

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**COMMENTS IN SUPPORT OF THE COMPANIES’
PROPOSED REVISIONS TO 807 KAR 5:015E**

Louisville Gas & Electric Company, Kentucky Utilities Company, and Kentucky Power Company (collectively, the “Companies”), in accordance with the Commission’s instructions at the November 1, 2024 informal conference, submit these comments in support of the Companies’ proposed revisions to the August 15, 2024 Emergency Amended After Comments pole attachment regulation (807 KAR 5:015E), submitted contemporaneously herewith.

INTRODUCTORY COMMENTS

The Commission should allow the emergency regulation to expire on February 25, 2025, without further amendment. As the Companies maintained throughout the previous informal conferences and in their written comments preceding the Commission’s August 15, 2024 order, the original regulation—which was carefully developed on a robust record over an 18-month period (and further tested/vetted through the subsequent tariff approval process)—was a *balanced* regulation that accounted for the complexities and practicalities of broadband deployment. It was the original regulation—not the emergency regulation—that facilitated the special contract between Kentucky Utilities and Charter, which is the only model with proven success for high-volume deployments in Kentucky. Had the emergency regulation been in place a year earlier, it is *unlikely* that Kentucky Utilities and Charter would have reached a special contract, and thus *likely*

that Charter’s deployment would be mired in delay due to a lack of resources and predictable throughput. In short, the emergency regulation likely would have served as a *barrier* to Charter’s deployment.

If, however, the Commission further amends its original regulation upon expiration of the emergency regulation, the Commission should amend the regulation as proposed by the Companies in their contemporaneous submission. The revisions proposed by the Companies fall primarily into two categories: (1) revisions that eliminate the unused (and ineffective) existing one-touch make-ready rule and replace it with “Enhanced” one-touch make-ready (“Enhanced OTMR”); and (2) revisions that steer more deployments—rather than fewer deployments—to the special contract model. The special contract model is the only model that can get the right resources to the right place at the right time; and it is the only model with proven success for high-volume deployments in Kentucky.

At the same time, if the Commission further amends its regulation upon expiration of the emergency regulation, there are several elements of the emergency regulation worth retaining in a permanent amendment, including the following:

- Section 3(5)¹ requiring that pole attachment tariffs include a web address where new applicants can easily find information relevant to the attachment process;
- Section 4(3)(e)&(f) requiring that invoices and payments “clearly identify” the application for which payment is requested or made;
- Section 4(6) requiring that new attachers provide notice to the pole owner within fifteen (15) days of completion of attachment;
- Section 4(8)(e) providing a process where negotiations for a special contract break down; and

¹ Unless stated otherwise, all “section” citations within these comments refer to the August 15, 2024 Emergency Amended After Comments version of the regulation.

- Section 4(10)(b) requiring that self-help make-ready be performed in compliance with applicable standards and that power space self-help make-ready be performed by an approved contractor.

The Companies’ explanation for their specific proposed revisions to the regulation are set forth below.²

COMMENTS EXPLAINING PROPOSED REVISIONS

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| Page 2, Lines 19-22 | Section 1(4) | Delete Definition of “Complex Make-Ready” |
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As explained in more detail below, the Commission should eliminate its existing one-touch make-ready rule and replace it with a new Enhanced OTMR framework that not only allows but also *requires* new attachers to perform *all* communications space make-ready needed to accommodate their proposed attachments, including make-ready that would qualify as “complex make-ready.” To implement this new Enhanced OTMR framework, the Commission should remove the definition for “complex make-ready” from the regulation, which serves as a limitation on the type of communications space make-ready that new attachers can perform without the “waiting period” associated with self-help in the communications space.

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| Page 4, Lines 4-7 | Section 1(12) | Delete Definition of “Simple Make-Ready” |
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As with the defined term “complex make-ready,” the regulation uses the defined term “simple make-ready” to limit the types of make-ready that new attachers can perform through the existing one-touch make-ready rule. The Commission should remove this definition from its pole attachment regulation to pave the way for Enhanced OTMR.

² The page and line numbers refer to pages and lines within the Companies’ proposed revisions submitted contemporaneously herewith. A header in orange indicates that the proposed revision is part of Enhanced OTMR; a header in blue indicates that the proposed revision is part of steering more deployments to the special contract model; and a header in yellow indicates that the proposed revision does not fall squarely into either aforementioned category.

