

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

**In the Matter of:**

<b>ELECTRONIC INVESTIGATION OF THE</b>	)	
<b>PROPOSED POLE ATTACHMENT TARIFFS OF</b>	)	<b>CASE NO. 2022-00106</b>
<b>RURAL ELECTRIC COOPERATIVE</b>	)	
<b>CORPORATIONS</b>	)	

**REQUEST FOR INFORMATION OF THE RECCs**

In accordance with the procedural schedule established by the Kentucky Public Service Commission (the “Commission”), Big Rivers Electric Corporation; Big Sandy R.E.C.C.; Blue Grass Energy Cooperative Corp.; Clark Energy Cooperative, Inc.; Cumberland Valley Electric, Inc.; Farmers R.E.C.C.; Fleming-Mason Energy Cooperative, Inc.; Grayson R.E.C.C.; Inter-County Energy Cooperative Corporation; Jackson Energy Cooperative Corporation; Jackson Purchase Energy Corporation; Kenergy Corp.; Licking Valley R.E.C.C.; Meade County R.E.C.C.; Nolin R.E.C.C.; Owen Electric Cooperative, Inc.; Salt River Electric Cooperative Corp.; Shelby Energy Cooperative, Inc.; South Kentucky R.E.C.C., Taylor County R.E.C.C. (each a “RECC” and collectively, the “RECCs”), by counsel, hereby request the response of the Kentucky Broadband and Cable Association (the “KBCA”) to the following Requests for Information.

**DEFINITIONS**

1. Whenever it is necessary to bring within the scope of these information requests documents that might otherwise be construed to be outside their scope: (1) the use of “and” as well as “or” shall be construed both disjunctively and conjunctively; (2) the use of a word in its singular form shall be construed to include within its meaning its plural form as well, and vice versa; (3) the use of “include” and “including” shall be construed to mean “without limitation”; and (4) the

use of a verb in any tense or voice shall be construed as the use of that verb in all other tenses and voices.

2. “**Commission**” means the Kentucky Public Service Commission.

3. “**Document**” means any written, recorded, transcribed, printed, or impressed matter of whatever kind, however produced, stored or reproduced, including but not limited to sound or pictorial recordings, computerized or electronic information, books, pamphlets, letters, memoranda, telegrams, electronic or mechanical transmissions, communications of all kinds, reports, notes, working papers, handwritings, charts, paper, writings, printings, transcriptions, tapes and records of all kinds. “Document” includes, without limitation, all workpapers produced by or relied upon by a witness.

4. “**Identify**” mean the following:

a: when identifying a person, to give such person’s:

- (1) full name;
- (2) business address, residence address (if no business address is available), and telephone number;
- (3) his or her present or last known position and business affiliation at the time in question; and
- (4) the nature of such person’s participation in, and the scope of his/her responsibility with regard to, the facts and events underlying the present matter;

b: when identify an oral communication, to:

- (1) identify the author(s) thereof and the parties thereto;
- (2) state the date of the communication;
- (3) state the place of the communication;
- (4) state the substance of the communication; and
- (5) state whether such communication has been reduced to writing and, if so, identify each document and the present custodian thereof;

c: when identifying other information, to state:

- (1) the source thereof;
- (2) any oral communications pertaining thereto;
- (3) any documents pertaining thereto; and
- (4) the substance of the information;

d: when identifying a document, to:

- (1) identify the author thereof and the parties thereto;
- (2) state its title or other identifying data;
- (3) state the date of the document or, if no date appears thereon, the approximate date;
- (4) state the exact nature and substance thereof;
- (5) identify each person having possession, care, custody, or control of the original and any copies thereof; and
- (6) if such document was, but no longer is, in your possession or subject to your control, state what disposition was made of it.

5. “**KBCA member,**” “**KBCA members,**” “**KBCA’s member,**” and “**KBCA’s members**” shall refer to Charter Communications, Comcast, and all other KBCA members actively participating in this matter.

6. “**Person**” includes a natural person, a business organization of any type, an unincorporated association, a governmental subdivision, agency, or entity, and a business trust.

7. “**RECC party**” shall mean any Kentucky electric cooperative that is subject to Commission jurisdiction and party to this case. For clarity, “*RECC party*” does not include Tennessee Valley Authority electric cooperatives or other electric cooperatives who are not subject to Commission jurisdiction.

