COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF POLE ATTACHMENTS	))	CASE NO. 2023-00416

REPLY COMMENTS OF DUKE ENERGY KENTUCKY, INC.

I. INTRODUCTION

Please accept these reply comments submitted on behalf of Duke Energy Kentucky, Inc., (Duke Energy Kentucky or Company) in response to certain proposed revisions submitted by participants in this proceeding in response to the Kentucky Public Service Commission's (Commission) invitation to comment on the amended emergency amendments to 807 KAR 5:015, provided via order in this proceeding on November 18, 2024 (Amended Emergency Amendments).[1]

In its November 18, 2024, Order, the Commission stated:

> [I]n anticipation of the informal conference scheduled for December 13, 2024, parties and participants to this proceeding should file, no later than December 9, 2024, proposed edits to 807 KAR 5:015E. The proposed edits should be made to the copy of 807 KAR 5:015E that counsel for the Commission has already provided to counsel for the parties and participants. Additionally, as discussed at the November 1, 2024 informal conference, edits should be made to the documents provided to the parties, but comments explaining the proposed edits should be in a separate document that reference the line and page numbers where the proposed edits are made.[2]

[1] *In the Matter of the Electronic Investigation of Pole Attachments*, Case No. 2023-00416, Order (November 18, 2024).
[2] *Id.*, p. 1.

Subsequently, the Company and other parties submitted proposed edits to the copy of 807 KAR 5:015E provided by Commission counsel, along with explanatory comments.[3]

Participants were informed by email that additional comments would be permitted through December 30, 2024. In accordance with this most recent direction, the Company submits herein its reply comments, addressing certain proposed edits and/or comments submitted previously by other parties.[4]

II. REPLY COMMENTS

The Commission Should Not Modify The Definition Of "Attachment" To Exclude "Service Drop[s]."

Windstream has proposed to add language to the definition of an "Attachment" to exclude "a service drop from an existing attachment."[5] First, this suggestion should be rejected on procedural grounds, as Windstream submitted its comments after the December 9, 2024, deadline, and without the required attached redline. But also, the proposal is substantively misguided and should be rejected on the merits.

If adopted, Windstream's "service drop" exclusion—which does not define the key term "service drop"—would allow attachers to circumvent necessary reviews and potentially create unacceptable safety and reliability risks. The revision, as proposed, would potentially allow attachers to run so-called "service drops" along multiple poles without requiring any application, thereby circumventing the permitting process entirely.

[3] *Id.*, Comments of Duke Energy Kentucky, Inc. (December 9, 2024) (Duke Energy Kentucky Comments); *id.*, Kentucky's Electric Cooperatives Proposed Amendments to 807 KAR 5:015E (December 9, 2024) (Kentucky Electric Co-Op Comments); *id.*, Comments in Support of the Companies' Proposed Revisions to 807 KAR 5:015E (December 9, 2024) (LG&E/KU Comments); *id.*, KBCA Emergency Regulations Redlines (December 9, 2024) (KBCA Comments); *id.*, Windstream's Response to Commission Order of 11-18-24 for Proposed Edits to 807 KAR 5:015E (December 10, 2024) (Windstream Comments).

[4] Where these reply comments do not address a matter proposed by another party, agreement should not be inferred.

[5] Windstream Comments, pp. 1-2.

For example, Duke Energy Kentucky's standard review process requires that attachments running multiple poles require a thru-bolt and messenger, which prevent sagging, which in turn can lead to downed lines. This requirement is just an example of the protections that would be circumvented. While such practices may result in short-term cost savings for attachers, they would create significant reliability and safety risks.

Existing Fee Regulations Reasonably Cover Service Drops.

Windstream has implied that fees for "service drop[s]" ought to be lower than fees for other types of attachments.[6] However, any so-called "service drop" which is an attachment and requires review to verify that no code violations are present, ought to be compensated at the same rate as other attachments.

The Commission Should Not Require Transmission Poles, With Or Without Distribution, To Be Treated Identically To Non-Transmission Poles.

KBCA has proposed to add the following language to the definition of "Attachment": "Poles used for distribution purposes, regardless of whether they are also used for lighting or to support transmission facilities, are expressly included."[7] This revision should be rejected, as poles supporting transmission facilities—regardless of whether they also support distribution facilities—have distinct technical considerations and may need to be treated differently from poles which do not support any transmission facilities.

The Commission has previously recognized the need for the rules to allow flexibility in this area and rejected a similar suggestion:

> ***The attachers that were part of the informal process argued that there are poles that act as both transmission and distribution poles (with distribution lines below and***

[6] *See* Windstream Comments, p. 2 (section titled "Service Drop Fees").
[7] KBCA Comments, pp. 2-3; KBCA Proposed Redlines, p. 2.

