

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JACKSON PURCHASE ENERGY CORPORATION	)	
_____	)	
ALLEGED FAILURE TO COMPLY WITH KRS 278.042	)	CASE NO. 2017-00202

ORDER

By Order entered May 24, 2017, the Commission initiated this proceeding to conduct a formal investigation and determine whether Jackson Purchase Energy Corporation (“Jackson Purchase”) should be subject to the penalties prescribed in KRS 278.990 for alleged violations of KRS 278.042. The incident giving rise to this case occurred on January 6, 2017, when Joshua Franklin, a line technician with Jackson Purchase, was fatally injured from contact with an energized conductor.

In its May 24, 2017 Order, the Commission directed Jackson Purchase to file a response to the allegations set forth in the Order within 20 days and scheduled a formal hearing for August 15, 2017. On June 13, 2017, Jackson Purchase filed a response to the Order in which it denied that it violated, willfully or otherwise, KRS 278.042. On August 15, 2017, the Commission conducted a formal hearing and heard testimony regarding the allegations in the May 24, 2017 Order. On August 18, 2017, Commission Staff filed post-hearing requests for information to Jackson Purchase, and on September

1, 2017, Jackson Purchase filed responses to the requests. This matter now stands submitted to the Commission for a decision.

### Background

Jackson Purchase is a corporation organized under KRS Chapter 279 and is engaged in the distribution of electricity for compensation for light, heat, power, and other uses. Jackson Purchase is a utility as defined in KRS 278.010(3)(a) and is subject to the jurisdiction of the Commission under KRS 278.040.

KRS 278.042(2) directs the Commission to ensure that each electric utility constructs and maintains its plant and facilities in accordance with accepted engineering practices as set forth in the Commission's administrative regulations and orders and the most recent edition of the National Electrical Safety Code ("NESC"). Pursuant to this authority, the Commission promulgated 807 KAR 5:041, Section 3(1), which requires each electric utility to construct and maintain its plants and facilities in accordance with engineering practices and adopts the provisions of the NESC as applicable standards.

KRS 278.280(2) directs the Commission to prescribe rules and regulations for the performance of service by a utility. Pursuant to this authority, the Commission promulgated 807 KAR 5:006, Section 25, which requires each utility to adopt and execute a safety program, and 807 KAR 5:006, Section 26, which requires each utility to adopt inspection procedures to assure safe and adequate operation of the utility's facilities.

KRS 278.990(1) provides that a utility that willfully violates any of the provisions of KRS Chapter 278 or any administrative regulation promulgated pursuant thereto shall be subject to a civil penalty to be assessed by the Commission not to exceed \$2,500 for each violation.

## Discussion

On January 6, 2017, Jackson Purchase notified the Commission that line technician Joshua Franklin had sustained injuries from contact with an energized conductor. Commission Staff (“Staff”) performed an onsite investigation on January 9, 2017, and on January 13, 2017, Jackson Purchase submitted to the Commission a written seven-day summary report setting forth the results of its initial investigation of the accident.<sup>1</sup> Jackson Purchase also submitted with its seven-day report additional information requested by Staff, including a hand-written statement given by Jackson Purchase crew leader Terry Doublin given in the immediate aftermath of the accident, and an incident report prepared by the detective from the McCracken County Sheriff Department who responded to the accident. Based on its onsite inspection and information provided by Jackson Purchase, Staff prepared and submitted to the Commission an Accident Investigation Staff Report (“Staff Report”), a copy of which was attached as an Appendix to the Commission’s May 24, 2017 Order.

According to Jackson Purchase’s seven-day report, a copy of which is Attachment A to the Staff Report, Mr. Franklin and Mr. Doublin were at the time of the accident responding to a power outage off Bethel Church Road, near the city of Kevil, in McCracken County, Kentucky. After determining that the outage was caused by a break in the line, the crew went to the upline protection device, a circuit recloser, approximately 575 feet to the south on Bethel Church.

