

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENTUCKY FRONTIER GAS, LLC)
ALLEGED VIOLATION OF UNDERGROUND)
FACILITY DAMAGE PREVENTION ACT) CASE NO. 2019-00280

NOTICE OF FILING

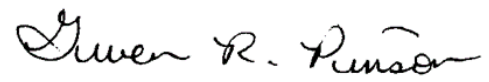
Notice is given to all parties that the following materials have been filed into the record of this proceeding:

- The digital video recording of the formal conference conducted on October 31, 2019 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 events begin and end on the digital video recording of the formal conference conducted on October 31, 2019.

A copy of this Notice, the certification of the digital video record, and formal conference log have been electronically served upon all persons listed at the end of this Notice.

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

Done at Frankfort, Kentucky, this 4th day of November 2019.

A handwritten signature in black ink that reads "Gwen R. Pinson". The signature is written in a cursive style with a large initial 'G' and a long, sweeping underline.

Gwen R. Pinson
Executive Director
Public Service Commission of Kentucky

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VIOLATION OF UNDERGROUND FACILITY)	2019-00280
DAMAGE PREVENTION ACT)	

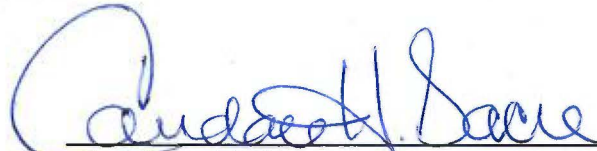
CERTIFICATION

I, Candace H. Sacre, hereby certify that:

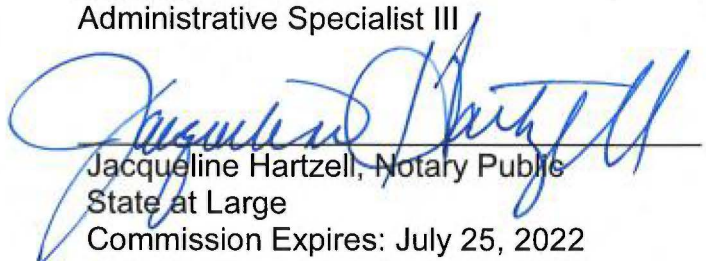
1. The attached DVD contains a digital recording of the Formal Conference conducted in the above-styled proceeding on October 31, 2019. The Formal Conference Log is included with the recording on October 31, 2019;
2. I am responsible for the preparation of the digital recording;
3. The digital recording accurately and correctly depicts the Formal Conference of October 31, 2019; and
4. The Formal Conference Log attached to this Certificate accurately and correctly states the events that occurred at the Formal Conference of October 31, 2019, and the time at which each occurred.

Signed this 1st day of November, 2019.





Candace H. Sacre
Administrative Specialist III



Jacqueline Hartzell, Notary Public
State at Large
Commission Expires: July 25, 2022
ID#: 605476



Damage Prevention Act - Kentucky Frontier Gas (Kentucky Frontier)

Date:	Type:	Location:	Department:
10/31/2019	Formal Conference	Hearing Room 1	Hearing Room 1 (HR 1)

