

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SOUTH KENTUCKY RURAL ELECTRIC)
COOPERATIVE CORPORATION)
_____) CASE NO. 97-343
)
ALLEGED FAILURE TO COMPLY WITH)
COMMISSION REGULATION 807 KAR)
5:041, SECTION 3)

O R D E R

By Order dated August 6, 1997, the Commission initiated this investigation to determine whether South Kentucky Rural Electric Cooperative Corporation ("South Kentucky") should be subjected to the penalties prescribed in KRS 278.990 for four alleged violations of Commission Regulation 807 KAR 5:041, Section 3. The alleged violations are set forth in a Utility Accident Investigation Report ("Report") which was prepared by Commission Staff and attached as an appendix to the August 6, 1997 Order. The Report describes the facts and circumstances surrounding an injury accident on April 24, 1997 on Rogers Grove Road, Clinton County, Kentucky.

South Kentucky was directed to file a response to the allegations set forth in the Report and show cause, if it could, why penalties should not be imposed. South Kentucky's response, filed on September 3, 1997, agreed with the substance of the Report but asserted that the violations were committed by a contractor and an employee of that contractor, not by South Kentucky. An informal conference was held on September 18, 1997 at the Commission's offices in Frankfort, Kentucky. South Kentucky and Staff subsequently filed a Stipulation of Facts ("Stipulation") which includes South

Kentucky's waiver of its right to a public hearing and a request that this case be decided on the basis of the existing evidence of record.

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that South Kentucky is a Kentucky corporation engaged in the distribution of electricity for compensation for lights, heat, power and other uses and is a utility subject to Commission jurisdiction. KRS 278.010, 279.210. KRS 278.280(2) directs the Commission to prescribe rules and regulations for the performance of services by utilities. Pursuant to this statutory directive, the Commission promulgated 807 KAR 5:041, Section 3(1), which requires utilities to construct and maintain their facilities in accordance with the National Electric Safety Code (1990 ed.) ("NESC").

On October 31, 1995, South Kentucky entered into a Distribution Line Extension Construction Contract with Power General, Inc. ("Power General"), Lancaster, Kentucky. Pursuant to this contract, Power General provided labor only construction services for site specific work orders written by South Kentucky. The construction contract sets forth the following provisions relative to the safety standards that must be adhered to by the contractor, Power General:

ART. II, Sec. 1, g. Special Conditions. Contractor will exercise all required safety practices when working energized lines (e.g. glove inspections, tool inspections, grounds, blankets, line hoses, pole covers, grounding of trucks, supervision, etc.).

* * * *

ART. IV, Sec. 1. Protection to Persons and Property. The contractor shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal,

State, and Municipal safety laws and building and construction codes, as well as the safety rules and regulations of the Owner.

In addition, Art. II, Sec. 3, c of the contract provides that, "The manner of performance of the work, and all equipment used therein, shall be subject to the inspection, tests, and approval of the Owner [South Kentucky]."

On April 24, 1997, an employee of Power General, Jeffrey Creech, was stringing a new single phase primary conductor on a double dead-end straight line pole on Rogers Grove Road. While taking the phase conductor up with a bucket truck, Mr. Creech contacted an energized hotline jumper, resulting in burns from his neck down to his left foot. Neither the hotline jumper nor the old line facilities were insulated with protective rubber equipment.

The April 24, 1997 incident on Rogers Grove Road involved four NESC violations. The first, NESC Rule 421.A.1, requires the first level supervisor or person in charge to adopt such precautions as are within the individual's authority to prevent accidents. In this case, the foreman, Paul Tucker, failed to adopt precautions to ensure that Mr. Creech did not contact an energized conductor. Specifically, Mr. Tucker should have ensured that either the line was de-energized and grounded or the energized equipment was adequately covered with insulating material.

The second, NESC Rule 421.A.2, requires the first level supervisor or person in charge to see that the safety rules and operating procedures are observed by the employees under the individual's direction. In this case, Mr. Tucker did not ensure that Mr. Creech was in compliance with applicable NESC safety rules. Specifically, Mr.

Tucker should have prevented Mr. Creech from approaching the energized conductor with a conductive object until adequate safety precautions had been taken.

The third, NESC Rule 441.A.1, establishes minimum clearance distances to any exposed ungrounded part normally energized and forbids supply employees from approaching, or taking any conductive object without a suitable insulating handle, within the minimum distances unless one of the following exceptions is met: (1) the line or part is de-energized; (2) the employee is insulated from the energized line or part; (3) the energized line or part is insulated from the employee; or (4) the employee is insulated from all conducting surfaces other than the one upon which the employee is working. In this case, Mr. Creech took a conductive object that was not insulated within the minimum clearance distances established by the rule, and none of the exceptions to the rule were met.

