

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 OF KENTUCKY POWER COMPANY TO
THE OBJECTIONS OF AT&T AND KENTUCKY BROADBAND & CABLE ASSOCIATION
TO REVISED TARIFF P.A.**

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Kentucky Power Company (“Kentucky Power”) respectfully submits the following response to the objections of AT&T Kentucky (“AT&T”) and Kentucky Broadband & Cable Association (“KBCA”) to Kentucky Power’s revised Tariff P.A. (“Revised Tariff”).

I. INTRODUCTION

Kentucky Power filed the Revised Tariff on February 28, 2022 to satisfy its obligation under the Commission’s new pole attachment regulations. *See* 807 KAR 5:015, Section 3(7) (“Tariffs conforming to the requirements of this administrative regulation and with a proposed effective date no later than March 31, 2022, shall be filed by February 28, 2022”). Only two stakeholders filed objections to the Revised Tariff: AT&T and KBCA. The objections are cursory, unspecific, vague and ambiguous, which makes it difficult for Kentucky Power to respond substantively.

There is a more fundamental issue with AT&T’s objections, though—the extent of AT&T’s interest in the Revised Tariff. As explained in more detail below, though AT&T has approximately 50,000 attachments on Kentucky Power’s poles, almost all of these attachments are governed by a joint use agreement (and are therefore not governed by Kentucky Power’s pole attachment tariff). Kentucky Power’s records indicate that less than 400 of AT&T’s attachments—less than one percent (1%)—are governed by Kentucky Power’s pole attachment tariff.

KBCA’s objections, with one exception, do not allege that the Revised Tariff conflicts with the Commission’s regulations. Instead, KBCA contends that these provisions are “unreasonable.” But several of these provisions are identical in form or substance to provisions within Kentucky Power’s existing pole attachment tariff. In other words, these are provisions that (a) do not conflict with the Commission’s regulations and (b) that the Commission has already found to be just and reasonable.

II. AT&T'S OBJECTIONS

A. **The Revised Tariff Comports with the Letter and Spirit of the Commission's Rules Governing Make-Ready Estimates.**

Section 6 of the Revised Tariff automatically withdraws a make-ready estimate unless a new attacher submits payment within fourteen (14) days of receipt of the estimate. Section 6 provides, in pertinent part:

Within forty-five (45) days (or within sixty (60) days in the case of Larger Orders) after receipt of a complete application, Company shall notify Operator whether and to what extent any special conditions will be required to permit the use by Operator of each such pole. Within fourteen (14) days of providing such notice, Company shall provide Operator with a statement of the costs for any necessary Company make-ready work, including the cost of rearranging Company's electric supply facilities or pole changeouts. Operator shall indicate its approval of the make-ready cost statement by submitting payment to Company within fourteen (14) days of receipt of the make-ready cost statement. **If payment is not received by Company within fourteen (14) days, then Company's make-ready cost statement shall be deemed withdrawn.**

Revised Tariff, P.S.C. KY. NO. 12 1st REVISED SHEET NO. 16-3, Section 6 (emphasis added).

AT&T objects to the automatic withdrawal provision, arguing that it "does not comport with the spirit of the rule" and that a "simple acceptance and later payment of the make-ready estimate should be sufficient." Comments of AT&T Kentucky in Response to March 2, 2022 Commission Order ("AT&T's Comments") at 18.

AT&T's objection has no basis in the Commission's pole attachment regulations. The Commission's regulations explicitly allow pole owners to withdraw a make-ready estimate if it has not been accepted within fourteen (14) days of presentation:

A utility may withdraw an outstanding estimate of charges to perform make-ready beginning fourteen (14) days after the estimate is presented.

807 KAR 5:015, Section 4(3)(c); *see also id.* at Section 4(3)(d) ("[A] new attacher shall not accept the estimate after the estimate is withdrawn."). Furthermore, there is nothing in the Commission's

regulations to suggest that pole owners are prohibited from placing an “expiration date” on make-ready estimates. Section 6, therefore, comports with both the letter and spirit of the Commission’s regulations.

