

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**PETITION OF THE KENTUCKY CABLE)
TELECOMMUNICATIONS ASSOCIATION)
FOR A 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)**

Case No. 2012-00544

**THE TVA COOPERATIVES' RESPONSE TO KCTA'S
STATUS REPORT AND REQUEST FOR ACTION**

The TVA Cooperatives,¹ by counsel, hereby respond to Kentucky Cable Telecommunications Association's ("KCTA") Status Report and Request for Action ("Request for Action") filed with the Public Service Commission of Kentucky (the "Commission") on Tuesday, April 1, 2014.

The KCTA's Request for Action is nothing more than an improper motion for a ruling on pending discovery motions, accompanied by unauthorized additional briefing on the merits. More egregiously, the KCTA uses the Request for Action to introduce a rate issue that has no place before the Commission in order to bolster KCTA's effort to turn this jurisdictional proceeding into a ratemaking dispute. The Commission's procedural rules do not contemplate this type of "Request for Action," and thus the Commission should summarily strike it from the record. However, because the Request for Action – as with multiple prior KCTA briefs – again

¹ Hickman-Fulton Counties Rural Electric Cooperative Corporation, Pennyrite Rural Electric Cooperative Corporation, Tri-County Electric Membership Corporation, Warren Rural Electric Cooperative Corporation, and West Kentucky Rural Electric Cooperative Corporation.

attempts to distort the legal issue pending before the Commission, as well as inappropriately present substantive argument on matters not before the Commission, the TVA Cooperatives are compelled to submit this short response to address the most egregious KCTA misstatements.

The KCTA's entitlement of its brief as a "Request for Action" obfuscates the true nature of the brief's intent: to litigate what the KCTA deems "unreasonable" pole attachment rates of the TVA Cooperatives. (Request for Action at 2.) The KCTA's complaint that it and Time Warner Cable ("TWC") "have no way of calculating what the appropriate rate is" demonstrates how far afield the KCTA is attempting to direct the Commission away from the sole question of jurisdiction.

In its August 6, 2013, order on rehearing, the Commission identified the limited issue in this case: "whether or not TVA has or exercises any jurisdiction, be it through the establishment of a ratemaking formula, review, or simply oversight responsibility in connection with ratemaking, over the pole attachment rates of the TVA cooperatives." (Order on Rehearing at *4.) The Commission specifically "reject[ed] KCTA's assertion that it is relevant and necessary for the Commission to determine whether TVA regulates pole attachment rates using the same or a similar rate methodology as [the Commission]... ." (Order on Rehearing at *3-4.) In other words, nothing about this case is a rate dispute, no matter how many times the KCTA attempts to turn it into one. This case seeks only a declaratory order to answer the question of whether the Commission has jurisdiction over the TVA Cooperatives' pole attachment rates. Only if the Commission asserts jurisdiction may the KCTA or any of its represented companies pursue litigation regarding the propriety of any actual rate.

Business issues between the parties are not before the Commission. The KCTA, however, injects the refusal of TWC to pay its contractual pole attachment rates and argues that

there is “uncertainty regarding the amounts that should be properly due” as a basis to urge Commission action. (Request for Action at 3.) Nothing about a business issue between the parties has any bearing on the question of jurisdiction, especially when the “dispute” concerns TWC’s unilateral refusal to perform under a contract into which it knowingly and voluntarily entered. The KCTA’s admonition to the Commission that a ruling on discovery matters is necessary to resolve “uncertainty regarding the amounts that should be properly due” only supports the TVA Cooperatives’ consistent position that the KCTA’s discovery seeks irrelevant and unduly burdensome cost information appropriate only in a ratemaking case.

Once again, the KCTA is attempting to convert a declaratory action on the sole issue of jurisdiction into a dispute regarding “the amounts that should properly be due” to the TVA Cooperatives. (Request for Action at 3.) KCTA has taken every opportunity imaginable to complicate this proceeding into a dispute about rates. Rather than burden the record further by repeating *ad nauseam* the details of the same arguments raised in multiple briefs over four pending motions, the TVA Cooperatives submit the proper course is to await the Commission’s ruling on those motions so that the Commission’s and the parties’ limited resources will not be wasted addressing extraneous issues.

Respectfully submitted,

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