

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

COMMENTS OF DUKE ENERGY KENTUCKY, INC.

I. INTRODUCTION

Please accept these comments submitted on behalf of Duke Energy Kentucky, Inc., (Duke Energy Kentucky or Company) in response to the Kentucky Public Service Commission’s (Commission) invitation to comment on the filed emergency amendments to 807 KAR 5:015, provided via Order in this proceeding on February 3, 2025 (2025 Emergency Amendments).¹ For ease of review, the Company first addresses those portions of the 2025 Emergency Amendments (Newest Amendments) which are different from the emergency amendments which are currently in effect. Second, the Company addresses aspects of the 2025 Emergency Amendments which it has previously encountered and may have addressed in earlier comments (Remaining Amendments).

II. BACKGROUND

On December 14, 2023, the Commission initiated this proceeding to “identify issues regarding pole attachments, particularly regarding the extension of broadband services that might be addressed through changes in the regulations, rules, or tariffs

¹ *In the Matter of the Electronic Investigation of Pole Attachments*, Case No. 2023-00416, Order (Feb. 3, 2025).

governing pole attachments.”² The Commission then held a series of informal conferences, at which stakeholders discussed related issues.

On April 11, 2024, the Commission offered stakeholders and parties an opportunity to submit “proposed amendments to 807 KAR 5:015 that will accomplish the dictates of SJR 175.”³ A number of submissions were made, and on May 15, 2024, the Commission Staff shared a draft of proposed amendments to 807 KAR 5:015 (Proposed Amendments).⁴ At the subsequent informal conference, on May 17, 2024, the Commission invited stakeholders to comment on the Proposed Amendments. Duke Energy Kentucky, along with other stakeholders, submitted written comments on May 21, 2024.⁵

On June 3, 2024, the Commission issued a Staff Notice, stating that the Commission had filed emergency amendments to 807 KAR 5:015 with the Legislative Research Commission, and that written comments on the filed Emergency Amendments would be accepted through July 31, 2024.⁶ Duke Energy Kentucky, along with other stakeholders, submitted written comments on July 31, 2024.⁷

On November 18, 2024, the Commission issued an Order, inviting written comments on a copy of proposed edits to 807 KAR 5:015 that had been provided by counsel for the Commission to the parties.⁸ This Order provided that written comments on the filed Emergency Amendments would be accepted through December 9, 2024.⁹ Duke Energy Kentucky, along with other stakeholders, submitted written comments on December 9,

² *Id.*, Order, p. 2 (Dec. 14, 2023).

³ *Id.*, Order, p. 3 (Apr. 11, 2024).

⁴ *Id.*, Notice of Filing Agenda, Appendix (May 15, 2024).

⁵ *See id.*, Comments of Duke Energy Kentucky, Inc. (May 21, 2024).

⁶ *Id.*, Staff Notice (June 3, 2024).

⁷ *See id.*, Comments of Duke Energy Kentucky, Inc. (July 31, 2024).

⁸ *Id.*, Order (Nov. 18, 2024).

⁹ *Id.*

2024.¹⁰ Subsequently, via e-mail, stakeholders were invited to submit reply and/or supplemental comments. Duke Energy Kentucky, along with other stakeholders, submitted additional comments on December 30, 2024.

On February 3, 2025, the Commission issued an Order, inviting parties to comment on the 2025 Emergency Amendments. The Company respectfully submits its comments below.

III. DISCUSSION

A. Newest Amendments

Duke Energy Kentucky offers the following comments on the Newest Amendments:

Utility Notice Requirement – Page 18, Lines 6 to 9.¹¹

The proposed provision provides:

(h) As soon as reasonably practicable a utility shall provide written notice to an attacher if the utility determines 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).¹²

As discussed by the Company in earlier comments,¹³ this requirement is burdensome and impractical. 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

¹⁰ See *id.*, Comments of Duke Energy Kentucky, Inc. (Dec. 9, 2024).

¹¹ Page and Line numbers in headings refer to Order, Appendix (Feb. 3, 2025).

¹² *Id.*, Order, Appendix, p. 18 (Feb. 3, 2025).

¹³ *Id.*, Reply Comments of Duke Energy Kentucky, Inc., pp. 8-9 (Dec. 30, 2024).

can discuss with attachers without a cumbersome and unprecedented notification requirement. The Company respectfully submits that this provision be deleted from the 2025 Emergency Amendments.

B. Remaining Amendments

Attachers Performing Surveys For 500 Poles Or Less – Page 9, Lines 19 to 22.

