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DELIVERED VIA EMAIL

July 30, 2021

Administrative Regulations Working Group J.E.B. Pinney
Kentucky Public Service Commission
P.O. Box 615
Frankfort, Kentucky 40602-0615
E: Jeb.Pinney@ky.gov

RE: Kentucky Power Company’s Comments Regarding Proposed Chapter 807 KAR 5:015, Access and Attachments to Utility Poles and Facilities

Dear Mr. Pinney:

Kentucky Power Company (“Kentucky Power” or the “Company”) hereby respectfully submits the following comments regarding the proposed pole attachment rules (proposed Chapter 807 KAR 5:015, Access and Attachments to Utility Poles and Facilities) filed with the Legislative Research Commission on May 14, 2021 (the “Revised Rules”).

Kentucky Power provides electric power service to approximately 165,000 customers in eastern Kentucky and has an electric distribution network that spans more than 10,000 miles. Kentucky Power’s distribution network is comprised of approximately 217,000 distribution poles and hosts more than 103,000 third-party attachments (not including attachments made pursuant to joint use agreements). Pursuant to joint use agreements, Kentucky Power also hosts attachments made by telephone companies on more than 121,000 of its distribution poles. Kentucky Power has a significant stake in the outcome of this proceeding and appreciates the Commission’s consideration of the suggestions contained herein as it works towards finalizing utility pole attachment rules for the Commonwealth.

807 KAR 5:015 – Section 1. Definitions.

Subsections (2) and (11): “Broadband Internet Provider” and “Telecommunications Carrier.”

Subsections (2) and (11) should be revised to exclude “a utility with an applicable joint use agreement” in a manner identical to the exclusion in Subsection (9). The revised language of Subsections (2) and (11) should read as follows:

“Broadband internet provider” means a person who owns, controls, operates, or manages any facility used or to be used to offer internet service to the public with download speeds of at least twenty-five (25) megabits per second and upload speeds of at least three (3) megabits per second. **The term “broadband internet provider” does not include a utility with an applicable joint use agreement with the utility that owns or controls the poles to which it is seeking to attach.**

“Telecommunications carrier” means a person who owns, controls, operates, or manages any facility used or to be used for or in connection with the transmission or conveyance over wire, in air, or otherwise, any message by telephone or telegraph for the public, for compensation. **The term “telecommunications carrier” does not include a utility with an applicable joint use agreement with the utility that owns or controls the poles to which it is seeking to attach.**

Reasoning: As explained in Kentucky Power’s initial comments, the proposed definitions of “broadband internet provider” and “telecommunications carrier” are not objectionable standing alone. Kentucky Power’s Initial Comments at 2-4. However, these definitions interact with other provisions of the proposed rules to create what appear to be a new right for incumbent local exchange carriers (“ILECs”) and a new obligation on electric utilities. These outcomes stem from the fact that ILECs—because of the services they provide—likely qualify as “broadband internet providers” and “telecommunications carriers.”

The new *right* for ILECs arises out of the interaction of Subsections (2) and (11) with Section 2(1), which defines the scope of mandatory access rights under the proposed rules. Section 2(1) provides:

Except as otherwise established in paragraphs (a), (b), and (c) of this subsection, a utility shall provide any cable television system operator, **telecommunications carrier**, **broadband internet provider**, or governmental unit nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

Revised Rules, Section 2(1) (emphasis added). Because ILECs with whom Kentucky Power has joint use agreements likely fall within the definitions of “broadband internet provider” and “telecommunications carrier,” these ILECs would enjoy a mandatory right of access on Kentucky Power’s poles under a literal reading of Section 2(1). However, because Kentucky Power does not fall within the definitions of any of the entities identified in Section 2(1), Kentucky Power would not enjoy a reciprocal mandatory right of access on utility poles owned by ILECs. Such an outcome would be unnecessary and unfair because ILECs do not need a mandatory right of access on Kentucky Power’s poles. Through longstanding joint use agreements, Kentucky Power and its ILEC joint use partners have a *reciprocal* contractual right to make attachments on each other’s poles. Reciprocal access rights are the cornerstone of joint use agreements. Displacing this with a non-reciprocal right of access for ILECs would undermine the primary mode of consideration under the joint use agreements.

