

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

INITIATING ORDER FOR ALLEGED 811 VIOLATION OF THE KENTUCKY
UNDERGROUND FACILITY DAMAGE PREVENTION ACT

(Se proporciona la traducción al español de este documento como anexo/apéndice C.)

Kevin Phillips d/b/a Phillips Waterproofing and Concrete (Phillips Waterproofing and Concrete) 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 A hearing in this case shall take place on October 27, 2023.

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

¹ KRS 367.4901 through KRS 367.4917.

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, 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 Appendix A. In its Incident Report, Staff cites Phillips Waterproofing and Concrete 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 Phillips Waterproofing and Concrete violated the Underground Facility Damage Prevention Act. The Commission further finds that a formal investigation into the excavation damage incident shall be conducted.

IT IS THEREFORE ORDERED that:

1. Phillips Waterproofing and Concrete 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. Phillips Waterproofing and Concrete shall appear on October 27, 2023, at 9 a.m. Eastern Daylight Time, in the Richard Raff Hearing Room of the Commission's offices at 211 Sower Boulevard in Frankfort, Kentucky, for the purpose of presenting

evidence concerning the alleged violation of the Underground Facility Damage Prevention Act.

3. The October 27, 2023 hearing shall be conducted via video conferencing.

4. Phillips Waterproofing and Concrete shall attend the hearing by using the following link: <https://meet.goto.com/pscformalhearing/psc-damage-prevention-hearing>; information and instructions are attached to this Order as Appendix B.

5. Phillips Waterproofing and Concrete shall notify the Commission at least ten days prior to the hearing if Phillips Waterproofing and Concrete is unable to appear by video conferencing and will therefore appear in person.

6. **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.**

7. An individual may submit a response to the allegations contained in the Staff Incident Report without the representation of an attorney.

8. The Staff Incident Report 43400, attached to this Order as Appendix A, is made a part of the record in this case.

9. The October 27, 2023 hearing shall be recorded by video only.

10. **Please note parties who fail to appear after service will be subject to entry of a default judgment against them.**

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

*by KAC
w/ permission*

Commissioner

ENTERED

SEP 22 2023 rcs

KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2021-00356 DATED SEP 22 2023

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

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?

Was gas or hazardous liquids released into the atmosphere? *

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

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2021-00356 DATED SEP 22 2023

Information and Instructions for Hearing

You are required to attend a formal hearing with the Kentucky Public Service Commission. Please note the hearing is scheduled in the **Eastern Time Zone**, and the hearing date and time are on the Order that accompanied these instructions.

You are **strongly encouraged** to download the GoToMeeting app now and be ready for your hearing. If you cannot appear via video using this app, at least ten days prior to your scheduled hearing you must call the Commission's offices at the number provided below. You will receive instructions on appearing in person in the Richard Raff Hearing Room of the Commission's offices at 211 Sower Boulevard in Frankfort, Kentucky at the time and date of your scheduled hearing.

Please direct any questions to Andrea Wise, Commission Division of Inspections: Andrea.Wise@ky.gov or 502-782-2656.

To download the GoToMeeting app go to:

<https://global.gotomeeting.com/install/258846301>

On the day of your hearing using your computer, tablet, or video enabled smartphone. **Access the proceeding at:**

<https://meet.goto.com/pscformalhearing/psc-damage-prevention-hearing>

More information about using GoToMeeting can be found at:

GoToMeeting - Attendee Quick Start

<https://www.youtube.com/embed/8VaHHVP0FCU?autoplay=1&showinfo=0&controls=0&rel=0>

GoToMeeting - How to Join a Meeting

https://www.youtube.com/embed/Ojl1q_sPrP0?autoplay=1&showinfo=0&controls=0&rel=0

Technical Requirements for Using GoToMeeting

Operating System:

Windows 7 – Windows 10
Mac OS X 10.9 (Mavericks) – mac OS Big Sur (11)
Linux/Ubuntu (Web App only)
Google Chrome OS (Web App only)
iOS 11 – iOS 13
Android OS 5 (Lollipop) – Android 10

Web Browser: (Applies to Web App only)

Google Chrome v72 or newer
Microsoft Edge v77 or newer

Internet Connection:

Computer: 1 Mbps or better (broadband recommended)
Mobile device and Chromebook: 3G or better (WiFi recommended for VoIP)

Software:

GoToMeeting desktop app (JavaScript enabled)
GoToMeeting app from the Apple Store, Google Play Store, or Windows Store

Hardware:

2GB of RAM (minimum), 4GB or more of RAM (recommended)
Webcam device*
Microphone and speakers** (USB headset recommended)

Mobile Device:

iPhone 5 or newer
iPad 3rd gen or newer

Note: * You MUST have a camera on your device or connected to your device to appear at the hearing.

