

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

In the Matter of:

ELECTRONIC INVESTIGATION)	
OF POLE ATTACHMENTS)	CASE NO. 2023-00416
)	

**KENTUCKY ELECTRIC COOPERATIVES' SUPPLEMENTAL COMMENTS
TO THE PROPOSED AMENDMENTS TO 807 KAR 5:015E**

The Kentucky Electric Cooperatives (the “Cooperatives”),¹ by counsel, respectfully submit the following supplemental comments to the proposed amendments to 807 KAR 5:015E (the “Regulation”) filed in this matter by various stakeholders on December 9-10, 2024. In support of their supplemental comments, the Cooperatives state as follows.

The Cooperatives believe that, to the extent any amendments to the existing Regulation are needed, those amendments should be surgical in nature and aimed at actual challenges being experienced “on the ground.” It is premature to implement wholesale substantive changes to the Regulation, and if there is one central fact that has shone through the recent series of informal conferences, it is that the volume of pole attachment activity has not yet tested the Regulation in any meaningful way. This fact was acknowledged by the parties at the November 1, 2024, informal conference and confirmed by subsequent data updates. The Commission and the stakeholders will certainly have ongoing opportunities to gather more experience with the

¹ The following electric cooperatives are jurisdictional utilities that were made party to this case by 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.

Regulation as attacher deployment activity improves in the coming years; until then, however, the prudent and efficient approach would be to entertain only modest revisions rooted in real-world challenges that are actually being experienced at this time: issues involving payment delinquencies and workflow smoothing.

I. The Cooperatives' Proposals.

A. Attacher Payment Delinquencies Must Be Addressed, and the Cooperatives Cannot Continue to Subsidize Broadband Providers.

As the Commission has been made aware, attachers continue to struggle with basic bill payment issues. This issue has been discussed at some length in multiple informal conferences, and the Cooperatives are grateful for the Commission's prior recognition of this concern. However, the current Regulation does not appear to have sent a sufficiently clear message that attachers must timely pay for the services needed to safely and responsibly facilitate an attachment request.

The Cooperatives want broadband in their communities, and they have gone to great lengths to work closely with attacher field personnel and prepare for the attachers' promises of broadband deployment. Whether it is for the conduct of pre-construction surveys; the provision of engineering services associated with pole-loading analyses, make-ready work, or safety inspections following attachment; or pre-purchasing materials and retaining construction crews in advance in order to be prepared to meet strict make-ready timelines, the Cooperatives are being asked to incur significant costs to help facilitate timely and responsible broadband deployment. Those costs must be timely reimbursed. As the Cooperatives have repeatedly stated during the course of these proceedings, they are collectively owed millions of dollars in outstanding payments due from the attachers. Not only is that fundamentally unfair in the most basic sense of any business transaction, it is likewise unfair to the Cooperatives' members, who should not

be forced to cash-flow the attachers' business.

With the billions of federal tax dollars flowing into the Commonwealth to fund broadband deployment, there is simply no excuse for the attachers' failure to timely pay their bills. To be clear, the Cooperatives of course recognize that this basic concept (attachers must pay for services) is neither new nor controversial. Given the actual challenges that attachers seem to be experiencing in meeting this obligation, however, it is clear that the Regulation could be improved by clarifying that attachers must pay for survey costs, engineering fees, and make-ready estimates before a utility is required to commence make-ready work. The Cooperatives therefore urge the Commission to adopt the Cooperatives' proposal to amend Sections 4(4) and (7) a. 1 of the Regulation.

B. Make-Ready Estimates Paid After the Fourteen Day Regulatory Timeframe Should Invoke Good-Faith Negotiation Obligations for the Completion of Make-Ready.

