

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

*In the Matter of:*

**ELECTRONIC INVESTIGATION )  
OF POLE ATTACHMENTS )**

**CASE NO. 2023-00416**

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

Kentucky's electric cooperatives (the "Cooperatives"),<sup>1</sup> by counsel, respectfully submit the following comments on the emergency amendments to 807 KAR 5:015 (the "Pole Attachment Regulation"). The Kentucky Public Service Commission (the "Commission") filed the emergency amendments with the Legislative Research Commission on May 31, 2024, and Commission staff attached the amendments as an Appendix to the Staff Notice filed in the above-referenced case on June 3, 2024. In support of their comments, the Cooperatives state as follows.

**I. Introduction.**

As an initial matter, the Cooperatives recognize the Commission's important role in helping ensure the responsible deployment of broadband to Kentuckians. Just as the delivery of safe, reliable electricity has transformed the Commonwealth's rural areas, deployment of broadband to unserved and underserved Kentuckians promises similar benefits to their lives and livelihoods. Given their collective historical experience in deploying vital services to often-

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<sup>1</sup> 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.

neglected areas of the Commonwealth, the Cooperatives endorse the Legislature’s determination that “access to broadband internet service has become critical for social and economic prosperity because it links the citizens of the Commonwealth to each other and to other parts of the world[.]”<sup>2</sup> Moreover, as the owners of significant portions of the pole infrastructure being utilized to (literally) support new broadband service, the Cooperatives know from experience that safety and reliability must receive equal attention. They appreciate the Commission’s focused engagement with the difficult task of balancing the opportunities and challenges inherent in regulating this process, and they understand that the Commission’s efforts to strike an appropriate balance will be an ongoing process as this endeavor evolves. Through that lens, the Cooperatives offer the following comments on 807 KAR 5:015E.

## **II. Comments.**

### **A. Self-Help for Pole Replacement.**

As discussed in the Cooperatives’ previous comments, pole replacement is one of the most critical and complex types of make-ready work. If conducted haphazardly, it risks significant personal injury or death, as well as otherwise avoidable outages of electric and other services provided by that infrastructure.<sup>3</sup> Given the existence of numerous regulatory timeframes that already exist to ensure pole-owner responsiveness to make-ready needs, and the absence of any evidence that utility-performed pole replacements are impeding broadband deployment, the proposed self-help for pole replacements was a risky solution in search of a problem. The Cooperatives commend the Commission for rejecting the proposal. The Commission’s

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<sup>2</sup> Joint Resolution, 24 RS SJR 175 (Ky. Apr. 4, 2024).

<sup>3</sup> Case No. 2023-00416, *Electronic Investigation of Pole Attachments*, Comments of Kentucky’s Electric Cooperatives, 1-2 (Ky. PSC May 21, 2024).

recognition that pole replacement must be conducted by pole-owners is exactly the sort of commonsense regulation that will ensure that the expansion of broadband proceeds securely, effectively, and without endangering or interfering with the lives of Kentuckians.<sup>4</sup>

**B. Timeframes and Contractor Availability.**

Despite an ongoing contractor-shortage, the Pole Attachment Regulation includes rigid frameworks for completing make-ready.<sup>5</sup> Based on their experiences procuring contractors to perform make-ready work in their communities, the Cooperatives believe that the Commission's use of inflexible timeframes for make-ready requirements – rather than continuing to rely on commonsense good cause provisions – will only compound the problems posed by this national worker shortage. Given the contractor shortage and the inconsistent rate of pole-attachment applications, the Cooperatives have struggled to obtain make-ready contractors when application volume is high. In order to hedge against contractor shortages, the Cooperatives often proactively retain contractors in anticipation of pending pole-attachment applications. However, when those applications fail to materialize during the expected time frame, the Cooperatives are frequently faced with a dilemma: retain contractors before any concrete projects have materialized and incur unnecessary costs for their members, or release them and risk not being able to retain them again for months due to worker shortages.

The month of July 2024 is a perfect example of the costly choices the Cooperatives must make to keep the application process moving in an orderly fashion. As has been stated, the Cooperatives continue to undertake substantial efforts to staff-up in anticipation of the high volume of attachment requests Charter and others have promised. However, the Cooperatives

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<sup>4</sup> See Case No. 2023-00416, *Electronic Investigation of Pole Attachments*, Staff Notice at Appendix 23:4 (Ky. PSC June 3, 2024).

<sup>5</sup> *Id.* at 15:15.

have not seen an increase in applications in July, leaving the Cooperatives paying contractors to standby without adequate work to perform.

At some point, this trickle of applications will likely be replaced by a deluge that will stretch the Cooperatives' staff and resources, frustrating pole owners and attachers alike. This erratic workflow is not helpful to the Cooperatives or attachers. Despite this, the Cooperatives have worked diligently to meet the required timelines and will continue to do so. However, given that the Pole Attachment Regulation does not contain any safeguards against contractor shortages and provides few provisions to smooth the pace of pole attachment applications, the Cooperatives anticipate that the Commission will likely need to refine the timelines and workflow procedures in future amendments to the Pole Attachment Regulation.

