

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**COMMENTS OF LOUISVILLE GAS & ELECTRIC COMPANY,
KENTUCKY UTILITIES COMPANY, AND KENTUCKY POWER COMPANY**

Louisville Gas & Electric Company, Kentucky Utilities Company, and Kentucky Power Company (collectively, the “Companies”) offer the following comments in further support of their proposed revisions to the pole attachment regulation and in response to the revisions proposed by the Kentucky Broadband and Cable Associations (“KBCA”) and Windstream on December 9, 2024.

**COMMENTS IN FURTHER SUPPORT OF
THE COMPANIES’ PROPOSED REVISIONS**

As stated in the December 9, 2024 comments submitted by the Companies, and as further explained by the Companies at the December 13, 2024 informal conference, the Commission should reinstate the original pole attachment regulation (807 KAR 5:015), which was the result of an 18-month rulemaking proceeding, a significant record, and the participation of numerous stakeholders. This is the best—and simplest—action the Commission can take to facilitate broadband deployment in Kentucky. The Commission “got it right” the first time when it adopted the original regulation. If the Commission is inclined to retain any portion of the emergency regulation, the Commission should retain the following provisions, all of which have the potential to streamline broadband deployment:

- Section 3(5), which requires pole owners to maintain an online repository of relevant information about their pole attachment process;
- Section 4(3)(e)&(f), which requires the parties to “clearly identify” on their invoices or payments the application for which payment is requested or made;
- Section 4(6), which requires attachers to provide pole owners with notice within 15 days of completion of attachment;
- Section 4(8)(e), which creates a process to address stalemates in the negotiation of special contracts; and
- Section 4(10)(b), which requires self-help make-ready to be performed in compliance with the pole owner’s standards, and requires power space self-help to be performed by an approved contractor.

Though the Companies believe that the original regulation (prior to the emergency regulation) created the most favorable ecosystem for efficient broadband deployment, there are opportunities to lean even further into the aspects of the original regulation that created the favorable ecosystem. The lowest hanging fruit is the threshold for the special contract requirement. Early coordination, good faith negotiation, and—critically—bilateral contractual commitment are the keys to facilitating large deployments. This will be even more true when multiple large deployments are competing for the same finite resources. The special contract requirement not only allows pole owners to marshal the necessary materials and approved contractor resources to meet the timing of the large deployment, but it also enables the efficient allocation of these resources across multiple, parallel deployments. Therefore, if the Commission is inclined to further amend the original regulation upon expiration of the emergency regulation, the Commission should adopt amendments that steer more applications—not fewer applications—to the special contract requirement.

During this proceeding, it also became apparent that the One-Touch Make-Ready (“OTMR”) framework in the original (and emergency) regulation does not yield any increase in

broadband deployment efficiency. In retrospect, the underutilization of OTMR should not have been surprising. As it currently stands, OTMR can be used only for applications in which every single pole requires nothing more than “simple make-ready.” This makes the existing OTMR remedy virtually useless because an application with multiple poles almost *always* requires something more than “simple make-ready” to accommodate new attachments. Therefore, the Commission should delete the existing OTMR framework from the original and emergency regulation and replace it with the Enhanced OTMR proposal urged by the Companies. Under this proposal, new attachers would be both allowed and required to perform all communications space make-ready necessitated by their new attachments without any sort of “waiting period.” Short of that, pole owners should *at least* be permitted to require new attachers to utilize self-help in the communications space at the earliest possible time.

At the December 13, 2024 informal conference, Charter objected to Enhanced OTMR on grounds that other attaching entities should not have the right to move Charter’s facilities in the communications space when the make-ready is “complex.” But other attaching entities *already* have this right through self-help. *See* 807 KAR 5:015E, Section 4(10). The Enhanced OTMR proposal has more to do with a change in *timing* than a change in a new attacher’s substantive rights, insofar as Enhanced OTMR eliminates the “waiting period” before a new attacher can exercise self-help. Another way of stating this is : Enhanced OTMR fuses the existing OTMR remedy with the existing self-help remedy in the communications space. This not only creates efficiencies, as all communications space make-ready on a pole would be performed by a single

qualified contractor during a single truck roll, but it also would circumvent one of the largest causes for delay—the anti-competitive motives of existing attachers.¹

