

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

The Petition of the Kentucky Cable)	
Telecommunications Association for a)	Case No. 2012-00544
Declaratory Order that the Commission)	
Has Jurisdiction to Regulate the Pole)	
Attachment Rates, Terms, and Conditions)	
of Cooperatives That Purchase Electricity)	
from the Tennessee Valley Authority)	

MOTION FOR ISSUANCE OF SUBPOENA DUCES TECUM

PLEASE TAKE NOTICE that pursuant to Kentucky Revised Statute 278.320, 807 KAR 5:0001 Section 4(6), and Kentucky Rule of Civil Procedure 30.02(6), the Kentucky Cable Telecommunications Association (“KCTA”) moves the Kentucky Public Service Commission (“Commission”) to issue the attached subpoena *duces tecum* to the Tennessee Valley Public Power Association (“TVPPA”), 1206 Broad Street, Chattanooga, Tennessee 37402, compelling the deposition testimony of a corporate representative to testify regarding the topics listed in Exhibit A of the attached subpoena, and compelling the production of documents listed in Exhibit B of the attached subpoena.

KCTA has petitioned the Commission for a declaratory order that the Commission has jurisdiction to regulate the pole attachment rates, terms, and conditions of the cooperatives that purchase electricity from the Tennessee Valley Authority (“TVA Cooperatives”). The TVA Cooperatives contend that the Commission’s exclusive jurisdiction over pole attachments is preempted by the Tennessee Valley Authority’s regulation of the TVA Cooperatives’ “rates and services.”

The TVA Cooperatives’ responses to KCTA’s requests for information have established that the TVPPA negotiates the rates, terms, and conditions of most, if not all, the TVA

Cooperatives' pole attachment agreements on behalf of the TVA Cooperatives. Thus, KCTA seeks testimony and documents from the TVPPA to understand the extent of the TVA's involvement, if any, with TVPPA when it negotiates the TVA Cooperatives' pole agreements.

For these reasons, KCTA respectfully requests that the Commission issue the requested subpoena, compelling KCTA to provide testimony and documents as described in Exhibits A and B to this Motion, respectively.

Respectfully submitted,

/s/ Laurence J. Zielke
Laurence J. Zielke
Janice M. Theriot
Zielke Law Firm, PLLC
1250 Meidinger Tower
462 South 4th Street
Louisville, KY 40202
(502) 589-4600

Gardner F. Gillespie (*application for pro hac vice admission pending*)
Amanda M. Lanham (*application for pro hac vice admission pending*)
Sheppard Mullin Richter & Hampton LLP
1300 I Street NW
11th Floor East
Washington, DC 20005
(202) 218-0000
ggillespie@sheppardmullin.com
alanham@sheppardmullin.com

**ATTORNEYS FOR THE KENTUCKY CABLE
TELECOMMUNICATIONS ASSOCIATION**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Kentucky Cable Telecommunications Association's Motion for Issuance of Subpoena *Duces Tecum* to Tennessee Valley Public Power Association has been served on all parties of record via hand delivery, facsimile, or electronically this 15th day of January, 2014.

/s/ Laurence J. Zielke

Laurence J. Zielke

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

The Petition of the Kentucky Cable)	
Telecommunications Association for a)	Case No. 2012-00544
Declaratory Order that the Commission)	
Has Jurisdiction to Regulate the Pole)	
Attachment Rates, Terms, and Conditions)	
of Cooperatives That Purchase Electricity)	
from the Tennessee Valley Authority)	

SUBPOENA DUCES TECUM

THE PUBLIC SERVICE COMMISSION TO:

Tennessee Valley Public Power Association (“TVPPA”), 1206 Broad Street, Chattanooga, Tennessee 37402

You are commanded to appear for a deposition upon oral examination by the Kentucky Cable Telecommunications Association before a certified court reporter duly authorized to administer oaths on a date, time, and location agreed upon by TVPPA and KCTA. The topics for deposition are set forth in Exhibit A, which is incorporated by reference. TVPPA is required to designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf as to each of the matters or topics identified and described in Exhibit A. Please identify the person who will testify regarding each matter or topic at least five (5) days before the date of the deposition.

You are further commanded to produce for inspection and copying the documents and things identified and described in Exhibit B.

Date: _____

Requesting Attorney: Laurence J. Zielke

Commissioner
Kentucky Public Service Commission

This Subpoena was served by delivery of a true copy to _____ this ___ day of _____ 2014.

