

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COLUMBIA GAS OF KENTUCKY, INC.	)	
	)	
_____	)	CASE NO.
	)	2020-00185
ALLEGED VIOLATION OF UNDERGROUND FACILITY	)	
DAMAGE PREVENTION ACT	)	

ORDER

This case was initiated by the Kentucky Public Service Commission’s (Commission) Division of Inspections (DOI) on June 10, 2020, as the result of a claimed violation by Columbia Gas of Kentucky, Inc. (Columbia) of the Underground Facility Damage Prevention Act as set out in KRS 367.4901 through KRS 367.4917 (sometimes hereinafter referred to as the “Act”). DOI alleged that Columbia in response to an emergency locate request mismarked a customer’s gas service line at 50 Bellefonte Road in Raceland, Greenup County, Kentucky on August 16, 2019. Bonzo Excavating, while using mechanized equipment, struck and damaged a one inch plastic natural gas service line at a location other than the one marked by Columbia. DOI cited Columbia for the alleged violation of KRS 367.4909(6)(a) which states that:

An operator shall, upon receiving an emergency locate request or a normal excavation locate request inform the excavator of the approximate location and the description of any of the operator’s facilities that may be damaged or pose a safety concern because of excavation or demolition.

Columbia filed its response to DOI’s opening order on June 30, 2020. In its response, Columbia stated that it should not be subject to a fine or civil penalty because it could not

have reasonably known of the location of the damaged portion of the pipeline. According to Columbia, the service line was installed by the customer and was “customer owned.”<sup>1</sup> Columbia acknowledged that by Order dated November 10, 1988, in Case No. 10127, it had assumed responsibility for operation and maintenance of existing customer owned service lines and that after November 10, 1988, it would install a new service line when necessary at no cost to the customer and would thereafter own, operate and maintain the line.<sup>2</sup>

### JURISDICTION

The Commission has jurisdiction to regulate the safety of natural gas facilities in Kentucky and to enforce minimum pipeline safety standards pursuant to KRS 278.495(2) and KRS 278.992(1), as well as to investigate and assess civil penalties for violations of the Act which relate to an underground facility used to transport natural gas or hazardous liquids subject to federal pipeline safety laws, as set out in 49 U.S.C. § 60101, *et seq.*<sup>3</sup> Penalties range from a low of \$250 for the first offense, no more than \$1,000 for the second offense committed within one year, to a high of \$3,000 for the third and any subsequent offenses.<sup>4</sup> An additional penalty of \$1,000 may be assessed where the violation results in damage to an underground facility containing any flammable, toxic,

---

<sup>1</sup> Pipeline Damage Excavation Report (PSC DOI Exhibit 1) at 2.

<sup>2</sup> See Case No. 10127, *Application of Columbia Gas of Kentucky, Inc. for an Order Authorizing It to Amend Its Tariff and for Authority to Deviate from Commission Regulation 807 KAR 5:022, Section 9(17)(a)1, and 807 KAR 5:022, Section 9(17)(a)2* (Ky. PSC Nov. 10, 1988) (PSC DOI Exhibit 2).

<sup>3</sup> KRS 367.4917(6).

<sup>4</sup> KRS 367.4917(1)

corrosive, or hazardous material or results in the release of any flammable, toxic, corrosive, or hazardous material.<sup>5</sup>

### PROCEDURAL HISTORY OF THE CASE

A hearing was held by video conferencing at the offices of the Commission in Frankfort, Kentucky, on September 9, 2020, after which the parties were provided a briefing schedule. All post hearing briefs have been filed in the record and the case stands submitted for a decision on the merits. The burden of proof is on the DOI to establish that Columbia violated the Act and as to the issue of an enhanced penalty pursuant to KRS 367.4917(4), to prove that the violation was a substantial causative factor in excavation damage to a service line which contained flammable, toxic, corrosive, or hazardous material, or resulted in the release thereof into the environment.

