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July 30, 2021

John E.B. Pinney, Acting General Counsel
Kentucky Public Service Commission
211 Sower Boulevard, Frankfort, Kentucky 40601
Jeb.Pinney@ky.gov

Re: Written Comments on Proposed Pole Attachment Regulation, 807 KAR 5:015

Dear Mr. Pinney,

Please accept this correspondence as the written comments of Kentucky Association of Electric Cooperatives, Inc. (the “Kentucky Electric Cooperatives”), with respect to the above-referenced proposed regulation of the Kentucky Public Service Commission (the “Commission”).

As the statewide organization representing the interests of Kentucky’s electric cooperatives, the Kentucky Electric Cooperatives are pleased and grateful to submit these comments.¹ The transparent, inclusive and deliberate process governing the promulgation of regulations under Kentucky law encourages both fairness and the participation of the public; in support of this fact, and because the matters addressed by the proposed regulation are immensely important to cooperative utilities and their member-owners, the Kentucky Electric Cooperatives submit these comments and hope their voices continue to be heard as the formal regulatory

¹ The membership of the Kentucky Electric Cooperatives includes the following jurisdictional utilities: Big Rivers Electric Corporation; Big Sandy RECC; Blue Grass Energy Cooperative Corporation; Clark Energy Cooperative, Inc.; Cumberland Valley Electric, Inc.; East Kentucky Power Cooperative, Inc.; Farmers RECC; Fleming-Mason Energy Cooperative; Grayson RECC; Inter-County Energy Cooperative Corporation; Jackson Energy Cooperative Corporation; Jackson Purchase Energy Corporation; Kenergy Corporation; Licking Valley RECC; Meade County RECC; Nolin RECC; Owen Electric Cooperative; Salt River Electric Cooperative Corporation; Shelby Energy Cooperative, Inc.; South Kentucky RECC; and Taylor County RECC. These comments reflect the views of the association and do not necessarily represent the views of each individual member. These comments are not intended to bind any of the foregoing members with respect to this matter or in any pending or future proceeding.

process moves forward.

Of course, during the months preceding the promulgation of the proposed regulation, the Kentucky Electric Cooperatives took part in the Commission's preliminary efforts to engage stakeholders in the development of a reasoned pole attachment regulation. Through participation in public forums and submission of written comments,² the Kentucky Electric Cooperatives have made clear their primary interests—in brief: (i) prioritization of safety and the integrity of the electric distribution system; (ii) recognition of the unique characteristics and challenges of rural electric cooperatives, particularly with respect to operational and administrative burdens; and (iii) protection of the not-for-profit Kentucky Electric Cooperatives and their member-owners (i.e., Kentucky homeowners and businesses) from costs they did not cause, and from liabilities for which they should not be responsible. These basic principles, guided by reasonableness, continue to buttress every position of the Kentucky Electric Cooperatives with respect to the Commission's regulation of pole attachments.

Thankfully, the proposed regulation as promulgated reflects certain positions—espoused by the Kentucky Electric Cooperatives and other similarly-situated pole owners—that recognize the need for greater broadband proliferation in Kentucky yet remain sensible with respect to the protection of the rates and service guaranteed electric utility customers. For example, the proposed regulation as promulgated reflects decreased minimum thresholds related to larger orders, requires attachers to provide written notice to utilities in advance of high volume requests, and includes a provision addressing utility-directed transfers to new poles. These provisions provide utilities—particularly smaller, cooperative utilities—a more balanced opportunity to remain compliant while they work alongside others to promote the proliferation of broadband and other services within their communities. These provisions also reflect the Commission's considered judgment, and they should be retained as part of the pole attachment regulation as this process moves forward.

² The Kentucky Electric Cooperatives submitted written comments to the Commission on September 15 and October 19, 2020, copies of which are appended hereto.

The foregoing notwithstanding, certain aspects of the proposed regulation require attention and must be addressed. To the point, the Kentucky Electric Cooperatives request the following:

1. Clarification regarding the proposed regulation's impact on existing agreements governing pole attachments and joint use;
2. Clarification regarding the intended scope of the proposed regulation, particularly as it concerns electric transmission facilities;
3. Confirmation that an electric cooperative may be an attacher under the proposed regulation and assured nondiscriminatory access to the poles of telecommunications providers and other utilities;
4. Clarification that a utility has the authority to deny access to its poles, ducts, conduits and rights-of-way due to insufficient capacity based both on current use and reasonably-anticipated future needs;
5. Confirmation of a pole owner's ability to limit an attacher's right to overlash only those existing facilities owned by the attacher;
6. Clarification that pole owners, like attachers, may avail themselves of the timely complaint resolution procedures provided by the reinvent Commission under Section 7 of the regulation, should an attacher fail to comply with applicable terms or otherwise perform some act or omission for which the Commission may provide appropriate relief;
7. Provision of a remedy process and liability protection for pole owners when attachers exercise self-help rights; and
8. Confirmation that the proposed regulation is intended strictly to govern "[a]ccess and attachments to utility poles and facilities," as the title of the proposed regulation reflects, rather than an overly broad attempt to impose unsupported rates and make-ready cost sharing at this premature juncture.

Each of these items is addressed in more detail, below.

1. ***The Commission should clarify the proposed regulation's impact on existing agreements governing pole attachments and joint use.***

The proposed regulation requires each utility to file and maintain a pole attachment tariff that “includes rates, terms, and conditions governing pole attachments in Kentucky that are consistent with the requirements of this administrative regulation and KRS Chapter 278.” *See* Section 3(1). A utility is explicitly permitted to incorporate into its pole attachment tariff a “standard contract or license for attachments,” and that standard contract or license must be “based wholly on the utility’s tariff[.]” *See* Section 3(2) and 3(3). A pole owner and attacher may agree to rates, charges, and conditions not contained in a utility’s tariff, so long as the parties’ written agreement is filed with the Commission pursuant to 807 KAR 5:011, Section 13. *See* Section 2(3).

As the Commission is aware, many pole owners have existing agreements with attachers governing the parties’ respective rights and obligations. The Commission should make clear that utility pole owners and attachers may continue to embrace and enter into these mutually-agreeable special contracts regarding pole attachments, subject to the Commission’s review and approval under 807 KAR 5:011, Section 13, and that neither the regulation nor any utility’s forthcoming pole attachment tariff will nullify or supersede arrangements reached by mutual agreement.

Further, the Commission should clarify that the proposed regulation does not undermine or supersede negotiated joint use agreements. Although the definition of “new attacher” under the proposed regulation explicitly excludes “a utility with an applicable joint use agreement with the utility that owns or controls the pole to which it is seeking to attach,” Section 1(9), it is important to understand which rules or rates may control in the future when joint use considerations are present. Given the unique mutuality of rights and obligations associated with joint use agreements, the Commission should be careful to distinguish these agreements from ordinary pole attachment arrangements and continue to recognize that joint use agreements are

not subject to the proposed pole attachment regulations.

2. The Commission should clarify the intended scope of the proposed regulation, particularly as it concerns electric transmission facilities.

The proposed regulation generally requires each utility to provide nondiscriminatory access to “any pole, duct, conduit, or right-of-way owned or controlled by it.” Though the proposed regulation appropriate and explicitly excludes “any pole that is used primarily to support outdoor lighting” (Section 2(1)(b)), the proposed regulation does not otherwise specify either the types of utilities or the types of “pole, duct, conduit, or right-of-way” to which it applies.

