

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

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

**REBUTTAL TESTIMONY OF  
MICHAEL E. HORNUNG  
MANAGER, PRICING/TARIFFS  
LG&E AND KU SERVICES COMPANY**

**Filed: July 11, 2022**

1 **INTRODUCTION**

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

3 A: My name is Michael E. Hornung. I am the Manager, Pricing/Tariffs, for LG&E and KU  
4 Services Company, which provides services to Louisville Gas and Electric Company  
5 (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively the “Companies). My  
6 business address is 220 West Main Street, Louisville, KY 40202. A statement of my  
7 education and work experience is attached to this testimony as Appendix A.

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

9 A: Yes. I submitted written testimony, responded to the Commission’s request for  
10 information and provided testimony at the public hearing within the Companies’ Demand  
11 Side Management and Energy Efficiency Case Nos. 2011-00134 and 2014-00003. I have  
12 also sponsored responses to the Commission’s request for information within this case  
13 2022-00105.

14 **Q: What is the purpose of your testimony?**

15 A: The purpose of my testimony is to rebut certain aspects of the testimony filed by KBCA  
16 witnesses Jerry Avery and Patricia Kravtin relating to the proposed pole attachment tariffs  
17 filed by the Companies.

18 **Q: What are the aspects of Mr. Avery’s and Ms. Kravtin’s testimony on which you are**  
19 **offering rebuttal?**

20 A: I am offering rebuttal to Mr. Avery’s testimony regarding the indemnity provision within  
21 the Companies’ proposed tariffs. I also am offering rebuttal on three aspects of Ms.  
22 Kravtin’s testimony: (1) that the Companies are the “primary” and “direct” beneficiaries  
23 of make-ready pole replacements; (2) that it would be appropriate for the Commission to

1 shift the cost of make-ready pole replacements to the Companies in this pole attachment  
2 tariff review proceeding; and (3) the unfounded innuendo that utilities are shifting pole  
3 replacement costs to Attachment Customers by “strategically under-identifying” red-  
4 tagged poles.

5 **REBUTTAL TO MR. AVERY’S TESTIMONY**

6 **Q: Mr. Avery contends that the indemnity provision in the Companies’ proposed tariffs**  
7 **seek to “hold attachers responsible for the pole owner’s own negligence.” Direct**  
8 **Testimony of Jerry Avery at 5. Do you agree with this characterization of the**  
9 **indemnity provision in the Companies’ proposed tariffs?**

10 A: No. Paragraph 18 of the proposed tariffs clearly provides that “the indemnity set forth in  
11 this section...shall be reduced to the extent it is established by final adjudication or mutual  
12 agreement of Attachment Customer and Company that the liability to which such  
13 indemnity applies was caused by the negligence or willful misconduct of Company.”

14 **Q: Would the indemnity provision be reasonable even without this exception?**

15 A: Yes. Even without the exception, the indemnity provision is still limited to claims “arising  
16 from Attachment Customer’s activities under this Schedule, or the Contract, or from  
17 Attachment Customer’s presence on Company’s premises.” In other words, the indemnity  
18 is limited to claims that would not have occurred in the first place but for the Attachment  
19 Customer. Even where LG&E or KU was jointly negligent, it would be reasonable for an  
20 Attachment Customer to indemnify LG&E or KU in those circumstances. Otherwise, the  
21 result is electric ratepayers bearing risk that would not exist but for the Companies’  
22 accommodation of third-party attachments.

1 **Q: Does Mr. Avery object to the indemnity provision in the Companies' proposed tariffs**  
2 **on any other grounds?**

3 A: Not that I can tell. My best understanding of his testimony is that his objection to the  
4 reasonableness of the indemnity provision is tied solely to the issue of whether the  
5 provision requires an Attachment Customer to indemnify the Companies for their own  
6 negligence.

