



KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

WENDELL H. FORD
GOVERNOR

IRIS R. BARRETT
EXECUTIVE DIRECTOR

REVIEW COMMISSION

CAPITAL PLAZA TOWER
FRANKFORT, KENTUCKY 40601
PHONE (502) 564-6892

7-3-74

H. L. STOWERS
CHAIRMAN

MERLE H. STANTON
MEMBER

CHARLES B. UPTON
MEMBER

KOSHRC # 16

JAMES R. YOCUM, Commissioner
Department of Labor

COMPLAINANT

VS.

BIG SANDY R.E.C.C.

RESPONDENT

REVIEW COMMISSION
DECISION

Before STOWERS, Chairman, UPTON and STANTON,
Commissioners.

PER CURIAM:

This case was duly called for review on June 17, 1974.
After due consideration it is decided that:

ORDER

The decision of the Hearing Officer shall be and the
same is hereby affirmed.


Herbert L. Stowers, Chairman

Concurring:

S/ Charles B. Upton
Charles B. Upton, Commissioner

S/ Merle H. Stanton
Merle H. Stanton, Commissioner

16



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Charles B. Upton, Commissioner

S/ Merle H. Stanton

Merle H. Stanton, Commissioner

This is to certify that a copy of this Decision has been served by mailing or personal delivery on the following:

Richard D. Heman, Jr., Secretary
Public Service Commission
Frankfort, Kentucky 40601

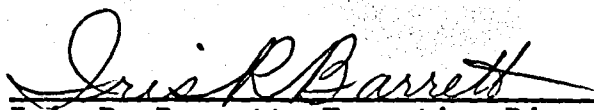
Honorable Morris E. Burton
326 W. Main Street
Frankfort, Kentucky 40601

Honorable Robert T. Harrod
335 West Main Street
Frankfort, Kentucky 40601

Big Sandy R.E.C.C.
P. O. Box 671
Paintsville, Kentucky 41240

Honorable James A. Knight
Main Street
Citizens National Bank Building
Paintsville, Kentucky 41240

This 3rd day of July, 1974.


Iris R. Barrett, Executive Director



WENDELL H. FORD
GOVERNOR

IRIS R. BARRETT
EXECUTIVE DIRECTOR

*KOSHRC Decision
& Order #19*

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

CAPITAL PLAZA TOWER
FRANKFORT, KENTUCKY 40601
PHONE (502) 564-6892

5-20-79

H. L. STOWERS
CHAIRMAN

MERLE H. STANTON
MEMBER

CHARLES B. UPTON
MEMBER

KOSHRC # 16

PUBLIC SERVICE COMMISSION OF KENTUCKY

VS

BIG SANDY RURAL ELECTRIC COOPERATIVE CORP.

COMPLAINANT

RESPONDENT

NOTICE OF RECEIPT OF RECOMMENDED
DECISION OF HEARING OFFICER
AND ORDER

All parties to the above-styled action before this Review Commission will take notice that pursuant to our Rules of Procedure a recommended decision of our hearing officer, the Honorable Lloyd Graper, has this day been received and is attached hereto as a part of this Notice and Order of this Commission.

You will take further notice that pursuant to Section 48 of our Rules of Procedure, any party aggrieved by this decision may submit a petition for discretionary review by this Commission.

Pursuant to Section 47 of our Rules of Procedure, jurisdiction in this matter now rests solely in this Commission and it is hereby ordered that unless this decision as recommended by the hearing officer in this matter is called for review and further consideration by a member of this Commission within 30 days of this date, the decision of the hearing officer is adopted and affirmed as the decision and final order of this Commission in the above-styled matter.

Parties will not receive further communication from the Review Commission unless a Direction for Review has been filed by one or more Review Commission members.

Copy of this Notice and Order has been served by mailing or personal delivery on the following:

Richard D. Heman, Jr., Secretary
Public Service Commission
Frankfort, Kentucky 40601

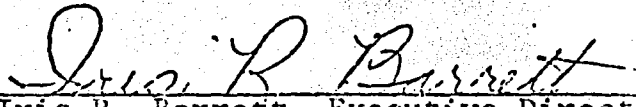
Honorable Morris E. Burton
326 W. Main Street
Frankfort, Kentucky 40601

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335 West Main Street
Frankfort, Kentucky 40601

Big Sandy R.E.C.C.
P. O. Box 671
Paintsville, Kentucky 41240

Honorable James A. Knight
Main Street
Citizens National Bank Building
Paintsville, Kentucky 41240

This 20th day of May, 1974.


