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August 29, 2008

RECEIVED

SEP - 2 2008

PUBLIC SERVICE
COMMISSION

Richard W. Bertelson, III, Esq.
Public Service Commission
211 Sower Blvd
P.O. Box 615
Frankfort, Kentucky 40602

Re: Shelby Energy Cooperative, Inc. -
Alleged Failure to Comply with KRS 278.042
Case No. 2008-00069

Dear Rick:

Enclosed is the original Joint Stipulation of Facts and Settlement Agreement which has been executed on behalf of Shelby Energy Cooperative, Inc. by Debbie Martin, President and CEO. Thank you for your assistance in working towards a resolution to this matter.

Yours truly,

MATHIS, RIGGS & PRATHER, P.S.C.

BY: 

Donald T. Prather

DTP/pm
Enclosures
Cc: Debbie Martin

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
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PUBLIC SERVICE
COMMISSION

In the Matter of:

SHELBY ENERGY COOPERATIVE, INC.)
_____) CASE NO. 2008-00069
)
ALLEGED FAILURE TO COMPLY)
WITH KRS 278.042)

JOINT STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

It is the intent and purpose of the parties to this proceeding to express their agreement on a mutually satisfactory resolution of all of the issues in the proceeding. This agreement is formally known as a Stipulation of Facts and Settlement Agreement ("Stipulation"). The parties to this proceeding are Shelby Energy Cooperative, Inc. ("Shelby Energy") and Staff of the Kentucky Public Service Commission ("Commission Staff").

It is understood by all parties that this Stipulation is not binding upon the Public Service Commission ("Commission"). The Commission must independently approve and adopt this Stipulation 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. Shelby Energy and Commission Staff agree that this Stipulation, viewed in its entirety, constitutes a reasonable resolution of all issues in this proceeding.

In addition, the adoption of this Stipulation will eliminate the need for the Commission, Commission Staff, and Shelby 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.

STIPULATION OF FACTS

Shelby Energy and the Commission Staff submit this Stipulation for the Commission's consideration in rendering a decision in this proceeding. The present matter involves two cases¹ which were consolidated by the Commission's Order dated May 21, 2008. The cases were consolidated because the alleged violations of KRS 278.042 involve the same utility (Shelby Energy) and contractor crew and are based on events which occurred only a day apart on the same distribution line construction project and involve common questions of fact and law.

In November 2006, Shelby Energy hired Dobson Power Line Construction Co. ("Dobson Construction") to serve as a contractor for a two-year electric system construction project.² Cosby Carroll was a Dobson Construction employee and served as a lineman.

¹ Case No. 2008-00069, Shelby Energy Cooperative, Inc. – Alleged Failure to Comply with KRS 278.042; Case No. 2008-00147, Shelby Energy Cooperative, Inc. – Alleged Failure to Comply with KRS 278.042.

² Dobson Construction was selected as the contractor after submitting a winning bid to Shelby Energy for its project, as required under the regulations for the United States Department of Agriculture's Rural Utilities Service ("RUS"). A Dobson Construction contract crew was upgrading an old single-phase circuit with a new three-phase circuit and neutral at the site on the day of the accident.

On December 3, 2007, Commission Staff submitted to the Commission an Electric Utility Personal Injury Accident Report (“Accident Report”) on this matter.³ The Accident Report alleges that on November 12, 2007, at 5500 Vigo Road in Shelbyville, Kentucky, within Shelby County, Mr. Carroll died as a result of injuries sustained in a fall from an aerial bucket at the site of a Shelby Energy electric construction project. As a result of the investigation, Commission Staff documented four violations of National Electrical Safety Code (“NESC”) rules by Dobson Construction.

On January 3, 2008, Commission Staff submitted to the Commission an Electric Utility Inspection Report (“Inspection Report”). The Inspection Report alleges that on November 13, 2007, Commission investigators conducted an inspection of Dobson Construction along Vigo Road in Shelbyville, Kentucky—the same distribution line construction project the Dobson Construction crew was working on the prior day when Mr. Carroll was fatally injured. As a result of the inspection, the investigators documented a deficiency involving the violation of two NESC rules by Dobson Construction.