### FACTS

The facts of this case are, for the most part, undisputed. Columbia is a natural gas distribution utility serving approximately 117,000 customers in central and eastern Kentucky.<sup>6</sup> On January 12, 1988, Columbia filed an application with the Commission requesting a deviation from administrative regulation 807 KAR 5:022, Section 9(17)(a)(1) and (2), seeking the authority to assume ownership of the service lines of its residential and commercial customers and to take responsibility for maintenance of those lines.<sup>7</sup> In response to data requests in Case No. 10127, Columbia advised the Commission that there would be no difference in operation and maintenance service provided to new

---

<sup>5</sup> KRS 367.4917(4).

<sup>6</sup> *Annual Report of Columbia Gas of Kentucky, Inc., to the Kentucky Public Service Commission for the Year Ending December 31, 2019* at 4 and 5.

<sup>7</sup> PSC DOI Exhibit 2.

customers and customers currently connected to the system and no difference in the services provided by Columbia for lines that it would own versus those service lines it would not own.<sup>8</sup> The Commission, on November 10, 1988, granted Columbia's request and authorized it to thereafter operate and maintain existing service lines at no cost to its customers on and after the date of its Order and to replace such service lines at no cost to the customer after which Columbia would become the owner of the line.<sup>9</sup>

On August 16, 2019, Columbia received an emergency request to locate underground natural gas facilities owned or operated by it at 50 Bellefonte Road, Raceland, Greenup County, Kentucky.<sup>10</sup> Columbia responded on the same day the request was received and mismarked the location of a natural gas service line owned by a resident, but had been operated by Columbia for more than 30 years.<sup>11</sup> Relying on Columbia's markings, Bonzo Excavating began its mechanical digging operations in an effort to repair a ruptured water line. While working outside of the area marked by Columbia, Bonzo struck and damaged a one-inch plastic natural gas service line.<sup>12</sup> The gas service line was severed and natural gas escaped into the atmosphere.<sup>13</sup> The service

---

<sup>8</sup> Case No. 10127, *Application of Columbia Gas of Kentucky, Inc. for an Order Authorizing It to Amend Its Tariff and for Authority to Deviate from Commission Regulation 807 KAR 5:022, Section 9(17)(a)1, and 807 KAR 5:022, Section 9(17)(a)2*, Columbia's Response to Staff's First Request for Information, Items 9a and 9b (PSC DOI Exhibit 3).

<sup>9</sup> PSC DOI Exhibit 2.

<sup>10</sup> PSC DOI Exhibit 1.

<sup>11</sup> PSC DOI Exhibit 1 at 2 and Gas Excavation Damage Report, Columbia Gas of Kentucky, Inc. dated September 9, 2019, at page 2 of 2.

<sup>12</sup> *Id.*

<sup>13</sup> Testimony of James Cooper, Kentucky Operations Center Manager for Columbia, Hearing Video Transcript (HVT) of Sept. 9, 2020 Hearing, at 10:20:02-10:20:18.

line which was damaged was a distribution line over which Columbia assumed operational control on November 10, 1988, but which had not been replaced.<sup>14</sup> Columbia, for a period in excess of 30 years, performed leak surveys on the service line as required by 49 C.F.R. § 192.723(2).<sup>15</sup> A post-accident examination of the plastic service line revealed it had been installed prior to the time that Columbia took over responsibility for its maintenance.<sup>16</sup> Although Columbia had exercised control over the line since late 1988, it had no records as to whether the line was steel or plastic or as to its exact location.<sup>17</sup> Columbia's locate technician erroneously assumed that the service line consisted of 1 1/4" bare steel pipe based upon the fact that Columbia's distribution line was steel as was the riser on the customer's property.<sup>18</sup> Relying solely upon these facts, the locate technician utilized only the direct locate method in an attempt to find the gas line.<sup>19</sup> Using

---

<sup>14</sup> *Id.*; See also e-mail from R.M. Twait on behalf of Columbia dated April 30, 2020, in which Mr. Twait explained that the service line was installed by the homeowner prior to the date Columbia assumed responsibility for its maintenance and that Columbia in more than 30 years had not replaced it. (PSC DOI Exhibit 1); Columbia's Response to Staff Incident Report at 2.

