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	)	

RESPONSE BRIEF OF KENTUCKY POWER COMPANY IN SUPPORT OF REVISED TARIFF

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Pursuant to the Kentucky Public Service Commission's September 23, 2022, Order, Kentucky Power Company ("Kentucky Power") respectfully submits this response brief in support of its revised Tariff P.A. ("Revised Tariff").

I. INTRODUCTION

The Kentucky Broadband Cable Association ("KBCA") is the only non-EDU to file an initial brief in this proceeding pursuant to the Commission's September 23, 2022, briefing order. In this response brief, Kentucky Power does not attempt to address all of KBCA's arguments. Instead, this response brief addresses only those arguments that implicate Kentucky Power's Revised Tariff and that have not already been fully briefed. Identifying these types of arguments was challenging because KBCA's brief is generic and high-level; it does not identify with specificity the tariffs or provisions to which it continues to object. Besides these issues, KBCA's brief suffers from at least one foundational problem: it does not address—let alone attempt to undermine—Kentucky Power's rebuttal testimony. This is a critical omission, as Kentucky Power's rebuttal testimony directly refutes the premises underlying KBCA's arguments.

II. RESPONSE TO KBCA'S ARGUMENTS

A. The Record Evidence Supports the Commission's Long-Standing Policy of Allocating the Cost of Make-Ready Pole Replacements to Attaching Entities.

Without actually specifying any particular pole attachment tariff with which it takes issue, KBCA reiterates its argument that it is unjust and unreasonable for attaching entities to bear the entire cost of a make-ready pole replacement. *See* Brief of the Kentucky Broadband and Cable Association ("KBCA's Brief") at 2-7 (filed Oct. 11, 2022). KBCA argues that attaching entities should, instead, be charged only for the "remaining net book value" of the pole that is being prematurely replaced ("Cost Allocation Proposal"). *See id.* at 3-4. Although KBCA's argument is not directed at any particular pole owner, it implicates Kentucky Power's Revised Tariff because the Revised Tariff allows Kentucky Power to recover the entire cost of a make-ready pole replacement. *See* Revised Tariff, P.S.C. KY. NO. 12 1st REVISED SHEET NO. 16-5, Section 10.

As a preliminary matter, **<u>the make-ready pole replacement cost allocation provision in Kentucky Power's Revised Tariff has been a part of Kentucky Power's pole attachment tariff since at least 2006</u>**. *See* Kentucky Power Company Tariff C.A.T.V., P.S.C. ELECTRIC NO. 8, Original Sheet No. 16-2, POLE INSTALLATION OR REPLACEMENT; REARRANGEMENTS; GUYING (effective Mar. 30, 2006). This means that KBCA bears the burden of demonstrating that the cost recovery provision is not just and reasonable. KBCA has failed to meet its burden. As noted above, KBCA relies exclusively on the testimony of Ms. Patricia Kravtin to justify its Cost Allocation Proposal, but KBCA has failed to address Kentucky Power's rebuttal testimony that directly contradicts Ms. Kravtin's premises.

For example, relying solely on Ms. Kravtin's testimony, KBCA argues that its Cost Allocation Proposal is justified by the "many benefits" electric utilities allegedly receive from make-ready pole replacements. The rebuttal testimony submitted by Kentucky Power, however, directly refutes these alleged "benefits." Ms. Pamela F. Ellis, Director of Energy Delivery Engineering Services for American Electric Power Service Corporation, explained:

> Ms. Kravtin supports her claim that Kentucky Power is the primary beneficiary of make-ready pole replacements by citing several benefits that Kentucky Power allegedly receives from the installation of a taller and/or stronger replacement pole, including: (1) the "enhance[ment] [of] the productive capacity of the plant to meet service quality and other regulatory mandates"; (2) the "ability to provide additional service offerings and enhancements of its own network"; (3) "enhanced rental opportunities from the increased capacity on the new replacement pole"; (4) "cost savings in the form of lower maintenance and operating expenses inherent to the features of the new, upgraded/higher-class replacement pole"; and (5) "[c]apital cost savings associated with future planned plant upgrades and cyclical replacement programs."
>
> The purported benefits cited above ignore the following fundamental fact: unless the make-ready pole replacement happens to coincide with Kentucky Power's plans