** Most devices have built-in speakers, but you will get better audio quality while connected via VoIP if you use a headset

ESTADO DE KENTUCKY
ANTE LA COMISIÓN DE SERVICIOS PÚBLICOS

Concerniente:

KEVIN PHILLIPS DBA PHILLIPS)	
WATERPROOFING AND CONCRETE)	
_____)	CASO NO.
)	2021-00356
PRESUNTA INFRACCIÓN DE LA LEY DE)	
PREVENCIÓN DE DAÑOS EN INSTALACIONES)	
SUBTERRÁNEAS)	

ORDEN DE INICIACIÓN POR LA PRESUNTA INFRACCIÓN DE TIPO 811 DE LA LEY
DE PREVENCIÓN DE DAÑOS EN INSTALACIONES SUBTERRÁNEAS DE
KENTUCKY

Kevin Phillips d/b/a Phillips Waterproofing and Concrete (Phillips Waterproofing and Concrete) ha sido implicado como parte de una investigación ante la Comisión de Servicios Públicos de Kentucky (Comisión) por la presunta infracción de la Ley de Prevención de Daños a Instalaciones Subterráneas de Kentucky (la Ley).² Una audiencia sobre este caso tendrá lugar el October 27, 2023.

Conforme a la norma KRS 278.495(2), la Comisión tiene jurisdicción para regular la seguridad de las instalaciones de gas natural en Kentucky y para hacer cumplir las normas federales mínimas de seguridad de las tuberías. En virtud de la Ley, la Comisión tiene autoridad para investigar y evaluar las sanciones civiles por cualquier infracción de la Ley que resulte en daños de excavación a una instalación subterránea utilizada para transportar gas natural o líquidos peligrosos sujetos a las leyes federales de seguridad

² KRS 367.4901 a KRS 367.4917.

de tuberías, 49 U.S.C. §. 60101 *et seq.* Toda persona que infrinja cualquier disposición de la Ley está sujeta a la imposición de una sanción civil por un importe de 250 dólares por la primera infracción, no más de 1,000 dólares por la segunda infracción en el plazo de un año, y no más de 3,000 dólares por la tercera infracción y las siguientes. Además, cualquier persona cuya infracción de la ley provoque daños en una instalación subterránea que contenga cualquier material inflamable, tóxico, corrosivo o peligroso, o que provoque la liberación de cualquier material inflamable, tóxico, corrosivo o peligroso, está sujeta a una sanción adicional de hasta 1,000 dólares.

Tras recibir un informe de daños por excavación en su gasoducto subterráneo por parte de un operador, el personal de la Comisión (el Personal) llevó a cabo una investigación y preparó un Informe de Incidentes, cuya copia se adjunta a esta Orden como Apéndice A. En su Informe de Incidentes, el Personal cita a Phillips Waterproofing and Concrete por la infracción de la siguiente disposición de la Ley:

KRS 367.4911(10) - Cuando sea necesario excavar o demoler dentro de la ubicación aproximada de la instalación subterránea, el excavador deberá cavar a mano o utilizar medios no intrusivos para evitar daños a la instalación subterránea.

Basándose en su revisión del Informe de Incidentes y estando suficientemente informada, la Comisión encuentra pruebas prima facie de que Phillips Waterproofing and Concrete violó la Ley de Prevención de Daños a Instalaciones Subterráneas. La Comisión considera, además, que debe llevarse a cabo una investigación formal sobre el incidente de los daños causados por la excavación.

POR LO TANTO SE ORDENA que:

1. Phillips Waterproofing and Concrete deberá presentar a la Comisión una respuesta por escrito a las alegaciones contenidas en el Informe de Incidencia del

Personal en un plazo de 20 días a partir de la recepción de esta Orden a través de un correo electrónico enviado a PSCED@ky.gov con el número de caso de este procedimiento en el asunto del mensaje

2. Phillips Waterproofing and Concrete comparecerá el October 27, 2023, a las 9 a.m. Eastern Daylight Time, en la sala de audiencias Richard Raff de las oficinas de la Comisión en 211 Sower Boulevard en Frankfort, Kentucky, con el fin de presentar pruebas relativas a la supuesta violación de la Ley de Prevención de Daños a Instalaciones Subterráneas.

3. La audiencia October 27, 2023 se llevará a cabo por videoconferencia.

4. Phillips Waterproofing and Concrete deberá asistir a la audiencia utilizando el siguiente enlace: <https://meet.goto.com/pscformalhearing/psc-damage-prevention-hearing>; la información y las instrucciones se adjuntan a esta Orden como Apéndice B.

5. Phillips Waterproofing and Concrete notificará a la Comisión, al menos diez días antes de la audiencia, si Phillips Waterproofing and Concrete no puede comparecer por videoconferencia y, por lo tanto, comparecerá en persona.