<sup>15</sup> HVT of the Sept. 9, 2020 Hearing at 09:35:39-09:36:49; see also Columbia's Post-Hearing Brief at 2 and 5; HVT of the Sept. 9, 2020 Hearing at 09:28:42-09:29:08. 49 C.F.R. § 192.723(a) requires each operator of a distribution system to conduct periodic leak surveys. Section (b)(2) requires leak surveys with leak detection equipment to be conducted outside business districts as frequently as necessary but at least once every 5 calendar years at intervals not exceeding 63 months. Cathodically unprotected distribution lines subject to § 192.465(e) on which electrical surveys are for corrosion are impractical must be subjected to a leak survey at least once every 3 calendar years at intervals not exceeding 39 months.

<sup>16</sup> Testimony of James Cooper at HVT of the Sept. 9, 2020 Hearing at 09:42:07-09:43:12.

<sup>17</sup> In its post-hearing brief at 3, counsel for Columbia stated as follows: "because the line was customer owned Columbia had to rely on its observations and make reasonable decisions regarding the locating method given industry standards and experience." Based upon Columbia's observation of its own portion of the line and the riser being made of 1 and 1/4 inch bare steel, Columbia says that it reasonably concluded that the customer-owned line was also bare steel and used the direct locate method in an attempt to find the line.

<sup>18</sup> *Id.*

<sup>19</sup> Columbia noted in its post-hearing brief at 1 and 2 that its locate technician concluded based upon his observation of the Columbia gas main and the steel riser at the customer meter that the customer owned line was also bare steel and therefore used the direct locate method in an attempt to find the gas line. Columbia conceded that no other locate method was employed because its technician "had no reason

a device designed exclusively to locate steel pipe, the technician's equipment instead located a steel water line which was mistakenly marked as the location of the gas service line.<sup>20</sup> Bonzo Excavating struck and severed the gas service line at a location outside of the area marked by Columbia.<sup>21</sup>

It is Columbia's position that it should not be subjected to a fine or civil penalty as a result of the mismarking because its locate technician reasonably believed the line to be steel rather than plastic and was therefore justified in not employing the use of other available means and equipment which if used could have accurately located the plastic service line.<sup>22</sup>

### DISCUSSION AND ANALYSIS

The General Assembly enacted the Underground Facility Damage Prevention Act for the purpose of promoting public workplace safety as well as the protection of consumer services by providing an effective underground damage prevention procedure.<sup>23</sup> The accurate location and marking of underground natural gas pipelines is the keystone to successful implementation of the Act.<sup>24</sup> Upon receipt of a locate request, the operator of

---

to do anything differently or additionally." Columbia initially claimed that its records indicated that the service line was one and a quarter inch bare steel but did not produce any record to support that statement. PSC DOI Exhibit 1 at 2.

<sup>20</sup> PSC DOI Exhibit 1 at 2, email from Columbia Gas dated April 30, 2020, setting out its position as to the events which resulted in damage to the customer owned gas service line; HVT of Sept. 9, 2020 Hearing at 09:35:39-09:36:49; see also 09:36:04-09:36:14.

<sup>21</sup> PSC DOI Exhibit 1.

<sup>22</sup> Columbia's Post-Hearing Brief at 4; James Cooper Testimony at HVT of Sept. 9, 2020 Hearing at 09:40:20-09:40:43.

<sup>23</sup> KRS 367.4901 through KRS 367.4917.

<sup>24</sup> Case Nos. 2019-00280 and 2019-00324, *Kentucky Frontier Gas, LLC, Alleged Violation of Underground Facility Damage Prevention Act* (Ky. PSC Mar. 3, 2020) at 8. "The marking of underground natural gas pipelines by the operator is the single most important requirement of the Act. It is the operator who owns and is legally responsible for the maintenance of its gas pipelines. It is the operator and only the

an underground facility devoted to serving the public<sup>25</sup> is required to inform the excavator of the approximate location and description of any of the operator's facilities that may be damaged or pose a safety concern because of excavation or demolition<sup>26</sup> and provide the excavator with any other information that would assist in locating or avoiding contact with or damage to them.<sup>27</sup> Unless permanent facility markers are provided, the operator is required to provide temporary markings to inform the excavator of the ownership and approximate location of the underground facility.<sup>28</sup> Although the service line in this case was owned by its residential customer, Columbia was clearly the operator of the service line.<sup>29</sup> The Commission, by Order dated November 10, 1988, granted Columbia's application and request that it be permitted to assume the responsibility of operating and maintaining residential service lines including the line damaged in this case.<sup>30</sup> Customer-owned service lines are underground facilities within the meaning of KRS 367.4903(1) as

