

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

NOLIN RURAL ELECTRIC COOPERATIVE	)	CASE NO.
CORPORATION ALLEGED FAILURE TO	)	2011-00376
COMPLY WITH KRS 278.020	)	

ORDER

By Order dated October 17, 2011, the Commission directed Nolin Rural Electric Cooperative Corporation ("Nolin") to appear at a hearing on January 10, 2012 to show cause why it should not be subjected to the penalties provided under KRS 278.990 for allegedly violating KRS 278.020 by beginning construction on certain projects contained in its 2010-2013 Construction Work Plan without first obtaining a Certificate of Public Convenience and Necessity.

Nolin filed an answer to the show cause Order and requested an informal conference, which was held at the Commission's offices on December 20, 2011. Those discussions led to the filing of a Stipulation of Facts and Settlement Agreement ("Stipulation") on September 12, 2012. The Stipulation, attached hereto as an Appendix and incorporated herein by reference, sets forth Nolin's agreement to develop internal procedures to insure that future construction work plans would be filed with the Commission in a timely manner to be reviewed by Commission Staff consistent with the new construction work plan process recently implemented by the Commission. Nolin further agreed to pay a fine of \$250.00 in full settlement of the instant proceeding.

Determining whether the terms of the Stipulation are in the public interest and are reasonable, the Commission has taken into consideration the comprehensive nature of

the Stipulation and Nolin's cooperation in achieving full resolution of this proceeding. Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that the Stipulation is in accordance with the law and does not violate any regulatory principle. The Stipulation is a product of arm's-length negotiations among capable, knowledgeable parties, is in the public interest, and results in a reasonable resolution of all issues in this case.

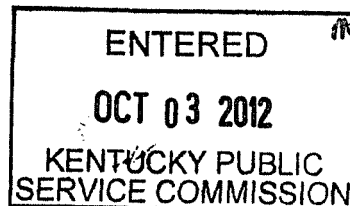
IT IS THEREFORE ORDERED that:

1. The Stipulation is adopted and approved in its entirety as a complete resolution of all issues in this case.

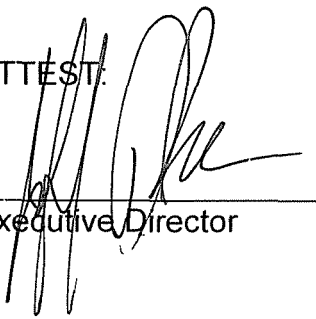
2. Nolin shall pay \$250.00 as a civil penalty within 30 days of the date of this Order by cashier's check or money order payable to the Kentucky State Treasurer and mailed or delivered to the Office of General Counsel, Public Service Commission, 211 Sower Boulevard, P. O. Box 615, Frankfort, Kentucky 40602.

3. Upon payment of the \$250.00 civil penalty referenced in the ordering paragraph above, this case shall be closed and removed from the Commission's docket without further Order of the Commission.

By the Commission



ATTEST:

  
\_\_\_\_\_  
Executive Director

Case No. 2011-00376

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2011-00376 DATED **OCT 03 2012**

## STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

By Order dated October 17, 2011, the Commission initiated this proceeding to determine whether Nolin Rural Electric Cooperative Corporation ("Nolin") should be subject to the penalties prescribed in KRS 278.990 for allegedly violating KRS 278.020 by beginning construction on some of the projects contained in its 2010-2013 Construction Work Plan ("CWP") without first obtaining a Certificate of Public Convenience and Necessity ("CPCN").

On November 7, 2011, Nolin filed a response to the Commission's October 17, 2011 Order. Also on the same date, Nolin filed a motion requesting an informal conference with Commission Staff to discuss the issues related to this matter. An informal conference was subsequently held at the Commission's offices on December 20, 2011. Discussions during the informal conference between Nolin and Commission Staff resulted in the following Stipulation of Facts and Settlement Agreement ("Stipulation"), which is submitted to the Commission's consideration in rendering its decision:

1. Commission's Interpretation of KRS and Regulations: Nolin acknowledges that the Commission interprets KRS 278.020(1) and 807KAR5:001, Section 9(3) to the effect that a CPCN should have been obtained, but was not, before beginning construction of any of the projects contained in its 2010/2013 CWP.
2. Nolin's Interpretation of KRS and Regulations: Nolin's interpretation, as set forth in detail in its November 7, 2011 response, is that its CWP consists of numerous distinct construction projects, each qualifying as "ordinary extensions of existing systems in the usual course of business" and, therefore, each distinct project is exempt from the requirement in KRS 278.020(1) to obtain a CPCN. Nolin believes its interpretation is reasonable. Nolin began construction of projects in its CWP to meet the immediate needs of its customers and should not be subjected to a penalty for providing service to its customers.

3. Nolin agrees to develop internal procedures to insure that future construction work plans will be filed with the Commission in a timely manner. In accordance with the Commission's new procedures set forth in Attachment #1 hereto, Nolin will, at the earliest possible time, submit its preliminary CWP for review by Commission Staff. The Staff, in turn, shall issue a legal staff opinion, not binding upon the Commissioners, stating the projects staff considers to be in the "ordinary course of business" and those which will need a CPCN. Staff's goal would be to issue these opinions within fourteen (14) days of receipt of the CWP.

Nolin could then begin construction immediately on those projects deemed in the ordinary course of business while those requiring a CPCN would be considered by the Commission with the CPCN case that would be subsequently filed by Nolin.

