

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BOSS CONSTRUCTION, LLC)	
)	
_____)	CASE NO.
)	2021-00269
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

OPENING ORDER

Boss Construction, LLC (Boss Construction) has been named as a party to an investigation before the Kentucky Public Service Commission (Commission) for allegedly violating the Kentucky Underground Facility Damage Prevention Act (Act).¹

Pursuant to KRS 278.495(2), the Commission has jurisdiction to regulate the safety of natural gas facilities in Kentucky and to enforce minimum federal pipeline safety standards. Under the Act, 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,

¹ KRS 367.4901 through KRS 367.4917.

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 Boss Construction for violation of the following provision of the Act:

KRS 367.4911(8) – The excavator shall contact the protection notification center to request remarking two (2) working days in advance of the expiration of each twenty-one (21) day period while excavation or demolition continues

Based on its review of the Incident Report and being otherwise sufficiently advised, the Commission finds prima facie evidence that Boss Construction 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. Boss Construction shall submit to the Commission, via email sent to PSCED@ky.gov with the case number of this proceeding in the subject line of the message, a written response to the allegations contained in the Staff Incident Report within 20 days of receipt of this Order.

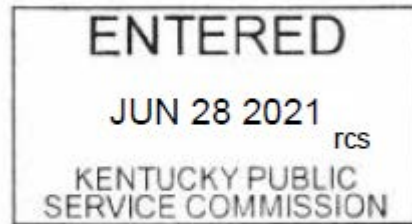
2. **Any partnership, corporation, or business entity (including a limited liability company) must be represented by an attorney licensed to practice law in Kentucky, and such representation includes the filing of papers with and appearances at hearings before the Commission.**

3. The Staff Incident Report 32502 in the Appendix to this Order is made a part of the record in this case.

4. Please note that notice of a hearing to be held in this matter will be mailed to Boss Construction once proof of service is received by the Commission. Parties who fail to appear after service will be subject to entry of a default judgment against them.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

By the Commission



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2021-00269 DATED JUN 28 2021

THIRTEEN PAGES TO FOLLOW

PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

KY PSC Investigator(s) John E. Gowins	Incident ID 32502
Incident Date 3/3/2020 5:13:00 PM	Report Submitted 3/30/2020 11:11:02 AM

OPERATOR INFORMATION

Operator Duke Energy Kentucky, Inc.	Reported By Laura Mate
Phone (513) 287-2594	Email Laura.Mate@duke-energy.com
Incident Location 720 Roberts, Newport 720 Roberts St Newport, KY 41071 Campbell	Locate Ticket Number No ticket

EXCAVATOR INFORMATION

Name of Excavator Ormes, Brian	Organization ID 0887375
Phone 859-628-2739	Email Bosselectricllc@gmail.com
Excavator Address Boss Construction, LLC 115 E 31st St Covington, KY 41015	Locate Ticket Number

INCIDENT

Locate Ticket Summary						
Ticket #	Valid	Initial Date	Expiration Date (21 calendar days from Initial date)	Incident Date	# of Days Expired	Within Scope of Excavation
None	N/A	N/A	N/A	3/3/20	N/A	N/A

Excavation Summary			
Excavation Within Tolerance Zone	Type Of Equipment Used	Cost of Damage (Per Operator)	Amount Billed (Excavator)
N/A	N/A	\$547.00	\$547.00

The operator reports that per damage investigator's notes: Mr. Ormes confirmed that they were performing excavation around the gas line, they did not hit it but during their excavation a rock fell onto the line in which damaged it.

INVESTIGATION

This would be the company's first violation.

November 6, 2020

- Called 859.628.2739, spoke to Mr. Ormes, who stated he called 811 twice and couldn't get Duke to mark the lines due to debris in the yard. While moving some rock one fell and broke the line. I requested that he find the numbers and gave him my phone number and email address.

November 13, 2020

- Called 859.628.2739, he asked that I send him the information on resolution, he stated the company was in bankruptcy and he needed to discuss with his attorney. He provided: bosselectricllc@gmail.com.
- Mr. Ormes indicated this was the second time they hit the line, and they were digging with a shovel.

November 23, 2020

- Received two dig tickets from 811, the first dated 12/9/19 and the second dated 12/16/19. The first dig ticket would have expired on 12/30/19, and the second would have expired on 1/6/20. The incident occurred on March 3, 2020, 57 days after the ticket expired.

VIOLATION

KRS 367.4911 (8) The excavator shall contact the protection notification center to request remarking two (2) working days in advance of the expiration of each twenty-one (21) day period while excavation or demolition.

Gas Excavation Damage Report

Duke Energy Kentucky, Inc.

