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April 29, 2025

John E. B. Pinney
Executive Advisor
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

Re: Duke Energy Kentucky, Inc.'s Comments on the Commission's Emergency Amendments to 807 KAR 5:015E: Access and attachments to utility poles and facilities

Dear Mr. Pinney:

Please accept these comments submitted on behalf of Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company) regarding the Commission's Emergency Amendments to 807 Kentucky Administrative Regulation (KAR) 5:015E: Access and attachments to utility poles and facilities.

I. Background

On February 25, 2025, the Kentucky Public Service Commission (Commission) filed emergency amendments to its Pole Attachment Regulations, 807 KAR 5:015 (Pole Attachment Regulations). The Commission stated that a public hearing on the emergency amendments would be held on Tuesday, April 29, 2025. Duke Energy Kentucky attended and participated in the public hearing held on April 29, 2025. The Commission also stated that written comments on the emergency amendments would be accepted through April 30, 2025. Accordingly, Duke Energy Kentucky submits its comments below.

II. Discussion

Utility Notice Requirement – 807:KAR 5:015E, Section 4(8)(h)

This provision provides:

As soon as reasonably practicable a utility shall provide written notice to an attacher if the utility determines it will be unable to meet survey or other make-ready deadlines. Such notice shall entitle an attacher immediately to proceed with self-help remedies in accordance with Section 4(10).

This requirement is burdensome and impractical. It can take time for a utility to recognize that it will not be able to meet survey and/or make-ready deadlines. It is unreasonably burdensome to require a utility to potentially litigate whether it recognized this “[a]s soon as reasonably practicable,” in retrospect. An attacher need not wait for months; it may always contact the utility to discuss issues with a pending application, and this is something which utilities can discuss with attachers without a cumbersome and unprecedented notification requirement. Duke Energy Kentucky respectfully submits that this provision be deleted from the emergency amendments.

Right of Attachers to Perform Own Surveys for 500 Poles or Less – 807 KAR 5:015E, Section 4(2)(a)(6).

This provision provides:

A new attacher may submit a survey with an application of 500 poles or less, which the utility shall accept if the new attacher used an approved contractor listed on the utility's website and the survey was conducted no longer than thirty (30) days prior to submission. A utility shall conduct the survey for applications exceeding 500 poles.

This provision gives attachers the right to perform their own surveys as a matter of course for applications containing 500 poles or fewer, even where the utility is perfectly capable of performing the required surveys in a timely manner. Although this provision attempts to mitigate risk by requiring the survey to be relatively recent and by requiring the attacher to use utility-

approved contractors, Duke Energy Kentucky believes it still creates significant risk and uncertainty by placing the survey process entirely into the control of attachers unnecessarily. The Company respectfully submits that this provision should be deleted from the emergency amendments.

Application Prioritization – Section 4(2)(a)(9)

This provision provides:

A new attacher, if it submits an application while a previous application is still under review, may prioritize the order in which a utility shall review the applications. Prioritizing a new application resets the respective review time period of the new attacher's deprioritized applications currently under review and over which the new application is being prioritized.

Duke Energy Kentucky believes that the need to track priorities and reset timelines of individual applications will create confusion, inefficiencies, and an unreasonable administrative burden for the utility. Attaching entities that have multiple organizations or groups across geographical areas may create priority requests from multiple parties within the same contractual area. And the same application's timeline may be reset repeatedly. Duke Energy Kentucky respectfully recommends that this provision should be stricken from the emergency amendments.

Applicability of Special Contract Requirement – 807 KAR 5:015E, Section 4(8)(d)

This provision provides in part:

A utility and a new attacher, unless the utility owns or controls fewer than 500 poles, shall negotiate a special contract in good faith all requests for attachment larger than the lesser of 3,000 poles or three (3) percent of the utility's poles in Kentucky.

Duke Energy Kentucky recommends that this provision be revised to require a special contract to be negotiated at a significantly lower threshold, such as 500 poles. The special contract

model allows for earlier coordination and facilitates communication, and should be more broadly applicable.

Timeline for Negotiation of Special Contracts – 807 KAR 5:015E, Section 4(8)(e)

This provision provides in part:

If a special contract identified in paragraph (d) of this subsection cannot be agreed to within fifteen (15) business days from submission of a formal written request to engage from the attacher, the new attacher may file a complaint with the commission,

Duke Energy Kentucky agrees with the general concept of this provision, but believes that fifteen business days is insufficient for completing negotiation of a special contract and that thirty business days would provide a more practical and workable time frame for reaching agreement. Accordingly, Duke Energy Kentucky recommends that this provision of the emergency amendments be revised to permit an attacher to file a complaint *thirty (30)* business days from submission of a formal written request to engage, rather than fifteen.

III. Conclusion

Duke Energy Kentucky appreciates this opportunity to offer its comments to the Commission's emergency amendments to the Pole Attachment Regulations and respectfully requests the emergency amendments be revised in accordance with the above.

Mr. John E. B. Pinney
April 29, 2025
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Respectfully submitted,

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