Judge: Michael Schmitt
Clerk: Candace Sacre

Event Time	Log Event	
1:03:03 PM	Session Started	
1:03:06 PM	Chairman Schmitt Note: Sacre, Candace	We are now on the record. This is the Kentucky Public Service Commission. My name is Michael Schmitt. I am Chairman of the Commission, and I am the only Commissioner here today.
1:03:16 PM	Chairman Schmitt Note: Sacre, Candace	In all of the cases, the dig law cases, that we have had so far, Commissioner Talina Mathews has disqualified herself, so that leaves Commissioner Cicero and me. And, for Mr. Hughes, if you haven't seen any of the others, I have conducted all the hearings and, basically, am responsible for doing the drafting, and Commissioner Cicero then subsequently watches the hearings and, so far, has agreed with me, but that might not always be the case.
1:03:50 PM	Chairman Schmitt Note: Sacre, Candace	So I know we have this case, which I'll call right now or state for the record what it is. It is in the matter of Kentucky Frontier Gas, LLC, Case Nos. 2019-00280, 2019-00309, 2019-00314, 2019-00315, 2019-00316, 2019-00317, 2019-00318, 2019-00319, 2019-00320, 2019-00321, 2019-00322, 2019-00323, and 2019-00324, and all of these are alleged violations of KRS 367.4901, et seq.
1:04:33 PM	Chairman Schmitt Note: Sacre, Candace	So I looked at some of the files on these cases, and, obviously, they are thick, and there are 13 cases, and it seemed to me that we might be able to achieve some degree of continuity and, essentially, economy if some of these cases could be dealt with either by combining them solely for purposes of the hearing or determining what the issues were and how basically the hearing could be managed.
1:05:13 PM	Chairman Schmitt Note: Sacre, Candace	Now, in these hearings, we've done these a little differently than we usually do because the burden of proof is on the Division of Inspections and its counsel. So they would, Mr. Hughes, put their case on first, you'd have an opportunity to cross examine, put on your witnesses, they cross examine, and counsel has been given the opportunity to speak afterwards and then file a brief, if you'd like to do that. So that, essentially, will be the procedures.
1:05:48 PM	Chairman Schmitt Note: Sacre, Candace	But, before we go any further, for the benefit of the record, Mr. Hughes, would you please identify yourself, your client, and those who are with you on the telephone?

1:06:00 PM Atty John Hughes Kentucky Frontier
Note: Sacre, Candace Jack Hughes, I'm the Attorney for Kentucky Frontier Gas. On the line is Mike Harris, who is the company's Operational Manager in Prestonsburg; Heather Music, who is also in Prestonsburg; Steve Shute, who is the Managing Partner or Managing Member; and Bob Oxford, who is a Member.

1:06:20 PM Chairman Schmitt
Note: Sacre, Candace Okay, thank you, and for Staff, Mr. Park?

1:06:23 PM Staff Atty Park PSC
Note: Sacre, Candace Yes, Mr. Chairman. John Park, Staff Attorney with the Commission's Division of Inspections, and Tina Frederick, Staff Attorney with the Commission.

1:06:31 PM Chairman Schmitt
Note: Sacre, Candace So, Mr. Hughes, I guess much of this depends on what you think, essentially, about it. I hadn't spoken to anybody here. I've been out for the better part of two and a half weeks, one on vacation for a couple of weeks, and then I've had a family member with an illness. After I dictated the order from San Diego and it went out, and so I just saw this morning, when I got in, that Mr. Park, I guess, had filed a statement basically setting out what he thought what cases had some common issues. I don't know if you've seen that or not.

1:07:15 PM Atty Hughes Kentucky Frontier
Note: Sacre, Candace I saw it just before I got here.

1:07:17 PM Chairman Schmitt
Note: Sacre, Candace Okay. You'll have a chance to present orally. You weren't required to file a writing, so that's fine. But it seemed to me that some of the cases had some of the same issues – was there a valid dig ticket or not, was it ever issued, had it expired, and what are the circumstances surrounding, at least, some of those cases. And then the others were the extent to which the excavator was to be notified or that the area had to be marked, and so some have some unique differences. And I gather that there's a difference of opinion not only on what the law is or ought to be, but there are, it seems to me, distinct differences of facts in the case as opposed to what usually happens – somebody breaks a line – and it's fairly clear. Some are these, the issues are not clear. At least, they aren't clear to me.

1:08:25 PM Chairman Schmitt
Note: Sacre, Candace What's your thinking, if anything, Mr. Hughes?

1:08:29 PM Atty Hughes Kentucky Frontier
Note: Sacre, Candace From our perspective, there's two groups of cases, and you touched on both of them. One is the legitimacy of the 8-1-1 ticket, whether one was requested or whether it had been expired. The other is whether the company complied with the statute for indicating within a reasonable method the location of the pipelines that were plastic and had no tracer wire on them. So those are the two groups of cases, basically. The facts on the 8-1-1 cases are pretty consistent. They either had the ticket or it was expired.

1:09:26 PM Chairman Schmitt
Note: Sacre, Candace Well, I saw one, and I wasn't sure, and I might have made a mistake in reading the material, but maybe there was, correct me if I'm wrong, an issue of whether a ticket was issued for one location, but the digging was done somewhere else, and I don't know if that's right or not.