Perhaps for the reason described above, the “Federal Mandate Analysis Comparison” section of the Revised Rules suggests that the Commission did not intend for the mandatory access right in

Section 2(1) to apply to ILECs. In explaining the differences between Section 2(1) and the Federal Communication Commission’s mandatory access rule, the Commission stated:

This administrative regulation does differ from FCC regulation on which it is based to fit within the PSC’s regulator[y] framework; to address circumstances specific to Kentucky; and to address issues that have been identified in the federal regulation. **Most notably, this administrative regulation: (1) Adds broadband internet providers and governmental units to the entities entitled to non-discriminatory access to ensure that there is no confusion regarding such entities ability to obtain access...**

Revised Rules, Federal Mandate Analysis Comparison at 38 (emphasis added). This recitation of “notable” differences between the Commission’s proposed rules and the FCC’s regulations makes no mention of the implicit mandatory right of access for ILECs under the Commission’s proposed rules. This is significant because *ILECs do not enjoy a mandatory right of access under the FCC’s regulations*. See 47 U.S.C. § 224(f)(1) (“[A] utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole...owned or controlled by it.”). In fact, unlike the Commission’s proposed rules, the FCC’s regulations specifically exclude ILECs from the definition of a “telecommunications carrier.” *Id.* at § 224(a)(5) (“For purposes of this section, the term ‘telecommunications carrier’ *does not include any incumbent local exchange carrier...*”). If the Commission intended to give ILECs a mandatory right of access, where the comparable FCC rule does not, it seems the Commission would have mentioned this significant difference.

The new *obligation* on electric utilities arises out of the interaction of Subsections (2) and (11) with Section 3(1), which requires utilities to file tariffs governing the rates, terms and conditions for “pole attachments.” Section 3(1) provides:

A utility that owns or controls utility poles located in Kentucky shall maintain on file with the commission a tariff that includes the rates, terms, and conditions governing **pole attachments** in Kentucky that are consistent with the requirements of this administrative regulation and KRS Chapter 278.

Revised Rules, Section 3(1) (emphasis added). Though the term “pole attachments” is not separately defined, the proposed rules define “attachment” as follows:

“Attachment” means any attachment by cable television system operator, **telecommunications carrier, broadband internet provider**, or governmental unit to a pole owned or controlled by a utility.

Revised Rules, Section 1(1) (emphasis added). Because ILECs likely fall within the definitions of “broadband internet provider” and “telecommunications carrier,” as proposed by the Commission, Section 3(1) could be construed as extending the tariff to ILEC attachments. But because electric utilities do not qualify as any of the entities identified in the definition of “attachment,” an ILEC’s tariff would not apply to attachments made by electric utilities on ILEC-owned poles. This potential outcome would create several major problems.

The first and most obvious problem is that Section 3(1), if it requires electric utilities to file tariffs that apply to ILEC attachments, would effectively nullify joint use agreements because one party to the joint use agreement would no longer be bound by the terms and conditions of the agreement. Second, Section 3(1) does not account for the bilateral nature of joint use relationships. ILECs are pole owners, which sets them apart from other attaching entities. For instance, pursuant to just its two largest joint use agreements, Kentucky Power is attached to more than 40,000 ILEC-owned poles. Joint use agreements are *bilateral* and involve qualitatively different rights and obligations than those established for other attaching entities under pole attachment tariffs, which are *unilateral* in nature. Replacing bilateral joint use agreements with one-sided, non-reciprocal, unilateral, tariff-based rates, terms and conditions would shift significant costs to electric utilities and place electric utilities' access to ILEC-owned poles in jeopardy.

Replacing an ILEC's cost-sharing obligations with tariffed rates not only disadvantages electric utilities, but it also tilts the broadband playing field in favor of ILECs. As explained in the reply comments previously submitted by Kentucky Power, ILECs deployed (and continue to deploy) their attachments under qualitatively different circumstances than other attaching entities. *See* Kentucky Power's Reply Comments at 1-3. Pursuant to joint use agreements, electric utilities installed poles that were taller and stronger than necessary for providing electric service to accommodate ILEC attachments. Because of joint use agreements, ILECs made (and continue to make) their attachments on built-to-suit networks of poles. As a consequence, ILECs have avoided substantial make-ready costs that non-ILEC attaching entities are required to bear when gaining access to electric utility poles—e.g., the costs of rearranging existing attachments, pole replacements, etc.

