

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MEADE COUNTY RURAL ELECTRIC	)	
COOPERATIVE CORPORATION	)	
_____	)	CASE NO.
	)	2010-00375
ALLEGED FAILURE TO COMPLY WITH	)	
KRS 278.042	)	

O R D E R

On October 6, 2010, the Commission ordered Meade County Rural Electric Cooperative Corporation ("Meade County") to show cause why it should not be subject to the penalties provided under KRS 278.990 for seven probable violations of KRS 278.042, which requires an electric utility to construct and maintain its plant and facilities in accordance with the most recent edition of the National Electric Safety Code (2007 edition) ("NESC").

Following the commencement of this proceeding, Meade County requested an informal conference and filed its answer to the Commission's Order. An informal conference was held at the Commission's offices on November 9, 2010 between Commission Staff and representatives of Meade County. On April 12, 2011, Meade County and Commission Staff filed with the Commission a Joint Stipulation of Facts and Settlement Agreement ("Stipulation").

In the Stipulation, a copy of which is appended to this Order, Meade County agreed to the description of facts and circumstances contained in the Commission

Staff's Electric Utility Personal Injury Accident Report of September 8, 2009. Meade County and Commission Staff agreed that:

1. Meade County should pay the amount of \$7,500 in full settlement of any potential penalties arising out of the incident of August 12, 2009.
2. Meade County should file copies of its monthly safety audit documents from May 2009 through October 2010 with the Commission.<sup>1</sup>
3. Meade County should file copies of its safety audit documents with the Commission for a period of two years following the issuance of a Final Order in this matter.
4. Meade County should develop a set of pre-qualification requirements for its contractors requiring them to screen employees for behaviors that indicate that they may not be able to perform their job duties in compliance with applicable safety requirements.

Having reviewed the Stipulation, the Commission finds that the Stipulation, with modifications, should be approved. We find that the penalty provisions of the settlement are inadequate and fail to adequately reflect the gravity and seriousness of the alleged violations. We find that, based upon the information currently contained in the record and the nature of the alleged offenses, the sum of \$17,500 is the more appropriate sum to be assessed against Meade County. Recognizing Meade County's efforts since 2006 to improve its safety performance, we further find that \$10,000 of this amount should be suspended until August 1, 2013 and vacated upon Meade County's successful performance of all provisions of the Stipulation and its compliance with the NESC. Should Meade County fail to comply with all provisions of the Stipulation and

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<sup>1</sup> In accordance with this term, Meade County filed with the Commission on May 16, 2011, safety audit documents for the period from May 12, 2009 to March 30, 2011.

the NESC, the remaining penalty should become due and payable. We further find that Meade County should be required to file its past safety documents with the Commission from April 1, 2011 through the date of this Order.

IT IS THEREFORE ORDERED that:

1. The Stipulation as modified in this Order is approved.
2. Meade County is assessed a civil penalty of \$17,500.
3. Within 30 days of the date of this Order, Meade County shall pay to the Commonwealth of Kentucky the sum of \$7,500. Payment shall be made by cashier's check payable to "Kentucky State Treasurer" and mailed or delivered to the Office of the General Counsel, Public Service Commission of Kentucky, 211 Sower Boulevard, Post Office Box 615, Frankfort, KY 40602.
4. The remaining portion of the penalty is suspended until August 1, 2013.
5. If, prior to July 31, 2013, Meade County fails to comply with any provision of the Stipulation or the NESC, the remaining portion of the assessed penalty (\$10,000) shall become immediately due and payable.
6. Within 30 days of the date of this Order, Meade County shall file copies of its monthly safety audit documents with the Commission from April 1, 2011 through the date of issuance of this Order.
7. Within six months of the entry of this Order, Meade County shall develop and file with the Commission written pre-qualification requirements for all contractors bidding to perform construction or right-of-way work for Meade County. This document shall require the contractor to perform a background check of its employees for illegal drug use, driving under the influence, and other behavior, as determined by Meade

County, that may indicate that an employee cannot ensure that his performance of electric construction work will be in compliance with applicable safety requirements.

8. Meade County shall file copies of its safety audit documents with the Commission on a quarterly basis beginning July 1, 2011. The quarterly safety audit document filings for the first four quarterly periods following the entry of this Order shall include, for each contractor crew working on Meade County's system, one (1) safety audit per crew performed by Meade County's safety staff and one (1) safety audit per crew performed by each contractor's safety staff. Quarterly safety audit documents shall be filed on or before the 15th day of the month following the final month of the quarter for which the documents are being filed.