1:09:56 PM	Atty Hughes Kentucky Frontier Note: Sacre, Candace	So I was talking to Mr. Park before the hearing, if we wanted to, we could go through those 8-1-1 issues and see if we have some agreement or, at least, some consistency on our understanding of what those situations are, and maybe we could either agree on some of those or determine which ones need to be –
1:10:26 PM	Chairman Schmitt Note: Sacre, Candace	You might be able to stipulate facts, and, if not, it probably won't take – just due to the number of cases, it will take a little time, but testimony on those issues I wouldn't think would be very extensive. Mr. Park?
1:10:45 PM	Staff Atty Park PSC Note: Sacre, Candace	There are certain cases where there is a legal issue, a threshold legal issue, concerning the duty of the operator with respect to these non-metallic lines, and I think that's going to resolve a number of these incidents, the first category you referred to, Mr. Hughes. The second category, there are some factual wrinkles, but there's also a legal question of whether if an excavator calls in a dig ticket, a locate request, and the lines aren't marked, does the expiration of that 21-day period somehow cure the lack of a mark in response to the original dig ticket, so there is some legal issues there perhaps more so than factual.
1:11:27 PM	Chairman Schmitt Note: Sacre, Candace	Do you agree that's -
1:11:29 PM	Atty Hughes Kentucky Frontier Note: Sacre, Candace	Well, there's a question of – there's a question of –
1:11:32 PM	Chairman Schmitt Note: Sacre, Candace	You agree it's an issue? I'm sure you won't agree with his position.
1:11:36 PM	Atty Hughes Kentucky Frontier Note: Sacre, Candace	We agree it's primarily a legal issue. I disagree with him in the sense of a marking. The statute says that on plastic pipe that does not have tracer wire there is to be a reasonable location, but it doesn't say marked, so I think that's a statutory interpretation issue that we probably have among us. But I'm not sure that the Staff disputes that the company actually went out and located the facilities each time there was a request. There may be a dispute about whether they were marked, but I'm not sure there is a dispute that the company was on site in each of those instances and was able to say the pipe is within five feet rather than eighteen inches.
1:12:34 PM	Chairman Schmitt Note: Sacre, Candace	I understand. That's what I think makes these cases a little interesting and different than, at least, the 15 or so we've had here so far. Mr. Park, anything?
1:12:47 PM	Staff Atty Park PSC Note: Sacre, Candace	I would agree with Mr. Hughes. Perhaps, in advance of the hearing next week, we can try to segregate those cases for the Commission to present them. The ones where we don't have a dispute can just be presented.
1:13:00 PM	Chairman Schmitt Note: Sacre, Candace	I think that would be helpful. I mean, it would be helpful, probably, to each of you if there were instances where some of those matters could be stipulated. You wouldn't have to put on proof. Then it becomes a legal argument, more or less.
1:13:12 PM	Atty Hughes Kentucky Frontier Note: Sacre, Candace	That's right.

