

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 |

NOTICE OF FILING

Notice is given to all parties that the Commission's Division of Inspection has filed its List of Common Issues, Hearing Exhibits and Witnesses into the record in these proceedings.



Gwen R. Pinson
Executive Director
Public Service Commission
P.O. Box 615
Frankfort, Kentucky 40602

DATED OCT 31 2019

cc: Parties of Record

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 |

COMMISSION STAFF’S LIST OF COMMON ISSUES,
HEARING EXHIBITS AND WITNESSES

Pursuant to the Commission’s October 28, 2019 Order, the Commission’s Division of Inspections (DOI) submits this List of Common Issues, Hearing Exhibits and Witnesses.

A. Common Issues

1. *Valid dig ticket, no marking* – Kentucky Frontier Gas, LLC (Frontier) acknowledges that in each of the incidents that are the subject of Case Nos. 2019-00280, 2019-00314, 2019-00321, 2019-00323, and 2019-00324, there was a valid, unexpired dig ticket, and that Frontier did not mark the location of its line prior to the excavation activity that damaged the line.

Frontier contends that the small gas systems it has acquired in rural Kentucky came with limited maps and records and consist of PE pipe with no tracer wire. Frontier

contends that because of this, it cannot determine the precise location of all of its underground lines.

Issue – What is the scope of an operator’s duty to locate non-metallic pipe without tracer wire in an area of planned excavation work. In pertinent part, under KRS 367.4909(6) provides:

An operator shall, upon receiving an emergency locate request or a normal excavation locate request:

(a) Inform the excavator of the approximate location and description of any of the operator's facilities that may be damaged or pose a safety concern because of excavation or demolition; [and]

. . .

(c) Unless permanent facility markers are provided, provide temporary markings to inform the excavator of the ownership and approximate location of the underground facility. . . .

For nonmetallic pipe without metallic tracer wire, “the underground facility shall be located as accurately as possible from field location records and shall require notification from the operator of the inability to accurately locate the facility.”¹

Frontier stated that it informed the excavators involved in these incidents of the approximate location of its facilities in the area of intended excavation, but did not use paint or otherwise provide temporary marks because that would imply precision that did not exist.

It is the position of the Commission’s Division of Inspections (DOI) that an operator’s obligation under KRS 367.4909(6)(c) to provide temporary markers of its

¹ KRS 367.4903(11)(b).

facilities in the area of planned excavation is not relieved by the operator's inability to locate the lines electronically. DOI's position is based not only on the plain language of the statute, but also in the context of an operator's duty under 49 CFR § 192.614 to carry out a damage prevention program that provides for temporary marking of buried pipelines in the area of excavation activity.

2. *Expired dig ticket, no marking* – In the incidents that are the subject of Case Nos. 2019-00315, 2019-00316, 2019-00317, 2019-00319, 2019-00322, the excavator made a locate request, but the work that resulted in damage to an underground line occurred more than 21 days after the request was made. (Locate requests are only valid for 21 days.) In each incident, however, Frontier failed to provide temporary marking of its facilities when the locate request was made, and told the excavator that the line could not be located beyond its general location.

It is DOI's position that an excavator's failure to renew a locate request does not excuse an operator's failure to mark its facilities in response to the original, valid locate request. In these instances, Frontier advised the excavator of the general location of its facilities but indicated the lines could not be located precisely and did not provide temporary markings.

3. *Failure of excavator to make locate request at least 2 days prior to commencing work, no marking* – In the incident that is the subject of Case No. 2019-00309, the excavator did not wait 2 days after making a locate request to commence work. Frontier, however, responded to the request before the work started. Frontier informed the excavator of the general location of its facilities but indicated the lines could not be located precisely and did not provide temporary markings.

As with the case with expired dig tickets, it is DOI's position that an excavator's failure to comply with its obligations under the Damage Prevention Act does not excuse the operator's failure to provide temporary markings of its facilities when it responded to the locate request. It would have been pointless in these circumstances for the excavator to have waited another day for Frontier to fail to mark its lines.

B. Exhibits

For each case, DOI expects to offer into evidence:

1. Pipeline Damage Investigation Report for the incident.
2. Operator incident report.
3. Dig ticket, if locate request was made by the excavator.
4. Frontier's response to DOI summary of its investigation of damage excavation incidents.

C. Witnesses

DOI expects the following witnesses to testify:

1. John Gowins, DOI Investigator
2. John Lyons, Deputy Executive Director, PSC.
3. Jamey Keathley, Mountain Water District.
4. Doug Scalf, Mountain Water District.
5. Nicholas Burchett, Jigsaw Enterprises, LLC
6. Casey Duncan, Duncan Construction, LLC
7. Brad Lyon, L & L Excavation and Site Prep, Inc.



Gwen R. Pinson
Executive Director
Public Service Commission
P.O. Box 615
Frankfort, Kentucky 40602

DATED OCT 31 2019

cc: Parties of Record

CT Corporation System Register Agent
306 W Main Street, Suite 512
Frankfort, KENTUCKY 40601

*Honorable John N Hughes
Attorney at Law
124 West Todd Street
Frankfort, KENTUCKY 40601

*Kentucky Frontier Gas, LLC
4891 Independence Street, Suite 200
Wheat Ridge, CO 80033

*Kentucky Frontier Gas, LLC
Kentucky Frontier Gas, LLC
4891 Independence Street, Suite 200
Wheat Ridge, CO 80033