In recognition of the significant workload that is being placed upon the Cooperatives, the Regulation's make-ready timeframe also contemplates a consistent and steady flow of attachments. Under the Regulation's timeframe, attachers have fourteen (14) days to accept or reject make-ready estimates.² Upon acceptance and payment of a make-ready estimate, pole owners then have ninety (90) days to complete make-ready in the power space for requests to attach to up to five hundred (500) poles or 0.75% of a utility's poles in Kentucky.³ The timing is aggressive for the Cooperatives, to be sure, but as long as the workflow input remains reasonably smooth, the Cooperatives believe they are prepared for the challenge.

In practice, however, the workflow input is not smooth. Attachers rarely accept or reject make-ready estimates within the regulatory timeframe. Rather, attachers often hold make-ready

² 807 KAR 5:015E § 4(3)(c).

³ 807 KAR 5:015E § 4(4)(b)2.

estimates well beyond the regulatory timeframe, only to then pay multiple expired estimates at once. This creates a logjam where all of the make-ready work that should have been “smoothed” in to the Cooperatives is backlogged and then released in one large dump. This strains the Cooperatives’ already limited resources, and it significantly impedes the efficient deployment of broadband services.

To address this issue, the Cooperatives proposed a simple solution. Make-ready estimates paid within the regulatory timeframe would not be affected. To the extent make-ready estimates are paid outside the regulatory timeframe, however, the Cooperatives ask the Commission merely to recognize that the timeframes to perform that make-ready will need to be negotiated in good faith between the parties. The Cooperatives have generally had good experiences working with attacher field personnel to solve problems, and they believe this revision to the Regulation will play to that strength, as well as the parties’ shared goals of getting broadband safely and efficiently deployed while avoiding unnecessary disputes. The Cooperatives therefore urge the Commission to adopt the Cooperatives’ proposal to amend Section 4(9)(d) of the Regulation.

II. The Attachers’ Proposals.

A. Service Drops Should Not Be Excluded from the Definition of Attachment.

Windstream’s proposal to exclude service drops from the Regulation’s definition of “attachment” is a direct affront to the safe and efficient deployment of broadband, and the Commission should reject it. The Cooperatives’ guiding principle throughout this proceeding has been to ensure the Commonwealth’s member-owned electric cooperatives remain capable of providing safe, reliable and affordable electric service to their local communities while utilizing existing infrastructure to promote the proliferation of broadband. The application and permitting process is a vital component to that goal because it helps ensure that deployment does not

endanger the grid, utility personnel, or members of the public. As was discussed during the December 13 informal conference and throughout this proceeding, it is imperative that attachers reject an attitude of general indifference to permitting, safety, and reliability concerns when using the facilities of pole owners. Windstream's proposal would undermine the very purpose of requiring attachment applications to ensure sound engineering to support broadband facilities. The Commission should reject it.

Windstream argues that a service drop is lighter than other cables. Yet, it ignores the fact that service drops are not attached in isolation. As Duke Energy Kentucky, Inc. so vividly demonstrated through the photo it shared during the informal conference on December 13th, a single pole could have multiple service drops attached to it. Attaching multiple service drops to even a single pole could cause pole-loading issues, particularly in windy or icy conditions. Multiple service drop attachments can likewise inhibit safe pole access for the pole owner and other attachers. Moreover, even a single service drop attached in the power space is a safety hazard, a scenario the Cooperatives have seen repeatedly.

Service drops are also particularly susceptible to sagging given that they are – as Windstream concedes – typically attached with j-hooks which are known to fail when adverse weather conditions create additional tension or weigh down lines or when changing weather conditions may cause a j-hook to work itself loose. A sagging line with insufficient clearance is a safety issue that places members of the public at serious risk.

Regardless of the nomenclature, a service drop is an attachment to a pole. Utilities must have an opportunity to analyze the potential effects of adding additional attachments to their poles before they are installed to avoid potential safety and reliability issues. Anything beyond a single attachment leading to a service should not be considered a service drop; it should be subject to

permitting review and analysis. The Commission should reject Windstream's proposal.

