

LAW OFFICE OF
JOHN J. SCOTT, PSC
108 EAST POPLAR STREET
P.O. BOX 389
ELIZABETHTOWN, KENTUCKY 42702-0389

JOHN J. SCOTT
ATTORNEY AT LAW

March 16, 2011

TELEPHONE 270-765-2179
FAX 270-765-2180

Mr. Jeff R. Derouen
Executive Director
Public Service Commission
211 Sowers Boulevard
P.O. Box 615
Frankfort, KY 40602-0615

RECEIVED

MAR 18 2011

PUBLIC SERVICE
COMMISSION

Re: PSC Case No. 2011-00061

Dear Mr. Derouen:

Please find enclosed for filing with the Commission in the above-referenced case an original and ten copies of the Response of Nolin Rural Electric Cooperative Corporation. Also enclosed is a Request for Informal Conference and Change of Date for Hearing.

Sincerely yours,



John J. Scott, Attorney for Nolin Rural
Electric Cooperative Corporation

JJS/rrd

Enclosures

cc: Mr. Rick Bertelson
Public Service Commission
211 Sowers Boulevard
P.O. Box 615
Frankfort, KY 40602-0615

RECEIVED

MAR 18 2011

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

NOLIN RECC)

_____)

CASE NO. 2011-00061

ALLEGED FAILURE TO COMPLY)

WITH KRS 278.042)

RESPONSE

Comes Nolin Rural Electric Cooperative Corporation (“Nolin”) by counsel, and for its Response to the allegations set forth in the Order of the Public Service Commission dated March 1, 2011, states as follows:

First Defense

In regard to KRS 278.042, Nolin does construct and maintain its plant and facilities in accordance with accepted engineering practices and in a safe and proper manner. However, Nolin contracted with Hamilton Construction Company to install new conductors and upgrade a line on Nolin’s system. Pursuant to the terms of the contract that Nolin has with Hamilton Power Line Construction Company, (“Hamilton”), Hamilton is required to take all reasonable precautions for the safety of its employees and furthermore, Hamilton contracted to comply with all applicable provisions of construction codes, in addition to safety rules and procedures of Nolin. In this instance, Hamilton and its employee, Pat Burman, apparently failed to comply with certain safety codes, resulting in the injuries set forth in the Commission’s Order.

Second Defense

The employee who was injured was not an employee of Nolin, but an employee of Hamilton. Nolin had no knowledge that Hamilton and its employee were acting in the manner in which they were acting at the time of the injury to Pat Burman. Nolin has no control whatsoever over Hamilton's employee. Only after the fact can Nolin then take safety measures pursuant to its contract to remedy the situation.

In their defense in this instance, Nolin did everything that Hamilton had asked them to do in placing the OCR on non-re-close prior to the accident. Nolin's own employees were not present at the accident scene and did not participate in any of the activities of Hamilton which permitted the safety violations leading up to the accident. Pursuant to the contract and pursuant to the law, Nolin is not required to have its own personnel on the scene when such work is being performed, but must rely upon Hamilton to abide by its contract in taking the necessary safety precautions.

Third Defense

Nolin denies that it in any manner violated the National Electric Safety Code and denies violations by Nolin of KRS 278.042.

Fourth Defense

Some of the violations stated in the Commission's Order are so similar in nature to be duplicative and therefore should be consolidated.

Fifth Defense

Some of the violations set forth in the Commission's Order are not related to the injuries sustained by Mr. Burman and therefore should be dismissed.

Sixth Defense


None of the alleged violations set forth in the Commission's Order were willful, as alleged in the Order. None of the violations attributed to Hamilton should be considered willful actions of Nolin, as Nolin has no right or obligation to control the minute to minute activities being taken by Hamilton and its employees.

Seventh Defense

Nolin further sets forth the defenses of Statute of Limitations and any other applicable defenses to which it may be entitled. Nolin further states that this is the first time it has been charged with such allegations.

