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VIA EMAIL: psc.regulations@ky.gov
Administrative Regulations Working Group
Kentucky Public Service Commission
P.O. Box 615
Frankfort, Kentucky 40602-0615

Re: Duke Energy Kentucky, Inc.'s Written Comments
Proposed Pole Attachment Regulation

To Whom It May Concern:

Please accept these comments submitted on behalf of Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company) in response to the Kentucky Public Service Commission's (Commission) request for comments on proposed rule changes.

807 KAR 5:00 XX Access and Attachments to Utility Poles and Facilities

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

The Commission is proposing substantial rule amendments related to access to attachments to utility poles and facilities. As a general matter, the Company respectfully submits that the Commission should model any proposed rules related to attachments and access to be as consistent as possible to those of the Federal Communications Commission (FCC). The present draft includes numerous definitions and provisions that go beyond what is required by the FCC. The Company presently complies with and monitors the FCC rules and has structures in place to maintain adherence. Any new or specific requirements implemented for operations in the Commonwealth will thus impose new costs, incremental to what is already incurred to comply with FCC

regulations, that will ultimately be recovered from either the attacher themselves for specific costs caused by the attacher, or through general customer rates as it related to incremental O&M to maintain the system and implement any new and necessary controls for Kentucky compliance. As such, any pole attachment regulations should model those of the FCC.

B. With minor amendments, Kentucky’s existing regulations are sufficient.

For decades, the Commission’s General Rules for cable attachments found in 807 KAR 5:006 Section 22 provided sufficient guidance regarding attachments to utility poles outside of utility joint use agreements, requiring utilities owning poles or other facilities to permit cable television operators, with necessary licenses and permits to attach to such poles and to charge the approved tariffed rate.¹ The Commission maintained complaint jurisdiction over any dispute arising under such tariffs. Admittedly, an update to this rule is appropriate insofar as new technologies, services, and entities desiring utility pole access have developed since the existing rule was enacted. However, the comprehensive re-write proposed is unnecessary and imposes far too restrictive and burdensome conditions for utilities to manage their systems. The Company suggests that simply amending the current regulation and to corresponding utility tariffs, so to accommodate new technologies and attachers in a manner consistent with what is required pursuant to FCC regulations would be a much simpler and concise way to accomplish this update.

For example:

Section 22. ~~Cable Television~~ Pole Attachments and Conduit Use.

(1) Each utility owning poles or other facilities supporting its wires shall maintain tariffs to permit cable television system operators, telecommunications carriers, broadband internet service providers, or

¹ 807 KAR 5:006 Section 22

governmental units operating such devices, who have all necessary licenses and permits to attach cables to poles and to use distribution facilities in accordance with rules and regulations of the Federal Communications Commission, as customers for transmission of signals to their patrons.

(2) The tariffs of the utility shall establish the rates, terms, and conditions under which the utility's facilities may be used, including but not limited to, any reasonable safety and loading restrictions, costs for facility upgrades, and timelines for attachers move their facilities.

(3) With respect to a complaint before the commission in an individual matter concerning cable television pole attachments, final action shall be taken on the matter within a reasonable time, but no later than 360 days after filing of the complaint.

A simple update, as the aforementioned, will allow individual utilities to develop appropriate terms and conditions, with approval by the Commission to enable reasonable and fair access to the utility poles and conduit owned and maintained by utilities and desired by the attachers.

C. The Commission's proposed Pole Attachment regulations are overbroad and create unnecessary burdens on utilities.

1. Section 1, Definitions

Section 1 of the proposed new rules regarding Access and Attachments to Utility Poles and Facilities are inconsistent with those of the FCC. For example, the proposed definition of "Attachment" is overbroad in two respects. The proposed definition of Attachment includes both a broadband internet provider and governmental unit, which goes beyond what is covered by the

FCC. While the Company does work with these entities on a regular basis for attachments that are consistent with the use of the utility pole, the FCC does not currently require mandatory access. As it relates to a governmental unit, the attachment definition lacks clarity as to what is included, and therefore, absent clear limitations, one can presume there are none. For example, the Company does not permit certain signage to be attached to its utility poles for obvious safety-related reasons, accessibility and loading restrictions. The Company's poles need to be accessible for its employees, which includes making sure the poles are safely climbable if necessary. Installing signage can make it difficult for the Company to access its poles in an emergency. Also, in instances where the Company must relocate its poles, if there are life-safety signage installed on the poles, it could present a public safety issue if these signs are not replaced in the same location. Therefore, if the Commission maintains the proposed expanded definition, particularly for governmental entities, the scope of permissible attachments needs to be clarified to only include telecom, internet, and broadband communication-related equipment, only.

