

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF THE) CASE NO.
PROPOSED POLE ATTACHMENT TARIFFS OF) 2022-00105
INVESTOR-OWNED ELECTRIC UTILITIES)

MOTION TO STRIKE TESTIMONY OF PATRICIA D. KRAVTIN

Kentucky Power Company (“Kentucky Power”) hereby moves to strike the testimony of Ms. Patricia D. Kravtin, submitted on behalf of the Kentucky Broadband and Cable Association (“KBCA”) on June 9, 2022.

1. The testimony submitted by Ms. Kravtin is an attempt to relitigate an issue the Commission has already squarely decided in the underlying rulemaking proceeding. The KBCA previously proposed, and the Commission rejected, the same proposal set forth in Ms. Kravtin’s testimony: that “utilities should be permitted only to recover [make-ready pole replacement] costs based on the remaining net book value of the replaced pole.”¹ In the absence of an order striking Ms. Kravtin’s testimony from the record, the parties will have to re-litigate an issue that the Commission has already resolved and should not be in dispute in this tariff review proceeding. To avoid the need for wasteful and duplicative re-litigation of issues already decided by the Commission, Kentucky Power respectfully requests that the Commission issue an order striking Ms. Kravtin’s testimony from this proceeding.

¹ Direct Testimony of Patricia D. Kravtin, Case No. 2022-105, June 9, 2022, p. 9. Ms. Kravtin’s June 9, 2022 testimony is hereinafter referenced as “Kravtin Testimony.”

2. KBCA Already Raised This Issue. The purpose of Ms. Kravtin’s testimony is to advocate for a regulatory framework in which pole owners, when prematurely replacing a pole to accommodate an attaching entity, recover from the attaching entity only the remaining net book value of the replaced pole. This is exactly what KBCA and Ms. Kravtin urged in the underlying rulemaking proceedings.² In fact, shortly before the July 29, 2021 Public Hearing on the Commission’s proposed regulation, KBCA offered the following specific revisions to Section 4(6)(b)4:

The make-ready cost, if any, for a pole that is not a red tagged pole to be replaced with a new utility pole to accommodate the new attacher’s attachment shall ~~be charged in accordance with the utility’s tariff or a special contract regarding pole attachments between the utility and the new attacher~~ **not exceed the remaining un-depreciated value of the replaced pole, provided that, if the replacement pole is of a different type or height, the attacher shall also be responsible for any difference in cost computed in accordance with subsection (6)(b)(3).**³

3. The Commission Already Resolved This Issue. The Commission not only declined to adopt KBCA’s cost-shifting proposal, but also set forth in detail its reasoning for rejecting KBCA’s proposal. The Commission, in its September 15, 2021 Statement of Consideration, stated:

Section 4(6)(b)4, with which KBCA now takes issue, then indicates that the replacement costs for non-red tagged poles that must be replaced to accommodate a new attachment will be charged in accordance with each utility’s tariff or an applicable special contract.

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² See, e.g., KBCA September 2, 2020 Comments, pp. 7-12; September 2, 2020 Report of Patricia D. Kravtin; KBCA July 22, 2021 Comments, pp. 3-6, Exhibit A (proposing language revisions to Section 4(6)(b)4) & Exhibit B (July 22, 2021 Report of Patricia D. Kravtin); Remarks of KBCA and Patricia Kravtin at July 29, 2021 Public Hearing; September 15, 2021 Statement of Consideration Relating to 807 KAR 5:015 at 43 (characterizing Ms. Kravtin’s position as arguing “that new attachers should only be responsible for the temporal effects of their request, i.e., the premature replacement of the pole, measure by the undepreciated value of the pole”).

³ KBCA July 22, 2021 Comments, Exhibit A.

The amendment proposed by KBCA could result in electric rates that are not fair, just and reasonable. When reviewing utility rates and charges to determine if they are fair, just and reasonable and otherwise comply with statutory requirements imposed by KRS Chapter 278, the Commission generally attempts to ensure that costs are assigned to the party responsible for causing the utility to incur the cost. If a utility must replace a pole that does not need to be replaced with a larger pole or a pole of a different type to accommodate a new attachment, then the cost to replace that pole is caused by the new attacher.

