

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DUKE ENERGY KENTUCKY, INC.)	
_____)	
ALLEGED FAILURE TO COMPLY WITH)	CASE NO.
KRS 278.042)	2010-00248
)	

O R D E R

By Order dated July 16, 2010, the Commission directed Duke Energy Kentucky, Inc. ("Duke") to show cause why it should not be subject to the penalties provided under KRS 278.990 for violations 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"), which is the 2007 edition. The alleged violation cited in the Commission's July 16, 2010 Order is as follows:

1. NESC Section 23, Rule 232.B.1: Service Adequacy and Safety Standards--Clearances. The vertical clearance of wires, conductors, and cables above ground in generally accessible places, roadway, rail, or water surfaces, shall be not less than that shown in Table 232-1.

The violation cited in the Commission's July 16, 2010 Order arose from a July 27, 2009 incident on Showplace Landscaping ("Showplace") property in Crittenden, Kentucky, wherein Kenneth Tyler Cummins, an employee of Showplace, sustained fatal injuries when contact was made with a Duke 7,200-volt distribution line.

On August 6, 2010, Duke submitted an answer to the Commission's show cause Order and a request for an informal conference. The informal conference was held at

the Commission's offices on August 27, 2010. The discussions at the informal conference led to the filing of a Joint Stipulation of Facts and Settlement Agreement (collectively referred to as "Settlement Agreement"). The Settlement Agreement, attached hereto as the Appendix and incorporated herein by reference, sets forth Duke's agreement with the statement of facts contained in the Commission Staff's Electric Utility Personal Injury Accident Report ("Report") dated March 24, 2010. The Report was appended to the Commission's July 16, 2010 show cause Order. The Settlement Agreement also discusses the remedial actions to be taken by Duke and a civil penalty in the amount of \$2,500.00 that Duke will pay in full satisfaction of this proceeding.

In determining whether the terms of the Settlement Agreement are in the public interest and are reasonable, the Commission has taken into consideration the comprehensive nature of the Settlement Agreement, Duke's willingness to implement a points-of-interest inspection, and Duke's cooperation in achieving a resolution of this proceeding.

Based on the evidence of the record and being otherwise sufficiently advised, the Commission finds that the Settlement Agreement is in accordance with the law and does not violate any regulatory principle. The Settlement Agreement is a product of arm's-length negotiations among capable, knowledgeable parties, is in the public interest, and results in a reasonable resolution of all issues in this case.

IT IS THEREFORE ORDERED that:

1. The Joint Stipulation of Facts and Settlement Agreement is adopted and approved in its entirety as a complete resolution of all issues in this case.

2. Duke shall pay \$2,500.00 as a civil penalty within 30 days of the date of this Order by cashier's check or money order payable to the Kentucky State Treasurer and mailed or delivered to the Office of General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

3. Beginning with the first full calendar month following the date of entry of this Order, Duke, as part of its current line inspection protocols, shall implement a heightened scrutiny for ground clearances on all medium-voltage conductors (1,000 to 35,000 volts) within its service territory. The purpose of this heightened scrutiny will be to identify any points of interest where ground clearances for medium-voltage conductors appear less than what is listed as a minimum clearance tolerance in the 2007 NESC. The company's line inspectors will identify these points of interest for further analysis by the company's engineering department. Duke's engineers shall evaluate the points of interest, taking into consideration any changes in land use, to determine if the installation complies with the version of the NESC (Applicable Version) in effect at the time the installation was originally constructed or last improved. If a clearance is determined not to be in compliance with the Applicable Version, the company shall take immediate corrective action. The company shall have two years to perform the described inspection.

4. Upon the completion of the inspection noted in ordering paragraph 3 above, Duke shall submit a report to the Commission identifying all points of interests that were corrected during this investigation. The company shall also identify any corrective actions that have not been completed by the time of submission of the report. The company shall describe the status of the corrective actions and estimated timeline

for completion of the remaining corrective actions. Duke shall submit this report no later than March 31, 2013, and it shall be placed in Duke's general correspondence file at the Commission. In the event the company has not completed all corrective actions at the time of submitting its March 31, 2013 report, the company shall submit a supplemental report within 30 days of completion of all outstanding corrective actions.

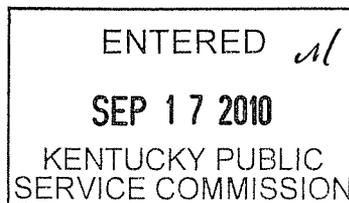
5. Duke shall provide the findings of the ongoing and completed inspection to Commission inspectors upon request and during the inspectors' periodic inspections.

