

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TOM WEIS)	
)	
_____)	CASE NO.
)	2022-00169
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

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

Tom Weis 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 July 29, 2022.

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 Appendix A. In its Incident Report, Staff cites Mr. Weis for violation of the following provision of the Act:

KRS 367.4911(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.

Based on its review of the Incident Report and being otherwise sufficiently advised, the Commission finds prima facie evidence that Mr. Weis violated the Underground Facility Damage Prevention Act. The Commission further finds that a formal investigation into the excavation damage incident shall be conducted.

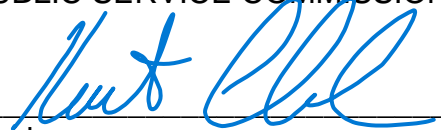
IT IS THEREFORE ORDERED that:

1. Mr. Weis 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. Mr. Weis shall appear on July 29, 2022, 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.

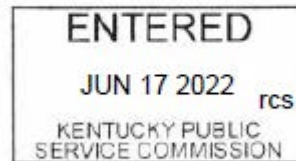
3. The July 29, 2022 hearing shall be conducted via video conferencing.
4. Mr. Weis shall attend the hearing by using the following link: <https://global.gotomeeting.com/join/308551245>; information and instructions are attached to this Order as Appendix B.
5. Mr. Weis shall notify the Commission at least ten days prior to the hearing if Mr. Weis 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 43142, attached to this Order as Appendix A, is made a part of the record in this case.
9. The July 29, 2022 hearing shall be recorded by video only.
10. **Please note that notice of a hearing to be held in this matter will be mailed to Mr. Weis 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.**

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman

Commissioner



ATTEST:


Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2022-00169 DATED JUN 17 2022

EIGHTEEN PAGES TO FOLLOW

PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

Investigator John Gowins **Incident ID** 43142 **Investigation** 8152
Incident Date 10/29/2020 4:50:00 PM **Report Submitted** 11/25/2020

Operator Information

Operator Atmos Energy Corporation **Reported By** Anthony Stallins
Phone (270) 779-4849 **Email** anthony.stallins@atmosenergy.com

Incident Location 4211 W 5th St Rd **Locate Ticket Number** N/A
Owensboro KY 42301
4211 W 5TH ST. RD., OWENSBORO
County Daviess

Excavator Information

Excavator Tom Weis **Organization ID**
Phone 270-993-1689 **Email** creativetmntn@aol.com
Address 5109 US Highway 60 W **Locate Ticket Number** N/A
Owensboro KY 42301

Damage Report Summary

Excavation Within 18" (Approximate Location)	Gas Or Hazardous Liquids		Type Of Equipment Used	Cost of Damage	Amount Billed
	Contained	Released			
NA	No	No	Mechanized	\$300,523.00	\$300,523.00

Locate Ticket Summary

Ticket #	Valid	Initial Date	Expiration Date (21 calendar days from Initial date)	Incident Date	# of Days Expired	Within Scope of Excavation
N/A	N/A	N/A	N/A	10/29/2020	N/A	NA

The operator reports that Tom Weis, property owner, was removing trees & clearing his land. While attempting to remove a tree at the edge of a slough with a trac-hoe, Mr. Weis damaged a 4" steel natural gas main causing release of natural gas. No locate ticket, 650 customers out.

PIPELINE DAMAGE INVESTIGATION REPORT

INVESTIGATION

Mr. Weis was found responsible for a previous violation, incident # 32396, and cited for failure to request a dig ticket.

The original Atmos report is provided in Attachment 1 below.

Phone number and address verified online (Reverse Phone Lookup).

November 5, 2021

- Called 270.993.1689, spoke to Mr. Weis, who said that he was pulling a stump out of the pond, and it's roots were wrapped around the gas line which ran beneath the pond. He stated the Atmos employee that came out said that even if he had called for a dig ticket they wouldn't have been able to mark the damage area due to the pond. I requested copies of any pictures he had and texted him my email address.

In response to questions from the PSC to Atmos regarding procedures, Atmos provided the documentation in Attachment 2 below. The first documentation is the response from Atmos, the second document are the procedures followed by their contract locator.