Certain of the Kentucky Electric Cooperatives, particularly wholesale cooperatives East Kentucky Power Cooperative, Inc. (“EKPC) and Big Rivers Electric, Inc. (“Big Rivers”), own and maintain high-voltage transmission facilities in connection with their generation and transmission activities. Though the proposed regulation permits a utility to deny access to its facilities on a non-discriminatory basis “where there is insufficient capacity or *for reasons of safety, reliability, and generally applicable engineering purposes,*” Section 2(1)(a) (emphasis added), the regulation should specifically reflect the ability of any utility to deny access to electric facilities supporting transmission-level voltages (69kV or greater). Moreover, in the specific case of EKPC and Big Rivers, and though each is a “utility that owns or controls utility poles located in Kentucky,” neither should be required to file and maintain a pole attachment tariff, as apparently required by Section 3(1). These revisions are consistent with the intention of the proposed pole attachment regulation, which is fundamentally aimed at distribution poles owned and maintained by electric and telecommunications utilities.

3. The Commission should confirm the inclusion of electric distribution utilities as protected attachers under the proposed regulation.

By its terms, the proposed regulation applies to attachments made by cable television system operators, telecommunications carriers, broadband internet providers, and governmental units. *See, e.g.,* Section 1(9) (“‘New attacher’ means a cable television system operator,

telecommunications carrier, broadband internet provider, or governmental unit requesting to attach new or upgraded facilities to a pole owned or controlled by a utility, except that a new attacher does not include a utility with an applicable joint use agreement with the utility that owns or controls the pole to which it is seeking to attach or a person seeking to attach macro cell facilities.”); Section 2(1) (“Except as established in paragraphs (a), (b), and (c) of this subsection, a utility shall provide any cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.”). The proposed regulation does not, however, provide any protection for attachments of electric distribution utilities, despite the recent passage of HB320 (addressing electric distribution cooperative participation in the proliferation of broadband) and the fact that these electric distribution utilities rely on the poles, ducts, conduit, and rights-of-way of other utilities to serve customers efficiently and effectively. It should be recognized and made clear, under both the terms of the regulation and in practice, that pole owners consist of more than just electric utilities, and pole attachers consist of more than just Windstream and Charter. Electric distribution utilities should be afforded the same nondiscriminatory attachment rights as other utilities and service providers.

4. ***The Commission should clarify that a utility has the authority to deny access to its poles, ducts, conduits and rights-of-way due to insufficient capacity based both on current use and reasonably-anticipated future need.***

As stated, the proposed regulation permits a utility to deny access to its facilities on a non-discriminatory basis “where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering purposes.” Section 2(1)(a). Particularly with respect to ducts and conduits—which by their nature are typically more space-restricted and difficult to maneuver—it is not uncommon for a cooperative utility to construct and reserve reasonable excess capacity in anticipation of future development. Sharing of ducts and conduits also presents safety and reliability concerns not present when considering attachments to poles. For these reasons, it should be made clear that a utility’s denial of access to its facilities based on “insufficient capacity” may be warranted based both on the current use of the duct/conduit/etc.

and reasonably-anticipated future need.

5. *The Commission should clarify that a pole attachment tariff may limit an attacher's right to overlash only to those existing facilities owned or controlled by the attacher.*

The proposed regulation, Section 3(5), states that a utility's pole attachment tariff "shall not prohibit overlashing except if doing so is justified by lack of capacity, safety or reliability concerns, or applicable engineering standards." From time to time, certain Kentucky Electric Cooperatives have received requests from prospective attachers seeking to overlash facilities the prospective attacher does not own or control. Aside from the inevitable administrative confusion that would result from such practices, a network of mismatched and intertwined attachments presents real and significant safety concerns. Though pole owners can almost-certainly prohibit such a practice based on a variety of operational safety considerations, Section 3(5) should be amended in order to address any unintended consequence, as follows:

The tariff shall not prohibit an attacher from overlashing its own facilities except if doing so is justified by lack of capacity, safety or reliability concerns, or applicable engineering standards.

6. *The Commission should clarify that all complaints related to pole attachments, whether filed by a pole owner or an attacher, may be addressed expeditiously through the complaint resolution process.*

As the Commission is aware, and unfortunately no matter the ultimate content of the pole attachment regulation, issues and disagreements may arise between attachers and pole owners as part of the pole attachment process. Section 7, entitled "Complaints for Violations of This Administrative Regulation[.]" recognizes this fact and describes how a complainant may seek relief from the Commission as a result of the act or omission of another party. It appears the proposed regulation, similar to related federal law, permits both pole owners and attachers to file complaints with the regulatory authority concerning pole attachment issues. *See* 47 CFR §

1.1404.

Pursuant to Section 7(8) of the proposed regulation, the Commission is limited in the amount of time it has to take final action “on a complaint alleging that a person or entity was unlawfully denied access to a utility’s pole, duct, conduit, or right-of-way[.]” Ostensibly, however, this assurance of timely review is not afforded to complaints filed for other reasons, or for *any* complaint raised by a pole owner. Of course, there may be times when an attacher fails to comply with applicable terms or otherwise perform some act or omission for which a pole owner make seek remedy from the Commission, and pole owners, like attachers, should be entitled to avail themselves of the timely complaint resolution procedures provided by the Commission under Section 7 of the regulation. This is particularly true when the subject of the complaint involves safety concerns, which are paramount.

7. The Commission should provide a remedy process and liability protection for pole owners when attachers exercise self-help or one-touch make-ready rights.

In most parts of the proposed regulation, the Commission succeeds in providing an even-handed approach that balances the needs of all parties, but one particular exception to this practice is notable and especially dangerous to Kentucky’s electric cooperatives.

The proposed regulation permits third parties to take unilateral action on utility assets but defines no process whereby the asset owners can remedy issues and be compensated by the third party if damage is done. Unlike under the federal pole attachment framework—under which utilities are granted ninety (90) days to inspect make-ready performed by new attachers and are also given the express ability to either require remediation of any issues/damage or address such issues/damage themselves at the new attacher’s expense³—the proposed Kentucky regulation is devoid of these or similar protections. The Commission sets a dangerous precedent when it provides “self-help” and “one-touch make-ready” processes for attachers without providing a remedy process or liability protection for existing attachers and pole owners, and the absence of

³ See 47 C.F.R. § 1.1411(i)(2) and § 1.1411(j).

liability protections like those contained in the similar federal regulation is a major disincentive to regulatory compliance by attachers.

Of course, as explained previously by the Kentucky Electric Cooperatives, significant risks are inherent when dealing with pole attachments, particularly when those attachments are made by unilateral action by a third party. The risks are not difficult to recognize; they may be immediate (such as the electrocution of an improperly-trained third-party attacher working near an energized line) or much delayed (such as an attachment which becomes dislodged and creates clearance issues between poles). Additionally, reliability and economic injuries are abundant—if an attachment has become dislodged and a third-party’s sagging wire results in damage to poles and other lines, it may jeopardize electric service (and potentially other services, like emergency/911 communications) for nearby residences and businesses. These consequences are clearly significant and must be duly considered by the Commission. Further, the Commission should explicitly limit the liability of pole owners and existing attachers at locations where another party has exercised these unilateral rights. These additional protections are necessary in order to ensure electric ratepayers remain responsible only for costs attributable to the electric service they receive.