The automatic withdrawal provision is not merely a mechanical invocation of Kentucky Power’s rights under the Commission’s regulations; it serves as an important financial and operational safeguard. Make-ready estimates are subject to rapid time-decay because the cost of the labor and material inputs used to generate a make-ready estimate fluctuates over very short periods of time. This is especially true today, where supply chains and labor markets are reeling from the pandemic and other geopolitical issues. The automatic withdrawal provision protects Kentucky Power and attachers alike from stale make-ready invoices, which might significantly overstate or understate the actual cost of make-ready at the time of acceptance. Moreover, by imposing an expiration date on make-ready estimates, Kentucky Power is able to avoid the significant administrative burden of monitoring outstanding make-ready estimates and actively withdrawing the stale ones. The automatic withdrawal provision also mitigates against disputes that can slow broadband deployment. For example, if a make-ready estimate is not accepted for several months, intervening events—such as the installation of a new attachment or a significant increase in labor or materials inputs—can invalidate the make-ready estimate and set the stage for a potential dispute between Kentucky Power and a new attacher.

B. The Revised Tariff’s Tagging Requirement for Existing Attachments Will Apply to Less than 1% of AT&T’s Attachments on Kentucky Power’s Poles.

Section 8 of the Revised Tariff requires that all untagged existing attachments on Kentucky Power’s poles be tagged within 180 days of the effective date of the Revised Tariff. Section 8 provides:

Operator shall identify each of its Attachments with a tag, approved in advance by

Company, that includes Operator’s name, 24-hour contact telephone number, and such other information as Company may require. Operator shall tag an Attachment at the time of construction. **Any untagged Attachment existing as of the effective date of this Tariff shall be tagged by Operator within one hundred and eighty (180) days from the effective date of this Tariff.**

Revised Tariff, P.S.C. KY. NO. 12 1st REVISED SHEET NO. 16-4, Section 8 (emphasis added).

AT&T objects to the 180-day deadline for tagging existing attachments, arguing that it “is completely impractical and prohibitively expensive” and that “[t]here could literally be tens of thousands of untagged attachments.” AT&T’s Comments at 18.

Almost all of AT&T’s approximately 50,000 attachments on Kentucky Power’s poles, though, are located within AT&T’s incumbent local exchange carrier (“ILEC”) service territory and are governed by the joint use agreement between Kentucky Power and AT&T. The Revised Tariff would not apply to these attachments. The Revised Tariff would apply only to AT&T’s attachments on Kentucky Power poles located outside of AT&T’s ILEC service territory. According to Kentucky Power’s records, there are less than 400 such attachments. Unless AT&T has been ignoring the tagging requirement in Kentucky Power’s Pole Attachment Policy handbook, presumably only a fraction of these 400-or-fewer attachments would be implicated by the new requirement to tag existing attachments within 180 days. *See* Kentucky Power’s Pole Attachment Policy at 16-17.¹ This is a far cry from AT&T’s assertion that “tens of thousands” of attachments would be implicated by the new tagging requirement.

C. Contrary to AT&T’s Objection, Section 15 Does Provide Attachers with a Right to Refute “Unauthorized Attachment” Designations.

Section 15 of the Revised Tariff provides, in pertinent part:

If a field inventory reveals that the number of Operator’s Attachments exceeds the number of Attachments shown in Company’s existing records, the excess number

¹ Kentucky Power’s Pole Attachment Policy handbook is available at: <https://www.kentuckypower.com/lib/docs/business/b2b/KYPCOPoleAttachmentPolicy2020.pdf>.

of Attachments shall be presumed to be unauthorized attachments and handled in accordance with Section 16.

Revised Tariff, P.S.C. KY. NO. 12 ORIGINAL SHEET NO. 16-7, Section 15. AT&T objects to this provision because it “[d]oes not allow an attacher to refute the presumption of an unauthorized attachment.” AT&T’s Comments at 18. AT&T instead proposes a framework whereby Kentucky Power would be required to provide attachers with notice of the presumed unauthorized attachment and thereafter grant the attacher a period of thirty (30) days to rebut the presumption (through the production of an “occupancy permit” for the attachment at issue). *See id.* at 18-19.

