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Commissioner

December 15, 2016

Talina R. Mathews  
Executive Director  
Public Service Commission  
P.O. Box 625  
Frankfort, KY 40602

Re: Case No. 2016-00324  
Kenergy Corp. Alleged Failure to Comply With KRS 278.042

Dear Ms. Mathews:

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

Sincerely,

A handwritten signature in blue ink that reads "Nancy J. Vinsel".

Nancy Vinsel  
Staff Attorney

NJV/ph

Enclosure

cc: Parties of Record

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

DEC 15 2016

PUBLIC SERVICE  
COMMISSION

In the Matter of:

KENERGY CORP.

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ALLEGED FAILURE TO COMPLY  
WITH KRS 278.042

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) CASE NO. 2016-00324  
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STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

By Order entered September 13, 2016, the Commission initiated this proceeding to determine whether Kenergy Corp. ("Kenergy") should be subject to the penalties prescribed in KRS 278.990 for alleged violations of KRS 278.042, which requires the Commission to ensure that each electric utility constructs and maintains its plan and facilities in accordance with accepted engineering practices as set forth in the Commission's administrative regulations and orders and the most recent edition of the National Electrical Safety Code ("NESC").

The violations giving rise to this case involve an incident occurring on October 7, 2014, during which a Kenergy crew was installing new triplex service on an overhead distribution line that would supply electric power to a pole at 9674 Highway US 60, Sturgis, Crittenden County, Kentucky. Rhyan Dickerson, a Kenergy apprentice lineman, was in the process of connecting the triplex service neutral to the transformer that would serve the new service when he made contact with a transformer riser with the back of his left hand at the same time his right hand was in contact with a secondary neutral at ground potential. Mr. Dickerson was not wearing rubber gloves at the time of the incident. The contact created an arc that rendered Mr. Dickerson unconscious and

inflicted burns to his hands. Mr. Dickerson was admitted to the hospital and discharged after three days.

According to the summary report submitted by Kenergy to the Commission after the incident, identified items of note included Mr. Dickerson's removing his rubber gloves while performing work in the bucket truck, how the placement of the bucket truck affected the angle at which Mr. Dickerson performed the work, and the failure to properly ground or barricade the bucket truck. Commission Staff's investigative report of the incident ("Staff Report") opined that Mr. Dickerson and the crew leader, Terry Frederick, did not meet certain requirements of the NESC and Kenergy Safety Manual. The Staff Report further stated:

The fact that the victim [Mr. Dickerson] removed his rubber gloves is a major contributing factor to this accident but during this investigation several contributing factors came to mind. It appears that the positioning of the bucket truck could have been better and this could have kept the victim out of the vicinity of the energized transformer riser. The transformer and riser could have been de-energized during the installation of the triplex service. There was no rubber cover-up material on the conductors at the time of this accident.

The victim is an apprentice lineman which means he is not a fully trained lineman. It appears that the first-level supervisor in charge of this job site did not fulfill his obligation in this situation. The supervisor in charge of this job site was Terry Frederick, a crew leader for Kenergy. This was not a contributing factor to this accident but during this investigation it was discovered that the vehicle ground had been pulled off the reel but was not connected to a grounding point. The vehicle the victim was working out of, at the time of this accident, was not grounded or barricaded and treated as energized.

Kenergy filed a response to the Commission's Order, agreeing to the Commission's summarization of the incident, but asserting as an affirmative defense that the alleged violations of the NESC and the Kenergy Safety Manual "resulted from an intervening, uncontrollable force, *i.e.* human error, that Kenergy could not control or prevent" rather than any willful violation on the part of Kenergy.<sup>1</sup>

At Kenergy's request, an informal conference was conducted with Commission Staff in this matter on October 14, 2016 to discuss outstanding issues in the case. Post conference, Commission Staff issued two rounds of information requests, to which Kenergy responded. Kenergy also filed testimony of its Vice President of Operations in preparation for the hearing scheduled in this matter. Kenergy and Commission Staff then had further discussions which resulted in an agreement in principle and the scheduled hearing was canceled.

As a result of the agreement in principle reached, Kenergy and Commission Staff submit the following Stipulation of Facts and Settlement Agreement ("Stipulation") for the Commission's consideration in rendering its decision this proceeding.

