COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:		
ELECTRONIC APPLICATION OF LOUISVILLE GAS AND ELECTRIC COMPANY FOR AN ADJUSTMENT OF ITS ELECTRIC AND GAS RATES	))))	Case No. 2018-00295

DIRECT TESTIMONY

OF

JOSEPH H. CRONE III

Submitted on

Behalf of

Charter Communications Operating, LLC

January 16, 2019

TABLE OF CONTENTS

I. INTRODUCTION AND QUALIFICATIONS.

Q: Please state your name, business address, and occupation?

A: My name is Joseph H. Crone, III. My business address is 11325 Reed Hartman Highway, Cincinnati, Ohio. I am the Senior Director of Regional Construction for Charter Communications, Inc., in the Southern Ohio Region, which includes Kentucky.

Q: Please summarize your educational and professional background.

A: I have been employed in various construction and management positions in the cable industry since 1981. Since 1996, my primary responsibilities have included the design and construction of cable facilities and addressing related permitting issues. To carry out these responsibilities, I regularly interface with construction and technical personnel, utility pole owners, local government agencies, and contractor and vendor representatives. I have been Senior Director of Construction – first for Time Warner Cable, Inc., and now for Charter – since 2013. As Senior Director of Construction, I oversee all construction projects in my region and ensure all projects meet or exceed Charter's construction specifications, requirements of the National Electric Code ("NEC"), National Electric Safety Code ("NESC"), and Occupational Safety and Health Administration ("OSHA"), and state, county, city, and/or agency rules and requirements.

Q: Have you previously testified before this Commission?

A: Yes. I submitted testimony in 2017 on behalf of the Kentucky Cable Telecommunications Association in Louisville Gas and Electric Company's Application For Adjustment Of Its Electric And Gas Rates And For Certificates Of Public Convenience And Necessity (Case No. 2016-00371), and Kentucky Utility's Application

For Adjustment Of Its Electric And Gas Rates And For Certificates Of Public Convenience And Necessity (Case No. 2016-00370).

Q: On whose behalf are you testifying?

A: I am testifying on behalf of Charter Communications Operating, LLC ("Charter"). Within the area served by Louisville Gas & Electric Company ("LG&E") and Kentucky Utilities Company ("KU"), Charter has 96% of all cable pole attachments, amounting to attachments on approximately 194,000 poles. The company with the second most attachments in the same area has approximately 15,000. Charter therefore has a direct and substantial interest in just, reasonable, non-discriminatory, timely, and cost-effective access to KU and LG&E pole facilities, or structures, for deploying communications network facilities.

Q: Why are you submitting testimony in this proceeding?

A: I am submitting testimony in this proceeding to address a number of LG&E's proposed tariff requirements that impact Attachment Customers like Charter. In critical respects, the Company's proposed tariff requirements are unjust and unreasonable and will undermine the ability of Attachment Customers like Charter to efficiently and cost-effectively deploy communications facilities in reliance on reasonable and non-discriminatory access to the Company's essential pole facilities.

Q: Please summarize your testimony.

A: A number of LG&E's proposed tariff requirements are unjust, unreasonable, impractical, and discriminatory. In effect, these proposed requirements threaten to delay and deter deployment of communications facilities on the Company's structures by providers like Charter:

- **Make-Ready and Maintenance Requirements**. The proposed tariff's requirement that an Approved Contract give one week notice to, and be accompanied by, a Company-designated inspector, for which the Attachment Customer must reimburse the Company, is unjust and unreasonable.
- **Unauthorized Attachments**. The proposed tariff sets forth unreasonable processes for identifying non-compliant attachments, and imposes unreasonable and unfair penalties on such attachments.
- **Service Drop Attachments**. The proposed tariff proposes an unjust and unreasonable requirement for Attachment Customers to reimburse the Company for audits of service drop attachments that it may undertake at its discretion.
- **Audit Provisions**. The proposed tariff contains unjust and unreasonable audit provisions, including requirements that Attachment Customers foot the bill for audits that benefit the Company and pursuant to processes that deny Attachment Customers a meaningful opportunity to participate and understand and contest audit findings.

II. THE PROPOSED TARIFF CONTAINS UNJUST AND UNREASONABLE MAKE-READY AND MAINTENANCE REQUIREMENTS.

Q: Does the proposed tariff impose new requirements related to make-ready work?