---

operator who knows the actual or at least the approximate location of its own pipelines and it is the operator who is required by the Act to pass that information on to homeowners and other excavators by marking such approximate location on the ground before commencement of excavation activities."

<sup>25</sup> KRS 367.4903(5) defines the term "operator" to mean "any entity or individual owning or operating underground facilities to serve the public."

<sup>26</sup> KRS 367.4909(6)(a).

<sup>27</sup> KRS 356.4909(6)(b).

<sup>28</sup> KRS 367.4909(6)(c).

<sup>29</sup> PSC DOI Exhibit 2. In 1988 Columbia applied to the Commission seeking a waiver of Administrative Regulation 807 KAR 5:022, Section 9(17)(a)1, and 807 KAR 5:022, Section 9(17)(a)2, and to allow it to assume operational maintenance and responsibility over customer-owned service lines, and to become the owner thereof at the time of necessary replacement.

<sup>30</sup> *Id.*

they provide the means by which natural gas is transported to the customer of a natural gas utility.<sup>31</sup>

Columbia has acknowledged that for over 30 years before the damage, it voluntarily assumed legal responsibility to operate and maintain this customer-owned service line, but argues that it should not be subjected to a fine or civil penalty because it was unaware of the location of the line and mistakenly but in good faith believed it to be made of steel instead of plastic. According to Columbia, the service line sustained damage because:

(1) Its technician executed the locate request based upon either a lack of or inaccurate information contained in its records as to whether the service line was steel or

---

<sup>31</sup> An underground facility is defined, insofar as applicable to this case, by KRS 367.4903(1) to mean “an underground line or system used for . . . conveying, transmitting or distributing . . . gas . . . .” Federal pipeline safety regulations to which Columbia is required to adhere defines a pipeline facility as “new and existing pipelines . . . used in the transportation of gas or in the treatment of gas during the course of transportation.” (49 C.F.R. § 192.3 at 425) The Common Ground Alliance, a stakeholder group dedicated to the mission of preventing damage to underground utility infrastructure has produced a best practices guide and, among other things, defined service lines and their relationship to the operator of a natural gas system. NiSource, Inc., the parent of Columbia, is a member of that organization, and those guidelines state that the operator is required to locate service lines within the bounds of the locate request. Nowhere in the guidelines is the obligation of the operator qualified by a standard of reasonableness or the exercise of ordinary care. The best practice guidelines as they apply to gas service lines are as follows:

4-21 service lines

Practice Statement: a service line is marked in response to a locate request to the operator who uses the service line to pursue a business that derives revenue by providing a product or service to an end-use customer via the service line. A service line is marked in response to a locate request to a governmental entity that provides a product or service to an end-use customer via the service line.

Practice Description: a service line is a type of underground facility that is connected to a main facility. The service line is used by the following entities: an operator who provides a product or service within a right of way, an easement, or an allowed access to or through private property while pursuing a business that generates revenue by providing a product or service to an end-use customer other than another operator of like kind or themselves.

The operator or the governmental entity locates and marks these service lines within the bounds of the locate requests up to either (1) the point of their operational responsibility, (2) the service line enters a building, or (3) where the access to locate the line terminates, as designated by the prevailing law.



plastic and the observation of the locate technician that the riser at the customer's meter was made of steel.

(2) The technician therefore reasonably assumed that the customer-owned portion of the line also consisted of bare steel since Columbia had no record of replacing the line.

(3) The technician employed the direct locate method and connected the locating equipment directly to the riser which, as pointed out by Mr. James Cooper, a Columbia witness, is the industry preferred location method.

