

**ELECTRONIC INVESTIGATION OF THE PROPOSED POLE ATTACHMENT
TARIFFS OF RURAL ELECTRIC COOPERATIVE CORPORATIONS
CASE NO. 2022-00106**

**BLUE GRASS RURAL ELECTRIC COOPERATIVE CORPORATION'S
RESPONSE TO THE KBCA'S INITIAL REQUESTS FOR INFORMATION**

REQUEST NO. 1-1: Please explain what You mean by “realities and risks associated with expanded use of overlashing,” when overlashing has been utilized by KBCA members extensively for decades. Response at 3.

- a. Identify each “risk” encompassed by Your Response.

OBJECTION: The request presumes facts not in evidence. Specifically, the extent to which KBCA members have historically overlashed spans of Cooperative-owned facilities, particularly if KBCA members have done so without notice to or permission from the Cooperative, is not supposition the Commission should accept as fact. To be certain, the Cooperative expects overlashing to increase substantially in the future as more parties seek entry into marketplaces requiring use of the Cooperative’s infrastructure. Subject to the foregoing, the Cooperative responds as follows.

RESPONSE: *See* Response to Commission Staff’s Initial Request No. 14. The reality of overlashing is that it creates a conductor that is heavier with an increased surface area compared to the original conductor that it is lashed upon. This added weight and cross-sectional surface creates more stress and burden on the poles, and it can cause greater sag in the wire. The intended purpose of the requirement of a PE to analyze the effects of the overlash by the attacher and to provide advanced notification to the Cooperative is to ensure that this added weight and cross-sectional surface from the overlash do not adversely affect the poles, address any guying needs, and meet all NESC and regulatory requirements. The risk in not doing so will potentially create clearance violations or overstressed poles, which could adversely impact the safety and reliability

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of the distribution system. The intent of the overlashing advanced notification and evaluation is due diligence on the part of the attacher and the Cooperative to ensure system integrity.

Witness: Kyle Lancaster, Manager, Engineering

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REQUEST NO. 1-2: Please explain why a pole analysis would be necessary following every overlash, even for extremely lightweight fiber overlashing.

RESPONSE: There are two primary reasons pole loading analysis is now necessary following every overlash. First, the relevant regulation allows for unlimited third-party overlashing, which means that it might not be a single increase in loading on the pole, but several increases over time, which must be considered and which may make a material difference on pole loading. Without conducting a pole loading analysis following every overlash, the Cooperative will not know the loading on the pole or which attachment (overlash) is responsible for causing an overloaded condition. Second, approximately \$1 billion in broadband subsidies have been appropriated for rural areas in Kentucky, so the demand for overlashing/additional load on poles will be much greater over the next 5-10 years than ever before.

Witness: Kyle Lancaster, Manager, Engineering

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REQUEST NO. 1-3: Please state whether You maintain current pole loading data for all of Your poles and, if so, explain how such data is maintained.

- a. Please identify the number or percentage of poles you own that are currently at, near, or over their load capacity.

RESPONSE: We do not maintain current pole loading data for all poles. However, during engineering analysis for new pole attachments, pole loading is calculated before the attachment. If a pole fails pre-attachment, the attacher is not charged for the pole change.

- a. See above.

Witness: Kyle Lancaster, Manager, Engineering

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REQUEST NO. 1-4: Explain the basis and provide relevant supporting data and the legal basis for the noncompensatory Unauthorized Attachment penalty You propose to impose based on failure to provide advance notice of attachment for overlashing.

OBJECTION: The request is conclusory regarding the nature of the Unauthorized Attachment fee and inappropriately seeks a legal analysis. Subject to the foregoing, the Cooperative responds as follows.

RESPONSE: Penalties in the tariff are designed to create an incentive for attachers to follow the required processes. Any new attachment to the cooperative's pole, whether a stand-alone attachment or an overlash, that does not follow the processes required in the tariff is an unauthorized attachment.

Please also see the responses to KBCA 1-2 and 1-3.

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REQUEST NO. 1-5: Please identify and provide data concerning all costs (including how such costs are calculated) incurred by You in connection with overlashing that You claim are not recovered from the overlashing attacher.

