

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MICHAEL CULLUM – ALLEGED VIOLATION OF)
UNDERGROUND FACILITY DAMAGE PREVENTION) CASE NO. 2019-00165
ACT)

NOTICE OF FILING

Notice is given to all parties that the following materials have been filed into the record of this proceeding:

- The digital video recording of the evidentiary hearing conducted on September 27, 2019 in this proceeding;
- Certification of the accuracy and correctness of the digital video recording;
- All exhibits introduced at the evidentiary hearing conducted on September 27, 2019 in this proceeding;
- A written log listing, *inter alia*, the date and time of where each witness' testimony begins and ends on the digital video recording of the evidentiary hearing conducted on September 27, 2019.

A copy of this Notice, the certification of the digital video record, and hearing log have been served upon all persons listed at the end of this Notice. Parties desiring to view the digital video recording of the hearing may do so at <https://youtu.be/0pYbCOxkTiw> .

Parties wishing an annotated digital video recording may submit a written request by electronic mail to pscfilings@ky.gov. A minimal fee will be assessed for a copy of this recording.

Done at Frankfort, Kentucky, this 4th day of October 2019.

A handwritten signature in cursive script that reads "Gwen R. Pinson".

Gwen R. Pinson
Executive Director
Public Service Commission of Kentucky

Michael Cullum
500 10th Avenue
Dayton, KENTUCKY 41074

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MICHAEL CULLUM – ALLEGED VIOLATION OF)	CASE NO.
UNDERGROUND FACILITY DAMAGE)	2019-00165
PREVENTION ACT)	

CERTIFICATION

I, Candace H. Sacre, hereby certify that:

1. The attached DVD contains a digital recording of the Formal Hearing conducted in the above-styled proceeding on September 27, 2019. Formal Hearing Log is included with the recording on September 27, 2019;
2. I am responsible for the preparation of the digital recording;
3. The digital recording accurately and correctly depicts the Formal Hearing of September 27, 2019; and
4. The Formal Hearing Log attached to this Certificate accurately and correctly states the events that occurred at the Formal Hearing of September 27, 2019, 2019 and the time at which each occurred.

Signed this 1st day of October, 2019.



Candace H. Sacre
Administrative Specialist III

Jacqueline Hartzell, Notary Public
State at Large
Commission Expires: July 25, 2022
ID#: 605476



Session Report - Detail

27September2019

Damage Prevention Act Opening Hearing 2019-00160, 2019-00161, 2019-00165, 2019-00279, 2019- 00299

Date:	Type:	Location:	Department:
9/27/2019	Show Cause Hearing	Hearing Room 1	Hearing Room 1 (HR 1)

Judge: Michael Schmitt
Clerk: Candace Sacre

Event Time	Log Event	
8:53:10 AM	Session Started	
8:53:13 AM	Session Paused	
8:59:07 AM	Session Resumed	
9:00:25 AM	Chairman Schmitt Note: Sacre, Candace	The first case, in numerical order, is 2019-00160, Jonathan Hylton. Is Mr. Hylton here?
9:00:38 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Hylton, I wanted to ask you, have you been served? Did you get a copy of the initiating order which started this proceeding?
9:00:47 AM	Chairman Schmitt Note: Sacre, Candace	You did not? Okay, that's, I guess, the demand letter that was made. How did you know there was a hearing this morning?
9:01:05 AM	Chairman Schmitt Note: Sacre, Candace	Okay, let me go through the docket, and then we can talk about how to proceed with you. At this point, apparently, a complaint has been filed, or an order, against you, but apparently you have not received it. We'll need to talk about how to deal with that, so if you will have a seat, we'll get to you right off the bat.
9:01:27 AM	Chairman Schmitt Note: Sacre, Candace	Number two, 2019-00161, Lonnie Williams and Son Excavating, LLC.
9:01:42 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Williams, do you have an attorney? Here's the issue, individuals can have an attorney or not have an attorney. It isn't required. But a business entity, such as a corporation or legal liability company, in order to advocate for a position, because the corporation or the LLC, it's separate from you, it's not the same, legally, it's a separate person, and there is a statute in Kentucky that says, under such circumstances, a person or a company can only be represented by somebody who has a license to practice law in Kentucky. (Click on link for further comments.)
9:04:03 AM	Chairman Schmitt Note: Sacre, Candace	Okay, we can do that. Mr. Park, I guess I would ask you if you have any problems with calling Mr. Williams as a witness. The only difference is, Mr. Williams, you wouldn't be able to ask questions of the inspector. You wouldn't be able to cross examine.
9:04:25 AM	Chairman Schmitt Note: Sacre, Candace	Okay, then we'll move ahead, and you can be a witness as opposed to being an advocate or a lawyer. Please have a seat, and we'll get to you second.
9:04:37 AM	Chairman Schmitt Note: Sacre, Candace	Third, 2019-00165, Michael Cullum. Yes, Mr. Cullum, are you here and ready to go?

