

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MOUNTAIN RURAL TELEPHONE	)	
COOPERATIVE CORPORATION, INC.	)	
_____	)	CASE NO.
	)	2012-00371
	)	
ALLEGED FAILURE TO COMPLY WITH	)	
807 KAR 5:061	)	

ORDER

By Order dated September 10, 2012, the Commission directed Mountain Rural Telephone Cooperative Corporation ("Mountain Rural") to show cause why it should not be subject to the penalties prescribed in KRS 278.990 for probable violations of 807 KAR 5:061, which requires a telephone utility to maintain its plant and facilities in accordance with the 1990 edition of the National Electrical Safety Code ("NESC"). The alleged violations cited in the Commission's September 10, 2012 Order are as follows:

1. 1990 NESC Section 42, Rule 422.B—Rules for the Operation of Electric-Supply and Communications Lines and Equipment—General Rules for Employees—Overhead Line Operating Procedures—Checking Structures Before Climbing—1. Before climbing poles, ladders, scaffolds, or other elevated structures, employees shall determine, to the extent practical, that the structures are capable of sustaining the additional or unbalanced stresses to which they will be subjected. 2. Where there are indications that poles and structures may be unsafe for climbing, they shall not be climbed until made safe by guying, bracing, or other means.

Mountain Rural's contractor did not inspect the pole to ensure that it was safe to climb prior to climbing the pole.

2. 1990 NESC Section 42, Rule 421.A—General Rules for Employees—General Operating Routines—Duties of a First Level Super Duties or Person in Charge—this individual shall: 1. Adopt such precautions as are within the individual's authority to prevent accidents. 2. See that safety rules and operating procedures are observed by the employee under the direction of this individual. 3. Make all necessary records and reports, as required.

The supervisor in charge of Mountain Rural's contractor did not make sure the safety rules and operating procedures were followed.

3. 1990 NESC Section 41 Rule 410.A.1—Supply and Communications Systems—Rules for Employers—General—1. The employer shall inform each employee working on or about communications equipment or electric-supply equipment and the associated lines, of the safety rules governing the employee's conduct while so engaged. When deemed necessary, the employer shall provide a copy of such rules.

The supervisor for Mountain Rural's contractor did not inform the employees of the safety rules governing the work to be performed.

4. 1990 NESC Section 41, Rule 411.A.3—Supply and Communications Systems—Rules for Employers—General—3. Employees shall be instructed as to the character of the equipment or lines and methods to be used before any work is undertaken.

Mountain Rural's contractor did not have a documented job briefing prior to the work commencing.

The violations cited in the Commission's September 10, 2012 Order arose from an April 17, 2012 incident in Wolfe County, Kentucky, wherein Ryan Rose, an employee of R & L Contracting, Inc. ("R & L"), a contractor for Mountain Rural Telephone Cooperative Corporation, Inc., sustained injuries as a result of an accident while

attempting to raise the height of a telephone service drop on a Licking Valley Rural Electric Cooperative Corporation ("Licking Valley") service pole.

On September 27, 2012, Mountain Rural filed a response to the Commission's September 10, 2012 show cause Order and requested an informal conference be held in this matter. The informal conference was held at the Commission's offices on November 8, 2012. The discussions at the informal conference led to the filing of a Joint Stipulation of Facts and Settlement Agreement (collectively referred to as "Settlement Agreement").

The Settlement Agreement, attached hereto as an Appendix and incorporated herein by reference, sets forth Mountain Rural's agreement with the statement of facts contained in the Commission Staff's Electric Utility Personal Injury Accident Report ("Report"), signed and dated June 7, 2012. The Report was appended to the Commission's September 10, 2012 show cause Order. The Settlement Agreement also discusses the remedial actions taken by Mountain Rural and a civil penalty in the amount of \$2,500.00 that Mountain Rural will pay in full satisfaction of this proceeding.

In determining whether the terms of the Settlement Agreement are in the public interest and are reasonable, the Commission has taken into consideration the comprehensive nature of the Settlement Agreement, and Mountain Rural's actions taken after the accident. These actions include: adding safety meetings to stress the importance of safety procedures when climbing poles; drafting a letter to send to each contractor regarding safety policies; performing safety audits on contractors; and cooperation in achieving a resolution of this proceeding.

Based on the evidence of the record and being otherwise sufficiently advised, the Commission finds that the Settlement Agreement is in accordance with the law and does not violate any regulatory principle. The Settlement Agreement 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 Joint Stipulation of Facts and Settlement Agreement is adopted and approved in its entirety as a complete resolution of all issues in this case.
2. Mountain Rural is assessed a penalty of \$2,500.00.
3. Mountain Rural shall pay the \$2,500.00 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, Kentucky Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.
4. Mountain Rural shall establish an annual safety meeting to be held with Mountain Rural's contractors. Mountain Rural's contractors may attend this annual safety seminar, but Mountain Rural shall not be required to compel or require that any contractor of Mountain Rural attend any annual safety seminar. Mountain Rural shall provide the date, time and place of each of these annual meetings to the Commission so that Commission Staff may attend.
5. Mountain Rural shall make all new policies or policy changes available to its contractors for informational purposes.

