



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

**MEADE COUNTY 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. Overlashing creates multiple issues. First, while the new cable is being lashed onto the existing, the yanking and pulling of the existing cable causes forces not necessarily designed for. Stresses are always expected transversely (due to wind) and downwardly (due to cable weight and ice). Longitudinal stresses occur during overlashing and can result in bowing poles and creating out-of-sag distribution routes which can result in clearance issues. Electrical outages often occur during the process due to these longitudinal stresses and the slapping of electrical conductors because the lashing process is not a usually a steady process.

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Overlashing also creates additional loading on the structures due to the additional weight of the cable and lashing wire, the additional wind and ice loading, and the additional loading on the guys and anchors. Too often when overlashing occurs the existing anchors of the attachers fail due to the shallowness of the usual anchors, resulting in the electrical utility's anchors, guys, and poles taking the additional load.

**Witness:** David R. Poe, P.E., V.P. Operations and 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:**

In the last 28 years no attaching entity has ever notified this Cooperative of the plan or desire to overlash or even notify the Cooperative as they overlash. The Cooperative usually discovers it via drive-bys or by restoring power to the members caused by the jerking and tugging of the overlashing device and crew. Further, 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:** David R. Poe, P.E., V.P. Operations and 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:** Meade County does not maintain a database concerning the loading of our poles.

- a. Please see above.

**Witness:** David R. Poe, P.E., V.P. Operations and 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.

**Witness:** David R. Poe, P.E., V.P. Operations and Engineering

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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:** David R. Poe, P.E., V.P. Operations and Engineering

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

**RESPONSE:** At this current time, 360 poles (out of a total of 73,136) have been identified as needing replaced for a total percentage of approximately 0.5 %.

**Witness:** David R. Poe, P.E., V.P. Operations and 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:** Approximately 2200 poles are anticipated to be changed in the next 5 years.

**Witness:** David R. Poe, P.E., V.P. Operations and Engineering

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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:** Poles are red-tagged as part of our pole testing and inspection program.

a. - b. When a pole is noted for a change-out due to deterioration, a service order is automatically generated and forwarded to the staking department. The staking department will then re-assess the pole and then compose a work order to change the pole. These are the same individuals that will be addressing requests from a prospective attacher; therefore, they have the information regarding the future status of that pole.

**Witness:** David R. Poe, P.E., V.P. Operations and Engineering

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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:**

- a. The requesting entity is charged the total cost of replacing the pole including labor and material overheads.
- b. Because the Cooperative is not-for-profit, there are no profits present. Additional benefits are difficult to calculate and quantify. Some existing poles may have some considerable age but are very solid and reliable, whereas some new poles do not have the same expected and realized lifespan as the old ones. Pole treatments are changing due to the inability to acquire "Penta", which is a type of treatment historically common in the industry. There are substantial questions regarding the performance of the substitute treatments today.

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

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Cooperative's budget, potentially deferring other investments intended for the economic benefit of the Cooperative's members.

**Witness:** David R. Poe, P.E., V.P. Operations and Engineering

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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:**

- a. Yes, we would expect the requesting entity to pay for the replacement of a pole that had no more room outside of “our reservation of space.” We build and replace lines with the understanding that a member may request an electrical service along that line that would require the additional space of large transformers, service wires, and/or lights. This same reasoning applies to the future installation of sectionalizing equipment. We have found it is more economical to provide space for equipment associated with our provision of future electric service in the beginning than having to change the pole again later, especially in a difficult location or application.
- b. Adhering to the electric utility’s need for its reserved space does not deter the Commission’s or anyone’s objective to speedily deploy broadband. The space needed by the requesting entity will still be provided but at a cost to the “for-profit” provider and their

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customers and not to the not-for-profit cooperative and their members who may not ever use the communications services offered by these attachers.

**Witness:** David R. Poe, P.E., V.P. Operations and Engineering

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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. Any penalties collected will be entered into the financial report as "other electric revenue."

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:** David R. Poe, P.E., V.P. Operations and Engineering

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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:** David R. Poe, P.E., V.P. Operations and Engineering

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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:** Members of cooperative utilities that desire to utilize the services of cable television and internet services could benefit from having access to such services. Conversely, not all members of the electric cooperative benefit from these communication services, therefore neither they nor the electric cooperative should be responsible for any non-electric costs incurred that ensure the profitability of the cable and internet operators.

- a. Not-for-profit electric cooperatives and their members do incur financial maintenance losses as a result to damages associated with allowing cable and internet providers the ability to attach to electric utility infrastructure. Without reasonable and fairly allocated cost-based fees through charges and annual rental payments, electric cooperatives and its members would be subsidizing the profitability of privately held cable and internet operators. Typically, the majority of the unintended third-party communication expenses occur through a combination of pole rearrangements, stub pole removal and pole replacements that have followed the original construction phase of cable

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and internet deployment on the electric utility's system. These items add to the expenses for the not-for-profit electric cooperative by creating additional labor, material and equipment losses that are not always covered in initial make ready, pre-construction or annual rental payments.

**Witness:** David R. Poe, P.E., V.P. Operations and 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:** David R. Poe, P.E., V.P. Operations and 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:** David R. Poe, P.E., V.P. Operations and Engineering

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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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