

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

EATON ASPHALT PAVING CO., INC.)	
)	
_____)	CASE NO.
)	2019-00335
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

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 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 Eaton Asphalt Paving Co., Inc. (Eaton Asphalt), for violation of the following provision of the Act:

KRS 367.4911(10) – 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

Based on its review of the Incident Report and being otherwise sufficiently advised, the Commission finds *prima facie* evidence that Eaton Asphalt 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. Eaton Asphalt shall submit to the Commission a written response to the allegations contained in the Staff Incident Report on or before October 21, 2019.
2. Eaton Asphalt shall appear on November 22, 2019, at 9 a.m., Eastern Standard 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 other person unless the person is an attorney licensed to practice law in Kentucky.

4. The November 22, 2019 hearing shall be recorded by videotape only.

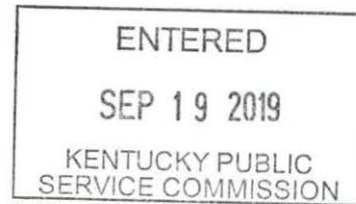
5. The Staff Incident Report in the Appendix to this Order is made a part of the record in this case.

6. This Order shall be served via certified mail, return receipt accepted, to Eaton Asphalt, c/o CT Corporation System, as Registered Agent for Service of Process, at 306 West Main Street, Suite 521, Frankfort, Kentucky 40601, and 136 East Frogtown Road, Walton, Kentucky 41094.

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By the Commission

Commissioner Talina Mathews did not participate in this case.



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2019-00335 DATED **SEP 19 2019**

TWO PAGES TO FOLLOW

PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

KY PSC Investigator(s) Eric V. Tout	Incident ID 21095
Incident Date 10/17/2018 12:43:00 PM	Report Submitted 10/30/2018 10:28:16 AM

OPERATOR INFORMATION

Operator Duke Energy Kentucky, Inc. Phone (513) 287-2594 Incident Location 28 Pentland Pl Fort Thomas, KY 41075 Campbell	Reported By Laura Mate Email Laura.Mate@duke-energy.com Locate Ticket Number Unknown
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EXCAVATOR INFORMATION

Name of Excavator Hellmann, Steve Phone 859-331-2303 Excavator Address Eaton Asphalt Paving Co., Inc. 136 E Frogtown Rd Walton, KY 41094	Organization ID 0081812 Email Locate Ticket Number
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Incident

The Operator reports that the Excavator damaged a one inch accurately marked plastic gas facility while doing road repairs with a bulldozer. The Operator states that the Excavator had a Locate Ticket Number, but at the time was unable to produce one.

Investigation

A request was made to the Protection Notification Center (811) to provide the Locate Ticket for the above noted Incident Location and Locate Ticket #1810050460 was provided indicating a valid ticket was issued to Eaton Asphalt Paving on 10/05/18.

On 06/03/19 the Excavator, Eaton Asphalt Paving Co., Travis Roberts (513-326-6751), stated that asphalt was being removed and damage occurred to the gas line. Mr. Roberts stated that the line was 2-2 ½ inches below the asphalt being removed. Mr. Roberts stated that potholing was completed, the gas line was located, but the line turned at a 90 degree at the curb making the line shallow and below the asphalt. Mr. Roberts stated that he would send photographs of the incident by the afternoon of 06/05/19.

On 06/03/19 the Operator, Duke Energy Laura Mate, provided photographs indicating the damaged gas line was deeper than 2-2½ inches the photographs depict the gas line at least 2-2½ feet deep.

On 06/07/19 Mr. Roberts, via email, was provided the photographs received from Duke Energy regarding the differences in the depth reported (2-2½ inches vs. 2-2½ feet deep).

On 06/12/19 a follow up call was made to Mr. Roberts regarding the 06/07/19 email resulting in a voice mail being left.

On 06/14/19 a follow-up email and call was made to Mr. Roberts regarding the 06/07/19 email resulting in Mr. Roberts stating that Eaton Asphalt Paving Co. will accept liability for damages.

Violation

KRS 367.4911 (10) - 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.

Eaton Asphalt Paving Co., Inc.
136 East Frogtown Road
, KENTUCKY 41094

CT Corporation System Register Agent
Kentucky Frontier Gas, LLC
306 W Main Street, Suite 512
Frankfort, KENTUCKY 40601