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July 30, 2021

RE: 807 KAR 5:015 Access and attachments to utility poles and facilities

Dear Mr. Pinney:

Enclosed please find and accept for filing Louisville Gas and Electric Company's and Kentucky Utilities Company's comments on the version of the Commission's proposed rules governing pole attachment procedures filed with the Legislative Research Commission on May 14, 2021.

Also enclosed is a copy of the presentation the Companies shared during the July 29, 2021 virtual public hearing. Please note that we have redacted a customer address and phone number from Slide 13 of the presentation deck.

Please note that we have redacted customer addresses and phone numbers in the exhibits.

Should you have any questions regarding the enclosed, please do not hesitate to contact me

Sincerely,

Rick E. Lovekamp

LOUISVILLE GAS AND ELECTRIC COMPANY AND KENTUCKY UTILITIES COMPANY COMMENTS ON THE REVISED PROPOSED POLE ATTACHMENT RULES

EXECUTIVE SUMMARY

- Taken as a whole, the proposed rules evidence an intent to preserve, rather than destroy, existing joint use agreements. Joint use agreements, which have long been subject to Commission regulation, are *bilateral* agreements between electric and telephone utility pole owners that establish reciprocal access, maintenance and cost-sharing obligations for the jointly used pole network. This distinguishes joint use agreements from *unilateral* pole attachment tariffs. Through an omission within two definitions, though, the proposed rules would undermine—if not displace entirely—existing joint use agreements. Specifically, because the definitions of "broadband internet provider" and "telecommunications carrier" do not exclude "a utility with an applicable joint use agreement"—like the definition of "new attacher"—the proposed rules would seemingly provide telephone companies with a *non-reciprocal* mandatory right of access and a *non-reciprocal* right to tariffed rates, terms and conditions on electric utility poles. To avoid this disruptive and inequitable outcome, the Commission should revise the definitions of "broadband internet provider" and "telecommunications carrier" in Sections 1(2) and (11) to exclude "a utility with an applicable joint use agreement."

- The proposed rules include a definition for "red tagged poles" and make clear that the cost of replacing such poles should not be borne by new attachers. LG&E-KU have always borne the cost of replacing "red tagged poles" and do not object to this new cost allocation rule. The new cost allocation rule, unlike KBCA's proposal earlier in this proceeding (which would have shifted almost all make-ready pole replacement costs to electric utilities) correctly implements the Commission's long-standing "cost causer pays" principle. However, the "red tagged pole presumption" in Section 7(7)(b) might be construed as requiring an electric utility to produce a "clean bill of health" for a disputed "make-ready" pole to overcome the presumption (and avoid bearing the cost of replacement). Such a requirement would impose a costly administrative burden and require LG&E-KU to fundamentally change the way they conduct inspections pursuant to 807 KAR 5:006. LG&E-KU urge the Commission to either (a) remove the "red tagged pole presumption" or (b) revise the proposed rules to make clear that electric utilities can rebut the "red tagged pole presumption" by presenting evidence that the pole in dispute was inspected as part of a circuit inspection and not designated as requiring replacement.

- The stated purpose of the FCC's self-help remedy for electric supply space make-ready is to expedite broadband deployment. LG&E-KU categorically oppose providing attaching entities with a regulatory right to perform make-ready in the electric supply space. Make-ready work in the electric supply space is more complicated and far more dangerous than make-ready work in the communications space. LG&E-KU specifically oppose the adoption of an electric supply space self-help remedy in Kentucky because there is no demonstrated need for such a remedy. The record is devoid of evidence or even allegations that electric utility make-ready is a source of broadband deployment delay in Kentucky. The benefits, if any, of a self-help remedy in the electric supply space are grossly outweighed by the significant risks. LG&E-KU urge the Commission to limit the self-help remedy to the communications space, which is not only where most make-ready occurs, but is also where broadband deployment is more likely to be delayed by the anti-competitive motives of existing attachers.

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Louisville Gas and Electric Company ("LG&E")[1] and Kentucky Utilities Company ("KU")[2] (collectively, "LG&E-KU") respectfully submit these comments on the version of the Commission's proposed rules governing pole attachment procedures filed with the Legislative Research Commission on May 14, 2021.

I. INTRODUCTION

LG&E-KU appreciate the opportunity to comment on the revised version of the Commission's proposed pole attachment rules. LG&E-KU commend the Commission for its thoughtful consideration of stakeholder input, which is evidenced by the Commission's revisions to the proposed rules after the completion of the informal stakeholder process. For example, the Commission addressed electric utility concerns by, *inter alia*, incorporating a new transfer provision that targets the "double wood" problem. *See* Revised Proposed Pole Attachment Rules ("Revised Rules"), Section 6(3). The Commission also addressed attaching entity concerns by, *inter alia*, incorporating a provision that expressly addresses overlashing and clarifying that new attachers are not responsible for the costs of replacing "red tagged" poles. *See* Revised Rules, Sections 3(5) & 4(6)(b).

Though LG&E-KU support many of the revised rules, there are a few issues that warrant further consideration and revision. First, though the proposed rules, in some places, seem to

[1] LG&E is an investor-owned electric and gas utility based in Louisville, Kentucky. LG&E owns electric distribution infrastructure, including a substantial number of utilities poles, in the City of Louisville and the surrounding sixteen (16) counties. LG&E provides electric power service to more than 418,000 customers and has an electric distribution network spanning 6,544 miles. LG&E's utility poles host more than 100,000 third-party attachments, not including the 40,000+ LG&E poles that host telephone company attachments pursuant to joint use agreements.

[2] KU is an investor-owned electric utility based in Lexington, Kentucky. KU owns electric distribution infrastructure, including a substantial number of utility poles, in Kentucky and Virginia. KU provides electric power service to more than 558,000 customers and has an electric distribution network spanning 16,613 miles. KU's utility poles host more than 170,000 third-party attachments, not including the 80,000+ KU poles that host telephone company attachments pursuant to joint use agreements.

evidence an intent by the Commission to *not* disrupt joint use agreements, other places within the proposed rules appear to undermine this intent. By operation of the definitions of "broadband internet provider" and "telecommunications carrier," Section 2(1) can be construed as providing telephone utility pole owners with a *non-reciprocal* right of access on electric utility poles, which would disrupt the primary form of consideration in joint use agreements between electric and telephone utility pole owners. In addition, Section 3(1) would seemingly provide telephone companies with a right to tariffed rates, terms and conditions—thereby displacing existing joint use agreements. The Commission can and should resolve these ambiguities by adding the same exclusion to the definitions of "broadband internet provider" and "telecommunications carrier" as currently exists in the definition of "new attacher."

Second, Section 7(7)(b) appears to create a presumption that a disputed pole has been "red tagged" in the absence of a "clean bill of health" for that particular pole. If this is, in fact, the Commission's intent, it would create a new and significant administrative burden for LG&E-KU and would be inconsistent with LG&E-KU's existing inspection and record-keeping practices under 807 KAR 5:006. Section 7(7)(b) should either be deleted or clarified to avoid this conflict.

Third, the Commission should also reexamine the proposed "self-help" remedy in Section 4(9), which would allow new attachers to perform self-help above the communications space. As explained in LG&E-KU's initial comments, there is no need for such a remedy. The record contains no evidence to suggest that electric utility make-ready is a source of broadband deployment delay in Kentucky. The record does demonstrate, however, that make-ready in the electric supply space is more complicated and substantially more dangerous than make-ready within the communications space. Because the potential benefits of an electric supply space self-help remedy, if any, are dwarfed by the substantial risks that such a remedy would pose, the

Commission should revise the proposed rules to limit the self-help remedy to the communications space only.

Fourth, the proposed rules would require electric utilities to file new pole attachment tariffs that conform to the proposed rules. *See* Revised Rules, Section 3(7). In other words, Section 3(7) would essentially bar electric utilities from incorporating any term or condition from an existing tariff that deviates from the proposed rules into their new pole attachment tariffs. This seems unnecessary from a regulatory and policy perspective because the terms and conditions of existing pole attachment tariffs have already run the full gamut of regulatory review; approved pole attachment tariffs are *presumptively* just and reasonable. Further, if a tariff is reviewed in a rate case, attaching entities are routinely permitted to intervene and present their positions regarding the terms and conditions within the tariff. This process yields terms and conditions that account for both the capabilities of a particular electric utility and the needs of the attaching entities within the utility's service area.

For example, the tariff review in LG&E-KU's 2016 rate cases yielded the "High Volume Application" framework contained in their pole attachment tariffs (the Rate PSAs), pursuant to which LG&E-KU and attaching entities negotiate and agree upon timelines for attachment requests involving more than 300 poles. This process has worked remarkably well for both LG&E-KU and the attaching entities on their poles. Because the "High Volume Application" framework would deviate from the proposed rules, however, Section 3(7) would bar LG&E-KU from incorporating the "High Volume Application" framework into their new tariffs. Displacing mutually negotiated (and presumptively just and reasonable) terms and conditions with one-size-fits-all rules is a step in the wrong direction. The Commission should revise Section 3 to make clear that electric utilities can incorporate existing terms and conditions that deviate from the proposed rules into the new

tariffs they are required to file pursuant to Section 3(7). The Commission should also reconsider the rigid timeline that Section 4(7) imposes on "larger" attachment requests.

Fifth, the proposed rules have been revised to provide existing attachers with the right to object to one-touch-make-ready ("OTMR") designations. LG&E-KU does not oppose extending this right to existing attachers; however, the proposed objection timeline, which runs parallel to the 15-day application review period, is not practicable. An existing attacher would have no way of knowing when the objection timeline commences because existing attachers are not notified of, or provided copies of, a new attacher's OTMR application. And because existing attachers are not able to review a new attacher's application, they would have no way of discerning whether the proposed make-ready is "simple" or "complex." These logistical issues can be avoided by moving the objection timeline for existing attachers to Section 4(10)(c) and commencing the objection timeline on the date on which new attachers are required to provide prior notice of make-ready to all existing attachers.

Finally, the revisions to the proposed rules suggest that the Commission intended to accommodate LG&E-KU's existing practice of requiring new attachers to conduct and submit a survey as part of their "complete" applications. That is, the proposed rules now allow utilities to satisfy their survey obligations under Section 4(2)(b)1 with any survey performed by a new attacher; under the prior version of Section 4(2)(b)3, only an OTMR survey would suffice. While this is a step in the right direction, the revisions to Section 4(2)(b)3 do not go far enough. Specifically, Section 4(2)(b)3 would apply the advance notice requirement applicable to OTMR surveys to any survey a utility elects to use to satisfy its survey obligations—including the pre-application surveys required by LG&E-KU's existing tariff. Requiring new attachers to provide advance notice of pre-application surveys would not only be impractical, but such a requirement

would also undermine the purpose of LG&E-KU's pre-application survey requirement—expediting the approval process. The Commission can address this impediment by removing the generally applicable advance notice requirement from Section 4(2)(b)3.

II. THE COMMISSION SHOULD MAKE TARGETED REVISIONS TO THE PROPOSED RULES TO CLARIFY THAT THEY DO NOT DISRUPT OR DISPLACE LONGSTANDING JOINT USE AGREEMENTS.

A. The Commission Should Revise the Definitions of "Broadband Internet Provider" and "Telecommunications Carrier" in Sections 1(2) and (11) to Clarify that Utilities with Joint Use Agreements Do Not Have a Non-Reciprocal Right of Access on Electric Utility Poles.

Section 2(1) of the proposed rules defines the scope of mandatory access rights as follows:

> [A] utility shall provide any cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit non-discriminatory access to any pole, duct, conduit or right-of-way owned or controlled by it.