(4) The technician picked up a strong signal from his locating equipment and marked the line accordingly.

(5) The technician's equipment actually located the position of a water line to the customer's residence which was marked by mistake.

(6) Bonzo Excavating while operating outside of the marked area struck and damaged the gas service line which was a one-inch plastic line.

(7) Columbia acknowledges that the plastic service line had been in place for more than 30 years and was installed by a homeowner prior to the time it assumed maintenance responsibilities.<sup>32</sup>

Columbia insists, however, that given the facts and circumstances of this case its locate technician acted reasonably in relying solely upon a strong locate signal in attempting to find and mark the service line. According to Columbia, had the signal not been so strong the technician would have employed additional locate methods such as

---

<sup>32</sup> PSC DOI Exhibit 1 at 2.

hydro excavation, the Jameson plastic locate system, or hand spotting the facility.<sup>33</sup> The technician, according to Columbia, would have also notified the excavator that he did not have a good locate on the line and may have even remained on site for the dig.<sup>34</sup> In view of the strong locate signal and the technician's observation, Columbia states there was no reason to employ additional locate techniques and that under the circumstances, it should not be subjected to a fine or civil penalty because its technician could not have reasonably known the location of the service line given the fact that Columbia did not install the line and that the locate equipment picked up a signal from an adjacent water line. Columbia contends that it "made all reasonable efforts to provide the approximate location pursuant to KRS 367.4909(6)(a), however, given the unusual circumstances, was unsuccessful in its efforts."<sup>35</sup> Columbia's argument is in essence an assertion that the statutory liability of an operator of a natural gas pipeline for mismarking a line which it owns, operates, or maintains should be determined by whether or not it acted reasonably in the exercise of ordinary care.<sup>36</sup> The Act does not predicate an operator's liability for a statutory violation on the basis of whether or not he was negligent.<sup>37</sup> Had that been

---

<sup>33</sup> HVT of the Sept. 9, 2020 Hearing at 09:34:21-09:34:36. See also Columbia's Post-Hearing Brief at 4.

<sup>34</sup> Columbia's Post-Hearing Brief at 4.

<sup>35</sup> *Id.* at 5.

<sup>36</sup> HVT of the Sept. 9 2020 Hearing 9:48:00-9:49:00. Columbia's Kentucky Operations Center Manager, Mr. James Cooper, testified that the company should not be held responsible for mismarking of the service line and therefore subject to a civil penalty because in this case it was not negligent. Negligence is the failure to exercise ordinary care; the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation (Black's Law Dictionary 8<sup>th</sup> edition at 1061 and 1063; *Shelton v. Kentucky Easter Seals Society*, 413 S.W.3d 901, 908 (Ky. 2013); *Lee v. Farmer's Rural Electric Cooperative Corporation*, 245 S.W.3d 209, 212 (Ky. App. 2007).

<sup>37</sup> Even if Columbia's asserted position that a finding of negligence should be required before a penalty assessment is made, the facts of this case demonstrate that Columbia's efforts to locate and mark a gas service line which it did not install and about which it had no reliable records fell short of the exercise

intended, the legislature would certainly have said so. Kentucky courts have repeatedly held that statutes must be given a literal interpretation unless they are ambiguous.<sup>38</sup>

There is no ambiguity here. KRS 367.4909(6) provides that:

(6) An operator shall, upon receiving an emergency locate request or a normal excavation locate request:

(a) Inform the excavator of the appropriate location and description of any of the operator's facilities that may be damaged or pose a safety concern because of excavation or demolition;

(b) Inform the excavator of any other information that would assist in locating and avoiding contact with or damage to underground facilities;

(c) Unless permanent facility markers are provided, provide temporary markings to inform the excavator of the ownership and approximate location of the underground facility; and

(d) Notify the requesting party if underground facilities are not in conflict with the excavation or demolition.