> ***transmission lines above), and they argued those should be subject to the regulation.*** There was also a discussion during the informal process regarding how to define a transmission pole and whether the definition would be the same for all utilities.
>
> Ultimately, the proposed regulation did not exclude transmission lines from the definition of poles subject to the regulation. However, it was modified to indicate that utilities may include tariff terms that restrict access to utility poles for reasons of lack of capacity, safety, reliability, or engineering standards. This specific language was added to allow utilities to include general prohibitions for attachments for certain types of poles, mainly transmission poles, in the utility tariffs. . . . ***The proposed regulation, by allowing utilities to include general prohibitions in tariffs, should allow utilities to define transmission facilities on their systems for which attachments present an issue.*** This should address the issues raised by commenters.[8]

The Company, for the record, continues to believe that transmission poles should be entirely excluded from the rule requirements.[9] But if the Commission does not accept this, then, for the same reasons it has previously given, the Commission should leave this issue to be reviewed in individual utility tariffs.

The Commission Should Maintain The Current Definition Of "Red Tagged Pole."

KBCA has proposed to define a "Red tagged pole" to "the pole that the utility has identified as needing replacement for any reason other than the pole's lack of capacity," and reduce the components of the current definition to mere non-limiting "examples."[10] This suggestion should be rejected, as the current Section 1(10)(c) already includes in the definition of a red tagged pole a pole that "[w]ould have needed to be replaced at the time of replacement ***even if the new attachment were not made***."[11] Thus, any situation where

[8] Statement of Consideration Relating to 807 KAR 5:015, p. 70 (September 15, 2021).
[9] *See id.*
[10] KBCA Comments, pp. 3-4; KBCA Proposed Redlines, p. 3.
[11] 807 KAR 5:015E, Section 1(10)(c) (emphasis added).

the pole requires replacement "even if the new attachment were not made" is already included. Accordingly, KBCA's proposed definition should be rejected.

Additionally, KBCA proposes to require utilities to "to notify attachers of each red tagged pole identified in an attacher's application when the utility responds to the attacher granting or denying access, and in the detailed make-ready estimate."[12] However, this requirement would impose an administrative burden on utilities that is not justified. A utility does not need to include red-tagged poles in the make-ready estimate because it does not seek those costs from the attacher. The purpose of a make-ready estimate is to inform the attacher of costs for which it will be responsible, not of costs for which the utility will be responsible. Accordingly, this proposed revision should be rejected.

The Commission Should Continue To Require Attachers To Certify That Their Applications Meet Legal And Tariff Requirements.

KBCA has proposed to amend the rules to excuse attachers entirely from certifying that their applications meet legal and tariff requirements.[13] Contrary to KBCA's assertions, this is not an unreasonably "broad" certification. Attachers are bound by both legal and tariff requirements, and such requirements are updated through known and public processes: legislation, regulatory revisions, and/or tariff updates which are publicly available on the Commission website during the submission and review process. And utility requirements are provided to attachers by the Company. The attachers are the ones who submit an application and know its contents best; they should continue to take responsibility for certifying compliance with applicable requirements prior to submitting

[12] KBCA Comments, p. 4.
[13] KBCA Comments, pp. 4; KBCA Proposed Redlines, pp. 6, 9.

for utility review. Thus, KBCA's proposed deletions of the certification requirement should be rejected.

KBCA also proposes to delete the requirement to "[d]esignate appropriate personnel responsible for overseeing all attachments with the utility,"[14] on the grounds that "there may not be a single person responsible for 'all attachments' in a utility's footprint.[15] However, the term used in the existing regulation, "personnel," can be read as both singular and plural. Thus, the existing regulation already permits the attacher to designate more than one individual and this proposed deletion should also be rejected.

The Commission Should Maintain The Current Period For Utility Application Completeness Review.

KBCA has proposed to reduce the amount of time for a utility to review an application for completeness to a flat ten days, regardless of the number of poles involved.[16] This would be an unreasonable and burdensome compression of the timeline. It is quite common for utilities to receive incomplete and/or incorrect information in an application; the completeness review is substantively necessary and not a mere formality. The existing rules strike an appropriate balance by taking volume into account.

The Commission Should Treat Applications Resubmitted Due To Incompleteness As New Submissions, With the Full Permissible Time Frame For Completeness Review.

