

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)	

NOTICE OF FILING

Notice is given to all parties that the Commission's Division of Inspections' post-hearing Brief has been filed into the record of this proceeding.



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DATED OCT 02 2020

cc: Parties of Record

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COMMISSION’S DIVISION OF INSPECTIONS POST-HEARING BRIEF

Columbia Gas of Kentucky, Inc. (Columbia Kentucky), a Kentucky corporation with a principal office located at 2001 Mercer Road, Lexington, Kentucky is a wholly owned subsidiary of the Columbia Energy Group.¹ Columbia Kentucky distributes natural gas to about 117,000 customers² in 30 central and eastern Kentucky counties.³ As a distributor of natural gas, Columbia Kentucky is an “operator” of underground facilities, and is subject to the provisions of the Underground Facility Damage Prevention Act of 1994 (Damage Prevention Act or the Act).⁴ KRS 367.4903(5) defines an operator as “any entity or individual owning or operating underground facilities to serve the public.”

Under the Damage Prevention Act, the Commission has authority to investigate and assess civil penalties for any violation of the Act that results in excavation damage to

¹ Columbia Energy Group is a wholly owned subsidiary of NiSource, Inc., an energy holding company whose subsidiaries provide natural gas, electricity, and other products and services.

² *Annual Report of Columbia Gas of Kentucky, Inc. for the Year Ended December 31, 2019*, at 5.

³ *Id.* at 4.

⁴ KRS 367.4901 through KRS 367.4917.

an underground facility used to transport natural gas or hazardous liquid subject to federal pipeline safety laws, 49 U.S.C. § 60101. *et seq.*⁵ Pursuant to this authority, the Commission's Division of Inspections (DOI) receives and investigates reports of damage to underground facilities used to transport natural gas or hazardous liquid. Operators of such facilities are required by KRS 367.4909(4) to report excavation damage to the Commission within thirty calendar days of being informed of the damage.

According to an account of damage to an underground facility reported to the Commission's Division of Inspections (DOI) on September 9, 2019, Bonzo Excavation was excavating in an area of 50 Bellefonte Road in Raceland, Kentucky with a valid emergency locate ticket on August 16, 2019, when it struck and damaged a one-inch plastic natural gas service line.⁶ According to the Gas Excavation Damage Report (Excavation Damage Report) submitted to DOI by Columbia Kentucky, the line was mismarked by Columbia Kentucky due to inaccurate records showing that the service line was made of steel, when in fact, it was made of plastic.⁷ During the course of the investigation, Columbia Kentucky reported to DOI that it did not own the service line at the time of the damage.⁸ In addition the Excavation Damage Report indicates the locate

⁵ KRS 3674917(6).

⁶ Gas Excavation Damage Report, contained in Pipeline Damage Investigation Report for Incident # 31976 (Incident Report) (KY. PSC DOI Exhibit 1).

⁷ *Id.*

⁸ Electronic mail dated Apr. 30, 2020 from Ryan Twait, contained in Pipeline Damage Investigation Report for Incident # 31976 (Incident Report) (KY. PSC DOI Exhibit 1).

technician's locate signal transferred from the steel riser onto a water line that was in the proximity of the natural gas service line.⁹

Following the investigation, DOI cited Columbia Kentucky for violating the Damage Prevention Act, when upon receiving an emergency locate request it failed to locate an underground facility it operated.¹⁰ On September 9, 2020, The Commission held a formal hearing in this matter at which it received evidence regarding the findings of violation set forth in DOI's Incident Report¹¹ and Columbia Kentucky's assertion that it should not be found in violation of KRS 367.4909(6)(a) because it could not have reasonably known the location of the damaged service line.¹² On September 9, 2020, the Commission entered a post-hearing scheduling order providing for the submission of briefs by DOI and Columbia Kentucky. DOI submits this Brief in compliance therewith.

BACKGROUND

An "underground facility" is defined by KRS 367.4903(1) as "an underground line or system used for producing, storing, conveying, transmitting, or distributing telecommunications, electricity, gas, petroleum, petroleum products, cable television, hazardous liquids, water, steam or sewerage, including storm drainage." The natural gas service line that was damaged in the incident central to this proceeding was an underground facility within the definition of the statute because it was an underground line for distributing gas. Columbia Kentucky's responsibility for locating the service line

⁹ Gas Excavation Damage Report, contained in Pipeline Damage Investigation Report for Incident # 31976 (Incident Report) (KY. PSC DOI Exhibit 1).

¹⁰ Pipeline Damage Investigation Report for Incident # 31976 (KY. PSC DOI Exhibit 1).

