

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENERGY CORP.)	
_____)	CASE NO. 2008-00164
)	
ALLEGED FAILURE TO COMPLY)	
WITH KRS 278.042)	

O R D E R

On May 22, 2008, the Commission directed Kenergy Corp. (“Kenergy”) to show cause why it should not be subject to the penalties provided under KRS 278.990(1) for a probable violation of KRS 278.042, which requires an electric utility to construct and maintain its plant and facilities in accordance with accepted engineering practices as set forth in the most recent edition of the National Electrical Safety Code (“NESC”).¹

The Commission’s action arose from a March 1, 2008 incident near Hill Bridge Road in Utica, Kentucky. On that day, Jason Koger was operating an all-terrain vehicle (“ATV”) with teenage passengers on property known as Beanland Farms. He came across a sagging single-phase line, raised the neutral conductor, and drove his ATV under it. He then proceeded to drive to Travis Hayden’s house to report the sagging wire. Mr. Hayden is the reported owner of the farm property. Mr. Hayden, operating his own ATV, accompanied Mr. Koger to the site. When they approached the low-hanging

¹ The most recent edition of the NESC was published by the Institute of Electrical and Electronics Engineering, Inc. in 2007.

wires, Mr. Koger touched the bottom neutral conductor with his left hand and the top energized phase conductor with his right hand. Mr. Koger's actions caused the tap line fuse protecting the tap line to blow, resulting in severe burns to his hands and lower arms.

Kenergy employees arrived at the site shortly after the incident occurred and photographed the site. They measured the ground clearance of the neutral conductor at 43 inches and the phase conductor at 86 inches. In accordance with 807 KAR 5:006, Section 26, Kenergy reported the incident to the Commission.

Commission Staff investigated the incident. On April 4, 2008, it issued an Incident Investigation Report in which it alleged that the neutral and phase conductors failed to comply with NESC Section 232-1-B-1, which provides that "[t]he vertical clearance of wires, conductors, and cables above ground on cultivated land traversed by vehicles shall not be less than 15.5 feet for a neutral conductor and 18.5 feet for a primary conductor."

In its response to the Commission's Order of May 22, 2008, Kenergy admitted that the ground clearances of the neutral and phase conductors at the time of the accident did not meet the standards of NESC Section 232-B-1 but maintained that no willful violation of NESC standards had occurred.

In support of its position, Kenergy relies upon NESC Section 230-I, which provides that the clearance requirements were not intended to be maintained as a result of an abnormal weather event. For Kentucky, the NESC classifies an ice accumulation in excess of one-fourth inch to be an abnormal weather event. Kenergy noted that Western Kentucky experienced two ice storms in February 2008. The first ice storm

occurred on February 11 and 12, producing accumulations of one inch. The second occurred on February 21, producing up to one-half inch of ice. Kenergy noted that it continued to clean up storm-related problems through the first week of March 2008. Kenergy asserts that the weight of the ice accumulations was the most probable cause of the sagging lines. It further asserts that the ice storms were weather events well in excess of the NESC minimum requirement criteria and triggered the applicability of NESC Section 230.I.

Following Kenergy's response, Kenergy and Commission Staff engaged in discussions to resolve the issues arising out of the March 1, 2008 incident. As a result of these discussions, Kenergy and Commission Staff entered into a Stipulation of Facts and Settlement Agreement ("Stipulation") on December 17, 2008. In the Stipulation, Kenergy agrees with the statement of facts contained in Commission Staff's Incident Investigation Report and further agrees to revisions to its facility inspection procedures and to undertake annual analyses of its inspection results to ascertain the existence of systemic problems. Kenergy has submitted the Stipulation to the Commission for our approval.

Determining whether the terms of the Stipulation are in the public interest and are reasonable, the Commission has taken into consideration the comprehensive nature of the Stipulation and Kenergy's willingness to revise its safety inspection procedures and cooperation to achieve a resolution of this proceeding. Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that the Stipulation is in accordance with the law, does not violate any regulatory principle, is in the public

interest, results in a reasonable resolution of all issues in this case, and should be approved.

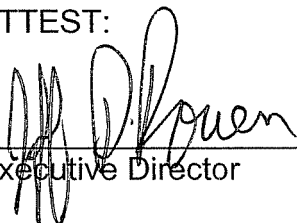
IT IS THEREFORE ORDERED that:

1. The Stipulation is approved.
2. The terms and conditions set forth in the Stipulation, appended hereto, are incorporated into this Order as if fully set forth herein.
3. This case shall be closed and removed from the Commission's docket.