Though Subsections (2) and (11), when read in tandem with Sections 2(1) and 3(1), could spell a disorganized and chaotic end to longstanding joint use agreements, other sections of the proposed rules indicate that the Commission intended to *preserve* joint use agreements. For example, the Commission expressly excluded “utilities with an applicable joint use agreement” from the definition of “new attacher”—the definitional gateway to the access and make-ready provisions that comprise the majority of the proposed rules. *See* Revised Rules, Section 1(9) (“...a new attacher does not include a utility with an applicable joint use agreement with the utility that owns or controls the pole to which it is seeking to attach...”) (emphasis added); *see also generally* Revised Rules, Section 4 (establishing procedure for “new attachers” to access utility poles). In addition, Section 6(1) of the proposed rules carves out an exception to the generally applicable sixty-day (60-day) notice requirement where it would conflict with the terms and conditions of a joint use agreement. *See* Revised Rules, Section 6(1) (“Unless otherwise established in a joint use agreement or special contract, a utility shall provide an existing attacher no less than 60 days written notice prior to...”) (emphasis added).

These express carveouts for joint use agreements, *coupled with the fact that joint use agreements have always been subject to regulation by the Commission*, strongly suggest that the Commission did not intend for Sections 2(1) or 3(1) to apply to ILEC attachments, let alone intend for the proposed rules to displace presumptively just and reasonable joint use agreements altogether. *See In the Matter of Ballard Rural Telephone Cooperative Corporation, Inc. v. Jackson Purchase Energy Corporation*, Order, Case No. 2004-00036, 2005 Ky. PUC LEXIS 277, *9-10 (Mar. 23,

2005) (finding it “unquestionable” that the Commission has jurisdiction over pole attachments made pursuant to a joint use agreement).

The Commission should take steps to ensure the preservation of joint use agreements, subject to the Commission’s jurisdiction to evaluate these agreements on a case-by-case basis where disputes arise. Joint use agreements facilitated the ubiquitous deployment of the first generation of wireline communications facilities, and they are among the most efficient vehicles for broadband deployment because the attachment processes are streamlined, and there is usually no additional attachment fee for additional wireline attachments. The additional language proposed by Kentucky Power above for Subsections (2) and (11), which mirrors language that already exists in Subsection (9), will solve this problem.

807 KAR 5:015–Section 4. Procedure for New Attachers to Request Utility Pole Attachments.

Subsection (4)(b)5: Make-ready (self-help make-ready above the communication space).

Subsection (4)(b)5 should be revised as follows in order to limit self-help make-ready to the communication space only:

State that if make-ready is not completed by the completion date established by the utility in subparagraph 2. of this paragraph (or, if the utility has asserted its fifteen (15) day right of control, fifteen (15) days later) the new attacher may **complete the make-ready specified pursuant to subparagraph 1 of this paragraph file a complaint with the Commission pursuant to Section 7 of this administrative regulation**; and

Reasoning: As explained in its initial comments, Kentucky Power opposes Subsection (4)(b)5 to the extent that it extends the self-help remedy to the electric supply space. *See* Kentucky Power’s Initial Comments at 11, 15-16. From a risk/benefit perspective, extending the right to perform self-help make-ready to the electric supply space does not make sense. The supposed purpose of the electric supply space self-help remedy is to speed deployment by allowing new attachers to hire contractors to complete make-ready in the electric supply space when electric utilities fail to complete electric supply space make-ready in a timely fashion. However, the record is devoid of any evidence (or even allegations) suggesting that electric utility make-ready is a source of deployment delay in Kentucky.

Moreover, Kentucky Power previously submitted data showing that 83% of the “make-ready” poles within its service territory required **only** communication space make-ready. Put another way, this data indicates that only 17% of make-ready poles in Kentucky Power’s service territory required make-ready in the electric supply space. However, because this data included pole replacements—i.e., make-ready that attaching entities cannot perform via the self-help remedy, Kentucky Power’s previous data submission actually **overstates** the amount of electric supply space make-ready that would have been eligible for the self-help remedy. In the 2019-2020 time period, attaching entities submitted applications to attach to 2,191 Kentucky Power poles. Of those 2,191 poles, only 102 poles—**less than 5%**—required the type of make-ready covered by the

Commission’s proposed electric supply space self-help remedy. Therefore, even assuming that electric utility make-ready is a source of broadband deployment delay in Kentucky (a proposition for which there is no evidence), an electric supply space self-help remedy would provide only a *de minimis* benefit to attachers.

