

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SHELBY ENERGY COOPERATIVE, INC.        )  
\_\_\_\_\_    )  
ALLEGED FAILURE TO COMPLY                )  
WITH KRS 278.042                             )  
CASE NO. 2006-00098

O R D E R

By Order dated June 8, 2006, the Commission directed Shelby Energy Cooperative, Inc. ("Shelby Energy") to appear at a hearing on July 11, 2006 to show cause why it should not be subject to the penalties provided under KRS 278.990 for eight probable violations of KRS 278.420, which requires an electric utility to construct and maintain its plant and facilities in accordance with the most recent edition of the National Electrical Safety Code, which is the 2002 Edition ("NESC"). More specifically, the probable violations are as follows:

- NESC Section 42, Rule 420.C.4, which requires employees while working in the vicinity of energized lines to consider all the effects of their actions and to take into account their own safety, the safety of other employees, the property of others, and the public in general;
- NESC Section 42, Rule 420.D, which requires employees to consider electric supply lines to be energized, unless they are positively known to be de-energized by performing preliminary tests to determine existing conditions, and by knowing the operating voltages of lines before working on or in the vicinity of energized parts;
- NESC Section 42, Rule 420.H, which requires employees to use the personal protective equipment, protective devices, and the special tools provided for the work;
- NESC Section 42, Rule 422.C.5, which requires employees, while working on or in the vicinity of equipment or lines exposed to voltages higher than those guarded against by the safety appliances provided, to take steps to

- be assured that the equipment or lines on which the employees are working are free from dangerous leakage or induction or have been effectively grounded;
- NESC Section 44, Rule 441.A.1, which requires employees to maintain the minimum distance to exposed parts that operate at voltages listed in NESC Table 441-1 or Table 441-4, when the line or part is not de-energized and grounded in accordance with NESC Rule 444.D;
- NESC Section 44, Rule 444.D, which requires employees to make protective grounds or verify that adequate grounds have been applied on the disconnected lines, and which requires the placement of grounds at each side of, or at, the work location;
- NESC Section 44, Rule 444.E.1, which requires employees, before proceeding to work on the lines, to first de-energize the lines and place grounds as required by NESC Rule 444.D; and
- NESC Section 44, Rule 445.A.3, which requires the employees to test for voltage the previously energized parts that are to be grounded, and which requires the employees to keep every part of their bodies at the required distance by using insulating handles of proper length or other suitable devices.

The alleged violations arose from a February 8, 2006 accident in which employees of Dobson Power Line Construction, Inc. ("Dobson"), a contractor hired by Shelby Energy to perform maintenance work on Shelby Energy's electric plant and facilities, were working on a pole preparing to cut a dead end on an old line near 4505 Peck Pike in Trimble County, Kentucky. The line was thought to be de-energized but, in fact, was not, and a Dobson employee was fatally injured. Shelby Energy filed an answer to the show cause Order and requested an informal conference, which was held at the Commission's offices on August 9, 2006. Those discussions led to the filing of a Stipulation of Facts and Settlement Agreement ("Stipulation") on September 13, 2006. The Stipulation, attached hereto as Appendix A and incorporated herein by reference, sets forth Shelby Energy's agreement with the statement of facts contained in the Staff's Incident Investigation Report which was appended to the Commission's June 8, 2006 Order. The Stipulation also discusses the remedial actions to be taken by Shelby

Energy, and provides that Shelby Energy will pay a civil penalty in the amount of \$5,000 in full satisfaction of the eight probable violations.

Determining whether the terms of the Stipulation are in the public interest and are reasonable, the Commission has taken into consideration the comprehensive nature of the Stipulation and Shelby Energy's willingness to revise its safety inspection procedures and cooperate to achieve a resolution of this proceeding. Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that the Stipulation is in accordance with the law and does not violate any regulatory principle. The Stipulation is a product of arm's-length negotiations among capable, knowledgeable parties, is in the public interest, and results in a reasonable resolution of all issues in this case.

