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Via Electronic Filing System

Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, KY 40602

RE: *In the Matter of Electronic Investigation of Pole Attachments, Case No. 2023-00416, Kentucky's Electric Cooperatives' Pole Attachment Request Data*

Dear Commission:

Kentucky's electric cooperatives (the "Cooperatives")¹ thank the Kentucky Public Service Commission (the "Commission") for its ongoing efforts to support broadband access while ensuring electric system safety, reliability, and affordability. The Cooperatives believe their proposals for emergency amendments to 807 KAR 5:015 would serve to improve and enhance the pole attachment process. In support of those proposals, the Cooperatives provide the enclosed data regarding pole attachment requests submitted to the Cooperatives.

As an initial matter, the term "backlog" as used by Charter is misleading. As Charter stated during the informal conference on Friday, April 26, 2024, "backlog" means applications submitted with a survey. It does not mean applications that have exceeded the regulatory timeframes for processing, or even applications that have satisfied the minimum threshold requirements for completeness. Therefore, as the parties continue to discuss Charter's "backlog" in the course of this proceeding, it is important to bear in mind that backlog is synonymous with submittal, not blockage or delay.

On May 2, 2024, the Kentucky Broadband and Cable Association ("KBCA") submitted data that purports to show the volume of Charter Communications' ("Charter") backlog of pole attachment requests in Kentucky, including requests submitted to the Cooperatives. The data

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; Kenenergy 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.

failed to show, however, whether the requests are awaiting action by Charter or by the applicable utility. The Cooperatives now seek to clarify for the Commission the status of pole attachment requests submitted by Charter and other attachers to the Cooperatives.

Exhibit 1 provides a snapshot of the Cooperatives' pole attachment data as of May 3, 2024.² Columns L and M, pasted below, show that of the 25,553 pole attachment requests submitted to the Cooperatives, 17,559 or 69% are currently with the attachers awaiting action.

	With Pole Owner	With Attacher
	Total	Total
Blue Grass	2477	4949
Inter-County	393	3990
Owen	723	1754
Meade-County	271	374
Fleming-Mason	2456	6287
South Kentucky	50	32
Shelby	0	0
Taylor County	7	5
Clark	1577	208
Total	7954	17599

Of the 17,559 pole attachment requests awaiting action by the attachers, 11,988 are ready for attachment, 5170 are awaiting make-ready payment, and 441 are either duplicates, cancelled or on hold by the attacher.³ The 7,954 pole attachment requests with the Cooperatives have all been reviewed for completeness and are being processed diligently and in cooperation with attachers.⁴ It is also worth noting that in the post-attachment stage, the Cooperatives have found numerous attachments that require correction. There are currently 4196 pole attachments that require correction by the attachers following post-construction inspection.

One issue that should not get lost is that the Cooperatives are collectively owed millions of dollars in outstanding payments by the attachers. Some of the Cooperatives have purchased materials in advance of receiving payment to insure quicker completion of the make-ready work. Others have hired additional crews in anticipation of make-ready. The attachers' failure to timely pay for pole attachment costs has caused at least some of the Cooperatives to have to draw on cash reserves while awaiting payment. It is imperative that the emergency amendments to the pole

² Exhibit 1 includes data from Blue Grass Energy Cooperative Corporation, Inter-County Energy Cooperative Corporation, Owen Electric Cooperative, Meade County RECC, Fleming-Mason Energy Cooperative, South Kentucky RECC, Shelby Energy Cooperative, Inc., Taylor County RECC, and Clark Energy Cooperative, Inc. In addition to the data provided in Exhibit 1, Salt River Electric has received 6,738 attachment requests from Charter, 4,282 of which have been completed. Salt River is working diligently and cooperatively with Charter to coordinate the remaining 2,456 requests and shifting its design and construction schedules as needed to match Charter's priorities for areas of attachment.

³ See attached Exhibit 1.

⁴ *Id.*

attachment regulation address the chronic failure of attachers to make timely payments to the utilities.

Moreover, Charter's suggestion during the last informal conference that delays in making payments could be remedied if all the Cooperatives accepted ACH payments is simply incorrect. The Cooperatives already accept ACH payments or are open to doing so with the submission of sufficient supporting documentation.⁵ The Cooperatives have found, however, that Charter is not always willing to pay by ACH. One of the Cooperatives recently requested Charter to pay by ACH and Charter stated it preferred to continue paying by check. This is just one example of the apparent disconnect between Charter leadership and Charter's personnel on the ground.

These discrepancies in Charter's preferred method of payment, and the financial burden placed on the Cooperatives while awaiting payment, could be avoided if the Commission accepts the Cooperatives' proposal to give utilities the option to require new attachers to create a prepaid fund from which the utility could draw for the payment of pole attachment charges. As reflected by the data in Exhibit 1, a prepaid fund could eliminate one of the primary causes for delay in the pole attachment process.⁶

Finally, as is evident from the discussions during the informal conferences in this matter, pole attachment requests, particularly large order pole attachment requests, require significant levels of cooperation between attachers and utilities. The Cooperatives' proposal that utilities and attachers negotiate in good faith all requests for attachment larger than the lesser of 300 poles or 0.5 percent of the utility's poles in Kentucky would serve to increase communication and cooperation between the parties and facilitate greater flexibility to address high priority attachments.

The Cooperatives thank the Commission for its consideration of this additional information related to their proposed amendments to the pole attachment regulation, and they look forward to furthering this process in a manner that will continue to support statewide broadband access while ensuring electric system safety, reliability, and affordability.

Sincerely yours,

DINSMORE & SHOHL LLP

/s/ Edward T. Depp

Edward T. Depp

Attachment

(See next page)

⁵ As some of the utilities noted during the last informal conference, ACH payments received without reference to invoice numbers causes delays while the utility works to reconcile the payment with the corresponding invoices.

⁶ *Id.*

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.

/s/ Edward T. Depp

Counsel to Kentucky's Electric Cooperatives