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<sup>1</sup> Pursuant to 807 KAR 5:006, Section 27(2), a utility is required to submit to the Commission a written summary report within 7 calendar days of the occurrence of an incident resulting in shock or burn injuries requiring hospitalization or death.

There is a discrepancy between Mr. Dublin's written statement and the police report as to what happened next. According to Mr. Dublin's written statement, he wanted to "kill the breaker," and Mr. Franklin told him he would "pull the handle" on the recloser.<sup>2</sup> The police report, however, states that Mr. Dublin told the detective that he and Mr. Franklin looked up at the recloser and observed that "the yellow breaker handle was down or open indicating that the power was off on the line."<sup>3</sup>

The crew then went back to where the line was down to make repairs. According to Jackson Purchase's seven-day report, the crew at this point had received a verbal job briefing "laying out that Joshua [Franklin] was to determine what hardware would be needed to complete the repair and Terry [Dublin] would walk a section of line to determine if a cause could be found for the break."<sup>4</sup> Mr. Franklin then ascended in an aerial bucket. When Mr. Dublin returned from his inspection of the line, he noticed that Mr. Franklin was not visible in the bucket. He lowered the bucket and found Mr. Franklin injured and in trauma.<sup>5</sup> Mr. Franklin subsequently died from his injuries.

Subsequent inspection of the recloser revealed that although the recloser was open, the line side jumper of the recloser was touching and had been fused to the load side jumper of the recloser. This allowed the current to bypass the recloser and the line feeding north up Bethel Road to remain energized.<sup>6</sup>

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<sup>2</sup> Staff Report, at 103.

<sup>3</sup> *Id.* at 60.

<sup>4</sup> *Id.* at 12.

<sup>5</sup> *Id.* at 12.

<sup>6</sup> *Id.* at 13

The Staff Report states that Mr. Franklin received shock and burn injuries from contact with an energized 7,200-volt conductor. According to the Staff Report, the conductor apparently was not tested for voltage or grounded prior to the attempt to repair the conductor. Further, Mr. Franklin was not using proper personal protective equipment at the time of the accident, and there was no insulation or cover-up installed around the facilities being worked upon. Finally, the Staff Report notes that there was no documentation that Jackson Purchase had conducted a systematic inspection of the area where the accident occurred within the preceding two years, as required by 807 KAR 5:006, 26(3) and (4)(e).

Based on its investigation of the January 6, 2017 accident, Staff determined that Jackson Purchase employees violated:

1. NESC Rules 420C, 420D, 420H, 421A, 441A, 444D and 445A;
2. Jackson Purchase Safety Manual Rules 102(b), 1405(a), 604(c), 601(e), 607(a), 615(a),(d), and 602(a),(b),(c); and
3. 807 KAR 5:006, Section 26.

In response to the Commission's May 24, 2017 Order initiating this proceeding, Jackson Purchase stated that it generally agrees with the factual description of the January 6, 2017 accident set forth in the Staff Report.<sup>7</sup> Jackson Purchase, however, denied that it violated, willfully or otherwise, KRS 278.042, the NESC, the Jackson Purchase Safety Manual, or Commission regulation.<sup>8</sup>

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<sup>7</sup> Jackson Purchase's Response to Order (filed June 13, 2017) ("Response") at 1.

<sup>8</sup> Id.

In the alternative, Jackson Purchase argued, it should not be assessed a civil penalty for the alleged violations of the Jackson Purchase Safety Manual because they overlap with, and are largely duplicative of, the alleged NESC violations.<sup>9</sup> Jackson Purchase further argued that NESC Rules 444D and 445A, the two NESC provisions cited in violations 6 and 7 in the May 24, 2017 Order, were not applicable. Specifically, Jackson Purchase argued that its crew was working the outage as if the facilities were energized, and therefore the NESC provisions requiring the grounding and voltage testing of a previously energized line did not apply.<sup>10</sup> Jackson Purchase requested the Commission to dismiss this proceeding or, in the alternative, to reduce the 14 alleged violations to five violations.<sup>11</sup>