¹¹ *Id.*

¹² Columbia Kentucky's Response (filed June 30, 2020).

in question stems from Columbia Kentucky's role as the operator of the service line. As stated above, "operator" is defined in the Damage Prevention Act as any entity or individual owning or operating underground facilities to serve the public.¹³ The General Assembly enacted the Damage Prevention Act to establish an effective underground damage prevention procedure in recognition that an effective damage prevention program results in public and workplace safety and protection of consumer services.¹⁴ The purpose of the Damage Prevention Act is to prevent damage to underground facilities containing natural gas or hazardous liquid, and thereby reduce the likelihood of injury to people, property, and the environment resulting from the escape and possible ignition of natural gas or hazardous liquid.

The Damage Prevention Act requires an operator to inform the excavator of the approximate location of underground facilities.¹⁵ For metallic facilities and nonmetallic facilities with tracer wire, "approximate location" is defined as a distance not to exceed the combined width of the underground facility plus 18 inches measured from the outer edge of each side of the underground facility.¹⁶ For nonmetallic facilities with no tracer wire, the statute requires that the underground facility shall be located as accurately as possible from field location records and shall require notification from the operator of the inability to accurately locate the facility.¹⁷

¹³ KRS 367.4903(5)

¹⁴ KRS 367.4901.

¹⁵ KRS 367.4909(6)(a).

¹⁶ KRS 367.4903(11)(a).

¹⁷ KRS 367.4903(11)(b).

Under KRS 367.4909(6)(a) an operator receiving an emergency or normal excavation locate request shall 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. The locate request involved in the incident in question was an emergency request.¹⁸ According to KRS 367.4909(5)(b) an operator must respond to an emergency locate request within 48 hours after receiving notification from the excavator. Here, the locate request was delivered on August 16, 2019, and Columbia Kentucky responded on the same day.¹⁹ The notes made on the locate request indicate Columbia Kentucky marked the scope of the request with paint.²⁰ However, the marks were inaccurate and the service line was ultimately damaged.²¹

COLUMBIA KENTUCKY'S RESPONSE

In its Response to the Commission's Order opening this proceeding, Columbia Kentucky maintains it should not be assessed a civil penalty in this matter because the service line that was damaged was installed prior to 1988 by the customer and followed an unusual path, running past the meter and then looping backwards toward the meter, as such Columbia Kentucky maintains it could not have reasonably known the location of the line.²² Columbia Kentucky also maintains that the signal from the locating equipment

¹⁸ Locate Request Ticket, contained in Pipeline Damage Investigation Report for Incident # 31976 (KY. PSC DOI Exhibit 1) and Utilisphere Archive Ticket and Notes (Columbia Kentucky, Exhibit A).

¹⁹ *Id.*

²⁰ Utilisphere Archive Ticket and Notes (Columbia Kentucky, Exhibit A).

²¹ Gas Excavation Damage Report, contained in Pipeline Damage Investigation Report for Incident # 31976 (Incident Report) (KY. PSC DOI Exhibit 1).

²² Columbia Kentucky's Response (filed June 30, 2020).

transferred from the steel riser onto a water line that ran along the same path Columbia Kentucky anticipated the gas service line to be located.²³ Columbia Kentucky also points to the fact that it did not technically own the service line at the time of the damage as another reason it could not have reasonably been expected to know the location of the service line. While acknowledging it provided an inaccurate locate in response to this locate request, Columbia Kentucky maintains it should not be held responsible for violating KRS 367.4909(6)(a).

Mr. James Cooper, Operations Manager for Columbia Kentucky testified that Columbia Kentucky estimates there are approximately 34,000 customer-owned service lines still in Columbia Kentucky's system.²⁴ Columbia Kentucky maintains and operates customer-owned service lines by supplying natural gas to the line, performing leakage surveys every three years, and by responding to locate requests.²⁵ Mr. Cooper testified it is his opinion that Columbia Kentucky can operate and maintain a line without knowing the precise location of the line.²⁶ Mr. Cooper testified that Columbia Kentucky is required by federal regulation to conduct leakage surveys on customer-owned service lines, and that when the precise location of the line is not known the person conducting the leakage survey will walk the property in a crisscross pattern and also survey the perimeter of any buildings where a service line may be present.²⁷

²³ *Id.*

²⁴ Hearing Video Transcript (HVT) of the Sept. 9, 2020 Hearing, 09:26:14-9:28:20.

²⁵ *Id.* at 9:30:35-9:31:34.

²⁶ *Id.* at 9:31:36-9:31:45.

