

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KEVIN PHILLIPS DBA PHILLIPS)	
WATERPROOFING & CONCRETE)	
_____)	CASE NO.
)	2021-00356
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

OPENING ORDER

Kevin Phillips DBA Phillips Waterproofing & Concrete (Mr. Phillips) 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

¹ KRS 367.4901 through KRS 367.4917.

results in damage to an underground facility containing any flammable, toxic, corrosive, 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 Mr. Phillips for violation of the following provision of the Act:

KRS 367.4911(10) – When excavation or demolition is necessary within the approximate location of the underground facility, the excavator shall hand-dig or use nonintrusive means to avoid damage to the underground facility.

Based on its review of the Incident Report and being otherwise sufficiently advised, the Commission finds prima facie evidence that Mr. Phillips 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. Mr. Phillips 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. An individual may submit a response to the allegations contained in the Staff Incident Report without the representation of an attorney.

4. The Staff Incident Report 43400 in the Appendix to this Order is made a part of the record in this case.

5. **Please note that notice of a hearing to be held in this matter will be mailed to Mr. Phillips 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.**

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By the Commission

Commissioner Marianne Butler did not participate in the deliberations or decision concerning this case.



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2021-00356 DATED SEP 15 2021

SIX PAGES TO FOLLOW

PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

KY PSC Investigator(s) Eric V. Tout Incident Date 1/19/2021 1:00:00 PM	Incident ID 43400 Report Submitted 2/16/2021 12:00:54 PM	Key 7302
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OPERATOR INFORMATION

Operator Louisville Gas and Electric Company (LG&E) Phone (502) 364-8281 Incident Location 4253 Northwestern Pkwy Louisville, KY 40212 Jefferson	Reported By Mike Jones Email Mike.Jones@lge-KU.com Locate Ticket Number 21001150796
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EXCAVATOR INFORMATION

Name of Excavator Crady, Terry Phone 502-963-2314 Excavator Address Phillips Waterproofing and Concrete 8880 S Preston Hwy Lebanon Junction, KY 40150	Organization ID Email Locate Ticket Number
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INCIDENT

The Operator reports that the Excavator damaged an accurately marked ½ inch gas service with a mini-excavator replacing an existing retaining wall.

The Damage Report (DR) is included as Attachment 1.

DR Summary

Excavation Within 18" (Approximate Location)	Type Of Equipment Used	Cost of Damage	Amount Billed
Yes	Mechanized / Mini-excavator	\$630.00	\$0.00

Locate Ticket (LT) Summary

Ticket #	Valid	Initial Date	Expiration Date (21 calendar days from Initial date)	Incident Date	# of Days Expired	Within Scope of Excavation
21001150796	No/ Per 811 extra digits	N/A	N/A	N/A	N/A	N/A
2101150796	Yes	01/15/21	02/05/21	01/19/21	0	Yes

The Locate Ticket(s) is/are included as Attachment 2.

INVESTIGATION

On 03/10/21 the Operator, LG&E's Mike Jones, provided the correct LT 2101150796.

On 03/11/21 an attempt to contact the Excavator at 502-963-2314 resulted in a message stating this is Phillips Waterproofing the voice mailbox is full.

On 03/18/21 the Excavator, Phillips Waterproofing and Concrete's Kevin Phillips, stated that Phillips Waterproofing and Concrete would not dispute LG&E's account of the events outlined in the DR. Mr. Phillips was receptive to attending the Damage Prevention Course and paying the reduced penalty of \$250.00.

VIOLATION

KRS 367.4911

(10) When excavation or demolition is necessary within the approximate location of the underground facility, the excavator shall hand-dig or use nonintrusive means to avoid damage to the underground facility.

of Offences (Including this incident)

Excavator	Last Offence Incident #	Last Offence Incident Date	Last Offence Resolved Date
1 st	N/A	N/A	N/A

Attachment 1

Gas Excavation Damage Report

Louisville Gas and Electric Company

Submitted 2/16/2021 Incident ID 43400

[Set back to Edit](#)[Staff Edit](#)[Print \(PDFForm.aspx?Rpt=GasInvestigation&IG=43400\)](#)