RESPONSE: Overlashing is not subject to annual rental fees if it is an overlap on an existing communications wire. The rental fee goes toward ongoing maintenance and operation of the poles that are a part of the distribution system that benefit the attachers utilizing those poles. By not providing additional rental revenue for overlap, the communication company is essentially not sharing in that O&M expense required to maintain the poles they are utilizing. Additionally, the Cooperative incurs costs related to inspections and violations that are not fully recovered. However, so long as the attacher follows the requirements in the proposed tariff to cover the cost of initial engineering analysis to ensure the overlashing does not compromise the safety and reliability of the pole, the Cooperative is not making any claims that it has unrecovered costs from the overlashing attacher.

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REQUEST NO. 6: Identify the number or percentage of Your poles that are currently red-tagged.

RESPONSE: 0.15% of Blue Grass Energy's poles are currently red-tagged.

Witness: Kyle Lancaster, Manager, Engineering

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REQUEST NO. 1-7: Provide data related to the number of Your Poles that are anticipated to be red-tagged in the next five years.

RESPONSE: The number of poles to be red-tagged cannot be determined, as the determination is based upon pole integrity, as determined by periodic inspections.

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REQUEST NO. 1-8: Explain how You will determine if a pole is red-tagged.

- a. Explain what you will do when You are notified of a red-tagged pole.
- b. Explain how an attacher can determine and assess whether or not a pole is or will be red tagged.

RESPONSE:

- a. If the Cooperative is notified of a red-tagged pole, the Cooperative will follow its Support Structure Inspection policy, which provides as follows:

Structures found to be unsafe are to be marked as DANGER STRUCTURES and will be reported to the respective District Line Superintendent for immediate replacement. Structures found to be unsatisfactory but do not represent an immediate threat to public or employee safety will be scheduled for replacement in routine work scheduling.

- b. An attacher can identify presently red-tagged poles by the red tag. The attacher will not be able to determine if the pole will be red-tagged in the future until the inspection is complete. It would be up to an attacher or their contractor to follow their own safety procedures on best safety practices for climbing any wood pole. Presence or absence of a red-tag should not replace those safety best practices.

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REQUEST NO. 1-9: Explain the basis for Your proposed requirement that an attacher pay the entire cost of replacing a pole that is not red-tagged, including all economic basis for this requirement.

- a. Explain your accounting treatment of a non-red-tagged pole that is replaced with a new pole paid for by an attacher.
- b. Explain whether or not You receive any financial or other benefit as a result of an attacher paying to replace an existing pole with a new pole so that it may attach.

RESPONSE: The Cooperative operates on an annual budget to ensure costs are incurred and managed in a prudent way. When new attachers seek to attach to Cooperative poles, this is a request that occurs outside of the Cooperative's annual budgeting process. If a pole is replaced due to the new attacher's request, this replacement is an unforeseen, unbudgeted action taken to allow the attacher to comply with NESC requirements. It is not related to the useful life of the pole. If a pole is red-tagged, the Cooperative does not and would not request the new attacher to pay any portion of the cost to replace the pole, as this replacement is a budgeted maintenance cost based on the Cooperative's inspection of the pole. Moreover, the Cooperative and its membership should not be forced to pay for new poles required solely by a requesting attacher, especially given the approximately \$1 billion dollars in new federal and state subsidies provided to encourage broadband deployment.

- a. The cost of the pole replacement will include all costs associated with material, labor, transportation, stores, and overheads but will have no impact on the value of Distribution

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Plant, due to the attacher paying for the replacement pole as a contribution in aid. The regulation and proposed tariff allows for an estimate of charges to be made prior to construction with provisions for a post construction "true-up" of actual costs for the job.

b. If the Cooperative were required to pay for the costs of new poles it did not budget or otherwise need to replace, this would have a negative impact on other areas of the Cooperative's budget, potentially deferring other investments intended for the economic benefit of the Cooperative's members.

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REQUEST NO. 1-10: Explain whether You would require an attacher to replace a pole where there would be space for it to attach but for Your reservation of space for Your sole use.

- a. Explain how You decide what size and strength of pole You to put in service.
- b. Explain the basis for Your assertion that “KBCA’s suggestion that a ‘specific, known plan to provide core electric service’ must support a reservation of space is unreasonable and directly counter to the Commission’s objective to speed broadband deployment,” as stated on page 7 of Your Response.

RESPONSE: Yes, when there is no room for additional attachments outside the Cooperative’s reasonably-anticipated need for space on its own pole, a requesting attacher would be required to pay for replacement of the pole to accommodate its request. (Consistent with the new regulation, this would not apply in the case of a red-tagged pole.)