Done at Frankfort, Kentucky, this 12th day of February, 2009.

By the Commission

ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2008-00164 DATED FEBRUARY 12, 2009

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENERGY CORP.)
_____)) CASE NO. 2008-00164
)
ALLEGED FAILURE TO COMPLY)
WITH KRS 278.042)

STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

By Order dated May 22, 2008, the Commission initiated this proceeding to determine whether Kenergy Corp. ("Kenergy") should be subject to the penalties prescribed in KRS 278.990 for an alleged violation of KRS 278.042, which requires an electric utility to construct and maintain its plant and facilities in accordance with the most recent edition of the National Electrical Safety Code ("NESC"). The alleged violation cited by the Commission's May 22, 2008 Order is as follows:

NESC Section 232-B-1: The vertical clearance of wires, conductors, and cables above ground on cultivated land traversed by vehicles shall not be less than 15.5 feet for a neutral conductor and 18.5 feet for a primary conductor.

The alleged violation arose from a March 1, 2008 accident near Hill Bridge Road in Utica, Kentucky. Jason Koger, a nearby resident, sustained severe burns to his lower arms and hands after making contact with low-hanging wires.

On June 10, 2008, Kenergy filed a response to the Commission's May 22, 2008 Order. Kenergy's response denied the NESC violation cited by the Commission. At the same time it filed its response, Kenergy filed a motion requesting an informal

conference. An informal conference was subsequently held at the Commission's offices on August 1, 2008.

Discussions during the informal conference between Kenergy and Commission Staff resulted in the following Stipulation of Facts and Settlement Agreement ("Stipulation") which is submitted for the Commission's consideration in rendering its decision:

1. Kenergy agrees that the Commission Staff's Incident Investigation Report ("Report"), Appendix A to the Commission's May 22, 2008 Order, accurately describes and sets forth material facts and circumstances surrounding the incident.

2. Kenergy agrees to the following in connection with future line inspections under 807 KAR 5:006, Section 25(4)(d):

a. During the course of line inspections, which include the inspection of insulators, conductors and supporting facilities, a notation will be made to document the reason, if known, concerning the replacement of any equipment.

b. Causes for replacement of equipment will be analyzed at least annually to determine if there is a probability of a systemic problem with design, material or construction. If a systemic problem is discovered, Kenergy shall take appropriate follow-up action to remedy the problem.

3. The scope of this proceeding is limited by the Commission's May 22, 2008 Order to whether Kenergy should be assessed penalties under KRS 278.990 for willful violations of the NESC rules as made applicable under KRS 278.042. No agreement contained in this Stipulation shall be construed as an admission by Kenergy of a violation, willful or otherwise, of any Commission regulation or NESC rule, nor shall it be

construed as an admission by Kenergy of any liability in any legal proceeding or lawsuit arising out of the facts set forth in the Report, nor shall the Commission's acceptance of this Stipulation be construed as a finding of a violation, willful or otherwise, of any Commission regulation or NESC rule.

4. In the event that the Commission does not accept this Stipulation in its entirety, Kenergy and Commission Staff reserve their rights to withdraw therefrom and require that a hearing be held on any and all issues involved herein, and that none of the provisions contained herein shall be binding upon the parties thereto, used as an admission by Kenergy of any liability in any legal proceeding or lawsuit arising out of the facts set forth in the Report, or otherwise used as an admission by either party.

5. This Stipulation is for use only in Commission Case No. 2008-00164, and neither party hereto 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 Kenergy's service, and Kenergy shall not be precluded or estopped from raising any issue, claim, or defense therein by reason of the execution of this Stipulation.

6. Kenergy and Commission Staff agree that the foregoing Stipulation is reasonable for the purpose of resolving all issues in Commission Case No. 2008-00164, is in the public interest, and should be adopted in its entirety by the Commission. If so adopted by the Commission, Kenergy agrees to waive its right to a hearing and will not file any petition for rehearing or seek judicial appeal.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their signatures this 17th day of December, 2008.

Kenergy Corp.

By: Sanford Novick

Title President and CEO

Staff of the Kentucky Public Service Commission

By: Quang D. Nguyen
Quang Nguyen, Counsel for the Staff

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