The fourth, NESC Rule 443.A.2, specifies the general requirements when working on energized lines and equipment, prohibits employees from placing dependence for their safety on the non-rated insulation covering of wires, and requires the observance of all precautions when working on energized parts. In this case, Mr. Creech violated this rule by relying upon a short piece of line hose covering the energized conductor to protect his safety. In addition, Mr. Creech failed to observe all precautions for working on energized equipment.

At the time of the accident, Mr. Creech was an employee of Power General and was performing work within the scope of his employment. At the same time, Mr. Tucker was employed by Power General as a foreman and was performing work within the

scope of his employment. The work being done by Power General on April 24, 1997 on Rogers Grove Road was within the scope of the October 31, 1995 contract with South Kentucky, and the facilities were owned by South Kentucky. Both Messrs. Tucker and Creech were experienced electrical linemen. They had been instructed on, and had knowledge and an awareness of, the NESC rules and requirements discussed above.

Commission Regulation 807 KAR 5:041, Section 3(1), requires South Kentucky to maintain its plant and facilities in accordance with the standards of the NESC. This duty may not be delegated. It runs with the ownership of the utility plant and facilities, not with who performs the actual work. See Snyder v. Southern California Edison Company, 285 P.2d 912 (Cal. 1955). South Kentucky failed to comply with the NESC when constructing and maintaining its plant and facilities on April 24, 1997 on Rogers Grove Road to the extent of the four violations discussed above.

Pursuant to KRS 278.990(1), a utility is subject to a civil penalty to be assessed by the Commission for each willful violation of any regulation promulgated pursuant to KRS Chapter 278. A willful violation "denotes an act which is intentional rather than accidental." Screws v. U.S., 325 U.S. 91, 101 (1945). It "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 'willfull' in its general acceptance means intentionally, not accidentally nor involuntarily."); Huddleston v. Hughes, Ky.App., 843 S.W.2d 901, 905 (1992) (The term "willfull" does not necessarily and solely entail an "intention to do wrong and inflict injury," but may include conduct which reflects "an indifference to . . . [its] natural consequences."). See also Woods v.

Corsey, 200 P.2d 208, 211 (Cal.App. 1948) (A willfull violation is "one which is intentional, knowing voluntary, deliberate or obstinate. . . .").

Based on the work experience of Messrs. Tucker and Creech and their knowledge of applicable safety rules, the Commission finds each of the four NESC violations to have been willful. At the time of the violations, Messrs. Tucker and Creech were acting for South Kentucky and within the scope of their employment. KRS 278.990(1) further provides that,

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.

Based upon the principle of imputed liability set forth in KRS 278.990(1), South Kentucky committed four willfull violations of Commission Regulation 807 KAR 5:041, Section 3(1), by failing to comply with the four NESC standards, discussed above, while constructing and maintaining its plant and facilities. For each of these willfull violations, South Kentucky should be assessed a civil penalty of \$2,500, for a total of \$10,000 for the four willfull violations. However, the Commission will suspend the penalty if, within 45 days from the date of this Order, South Kentucky files for our review and approval a detailed plan to spend not less than \$10,000 on safety training of the employees of its independent contractors.

IT IS THEREFORE ORDERED that:

1. A civil penalty in the amount of \$10,000 is assessed against South Kentucky for four willfull violations of Commission Regulation 807 KAR 5:041, Section 3(1).

2. If within 45 days from the date of this Order, South Kentucky files a plan to spend not less than \$10,000 on safety training for the employees of its independent contractors, the civil penalty assessed herein shall be suspended upon approval of the safety plan.

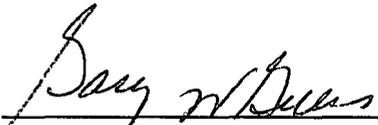
3. Absent suspension of the penalty as provided for above, South Kentucky shall pay the assessed penalty of \$10,000 within 45 days of the date of this Order. Payment shall be made by certified check or money order made payable to the Kentucky State Treasurer and mailed or delivered to the Office of General Counsel, Public Service Commission, 730 Schenkel Lane, Frankfort, Kentucky.

Done at Frankfort, Kentucky, this 25th day of February, 1998.

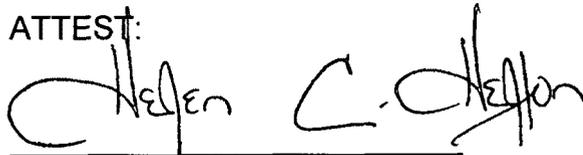
PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director