COMMENTS OF LOUISVILLE GAS & ELECTRIC COMPANY, KENTUCKY UTILITIES COMPANY, AND KENTUCKY POWER COMPANY ON EMERGENCY AMENDMENT TO 807 KAR 5:015E

Louisville Gas & Electric Company, Kentucky Utilities Company, and Kentucky Power Company (collectively, the "Companies") offer the following comments on the Commission's emergency amendment to 807 KAR 5:015, promulgated by the Kentucky Public Service Commission (the "Commission") on February 25, 2025.

INTRODUCTION

The Companies reiterate their support for broadband deployment in Kentucky and appreciate the Commission's continued efforts to facilitate broadband deployment throughout the Commonwealth. These efforts began in 2020 when the original regulation was initially proposed. The original regulation, adopted in September 2021 after significant stakeholder input, provided a solid foundation for broadband deployment throughout the Commonwealth, in no small measure because of the original regulation's reliance upon the special contract model. It was that reliance upon the special contract model that made Charter's broadband deployment in KU's service area possible. Had the original regulation *not* required the parties to reach an agreement on the mechanics, logistics, and economics of Charter's high-volume deployment, Charter's deployment might still be mired in a logjam.

Roughly one year after the Companies filed revised tariffs conforming to the original regulation, the Commission opened the present docket. Shortly thereafter, the General Assembly adopted Senate Joint Resolution 175 directing the Commission to consider action that would: (1) remove any unreasonable utility pole attachment-related impediments to broadband deployment; (2) establish parameters to expedite the processing of pole attachment requests; and (3) reduce the

current backlog of pole attachment requests.[1] In response to this mandate, the Commission adopted an initial emergency regulation that contained certain provisions that both built on the success of the original regulation and helped fulfill the objectives of SJR 175, including:

- An administrative complaint process by which disputes can be resolved if a special contract is not agreed upon within fourteen (14) days of a new attacher's request for such an agreement;
- The requirement that invoices and payments "clearly identify" the application for which payment is requested or made; and,
- The requirement that pole owners provide easily accessible contact information on their website for the personnel who oversee attachment applications, along with other information relevant to the pole attachment process.

Likewise, the recent amended emergency regulation includes several additional steps in the right direction. For example, the amended emergency regulation:

- Does away with the requirement that attachers submit a "certificate of application completeness" which was an unnecessary administrative burden;
- Allows utilities to waive the "waiting period" prior to an attacher's performance of self-help surveys which will expedite application processing; and,
- Requires new attachers to provide ninety (90) days' notice prior to submitting applications for 500 or more poles within any thirty (30) day period which will facilitate planning and coordination between attachers and pole owners, thus increasing the chances of success with larger deployments.

However, the Companies believe—as they have expressed at every opportunity—that the Commission should take even further steps to satisfy the objectives of SJR 175. The Companies are filing these brief comments on the amended emergency regulation as a reminder of the additional opportunities available to streamline broadband deployment and to respond to certain recommendations from other stakeholders that would prove detrimental to this goal.[2]

[1] Senate Joint Resolution 175 § 1(1) – (3)
[2] The Companies intend to submit more comprehensive comments in connection with the ordinary regulation.

First, the Commission should steer *more* deployments (rather than fewer deployments) towards the special contract model. The primary obstacle to timely high-volume deployments is the availability of resources. Certainty of scope and timing of a deployment are required before the necessary resources can be secured. The special contract model has *proven* success in solving this problem whereas regulatory timeframes have no track record of success. Second, the Commission should remove the unnecessary distinction between "simple" and "complex" make-ready within the communications space by adopting the Enhanced One-Touch Make-Ready ("Enhanced OTMR") process outlined by the Companies in this proceeding. These recommendations will expedite broadband deployment, provide attachers with more control over their deployment, and further satisfy the objectives of SJR 175.

I. THE COMPANIES' PROPOSALS

A. The Commission's Regulation Should Steer More Deployments Toward the Special Contract Model.

The amended emergency regulation will have the effect of steering fewer broadband deployments toward the special contract model by adopting regulatory timeframes for large deployments rather than requiring the parties to reach a negotiated solution. Bilateral negotiated contracts are the only mechanism by which large deployments can reliably avoid backlogs and delays because they can ensure that the right resources are in the right place at the right time. As the Companies have expressed numerous times throughout this proceeding, the lack of "on demand" resources is the primary driver of backlog and delays in high volume broadband deployments. In fact, it was *the* reason for the backlog in Charter's deployment within KU's service area. Had the emergency regulation been in place during 2023, Charter would not have pursued a special contract and its deployment likely would still be mired in the backlog created by its

continued submission of attachment applications without any provisions in place to ensure the existence of the resources necessary to move its deployment forward.