Iris R. Barrett, Executive Director

COMMONWEALTH OF KENTUCKY
KENTUCKY OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

KOSHRC DOCKET NO. 16

PUBLIC SERVICE COMMISSION OF KENTUCKY

COMPLAINANT

V.

DECISION, FINDINGS OF
FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER

"G SANDY RURAL ELECTRIC COOPERATIVE CORP.

RESPONDENT

* * * * *

This hearing was held on Monday, February 25, 1974, at the respondent's offices in Paintsville, Kentucky, under the provisions of KRS 338 of the Kentucky Revised Statutes dealing with the safety and health of employees, which authorizes the Review Commission to hear and rule on appeals from citations, notifications, and variances issued under the provisions of this Chapter and to adopt and promulgate rules and regulations with respect to the procedural aspect of its hearings. Under the provisions of KRS 338.081, hearing authorized by the provisions of this Chapter may be conducted by a Hearing Officer appointed by the Review Commission to serve in its place. After hearing an

appeal, the Review Commission may sustain, modify, or dismiss a citation or penalty..

KRS 338.041, which creates in the Department of Labor a Division of Occupational Safety and Health to administer all matters pertaining to occupational safety and occupational health, requires the Department of Labor to enter into an agreement with Public Service Commission, which shall serve as the state agency in the administration of this chapter for all matters relating to occupational safety and occupational health with respect to utilities as defined in KRS 278.010, and their employees. Such an agreement was entered into between the Department of Labor and the Public Service Commission on August 1, 1973.

On December 6, 1973, as a result of an inspection on November 19, 1973, at a place of employment located off Upper Twin Branch, Denver, Kentucky, described as a construction site, utility pole #4-77-29, and at a warehouse in the city of Paintsville, Kentucky, due to a fatality, the Kentucky Public Service Commission, Engineering Division, Occupational Safety and Health Section, issued two citations to the respondent charging an alleged serious violation and an alleged other than serious violation. On the basis of such inspection, in regard to the alleged serious violation, it was alleged that respondent violated the provisions of KRS Chapter 338 (Kentucky Occupational Safety and Health Act of 1972), in the following respects:

The standard, regulation or section of KRS Chapter 338 allegedly violated was OSH-12, 29CFR 1926.950(b)(1) and a description

f the alleged violation was:

Employer failed to determine and advise employees of existing conditions of feeder lines at time of job assignment. Such conditions include location of circuits and energized lines. When this information is not immediately available, the existing conditions shall be determined by an inspection or test before starting work.

and the date on which the alleged violation must be corrected was immediately upon receipt of the citation.

Another standard or section of KRS Chapter 338 allegedly violated was OSH-12, 29CFR 1926.950(b)(2) and a description of the alleged violation is:

Employer failed to consider that electric lines are energized until determined to be de-energized by tests or other appropriate methods or means.

and the date by which the alleged violation was to be corrected was immediately upon receipt of the citation.

Another standard, regulation or section of KRS Chapter 338 allegedly violated was OSH-12, 29CFR.950(d)(1)(ii)(b) and a description of the alleged violation was:

Employer failed to ensure that the pulled disconnect switch, located approximately 1-1/2 miles from job site and not visible at job site, was tagged indicating that men were at work on the 7600 volt single phase primary line.

and the date by which the alleged violation must be corrected was immediately upon receipt of citation.

Another standard, regulation or section of KRS Chapter 338 allegedly violated was OSH-12, 29CFR 1926.950(d)(1)(iv) and a description of the alleged violation was:

Employer failed to place protective grounds on the 7600 volt 1 phase lines, to be worked on, between the work location and all possible sources of energy, or ground equipment that employees made contact with while standing on the ground.

and the date by which the alleged violation must be corrected was immediately upon receipt of the citation. Further description of the alleged violation was:

On November 16, 1973, four (4) employees and one (1) crew leader were given a job assignment at Upper Twin Branch, approximately 1-1/2 miles from Denver, Kentucky, to replace a take off utility pole with one (1) transformer. Upon arriving at job site and performing the preliminary hole digging for new pole, the crew leader and one (1) employee went toward Denver, Kentucky, approximately one and one-half (1-1/2) miles from job site to disconnect the 7600 volt 1 phase line. The disconnect was not tagged. Upon return to job site no test was performed on high voltage lines coming to pole from the north and east to determine that they were de-energized and safe. The new pole with a ground wire stapled the full length having approximately five (5) foot tail at top and bottom was raised in preparation to set in hole. The ground wire tail at top of pole struck the north high voltage feeder line, which was presumed to be dead. Three (3) employees at base of pole were injured and hospitalized, one (1) employee standing on the ground operating boom digger truck #94 was electrocuted.

The proposed penalty, as adjusted, for the serious violation was \$650.00.