Other utility customers may eventually benefit from the installation of the new pole installed to accommodate a new attacher as alleged by KBCA, but only to the extent the new pole adds useful life. For instance, if a new pole has a 50-year life and the pole that was replaced had a 30 year remaining useful life, then other customers may get the benefit of 20 additional years of life that were paid for by the new attacher. However, in 30 years, the relevant pole may not be necessary such that other customers would not receive any benefit from the new pole installed to accommodate the new attacher's equipment. Further, depending on the age of the pole being replaced and the types of poles involved, it is possible that a new pole of a different type necessary to accommodate a new attacher may not actually have a longer life than the existing pole.⁴

KBCA had the opportunity to challenge the underlying rulemaking prior to this tariff review proceeding but did not take such action.

4. Ms. Kravtin's testimony claims that "the Commission's regulations do not address the cost allocation treatment of non-red-tagged poles"⁵ but as set forth above in paragraph 3 above, this statement is not accurate. In fact, Ms. Kravtin attributes the position "that attachers should bear the entire cost of replacing non-red-tagged pole because they are the 'cost causer'" to "utilities" as revealed in their responses to KBCA's requests for information,⁶ when in fact this was the position set forth in the Commission's Statement of Consideration. The Commission stated: "If a utility must replace a pole that does not need to be replaced with a larger pole or a pole of a different type to accommodate a new attachment, then **the cost to replace that pole is**

⁴ Statement of Consideration Relating to 807 KAR 5:015 at 47.

⁵ Kravtin Testimony, p. 6.

⁶ Kravtin Testimony, p. 37 n. 29.

caused by the new attacher.⁷ Ms. Kravtin’s testimony further states that “the Commission reserved treatment of the cost allocation of non-red-tagged poles until the utilities submitted proposed tariffs and it had hard data to inform its analysis.”⁸ This is an untenable position because while the “hard data” might have informed the *amount* of any cost allocation under KBCA’s proposed rule revisions, it would not inform the *concept* behind the proposed rule revision—whether any cost of non-red-tagged make-ready replacement poles should be allocated to pole owners. This is a *concept* the Commission rejected in its final rule and Statement of Consideration. Ms. Kravtin’s testimony is an attempt to re-litigate the rulemaking *concept* (rejected by the Commission) under the guise of tariff review and under the pretense that the issue relates to *amount* rather than concept.

5. The relief sought by Kentucky Power is important because Kentucky Power’s deadline to submit rebuttal testimony is July 11, 2022 (three weeks from the date of this motion). If Kentucky Power needs to rebut this testimony—on an issue the Commission has already firmly decided—it will need to marshal internal and external resources in short order. Further, in the event the Commission holds a hearing, Ms. Kravtin’s testimony (including the significant cross examination and rebuttal testimony) will unnecessarily prolong the hearing on an issue (a) the Commission has already decided, (b) the KBCA did not appeal, and (c) on which the KBCA has not filed a petition for rulemaking.

⁷ Statement of Consideration Relating to 807 KAR 5:015 at 47. Perhaps recognizing that her testimony is merely a collateral attack on the Commission’s regulation, Ms. Kravtin’s testimony—after identifying a plethora of utility responses to KBCA’s information requests—includes a “*see also*” citation to the Commission’s September 15, 2021 Statement of Consideration Relating to 807 KAR 5:015 at 46-47. See Kravtin Testimony, p. 37 n.29.

⁸ Id. at 23.

6. For the reasons set forth above, as well as the reasons set forth by Kentucky Power in the underlying rulemaking proceeding (which served as the basis for rejecting the proposal advanced by KBCA through Ms. Kravtin’s testimony), Kentucky Power respectfully requests that the Commission enter an order striking Ms. Kravtin’s testimony from the record. Kentucky Power further requests that the Commission enter this order by Monday, June 27, 2022, given the time constraints and the impending deadline for rebuttal testimony.

Dated: June 20, 2022

Respectfully submitted,



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CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, and the Public Service Commission’s Order of July 22, 2021 in Case No. 2020-00085, I certify that this document was transmitted to the Public Service Commission on June 20, 2022 and that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding



Robert J. Patton
Counsel for Kentucky Power Company