Reported By:

Name	Mike Jones
Phone	(502) 364-8281
Email	Mike Jones@lge-KU.com

Gas Line Incident Occured:

Date	1/19/2021
Time	1:00 PM

Details:

Reported Date	2/16/2021 11:58 AM
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Incident Location Address:

Location	
Address	4253 Northwestern Pkwy
City	Louisville
State	KY
County	Jefferson
Zip	40212
Confirm Code	Y
Number of Customers out	1
Was gas or hazardous liquids contained in the underground facility?	<input checked="" type="checkbox"/>
Was gas or hazardous liquids released into the atmosphere?	<input checked="" type="checkbox"/> *
	3/2020
Locate Request Ticket No.	21001150796
Excavator	Contractor

Excavator Address:

First Name	Terry
Last Name	Crady
Organization ID	
Company	Phillips Waterproofing
Phone	502-963-2314
Email	

Address	8880 S Preston Hwy
City	Lebanon Junction
State	KY
Zip	40150
Confirm Code	Y
Excavation Damage	Failure to maintain clearance

Description of Incident ?Excavator damaged service digging within tolerance zone.

Summary Information

2/16/2021

Full details such as the cause	Phillips Waterproofing was hired by the homeowner, Nancy Warfield, to replace the existing retaining wall on the west side of the home at 4253 Northwestern Pkwy. While digging with a mini-excavator, Phillips Waterproofing cut an accurately marked 1/2" IPS Plastic gas service (#121218E), also damaging the tracer wire. The gas line was damaged on the customer side of the gas service at an approximate depth of 36", approximately 21' off the gas meter. Phillips Waterproofing crew leader on-site, Terry Crady, agreed the gas line was marked accurately prior to digging. Mr. Crady stated he tried to stay 6-8" off the markings thinking this would give him enough room to dig without damaging the gas line. Mr. Crady stated he was not aware there were any laws or guidelines stating he could not dig within 18" of the yellow locate markings.
Extent of the damage	Broken 1/2" plastic gas service
Cost of the damage	\$630.00
Steps taken to prevent re-occurrence	I gave the Phillips crew on-site several pieces of 811 literature, as well as my business card. I also explained to the crew the 811 laws, specifically about the 18" tolerance zone and what steps to take to insure they stay damage free in the future. I called Kevin Phillips, the company owner, directly after the damage as he was not present on-site. I spoke with Kevin in length about 811 laws and I also emailed Kevin some 811 contractor links.
Amount billed to excavator	\$0.00

Attachment 2

NORMAL NOTICE

Ticket : 2101150796 Date: 01/15/2021 Time: 11:49 Oper: TONEILL Chan:000

State: KY Cnty: JEFFERSON City: LOUISVILLE
Subdivision:

Address : 4253
Street : NORTHWESTERN PKWY
Cross 1 : BANK ST
Location: LOOK FOR THE EXISITING RETAINING WALL - STANDING ON NORTHWESTERN PKWY
FACING THE PROPERTY - LOCATE ENTIRE FRONT AND LEFT SIDES OF PROPERTY
:
Boundary: n 38.274313 s 38.271445 w -85.818827 e -85.814235

Work type : REPAIR RETAINING WALL
Done for : NANCY WARFIELD
Start date: 01/20/2021 Time: 12:00 Hours notice: 120/47 Priority: NORM
Ug/Oh/Both: U Blasting: NO Emergency: N
Duration : N/A Depth: 7 FEET

Company : PHILLIPS WATERPROOFING Type: CONT
Co addr : 175 RAINBOW DR
City : COLUMBIA State: KY Zip: 42728
Caller : KEVIN PHILLIPS Phone: (502)963-2314
Contact : KEVIN PHILLIPS - CELL Phone:
Mobile : (502)963-2314
Email : PHILLIPSWATERPROOFING@GMAIL.COM

Submitted date: 01/15/2021 Time: 11:49
Members: 0002 0004 0006 0139

*Kevin Phillips
Phillips Waterproofing & Concrete
8880 S Preston Hwy
Lebanon Junction, KENTUCKY 40150