1:13:17 PM	Chairman Schmitt Note: Sacre, Candace	But I don't think anybody ought to be under any pressure to stipulate anything, if there's an issue that they've got. You're entitled to a hearing to present and have all of your evidence and say what you like. But if you do get in a position where you can stipulate something, I'd like for you to be able to file something so that I'll have an opportunity to read it, at least, sometime the afternoon before.
1:13:41 PM	Chairman Schmitt Note: Sacre, Candace	Mr. Hughes, do you foresee any serious evidentiary issues or anything in this case, anything unusual that might come up?
1:13:51 PM	Atty Hughes Frontier Note: Sacre, Candace	I think it's pretty straight forward, Your Honor. Our witness is going to be the Operations Manager that's going to say exactly what happened in each of these instances, and the record in the case already indicates the facts related to the 8-1-1 tickets, so, I mean, that's pretty clear. If there is a factual dispute, it's the process that the company went through to locate the lines for the contractor.
1:14:25 PM	Chairman Schmitt Note: Sacre, Candace	I agree. Somehow, in the final order, it'll be upon us, I guess, to make a decision and try to work through that. That's why I think that, probably, when the case is over, we would like to see maybe a short brief on the issue or something in writing that would articulate your position, and I know you advance, I think, the idea there ought to be some global way to resolve this, and I'd like to hear what you think about that.
1:15:00 PM	Chairman Schmitt Note: Sacre, Candace	Now, I know you've said, and I'm not sure how that comes down, but we say, "Well, my client has purchased equipment, and we've made these expenditures." You ought to be able to have some records or evidence that there is, at least, for what you've already purchased, what has been done, so we can see that.
1:15:21 PM	Atty Hughes Kentucky Frontier Note: Sacre, Candace	We have filed that in the record.
1:15:22 PM	Chairman Schmitt Note: Sacre, Candace	Okay, all right. I'm sorry. Yeah, I haven't – all right, okay.
1:15:23 PM	Atty Hughes Kentucky Frontier Note: Sacre, Candace	That was in a data response. Sure, yes.
1:15:27 PM	Chairman Schmitt Note: Sacre, Candace	All right, so your witnesses will be those two individuals?
1:15:33 PM	Atty Hughes Kentucky Frontier Note: Sacre, Candace	Three.
1:15:34 PM	Chairman Schmitt Note: Sacre, Candace	Three? Do you have any exhibits, photographs, or anything?
1:15:37 PM	Atty Hughes Kentucky Frontier Note: Sacre, Candace	We have photographs. Frankly, this came up fairly quickly.
1:15:40 PM	Chairman Schmitt Note: Sacre, Candace	I know. You weren't given - you deserve more opportunity than you got.
1:15:45 PM	Atty Hughes Kentucky Frontier Note: Sacre, Candace	I'm meeting with the group next Wednesday, so, if there is something I'll get to you as quickly as possible.
1:15:52 PM	Chairman Schmitt Note: Sacre, Candace	If you could, yeah, and I guess Mr. Park probably would enjoy seeing that, too, right? He'd like to see any photographs or things.

1:16:02 PM	Atty Hughes Kentucky Frontier Note: Sacre, Candace	Sure, all right.
1:16:07 PM	Chairman Schmitt Note: Sacre, Candace	We had one in here where, I guess, the operator claimed that the people had, after a storm, had tried to remove some vehicles from a building and a car lot and had damaged the gas meter and underground lines, and the people came in and said, "No, a billboard fell on the building before," so you get some strange facts. The guy said, "We never did anything; we just pulled the cars out of the collapsed building; we didn't touch the gas line."
1:16:36 PM	Atty Hughes Kentucky Frontier Note: Sacre, Candace	Uh-huh, yeah.
1:16:37 PM	Chairman Schmitt Note: Sacre, Candace	But, anyway, I know some of these cases get kind of interesting, but file, if you could, by Wednesday afternoon at three or four o'clock, so somehow, at least, during the evening, I'd like to become familiar with whatever you had in terms of an exhibit or something because I want to make the right ruling.
1:16:57 PM	Atty Hughes Kentucky Frontier Note: Sacre, Candace	Sure, as I stated, I think the only thing we might have if we have some photographs of the locations, but as I say, I haven't had a chance to dig into that yet.
1:17:08 PM	Chairman Schmitt Note: Sacre, Candace	Okay, all right. Okay, Mr. Park, anything?
1:17:11 PM	Staff Atty Park PSC Note: Sacre, Candace	Nothing else, Your Honor. Is the Motion to Deviation still outstanding, or has that Order been –
1:17:18 PM	Atty Hughes Kentucky Frontier Note: Sacre, Candace	Right, and I've got one other question on –
1:17:22 PM	Chairman Schmitt Note: Sacre, Candace	Well, I may have overlooked that, so what is your question?
1:17:26 PM	Atty Hughes Kentucky Frontier Note: Sacre, Candace	The first data request asked for copies of maps of our systems, and it's a huge roll of maps, and they asked for ten. I asked to file one copy and ten electronic copies.
1:17:44 PM	Chairman Schmitt Note: Sacre, Candace	And has that been filed? Well, just sustain your Motion. That'll be sustained.
1:17:49 PM	Atty Hughes Frontier Note: Sacre, Candace	Okay. In this most recent data request yesterday or day before, you asked for the GIS maps. Those are not paper maps; that's an electronic-style mapping system, so we don't have those on paper. We can give you the electronic version of that so you can dump it into your system and have it, but I was going to file a Motion for Deviation on that one to avoid filing a paper copy because the Order said file ten paper copies.
1:18:29 PM	Chairman Schmitt Note: Sacre, Candace	Okay. Do you have any objection to that, Mr. Park?
1:18:31 PM	Staff Atty Park PSC Note: Sacre, Candace	No, Chairman.
1:18:31 PM	Chairman Schmitt Note: Sacre, Candace	I'm taking it that you just made an oral Motion for Deviation, and that also will be sustained.
1:18:36 PM	Atty Hughes Kentucky Frontier Note: Sacre, Candace	Thank you.