RESPONSE TO KBCA’S PROPOSED REVISIONS

Page 2, lines 10-11	Section 1(1)	Expand Definition of “Attachment” to Include Lighting and Transmission Facilities
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KBCA proposes adding the following language to the definition of “attachment” in Section 1(1) of the emergency regulation:

“Attachment” means any attachment by a cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit to a pole owned or controlled by a utility. **Poles used for distribution purposes, regardless of whether they are also used for lighting or to support transmission facilities, are expressly included.**²

Insofar as distribution poles hosting lighting facilities are concerned, the Companies do not oppose the substance of KBCA’s proposal. The Companies’ tariffs already treat these types of poles as “distribution poles” suitable for third-party attachments. However, there is no need to specifically enumerate distribution poles with lighting facilities in the definition of “attachment.” The Commission, in its Statement of Consideration accompanying the original regulation, clearly stated that: “Attachments would still be required for poles with a light if lighting is not the primary purpose of the pole i.e. if there is a light on an electric distribution pole.” Statement of Consideration Relating to 807 KAR 5:015 at 61 (Sep. 15, 2021) (“2021 Statement of Consideration”).

¹ During the December 13, 2024 informal conference, Charter and CTIA expressed concerns over the qualifications of the contractors that would perform Enhanced OTMR. To the extent that Section 5(2) of the regulation, which governs the qualification of contractors that can perform work within the communications space, is not strong enough to assuage Charter’s and CTIA’s concerns, these concerns should be addressed through improvements to the language of Section 5(2)—not through a rejection of Enhanced OTMR.

² Bold/underlined text indicates proposed additions to the Commission’s emergency regulation. Bold/strike-through font indicates proposed deletions to the Commission’s emergency regulation.

The Companies *do* oppose KBCA's proposal insofar as it concerns transmission poles with distribution underbuild. As a preliminary matter, the Commission addressed this issue in its Statement of Consideration accompanying the original regulation:

Electric utilities argued during the informal process that transmission lines should be excluded from the definition of poles in the proposed regulation such that the proposed regulation would not govern access to transmission poles, in part, because making attachments to transmission poles presents unique safety, reliability, and engineering issues. 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 transmission lines above), and they argued those should be subject to the regulation....

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.

2021 Statement of Consideration at 70. In other words, the Commission adopted a nuanced approach to transmission poles that provided utilities with the right to place limitations on access to transmission facilities within their tariffs, subject to Commission review and approval.

The Companies' primary concern with KBCA's proposal is the application of the regulatory timelines to transmission facilities. Transmission facilities have fundamentally different safety, reliability and engineering profiles than distribution poles. Thus, the evaluation of access requests for transmission facilities is more complex, requires a higher level of skilled resource, and requires more time than requests involving distribution poles. For example, LG&E and KU utilize an analysis template in their application portal, Katapult, to perform pole loading analyses on distribution poles. This allows LG&E and KU to perform this analysis within the Commission's regulatory timelines. However, LG&E and KU cannot perform pole loading analysis on transmission facilities through Katapult. Therefore, though LG&E's and KU's existing

tariffs provide access to transmission facilities with distribution underbuild, the tariffs make clear that attachment requests for these types of facilities are not subject to the timelines.³ This allows LG&E and KU to facilitate broadband deployment in a manner that complies with their obligation to maintain the safety and reliability of their transmission and distribution facilities.

Page 3, lines 15-17	Section 1(10)	Expand Definition of “Red Tagged Pole”
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KBCA proposes the following revisions to the definition of “red-tagged pole” in Section 1(10) of the emergency regulation:

“Red tagged pole” means a pole that a utility that [sic] owns or controls the pole that **the utility has identified as needing replacement for any reason other than the pole’s lack of capacity. Examples include, but are not limited to a pole that:**

- (a) Is designated for replacement based on the pole’s non-compliance with an applicable safety standard;
- (b) Is designated for replacement within two (2) years of the date of its actual replacement for any reason unrelated to a new attacher’s request for attachment; or
- (c) Would have needed to be replaced at the time of replacement even if the new attachment were not made.

The stated purpose of KBCA’s proposed revisions is to “align [the Commission’s definition] with the FCC’s definition.” KBCA Comments at 3. KBCA also wants the Commission “to require utilities 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.” *Id.* at 4.⁴

As a preliminary matter, KBCA’s proposal is out of place in this proceeding. KBCA’s proposed revisions to the definition of “red tagged pole” address a singular issue: cost allocation

³ Kentucky Power’s pole attachment tariff excludes all transmission poles. However, per Kentucky Power’s published policies, Kentucky Power *does* consider access request for transmission poles with distribution underbuild (but not within the regulatory timelines).

