

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MOODY EXCAVATING LLC)	
)	
_____)	CASE NO.
)	2021-00256
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

OPENING ORDER

Moody Excavating LLC (Moody Excavating) 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 Moody Excavating for violation of the following provisions 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.

and

KRS 367.4911(2) – Locate requests are valid for twenty-one (21) calendar days from the day of the initial request.

Based on its review of the Incident Report and being otherwise sufficiently advised, the Commission finds prima facie evidence that Moody Excavating 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. Moody Excavating shall submit to the Commission, via email sent to PSCED@ky.gov with the case number of this proceeding in the subject line of the message, 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**

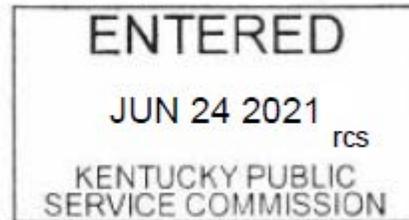
Kentucky, and such representation includes the filing of papers with and appearances at hearings before the Commission.

3. The Staff Incident Report 32150 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 Moody Excavating 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.**

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By the Commission



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2021-00256 DATED JUN 24 2021

TWENTY-TWO PAGES TO FOLLOW

PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

KY PSC Investigator(s) Eric V. Tout Incident Date 9/23/2019 2:22:00 PM	Incident ID 32150 Report Submitted 10/22/2019 10:54:20 AM
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OPERATOR INFORMATION

Operator Columbia Gas of Kentucky, Inc. Phone (859) 361-0344 Incident Location 625 Beaumont Ave Lexington, KY 40502 Fayette	Reported By Tim McKune Email tmckune@nisource.com Locate Ticket Number none
---	--

EXCAVATOR INFORMATION

Name of Excavator Moody, Tom Phone 859-509-4845 Excavator Address Moody Excavating LLC 103 Summit Dr. Georgetown, KY 40324	Organization ID 0729616 Email none Locate Ticket Number
--	--

INCIDENT

The Operator reports that the Excavator damaged a one-inch gas service with mechanized equipment and failed to contact the Protection Notification Center (811).

The Damage Report is include as Attachment 1.

Excavation Summary

Excavation Within 18" (Approximate Location)	Type Of Equipment Used	Cost of Damage (Per Operator)	Amount Billed (Excavator)
No call to 811	Mechanized / Not Specified	\$2,018.00	\$2,018.00

INVESTIGATION

On 06/12/20 the Excavator, Moody Excavating's Tom Moody, stated that this incident should not be attributed to his company Moody Excavating LLC. Mr. Moody stated that he was working for Economy Home Improvements (EHI), John Book (859-396-8814) as an hourly worker. Mr. Moody stated that EHI called 811 and the gas service was mismarked.

On 06/12/20 Mr. Book stated that Moody Excavating is an hourly sub-contractor, hourly invoices (See Attachment 2) are provide by Moody Excavating indicating equipment use and labor. Mr. Book stated that no W-2s are provided to Mr. Moody or his employees. Mr. Book stated that EHI obtained a Locate Ticket (LT), 1908260604, which expired prior to the incident date. Mr. Book provide photographs of the Incident Location depicting the damage with no location marks visible.

Mr. Book's email, Photos & Invoice are include as Attachment 2.

LT Summary

Ticket #	Valid	Initial Date	Expiration Date (21 calendar days from Initial date)	Incident Date	# of Days Expired	Within Scope of Excavation
1908260604	for EHI	08/26/19	09/16/19	09/23/19	7	Yes

The Locate Ticket(s) is/are include as Attachment 3.

On 06/16/20 Mr. Moody stated that he disagrees and felt that he is and hourly employee event though no W-2 is received from EHI and felt Moody Excavating should not be penalized. Mr. Moody stated that EHI obtained the LT, but he was unaware the ticket was expired. Mr. Moody was receptive to attending the Damage Prevention Course and paying the \$250.00 reduced penalty.