Pictures from Atmos are provided in Attachment 3 below.

Documentation regarding Atmos' efforts to recover damage repair costs is provided in Attachment 4 below.

Based on the documentation available, this is deemed to be Mr. Weis' second violation and a demand letter will be sent accordingly.

VIOLATIONS

KRS 367.4911 (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.

of Offences

(Including this incident)

Excavator	Last Offence Incident #	Last Offence Incident Date	Revert to 1st Offence Date (Last Offence Date +365 Days)
2 nd	32396	1/25/20	1/24/21

Attachment 1

Incident # 43142

Original Atmos Report

Gas Excavation Damage Report

Atmos Energy Corporation

Submitted 11/25/2020 Incident ID: 43142

[Set back to Edit](#)[Staff Edit](#)[Print \(PDFForm.aspx?Rpt=GasInvestigation&IG=43142\)](#)

Reported By:

Name: Anthony Stallins
Phone: (270) 779-4849
Email: anthony.stallins@atmosenergy.com

Gas Line Incident Occured:

Date: 10/29/2020
Time: 4:50 PM

Details:

Reported Date: 10/30/2020 10:28 AM

Incident Location Address:

Location: 4211 W 5TH ST. RD., OWENSBORO
Address: 4211 W 5th St Rd
City: Owensboro
State: KY
County: Daviess
Zip: 42301

Confirm Code:

Number of Customers out: 650

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.: N/A

Excavator: Home Owner

Excavator Address:

First Name: Tom
Last Name: Weis
Phone: 270-993-1689
Email: creativemtn@aol.com
Address: 5109 US Highway 60 W
City: Owensboro

State: KY

Zip: 42301

Confirm Code:

Excavation Damage: No notification made to the One Call Center

Description of Incident Damaged 4" steel gas main. No locate ticket. Approximately 650 customers off. No injuries

Summary Information

11/25/2020

Full details such as the cause Tom Weis, property owner, was removing trees & clearing his land. While attempting to remove a tree at the edge of a slough with a trac-hoe, Mr. Weis damaged a 4" steel natural gas main causing release of natural gas. On the following morning of October 30th, Cody Townsend, Owensboro Op Supervisor, and myself would meet with Mr. Weis and his son in the parking lot of the First Free Will Baptist Church across the street from the Weis property. I asked Mr. Weis if he had a locate ticket and he advised me that he did not. I then asked if he was aware of the KY Dig Law and the need to call KY 811 before digging and he acknowledged that he was aware. Atmos construction crews would weld on two 4" Williamson Stopper fitting to stop the flow of gas. Atmos crews and contractors installed temporary 4" main to restore gas service to the affected customers. Service was restored to the majority of the affected customers by 6:00 PM on Saturday, October 31st.

Extent of the damage \$300,523.00

Cost of the damage \$300,523.00

Steps taken to prevent re-occurrence Mr. Weis was advised of the need to call KY 811 before starting any excavation related activity.

Amount billed to excavator \$300,523.00

Attachment 2

Incident # 43142

Procedures Provided by Atmos

In answer to your questions;

Does Atmos have written policies on locating underground facilities near or through standing water?

- Atmos Energy does not have specific written procedures on locating lines that are located under water.

Do your training materials cover this?

Atmos Energy's contract line locator follows the following steps if a gas line or any section of gas line can't be located and marked with paint and/or marking flags on each locate request.

- The locator will contact the excavator/person requesting the locate directly by phone using number provided on locate request.
- The excavator will be informed of the issue with the locate and not to proceed until contacted directly by Atmos Energy personnel.
- The locator will also document specifics around locate and the message to excavator. This is captured in contract line locator's work management system.
- Atmos Energy personnel are notified immediately and systematically by email and text of the "unlocatable gas line".
- Also at the same time the excavator receives a direct "Positive Response" by email containing all locator's comments (excavator will be informed of the issue with the locate and not to proceed until contacted directly by Atmos Energy personnel).
- Atmos Energy personnel will contact the excavator directly and take all necessary steps to resolve the locate issue.

