

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

FLEMING-MASON RURAL ELECTRIC)	
COOPERATIVE CORPORATION)	
)	
AND)	
)	
CONTINENTAL TELEPHONE COMPANY)	CASE NO. 9988
OF KENTUCKY)	
)	
<hr style="width: 50%; margin-left: 0;"/>		
)	
ALLEGED FAILURE TO COMPLY WITH)	
THE COMMISSION'S REGULATION 807)	
KAR 5:006, SECTION 24)	

O R D E R

PROCEDURAL BACKGROUND

On August 17, 1987, this Commission ordered Continental Telephone Company of Kentucky ("ConTel") and Fleming-Mason Rural Electric Cooperative Corporation ("Fleming-Mason") to show cause why they should not be subject to the penalties prescribed in KRS 278.990 for their alleged failure to comply with Commission regulations. This action followed our receipt of a Commission Staff accident investigation report ("Staff report") which alleged that both utilities had violated Commission regulation 807 KAR 5:006, Section 24.

On August 28, 1987, each utility filed a written response to the staff report.

Informal conferences between the Commission Staff and representatives of each utility were held to discuss the alleged

violations. The Staff met with representatives of ConTel¹ on September 9, 1987, and with representatives of Fleming-Mason² on September 11, 1987. The minutes of each conference have been made part of the case record.

Both utilities have waived any right to a hearing before the Commission and have advised the Commission that they have no further evidence to present.

DISCUSSION

At approximately 5:00 p.m. on April 29, 1987, Hazel C. McCarthy was killed in a freak accident at his home in Maysville, Kentucky. While McCarthy was mowing the front yard of his home, the tractor which he was operating became entangled with guy wires attached to a utility pole used by ConTel and Fleming-Mason. The stress placed on one of the guy wires caused the top of the utility pole to snap. The freed guy wire then wrapped around the tractor's rear tire and McCarthy's chest, pinning McCarthy to the tractor seat. As the tractor tire continued to rotate, this guy wire tightened across McCarthy's chest and strangled him.³

Two and a half hours later Fleming-Mason linemen Russell Dunaway and Steve Harn discovered McCarthy and summoned an

¹ L.W. Darden, General Manager and Vice-President of ConTel, and Hon. Henry Jernigan.

² Huston Delaney, General Manager of Fleming-Mason, S.D. Souder, resident engineer in charge of the Division of Utility Engineering and Services, Jack Owens, superintendent in charge of maintenance and operations, and Hon. Marvin Suit.

³ Report of Mason County Coroner James Brell (hereinafter "Coroner's Report").

ambulance.⁴ Emergency medical personnel arrived at the accident scene shortly thereafter, but were unable to revive McCarthy. They pronounced him dead at the scene at 7:59 p.m.⁵

Dunaway and Harn then notified Jack Owens, superintendent in charge of maintenance and operations at Fleming-Mason. Owens immediately travelled to the accident scene. After briefly inspecting it, he telephoned Fleming-Mason's General Manager Huston Delaney at 8:45 p.m. and informed him of the accident. At 6:55 a.m. the next morning, Owens telephone ConTel's local office and reported the accident.⁶

Fleming-Mason notified the Commission of the accident at 3:07 p.m. on April 30 and filed a written report with the Commission on June 3.⁷ ConTel never reported the accident.

Commission Regulation 807 KAR 5:006, Section 24 states:

Each utility, other than a natural gas utility, shall notify the commission of any utility related accident which results in death or serious injury to any person or any other incident which has or may result in substantial property damage or substantial loss of service. Prompt notice of fatal accidents shall be given to the commission by telephone or telegraph. A summary written report shall be submitted to the commission within seven (7) days. [Emphasis added.]

The Commission Staff in its report alleges that neither Fleming-Mason nor ConTel promptly notified the Commission of the McCarthy accident or submitted a written report within 7 days.

⁴ Fleming-Mason Summary Report, "Hazel McCarthy's Fatal Accident", p. 2.

⁵ Coroner's Report.

⁶ "Hazel McCarthy's Fatal Accident," p. 2.

⁷ Staff Report, p. 1.

Fleming-Mason contends that it provided the Commission with prompt notice of the McCarthy accident. Any notice which is given within 24 hours of a fatal accident, it argues, is prompt notice.⁸

Fleming-Mason also argues that notice to the Commission can be provided only after a utility has conducted a preliminary investigation of the fatal accident to ascertain the facts.⁹ In this case, Fleming-Mason officials immediately contacted the Commission after thoroughly inspecting the accident site and interviewing the county coroner, the local police and emergency medical personnel.