The word "shall" in KRS 367.4909(6) carries the common ordinary meaning and is a word of command.<sup>39</sup> It clearly requires an operator to perform his statutorily defined duties without exception or qualification. The Act does not provide that an operator is to use reasonable efforts to locate and mark its underground facilities, but rather that it shall locate and mark those facilities. The failure to do so is a statutory violation for which a penalty may be assessed even where no damage occurs.<sup>40</sup> Columbia also ignores the

---

of reasonable conduct or ordinary care given that its locate attempt was limited to a method used exclusively to locate lines made of bare steel.

<sup>38</sup> *Kentucky Farm Bureau Mutual Insurance Company v. Ryan*, 177S.W.3d 797, 800 (Ky. 2005); *White, et al. v. Check Holders, Inc.*, 996 S.W.2d 496, 497 (Ky. 1999); *Lincoln County Fiscal Court v. Department of Public Advocacy*, 794 S.W.2d 162, 163 (Ky. 1990).

<sup>39</sup> KRS 446.080(4).

<sup>40</sup> KRS 367.4917(1)

fact that under Kentucky law, the violation of a statute is negligence per se,<sup>41</sup> and if the damage sustained is one which enactment of the statute was intended to prevent, the violation must be considered as the proximate cause<sup>42</sup> or substantial factor in causing the result.<sup>43</sup> As there is no language in the Act which requires or even infers that a finding of negligence is a prerequisite to the assessment of a fine or civil penalty, Columbia's argument is not persuasive.

### PENALTY ASSESSMENT

KRS 367.4917(6) vests the Public Service Commission with statewide authority to enforce and assess civil penalties provided for in the Act. Unlike KRS 367.4917(1), which requires no proof of causation and damages to support the imposition of a civil penalty,<sup>44</sup> a penalty assessment issued pursuant to KRS 367.4917(4) must be predicated upon a finding that the Act was violated and that the violation involves damage to a facility containing any flammable, toxic, corrosive, or hazardous material or results in the release of any such substance.<sup>45</sup> A penalty assessed where the violation caused or was a

---

<sup>41</sup> *Frankfort Plant Board Municipal Projects Corporation v. Bell South Telecommunications, LLC*, 610 S.W.3d 315, 318 (Ky. App. 2020); *Peak v. Barlow Homes, Inc.*, 765 S.W.2d 577, 578 (Ky. App. 1988).

<sup>42</sup> *Blue Grass Restaurant Company, Inc. v. Eastland Investment Company*, 424 S.W.2d 594, 597 (Ky. 1968); *Greyhound Terminal of Louisville v. Thomas*, 209 S.W.2d 478, 479 (Ky. 1947).

<sup>43</sup> *Isaacs v. Smith*, 5 S.W.3d 500, 502 (Ky. 1999).

<sup>44</sup> KRS 367.4917(1) provides that: "An excavator who fails to comply with any provision of KRS 367.49.09, or an operator who fails to comply with any provision of KRS 367.4909, shall be guilty of endangering underground facilities and may be subject to a fine . . . ." This statute does not require that an underground facility sustain any damage as a result of a violation for a fine or civil penalty to be imposed.

<sup>45</sup> KRS 367.4917(4) permits assessment of a civil penalty of up to one thousand dollars (\$1,000) for each offense where a statutory violation involves damage to a facility containing any flammable, toxic, corrosive, or hazardous material or results in the release of such substance. See Case No. 2019-00278, *Blue Jay Communications, Inc., Alleged Violation of Underground Facility Damage Prevention Act*, (Ky. PSC June 30, 2020) at 4. Where the Commission noted that where a violation of the Act was established the only issue remaining prior to assessing a penalty under KRS 367.4917(4) was whether the violation was a cause of the damage and if so, the amount of the civil penalty.

substantial factor in causing damage to such an underground facility may not exceed \$1,000 for each offense.<sup>46</sup>