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| Page 7, Lines 9-13 | Section 3(6)(c)1 | Revise Advance Notice Requirement for Overlashing |
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Under both the original and emergency regulation, attachers cannot be required to provide more than 30 days’ advance notice of planned overlashing—regardless of whether the attacher intends to overlash 1 pole or 10,000 poles. This one-size-fits-all advance notice requirement is not only burdensome for pole owners, but also inconsistent with the recognition in Section 4 that more poles require more time for review. Overlashing is, indeed, an efficient way for attachers to expand their broadband offerings in an existing market but overlashes are not immune from the laws of physics. Overlashing additional facilities onto existing facilities increases the load on poles. For this reason, the Companies should be allowed sufficient time to review all proposed overlashes and perform any necessary pole loading analysis. Completing this analysis within 30 days is difficult enough for smaller overlash requests, but it becomes nearly impossible to complete this analysis within 30 days for larger requests. Therefore, the Companies propose that the Commission: (a) apply the 30-day advance notice restriction to overlash projects involving up to 500 poles in any 30 day period; and (b) require pole owners and attachers to negotiate a special contract for overlash projects involving more than 500 poles in any 30 day period.

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| Page 10, Lines 3-6 | Section 4(2)(a)6 | Delete Right of New Attachers to Perform Their Own Surveys |
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The Commission’s emergency regulation provides attachers with the right to conduct their own surveys for applications involving 500 or fewer poles. As the Companies explained during the previous informal conferences and in their comments prior to the amended version of the emergency regulation, surveys are a “single point of failure” in broadband deployments. Surveys collect information about the condition of the poles to which attachers are seeking to make new attachments. This information is then used to engineer a make-ready solution that will

accommodate the existing and new attachments without jeopardizing the safety and reliability of electric distribution facilities. Though the emergency regulation appropriately requires attachers to use “approved contractors” and attempts to mitigate against the submission of stale surveys (i.e., surveys must be completed no earlier than 30 days prior to submission), it nevertheless shifts control over the survey process from the pole owner to the attacher without any “failure to perform” on the part of the pole owner.

New attachers, especially with high-volume deployments, are naturally more inclined to prioritize speed-to-market over compliance with utility permitting processes. Under Section 4(2)(a)6 of the emergency regulation, the approved contractors will be the agent of—and under the direct control of—the attachers. The Companies are thus concerned that the incentives of the attachers will be foisted onto the approved contractors. This potential conflict of interest could result in hurried work that not only will result in delayed deployments but also will result in safety and reliability issues on electric distribution facilities. Finally, removing this right from the emergency regulation should not be detrimental to attachers because no attacher has utilized this rule (at least with the Companies) since it became effective more than 6 months ago.

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| Page 10, Lines 11-12 | Section 4(2)(a)8 | Delete Incremental Extension of “Completeness” Review Timeline for Larger Orders |
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The emergency regulation extends the 10-day “completeness” review period for “each additional 500 pole increment in an application.” While this framework is better than the static timeline the original regulation imposed on “completeness” reviews (i.e., the 10-day timeline applied to all applications up to 1,000 poles, regardless of size), the Companies believe that expanding the use of regulatory timelines is a step in the wrong direction. As part of the revisions to steer all deployments in excess of 500 poles per 30 day period to the special contract model, the

Commission should delete the second sentence in Section 4(2)(a)8 such that the completeness review period for such deployments would be governed by the special contract.

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| Page 10, Lines 13-16 | Section 4(2)(a)9 | Delete Right to Reprioritize Pending Applications |
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The Companies oppose the “reprioritization” rule because, if utilized, it would add significant complexity to the permitting process without providing any real benefit to attachers. First, processing applications under the Commission’s existing regulatory timelines is already complex. Giving attachers the right to reshuffle the deck and further complicate this process will lead to inefficient consumption of limited resources. Attachers should prioritize applications *before* they file them. Second, the burden and risk of this new rule is not offset by efficiency gains. If an attacher “prioritizes” a new application over a pending application, it results in a net loss in efficiency because the “completeness” review timeline for the “deprioritized” application resets, and the “completeness” review timeline for the “prioritized” application commences at the same time. Third, removing this rule from the emergency regulation should have no impact on new attachers, as this rule has not been utilized by any attacher (with the Companies, at least) since it became effective more than 6 months ago.