⁴ KBCA’s proposed “notice” requirement is addressed *infra* at p.14.

for make-ready pole replacements. KBCA does not (and cannot) argue that its proposed revisions to the “red tagged pole” definition expedite broadband deployment. In addition to falling outside of the goals of SJR 175, KBCA’s proposed revisions are an unproductive distraction. The Commission’s pole attachment complaint process *already* provides attachers with a remedy for improper make-ready charges.

Furthermore, contrary to KBCA’s argument, the FCC’s pole attachment rules do not define the term “red tagged pole.” The treatment of “red tagged poles” lies solely within the FCC’s administrative orders—not its actual rules. The Commission’s codified (and far more objective) definition of “red tagged pole” is superior to the FCC’s amorphous statements of what constitutes a “red tagged pole.” Finally, unlike the FCC’s framework, the “red tagged pole” definition plays a very specific role in the Commission’s regulation. Section 7(7)(b) of the Commission’s regulation establishes a rebuttable presumption that a pole is “red tagged.” Because of this rebuttable presumption, the regulation must provide pole owners with a specific (non-amorphous) definition for “red tagged poles,” or else there would be no objective criteria by which pole owners could overcome the rebuttable presumption. Therefore, the Commission should reject KBCA’s proposed revisions to the definition of “red tagged pole” in Section 1(10).

Page 6, lines 8-11	Section 3(5)(b1)	Delete the “Certification” of Completeness Requirement
Page 9, lines 10-13	Section 4(2)(b)	

KBCA proposes significant revisions to Section 3(5)(b)1 of the emergency regulation and the deletion of Section 4(2)(b). Sections 3(5)(b)1 and 4(2)(b) require attachers to: (1) submit a standalone document with their application that certifies that the application complies with the law and the applicable tariff; (2) “designate appropriate personnel responsible for overseeing all attachments with the utility”; and (3) “identify appropriate personnel...who shall be responsible for coordinating with the utility and ensuring that attachment-related issues are addressed in a

timely manner.” KBCA argues that the requirements outlined in (1) and (2) above “create additional administrative burdens” without providing any real benefit. *See* KBCA’s Comments at 4. Therefore, KBCA proposes deleting these requirements (while retaining the requirement that attachers “identify appropriate personnel...who shall be responsible for coordinating with the utility and ensuring that attachment-related issues are addressed in a timely manner.”). *See id.*

The Companies do not oppose KBCA’s proposal. In fact, the Companies questioned the effectiveness of the “certification” requirement in the informal conferences leading up to the adoption of the emergency regulation. Moreover, the attachers have completely ignored this requirement—i.e., no attacher has submitted the required certification to the Companies since this requirement went into effect in May 2024. However, in lieu of deleting the certification requirement altogether, and to address the concern raised by the Kentucky Electric Cooperatives at the December 13, 2024 informal conference (relating to the importance of attention to accuracy within an application), the Companies propose that the Commission revise the regulation such that the act of filing an application is deemed a “certification” by the attacher that it complies with the applicable law, the pole owner’s requirements, and the pole owner’s tariff.

Page 7, lines 12 & 19	Section 3(6)(c)1 Section 3(6)(c)3	Reduce the Advance Notice Requirement for Overlashing to 15 days
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KBCA argues that 30-day advance notice for overlashing “unnecessarily delays broadband deployment.” KBCA Comments at 4. KBCA, therefore, proposes that the Commission reduce this advance notice period to 15 days. *See id.* at 5. The Companies oppose reducing the advance notice period to 15 days, especially if this reduced notice period would apply to overlash notices of all sizes. Though overlashing sometimes imposes a lower burden on poles than the addition of an entirely new attachment, overlashing is not immune from the laws of physics—i.e., the overlashing of additional facilities onto an existing attachment increases pole loading (particularly

wind and ice loading due to the increased bundle profile). Therefore, prudent distribution system management requires that electric utilities review proposed overlashes to ensure compliance with the National Electrical Safety Code and other applicable internal standards. Depending on the size of the overlash request and the need for pole loading analyses, this process can be time-consuming. The Commission recognized this fact when it rejected KBCA's identical proposal prior to the adoption of the original regulation. *See* 2021 Statement of Consideration at 52 (“[T]he Commission will amend Section 3(5)(c) to allow a utility to require up to 30 days’ advance notice of planned overlashing... Fifteen days is too short a period for a utility to review such a notice, particularly for large requests, and 30 days is not long enough to prejudice an overlasher.”).