AT&T’s objection and proposal ignore two key aspects of Section 15. First, Section 15 specifically permits attachers to participate in Kentucky Power’s attachment inventory. *See* Revised Tariff, P.S.C. KY. NO. 12 ORIGINAL SHEET NO. 16-7, Section 15 (“Company shall provide Operator with at least thirty (30) days’ prior notice of a field inventory, and Operator shall advise Company whether Operator desires to participate in the field survey not less than fifteen (15) days prior to the scheduled date of such inventory.”). This means that attachers can refute—in real time—any potential “unauthorized attachment” designations. Second, Section 15 provides attachers with the right to request a “summary report for the field inventory within a reasonable time after its completion.” *See id.* Third, as the language at issue explicitly states, the excess number of Attachments is “*presumed* to be unauthorized attachments.” The fact that this is a presumption—rather than a conclusive contractual fact—necessarily means there is an opportunity to rebut the presumption.

III. KBCA’S OBJECTIONS

A. The Revised Tariff’s Charge for Attachments within Ducts or Conduit Complies with the Commission’s Conduit Rate Methodology.

The Revised Tariff includes a \$2.70 per linear foot rate for attachments within Kentucky

Power's ducts or conduit (the "Conduit Rate"). See Revised Tariff, P.S.C. KY. NO. 12 1st REVISED SHEET NO. 16-2, Section 3. KBCA objects to this rate and argues that Kentucky Power "has not provided any cost justification for this new charge." Objections of the Kentucky Broadband and Cable Association to Newly Filed Kentucky Tariffs ("KBCA's Objections") at 20. Kentucky Power calculated the Conduit Rate using the formula set forth by the Commission in *The Adoption of a Standard Methodology for Establishing Rates for Conduit Usage*, Order, Administrative Case No. 304, 1987 Ky. PUC LEXIS 12 (May 4, 1987) (the "Conduit Rate Order"). The only variation from this formula is that Kentucky Power calculated the Conduit Rate using a "net book value" methodology rather than a "gross book value" methodology. As the Commission noted in the Conduit Rate Order, though, "both methodologies produce the same result." *Id.* at 9. The year-end 12/31/2020 cost and other data that Kentucky Power used to calculate the Conduit Rate is set forth in Exhibit A hereto.

B. The Cost-Based Per Pole Estimate for Make-Ready Surveys in Section 6 Is Just and Reasonable.

The Commission's regulations allow pole owners to require prepayment of make-ready survey costs so long as their tariffs include a per pole estimate of such costs. 807 KAR 5:015, Section 4(2)(b)6.b. To preserve its right to require prepayment of survey costs, Kentucky Power incorporated the following provision into Section 6:

If Operator is only seeking to make Wireline Attachments to Distribution Poles, Company shall complete a make-ready survey within forty-five (45) days (or within sixty (60) days in the case of a Larger Order) of receipt of a complete application. Company may, in its sole discretion, require prepayment for a make-ready survey. **The current per pole estimate for a make-ready survey is \$275.** If the actual cost of performing the make-ready survey exceeds the amount of Operator's prepayment, then Operator shall reimburse Company for any difference upon receipt of an invoice for such amount.

Revised Tariff, P.S.C. KY. NO. 12 1st REVISED SHEET NO. 16-3, Section 6 (emphasis added).

KBCA objects to the Kentucky Power’s per pole estimate for a make-ready survey (“Survey Estimate”), arguing that it is “unreasonable and unsupported.” KBCA’s Objections at 20.

