

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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JUN 30 2017

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COMMISSION

In the Matter of:

Kentucky Power Company)
_____))
Alleged Failure To Comply) Case No. 2017-00196
With KRS 278.042)

**Response Of Kentucky Power Company To
The Commission's May 31, 2017 Order**

The Public Service Commission of Kentucky on May 31, 2017 issued an Order requiring Kentucky Power Company to file a written response to the allegations contained in the November 3, 2015 "Incident Report" involving a contact incident occurring on July 9, 2015 near 39 Donna Court, Flatwoods, Kentucky that resulted in the death of Tony Wayne Craig, Jr. Kentucky Power states for its response:

1. Kentucky Power admits the information contained on page one of the Incident Report *above* the section labeled "Description," with the following exceptions:
 - (a) Kentucky Power states that Mr. Bell's work address is Ashland Service Center, 12333 Kevin Avenue, Ashland, Kentucky;
 - (b) Kentucky Power states that its current corporate offices are located at 855 Central Avenue, Suite 200, Ashland, Kentucky; and

(c) Kentucky Power states upon information and belief the contact incident occurred at approximately 2:10 p.m. on July 9, 2015.

2. Kentucky Power admits the information contained in the “Description” section of the Incident Report is accurate with the following exception: Kentucky Power denies upon information and belief that Mr. Craig was “climbing the tree ... when the incident occurred.”

3. Kentucky Power further states that the information contained in the “Description” section of the Incident Report is incomplete. In particular, Kentucky Power states:

(a) Upon information and belief Kentucky Power states that Personal Protective Equipment was available to Mr. Craig at the work site. Joe Hemlepp, Line Crew Supervisor, Ashland District, Kentucky Power Company, left the site of the subsequent contact incident prior to approximately 1:38 p.m. on July 9, 2015, and thus left the site approximately 30 minutes prior to the contact incident. Mr. Hemlepp did not observe the contact incident. As he was leaving the site on July 9, 2015, Mr. Hemlepp observed a member of the Asplundh Tree Expert Company crew put on his climbing equipment and start to climb a tree.

(b) Prior to leaving the job site Mr. Hemlepp heard the person he saw ascending the tree as Mr. Hemlepp was leaving the job site ask other Asplundh crew members for an insulated pruning pole. Upon information and belief Kentucky Power states that the person Mr. Hemlepp saw ascending the tree and asking for the insulated pruning pole was Mr. Craig.¹ Kentucky Power states

¹ The July 22, 2015 letter from Gregory A. Bell, Region Support Manager, Kentucky Power Company, to Mr. Moore indicated that Mr. Craig ascended the white pine tree at approximately 1:45 p.m. on July 9, 2015.

upon information and belief that if Mr. Craig had used the insulated pruning pole the contact incident would have been avoided.

(c) Prior to leaving the site of the contact incident prior to approximately 1:38 p.m. Mr. Hemlepp observed another Asplundh crew member in an Asplundh backyard bucket machine at the site. Subsequent to the contact incident, Charles Tackett, Field Services Supervisor, Kentucky Power Company; Jason Bradshaw, Utility Forester, Ashland District, Kentucky Power Company; Mike Phelps, General Servicer, Ashland District, Kentucky Power Company; Lloyd Rayburn, Distribution System Supervisor, Ashland District, Kentucky Power Company; and Gregory A. Bell, Region Support Manager, Kentucky Power Company arrived at the site of the contact incident within approximately 60 minutes after the contact incident. Each observed an Asplundh backyard bucket machine at the site. Upon information and belief, Kentucky Power states that had the pruning work been performed using the available backyard bucket machine the contact incident would have been avoided;

(d) No Kentucky Power employees were present at the work site or observed the work site within the approximate 30 minute period immediately preceding the contact incident. No Kentucky Power employees were present at the site of the contact incident, or observing the site, at the time Mr. Craig was sawing the limb that came into contact with the 7.2 kV circuit, or at the time of the contact incident.

Subsequent review of electronic records available to Kentucky Power indicate that Mr. Hemlepp left the site prior to 1:38 p.m. and thus Mr. Hemlepp saw the person believed to be Mr. Craig ascend the tree prior to 1:38 p.m.

(e) The witness report provided by Dalton Terry, Foreman, Asplundh Tree Expert Company, indicates that Mr. Terry:

was on the ground below tony [Mr. Craig] watching him trim tree. I instructed him to not cut it where he was going to but to reach out on it and pull the limb up. I then seen tony make a cut and then swing out and grab the limb and swing back to the tree but on his way back to the base of the tree he pulled the limb into the primary line of single phase.

Multiple similar statements regarding Mr. Craig's failure to observe Mr. Terry's directions were made by Mr. Terry in the presence of Jason Bradshaw, Utility Forester, Ashland District, Kentucky Power Company on July 9, 2015, as well as subsequent to that date. Upon such information and belief, Kentucky Power states that the contact incident occurred as a result of Mr. Craig's failure to observe the instructions of the Asplundh employee charged with observing and superintending his work.

(f) Upon information and belief, Kentucky Power states Mr. Craig was outside of the Minimum Approach Distance at the time of the contact incident. Further, investigation following the incident revealed that the cut made by Mr. Craig on the branch that came into contact with the primary line was outside the Minimum Approach Distance. Kentucky Power further states upon information and belief that Mr. Craig was using the required Personal Protective Equipment to perform the work he was performing at the time of the contact incident so long as he did not encroach upon the Minimum Approach Distance.