1. Kenergy is a consumer-owned rural electric cooperative corporation engaged in the distribution and sale of electric energy to the public for compensation and is a utility subject to Commission jurisdiction.
2. On October 7, 2014, an incident took place during which a Kenergy crew was installing new triplex service on an overhead distribution line that would supply electric power to a pole at 9674 Highway US 60, Sturgis, Crittenden County, Kentucky. Rhyan Dickerson, a Kenergy apprentice lineman, was in

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<sup>1</sup> Response of Kenergy Corp. (filed Sept. 29, 2016), at 3.

the process of connecting the triplex service neutral to the transformer that would serve the new service when he made contact with a transformer riser with the back of his left hand at the same time his right hand was in contact with a secondary neutral at ground potential. Mr. Dickerson was not wearing rubber gloves at the time of the incident. The contact created an arc that rendered Mr. Dickerson unconscious and inflicted burns to his hands. Mr. Dickerson was admitted to the hospital and discharged after three days.

3. As a direct result of the October 7, 2014 incident, Kenergy has undertaken the following remedial actions:
  - a. Mr. Dickerson was cited for a P1 violation for violating section 604c of the APPA Safety Manual which required that all employees use rubber gloves and sleeves to cradle. Mr. Dickerson received a written level three corrective action which included a 5-day suspension without pay, a requirement for Mr. Dickerson to repeat his third year of the Kenergy apprenticeship program, and a stipulation that if Mr. Dickerson received another safety violation within a two-year period from the date of the incident, that his employment with Kenergy would be terminated.
  - b. Mr. Frederick, the crew leader of record on the jobsite during the incident, was cited for two P2 violations for failure to supervise the apprentice who removed his gloves violating section 604c of the APPA safety manual; failure to ensure the vehicle was grounded per section 312v of the APPA safety manual; failure to provide cover up according to section 602c of the APPA safety manual; and failure to provide a

visible opening point per section 626 of the APPA safety manual. Mr. Frederick received a written level three corrective action which included a 5-day suspension without pay, demotion from crew leader to line tech, and a stipulation that if the employee received another safety violation within a two-year period from the date of the incident, the employee's employment with Kenergy would be terminated.

- c. Kevin Board, who is a Kenergy crew leader but was not the crew leader of record for the job on the day of the incident, accompanied the crew on this job. Mr. Board was cited for a P2 violation for failure to ensure vehicle was grounded per section 312v of the APPA safety manual, failure to provide cover up according to section 602c of the APPA safety manual, and failure to provide a visible opening point according to section 626 of the APPA safety manual. Mr. Board received a written level three corrective action with a 5-day suspension without pay and a stipulation that if the employee received another safety violation within two years of the date of the incident, the employee's employment with Kenergy would be terminated.
- d. Erik Winebarger, a Journeyman lineman working on this crew on the day of the incident, was cited for a P3 violation for failure to ensure vehicle was grounded per section 312v of the APPA safety manual; failure to provide cover up according to section 602c of the APPA safety manual; and failure to provide a visible opening point according to section 626 of the APPA safety manual. Mr. Winebarger received a

written level three corrective action with a 3-day suspension without pay and a stipulation that if the employee received another safety violation within two years of the date of the incident, the employee's employment with Kenergy would be terminated.

- e. Since the incident, Mr. Frederick has given presentations on the incident at multiple KAEC (Kentucky Association of Electric Cooperatives) events and at a half dozen or so employee meetings of other electric cooperatives throughout the state of Kentucky.
- f. The other three crew members, Mr. Frederick, Mr. Board, and Mr. Winebarger, were required to present the incident to all Kenergy employees at Kenergy's annual Safety Day in 2014, which was held on November 11, 2014.
- g. Kenergy has increased the number of crew audits performed in the Marion district where the incident occurred by requiring the managers of the other Kenergy districts to perform unannounced crew audits in the Marion district.
- h. Mr. Dickerson, Mr. Board, and Mr. Winebarger made a safety presentation on March 27, 2015 at the Crittenden County Elementary School to approximately 120 students speaking about the incident and the importance of electrical safety.
- i. On October 20, 2014, the Kenergy Safety Committee recommended the purchase of additional AED's. Eighteen new AED units were

ordered in January of 2015 and received and installed on January 29, 2015.

j. In February of 2016, Kenergy requested and had KAEC provide accident investigation training to the Kenergy Safety Committee, Kenergy Safety Leadership Team and various other members of Kenergy management.

