

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENERGY CORP	)	
_____	)	CASE NO.
	)	2009-00431
ALLEGED FAILURE TO COMPLY WITH	)	
KRS 278.042	)	

O R D E R

By Order dated December 8, 2009, the Commission directed Kenergy Corp (“Kenergy”) to show cause why it should not be subject to the penalties provided under KRS 278.990 for violations of KRS 278.042, which requires an electric utility to construct and maintain its plant and facilities in accordance with the most recent edition of the National Electrical Safety Code (“NESC”), which is the 2007 edition. The three alleged violations cited in the Commission’s December 8, 2009 Order are as follows:

1. NESC Section 42, 422-A-1 & 2: Employees working on or with overhead lines shall observe the following rules in addition to applicable rules contained elsewhere in Sections 43 and 44:
  - (1) When setting, moving, or removing poles in or in the vicinity of energized lines, precautions shall be taken to avoid direct contact of the pole with the energized conductors. Employees shall wear suitable insulating gloves or use other suitable means where voltages may exceed rating of gloves in handling poles where conductors energized at potentials above 750 V can be contacted. Employees performing such work shall not contact the pole with uninsulated parts of their bodies.
  - (2) Contact with trucks, or other equipment that is not bonded to an effective ground being used to set, move, or remove poles in or in the vicinity of energized lines shall be avoided by employees

standing on the ground or in contact with grounded objects unless employees are wearing suitable protective equipment.

2. NESC Section 42, 421-A-1 and 2: A First-Level Supervisor or Person in Charge shall: 1. Adopt such precautions as are within the individual's authority to prevent accidents and 2. See that the safety rules and operating procedures are observed by the employees under the direction of this individual.
3. NESC Section 44, 441-A-1: Employees shall not approach or bring any conductive object within the minimum approach distance listed in Table 441-1 or Table 441-4 to exposed parts unless one of the following is met:
  - a. The line or part is de-energized and grounded per Rule 444D;
  - b. The employee is insulated from the energized line or part. Electrical protective equipment insulated for the voltage involved, such as tools, gloves, rubber gloves, or rubber gloves with sleeves, shall be considered effective insulation for the employee from the energized part being worked on; or
  - c. The energized line or part is insulated from the employee and from any other line or part at a different voltage.

The violations cited in the Commission's December 8, 2009 Order arose from a February 13, 2009 incident on Knight Road in Lyon County, Kentucky, wherein Bill Plunkett, an employee of Butler Storm Recovery, Inc. ("Butler Storm Recovery"), sustained burn injuries while working on a Kenergy electric construction project.

On December 23, 2009, Kenergy submitted an answer to the Commission's show cause Order and a request for an informal conference. The informal conference was held at the Commission's offices on January 27, 2010. The discussions at the informal conference led to the filing of a Joint Stipulation of Facts and Settlement Agreement (collectively referred to as "Settlement Agreement"). The Settlement Agreement, attached hereto as the Appendix and incorporated herein by reference, sets forth Kenergy's agreement with the statement of facts contained in the Commission Staff's Electric Utility Personal Injury Accident Report ("Report") dated March 23, 2009.

The Report was appended to the Commission's December 8, 2009 show cause Order. The Settlement Agreement also discusses the remedial actions to be taken by Kenergy and a civil penalty in the amount of \$3,000.00 that Kenergy will pay in full satisfaction of this proceeding.

In determining whether the terms of the Settlement Agreement are in the public interest and are reasonable, the Commission has taken into consideration the comprehensive nature of the Settlement Agreement, Kenergy's willingness to implement job briefing documentation methods for its contractor crews, Kenergy's willingness to implement regular safety audits for its contractor work crews, and Kenergy's cooperation in achieving a resolution of this proceeding.

Based on the evidence of the record and being otherwise sufficiently advised, the Commission finds that the Settlement Agreement is in accordance with the law and does not violate any regulatory principle. The Settlement Agreement 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 Joint Stipulation of Facts and Settlement Agreement is adopted and approved in its entirety as a complete resolution of all issues in this case.