6. Mountain Rural shall require all contractors to keep written documentation on job briefings and safety meetings on Mountain Rural jobs. Mountain Rural shall require its contractors to provide this documentation to Mountain Rural upon request.

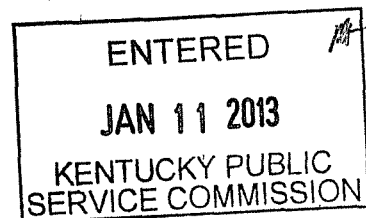
7. Mountain Rural shall perform, or Mountain Rural shall contract with a third-party consultant to perform, documented safety audits on its contractors' compliance with the NESC and any other standards adopted or regulation promulgated by the Commission. On or before June 30, 2013, Mountain Rural shall provide to the Commission documentation of its safety audits performed on Mountain Rural's contractors from January 1, 2013 to June 1, 2013.

8. The hearing scheduled for January 15, 2013 is cancelled.

9. Upon payment of the \$2,500.00 civil penalty, this case shall be closed and removed from the Commission's docket without further Order of the Commission.

10. Any documents filed in the future pursuant to ordering paragraphs 4 through 7 herein shall reference this case number and shall be retained in the utility's general correspondence file.

By the Commission



ATTEST:

  
Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2012-00371 JAN 11 2013

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MOUNTAIN RURAL TELEPHONE	)	
COOPERATIVE CORPORATION	)	
_____	)	CASE NO. 2012-00371
	)	
ALLEGED FAILURE TO COMPLY	)	
WITH 807 KAR 5:061	)	

**STIPULATION OF FACTS AND SETTLEMENT AGREEMENT**

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

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

In addition, the adoption of this Settlement Agreement will eliminate the need for the Commission, Commission Staff, and Mountain Rural 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.

### FACTS

Mountain Rural and the Commission Staff submit this stipulation of facts for the Commission's consideration. Commission Staff submitted to the Commission an Incident Investigation Report ("Report") regarding this incident. The report alleges that on April 17, 2012, at Highway 1812 and Hurst Lane in Wolfe County, Kentucky, Ryan Rose, an employee of R & L Contracting, Inc. ("R & L"), sustained injuries as a result of an accident while attempting to raise the height of a telephone service drop on a Licking Valley Rural Electric Cooperative Corporation ("Licking Valley") service pole. R & L is an independent contractor of Mountain Rural.

According to the Report, on the day of the incident, the victim climbed the Licking Valley service pole to raise a telephone service drop attached to the pole. When Mr. Rose released the tension of the telephone service drop, the pole fell with Mr. Rose still attached to it.

According to the Report, it appears the pole was set near a creek and the earth at the base of the pole had been eroded on the side closest to the creek. It also appears the pole was being supported by the attached conductors and down guys; that the pole was only sticking in the ground about 21 inches from the moisture/mud on the pole; and that the pole fell, with Mr. Rose still attached, after he cut the p clamp. Based on the hook marks on the pole, Mr. Rose had climbed about two-thirds (2/3) of the way



up the pole when it fell across the creek. Mr. Rose remained secured to the utility pole until R & L employees removed him after the pole collapsed.

Mountain Rural and Commission Staff agree that the Report fairly and accurately describes events which occurred on the day of the April 17, 2012 incident.

### **SHOW CAUSE ORDER**

By a Show Cause Order dated September 10, 2012, the Commission initiated this proceeding to determine whether Mountain Rural should be subject to the penalties prescribed in KRS 278.990 for probable violations of 807 KAR 5:061 § 3, which requires a telephone utility to maintain its plant and facilities in accordance with the 1990 edition of the National Electrical Safety Code ("NESC"). Specifically, the sections alleged to be violated are as follows:

1. 1990 NESC Section 42, Rule 422.B—Rules for the Operation of Electric-Supply and Communications Lines and Equipment—General Rules for Employees—Overhead Line Operating Procedures—Checking Structures Before Climbing—1. Before climbing poles, ladders, scaffolds, or other elevated structures, employees shall determine, to the extent practical, that the structures are capable of sustaining the additional or unbalanced stresses to which they will be subjected. 2. Where there are indications that poles and structures may be unsafe for climbing, they shall not be climbed until made safe by guying, bracing, or other means.
2. 1990 NESC Section 42, Rule 421.A—General Rules for Employees—General Operating Routines—Duties of a First Level Super Duties or Person in Charge—this individual shall: 1. Adopt such precautions as are within the individual's authority to prevent accidents. 2. See that safety rules and operating procedures are observed by the employee under the direction of this individual. 3. Make all necessary records and reports, as required.
3. 1990 NESC Section 41 Rule 410.A.1—Supply and Communications Systems—Rules for Employers—General—1. The employer shall inform each employee

working on or about communications equipment or electric-supply equipment and the associated lines, of the safety rules governing the employee's conduct while so engaged. When deemed necessary, the employer shall provide a copy of such rules.

