

TENNESSEE VALLEY AUTHORITY
Chattanooga, Tennessee
November 8, 1944

TV-84,017
Supple. #1

Mr. Ed C. Ray, President
West Kentucky R.E.C.C.
Mayfield, Kentucky

Dear Sir:

Re: Joint Use of Poles Agreement
Dated 6-11-42

A number of provisions of the above agreement are susceptible of an interpretation prohibiting arrangements between us which would permit a crew of either of us working on any job to perform certain tasks for the other on a cost basis. Notwithstanding any provisions in the above agreement which might be construed otherwise, we believe that the agreement should be interpreted to permit the parties thereto to enter into informal arrangements under which either party's crew performing work on a line jointly used may, upon request, perform certain tasks for the other party on a cost basis. For example, if the authority is making a routine pole replacement and notifies you of the necessity of transferring your attachments to a new pole, this interpretation would permit the Authority's crew, upon request, to perform the entire job, and you would be required merely to reimburse the authority for the actual cost of the work performed for you. Similarly, whenever you undertake work which would require the rearrangement or removal of Authority's facilities, your crew could perform, upon request, the tasks for the Authority and you would be reimbursed therefor by us on a cost basis.

If this interpretation of the above agreement is acceptable to you, please execute and return to me four (4) of the attached copies of this letter and we will consider this interpretation to be established as the proper construction of the agreement.

Very truly yours,

TENNESSEE VALLEY AUTHORITY



G. O. Wessenauer
Manager of Power

Accepted and agreed to this
15th day of Nov, 1944.

West Kentucky Rural Electric Co. Inc.

By Ed C. Ray

Title President

AGREEMENT FOR JOINT USE OF POLES
Between
TENNESSEE VALLEY AUTHORITY
And

TV-84017 ✓
Berk

WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

THIS AGREEMENT, made as of June 11, 1948, by and between TENNESSEE VALLEY AUTHORITY (hereinafter called "Authority"), a corporation created and existing under and by virtue of the Tennessee Valley Authority Act of 1933 as amended, and WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION (hereinafter called "Distributor"), a corporation duly created, organized, and existing under and by virtue of the laws of the Commonwealth of Kentucky;

W I T N E S S E T H :

WHEREAS, Authority is engaged in transmitting surplus electric energy and in connection with such business maintains and operates a system of pole lines in the Tennessee Valley and surrounding territory; and

WHEREAS, within a portion of the same area Distributor is engaged in constructing, maintaining, and operating a plant and system for the distribution of power; and

WHEREAS, Distributor and Authority desire to enter into an agreement whereby each may use jointly with the other the pole lines maintained by the other for the attachment of the facilities of each whenever such joint use shall be of mutual advantage, and desire to agree upon proper rules, regulations, and terms for such joint use;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and subject to all of the provisions of the Tennessee Valley Authority Act of 1933 as amended, the parties hereto mutually covenant and agree as follows:

1. Subject to the terms and conditions stated herein, each party owning poles within the territory served by both parties will, at the request of the other party, permit the use by the other party of any of its said poles for the attachment of facilities of the other party; provided, however, that the owning party shall not be required to permit such joint use when it will interfere with the use of such pole by the owning party, or when the owning party is using or intends to use circuits of such character that joint use will be undesirable.

2. Except as otherwise provided herein, the joint use of the poles covered by this agreement (1) when used for the attachment of communication and signal circuits shall at all times be in conformity with the National Electric Safety Code and the terms and provisions of the Specifications for the Construction and Maintenance of Jointly Used Wood Pole Lines Carrying Supply and Communication Circuits, Edison Electric Institute and American Telephone and Telegraph Company (January 1937) (hereinafter called "Communication Specifications"), hereby made a part of this agreement, and (2) when used for the attachment of transmission or distribution facilities shall at all times be in conformity with the National Electric Safety Code and with

the terms and provisions of the Specifications for Distribution Circuits on TVA Transmission Pole Lines, Tennessee Valley Authority, Department of Operations, Distribution Engineering Section (January 1, 1941) (hereinafter called "Distribution Specifications"), attached hereto as Exhibit A and hereby made a part of this agreement (the word "Specifications" as used hereinafter shall mean "Communication Specifications" and/or "Distribution Specifications," as the circumstances may require); provided, that in case either Communication Specifications or Distribution Specifications would be applicable and there is conflict between them, the provisions of the Distribution Specifications shall be controlling; and provided, further, that in any case a provision of governmental authority prevents compliance with the applicable Specifications, such poles as are thereby affected shall be excluded from this agreement; and further provided, that item 7(b) of Part I of the Communication Specifications shall not be applicable.

