

WARREN RURAL ELECTRIC COOPERATIVE CORPORATION

**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

**Response to KCTA's First Requests for Information
dated October 24, 2013**

November 14, 2013

1 **Item 1)** *Do you contend that the TVA regulates your pole rates in any way?*

2

3 **Response)** Yes.

4

5 **Witness)** Dewayne McDonald

WARREN RURAL ELECTRIC COOPERATIVE CORPORATION

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1 **Item 2)** *If the answer to the prior data request is affirmative, please explain*
2 *fully, making reference to all facts known to you supporting that answer.*

3

4 **Response)** Warren objects to this request insofar as it seeks conclusions of a legal
5 nature which are protected by the attorney-client and attorney-work-product privileges.
6 Warren also objects to this request on the grounds that it is overly broad and unduly
7 burdensome. Notwithstanding these objections, but without waiving them, Warren states
8 as follows.

9 By statute, the TVA has plenary authority over all rates and services of the
10 utilities which purchase and distribute the electricity it generates. The TVA regulates
11 these rates and services through the express terms of its wholesale power contract with
12 Warren. Please also see the TVA Cooperatives' Response to the January 17 Order filed
13 February 15, 2013 in this matter, and the Response to Application for Rehearing filed
14 July 25, 2013 in this matter.

15

16 **Witness)** Dewayne McDonald

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1 Item 3) *Provide the legal and factual basis for the statement on page 7 of the*
2 *TVA Cooperatives' Response to the January 17 Order, filed with the Commission on*
3 *February 15, 2013, that states: "The cost-based rates the TVA Cooperatives collect in*
4 *connection with the pole attachment services they provide directly impact the end-*
5 *users' retail rates which are set by the TVA."*

6

7 Response) Warren objects to this request insofar as it seeks conclusions of a legal
8 nature which are protected by the attorney-client and attorney-work-product privileges.
9 Notwithstanding this objection, but without waiving it, Warren states as follows.

10 The retail rates approved by the TVA are calculated based on Warren's revenue
11 requirement. TVA's assessment of the revenue requirement takes into account all
12 revenues, including those for pole attachment services. Any change in Warren's pole
13 attachment revenues will necessarily change its revenue requirement and thus directly
14 impact the retail rate set by the TVA. Please see Warren's response to KCTA 1-2, and
15 the TVA Cooperatives' Response to the January 17 Order, filed February 15, 2013 in this
16 matter.

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1

2 **Witness)** Dewayne McDonald

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1 **Item 4)** *Do you contend that regulation of your pole attachment rates according*
2 *to the cost-based rate methodology used by the Commission, and outlined in the*
3 *September 17, 1982 order by the Commission in Administrative Case No. 251, would*
4 *conflict with the TVA's regulation of your electric rates?*

5

6 **Response)** Yes.

7

8 **Witness)** Dewayne McDonald

WARREN RURAL ELECTRIC COOPERATIVE CORPORATION

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1 **Item 5)** *If the answer to the prior data request is affirmative, please explain*
2 *fully, making reference to all facts known to you supporting that answer.*

3

4 **Response)** Warren objects to this request insofar as it seeks conclusions of a legal
5 nature which are protected by the attorney-client and attorney-work-product privileges.
6 Warren also objects to this request on the grounds that it is overly broad and unduly
7 burdensome. Notwithstanding these objections, but without waiving them, Warren states
8 as follows.

9 The TVA takes into account pole attachment revenues when determining
10 Warren's revenue requirement and retail rate. Because pole attachment rates are a
11 component of the retail rate that the TVA sets for Warren, any State action attempting to
12 set Warren's pole attachment rates would necessarily impact the retail rate and present a
13 direct conflict between state and federal law. Please see Warren's responses to KCTA 1-
14 2 and KCTA 1-3, and the TVA Cooperatives' Response to the January 17 Order, filed
15 February 15, 2013 in this matter.

16

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1 **Witness)** Dewayne McDonald

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1 **Item 6)** *Produce all documents concerning how you ensure a pole attachment*
2 *rate will provide sufficient revenues to cover the costs of providing for the attachments.*

3

4 **Response)** Warren objects to this request on the grounds that it is overly broad and
5 unduly burdensome. Notwithstanding this objection, but without waiving it Warren
6 states as follows.

7 Please see the attached documents. Please also see Warren's responses to KCTA
8 1-1, KCTA 1-2, KCTA 1-3, KCTA 1-4, and KCTA 1-5.

9

10 **Witness)** Dewayne McDonald

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1 **Item 7)** *Do you contend that the TVA has statutory jurisdiction to regulate pole*
2 *attachment rates of its member cooperatives?*

3

4 **Response)** Yes.

5

6 **Witness)** Dewayne McDonald

WARREN RURAL ELECTRIC COOPERATIVE CORPORATION

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1 **Item 8)** *If the answer to the prior data request is affirmative, please explain*
2 *fully, giving all statutory reference and case citations in support of your answer.*

3

4 **Response)** Warren objects to this request insofar as it seeks legal conclusions (not
5 data) and legal research and reasoning protected by the attorney-client and attorney-
6 work-product privileges. Warren also objects to this request on the grounds that it is
7 overly broad and unduly burdensome. Notwithstanding these objections, but without
8 waiving them, Warren states as follows.

