

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JACKSON COUNTY RURAL ELECTRIC
COOPERATIVE CORPORATION, INC.

_____)
ALLEGED FAILURE TO COMPLY WITH)
COMMISSION REGULATION 807 KAR 5:041)

CASE NO. 91-237

O R D E R

After receiving an Electrical Utility Accident Investigation Report prepared by Commission Staff which alleged that Jackson County Rural Electric Cooperative Corporation ("Jackson County RECC") had failed to comply with Commission regulations, the Commission ordered the utility to show cause why it should not be penalized for its alleged failure. Jackson County RECC has responded to the allegations contained in that report, stipulated the facts, submitted a memorandum of law, and waived its right to a hearing.

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Jackson County RECC is a corporation formed under the provisions of KRS Chapter 279, is engaged in the distribution of electricity to the public for compensation for light, heat, power and other uses, and is therefore a utility subject to the Commission's regulatory jurisdiction. KRS 278.010(3)(a) and 278.040, and 279.210.

2. Commission Regulation 807 KAR 5:041, Section 3, requires electric utilities to maintain their plant and facilities in accordance with the standards of the National Electrical Safety Code (1990 Edition) ("NESC").

3. NESC Section 42 (420D) requires employees to perform preliminary inspections or tests to determine existing conditions before working on energized lines.

4. NESC Section 42 (420H) requires that employees use the personal protective equipment and devices provided for work.

5. NESC Section 42 (421A) directs a foreman or person-in-charge to see that safety rules and operating procedures are observed.

6. Prior to April 15, 1991, Jackson County RECC had established safety rules which require all employees to use rubber gloves when working near energized lines and to test and ground energized lines before considering them de-energized.

7. On April 15, 1991, Jimmy D. Brumback was injured while replacing a damaged cut-out on a 3-phase transformer bank in Estill County, Kentucky. He suffered serious burns when he came into contact with an energized 7,200 volt conductor.

8. Jackson County RECC owned the facilities upon which Brumback was working.

9. At the time of the accident, Brumback was not wearing the rubber gloves provided to him, nor had he tested or grounded the conductor.

10. At the time of the accident, Brumback was the person-in-charge at the accident site.

11. Brumback's failure to wear rubber gloves while working on an energized line is a violation of NESC Section 42 (420H).

12. Brumback's failure to positively ensure that the conductor in question was de-energized before making repairs is a violation of NESC Section 42 (420D).

13. Brumback's failure to ensure that all safety rules and procedures were followed at the accident site is a violation of NESC Section 42 (421A).

14. Any utility which willfully violates any Commission regulation is subject to civil penalty. KRS 278.990(1). A willful violation "means 'knowing' violation or 'knowing failure to comply.'" Oldham v. Kubinski, 185 N.E.2d 270, 280 (Ill. App. 1962). See, Muncy v. Commonwealth, Ky., 97 S.W.2d 606, 609 (1936) ("The word 'wilful' in its general acceptance means intentionally, not accidentally nor involuntarily.") See also Woods v. Corsey, 200 P.2d 208, 211 (Cal. App. 1948) (A willful violation is "one which is intentional, knowing, voluntary, deliberate or obstinate. . . .")

15. KRS 278.990(1) provides: "Each act, omission, or failure by an officer, agent, or other person acting for or employed by a utility and acting within the scope of his employment shall be deemed to be the act, omission, or failure of the utility."

16. Brumback's violation of NESC Section 42 was willful.

17. At the time of the accident, Brumback was an employee of Jackson County RECC and acting within the scope of his employment.

18. Based upon the principle of imputed liability contained in KRS 278.990(1), Jackson County RECC willfully violated

Commission Regulation 807 KAR 5:041, Section 3, by failing to comply with NESC standards while maintaining its plant and equipment.

19. For its willful failure to comply with Commission Regulation 807 KAR 5:041, Section 3, Jackson County RECC should be assessed a penalty of \$1,000.

IT IS THEREFORE ORDERED that:

1. A penalty in the amount of \$1,000 is assessed against Jackson County RECC for its willful failure to comply with Commission Regulation 807 KAR 5:041, Section 3.

2. Jackson County RECC shall pay the assessed penalty within 20 days of the date of this Order by certified or cashier's check made payable to "Treasurer, Commonwealth of Kentucky." Said check shall be delivered to Office of General Counsel, Public Service Commission of Kentucky, 730 Schenkel Lane, P. O. Box 615, Frankfort, Kentucky 40602.

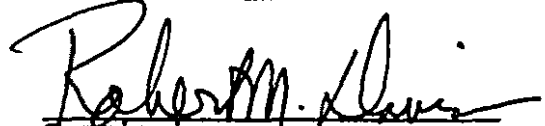
3. This case is hereby closed and removed from the Commission's docket.

Done at Frankfort, Kentucky, this 31st day of January, 1992.

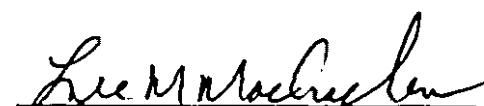
PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner

ATTEST:


Executive Director