

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TODD ABELL	)	
	)	
_____	)	CASE NO.
	)	2019-00449
ALLEGED VIOLATION OF UNDERGROUND	)	
FACILITY DAMAGE PREVENTION ACT	)	

OPENING ORDER

Todd Abell (Mr. Abell) 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).<sup>1</sup>

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 results in damage to an underground facility containing any flammable, toxic, corrosive,

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<sup>1</sup> KRS 367.4901 through KRS 367.4917.

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 an Appendix. In its Incident Report, Staff cites Mr. Abell 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. Abell 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:

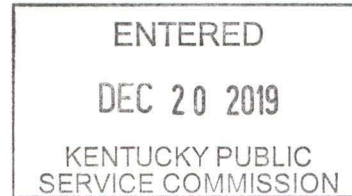
1. Mr. Abell shall submit to the Commission, at 211 Sower Boulevard, Frankfort, Kentucky 40601, a written response to the allegations contained in the Staff Incident Report within 20 days of receipt of this Order.
2. Any partnership, corporation, or business entity (including a limited liability company) 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.
3. The Staff Incident Report 31437 in the Appendix to this Order is made a part of the record in this case.

4. Please note that notice of a hearing to be held in this matter will be mailed to Mr. Abell 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.

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By the Commission

Commissioner Talina Mathews did not participate in this case.



ATTEST:

  
Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2019-00449 DATED **DEC 20 2019**

FIVE PAGES TO FOLLOW



# PIPELINE DAMAGE INVESTIGATION REPORT

## Investigation Information

<b>KY PSC Investigator(s)</b> Eric V. Tout	<b>Incident ID</b> 31437
<b>Incident Date</b> 4/2/2019 7:00:00 PM	<b>Report Submitted</b> 4/3/2019 6:59:07 AM

## OPERATOR INFORMATION

<b>Operator</b> Atmos Energy Corporation <b>Phone</b> (270) 779-4849 <b>Incident Location</b> 46 Mulberry St, Fordsville 46 Mulberry St Fordsville, KY 42343  Ohio	<b>Reported By</b> Anthony Stallins <b>Email</b> anthony.stallins@atmosenergy. <b>Locate Ticket Number</b> N/A
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## EXCAVATOR INFORMATION

<b>Name of Excavator</b> Abell, Todd <b>Phone</b> 270-256-9824 <b>Excavator Address</b> 46 Mulberry St Fordsville, KY 42343	<b>Organization ID</b> <b>Email</b> N/A <b>Locate Ticket Number</b>
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## INCIDENT

The Operator reports that the Excavator/Homeowner was digging in a heavily rooted area and cut a 3/4" service line with an axe and failed to notify the Protection Notification Center (811).

**The Damage Report is include as Attachment 1.**

### Locate Ticket Summary

Ticket #	Valid	Initial Date	Expiration Date (21 calendar days from Initial date)	Incident Date	# of Days Expired	Within Scope of Excavation
None	No	N/A	N/A	N/A	N/A	N/A

### Excavation Summary

Excavation Within Tolerance Zone	Type Of Equipment Used	Cost of Damage (Per Operator)	Amount Billed (Excavator)
Yes	Non-mechanized / Axe	\$1,271.00	\$1,271.00

## INVESTIGATION

On 09/23, 26 & 30/19 an attempt to contact the Homeowner, Todd Able, resulted in a voice mail being left.

On 10/02/19 Mr. Able advised that he had no knowledge gas service was on his property resulting in damaged to the service, which was 4-6 inches deep. Mr. Able stated that no call was made to 811. Mr. Able was receptive to attending the Damage Prevention course and paying the \$100.00 penalty.

## 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.

# Gas Excavation Damage Report

## Atmos Energy Corporation

Submitted 4/30/2019 Incident ID: 31437

[Set back to Edit](#)

[Staff Edit](#)

[Print \(PDFForm.aspx?Rpt=GasInvestigation&IG=31437\)](#)

### Reported By:

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

### Gas Line Incident Occured:

**Date:** 4/2/2019  
**Time:** 7:00 PM

### Details:

**Reported Date:** 4/3/2019 6:59 AM

### Incident Location Address:

**Location:** 46 Mulberry St, Fordsville  
**Address:** 46 Mulberry St  
**City:** Fordsville  
**State:** KY  
**County:** Ohio  
**Zip:** 42343  
**Confirm Code:** Y  
**Number of Customers out:** 0  
**Locate Request Ticket No.:** N/A  
**Excavator:** Home Owner

### Excavator Address:

**First Name:** Todd  
**Last Name:** Abell  
**Phone:** 270-256-9824  
**Email:** N/A  
**Address:** 46 Mulberry St  
**City:** Fordsville  
**State:** KY  
**Zip:** 42343  
**Confirm Code:** Y  
**Excavation Damage:** No notification made to the One Call Center