Nevertheless, the Companies are open to revising the advance notice period for overlashing in a way that balances the interests of attachers and pole owners. For example, the Companies would support a dynamic advance notice period that allows pole owners to require:

- 15 days’ advance notice of overlash requests involving up to 100 poles;
- 30 days’ advance notice of overlash requests involving between 101-500 poles; and
- A special contract for overlash requests involving more 500 poles.

This approach expedites broadband deployment in two major ways. First, it decreases the advance notice period for smaller overlash requests, which facilitates smaller overlash projects. Second, the special contract facilitates larger overlash requests by allowing the pole owner to allocate sufficient resources to ensure that the review process and any required pole loading analyses are completed in a timely manner.

Page 9, lines 15-16	Section 4(2)(a)2	Establish Fixed Timeline for “Completeness” Review of Applications, Regardless of Size
Page 10, lines 11-12	Section 4(2)(a)8	
Page 11, lines 1-2	Section 4(2)(a)11	

KBCA proposes eliminating the incremental extensions to the “completeness” review timeline for larger orders and installing a static timeline for all applications. *See* KBCA Comments at 5. The emergency regulation requires pole owners to review applications involving up to 500 poles within 10 days and provides pole owners with one additional day to perform the “completeness” review for “each additional 500 pole increment in an application.” Emergency Regulation, Section 4(2)(a)8. KBCA argues that there “is no apparent justification or specific need” for the extended timelines for larger orders and that the incremental timelines are “confusing” and “difficult” to operationalize. KBCA Comments at 5. Although the Companies agree with KBCA that the sliding scale timelines present operational challenges, the Companies oppose KBCA’s proposed revisions to the “completeness” review timelines (barring additional revisions to the Commission’s regulatory timelines).

KBCA’s conclusory statement that there “is no apparent justification or specific need” for the additional time to review larger applications for “completeness” defies math and logic. As is recognized throughout Section 4 of both the original and emergency regulation, the burden imposed by an attachment request on the pole owner grows with the size of the attachment request. It does not make sense for an application involving 3,000 poles to be governed by the same review timeline that applies to an application involving a single pole.

Nevertheless, the Companies also believe that the incremental increases to the “completeness” review timeline should be removed from the emergency regulation, but only as a component of broader revisions that steer more deployments to the special contract model. As explained above and during the informal conferences, the primary challenge for large deployments

is marshalling and matching the necessary contractor resources. The best solution for marshaling and matching resources to large deployments is the use of a special contract (like the high-volume deployment plan between KU and Charter). Therefore, the Companies support deleting the incremental “completeness” review timelines for larger orders, but only insofar as those orders are subject to the special contract requirement.

Page 10, lines 17-23	Section 4(2)(a)10	Establish Review Timeline for Resubmitted Applications
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KBCA proposes adding the following provision to the emergency regulation’s “completeness” review framework, as a new Section 4(2)(a)10:

Any resubmitted application need only address the utility’s reasons for finding the original application incomplete and shall be deemed complete within 5 business days after its resubmission, unless the utility specifies which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons. The new attacher may follow the resubmission procedure as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the deadline set forth in this paragraph shall apply to the utility’s review.

KBCA explains that the lack of a review timeline for resubmitted applications creates uncertainty and that the language proposed above mirrors the FCC’s approach. KBCA Comments at 5-6.

The Companies believe that adding this level of detail to the regulation is unnecessary given that the existing “completeness review” deadline already seems to apply to resubmitted applications. That said, the Companies are not opposed to an explicit timeline for resubmitted applications, but reducing this timeline from 10 days to 5 days does not make sense. First, the Companies do not perform abbreviated reviews on resubmitted applications; the Companies review resubmitted applications in their entirety to ensure they contain all required components. Second, it makes no sense from a policy perspective to shorten the “completeness” review timeline for resubmitted applications, as this would put the pole owner on a shorter “shot clock” due to the mistake of an attacher. Third, KBCA’s proposal does not make mathematical sense. If an

application was rejected because it was missing 4 of 5 (80%) of the required components, then reducing the resubmittal review timeline by 50% is incongruous.

