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September 15, 2020

RE: Kentucky Public Service Commission Proposed Pole Attachment Rules

Dear Mr. Chandler:

Enclosed please find and accept for filing Louisville Gas and Electric Company's and Kentucky Utilities Company's initial comments to the proposed pole attachment rules.

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 INITIAL COMMENTS ON KPSC PROPOSED POLE ATTACHMENT RULES

EXECUTIVE SUMMARY

- LG&E-KU commend the Commission for proposing new rules to clarify the scope of the Commission's jurisdiction over pole attachments. In particular, the new rule identifying attachments by a "telecommunications carrier" as attachments within the Commission's jurisdiction will avoid uncertainty in the future and avoid the potentially unseemly result of "split" jurisdiction over pole attachments between the Commission and the FCC. Further, the new rule expressly including attachments by a "broadband internet provider" within the Commission's pole attachment jurisdiction will help achieve one of the main purposes of sound pole attachment policy—the promotion of broadband deployment.

- The Commission should ensure, though, that attachments by incumbent local exchange carriers ("ILECs") are not inadvertently included within the definition of "attachments" subject to the new proposed rules. ILECs, like AT&T, attach to LG&E-KU poles pursuant to "joint use agreements" under which both parties share space on each other's poles in order to avoid the cost and aesthetic nuisance of redundant pole networks. The joint use agreements have long been subject to the Commission's ad hoc jurisdiction and, as such, are presumptively reasonable. The ex post facto application of new rules would undermine these important infrastructure cost sharing relationships over which the Commission already exercises oversight.

- LG&E-KU support the Commission's proposed adoption of one-touch make-ready and self-help rules within the communications space on utility poles. But those rules should be limited to the communications space. Those rules should not extend to the electric supply space because: (1) electric make-ready is not a source of delay in the deployment of broadband (the delay is usually the result of other communications attachers with anti-competitive motive); and (2) any work in the electric supply space presents additional and significant issues of safety and reliability. The decision whether to allow attaching entities to perform make-ready work in the supply space should be left in the sound discretion of individual electric utilities and offered, if at all, through tariffs reviewed and approved by the Commission.

- The Commission should also add a rule addressing the transfer of attachments. On an operational level, on the biggest challenges faced by LG&E-KU is getting communications attachments to transfer when a new pole is set. These delays in transfer of communications attachments result in unsightly and unsafe "double wood" in the right-of-way. New Section 6(3) proposed by LG&E-KU would go a long way towards remedying this problem.

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INITIAL COMMENTS OF LOUISVILLE GAS & ELECTRIC AND KENTUCKY UTILITIES

Louisville Gas & Electric Company ("LG&E")[1] and Kentucky Utilities Company ("KU)[2] (collectively "LG&E-KU") respectfully submit these initial comments on the proposed rules governing pole attachment procedures. Attachment A sets forth the specific red-lined changes recommended to the proposed rules.

I. INTRODUCTION

LG&E-KU appreciate the opportunity to offer comment on the Commission's proposed pole attachment rules and commend the Commission for proposing to clearly articulate the full scope of its jurisdiction over pole attachments. Kentucky reverse preempted the FCC's pole attachment jurisdiction in 1981 and has exercised its jurisdiction continuously since that time. *See In the Matter of the Regulation of Rates, Terms and Conditions for the Provision of Pole Attachment Space to Cable Television Systems by Telephone Companies and In the Matter of Regulation of Rates, Terms and Conditions for the Provision of Pole Attachment Space to Cable Television Systems by Electric Utilities*, Order, Case No. 8040, Case No. 8090, 1981 Ky. PUC LEXIS 499 (Aug. 26, 1981) (asserting jurisdiction over "pole attachment space for cable television systems" and reverse preempting federal jurisdiction over the same). Kentucky's existing pole

[1] 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.

[2] 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.

attachment rules, like the pole attachment rules in many other states, were adopted at a time when the only federal jurisdiction to reverse preempt was federal jurisdiction over cable television attachments to utility poles. "Telecommunications carriers," for example, had no pole attachment rights under federal law until Congress passed the Telecommunications Act of 1996. Thus, it makes sense that state-level pole attachment rules adopted prior to 1996 would make no mention of "telecommunications carriers." Though it is clear, from both the Commission's orders and LG&E-KU's pole attachment tariffs, that the Commission's pole attachment jurisdiction extends well beyond the scope of its original rules, the new proposed rules will bring clarity to this issue, particularly as it relates to the rights of "telecommunications carriers."

LG&E-KU also commend the Commission for expressly bringing attachments of broadband internet providers within the Commission's pole attachment jurisdiction. This move by the Commission will help achieve one of the main purposes of sound pole attachment policy—the promotion of broadband deployment. As the Commission is aware, too many citizens of the Commonwealth lack adequate broadband connectivity, and the last several months have underscored the painful consequences of poor-to-no internet connection. LG&E-KU appreciate that the Commission has seized this opportunity for the benefit of broadband deployment in Kentucky.

LG&E-KU agree with many of the proposed rules, as drafted. Even where LG&E-KU are offering proposed revisions, many of the proposed revisions are offered as a potential improvement upon, rather than a conceptual disagreement with, the proposed rules. There are, though, a few areas of conceptual disagreement. These comments attempt to identify, and concisely explain the basis for, those areas of disagreement.

At a high level, LG&E-KU disagree with any proposed rule that would directly contradict an existing pole attachment tariff. LG&E-KU's current pole attachment tariffs are already the products of a strong regulatory process, having undergone full Commission scrutiny during two rate cases, with intervention from interested parties, before receiving Commission approval. The terms and conditions of attachment have not been unilaterally "forced" upon attaching entities; rather, they reflect the determination by the Commission that they are just and reasonable. In a sense, an existing, approved pole attachment tariff has already been subject to something akin to the notice and comment rulemaking that the Commission may ultimately undertake with these proposed regulations.

Indeed, the Commission's approval of LG&E-KU's pole attachment tariffs have been far from a rubber-stamp. In each instance during the preceding decade when LG&E-KU proposed revisions to their pole attachment tariffs, attaching entities have intervened in the proceeding to participate, comment and object. For example, when KU substantively revised its pole attachment tariff in its 2016 rate case, *see Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates and for Certificates of Public Convenience and Necessity*, Case No. 2016-0370 (Oct. 24, 2016), Kentucky Cable Telecommunications Association ("KCTA") and Bellsouth Telecommunications, LLC d/b/a AT&T Kentucky ("AT&T") filed motions to intervene in the proceedings to voice their objections to certain provisions within the proposed pole attachment tariffs. Motion to Intervene of the Kentucky Cable Telecommunications Association, Case No. 2016-00370 (Dec. 20, 2016); Motion to Intervene of AT&T Kentucky, Case No. 2016-00370 (Dec. 22, 2016). Following months of formal discovery, as well as settlement conferences and informal negotiations, KU revised its proposed pole attachment tariff in a manner suitable to all pole attachment stakeholders. *See* Kentucky Cable Telecommunications Association's

Statement Concerning the Stipulation and Settlement, Case No. 2016-00370 (May 31, 2017) (stipulating to revised terms of proposed pole attachment tariff); AT&T Kentucky's Statement Concerning the Stipulations and Recommendation on the April 19, 2017 Stipulation, Case No. 2016-00370 (May 31, 2017) (stipulating to revised terms of proposed pole attachment tariff); Final Order at p. 24, Case No. 2016-00370 (Jun. 22, 2017) (finding that the proposed pole attachment tariff, with the modifications agreed to in the second stipulation by KCTA and AT&T, "is reasonable" and "should be approved in its entirety").

The pole attachment tariff proceedings in LG&E's 2018 rate case followed this pattern as well. *See Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates*, Case No. 2018-00295 (Sept. 28, 2018); Charter Communications Operating LLC's Motion for Full Intervention, Case No. 2018-00295 (Oct. 15, 2018); Final Order at p. 14, Case No. 2018-00295 (Apr. 30, 2019) (finding that the proposed pole attachment tariff, with the modifications agreed to in the stipulation between Charter Communications and LG&E, "is reasonable" and "should be approved in its entirety"). The participation by attaching entities has, in every instance, led to revisions to the tariff ultimately submitted to the Commission for approval. For this reason, any rule which contradicts a term or condition of a pole attachment tariff would not only undermine the compromise reflected by the existing tariff but would also undermine an integrated set of terms and conditions the Commission has already determine to be just and reasonable.

II. THE COMMISSION SHOULD MAKE CERTAIN TARGETED REVISIONS AND ADDITIONS TO THE PROPOSED DEFINITIONS IN SECTION 1 TO ADD FURTHER CLARITY TO THE POLE ATTACHMENT RULES.

A. The Commission Should Revise Section 1(4) to Limit "Complex Make-Ready" to Make-Ready within the Communications Space.

The Commission's proposed definition of "complex make-ready" would seemingly include make-ready that is performed above the communications space. This is important within the context of the Commission's proposed self-help remedy. Specifically, the proposed self-help remedy would allow a new attacher to perform complex make-ready if an existing attacher or utility fails to meet its make-ready deadlines. *See* Section 4(9) of the Proposed Rules. As discussed in Section III.J. of these comments below, the Commission should not extend its proposed self-help remedy to make-ready above the communications space. Therefore, LG&E-KU urge the Commission to adopt the following revisions, which would limit "complex make-ready" to the communications space:

> "Complex make-ready" means any make-ready **within the communication space** that is not simple make-ready, such as the ~~**replacement of a utility pole;**~~ splicing of any communication attachment or relocation of existing wireless attachments, ~~**even within the communications space;**~~ and any transfers or work relating to the attachment of wireless facilities.

B. The Commission Should Include the Term "High Volume Request" in Section 1 of the Proposed Rules.

As discussed in more detail in Section III.I. below, Section 4(7) of the proposed rules would establish generally applicable timelines for completing surveys and make-ready. While LG&E-KU do not object to a 60-day timeline (see Section III.C. infra) for "regular" sized attachment requests (i.e., requests involving three hundred (300) or fewer utility poles) in Section 4(7)(a), LG&E-KU object to the proposed timelines for larger attachment requests (i.e., requests involving more than three hundred (300) utility poles). *See* Sections 4(7)(b) (providing utilities a mere fifteen (15) additional days to conduct surveys involving up to 3,000 poles) and 4(7)(c) (providing utilities a mere forty-five (45) additional days to complete make-ready involving up to 3,000 poles). LG&E-KU instead urge the Commission to adopt the "High Volume Request" framework outlined in Section III.I. below, which closely tracks the "High Volume Applications" framework used in

the recently approved LG&E and KU pole attachment tariffs. *See* Kentucky Utilities Company Pole and Structure Attachment Charges Tariff, P.S.C. No. 19, Original Sheet No. 40.8 at ¶ 7.h. (effective May 1, 2019); Louisville Gas and Electric Company Pole and Structural Attachment Charges Tariff, P.S.C. Electric No. 12, Original Sheet No. 40.8 at ¶ 7.h. (effective May 1, 2019) (hereinafter collectively referred to as the "LG&E-KU Pole Attachment Tariff"). Though relatively rare, large attachment requests present unique challenges that require tailored solutions—i.e., solutions that balance the needs of attaching entities with the available resources of pole owners. To implement the High Volume Request framework outlined in Section III.I. below, the Commission should adopt the following definition in Section 1 of the proposed rules:

> "High Volume Request" means a request for attachment to more than 300 poles or 0.5 percent of the utility's poles in the state, whichever is fewer.

C. The Commission Should Include the Term "Pole" in Section 1 of the Proposed Rules.

Although the term "pole" is used throughout the Commission's proposed rules and is crucial to defining the scope of mandatory access rights, the term "pole" is not defined by the proposed rules. Without such a definition, the proposed rules are unclear as to what utility assets are subject to the proposed rules. In fact, under the proposed rules, attaching entities might argue that their access rights extend well beyond electric distribution poles and include assets like electric transmission poles and lighting structures (such as decorative streetlights, lamps and standards).

Only a fraction of LG&E-KU's assets are suitable for (or even capable of) hosting communications attachments. For this reason, LG&E-KU's current pole attachment tariffs place clear limitations on which structures are covered by the tariff—i.e., attaching entities can only make attachments on LG&E-KU assets that meet the definition of "structure." LG&E-KU Pole

Attachment Tariff, Sheet No. 40.4 (Terms and Conditions of Attachment). "Structure" is defined as follows:

> "Structure" means any Company pole, conduit, duct, or other facility normally used by Company to support or protect its electric conductors but shall not include (1) any Transmission Pole with electric supply lines operated at 138kV or above; (2) any Transmission Pole with electric supply lines operated at less than 138kV other than Transmission Poles to which Company has also attached electric supply lines operated at less than 69kV; (3) any street light pole that is not a wood pole located in a public right-of-way; or (4) any pole that Company has leased to a third party.

Id. at Sheet No. 40.2. This makes sense because it extends the tariff's coverage to those assets that are generally suitable for hosting communications attachments.

For example, conducting make-ready on electric transmission poles is more complicated, time-consuming, and dangerous than conducting make-ready on electric distribution poles. Electric transmission lines carry much higher voltage, making even minor mistakes a deadly affair. This danger is exacerbated by the fact that communications workers generally lack sufficient expertise to work amongst transmission lines. To alleviate the inherent dangers of attachments on electric transmission poles, the LG&E-KU pole attachment tariffs place several reasonable restrictions on attaching entities' access rights. First, LG&E-KU limit access to only those electric transmission structures that also support distribution underbuild. The LG&E-KU pole attachment tariffs also provide LG&E-KU with the sole discretion to deny access to any transmission structure. LG&E-KU Pole Attachment Tariff, Sheet No. 40.7 at ¶ 7.c. Finally, the LG&E-KU pole attachment tariffs prohibit communications attachers from conducting self-help make-ready on any transmission pole. *Id*. at Sheet No. 40.8, ¶ 7.g.