4. Other remedial and safety related actions taken that were not a direct result of the October 7, 2014 incident, but rather as a continuation of Kenergy's ongoing safety program and Kenergy's safety benchmarking efforts which began in late 2013 include the following:

- a. Kenergy has implemented a new Safety Manual. This action was also implemented to comply with OSHA's issuing of an update to OSHA Standard 29 CFR 1910.269 on April 11, 2014.
- b. Kenergy implemented a program to document all field employees having read through the Kenergy safety manual annually.
- c. Kenergy expanded the Kenergy Employee Safety Committee to include 4 non-field employees, thereby expanding the committee to twelve members.
- d. Kenergy began to time field personnel who are required to be trained and tested on pole and bucket rescue.
- e. Kenergy donated resources to the KAEC safety demonstration trailer and has widely utilized the new trailer providing safety demonstrations throughout the Kenergy territory.



- f. Kenergy sought employee input and then selected a new safety slogan – Safety Works Here.
- g. Kenergy implemented a “safety moment” before every meeting.
- h. Kenergy requested and received onsite informal safety audits by Kentucky OSHA.
- i. In December of 2014, the Kenergy Safety Leadership Team approved the purchase of additional personal protective grounds to be placed on line trucks, giving field employees more options in how to apply personal protective grounding.
- j. In February of 2015, the Kenergy Safety Committee conducted an internal Rural Electric Achievement Program (RESAP) audit.
- k. In July of 2016, KAEC conducted an announced external RESAP audit of Kenergy. Kenergy is working with KAEC to provide an unannounced RESAP audit of Kenergy sometime in 2017.
- l. Annually, Kenergy makes participation in the Kentucky Lineman’s Rodeo mandatory for all Kenergy apprentices. This challenges apprentices to hone their skills, especially pole-top rescue.
- m. Kenergy instituted summer work hours for construction crews, allowing construction crews to come in one hour early thereby leaving an hour early and avoiding the afternoon heat.
- n. Kenergy revised and standardized the morning stretch and flex program for all operations field employees.

- o. Kenergy increased the physical security by installing automated gates at the Kenergy district offices and maintaining those gates in a normally closed condition except when Kenergy employees are entering or exiting the facilities.
5. As a result of the October 7, 2014 incident, Kenergy agrees to pay a civil penalty, pursuant to KRS 278.990, in the amount of \$12,500. The Commission's acceptance of this Stipulation will satisfy and resolve any and all claims against Kenergy for any violation of KRS Chapter 278 or for any penalty under KRS 278.990 arising out of the October 7, 2014 incident.
6. This Stipulation is not an admission by Kenergy that it willfully violated KRS 278.042 or any other provision of KRS Chapter 278. The Commission's acceptance of this Stipulation shall not be construed as a finding that Kenergy willfully violated any statute.
7. In the event the Commission does not accept this Stipulation in its entirety, Kenergy reserves the 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 used as an admission by Kenergy of any liability in any legal proceeding or lawsuit arising out of the facts set forth in this Stipulation.
8. This Stipulation is for use in Case No. 2016-00324. None of its provisions establishes any precedent for any other case. Neither Kenergy nor Commission Staff shall be bound by any part of this Stipulation in any other proceeding, except that it may be used in any proceeding by the Commission

to investigate or enforce the terms of this Stipulation. Kenergy shall not be precluded or estopped from raising any issue, claim, or defense, therein by reason of the execution of this Stipulation.

9. If the Commission accepts and adopts this Stipulation, Kenergy's failure to comply with Paragraph 5 of this Stipulation will constitute failure to comply with a Commission Order and may be subject to civil penalties under KRS 278.990(1) for its failure.

10. Kenergy 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 adopted by the Commission, Kenergy waives its right to a hearing in this matter and will not petition for rehearing or bring an action for review in Franklin Circuit Court.

KENERGY CORP.

By   
JEFF HOHN

Title PRESIDENT and CEO

Date DECEMBER 14, 2016

STAFF OF THE PUBLIC SERVICE COMMISSION

By 

Title Staff Attorney

Date December 15, 2016

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