

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BOSS CONSTRUCTION, LLC)	
)	
_____)	CASE NO.
)	2021-00270
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

ORDER

A hearing was held before the Kentucky Public Service Commission (Commission) on August 19, 2021, at its offices at 211 Sower Boulevard, Frankfort, Kentucky, concerning the allegation that Boss Construction, LLC (Boss Construction) violated KRS 367.4911(8) when, on March 4, 2020, at approximately 10 a.m. at 720 Roberts Street, Newport Kentucky, it conducted excavation activities within the approximate location of an underground facility containing natural gas after failing to request remarking of the excavation area by contacting the Protection Notification Center (811) at least two working days in advance of the expiration of a prior locate request. Boss Construction subsequently damaged an underground gas service line owned and operated by Duke Energy Kentucky, Inc. (Duke Kentucky) to serve the public.

FINDINGS OF FACT

The testimony presented at the hearing as well as the exhibits filed in the record establish that:

1. Boss Construction, at the time the damage occurred on March 4, 2020, was an excavator as defined by KRS 367.4903(4) who caused damage to a natural gas service line by means of excavation as defined by KRS 367.4903(2) and (6).

2. The natural gas service line that was damaged was an underground facility owned and operated by Duke Kentucky to serve the public.

3. The service line contained natural gas at the time it was damaged by Boss Construction; natural gas was released into the atmosphere, and one customer temporarily lost service due to the damage.

4. Boss Construction failed to call 811 and request remarking of the excavation area at least two working days prior to the expiration of a prior locate request made on December 16, 2019, as required by KRS 367.4911(8).

5. Boss Construction's excavation work was not emergency work within the scope of KRS 367.4907 or the definition of "Emergency" as defined in KRS 367.4903(7), and no exception to the call requirement is applicable to this case.

6. There are no known mitigating factors which would merit the imposition of a civil penalty less than the maximum provided by law. This violation is Boss Construction's second violation of KRS 367.4901 through KRS 367.4917.

CONCLUSIONS OF LAW

1. Boss Construction violated KRS 367.4911(8) in that it failed to call 811 and request remarking of the excavation area at least two working days prior to the expiration of a prior locate request made on December 16, 2019.

2. As a consequence, Boss construction damaged the gas line in the course of excavation activity.

3. Boss Construction is subject to a civil penalty in the amount of \$2,000 for this violation by operation of KRS 367.4917(1) and KRS 367.4917(4).

IT IS THEREFORE ORDERED that:

1. Boss Construction is assessed a civil penalty of \$2,000 for violation of KRS 367.4911(8).

2. Boss Construction shall pay \$2,000 within 30 days of the date of this Order by cashier's check or money order payable to the Kentucky State Treasurer and mailed or delivered to the office of the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky 40602.

3. This case is closed and removed from the Commission's docket.

THIS IS A FINAL AND APPEALABLE ORDER OF THE PUBLIC SERVICE COMMISSION.

An application for a rehearing may be filed with the Commission within 20 days after service of this Order as provided by KRS 278.400. Any appeal of this Order must be filed with the Franklin Circuit Court within 30 days after service of this Order or within 20 days after an application for rehearing has been denied by failure of the Commission to act or, within 20 days after service of the final Order, as set out in KRS 278.410.

PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman



Commissioner



ATTEST:



Executive Director

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