3. (a) When either party shall desire to attach any facility to or to remove any facility from any pole of the other party as provided in this agreement, the party desiring to attach or remove shall give to the party owning the pole written notice of such desire specifying in such notice the location of the pole in question and the number, kind, and arrangement of attachments which it desires to place thereon or remove therefrom and the character of the facility involved. Such notice may be substantially in the form attached hereto as Exhibit B. Within thirty (30) days after the receipt of notice of desire to attach, the owner of such pole shall notify the party desiring to make the attachment whether such attachment may be made or whether the said pole is excepted under the provisions of section 1 above. In the event the making of such attachment will require rearranging the facilities of the owner on such pole, the owner shall so state, giving the approximate cost of such rearranging, and the attaching party will pay the actual cost of such rearranging. Such cost may include overheads, not in excess of twelve and one-half percent (12-1/2%), applicable to such work. Upon receipt of permission from the owner of the pole and after the party desiring to make the attachment shall have obtained in a form satisfactory to the owner of the said pole any public or private grants or consents that may be necessary for the use by it of said pole, and after the completion of any necessary transferring or rearranging of the owner's facilities on the said pole, the party desiring to make the attachment may proceed to make such attachment. If the attaching party shall fail to furnish the owning party with such a grant or consent satisfactory to the owning party, the owning party may refuse permission to make the attachment or, if the attachment has already been made, may require the attaching party to remove its facilities. Neither party shall be responsible for or be considered to guarantee the permission of property owners or any responsible governmental agency for the use of its poles by the other party. Changes in character, location, or arrangement of any attachment shall be considered a new attachment and must be submitted for the approval of the owning party in accordance with the provisions of this section.

(b) Except as otherwise expressly provided herein, each party desiring to make attachments to a pole of the other party shall, at its own expense, place, maintain, rearrange, transfer, and remove its own attachments and do all trimming which it shall deem necessary for the protection of its attachments and shall perform such work promptly and in such manner as not to interfere with the services of the owning party.

(c) In any case where the parties have established joint use of a pole under the terms of this agreement and the owning party desires to change the character or operating conditions of its circuits or facilities on such jointly used pole so that it will be necessary for the other party to change its facilities or construction in order to permit satisfactory operation and to comply with the provisions of the applicable Specifications, the owning party shall give thirty (30) days' notice to the other party of such desired change. Each party shall arrange its facilities at its own expense to conform with such requirements and applicable Specifications. In the event the necessary changes are not completed within the thirty (30) day period the owning party may make said changes at the expense of the other party.

(d) In the event the owning party determines that the other party's use of the pole interferes with the owner's existing or immediately contemplated use of said pole, the owner may require the other party to remove its facilities from such pole by giving the attaching party written notice sixty (60) days in advance of the time for removal stated in such notice. The non-owning party shall, at its expense, remove its attachments within the sixty (60) day period, or as soon thereafter as it can obtain the materials and do the work necessary for the relocation of its facilities.

4. (a) When either party shall desire to attach its facilities to any pole of the other party and such attachment will require the replacement of the existing pole by a new pole, the party owning the pole shall make such replacement at the request of the party desiring to make the attachment, and the party desiring to make the attachment will pay the owning party the value in place of the remaining life of the removed pole, plus the difference between the cost in place of the new pole and the estimated cost in place of a pole similar in kind to the new pole and similar in size to the pole removed, plus the cost of removal of the old pole, and plus the cost to the owning party of removing its facilities from the old pole and attaching them to the new pole. The party requiring the replacement shall have the choice of taking the removed pole or of having its salvage value, as determined by the owning party, deducted from the sum to be paid by the party requiring the replacement.

(b) Whenever any governmental requirement or the requirement of a property-owner makes it necessary for the owner of a jointly used pole to relocate such pole, the owner shall give reasonable written notice of such necessity to the other party, specifying in such notice the time and place of such relocation and the jointly using party shall at the time so specified transfer its attachments to the pole at the new location at its own expense.

(c) When it is necessary to replace a jointly used pole carrying terminals or underground connections, the new pole shall be set in the same hole which the replaced pole occupied unless it is necessary or desirable to set it in a different place.

(d) Except in case of emergency, the owner of any jointly used pole, before replacing or relocating such pole, shall give reasonable written notice to the other party, specifying in such notice the pole, the intended time of the replacement or relocation, and the place of the relocation,

and the jointly using party shall at the time so specified, at its own expense, transfer its attachments to the new pole or to the pole at the new location.

