

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BEN POORE)	
)	
_____)	CASE NO.
)	2019-00281
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

OPENING ORDER

Ben Poore 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 Poore (Mr. Poore) 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 Mr. Poore 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:

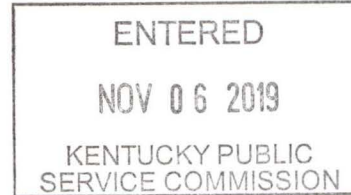
1. Mr. Poore shall submit to the Commission a written response to the allegations contained in the Staff Incident Report within 20 days of receipt of this Order.
2. Any partnership, corporation, or business entity (including a limited liability company) must be represented by an attorney licensed to 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 21205 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. Poore 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

Commissioner Talina Mathews did not participate in this case.



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2019-00281 DATED **NOV 06 2019**

EIGHT PAGES TO FOLLOW

PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

KY PSC Investigator(s) Eric V. Tout	Incident ID 21205
Incident Date 11/11/2018 10:17:00 AM	Report Submitted 12/7/2018 11:22:58 AM

OPERATOR INFORMATION

Operator Columbia Gas of Kentucky, Inc. Phone (859) 533-4022 Incident Location 148 Belt Line Ave Lexington, KY 40508 Fayette	Reported By Ryan Twait Email rmtwait@nisource.com Locate Ticket Number
--	---

EXCAVATOR INFORMATION

Name of Excavator Ben Poore, Gus Shalash, Mariam Shalash Phone Ben: 859-202-4887 Excavator Address Private Contractor Ben: 1203 E New Circle Rd. Gus: 1701 N Broadway Rd. Lexington, KY 40505	Organization ID Email Gus: 859-420-9151 Locate Ticket Number
---	---

Incident

The Operator reports that the Excavator, Ben Poore, was excavating an area without a locate ticket. While digging with an excavator, Mr. Poore struck a plastic one inch natural gas service line.

Investigation

On 06/14/19 the Excavator, Ben Poore (859-202-4887), stated that he was operating a backhoe when damage occurred to the gas service. Mr. Poore stated that he was contracted by Gus Shalash to excavate at Mr. Shalash's sister's property. Mr. Poore stated that Mr. Shalash informed him of the area to excavate and he did so. Mr. Poore was advised that a call to the Protection Notification Center (811) before excavating was warranted. Mr. Poore advised he had nothing else to say and the telephone conversation was cut off. An attempt to reconnect with Mr. Poore resulted in a voice message with no return call as of today's date.

On 06/14/19 an attempt to contact Mr. Shalash (859-420-9151) resulted in, this number is not in service message. An attempt to contact Mr. Shalash (859-299-5500) resulted in a message being left.

On 06/17/19 and 06/18/19 an attempt to contact Mr. Shalash resulted in a voice mail/message with no return call as of today's date.

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.



Matthew G. Bevin
Governor

Charles G. Snaveley
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

Michael J. Schmitt
Chairman

Robert Cicero
Vice Chairman

Talina R. Mathews
Commissioner

June 20, 2019

Ben Poore
1203 E. New Circle Rd.
Lexington, KY 40505

Re: Violation of Kentucky Underground Facility Damage Prevention Act
Incident Number: 21205

DEMAND FOR PENALTY ASSESSMENT

Dear Mr. Poore:

The Kentucky Public Service Commission (Commission) received a report on December 7, 2018, regarding damage to a natural gas or hazardous liquid facility owned and/or operated by the Columbia Gas of Kentucky, Inc. Under the Kentucky Underground Facility Damage Prevention Act (Act), KRS 367.4901 through KRS 367.4917, the Commission has jurisdiction to investigate and assess civil penalties for any violation of the Act that results in excavation damage to underground facilities used to transport gas or hazardous liquid subject to federal pipeline safety laws, 49 U.S.C. secs. 60101 et seq. The Commission regulates the safety of jurisdictional natural gas pipelines in the Commonwealth pursuant to KRS 278.495 and 49 CFR Parts 190, 191, 192 and 195.

Following receipt of the damage notification, Commission Staff (Staff) performed an investigation of the incident and prepared the attached incident report. Based on its investigation of the incident, Staff has determined that Mr. Poore committed the following violation(s) 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.

CIVIL PENALTY

KRS 367.4917 provides that a person who commits a violation of the Act shall be subject to a civil penalty not to exceed \$250 for the first violation, \$1,000 for the second violation within one year, and \$3,000 for the third and any subsequent violation. If the violation results in damage to an underground pipeline used to transport gas or hazardous liquid, the violator is subject to an additional civil penalty not to exceed \$1,000 per violation. Based on its investigation of this matter, Staff has determined that Mr. Poore should be assessed a civil penalty in the total amount of \$1,250 for failing to comply with KRS 367.4911, first offense.

If Mr. Poore does not wish to contest the proposed penalty, Mr. Poore should mail or deliver a cashier's check or money order made payable to the "**Kentucky State Treasurer**", within 30 days of the date of this letter, to:

Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

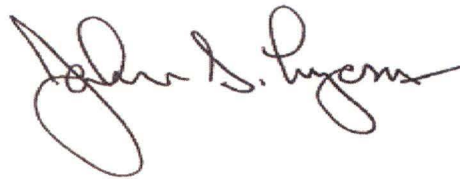
Please include the Incident Number **21205** on the cashier's check or money order submitted for payment.

Payment of the proposed civil penalty will satisfy and resolve any and all claims against Mr. Poore for any violation of the Act, arising out of the November 11, 2018, incident. Mr. Poore's payment of the proposed civil penalty will not be considered an admission by Mr. Poore that he willfully violated any provision of the Act.