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 Power’s 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) post-construction 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. To generate a Survey Estimate that balances and captures each of these components, Kentucky Power averaged the per pole make-ready survey cost for each of the aforementioned pole types based on a 50-pole proposal using the following methodology:

Where:

A = per application administrative processing cost

B = unit cost for field data collection

C = unit cost for engineering: pole that requires no work

D = unit cost for engineering: pole that requires rearrangement

E = unit cost for engineering: pole that requires work beyond rearrangement

F = unit cost for post-construction inspection

And:

$$X = (A + 50B + 50C + 50F) / 50$$

$$Y = (A + 50B + 50D + 50F) / 50$$

$$Z = (A + 50B + 50E + 50F) / 50$$

Survey Estimate Equals:

$$(X + Y + Z) / 3$$

In addition to capturing the pass-through costs charged by Kentucky Power's contractor, the Survey Estimate also includes a small surcharge (equal to 15% of the average per pole make-ready survey estimate) designed to cover the maintenance costs of Kentucky Power's Joint Use Portal. The Joint Use Portal is an electronic application and notification platform that streamlines the management of third-party communications attachments on Kentucky Power's poles.

C. The Make-Ready Pole Replacement Provision in Section 10 Complies with the Commission's Red-Tagged Pole Framework.

Section 10 of the Revised Tariff would allow Kentucky Power to recover the costs of make-ready pole replacements when they are performed "solely to adequately provide" for a new attachment:

Where in Company's judgment a new pole must be erected to replace an existing pole **solely to adequately provide for Operator's proposed Attachments**, Operator agrees to pay Company for the entire cost of the new pole necessary to accommodate the existing facilities on the pole and Operator's proposed Attachments, plus the cost of removal of the in-place pole, minus the salvage value, if any, of the removed pole. Operator shall also pay to Company and to any other owner of existing attachments on the pole the cost of transferring each of their respective facilities or attachments to the newly-installed pole.

Revised Tariff, P.S.C. KY. NO. 12 1st REVISED SHEET NO. 16-5, Section 10 (emphasis added). KBCA objects to this provision, but only "to the extent it conflicts with the Commission's red-tagged pole framework." KBCA's Objections at 20. KBCA also claims that it "should only pay its reasonable share of a pole replacement." *Id.* There are several problems with KBCA's objections.

First, the make-ready pole replacement provision in the Revised Tariff is virtually identical to the "Pole Installation or Replacement" provision contained within Kentucky Power's existing tariff. *Compare* Revised Tariff, P.S.C. KY. NO. 12 1st REVISED SHEET NO. 16-5, Section 10 *with* Kentucky Power Company Tariff C.A.T.V., P.S.C. KY. NO. 12 ORIGINAL SHEET NO. 16-

2, Pole Installation or Replacement; Rearrangements; Guying (effective Jan. 14, 2021). Therefore, to the extent that it does not conflict with the Commission’s red-tagged pole framework, the make-ready pole replacement provision in Section 10 is presumptively just and reasonable.

Second, KBCA has not identified an actual conflict with the Commission’s regulations. Rather, KBCA seems to be hedging against some future, hypothetical application of Section 10 that might conflict with the Commission’s red-tagged pole framework. However, the black letter of the make-ready pole replacement provision mitigates against such future misapplications, as it makes clear that attachers are held responsible for the “entire cost of the new pole” only when replacements are performed “*solely* to adequately provide for Operator’s proposed Attachments.” Revised Tariff, P.S.C. KY. NO. 12 1st REVISED SHEET NO. 16-5, Section 10 (emphasis added). This limitation on make-ready pole replacement cost allocation ensures that the Revised Tariff complies with the Commission’s red-tagged pole framework, which protects attachers from bearing the cost of replacing poles that have already been identified by Kentucky Power as requiring replacement. *See* 807 KAR 5:015, Section 4(6)(b)2 (“A utility shall not charge a new attacher...the cost to replace any red tagged pole...”).

Finally, it is unclear what KBCA means when it argues that it “should only pay its reasonable share of a pole replacement.” KBCA’s Objections at 20. To the extent KBCA is arguing that it should not be required to bear the entire cost of a make-ready pole replacement that does not involve a red-tagged pole, KBCA’s objection repeats an argument the Commission has already rejected. In rejecting KBCA’s cost allocation proposal in the underlying rulemaking proceedings, the Commission stated:

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.

Statement of Consideration Relating to 807 KAR 5:015 at 47 (emphasis added). In other words, the Commission's cost causation principles require attachers to bear the entire cost of a make-ready pole replacement where it is performed to accommodate a new attachment.