8. Confirmation that the proposed regulation is intended strictly to govern “[a]ccess and attachments to utility poles and facilities,” as the title of the proposed regulation reflects, rather than an overly broad attempt to impose unsupported rates and make-ready cost sharing at this premature juncture.

The Kentucky Electric Cooperatives appreciate the Commission’s efforts in developing its regulation governing “[a]ccess and attachments to utility poles and facilities,” as the title of the proposed regulation reflects. The Kentucky Electric Cooperatives also appreciate the Commission’s ongoing resistance to attempts by certain parties to push agendas concerning rates and a remaking of long-standing cost sharing practices in the make-ready process at this premature juncture. Though matters of cost recovery are and will remain important, the Commission clearly did not intend the proposed regulation to be about rates. While the Kentucky

Electric Cooperatives have tried to follow the Commission's intent and focus on issues related to access, some other parties have consistently sought to broaden the scope of the rule-making to reduce their costs. Any discussion of rates and cost-sharing related to pole attachments demands and deserves much more focused attention, specific data and fact-finding, and informed testimony from interested parties; therefore, efforts to broaden the scope of the proposed regulation at this point should continue to be rejected.

Conclusion

The Kentucky Electric Cooperatives have constructed and maintained a vast network of poles that is essential to the direct provision of electric service to over 1.5 million Kentuckians. This network spans the Commonwealth, serving homes and business in the state's metropolitan communities and its most rural communities, alike. Despite the importance and value of this network, the Kentucky Electric Cooperatives continue to support reasonable third-party access to their poles, as they always have, consistent with and in no way compromising the utility's obligation to provide safe, reliable, and affordable electric service.

Finally, the Kentucky Electric Cooperatives appreciate the Commission's consideration of these comments, as well as the Commission's ongoing recognition of the challenges faced (and regularly overcome) by the Commonwealth's member-owned rural cooperatives. Of course, in preempting federal law in this area, the Commission has affirmed that it "does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services." *See* 47 U.S. Code § 224(c)(2)(b) (emphasis added). The Kentucky Electric Cooperatives remain confident that their member-owners—who are the same individuals and businesses designed to benefit from the expansion of broadband in the Commonwealth—will remain at the forefront of the Commission's policies and practices moving forward.

Please do not hesitate to contact me with any questions or concerns.

Respectfully,

A handwritten signature in blue ink that reads "Chris Perry". The signature is written in a cursive style with a large, looping "C" and a long, sweeping tail on the "y".

Chris Perry
CEO & President



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September 15, 2020

Administrative Regulations Working Group
Kentucky Public Service Commission
Via email: psc.regulations@ky.gov

Re: Comments Regarding Proposed Pole Attachment Regulation, 807 KAR 50XX

Working Group Members,

Please accept this correspondence as the initial written comments of Kentucky Association of Electric Cooperatives, Inc. (the “Kentucky Electric Cooperatives”), to the above-referenced proposed regulation of the Kentucky Public Service Commission (the “Commission”).

As the statewide organization representing the interests of Kentucky’s electric cooperatives,¹ the Kentucky Electric Cooperatives appreciate the opportunity to submit these comments as part of the Commission’s proactive efforts to engage stakeholders in the development and revision of its administrative regulations. The overarching objective of these comments is to ensure the Commonwealth’s member-owned electric cooperatives remain capable of providing safe, reliable and affordable electric service to their local communities

¹ The membership of the Kentucky Electric Cooperatives includes the following jurisdictional utilities: Big Rivers Electric Corporation; Big Sandy RECC; Blue Grass Energy Cooperative Corporation; Clark Energy Cooperative, Inc.; Cumberland Valley Electric, Inc.; East Kentucky Power Cooperative, Inc.; Farmers RECC; Fleming-Mason Energy Cooperative; Grayson RECC; Inter-County Energy Cooperative Corporation; Jackson Energy Cooperative Corporation; Jackson Purchase Energy Corporation; Kenenergy Corporation; Licking Valley RECC; Meade County RECC; Nolin RECC; Owen Electric Cooperative; Salt River Electric Cooperative Corporation; Shelby Energy Cooperative, Inc.; South Kentucky RECC; and Taylor County RECC. These comments reflect the views of the association and do not necessarily represent the views of each individual member. These comments are not intended to bind any of the foregoing members in this matter or in any future docket or proceeding.

while utilizing existing infrastructure to promote the responsible proliferation of broadband and related technologies. It is the hope of the Kentucky Electric Cooperatives that their valuable experience and real-world input will assist in shaping whether and how the Commission exercises its authority to regulate attachments to utility poles across the wide variety of diversely-situated pole owners, especially those predominantly situated in the more rural areas of the state.

The Kentucky Electric Cooperatives submit these comments in order to promote a regulatory scheme governing pole attachments in the Commonwealth that:

- Respects existing arrangements in local areas where relationships are working well and allows for parties to mutually agree to terms that work well for them based on local conditions;
- Properly considers the unique characteristics and challenges of rural electric cooperatives, particularly with respect to timeframes and administrative burdens, and thus permits reasonable flexibility;
- Prioritizes safety and reliability; and
- Protects rural electric cooperatives and their member-owners from costs they did not cause, and from liabilities for which they should not be responsible.

Though it is difficult to fully capture the unique experiences and viewpoints of the Kentucky Electric Cooperatives' diverse membership, these comments are intended to address matters of particular importance consistent with a consensus of the statewide organization.² The Kentucky Electric Cooperatives look forward to engaging in further constructive discussions as this stakeholder process progresses, as well as participating in the procedures provided under KRS Chapter 13A should the Commission proceed to formal regulatory procedures.

² At least one member of the Kentucky Electric Cooperatives, East Kentucky Power Cooperative, Inc., intends to submit its own comments as part of this process. Those comments are supported by the Kentucky Electric Cooperatives.

Background

Few know better the importance of sensible and timely infrastructure development than the cooperatives established to help electrify rural America. With roughly 100,000 miles of conductor supported by hundreds of thousands of wooden poles and similar structures, the Kentucky Electric Cooperatives' assets at issue here represent a significant, ongoing, and vital investment—ubiquitous and unremarkable, yet incredibly valuable to the greater grid they substantially comprise. Each of Kentucky's electric cooperatives has worked around-the-clock, decade after decade to construct and maintain a useful network of poles, ducts, conduits, and rights-of-way, and each has done so in service of a singular ultimate objective: to provide safe, reliable, affordable power to its member-owners. It is against this backdrop that the Kentucky Electric Cooperatives approach the use of utility assets by public and private third-parties, and particularly the pole attachment regulation presently proposed by the Commission.

Pole attachment frameworks work best not when there is extensive involvement by the Commission, but rather when local parties have invested the time and effort to build solid working relationships and maintain open lines of communication. Highly prescriptive statewide regulation will be very difficult to track and enforce without significant investments in people (additional staffing and/or contracting) and software, and could limit the flexibility of local parties to work together to produce positive results. Although issues surely arise that both pole owners and pole attachers must work to address, there is no evidence to indicate that putting in place additional regulatory burdens on electric cooperatives will increase or improve broadband deployment. Indeed, it appears that the principal reason broadband deployment has struggled to advance in certain electric cooperative territories is due largely to a lack of customer density, and certainly not an unwillingness or inability of the local electric cooperative to work with third parties to bring additional services to its member-owners. In that context, increasing the regulatory burden on rural electric cooperatives will not alleviate the central issue affecting the decision of certain broadband providers to focus their efforts in more densely-populated areas than those served generally by the cooperatives.

