

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BEN HODGES)	
)	
_____)	CASE NO.
)	2021-00069
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

OPENING ORDER

Ben Hodges (Mr. Hodges) 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

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,

¹ 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. Hodges for violation of the following provisions 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.

and

KRS 367.4911(10) – When excavation or demolition is necessary within the approximate location of the underground facility, the excavator shall hand-dig or use nonintrusive means to avoid damage to the underground facility.

Based on its review of the Incident Report and being otherwise sufficiently advised, the Commission finds prima facie evidence that Mr. Hodges 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. Hodges 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. 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 42952 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. Hodges 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



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2021-00069 DATED MAR 01 2021

FOURTEEN PAGES TO FOLLOW

PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

KY PSC Investigator(s) John E. Gowins	Incident ID 42952
Incident Date 8/28/2020 9:30:00 AM	Report Submitted 8/28/2020 12:46:17 PM

OPERATOR INFORMATION

Operator Leitchfield Gas Company	Reported By Jimmy Wells
Phone (270) 589-1668	Email jwwells@windstream.net
Incident Location 387 Oakwood Lane 387 Oak Wood Ln Leitchfield, KY 42754 Grayson	Locate Ticket Number Couldn't find

EXCAVATOR INFORMATION

Name of Excavator Hodges, Ben	Organization ID
Phone 270-230-6734	Email
Excavator Address 387 Oak Wood Ln Leitchfield, KY 42754	Locate Ticket Number

INCIDENT

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	N/A	N/A	N/A	8/28/20	N/A	N/A

Excavation Summary			
Excavation Within Tolerance Zone	Type Of Equipment Used	Cost of Damage (Per Operator)	Amount Billed (Excavator)
N/A	Mechanized	\$161.00	\$161.00

The operator reports that the homeowner hit the service line to his house with a mini trackhoe. The line had been marked but homeowner forgot it being there. Operator reports could not find a dig ticket.

INVESTIGATION

This would be Mr. Hodges first violation.

A dig ticket was issued in order for Windstream to replace a pole, but Mr. Hodge was not the person who requested it. This would explain why there were marks on the ground.

September 3, 2020

- Called 270.230.6734, left a v.m.
- Mr. Hodges returned my call and left a v.m.

September 4, 2020

- Called 270.230.6734, left a v.m., included my email address.
- Mr. Hodges called back, he is certain he had a dig ticket although 811 has no record of it. He will look for the dig ticket number, I will contact Leitchfield.

September 8, 2020

- Sent Mr. Hodges an email based on his email to me from 9/4/2020 indicating this was still a violation and provided the options for resolution, and requested his preference.
- Reviewed an email Mr. Hodge sent on Saturday, 9/5/2020 that showed a dig ticket, however it was requested on June 3, expired on June 24, and the damage occurred on August 28, 65 days after expiration. I sent Mr. Hodge an email with this information.

September 15, 2020

- Sent Mr. Hodges an email about resolution.
- Received an email back requesting a telephone call.

September 16, 2020

- Called Mr. Hodges back at 270.230.6734, long discussions, I believe Mr. Hodges wants the demand letter with the reduced penalty and remedial. This is what I will send.

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.

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Gas Excavation Damage Report

Leitchfield Gas Company

Submitted 8/28/2020 Incident ID: 42952

[Set back to Edit](#)[Staff Edit](#)[Print \(PDFForm.aspx?Rpt=GasInvestigation&IG=42952\)](#)

Reported By:

Name: Jimmy Wells
Phone: (270) 589-1668
Email: jwwells@windstream.net

Gas Line Incident Occured:

Date: 8/28/2020
Time: 9:30 AM

Details:

Reported Date: 8/28/2020 12:32 PM

Incident Location Address:

Location: 387 Oakwood Lane
Address: 387 Oak Wood Ln
City: Leitchfield
State: KY
County: Grayson
Zip: 42754
Confirm Code: Y

Number of Customers out: 1

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.: Couldn't find

Excavator: Home Owner

Excavator Address:

First Name: Ben
Last Name: Hodge
Phone: 270-230-6734
Email:
Address: 387 Oak Wood Ln
City: Leitchfield

State: KY
Zip: 42754
Confirm Code: Y
Excavation Damage: Failure to use hand tools where required

Description of Incident Hit 3/4 inch service line to his house, line had been marked prior but he said he had forgot it being there.

Summary Information

8/28/2020

Full details such as the cause Hit with mini trackhoe
Extent of the damage tore 3/4 inch service line into
Cost of the damage \$161.00
Steps taken to prevent re-occurrence Explain to customer that he would have to pay for damages and that he could be fined, someone with the public service commission would be contacting him.
Amount billed to excavator \$161.00

Gowins, John E (PSC)

From: Carly Dunsmore <cdunsmore@usa811.org>
Sent: Thursday, September 3, 2020 9:33 AM
To: Gowins, John E (PSC)
Cc: PSCrequest@Kentucky811.org
Subject: Re: Incident # 42952
Attachments: 2006261333.pdf

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

Good morning John,

We searched between 7/1/20 and 9/3/20. The only ticket I could find for that address is ticket 2006261333, which was created at the end of June and retransmitted on 7/6/20 to add Windstream. We are not showing any tickets being created for that address since then.

Please let me know if you have any questions.