If Mr. Poore does not pay the proposed civil penalty within 30 days of the date of this letter, the Commission will institute an administrative proceeding against Mr. Poore and hold a formal hearing during which Mr. Poore will have an opportunity to present evidence and show cause why it should not be assessed penalties under KRS 367.4917 as a result of the November 11, 2018, incident.

If you have any questions regarding this demand for penalty assessment, please contact Eric V. Tout, Division of Inspections at 502-782-2622.

Sincerely,



John S. Lyons
Deputy Executive Director
Kentucky Public Service Commission

Attachment

Columbia Gas/NiSource INVOICE

CLAIM NO.: KY18-1185

JOB ORDER NO.: 18-6567568-00

DATE: November 27, 2018

MRA ACCOUNT NUMBER: 20496540-000-001-5

PAYMENT DUE 28 DAYS FROM ABOVE DATE
PLEASE MAKE REMITTANCE PAYABLE TO:

Mr. Ben Poore
1203 E. New Circle Rd.
Lexington, Kentucky 40505

Columbia Gas / NiSource
3101 N. Ridge Rd. E.
Lorain, Ohio 44055
ATTN: Damage Prevention Support

AMOUNT DUE

\$2,074.30

PLEASE CUT HERE AND RETURN TOP WITH PAYMENT

Itemization of the charges for the damages which occurred on 11/11/2018 in the vicinity of 148 Beltline Av, Lexington, Kentucky 40508.

ITEMS	AMOUNT
Labor	\$1,361.16
Materials	\$8.28
Equipment	\$676.88
Gas Loss	\$27.48
Contracted Fees	\$0.00
Taxes	\$0.50
TOTAL EXPENSE	\$2,074.30

Notes:

**If you have any questions regarding this bill, please contact Dawn Miller,
Facility Damage Coordinator, at (440)240-6166.**



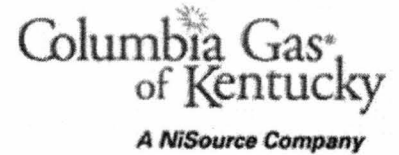
**Know what's below.
Call before you dig.**

Columbia Gas/NiSource INVOICE

CLAIM NO.: KY18-1185

JOB ORDER NO.: 18-6567568-00

DATE: November 27, 2018



**Columbia Gas of Kentucky, Inc.
Damage Prevention Support**

3101 N Ridge Road E
Lorain, Ohio 44055

11/27/2018

(440)240-6166

Mr. Ben Poore
1203 E. New Circle Rd.
Lexington, Kentucky 40505

Re: Our Claim: KY18-1185

Dear Mr. Ben Poore,

Enclosed is our damage claim invoice in the amount of \$2,074.30, which is the expense our company incurred as the result of your contact with our facilities, located in the vicinity of 148 Beltline Av, Lexington, Kentucky 40508. Our reports indicate that our facilities were damaged on 11/11/2018 - Failure to call the one call center.

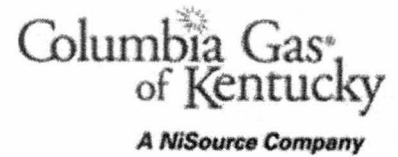
If you have insurance to cover this type of damage claim, please forward the enclosed damage claim invoice and envelope to your insurance carrier for payment. Then please advise our department of your insurance company's name and address so that we can follow the matter to a conclusion. In the event you are not insured, your check, draft or money order in the above amount is hereby requested. To insure proper credit to your account, please remit the top portion of the damage claim invoice, along with your payment, in the enclosed pre-addressed envelope.

If you wish to discuss this matter further, please contact the undersigned.

Sincerely,

Dawn Miller
Facility Damage Coordinator

Enclosure



**Columbia Gas of Kentucky, Inc.
Damage Prevention Support**

3101 N Ridge Road E
Lorain, Ohio 44055

01/03/2019

(440)240-6166

Mr. Ben Poore
1203 E. New Circle Rd.
Lexington, Kentucky 40505

Re: Our Claim: KY18-1185

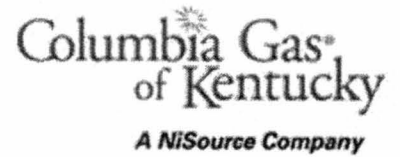
Gentlemen,

On 11/27/2018, we forwarded our damage claim invoice in the amount of \$2,074.30, which is the expense our company incurred as the result of your contact with our facilities located in the vicinity of 148 Beltline Av, Lexington, Kentucky 40508, which occurred on 11/11/2018.

Unfortunately, we have not been contacted by you or your insurance carrier relative to the settlement of this claim and are once again directing this matter to your attention. We request that immediate arrangements be made to expedite this loss. If you have insurance, please forward this correspondence and the enclosed envelope to your insurance carrier.

Sincerely,

Dawn
Facility Damage Coordinator



Columbia Gas of Kentucky, Inc.
Damage Prevention Support

3101 N Ridge Road E
Lorain, Ohio 44055

01/17/2019

(440)240-6166

Mr. Ben Poore
1203 E. New Circle Rd.
Lexington, Kentucky 40505

Re: Our Claim: KY18-1185

Dear Mr. Ben Poore,

We have requested payment of our facility damage claim in the amount of \$2,074.30, which is the expense our company incurred to make the necessary repairs to our facility located in the vicinity of 148 Beltline Av, Lexington, Kentucky 40508. The damage occurred on 11/11/2018.

We have not received payment from you or your insurance carrier, please let this communication serve as notice that unless the above amount is received by 2/6/2019, this matter shall be referred to a collection attorney.

Sincerely,

Dawn Miller
Facility Damage Coordinator

Ben Poore
6525 Highway 218
Greensburg, KENTUCKY 42743