

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KEITH GUTTERMAN

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ALLEGED VIOLATION OF UNDERGROUND  
FACILITY DAMAGE PREVENTION ACT

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CASE NO.  
2019-00156

NOTICE OF FILING

Notice is given to all parties that the following materials have been filed into the record of this proceeding:

- The digital video recording of the evidentiary hearing conducted on February 28, 2020 in this proceeding;
- Certification of the accuracy and correctness of the digital video recording;
- A written log listing, inter alia, the date and time of where each witness' testimony begins and ends on the digital video recording of the evidentiary hearing conducted on February 28, 2020.

A copy of this Notice, the certification of the digital video record, and hearing log have been served upon all persons listed at the end of this Notice. Parties desiring to view the digital video recording of the hearing may do so at <https://youtu.be/KNWna-TimgE>.

Parties wishing an annotated digital video recording may submit a written request by electronic mail to [pscfilings@ky.gov](mailto:pscfilings@ky.gov). A minimal fee will be assessed for a copy of this recording.

Done at Frankfort, Kentucky, this 23<sup>rd</sup> day of June 2020.



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Kent A. Chandler  
Executive Director  
Public Service Commission of Kentucky

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

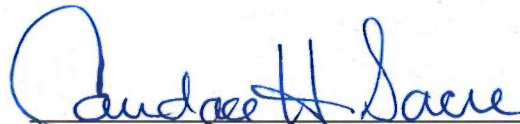
KEITH GUTTERMAN –	)	CASE NO.
ALLEGED VIOLATION OF UNDERGROUND	)	2019-00156
FACILITY DAMAGE PREVENTION ACT	)	


CERTIFICATION

I, Candace H. Sacre, hereby certify that:

1. The attached DVD contains a digital recording of the Formal Hearing conducted in the above-styled proceeding on February 28, 2020. The Formal Hearing Log is included with the recording on February 28, 2020;
2. I am responsible for the preparation of the digital recording;
3. The digital recording accurately and correctly depicts the Formal Hearing of February 28, 2020; and
4. The Formal Hearing Log attached to this Certificate accurately and correctly states the events that occurred at the Formal Hearing of February 28, 2020, and the time at which each occurred.

Signed this 12<sup>th</sup> day of June, 2020.

  
\_\_\_\_\_  
Candace H. Sacre  
Administrative Specialist III

  
\_\_\_\_\_  
Stephanie Schweighardt  
Notary Public State at Large  
Commission Expires: January 14, 2023  
ID#: 614400



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Date:	Type:	Location:	Department:
2/28/2020	Show Cause Hearing	Hearing Room 1	Hearing Room 1 (HR 1)

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Judge: Michael Schmit  
Clerk: Candace Sacre

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Event Time	Log Event	
9:04:06 AM	Session Started	
9:04:07 AM	Chairman Schmitt Note: Sacre, Candace	We're now on the record. This is the Kentucky Public Service Commission. My name is Michael Schmitt, and I am Chairman of the Commission.
9:04:13 AM	Chairman Schmitt Note: Sacre, Candace	Vice Chairman Robert Cicero is not here this morning. He will be participating, however, in the decision because he will either be watching this proceeding live over the internet or will be watching the vidoe sometime later before a decision is made.
9:04:31 AM	Chairman Schmitt Note: Sacre, Candace	Commissioner Talina Mathews has, as usual, disqualified herself from any consideration in these cases involving citations and possible penatlies under the Underground Facility Damage Prevention Act.
9:04:53 AM	Chairman Schmitt Note: Sacre, Candace	This morning, there are scheduled, I think, four hearings. Is that right, Counsel?
9:04:59 AM	Staff Atty Frederick PSC Note: Sacre, Candace	Yes, Your Honor.
9:05:01 AM	Chairman Schmitt Note: Sacre, Candace	Okay, so we'll call them in order. Before we start, is there anyone here on behalf of any of these hearings?
9:05:11 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Gutterman, okay. Your case was the first in terms of the numerical order, so we'll go ahead and proceed with that.
9:05:21 AM	Chairman Schmitt Note: Sacre, Candace	First is Case No. 2019-00156, Keith Gutterman. The allegation is that Mr. Gutterman allegedly violated the Underground Facility Damage Act by failing to notify Louisville Gas & Electric or the appropriate 8-1-1 folks not less than two nor more than ten full working days prior to commencing work.
9:06:02 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Gutterman, I understand you are here. Do you want to come on up and take a seat?
9:06:12 AM	Chairman Schmitt Note: Sacre, Candace	All right. Mr. Gutterman, I guess your case has been a set a couple of times, and, the last time, you didn't have enough notice, and so it was continued over until today.
9:06:24 AM	Chairman Schmitt Note: Sacre, Candace	Let me ask you this before we start. What is essentially your position here? Did you make the call or -