- a. The height and class of the pole is determined based on engineering determination to support the intended electric distribution equipment and to meet required code and regulations.
- b. If a dispute arises with respect to whether a pole-owner is improperly reserving space on its own infrastructure, that dispute can be addressed in a fact-specific manner with a specific pole-owner. Absent an actual, existing, and substantial dispute about a pole-owner’s specific space reservation practices it is reasonable to suggest that pole-owners may reserve space on their own assets for reasonably anticipated uses. Disputes, if any, can and should be addressed in future complaint proceedings, where the regulation’s new

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pole attachment complaint resolution timeframes will ensure that a timely resolution is made.

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REQUEST NO. 11: Explain the cost basis for Your \$100 penalty for uncorrected violations and violations not corrected to Your satisfaction.

- a. Explain and provide data concerning all costs you incur as a result of uncorrected violations that You do not correct.
- b. Explain how those costs are not recovered in the annual rental rate.
- c. Explain and provide data concerning how you will determine whether a violation is corrected to Your satisfaction.
- d. Explain and provide data concerning how you will determine which attacher on the pole caused a given violation.
- e. Explain and provide data explaining how these penalties will be accounted for in Your financial reporting requirements.
- f. Explain the legal basis for collecting non-compensatory damages from a third party.

RESPONSE: As with any penalty, amounts are generally determined based primarily upon a consideration of what amount may serve as a reasonable disincentive against prohibited behavior. The \$100 penalty is based upon general industry practices and considerations of reasonableness.

- a. Uncorrected violations of attachers create significant safety and reliability risks to the system, the costs of which would certainly exceed \$100.
- b. The annual rental rate assumes that all attachments have been made through the permitting process required in the tariff and attached in compliance with all applicable

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codes and specifications. If attachments are found not to be in compliance with code, the cost of bringing those attachments into compliance is the responsibility of the attacher, separate and apart from any annual rental payment.

c. The burden of proof as to whether a violation is satisfactorily corrected should not fall upon the electric utility, as the pole-owner. All applicable codes and regulations and Appendix B specifications of the proposed tariff must be met. Not surprisingly, there is a cost to the Cooperative when it comes to dealing with non-compliant attachers, both in ensuring violations are properly corrected and addressing the consequences of violations that are not properly corrected.

D. The attacher who is out of compliance with the applicable codes and regulations and Appendix B of the proposed tariff will be the one identified as causing the violation. And per the proposed tariff Article VIII Section B part vi, if no determination can be made as to the actual party causing the violation then all parties on the pole will share proportionally in the cost to remedy the violation. This is a fair, just and reasonable approach to dealing with costs that the Cooperative did not cause or seek to incur.

e. The penalties would be treated the same as any other Pole Attachment revenue.

f. **OBJECTION:** The request inappropriately seeks legal conclusions. Subject to the foregoing, the Cooperative responds as follows.

Utility rates are required to be fair, just, and reasonable. Attachers to utility poles must not endanger the safety or reliability of service to utility customers. Unexpected costs

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can arise when that safety and reliability is not maintained as a consequence of the attacher's tariff violations. Incentivizing attachers to comply with their obligations by threatening to impose a reasonable penalty of \$100 for violations or uncorrected violations helps ensure the safety and reliability of the system. In the absence of such a deterrent, attachers are economically incentivized to potentially forego compliance based on the calculation that if the noncompliance is discovered, the only obligation to the attacher is that it has to do what it was required to do in the first place.

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REQUEST NO. 1-12: Explain and provide data concerning why the RECCs should only be liable for gross negligence, including the basis for Your statement “RECCs should be liable only if they are solely the cause of any damage or injury.” Response at 9.

- a. Explain why the same standard of liability does not apply to the RECCs and the third party attachers.
- b. Explain why third party attachers should be liable for Your negligence.

OBJECTION: The request inappropriately seeks legal conclusions. Subject to the foregoing, the Cooperative responds as follows.

RESPONSE: The tariff is written broadly to protect the Cooperative from incurring defense costs and avoiding potential liability as a result of being required by law to allow a third-party to occupy and utilize its property. If a third-party incurs damage involving a utility pole owned by the Cooperative, the owner of the pole will undoubtedly be included in any lawsuit or claim for damages. Without protection to a pole owner, an attacher would be incentivized to shift blame to a pole owner to attempt to minimize the extent of its own losses caused by the attacher's negligence. Further, a pole attachment tariff must have mechanisms to incentivize an attacher to ensure that all attachments are made safely and without damage to a pole, which could lead to injuries to a third party.

It is not fair, just, and reasonable to require an entity to involuntarily provide access to its property while then stripping that property-owner of the right to be fully protected against any loss or damage resulting from the licensee's actions or omissions.