6. Cualquier sociedad, corporación o entidad comercial (incluyendo una sociedad de responsabilidad limitada) debe ser representada por un abogado con licencia para ejercer la abogacía en Kentucky y dicha representación incluye la presentación de documentos y las comparecencias en las audiencias ante la Comisión.

7. Un individuo puede presentar una respuesta a las alegaciones contenidas en el Informe de Incidentes del Personal sin la representación de un abogado.

8. El Informe de Incidentes del Personal 43400, que se adjunta a esta Orden como Apéndice A, forma parte del expediente de este caso.

9. La audiencia October 27, 2023 se grabará únicamente por vídeo.
10. **Tenga en cuenta que las partes que no comparezcan después de la notificación estarán sujetas a que se asiente una sentencia en rebeldía contra ellos.**

COMISIÓN DE SERVICIOS PÚBLICOS

Presidente

Vicepresidente

Comisionado/a

HACE CONSTAR:

Director/a Ejecutivo/a

APÉNDICE A

APÉNDICE DE UNA ORDEN DE LA COMISIÓN DE SERVICIOS
PÚBLICOS DE KENTUCKY EN EL CASO No. 2021-00356 FECHADO

SEIS PÁGINAS A SEGUIR

APÉNDICE B

APÉNDICE DE UNA ORDEN DE LA COMISIÓN DE SERVICIOS PÚBLICOS DE KENTUCKY EN EL CASO No. 2021-00356 FECHADO

Información e instrucciones para la audiencia

Se le obliga a asistir a una audiencia formal con la Comisión de Servicios Públicos de Kentucky. Tenga en cuenta que la audiencia está programada en la **huso horario del este**, y que la fecha y la hora de la audiencia figuran en la Orden que acompaña a estas instrucciones.

Se le recomienda encarecidamente que descargue la aplicación GoToMeeting ahora y esté preparado para su audiencia. Si no puede comparecer por vídeo utilizando esta aplicación, debe llamar a las oficinas de la Comisión al número que se indica a continuación al menos diez días antes de la audiencia programada. Recibirá instrucciones para presentarse en persona en la sala de audiencias Richard Raff de las oficinas de la Comisión en el 211 Sower Boulevard en Frankfort, Kentucky, a la hora y fecha de su audiencia programada.

Sírvase dirigir cualquier pregunta a Andrea Wise, División de Inspecciones de la Comisión: Andrea.Wise@ky.gov o 502-782-2656.

Para descargar la aplicación GoToMeeting vaya a:

<https://global.gotomeeting.com/install/258846301>

El día de su audiencia utilizando su computadora, tableta o teléfono inteligente con capacidad de vídeo. **Acceda al procedimiento en:**

<https://meet.goto.com/pscformalhearing/psc-damage-prevention-hearing>

Puede encontrar más información sobre el uso de GoToMeeting en
GoToMeeting - Inicio rápido del asistente

<https://www.youtube.com/embed/8VaHHVP0FCU?autoplay=1&showinfo=0&controls=0&rel=0>

GoToMeeting - Cómo unirse a una reunión

https://www.youtube.com/embed/Ojl1q_sPrP0?autoplay=1&showinfo=0&controls=0&rel=0

Requisitos técnicos para utilizar GoToMeeting

Sistema operativo:

Windows 7 – Windows 10

Mac OS X 10.9 (Mavericks) – Mac OS Big Sur (11)

Linux/Ubuntu (sólo aplicación web)

Google Chrome OS (sólo aplicación web)

iOS 11 - iOS 13

Android OS 5 (Lollipop) - Android 10

Navegador web: (Sólo se aplica a la aplicación web)

Google Chrome v72 o más reciente

Microsoft Edge v77 o más reciente

Conexión a Internet:

Computadora: 1 Mbps o superior (se recomienda la banda ancha)

Dispositivo móvil y Chromebook: 3G o superior (se recomienda WiFi para VoIP)

Software:

Aplicación de escritorio de GoToMeeting (con JavaScript activado)

La aplicación GoToMeeting de Apple Store, Google Play Store o Windows Store

Hardware:

2 GB de RAM (mínimo), 4 GB o más de RAM (recomendado)

Dispositivo de cámara web*

Micrófono y altavoces** (se recomiendan auriculares USB)

Dispositivo móvil:

iPhone 5 o más reciente

iPadde 3ª generación o más reciente

Nota: * Para comparecer en la audiencia, ES PRECISO tener una cámara en su dispositivo o conectada a él.

** La mayoría de los dispositivos tienen altavoces incorporados, pero obtendrás una mejor calidad de audio mientras estés conectado por VoIP si utilizas unos auriculares.

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