

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

**In the Matter of:**

<b>PETITION OF THE KENTUCKY CABLE</b>	)	
<b>TELECOMMUNICATIONS ASSOCIATION</b>	)	
<b>FOR A DECLARATORY ORDER THAT THE</b>	)	
<b>COMMISSION HAS JURISDICTION TO</b>	)	
<b>REGULATE THE POLE ATTACHMENT</b>	)	<b>Case No. 2012-00544</b>
<b>RATES, TERMS, AND CONDITIONS OF</b>	)	
<b>COOPERATIVES THAT PURCHASE</b>	)	
<b>ELECTRICITY FROM THE TENNESSEE</b>	)	
<b>VALLEY AUTHORITY</b>	)	

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

The TVA Cooperatives,<sup>1</sup> by counsel, hereby respond to Kentucky Cable Telecommunications Association's ("KCTA") Second Status Report and Request for Action ("Second Request for Action") filed with the Public Service Commission of Kentucky (the "Commission") on Monday, October 6, 2014. For the reasons set forth below, as well as the reasons set forth in their April 8, 2014 Response to KCTA's First Status Report and Request for Action, the TVA Cooperatives respectfully request that the Commission disregard and strike KCTA's Second Request for Action and encourage KCTA to refrain from any such "status report" filings in the future except at the Commission's express request.

**I. This proceeding is limited to a single jurisdictional issue, and the Commission should deny KCTA's efforts to complicate and expand it.**

The Commission has made it clear that the scope of this proceeding is narrowly restricted to a single issue: "[t]he question before us is whether or not TVA has or exercises any

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<sup>1</sup> Hickman-Fulton Counties Rural Electric Cooperative Corporation, Pennyryle Rural Electric Cooperative Corporation, Tri-County Electric Membership Corporation, Warren Rural Electric Cooperative Corporation, and West Kentucky Rural Electric Cooperative Corporation.

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 (Aug. 6, 2013).) Neither the manner in which nor the degree to which the TVA chooses to exercise its jurisdictional authority are relevant to that question. Indeed, 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] . . . ." (*Id.* at \*3-4.) KCTA itself also acknowledged the limited nature of this proceeding when it recently admitted that "this is not a rate case." (KCTA's Reply in Support of Its Status Report and Request for Action (April 10, 2014).)

Despite this express and undisputed limitation, KCTA has repeatedly attempted to complicate the issue before the Commission and expand the scope of this proceeding.

First, KCTA demanded broad discovery on numerous issues unrelated to the sole question of the TVA's jurisdiction. (*See, e.g.*, KCTA Motion to Compel (Jan. 2, 2014).) Then, apparently impatient with the Commission's deliberation, KCTA filed a "Status Report and Request for Action" demanding Commission action, inappropriately arguing on the merits in contravention of Commission procedures, and attempting to insert irrelevant and misleading allegations. (*See* KCTA's Status Report and Request for Action (April 1, 2014) ("First Request for Action").)

Now, once again under the guise of a "status report," KCTA repeats its attempt to expand this proceeding far beyond the limits previously enunciated by the Commission. Complaining about "the Commission's failure to exercise its statutory jurisdiction," KCTA mischaracterizes

numerous facts and inappropriately raises arguments that are unrelated to the limited jurisdictional question before the Commission.

KCTA's Second Request for Action is not relevant to "whether or not TVA has or exercises any jurisdiction . . . over the pole attachments of the TVA cooperatives." Accordingly, the TVA Cooperatives respectfully request that the Commission strike and disregard KCTA's Second Request for Action in its entirety and refuse KCTA's continued and improper attempts to expand the scope of this proceeding.

**II. KCTA's allegations are misleading and irrelevant to the current proceeding, and the Commission should disregard them.**

Although the allegations in KCTA's Second Request for Action should be disregarded simply because they are irrelevant to the current proceeding, the TVA Cooperatives also believe it is necessary to respond to KCTA's remarkable mischaracterization of the facts in its apparent effort to provoke a ruling by the Commission.

KCTA has crafted an inflammatory narrative in which it paints itself as a victim of the TVA Cooperatives. (Second Request for Action at pp. 4-7.) KCTA even accuses the Commission of victimizing it by claiming that "the Commission's failure to exercise its jurisdiction . . . is causing [Time Warner Cable] severe financial harm that may not be rectifiable." (Request for Action at p. 1.)

Nothing could be further from the truth. To the extent KCTA can describe itself as a victim, it is only a victim of its own decision to voluntarily and unilaterally disregard its legal obligations.

As just one example, KCTA lambasts Warren Rural Electrical Cooperative Corporation ("Warren") for "accept[ing] no less than the exorbitant rates of \$25.26 or \$25.57" and for charging "exorbitant" late fees on those amounts unpaid. (Request for Action at pp. 3-4.) What

KCTA fails to mention even once is that the rates and late fees Time Warner Cable refuses to pay are consistent with the written contract signed by both parties and consistent with the longstanding practice between the parties. For all of KCTA's rhetoric, the situation boils down to Time Warner Cable not wanting to pay its bills and trying to use this pending case as an excuse to withhold payment.

In short, the allegations KCTA makes to support its Second Request for Action are solely caused by KCTA itself – not the TVA Cooperatives, not the Commission, and not the timing or status of this proceeding. KCTA's Second Request for Action serves only to distract the Commission and the parties from the limited question at issue in this proceeding. Accordingly, the TVA Cooperatives respectfully request that the Commission strike and disregard KCTA's Second Request for Action in its entirety.

### **III. Conclusion.**

The TVA Cooperatives already addressed in their response to KCTA's First Request for Action the inappropriate tactics employed by KCTA in its "status report" briefs. Those filings are inconsistent with the Commission's procedural rules and are nothing more than inappropriate attempts to argue on the merits and interject misleading and irrelevant facts into this proceeding.

For the reasons discussed above and in their prior response, the TVA Cooperatives submit that the proper course is to await the Commission's ruling on all pending matters so that the Commission's and the parties' limited resources will not be wasted addressing extraneous issues.

Accordingly, the TVA Cooperatives respectfully request that the Commission disregard and strike KCTA's Second Request for Action. Furthermore, because of KCTA's repeated and improper attempts to pollute the record with irrelevant and spurious allegations disguised as unsolicited "status updates," the TVA Cooperatives also respectfully request that the

Commission encourage KCTA to refrain from filing any further such "status report" filings in the future except at the Commission's express request.

Respectfully submitted,

/s/ Edward T. Depp  
John E. Selent  
Edward T. Depp  
Michelle Tupper Butler  
**DINSMORE & SHOHL LLP**  
101 South Fifth Street, Suite 2500  
Louisville, Kentucky 40202  
Tel.: (502) 540-2300  
Fax: (502) 585-2207  
[John.Selent@dinsmore.com](mailto:John.Selent@dinsmore.com)  
[Tip.Depp@dinsmore.com](mailto:Tip.Depp@dinsmore.com)  
[Michelle.TupperButler@dinsmore.com](mailto:Michelle.TupperButler@dinsmore.com)

*Counsel to the TVA Cooperatives*

7293748v3