#### Hearing

The Commission held a formal evidentiary hearing on August 15, 2017. Scott Morris, an investigator from the Commission's Division of Inspections, testified regarding his investigation of the January 6, 2017 accident, the Staff Report he submitted to the Commission, and the conclusions he reached in the Staff Report.<sup>12</sup>

Jackson Purchase presented three witnesses: Dennis Cannon, Jackson Purchase president and chief executive officer; Scott Ribble, Jackson Purchase vice president of engineering and operations; and Murray Riley, Jackson Purchase safety coordinator. Mr.

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<sup>9</sup> *Id.* at 1–2, fn. 1.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 4.

<sup>12</sup> Video Transcript of Hearing (“H.V.T.”) at 9:09:12 a.m..

Cannon testified that Jackson Purchase is fully committed to a culture of safety, and discussed the actions Jackson Purchase took in the immediate aftermath of the accident and its investigation of the cause of the accident.<sup>13</sup> Mr. Cannon also testified in detail as to the actions Jackson Purchase has taken since the accident to strengthen its commitment to safety. These actions included a thorough review of employee training, policies and procedures, additional safety training, and a redoubling of the organization's commitment to safety.<sup>14</sup>

Mr. Cannon testified that following a thorough review of the accident, it was determined that Mr. Doublin did not engage in misconduct and would not be subject to any disciplinary action.<sup>15</sup> Mr. Cannon said one employee, Mr. Franklin, did not adhere to his training or safety regulations and suffered horrendously as a result.<sup>16</sup> Mr. Cannon, however, could not explain why Mr. Franklin would work a hot line without using his personal protective equipment.<sup>17</sup> Mr. Cannon said that perhaps Mr. Franklin thought that because the recloser was open, the line was dead.<sup>18</sup> Later in his testimony, Mr. Cannon said that Mr. Franklin's rubber gloves, protective sleeves and voltage meter were found inside a storage bin on the truck.<sup>19</sup>

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<sup>13</sup> *Id.* at 10:17:14 a.m.

<sup>14</sup> *Id.* at 10:39:39-10:44:05 a.m.

<sup>15</sup> *Id.* at 10:48:55 a.m.

<sup>16</sup> *Id.* at 10:50:24 a.m.

<sup>17</sup> *Id.* at 10:50:38 AM; 10:52:00 a.m.

<sup>18</sup> *Id.* at 10:53:56 a.m.

<sup>19</sup> *Id.* at 11:54:14 a.m.

Mr. Cannon testified that Mr. Dublin and Mr. Franklin were, at the time of the accident, acting within the scope of their employment on behalf of Jackson Purchase.<sup>20</sup> Mr. Cannon stated that Mr. Dublin was the person in charge, within the meaning of the NESC, and that he conducted a pre-job briefing with Mr. Franklin prior to commencing work to repair the line.<sup>21</sup> He acknowledged that there was no documentation of the job briefing, but stated that the NESC does require a record of the briefing. He said that although he has no personal knowledge that Mr. Dublin conducted a pre-job briefing, he has faith that Mr. Dublin did so. Mr. Cannon testified that his belief that Mr. Dublin conducted a job briefing is based on Mr. Dublin's written statement given at the accident scene and subsequent verbal statements he made.<sup>22</sup> He said this job briefing would have entailed a discussion of the work to be done, the personal protective equipment that would be necessary to do the work, and any known hazards that the work would present.<sup>23</sup>

Mr. Cannon asserted that in his written statement, Mr. Dublin said he gave a job briefing and that he and Mr. Franklin were going to work the outage as if it were hot. Upon review of the written statement, however, Mr. Cannon acknowledged that the statement does not specifically indicate a job briefing was conducted. Mr. Cannon said the written statement was indicative of a pre-job briefing because Mr. Dublin mentioned telling Mr. Franklin to see what was needed for the job and that he would walk the line to see if he

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<sup>20</sup> *Id.* at 10:58:50 a.m.

