

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MARCUS HENSLEY – ALLEGED VIOLATION OF )	CASE NO.
UNDERGROUND FACILITY DAMAGE )	2019-00236
PREVENTION ACT )	

ORDER

Pursuant to KRS 278.495(2), the Kentucky Public Service Commission (Commission) has jurisdiction to regulate the safety of natural gas facilities in Kentucky and to enforce minimum federal pipeline safety standards. Under the Kentucky Underground Facility Damage Prevention Act (Act), KRS 367.4901 through KRS 367.4917, 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, 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 from an operator of excavation damage to its underground gas pipeline, 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 Marcus Hensley 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.

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 Marcus Hensley 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:

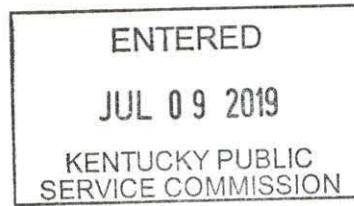
1. Marcus Hensley shall submit to the Commission a written response to the allegations contained in the Staff Incident Report within 20 days of the date of this Order.
2. Marcus Hensley shall appear on August 9, 2019, at 9 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard in Frankfort, Kentucky, for the purpose of presenting evidence concerning the alleged violation of the Underground Facility Damage Prevention Act, and showing cause why it should not be subject to the penalties prescribed in KRS 367.4917(1) and (4) for this alleged violation.
3. The August 9, 2019 hearing shall be recorded by videotape only.

4. A person shall not file a paper or appear at a hearing on behalf of, or otherwise represent, a partnership, corporation, business entity or other person unless the person is an attorney licensed to practice law in Kentucky.

5. The Staff Incident Report in the Appendix to this Order is made a part of the record in this case.

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By the Commission



ATTEST:

  
Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2019-00236 DATED **JUL 09 2019**

TWO PAGES TO FOLLOW

# PIPELINE DAMAGE INVESTIGATION REPORT

## Investigation Information

<b>KY PSC Investigator(s)</b> John Lyons	<b>Incident ID</b> 20865
<b>Incident Date</b> 8/3/2018 5:03:00 PM	<b>Report Submitted</b> 8/29/2018 2:16:16 PM

## OPERATOR INFORMATION

<b>Operator</b> Duke Energy Kentucky, Inc. <b>Phone</b> (513) 287-2594 <b>Incident Location</b> 4830 Kollman Rd 4830 Kollman Ave Taylor Mill, KY 41015  Kenton	<b>Reported By</b> Laura Mate <b>Email</b> Laura.Mate@duke-energy.com <b>Locate Ticket Number</b> None
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## EXCAVATOR INFORMATION

<b>Name of Excavator</b> Marcus Hensley <b>Phone</b> 859-394-7713 <b>Excavator Address</b> 4830 Kollman Ave Taylor Mill, KY 41015	<b>Organization ID</b> <b>Email</b> <b>Locate Ticket Number</b>
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Operator reports homeowner hit service digging with a backhoe and did not have a ticket. Homeowners 1" plastic service was cut.

Investigator Lyons contacted Mr. Hensley on October 16, 2018. Mr. Hensley stated that he was doing work on his home's foundation when the incident occurred. He had hand dug the line around the meter set and foundation then proceeded to do work with the backhoe when an unexpected loop in the line was outside the expected alignment from the meter to the marked tap to the main at the street. Mr. Hensley stated that the loop was outside of 18" of where he thought the line was and that the line was only about 4" deep. Mr. Hensley also stated that a Duke contractor was doing gas line work on his street and also pointed out where the line was expected to be from the street back to his meter; however, this was not an official locate on behalf of Duke.

Investigator Lyons asked Mr. Hensley to provide any information he had such as pictures and information from the subcontractor and provide them by email.

Mr. Hensley left Investigator Lyons a voice mail on October 19, 2018 informing that his mother had passed away and he had been unable to get the information sent to the Commission but would do so over the weekend.

Mr. Hensley submitted pictures of the incident area. Commission staff determined that a violation of KRS 367.4911(1)(a) and 367.4911(10) had been committed. An explanation of the violations were transmitted to Mr. Hensley on November 1, 2018 via email.

Mr. Hensley responded to the November 1 email that he would pay the penalty and attend the class.

Violation(s)

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Marcus Hensley  
4830 Kollman Avenue  
Taylor Mill, KENTUCKY 41015