2. Kenergy shall pay \$3,000.00 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, Kentucky Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

3. Beginning with the first full calendar month following the date of entry of this Order, each month Kenergy shall perform one safety audit of each contractor construction crew working in the vicinity of energized Kenergy facilities.

a. Kenergy shall document each safety audit in writing, using the standardized checklist developed by Kenergy for such purpose, a copy of which is attached as an Appendix to the Settlement Agreement.

b. For a period of 12 months following the institution of the monthly safety audits described in this paragraph, on or before the tenth day of each following month, Kenergy shall file with the Commission a copy of all safety audit checklists completed during the prior month, along with a brief summary report indicating any safety violations identified during the safety audits and any safety measures that Kenergy has undertaken to correct those violations.

4. Following the twelfth monthly safety audit pursuant to ordering paragraph 3 above, Kenergy may revise its contractor construction crew safety audit schedule to perform one safety audit of each contractor construction crew working in the vicinity of energized Kenergy facilities every three months.

5. Kenergy shall maintain all safety audit checklists for a period of at least two years and shall provide the safety audit checklists to Commission inspectors upon request and during the inspectors' periodic inspections.

6. Kenergy shall ensure that all contractor construction crews working in the vicinity of energized Kenergy facilities make written documentation of each daily job briefing.

a. Kenergy shall not file copies of daily job briefing documentation with the Commission unless the Commission requires Kenergy to do so in a subsequent Order.

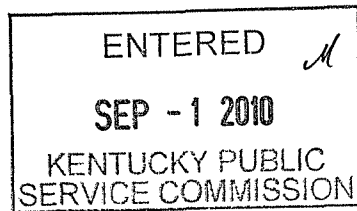
b. Filings may be required by Order of the Commission during the period of time that Kenergy is required to file safety audit checklists under ordering paragraph 3 above.

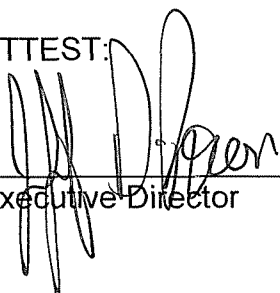
c. Thereafter, the written documentation shall be maintained and provided upon request under the same terms as applicable to safety audit checklists under ordering paragraph 5 above.

7. Upon payment of the \$3,000.00 civil penalty, this case shall be closed and removed from the Commission's docket without further Order of the Commission.

8. Any documents filed in the future pursuant to ordering paragraphs 3 and 4 herein shall reference this case number and shall be retained in the utility's general correspondence file.

By the Commission



ATTEST:  
  
\_\_\_\_\_  
Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2009-00431 DATED **SEP - 1 2010**

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUL 28 2010

PUBLIC SERVICE  
COMMISSION

In the Matter of:

KENERGY CORP. )  
\_\_\_\_\_ )

CASE NO. 2009-00431

ALLEGED FAILURE TO COMPLY )  
WITH KRS 278.042 )

**STIPULATION OF FACTS AND SETTLEMENT AGREEMENT**

This agreement is formally known as a Stipulation of Facts and Settlement Agreement ("Settlement Agreement"). The parties to this Settlement Agreement are Kenergy Corp. ("Kenergy") and Staff of the Kentucky Public Service Commission ("Commission Staff"). It is the intent and purpose of the parties hereto to express their agreement on a mutually satisfactory resolution of all of the issues in the proceeding.

It is understood by the parties that this Settlement Agreement is not binding upon the Public Service Commission ("Commission"). The Commission must independently approve and adopt this Settlement Agreement before this matter can be deemed concluded and removed from the Commission's docket. The parties have expended considerable efforts to reach a stipulation as to the facts of this matter, as well as in developing a proposal for settlement. Kenergy and Commission Staff agree that this Settlement Agreement, viewed in its entirety, constitutes a reasonable resolution of all issues in this proceeding.

In addition, the adoption of this Settlement Agreement will eliminate the need for the Commission, Commission Staff, and Kenergy to expend significant resources in litigating this proceeding and will eliminate the possibility of, and any need for, rehearing or appeals of the Commission's final Order.

