

rural electric cooperative. After receiving written arguments from Jackson County and the Commission Staff, the Commission denied this motion on March 2, 1988.

On April 4, 1988, Commission Staff and representatives of Jackson County¹ held an informal conference to discuss this case and agreed to stipulate the facts of this case. This stipulation was filed with the Commission on May 23, 1988. Under the terms of stipulation, Jackson County waived any right to an evidentiary hearing before the Commission and requested that the Commission proceed to decide this case.

On May 23, 1988, Jackson County also filed with the Commission a letter outlining its position in this case.

Facts

On September 25, 1987, a Jackson County work crew repaired a damaged 3-phase 7200 volt overhead distribution line in London, Kentucky. Herman Gray, superintendent for Jackson County's Laurel County District, supervised the work crew.

After repairs were completed, Gray ordered Kendall Gabbard, an apprentice lineman, to energize the distribution line. As Gray watched, Gabbard climbed a utility pole and, with a hot stick, energized the top phase of the repaired line. Energizing the top phase also energized a three-phase transformer bank down line. Backfeed from this transformer bank effectively energized the middle phase.

¹ Representing Jackson County were: Lee Roy Cole, general manager of Jackson County, Lewis Ray Norris, safety director of Jackson County, and Peter J. Flaherty, III, Jackson County's legal counsel.

Unaware of the back feed, Gabbard reached out and grabbed the middle phase hotline clamp. At the time he was not wearing the rubber gloves or sleeves provided to him. As a result of his contact with the hotline clamp, Gabbard suffered serious burns on his hands, chest and feet. He was hospitalized for his injuries and was unable to return to work until December 10, 1987.

Gabbard's and Gray's actions violated the provisions of the National Electric Safety Code ("NESC").² Gabbard's failure to wear his rubber gloves while working around energized equipment violated NESC Section 42 (420H) which requires that employees use the protective equipment and devices provided for work. By failing to require Gabbard to wear his rubber gloves, which the NESC and Jackson County operating procedures³ required, Gray failed to comply with NESC Section 42 (421B) which directs a foreman to "see that the safety rules and operating procedures are observed by employees under his direction."

Discussion

KRS 278.990(1) states that "[e]ach . . . failure by [a] person employed by a utility and acting within the scope of his employment shall be deemed to be the failure of the utility." Jackson County has stipulated that Gabbard and Gray failed to comply with the provisions of the NESC at the time of the

² All references to the NESC are to the 1981 edition.

³ Jackson County Policy Bulletin No. 8-18 requires all Jackson County employees to wear rubber gloves when working on any energized primary voltage structure or any energized secondary or service structure or using hotsticks of any kind or energized equipment.

incident. It has further stipulated that these men were its employees at the time of the incident and were acting within the scope of their employment. Accordingly, we must find that Jackson County failed to comply with the NESC.

Jackson County argues that its failure to comply with the NESC has no significance since Commission Regulations do not require a utility to comply with the NESC. Commission Regulations, it asserts, demand only that an electric utility use the NESC as its "standard of practice."⁴ What Jackson County means by standard of practice is unclear. Apparently, it interprets standard of practice as a policy goal for which a utility should strive to ascertain -- but nothing more.

We believe a failure to comply with the NESC is a violation of Commission Regulation 807 KAR 5:041, Section 3, which requires all electric utilities to use the NESC as the standard of accepted good engineering practice for the construction and maintenance of plant and facilities. This regulation prescribes a minimum level of conduct necessary for the protection of human life.⁵ Failure to conform to the NESC would endanger lives, as the incident in this case clearly demonstrates. Given the consequences of a

⁴ Letter from Peter J. Flaherty III, counsel for Jackson County RECC, to the Commission (May 20, 1988).