9:04:47 AM	Chairman Schmitt Note: Sacre, Candace	All right, okay, thank you. You don't have to have a lawyer. You're not required to have one. You can tell your story and cross examine a witness or witnesses, if any are called to testify. Thank you.
9:05:02 AM	Chairman Schmitt Note: Sacre, Candace	Four is 2019-00279, Clear Choice Facility Maintenance, LLC. Is anyone here on behalf of Clear Choice?
9:05:15 AM	Chairman Schmitt Note: Sacre, Candace	We'll call them later as we get through the others. Maybe they're just late.
9:05:20 AM	Chairman Schmitt Note: Sacre, Candace	2019-00219, Basham Construction and Rental Company, Inc. Yes, sir?
9:05:29 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Basham, the same thing holds true for you as Williams Excavating, LLC. I assume you do not have a license to practice law, correct? And you do not have a lawyer who is with you here this morning. You'll have an option of either being a witness and telling what you know but not advocating for your company. (Click on link for further comments.)
9:07:34 AM	Chairman Schmitt Note: Sacre, Candace	You can speak with them, but now we're at the hearing, and there's nothing I can do about it. Go ahead.
9:07:54 AM	Chairman Schmitt Note: Sacre, Candace	This is an official administrative proceeding. Everything you say is being broadcast over the internet, and this is a video record that is being made in this case and in others. Ms. Sacre, here, is basically doing a log, sort of an outline, of what everybody says that will be available and can be synced in with the video. (Click on link for further comments.)
9:08:46 AM	Chairman Schmitt Note: Sacre, Candace	I don't know. This is the first alleged, or it's more than one?
9:08:54 AM	Chairman Schmitt Note: Sacre, Candace	I tell you what, if you need more time to think about it, this is the last case on the docket. You can either make a decision now or wait until your case is called or we'll have four others in between or three, depending on what Mr. Hylton wants to do, and you can say, I've made a decision, and this is what we'll do, and I'll give you whatever time you need.
9:09:25 AM	Chairman Schmitt Note: Sacre, Candace	Yeah, you are. In any event, we will then start with Mr. Williams in a minute, and you may walk out and make any decision, and at any time up to and including the time your case is called, which is last, maybe around noon, and you can make that decision.
9:09:51 AM	Chairman Schmitt Note: Sacre, Candace	You and I can talk about the limits that would be placed upon or what you could say and do if you went forward, if the company went forward, without an attorney.
9:10:06 AM	Chairman Schmitt Note: Sacre, Candace	No, no. I know that, and what our interests are here, too, is in protecting you and in seeing that the company gets a fair shake, but how you proceed is up to you. I can't make that decision.
9:10:25 AM	Chairman Schmitt Note: Sacre, Candace	Go right ahead. Take your time.

9:10:28 AM	Chairman Schmitt Note: Sacre, Candace	I guess then the next order of business would be to call the first case, and then I guess that would be Mr. Hylton, Jonathan Hylton, and then we can discuss how to proceed.
9:11:02 AM	Chairman Schmitt Note: Sacre, Candace	We will, at this time, declare a recess for one minute at which time we'll go on a different video, Mr. Hylton, and then we'll call your case, and we can discuss what to do.
9:11:16 AM	Session Paused	
9:11:23 AM	Session Ended	

COMMONWEALTH OF KENTUCKY
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MICHAEL CULLUM – ALLEGED VIOLATION OF)	CASE NO.
UNDERGROUND FACILITY DAMAGE)	2019-00165
PREVENTION ACT)	

CERTIFICATION

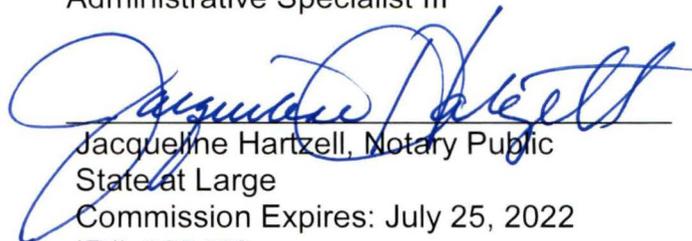
I, Candace H. Sacre, hereby certify that:

1. The attached DVD contains a digital recording of the Formal Hearing conducted in the above-styled proceeding on September 27, 2019. Formal Hearing Log, Exhibit List, Exhibits, and Witness List are included with the recording on September 27, 2019;
2. I am responsible for the preparation of the digital recording;
3. The digital recording accurately and correctly depicts the Formal Hearing of September 27, 2019; and
4. The Formal Hearing Log attached to this Certificate accurately and correctly states the events that occurred at the Formal Hearing of September 27, 2019 and the time at which each occurred.

Signed this 2nd day of October, 2019.



Candace H. Sacre
Administrative Specialist III



Jacqueline Hartzell, Notary Public
State at Large
Commission Expires: July 25, 2022
ID#: 605476



Date:	Type:	Location:	Department:
9/27/2019	Show Cause Hearing	Hearing Room 1	Hearing Room 1 (HR 1)

Witness: Michael Cullum; John Lyons
 Judge: Michael Schmitt
 Clerk: Candace Sacre

Event Time	Log Event	
10:15:28 AM	Session Started	
10:15:30 AM	Session Paused	
10:18:19 AM	Session Resumed	
10:18:22 AM	Session Paused	
10:18:31 AM	Session Resumed	
10:18:33 AM	Chairman Schmitt Note: Sacre, Candace	Back on the record, and the next case is Case Number 2019-00165, Michael Cullum. Is Mr. Cullum here?
10:18:50 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Cullum, please step forward and have a seat behind the bar.
10:18:59 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Cullum, are you ready to proceed? Have you seen the investigative material and all that, and you're ready to go?
10:19:09 AM	Chairman Schmitt Note: Sacre, Candace	The burden is on Division of Inspections, represented by Mr. Park, so you'll have an opportunity, since you're not representing anyone other than yourself, you can ask questions or make statement or testify or whatever.
10:19:24 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Park, please identify yourself and your witness.
10:19:29 AM	Staff Atty Park PSC Note: Sacre, Candace	John Park, Commission Staff Attorney with Division of Inspections. With me today is Tina Frederick, also Commission Staff Attorney. The Commission is going to call John Lyons as witness.
10:19:41 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Lyons, would you please take the stand?
10:19:51 AM	Chairman Schmitt Note: Sacre, Candace	Witness is sworn.
10:20:00 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Park?
10:20:04 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	Direct Examination. Please state name, place of employment, and current position.
10:20:26 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	In position, what is role in administering the Commission's damage prevention program?
10:20:51 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	In addition to duties as supervisor of Division of Inspections employees and inspectors, do you also investigate incidents?
10:21:06 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	Are you familiar with gas pipeline damage excavation incident that occurred on September 1, 2018, at 500 10th Street, Dayton, Kentucky?

10:21:19 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	Did you have occasion to investigate incident, or was it investigated by someone under your supervision?
10:21:31 AM	Staff Atty Park PSC Note: Sacre, Candace	May I approach, Your Honor?
10:21:32 AM	Chairman Schmitt Note: Sacre, Candace	Yes, you may.
10:21:59 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	Please describe this document.
10:22:07 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	This is the report you prepared following investigation of incident?
10:22:14 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	Was report prepared following report from Duke Energy of damage to pipeline?
10:22:23 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	Please describe findings reached in investigation as set forth in report.
10:22:46 AM	PSC EXHIBIT 1. Note: Sacre, Candace Note: Sacre, Candace	STAFF ATTY PARK PSC - WITNESS LYONS. PIPELINE DAMAGE INVESTIGATION REPORT-CULLUM.
10:22:48 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	As part of investigation, did you contact Mr. Cullum?
10:23:26 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	As part of investigation, did you determine whether call had been made to 8-1-1 call center to request line location before work done?
10:23:49 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	Was Mr. Cullum offered opportunity to resolve matter through attending training session and paying reduced fine?
10:25:28 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	Did Mr. Cullum respond to demand letter?
10:27:31 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	Mr. Cullum was given two opportunities and did not attend either of training sessions?
10:27:56 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	No payment was received from Mr. Cullum?
10:28:01 AM	Staff Atty Park PSC Note: Sacre, Candace	No further quesitons.
10:28:05 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Cullum, any questions? You may cross examine, if you like, or ask questions about the whole process or incident in question.
10:28:20 AM	Chairman Schmitt Note: Sacre, Candace	Let me ask Mr. Lyons.
10:28:27 AM	Chairman Schmitt - witness Lyons Note: Sacre, Candace	Examination. According to investigative report, Mr. Cullum was doing yardwork, was digging in yard with Bobcat, and damaged line owned by Duke Energy?
10:29:30 AM	Chairman Schmitt - witness Lyons Note: Sacre, Candace	It was Duke, not Delta, right?
10:29:37 AM	Chairman Schmitt - witness Lyons Note: Sacre, Candace	Mr. Cullum acknowledged he had not called 8-1-1 prior to conducting excavation?
10:29:47 AM	Session Paused	
10:31:49 AM	Session Resumed	

