

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BECKNELL-COGHILL, INC.)	
)	
_____)	CASE NO.
)	2021-00159
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

ORDER

This case was initiated by the Commission’s Division of Inspections (DOI) on April 19, 2021, as a result of a claimed violation by Becknell-Coghill, Inc. (Becknell-Coghill) of the Underground Facility Damage Prevention Act set forth in KRS 367.4901 through KRS 367.4917 (hereinafter referred to as the “Act”). DOI alleged that on October 28, 2019, at approximately 9:56 a.m. at 2119 Highwater Rd., Villa Hills, Kentucky 41017, Becknell-Coghill violated KRS 367.4911(6) by failing to “protect and preserve temporary underground facility markers until the scheduled excavation or demolition is completed.” Becknell-Coghill’s alleged violation of KRS 367.4911(6) resulted in damage to a gas line owned and operated by Duke Energy Kentucky, Inc. (Duke Kentucky). The Commission filed its proof of service upon Becknell-Coghill on May 12, 2021,¹ and scheduled a hearing on June 18, 2021.² On June 7, 2021, Becknell-Coghill filed a motion to continue the June 18, 2021 hearing, citing counsel’s unavailability to be present on June 18, 2021, due to

¹ Notice of Filing (Ky. PSC May 12, 2021).

² Order (Ky. PSC May 24, 2021).

an already-scheduled civil trial.³ The Commission granted Becknell-Coghill's motion to continue and rescheduled the hearing for August 19, 2021.⁴ Becknell-Coghill filed its Response to the Commission's April 19, 2021 Order, albeit untimely, on August 16, 2021.⁵

A hearing was held before the Commission on August 19, 2021, at its offices at 211 Sower Boulevard, Frankfort, Kentucky 40602, by video conferencing technology concerning Becknell-Coghill's alleged violation of KRS 367.4911(6).

TESTIMONY

The Commission heard the testimony of two witnesses, DOI investigator Mr. Eric Tout (Mr. Tout) and Mr. Bobby Coghill of Becknell-Coghill (Mr. Coghill). Mr. Tout testified as to the contents of his Incident Report,⁶ which DOI Staff introduced as Staff Exhibit 1.⁷

Per Mr. Tout's Incident Report, Becknell-Coghill called in a locate ticket on October 19, 2019.⁸ On October 23, 2019, underground facilities were marked, and pictures were taken of the markings.⁹ Becknell-Coghill began excavation on October 28, 2019, and damaged a gas service line with a backhoe while installing a water meter. The underground gas service line was owned and operated by Duke Kentucky. On April 19,

³ Becknell-Coghill's Motion to Continue (filed June 7, 2021).

⁴ Order (Ky. PSC June 14, 2021).

⁵ Becknell-Coghill's Response (filed August 16, 2021).

⁶ Order (Ky. PSC Apr. 19, 2021), Appendix.

⁷ Notice of Filing (Ky. PSC Sept. 8, 2021).

⁸ Order (Ky. PSC Apr. 19, 2021) Appendix, Attachment 2.

⁹ Order (Ky. PSC Apr. 19, 2021) Appendix, Attachment 3.

2021, the Commission opened a case to investigate Becknell-Coghill's for violation of KRS 367.4911(6).¹⁰

Mr. Coghill testified that Duke Kentucky came out and marked the underground utility on October 23, 2019; however, there was rain and wind on October 26, 2019.¹¹ Mr. Coghill further testified that when he began digging on October 28, 2019 (five days after the utilities were marked), he did not see any markings, flags, stakes, an uncovered curb box, nor paint on the curb box.¹² He testified that he spoke with "Al" from 811 about why the area was not marked and Al stated he did not think Becknell-Coghill would be digging in that area.¹³ Mr. Coghill testified the October 23, 2019 pictures showing the markings were in the approximate area where the damage to the underground facility occurred.¹⁴

LEGAL STANDARD

KRS 367.4911(6) provides "The excavator shall protect and preserve temporary underground facility markers until the scheduled excavation or demolition is completed." An "excavator" is defined as "any entity or individual [...] engaged in excavation, demolition, or timber harvesting using mechanized equipment[.]"¹⁵ An "underground facility" is defined as "an underground line or system used for producing, storing, conveying, transmitting, or distributing [...] gas[.]"¹⁶

¹⁰ Order (Ky. PSC Apr. 19, 2021).

¹¹ Hearing Video Transcript (HVT) of the Aug. 19, 2021 Hearing at 09:31:08–09:31:21.

¹² HVT of the Aug. 19, 2021 Hearing at 09:31:22–09:32:14.

¹³ HVT of the Aug. 19, 2021 Hearing at 09:29:48–09:30:05.

¹⁴ HVT of the Aug. 19, 2021 Hearing at 09:38:57–09:39:56.

¹⁵ KRS 367.4903(4).

¹⁶ KRS 367.4903(1).

