COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

REBUTTAL TESTIMONY OF JASON P. JONES MANAGER, DISTRIBUTION SYSTEMS COMPLIANCE AND EMERGENCY PREPAREDNESS

LG&E AND KU SERVICES COMPANY

Filed: July 11, 2022

INTRODUCTION

Q: What is your name, occupation, and business address?

A: My name is Jason P. Jones. I am the Manager – Distribution Systems Compliance and Emergency Preparedness, for LG&E and KU Services Company, which provides services to Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU") (collectively the "Companies). My business address is 220 West Main Street, Louisville, KY 40202. A statement of my education and work experience is attached to this testimony as Appendix A.

Q: Have you testified before the Kentucky Public Service Commission before?

A: No.

Q: What is the purpose of your testimony?

A: The purpose of my testimony is to rebut certain aspects of the testimony filed by KBCA witnesses Jerry Avery and Richard Bast, as well as the testimony filed by AT&T witness Daniel Rhinehart, relating to the proposed pole attachment tariffs filed by the Companies.

Q: What are the aspects of Mr. Avery's, Mr. Bast's and Mr. Rhinehart's testimony on which you are offering rebuttal?

A: I am offering rebuttal of Mr. Avery's testimony with respect to the tariff provision designed to ensure that Attachment Customer's contractors and subcontractors maintain the same insurance required of Attachment Customer. I am offering rebuttal on two aspects of Mr. Bast's testimony: (1) his characterization of the overlashing process in the Companies' existing tariffs; and (2) his testimony regarding application review fees. Lastly, I am offering rebuttal of Mr. Rhinehart's testimony with respect to four aspects of the Companies' proposed tariffs: (1) the definition of "attachment;" (2) the provision that

deems a make-ready estimate withdrawn if not accepted within 14 days; (3) the provision that requires all untagged existing facilities to comply with the tagging requirement within 180 days of the effective date of the tariff; and (4) the provision that allows the Companies to recover any engineering costs incurred in connection with a proposed overlash.

REBUTTAL TO MR. AVERY'S TESTIMONY

Contractor Insurance Provision

Q: What is your understanding of Mr. Avery's objection to the contractor insurance requirement in the Companies' proposed tariffs?

A: Mr. Avery contends that the requirement is unjust or unreasonable for two reasons: (1) because it would be too difficult for KBCA members to change each of their contracts based on a pole owner's requirements; and (2) because KBCA members are ultimately responsible for the actions of their contractors, anyway.

Q: Do you agree with Mr. Avery?

A: No.

Q: Why not?

A: The contractor insurance requirements in the Companies' proposed tariffs should not require any KBCA member to change any of their contractor agreements. The Companies' existing tariffs already require Attachment Customers to meet the exact same requirements as those that Mr. Avery objects to now. So, unless a KBCA member has been in violation of the existing tariffs, the KBCA members should not have to make any change to their current practice in this regard. Second, though it is true that KBCA members are ultimately responsible for the actions of their contractors, it is unclear whether or to what extent those actions are covered by the KBCA members' insurance policies. The Companies'

requirement is designed to ensure that there is no gap in the insurance coverages that would shift risk to the Companies and their electric customers arising out of attachments made by Attachment Customers.

REBUTTAL TO MR. BAST'S TESTIMONY

Overlashing

Q: Mr. Bast testified that the Companies' existing tariffs "did not require any notice or application for overlashing." Direct Testimony of Richard Bast at 6. Do you agree with that characterization?

A: No. The Companies' exisiting tariffs require advanced notice for most overlashing projects. The existing tariffs only permit overlashing without advanced notice in one limited circumstance: an initial overlash of fiber or cable that does not exceed one-half inch in diameter. An initial overlash larger than one-half inch in diameter still requires advance notice. Also, any subsequent overlash of fiber or cable—regardless of diameter—requires advance notice.

Q: What is the purpose of these limitations?

A: The purpose is to allow the Companies the opportunity to properly engineer the load created by additional facilities. An overloaded pole can, and will, create reliability problems for the distribution system. Overlashing can, and does, result in overloaded poles.

Q: Mr. Bast also says that an "attacher should only be required to reimburse a utility's reasonable and actual costs for the pole loading analysis if the analysis uncovers an issue that must be addressed prior to overlashing." Direct Testimony of Richard Bast at 7. Do you agree with this statement?

