

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

KENTUCKY FRONTIER GAS, LLC)	
)	Case Nos.
<u>ALLEGED VIOLATION OF UNDERGROUND</u>)	2019-00315
FACILITY DAMAGE PREVENTION ACT)	2019-00316
		2019-00323
		2019-00324

PETITION FOR REHEARING

Kentucky Frontier Gas, LLC (Frontier) is the owner and operator of natural gas distribution systems that serve approximately 5,000 customers in 13 counties in eastern Kentucky. Frontier is a jurisdictional utility subject to the Commission's plenary authority under KRS Chapter 278. Pursuant to KRS 278.400 it requests a rehearing and reconsideration of the four cases cited in the caption, which were included in the order dated March 3, 2020.

1. Thirteen cases including the four captioned were initiated by the Commission's Division of Inspections as a result of alleged violations by Frontier of the Underground Facility Damage Prevention Act set out in KRS 367.4901 through KRS 367.4917.

2. The parties stipulated to certain facts of the cases and a hearing on limited arguments was held at the offices of the Commission in Frankfort, Kentucky on November 8, 2019.

3. In its Order dated March 3, 2020 the Commission held Frontier in violation on thirteen cases and directed Frontier to pay \$37,000 in fines to the Commission. The

finer included \$1000 in Case 2019-00280 and \$3000 each for the other twelve cases, including the four captioned herein.

4. In all cases, despite statutory violations by the excavator in some cases, the Commission held that "Frontier failed to mark the approximate location of any of its underground pipelines" (Par. 14), and that act is a violation is subject to a civil penalty.

5. Frontier will not contest the fines totaling \$25,000 in the nine other cases. However, Frontier contests the fines in these four cases for a very specific reason.

6. Case 2019-00315 involved a line hit in November 2018 on Abbott Creek Road near Prestonsburg. Case 2019-00316 was another line hit at the same address and location on the same day by the same excavator. Frontier had responded to an 811 locate some 25 days earlier at the same address to describe and locate Frontier's lines in detail to a different excavation contractor for this project. The second excavator had not called for an 811 locate as required for each entity.

The Commission held that Frontier "failed to mark" the first time out, regardless of when excavation would occur or any failure by a subcontractor and levied a fine of \$3,000 in both Cases ...315 and ...316. However, both of these line hits, at the same address on the same day by the same digger, were the subject of a *single* 811 ticket.

7. There cannot logically be 2 fines for the same "failure to mark" on a *single* 811 locate ticket. This is analogous to a state trooper issuing 2 fines to the same driver in the same traffic stop, for twice failing to signal a turn, both 200 feet and 100 feet before the turn.

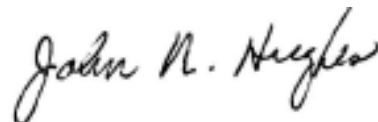
8. The same fact pattern applies to Cases 2019-00324 and 2019-00325. An excavator called in an 811 locate ticket in March 2019 to 625 Elk Creek Road near Salyersville. Frontier responded with precise locate information, but did not paint the

location of its lines. About 10 days later a different excavator showed up and hit Frontier's lines twice. Again, the Commission held that Frontier "failed to mark" the first time out and levied a fine of \$3,000 in both Cases ...323 and ...324. These Cases were both covered by the same locate ticket.

9. There is no new evidence presented here. The Commission's Division of Inspections has the facts and dates and locate tickets, all of which are part of the case record. Frontier does not request a hearing of these four cases, only reconsideration of the double fine for a single incident.

10. Frontier will pay \$25,000 in fines by the due date for the nine other cases in this proceeding. Frontier asserts that only \$6,000 of the \$12,000 in fines for the cases cited should be assessed based on the assertions of this petition.

Submitted By:



John N. Hughes
124 West Todd St.
Frankfort, KY 40601
502 227 7270
jnhughes@johnnhughespsc.com

Attorney for
Kentucky Frontier Gas, LLC