

INTRA-AGENCY MEMORANDUM
KENTUCKY PUBLIC SERVICE COMMISSION

TO: Main Case File 2012-00544

FROM: J.E.B. Pinney, Staff Attorney 

DATE: June 18, 2013

SUBJECT: Case No. 2012-00544: Petition of the Kentucky Cable Telecommunications Association for a Declaratory Order that the Commission Has Jurisdiction to Regulate the Pole Attachment Rates, Terms, and Conditions of Cooperatives That Purchase Power from the Tennessee Valley Authority

The attached two documents are being placed in the main case file for the above captioned case.

1. Letter from Jeff R. Derouen, Executive Director, Public Service Commission to Cynthia L. Herron, Director Retail Regulatory Affairs, Tennessee Valley Authority (April 29, 2013)
2. Letter from Cynthia L. Herron, Director Retail Regulatory Affairs, Tennessee Valley Authority, to Jeff R. Derouen, Executive Director, Public Service Commission (May 16, 2013).

Any questions regarding these documents may be referred to J.E.B. Pinney, Staff Attorney at (502) 782-2587 or at jeb.pinney@ky.gov.



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April 29, 2013

Cynthia L. Herron
Director
Retail Regulatory Affairs
Tennessee Valley Authority
PO Box 292409
OCP 1F
Nashville, Tennessee 37229-2409

RE: TVA Statement of Regulatory Authority

Dear Ms. Herron:

On December 3, 2012, the Kentucky Cable Telecommunications Association ("KCTA") filed with the Public Service Commission ("Commission") a petition for a Declaratory Order¹ requesting that the Commission affirm its jurisdiction to regulate the pole attachment rates, terms, and conditions of the five electric cooperatives in Kentucky that purchase electricity from the Tennessee Valley Authority ("TVA Cooperatives")². On January 17, 2013, the Commission issued an order establishing the case to "review the extent, if any, of our jurisdiction to regulate the pole attachment rates of the TVA Cooperatives."

On February 15, 2013, the TVA Cooperatives responded to the Commission's order. In its response, the TVA Cooperatives requested the Commission to "enter an Order affirming that it lacks the jurisdiction to regulate the pole attachment rates of cooperatives that purchase electricity from the Tennessee Valley Authority." In support of their motion, the TVA Cooperatives cited five identical letters from you to the TVA

¹ Case No. 2012-00544, *Petition of the Kentucky Cable Telecommunications Association for a Declaratory Order that the Commission Has Jurisdiction to Regulate the Pole Attachment Rates, Terms, and Conditions of Cooperatives that Purchase Electricity from the Tennessee Valley Authority*

² These cooperatives are: Hickman-Fulton Counties Rural Electric Cooperative Corporation, Pennyrite Rural Electric Cooperative Cooperation, Tri-County Electric Membership Corporation, Warren Rural Electric Cooperative Corporation, and West Kentucky Rural Electric Cooperative Corporation.

Cynthia L. Herron
April 29, 2013
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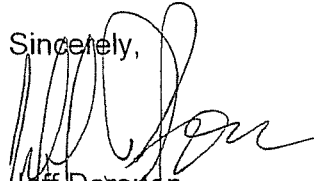
Cooperatives. In those letters you state that the TVA is "the exclusive retail rate regulator for the distributors of TVA power," and describe the TVA's relationship with the distributors. Additionally, the letters address pole attachment rental fees, but you state that "... TVA requires that a distributor recover its full cost associated with the pole attachment and does not place any unfair burdens on the electric ratepayers by ensuring full cost recovery." The TVA Cooperatives contend that your letters indicate the TVA agrees that the TVA has exclusive control over pole attachment regulation.

On March 1, 2013, KCTA filed a reply to the TVA Cooperatives' Response. In its reply, the KCTA argued that the TVA's letters are "neither an assertion of preemptive jurisdiction by the TVA or an objection to this Commission regulating the Coops' pole attachment rates ..."

The Commission would appreciate clarification from you as to whether or not the TVA is asserting that the TVA has exclusive jurisdiction to regulate the TVA Cooperatives' pole attachments rates, and if it objects to the Commission regulating the TVA Cooperatives' pole attachment rates. Additionally, the Commission would appreciate it if you would state whether or not you have the authority to speak on behalf of the TVA regarding this matter or, if you do not, whom the Commission may contact.

Please respond within 20 days of the receipt of this letter. Questions concerning this letter should be directed to J.E.B. Pinney, Staff Attorney, at (502) 782-2587.

Sincerely,



Jeff Derouen
Executive Director

AAC/kar



Tennessee Valley Authority, PO Box 292409, OCP 1F, Nashville, Tennessee 37229-2409

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MAY 20 2013

PUBLIC SERVICE
COMMISSION

May 16, 2013

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
Post Office Box 615
211 Sower Blvd.
Frankfort, KY 40602-0615

Dear Mr. Derouen:

This is in response to your April 29 letter to me regarding TVA's Statement of Regulatory Authority of the five Kentucky cooperatives served by TVA. I am TVA's Director of Retail Regulatory Affairs, and I do have the authority to speak on behalf of TVA regarding this matter.

As I stated in the January 24, 2013, letter that I sent to the Kentucky cooperatives, TVA is the exclusive retail rate regulator for the distributors of TVA power. As the regulator and as authorized by the TVA Act, we work closely with our distributors to keep the valley's retail rates as low as feasible and to ensure that the operations and assets of the electric system are primarily for the benefit of the consumers of electricity. As part of approving the retail rates for each distributor, TVA assesses each distributor's revenues requirements, which take into account the distributor's electric sales revenue, service fee revenue, rental revenue from electric property, and other electric revenue. The revenue received from pole attachment fees is also considered in TVA's assessment of each distributor's revenue requirements.

TVA also regulates the use of electric system assets of the distributors of TVA power. The wholesale power contract that TVA has in place with each of our distributors includes certain provisions that prohibit the subsidization of any non-electric activities because such subsidy ultimately would have to be recovered through the electric consumer's retail rates. Consequently, TVA requires each distributor to charge a pole attachment fee that ensures full cost recovery so that no unfair burdens are placed on the electric ratepayers. This full cost recovery may include usable space, safety space, and height. Accordingly, as explained above, TVA does have oversight responsibility for the pole attachment fees of the Kentucky distributors of TVA power to ensure consistency with the wholesale power contract.

Furthermore, it appears as though the Kentucky Public Service Commission has long recognized the sufficiency of the unique, comprehensive regulatory scheme controlling the rates and services of the distributors of TVA power. Indeed, by virtue of TVA's role as exclusive retail rate regulator and through the regulatory provisions in the wholesale power contract that prohibit subsidies, it is TVA's position that TVA's oversight over the pole attachment rates of these distributors is sufficient. Moreover, additional regulation by the Commission could potentially contravene TVA's oversight in this area. Accordingly, TVA sees no reason to alter the status quo, especially given the long-standing effectiveness and comprehensiveness of such regulatory scheme.

Should you have further questions, I can be reached at (615) 232-6865.

Sincerely,

Cynthia L. Herron
Director
Retail Regulatory Affairs