Fleming-Mason admits failing to submit a written report within 7 days of the accident. Its officials claim to have been unaware of revisions made to 807 KAR 5:006, Section 24 in 1986.¹⁰

The Commission does not agree with Fleming-Mason's arguments. When interpreting a regulation, its words should be given ordinarily understood meaning. "Prompt" generally means immediately. Black's Law Dictionary defines prompt as "[t]o act immediately, responding to the instant." Webster's Dictionary defines it as "done without delay". Fleming-Mason's interpretation of "prompt" is contrary to its ordinarily understood meaning and is, therefore, rejected.

A utility is not required to conduct an extensive preliminary investigation of a fatal accident, such as Fleming-Mason did,

⁸ PSC Memorandum, "Informal Conference with Fleming-Mason RECC," September 21, 1987.

⁹ Id.

¹⁰ Affidavit of J. D. Souder, August 26, 1987, p. 3.

before notifying the Commission. The purpose of Commission Regulation 807 KAR 5:006, Section 24 is to insure the Commission of notice of a fatal accident so that the Commission has an opportunity to initiate its own investigation while the accident site is unaltered. Any delay in notification increases the likelihood that the accident site will be altered¹¹ and thus limits the Commission's ability to conduct its own investigation. Accordingly, notice should be provided as soon as a utility learns of a fatal accident.

As to Fleming-Mason's claim that its officials were unaware of revisions to Commission Regulations, the Commission notes that ignorance does not excuse a utility's failure to comply with Commission Regulations. Every person is expected to stay abreast of changes in the law. This is especially true for utilities, which must constantly deal with Commission Regulations.

ConTel admits violating the Commission regulation. It attributes its failure to an employee's negligence and to design flaws in its trouble reporting system.¹² It assures the

¹¹ In this case, Fleming-Mason had installed a new utility pole and completed all repair work by 12:00 p.m., on April 30. The Commission was notified of the accident 3 hours later.

¹² PSC Memorandum, "Informal Conference with ConTel," September 9, 1987. When Owens telephoned ConTel's local office, his call was automatically switched to ConTel's "after hours" repair center in Hershey, Pennsylvania. The information was placed into the company's computer. When the information was retrieved and reviewed by the local ConTel office later that morning, the clerk performing the review ignored the report and focused only on the caller's telephone number. Because the telephone number indicated a Flemingsburg exchange, an area served by General Telephone Company, he assumed the report did not involve ConTel facilities and filed it away.

Commission that these flaws have been corrected.¹³ ConTel argues against the imposition of any penalty as its violation was not willful and as corrective action has been taken.¹⁴

FINDINGS AND ORDERS

After examining the evidence of record and being advised, the Commission finds:

1. ConTel and Fleming-Mason are utilities as defined by KRS 278.010 and, therefore, are subject to the jurisdiction of the Commission.

2. Commission Regulation 807 KAR 5:006, Section 24, requires a utility to provide the Commission with prompt notice of any utility-related accident which results in death and to submit a summary written report on the accident within 7 days.

3. Hazel McCarthy died in a utility-related accident involving facilities used by ConTel and Fleming-Mason.

4. Fleming-Mason notified the Commission of this fatal accident 19 hours after learning of it. Fleming-Mason submitted a summary written report to the Commission 34 days later.

5. Fleming-Mason did not promptly notify the Commission of the McCarthy accident or submit a summary written report within 7 days of the accident.

6. After being informed of the McCarthy accident, ConTel neither notified the Commission nor submitted a summary written report on it.

¹³ Letter to PSC from Hon. Henry Jernigan, September 11, 1987.

¹⁴ Response of ConTel, p. 4

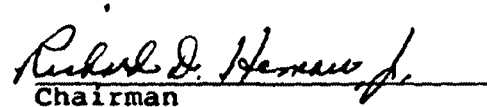
7. Fleming-Mason and ConTel failed to comply with Commission Regulation 807 KAR 5:006, Section 24.

8. ConTel and Fleming-Mason should be assessed a penalty of \$500 each for their failure to comply with 807 KAR 5:006, Section 24.

IT IS THEREFORE ORDERED that ConTel and Fleming-Mason are assessed a penalty of \$500 each for their failure to comply with 807 KAR 5:006, Section 24. Said penalty shall be made payable to the Kentucky State Treasurer and mailed to the Office of General Counsel, Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602.

Done at Frankfort, Kentucky, this 21st day of January, 1988.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director