Submitted 3/30/2020 Incident ID 32502

[Set back to Edit](#)
[Staff Edit](#)
[Print \(PDFForm.aspx?Rpt=GasInvestigation&IG=32502\)](#)

Reported By:

Name	Laura Mate
Phone	(513) 287-2594
Email	Laura.Mate@duke-energy.com

Gas Line Incident Occured:

Date	3/3/2020
Time	5:13 PM

Details:

Reported Date	3/30/2020 11:04 AM
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Incident Location Address:

Location	720 Roberts, Newport
Address	720 Roberts St
City	Newport
State	KY
County	Campbell
Zip	41071
Confirm Code	Y

Number of Customers out	1
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Was gas or hazardous liquids contained in the underground facility?	<input checked="" type="checkbox"/>
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Was gas or hazardous liquids released into the atmosphere?	<input checked="" type="checkbox"/>	*
		3/2020

Locate Request Ticket No.	No ticket
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Excavator	Contractor
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Excavator Address:

First Name	Brian
Last Name	Ormes
Organization ID	0887375
Company	Boss Construction, LLC
Phone	859-628-2739
Email	Bosselectricllc@gmail.com

Address 115 E 31st St
City Covington
State KY
Zip 41015
Confirm Code Y
Excavation Damage No notification made to the One Call Center

Description of Incident Per damage investigator's notes: Mr Ormes confirmed that they were performing excavation around the gas line, they did not hit it but during their excavation a rock fell onto the line in which damaged it.

Summary Information

3/30/2020

Full details such as the cause Excavator left the scene before the Duke Energy crew arrived to repair the damaged gas service, but later stated that a rock fell on the gas service while they were excavating, thus damaging the gas service.
Extent of the damage Gas service required repair.
Cost of the damage \$547.00
Steps taken to prevent re-occurrence
Amount billed to excavator \$547.00

Boss Construction, LLC

General Information

Organization Number	0887375
Name	Boss Construction, LLC
Profit or Non-Profit	P - Profit
Company Type	KLC - Kentucky Limited Liability Company
Status	I - Inactive
Standing	B - Bad
State	KY
File Date	5/15/2014 9:10:54 AM
Organization Date	5/15/2014 9:10:54 AM
Last Annual Report	6/26/2019
Principal Office	10 West 7th Street Newport, KY 41071
Managed By	Managers
Registered Agent	Brian Ormes 10 West 7th Street Newport, KY 41071

Current Officers

Member	Brian Ormes
Member	Bonnie Ormes
Member	Raephael Dell
Member	James Stidham

Individuals / Entities listed at time of formation

Organizer	BRIAN ORMES
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Images available online

Documents filed with the Office of the Secretary of State on September 15, 2004 or thereafter are available as scanned images or PDF documents. Documents filed prior to September 15, 2004 will become available as the images are created.

Administrative Dissolution	10/8/2020	1 page	PDF
Annual Report	6/26/2019	1 page	PDF
Annual Report	5/24/2018	1 page	PDF
Annual Report	4/26/2017	1 page	PDF
Annual Report Amendment	4/8/2016	1 page	PDF
Annual Report	3/25/2016	1 page	PDF
Annual Report	8/28/2015	1 page	PDF
Articles of Organization	5/15/2014 9:10:55 AM	1 page	PDF

Assumed Names

Activity History

Filing	File Date	Effective Date	Org. Referenced
Admin Dis. A. report not in	10/8/2020	10/8/2020	
Annual report	6/26/2019 9:25:57 AM	6/26/2019 9:25:57 AM	
Annual report	5/24/2018 4:36:16 PM	5/24/2018 4:36:16 PM	
Annual report	4/26/2017 12:31:33 PM	4/26/2017 12:31:33 PM	

Amendment to annual report	4/8/2016 10:49:59 AM	4/8/2016 10:49:59 AM
Annual report	3/25/2016 1:42:17 PM	3/25/2016 1:42:17 PM
Annual report	8/28/2015 4:56:29 PM	8/28/2015 4:56:29 PM
Add	5/15/2014 9:10:54 AM	5/15/2014 9:10:54 AM

Microfilmed Images

Gowins, John E (PSC)

From: Mate, Laura L <Laura.Mate@duke-energy.com>
Sent: Friday, November 6, 2020 8:12 AM
To: Gowins, John E (PSC)
Subject: RE: Incident # 32502
Attachments: 720 Roberts - Claim Support Package.pdf

****CAUTION** PDF attachments may contain links to malicious sites. Please contact the COT Service Desk ServiceCorrespondence@ky.gov for any assistance.**

The note from the Duke Energy first responder on this damage is "Found service C-M cut in half by Boss Construction". I don't see anything else that contradicts Boss's statement.

Boss Construction did not have a dig ticket, so they were charged for the repair costs.

Laura Mate', P.E.

Duke Energy

Regulatory Compliance
513-287-2594 Office
859-206-4639 Cell

From: Gowins, John E (PSC) <john.gowins@ky.gov>
Sent: Friday, November 6, 2020 7:22 AM
To: Mate, Laura L <Laura.Mate@duke-energy.com>
Subject: [EXTERNAL] Incident # 32502

***** CAUTION! EXTERNAL SENDER *** STOP & THINK!** Do you know and trust this sender? Were you expecting this email? Are grammar and spelling correct? Does the content make sense? If suspicious, then do not click links, open attachments or enter your ID or password.

Good morning Laura,

I was wondering if you had any additional information on this one.

Also, the excavator claimed a rock fell on the gas line. Did that sound reasonable based on the damage?

Thanks.

