

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

*In the Matter of:*

<b>ELECTRONIC INVESTIGATION )</b>	<b>TFS 2024-00367</b>
<b>OF POLE ATTACHMENTS )</b>	<b>CASE NO. 2023-00416</b>
<b>)</b>	

**RESPONSE OF KENTUCKY’S ELECTRIC COOPERATIVES  
IN OPPOSITION TO KBCA’S REQUEST TO SUSPEND  
THE REVISED POLE ATTACHMENT TARIFFS**

Kentucky’s electric cooperatives (the “Cooperatives”),<sup>1</sup> by counsel and in response to the Request to Suspend the Revised Pole Attachment Tariffs filed by the Kentucky Broadband and Cable Association (“KBCA”) on August 23, 2024 (the “Request”), respectfully oppose the KBCA’s Request.<sup>2</sup> In support of their response, Kentucky’s electric cooperatives state as follows.

**I. Clark Energy’s Tariff Does Not Require Attachers To Submit Pole Loading Analyses.**

KBCA claims that Clark Energy Cooperative, Inc.’s (“Clark Energy”) Pole Attachment Tariff (“Tariff”) requires attachers to submit pole loading analyses in violation of the Pole Attachment Regulation (the “Regulation”). KBCA misreads Clark Energy’s Tariff.

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<sup>1</sup> The following electric cooperatives are jurisdictional utilities that were made party to this case by the Order: Big Rivers Electric Corporation; Big Sandy RECC; Blue Grass Energy Cooperative Corporation; Clark Energy Cooperative, Inc.; Cumberland Valley Electric, Inc.; East Kentucky Power Cooperative, Inc.; Farmers RECC; Fleming-Mason Energy Cooperative; Grayson RECC; Inter-County Energy Cooperative Corporation; Jackson Energy Cooperative Corporation; Jackson Purchase Energy Corporation; Kenergy Corporation; Licking Valley RECC; Meade County RECC; Nolin RECC; Owen Electric Cooperative; Salt River Electric Cooperative Corporation; Shelby Energy Cooperative, Inc.; South Kentucky RECC; and Taylor County RECC. Although this filing speaks on behalf of the group’s common interests, each cooperative reserves the right to also address issues on an individual basis throughout this proceeding.

<sup>2</sup> KBCA requested suspension of the following Cooperatives’ Pole Attachment Tariffs: Big Rivers Electric Corporation; Big Sandy RECC; Blue Grass Energy Cooperative Corporation; Clark Energy Cooperative, Inc.; Cumberland Valley Electric, Inc.; Farmers RECC; Fleming-Mason Energy Cooperative; Grayson RECC; Inter-County Energy Cooperative Corporation; Jackson Energy Cooperative Corporation; Jackson Purchase Energy Corporation; Kenergy Corporation; Meade County RECC; Nolin RECC; Owen Electric Cooperative; Salt River Electric Cooperative Corporation; Shelby Energy Cooperative, Inc.; South Kentucky RECC; and Taylor County RECC.

Section 4(2)(a)5 of the Regulation prohibits pole owners from requiring attachers to submit pole loading analyses with pole attachment applications. “A utility shall not require a new attacher to submit a survey or pole loading analysis as a filing requirement for an application.”<sup>3</sup> In the event of a conflict between the Regulation and the Tariff (of which there is none in this case), the Regulation governs.<sup>4</sup> The Tariff expressly recognizes this order of authority, providing that “This Schedule includes the Cooperative’s rates, terms, and conditions governing attachments to Cooperative’s Poles. It is intended to be (and should be interpreted) consistent with the requirements of 807 KAR 5:015 (the “Pole Attachment Regulation”) and KRS Chapter 278.”<sup>5</sup>

KBCA claims that Section D.2. of Appendix B to the Tariff requires attachers to submit pole loading analyses with their applications. It does not. Appendix B – Specifications for Attachments – provides the engineering and construction practices for attachments. Pursuant to Section D.1. of Appendix B, either the attacher or the Cooperative, at the attacher’s option, may perform the engineering.

Licensee's Attachment Permit application must be signed and sealed by a professional engineer, registered in the State of Kentucky, certifying that Licensee's aerial cable design fully complies with the NESC and Cooperative's Construction Standards and any other applicable federal, state or local codes and/or requirements, or Licensee will pay Cooperative for actual costs for necessary engineering and post-construction inspection and to ensure Licensee's design fully complies with the NESC and Electric Utility's Construction Standards and any other applicable federal, state or local codes and/or requirements.<sup>6</sup>

Pursuant to this plain language of the Tariff, attachers may, at their option, elect to: (i) perform

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<sup>3</sup> 807 KAR 5:015 § 4(2)(a)5.

<sup>4</sup> See, generally, *In the matter of: Electronic Investigation of the Proposed Pole Attachment Tariffs of Investor Owned Electric Utilities*, Case No. 2022-00105, Order, 8-9 (Ky. PSC Dec. 28, 2022).