While the purported benefits are virtually non-existent, the risks of the proposed electric supply space self-help remedy are immense. Make-ready in the electric supply space is more complicated and significantly more dangerous than make-ready in the communications space. This not only means that mistakes would be more prevalent with a self-help remedy in the electric supply space, but it also means that the consequences of such mistakes would be more severe. Missteps amongst electric supply lines can lead to power outages, and in some cases, even fatal injuries. This perhaps explains why several other states do not allow attaching entities to perform self-help make-ready above the communication space. *See, e.g., Arkansas:* 126-03 Ark. Code R. § 028, Rule 2.03(e) (stating that self-help remedy “does not apply to any work that is within the electric space”); **Georgia:** *In re: Implementation of House Bill 244*, Docket No. 4353, Order Implementing House Bill 244 (Dec. 30, 2020) (declining cable companies’ request to adopt the FCC’s self-help remedy); **New Hampshire:** N.H. Code Admin. R. Puc. 1303.12 (limiting self-help remedy to make-ready in the communication space); **Washington:** Wash. Admin. Code § 480-54-030(10) (limiting self-help remedy to make-ready within the communication space). Even the FCC, prior to 2018, expressly disallowed self-help above the communications space. *See Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, WC Docket No. 07-245, GN Docket No. 09-51, 26 FCC 5240, 5262 at ¶ 42 (Apr. 7, 2011) (“Based on the record, we find the self-help remedy for survey and make-ready performance would not be appropriate for attachments that generally are located in, near, or above the electric space.”).

In summary, an electric supply space self-help remedy has no demonstrated need, creates dangerous and unnecessary risks, and would only be useful in a *de minimis* number of circumstances. These facts demonstrate that the Commission’s proposed electric supply space self-help remedy fails the risk/benefit analysis. In lieu of providing new attachers with the right to perform make-ready in the electric supply space, Subsection (4)(b)5 should instead provide that access disputes involving delays in electric supply space make-ready should be handled in accordance with the complaint procedures in Section 7 of the proposed rules.

Subsection (6)(a): Final Invoice (timeline for issuing final invoice).

Subsection (6)(a) should be revised as follows to afford utilities sufficient time to collect invoices from third-party contractors before issuing final make-ready invoices to new attachers:

Within a reasonable period, ~~not to exceed ninety (90) days~~ after a utility completes the utility’s make-ready, the utility shall provide the new attacher:

In the alternative, the Commission should extend the timeline for issuing final make-ready invoices as follows:

Within a reasonable period, not to exceed **one hundred and eighty (180) ~~ninety (90)~~** days after a utility completes the utility's make-ready, the utility shall provide the new attacher:

Reasoning: Subsection (6)(a) would require utilities to issue final make-ready invoices within 90 days of completion of their make-ready. Though this is not currently a problem for Kentucky Power because it bills make-ready based on work order estimates, this *will* become a problem as Kentucky Power transitions to post-make-ready true-up invoicing for several reasons. First, a work order is not closed until at least 60 days after completion of work. This allows time for contractor invoices and internal resources to be associated with a particular work order. After this 60-day period, there is a reconciliation to ensure all charges are properly recorded, and *only then* are final invoices actually generated. The reconciliation and invoicing process often takes at least 90 days after a work order is closed. In other words, under Kentucky Power's existing practices, issuing a final make-ready invoice would require at least 150 days. Because the proposed timeline does not sufficiently account for the time-consuming nature of third-party billing, the Commission should either remove or extend the timeline as proposed above.

Subsection (6)(b)1: Limitation on make-ready costs (the “preexisting violations rule”).

Subsection (6)(b)1 should be revised as follows to make clear that utilities are not responsible for the costs of correcting pre-existing violations caused by attaching entities:

A utility shall not charge a new attacher, as part of any invoice for make-ready, to bring poles, attachments, or third-party or utility equipment into compliance with current published safety, reliability, and pole owner construction standards if the poles, attachments, or third-party or utility equipment were out of compliance because of work performed by a party other than the new attacher prior to the new attachment. **In no event shall a utility be required to bear such cost unless the utility was the cause of such non-compliance.**

Reasoning: Subsection (6)(b)1 makes clear that new attachers are not responsible for the costs of correcting violations caused by existing attachers on the pole. As explained in its initial comments, Kentucky Power does not object to Subsection (6)(b)1 insofar as it shields entities from bearing the costs of violations that they did not cause. *See* Kentucky Power's Initial Comments at 12-13. In fact, Kentucky Power supports the underlying policy of Subsection (6)(b)1 because it closely tracks the Commission's “cost causation” principles—i.e., the cost causer pays. *See, e.g., In the Matter of: The Application of Kentucky Power Company d/b/a American Electric Power for Approval of Amendment Compliance Plan for Purposes of Recovering the Costs of New and Additional Pollution Control Facilities and to Amend its Environmental Cost Recovery Surcharge Tariff*, Order, Case No. 2002-00169, 2003 Ky. PUC LEXIS 230, at *56 (Mar. 3, 2003) (rejecting cost allocation proposal because it would “require the Commission to abandon the bedrock principle of basing rates on cost causation”).