9. Following the filing of the quarterly safety audit documents for the second quarter of 2012, Meade County shall file with the Commission copies of the safety audit documents performed by its own safety staff on a quarterly basis through the second quarter of 2013. Quarterly safety audit documents shall be filed on or before the 15th day of the month following the final month of the quarter for which the documents are being filed.

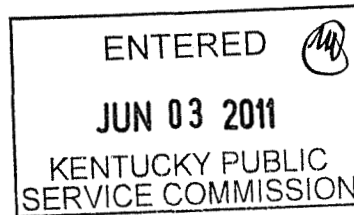
10. Meade County shall maintain its safety audit documents in an orderly and readily accessible format and shall provide them to the Commission's inspectors upon request.

11. If Meade County intends to exercise its right to withdraw from the Stipulation because of modifications ordered herein, it shall notify the Commission in writing of its intention within 20 days of the date of this Order.

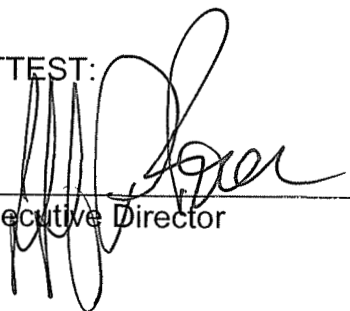
12. If Meade County exercises its right to withdraw from the Stipulation, ordering paragraphs 1 through 10 shall be vacated and Meade County shall appear before the Commission on August 9, 2011, at 10:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 211 Sower Blvd., Frankfort, Kentucky, for the purpose of showing why it should not be penalized for its alleged violations of KRS 278.042.

13. If the suspended portion of the assessed penalty has not become due and payable as of July 31, 2013, it shall be vacated and this case shall be closed and removed from the Commission's docket without further Order of the Commission.

By the Commission



ATTEST:

  
\_\_\_\_\_  
Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2010-00375 **JUN 03 2011**

In the Matter of:

MEADE COUNTY RURAL ELECTRIC )  
 COOPERATIVE CORPORATION )  
 \_\_\_\_\_ )  
 ALLEGED FAILURE TO COMPLY )  
 WITH KRS 278.042 )

CASE NO. 2010-00375

**STIPULATION OF FACTS AND SETTLEMENT AGREEMENT**

By Order dated October 6, 2010, the Commission initiated this proceeding to determine whether Meade County Rural Electric Cooperative Corporation (“Meade County”) should be subject to the penalties prescribed in KRS 278.990 for seven alleged violations of KRS 278.042, which requires an electric utility to construct and maintain its plant and facilities in accordance with the most recent edition of the National Electric Safety Code (NESC).<sup>1</sup>

The seven alleged violations of the NESC cited by the Commission’s October 6, 2010 Order are as follows:

**NESC Section 42: General Rules for Employees:**

- Violation 1. 420. Personal General Precautions
  - C. Safeguarding Oneself and Others

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.

<sup>1</sup> At present, the most recent version of the NESC is the 2007 edition.

Violation 2: 420. Personal General Precautions  
D. Energized or Unknown Conditions

Employees shall consider electric supply equipment and lines to be energized, unless they are positively known to be de-energized. Before starting work, employees shall perform preliminary inspections or tests to determine existing conditions. Operating voltages of equipment and lines should be known before working on or in the vicinity of energized parts.

Violation 3: 420. Personal General Precautions  
H. Tools and Protective Equipment

Employees shall use the personal protective equipment, the protective devices, and the special tools provided for their work. Before starting work, these devices and tools shall be carefully inspected to make sure that they are in good condition.

Violation 4: 421. General Operating Routines  
A. Duties of a First-Level Supervisor or Person in Charge

This individual shall:

1. Adopt such precautions as are within the individual's authority to prevent accidents.
2. See that the safety rules and operating procedures are observed by the employees under the direction of this individual.

Violation 5: 422. Overhead Line Operation Procedures  
C. Installing and Removing Wires or Cables

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.



## NESC Section 44. Additional Rules for supply employees

### Violation 6: 441. Energized Conductors or Parts

NESC Section 44, 441-A-1: Employees shall not approach or bring any conductive object within the minimum approach distance listed in Table 441-1<sup>2</sup> or Table 441-4 to exposed parts unless one of the following is met:

- a. The line or part is de-energized and grounded per Rule 444D;
- b. The employee is insulated from the energized line or part. Electrical protective equipment insulated for the voltage involved, such as tools, gloves, rubber gloves, or rubber gloves with sleeves, shall be considered effective insulation for the employee from the energized part being worked on; or
- c. The energized line or part is insulated from the employee and from any other line or part at a different voltage.