7 **Q: To the extent Mr. Avery is voicing other objections to the reasonableness of the**  
8 **indemnity provision, are there other reasons you believe the indemnity provision is**  
9 **reasonable?**

10 A: Yes. As a preliminary matter, the indemnity provision in the proposed tariffs is virtually  
11 identical to the indemnity provision in the existing tariffs. Further, the indemnity provision  
12 in the existing tariffs resulted from a settlement that involved the Kentucky Cable  
13 Telecommunications Association, the predecessor to the Kentucky Broadband Cable  
14 Association. The Companies agreed to amend their tariff language regarding indemnity to  
15 address the very same criticism that KBCA now makes in this proceeding. In fact, the  
16 stipulation testimony supporting the settlement states:

17 The Stipulating Parties recommend revisions to Term 18 (previously Term  
18 17) that, while still requiring an Attachment Customer to indemnify the  
19 Companies for any acts of joint negligence, allow for a reduction in the  
20 amount of indemnity to reflect an assignment of liability to the Companies  
21 resulting from the Companies' negligence or willful misconduct. The  
22 recommended revision will also permit the Attachment Customer to select  
23 the defense counsel and to direct the defense or settlement of any such claim  
24 or suit for which it is required to indemnify the Companies. While Term 18  
25 will continue to provide significant financial and legal protection to the  
26 Companies from an Attachment Customer's negligence or willful  
27 misconduct, it will promote greater fairness by not subjecting an  
28 Attachment Customer to liability from the Companies' conduct and by  
29 permitting the Attachment Customer greater control over the defense of any  
30 claim for which it is financially and legally responsible.

1           *An Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates and*  
2           *For Certificates of Public Convenience and Necessity; An Application of Louisville Gas*  
3           *and Electric Company for an Adjustment of Its Electric and Gas Rates and For Certificates*  
4           *of Public Convenience and Necessity, Case Nos. 2016-00370 & 2016-00371, Second*  
5           Stipulation Testimony of Robert M. Conroy at 4-5 (May 4, 2017). KCTA’s involvement  
6           in developing the indemnity provision now at issue likely explains why KCTA (and later  
7           KCBA) did not raise any objections to the indemnity provision in the prior two rate cases.  
8           The current language continues to strike the right balance on this issue.

9           **REBUTTAL TO MS. KRAVTIN’S TESTIMONY**

10          The Companies Are Not the “Primary” or “Direct” Beneficiaries of Make-Ready Pole  
11          Replacements.

12          **Q:    Ms. Kravtin contends that the provision within the Companies’ proposed tariffs**  
13               **requiring Attachment Customers to bear the entire cost of a make-ready pole**  
14               **replacement is unreasonable because the Companies are the “primary” and “direct”**  
15               **beneficiaries of a make-ready pole replacement. Do you agree with Ms. Kravtin?**

16          A:    No, I strongly disagree with Ms. Kravtin’s characterizations.

17          **Q:    Who is the “primary” and “direct” beneficiary of a make-ready pole replacement?**

18          A:    The Attachment Customer(s) whose attachment request necessitates the make-ready pole  
19               replacement. Make-ready pole replacements are not performed to support the Companies’  
20               core electric service needs. By definition, make-ready pole replacements are performed  
21               for only one reason: to create sufficient capacity on the Companies’ poles to safely  
22               accommodate additional, third-party communications attachments. But for a request by an  
23               Attachment Customer to install an additional attachment on a pole that is already at full  
24               capacity, there would be no pole replacement. Therefore, the Attachment Customer whose

1 attachment request necessitates a make-ready pole replacement is not only the “primary”  
2 and “direct” beneficiary of the replacement pole, but it is also the “cost causer” of the make-  
3 ready pole replacement.

