

EXHIBIT PDK 10

1 Q. So you became aware of the decision -- I am
2 sorry. You became aware of TVA's policy when its
3 board adopted it; is that correct?

4 A. That is correct.

5 Q. And do you know when the board adopted it?

6 A. February of '16, I believe.

7 Q. But you said you were aware of a study when
8 it was first commissioned. What study are you
9 referencing?

10 A. The LPCs, local -- I think they are called
11 local power companies.

12 Q. For ease, if you want, we can agree that
13 LPC refers to the cooperatively owned and municipally
14 owned utilities who purchase power from TVA.

15 A. That is good. I knew there was a study
16 that was being done because some of the electric
17 co-ops that are TVA members contacted us about -- I
18 think we actually commented on some of the original
19 language. And I don't remember if it was from TVA or
20 TVPPA.

21 Q. Do you remember when these electric co-ops
22 contacted you?

23 A. No. I could -- I could go back to my
24 e-mail or -- or records and find that. I would assume
25 it would have been in 2015.

1 Q. You mentioned AREA earlier. Is that the
2 Alabama Rural Electric Association?

3 A. That is correct.

4 Q. Did AREA contact you, or was it members of
5 AREA who contacted you?

6 A. It was some of the cooperative members of
7 AREA, if I remember correctly.

8 Q. And which members were those?

9 A. They were in North Alabama. Probably Joe
10 Wheeler and Cullman.

11 Q. I am sorry?

12 A. Cullman, C-U-L-L-M-A-N.

13 Q. And you said a name. Joe?

14 A. Wheeler.

15 Q. Is Joe Wheeler --

16 A. It's an electric co-op.

17 Q. Is Joe Wheeler an electric co-op?

18 A. It is, yes, as is Cullman.

19 Q. How do you spell Joe Wheeler?

20 A. J-O-E. Wheeler, W-H-E-L-L-E-R [sic]. It's
21 named for the waterway up in that area.

22 Q. I learn something new every day.

23 So you mentioned Cullman, Joe Wheeler.
24 Were there any other co-ops who contacted you about
25 the TVA study?

1 A. Not that I remember.

2 Q. And what did the TVA study consist of?

3 A. Well, they were gathering -- they were
4 doing fact gathering at the time. They were looking
5 at attachment rental rates and contract terms. I
6 don't believe they ever published anything on contract
7 terms in the docket, and I don't remember exactly what
8 all we produced and sent them. But it was all
9 historical stuff. It was. And -- and we didn't
10 get -- we were never involved any further. It just
11 kind of went into a black hole.

12 Q. I want to clarify something. You've
13 mentioned a TVA decision, and you've mentioned a TVA
14 docket. Are you aware of any dockets or decisions
15 related to pole attachment rates issued by the TVA?

16 A. Only -- I'm only aware of the exhibit that
17 I provided.

18 Q. Is that Exhibit 8?

19 A. 8. Exhibit 8.

20 Q. WA?

21 A. WA Exhibit Number 8.

22 Q. And that is a board resolution?

23 A. That is what I'm familiar with.

24 Q. So when you talk about the TVA formula and
25 you talk about what TVA has done, what we are really

1 talking about is a resolution passed by TVA's board?

2 A. That is correct.

3 Q. There is no docket?

4 A. No.

5 Q. There is no decision?

6 A. Correct.

7 Q. There is no order?

8 A. Right. A board resolution.

9 Q. What facts did you provide during this
10 fact-gathering process?

11 A. I honestly can't remember what -- we were
12 asked to provide certain things, and whatever they
13 asked, we provided. Both of those electric co-ops are
14 clients of ours, and we do design work and inventories
15 and things like that. So they knew us and contacted
16 us about questions they had.

17 Q. Did you provide information about rate
18 methodologies?

19 A. No, I don't remember doing that.

20 Q. Did you propose any rate methodologies?

21 A. I do not believe we did.

22 Q. But you mentioned at some point, you
23 received -- you commented on a proposal?

24 A. I don't remember saying that. I -- I don't
25 think I -- we never commented on anything related to

1 this board resolution that was passed.

2 Q. I thought I heard you earlier say that
3 there was a proposal from either TVA or TVPPA, you
4 couldn't remember which, and that you may have
5 submitted comments to that.

6 A. I -- I think what we provided was input
7 that was requested by the two electric co-ops that I
8 mentioned. And that was the extent.