WHEREFORE, Nolin respectfully requests the Commission to dismiss the Order of the Commission; to enter a finding that Nolin did not willfully violate KRS 278.042 or any other provisions of KRS Chapter 278; that no disciplinary action or fine should be levied against Nolin for the actions (or inactions) taken by employees of the independent contractor, Hamilton in this case; for all further relief to which Nolin may be entitled.

Nolin also requests that an Informal Conference in this matter be held with the Commission Staff.



JOHN J. SCOTT
JOHN J. SCOTT, P.S.C.
108 E. Poplar St., P.O. Box 389
Elizabethtown, Kentucky 42702-0389
Phone No. (270) 765-2179
Fax No. (270) 765-2180
Email: john@johnscottlaw.org
Attorney for Nolin Rural Electric
Cooperative Corporation

Certificate of Service

I, the undersigned, do hereby certify that a copy of the foregoing was mailed by first class mail postage prepaid and addressed for delivery to Mr. Jeff Derouen, Executive Director, Public Service Commission of Kentucky, 211 Sower Blvd., P.O. Box 615, Frankfort, Kentucky 40602-0615 and Mr. Rick Bertelson, Public Service Commission of Kentucky, 211 Sower Blvd., P.O. Box 615, Frankfort, Kentucky 40602-0615 this 16th day of March, 2011.



JOHN J. SCOTT
ATTORNEY FOR NOLIN RURAL
ELECTRIC COOPERATIVE CORP.

JOHN J. SCOTT
ATTORNEY AT LAW
108 EAST POPLAR STREET
P O BOX 389
ELIZABETHTOWN, KY
42702-0389
270-765-2179
FAX: 270-765-2180

RECEIVED

COMMONWEALTH OF KENTUCKY

MAR 18 2011

BEFORE THE PUBLIC SERVICE COMMISSION PUBLIC SERVICE COMMISSION

In the Matter of:

NOLIN RECC)

_____)

CASE NO. 2011-00061

ALLEGED FAILURE TO COMPLY)


WITH KRS 278.042)

REQUEST FOR INFORMAL CONFERENCE
AND
CHANGE OF DATE FOR HEARING

Comes Nolin Rural Electric Cooperative Corporation, by counsel, and in the above-styled matter, requests as follows:

- 1.) Nolin Rural Electric Cooperative Corporation hereby requests an Informal Conference be held in this matter prior to the scheduled hearing date.
- 2.) On February 21, 2011, a "PSC REQUEST FORM" was sent to Nolin giving three proposed dates for a hearing. Upon receipt of that form, the undersigned contacted the Public Service Commission and indicated that of the three proposed dates, the only date that would work for Nolin and its employees was May 5, 2011. After that date, Nolin received Notice that the hearing date had already been scheduled for May 3, 2011. Therefore, Nolin requests that the hearing date be rescheduled to May 5, 2011.

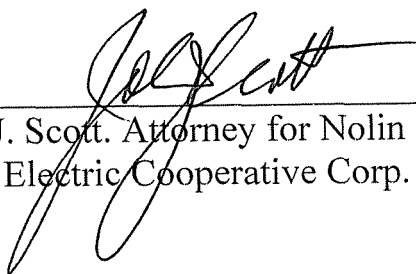
Respectfully submitted,



John J. Scott
John J. Scott, PSC
108 E. Poplar St., P.O. Box 389
Elizabethtown, Kentucky 42702-0389
Phone No. (270) 765-2179
Fax No. (270) 765-2180
Email: john@johnscottlaw.org
Attorney for Nolin Rural Electric
Cooperative Corporation

Certificate of Service

I, the undersigned, do hereby certify that a copy of the foregoing was mailed by first class mail postage prepaid and addressed for delivery to Mr. Jeff Derouen, Executive Director, Public Service Commission of Kentucky, 211 Sower Blvd., P.O. Box 615, Frankfort, Kentucky 40602-0615 and Mr. Rick Bertelson, Public Service Commission of Kentucky, 211 Sower Blvd., P.O. Box 615, Frankfort, Kentucky 40602-0615 this 16th day of March, 2011.



John J. Scott, Attorney for Nolin
Rural Electric Cooperative Corp.