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9:06:37 AM	Chairman Schmitt Note: Sacre, Candace	I know, most of the time, when it's a homeowner, especially, on the first time around, the Staff, Division of Inspections, offers remediation, you know, a small fine, but requires somebody to go to the program that we have here. But, when that doesn't happen, the penalty can range from \$250 or less, if that is agreed to and you go to their remediation, up to potentially \$1250.
9:07:16 AM	Chairman Schmitt Note: Sacre, Candace	So let me ask you this, has the Division of Inspections offered you the opportunity to pay a smaller fine and go to the hour or hour and a half training we have here every month, which a lot of people ultimately go to under the same circumstances?
9:07:37 AM	Chairman Schmitt Note: Sacre, Candace	Well, before we start, I mean, if you didn't make the call, your chances of success are not very good.
9:07:48 AM	Chairman Schmitt Note: Sacre, Candace	Let me ask Counsel for the Division, to your knowledge, has Mr. Gutterman been offered any kind of remediation or reduction of the proposed penalty, and, if not, would you be willing to do that at this time if he comes to the next session we have here on digging and the Act?
9:08:11 AM	Staff Atty Frederick PSC Note: Sacre, Candace	Yes, Your Honor, the Division of Inspections would be open to that. The Investigation Report in this case does indicate that on October 3, 2018, Mr. Gutterman was offered that opportunity by the Investigator in this case.
9:08:27 AM	Chairman Schmitt Note: Sacre, Candace	And how much was the proposed penalty that was offered or would be offered to Mr. Gutterman?
9:08:36 AM	Staff Atty Frederick PSC Note: Sacre, Candace	The Division of Inspections records indicate that the penalty was \$500 with \$400 of that suspended contingent upon attendance at the training.
9:08:45 AM	Chairman Schmitt Note: Sacre, Candace	Is this Mr. Gutterman's first encounter with a gas line, or has there been a prior incident?
9:08:57 AM	Staff Atty Frederick PSC Note: Sacre, Candace	Your Honor, according to the Division of Inspections records, this is the first and only incident involving Mr. Gutterman and a gas line.
9:09:05 AM	Chairman Schmitt Note: Sacre, Candace	Okay, Mr. Gutterman, here's how this would work, if you're in agreement, and, if not, we can go ahead and hold a hearing and take some evidence.
9:09:19 AM	Chairman Schmitt Note: Sacre, Candace	But if the hearing is held and if it is found that you violated the dig law, your potential penalty is likely to be \$250 under one section of the statute, but the other is, if there's damage to the gas line and it had natural gas in it at the time, there's an enhanced penalty of an additional \$1,000, so the penalty would be \$1250.
9:09:53 AM	Chairman Schmitt Note: Sacre, Candace	On the other hand, if you agree to the remediation and pay a one-hundred-dollar fine or penalty and attend a training, basically, the fine goes to \$100, and that's it, but what you'll need to do, if you agree to that, is actually attend for an hour or hour and a half one of the sessions here, and they're scheduled through September, but the next one is - what? Monday?

