

**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**

**RESPONSE OF**  
**LOUISVILLE GAS AND ELECTRIC COMPANY AND**  
**KENTUCKY UTILITIES COMPANY**  
**TO**  
**KENTUCKY BROADBAND AND CABLE ASSOCIATION'S INITIAL REQUEST**  
**FOR INFORMATION**  
**DATED APRIL 21, 2022**

**FILED: MAY 5, 2022**

VERIFICATION

COMMONWEALTH OF KENTUCKY )  
 )  
COUNTY OF JEFFERSON )

The undersigned, **Christopher M. Garrett**, being duly sworn, deposes and says that he is Vice President, Finance and Accounting, for Kentucky Utilities Company and Louisville Gas and Electric Company and an employee of LG&E and KU Services Company, and that he has personal knowledge of the matters set forth in the responses for which he is identified as the witness, and the answers contained therein are true and correct to the best of his information, knowledge, and belief.

  
Christopher M. Garrett

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 5<sup>th</sup> day of May 2022.

  
Notary Public

Notary Public ID No. 611417

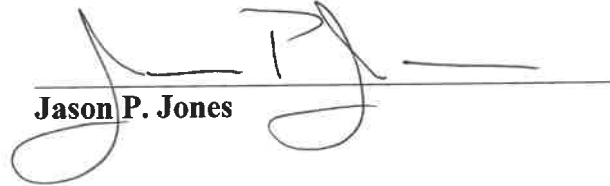
My Commission Expires:

November 9, 2022

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 responses for which he is identified as the witness, and 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 5<sup>th</sup> day of May 2022.

  
Notary Public

Notary Public ID No. 603967

My Commission Expires:

July 11, 2022

**LOUISVILLE GAS AND ELECTRIC COMPANY AND  
KENTUCKY UTILITIES COMPANY**

**Response to Kentucky Broadband and Cable Association's Initial Request for  
Information  
Dated April 21, 2022**

**Case No. 2022-00105**

**Question No. 1**

**Responding Witness: Jason P. Jones**

Q-1. Identify the number or percentage of Your poles that are currently red-tagged.

A-1. Distribution

- KU currently has 446 poles identified for replacement.
- LG&E currently has 167 poles identified for replacement.

Transmission

- KU currently has 2,922 poles identified for replacement.
- LG&E currently has 300 poles identified for replacement.

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**Question No. 2**

**Responding Witness: Jason P. Jones**

Q-2. Provide data related to the number of Your Poles that are anticipated to be red-tagged in the next five years.

A-2. Distribution

- KU anticipates identifying approximately 1,738 KU poles per year for replacement.
- LG&E anticipates identifying approximately 2,032 LG&E poles per year for replacement.

Transmission

- KU anticipates identifying approximately 289 KU poles per year for replacement.
- LG&E anticipates identifying approximately 77 LG&E poles per year for replacement.

**LOUISVILLE GAS AND ELECTRIC COMPANY AND  
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**Dated April 21, 2022**

**Case No. 2022-00105**

**Question No. 3**

**Responding Witness: Jason P. Jones**

- Q-3. Explain how You will determine if a pole is red-tagged.
- a. Explain what You will do when You are notified of a red-tagged pole.
  - b. Explain how an attacher can determine and assess whether or not a pole is or will be red tagged.

A-3. Distribution

To satisfy their inspection obligations under 807 KAR 5:006, the Companies inspect all lines, poles, equipment and meters within their electric distribution systems on a circuit-by-circuit basis every two (2) years. *See* Companies' Electric Operation, Maintenance and Inspection Plan ("EOMI Plan") attached in response to PSC-1 Question No. 7; *see also* Companies' Comments on the Revised Proposed Pole Attachment Rules at pages 13-14 (Jul. 30, 2021). As part of these inspections, every distribution pole within a circuit is visually inspected for signs of deterioration or damage. The Companies also "sound" inspect approximately 10% of the poles within each circuit for signs of internal decay. The Companies' EOMI Plan provides the following guidance for replacing or repairing wood distribution poles:

Poles with decay, infestation, or cracks sufficient to jeopardize safety or service restoration shall be turned in for replacement or repair. If a pole is sufficiently defective to be a safety hazard to a person climbing the pole or to the public in general, a danger pole tag must be applied to the pole and special attention given to replacing the pole.