9 Please see the TVA Cooperatives' Response to the January 17 Order filed
10 February 15, 2013 in this matter, and the Response to Application for Rehearing filed
11 July 25, 2013 in this matter.

12

13 **Witness)** Counsel

WARREN RURAL ELECTRIC COOPERATIVE CORPORATION

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1 **Item 9)** *Provide all pole attachment rates charged by you to any entity (identify*
2 *by year and the entity to which such rate applied).*

3

4 **Response)** Warren objects to this request on the grounds that it is overly broad and
5 unduly burdensome. Warren also objects to this request on the grounds that it is not
6 reasonably calculated to lead to the discovery of relevant and admissible evidence.
7 Notwithstanding these objections, but without waiving them, Warren states as follows.

8 Please see the attached document.

9

10 **Witness)** Dewayne McDonald

WARREN RURAL ELECTRIC COOPERATIVE CORPORATION

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1 **Item 10)** *Explain the basis and methodology for setting or calculating all pole*
2 *attachment rates used by you.*

3

4 **Response)** Warren relies on the TVPPA/AT&T Joint Use Agreements to set pole
5 attachment rates for all foreign attachers. The rates for the years of 2009, 2010, and 2011
6 were negotiated rates based on TVPPA's cost-of-ownership analysis. From 2012
7 forward, the rate escalates based on the Handy-Whitman Index. Please see Warren's
8 response to KCTA 1-6.

9

10 **Witness)** Dewayne McDonald

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1 **Item 11)** *Explain the basis and methodology for setting or calculating all pole*
2 *attachment rates used by you at this time and, if the basis or methodology has changed*
3 *since the year 2000, provide an explanation of the changes.*

4

5 **Response)** Warren objects to this request on the grounds that it is overly broad and
6 unduly burdensome. Warren also objects to this request on the grounds that it is not
7 reasonably calculated to lead to the discovery of relevant and admissible evidence.
8 Notwithstanding this objection, but without waiving it, Warren states as follows.

9 Please see Warren's response to KCTA 1-10.

10

11 **Witness)** Dewayne McDonald

WARREN RURAL ELECTRIC COOPERATIVE CORPORATION

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1 **Item 12)** *Explain how often you have reset or recalculated your pole attachment*
2 *rates.*

3

4 **Response)** Pole attachment rates are revised annually pursuant to the terms of
5 Warren's agreements with foreign attachers. Please see Warren's responses to KCTA 1-
6 6 and KCTA 1-10.

7

8 **Witness)** Dewayne McDonald

WARREN RURAL ELECTRIC COOPERATIVE CORPORATION

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1 **Item 13)** *State your total revenues for each of the years 2000 to the present.*

2

3 **Response)** Warren objects to this request on the grounds that it is overly broad and
4 unduly burdensome. Warren also objects to this request on the grounds that it is not
5 reasonably calculated to lead to the discovery of relevant and admissible evidence.
6 Notwithstanding these objections, but without waiving them, Warren states as follows.

7 Please see the table below.

Year	Operating Revenue (\$)
FY 2010	160,826,296
FY 2011	176,519,691
FY 2012	171,346,973

8

9 Please note that for accounting purposes, FY 2011 includes thirteen months of
10 revenue from commercial and industrial customers.

11

12 **Witness)** Dewayne McDonald

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1 **Item 14)** *State your total revenues received from pole attachment rates for each*
2 *year from 2000 to the present.*

3

4 **Response)** Warren objects to this request on the grounds that it is overly broad and
5 unduly burdensome. Warren also objects to this request on the grounds that it is not
6 reasonably calculated to lead to the discovery of relevant and admissible evidence.
7 Notwithstanding these objections, but without waiving them, Warren states as follows.

8 Please see the table below.

Year	Pole Attachment Revenue (\$)
2010	1,083,068
2011	1,124,157
2012	1,139,048

9

10 **Witness)** Dewayne McDonald

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1 **Item 15)** *Produce all documents reflecting any communication between you and*
2 *the TVA at any time concerning pole attachment revenues or rates.*

3

4 **Response)** Warren objects to this request on the grounds that it is overly broad and
5 unduly burdensome. Warren also objects to this request on the grounds that it is
6 duplicative. Notwithstanding these objections, but without waiving them, Warren states
7 as follows.

8 Please see Warren's response to KCTA 1-17.

9

10 **Witness)** Dewayne McDonald

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1 **Item 16)** *Identify each communication concerning pole attachment revenues or*
2 *rates from 2000 to the present.*

3

4 **Response)** Warren objects to this request on the grounds that it is overly broad and
5 unduly burdensome. Warren also objects to this request on the grounds that it is
6 duplicative. Notwithstanding these objections, but without waiving them, Warren states
7 as follows.