1:18:39 PM	Chairman Schmitt Note: Sacre, Candace	Okay. Now, I won't make any ruling or order on consolidation and give you all the opportunity, if you choose, to say we're going to put this in one group, these four or five cases, however that may be. They're on was there a dig ticket or was it issued or wasn't it, and we admit that, for instance, the line wasn't marked, so the issue is whether the ticket was valid; whether, if the ticket was expired, what are the obligations, if any, of the operator to have done something when the excavator comes back and, in essence, violates the statute when he doesn't request another location. So however you'd like to proceed, I just thought it would be best to have some idea how we were going to do that rather than get into the middle of a hearing and have it all muddled up.
1:19:38 PM	Atty Hughes Kentucky Frontier Note: Sacre, Candace	Sure. I think there's a significant amount of these issues that can be lumped into one or two issues, legal issues and then just a couple of factual issues.
1:19:52 PM	Chairman Schmitt Note: Sacre, Candace	Okay. If you and Mr. Park will meet and see what you can do. Otherwise, what I think we would do, rather than make a separate record by calling, for instance, the Case No. 2019-00280, have everybody identify themselves, their witnesses, then put on proof for 20 minutes, then go off the record and come back, we ought to be able to open one hearing, and, basically, then go with the same people, not identify everything else, but as testimony began, say, about 2019-00309, we would identify that so would have the record but without having to recess and go off the record and come back. Do you agree with that?
1:20:37 PM	Atty Hughes Kentucky Frontier Note: Sacre, Candace	As I said, the facts in each case as they relate to what the company has done in each of these locate requests is virtually the same. I mean, there's a minor distinction here and there, but, for the most part, the facts are consistent in how we responded to the 8-1-1 tickets.
1:20:57 PM	Chairman Schmitt Note: Sacre, Candace	Would you have any objection, assuming you and Mr. Park can't agree or don't agree on all of it or enough to make any difference, if, at least, in the order when the case is proceeded, if we could do, like Mr. Park set out in his comments, that about some of these cases that had the same issues with the dig ticket, maybe there were five or six, we could just do those as a unit or together, back to back to back, so we could resolve or have all the testimony on those common issues in the same part of the hearing and the transcript? Does that make any -
1:21:45 PM	Atty Hughes Kentucky Frontier Note: Sacre, Candace	Sure.
1:21:46 PM	Chairman Schmitt Note: Sacre, Candace	Okay, all right. Is there anything else, Mr. Hughes?
1:21:50 PM	Atty Hughes Kentucky Frontier Note: Sacre, Candace	Well, I mean, I'd be glad to meet with the Staff right now to go over these -
1:21:55 PM	Chairman Schmitt Note: Sacre, Candace	Well, yeah, it's up to you, I mean, if you'd like to do that.
1:21:56 PM	Atty Hughes Kentucky Frontier Note: Sacre, Candace	- because I came prepared to do that. I thought that's what we were going to do today, so, if they have the time, we can go over and maybe get some of this resolved this afternoon.

1:22:07 PM	Chairman Schmitt Note: Sacre, Candace	All right, and, if you could, for instance, if either you prepare it or you want Mr. Park to prepare it, whatever, if there is anything to prepare in terms of an agreement or a stipulation, just make sure whoever does it, the other side gets it and signs off on it or sends an email that "I agree with this," so that we don't have an issue there.
1:22:27 PM	Atty Hughes Kentucky Frontier Note: Sacre, Candace	I mean, I would assume, if we stipulate, it would be a written document that's submitted into the record or, at least, read into the record at the beginning of the hearing.
1:22:41 PM	Chairman Schmitt Note: Sacre, Candace	Okay, all right, sure. There being nothing else, then this Conference is adjourned. Thank you.
1:22:49 PM	Session Paused	
1:22:53 PM	Session Ended	

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