

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

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In the Matter of: )  
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)  
ELECTRONIC APPLICATION OF DUKE ) CASE NO. 2022-00372  
ENERGY KENTUCKY, INC. FOR (1) AN )  
ADJUSTMENT OF ELECTRIC RATES; (2) )  
APPROVAL OF NEW TARIFFS; (3) )  
APPROVAL OF ACCOUNTING )  
PRACTICES TO ESTABLISH )  
REGULATORY ASSETS AND )  
LIABILITIES; AND (4) ALL OTHER )  
REQUIRED APPROVALS AND RELIEF )  
)

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**KENTUCKY BROADBAND AND CABLE ASSOCIATION’S**  
**POST HEARING MEMORANDUM**

Pursuant to the Commission’s May 15, 2023, Order, the Kentucky Broadband and Cable Association (“KBCA”)<sup>1</sup> respectfully submits this post-hearing memorandum.

**INTRODUCTION**

For the third time in five years, Duke seeks materially to increase its pole attachment rental rates. This time, Duke seeks significant, double-digit percentage increases that far outstrip inflation – by nearly four times.<sup>2</sup> These increases are based on confirmed errors that over recover Duke’s costs of accommodating third-party attachments and drive up communications providers’

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<sup>1</sup> 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>.

<sup>2</sup> Duke Energy Kentucky, Inc., *Rate Distribution Pole Attachments* (K.P.S.C. 2022), *available at* [kentucky-rate-case-public-notice-ad.pdf \(duke-energy.com\)](https://www.duke-energy.com/kentucky-rate-case-public-notice-ad.pdf) (proposing increasing two-user rate from \$8.59 to \$9.99 and three-user rate from \$7.26 to \$8.61).

costs of broadband deployment – particularly in rural areas where it takes more poles to reach potential customers and there are more poles than customers. Duke’s rates are unjust and unreasonable, and the Commission should order the utility to correct the errors to produce lawful rates that promote instead of impede broadband.

KBCA and its members know the critical importance of reasonable pole attachment rental rates first hand. KBCA’s members are connectivity companies offering broadband, voice, mobile, and video services to more than 1,000,000 homes and businesses across the Commonwealth, serving some of the Commonwealth’s largest businesses, hospitals, and anchor institutions. These members depend on access to poles on reasonable rates to construct, operate, and – critically – expand their communications networks across Kentucky. Reasonable rates are especially critical now, as KBCA’s members invest more than \$100 million annually in infrastructure and technology to upgrade their network facilities in urban areas and expand access to broadband in rural areas across the Commonwealth.

For KBCA members to continue to deploy broadband throughout Kentucky, they must access utility poles on just and reasonable rates, terms, and conditions. To that end, KBCA intervened in the Commission’s recent pole attachment proceedings to assist it in adopting just and reasonable pole attachment terms and conditions. And KBCA intervened in this proceeding for similar reasons. Just as reasonable terms are essential for providing timely and cost-effective broadband in Kentucky, the rates charged by pole owners similarly impact broadband deployment. When pole owners impose excessive, unlawful pole attachment rental rates, they over recover their costs and improperly drive up costs to provide broadband.

KBCA therefore intervened here to ensure its members can access Duke’s poles at reasonable rates, which Duke’s proposed increases put at risk. Duke seeks to increase its pole

attachment rental rates for the third time in five years,<sup>3</sup> this time seeking a *16 percent* increase for its two-user poles and a *19 percent* increase for three-user poles. Duke’s significant pole attachment rate increases substantially impact communications attachers’ deployment decisions and costs to provide broadband. Duke’s rates apply on a per-pole basis and attachers often must attach to thousands – or even *tens* of thousands – of poles to serve subscribers in any given community. This is particularly true in rural areas, where KBCA members must attach to more poles to reach fewer customers. Sharp and unexpected rental rate increases, like those Duke seeks, raise providers’ costs to provide and expand service, and can impact investment decisions.