EXHIBIT A

The following definitions are applicable to terms employed in this Notice:

1. The term “person(s)” shall include any natural person, corporation, partnership, association, joint venture, sole proprietorship, firm, business enterprise, governmental or quasi-governmental body or agency, or legal entity of any type, and includes both the singular and plural.
2. The terms “you, “your,” and “TVPPA” refer to the Tennessee Valley Public Power Association and any predecessors in interest, subsidiaries, and employees, agents, representatives, attorneys and/or investigators.
3. The term “Association,” “KCTA,” or Petitioner refers to the Kentucky Cable Telecommunications Association, as well as any employee, agent, representative, attorney and/or investigator.
4. The term “TVA” refers to the Tennessee Valley Authority, as well as any employee, agent, representative, attorney and/or investigator.
5. The term “TVA Cooperatives” refers to Warren Rural Electric Cooperative Corporation, Pennyrile Rural Electric Cooperative Corporation, West Kentucky Rural Electric Cooperative Corporation, Hickman-Fulton Counties Rural Electric Cooperative Corporation, and Tri-County Electric Membership Corporation.
6. “Poles” and “distribution poles” mean utility poles in the electric distribution network in Kentucky that the TVA Cooperatives own or control.
7. “Pole rates” mean the annual charges the TVA Cooperatives charge for use of their poles by any other entity, including any member of the Association and/or any telephone joint user.

8. "Commission" means the Kentucky Public Service Commission.
9. "ILEC" means incumbent local exchange carrier.
10. "Joint user" refers to any utility with which the TVA Cooperatives have an agreement that provides the rates and terms of service whereby the TVA Cooperatives and the other utility can attach to each other's poles.

TOPICS

1. The corporate designee's position, duties, knowledge of and involvement in this matter.
2. Efforts made by the corporate designee(s) to learn as necessary the information requested in this list of topics.
3. TVPPA's authority to negotiate pole attachment agreements on behalf of the TVA Cooperatives.
4. TVPPA's communications with the TVA Cooperatives at any time during the past five years regarding the TVA Cooperatives' poles, pole attachment rates, and KCTA's assertions of Commission jurisdiction over pole rates.
5. TVPPA's communications with the TVA Cooperatives at any time during the past five years regarding the TVA Cooperatives' pole attachment agreements, including joint use agreements and pole license agreements between the TVA Cooperatives and all pole users, including but not limited to communications regarding the TVPPA's negotiation of the March 2010 Joint Use Agreement with BellSouth Telecommunications, Inc.
6. TVPPA's communications with the TVA at any time during the past five years regarding the TVA Cooperatives' poles, pole attachment rates, pole attachment revenues, and KCTA's assertions of Commission jurisdiction over pole rates.

7. TVPPA's communications with the TVA at any time during the past five years regarding the TVA Cooperatives' pole attachment agreements, including joint use agreements and pole license agreements between the TVA Cooperatives and pole users, including but not limited to communications regarding the TVPPA's negotiation of the March 2010 Joint Use Agreement with BellSouth Telecommunications, Inc.

8. Any approval or consideration by TVA of any pole attachment agreements, joint use agreements, or pole license agreements TVPPA negotiated on behalf of the TVA Cooperatives, including but not limited to the March 2010 Joint Use Agreement with BellSouth Telecommunications, Inc.

9. Any formulas and/or calculations used by, or considered by, TVPPA when negotiating pole attachment rates on behalf of the TVA Cooperatives.

10. TVPPA's analysis, if any, of the TVA Cooperatives' pole attachment rates under the Commission's cost-based pole attachment rate methodology as set forth in the September 17, 1982 order by the Commission in Administrative Case No. 251.

11. TVPPA's analysis, if any, of the TVA Cooperatives' pole attachment rates under the Federal Communication Commission's pole attachment methodology used to determine the maximum just and reasonable rate under 47 U.S.C. § 224(d).

12. The method by which TVPPA ensures that the pole attachment rates it negotiates on behalf of the TVA Cooperatives provide sufficient revenues to cover the TVA Cooperatives' cost of providing the attachments.

