

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 Kentucky Power Company’s (“KPC’s”), First Request For Information To Kentucky Broadband And Cable Association.

RESPONSES

- 1. Please provide all schedules, tables, and charts included in the testimony and exhibits to the testimony of Patricia D. Kravtin in electronic format, with formulas intact and visible, and no pasted values.**

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 KPC. Subject to KBCA’s objections, KBCA responds that the schedules, tables, and charts referenced 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 her testimony.

WITNESS: Patricia Kravtin

- 2. Please provide all workpapers, source documents, and electronic spreadsheets used in the development of the testimony of Ms. Kravtin. The requested information, if so available, should be provided in an electronic format, with formulas intact and visible, and no pasted values.**

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>.

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 KPC. Subject to KBCA's objections, KBCA responds that the publicly available source documents and workpapers upon which Ms. Kravtin 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, on the matters addressed in her testimony, 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: Patricia Kravtin

3. **Please provide all workpapers, source documents, and electronic spreadsheets used in the development of the testimony of Jerry Avery. The requested information, if so available, should be provided in an electronic format, with formulas intact and visible, and no pasted values.**

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 KPC. Subject to KBCA's objections, KBCA responds that Mr. Avery did not use workpapers, source documents, or electronic spreadsheets in developing his testimony.

WITNESS: Jerry Avery

4. **Please provide all workpapers, source documents, and electronic spreadsheets used in the development of the testimony of Richard Bast. The requested information, if so available, should be provided in an electronic format, with formulas intact and visible, and no pasted values.**

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 KPC. Subject to KBCA's objections, KBCA responds that Mr. Bast did not use workpapers, source documents, or electronic spreadsheets in developing his testimony.

WITNESS: Richard Bast

5. **Please identify with particularity each and every objection KBCA or its predecessors (including but not limited to the Kentucky Broadband Cable Association, "KCTA"), or any of their members, have filed with respect the Kentucky Power's approved pole depreciation rates or the useful life of poles uses for purposes of determining the depreciation rate.**

ANSWER: KBCA objects that this Request seeks information that is unduly burdensome and disproportionate to the needs of this case. Nor is this information relevant given objections to KPC's depreciation rates or KPC's stated useful life of poles used for the purposes of determining the depreciation rate are not at issue in this proceeding. KBCA further objects this information is already within the possession, custody, and control of

KPC. Subject to its objection, KBCA does not have information within its possession, custody, or control that is responsive to this Request.

WITNESS: Jason Keller

6. **Please identify the per pole survey fee or survey fee estimates paid by each member of KBCA or its predecessors (including but not limited to the KCTA) from January 1, 2019 through the present. Please also identify the company to whom the survey fee or survey fee estimate was paid.**

ANSWER: KBCA objects that this Request seeks information that is unduly burdensome and disproportionate to the needs of this case. Nor is this information relevant given that the prepayment of survey fees is being address for the first time following the Commission's adoption of pole attachment regulations. Subject to its objection, KBCA does not have information within its possession, custody, or control that is responsive to this Request.

WITNESS: Jason Keller

7. **With respect to the testimony of Mr. Richard Bast, p. 10, please provide all support for the statement that Kentucky Power's survey cost estimate is "out of line with the industry norm."**

ANSWER: KBCA objects to the request to provide "all support" as untimely and unduly burdensome. The utilities have not submitted testimony in this proceeding yet, nor has the Commission set forth a briefing or hearing schedule. KBCA reserves the right to amend or supplement this Response and necessary. Subject to KBCA's objections, KBCA responds that, as set forth in Mr. Bast's testimony, KPC's survey estimate it out of line with the majority of the survey estimates in Kentucky. Bast Testimony at 9-10 & fn. 13. Most of the other utilities stated survey fees ranging from proposed estimates ranging from \$17-\$40, which is in line with my experience that per pole survey estimates fall in the \$30-\$50 range. *Id.* Kentucky Power, on the other hand, proposed an estimate of \$275 per pole. Based on KPC's responses to KBCA's RFIs, it appears KPC reached this number by failing to provide a per-pole calculation of the survey fee. Bast Testimony at 912 & fns. 13-16. As other utilities specified, it generally takes 10-30 minutes to evaluate a single pole, not the hours assumed by KPC. Bast Testimony at 912 & fns. 13-16.