Revised Rules, Section 2(1). A "utility with an applicable joint use agreement," which is excluded from the definition of "new attacher" in Section 1(9), is not specifically referenced in Section 2(1). However, based on the services that they typically provide, incumbent local exchange carriers ("ILECs"), which are the predominant "utilities with an applicable joint use agreement" when it comes to electric utility poles, likely fall within the Commission's definitions for "telecommunications carrier" and "broadband internet provider." Against this backdrop, Section 2(1), if read literally, would extend mandatory access rights to ILECs on electric utility poles, but not vice versa. This non-reciprocal right of access—in which the ILEC class of pole owners have a right to attach facilities to electric utilities' poles, but electric utilities do not have a right to attach to ILEC's poles—undermines the joint use agreements that are the basis of the parties' respective attachment rights.

Notwithstanding the apparent breadth of Section 2(1), other portions of the proposed rules seem to indicate that the Commission did not intend to provide ILECs with the same mandatory

access rights as other attaching entities without "an applicable joint use agreement." For example, the Commission expressly excluded ILECs from the definition of "new attacher." *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…"). As a consequence, ILECs are not entitled to the access rights under Section 4 of the proposed rules (which constitutes more than half of the entire proposed regulation) because Section 4 extends only to "new attachers."

Further, in the "Federal Mandate Analysis Comparison" section of the proposed rules, the Commission explains that Section 2(1) differs from the federal mandatory right of access as follows:

> 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). According to the Commission, the mandatory right of access under Section 2(1) differs from the federal right only insofar as Section 2(1) also extends to "broadband internet providers" and "governmental units." The language quoted above does not identify ILECs as an entity entitled to non-discriminatory access. This is notable because **ILECs do not enjoy a mandatory right of access under the Federal Communication Commission's pole attachment 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."); *id.* at § 224(a)(5) ("For purposes of this section, the term 'telecommunications carrier' **does not include any incumbent**

local exchange carrier…"). The fact that the Commission did not identify this significant departure from the FCC's regulations strongly suggests the Commission did not intend to provide ILECs with a right of access that they do not enjoy under federal law.

Irrespective of intent, the Commission should not provide ILECs with a mandatory right of access on electric utility poles. First, ILECs do not need a regulatory right of access to electric utility poles. Pursuant to longstanding joint use agreements over which the Commission has jurisdiction, ILECs already have the right to access and make attachments to electric utility poles (and vice versa); it would be superfluous to include ILECs within the scope of Section 2(1). Second, electric utilities are definitionally excluded from the scope of Section 2(1)—*i.e.*, electric utilities do not meet the definitions of any of the entities identified in Section 2(1). Therefore, electric utilities have no mandatory right of access on poles owned by ILECs. Providing ILECs a *non-reciprocal* right of access on electric utility poles would disrupt the equilibrium that currently exists between ILECs and electric utilities.

To clarify that ILECs are not entitled to a mandatory right of access on electric utility poles, the Commission should adopt LG&E-KU's proposed revisions to the definitions of "broadband internet provider" and "telecommunications carrier":

> "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.**

The foregoing revisions merely borrow the exclusionary language from the Commission's definition of "new attacher" in Section 1(9) and operate to definitionally exclude ILECs from the scope of Section 2(1).

B. The Commission Should Clarify that the Tariff Required in Section 3(1) of the Proposed Rules Does Not Govern Attachments Made Pursuant to Joint Use Agreements.

Section 3(1) of the proposed rules provides as follows:

> A utility that owns or controls utility poles located in Kentucky shall maintain on file with the commission a tariff that includes 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 "pole attachments" is not separately defined, "attachments" is a defined term under the proposed rules:

> "Attachment" means any attachment by a 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). As explained in Section II.A *supra*, ILECs likely fall within the definitions of "broadband internet provider" and "telecommunications carrier." Therefore, by making pole attachment tariffs generically applicable to "attachments," Section 3(1) would seemingly sweep attachments made by ILECs pursuant to joint use agreements under the rates, terms and conditions of pole attachment tariffs. By giving ILECs the right to attach to electric utilities' poles pursuant to pole attachment tariffs—and not pursuant to the joint use agreements that are currently the only basis for the parties' respective attachment rights—Section 3(1) would have the practical effect of displacing longstanding joint use agreements in whole or in part. There are at least three problems with this potential outcome.

First, displacing joint use agreements would leave electric utilities out in the cold. Under Section 3(1), electric utilities would be required to file tariffs that apply to ILEC attachments, and

ILECs would enjoy a regulatory right to tariffed rates, terms and conditions on electric utility poles. However, because their facilities do not meet the definition of "attachment" under the proposed rules, electric utilities would not enjoy a reciprocal regulatory right to tariffed rates, terms and conditions on poles owned by ILECs.

Second, it would be disruptive and discriminatory to replace longstanding joint use relationships between ILECs and electric utilities with a one-sided tariff-based regime. ILECs are pole owners, which sets them apart from other attaching entities like cable companies. As pole owners, ILECs gained access to electric utility poles (and vice versa) pursuant to joint use agreements. These *bilateral* agreements involve qualitatively different rights and obligations than those established for other attaching entities under pole attachment tariffs, which are *unilateral* in nature.[3]

For example, under the joint use agreement between KU and AT&T, there is an "Objective Percentage Ownership," which establishes the percentage of jointly used poles that each party is required to own. If a pole count reveals that either party is deficient by one or more percentage points, then the deficient party is required to purchase poles from the other party to reduce its

[3] The Public Utilities Commission of Ohio recently reached the same conclusion, finding:

> The presumption that telephone utilities are similarly situated to other attaching entities is incorrect. As currently proposed by staff, [the proposed rule] would permit ILECs to receive the same rates as non-utilities under tariff agreements. By allowing ILECs to negotiate joint use agreements, which are presumed just and reasonable, while, at the same time, being treated equal to non-public utility attachers who are attaching pursuant to a tariff would provide ILECs with a competitive advantage over other attachers. Furthermore, the Commission previously reasoned that default rate formulas may be negotiated among the parties to a joint use agreement but may not be unilaterally insisted upon due to the unique nature of joint use agreements.

See In the Matter of the Commission's Review of Ohio Adm. Code Chapter 4901-3, Concerning Access to Poles, Ducts, Conduits, and Rights-of-Way, Case No.19-834-AU-ORD, Finding and Order (Apr. 7, 2021) at ¶ 69.

deficiency below one percent. If the tariff displaces AT&T's rights and obligations under the joint use agreement, then there is no mechanism by which AT&T can be required to purchase poles from KU to resolve an ownership deficiency. The 80,000 KU poles occupied by AT&T would also become subject to the rates, terms and conditions of the tariff, including, but not limited to, the $7.25/attachment rate. *See* Kentucky Utilities Company Pole and Structure Attachment Charges Tariff, P.S.C. No. 20, Original Sheet No. 40.3 (effective May 19, 2019). This would increase AT&T's annual rental from $0 to ***at least*** $580,000 overnight.[4] Furthermore, the fate of KU's attachments to AT&T's poles would be unclear if the tariff displaced AT&T's rights and obligations under the JUA. Are KU's rights and obligations still governed by the joint use agreement? Does KU even have a right to remain attached to AT&T's poles? If so, under what terms and conditions? These questions only scratch the surface of the disarray that would be caused by the tariff displacing the joint use agreement between KU and AT&T.

Third, there is no need to replace joint use agreements with tariffed rates, terms and conditions because the Commission has always exercised jurisdiction over joint use agreements between ILECs and electric utilities. *See, e.g.*, *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, at *9-10 (Mar. 23, 2005) (finding it "unquestionable" that the Commission has jurisdiction over pole attachments made pursuant to a joint use agreement). Thus, it is impossible that existing joint use agreements are somehow "unfair" or improper because each party to the joint use agreement has always had recourse at the Commission if it believed it was unable to obtain just and reasonable rates, terms or conditions through private negotiations.

[4] The $7.25 tariffed rate is a per attachment rate, rather than a per pole rate. Joint users, like AT&T, often have more than one attachment per pole and often occupy more than the 1-foot of space presumed in the tariffed rate.

The Commission can ensure that joint use agreements are not thrown into disarray by adopting the revisions proposed in Section II.A *supra* to the definitions of "broadband internet provider" and "telecommunications carrier" in Sections 1(2) and (11). The Commission would still have jurisdiction—as has always been the case—to adjudicate complaints regarding the rates, terms and conditions of a joint use agreement on a case-by-case basis.

III. THE COMMISSION SHOULD EITHER STRIKE OR REVISE THE "RED TAGGED POLE PRESUMPTION" IN SECTION 7(7)(b).

During the initial stakeholder review process at the Commission, Kentucky Broadband & Cable Association ("KBCA") urged the Commission to adopt a cost allocation rule that would have shifted the vast majority of make-ready pole replacement costs to electric rate payers. *See* KBCA's Initial Comments at 13-17. KBCA's proposal was premised upon the false notion that all make-ready pole replacements somehow benefit electric utilities and their ratepayers. As set forth in LG&E-KU's previously submitted reply comments, this is not the case. *See* LG&E-KU's Reply Comments at 14-20. Further, since the close of the informal rulemaking process in January 2021, the FCC has specifically declined to act upon a nearly identical request from the National Cable Telecommunications Association. *See Accelerating Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling, WC Docket No. 17-84, 36 FCC Rcd 776, 780-82 (Jan. 19, 2021). Applying "cost causation" principles, the Commission correctly decided to take a more equitable approach and revised the proposed rules to make clear that attachers should not be charged for the replacement of "red tagged poles."[5] *See* Revised Rules,

[5] In the Federal Mandate Analysis Comparison, the Commission explains that the cost allocation provisions within the proposed rules, including the allocation of make-ready costs, were heavily influenced by its longstanding "cost causation" principles. *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

Sections 4(6)(b)2 ("A utility shall not charge a new attacher…the cost to replace any red tagged pole with a replacement pole of the same type and height."), 1(10) (defining "red tagged pole" as a pole "designated for replacement within two (2) years of the date of its actual replacement" or that "would have needed replacement at the time of replacement even if the new attachment were not made"). As explained during the December 17, 2020 public meeting, LG&E-KU already absorb the cost of replacing such poles—even if the replacement schedule for those poles is accelerated by a new attachment request. Therefore, LG&E-KU do not oppose the Commission's new cost allocation rule governing "red tagged poles" or definition of "red tagged pole."

The problem with the new rules relating to "red tagged" poles lies exclusively with the presumption in Section 7(7)(b), which provides:

> 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.

Revised Rules, Section 7(7)(b) (emphasis added). The language emphasized above could be interpreted as requiring an electric utility to produce a "clean bill of health" for a particular pole in a dispute to overcome the "red tagged pole presumption." This does not appear to be the Commission's intent, given that Section 7(7)(b) expressly references the inspection requirements

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.").

of 807 KAR 5:006, and given than 807 KAR 5:006 does do not require this level of documentation. Nevertheless, such an interpretation would impose an onerous administrative burden on electric utilities—a burden that would add unnecessary expense to LG&E-KU.

Requiring electric utilities to maintain records on non-deficient poles would also require LG&E-KU to fundamentally change the way they conduct their inspections. In compliance with the requirements of 807 KAR 5:006, LG&E-KU inspect all lines, poles, equipment and meters within their electric distribution systems on a circuit-by-circuit basis every two (2) years. *See* Exhibit 1 (LG&E-KU's Electric Operation, Maintenance and Inspection Plan). These inspections are not limited to just poles. LG&E-KU visually inspect all components of their distribution systems for apparent safety and reliability issues. As part of these inspections, every distribution pole within a circuit is visually inspected for signs of deterioration and damage. LG&E-KU also "sound" inspect approximately 10% of the poles within each circuit for signs of internal decay. When a deficiency is observed, LG&E-KU assign the deficiency a unique identification number and record the deficiency in the applicable circuit map. *See* Exhibit 2 (LG&E-KU Circuit Inspection Map). Where a deficiency relates to a pole, LG&E-KU record the affected pole number, the particular deficiencies of the pole, and the corrective action taken (or prescribed to be taken) in a PSC Regulatory Inspection Form—*i.e.*, the form LG&E-KU generate upon completion of a circuit inspection. *See* Exhibit 3 (LG&E-KU PSC Regulatory Inspection Form). Poles that are not identified as requiring corrective action in a LG&E-KU PSC Regulatory Inspection Form remain in service. LG&E-KU does not maintain a separate "clean bill of health" for each of these poles.

