

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF THE)	CASE NO.
PROPOSED POLE ATTACHMENT TARIFFS OF)	2022-00105
INVESTOR OWNED ELECTRIC UTILITIES)	

ORDER

This matter is before the Commission on Kentucky Broadband and Cable Association’s (KBCA) motion for clarification filed May 12, 2022. KBCA requested clarification regarding whether the intervenor testimony to be filed on or before June 9, 2022, pursuant to the procedural schedule in the Commission’s March 30, 2022 Order, contemplated witness testimony or legal briefing from the intervenors, and if the procedural schedule did not contemplate legal briefing, KBCA requested that the procedural schedule be amended to allow legal briefs to be filed by intervenors with intervenor witness testimony and by the utilities with their rebuttal testimony. KBCA argued that many of its issues with the utilities’ tariffs relate to their failure to comply with 807 KAR 5:015 or are based on Commission or Federal Communications Commission precedent such that legal briefing is a more appropriate way to address them. No party responded to KBCA’s motion in this case.¹

¹ Notably, there are currently 3 other cases addressing utility pole attachment tariffs. KBCA made the same motion in each of those cases, and the rural electric cooperative corporations (RECCs) and rural local exchange carriers (RLECs) objected to the motion in the cases pertaining to their tariffs. Windstream Kentucky East, LLC and Windstream Kentucky West, LLC responded to KBCA’s motion in the case reviewing the incumbent local exchange carriers’ tariffs and indicated that they did not have an objection to the motion but requested additional time to file a response brief such that they could do so several days after they are required to file rebuttal testimony.

The Commission notes that verified intervenor testimony, if any, to be filed on or before June 9, 2022, was not intended to include legal briefing. Rather, the procedural schedule contemplated that intervenors would file written, verified witness testimony, if any, to support their objections to the tariffs in this matter by the date in the procedural schedule. The Commission understands that certain objections to the tariffs may be primarily legal, and that legal briefing will likely be beneficial in this matter, but such briefs would be more useful at the close of written discovery or any hearing in this matter. Thus, the Commission finds that KBCA's motion for clarification shall be denied to the extent it seeks to have the parties submit legal briefs with intervenor and rebuttal testimony. However, the Commission does find that counsel for the parties shall confer and that the parties shall jointly or separately state their positions, if any, regarding briefing, including the order and timing of briefing, on or before July 18, 2022 (when parties must request a hearing or that the case be submitted for a decision on the record).

IT IS THEREFORE ORDERED that:

1. KBCA's motion is denied to the extent it sought to amend the procedural schedule to establish deadlines for filing legal briefs with intervenor and rebuttal testimony.
2. Parties shall jointly or separately state their positions, if any, regarding briefing, including the order and timing of briefing, on or before July 18, 2022.

PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman

Commissioner

ENTERED
JUN 03 2022 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

*Amy B Spiller
Associate General Counsel
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Duke Energy Kentucky, Inc.
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45202

*Rebecca C. Price
Sturgill, Turner, Barker & Moloney
155 East Main Street
Lexington, KENTUCKY 40507

*Honorable Allyson K Sturgeon
Managing Senior Counsel - Regulatory &
LG&E and KU Energy LLC
220 West Main Street
Louisville, KENTUCKY 40202

*Larisa Vaysman
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Sara Judd
Senior Corporate Attorney
LG&E and KU Energy LLC
220 West Main Street
Louisville, KENTUCKY 40202

*Hannah Wigger
Sheppard Mullin Richter & Hampton LLP
2099 Pennsylvania Avenue NW, Suite 1
Washington, DISTRICT OF COLUMBIA 20006

*Michael Hornung
Manager, Pricing/Tariffs
Louisville Gas and Electric Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40202

*Louisville Gas and Electric Company
Louisville Gas and Electric Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40232-2010

*James W Gardner
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street
Suite 1400
Lexington, KENTUCKY 40507

*Minna Sunderman
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Kentucky Utilities Company
Kentucky Utilities Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40232-2010

*John Tyler
BellSouth Telecommunications, LLC dba AT&T
405 N Broadway
Oklahoma City, OK 73102

*Paul Werner
Sheppard Mullin Richter & Hampton LLP
2099 Pennsylvania Avenue NW, Suite 1
Washington, DISTRICT OF COLUMBIA 20006

*M. Todd Osterloh
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street
Suite 1400
Lexington, KENTUCKY 40507

*Kentucky Power Company
Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Honorable Robert J Patton
Attorney at Law
Kinner & Patton Law Offices
328 East Court Street
Prestonsburg, KENTUCKY 41653

*Katie M Glass
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Rocco O D'Ascenzo
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201