9 Q. And that input did not include anything
10 related to pole attachment rate methodology?

11 A. No. I'm fairly confident that that was the
12 case. And those would have just been two co-ops out
13 of the 165 co-ops or -- or municipals in the TVA
14 system.

15 Q. Did you have any other role or involvement
16 in the development of the TVA approach adopted by the
17 board resolution?

18 A. None at all.

19 Q. What did you do to educate yourself about
20 it?

21 A. I got a copy of it and read it, of course.

22 Q. When you say "read it," are you referring
23 to your WA Exhibit 8?

24 A. Yes.

25 Q. And that includes the board resolution, as

1 Do you see that?

2 A. That is right. That is what I remembered
3 in the gray area from the last time I read it.
4 That's -- yes.

5 Q. And if we keep going in this section, if we
6 turn the page. The top of the next page.

7 MR. VINROOT: Are we on Page 3? It
8 has a page number.

9 MR. GEORGE: Yeah. The Page 3.
10 BY MR. GEORGE:

11 Q. It is board of directors at the top. Page
12 3. January 22nd, 2016.

13 A. Right.

14 Q. Are you on the page at the top?

15 A. I am.

16 Q. About midway through that paragraph, do you
17 see a sentence that begins with "Space Allocation?"

18 A. "Space allocation will be determined using
19 the actual number of attaching parties per pole,
20 including the pole owner." Yes.

21 Q. And are you aware of how that calculation
22 of average number of attached amenities works?

23 A. Yes, sir, I am.

24 Q. How does that calculation work?

25 A. You only consider in the calculation poles

1 that have foreign attachments on them. You look at
2 those poles for the pole owner that have foreign
3 attachments. And you count not the number of
4 attachments, but the number of parties that are
5 attached to each of those poles.

6 So, for instance, a pole owned by a co-op
7 that has the co-op, a telephone company with six
8 attachments, a cable company with two attachments and
9 a CLEC with two attachments has four attaching
10 entities, and that's the way the number is developed.

11 You add up all of those one-party pole --
12 I'm sorry, not one party, because they don't go into
13 the total.

14 You add up all of the two-party poles, all
15 of the three-party poles, all the four-party poles,
16 all of the five-party poles. In CPS Energy we found
17 an eight-party pole.

18 But you add all those parties together, not
19 the number of their attachments, you sum the number of
20 times they're on the poles, divided by the total,
21 including the owner, divided by the number of poles
22 owned by the owner that are in the universe, and that
23 gives you your average number of attaching entities.

24 Q. Is that the Wil Arnett approach, or is that
25 the TVA approach?

1 A. That is my understanding of the TVA
2 approach.

3 Q. Okay. And so that approach requires that
4 the cooperative know how many poles on its system have
5 the third-party attachment; is that correct?

6 A. It -- yes.

7 Q. How is that number calculated, when the
8 utility does not know how many of its poles have a
9 third-party attachment?

10 A. There was -- there was only one case of the
11 four where we had to do a calculation. We had billing
12 records.

13 Q. Okay. We will get there in a second,
14 Mr. Arnett.

15 I guess my question is, how would TVA
16 calculate the average -- under the TVA approach, how
17 would you calculate the average number of attached --

18 A. They assume --

19 Q. -- in that situation?

20 A. Excuse me. They assume three. They assume
21 there is a telephone company, a cable company and a
22 power company on every pole. That was their
23 assumption.

24 Q. Okay. And you've anticipated my next
25 question, which was, how did you calculate the average

1 number of attaching entities for each of the four
2 co-ops in this case?

3 A. We had billing records for the one co-op
4 that didn't have pole-by-pole information. But we had
5 billing records. And we knew how many poles had
6 attachments by the ILEC. And the ILEC has a specific
7 dedicated area. An exchange boundary. They don't
8 cross into another exchange boundary.

9 We use that as the base. We assume that
10 all poles -- I think it was ILEC. We assume that --
11 it may have been the cable operator. But we assume
12 that the -- that the ILECs all had a cable attachment
13 on them, up to the point that we had to utilize all of
14 the cable attachments that were being paid for. And
15 then after that, we assumed it was just a two-party
16 pole.

17 There was -- I think there was one CLEC,
18 maybe two at that co-op. And we added those on top of
19 the three-party poles and assumed a maximum overlap.