WITNESS: Richard Bast

8. **With respect to the testimony of Mr. Jerry Avery, pp. 3-4 & 5-9, please clarify whether KBCA objects to ¶ 26, Sheet 16-11, of Kentucky Power's proposed tariff. If so:**
- a. **Please identify with specificity the portion of ¶ 26 to which KBCA objects and to which Mr. Avery's testimony is directed;**

- b. **Please identify the customer contract provision or other applicable term of service, if any, which allows any KBCA member to terminate a customer's service for nonpayment;**
- c. **Please produce a copy of each KBCA or KCTA member's customer contract or terms of service applicable to any period since January 1, 2019.**
- d. **With respect to Mr. Avery's testimony, pp 6-7, please identify with particularity the situations "Charter has faced...where a pole owner has threatened to remove its attachments during a billing dispute" including but not limited to the case where "a pole owner publicly threatened to remove Charter's attachments over a billing dispute, which caused widespread concern and confusion among its customers."**
- e. **Please provide all data and other information to support Mr. Avery's testimony at pp. 6-7 that concern was "widespread" or that customers were "confused."**
- f. **Please produce the call log or other data to support Mr. Avery's testimony at p. 7 that "Charter faced an onslaught of calls from customers worried their service would be disconnected."**

ANSWER: KBCA objects that this question calls for a legal analysis and response. KBCA further objects to subsections (b), (c), and (f) as unduly burdensome and disproportionate to the needs of this case. Nor is this information relevant given KBCA or KCTA's members' customer contracts are not at issue in this proceeding. Subject to its objections, KBCA responds as follows:

KBCA objects to ¶ 26 of KPC's proposed tariff to the extent it purports to allow KPC to disconnect KBCA's members' system to remove any or all of an attacher's attachments for so-called "noncompliance" with KPC's tariff, including for "failure to pay any of the charges, fees or amounts provided in this Tariff or any other substantial default." Kentucky Power Company Proposed Tariff, Original Sheet No. 16-11, ¶ 26.

As explained in Mr. Avery's testimony, Charter has faced instances in the past in Kentucky in which pole owners publicly threatened to remove attachments to gain leverage in disputes with Charter. The instance referenced in his direct testimony related to a situation in Hopkinsville, Kentucky, in which Charter disputed the proper calculation of the pole attachment rate, and the amount due to Hopkinsville Electric System. While the parties were negotiating the issue, the cable board notified the local newspaper and radio stations, stating it would remove Charter's cable attachments because Charter failed to pay its invoices, without mentioning the dispute. This caused widespread confusion among Charter's broadband and cable customers. Charter has also faced other situations outside of Kentucky where pole owners have threatened to remove Charter's attachments, including when the parties are engaged in good faith billing or pole attachment agreement disputes (even *after* Charter has instituted formal proceedings to resolve the dispute).

WITNESS: Jerry Avery (factual testimony only)

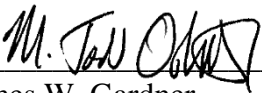
9. **In the event Kentucky Power provides written notice that a KBCA member must remove its facilities from Kentucky Power poles dues to a default under a pole attachment tariff or any special contract, please state whether 807 KAR 5:015, Section 6(2)(a) would allow a KBCA member request a stay of a notice of removal.**
- a. **If your answer is anything other than an unqualified “yes” please explain in detail the basis for your answer.**

ANSWER: KBCA objects that this question calls for a legal analysis and response. Subject to its objection, KBCA agrees § 6(2)(a) of 807 KAR 5:015 states “an existing attacher may request a stay of the action contained in a notice of removal received pursuant to subsection (1) of this section by filing a motion.” Section 1 of 807 KAR 5:015 § 6 states “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: (a) removal 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.”

WITNESS: N/A

Dated: July 7, 2022

Respectfully submitted,

/s/ 

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Counsel for KBCA

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

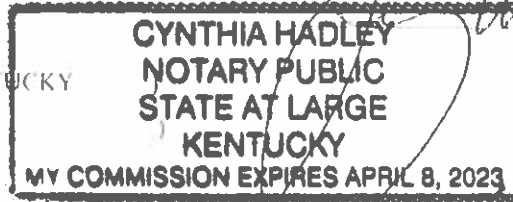
In the Matter of

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

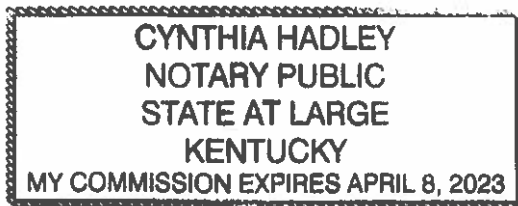
The undersigned, Richard Bast, being duly sworn, deposes and says that he has personal knowledge of the matters set forth in these Responses for which he is listed as a witness, and that the answers contained therein are true and correct to the best of his information, knowledge, and belief.

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

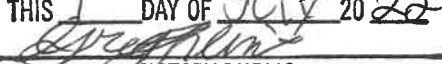
The undersigned, Patricia Kravtin, being duly sworn, deposes and says that she has personal knowledge of the matters set forth in these Responses for which she is listed as a witness, and that the answers contained therein are true and correct to the best of her information, knowledge, and belief.



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