4. 1990 NESC Section 41, Rule 411.A.3—Supply and Communications Systems—Rules for Employers—General—3. Employees shall be instructed as to the character of the equipment or lines and methods to be used before any work is undertaken.

On September 27, 2012, Mountain Rural filed a response to the Commission's September 10, 2012 Order and requested an informal conference be held in this matter. Pursuant to that request, an informal conference was scheduled in this matter for November 8, 2012, at the Commission's Frankfort offices. Representatives of Mountain Rural were in attendance, as were Commission Staff.

During the informal conference, representatives of Mountain Rural confirmed that proactive steps have been taken to improve the contractor relationship. Mountain Rural also provided Commission Staff with a binder of information pertaining to all changes in policies and procedures that have been made since this incident. Mountain Rural filed a copy of this information in the record of this case on November 14, 2012.

#### **SETTLEMENT AGREEMENT**

As a result of discussions held during the informal conference, Mountain Rural and the Commission Staff submit the following Settlement Agreement for the Commission's consideration in this proceeding:

1. Mountain Rural agrees that the Commission Staff's Incident Investigation Report, Appendix to the Commission's September 10, 2012 Order in this matter,

accurately describes and sets forth material facts and circumstances surrounding the April 17, 2012 incident.

2. In settlement of this proceeding, Mountain Rural agrees for a civil penalty of \$2,500.00 to be assessed. Mountain Rural agrees to pay the \$2,500.00 civil penalty within 30 days of the date of the Commission's Order approving this Settlement Agreement. The scope of this proceeding is limited by the Commission's September 10, 2012 Order on whether Mountain Rural should be assessed a penalty under KRS 278.990 for violations of 807 KAR 5:061 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 \$2,500.00 nor any other agreement contained in this Stipulation, shall be construed as an admission by Mountain Rural 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 violation of any Commission regulation or NESC rule.

3. Mountain Rural shall establish an annual safety seminar to be held with Mountain Rural's contractors. Mountain Rural's contractors may attend this annual safety seminar, but Mountain Rural shall not be required to compel or require that any contractor of Mountain Rural attend any annual safety seminar. Mountain Rural shall provide the date, time and place of each of these annual seminars to the Commission for a period of two (2) years, ending on December 31, 2014, so that Commission Staff can attend.

4. Mountain Rural shall make all new safety policies or changes to existing safety policies available to its contractors for informational purposes.

5. Mountain Rural shall require that all contractors keep written documentation on job briefings and safety meetings on all Mountain Rural jobs. Mountain Rural shall require that its contractors provide this documentation to Mountain Rural upon request.

6. Mountain Rural shall perform, or Mountain Rural shall contract with a third party consultant to perform, documented safety audits on its contractors' compliance with the NESC and any other standards adopted or regulation promulgated by the Commission. On or before June 30, 2013, Mountain Rural shall provide the Commission documentation of safety audits performed on Mountain Rural's contractors from January 1, 2013 to June 1, 2013.

7. In the event that the Commission does not accept this Settlement Agreement in its entirety, Mountain Rural 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 Settlement Agreement shall be binding upon the parties; used as an admission by Mountain Rural of any liability in any legal proceeding, administrative proceeding or lawsuit arising out of the facts set forth in the Incident Investigation Report; or otherwise used as an admission by either party.

8. This Settlement Agreement is for use in Commission Case No. 2012-00371, and no party to this matter shall be bound by any part of this Settlement Agreement in any other proceeding, except that this Settlement Agreement may be used in any proceedings by the Commission to enforce the terms of this Settlement

Agreement or to conduct a further investigation of Mountain Rural's service. Mountain Rural shall not be precluded or estopped from raising any issue, claim or defense therein by reason of the execution of this Settlement Agreement.

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

**MOUNTAIN RURAL TELEPHONE COOPERATIVE CORPORATION, INC.**

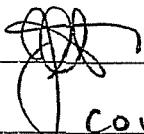
By: (print name) W. A. Gillum

By: (sign name) WA Gillum

Title: General Manager

Date: 12/12/2012

By: (print name) John E. Selent

By: (sign name) 

Title: Counsel

Date: 12/12/12

**STAFF OF THE KENTUCKY PUBLIC SERVICE COMMISSION**

By: (print name) L. Allyson Honaker

By: (sign name) L. Allyson Honaker

Title: Staff Attorney

Date: 12/17/12

W. Allen Gillum  
General Manager  
Mountain Rural Telephone Cooperative  
405 Main Street  
P. O. Box 399  
West Liberty, KY 41472-0399

John E Selent  
Dinsmore & Shohl, LLP  
101 South Fifth Street  
Suite 2500  
Louisville, KENTUCKY 40202