### Violation 7: 443. Work on Energized Lines and Equipment A. General Requirements

6. Equipment or material of a non insulating substance that is not bonded to an effective ground and which extends into an energized area, and which could approach energized equipment closer than the distance specified in Rule 441A, shall be treated as though it is energized at the same voltage as the line or equipment to which it is exposed.

The Commission's October 6, 2010 Order arose out of an August 12, 2009 incident in which Patrick Haste, an employee of Bowlin Energy Services ("BES") sustained severe burn injuries as a result of an accident at the site of an electric construction/reconductoring project for Meade County at 315 South Hwy 259, Harned, in Breckinridge County, Kentucky. At the time of the August 12, 2009 incident, BES was working under contract with Meade County, installing new conductors on an

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<sup>2</sup> See Report at 6.

existing three phase circuit on Meade County's system. The first-level supervisor or person in charge at the construction site on the day of the incident was BES employee, Ronald Douglas.

Before pulling up the new conductor to install it on Meade County's system, the BES crew failed to effectively ground the new conductor. In the process of pulling it up for installation, the new conductor made contact with an existing, energized conductor on Meade County's system. Because of the BES crew's failure to effectively ground the new conductor, it became energized.

The new conductor was attached to a tensioner (also called a "brake")—a piece of construction equipment made of steel and other materials. The purpose of a tensioner is to keep the new conductor under control and to prevent it from making contact with any energized equipment during the installation. This tensioner was mounted onto the bed of a utility truck, which was constructed of steel and wood. Neither the tensioner nor the utility truck was effectively grounded by the BES crew prior to the incident. As a result of the BES crew's failure to effectively ground the tensioner or the utility truck, when the new conductor became energized it energized both the tensioner and the bed of the utility truck.

While attempting to adjust the tension on the new conductor, Mr. Haste touched the energized truck bed and received very serious shock and burn injuries to his right hand, right arm and right side. Mr. Haste received emergency medical treatment at the scene of the incident and was later transported to the University of Louisville Hospital, where his right arm was amputated above the elbow. He also received skin grafts for the burns to his right arm and side.

Pursuant to 807 KAR 5:006, Section 26(2), Meade County provided a written summary report (“summary report”) regarding the August 12, 2009 accident to Commission Staff on August 18, 2009.<sup>3</sup> According to Meade County’s summary report, Mr. Haste was wearing fire retardant clothing at the time of the incident. However, according to the Staff’s Report, he was not wearing other personal protective equipment (“PPE”) such as rubber gloves or rubber sleeves that could have insulated him from the electric charge.

On October 26, 2010, Meade County filed a response to the Commission’s October 6, 2010 Order. In its response, Meade County acknowledged, in general, the recitation of facts in the Commission’s October 6, 2010 Order, but Meade County denied that it violated any provisions of the NESC, because the allegations in this matter arose from the conduct of BES’s crews.

The October 10, 2010 Order also provides that the Commission’s investigation in this matter will examine the adequacy, safety, and reasonableness of Meade County’s practices related to the construction, installation and repair of electric facilities, as they relate to the facts of this case. In its response, Meade County points to a number of “increased safety-related communications, safety-improvement plans/training and other injury mitigation requirements” which Meade County has placed upon its contractors, over the past several years, in an effort to increase safety, including, specifically:

Qualified Bidder Reports which now require a contractor who is bidding to perform some construction or right-of-way work for Meade County to provide information and data from five years worth of OSHA 300 logs in order to determine the

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<sup>3</sup> Commission Staff’s Report (“Report”) on the August 12, 2009 incident is attached to the Commission’s October 6, 2010 Order as Appendix A, and Meade County’s summary report is found as Attachment A to that Report.

contractor's safety record, it's compliance plans for the latest OSHA regulations, safety meeting frequency, new hire orientation, and employee training schedules.

Contract Addenda which now are a part of all contracts with construction and right-of-way contractors describing in detail Meade County's increased emphasis on safety, the requirement for periodic safety audits, disciplinary actions if safe practices are not observed, pre-job "tailgate" sessions and quarterly meetings with Meade County to discuss accidents and near misses, safety audit deficiencies, violations and concerns, as well as safety program accomplishments.

