

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

HAYDEN CONSTRUCTION - ALLEGED)	
VIOLATION OF UNDERGROUND FACILITY)	CASE NO.
DAMAGE PREVENTION ACT)	2019-00167

ORDER

A hearing was held before the Kentucky Public Service Commission (PSC) on August 9, 2019 at its offices at 211 Sower Boulevard, Frankfort, Kentucky concerning the allegation that Hayden Construction Company, Inc. (Hayden) on August 28, 2018 at 3943 Highway 54, Owensboro, Kentucky, damaged a natural gas service line owned by Atmos Energy Corporation and used to serve the public. It was further alleged that Hayden damaged the natural gas service line while operating a backhoe. The initiating order included the allegation that Hayden violated KRS 367.4911(1)(a) in that it failed to notify the affected operator, Atmos Energy Corporation, not less than two (2) full working days nor more than ten (10) full working days prior to commencing work, such notification to include the work intended and the excavator's work schedule.

Hayden was duly served with the initiating order in this case but failed to either file a written response or appear at the hearing to contest the allegations asserted against it.

FINDINGS OF FACT

The testimony presented at the hearing through PSC investigator John Lyons, together with exhibits filed in the record stand unrebutted and establish that:

1. Hayden was at the time the damage occurred on August 28, 2018 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). The natural gas service line was an underground facility owned and operated by Atmos Energy Corporation to serve the public. The service line contained natural gas at the time it was damaged by Hayden.

2. Hayden failed to call the Kentucky Contact Center (One Call Center or Protection Notification Center) to obtain information about the approximate location of the damaged natural gas service line not less than two (2) nor more than ten (10) full working days prior to commencing work as required by KRS 367.4911(1)(a).

3. Hayden'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.

4. There are no known mitigating factors which would merit the imposition of a fine less than the maximum provided by law. This violation is Hayden's first offense.

5. Hayden was offered the opportunity to mitigate its potential penalty of one thousand two hundred and fifty dollars (\$1,250) by making a payment to the Kentucky State Treasurer in the amount of two hundred fifty dollars (\$250) and attending a damage prevention training course to be held at the offices of the PSC at 211 Sower Boulevard in Frankfort, Kentucky on May 6, 2019. Hayden paid the sum of two hundred fifty dollars (\$250) by check on February 18, 2019 but failed to have any agent, servant or employee present at the May 6 training.

6. The offer of mitigation of the potential maximum penalty involved both paying a reduced fine of two hundred and fifty dollars (\$250) and attending training. Hayden failed to fulfill its obligation and as a result the present action was initiated against it on July 7, 2019.

CONCLUSIONS OF LAW

1. Hayden Construction Company, Inc. violated the requirements of KRS 367.4911(1)(a) by failing to provide the operator of an underground facility serving the public with notification of its intended work and work schedule not less than two (2) nor more than ten (10) full working days prior to commencing work.

2. KRS 367.4917(1) provides that an excavator who fails to comply with any provision of KRS 367.4911 shall be guilty of endangering underground facilities and may be subject to a fine of two hundred and fifty dollars (\$250) for the first offense.

3. KRS 367.4917(4) provides that any person who violates any provision of the act that involves damage to a facility containing any flammable, toxic, corrosive, or hazardous material or results in the release of any flammable, toxic, corrosive, or hazardous material shall be subject to a fine not to exceed one thousand dollars (\$1,000) for each offense.

4. Hayden Construction Company, Inc., is, by reason of its failure to comply with the applicable provisions of Underground Facility Damage Prevention Act as hereinbefore set out, subject to a maximum fine of one thousand two hundred and fifty dollars (\$1,250).

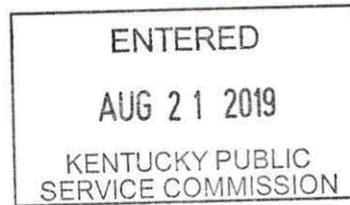
IT IS THEREFORE ORDERED that:

1. Hayden is assessed a fine of one thousand two hundred and fifty dollars (\$1,250) less the sum of two hundred and fifty dollars (\$250) previously paid by check made payable to the Kentucky State Treasurer on February 18, 2019, for violation of KRS 367.4911(1)(a) for failure to provide Atmos Energy Corporation the operator of an underground facility serving the public with notification of its intended work and work schedule not less than two (2) nor more than ten (10) full working days prior to commencement of work.

2. Hayden shall pay one thousand dollars (\$1,000) by cashier's check or money order payable to the Kentucky State Treasurer and mailed or delivered to the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, KY 40602 within thirty (30) days of the date of this order.

3. The Kentucky Public Service Commission will hold a damage prevention training course at its offices located at 211 Sower Boulevard, Frankfort, KY on September 9, 2019 beginning at 1:00 o'clock p.m. and lasting until approximately 3:00 o'clock p.m. Eastern Daylight Time. If Hayden, through an agent, servant or employee attends the above training course the additional one thousand dollars (\$1,000) assessed in numerical paragraph 2 of this order will be vacated.

By the Commission



Commissioner Talina Mathews did not participate in the deliberations or decision concerning this case.

ATTEST:


Executive Director

Steve Hayden
Hayden Construction
3830 Vincent Station Dr.
Owensboro, KENTUCKY 42303