<sup>5</sup> Clark Energy Cooperative, Inc., KY P.S.C. Tariff No. 2, Schedule PA – Pole Attachments, First Revised Page No. 109, Article I (emphasis omitted).

<sup>6</sup> *Id.* at ¶ D.1 (emphasis added).

their own engineering; or (ii) pay Clark Energy to perform the engineering. The Tariff does not require attachers to perform the engineering.

Section D.2. provides that the engineering referenced in Section D.1. must include confirmation “that the design is in accordance with pole strength requirements of the NESC, taking into account the effects of Cooperative’s facilities and other Attaching Entities’ facilities that exist on the poles without regard to the condition of the existing facilities.”<sup>7</sup> Clark Energy’s inclusion of the phrase “pole loading analysis” in Section D.2. merely specifies the means by which the party performing the engineering confirms that the design meets the pole strength requirements of the NESC. On its face, this language does not require that the analysis be performed by the attacher, nor can it reasonably be interpreted to do so given the Tariff’s express statement that the Tariff should be interpreted consistent with the Pole Attachment Regulation, as well as the Regulation’s prohibition against requiring attachers to conduct pole loading analyses.

In summary, when read appropriately in concert with Section D.1., Section D.2. provides that the entity performing the engineering shall be responsible for ensuring that the design complies with NESC pole strength requirements. The Tariff does not require attachers to submit pole loading analyses, does not violate the Regulation, and should not be suspended.

## **II. “Expected Make-Ready” Is Not a Survey or Pole Loading Analysis.**

KBCA also objects to language in the Cooperatives’ pole attachment tariffs (“Tariffs”) that requires attachers to include basic information about anticipated pole attachment requests when they provide the required ninety-day notice of high-volume requests. Specifically, KBCA objects to the phrase “expected Make-ready,” claiming that it somehow violates the prohibition

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<sup>7</sup> *Id.* at Appendix B, Original Page No. 118.33, ¶ D.2.

against requiring attachers to submit surveys or pole loading analyses with applications. It does not. The Tariffs merely provide that attachers share information about “expected Make-ready,” along with the location and number of poles, when they provide advance notice of high-volume requests.

The Regulation provides that “[a] utility shall not require a new attacher to submit a survey or pole loading analysis as a filing requirement for an application.”<sup>8</sup> KBCA does not allege that the Cooperatives are requiring surveys or pole loading analyses, and KBCA has (since its filing) confirmed that it does not believe any have sought to do so. Rather, KBCA apparently objects to providing information regarding “expected Make-ready” when it provides advance notice of an expected high-volume request.

The Tariffs provide:

If a person or entity expects to submit an Application (or series of Applications) seeking to attach to more than zero and seventy-five hundredths percent (0.75%) of Cooperative’s Poles in Kentucky (or to more than 500 Poles, whichever is less), then as soon as reasonably practicable (and in no event less than ninety (90) days before submission of such Application(s)), the person or entity shall provide written notification to Cooperative describing the details of the expected Application, including location and number of Poles to be impacted, relevant timelines, expected Make-ready, and similar information.<sup>9</sup>

As is evident from this plain language, the Tariffs do not require attachers to provide surveys or pole loading analyses in violation of the Regulation. The Tariffs merely require attachers to provide information about forthcoming high-volume requests, to enable the Cooperatives to plan for the allocation of limited resources in preparation for the requests.

Because attachers know the general locations and number of poles in the expected

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<sup>8</sup> 807 KAR 5:015 § 4(2)(a)5.

<sup>9</sup> Big Sandy Rural Electric Cooperative Corporation, KY P.S.C. Tariff No. 10, Schedule PA – Pole Attachments, Revised Page No. 8, ¶3. The Cooperatives identified in KBCA’s Request have similar language in their Tariffs.

requests, they may also have some expectations regarding the make-ready that may need to be performed. Instructing attachers to inform pole owners about “expected Make-ready” when providing notice of high-volume requests is a prudent practice, particularly given the volume of requests forecast by KBCA and the shortage of qualified workers to perform make-ready, both of which are well documented in this proceeding. Quite simply, if attachers have an expectation regarding make-ready that may be needed for part of a high-volume request, they should identify that expectation. That does not require a survey or pole-loading analysis, and the attachers are not required to provide them.

In summary, requiring attachers to share their expectations regarding make-ready when providing advance notice of high-volume requests gives the pole owners valuable information that will facilitate planning efforts, and it does not violate the prohibition against requiring surveys and pole loading analyses. The Tariffs should therefore not be suspended.

### **III. Conclusion.**

The Cooperatives’ Tariffs do not violate the Regulation and should not be suspended. The Cooperatives respectfully request that the Commission approve the Tariffs as of the effective dates stated therein.

This the 28<sup>th</sup> day of August, 2024.

Respectfully submitted,

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**Certification**

I hereby certify that a copy of this filing 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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