

**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**

**INITIAL BRIEF**  
**OF THE RURAL ELECTRIC COOPERATIVE CORPORATIONS**

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., and Taylor County R.E.C.C. (collectively, the “Kentucky Electric Cooperatives”), by counsel and pursuant to the Commission’s Order entered September 23, 2022, in the above-captioned matter, hereby respectfully submit this Initial Brief.

The Commission’s new pole attachment regulation, 807 KAR 5:015 (the “Pole Attachment Regulation”), is the result of years of detailed stakeholder input and a voluminous body of public comment and discourse, beginning with the Commission’s initial public meeting in February of 2020. Through multiple subsequent public comment meetings and several rounds of written comments, the Kentucky Electric Cooperatives have endorsed their role in facilitating the deployment of rural broadband in a manner that ensures safety and integrity of the electric system, recognition of the unique characteristics and challenges of rural electric cooperatives, and protection of their members from costs they have not caused and liabilities they should not bear.

As the Commission underscored in its Order establishing this case, KRS 278.030 requires utilities to provide adequate, efficient, and reasonable service at fair, just and reasonable rates.<sup>1</sup> Each of the Kentucky Electric Cooperatives has proposed a pole attachment tariff that is, on its face, not only consistent with KRS 278.030 and KRS Chapter 278 generally, but also specifically compliant with the letter and spirit of the Commission’s new Pole Attachment Regulation. The Kentucky Electric Cooperatives respectfully request the Commission accept and approve the proposed tariffs as reasonable and consistent with law.<sup>2</sup>

The pole attachment tariffs proposed by the Kentucky Electric Cooperatives reflect all of the requirements of the Pole Attachment Regulation (oftentimes verbatim), and the terms employed are entirely consistent with the reasonable provision of an ancillary service like access to poles. Substantial evidence supports the conclusion that the proposed tariffs are reasonable and should therefore be approved.

In addition to requiring reasonable rates and service, KRS 278.030 provides that a utility may “... establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service[,]” as well as “employ in the conduct of its business suitable and reasonable classifications of its service, patrons and rates.”<sup>3</sup> Likewise, Section 3(4) of the Pole Attachment Regulation permits an approved pole attachment tariff to include any terms

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<sup>1</sup> See Order at 1 (Ky. P.S.C. March 30, 2022).

<sup>2</sup> The Commission’s September 23, 2022 order establishing this briefing schedule did not specify any issues that briefs should address. Consequently, the Kentucky Electric Cooperatives respectfully reserve the right to respond to any issues raised by other parties submitting an initial brief in this matter. See also the July 18, 2022 Joint Statement of Position on behalf of the Rural Electric Cooperative Corporations (requesting that “[i]f ... the Commission determines that briefing would be beneficial to its consideration of this matter, the RECCs respectfully request that the Commission ... specify which limited issues it believes should be addressed...”).

<sup>3</sup> See KRS 278.030(2) and (3).

that are fair, just, and reasonable if they are consistent with the requirements of the Pole Attachment Regulation and KRS Chapter 278.<sup>4</sup>

As the long-term stewards of their electric system assets, the Kentucky Electric Cooperatives' proposed tariffs included the reasonable tools necessary to support safe, fair, and workable practices with respect to third-party attachers. Recognizing their responsibility to demonstrate the reasonableness of their proposed rules and conditions of service, the Kentucky Electric Cooperatives have utilized this proceeding as an opportunity to discuss in detail (and defend as necessary) each item in their proposed tariffs which drew the focus of either Commission Staff or an intervenor. Absolutely, the impetus of certain portions of the proposed tariffs is to ensure retail electric cooperative ratepayers avoid costs they did not cause and should not bear, but chiefly the tariff design is motivated by concerns of system reliability and safety. As the Commission has recognized in the specific context of pole attachments, "[t]he delivery of safe service is synonymous with 'adequate' and 'reasonable' service."<sup>5</sup> The Kentucky Electric Cooperatives propose reasonable tariff terms that, unless unreasonably applied (which, despite the contentions of certain intervenors, cannot and should not be presumed), will successfully allow reasonable access to poles without jeopardizing the integrity of cooperative infrastructure, cooperative members, or the cooperative itself.

While this proceeding was established to investigate the reasonableness of proposed tariffs governing access to utility poles, it no-doubt directly impacts the primary retail electric utility service the Kentucky Electric Cooperatives exist to provide. As the Commission has observed,

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<sup>4</sup> 807 KAR 5:015, Section 3(4) (providing, as examples, terms related to "limitations on liability, indemnification and insurance requirements, and restrictions on access to utility poles for reasons of lack of capacity, safety, reliability, or generally applicable engineering standards").

<sup>5</sup> See Case No. 93-044, *In the Matter of: Jackson Purchase Electric Cooperative Corporation, Inc.; Alleged Failure to Comply with Commission Regulations*, Order at 6 (Ky. P.S.C. Aug. 14, 1996)

“[a] utility pole attachment's operation and maintenance is inseparable from that of its supporting utility pole. If a pole attachment is not operated and maintained in accordance with the NESC, then neither is the utility pole to which it is attached. A pole attachment's non-compliance poses a safety risk not only to itself but also to the utility pole, other pole attachments and to the general public....”<sup>6</sup> Based on this same reasoning, each of the Kentucky Electric Cooperatives has developed a pole attachment framework that appropriately balances the interests of broadband providers and other attachers with the cooperatives’ enduring obligation to ensure the provision of safe, reliable, and low-cost service to their members.

The resulting tariffs represent the culmination of several hundred hours of considered effort by dedicated professionals from cooperatives across the Commonwealth, and they will permit adequate, efficient, and reasonable service (at fair, just, and reasonable rates) in connection with third-party access to electric cooperative poles. Consequently, the Kentucky Electric Cooperatives respectfully request that the Commission approve their proposed tariffs.

Respectfully submitted,

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<sup>6</sup> *Id.*, Order at 9-10 (Ky. P.S.C. Aug. 14, 1996).

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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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