8. “**You**” or “**your**” means the KBCA, its members, and their respective agents, officers, employees, consultants, and witnesses.

### **GENERAL INSTRUCTIONS**

1. Please identify the witness who will be prepared to answer questions concerning each request.

2. If any request appears confusing, please request clarification directly from the undersigned.

3. To the extent that the specific document, workpaper or information as requested does not exist, but a similar document, workpaper or information does exist, provide the similar document, workpaper or information.

4. If the company has objections to any request on the grounds that the requested information is proprietary in nature, or for any other reasons, please notify the undersigned as soon as possible.

5. For any document withheld on the basis of privilege, state the following: date; author; addressee; indicated or blind copies; all persons to whom distributed, shown or explained; and the nature of and legal basis for the privilege asserted.

6. To the extent that a request calls for information not available for all categories or all periods of time for which the information is sought, please explain why the information is not available and answer the request for the time or categories for which it is available.

7. These requests shall be deemed continuing, and you should serve upon counsel: (1) supplemental responses to these data requests if additional information or information that changes your response to any data request is obtained during the course of this proceeding; and (2) any

documents requested herein that become available or that are discovered after the date your responses to these requests are due.

### **REQUESTS FOR INFORMATION**

1. For each KBCA member, provide the number of existing attachments that each presently has on the facilities of each RECC party. If this data is not available as of June 23, 2022, please provide this data as of the most recent date for which such data is available (and specify that date).
2. For each KBCA member, provide the annual number of poles for which new attachment requests were made to each RECC party in each of 2022 YTD, 2021, 2020, 2019, 2018, and 2017.
3. With respect to the testimony of Mr. Avery at page 2, identify each additional cost of deploying broadband in Kentucky that will be incurred by each KBCA member upon the following events:
  - a. If the Commission approves a tariff allowing a pole-owner to remove an attacher's facilities upon written notice of a breach of the tariff and the attacher's failure to remedy the breach within thirty (30) days.
  - b. If the Commission approves a tariff requiring a KBCA's member's contractors working on facilities in Kentucky to maintain insurance coverages.
  - c. If the Commission approves a tariff requiring an attacher to indemnify a pole-owner for damages, unless caused by the sole negligence of the pole owner.
4. With respect to the testimony of Mr. Avery at page 4, identify each contractor with whom each KBCA member has negotiated a contract that would apply to work to be performed in Kentucky.
  - a. Provide a copy of all provisions identifying or otherwise relating to the "robust insurance requirements" that have been negotiated with each such contractor by each KBCA member.
  - b. Provide copies of all current certificates of insurance provided by such contractor(s) to each KBCA member.
5. With respect to the testimony of Mr. Avery at page 6, provide documentation of every instance when an RECC party has threatened to remove a KBCA member's "entire communications network" if such member "does not accede to ... [such] pole owner demands."

- a. For each such matter, please identify the KBCA member who received such threat, the RECC party who made such threat, the date the dispute began, and the current status of the dispute.
  - b. For each such matter, please provide the case number of any Commission complaint or other litigation pertaining to the dispute.
6. With respect to the testimony of Mr. Avery at page 6, if any of the technical NESC compliance issues he references include disputes with an RECC party, please describe the nature of such dispute, the date it began, and the status of such dispute for each RECC party.
7. With respect to the testimony of Mr. Avery at page 6, please state whether the “one case” he references involved an RECC party. If so, please provide a description of the dispute, including the date it began, the Commission case number or other litigation where the dispute was addressed, and the outcome and current status of same.
8. With respect to the testimony of Mr. Avery at page 7, please describe all disputes where an RECC party has demanded “compliance repairs” that were delayed as a result of “local permitting issues” or other attachers.
  - a. For each such dispute, please identify the KBCA member who was a party to the dispute, the date the dispute began, and the current status of the dispute.
  - b. For each such matter, please provide the case number of any Commission complaint or other litigation pertaining to the dispute.
9. With respect to the testimony of Mr. Avery at page 8, please describe all disputes where an RECC party has “use[d] their leverage to remove attachments in ... other disputes that have nothing to do with ensuring safe pole conditions and reliable service.”
  - a. For each such dispute, please identify the KBCA member who was a party to the dispute, the date the dispute began, and the current status of the dispute.
  - b. For each such matter, please provide the case number of any Commission complaint or other litigation pertaining to the dispute.
10. With respect to the testimony of Mr. Avery at page 8, please describe all disputes about whether an invoiced rate was properly calculated by an RECC party, and state whether such rate was tariffed.
  - a. If such rate was tariffed, explain why such RECC party’s rate needed to be calculated (as opposed to the “disputes over the number of attachments to which it applies” described in the next sentence of your testimony).
  - b. If the “[f]irst” and “[s]econd” disputes are the same, please confirm. If you cannot confirm, please explain the factual basis for the different disputes with a particular RECC party.

