

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MOUNTAIN RURAL TELEPHONE
COOPERATIVE CORPORATION, INC.

ALLEGED FAILURE TO COMPLY WITH
807 KAR 5:061

)
)
) CASE NO.
) 2012-00370
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)

ORDER

By Order dated September 7, 2012, the Commission directed Mountain Rural Telephone Cooperative Corporation ("Mountain Rural") to show cause why it should not be subject to the penalties prescribed in KRS 278.990 for probable violations of 807 KAR 5:006 and 807 KAR 5:061, which requires a telephone utility to maintain its plant and facilities in accordance with the 1990 edition of the National Electrical Safety Code ("NESC"). The alleged violations cited in the Commission's September 10, 2012 Order are as follows:

1. 807 KAR 5:006 General Rules. Section 26. Reporting of Accidents, Property Damage or Loss of Service. (1) Within two (2) hours following discovery each utility, other than a natural gas utility, shall notify the Commission by telephone or electronic mail of any utility related accident which results in: (a) Death; or shock or burn requiring medical treatment at a hospital or similar medical facility, or any accident requiring inpatient overnight hospitalization.

Mountain Rural did not notify the Commission within two hours of the discovery of the utility related incident that resulted in overnight hospitalization. Mountain Rural had a

reportable incident occur on April 4, 2012 and did not report that incident until April 18, 2012.

2. 1990 NESC Section 42, Rule 421.B—General Operating Routines—Area Protection—1. Areas Accessible to Vehicular and Pedestrian Traffic—a. Before engaging in work that may endanger the public, warning signs or traffic control devices, or both, shall be placed conspicuously to alert approaching traffic. Where further protection is needed, suitable barrier guards shall be erected. Where the nature of work and traffic requires it, a person shall be stationed to ward traffic while the hazard exists.

Mountain Rural employees were constructing a new telephone line across a roadway with the strand of wire lying across the roadway. Mountain Rural did not have warning signs posted nor did it have any flagmen on site.

3. Mountain Rural Telephone Safety Manual—Section K—Roadway Safety—When performing maintenance or construction work near a roadway or public thruway of any kind, the use of warning flags, signs, cones, lights or flagmen must be used in such a manner as to provide adequate warning to the public that work is being performed in the immediate area.

Mountain Rural employees were constructing a new telephone line across a roadway with the strand of wire lying across the roadway. Mountain Rural did not have warning signs posted nor did it have any flagmen on site.

The violations cited in the Commission's September 7, 2012 Order arose from an April 4, 2012 incident in Morgan County, Kentucky, wherein Richard Shaun Dalton, an employee of Mountain Rural, suffered injuries as a result of an accident while constructing a new line across a highway.

On September 27, 2012, Mountain Rural filed a response to the Commission's September 7, 2012 show cause Order and requested an informal conference be held in

this matter. The informal conference was held at the Commission's offices on November 8, 2012. 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 an Appendix and incorporated herein by reference, sets forth Mountain Rural's agreement with the statement of facts contained in the Commission Staff's Electric Utility Personal Injury Accident Report ("Report"), signed and dated July 18, 2012. The Report was appended to the Commission's September 7, 2012 show cause Order. The Settlement Agreement also discusses the remedial actions taken by Mountain Rural and a civil penalty in the amount of \$1,875.00 that Mountain Rural 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 and Mountain Rural's actions taken after the incident. Those actions include: adding training to safety meetings regarding accident notifications; preparing and distributing accident notification cards to employees and contractors; establishing a certification class for employees to be certified by the Kentucky Department of Transportation as flagmen; and 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

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. Mountain Rural is assessed a penalty of \$1,875.00.

3. Mountain Rural shall pay the \$1,875.00 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.

4. Within 30 days of the date of this order, Mountain Rural shall provide a copy of each of its incident notification contact cards to the Commission, including the contact card with the Commission's contact information, as well as Mountain Rural's management contact information. Mountain Rural shall also provide copies of the contact card with Mountain Rural's contact information to each of Mountain Rural's contractors.

5. Mountain Rural shall review and update the incident reporting contact information for both Mountain Rural staff and Commission Staff on a regular basis. Mountain Rural will make any changes to relevant incident notification contact card and provide new copies of the revised incident reporting contact card to the relevant individuals.

6. Within 30 days of the date flagman certification is obtained by Mountain Rural's employees, Mountain Rural shall provide the Commission with a summary of the training received to certify flagmen by the Kentucky Department of Transportation,

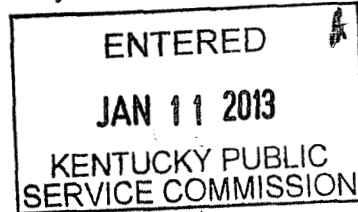
including any recertification requirements for employees to maintain the certification, and a list of Mountain Rural employees who received the certification.