### **FACTS**

Kenergy and the Commission Staff submit this stipulation of facts for the Commission's consideration in rendering a decision in this proceeding. Commission Staff developed and submitted to the Commission an Electric Utility Personal Injury Accident Report ("Report") on this matter dated March 23, 2009. The Report describes an incident which occurred on February 13, 2009, on Knight Road, in Lyon County, Kentucky, in which Bill Plunkett, an employee of Butler Storm Recovery, Inc. ("Butler Storm Recovery"), sustained burn injuries while working on a Kenergy electric construction project. Kenergy and Commission Staff agree that the Report fairly and accurately describes the events which occurred on the day of the February 13, 2009 incident.

According to the Report, Mr. Plunkett was a member of a Butler Storm Recovery crew. Butler Storm Recovery was working under contract with Kenergy to replace utility poles that were broken during the ice storm that occurred on January 27, 2009. More specifically, the Butler Storm Recovery crew was digging the holes for the new poles and setting the poles into place.

A Blue Grass Energy Cooperative ("Blue Grass Energy") crew which was working on the same project had confirmed that the single phase primary distribution tap line on which the Butler Storm Recovery crew was to work was de-energized, and



the Blue Grass Energy crew grounded the tap line. According to the Report, the Blue Grass Energy crew foreman told the Butler Storm Recovery crew that the single phase line was grounded and warned them to beware of making contact with the overhead transmission line.

The Butler Storm Recovery crew was operating a small Bobcat skid steer excavator with a front attachment being used to set the poles in place. The Bobcat was being operated by Justin Pepitone, an employee of Butler Storm Recovery, who was also the person in charge of the job site. After Mr. Pepitone would lift a pole off the ground, other members of the Butler Storm Recovery crew would secure the pole to the Bobcat with a long metal log chain.

While using the Bobcat to lift a utility pole into place, Mr. Pepitone raised the pole too high, bringing the pole into contact with an energized 161 kV transmission conductor owned and operated by Kentucky Utilities Company ("KU"). According to the witness statements contained in the incident report filed by Butler Storm Recovery (Attachment C to the Report), prior to making contact with the transmission lines Mr. Pepitone asked Mr. Plunkett, who was watching him as he was operating the Bobcat, whether he was clear of the transmission lines, and Mr. Plunkett mistakenly told him that he was clear when, in fact, he was not clear.

At the time of the accident Mr. Plunkett was walking beside the Bobcat and holding the end of the log chain, which was attached to the pole, in order to keep the chain out of the Bobcat's treads. When the pole made contact with the KU transmission conductor Mr. Plunkett received a shock and burn injury. He suffered an entrance wound to his right hand and exit wounds to his right foot. Mr. Plunkett was taken to a

local hospital and was later transferred by helicopter to Vanderbilt Hospital in Nashville, Tennessee. Mr. Plunkett has since recovered from his injuries.

### Show Cause Order

By a Show Cause Order dated, December 8, 2009, the Commission initiated this proceeding to determine whether Kenergy should be subject to the penalties prescribed in KRS 278.990 for three probable violations of KRS 278.042, which requires an electric utility to construct and maintain its plant and facilities in accordance with the 2007 edition of the NESC. The three alleged violations cited in the Commission's December 8, 2009 Order are as follows:

1. NESC Section 42, 422-A-1 & 2: Employees working on or with overhead lines shall observe the following rules in addition to applicable rules contained elsewhere in Sections 43 and 44:

(1) When setting, moving, or removing poles in or in the vicinity of energized lines, precautions shall be taken to avoid direct contact of the pole with the energized conductors. Employees shall wear suitable insulating gloves or use other suitable means where voltages may exceed rating of gloves in handling poles where conductors energized at potentials above 750 V can be contacted. Employees performing such work shall not contact the pole with uninsulated parts of their bodies.

(2) Contact with trucks, or other equipment that is not bonded to an effective ground being used to set, move, or remove poles in or in the vicinity of energized lines shall be avoided by employees standing on the ground or in contact with grounded objects unless employees are wearing suitable protective equipment.

