

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

In the Matter of:

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

**JACKSON ENERGY COOPERATIVE CORPORATION’S
RESPONSE TO THE KENTUCKY BROADBAND AND CABLE ASSOCIATION’S
INITIAL REQUESTS FOR INFORMATION**

Jackson Energy Cooperative Corporation (“Jackson Energy” or the “Cooperative”), by counsel, hereby files its Response to the Kentucky Broadband and Cable Association’s Initial Requests for Information, issued in the above-captioned case on April 21, 2022.

FILED: May 5, 2022

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**JACKSON ENERGY 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. Overlashing too many cables to the existing cables can cause several issues such as low clearance, broken poles, and pulled anchors. Overlashing does put more than one cable on a strand. If the company performing the overlashing does not see an immediate issue, it may not notify Jackson Energy. Later loading due to wind, ice, or both, can cause an issue related to the overlashing. Overlashing needs to be treated like a new attachment made on the pole and a loading analysis completed to see if pole can stand the additional loading on the pole under various weather conditions.

Witness: Ryan Henderson, Vice President of Engineering & Operations

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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: Ryan Henderson, Vice President of Engineering & Operations

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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: Jackson Energy Cooperative does not have current pole loading data for all of its poles.

Witness: Ryan Henderson, Vice President of Engineering & Operations

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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: Jackson Energy Cooperative has offered a CATV tariff for several decades. In the CATV tariff there are penalties listed covering unauthorized attachments. As such KBCA members have been subject to these penalties for some time.

Unauthorized attachments constitute conversion (basically, theft) of cooperative infrastructure. The penalty imposed is to disincentivize unauthorized attachments. The greater the penalty the greater the incentive to get authorization before attaching or overlashing. This penalty can be avoided by following the procedures to get authorization before attaching or overlashing.

Witness: Ryan Henderson, Vice President of Engineering & Operations

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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.

Witness: Ryan Henderson, Vice President of Engineering & Operations

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REQUEST NO. 1-6: Identify the number or percentage of Your poles that are currently red-tagged.

RESPONSE: 415 poles, or 0.37% of the total 107,393 poles on our system.

Witness: Ryan Henderson, Vice President of Engineering & Operations

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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:

Based on a historical average of red-tagged, Jackson Energy estimates that it will have approximately 4,000 red-tagged poles over the next five (5) years.

Witness: Ryan Henderson, Vice President of Engineering & Operations

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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: Jackson Energy Cooperative personnel will examine the pole for structural integrity of the pole. They will also strike the base of the pole with a hammer and listen to how the pole sounds when struck to assess if the pole has indications of internal rot.

- a. Jackson Energy personnel will examine the pole as described above. If the pole needs to be red-tagged a work order will be drawn up and replaced in the due course of business. If the condition of the pole warrants more immediate action it will be replaced on a priority basis.
- b. The attacher should be able to determine if a pole is broken, damaged or has integrity issues. If there is any question about whether the pole is red tagged, they can contact Jackson Energy Cooperative and have a Jackson Energy employee check it.

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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: If the existing pole meets all NESC clearances, then there is no need to change the pole. If an attacher wants to attach to the pole, and there is no room available on the pole then a taller pole will have to be installed. Jackson Energy does not need a taller pole, and the existing attachers do not need a taller pole. Since the new attacher is the only entity requiring a taller pole, then the new attacher is the entity that pays for the taller pole. The Commission has already addressed this issue.

- a. The money would be considered a contribution in aid to construction.
- 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: If an attacher requested to attach, but the only space left on that pole was reserved for our sole use, we would require the attacher to replace the pole. If space is reserved for the sole use of the Cooperative, then that space would be considered occupied for pole attachment purposes.

- a. Pole size and strength is determined based on a multitude of factors such as: ground clearance, wire size, span lengths, construction framing of the pole, proximity to certain hazards or troublesome terrain (roadways, ponds, cliffs, etc.), number of attachments on pole, etc. Jackson Energy Staking Engineers and Line Inspectors are trained to take all factors into consideration and choose the correct size and class of the pole based on our needs, as well as the needs of all current attachers or attachers seeking to attach.
- 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-

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

Witness: Ryan Henderson, Vice President of Engineering & Operations

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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. Unsurprisingly, 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 that 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 it cannot be determined as to the causer of 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 money for these penalties would be considered Miscellaneous Service Revenues.

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

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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 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.

Witness: Ryan Henderson, Vice President of Engineering & Operations

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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.

Witness: Ryan Henderson, Vice President of Engineering & Operations

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**JACKSON ENERGY COOPERATIVE CORPORATION'S
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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: Jackson Energy acknowledges that cooperative members may benefit from access to communications services, such as cable television and internet access service. However, this question is not relevant to the technical or administrative issues in the tariff. Whether or not cooperative members benefit from the services of an attacher is not relevant to the technical or administrative requirements of the tariff.

- 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 overlashing protections is an example of this. System safety and reliability are paramount; consequently, there must be an analysis of proper engineering 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 overlashing party

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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: Ryan Henderson, Vice President of Engineering & Operations

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**JACKSON ENERGY COOPERATIVE CORPORATION'S
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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: Ryan Henderson, Vice President of Engineering & Operations

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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: Ryan Henderson, Vice President of Engineering & Operations

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REQUEST NO. 1-16: 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,

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VERIFICATION

I, Ryan Henderson, verify, state, and affirm that the information request responses filed with this verification for which I am listed as a witness are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



Ryan Henderson
Vice President of Engineering & Operations
Jackson Energy Cooperative Corporation

COMMONWEALTH OF KENTUCKY)
) ss:
COUNTY OF)

SUBSCRIBED AND SWORN TO before me by Ryan Henderson on this the 3rd day of May, 2022.

My commission expires: 1/19/26

Gisa Baker # 42192
Notary Public