



Steven L. Beshear  
Governor

Leonard K. Peters  
Secretary  
Energy and Environment Cabinet

Commonwealth of Kentucky  
**Public Service Commission**  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602-0615  
Telephone: (502) 564-3940  
Fax: (502) 564-3460  
psc.ky.gov

David L. Armstrong  
Chairman

James W. Gardner  
Vice Chairman

Charles R. Borders  
Commissioner

November 16, 2009

Mr. Jeff Derouen  
Executive Director  
Public Service Commission  
P.O. Box 615  
Frankfort, KY 40602

Re: Jackson Purchase Energy Corporation  
Case No. 2009-00326

Dear Mr. Derouen:

Attached hereto is the Stipulation of Facts and Settlement Agreement entered into by Jackson Purchase Energy Corporation and Staff. Please bring this document to the Commission's attention for its review and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard G. Raff".

Richard G. Raff  
Assistant General Counsel

RGR:ew  
Enclosure

cc: Melissa D. Yates

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

**RECEIVED**

NOV 16 2009

**PUBLIC SERVICE  
COMMISSION**

In the Matter of:

JACKSON PURCHASE ENERGY  
CORPORATION

\_\_\_\_\_  
ALLEGED FAILURE TO COMPLY  
WITH KRS 278.042

)  
)  
)  
)  
)  
)  
)

CASE NO.  
2009-00326

STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

By Order dated August 6, 2009, the Commission initiated this proceeding to determine whether Jackson Purchase Energy Corporation ("Jackson Purchase") 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 ("NESC"), which is the 2007 Edition.

The probable violations of the NESC cited by the Commission's August 6, 2009 Order are as follows:

- Section 41, Rule 411.A.3, which requires employees to be instructed as to the character of the equipment of lines and methods to be used before any work is undertaken thereon;
- Section 41, Rule 411.A.4, which requires employees to be instructed to take additional precautions to ensure their safety when conditions create unusual hazards; and

- Section 42, Rule 421.A.1, which requires the first-level supervisor or person in charge to adopt such precautions as are within the individual's authority to prevent accidents.

The Commission's Order arose out of an incident which occurred on February 10, 2009, when an employee of Jackson Purchase, along with three contract employees of Connexus Energy ("Connexus"), were repairing primary and secondary conductors located near 2040 Clarkline Road, Paducah, Kentucky. While workers were moving a Connexus truck closer to a pole to repair a downed primary line, the truck got stuck in the mud. While waiting for a second truck to extract the Connexus truck, two workers climbed the pole to repair the downed primary conductor. Upon arrival, the second truck attempted to extract the Connexus truck while a Connexus employee was driving it. A steel messenger cable was attached to the pole on which the two workers had climbed, and the other end of the cable was on the ground. As the tires of the Connexus truck were turning, the messenger cable became entangled in the right rear wheels, tightening the messenger cable and ultimately snapping the pole. The two workers fell to the ground. One suffered fatal injuries and the other suffered minor injuries.

On August 27, 2009, Jackson Purchase filed a response to the Commission's August 6, 2009 Order. Jackson Purchase's response sets forth numerous defenses, including the absence of any violations of either the NESC or KRS 278.042, the existence of a comprehensive safety program that was in effect on February 10, 2009, and the assertion that the incident was the result of unforeseen hazards. Jackson Purchase also requested an informal conference to discuss the issues raised in this

case. In response to Jackson Purchase's request for an informal conference, the Commission suspended the hearing that had been set for September 10, 2009 and scheduled an informal conference to be held on that same date.

As a result of discussions held during the informal conference, Jackson Purchase 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. Jackson Purchase agrees that the Staff's Incident Investigation Report ("Report"), Appendix A to the Commission's August 6, 2009 Order in this case, accurately describes and sets forth facts and circumstances surrounding the incident giving rise to the Order. Jackson Purchase does not agree with the statement in the Commission's August 6, 2009 Order that "the other end of the [messenger] cable was on the ground by the Connexus truck," and maintains that the exact location of the other end of the messenger cable, as it existed immediately prior to this incident, is unknown. However, Jackson Purchase believes that the other end of the cable was not in the immediate vicinity of the Connexus truck.

2. Jackson Purchase agrees to include, as part of its safety presentations to field personnel, an annual discussion of the need to identify and locate cables that are attached to poles to be worked on but are not attached to the next adjoining poles. Jackson Purchase has developed a specific plan to be followed by field personnel when cables of this nature are encountered. A copy of that plan, which shall be included in Jackson Purchase's safety manual, is attached hereto as Exhibit A.

3. Jackson Purchase agrees to pay the amount of \$5,000 in full settlement of this proceeding. The scope of this proceeding is limited by the Commission's August 6, 2009 Order to whether Jackson Purchase should be assessed penalties under KRS 278.990 for three alleged violations of the NESC rules as made applicable under KRS 278.042, with each violation having a potential penalty of \$2,500. Neither the payment of the \$5,000, nor any other agreement contained in this Stipulation, shall be construed as an admission by Jackson Purchase 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, Jackson Purchase 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 Jackson Purchase 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. 2009-00326. None of the provisions in this Stipulation establishes any precedent for any other case and neither Jackson Purchase nor Staff 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 Jackson Purchase's service, and Jackson Purchase shall not be precluded or

estopped from raising any issue, claim, or defense therein by reason of the execution of this Stipulation.

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

Dated this 13<sup>th</sup> day of November, 2009.

**JACKSON PURCHASE ENERGY CORPORATION**

BY   
Title PRESIDENT & CEO

**STAFF OF THE KENTUCKY PUBLIC SERVICE COMMISSION**

BY   
Richard G. Raff, Assistant General Counsel

EXHIBIT A

JACKSON PURCHASE ENERGY  
CORPORATION

\_\_\_\_\_  
ALLEGED FAILURE TO COMPLY  
WITH KRS 278.042

)  
)  
)  
)  
)  
)

CASE NO.  
2009-00326

STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

The complete work zone shall be identified and thoroughly inspected to identify hazards to persons or property that may exist. This inspection shall include the determination of the location of any and all conductors, wires, cables, hardware, and equipment attached to poles or otherwise located within the work zone. All such items attached to poles or otherwise located within the work zone shall be identified and the facilities shall be made safe before beginning work on JPEC facilities.

In the case of conductors, wires, and cables, the exact location and route of all conductors, wires, and cables attached to poles within the work zone or otherwise passing through the work zone shall be identified. Employees shall ensure that no conductors or wires present a hazard to persons or property prior to beginning work on JPEC facilities. Should a conductor, wire, or cable in the work zone present a hazard which could subject any person to imminent harm or result in substantial damage to the property of the utility or others, employees shall take any and all appropriate precautionary measures to ensure the safety of all persons and property prior to working on JPEC facilities. Authorized precautionary measures may include removing conductors, wires, or cables attached to JPEC poles when JPEC personnel determine that, in order prevent imminent harm to any persons involved or prevent substantial damage to property, no other means is available to remedy the hazardous condition. Under any such circumstance, JPEC shall given written and, if possible, oral notice to the owner of said equipment the reasons for the removal of said equipment, which notice shall be recorded by JPEC.