

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CLOSURE OF INVESTIGATION OF)	
AUGUST 22, 2018 INCIDENT – EAST)	CASE NO.
KENTUCKY POWER COOPERATIVE, INC.)	2019-00120

ORDER

The Commission, on its own motion, initiates this proceeding to close the investigation of an August 22, 2018, vehicular accident near Beattyville, Kentucky, in which an employee of a contractor of East Kentucky Power Cooperative, Inc. (EKPC) suffered injuries requiring hospitalization. Commission Staff (Staff) investigated the incident and found two probable violations of Commission regulations and two probable violations of the National Electrical Safety Code. Staff issued EKPC a Demand for Remedial Measures and Penalty Assessment, a copy of which is attached to this Order as an Appendix, to resolve all compliance and enforcement matters pertaining to the August 22, 2018 incident. EKPC paid the proposed penalty and completed all remedial measures required by Staff.

The Commission finds that EKPC has addressed to its satisfaction the probable violations cited by Staff in connection with the August 29, 2018 incident. The Commission further finds that the Commission’s investigation of this incident should be closed.

IT IS THEREFORE ORDERED THAT:

1. EKPC’s payment of Staff’s proposed penalty and completion of remedial measures required by Staff is accepted and resolves all alleged violations of KRS

278.042, 807 KAR 5:006, or 807 KAR 5:041, as well as any penalty that could be assessed under KRS 278.990(1), arising out of the August 22, 2018 incident.

2. EKPC's payment of Staff's proposed penalty is not an admission by EKPC that it violated any provision of KRS Chapter 278 or any administrative regulation promulgated pursuant thereto.

3. The Commission's investigation of the August 22, 2018 incident is closed.

4. This case is closed and removed from the Commission's docket.

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By the Commission



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2019-00120 DATED **APR 16 2019**

[FOUR PAGES TO FOLLOW]



Matthew G. Bevin
Governor

Charles G. Snavely
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

Michael J. Schmitt
Chairman

Robert Cicero
Vice Chairman

Talina R. Mathews
Commissioner

March 5, 2019

Patrick Woods
Director, Regulatory & Compliance
East Kentucky Power Cooperative
P.O. Box 707
Winchester, KY 40392-0707

Re: August 22, 2018 Accident

**DEMAND FOR REMEDIAL MEASURES AND
FOR PENALTY ASSESSMENT**

Dear Mr. Woods:

This letter is in reference to a vehicular accident that occurred on August 22, 2018, near Beattyville, Kentucky, in the vicinity of East Kentucky Power Cooperative (EKPC) structure number 33 on the EKPC Beattyville to Oakdale line. As a result of the accident, an employee of Forbes Brothers Timberline Construction, Inc. (Forbes), an EKPC contractor, suffered a broken leg and was hospitalized. Kentucky Public Service Commission Staff (Staff) investigated the accident and prepared the attached Accident Investigation Staff Report (Report).

According to EKPC's 7-day summary report, a Forbes crew was going up a steep grade in a 4-wheel drive Artic Cat Utility Task Vehicle (UTV). The crew had identified in its pre-use inspection of the UTV transmission issues and a lack of a "low gear" but nonetheless continued to use the vehicle. As a result of the mechanical issues, the UTV was under-powered for the terrain and work area and could not make it up the hill. The driver, Derek Moman, pulled over, and the crew exited the vehicle. The UTV then began rolling back down the hill. Mr. Moman attempted to stop the UTV by pressing on the brake from outside of the vehicle with his right leg. The UTV continued to travel backwards and pinned Mr. Moman's leg underneath, breaking it. Mr. Moman was hospitalized for his injury.

Although the accident occurred on August 22, 2018, EKPC did not notify the Commission of the accident until December 14, 2018. EKPC states in its 7-day summary report that it did not initially report the incident to the Commission because Forbes did not communicate to it that Mr. Moman had been hospitalized. In an addendum to its 7-day

summary report, however, EKPC states that as early as August 23, 2018, numerous EKPC employees had been made aware that Mr. Moman had been hospitalized.