KRS 367.4917(1) provides that “[a]n excavator who fails to comply with any provision of KRS 367.4911 [...] may be subject to a civil penalty of two hundred fifty dollars (\$250) for the first violation[.]”

KRS 367.4917(4) allows for an additional penalty not to exceed \$1,000 for any violation that results in damage to an underground facility containing flammable, toxic, corrosive, or hazardous material or results in the release of flammable, toxic, corrosive, or hazardous material.

DISCUSSION AND FINDINGS

It is undisputed that Becknell-Coghill was doing work as “excavator” as defined by KRS 367.4903(4) on October 28, 2019, at or near 2119 Highwater Rd., Villa Hills, Kentucky 41047.¹⁷ It is also undisputed that Duke Kentucky’s underground facility was damaged as a result of Becknell-Coghill’s excavation on that date and in that location.¹⁸

Becknell-Coghill’s sole argument is that no marks or markings were easily visible on October 28, 2019, at the excavation location to identify Duke Kentucky’s underground facilities.¹⁹ Becknell-Coghill attempted to shift the burden onto the operator, Duke Kentucky, to reestablish marks or markings identifying their underground facilities in the event that a weather event impairs the visibility of the initial markings.²⁰ However, KRS 367.4911(6) places the burden on the excavator. “The excavator shall protect and preserve temporary underground facility markers until the scheduled excavation or

¹⁷ Becknell-Coghill’s Response (filed Aug. 16, 2021), paragraph 1.

¹⁸ HVT of the Aug. 19, 2021 Hearing at 09:38:57–09:39:56.

¹⁹ Becknell-Coghill’s Response (filed Aug. 16, 2021), paragraph 7.

²⁰ Becknell-Coghill’s Response (filed Aug. 16, 2021), paragraphs 3–9.

demolition is completed.”²¹ Here, Becknell-Coghill failed to do this. Photographs filed in the record show that Duke Kentucky’s underground facilities were marked on October 23, 2019.²² Becknell-Coghill did not ensure that the temporary underground facility markers were preserved until the scheduled excavation on October 28, 2019 in violation of KRS 367.4911(6).

There is no evidence suggesting that Becknell-Coghill’s excavation work was emergency work within the scope of KRS 367.4907 or within the definition of “emergency” as defined in KRS 367.4903(7).

There are no known mitigating factors which would merit the imposition of a civil penalty less than the maximum provided by law.

After a review of the evidence and being otherwise sufficiently advised, the Commission finds that Becknell-Coghill violated the ACT when, on October 28, 2019, it conducted excavation activity in the approximate location of an underground facility containing natural gas, while failing to preserve the facility markings. Further, the Commission finds that this violation is Becknell-Coghill’s first violation of the Act.

CONCLUSIONS OF LAW

1. Becknell-Coghill violated KRS 367.4911(6) by failing to protect and preserve the temporary underground facility markers until the scheduled excavation or demolition was completed.

2. KRS 367.4917(1) provides that an excavator who fails to comply with any provision of KRS 367.4911 shall be guilty of endangering underground facilities and may

²¹ KRS 367.4911(6).

²² Order (Ky. PSC Apr. 19, 2021) Appendix, Attachment 3.

be subject to a fine of not more than \$250 for the first offense. The incident which occurred on October 28, 2019, was Becknell-Coghill's first offense and subjects it to a potential fine of \$250.

3. KRS 367.4917(4) provides that any person who violates any provision of the Act that involves damage to a facility containing any flammable, toxic, corrosive, or hazardous material, or results in the release of any flammable, toxic, corrosive or hazardous material shall be subject to a fine not to exceed \$1,000 for each offense. The Duke Kentucky underground facility that Becknell-Coghill damaged contained gas, thereby subjecting Becknell-Coghill to a potential additional fine of \$1,000.

4. Becknell-Coghill is subject to a civil penalty of \$1,250 for this violation by operation of KRS 367.4917(1) and KRS 367.4914(4) for its failure to comply with the Act.

IT IS THEREFORE ORDERED that:

1. Becknell-Coghill, Inc. is assessed a civil penalty of \$250 for violation of KRS 367.4911(6) and an additional civil penalty of \$1,000 for violation of KRS 367.4917(4).

2. Becknell-Coghill, Inc. shall pay \$1,250 within 30 days of the date of service 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.

3. A record of payment of the penalty assessed in this Order shall be made in the post-case correspondence file of this proceeding.

4. This case is closed and removed from the Commission's docket.

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

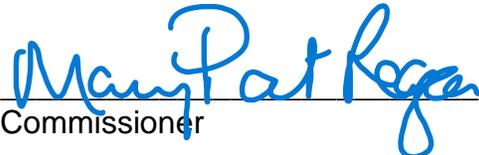
An application for a rehearing may be filed with the Commission within 20 days after service of this Order as provided by KRS 278.400. Any appeal of this Order must be filed with the Franklin Circuit Court within 30 days after service of this Order or within 20 days after an application for rehearing 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.

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PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner



ATTEST:


Executive Director

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