

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CLARK ENERGY COOPERATIVE, INC.	)	
_____	)	
ALLEGED FAILURE TO COMPLY WITH	)	CASE NO.
KRS 278.042	)	2010-00334
	)	

O R D E R

By Order dated September 8, 2010, the Commission directed Clark Energy Cooperative, Inc. ("Clark Energy") 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 alleged violations cited in the Commission's September 8, 2010 Order are as follows:

- ① NESC Section 42, 420-C-4: Employees who work on or in the vicinity of energized lines shall consider all of the effects of their actions, taking into account their own safety as well as the safety of other employees on the job site, or on some other part of the affected electric system, the property of others, and the public in general.
2. NESC Section 42, 420-H: Employees shall use the personal protective equipment, the protective devices, and the special tools provided for their work. Before starting work, these devices and tools shall be carefully inspected to make sure that they are in good condition.
3. NESC Section 44, Rule 441-A.3: Energized Conductors or Parts. Employees shall not approach or knowingly permit others to approach, any exposed ungrounded part normally energized except as permitted by this rule.

3. Precautions for approach-Voltages from 301V to 72.5 kV

At voltages from 301V to 72.5 kV, employees shall be protected from phase-to-phase and phase-to-ground differences in voltage. See Table 441-1 for the minimum approach distances to live parts.

b. When the Rubber Glove Method is employed, rubber insulating gloves, insulated for the maximum use voltage as listed in Table 442-6, shall be worn whenever employees are within the reach or extended reach of the minimum approach distances listed in Table 441-1, supplemented by one of the following two protective methods:

1. The employee shall wear rubber insulating sleeves, insulated for the maximum use voltage as listed in Table 441-6, in addition to rubber gloves.

2. All exposed energized lines or parts, other than those temporarily exposed to perform work and maintained under positive control, located within maximum reach of the employee's work position, shall be covered with insulating protective equipment.

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

5. NESC Section 44, 441-A: Employees shall not approach, or knowingly permit others to approach, any exposed ungrounded part normally energized except as permitted by this rule.

A. Minimum Approach Distance to Live Parts

(1) General

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.

(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 September 8, 2010 Order arose from a March 31, 2010 incident in Clark County, Kentucky, wherein Paul Perkins, an employee of Bluegrass Central Construction Company ("Bluegrass"), a contractor for Clark Energy, sustained injuries when the metal parts of the aerial lift in which he was working made contact with an energized phase conductor.

On September 27, 2010, Clark Energy 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 October 18, 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 Clark Energy's agreement with the statement of facts contained in the Commission Staff's Electric Utility Personal Injury Incident Report ("Report") dated June 29, 2010. The Report was appended to the Commission's September 8, 2010 show cause Order. The Settlement Agreement also discusses the remedial actions to be taken by Clark Energy and a civil penalty in the amount of \$2,500.00 that Clark Energy 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, Clark Energy's willingness to implement monthly safety audits, increased contractor screening, and Clark Energy'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. Clark Energy shall pay \$2,500.00 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. Within 30 days of the date of this Order, Clark Energy shall provide a copy of its prescreening qualifications to the Commission.

4. Beginning with the first full calendar month following the date of this Order, Clark Energy shall begin performing monthly safety audits on all employee and contract crews.<sup>1</sup> Clark Energy shall file a quarterly report of these monthly safety audits with the Commission for the next 12 months.

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<sup>1</sup> Commission Staff and Clark Energy agreed that contract crews for vegetation management that do not break the minimum approach distance contained in the NESC will not have to be audited on a monthly basis. However, Clark Energy should still insure that these crews are trained and follow the safety policies and procedures.

5. Clark Energy shall continue to perform the proactive safety measures outlined in its response filed on September 27, 2010, as further detailed in the informal conference and contained within the Settlement Agreement.

