

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BEN TERLAU CONSTRUCTION, LLC)	
)	
_____)	CASE NO.
)	2021-00070
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

OPENING ORDER

Ben Terlau Construction, LLC (Ben Terlau Construction) 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 Ben Terlau Construction 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 Ben Terlau Construction 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. Ben Terlau Construction 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 31953 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 Ben Terlau Construction 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.**

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

By the Commission



ATTEST:

A handwritten signature in blue ink that reads "Linda C. Bidwell". The signature is written in a cursive style.

Executive Director

Case No. 2021-00070

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2021-00070 DATED MAR 01 2021

SIX PAGES TO FOLLOW

PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

KY PSC Investigator(s) John E. Gowins	Incident ID 31953
Incident Date 8/14/2019 4:11:00 PM	Report Submitted 8/30/2019 7:42:00 AM

OPERATOR INFORMATION

Operator Duke Energy Kentucky, Inc.	Reported By Laura Mate
Phone (513) 287-2594	Email Laura.Mate@duke-energy.com
Incident Location 5313 Madison Pk 5313 Madison Pike Independence, KY 41051 Kenton	Locate Ticket Number None

EXCAVATOR INFORMATION

Name of Excavator Unknown, Dave	Organization ID 0614814
Phone 513-518-907	Email rbt@benterlauconstruction.com
Excavator Address Ben Terlau Construction, LLC 10729 Union Reserve North Rd Union, KY 41091	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	N/A	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	\$525.00	\$525.00

The operator reports that Ben Terlau Construction was on site excavating without a locate ticket. Operator stated he knew where the facility was but still hit it with a backhoe.

INVESTIGATION

Better Business Bureau website has same address as above, phone number of: 859.663.0599.

This would be the company's first violation.

April 23, 2020

- Called 859.663.0599, went straight to the v.m. of Ben Terlau, however the mailbox was full and could not take any messages.

May 1, 2020

- Called 859.663.0599, the mailbox was full and could not take any messages.
- Sent an email to the address listed above.
- Received a v.m. from Mr. Terlau requesting a call back.

May 4, 2020

- Called Mr. Terlau, we discussed the requirements for a dig ticket, he agreed to the reduced penalty and remedial measure.

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.

BEN TERLAU CONSTRUCTION, LLC

General Information

Organization Number	0614814
Name	BEN TERLAU CONSTRUCTION, LLC
Profit or Non-Profit	P - Profit
Company Type	KLC - Kentucky Limited Liability Company
Status	A - Active
Standing	G - Good
State	KY
File Date	6/8/2005
Organization Date	6/8/2005
Last Annual Report	6/20/2019
Principal Office	10729 UNION RESERVE NORTH ROAD UNION, KY 41091
Managed By	Members
Registered Agent	KIRK M PFEFFERMAN 9 KEES DR ALEXANDRIA , KY 41001

Current Officers

Member	Ben Terlau
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Individuals / Entities listed at time of formation

Organizer	ROBERT B TERLAU
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Images available online

Documents filed with the Office of the Secretary of State on September 15, 2004 or thereafter are available as scanned images or PDF documents. Documents filed prior to September 15, 2004 will become available as the images are created.

Annual Report	6/20/2019	1 page	PDF	
Annual Report	6/20/2018	1 page	PDF	
Annual Report	8/7/2017	1 page	PDF	
Annual Report	6/6/2016	1 page	PDF	
Annual Report	7/27/2015	1 page	PDF	
Annual Report	2/27/2014	1 page	PDF	
Reinstatement Certificate of Existence	10/25/2013 1:32:55 PM	2 pages	PDF	
Reinstatement	10/25/2013 1:32:49 PM	2 pages	PDF	
Administrative Dissolution	9/28/2013	1 page	PDF	
Principal Office Address Change	8/30/2012 1:47:53 PM	1 page	PDF	
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Annual Report	3/12/2008	1 page	tiff	PDF
Annual Report	4/18/2007	1 page	tiff	PDF
Annual Report	5/4/2006	1 page	tiff	PDF
Articles of Organization	6/8/2005	2 pages	tiff	PDF

Assumed Names

Activity History

Filing	File Date	Effective Date	Org. Referenced
Annual report	6/20/2019 1:43:21 PM	6/20/2019 1:43:21 PM	
Annual report	6/20/2018 4:09:06 PM	6/20/2018 4:09:06 PM	
Annual report	8/7/2017 2:04:26 PM	8/7/2017 2:04:26 PM	
Annual report	6/6/2016 11:10:22 AM	6/6/2016 11:10:22 AM	
Annual report	7/27/2015 3:06:34 PM	7/27/2015 3:06:34 PM	
Annual report	2/27/2014 1:36:32 PM	2/27/2014 1:36:32 PM	
Reinstatement	10/25/2013 1:32:52 PM	10/25/2013	
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Annual report	8/30/2012 1:44:45 PM	8/30/2012 1:44:45 PM	
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Annual report	3/12/2008 10:02:50 AM	3/12/2008	
Annual report	4/18/2007 10:38:05 AM	4/18/2007	
Annual report	5/4/2006 10:27:30 AM	5/4/2006	
Add	6/8/2005 1:24:22 PM	6/8/2005	

Microfilmed Images

Microfilm images are not available online. They can be ordered by faxing a [Request For Corporate Documents](#) to the Corporate Records Branch at 502-564-5687.

Articles of Organization (LLC)

6/8/2005

2 pages

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Ben Terlau Construction, LLC
10729 Union Reserve North Rd
Union, KENTUCKY 41091

*Kirk Pfefferman
Registered Agent
Ben Terlau Construction, LLC
10729 Union Reserve North Rd
Union, KENTUCKY 41091