

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

LOUISVILLE GAS AND ELECTRIC COMPANY)
_____) CASE NO. 2004-00232
)
FAILURE TO COMPLY WITH COMMISSION)
REGULATIONS 807 KAR 5:006, SECTION)
25(4)(d) AND 807 KAR 5:041, SECTION 3(1))

O R D E R

By Order dated September 7, 2004, the Commission directed Louisville Gas and Electric Company ("LG&E") to appear at a hearing on September 30, 2004 to show cause why it should not be subject to the penalties provided for under KRS 278.990 for two alleged violations of the Commission's administrative regulations. More specifically, the alleged violations are of: (1) 807 KAR 5:006, Section 25(4)(d), which requires a utility to inspect, at intervals not to exceed 2 years, electric lines operating at voltages of less than 69 kV; and (2) 807 KAR 5:041, Section 3(1), which requires maintenance of utility facilities to be in accordance with the National Electrical Safety Code, 2002 Edition, ("NESC"). The NESC, Section 23, Rule 232.B.1 and Table 232-1 require that there be a minimum vertical clearance of wires and conductors above ground in generally accessible places and roadway surfaces.

The alleged violations arose from a May 6, 2004 accident in which a contractor was installing fiber optic communication lines for the Rohm-Haas Chemical Company at 4300 Campground Road, Louisville, Kentucky. While working in a non-insulated aerial

lift device, the contractor came into contact with a 7,200-volt LG&E line. At LG&E's request, an informal conference was convened at the Commission's offices on October 15, 2004 to provide an opportunity to discuss the operative facts surrounding the accident. Those discussions led to the filing of a Stipulation of Facts and Settlement Agreement ("Stipulation") on December 9, 2004.

The Stipulation, attached hereto as Appendix A and incorporated herein by reference, sets forth LG&E's agreement with the statement of facts set forth in the Staff's Incident Investigation Report, which was an appendix to the Commission's September 7, 2004 Order. The Stipulation also discusses the remedial action taken by LG&E since the time of the accident, and provides that LG&E will pay a civil penalty in the amount of \$2,500.

In determining whether the terms of the Stipulation are in the public interest and are reasonable, the Commission has taken into consideration the comprehensive nature of the Stipulation and LG&E's willingness to cooperate to achieve a resolution of this matter. Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that the Stipulation is in accordance with the law and does not violate any regulatory principle. The Stipulation 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 Stipulation is adopted and approved in its entirety as a complete resolution of all issues in this case.

2. LG&E shall pay \$2,500 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, Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

3. Upon payment of the \$2,500 civil penalty, this case shall be closed and removed from the Commission's docket without further Order of the Commission.

Done at Frankfort, Kentucky, this 25th day of January, 2005.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above the text 'Executive Director'.

Executive Director

Case No. 2004-00232

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2004-00232 DATED JANUARY 25, 2005

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

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PUBLIC SERVICE
COMMISSION

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LOUISVILLE GAS AND ELECTRIC COMPANY)
_____))
FAILURE TO COMPLY WITH COMMISSION)
REGULATIONS 807 KAR 5:006, SECTION)
25(4)(d) AND 807 KAR 5:041, SECTION 3(1))

CASE NO. 2004-00232

STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

By Order dated September 7, 2004, the Commission initiated this proceeding to determine whether Louisville Gas and Electric Company ("LG&E") should be subject to the penalties prescribed in KRS 278.990 for two probable violations of the Commission's Administrative Regulations: (1) 807 KAR 5:006, Section 25(4)(d), which requires a utility to inspect, at intervals not to exceed 2 years, electric lines operating at voltages of less than 69 Kv; and (2) 807 KAR 5:041, Section 3(1), which requires the maintenance of utility facilities to be in accordance with the National Electrical Safety Code, 2002 Edition ("NESC"). The portion of the NESC at issue with regard to (2) above is Section 23, Rule 232.B.1 and Table 232-1, which requires that there be a minimum vertical clearance of wires and conductors above ground in generally accessible places and roadway surfaces. The Commission's Order arose out of an incident which occurred on May 6, 2004 at the Rohm and Haas Chemical Company ("Rohm and Haas"), 4300 Campground Road, Louisville, Kentucky. A contractor working for Rohm and Haas was installing fiber optic communication lines. While

working outside in a non-insulated aerial lift truck, he contacted a 7,200 volt LG&E line, resulting in burns to his body and requiring two nights' hospitalization. One phase and the neutral of the LG&E line were below the minimum vertical clearances required by the NESC.

On September 23, 2004, LG&E filed a Response to the Commission's September 7, 2004 Order and denied any violation of the NESC or any regulation. An informal conference was held at the Commission's offices on October 15, 2004. As a result of discussions held during the conference, LG&E and the Commission Staff submit the following Stipulation of Facts and Settlement Agreement ("Stipulation") for the Commission's consideration in rendering its decision in this proceeding:

1. LG&E agrees that the Staff's Incident Investigation Report ("Report"), Appendix A to the Commission's September 7, 2004 Order in this case, accurately describes and sets forth the material facts and circumstances surrounding the incident giving rise to the Order.

2. LG&E has circulated a letter to its Operations Centers reminding them of the obligations in inspecting LG&E's facilities, including those facilities which are not easily accessible. A copy of that letter is attached to this Settlement Agreement as Exhibit 1.

3. LG&E agrees to pay a civil penalty in the amount of Two Thousand Five Hundred Dollars (\$2,500) in full settlement of this proceeding. The scope of this proceeding is limited by the Commission's September 7, 2004 Order to whether LG&E should be assessed penalties under KRS 278.990 for willful violations of Commission regulations, including NFSC Rules. Neither the payment of the civil penalty, nor any

other agreement contained in this Stipulation, shall be construed as an admission by LG&E of a willful violation of any Commission regulation or NESC Rule, nor shall it be construed as an admission by LG&E of any liability in any legal proceeding or lawsuit arising out of the facts set forth in the Report, nor shall the Commission's acceptance of this Stipulation be construed as a finding of a willful violation of any Commission regulation or NESC Rule.

4. In the event that the Commission does not accept this Stipulation in its entirety, LG&E and Staff reserve their rights to withdraw therefrom and require that a hearing be held on any and all issues involved herein, and that none of the provisions contained herein shall be binding upon the parties hereto, used as an admission by LG&E of any liability in any legal proceeding or lawsuit arising out of the facts set forth in the Report, or otherwise used as an admission by either party.

5. This Stipulation is for use in Commission Case No. 2004-00232, and neither party hereto shall be bound by any part of this Stipulation in any other proceeding, except that this Stipulation may be used in any proceeding by the Commission to enforce the terms of this Stipulation or to conduct a further investigation of LG&E's service, and LG&E shall not be precluded or estopped from raising any issue, claim, or defense therein by reason of the execution of this Stipulation.

6. LG&E and Staff agree that the foregoing Stipulation is reasonable, is in the public interest, and should be adopted in its entirety by the Commission. If so adopted by the Commission, LG&E agrees to waive its right to a hearing and will not file any petition for rehearing or seek judicial appeal.

Dated this ^{December} 2nd day of ~~November~~, 2004.

LOUISVILLE GAS AND ELECTRIC COMPANY

By: Jim Dimas

Title Jim Dimas, Senior Corporate Attorney

STAFF OF THE PUBLIC SERVICE
COMMISSION OF KENTUCKY

BY: Richard G. Raff
Richard G. Raff, Staff Attorney