

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**LOUISVILLE GAS & ELECTRIC COMPANY’S AND KENTUCKY UTILITIES
COMPANY’S PROPOSED AMENDMENTS TO 807 KAR 5:015**

Pursuant to the Kentucky Public Service Commission’s (the “Commission”) Order issued April 11, 2024, Kentucky Utilities Company and Louisville Gas & Electric Company (the “Companies”) hereby submit their proposed amendments, as Exhibit A hereto, to the Commission’s current pole attachment regulation, 807 KAR 5:015.

The Companies believe, as expressed in the previous informal conferences in this proceeding, that the existing regulation carefully and correctly balances the need for timely access to poles with the important issues of safety and reliability. That said, if changes must be made to the existing regulation, the Companies believe that the proposed changes submitted herewith would serve the goals outlined in SJR 175 and the Commission’s April 11 Order without further compromise to the safety and reliability of the electric distribution system.

The proposed revisions fall into six (6) buckets:

1. **Expanding the “Good Faith Negotiation” Requirement to Any Project Involving More than 300 Poles/Month.** The key to success in any large broadband deployment is marshaling and matching resources to the location and time of a deployment. These resources are best marshaled and matched through early coordination and negotiated solutions. The following proposed revisions implement this approach:

- Deleting existing Sections 4(7)(b) and (c) (which established separate deadlines for applications involving 301-1,000 poles);
- Revising existing Section 4(7)(d) to require utilities and new attachers to negotiate the “timing of all requests for attachment larger than the lesser of 300 poles or 0.5 percent of the utility’s poles in Kentucky”;
- Deleting all parenthetical references to “larger” orders (301 -1,000 poles) in Section 4;
- Adding an expedited complaint proceeding, in the event the parties are unable to timely reach a solution through “good faith negotiations,” as a new Section 7(8)(c).

2. **Streamlining the Deployment Process by Requiring New Attachers to Perform All Required Communications Space Make-Ready.** The existing one-touch make-ready rule (Section 4(10)) is limited to “simple make-ready” and is, therefore, hardly ever used by new attachers. Further, under the existing regulation, new attachers must wait on existing attachers (potential competitors that may stand to gain from delays) before exercising self-help to complete any “complex make-ready” required for their new attachments. The Commission can streamline new deployments by not only allowing new attachers to perform all communications space make-ready without delay, but also *requiring* new attachers to perform all communications space make-ready through the use of a qualified contractor. The following proposed revisions implement this approach:

- Eliminating the definitions of “complex make-ready” and “simple make-ready”;
- Deleting existing Section 4(10) in its entirety;
- Revising the notice requirement in existing Section 4(4)(a)1 to make clear that the new attacher will be performing all communications space make-ready through the use of a qualified contractor;

- Deleting existing Sections (4)(4)(a)2.-4. (which establish the conditions precedent to a new attacher’s right to exercise self-help);
- Revising existing Section 4(4)(c) to require the new attacher to complete all required communication space make-ready upon completion of any necessary power space make-ready; and
- Deleting other provisions within Section 4 that conflict with this approach.

3. **Permitting Pole Owners to Give Preference to Government-Funded Projects in Unserved/Underserved Areas (“Priority Projects”)**. Section 2(1) of the existing regulation requires utilities to provide “*nondiscriminatory*” access to their poles. To comply with this requirement, utilities process attachment requests on a first-in, first out basis. If the Commission intends for utilities to prioritize Priority Projects, utilities must be given a narrowly-tailored right to discriminate in favor of Priority Projects without recourse. The Companies have proposed a new definition of “priority project” (consistent with the language of SJR 175) and proposed a narrow exception to the non-discrimination requirement as a new Section 2(1)(d).

4. **Requiring 90 days of Advance Notice for Priority Projects**. The existing regulation already requires no less than 60 days advance notice before submitting applications for more than 300 pole per month. During the informal conferences held thus far in 2024, all stake holders agree that advance notice and pre-planning are keys to successful deployment. The proposed addition to existing Section 4(7)(f) (or as-revised Section 4(6)(d)) would extend this concept by requiring 90 days of advance notice for priority projects (i.e., the projects that are the focus of SJR 175).

5. **Avoiding Payment-Related Delays by Allowing Pole Owners to Require an Escrow Account for “Priority Projects.”** Payment-related delays are a frequent impediment to broadband deployment. The standard invoice/payment process can add at least a couple of weeks

to the permitting process. And inadvertent failures to pay survey or electric make-ready costs can delay the application review and construction process. Allowing pole owners to require escrow accounts for time-sensitive priority projects could avoid these types of delays altogether. The Commission can accommodate this solution by adopting the narrowly-tailored language proposed as a new Section 4(2)(c).

5. **Adding Further Clarity to the Contractor Rule.** Contractors play an essential role in broadband deployment—especially large deployments. To avoid confusion and the unnecessary use of scarce “approved contractor” resources, the revisions proposed at Sections 5(1) and 5(2) further clarify the respective scopes of work for different types of contractors by:

- Revising existing Section 5(1) by eliminating references to “complex” make-ready and making clear that Section 5(1) applies only to surveys and “above the communications space” make-ready;
- Revising existing Section 5(2) by eliminating references to surveys and “simple” make-ready and making clear that it only applies to make-ready “within the communications space”; and
- Adding a new Section 5(2)(c) that would apply the more permissive contractor-selection standard to surveys on poles that do not host electric facilities (such as telephone poles that are not jointly used by an electric utility).

The Companies appreciate the Commission’s consideration of their proposal and look forward to further discussion with the Commission and other stakeholders at the Friday, April 26, 2024 informal conference.

Dated: April 19, 2024

Respectfully submitted,

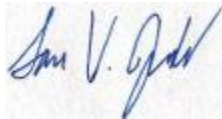


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CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8 and the Commission's Order of July 22, 2021 in Case No. 2020-00085, I certify that this document was electronically transmitted to the Public Service Commission on April 19, 2023; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.



*Counsel for Kentucky Utilities Company and
Louisville Gas and Electric Company*