<sup>21</sup> *Id.* at 11:01:30 a.m.

<sup>22</sup> *Id.* at 11:04:05 a.m.

<sup>23</sup> *Id.* at 11:04:20 a.m.

could find the cause of the line break.<sup>24</sup> Mr. Cannon testified that in subsequent interviews conducted by counsel for Jackson Purchase, Mr. Dublin said he did perform a pre-job briefing and planned to conduct a second briefing once the scope of work was determined.<sup>25</sup> Mr. Cannon later acknowledged that if Mr. Dublin had said that he failed to conduct a pre-job briefing, he would have been subject to discipline.<sup>26</sup>

Mr. Cannon stated that according to his understanding of the job briefing, as relayed to him by the attorney who conducted the subsequent interview with Mr. Dublin, Mr. Dublin and Mr. Franklin had made the decision to work the line as if it were hot. Mr. Cannon further stated that the NESC does not require grounding if the line is going to be worked hot.<sup>27</sup> Mr. Cannon acknowledged that Mr. Dublin's written statement does not indicate that the crew was going to work the line hot, and said this information came out in subsequent interviews conducted by Jackson Purchase's counsel.<sup>28</sup>

Mr. Cannon acknowledged the discrepancy between the statement in Jackson Purchase's seven-day report that the recloser handle was pulled and the police report, which indicates Mr. Dublin told the responding officer that the recloser was open when he and Mr. Franklin arrived on the scene. Mr. Cannon said in the subsequent interview

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<sup>24</sup> *Id.* at 11:06:30 a.m.

<sup>25</sup> *Id.* at 11:07:00 a.m.

<sup>26</sup> *Id.* at 11:42:08 a.m.

<sup>27</sup> *Id.* at 11:15:45 a.m.

<sup>28</sup> *Id.* at 11:16: 46 a.m.

conducted by counsel, Mr. Doublin confirmed that Mr. Franklin pulled the recloser handle.<sup>29</sup>

Mr. Cannon testified that Jackson Purchase is evaluating whether to require documentation of job briefings for all operations. He said Jackson Purchase employees currently document job briefings on construction operations for which a written work order is generated, and that Jackson Purchase is studying whether to require written job briefings for maintenance and outage restoration activities as well.<sup>30</sup>

Scott Ribble, Jackson Purchase's vice president of engineering and operations, testified regarding Jackson Purchase's response to the accident and its investigation of the cause thereof. Mr. Ribble stated that safety is his number one priority. Mr. Ribble discussed the safety training received by Jackson Purchase employees and noted that Jackson Purchase goes above and beyond what is required by the NESC.<sup>31</sup>

Mr. Ribble stated that Jackson Purchase generally agrees with the factual description of the events that took place on the day of the accident, but that it respectfully disagrees with the number of violations alleged in the Staff Report considering that the alleged violations of Jackson Purchase's Safety Manual overlap with the NESC violations.<sup>32</sup> Later in his testimony, Mr. Ribble went through the specific violations alleged

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<sup>29</sup> *Id.* at 11:18:42 a.m.

<sup>30</sup> *Id.* at 11:47:15.

<sup>31</sup> *Id.* at 1:09:30 p.m.

<sup>32</sup> *Id.* at 1:06:50 p.m.

in the May 24, 2017 Order to which Jackson Purchase admits and identified the violations Jackson Purchase contend overlap, by the number listed in the Order, as follows:

1. Violation No. 1 overlaps with No. 8;
2. Violation No. 2 overlaps with Nos. 12 and 13;
3. Violation No. 3 overlaps with No. 10;
4. Violation No. 4 overlaps with No. 9; and
5. Violation No. 5 overlaps with Nos. 11 and 14.