November 12, 2007 Accident

The December 3, 2007 Accident Report documents that the Dobson Construction supervisor conducted a verbal job briefing with the employees prior to the start of work on the day of the accident, but that there were no written work

³ The pages of the report are unnumbered. However, for the purpose of this Stipulation only, the parties agree that page numbers will refer to the actual physical order of the pages within the report.

briefings relating to this job.⁴ Prior to the accident, the crew had attached the three conductors and the neutral line to individual ropes which were then attached to a single rope. The single rope was strung through a dolly in order to pull the four individual lines up to the pole for attachment. When the accident occurred, Mr. Carroll was in the bucket of a truck approximately 30 feet above the ground waiting to transfer the four individual ropes into their respective dollies. The Accident Report indicates that the latch of the primary dolly had not been properly fastened after the rope was strung through it. When the rope was pulled, it slipped out of the unfastened dolly at a high velocity, striking Mr. Carroll and pulling him out of the bucket. He slid approximately 8 feet down the boom and then fell approximately 26 feet, striking the back outrigger box of the truck and falling to the ground. Mr. Carroll was air-lifted to University Hospital in Louisville, Kentucky where he later died due to injuries sustained in the fall.⁵

November 13, 2007 Inspection

The January 3, 2008 Inspection Report documents that on November 13, 2007, in Shelbyville, Kentucky, within Shelby County, Commission investigators conducted an inspection of Dobson Construction in Shelbyville, Shelby County, Kentucky. The inspection took place on Vigo Road in Shelby County, Shelbyville, Kentucky. During the inspection, Commission investigators witnessed new conductors being pulled by Dobson Construction crew personnel and, at one location, the conductors were sagging just a few feet above the ground. After

⁴ See Report, page 2, Accident Description.

⁵ Id.

witnessing the low-hanging conductors, the inspectors investigated the area for possible line clearance violations.

During the line inspection, James Dobson, son of the owner of Dobson Construction drove by the location. One of the inspectors spoke to him and pointed out the conductors sagging very low to the ground. Mr. Dobson admitted that the conductors did not have any grounds on them, and he stated that when the employees have finished pulling the conductors to the last pole, they would “dead end” the conductors, and then install the grounds. After this discussion the inspector called the Vice President of Operations for Shelby Energy to inform him about the low-hanging conductors. He and another employee of Shelby Energy then came to the site, where they discussed the possible violations with the Commission inspectors.

On January 16, 2008, the Commission issued a copy of the January 3, 2008 Inspection Report to Shelby Energy, requesting that the utility respond to the documented deficiency by February 29, 2008. On February 25, 2008, Shelby Energy filed its response to the Inspection Report, in which it admitted the two violations cited in the Inspection Report.

March 7, 2008 Show Cause Order

By a Show Cause Order dated, March 7, 2008, the Commission initiated this proceeding to determine whether Shelby Energy should be subject to the penalties prescribed in KRS 278.990 for four probable violations of KRS 278.042, which requires an electric utility to construct and maintain its plant and facilities in

accordance with the 2002 edition of the NESC. The four alleged violations cited in the Commission's March 7, 2008 Order are as follows:

NESC Section 42: General rules for employees:

1. 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. 420-K-1: At elevated locations above 3 m (10 ft), climbers shall be attached to equipment or structures by a fall protection system while at the worksite, at a rest site, in aerial devices, helicopters, cable carts, and a boatswain's chair.
3. 420-K-4: Fall arrest equipment shall be attached to a suitable anchorage.
4. 420-K-5: The employee shall determine that all components of the fall protection system are properly engaged and that the employee is secure in the line-worker's body belt, harness, or any other fall protection system.