The Kentucky Electric Cooperatives have consistently provided safe, reliable, and affordable service because they have been afforded the flexibility to develop the pole attachment processes and guidelines best suited for their particular circumstances. Put simply, no two electric cooperatives share the same size, customer density, workforce, service territory, or operational needs. The absence of a rigid, uniform framework across the state has allowed each cooperative to consider factors such as local demand, available cooperative personnel, and topographical challenges—all of which can vary greatly—when reasonably addressing the requests of third parties to attach to utility poles.

The unique characteristics of rural electric cooperatives explain why Congress initially excluded them from the jurisdictional scope of Federal Communications Commission (“FCC”) regulation under the Pole Attachment Act of 1978. To this day, cooperative pole attachments remain categorically excluded from regulation by the FCC,³ and thus investor-owned utilities (“IOUs”) have been the dominant concern during the negotiation and development of federal policy governing pole attachments during the past 40+ years. Consequently, while the federal rules (from which the Commission borrowed in drafting its proposed regulation) undoubtedly reflect decades of substantial FCC efforts to strike an appropriate balance among various stakeholders, the federal rules have never considered the interests and challenges faced by rural electric cooperatives. This is because, quite simply, cooperatives (as well as municipal utilities) are not subject to the FCC’s pole attachment rules.⁴ Therefore, while there may be some appeal to modeling Kentucky’s proposed pole attachment regulations at least in part on existing FCC regulations, the blanket application of those rules to rural electric cooperatives takes on a distinctly different character in light of the fact that those FCC regulations were never developed with cooperative concerns in mind. Here, realistic differences support reasonable distinctions, and thus one-size-fits-all regulation demands significant scrutiny.

³ See 47 U.S.C. §224(a)(1) (“The term ‘utility’ ... does not include ... any person who is cooperatively organized ...”).

⁴ *Id.*

Discussion

Each rural electric cooperative in Kentucky is an integral part of the community it serves, and each supports new opportunities for economic growth in its region. For this reason, the Commission should continue to encourage strong local relationships whenever reasonably possible, and parties should be free to mutually agree to terms and conditions for pole access as they see fit. Likewise, electric cooperatives should remain capable of filing specific tariff schedules describing the terms upon which they will provide service, consistent with KRS Chapter 278 and the needs of the particular cooperative. Maintaining this flexibility ensures that smaller pole-owners, like many rural electric cooperatives, may continue to balance attachment interests with the cooperative mission to provide safe, reliable, and affordable electric service to its member-owners. However, to the extent the Commission believes detailed regulation is required in this area, the electric cooperatives ask that the rules be reasonable and that they recognize (and, where possible, minimize) the unique and varying burdens faced by the cooperatives.

A. Flexibility Should Be Preserved, Burdens Minimized.

In Kentucky, if the Commission determines it should pursue uniformity in pole attachment administration between service territories, it should allow for exceptions and appropriate flexibility. As stated, this flexibility is imperative to ensure that each cooperative's ability to provide safe, reliable, and affordable electric service remains uncompromised, particularly considering the unique characteristics of each cooperative's workforce and terrain.

Of course, not only is each electric cooperative unique in size and territory when compared to its sister cooperatives (*e.g.*, the Kentucky electric cooperative with the most poles has over 110,000, while the cooperative with the least has roughly 14,000), but differences between cooperatives and other types of providers—such as investor-owned utilities, “IOUs”—can be far more stark. For example, certain rural electric cooperatives in Kentucky average roughly seven (7) customers per mile of line, and in certain places within their territories, far fewer. When this figure is compared to the average number of customers per mile of line served

by Louisville Gas & Electric Company, for example (roughly sixty-four (64)),⁵ it is clear how cooperatives may face dissimilar operational and logistical issues in light of the nature of their predominantly rural territories. While an IOU may regularly address a steady and predictable flow of pole attachment requests, many electric cooperatives find it difficult to justify maintenance of sufficient on-hand resources to accommodate the occasional attachment without running afoul of predetermined deadlines. Population density, topography, overall demand for attachments, and other factors necessarily impact how and when work is completed by a utility. These matters should therefore be taken into account when devising regulations applicable to electric cooperatives.

In the Commission's proposed pole attachment regulation, the day-to-day realities of cooperative operations are not reflected in the specific timeframes established for completing the various steps in the pole attachment process. At the outset, the proposed regulation should be clarified to reflect that all timelines are in business days (as opposed to calendar days), as the draft regulation is presently inconsistent and unclear in that respect. Furthermore, all timelines should be made to run consecutively, rather than concurrently. These simple changes will help align expectations and promote ongoing compliance.

Most important, though, are the durations of the timeframes themselves. Most rural electric cooperatives, unlike many IOUs, work with limited staffing and with infrastructure oftentimes spanning difficult and diverse terrain. These facts render unrealistic the base deadlines set forth in the proposed regulation, absent a corresponding and significant increase in staffing or contracting costs. Most cooperatives, for example, are simply not staffed to meet the proposed deadlines for reviewing applications for completeness (Sec. 4(2)(a)1.), completing surveys (Sec. 4(2)(b)1.), and completing make-ready (Sec. 4(4)) with the degree of absolute consistency required by the proposed regulations. This is particularly true for "large" pole attachment requests, which by regulation might involve between 301 and 3,000 poles but only impact time limits by a matter of weeks. In the case of a rural electric cooperative with under

⁵ See <https://lge-ku.com/our-company/about-lge> (last accessed September 11, 2020).

fifty (50) employees (only a small portion of which are designated or trained to handle pole attachments, frequently on a part-time basis), the threshold of what it would consider a “large” amount of pole attachments is certainly much lower than contemplated by the proposed regulation. For this reason, the size delineations and relevant timelines must be extended so that they may realistically reflect cooperative operations and allow for significant flexibility to accommodate the cooperatives’ diverse operational paradigms.

While the proposed regulation at Sec. 4(8) does allow utilities to deviate from make-ready deadlines “...for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the time limits specified...,” it should be made clear that electric cooperatives need not prioritize pole attachment matters to the detriment of electric operations to meet deadlines that are sometimes simply unworkable. For example, cooperative personnel generally should not face diversion from electric service installation or restoration tasks because a particularly sizable or complicated pole attachment request is pending. Accordingly, the Commission should ensure that Kentucky’s rural cooperatives maintain reasonable flexibility in fulfilling their obligations to ensure attachments can be made safely and without imposing an unreasonable burden.

In addition to revising prescribed timeframes, other relatively-minor adjustments to the proposed regulation may also assist in minimizing the negative impacts to electric cooperatives. These include requiring certain notices be sent by the new attacher, rather than the relevant utility,⁶ as well as requiring attachers to cooperate in pole audits and maintain up-to-date contact information with the utility and the Commission. After all, the practical and timely workability of attachment processing is only as good as the base-level of information about existing attachments and an ongoing effort to ensure that attacher facilities are properly labeled or identified. It is also important that any regulation be limited to space available on above-ground poles, and not within ducts or conduits constructed and maintained by electric cooperatives for their own use.⁷ This is consistent with the National Electric Safety Code’s restrictions on shared

⁶ See Proposed Regulation, Sec. 4(2)(b); Sec. 4(4).