*See* EOMI Plan, Appendix A at A.1.1(b). Pursuant to their EOMI Plan, the Companies will reject a pole if it is found to have deteriorated below a minimum of two-thirds of ANSI defined strength. All rejected poles found during the pole inspections are tagged in a manner consistent with Figure 1 below:

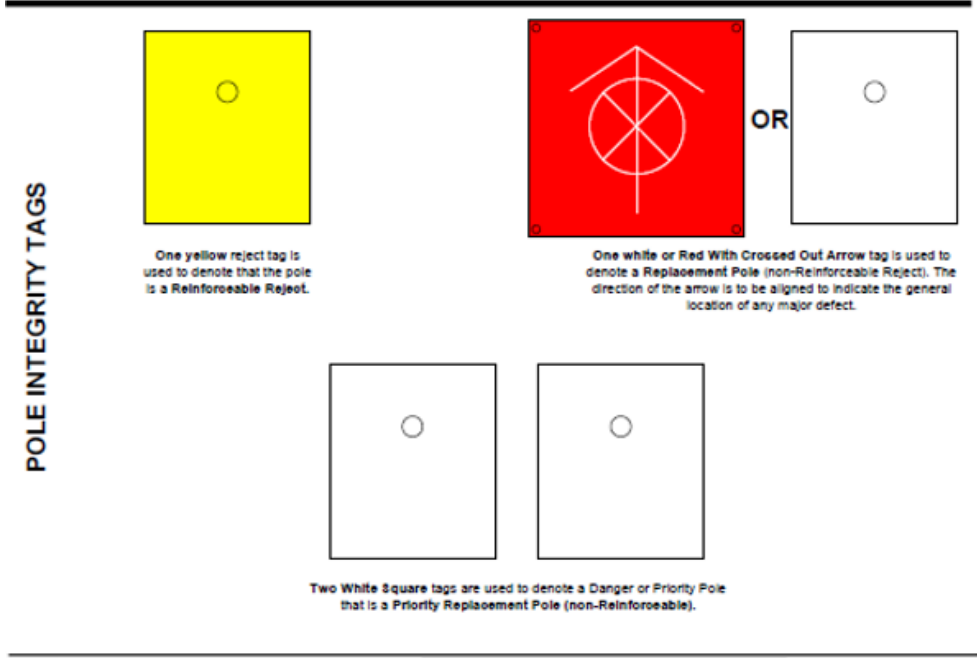


Figure 1: Pole Integrity Tags

Furthermore, for all rejected poles, the Companies record the pole number, the particular damage or deficiency observed, and the corrective action prescribed (or taken) in a PSC Regulatory Inspection Form. See Companies' PSC Regulatory Inspection Form attached in response to PSC-1 Question No. 7.

Transmission

To satisfy their inspection obligations under 807 KAR 5:006, the Companies also inspect all 69kV and greater lines, insulators, conductors and supporting facilities within their electric transmission systems—on a circuit-by-circuit basis—every six (6) years. During these inspections, a pole is rejected if the pole is found to have deteriorated below a minimum of two-thirds of ANSI defined strength. All rejected poles are tagged in a manner consistent with Figure 2 below:



Figure 2

The Companies document “red-tagged” structures using InSite, their mobile inspection application. Once the inspection of the circuit is completed, a needs statement is generated to initiate the replacement project. The circuit is then prioritized based on multiple risk and system impact metrics.

- a. To the extent applicable, the Companies incorporate by reference their response to KBCA Data Request 1-3 *supra*. It is not entirely clear what KBCA means by “notified of a red-tagged pole” because the Companies discover poles in need of replacement and repair through their inspections. Nevertheless, as explained in more detail above, the Companies inspect all of their distribution and transmission poles—on a circuit-by-circuit basis—every two (2) years (in the case of distribution poles) or six (6) years (in the case of transmission poles). If a pole exhibits signs of damage or a deficiency that cannot be repaired or reinforced, the Companies reject (or “red-tag”) the pole and identify it for replacement using the relevant “pole integrity tag(s)” set forth in Figures 1 and 2 *supra*. Work requests are generated for each rejected pole and sent to the Companies’ Operation Centers for replacement.
- b. To the extent applicable, the Companies incorporate by reference their responses to KBCA Data Requests 1-3, and 1-3(a). If the Companies designate a particular pole as being “red-tagged,” the Companies will typically identify the pole with an actual tag indicating its status (*e.g.*, in need of repair, in need of replacement, etc.). *See supra* Figures 1 and 2. By the time an Attachment Customer has submitted its application for a pole attachment route, the Attachment Customer would typically have already performed a survey on the affected poles. Therefore, the Attachment Customer would be able to observe “red-tagged” poles (poles marked with a red ribbon, white tag, etc.) during its survey of the proposed pole attachment route, and the Attachment Customer is required to identify these “red-tagged” poles in its application. If the Attachment Customer does not identify “red-tagged” poles in its application, or if the proposed pole attachment route is in a location where the Companies’ regulatory inspections have not yet identified a “red-tagged” pole, the Companies’ design teams will identify any “red-tagged” poles during their review of the Attachment Customer’s application. The cost of replacing any “red-tagged” poles along the Attachment Customer’s proposed pole attachment route will be excluded from the make-ready estimate prepared in response to the Attachment Customer’s application.