The inspection and recordkeeping protocols outlined above already exceed the Commission's requirements under 807 KAR 5:006. However, if overcoming the negative

presumption in Section 7(7)(b) requires the production of a "clean bill of health" for the particular pole in dispute, LG&E-KU's inspection and recordkeeping protocols would be deficient. LG&E-KU would, in effect, be required to maintain a parallel set of records for each circuit inspection—*i.e.*, one set of records showing all deficiencies identified within the entire distribution system and a separate set of records showing the condition of each non-deficient pole. This practice not only would be unduly burdensome, but also wholly unnecessary because LG&E-KU already undertake the cost of replacing damaged or deteriorated poles (as one of the many consequences of responsible pole ownership).

LG&E-KU are also concerned that attaching entities will attempt to exploit the ambiguity in Section 7(7)(b) and use the negative inference to shift significant portions of their deployment costs to electric ratepayers. For example, given KBCA's interest in shifting the cost of make-ready pole replacements to electric ratepayers, LG&E-KU can foresee an attaching entity disputing the condition of poles that require replacement in order to safely accommodate a new or modified attachment, and arguing that LG&E-KU cannot overcome the "red tagged pole presumption" with the records generated and maintained pursuant to 807 KAR 5:006. While LG&E-KU do not believe the Commission intended to create such an onerous presumption against electric utilities, or that a fair reading of Section 7(7)(b) yields such an onerous burden of proof, the allure of shifting deployment costs to electric utilities may compel attaching entities to make this argument.

The Commission can resolve this ambiguity and avoid unnecessary litigation over the "red tagged pole presumption" by revising Section 7(7) to clarify that documentation of a circuit inspection and the corresponding absence of a "red tag" is sufficient to meet the burden. This can be accomplished by either deleting Section 7(7)(b) altogether or by adopting the following language as a new Section 7(7)(c):

Records indicating that a pole was inspected as part of a circuit inspection and not designated as requiring replacement are sufficient to overcome the presumption in subsection (7)(b) of this section.

IV. THE COMMISSION SHOULD REVISE SECTION 4(9) TO LIMIT THE "SELF-HELP" REMEDY TO THE COMMUNICATION SPACE ONLY.

New attachers should not be given a regulatory right to perform make-ready within the electric supply space. As explained in LG&E-KU's initial comments, make-ready within the electric supply space is far more dangerous than make-ready within the communication space. *See* LG&E-KU's Initial Comments at 27-30. Safety is LG&E-KU's top priority. Electric supply space make-ready is also typically more complicated than make-ready within the communication space and, therefore, presents a much greater risk of service outages. To mitigate these important safety and reliability risks, LG&E-KU permit only their own personnel or entities subject to their direct control to work within the electric supply space. This restriction allows LG&E-KU to ensure that only qualified personnel—*i.e.*, personnel who have satisfied LG&E-KU's safety and training requirements and are familiar with LG&E-KU's protocols—are working among their electric distribution facilities.

During the initial round of comments, the KBCA argued that the risks outlined above are mitigated by the requirement that new attachers retain an authorized contractor to perform work within the electric supply space. KBCA's Reply Comments at 7-8. However, Section 5(1) of the proposed rules provides new attachers with the right to propose contractors that are not on an electric utility's list of authorized contractors. To the extent the proposed contractor meets the "minimum qualifications" under Section 5(3), it is not entirely clear how much discretion electric utilities have to reject proposed contractors for electric supply space make-ready. This apparent constraint on an electric utility's discretion may create a situation where a contractor *meets* the "minimum qualifications" of Section 5(3), yet *lacks* a strong record of safety performance,

experience on the utility's system, or familiarity with the utility's essential safety and reliability protocols, such as lock-out-tag-out, but is nevertheless permitted to work for an attaching entity in the electric supply space.

While the risks of extending the self-help remedy into the electric supply space are significant and sometimes irreversible, the purported benefits of doing so are virtually non-existent. The purpose of the electric supply space self-help remedy is allegedly to speed deployment by allowing new attachers to complete electric supply space make-ready where electric utility make-ready is a source of delay. *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, WC Docket No. 17-84, WT Docket No. 17-79, 33 FCC Rcd 7705, 7751 at ¶ 96 (Aug. 3, 2018). However, the deployment of new attachments rarely requires make-ready within the electric supply space. *See, e.g.,* Kentucky Power's Initial Comments at 16 (showing that only 17% of make-ready on Kentucky Power's poles involves make-ready in the electric supply space). Allowing self-help in the electric supply space will not move the needle on making broadband deployments more efficient. Furthermore, as revealed in the initial round of comments and during the public meetings held thus far, there is simply no indication that electric utilities in Kentucky have routinely failed to timely complete electric supply space make-ready. *See* LG&E-KU's Initial Comments at 28.

Therefore, LG&E-KU urge the Commission to limit the self-help remedy to the communication space, which would be consistent with the approach taken by several other reverse preemption jurisdictions and was the approach taken by the FCC prior to 2018.[6] This can be accomplished by making the following revisions to Section 4(9) of the proposed rules:

[6] *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,*

> 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**.

To fully implement this revision, the Commission should also revise Sections 4(4)(b)5 and 5(1) of the proposed rules as follows:

> 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
>
> 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 ~~T~~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.

Revised Rules, Sections 4(4)(b)5, 5(1).

It bears emphasizing that the revisions proposed above would only eliminate a new attacher's legal entitlement to work within the electric supply space. It would not eliminate the

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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); **FCC:** *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.").

ability of electric utilities and attaching entities to negotiate a contractual right to work within the electric supply space, subject to adequate safeguards. As indicated in their initial comments, LG&E-KU's pole attachment tariffs currently allow attaching entities to work within the electric supply space under specific, protective terms and conditions. *See* Louisville Gas and Electric Company Pole and Structure Attachment Charges Tariff, P.S.C. Electric No. 13, Original Sheet No. 40.8 at ¶ 7.g. (requiring work to be performed by approved contractor and in the presence of LG&E-KU inspectors), Sheet Nos. 40.17-40.18 at ¶ 18 (outlining additional indemnity requirements), Sheet Nos. 40.19-40.23 at ¶ 23 (outlining additional insurance requirements), Sheet Nos. 40.23-40.24 at ¶ 24 (outlining additional performance assurance requirements). Whether or not attaching entities are permitted to work within the electric supply space, though, should be a decision left to each utility's sound discretion and subject to its specific protective protocols.

V. THE COMMISSION SHOULD REVISE SECTION 3 TO MAKE CLEAR THAT ELECTRIC UTILITIES CAN RETAIN PRESUMPTIVELY JUST AND REASONABLE TERMS AND CONDITIONS FROM THEIR EXISTING TARIFFS.

Section 3 has been revised to include a new subsection that requires electric utilities to file revised pole attachment tariffs that conform to the proposed rules:

> Tariffs conforming to the requirements of this administrative regulation and with a proposed effective date no later than March 31, 2022, shall be filed by February 28, 2022.

Revised Rules, Section 3(7); *see also* Section 3(1) (requiring electric utilities to "maintain on file with the commission a tariff that includes rates, terms, and conditions…that are consistent with the requirement of this administrative regulation"). To the extent they differ from the proposed rules, Section 3(7) appears to bar electric utilities from incorporating terms and conditions from their existing tariffs into the new pole attachment tariffs they are required to file pursuant to this

proposed rule. LG&E-KU oppose any rule that would displace or directly contradict their existing, approved pole attachment tariffs.

In their initial comments, LG&E-KU explained that existing pole attachment tariffs are the product of rigorous regulatory proceedings. *See* LG&E-KU's Initial Comments at 7-8. Electric utilities are required to file their pole attachment tariffs with the Commission, and attaching entities are routinely permitted to intervene and contest the terms and conditions contained therein. During these proceedings, stakeholders typically engage in formal discovery and appropriate settlement conferences to attempt to reach agreement on the terms and conditions for pole attachments. The revised pole attachment tariff is then subject to Commission-level review and approval. This robust process, which includes Commission review and scrutiny, yields *presumptively* just and reasonable terms and conditions.

For example, the tariff filings made in connection with LG&E-KU's 2016 Base Rate Cases limited the standard make-ready timeline to attachment requests involving 300 or fewer poles, beyond which the parties were required to negotiate the timing of make-ready and execute a "High-Volume Application." *See* Louisville Gas and Electric Company Pole and Structure Attachment Charges Tariff, P.S.C. Electric No. 11, Original Sheet No. 40.7 at ¶ 7.h (effective Jul. 1, 2017); Kentucky Utilities Company Pole and Structure Attachment Charges Tariff, P.S.C. Electric No. 18, Original Sheet No. 40.7 at ¶ 7.h (effective Jul. 1, 2017). The "High-Volume Application" framework was subsequently included within the tariff filings LG&E-KU made in connection with their 2018 and 2020 Base Rate Cases. *See* Louisville Gas and Electric Company Pole and Structure Attachment Charges Tarif, P.S.C. Electric No. 12, Original Sheet No. 40.8 at ¶ 7.h. (effective May 1, 2019); Louisville Gas and Electric Company Pole and Structure Attachment Charges Tariff, Electric No. 13, Original Sheet No. 40.8 at ¶ 7.h. (effective Jul. 1, 2021). Even though interested

parties intervened in the proceedings, no party has ever contested this provision. *See, e.g.*, Motion to Intervene of the Kentucky Cable Telecommunications Association, Case No. 2016-00371 (Dec. 20, 2016); Charter Communications Operating LLC's Motion for Full Intervention, Case No. 2018-00295 (Oct. 15, 2018). Since the tariff was first approved, LGE&-KU have entered into, and the Commission has approved, two "High Volume Pole Attachment Application Plans." *See* High Volume Pole Attachment Application Plan between Kentucky Utilities Company and Metro Fibernet, LLC (Feb. 17, 2018); High Volume Pole Attachment Application Plan between Louisville Gas and Electric Company and MCImetro Access Transmission Services Corp. (Sep. 29, 2018).[7] Notwithstanding the multiple layers of Commission approval, LG&E-KU's existing framework would be displaced by the proposed rules because it conflicts with Section 4(7)'s provisions governing "larger orders." Especially in light of the fact that there is no evidence suggesting LG&E-KU's existing approach to "larger orders" is insufficient or unreasonable, there is no cause for the proposed rules to disrupt LG&E-KU's existing approach (or any other presumptively just and reasonable term or condition in existing tariffs for that matter).

Because terms and conditions in existing pole attachment tariffs are *presumptively* just and reasonable, the proposed rules should embrace—rather than displace—such terms and conditions. Allowing electric utilities to incorporate existing terms and conditions into their new pole attachment tariffs would also soften the transition from the purely tariff-based regime that currently exists to the new rules-based regime for regulating pole attachments. Therefore, LG&E-KU urge the Commission to include the following language as a new Section 3(8):

> A utility is not prohibited from including in the tariff required by subsection (7) of this section any term or condition from the tariff that it had on file with the commission as of the effective date of 807 KAR 5:015.

[7] The "High-Volume Plans" are attached as Attachments B and C to the Initial Comments filed by LG&E-KU on September 15, 2020.