With respect to the alleged violation of the requirements to voltage test and ground previously energized lines (violations nos. 6 and 7), Mr. Ribble reiterated Mr. Cannon's assertion that these requirements were not applicable to this job because Mr. Doublin and Mr. Franklin were working the outage assuming the conductor was energized. In addition to Mr. Doublin's alleged statement during his interview by counsel that they were working the job hot, i.e., assuming that the line was energized, Mr. Ribble noted that the crew had grounded the bucket truck. He asserted that this is a precaution taken when a line is assumed to be energized.<sup>33</sup>

Mr. Ribble testified that he believed Mr. Franklin went up in the bucket truck assuming the conductor was energized.<sup>34</sup> He could not explain, however, why Mr. Franklin would go up in the bucket without his personal protective equipment if, in fact, he was working the job hot.<sup>35</sup>

Mr. Ribble acknowledged that Jackson Purchase is required by 807 KAR 5:006, Section 26(4)(2), to inspect electric facilities operating at 69 kilovolts ("kV") or less at

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<sup>33</sup> *Id.* at 1:23:55 p.m.; 2:10:00 p.m.

<sup>34</sup> *Id.* at 2:27:50 p.m.

<sup>35</sup> *Id.* at 1:28:08 p.m.

intervals not to exceed two years.<sup>36</sup> Mr. Ribble testified that at the time of the accident, the last inspection of the portion of Jackson Purchase's system covering the accident site occurred in 2014. Mr. Ribble acknowledged that Jackson Purchase failed to inspect this area again within two years of the 2014 inspection as required by Commission regulation.<sup>37</sup>

Mr. Ribble testified that as the person in charge, Mr. Dublin had a duty to conduct a job briefing that covered the requirements of the NESC applicable to the job, including the need to use personal protective equipment. Mr. Ribble denied that Mr. Dublin had a duty as the person in charge to make sure Mr. Franklin was wearing his rubber gloves and sleeves before ascending in the bucket.<sup>38</sup>

Mr. Riley testified about Jackson Purchase's safety training program. Mr. Riley discussed his duty as safety coordinator to coordinate safety meetings and training, and to make sure the Jackson Purchase safety program remains up to date.<sup>39</sup> Mr. Riley also discussed Jackson Purchase's disaster-response training and his role in the investigation of the January 6, 2017 accident.<sup>40</sup>

Mr. Riley testified regarding the crew safety audits he performed monthly on of Jackson Purchase pursuant to the Commission's March 26, 2008 Order in Case No.

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<sup>36</sup> *Id.* at 2:02:14 p.m.

<sup>37</sup> *Id.* at 2:05:05 p.m.

<sup>38</sup> *Id.* at 2:13:34 p.m.; 2:39:00 p.m.

<sup>39</sup> *Id.* at 3:004:25 p.m.

<sup>40</sup> *Id.* at 3:08:05 p.m.; 3:10:00 p.m.

2007-00456.<sup>41</sup> He stated that over the two years prior to the accident, no safety audit had identified any concerns with the work of either Mr. Franklin or Mr. Dublin, and that both of these employees would always adhere to safety rules and procedures.<sup>42</sup> He described Mr. Franklin as “one of the best employees,” an experienced lineman who “could do it all.”<sup>43</sup> Mr. Riley admitted that, considering Mr. Franklin’s safety record and the training Jackson Purchase had provided him, there’s “no way” he would climb up and work on a line knowing it was energized without wearing rubber gloves.<sup>44</sup>

### Findings

As discussed, Jackson Purchase at the hearing withdrew its denial of the NESC violations numbered 1 through 5 in the May 24, 2017 Order. Jackson Purchase, however, continues to dispute that it violated the NESC Rules 444 or 445 (cited in the alleged violations numbered 6 and 7 in the Order), arguing that the provisions were not applicable to the work performed by Dublin and Franklin on the day of the accident.

NESC Rules 444 and 445 prescribe procedures that electric supply employees must follow prior to working on lines that have been de-energized by operation of switches or other means. Witnesses for Jackson Purchase did not claim at the hearing that its crew followed these procedures. Rather, they contended that Dublin and Franklin were not required to adhere to these rules because they were working the job on the

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<sup>41</sup> Case No. 2007-00456, *Jackson Purchase Energy Corporation Alleged Failure to Comply with KRS 278-042*, (Ky. PSC Mar. 26, 2008).

