

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CLEAR CHOICE FACILITY MAINTENANCE, LLC)	
)	
_____)	CASE NO.
)	2019-00279
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

ORDER

Pursuant to KRS 278.495(2), the Kentucky Public Service Commission (Commission) has jurisdiction to regulate the safety of natural gas facilities in Kentucky and to enforce minimum federal pipeline safety standards. Under the Kentucky Underground Facility Damage Prevention Act (Act), KRS 367.4901 through KRS 367.4917, 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 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 from an operator of a report of excavation damage to its underground gas pipeline, 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 Clear Choice Facility Maintenance, LLC, 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 Clear Choice Facility Maintenance, LLC, 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. Clear Choice Facility Maintenance, LLC, shall submit to the Commission a written response to the allegations contained in the Staff Incident Report within 20 days of the date of this Order.
2. Clear Choice Facility Maintenance, LLC, shall appear on September 27, 2019, at 9 a.m. Eastern Daylight Time, in Hearing Room 1 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, and showing cause why it should not be subject to the penalties prescribed in KRS 367.4917(1) and (4) for this alleged violation.

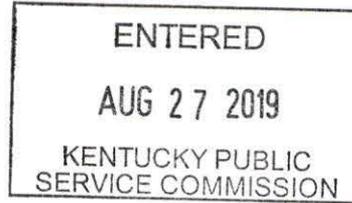
3. A person shall not file a paper or appear at a hearing on behalf of, or otherwise represent, a partnership, corporation, or business entity (including a limited liability company) or another person unless the person is an attorney licensed to practice law in Kentucky.

4. The September 27, 2019 hearing shall be recorded by videotape only.

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

6. This Order shall be served via certified mail, return receipt accepted, to Clear Choice Facility Maintenance, LLC, c/o Sutton Law Service Company, LLC, Agent for Service of Process, 6900 Houston Road, Suite 43, Florence, Kentucky, 41042 and Clear Choice Facility Maintenance, LLC, 9210 Marshall Road, Covington, Kentucky 41015.

By the Commission



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2019-00279 DATED **AUG 27 2019**

TWO PAGES TO FOLLOW

PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

KY PSC Investigator(s) John E. Gowins	Incident ID 21080
Incident Date 9/30/2018 7:32:00 PM	Report Submitted 10/26/2018 1:39:57 PM

OPERATOR INFORMATION

Operator Duke Energy Kentucky, Inc. Phone (513) 287-2594 Incident Location 2753 Bentwood Dr, Independence 2753 Bentwood Dr Independence, KY 41051 Kenton	Reported By Laura Mate Email Laura.Mate@duke-energy.com Locate Ticket Number NONE
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EXCAVATOR INFORMATION

Name of Excavator Kitts, Chad Phone 859-816-6321 Excavator Address Clear Choice Facility Maintenance 3865 Turkeyfoot Rd Erlanger, KY 41018	Organization ID Email Locate Ticket Number
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INCIDENT

Builder was grading yard of home and damaged existing gas service. 811 not called.

INVESTIGATION

Clear Choice Facility Maintenance, LLC is a Kentucky company that is active and in good standing with the Secretary of State's office. Business address is listed as 9210 Marshall Rd, Covington, KY 41015.

Googled the company, the number on their website is (859) 342-7777.

May 3, 2019

- Called business number, left a voicemail;
- Called Mr. Chad Kitts number, left a voicemail.

May 10, 2019 called business again, was told I need to speak with Kelly Kitts, and she was out. She will call me Monday.

May 14, 2019 called business again, was told Kelly was out today, but the person I spoke with said she was who took the call on the 10th and she would make sure Kelly got my message to call me.

May 23, 2019 called business again, got voicemail, explained that a demand letter with a \$1250 civil penalty was coming by tomorrow and if they had any additional information they would like to share with me they should call by today. No additional information received.

VIOLATION

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.

Sutton Law Service Company, LLC Register Agent
Clear Choice Facility Maintenance, L
6900 Houston Road, Suite 43
Florence, KENTUCKY 41042

Clear Choice Facility Maintenance, LLC
9210 Marshall Road
Covington, KENTUCKY 41015