

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BOSS CONSTRUCTION, LLC)	
)	
_____)	CASE NO.
)	2021-00270
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

OPENING ORDER

Boss Construction, LLC (Boss Construction) 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 Boss Construction for violation of the following provision of the Act:

KRS 367.4911(7) – If after the two (2) day period provided by KRS 367.4909(5)(a), the excavator finds evidence of an unmarked underground facility at the site, he shall immediately notify the protection notification

and

KRS 367.4911(8) – The excavator shall contact the protection notification center to request remarking two (2) working days in advance of the expiration of each twenty-one (21) day period while excavation or demolition continues

Based on its review of the Incident Report and being otherwise sufficiently advised, the Commission finds prima facie evidence that Boss Construction 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. Boss Construction 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**

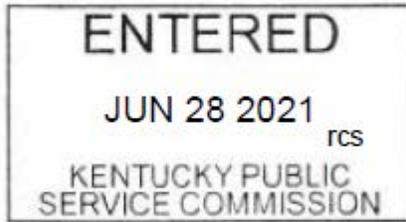
Kentucky, and such representation includes the filing of papers with and appearances at hearings before the Commission.

3. The Staff Incident Report 32503 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 Boss Construction 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.**

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

By the Commission



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2021-00270 DATED JUN 28 2021

SEVEN PAGES TO FOLLOW

PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

KY PSC Investigator(s) John E. Gowins	Incident ID 32503
Incident Date 3/4/2020 10:00:00 AM	Report Submitted 3/30/2020 11:19:00 AM

OPERATOR INFORMATION

Operator Duke Energy Kentucky, Inc.	Reported By Laura Mate
Phone (513) 287-2594	Email Laura.Mate@duke-energy.com
Incident Location 720 Roberts, Newport 720 Roberts St Newport, KY 41071 Campbell	Locate Ticket Number No ticket

EXCAVATOR INFORMATION

Name of Excavator Ormes, Brian	Organization ID 0887375
Phone 8596282739	Email Bosselectricllc@gmail.com
Excavator Address Boss Construction, LLC 115 E 31st St Covington, KY 41015	Locate Ticket Number

INCIDENT

Locate Ticket Summary						
Ticket #	Valid	Initial Date	Expiration Date (21 calendar days from Initial date)	Incident Date	# of Days Expired	Within Scope of Excavation
None	N/A	N/A	N/A	3/4/20	N/A	N/A

Excavation Summary			
Excavation Within Tolerance Zone	Type Of Equipment Used	Cost of Damage (Per Operator)	Amount Billed (Excavator)
N/A	Mechanized	\$0.00	\$0.00

The operator reports that Boss Construction LLC. was installing a retaining wall. While excavating the hill side they inadvertently came into contact with Duke Energy's gas service line. After further investigation I discovered that Boss Construction LLC. had not notified the One-Call System prior

to excavation. This is the second time this gas service was damaged by Boss Construction. See incident # 32502.

INVESTIGATION

November 6, 2020

- Called 859.628.2739, spoke to Mr. Ormes, who stated he called 811 twice and couldn't get Duke to mark the lines due to debris in the yard. While moving some rock one fell and broke the line. I requested that he find the numbers and gave him my phone number and email address.

November 13, 2020

- Called 859.628.2739, he asked that I send him the information on resolution, he stated the company was in bankruptcy and he needed to discuss with his attorney. He provided: bosselectricllc@gmail.com.
- Mr. Ormes indicated this was the second time they hit the line, and they were digging with a shovel.

November 20, 2020

- Having heard nothing from Mr. Ormes, the decision is to send a demand letter for \$1250 for this incident, and a second demand letter for \$2000 for incident # 32503.

November 23, 2020

- Received two dig tickets from 811, the first dated 12/9/19 and the second dated 12/16/19. The first dig ticket would have expired on 12/30/19, and the second would have expired on 1/6/20. The incident occurred on March 3, 2020, 57 days after the ticket expired.

VIOLATION

KRS 367.4911 (8) The excavator shall contact the protection notification center to request remarking two (2) working days in advance of the expiration of each twenty-one (21) day period while excavation or demolition.

KRS 367.4911 (7) If, after the two (2) day period provided by KRS 367.4909(5)(a), the excavator finds evidence of an unmarked underground facility at the site, he shall immediately notify the protection notification center.

Gas Excavation Damage Report

Duke Energy Kentucky, Inc.