As to the other than serious alleged violation, it was alleged on the basis of such inspection that respondent violated the provisions of KRS Chapter 338 (Kentucky Occupational Safety and Health Act of 1972) in the following respect:

The standard or regulation allegedly violated was OSH-12, 29CFR 1926.152(a)(1) and the description of the alleged violation was:

Employer failed to provide approved container for storage and handling of flammable and combustible liquid. (gasoline) An approved metal safety can shall be used for the handling and use of flammable liquid in quantities greater than one gallon. For example: 2-1/2 gallon can, less than one-half full, was found on bed of boom-digger truck #94 during inspection of truck at dock of storage warehouse.

and the date on which the alleged violation must be corrected was immediately upon receipt of the citation.

The adjusted proposed penalty for the other than serious violation was \$40.00.

By letter dated December 17, 1973, respondent, by its attorney, advised Mr. Richard D. Heman, Jr. of respondent's desire to contest the citations and proposed penalties.

By letter dated December 20, 1973, Richard D. Heman, Jr., Secretary of the Public Service Commission of Kentucky, advised the Hon. Herbert L. Stowers, Chairman of the Kentucky Occupational Safety and Health Review Commission, that in accordance with Rule 14 of the Commission's Rules governing occupational safety and health the Public Service Commission enclosed herewith the notice of intention to contest citations imposed by the Public Service Commission against Big Sandy Rural Electric Cooperative Corporation, further indicating that the notice is in the form of a letter dated December 17, 1973, from Mr. James Knight, attorney. The letter

also indicates that enclosed are copies of the transmittals to Big Sandy Rural Electric Cooperative Corporation including the citations, the citation for serious violation and the penalty assessment worksheets.

There is in the files a notice of receipt of contest mailed to the complainant and to the employer. Notice of Contest of Enforcement Action of the Commissioner of Labor of Kentucky by the named employer has been received and docketed by the Kentucky Occupational Safety and Health Review Commission. Also included are instructions to employer. Accompanying the notice are the Commission's Rules of Procedure, a form for use in notifying respondent's affected employees of the case and the certification form for use in certifying to the Review Commission that notice has been properly accomplished.

On January 10, 1974, respondent certified that on January 10, 1974, the notice supplied by the Commission advising affected employees of this case and the fact that a copy of the employer's notice of contest was posted at each place where the Kentucky Occupational Safety and Health Act citation is required to be posted was received by the Review Commission on January 14, 1974. It indicated therein that the names and addresses of each local union representing affected employees was: IBEW, Local No. 317, Paintsville, Kentucky 41240. The complaint was received by the Occupational Safety and Health Review Commission on January 9, 1974.

On January 10, 1974, complainant and respondent were advised that this case had been assigned to Hearing Officer, Lloyd Graper, and that all pleadings and papers shall be filed with Mr. Graper until a decision in the case is made by him.

On January 16, 1974, a notice of hearing was mailed to respondent and complainant advising them that a hearing of this matter would be held before a hearing officer assigned under KRS 338.081 and the Rules of Procedure of the Review Commission on Monday, February 25, 1974, at 10:30 a.m. at the Big Sandy R.E.C.C. office, Paintsville, Kentucky.

At the hearing an answer was filed without objection.

After hearing the testimony of the witnesses and having considered the same together with the exhibits and stipulations and representations of the parties, it is concluded that the substantial evidence, on the record considered as a whole, supports the following findings of fact:

FINDINGS OF FACT

1. As to the alleged serious violation, it is found that respondent failed to determine and advise its employees of existing conditions of feeder lines at the time of their job assignment. Such conditions include location of circuits and energized lines. When this information is not immediately available, the existing conditions shall be determined by an inspection or test before starting work. No such inspection or test was made. The respondent failed to consider that electric lines are energized until

determined to be de-energized by tests or other appropriate methods or means. The respondent failed to ensure that the pulled disconnect switch, located approximately 1-1/2 miles from the job site and not visible at the job site, was tagged to indicate that men were at work on the 7600 volt single phase primary line. The respondent failed to place protective grounds on the 7600 volt 1 phase lines, to be worked on, between the work location and all possible sources of energy, or on ground equipment that the employees made contact with while standing on the ground. On November 16, 1973, four employees and one crew leader were given a job assignment at Upper Twin Branch, approximately 1-1/2 miles from Denver, Kentucky, to replace a take off utility pole with one transformer. Upon arriving at the job site and performing the preliminary hole digging for a new pole, the crew leader and one employee went toward Denver, Kentucky, to disconnect the 7600 volt 1 phase line. The disconnect was not tagged. Upon return to the job site, no test was performed on the high voltage lines coming to the pole from the north and east to determine that they were de-energized and safe. The new pole with a ground wire stapled the full length having approximately a five-foot tail at top and bottom was raised in preparation to set in the hole. The ground wire tail at the top of the pole struck the north high voltage feeder line, which was presumed to be dead, but was not. Three employees at the base of the pole were injured and hospitalized and one employee standing on the ground operating the boom digger truck #94 was electrocuted and killed.

2. As to the alleged other than serious violation, there is not sufficient evidence from which to find the quantity of gasoline stored in the container.

Upon the basis of the foregoing, the hearing officer makes the following conclusions of law:

CONCLUSIONS OF LAW

1. There is no significant dispute in the testimony as to the fact that the employer failed to determine and advise his employees of existing conditions of feeder lines at the time of the job assignment, nor as to the fact that the employer failed to consider that the electric lines were energized until determined to be de-energized by tests or other appropriate methods or means, or that the employer failed to insure that the pulled disconnect switch was tagged indicating the men were at work on the 7600 volt single phase primary line. In regard to the placing of protective grounds, respondent contends that protective grounds would have been placed but for the happening of the accident which interrupted the placing of the grounds.

By way of avoidance, respondent contends that the accident was a result of an isolated failure of one of the employees to comply with the safety rules promulgated by respondent. Respondent further maintains that it could not reasonably be expected to anticipate that an experienced man would ignore the safety rules of the cooperative. Respondent also contends that it

exercised the proper and reasonable supervisory control as was necessary to insure compliance with the safety regulations and that the proper procedures involved in the changing of the poles were clearly and sufficiently communicated to the employees involved in performing the work.

It is clear that the respondent, either itself or through the man supervising the employees on the job site as crew chief, failed to determine and advise employees of the existing conditions of feeder lines at the time of the job assignment. No one knew the locations of all of the energized lines. Only one line was disconnected. No action was taken as to the other line because there was no indication that anyone knew that it was energized. It is also clear that respondent itself, or through its crew chief, also failed to consider that electric lines are energized until determined to be de-energized by tests or other appropriate methods or means. While applying a ground might be one way of determining if a line is de-energized, it is not an appropriate test or means. Other means are available and appropriate to perform such tests. Applying a ground so as to cause a circuit to break is a dangerous and inappropriate method or means. It is also clear that respondent did not tag the disconnect switch. As to the argument that the employer would have placed protective grounds but for the happening of the accident, such failure to place the protective grounds cannot be excused by the happening of an accident because of the failure of the employer to observe prescribed standards.

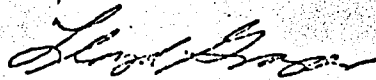
To assure safe and healthful working conditions, the Commissioner of Labor has imposed on the employer the responsibility for obtaining employee compliance with applicable standards, rules, regulations and orders. Should an employee fail to comply, the employer is subject to citation. Employers are thus responsible for establishing the means whereby they can become informed of situations where their employees do not comply with applicable standards and they should take all necessary action to assure employee compliance with such standards. The fact that the pole was set prior to the placing of the grounds, while it may have been the direct cause of the accident, is not really relevant to the issue of whether or not the standards allegedly violated were in fact violated. The employer had the affirmative duty to make the determination as to whether or not the lines were energized and it failed to do so. The employer had the affirmative duty to consider that electric lines were energized until determined to be de-energized by tests or other appropriate methods or means and it failed to do so. The employer failed to tag the disconnect switch and the employer failed to place protective grounds on the lines. Its failure to place protective grounds is not excused by the fact that it could not do so by reason of its failure to comply with the other standards that were violated.

The compliance officer, as to this serious violation, gave effect to the criteria prescribed by statute and gave them the proper weight under the circumstances. The complainant has met its burden of proof and the citation, the penalty assessed, and the abatement date should stand.

2. As to the alleged non-serious violation, there was a lack of probative evidence upon which to determine the quantity of flammable liquid in the container. In all proceedings initiated by a notice of contest, the burden of proving the case rests with the complainant and, as here, proof that is speculative or conjectural in nature is not satisfactory. Because of this the citation and proposed penalty of \$40.00 for the non-serious violation should be vacated.

RECOMMENDED ORDER

IT IS ORDERED that the citation, the proposed penalty of \$650.00, and the proposed immediate abatement date for the serious violation shall be and the same hereby is sustained, and that citation, the proposed penalty of \$40.00, and the abatement date for the non-serious violation shall be and the same hereby are vacated.



LLOYD GRAPER
Hearing Officer, KOSHRC

Dated: May , 1974
Frankfort, Kentucky

Decision No. 13