

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CLARK ENERGY COOPERATIVE, INC.)	
_____)	CASE NO. 1999-00142
)	
FAILURE TO COMPLY WITH)	
COMMISSION REGULATION)	
807 KAR 5:041, SECTION 3(1))	

O R D E R

On April 22, 1999, the Commission directed Clark Energy Cooperative, Inc. (Clark Energy) to show cause why it should not be penalized pursuant to KRS 278.990(1) for its alleged violations of Commission Regulation 807 KAR 5:041, Section 3. Upon Clark Energy s motion, the Commission ordered this proceeding to be held in abeyance pending the outcome of judicial proceedings regarding 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.

After the courts ascertained the scope and nature of utility liability, Clark Energy and Commission Staff entered into negotiations to resolve all outstanding issues in this proceeding. On March 7, 2002, they executed a Settlement Agreement, appended hereto, and jointly moved for Commission approval of that Agreement.

Upon review of the Settlement Agreement and consideration of the circumstances surrounding the January 11, 1999 incident, the Commission finds that

the Settlement 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, appended hereto, is incorporated into this Order as if fully set forth herein.

2. The terms and conditions of the Settlement Agreement are adopted and approved.

3. Within 10 days of the date of this Order, Clark Energy shall pay to the Commonwealth of Kentucky the sum of \$3,500. This payment shall be in the form of a cashier s check made payable to Treasurer, Commonwealth of Kentucky and shall be mailed or delivered to the Office of General Counsel, Public Service Commission of Kentucky, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

4. Upon the payment of the assessed penalty as described above, this case shall be removed from the Commission s docket.

Done at Frankfort, Kentucky, this 26th day of April, 2002.

By the Commission

ATTEST:


Executive Director

APPENDIX TO AN ORDER OF THE
KENTUCKY PUBLIC SERVICE COMMISSION
IN CASE NO. 1999-00142
DATED April 26, 2002

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CLARK ENERGY COOPERATIVE, INC.)

_____) CASE NO. 99-142

)

ALLEGED VIOLATION OF)

COMMISSION REGULATION)

807 KAR 5:041, SECTION 3

SETTLEMENT STIPULATIONS

This AGREEMENT is made and entered into this 27th day of March, 2002, by and between the Staff of the Public Service Commission of Kentucky ("Commission Staff") and Clark Energy Cooperative, Inc. ("Clark Energy").

WITNESSETH:

WHEREAS, Clark Energy is a Kentucky corporation, organized pursuant to KRS Chapter 279, engaged in the distribution of electricity to the public for compensation for lights, heat, power, and other uses, and is a utility subject to Commission jurisdiction pursuant to KRS 278.010; and

WHEREAS, on January 11, 1999, Albert Sturgell was injured as he installed Clark Energy's electric distribution facilities in Montgomery County, Kentucky; and

WHEREAS, at the time of the incident, James Maynard was the first line supervisor at the work site; and

WHEREAS, at the time of the incident, Albert Sturgell and James Maynard were employees of Davis H. Elliot Company, Inc. and were acting within the scope of their employment; and

WHEREAS, at the time of the incident, Davis H. Elliot Company, Inc. was performing construction and maintenance activities pursuant to its "Distribution Line Extension Construction Contract" with Clark Energy; and

WHEREAS, Commission Staff investigated the incident, and, on January 28, 1999, issued its Utility Accident Investigation Report; and

WHEREAS, in its Utility Accident Investigation Report, Commission Staff found that Albert Stergell and James Maynard had violated certain provisions of the National Electrical Safety Code (1990 Edition) ("NESC"); and

WHEREAS, on April 22, 1999, the Public Service Commission entered an Order establishing this case and directing Clark Energy to show cause why it should not be subject to the penalties under KRS 278.990(1) relating to this incident; and

WHEREAS, on May 24, 1999, Clark Energy, by counsel filed its response to the Commission's Order of April 22, 1999; and

WHEREAS, Clark Energy recognizes and acknowledges that National Electrical Safety Code, Section 42,420.4 requires tools, protective equipment, and safety straps to be used by employees in connection with their work, and Clark Energy further recognizes and acknowledges that National Electrical Safety Code, Section 42, 421A requires that the first level supervisor to adopt such precautions within his authority to prevent accidents and to see that the safety rules and operating procedures were observed by the employees under his direction, and

WHEREAS, Clark Energy and Commission Staff desire to settle the issues raised by this proceeding and have entered into this Settlement Agreement through compromise to settle this proceeding.

NOW, THEREFORE, Clark Energy and Commission Staff agree that:

1. Within 10 days after the entry of an Order approving this Settlement Agreement, Clark Energy shall pay to the Commonwealth of Kentucky the sum of Three Thousand Five Hundred Dollars (\$3,500.00). This payment shall be in the form of a cashier's check made payable to "Treasurer, Commonwealth of Kentucky" and shall be mailed or delivered to the Office of General Counsel, Public Service Commission of Kentucky, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

2. Nothing contained herein shall be construed as an admission of a willful violation of any federal or state statute or

any provision of an administrative regulation, nor shall the Public Service Commission's acceptance of this agreement be construed as a finding of a willful violation of any statute, administrative regulation, or any provision of NESC. This Settlement Agreement shall not be used for any purpose in any subsequent legal or administrative proceeding (other than a proceeding by the Commission to enforce the terms of this Settlement Agreement), and Clark Energy shall not be precluded or stopped from raising any issue, claim, or defense therein by reason of the execution of this Settlement Agreement.

3. This Agreement is subject to the acceptance of and approval by the Public Service Commission. If this settlement is accepted by an Order of the Public Service Commission, the parties agree not to request rehearing or to file an appeal of that Order in the Franklin Circuit Court.

4. Commission Staff shall recommend to the Public Service Commission that this Settlement Agreement be accepted and approved.

5. If the Public Service Commission fails to accept and approve this Settlement Agreement in its entirety, this proceeding shall go forward and neither the terms of this Settlement Agreement nor any matters raised during settlement negotiations shall be on either signatory or be construed against either Clark Energy or Commission Staff.

6. Upon approval of this Settlement Agreement by the Public Service Commission, Clark Energy waives a formal hearing for all

purposes and stipulates that an Order may be entered in this case incorporating this settlement.

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

STAFF OF PUBLIC SERVICE
COMMISSION OF KENTUCKY

BY: Yugela H. Curry

TITLE: Staff Attorney

CLARK ENERGY COOPERATIVE, INC.

BY: [Signature]

TITLE: Pres + CEO