Submitted 3/30/2020 Incident ID 32503

[Set back to Edit](#)[Staff Edit](#)[Print \(PDFForm.aspx?Rpt=GasInvestigation&IG=32503\)](#)

Reported By:

Name	Laura Mate
Phone	(513) 287-2594
Email	Laura.Mate@duke-energy.com

Gas Line Incident Occured:

Date	3/4/2020
Time	10:00 AM

Details:

Reported Date	3/30/2020 11:11 AM
---------------	--------------------

Incident Location Address:

Location	720 Roberts, Newport
Address	720 Roberts St
City	Newport
State	KY
County	Campbell
Zip	41071
Confirm Code	Y

Number of Customers out	1
-------------------------	---

Was gas or hazardous liquids contained in the underground facility?	<input checked="" type="checkbox"/>
---	-------------------------------------

Was gas or hazardous liquids released into the atmosphere?	<input checked="" type="checkbox"/>	*
		3/2020

Locate Request Ticket No.	No ticket
---------------------------	-----------

Excavator	Contractor
-----------	------------

Excavator Address:

First Name	Brian
Last Name	Ormes
Organization ID	0887375
Company	Boss Construction, LLC
Phone	8596282739
Email	Bosselectricllc@gmail.com

Address 115 E 31st St
City Covington
State KY
Zip 41015
Confirm Code Y
Excavation Damage No notification made to the One Call Center

Description of Incident This is the second time this gas service was damaged by Boss Construction. They failed to notify 811 to have the underground utilities marked.

Summary Information

3/30/2020

Full details such as the cause Boss Construction LLC. was installing a retaining wall. While excavating the hill side they inadvertently came into contact with Duke Energy's gas service line. After further investigation I discovered that Boss Construction LLC. had not notified the One-Call System prior to excavation.
Extent of the damage Gas service damaged by tractor.
Cost of the damage \$0.00
Steps taken to prevent re-occurrence
Amount billed to excavator \$0.00

Gowins, John E (PSC)

From: Gowins, John E (PSC)
Sent: Friday, November 13, 2020 9:58 AM
To: vosselectricllc@gmail.com
Subject: Incidents # 32502 and 32503
Attachments: Original_Duke Report_32502.pdf; Original_Duke Report_32503.pdf

Mr. Ormes,

To resolve the first violation, the options are:

1. A \$1,250 civil penalty reduced to \$250 provided a representative of your company participates in a damage prevention training to be held in the future online;
2. No one has to participate in the training, but the full \$1,250 civil penalty would be due; or
3. You may request a hearing before the commissioners.

To resolve the second violation, we cannot reduce the penalty and the amount is \$2,000.

I have included the original Duke reports.

We agreed that you would contact me next week.

John E. Gowins
Consumer Complaints Investigator II
Division of Inspections
Kentucky Public Service Commission
502.782.2656 office
502.229.3058 cell

Boss Construction, LLC

General Information

Organization Number	0887375
Name	Boss Construction, LLC
Profit or Non-Profit	P - Profit
Company Type	KLC - Kentucky Limited Liability Company
Status	I - Inactive
Standing	B - Bad
State	KY
File Date	5/15/2014 9:10:54 AM
Organization Date	5/15/2014 9:10:54 AM
Last Annual Report	6/26/2019
Principal Office	10 West 7th Street Newport, KY 41071
Managed By	Managers
Registered Agent	Brian Ormes 10 West 7th Street Newport, KY 41071

Current Officers

Member	Brian Ormes
Member	Bonnie Ormes
Member	Raephael Dell
Member	James Stidham

Individuals / Entities listed at time of formation

Organizer	BRIAN ORMES
------------------	-----------------------------

Images available online

Documents filed with the Office of the Secretary of State on September 15, 2004 or thereafter are available as scanned images or PDF documents. Documents filed prior to September 15, 2004 will become available as the images are created.

Administrative Dissolution	10/8/2020	1 page	PDF
Annual Report	6/26/2019	1 page	PDF
Annual Report	5/24/2018	1 page	PDF
Annual Report	4/26/2017	1 page	PDF
Annual Report Amendment	4/8/2016	1 page	PDF
Annual Report	3/25/2016	1 page	PDF
Annual Report	8/28/2015	1 page	PDF
Articles of Organization	5/15/2014 9:10:55 AM	1 page	PDF

Assumed Names

Activity History

Filing	File Date	Effective Date	Org. Referenced
Admin Dis. A. report not in	10/8/2020	10/8/2020	
Annual report	6/26/2019 9:25:57 AM	6/26/2019 9:25:57 AM	
Annual report	5/24/2018 4:36:16 PM	5/24/2018 4:36:16 PM	
Annual report	4/26/2017 12:31:33 PM	4/26/2017 12:31:33 PM	

Amendment to annual report	4/8/2016 10:49:59 AM	4/8/2016 10:49:59 AM
Annual report	3/25/2016 1:42:17 PM	3/25/2016 1:42:17 PM
Annual report	8/28/2015 4:56:29 PM	8/28/2015 4:56:29 PM
Add	5/15/2014 9:10:54 AM	5/15/2014 9:10:54 AM

Microfilmed Images

*Brian Ormes
Boss Construction, LLC
10 West 7th Street
Newport, KENTUCKY 41071