There are also a host of problems associated with granting mandatory access rights to lighting assets. First, lighting assets (such as streetlights, lamps, and standards) are particularly ill-suited for hosting attachments. For example, if a city has requested decorative lighting in a

downtown area, the aesthetic objectives of the installation are compromised by the presence of unsightly wireline attachments spanning from pole to pole. As another example, where a wireless carrier seeks to install a small cell antenna and associated equipment on a lighting asset, the lighting asset would, in many cases, have to be replaced with a wholly different structure to accommodate such equipment. Second, all lighting assets exist solely because of a particular customer's request for street or outdoor area lighting. Lighting customers range from cities to homeowners' associations to private businesses and individuals. In other words, lighting assets involve an additional stakeholder not generally present in pole attachment negotiations—lighting customers. As referenced above, if a lighting customer has requested (and paid for) decorative lighting to beautify a downtown area, a mandatory right of access to those structures defeats the purpose of decorative lighting. Nevertheless, some lighting assets are capable of hosting communications attachments. Specifically, LG&E-KU have an inventory of wooden light poles that are generally located in public rights-of-ways. These assets are included within the LG&E-KU pole attachment tariff's definition of "structure," meaning that attaching entities are provided access to these specific structures.

Unlike LG&E-KU's pole attachment tariffs, which clearly define the scope of assets subject to access rights, the current version of the proposed rules does not. This ambiguity could result in attaching entities jockeying for expansive mandatory access rights, including access rights to electric transmission poles and lighting assets. If such rights are granted, LG&E-KU will not be able to impose reasonable restrictions on electric transmission poles and lighting assets, such as those outlined above. To avoid this outcome and to create a uniform set of expectations, the Commission should adopt the following definition of "pole" in Section 1 of the proposed rules:

> "Pole" means a utility pole supporting electric supply facilities that operates at or below nominal maximum distribution voltage and does not include either (1) a pole

> that supports electric transmission facilities or (2) any pole, post, standard or other structure that is used primarily to support outdoor lighting.

D. The Commission Should Revise the Terms "Broadband Internet Provider" and "Telecommunications Carrier" in Section 1 of the Proposed Rules to Exclude Incumbent Local Exchange Carriers.

Sections 1(2) and 1(10) of the proposed rules define "broadband internet provider" and "telecommunications carrier" as follows:

> "Broadband internet provider" means a person who owns, controls, operates, or manages any facility used or to be used to offer internet service to the public with download speeds of at least 25 megabytes per second and upload speeds of at least 3 megabytes per second.
>
> "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.

Standing alone, LG&E-KU do not have any objections to these definitions. However, Section 2(1) uses these definitions to define the scope of the mandatory right of access:

> 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.

As proposed, the Commission's definitions of "broadband internet provider" and "telecommunications carrier," when read in conjunction with Section 2(1), would extend mandatory access rights to incumbent local exchange carriers ("ILECs") with whom electric utilities have joint use agreements. LG&E-KU strongly oppose such an outcome for several reasons.

As the Commission recognizes in its proposed definition of "new attacher," an ILEC that is party to a joint use agreement with an electric utility is not similarly situated to other attaching entities. *See* Section 1(9) of the Proposed Rules (defining "new attacher" to exclude "a utility with an applicable joint use agreement with the utility that owns or controls the pole to which it is

seeking to attach…"). For example, LG&E and AT&T share space on approximately 113,000 poles, approximately 68,000 of which are owned by LG&E and approximately 45,000 of which are owned by AT&T. KU and AT&T share space on approximately 136,000 poles, approximately 80,000 of which are owned by LG&E and approximately 56,000 of which are owned by AT&T. In light of their significant pole ownership, ILECs and electric utilities gained access to each other's utility poles through joint use agreements. In those joint use agreements, ILECs and electric utilities agreed to share their infrastructure for the distribution of their respective services, thus saving costs through a single, shared pole network in their overlapping service areas, rather than building separate, redundant networks. To accommodate ILEC attachments on electric utility poles, electric utilities, *inter alia*, invested in much larger (and much more costly) utility poles than would have been necessary in the absence of ILEC attachments. These were huge investments, and electric utilities made them pursuant to the mutually agreed upon joint use agreements, which defined the access rights of each party. In short, ILECs do not need a mandatory access right because they already have access under existing joint use agreements.

Significantly, ILECs are not even entitled to mandatory access rights at the federal level. The federal Pole Attachments Act provides that "[a] utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole…owned or controlled by it." 47 U.S.C. § 224(f)(1). Like Section 2(1) of the proposed rules, the Pole Attachment Act relies on defined terms like "telecommunications carrier" to define the scope of its grant of mandatory access rights. Under the Pole Attachments Act, the term "telecommunications carrier" explicitly excludes ILECs: "For purposes of this section, the term 'telecommunications carrier' **does not include any incumbent local exchange carrier**…" 47 U.S.C. § 224(a)(5); *see also In the Matter of Implementation of Section 703(e) of the*

Telecommunications Act of 1996; Amendment of the Commission's Rules and Policies Governing Pole Attachments, Report and Order, CS Docket No. 97-151, 13 FCC Rcd 6777, 6781 at ¶5 (Feb. 6, 1998) ("Because, for purposes of Section 224, an ILEC is a utility but is not a telecommunications carrier, an ILEC must grant other telecommunications carriers and cable operators access to its poles, even though the ILEC has no rights under Section 224 with respect to the poles of other utilities.").

Further, and perhaps most importantly, it would not make any sense for ILECs to have mandatory access rights to electric utility poles but not vice versa. Affording ILECs non-reciprocal access rights to electric utility poles would undermine both the bargained-for exchange at the heart of joint use agreements and electric utilities' bargaining power vis-à-vis ILECs. This is significant because most of LG&E-KU's joint use agreements have been in place for decades and served as the foundation upon which most of the utility pole infrastructure in Kentucky was constructed. And because the Commission has, and has exercised, its jurisdiction over joint use agreements, ILECs already have a remedy against unreasonable rates, terms and conditions—a complaint with the Commission—that is reaffirmed in these proposed rules. *See, e.g., In the Matter of Ballard Rural Telephone Cooperative Corporation, Inc., Complainant v. Jackson Purchase Energy Corporation, Defendant*, Case No. 2004-00036, Order, 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).

Therefore, LG&E-KU urge the Commission to revise the definitions of "broadband service provider" and "telecommunications carrier" in a manner similar to the existing language in the proposed definition of "new attacher":

> "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 25 megabytes per second and upload speeds of at least 3 megabytes 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.**

If the Commission does intend to provide ILECs with a mandatory right of access, LG&E-KU urge the Commission to make that right reciprocal, i.e., provide electric utilities with a corresponding mandatory right of access to poles owned by ILECs.

III. THE COMMISSION SHOULD MAKE SEVERAL REVISIONS TO SECTION 4 TO AFFORD THE PARTIES GREATER FLEXIBILITY AND SAFEGUARD THE SAFETY AND RELIABILITY OF ELECTRIC DISTRIBUTION FACILITIES.

A. The Commission Should Revise Section 4(2)(a)1 to Afford Utilities Additional Time to Review for Completeness Applications Involving High Volume Requests.

Section 4(2)(a)1 provides electric utilities with ten (10) days to review pole attachment applications for "completeness." This deadline apparently applies to all applications, whether they involve one (1) pole or one thousand (1,000) poles. While LG&E-KU do not object to the 10-day timeframe for "regular" sized applications, i.e., applications involving three hundred (300) or fewer poles, LG&E-KU strongly object to applying the same deadline to larger applications, i.e., those involving more than three hundred (300) poles. To afford electric utilities with a reasonable amount of time to review larger applications for "completeness," the Commission should revise Section 4(2)(a)1 as follows:

> A utility shall review a new attacher's pole attachment application for completeness before reviewing the application on its merits and shall notify the new attacher within 10 business days after receipt of the new attacher's pole attachment application **(or by a mutually agreed upon date in the case of High Volume**

> **Requests as described in subsection (7) of this section)** if the application is incomplete.

As discussed in greater detail in Section III.I. below, the proposed High Volume Request framework forgoes the imposition of rigid timelines on large attachment requests and, instead, requires electric utilities and attaching entities to negotiate a mutually beneficial solution. This approach, which has already been deemed just and reasonable by the Commission, would result in more practical (and achievable) timelines for large attachment requests.

B. The Commission Should Revise Section 4(2)(b)1 to Accommodate the LG&E-KU's Existing Practice of Requiring New Attachers to Perform a Survey as Part of a Complete Application.

Section 4(2)(b)1 requires utilities to "complete a survey of poles for which access has been requested within 45 days of receipt of a complete application…." However, LG&E-KU already require new attachers to perform a survey as part of their "complete" application. For example, the pole attachment tariffs for LG&E-KU currently provides as follows:

> Company may perform a pole loading study or request Attachment Customer to submit such study based upon a visual inspection or other information held by Company….If Company determines a pole loading study is required, no application shall be considered completed until submission of such study. Attachment Customer may perform the pole loading study or request Company to perform the study with cost to be borne by Attachment Customer….

LG&E-KU Pole Attachment Tariff, Sheet No. 40.6 at ¶ 7.a. This provision of the tariffs exists to expedite the attachment approval process. As currently drafted, Section 4(2)(b)1 could be interpreted to require LG&E-KU to perform a survey in addition to the survey that a new attacher would be required to perform as part of its complete application. To avoid the performance of unnecessarily redundant surveys and to avoid undermining existing processes that expedite broadband deployment, the Commission should 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 45 days of receipt of a complete application to attach facilities to its utility poles (as described in subsection (7) of this section) for the purpose of determining whether the attachments may be made and identifying any make-ready to be completed to allow for the attachment.

C. The Commission Should Revise Section 4(2)(b)4 to Provide Utilities with Adequate Time to Review Completed Applications.

Section 4(2)(b)4 requires electric utilities to either grant or deny access within forty-five (45) days of receiving a completed application:

> Based on the results of the applicable survey and other relevant information, a utility shall respond to the new attacher either by granting access or denying access within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days in the case of larger orders as described in subsection (7) of this section).

Under their current pole attachment tariffs, LG&E-KU have sixty (60) days from receipt of a complete application to determine whether access should be granted to a new attacher. *See* LG&E-KU Pole Attachment Tariff, Sheet Nos. 40.6-40.7 at ¶¶ 7.b.-7.c. Therefore, if adopted, Section 4(2)(b)4 would dramatically reduce LG&E-KU's application review timeline—by twenty-five percent (25%). This is a big deal.

The application review timeline is the critical period during which an electric utility performs an engineering evaluation to determine whether a pole or pole line can safely accommodate a proposed attachment and, if not, what make-ready work, if any, can be performed to safely accommodate the proposed attachment. As contemplated by the proposed rules, the work compressed into this time period would include:

- Evaluation, organization and processing of paperwork;
- Scheduling a pole survey;
- Performing a pole survey;
- Evaluating the results of the pole survey;
- Performing a pole loading analysis based on data from the application and the survey;
- Reviewing the results from the pole loading analysis;

- Determining the electric supply space and/or communications space make-ready work necessary to accommodate the proposed attachments;
- Review of the permitting contractor's work (if applicable); and
- Preparation and transmittal of written response to application.

Performing these steps within the current timeline of sixty (60) days already places considerable strain on LG&E-KU's resources. Requiring LG&E-KU to perform these steps within forty-five (45) days is unrealistic. The only way LG&E-KU would be able to consistently meet Section 4(2)(b)4's compressed timeline is to cut corners—something LG&E-KU is unwilling to do. The foregoing steps are crucial to maintaining the safety and reliability of LG&E-KU's electric distribution facilities. Furthermore, there are other factors outside of LG&E-KU's control that render the reduced timeline unreasonable, e.g., receiving multiple pole attachment applications within a short timeframe, delays in coordinating surveys with existing attachers, shortage of engineers to perform the necessary pole loading analyses, etc.

In light of the foregoing, the Commission should revise Section 4(2)(b)4 to provide utilities at least sixty (60) days from receipt of a complete application to determine whether access should be granted to a new attacher.

D. The Commission Should Delete the Provisions in Section 4 that Require Utilities to Provide "Itemized" Estimates and Invoices on a "Pole-By-Pole Basis."

Section 4 contains multiple provisions that would require electric utilities to provide billing information on an "itemized" and "pole-by-pole" basis. *See* Sections 4(2)(b)6.b. (requiring utility to provide a new attacher with a "detailed, **itemized** estimate in writing of charges to perform all necessary survey work"); 4(3)(a) (requiring utility to provide new attacher with "a detailed, **itemized** estimate in writing, **on a pole-by-pole basis where requested and reasonably calculable**, of charges to perform all necessary make-ready"); 4(6)(a)1 (requiring utility to provide a "detailed **itemized** final invoice of the actual survey charges incurred"); and 4(6)(a)2 (requiring

utility to provide a "detailed, **itemized** final invoice, **on a pole-by-pole basis where requested and reasonably calculable**, of the actual make-ready costs"). LG&E-KU already provide reasonably detailed make-ready estimates and invoices and, therefore, do not oppose a rule requiring that estimates be reasonably detailed. However, the proposed rules should not go so far as to require "itemized" estimates or invoices, nor should they allow new attachers to require such information be broken down on a "pole-by-pole basis."

There are a number of problems with providing such information on an itemized and pole-by-pole basis. First, with respect to a project of any size, generating any such breakdown would be significantly more burdensome than LG&E-KU's current practice. Second, make-ready estimates and invoices do not always lend themselves to a pole-by-pole breakdown because certain costs cannot be accurately assigned on a per-pole basis. Fixed costs—like traffic-control, lock-out/tag-out, and rolling a truck to the work site—would ordinarily be priced into the total job (which almost always includes multiple poles). These fixed costs cannot be allocated on a pole-by-pole basis because the costs do not change just because one pole is removed from the job. There are also other costs that are neither fixed nor per pole but affect more than one pole—e.g., re-sagging a conductor to meet mid-span clearance requirements. Third, the existing work order systems used by LG&E-KU do not allow them to break down make-ready costs on a pole-by-pole basis. These are the same systems LG&E-KU are using to provide cost estimates to their electric service customers. The Commission should not require electric utilities to implement estimating and invoicing tools for pole attachment customers that are any different from those they already use for their electric service customers. However, if new attachers are permitted to request "itemized estimates" on a "pole-by-pole basis" under Sections 4(2)(b)6.b., 4(3)(a), 4(6)(a)1 and

4(6)(a)2 of the proposed rules, then the proposed rules should be amended to allow pole owners to recover directly from attaching entities any additional costs flowing from such a request.