10:31:54 AM	Chairman Schmitt Note: Sacre, Candace	We're back on the record. Mr. Park, do you have any further questions?
10:31:56 AM	Chairman Schmitt Note: Sacre, Candace	I'll give you one more bite of the apple, Mr. Cullum. Anything you want to ask Mr. Lyons?
10:32:03 AM	Mr. Cullum - witness Lyons Note: Sacre, Candace	Cross Examination. So you have no record of me calling and saying I wasn't going to be able to make the March and August? because I did both times.
10:32:22 AM	Mr. Cullum - witness Lyons Note: Sacre, Candace	I did, and I knew I scheduled it, too. My daughter was sick both times. My wife is in school to get BSN, so I called both times to get it rescheduled.
10:32:35 AM	Mr. Cullum - witness Lyons Note: Sacre, Candace	And I called and talked to lady second time and told her I wasn't sure if I would be able to make it because of my wife, and I was trying to get mom to watch daughter. My wife is done with school now, but she was in school to get BSN in nursing.
10:32:54 AM	Mr. Cullum - witness Lyons Note: Sacre, Candace	And I called the first time as well.
10:33:05 AM	Mr. Cullum Note: Sacre, Candace	That's it.
10:33:06 AM	Chairman Schmitt Note: Sacre, Candace	You may step down, Mr. Lyons. Any other witnesses, Mr. Park?
10:33:10 AM	Staff Atty Park PSC Note: Sacre, Candace	No further witnesses.
10:33:12 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Cullum, would you like to take the stand and tell us about it?
10:33:22 AM	Chairman Schmitt Note: Sacre, Candace	Witness is sworn.
10:33:32 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Cullum, since you're your own witness, you may tell your version of what happened and how it happened, and then Mr. Park will probably ask you some questions.
10:34:15 AM	Chairman Schmitt Note: Sacre, Candace	Maybe we can cut this a little short.
10:34:20 AM	Chairman Schmitt - witness Cullum Note: Sacre, Candace	Examination. On previous occasions, only other time we've had hearings, the first time and they didn't come to training or pay the penalty, decision what to do after that is with Commission and not Division of Inspections.
10:34:53 AM	Chairman Schmitt - witness Cullum Note: Sacre, Candace	What we have done and what we would do here, Commission isn't bound by any offer or any proposed deal inspectors make once it gets to this position.
10:35:13 AM	Chairman Schmitt - witness Cullum Note: Sacre, Candace	Potential fine you face is \$1250, but there's training on November 4, 2019.
10:35:40 AM	Chairman Schmitt - witness Cullum Note: Sacre, Candace	Why don't you tell me what you did? How did this incident occur? You didn't call 8-1-1? You may not have even known you were supposed to call.
10:35:52 AM	Chairman Schmitt - witness Cullum Note: Sacre, Candace	What were you doing? How did you contact gas line?