VI. THE COMMISSION SHOULD MAKE FURTHER REVISIONS TO SECTION 4(7) TO ALLOW ELECTRIC UTIILITIES TO NEGOTIATE THE TIMING OF ATTACHMENT REQUESTS INVOLVING MORE THAN 300 POLES.

The issue, here, is the threshold number of poles beyond which attaching entities and utility pole owners are required to negotiate for the timing and process associated with new attachments. LG&E-KU, in both their initial comments and during the public meetings held this past December and January, proposed an alternative solution to coordinating "larger orders" using "special contracts." *See* LG&E-KU's Initial Comments at 24-27 (advocating for adoption of "High Volume Request" framework). LG&E-KU also explained that even if it could respond to "larger orders" within the proposed deadlines, the time savings would be useless to a new attacher because there is no way a new attacher could perform construction (or that existing attachers could perform the necessary make-ready) at a commensurate pace. During the public meeting held on January 13, 2021, LG&E-KU provided data regarding the highest volume deployments on its distribution poles: MCI Communications (107 poles/month); MetroNet (220 poles/month); and Kentucky Wired (250 poles/month).[8] Based on these figures, which are the highest deployment volumes LG&E-KU have experienced in recent memory, the highly constrained timelines for "larger orders" are not justified.

Based on stakeholder input, the Commission reduced the size of "larger orders" in its revised rules from the "lesser of 3,000 poles or 5 percent of the utility's poles" to the "lesser of 1,000 poles or 1.50 percent of the utility's poles." *Compare* Proposed Rules, Section 4(7)(b)-(d) *with* Revised Rules, Section 4(7)(b)-(d). While LG&E-KU appreciate the Commission's revisions to Section 4(7)(b)-(d), limiting the size of "larger orders" to 1,000 poles does not go far enough.

[8] During the January 13, 2021 public meeting, LG&E-KU explained that the rates of these deployments were far lower than what the attaching entities had forecasted.

For perspective, 1,000 poles represents approximately 40 miles of distribution line. Even with the Commission's revisions, "larger orders" can still involve more than 300% the number of poles in "regular" sized attachment requests, but the proposed rules only provide electric utilities with 33% more time to complete surveys and 50% more time to complete make-ready than "regular" sized attachment requests. These timelines do not provide electric utilities with sufficient time to marshal the manpower and equipment necessary to complete "larger orders."[9]

Accordingly, LG&E-KU urge the Commission to allow electric utilities and new attachers to negotiate the timing of all "larger orders" by revising Section 4(7) as follows:

> (a) A utility shall apply the timeline described in subsection (2) through (4) of this section to all requests for attachment up to the lesser of 300 poles or 0.5 percent of the utility's poles in the state.
>
> (b) **A utility shall negotiate in good faith the timing of all requests for attachment larger than the lesser of 300 poles or zero and five-tenths (0.5) percent of the utility's poles in the state.** ~~A utility may add 15 days to the survey period described in subsection (4) of this section to larger orders up to the lesser of 3000 poles or 5 percent of the utility's poles in the state~~.
>
> ~~(c) A utility may add 45 days to the make-ready periods described in subsection (4) of this section to larger orders up to the lesser of 3000 poles or 5 percent of the utility's poles in the state.~~
>
> ~~(d) A utility shall negotiate in good faith the timing of all requests for attachment larger than the lesser of 3000 poles or 5 percent of the utility's poles in a state~~.
>
> **(c)** A utility may treat multiple requests from a single new attacher as one request when the requests are filed within 30 days of one another.

[9] As explained in Section IV *supra*, LG&E-KU's tariff requires the parties to enter into a "High-Volume Plan" and negotiate the timing of surveys and make-ready for attachment requests involving more than 300 poles. No attaching entity has ever objected to this framework, and the Commission has already approved two "High-Volume Plans" under this framework. Furthermore, at least one attaching entity has showered unsolicited praise on LG&E-KU's High Volume Plan. *See CMN-RUS, Inc. v. Windstream Kentucky East, LLC*, Case No. 2017-00157, Complaint at p. 9, ¶ 20 (May 15, 2018) ("[Kentucky Utilities] has been willing to negotiate a High Volume Pole Attachment Application Plan with prospective pole attachers that contains more reasonable time frames."). Because there is a conspicuous dearth of evidence showing that LG&E-KU's existing framework for handling surveys and make-ready for "larger orders" is insufficient or unreasonable, the Commission should not change the approved tariffs for LG&E-KU.

VII. THE COMMISSION SHOULD REVISE THE DEADLINE FOR AN EXISTING ATTACHER'S OBJECTION TO A NEW ATTACHER'S DESIGNATION OF ONE-TOUCH-MAKE-READY AS "SIMPLE" TO RUN FROM THE DATE OF THE REQUIRED MAKE-READY NOTICE IN SECTION 4(10)(c).

Section 4(10)(a) of the proposed rules has been revised to allow both utilities *and* existing attachers to object to a new attacher's designation of one-touch-make-ready ("OTMR") as "simple":

> Within the fifteen (15) day application review period (or within thirty (30) days in the case of larger orders as established in subsection (7)(b) of this section or within the time negotiated in good faith for requests equal to or larger than those established in (7)(d)), a utility or **an existing attacher** may object to the designation by the new attacher's contractor that certain make-ready is simple.

Revised Rules, Section 4(10)(a)3.b (emphasis added). Though LG&E-KU conceptually support allowing existing attachers to object to OTMR designations, LG&E-KU believe the current iteration of Section 4(10)(a) would, in practice, be logistically daunting.

The logistical issues stem from the fact that the timeline for objecting to OTMR designations runs in tandem with the "fifteen (15) day application review period." There are at least two problems with this framework. First, an existing attacher would have no way of knowing when the timeline for objecting to an OTMR designation would commence. This is because, in practice and under the proposed rules, an existing attacher would not be provided a copy of a new attacher's application, let alone notice of whether and when a new attacher's application is deemed "complete"—*i.e.*, the trigger for the application review period. Second, because existing attachers are not provided a copy of a new attacher's application, they would have no way of discerning whether the new attacher's proposed make-ready is "simple" or "complex." In other words, existing attachers would not be equipped to make informed objections to OTMR designations at this stage in the process.

The Commission can avoid these problems altogether by moving the timeline for objecting to OTMR designations to a later phase in the OTMR process. The most efficient solution would be to revise the OTMR designation objection timeline so that it commences on the date on which the new attacher is required to provide notice of its proposed make-ready in Section 4(10)(c). This would not only solve the notice problem explained above, but it would also ensure that existing attachers were equipped with sufficient information to determine whether an objection is merited. The revised objection timeline framework could be implemented through targeted revisions to Sections 4(10)(a)3.b and 4(10)(c). Specifically, the Commission should revise Section 4(10)(a)3.b by limiting its applicability to the affected utility:

> b. Within the fifteen (15) day application review period (or within thirty (30) days in the case of larger orders as established in subsection 7(b) of this section or within a time negotiated in good faith for requests equal to or larger than those established in (7)(d)), a utility ~~**or an existing attacher**~~ may object to the designation by the new attacher's contractor that certain make-ready is simple.

The revised objection timeline should be implemented within Section 4(10)(c) as follows:

> (c) Make-ready. If the new attacher's attachment application is approved and if the attacher has provided 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 using a contractor in the manner established for simple make-ready in Section 5(2) of this administrative regulation.
>
> 1. The prior written notice shall include the date and time of the make-ready, a description of the work involved, the name of the contractor being used by the new attacher, and provide the affected utility and existing attachers a reasonable opportunity to be present for any make-ready.
>
> **2. Within the fifteen (15) day notice period established in subsection 10(c) of this section, an existing attacher may object to the designation by the new attacher's contractor that certain make-ready is simple.**
>
> ~~**2.**~~ **3.** The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher.

> ~~3.~~ **4.** In performing make-ready, if the new attacher or the utility determines that make-ready classified as simple is complex, then all make-ready on the impacted poles shall be halted and the determining party shall provide immediate notice to the other party of its determination and the impacted poles. All remaining make-ready on the impacted poles shall then be governed by subsections (2) through (9) of this section, and the utility shall provide the notices and estimates required by subsections (2) through (9) of this section, and the utility shall provide the notices and estimates required by subsections (2)(a), (3) and (4) of this section as soon as reasonably practicable.

VIII. THE COMMISSION SHOULD MAKE FURTHER REVISIONS TO SECTION 4(2)(b)3 TO SPECIFICALLY ACCOMMODATE LG&E-KU'S EXISTING PRACTICE OF REQUIRING SURVEYS TO BE SUBMITTED AS PART OF A "COMPLETE" APPLICATION.

In their initial comments, LG&E-KU explained that their tariffs require attaching entities to submit surveys as part of a "complete" application. *See* LG&E-KU's Initial Comments at 17-18. The purpose of this requirement is to expedite the approval process for attachment requests. To accommodate this existing practice, LG&E-KU proposed that the Commission revise Section 4(2)(b)1 as follows:

> **Unless a utility's tariff requires a new attacher to perform a survey as part of a complete application, a** ~~A~~ utility shall complete a survey of poles for which access has been requested within forty-five (45) days of receipt of a complete application to attach facilities to its utility poles (or within sixty (60) days in the case of larger orders as established in subsection (7) of this section) for purposes of determining if the attachments may be made and identifying any make-ready to be completed to allow for the attachment.

See LG&E-KU's Initial Comments at 17-18.[10] LG&E-KU's proposed revisions to Section 4(2)(b)1 were not incorporated into the Revised Rules. However, based on the Commission's revisions to Section 4(2)(b)3, it appears that the Commission intended to accommodate LG&E-KU's pre-application survey requirement. Section 4(2)(b)3 establishes an exception to Section

[10] Because the Commission has made minor revisions to Section 4(2)(b)1 since LG&E-KU's initial comments were filed, LG&E-KU's proposed revisions have been overlaid on Section 4(2)(b)1 of the Revised Rules.

4(2)(b)1's general requirement that a utility complete a survey of the affected poles within forty-five (45) days of a complete application. Specifically, Section 4(2)(b)3 allows a utility to satisfy its survey obligations by electing to use a survey performed by a new attacher. The prior version of Section 4(2)(b)3 was narrowly drafted and only contemplated a utility using a new attacher's OTMR survey. Following the Commission's revisions, however, Section 4(2)(b)3 is no longer limited to OTMR surveys, and a utility can elect to use any survey performed by a new attacher to satisfy its survey obligations:

> If a new attacher has conducted a survey pursuant to subsection (10)(c) of this section, or a new attacher has otherwise conducted and provided a survey, after giving existing attachers notice and an opportunity to participate in a manner consistent with subsection (10)(c), a utility may elect to satisfy survey obligations established in this paragraph by notifying affected attachers of the intent to use the survey conducted by the new attacher and by providing a copy of the survey to the affected attachers within the time period established in subparagraph 1. of this paragraph.

Revised Rules, Section 4(2)(b)3 (emphasis added). Surveys performed in accordance with LG&E-KU's pre-application survey requirement would now undoubtedly fall within Section 4(2)(b)3.

LG&E-KU appreciate the Commission's revisions to Section 4(2)(b)3 and believe they are a step in the right direction; however, the revisions do not go far enough. While Section 4(2)(b)3 has been expanded to include surveys performed outside of the OTMR framework, it would apply the advance notice requirement applicable to OTMR surveys to non-OTMR surveys—such as the pre-application surveys required under LG&E-KU's tariffs. *See* Revised Rules, Section 4(10)(b)3 (requiring new attacher to provide existing attachers with at least 5 days' notice before performing OTMR survey). Requiring new attachers to provide advance notice to other attaching entities of pre-application surveys would undermine the purpose of LG&E-KU's pre-application survey requirement—*i.e.*, expediting the approval process.