9:10:25 AM	Staff Atty Frederick PSC Note: Sacre, Candace	Yes, Monday, March the 2nd.
9:10:27 AM	Chairman Schmitt Note: Sacre, Candace	- March 2nd. The one following that is April the 6th. I don't know. How far do you live from Frankfort?
9:10:39 AM	Chairman Schmitt Note: Sacre, Candace	Okay, well, can you attend March the 2nd? It's like one o'clock or something? Is that when the -
9:10:46 AM	Staff Atty Frederick PSC Note: Sacre, Candace	Yes, Your Honor, 1 to 3.
9:10:53 AM	Chairman Schmitt Note: Sacre, Candace	You could do April. Now, here's what would happen. Say, on the record, you agree with this, an order will be entered basically that would say that you would be responsible for \$1250, but if you come to this remediation training on April 6th at one o'clock and at that time pay a one-hundred-dollar penalty, that the rest of it is basically erased from the record.
9:11:25 AM	Chairman Schmitt Note: Sacre, Candace	Now, tell me on the record what is your preference? We can go forward with the hearing, or you can agree to basically entry of this order of \$1250 but reducing it to \$100 if you are here on April the 6th at one o'clock?
9:11:53 AM	Chairman Schmitt Note: Sacre, Candace	Well, it is true. I know from the time this law became effective in July, prior to that time, the Public Service Commission has had advertisements. I don't know if you listen to any of the U.K. ballgames on radio. But it is tough because you go out and you say, "Well, I'm gonna dig a hole and put in my mailbox" or put in a fence, and you don't think about it, and it can happen to anybody. That's why the proposed reduction in penalty, especially for homeowners, is warranted.
9:12:29 AM	Chairman Schmitt Note: Sacre, Candace	But, from now on, all you have to do, if you want to dig another hole, just call. If somebody doesn't come out there in two days, then it's on them and not on you if you hit something.
9:12:45 AM	Chairman Schmitt Note: Sacre, Candace	I don't know. I haven't looked at it. Is gardening an exception?
9:12:49 AM	Chairman Schmitt Note: Sacre, Candace	No, it's not, so if you've got a tiller, yeah, call especially if you hadn't dug where you dug before.
9:12:58 AM	Chairman Schmitt Note: Sacre, Candace	Okay. Is that acceptable to Counsel for Division of Inspections?
9:13:03 AM	Staff Atty Frederick PSC Note: Sacre, Candace	Yes, Your Honor, that is acceptable.
9:13:04 AM	Chairman Schmitt Note: Sacre, Candace	Okay, Mr. Gutterman, do we have a correct address for you where we can send you copies of this and let you know you need to be here on April the 6th?
9:13:16 AM	Chairman Schmitt Note: Sacre, Candace	Do we have his - as far as you know, do we have Mr. Gutterman's correct address?
9:13:20 AM	Staff Atty Frederick PSC Note: Sacre, Candace	Your Honor, I think we might need to ask Mr. Gutterman for his address. We've had some mail that's been returned, and I just wanted to double-check on the address.

9:13:29 AM	Chairman Schmitt Note: Sacre, Candace	What is your address, Mr. Gutterman?
9:13:39 AM	Chairman Schmitt Note: Sacre, Candace	Okay, thank you. Mr. Gutterman, I wish you well. I know spring is coming, and that's the time when people do improvements, but, if you're going to dig a hole, just call, and that exonerates you, unless they come out and mark it and then you use a piece of equipment and dig. I can't help you then.
9:13:58 AM	Chairman Schmitt Note: Sacre, Candace	If that's the case, then, Mr. Gutterman, an order will be entered as we discussed, and you're free to go if you'd like.
9:14:07 AM	Chairman Schmitt Note: Sacre, Candace	Okay, thank you.
9:14:28 AM	Session Ended	

Keith Gutterman  
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Shepherdsville, KENTUCKY 40165