Moreover, the new administrative complaint process within the emergency regulation is available when special contract negotiations fail. Under the emergency regulation framework, if the parties cannot reach an agreement on a special contract within fourteen (14) days from the date on which the new attacher initiated negotiations, the new attacher can file a complaint with the Commission, which will be ruled on within twenty (20) days from the date of filing. Essentially, the emergency regulation guarantees that a special contract (or a Commission order of similar effect) will be in place within thirty-four (34) days from the date on which a new attacher requests one. Further, the emergency regulation also already requires that new attachers provide pole owners with ninety (90) days advance notice before submitting applications for 500 or more poles. Given this requirement (along with the opportunity for administrative intervention) more than enough time exists for the parties to reach an agreement on a special contract prior to the submission of voluminous applications. Special contracts stand only to expedite broadband deployment—they have zero chance of slowing it down.

Despite the demonstrated success of the special contract model (and the Commission's adoption of the new administrative process), the emergency amendment moves away from the special contract model, choosing instead to rely on regulatory timeframes for voluminous applications. Regulatory timeframes do not expedite large deployments. To the contrary, these timeframes have the opposite effect by giving attachers unreasonable expectations without the resources in place to process voluminous applications. Securing the resources necessary to process voluminous applications requires consistency and certainty in the volume of applications. If an established volume (such as 5,000 poles per month) – along with the money to fund it – cannot be

guaranteed, then a contractor is less likely to agree to work on a project because it is not certain that the work will continue if monthly volume suddenly drops. Likewise, if application volume suddenly spikes, contractors will not have enough employees dedicated to the project. The solution to this problem is a contract between the utility and the new attacher that (a) specifies a particular volume of applications will be submitted over a given period of time, and (b) specifies that the attacher is financially responsible for the resources required to process the prescribed volume. Regulatory timeframes cannot solve this problem; they can only deepen it.

Because the regulatory timeframes in the emergency regulation fail to solve the resource availability issue, the Companies continue to respectfully object to the increased reliance on these timeframes and urge the Commission to take action (whether now or in the ordinary regulation) to steer more deployments toward the special contract model.

B. The Commission Should Include Enhanced OTMR in the Emergency Regulation.

SJR 175 directs the Commission to adopt regulations that will "[r]emove any unreasonable utility pole attachment-related impediments to the deployment of broadband service throughout the Commonwealth." The Companies' Enhanced OTMR proposal provides the Commission with an excellent opportunity to satisfy this mandate. In fact, the proposal is not even necessarily a novel one. The one-touch make-ready provision of the regulation (as originally adopted, in the initial emergency regulation, and in the amended emergency regulation) permits new attachers to perform "simple" make-ready with no "waiting period" whatsoever.[3] The self-help provision of the regulation (as originally adopted, in the initial emergency regulation, and in the amended

[3] *See* 807 KAR 5:015E, Section 4(11)(c) ("If the new attacher's attachment application is approved by the pole owner and if the attacher has provided at least fifteen (15) days prior written notice of the make-ready to the affected utility and existing attachers, the new attacher may proceed with make-ready").

emergency regulation) also permits new attachers to perform "complex" make-ready within the communications space (as a self-help remedy) upon the expiration of forty-five (45) days.[4]

Enhanced OTMR, rather than dramatically changing the current framework, simply fuses the existing OTMR and self-help remedies. The result is that the new attacher will conduct all make-ready within the communications space–whether "simple" or "complex"–from the outset, without first waiting 45 days for existing attachers to fail to meet their make-ready deadlines. Existing attachers should have nothing to fear from this proposal because: (1) new attachers are already permitted to perform "complex" make-ready when exercising their self-help remedy; and (2) Enhanced OTMR protects their interests by requiring that all make-ready be performed by a contractor that meets the criteria set forth in Section 5 of 807 KAR 5:015E. In fact, none of the attaching entities have *ever* made any objection not the criteria for contractors set out in Section 5 of 807 KAR 5:015 or 807 KAR 5:015E.

Enhanced OTMR also removes the potentially confusing process of distinguishing between "simple" and "complex" work within the communications space and relieves the burden on the attacher to distinguish between applications that it can or cannot submit as OTMR applications. As the rule presently stands, if a new attacher submits an OTMR application and it is subsequently discovered that even one pole implicated in the application requires complex make-ready work, the new attacher is required to halt all work and proceed under the standard timeframes. This process often deprives new attachers of the efficiencies promised by OTMR and may be the reason

[4] Section 4(10)(b)("If make-ready is not complete by the applicable date established in subsection (4) of this section, then a new attacher may conduct the make-ready in place of the utility and existing attachers by hiring a contractor to complete the make-ready, which shall be completed as specified in Section 5 of this administrative regulation").

that the Companies have not received any OTMR applications since the option was made available in September of 2021.

