

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\* \* \* \* \*

In the matter, on the Commission's own motion,	)	
to require <b>MCLEAN TRANSPORT, LLC</b> , to show	)	
cause why it should not be found in violation	)	Case No. U-20520
of Public Act 174 of 2013, the MISS DIG	)	
Underground Facility Damage Prevention	)	
and Safety Act, MCL 460.721 <i>et seq.</i>	)	
_____	)	

At the August 20, 2019 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman  
Hon. Daniel C. Scripps, Commissioner

**ORDER**

On April 6, 2018, the Commission Staff (Staff) received notification from Consumers Energy Company that a 3/4-inch steel natural gas service at 512 South Clinton Street in Grand Ledge, Michigan had been damaged. The Staff initiated an investigation<sup>1</sup> to determine if the damage was caused in violation of Public Act 174 of 2013 (Act 174), the MISS DIG Underground Facility Damage Prevention and Safety Act, MCL 460.721 *et seq.*

As a result of the investigation, the Staff determined that McLean Transport, LLC (McLean) committed a probable violation of Act 174 by failing to expose the marked gas main in the caution zone prior to excavation with power equipment.

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<sup>1</sup> Damage Prevention Case No. 447240 was issued for this investigation.

On May 2, 2019, the Commission issued an order opening this contested case proceeding requiring McLean to show cause why it should not be penalized for violating Act 174. A prehearing conference was held on June 4, 2019, before Administrative Law Judge Dennis W. Mack (ALJ). McLean failed to file any response to the allegations and did not attend the prehearing conference. The ALJ ordered an evidentiary hearing to be held on June 25, 2019. On June 18, 2019, the Staff filed testimony and exhibits. McLean did not file a response.

On June 25, 2019, at the designated time, the ALJ opened the evidentiary hearing and allowed for the direct examination of Jeffrey M. Quirante, a Damage Prevention/Gas Safety Engineer in the Commission's Gas Operations Division. McLean did not attend the evidentiary hearing and failed to otherwise respond to the record evidence. At the conclusion of the hearing, the ALJ issued an oral proposal for decision (PFD) finding that, based on the uncontroverted evidence, McLean violated MCL 460.725(5) and recommended a \$500.00 fine. 2 Tr 27-28. The ALJ also recommended that McLean be required to obtain training that would ensure future compliance with Act 174. *Id.*

### Discussion

Act 174 specifically provides:

Except as otherwise provided in this subsection, before blasting or excavating in a caution zone, an excavator shall expose all marked facilities in the caution zone by soft excavation. If conditions make complete exposure of the facility impractical, an excavator shall consult with the facility owner or facility operator to reach agreement on how to protect the facility. For excavations in a caution zone parallel to a facility, an excavator shall use soft excavation at intervals as often as reasonably necessary to establish the precise location of the facility. An excavator may use power tools and power equipment in a caution zone only after the facilities are exposed or the precise location of the facilities is established.

MCL 460.725(5). The Staff's investigation determined that although the gas facilities in question were marked properly, McLean failed to employ soft excavation measures while removing a large

concrete slab with a backhoe within the caution zone. According to the Staff, the failure of McLean to use soft excavation at intervals as often as reasonably necessary to establish the precise location of the facility before excavation in a caution zone is a violation of Act 174.

Under Act 174:

Upon complaint filed with the [C]ommission or upon the [C]ommission's own motion, following notice and hearing, a person, other than a governmental agency, who violates any of the provisions of this act may be ordered to pay a civil fine of not more than \$5,000.00 for each violation. In addition to or as an alternative to any fine, the [C]ommission may require the person to obtain reasonable training to assure future compliance with this act.

MCL 460.731(2). In initially recommending that McLean be required to pay a fine of \$500.00 and obtain reasonable training, the Staff also relied on the MISS DIG Underground Facility Damage Prevention and Safety Rules, which provide, in part:

In cases where a person has committed a first offense that does not involve injury, death, or significant property damage, and where the person admits responsibility without requesting a hearing, the maximum civil fine to be assessed shall not exceed \$500.00.

Mich Admin Code, R 460.20(6).