13. Any non-privileged communications between TVPPA and the TVA regarding this case.

14. Any non-privileged communications between TVPPA and the TVA Cooperatives regarding this case.

EXHIBIT B

DEFINITIONS

1. The term “document,” as used herein, is employed in the broadest possible sense and includes, but is not limited to, any printed, written, recorded, taped, electronic (including e-mail and deleted electronic media that is recoverable in any form), graphic, or other tangible matter from whatever source, however produced or reproduced, whether in draft or otherwise, whether sent or received or neither, including the original, all amendments and addenda and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) of any and all writings, correspondence, letters, telegraphs, telex communications, cables, notes, notations, papers, newsletters, memoranda, interoffice communications, e-mails, releases, agreements, contracts, books, pamphlets, studies, minutes of meetings, recordings or other memorials of any type of personal or telephone conversations, meetings or conferences, reports, analyses, test results, examinations, evaluations, estimates, projections, forecasts, receipts, statements, accounts, books of account, diaries, calendars, desk pads, appointment books, stenographer’s notebooks, transcripts, ledgers, registers, worksheets, journals, statistical records, cost sheets, summaries, lists, tabulations, digests, canceled or uncanceled checks or drafts, vouchers, charge slips, invoices, purchase orders, hotel charges, accountant’s reports, financial statements, newspapers, periodicals or magazine materials, and any materials underlying, supporting, or used in the preparation of any documents. The term “document(s)” also specifically includes any records stored on computer tape or computer disk or otherwise stored by or in a computer, including telephone voice mail or electronic mail, whether or not a hard copy (i.e., paper copy) of the document is or was at any time in existence,

and any electronically generated or stored information, however produced or reproduced, and including any metadata for any such information. A document includes all documents appended thereto and any marked copy thereof. A “marked copy” is any document containing any writing or any markings of any kind in the text, in the margins, or on the reverse side of the document.

2. The term “person(s)” shall include any natural person, corporation, partnership, association, joint venture, sole proprietorship, firm, business enterprise, governmental or quasi-governmental body or agency, or legal entity of any type, and includes both the singular and plural.

3. The term “communication” or “communications” shall mean all oral, visual, or other sensory (including electronic) means of transmitting information, messages, or statements, including documents and oral statements.

4. The terms “identify,” “identity,” “identification,” “state,” “describe,” or “explain,”

- (a) when used in reference to a document, shall require that you state the title, date, author, signer(s), intended recipient, addressee, place of origination, name and address of the present custodian of all copies thereof, and type of document (e.g., letter, memorandum, telegram, chart, etc.) or attach an accurate copy of the document to your answer, appropriately labeled to correspond to the interrogatory;
- (b) (1) when used in reference to a natural person, shall mean to provide that person’s full name, last known address, home, business and/or cellular telephone numbers, and present occupation or business affiliation; (2) when used in reference to a person other than a natural person, shall mean to include a description of the nature of the person (that is, whether it is a corporation, partnership, etc., under the definition of person above), and the person’s last known address, telephone number, and principal place of business; and (3) when used in reference to any person after the person has been properly identified previously, shall mean to provide the person’s name;
- (c) when used with respect to a communication or contact, shall mean to state the date and place of such communication or contact; to state whether the

communication or contact was oral or written; to identify each document which in any way concerns, relates, or refers to the communication or contact; to identify each person or persons who participated in, sent, received, or had knowledge of the communication or contact; and to state the substance of the communication or contact.

- (d) when used with respect to a fact, event, or action shall mean to provide the complete and full details (including date, time, and place) concerning such fact, event, or action, including the identity, as defined above, of all documents, communications, and persons that reflect, refer, relate, evidence, or pertain in any way to such fact, event, or action.

5. “Concerning” means and includes: with respect to, referring to, relating to, purporting, embodying, establishing, evidencing, comprising, connected with, commenting on or about, responding to, showing, describing, analyzing, reflecting, indicating, summarizing, containing, mentioning, discussing, presenting, and/or constituting.

6. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these requests any response that otherwise would be construed to be outside their scope.

7. The terms “you,” “your,” and “TVPPA” refer to the Tennessee Valley Public Power Association and any predecessors in interest, subsidiaries, and employees, agents, representatives, attorneys and/or investigators.

8. The term “Association,” “KCTA,” or Petitioner refers to the Kentucky Cable Telecommunications Association, as well as any employee, agent, representative, attorney and/or investigator.

9. The term “TVA” refers to the Tennessee Valley Authority, as well as any employee, agent, representative, attorney and/or investigator.

10. The term “TVA Cooperatives” refers to Warren Rural Electric Cooperative Corporation, Pennyrile Rural Electric Cooperative Corporation, West Kentucky Rural Electric

Cooperative Corporation, Hickman-Fulton Counties Rural Electric Cooperative Corporation, and Tri-County Electric Membership Corporation.