On March 26, 2008, Shelby Energy filed a response to the Commission's March 7, 2008 Order. In its response, Shelby Energy stipulated to three of the NESC violations, but denied violating NESC Section 42, 420-C-4.⁶

April 30, 2008 Show Cause Order

By a Show Cause Order dated April 30, 2008, the Commission initiated Case No. 2008-00147 to determine whether Shelby Energy should be subject to the penalties prescribed in KRS 278.990 for two probable violations of

⁶ In its response, Shelby Energy asserted that without knowing Cosby Carroll's state of mind at the time of the accident, there is insufficient evidence to establish that he failed to consider the effects of his actions that day. See Shelby Energy Response, dated March 26, 2008, Item 2. However, at the May 29, 2008 informal conference, Shelby Energy conceded that it agreed to pay the maximum \$2,500 civil penalty per violation, for all six of the alleged NESC violations.

KRS 278.042. The two alleged violations cited in the Commission's April 30, 2008

Order are as follows:

1. NESC Section 23, 232-B-2: The vertical clearance of wires, conductors, and cables above ground in generally accessible places, roadway, rail, or water surfaces, shall be not less than [18.5 feet].
2. NESC Section 42, 422-C-1: Precautions shall be taken to prevent wires or cables that are being installed or removed from contacting energized wires or equipment. Wires or cables that are not bonded to an effective ground and which are being installed or removed in the vicinity of energized conductors shall be considered as being energized.

Following the Commission's May 21, 2008 Order consolidating the two cases, an informal conference was held on May 29, 2008. Representatives of Shelby Energy, including Shelby Energy's Chief Executive Officer and legal counsel, were in attendance, as were Commission Staff. Dobson Construction, which was not a party to this case, was not represented at the informal conference.

During the informal conference, representatives of Shelby Energy stated that the company had implemented a number of new self-directed remedial measures since Mr. Carroll's accident and death. These measures included the hiring of Jason Ginn, an 8-year Shelby Energy employee, as a full-time Safety and Loss Control Coordinator for Shelby Energy. According to the Shelby Energy representatives, Mr. Ginn will receive intensive safety training over the next three years, including NESC and OSHA training. Mr. Ginn will report directly to Shelby Energy's CEO and will not be subject to termination by Shelby's Board of Directors.

Company representatives also informed Commission Staff that, within the next few weeks following the informal conference, they intend to notify Dobson Construction to stop work on all remaining projects under their current November 21, 2006 RUS contract due to financial reasons. The Shelby Energy representatives further stated that Shelby Energy does not intend to hire Dobson Construction for any future construction projects after the expiration of the current contract on November 30, 2008.⁷

SETTLEMENT AGREEMENT

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

1. Shelby Energy agrees that the Commission Staff's Electric Utility Personal Injury Accident Report, Appendix A to the Commission's March 7, 2008 Order, accurately describes and sets forth the material facts and circumstances surrounding the November 12, 2007 incident.
2. Shelby Energy agrees that the Commission Staff's Electric Utility Inspection Report, Appendix A to the Commission's April 30, 2008 Order, accurately describes and sets forth the material facts and circumstances surrounding the November 13, 2007 inspection.
3. Shelby Energy agrees to pay a civil penalty in the amount of FIFTEEN THOUSAND DOLLARS (\$15,000) in full settlement of this proceeding. The scope of this proceeding is limited by the Commission's March 7, 2008 Show Cause Order and the Commission's April 30, 2008 Show Cause Order on whether Shelby Energy should be assessed penalties under KRS 278.990 for a willful violation of the NESC rules as made applicable under KRS 278.042. Neither the payment of the civil penalty, nor any other agreement contained in this Stipulation, shall be construed as an admission by Shelby Energy of any liability in any legal proceeding or lawsuit arising out of the facts set forth in the Electric Utility

⁷ This is consistent with Shelby Energy's April 14, 2008, Response to Commission Staff's First Data Request, Item 10: "This contract does not expire by its terms until November 30, 2008, when it will not be renewed."

Personal Injury Accident Report or the Electric Utility Inspection 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. Within 30 days of entry of this Stipulation, Shelby Energy shall submit a copy of the letter previously sent by Shelby Energy to Dobson Construction communicating Shelby Energy's decision to stop work on all of Dobson Construction's remaining projects under the November 21, 2006 RUS contract due to financial reasons.

5. Shelby Energy shall continue to employ a full-time Safety and Loss Control Coordinator who shall have responsibility for ensuring that Shelby Energy's construction crew personnel and contractor construction crew personnel have received all necessary and required safety training.