⁵ NESC Section 1(010) states: "They [the rules of the NESC] contain minimum provisions necessary for the safety of employees and the public."

deviation from the NESC, the Commission does not accept the argument that compliance is not required.⁶

The final issue before this Commission is the assessment of a penalty. Jackson County has described the assessment of any penalty in this case as inappropriate. Penalties, it asserts, should be assessed only for "disobedience of utility statutes or Commission orders or regulations, not . . . [for] human frailties or momentary lapses of memory on the job."⁷

This case involves more than the simple negligence of an employee. In this case, a superintendent failed to ensure that his subordinate complied with a safety rule and, in fact, was present when the violation occurred. As a result of that violation, the subordinate was seriously injured. Denying any responsibility for the superintendent's actions, Jackson County noted that "management had no notion that . . . [this superintendent] was not performing the supervisory duties of employment."⁸

⁶ The language of the NESC also supports the argument for compliance. NESC Section 1 (012) states: "All electric supply and communication lines and equipment shall be designed, constructed and maintained to meet the requirements of these rules." (Emphasis added) Clearly if a utility is to use the NESC as its standard, it must follow the NESC's directive to comply with all NESC rules.

⁷ Letter from Peter J. Flaherty III, supra, note 5.

⁸ Response to Electric Utility Accident Investigation Report, December 16, 1987. Since the incident, Jackson County has initiated a program to frequently inspect work site to ensure that Jackson County superintendents and foremen are complying with safety rules and regulations.

A utility cannot abdicate its responsibility for ensuring compliance with safety rules by divorcing itself from the actions of its management employees. The enforcement of safety rules can be accomplished only through these employees. The responsibility for the training, selection, and supervision of management personnel belongs to the utility. If a utility fails to select responsible people, to properly train them, or to adequately supervise them, it cannot escape its responsibility by citing its manager's failure. Any failure of that manager is truly its own failure.

Under the provisions of KRS 278.990, this Commission may assess a maximum penalty of \$1000. While this incident is of a most serious nature, we believe Jackson County's efforts since the incident will reduce the likelihood of future accidents and mitigate against the assessment of the maximum penalty. We are of the opinion that a penalty in the amount of \$750 should be assessed.

Findings and Orders

The Commission, after review of the evidence of record and being advised, is of the opinion and finds that:

1. On September 25, 1987, Kendall Gabbard came into contact with an energized hot line clamp and was seriously injured. At the time of the incident, Gabbard was an employee of Jackson County and was acting within the scope of his employment.

2. At the time of the accident, Gabbard was working near energized equipment but was not wearing the rubber gloves provided to him by Jackson County.

3. Gabbard's conduct failed to comply with the provisions of NESC Section 42 (420H) which requires employees to use the protective equipment provided to them.

4. At the time of the accident, Gabbard was a member of a work crew supervised by Herman Gray, superintendent of Jackson County's Laurel County District. Gray was acting within the scope of his employment at the time of the incident.

5. Gray observed Gabbard working near energized equipment without wearing rubber gloves. Although Jackson County operating procedures and the NESC required Gabbard to wear these gloves, Gray took no action to require Gabbard to wear them.

6. By failing to require Gabbard to wear his gloves, Gray failed to comply with NESC Section 42 (421B) which requires a supervisor to see that all safety rules and operating procedures are observed by employees under his direction.

7. Pursuant to KRS 278.990(1), the failure of a person employed by a utility and acting within the scope of his employment is deemed to be the failure of the utility. Accordingly, Gabbard's and Gray's failure to comply with the provisions of the NESC are deemed to be Jackson County's failures.

8. Commission Regulation 807 KAR 5:041 requires all electric utilities to comply with the provisions of the NESC.

9. Jackson County failed to comply with Commission Regulation 807 KAR 5:041.

10. Jackson County should be assessed a fine of \$750 for its failure to comply with a Commission Regulation.

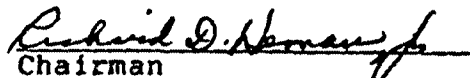
IT IS THEREFORE ORDERED that:

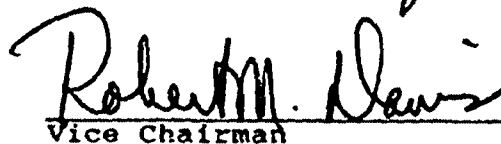
1. A fine of \$750 be, and it hereby is, assessed against Jackson County for its failure to comply with a Commission Regulation.

2. This fine shall be paid within 30 days of the date of this Order by certified check or money order made payable to Treasurer, Commonwealth of Kentucky. Said check or money order shall be mailed to the Office of General Counsel, Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602.

Done at Frankfort, Kentucky, this 11th day of July, 1988.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director