

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

FOOTHILLS RURAL TELEPHONE	)	
COOPERATIVE CORPORATION, INC.	)	
_____	)	CASE NO. 98-00593
	)	
ALLEGED FAILURE PURSUANT TO	)	
807 KAR 5:041, SECTION 3, TO COMPLY	)	
WITH NATIONAL ELECTRICAL SAFETY	)	
CODE, 1990 EDITION, SECTION 42,	)	
RULE 420H; RULE 421A; RULE 422A;	)	
AND SECTION 43, RULE 431	)	

O R D E R

On November 24, 1998, the Commission directed Foothills Rural Telephone Cooperative Corporation, Inc. ( Foothills ) to appear at a hearing and to show cause why it should not be penalized pursuant to KRS 278.990(1) for its alleged violations of the National Electrical Safety Code ( NESC ) which the Commission enforces pursuant to 807 KAR 5:041, Section 3. Two employees of a subcontractor named United, Inc. violated two counts of NESC 42, Rule 420H and Rule 422A. The third employee, a foreman, violated two counts of NESC 42, Rule 421A and he violated NESC 43, Rule 431. These violations involved two employees working with a telephone pole while not wearing rubber gloves and sleeves; the foreman not directing that they do so; and the foreman allowing the electric transmission line to sag or lower, thereby allowing the telephone pole being replaced to entangle the power distribution line.

This proceeding was placed in abeyance awaiting the decision in another case involving independent contractors. When that case was decided favorably for the Commission, Foothills and Commission Staff entered into negotiations to resolve all outstanding issues. On February 11, 2002, Foothills and Commission Staff executed a Settlement Agreement, which is appended hereto. In reviewing the Settlement Agreement, the Commission considered, *inter alia*, the unique circumstances in this case and the fact that the injuries were relatively harmless. This case involves only the indirect involvement of a power transmission line which would not have been involved had the foreman of the subcontractor been cognizant of the danger. After reviewing the Settlement Agreement, and being otherwise sufficiently advised, the Commission finds that the Agreement is in accordance with the law, does not violate any regulatory principle, results in a reasonable resolution of this case, and is in the public interest.

IT IS THEREFORE ORDERED that:

1. The Settlement Agreement is incorporated in this Order as if fully set out herein.
2. The terms and conditions set forth in the Settlement Agreement are hereby adopted and approved.
3. Within 10 days of the date of this Order, Foothills shall pay to the Commonwealth of Kentucky the sum of Three Thousand Five Hundred Dollars (\$3,500.00). This payment shall be made in the form of a cashier s check payable to the Kentucky State Treasurer, and shall be mailed or delivered to the Office of General Counsel, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40602.

4. Upon receipt of the aforementioned payment, this case shall be closed and removed from the Commission's docket.

Done at Frankfort, Kentucky, this 27<sup>th</sup> day of February, 2002.

By the Commission

ATTEST:

Deputy W<sup>m</sup> H. Fowler  
Executive Director



APPENDIX TO AN ORDER OF THE  
KENTUCKY PUBLIC SERVICE COMMISSION  
IN CASE NO. 98-00593  
DATED February 27, 2002

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

FOOTHILLS RURAL TELEPHONE	)	
COOPERATIVE CORPORATION, INC.	)	
_____	)	CASE NO. 98-593
	)	
ALLEGED FAILURE PURSUANT TO	)	
807 KAR 5:041, SECTION 3, TO COMPLY	)	
WITH NATIONAL ELECTRICAL SAFETY	)	
CODE, 1990 EDITION, SECTION 42,	)	
RULE 420H; RULE 421A; RULE 422A;	)	
AND SECTION 43, RULE 431	)	

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into on this 11 day of February, 2002, by and between Foothills Rural Telephone Cooperative Corporation, Inc. ( Foothills Telephone ) and the Staff of the Public Service Commission ( Commission Staff ).

WITNESSETH:

WHEREAS, on January 12, 1999, the Commission directed that this proceeding be held in abeyance pending the outcome of a judicial proceeding on the Commission's authority to assess a penalty against a utility for the failure of its contractors to operate and maintain the utility's facilities in accordance with Commission regulations. The courts of this Commonwealth have addressed the issue and ascertained the scope and nature of the Commission's authority to assess such a penalty against a utility for the failure of its contractors. Public Service Commission v. Jackson County Rural Electric

Cooperative Corporation, Ky.App., 50 S.W.2d 764 (2000). Therefore, this case is withdrawn from abeyance and is currently on the pending docket; and

WHEREAS, Commission Staff issued a Utility Accident Investigation Report ( Investigation Report ) dated August 6, 1998, detailing its investigation of an incident which occurred on May 20, 1998. The incident involved four employees of United, Inc., a contractor employed by Foothills Telephone to replace old communications poles with new 25-foot poles, upon which Foothills Telephone maintained its service lines. The investigation was conducted by and a written report prepared by Commission Staff members, John Land and Vern Miracle; and

WHEREAS, on November 24, 1998, the Public Service Commission ( Commission ) entered a show cause Order in Case No. 98-593 against Foothills Telephone in which it found sufficient evidence that Foothills Telephone failed to comply with seven sections of the National Electrical Safety Code ( NESC ) which the Commission enforces pursuant to 807 KAR 5:061, Section 3, and therefore subject to penalties pursuant to KRS 278.990(1); and

WHEREAS, the Commission ordered Foothills Telephone to show cause why it should not be subject to the penalties of KRS 278.990(1) for its alleged violations; and

WHEREAS, the parties hereto desire to enter into this Settlement Agreement to resolve the issues raised by the Commission's show cause Order and have, in furtherance thereof, entered into the following stipulations:

1. Foothills Telephone is a Kentucky corporation doing business as a telephone utility in the Commonwealth of Kentucky and is regulated by the Commission.