On 06/16/20 the Operator, Columbia's Ryan Twait, stated, via email, that there is some dispute on who is responsible for the bill/damage, Moody Excavating was billed, but it was not paid.

Mr. Twait's email is include as Attachment 4.

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.

(2) Locate requests are valid for twenty-one (21) calendar days from the day of the initial request.

of Offences

(Including this incident)

Excavator	Last Offence Incident #	Last Offence Incident Date	Last Offence Resolved Date
1 st	N/A	N/A	N/A

Attachment 1

Gas Excavation Damage Report

Columbia Gas of Kentucky, Inc.

Submitted 10/22/2019 Incident ID 32150

[Set back to Edit](#)[Staff Edit](#)[Print \(PDFForm.aspx?Rpt=GasInvestigation&IG=32150\)](#)

Reported By:

Name	Tim McKune
Phone	(859) 361-0344
Email	tmckune@nisource.com

Gas Line Incident Occured:

Date	9/23/2019
Time	2:22 PM

Details:

Reported Date	10/22/2019 10:54 AM
---------------	---------------------

Incident Location Address:

Location	
Address	625 Beaumont Ave
City	Lexington
State	KY
County	Fayette
Zip	40502
Confirm Code	Y
Number of Customers out	1
Was gas or hazardous liquids contained in the underground facility?	<input type="checkbox"/>
Was gas or hazardous liquids released into the atmosphere?	<input type="checkbox"/> *
	3/2020
Locate Request Ticket No.	none
Excavator	Contractor

Excavator Address:

First Name	Tom
Last Name	Moody
Organization ID	
Company	Moody Excavating
Phone	859-509-4845
Email	none

Address 103 Summit Dr
City Georgetown
State KY
Zip 40324
Confirm Code Y
Excavation Damage No notification made to the One Call Center

Description of Incident Moody Excavating struck a plastic one inch natural gas service line with mechanized equipment.

Summary Information

10/22/2019

Full details such as the cause Moody Excavating was excavating an area without a locate ticket. While digging with mechanized equipment, Moody Excavating struck a plastic one inch natural gas service line
Extent of the damage A plastic one inch natural gas service line was damaged, and the service line was repaired.
Cost of the damage \$2,018.00
Steps taken to prevent re-occurrence CKY's Damage Prevention Specialist setup and conducted a safety tailgate with Moody Excavating following the damage to educate them on the 811 dig law. The Damage Prevention Specialist also provided excavator pocket manuals and pocket color code reference cards to Moody Excavating.
Amount billed to excavator \$2,018.00

Attachment 2

Tout, Eric V (PSC)

From: John Book <johnthebuilder@windstream.net>
Sent: Friday, June 12, 2020 3:00 PM
To: Tout, Eric V (PSC)
Subject: Re: 625 Beaumont

Eric,

Here is the original Confirmation number for 625 Beaumont Ave. 1908260604 we had a ticket for 30" deep no blasting. Upon hitting the line I called in to 811 and notified them and they notified the fire dept. I met them (Fire dept. and Columbia gas) on site and they two members from Columbia gas showed up. the first I don't have a name, the second person was JoAnne Parks.

I will forward the Bill I paid to Moody excavation shortly.

John Book

From: Tout, Eric V (PSC)
Sent: Friday, June 12, 2020 2:24 PM
To: John Book
Subject: RE: 625 Beaumont

Got it, will be waiting for the other information.

*Thanks,
Eric V. Tout
Kentucky Public Services Commission
Division of Inspections / Damage Prevention
211 Sower Blvd., Frankfort, KY 40601
Office: 502-782-2622
Fax: 502-564-1582*

From: John Book <johnthebuilder@windstream.net>
Sent: Friday, June 12, 2020 2:16 PM

To: Tout, Eric V (PSC) <ericv.tout@ky.gov>

Subject: 625 Beaumont

Here you go sir .

John Book









Sent from my iPhone

Tout, Eric V (PSC)

From: John Book <johnthebuilder@windstream.net>
Sent: Friday, June 12, 2020 3:09 PM
To: Tout, Eric V (PSC)
Subject: Moody excavation bill for Tremont

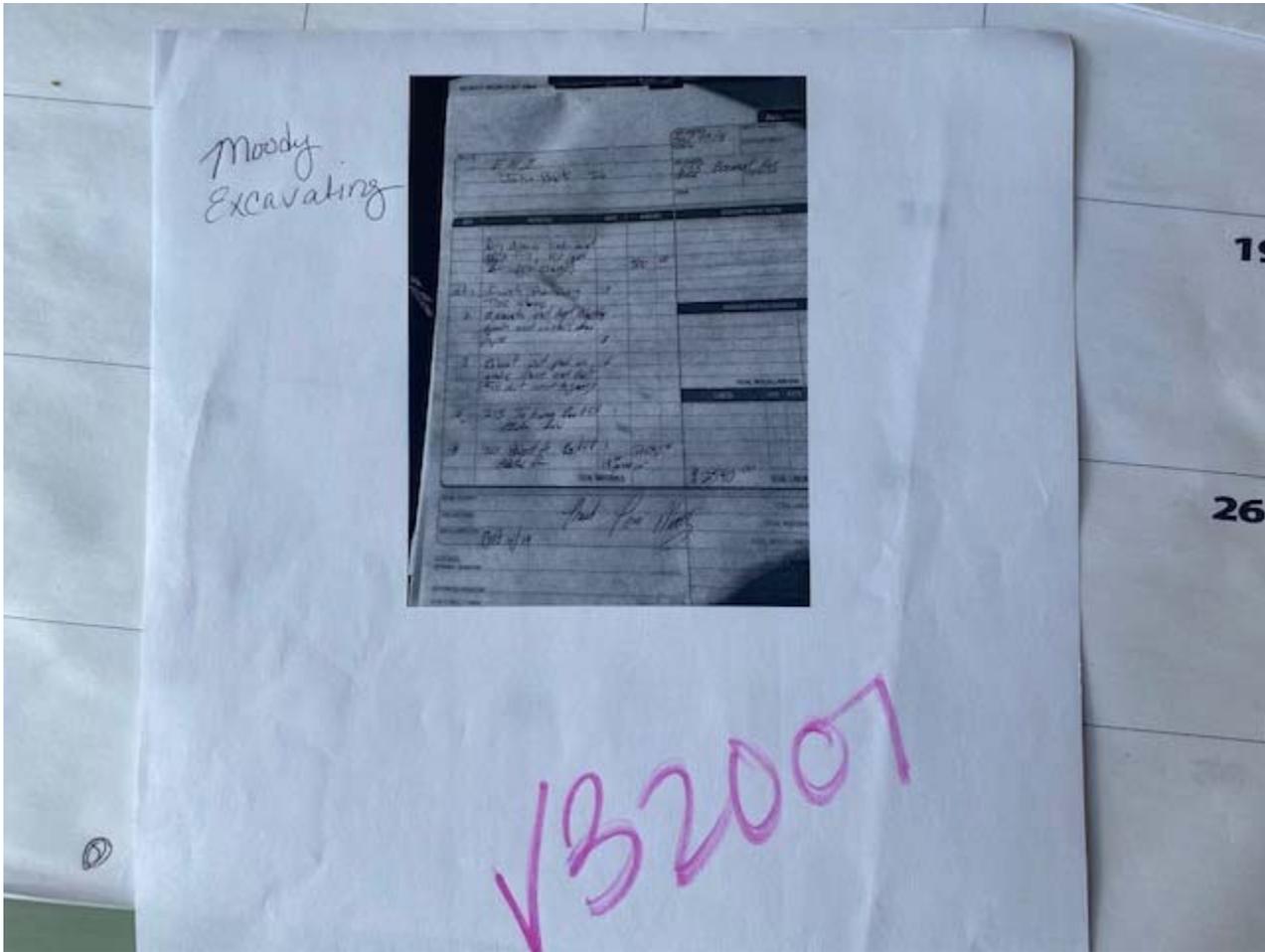
Job Info

DATE ISSUED: 09/23/19
 CHECK NO.: 625
 PROJECT: Basement A/C

NAME: E.H.I. John Book Job

QTY	MATERIAL	UNIT	AMOUNT	DESCRIPTION OF WORK
	Dig down line and back fill, H.F. gas (no charge)		300.00	
01	Finish Penning	3		
2	Tree stump remove and back fill	8		
3	Block part pad on smoke, place and back fill dirt next to garage	6		
X	215 To heavy backfill	1		
X	715 19" pipe	1	200.00	
			TOTAL MATERIALS	12590.00
			TOTAL LABOR	0551
			TOTAL MISCELLANEOUS	
			TOTAL MATERIALS	
			TOTAL LABOR	
			TOTAL MISCELLANEOUS	

WORK ORDER: _____
 DATE ISSUED: _____
 DATE COMPLETED: Oct 4/19
 CUSTOMER APPROVAL SIGNATURE: *And Tom Hays*
 AUTHORIZED CONTRACTOR SIGNATURE: _____
 AUTO-DISPATCH: _____



Sent from my iPhone

Attachment 3

NORMAL NOTICE

Ticket : 1908260604 Date: 08/26/2019 Time: 10:28 Oper: TNUNEZ Chan:000

State: KY Cnty: FAYETTE City: LEXINGTON
Subdivision: HOLLYWOOD TERRACE

Address : 625
Street : BEAUMONT AVE
Cross 1 : MELROSE AVE
Location: FOR LOTS NUMBER 78 AND 79 - LOCATE THE REAR OF PROPERTY BETWEEN THE
BACK OF THE HOME TO THE REAR PROPERTY LINE

:
Boundary: n 38.028858 s 38.027122 w -84.496872 e -84.494938

Work type : DETACHED GARAGE CONSTRUCTION
Done for : KELLEY CARMEAN
Start date: 08/28/2019 Time: 10:45 Hours notice: 48/48 Priority: NORM
Ug/Oh/Both: U Blasting: NO Emergency: N
Duration : N/A Depth: 3 FEET

Company : ECONOMY HOME IMPROVEMENT Type: CONT
Co addr : 1320 BRYAN AVE
City : LEXINGTON State: KY Zip: 40505
Caller : JOHN BOOK Phone: (859)252-8812
Contact : JOHN BOOK - CELL Phone:
Mobile : (859)396-8814
Fax : (859)231-6104
Email : JOHNTHEBUILDER@WINDSTREAM.NET

Submitted date: 08/26/2019 Time: 10:28
Members: 0200 0326 0370 0696 2621

Attachment 4

Tout, Eric V (PSC)

From: rmtwait@nisource.com
Sent: Tuesday, June 16, 2020 12:32 PM
To: Tout, Eric V (PSC)
Subject: Fw: JO# 19-7442426-00 32150, 9/23/2019, 625 Beaumont Ave. Lex., Moody Excavating LLC

Eric,

It appears that there is some dispute on who is responsible for the bill, and this will need be turned over to collections. It is unclear at this time if that will go to Moody Excavating or Economy Home Improvement.

Thanks,

Ryan Twait
Manager, Operations Compliance
Columbia Gas of Kentucky
Cell: 859-533-4022
Office: 859-288-0234



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----- Forwarded by Ryan M Twait/COH/Enterprise on 06/16/2020 12:12 PM -----

From: Dawn Miller/COH/Enterprise
To: Ryan M Twait/COH/Enterprise@NISOURCE,
Date: 06/16/2020 11:29 AM
Subject: Fw: JO# 19-7442426-00 32150, 9/23/2019, 625 Beaumont Ave. Lex., Moody Excavating LLC

Ryan,

This bill is not paid at this time and I have been talking to Sue and James Rice to see if he would have anymore information on this before we turn it over to Litigation.

We have a problem with who the damager is because Moody Excavating stated he was working for John Book - Economy Home Improvement.



Columbia Gas of Kentucky, Inc.
Damage Prevention Support

3101 N Ridge Road E
Lorain, Ohio 44055

10/24/2019

(440)240-6166

Moody Excavating, LLC
103 Summit Dr
Georgetown, Kentucky 40324

Re: Our Claim: KY19-1185

Gentlemen,

Enclosed is our damage claim invoice in the amount of \$2,101.50, which is the expense our company incurred as the result of your contact with our facilities, located in the vicinity of 625 Beaumont Av, Lexington, Kentucky 40502. Our reports indicate that our facilities were damaged on 09/23/2019.

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/NiSource

INVOICE

CLAIM NO.: KY19-1185 **JOB ORDER NO.:** 19-7442426-00 **DATE:** October 24, 2019

MRA ACCOUNT NUMBER: 20685716-000-001-3 **PAYMENT DUE 28 DAYS FROM ABOVE DATE**
PLEASE MAKE REMITTANCE PAYABLE TO:

Moody Excavating, LLC
103 Summit Dr
Georgetown, Kentucky 40324

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

AMOUNT DUE
\$2,101.50

PLEASE CUT HERE AND RETURN TOP WITH PAYMENT

Itemization of the charges for the damages which occurred on 09/23/2019 in the vicinity of 625 Beaumont Av, Lexington, Kentucky 40502.

ITEMS	AMOUNT
Labor	\$436.56
Materials	\$1.78
Equipment	\$510.28
Gas Loss	\$2.90
Contracted Fees	\$1,149.87
Taxes	\$0.11
TOTAL EXPENSE	\$2,101.50

Notes:

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



Columbia Gas/NiSource

INVOICE

CLAIM NO.: KY19-1185 **JOB ORDER NO.:** 19-7442426-00 **DATE:** October 24, 2019

Thanks,

Dawn R. Miller
Facility Damage Coordinator / Facility Damage Investigation & Recovery
NiSource / 3101 N. Ridge Rd. East / Lorain, OH 44055
P. (440) 240-6166 / Fax (440)-240-6128 / Drmiller@NiSource.com
Call 811 before you dig !

=^..^=

----- Forwarded by Dawn Miller/COH/Enterprise on 06/16/2020 11:17 AM -----

From: Ryan M Twait/COH/Enterprise
To: Dawn Miller/COH/Enterprise@NISOURCE,
Cc: Sue Chislow/COH/Enterprise@NISOURCE
Date: 06/16/2020 10:56 AM
Subject: Fw: JO# 19-7442426-00 32150, 9/23/2019, 625 Beaumont Ave. Lex., Moody Excavating LLC

Hi Dawn,

Can you send me the requested info from the PSC below?

Thanks!

Ryan Twait
Manager, Operations Compliance
Columbia Gas of Kentucky
Cell: 859-533-4022
Office: 859-288-0234



DISCLAIMER: The information contained in this e-mail may be confidential and is intended solely for the named addressee. Access, copying or re-use of the e-mail or any information contained herein by any other person is not authorized. If you are not the intended recipient please notify me immediately by returning the e-mail to the originator.

----- Forwarded by Ryan M Twait/COH/Enterprise on 06/16/2020 10:55 AM -----

From: "Tout, Eric V (PSC)" <ericv.tout@ky.gov>
To: "rmtwait@nisource.com" <rmtwait@nisource.com>,
Date: 06/16/2020 10:52 AM
Subject: 32150, 9/23/2019, 625 Beaumont Ave. Lex., Moody Excavating LLC

USE CAUTION: This email was sent from an external source. Think before you click links or open attachments. If suspicious, please forward to security@nisource.com for review.

Ryan,

Please provide the billed invoice and if paid the paid invoice.

*Thanks,
Eric V. Tout
Kentucky Public Services Commission
Division of Inspections / Damage Prevention
211 Sower Blvd., Frankfort, KY 40601
Office: 502-782-2622
Fax: 502-564-1582*

Thomas A Moody
Registered Agent
Moody Excavating LLC
103 Summit Drive
Georgetown, KENTUCKY 40324