A: Yes. If the Company fails to perform necessary make-ready work within sixty days of receipt of the Attachment Customer's payment of make-ready costs, the Attachment Customer may perform the work at its own expense using an Approved Contractor. PSA Rate Schedule, Term & Condition 7(g). While this is a reasonable and appropriate mechanism to ensure that an Attachment Customer may timely complete needed make ready, unlike the previous tariff, the proposed tariff further requires the Approved

Contractor to provide notice to the Company one week prior to performing any make-ready work and to be accompanied by a Company-designated inspector who may, in his or her sole discretion, direct that work be performed in a manner different from that previously approved by the Company. *Id.* The Attachment Customer must also reimburse the Company for the cost of the inspector within 30 days of receipt of the invoice from the Company. *Id.*

Q: Is it reasonable for the Company to require a Company-designated inspector to accompany an Approved Contractor in connection with the performance of pre-approved make ready work and at the expense of the Attachment Customer?

A: No. This requirement will lead to needless delay and increased costs. LG&E already requires that a contractor approved by the Company perform any make-ready work, and the make ready work itself has already been approved by the Company. *See* PSA Rate Schedule, Definitions and Term & Condition 7(g). Requiring a company approved inspector to supervise a company-approved contractor to perform pre-approved work is needless and redundant and invites delay and abuse by LG&E as well as increased costs on Attachment Customers. There is no apparent justification for this requirement. Importantly, LG&E has not provided any support for its assertion that a company-designated inspector is necessary to ensure worker safety or reduce the likelihood of outages in connection with work performed by an Approved Contractor. *See* LG&E Response to First Requests for Information of Charter, Question No. 6. LG&E even concedes that it is "not aware of any such issues" in circumstances where an Approved Contractor performed work on Company facilities without the supervision of a Company-designated inspector. *See* LG&E Response to Supplemental Requests for Information of

Charter, Question Nos. 2-4 & 2-7. Additionally, LG&E has admitted it has no plan to address situations in which a Company-designated inspector is unavailable to accompany the Approved Contractor, including how to avoid cost and delay to an Attachment Customer. *See id.*, Question No. 2-8. As a result, this requirement is sure to increase costs and delay deployment of communications facilities for no good reason.

Q: Is it reasonable for the Company to allow its designated inspector to, in his or her sole discretion, direct that work be performed in a manner different than that approved in the application?

A: No. This is a recipe for mischief, conflict, delay, and increased costs. Allowing changes to an approved application at the discretion of an inspector sets up a scenario ripe for abuse that could lead to allegations of unauthorized attachments or safety violations down the road, and will create confusion as to the party responsible for any noncompliant attachments. Moreover, because approved make-ready work is already based on a field inspection, this requirement seems unnecessary and inappropriate. Nor does the Company propose any mechanism to timely and properly resolve any disputes that may arise in the field concerning work that needs to be performed. While the Company suggests that, in the event of a dispute, the Attachment Customer may simply stop working and appeal to the Company personnel who approved the attachment application, that is impractical, unfair, and inappropriate in light of the practical realities of field work and the business imperatives of Attachment Customers. *See* LG&E Response to Supplemental Requests for Information of Charter, Question 2-5. The Company cannot reasonably expect Charter or another Attachment Customer to have an Approved Contractor stop work that the Company previously approved so that it can debate with

remote Company personnel over new demands issued by a designated inspector in the field. That will delay Charter from completing make ready work necessary to provide service to customers and increase its costs of deploying facilities and service.

Q: Is it reasonable for the Attachment Customer to bear the cost of the Company-designated inspector in connection with performance of approved make ready work?

A: No. As explained above, these costs are wholly unnecessary and unreasonable in the first place, and they are properly borne by the Company if it nevertheless opts to incur them. Thus, where LG&E requires a Company-designated inspector to supervise the performance of pre-approved work of an LG&E Approved Contractor, LG&E should bear its own costs. LG&E has not offered any data or information to justify why an inspector is necessary to supervise performance of make ready work that it has already approved by a contractor that it has approved. This requirement makes no sense and will simply increase the cost of and delay completion of make ready necessary to deploy communications facilities to serve customers. The Company should not be permitted to impose these needless costs and delays on Attachment Customers.

III. THE PROPOSED TARIFF CONTAINS UNJUST AND UNREASONABLE PROVISIONS RELATED TO "UNAUTHORIZED" ATTACHMENTS.

Q: Does the proposed tariff address "unauthorized" attachments?