6. Clark Energy shall invite its power line contractors to participate in its annual safety training day.

7. Clark Energy shall insure that all contractor job briefings are noted on all work orders issued by Clark Energy.

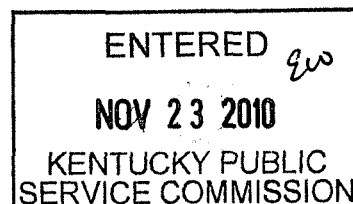
8. Clark Energy shall maintain and provide any of these documents to Commission inspectors upon request and during the inspectors' periodic inspections.

9. The hearing scheduled for November 10, 2010 is cancelled.

10. Upon payment of the \$2,500.00 civil penalty, this case shall be closed and removed from the Commission's docket without further Order by the Commission.

11. Any documents filed in the future pursuant to ordering paragraphs 3, 4, or 8 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. 2010-00334 DATED **NOV 23 2010**

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED  
11-03-2010  
PUBLIC SERVICE  
COMMISSION

In the Matter of:

CLARK ENERGY COOPERATIVE, INC.            )  
\_\_\_\_\_    )  
ALLEGED FAILURE TO COMPLY                )  
WITH KRS 278.042                            )  
CASE NO. 2010-00334

**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 Clark Energy Cooperative, Inc. (“Clark Energy”) 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. Clark Energy 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 Clark Energy 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**

Clark Energy 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 June 29, 2010. The Report describes an incident which occurred on March 31, 2010, in Clark County, Kentucky, in which Paul Perkins, an employee of Bluegrass Central Construction Company ("Bluegrass"), who was working as a contractor for Clark Energy, was injured when the metal parts of the aerial lift he was working in made contact with an energized phase conductor. Clark Energy and Commission Staff agree that the Report fairly and accurately describes the events which occurred on the day of the March 31, 2010, incident.

According to the Report, on the day of the accident the victim was working with Chris Willoughby and Dylan Combs, both Bluegrass employees, on upgrading and relocating facilities on Muddy Creek Road. Mr. Perkins was working in an insulated aerial lift device attempting to finish the conversion of a pole structure from a three phase to a single phase. At some point the metal parts of the aerial lift came into contact with the energized phase conductor. The old primary phase conductor was energized at 14.4 kV and had no rubber protective equipment covering it at the time of the incident. It appears Mr. Perkins had created a path to ground when he attempted to



attach the metal hook on the winch line to the new grounded phase conductor to pull it into place. Mr. Perkins was not wearing rubber gloves at the time of the incident. Mr. Perkins was the person in charge at the job site that day. Mr. Willoughby and Mr. Combs did not see how contact was made, but upon hearing the cracking they lowered the aerial device and lifted Mr. Perkins from the bucket and waited on emergency personnel to arrive. Mr. Perkins was transported to Clark Regional Hospital and then transport to the University of Kentucky Chandler Medical Center. He was treated for second and third degree burns.

#### Show Cause Order

By a Show Cause Order dated, September 8, 2010, the Commission initiated this proceeding to determine whether Clark Energy should be subject to the penalties prescribed in KRS 278.990 for five 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 five alleged violations cited in the Commission's September 8, 2010, Order is as follows:

1. NESC Section 42, 420-C-4: Employees who work on or in the vicinity of energized lines shall consider all of the effects of their actions, taking into account their own safety as well as the safety of other employees on the job site, or on some other part of the affected electric system, the property of others, and the public in general..
2. NESC Section 42, 420-H: Employees shall use the personal protective equipment, the protective devices, and the special tools provided for their work. Before starting work, these devices and tools shall be carefully inspected to make sure that they are in good condition.
3. NESC Section 44, Rule 441-A.3: Energized Conductors or Parts. Employees shall not approach or knowingly permit others to approach, any exposed ungrounded part normally energized except as permitted by this rule.
  3. Precautions for approach-Voltages from 301V to 72.5 kV

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b. When the Rubber Glove Method is employed, rubber insulating gloves, insulated for the maximum use voltage as listed in Table 442-6, shall be worn whenever employees are within the reach or extended reach of the minimum approach distances listed in Table 441-1, supplemented by one of the following two protective methods:

1. The employee shall wear rubber insulating sleeves, insulated for the maximum use voltage as listed in Table 441-6, in addition to rubber gloves.