4. Nolin agrees to pay the amount of \$250.00 in full settlement of this proceeding. The scope of this proceeding is limited by the Commission's October 17, 2011 Order as to whether Nolin should be assessed penalties under KRS 278.990 for willful violations of KRS 278.020. The Commission's acceptance of this Stipulation shall not be construed as a finding of a willful violation of any Commission statute or order.
5. In the event that the Commission does not accept this Stipulation in its entirety, Nolin and Commission Staff reserve their rights to withdraw therefrom and require that a hearing be held on any and all issues involved herein, and that none of the provisions contained herein shall be binding upon the parties thereto, used as an admission by Nolin of any liability in any legal proceeding or lawsuit arising out of the facts set forth in the October 17, 2011 Order, or otherwise used as an admission by either party.

6. This Stipulation is for use only in Commission Case No. 2011-00376, and neither party hereto shall be bound by any part of this Stipulation in any other proceeding, except that this Stipulation may be used in any proceeding by the Commission to enforce the terms of this Stipulation or to conduct a further investigation of Nolin's service, and Nolin shall not be precluded or estopped from raising any issue, claim, or defense therein by reason of the execution of this Stipulation.
7. Nolin and Commission Staff agree that the foregoing Stipulation is reasonable for the purpose of resolving all issues in Commission Case No. 2011-00376, is in the public interest, and should be adopted in its entirety by the Commission. If so adopted by the Commission, Nolin agrees to waive its right to a hearing and will not file any action for rehearing or seek judicial appeal.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their signatures this 5<sup>th</sup> day of September, 2012.

**NOLIN RURAL ELECTRIC COOPERATIVE  
CORPORATION**

BY: Michael L. Miller

TITLE: President & CEO

**STAFF OF THE KENTUCKY PUBLIC  
SERVICE COMMISSION**

BY: Quang D. Nguyen  
**QUANG NGUYEN, COUNSEL FOR  
THE STAFF**



Steven L. Beshear  
Governor

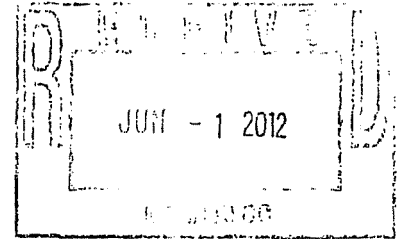
Leonard K. Peters  
Secretary  
Energy and Environment Cabinet

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

David L. Armstrong  
Chairman

James W. Gardner  
Vice Chairman

Linda Breathitt  
Commissioner



May 31, 2012

Michael Miller  
President and Chief Executive Officer  
Nolin Rural Electric Cooperative Corporation  
411 Ring Road  
Elizabethtown, KY 42701-6767

MAILED  
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Dear Mr. Miller:

Thank you for allowing the Kentucky Public Service Commission (PSC) staff to come and speak with you during your May 22 board meeting at the Kentucky Association of Electric Cooperatives (KAEC) headquarters in Louisville. Hopefully, we can continue to meet in this manner to discuss matters facing the Cooperative community in the future.

I would like to take this opportunity to lay out the proposal we discussed during the meeting. As you know, the Commission has considered a Construction Work Plan (CWP) to be one project. As such, the Commission has required a Certificate of Public Convenience and Necessity (CPCN) pursuant to KRS 278.020 before any construction could commence on the projects contained within the CWP. On many occasions, various cooperatives have argued that the projects should be considered "ordinary course of business" and thus exempted from the need for a CPCN.

While the Commission believes the current practices are supported by the statute, the PSC is willing to consider the CWP, not as one project, but as a compilation of individual projects. Under this interpretation, each cooperative would, at the earliest possible time, submit its CWP for review by Commission staff. The staff, in turn, would issue a legal staff opinion, not binding upon the Commissioners, stating the projects staff considers to be in the "ordinary course of business" and those which would need a CPCN. Staff's goal would be to issue these opinions within 14 days of receipt of the CWP.

May 31, 2012

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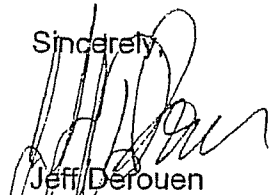
The Cooperative could begin construction immediately on those projects deemed in the ordinary course of business while those requiring a CPCN would be considered by the Commission with the CPCN case that would be subsequently filed by the Cooperative.

As with all legal opinions requesting determination of ordinary course of business, the staff's review does not consider the reasonableness or need for the project. While its occurrence would be extremely rare, it is not impossible for any project, not previously approved by the Commission in a CPCN or other case, to be denied recovery in a rate case because it was not deemed reasonable or needed. This, however, is the same scenario any regulated utility faces when it chooses to construct a facility without a CPCN.

We would like to hear from you, individually or collectively through Mr. Corum at KAEC, so that the PSC knows whether the 19 cooperatives wish to continue to treat the CWP's as one project, submitting CPCN applications, or wish to adopt this new proposal and treat CWP's as a compilation of individual projects. If there is agreement among the 19 regulated KAEC represented distribution cooperatives, the PSC would like to implement this new plan as soon as possible. We would appreciate an answer by Friday, June 15.

Again, thank you for making time available at your meeting for our presentation. We are always open to discussing issues of concern with you while ensuring that the PSC meets its statutory obligations.

Sincerely,



Jeff DeFouen  
Executive Director

JD/pa



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