In making a penalty assessment, the Commission reviews the evidence presented to determine if there are mitigating circumstances to be considered in arriving at a decision as to the amount.<sup>47</sup> In this case, Columbia voluntarily assumed full responsibility for the operation and maintenance of this customer-owned gas service line in November 1988, more than 30 years before the excavator made a locate request. Columbia conducted periodic gas leak surveys as required by federal regulations for an even longer period. In more than 30 years, Columbia neither replaced nor made any repair to the line and was unaware of both its precise location and the material of which it was constructed. In responding to an excavator's locate request, the locate technician unreasonably assumed the service line was steel when it was in fact plastic. This assumption led the technician to utilize locate equipment exclusively designed to find only steel pipe, and when the equipment provided the location of a steel waterline, the technician marked it as the location of the gas service line. Relying on the Columbia markings, the excavator struck and damaged the service line outside of the marked area. The failure to utilize appropriate locate methods and equipment, which were readily available to the technician, resulted in the erroneous location and marking of a water line instead of the gas service line. The failure to provide the excavator with an accurate marking of the approximate location of the gas service line as required by KRS 367.4909(6) was a

---

<sup>46</sup> Id.

<sup>47</sup> Case No. 2019-00235, *Derek Engineering, Inc., Alleged Violation of Underground Facility Damage Prevention Act* (Ky. PSC Sept. 18, 2019).

substantial factor in causing damage to the line which contained natural gas at the time it was severed.

The incident, which occurred on August 16, 2019, represented more than three violations of the Act by Columbia within one year,<sup>48</sup> thereby subjecting Columbia to a potential penalty of \$3,000 under KRS 367.4917(1). The potential penalty for the violation of KRS 367.4917(4) is \$1,000 for a possible maximum penalty assessment in the amount of \$4,000. The facts are devoid of mitigating circumstances sufficient to warrant the assessment of a penalty less than the maximum.

#### FINDINGS OF FACT

1. Columbia is a natural gas utility which owns and operates underground facilities through which it distributes natural gas to members of the public and is an operator as defined by KRS 367.4903(5) and therefore subject to the provisions of the Underground Facility Damage Prevention Act of 1994.

2. On January 1, 1988, Columbia filed an application with the Commission requesting a deviation from administrative regulation 807 KAR 5:022, Section 9(17)(a)(1) and (2), seeking authority to assume ownership of service lines of its residential and commercial customers and to take responsibility for maintenance of those lines. Under its proposal, Columbia would install, own, operate, and maintain customer service lines and with respect to existing service lines would assume responsibility for operation and maintenance and would replace such lines as necessary and thereafter become the owner thereof.

---

<sup>48</sup> PSC records reveal that Columbia violated the Act on 58 separate occasions in the one year immediately preceding August 16, 2019.

3. The Commission, by Order dated November 10, 1988, granted Columbia's request for deviation and in its Order stated that "Columbia shall operate and maintain existing service lines at no cost to its customers on and after the date of this order. When a customer's service line is to be replaced, Columbia shall install a new service line at no cost to the customer and thereafter will own, operate, and maintain the service line."

4. In response to a data request from Commission's staff prior to entry of the Order, Columbia stated that there would be no differences in the operation and maintenance services provided to new customers versus operation and maintenance services provided to customers currently connected to the system.

5. A customer service line used for the transportation of gas is an underground facility within the meaning of KRS 367.4903(1).

6. On August 16, 2019, in the area of 50 Bellefonte Road in Raceland, Greenup County, Kentucky, Bonzo Excavation struck and damaged a one-inch plastic customer service line operated by Columbia but owned by its residential customer. Columbia, responding to an emergency locate request earlier on the same day, mismarked the location of the service line based upon either inaccurate or insufficient records contained in its files which led its technician to conclude that the service line was made of steel. His mistaken belief was reinforced by the steel riser at the customer's meter.

As a result of this lack of accurate information and his mistaken assumption that the service line was steel, the technician limited the scope of his efforts to the use of equipment designed to locate a steel pipeline.

7. The locate equipment picked up a signal which indicated the presence of a steel pipeline. The steel line was marked for the excavator as the location of the gas service line.

8. The excavator using mechanical equipment outside the area marked by Columbia struck and damaged the natural gas service line which was in fact plastic and not steel. The Columbia locate equipment picked up a signal from a steel water line which was erroneously marked as the gas line.