11. With respect to the testimony of Mr. Avery at page 8 that “cable companies have numerous contractor relationships,” state whether KBCA’s members routinely accept liability for their contractors’ pole attachment-related actions or omissions in instances where KBCA members or their contractors are alleged to have acted negligently or otherwise caused property damage or personal injury.
  - a. Please state whether KBCA’s members are willing to accept liability for their contractors’ pole attachment-related actions in all instances in Kentucky.
  - b. In the event KBCA’s members do not routinely accept liability for their contractors’ pole attachment-related actions or that they do not agree to do so in all instances in Kentucky, please reconcile that position with Mr. Avery’s sworn testimony at page 10 that, “In any case, attachers are ultimately responsible for any issues their workers, including their contractors, cause, so there is no need for both the attacher and its contractor to have the same exact insurance required by every pole owner.”
12. With respect to the testimony of Mr. Avery at pages 11-12, please identify all instances where an RECC party has attempted to recover from a KBCA member for damage that the RECC party caused.
  - a. For each such instance, please identify the KBCA member who was a party to the dispute, the date the dispute began, and the current status of the dispute.
  - b. For each such matter, please provide the case number of any Commission complaint or other litigation pertaining to the dispute.
13. With respect to the testimony of Mr. Bast at page 4 regarding an alleged “administrative nightmare,” please:
  - a. Explain the factual basis for your allegation.
  - b. Explain why it is not an “administrative nightmare” for a pole-owner to prepare and issue invoices demanding payment of additional amounts owed by an attacher, but it is an “administrative nightmare” for a pole-owner to issue a refund or credit to an attacher.
14. With respect to the testimony of Mr. Bast at page 6, please explain the factual basis for describing a pole loading analysis as “inefficient and costly” for an overlash, and provide the estimated costs per pole of conducting a pole loading analysis. State all factual bases for such estimate.
15. With respect to the testimony of Mr. Bast at page 6, provide a detailed estimate of all reasonable work tasks involved in performing a pole loading analysis for a single pole.
16. For each KBCA member, please explain in detail:
  - a. Whether such member permits third parties to overlash the member’s facilities and if so, on what terms, and if not, why not;

- b. Whether such member is willing to allow third-party overloading on its facilities;
  - c. If the answer to subpart (b) is affirmative, whether such member would anticipate demanding and/or receiving some compensation or other non-monetary consideration from a third-party permitted to overload and, if so, what; and
  - d. If the answer to subpart (b) is affirmative, how such KBCA member would ensure that the pole-owning utility has accurate records of all third-parties overloaded to such KBCA member's facilities.
17. For each KBCA member, provide – for each RECC party – the anticipated number of RECC party poles upon which it intends to seek attachment or overloading in the following periods: the next twelve (12) months, the next twenty-four (24) months, and the next sixty (60) months.
18. For each KBCA member, provide a copy of all pole attachment agreements whereby the KBCA member has agreed to indemnify a pole-owner unless the alleged damages were caused by the sole negligence of the pole-owner.
19. For each KBCA member, please state whether you intend to accept liability if an overload of your facilities causes or contributes to a service outage, service interruption, property damage, injury, or death. If you do not intend to accept full liability for such eventualities, please explain in detail, including a description of how you intend to apportion liability in the event an overloading entity (or its contractors or agents) is involved.
20. With respect to the testimony of Mr. Bast at page 12, please identify – for each KBCA member – each true-up request sought from an RECC party, but not obtained within 120 days after the date of the request. For each such instance, please identify the amount of such dispute, the date that constituted the 120<sup>th</sup> day after the date of the request, the status of such dispute, and the case number of any Commission or other litigation associated with the same.
21. For each KBCA member, identify:
- a. The cumulative amount of RDOF funds it has been awarded in Kentucky, to date; and
  - b. The cumulative amount of RDOF funds it has been awarded in each individual RECC party service territory;
  - c. Whether RDOF funds may be applied to the cost of make-ready work, including the cost of pole replacements.
22. For each KBCA member, identify all state, federal, and local funds (whether through grants, awards, legislative allocations, financial commitments, subsidies, low-interest loans, pledges, or other sources) (collectively, “Funds”) that it has sought, provided that such Funds are eligible for use in Kentucky for purposes of broadband deployment. For