However, Subsection (6)(b)1 is narrowly drawn and only prevents utilities from charging new attachers for correcting preexisting violations. Subsection (6)(b)1 does not provide any guidance on where this cost should ultimately fall. This creates uncertainty, especially in situations where

the violation cannot be traced back to the particular entity (or entities) that caused the violation. By implication, Subsection (6)(b)1 might be construed as requiring pole owners to absorb these costs if the cost causer cannot be identified. Of the three potential cost-bearers in these situations (the attacher who caused the violation, the new attacher, and the pole owner), it would make the least sense for this cost to fall on the pole owner, which neither caused the violation nor stands to benefit as a result of the correction of the violation.

To remove uncertainty under Subsection (6)(b)1 and ensure that the cost of correcting violations falls on the cost-causer, the Commission should adopt the revisions proposed above. This would bring Subsection (6)(b)1 more in line with other reverse preempted states that have addressed the issue of preexisting violations. *See, e.g., Louisiana: In re: Review of General Order Dated March 12, 1999 (Pole Attachments)*, General Order, Docket No. R-26968, 2014 La. PUC LEXIS 263, *35-36 (Sept. 4, 2014) (allocating the costs of correcting a preexisting violation to the entity that caused the violation “[w]here it can reasonably be determined which Attachment necessitated the corrections); **Washington:** Wash. Admin. Code § 480-54-050(2) (“The costs of modifying a facility to bring an existing attachment into compliance with applicable safety requirements shall be borne by the occupant or owner that created the safety violation that necessitated the modification....”).

The Commission should also consider revising the proposed rules to provide new attachers with a right to recover the costs of correcting violations from the entity that caused the violations. This would promote more efficient deployments by allowing new attachers to correct the violations and deploy their facilities on the front end, while providing them with a mechanism by which they can recover the costs they incurred in correcting the violations after their facilities have been deployed. This would also avoid putting the pole owner (and its ratepayers) in the position of a creditor who fronts the money to accommodate a broadband deployment and must chase down the money from the cost causer after the fact.

Finally, the Commission should consider adopting a rule that would allocate the cost of correcting preexisting violations on a pro rata basis whenever violations cannot be traced back to the particular entity that caused the violation. The Louisiana Public Service Commission has adopted a similar approach:

If a rearrangement is required, because of pre-existing violations of (sic) safety violations, the NESC or a Pole Owner’s engineering standards, or any other non-compliance issues, the direct, actual and verifiable costs related to the rearrangement shall be treated as follows:

[...]

- ii. Where it cannot reasonably be determined which Attachment necessitated the corrections, the direct, actual and verifiable costs related to the rearrangement shall be shared equally among the Pole Owner and all Attachers.

See In re: Review of General Order Dated March 12, 1999 (Pole Attachments), General Order, Docket No. R-26968, 2014 La. PUC LEXIS 263, *35-36 (Sept. 4, 2014) (Rule 5(e)(ii)). While

not a perfect solution to the preexisting violations problem, allocating the costs of untraceable violations on a pro rata basis will: (1) avoid the gridlock that sometimes occurs when it is impossible to identify (and allocate the costs of the violation to) the cost causer; (2) encourage the parties to collaborate in identifying the attacher who caused the violation; and (3) incentivize existing attachers to become more proactive in monitoring the communications space for violations, which would have the added benefit of bolstering the safety and reliability of the pole network.

Subsection (9)(b): Self-help remedy (make-ready above the communications space).

Subsection (9)(b) should be revised as follows to limit the self-help remedy to the communications space only:

Make-ready. If make-ready **in the communications space** is not complete by the applicable date specified 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~~ as specified in Section 5 of this administrative regulation, **to complete such communications space make-ready.** **Under no circumstances shall any attacher, or any contractor hired by an attacher, complete make-ready above the communications space without the express written consent of the electric utility.**

Reasoning: As discussed in more detail above in connection with Subsection (4)(b)5, the Commission should not extend the self-help remedy to make-ready above the communications space because the benefit of such a remedy, if any, is vastly outweighed by its attendant risks. In lieu of creating an electric supply space self-help remedy, the Commission should revise Subsection (9)(b) and limit the self-help remedy to the communications space only.

807 KAR 5:015 – Section 5. Contractors for Surveys and Make-ready.

Subsection (1): Contractors for self-help complex and above the communications space make-ready.