Additionally, and most importantly, Enhanced OTMR completely does away with the forty-five (45) day "waiting period" present in the amended emergency regulation. In this way, adoption of Enhanced OTMR would go yet another step further than the amended emergency regulation toward "remov[ing] any unreasonable utility pole attachment-related impediments to the deployment of broadband service throughout the Commonwealth" as required by SJR 175.

II. THE COMPANIES' RESPONSE TO CERTAIN ISSUES RAISED BY KBCA DURING THE APRIL 29, 2025 HEARING

During the April 29, 2025 hearing on the amended emergency regulation, KBCA urged the Commission to make five changes to the amended emergency regulation. The Companies oppose all five of those proposed changes, and have addressed two of them in more detail below: (1) the proposal to treat certain transmission structures identically to distribution poles; and (2) the proposal to make special contracts merely "permissive" for application volume in excess of the regulatory threshold.

A. The Commission Should Continue to Treat Transmission Structures Differently than Distribution Poles.

During the April 29, 2025 hearing, KBCA argued that the emergency regulation should be amended so that utility poles supporting both electric transmission and distribution lines are treated the same as poles supporting only electric distribution lines. This is a dangerous proposal that should be rejected because structures supporting transmission-level voltages are critical infrastructure that are in a fundamentally different class of electric utility assets. The extent to which an electric utility permits access to this infrastructure, the engineering parameters the utility uses to evaluate attachment requests, and the processes the utility follows to safely perform

construction on transmission poles should all be considered by the Commission as it reviews a utility's tariff, and not in the context of a generally applicable regulation.

The KBCA proposal ignores an obvious and critical fact: transmission structures present fundamentally different and more complex safety, reliability and engineering considerations than distribution poles – regardless of whether a transmission structure also supports distribution lines. These heightened considerations owe to the presence of high-voltage electric lines on transmission structures. For LG&E and KU, these voltages range from 69kV to 345kV, compared with a maximum of 34kV for distribution poles. Transmission poles are subjected to more detailed engineering analysis than distribution poles because of the greater safety risk they pose and because of their importance to the electric grid. LG&E and KU, for example, utilize specialized computer modeling software and specialized engineering personnel when considering *any* changes to transmission infrastructure, including those proposed by LG&E and KU itself. This is a deliberate process – and it should be. By contrast, LG&E and KU perform engineering for distribution poles using pole loading software that is synched with the Katapult pole attachment application system. This software allows LG&E and KU to meet its survey and engineering timeline obligations but is not compatible – or suitable – for the engineering of transmission structures.

Similarly, construction on transmission structures implicates far more serious safety concerns and risks to the electrical grid than construction on a distribution pole. In short, construction on transmission structures requires special care due to the complexity of the work and consequences of performing that work incorrectly. Construction on transmission structures and distribution poles are both are specialized and require significant training, but one requires more time and carries greater consequences than the other. Furthermore, transmission lines often must

be de-energized to perform construction safely. Transmission outages require significant planning and coordination, and yet still depend on electric grid load conditions to proceed; they are frequently canceled and rescheduled, even for a utility's own construction activities.

KBCA and Charter contend – wrongly - that a "mixed use" pole (the name they give a structure supporting both transmission and distribution lines) does not present the same concerns as a transmission structure without distribution lines. However, it is the presence of the high-voltage transmission lines that calls for a greater degree of care – the presence of distribution lines as well does not reduce this danger. KBCA's argument on this point is akin to saying that a diver in shark infested waters does not need a cage because the water is also filled with minnows. The diver needs protection because of the sharks - the presence of minnows changes nothing.

Understanding these issues, the Commission reasoned as follows in its 2021 Statement of Consideration accompanying the original regulation:

> Electric utilities argued during the informal process that … transmission poles presents unique safety, reliability, and engineering issues. The attachers that were part of the informal process argued that there are poles that act as both transmission and distribution poles (with distribution lines below and transmission lines above), and they argued those should be subject to the regulation….
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> Ultimately, the proposed regulation did not exclude transmission lines from the definition of poles subject to the regulation. However, it was modified to indicate that utilities may include tariff terms that restrict access to utility poles for reasons of lack of capacity, safety, reliability, or engineering standards. *This specific language was added to allow utilities to include general prohibitions for attachments for certain types of poles, mainly transmission poles, in the utility tariffs.*

2021 statement of Consideration at 70 (emphasis added). This reasoning was correct in September 2021 and remains correct today.