Page 11, line 8	Section 4(2)(b)1	Incorporate the FCC’s Timelines for Completion of Surveys and Make-Ready
Page 12, lines 5-6	Section 4(2)(b)4	
Page 13, line 22	Section 4(4)(a)2	
Page 14, line 11	Section 4(4)(b)2	
Page 16, line 21	Section 4(8)(b)	
Page 17, line 1	Section 4(8)(c)	
Page 19, line 2	Section 4(9)(c)	

KBCA proposes that the Commission scrap the timelines for larger orders and incorporate the FCC’s shorter timelines for surveys and make-ready. *See* KBCA Comments at 6-8. The emergency regulation utilizes defined timelines for completion of surveys and make-ready for orders involving up to 500 poles and then provides pole owners with an additional 15 days to complete surveys and make-ready work for each additional 500-pole increment within an application. *See* Emergency Regulation, Section 4(8)(a)-(c). This incremental framework applies to applications involving up to 3,000 poles. *See id.* at Section 4(8)(d) (requiring the parties to negotiate a special contract for applications involving more than 3,000 poles). KBCA argues that “[t]here is no evidence to suggest that the utilities need this additional time, or that these additional timeframes will address the ongoing challenges pole owners are facing with increasing pole application volume.” KBCA Comments at 6.

The Companies oppose KBCA’s proposal. The emergency regulation did not just modify how timelines were calculated for larger orders—it drastically increased the upper bound for “larger orders.” Under the original regulation, the upper bound for “larger orders” was an application involving up to 1,000 poles; anything above this threshold fell outside of the regulatory timelines and was subject to the special contract requirement. Under the emergency regulation, however, the threshold for “larger orders” is an application involving up to 3,000 poles—three

times the threshold of the original regulation. KBCA's proposal, if accepted, would result in even shorter timelines for applications involving up to 300% more poles. Increasing the size of applications subject to regulatory timelines and decreasing the timelines for those applications is not a viable solution. This is particularly true with respect to the survey timeline because every pole within an application must be surveyed (as opposed to power space make-ready, which is typically only required on a fraction of the poles in an application). And because surveys (and the resulting engineering work) are the foundation of every deployment, pole owners cannot cut corners to meet unrealistic timelines. Therefore, if the Commission intends to maintain rigid survey and make-ready timelines on attachment requests involving more than 500 poles, the Commission should also retain the incremental extension framework for those timelines.

As explained above, though, tinkering with regulatory timelines will do little to facilitate broadband deployment. The primary challenge for large deployments is getting the right resources to the right place at the right time. This is a logistical challenge that can only be solved through early coordination and good faith negotiation. Special contracts—negotiated before large deployments commence—allow the parties to marshal and retain the resources needed to complete surveys and make-ready in a timely manner. Regulatory timelines are not only the wrong tool for this logistical problem, but they also create unrealistic expectations that hinder good faith negotiations. Therefore, to meet the goals of SJR 175, the Commission should be moving away from regulatory timelines and steering **more** applications to the special contract requirement. A shorter regulatory time frame does nothing to advance broadband deployment when there are no resources available to perform the self-help work upon the expiration of the regulatory timeframe.

Page 16, lines 15-16	Section 4(7)(b)5	Require Pole Owners to Provide Notice of “Red Tagged Poles” in an Application
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KBCA proposes adding the following notice requirement (as Section 4(7)(b)5) under the “final invoice” rule in both the original and emergency regulation:

A utility shall notify attachers of each red tagged pole identified in an attacher’s application in the utility’s response to the attacher’s application.

KBCA Proposed Revisions at 16, lines 15-16. This proposal is unnecessary. Deteriorated poles are called “red tagged poles” for a reason: these poles are prominently marked in the field with actual tags. Therefore, attachers can easily obtain this information while they are performing their pre-application “ride-outs.”⁵ Furthermore, during LG&E’s and KU’s surveys, photographs are taken of each pole identified in an attacher’s application, which allows attachers to identify all “red-tagged poles” in the survey results they receive from LG&E and KU. LG&E and KU also hold a “virtual ride-out” during which an attacher has the opportunity to review the proposed make-ready solution. During the “virtual ride-out,” attachers are, yet again, notified of “red-tagged poles” within the application and informed that those poles replacements will be excluded from the make-ready cost estimate. The Commission should reject KBCA’s proposal because it would impose still another administrative burden on pole owners while providing no value to the pole attachment process.