5. Except as otherwise provided herein, each party shall at its own expense maintain poles owned by it in a safe and serviceable condition in accordance with the applicable Specifications, and any such pole shall be replaced at once if it shall become unserviceable. Each party shall, at its own expense, maintain its attachments in a safe condition and in thorough repair at all times and in accordance with the said Specifications, and shall do all trimming which it shall deem necessary for the protection of its own facilities. Each party shall, within a reasonable time from the effective date of this agreement, rearrange or replace any of its poles or facilities installed prior to the date of this agreement in order to conform such poles or facilities to the said Specifications; provided, that there shall be excepted from this requirement any pole or facility the rearrangement or replacement of which is agreed by both parties to be unnecessary. The costs of such rearrangement and/or replacement shall be borne by the parties in the manner prescribed in section 3(a) and/or section 4(a), respectively.

6. Either party attaching facilities to the poles of the other party may remove such facilities at any time. If the owner of any jointly used pole shall desire to abandon its use of and retire such pole, it shall give written notice of abandonment to the other party sixty (60) days in advance of the time of abandonment stated in such notice. If the attaching party desires to maintain its attachments on such pole, the attaching party shall purchase the pole from the owning party for the remaining value of such pole as agreed upon by the parties, and such pole shall thereupon become the property of the attaching party which shall save the former owner of the pole harmless from all obligation, liability, damage, costs, expenses, or charges incurred thereafter because of, or arising out of, the presence or condition of such pole or of any attachments thereon. Credit shall be allowed the purchasing party for the depreciated value of any portion of the cost of such pole which it may have paid.

7. The owning party shall bill and the attaching party shall pay One Dollar (\$1) per pole per annum for each and every pole attached. Such bills shall be for fiscal year periods ending on June 30 of each year, shall be submitted on or before the thirty-first (31st) day of March of each year and shall include a statement of the number of poles owned by each party upon which the other party had attachments (including guys) on December 31 of that fiscal year. Wires or cables attached only for the purpose of providing clearance for such wires or cables and not for the support of such wires or cables shall not be considered attachments for billing purposes. The determination of the number of jointly used poles shall be based upon Authority's field count made in 1940 adjusted according to records existing at the time of execution of this agreement, and after the execution of this agreement according to attachments and removals made during the year as evidenced by accepted applications therefor. The record of attachments shall be subject to a complete field check during 1945 and every fifth (5th) year thereafter. Either party found by such field check to have made an attachment to a pole or poles of the other party without

the submission and approval of an application as provided herein shall pay to the party owning such pole or poles Ten Dollars (\$10) for each such pole to which such an attachment has been made. No rebates shall be made for attachments paid for but found by the field check to have been removed without notification. All rental payments provided for herein, except the first payment, shall be due on the thirtieth (30th) day of June of each year and shall be paid not later than the tenth (10th) day of July following. The first payment shall be due sixty (60) days after receipt of the invoice. Such first payment shall include a settlement for the benefits received by each party under existing joint-use agreements based upon the pro-rata portion of the annual rates stated in such existing joint-use agreements allocable to the period from the end of the last period for which payment was made under such agreements to June 30, 1943. Each attachment made by either party and not under the terms of any existing agreement shall be paid for at the rate of One Dollar (\$1) for each year (partial years being prorated) such attachment has existed as of June 30, 1943, and such payment shall be made within sixty (60) days after receipt of the invoice. For the purpose of billing for the fiscal year 1943, the number of attachments shall be the number existing as of December 31, 1942.

8. Upon the completion of any work performed hereunder by either party, the expense of which is to be borne wholly or in part by the other, the party performing the work shall present to the other party as soon as possible after the completion of such work a properly certified, itemized statement in triplicate showing the entire cost of the labor and material employed therein, supervision, and all overhead charges, and such party shall within thirty (30) days after such statement is presented pay to the party doing the work such other party's proportion of the cost of such work.

~~9. All claims and liability for damage to property or injury to persons made against, or incurred by either or both of the parties hereto and arising out of or alleged to have arisen out of the joint use of poles under this agreement shall be settled between the parties as follows:~~

(a) Each party shall be responsible for all claims and liabilities for damage and injury caused by or arising out of its sole negligence or its failure to comply with the Specifications as required herein.

(b) Each party shall be responsible for all claims and liabilities for injury to its own employees or damage to its own property caused by the concurrent negligence of both parties or due to causes which cannot be traced to the sole negligence of either party.

