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David L. Armstrong  
Chairman

James W. Gardner  
Vice Chairman

December 14, 2011

Mr. Jeff Derouen  
Executive Director  
Public Service Commission  
P.O. Box 615  
Frankfort, KY 40602

Re: South Kentucky R.E.C.C.  
Case No. 2011-00404

Dear Mr. Derouen:

Attached hereto is the Stipulation of Facts and Settlement Agreement entered into by South Kentucky R.E.C.C. and Staff. Please bring this document to the Commission's attention for its review and consideration.

Sincerely,

A handwritten signature in black ink that reads "L. Allyson Honaker".

L. Allyson Honaker  
Staff Attorney III

Enclosure

cc: Darrell L. Saunders

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

DEC 14 2011

PUBLIC SERVICE  
COMMISSION

In the Matter of:

SOUTH KENTUCKY R.E.C.C. )

\_\_\_\_\_  
ALLEGED FAILURE TO COMPLY )  
WITH KRS 278.042 )

CASE NO. 2011-00404

**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 South Kentucky R.E.C.C. ("South Kentucky") 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. South Kentucky 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 South Kentucky 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**

South Kentucky and the Commission Staff submit this stipulation of facts for the Commission's consideration. Commission Staff developed and submitted to the Commission an Incident Investigation-Staff Report ("Report") on this matter signed and dated June 30, 2011. The Report describes an incident which occurred on June 16, 2011, in Burnside, Kentucky, in which Franklin Reed, a contractor installing a pitched metal roof for the homeowner, Eddie Cleary, was injured when he was attaching the Cable TV cable to the South Kentucky neutral conductor.

According to the Report, on the day of the incident the victim was installing a new pitched metal roof over an existing flat metal roof on a mobile home. Mr. Reed was attempting to increase the clearance of the Cable TV cable over the mobile home by attaching the Cable TV cable to the South Kentucky neutral conductor. Mr. Reed was standing on the existing metal roof when the South Kentucky neutral conductor came into contact with the South Kentucky energized primary conductor and momentarily energized the neutral conductor and possibly the Cable TV cable. It appears Mr. Reed was in contact with the neutral conductor and the metal roof when it became energized. Mr. Reed was transported to the local hospital and then taken to University of Kentucky Burn Center in Lexington, Kentucky. Mr. Reed was released from the hospital on June

16, 2011. He was reported to have burns to his left hand and his little toe on his left foot.

South Kentucky and Commission Staff agree that the Report fairly and accurately describes events which occurred on the day of the June 16, 2011 incident.

### SHOW CAUSE ORDER

By a Show Cause Order dated, October 18, 2011, the Commission initiated this proceeding to determine whether South Kentucky should be subject to the penalties prescribed in KRS 278.990 for a probable violation of KRS 278.042, which requires the Commission to ensure that an electric utility constructs and maintains its plant and facilities in accordance with the most current edition of the National Electric Safety Code ("NESC"). The alleged violation cited in the Commission's October 18, 2011, Order is as follows:

1. 1990 NESC Section 23, Rule 234.C.1(a)—Clearance of Wires, Conductors, Cables, and Equipment from Buildings, Bridges, Rail Cars, Swimming Pools, and Other Installations.
  - C. Clearances of Wires, Conductors, Cables, and Rigid Live Parts from Buildings, Signs, Billboards, Chimneys, Radio and Television Antennas, Tanks, and Other Installations except Bridges.
    1. Vertical and Horizontal Clearances
      - a. Clearances.

Unguarded or accessible supply wires, conductors, or cables, or rigid live parts may be located adjacent to buildings, signs, billboards, chimneys, radio and television antennas, tanks, and other installations and any projections therefrom. The vertical and horizontal clearances of such rigid and non-rigid parts shall be not less than the values given in Table 234-1 when at rest under the conditions specified in rule 234A1. Those facilities may be installed beside, over or under buildings, as illustrated in figures 234-1(a) and 234-1(b).

**Table 234-1 Clearance of Wires, Conductors, Cables, and Unguarded Rigid Live Parts Adjacent but Not Attached to Buildings and Other Installations Except Bridges FT**  
 (Voltages are phase to ground for effectively grounded circuits and those other circuits where all ground faults are cleared by promptly de-energizing the faulted section, both initially and following subsequent breaker operations. See the definitions section for voltages of other systems.)

Clearance of	Insulated communication conductors and cables; messengers; surge protection wires; grounded guys; neutral conductors meeting Rule 230E1; supply cables meeting Rule 230C1 (ft)	Unguarded rigid live parts, 0 to 750 V; non-insulated communication conductors; supply cables of 0 to 750 V meeting Rules 230C2 or 230C3 (ft)	Supply cables over 750 V meeting Rules 230C2 or 230C3; open supply conductors, 0 to 750 V (ft)	Open supply conductors, over 750 V to 22 kV (ft)	Unguarded rigid live parts, over 750 V to 22 kV (ft)
1. Buildings					
a. Horizontal					
(1) To walls, projections and guarded windows	4.5 ⑦	5.0	5.5 ①②③④	7.5 ①②③④⑤⑥⑦⑧⑨⑩⑪	7.0
(2) To unguarded windows ③	4.5	6.0	6.5 ①②③④	7.5 ⑩⑪	7.0
(3) To balconies and areas accessible to pedestrians ③	4.5	6.0	6.5 ③	7.5 ⑩⑪	7.0
b. Vertical					
(1) Over or under roofs or projections not accessible to pedestrians ③	3.0	3.5	10.5	12.5	12.0

(2) Over or under balconies and roofs accessible to pedestrians ③	10.5	11.0	11.5	13.5	13.0
(3) Over roofs accessible to vehicles but not subject to truck traffic ⑥	10.5	11.0	11.5	13.5	13.0
(4) Over roofs accessible to truck traffic ⑥	15.5	16.0	16.5	18.5	18.0
2. Signs, chimneys, billboards, radio and television antennas, tanks, and other installations not classified as buildings or bridges					
a. Horizontal ④	3.0	3.5	5.5 ①②③④	7.5 ①②③④⑤⑥⑦⑧⑨⑩⑪	7.0
b. Vertical over or under ④	3.0	3.5	6.0 ①	8.0	7.5

① Where building, sign, chimney, antenna, tank, or other installation does not require maintenance such as painting, washing, changing of sign letters, or other operations which would require persons to work or pass between supply conductors and structure, the clearance may be reduced by 2 ft.

② Where available space will not permit this value, the clearance may be reduced by 2 ft provided the conductors, including splices and taps, have covering which provides sufficient dielectric to prevent a short circuit in case of momentary contact between the conductors and a grounded surface.

③ A roof, balcony, or area is considered accessible to pedestrians if the means of access is through a doorway, ramp, window, stairway, or permanently mounted ladder. A permanently mounted ladder is not considered a means of access if its bottom rung is 8 ft or more from the ground or other permanently installed accessible surface.

④ The required clearances shall be to the closest approach of motorized signs or moving portions of installations covered by Rule 234C.

⑤ This footnote not used in this edition.

⑥ For the purpose of this rule, trucks are defined as any vehicle exceeding 8 ft in height.

⑦ This clearance may be reduced to 3 in for the grounded portions of guys.

⑧ Windows not designed to open may have the clearances permitted for walls and projections.

⑨ This clearance shall be not less than 3.5 ft with the conductor or cable displaced by wind; see Rule 234C1b.

⑩ This clearance shall be not less than 4.5 ft with the conductor displaced by wind; see Rule 234C1b.

⑪ Where available space will not permit this value, the clearance may be reduced to 7.0 ft for conductors limited to 8.7 kV to ground.

On November 9, 2011, South Kentucky filed a response to the Commission's October 18, 2011, Order. On November 10, 2011, South Kentucky requested an informal conference be held in this matter. Pursuant to that request, an informal conference was scheduled in this matter for December 1, 2011, at the Commission's Frankfort offices. Representatives of South Kentucky were in attendance, as were Commission Staff.