7. The hearing scheduled for January 15, 2013 is cancelled.

8. Upon payment of the \$1,875.00 civil penalty, this case shall be closed and removed from the Commission's docket without further Order of the Commission.

9. Any documents filed in the future pursuant to ordering paragraphs 4 through 6 herein shall reference this case number and shall be retained in the utility's general correspondence file.

By the Commission



ATTEST:

Cason D. Beemoll for
Executive Director

Case No. 2012-00370

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2012-00370 JAN 11 2013

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MOUNTAIN RURAL TELEPHONE)
COOPERATIVE CORPORATION)
_____) CASE NO. 2012-00370
)
ALLEGED FAILURE TO COMPLY)
WITH 807 KAR 5:061)

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 Mountain Rural Telephone Cooperative Corporation, Inc. ("Mountain Rural") 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 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. Mountain Rural 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 Mountain Rural 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

Mountain Rural and Commission Staff submit this stipulation of facts for the Commission's consideration. Commission Staff submitted to the Commission an Incident Investigation Report ("Report") regarding this incident. The report alleges that on April 4, 2012, at Woodsbend on Bays Bend Road in Morgan County, Kentucky, Richard Shaun Dalton, a Mountain Rural employee, sustained injuries as a result of an accident while constructing a new telephone line across a roadway. Mountain Rural did not report this incident at the time it occurred, but did report this incident to Commission investigator Scott Morris on April 18, 2012. This subsequent reporting was prompted by Mountain Rural and Mr. Morris's discussions related to the Commission's reporting requirements, which took place while Mr. Morris was on site investigating a separate incident. Mr. Morris gave Mountain Rural the most recent version of the Commission's contact list for reporting incidents and outages and requested that Mountain Rural provide a summary report of this incident within seven days.

According to Mountain Rural's seven day report, Mr. Dalton was injured when a passing vehicle caught a metal cable strand stretched across the roadway, causing the strand to collide with Mr. Dalton and knock him to the blacktop. Mr. Dalton was the ground man and another Mountain Rural employee, Toby Wells, was on the pole for purposes of this job. On the day of the incident, Mountain Rural's crew had attached

one end of the strand to a dead end pole and the other end of the strand remained attached to the flat bed spool, with the length of the strand laid flat across the roadway. Mr. Dalton was standing between the pole and the strand at the time of the incident. The slack was pulled from the strand lying on the road, which allowed the strand to rise approximately two feet above the roadway. A passing vehicle hooked the raised strand, causing it to pull towards Mr. Dalton and knock him to the ground. Mr. Dalton suffered a fractured skull, three small broken bones around the eye socket and a black eye.

The jerk of the strand also caused Mr. Wells's gaffs to come out of the pole. Mr. Wells was able to stabilize himself by holding onto a $\frac{3}{4}$ bolt in the pole long enough to secure his hooks back into the pole and, therefore, did not sustain any injuries as a result of this incident.

According to Mountain Rural, Mike Howard was the supervisor on this job. Mr. Howard had helped dig an anchor prior to connecting the strand to the pole, while the rest of the crew began running the strand and attached it to the take-off pole. Mr. Howard laid the strand in the ditch, made sure it was flat across the roadway, and then went to the other end of the job to help with additional preparations. No road signs were displayed at the time of the incident.

Mountain Rural and Commission Staff agree that the Report fairly and accurately describes events which occurred on the day of the April 4, 2012 incident.

SHOW CAUSE ORDER

By a Show Cause Order dated September 7, 2012, the Commission initiated this proceeding to determine whether Mountain Rural should be subject to the penalties prescribed in KRS 278.990 for probable violations of 807 KAR 5:006 and 807 KAR

5:061 § 3, which requires a telephone utility to maintain its plant and facilities in accordance with the 1990 edition of the National Electrical Safety Code (“NESC”).

Specifically, the sections alleged to be violated are as follows:

1. 807 KAR 5:006 General Rules. Section 26. Reporting of Accidents, Property Damage or Loss of Service. (1) Within two (2) hours following discovery each utility, other than a natural gas utility, shall notify the Commission by telephone or electronic mail of any utility related accident which results in: (a) Death; or shock or burn requiring medical treatment at a hospital or similar medical facility, or any accident requiring inpatient overnight hospitalization.
2. 1990 NESC Section 42, Rule 421.B—General Operating Routines—Area Protection—1. Areas Accessible to Vehicular and Pedestrian Traffic—a. Before engaging in work that may endanger the public, warning signs or traffic control devices, or both, shall be placed conspicuously to alert approaching traffic. Where further protection is needed, suitable barrier guards shall be erected. Where the nature of work and traffic requires it, a person shall be stationed to ward traffic while the hazard exists.
3. Mountain Rural Telephone Safety Manual—Section K—Roadway Safety—When performing maintenance or construction work near a roadway or public thruway of any kind, the use of warning flags, signs, cones, lights or flagmen must be used in such a manner as to provide adequate warning to the public that work is being performed in the immediate area.

