

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BURL RUSSELL - ALLEGED VIOLATION OF	)	CASE NO.
UNDERGROUND FACILITY DAMAGE	)	2019-00155
PREVENTION ACT	)	

ORDER

A hearing was held before the Kentucky Public Service Commission (PSC) on August 9, 2019 at its offices at 211 Sower Boulevard, Frankfort, Kentucky concerning the allegation that Burl Russell (Russell) violated KRS 367.4911(1)(a) on July 26, 2018 at 200 Wells Lane, Morehead, Kentucky when he damaged a natural gas service line with an excavator which resulted in a full ¾" open line without making a line location request to the One Call Center within twenty-one (21) calendar days of the excavation. Although served with process and notified of the hearing date and time, Russell neither filed a response to the charge nor appeared at the hearing to contest the allegations.

FINDINGS OF FACT

The testimony presented at the hearing as well as the exhibits filed in the record stand un rebutted and conclusively establish that:

1. Russell was at the time the damage occurred on July 26, 2018 an excavator as defined by KRS 367.4903(4) who caused damage to a natural gas service line by means of excavation as defined by KRS 367.4903(2) and (6). The natural gas service line was an underground facility owned and operated by Morehead Utilities to serve the

public. The service line contained natural gas at the time it was damaged by Russell who then crimped the line and contacted proper officials.

2. Russell failed to call the Kentucky Contact Center (One Call Center or Protection Notification Center) to obtain information about the approximate location of the damaged natural gas service line not less than two (2) nor more than ten (10) full working days prior to commencing work as required by KRS 367.4911(1)(a).

Although a One Call request was made three months prior to the excavation, locate requests are valid for only twenty-one (21) days from the date of the initial request (KRS 367.4911(2)) and by the time the excavation was commenced three (3) months later the markings and flags were no longer present.

3. Russell's excavation work was not emergency work within the scope of KRS 367.4907 or the definition of "Emergency" as defined in KRS 367.4903(7) and no exception to the call requirement is applicable to this case.

4. There are no known mitigating factors which would merit the imposition of a fine less than the maximum provided by law. This violation is Russell's first offense.

#### CONCLUSIONS OF LAW

1. Burl Russell violated the requirements of KRS 367.4911(1)(a) by failing to provide the operator of an underground facility serving the public with notification of his intended work and work schedule not less than two (2) nor more than ten (10) full working days prior to commencing work.

2. KRS 367.4917(1) provides that an excavator who fails to comply with any provision of KRS 367.4911 shall be guilty of endangering underground facilities and may be subject to a fine of two hundred and fifty dollars (\$250) for the first offense.

3. KRS 367.4917(4) provides that any person who violates any provision of the act that involves damage to a facility containing any flammable, toxic, corrosive, or hazardous material or results in the release of any flammable, toxic, corrosive, or hazardous material shall be subject to a fine not to exceed one thousand dollars (\$1,000) for each offense.

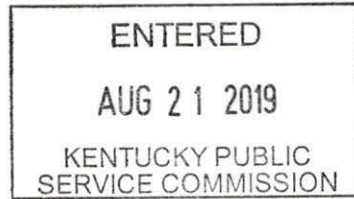
4. Burl Russell is, by reason of his failure to comply with the applicable provisions of Underground Facility Damage Prevention Act as hereinbefore set out, subject to a maximum fine of one thousand two hundred fifty dollars (\$1,250).

IT IS THEREFORE ORDERED that:

1. Burl Russell is assessed a fine of one thousand two hundred fifty dollars (\$1,250) for violation of KRS 367.4911(1)(a) for failure to provide Morehead Utilities, the operator of an underground facility serving the public, with notification of his intended work and work schedule not less than two (2) nor more than ten (10) full working days prior to commencing work.

2. Burl Russell shall pay one thousand two hundred fifty dollars (\$1,250) within thirty (30) days of the date of this order by cashier's check or money order payable to the Kentucky State Treasurer and mailed or delivered to the office of the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, KY 40602.

By the Commission



Commissioner Talina Mathews did not participate in the deliberations or decision concerning this case.

ATTEST:

  
Executive Director

Burl Russell  
1045 N Tolliver Rd  
Morehead, KENTUCKY 40351