⁷ See Proposed Regulation, Sec. 2(1) (“A utility shall provide any cable television system operator,

use of conduit, clearly put in place to support safety and reliability. Moreover, because conduit and duct space is so much more limited, and because adding space is significantly more expensive in comparison to pole-based facilities, the costs and complication involved in attempting to strictly regulate conduit and duct access weighs in favor of their exclusion from the proposal. Again, attempting to impose one-size-fits-all rules on the electric cooperatives would be unreasonable under the circumstances.

Furthermore, while the proposed regulation speaks specifically to the requirements and responsibilities of pole owners in enabling new attachers to access their poles and speed the build-out of new broadband, existing attachers also play a part in allowing the new attacher to access the pole. We would urge the Commission to consider adding language to its proposed regulation to address late transfers (sometimes known as “double wood” or “buddy poles”) and unauthorized attachments as a part of its regulation. When these conditions exist in the field, they slow new attacher access to poles, and they can create dangerous conditions. Addressing these issues would help even existing attachers and likewise help speed broadband access and deployment without imposing additional burdens and costs on the pole owner.

While these modifications will aid in minimizing the burdens experienced by rural electric cooperatives, meeting the timelines required in the proposed regulation will require electric cooperatives to be ready to go to work “on demand” for attachers. Developing the operations and staffing capabilities to meet timelines on demand will create costs of compliance that simply cannot be avoided. These costs – dedicated staffing, software, communications systems, and other administrative and operational needs – can be significant and must ultimately be recovered from pole attachers, the cost-causers. If costs such as these are not able to be recovered from the attachers, electric cooperative members will be forced to subsidize the costs of this regulation.

telecommunications carrier, broadband internet provider, or governmental unit nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.”).

B. Safety and Reliability Must Remain Paramount.

While the Kentucky Electric Cooperatives thoroughly support expansion of broadband and advanced communication technologies throughout the Commonwealth, all cooperatives must have the ability to ensure the safety and reliability of their systems. Consequently, utility pole owners should maintain the discretion to reasonably define where and under what conditions attachments occur. This is particularly true with respect to complex make-ready and make-ready which may impact areas above a pole's communication space (such as small cell/5G technologies), as utilities must maintain the right to control any activity in or near the pole space which accommodates their supply.

A paramount concern to many Kentucky cooperatives is the risk that accompanies any activity on utility poles, and particularly if the activity is completed without the full knowledge and oversight of the pole owner. The provisions in the proposed regulation that provide for "self-help" for new attachers are unworkable in their current form. Providing attachers the right to undertake their own work on an electric cooperative's pole without the oversight and consent of the cooperative creates a safety concern of the highest order. Further, the regulation provides no potential method of remedy for the pole owner if the new attacher performs substandard work and leaves behind a noncompliant and/or dangerous situation. Will the new attacher come back to fix the issue at its own cost? Will the electric cooperative be forced to correct the issue and pursue the unresponsive attacher for payment? Who is liable if the substandard workmanship later causes an accident or death? The proposed regulation does not speak to these concerns.

C. Cooperatives Should Face No Undue Risk or Cost.

Finally, if third-parties are to be permitted to work on electric cooperative poles, it is essential that electric cooperatives be protected from liability related to any such work.⁸ Although it is encouraging that the proposed regulation explicitly permits utilities to include in their tariffs

⁸ Due largely to historical practices and economic considerations related to potential use of attachment clearinghouse systems like NJUNS, many cooperatives maintain system information themselves. Consequently, safety concerns generally compel the utility pole-owner to handle any attachment processing and related work itself and without the use of third-parties who will not have the level of system knowledge required to safely process attachment requests without impacting service reliability, safety considerations aside.

“...terms that are fair, just, and reasonable subject to approval by the commission such as limitations on liability, indemnification, insurance requirements, and restrictions on access to utility poles that are consistent with the requirements of this administrative regulation[.]” the Kentucky Electric Cooperatives are concerned that they may be left “holding the bag” if third parties exacerbate the high safety and reliability risks that accompany working with electric poles and conductors. These risks are not difficult to recognize; they may be immediate (such as the electrocution of an improperly-trained third-party attacher working near an energized line) or much delayed (such as an attachment which becomes dislodged and creates clearance issues between poles). Additionally, reliability and economic injuries are abundant—if an attachment has become dislodged and a third-party’s sagging wire results in damage to poles and other lines, it may jeopardize electric service (and potentially other services, like emergency/911 communications) for nearby residences and businesses. These consequences are clearly significant and must be duly considered by the Commission. Moreover, cooperative tariffs and agreements should be liberally accepted by the Commission and permitted to reflect the realities of pole ownership and pole use by electric utilities.

Additionally, and as noted above, pole owners under Kentucky’s regulatory scheme should at least be afforded similar post-attachment rights and remedies as pole owners under the comparable FCC rule (*i.e.*, the rule upon which the Commission’s proposed regulation was evidently based). Under 47 C.F.R. § 1.1411(i)(2) and § 1.1411(j), utilities are granted ninety (90) days to inspect make-ready performed by new attachers, as well as given the ability to either require remediation of any issues/damage or address such issues/damage themselves at the new attacher’s expense.⁹ These or similar protections are noticeably absent from the Commission’s proposed regulation, but if regulation on this issue proceeds, they should be restored.

⁹ For example, the text of 47 C.F.R. § 1.1411 (i)(2)(ii) & (iii) is duplicated below. Only the parts in bold are reflected in the Commission’s proposed regulation.

(ii) The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher. Upon receiving notice from the new attacher, the utility or existing attacher may either: (A) Complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage; or (B) Require the new attacher to fix the damage at its expense immediately following notice from the utility or existing attacher.

Conclusion

The Kentucky Electric Cooperatives have constructed and maintained a vast network of poles that is essential to the provision of electric service to over 1.5 million Kentuckians. As members of the communities they serve, all cooperatives seek to spread the benefits of new technologies, particularly in rural areas that are all-too-often left behind. For this reason, the Kentucky Electric Cooperatives continue to support reasonable third-party access to their poles, as they always have, consistent with and in no way compromising the utility's obligation to provide safe, reliable, and affordable electric service. Ideally, these matters can be driven by strong local working relationships, with all service meeting or exceeding reasonableness and adequacy standards statutorily-required of electric cooperatives.

While the Kentucky Electric Cooperatives certainly recognize the benefits of a better-connected world and indeed support it, responsible growth cannot be had at the expense of the local electric utility, its assets, or its general ratepayers. Rural electric cooperatives face significant risks and costs (financial, operational, legal, safety, reliability, and perhaps others) in connection with third-party pole attachments. These costs are sure to increase if the Commission mandates compliance with a new regulatory scheme derived from the FCC's IOU-centric federal regulations. The predominant purpose of electric cooperative poles remains the safe and reliable delivery of power, and it is imperative that the applicable rules reflect that fact. The Commonwealth's rural electric cooperatives thank the Commission for the opportunity to provide feedback through the comment process and ask that their input be considered and implemented as the regulatory process develops.

