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And

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Kentucky Public Service Commission
P.O. Box 615
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Re: Duke Energy Kentucky, Inc.'s Written Comments
Proposed Pole Attachment Regulation

To Whom It May Concern:

Please accept these comments submitted on behalf of Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company) in response to the Public Hearing and Public Comment Period information contained in the proposed regulation.

807 KAR 5:015 Access and Attachments to Utility Poles and Facilities

I. INTRODUCTION

For the sake of brevity, Duke Energy Kentucky refers back to its initial comments, reply comments and suggested amendments to the Commission's draft rules filed in this proceeding,

and wishes to re-emphasize its position that the Commission's new rules regarding attachments, should be as consistent as possible to those of the Federal Communications Commission (FCC).

A. Pole attachment regulations should be consistent with those of the Federal Communications Commission.

As Duke Energy stated in its previous comments, the Company respectfully submits that the Commission should model any proposed rules related to attachments and access to be as consistent as possible to those of the Federal Communications Commission (FCC). The present draft includes numerous definitions and provisions that go beyond what is required by the FCC. The Company presently complies with and monitors the FCC rules and has structures in place to maintain adherence. Any new or specific requirements implemented for operations in the Commonwealth will thus impose new costs, incremental to what is already incurred to comply with FCC regulations, that will ultimately be recovered from either the attacher themselves for specific costs caused by the attacher, or through general customer rates as it related to incremental O&M to maintain the system and implement any new and necessary controls for Kentucky compliance. As such, any pole attachment regulations should model those of the FCC.

Subsection (4)(c) requires the utility to share the contact information of each and every attacher on the pole and all notices previously provided. This requirement is overbroad and unduly burdensome for the utility. Currently, Duke Energy utilizes an electronic notification system to notify current attachers the originating proposal number and the company name of the new attacher so they are able to cross reference it. The Company should not be required to provide the contact information and all notices sent to existing attachers. Duke Energy Kentucky recommends that proposed requirement be eliminated.

B. Contractors for survey and make-ready

The regulation as drafted permits new and existing attachers to request the addition of “any contractor” be added to the utility’s list of authorized contractors to perform work on its poles. Electric utilities have approved lists of qualified contractors for a reason. These utility-approved contractors have the requisite training and knowledge to access utility poles in a manner that complies with applicable safety regulations. Too many times, the Company has had to deal with 3rd parties accessing utility poles with improperly qualified personnel without the knowledge of the utility. These unauthorized attachers have placed devices on poles that do not comply with applicable safety codes, and unfortunately, at times are performed in a manner that directly violates Occupational Safety and Health Administration regulations (OSHA). At best, these inappropriate and unauthorized attachments present a reliability concern. At worst, they risk human life. The Commission should allow utilities to have reasonable control over who is qualified to perform attachment work on its infrastructure, including make-ready work. Of course, 3rd party attachers may request to have their preferred contractor become qualified by the utility, but those preferred contractors should be subject to the exact standards and requirements as all other persons qualified to perform work along the utility power lines. Broad safety and reliability interests should prevail and the Commission should not encourage unfettered attachment to utility poles by unqualified persons.

C. Transmission Poles should be excluded

Duke Energy Kentucky requests that transmission poles be specifically excluded from the Commission’s proposed regulation. Although Duke Energy Kentucky appreciates the Commission’s comments in the Regulatory Impact Analysis and Tiering Statement section at the end of the regulation, requiring utilities to exclude transmission poles in the utility’s tariff

then shifts the burden onto the utility to prove why transmission poles should be excluded from attachments in its service territory. Furthermore, transmission poles are inherently different than distribution poles. Attachments on transmission poles can cause reliability and other issues. Transmission structures will have integrity issues due to excessive loading that become problematic in ice and windstorms. As transmission poles are the backbone of system reliability, any additional attachments on transmission structures should be met with great caution.

D. Right of Access

The proposed rules prevent telephone and electric utilities from using the new access and make-ready provisions. This is done through the definition of “new attacher,” which excludes a utility utilizing a joint use agreement. The proposed rules do not include similar language in their definitions of “broadband internet provider” and “telecommunications carrier.” Because telephone companies provide broadband, they would fit within each of these definitions. The new rules provide a mandatory right of access to “broadband providers” and “telecommunications carriers,” but they do not provide a similar right of access to electric utilities. The proposed rules imply to provide telephone companies with a non-reciprocal right of access on electric utility poles. Under this rule, electric utilities could be denied access to telephone poles but could not deny access to telephone companies.

E. Work Order True Up

When utilities provide work orders for new attachment construction, they are based on system generated estimates. After all work is completed and inspected for compliance, a true up of the estimate may be necessary to determine actual cost so refunds or additional charges may be billed. Under the newly proposed guidelines, a utility will only have 90 days to complete the true up process. Typically, this process takes at least 180 days to close out work orders and

access actual cost. Limiting the time for accounting to gather project cost and billing or applying credits would decrease the utilities ability to determine actual cost.

II. CONCLUSION

Duke Energy Kentucky thanks the Commission for this opportunity to provide comments to its proposed revisions and new administrative rules and respectfully requests the Commission consider and adopt the Company's comments. Duke Energy Kentucky respectfully reserves the right to provide additional feedback if as a result of additional comments received, the Commission revises its rules further.

Respectfully submitted,

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