E. The Commission Should Revise Section 4(4) to Place the Burden of Issuing Make-Ready Notices on New Attachers.

Section 4(4) of the proposed rules places the burden of issuing make-ready notices to existing attachers on electric utilities. However, there are several reasons why this burden should rest with the new attacher. First, make-ready notices are an administrative burden that electric utilities should not be forced to bear. By definition, make-ready is being done at the request of, and for the sole benefit of, the new attacher. Therefore, the new attacher should bear the administrative burden of issuing any make-ready notices. Any additional administrative burden placed on an electric utility detracts from an electric utility's core mission—providing safe and reliable electric service. Second, it is the new attacher, not the electric utility, that stands to benefit from having make-ready notices issued quickly. Thus, placing the burden of issuing make-ready notices on new attachers will align the action with the benefit of the action, thereby incentivizing the expedient issuance of make-ready notices and ultimately accelerating broadband deployment. Finally, LG&E-KU's current pole attachment tariffs, which have already been approved by the Commission, place this burden on new attachers. LG&E-KU Pole Attachment Tariff, Sheet No. 40.7 at ¶ 7.d. Accordingly, the Commission should revise Section 4(4) as follows to place the burden of issuing make-ready notices on new attachers:

> Upon ~~**receipt of**~~ **tendering** payment for survey costs owed pursuant to the utility's tariff and the estimate specified in subsection (3)(d) of this section, ~~**a utility**~~ **a new attacher** shall, as soon as practical but in no case more than 7 days, notify all known entities with existing attachments in writing that may be affected by the make-ready.

F. Sections 4(4)(a) and 4(4)(b) Should Be Revised to Turn on Where the Make-Ready Is to Be Performed, not Where the Attachments Will Be Made.

Sections 4(4)(a) and 4(4)(b) of the proposed rules govern what type of information shall be included in make-ready notices issued to existing attachers. Section 4(4)(a) provides the requirements for "attachments in the communications space," and Section 4(4)(b) provides the requirements for "attachments above the communications space." Sections 4(4)(a) and 4(4)(b) are particularly important because they also establish the time periods within which certain make-ready must be performed. However, distinguishing make-ready notice requirements and timelines based on where attachments are to be made makes no sense within the context of Sections 4(4)(a) and 4(4)(b), which are solely focused on the performance of make-ready. For example, some attachments in the communications space will require make-ready work above the communications space, and some attachments above the communications space will require make-ready within the communications space. What matters—especially for purposes of determining the deadline for completing make-ready work—is **where** the make-ready is performed. To avoid this odd disconnect, the Commission should revise Sections 4(4)(a) and 4(4)(b) to differentiate the make-ready notice requirements and timelines based on where the make-ready is to be performed. For example, Section 4(4)(a) should be revised as follows: "For ~~**attachments**~~ **make-ready** in the communications space, the notice shall…" Likewise, Section 4(4)(b) should be revised as follows: "For ~~**attachments**~~ **make-ready** above the communications space, the notice shall…"

G. The Commission Should Strike the Electric Supply Space Self-Help Remedy Reference in Section 4(4)(b)5 of the Proposed Rules.

Section 4(4)(b)5 of the proposed rules requires electric utilities to include the following statement in their make-ready notices to existing attachers: "if make ready is not completed by the completion date set by the utility…the new attacher may complete the make-ready specified

pursuant to subparagraph 1 of this paragraph." In other words, Section 4(4)(b)5 requires utilities to notify existing attachers of the new attachers' right to perform self-help above the communications space. As discussed in Section III.J. below, however, the Commission should not mandate that new attachers have the right to perform self-help in the electric supply space. Accordingly, the reference to electric supply space self-help in Section 4(4)(b)5 should be deleted, and in its place, Section 4(4)(b)5 should provide that a new attacher can seek relief pursuant to the Commission's well-established complaint procedures:

> State that if make-ready is not completed by the completion date set by the utility in subparagraph 2 in this paragraph (or, if the utility has asserted its 15-day right of control, 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 807 KAR 5:001, Section 17**.[3]

H. The Commission Should Revise Section 4(6)(b) of the Proposed Rules to Make Clear that Electric Utilities Are Not Responsible for the Costs of Preexisting Violations Caused by Attaching Entities.

Section 4(6)(b) prohibits utilities from shifting the costs of correcting preexisting violations onto new attachers. LG&E-KU does not oppose this rule and generally agrees with the Commission's policy stance—i.e., requiring the at-fault party to bear the cost of its own violations. But to avoid any ambiguity, the Commission should revise Section 4(6)(b) to make clear that a utility shall only bear the cost of a preexisting violation when it is the cause of such violation. Under no circumstances should an electric utility be forced to foot the bill for violations caused by a communications attachment. Of the three potential cost-bearers in this situations (the attacher

[3] The FCC had actually used this approach until it revised its pole attachment rules in 2018 to include a self-help remedy in the electric supply space. *See In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, WC Docket No. 17-84, WT Docket 17-79, 33 FCC Rcd 7705, 7751 at ¶ 96 (Aug. 3, 2018).

who caused the violation, the new attacher and the electric utility), it makes the least sense for the electric utility to bear this cost given that the electric utility was neither the cause of the violation nor stands to gain access as a result of correcting the violation. Therefore, LG&E-KU urge the Commission to revise Section 4(6)(b) as follows:

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

I. The Commission Should Revise Section 4(7) of the Proposed Rules to Incorporate the High Volume Request Framework Discussed Above, which Was Recently Approved by the Commission in LG&E-KU's Pole Attachment Tariffs.

Section 4(7), which imposes objective timelines for completing surveys and make-ready, represents one of the greatest divergences between the proposed rules and LG&E-KU's current pole attachment tariffs. Section 4(7) proposes as follows:

> For the purposes of compliance with the time periods in this section:
>
> (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 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.
>
> (e) 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.

Though LG&E-KU do not object to the timelines imposed by Section 4(7)(a) on "regular" sized attachment requests, LG&E-KU strongly oppose subsections (b) and (c) of Section 4(7), which

provide electric utilities with *de minimis* and insufficient time extensions for *significantly* larger attachment requests.

The aspect of Section 4(7) that is most concerning to LG&E-KU is its interplay with the application response deadline in Section 4(2)(b). It is challenging enough to respond to attachment requests for up to three hundred (300) poles within forty-five (45) days (or even the 60 days proposed in Section III.C. above. The idea that electric utilities could perform all of the work necessary to respond to attachment requests for ten times that number of poles (up to 3,000 poles) in a mere additional fifteen (15) days is unreasonable and unrealistic. The problems attending the inadequate timelines imposed on large attachment requests are amplified if and when an electric utility receives large attachment requests from multiple new attachers at the same time. Furthermore, even if an electric utility could respond to such a large volume of attachment requests in such a short amount of time, the time savings would be useless to a new attacher because there is no way the new attacher could perform construction (or that existing attachers could perform the necessary make-ready) at a commensurate pace.

For these reasons, the Commission should dispense with the incremental timeline extensions for larger attachment requests and, instead, adopt an approach that is similar to the High Volume Applications framework utilized in LG&E-KU's current pole attachment tariffs:

> If Attachment Customer submits to Company within a thirty (30) day period an application or applications for Attachments to more than 300 poles…such application shall be considered a High Volume Application. The provisions set forth in Sections 7b through 7g that relate to time period and cost-reimbursement of Company's performance of application review, engineering analysis, and a Make Ready Survey, and the performance of make-ready work, shall not apply to High Volume Applications. **Company and Attachment Customer submitting a High Volume Application shall develop a mutually agreeable plan of performance and cost reimbursement for Company's performance of application review, engineering analysis, and a Make Ready Survey, and the performance of make ready work, shall set this plan in writing and shall file it with the Commission as a special contract**.

LG&E-KU Pole Attachment Tariff, Sheet No. 40.8 at ¶ 7.h. (emphasis added). This is not a mere hypothetical opportunity. The "High Volume Request" framework has been a part of LG&E-KU's pole attachment tariffs since 2017. In 2018, KU and Metro Fibernet LLC ("MetroNet") actually negotiated and executed a High-Volume Plan, which was submitted to and approved by the Commission. *See* High Volume Pole Attachment Application Plan between Kentucky Utilities Company and Metro Fibernet, LLC (Feb. 17, 2018), attached hereto as Attachment B. Pursuant to this High-Volume Plan, MetroNet proposed to deploy approximately 40,000 attachments on KU poles over a twenty-four (24) month period. In 2019, LG&E and MCImetro Access Transmission Services Corp. ("MCImetro") negotiated and executed a High-Volume Plan, which was submitted to and approved by the Commission. *See* High Volume Pole Attachment Application Plan between Louisville Gas and Electric Company and MCImetro Access Transmission Services Corp. (Sep. 29, 2018), attached hereto as Attachment C. Pursuant to this High-Volume Plan, MCImetro proposed to deploy approximately 12,000 attachments on LG&E poles over a twenty-four (24) month period.

This High Volume Request framework has also received praise from other attaching entities. *See, e.g., CMN-RUS, Inc. v. Windstream Kentucky East, LLC*, Case No. 2017-00157, Complaint at p. 9, ¶ 20 (May 15, 2018) (attaching entity noting that, in a formal pole attachment complaint against an ILEC, "[Kentucky Utilities] has been willing to negotiate a High Volume Pole Attachment Application Plan with prospective pole attachers that contains more reasonable time frames."). This framework allows the parties to negotiate survey and make-ready deadlines for large attachment requests that are reasonably tailored to each party's capacity and needs. Moreover, while it emphasizes privately negotiated solutions tailored to address a specific deployment, the High Volume Request framework would not remove large attachment requests

from Commission oversight—the parties are required to file their agreement with the Commission as a "special contract," thereby subjecting it to regulatory review.

For the reasons discussed above, the Commission should revise Section 4(7) to incorporate the following High Volume Request framework:

> For the purposes of compliance with the time periods in this section:
>
> (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 and new attacher shall negotiate in good faith the timing of all High Volume Requests, and any agreement reached shall be filed with the Commission as a special contract**. ~~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.

To fully implement this framework throughout the proposed rules, the Commission should revise its treatment of "larger orders" in Sections 4(2)(b)1, 4(2)(b)4, 4(4)(a)2, 4(4)(b)2, 4(8)(c), 4(10)(a)3, and 4(10)(a)3b to reference High Volume Requests. These revisions are noted in LG&E-KU's proposed revisions, attached hereto as Attachment A.

J. The Commission Should Revise Section 4(9) of the Proposed Rules to Limit the Self-Help Remedy to the Communications Space Only.

LG&E-KU oppose Section 4(9) to the extent that it extends a regulatory right to self-help make-ready in the electric supply space. The proposed rule is not sound pole attachment policy,

poses unnecessary safety risks, and does not actually accelerate broadband deployment. The decision whether to allow third parties within the electric supply space should rest exclusively with the electric utility. Further, if an electric utility allows third-parties into the electric supply space for purposes of performing make-ready work, it should be on terms and conditions that rest with the utility's discretion (and subject to Commission review and approval through the tariff approval process).

The purpose of the electric supply space self-help remedy adopted by the FCC was allegedly to speed deployment by allowing new attachers to hire contractors to perform self-help make-ready in the power supply space where electric utilities failed to meet deadlines for such make-ready imposed by the FCC. *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, FCC 18-111, WC Docket No. 17-84, WT Docket No. 17-79, 33 FCC Rcd 7705, 7751 at ¶ 96 (Aug. 3, 2018). However, electric utility make-ready is **not** what causes delays in the make-ready process; it represents a small minority of the overall work to be performed in that process. Further, there is no indication that electric utilities in Kentucky have routinely failed to meet electric supply space make-ready deadlines or that such self-help will meaningfully accelerate deployment without cutting corners or skipping steps. The Commission should not adopt a rule as dangerous as an electric supply space self-help remedy when there is simply no reason for such a remedy in Kentucky. In other words, the proposed electric supply space self-help remedy is a solution in search of a problem.

Furthermore, an electric supply space self-help remedy such as the one adopted by the FCC presents a danger to the safety of workers and the public when it is not accompanied by the utility-specific requirements of a tariff or a special contract. This is extremely dangerous for several

reasons. First, attaching entities sometimes elevate speed to market over the safety and reliability of electric infrastructure. Second, allowing entities other than an electric utility or contractors under its control to work in the electric supply space creates a situation where entities working in that space may not be familiar with essential protocols of the electric utility, such as, e.g., lock-out-tag-out procedures.

In light of the foregoing, the following changes to Section 4(9)(b) are warranted:

> 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**.

In addition to the proposed revisions to Section 4(9)(b), the Commission should also revise Section 4(9)(d) to make clear that self-help shall not be available above the communications space:

> **~~Pole Replacements.~~** Self-help shall not be available for pole replacements **or for make-ready above the communications space.**

The decision whether to allow third parties to perform work in the electric supply space, and the terms and conditions according to which that work is performed, should rest in the sound discretion of an individual electric utility. For example, LG&E-KU's pole attachment tariff already allows attaching entities to perform self-help in the electric supply space:

> If Company fails to perform the make-ready work within sixty (60) days of receipt of Attachment Customer's payment of the make-ready costs, Attachment Customer may perform such work at its expense using an Approved Contractor, except that Attachment Customer may not perform such work with respect to Transmission Poles or Ducts. The Approved Contractor shall provide notice to Company at least one week prior to performing any make-ready. **During the performance of any make-ready by Approved Contractors, an inspector designated by Company shall accompany the Approved Contractor(s). The inspector, in his or her sole discretion, may direct that work be performed in a manner other than as approved in an application, based on the then existing circumstances in the**

> **field**. Company shall refund any unexpended make-ready fees within 30 days of notice that Attachment Customer has performed the work.

