

KENTUCKY PUBLIC SERVICE COMMISSION

In the Matter of:)
)
)
ELECTRONIC INVESTIGATION OF THE) CASE NO. 2022-00105
PROPOSED POLE ATTACHMENT)
TARIFFS OF INVESTOR OWNED)
UTILITIES)
)
)

The Kentucky Broadband and Cable Association and its members¹ (“KBCA”), pursuant to the Commission’s March 30, 2022, Order, respectfully submits these Responses to Duke Energy Kentucky, Inc.’s (“Duke Energy’s”), First Request For Information To Kentucky Broadband and Cable Association.

General Questions

1. Other than Witnesses Avery, Bast, and Kravtin, please identify any persons, including experts whom KBCA has retained or consulted regarding evaluating the Commission’s Investigation in this proceeding.

ANSWER: KBCA objects to this request to the extent it requires it to identify every person it “consulted” in any form or fashion relation to this proceeding. KBCA further objects to the phrase “evaluating the Commission’s Investigation” as vague and ambiguous. Subject to its objections, KBCA states it has not retained or consulted any witnesses other than Mr. Avery, Mr. Bast, and Ms. Kravtin to evaluate the Commission’s investigation in this proceeding. KBCA reserves the right to amend and supplement this response based on the testimony submitted by the utilities later in this proceeding.

WITNESS: Jason Keller

2. For each person identified in (prior) response to Request No. 1 above, please state (1) the subject matter of the discussions/consultations/evaluations; (2) the written opinions of such persons regarding the Commission’s Investigation; (3) the facts to which each person relied upon; and (4) a summary of the person’s qualifications to render such discussions, consultations, or evaluations.

ANSWER: N/A

¹ The KBCA’s members are Access Cable, Armstrong, C&W Cable, Charter Communications, Comcast, Inter Mountain Cable, Lycom Communications, Mediacom, Suddenlink, and TVS Cable. Kentucky Broadband & Cable Association, Our Members, *available at* <https://www.kybroadband.org/members>.

WITNESS: N/A

3. **Please identify all proceedings in all jurisdictions in the last three years in which Witnesses Avery, Bast, and Kravtin, along with each person identified in response to Request No. 2 above, has offered evidence, including but not limited to, pre-filed testimony, sworn statements, and live testimony and analysis. For each response, please provide the following:**

- (a) **the jurisdiction in which the testimony, statement or analysis was pre-filed, offered, given, or admitted into the record;**
- (b) **the administrative agency and/or court in which the testimony, statement or analysis was pre-filed, offered, admitted, or given;**
- (c) **the date(s) the testimony, statement or analysis was pre-filed, offered, admitted, or given;**
- (d) **the identifying number for the case or proceeding in which the testimony, statement or analysis was pre-filed, offered, admitted, or given;**
- (e) **whether the witness was cross-examined;**
- (f) **the custodian of the transcripts and pre-filed testimony, statements or analysis for each proceeding; and**
- (g) **copies of all such testimony, statements or analysis.**

ANSWER: KBCA objects to this request because it is unduly burdensome and disproportionate to the needs of the case. KBCA further objects to the extent this information is equally available to Duke Energy. Subject to its objections, KBCA responds as follows:

Jerry Avery: Mr. Avery has not offered evidence in any proceeding in the past three years.

Richard Bast: Mr. Bast has not offered evidence in any proceeding in the past three years.

Patricia Kravtin: The proceedings in which Ms. Kravtin has testified, including the jurisdiction, court or agency, date, case, and whether she was cross-examined, are identified in the CV attached as Exhibit 1 to her testimony. The records are public. As a courtesy, KBCA has attached to these responses her most recent white paper, submitted to the FCC on June 27, 2022, as well as an expert report she submitted in New York that may not be readily available in the public domain. *See* Exhibits 1 and 2.