IT IS THEREFORE ORDERED that:

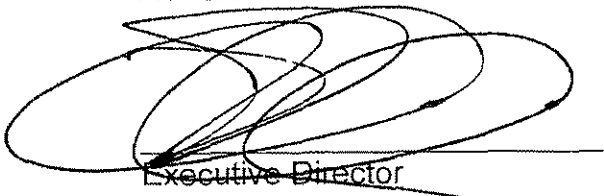
1. The Stipulation is adopted and approved in its entirety as a complete resolution of all issues in this case.
2. Shelby Energy shall pay \$5,000 as a civil penalty within 30 days of the date of this Order by cashier's check or money order payable to the Kentucky State Treasurer and mailed or delivered to the Office of General Counsel, Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.
3. Shelby Energy shall file, within 30 days of the date of this Order, a notice setting forth the name and job title of the Shelby Energy employee who will be responsible for ensuring that safety audits are performed once a month on each Shelby Energy crew and each contractor crew and that the written records of those audits are being maintained.

4. Upon payment of the \$5,000 civil penalty and the filing of the notice referenced in the ordering paragraph above, this case shall be closed and removed from the Commission's docket without further Order of the Commission.

Done at Frankfort, Kentucky, this 7th day of November, 2006.

By the Commission

ATTEST:



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2006-00098 DATED November 7, 2006.

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SHELBY ENERGY COOPERATIVE, INC. )  
\_\_\_\_\_) ) CASE NO. 2006-00098  
)  
ALLEGED FAILURE TO COMPLY )  
WITH KRS 278.042 )

STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

By Order June 8, 2006, the Commission initiated this proceeding to determine whether Shelby Energy Cooperative, Inc. ("Shelby Energy") should be subject to the penalties prescribed in KRS 278.990 for eight probable violations of KRS 278.420, which requires an electric utility to construct and maintain its plant and facilities in accordance with the most recent edition of the National Electrical Safety Code, which is the 2002 Edition ("NESC"). The eight probable violations cited by the Commission's June 8, 2006 Order are as follows:

1. NESC, Section 42, Rule 420.C.4, by the employees' failure while working in the vicinity of energized lines to consider all the effects of their actions and to take into account their own safety, the safety of other employees, the property of others, and the public in general;
2. NESC, Section 42, Rule 420.D, by the employees' failure to consider electric supply lines to be energized, unless they are positively known to be de-energized, by failing to perform preliminary tests to determine existing conditions, and by failing to know the operating voltages of lines before working on or in the vicinity of energized parts;
3. NESC, Section 42, Rule 420.H, by the employee's failure to use the personal protective equipment,

protective devices, and the special tools provided for the work;

4. NESC, Section 42, Rule 422.C.5, by the employees' failure, while working on or in the vicinity of equipment or lines exposed to voltages higher than those guarded against by the safety appliances provided, to take steps to be assured that the equipment or lines on which the employees are working are free from dangerous leakage or induction or have been effectively grounded;

5. NESC, Section 44, Rule 441.A.1, by the employees' failure to maintain the minimum distance to exposed parts that operate at the voltages listed in NESC Table 441-1 or Table 441-4, when the line or part is not de-energized and grounded in accordance with NESC, Rule 444.D;

6. NESC, Section 44, Rule 444.D, by the employee's failure to make protective grounds or verify that adequate grounds have been applied on the disconnected lines, and by the failure to place grounds at each side of, or at, the work location;

7. NESC, Section 44, Rule 444.E.1, by the employee proceeding to work on the lines before first de-energizing the lines and placing grounds as required by NESC Rule 444.D; and

8. NESC, Section 44, Rule 445.A.3, by the employee's failure to test for voltage the previously energized parts that are to be grounded, and by the employee's failure to keep every part of the body at the required distance by using insulating handles of proper length or other suitable devices.

The Commission's Order arose out of an incident which occurred on February 8, 2006 when an employee of Dobson Power Line Construction, Inc. ("Dobson"), a contractor hired by Shelby Energy to perform maintenance work on Shelby Energy's electric plant and facilities, was working on a pole preparing to cut a dead end on an old line near 4505 Peck Pike in Trimble County, Kentucky. The line was thought to be de-energized but, in fact, was not and a Dobson employee was fatally injured.

On July 6, 2006, Shelby Energy filed a response to the Commission's June 8, 2006 Order. Shelby Energy's response denied four of the NESC violations cited by the

Commission. Shelby Energy admitted the other four NESC violations, but claimed that the cited violations were duplicative since they arose under overlapping NESC rules and that there were really only a total of two NESC violations. In response to Shelby Energy's request for an informal conference, the Commission suspended the hearing that had been set for August 9, 2006 and scheduled an informal conference in its place.

As a result of discussions held during the informal conference, Shelby Energy and the Commission Staff submit the following Stipulation of Facts and Settlement Agreement ("Stipulation") for the Commission's consideration in rendering its decision in this proceeding:

1. Shelby Energy agrees that the Staff's Incident Investigation Report ("Report"), Appendix A to the Commission's June 8, 2006 Order in this case, accurately describes and sets forth the material facts and circumstances surrounding the incident giving rise to the Order.

2. Shelby Energy agrees to perform safety audits once a month on each Shelby Energy crew and each contractor crew. Written summaries of each audit shall be maintained by Shelby Energy, and one Shelby Energy employee shall be designated as responsible for ensuring that the monthly audits are performed and that the written records are maintained. Shelby Energy has also submitted a copy of a memo issued by Dobson to all of its employees emphasizing the need to work on all conductors as if they were energized if they are not grounded and providing that violations of this rule will result in an employee's dismissal on the first offense.

3. Shelby Energy agrees to pay a civil penalty in the amount of \$5,000 in full settlement of this proceeding. The scope of this proceeding is limited by the



Commission's June 8, 2006 Order to whether Shelby Energy should be assessed penalties under KRS 278.990 for willful violations of the NESC rules as made applicable under KRS 278.042. Neither the payment of the civil penalty, nor any other agreement contained in this Stipulation, shall be construed as an admission by Shelby Energy of a willful violation of any Commission regulation or NESC rule, nor shall it be construed as an admission by Shelby Energy of any liability in any legal proceeding or lawsuit arising out of the facts set forth in the Report, nor shall the Commission's acceptance of this Stipulation be construed as a finding of a willful violation of any Commission regulation or NESC rule.


4. In the event that the Commission does not accept this Stipulation in its entirety, Shelby Energy and Staff reserve their rights to withdraw therefrom and require that a hearing be held on any and all issues involved herein, and that none of the provisions contained herein shall be binding upon the parties hereto, used as an admission by Shelby Energy of any liability in any legal proceeding or lawsuit arising out of the facts set forth in the Report, or otherwise used as an admission by either party.

5. This Stipulation is for use in Commission Case No. 2006-00098, and neither party hereto shall be bound by any part of this Stipulation in any other proceeding, except that this Stipulation may be used in any proceeding by the Commission to enforce the terms of this Stipulation or to conduct a further investigation of Shelby Energy's service, and Shelby Energy shall not be precluded or estopped from raising any issue, claim, or defense therein by reason of the execution of this Stipulation.

6. Shelby Energy and Staff agree that the foregoing Stipulation is reasonable, is in the public interest, and should be adopted in its entirety by the Commission. If so adopted by the Commission, Shelby Energy agrees to waive its right to a hearing and will not file any petition for rehearing or seek judicial appeal.

Dated this 6th day of September, 2006.

**SHELBY ENERGY COOPERATIVE, INC.**

BY   
Title President & CEO

**STAFF OF THE KENTUCKY PUBLIC SERVICE COMMISSION**

BY   
Richard G. Raff, Staff Attorney