2. NESC Section 42, 421-A-1 and 2: A First-Level Supervisor or Person in Charge shall: 1. Adopt such precautions as are within the individual's authority to prevent accidents and 2. See that the safety rules and operating procedures are observed by the employees under the direction of this individual.

3. NESC Section 44, 441-A-1: Employees shall not approach or bring any conductive object within the minimum approach distance listed in Table 441-1 or Table 441-4 to exposed parts unless one of the following is met:
- a. The line or part is de-energized and grounded per Rule 444D;
  - b. The employee is insulated from the energized line or part. Electrical protective equipment insulated for the voltage involved, such as tools, gloves, rubber gloves, or rubber gloves with sleeves, shall be considered effective insulation for the employee from the energized part being worked on; or
  - c. The energized line or part is insulated from the employee and from any other line or part at a different voltage.

On December 23, 2009, Kenergy filed a response to the Commission's December 8, 2009 Order. In its response, Kenergy denied that it was in violation of either KRS 278.042 or 807 KAR 5:006, Section 24(1), because, it claimed, the incident was the result of human error and not the result of any action or inaction on the part of Kenergy.

Pursuant to a request by Kenergy, the formal administrative hearing which the Commission scheduled in this matter for January 27, 2010, was cancelled and an informal conference ("IC") was held that day at the Commission's Frankfort offices. Representatives of Kenergy, including Kenergy's Chief Executive Officer and legal counsel, were in attendance, as were Commission Staff.

During the informal conference, representatives of Kenergy stated that, since the February 13, 2009 incident, the utility has implemented a number of new self-directed remedial measures since the February 13, 2009 incident in which Mr. Plunkett was injured. These measures include undergoing a safety management system assessment

by the National Safety Council<sup>1</sup> and the subsequent hiring of a full-time risk manager for Kenergy who will be responsible for overseeing Kenergy's safety program.

### **SETTLEMENT AGREEMENT**

As a result of discussions held during the informal conference, Kenergy and the Commission Staff submit the following settlement agreement for the Commission's consideration in rendering its decision in this proceeding:

1. Kenergy agrees that the Commission Staff's Electric Utility Personal Injury Accident Report, Appendix A to the Commission's December 8, 2009 Order in this matter, accurately describes and sets forth the material facts and circumstances surrounding the February 13, 2009 incident.
2. Kenergy agrees to pay a civil penalty in the amount of THREE THOUSAND DOLLARS (\$3,000) in full settlement of this proceeding.
3. The scope of this proceeding is limited by the Commission's December 8, 2009 Show Cause Order on whether Kenergy should be assessed penalties under KRS 278.990 for a willful violation of the NESC rules as made applicable under KRS 278.042, and the adequacy, safety, and reasonableness of its practices related to the construction, installation and repair of electric facilities and whether such practices require revision. Neither the payment of the civil penalty, nor any other agreement contained in this Settlement Agreement, shall be construed as an admission by Kenergy of any liability in any legal proceeding or lawsuit arising out of the facts set forth in the Electric Utility Personal Injury Accident Report or the Electric Utility Inspection Report, nor shall the Commission's acceptance of this Settlement Agreement be construed as a finding of a willful violation of any Commission regulation or NESC rule.
4. Beginning with the first full calendar month following the date of entry of the Order approving this Settlement Agreement, each month Kenergy shall perform one safety audit of each contractor construction crew working in the vicinity of energized Kenergy facilities. Kenergy shall document each safety audit in writing, using the standardized checklist developed by Kenergy for such purpose, a copy of which is attached as an Appendix hereto. For a period of twelve (12) months following the institution of the monthly safety audits described in this paragraph, on or before the tenth (10<sup>th</sup>) day of each following month, Kenergy shall file with the Commission a copy of all safety audit checklists

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<sup>1</sup> A copy of the assessment report was attached to Kenergy's Response as Exhibit C to the Affidavit of Gerald Ford, Vice President of Operations.

completed during the prior month, along with a brief summary report indicating any safety violations identified during the safety audits and any safety measures that Kenergy has undertaken to correct those violations.