(iii) A new attacher shall notify the affected utility and existing attachers within 15 days after completion of make-ready on a particular pole. The notice shall provide the affected utility and existing attachers at least 90 days from receipt in which to inspect the make-ready. The affected utility and existing attachers have 14 days after completion of their inspection to notify the new attacher of any damage or code violations caused by make-ready conducted by the new attacher on their equipment. If the utility or an existing attacher notifies the new attacher of such damage or code violations, then the utility or existing attacher shall provide adequate documentation of the damage or the code violations. The utility or existing attacher may either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or code violations or require the new attacher to fix the damage or code violations at its expense within 14 days following notice from the utility or existing attacher.

Please do not hesitate to contact me with any questions or concerns.

Respectfully,

A handwritten signature in blue ink that reads "Chris Perry". The signature is written in a cursive style with a large, looping "P" and a long, sweeping underline.

Chris Perry
CEO & President



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October 19, 2020

Administrative Regulations Working Group
Kentucky Public Service Commission
Via email: psc.regulations@ky.gov

Re: Supplemental Comments Regarding Proposed Pole Attachment Regulation

Working Group Members,

This letter is provided in supplement to my earlier correspondence dated September 15, 2020, containing the initial written comments of Kentucky Association of Electric Cooperatives, Inc. (the “Kentucky Electric Cooperatives”), to the above-referenced proposed regulation of the Kentucky Public Service Commission (the “Commission”). Having now reviewed the various comments submitted by other interested stakeholders as part of this process, the Kentucky Electric Cooperatives appreciate the opportunity to provide additional thoughts and context to these most important issues.

At the outset, it is advantageous to revisit and reiterate the Kentucky Electric Cooperatives’ primary interests with respect to the Commission’s development of a statewide pole attachment framework. *First*, Kentucky’s regulatory scheme must prioritize safety and reliability. While the Commonwealth’s vast, vital network of utility poles offers promise for the expansion of broadband and other services, any use of cooperative infrastructure must be approached with due respect for its chief purpose—the provision of safe, reliable electricity. *Second*, Kentucky’s pole attachment framework must consider the unique characteristics and challenges of rural electric cooperatives, particularly with respect to operational and administrative burdens, and thus permit reasonable flexibility and promote mutual cooperation

between pole attachers and pole owners. The significant differences between and among Kentucky’s rural electric cooperatives and investor-owned utilities (“IOUs”)—in terms of customer composition, service territory, system layout, and personnel base, for example—result in substantial impacts to the suitability of one-size-fits-all regulation in this context. Consequently, the Commission should resist the temptation to impose federal standards that were not developed and are not designed with rural cooperatives in mind. *Third*, and finally, if the Commission determines that a uniform regulatory scheme governing access to cooperative poles is necessary, the not-for-profit Kentucky Electric Cooperatives and their member-owners (*i.e.*, Kentucky homeowners and businesses) must be protected from costs they did not cause, and from liabilities for which they should not be responsible. These basic principles, guided by reasonableness, buttress every position of the Kentucky Electric Cooperatives in these and their earlier comments.

It surely comes as no surprise that the Kentucky Electric Cooperatives stand squarely opposed to many of the viewpoints espoused within the comments of several industry members, particularly those keen on cheap, largely-unfettered access to utility infrastructure. Certainly the further constriction of already-truncated timelines, as proposed by certain commenters,¹ would present immense (if not routinely insurmountable) compliance challenges for the smaller workforces of Kentucky’s rural electric cooperatives. Likewise, no benefit can be realized from attempts by certain commenters to unnecessarily curtail the Commission’s ability to address pole access disputes² or to excessively regulate each conceivable aspect of this subject on a statewide basis.³ Instead, each cooperative must maintain the ability to establish reasonable

¹ *See, e.g.*, Comments of The Kentucky Broadband and Cable Association (“KBCA”), at pp. 9-10 (proposing, among other things, that the window during which a utility may review an application for completeness be cut in half, to 5 days).

² *See* Comments of KBCA, at p. 27 (requesting the Commission reduce the timeframe it allows itself to address pole access complaints, from the proposed regulation’s 360 days down to “an expedited, 90-day timeframe”); Comments of AT&T Kentucky (seeking a 180-day timeframe for a Commission decision); Comments of CTIA - The Wireless Association, at p. 7 (stating the Commission “should look to Maine” and implement “rules requir[ing] a final order from the Commission resolving a dispute within seven business days of a complaint being filed.”).

³ *See, e.g.*, Comments of KBCA, at pp. 24-25 (proposing the Commission regulate, among many other things, the frequency of pole audits conducted by utilities, as well as bestow upon attachers rights to notice of audits, rights in the planning and design of audits, the right to review company data and documentation related to audits, and the right to approve the costs of audits).

practices and safeguards governing its facilities and services,⁴ recognizing that the Commission maintains the ultimate regulatory authority to determine what is reasonable and what is not—just as it always has.⁵

Without a doubt, safety is the paramount concern and the driving force behind the Kentucky Rural Cooperatives' positions vis-à-vis third-party pole access. Though there are many areas where pole owners and pole attachers inevitably disagree, safety and continuity of affordable electric service must be given priority in any regulatory scheme prescribing the rules for attachments to utility poles. This includes the safety of pole attachers, who cooperatives know from experience are too-often ill-equipped to ensure proper clearances, grounding, tensioning, proper use of personal protective equipment, and adherence to other safety measures. By extension, this also affects the safety of utility personnel, who face significant dangers from attachments installed improperly and, in many cases, entirely without the utility's knowledge.⁶ And, of course, the concerns of cooperatives necessarily include the safety of utility customers and the general public—when the sag of an overburdened span prevents a farmer's combine from safe passage across his field, or when an a pole serving a nearby hospital breaks at its midsection as a result of continual abuse by un-invested (sometimes unreachable or unresponsive) attachers, the stakes are high, and the risks are real.⁷ For these reasons, the Kentucky Electric Cooperatives are generally opposed to any regulatory provision that inhibits a utility's ability to limit or condition pole access on a nondiscriminatory basis when safety or reliability require it. Even the Kentucky Broadband and Cable Association concedes the

⁴ See KRS 278.030(2) (“Every utility shall furnish adequate, efficient and reasonable service, and may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service.”);

⁵ See, e.g., KRS 278.040(2) (“The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities....”); KRS 278.040(3) (“The commission may ... investigate the methods and practices of utilities to require them to conform to the laws of this state, and to all reasonable rules, regulations and orders of the commission not contrary to law.”).

⁶ One member of the Kentucky Electric Cooperatives reported that third-party field audits have identified approximately 20,000 illegal attachments made to its system in roughly the last decade. Unfortunately, many other cooperatives have experienced similar situations.

⁷ These anecdotes are not dramatizations, but rather true examples shared by cooperatives which reflect the day-to-day challenges they face when sharing their infrastructure with third-party attachers. In fact, an incident occurred just a few weeks ago in a cooperative's territory which demonstrates the types of issues cooperatives must often address related to pole attachments; an anonymized copy of the relevant Incident Report is attached.

fundamental concern that “[a]llowing other entities to handle another attacher’s plant can lead to unknown problems and damage that can cause critical outages and failures.”⁸ Likewise, pole owners like the cooperatives must maintain reasonable precautions against allowing other entities to handle cooperative plant, as well as the ability to reasonably control the use of their poles, particularly above the communication space.