⁵ During the December 13, 2024 informal conference, Charter claimed that they are not privy to whether a pole is red-tagged when the survey is performed by another party. This is a red-herring. The survey—whether Charter participates or not—is performed *after* an application is submitted. But attaching entities should be riding-out a line *before* submitting an application.

Page 17, lines 4-9	Section 4(8)(d)	Make the Special Contract Requirement Permissive
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KBCA proposes that special contracts be permissive, rather than mandatory, for requests in excess of 3,000 poles in any 30-day period. KBCA thus proposes that Section 4(8)(d) be revised as follows:

A utility and a new attacher...~~shall~~ may negotiate a special contract in good faith [for] all requests for attachment larger than the lesser of 3,000 poles or three (3) percent of the utility’s poles in Kentucky....

KBCA states, without explanation, that the special contract requirement should be made permissive because, although special contracts “may be beneficial under certain circumstances, pole owners and attachers should not be mandated to pursue them.” KBCA Comments at 8. It is unclear how KBCA’s proposal would work and KBCA did not offer a cogent explanation at the December 13, 2024 informal conference. If there is no requirement that the parties negotiate a special contract for applications above a particular threshold, then there would be a regulatory gap that would sow confusion and likely create more disputes requiring Commission intervention. For example, if Section 4(8)(d) is permissive, then a pole owner could presumably just decide *not* to entertain applications in excess of the threshold.

Casting ambiguity upon the special contract requirement is perhaps the *worst* thing the Commission could do for broadband deployment. The *best* thing the Commission can do with respect to Section 4(8)(d) is either: (a) reinstate Section 4(7) of the original regulation requiring special contracts for applications in excess of 1,000 poles in any 30-day period; or (b) eliminate the incremental extension framework for larger orders and require special contracts for all applications involving more than 500 poles. The more deployments that are subject to the special contract requirement, the more broadband will be deployed in Kentucky.

Page 18, lines 12-15	Section 4(8)(h)	Require Pole Owners to Provide Early Notice of Inability to Meet Timelines
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KBCA proposes a new Section 4(8)(h) to expedite its self-help remedies:

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).

KBCA’s proposal is well-intended but impractical. A pole owner typically will not know within 15 days of receiving a complete application whether it will be able to meet the applicable survey timeline. This determination depends heavily on the fluctuating capacity of a pole owner’s resources. In other words, unless the pole owner is experiencing significant survey backlogs at the time the complete application is received, it would be difficult for a pole owner to accurately forecast whether it will be unable to meet the survey deadline. KBCA’s proposal is even less practical with respect to make-ready. Within 15 days of receiving an application, a pole owner will not even know the scope or type of make-ready the application will require (i.e., because a survey would not have been performed at this point in the process). Therefore, the Commission should reject KBCA’s proposal.

However, there are potentially workable alternatives. In their December 9, 2024 filing, the Companies proposed the following revision to Section 4(9)(a):

If a utility fails to complete a survey as established in subsection (2)(b) of this section, **or if a utility waives its right to perform the survey in writing**, then a new attacher may conduct the survey in place of the utility by hiring a contractor to complete the survey, which shall be completed as specified in Section 5 **(1)** of this administrative regulation.

The Companies are also open to a “notice” requirement so long as it is triggered by a good faith belief that they cannot meet the timeline (as opposed to an arbitrary 15-day period). For example, Section 4(9)(a) could be revised as follows:

If a utility fails to complete a survey as established in subsection (2)(b) of this section, then a new attacher may conduct the survey in place of the utility by hiring a contractor to complete the survey, which shall be completed as specified in Section 5(1) of this administrative regulation. **A utility may waive its right to perform the survey in writing at any time and shall provide written notice to the attacher as soon as practicable upon the good faith realization that it cannot complete the survey as established in subsection (2)(b) of this section.**

The Companies are also open to a similar addition in Section 4(9)(b) regarding power space make-ready work. This approach would not only *allow* pole owners to waive the “waiting period” for self-help (as proposed by the Companies in their December 9, 2024 submittals) but also, in essence, *require* pole owners to waive the “waiting period” (as proposed by KBCA) when the pole owner believes, in good faith, that it cannot meet the regulatory timeline.