### **C. Application Reprioritization.**

Other provisions in the emergency amendments also exacerbate the challenges the Cooperatives face. This is especially true of the application reprioritization provisions.<sup>6</sup> As noted above, limited contractor availability and coordination of appropriate staffing for a given pole attachment application requires careful planning and execution on the part of the Cooperatives. Giving attachers the ability to reprioritize their applications at their discretion – which can just as easily be done internally by attachers before submitting applications to pole owners – only complicates the challenge of obtaining the right number of contractors at the right times.<sup>7</sup> Juggling these prioritized and deprioritized applications – as well as the varying regulatory timelines each application carries with it – creates additional administrative work that increases costs, bogs down the application process, and adds unnecessary friction to broadband deployment

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<sup>6</sup> *Id.* at 12:5-9.

<sup>7</sup> *Id.*

efforts. Given the large volume of requests that broadband providers have alleged are coming, it is impossible at this time to know the true extent of the expense and complication these reprioritizations may cause. As those facts develop, the Commission may need to re-evaluate the reasonableness of requiring pole-owners to adjust to these administrative challenges, rather than simply requiring pole-attachers to determine their preferred application order internally.

**D. Application Processing Thresholds and Timelines.**

A less complex but equally fundamental issue in the emergency amendments relates to the drastic increase in the number of poles permitted in standard requests from 300 to 500 poles, and in larger orders from 1000 to 3000 poles.<sup>8</sup> Given that many of the timeframes in the Pole Attachment Regulation remain unchanged, this change will place potentially unworkable burdens on the Cooperatives to process applications at an unsustainable pace. Moreover, given the large volume of requests that the Cooperatives and other pole owners may face in the future, nearly doubling the number of poles in certain types of requests may simply overwhelm the administrative and practical abilities of the Cooperatives to respond in a timely and effective manner. These timeframes may need to be refined for smaller entities like the Cooperatives once there is actual data available from which to draw conclusions about reasonable processing intervals.

Similarly, while the Cooperatives appreciate some of the incremental time allowances that the regulation provides, the revisions do not appear to provide the type of flexibility that the Commission may have intended. Given that additional time is granted for processing applications based on every “full 500-pole increment,” the incremental time allowances the Pole Attachment

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<sup>8</sup> *Id.* at 18:19-22; 19:1-7.

Regulation includes will not adequately offset these pressures.<sup>9</sup> Rather, the amended regulation should have recognized that the baseline increment represents the maximum capacity for the associated timeframe, and each full or partial increment above that (in groups of 500) deserves an increase in allowed processing time. While the Commission’s attempt to balance speedy deployment and flexible timeframes is commendable, this iteration of the Pole Attachment Regulation does not embody a realistic goal, and its aspirational targets may require further refinement as the attachments begin to materialize.

**E. Timely Payment Considerations.**

Finally, the Pole Attachment Regulation does not provide adequate enforcement of timely payment. As previously discussed, the staggering amount of outstanding payments due to pole owners from broadband providers looms over this entire proceeding.<sup>10</sup> For example, Inter-County Energy – which has been especially flexible and worked diligently to complete make-ready work ahead of schedule – is still awaiting nearly \$1.4 million in overdue payments. These payment delays create an unnecessary financial burden for the Cooperatives and their members, and they are unsustainable.

Unless the Commission develops protocols which ensure that pole owners receive timely payment for their work to prepare poles for attachments, the cost of the Commonwealth’s efforts to facilitate broadband deployment will disproportionately fall on entities like the Cooperatives and their members, who should not be required to subsidize these broadband service providers. Given the billions of dollars in subsidies that have been directly authorized for the broadband

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<sup>9</sup> *Id.* at 12:3; 19:1, 4 (emphasis added). Use of the term “full 500-pole increment” suggests that, for example, a 999 pole application would not receive additional time, whereas a 1000 pole application would receive additional time.

<sup>10</sup> *See, e.g.* Case No. 2023-00416, *Electronic Investigation of Pole Attachments*, Summary Update of Pole Attachment Data, Letter at 2-3 (Ky. PSC June 3, 2024).

providers, there is simply no good reason that their payment delinquencies to pole owners should be tolerated, especially when it is rural Kentucky who is presently being forced to shoulder that burden. In short, the Cooperatives believe that failing to institute provisions that force these providers to timely pay their fair share of the costs is a missed opportunity that must be addressed in future refinements of the regulations.

### **III. Conclusion.**

In short, the Cooperatives believe that, though the Pole Attachment Regulation incorporates thoughtful provisions to ensure the safe and responsible deployment of broadband throughout the Commonwealth, the emergency amendments should necessarily be treated as a first step towards a regulation that evolves alongside a body of factual experiences as attachment requests begin to approach the levels they are alleged to reach. The Cooperatives are not simply utility providers in their communities; they are members of these communities. As such, they look forward to continuing to play a supportive role in the safe and responsible deployment of broadband to their members.

This the 31st day of July, 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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