D. The Timelines for Completing One-Touch Make-Ready in Section 12 Are Just and Reasonable.

The Commission's regulations include a new, one-touch make-ready ("OTMR") option. *See* 807 KAR 5:015, Section 4(10). To address this new framework, Kentucky Power incorporated Section 12 into its Revised Tariff, which specifically addresses OTMR. Among other things, Section 12 fills a gap in the Commission's regulations by establishing a timeline for the completion of make-ready work identified in an OTMR application:

Operator shall complete all make-ready within thirty (30) days of the date on which Company approved Operator's OTMR application (or within forty-five (45) days in the case of a Larger Order), or Operator's OTMR application will be deemed closed.

Revised Tariff, P.S.C. KY NO. 12 ORIGINAL SHEET NO. 16-6, Section 12. KBCA claims that the timelines for completion of OTMR are "unreasonable" and should mirror "the utilities' deadlines to complete make-ready, including deviations from the schedule for good cause." KBCA's Objections at 21. KBCA's objection is flawed in at least three ways.

First, the timelines in Section 12 are generally consistent with the Commission's standard timelines for completing make-ready within the communications space. *See* 807 KAR 5:015, Section 4(4)(a)2 ("For make-ready in the communications space, the notice shall...[s]tate a date for completion of make-ready in the communications space that is no later than thirty (30) days

after notification is sent (or up to seventy-five (75) days in the case of larger orders...”).² Importantly, the timelines in Rule 4(4)(a)2 apply to both simple *and* complex make-ready. However, the timelines in Section 12 only apply to OTMR which, by definition, is limited to *simple* make-ready—i.e., the simplest and most expedient type of make-ready. KBCA offers no explanation for why attachers should be given more time to complete *simple* OTMR than the Commission affords existing attachers to complete *complex* make-ready.

Second, KBCA’s request for a “good cause” exception to the OTMR timelines is unnecessary. The Revised Tariff already has a “good cause” exception for non-performance:

Neither party shall be considered in default in the performance of its obligations herein, or any of them, to the extent that performance is delayed or prevented due to causes beyond the control of said party, including but not limited to, Acts of God or the public enemy, war, revolution, civil commotion, blockade or embargo, acts of government, any law, order, proclamation, regulation, ordinance, demand, or requirement of any government, fires, explosions, cyclones, floods, unavoidable casualties, quarantine, restrictions, strikes, labor disputes, lock-outs, and other causes beyond the reasonable control of either of the parties.

Revised Tariff, P.S.C. KY. NO. 12 ORIGINAL SHEET NO. 16-12, Section 30.

Third, the timeframe for completion of OTMR proposed in the Revised Tariff is consistent with—and targeted to fulfill—the purpose of the OTMR rule: to expedite broadband deployment. Allowing a timeframe longer than allowed for similar work under the non-OTMR process would thwart the intent of the Commission’s new OTMR rule.

E. The Indemnity Requirement (Section 18) and Limitation of Liability Provision (Section 19) Are Just and Reasonable.

Citing Sections 18 and 19 of the Revised Tariff, KBCA raises a generic objection “to any standard that makes an attacher responsible for the negligence of a pole owner.” KBCA’s

² KBCA did not object to the timelines for completing make-ready within the communications space, 807 KAR 5:015, Section 4(4)(a)2, during the underlying rulemaking proceedings.

Objections at 20. Section 18 provides:

Operator hereby agrees to indemnify, hold harmless, and defend Company from and against any and all loss, damage, cost or expense which Company may suffer or for which Company may be held liable because of interruption of Operator's service to its subscribers, or by reason of bodily injury, including death, to any person, or damage to or destruction of any property, including loss of use thereof, arising out of or in any manner connected with the attachment, operation, and maintenance of the Attachments and other facilities of Operator on the Facilities of Company under this Tariff, or to any such act or omission of Operator's respective representatives, employees, agents or contractors.

Revised Tariff, P.S.C. KY. NO. 12 ORIGINAL SHEET NO. 16-8, Section 18.