RESPONSE TO WINDSTREAM’S ROPOSED REVISIONS

Windstream proposes adding the following exclusionary language to the definition of “attachment” in Section 1(1) of the Emergency Regulation:

“Attachment” means any attachment by a cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit to a pole owned or controlled by a utility. **“Attachment”, as used throughout 807 KAR 5:015E, does not include a service drop from an existing attachment.**

Windstream Comments at 2. Windstream’s proposed revision is intended to make clear that the regulation’s application requirement does not apply to service drops. Generally speaking, the Companies do not subject “service drops” to the prior application requirement. In fact, the Companies’ tariffs make clear that true “service drops” are excluded from the standard application and permitting requirements. For instance, LG&E’s and KU’s tariffs provide:

No written application to Company to affix and attach a Service Drop to Company’s poles is required but Attachment Customer shall provide notice to Company within sixty (60) days of attachment of such Service Drop.

Louisville Gas and Electric Company, P.S.C. Electric No. 13, Second Revision of Original Sheet No. 40.14, Section 7.k. (eff. Sep. 30, 2024); Kentucky Utilities Company, P.S.C. No. 20, Second

Revision of Original Sheet No. 40.14, Section 7.k (eff. Sep. 30, 2024). Similarly, under Kentucky Power’s tariff, the application requirement only applies to “attachments,” and the term “attachment” is defined to exclude service drops (except for billing purposes under certain specified circumstances). *See* Kentucky Power Company, P.S.C. KY. NO. 13, 1st REVISED SHEET NO. 12-3, Section 6 (application requirement) (eff. Aug. 31, 2024); and Kentucky Power Company, P.S.C. KY. NO. 13, 2nd REVISED SHEET NO. 12-1, Section 2 (definitions) (eff. Sep. 30, 2024). In lieu of advance permitting requirements, the Companies subject service drops to after-the-fact applications/notifications to prevent unnecessary delays in providing service to customers.

However, the exclusionary language proposed by Windstream is problematic because the term “service drop” is not defined. The Companies narrowly define “service drops” to encompass a cable that runs from either: (1) a trunk line directly to a customer’s premises; or (2) a trunk line to a drop/lift pole. *See, e.g.,* Louisville Gas and Electric Company, P.S.C. Electric No. 13, Second Revision of Original Sheet No. 40.2, Definitions (eff. Sep. 30, 2024); Kentucky Utilities Company, P.S.C. No. 20, Second Revision of Original Sheet No. 40.2, Definitions (eff. Sep. 30, 2024); Kentucky Power Company, P.S.C. KY. NO. 13, 2nd REVISED SHEET NO. 12-1, Section 2 (eff. Sep. 30, 2024). The purpose of these narrowly tailored definitions is to prevent attachers from circumventing the application requirement for standard attachments by using a “service drop” to serve a customer that is multiple poles away from the trunk line. Based on Windstream’s comments, which explain that “service drop cabling may extend across multiple utility poles...and not just from the closest pole to the customer’s location,” it appears that Windstream might be

attempting to shield this improper practice from the standard application requirement. Windstream Comments at 1.⁶

Therefore, the Commission should reject Windstream's proposed revisions to the definition of "attachment." If, however, the Commission intends to incorporate exclusionary language for service drops in Section 1(1), then the Commission should include a definition for "service drops" in the regulation. To avoid gamesmanship by attachers, the definition should be narrowly drawn to only include cables that extend directly from the trunk line to either: (1) a customer's premises; or (2) a drop or lift pole. *See, e.g.,* Louisville Gas and Electric Company, P.S.C. Electric No. 13, Second Revision of Original Sheet No. 40.2, Definitions (defining "service drop" as a cable "attached to a pole with a J-hook or other similar hardware that connects the trunk line to an end user's premises, and extends directly from the trunk line to a drop/lift pole or into an end user's premises.").

⁶ The problem with Windstream's proposal was visually well-explained by Duke Energy Kentucky during the December 13, 2024 informal conference at approximately 25:20 in the video.

CONCLUSION

The Companies appreciate the opportunity to offer these written comments in response to the revisions proposed by other stakeholders to the emergency regulation.

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Respectfully submitted,

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