KBCA has proposed that the Commission "require pole owners to review any resubmitted application within five (5) business days."[17] This proposal appears to rest on an implicit presumption that resubmitted application review is much briefer than an

[14] KBCA Proposed Redlines, p. 6, line 11.
[15] KBCA Comments, p. 4.
[16] KBCA Comments, p. 5; KBCA Proposed Redlines, pp. 9, 10, 11.
[17] KBCA Comments, pp. 5-6; KBCA Proposed Redlines, p. 10.

original submission. However, this is often not the case. By the time a resubmitted application is being reviewed, time has passed and the reviewer may not remember all of the items that prompted the need for resubmittal. Additionally, the reviewer must still verify that nothing else has changed. Accordingly, a resubmission should simply be treated as a new submission for time frame purposes, with the same completeness review deadlines.

The Commission Should Maintain The Current Timeline Scale For Orders By Size.

KBCA proposes that survey and make-ready time periods be fixed as follows:

- Survey time periods: 45 days for small orders, 60 days for large orders; and
- Make-ready time periods: 30 days for small order in communication space, 75 days for large order in communication space, and 135 days for large order above communication space.[18]

This proposal should be rejected as unreasonably rapid and burdensome on utilities. The existing timelines are already challenging to meet; shortening these time frames as volumes increase will only create more delays. Additionally, giving utilities adequate time will make it easier for utilities to offer make ready solutions to resolve safety, reliability, or engineering issues that are identified. For these reasons, KBCA's proposed revisions should be rejected.

The Commission Should Retain A Mandatory Special Contract Requirement For Requests of Larger Than 3,000 Poles or 3% of Utility Poles in Kentucky.

KBCA has proposed a revision to make special contract negotiation merely "permissive" for requests larger than 3,000 poles or 3% of a utility's poles in Kentucky.[19] KBCA does not elaborate on what should occur in the event that one party wishes to

[18] *See* KBCA Comments, pp. 6-8; KBCA Proposed Redlines, pp. 11, 12, 13, 16, 17, 19.
[19] *See* KBCA Comments, p. 8; KBCA Proposed Redlines, p. 17.

negotiate a special contract and the other does not agree—presumably the longest of the standard time frames that apply to smaller attachment requests would then apply to such very large requests. These standard time frames, however, were not intended to govern requests of very large size. Requiring a special contract to be negotiated protects both parties by providing transparency at the outset of the application process and allowing reasonable time frames to be agreed to for the specific circumstances at hand. Thus, the revisions proposed by KBCA to make the special contract optional should be rejected.

Although not mentioned in the KBCA Comments, KBCA has, in the KBCA Proposed Redlines, also proposed to delete the language from the same provision that permits combining smaller attachment requests to reach the 3,000-or-3% thresholds.[20] This proposed deletion should be rejected, since the language in question simply ensures that the requirement cannot be circumvented by splitting attachments into multiple requests superficially.

The Commission Should Reject KBCA's Proposal To Add An Unduly Burdensome And Impractical Notice Requirement Regarding Survey and Make-Ready Work.

KBCA has proposed to add the following notice requirement to Section 4(8) (the subsection elaborating on time periods for compliance):

> (h) As soon as reasonably practicable, but no less than fifteen (15) days after receiving a complete pole attachment application, a utility shall provide written notice to an attacher if it will be unable to meet survey or other make-ready deadlines. Such notice shall entitle an attacher immediately to proceed with self-help remedies in accordance with section 4(10).[21]

[20] KBCA Proposed Redlines, p. 17, lines 6-8 (proposing to delete "[, or upon 13 receipt of three (3) separate applications averaging 1,000 poles or one (1) percent of the utility's poles in Kentucky for any three (3) months over a five (5) month period]").
[21] KBCA Redlines, p. 18.

According to KBCA, this provision is necessary to avoid "wait[ing] for months after submitting an application before learning that a utility does not have the ability to complete necessary survey or make-ready work."[22] However, it can take time for a utility to recognize that it will not be able to meet survey and/or make-ready deadlines. It is unreasonably burdensome to require a utility to potentially litigate whether it recognized this "[a]s soon as reasonably practicable," in retrospect. An attacher need not wait for months; it may always contact the utility to discuss issues with a pending application, and this is something which utilities can discuss with attachers without a cumbersome and unprecedented notification requirement.

III. CONCLUSION

Duke Energy Kentucky appreciates the opportunity to offer reply comments regarding certain proposed revisions to the Amended Emergency Amendments and hopes that its reply comments will aid the Commission.

Respectfully submitted,

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[22] KBCA Comments, p. 8.

CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing is a true and accurate copy of the document in paper medium; that the electronic filing was transmitted to the Commission on December 30, 2024; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that submitting the original filing to the Commission in paper medium is no longer required as it has been granted a permanent deviation.[23]

/s/Larisa M. Vaysman
Counsel for Duke Energy Kentucky, Inc.

[23] *In the Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, Order, Case No. 2020-00085 (Ky.PSC July 22, 2021).