

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CLARK ENERGY COOPERATIVE, INC.)	
_____)	CASE NO.
)	2012-00219
ALLEGED FAILURE TO COMPLY WITH)	
ADMINISTRATIVE REGULATIONS)	

ORDER

By Order dated June 25, 2012, the Commission directed Clark Energy Cooperative, Inc. ("Clark Energy") to appear at a hearing on August 8, 2012 to show cause why it should not be subject to penalties under KRS 278.990 for its apparent violation of KRS 278.020 by beginning construction on four projects contained in its 2010-2014 Construction Work Plan ("CWP") prior to obtaining a Certificate of Public Convenience and Necessity ("CPCN").

Clark Energy filed its Response to Allegations on July 10, 2012, and requested a telephonic informal conference. On July 23, 2012, an Informal Conference was held at the Commission's offices. Those discussions led to the filing of a Stipulation of Facts and Settlement Agreement ("Stipulation and Settlement Agreement") on October 25, 2012. The Stipulation and Settlement Agreement, attached hereto as an Appendix and incorporated herein by reference, sets forth Clark Energy's acknowledgment that a CPCN should have been obtained, but was not, before beginning construction of any of the projects contained in its 2010-2014 CWP. The Stipulation and Settlement Agreement also discusses the remedial actions to be taken by Clark Energy to develop and implement internal procedures to ensure that future construction work plans will be

filed with the Commission in a timely manner, contains Clark Energy's new internal procedures, and provides that Clark Energy will pay a civil penalty in the amount of \$1,500.00 in full satisfaction of the alleged statutory violation.

The Commission has determined that each construction project contained in a CWP should be analyzed on an individual basis to determine whether that individual project is exempt from the requirement in KRS 278.020(1) to obtain a CPCN. As such, a new process for the review of CWPs has been implemented.

Determining whether the terms of the Stipulation and Settlement Agreement are in the public interest and are reasonable, the Commission has taken into consideration the comprehensive nature of the Stipulation and Settlement Agreement and Clark Energy's cooperation in achieving full resolution of this proceeding.

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that the Stipulation and Settlement Agreement is in accordance with the law and does not violate any regulatory principle. The Stipulation and Settlement Agreement is a product of arm's-length negotiations between capable, knowledgeable parties, is in the public interest, and results in a reasonable resolution of all issues in this case.

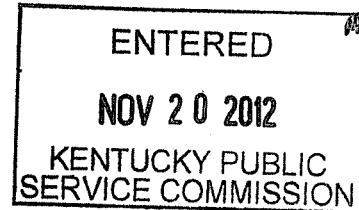
IT IS THEREFORE ORDERED that:

1. The Stipulation and Settlement Agreement is adopted and approved in its entirety as a complete resolution of all issues in this case.
2. Clark Energy shall pay \$1,500.00 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

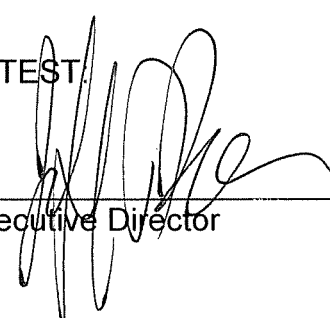
Treasurer and mailed or delivered to the Office of General Counsel, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, KY 40602.

3. Upon payment of the \$1,500.00 civil penalty, this case shall be closed and removed from the Commission's docket without further Order of the Commission.

By the Commission



ATTEST



Executive Director

Case No. 2012-00219

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2012-00219 DATED NOV 20 2012

STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

By Order dated June 25, 2012, the Commission initiated this proceeding to determine whether Clark Energy Cooperative, Inc. ("Clark Energy") should be subject to the penalties prescribed in KRS 278.990 for allegedly violating KRS 278.020(1) by beginning construction on some of the projects contained in its 2010–2014 Construction Work Plan ("CWP") without first obtaining a Certificate of Public Convenience and Necessity ("CPCN").