Subsection (1) should be revised to make clear that the self-help remedy is limited to the communications space:

Contractors for self-help **surveys and** complex ~~and above the communications space~~ make-ready. A utility **may, but is not required to, shall make available** and keep up-to-date a reasonably sufficient list of contractors the utility authorizes to perform self-help surveys and make-ready that is complex ~~and self-help surveys and make-ready that is above the communications space on the utility's poles.~~ **If a utility provides such a list, then** the new attacher must use a contractor from this list to perform self-help work that is complex ~~or above the communications space.~~ New and existing attachers may request the addition to the list of any

contractor that meets the minimum qualifications in subsection (3) of this section and the utility shall not unreasonably withhold its consent.

Reasoning: As explained above in conjunction with Section 4(4)(b)5, the Commission should not extend the self-help remedy to make-ready above the communications space. A self-help remedy in the electric supply space would create unnecessary risk to life and electric distribution facilities, while doing little to promote broadband deployment. The revisions proposed above, along with the proposed revisions to Sections 4(4)(b)5 and 4(9)(b), would limit the proposed self-help remedy to make-ready within the communication space.

807 KAR 5:015 – Section 7. Complaints for Violations of This Administrative Regulation.

Subsection (7)(b): Burden of proof (“red tagged” pole presumption).

Subsection (7)(b) should be deleted in its entirety:

~~**The commission may presume that a pole replaced to accommodate a new attachment was a red tagged pole if:**~~

- ~~**1. There is a dispute regarding the condition of the pole at the time it was replaced; and**~~
- ~~**2. The utility failed to document and maintain records that inspections were conducted pursuant to 807 KAR 5:006 and that no deficiencies were found on the pole or poles at issue, or if inspections of poles are not required pursuant to 807 KAR 5:006, the utility failed to periodically inspect and document the condition of its poles.**~~

In the alternative, the Commission should revise Subsection (7) to clarify that documentation showing that the pole in dispute was inspected in accordance with 807 KAR 5:006 and was not flagged as requiring replacement is sufficient to overcome the “red tagged” pole presumption. This can be accomplished by including the following language as a new Subsection (7)(c):

Records indicating that a pole was included within a circuit inspection conducted pursuant to 807 KAR 5:006 and was not designated as requiring replacement are sufficient to overcome the presumption in subsection (7)(b) of this section.

Reasoning: As a preliminary matter, Kentucky Power does not object to the Commission’s new cost allocation rule regarding “red tagged” poles. *See* Sections 1(10), 4(6)(b)2-4. The new “red tagged” pole rule is a fair implementation of the Commission’s longstanding cost allocation principle that the “cost causer pays.” *See* Revised Rules, Federal Mandate Analysis Comparison at 32 (“This administrative regulation creates a uniform process with specific timelines and self-help remedies, including one-touch make-ready, by which cable television providers, telecommunications carriers, broadband internet providers, and government units may seek to

make new attachments, while minimizing burdens placed on utilities and considering the fair allocation of costs between attachers and the traditional utility customers based on cost causation principles traditionally applied by the PSC.”), 33 (“[L]ike the federal regulation, and consistent with the cost causation principles the PSC applies when setting rates for other customers, utilities are able to recover the costs of processing pole attachment applications and completing make-ready from the attaching entities that caused them to be incurred, so the timelines for reviewing applications and completing make-ready should not result in the regulated entities incurring uncompensated costs.”).

The Commission properly rejected Kentucky Broadband & Cable Association’s (“KBCA”) make-ready pole replacement cost allocation proposal, which would have shifted more than 90% of make-ready pole replacement costs to electric utilities and their ratepayers. *See* KBCA’s Initial Comments at 13-17. KBCA proposed that the new attacher requesting a pole replacement pay *only* the remaining book value of the existing pole. Based on year-end 2020 data, the average remaining book value of a pole in Kentucky Power’s distribution system was \$489.95 (which excludes accumulated depreciation and deferred income taxes). By contrast, the actual average make-ready pole replacement cost during 2020 was \$6,326.49. In other words, based on 2020 data, the average remaining book value represents less than 8% of the *actual* make-ready pole replacement cost. Part of the reason for this vast disparity is that roughly 43% of the cost of a make-ready pole replacement—including flagging, overhead line transfers, engineering services, maintenance charges and other capital—never hit FERC Account 364 (which is the starting point for KBCA’s proposal). FERC Account 364 merely captures the cost of labor and materials associated with setting a new pole; it does not capture all costs incurred in a make-ready pole replacement.