See LG&E-KU Pole Attachment Tariff, Sheet No. 40.8 at ¶ 7.g. (emphasis added). As noted in the language emphasized above, LG&E-KU allows attaching entities to perform self-help in the electric supply space subject to certain safeguards, such as the requirements that self-help be performed by an approved contractor and in the presence of an LG&E-KU inspector. The LG&E-KU pole attachment tariff also requires attaching entities to provide additional protections against damage to their electrical distribution facilities, such as bonds, insurance and indemnity. *See* LG&E-KU Pole Attachment Tariff, Sheet Nos. 40.17-40.18 at ¶ 18 (indemnity requirements), 40.19-40.23 at ¶ 23 (insurance requirements), and 40.23-40.24 at ¶ 24 (performance assurance requirements). This type of tariff-based solution strikes the right balance between an attaching entity's need to perform make-ready in the electric supply space under certain circumstances and an electric utility's responsibility to safeguard its electric distribution facilities. In any event, this is a matter that should be offered in a tariff (if at all) in the sound operational discretion of an individual electric utility and under terms and conditions that the Commission finds just and reasonable. It should not be required through this regulation.

K. The Commission Should Revise the Self-Help Remedy (Section 4(9)) and One-Touch-Make-Ready (Section 4(10)) Rules to Incorporate an Objective Framework for Resolving Damage and Violations Caused by the Installation of New Attachers' Facilities.

Sections 4(9) and 4(10) of the proposed rules, which govern self-help and one-touch-make-ready ("OTMR"), respectively, closely track FCC Rules 1.1411(i) and 1.1411(j). However, the proposed rules do not incorporate the FCC's framework for resolving damage and violations caused by a new attacher's make-ready. For example, the FCC's self-help rule provides as follows:

> 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. **Upon receiving notice from the new attacher, the utility or existing attacher may either:**

(A) Complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage; or

(B) Require the new attacher to fix the damage at its expense immediately following notice from the utility or existing attacher.

47 C.F.R. § 1.1411(i)(2)(ii) (emphasis added); *see also id*. at § 1.1411(j)(4)(ii) (establishing an identical framework within the context of OTMR). Sections 4(9) and 4(10) of the proposed rules omit the language emphasized above. The FCC's self-help rule also establishes the following "post make-ready timeline":

> A new attacher shall notify the affected utility and existing attachers within 15 days after completion of make-ready on a particular pole. **The notice shall provide the affected utility and existing attachers at least 90 days from receipt in which to inspect the make-ready. The affected utility and existing attachers have 14 days after completion of their inspection to notify the new attacher of any damage or code violations caused by make-ready conducted by the new attacher on their equipment. If the utility or an existing attacher notifies the new attacher of such damage or code violations, then the utility or existing attacher shall provide adequate documentation of the damage or the code violations. The utility or existing attacher may either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or code violations or require the new attacher to fix the damage or code violations at its expense within 14 days following notice from the utility or existing attacher.**

47 C.F.R. § 1.1411(i)(2)(iii); *see also id*. at § 1.1411(j)(5) (setting forth a virtually identical post make-ready timeline within the OTMR context). While there is a "post make-ready timeline" provision in the Commission's proposed OTMR rule, *see* Section 4(10)(d), it does not include any of the language emphasized in the FCC's OTMR rule above. And in contrast to the FCC's corresponding rule, the Commission's proposed self-help rule does not contain a "post make-ready

timeline" provision. *Compare* Section 4(9)(b) of the Proposed Rules *with* 47 C.F.R. § 1.1411(i)(2)(iii).

The Commission should incorporate the FCC's framework for handling damage and code violations arising out of a new attacher's make-ready into Sections 4(9) and 4(10) of the proposed rules. Doing so would lend predictability to the post-attachment inspection process and ensure that damage and code violations do not go unresolved for long periods of time. The specific revisions proposed by LG&E-KU are set forth in Attachment A.

L. The Commission Should Revise Section 4(10) to Provide Utilities with Sufficient Time to Review Applications for One-Touch-Make-Ready.

Pursuant to Section 4(10)(a)3 of the proposed rules, an electric utility is required to review and make a determination on a completed application for one-touch-make-ready ("OTMR") within fifteen (15) days. For many of the same reasons discussed in Section III.C. above, this timeline should be sixty (60) days. The perceived problem that OTMR was seeking to address has nothing to do with a utility pole owner's review process; it has everything to do with the challenges of sequential make-ready in the communications space. Thus, a constricted review process is mis-aligned with the purpose of OTMR. Furthermore, while OTMR does accelerate the process of completing make-ready in the communications space, it does not obviate an electric utility's responsibility to thoroughly review a new attacher's application and survey findings to ensure that the proposed attachments do not jeopardize the safety and reliability of its electric distribution facilities. This process requires more than the fifteen (15) days stated in the proposed rules. Therefore, the Commission should revise Section 4(10)(a)3 to provide utilities with at least sixty (60) days to review an application for OTMR.

IV. THE COMMISSION SHOULD DELETE REFERENCES TO SELF-HELP ABOVE THE COMMUNICATIONS SPACE IN SECTION 5 (CONTRACTORS FOR SURVEY AND MAKE-READY).

As set forth in Section III.J. above, the Commission should not provide attaching entities a rule-based self-help remedy in the electric supply space. Consistent with LG&E-KU's proposed revisions to Section 4(9) of the proposed rules, which would eliminate the self-help remedy above the communications space, LG&E-KU urge the Commission to remove all references to electric supply space self-help from Section 5(1):

> 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 it authorizes to perform self-help surveys and make-ready that is complex ~~**and make-ready that is above the communications space on its 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 may not unreasonably withhold its consent.

V. SECTION 6 SHOULD BE REVISED TO INCLUDE A NEW SECTION GOVERNING TRANSFERS OF ATTACHMENTS TO REPLACED POLES.

Section 6 should be revised to provide utilities with the right to transfer communications attachments under certain circumstances to mitigate against the pervasive and unsightly "double wood" problem. The "double wood" problem arises when a replacement pole is set next to an existing "stub" pole, and existing attachers fail—for long periods of time—to transfer their attachments to the replacement pole. This delays the removal of the stub pole and results in unnecessarily redundant pole lines that clutter rights-of-way. To combat the "double wood" problem, the Commission should incorporate the following as subsection (3) to Section 6 of the proposed rules:

> **(3) Transfer of Attachments.**
>
> **(a) Unless an applicable tariff or special contract establishes a different timeframe, existing attachers shall transfer their attachments within 60 days of receiving written notice from the utility pole owner.**

(b) If an existing attacher fails to transfer its attachments within the applicable timeframe, a utility pole owner may transfer such attachments at the existing attacher's expense.

(c) For good cause, a utility pole owner can deviate from the 60-day notice period required in subsection (3)(a) of this section where circumstances warrant an expedited transfer.

VI. CONCLUSION

LG&E-KU appreciate the Commission's attention to these matters and look forward to working further with the Commission and its Staff on these issues of great importance to the stakeholders and their customers.

Respectfully submitted this 15th day of September, 2020.

ATTACHMENT A

Access and Attachments to Utility Poles and Facilities
807 KAR 5:0XX

Section 1. Definitions

(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.

(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 25 megabytes per second and upload speeds of at least 3 megabytes 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.

(3) "Communication space" means the lower usable space on a utility pole, which is typically reserved for low voltage communications equipment.

(4) "Complex make-ready" means any make-ready within or below the communications space that is not simple make-ready, such as the splicing of any communication attachment or relocation of existing wireless attachments, and any transfers or work relating to the attachment of wireless facilities.

(5) "Existing attacher" means any person or entity with equipment lawfully on a utility pole.

(6) "Governmental unit" means an agency or department of the federal government; a department, agency, or other unit of the Commonwealth of Kentucky; or a county or city, special district, or other political subdivision of the Commonwealth of Kentucky.

(7) "High Volume Request" means a request for attachment to more than 300 poles or 0.5 percent of the utility's poles in the state, whichever is fewer.

(8) "Macro cell facility" means a wireless communications system site that is typically high-power and high-sited, and capable of covering a large physical area, as distinguished from a distributed antenna system, small cell, or WiFi attachment, by way of example.

(9) "Make-ready" means the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to safely accommodate additional facilities on the utility pole.

(10) "New attacher" means a cable television system operator, telecommunications carrier, broadband internet service 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 shall 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.

Deleted: the replacement of a utility pole;

Deleted: even within the communications space;

Deleted:

(11) "Pole" means a utility pole supporting electric supply facilities that operates at or below nominal maximum distribution voltage and does not include either (1) a pole that supports electric transmission facilities or (2) any pole, post, standard or other structure that is used primarily to support outdoor lighting.

(12) "Simple make-ready" means make-ready within or below the communications space where existing attachments in the communications space of a pole could be rearranged without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.

(13) "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.

Deleted: transferred

Deleted: <#>"Simple make-ready" means make-ready where existing attachments in the communications space of a pole could be transferred without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.¶

Section 2. Duty to provide access to utility poles and facilities

(1) 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.

(2) Notwithstanding subsection (1) of this section:

(a) A utility may deny access to any pole, duct, conduit, or right-of-way on a non-discriminatory basis where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering purposes; and

(b) A utility has no obligation to secure any right-of-way, easement, license, franchise, or permit required for the construction or maintenance of attachments from a third party for or on behalf of any new or existing attacher.

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

(4) If a utility provides access to its poles, ducts, conduits or rights-of-way pursuant to an agreement that establishes rates, charges, or conditions for access not contained in its tariff:

(a) The rates, charges, and conditions of the agreement shall be in writing; and

(b) The utility shall file the written agreement with the commission pursuant to 807 KAR 5:011, Section 13.

(5) Ducts and Conduit. The requirements of Sections 3, 4, 5 and 6 of this administrative regulation are not applicable to ducts and conduit. Any dispute arising out of ducts and conduit shall be resolved pursuant to 807 KAR 5:001, Section 17.

Section 3. Pole attachment tariff required

(1) 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.

(2) The tariff may incorporate a standard contract or license for attachments so long as its terms and conditions are consistent with the requirements of this administrative regulation and KRS Chapter 278.

(3) (3) The tariff may include terms that are fair, just, and reasonable subject to approval by the commission such as limitations on liability, indemnification, insurance requirements, and restrictions on access to utility poles that are consistent with the requirements of this administrative regulation.

Section 4. Procedure for new attachers to request utility pole attachments

(1) All time limits in this section are to be calculated according to 807 KAR 5:001, Section 3(5).

(2) Application review and survey

(a) Application completeness.

1. A utility shall review a new attacher's pole attachment application for completeness before reviewing the application on its merits and shall notify the new attacher within 10 business days after receipt of the new attacher's pole attachment application (or by a mutually agreed upon date in the case of High Volume Requests as described in subsection (7) of this section) if the application is incomplete.

2. A new attacher's pole attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in the utility's applicable tariff or a special contract regarding pole attachments between the utility and the new attacher, to begin to review the pole attachment application on the merits or survey the affected poles.

(b) Survey and Application review on the merits.

1. Unless a utility's tariff requires a new attacher to perform a survey as part of a complete application, a utility shall complete a survey of poles for which access has been requested within 60 days of receipt of a complete application to attach facilities to its utility poles (or by a mutually agreed upon date in the case of

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High Volume Requests as described in subsection (7) of this section) for the purpose of determining whether the attachments may be made and identifying any make-ready to be completed to allow for the attachment.

2. Participation of attachers in surveys conducted by a utility.

   a. A utility shall permit the new attacher and any existing attachers on the affected poles to be present for any field inspection conducted as part of a utility's survey conducted pursuant to paragraph (b)1 of this subsection.

   b. A utility shall use commercially reasonable efforts to provide the affected attachers with advance notice of not less than 5 business days of any field inspection as part of the survey and shall provide the date, time, and location of the inspection, and name of the contractor, if any, performing the inspection.

3. Where a new attacher has conducted a survey pursuant to subsection (10)(c) of this section, a utility can elect to satisfy its survey obligations in this paragraph (if any) by notifying affected attachers of its intent to use the survey conducted by the new attacher pursuant to subsection (10)(c) of this section and by providing a copy of the survey to the affected attachers within the time period set forth in subsection (2)(b)1 of this section.

4. Based on the results of the applicable survey and other relevant information, a utility shall respond to the new attacher either by granting access or denying access within 60 days of receipt of a complete application to attach facilities to its utility poles (or by a mutually agreed upon date in the case of High Volume Requests as described in subsection (7) of this section).

5. A utility's denial of a new attacher's pole attachment application shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.

6. Payment of survey costs and estimates.

   a. Notwithstanding any other provision of this administrative regulation, a utility's tariff may require prepayment of the costs of surveys made to review a pole attachment application, or some other reasonable security or assurance of credit worthiness, before a utility is obligated to conduct surveys pursuant to this section.

   b. If a utility's tariff requires prepayment of survey costs, the utility shall send a new attacher whose application for access has been deemed to be complete, a detailed estimate in writing of charges to perform all necessary survey work within 14 days of providing the response required by subsection (2)(a)1 of this section indicating the application is complete.

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c. The new attacher shall be responsible for the costs of surveys made to review its pole attachment application even if the new attacher decides not to go forward with its attachments.

(3) Payment of make-ready estimates

(a) A utility shall send a new attacher whose application for access has been granted a detailed estimate in writing of charges to perform all necessary make-ready within 14 days of providing a response granting access pursuant to subsection (2)(b)4 of this section.

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(b) Upon request, a utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of its estimate.

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(c) A utility may withdraw an outstanding estimate of charges to perform make-ready work beginning 14 days after the estimate is presented.

(d) A new attacher may accept a valid estimate and make payment any time after receipt of an estimate, except it may not accept after the estimate is withdrawn.

(4) Make-ready. Upon tendering payment for survey costs owed pursuant to the utility's tariff and the estimate specified in subsection (3)(d) of this section, a new attacher shall, as soon as practical but in no case more than 7 days, notify all known entities with existing attachments in writing that may be affected by the make-ready.

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(a) For make-ready in the communications space, the notice shall:

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1. Specify where and what make-ready will be performed.

2. Set a date for completion of make-ready in the communications space that is no later than 30 days after notification is sent (or by a mutually agreed upon date in the case of High Volume Requests as described in subsection (7) of this section).

