

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

EAST KENTUCKY POWER	)	
COOPERATIVE, INC.	)	
_____	)	CASE NO. 2007-00404
	)	
ALLEGED FAILURE TO COMPLY	)	
WITH KRS 278.042	)	

O R D E R

By Order dated October 24, 2007, the Commission directed East Kentucky Power Cooperative, Inc. ("EKPC") to appear at a hearing on January 8, 2008 to show cause why it should not be subject to the penalties provided under KRS 278.990 for three probable violations of KRS 278.042, which requires an electric utility to construct and maintain its plant and facilities in accordance with accepted engineering practices as set forth in the Commission's administrative regulations and in the most recent edition (2007) of the National Electrical Safety Code ("NESC"). More specifically, the probable violations are as follows:

- NESC Section 42, Rule 421-A-1, which requires a first-level supervisor to adopt such precautions as are within the individual's authority to prevent accidents.
- NESC Section 42, Rule 421-A-2, which requires the first-level supervisor to see that the safety rules and operating procedures are observed by the employees under the direction of this individual.
- NESC Section 42, Rule 421-A-5, which requires the first-level supervisor to prohibit the use of tools or devices unsuited to the work at hand or that have not been tested or inspected as required.

The Commission's Order arose from an accident that occurred on June 11, 2007 when a contract crew with Irby Construction Company, working for EKPC, was loading transmission poles in the EKPC pole yard in Winchester, Kentucky, and a steel sling they were using to attach the winch line to the poles failed. The victim, Willie Ray Williams, who was the crew foreman, was operating the lift truck when the steel sling failed, and this allowed the 80-foot, Class 1 pole to strike Mr. Williams on the head, causing severe injuries. Mr. Williams was flown to the University of Kentucky Medical Center for treatment, but he eventually died as a result of his injuries.

It appears that the sling being used as a choker to lift the pole was not strength-rated for the load being lifted. The pole being lifted weighed approximately 5,200 pounds, per EKPC's summary report, and the steel sling that failed was rated at 3,200 pounds.

On November 13, 2007, EKPC filed a response to the show cause Order and requested an informal conference, which was held at the Commission's offices on January 14, 2008. Discussions at the conference led to the filing of a Stipulation of Facts and Settlement Agreement ("Stipulation") on March 6, 2008. The Stipulation, attached hereto as Appendix A and incorporated herein by reference, sets forth EKPC's agreement with the facts contained in the Staff's Incident Investigation Report, which was appended to the Commission's October 24, 2007 Order. The Stipulation also sets forth the remedial action to be taken by EKPC and provides that EKPC will pay a civil penalty in the amount of \$5,000 in full satisfaction of the three probable violations.

In determining whether the terms of the Stipulation are in the public interest and reasonable, the Commission has taken into consideration the comprehensive nature of

the Stipulation and EKPC's willingness to conduct monthly safety audits 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 and 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.

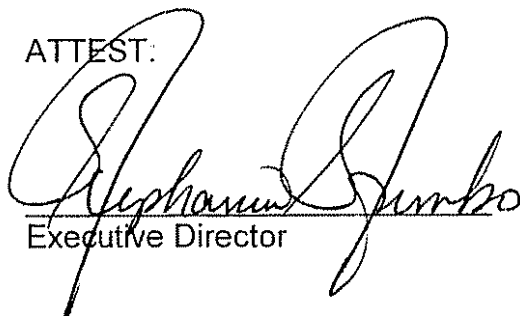
2. Within 30 days of the date of this Order, EKPC shall pay \$5,000 as a civil penalty by cashier's check or money order payable to the Kentucky State Treasurer and mailed or delivered to the Office of General Counsel, Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

3. Upon payment of the \$5,000 civil penalty, this case shall be closed and removed from the Commission's docket without further Order of the Commission

Done at Frankfort, Kentucky, this 14<sup>th</sup> day of May, 2008.

By the Commission

ATTEST:

  
Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2007-00404 DATED MAY 14, 2008

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2007-00404 DATED

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EAST KENTUCKY POWER COOPERATIVE, INC. _____	) ) ) ) ) ) )	CASE NO. 2007-00404
ALLEGED FAILURE TO COMPLY WITH KRS 278.042	) )	

STIPULATION OF FACTS  
AND  
SETTLEMENT AGREEMENT

By Order of October 24, 2007, the Commission initiated this proceeding to determine whether East Kentucky Power Cooperative, INC. ("EKPC") should be subject to the penalties prescribed in KRS 278.990 for three probable violations of KRS 278.042, 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 2007 Edition ("NESC"). The three probable violations cited by the Commission's October 24, 2007 Order are NESC Section 42, Rule 421-A-1, which requires the first-level supervisor to adopt such precautions as are within the individual's authority to prevent accidents; NESC Section 42, Rule 421-A-2, which requires the first-level supervisor to see that the safety rules and operating procedures are observed by the employees under the direction of this individual; and NESC Section 42, Rule 421-A-5,

which requires the first-level supervisor to prohibit the use of tools or devices unsuited to the work at hand or that have not been tested or inspected as required.

The Commission's Order arose out of an incident which occurred on June 11, 2007, when a contract crew with Irby Construction Company, working for EKPC, was loading transmission poles in the EKPC pole yard in Winchester, Kentucky, and a steel sling they were using to attach the winch line to the poles failed. The victim, Willie Ray Williams, who was the crew foreman, was operating the lift truck when the steel sling failed and this allowed the 80-foot, Class 1 pole to strike Mr. Williams on the head, causing severe injuries. Mr. Williams was flown to the University of Kentucky Medical Center for treatment of his injuries, which eventually led to his death.

It appears that the sling being used as a choker to lift the pole was not strength-rated for the load being lifted. The pole being lifted weighs approximately 5,200 lbs. per EKPC's summary report. The rating tag on the steel sling that failed in this accident states that the sling being used as a choker is rated at 1.5 tons (3,200 lbs.).

On November 13, 2007, EKPC filed a response to the Commission's October 24, 2007 Order. EKPC's response denied the NESC violations cited by the Commission. In response to EKPC's request for an informal conference, the Commission suspended the hearing that had been set for January 8, 2008 and scheduled an informal conference on January 14, 2008.

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

1. EKPC agrees that the Staff's Utility Incident Investigation Report ("Report"), Appendix A to the Commission's October 24, 2007 Order in this case, accurately describes and sets forth the material facts and circumstances surrounding the incident giving rise to the Order.

2. EKPC agrees to monthly safety audits for each crew which is subject to the NESC, regardless of whether the crew consists of EKPC employees or contracted workers doing work on behalf of EKPC. EKPC will determine which of its employees are qualified to conduct the monthly safety audits, which shall be documented. EKPC shall designate one individual to receive, review, and retain all safety audits.

3. EKPC 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 October 24, 2007 Order to whether EKPC should be assessed a penalty under KRS 278.990 for a willful violation of the NESC rules, as made applicable under KRS 278.042. Neither this payment of the civil penalty, nor any other agreement contained in this Stipulation, shall be construed as an admission by EKPC of a willful violation of any Commission regulation or NESC rule, nor shall it be construed as an admission by EKPC of any liability in any legal proceeding or lawsuit arising out of or 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, EKPC and Staff reserve their rights to withdraw therefrom and require that the 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 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 hereto.

5. This Stipulation is for use in Commission Case No. 2007-00404, 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 EKPC's service, and EKPC shall not be precluded or estopped from raising any issue, claim, or defense therein by reason of the execution of this Stipulation.

6. EKPC 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, EKPC agrees to waive its right to a hearing and will not file a petition for rehearing or seek judicial appeal.

Dated this 4<sup>th</sup> day of February, 2008.

STAFF OF THE PUBLIC SERVICE  
COMMISSION OF KENTUCKY

BY: Virginia W. Gregg 2/4/08  
Virginia W. Gregg, Staff Attorney

EAST KENTUCKY POWER COOPERATIVE, INC.

BY: Shirley L. Lippert