²⁷ *Id.* at 9:31:46-9:32:41

Columbia Kentucky locates all lines regardless of ownership.²⁸ When responding to a locate request for a customer owned-service line Columbia Kentucky uses a two-piece locating device, consisting of a transmitter and a receiver.²⁹ The transmitter is placed along the pipeline above ground at metallic pipe or tracer wire known to be part of the line and then the receiver picks up the signal and the person locating the line marks the line with paint or flags.³⁰ When Columbia Kentucky personnel cannot obtain a signal using this method, they consult their system maps and service line records and use vac trucks and hand digging techniques to locate the line.³¹ In the case of a customer-owned service line, no system maps or service line records are available for Columbia Kentucky to review for the customer-owned portion of the line.³²

In conducting the line locate central to this proceeding Columbia Kentucky used the two-piece locating equipment described above and hooked the equipment directly to the riser, got a signal, and proceeded to mark what it assumed was the gas line.³³ Columbia Kentucky assumed the line would be made of steel because its records indicated the Columbia Kentucky owned portion of the line was a steel line, one and one quarter inch in circumference, the riser was also an inch and a quarter steel line, and Columbia Kentucky had no records it had ever replaced this service line.³⁴ After the

²⁸ *Id.* 9:35:02-9:35:08.

²⁹ *Id.* 9:32:42-9:33:58.

³⁰ *Id.*

³¹ *Id.* at 9:34:10-9:34:32.

³² *Id.* at 9:34:36-9:34:59.

³³ *Id.* at 9:35:13-9:36:16.

³⁴ *Id.* at 9:36:18-9:36:50.

damage occurred, Columbia Kentucky discovered the steel customer-owned service line had been replaced at some point in time by inserting a plastic pipe into the steel pipe.³⁵ The plastic pipe ran outside of the steel pipe, past the meter, and then looped back to the meter.³⁶ It was this section of plastic pipe looping back to the meter that was damaged.³⁷ Mr. Cooper testified that in his opinion once the person locating this line had a good signal from the locating equipment, there was nothing further that needed to be done, and no reason to believe the locate was inaccurate.³⁸ However, Mr. Cooper also testified it was his belief, after reviewing the records after the damage that the equipment actually picked up the signal from a water line, which was in extremely close proximity to the gas line.³⁹

ANALYSIS

By Order dated November 10, 1988, the Commission granted Columbia Kentucky's application to amend its tariff and approved its request for deviation from 807 KAR 5:022, Section 9(17)(a)(2).⁴⁰ The effect of the Order was to permit Columbia Kentucky to install, own, operate, and maintain new customer service lines.⁴¹ In addition, Columbia Kentucky also assumed responsibility for operating and maintaining existing customer service lines. The Commission noted Columbia Kentucky estimated it would

³⁵ *Id.* at 9:36:50-9:37:52.

³⁶ *Id.* at 9:37:55--9:41:51.

³⁷ *Id.*

³⁸ *Id.* at 9:40:31-9:41:51.

³⁹ *Id.* at 9:38:52-9:39:56.

⁴⁰ 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) (KY. PSC DOI Exhibit 2).

⁴¹ *Id.*

attract 794 new commercial and residential customers annually, along with retaining an estimated 40 customers annually who would have otherwise switched to electric equipment to avoid the cost of repair or replacement of service lines.⁴² Ordering paragraph number two reads, in its entirety:

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.⁴³

As stated above it is Columbia Kentucky's role as the operator of the service line in question that imposes duties upon it under the Damage Prevention Act.⁴⁴ The ownership of the line is not relevant to Columbia Kentucky's duty to locate the line under KRS 367.4909(6). The Damage Prevention Act requires the operator to inform the excavator of the approximate location of the line and provide a description of any of the operator's facilities that may be damaged or pose a safety concern because of the excavation.⁴⁵ It also requires the operator to provide temporary markings to inform the excavator of the ownership and approximate location of the underground facility, unless permanent facility markers are provided.⁴⁶ The Damage Prevention Act requires Columbia Kentucky to respond to a locate request by actually locating the approximate

⁴² *Id.*

⁴³ *Id.*

⁴⁴ KRS 367.4903(5).

⁴⁵ KRS 367.4909(6)(a).

⁴⁶ KRS 367.4909(6)(c).

location of the line, and marking that approximate location, not by making what it deems reasonable attempts to locate the approximate location of the line.