> for infrastructure improvement, then the make-ready pole replacement will in almost every case provide no benefit to Kentucky Power or its electric ratepayers. The reason for this is that it is impossible for Kentucky Power to know at the time of a make-ready pole replacement what type of pole its core electric service needs would require at the time the existing pole would have otherwise been replaced pursuant to Kentucky Power's infrastructure improvement plans. Because of this uncertainty, when performing make-ready pole replacements, Kentucky Power only installs poles that are incrementally taller and/or stronger to accommodate the additional attachment. Therefore, if five (5) years down the road Kentucky Power's core electric service needs would require an even taller or stronger pole than the previously installed make-ready replacement pole, the previously installed make-ready replacement pole would be of no use or benefit to Kentucky Power. Yet, under Ms. Kravtin's cost allocation proposal, Kentucky Power would lose the value inherent in the remaining useful life of the existing pole, bear the vast majority of cost for the make-ready replacement pole, and also bear the entire cost of replacing the make-ready replacement pole with one that would actually meet Kentucky Power's core electric service needs.

Rebuttal Testimony of Pamela F. Ellis on Behalf of Kentucky Power Company at 10-11 (filed Jul. 11, 2022).

Kentucky Power also submitted expert testimony demonstrating that, even if a make-ready pole replacement *does* coincide with Kentucky Power's infrastructure improvement plans (and, therefore, might theoretically provide Kentucky Power with some benefit), Kentucky Power would still incur a "**significant net loss**" from the premature replacement of a pole under the Cost Allocation Proposal. Mr. Christopher F. Tierney, a third-party expert retained by Kentucky Power and Duke Energy Kentucky Inc., explained:

> [U]nder Ms. Kravtin's proposed approach, wherein utilities would pay for the total cost of a pole replacement, adjusted only for the remaining net book value of the existing pole, the utilities would be incurring significant losses with each make-ready pole replacement. The table below summarizes the net make-ready pole replacement costs and the time value of money benefit resulting from the deferral of an otherwise necessary average pole replacement at the end of its useful life. Again, this illustration assumes (1) that the existing pole would otherwise need to be replaced eventually and (2) that the replacement pole will accommodate the utilities' electric service needs in the future.
>
> […]

	[A]	[B]	[C = B - A]
Utility	Average Current Pole Replacement Cost Net Of Remaining Book Value (2022 $)	Present Value Benefit To Utility Of Deferred Pole Replacement (2022 $)	Net Loss To Utility (2022)
Duke Energy Kentucky	$ 10,837	$ 5,107	$ (5,730)
Kentucky Power	8,669	2,325	(6,344)

Rebuttal Testimony of Christopher F. Tierney on Behalf of Kentucky Power and Duke Energy Kentucky Inc. at 8-9 (filed Jul. 11, 2022). In other words, even in the best-case scenario, Kentucky Power still stands to incur a net loss of $6,344 for each make-ready pole replacement, which led Mr. Tierney to conclude that "any reliance on the remaining book value of poles (i.e., KBCA's Cost Allocation Proposal) would be deeply flawed and grossly undercompensate utilities." *See id.* at 8.

In addition, KBCA argues that if the Commission declines to adopt the Cost Allocation Proposal, "the record evidence shows that utilities would be incentivized to underreport the number of red-tagged poles they intend to replace each year in order to improperly shift replacement costs to attachers." KBCA's Brief at 4. KBCA also argues that "data submitted by utilities…reveals that utilities are as a matter of course currently red-tagging a much smaller population of poles than they intend to replace in the normal course of business." *Id.* Once again, however, KBCA's brief completely ignores Kentucky Power's rebuttal testimony—testimony that directly refutes each of these points. For example, Mr. Tierney explained that it would be contrary to Kentucky Power's economic interest to underreport "red tagged poles":

> Based on my extensive experience working with electric utilities, these allegations [i.e., that electric utilities are shifting the cost to maintain their pole infrastructure by waiting for attaching entities to initiate pole replacements] are untrue. Further, and perhaps more importantly, this allegation is contrary to an electric utility's economic interests. As regulated businesses, utilities are allowed to earn a return

> (profit) on prudently invested capital. Thus, when a utility determines that a pole replacement is prudent and reasonable to ensure continued safe and reliable service, it knows it will recover a reasonable return on its investment and that there will be no detriment to shareholders. Not only is a utility economically incentivized to install poles at its own cost when it is prudent to do so, it is disincentivized to wait for a third-party to do so when it makes sense (i.e., lost opportunity to earn a return on the invested capital).