20 Q. And where did you get that methodology?

21 A. Mr. Henry Dent, who works for me, did a VIN
22 diagram drawing of how to calculate the maximum
23 overlap. And he and Ms. Inman, who looked up a
24 formula off the Internet, both saw -- using two
25 different methods, and got the same number to the

1 100th decimal place.

2 Q. Do you know what formula Ms. Inman looked
3 up?

4 A. I don't. But it was -- it was on the
5 Internet.

6 Q. Do you know where on the Internet?

7 A. No. But I can find out, and I will let you
8 know.

9 Q. Okay. And can you look back on just Page
10 16 and 17 of your testimony, just so we are clear,
11 which co-op you did this calculation for?

12 A. Sure. Okay. Union Power had done an
13 inventory, and we had detailed information for Union
14 Power about who was on every pole. And we could very
15 easily calculate the number. And it was 2.33 average
16 attaching entities on Union Power.

17 Surry-Yadkin keeps pole-by-pole attachment
18 records and they update those records monthly. The
19 average there was 2.2.1, and it's in an Excel
20 spreadsheet that's like 30 MG in size. It's huge.
21 But we were able to determine which poles had
22 attachments and who all was attached. It's by pole.

23 Jones-Onslow is where we did the annual
24 billing records, by assuming that each pole to which
25 Time Warner is attached also has a telephone company

1 attachment on them, up to the total number of
2 telephone attachments. That is the way it was done.

3 So we assumed maximum overlap. We assume
4 that there were no poles owned by Surry-Yadkin with
5 telephone attachments that didn't also have a cable
6 attachment.

7 Q. I am sorry, you made that assumption for
8 Jones-Onslow?

9 A. That is correct.

10 MR. VINROOT: You said Surry-Yadkin.

11 You meant Jones-Onslow.

12 THE WITNESS: Oh, I am sorry. Thank
13 you.

14 BY MR. GEORGE:

15 Q. And can you explain how --

16 MR. VINROOT: Do you want to let him
17 finish his testimony, or do you want to ask
18 about him about Carteret? Carteret-Craven?

19 BY MR. GEORGE:

20 Q. Did you finish your testimony --

21 MR. VINROOT: He was going -- he has
22 not.

23 MR. GEORGE: Oh, I'm sorry.

24 THE WITNESS: We did. We did.

25 MR. GEORGE: Well, thank you,

1 Mr. Vinroot.

2 BY MR. GEORGE:

3 Q. Please. Carteret-Craven.

4 A. Carteret-Craven has only 38 telephone
5 attachments on the whole system. So we added those 38
6 CenturyLink attachments to the Time Warner
7 attachments. And again, another maximum overlap. And
8 calculated the average attaching entities there to be
9 2.0003 or 2.0.

10 Q. And what is the relationship between the
11 average number of attaching entities and the space
12 allocation factor used in the TVA approach?

13 A. The -- the smaller the number of attaching
14 entities, the higher the attachment rentals because
15 there are fewer parties sharing the common space.

16 Q. So by not using the TVA assumption of three
17 for Jones-Onslow, your calculation produces a higher
18 rate?

19 A. That is correct. But that was one
20 of the -- the TVA method says that's a rebuttable
21 presumption.

22 Q. So do you think it's reasonable that the
23 TVA approach allocates the safety space entirely to
24 the communications attachers on the pole?

25 A. Well, Delaware does that as well. So yeah,

1 Q. I'm not going to make any promises, but
2 read into it what you will.

3 A. Okay.

4 Q. So on Page 53, you propose contract
5 language that you submit the commission should adopt
6 related to the recovery but for costs; is that right?

7 A. Yes, I do.

8 Q. How do you define "but for costs"?

9 A. That the expense would not have been
10 required but for the presence of the cable attachment.

11 Q. And what does that include?

12 A. Permit fees. When a licensee wants to make
13 an attachment and they submit a permit, the cost
14 associated with receiving, logging, doing a field
15 investigation, any engineering associated with making
16 that pole ready, any construction that the pole owner
17 would be required to do to make the space available
18 for the licensee. All those typical engineering
19 inspection may create a cost that the pole owner would
20 not be doing but for the presence of the licensee on
21 the pole.