As an initial matter, the indemnity requirement in Section 18 of the Revised Tariff is virtually identical to the indemnity requirement in Kentucky Power's existing tariff. *See* Kentucky Power Company Tariff C.A.T.V., P.S.C. KY. NO. 12 ORIGINAL SHEET NO. 16-3, Indemnity (effective Jan. 14, 2021). Moreover, Section 18 does not conflict with any of the Commission's regulations. Rather, the Commission's regulations specifically permit pole owners to include indemnity requirements in their pole attachment tariffs:

The tariff may include terms, subject to approval by the commission, that are fair, just, and reasonable and consistent with the requirements of this administrative regulation and KRS Chapter 278, such as certain limitations on liability, indemnification and insurance requirements....

See 807 KAR 5:015, Section 3(4).

Section 19 of the Revised Tariff provides:

IN NO EVENT SHALL COMPANY OR ANY OF ITS REPRESENTATIVES BE LIABLE UNDER THIS TARIFF TO OPERATOR FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, OR IN CONNECTION WITH THIS TARIFF, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE; (B) WHETHER OR NOT COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. THE LIMITATIONS SET FORTH IN THIS SECTION 19 SHALL NOT APPLY TO DAMAGES OR LIABILITY ARISING

FROM THE GROSSLY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF COMPANY IN PERFORMING ITS OBLIGATIONS UNDER THIS TARIFF.

Revised Tariff, P.S.C. KY. NO. 12 ORIGINAL SHEET NO. 16-8, Section 19.³ With respect to Section 19, KBCA also apparently objects “to any standard that makes an attacher responsible for the negligence of a pole owner.” Section 19, though, does not allocate liability for Kentucky Power’s negligence to attachers. Instead, Section 19 establishes a reasonable limitation on Kentucky Power’s liability for certain types of damages that may arise out of the use of Kentucky Power’s electric distribution facilities, which is expressly permitted under the Commission’s regulations. *See* 807 KAR 5:015, Section 3(4) (“The tariff may include terms, subject to approval by the commission, that are fair, just, and reasonable and consistent with the requirements of this administrative regulation and KRS Chapter 278, such as certain limitations on liability....”). Not only are such provisions customary in commercial contracts, but the provision also helps mitigate against unreimbursed incremental costs (which would otherwise be borne by electric ratepayers) associated with the presence of attaching entities.

F. Section 26 of the Revised Tariff, which Is Virtually Identical to the “Default or Non-Compliance” Provision in the Existing Tariff, Is Just and Reasonable.

Section 26 of the Revised Tariff outlines Kentucky Power’s rights and remedies in the event of default or non-compliance:

If Operator fails to comply with any of the provisions of this Tariff or defaults in the performance of any of its obligations under this Tariff and fails within sixty (60) days, after written notice from Company to correct such default or non-compliance, Company may, in addition to all other remedies under this Tariff, take any one or

³ The limitation of liability provision in Section 19 of the Revised Tariff closely tracks the limitation of liability provisions in Louisville Gas and Electric Company’s and Kentucky Utilities Company’s existing pole attachment tariffs. *See* Louisville Gas and Electric Company Pole and Structure Attachment Charges, P.S.C. Electric No. 13, Original Sheet No. 40-25, Section 29 (effective Jul. 1, 2021); Kentucky Utilities Company Pole and Structure Attachment Charges, P.S.C. No. 20, Original Sheet No. 40.25, Section 29 (effective Jul. 1, 2021).

more of the following actions: terminate the specific permit or permits covering the Company Facilities to which such default or non-compliance is applicable; remove, relocate or rearrange Attachments of Operator to which such default or non-compliance relates, all at Operator's expense; decline to permit additional Attachments hereunder until such default is cured; or in the event of any failure to pay any of the charges, fees or amounts provided in this Tariff or any other substantial default, or of repeated defaults, terminate Operator's right of attachment....

Revised Tariff, P.S.C. KY. NO. 12 ORIGINAL SHEET NO. 16-11, Section 26. KBCA objects to Section 26 because it gives Kentucky Power a "broad right to terminate KBCA's rights under the tariff and remove its attachments." KBCA's Objections at 21.