Thank you,

Carly Dunsmore
Member Services
P: 833-538-0923
F: 317-386-7820



On Thu, Sep 3, 2020 at 8:42 AM Gowins, John E (PSC) <john.gowins@ky.gov> wrote:

Another not-straightforward request:

Can you see if there is a dig ticket issued for 387 Oak Wood Ln, Leitchfield, KY, or to Ben Hodge?

The timeframe is around 8/28/20.

Thank you.

John E. Gowins

Consumer Complaints Investigator II

Division of Inspections

Kentucky Public Service Commission

502.782.2656

Gowins, John E (PSC)

From: Gowins, John E (PSC)
Sent: Tuesday, September 8, 2020 7:10 AM
To: Ben Hodges
Subject: RE: Incident # 42952
Attachments: 2006261333.pdf

The information I have is that Warren Rural Electric requested a dig ticket for 387 Oak Wood Ln in Elizabethtown on July 6, 2020, in order to replace a pole. This would explain marks on the ground, but doesn't necessarily include the scope of where you were digging. As you can see, the identification of the dig tickets are 10-digit numbers, in this case 2006261333, not letters.

So the documentation I have indicates that this is a violation of the statutes, KRS 367.4911 (1) (a) for not having a dig ticket, and KRS 367.4911 (10) for digging with mechanized equipment within 18-inches of locate marks.

There are three possible ways to resolve this violation.

1. Since it is your first violation, and you were the homeowner, if you will agree to participate in a damage prevention training that the PSC puts on, we will reduce the initial \$500 civil penalty to \$100. Currently we do not know when we may be able to conduct the training due to the coronavirus pandemic, however we are exploring the ability to conduct the training online, which would save you a trip to Frankfort;
2. No participation in the training would be required, but the full \$500 civil penalty would be due; and
3. You have the right to request a hearing before the Public Service Commissioners.

Please let me know which option you would prefer.

From: Ben Hodges <ben_bensfurniture@yahoo.com>
Sent: Friday, September 4, 2020 3:10 PM
To: Gowins, John E (PSC) <john.gowins@ky.gov>
Subject: Re: Ben Hodges

Okay. Not sure what else you need . Let me know Just let me know when you find out more

Sent from my iPhone

On Sep 4, 2020, at 12:29 PM, Gowins, John E (PSC) <john.gowins@ky.gov> wrote:

Okay, this validates your email so that you can use the online 811 system.

What is needed is the actual dig ticket that specifies the location of the work, the date it was requested, and who was requesting it.

From: Ben Hodges <ben_bensfurniture@yahoo.com>

Sent: Friday, September 4, 2020 1:26 PM

To: Gowins, John E (PSC) <john.gowins@ky.gov>

Subject: Ben Hodges

<image001.png>

<image002.png>

Sent from my iPhone

RETRANSMIT SEE REMARKS

Ticket : 2006261333 Date: 07/06/2020 Time: 17:24 Oper: SWOODFORD Chan:000
Old Tkt: 2006261333 Date: 06/26/2020 Time: 14:49 Oper: JOEY.DUDGEON.KY Rev: 00A

State: KY Cnty: GRAYSON City: LEITCHFIELD
Subdivision:

Address : 387
Street : OAK WOOD LN
Cross 1 : ELIZABETHTOWN RD
Location: LOCATE THE POLE TO THE LEFT OF THE GARAGE WITH THE TRANSFORMER ON IT
25 FEET AROUND POLE

:
Boundary: n 37.486107 s 37.484923 w -86.253636 e -86.251957

Work type : POLE REPLACEMENT
Done for : WARREN RURAL ELEC
Start date: 06/30/2020 Time: 15:15 Hours notice: 0/0 Priority: NORM
Ug/Oh/Both: U Blasting: NO Emergency: N
Duration : N/A Depth: 8 FEET

Company : WARREN RURAL ELECTRIC Type: CONT
Co addr : 951 FAIRVIEW AVE
City : BOWLING GREEN State: KY Zip: 42101
Caller : JOEY DUDGEON Phone: (270)842-6541
Contact : JOEY DUDGEON - CELL Phone:
Mobile : (270)259-7518
Fax : (270)781-3299
Email : JDUDGEON@WRECC.COM

Remarks : THIS TICKET IS BEING RETRANSMITTED TO ADD WINDSTREAM KENTUCKY TO THE
LOCATE TICKET PER JOEY DUDGEON.

* WINKY WAS MANUALLY ADDED TO THIS TICKET, PLEASE CHECK YOUR DATABASE

* WINKY WAS NOT ON THE ORIGINAL VERSION OF THIS TICKET

:

Submitted date: 07/06/2020 Time: 17:24
Members: 0031 0423 0667 WINKY

Gowins, John E (PSC)

From: Ben Hodges <ben_bensfurniture@yahoo.com>
Sent: Tuesday, September 15, 2020 6:02 PM
To: Gowins, John E (PSC)
Subject: Re: Incident # 42952

Mr Gowins.

If you don't mind please call me. I prefer to talk instead of email

Thanks

Ben

Sent from my iPhone

On Sep 15, 2020, at 11:31 AM, Gowins, John E (PSC) <john.gowins@ky.gov> wrote:

Mr. Hodges,

I have not received a response from you regarding my email of one week ago. If I have not received a response by tomorrow, I will develop a demand letter in accordance with option number 2 below.

From: Gowins, John E (PSC)
Sent: Tuesday, September 8, 2020 7:10 AM
To: Ben Hodges <ben_bensfurniture@yahoo.com>
Subject: RE: Incident # 42952

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*Ben Hodges
387 Oakwood Ln
Leitchfield, KENTUCKY 42754