

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

In the Matter of:

ELECTRONIC INVESTIGATION) OF POLE ATTACHMENTS))	CASE NO. 2023-00416
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**KENTUCKY’S ELECTRIC COOPERATIVES
PROPOSED AMENDMENTS TO 807 KAR 5:015E**

Kentucky’s electric cooperatives (the “Cooperatives”),¹ by counsel and pursuant to the Commission’s Order entered in this matter on November 18, 2024, respectfully propose the following amendments to 807 KAR 5:015E, the emergency-amended Pole Attachment Regulation (the “Pole Attachment Regulation”).² In support of their proposed amendments, the Cooperatives state as follows.

The Cooperatives’ proposed amendments address two issues that the Cooperatives have raised throughout the course of this proceeding: (i) the failure of broadband providers to timely pay for work performed, including survey costs; and (ii) the broadband providers’ practice of holding make-ready estimates and paying several at once triggering the strict make-ready deadlines for multiple applications simultaneously.³

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; Kenegy 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.

² A redlined version of the regulation is attached hereto and incorporated herein by reference as Exhibit A.

³ In addition to these substantive amendments, Exhibit A includes the addition of “and” at Pg. 10, Line 12. This

I. Broadband Providers Fail to Timely Pay for Work Performed Including Survey Costs.

As previously explained by the Cooperatives, a staggering amount of outstanding payments past-due to pole owners from broadband providers continues to loom over this proceeding.⁴ The cost of the Commonwealth's efforts to facilitate broadband deployment have been disproportionately borne by entities like the Cooperatives and their members, who should not be required to subsidize broadband providers. Given the billions of dollars in subsidies that have been directly authorized for the broadband providers, there is simply no good reason that their ongoing payment delinquencies to pole owners should be tolerated, especially when it is rural Kentucky who is being forced to shoulder that burden.

History has shown that the broadband providers often struggle with timely payment for survey costs and other work requested from the Cooperatives. For these reasons, the Cooperatives propose the following revisions to Sections 4 (4) and (7) a. 1. of the Pole Attachment Regulation to more explicitly require broadband providers to pay survey costs and the make-ready estimate before pole owners are required to commence make-ready. Revisions are reflected in redline format.

- Pg. 13, Lines 4-5:

(4) Make-ready. Upon receipt of payment for survey costs invoiced or otherwise owed to-date pursuant to the utility's tariff and the make-ready estimate specified

addition is not intended to change the substantive meaning of Section 4 (2) a. 9., but rather to correct what appears to be a minor typo.

⁴ 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).

in subsection (3)(d) of this section, a utility shall, as soon as practical but in no case more than seven (7) days, notify all known entities with existing attachments in writing that could be affected by the make-ready.

- Pg. 15, Lines 6-7:

(7) Final Invoice.

(a) 1. A detailed, itemized final invoice of the actual survey charges incurred if the final survey costs for an application differ from ~~any estimate~~ the amount previously paid ~~for the survey work or if no estimate was previously paid;~~

II. Broadband Providers Often Hold Make-Ready Estimate Payments, Paying Large Quantities at Once, Thereby Triggering Strict Make-Ready Deadlines for Multiple Applications Simultaneously.

The broadband providers' frequent practice of holding make-ready estimates and then paying large quantities at once (and often beyond the tariff-prescribed timeline) triggers the regulation's strict make-ready deadlines simultaneously for multiple applications that were previously submitted over the course of weeks and months. This practice unreasonably strains the resources of pole owners, making it extremely difficult to complete make-ready within the regulatory deadlines, to the frustration of pole owners and attachers alike. When broadband providers engage in this practice, the strict deadlines to perform make-ready should not apply; rather, the parties should negotiate in good faith to smooth the workflow for attachment applications that are otherwise beyond the applicable payment timeframe. In these circumstances, the attacher should negotiate with the pole owner in good faith to prioritize specific make-ready work that is needed, as well as reasonable timelines to perform it. Consequently, the Cooperatives propose to add the following new section (d) to Section 4 (9) –

Deviations to Make-Ready Timeline. Revisions are reflected in redline format.

- Pg. 18 Line 22 – Pg. 19 Line 2:

(d) In the event a utility receives payment from a new attacher for a make-ready estimate more than fourteen (14) days after the utility presented the estimate to the new attacher, the timelines applicable to the subject attachments pursuant to this Section 4 shall no longer apply, and the utility and new attacher shall negotiate in good faith reasonable timelines for completion of make-ready.

III. Conclusion.

The Cooperatives thank the Commission for its consideration of 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.

This the 9th 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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