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3. State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

4. State that if make-ready is not completed by the completion date set by the utility in subparagraph 2 of this paragraph, the new attacher may complete the make-ready specified pursuant to subparagraph 1 of this paragraph.

5. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(b) For make-ready above the communications space, the notice shall:

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1. Specify where and what make-ready will be performed.

2. Set a date for completion of make-ready that is no later than 90 days after notification is sent (or by a mutually agreed upon date in the case of High Volume Requests as described in subsection (7) of this section).

3. State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

4. State that the utility may assert its right to 15 additional days to complete make-ready.

5. State that if make-ready is not completed by the completion date set by the utility in subparagraph 2 in this paragraph (or, if the utility has asserted its 15-day right of control, 15 days later), the new attacher may file a complaint with the Commission pursuant to 807 KAR 5:001, Section 17.

6. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(c) The new attacher shall be responsible for coordinating with existing attachers to encourage their completion of make-ready by the dates set forth by the utility in paragraph (a)2 of this subsection for make-ready within the communications space or paragraph (b)2 of this subsection for make-ready above the communications space.

(5) A utility shall complete its make-ready in the communications space by the same dates set for existing attachers in subsection (4)(a)2 of this section or its make-ready above the communications space by the same dates for existing attachers in subsection (4)(b)2 of this section (or if the utility has asserted its 15-day right of control, 15 days later).

(6) Final invoice.

(a) Within a reasonable period after a utility completes its make-ready, the utility shall provide the new attacher:

1. A detailed final invoice of the actual survey charges incurred if the final survey costs for an application differ from any estimate previously paid for the survey work; and

2. A detailed final invoice of the actual make ready costs to accommodate attachments if the final make ready costs differ from the estimate provided pursuant to subsection (3)(d) of this section.

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

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(7) For the purposes of compliance with the time periods in this section:

(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 High Volume Requests, and any agreement reached shall be filed with the Commission as a special contract.

(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.

(8) Deviations from make-ready timeline

(a) A utility may deviate from the time limits specified in this section before offering an estimate of charges if the new attacher failed to satisfy a condition in the utility's tariff, approved by the commission, or in a special contract between the utility and the new attacher.

(b) A utility may deviate from the time limits specified in this section during performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the time limits specified in this section. A utility that so deviates shall immediately notify, in writing, the new attacher and affected existing attachers and shall identify the affected poles and include a detailed explanation of the reason for the deviation and a new completion date. The utility shall deviate from the time limits specified in this section for a period no longer than necessary to complete make-ready on the affected poles and shall resume make-ready without discrimination when it returns to routine operations.

(c) An existing attacher may deviate from the time limits specified in this section during performance of complex make-ready for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready within the time limits specified in this section. An existing attacher that so deviates shall immediately notify, in writing, the new attacher and other affected existing attachers and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which in no event shall extend beyond 60 days from the completion date provided in the notice described in subsection (4) of this section is sent by the utility (or by a mutually agreed upon completion date in the case of High Volume Requests as described in subsection (7) of this section). The existing attacher shall deviate from the time limits specified in this section for a period no longer than necessary to complete make-ready on the affected poles.

(9) Self-help remedy

(a) Surveys. If a utility fails to complete a survey as specified in subsection (2)(b) of this section, then a new attacher requesting attachment in the communications space

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<#>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.¶

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may conduct the survey in place of the utility by hiring a contractor to complete a survey as specified in Section 5 of this administrative regulation.

1. A new attacher shall permit the affected utility and existing attachers to be present for any field inspection conducted as part of the new attacher's survey.

2. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than 5 business days of a field inspection as part of any survey it conducts.

3. The notice shall include the date and time of the survey, a description of the work involved, and the name of the contractor being used by the new attacher.

(b) 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, 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.

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1. A new attacher shall permit the affected utility and existing attachers to be present for any make-ready.

2. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than 7 days of the impending make-ready.

3. The notice shall include the date and time of the make-ready, a description of the work involved, and the name of the contractor being used by the new attacher.

(c) 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. Upon receiving notice from the new attacher, the utility or existing attacher may either:

1. Complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage; or

2. Require the new attacher to fix the damage at its expense immediately following notice from the utility or existing attacher.

(d) Post make-ready timeline. A new attacher shall notify the affected utility and existing attachers within 15 days after completion of make-ready on a particular pole. The notice shall provide the utility and existing attachers at least 90 days from receipt in which to inspect the make-ready. If the utility or an existing attacher

discovers any damage or code violations caused by the make-ready conducted by the new attacher on its equipment, the utility or existing attacher shall notify the new attacher and provide it with adequate documentation of such damage or code violations. The utility or existing attacher may either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or code violations or require the new attacher to fix the damage or code violations at its expense within 14 days following notice from the utility or existing attacher

(e) Self-help shall not be available for pole replacements or for make-ready above the communications space.

Deleted: Pole replacements.

(10) One-touch make-ready option. For attachments involving simple make-ready, new attachers may elect to proceed with the process described in this subsection in lieu of the attachment process described in subsections (2) through (6) and (9) of this section.

(a) Attachment application.

1. A new attacher electing the one-touch make-ready process must elect the one-touch make-ready process in writing in its attachment application and must identify the simple make-ready that it will perform. It is the responsibility of the new attacher to ensure that its contractor determines whether the make-ready requested in an attachment application is simple.

2. Application completeness.

   a. The utility shall review the new attacher's attachment application for completeness before reviewing the application on its merits and shall notify the new attacher within 10 business days after receipt of the new attachers attachment application whether the application is complete.

   b. An attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in the utility's applicable tariff or a special contract regarding pole attachments between the utility and the new attacher, to make an informed decision on the application.

   c. If the utility notifies the new attacher that its attachment application is not complete, then the utility must specify all reasons for finding it incomplete.

3. Application review on the merits. The utility shall review on the merits a complete application requesting one-touch make-ready and respond to the new attacher either granting or denying an application within 60 days of the utility's receipt of a complete application (or within a mutually agreed upon timeframe in the case of High Volume Requests as described in subsection (7) of this section).

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a. If the utility denies the application on its merits, then its decision shall be specific, shall include all relevant evidence and information supporting its decision, and shall explain how such evidence and information relate to a denial of access.

b. Within the ~~60~~-day application review period (or within a mutually agreed upon timeframe in the case of High Volume Requests as described in subsection (7) of this section), a utility may object to the designation by the new attacher's contractor that certain make-ready is simple. If the utility objects to the contractor's determination that make-ready is simple, then it is deemed complex. The utility's objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, made in good faith, and explains how such evidence and information relate to a determination that the make-ready is not simple.

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(b) Surveys.

1. The new attacher is responsible for all surveys required as part of the one-touch make-ready process and shall use a contractor as specified in Section 5(2) of this administrative regulation to complete such surveys.

2. The new attacher shall permit the utility and any existing attachers on the affected poles to be present for any field inspection conducted as part of the new attacher's surveys.

3. The new attacher shall use commercially reasonable efforts to provide the utility and affected existing attachers with advance notice of not less than 5 business days of a field inspection as part of any survey and shall provide the date, time, and location of the surveys, and name of the contractor performing the surveys.

(c) Make-ready. If the new attacher's attachment application is approved and if it has provided 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 specified 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. 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. Upon receiving notice from the new attacher, the utility or existing attacher may either:

a. Complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage; or

b. Require the new attacher to fix the damage at its expense immediately following notice from the utility or existing attacher.

3. In performing make-ready, if the new attacher or the utility determines that make-ready classified as simple is complex, then that specific make-ready must be halted and the determining party must provide immediate notice to the other party of its determination and the impacted poles. The affected make-ready 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)(a), (3) and (4) of this section as soon as reasonably practicable.

(d) Post-make-ready timeline. A new attacher shall notify the affected utility and existing attachers within 15 days after completion of make-ready on a particular pole. The notice shall provide the affected utility and existing attachers at least 90 days from receipt in which to inspect the make-ready. If the utility or an existing attacher discovers any damage or code violations caused by the make-ready conducted by the new attacher on its equipment, the utility or existing attacher shall notify the new attacher and provide it with adequate documentation of such damage or code violations. The utility or existing attacher may either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or code violations or require the new attacher to fix the damage or code violations at its expense within 14 days following notice from the utility or existing attacher.

Section 5. Contractors for survey and make-ready

(1) Contractors for self-help surveys and complex make-ready. A utility may, but is not required to, keep up-to-date a reasonably sufficient list of contractors it authorizes to perform self-help surveys and make-ready that is complex. If a utility provides such a list, then the new attacher must use a contractor from this list to perform self-help work that is complex. 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 may not unreasonably withhold its consent.

(2) Contractors for simple work. A utility may, but is not required to, keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and simple make-ready. If a utility provides such a list, then the new attacher must choose a contractor from the list to perform the work. 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 may not unreasonably withhold its consent.

(a) 1. If the utility does not provide a list of approved contractors for surveys or simple make-ready or no utility-approved contractor is available within a

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reasonable time period, then the new attacher may choose its own qualified contractor that meets the requirements in subsection (3) of this section.

2. When choosing a contractor that is not on a utility-provided list, the new attacher must certify to the utility that its contractor meets the minimum qualifications described in subsection (3) of this section when providing notices required by subsections 9(a)2, 9(b)2, 10(b)3, and 10(c) of Section 4 of this administrative regulation.

(b) 1. The utility may disqualify any contractor chosen by the new attacher that is not on a utility-provided list, but such disqualification must be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications described in section 3 of this section or to meet the utility's publicly available and commercially reasonable safety or reliability standards.

2. The utility must provide notice of its contractor objection within the notice periods provided by the new attacher in subsections 9(a)2, 9(b)2, 10(b)3, and 10(c) of Section 4 of this administrative regulation and in its objection must identify at least one available qualified contractor.

(3) Contractor minimum qualification requirements. Utilities must ensure that contractors on a utility-provided list, and new attachers must ensure that contractors they select pursuant to subsection (2)(a) of this section, meet the following minimum requirements:

(a) The contractor has agreed to follow published safety and operational guidelines of the utility, if available, but if unavailable, the contractor shall agree to follow National Electrical Safety Code (NESC) guidelines;

(b) The contractor has acknowledged that it knows how to read and follow licensed-engineered pole designs for make-ready, if required by the utility;

(c) The contractor has agreed to follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under the requirements of the Occupational and Safety Health Administration (OSHA) rules;

(d) The contractor has agreed to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the utility, if made available; and

(e) The contractor is adequately insured or will establish an adequate performance bond for the make-ready it will perform, including work it will perform on facilities owned by existing attachers.

(4) A consulting representative of an electric utility may make final determinations, on a nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

Section 6. Notice of changes to existing attachers

(1) Unless otherwise provided in a joint use agreement or special contract, a utility shall provide an existing attacher no less than 60 days written notice prior to:

(a) Removal of facilities or termination of any service to those facilities if that removal or termination arises out of a rate, term, or condition of the utility's pole attachment tariff or any special contract regarding pole attachments between the utility and the attacher; or

(b) Any modification of facilities by the utility other than make-ready noticed pursuant to Section 4(4) of this administrative regulation, routine maintenance, or modifications in response to emergencies.

(2) Stays from removals, terminations, and modifications noticed pursuant to subsection (1) of this section.

(a) An existing attacher may request a stay of the action contained in a notice received pursuant to subsection (1) of this section by filing a motion pursuant to 807 KAR 5:001, Section 4 within 15 days of the receipt of the first notice provided pursuant to subsection (1) of this section.

(b) The motion shall be served on the utility that provided the notice pursuant to 807 KAR 5:001, Section 5(1).

(c) The motion shall not be considered unless it includes, in concise terms, the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of cable television system operator or telecommunication service, a copy of the notice, and a certification that service was provided pursuant to paragraph (b) of this subsection.

(d) The utility may file a response within 10 days of the date the motion for a temporary stay was filed.

(e) No further filings under this subsection will be considered unless requested or authorized by the commission.

(3) Transfer of Attachments.

(a) Unless an applicable tariff or special contract establishes a different timeframe, existing attachers shall transfer their attachments within 60 days of receiving written notice from the utility pole owner.

(b) If an existing attacher fails to transfer its attachments within the applicable timeframe, a utility pole owner may transfer such attachments at the existing attacher's expense.

(c) For good cause, a utility pole owner can deviate from the 60-day notice period required in subsection (3)(a) of this section where circumstances warrant an expedited transfer.

Section 7. Complaints

(1) A complaint alleging a violation of this administrative regulations shall be made pursuant to 807 KAR 5:001, Section 17.

(2) The commission shall take final action on a complaint alleging that a person or entity was unlawfully denied access to a utility's pole, duct, conduit, or right-of-way within 360 days of the complaint being filed.

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ATTACHMENT B

1-4-18 KU

HIGH VOLUME
POLE ATTACHMENT APPLICATION PLAN

between

KENTUCKY UTILITIES COMPANY

and

METRO FIBERNET, LLC

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HIGH VOLUME POLE ATTACHMENT APPLICATION PLAN

This High Volume Pole Attachment Application Plan ("Plan") is made as of the 16th day of January, 2018, by and between Kentucky Utilities Company ("KU" or "Licensor" or "Company") and Metro Fibernet, LLC ("MetroNet" or "Licensee" or "Attachment Customer"), each a "Party" and together the "Parties."

RECITALS

KU is an electric utility company providing services in Kentucky, including in and around the city of Lexington. KU offers pole attachment services under its Pole and Structure Attachment Charges Rate Schedule ("PSA Rate Schedule"), which is on file with and approved by the Kentucky Public Service Commission ("the Commission") as part of KU's Electric Service Tariff.

MetroNet is a telecommunications carrier that desires to build a fiber network within KU's service area in or near Lexington, Kentucky. MetroNet contemplates that its fiber network construction project in or near Lexington, Kentucky (the "Project") will require approximately 40,000 Attachments to KU-owned poles, or foreign-owned poles to which KU has attached its electric supply lines, over the course of two years.

MetroNet further contemplates that the size of its Project, and the desired speed of completing its Project, will require High Volume Applications, as defined in the PSA Rate Schedule.

The Parties have entered into an Attachment Customer Agreement, as defined in the PSA Rate Schedule, with an effective date of November 2, 2017.

