

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

L & N UTILITIES LLC)	
)	
_____)	CASE NO.
)	2021-00076
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

ORDER

A hearing was held before the Kentucky Public Service Commission (PSC) on April 23, 2021 at its offices at 211 Sower Boulevard, Frankfort, Kentucky, concerning the allegation that L & N Utilities LLC (L&N) violated 367.4911(10), (the Underground Facility Damage Prevention Act, hereinafter the "Act"), when, on January 18, 2020, at approximately 11:40 p.m. at 1168 Colorado Road in Lexington, Kentucky, it conducted excavation activities within the approximate location of an underground facility using mechanized equipment and thereby caused damage to an underground gas service line owned and operated by Columbia Gas of Kentucky, Inc. which was used to serve the public. L & N Utilities LLC was served with process and notified of the hearing date, place and time but failed to appear at the hearing to contest the allegations.

John E. Goins, an investigator employed by the Commission's Division of Inspections testified that his investigation found that L&N was conducting boring operations in an area with a locate ticket and within the tolerance zone of a properly marked main line. L&N was using mechanized equipment and in the process damaged

a natural gas service line which contained natural gas at the time the damage occurred. The gas line was severed and natural gas escaped into the environment.

Mr. Goins testified that he spoke to the excavator who acknowledged that his employees were responsible for the damage. L&N was properly served with process and advised of the time, place, and date of the hearing but failed to appear and present evidence on its own behalf or cross-examine inspector Goins.

The incident, which is the subject of this action, represents L&N's second violation of the Act and by reason thereof subjects it to a potential civil penalty of \$2,000 pursuant to KRS 367.4917(1) and (4).

FINDINGS OF FACT

The testimony presented at the hearing as well as the exhibits file in the record establish that:

1. L&N was at the time the damage occurred on January 18, 2020, an excavator as defined by KRS 367.4903(4) which 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 Columbia Gas of Kentucky, Inc. to serve the public. The service line contained natural gas at the time it was damaged by L&N.

2. L&N'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.

3. L&N failed when conducting excavation operations to use nonintrusive means to avoid damage to the underground facility in violation of KRS 367.4911(10).

4. The incident which is the subject matter of this proceeding represents L&N's second violation of the Act.

5. There are no known mitigating factors which would merit the imposition of a fine less than the maximum provided by law. L&N's maximum penalty assessment is \$2,000.

CONCLUSIONS OF LAW

1. L&N violated KRS 367.4911(10), by failing to hand dig or use nonintrusive means to avoid damage to the underground facility owned and operated by Columbia Gas of Kentucky, Inc. for use of the public while conducting excavation work within the approximate location of such facility. Nonintrusive excavating is defined by KRS 367.4903(13) as "excavation using hand tools or equipment that uses air or water pressure as the direct means to break up soil for removal by hand tools or vacuum excavations."

2. L&N at the time it damaged the Columbia Gas of Kentucky, Inc. natural gas service line was conducting excavation activities. "Excavation" is defined by KRS 367.4903(6) as "any activity that results in the movement, placement, probing, boring, or removal of earth, rock, or other material in or on the ground by the use of any tools or equipment Forms of excavating include but are not limited to auguring, backfilling, digging, ditching, drilling, driving, grading, piling, pulling-in, ripping, scraping, trenching, and tunneling."

3. L&N's work activities were within the approximate location of the natural gas service line at the time it caused the pipeline damage during the course of boring operations and such work activities were conducted by the use of mechanized equipment

as defined by KRS 367.4903(14). L&N was required to hand dig or use nonintrusive means to prevent damage to the pipeline while excavating within the approximate location of the service line.

4. The use by L&N of mechanized equipment rather than hand digging or use of nonintrusive means as required within the approximate location of the service line was a substantial factor in causing damage to the natural gas pipeline.

IT IS THEREFORE ORDERED that:

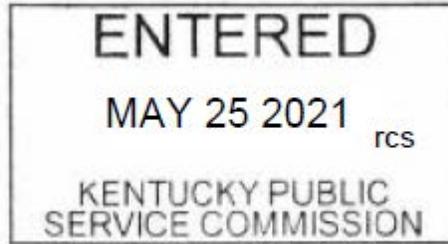
1. L & N Utilities LLC is assessed a fine of \$2,000 for violation of KRS 367.4911(10) as provided by KRS 367.4917(1) and (4).

2. L & N Utilities LLC shall pay \$2,000 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 40601.

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 within 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

L & N Utilities LLC
4162 W County Road 250 S
Holton, INDIANA 48203

L & N Utilities LLC - Northwest Registered Agen
212 N 2nd St, Ste 100
Richmond, KENTUCKY 40475