Any payments made by either party to injured employees or their relatives or representatives in conformity with the provisions of any Workmen's Compensation Act or any act creating a liability in the employer to pay compensation for personal injury to any employee by accident arising out of and in the course of his employment, whether based on negligence on the part of the employee or not, or in conformity with any plan for employees' disability benefits or death benefits now established or hereafter adopted by the parties or either of them, shall be made by the employing party without reimbursement from the other party if such injury occurs as

~~a result of (1) causes which cannot be traced to the negligence or failure of either party to comply with the Specifications as provided herein, or (2) as a result of the negligence or concurrent negligence of the employing party; but if such injury occurs as a result of the sole negligence of the other party it shall reimburse the employing party for such payment.~~

(c) Each party shall be responsible for one-half (1/2) of all claims and liabilities for injuries to persons other than employees of either party and damage to property other than that belonging to either party, which damage or injury shall be caused by the concurrent negligence of both parties or which shall be due to causes which cannot be traced to the sole negligence of either party,

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(d) All claims and liabilities arising hereunder that are asserted against or affect both parties hereto shall be dealt with by the parties jointly; provided, however, that in any case where the claimant desires to settle any such claim for liability upon terms acceptable to one of the parties but not to the other, the party to which said terms are acceptable may, at its election, pay to the other party one-half (1/2) of the expense which such settlement would involve and thereupon said other party shall be bound to protect the party making such payment from all further liability and expense on account of such claim.

(e) For the purpose of making adjustments between the parties hereto of any claims of liability for damages or injury arising hereunder, the sum to be adjusted shall be considered to include all expenses incurred by the parties in connection therewith, including costs, attorney's fees, ~~disbursements, and other proper charges and expenditures.~~

10. The owning party shall have the right to continue and extend rights and privileges conferred upon others not parties to this agreement, by contract or otherwise, to use any pole covered by this agreement, and to grant such rights and privileges to others. It is understood, however, that for the purpose of this agreement the attachments of any such person not a party to this agreement shall be treated as attachments belonging to the owning party, except that the owner may not require the other party hereto to remove its attachments in order to provide space for the attachments of such other party or to rearrange its attachments in order to provide space unless such other party to this agreement shall be reimbursed for the cost of such rearrangement.

11. Any notice or reply provided in this agreement to be given by either party to the other party shall be in writing and, unless otherwise provided herein, shall be considered to be given on the day that the communication containing such notice is mailed, telegraphed, or personally delivered to the Division Manager, Tennessee Valley Authority, Seaman, Tennessee, on behalf of Authority, and the Superintendent, West Kentucky Rural Electric Cooperative Corporation, Mayfield, Kentucky, on behalf of Distributor, or to such other person or address as either party may from time to time designate in writing for that purpose.

12. Except as otherwise provided in this agreement, neither party hereto shall assign or otherwise dispose of this agreement or any

of its rights or interests hereunder, without the written consent of the other party.

13. Any waiver at any time by either of the parties hereto with respect to any default of the other party or with respect to any other matter arising in connection with this agreement shall not be considered a waiver with respect to any subsequent default or matter.

14. All existing agreements between the parties, including such agreements specified in contracts providing for the acquisition of property and facilities by Authority and/or Distributor, for the joint use of poles within the territory covered by this agreement shall be considered subject to the terms of this agreement and provisions of said contracts inconsistent with the terms of this agreement shall be considered canceled. Rental for any attachments previously made but not yet billed shall be billed and paid under the terms of this agreement.

15. This agreement shall be effective upon execution. All the terms and conditions of this agreement governing the joint use of poles shall continue to apply to the joint use of all pole attachments which have become or have been made subject to this agreement so long as the joint use of such poles continues. So far as further granting of joint use by either party is concerned, this agreement may be terminated at any time one (1) year or more from the date of execution by written notice given by either party to the other party six (6) months in advance of the date of termination stated in such notice. Upon the expiration of five (5) years from the date of this agreement, and at the end of every five (5) year period thereafter, the parties shall review the provisions and terms of this agreement and shall consider the desirability of readjusting the rental provided for herein.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

Attest:

TENNESSEE VALLEY AUTHORITY

Assistant Secretary

By

E. W. ...
General Manager of Power

Legal
Dept.

Attest:

**WEST KENTUCKY RURAL ELECTRIC
COOPERATIVE CORPORATION**

Martha ...
(Name and Title)

By

J. C. ...
(Name and Title) Superintendent