COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

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

Louisville Gas & Electric Company, Kentucky Utilities Company, and Kentucky Power Company (collectively, the "Companies"), in accordance with the Commission's instructions at the May 17, 2024 Informal Conference, submit these joint comments on the proposed emergency amendments to 807 KAR 5:015 released by Commission staff on May 15, 2024 (the "Proposed Amendments").

INTRODUCTION AND GENERAL COMMENTS

The Kentucky Public Service Commission ("the Commission") adopted its existing pole attachment regulation, which took effect on February 1, 2022, based on a robust evidentiary record developed over an 18-month period. The Commission simultaneously released a detailed Statement of Consideration that addressed every contested issue in the underlying rulemaking proceeding. In the two years that the existing regulation has been in effect, there have been **no** pole attachment complaints filed with the Commission, even though the current regulation includes a special complaint process specifically for pole attachment issues. As the Companies have contended from the outset of this docket in December 2023, there is nothing fundamentally "broken" about the existing regulation.

Nevertheless, the General Assembly enacted SJR 175 in this year's legislative session, requiring the Commission to promulgate emergency administrative regulations to "improve" the existing regulation. The Companies appreciate the opportunity the Commission has afforded the parties in this proceeding to provide input regarding the required amendments. To this end, the Companies offered proposed amendments that fell into two major buckets, both of which would expedite—and provide more predictability to—the access process:

- Amendments that addressed the only real bottleneck in the access process—the lack of sufficient resources to perform surveys, engineering, and electric supply space make-ready work—by steering **more** deployments toward the good faith negotiation model (i.e., the only model that can bring the right resources, at the right time, to the right place); and
- Amendments that saved time and removed anti-competitive behavior from the access process by not only allowing, but also **requiring**, a new attacher to perform all communications space make-ready work through a qualified contractor contemporaneously with the installation of its new broadband facilities.

By contrast, the Commission's Proposed Amendments steer fewer deployments to the "good faith negotiation" model and delay the opportunity for new attachers to perform communications space make-ready—both of which will slow broadband deployment in Kentucky.

The Companies continue to believe that the approach they have offered is better for broadband deployment and more closely aligns with the goals of SJR 175. The Companies respectfully request that the Commission incorporate the ideas above (as more specifically explained in Sections I and M *infra*) into the amendments the Commission ultimately adopts.

While Companies appreciate certain aspects of the Proposed Amendments, these revisions, *inter alia*, (1) do not adequately address the resource availability issues discussed during the Informal Conferences, (2) place too much focus on the make-ready stage of the attachment process (even though all stakeholders agreed that the greatest potential for delay is in the survey/engineering step of the process), and (3) remove important safeguards, such as prohibition on self-help pole replacements—a practice that presents that is dangerous and deleterious to system reliability. In addition to these general comments, the Companies offer the following comments on the specific revisions in the Proposed Amendments, along with a redlined version of the Proposed Amendments.[1]

SPECIFIC COMMENTS ON PROPOSED AMENDMENTS

A. Section 3(5): Incorporating a URL Requirement in Tariffs [*NO OBJECTION WITH EXPLANATION*]

The Proposed Amendments incorporate a new Section 3(5) that would require utilities to identify a URL within their pole attachment tariffs that includes: (1) a form that attachers can submit to utilities to, among other things, certify their applications comply with the utilities' requirements; (2) lists of approved contractors for surveys and power space make-ready; and (3) the utilities' construction standards. Proposed Amendments, Section 3(5). The Companies do not object to the proposed Section 3(5).

As explained in Section D *infra*, though, some utilities utilize engineering and pole loading analysis software to complete survey and engineering work. This technology not only reduces the

[1] The attached redlined version of the Proposed Amendments shows only the Companies' incremental revisions to the Commission's proposed revisions. For the Companies' more substantive revisions to the 807 KAR 5:015, the Companies refer the Commission to their previously filed proposed revisions. *See* Louisville Gas & Electric Company's and Kentucky Utilities Company's Proposed Amendments to 807 KAR 5:015, Exhibit A (filed Apr. 19, 2024); Kentucky Power Company's Notice in Support of Louisville Gas & Electric's and Kentucky Utilities' Proposed Amendments to 807 KAR 5:015 (filed Apr. 19, 2024).

potential for errors, but it also analyzes and provides results for proposed engineering much more quickly. Because proposed Section 3(5) requires pole owners to publish their list of approved contractors and their construction standards online, attachers might interpret this language as allowing them to simply hire approved contractors and perform surveys without using a utility's required engineering and pole loading analysis software. This misinterpretation would create problems within the permitting process and it would neutralize the time/money saving benefits of this new technology.

B. Section 4(2)(a)1: Requiring Attachers to Submit Certifications of Completeness [*NO OBJECTION*]

As explained above, the Companies do not object to Section 4(2)(a)1 of the Proposed Amendments.

C. Section 4(2)(a)5: Barring Utilities from Requiring Surveys as Part of Complete Application [*NO OBJECTION*]

The Proposed Amendments incorporate a new Section 4(2)(a)5 that provides: "A utility shall not require a new attacher to submit a survey as a filing requirement for an application." The Companies do not object to proposed Section 4(2)(a)5. As the Companies explained during the Informal Conferences, their experience with attacher submittal of surveys has proven that it slows deployments and increases costs. That said, the Companies believe the decision on whether to require a survey as part of a complete application should lie with each utility.

