

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 April 21, 1988, overhead utility lines belonging to Jackson Purchase Electric Cooperative Corporation, Inc. ("Jackson Purchase"), and Ballard Rural Telephone Cooperative Corporation ("Ballard") were involved in a fatal accident near Kevil, Kentucky. These lines hung across a gravel road leading to an automobile salvage yard. On this day, three of these lines -- a neutral conductor belonging to Jackson Purchase and two telephone conductors belonging to Ballard -- obstructed the path of a transport truck piled high with crushed automobiles. To clear the truck's path, Wilbur Nall III climbed atop the truck and lifted these lines. While lifting them, he touched an energized 7200 volt single phase line owned by Jackson Purchase and was electrocuted.

Commission Staff investigated the accident and then submitted an Accident Investigation Report to this Commission. Commission Staff found that none of the utility lines involved in the accident met the vertical clearance standards of the National Electric Safety Code (NESC)¹ and concluded that Jackson Purchase and Ballard had failed to comply with Commission regulations.

On July 21, 1988, this Commission ordered Jackson Purchase and Ballard to show cause why they should not be penalized for their alleged failure to comply with Commission regulations. We further ordered each utility to respond to the Accident Investigation Report. Jackson Purchase and Ballard filed their responses on November 14 and November 16, 1988, respectively. Neither disputed the Report's findings. Both utilities, however, sought to present oral argument on the assessment of a penalty. Arguments were heard on December 8, 1988.

We first address the utilities' motions, made at oral argument, to hold these proceedings in abeyance. The issues posed by them are not new to us. Arguing that Commission proceedings would prejudice their efforts to defend against any potential wrongful death action initiated by the estate of Wilbur Nall III, Jackson Purchase and Ballard made similar motions at the start of this case. This Commission denied those motions in our Order of September 13, 1988, finding that any prejudice to the utilities as a result of these proceedings would be relatively small and

¹ All references in this Order to the National Electric Safety Code refer to the 1981 edition.

outweighed by the public's interest in the swift enforcement of safety laws.

In renewing their motions, Jackson Purchase and Ballard argue that circumstances have changed since the issuance of the September 13, 1988 Order. A wrongful death action, only a possibility when the previous Order was issued, has become a vivid reality as the Nall Estate recently filed suit against Jackson Purchase.

This development does not warrant reversal of our earlier Order. In considering the utilities' previous motions, this Commission carefully assessed the potential impact of Commission proceedings on the utilities' efforts to defend against a wrongful death action. The fact that such an action has now been initiated, therefore, does not affect that decision. Our previous Order stands. The utilities' motions are denied.

We now turn to the two substantive issues of this case -- the utilities' alleged failure to comply with Commission regulations and the assessment of a penalty for those alleged failures.

Commission regulations require electric and telephone utilities to construct and maintain their facilities in compliance with the standards of the NESC. 807 KAR 5:041 §3; 807 KAR 5:061 §2. NESC Rule 232 specifies the minimum vertical clearance standards for utility lines. The actual clearance distance established by the rule varies depending upon temperature, length of the line span, type of line, and the type of surface over which the line hangs.

The evidence clearly shows that Jackson Purchase's and Ballard's lines did not meet NESC minimum vertical clearance standards. Within hours of the accident, a member of the McCracken County Sheriff Department measured the vertical clearance of each utility line. On April 22, 1988, the day following the accident, Staff investigator John Land visited the accident site and did likewise. The table below compares both sets of measurements with the clearance distances required by NESC Rule 232 under similar conditions.

	<u>Land</u> <u>Measurements</u>	<u>Sheriff</u> <u>Measurements</u>	<u>NESC</u> <u>Minimum</u>
Phase conductor to ground elevation (Jackson Purchase)	17'-4"	17'-8"	21.1'
Neutral conductor to ground elevation (Jackson Purchase)	14'-1"	14'-5"	19.1'
Communication conductors to ground elevation (Ballard)	13'-3" 12'-11"	13'-5" 13'-4"	19.1'

Both sets of measurements, the accuracy of which neither utility disputes, reveal all utility lines to be below NESC standards. We must, therefore, find that Jackson Purchase and Ballard failed to comply with Commission regulations.

Having found a failure to comply with Commission regulation, we now decide if a penalty should be assessed. The utilities have advanced several arguments against such assessments.

The utilities first argue that a penalty cannot be imposed because a showing of willful misconduct on their part is lacking. Willful misconduct is a prerequisite for assessing a penalty against "any officer, agent or employee of a utility"; it is not, however, a prerequisite for assessing a penalty against the utility itself. KRS 278.990(1) provides that a penalty may be

assessed against "any such utility that . . . fails to obey any lawful requirement or order of the public service commission." Commission regulations require Jackson Purchase and Ballard to construct and maintain their facilities in accordance with NESC standards. In this instance, the utilities did not. For that failure, they may be penalized.

The utilities next argue that, though failing to strictly comply with Commission regulations, they substantially complied with them and should not, therefore, be penalized. Jackson Purchase noted in oral argument that it has over 2700 miles of utility line to maintain. Under such circumstances, it asserts that strict compliance is difficult at best and impossible at worst. It further asserted that it exerted its best efforts to ensure compliance by conducting inspections of all utility lines. Ballard made similar assertions.