WITNESS: Jerry Avery, Richard Bast, Patricia Kravtin

4. **Identify and provide all documents or other evidence that KBCA may seek to introduce as exhibits or for purposes of witness examination in the above-captioned matter.**

ANSWER: KBCA objects to this Request because it asks for a legal analysis, and is untimely and unduly burdensome. The Commission has not set a date for hearing, much less required the parties to exchange exhibits. Subject to its objection, KBCA identifies each document referenced in the testimony of the witnesses, all documents exchanged by the parties and/or submitted to the Commission in this proceeding, including in the parallel proceeding dockets, and any documents necessary to rebut any assertion made by a utility in this proceeding or in the parallel dockets. KBCA reserves the right to amend and supplement this list prior to any briefing or hearing.

WITNESS: N/A

5. Please provide copies of any and all documents, analysis, summaries, white papers, work papers, spreadsheets (electronic versions with cells intact), including drafts thereof, as well as any underlying supporting materials created by Witnesses Avery, Bast, and Kravtin as part of their evaluation of the Commission's Investigation or used in the creation of Witnesses Avery, Bast, and Kravtin's testimony.

ANSWER: KBCA objects to this request because it is unduly burdensome and disproportionate to the needs of the case. KBCA further objects to the extent this information is equally available to Duke Energy. Subject to its objections, KBCA responds as follows:

Avery: None

Bast: None

Kravtin: The schedules, tables, and charts in Ms. Kravtin's testimony are provided in full in her testimony. There are no other versions, including excel versions, of the tables and charts in Ms. Kravtin's testimony. The publicly available source documents and workpapers upon which she relies are cited in her testimony. In addition, KBCA has attached to these responses her most recent white paper, submitted to the FCC on June 27, 2022, as well as an expert report Ms. Kravtin submitted in New York that may not be readily available in the public domain. *See* Exhibits 1 and 2.

WITNESS: Jerry Avery, Richard Bast, Patricia Kravtin

6. Please provide copies of any and all documents not created by Witnesses Avery, Bast, and Kravtin, including but not limited to, analysis, summaries, cases, reports, evaluations, etc., that Witnesses Avery, Bast, and Kravtin relied upon, referred to, or used in the development of their testimony.

ANSWER: KBCA objects to this request because it is unduly burdensome and disproportionate to the needs of the case. KBCA further objects to the extent this information is equally available to Duke Energy. Subject to its objections, KBCA responds as follows:

Avery: Mr. Avery relied on publicly available documents, including the tariffs and RFI responses from the utilities, in developing his testimony.

Bast: Mr. Bast relied on publicly available documents, including the tariffs and RFI responses from the utilities, in developing his testimony.

Kravtin: The publicly available source documents and workpapers upon which Ms. Kravtin relied are cited in her testimony.

WITNESS: Jerry Avery, Richard Bast, Patricia Kravtin

7. Please provide copies of any and all presentations or publications made, written or presented by Witnesses Avery, Bast, and Kravtin in a non-adjudicative forum within the last three years involving or relating to the following: 1) utility rate-making; 2) rate of return; 3) rider cost recovery; 4) depreciation; 5) pole attachments; 6) maintenance of utility poles; 7) cost allocations; and 8) taxes.

ANSWER: KBCA objects to this request because it is unduly burdensome and disproportionate to the needs of the case. Many of the documents requested are not relevant to this case, and reflect issues that are not being addressed in this proceeding (like rate-making). KBCA further objects to the extent this information is equally available to Duke Energy. Subject to its objections, KBCA responds as follows:

Avery: None

Bast: None

Kravtin: Ms. Kravtin's publicly available presentations and publications are listed in her testimony.

WITNESS: Jerry Avery, Richard Bast, Patricia Kravtin

8. Please refer to Witnesses Avery, Bast, and Kravtin's testimony where they indicate they are testifying "on behalf of the Kentucky Broadband and Cable Association." To avoid unnecessary litigation expense and to promote judicial economy, please indicate whether KBCA agrees with the arguments and claims made by Witnesses Avery, Bast, and Kravtin and, if not, please identify which specific arguments or claims KBCA disclaims.