A: Yes. The proposed tariff deems any attachment "unauthorized" if it "requires Company approval or advance notice under this Schedule or the Contract and [the Attachment Customer] has not obtained such approval or provided such advance notice." PSA Rate Schedule, Term & Condition 19. Such attachments are also presumed to have existed for two years or since the completion of the most recent audit, whichever occurred earlier.

Id. An Attachment Customer is liable for attachment charges for this time period as well. Additionally, an Attachment Customer is required to pay an additional $25.00 penalty for each unauthorized attachment. *Id.*

Q: Does the proposed tariff set forth a process to identify "unauthorized attachments"?

A: Yes. During an audit, if the number of attachments counted for an Attachment Customer exceeds the number of attachments shown in the Company's records, the excess number of attachments are deemed "unauthorized." PSA Rate Schedule, Term & Condition 14.

Q: Is LG&E's treatment of alleged "unauthorized" attachments reasonable?

A: No. History demonstrates the process the Company intends to follow will lead to incorrect and overblown claims of unauthorized attachments and for back rent, generate disputes, and cause disruption to relationships in the field. As an initial matter, LG&E's process is not geared actually to identify attachments for which there are no underlying permits, but instead to identify any mismatch between the number of "attachments" counted in the field and the number of attachments reflected in its books and records for any given Attachment Customer. Those are very much not the same thing. In my experience, the reality is that the numbers of unauthorized attachments utilities claim to "discover" during inspections are misleading and overblown. The identification of "unauthorized attachments" typically result from inaccurate and faulty audits, poor record keeping on the part of the utility, novel methods to count attachments that are not designed to determine whether any given attachment has actually been installed without a permit, and shifting definitions of what constitutes an "attachment." For example, in LG&E's Customer Notification of Changes, LG&E states the proposed tariff "[r]evises the definition of attachment to clarify that multiple attachments located within one foot of

usable space will not be considered a single attachment," yet the definition of "attachment" in the proposed tariff is unchanged, although it likely varies from the operative definition used during the Company's last pole attachment audit. As a result of its current different approaches to understanding what constitutes an attachment, it is unclear if, when, or why LG&E actually would count multiple attachments located within one foot of usable space as separate attachments, but the shifting definition is ripe for abuse and likely to result in overblown counts of supposedly "unauthorized" attachments. This issue is not hypothetical or academic. During its last audit, LG&E supposedly found 9,832 "unauthorized attachments." *See* LG&E's Response to Supplemental Requests for Information of Charter, Question No. 2-21(b). Given there are approximately 30 attachments per mile, LG&E's unauthorized attachment finding means that Attachment Customers supposedly installed more than 300 miles of unauthorized plant without it noticing. That is highly doubtful and improbable for many reasons, including the practical realities involved in plant construction and also the simple fact that Attachment Customers themselves have strong incentives to permit their facilities. The massive number of unauthorized attachments supposedly found during LG&E's last audit more likely resulted from a mismatch between the way attachments were counted for permitting purposes in the first instance and auditing after the fact or poor record keeping by the Company rather than Attachment Customers surreptitious installing hundreds of miles of unauthorized plant across LG&E's network without it knowing. This is not unusual. It is often the case in pole attachment audits that outsized numbers of "unauthorized attachment" are the byproduct of a mismatch in how attachments are defined for permitting construction purposes and how they are later counted for billing

purposes during an audit. These issues and the way unauthorized attachments are counted make it exceedingly difficult for an Attachment Customer to identify, verify, or contest the utility's asserted number of unauthorized attachments found during an audit. Instead of simply providing the Attachment Customer with a number that supposedly represents its excess number of attachments, the Company must provide the Customer with sufficient information to identify, verify and challenge alleged unauthorized attachments. Yet, LG&E's tariff includes no mechanism or process for an Attachment customer to verify or challenge its assessment of "unauthorized" attachments.

Q: Are the Company's unauthorized attachment penalties reasonable?