6. The hearing scheduled for September 21, 2010 is canceled.

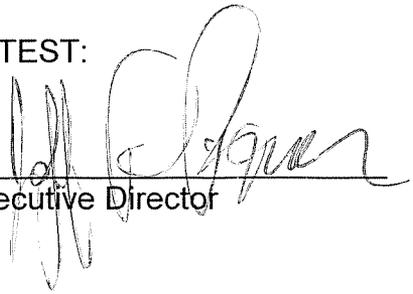
7. Upon payment of the \$2,500.00 civil penalty, this case shall be closed and removed from the Commission's docket without further Order of the Commission.

8. Any documents filed in the future pursuant to ordering paragraphs 3 and 4 herein shall reference this case number and shall be retained in the utility's general correspondence file.

By the Commission



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2010-00248 DATED **SEP 17 2010**

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

SEP 10 2010

PUBLIC SERVICE
COMMISSION

In the Matter of:

DUKE ENERGY KENTUCKY, INC)
_____)) CASE NO. 2010-00248
)
ALLEGED FAILURE TO COMPLY)
WITH KRS 278.042)

STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

This agreement is formally known as a Stipulation of Facts and Settlement Agreement ("Settlement Agreement"). The parties to this Settlement Agreement are Duke Energy Kentucky, Inc. ("Duke") and Staff of the Kentucky Public Service Commission ("Commission Staff"). It is the intent and purpose of the parties hereto to express their agreement on a mutually satisfactory resolution of all of the issues in the proceeding.

It is understood by the parties that this Settlement Agreement is not binding upon the Public Service Commission ("Commission"). The Commission must independently approve and adopt this Settlement Agreement before this matter can be deemed concluded and removed from the Commission's docket. The parties have expended considerable efforts to reach a stipulation as to the facts of this matter, as well as in developing a proposal for settlement. Duke and Commission Staff agree that this Settlement Agreement, viewed in its entirety, constitutes a reasonable resolution of all issues in this proceeding.

In addition, the adoption of this Settlement Agreement will eliminate the need for the Commission, Commission Staff, and Duke to expend significant resources in litigating this proceeding and will eliminate the possibility of, and any need for, rehearing or appeals of the Commission's final Order.

FACTS

Duke and the Commission Staff submit this stipulation of facts for the Commission's consideration in rendering a decision in this proceeding. Commission Staff developed and submitted to the Commission an Electric Utility Personal Injury Accident Report ("Report") on this matter dated March 24, 2010. The Report describes an incident which occurred on July 27, 2009, at Showplace Landscaping, in Crittenden, Kentucky, in which Kenneth Tyler Cummins, an employee of Showplace Landscaping ("Showplace"), was fatally injured when a dump truck made contact with a Duke 7200 volt distribution line. Duke and Commission Staff agree that the Report fairly and accurately describes the events which occurred on the day of the July 27, 2009 incident.

According to the Report, Mr. Cummins and another Showplace employee, Brandon Harris were working at Showplace unloading the dump truck behind the topsoil bed. Mr. Harris was driving the truck and Mr. Cummins was driving a bobcat. Mr. Cummins got off the bobcat and walked over to the truck and motioned Mr. Harris to move forward a little. When Mr. Harris pulled forward with the bed of the truck extended, the top of the truck bed made contact with the 7200 volt distribution line. Mr. Harris jumped from the truck, and saw Mr. Cummins lying on the ground behind the truck. The Grant County Sheriff's report indicates that it appeared Mr. Cummins fell and

hit his shoulder against the energized truck. Mr. Cummins was pronounced dead at the scene.

Show Cause Order

By a Show Cause Order dated, July 16, 2010, the Commission initiated this proceeding to determine whether Duke should be subject to the penalties prescribed in KRS 278.990 for a probable violation of KRS 278.042, which requires an electric utility to construct and maintain its plant and facilities in accordance with the 2007 edition of the NESC. The alleged violation cited in the Commission's July 16, 2010, Order is as follows:

1. NESC Section 23, Rule 232.B.1: Service Adequacy and Safety Standards--Clearances. The vertical clearance of wires, conductors, and cables above ground in generally accessible places, roadway, rail, or water surfaces, shall be not less than that shown in Table 232-1.

On August 6, 2010, Duke filed a response to the Commission's July 16, 2010, Order. In its response, Duke denied that it was in violation of either KRS 278.042 or 807 KAR 5:006, Section 24(1), because, it claimed, the clearances set forth in the 2007 version of the NESC are not applicable to the line in question.

Pursuant to a request by Duke, an informal conference was scheduled in this matter for August 27, 2010, at the Commission's Frankfort offices. Representatives of Duke, were in attendance, as were Commission Staff.

During the informal conference representatives of Duke Energy Kentucky confirmed that repairs had been made to the line in question.

