

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENTUCKY UTILITIES COMPANY

ALLEGED FAILURE TO COMPLY WITH
COMMISSION REGULATIONS

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CASE NO.
90-172

O R D E R

After receiving an Electrical Utility Accident Investigation Report prepared by Commission Staff which alleged that Kentucky Utilities Company ("KU") had failed to comply with Commission Regulation 807 KAR 5:006, Section 24, the Commission ordered the utility to show cause why it should not be penalized for its alleged failure. KU has responded to the allegations contained in that report, contending that no violation of Commission regulations has occurred and that, if it did violate any Commission regulation, its violation was not willful. KU has stipulated the facts in this matter and has waived its right to hearing.

After reviewing the evidence of record and being otherwise sufficiently advise, the Commission finds that:

1. KU, a private corporation incorporated under the laws of Kentucky, engages in the distribution of electricity to the public, for compensation, for light, heat, power and other uses,

and is therefore a utility subject to the Commission's jurisdiction. KRS 278.010(3)(a) and 278.040.

2. Commission Regulation 807 KAR 5:006, Section 24, requires an electric utility to submit to the Commission a summary written report of "any utility-related accident which results in death or serious injury" (emphasis added). It further requires that such report be submitted within 7 days of that accident.

3. On April 5, 1990, Jimmy Ernst was injured while transferring a 3-phase, 2400-volt line to a new utility pole in Georgetown, Kentucky. Suffering flash burns to his face and neck, Mr. Ernst was taken to the University of Kentucky Medical Center for treatment of his injuries and was released later that same day. He returned to work the next day.

4. KU owns and operates the facilities upon which Mr. Ernst was working at the time of the accident.

5. KU notified the Commission of this accident by telephone at 11:20 a.m. on April 5, 1990.

6. KU submitted a summary written report of the accident involving Mr. Ernst to the Commission on April 20, 1990, 15 days after the accident occurred.

7. Due to the nature of Mr. Ernst's injuries and the fact that they required medical attention, the accident in question involved a serious injury.

8. KU failed to submit to the Commission a summary written report of a utility-related accident involving a serious injury within 7 days of its occurrence and therefore failed to comply with Commission Regulation 807 KAR 5:006, Section 24.

9. Any utility which willfully violates any Commission regulation is subject to civil penalty. KRS 278.990(1). A willful violation "means 'knowing' violation or 'knowing failure to comply.'" Oldham v. Kubinski, 185 N.E.2d 270, 280 (Ill. App. 1962). See, Muncy v. Commonwealth, 97 S.W.2d 606, 609, 265 Ky. 730 (1936) ("The word 'wilful' in its general acceptance means intentionally, not accidentally nor involuntarily.") See also Woods v. Corsey, 200 P.2d 208, 211 (Cal. App. 1948) (A willful violation is "one which is intentional, knowing, voluntary, deliberate or obstinate. . .").

10. At the time of the accident, the Commission had not issued any Order or Opinion interpreting or defining the term "serious injury."

11. At the time of the accident, KU construed "serious injury" as one which requires hospitalization for one or more days and/or causes lost worktime. As the accident in question did not require any hospitalization and/or caused lost work time, KU believed that the reporting requirements of Commission Regulation 807 KAR 5:006, Section 24, were not applicable.

12. Inasmuch as KU did not knowingly violate Commission Regulation 807 KAR 5:006, Section 24, its violation of that regulation does not subject it to civil penalty. In the future, however, KU and all other jurisdictional utilities are hereby placed on notice that an injury that requires any medical attention shall be construed as a serious injury as that phrase is used in Commission Regulation 807 KAR 5:006, Section 24.


IT IS ORDERED that this case is hereby closed and removed
from the Commission's docket.

Done at Frankfort, Kentucky, this 4th day of December, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director