To avoid unnecessary delays in the approval process, LG&E-KU urge the Commission to adopt the following revisions to Section 4(2)(b)3:

> If a new attacher has conducted a survey pursuant to subsection (10)(~~c~~**b**) of this section, or **if a new attacher has conducted and provided a survey as part of its pole attachment applicationa new attacher has otherwise conducted and provided a survey, after giving existing attachers notice and an opportunity to participate in a manner consistent with subsection (10)(c)**, a utility may elect to satisfy survey obligations established in this paragraph by notifying affected attachers of the intent to use the survey conducted by the new attacher and by providing a copy of the survey to the affected attachers within the time period established in subparagraph 1. of this paragraph.

As noted in the revisions proposed above, the Commission should also revise Section 4(2)(b)3 to reference Section 4(10)(b), which governs OTMR surveys, as opposed to Section 4(10)(c), which governs OTMR make-ready.

IX. CONCLUSION

LG&E-KU appreciate the Commission's continued attention to these matters as the Commission works on the important task of striking the right balance between the needs of attaching entities and electric utilities in the effort to promote broadband deployment in Kentucky.

Respectfully submitted this 30th day of July 2021.

EXHIBIT 1

LG&E KU
PPL companies

OM&I

Electric Operation, Maintenance, and Inspection Plan

KENTUCKY REGULATORY INSPECTION
ELECTRIC DISTRIBUTION SUBSTATIONS AND LINES

Subject
Distribution System Inspection

OM&I Number
EOM&I-SI-001

Effective Date
December 1, 2017

SECTION 1 – PURPOSE

This policy documents the inspection requirements for electric distribution substations, distribution lines and equipment and meters at Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU). The inspection program is intended to identify, where possible, problems or potential problems that could have an adverse effect on safety, customer service and/or the orderly and efficient operation of the electric distribution system. It is structured to assure that assets are properly inspected, apparent deficiencies identified and documented, and records retained to ensure compliance with requirements of the Kentucky Public Service Commission (KYPSC) and company procedures. This document is to be filed with the KYPSC per regulation KRS Chapter 278 and 807 KAR Chapter 5 Section 26 - Inspection of Systems.

SECTION 2 – SCOPE

2.1 This policy details the requirements for a periodic, ground based inspection program for electric distribution substations and electric distribution facilities operating at voltages less than 69,000 volts up to the point of service, including overhead and underground electric lines, equipment, utility owned (leased) lighting and meters. It does not cover the inspection of underground network transformers and network protectors in vaults addressed in EOM&I-SI-002: Regulatory Inspection Downtown Louisville Secondary Network Vaults, current revision.

2.2 The objectives of the distribution system inspection program are to:

2.2.1 Enhance public safety and the safety of LG&E and KU employees and contractors by periodically inspecting all distribution substations, electric lines, structures and equipment for recognizable damage, defects and/or unsafe conditions.

2.2.2 Improve system reliability, where possible, by identifying defective and/or damaged structures or equipment and other operating conditions which could result in outages or failures.

2.2.3 Provide documentation of inspections, deficiencies found and corrective actions taken.

2.2.4 Maintain compliance with the KYPSC Regulations and the National Electrical Safety Code (NESC) regarding distribution inspections.

Steve Woodworth
Director Dist Ops and Emerg Prepare

Robert Trimble
Director Electric Distribution

Raymond Connolly
Director Substations and Asset Mgmt

Denise Simon
Director Dist Reliab Analytics Adm

Shannon Montgomery
Director Revenue Integrity

Dan Hawk
Manager Electrical Engineering/Pln

SECTION 3 – REFERENCES

3.1 Kentucky Revised Statutes Chapter 278

3.2 Kentucky Administrative Regulations, Title 807 KAR 5:006, Section 26, Inspection of Systems.

3.3 Kentucky Occupational Safety and Health Act (KOSHA).

3.4 LG&E Energy's Health & Safety Manual, Latest edition.

3.5 National Electrical Safety Code, Latest edition.

SECTION 4 – RESPONSIBILITIES

4.1 Asset Management's Electric System Codes and Standards section shall have responsibility for revising and communicating the requirements of this Policy. Revisions to this policy shall be reviewed and approved by the Directors of Asset Management, Distribution Operations and Metering.

4.2 At LG&E and KU, regulatory inspections for overhead and underground lines and associated equipment operating at less than 69,000 volts and the associated record keeping are performed by the individual operations centers. Specifically, these centers are located in Louisville, Lexington, Richmond, Danville, Shelbyville, Elizabethtown, Maysville, Pineville, London and Earlington.

4.3 At LG&E and KU, regulatory inspections for meters and associated record keeping are performed by Meter Reading and stored electronically in the system(s) of record.

4.4 Regulatory inspections for distribution substations and the associated record keeping are performed by the individual Substation centers. Specifically, these centers are located in Louisville, Lexington, Danville, Pineville, and Earlington.

4.5 Records shall be stored electronically and/or filed in the appropriate substation, metering or operations center offices and kept for the time prescribed in Section 11 – Record Keeping. All records and associated documents must be kept in a manner which allows them to be easily accessed for KYPSC audits.

SECTION 5 – DISCUSSION

5.1 This policy and the KYPSC regulations impose minimum standards for frequency, content of inspections and record requirements. Nothing in this document shall be construed as limiting more frequent and/or more rigorous inspections and/or more stringent record requirements at the discretion of the individual operations center.

5.2 Inspection methods, timing of inspections and labor resource (utility personnel/contractor) utilized to complete regulatory inspections may vary by center provided they meet the minimum requirements contained in this document.

SECTION 6 – POLICY

6.1 Inspection Frequency for Substations, Distribution Lines, Equipment, and Meters.

The requirements of regulation KY KYPSC 807 KAR 5:006 Section 26 - Inspection of Systems impose the following minimum requirements for inspection frequency for substations, distribution lines, equipment, and meters.

6.1.1 At intervals not to exceed two years:

a) Electric lines, equipment, and meters operating at a voltage less than 69,000 volts.

6.1.2 At intervals not to exceed one year:

a) Distribution substations with primary voltage of less than 69,000 volts.

6.1.3 At intervals not to exceed six months:

a) Distribution substations with primary voltage 69,000 volts or greater.

6.1.4 Upon receipt of any report of a potentially hazardous condition all portions of the system which are the subject of the report shall be inspected as soon as practicable.

6.2 Intent of Inspections

6.2.1 Inspections will be completed by utility personnel or contractors qualified to perform field inspections.

6.2.2 The intent of the regulatory inspection is not to perform a detailed technical assessment of every line or structure or to open and inspect every piece of equipment unless a problem is otherwise apparent. The intent is to visually inspect the system looking for apparent unsafe conditions, while identifying, where possible, damaged and/or defective equipment and other operating conditions that may affect system reliability or safety. A listing of items commonly checked during inspections can be found in the Appendix of this document.

6.2.3 Distribution Lines and Equipment

6.2.3.1 The inspection of overhead and underground lines and equipment will consist of a ground (foot, vehicle) based visual inspection. The most effective method to achieve this requirement for each portion of line will be determined by the operating center based on the characteristics of the line being inspected. Aerial inspections shall not be used as the basis for compliance.

6.2.3.2 Distribution lines and equipment placed on foreign owned structures will be inspected to the same extent as facilities on the utility's own structures. It is not the responsibility of the utility to inspect foreign owned structures, lines or equipment. However, defects or structural deficiencies with foreign owned structures and attachments identified during routine inspections will be reported to the facility owner whenever such deficiencies could have a detrimental impact on safety or operation of the utility's lines and equipment. Any such deficiencies shall be documented in the same manner as deficiencies on the utility's own structures and tracked in the same manner until all deficiencies have been corrected.

6.2.3.3 It is not the responsibility of the utility to inspect foreign owned lines and equipment located on utility owned structures. However, such deficiencies identified during routine inspections will be reported to the facility owner whenever such deficiencies could have a detrimental impact on safety or operation of the utility's lines and equipment. Any such deficiencies shall be documented in the same manner as deficiencies on the utility's structures and tracked in the same manner until all deficiencies have been corrected.

6.2.3.4 Damage or unsafe conditions on customer-owned wiring or equipment at the utility/customer interface point identified during the course of normal utility inspections shall be documented and reported to the customer, and where necessary the appropriate Authority Having Jurisdiction (AHJ).

6.2.3.5 Utility owned (leased) lighting equipment mounted on overhead distribution line structures and underground fed leased lighting structures will be inspected as part of routine system inspections.

6.2.4 Electric Meters.

The inspection of manually-read meters and walk-by AMR meters will consist of a visual inspection by meter readers during the course of routine meter reading.

6.2.5 Distribution Substations.

The inspection of substations will consist primarily of a field visit to each substation site and a visual inspection of the substation facilities and equipment.

6.3 Patrol along Roads, Cross Country or in Easements

6.3.1 Visual inspections of distribution lines and equipment may be accomplished by patrolling lines from vehicles when distribution facilities are located adjacent to and in reasonable proximity to roadways. Patrolling lines from vehicles is also permitted in off road easements where vehicle access is available. Facilities located in easements on private property where vehicle access is either not available or not practical due to the nature of the line, must be inspected on foot.

6.3.2 Every reasonable attempt should be made to inspect each structure or piece of equipment from its immediate vicinity. If inaccessible, inspection with binoculars is permitted. If access cannot be gained to at least perform a visual inspection, the area or line must be noted on the inspection print and provisions made to inspect at another time. At a minimum, the intent is to visually inspect every structure, line, and piece of equipment each inspection cycle.

SECTION 7 - SAFETY

7.1 Personnel performing the duties related to system inspection shall perform the necessary tasks in a safe manner and in compliance with company and departmental Safety Manuals, procedures and policies using the required Personal Protective Equipment (PPE). Special attention will be directed to the hazards related to terrain, insects, snakes, other animals, and plants as well as vehicular hazards.

SECTION 8 – ENVIRONMENTAL

8.1 Oil filled equipment found to be passively leaking will be noted as part of the inspection process. Equipment found to be actively leaking requires immediate notification of the appropriate responsible department(s) so that compliance with utility oil spill response procedures can be assured.

SECTION 9 – TRAINING AND QUALIFICATIONS

9.1 All inspectors must be knowledgeable of company Safety Manual, safety policies and procedures and have a working knowledge of the NESC as it applies to the facilities being inspected. Distribution line inspectors shall have complete familiarity with the construction and operation of distribution lines, equipment and structures as well as a working knowledge of company construction standards. Meter readers shall have complete familiarity and working knowledge of meter reading and meter inspection requirements. Substation inspectors shall have complete familiarity and working knowledge of substation facilities and equipment.

SECTION 10 – EQUIPMENT

10.1 Inspectors shall be equipped with and qualified in the use of all personal protective equipment (PPE) appropriate for the work and facilities being inspected.

10.2 Inspectors shall carry a cellular phone and/or a company radio at all times while performing inspection work suitable for contacting the appropriate emergency response personnel in the event of an emergency or appropriate company personnel in the event an active oil leak or potentially dangerous condition is found during the course of inspection.

SECTION 11 – RECORD KEEPING

11.1 Records of Inspection – Distribution Lines and Equipment

11.1.1 Distribution line inspections must be performed from inspection records which identify every primary line segment, such as a circuit map, facility map, or electronic mobile mapping technology. Secondary voltage lines and services and leased lighting facilities need not be shown on these records. However, they must be inspected.

11.1.2 Each inspection record must contain the inspector's name and the completion date of the inspection, if inspected in whole on the completion date. If multiple days are required to complete the inspection, each portion inspected will be noted with each line segment being coded by respective date inspected and inspector's name. In addition, an overall completion date for the entire record is required when the inspection is complete.