**LOUISVILLE GAS AND ELECTRIC COMPANY AND  
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**Question No. 4**

**Responding Witness: Christopher M. Garrett / Jason P. Jones**

- Q-4. Explain the basis for Your proposed requirement that an attacher pay the entire cost of replacing a pole that is not red-tagged, including all economic bases for this requirement.
- a. Explain your accounting treatment of a non-red-tagged pole that is replaced with a new pole paid for by an attacher.
  - b. Explain whether or not You receive any financial or other benefit as a result of an attacher paying to replace an existing pole with a new pole so that it may attach.
- A-4. This is not just the Companies' requirement; it is the Commission's requirement as well. The Commission's longstanding "cost causation" principles dictate that the cost of prematurely replacing a non-"red-tagged" pole with a pole that is tall enough and strong enough to host an additional communications attachment should be borne solely by the party necessitating the additional capacity afforded by a taller/stronger pole—*i.e.*, the cost causer. *See* Regulatory Impact Analysis and Tiering Statement Regarding 807 KAR 5:015 at pages 35-36 (explaining that the new pole attachment regulation "minimize[es] [the] burdens placed on utilities and consider[s] the fair allocation of costs between attachers and the traditional utility customers based on cost causation principles traditionally applied by the PSC"); Statement of Consideration Relating to 807 KAR 5:015 at page 47 (rejecting the pole replacement cost allocation proposal submitted by KBCA and stating that "the Commission generally attempts to ensure that costs are assigned to the party responsible for causing the utility to incur the cost" and that "[i]f 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") Unless a make-ready pole replacement happens to coincide with plans for infrastructure improvement, a make-ready pole replacement provides no benefit at all to utility customers. Further, any potential future benefit to utility customers occasioned by a make-ready pole replacement is too speculative to be meaningful. Some poles will

never be replaced in the ordinary course and will, instead, be removed from service as part of an undergrounding project prior to the end of their useful lives. Under these circumstances, the replacement pole is of no benefit to the Companies or their ratepayers. It is also impossible to know at the time of a make-ready pole replacement what type of pole the Companies' electric service needs would require at the time the existing pole would have otherwise been replaced. If, at the time the existing pole would have otherwise been replaced, the Companies' electric service needs would require a taller or stronger pole than the replacement pole, then the replacement pole installed in the past to accommodate the new attachment would be of no use or benefit to the Companies or their ratepayers. The Companies addressed this issue at length in their reply comments in the underlying rulemaking proceedings. *See* Companies' Reply Comments at 14-20 (Oct. 19, 2020). The Commission also addressed this issue in its Statement of Consideration:

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.

Statement of Consideration Relating to 807 KAR 5:015 at 47. Thus, if an attacher does not bear the make-ready cost of replacing a pole that is not "red-tagged,"

then utility customers would be paying costs that are not related or beneficial to the provision of electric service.

- a. A non-“red-tag” pole that is replaced with a new pole and paid for by an attacher is accounted for as a Contribution in Aid of Construction. Contributions in Aid of Construction are non-refundable amounts paid by states, municipalities, other governmental agencies, individuals, and others for construction of facilities. The entries for this process are:

Create invoice based on contract terms:

Debit – 143 Other Accounts Receivable

Credit – 107001 Construction Work in Progress (CWIP)

Credit – 108901 Cost of Removal

Payment received:

Debit – 131 Cash

Credit – 143 Other Accounts Receivable

Cost to Replace the Pole:

Debit – 107001 Construction work in Progress

Debit – 108901 Cost of Removal

Credit – 131 Cash (for expenses paid)

Classified to plant in service (assumes zero or net positive balance in CWIP):

Debit – 101 Plant in Service

Credit – 107001 Construction Work In Progress

Debit – 108 Accumulated Depreciation (including removal component)

Credit – 108901 Cost of Removal

Credit – 101 Plant in Service (for removed asset)

- b. No. As explained in their response to KBCA Data Request 1-4 *supra*, which is incorporated by reference herein, the Companies do not derive any benefit, financial or otherwise, from the early replacement of a pole with remaining useful life to accommodate an additional attachment, unless the replacement happens to coincide with the Companies’ own plans for infrastructure improvement.