SETTLEMENT AGREEMENT

As a result of discussions held during the informal conference, Duke and the Commission Staff submit the following settlement agreement for the Commission's consideration in rendering its decision in this proceeding:

1. Duke agrees that the Commission Staff's Electric Utility Personal Injury Accident Report, Appendix A to the Commission's July 16, 2010, Order in this matter, accurately describes and sets forth the material facts and circumstances surrounding the July 27, 2009 incident.
2. Duke agrees to pay a civil penalty in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500), within 30 days from the date of this order, in full settlement of this proceeding.
3. The scope of this proceeding is limited by the Commission's July 16, 2010 Show Cause Order on whether Duke should be assessed penalties under KRS 278.990 for a willful violation of the NESC rules as made applicable under KRS 278.042, and the adequacy, safety, and reasonableness of its practices related to the construction, installation and repair of electric facilities and whether such practices require revision. Neither the payment of the civil penalty, nor any other agreement contained in this Settlement Agreement, shall be construed as an admission by Duke of any liability in any legal proceeding or lawsuit arising out of the facts set forth in the Electric Utility Personal Injury Accident Report or the Electric Utility Inspection Report, nor shall the Commission's acceptance of this Settlement Agreement be construed as a finding of a willful violation of any Commission regulation or NESC rule.
4. Beginning with the first full calendar month following the date of entry of the Order approving this Settlement Agreement, Duke, as part of its current line inspection protocols, shall implement a heightened scrutiny for ground clearances on all medium voltage conductors within its service territory.¹The purpose of this heightened scrutiny will be to identify any points of interest where ground clearances for medium voltage conductors appear less than what is listed as a minimum clearance tolerance of the 2007 NESC. The Company's line inspectors will identify these points of interest for further analysis by the Company's engineering department. Duke Energy Kentucky's engineers shall evaluate the points of interest, taking into consideration any changes in land use, to determine if the installation complies with the version of the NESC (Applicable Version) in effect at the time the installation was originally constructed or last improved. If a clearance is determined to be not in compliance with the Applicable Version the Company shall take immediate corrective action. The Company shall have two years to perform the described inspection..

¹ Medium voltage conductors include all conductors from 1,000 to 35,000 volts.

5. Upon the completion of the inspection noted in Paragraph 4 above, Duke shall submit a report with the Commission identifying all points of interests that were corrected during this investigation. The Company shall also identify if any corrective actions have not been completed by the time of the report submission. The Company shall describe the status of the corrective actions and estimated time line for completion of the remaining corrective actions. Duke shall submit this report no later than March 31, 2013, and it shall be placed in Duke's general correspondence file at the Commission. In the event the Company has not completed all corrective actions at the time of submitting its March 31, 2013 report, the Company shall submit a supplemental report within thirty days of completion of all outstanding corrective actions.

6. Duke shall provide the findings of the ongoing and completed inspection to Commission inspectors upon request and during the inspectors' periodic inspections.

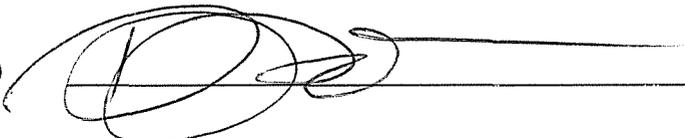
7. In the event that the Commission does not accept this Settlement Agreement in its entirety, Duke and Commission Staff reserve their rights to withdraw from it and require that a hearing be held on any and all issues involved and that none of the provisions contained within this Settlement Agreement shall be binding upon the parties, used as an admission by Duke of any liability in any legal proceeding, administrative proceeding or lawsuit arising out of the facts set forth in the Accident Report and the Inspection Report or otherwise used as an admission by either party.

9. This Settlement Agreement is for use in Commission Case No. 2010-00248, and no party to this matter shall be bound by any part of this Settlement Agreement in any other proceeding, except that this Settlement Agreement may be used in any proceedings by the Commission to enforce the terms of this Settlement Agreement or to conduct a further investigation of Duke's service. Duke shall not be precluded or estopped from raising any issue, claim or defense therein by reason of the execution of this Settlement Agreement.

10. Duke and Commission Staff agree that this Settlement Agreement is reasonable, is in the public interest, and should be adopted in its entirety by the Commission. If adopted by the Commission, Duke agrees to waive its right to a hearing and will not file any petition for rehearing or seek judicial appeal.

DUKE ENERGY KENTUCKY, INC

By: (print name) Rocco O. D'Ascenzo

By: (sign name) 

Title: Senior Counsel

Date: 9/9/10

STAFF OF THE KENTUCKY PUBLIC SERVICE COMMISSION

By: (print name) L. Allyson Honaker

By: (sign name) 

Title: Staff Attorney

Date: 9/13/10

Rocco D'Ascenzo
Senior Counsel
Duke Energy Kentucky, Inc.
139 East 4th Street, R. 25 At II
P. O. Box 960
Cincinnati, OH 45201