11.1.3 Deficiencies found during inspections are to be identified by a unique number so that a cross-reference can be established between the inspection record and the deficiency repair order or work request. These records are the tangible basis from which the KYPSC will audit. Keeping records in this manner allows the KYPSC to verify that a facility was inspected, to relate the inspection to deficiencies found, to track the deficiency to a repair order, work request, database or work management system entry and to determine the disposition of work to correct the deficiency.

11.1.4 The inspection and deficiency records will be filed in the appropriate operations center offices and kept for six years. All records and associated documents must be kept in a manner which allows them to be easily accessed for KYPSC audits.

11.2 Records of Inspection – Meter

11.2.1 Meter inspections will be performed using electronic devices that allow for identification of each meter, location, date and time, inspector's name, and deficiency if applicable.

11.2.2 The inspection and deficiency records will be stored electronically or filed in the appropriate metering offices and kept for a minimum of six years. All records and associated documents must be kept in a manner which allows them to be easily accessed for KYPSC audits.

11.3 Records of Inspection – Substations

11.3.1 Substation inspections will document substation name, location, date, inspector's name, and deficiency if applicable.

11.3.2 The inspection and deficiency records shall be filed in the appropriate substation center offices and kept for four years. All records and associated documents must be kept in a manner which allows them to be easily accessed for KYPSC audits.

11.4 Documentation and Tracking of Deficiencies Found – Distribution Lines

11.4.1 When the inspector identifies a deficiency, a sequential or otherwise unique number is to be marked on the inspection record for that location. All pertinent information about the deficiency is to be recorded on a deficiency report form which contains the corresponding number placed on the inspection record, including a description of the problem, the exact location (house number or distance from a known highway intersection, etc.), the pole or coordinate number (if available) and any other pertinent information.

11.4.2 Where deficiency form is to also serve as the final repair record, information must be added to the deficiency form once work is completed which at a minimum includes, the completion date, repair crew information and a description of the corrective actions taken to address the deficiency. Upon completion of the work, the original deficiency form must be filed with the inspection record or retained in another manner such that the status and/or disposition of the corrective work can be tracked from the original inspection record.

11.4.3 Where the deficiency form information is to be transferred to a different work request document, work management system or database to manage the deficiency correction, all appropriate information from the deficiency form is transferred to the work request document or entered into the electronic record. Unless stored in a database that can be queried for the original deficiency form number recorded on the inspection record, each form or data entry must also have a unique identifier assigned that can be tracked to the original deficiency form number. The new work request or data tracking number will be recorded on the original inspection print and/or recorded on the deficiency form where the deficiency form is to be retained separate of the inspection record. At all times continuity must be maintained between the inspection record, deficiency form and any other form or electronic entry used to manage corrective work. Upon completion of work to correct the deficiency, the form or record must be updated with information which at a minimum includes, the completion date, repair crew information and a description of the corrective actions taken to address the deficiency.

11.4.4 When a defect, deficiency, or other condition is found that poses an imminent hazard to safety or customer service, the inspector must immediately notify (by phone or radio) the appropriate department for corrective action. If the condition represents a present safety hazard to customers or the public in general, such as a live wire down, the inspector must guard the area until maintenance crews arrive to make the area safe.

11.5 Documentation and Tracking of Deficiencies Found – Electric Meter

11.5.1 Meter deficiencies found will be recorded and identified to the specific meter with a repair order, description of the deficiency, location of meter, and any other pertinent information. The completion date, repair crew information, and appropriate remarks will be added once the work is complete. All records will be maintained by Meter Reading and stored electronically in the system(s) of record.

11.6 Documentation and Tracking of Deficiencies Found - Substations

11.6.1 Substation deficiencies found will be recorded and identified to the specific substation with a corrective work order, description of the deficiency, location, and any other pertinent information. The completion date, repair crew information, and appropriate remarks will be added once the work is complete. All records will be maintained electronically in the substation work management system.

Appendix – Guidelines for Inspection

A.1.0 Guidelines for Overhead Inspection (conditions to be reported)

A.1.1 Structures

a) All Supporting Structures – General
- ✓ Excessive lean or bowing
- ✓ External damage (vehicles, vandals, etc.)
- ✓ Insufficient clearance from curbs, roads, etc.
- ✓ Physical damage protection/marking (if required)
- ✓ Climbing hazards (including excessive vines and vegetation)
- ✓ Unauthorized foreign attachments (basketball goals, customer wiring/lighting, security cameras, etc.)
- ✓ Presence of any permanent climbing steps or other platforms providing climbing access (at least eight feet above ground level)
- ✓ Equipment and equipment supports are not readily climbable (hardware does not facilitate climbing – eight feet between footholds and handholds starting at not more than six feet above ground)
- ✓ Presence of fences, trees, sheds that would facilitate climbing by members of the public or encourage climbing by children
- ✓ Insufficient or improper grounding
- ✓ Lack of foundation integrity
- ✓ Proper signage when required
- ✓ Objectionable graffiti

b) Wood Poles
- ✓ Externally visible physical damage (external decay, woodpecker holes, excessive checking, damage by fire, vehicle contact, etc.)
- ✓ Ground line deficiencies.
  Wood poles with obvious ground line deficiencies must be sounded from ground line to six feet. If significant external decay is suspected at or just below the ground line, it may become necessary to remove soil from around the base of the pole, where practical, to determine the extent of decay. Poles with decay, infestation, or cracks, sufficient to jeopardize safety or service restoration shall be turned in for replacement or repair. If a pole is sufficiently defective to be a safety hazard to a person climbing the pole or to the public in general, a danger pole tag must be applied to the pole and special attention given to replacing the pole. In areas where poles appear solid, a reasonable attempt to sound a representative sample (approximately 10%) should be made. Exception: Wood pole structures supporting lines crossing limited access highways or railroads must be sounded each inspection cycle.

c) Steel Poles, Guy Beams and Lattice Towers
- ✓ Excessive corrosion or rust affecting structural integrity
- ✓ Missing, loose, damaged foundation bolts and nuts
- ✓ Loose or missing bracing

d) Concrete Poles
- ✓ Spalling
- ✓ Excessive cracking, voids, holes, etc.

A.1.2 Overhead Equipment
- ✓ Broken or damaged
- ✓ Oil leaks
- ✓ Structurally damaging rust (does not include minor surface rusting)
- ✓ Bulged
- ✓ Overheating (discolored terminals or melted insulation)
- ✓ Flashed or broken bushings or terminals
- ✓ Not bolted securely to structure
- ✓ Excessive lean
- ✓ Blown fuses

- ✓ Blown lightning arresters
- ✓ Cutouts and switches not properly terminated and fully closed
- ✓ Ground mounted equipment controls not locked and otherwise secure

A.1.3 Conductor Supports

a) Crossarms
- ✓ Broken, split, twisted, burned, or rotten
- ✓ If steel, excessive (structural) corrosion
- ✓ Not securely bolted to structure
- ✓ Braces not installed and in good working order

b) Miscellaneous Support Brackets, and Hardware
- ✓ Flashed or broken
- ✓ Broken spacer cable brackets or bands
- ✓ Not securely bolted to structure
- ✓ Loose or missing hardware

c) Insulators
- ✓ Cracks, chips and signs of flashing/tracking
- ✓ Excessive dirt, soot or other possible contamination
- ✓ Improper insulator attachment (suspension insulators are properly attached to pole, crossarm or other support, pin insulators are properly seated on pin or secured to support arm, pole, etc.)
- ✓ Conductor improperly secured to insulators (conductor floating)

A.1.4 Anchors and Guys
- ✓ Inadequate for loads or slack guying
- ✓ Improper insulation (insulate or grounded)
- ✓ Improper positioned guy insulators (insulated guys)
- ✓ Guy guards not installed (one per anchor)
- ✓ Anchor rod/eyes and guy-wire not sufficiently above grade to minimize the possibility of guy-wire or guy grip deterioration
- ✓ Anchor pulling out (excessive rod length)
- ✓ Guy wire strands, grips, and/or automatic guy deadends damaged, corroded, or broken
- ✓ Improperly insulated, grounded or guarded guys
- ✓ Guying hardware (guy hooks and eyebolt assemblies) are deteriorated or improperly secured)
- ✓ Insufficient clearances (distance between guy wires and curbs, sidewalks, paths, roads, etc. is not satisfactory)
- ✓ Push poles (improperly connected and structurally sound)
- ✓ Third party guying or lack of proper guying (obvious problems affecting pole loading/leaning/buckling)

A.1.5 Primary and Secondary Conductors and Conductor Hardware
- ✓ Improper clearances (at structure, throughout span, adjacent to other structures, or over ground)
- ✓ Defective conductors, splices, or connections (burns, broken strands or evidence of overloading such as discoloration or melted insulation)
- ✓ Improperly secured to insulators or deadend assemblies
- ✓ Foreign objects (trees, balloons, shoes, etc.)
- ✓ Vegetation (growing into or rubbing against conductors)
- ✓ Illegal services or unmetered load
- ✓ De-energized and/or abandoned lines not properly grounded
- ✓ Apparent easement violations (pools, buildings, private structures, etc.)

A.1.6 Services
- ✓ Low over roads, driveways or parking areas
- ✓ Improperly attached at house and pole
- ✓ Improper clearance over deck, garages and other structures
- ✓ Vegetation (limbs not clear from laying or rubbing on service to cause service integrity problems)
- ✓ Conduit damage (Overhead or UG)

A.1.7 Overhead Lighting

- ✓ Broken or loose mounting arms or fixtures
- ✓ Damaged or broken lighting fixtures

A.2.0 Guidelines for Underground Inspection (conditions to be reported)

A.2.1 Area around Equipment

- ✓ Improper clearances (to buildings, roads, fences, etc.)
- ✓ Traffic barriers (if required) not in place or not in satisfactory condition
- ✓ Vegetation (not trimmed to permit opening of cabinet and provide room for switching / maintenance)
- ✓ Dumping/Storage (materials or debris stored in front of or against the equipment)
- ✓ Ground erosion exposing energized cables
- ✓ Fences around open air installation on ground not secure, locked, and properly signed
- ✓ Danger and warning signs not properly applied
- ✓ Penta-head bolt not in subgrade grating

A.2.2 Pad/Foundation

- ✓ Not properly leveled
- ✓ Ground erosion compromising pad stability
- ✓ Damaged (cracked, broken, etc.)

A.2.3 Cabinet/Enclosure/Tank

- ✓ Improper alignment on pad (gaps between cabinet and pad)
- ✓ Holes (screw holes, bolt holes, rust holes, etc.)
- ✓ Mechanical damage due to rust
- ✓ Leaks or swollen areas
- ✓ Door/hood hinges damaged
- ✓ Cabinet doors/hood not properly aligned (no excessive gaps or spaces to permit access to the inside with wires, rods, etc.)
- ✓ Cabinet not properly secured (pentahead bolt and company lock not in place)
- ✓ Proper signage not applied (“Warning” meeting specifications of ANSI Z535, and “No Obstructions/Planting” signs not in place)
- ✓ Paint is not in satisfactory condition to prevent excessive corrosion
- ✓ Objectionable graffiti
- ✓ Lifting hardware has been removed
- ✓ Signs of excessive heating

A.2.4 Miscellaneous

- ✓ Loose or missing lids or covers (splice box lid, pedestal covers, etc.)
- ✓ Terminations show signs of tracking, excessive heating or otherwise damaged.
- ✓ Secondary buswork (open air) not properly insulated with no obvious signs of excessive heating

A.2.5 Underground Fed Lighting Poles and Fixtures

- ✓ Physical damage to pole
- ✓ Severely leaning poles
- ✓ Missing, loose, damaged foundation bolts and nuts
- ✓ Missing hand hole covers/exposed wiring
- ✓ Unauthorized attachments
- ✓ Damaged or missing fixtures, globes, etc.