(g) Upon information and belief, and in the alternative, Kentucky Power states that Mr. Craig's failure to use a non-conductive tool in cutting the branch that

encroached upon the Minimum Approach Distance violated his employer's rule requiring the use of such tools if it is necessary to encroach upon the Minimum Approach Distance when distribution facilities remain energized. *See*, 29 CFR 1910.269(r)(1)(v).

(h) Kentucky Power's distribution system equipment was properly sized and functioning at the time of the contact incident. Inspection following the incident revealed that an appropriately-sized 30T fuse link had been installed at Pole # 39831123B00355 located approximately 565 feet ahead of the point of contact. The electronic recloser located at Pole # 39831009B26927, located approximately 11,300 feet "upstream" of the line fuse, was found upon inspection following the incident to have been correctly programmed (500 amps on the phase and 425 amps on the ground).

(i) Asplundh possessed the ability under its agreement with Kentucky Power to request that a line be de-energized whenever in the opinion of Asplundh employees the line should be de-energized to permit Asplundh employees to perform their work safely. No such request was made in connection with the work being performed by Mr. Craig on July 9, 2015 that resulted in the contact incident.

(j) Upon information and belief, Kentucky Power states that the work being performed by Mr. Craig at the time of the contact incident could have been performed safely without de-energizing the primary line indirectly contacted by Mr. Craig.

(k) The Asplundh “Single-Day – Job Briefing” sheet indicates that Mr. Craig was assigned to “spotting” duty and that Messrs. Dalton and Coburn were assigned to perform trimming. Upon information and belief, Kentucky Power states that an additional job briefing was not undertaken prior to Mr. Craig being shifted from “spotting” duty to trimming. *See*, 29 CFR 1926.952(c)(2).

(l) All of Kentucky Power’s actions and equipment met all safety and code requirements, including the Occupational Safety and Health Act, National Electrical Safety Code, and American National Standards Institute rules.

4. Kentucky Power admits the information contained in the “Discussion” Section of the Incident Report.

5. Based upon information and belief, Kentucky Power admits the first sentence of the “Conclusion” Section of the Incident Report. Based upon information and belief, and in response to the second sentence of the “Conclusion” Section of the Incident Report, Kentucky Power further admits that Mr. Craig was not wearing the Personal Protective Equipment required by Section 44, Rule 441 (A)(1)(b), of the 2012 National Electrical Safety Code if Mr. Craig directly or indirectly encroached upon the Minimum Approach Distance. With respect to the third sentence of the “Conclusion” Section of the report, Kentucky Power admits that Section 44, Rule 441 (A)(1), of the 2012 National Electrical Safety Code provides as quoted in the sentence. With respect to the remaining allegations of the “Conclusion” Section of the Incident Report, Kentucky Power denies that it knowingly permitted Mr. Craig to “approach (within the reach or extended reach) ... any exposed ungrounded part normally energized ...” as prohibited by Rule 441, or that Kentucky Power otherwise violated Section 44, Rule 441 (A)(1).

6. Kentucky Power admits the information contained in the “Comments” Section of the Incident Report, except that Attachment B, Region 443 Safety Action Plan referenced in the Comments” Section of the Incident Report did not appear to be included as part of Attachment B as indicated .

7. Kentucky Power admits that Attachment A, Attachment B, and Attachment C comprise a portion of the materials provided to Commission Staff during the investigation of the July 9, 2015 incident at the request of staff and that the attached copies are authentic. Certain information contained in Attachment A, Attachment B, and Attachment C was provided to the Company by Asplundh and Kentucky Power has not verified all statements contained in the attachments or information provided by Asplundh.

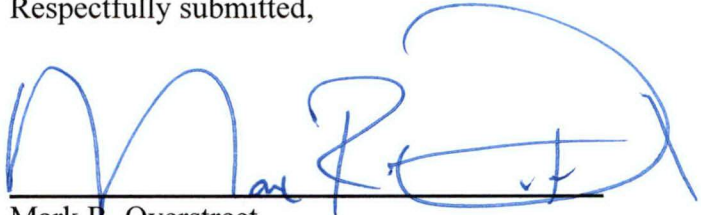
8. Kentucky Power denies it violated KRS 278.042 or the Section 44, Rule 441 (A)(1), of the 2012 edition of the National Electrical Safety Code.

9. Kentucky Power states that it lacked the ability to foresee or otherwise prevent the actions, or failures to act, if any, by Mr. Craig, Asplundh Tree Expert Company, and its employees, or agents, alleged to have resulted in the contact incident.

10. Kentucky Power states that to the extent the actions or failures to act by Mr. Craig, Asplundh Tree Expert Company, or its employees and agents, are deemed the actions or failures to act of Kentucky Power for purposes of KRS 278.990(1), and such actions or failures to act by Mr. Craig, Asplundh Tree Expert Company, or its employees and agents are determined to be violations of the National Electric Safety Code or KRS 278.042 that proximately resulted in the contact incident, Kentucky Power’s alleged violation of the National Electric Safety Code or KRS 278.042 was not willful.

Wherefore, Kentucky Power Company respectfully requests that the Show Cause order and this case be dismissed, and that the Company be accorded all relief to which it may be entitled.

Respectfully submitted,



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