The record demonstrates that the Staff made many attempts to resolve this issue with McLean and that McLean has failed to address the allegations in any satisfactory manner. The Commission, therefore, adopts the recommendations in the PFD and finds McLean in violation of MCL 460.725(5) and imposes a penalty of \$500.00. While the Commission may order a fine greater than \$500.00 due to the lack of an admission of responsibility by McLean nor any other effort to constructively engage with the Staff to resolve this matter, the Commission declines, at this point, to assess the higher penalty provisions allowed for under Act 174. Further, the Commission stresses the importance of full compliance with Act 174 and other provisions, and

therefore requires Mclean to meet with the Staff within 21 days from the date of this order to determine the appropriate level of training that will ensure future compliance.

THEREFORE, IT IS ORDERED that:

A. McLean Transport, LLC, shall make a penalty payment of \$500.00 payable to the State of Michigan, and addressed to the Commission's Executive Secretary, P.O. Box 30221, Lansing Michigan, 48909, with a post mark date within 30 days from the date of this order. The penalty funds paid shall be credited to a special account and used for underground facilities safety education and training pursuant to MCL 460.732. Should McLean fail to timely remit the penalty payment or meet its training obligation, the Commission may reopen the record, exposing McLean Transport, LLC to a penalty amount up to the maximum of \$5,000.00.

B. Within 21 days from the date of this order, McLean Transport, LLC, shall initiate training obligation discussions with the Commission Staff.

C. Within 30 days from the date of this order, the Commission Staff shall file a report in this docket outlining the discussions with McLean Transport, LLC, regarding its training obligation requirements and an agreed upon course of action for completion.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov) and to the Michigan Department of the Attorney General - Public Service Division at [pungp1@michigan.gov](mailto:pungp1@michigan.gov). In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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Sally A. Talberg, Chairman

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Daniel C. Scripps, Commissioner

By its action of August 20, 2019.

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Barbara S. Kunkel, Acting Executive Secretary

# PROOF OF SERVICE

STATE OF MICHIGAN )

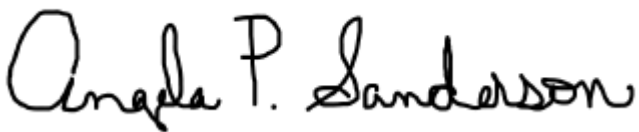
Case No. U-20520

County of Ingham )

Brianna Brown being duly sworn, deposes and says that on August 20, 2019 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

  
Brianna Brown

Subscribed and sworn to before me  
this 20<sup>th</sup> day of August 2019.



\_\_\_\_\_  
Angela P. Sanderson  
Notary Public, Shiawassee County, Michigan  
As acting in Eaton County  
My Commission Expires: May 21, 2024

**Service List for Case: U-20520**

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---

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Xcel Energy

Great Lakes Energy

Michigan Public Power Agency

American Transmission Company

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UMERC, MERC and MGU

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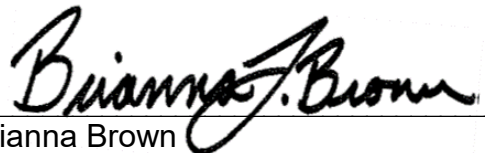
# PROOF OF SERVICE

STATE OF MICHIGAN )

Case No. U-20520

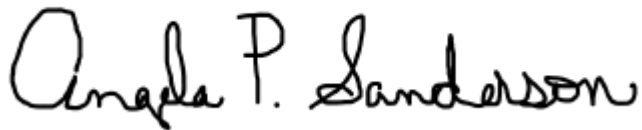
County of Ingham )

Brianna Brown being duly sworn, deposes and says that on August 20, 2019 A.D. she served a copy of the attached Commission order by certified first class mail (7014 0150 0001 6136), postage prepaid, to the persons as shown service list below.

  
Brianna Brown

Mr. Andy McLean  
McLean Transport, LLC  
9801 Oneida Road  
Grand Ledge, MI 48827

Subscribed and sworn to before me  
this 20<sup>th</sup> day of August 2019.



\_\_\_\_\_  
Angela P. Sanderson  
Notary Public, Shiawassee County, Michigan  
As acting in Eaton County  
My Commission Expires: May 21, 2024

McLean Transport LLC  
9801 Oneida Road  
Grand Ledge, MI 48837