A: No. LG&E's penalties for unauthorized attachments are excessive and unreasonable. *First*, LG&E's proposed penalties are excessive in light of the many problems with identifying true unauthorized attachments noted above. As a result, penalties for unauthorized attachments used by utilities impose massive, unforeseen, punitive, and unjustified costs on Attachment Customers. For example, the "unauthorized attachments" found during LG&E's audit would have resulted in hundreds of thousands of dollars in penalties under its proposed penalty regime. *Second*, the penalty is unjustified on its own terms. The penalty is approximately 3.5 times the annual attachment fee and almost double LG&E's current unauthorized attachment penalty. Yet LG&E has not provided any information, data, reports, or analysis related to any costs caused by unauthorized attachments or that it incurs to address, or any other reasonable basis for its proposed penalties. *See* LG&E Response to First Requests for Information of Charter, Question No. 14 (e)-(f). Nor has LG&E come forward with any information supporting the notion that any penalty, let alone one as severe as it has proposed, is

necessary to deter Attachment Customers from adhering to the permit process for their attachments. As noted above, Attachment Customers already have strong business incentives to comply with applicable permitting processes.

Q: Are there any other charges associated with noncompliant attachments?

A: Yes. The proposed tariff states that, if an Attachment Customer fails to install any Attachment in accordance with the standards and terms set forth in the proposed tariff, the Company will provide written notice of the failure to the Attachment Customer and the Attachment Customer will have thirty days to make the necessary corrections. PSA Rate Schedule, Term & Condition 8(j). After thirty days, the "Company may make the repairs or adjustments," and the Attachment Customer must then reimburse the Company for the actual cost of the repairs or adjustments and pay a penalty of 50% of the actual cost within 30 days of receipt of an invoice. *Id.*

Q: Is a 50% penalty imposed by the Company for its "repairs and adjustments" a new requirement?

A: Yes. The former tariff did not include any additional penalty or fee for "repairs or adjustments" made by the Company to Attachments that did not conform to the tariff requirements above the costs of the repairs and adjustments. PSC Electric No. 11, PSA Rate Schedule, Term & Condition 8(j).

Q: Does the tariff establish how LG&E will determine if an attachment is out of specification and/or the cause of the noncompliant condition?

A: No. The tariff does not set forth any process or guidance for how LG&E is to determine whether an attachment is out of specification or how or by whom the condition was caused.

Q: Is a 50% penalty for "repairs and adjustments" following 30 days' notice reasonable?

A: No, for multiple reasons. *First*, LG&E's selection of 50% as the measure of the penalty is arbitrary and does not strike a reasonable balance between unreasonable charges and any deterrence function, if there is one. *See* LG&E Response to Supplemental Requests for Information of Charter, Question No. 2-16(a) ("There are no data or documents that specifically relate to the selection of 50% versus any other percentage."). LG&E came forward with no information to support its proposed penalty. *Second*, LG&E has no process to determine who caused any given out of specification condition, and thus who should properly bear the cost (and any associated penalty).

Q: Are there any other terms in the proposed tariff regarding "unauthorized attachments" that are unreasonable?

A: Yes. Term and Condition 8(c) of the proposed tariff places any expense incurred by the Company to identify the owner of an untagged attachment on the Attachment Customer. And, while Term and Condition 16 requires 45 days' written notice before a Company alters, relocates, or removes any of an Attachment Customer's attachments, Term and Condition 8(c) considers that notice provided at the time when the Company inspects the attachment and determines it is untagged. PSA Rate Schedule, Terms & Conditions 8(c) & 16(b).

Q: Is it reasonable to place any expense incurred by the Company to identify the owner of an untagged attachment on the Attachment Customer?

A: No. Rather than placing the expense of identifying the owner of an untagged attachment on the Attachment Customer, the Company must have a process properly to identify the

cause of an untagged attachment, and require the appropriate party to bear the costs and responsibility to correct the situation.

Q: Is it reasonable to presume the owner of an untagged Attachment has notice when the Company inspects its attachment that the Company may alter, relocate, or remove its attachment?

A: No. It is not reasonable for the Company to move an attachment – and disrupt the Attachment Customer's service – without warning. Except in the case of emergency, the Company must provide notice before it alters, relocates, or removes an Attachment Customer's attachments.

IV. THE PROPOSED TARIFF CONTAINS ADDITIONAL UNJUST AND UNREASONABLE TERMS.

A. The Proposed Tariff Contains Unjust And Unreasonable Terms For Service Drop Attachments.

Q: What is a service drop attachment?

A: A service drop attachment is defined under the proposed tariff as a cable attached to a structure with a J-hook or other similar hardware that connects the trunk line to an Attachment Customer's premises. *See* PSA Rate Schedule, Definitions. As the name suggests, a service drop interconnects a new customer's premises with the communications provider's network, enabling the communications provider to serve the customer.

Q: Does the proposed tariff contain regulations regarding service drop attachments?