The proposed provision provides:

6. A new attacher may submit a survey with an application of 500 poles or less, which the utility shall accept if the new attacher used an approved contractor listed on the utility's website and the survey was conducted no longer than thirty (30) days prior to submission. A utility shall conduct the survey for applications exceeding 500 poles.¹⁴

This provision gives attachers the right to perform their own surveys as a matter of course for applications containing 500 poles or fewer, even where the utility is perfectly capable of performing the required surveys in a timely manner. Although this provision attempts to mitigate risk by requiring the survey to be relatively recent and by requiring the attacher to use utility-approved contractors, Duke Energy Kentucky believes it still creates significant risk and uncertainty by placing the survey process entirely into the control of attachers unnecessarily. The Company agrees with the arguments made against this provision earlier in this proceeding by Kentucky Utilities Company, Louisville Gas and Electric Company and Kentucky Power Company, in their comments of December 9, 2024.¹⁵

The Company respectfully submits that this provision should be deleted from the 2025 Emergency Amendments.

¹⁴ *Id.*, Order, Appendix, p. 9 (Feb. 3, 2025).

¹⁵ *Id.*, Comments in Support of the Companies' Proposed Revisions to 807 KAR 5:015E, pp. 4-5 (Dec. 9, 2024).

Application Prioritization – Page 10, Lines 7 to 10.

The proposed provision provides:

A new attacher, if it submits an application while a previous application is still under review, may prioritize the order in which a utility shall review the applications. Prioritizing a new application resets the respective review time period of the new attacher's deprioritized applications currently under review and over which the new application is being prioritized.¹⁶

Duke Energy Kentucky believes that the need to track priorities and reset timelines of individual applications will create confusion, inefficiencies, and an unreasonable administrative burden for the utility. Attaching entities that have multiple organizations or groups across geographical areas may create priority requests from multiple parties within the same contractual area. And the same application's timeline may be reset repeatedly. Regarding this provision, Duke Energy Kentucky also supports and reiterates the same concerns that were voiced in the previously filed Joint Comments of Louisville Gas & Electric Company, Kentucky Utilities Company, and Kentucky Power Company on July 31, 2024,¹⁷ and respectfully recommends that this provision should be stricken from the 2025 Emergency Amendments.

Applicability of Special Contract Requirement – Page 17, Lines 1 to 3.

The proposed provision provides:

(d) A utility and a new attacher, unless the utility owns or controls fewer than 500 poles, shall negotiate a special contract in good faith all requests for attachment larger than the lesser of 3,000 poles or three (3) percent of the utility's poles in Kentucky.¹⁸

¹⁶ *Id.*, Order, Appendix, p. 10. (Feb. 3, 2025).

¹⁷ *Id.*, Joint Comments of Louisville Gas & Electric Company, Kentucky Utilities Company, and Kentucky Power Company, Section V (July 31, 2024).

¹⁸ *Id.*, Order, Appendix, p. 17 (Feb. 3, 2025).

For the reasons given by Kentucky Utilities Company, Louisville Gas and Electric Company and Kentucky Power Company, in their comments of December 9, 2024,¹⁹ Duke Energy Kentucky recommends that this provision be revised to require a special contract to be negotiated at a significantly lower threshold, such as 500 poles.

Negotiation of Special Contracts – Page 17, Line 17.

The proposed provision provides:

If a special contract identified in paragraph (d) of this subsection cannot be agreed to within fifteen (15) business days from submission of a formal written request to engage from the attacher, the new attacher may file a complaint with the commission, with a copy served contemporaneously to the utility, on which the commission shall rule within twenty (20) business days of filing of the complaint.²⁰

Duke Energy Kentucky agrees with the general concept of this provision, but believes that fifteen business days is insufficient for completing negotiation of a special contract and that thirty business days would provide a more practical and workable time frame for reaching agreement. Accordingly, Duke Energy Kentucky recommends that this provision be revised to permit an attacher to file a complaint **thirty (30)** business days from submission of a formal written request to engage, rather than fifteen.

IV. CONCLUSION

Duke Energy Kentucky appreciates the opportunity to offer its comments regarding the 2025 Emergency Amendments and hopes that its comments will aid the Commission.

¹⁹ *Id.*, Comments in Support of the Companies' Proposed Revisions to 807 KAR 5:015E, pp. 4-5 (Dec. 9, 2024).

²⁰ *Id.*, Order, Appendix, p. 17 (Feb. 3, 2025).

Respectfully submitted,

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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 February 12, 2025; 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.²¹

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

²¹*In the Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-19, Order, Case No. 2020-00085 (Ky.PSC July 22, 2021).*