Nor are Duke’s proposed increases warranted or fair. Duke’s proposed increases are the product of two substantial errors that improperly inflate its rates, as demonstrated through testimony, including during the recent evidentiary hearing. *First*, KBCA established through uncontroverted hearing evidence based on Duke’s own data that there is a major discrepancy – indeed, as high as *27 percent* – between the actual distribution of third party attachments on Duke’s poles and *Order 251*’s outmoded presumed distribution.<sup>4</sup> That variance results in inflated and

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<sup>3</sup> Compare Duke Energy Kentucky, Inc., *Rate Distribution Pole Attachments* (K.P.S.C. 2018), available at <https://psc.ky.gov/tariffs/electric/duke%20energy%20kentucky/cancelled%20tariff%20pages/2020/Rate%20DPA%20-%20Distribution%20Pole%20Attachments/05-01.pdf> (setting forth Duke’s 2018 pole attachment rates of \$5.92 for a two-user pole and \$4.95 for a three-user pole), with Duke Energy Kentucky *Rate Distribution Pole Attachments* (K.P.S.C. 2020), available at <https://psc.ky.gov/tariffs/Electric/Duke%20Energy%20Kentucky/Cancelled%20Tariff%20Pages/2020/Rate%20DPA%20-%20Distribution%20Pole%20Attachments/10-16.pdf> (increasing Duke’s 2020 pole attachment rates to \$8.59 for a two-user pole and \$7.26 for a three-user pole), and Duke Energy Kentucky, Inc., *Rate Distribution Pole Attachments* (K.P.S.C. 2022), available at [kentucky-rate-case-public-notice-ad.pdf \(duke-energy.com\)](https://psc.ky.gov/tariffs/Electric/Duke%20Energy%20Kentucky/Cancelled%20Tariff%20Pages/2022/Rate%20DPA%20-%20Distribution%20Pole%20Attachments/05-01.pdf) (proposing increasing Duke’s two-user rates to \$9.99 and three-user rate to \$8.61); 5/9/23; VR: 9:28:30-9:29:21.

<sup>4</sup> See *In The Matter Of The Adoption Of A Standard Methodology For Establishing Rates For CATV Pole Attachments*, Administrative Case No. 251, Order at 1 (K.P.S.C. 1982) (attached as Exhibit 2 to the testimony of Patricia Kravtin) (“*Order 251*”) (setting forth the methodology by which Kentucky establishes pole attachment rates).

unreasonable pole attachment rental rates. Additionally, Duke failed to include data on its 50-foot poles in its three-user rate, even though it increasingly uses poles of that size and therefore has a growing number of attachments on such poles. To correct these errors, the Commission should require Duke to recalculate its rates using the actual distribution of attachments on its poles, including on its 50-foot poles.

*Second*, Duke identified 2,464 non-unitized poles that it did not include in its pole count in its rate calculation, and for which it does not record pole height data. Failing to include these poles in its pole count results in rates that likely overstate Duke's gross per-pole investment and therefore produce inflated rental charges. However, because Duke failed to provide data related to its non-unitized poles, there is no way for KBCA – or the Commission – to determine the actual impact of adding thousands of non-unitized poles to the investment and whether Duke included the appropriate number of non-unitized poles in its pole attachment rate calculation. To correct these problems, the Commission should require Duke to include its actual count of non-unitized poles or to reasonably estimate the count to include in its rate calculations.

### **BACKGROUND**

Among the many issues before the Commission in this proceeding are the just and reasonable rental rates that Duke is permitted to charge third-party communications providers to make use of otherwise unused pole space. Those rates are governed by *Order 251*, which includes, among other requirements, certain presumptions in calculating pole attachment rental rates. But, as the Commission has made expressly clear, those base presumptions are properly rebutted when there is a major discrepancy between a presumption and the actual characteristics of Duke's plant. Here, the evidence shows the Commission's historic presumptions are properly rebutted in favor of actual data or estimates based on such data – lest Duke be permitted to exploit outmoded

presumptions to over recover costs at the expense of broadband providers and consumers and, critically, rural broadband deployment.

*Administrative Order No. 251.* Kentucky’s pole attachment rate is the product of the embedded cost of an average bare pole, the annual carrying charge, and the percentage of usable space occupied by a third party attachment. *Id.* at 7. Under *Order 251*, the percentage of usable space occupied by a third party attacher is calculated by dividing the space occupied by an attacher (usually 1 foot) by the usable space (the taller the pole, the more usable space) on a pole. *Id.* at 13. To determine the usable space, *Order 251* subtracts the *unusable* space from the average height of a pole. *Id.*

Under *Order No. 251*, the average height of a pole depends on whether there are two users (attachers) or three. *Id.* at 11. The Commission presumes two attachments “are commonly made on 35 foot and 40 foot poles.” *Id.* Assuming “[a]n equal distribution” of attachments on 35 and 40 foot poles thus “produce[s] a composite average pole of 37.5 feet.” *Id.* VR: 5/11/23; 11:01:38-11:04:56. Similarly, the Commission presumes three-user poles are “commonly 40 feet and 45 feet long,” producing an average length of 42.5 feet, assuming the two lengths are weighted equally.<sup>5</sup> *Id.*

From these average pole heights – 37.5 feet and 42.5 feet – the Commission then subtracts the *unusable* space. *Id.* at 13. This includes six feet of pole buried underground, 20 feet of clearance to the lowest attachment, and a 3.33 foot safety space. *Id.* at 13. Subtracting the unusable

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<sup>5</sup> *Order 251* does not explicitly address 50-foot poles, but notes “that poles . . . more than 45 feet long are used so infrequently . . . they should be excluded from the calculation.” *Id.* at 8. But times have changed markedly since 1982. Today, Duke routinely uses 50-foot distribution poles. Duke Response to KBCA-DR-02-002. As such, it has construction standards setting below and above ground clearance standards for such poles, similar to those relied on by the Commission in *Order 251* for 35-, 40-, and 45-foot poles. Duke Response to KBCA-PHDR-01-003.

space from the average height of a pole produces 8.17 feet of usable space on a 37.5 foot, two-user pole, and 13.17 feet of usable space on a 42.5 foot, three-user pole. *Id.*

Of this usable space, an attacher is responsible for the one foot its attachments physically occupy (including clearance from the next communications attacher). *Id.* Thus, the usable space factor established by the Commission’s presumptions in *Order 251* for a two-user pole is 12.24% (one foot divided by 8.17 feet of usable space). And the usable space factor for a three-user pole is 7.59% (one foot divided by 13.17 feet of usable space).

Duke used these presumptions – and the resulting usable space factors – in calculating its proposed pole attachment rates in this proceeding. *See, e.g.,* BLS-7; BLS-Rebuttal-1; Sailers Rebuttal Testimony at 12:14-14:6. But these presumptions are only appropriate where there is no “major discrepancy” between the “contested element and the average characteristics of the utility.”<sup>6</sup> *Order 251* at 16-17; *see also In The Matter Of The Adoption Of A Standard Methodology For Establishing Rates For CATV Pole Attachments*, Administrative Case No. 251, Amended Order at 19 (K.P.S.C. 1982) (attached as Exhibit 3 to KBCA’s Response to Duke DR 1-7) (“*Amended Order 251*”).

***Duke’s Pole Plant.*** While *Order 251* presumes that third party attachments are distributed equally between 35 foot and 40 foot poles (two-user poles) or 40 foot and 45 foot poles (three-user poles), Duke’s data shows that attachments on its poles are not so evenly distributed. Duke Response to KBCA-DR-02-002. Today, the majority of Duke’s third party attachments (70%) are

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<sup>6</sup> Kentucky’s pole attachment formula thus operates similarly to the FCC rate formula, which allows the computation of usable space based on the average height of the utility’s actual pole plant where actual data or a statistically significant sample of data is available. Kravtin Testimony at 13; *see* 47 U.S.C. § 1.1410 (usable space presumptions “may be rebutted by either party”).

on 40-foot and 45-foot poles. *Id.* And 35-foot and 50-foot poles now have almost an equal number of attachments (12% and 10%, respectively), as set forth in Duke’s chart below:

2021	Description	Quantity
	Pole: steel, all sizes	0
	Pole: Wood, 30' or less	2,192
	Pole: Wood, 35'	8,606
	Pole: Wood, 40'	28,669
	Pole: Wood, 45'	23,245
	Pole: Wood, 50'	7,164
	Pole: Wood, 55'	2,574
	Pole: Wood, 60'	993
	Pole: Wood, 65'	282
	Pole: Wood, 70'	142
	Pole: Wood, 75'	35
	Pole: Wood, 80'	16
	Pole: Wood, 85'	3
	Pole: Wood, 90'	0
	Pole: Wood, 95'	0
	Unknown	886
		<u>74,807</u>

*Id.*

Given that Duke’s third-party attachments are not evenly distributed between 35-foot and 40-foot poles, or between 40-foot and 45-foot poles, Duke’s actual pole plant deviates significantly

from *Order 251*'s traditional presumptions. For two-user poles, Duke's actual plant varies from *Order 251*'s presumption by 27 percent, as depicted in KBCA-3:

<b>Duke Actual Distribution</b>					
2021	Description - 2 User Poles	Quantity of Attachments	Percentage of Attachments	Pole Height	Weighted by Percentage of Attachments
	Pole: Wood, 35'	8,606	23.09%	35	8.1
	Pole: Wood, 40'	28,669	76.91%	40	30.8
	<b>Total</b>	<b>37,275</b>	<b>100.00%</b>		<b>38.85</b>

  

<b>Admin 251 Presumed Distribution</b>					
2021	Description - 2 User Poles	Quantity of Attachments	Percentage of Attachments	Pole Height	Weighted by Percentage of Attachments
	Pole: Wood, 35'		50.00%	35	17.5
	Pole: Wood, 40'		50.00%	40	20.0
	<b>Total</b>		<b>100.00%</b>		<b>37.50</b>

  

<b>Variance</b>					
2021	Description - 2 User Poles	Quantity of Attachments	Variance by Percentage of Attachments	Pole Height	Weighted by Percentage of Attachments
	Pole: Wood, 35'		26.91%	35	9.4
	Pole: Wood, 40'		-26.91%	40	(10.8)
	<b>Total</b>		<b>0.00%</b>		<b>(1.35)</b>

Source: KBCA-DR-02-002

VR: 5/11/23; 11:14:10-11:21:08.



Similarly, for three-user poles, Duke’s plant varies from *Order 251*’s presumption by 12.13 percent for 50-foot poles, 10.65 percent for 45-foot poles, and 1.47 percent for 40-foot poles.

<b>Duke Actual Distribution</b>					
2021	Description - 3 User Poles	Quantity of Attachments	Percentage of Attachments	Pole Height	Weighted by Percentage of Attachments
	Pole: Wood, 40'	28,669	48.53%	40	19.4
	Pole: Wood, 45'	23,245	39.35%	45	17.7
	Pole: Wood, 50'	7,164	12.13%	50	6.1
	<b>Total</b>	<b>59,078</b>	<b>100.00%</b>		<b>43.2</b>

  

<b>Admin 251 Presumed Distribution</b>					
2021	Description - 3 User Poles	Quantity of Attachments	Percentage of Attachments	Pole Height	Weighted by Percentage of Attachments
	Pole: Wood, 40'		50.00%	40	20.0
	Pole: Wood, 45'		50.00%	45	22.5
	Pole: Wood, 50'		0.00%	50	-
	<b>Total</b>		<b>100.00%</b>		<b>42.5</b>

  

<b>Variance</b>					
2021	Description - 3 User Poles	Quantity of Attachments	Variance by Percentage of Attachments	Pole Height	Weighted by Percentage of Attachments
	Pole: Wood, 40'		1.47%	40	0.6
	Pole: Wood, 45'		10.65%	45	4.8
	Pole: Wood, 50'		-12.13%	50	(6.1)
	<b>Total</b>				<b>(0.7)</b>

Source: KBCA-DR-02-002

KBCA-4; VR: 5/11/23; 11:14:10-11:21:08.

Recalculating Duke’s two- and three-user rates to reflect its actual distribution of attachments on its poles results in rates that are substantially lower than those the utility seeks. For a two-user pole, the weighted average pole height of the population of 35- and 40-foot poles used by Duke for attachments is 38.85 feet, rather than 37.5 feet. Using the actual distribution results in a substantially lower usable space factor of 10.50 percent (the lower the space factor, the lower the rate), rather than the 12.24 percent proposed by Duke. Kravtin Testimony at 15. In turn, this results in a lower two-user rate of \$8.26, instead of \$9.99 – more than a dollar lower than Duke’s proposed rate. *Id.*; BLS-7.

Similarly, for a three-user pole, the actual weighted average pole height of the population of 40-, 45-, and 50-foot poles used by Duke for attachments is 43.2 feet, as opposed to 42.5 feet. Kravtin Testimony at 15. The resulting usable space factor is 7.21 percent (versus the presumptive 7.59 percent), which produces a substantially lower three-user rate of \$7.56, or more than a dollar lower than Duke’s proposed rate of \$8.61. *Id.*; BLS-7. As explained above, every dollar increase in pole attachment rates has a meaningful impact on broadband deployment, particularly in rural areas where there are far more poles than prospective customers.

***Duke’s Plant Records.*** While Duke reports 7,164 50-foot poles in 2021, its pole attachment counts do not include poles that have not yet been “unitized.” *See, e.g.,* Duke Response to KBCA-PHDR-01-002. A “non-unitized” pole is one that has been recorded on the utility’s property records as an unspecified property unit and is included in its pole investment account, but not necessarily in the pole count used to calculate the pole attachment rate. VR: 5/11/23; 10:29:34-10:29:43. In other words, a non-unitized pole exists when a pole asset is placed in service, and the utility classifies the asset to the appropriate utility account (Account 364 in the case of poles) based on the work order, but the utility’s accounting processes have not finalized the classification of the work order at the retirement/property unit level (*e.g.,* pole height/type). VR: 5/11/23; 10:29:43-10:30:09. Depending on the lag in the utility’s accounting processes, non-unitized poles can remain unspecified for a year – or more. VR: 5/11/23; 10:30:09-10:30:30.

Here, Duke identified 2,464 non-unitized poles that it had not “finalized” when it submitted its rate calculation. Duke Response to KBCA-DR-02-005-Attachment; Kravtin Testimony at 7-8. In his rebuttal testimony, Mr. Sailors identified an additional seventy-one 35-foot, 40-foot, and 45-

foot poles that had not been unitized as of December 31, 2021, but were unitized in 2022.<sup>7</sup> Sailers Rebuttal Testimony at 13:16-14:14. Because the remaining poles were not unitized into specific retirement units (*i.e.*, poles of specified heights), they were not included in Duke’s pole count, and if any investment associated with these poles was included, the result is likely an inflated average gross per-pole investment and unlawfully high rates. Duke Response to KBCA-DR-02-005-Attachment; BLS-7; BLS-Rebuttal-1.<sup>8</sup>

### **STANDARD**

The Commission reviews Duke’s pole attachment rates under the longstanding “fair, just and reasonable” standard. K.R.S. § 278.030(1). Here, the Commission should reject Duke’s proposed pole attachment rates for the reasons discussed below.

### **ARGUMENT**

Duke’s proposed rates are the product of critical errors that generate excessive recovery, and are therefore not fair, just, or reasonable. As KBCA established – and Duke did not contest – there is a major discrepancy between the actual distribution of Duke’s attachments and *Order 251*’s historic presumptions that seriously inflates Duke’s rates. In addition, Duke’s failure to include the majority of poles classified as non-unitized poles in 2021 in its pole rate calculation based on year end 2021 costs likely further improperly inflates its rates. Accordingly, the

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<sup>7</sup> In response to KBCA’s post hearing data requests, Duke provided specific information, including work orders, related to the 71 poles identified by Mr. Sailers as unitized in 2022, but failed to include any information related to 50-foot poles unitized in 2022. Duke Response to KBCA-PHDR-01-001. For example, in its response to KBCA’s post hearing data request, Duke identified sixteen 35-foot poles and three 45-foot poles unitized in work order D2210DL1. *Id.* But Duke did not disclose the twelve 50-foot poles that were unitized as part of the same work order. KBCA-DR-01-009-Attachment, Tab C-2022, Row 292.

<sup>8</sup> Because Duke does not record the height of non-unitized poles, the Commission cannot determine the impact of including these non-unitized poles in Duke’s rate calculation. *See* Duke Response to KBCA-DR-01-005-Attachment at column Q; BLS-Rebuttal-1.

Commission should require Duke to correct these errors and recalculate its rates based on its uncontested actual distribution of pole attachments and the inclusion of a reasonable estimate of non-unitized poles in its pole count. Correction of those substantial errors will generate far more reasonable rates that do not frustrate broadband investment and deployment in the Commonwealth.

**I. THE COMMISSION SHOULD ORDER DUKE TO USE ITS ACTUAL POLE DISTRIBUTION DATA BECAUSE THERE ARE MAJOR DISCREPANCIES BETWEEN THOSE DATA AND *ORDER 251*'S PRESUMPTIONS.**

The Commission should order Duke to base its pole attachment rental rate calculations on its actual attachment distributions rather than on *Order 251*'s historic presumptions. As the Commission recognized in that *Order*, those presumptions are properly rebutted based on evidence of a “major discrepancy” between the assumed and actual distributions of attachments. *See Amended Order 251* at 16-17; *Order 251* at 19; VR: 5/11/23; 11:01:38-11:04:56. A “major” discrepancy – in plain English – is just one that is “notable” or “conspicuous in effect.” *Amended Order 251* at 19; *see also* Merriam-Webster, *Major*, available at <https://www.merriam-webster.com/dictionary/major>.

Based on Duke's own data, and as acknowledged by Duke on cross examination, there is a 27 percent variance between the actual distribution of attachments on two-user (35- and 40-foot) poles and the 50/50 split contemplated by *Order 251*. KBCA-3; VR: 5/11/23; 11:14:10-11:21:08. A more than 25 percent variance is most certainly “notable” and “conspicuous.” *Order 251* at 16-17; Merriam-Webster, *Major*, available at <https://www.merriam-webster.com/dictionary/major>. Indeed, it is profound. Duke did not attempt to argue – let alone submit evidence – otherwise. That major variance results in an attachment rate that is 16 percent higher than Duke's current attachment rate – a variance that is obviously “notable” and “conspicuous” for attachers who must

attach to thousands of Duke's poles. Kravtin Testimony at 5 & 11 (noting Charter Communications alone attaches to roughly 35,000 Duke poles).

Likewise, the difference between *Order 251*'s presumptions and the actual distribution of attachments on Duke's three-user poles is more than "notable." Fifty foot poles now make up roughly 12 percent of Duke's plant, while *Order 251* contemplated no such poles. *See, e.g.*, *Order 251* at 8. As a result, there are 10.65 percent and 1.47 percent variances between the actual distribution of attachments on 45-foot and 40-foot poles, respectively, and *Order 251*'s presumptions. KBCA-4; VR: 5/11/23; 11:14:10-11:21:08. Those variances will inevitably continue to increase as Duke increasingly replaces its shorter poles with taller ones. *See* Kravtin Testimony at 13. Duke's 19 percent increase is certainly a "conspicuous" change that will increase costs for Duke's third-party attachers – and their customers.

Duke failed to come forward with any evidence (or even argument) to counter the major variance evidence introduced by KBCA, even though any such evidence is within Duke's exclusive possession. Indeed, at hearing, Duke's witness declined even to comment on what constitutes a "major discrepancy," refusing to disagree with KBCA's definition and otherwise deferring to the Commission. *See, e.g.*, VR: 5/11/23; 11:11:45-11:12:19.

Because KBCA has demonstrated (and Duke has not even challenged) a major discrepancy between Duke's actual and presumed attachment distributions, the Commission should order Duke to recalculate its two-user pole attachment rate using the weighted average pole height of its 35- and 40-foot poles rather than *Order 251*'s presumptions. Using that average results in a two-user pole attachment rental rate of \$8.26.<sup>9</sup> Kravtin Testimony at 15. The Commission should likewise

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<sup>9</sup> Even if the Commission excludes Duke's non-unitized poles – which it should not, as explained below – the pole attachment rate using the actual distribution of Duke's poles and the number of poles identified by Mr. Sailors would be \$8.57. BLS-Rebuttal-1; Kravtin Testimony at 15.

require Duke to recalculate its three-user pole attachment rate using the weighted average of its 40-, 35-, and 50-foot poles rather than *Order 251*'s presumptions. That correction results in a three-user pole attachment rental rate of \$7.56.<sup>10</sup> *Id.* These recalculated rates will prevent Duke from over recovering its costs of attachments and ensure KBCA's members just and reasonable rates that will advance the continued roll out of rural broadband throughout the Commonwealth.

## **II. THE COMMISSION SHOULD REQUIRE DUKE TO INCLUDE AN ESTIMATE OF ITS NON-UNITIZED POLES IN ITS POLE COUNT.**

The Commission should also order Duke to include an estimate of the full number of non-unitized poles in the pole count portion of its rental rate calculations. Duke does not dispute that it is proper and appropriate for it to include previously non-unitized poles whose "values are available" in its calculation – nor could it. Sailers Rebuttal Testimony at 12:17-18. Excluding non-unitized poles from the pole count, all else being equal, improperly inflates Duke's pole rate because its rates are calculated on a per-unit cost. Kravtin Testimony at 8.

The Commission must rely on an estimate of Duke's unitized poles because Duke cannot (or will not) identify the actual heights and investment associated with its non-unitized poles broken down by pole heights. *See, e.g.*, Duke Response to KBCA-PHDR-01-002. As the hearing evidence confirmed, Duke does not keep accurate plant records. *See, e.g.*, Sailers Rebuttal Testimony at 15:1-8; VR: 5/10/23; 9:35:00-9:40:42 (testimony of J. Ziolkowski); VR: 5/11/23; 10:58:00-11:00:10 (testimony of B. Sailers). As a result, attachers cannot know the precise impact that Duke's failure to include non-unitized poles in its pole count has on the rates. *Id.* This lack of transparency is particularly troubling given Duke decides how long it takes to unitize its plant

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<sup>10</sup> Even if the Commission does not require Duke to include 50-foot poles in its three-user rate, it should nevertheless order Duke to recalculate its rate using its actual distribution of attachments on its 40-foot and 45-foot poles, which would result in a three-user rate of \$8.18. VR: 5/11/23; 11:29:00-11:30:47.

– which is often *years* – and where the relatively simple steps in placing the pole in service and unitizing it should not take years to accomplish. VR: 5/11/23; 10:30:09-10:30:30; Duke Response to STAFF-PHDR-01-012 (explaining Duke’s process of installing and unitizing a pole).

To ensure Duke’s rates are just and reasonable, the Commission should therefore require Duke to recalculate them using a reasonable approximation of all its non-unitized poles. As Ms. Kravtin explained, the Commission should require Duke to add a number of the 35-foot, 40-foot, and 45-foot non-unitized poles to the pole count in its rate formula based on the same proportion of those poles that it otherwise used in its formula. Kravtin Testimony at 11. Doing so will ensure that Duke’s rates are lawful, reflect the appropriate cost recovery, and, at the same time, provide Duke the incentive to keep accurate plant records so neither attachers nor the Commission need to go through this exercise again.<sup>11</sup>

### **CONCLUSION**

For the third time in five years, Duke again seeks to increase its pole attachment rates considerably – to the detriment of communications providers investing in the deployment of broadband services to Kentuckians, including in underserved and unserved areas, and to broadband consumers. The evidence in this proceeding confirms that Duke’s proposed rates are unfair, unjust, and unreasonable because they are based on demonstrated errors that generate unlawful and inflated rates. Duke’s proposed, but unlawful, increases, if allowed to go into effect as is, will raise costs for broadband consumers in Kentucky at a time when KBCA’s members are focused

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<sup>11</sup> Alternatively, the Commission could adopt the Ohio Public Utilities Commission’s approach by requiring Duke to estimate its non-unitized pole count using the current average cost of an installed pole based on pole replacements for the past year. *In the Matter of the Application Of Toledo Edison Company To Update Its Pole Attachment Rate*, Case No. 20-1645-EL-ATA, Review & Recommendation (Public Utilities Commission of Ohio 2020) (attached as Exhibit 4 to Kravtin’s Testimony).

on expanding service to unserved and underserved areas of the Commonwealth and access to broadband is increasingly vital. Accordingly, the Commission should require Duke to recalculate its rates using the actual distribution of attachments on Duke's poles and a reasonable estimate of non-unitized poles, as proposed by KBCA herein.

Dated: June 9, 2023

Respectfully submitted,

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