<sup>42</sup> H.V.T. at 3:20:18 p.m.; 3:22:25 p.m.

<sup>43</sup> *Id.* at 3:19:50 p.m.

<sup>44</sup> *Id.* at 3:23:00 p.m.

assumption that the line was energized. The Commission finds that the evidence does not support this contention.

Jackson Purchase supported its argument with testimony that Dublin told Jackson Purchase's general counsel during a post-accident interview that he and Franklin had agreed during a pre-job briefing to work the job hot. Jackson Purchase also cited the fact that the bucket truck was grounded at the time Franklin ascended in the bucket truck, which, according to Ribble and Riley's testimony, is a procedure that is taken when a crew is working a job assuming equipment is energized.

The Commission finds the testimony about what Dublin allegedly told Jackson Purchase's general counsel to be unpersuasive. Such testimony was offered to prove the truth of Dublin's alleged statement that he and Franklin were working the job hot and fits the plain definition of hearsay.<sup>45</sup> It is in fact double hearsay. Although the Commission is not bound by<sup>46</sup> and does not strictly follow the Kentucky Rules of Evidence,<sup>47</sup> Dublin's absence from the hearing deprived the Commissioners of an opportunity to judge his credibility. In such circumstances, the Commission is unable to discern the truth or accuracy of the testimony.

The Commission notes that Dublin did not assert that he and Franklin were working the job hot in either the written statement he gave in the immediate aftermath of the accident or his interview with the responding law enforcement officer. He did mention,

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<sup>45</sup> KRE 801(c).

<sup>46</sup> KRS 278.310.

<sup>47</sup> Case No. 2013-00287, *Short vs. Kentucky Utilities Company* (Ky. PSC Sept. 11, 2014) at 3.

however, in both his written statement and his interview with the officer that the upline recloser was opened before Franklin ascended in the bucket truck. As noted by Mr. Cannon in his testimony, the fact that the recloser was open could have led Franklin to assume when he ascended in the bucket truck that the line was de-energized.

By far the most compelling evidence on this issue is the action of the victim, Mr. Franklin, in ascending in the bucket while not wearing rubber gloves or protective sleeves, and without the line he was working on having been voltage tested, grounded, and confirmed to be de-energized. Cannon, Ribble and Riley each testified that there was no explanation for Franklin's decision to ascend in the bucket, knowing the line could be energized, without personal protective equipment. Riley admitted that there was "no way" a lineman with Franklin's safety record, experience and safety training would ascend in a bucket while assuming the equipment being worked on was energized without using personal protection equipment. The Commission finds it is simply not credible that Franklin would ascend in the bucket without wearing rubber gloves and sleeves if, in fact, he thought that the line was energized.

Based on the foregoing, the Commission finds that Franklin ascended in the bucket wrongly assuming the line was de-energized. He did so without the line having been tested for voltage and grounded. Franklin was required by the NESC and Jackson Purchase's Safety Manual to use personal protective equipment until the line was confirmed to be de-energized. His failure to do so resulted in his tragic death.

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that Jackson Purchase violated the following provisions of the 2017 edition of the NESC, each of which constitutes a violation of 807 KAR 5:041, Section 3(1):