**Description of Incident** Homeowner, installing gutters, cut his 3/4" service line. No locates. No injuries.

## Summary Information

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4/30/2019

<b>Full details such as the cause</b>	Todd Abell, homeowner, was installing gutters at his home. He was digging in a heavily rooted area and cut the 3/4" PE service line with an axe. Mr. Abell did not have a locate ticket.
<b>Extent of the damage</b>	Service was temporarily retired.
<b>Cost of the damage</b>	\$1,271.00
<b>Steps taken to prevent re-occurrence</b>	We will invite Mr. Abell to the next Atmos Energy Damage Prevention/KY 811 Dig Law Training in Owensboro.
<b>Amount billed to excavator</b>	\$1,271.00





Matthew G. Bevin  
Governor

Charles G. Snaveley  
Secretary  
Energy and Environment Cabinet

Commonwealth of Kentucky  
**Public Service Commission**  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602-0615  
Telephone: (502) 564-3940  
Fax: (502) 564-3460  
psc.ky.gov

Michael J. Schmitt  
Chairman

Robert Cicero  
Vice Chairman

Talina R. Mathews  
Commissioner

October 2, 2018

Todd Able  
46 Mulberry St,  
Fordsville, KY 42343

Re: Violation of Kentucky Underground Facility Damage Prevention Act  
Incident Number: 31437

### **DEMAND FOR PENALTY ASSESSMENT AND REMEDIAL MEASURES**

Dear Mr. Able:

The Kentucky Public Service Commission (Commission) received a report on April 03, 2019, regarding damage to a natural gas or hazardous liquid facility owned and/or operated by the Atmos Energy Corporation. Under the Kentucky Underground Facility Damage Prevention Act (Act), KRS 367.4901 through KRS 367.4917, the Commission has jurisdiction to investigate and assess civil penalties for any violation of the Act that results in excavation damage to underground facilities used to transport gas or hazardous liquid subject to federal pipeline safety laws, 49 U.S.C. secs. 60101 et seq. The Commission regulates the safety of jurisdictional natural gas pipelines in the Commonwealth pursuant to KRS 278.495 and 49 CFR Parts 190, 191, 192 and 195.

Following receipt of the damage notification, Commission Staff (Staff) performed an investigation of the incident and prepared the attached incident report. Based on its investigation of the incident, Staff has determined that you committed the following violation(s) 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.

### **CIVIL PENALTY**

KRS 367.4917 provides that a person who commits a violation of the Act shall be subject to a civil penalty not to exceed \$250 for the first violation, \$1,000 for the second violation within one year, and \$3,000 for the third and any subsequent violation. If the violation results in damage to an underground pipeline used to transport gas or hazardous liquid, the violator is subject to an additional civil penalty not to exceed \$1,000 per violation. Based on its investigation of this matter, Staff has determined that you should be assessed a penalty in the total amount \$500, but that \$400 of the penalty should be suspended contingent upon completion of the following remedial measure:

## REMEDIAL MEASURES

- A representative or you shall attend a Damage Prevention training course to be held at the offices of the Commission, 211 Sower Blvd. in Frankfort, Kentucky, 40602 on November 4, 2019. The course will begin at 1:00 p.m. and conclude at 3:00 p.m.

If you do not wish to contest the proposed penalty, you should mail or deliver a cashier's check or money order made payable to the "**Kentucky State Treasurer**", within 30 days of the date of this letter, to:

Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40602

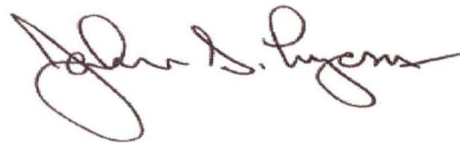
Please include the Incident Number **31437** on the cashier's check or money order submitted for payment.

Payment of the proposed civil penalty and completion of the remedial measure will satisfy and resolve any and all claims against you for any violation of the Act arising out of the April 2, 2019 incident. Your payment of the proposed civil penalty will not be considered an admission by you that you willfully violated any provision of the Act.

If you do not pay the proposed civil penalty within 30 days of the date of this letter, the Commission will institute an administrative proceeding against you and hold a formal hearing during which you will have an opportunity to present evidence and show cause why you should not be assessed penalties under KRS 367.4917 as a result of the April 2, 2019 incident.

If you have any questions regarding this demand for remedial measures and penalty assessment, please contact Eric V. Tout, Division of Inspections at 502-782-2622.

Sincerely



John S. Lyons  
Deputy Executive Director  
Kentucky Public Service Commission

Attachment

Todd Abell  
46 Mulberry St.  
Fordsville, KENTUCKY 42343