A: No. I agree that a utility's reimbursement should be limited to reasonable and actual costs, but I do not agree that a utility should be foreclosed from reimbursement simply because the analysis did not reveal a pole loading issue.

Q: Why not?

A: Because, in many instances, the only way to determine whether a loading issue exists is by actually performing the analysis. The Companies would only undertake such an analysis if there was a question as to whether the overlashing could be performed without compromising the integrity of the pole line. This is a cost that the Companies would not incur but for the overlashing notification. It would not comport with cost causation principles to require the Companies or their electric customers to bear this cost.

Q: Does Mr. Bast's testimony state any objection to the Companies' proposed tariffs?

A: Not based on my understanding.

Q: Then why are you offering rebuttal testimony related to overlashing?

A: Because his testimony overtly mischaracterizes the overlashing process in the Companies' existing tariffs. He uses the incorrect premise that the Companies do not require advanced notice of overlashing projects to advocate for an even more permissive overlashing process, which would negatively impact the Companies' ability to safely engineer new loads and recover the costs incurred in doing so.

<u>Application Review Fee</u>

Q: A portion of Mr. Bast's testimony is devoted to addressing whether the per pole survey estimates submitted by the various electric utilities are just and reasonable. Does Mr. Bast's testimony raise any objections to the $75 per pole estimate for application review work included within the Companies' proposed tariffs?

A. Mr. Bast's testimony does not seem to object to the $75 estimate, but KBCA previously raised a vague objection to the application review fee. *See* Objections of the Kentucky Broadband and Cable Association to the Newly Filed Kentucky Tariffs. Moreover, in KBCA's recent responses to the Companies' First Request for Information, KBCA, through a different witness, indicated that "[i]t is unclear what this fee covers" and questioned "why it costs LGE-KU $75 to review a single application." *See* KBCA's Response to Data Request 1-2.a. of the Companies' First Request for Information.

Q: What does the application review fee cover and why does it cost $75?

A: There should not be any confusion on this issue because the Companies have already provided KBCA with a detailed explanation of the application review fee in this case:

> [T]he application review fee is a reasonable estimate of the costs the Companies incur in reviewing pole attachment applications. The $75/pole fee was calculated by dividing: (a) the total amount the Companies paid their contract labor force to review wireline pole attachment applications during 2019 and 2020 by (b) the total number of poles included in the wireline pole attachment applications reviewed during 2019 and 2020. This cost-based application review fee aligns with the accepted cost-causation principles by allocating the incremental cost of pole attachments to the new attachers responsible for such costs. Moreover, this $75/pole application review fee has been in place for more than a year and no KBCA member has objected until now.

The Companies' Response to Kentucky Broadband and Cable Association's and AT&T Kentucky's Objections to Amended Pole Attachment tariffs at 4 (filed Apr. 14, 2022); *see also id.* at 4 n.1 ("Even prior to the implementation of the $75/pole application review fee, there as a $65/pole application review fee in place since 2017 which, likewise, drew no objection."). Further, in response to the Commission's First Request for Information, the Companies explained that from 2018-21, the average per pole cost was $80.16 ($235,816.75/2,942 poles). The Companies Response to Commission Staff's First Request for Information, Item 11. In response to the Commission's Second Request for

Information, the Companies further explained that the specific work covered by the estimate included: (1) initial review of the application for completeness and accuracy; (2) field visit to the affected poles; (3) review of proposed new attachments relevatnt to existing facilities and pole loading; (4) evaluation of proposed make-ready solutions; (5) creation of work orders for Company construction (i.e. power space make-ready); (6) communication with new attacher; and (7) post-construction inspection. The Companies Response to Commission Staff's Second Request for Information, Item 1.

REBUTTAL TO MR. RHINEHART'S TESTIMONY

Definition of Attachment

Q: Do you understand Mr. Rhinehart's objection to the definition of the term "Attachment" in the Companies' proposed tariffs?

A: Not entirely, but it appears that Mr. Rhinehart may be concerned that the definition of "Attachment" would allow the Companies to charge an additional "wireline" attachment fee for things like risers and fiber overlashed to an existing messenger strand.

Q: Is this a legitimate concern?

