

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENTUCKY UTILITIES COMPANY)	
AND)	
SOUTH CENTRAL RURAL TELEPHONE)	
COOPERATIVE CORPORATION)	
_____)	CASE NO.
)	90-257
ALLEGED FAILURE TO COMPLY WITH)	
COMMISSION REGULATIONS)	

O R D E R

After receiving an Electrical Utility Accident Investigation Report prepared by Commission Staff which alleged that Kentucky Utilities Company ("KU") and South Central Rural Telephone Cooperative Corporation ("SCRTCC") had failed to comply with Commission regulations, the Commission ordered each utility to show cause why it should not be penalized for its alleged failure. Each has responded to the allegations contained in that report, has stipulated the facts in this matter, and has waived its right to a hearing.

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

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 regulatory jurisdiction. KRS 278.010(3)(a) and 278.040.

2. KU constructs, operates, and maintains electric distribution and service lines throughout its service areas in Kentucky.

3. Commission Regulation 807 KAR 5:041, Section 3, requires electric utilities to maintain their plant and facilities in accordance with standards of the National Electrical Safety Code (1987 Edition) ("NESC").¹

4. On July 5, 1990, a moving van came into contact with a cable television ("CATV") conductor and a communications conductor overhanging Washington Street in Munfordville, Kentucky. The tension on these conductors, once released, caused two secondary 120-volt electric conductors, which KU owns and maintains, to recoil and make contact. This contact resulted in a blown transformer fuse. Mike Blanton, a passenger in the moving van, claimed to be injured as a result of the incident and was taken to Munfordville Clinic for medical treatment. He was released later that day.

5. On July 5 and September 24, 1990, KU employees measured the vertical clearance of the electric conductors in question. Their minimum vertical clearance on those dates was 18 feet 2 inches and 18 feet 8 inches respectively. Temperature at the time of measurement was 75 degrees Fahrenheit and 40 degrees Fahrenheit respectively.

¹ Effective April 4, 1991, Commission Regulation 807 KAR 5:041, Section 3, was amended to require electric utilities to maintain their plant and facilities in accordance with the standards of the National Electrical Safety Code (1990 edition). This amendment does not affect the findings contained herein.

6. On July 6, 1990, Commission Staff measured the vertical clearance of the same conductors. At that time, their vertical clearance was 18 feet 10 inches and 17 feet 3 inches respectively. The temperature was approximately 90 degrees Fahrenheit.

7. The span of neither electric conductor exceeds 250 feet in length.

8. The KU conductors were constructed in 1961. No record of any significant change or alteration to them prior to July 5, 1990 has been found.

9. NESC Section 013 requires existing facilities to comply with NESC provisions in effect at the time of their construction. Absent substantial changes or alterations, these facilities are not required to comply with subsequently adopted standards.

10. When the KU conductors were constructed, Commission regulations required an electric utility to construct and maintain its facilities in accordance with the National Bureau of Standards Handbook H43 (1949 Edition) ("1949 Code").

11. At the time of the incident, Commission Regulation 807 KAR 5:041, Section 3, required KU to maintain the conductors in accordance with the 1949 Code's standards.

12. The 1949 Code requires a minimum vertical clearance of 18 feet above a public street for a 0 to 750-volt open supply conductor with a span length no greater than 250 feet where the outside air temperature is 60 degrees Fahrenheit, wind speed is zero, and the conductor has reached its final unloaded sags.

13. To determine if a conductor meets the clearance standards of the 1949 Code, it must be measured under the

conditions specified in the 1949 Code or the actual clearance measurements must be adjusted to reflect those conditions.

14. As adjusted to reflect the conditions specified in the 1949 Code, the July 6, 1990 measurements show that KU's conductors comply with the 1949 Code's vertical clearance standards.

15. As to its electric conductors, KU complied with Commission Regulation 807 KAR 5:041, Section 3, and should not be penalized.

16. KU inspected the facilities in question on May 7, 1990. During that inspection, no clearance problems with KU facilities were noted. KU employees, however, discovered clearance problems with the other conductors attached to the utility pole which KU owned. KU failed to notify the owners of these conductors of this clearance problem or to require them to take corrective action. A change order to install a taller utility pole was issued on May 7, 1990, but not implemented until August 30, 1990. All facilities were transferred to a taller pole on October 5, 1990.

