

TVA contracts that this Office has had the opportunity to review do not contain any language that directly addresses pole attachment rates.² The TVA has asserted that it does have oversight responsibility for pole attachment fees, and based on the authorities discussed above, any provision in a TVA contract expressly addressing pole attachment rates would preempt state law.³

It could also be argued that state regulation of TVA distributors' pole attachment rates is preempted even in the absence of express language addressing pole attachments or other direct involvement by the TVA in pole attachment rates. The TVA's broad authority extends as far "as in [the TVA Board's] judgment may be necessary or desirable for carrying out the purpose of [the TVA Act]," 16 U.S.C. § 831i, and it must be acknowledged that the setting of pole attachment rates is at least to some extent related to the setting of rates for the sale of electric power. Utility poles themselves "clearly are an essential part of providing utility service. Because cable television operators use the same poles that are used to deliver electric and telephone service, abuses by cable television operators potentially could disrupt such service." *Louisiana Cablevision v. Louisiana Public Service Comm'n*, 493 So.2d. 555, 558 (La. 1986). As to rates, "[t]he primary purpose of a pole attachment tariff rate is to provide an appropriate level of revenue contribution towards the total electric revenue requirement, for which the municipality's electric ratepayers would otherwise be completely responsible." *In re Determine Pole Attachment Rates for Municipal-Owned Poles*, No. 06-E-1427, 2007 WL 1387930, at *3 (N.Y. Pub. Serv. Comm'n. May 9, 2007); see also *In re Meade County Rural Electric Cooperative Corp.*, No. 2010-00222, 2011 WL 585043, at *3 (Ky. Pub. Serv. Comm'n. Feb. 17, 2011).

Nevertheless, effect must be given to the general presumption against preemption of state regulation, particularly in this area of utility regulation and particularly where Congress has recognized, in the Pole Attachment Act, the states' traditional authority. In the absence of direct regulation by the TVA Board of pole attachment rates, therefore, regulation by the State of Tennessee of the rates, terms, and conditions of pole attachments would not be clearly preempted by the TVA Act, provided that the specific form of regulation adopted by the State does not

² This Office has viewed contracts produced in the proceeding before the Kentucky Public Service Commission, see, e.g., Power Contract Between Tennessee Valley Authority and Pennyryle Rural Electric Cooperative Corporation, Apr. 7, 1982, produced in Ky. Pub. Serv. Comm'n. Case No. 2012-00544, Nov. 14, 2013. The Office has not viewed any of the contracts between the TVA and its Tennessee cooperatives and recognizes that the contracts produced in the Kentucky proceeding may not be identical in all respects to the contracts in effect in Tennessee.

³ In the pending Kentucky proceedings, the Public Service Commission granted rehearing "on the issue of whether TVA has, or does exercise, jurisdiction over the pole attachment rates of the TVA Cooperatives." *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*, No. 2012-00544, Order, at 3 (Ky. Pub. Serv. Comm'n, Aug. 6, 2013).