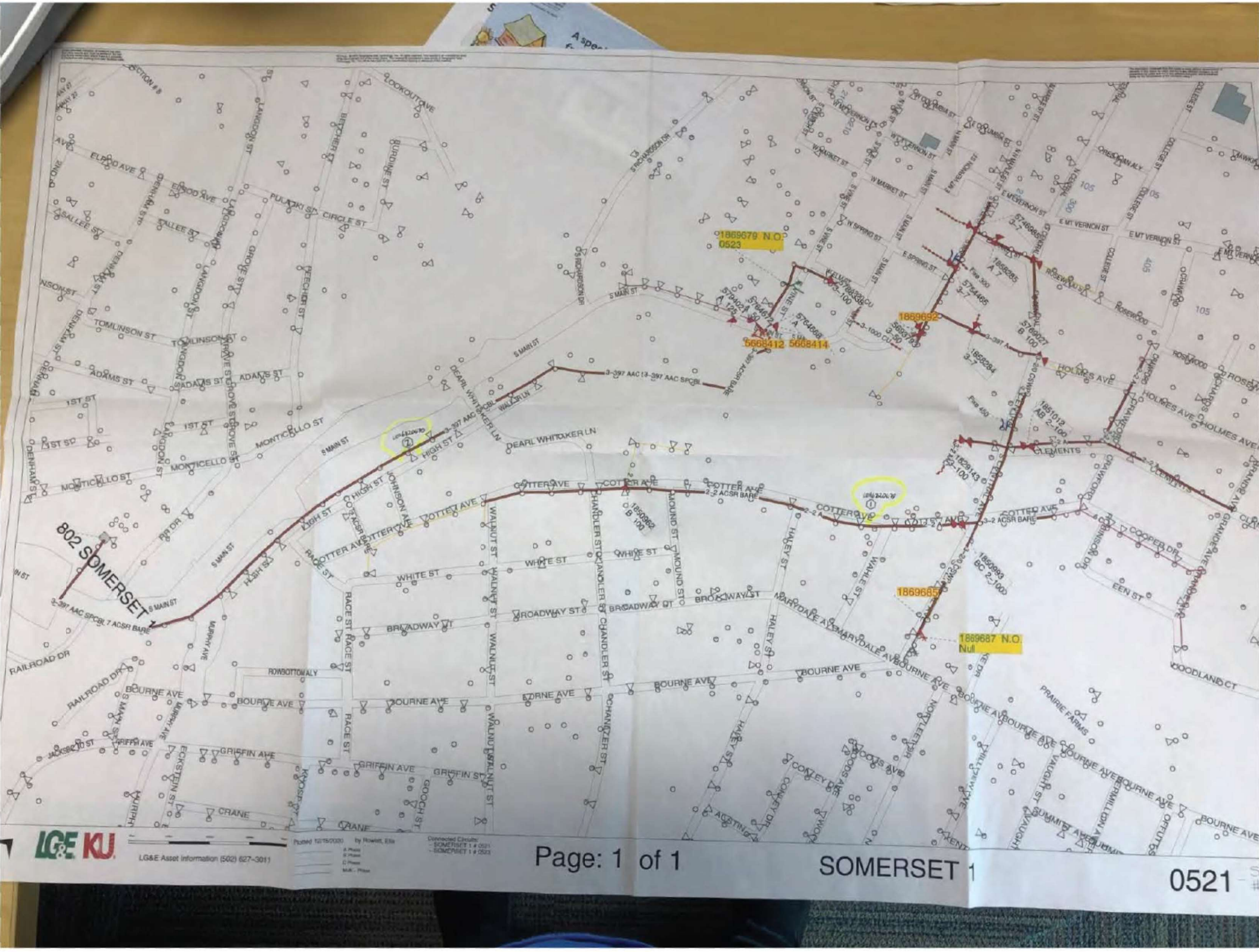
A.3.0 Meters (conditions to be reported)

- ✓ Properly secured (missing seal, lock, cover)
- ✓ Broken glass
- ✓ Damaged meter, meter base, metering cabinets
- ✓ Vegetation (obstructions)

A.4.0 Substations (specific conditions on the following, including all status indicators, gauges, and metering if applicable, will be checked and deficiencies reported)

- ✓ Drive and Approach
- ✓ Fence and Gates, Substation Security
- ✓ Warning Signs, Danger Signs and Barriers
- ✓ Structures
- ✓ Annunciator Systems
- ✓ Disconnects and Motor Operated Disconnects
- ✓ Station Grounds
- ✓ Transformers, Tap Changers and Regulators
- ✓ Circuit Breakers and Reclosers
- ✓ Capacitor and Capacitor Protective and Switching Equipment
- ✓ Control House
- ✓ Switchgear
- ✓ Station Yard
- ✓ Metering
- ✓ Spill Prevention Control and Counter Measure
- ✓ Fire Protection System

EXHIBIT 2



SOMERSET 1

0521

EXHIBIT 3

LG&E KU
PPL companies

Inspection WR 67667677

PSC Regulatory Inspection Form

Utility: KU Operations Center: SOMERSET Circuit #: 0521

Inspector: TS Date Completed: 3/25/21
Due 3-25-21

Deficiencies:

The inspection form is intended to identify problems that could have an adverse effect on safety, customer service, orderly and efficient system operation, or a combination of these. To achieve this goal, the inspection program is structured to assure that assets are properly inspected, apparent deficiencies identified, and records kept to satisfy the requirements of the PSC regulations and company procedures. Inspectors are encouraged to review annually the EOM&I-SI-001 and to use this form to ensure deficiencies are recorded in a consistent format for the following areas of inspection:

A.1.0 Guidelines for Overhead Inspection (conditions to be reported)	**Check**
A.1.1 Structures and poles	✓
A.1.2 Overhead Equipment	✓
A.1.3 Conductor Supports	✓
A.1.4 Anchors and Guys	✓
A.1.5 Primary and Secondary Conductors and Conductor Hardware	✓
A.1.6 Services	✓
A.2.0 Guidelines for Underground Inspection (conditions to be reported)	
A.2.1 Area around Equipment	✓
A.2.2 Pad/Foundation	✓
A.2.3 Cabinet/Enclosure/Tank	✓
A.2.4 Miscellaneous	✓

Point 1-6820679 4-7-2021

Point 2-6820670 4-15-2021

PSC Regulatory Inspection Form

WR#: 6767677

CONSTRUCTION JOB CARD

1/5/2021 9:17:26 AM

GENERAL

Source: Work Manager

Local District:	SOMCC	**WR Name:**	2021 PSC OH INSPECTION	**Requested Completion:**	3/25/2021
Taxing District:	681	**Job Address:**	SOMERSET #1 SUB (751) CIRCIUT 0521	**Premise ID:**	
WR Type:	MTNPMINSPN		SOMERSET,	**Ext Sys ID:**	
WR Sub-Type:	KOIPSO	**Unit No:**		**Contract Acct No:**	
CCS Code:		**Customer Phone:**	--	**Meter Number:**	
Est. Hours:	1	**Contact:**	PSC INSPECTION	**Meter Reading / Loc:**	/
Circuit:	521	**Contact Phone:**		**Rd Rte:**	
				Rd Seq:	

Description: PSC OH INSPECTIONS (BI ANNUAL)

COMMENTS -

JOB BRIEFING

- ☐ Hazards Assoc With Job
- ☐ Special Precautions
- ☐ P. P. E. Required
- ☐ Work Procs involved
- ☐ Energy Source Controls

FINANCIAL

Project #	Task #
OPMIN426	O

SUBSTATION INFO:

Name:

TLM Number:

Asset Number:

COMPLETION DETAILS

Comments: Complete

Job Start Date: 3/25/21 **Crew Size:** 1 **Completed By:** T. Shafer

Completion Date: 3/25/21 **Man Hours:** 3

WR#: 6820679

CONSTRUCTION JOB CARD

4/27/2021 11:22:48 AM

GENERAL

Source: Work Manager

Local District:	SOMCC	**WR Name:**	PSC REPAIRS	**Requested Completion:**	12/8/2021
Taxing District:	687	**Job Address:**	[redacted]	**Premise ID:**	0000025666
WR Type:	ENPOLEN		SOMERSET, KY 42501	**Ext Sys ID:**	000014123803
WR Sub-Type:	KEPO30	**Unit No:**		**Contract Acct No:**	300001541956
CCS Code:	ZCDO	**Customer Phone:**	[redacted]	**Meter Number:**	
Est. Hours:	7	**Contact:**	KENTUCKY UTILTIES	**Meter Reading / Loc:**	/
Circuit:	0521	**Contact Phone:**		**Rd Rte:**	19451179
				Rd Seq:	

(1)

Description: REPLACE 30F6 W/30F6 WOOD POLE

COMMENTS - CCS COMPLETION - *POLE CHANGED, WIRE AND LIGHT TRANSFERRED; EFFECTIVE: 4/7/21 ***** **CREW INSTRUCTIONS** - CHANGE ROTTEN 30' SERVICE POLE; TRANSFER SECONDARY, SERVICE AND STREET LIGHT; EFFECTIVE: 3/25/21***** **Premise Notes**- *****

JOB BRIEFING

- ☐ Hazards Assoc With Job
- ☐ Special Precautions
- ☐ P. P. E. Required
- ☐ Work Procs involved
- ☐ Energy Source Controls

FINANCIAL

Project #	Task #
ARPOLE426	I
ARPOLE426	R

SUBSTATION INFO:

Name:

TLM Number:

Asset Number:

COMPLETION DETAILS

Comments: Completed 4-7-2021

Job Start Date: _____ **Crew Size:** 1 **Completed By:** Tommy S Taylor

Completion Date: 4-7-2021 **Man Hours:** 1

WR#: 6820670 **CONSTRUCTION JOB CARD** 3/31/2021 10:33:18 AM

GENERAL **Source: Work Manager**

Local District: SOMCC	**WR Name:** PSC REPAIRS		**Requested Completion:** 8/4/2021
Taxing District: 687	**Job Address:** [redacted]		**Premise ID:** 0000025666
WR Type: RPRPLDEOHN	SOMERSET, KY 42501	(2)	**Ext Sys ID:** 000014123803
WR Sub-Type: KROVEQ	**Unit No:**		**Contract Acct No:** 300001541956
CCS Code: ZCDO	**Customer Phone:** [redacted]		**Meter Number:**
Est. Hours: 4	**Contact:** KENTUCKY UTILTIES		**Meter Reading / Loc:** /
Circuit: 0521	**Contact Phone:**		**Rd Rte:** 19451179
			Rd Seq:

Description: KU REPAIR OVERHEAD EQUIPMENT

COMMENTS - CREW INSTRUCTIONS - REPAIR ANTI-SWAY BRACKET ON PO3808273803; EFFECTIVE: 3/25/21***** **Premise Notes-** *****