In this case the excavator did not follow the law and request a locate which led to the line being damaged. As you know if any piece of the law is circumvented damages occur. if you have further questions please let me know.

Best regards,
Tim



Your Safety...Our Commitment

Unlocateable Procedures

Updated 3/13/2020

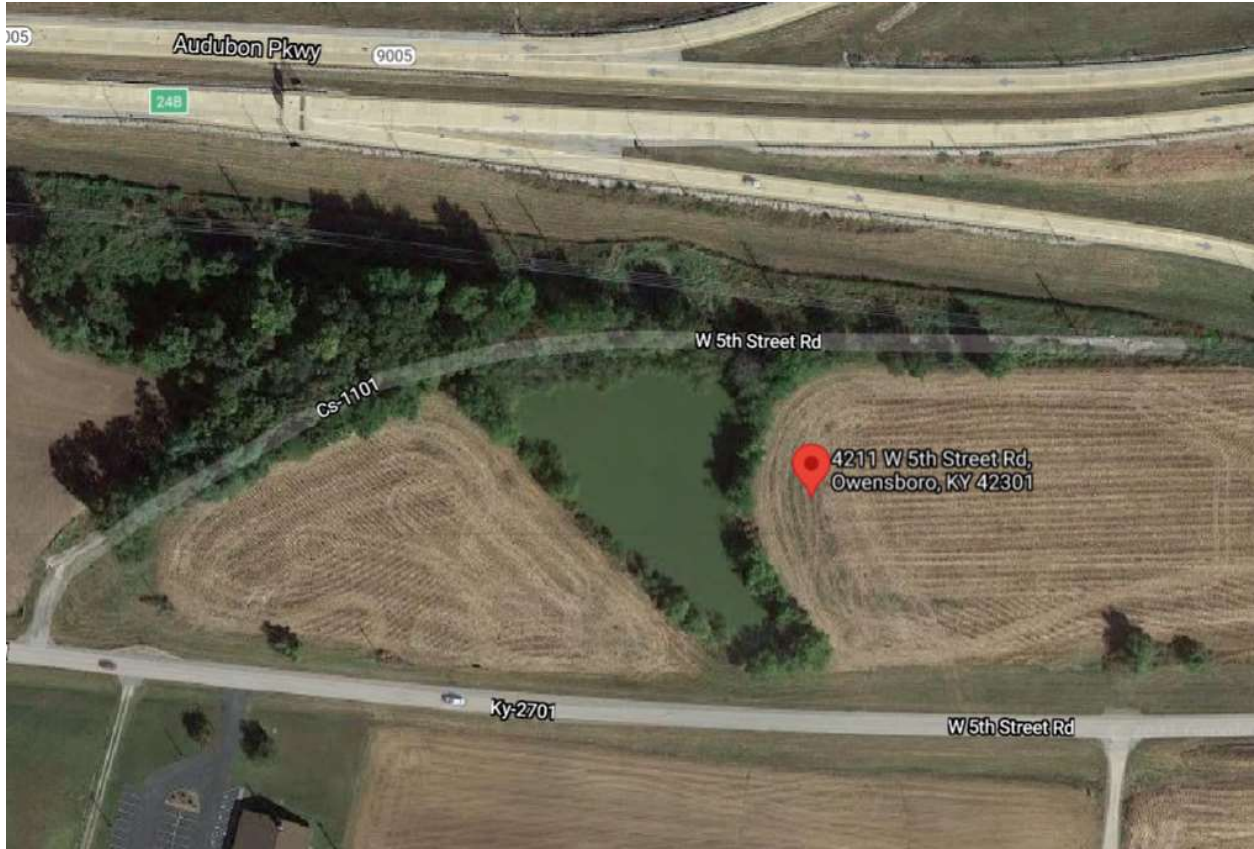
When a technician encounters an unlocateable, the following steps must take place.