Of course, it is clearly unmanageable in the present context to address every position promoted by the other parties to this process, and therefore the Kentucky Electric Cooperatives focus the remainder of these supplemental comments on two central objectives: (i) emphasizing the reasons that the FCC rules do not belong unmodified in Kentucky; and (ii) ensuring that electric customers do not bear the burden nor expense of third-party attachments. These overarching issues permeate many of the comments received and require the Commission’s careful consideration.

FCC Regulation is Not Appropriate for Rural Electric Cooperatives

Many of the comments submitted to the Commission make reference to regulations of the Federal Communications Commission (“FCC”), with some requesting that the Commission adopt FCC rules and regulations wholesale for all poles within the state of Kentucky. While this may be expedient and practical for some pole owners, it is not appropriate for rural electric cooperatives. As the Commission is doubtlessly aware, cooperatives were specifically exempted from the Pole Attachment Act when it became law in 1978 and have remained exempt from the ensuing 42 years of regulation that has developed at the federal level. This long-term exemption is not by happenstance, but rather is based on the substantially different circumstances facing investor-owned utilities and electric cooperatives, particularly as it relates to pole attachments.

Perhaps the most notable difference between rural cooperatives and IOUs concerns the typical densities of the populations each serves. Investor-owned utilities have far denser populations—many more electric meters per mile of line, many more attachments per pole—and

⁸ See Comments of KBCA, at p. 19 (also stating that maintaining certain oversight as part of make-ready is “imperative for a facility owner to ensure the integrity and safety of its plant.”).

this fact has a practical impact on utility operations related to pole attachments (*e.g.*, more frequent, more consistent, and more localized demand for attachments supports greater staffing levels and economies of scale). As a result, it is much more economic and practical for investor-owned utilities to meet FCC timelines by maintaining staff, contractors, and systems in place to respond to attachment requests and other demands of the pole attachment process. It also bears repeating that, while the FCC's rules surely reflect decades of substantial efforts to strike an appropriate balance among various stakeholders, the federal rules have never considered the interests and challenges faced by rural electric cooperatives. The attachment process for a series of poles in, *e.g.*, downtown Pittsburgh⁹ may simply not be suited for a series of poles in a holler of Harlan County, which is why this Commission should reject attempts to enforce the blanket application of national FCC rules on Kentucky's rural electric cooperatives.

FCC Pole Attachment Rental Rate Formula is Not Appropriate for Electric Cooperatives

While many of the comments submitted to the Commission request FCC-derived regulation broadly, some also specifically request that the Commission adopt the FCC pole attachment rental rate formula. These efforts are clearly outside the scope of the Commission's proposed rulemaking. Though matters of cost recovery are and will remain important, as there are "no free rides" in policy-making, this proposed regulation governs access and attachments to utility poles, as its title reflects. Therefore, attempts by certain parties to push an agenda concerning rates at this juncture should be soundly rejected.

The foregoing notwithstanding, it is important that the Commission is provided full and accurate information with respect to the demands being made by certain commenters regarding rates. The FCC pole attachment rental rate formula may initially appear like a harmless request—simply a "good idea" passed down from the federal government. However, the FCC

⁹ On August 29, 2019, the Pennsylvania Public Utility Commission ("PPUC") voted to exercise jurisdiction over pole attachments and to adopt, wholesale, the FCC's pole attachment rules. The rules do not extend to attachments made to poles owned by municipalities or cooperatives which, like in many states, are generally excluded from regulation by the public utilities commission. See PPUC Final Rulemaking Order, *Assumption of Commission Jurisdiction Over Pole Attachments from the Federal Communications Commission*, L-2018-3002672; see also Ohio Revised Code Chapter 4901:1-3, *Attachments to Utility Equipment or Rights of Way* (also excluding cooperatives from pole attachment regulation).

rental rate is a not a formula-based rate in the traditional sense of utility ratemaking. Rather, it is a policy designed by the FCC (at the request of members of the communications industry) with a stated objective of encouraging broadband deployment, specifically calculated to subsidize attachers at the expense of pole owners (and by extension their members/customers). The FCC's approach to pole attachment rates is simply not about cost recovery reflecting cost causation, and the Commission should avoid any temptation to accept the FCC's framework as an acceptable model.

It is worth noting, further, that the FCC's consistent policy choice to reduce rental rates with the hope of encouraging broadband deployment has not worked, despite promises made by various third-party attachers. The FCC's policy choices have put millions of dollars into the pockets of large broadband providers on the hope that they will invest some of that windfall in rural areas, but the investment has not come. Indeed, as the Commission is keenly aware, broadband deployment remains one of the most stubborn problems facing our Commonwealth and our country today. This is not because cooperatives are difficult to deal with or because rates have been prohibitively high. In fact, many cooperatives' tariffed rates for CATV remain basically unchanged since their implementation nearly forty years ago following Administrative Case No. 251 in 1982.¹⁰ Instead, broadband deployment in many rural areas has lagged for a far more obvious reason: just as electrification was slow to come to rural Kentucky but for the community-based action of the electric cooperatives, the customer density in rural areas is simply not sufficient to entice shareholders of for-profit, investor-owned entities to pursue the low return on investment associated with serving rural Kentucky. Indeed, any suggestion that the Kentucky Electric Cooperatives member pole attachment rates or processes have inhibited the deployment of broadband or other services to rural Kentuckians is a blatant falsehood unsupported by evidence, as well as an affront to cooperatives and the rural community-based foundations upon which they were built and continue to operate. Certainly there is no reason to blindly adopt the attacher-biased FCC rates at this juncture, as doing so will siphon funds from

¹⁰ Administrative Case No. 251, *The Adoption of a Standard Methodology for Establishing Rates for CATV Pole Attachments* (Ky. P.S.C. Sept. 17, 1982).

small towns in rural Kentucky where electric cooperatives provide service to the headquarters of major telecom and cable firms in Dallas, Philadelphia, and other locations with no accountability and no hope of those funds being reinvested in rural Kentucky. Put simply, it is a policy choice that would disadvantage rural Kentucky communities even further.

In specific terms, the FCC rental rate is not appropriate for electric cooperatives for reasons similar to the reasons that FCC regulation itself is not appropriate for electric cooperatives. The rate was designed and has been implemented over many years for a fundamentally different use case—IOWUs—and it has been designed solely with that use case in mind. Investor-owned utilities have denser service territories and more densely populated poles. For example, if a typical investor-owned utility has an average span length of 150 feet between poles, two attachments per pole, and is charging \$7 per attachment based on the FCC formula, it would generate revenue of approximately \$492.80 per mile of distribution line for attachments, and it would have many more line miles of revenue to support overhead and centralized joint use/pole attachment operations. Conversely, a typical electric cooperative with the same \$7 rental rate is likely to have an average span length of 250 feet between poles and an average of 1 attachment per pole. This would generate revenue of only \$147.84 per mile of distribution line, and that revenue would be replicated across far fewer miles of line. Because the electric cooperative system is much less dense, this rate does not provide the revenue necessary to support joint use/pole attachment operations and would most certainly not provide enough revenue to support staffing required to meet the desired timelines in the Commission's proposed rulemaking. Electric cooperatives and their member-customers should not be forced to pick up the tab for those costs, especially when they have not caused them.