4 **Q: Ms. Kravtin testified that the Companies benefit as the result of a make-ready pole**  
5 **replacement through “enhanced rental opportunities from the increased capacity on**  
6 **the new replacement pole” and “cost savings in the form of lower maintenance and**  
7 **operating expenses inherent to the features of the new, upgraded/higher-class**  
8 **replacement pole.” Direct Testimony of Patricia D. Kravtin at 40. What is your**  
9 **response to this testimony?**

10 A: The benefits alleged by Ms. Kravtin overlook an important operational fact: unless a make-  
11 ready pole replacement coincides with the Companies’ internal infrastructure improvement  
12 plan, the make-ready pole replacement will virtually never benefit the Companies or their  
13 electric ratepayers. There is no way for the Companies to know at the time of a make-  
14 ready pole replacement what type of pole their core electric service needs would require at  
15 the time the existing pole would have otherwise been replaced in the normal course. Due  
16 to this inability to forecast future service needs, the Companies—when performing make-  
17 ready pole replacements—only install poles that are incrementally tall and/or strong  
18 enough to accommodate the additional attachment. As a result, if five (5) years down the  
19 road the Companies’ core electric service needs would require an even taller or stronger  
20 pole than what was previously installed pursuant to an Attachment Customer’s make-ready  
21 pole replacement request, then the previously installed make-ready replacement pole would  
22 be of no use or benefit to the Companies. Yet, under Ms. Kravtin’s cost allocation proposal,  
23 the Companies would: (1) lose the value and utility of the remaining useful life of the

1 existing pole; (2) be forced to incur the vast majority of the cost for the make-ready  
2 replacement pole; and (3) also bear the entire cost of replacing the make-ready replacement  
3 pole with one that actually supports the Companies' core electric service needs. Even  
4 under the best of circumstances, this would require current electric ratepayers to fund  
5 infrastructure that is not currently needed (and will not be needed in the near future) to  
6 provide electric service.

7 In addition to this more general flaw, there are several problems with the specific benefits  
8 that are cited in Ms. Kravtin's testimony. For example, Ms. Kravtin claims that make-  
9 ready pole replacements enable the Companies to "enhance [their] rental opportunities."  
10 However, it is highly unlikely that the replacement of a couple of poles along a pole line  
11 with taller or stronger poles will result in new attachers swarming to that pole line and  
12 making additional communications attachments. This is particularly true in rural and  
13 unserved areas, where it is difficult to get even a single attacher to provide service. Even  
14 if this were true, the "enhanced" revenue from the Companies' \$7.25 wireline pole  
15 attachment fee would be de minimus. Ms. Kravtin also claims that make-ready pole  
16 replacements benefit the Companies through "cost savings in the form of lower  
17 maintenance and operating expenses." Although the Companies do not maintain detailed  
18 records showing the difference between maintenance and operating costs for older poles  
19 versus newer poles, the difference in such costs is trivial. The Companies' inspection  
20 programs are the primary driver of their O&M costs, and these inspections are performed  
21 on a cyclical basis regardless of the age of the pole. Thus, even though a newer pole might  
22 reduce or defer the costs of treating or reinforcing an older pole, these costs represent only  
23 a small fraction of the Companies' O&M costs and would not justify a cost allocation

1 proposal that seeks to shift the vast majority of make-ready pole replacement costs to the  
2 Companies.

3 It Would Be Inappropriate to Consider Ms. Kravtin's Cost Allocation Proposal in These  
4 Proceedings.

5 **Q: Ms. Kravtin testified that “utilities should be permitted only to recover costs based**  
6 **on the remaining net book value of the replaced pole.” Do you agree with Ms.**  
7 **Kravtin's cost allocation proposal for make-ready pole replacements?**

8 **A:** No, I disagree with Ms. Kravtin's cost allocation proposal. Pursuant to the Commission's  
9 longstanding cost causation principles, the Companies have always been entitled to recover  
10 the entire cost of a make-ready pole replacement from the Attachment Customer that  
11 necessitates the pole replacement. Consistent with these principles, the Companies' tariffs  
12 have expressly permitted the Companies to recover the actual cost of a make-ready pole  
13 replacement since at least 2016, and this cost recovery provision has not drawn any  
14 objections from Attachment Customers until this proceeding. Ms. Kravtin's cost  
15 allocation proposal would upend longstanding cost causation principles, usurp the  
16 Companies' heretofore undisputed cost recovery provision and force the Companies to bear  
17 a large portion of their Attachment Customer's deployment costs. As the Commission  
18 itself acknowledged last September when rejecting KBCA proposed rule (which is  
19 identical to what Ms. Kravtin proposes in her testimony), these costs would be diverted to  
20 the Companies' rate base and unfairly foisted upon the Companies' electric customers.