each separate source of Funds, provide the amount sought and/or awarded (if any), as well as the status or date of application and/or award (if any) for each.

23. Identify each Kentucky local government with whom each KBCA member has partnered or entered into an arrangement to utilize ARRA funds to assist with broadband deployment. For each, please:
  - a. Provide copies of any documented agreement(s) with such local government(s).
  - b. Identify the amount of Funds made available to the KBCA member through each such arrangement(s).
  - c. State whether each such arrangement(s) is exclusive to the KBCA member.
  - d. State whether the KBCA member has sought to make such arrangement(s) exclusive to the KBCA member, or to other members of KBCA.
  - e. Provide copies of all communications pertaining to a KBCA member seeking or obtaining an exclusive arrangement to utilize such funds provided by a Kentucky local government.
24. For each KBCA member, describe in detail the NESC training that you provide, or require your contractors to provide, before working on RECC party poles.
25. Describe in detail how you measure and monitor worker safety practices and procedures of employees and contractors you may use to work on RECC party poles.
26. For each KBCA member, identify all service interruption, injury, and worker safety incidents that you have experienced in the past three (3) years. For each such incident, describe in detail: (i) the nature of the matter (including the nature of the interruption, injury, or safety concern); (ii) the identified cause of the matter; (iii) whether it was caused by such KBCA member employee(s) or contractor employee(s); and (iv) all steps taken to avoid similar issues in the future.
27. For each KBCA member, please identify:
  - a. The annual number of pole attachment transfer requests received from each RECC party in each of 2022 YTD, 2021, 2020, 2019, 2018, and 2017;
  - b. The average timeframe between receiving a pole attachment transfer request and completing the requested pole attachment transfer;
  - c. All policies currently in place to ensure that pole attachment transfer requests are performed in a timely manner;
  - d. The number of pole attachment transfers that were performed with each RECC party in each of 2022 YTD, 2021, 2020, 2019, 2018, and 2017;

- e. The annual budget allocated for pole attachment transfers in each of 2022, 2021, 2020, 2019, 2018, and 2017; and
  - f. All policies or processes currently in place that pertain to the conduct of pole attachment transfers after any allocated annual budget for pole attachment transfers has been exhausted for a budget period.
28. For each KBCA member, please state whether:
- a. You subscribe to, have purchased, or possess a license to use any software designed to conduct pole loading analysis, including O-Calc Pro, PoleForeman, SPIDACalc, or similar software, and please provide the name of each such software and a description of how and why you use it or have access to use it;
  - b. You provide any pole owner(s) with a Professional Engineer (PE) certified analysis or plans for any purpose associated with use or occupancy of the pole owner's poles or other facilities, and please provide the name of each such pole owner, the identity of the PE(s) used, as well as a description of all purposes for which you provide it for each such pole owner, and state whether such analysis or plans are provided at your expense or the pole owner's expense.
  - c. You possess, utilize, or have access to any other mechanism or method for conduction a pole loading analysis (whether or not performed or certified by a PE), and please provide the name and a description of those mechanisms or methods.

On this the 23<sup>rd</sup> day of June, 2022.

Respectfully submitted,

**DINSMORE & SHOHL LLP**

/s/ Edward T. Depp

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**Certification**

I hereby certify that a copy of the foregoing has been served electronically on all parties of record through the use of the Commission's electronic filing system, and there are currently no parties that the Commission has excused from participation by electronic means. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085, a paper copy of this filing has not been transmitted to the Commission.

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