The Parties enter into this Plan for purposes of accommodating MetroNet's intent to submit High Volume Applications and for the purposes set forth in Section 7.h. of the PSA Rate Schedule. The Parties recognize that the Project is of exceptional scope and this Plan is necessary and integral to completion of the Project.

The Parties recognize that this Plan is a special contract and that it must be filed with the Commission for review and approval before becoming effective (or, in the absence of Commission approval, such other action by the Commission that allows the terms of this Plan to become effective, as determined in KU's sole discretion).

AGREEMENT

NOW THEREFORE, in consideration of the promises and the mutual covenants herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms used in this Plan shall have the meaning set forth in the PSA Rate Schedule and the Attachment Customer Agreement, unless otherwise defined herein.

2. PSA Rate Schedule and Attachment Customer Agreement. E otherwise in this Plan, the rates, terms and conditions set forth and the Attachment Customer Agreement between the Parties are adopted and incorporated

as if fully set forth herein. Any amendments to the PSA Rate Schedule will, when approved by the Commission, be adopted and incorporated as if fully set forth herein. In the event of a conflict between this Plan and either the PSA Rate Schedule or the Attachment Customer Agreement, this Plan shall control.

3. Scope. This Plan applies only to wireline attachments to Distribution Poles. This Plan does not apply to Wireless Facilities and does not apply to any Duct, conduit or other Structure (including but not limited to Transmission Poles). To the extent MetroNet seeks to attach to any Structure other than a Distribution Pole, or seeks to attach Wireless Facilities to any Structure, it shall do so under the terms of the PSA Rate Schedule and the Attachment Customer Agreement.

4. High Volume Applications.

a. Ramp-Up. During the first thirty (30) day period of the Project, MetroNet may submit High Volume Applications for up to 625 poles. During the second thirty (30) day period of the Project, MetroNet may submit High Volume Applications for up to 1,250 poles. During the third thirty (30) day period of the Project, MetroNet may submit High Volume Applications for up to 1,875 poles. Thereafter, MetroNet may submit High Volume Applications for up to 2,500 poles during any thirty (30) day period. The purpose of this ramp-up schedule is to acclimate the Parties and their contract resources to the maximum volume of applications allowed under this Plan. The Parties agree to cooperate in good-faith for any revisions to, or extension of, this ramp-up period as necessary to achieve the objective stated in this Section 4.a.

b. Application Requirements. Each High Volume Application shall include: (1) the location and other identifying information for each pole (such as transformer location number or pole number) to which MetroNet seeks to make an Attachment, and the amount of space required thereon; (2) the physical attributes of all proposed Attachments; (3) a pole loading study; (4) an annotated picture of each pole with heights of existing facilities; (5) any issues then known to MetroNet regarding space, engineering, access or other matters that might require resolution before installation of Attachments; and (6) proposed make ready drawings. KU, in its reasonable discretion, may request additional information be included with the High Volume Application. MetroNet shall provide such additional information before KU further processes the High Volume Application.

c. Design Review. Within thirty (30) days after receipt of a complete High Volume Application, KU shall (i) perform any survey, inspection, pole loading analysis, or other engineering necessary, in KU's sole discretion, to determine whether the make-ready drawings or other design materials require revision, and (ii) notify MetroNet of any required revisions to the make-ready drawings or other design materials. Such work shall be performed by the contract designers described in Section 5.d. below.

d. Contract Designers.

i. In order to process the High Volume Applications anticipated in connection with the Project, KU will retain at least two (2) contract designers for the duration of the Project. The entire cost of such contract designers, plus the overhead and any reasonable costs associated with the oversight of such contract designers, will be reimbursed by MetroNet within thirty (30) days after presentation of monthly invoices by KU. The invoices shall separately set forth the cost associated with the contract designers (including any overhead) and any oversight of such contract designers. The contract designers shall be dedicated to the Project, but may be utilized by KU for other work so long as such other work does not in any way delay or otherwise impede the progress of the Project.

ii. KU will initially retain two (2) contract designers, and engage additional contract designers if and as needed to process MetroNet's High Volume Applications. If at any time, MetroNet anticipates applying for access to fewer poles than the number contemplated in Section 4.a. above, MetroNet may request in writing, with not less than thirty (30) days' notice, that KU reduce the number of contract designers accordingly at the beginning of the following month. Such notice shall state with specificity the anticipated volume of applications. KU, in its reasonable discretion, shall determine whether the anticipated reduction in the volume of applications warrants a reduction in the number of contract designers. KU may delay the reduction of contract designers in order to process the High Volume Applications already submitted to KU in accordance with the time frames provided for in this Agreement. After a decrease in the number of contract designers as set forth in this Section, MetroNet may subsequently request an increase in the number of contract designers for the following month, with not less than thirty (30) days' written notice. Any increase in contract designers as set forth in the preceding sentence shall be subject to a ramp-up period as determined in KU's reasonable discretion.

e. Estimates. KU shall not be responsible for preparing any estimate of the Supply Space make-ready required for the approval of a High Volume Application. MetroNet is responsible for obtaining any such estimates directly from the Approved Contractor performing the Supply Space make-ready pursuant to Section 5.a. below.

5. Construction of Attachments. Upon completion of design review by KU, and notification to MetroNet of any required revisions to the make-ready drawings or other design materials within a High Volume Application, construction shall proceed as follows:

a. Supply Space Make-Ready.

i. KU-owned poles. For any approved High Volume Applications requiring Supply Space make-ready, including rearrang
replacement of KU poles (and transfer of KU
writing whether to perform some or all of such Supply Space make-ready.

If KU elects to perform some, but not all, of the Supply Space make-ready within an approved High Volume Application, KU shall designate with specificity the portion of Supply Space make-ready it elects to perform. KU shall complete any such work it elects to perform, at MetroNet's expense, within sixty (60) days of election. If KU approves a High Volume Application without so electing, MetroNet shall complete such work through the use of an Approved Contractor within sixty (60) days following KU's approval of the High Volume Application. In the event MetroNet does not complete such work within sixty (60) days, MetroNet will notify KU of the delay in completion, the reason for such delay and the need for an extension, including anticipated completion date, if known. KU may object to the extension, and the parties shall work in good faith to reach a mutually acceptable completion time frame.

ii. Foreign-owned poles. For any Supply Space make-ready required on foreign-owned poles (such as poles owned by the incumbent local exchange carrier), including rearrangement of KU facilities or transfer of KU facilities to a replacement pole, MetroNet shall present the make-ready drawings to KU for review and approval. KU shall elect in writing whether to perform some or all of such Supply Space make-ready. If KU elects to perform some, but not all, of the Supply Space make-ready within the make-ready drawings, KU shall designate with specificity the portion of Supply Space make-ready it elects to perform. KU shall complete any such work it elects to perform, at MetroNet's expense, within sixty (60) days of election. For any Supply Space make-ready work KU does not elect to perform, MetroNet shall complete such work through the use of an Approved Contractor within sixty (60) days following KU's approval of the make-ready drawings. In the event MetroNet does not complete such work within sixty (60) days, MetroNet will notify KU of the delay in completion, the reason for such delay and the need for an extension, including anticipated completion date, if known. KU may object to the extension, and the parties shall work in good faith to reach a mutually acceptable completion time frame.

b. Approved Contractor. The Approved Contractor shall provide notice to KU, in the form and manner directed by KU, at least one week prior to performing any Supply Space make-ready. MetroNet shall provide the Approved Contractor with Supply Space make-ready drawings or other design materials as approved by KU, and the Approved Contractor shall document receipt of such drawings or materials, in the manner directed by KU, for each pole requiring Supply Space make-ready. Supply Space make-ready work shall be performed in accordance with KU's electric design and construction standards and applicable requirements of the NESC, NEC, all other applicable codes and laws, and KU's construction and safety practices. Each Approved Contractor performing Supply Space make-ready pursuant to this Plan shall (i) execute a Structure Access Agreement and [illegible] performing such work, and (ii) procure all materials fo[illegible] approved in writing by KU. The cost of the Ap[illegible]

materials and other labor necessary to complete the Supply Space make-ready, shall be paid entirely by MetroNet. Supply Space make-ready shall be completed prior to third-party make-ready or installation of Attachments.

c. Supply Space Make-Ready Inspectors. During the performance of any Supply Space make-ready by Approved Contractors under this Plan, an inspector designated by KU shall accompany the Approved Contractor(s). The inspector, in his or her sole discretion, may direct that work be performed in a manner other than as approved in a High Volume Application, based on the then-existing circumstances in the field. The reasonable cost of such inspector(s) shall be reimbursed by MetroNet within thirty (30) days after presentation of monthly invoices by KU.

d. Third-Party Make-Ready. In the event an approved High Volume Application requires another Attachment Customer to rearrange or transfer its facilities on one or more poles, MetroNet shall coordinate the rearrangement or transfer with such third party and shall pay the costs related thereto. MetroNet shall not install its Attachments on any pole until all necessary third-party make-ready for that pole is complete.

e. Installation of Attachments. MetroNet shall complete installation of its Attachments on KU poles within sixty (60) days of the later of the following: (i) approval of a High Volume Application; or (ii) if an approved High Volume Application requires make-ready work, completion of such make-ready work. In the event MetroNet does not complete installation within one sixty (60) days, MetroNet will notify KU of the delay in installing, the reason for such delay and the need for an extension, including anticipated installation date, if known. KU may object to the extension, and the parties shall work in good faith to reach a mutually acceptable installation time frame. MetroNet shall provide notice to KU of completion of installation of Attachments, with as-built drawings, within thirty (30) days of completion of installation.

f. Election Not to Proceed. If MetroNet elects not to proceed with construction of any portion of an approved High Volume Application, MetroNet shall so notify KU in writing.

g. Identification of Contractors. At all times while performing work on or near KU's poles, MetroNet shall cause its contractors to visibly identify themselves and their work vehicles as such.

6. Inspection and Corrective Action.

a. Within sixty (60) days of notification of completion of installation as set forth in Section 5.e. above, and at MetroNet's expense (limited to expenses reasonably incurred by KU), KU shall conduct a post-const Attachments with the High Volume Application for th such Attachments comply with all KU design and

applicable requirements of the NESC, NEC, and all other applicable codes and laws.

b. The process for correcting any non-compliance with any such requirements discovered during such inspection shall be as set forth in the PSA Rate Schedule, except that MetroNet shall, in addition to complying with the requirements in the PSA Rate Schedule, pay as liquidated damages the amount of $50 per pole for each pole on which violations are discovered during the post-construction inspection.

7. Process Flow Chart. The process described in Sections 4 through 6 above is illustrated in the flow chart attached as Exhibit A, hereto.

8. Regular Coordination Meeting. On a regular basis during the term of this Plan, but no less than twice per month, the Parties, through their designated Project representatives, shall meet in person or by telephone for the purpose of discussing progress of the Project, resolving issues and other coordination necessary for the efficient completion of the Project.

9. Denial of Access. In the normal course, KU contemplates approving each High Volume Application submitted by MetroNet pursuant to this Plan. Nothing in this Plan, though, shall be interpreted as requiring KU to grant approval to make Attachments to any particular pole. KU reserves the right to deny access to any pole for reasons of insufficient capacity, safety, reliability and generally applicable engineering concerns.

10. No Ownership Interest. No payment for materials or labor associated with Supply Space make-ready pursuant to this Plan shall establish any ownership interest in KU's poles or other facilities. All such poles and facilities, including but not limited to those KU poles replaced by MetroNet pursuant to this Plan, shall be and remain the sole property of KU.

11. Additional Reimbursement. Given the extraordinary scope of the Project contemplated by this Plan, the Parties recognize that KU may incur different and additional costs in connection with the Project beyond those contemplated by the PSA Rate Schedule, the Attachment Customer Agreement, or within this Plan. If KU is aware that it will incur such different and additional costs, KU will notify MetroNet in advance of incurring such additional costs to the extent reasonably possible, but KU's failure to provide such notice shall not relieve MetroNet of the responsibility to pay such costs. MetroNet agrees to reimburse KU for all such costs reasonably incurred, within thirty (30) days after presentation of an invoice for such costs, together with any reasonable supporting documentation requested by MetroNet.

12. Unauthorized Work in Supply Space. In the event MetroNet performs Supply Space make-ready or any other work in the Supply Space except as expressly set forth in this Plan, MetroNet shall pay to KU as liquidated damages the amount of $2,500 per each such pole on which such unauthorized work was performed.

13. Performance Assurance. The Parties anticipate that the Proj 40,000 Attachments to KU poles, or foreign-owned poles to electric supply lines, over the course of a two-year period, and the Parties recognize that

the size of the Project, along with the provisions set forth in this Plan to accommodate the Project, increases KU's financial risk beyond the risk addressed in Section 24 (Performance Assurance) of the PSA Rate Schedule. Prior to submitting a High Volume Application, MetroNet shall furnish to KU a surety bond in the amount of one million dollars ($1,000,000) (or increase its existing surety bond to $1,000,000), which otherwise meets the requirements of Section 24 of the PSA Rate Schedule. The surety bond required by this Plan shall remain in place until the completion of the Project, at which point the bond shall be reduced in accordance with Section 24 of the PSA Rate Schedule.

14. Insurance. During the term of this Plan, MetroNet shall comply with the insurance requirements set forth in Section 23 of the PSA Rate Schedule, except as follows:

    a. Umbrella/Excess Liability Insurance. MetroNet shall maintain minimum limits of $5,000,000 per occurrence; $5,000,000 aggregate to apply to employer's liability, commercial general liability, and automobile liability.

    b. Election Not to Comply. MetroNet may not avail itself of the election not to comply with Section 23.a. through f. of the PSA Rate Schedule, as set forth in Section 23.h. of the PSA Rate Schedule, at any time during the term of this Plan.

15. Revocation or Suspension of Plan; Safety. In the event KU discovers unauthorized work in the Supply Space, Unauthorized Attachments or other violations of KU's safety standards, or if MetroNet's Attachments repeatedly fail the post-construction inspection, or if MetroNet repeatedly submits deficient applications, KU may in the exercise of its reasonable discretion revoke or suspend this Plan, or restart the Ramp-Up period set forth in Section 4.a. above.

