

MATHIS, RIGGS & PRATHER, P.S.C.
ATTORNEYS AT LAW
500 MAIN STREET, SUITE 5
SHELBYVILLE, KENTUCKY 40065

C. LEWIS MATHIS, JR.
T. SHERMAN RIGGS
DONALD T. PRATHER
NATHAN T. RIGGS

TELEPHONE: (502) 633-5220
FAX: (502) 633-0667

E-MAIL: mrp@iglou.com

July 5, 2006

Beth O'Donnell, Executive Director
Public Service Commission
211 Sower Blvd
P.O. Box 615
Frankfort, KY 40602

RECEIVED

JUL 6 2006

PUBLIC SERVICE
COMMISSION

Re: Shelby Energy Cooperative, Inc. -
Failure to Comply with KRS 278.042

Case No. 2006-00098

Dear Ms. O'Donnell:

Enclosed please find one original and ten (10) copies, plus an extra first page only, of the Shelby Energy Cooperative, Inc.'s Response to Commission Staff's Order dated June 8, 2006.

Please file the original and ten copies of each Motion with the Commission and return to me the file-stamped first page copy. For your convenience I have enclosed a self-addressed stamped envelope.

Yours truly,

MATHIS, RIGGS & PRATHER, P.S.C.

BY: 
Donald T. Prather

DTP/pm
Enclosures
Cc: Dudley Bottom, Jr.

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUL 6 2006

PUBLIC SERVICE
COMMISSION

In the Matter of:

Shelby Energy Cooperative, Inc.

Failure to Comply with KRS 278.042

CASE NO. 2006-00098

**SHELBY ENERGY COOPERATIVE, INC.'S RESPONSE TO
COMMISSION STAFF'S ORDER DATED JUNE 8, 2006**

Comes Shelby Energy Cooperative, Inc. ("Shelby Energy"), by counsel, and for its Response to the Commission Staff's Order dated June 8, 2006 states as follows:

1. NESC, § 42, Rule 420.C.4 was not violated in the instant situation. The employees of Dobson Power Line Construction, Inc. ("Dobson") considered all of the effects of their actions as shown by the fact they honestly believed they had de-energized the line. They knew their actions did not comply with NESC, § 44, Rule 441.A.1.a, but made the conscious decision to proceed anyway. Considering the effects of their actions includes the conscious decision to take a chance, even though that is an ill-advised and deadly decision.

2. NESC, § 42, Rule 420.D was not violated because the Dobson employees positively knew in their minds the line to be de-energized. Preliminary inspections or tests to determine existing conditions were not necessary because they honestly were convinced the line was de-energized. They knew the operating voltages of the equipment and lines.

3. NESC, § 42, Rule 420.H was not violated because the Dobson employees had made the decision to de-energize the line which would render the use of personal protective equipment unnecessary under the NESC. There is no evidence that the personal protective equipment, protective devices, and special tools were not carefully inspected to make sure they were in good condition.

4. NESC, § 42, Rule 422.C.5 was not violated. The Dobson employees made the choice, as allowed by NESC, § 44, Rule 441.A.1, to de-energize (and ground) the line in question. If they had correctly implemented that choice, the voltage of the subject power line would not have been higher than guarded against by the safety appliances (the grounds).

5. The Dobson employees violated NESC, § 44, Rule 441.A.1.a because they did not ground the line in question.

6. NESC, § 44, Rule 444.D was violated because the Dobson employee Greg Mayes did not proceed to make his own protective grounds or verify that adequate grounds had been applied on the disconnected line. This violation overlaps the preceding violation (PSC Item No 5).

7. NESC, § 44, Rule 444.E.1 was violated because Dobson employee Greg Mayes proceeded with work on the alleged de-energized line without grounding the line. This violation overlaps the preceding two violations (PSC Item Nos. 5 and 6).

8. NESC, § 44, Rule 445.A.3 was violated because Dobson employee Greg Mayes did not test the line for voltage. Since he did not attempt to test the lines for voltage, the portion of the rule requiring him to keep every part of his body at the required distance by using insulated handles of proper length or other suitable devices during testing is not applicable.

In short, since the Dobson employees thought they had de-energized the line, they should have tested for voltage as required by NESC, § 44, Rule 445.A.3, and assuming that test to be negative, they should have grounded the line as required by NESC, § 44, Rules 441.A.1.a, 444.D, and 444.E.1, prior to approaching the line without personal protective devices. Although several NESC rules are

involved, under the choice of action taken by the Dobson employees, namely to de-energize the line, the NESC was violated twice: first by the failure to test and second by the failure to ground. If the Commission's purpose is to modify behavior, this situation should be addressed in terms of those two violations rather than multiple citations under various overlapping NESC rules. Summing up the violation of the NESC by the Dobson employees in a clear and concise manner limited to the actual errors they made has the greatest likelihood of modifying future behavior.

Dobson's experience modification factor for workers' compensation purposes was 0.72 prior to the accident, which is a very favorable rating indicating Dobson had previously operated in a very safe manner. Shelby Energy evaluated the bidders for contract construction considering safety and this experience modification factor. In addition, numerous field safety audits of this contractor were performed as noted in Appendix A (Contractor Job Site Visit Report).

WHEREFORE, Shelby Energy respectfully requests that any fines levied in this matter be limited to two violations: first the failure to test the line as required by NESC, § 44, Rule 445.A.3, and the second failure to properly ground the line as required by NESC, § 44, Rules

441.A.1.a, 444.D, and 444.E.1. Shelby Energy further requests that Dobson's favorable experience modification factor on his workers' compensation factor and Shelby Energy's field safety audits be considered in the amount of any fines.

Respectfully submitted,

Mathis, Riggs & Prather, P.S.C.

By:  _____

Donald T. Prather
500 Main Street, PO Box 1059
Shelbyville, Kentucky 40066-1059
Phone: (502) 633-5220
Fax: (502) 633-0667
Attorney for Shelby Energy
Cooperative, Inc.



MATHIS, RIGGS & PRATHER, P.S.C.

ATTORNEYS AT LAW
600 MAIN STREET - SUITE 3
SHARPSVILLE KENTUCKY 40085-1147

Beth O'Donnell, Executive Director
Public Service Commission
211 Sower Blvd
P.O. Box 615
Frankfort, KY 40602

RECEIVED
JUL 6 2006
PUBLIC SERVICE
COMMISSION