ANSWER: The testimony of Mr. Avery, Mr. Bast, and Ms. Kravtin is submitted on behalf of KBCA, and the KBCA adopts their testimony.

WITNESS: Jason Keller

9. Please identify whether KBCA is taking any additional positions or making any additional recommendations on the Commission's Investigation that are not being offered by the direct testimony of Witnesses Avery, Bast, and Kravtin in this proceeding.

ANSWER: KBCA objects to this Request because it asks for a legal analysis, and is unduly burdensome and untimely. The Commission has not set a date for hearing, or any briefing schedule. Subject to its objections, KBCA reserves the right to take positions and make recommendations that are not addressed by the testimony of Mr. Avery, Mr. Bast, or Ms.

Kravtin, including positions or arguments necessary to respond to the utilities' rebuttal testimony and positions or arguments related to KBCA's objections to the utilities' tariffs.

WITNESS: Jason Keller

10. Please confirm that Witnesses Avery, Bast, and Kravtin are not customers of Duke Energy Kentucky.

ANSWER: Confirmed.

WITNESS: Jerry Avery, Richard Bast, Patricia Kravtin

11. Please confirm that KBCA is not a customer of Duke Energy Kentucky.

ANSWER: Confirmed.

WITNESS: Jason Keller

12. Please provide, for calendar years 2019, 2020, and 2021, for each and every KBCA member company, a list of all incomplete utility work-order requests to relocate attachments and/or facilities, with the date each work order was requested and the date each work order was completed.

ANSWER: KBCA objects that this Request seeks information that is unduly burdensome and disproportionate to the needs of this case. Nor are records of all incomplete utility work-order requests relevant to this proceeding. Subject to its objection, KBCA does not have this information in its possession, custody, or control.

WITNESS: Jason Keller

Questions for Witness Avery

13. Please refer to where Witness Avery states that "such discretion is far outside industry norms," regarding various tariff provisions describing a pole owner's right to remove attachments after a notification period. Please identify all Kentucky pole attachment tariffs that, in Witness Avery's opinion, are within the "industry norms" with respect to a pole owner's right to remove attachments after a notification period.

ANSWER: Mr. Avery responds as follows: In my experience, pole owners do not generally have discretion to remove a utilities' network after 30-60 days of alleged noncompliance with a tariff or contract, especially if there is a bona fide dispute between the parties that could be resolved in a longer period. Instead, utilities and attachers recognize that they must work together to resolve joint use issues and disputes. If the parties are unable to reach a resolution in a particular situation, they are able to escalate the dispute to the appropriate adjudicatory body, but it should not be standard industry practice for utilities to use their ownership of the pole infrastructure and threats of removal to gain untoward leverage in a dispute.

This experience is reflected in the tariffs filed in this proceeding. Of the tariffs to which Charter objected in this proceeding, most of the tariffs did not propose that the pole owner have the unilateral ability to remove attachments for alleged noncompliance with any tariff term even in the face of a good-faith dispute, particularly within 30 days, illustrating that such a provision is not the industry norm. For example, the RECC tariffs require the pole owner and attacher to “mutually agree on an additional time period in which Licensee shall complete the required corrections” if violations cannot be cured in 30 days. *See, e.g.*, Nolin RECC Proposed Tariff, Original Sheet No. 23, Article VIII(B)(ii) (representative of the RECC tariffs).²

WITNESS: Jerry Avery

14. Please refer to where Witness Avery states that “I am not aware of any situation where an attacher has sought to shift blame to a utility for damage that it caused.” Please identify all instances, since January 1, 2020, of which KBCA is aware in which a utility held an attacher responsible for the utility’s sole negligence.

ANSWER: KBCA objects to this request because it is unduly burdensome and disproportionate to the needs of the case. KBCA further objects to the extent this information is equally available to Duke Energy. Subject to these objections, KBCA does not have this information in its possession, custody, or control.

