

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF POLE ) Case No.  
ATTACHMENTS ) 2023-00416

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**COMMENTS OF LOUISVILLE GAS & ELECTRIC COMPANY,  
KENTUCKY UTILITIES COMPANY, AND KENTUCKY POWER COMPANY  
ON PROPOSED EMERGENCY AMENDMENTS TO 807 KAR 5:015**

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Louisville Gas & Electric Company, Kentucky Utilities Company, and Kentucky Power Company (collectively, the “Companies”), in accordance with the Kentucky Public Service Commission’s (the “Commission”) February 3, 2025 Order, offer the following comments on the Commission’s proposed emergency amendments to 807 KAR 5:015.

**INTRODUCTION**

The Companies support broadband deployment, understand their important role in the pole attachment process, and appreciate the Commission’s multi-year focus on the important details of pole attachment regulation. These efforts began in early 2020 and resulted in a thoroughly vetted regulation, with significant stakeholder input, in September 2021. The original regulation was further vetted and tested through the subsequent proceedings to review conforming tariffs filed by the utilities. The tariff review proceedings concluded in late December 2022. In December 2023, the Commission opened the present docket to consider changes to a regulation that had been hardwired into utility tariffs for less than 1 year. At that time, no stakeholder had filed a complaint regarding the regulation and no stakeholder had asked the Commission to revise its regulation.

The Commission then adopted emergency amendments to the regulation on May 31, 2024. In the informal conferences beginning in November 2024 and as recently as the December 13,

2024 informal conference, the Companies urged the Commission to restore the original regulation, partially on the basis that the emergency amendments were either unused or underutilized during the preceding 7 months. The pushback to this argument was, in essence, that a 7-month time period was too early to tell whether the emergency amendments might bear fruit, notwithstanding the fact that the tariffs conforming to the original regulation had been effective for less than 1 year at the time the Commission opened a docket to consider changes to the regulation.

The new proposed emergency amendments include several steps in the right direction, including (a) the elimination of the unnecessary and awkward “certificate of application completeness” requirement in Section 3(5)(b)1 and 4(2)(a)1.a., and (b) the addition of a utility’s right to waive the “waiting period” prior to performing self-help surveys in Section 4(10)(a). In most other areas, though, the Companies believe the proposed emergency amendments are a step in the wrong direction for broadband deployment in Kentucky.

The Companies are particularly concerned that the Commission intends for the companion ordinary administrative regulation to be identical to the proposed emergency amendments. This is particularly true given the acknowledgement by all stakeholders that the concepts and language of the proposed emergency amendments—which are identical in most respects to the existing emergency regulation—are largely untested. Additional experience and data are certainly needed before solidifying those emergency amendments in an ordinary regulation.

The Companies have expressed their view that revisions in two key areas—the application threshold for special contracts and Enhanced One-Touch Make-Ready (“Enhanced OTMR”)—will actually speed up the completion of broadband projects. The Companies will not belabor their arguments below but instead hereby adopt and incorporate their previous comments and proposed rule revisions filed in this docket on December 9, 2024, and their reply comments filed on

December 30, 2024. In addition to the points set forth in their comments, reply comments, and during the October 11, 2024, November 1, 2024, and December 13, 2024 informal conferences, the Companies also urge the Commission to consider the following high-level points.

**I. The Proposed Emergency Amendments Steer *Fewer* Deployments to the Special Contract Model Which Will Result in *Less* Broadband Deployment.**

The primary error in the proposed emergency amendments is that they steer fewer broadband deployment projects to the special contract model than the original regulation. As the Companies have stated at every opportunity, the special contract can do what regulatory timelines cannot: provide a reasonable chance of getting the right resources to the right place at the right time for large broadband deployments. Without the right resources in the right place at the right time, large deployments will be stuck in the mud. Though the Companies have made this point before, it bears repeating: if the proposed emergency amendments had been in place in 2023 or even early 2024, Charter likely would never have pursued a special contract and its deployment would likely be in roughly the same place it was in March 2024 when the Commission approved the special contract between Charter and KU—with significant “backlog.” It was the special contract—facilitated by the Commission’s original regulation—that freed Charter’s deployment from the mud by providing the resources necessary for the project. And yet the proposed emergency amendments make the existence of special contracts *less* likely in the future. This is a step backwards for broadband deployment in Kentucky.

KBCA repeatedly extolled the virtue of “predictability” that comes with the expanded use of regulatory timelines. But regulatory timelines do not create more predictability. The only thing accomplished through expanded regulatory timelines is a trigger for the right to exercise self-help. But self-help is meaningless without the resources to exercise it, and the only way to ensure the

right resources in the right place at the right time (for any deployment of meaningful volume) is through the special contract.