9. The plastic gas service line had been placed into service prior to Columbia's assumption of maintenance and replacement responsibility more than 30 years prior to the damage. During this 30 year period, Columbia made no repairs to the line and as far as can be determined from the evidence made no attempt to ascertain its precise location. Although Columbia, for more than 30 years, performed periodic leak surveys on or in the vicinity of the line as required by federal pipeline safety regulations,<sup>49</sup> it remained unaware of both its location and that it was plastic and not steel.

10. The customer service line contained natural gas at the time it was damaged.

11. Other pipeline location methods and equipment were available to the technician and could have been used to accurately locate the plastic service line but were not used because of the erroneous and unreasonable assumption that the line was of steel construction.

12. Columbia as the operator of the gas service line was required by KRS 367.4909(6), upon receipt of an emergency locate request or a normal locate request to inform the excavator of the approximate location and description of any of its

---

<sup>49</sup> 49 C.F.R. § 192.723(2).



facilities that may be damaged or pose a safety concern because of excavation as well as provide any other information that would assist in locating and avoiding contact with or damage to underground facilities and to mark their approximate location.

13. Columbia failed to inform the excavator, Bonzo Excavation, of the approximate location of the gas service line. Had another available method of line location been employed, the plastic gas service line would more likely than not have been located and the damage avoided. Columbia's failure to accurately locate and mark the service line or advise the excavator that it was unable to locate the facility<sup>50</sup> violated the Act, and such violation was a substantial factor in causing damage to an underground facility, which contained natural gas, a flammable and hazardous material, which was also released into the atmosphere.

14. Columbia violated the Act on more than three occasions within one year prior to August 16, 2019, and is subject to a maximum penalty of \$3,000 as prescribed by KRS 367.4917(1).

15. The violation involved damage to a facility containing natural gas, a flammable substance, thereby subjecting Columbia to an additional civil penalty not to exceed \$1,000 as prescribed by KRS 367.4917(4).

16. There are insufficient mitigating circumstances to warrant a penalty less than the maximum. Columbia is assessed a civil penalty in the amount of \$4,000.

---

<sup>50</sup> KRS 367.4903(11)(b) provides that nonmetallic facilities without tracer wire are to be located as accurately as possible and the operator is required to notify the excavator of its inability to accurately locate the facility.

## CONCLUSIONS OF LAW

The failure of Columbia to properly locate the customer-owned service line at or near 50 Bellefonte Road, Raceland, Greenup County, Kentucky, on August 16, 2019, a service line for which it was legally responsible for operation and maintenance constitutes a violation of KRS 367.4909(6). The violation was a substantial factor in causing damage to an underground facility which contained natural gas, a flammable material. Columbia is subject to a civil penalty assessment of \$4,000 as provided by KRS 367.4917(1) and (4).

IT IS THEREFORE ORDERED that:

1. Columbia Gas of Kentucky, Inc. be and it is hereby assessed a civil penalty pursuant to KRS 367.4917(1) of \$3,000 for violation of KRS 367.4909(6) and an additional civil penalty of \$1,000 pursuant to KRS 367.4917(4).

2. Columbia Gas of Kentucky, Inc. shall pay the sum of \$4,000 within 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, Kentucky 40602.

THIS IS A FINAL AND APPEALABLE ORDER OF THE PUBLIC SERVICE COMMISSION.

An application for a rehearing may be filed with the Commission within 20 days after service of this Order as provided by KRS 278.400. Any appeal of this Order must be filed with the Franklin Circuit Court within 30 days after service of this Order or within 20 days after an application for rehearing has been denied by failure of the Commission to act or, within 20 days after service of the final Order, as set out in KRS 278.410.

By the Commission



ATTEST:

  
Executive Director

\*Joseph Clark  
NiSource  
290 W. Nationwide Blvd  
Columbus, OHIO 43215

\*Columbia Gas of Kentucky, Inc.  
290 W Nationwide Blvd  
Columbus, OH 43215

\*Columbia Gas of Kentucky, Inc.  
Columbia Gas of Kentucky, Inc.  
290 W Nationwide Blvd  
Columbus, OH 43215