A: Yes. The proposed tariff defines any service drop affixed to a pole more than six inches above or below a through-bolt as a separate attachment for billing purposes. PSA Rate Schedule, Term & Condition 7(i). The proposed tariff allows the Company to conduct an inspection of any service drop attachment at its discretion, and requires the Attachment

Customer to reimburse the Company for the cost of the inspection within 30 days of receiving the invoice. *Id.*

Q: Is it reasonable for the Company to require the Attachment Customer to reimburse the Company for the cost of an inspection of service drop attachments?

A: No. LG&E offered no valid reason for why it would need to conduct such inspections. Nor does there seem to be any. Service drop attachments do not raise any of the same safety or maintenance issues involved with mainline attachments, as they are only connections to serve customers. If LG&E chooses to conduct an inspection of service drop attachments outside of a formal audit, it should bear its own costs for doing so. Otherwise, such inspections are likely to become an opportunity for LG&E to impose needless additional costs on Attachment Customers.

B. The Proposed Tariff Contains Unjust And Unreasonable Audit Provisions.

Q: Does the proposed tariff provide for the Company to conduct audits of its structures?

A: Yes. The proposed tariff states the Company may conduct an audit of its structures upon 30 days' written notice to the Attachment Customers, and must make available to the Attachment Customer the audit report. PSA Rate Schedule, Term & Condition 14. The proposed tariff also requires the Attachment Customer to reimburse the Company for the expense of the audit (or its pro rata share if there are other Attachment Customers) within 30 days of receiving the Company's invoice. *Id.*

Q: Is it reasonable for the Company to require the Attachment Customer(s) to reimburse the Company for the entire expense of the audit?

A: No. While the Attachment Customer should pay for the portion of the audit that directly concerns and benefits it, audits also benefit the Company because they allow it to gather

revenue collection information, and conduct required maintenance and safety inspections of its own infrastructure. The Company must therefore bear its fair share of any audit costs.

Q: Is there anything else about the proposed audit provisions that are unreasonable?

A: Yes. The proposed tariff does not allow Attachment Customers meaningfully to participate in the audit or even set out any appropriate inspection process. Refusing to allow the Attachment Customers to participate in the audit process makes it exceedingly difficult for an Attachment Customer to verify or contest the utility's claimed number of unauthorized attachments or safety violations. At a minimum, in conducting any inspections to identify unauthorized or otherwise noncompliant attachments, an appropriate inspection process needs to set forth criteria by which LG&E's employees or its contractors are to conduct the inspection and provide information to Attachment Customers about specific attachments claimed to be "unauthorized" or that present any maintenance or safety issues. Attachment Customers must understand LG&E's process for identifying and confirming unauthorized or otherwise noncompliant attachments, as well as maintenance or safety issues, and be provided sufficient information to verify or contest LG&E's findings. Additionally, Attachment Customers also must have an efficient dispute resolution process to challenge LG&E's findings.

V. THE COMMISSION MUST ENSURE THAT LG&E'S PROPOSED ELECTRIC RATE INCREASE ON ATTACHMENT CUSTOMERS IS JUST AND REASONABLE.

Q: Do you know whether Charter's electric rate will increase under the proposed tariff?

A: Yes, it is will increase under the proposed electric tariff.

Q: Do you know what, if any, impact the electric rate increase will have on Charter's members?

A: As with any increase in costs, the electric rate increase will increase Charter's costs to provide service to customers. Accordingly, the Commission must ensure that LG&E's increase in its electric rates is just and reasonable.

VI. CONCLUSION

Q: Does this conclude your testimony?

A: Yes, it does.

[VERIFICATION ON SEPARATE PAGE]

VERIFICATION

STATE OF OHIO)
)
COUNTY OF HAMILTON)
)

The undersigned, **Joseph H. Crone III**, being duly sworn, deposes and says that he is the Senior Director of Regional Construction for Charter Communications in the Southern Ohio Region, and that he has personal knowledge of the matters set forth in the foregoing testimony, and that the answers contained therein are true and correct to the best of his information, knowledge, and belief.

Joseph H. Crone III

Subscribed and sworn to before me, a Notary Public, in and before said County and State, this 15 day of January, 2019.

Tamara Newsom (SEAL)

Notary Public

My Commission Expires:

NOTARIAL SEAL
STATE OF OHIO

TAMARA NEWSOM
Notary Public, State of Ohio
My Commission Expires 11-13-2021