

**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  
REPLY IN SUPPORT OF POST HEARING MEMORANDUM**

Pursuant to the Commission’s May 15, 2023, Order, and in response to Duke Energy Kentucky, Inc.’s (Duke’s”), Initial Post Hearing Brief (“Duke Br.”), the Kentucky Broadband and Cable Association (“KBCA”) respectfully submits this reply in support of its post-hearing memorandum.

**ARGUMENT**

Duke, for the third time in five years, seeks once again to materially increase the rates it charges to third-party communications providers dependent on its poles to maintain and extend their broadband networks. Its proposed increases – which far exceed the inflation rate – are demonstrably unreasonable, for the reasons KBCA presented at hearing and in its post-hearing brief. The Commission should reject Duke’s proposed rates and require Duke to implement lawful ones. Duke’s proposed rates are based on several errors that would result in over-recovery from

communications attachers, and, in turn, would raise the costs of broadband deployment if allowed, especially in rural areas where more poles are necessary to reach fewer broadband customers.

As KBCA explained in its post-hearing brief, Duke failed to include the actual distribution of attachments on its poles in its rate calculation. That omission is significant because – as KBCA demonstrated through uncontroverted evidence – there is a major discrepancy between the number of attachments on Duke’s poles and the presumptions Duke applies from *Order 251* for both two-user and three-user poles. That disconnect alone results in inflated, unjust, and unreasonable pole attachment rates. Duke also failed to include its non-unitized poles in its pole count, which also likely operates to overstate Duke’s gross per-pole investment and, in turn, inflate its rental charges.

These two errors allow Duke to over-recover its costs at the expense of KBCA’s members’ abilities to reach under- and unserved residents in Kentucky. As the Commission has emphasized in its recent broadband proceedings, rural broadband deployment is a critical policy imperative,<sup>1</sup> and attachment costs have a direct and significant impact on a broadband provider’s ability to reach rural customers in a timely and efficient matter. Increasing pole attachment rates by more than a dollar per attachment – and more than \$4.00 per attachment in the last five years, as Duke proposes here – would impact attachers’ ability to bring broadband to rural customers because deployment to rural areas is already costly considering pole to customer ratios. In order for broadband providers to expand their broadband networks throughout Kentucky, the Commission should ensure that Duke’s rates are reasonable and tied to the actual characteristics of its pole plant.

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<sup>1</sup> See, e.g., *Electronic Investigation of the Proposed Pole Attachment Tariffs Of Investor Owned Electric Utilities*, Case No. 2022-00105 (K.P.S.C. 2022); 807 K.A.R. § 5:015, Regulatory Impact Analysis & Tiering Statement, at 34 (noting the need to “promote the deployment of broadband services in the Commonwealth as exhorted by [the] General Assembly in House Bill 320”).

Duke itself did not make any effort to address these issues during the proceeding, or even now, in its post-hearing brief. Instead, Duke merely recites the same generic points it presented in its pre-filed testimony and asserts (without evidence or argument) the rates KBCA proposes are “unauthorized,” not based on a major discrepancy, or would somehow require additional undefined studies. Duke’s assorted assertions disregard the evidence in this proceeding and are otherwise mistaken. As KBCA demonstrated during the hearing and explained in its post-hearing brief, Duke’s arguments are easily rebutted by the actual, uncontroverted testimony adduced at hearing.

1. Duke’s assertion that KBCA’s rate expert, Ms. Kravtin, proposed “unauthorized” changes to the Commission’s pole attachment methodology is mistaken. To the contrary, *Order 251* expressly authorizes attachers to challenge a utility’s pole attachment rates where there is a “major discrepancy” between the “contested element and the average characteristics of the utility.” *Order 251* at 16-17. That is the case here.

KBCA has demonstrated a “major discrepancy” between Duke’s actual plant and *Order 251*’s historic presumptions as it pertains to both two-user and three-user poles. Indeed, KBCA presented *uncontested* evidence that Duke’s actual plant varies from *Order 251*’s presumptions for two-user poles by as much as 27 percent (for attachments to 35 foot poles), and by 11 to 12 percent for three-user poles (for attachments to 45- and 50-foot poles, respectively). KBCA-3; KBCA-4; KBCA Br. At 8-9. While *Order 251* does not explicitly define “major discrepancy,” as KBCA has explained, the ordinary meaning of the word “major” is “notable” or “conspicuous.” *Order 251* at 16-17; Merriam-Webster, *Major*, available at <https://www.merriam-webster.com/dictionary/major>. Duke did not contest this definition at hearing, and it puts forward no different understanding now in its brief. *See, e.g.*, VR: 5/11/23; 11:11:45-11:12:19. Nor has Duke presented any evidence, explanation, or argument showing that its plant’s uncontested

variance from *Order 251*'s presumptions is not a "major discrepancy." *See, e.g.*, VR: 5/11/23; 11:11:45-11:12:19. And Duke does not dispute that the major discrepancy between its actual plant and *Order 251*'s presumptions generates pole attachment rates that allow the utility to over-recover its costs by more than a dollar for both two- and three-user poles. KBCA Br. at 10 & 12-13. Because many poles are typically required to serve one subscriber in rural areas, the impact of each dollar of excess recovery by Duke has an exponential impact on the ability of broadband providers to deploy plant to rural customers.