B. The Notice Period for Overlapping Should Not be Reduced.

The Cooperatives oppose KBCA's proposal to reduce the time a utility has to evaluate a proposed overlap. Under the Regulation, utilities have just thirty days to determine whether "an overlap would create a capacity, safety, reliability, or engineering issue...."⁴ Cutting this time in half from thirty to fifteen days would leave insufficient time for utilities to adequately assess the potential safety issues that could be created by the additional loading caused by overlapping. Moreover, it appeared at the December 13th informal conference that overlapping was not in widespread use, and certainly the Cooperatives are not aware of any actual problems resulting from the current overlapping provisions in the Regulation.⁵ Given the lack of complaints related to overlapping, the Commission should reject KBCA's proposal on this issue.

C. The Time Periods for Utilities to Perform Services Under the Regulation Should Not Be Reduced, and the Special Contract Provision and the Definition of "Pole" Should Not Be Revised.

The Cooperatives also oppose KBCA's remaining proposals, including its sweeping proposals to: (1) reduce the time utilities have to perform at all stages of the pole attachment process by eliminating the 500-pole incremental increases to the regulatory deadlines; (2) make special contracts permissive, rather than required, for applications to attach to in excess of the lesser of three thousand (3000) poles or three percent (3%) of a utility's poles in Kentucky; and (iii) add transmission poles to the definition of "pole."

As stated above, the parties have yet to operate for a meaningful period of time under the

⁴ 807 KAR 5:015E § 3(6)(c).

⁵ It is, of course, conceivable that overlapping has not generally been an issue to date because the broadband deployment motivations behind this Regulation are aimed at areas where the broadband provider does not generally already have facilities on which to overlap. Similarly, it may also be conceivable that overlapping on third-party facilities has not been common because existing facility-owners may not be keen to subsidize their actual or potential competitors.

Regulation. Without the benefit of real experience, there is no factual basis – only conjecture – for KBCA to assert that the 500-pole framework, the special contract provision, and the definition of “pole” require amendment. And in that light, its arguments are nothing more than a reiteration of its national platform and an attempt to reargue issues that the Commission and all parties have spent plentiful time addressing. If the goal is to encourage the actual deployment of broadband, then the parties and the Commission should have the opportunity to evaluate the Regulation and the various deadlines contained therein in the light of actual experience and operation. Only then can potential improvements be effectively evaluated.

Moreover, an atmosphere of constantly shifting regulatory rules only exacerbates the operational challenges facing all the stakeholders. The Cooperatives have been ramping up to operate under the Regulation as amended and refining their processes to work more efficiently with broadband providers. Changing the process now – before the Regulation has been given a reasonable chance to work – would only place yet another obstacle into the parties’ pathways, as they would have to revise their processes and procedures yet again.

For all these reasons, the Commission should reject KBCA’s proposals to alter the Regulation by creating new deadlines, including but not limited to, deadlines for pole owners to (i) perform an initial review of an application; (ii) review a re-submitted application; (iii) conduct a survey and perform a review on the merits; (iv) issue a make-ready estimate; and (v) perform make-ready. The Commission should also reject KBCA’s proposal to make transmission poles subject to the same regulatory deadlines as distribution poles. Performing any work on transmission poles requires a heightened level of scrutiny given the high-voltage lines they carry. Suggesting that transmission poles should be subject to the same strict regulatory deadlines as distribution poles reflects a lack of appreciation for the fundamental differences between the

poles. The Commission's current approach is balanced and appropriate and the KBCA's proposal should be rejected. Finally, the Commission should also reject KBCA's proposal to make special contracts permissive.

III. Conclusion.

Until the parties have had adequate time to operate under the existing Regulation, it is premature to make sweeping, wholesale amendments to the Regulation. Rather, the Commission should entertain only modest revisions that address actual challenges being experienced on the ground, such as payment delinquencies and workflow bottlenecks.

The Cooperatives thank the Commission for its continued attention to the propagation of measures to support statewide broadband access while ensuring electric system safety, reliability, and affordability.

This the 30th day of December, 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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