Rebuttal Testimony of Christopher F. Tierney at 10. KBCA failed to address this testimony.

Furthermore, Ms. Ellis expressly denied that Kentucky Power underreports "red tagged poles" and explained that Ms. Kravtin's "red-tag rate" is predicated on flawed datapoints:

> Kentucky Power does not under-report red-tagged poles. Ms. Kravtin's response (on behalf of KBCA) to the Commission's request for information seemed to acknowledge that there is no direct evidence of this.[1] Instead, Ms. Kravtin says that the difference between expected life-cycle pole replacement rates and red-tag rates means Kentucky Power must be under-reporting red-tag poles. This reasoning is incorrect for at least two reasons. First, for purposes of determining the "expected life-cycle pole replacement rates," Ms. Kravtin uses the average service life underlying the depreciation rates approved by the Commission. This average service life figure, though, does not equate to the actual useful life of an individual pole or even the average actual useful life of poles. Second, the red-tag rate, which Ms. Kravtin derives by dividing the number of red-tagged poles each year with the total number of poles, is the wrong comparison because the number of red-tagged poles only captures poles identified for reinforcement or replacement through cyclical inspections.

Rebuttal Testimony of Pamela F. Ellis at 12-13. Ms. Ellis also explained that Ms. Kravtin should have used the "total number poles actually replaced each year" to calculate the "red-tag rate" because it would capture all pole replacements, including replacements for "core electric service, storm restoration or any other reason *[that] has the effect of eliminating a red-tag designation as a result of an inspection*." *See id.* at 13. According to Ms. Ellis, Ms. Kravtin's reliance on the average service life underlying Kentucky Power's depreciation rates "fails to account for the dynamic nature of distribution pole networks":

[1] *See* KBCA_R_KPSC_1_06 (filed Jul. 7, 2022).

> The average service life for Kentucky Power distribution poles, upon which the depreciation rate in currently based, is 28 years. Under Ms. Kravtin's rationale, this would equate to an expected life-cycle pole replacement rate of 3.57% annually. In reality, though, the actual useful life of a pole is more like 50 years, which would indicate an expected life-cycle pole replacement rate of 2% annually. The number of poles replaced by Kentucky Power each year is much closer to 2% than the number of poles red-tagged by Kentucky Power each year. In any event, we would expect the red-tagged pole rate to be much lower than the 2% expected life-cycle replacement rate posited by Ms. Kravtin because of the dynamic nature of pole networks. Kentucky Power routinely replaces poles that have not been red-tagged and are not near the end of their average actual useful life in response to, for example, increasing customer demand, storm hardening requirements or significant storm events. **The practical effect of this fundamental characteristic of pole networks is this: countless poles are replaced before they ever reach red-tagged status to the benefit of the Company's customers. Therefore, the red-tagged rate on which Ms. Kravtin's analysis depends fails to account for the dynamic nature of distribution pole networks**.

Id. at 14 (emphasis added). KBCA's brief does not so much as acknowledge the existence of Ms. Ellis' rebuttal testimony.

B. The Commission Has Already Determined that Pole Owners Are Entitled to Recover the Cost of Evaluating a Proposed Overlash.

Citing the overlashing provisions in the tariffs filed by the rural electric cooperatives ("RECCs"), KBCA raises two arguments against cost recovery. *See* KBCA's Brief at 7-9. First, KBCA argues that attaching entities should bear the cost of pole loading studies only if the study reveals a loading issue. *See id.* at 8-9. Second, KBCA argues that pole owners should not be permitted to recover inspection costs when those costs pertain to overlashing. *See id.* at 9. KBCA's overlashing argument is not specifically directed at Kentucky Power, and KBCA has not raised an objection to the overlashing provision in Kentucky Power's Revised Tariff. However, KBCA's argument seems to implicate the Revised Tariff because the Revised Tariff permits Kentucky Power to perform a post-overlashing inspection at the overlashing party's expense. *See* Revised Tariff, P.S.C. KY. NO. 12 1st REVISED SHEET NO. 16-4, Section 9.

