020 which assessed a civil penalty against Frontier in Case 2019-00315 in the amount of \$3,000 and a civil penalty against Frontier in Case Number 2019-00323 in the amount of \$3,000 is hereby affirmed.

(5) The total civil penalty assessment for violations of the Act in the eleven remaining cases is \$31,000.

(6) Frontier is hereby assessed a civil penalty of \$31,000 for its eleven violations of KRS 367.4909(6) and (9).

(7) Frontier shall pay the sum of \$31,000 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.

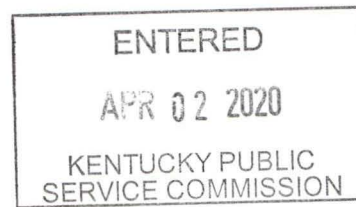
THIS IS A FINAL AND APPEALABLE ORDER OF THE PUBLIC SERVICE COMMISSION.

Any appeal of this Order must be filed with the Franklin Circuit Court within 20 days after service of this Order as set out in KRS 278.410.

(8) This case is closed and removed from the Commission's docket.

By the Commission

Commissioner Talina Mathews did not participate in this case.



ATTEST:

A handwritten signature in blue ink, consisting of stylized cursive letters, positioned above a horizontal line.

Executive Director

Case No. 2019-00280 et. al.

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