Complete

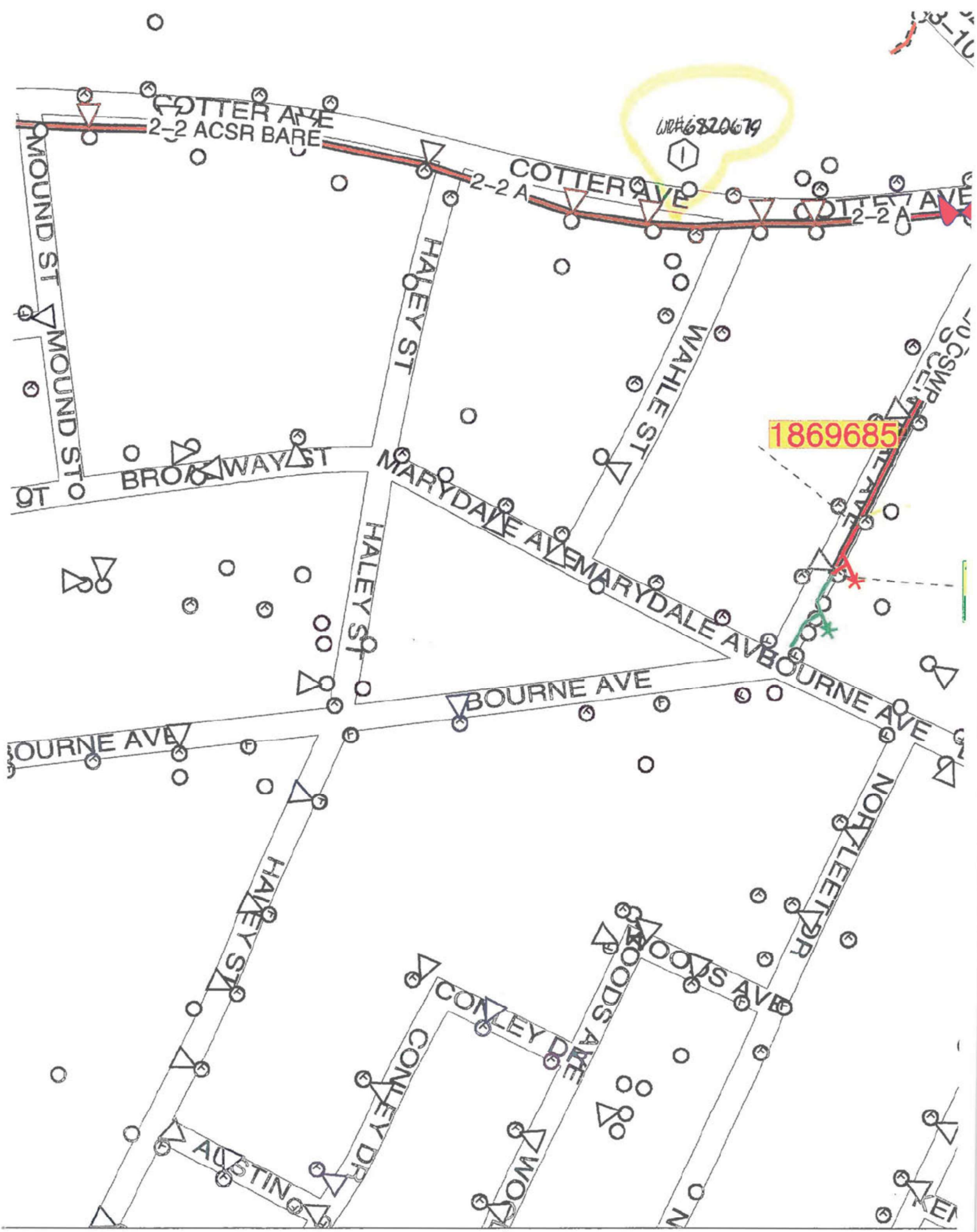
JOB BRIEFING	FINANCIAL		SUBSTATION INFO:
☑ Hazards Assoc With Job	Project #	Task #	Name:
☑ Special Precautions	ARDD426O	R	TLM Number:
☑ P. P. E. Required	ARDD426O	I	Asset Number:
☑ Work Procs involved			
☑ Energy Source Controls			

COMPLETION DETAILS

Comments: Crew replaced anti-sway bracket

Job Start Date: _____ Crew Size: 3 Completed By: SOMERSET CREW

Completion Date: 4-15-2021 Man Hours: _____


COTTER AVE
2-2 ACSR BARE
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2-2 A
COTTER AVE
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WR#6820679
1
MOUND ST
MOUND ST
HALEY ST
WAHLE ST
1869685
BROADWAY ST
MARYDALE AVE
MARYDALE AVE
BOURNE AVE
BOURNE AVE
BOURNE AVE
HALEY ST
HALEY ST
CONLEY DR
CONLEY DR
WOODS AVE
WOODS AVE
AUSTIN


WRA6820670
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3-397 AAC SPCL
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HIGH ST
PEARL WHITAKER LN
JOHNSON AVE
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CHANDLER ST
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GRIFFIN AVE
GRIFFIN ST
WALNUT ST
CHANDLER ST

Tier 1 Issues

- Impact of Revised Rules on Joint Use Agreements
- Self-Help Remedy within Electric Supply Space
- “Red-Tagged Pole Presumption” in Section 7(7)(b)
  - But Not the Rule Itself

Tier 2 Issues

- Impact on Existing Tariffs
- Threshold Number of Poles in an Application
- 90-Day Cutoff for Make-Ready Invoices
- Cost Allocation for Correction of Pre-Existing Violations

- **Section 1(2):**

  “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.

- **Section 1(11):**

  “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.

Section 1(9):

"New attacher" means a cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit requesting to attach new or upgraded facilities to a pole owned or controlled by a utility, except that 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 or a person seeking to attach macro cell facilities.

Section 2(1) – Mandatory Right of Access:

Except as 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.

Section 3(1) – Tariff Requirement:

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

Section 1(1):

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

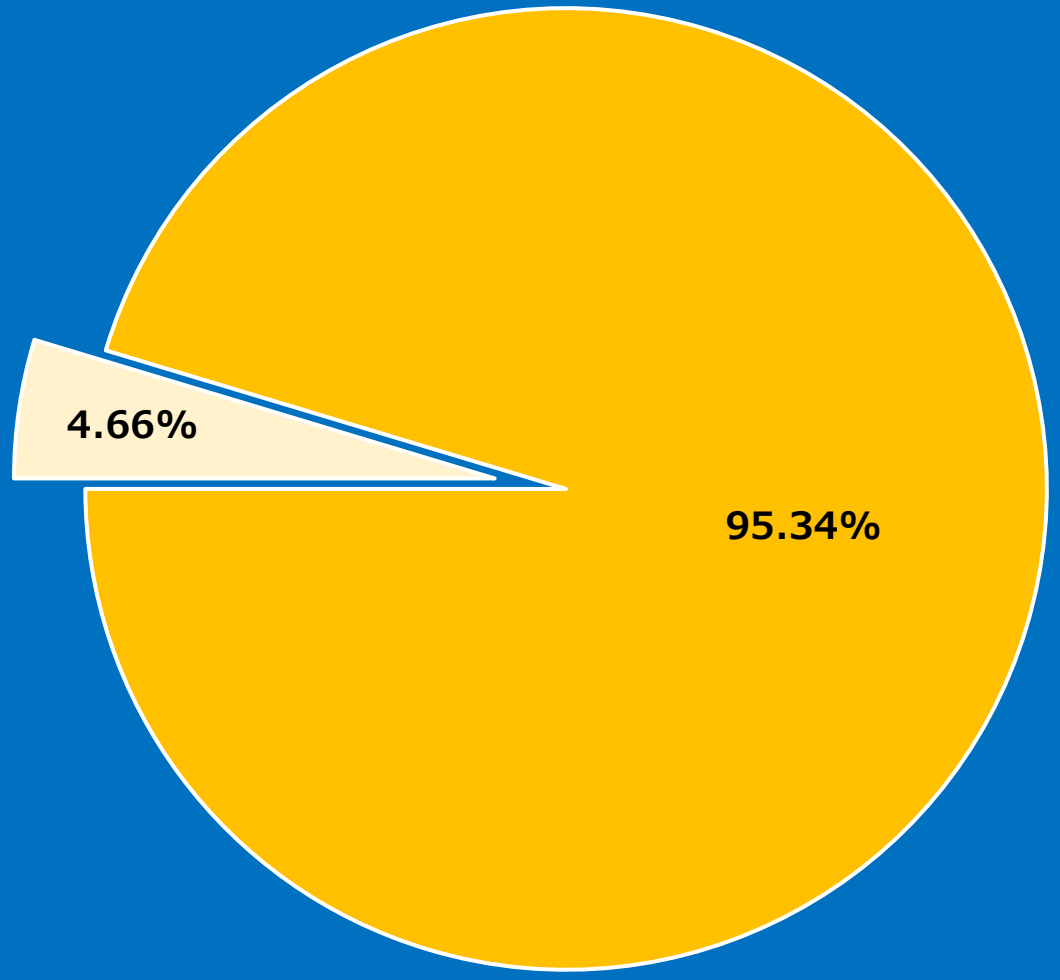
- **Section 1(2):**

  "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.

- **Section 1(11):**

  "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.

Kentucky Power 2019-2020 Data



2019-2020 Data

Approved attachment requests involving 2,191 poles

Excluding pole replacements, only 102 (4.66%) poles required electric supply space make-ready

Section 7(7)(b):

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.**

LG&E KU

LG&E Asset Information (502) 627-3011

Page: 1 of 1

SOMERSET 1

0521

LG&E KU
PPL companies

Inspection WR 67667677

PSC Regulatory Inspection Form

Utility: KU Operations Center: SOMERSET Circuit #: 0521

Inspector: TS Date Completed: 3/25/21

Due 3-25-21

Deficiencies:

The inspection form is intended to identify problems that could have an adverse effect on safety, customer service, orderly and efficient system operation, or a combination of these. To achieve this goal, the inspection program is structured to assure that assets are properly inspected, apparent deficiencies identified, and records kept to satisfy the requirements of the PSC regulations and company procedures. Inspectors are encouraged to review annually the EOM&I-SI-001 and to use this form to ensure deficiencies are recorded in a consistent format for the following areas of inspection:

A.1.0 Guidelines for Overhead Inspection (conditions to be reported)	**Check**
A.1.1 Structures and poles	✓
A.1.2 Overhead Equipment	✓
A.1.3 Conductor Supports	✓
A.1.4 Anchors and Guys	✓
A.1.5 Primary and Secondary Conductors and Conductor Hardware	✓
A.1.6 Services	✓
A.2.0 Guidelines for Underground Inspection (conditions to be reported)	
A.2.1 Area around Equipment	✓
A.2.2 Pad/Foundation	✓
A.2.3 Cabinet/Enclosure/Tank	✓
A.2.4 Miscellaneous	✓

Point 1-6820679 4-7-2021

Point 2-6820670 4-15-2021

WR#: 6820679

CONSTRUCTION JOB CARD

4/27/2021 11:22:48 AM

Source: Work Manager

GENERAL

Local District: SOMCC
Taxing District: 687
WR Type: ENPOLEN
WR Sub-Type: KEPO30
CCS Code: ZCDO
Est. Hours: 7
Circuit: 0521

WR Name: PSC REPAIRS
Job Address: [redacted]
SOMERSET, KY 42501
Unit No:
Customer Phone: [redacted]
Contact: KENTUCKY UTILTIES
Contact Phone:

Requested Completion: 12/8/2021
Premise ID: 0000025666
Ext Sys ID: 000014123803
Contract Acct No: 300001541956
Meter Number:
Meter Reading / Loc: /
Rd Rte: 19451179
Rd Seq:

1

Description: REPLACE 30F6 W/30F6 WOOD POLE

COMMENTS - CCS COMPLETION - *POLE CHANGED, WIRE AND LIGHT TRANSFERRED; EFFECTIVE: 4/7/21 ***** **CREW INSTRUCTIONS** - CHANGE ROTTEN 30' SERVICE POLE; TRANSFER SECONDARY, SERVICE AND STREET LIGHT; EFFECTIVE: 3/25/21***** **Premise Notes-** *****

JOB BRIEFING

- ☐ Hazards Assoc With Job
- ☐ Special Precautions
- ☐ P. P. E. Required
- ☐ Work Procs involved
- ☐ Energy Source Controls

FINANCIAL

Project #	Task #
ARPOLE426	I
ARPOLE426	R

SUBSTATION INFO:

Name:
TLM Number:
Asset Number:

COMPLETION DETAILS

Comments: Completed 4-7-2021

Job Start Date: _____
Completion Date: 4-7-2021

Crew Size: 1
Man Hours: 1

Completed By: Tommy Shelton

Section 4(6)(a) – Final Invoice:

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: