



PSC Mission

To foster the provision of safe and reliable service at a reasonable price to the customers of jurisdictional utilities while providing for the financial stability of those utilities by setting fair and just rates, and supporting their operational competence by overseeing regulated activities.

Public Service Commission

- Independent Regulatory Agency
- Three-member Commission
- Quasi-judicial function
- Regulates rates and service provided by jurisdictional utilities:
 - 1,100 jurisdictional utilities
 - Water and sewer utilities (**small systems comprise the bulk of regulated utilities**)
 - Natural gas distribution systems and intrastate pipelines
 - Electric utilities (investor-owned and jurisdictional cooperatives)
 - Telecommunications (small number)
 - Does not regulate municipal utilities except for gas pipeline safety.
 - Does not regulate cooperatives served by TVA.

Pole Attachments

- Requiring utilities to allow attachments to their poles is quite important to the provision and expansion of broadband service.
- The Federal Communications Commission (FCC), pursuant to 47 U.S.C. § 224 requires utilities to allow access to their poles.
 - Originally applied to CATV providers.
 - Expanded to telecommunications carrier (including broadband providers).
- FCC rules govern pole attachments unless a state had “reverse preempted” from FCC pole attachment regulation. 47 U.S.C. § 224 (c).
- The PSC reverse preempted in 1981, and upheld by the Court of Appeals. *Kentucky CATV Ass'n v. Volz*, 675 S.W.2d 393 (Ky. App. 1983)

Pole Attachments: Problems

- The PSC did not adopt rules regarding pole attachments, rather, utilities were required to file tariffs setting our rates and conditions for CATV attachments.
- In many cases, no changes were made to these tariffs for decades.
- Thus, the tariffs were ill equipped to address a world where more entities, such as broadband providers and cellular providers, sought to attach to utilities' poles.
- The PSC would address issues relating to pole attachments on an *ad hoc* basis, but there were no unifying principles or rules.
- Pole attachment disputes were a significant cause of delay in broadband deployment

Pole Attachments: Beginning of Change

- The PSC, in 2018, began drafting a proposed administrative regulation to comprehensively address pole attachments
- In late 2019, the PSC distributed the proposed regulation to various stakeholders as part of an informal process to receive comments about perceived problems or changes before the PSC started the formal promulgation process under KRS Chapter 13A.
- The PSC held three public meetings to discuss the proposed regulations, but further meetings were put on hold due to COVID.
- COVID restrictions requiring remote school and work emphasized the necessity of access to high-speed internet.

Pole Attachment: Solution

- In early spring of 2021, the PSC restarted the informal meetings about the proposed regulation
- At the same time, the General Assembly sought to promote broadband deployment
- House Bill 320 (codified at KRS 278.5464) required, *inter alia*, that the PSC had to promulgate, by December 31, 2021, “regulations regarding pole attachments under the commission's jurisdiction, including those necessary for the provision of broadband service.”
- Luckily, the PSC was well along in the process and filed the proposed regulation with the Legislative Research Commission on May 14, 2021, and became effective on February 1, 2022. Codified at Administrative Regulation 807 KAR 5:015.

Pole Attachment Regulation

- Modernized pole attachment rules to reflect changes to the industry since 1981 and promote the timely attachment of facilities to poles
- Created a uniform process with specific timelines and provisions by which cable television providers, telecommunications carriers, and broadband internet providers may seek to make new attachments, while minimizing burdens placed on utilities and considering the fair allocation of costs between attachers and traditional utility customers.
- Required pole owners to file tariffs with the PSC

Pole Attachment Regulation: What it Did

- Established a formal complaint process specific to pole attachments. This process has defined time limits in which the PSC must act. This process reflects the urgency of the underlying expansion or provision of broadband service.
- Established a process for “one-touch make ready” work which allows a new attacher, pursuant to certain rules, to make necessary changes to others’ attachments on a pole so the new attacher may place their equipment on the pole.

Pole Attachment Regulation: What it Did

- Streamlined the opportunity for attachers to request and have fulfilled what some parties call “High Volume Requests,” or requests for attachment to more than 1,000 poles or 1 percent of a utility’s poles, whichever is less. These requests are more common in unserved or underserved areas where the attaching entity likely does not currently have wires.
- Provided for specific timelines in which pole owners shall conduct their activities, and remedies in the event those activities are not timely completed.