This Commission recognizes that Jackson Purchase and Ballard have large service areas which make strict compliance with Commission regulations difficult. In some instances, however, especially where public safety is concerned, we have no choice but to demand strict compliance with a Commission regulation. This is such an instance. The NESC "contain[s] minimum provisions considered necessary for the safety of employees and the public."² Failure to comply with the NESC, even in isolated incidents, therefore, jeopardizes public safety.

² NESC Rule 010.

To characterize the utilities' actions in this case as their best efforts, furthermore, is not entirely accurate. Ballard was aware of clearance problems as early as June 1986, when, according to its general manager, the utility "had this one report to raise our lines, that loads were going out that were taller than our lines."³ Ballard raised its lines, but not to the height required by the NESC. Jackson Purchase's lines prevented it from doing so. Ballard did not, however, contact Jackson Purchase or this Commission to report the problem.

While Jackson Purchase had no actual knowledge of the clearance problems, it had constructive notice of it. In February 1988, just 2 months before the accident, Jackson Purchase employees inspected all lines in the area where the accident occurred. As part of the inspection, the height of each line was checked. Although the two Jackson Purchase lines in question were from three to five feet below minimum vertical clearance standards, no report of a low line was recorded. A properly conducted inspection should have discovered the problem.

In their arguments the utilities sought to focus attention on other factors which contributed to the accident. Both noted that the transport truck involved in the accident exceeded height permitted by state law, that the salvage yard owner was aware of

³ Letter from Harlan E. Parker to Forest Skaggs (April 26, 1988). This letter contradicts Ballard's claims that it was unaware of the auto salvage yard's operations since installing its utility lines.

clearance problems but made no attempt to notify the utilities, and that Nall was negligent. These actions, the utilities contend, must be considered in our decision on the assessment of a penalty.

If this Commission regards Nall's death as a consequence of the utilities' failure to comply with Commission regulations and, thus, as a factor to consider in making our decision, we must also consider other factors which contributed to Nall's death. These other factors, however, do not absolve either utility of its failure to comply with Commission regulations. Neither Nall's alleged negligence nor the alleged height of the transport truck were responsible for the height of the lines at the time of the accident.

In reaching our decision, this Commission also considers the corrective actions taken by the utilities to correct the clearance problems. Ballard has placed the telephone conductors in question underground, is actively pursuing a program to bury most of its telephone conductors. Jackson Purchase has raised its lines near the automobile salvage yard and has initiated a more aggressive line inspection program. We view these actions as positive developments which will enhance public safety.

Having considered the gravity of the utilities' offense and the utilities' actions to achieve compliance with Commission Regulations, we believe that each utility should be assessed a penalty of \$250.

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

1. On April 22, 1988, Jackson Purchase utility lines hanging across Kingsway Drive in McCracken County, Kentucky, failed to meet the minimum vertical clearance distances specified by NESC Rule 232.

2. Commission Regulation 807 KAR 5:041, Section 3 requires an electric utility to construct and maintain its facilities in accordance with the NESC.

3. As Jackson Purchase's facilities were not in accordance with the standards of the NESC, Jackson Purchase failed to comply with Commission Regulation 807 KAR 5:041, Section 3.

4. Jackson Purchase should be assessed a penalty of \$250 for its failure to comply with Commission Regulation 807 KAR 5:041, Section 3.

5. On April 22, 1988, Ballard utility lines hanging across Kingsway Drive in McCracken County, Kentucky, failed to meet the minimum vertical clearance distances specified by NESC Rule 232.

6. Commission Regulation 807 KAR 5:061, Section 2 requires a telephone utility to construct and maintain its facilities in accordance with the standards of the NESC.

7. As Ballard's facilities were not in accordance with the standards of the NESC, Ballard failed to comply with Commission Regulation 807 KAR 5:061, Section 2.

8. Ballard should be assessed a penalty of \$250 for its failure to comply with Commission Regulation 807 KAR 5:061, Section 2.

IT IS THEREFORE ORDERED that:

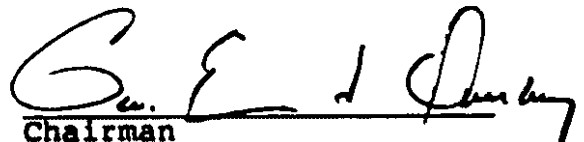
1. Jackson Purchase be, and it hereby is, assessed a penalty of \$250 for its failure to comply with Commission Regulation 807 KAR 5:041, Section 3.

2. Ballard be, and it hereby is, assessed a penalty of \$250 for its failure to comply with Commission Regulation 807 KAR 5:061, Section 2.

3. These penalties shall be paid within 20 days of the date of this Order by certified check or money order made payable to Treasurer, Commonwealth of Kentucky. Said check or money order shall be mailed or delivered to the Office of General Counsel, Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602.

Done at Frankfort, Kentucky, this 6th day of January, 1989.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director