Further, KBCA’s proposal was premised entirely on the false notion that an electric utility always benefits from a new pole, but as explained in Kentucky Power’s previously submitted reply comments, this is hardly ever the case. *See* Kentucky Power’s Reply Comments at 6-10. There are many situations where even a fully depreciated pole is more than adequate for existing electric service needs. The Commission’s “red tagged pole” rule, on the other hand, correctly acknowledges those situations where an electric utility and its ratepayers actually *do* benefit from a pole replacement precipitated by an attachment request.

Kentucky Power’s objection to the “red tagged” pole rule relates *solely* to the presumption in Subsection (7)(b). Specifically, Kentucky Power is concerned that the following language would require electric utilities to produce a “clean bill of health” for a particular pole in dispute to overcome the “red tagged” pole presumption:

The utility failed to document and maintain records that inspections were conducted pursuant to 807 KAR 5:006 and that no deficiencies were found on the pole or poles at issue...

Revised Rules, Section 7(7)(b)2 (emphasis added). A requirement to produce a “clean bill of health” does not appear to be the Commission’s intent, given that (1) Subsection (7)(b) specifically references the inspection requirements of 807 KAR 5:006, and (2) 807 KAR 5:006 does not require electric utilities to document the condition of their poles on a pole-by-pole basis. Nevertheless,

such an interpretation would impose a significant administrative burden on electric utilities and add unnecessary expense to Kentucky Power's revenue requirements.

Furthermore, requiring Kentucky Power to document and maintain records for each "healthy" pole in its distribution system would require Kentucky Power to overhaul the manner in which it conducts inspections. To comply with the requirements of 807 KAR 5:006, Kentucky Power currently:

[V]isually inspect[s] all overhead and the external, above ground portions of underground facilities on a 2 year cycle to identify and correct deficiencies necessary for the safety of employees and the public under the conditions specified in the NESC and for system reliability.

Exhibit 1 (AEP-Kentucky Overhead/Underground Circuit Facilities Inspection and Maintenance) at 1. The overhead component of Kentucky Power's inspections includes, but is not limited to, the following:

[V]isual inspection[s] of poles (including foreign owned poles with company owned attachments), conductors, and pole-mounted equipment (transformer, regulators, reclosers, capacitors, etc.) and related materials (insulators, brackets, terminations, cutouts, surge arresters, etc.) owned by the company.

Id. These inspections are performed on a circuit-by-circuit basis. When a safety or reliability issue is identified, Kentucky Power documents the issue for corrective action in a detailed map of the circuit being inspected. Kentucky Power also maintains circuit inspection results, which detail the type of corrective actions taken within a particular circuit and when the corrective actions were completed. Kentucky Power does *not* document the condition of distribution facilities that exhibit no safety or reliability issues. Such documentation would serve no core utility function.

Kentucky Power is also concerned that attachers will seize upon the ambiguity in Subsection (7)(b) in future complaint proceedings in an attempt to shift deployment costs onto electric utilities. For instance, attachers might attempt to exploit Subsection (7)(b) by disputing the condition of "make-ready" poles and arguing that electric utilities cannot rebut the "red tagged" pole presumption without presenting documentation showing the condition of the particular pole in dispute. This is not a baseless concern, given the effort invested by KBCA thus far to shift more than 90% of make-ready pole replacement costs to electric utilities and their ratepayers. *See* KBCA's Initial Comments at 13-17. To ward off unnecessary litigation over the condition of "make-ready" poles, the Commission should consider the revisions proposed above.

Kentucky Power appreciates the opportunity to provide the foregoing comments regarding the proposed pole attachment rules. Because Kentucky Power owns more than 217,000 distribution poles in eastern Kentucky, which host approximately 103,000 third-party attachments, and because telephone companies are attached to more than 121,000 of Kentucky Power's distribution poles

pursuant to joint use agreements, Kentucky Power has a significant stake in the outcome of this proceeding. For the Commission's convenience, Kentucky Power has attached, as Exhibit 2 hereto, a copy of the slide deck it used for illustrative purposes during the July 29, 2021 public hearing.

Respectfully submitted.

A handwritten signature in blue ink, appearing to read 'BK West', with a long horizontal line extending to the right.

Brian K. West
Vice President, Regulatory & Finance

Kentucky Power Company

EXHIBIT 1

AEP — KENTUCKY
OVERHEAD/UNDERGROUND CIRCUIT FACILITIES INSPECTION
AND MAINTENANCE

Objective: The objective of this program is to visually inspect all overhead and the external, above ground portions of underground facilities on a 2 year cycle to identify and correct deficiencies necessary for the safety of employees and the public under the conditions specified in the NESC and for system reliability.