16. Term and Termination. The initial term of this Plan shall be for two (2) years from the effective date, unless earlier terminated by either Party due to default by the other (and failure to cure such default within thirty (30) days written notice). This Plan shall automatically renew for successive one (1) month terms unless either Party gives notice of termination thirty (30) days prior to expiration of the initial term or any successive term.

17. Supplemental Operating Procedures. The Parties recognize that, during the course of the Project, it may become necessary to implement mutually beneficial supplemental operating procedures. Nothing herein, or in the Customer Attachment Agreement or the PSA Rate Schedule, shall prevent the Parties from adopting supplemental operating procedures as deemed mutually beneficial for purposes of completing the Project.

18. No Third Party Beneficiaries. This Agreement is entered into for the sole benefit of KU and MetroNet and, where permitted, their respective successors and assigns. Nothing in this Plan or in any approved High Volume Application shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity.

19. Exhibits. KU may revise the Exhibit to this Plan, in its reasonable discretion, without need for a mutually executed amendment to this Plan, as necessary to be incorporated into this Plan. In the event of a conflict between this Plan and the Exhibit, this Plan shall control unless otherwise mutually agreed in writing.

IN WITNESS WHEREOF, the Parties have caused this Plan to be duly executed by their authorized officers.

KENTUCKY UTILITIES COMPANY

By: Denise Simon

Name: Denise Simon

Title: Dir. Dist. Reliability, Analytics, & Admin.

Date: 1/16/2018

METRO FIBERNET, LLC.

By: _____

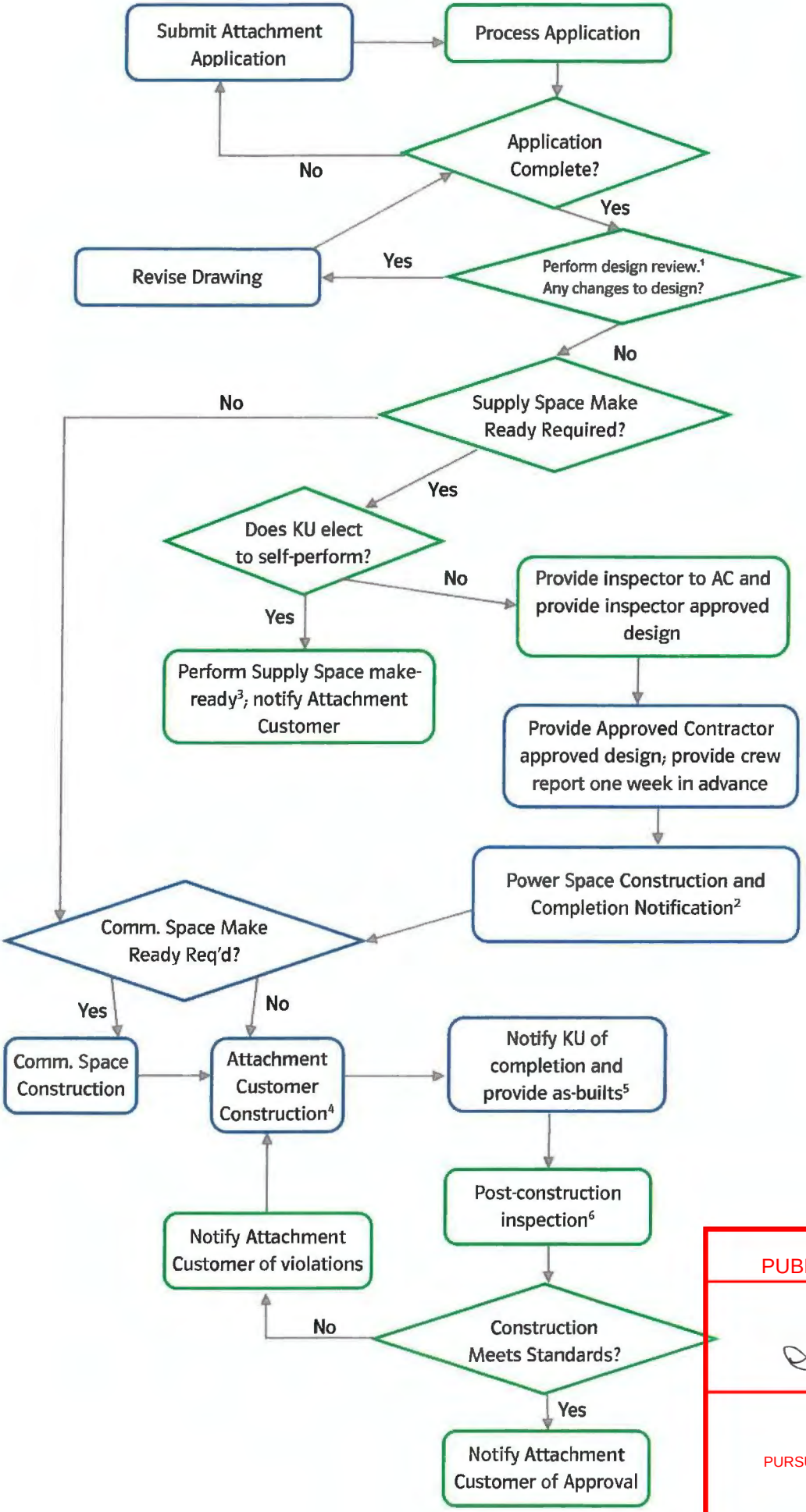
Name: John Greenbank

Title: Executive Vice President

Date: January 8, 2018

REVIEWED
By Anita Larson at 1:51 pm, 1/7/18

KENTUCKY
PUBLIC SERVICE COMMISSION
Gwen R. Pinson
Executive Director
Gwen R. Pinson
EFFECTIVE
2/17/2018
PURSUANT TO 807 KAR 5:011 SECTION 9 (1)



Legend

- Attachment Customer
- KU Contract Designer

Notes

1. Up to 2,500 poles per month; KU deadline: 30 days after receipt
2. Attachment Customer construction deadline: 60 days after approval
3. KU construction deadline: 60 days
4. Attachment Customer initial construction deadline: 60 days, corrective construction deadline: 30 days
5. As-built deadline: 30 days after completion
6. Post-construction inspection deadline: 60 days

KENTUCKY
PUBLIC SERVICE COMMISSION

Gwen R. Pinson
Executive Director

Gwen R. Pinson

EFFECTIVE

2/17/2018

PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

ATTACHMENT C

HIGH VOLUME
POLE ATTACHMENT APPLICATION PLAN

between

LOUISVILLE GAS AND ELECTRIC COMPANY

and

MCImetro ACCESS TRANSMISSION SERVICES CORP

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HIGH VOLUME POLE ATTACHMENT APPLICATION PLAN

This High Volume Pole Attachment Application Plan ("Plan") is made as of the 30th day of August, 2018, by and between Louisville Gas and Electric Company ("LG&E" or "Licensor" or "Company") and MCImetro Access Transmission Services ("MCIMetro" or "Licensee" or "Attachment Customer"), each a "Party" and together the "Parties."

RECITALS

LG&E is an electric utility company providing services in Kentucky, including in and around the city of Louisville. LG&E offers pole attachment services under its Pole and Structure Attachment Charges Rate Schedule ("PSA Rate Schedule"), which is on file with and approved by the Kentucky Public Service Commission ("the Commission") as part of LG&E's Electric Service Tariff.

MCIMetro is a telecommunications carrier that desires to build a fiber network within LG&E's service area in or near Louisville, Kentucky. MCIMetro contemplates that its fiber network construction project in or near Louisville, Kentucky (the "Project") will require approximately 12,000 Attachments to LG&E-owned poles, or foreign-owned poles to which LG&E has attached its electric supply lines, over the course of two years.

MCIMetro further contemplates that the size of its Project, and the desired speed of completing its Project, will require High Volume Applications, as defined in the PSA Rate Schedule.

The Parties have entered into an Attachment Customer Agreement, as defined in the PSA Rate Schedule, with an effective date of November 2, 2017.

The Parties enter into this Plan for purposes of accommodating MCIMetro's intent to submit High Volume Applications and for the purposes set forth in Section 7.h. of the PSA Rate Schedule. The Parties recognize that the Project is of exceptional scope and this Plan is necessary and integral to completion of the Project.

The Parties recognize that this Plan is a special contract and that it must be filed with the Commission for review and approval before becoming effective (or, in the absence of Commission approval, such other action by the Commission that allows the terms of this Plan to become effective, as determined in LG&E's sole discretion).

AGREEMENT

NOW THEREFORE, in consideration of the promises and the mutual covenants herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms used in this Plan shall have the meaning set forth in the PSA Rate Schedule and the Attachment Customer Agreement, unless otherwise defined herein.

2. PSA Rate Schedule and Attachment Customer Agreement. Except as otherwise in this Plan, the rates, terms and conditions set for

and the Attachment Customer Agreement between the Parties are adopted and incorporated as if fully set forth herein. Any amendments to the PSA Rate Schedule will, when approved by the Commission, be adopted and incorporated as if fully set forth herein. In the event of a conflict between this Plan and either the PSA Rate Schedule or the Attachment Customer Agreement, this Plan shall control.

3. Scope. This Plan applies only to wireline attachments to Distribution Poles. This Plan does not apply to Wireless Facilities and does not apply to any Duct, conduit or other Structure (including but not limited to Transmission Poles). To the extent MCIMetro seeks to attach to any Structure other than a Distribution Pole, or seeks to attach Wireless Facilities to any Structure, it shall do so under the terms of the PSA Rate Schedule and the Attachment Customer Agreement.

4. High Volume Applications.

a. Ramp-Up. During the first thirty (30) day period of the Project, MCIMetro may submit High Volume Applications for up to 400 poles. During the second thirty (30) day period of the Project, MCIMetro may submit High Volume Applications for up to 550 poles. Thereafter, MCIMetro may submit High Volume Applications for up to 700 poles during any thirty (30) day period. The purpose of this ramp-up schedule is to acclimate the Parties and their contract resources to the maximum volume of applications allowed under this Plan. The Parties agree to cooperate in good faith for any revisions to, or extension of, this ramp-up period as necessary to achieve the objective stated in this Section 4.a.

b. Application Requirements. Each High Volume Application shall include: (1) the location and other identifying information for each pole (such as transformer location number or pole number) to which MCIMetro seeks to make an Attachment, and the amount of space required thereon; (2) the physical attributes of all proposed Attachments; (3) a pole loading study; (4) an annotated picture of each pole with heights of existing facilities; (5) any issues then known to MCIMetro regarding space, engineering, access or other matters that might require resolution before installation of Attachments; and (6) proposed make ready drawings. LG&E, in its reasonable discretion, may request additional information be included with the High Volume Application. MCIMetro shall provide such additional information before LG&E further processes the High Volume Application.

c. Design Review. Within thirty (30) days after receipt of a complete High Volume Application, LG&E shall (i) perform any survey, inspection, pole loading analysis, or other engineering necessary, in LG&E's sole discretion, to determine whether the make-ready drawings or other design materials require revision, and (ii) notify MCIMetro of any required revisions to the make-ready drawings or other design materials. Such work shall be performed by the contract designers described in Section 5.d. below.

d. Contract Designers.

i. In order to process the High Volume Applications anticipated in connection with the Project, LG&E will retain at least two (2) contract designers for the duration of the Project. The entire cost of such contract designers, plus the overhead and any reasonable costs associated with providing and overseeing such contract designers, will be reimbursed by MCIMetro within thirty (30) days after presentation of monthly invoices by LG&E. The contract designers shall be dedicated to the Project, but may be utilized by LG&E for other work so long as such other work does not in any way delay or otherwise impede the progress of the Project.

e. Estimates. LG&E shall not be responsible for preparing any estimate of the Supply Space make-ready required for the approval of a High Volume Application. MCIMetro is responsible for obtaining any such estimates directly from the Approved Contractor performing the Supply Space make-ready pursuant to Section 5.a. below.

5. Construction of Attachments. Upon completion of design review by LG&E, and notification to MCIMetro of any required revisions to the make-ready drawings or other design materials within a High Volume Application, construction shall proceed as follows:

a. Supply Space Make-Ready.

i. LG&E-owned poles. For any approved High Volume Applications requiring Supply Space make-ready, including rearrangement of LG&E facilities or replacement of LG&E poles (and transfer of LG&E facilities), LG&E shall elect in writing whether to perform some or all of such Supply Space make-ready. If LG&E elects to perform some, but not all, of the Supply Space make-ready within an approved High Volume Application, LG&E shall designate with specificity the portion of Supply Space make-ready it elects to perform. LG&E shall complete any such work it elects to perform, at MCIMetro's expense, within sixty (60) days of election. If LG&E approves a High Volume Application without so electing, MCIMetro shall complete such work through the use of an Approved Contractor within sixty (60) days following LG&E's approval of the High Volume Application. In the event MCIMetro does not complete such work within sixty (60) days, MCIMetro will notify LG&E of the delay in completion, the reason for such delay and the need for an extension, including anticipated completion date, if known. LG&E may object to the extension, and the parties shall work in good faith to reach a mutually acceptable completion time frame.

ii. Foreign-owned poles. For any Supply Space make-ready required on foreign-owned poles (such as poles owned by the incumbent local exchange carrier), including rearrangement of LG&E facilities or transfer of LG&E facilities to a replacement pole, MCIMetro s[illegible] drawings to LG&E for review and approval. [illegible] whether to perform some or all of such Supply

elects to perform some, but not all, of the Supply Space make-ready within the make-ready drawings, LG&E shall designate with specificity the portion of Supply Space make-ready it elects to perform. LG&E shall complete any such work it elects to perform, at MCIMetro's expense, within sixty (60) days of election. For any Supply Space make-ready work LG&E does not elect to perform, MCIMetro shall complete such work through the use of an Approved Contractor within sixty (60) days following LG&E's approval of the make-ready drawings. In the event MCIMetro does not complete such work within sixty (60) days, MCIMetro will notify LG&E of the delay in completion, the reason for such delay and the need for an extension, including anticipated completion date, if known. LG&E may object to the extension, and the parties shall work in good faith to reach a mutually acceptable completion time frame.

