

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SOUTH KENTUCKY RURAL ELECTRIC)	
COOPERATIVE CORPORATION)	
_____)	CASE NO.
)	2009-00015
ALLEGED FAILURE TO COMPLY WITH)	
KRS 278.042)	

O R D E R

South Kentucky Rural Electric Cooperative Corporation ("South Kentucky") is a Kentucky cooperative corporation that engages in the distribution of electricity to the public for compensation for lights, heat, power, and other uses. South Kentucky was formed pursuant to KRS 279.010-279.220 and is a utility subject to Commission jurisdiction.¹

The present case is an investigation by the Commission of an incident in which two electric line construction crew members, Scott Hurst and Donnie Lainhart, were injured while working on a South Kentucky electric construction project. Mr. Hurst and Mr. Lainhart are employees of Elliot Construction, which was under contract to South Kentucky at the time the incident occurred.

BACKGROUND

On the day of the incident, August 5, 2008, the Elliot Construction crew was replacing a conductor on a single-phase 7,200-volt tap line at 1571 Fishing Creek

¹ KRS 278.010(3)(a); KRS 279.210.

Road, Yosemite, Kentucky, within Casey County. Mr. Hurst was the foreman and the person in charge at the South Kentucky job site.

Prior to beginning the reconductoring work, the Elliot Construction crew turned off the power to the existing tap line. However, before they began installing the new conductor, the crew re-energized the line because it was a hot summer day and they wanted to restore power to an elderly couple at the end of the line so that they could run their air-conditioning unit. The Elliott Construction crew did not effectively ground the new conductor before pulling it up to be installed.²

Mr. Hurst and Mr. Lainhart were attempting to pull the new conductor up to the poles using a rope attached to the new conductor. Both men were wearing leather gloves that were not insulated to resist conducting electricity, and the rope they were using was not dielectrically tested to ensure that it would not conduct electricity.³ As they were pulling the new conductor up, it became entangled in some vegetation at the end of the conductor furthest from the crew—some 1,000 to 1,500 feet from where they were standing. Instead of investigating the source of the snag that was keeping the conductor from being pulled up and freeing the conductor from the snag, the crew members pulled harder on the new conductor. As they were pulling harder on the new conductor, it suddenly came loose from the vegetation, flew upward, and made brief contact with the old, energized conductor. The contact between the conductors caused the new conductor to become energized, delivering a shock to the victims, who each received burn injuries to one foot.

² Transcript of Record ("TR"), September 1, 2009, at 57.

³ TR at 92.

Following the incident, South Kentucky notified the Commission, and an investigation was conducted by a Commission inspector on August 6, 2008. The Commission inspector conducted a follow-up interview with the Elliot Construction crew members on August 28, 2008. The Commission inspector subsequently filed an Incident Investigation Report ("Report") on November 14, 2008. The Report was attached to the February 12, 2009 Show Cause Order in this matter and was later admitted as Commission Staff's Exhibit 1 at the September 1, 2009 hearing.⁴

The Report noted seven probable violations of the 2007 edition of the National Electric Safety Code ("NESC"), which were as follows:

NESC Section 42: General Rules for Employees:

1. NESC Section 42, 420-C-4: Employees who work on or in the vicinity of energized lines shall consider all of the effects of their actions, taking into account their own safety as well as the safety of other employees on the job site, or on some other part of the affected electric system, the property of others, and the public in general.
2. NESC Section 42, 420-C-5: No employee shall approach or bring any conductive object, without a suitable insulating handle, closer to any exposed energized part than allowed by Rule 431 (communication) or Rule 441 (supply), as applicable.
3. NESC Section 42, 420-H: Employees shall use the personal protective equipment, the protective devices, and the special tools provided for their work. Before starting work, these devices and tools shall be carefully inspected to make sure they are in good condition.
4. NESC Section 42, 421-A-1: The First-Level Supervisor or person in charge shall adopt such precautions as are within the individual's authority to prevent accidents.

⁴ TR at 13.