There is a significant problem with KBCA's argument: the Commission has already considered and rejected it. The first version of the Commission's proposed pole attachment regulation did not address overlashing at all. The overlashing rule was incorporated, at KBCA's prompting, in the second version of the Commission's proposed pole attachment regulation. In fact, the Commission's overlashing rule was largely based on language proposed by KBCA, but the Commission specifically stated:

> The Commission will also remove the prohibition on charging a fee to overlashers. Reviewing potential overlashing, like new attachments, will result in costs and there may be instances where an overlash evaluation requires a more complicated review, such as an engineering study, and this is a cost that the overlasher, and not the utility's customers, should bear.

Statement of Consideration Relating to 807 KAR 5:015 ("Statement of Consideration) at 52 (filed Sep. 15, 2021). In other words, the Commission has already expressly determined that pole owners are entitled to recover the cost of evaluating a proposed overlash from the overlashing party. KBCA's argument, therefore, conflicts with the Commission's regulation.

C. The Record Evidence Clearly Establishes that Kentucky Power's Per Pole Estimate for Make-Ready Surveys Is Based on Actual Costs, and Therefore, Fair, Just and Reasonable.

KBCA indirectly argues that Kentucky Power's $275 per pole estimate for make-ready surveys ("Survey Estimate") is not just and reasonable because it is "many multiples" of the "actual survey costs KBCA members pay," which KBCA claims to be approximately "$20-$40 per pole." *See* KBCA's Brief at 10. Though not entirely clear, the thrust of KBCA's argument appears to be that Kentucky Power's Survey Estimate is not based on "actual cost data." In making this argument, however, KBCA glosses over the substantial record evidence to the contrary.

For example, in response to KBCA's initial objections, Kentucky Power explained:

> Kentucky Power utilizes third-party contractors to perform make-ready surveys. The Survey Estimate in Section 6 is designed to capture the average pass-through cost of this work on a per pole basis. Because Kentucky Powers contractors charge on

> a per-unit basis, the Survey Estimate was calculated using the unit costs for the following make-ready survey inputs: (1) administrative processing costs; (2) field data collection costs; (3) engineering costs; and (4) postconstruction inspection costs. The unit cost for engineering varies based on the condition of the pole: (a) a pole that requires no make-ready or other work; (b) a pole that requires rearrangement of existing attachments; and (c) a pole that requires additional work beyond rearrangement.

Response of Kentucky Power to the Objections of AT&T and KBCA to Revised Tariff P.A. ("Response to Objections") at 7 (filed Apr. 14. 2022); *see also id*. (providing KBCA with the methodology used to calculate the Survey Estimate); KPCO_R_KPSC_1_06.a. ("Kentucky Power utilizes third-party contractors to perform make-ready surveys. The Survey Estimate in Section 6 is designed to capture the average ***pass through cost*** of this work on a per pole basis….") (emphasis added) (internal citations omitted). Kentucky Power also, in response to KBCA's first set of data requests, provided KBCA with the per-unit cost inputs utilized in the Survey Estimate:

Administrative Processing/proposal	$98-$135
Field Data Collection/ pole	$52-$79
"OK to Attach" Pole/pole	$46-$82
Rearrangement (Standard) Remedy/pole	$129-132
Work Order (Complex) Remedy/pole	$186-191
Post Construction Inspection/pole	$19-$43
Overlash Post Construction Inspection/pole	$12-$45

KPCO_R_KBCA_1_01; *see also* KPCO_R_KBCA_2_07.a. (providing Commission with a detailed calculation of the Survey Estimate); KPCO_R_KPSC_3_02 (providing further explanation of the unit cost data utilized to calculate the Survey Estimate). Kentucky Power provided even further explanation of the Survey Estimate in its rebuttal testimony. *See* Rebuttal Testimony of Pamela F. Ellis at 4-7. For instance, Ms. Ellis explained that the Survey Estimate is derived from the actual unit costs attaching entities have been charged since 2018—charges that no KBCA member has disputed until now:

Q: HAS THE MAKE-READY SURVEY FEE ESTIMATE PREVISOULY BEEN CHALLENGED BY ANY KBCA MEMBER?