- Technician completes all steps of the Unlocateable Process (attached)
- Unlocateable facility is turned over to Field Supervisor
- Field Supervisor either reports to the site or assigns unlocateable to Tech 1.
- Field Supervisor or Tech 1 try to locate facility using all means available to them; MetroTech 810, Pipe Horn, service cards and/or measurements, etc.
- If facility can be located, all information, including what steps were taken to complete the ticket, need to be documented in an email and sent over to the client with the subject line "Maintenance."
 - Ticket needs to be closed out with all documentation attached within DigTix.
- If facility cannot be located, all information, including what steps were taken to try and identify the unlocateable needs to be documented in an email and sent over to the client with the subject line "Unlocateable."
 - Ticket should not be closed but all documentation should be attached to the ticket within DigTix.
- A phone call to the excavator and a follow up email need to be sent making sure excavator is aware of the status of their ticket.
- A copy of all documentation needs to be added to the ticket in DigTix and the ticket must be rescheduled and/or put in ongoing status depending on state and/or client expectations. The ticket needs to remain open until we are certain that the repairs have been finished or we have been told by the client to close the ticket.
 - At no point should a ticket every expire. If we run into those situations, the ticket needs to be closed out as marked with a note of the unlocateable facility. If an update ticket comes in, then all notes need to be transferred to the new ticket until such time repairs are completed.
- A ticket should not be closed out and unlocateable should not be selected until the ticket is closed. Locator who has the unlocateable should status the ticket as not complete and/or reschedule the ticket based on due date. Once the unlocateable has been checked by Field Supervisor and/or Tech Level 1, the ticket should be closed properly and if there is an unlocateable, then unlocateable should be selected within DigTix.

Attachment 3

Incident # 43142

Pictures from Atmos



Aerial view of pond and area of incident.



Approximate location of the damage.



Approximate location of the damage.



Approximate location of the damage.



Area behind location of damage.



Permanent locate marker behind location of damage.

Attachment 4

Incident # 43142

Damage Cost Recovery Efforts by Atmos

Gowins, John E (PSC)

From: Carter, Andrew F. <Andrew.Carter@atmosenergy.com>
Sent: Friday, November 5, 2021 11:27 AM
To: Gowins, John E (PSC)
Subject: Incident Number 43142
Attachments: 11.05.2021 Letter to Mr. John E. Gowins re Incident Number 43142.pdf

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

Mr. Gowins,

I am an in-house attorney with Atmos Energy who is working on the above-referenced Incident Number. It is my understanding that the Kentucky Public Service Commission has asked for an update on the matter. To that end, please see the attached correspondence. Please also let me know if you have any questions or would like to further discuss.

Thank you,

Andrew F. Carter | Attorney | Atmos Energy Corporation | 5430 LBJ Freeway | 1800 Three Lincoln Centre | Dallas, TX 75240 | Direct Dial 972-855-3774

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Andrew F. Carter
Attorney

November 5, 2021

VIA EMAIL: john.gowins@ky.gov

John E. Gowins
Consumer Complaints Investigator II
Division of Inspections
Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

Dear Mr. Gowins:

I am an in-house attorney with Atmos Energy Corporation (“Atmos Energy”). Per your request, please allow this letter to serve as an update concerning Incident Number 43142. This incident stems from an individual performing excavation activities without first requesting line locates and, as a result, damaging Atmos Energy’s 4-inch steel line. The damage to this line resulted in an outage of hundreds of Atmos Energy customers. Atmos Energy incurred costs and expenses of approximately \$300,000.00 in connection with this incident.

Atmos Energy initially notified the responsible individual of the matter and Atmos Energy’s anticipated costs and expenses, for which Atmos Energy was entitled to be reimbursed. The responsible individual referred to the matter to his insurance company, and Atmos Energy is currently in discussions with that insurance company regarding reimbursement.

If you have any questions or would like to further discuss, please do not hesitate to contact me.

Sincerely,

/s/ Andrew F. Carter

Andrew F. Carter

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2022-00169 DATED JUN 17 2022

TWO PAGES TO FOLLOW

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 Ashley Rhodes, Commission Division of Inspections. AshleyB.Rhodes@ky.gov or 502-782-2578.

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://global.gotomeeting.com/join/308551245>

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

*Tom Weis
5109 US HIGHWAY 60 W
Owensboro, KENTUCKY 42301-8446