Moreover, as it pertains to three-user poles, while Duke asserts that using "more 50-foot poles" does not show a "major discrepancy" within the meaning of *Order 251*, Duke's unsupported assertion ignores the hearing testimony of Mr. Sailors, Duke's Jurisdictional Rate Administration witness, and Ms. Kravtin. Duke Br. at 65. Both witnesses agreed that failing to account for 50-foot poles in the rate calculation results in a variance of 1.47 percent to 12.13 percent from *Order 251*'s presumptions. KBCA-4; VR: 5/11/23; 11:14:10-11:21:08. Duke has failed to contest that this is a major, or "notable," discrepancy. *See, e.g.*, VR: 5/11/23; 11:11:45-11:12:19; KBCA Br. at 9-10. When that discrepancy is corrected, the three-user pole attachment rate falls significantly from Duke's proposed \$8.61 to \$7.56. KBCA Br. at 10 & 12-13.<sup>2</sup>

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<sup>2</sup> Duke's assertion that Ms. Kravtin has not demonstrated its "current calculation results in a poor estimate for pole attachment rates" is both factually wrong and irrelevant. Duke Br. at 65. Ms. Kravtin testified that Duke's flawed calculation produces rates more than a dollar higher than the appropriate rate. Kravtin Testimony at 6-7. Additionally, Ms. Kravtin explained that utilities are increasingly engaging in practices that create accounting "backlogs," which can "ha[ve] the effect of" creating "artificially high rates." Kravtin Testimony at 9. In any event, the question presented by *Order 251* is whether there is a "major discrepancy" between the "contested element and the average characteristics of the utility," *Order 251* at 16-17, not whether Duke believes its pole attachment rates are good "estimates" of pole attachment rates, Duke Br. at 65. And the answer to that question is clear on the uncontroverted evidence: yes, there is most certainly a "major discrepancy" between Duke's pole plant and *Order 251*'s base presumptions.

2. There is also no need for Duke to conduct some kind of unspecified “study” to account for the actual distribution of attachments on its three-user poles.<sup>3</sup> While Duke states *Order 251* does not contain a usable space assumption that includes 50-foot poles, Duke can easily calculate that assumption using the Kentucky formula. *See* Duke Br. at 66. *Order 251* exempts three parts of the pole from the usable space calculation: Six feet of pole buried underground, 20 feet of ground clearance up to the lowest attachment, and 3.33 feet of safety space between the highest communications attachment and the lowest electrical conductor. *Order 251* at 13. Ground clearance and safety space do not depend on the height of the pole. VR: 5/11/23; 11:09:08-11:10:08. And while the proportion of the pole buried underground may vary slightly with the height of the pole, as the evidence demonstrates, Duke knows how much of a 50-foot pole it must bury underground for stability (as it must, because 10% of its plant consists of 50-foot poles). Duke Response to KBCA-PHDR-01-003 at 3. Indeed, the depth at which a pole is buried is based on widely-accepted and commonly-used industry standards. *Id.* Accounting for seven feet of a 50-foot pole buried underground produces a usable space factor of 7.27 percent, and a corresponding three-user rate of \$8.25.<sup>4</sup> Duke has not presented any evidence or explanation showing why it “need[s]” to perform an additional usable space study to account for the actual distribution of attachments on its poles in its pole attachment formula. It obviously does not, and accepting that fiction would, indefinitely, sanction Duke’s pole overcharges.

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<sup>3</sup> The two-user rate does not include 50-foot poles, so even if a usable space study were necessary – it is not – it would not impact the rate calculation for two-user poles. *See* KBCA Br. at 9.

<sup>4</sup> The usable space factor of 7.27 percent is based on the distribution of Duke’s plant as reported by Duke. Duke Response to KBCA-DR-02-002. That distribution results in an average pole height of 43.20 feet. *Id.* Subtracting the 20 feet of clearance space, 3.33 feet of safety space, and 6 or 7 feet buried in the ground (weighted according to the percentage of 40-, 45-, and 50-foot poles), leaves 13.75 feet of usable space. *See Order 251* at 13. The attacher’s one foot of space divided by 13.75 feet of usable space equals a usable space factor of 7.27 percent.

3. Finally, while KBCA agrees Duke should add to its pole attachment formula both its newly-unitized poles and the corresponding investment associated with those poles, Duke must be transparent enough with its pole data for attachers – and the Commission – to determine whether it is accurately reporting pole heights and corresponding investment. *See* Duke Br. at 65. As the record stands, Duke takes years to unitize poles, and does not keep (or, at least generate) data related to the pole height or corresponding investment of non-unitized poles. *See, e.g.*, Duke Response to KBCA-PHDR-01-002. As a result, there is no way for attachers – or even the Commission – to know the exact impact of properly accounting for Duke’s total plant in the pole attachment formula. To ensure rates are just and reasonable – an incentivize Duke to produce accurate data – the Commission should require Duke to add a number of the 35-foot, 40-foot, and 45-foot non-unitized poles, and their corresponding investment, to the pole count in its rate formula based on the same proportion of those poles that it otherwise used in its formula. *See* KBCA Br. at 14-15. Doing so would ensure the utility cannot overcharge attachers by manipulating data and accounting procedures entirely within its own discretion, hidden from attachers and the Commission alike.

### **CONCLUSION**

For these reasons, as well as those in KBCA’s testimony at hearing and its post-hearing memorandum, the Commission should order Duke to recalculate its rates using the actual distribution of attachments on Duke’s poles, including 50-foot poles in its calculation of three-user poles, and a reasonable estimate of non-unitized poles. These corrections will ensure Duke’s rates are just and reasonable, and in line with the cost recovery principles in the Commission’s *Order 251*. Requiring these modifications will also prevent Duke from over-recovering its costs at the expense of broadband deployment in Kentucky.

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Respectfully submitted,

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