2. Foothills Telephone installs, operates, and maintains line and pole facilities throughout its service area within Kentucky.

3. Foothills Telephone has a duty to comply with the provisions of Chapter 278 of the Kentucky Revised Statutes and Commission regulations promulgated thereunder, including the application of NESC.

4. The facts of the Investigation Report are not in dispute by either Commission Staff or Foothills Telephone. Further, there are no factual disputes regarding those matters set out in the show cause Order issued by the Commission on November 24, 1998 and the response thereto by Foothills Telephone filed on December 15, 1998.

5. Big Sandy Rural Electric Cooperative Corporation, Inc. ( Big Sandy ) maintained a single-phase distribution line carrying 7,620 V. on Patterson Creek at Flat Gap, Johnson County, Kentucky. Big Sandy's line was built over (over-built) a telephone communications line constructed and maintained by Foothills Telephone. Each system co-existed within the same easement space with the Big Sandy line simply being higher than the other.

6. Four employees of United, Inc., the contractor employed by Foothills Telephone to replace old poles, were working to set a new 25-foot communications pole and were working beneath the Big Sandy transmission lines. Dewey Lemaster, Donald McCoy, Anthony McDowell, and Paul Hale were physically pushing and maneuvering the new pole in order to set it and it became entangled with Big Sandy's energized line.

7. Neither Donald McCoy or Anthony McDowell were wearing rubber gloves and sleeves, which is a violation of NESC Section 42, Rule 420H and Rule 422A.

8. Dewey Lemaster was the foreman in charge of the work and he violated NESC Section 42, Rule 421A, by failing to direct Messrs. McCoy and McDowell to wear protective rubber gloves and sleeves and use safe procedures.

9. Messrs. McCoy, McDonald and Lemaster violated NESC Section 43, Rule 431, by causing a situation in which the proper minimum distances from live electric facilities to the new pole were reduced, exposing the energized lines to the pole.

10. It is noted that Big Sandy was not in any violation of state or federal regulations.

11. These stipulations are proposed by Commission Staff and Foothills Telephone for purposes of reaching a settlement in Case No. 98-593. In the event such a settlement is not reached, these proposed stipulations will be withdrawn.

12. Nothing contained herein shall be construed by the Commission as an admission of a violation of any statute or regulation by Foothills Telephone, and the Commission's acceptance of this Agreement shall not be construed as a finding of a violation of any statute or regulation by Foothills Telephone. The facts contained herein shall not be cited as precedent in any other proceeding except to enforce this Settlement Agreement.

NOW, THEREFORE, Foothills Telephone and Commission Staff agree that:

1. Foothills Telephone shall pay a civil penalty of \$500 for each of the seven incidences herein. The total civil penalty shall be \$3,500.

2. Within 10 days of the date of the Commission's Order approving this Settlement Agreement, Foothills Telephone shall pay to the Commonwealth of Kentucky \$3,500. This payment shall be in the form of a cashier's check payable to Treasurer,

Commonwealth of Kentucky, and shall be mailed or delivered to the Office of General Counsel, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40602.

3. This agreement is subject to the acceptance of and approval by the Commission and an issued Order.

4. Nothing contained herein shall be construed as an admission of a violation of any statute or Commission regulation by Foothills Telephone, including any violation of the NESC, nor shall the Commission's acceptance of this agreement be construed as a finding of such a violation by Foothills Telephone. This Settlement Agreement and the stipulations contained herein may not be cited in any other matter or proceeding except they may be used in a proceeding between the Commission and Foothills Telephone to enforce this Settlement Agreement. This case shall be terminated upon the issuance of the Commission's Order accepting this Settlement Agreement and the payment of the monies herein provided, all in satisfaction of the show cause Order of November 24, 1998.

5. If the Commission fails to accept and approve this Settlement Agreement in its entirety, this proceeding shall go forward and each of the terms of the Settlement Agreement or any matters raised during settlement negotiations or contained herein shall not be binding on any of the signatories.

6. If the Commission accepts and adopts this Settlement Agreement in its entirety and enters an Order in this proceeding to that effect, Foothills Telephone shall not apply for rehearing in this matter, nor bring an action for judicial review of that Order.

IN WITNESS WHEREOF, Foothills Telephone and Commission Staff have executed this Settlement Agreement the day and year first above written by and through their duly authorized attorneys.

FOOTHILLS RURAL TELEPHONE  
COOPERATIVE CORPORATION, INC.

By: *John G. P. [Signature]*  
Title: *General Manager*

COMMISSION STAFF  
PUBLIC SERVICE COMMISSION

By: *Dale Wright*  
Dale Wright, Staff Attorney