b. Approved Contractor. The Approved Contractor shall provide notice to LG&E, in the form and manner directed by LG&E, at least one week prior to performing any Supply Space make-ready. MCIMetro shall provide the Approved Contractor with Supply Space make-ready drawings or other design materials as approved by LG&E, and the Approved Contractor shall document receipt of such drawings or materials, in the manner directed by LG&E, for each pole requiring Supply Space make-ready. Supply Space make-ready work shall be performed in accordance with LG&E's electric design and construction standards and applicable requirements of the NESC, NEC, all other applicable codes and laws, and LG&E's construction and safety practices. Each Approved Contractor performing Supply Space make-ready pursuant to this Plan shall (i) execute a Structure Access Agreement and General Release prior to performing such work, and (ii) procure all materials for such work from suppliers approved in writing by LG&E. The cost of the Approved Contractor, along with any materials and other labor necessary to complete the Supply Space make-ready, shall be paid entirely by MCIMetro. Supply Space make-ready shall be completed prior to third-party make-ready or installation of Attachments.

c. Supply Space Make-Ready Inspectors. During the performance of any Supply Space make-ready by Approved Contractors under this Plan, an inspector designated by LG&E shall accompany the Approved Contractor(s). The inspector, in his or her sole discretion, may direct that work be performed in a manner other than as approved in a High Volume Application, based on the then-existing circumstances in the field. The reasonable cost of such inspector(s) shall be reimbursed by MCIMetro within thirty (30) days after presentation of monthly invoices by LG&E.

d. Third-Party Make-Ready. In the event an approved High Volume Application requires another Attachment Customer to rearrange or transfer its facilities on one or more poles, MCIMetro shall coordinate the rearrangement or transfer with such third party and shall pay the costs related thereto. M Attachments on any pole until all necessary third-part complete.

e. Installation of Attachments. MCIMetro shall complete installation of its Attachments on LG&E poles within sixty (60) days of the later of the following: (i) approval of a High Volume Application; or (ii) if an approved High Volume Application requires make-ready work, completion of such make-ready work. In the event MCIMetro does not complete installation within sixty (60) days, MCIMetro will notify LG&E of the delay in installing, the reason for such delay and the need for an extension, including anticipated installation date, if known. LG&E may object to the extension, and the parties shall work in good faith to reach a mutually acceptable installation time frame. MCIMetro shall provide notice to LG&E of completion of installation of Attachments, with as-built drawings, within thirty (30) days of completion of installation.

f. Election Not to Proceed. If MCIMetro elects not to proceed with construction of any portion of an approved High Volume Application, MCIMetro shall so notify LG&E in writing.

g. Identification of Contractors. At all times while performing work on or near LG&E's poles, MCIMetro shall cause its contractors to visibly identify themselves and their work vehicles as such.

6. Inspection and Corrective Action.

a. Within sixty (60) days of notification of completion of installation as set forth in Section 5.e. above, and at MCIMetro's expense (limited to expenses reasonably incurred by LG&E), LG&E shall conduct a post-construction inspection of all Attachments with the High Volume Application for the purposes of ensuring that such Attachments comply with all LG&E design and construction standards and applicable requirements of the NESC, NEC, and all other applicable codes and laws.

b. The process for correcting any non-compliance with any such requirements discovered during such inspection shall be as set forth in the PSA Rate Schedule, except that MCIMetro shall, in addition to complying with the requirements in the PSA Rate Schedule, pay as liquidated damages the amount of $50 per pole for each pole on which violations are discovered during the post-construction inspection.

7. Process Flow Chart. The process described in Sections 4 through 6 above is illustrated in the flow chart attached as Exhibit A, hereto.

8. Regular Coordination Meeting. On a regular basis during the term of this Plan, but no less than twice per month, the Parties, through their designated Project representatives, shall meet in person or by telephone for the purpose of discussing progress of the Project, resolving issues and other coordination necessary for the efficient completion of the Project.

9. Denial of Access. In the normal course, LG&E contemplates a Application submitted by MCIMetro pursuant to this Plan. I shall be interpreted as requiring LG&E to grant approval to make Attachments to any

particular pole. LG&E reserves the right to deny access to any pole for reasons of insufficient capacity, safety, reliability and generally applicable engineering concerns.

10. No Ownership Interest. No payment for materials or labor associated with Supply Space make-ready pursuant to this Plan shall establish any ownership interest in LG&E's poles or other facilities. All such poles and facilities, including but not limited to those LG&E poles replaced by MCIMetro pursuant to this Plan, shall be and remain the sole property of LG&E.

11. Additional Reimbursement. Given the extraordinary scope of the Project contemplated by this Plan, the Parties recognize that LG&E may incur different and additional costs in connection with the Project beyond those contemplated by the PSA Rate Schedule, the Attachment Customer Agreement, or within this Plan. If LG&E is aware that it will incur such different and additional costs, LG&E will notify MCIMetro in advance of incurring such additional costs to the extent reasonably possible, but LG&E's failure to provide such notice shall not relieve MCIMetro of the responsibility to pay such costs. MCIMetro agrees to reimburse LG&E for all such costs reasonably incurred, within thirty (30) days after presentation of an invoice for such costs, together with any reasonable supporting documentation requested by MCIMetro.

12. Unauthorized Work in Supply Space. In the event MCIMetro performs Supply Space make-ready or any other work in the Supply Space except as expressly set forth in this Plan, MCIMetro shall pay to LG&E as liquidated damages the amount of $2,500 per each such pole on which such unauthorized work was performed.

13. Performance Assurance. The Parties anticipate that the Project will involve more than 12,000 Attachments to LG&E poles, or foreign-owned poles to which LG&E has attached its electric supply lines, over the course of a two-year period, and the Parties recognize that the size of the Project, along with the provisions set forth in this Plan to accommodate the Project, increases LG&E's financial risk beyond the risk addressed in Section 24 (Performance Assurance) of the PSA Rate Schedule. Prior to submitting a High Volume Application, MCIMetro shall furnish to LG&E a surety bond in the amount of three hundred thousand dollars ($300,000) (or increase its existing surety bond to $300,000), which otherwise meets the requirements of Section 24 of the PSA Rate Schedule. The surety bond required by this Plan shall remain in place until the completion of the Project, at which point the bond shall be reduced in accordance with Section 24 of the PSA Rate Schedule.

14. Insurance. During the term of this Plan, MCIMetro shall comply with the insurance requirements set forth in Section 23 of the PSA Rate Schedule, except as follows:

a. Umbrella/Excess Liability Insurance. MCIMetro shall maintain minimum limits of $5,000,000 per occurrence; $5,000,000 aggregate to apply to employer's liability, commercial general liability, and automobile liability.

b. Election Not to Comply. MCIMetro may not avail itself of the election not to comply with Section 23.a. through f. of the PSA Rate Schedule, as set forth in Section 23.h. of the PSA Rate Schedule, at any time during the term of this Plan.

15. Revocation or Suspension of Plan; Safety. In the event LG&E discovers unauthorized work in the Supply Space, Unauthorized Attachments or other violations of LG&E's safety standards, or if MCIMetro's Attachments repeatedly fail the post-construction inspection, or if MCIMetro repeatedly submits deficient applications, LG&E may in the exercise of its reasonable discretion revoke or suspend this Plan, or restart the Ramp-Up period set forth in Section 4.a. above.

16. Term and Termination. The initial term of this Plan shall be for two (2) years from the effective date, unless earlier terminated by either Party due to default by the other (and failure to cure such default within thirty (30) days written notice). This Plan shall automatically renew for successive one (1) month terms unless either Party gives notice of termination thirty (30) days prior to expiration of the initial term or any successive term.

17. Supplemental Operating Procedures. The Parties recognize that, during the course of the Project, it may become necessary to implement mutually beneficial supplemental operating procedures. Nothing herein, or in the Customer Attachment Agreement or the PSA Rate Schedule, shall prevent the Parties from adopting supplemental operating procedures as deemed mutually beneficial for purposes of completing the Project.

18. No Third Party Beneficiaries. This Agreement is entered into for the sole benefit of LG&E and MCIMetro and, where permitted, their respective successors and assigns. Nothing in this Plan or in any approved High Volume Application shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity.

19. Exhibits. LG&E may revise Exhibit A to this Plan, in its reasonable discretion, at any time without need for a mutually executed amendment to this Plan, and the revised Exhibit A shall be incorporated into this Plan. In the event of a conflict between Exhibit A and this Plan, this Plan shall control unless otherwise mutually agreed in writing.

IN WITNESS WHEREOF, the Parties have caused this Plan to be duly executed by their authorized officers.

LOUISVILLE GAS AND
ELECTRIC COMPANY

By: Denise Simon

Denise Simon
Director, Distribution Reliability,
Analytics, and Administration

Date: 8/31/2018

KENTUCKY
PUBLIC SERVICE COMMISSION
Gwen R. Pinson
Executive Director
Gwen R. Pinson
EFFECTIVE
9/29/2018
PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

MCImetro ACCESS TRANSMISSION SERVICES CORP

By: Gisela Macedo (Aug 10, 2018)

Name: Gisela Macedo

Title: _Senior Manager_

Date: Aug 10, 2018

VZB-8-10-2018 LGE-MCImetro High Volume Plan RHC 7-6-18

Adobe Sign Document History 08/10/2018

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Status:	Signed
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"VZB-8-10-2018 LGE-MCImetro High Volume Plan RHC 7-6-18" History

Document created by Sonya Bible (Sonya.bible@one.verizon.com)
08/10/2018 - 9:59:45 AM CDT- IP address: 198.23.5.73

Document emailed to Gisela Macedo (Gisela.Macedo@one.verizon.com) for signature
08/10/2018 - 10:00:23 AM CDT

Document viewed by Gisela Macedo (Gisela.Macedo@one.verizon.com)
08/10/2018 - 10:01:03 AM CDT- IP address: 146.1.1.2

Document e-signed by Gisela Macedo (Gisela.Macedo@one.verizon.com)
Signature Date: 08/10/2018 - 10:02:23 AM CDT - Time Source: server- IP address: 146.1.1.2

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9/29/2018
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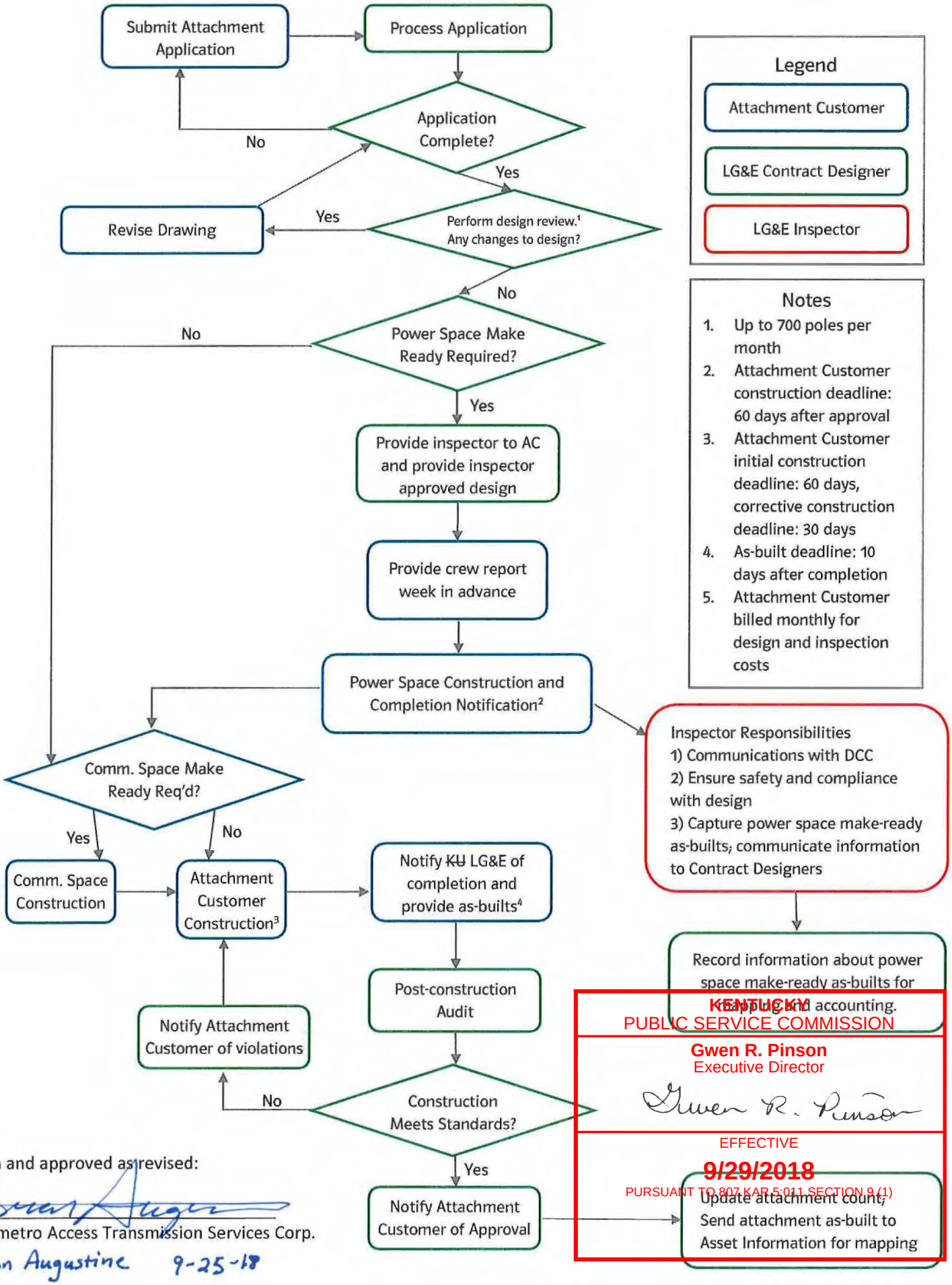
EXHIBT A - High Volume Process Flow Chart



Seen and approved as revised:

MCImetro Access Transmission Services Corp.

Brian Augustine 9-25-18

KENTUCKY
PUBLIC SERVICE COMMISSION
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