John E. Gowins
Consumer Complaints Investigator II
Division of Inspections
Kentucky Public Service Commission
502.782.2656 office
502.229.3058 cell



INVOICE



Please Make Check Payable to: Project Resources Group

Remit to: Project Resources Group, Inc. Attn. Damage Claims 5340 S. Quebec St., Suite 250S Greenwood Village, CO 80111 EIN: 84-1576547	Invoice # DK-435856 Date: March 30, 2020 Terms: Due Upon Receipt Conf. Code # E4XGA
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Responsible for Damages: Boss Construction LLC 10 W 7th St Newport, KY 41071
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Date & Address Where Damage Occurred: 3/3/2020 720 Roberts Newport, KY 41071

Labor and Materials Costs:		<u>Units</u>	<u>Unit Rate</u>	<u>Amount</u>
<i>Internal Labor Costs</i>				
	Service Mechanic B	1.00	\$72.31	\$72.31
	Mechanic Operator III	2.00	\$55.80	\$111.60
	Mechanic Operator I	2.00	\$73.51	\$147.02
	Emergency Call Out	1.00	\$175.00	\$175.00
	SRW Utility, Stake, Flat 4x4	1.00	\$3.39	\$3.39
	DRW 15-26K Utility, Stake, Flat, Dump 4x2	2.00	\$13.28	\$26.56
	Damage Investigation/Quality Control			<u>\$137.00</u>
	Sub-Total			\$672.88
<i>Material Costs</i>				
	Pipe	4.00	\$0.47	\$1.88
	Label	2.00	\$4.56	<u>\$9.12</u>
	Sub-Total			\$11.00
Invoice Total				<u>\$683.88</u> =====

Please Make Check Payable to: Project Resources Group

For questions regarding this invoice, please contact: Jed Floyd, (720) 500.9655 or via email jfloyd@prgconsulting.net

Damage Investigation Findings

PRG CLAIM:	DK-435856	
DATE OF OUTAGE:	03/03/2020	05:10 PM
NOTIFICATION:	03/03/2020	05:13 PM
ARRIVAL:	03/03/2020	06:28 PM
LOCATION:	720 Roberts, Newport, KY 41071	
LOCATE TICKET:	(none)	
INVESTIGATOR:	Christopher Hogle	

SUMMARY

On Tuesday, March 3, 2020, I was notified by Duke Energy about damage at 720 Roberts, Newport, KY 41071. Duke Energy's Underground Facilities were damaged at the above stated location by unsecured debris during excavation.



STATEMENTS

USIC / Fact Based Investigation Report Notification ID 22320200303023 - "Cause Factors No ticket / locate request"

Brian Ormes / Damaging Party / Boss Construction - "We are working on a retaining wall at the address the gas line was hit. We were digging around the gas line and a rock fell onto the line that we were working near and it broke."

DETERMINATION

It has been determined that on March 3rd, 2020 Boss Construction LLC was performing a retaining wall installation in the front residential yard of the above stated location. During this time, as the result of an excavation performed by Boss an unsecured rock came into contact with and thus damaged an underground natural gas facility owned by Duke Energy Company. Boss Construction LLC failed to request or obtain a locate ticket via One-Call center prior to excavation at the damage location as well as failed to properly expose and protect and underground utility facility.

Law(s): **KRS 367.4911**

Excavator or person responsible for excavation to notify operator of work schedule -- Responsibilities of excavator. (1) (a) Each excavator, or person responsible for an excavation, planning excavation or demolition work shall, not less than two (2) full working days nor more than ten (10) full working days prior to commencing work, notify each affected operator of the excavator's intended work and work schedule. Contacting the applicable protection notification centers shall satisfy this requirement. Excavator or person responsible for excavation to notify operator of work schedule -- Responsibilities of excavator.



ROOT CAUSE

Failure to notify the One Call Center



435856 - Investigator1.jpeg



435856 - Investigator2.jpeg



435856 - Investigator3.jpeg



435856 - Investigator4.jpeg



435856 - Investigator5.jpeg



435856 - Investigator6.jpeg



435856 - Investigator7.jpeg

Gowins, John E (PSC)

From: Gowins, John E (PSC)
Sent: Friday, November 13, 2020 9:58 AM
To: vosselectricllc@gmail.com
Subject: Incidents # 32502 and 32503
Attachments: Original_Duke Report_32502.pdf; Original_Duke Report_32503.pdf

Mr. Ormes,

To resolve the first violation, the options are:

1. A \$1,250 civil penalty reduced to \$250 provided a representative of your company participates in a damage prevention training to be held in the future online;
2. No one has to participate in the training, but the full \$1,250 civil penalty would be due; or
3. You may request a hearing before the commissioners.

To resolve the second violation, we cannot reduce the penalty and the amount is \$2,000.

I have included the original Duke reports.

We agreed that you would contact me next week.

John E. Gowins
Consumer Complaints Investigator II
Division of Inspections
Kentucky Public Service Commission
502.782.2656 office
502.229.3058 cell

*Brian Ormes
Boss Construction, LLC
10 West 7th Street
Newport, KENTUCKY 41071