Quarterly Contractor Safety Updates where the contractor and Meade County staff actually meet face-to-face to discuss accidents and violations and other concerns found and/or reported near misses, deficiencies, during observations and audits, and safety program accomplishments and updates. It is these meetings that have been added to the contractor's obligations under its construction or right-of-way contract with Meade County.

Monthly Safety Observations where Meade County staff actually make an in-field observation of the contractor while its crew is performing construction or right-of-way work on a project for Meade County. These observations are recorded in writing in a report and any important or unusual findings are discussed and addressed either immediately or at the quarterly safety update meeting depending upon the severity and immediacy of the observation.

Pursuant to a request by Meade County, an informal conference was held on November 9, 2010, at the Commission's Frankfort offices. Representatives of Meade County, BES, and legal counsel were in attendance, as were Commission Staff. As a result of discussions held during the informal conference, Meade County and Commission Staff submit the following Stipulations of Facts and Settlement agreement ("Stipulation") for the Commission's consideration in rendering its decision in this proceeding:

1. Meade County agrees to the Report's description of the facts and circumstances surrounding the August 12, 2009 incident, which gave rise to the Commission's October 6, 2010 Order.

2. Meade County agrees to pay the amount of \$7,500 in full settlement of this proceeding. The scope of this proceeding is limited by the Commission's October 6, 2010 Order on whether Meade County should be assessed a penalty under KRS 278.990 for willful violations of the NESC rules as made applicable under KRS 278.042, with the violations having a maximum civil penalty of \$17,500, and the adequacy, safety, and reasonableness of its practices related to the construction, installation and repair of electric facilities and whether such practices require revision. Neither the payment of the \$7,500 nor any other agreement contained in this Stipulation, shall be construed as an admission by Meade County of any liability in this matter, or in any legal proceeding or lawsuit arising out of the facts set forth in the Report, nor shall the Commission's acceptance of this Settlement Agreement be construed as a finding of a willful violation of any Commission regulation or NESC rule.

3. Commission Staff agrees that the increased safety-related communications, safety-improvement plans/training and other injury mitigation requirements which Meade County has placed upon its contractors since 2006 demonstrate that Meade County now has proper procedures in place relating to the safety practices of its contractor crews, including performing regular safety audits of its contractor crews.

4. Meade County agrees to file copies of its monthly safety audit documents from May 2009 through October 2010 with the Commission.

5. Meade County agrees to file copies of its safety audit documents with the Commission on a quarterly basis, beginning with the third quarter of 2011. The quarterly safety audit document filings for the first 4 quarterly periods following the entry of the Final Order in this matter shall include, for each contractor crew working on Meade County's system, one (1) safety audit per crew performed by Meade County's safety staff and one (1) safety audit per crew performed by each contractor's safety staff.

6. Following the filing of the quarterly safety audit documents for the second quarter of 2012, Meade County agrees to file copies of the safety audit documents performed by its own safety staff with the Commission on a quarterly basis through the second quarter of 2013.

7. Meade County agrees to maintain its safety audit documents in a manner in which they can be provided upon request to the Commission's inspectors during routine inspections or incident investigations.

8. Within 6 months of the entry of the Final Order in this matter, Meade County shall develop a set of pre-qualification requirements for all contractors bidding to perform some construction or right-of-way work for Meade County, which shall require that a contractor submitting a bid to perform construction or right-of-way work for Meade County has performed a background check of its employees for illegal drug use, driving under the influence, and other behavior—as determined by Meade County—which may indicate that an employee cannot ensure that his performance of electric construction work will be in compliance with applicable safety requirements.

9. In the event that the Commission does not accept this Stipulation in its entirety, Meade County 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 herein shall be binding upon the parties hereto, used as an admission by Meade County 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.

10. This Stipulation is for use in Commission Case No. 2010-00375. None of the provisions in this Stipulation establishes any precedent for any other case, and neither Meade County nor Staff 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 Meade County's service, and Meade County shall not be precluded or estopped from raising any issue, claim or defense therein by reason of the execution of this Stipulation.

11. Meade County and Commission 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, Meade County agrees to waive its right to a hearing and will not file any petition for rehearing or seek judicial appeal.

Dated this 11<sup>th</sup> day of April 2011.

**MEADE COUNTY RURAL ELECTRIC COOPERATIVE CORPORATION**

By: Burns E. Mercer  
Signature

BURNS E. MERCER  
Print Name

Title: PRESIDENT/CEO

Date: 3/30/2011

**STAFF OF THE KENTUCKY PUBLIC SERVICE COMMISSION**

By: Richard W. Bertelson, III  
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