A: No. The definition of "Attachment" in the Companies' proposed tariff is identical to the definition in the existing tariff. This definition exists for purposes of the broader use of the term within the proposed tariffs. For instance, the tariff requires that "Attachments" be constructed in a manner that complies with all applicable codes, including the NESC. By using the defined term "Attachment," the Companies avoid the unnecessary burden of listing all components of an attachment installation in multiple sections of the proposed tariffs. I am not aware that the billing issue Mr. Rhinehart seems to be raising has ever been an issue with AT&T or any other attaching entity. Further, Mr. Rhinehart does not

contend that the Companies have leveraged the definition in any improper way—e.g., billing AT&T for a riser. This is because the Companies already make the distinction between "Attachments" for billing purposes and for purposes of general compliance with the requirements of the Companies' tariffs.

Q: Mr. Rhinehart testified that AT&T's proposed tariff establishes its attachment rate on a "Per foot of usable space basis." Direct Testimony of Daniel Rhinehart at 8. Is this an acceptable approach in your view?

A: No. There might be circumstances where the Companies allow two through-bolts within 12". Each would count as a separate attachment for billing purposes. Further, paragraph 7.k. of the Companies' proposed tariffs specifically address the circumstances under which a Service Drop is considered an additional attachment for billing purposes:

> Any Service Drop affixed to a pole more than six (6) inches above or below a through-bolt shall be considered a separate Attachment for billing purposes. On drop or lift poles only, all Service Drops affixed within one foot of usable space shall be considered a single Attachment for billing purposes.

The definition of "attachment" in AT&T's proposed tariff would conflict with the language above, which is identical to the language in the Companies' existing tariffs at paragraph 7.i. For these reasons, and because AT&T has not identified any actual billing issues arising out of the Companies' existing definition of "Attachment," overhauling this definition (and the manner in which the Companies bill for attachments) is not necessary, and is far from the "simplest approach" as suggested by Mr. Rhinehart. *See* Direct Testimony of Daniel Rhinehart at 9. Such a change the the Companies' billing practices would require the Companies to retool complex billing processes and specialized billing software. Mr. Rhinehart's proposal is a solution looking for a non-existing problem.

<u>Withdrawal of Make Ready Estimate</u>

Q: Why does the language in the Companies' proposed tariffs deem a make-ready estimate withdrawn if not paid within 14 days?

A: As Mr. Rhinehart acknowledges, the automatic withdrawal provision is not "contrary to the rules of the Commission." Direct Testimony of Daniel Rhinehart at 4. The new regulation explicitly allows pole owners to withdraw a make-ready estimate 14 days after it is presented. Thus, the "deemed withdrawn" language was the Companies' effort to implement the Commission's new regulation in a practical and efficient way. This language is similar to the Companies' existing tariff provisions, which require Attachment Customers to "indicate approval" of the make-ready estimate "by submitting payment within 15 days." In other words, even under the existing tariffs, estimates are no longer "good" after 15 days. The new tariff provision simply brings this into sharper focus in light of the Commission's new regulation specifically addressing the right to withdraw an estimate after 14 days.

Q: Mr. Rhinehart claims that the "deemed withdrawn" language will result in higher costs and greater administrative burden. Do you agree?

A: No. The exact opposite is true. The "deemed withdrawn" language allows the Companies to avoid the significant and growing administrative burden of tracking and affirmatively withdrawing individual make-ready estimates. This burden will likely continue growing at a rapid pace, as the Companies are receiving more attachment requests each year. Furthermore, the "deemed withdrawn" provision protects the Companies and attaching entities from stale make-ready estimates, which could be predicated on lower labor and material inputs than exist at the time of acceptance. This is an important safeguard, especially with the current volatility in labor and material costs. Finally, electric

distribution facilities are dynamic and prone to change even over a short period of time. This means that the validity of make-ready estimates can decrease rapidly following issuance. By imposing a "life span" on make-ready estimates, the "deemed withdrawn" provision mitigates against conflicts and delays in broadband deployment.

Tagging Requirement

Q: Mr. Rhinehart testified that it "simply is not practical" for AT&T to tag all untagged existing attachments within 180 days of the effective date of the proposed tariffs. Direct Testimony of Daniel Rhinehart at 4. Do you agree?