There are at least two problems with KBCA's objection. First, Section 26 of the Revised Tariff is virtually identical to the "Default or Non-Compliance" provision in Kentucky Power's existing tariff. *Compare* Revised Tariff, P.S.C. KY. NO. 12 ORIGINAL SHEET NO. 16-11, Section 26 *with* Kentucky Power Company Tariff C.A.T.V., P.S.C. KY. NO. 12 ORIGINAL SHEET NO. 16-4 (effective Jan. 14, 2021). In fact, besides some minor cosmetic changes, the only substantive difference between the Revised Tariff and the existing tariff is that Kentucky Power revised the cure period in Section 26 to comply with Rule 6(1)(a), which requires pole owners to provide sixty (60) days' notice before removing an attacher's facilities from Kentucky Power's poles. *See* 807 KAR 5:015, Section 6(1)(a).

Second, the Commission's rules implicitly (if not explicitly) permit the types of remedies outlined under Section 26:

Unless otherwise established in a joint use agreement or special contract, a utility shall provide an existing attacher no less than 60 days written notice prior to...[r]emoval of facilities or termination of any service to those facilities if that removal or termination arises out of a rate, term, or condition of the utility's pole attachment tariff or any special contract regarding pole attachments between the utility and the attacher[.]

807 KAR 5:015, Section 6(1)(a). In other words, Section 6(1)(a) presumes that pole owners can

terminate attachment rights and remove attachments in the event of non-compliance, but only so long as they provide adequate notice to the non-compliant attacher. Finally, to the extent KBCA is worried about Kentucky Power's discretion under Section 26, the Commission's regulations already provide attachers with an adequate safeguard against termination and removals. *See* 807 KAR 5:015, Section 6(2)(a) ("An existing attacher may request a stay of the action contained in a notice received pursuant to [Rule 6(1)(a)] by filing a motion pursuant to 807 KAR 5:001.").

IV. CONCLUSION

Kentucky Power appreciates the opportunity to provide the foregoing response to AT&T's and KBCA's objections. As set forth above, the provisions of the Revised Tariff conform to the Commission's new regulations and are otherwise just and reasonable. AT&T's and KBCA's objections should be dismissed, and the Revised Tariff should be accepted as proposed.

Dated: April 14, 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 April 14, 2022 and that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding

/s/ Robert J. Patton
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EXHIBIT A

Year-End 12/31/2020 Data Used In Conduit Rate Calculation

Gross Investment

A	Underground Conduit	FERC Account 366	\$7,922,239
B	Underground Conductors & Devices	FERC Account 367	\$12,123,529
C	Total Distribution Plant	Page 207	\$954,945,289
D	Total Utility Plant	Page 200	\$3,012,297,428

Depreciation Reserve

E	Underground Conduit	(G/C)*A	\$2,369,615
F	Underground Conductors & Devices	(G/C)*B	\$3,626,260
G	Total Distribution Plant	Page 219	\$285,632,969
H	Total Utility Plant	Page 200	\$1,089,649,675

Deferred Taxes

I	Underground Conduit	(A-E)/(D-H)*K	\$1,544,268
J	Underground Conductors & Devices	(B-F)/(D-H)*K	\$2,363,219
K	Total Utility Plant	FERC Accounts 281, 282, 283 & 190	\$534,717,339

Other Data

L	Conduit Maintenance	(A-E-I)/(B-F-J)*M	\$30,916
M	Underground Maintenance	FERC Account 594	\$78,228
N	Administrative & Overhead	Page 323	\$22,516,742
O	Operating Taxes	FERC Accounts 408, 409.1, 410.1, 411.1 & 411.4	\$24,036,220
P	Gross Distribution Plant Depreciation Rate	Finance Dept.	3.43%
Q	Rate of Return	Commission Order 2020-00174	6.19%
R	Conduit Feet	Plant Accounting	254,059

*Page numbers above reference pages in the year-end 12/31/2020 Kentucky Power Company FERC Form 1.