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**Case No. 2022-00105**

**Question No. 5**

**Responding Witness: Jason P. Jones**

- Q-5. Please identify and provide data concerning all costs (including how such costs are calculated) incurred by You in connection with overlashing.
- A-5. The costs incurred by the Companies in connection with an overlashing proposal would be for engineering design, materials for make ready (if required), a field visit to ensure a pole loading analysis is not required, and additional field visit(s) after overlashing has occurred to verify there are no NESC violations/clearance issues. These costs are charged back to the Attachment Customer at actual cost based on labor rates and material costs (if applicable). The Companies expect these costs would very rarely, if ever, exceed \$75/pole.

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**Case No. 2022-00105**

**Question No. 6**

**Responding Witness: Jason P. Jones**

- Q-6. Explain the basis for and provide all data concerning Your requirement that contractors and subcontractors be required to “provide and maintain the same insurance coverage as required of Attachment Customer.”
- a. Explain how “the Companies would be largely unprotected in the event of property damage or bodily injury caused by an attacher’s third-party contractor” where KBCA members require their contractors and subcontractors to be insured and are ultimately liable to LG&E and KU. Response at 15.
- A-6. This requirement has been a part of the Companies’ Rate PSAs since 2017. *See* Louisville Gas and Electric Company Pole and Structure Attachment Charges, P.S.C. Electric No. 11, Original Sheet No. 40.18, Section 23.b. (effective Jul. 1, 2017); Kentucky Utilities Company Pole and Structure Attachment Charges, P.S.C. Electric No. 18, Original Sheet No. 40.18, Section 23.b. (effective Jul. 1, 2017). The purpose of this insurance requirement is to mitigate against any potential gaps in insurance coverage based upon who is actually performing the Attachment Customer’s work (*i.e.*, an Attachment Customer’s employees versus a third-party contractor). For example, if an Attachment Customer utilizes a contractor to perform make-ready on the Companies’ poles, and the third-party contractor either willfully or recklessly causes damage to the Companies’ facilities, the Attachment Customer could potentially disclaim liability for the contractor’s willful or reckless misconduct. In that case, the Companies might be forced to recover directly from the contractor. If the contractor is underinsured, the Companies might be left holding the bag. There is no “data” concerning this insurance requirement other than the empirical data that Attachment Customers frequently use contractors to perform their work (as seems to be evidenced by KBCA’s objections to this insurance requirement).
- a. To the extent applicable, the Companies incorporate by reference their response to Data Request 1-6 *supra*. The purpose of the Companies’ insurance requirements is to ensure that any entity performing work under the

Rate PSA, or on or near the Companies' infrastructure, is adequately protected. If a contractor for an Attachment Customer does not meet these requirements, then the Companies are exposed to underinsured liability and not adequately protected. Furthermore, without examining an Attachment Customer's insurance policies in careful detail (an impractical endeavor), the Companies do not know whether or to what extent certain acts or omissions of a contractor are excluded from the scope of the Attachment Customer's insurance.

**LOUISVILLE GAS AND ELECTRIC COMPANY AND  
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**Response to Kentucky Broadband and Cable Association's Initial Request for  
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**Dated April 21, 2022**

**Case No. 2022-00105**

**Question No. 7**

**Responding Witness: Jason P. Jones**

- Q-7. Explain the cost basis for Your requirement that an Attachment Customer pay a 25% penalty for corrections to an attachment not made with 30 days of receipt of notice. Response at 8 (stating “if Attachment Customer fails to make such adjustments within such time period, Company may make repairs or adjustments, and Attachment Customer shall pay Company for the actual cost thereof plus a penalty of 25% of actual costs within thirty (30) days of receipt of an invoice”).
- a. Explain and provide data concerning all costs you incur as a result of attachments “an Attachment Customer fails to install . . . in accordance with the standards and terms set forth in this Schedule.” Response at 8.
  - b. Explain how those costs are not recovered in the unauthorized attachment fee set forth in Your Proposed Tariff.
  - c. Explain and provide data related to how the penalty “encourage[s] attachment customers to adopt responsible maintenance practices and to promptly repair non-compliant attachments.” Response at 9.
  - d. Explain and provide data supporting your contention that “[i]ncreasing and expediting broadband deployment will almost certainly result in an increase in defective attachment installations and longer delays in the correction of defective installations.”
- A-7. There is not a readily calculable cost basis for the 25% penalty. There is also not a readily calculable cost basis for the 10% penalty in the Companies' current Rate PSAs, which was adopted pursuant to a settlement agreement and to which Charter Communications Operating LLC (*i.e.*, KBCA's largest member) stipulated as being “fair, just, and reasonable.” *See In the Matter of: Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates*, Case No. 2018-00294, Stipulation and Recommendation at 3 (filed Feb. 27, 2019); *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,

