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James W. Gardner
Vice Chairman

Daniel E. Logsdon Jr.
Commissioner

October 20, 2015

Jeff Derouen
Executive Director
Public Service Commission
P.O. Box 615
Frankfort, KY 40602

Re: Case No. 2015-00263
East Kentucky Power Cooperative, Inc. Failure to Comply with KRS 278.020(2)

Dear Mr. Derouen:

Enclosed for filing is the Stipulation of Facts and Settlement Agreement entered into between Commission Staff and East Kentucky Power Cooperative, Inc. Please bring this document to the Commission's attention for its review and consideration

Sincerely,

A handwritten signature in cursive script, appearing to read "Jonathan Beyer".

Jonathan Beyer
Staff Attorney

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

EAST KENTUCKY POWER)
COOPERATIVE, INC.)
_____) CASE NO. 2015-00263
)
FAILURE TO COMPLY WITH KRS)
278.020(2))

STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

By Order dated August 18, 2015, the Commission initiated this proceeding to determine whether East Kentucky Power Cooperative, Inc. ("EKPC") should be subject to the penalties prescribed in KRS 278.990 for violating KRS 278.020(2).

KRS 278.020(1) states in part:

No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction

KRS 278.020(2) further provides in part that:

For the purposes of this section, construction of any electric transmission line of one hundred thirty-eight (138) kilovolts or more and of more than five thousand two hundred eighty (5,280) feet in length shall not be considered an ordinary extension of an existing system in the usual course of business and shall require a certificate of public convenience and necessity.

The Commission's Order arose out of EKPC's construction of an 18.5 mile dual circuit 345/138-kV transmission line without obtaining a Certificate of Public

Convenience and Necessity (“CPCN”). The issue was thoroughly litigated in Case No. 2013-00291,¹ and in the July 6, 2015 Order in that matter the Commission found that EKPC violated KRS 278.020(2) through not applying for and receiving a CPCN prior to constructing the transmission line. Accordingly, the Commission ordered that this action be opened for the purpose of determining whether EKPC should be subject to penalties for the violation.

On September 3, 2015, EKPC filed a response to the Commission’s August 18, 2015 Order. EKPC admitted constructing the transmission line and that it did not request or obtain a CPCN. However, it denied willfully violating KRS 278.020(2). Thereafter, an informal conference was held on September 22, 2015.

As a result of information provided by EKPC, and discussions between Commission Staff and EKPC in the course of the informal conference, EKPC 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. EKPC agrees to pay the amount of \$2,500 in full settlement of this proceeding. The scope of this proceeding is limited by the Commission’s August 18, 2015 Order as to whether EKPC should be assessed penalties under KRS 278.990 for the violation of KRS 278.020, with a maximum potential penalty of \$2,500. Neither the payment of \$2,500, nor any agreement contained in this Stipulation, shall be construed as an admission by EKPC of any liability in any legal proceeding or lawsuit arising out of the facts set forth in the Order, nor shall the Commission’s acceptance of this

¹ *Harold Barker, Ann Barker and Brooks Barker v. East Kentucky Power Cooperative, Inc.* (Ky. PSC July 6, 2015).

Stipulation be construed as a finding of a willful violation of any Commission statute or regulation.

2. In the event that the Commission does not accept this Stipulation in its entirety, EKPC reserves its right to withdraw therefrom and require that a hearing be held on any and all issues herein, and that none of the provisions contained herein shall be binding upon the parties hereto, used as an admission by EKPC of any liability in any legal proceeding or lawsuit arising out of the facts set forth in the Order, or otherwise used as an admission by either party.

3. This Stipulation is for use in Commission Case No. 2015-00263. None of the provisions in this Stipulation establishes any precedent for any other case and neither EKPC nor Staff 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 EKPC service, and EKPC shall not be precluded or estopped from raising any issue, claim, or defense, therein by reason of the execution of this Stipulation.

6. EKPC 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, EKPC agrees to waive its right to a hearing and will not file any petition for rehearing or seek judicial appeal.

East Kentucky Power Cooperative, Inc.

By Denver York, [Signature]

Title VP Power Delivery & System Operations

Date 10/20/2015

Staff of the Kentucky Public Service Commission

By *Justin Byers*

Title *Staff Attorney II*

Date *10/20/2015*

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