The proposed definition of "existing attacher" is overly broad through its incorporation of any "person or entity" and should be clarified. Company recommends that the proposed definition of "existing attacher" be amended to state, "any communication carrier or governmental unit with equipment lawfully on the pole." The reason for this proposed edit is to simply limit the scope of who is permitted to attach to the utility pole. Any person or entity could open the pole up for any third party and for uses other than for communication purposes.

If the Company requests that the Commission also include a definition for the term pole as it related to the types of facilities that access must be provided. The access should be limited to those poles used for the distribution or delivery of electric or communication service. The term pole should not be interpreted to include transmission poles, or those used solely for street lighting.

The Company has received inquiry regarding access to its street lighting poles. While the Company may consider such access on a case-by-case basis, it should not be required to provide access to these facilities. Indeed, with respect to lighting poles, such installations are typically provided for a specific customer, private or municipal. Mandatory access to these facilities would ignore the interest of the entity that is paying for the lighting service. And, if that lighting customer requests removal or replacement of the facility, the attachment would thus also be impacted and need to be removed. Utilities should be permitted to maintain autonomy over the street lighting services it provides under its tariffs, and not be forced to also grant access for these devices. Indeed, many such poles are not even capable of accommodating additional attachments such as small cell wireless communication devices.

2. Section 2, Duty to Provide Access to utility poles and facilities.

i. Subsection 1 is overbroad.

Subsection 1 of the proposed regulation requires utilities to provide pole access to “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 by it.” This proposed regulation is overbroad and unreasonable in several respects. First, the parties that must be permitted access are far broader than what is required by the FCC, which does not include internet service providers or governmental entities. This broad-sweeping requirement would mean that any governmental unit could access the poles that exist in the right-of-way geographically located within the boundaries of another governmental unit. While it is understandable that a governmental unit should have access to poles and conduit within its own boarders, the language as drafted would mean that any governmental unit from any part of the

Commonwealth, even located outside the utility's own service territory, could demand access to a utility's poles.

Second, as written, this regulation would require the utility to provide complete and unfettered access to the entire right-of-way controlled by the utility. To the extent this language intended to include public rights-of-way, the local government has control over the access to its rights-of-way, typically through franchise arrangements. Duke Energy Kentucky does not have absolute control over this right-of-way. While the regulation appears to limit right-of-way access to that owned or controlled by "it," (*i.e.*, the utility) this presumably would include private easements owned by the utility and negotiated long ago. These easements may not be broad enough to permit complete access to a private party's property. Expanding the presence of third-party facilities in utility easements may rise to the level of an encroachment upon the real property of the customer that granted the utility an easement. Utilities should not be required to renegotiate easements. The regulation should at a minimum, make it clear that to the extent such attachments are not within public right-of ways, but are on private property, the attacher is required to obtain their own private easement.

ii. Subsection 3 should permit an electronic and automated access request process.

Subsection 3 requires the utility to implement a written access request process for access to poles, conduit, and rights-of-way and permits the utility to provide the application by email. Duke Energy Kentucky recommends that this be expanded to allow an electronic and automated application process. For example, a utility, if it has the capability, should be permitted to have an electronic and automatic submittal process in its web site. The Company recommends that the regulation be amended as follows:

(3) A request for access to a utility's poles, ducts, conduits or rights-of-way must be in writing, except that an application *process* may be provided *electronically and/or* via email as permitted by a utility's tariff or a special contract between the utility and person requesting access.

3. Section 4 Procedures for new attachers to request utility pole attachments.

Under subsection (2)(b)(6)(a), if a utility requires prepayment of survey costs, the utility is required to provide a detailed and itemized invoice within 14 days of informing the attacher that the application is complete. Duke Energy Kentucky believes that as written, and without further clarification, that the requirement to provide a detailed, itemized estimate is overly broad and onerous as it could be interpreted as requiring an itemization down to the nut and bolt. To avoid confusion and potential conflict, the Company suggests that the Commission amend this language to include a "reasonably detailed, itemized estimate..." Any differential between the actual final costs and the estimated prepayment will be trued up with a final bill.

Similarly, under subsection (3)(a), the utility is required to a detailed, itemized estimate of make-ready on a pole-by-pole basis. Again, the Company suggests that if this regulation comes to fruition, that the language be amended to include a "reasonably detailed, itemized estimate." The utility should have flexibility under their billing and estimating systems and tools to provide a detailed summary, but not be required to provide an invoice that is down to the nut and bolt for each and every pole. If the utility were required to provide such an extremely detailed estimate, the workload and billing would take significant time and resources, cause delay, and increase the costs to pole attachers.