Based on its investigation of the accident, Staff has determined that EKPC's contractor violated the following requirements set forth in the Commission's regulations and the 2017 National Electrical Safety Code (NESC):

1. 807 KAR 5:006, Section 27(1) – Reporting of Accidents, Property Damage, or Loss of Service. Each utility, other than a natural gas utility, shall notify the Commission within two hours following discovery of a utility-related accident requiring inpatient overnight hospitalization. EKPC was informed of the accident by August 23, 2018, but did not notify the Commission of the accident until December 14, 2018.
2. 807 KAR 5:006, Section 27(2) – Reporting of Accidents, Property Damage, or Loss of Service. Each utility shall submit to the Commission a summary written report within seven calendar days of the accident. EKPC was informed of the accident by August 23, 2018, but did not submit a written summary report to the Commission until December 17, 2018.
3. NESC Part 4, Section 42, Rule 421(A)(1), (2) and (5) – Duties of a first-level supervisor or person in charge. A utility's supervisor or person in charge shall: adopt such precautions as are within the person's authority to prevent accidents; see that safety procedures are followed by employees under such person's direction; and prohibit the use of tools or devices unsuited to the work at hand. Forbes' supervisor/person in charge violated the requirements of this rule by allowing the crew to use the UTV despite the fact that the pre-use inspection of the vehicle identified mechanical problems rendering the UTV unsuited to the job.
4. NESC Part 4, Section 42, Rule 420(H) – Tools and Protective Equipment. Before starting work, personal protective equipment, protective devices and special tools provided to employees for their work shall be carefully inspected to make sure they are in good working condition. Forbes failed to make sure the UTV provided to its employees for their work was in good working condition.

KRS 278.042 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 regulation and orders and in the most recent edition of the NESC. 807 KAR 5:041, Section 3(1) requires each electric utility to construct and maintain its plant and facilities in accordance with accepted engineering practices, adopting the provisions of the NESC as applicable standards of accepted good engineering practices. Based on its investigation of the accident and its determination that EKPC committed a violation of the NESC, Staff finds that EKPC is in violation of 807 KAR 5:041, Section 3(1), for failing to maintain its plant and facilities in accordance with accepted engineering practices.

REMEDIAL MEASURES

In order to resolve the above violations, the following remedial measures must be completed:

- Within 30 days of the date of this letter, EKPC shall review with appropriate personnel the incident-reporting requirements that were not followed.
- Within 30 days of the date of this letter, EKPC shall review the foregoing safety violations with Forbes to reinforce the requirements that were not followed.
- Within 60 days of the date of this letter, EKPC shall submit to the Commission documentation of its safety briefing with Forbes.

CIVIL PENALTY

KRS 278.990(1) provides that a utility's willful violation of any of the provisions of KRS Chapter 278, or any administrative regulation promulgated pursuant thereto, shall subject the utility to a civil penalty assessed by the Commission not to exceed \$2,500 for each violation. Under the statute, each act, admission or failure of a person acting for a utility within the scope of his employment shall be deemed to be the act, omission or failure of the utility. After investigation of this matter, and in light of the overlap between the two NESC violations, it is Staff's recommendation that EKPC be subject to a civil penalty in the amount of \$7,500 for two violations of 807 KAR 5:006, Section 27, and one violation of 807 KAR 5:041, Section 3(1). Additionally, Staff admonishes EKPC that it considers EKPC's failure to provide timely notice of the August 22, 2018 incident to be a serious violation of Commission regulations.

If EKPC does not wish to contest the proposed civil penalty, EKPC should mail or deliver a company check, cashier's check or money order made payable to the "Kentucky State Treasurer" in the amount of \$7,500, within 30 days of the date of this letter, to:

Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, Kentucky, 40602

Payment of the proposed civil penalty and completion of the remedial measures specified in this letter will satisfy and resolve any and all claims against EKPC for any violation of KRS 278.042 or of 807 KAR 5:041, Section 3(1), and for any penalty under KRS 278.990 arising out of the August 22, 2018 accident. EKPC's payment of the proposed civil penalty will not be considered an admission by EKPC that it willfully violated any provision of KRS Chapter 278 or any administrative regulation promulgated pursuant thereto. Upon payment of the proposed penalty and completion of the remedial measures, the Commission will confirm resolution of this matter by entry of an order. Payment of the penalty constitutes a waiver by EKPC of any right to a hearing in any proceeding initiated to close the investigation.

If EKPC does not pay the proposed civil penalty within 30 days of the date of this letter, the Commission will institute an administrative proceeding against EKPC and schedule a formal hearing, at which EKPC will have an opportunity to present evidence and show cause why it should not be subject to penalties in KRS 278.990(1) based on the August 22, 2018 accident.

This demand letter addresses only those matters specifically referred to in this document. This demand does not waive or otherwise affect any obligations or liabilities that may result from other activities by EKPC. If you have any questions, please contact John Park at 502-782-2589.

Sincerely,



Gwen R. Pinson
Executive Director

Attachment

*East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707

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Winchester, KY 40392-0707