5. NESC Section 42, 421-A-2: The First-Level Supervisor or person in charge shall see that the safety rules and operating procedures are observed by the employees under his direction.
6. NESC Section 42, 422-C-1: Precautions shall be taken to prevent wires or cables that are being installed or removed from contacting energized wires or equipment. Wires or cables that are not bonded to an effective ground and which are being installed or removed in the vicinity of energized conductors shall be considered as being energized.

NESC Section 44: Additional Rules for Supply Employees:

7. NESC Section 44, 441-A-1: Employees shall not approach or bring any conductive object within the minimum approach distance listed in Table 441-1 or Table 441-4 to exposed parts unless one of the following is met:
 - a. The line or part is de-energized and grounded per Rule 444D;
 - b. The employee is insulated from the energized line or part. Electrical protective equipment insulated for the voltage involved, such as tools, gloves, rubber gloves, or rubber gloves with sleeves, shall be considered effective insulation for the employee from the energized part being worked on; or
 - c. The energized line or part is insulated from the employee and from any other line or part at a different voltage.

KRS 278.042(2) provides that the Commission "shall . . . ensure that each electric utility constructs and maintains its plant and facilities in accordance with accepted engineering practices as set forth in the Commission's administrative regulations and orders and in the most recent edition of the NESC." Therefore, violations of the NESC by persons working on electrical construction projects for jurisdictional utilities in Kentucky are violations of KRS 278.042, which the Commission has jurisdiction to enforce against the utility for which the work is being done.

Procedural History

In its February 11, 2009 initiating Order, the Commission ordered South Kentucky to file a written response to the alleged violations of the NESC and to appear at a hearing on March 25, 2009 to present evidence regarding the August 5, 2008 incident and the alleged violations of KRS 278.042 and to show cause why it should not be subject to civil penalties pursuant to KRS 278.990. South Kentucky filed its response on March 5, 2009 and requested an informal conference with Commission Staff. The Commission cancelled the March 25, 2009 evidentiary hearing, and an informal conference was held on that date between Commission Staff and representatives of South Kentucky. Following the informal conference, the evidentiary hearing was rescheduled for September 1, 2009.

South Kentucky appeared at the September 1, 2009 hearing and presented evidence regarding the August 5, 2008 incident, the contractual relationship between South Kentucky and Elliot Construction, and the safety programs of South Kentucky and Elliot Construction. Commission Staff also presented witness testimony and evidence regarding the Commission's investigation of the August 5, 2008 incident. At the end of the September 1, 2009 hearing, the Commission ordered South Kentucky to file a post-hearing brief by October 19, 2009. South Kentucky filed its post-hearing brief in this matter on November 2, 2009, pursuant to the Commission's October 27, 2009 Order granting South Kentucky's October 19, 2009 request for additional time to file its brief.

Utility Liability for NESC Violations

In Public Service Com'n v. Jackson County Rural Elec. Co-op., Inc., 50 S.W.3d 764 (Ky. App. 2000), the Kentucky Court of Appeals ruled that the Commission may

assess civil penalties against jurisdictional utility companies for violations of the NESC by contract employees.⁵ In finding for the Commission, the Court of Appeals stated that:

the Legislature intended for the utility to be subject to a civil penalty in this circumstance-where a person acting for it and in the scope of his employment willfully violates a regulation. The language of the statute is unambiguous and mandatory. KRS 446.010(29). "Each [such] act, omission, or failure . . . shall be deemed to be the act, omission, or failure of the utility." KRS 278.990(1) (emphasis added). "When a thing is to be 'deemed' something that it really is not, it means merely that it is to be so treated, with the attendant consequences, [citation omitted]". (citing Strand Amusement Co. v. Commonwealth, Ky., 241 Ky. 48, 43 S.W.2d 321, 327 (1931)).

The Commission finds South Kentucky's arguments that it should disregard the Jackson County holding unpersuasive. South Kentucky argues that the Jackson County court's reason for holding utilities liable for the actions of their contractors is "because an independent contractor is 'any other person who willfully violates any of the provisions of this chapter'" and then goes on to lament the consequences of what, it argues, is the court's overly-broad interpretation of KRS 278.990: "Where does 'any other person' end? This language includes any person acting within a utility's service territory and requires no connection to the utility whatsoever."⁶ However, South Kentucky has misread the Jackson County decision. The court in Jackson County clearly states that the reason for holding utilities liable for their contractor's NESC

⁵ 50 S.W.3d 764, 770.