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a. See above. It is not unusual in commercial contracting situations for counterparties to be exposed to different levels of risk.

b. See above.

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REQUEST NO. 13: Explain whether or not members of cooperative utilities benefit from access to communications services, such as cable television and internet access service. Response at 9.

- a. Identify all costs that electric cooperatives or their members incur as a result of third party communications attachments that are not covered by non-recurring charges, such as pre-construction survey fees, make ready charges, or recurring annual rental payments from attachers.

RESPONSE: Attachers providing services to Cooperative members should seek to recover their costs solely from those members who choose to purchase the attacher's services. Cooperative members who do not desire attacher services should not be forced to contribute to the costs of attachers who do not serve them. *This is a fundamental issue before the Commission, and should not be overlooked.* KBCA ostensibly believes attachers are entitled to certain treatment by virtue of the for-profit services they generally provide, but the member-owned Cooperative is neither intended nor designed to overlook costs that should be properly recovered from the cost-causers.

- a. Cooperative costs are adequately protected by the Proposed Tariff. However, when changes to that Proposed Tariff are proposed, that is when the question arises of whether a cost is being unfairly shifted to the Cooperative and its membership. KBCA's apparent desire to avoid certain overlapping protections is an example of this. System safety and reliability are paramount; consequently, there must be an analysis of proper engineering

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considerations. One of the parties must do that, which entails the use of that party's time and monetary resources. The Cooperative maintains that, consistent with typical Commission practice, the party causing the cost should pay. Here, the overloading party clearly causes the cost, as it is the party introducing the new burdens on the system. Consequently, the overloading party should be responsible for undertaking the tasks (and associated costs) necessary to ensure system safety and reliability. If these longstanding principles are followed, then the Cooperative and its membership should not be unfairly burdened by allowing attachments on Cooperative facilities.

Witness: Kyle Lancaster, Manager, Engineering

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REQUEST NO 1-14: Explain the basis for and provide all data concerning Your requirement that “Licensee shall require its agents, contractors and subcontractors to comply with the specifications required under this Schedule and the obligations of this Schedule (including but not limited to the insurance and indemnification obligations under this Schedule).”

RESPONSE: Parties acting on behalf of the of the Licensee stand in the shoes of the Licensee. Therefore, they should be held to the same standards as the Licensee.

Witness: Kyle Lancaster, Manager, Engineering

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REQUEST NO. 1-15: Explain the basis for and provide all data concerning Your assertion that “from an operational standpoint, it is important to consider that contractors unable to acquire the required coverage may not be sophisticated enough or may have previous safety violations making adequate insurance unaffordable.” Response at 10.

a. Explain how Cooperatives are at an “elevated risk[]” if contractors and subcontractors are not required to carry the same insurance as KBCA members, including any data concerning Your assertion, even though KBCA members require their contractors and subcontractors to be insured and are ultimately liable to the Cooperative. Response at 10.

b. Explain how You quantify any “elevated risk” caused by contractors and subcontractors that are not required to carry the same insurance as a third party attacher, even though the third party attacher requires its contractors and subcontractors to be insured and is ultimately liable to You.

RESPONSE: Please see the response to KBCA 1-14. It is not unusual in commercial contracts, particularly those involving construction and maintenance of facilities, to include appropriate flow-down provisions to ensure the protection of the contracting parties.

Witness: Kyle Lancaster, Manager, Engineering

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REQUEST NO. 16: To Clark Energy only: Explain the cost basis for Clark Energy's "administrative review fee" of \$100, including any data supporting the fee.

- a. Explain how those costs are not recovered in the annual rental rate.
- b. Identify and provide all data concerning the "costs associated with performing the work required to comply with the regulation's review and processing requirements."

Response at 11.

RESPONSE: Not applicable.

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As to Objections,

/s/ Edward T. Depp
Edward T. Depp
R. Brooks Herrick
DINSMORE & SHOHL LLP
101 South Fifth Street, Suite 2500
Louisville, KY 40202
Tel: (502) 540-2300
Fax: (502) 585-2207
tip.depp@dinsmore.com
brooks.herrick@dinsmore.com

and

M. Evan Buckley
DINSMORE & SHOHL LLP
100 West Main Street, Suite 900
Lexington, KY 40507
Tel: (859) 425-1000
Fax: (859) 425-1099
evan.buckley@dinsmore.com

*Counsel to Blue Grass Energy Cooperative
Corporation*