Subsection (3)(c) permits a utility to withdraw an outstanding estimate of charges to perform make-ready work beginning 14 days after the estimate is submitted. Duke Energy

Kentucky merely points out that as written, this language provides flexibility for the utility to provide a longer period if it desires. Currently Duke Energy Kentucky's practice is to permit thirty days, consistent with the FCC guidance. Duke Energy Kentucky recommends that this flexibility remain and that each utility could elect to withdraw its estimate beginning as early as fourteen days after it is presented, but that it have the flexibility to allow the estimate to stay valid for longer if it so chooses.

Subsection (4)(a)(5) requires the utility to provide a contact name, telephone number and email address for an attacher to obtain information about make ready procedures. The utility should be permitted to provide a dedicated telephone number and email address for pole attachments. However, it is not necessary to provide a name/ direct contact. Duke Energy Kentucky, for example, has a department with dedicated email addresses and telephone numbers for managing the attachments. The Company does not publicly provide a direct contact name. The utility should be given flexibility to allow its department to handle the inquiries without assigning a specific person for each individual attacher. This provides needed flexibility as Company personnel change roles and positions and would allow the Company to develop specific pre-populated forms for billing estimates to create efficiencies. For the same reasons, the same comment and recommendation applies to proposed subsection (4)(b)(6), insofar as it places a similar requirement for a named contact person on the utility.

Subsection (4)(b)(2) requires that for attachments above the communication space, the utility notice shall include, among other things, a date for completion of make-ready work that is no later than 90 days after notification is sent (135 days for larger orders). This provision does not consider delays that sometimes occur due to storm response, pandemics, or when governmental permits must be obtained. Governmental permitting can adversely impact timing of completion of

work that is entirely outside the utility's control. Moreover, the utility should not be required to complete any make-ready work prior to receiving payment. Accordingly, the subsection (4)(b)(2) should be amended to state as follows:

Set an estimated date for completion of make-ready that is no later than 90 days after notification is sent and any applicable governmental permits are obtained, (or 135 days in the case of larger orders, as described in subsection (7) of this section). Such completion may be impacted by factors beyond the utility's control. In no event will the utility be required to complete make-ready work prior to receiving payment from the attacher for estimated costs of the make-ready work.

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

Subsection (6)(a)(1) and (2) requires the utility to provide a "detailed, itemized final invoice" for actual survey costs and make ready costs, respectively. This requirement is overly burdensome to the extent it purports to apply to each and every make ready project. For smaller projects, initial make ready estimates should be sufficiently within the range of accuracy such that tabulating final actual costs would be unnecessary and impose administrative costs that would exceed any nominal differences between amounts estimated and final/actual costs. Moreover, to

provide final/actual costs for each and every project would create significant delays, as often times final invoices and materials may not come in for several months. As long as the scope of the project that the make ready work estimate was derived does not change significantly based upon the attacher's representations, the estimate should be sufficient. The Company proposes that as long as the estimate of the make ready work is under a reasonable threshold as determined by each utility, a final invoice that trues-up survey and make ready work costs would not be necessary.

Additionally, as described above, these final invoices should be "reasonably detailed" and reasonably itemized, so as not to obligate the utility to provide such detail down to the hourly rate of each and every employee, and nut and bolt. Some summary-level detail should be sufficient. The detailed bill should be upon request with the utility having the ability to provide a summary bill unless a more detailed version is requested by the attacher.

4. Section 5. Contractors for survey and make-ready

Section 5(1) as drafted permits new and existing attachers to request the addition of "any contractor" be added to the utility's list of authorized contractors to perform work on its poles. The utilities should have the final say whether a proposed contractor is authorized to perform work on the utility's poles. It should not be a matter of simply meeting minimum qualifications to perform work on a utility's pole. Currently, Duke Energy Kentucky thoroughly examines contractor qualifications to ensure that they have the technical and operational ability, in compliance with all applicable rules, regulations, and electrical and safety standards, to perform work in and along utility power lines. This includes a review of training, safety and historic performance, if known. Duke Energy Kentucky has removed contractors from approved lists if they fail to follow strict safety and performance standards. While an attacher may request a contractor be added to the approved list, setting this by regulation could create the implication that the utility must then add

the contractor if they meet some minimum standard. The utility should not be obligated to add such contractor if there is any doubt in that contractor's ability to perform the necessary work in a safe, thorough and appropriate manner. Doing otherwise could impact service reliability for other electric customers and increase outages and raise safety concerns.

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

Respectfully submitted,

/s/Rocco D'Ascenzo

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