⁶ South Kentucky's Brief at 21.

violations is that “[t]he statute also subjects the utility to imposition of a penalty, where a person acting for it and in the scope of his employment commits a willful violation.”⁷

South Kentucky argues that the phrase “in the scope of his employment” requires that the contract employee be employed by the utility in order for liability for a violation of KRS Chapter 278 to attach.⁸ However, that is clearly incorrect, as the language of KRS 278.990 attaches liability for any person (1) doing work for a utility (2) while working within the scope of his employment (3) who willfully violates any provision of KRS Chapter 278, including KRS 278.042. In the present case, Elliot Construction was doing work *for* South Kentucky (replacing a power line) that South Kentucky would otherwise have had to do for itself in order to provide adequate service to its customers. At the time of the incident, South Kentucky owned the facility in question, Mr. Hurst and Mr. Lainhart were working in the scope of their employment for Elliot Construction, and the work was within the scope of the contract between Elliot Construction and South Kentucky.

The language “within the scope of his employment” limits the applicability of KRS 278.990 to only those persons working *for* a utility, such as a utility employee or utility contractor, and was included in the statute to prevent the unintended consequences that South Kentucky contemplates in its brief: “[u]nder this interpretation, if a member of the public in the Yosemite area of Casey County, Kentucky is sawing down a tree, hits an electric line and becomes injured, South Kentucky must be penalized.”⁹ Contrary to

⁷ 50 S.W.3d 764, 769.

⁸ South Kentucky’s Brief at 21.

⁹ South Kentucky’s Brief at 21.

South Kentucky's misreading of the Jackson County opinion, the plain language of KRS 278.990 prevents the statute from being applied to the very situation cited by South Kentucky, because unless the person sawing down the tree was an employee of a tree trimming service (or an employee of South Kentucky) and was doing the tree trimming work *for* South Kentucky—presumably as part of South Kentucky's vegetation management program—the statute could not be applied to the incident and the utility could not be held liable for violating the NESC.¹⁰

South Kentucky asserts that it cannot control the actions of its contractor, Elliot Construction, and that South Kentucky itself did not undertake any “willful” action that led to the August 5, 2008 incident. Therefore, South Kentucky argues, it cannot be held liable for the NESC violations. The Commission disagrees with South Kentucky's reasoning. On the contrary, as South Kentucky's own witness testified, its contract with Elliot Construction specifically requires the contractor to comply with all federal, state, and municipal safety laws, including the NESC, or else the contractor could be found to be in breach of the contract.¹¹ Section 3, subsection “c” of the contract provides that “[t]he manner of performance of the work, and all equipment used therein, shall be subject to the inspection, tests, and approval” of South Kentucky.¹² Clearly, while the contractor is not under the direct control and supervision of South Kentucky every

¹⁰ Of course, if the tree-trimmer's contact with the energized power line was actually due to a violation of an NESC conductor height standard, then the utility could be held accountable for constructing the conductor and/or utility pole improperly, but the tree-trimmer's injuries would not be a citable violation of the NESC.

¹¹ TR at 141. The electric construction contract was admitted as South Kentucky's Exhibit 9.

¹² Id. at 138.

minute of every day, the contract does allow South Kentucky to exert some degree of control over how the work is performed, which would include the ability to mandate compliance with the most recent version of the NESC.

While South Kentucky takes issue with the Court of Appeals' ruling in Jackson County,¹³ the statutory duty to comply with the NESC cannot be delegated and, as such, a utility may not "contract away" its responsibility for compliance with its provisions. Therefore, the Commission finds that it may hold South Kentucky accountable for the NESC violations committed by the employees of Elliot Construction while they were constructing and maintaining South Kentucky's plant and facilities on August 5, 2008.

The language of KRS 278.042 is broad, ensuring that the NESC's safety provisions apply to all electric utility construction workers in Kentucky, regardless of how a particular utility may choose to engage the services of its electrical construction workers or how it classifies their employment status. Whether a utility "constructs and maintains its plant and facilities" utilizing its own employees or contract employees, the Commission must "ensure" that the construction work is done "in accordance with accepted engineering practices as set forth in the commission's administrative regulations and orders and in the most recent edition of the NESC."

Sufficiency of the Commission's Notice and Pleading

South Kentucky argues that the Commission's February 11, 2009 Order did not sufficiently set forth a "charge" that South Kentucky "willfully violated" KRS 278.042. Contrary to this argument, the February 11, 2009 Order specifically identified the

¹³ South Kentucky Brief at 21-22.

alleged NESC violations and informed South Kentucky that it was required to appear at a hearing to provide evidence as to the alleged violations of KRS 278.042 and show cause why it should not be subject to civil penalties pursuant to KRS 278.990(1), which provides:

Any officer, agent, or employee of a utility, as defined in KRS 278.010, and any other person who willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or fails to obey any order of the commission from which all rights of appeal have been exhausted, or who procures, aids, or abets a violation by any utility, shall be subject to either a civil penalty to be assessed by the commission not to exceed two thousand five hundred dollars (\$2,500) for each offense or a criminal penalty of imprisonment for not more than six (6) months, or both. If any utility willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or does any act therein prohibited, or fails to perform any duty imposed upon it under those sections for which no penalty has been provided by law, or fails to obey any order of the commission from which all rights of appeal have been exhausted, the utility shall be subject to a civil penalty to be assessed by the commission for each offense not less than twenty-five dollars (\$25) nor more than two thousand five hundred dollars (\$2,500). Each act, omission, or failure by an officer, agent, or other person acting for or employed by a utility and acting within the scope of his employment shall be deemed to be the act, omission, or failure of the utility. [Emphasis added.]

The fact that the Commission did not reproduce KRS 278.990 in its entirety in the February 11, 2009 Order did not result in insufficient notice to South Kentucky regarding the legal standards by which the Commission would determine the issues in this matter.

However, the Commission finds that, in this case, its February 11, 2009 Order did not provide sufficient notice to South Kentucky regarding the possibility that the Commission might order the utility to undertake remedial measures, in addition to the issuance of civil penalties for violations of the NESC. Therefore, the Commission, will not require South Kentucky to undertake any remedial measures to correct the work practices which led to the NESC violations on August 5, 2008.

The Workers' Actions Which Led to the August 5, 2008 Incident Were Willful.

South Kentucky argues that it cannot be held accountable for the NESC violations because its contract workers did not willfully violate the NESC. In its brief, South Kentucky states the unremarkable maxim that “[i]t is a fact of life that accidents happen.”¹⁴ While that fact does contain an element of universal truth, it has no bearing on the determination of whether the actions undertaken by the utility workers resulted in violations of the NESC.

In support of its argument, South Kentucky cites the definition of “willfulness” in Black’s Law Dictionary as “an act done intentionally and designedly.”¹⁵ However, a “willful violation” of the NESC, as referred to in KRS 278.990(1), is not a “willful accident,” as South Kentucky mistakenly argues. Rather, a willful violation of the NESC is a willfully undertaken action in contradiction of an NESC safety standard. A willful violation “denotes an act which is intentional rather than accidental.”¹⁶ It “means ‘knowing’ violation or ‘knowing failure to comply’”¹⁷ but does not necessarily and solely entail an “intention to do wrong and inflict injury,” and may include conduct which

¹⁴ South Kentucky’s Brief at 18.

¹⁵ Id. at 17.

¹⁶ Screws v. United States, 325 U.S. 91, 101 (1945).

¹⁷ Oldham v. Kubinski, 185 N.E.2d 270, 280 (Ill. App. 1962); see Muncy v. Commonwealth, 97 S.W.2d 606, 609 (Ky. 1936). (“The word ‘willful’ in its general acceptance means intentionally, not accidentally nor involuntarily.”)

reflects “an indifference to . . . [its] natural consequences.”¹⁸ The Commission finds that sufficient evidence was presented at the hearing to establish that the actions of South Kentucky’s workers which led to the alleged NESC violations were willful.

A willful decision was made to re-energize the old conductor after it had been de-energized most of the day. After making the willful decision to re-energize the old conductor, Mr. Hurst, the person in charge, made a willful decision not to require the crew members to either put on personal protective equipment (“PPE”) or to effectively ground the new conductor before it was pulled up. After they began pulling up the new conductor and the conductor became snagged in vegetation, a willful decision was made by the person in charge and the crew members not to go to the source of the snag and free the line from the vegetation but, rather, to simply pull harder on the new conductor in an effort to free it.

The Commission finds that the actions which led to the August 5, 2008 incident resulted in five willful violations of the NESC and two non-willful violations. The Commission agrees with South Kentucky that the act of bringing the new conductor into contact with the old, energized conductor was not willful, because it was the result of the unexpected release of the new conductor from the vegetation in which it was entrapped.

Had the workers been able to control the movement of the line after it sprang out of the ensnarement, it is clear that they would not have intentionally brought the new line within the two-feet, two-inch minimum approach distance pursuant to NESC Table

¹⁸ Huddleston v. Hughes, 843 S.W.2d 901, 905 (Ky. App. Ct. 1992). (The term “willful” does not necessarily and solely entail an “intention to do wrong and inflict injury,” but may include conduct which reflects “an indifference to . . . [its] natural consequences.”).

431-1. In fact, the Commission notes that the Elliot Construction crew took precautions prior to pulling up the new conductor to keep it from contacting the old conductor by installing a three-foot “hot arm” or “layout arm” on the pole¹⁹ and placing a rubber cover over the old conductor.²⁰ The Commission finds that the use of those precautions was clearly not sufficient to preclude the need to effectively ground the new conductor before pulling it up to the pole and the need to wear PPE. The Commission notes that the new conductor actually came into contact with the old, energized conductor despite the installation of the hot arm and the use of the rubber covering.

Therefore, the Commission finds that South Kentucky did not willfully violate NESC Section 42, 420-C-5, which provides that “[n]o employee shall approach or bring any conductive object, without a suitable insulating handle, closer to any exposed energized part than allowed by Rule 431 (communication) or Rule 441 (supply), as applicable.” For the same reasons as described above, the Commission also finds that South Kentucky did not willfully violate NESC Section 44, 441-A-1, which provides that:

Employees shall not approach or bring any conductive object within the minimum approach distance listed in Table 441-1 or Table 441-4 to exposed parts unless one of the following is met:

- a. The line or part is de-energized and grounded per Rule 444D;
- b. The employee is insulated from the energized line or part. Electrical protective equipment insulated for the voltage involved, such as tools, gloves, rubber gloves, or rubber gloves with sleeves, shall be considered effective insulation for the employee from the energized part being worked on; or
- c. The energized line or part is insulated from the employee and from any other line or part at a different voltage.

¹⁹ TR at 76.

²⁰ Id. at 95.

The willful actions that led to the violations of the NESC on August 5, 2008 were the result of deliberate decisions made by the Elliot Construction crew members and, particularly, the person in charge that day. The crew de-energized the old conductor prior to working on it at the beginning of the day. Then, having worked the old conductor de-energized all day, the person in charge made the conscious decision to change the work site conditions by re-energizing the old conductor in order to restore service to an elderly couple who needed their air conditioner on that hot summer afternoon.

The act of re-energizing the old conductor was reasonable, in itself. However, the Commission finds that the decision to re-energize the old conductor significantly changed the conditions at the job site in a way that materially affected the safety of the workers. At that point, prior to allowing the crew to continue working on the construction project in the same manner as they had been working when the old conductor was de-energized, the person in charge should have announced that the crew members were to undertake additional safety measures for the remainder of the workday and should have ensured that his crew members complied with those safety measures. The failure of the person in charge to do so was a violation of NESC Section 42, 421-A-1, which provides that “[t]he First-Level Supervisor or person in charge shall adopt such precautions as are within the individual’s authority to prevent accidents,” and NESC Section 42, 421-A-2, which provides that “[t]he First-Level Supervisor or person in charge shall see that the safety rules and operating procedures are observed by the employees under his direction.”

Commission Staff's witness, Mr. Kingsolver, testified that there is a difference between working a de-energized (and grounded) conductor and "working with the old conductor energized and pulling a new conductor beside it."²¹ Those differences include the need to ground the new conductor before pulling it up or the need for the workers to wear their PPE.²² The Commission finds that the Elliot Construction workers' failure to effectively ground the new conductor before pulling it up to the pole and their failure to wear appropriate PPE were willful violations of the following NESC requirements:

NESC Section 42, 420-H: Employees shall use the personal protective equipment, the protective devices, and the special tools provided for their work. Before starting work, these devices and tools shall be carefully inspected to make sure they are in good condition;

NESC Section 42, 422-C-1: Precautions shall be taken to prevent wires or cables that are being installed or removed from contacting energized wires or equipment. Wires or cables that are not bonded to an effective ground and which are being installed or removed in the vicinity of energized conductors shall be considered as being energized;

As to the construction crew's actions immediately preceding the incident, there was clearly a conscious decision made by the crew to pull harder on the new conductor, as opposed to taking the additional time to go to the source of the snag and release the new conductor from the vegetation in a safe manner. What, in fact, resulted in non-life-threatening injuries to the two crew members could have resulted in very serious injury—possibly death—if the old and new conductors had maintained contact with each

²¹ Id. at 27.

²² Id.

other for a longer period of time.²³ This failure by the crew members to reasonably think through what they were doing and the possible results of their actions was a violation of NESC Section 42, 420-C-4, which provides that:

Employees who work on or in the vicinity of energized lines shall consider all of the effects of their actions, taking into account their own safety as well as the safety of other employees on the job site, or on some other part of the affected electric system, the property of others, and the public in general.

While the workers themselves were several hundred feet away from the energized power line,²⁴ the Commission finds that they were working “in the vicinity” of the energized power line. The Commission finds that the new conductor had the potential to come into contact with the energized power line and, in fact, actually did make contact with the energized power line, resulting in the injuries to the workers. The NESC does not define the term “in the vicinity.” The Commission agrees with Mr. Kingsolver’s testimony that, if the worker has a conductive object in his hand (such as the new power line, in this instance) which “has the potential to be within the vicinity”²⁵ of the energized facility, then for purposes of compliance with the NESC rules, he should be deemed to be in the vicinity of energized lines.

Although Elliot Construction’s safety practices allow the use of a dry rope to pull up a new power line,²⁶ South Kentucky’s safety manual does not allow such work practice. South Kentucky’s CEO testified that, if South Kentucky’s employees had been

²³ Id. at 24 and 61.

²⁴ Id. at 29.

²⁵ Id. at 57.

²⁶ Id. at 94.

performing the same work under the same conditions, they would have worn rubber gloves (PPE).²⁷ NESC Section 12, 121-D provides that “[n]ew equipment shall be inspected and tested before being placed in service,” and “[n]ew equipment shall be tested in accordance with standard industry practices.” South Kentucky’s witness verified that the rope being used in this instance had not been dielectrically tested²⁸ and, without such testing, the rope cannot be deemed to be non-conductive.

Even if Elliot Construction’s safety practices with regard to raising a power line with a dry rope were deemed to be acceptable, and the Commission finds they are not, South Kentucky’s witness confirmed that the workers were not even following their own safety requirements, because they did not exercise “extreme caution” while doing so.²⁹ As South Kentucky’s CEO testified, the utility’s safety rules are more stringent than Elliott Construction’s safety rules with regard to pulling up a new conductor with a rope.³⁰ Unfortunately, the less-stringent safety rules were followed in this instance, resulting in the workers’ injuries.

CIVIL PENALTIES

As stated above, the Commission has found that the actions which led to the August 5, 2008 incident resulted in five willful violations of the NESC. KRS 278.990(1) provides that the Commission shall assess a civil penalty for each violation of the NESC of not more than \$2,500 and not less than \$25 per incident. The violations resulted in

²⁷ Id. at 145.

²⁸ Id. at 92.

²⁹ Id. at 96.

³⁰ Id. at 146.

injuries to two individuals which were not life-threatening but could have been much more serious had the new conductor maintained contact with the energized conductor for a longer period of time.³¹ While the Commission does not believe the maximum civil penalty of \$2,500 per violation is appropriate in this case, the violations were serious enough to warrant a civil penalty substantially higher than the minimum of \$25 per violation.

The Commission finds that the violation of NESC Section 42, 420-C-4 for the failure of the workers to reasonably think through what they were doing and the possible results of their actions warrants a civil penalty of \$2,250. The most unsafe action that the work crew undertook that day was pulling harder on the new conductor, as opposed to freeing it by hand from where it was snagged in the vegetation, and it was the action which led most directly to the workers' injuries.

The \$2,250 civil penalty is relatively close to the maximum \$2,500 fine because the act of pulling on the conductor was done in clear disregard of the workers' own safety, as opposed to taking the extra time necessary to manually and carefully release the line from the vegetation snag. The Commission notes that if the new conductor had maintained contact with the line for a longer period of time, the injuries to the workers might have been much more serious than they were—perhaps even fatal. Therefore, a relatively high civil penalty is reasonable for the violation of NESC Section 42, 420-C-4 in this case.

In terms of the seriousness of the violations, the failure of the crew to effectively ground the new conductor (NESC Section 42, 422-C-1) and their failure to wear their

³¹ TR at 24.

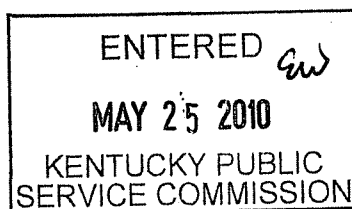
PPE (NESC Section 42, 420-H) were nearly as serious as pulling on the new conductor when it was snagged in the vegetation. Therefore, the Commission finds that the violation of NESC Section 42, 422-C-1 for failure to effectively ground the new conductor before pulling it up to the pole warrants a civil penalty of \$2,000. The Commission finds that the violation of NESC Section 42, 420-H for failure to wear appropriate PPE also warrants a civil penalty of \$2,000.

The Commission finds that the actions of the person in charge at the work site also led to the workers' injuries but in a less-direct manner than the other violations previously listed. NESC Section 42, 421-A-1, provides that "[t]he First-Level Supervisor or person in charge shall adopt such precautions as are within the individual's authority to prevent accidents." The Commission finds that the violation of NESC Section 42, 421-A-1 warrants a relatively large civil penalty but less than the \$2,000 civil penalties for failing to ground the conductor and failing to wear PPE. The Commission finds that the violation of NESC Section 42, 421-A-1 for the failure by the person in charge to adopt precautions within his authority to prevent the August 5, 2008 incident warrants a civil penalty of \$1,500. The Commission further finds that the violation of NESC Section 42, 421-A-2, which provides that "[t]he First-Level Supervisor or person in charge shall see that the safety rules and operating procedures are observed by the employees under his direction," warrants a civil penalty of \$1,500, as the violation of that NESC provision is equivalent to the violation of NESC Section 42, 421-A-1 in seriousness and in its relationship to the workers' injuries.

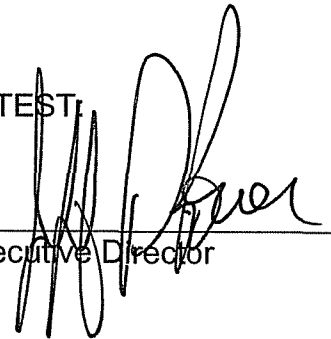
The total civil penalty for the five violations as listed above is \$9,250.

IT IS THEREFORE ORDERED that South Kentucky shall pay \$9,250 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, Kentucky Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

By the Commission



ATTEST



Executive Director

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