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**

and

In the Matter of:

ELECTRONIC INVESTIGATION OF THE PROPOSED POLE ATTACHMENT TARIFFS OF RURAL ELECTRIC COOPERATIVE CORPORATIONS	**)** **)** **)** **)**	**CASE NO. 2022-00106**

AT&T's REPLY BRIEF

October 18, 2022

Pursuant to the Kentucky Public Service Commission's ("Commission's") September 23, 2022 Order in this matter, AT&T[1] respectfully submits this reply brief in support of its objections to select terms and conditions of tariffs parties filed pursuant to 807 KAR 5:015 § 3(7). Various parties filed tariffs on February 28, 2022.

I. INTRODUCTION

Pursuant to Commission orders in Case Numbers 2022-00064, 2022-00105, and 2022-00106, AT&T filed its limited comments and objections on March 17, 2022 in Case Number 2022-00064, and testimony, including a copy of AT&T's comments related to the tariff filings of Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities ("KU"), Kentucky Power Company ("Kentucky Power"), and sixteen Rural Electric Cooperative Corporations ("RECCs")[2] on June 9, 2022 in Case Numbers 2022-00105 and 2022-00106. AT&T herein seeks to draw the Commission's attention to the most significant issues AT&T raised. Any failure to mention an issue that AT&T raised in its comments and testimony does not constitute a waiver of AT&T's stated issue.

II. General Issue – Definition of Attachment

One issue that crosses all the tariffs LG&E, KU, Kentucky Power, and the RECCs filed is the definition of "attachment."[3] While AT&T is sympathetic to the use of a broad definition of attachments for identification purposes, AT&T is concerned that tariff language that identifies the assessable rate as a "per attachment" rate can be abused under the tariffs' terms. AT&T pointed out that, for example, overlashing a second cable on an existing cable is accomplished without use

[1] BellSouth Telecommunications, LLC d/b/a AT&T Kentucky ("AT&T")
[2] AT&T's comments were limited to the sixteen RECCs with whom AT&T has business relationships. However, as the individual company tariffs are nearly identical, any Commission finding that addresses the sixteen named companies should be extended to the remaining companies as well.
[3] Testimony of Daniel Rhinehart, June 9, 2022 ("Rhinehart Testimony"), pp.6 to 9.

of additional usable space on the pole. Yet, a per-attachment-rate regime could lead pole owners to double recover – one time for the existing cable and again for the overlashed cable.

Another problematic example is set forth in LG&E and KU's tariffs that expressly define overlashing and risers as attachments. Risers are often placed in the "unusable" portion of the pole and may extend into the communications space, but they are placed in such a way to not inhibit placement of pole-to-pole cable attachments. Attachment rates should not apply to risers. Similarly, the RECCs imply that it is perfectly reasonable to charge an attacher for the attacher's placement of a down guy that occupies no additional usable space but, in fact, is provided to help ensure the safety and stability of the pole. These outcomes are unreasonable, yet are seemingly permissible pursuant to the filed tariffs.

AT&T recommends that rates be assessed per foot of occupied usable space on a pole. In the alternative, pole owners should be required to add terms to their tariffs specifying when "attachments" are not assessed the annual attachment rate.

III. Kentucky Power

AT&T challenges Kentucky Power's proposals that: (a) automatically withdraw make-ready estimates if not accepted and paid within 14 days; (b) require all untagged attachments to be tagged within 180 days; and (c) fail to provide a reasonable opportunity to refute the presumption of a claimed unauthorized attachment. In each instance, AT&T described why Kentucky Power's proposals are problematic and offered alternative tariff language to ameliorate the problem identified.[4]

Kentucky Power's responses to AT&T's issues are generally dismissive, but not persuasive. Automatic withdrawal of make-ready estimates is claimed to be permissible under the

[4] Rhinehart Testimony pp. 3 to 5 and Attachment DPR-2 pp. 18 to 21.

rules – so by implication, concerns about multiple collections of application fees for the same request can be ignored. All attachments should have already been tagged – so by implication, it is reasonable to impose penalties for untagged attachments, even if, as could be possible, AT&T were to convert its many thousands of attachments from joint use to tariffed service. Inventories can identify **presumed**[5] unauthorized attachments under the tariff – so by implication it is acceptable for the tariff to fail to describe how the presumption may be rebutted. In each instance, Kentucky Power asks attachers to trust it. AT&T asks the Commission to build the trust into the tariff with recommended language modifications.

IV. LG&E and KU

AT&T challenges LG&E and KU's proposals that: (a) automatically withdraw make-ready estimates 14 days after the estimate is presented; (b) include overlashing and risers in the "attachment" definition; (c) require that all attachments be tagged within 180 days of the effective date of the tariff; and (d) introduces ambiguous language relating to reimbursement of costs in evaluating proposed overlashing.[6] AT&T addressed issues (a) through (c) above. AT&T recommends the Commission follow the FCC's lead and prohibit charging for engineering evaluation of overlashing notifications.[7]

LG&E's and KU's responses are similar to Kentucky Power with their implicit assumption that AT&T's concerns should simply be ignored. LG&E and KU also assert that "none of KBCA's or AT&T's objections is based on a potential conflict with the Commission's new regulation."[8]

---

[5] Emphasis in Kentucky Power's Brief, p. 25.
[6] Rhinehart Testimony, pp. 5 to 6 (make ready), pp. 6 to 9 (definition of attachment), p. 9 (tagging), and pp. 9 to 10 (overlashing evaluation costs).
[7] See 47 C.F.R. § 1.1415(c). Supporting discussion can be found at FCC Third Report and Order and Declaratory Ruling, Decision No. FCC 18-111 in WC Docket No. 17-84 and WT Docket No. 17-79, August 2, 2018, at paragraph 116: "a utility may not charge a fee to the party seeking to overlash for the utility's review of the proposed overlash."
[8] LG&E and KU Brief, p. 2. Kentucky Power makes the **identical** statement at p.2.

Even if the concerns AT&T raised are not expressly addressed in the new rules, the intent of the rules is important to their interpretation and implementation in filed tariffs. As LG&E and KU, as well as Kentucky Power were eager to say, their tariffs have many sections – most of which received no objections. What they fail to acknowledge is that the Commission rules do not and cannot address each word or phrase in detail. Thus, AT&T's objections should receive the Commission's full consideration.

V. RECC Tariffs

AT&T raised the issues covering the following topics relative to RECC tariffs: (a) the tariff definition of attachment;[9] (b) the definition of "service drop;"[10] (c) the definition of "supply space;"[11] (d) the automatic withdrawal of make-ready estimates;[12] (e) whether attaching parties should be assessed attachment rates for attacher-supplied guys and anchors;[13] (f) five specific issues related to pole inventories;[14] (g) excessive requirements imposed on licensee design submissions;[15] (h) excessive requirements on overlashing advance notice;[16] and (i) excessive design requirements for mid-span taps.[17]

As with the Kentucky Power, LG&E and KU tariffs, AT&T recommends that attachments be billed on a usable space utilized basis[18] or in the alternative, non-billable attachments should be identified in the tariff. Service drops should not be restricted to the use of only one pole.[19] Tariff

[9] AT&T's comments and proposed solutions are detailed in the testimony of Daniel Rhinehart and in his Exhibit DPR-2. See Rhinehart Testimony pp. 11 to 12, Exhibit DPR-2, pages 2 to 4.
[10] Rhinehart Testimony, pp. 12 to 13, Exhibit DPR-2, pp. 4 to 5
[11] Rhinehart Testimony, pp. 13 to 14, Exhibit DPR-2, pp. 5 to 6
[12] Rhinehart Testimony, pp. 15 to 16, Exhibit DPR-2, pp. 6 to 8
[13] Rhinehart Testimony, pp. 16 to 17, Exhibit DPR-2, pp. 8 to 9
[14] Rhinehart Testimony, pp. 17 to 18, Exhibit DPE-2, pp. 9 to 12
[15] Rhinehart Testimony, pp. 18 to 19, Exhibit DPR-2, pp. 13 to 15
[16] Rhinehart Testimony, pp. 19 to 20, Exhibit DPR-2, pp. 15 to 16
[17] Rhinehart Testimony, p. 20, Exhibit DPR-2, pp. 16 to 18
[18] Rhinehart Testimony, p. 12
[19] Rhinehart Testimony, pp. 12 to 13

requirements relative to supply space and placement of attachments should not impose space-wasting requirements and the Commission should adopt AT&T's alternate language proposal .[20] Separately, AT&T opposes the space reservation language in the Blue Grass Energy tariff for 35 foot poles as the company reserves more than the total height of a 35 foot pole for its own use – potentially requiring pole replacements for every third party attachment.[21] Automatic withdrawal of make-ready estimates are not contrary to the Commission's rules, but can result in unnecessary resubmissions of applications, increased engineering, and generally increased administrative burdens. Automatic withdrawals may have the effect of driving up costs for new attachments whenever a pole owner also demands non-refundable application, survey, or engineering fees. AT&T offers appropriate substitute tariff language.[22] AT&T opposes RECC tariff terms that would assess attachment rates on attacher-supplied guys.[23] AT&T recommends that language from AT&T's proposed tariff be used to address five inventory audit and inspection issues.[24]

The RECC's propose "Specifications for Attachments," overlashing notice requirements, and requirements related to mid-span taps that impose costly state-licensed professional engineer requirements that do not allow for the use of qualified attacher self-provisioned engineering of attachments. Further, the overlashing requirements effectively convert "notice," which is reasonable and required by the Commission's new rules, into an application which is not required by the Commission's new rules. For each of these issues, AT&T proposes specific tariff language changes.[25] Finally, AT&T recommends that Big Sandy RECC change the cover sheet name of its

[20] Rhinehart Testimony, pp. 13 to 14
[21] Rhinehart Testimony, pp. 14 to 15.
[22] Rhinehart Testimony, pp. 15 to 16.
[23] Rhinehart Testimony, pp16 to 17 and p. [TBD] infra.
[24] Rhinehart Testimony, pp. 17 to 18.
[25] Rhinehart Testimony, pp. 18 to 20.

tariff as the title appears to limit the availability of Big Sandy's pole attachment service to only CATV customers.[26]

VI. Conclusion

AT&T recommends targeted modifications to Kentucky Power, LG&E and KU, and RECC tariffs to align the tariffs with the spirit and intent of the new Commission pole attachment rules. In most instances, AT&T has offered specific revised tariff language associated with each recommendation. AT&T respectfully requests adoption of its stated positions.

Respectfully Submitted

John T. Tyler
Assistant Vice President-Senior Legal Counsel
AT&T Services, Inc.
1025 Lenox Park Blvd., NE
Atlanta, GA 30319
(404) 889-4711
Email: jt9523@att.com

ATTORNEY FOR AT&T

[26] Rhinehart Testimony, p. 20.