During the informal conference representatives of South Kentucky confirmed that they have taken proactive steps to enhance the safety program, and that a heightened emphasis was placed on this type of clearance violation during the inspection process.

### **SETTLEMENT AGREEMENT**

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

1. South Kentucky agrees that the Commission Staff's Incident Investigation – Staff Report, Appendix A to the Commission's October 18, 2011, Order in this matter, accurately describes and sets forth material facts and circumstances surrounding the June 16, 2011, incident.

2. In settlement of this proceeding, South Kentucky agrees for a civil penalty of \$2,500 to be assessed. South Kentucky agrees to pay \$1,500 of the civil penalty within 30 days of the date of the Order approving this settlement. The scope of this proceeding is limited by the Commission's October 18, 2011 Order on whether South Kentucky should be assessed a penalty under KRS 278.990 for willful violations 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 \$1,500 nor any other agreement contained in this Stipulation, shall be construed as an admission by South Kentucky of any liability in this matter, or in any legal proceeding or lawsuit arising out of the facts set forth in the 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.

3. South Kentucky agrees that the remaining amount of the civil penalty, \$1,000, is suspended and shall be imposed upon South Kentucky if it fails to comply with any provision of this Stipulation, or if South Kentucky has a related reportable incident investigated by the PSC during the time the penalty is suspended which results in a similar proceeding being established by the PSC. South Kentucky agrees that such suspended penalty shall become due and payable if South Kentucky does not remedy its failure to comply within 30 days after the Commission has issued written notice to South Kentucky.

4. Within 30 days of the date of entry of the Order approving this Settlement Agreement, South Kentucky shall provide to the Commission documentation on the safety meeting conducted on June 21, 2011, as a result of this incident, including the minutes of that meeting and who attended and the email containing the dates district meetings were conducted between the date of the incident and June 30, 2011.

5. Within 30 days of the date of entry of the Order approving this Settlement Agreement, South Kentucky shall provide to the Commission minutes from its August 25, 2010, hazardous recognition training and the power point presentation from its

December 5, 2011, hazardous recognition training, as well as providing documentation on which employees attended these meetings. South Kentucky will continue to provide training specifically on the NESC and clearance issues (hazardous recognition training) at least on a yearly basis.

6. On or before February 1, 2012, South Kentucky shall provide to the Commission a summary report of the 50 clearance issues that have been found by South Kentucky since 2008. This summary report shall contain the type of issue found, the curative action taken and the timeframe they were corrected. The specific service orders or further specific information regarding these clearance issues shall be made available to Commission inspectors upon request during periodic inspections.

7. South Kentucky shall conduct a system wide inspection specifically looking for clearance violations near mobile home parks. On or before June 1, 2012, South Kentucky shall provide to the Commission a summary report of this inspection, including all violations found, the corrective action taken and the timeframe it was taken. All specific information regarding this inspection shall be made available to Commission inspectors upon request during the normal periodic inspections.

8. On the date that all requested documentation has been provided to the Commission, the conditions of the suspended civil penalty shall be deemed to have been met.

9. In the event that the Commission does not accept this Settlement Agreement in its entirety, South Kentucky 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 South Kentucky of any liability in any legal proceeding, administrative proceeding or lawsuit arising out of the facts set forth in the Incident Investigation – Staff Report or otherwise used as an admission by either party.

10. This Settlement Agreement is for use in Commission Case No. 2011-00404, 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 South Kentucky's service. South Kentucky shall not be precluded or estopped from raising any issue, claim or defense therein by reason of the execution of this Settlement Agreement.

11. South Kentucky 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, South Kentucky agrees to waive its right to a hearing and will not file any petition for rehearing or seek judicial appeal.

**SOUTH KENTUCKY R.E.C.C.**

By: (print name) Darrell L. Saunders

By: (sign name)  \_\_\_\_\_

Title: Attorney

Date: December 12, 2011

**STAFF OF THE KENTUCKY PUBLIC SERVICE COMMISSION**

By: (print name) L. Allyson Honaker

By: (sign name)

Allyson Honaker

Title:

Staff Attorney

Date:

12-14-11