17. KU and all other jurisdictional utilities are hereby placed on notice that Commission Regulation 807 KAR 5:041 shall henceforth be construed as requiring the owner of a utility pole to ensure all pole attachments comply with NESC standards.² Utility pole owners shall be jointly responsible for a pole

² Insofar as Commission Regulation 807 KAR 5:061, Section 3, imposes the same requirements on telephone utilities as Commission Regulation 807 KAR 5:041, Section 2, imposes on electric utilities, the Commission construes Commission Regulation 807 KAR 5:061 to impose a similar obligation on telephone utilities which own utility poles.

attachment's failure to comply with NESC standards and shall be subject to possible penalty under KRS 278.990 for such failure.

18. SCRTCC, a Kentucky corporation formed under KRS 279.310 to 279.600, engages in the transmission over wire of messages by telephone for the public for compensation and is therefore a utility subject to the Commission's regulatory jurisdiction. KRS 278.010(3)(e), 278.040, and 279.540.

19. SCRTCC installs, operates, and maintains telecommunications facilities throughout its service area in south central Kentucky.

20. Commission Regulation 807 KAR 5:006, Section 24, requires a telephone utility to submit to the Commission a summary written report of any utility-related accident which results in death or serious injury. It further requires that such report be submitted within seven days of the accident.

21. Commission Regulation 807 KAR 5:061, Section 3, requires telephone utilities to construct and maintain their plant and facilities in accordance with NESC standards.³

22. SCRTCC owns the communications conductor which overhangs Washington Street and was involved in the July 5, 1990 incident.

23. SCRTCC never notified the Commission of the incident nor submitted a summary written report on it.

³ Effective April 4, 1991, Commission Regulation 807 KAR 5:061 was amended to require telephone utilities to maintain their plant and facilities in accordance with the standards of the National Electrical Safety Code (1990 edition). This amendment does not affect the findings contained herein.

24. Commission Staff advised SCRTCC of the incident by telephone on July 5, 1990, but made no mention of any injuries in that conversation.

25. No claim for personal injury involving the incident has been presented to SCRTCC.

26. SCRTCC first learned that the incident involved an injury upon its receipt of the Commission's Order of September 17, 1990.

27. At the time of the incident, SCRTCC's communications conductor did not meet NESC vertical clearance standards.

28. At the time of the incident, SCRTCC had not inspected that conductor since 1975 for compliance with NESC clearance standards despite the requirement of Commission Regulation 807 KAR 5:006, Section 23, that it inspect its aerial plant at least every two years.

29. 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. 26 Ky. 730 (1936) ("The word 'wilful' in its general acceptation 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. . . .") A willful violation occurs when one having responsibility over a facility knows that the facility's condition violates Commission regulations or, "by the

exercise of reasonable care, could have discovered the existence of the condition and fails to promptly correct it." Simmons v. Union Electric Co., 460 N.E.2d 28, 36 (Ill. App. 1984), aff.'d 473 N.E.2d 946 (Ill. 1984).

30. As it was unaware of any injury resulting from the July 5, 1990 incident, SCRTCC did not willfully fail to comply with Commission Regulation 807 KAR 5:006, Section 24.

31. SCRTCC willfully failed to comply with Commission Regulation 807 KAR 5:061, Section 2, by failing to maintain its conductor in accordance with NESC Standards and conducting biennial inspections to ensure compliance with those standards.

32. For its willful failure to comply with Commission Regulation 807 KAR 5:061, Section 3, SCRTCC should be assessed a penalty of \$1,000.

IT IS THEREFORE ORDERED that:

1. A penalty in the amount of \$1,000 is assessed against SCRTCC for its failure to comply with Commission Regulation 807 KAR 5:061, Section 2.

2. SCRTCC shall pay the assessed penalty within 20 days of the date of this Order by certified or cashier's check made payable to "Treasurer, Commonwealth of Kentucky." Said check shall be delivered to Office of General Counsel, Public Service Commission of Kentucky, 730 Schenkel Lane, P. O. Box 615, Frankfort, Kentucky 40602.

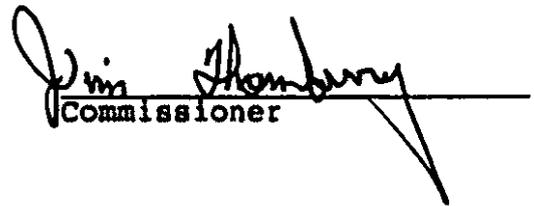
3. This case is hereby closed and removed from the Commission's docket.

Done at Frankfort, Kentucky, this 23rd day of May, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director