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4. NESC Section 42, 421-A: Duties of a First-Level Supervisor or Person in Charge. This individual shall: (1) Adopt such precautions as are within the individual's authority to prevent accidents. (2) See that the safety rules and operating procedures are observed by the employees under the direction of this individual.
5. NESC Section 44, 441-A: Employees shall not approach, or knowingly permit others to approach, any exposed ungrounded part normally energized except as permitted by this rule.
  - A. Minimum Approach Distance to Live Parts
    - (1) General  
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.
      - (c) The energized line or part is insulated from the employee and from any other line or part at a different voltage.

On September 27, 2010, Clark Energy filed a response to the Commission's September 8, 2010, Order. In its response, Clark Energy requested an informal conference be held in this matter. Pursuant to that request, an informal conference was scheduled in this matter for October 18, 2010, at the Commission's Frankfort offices. Representatives of Clark Energy, were in attendance, as were Commission Staff.

During the informal conference representatives of Clark Energy confirmed that they have taken proactive steps to enhance the oversight and verification process of contractors.

### **SETTLEMENT AGREEMENT**

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

1. Clark Energy agrees that the Commission Staff's Electric Utility Personal Injury Accident Report, Appendix A to the Commission's September 8, 2010, Order in this matter, accurately describes and sets forth the material facts and circumstances surrounding the March 31, 2010, incident.
2. Clark Energy agrees to pay a total civil penalty in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500), within 30 days from the date of this order, in full settlement of this proceeding. (Although 5 NESC violations are noted in the Commission's September 8, 2010, order, violations numbered 2 and 3 in the order should be a single violation as opposed to two violations, as they arise from the same set of facts.)
3. The scope of this proceeding is limited by the Commission's September 8, 2010 Show Cause Order on whether Clark Energy should be assessed penalties under KRS 278.990 for willful violations 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 Clark Energy 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. Within 30 days of the date of entry of the Order approving this Settlement Agreement, Clark Energy shall provide to the Commission a copy of its prescreening qualifications.

5. Beginning with the first full calendar month following the date of entry of the Order approving this Settlement Agreement, Clark Energy shall begin performing monthly safety audits on all employee and contract crews.<sup>1</sup> Clark Energy shall file the monthly safety audits with the Commission on a quarterly basis..

6. Clark Energy shall continue to do the proactive safety measures outlined in its response filed on September 27, 2010, as further detailed at the informal conference; i.e.,

a. Safety prequalification screening for all contractors submitting bids for Clark Energy projects;

b. Require all contractors to submit a list of employees and their qualifications to Clark Energy prior to starting work;

c. Provide in all contracts with its contractors that Clark Energy reserves the right to deny any contract employee access and permission to do work on its system.

7. Clark Energy shall invite its power line contractors to participate in its annual safety training day.

8. Clark Energy will insure that all contractor job briefings will be noted on all work orders issued by Clark Energy.

9. In the event that the Commission does not accept this Settlement Agreement in its entirety, Clark Energy 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 Clark Energy 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.

10. This Settlement Agreement is for use in Commission Case No. 2010-00334, and no party to this matter shall be bound by any part of this Settlement

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<sup>1</sup> Commission Staff and Clark Energy agreed that contract crews for vegetation management that do not break the minimum approach distance contained in the NESC, will not have to be audited on a monthly basis. However, Clark Energy should still insure that these crews are trained and follow the safety policies and procedures.

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 Clark Energy's service. Clark Energy shall not be precluded or estopped from raising any issue, claim or defense therein by reason of the execution of this Settlement Agreement.

11. Clark Energy 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, Clark Energy agrees to waive its right to a hearing and will not file any petition for rehearing or seek judicial appeal.

**CLARK ENERY COOPERATIVE, INC.**

By: (print name) Robert L. Rose

By: (sign name) *Robert L. Rose*

Title: Attorney for Clark Energy

Date: November 1, 2010

**STAFF OF THE KENTUCKY PUBLIC SERVICE COMMISSION**

By: (print name) L. Allyson Honaker

By: (sign name) *L. Allyson Honaker*

Title: Staff Attorney

Date: 11/5/10

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