Even if a reasonable attempt to locate the line was what the Damage Prevention Act required of Columbia Kentucky, DOI's position is that Columbia Kentucky's actions in relation to locating this line would still fall short of that requirement. It is evident that Columbia Kentucky did promptly respond to this emergency locate request and made an attempt to locate the line using mechanical locating equipment designed to locate metal lines or plastic lines with tracer wire. However, given the fact that Columbia Kentucky knew this line pre-dated 1988, and knew it had no reliable records of the line's composition or location, relying solely on the mechanical locating equipment to inform the marks placed on the ground in response to the locate request was not reasonable.

At the hearing Columbia Kentucky pointed to the fact that this was an emergency request.⁴⁷ KRS.367.4907 seems to indicate that when responding to an emergency, as defined in the Damage Prevention Act,⁴⁸ excavators and operators are not required to comply with every provision of the Damage Prevention Act. KRS 367.4907 reads:

Every person who engages in nonemergency timber harvesting using mechanized equipment, excavation, or demolition work shall conform to KRS 367.4905 to 367.4917. Compliance with excavator and operator notification requirements of KRS 367.4905 to 367.4917 shall not be required of authorized persons responding to emergency situations. However, these persons shall take every reasonable precaution to protect the public safety and underground facilities of others.

⁴⁷ HVT at 9:17:58-9:18:48.

⁴⁸ KRS 367.4903(7) defines "emergency" as "there exists substantial likelihood that loss of life or property, the inability to restore interrupted utility service, an imminent danger to health or the environment, or the blockage of public transportation facilities will result before procedures required under KRS367.4909 to 367.4913 can be completed." KRS 367.4903(16) defines "emergency locate request" as "a notification made to a protection notification center by an excavator to alert facility owners or operators of the need to begin immediate excavation in response to an emergency."

However, the express requirements for an operator to respond to an emergency locate request by informing the excavator of the approximate location of the underground facility⁴⁹ and to mark the approximate location of the underground facility⁵⁰ were added to the law after KRS 367.4907 was enacted.⁵¹ Therefore, it is apparent the legislature did not intend for locating and marking the approximate location of underground facilities to be requirements for which compliance in an emergency situation was not required. The legislature chose instead to expressly require locating the approximate location of underground facilities and informing the excavator of their location by means of markings in response to both normal and emergency locate requests.

At the time the damage to the underground facility in question took place, Columbia Kentucky had been responsible for maintaining and operating customer-owned service lines for nearly 31 years.⁵² Columbia Kentucky had performed several leakage surveys involving this customer-owned line,⁵³ despite this it still did not know the precise location of the line. When Columbia Kentucky responded to this emergency locate request it knew the service line was customer-owned and it knew it had no maps of the location of the service line. The only indication it had about the composition of the line was that the

⁴⁹ KRS 367.4909(6)(a).

⁵⁰ KRS 367.4909(6)(c).

⁵¹ The language “An operator shall, upon receiving an emergency locate request or a normal excavation locate request” was added to KRS 367.4909(5) by 2012 Ky. Acts ch. 137, sec. 3. KRS 367.4909(5) was later renumbered as KRS 367.4909(6) by 2018 KY. Acts ch.70, sec 3. The language “compliance with excavator and operator notification requirements of KRS 367.4905 to 367.4917 shall not be required of authorized persons responding to emergency situations” dates to the creation of the Damage Prevention Act in 1994 (1994 Ky. Acts ch. 425, sec 4.).

⁵² Case No. 10127, final Order (Ky. PSC Nov. 10, 1988) (KY. PSC DOI Exhibit 2).

⁵³ HVT at 9:44:43

portion of the line owned by Columbia Kentucky was made of steel.⁵⁴ Rather than simply assuming the customer-owned service line would be made of the same material as the portion of the line owned by Columbia Kentucky, and relying solely on mechanical locating equipment to locate an unmapped service line, Columbia Kentucky could have reasonably employed additional means of confirming its locate. Columbia Kentucky could also have chosen to inform the excavator that the service line was unmapped and the markings on the ground could therefore not be verified. Columbia Kentucky did neither of these, and the line was subsequently damaged.

Exposing the portion of the service line connected to the meter would have revealed that portion of the customer-owned service line was made of plastic, not steel, and would have resulted in the person performing the locate realizing that the signal he or she suspected was from the service line was actually from another underground facility. Under these circumstances Columbia Kentucky would also have been likely to discover the customer-owned service line ran past the meter and looped backwards to the meter. While the position of this service line in relation to the meter is not particularly common, neither is it completely unheard of. Mr. Cooper testified he had seen this configuration before.⁵⁵ Mr. Cooper also testified that if this plastic line had had tracer wire, the method and equipment Columbia Kentucky uses to locate lines would likely not have located the portion of the line running past the meter in the absence of service line records or maps.⁵⁶ Knowing it lacked service line records and maps of the facility, Columbia Kentucky

⁵⁴ HVT at 9:36:18-9:36:50.