**II. The Proposed Emergency Amendments Do Not Further the Goals of SJR 175; In Fact, They May *Inhibit* the Goals of SJR 175.**

The proposed emergency amendments either fail to serve, or actively frustrate, the goals of SJR 175 in several ways. First, SJR 175 Section 1(3) directs the Commission to promulgate regulations that “[r]educe the backlog of utility pole attachment requests....”<sup>1</sup> However, as all stakeholders seem to agree, the “backlog of utility pole attachment requests” was largely a product of resource availability—not motivation (or lack thereof) by either attachers or utilities. The proposed emergency amendments do nothing to address the issue of resource availability. In fact, for the reasons set forth in Part I above, the proposed emergency amendments are more likely to hinder than help solve the logistical puzzle of resource availability.

Second, SJR 175 Section 1(1) directs the Commission to “[r]emove any unreasonable utility pole attachment-related impediments to the deployment of broadband service throughout the Commonwealth....”<sup>2</sup> The major impediment to the deployment of broadband service—resource availability—is not something the Commission can remove with the stroke of a pen; this is something that can only be solved through advance planning, good faith negotiation, and bilateral contractual commitment. But the Commission *can* adopt amendments that encourage and oversee the activities that can remove the impediment. Though the Commission, through proposed Section 4(8)(e), aims for an expedited process for resolving stalled negotiations over special contracts, the Commission is also minimizing the efficacy of this process by reducing the number of deployments subject to the special contract requirement in the first place.

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<sup>1</sup> S.J.R. 175, Section 1(3), 2024 Regular Session (Ky. 2024).

<sup>2</sup> S.J.R. 175, Section 1(1), 2024 Regular Session (Ky. 2024).

Third, and to a lesser degree, SJR 175 Section 1(4) requires that the Commission “ensure that any new or amended administrative regulations are tailored to advance the buildout of broadband service to unserved or underserved areas and does not result in an undue burden in processing pole attachment requests for service in served areas of the Commonwealth.”<sup>3</sup> The proposed emergency amendments do not delineate in any way between “unserved/underserved” areas and “served” areas of the Commonwealth. Instead, the proposed emergency amendments apply equally to unserved, underserved, and served areas of the Commonwealth.

### **III. The Failure to Incorporate Enhanced OTMR is a Missed Opportunity to Expedite Broadband Deployment.**

The Enhanced OTMR proposal offered by the Companies would not only have allowed—but also required—new attachers to complete all make-ready within the communications space necessary to accommodate their attachments. This is low-hanging fruit because this right already exists within the Commission’s regulation in the form of self-help—but only after existing attachers have successfully delayed a competitor’s deployment by up to four months through failure to complete the required make-ready within the regulatory timelines.<sup>4</sup> To safeguard the facilities of existing attachers, the Enhanced OTMR proposal requires that all communications space make-ready work be performed by a qualified contractor. Enhanced OTMR circumnavigates one of the biggest impediments to broadband deployment—the anti-competitive motives (or disinterest) of existing attachers. Thus, the Commission’s rejection of Enhanced OTMR may be at odds with SJR 175 which, as set forth above, requires the Commission to

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<sup>3</sup> S.J.R. 175, Section 1(4), 2024 Regular Session (Ky, 2024).

<sup>4</sup> See 807 K.A.R. 5:015, Section 4(4)(a) (allowing up to 120 days for existing attachers to perform communication space make-ready within “larger orders”) and Section 4(10)(b) (providing self-help remedy to new attacher if existing attachers fail to perform within the deadlines established in Section 4(4)).

“[r]emove any unreasonable utility pole attachment-related impediments to the deployment of broadband service.”<sup>5</sup>

### **CONCLUSION**

The Companies appreciate the opportunity to offer these comments on the proposed emergency amendments to 807 KAR 5:015. The Companies respectfully request that the Commission revise the proposed emergency amendments to 807 KAR 5:015 in a manner consistent with the comments herein. The Companies further request that the Commission either (a) not submit a companion ordinary administrative regulation, or (b) if it does submit a companion ordinary administrative regulation, that the companion ordinary regulation reflect the input of the Companies as set forth above.

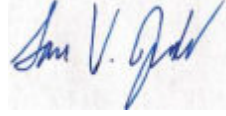
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<sup>5</sup> S.J.R. 175, Section 1(3), 2024 Regular Session (Ky. 2024).

Dated: February 12, 2025

Respectfully submitted,

/s/ Robert J. Patton by Sara V. Judd  
With Authority



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