



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902

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February 14, 2014

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

Dear Mr. Derouen:

This letter is in regard to pending administrative litigation before the Kentucky Public Service Commission (the "Commission") styled *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*, Case No. 2012-00544. TVA has been following this proceeding since you contacted Cynthia Herron, TVA's former Director of Retail Regulatory Affairs. I am writing you to reaffirm TVA's position in this matter and reiterate TVA's view that its position as the exclusive retail rate regulator for distributors of TVA power, including services relating to such rates, is consistent with both federal laws and the decisions of the courts of Kentucky.

TVA, as a federal corporation, has under federal law the exclusive authority to regulate retail rates and service practices of distributors of TVA power. Among TVA's duties is a duty to supply electrical power at the lowest feasible cost. See 16 U.S.C. § 831n-4(f) ("power shall be sold at rates as low as are feasible"). TVA's jurisdiction to "regulate local intrastate rates and service ... supplant[s] state regulation ..." *TVA v. Tenn. Elec. Power Co.*, 90 F.2d 885, 890 (6th Cir. 1937). And, TVA is expressly authorized to do so in the manner that "as in its judgment may be necessary or desirable" for carrying out the purposes of the TVA Act. 16 U.S.C. § 831i. As Ms. Herron indicated, this oversight extends to the regulation of "the use of electric system assets [(such as poles)] of the distributors of TVA power." Letter from Cynthia Herron to Jeff Derouen (May 16, 2013) (Docket Entry; June 18, 2013). 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.

Any Commission activity with respect to the fees charged by a TVA distributor for the use of electric system assets (such as poles) will directly affect the distributor's cost of service. Kentucky long ago established that "the rates charged for pole attachments are 'rates' within the meaning of KRS 278.040, and ... the pole attachment itself is a 'service' within the meaning of the statute." *Kentucky CATV Ass'n v. Volz et al.*, 675 S.W.2d 393, 396 (Ky. Ct. App. 1983). Further, in 1983, the Commission determined that "federal rather than state law governs the service as well as the rates of all TVA-supplied utilities." Letter from William Sawyer, General Counsel, Ky. Pub. Serv. Comm'n, to Sen. William Quinlan, Ky. Leg. (Mar. 2, 1983) (relying upon


Mr. Jeff Derouen
Page 2
February 14, 2014

TVA v. Energy Regulatory Comm'n of Ky., No. 79-009-P, slip op. (W.D. Ky. Sept. 27, 1979)).
The Commission's June 28, 2013, Order is consistent with the above-described determination that Commission regulation of rates and services of TVA distributors is precluded.

The Commission reached the correct result in its order of June 28, 2013. TVA respectfully submits that the Commission's continued forbearance from regulation of the rates and services of TVA distributors is both justified and appropriate.

Please file this letter in the record of Case No. 2012-00544.

Sincerely,


William D. Johnson
President and Chief Executive Officer