11. “Poles” and “distribution poles” mean utility poles in the electric distribution network in Kentucky that the TVA Cooperatives own or control.

12. “Pole rates” mean the annual charges the TVA Cooperatives charge for use of their poles by any other entity, including any member of the Association and/or any telephone joint user.

13. “Commission” means the Kentucky Public Service Commission.

14. “Petition” means the petition filed by the Association in the above-captioned case.

INSTRUCTIONS

1. If you withhold any information responsive to these Requests for Production, identify the requests as to which such information is withheld and the reason(s) for withholding it.

2. For any information that you claim is unavailable, state why it is unavailable. If you cannot respond to the Request for Production precisely as it is stated, provide any information that is available that would respond to the request at a level of detail different from that specified herein.

3. If you claim a privilege as a ground for failing to answer any Request for Production, respond to that part of each such request that, in your view, does not call for allegedly privileged information or communications. For each request, or portion thereof, as to which you claim a privilege, describe the factual basis for your claim of privilege in sufficient

detail to permit adjudication of the validity of that claim, including without limitation, the following:

- (a) the identity, title, and job description of the transmitter of the information, document, or communication;
- (b) the identity, title, and job description of the person(s) to whom the information, document, or communication was addressed;
- (c) the identity, title, and job description of each person who has received or utilized the information, document, or communication;
- (d) the date (or your best approximation thereof) of the information, document, or communication;
- (e) a brief description of the type of information, document, or communication;
- (f) a brief description of the subject matter of the information, document or communication; and
- (g) a brief reason why the information, document or communication is claimed to be privileged, protected, or subject to non-disclosure.
- (h) Maintain a “running” log of all materials you claim to be privileged to be provided to Petitioner.

4. If you cannot answer any of the Requests for Production in full after exercising due diligence to secure the full information to do so, so state and answer to the extent possible, specifying your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion, and describing what you did in attempting to secure the unknown information.

5. The singular form of a word shall be interpreted to include the plural, and the plural form of a word shall be interpreted to include the singular whenever appropriate.

6. The past tense of a word shall be interpreted to include the present tense and vice versa.

7. Unless otherwise indicated, these Requests for Production cover the period 2000 to present.

REQUESTS FOR PRODUCTION

1. All documents relating to TVPPA's communications with the TVA Cooperatives at any time during the past five years regarding the TVA Cooperatives' poles, pole attachment rates, and KCTA's assertions of Commission jurisdiction over pole rates.

2. All documents relating to TVPPA's communications with the TVA Cooperatives at any time during the past five years regarding the TVA Cooperatives' pole attachment agreements, including joint use agreements and pole license agreements between the TVA Cooperatives and all pole users, including but not limited to communications regarding the TVPPA's negotiation of the March 2010 Joint Use Agreement with BellSouth Telecommunications, Inc.

3. All documents relating to TVPPA's communications with the TVA at any time during the past five years regarding the TVA Cooperatives' poles, pole attachment rates, and KCTA's assertions of Commission jurisdiction over pole rates.

4. All documents relating to TVPPA's communications with the TVA at any time during the past five years regarding all pole attachment agreements, joint use agreements, and pole license agreements between the TVA Cooperatives and all pole users, including but not limited to communications regarding the March 2010 Joint Use Agreement with BellSouth Telecommunications, Inc.

5. All documents concerning any approval or consideration by TVA of any pole attachment agreements, joint use agreements, and pole license agreements TVPPA negotiated on behalf of the TVA Cooperatives.

6. All documents relating to any formulas and/or calculations used by, or considered by, TVPPA when negotiating pole attachment rates on behalf of the TVA.

7. All documents concerning TVPPA's analysis, if any, of the TVA Cooperatives' pole attachment rates under the Commission's cost-based pole attachment rate methodology as set forth in the September 17, 1982 order by the Commission in Administrative Case No. 251.

8. All documents concerning TVPPA's analysis, if any, of the TVA Cooperatives' pole attachment rates under the Federal Communication Commission's pole attachment methodology used to determine the maximum just and reasonable rate under 47 U.S.C. § 224(d).

9. All documents relating to the method by which TVPPA ensures that the pole attachment rates it negotiates on behalf of the TVA Cooperatives provide sufficient revenues to cover the costs of the TVA Cooperatives providing for the attachments.

10. All documents pertaining to any non-privileged communications between TVPPA and the TVA regarding this case.

11. All documents pertaining to any non-privileged communications between TVPPA and the TVA Cooperatives regarding this case.