21 The Commission stated:

22 **The amendment proposed by KBCA could result in electric rates that**  
23 **are not fair, just and reasonable.** When reviewing utility rates and  
24 charges to determine if they are fair, just and reasonable and otherwise  
25 comply with statutory requirements imposed by KRS Chapter 278, the  
26 Commission generally attempts to ensure that costs are assigned to the party  
27 responsible for causing the utility to incur the cost. If a utility must replace



1 a pole that does not need to be replaced with a larger pole or a pole of a  
2 different type to accommodate a new attachment, then the cost to replace  
3 that pole is caused by the new attacher.

4 Amendments after Comments and Statement of Consideration for 807 KAR 5:015 at 47  
5 (emphasis added). For this reason, it would be inappropriate for the Commission to  
6 consider whether Ms. Kravtin's cost allocation proposal should be incorporated into the  
7 Companies' proposed tariffs in these proceedings.

8 **Q: Assuming, for a moment, that the Commission was inclined to reconsider Ms.**  
9 **Kravtin's proposal, which it rejected last September, is this the appropriate**  
10 **proceeding to consider reallocating make-ready pole replacement costs to electric**  
11 **ratepayers?**

12 A: No. Because Ms. Kravtin's cost allocation proposal would effectively shift make-ready  
13 pole replacement costs from Attachment Customers to the Companies' electric customers,  
14 the cost allocation proposal should be considered, if at all, during the Companies' rate  
15 cases:

16 [W]hen a utility proposes to increase its base utility rates, it files a tariff  
17 with the proposed rates and charges, along with required evidence and  
18 explanations, and the Commission then determines whether those proposed  
19 rates are fair, just and reasonable by reviewing evidence and asking  
20 questions regarding the costs a utility must cover in a given year, how those  
21 cost (sic) should be allocated to various customers or classes of customers,  
22 and how rates and charges should be designed such that customer classes  
23 cover the costs allocated to them without giving the utility a windfall.

24 Amendments after Comments and Statement of Consideration for 807 KAR 5:015 at 47  
25 n.1. The pending proceedings are necessarily narrow in scope (i.e., limited to whether the  
26 terms and conditions of the proposed pole attachment tariffs are just and reasonable to the  
27 Companies' Attachment Customers) and do not sufficiently take into account the impact  
28 that Ms. Kravtin's cost allocation proposal would have on the Companies' electric

1 customers. That is, the pending proceedings do not provide the same level of procedural  
2 safeguards that the Commission has previously identified as necessary to ensuring that  
3 costs are fairly allocated amongst the Companies' various classes of customers.

4 The Innuendo That Utilities “Strategically Under-Identify” Red-Tagged Poles is Incorrect and  
5 Supported by Faulty Analysis.

6 **Q: Ms. Kravtin suggested that utilities “strategically under-identify” the number of red-**  
7 **tagged poles and supported this suggestion, in part, through a comparison of the**  
8 **expected life-cycle pole replacement rates with red-tag rates. Is this a legitimate basis**  
9 **for Ms. Kravtin’s suggestion that utilities “strategically under-identify” red-tagged**  
10 **poles?**

11 A: No.

12 **Q: Why not?**

13 A: As a preliminary matter, the innuendo is simply incorrect. The Companies do not under-  
14 report red-tagged poles. In fact, Ms. Kravtin, in her response to the Commission’s request  
15 for information, acknowledged that there is no direct evidence of this. Instead, she  
16 doubled-down on the idea that expected life-cycle pole replacement rates and red-tag rates  
17 tell the whole story. This is incorrect for at least two reasons. First, for purposes of  
18 determining the “expected life-cycle pole replacement rates,” Ms. Kravtin uses the asset life  
19 (or average service life) underlying the depreciation rates approved by the Commission.  
20 These service life figures, though, may be outdated or may be the result of a settlement. In  
21 any event, the life of a pole for depreciation purposes does not equate to the actual useful  
22 life of an individual pole—or even the average actual useful life of poles. Second, the “red-  
23 tag rate,” which Ms. Kravtin derives by dividing the number of red-tagged poles each year  
24 with the total number of poles, is the wrong comparative value because it only captures

1 poles identified for reinforcement or replacement through cyclical inspections. A more  
2 representative value would be the total number of poles actually replaced each year.