WITNESS: Jason Keller

Questions for Witness Kravtin

15. Please refer to where Witness Kravtin states that “there is ample opportunity and motive for utilities to understate the number of poles that fit the regulatory definition of re[d] tagged.” Please identify all instances since January 1, 2020, of which KBCA is aware, in which a utility had mis-classified poles that fit the regulatory definition of red tagged as non-red-tagged and the total number of poles involved in each such instance.

ANSWER: Because the Commission’s regulations have not taken effect, no poles have yet been “mis-classified” as non-red tagged poles. However, the data provided by the utilities demonstrate an underreporting of the number of red-tagged poles will occur once the regulations do take effect. Kravtin Testimony at 29-32. As explained in Ms. Kravtin’s

² *See also* Proposed Tariffs of Duke Energy Kentucky, Inc., Kentucky Power Company, Louisville Gas & Electric Company, Kentucky Utilities Company, Big Rivers Electric Corp., Blue Grass Energy Cooperative Corp., Clark Energy Cooperative, Cumberland Valley Electric, Inc., Farmers Rural Electric Cooperative Corp., Fleming-Mason Energy Cooperative, Inc., Grayson Rural Electric Cooperative Corp., Inter-County Energy, Jackson Energy Cooperative Corp., Jackson Purchase Energy Corp., Kenergy, Meade County Rural Electric Cooperative Corp., Nolin Rural Electric Cooperative Corp. Owen Electric Cooperative, Inc., Salt River Electric Cooperative Corp., Shelby Energy Cooperative, Inc., South Kentucky Rural Electric Cooperative Corp., Taylor County Rural Electric Cooperative Corp., Windstream Kentucky West, LLC, and Windstream Kentucky East, LLC.

testimony, if utilities were properly designating as red-tagged all poles that would be replaced within two years in accordance with the utilities' identified depreciation parameters, the annualized red-tagged percentage should be close to the utilities' theoretical annual utility pole replacement rate. *Id.* & *Table 4*. But it is not. *Id.* Instead, the utilities' rate of red-tag poles is a fraction of utilities' annual replacement rate based on identified depreciation parameters for the pole asset group. *Id.* This shows utilities have not historically reported, and apparently are not intending going forward to report, all red-tagged poles as red-tagged, and are likely to shift pole replacement costs to new attachers. *Id.*

Even once the regulations do take effect, it will be difficult for attachers to discover when utilities mis-classify non-red-tagged poles. Part of the problem with the red-tag framework is that there is no way for attachers independently to verify whether a pole falls under the Commission's definition of red-tagged, especially if it is one without obvious safety defects but is nevertheless "[d]esignated for replacement within two (2) years of the date of its actual replacement for any reason unrelated to a new attacher's request for attachment." 807 KAR 5:015 § 1(10); Kravtin Testimony at 14. Utilities confirmed this fact in responding to KBCA's RFI by stating attachers would have to follow up with utilities if they have questions regarding whether or not a pole is red-tagged. *Id.* Without any independent way to verify whether a utility intends to replace a pole within two years of the attachment request, attachers will likely be stuck with the bill for replacing large portions of a utility's network, even if the utility would have replaced the poles themselves in the normal course of business.

Ms. Kravtin further expands on these questions in her recent white paper, submitted to the FCC on June 27, 2022, and attached to these responses as Exhibit 1. In the white paper, she elaborates on why and the various means by which utilities strategically hold up access to poles, one of those being under-identifying, misreporting and overstating the need for pole replacement, overattributing the reason for a pole replacement to a new attachment, and misreporting or underreporting the number of red tagged poles. White paper at 24-27. Part of the incentive utilities have to exercise their hold-up power is that they are facing pressure to upgrade and harden their existing pole network to provide more reliable power for electric customers. *Id.* And for their own pole hardening purposes, it is widely acknowledged that replacing a pole is the preferred course of action to reinforcing, restoring, or other forms of remediation. *Id.*

WITNESS: Patricia Kravtin

Dated: July 7, 2022

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. Todd Osterloh" with a stylized flourish at the end. The signature is written over a horizontal line.