A: No, I am not aware of any previous challenge by a KCBA member. Kentucky Power passes through the cost from the engineering contractor, so whether billed based on an estimated cost prior to engineering or actual cost after completion, the average cost per pole is $275. As stated previously, $275 is an estimate based on the actual per unit fees charged by the Engineering contractors performing this work for Kentucky Power. Contracts were awarded to these vendors through a competitive bid process for these services in 2018. Each Operating Company of AEP awarded contracts to at least two vendors. For the work performed in the engineering survey and analysis, the unit prices used to build the per pole estimate are actual and reasonable. Kentucky Power passes through the actual costs invoiced from the vendor for this work. To my knowledge, no attachers have challenged the engineering invoices.

Id. at 6.

Though it is not entirely clear, KBCA seems to argue that, in order to be just and reasonable, the per pole estimate for make-ready surveys should fall within the range of "$20-$40 per pole." KBCA's Brief at 10. Unlike Kentucky Power, however, KBCA has not explained how this range is calculated or the types of work that are included. Ms. Ellis addressed this disparity in her testimony:

> Mr. Bast states that, "Charter estimates the preconstruction survey cost per pole in Kentucky to be roughly $25 per pole and considers anywhere from $30-$50 to be within the reasonable estimate range." Unless we are defining "make-ready survey fee" differently, I cannot explain the disparity. Just the field data collection alone averages $65.50 per pole from our vendors. Additionally, Mr. Bast suggests that it takes 15 minutes to survey one pole. It takes more than 15 minutes to collect field data, analyze the strength and loading of the pole, determine a remedy if there is any failure of the existing pole in that analysis, and write a work order if work is required. Without a true breakdown of the services included in the $30-$50 estimate Mr. Bast suggests to be within a "reasonable estimate range", I cannot explain this discrepancy any further. That said, my best judgment is that the parties are defining "make-ready survey fee" differently because there is no way the data collection, analysis, work order preparation and post-inspection can be competently performed in the $30-50 range.

Rebuttal Testimony of Pamela F. Ellis at 6-7. In other words, KBCA has failed to provide any contextual information for its "$20-$40 per pole" range for make-ready surveys, so for all we know, KBCA is comparing apples to oranges.

D. Retroactive Relief Is Not Available for Pole Attachment Disputes.

KBCA is also challenging the two-year limitations period that AT&T's tariff imposes on pole attachment disputes. *See* KBCA's Brief at 16-17. In particular, KBCA is urging the Commission to "establish a reasonable time between three years (which would give parties more time to work through disputes informally and cooperatively) and ten years (the applicable limitations period under Kentucky law)." *See id.* at 17. Although Kentucky Power's Revised Tariff is not implicated by this issue, Kentucky Power is worried about the implication of KBCA's argument. To the extent KBCA is urging for a rule that allows retroactive challenge to the terms of an approved tariff, this argument is contrary to the law.

In a recent proceeding involving KBCA's predecessor (Kentucky Cable Telecommunications Association), the Commission stated:

> It is well established that a Commission's Order remains in full force and effect until amended or revoked by subsequent Commission Order or order by a court of competent jurisdiction. KRS 278.270 provides that:
>
> > Whenever the commission, upon its own motion or upon complaint as provided in KRS 278.260, and after a hearing upon reasonable notice, finds that any rate is unjust, unreasonable, insufficient, unjustly discriminatory or otherwise in violation of any provisions of this chapter, the commission shall by order prescribe a just and reasonable rate to be followed in the future.
>
> Therefore, **by statute, the Commission, if it determines that a rate is unreasonable, may "prescribe a just and reasonable rate to be followed in the future." This statutory scheme thus makes it clear that if rates are found upon complaint to be unreasonable, any award of relief can only be prospective following the entry of an Order by the Commission**.

Kentucky Cable Telecommunications Association v. Louisville Gas and Electric Company and Kentucky Utilities Company, Case No. 2014-00025 (Ky. PSC Mar. 27, 2015) at 8 (emphasis added). To avoid unnecessary disputes, the Commission should make clear that attaching entities are only entitled to prospective relief when challenging a provision of a tariff.

III. CONCLUSION

For all the reasons set forth herein, as well as the reasons set forth in Kentucky Power's initial brief, Kentucky Power's responses to requests for information, Kentucky Power's response to the initial objections filed by KBCA and AT&T, and the testimony of Ms. Ellis and Mr. Tierney, Kentucky Power respectfully requests that the Commission approve the Revised Tariff as submitted.

Dated: October 18, 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 October 18, 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
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