B. The Commission Should Not Make Special Contracts Permissive.

Section 4(8)(d) of the amended emergency regulation requires the parties to negotiate a special contract for application volume that exceeds 3,000 poles per 30-day period. During the April 29, 2025 hearing on the amended emergency regulation, KBCA and Charter reiterated their position that special contracts should be "permissive" rather than "mandatory" for application volume beyond the regulatory threshold. Despite pointed questioning from the Executive Advisor to the Commission, KBCA and Charter *still* failed to offer a cogent explanation for what happens when application volume exceeds the regulatory threshold.

If special contracts are merely "permissive" for applications above a particular threshold, a regulatory gap would exist that would sow confusion and likely create more disputes requiring Commission intervention. For example, if Section 4(8)(d) is merely permissive, then an attacher could refuse to engage in negotiations for a special contract. This would essentially bring a deployment to a self-inflicted standstill. Similarly, a pole owner could simply decide not to entertain applications in excess of the regulatory threshold.

Casting this sort of ambiguity upon the special contract requirement is one of the worst things the Commission could do for broadband deployment. As set forth in part I.A. above, the best thing the Commission can do for broadband deployment in Kentucky is to steer more deployments to the special contract model. The more deployments that are subject to the special contract requirement, the more broadband will be deployed in the Commonwealth. Making special contracts "permissive," on the other hand, would result in fewer special contracts which in turn would constrain deployment.

III. The Emergency Amendment, in its Current Form, May Inhibit the Goals of SJR 175 by Slowing Broadband Deployment in Kentucky.

SJR 175 directed the Commission to remove unreasonable pole attachment-related barriers to broadband deployment, establish measures that would expedite the processing of pole

attachment requests, and reduce the backlog of pending pole attachment applications.[5] All stakeholders who have commented on the amended emergency regulation agree that the primary cause of delays in processing pole attachment applications –and in broadband deployment more generally– is resource availability. However, the amended emergency regulation does not provide a solution to this problem. Instead, it adopts regulatory timeframes that are likely to exacerbate the problem by encouraging attaching entities to submit voluminous applications without any provision for the resources necessary to carry out their deployment. Without advance input, planning and participation on the part of the attacher, utilities lack the ability to marshal and retain the resources necessary to process an unknown volume of applications. Without the necessary resources, deployments become stuck in the mud—as was precisely the case with Charter's deployment in KU's service area prior to the high-volume deployment plan.

The emergency amendment likewise fails to carry out the goals set forth in SJR 175 by failing to remove the impediment to deployment caused by existing attachers failing to timely complete their portion of the communications space make-ready. Existing attachers, understandably, have minimal (if any) interest in performing work that will assist in a competitor's deployment. Enhanced OTMR removes this impediment by requiring new attachers to perform all the communications space make-ready necessary for their deployments without waiting on any existing attachers.

The combination of these two proposals (special contracts + Enhanced OTMR) has the effect of putting the party with the most incentive to drive a speedy deployment—the new attacher—in control of the application and make-ready process. These two proposals working in

[5] *See generally* Senate Joint Resolution 175.

tandem will expedite broadband throughout Kentucky and satisfy the goals set out in SJR 175 in a way that the emergency amendment does not.

CONCLUSION

The Companies appreciate the opportunity to offer these comments on the emergency amendment to 807 KAR 5:015 and respectfully request that the Commission revise the emergency amendment to 807 KAR 5:015 in a manner consistent with the comments herein. Though the Companies are pleased that the amended emergency regulation takes many steps in the right direction to facilitate broadband deployment in Kentucky, the Companies continue to believe that bolder action is needed to build on the momentum generated by the original regulation. Specifically, the Commission should adopt rules that (1) steer more deployments to the special contract model, and (2) incorporate Enhanced OTMR. Though the Companies are hopeful that the Commission will revise the emergency regulation to conform with its suggestions herein, the Companies also look forward to the opportunity to submit a more comprehensive set of comments on the ordinary regulation.

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Respectfully submitted,

/s Robert J. Patton by Sara V. Judd
with Authority

Robert J. Patton
Kinner & Patton
328 East Court Street
Prestonsburg, Kentucky 41653
Telephone: (606) 886-1343
Email: rjpatton@bellsouth.net

Counsel for Kentucky Power Company

Allyson K. Sturgeon
Vice President and Deputy General Counsel
Sara V. Judd
Senior Counsel
PPL Services Corporation
220 West Main Street
Louisville, KY 40202
Telephone: (502) 627-2088
Email: ASturgeon@pplweb.com
Email: svjudd@pplweb.com

Counsel for Louisville Gas & Electric Company and Kentucky Utilities Company