James W. Gardner

M. Todd Osterloh

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Counsel for KBCA

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

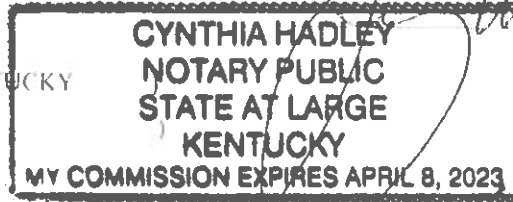
In the Matter of

ELECTRONIC INVESTIGATION OF THE)
PROPOSED POLE ATTACHMENT) Case No
TARIFFS OF INVESTOR OWNED) 2022-00105
ELECTRIC UTILITIES)

VERIFICATION

The undersigned, Jerry Avery, being duly sworn, deposes and says that he has personal knowledge of the matters set forth in these Responses for which he is listed as a witness, and that the answers contained therein are true and correct to the best of his information, knowledge, and belief

COMMONWEALTH OF KENTUCKY
JEFFERSON COUNTY



Jerry Avery

SUBSCRIBED AND SWORN TO before me by Jeffrey Avery on this the 10 day of July,
2022

Cynthia Hadley
NOTARY 6210107

**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

VERIFICATION

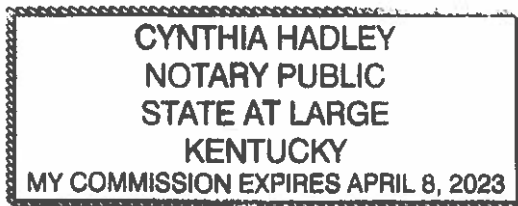
The undersigned, Richard Bast, being duly sworn, deposes and says that he has personal knowledge of the matters set forth in these Responses for which he is listed as a witness, and that the answers contained therein are true and correct to the best of his information, knowledge, and belief.

Richard W. Bast

Richard Bast

COMMONWEALTH OF KENTUCKY)
JEFFERSON COUNTY)

SUBSCRIBED AND SWORN TO before me by Richard Bast on this the 7th day of
July, 2022.



Cynthia Hadley
NOTARY
621067

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:
ELECTRONIC INVESTIGATION OF THE)
PROPOSED POLE ATTACHMENT) Case No.
TARIFFS OF INVESTOR OWNED) 2022-00105
ELECTRIC UTILITIES)

VERIFICATION

The undersigned, Jason Keller, being duly sworn, deposes and says that he has personal knowledge of the matters set forth in these Responses for which he is listed as a witness, and that the answers contained therein are true and correct to the best of his information, knowledge, and belief.



Jason Keller

COMMONWEALTH OF KENTUCKY)
JEFFERSON COUNTY)

SUBSCRIBED AND SWORN TO before me by Jason Keller on this the 7 day of July,
2022.



Notary Public, State at Large - Kentucky

I.D. No.:

My Commission Expires:

Chelsey Owens, Notary Public
State at Large, Kentucky
Notary ID KYNP33388
My Commission Expires 7/16/2025

**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

VERIFICATION

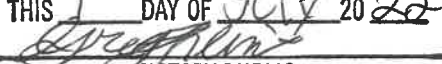
The undersigned, Patricia Kravtin, being duly sworn, deposes and says that she has personal knowledge of the matters set forth in these Responses for which she is listed as a witness, and that the answers contained therein are true and correct to the best of her information, knowledge, and belief.



Patricia Kravtin

STATE OF UTAH)
SUMMIT COUNTY)

SUBSCRIBED AND SWORN TO before me by Patricia Kravtin on this the 18th day of July, 2022.

STATE OF UTAH
COUNTY OF Summit
SUBSCRIBED AND SWORN TO BEFORE ME
THIS 1 DAY OF July 2022

NOTARY PUBLIC