8 Please see the attached documents. Please also see Warren's responses to KCTA
9 1-6, KCTA 1-15, KCTA 1-17, and KCTA 1-18.

10

11 **Witness)** Dewayne McDonald

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1 **Item 17)** *Produce all documents concerning any order, directive, contract or*
2 *other communication from or by the TVA concerning pole attachment rates.*

3

4 **Response)** Warren objects to this request on the grounds that it is overly broad and
5 unduly burdensome. Warren also objects to this request on the grounds that it is
6 duplicative. Notwithstanding these objections, but without waiving them, Warren states
7 as follows.

8 Please see the attached documents. Please also see Warren's response to KCTA
9 1-15.

10

11 **Witness)** Dewayne McDonald

WARREN RURAL ELECTRIC COOPERATIVE CORPORATION

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1 **Item 18)** *Identify and produce all communications with the TVPPA concerning*
2 *pole attachment rates.*

3

4 **Response)** Warren objects to this request on the grounds that it is overly broad and
5 unduly burdensome. Notwithstanding this objection, but without waiving it, Warren
6 states as follows.

7 Please the attached documents.

8

9 **Witness)** Dewayne McDonald

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1 **Item 19)** *Identify the name, title, dates of employment, and contact information*
2 *for your former and current personnel who had responsibility for setting or calculating*
3 *your pole attachment rates for the years 2008 to the present.*

4

5 **Response)** Warren objects to this request on the grounds that it is overly broad and
6 unduly burdensome. Notwithstanding this objection, but without waiving it, Warren
7 states as follows.

8 Since 2010, the following employees have had responsibility for setting or calculating
9 Warren's pole attachment rates. Rates are set and reviewed according to the terms of the
10 agreements Warren has with foreign attachers. Agreements are executed by the
11 President/CEO.

Name	Dates of Employment
Gary Dillard	May 1998 – March 2013
W. Scott Ramsey	Sept. 2013 – present

12

13 **Witness)** Dewayne McDonald

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- 1 Item 20) *Provide the following information for each of the years 2010, 2011 and*
2 *2012. Use either the data for the entire year or the information as of the yearend, as*
3 *appropriate. If you do not keep any data requested according to the RUS accounting*
4 *system contained in 7 C.F.R. Ch. 17, provide the equivalent number.*
- 5 a. *Gross investment in RUS Account 364;*
6 b. *The number of poles in RUS Account 364;*
7 c. *Gross investment in 35 foot poles in RUS Account 364;*
8 d. *The number of 35 foot poles in RUS Account 364;*
9 e. *Gross investment in 40 foot poles in RUS Account 364;*
10 f. *The number of 40 foot poles in RUS Account 364;*
11 g. *Gross investment in 45 foot poles in RUS Account 364;*
12 h. *The number of 45 foot poles in RUS Account 364;*
13 i. *Accumulated depreciation reserve related to the total investment in RUS*
14 *Account 364;*
15 j. *Gross investment in any grounds included in RUS Account 364;*
16 k. *Gross investment in RUS Account 365;*

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- 1 *l. Accumulated depreciation related to RUS Account 365;*
- 2 *m. Gross investment in RUS Account 369;*
- 3 *n. Accumulated depreciation related to RUS Account 369;*
- 4 *o. Gross investment in total utility plant;*
- 5 *p. Accumulated depreciation related to total utility plant;*
- 6 *q. Gross investment in Distribution Plant;*
- 7 *r. Accumulated depreciation related to Distribution Plant;*
- 8 *s. Annual depreciation rate for RUS Account 364;*
- 9 *t. Expenses in RUS Account 593;*
- 10 *u. Any tax expenses (please describe and detail);*
- 11 *v. Expenses in RUS Accounts 920-931 (General and Admin.)*
- 12 *w. Cost of money*
- 13 *x. The number of poles with attachments owned only by the pole owner*
14 *and a cable company (two-party poles as described in Administrative*
15 *Order 251);*
- 16 *y. The number of poles with attachments owned by the pole owner, a cable*

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1 *company, and another entity (three-party poles as described in*
2 *Administrative Order 251).*

3

4 **Response)** Warren objects to this request on the grounds that it is overly broad and
5 unduly burdensome. Warren also objects to this request on the grounds that it is not
6 reasonably calculated to lead to the discovery of relevant and admissible evidence.

7

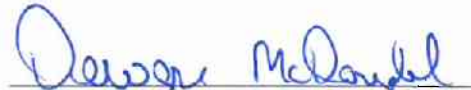
8 **Witness)** Counsel

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VERIFICATION

I, Dewayne McDonald, verify, state, and affirm that I prepared or supervised the preparation of the data responses filed with this Verification, and that those data responses are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



Dewayne McDonald

COMMONWEALTH OF KENTUCKY)
COUNTY OF WARREN)

SUBSCRIBED AND SWORN TO before me by Dewayne, McDonald on this the 13
day of November, 2013.



Notary Public, Ky. State at Large

My Commission Expires 8/6/15

C# 222 708