22 Q. And do you know whether those types of
23 costs are typically provided for in a pole attachment
24 agreement?

25 A. Yes, they are.

1 Q. And how are they typically addressed in a
2 pole attachment agreement?

3 A. It's -- agreements I'm familiar with, they
4 are -- are addressed in Articles 3 or 4, which is the
5 permit process and the application process to get on
6 the pole. It talks about make-ready. It talks about
7 advanced payment in many cases for the make-ready. It
8 talks about the timing for release of the construction
9 work order. It's usually very -- very early in the
10 contract that all those things are set out.

11 Q. It's an industry standard rate to have --

12 A. I would.

13 Q. -- an application fee, right?

14 A. Yes.

15 Q. And to have the licensee pay for the
16 make-ready costs required to attach to a pole?

17 A. Yes.

18 Q. Are you proposing this paragraph in lieu of
19 those typical full attachment provisions?

20 A. I thought it was important that it's clear
21 that the attachment rental doesn't cover those kinds
22 of costs.

23 Q. What other costs?

24 A. Those are the ones that come to mind.

25 Q. In your proposed definition, you list --

1 you say, "And to perform other activities that the
2 cooperative would not have to do but for the presence
3 of TWC attachments."

4 What other activities?

5 A. Periodic inventories. A five-year
6 inventory of attachments is an example.

7 Q. Would you agree it's industry standard for
8 the parties to agree on some language about sharing
9 costs for that type of inventory?

10 A. It's -- it's in all the contracts I have
11 been involved in when we are finished with them.

12 Q. So those are typically addressed in the
13 contract, right?

14 A. Yes.

15 Q. And typically, it requires the attachment
16 party to pay for the inventory to the extent that its
17 attachments are counted?

18 MR. VINROOT: Well, object --

19 BY MR. GEORGE:

20 Q. Is that right?

21 MR. VINROOT: -- typical.

22 BY MR. GEORGE:

23 Q. Is that industry standard?

24 A. It's very common in the agreements, I -- I
25 have been involved in, that the licensee pays for his

1 share of attachment inventory at periodic intervals.

2 Q. Based on the number of its attachments
3 accounted in the inventory?

4 A. No, I disagree there. I would say, based
5 on the number of poles in the area that the licensee
6 serves, not the number of poles they are attached to.
7 If we know how many poles they were attached to, we
8 wouldn't be doing inventory.

9 So you take the licensee service area and
10 you create a polygon around it, it's very easy to do
11 now with GIS systems. And if in that area you look at
12 5,000 poles, and 4,800 of them have licensee
13 attachments on it, the licensee pays for the 5,000
14 poles, one way or another. It's either baked into the
15 rate, based on 4,800 poles, or it's based into the --
16 baked into the rate. We are looking at 5,000 poles.
17 And the cleanest, safest, easiest way is to say a rate
18 per pole inspected are inventoried instead of a rate
19 per pole with attachments.

20 Q. When you say it's "baked into the rate,"
21 are you saying that the inspection costs are baked
22 into the annual pole attachment rate?

23 A. I'm -- No. I'm saying -- I am sorry, that
24 was a -- that was a -- not a good statement.

25 I'm saying that if the charge is \$3 per

1 pole, with an attachment to do an inventory, and it's
2 known that there are -- only about half the poles have
3 an attachment on them at \$3 a pole becomes \$1.50 for
4 every pole looked at.

5 Somebody doing an inventory can't look at a
6 pole to determine whether or not it has an attachment
7 without recovering its cost to doing that.

8 I may not be clear in what I'm saying
9 but --

10 Q. But the parties typically would have a
11 contact around that?

12 A. That is correct, yes.

13 Q. And the contract, typically, if it's not a
14 payment based on the number of attachments, then it
15 would typically be based on a polygon approach or
16 another approach that you described that would try to
17 identify the service area where the third-party
18 attachment --

19 A. That's correct.

20 Q. -- attachments exist?

21 A. Yes. I interrupted. But that is correct.

22 I think we are saying the same thing. I
23 just didn't want it to be on the record that I agreed
24 that the rate ought to be per attachment found because
25 there is an incentive when you do that to find a whole

1 bunch of attachments.

2 The better thing is to pay somebody per
3 pole looked at, period, and then do a QC -- quality
4 checks to make sure that they are properly identifying
5 everything they are looking at. And then you are not
6 driving them to find additional attachments or
7 additional violations or additional transfers. Just
8 how much per pole that you are going to look at.