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| Page 10, Line 23 through Page 11, Lines 2 | Section 4(2)(b)1 | Delete Reference to Extended Survey Timeline for Larger Orders |
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This proposed deletion is part of the broader revisions that steer more deployments to the special contract model. As the Companies have maintained throughout this proceeding, the single biggest hurdle for large deployments is marshalling and matching materials and scarce approved contractor resources in advance of those deployments. Extending regulatory timelines does not address this logistical problem. This problem can only be solved through early coordination and “good faith negotiation.” Regulatory timelines often have the opposite effect by creating

unrealistic expectations and fomenting disappointment. Therefore, the Commission should delete Section 4(2)(b)1’s reference to the extended timeline for “larger orders” and require pole owners and attachers to negotiate special contracts (i.e., high-volume deployment plans) for all deployments larger than 500 poles per 30 day period.

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| Page 11, Lines 12-18 | Section 4(2)(b)3 | Delete Provision Regarding OTMR Surveys |
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This section directly addresses OTMR surveys and indirectly addresses surveys performed by an attacher pursuant to Section 4(2)(a)6. Because the Companies are proposing to delete the existing OTMR rule (Section 4(11)) in favor of Enhanced OTMR, and to delete Section 4(2)(a)6, Section 4(2)(b)3 should also be deleted.

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| Page 11, Lines 21-22 | Section 4(2)(b)4 | Delete Reference to Extended “On the Merits” Review Timeline for Larger Orders |
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The emergency regulation, like the original regulation, applies longer regulatory timelines to larger orders. This provision references the longer timeline for reviewing large applications on the “merits.” The Companies have maintained throughout this proceeding that rigid regulatory timelines do not facilitate large deployments. Marshalling and matching scarce approved contractor resources to large deployments requires early coordination, good faith negotiation, and contractual commitment. Therefore, the Companies urge the Commission to remove the incremental timeline extensions for larger orders and instead require pole owners and new attachers to negotiate special contracts (i.e., high-volume deployment plans) for applications involving more than 500 poles per 30 day period.

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| Page 13, Lines 13-22 | Section 4(4)(a) | Revise Make-Ready Notice Provision to Implement Enhanced OTMR |
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The Commission’s original regulation required pole owners to issue a written notice to all existing attachers on poles affected by an application of their make-ready obligations to accommodate the new applicant. The emergency regulation does not substantively change this requirement, except to extend the regulatory timelines to accommodate larger applications. Instead of simply opposing the proposed modifications to the regulatory timelines, the Companies propose a bolder approach—fundamentally changing the make-ready process so that the entity most incentivized to complete communications space make-ready expediently and efficiently (i.e., the new attacher) is responsible for performing that work.

The proposed revisions to Section 4(4)(a) are part of the Enhanced OTMR proposal. These revisions make clear that new attachers are not only permitted—but also required—to complete all communication space make-ready to accommodate their attachments. 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. This proposal creates significant efficiencies in the Commission’s make-ready process. First, it circumnavigates one of the biggest causes of deployment delays—the anti-competitive motives (or sheer disinterest) of existing attachers. Second, the Enhanced OTMR proposal makes communication space make-ready more efficient. The new attacher, through the use of a qualified contractor, can complete all required communication space make-ready in a single truck roll.

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| Page 14, Lines 5-6 | Section 4(4)(b)2 | Delete Reference to Extended Power Space Make-Ready Timeline for Larger Orders |
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The Companies propose deleting the reference to the extended regulatory timeline for completing power space make-ready as part of the revisions to steer more deployments to the special contract model. Further, the extended power space make-ready timeline unnecessarily extends the “waiting period” prior to exercising self-help, while at the same time doing nothing to address the underlying issue of whether *resources* will be available at the end of the waiting period.