Though the Commission clearly did not intend the current process to encompass discussion of pole attachment rates, should it determine in the future to conduct such an examination, the FCC's approach to pole attachment ratemaking should not be adopted.

***Demanding Contribution to Make-Ready Costs Further Disadvantages
Rural Electric Cooperatives and their Member-Owners***

Some comments submitted to the Commission request that electric utilities contribute to the make-ready costs incurred by attachers to access poles. It should first be emphasized that make-ready is about safety, code compliance, and system integrity. As with all things under the cooperative model, there is no profit motive or shareholder to satisfy, but simply the continued provision of safe, reliable, affordable electric power. It is next important to understand why only one regulatory body in the country, in the 100+ years of joint use and pole attachment agreements and 40+ years of regulation of pole attachments by state and federal governments, has implemented a framework requiring pole owners to contribute to make-ready costs.¹¹

The asset that is the distribution pole is typically owned and maintained by one party, most often the electric utility. The utility holds that asset and is responsible for the liability associated with it. The utility must maintain its assets to provide for the safety and reliability of its system. As a part of that process, the utility must budget and plan for the maintenance and replacement of its poles. If a third-party attacher is able to demand the utility to contribute to its pole replacement costs on demand based on the attacher's own budget and deployment schedule, this directly undermines the utility pole-owner's control of its own operation and maintenance budget. There will be fewer funds to spend on the utility's planned pole replacements. This is, in essence, an unplanned (and unplannable) tax that will cause the utility's system to become less safe and less reliable. It will disrupt the electric cooperative's planning and execution of its primary function which, again, is providing safe and reliable power to its members. The Commission has long-recognized the principle that the "cost-causer pays," and it should therefore reject any notion that a utility should subsidize a portion of a putative attacher's expense to make a pole safe for further loading/attachment.

¹¹ See Maine Administrative Code 65-407, Chapter 880, Section 5.C.

Policies to Move Kentucky Toward Rural Broadband Deployment

The Kentucky Electric Cooperatives wish to express clearly to the Commission that we enthusiastically support increased broadband deployment in rural areas. In some cases, smaller community-based entities have long-ago invested in bringing broadband to cooperative territories; in others, where there is no locally-based broadband provider, service availability lags significantly. This real-world experience belies the distorted reality that the large telecommunications and broadband companies are selling. Have no doubt, many electric cooperative territories desperately need better broadband to support education, telemedicine, and local economic development. Frankly, that is why one electric cooperative presently seeks to fill the void left by unwilling telecommunications/cable providers.

Unfortunately, a blanket application of FCC rules/regulations to electric cooperatives they were never designed to affect will not only fail to enhance broadband availability in rural Kentucky, it will negatively impact the safety, reliability, and affordability of electricity to those same households and businesses. While Kentucky's electric cooperatives have maintained low pole attachment (CATV) rates on file with the Commission that have been largely unchanged over the last nearly forty years, the large telecommunications and cable companies have simply not invested in bringing rural broadband to Kentucky. If nearly forty year-old rates are inadequate to encourage investment in broadband deployment, there is no realistic justification to assume that imposing additional costs and burdens on electric cooperatives will solve the problem; they will not.

Instead, the Kentucky Electric Cooperatives propose that the Commission consider ways to encourage investment in the staffing and software that undergird the safe and efficient facilitation of pole attachments. Primarily, this could be accomplished by allowing electric utilities to treat this part of their organization like any other, allowing a reasonable rate of return on joint use/pole attachment services provided by electric utilities to third-party attachers. This would allow cooperatives to invest in the software and staffing required to provide prompt, modern services to new attachers seeking to make real investments in deploying broadband to

rural Kentuckians. This policy approach would allow electric cooperatives to engage constructively with third-party attachers for their mutual benefit, finding mutually-agreeable approaches on issues that will truly speed deployment, like safe processes for One-Touch Make-Ready and overlashing.

It bears repeating that rural electric cooperatives face significant risks and costs in connection with third-party pole attachments. There are “no free rides” in policy-making, and these costs are sure to increase if the Commission mandates compliance with a new regulatory scheme derived from the FCC’s IOU-centric federal regulations, and cost-causers must not avoid expenses or liability at the expense of cooperative customers. The Kentucky Electric Cooperatives thank the Commission for the opportunity to provide feedback through the comment process and ask that their input continue to be considered and implemented moving forward.

Please do not hesitate to contact me with any questions or concerns.

Respectfully,



Chris Perry
CEO & President

Fiber Contractor Incident Report September 21, 2020

On Monday, September 21st an employee of ABC Cooperative received a call from a Contractor crew installing new fiber wire, contracted by XYZ Attacher, that one of their employees had been shocked on ABC Cooperatives pole. ABC Cooperative dispatched a Crew Foreman, 1st Class Line Technician, and Safety/Loss Control Coordinator to the scene.

Upon arrival to the scene the contracting crew had a bucket truck setup beside ABC Cooperatives pole, the bucket was in the cradled position and no one in it. The individual that felt the shock and his Supervisor were both on the ground. No injuries were sustained from the “shock”. The individual that was working the bucket truck stated the following: “I was going up in the bucket to swap the lasher. As I reached out and touched the lasher I felt a shock in my right hand. I immediately brought the bucket down and reported what happened to my supervisor”.

The contracting crew was pulling in new Fiber and lashing it to existing XYZ Attacher Cable that was already present on the pole. The new reel of fiber was approximately 1,160ft from the shock location, and 45ft away from an adjoining utility 138kv transmission line. ABC Cooperatives pole was a VA.6, double dead-end single phase, with a guy wire in-line. The guy wire and primary neutral were both grounded to the pole ground. ABC Cooperative’s framing was on 4ft spacing, and the XYZ Attacher pre-existing cable was 6’2” below the primary neutral. Voltage on ABC Cooperative’s distribution line was 14,400 volts. Running parallel to ABC Cooperatives line was the adjoining utilities 138kv transmission line, and also in close proximity to a 345kv transmission line.

The lasher was sitting very close, if not touching, ABC Cooperative’s guy wire when the contractor employee went up in the bucket. The new fiber that was being pulled in was not grounded in any way. The existing XYZ Attacher cable was bonded to ABC Cooperative’s ground wire.

ABC Cooperative found nothing on their equipment that could have caused the Contractor employee to feel a shock. After the investigation ABC Cooperative believes the following to have occurred: With the close proximity to the 138kv transmission line that the ungrounded new fiber had built up a static charge. When the Contractor employee went up in his bucket truck that he made contact with the lasher and ABC Cooperatives grounded guy wire at the same time, causing him to feel a shock from the static build up.

Findings

From the investigation the following was found in regards to the Contractor Crew installing the new fiber wire:

- No pole attachment request was made
- No notification to ABC Cooperative that work would be conducted on their system
- Did not reach out to ABC Cooperative regarding voltage levels or Minimum Approach Distances
- Did not reach out to adjoining utility in regards to the transmission line voltage or Minimum Approach Distances

- Did not conduct job briefings to discuss potential hazards on the job site
- Only PPE being worn were hard hats
- Contractor bucket truck had uninsulated boom
- Contractor employees were not trained on potential of static voltage working near transmission lines, or identification of transmission lines