On July 10, 2012, Clark Energy filed a response to the Commission's June 25, 2012 Order, and therein requested an informal teleconference with Commission Staff. An informal conference was subsequently held at the Commission's offices on July 23, 2012. Discussions during the informal conference between Clark Energy and Commission Staff resulted in an agreement in principle and the following Stipulation of Facts and Settlement Agreement ("Stipulation"), is submitted for the Commission's consideration in rendering its decision:

1. Clark Energy acknowledges that a CPCN should have been obtained, but was not, before beginning construction of any of the projects contained in its 2010--2014 CWP.

2. Clark Energy agrees to develop internal procedures to ensure that future requests for staff legal advisory opinions ("staff opinions") as to whether a CPCN will be required for any project in its construction work plans will be filed with the Commission in a timely manner; agrees to develop internal procedures to ensure that any CPCN applications that may be required for projects in its construction work plans will be filed with the Commission in a timely manner; and further agrees that no construction will

begin on any project identified in staff opinions as needing a CPCN until the Commission has issued a CPCN.

3. These procedures will include the establishment of a detailed checklist for preparing and submitting written requests to Commission Staff for staff opinions as to whether any projects in Clark Energy's construction work plans need a CPCN, as well as a detailed timeline for submission of CPCN applications for those projects in its construction work plan that are identified in the staff opinions as needing a CPCN. A copy of Clark Energy's new internal procedures is attached hereto and incorporated by reference herein.

4. Clark Energy agrees to pay the amount of One Thousand Five Hundred Dollars (\$1,500.00) in full settlement of this proceeding. The scope of this proceeding is limited by the Commission's June 25, 2012 Order as to whether Clark should be assessed penalties under KRS 278.990 for violating KRS 278.020(1). The Commission's acceptance of this Stipulation shall not be construed as a finding of a willful violation of any Commission statute or order.

5. In the event that the Commission does not accept this Stipulation in its entirety, Clark Energy and Commission 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 thereto, used as an admission by Clark Energy of any liability in any legal proceeding or lawsuit arising out of the facts set forth in the June 25, 2012 Order, or otherwise used as an admission by either party.

6. This Stipulation is for use only in Commission Case No. 2012-00219, 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 Clark Energy's service, and Clark Energy shall not be precluded or estopped from raising any issue, claim, or defense therein by reason of the execution of this Stipulation.

7. Clark Energy and Commission Staff agree that the foregoing Stipulation is reasonable for the purpose of resolving all issues in Commission Case No. 2012-00219, is in the public interest, and should be adopted in its entirety by the Commission. If so adopted by the Commission, Clark Energy agrees to waive its right to a hearing and will not file any petition for rehearing or seek judicial appeal.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their signatures on the dates indicated below.

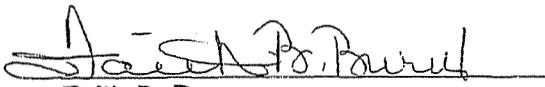
Clark Energy Cooperative, Inc.

By: 

Title: President : CEO

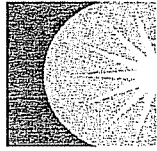
Date: 10-10-12

Staff of the Kentucky Public Service Commission


By: 
Faith B. Burns

Title: Staff Attorney

Date: 10-25-12



CLARK ENERGY

A Touchstone Energy Cooperative 

2640 Ironworks Road
Winchester, KY 40391

Process Schedule for Submission of Construction Work Plan

<u>TASK</u>	<u>TIMELINE</u>
Receive Board Approval of CWP	
Submit Board Approved CWP and BER to RUS	Within 1 week of Board Approval
File Board Approved CWP with PSC for CPCN Opinion	Within 1 week of Board Approval
All pending CWP work on hold awaiting Opinion from PSC	PSC response within two weeks of Submission
Begin construction of all non-CPCN required work per PSC Opinion	After receiving PSC Opinion
Place on hold any work requiring a CPCN per PSC Opinion	After receiving PSC Opinion
Request CPCN from PSC as necessary per Opinion	After receiving PSC Opinion
Begin construction of CWP work requiring CPCN from PSC	After receiving CPCN from PSC

CWP - Construction Work Plan

BER - Borrowers Environmental Report from RUS

RUS - Rural Utilities Service

PSC - Public Service Commission

CPCN - Certificate of Public Convenience and Necessity

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