9 Q. When you say that there is an incentive
10 for -- you are talking about the company doing the
11 attachment has an incentive to find more? Is that --
12 doing the audit has incentive to find more
13 attachments?

14 A. If you are paying the person based on the
15 number of attachments they find, instead of the number
16 of locations they look at, then they are going to try
17 to find as many attachments as possible. You would
18 hope they would do it either way. But the better way
19 is to say, I want this part of my system inspected --
20 inventoried. How much would you charge me per pole to
21 go look at it? I want you to tell me how many
22 attachments, how many violations, how many transfers,
23 how many whatever. But this area has got this many
24 poles. How much per pole?

25 Q. So we were talking about payment by the

1 licensee. And you are talking about now payment to
2 the company conducting the inspection?

3 A. And they could be one in the same. If the
4 licensee is paying for the cost of the inventory is a
5 but-for cost, then I'm saying my experience is -- the
6 more appropriate way to do it is on -- based on the
7 number of poles looked at.

8 Q. Based on the total poles looked at?

9 A. That is correct.

10 Q. And the licensee would pay for the entire
11 inspection?

12 A. I go back to what I said earlier. If -- if
13 you've got to look at 2,000 poles and only 1,000 of
14 them have attachments on it, you've got to have a rate
15 that covers looking at all 2,000 poles.

16 Q. What if you know that only 20,000 poles
17 have an attachment on it, but your system consists of
18 60,000 poles, would that be reasonable to charge the
19 attaching entity for the inspection of the entire
20 system?

21 A. What you would want -- my proposal -- my
22 belief is that you ought to look at everything at one
23 time. You shouldn't do one licensee today in this
24 area of your system, and then next year do another
25 licensee, like the telephone company in that same area

1 of the system. And you pro rate the cost, based on
2 what is found in that particular area on a per pole
3 basis.

4 Q. Does the pole owner derive benefits from a
5 systemwide inspection?

6 A. An inventory?

7 Q. Uh-huh (affirmative).

8 A. From an inventory? If there are unreported
9 attachments and he gets his attachment records
10 correct, yes. If you look for unsafe conditions at
11 the same time, then those can be found, as well.

12 Q. Whether they are caused by the third-party
13 attacher or caused by the utility itself, right?

14 A. Whatever -- whatever is in the scope of the
15 inventory. Yes.

16 Q. Are there any other activities that you
17 maintain are not recovered by an annual rental rate?

18 A. The ones that I mentioned are the ones that
19 come to mind.

20 Q. Are there any others?

21 A. I -- there may be, but I can't think of
22 them right now.

23 Q. If the commission were to approve this
24 contract language, anybody could think of some other
25 activity, right?

1 A. Yes. I'm sure they could if they were of
2 that character.

3 Q. And that could lead to more disputes,
4 right?

5 A. The best is to get it in writing, agreed to
6 by the parties and get a signature on it.

7 Q. Would you agree that the standard terms
8 that we talked about that would address application
9 fees and make-ready fees and sharing of expenses for
10 audits and inspections are the best way to address the
11 but-for costs that you discussed?

12 A. And things like make-ready when it's
13 required on behalf of the licensee, those -- those
14 would be but-for cost as well. But yes.

15 Q. The best way to do that is to address it
16 specifically in a contract?

17 A. Absolutely.

18 Q. Which is the standard approach?

19 A. That is the best approach, in my opinion.

20 Q. And it's actually the same approach that is
21 taken in each of the contracts that are currently in
22 effect between the parties in these proceedings,
23 right?

24 A. I would -- I haven't -- I read all of the
25 contracts, but I can't remember exactly how they

1 address all those things.

2 MR. GEORGE: I may be done, but let's
3 take a short break and let me review my
4 notes.

5 MR. VINROOT: Sure.

6 MR. GEORGE: I'm done.

7 (Deposition concluded at 4:55 p.m.)
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2 STATE OF _____)
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4 COUNTY OF _____)
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7 I, WILFRED ARNETT, the witness
8 herein, having read the foregoing
9 testimony of the pages of this deposition,
10 do hereby certify it to be a true and
11 correct transcript, subject to the
12 corrections, if any, shown on the attached
13 page.
14

15 _____
16 WILFRED ARNETT
17
18
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20 Sworn and subscribed to before
21 me, this _____ day of
22 _____, 2017.
23
24

25 _____
Notary Public