On September 27, 2012, Mountain Rural filed a response to the Commission’s September 7, 2012 Order and requested an informal conference be held in this matter. Pursuant to that request, an informal conference was scheduled in this matter for November 8, 2012, at the Commission’s Frankfort offices. Representatives of Mountain Rural were in attendance, as were Commission Staff.

During the informal conference, representatives of Mountain Rural confirmed that proactive steps have been taken to improve the reporting of incidents and to have its

flagmen certified through the Kentucky Department of Transportation. Mountain Rural also provided Commission Staff with a binder of information pertaining to all changes in policies and procedures that have been made since this incident. Mountain Rural filed a copy of this information in the record of this case on November 14, 2012.

SETTLEMENT AGREEMENT

As a result of discussions held during the informal conference, Mountain Rural and the Commission Staff submit the following Settlement Agreement for the Commission's consideration in this proceeding:

1. Mountain Rural agrees that the Commission Staff's Incident Investigation Report, Appendix to the Commission's September 7, 2012 Order in this matter, accurately describes and sets forth material facts and circumstances surrounding the April 4, 2012 incident.

2. In settlement of this proceeding, Mountain Rural agrees for a civil penalty of \$1,875.00 to be assessed. Mountain Rural agrees to pay the \$1,875.00 civil penalty within 30 days of the date of the Commission's Order approving this Settlement Agreement. The scope of this proceeding is limited by the Commission's September 7, 2012 Order on whether Mountain Rural should be assessed a penalty under KRS 278.990 for violations of 807 KAR 5:006 and 807 KAR 5:061 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 \$1,875.00 nor any other agreement contained in this Stipulation shall be construed as an admission by Mountain Rural 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 violation of any Commission regulation or NESC rule.

3. Within 30 days of the date of the Commission's Order approving this Settlement Agreement, Mountain Rural shall provide a copy of each of Mountain Rural's incident notification contact cards, including the contact card with Mountain Rural's management's contact information and the contact card with the Commission's contact information, to the Commission. Mountain Rural shall also provide copies of the contact card with Mountain Rural's management's contact information to each of Mountain Rural's contractors.

4. Mountain Rural shall review and update the incident reporting contact information for both Mountain Rural management and Commission Staff on a regular basis. During Mountain Rural's periodic review of the incident reporting contact information, if Mountain Rural learns that either Mountain Rural's management's or the Commission Staff's contact information has changed, Mountain Rural will make any changes to the relevant incident notification contact card and provide new copies of the revised incident reporting contact card to the relevant employees and/or contractors of Mountain Rural.

5. Within 30 days of the date on which flagman certification is obtained by Mountain Rural's employees, Mountain Rural shall provide the Commission with a summary of the training received to certify flagmen by the Kentucky Department of Transportation, including any recertification requirements for employees to maintain the certification, and a list of Mountain Rural's employees who receive the certification.

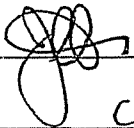
6. In the event that the Commission does not accept this Settlement Agreement in its entirety, Mountain Rural and Commission Staff reserve their rights to withdraw from it and require that a hearing be held on any and all issues involved and that none of the provisions contained within this Settlement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

7. This Settlement Agreement is for use in Commission Case No. 2012-00370, 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 Mountain Rural's service. Mountain Rural shall not be precluded or estopped from raising any issue, claim or defense therein by reason of the execution of this Settlement Agreement.

8. Mountain Rural 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, Mountain Rural agrees to waive its right to a hearing and will not file any petition for rehearing or seek judicial appeal.

MOUNTAIN RURAL TELEPHONE COOPERATIVE CORPORATION, INC.

By: (print name) W. A. Gillum
By: (sign name) WA Gillum
Title: General Manager
Date: 12/10/2012

By: (print name) John E. Selevst
By: (sign name) 
Title: Counsel
Date: 12/12/12

STAFF OF THE KENTUCKY PUBLIC SERVICE COMMISSION

By: (print name) L. Allyson Honaker
By: (sign name) L. Allyson Honaker
Title: Staff Attorney
Date: 12/14/12

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