Pole Attachment Regulation: What it Does

- Created procedures for overlashing, which is the practice of a new attacher placing its equipment on the equipment of an existing attacher.
- Established clear responsibilities for allocation of costs in situations where a new attacher's request requires a new pole to be installed.
- Provided that the attacher will not be charged for the cost if the pole had already been designated to be replaced by the pole owner.
- The regulation further protects attachers in disputes regarding whether a pole should have been designated to be replaced if the pole owner had been properly conducting periodic inspections of poles.

Pole Attachments—Post Promulgation

- As of Late December 2022, the PSC had approved the proposed pole attachment tariffs
- NO FORMAL COMPLAINTS HAVE BEEN FILED SINCE TARIFFS HAVE BEEN APPROVED
- However, the PSC became aware of legislative concerns about the pace of broadband attachments in unserved and underserved areas, therefore...
- Beginning in January 2024 the PSC hosted six informal conferences between the PSC, PSC Staff, utilities and broadband attachers

Lesson learned

- Purpose of the meetings was to better understand challenges with the pole attachment process, particularly the practical “on the ground” challenges attachers and utilities faced in processing pole attachment applications.
- The informal conferences helped all stakeholders identify practical constraints in the processing of broadband attachments.
- Example: Contact information of a person responsible for a particular application, for both a utility and attacher, was not readily apparent.

Senate Joint Resolution 175

- Passed during the 2024 Regular Session, a resolution “facilitating the deployment of broadband internet service to unserved and underserved citizens in the Commonwealth.”
- Recognized the importance of broadband internet access to broadband internet service and that lack of internet access in rural areas places unserved or underserved citizens at a disadvantage
- Noted that broadband providers have and will receive significant monies to fund broadband deployment
- Declared an emergency and directed the PSC to:
- Promulgate emergency amendments to its pole attachment regulations to among other things:
 - expedite the processing of broadband requests for pole attachments,
 - reduce the backlog of pole attachment requests,
 - and establish parameters to expedite the processing of pole attachment requests for unserved and underserved areas. SJR 175 directed the PSC

Emergency Amendments

- Using the “lessons learned” from the informal conferences the PSC promulgated emergency amendments to 807 KAR 5:015 on May 31, 2024 (and amended after comment on August 15, 2024) that:
- Required utilities to maintain a website with construction standards and rules and requires contact information for appropriate personnel.
- Clarified the minimum contents of a pole attachment application including a certification of compliance and appropriate personnel for each application.
- Clarified when the next procedural step begins absent utility action within the prescribed time.

Emergency Amendments (Cont'd)

- Allowed the attachers, if they have multiple pending applications, to prioritize a particular application.
- Increased the maximum number of poles, from 1,000 to 3,000, that may be requested in an application and to which regulatory timelines for processing apply.
- 45 days for the first 500 poles. Plus, 15 days for each subsequent 500 pole increment.
- Addressed concerns regarding clarity of invoices and payments from both utilities and pole attachers that expedites invoicing and payment.

Emergency Amendments (Cont'd)

- Increased from 60 to 90 days the notice time in which an attacher will be filing an application for attachments exceeding 3,000 poles.
- Establishes minimum contents of special contracts for applications of greater than 3,000 poles.
 - Such large orders are resource-intensive for utilities, particularly regarding the personnel to perform the work necessary to make the attachments.
 - The stakeholders confirmed that for such large orders there needs to be a “meeting of minds” to marshal the necessary resources and timing of work.

Emergency Amendments (Cont'd)

- Establishes an expedited complaint and resolution process if a special contract cannot be negotiated within 15 business days of the beginning of good faith negotiations.
 - Beginning of negotiations must be made in writing
 - The PSC must issue a final order within 20 business days of the filing of a complaint.
- For other complaints, reduces from 180 to 60 days the time in which the PSC must issue a final order.
 - PSC, or parties by agreement, may extend to 180 days.
 - Previous maximum was 360 days.

Future Issues

- The emergency amendments to 807 KAR 5:015 will expire in February 2025.
- PSC will continue to hold informal conferences to determine what of the emergency amendments is working and what needs changing when it files to replace the emergency amendments
- PSC will use the open docket to “receive comments from affected parties and find resolutions that will expedite pole attachment requests and broadband deployment,” as required by SJR 175.

QUESTIONS?

- QUESTIONS?