5. Following the twelfth (12<sup>th</sup>) monthly safety audit pursuant to paragraph 4 above, Kenergy may revise its contractor construction crew safety audit schedule to perform one safety audit of each contractor construction crew working in the vicinity of energized Kenergy facilities every three (3) months.

6. Kenergy shall maintain all safety audit checklists for a period of at least two (2) years and shall provide the safety audit checklists to Commission inspectors upon request and during the inspectors' periodic inspections.

7. Kenergy shall ensure that all contractor construction crews working in the vicinity of energized Kenergy facilities make written documentation of each daily job briefing. Kenergy shall not file copies of daily job briefing documentation with the Commission unless the Commission requires Kenergy to do so in a subsequent Order. Filings may be required by Order of the Commission during the period of time that Kenergy is required to file safety audit checklists under paragraph 4 above. Thereafter, the written documentation shall be maintained and provided upon request under the same terms as applicable to safety audit checklists under paragraph 6 above.

8. In the event that the Commission does not accept this Settlement Agreement in its entirety, Kenergy and Commission Staff reserve their rights to withdraw from it and require that a hearing be held on any and all issues involved and that none of the provisions contained within this Settlement Agreement shall be binding upon the parties, used as an admission by Kenergy of any liability in any legal proceeding, administrative proceeding or lawsuit arising out of the facts set forth in the Accident Report and the Inspection Report or otherwise used as an admission by either party.

9. This Settlement Agreement is for use in Commission Case No. 2009-00431, and no party to this matter shall be bound by any part of this Settlement Agreement in any other proceeding, except that this Settlement Agreement may be used in any proceedings by the Commission to enforce the terms of this Settlement Agreement or to conduct a further investigation of Kenergy's service. Kenergy shall not be precluded or estopped from raising any issue, claim or defense therein by reason of the execution of this Settlement Agreement.

10. Kenergy and Commission Staff agree that this Settlement Agreement is reasonable, is in the public interest, and should be adopted in its entirety by the Commission. If adopted by the Commission, Kenergy agrees to waive its right to a hearing and will not file any petition for rehearing or seek judicial appeal.

**KENERGY CORP**

By: (print name) SANFORD NOVICK

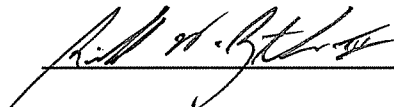
By: (sign name) Sanford Novick

Title: CEO

Date: 7/23/10

**STAFF OF THE KENTUCKY PUBLIC SERVICE COMMISSION**

By: (print name) Richard W. Bertelson, III

By: (sign name) 

Title: Staff Attorney

Date: 8-11-2010

# KENERGY

## CREW WORK PROCEDURES AND SAFETY OBSERVATION CHECKLIST

(Contractor Construction Crew)

DATE \_\_\_\_\_ CONTRACTOR \_\_\_\_\_

SAFETY AUDIT PERFORMED BY: \_\_\_\_\_ CREW LEADER \_\_\_\_\_

WO NUMBER \_\_\_\_\_ CREW MEMBERS \_\_\_\_\_

VEHICLES \_\_\_\_\_

DESCRIPTION	USED PROPERLY	NOT USED PROPERLY	N/A	REMARKS
1. Tailgate Discussion				
2. Wheel Chocks				
3. Personal Protective Equipment				
a. Hard Hat				
b. Eye/Face Protection				
c. Hearing Protection				
d. Hand Protection				
4. Traffic Control Devices				
a. Cones				
b. Signs				
c. Flagman With Proper Equipment				
5. Vehicle Grounds				
6. Personal Grounds				
7. Rubber Gloves and/or Sleeves				
8. Cover-up Material				
9. Fall Protection				
a. Climbing Belt and Safety Strap				
b. Harness (full body)				
c. Lanyards				
d. Ladders Secured				
10. Proper Equipment Use and Location				
11. Trench/Shoring				

COMMENTS \_\_\_\_\_

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Sanford Novick  
President & CEO  
Kenergy Corp.  
P. O. Box 18  
Henderson, KY 42419