6. Shelby Energy shall ensure that the Safety and Loss Control Coordinator receives all necessary and required safety training including training in NESC regulations and all applicable Occupational Safety and Health Administration regulations.

7. For a period of three years from the date of entry of the final Order in this case, Shelby Energy shall provide a semi-annual report to the Commission explaining, in detail, the safety training courses attended by its Safety and Loss Control Coordinator and all certifications the Safety and Loss Coordinator has earned during that time period.

8. Shelby Energy will continue to employ an outside safety auditor to conduct audits of all Shelby Energy construction crews and contractor crews for one year from the date of entry of the final Order in this case and shall provide copies of all safety audit reports to the Commission during that period.

9. Upon expiration of the one-year period described under requirement 8 above, Shelby Energy's Safety and Loss Control Coordinator shall be responsible for conducting safety audits of all Shelby Energy construction crews and contractor crews, and for a period of three years from the date of entry of the final Order in this case, the Safety and Loss Control Coordinator shall provide copies of all safety audit reports to the Commission.

10. Shelby Energy will ensure that its safety audit report forms identify the person who performed the safety inspection by name, title, address, and telephone number.

11. Within 90 days of entry of the final Order in this case, Shelby Energy will amend the language of its safety handbook to address the safety issues that led to the accident in which Mr. Carroll was fatally injured.

12. Shelby Energy shall require all of its construction crews and contractor construction crews to follow the requirements of its safety handbook, all NESC regulations, all applicable OSHA regulations, and all other applicable safety laws and regulations while working on any construction project for Shelby Energy.

13. Before requesting the submission of bids for its next construction project, Shelby Energy shall amend its bidding process to require that all bidders be pre-qualified, based on applicable criteria, including certification that all construction crew members of the bidding firm have received all necessary and required safety training.

14. Shelby Energy will amend its pre-qualification form and will provide a copy of the amended form to the Commission prior to the issuance of its next request for bids.

15. Shelby Energy shall amend its standard RUS contract to include a specific termination-for-cause provision, allowing Shelby Energy to terminate the contract immediately upon its discovery of any violation of any NESC regulation.

16. Commission Staff recommends that the Commission make a finding that Article II, Section 6(b) of Shelby Energy's November 26, 2006 RUS contract with Dobson Construction allows it to terminate the contract with Dobson Construction, because it does not have a "termination clause"; however, there is sufficient language in it for Shelby Energy to remove any contract employee for safety reasons, including Dobson Construction's entire crew if necessary).

17. Commission Staff recommends that the Commission order a focused management audit of Shelby Energy pursuant to KRS 278.255 to examine management and safety operations of Shelby Energy, with a special emphasis on the relatively high number of construction worker fatalities the company has experienced between November 1998 and November 2007.

18. In the event that the Commission does not accept this Stipulation in its entirety, Shelby 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 Stipulation shall be binding upon the parties, used as an admission by Shelby 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.

19. This Stipulation is for use in Commission Case Nos. 2008-00069 and 2008-00147 and no party to this matter shall be bound by any part of this Stipulation in any other proceeding, except that this Stipulation may be used in any proceedings by the Commission to enforce the terms of this Stipulation or to conduct a further investigation of Shelby Energy's service. Shelby Energy shall not be precluded or estopped from raising any issue, claim or defense therein by reason of the execution of this Stipulation.

20. Shelby Energy and Commission Staff agree that this Stipulation is reasonable, is in the public interest, and should be adopted in its entirety by the Commission. If adopted by the Commission, Shelby Energy agrees to waive its right to a hearing and will not file any petition for rehearing or seek judicial appeal.

SHELBY ENERGY COOPERATIVE, INC.

By: (print name) Debbie Martin
By: (sign name) Debbie Martin
Title: President & CEO
Date: 8/26/08

STAFF OF THE KENTUCKY PUBLIC SERVICE COMMISSION

By: (print name) Richard W. Bertelson, III
By: (sign name) _____
Title: Staff Attorney
Date: _____