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| Page 14, Lines 19-23 through Page 15, Lines 1-7 | Section 4(4)(c) | Revise “Coordination with Existing Attachers” Provision to Implement Enhanced OTMR |
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Both the original and emergency regulations impose a duty on new attachers to coordinate communication space make-ready once the pole owner issues the make-ready notice to existing attachers. To implement the Enhanced OTMR proposal, the Companies propose substantively revising this requirement by requiring the new attacher to *perform* all communications space make-ready required for its deployment, as opposed to merely *coordinating* make-ready with existing attachers. The revisions proposed to Section 4(4)(c) would create a more efficient make-ready process by: (a) requiring the new attacher to perform all required communication space make-ready upon receiving notice from the pole owner that all required power space make-ready has been completed; (b) requiring new attachers to complete any necessary transfers of existing attachments within the communications space to poles replaced as part of power space make-ready; and (c) requiring new attachers to provide notice once all communications space make-ready has been completed so that pole owners can ensure that such work was performed in accordance with the make-ready directives, National Electrical Safety Code, and other applicable standards.

In addition to increasing efficiency in the make-ready process (as explained above), this new framework also benefits the public more broadly. By requiring the new attacher to complete all transfers of existing attachments to new poles, the Enhanced OTMR framework should reduce the instances of “double wood” in the public rights-of-way.

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| Page 15, Lines 8-11 | Section 4(5) | Delete the Utility-Specific Make-Ready Deadline Provision |
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This provision should be deleted to accommodate the Enhanced OTMR proposal. Under Enhanced OTMR, new attachers are required to complete *all* communications space make-ready, regardless of: (a) whether the make-ready is “simple” or “complex”; or (b) who owns the facilities being rearranged or transferred within the communications space. Furthermore, the imposition of a power space make-ready deadline on utilities in this provision is unnecessary, as other parts of the pole attachment regulation already impose power space make-ready deadlines on utilities. See, e.g., Section 4(4)(b).

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| Page 16, Lines 21-23 through Page 17, Lines 1-3 | Section 4(8)(b)-(c) | Delete the Survey and Make-Ready Deadlines for Larger Orders |
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Under the original regulation, pole owners were provided 15 additional days to complete surveys for applications involving between 301 to 1,000 poles and an additional 45 days to complete power space make-ready for applications involving between 301 to 1,000 poles. The emergency amendments substantively changed the application-size thresholds for these regulatory timelines, as well as the timelines themselves. As explained above, the Companies oppose the use of regulatory timelines for applications involving more than 500 poles in a 30 day period because regulatory timelines do not address the primary hurdle for large deployments—marshalling and matching the materials and approved contractor resources needed for the deployment. Therefore, the Companies urge the Commission to remove the regulatory timelines for larger orders from the

emergency regulation and, in their place, require pole owners and attachers to negotiate special contracts (i.e., high-volume deployment plans) for applications involving more than 500 poles per 30 day period.

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| Page 17, Line 6 | Section 4(8)(d) | Revise the Special Contract Requirement to Apply to Applications Involving More than 500 Poles |
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Under the original regulation, pole owners and attachers were required to negotiate special contracts for applications involving more than 1,000 poles. *See* 807 KAR 5:015, Section 4(7)(d). The emergency amendments significantly increase the application size threshold for the “special contract” requirement to applications involving more than 3,000 poles. This is a step in the wrong direction. As explained above, if the Commission further amends the regulation upon expiration of the emergency amendments, the Commission should *expand* the use of the special contract requirement to all applications involving more than 500 poles per 30 day period. The proposed revisions in this section are intended to effectuate that high-level proposal.

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| Page 19, Lines 1-11 | Section 4(9)(c) | Delete Exception to Regulatory Timeline for Communications Space Make-Ready |
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This proposed revision is part and parcel of the Enhanced OTMR proposal. Both the original and emergency regulations allow existing attachers to deviate from the regulatory timeline applicable to make-ready within the communications space if complying with these timelines would create a safety issue or service interruption. Because, under Enhanced OTMR, new attachers would be responsible for completing all required make-ready within the communications space, this exception to the timelines would be unnecessary if the Commission adopts the Enhanced OTMR proposal.

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| Page 19, Lines 14-16 | Section 4(10)(a) | Revise Self-Help Survey Remedy |
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Both the original and emergency regulations provide attachers with the right to perform self-help surveys if the pole owner fails to complete this work within the regulatory timeline. Though the Companies oppose providing attachers with a regulatory *right* to perform their own surveys prior to allowing the pole owner an opportunity to timely perform the survey, pole owners should be allowed to waive the 45-day survey timeline in their discretion (for example, when they know early on that they cannot meet the deadline). Therefore, the Companies propose revising Section 4(10)(a) to provide pole owners with the discretion to allow attachers to perform self-help surveys before the regulatory timeline has expired (i.e., to waive the “waiting period” for self-help surveys). The Companies also propose revising Section 4(10)(a)’s reference to Section 5 (the “Contractor Rule”) to make clear that self-help surveys must be performed by approved contractors (by referencing Section 5(1), specifically, rather than Section 5, generally).