Stipulation and Recommendation at 3 (filed Feb. 27, 2019) (collectively, the *2019 Rate Cases*”). To the extent the 25% penalty is cost-based, the penalty is analogous to liquidated damages (*i.e.*, a fixed amount representing damages that are inherently difficult to quantify). As explained in the Companies’ response to KBCA’s objections, the penalty was originally incorporated into the Rate PSAs to “encourage attachment customers to adopt responsible maintenance practices and to promptly repair non-compliant attachments rather than delay or defer to the Companies to perform repairs.” Companies’ Response to KBCA’s Objections at 9 (Apr. 14, 2022) (quoting *2019 Rate Cases*, Case Nos. 2018-00294, 2018-00295, Stipulation Testimony of John K. Wolfe at 6-7 (Mar. 1, 2019)). Despite incorporating a 10% penalty into their Rate PSAs in May 2019, the Companies continue to experience significant delays in the correction of non-compliant attachments. *See* Companies’ Response to KBCA’s Objections at 9 (“[S]ince July 1, 2019, the Companies have identified thirty-seven (37) applications as having some type of installation defect, and it took—on average—105 days (from the date of invoice) for the attachers to correct their defective attachment installations.”). This indicates that the existing 10% penalty is not serving as an effective incentive for Attachment Customers to timely correct violations. The primary purpose of the increase in the penalty from 10% to 25% is to provide an even greater incentive for Attachment Customers to timely correct non-compliant attachment installations.

- a. The costs the Companies incur as a result of non-compliant attachment installations generally fall into two (2) buckets: (1) the administrative costs associated with notifying the Attachment Customer of its non-compliance and tracking the Attachment Customer’s remedial action (or lack thereof); and (2) the actual cost of any work performed by the Companies to correct the non-compliant attachment installation. The first bucket is not readily susceptible to quantification. The second bucket would vary widely depending on the nature of the remedial work required.
- b. The unauthorized attachment fee and the 25% penalty address different issues. The unauthorized attachment fee is intended to encourage compliance with the Companies’ permitting process. Specifically, the unauthorized attachment fee applies when an attachment is made without a permit. The 25% penalty, on the other hand, is intended to encourage timely remediation of any violations of the Companies’ construction and design standards, the National Electrical Safety Code (and other applicable codes), and applicable laws, regulations, rules and ordinances. The 25% penalty applies only when the following occurs: (1) the Companies provide notice to Attachment Customer of a violation (such as a clearance or other violation); (2) Attachment Customer fails to correct the violation within thirty (30) days; and (3) the Companies ultimately correct the non-compliant attachment installation.



- c. To the extent applicable, the Companies incorporate by reference their response to Data Request 1-7 *supra*. The Companies are not certain that the 25% penalty will encourage Attachment Customers to adopt responsible maintenance practices or to promptly repair non-compliant attachments. But the Companies now know that the existing 10% penalty is not sufficient. As noted above, it took Attachment Customers—on average—105 days from date of notice to correct their non-compliant attachments (*i.e.*, more than three times the thirty (30) day period required in the Companies’ Rate PSAs). When the penalty was first proposed in 2019, the Companies sought a 50% penalty. *See 2019 Rate Cases*, Case Nos. 2018-00294, 2018-00295, Stipulation and Recommendation, Stipulation Exh. 1 at Original Sheet No. 40.12 & Stipulation Exh. 2 at Original Sheet No. 40.12 (filed Feb. 27, 2019). The Companies eventually agreed to reduce the penalty to 10% to resolve objections raised by Charter Communications Operating LLC. *See id.* At this time, the Companies are still willing to apply an incremental approach to calibrating the appropriate penalty amount. In other words, the Companies are willing to incrementally increase the penalty from 10% to 25% and see whether it effectively encourages timely correction of non-compliant attachments. If not, the Companies may seek a higher penalty (or additional penalties) in future tariff submissions.
- d. There is a wide disparity in the quality of communications contractors. While some communications contractors perform good work that comports with the Companies’ construction and design standards, there are also some that do not. During periods of high deployment (which are being encouraged and facilitated through the Commission’s new pole attachment regulation), there are not enough high-quality communications contractors to perform all of the necessary make-ready and installation work. By necessity, Attachment Customers often resort to utilizing lower-quality communications contractors, which leads to a higher incidence of defective installations. Furthermore, because periods of high deployment place considerable strain on the resources of Attachment Customers, Attachment Customers—without strong incentive otherwise—may be reluctant to divert resources away from new installations in order to correct existing violations.