Activities Included In Program for Overhead Facilities: The program consists of a visual inspection of poles (including foreign owned poles with company owned attachments), conductors, and pole-mounted equipment (transformer, regulators, reclosers, capacitors, etc.) and related materials (insulators, brackets, terminations, cutouts, surge arresters, etc.) owned by the company. It includes inspection of foreign attachments (CATV, telephone, etc.) to the company's poles for any safety related electrical or mechanical defects. Electrical and mechanical defects observed will be identified and the information will be collected so appropriate corrective action can be taken. Driving or foot patrol inspections are conducted as appropriate looking for obvious defects such as loose down guys, broken grounds, cracked insulators, lightning arresters with blown isolators, deteriorated crossarms having inadequate strength, and NESC minimum vertical and horizontal conductor clearance issues.

Activities Included In Program for Underground Facilities: The program consists of an external, visual inspection of the above ground portion of underground systems including pad-mounted equipment (transformers, switches, primary metering enclosures, junction cabinets, etc.), pedestals and the underground associated components of primary riser poles. The program also includes the visual inspection of company owned outdoor lights and light poles fed from underground systems in URD developments and similar installations. The external inspection will be conducted to determine that the equipment is locked and secure and that there are no open appurtenances that might allow access to the interior of the equipment via soil erosion, cabinet or conduit deterioration or by other means such as vandalism. Oil filled equipment is also checked for any external leaks. Any defects observed that need attention will be identified and the information will be collected so appropriate corrective action can be taken.

Inspection/Collection

AEP personnel and contractors inspect and maintain overhead and underground facilities as a part of the 2 year cycle for the examination of distribution assets to identify defects and areas requiring attention. The Distribution Region and/or District/Areas identify the circuits to be included in the current year program based on inspection and operating history. Detail circuit maps are provided as needed by graphics personnel to be used for the inspection program which also allows for any field corrections to be documented for

follow up. A listing of items to be checked as a part of this inspection is on the attached page 3.

How The Program Fits Into Overall Operations and Maintenance Plans:

This program is designed to proactively identify defects involving company owned overhead and above ground portions of underground facilities so that appropriate action can be taken to reduce the possibility of an accident or correct a condition that would adversely affect system operation. The corrective actions taken are to include necessary maintenance and replacement as a part of this program. If defects should be discovered that pose a safety risk, then timely corrective action by qualified personnel is required. In rare instances the inspector may be required to guard the site of a safety hazard until qualified personnel arrive to correct the hazard. Defects involving foreign owned facilities are to be reported to the owner for correction. However, in some situations action may be required on the company's part to correct a safety hazard involving foreign owned facilities.

Maintenance

Maintenance activities are identified during the inspection process and in some cases are done in conjunction with the inspection. Some of these type activities would include the replacement of property ownership tags or structure location tags, tightening of pole down guys, replacement of lock(s) for underground equipment, etc. Otherwise, the local area office schedules follow up work as appropriate.

Records/Reporting

Circuit inspection results are maintained at the Region/District/Area office. This documentation includes what if any follow up action was required and when the follow up action was completed.

Kentucky PSC Inspections

In the interest of public safety, to limit our liability, and to comply with PSC requirements, a periodic and systematic inspection of all our facilities is necessary.

The following are the general guidelines for what to look for as a part of this inspection:

- * Condition of pole:
 - Rotten
 - Leaning or Washed out
 - Burned
 - Broken / split
 - Other

- * Condition of crossarm and crossarm braces
 - Broken / split
 - Other

- * Pole ground intact
 - Broken / missing ground wire molding
 - Loose connections

- * Hardware damaged
 - Lightning arrester
 - Cutout
 - Insulators

- * Guys and anchors
 - Loose
 - Damaged
 - Need insulator / breaker / marker

- * Transformers / Other Equipment
 - Unused
 - Overloaded
 - Leaking
 - Damaged

- * Conductors
 - Proper NESC vertical and horizontal clearance of primary, secondary and service conductors
 - Unused or abandon primary, secondary and service conductors.

- Services Drop Clearances and Blanked Meter Bases
- Damaged — broken strands
- Excessive splices
- Loose tie wire

*Attachments

- Clearance issues

* Pole tags

- Damaged / missing

Report immediately any hazardous conditions that could endanger life or property, or would cause an outage.