



Andy Beshear
Governor

Rebecca W. Goodman
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

Kent A. Chandler
Chairman

Angie Hatton
Vice Chairman

Mary Pat Regan
Commissioner

February 15, 2024

PARTIES OF RECORD

Re: Case No. 2023-00303

Notice is given to all parties that the attached Phillips Waterproofing and Concrete Order for Default has been filed into the record of this proceeding.

If you have any comments you would like to make regarding the contents of the document, please do so within five days of receipt of this letter. If you have any questions, please contact Jessica Norris-Canfield, Staff Attorney III , at jnorriscanfield@ky.gov.

Sincerely,

A handwritten signature in blue ink that reads "Linda C. Bridwell".

Linda C. Bridwell, PE
Executive Director

Attachment

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|-------------------------------------|---|------------|
| PHILLIPS WATERPROOFING AND CONCRETE |) | |
| |) | |
| _____ |) | CASE NO. |
| |) | 2023-00303 |
| ALLEGED VIOLATION OF UNDERGROUND |) | |
| FACILITY DAMAGE PREVENTION ACT |) | |

This matter was originally established by an Order of the Commission, dated September 22, 2023. The hearing in this matter was reset for January 26, 2024, by an Order of the Commission, dated October 26, 2023.

Staff moves that the Commission enter judgment against Phillips Waterproofing and Concrete pursuant to KRS 13B.050(3) and the following:

1. Phillips Waterproofing and Concrete was duly served with a copy of the Initiating Order and Final Investigative Report by the Bullitt County Sheriff's Department on November 6, 2023.
2. Phillips Waterproofing and Concrete has not filed an answer or any other responsive pleading and the time for such has since expired.
3. The Initiating Order and Final Investigative Report cited a violation of KRS 367.4911(1)(a) when, on July 9, 2021, at approximately 11:32 AM at 7208 Vaughn Mill Road, Louisville, KY 40228, Phillips Waterproofing and Concrete failed to request a locate ticket not less than two full workings days or more than ten full working days prior to commencing work to avoid damage within the approximate location of the underground facility. As outlined in the Final Investigative Report, Phillips Waterproofing and Concrete

was excavating the front corner of a residence without a locate request when they damaged an unmarked customer service line owned and operated by Louisville Gas and Electric Company (LG&E) to serve the public just below the meter. The civil penalty for a second/subsequent¹ offense violation of KRS 367.4911(1)(a) is \$1,000.00.

4. The Initiating Order and Final Investigative Report cited a violation of KRS 367.4917(4) for damaging a facility that contains any flammable, toxic, corrosive, or hazardous material or results in the release of any flammable, toxic, corrosive, or hazardous material. As outlined in the Final Investigative Report, Phillips Waterproofing and Concrete damaged an unmarked ½” gas service line resulting in the release of natural gas into the atmosphere. The civil penalty for a violation of KRS 367.4917(4), is \$1,000.

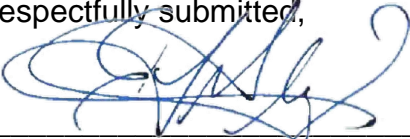
5. The total civil penalty assessed in the Initiating Order being \$2,000, upon which no reductions are due. Phillips Waterproofing and Concrete has failed to pay the civil penalty of \$2,000.

6. That by reason of Phillips Waterproofing and Concrete’s default, Staff is entitled to a final order as a matter of law.

WHEREFORE, Staff respectfully requests for a final order by default against Phillips Waterproofing and Concrete in the amount of \$2,000, and that the Commission’s investigation of Damage Incident 53846 be closed, and this case removed from the Commission’s docket.

¹ Phillips Waterproofing and Concrete has had one prior violation. The first offense violation was incident number 43400, which occurred on January 19, 2021. More than three hundred sixty-five days (365) have not elapsed since the last incident attributable to Phillips Waterproofing and Concrete to warrant a reversion to a first offense violation under KRS 367.4197(1).

Respectfully submitted,



Ellen Fouser-Gormley
Staff Attorney

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|-------------------------------------|---|------------|
| PHILLIPS WATERPROOFING AND CONCRETE |) | |
| |) | |
| _____ |) | CASE NO. |
| |) | 2023-00303 |
| ALLEGED VIOLATION OF UNDERGROUND |) | |
| FACILITY DAMAGE PREVENTION ACT |) | |

ORDER

A hearing was scheduled before the Kentucky Public Service Commission (Commission) on January 26, 2024, at its offices at 211 Sower Boulevard, Frankfort, Kentucky, concerning the allegation that Phillips Waterproofing and Concrete violated KRS 367.4911(1)(a) when, on July 9, 2021, at approximately 11:32 AM at 7208 Vaughn Mill Road, Louisville, KY 40228, Phillips Waterproofing and Concrete conducted excavation activities without a locate request within the approximate location of an unmarked underground facility and thereby cause damage to a ½” gas service owned and operated by Louisville Gas and Electric Company (LG&E) to serve the public.

According to the Damage Report submitted to the Commission by LG&E, which is encompassed in the Final Investigative Report compiled by the Commission’s Division of Inspections, Phillips Waterproofing and Concrete was stated to be in violation of KRS 367.4911(1)(a) and subject to a civil penalty for this violation by operation of KRS 367.4917(1) and KRS 367.4917(4). Phillips Waterproofing and Concrete did not appear at the hearing.

Upon Commission Staff's Motion for Default Judgement herein against Phillips Waterproofing and Concrete, and it appears that Phillips Waterproofing and Concrete was duly served with the Initiating Order and Final Investigative Report on November 6, 2023, and made no Answer nor Filed any responsive pleading herein, and is thereby in default, and the Commission being otherwise sufficiently advised;

IT IS HEARBY ORDERED that:

1. Phillips Waterproofing and Concrete be assessed a civil penalty in the amount of \$2,000 for violation of KRS 367.47911(1)(a) and KRS 367.4917(4).
2. Phillips Waterproofing and Concrete shall pay \$2,000 within 30 days 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. The Commission's Investigation of Damage Incident 53846 is hereby closed, and this case is 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.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ATTEST:

Executive Director

Case No. 2023-00303

*Kevin Phillips
PHILLIPS WATERPROOFING AND CONCRETE
175 Rainbow Drive
Columbia, KENTUCKY 42728

*Kevin Phillips
PHILLIPS WATERPROOFING AND CONCRETE
8880 S Preston Hwy
Lebanon Junction, KENTUCKY 40150