1. Part 4, Section 42, Rule 420(C), by its employees' failure while working in the vicinity of energized lines to consider all of the effects of their actions, and to take into account their own safety and the safety of other employees.
2. Part 4, Section 42, Rule 420(D), by its employees' failure to consider electric supply lines to be energized without positively knowing the lines to be de-energized, by their failure to perform preliminary tests to determine existing conditions, and by their failure to determine the operating voltages of the lines before working on them.
3. Part 4, Section 42, Rule 420(H), by Franklin's failure to use personal protective equipment provided for his work.
4. Part 4, Section 42, Rule 421(A), by the failure of Dublin, who was person in charge, to see that safety rules and operating procedures were observed by Franklin, and by his failure to conduct a job briefing covering work procedures, personal protective equipment requirements, energy source controls, hazards associated with the job, and special precautions.
5. Part 4, Section 42, Rule 441(A), by Franklin's failure to maintain the required minimum approach distance to an energized conductor.
6. Part 4, Section 42, Rule 444(D), by its employees' failure to make protective grounds or verify that adequate grounds had been applied.
7. Part 4, Section 42, Rule 445(A), by its employees' failure to test the lines for voltage.

The Commission further finds that Jackson Purchase violated the following provisions of its Safety Manual, each of which constitutes a violation of 807 KAR 5:006, Section 25:

1. Rule 102, by its employees' failure to thoroughly understand the work to be done, their part in the work, and the safety rules that apply.
2. Rule 1405, by the failure of Dublin, who was the employee in charge, to conduct a pre-job briefing covering hazards associated with the job, work procedures involved, special precautions, energy source controls, and personal protective equipment requirements.
3. Rule 604, by the failure of Franklin to wear rubber gloves and sleeves while working in the vicinity of a potentially energized conductor.

4. Rule 601, by Franklin's failure to maintain the required minimum approach distance from the energized conductor without being insulated from the conductor.
5. Rule 607, by its employees' failure to treat all conductors as energized until tested and grounded.
6. Rule 615, by its employees' failure to test previously energized conductors for the presence of voltage.
7. Rule 602, by Franklin's working on energized conductor when not wearing protective equipment approved for the voltage to be contacted.

The Commission further finds that Jackson Purchase violated 807 KAR 5:006, Section 26, by failing to conduct a documented inspection of the electric facilities involved in the accident for more than two years preceding the accident.

The Commission finds that Dublin and Franklin were acting on behalf of Jackson Purchase within the scope of their employment at the time the safety violations occurred. The Commission further finds that Jackson Purchase's violations were willful within the meaning of KRS 278.990(1). The violations were the result of intentional, not accidental or involuntary, conduct on the part of its employees. The term "willful" applies to the action or failure to act that results in the violation. It does not necessarily require an intent to commit a violation, but may include conduct that reflects an indifference to its natural consequences. *See Huddleston v. Hughes*, 843 S.W.2d 901, 905 (Ky.Ct.App. 1992).

The Commission finds that pursuant to KRS 278.990(1), Jackson Purchase should be assessed a civil penalty in the amount of \$2,500 for each of the seven violations of the NESC. The Commission further finds that Jackson Purchase should be assessed an additional penalty in the amount of \$2,500 for its violation of 807 KAR 5:006, Section 26. The Commission finds that Jackson Purchase should not be assessed additional civil

penalties for the violations of its Safety Manual in light of the overlap between the provisions of the Manual and the NESC.

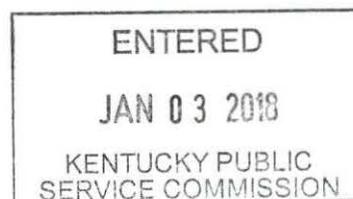
IT IS THEREFORE ORDERED that:

1. Pursuant to KRS 278.990(1), Jackson Purchase is assessed a civil penalty in the total amount of \$20,000 for seven violations of 807 KAR 5:041, Section 3(1), and one violation of 807 KAR 5:006, Section 26.

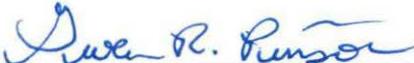
2. Jackson Purchase shall pay \$20,000 within 30 days of the date of this Order by cashier's check or money order payable to the Kentucky State Treasurer, and mailed or delivered to the Office of the General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

3. Jackson Purchase shall provide to the Commission results of its evaluation of whether to document pre-job briefings for outage response and maintenance activities within 30 days of the date of this Order.

By the Commission



ATTEST:

  
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