3 **Q: Why would this be a more representative value?**

4 **A:** Because it accounts for all pole replacements, including pole replacements for electric  
5 service, reliability, storms and other reasons—all of which have the effect of avoiding a  
6 red-tag designation as a result of an inspection.

7 **Q: Can you explain this through an example with actual data?**

8 **A:** Yes. The asset life for KU distribution poles, as set forth in the 2015 Depreciation Study  
9 underlying the depreciation rates currently approved by the Commission, is 50 years.  
10 Under Ms. Kravtin’s rationale, this would equate to an expected life-cycle pole  
11 replacement rate of 2% annually. KU, based on historical data, anticipates red-tagging  
12 1,738 distribution poles per year. This would equate to a red-tag rate of 1.3%. However,  
13 between 2019-2021, KU replaced 5,564 poles per year on average, which would equate to  
14 a replacement rate of 4.0%. In other words, KU is actually replacing 4.0% of its pole  
15 inventory each year, which doubles Ms. Kravtin’s “expected life-cycle pole replacement  
16 rate.” These replacements for reasons other than deterioration have the effect of reducing  
17 the number of red-tagged poles identified through cyclical inspections.

18 **Q: What is the bottom line, here?**

19 **A:** There is no evidence to support the idea that utilities are strategically under-identifying  
20 red-tagged poles. With respect to LG&E and KU, that allegation is not true. And the  
21 analysis that Ms. Kravtin offered in an effort to support that false innuendo is  
22 fundamentally flawed.

23

1 **CONCLUSION**

2 **Q: Do you have any concluding remarks?**

3 A: Yes. As explained above, the Companies rarely, if ever, benefit from make-ready pole  
4 replacements. Given that this is the foundational premise of Ms. Kravtin's proposal, her  
5 proposal should be rejected. Further, if the Commission believes it is appropriate for  
6 electric ratepayers to bear the cost of broadband deployment, then this issue should be  
7 taken up in a rate case proceeding rather than through this pole attachment tariff review  
8 proceeding.

9 **Q: Does this conclude your rebuttal testimony?**

10 A: Yes.



## APPENDIX A

### **Michael E. Hornung**

Manager, Pricing & Tariffs  
LG&E and KU Services Company  
220 West Main Street  
Louisville, Kentucky 40202  
Telephone: (502) 627-4671

### **Professional Experience**

#### **Louisville Gas and Electric Company and Kentucky Utilities Company**

Manager, Pricing & Tariffs	Jan. 2018 – Present
Acting Director, Revenue Integrity	Jan. 2017 – July 2017
Manager, Billing Integrity	Jan, 2016 – Dec. 2016 Jul. 2017 – Dec. 2017
Manager, Energy Efficiency Planning & Development	Aug. 2008 – Dec. 2015
Senior Rate & Regulatory Analyst	Aug. 2006 – Aug. 2008
Senior Market Policy Analyst	Feb. 2000 – Aug. 2006
Senior Financial Analyst	
Risk Management/Trading Controls	June 1999 – Feb. 2000
Senior Accountant at LG&E Energy Marketing	1997 – 1999
Venture Accountant at LG&E Power, Inc.	1996 – 1997
General Labor, LG&E Construction	Summer 1988 & 1989

### **Professional Memberships**

Electric Edison Institute (EEI)	Jan. 2018 - Present
Southeastern Electric Exchange (SEE)	Jan. 2018 - Present

### **Education**

Bachelor of Science in Business Administration - Accounting;  
University of Louisville, August 1992

Strategic Business Integration: Generation & Energy Marketing, August 2009