

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JACKSON PURCHASE ELECTRIC	)	
COOPERATIVE CORPORATION, INC.	)	
	)	
AND	)	
	)	
BALLARD RURAL TELEPHONE COOPERATIVE	)	CASE NO. 10323
CORPORATION, INC.	)	
	)	
_____	)	
	)	
ALLEGED FAILURE TO COMPLY WITH	)	
COMMISSION REGULATIONS	)	

O R D E R

On July 21, 1988, this Commission ordered Jackson Purchase Electric Cooperative Corporation, Inc. ("Jackson Purchase"), and Ballard Rural Telephone Cooperative Corporation, Inc. ("Ballard"), to show cause why they should not be penalized for failing to comply with Commission regulations. We further ordered that a hearing in this case be set for October 6, 1988.

These actions followed our receipt of a Commission Staff Electrical Utility Accident Investigation Report on the death of Wilbur Nall III. On April 21, 1988, Mr. Nall was electrocuted when he came into contact with a 7200 volt single phase overhead line owned by Jackson Purchase. At the time of his death, Mr. Nall was attempting to extricate a transport truck from two low-hanging utility lines, a neutral conductor owned by Jackson Purchase and a communications conductor owned by Ballard. The

Accident Investigation Report contains allegations that none of the utility lines met the minimum clearance standards of the National Electric Safety Code as Commission regulations require.<sup>1</sup>

On August 12, 1988, Jackson Purchase filed a motion to stay all proceedings in this case until all judicial proceedings arising from the accident are resolved or the statute of limitations runs. In its motion, Jackson Purchase alleges that the Commission proceedings would greatly prejudice its defense in any wrongful death action brought by Mr. Nall's estate. On August 22, 1988, Ballard filed a similar motion, adopting the grounds and reasoning set forth in Jackson Purchase's motion.

The grant or denial of a stay is a matter solely within this Commission's discretion. 2 Am.Jur.2d Administrative Law §426 (1962). In rendering our decision, we must consider the following factors: the length of delay requested, the possible prejudice to the moving parties if denied the delay, the potential adverse effects of the delay, and the public interest. PATCO v. Federal Labor Relations Authority, 685 F.2d 547 (D.C. Cir. 1982); In re Mid-Atlantic Toyota Anti-Trust Litigation, 92 F.R.D. 358 (D.Md. 1981).

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<sup>1</sup> Commission Regulation 807 KAR 5:041, Section 2 requires electric utilities to maintain and operate their facilities in accordance with the National Electric Safety Code (1981 ed.).

Commission Regulation 807 KAR 5:061, Section 2 requires telephone utilities to maintain and operate their facilities in accordance with the National Electric Safety Code (1981 ed.).

Length of delay. The exact length of the delay is uncertain. KRS 413.140 requires a wrongful death action to be brought within one year of the death of a person. Unless both utilities reach a settlement with Mr. Nall's estate prior to the running of the statute of limitations, Commission proceedings will be delayed at least eight months. If a wrongful death action is filed against either utility and a protracted legal battle ensues, the Commission proceedings may be delayed for several years.

Possible prejudice to the moving parties if stay denied. Jackson Purchase and Ballard claim that their efforts to defend against a potential wrongful death action will be adversely affected by the Commission proceedings in three ways. First, Commission proceedings may require the disclosure of material not subject to discovery under the Kentucky Rules of Civil Procedure. As all case records are available to the public, KRS 61.872, the Nall estate may gain access to materials and information not normally available through discovery. Second, the Commission proceedings are likely to attract significant media coverage and, as a result, are likely to limit the utilities' opportunity for an impartial jury trial in any wrongful death action. Third, the findings of this Commission may be used against the utilities in any civil action brought by Mr. Nall's estate.

The utilities overlook some significant facts. First, any material which may be presented or disclosed to this Commission is already discoverable. The Kentucky Rules of Civil Procedure

concerning discovery are quite liberal.<sup>2</sup> Mr. Nall's estate, therefore, will have access to the material whether we proceed with this case or grant a stay.

Second, although our proceedings are likely to attract some media coverage, they will not seriously impair either utility's right to an impartial jury trial if a wrongful death action is brought. A significant passage of time between the administrative and judicial proceedings will likely occur, thus lessening any prejudice. Furthermore, prospective jurors exposed to any publicity about the accident can be weeded out during the voir dire phase of any trial. If publicity surrounding the accident is as widespread as suggested, the utilities can request a change of venue and have the trial moved to another location. Either option is far more effective and much less drastic than staying of Commission proceedings.

Finally, as we have not yet heard any evidence in this case, speculation on our final findings or their impact on any wrongful

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<sup>2</sup> Rule 26.02(1) states:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

death action is quite premature. Our findings may adversely affect the utilities' legal defense in any wrongful death action. They may also buttress it. In either event, our findings will be made only after the utilities have had an opportunity to argue their cases, present evidence in their own behalf, and cross-examine Staff. They will be based solely on the utilities' presentation of their cases and the facts. Furthermore, any findings made in this case will go to but one issue -- the utilities' compliance with Commission regulations. We will not deal with the issues of negligence, contributory negligence, proximate causation, or damages, the principal issues in any wrongful death action.

Potential adverse effects of delay. As the proceedings could be stayed for several years, it is very likely that witnesses could possibly relocate or their memories fade. Our ability to discern the facts will thus be lessened.

Public Interest. Both utilities claim the public interest will not be affected by the grant of a stay. The conditions which are the subject of the show cause proceedings have been corrected. Any penalty which might be levied, they assert, will have the same deterrent effect whether levied after a judicial proceeding or before it.

The public, however, also has an interest in the swift and sure enforcement of its laws. At issue in this case is the enforcement of administrative regulations designed to protect public safety. These proceedings are the only means of enforcing those regulations. To indefinitely stay these proceedings, to

effectively hold them hostage to potential civil litigation involving only private interests, runs counter to the public interest.

After considering all relevant factors, this Commission is of the opinion that the facts militate against granting a stay in this case. Neither utility will suffer any prejudice in this proceeding if a stay is denied. Any prejudice which might accrue to the utilities in their efforts to defend against a potential wrongful death action is small and easily remedied at trial. In contrast, an indefinite stay will adversely impact on this Commission's proceedings and on the public interest.

Accordingly, this Commission finds that Jackson Purchase's and Ballard's motions should be denied.

IT IS THEREFORE ORDERED that:

1. Jackson Purchase's and Ballard's motions to hold the proceedings in this case in abeyance be, and they hereby are, denied.

2. Jackson Purchase and Ballard shall each submit to this Commission a written response to the allegations contained in the Electrical Utility Accident Investigation Report no later than October 3, 1988.

3. The hearing in this case, previously scheduled for October 6, 1988, shall be, and it hereby is, rescheduled to November 2, 1988, at 1:30 p.m., Eastern Standard Time, in this Commission's offices at Frankfort, Kentucky.

Done at Frankfort, Kentucky, this 13th day of September, 1988.

PUBLIC SERVICE COMMISSION

*Richard D. Hemmings*  
Chairman

*Robert M. Davis*  
Vice Chairman

*Spencer M. Williams*  
Commissioner

ATTEST:

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Executive Director