10:36:11 AM	Chairman Schmitt - witness Cullum Note: Sacre, Candace	Just few inches below surface?
10:36:21 AM	Chairman Schmitt - witness Cullum Note: Sacre, Candace	Whatever penalty that will be assessed in your case against you personally will be subject to being mitigated to a payment of \$100 if you attend training on November 4. (Click on link for further comments.)
10:36:45 AM	Chairman Schmitt - witness Cullum Note: Sacre, Candace	If you miss training November 4 or by November 4 you haven't paid \$100, it is my belief your penalty will be substantially higher because there hasn't been any mitigation. (Click on link for further comments.)
10:37:20 AM	Chairman Schmitt - witness Cullum Note: Sacre, Candace	You understand if you don't go to training on November 4 or you don't pay \$100 by that date, you risk a penalty many times higher than that, right?
10:37:37 AM	Chairman Schmitt - witness Cullum Note: Sacre, Candace	Do you have anything else you'd like to say?
10:37:41 AM	Chairman Schmitt Note: Sacre, Candace	Nobody may answer phone since training is November 4. Is there any way we can send Mr. Cullum letter and document we've advised him by telephone few days or week before this? because if he doesn't attend, he will be subject to \$1250 fine. I want to make sure something has been given him so he doesn't forget.
10:38:36 AM	Chairman Schmitt Note: Sacre, Candace	Thank you. Anything else you'd like to say, Mr. Cullum?
10:38:50 AM	Chairman Schmitt Note: Sacre, Candace	No, that's an offer they made you. The statute has penalty of \$250. If it's gas line, there's an extra \$1,000 on it. What we've tried to do is offer a homeowner who's basically digging in his own yard something much less. (Click on link for further comments.)
10:40:29 AM	Chairman Schmitt Note: Sacre, Candace	Anything else?
10:40:32 AM	Chairman Schmitt Note: Sacre, Candace	You'll get Order that will set out what I just told you. Later, since it's a little more than a month off for training, you'll get a reminder. (Click on link for further discussions.)
10:40:59 AM	Chairman Schmitt Note: Sacre, Candace	Why do we have these penalties? There's a statute that provides that, and that's required by the federal government. (Click on link for further comments.)
10:42:02 AM	Chairman Schmitt Note: Sacre, Candace	You may step down, if there's nothing further, Mr. Cullum.
10:42:07 AM	Chairman Schmitt Note: Sacre, Candace	This case is hereby adjourned.
10:42:19 AM	Session Paused	
10:42:22 AM	Session Ended	



Exhibit List Report

2019-00165 27Sept2019

Michael Cullum

Name:

Description:

PSC EXHIBIT 1

PIPELINE DAMAGE INVESTIGATION REPORT

PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

KY PSC Investigator(s) John Lyons	Incident ID 20994
Incident Date 9/1/2018 12:11:00 PM	Report Submitted 9/28/2018 1:15:01 PM

OPERATOR INFORMATION

Operator Duke Energy Kentucky, Inc. Phone (513) 287-2594 Incident Location 500 10th St, Dayton, KY 500 10th Ave Dayton, KY 41074 Campbell	Reported By Laura Mate Email Laura.Mate@duke-energy.com Locate Ticket Number
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EXCAVATOR INFORMATION

Name of Excavator Michael Cullum Phone 859-866-3786 Excavator Address 500 10th Ave Dayton, KY 41074	Organization ID Email Locate Ticket Number
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Operator reports homeowner did not call 811 before digging in yard with bobcat and damaged 1" gas service line.

Investigator Lyons phoned Mr. Michael Cullum on February 26, 2019. An explanation of the reason for the call, the Public Service Commission's duty and authority is to investigate damages to natural gas pipelines and what Duke had reported to the Commission was provided to Mr. Cullum.

Mr. Cullum said that he had been in contact with Duke and that no one had ever told him about violations of the Underground Facility Damage Prevention Act (KRS 367.4901-4917). Investigator Lyons explained that only the operator had to report damages to the Commission and that Duke probably does not normally mention the Commission's roll in the matter. Further, the Commission had no part in the repair cost that Duke was charging him.

Mr. Cullum acknowledged that he had not called 811 for a line locate prior to the excavation which involved the removal of a wall built by the previous homeowner. Investigator Lyons explained that this was a violation of KRS 367 and that first time offender resolution options included: 1) payment of a partial civil penalty and attendance of a damage prevention training at the offices of the Commission; 2) payment of the full penalty amount; or 3) he could request an administrative hearing in front of the Commission if he disagreed with Commission staff's determination of the violation. Investigator Lyons inadvertently misstated the penalty amount as \$1,250 when it is actually \$500 for a homeowner. Option 1 would therefore be a partial payment of the \$500 penalty in the amount of \$100, \$400 which would be suspended upon attendance of the May 6, 2019, Damage Prevention training in Frankfort, Kentucky. Option 2 would be full payment of the \$500 penalty and no requirement to attend the training, with Option 3 he could request an administrative hearing in front of the Commission if he disagreed with Commission staff's determination of the violation. Mr. Cullum, requested that the options be put in a letter and sent to him, to which Commission staff agreed.

Violation(s)

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.

Michael Cullum
500 10th Avenue
Dayton, KENTUCKY 41074