⁵⁵ *Id.* at 9:43:52-9:44:11 and 10:17:48-10:18:15.

⁵⁶ *Id.* at 10:18:31-10:19:30.

employed only the conventionally used method for locating the line. It failed to modify its line-locate procedures to more effectively respond to the circumstance in which it was operating. It also failed to notify the excavator that it had no maps or records of the facility and was relying solely on the performance of the locating equipment to determine the location of the line.⁵⁷ Columbia Kentucky does not have a policy of informing excavators when the location of facilities cannot be verified by system maps and records.⁵⁸

Given the number of steel underground facilities present in many locations, and the possibility of a signal bleed off to another one of those facilities, it is reasonable to expect Columbia Kentucky to verify the accuracy of the signal produced by its locating equipment when there are no maps or records to indicate where a line is actually located. Exposing a small section of the line to verify its location and composition in circumstances such as these is reasonable. Here, doing so would have revealed the line was actually made of plastic and lacked tracer wire. Columbia Kentucky would have then known it needed to employ other means to locate the facility. Instead Columbia Kentucky relied solely on mechanical locating equipment, despite its acknowledged lack of records to confirm the location of the service line.

It is DOI's position that the actions of Columbia Kentucky in relation to service lines remaining customer-owned and unmapped more than three decades after Columbia Kentucky obtained Commission approval for assuming responsibility for the maintenance of such lines is also not reasonable and contributed to this incident of damage. Mr. Cooper testified that approximately 34,000 customer-owned service lines still exist within

⁵⁷ *Id.* at 9:51:40-9:53:50.

⁵⁸ *Id.*

Columbia Kentucky's system.⁵⁹ In addition, he testified that Columbia Kentucky places no priority on replacing these lines as part of its service line replacement program.⁶⁰ Columbia Kentucky replaces customer-owned service lines in connection with its service line replacement program only if the main to which the service lines are attached is replaced.⁶¹ The evidence presented in this proceeding reveals that in the 31 years Columbia Kentucky has been responsible for customer-owned service lines it has made no attempt to map their location or to systematically replace them. Columbia Kentucky also has no policy of informing excavators when the location of such underground facilities cannot be verified because Columbia Kentucky lacks maps or records of these service lines.⁶²

DOI also notes that responsibility for replacing and maintaining service lines is something Columbia Kentucky actually sought Commission approval to do in order to reduce the number of customers and potential customers turning to electric equipment.⁶³ Under these circumstances it is reasonable to expect Columbia Kentucky to modify its standard approach to locating service lines when it responds to a locate request involving an unmapped customer-owned service line. Approaching the locating of an unmapped customer-owned service line in the exact same way Columbia Kentucky would approach

⁵⁹ *Id.* at 9:26:14-9:28:20.

⁶⁰ *Id.* at 9:54:25-9:56:22.

⁶¹ *Id.*

⁶² *Id.* at 9:51:40-9:53:50.

⁶³ Case No. 10127, final Order (Ky. PSC Nov. 10, 1988) (KY. PSC DOI Exhibit 2).

locating a service line it installed and for which it had maps and records is not a reasonable approach to the task.

CONCLUSION

As stated above, the customer-owned service line damaged in this incident is an underground facility within the meaning of the Damage Prevention Act.⁶⁴ Columbia Kentucky was the operator of that facility, and was responding to a valid emergency locate request.⁶⁵ As such, Columbia Kentucky was responsible for informing the excavator of the approximate location and description of the facility and for providing temporary marking to inform the excavator of the approximate location of the facility.⁶⁶ Columbia Kentucky inaccurately located the facility and the facility was subsequently damaged.⁶⁷ At the time the service line was damaged it contained natural gas.⁶⁸ Therefore, it is DOI's position that Columbia Gas should be assessed the civil penalties set forth in KRS 367.4917(1) and KRS 367.4917(4), for a total penalty of four thousand dollars (\$4,000).

Respectfully submitted,

/s/ Tina Carson Frederick
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⁶⁴ KRS 367.4903(1).

⁶⁵ Gas Excavation Damage Report, contained in Pipeline Damage Investigation Report for Incident # 31976 (Incident Report) (KY. PSC DOI Exhibit 1).

⁶⁶ KRS 367.4909(6)(a) and (c).

⁶⁷ Gas Excavation Damage Report

⁶⁸ HVT at 10:20:02-10:20:16.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic mail this 2nd day of October, 2020 to the following:

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