A: No. As an initial matter, the tariffs cover only those AT&T attachments that are not subject to the Joint Use Agreements between the parties. Nearly 98% of AT&T's attachments to the Companies' poles are subject to the Joint Use Agreements (and thus not impacted by the tariffs). The Companies' most recent records indicate that AT&T has 3,549 attachments to the Companies' poles that are subject to the tariffs. Approximately 2,400 of these attachments were made pursuant to a 1999 letter agreement, which specifically required AT&T's attachments "to be identified as to the owner of said facilities at each attachment location." Moreover, the current tagging requirement has been part of the tariff requirements since 2017. Between the requirements of the 1999 letter agreement and the existing tariffs, there should be very few (if any) untagged AT&T attachments unless AT&T has been out of compliance with the existing requirements.

Q: What is the purpose of the tagging requirement?

A: The tagging requirement serves an important operational purpose: it allows the Companies and third parties to quickly identify who owns a particular attachment. This is particularly important for first responders, who may not have immediate access to the Companies'

maps and records. It is also important to the process of deploying new communications facilities, especially with the Commission's new OTMR and self-help rules. For example, new attachers are required to provide advance notice to existing attachers before performing a survey or completing any make-ready identified in an OTMR application. Untagged attachments could slow this process down and make it difficult for new attachers to satisfy their obligations under the new OTMR framework (thus slowing broadband deployment).

Q: AT&T stated in its response to the Companies' request for information that it had no records on the number of its attachments subject to the existing tariff, that it did not know what portion of those attachments are untagged, that it did not know how many attachments it had made under the tariff since July 1, 2017, and that it did not know the number of attachments on which it had performed work since July 1, 2017. Do you have any comments on those disclosures?

A: Yes. It alarming that AT&T does not have any actual data in response to any of those questions. These are basic operational facts that AT&T should either be able to identify with specificity or, at a minimum, provide good faith estimates.

Overlash Engineering Costs

Q: Do you understand Mr. Rhinehart's objection to the proposed tariff provision requiring an Attachment Customer to reimburse the Companies for costs incurred in evaluating a proposed overlash?

A: Not entirely, but the gist of his objection seems to be based on his impression that the FCC's overlashing rules prohibit charging for engineering evaluation of overlashing notifications.

Q: Do you know whether Mr. Rhinehart is accurately characterizing the FCC's overlashing rules?

A: No. But I know that, in its underlying rulemaking proceeding, this Commission specifically rejected KBCA's proposed revision to its overlashing rule that would have said: "A utility may not charge a fee to the party seeking to overlash for the utility's review of the proposed overlash." *See* Statement of Consideration Relating to 807 KAR 5:015 at 49; KBCA's July 2021 Comments at Exh. A, Section 3(5)(c). Further, the Commission set forth, as part of its reasoning for rejecting the proposed revision, that "[re]viewing potential overlashing, like new attachments, will result in costs and there may be instances where an overlashing 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."

Q: Do you agree with the Commission's stated rationale?

A: Yes. In those instances where the Companies incur costs to evaluate a proposed overlash, those are costs that would not be incurred but for the existing attachment and the proposed overlash. Those costs should be borne by the entity that caused the costs.

CONCLUSION

Q: Does this conclude your rebuttal testimony?

A: Yes.

VERIFICATION

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF JEFFERSON)

The undersigned, **Jason P. Jones**, being duly sworn, deposes and says that he is Manager – Distribution Systems Compliance and Emergency Planning for LG&E and KU Services Company, 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.

Jason P. Jones

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 7th day of July 2022.

Notary Public

Notary Public ID No. 603967

My Commission Expires:

July 14, 2022

APPENDIX A

Jason P. Jones
Manager, Distribution Systems Compliance and Emergency Preparedness
LG&E and KU Services Company
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Louisville, Kentucky 40202
Telephone: (502) 627- 2658

Professional Experience

Louisville Gas and Electric Company and Kentucky Utilities Company

Manager, Distribution Systems Compliance and Emergency Preparedness	July 2020 – Present
Manager, Distribution Automation	July 2017 – June 2020
Business Relationship Manager	Sept. 2013 – June 2017
Supervisor, Energy Delivery IT	June 2004 – Aug. 2013
Project Manager	June 2002 – May 2004
Programmer / Analyst	Aug. 1999 – May 2002

Education

Associate degree – General Studies
Jefferson Community College, 1997

Strategic Business Integration: Energy Delivery, 2014