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| Page 20, Lines 2-3 | Section 4(10)(b) | Revise Self-Help Make-Remedy Provision to Facilitate Enhanced OTMR |
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Both the original and emergency regulations allow new attachers to complete communications space make-ready when an “existing attacher” fails to complete this work in a timely manner. If the Commission adopts the Enhanced OTMR proposal, there would be no need for this remedy because the new attacher would be required to perform all required communications space make-ready as a matter of course. As such, the Companies propose deleting the reference to “existing attachers” in lines 2-3.

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| Page 20, Line 19 through Page 23, Line 21 | Section 4(11) | Delete Existing One-Touch Make-Ready Option |
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Both the original and emergency regulations include an OTMR option. However, the OTMR option is hardly—if ever—utilized by new attachers. The primary problem with the existing OTMR option is that it can only be used for applications where *all* make-ready within the

application is simple make-ready within the communications space. This limitation severely curtails the functionality of the existing OTMR option. Therefore, the Companies propose deleting the existing OTMR option and replacing it with the vastly superior Enhanced OTMR proposal explained above. This would also simplify and shorten (by more than 3 pages) the regulation.

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| Page 23, Line 23 through Page 24, Line 5 | Section 5(1) | Revise the “Approved Contractor” Requirement |
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Both the original and emergency regulations require that new attachers use “approved contractors” to perform “self-help surveys and make-ready that is complex and self-help surveys and make-ready that is above the communications space.” The Companies appreciate the spirit of the “approved contractor” rule, which emphasizes safety by requiring the use of an approved contractor for work within and above the communications space on a pole. However, the Companies believe that the “approved contractor” rule can be relaxed without jeopardizing the safety and reliability of electric distribution facilities by requiring the use of an “approved contractor” in only two scenarios: (1) when new attachers are performing self-help surveys on poles with electric facilities (in other words, on a pole that has power space); and (2) when attachers are performing self-help make-ready above the communications space. Put another way, new attachers should not be required to use “approved contractors” to perform “complex make-ready” within the communications space. Moreover, electric utilities typically do not have “approved contractors” for communications space make-ready regardless of whether it is simple or complex.

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| Page 24, Lines 8-22 | Section 5(2)(a) | Revise the “Qualified Contractor” Requirement |
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Pursuant to the original and emergency regulation, if a utility maintains a “list of contractors the utility authorizes to perform surveys and simple make-ready,” then new attachers are required to use those contractors to perform that work. There are two problems with this rule.

First, the “trigger” for the rule is unnecessarily complicated. Instead of forcing new attachers to determine whether certain make-ready work qualifies as “simple,” the trigger should, instead, turn on *where* the make-ready work is located. That is, if the make-ready work will take place solely within the communications space, then there is no need for an “approved contractor” to perform this work; the work can instead be performed by any qualified contractor. Second, surveys—if performed correctly—examine the entire pole. Therefore, unless a pole has no electric facilities (in other words, only communications facilities), surveys will *always* require work “above the communications space.” Another way of saying this is as follows: there is no such thing as a “simple” survey when there is power space on a pole. To account for this, and to simplify the triggers under the “qualified contractor” rule, the Companies propose that the reference to “surveys” be dropped entirely from Section 5(2).

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| Page 25, Lines 10-11 | New Section 5(2)(c) | Addition to the “Qualified Contractor” Requirement |
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To account for the instances where a utility pole does not have power supply space (i.e., a pole owned by a telephone utility with no electric facilities attached), the Companies have proposed a new Section 5(2)(c), which would allow a “qualified contractor” (as opposed to an “approved contractor”) to perform surveys on poles without power supply space.

CONCLUSION

The Companies appreciate the opportunity to offer proposed revisions to the emergency regulation and look forward to further dialogue with the Commission and other stakeholders on these important issues at the December 13, 2024 informal conference.

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Respectfully submitted,

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