D. Section 4(2)(a)6: Giving Attachers a Regulatory Right to Conduct Their Own Surveys [*OBJECTION*]

Under the existing rules, attachers can hire an approved contractor to perform self-help surveys, but this right only kicks in after a utility fails to complete the surveys within the regulatory timeline. The Proposed Amendments expand this right by allowing attachers to perform self-help surveys from the onset:

> A new attacher may submit a survey with an application of 500 poles or less, which the utility shall accept if the new attache[r] used an approved contractor listed on the utility's website and the survey was conducted no longer than forty five (45) days prior to submission.

Section 4(2)(a)6. Based on the Companies' experience with attacher-submitted surveys, the Companies do not believe this proposed revision will further the goals of SJR 175.

Nevertheless, the Companies appreciate the limitations embedded within this rule. Surveys are the single most important part of the deployment process because the data collected serves as the foundation for the deployment. The quality of all subsequent work on the pole is directly correlated to the quality of the surveys. Therefore, surveys must be conducted by qualified personnel. At least with respect to poles hosting electric distribution facilities, only approved contractors fall within this category (because properly conducted surveys examine the entire pole, including the power space). Furthermore, the temporal limitation within this rule properly acknowledges the dynamic nature of jointly used pole networks. Surveys can quickly become inaccurate due to changes in the composition of electric distribution poles, either in response to the needs of electric ratepayers or due to increased demand by third-party attachers.

That said, the Companies oppose providing attachers with a regulatory right to perform surveys as a matter of course. Because surveys are the "single point of failure" in broadband deployments, if not done correctly, the resulting make-ready work could jeopardize the safety and reliability of the Companies' electric distribution facilities. Attachers do not have the same incentives as pole owners and often prioritize speed to market over strict compliance with utility permitting processes. Though partially alleviated by the approved contractor requirement, the risk of attachers cutting corners during surveys remains elevated if the approved contractors are under the direct control of, and are taking directions from, the attachers. That is, the motives of the "master" in this scenario (i.e., speed to market) might override the safety and reliability

considerations of the utility. Though it is true that this concern can be managed by removing contractors from the "approved" list when the work is sub-par, this is a backwards looking solution insofar as it invites the error before the correction. Perhaps more importantly, during both the April 26, 2024 and May 17, 2024 Informal Conferences, KBCA clearly stated that the right to perform surveys was unimportant. Given that this issue **is** important to the Companies, and given that it appears to be unimportant to KBCA, the Companies respectfully submit that it should be removed from the Proposed Amendments.

If the Commission intends to provide attachers with a regulatory right to perform surveys, additional safeguards are necessary. For some utilities, the contractor must be proficient with—and have access to—the utility's engineering and pole loading analysis software. Access to, and the ability to use, this software system may be critical to performing surveys on poles because a utility's construction standards may be embedded within the software. Thus, the Proposed Amendments to Section 4(2)(a)6 should—at a minimum—provide pole owners with the right to require attachers to use their internal software systems when performing self-help surveys. As explained in Section A *supra*, the use of these software systems benefits attachers (in addition to the utility) by promoting faster deployments and reducing costly errors during the survey and engineering phase of the deployment.

E. Section 4(2)(a)7: Requiring Utility's to Explain Denials of "Incomplete" Applications [*NO OBJECTION*]

The Proposed Amendments incorporate a new Section 4(2)(a)7 that provides: "If a utility rejects an application the rejection shall state the reason for the denial and shall include specific citations to the regulation and the utility's tariff that form the basis of the rejection." The Companies do not object to proposed Section 4(2)(a)7.

F. Section 4(2)(a)8: Clarifying the Deadline for Reviewing Applications for "Completeness" [*SUPPORT WITH MODIFICATION*]

Under the existing rules, pole owners are required to review applications for completeness within ten (10) days, regardless of whether the application includes one (1) pole or 1,000 poles. The Proposed Amendments address this anomaly by providing pole owners with an additional two (2) days "for each 500-pole increment in an application." The Companies support this proposed revision, but propose that the Commission add the following sentence to ensure that the completeness review period expands when the number of poles exceeds 500: "By way of example, the completeness review period for 501-1,000 poles shall be twelve (12) business days."

G. Section 4(2)(a)9: Allowing Attachers to Reprioritize Pending Applications [*OBJECTION*]

The Proposed Amendments include a new rule that gives attachers the right to reprioritize applications that are already pending with the pole owner:

> 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 an application suspends the review time for a new attacher's other applications currently under review.

Section 4(2)(a)9. The Companies object to providing attachers with a regulatory right to reprioritize pending applications. First, allowing attachers to reshuffle applications after they have already been submitted places an enormous burden on utilities. Tracking and managing applications subject to strict regulatory timelines already places significant pressure on the pole owner. Requiring utilities to somehow manage regulatory timelines for de-prioritized applications would add an additional layer of complexity and create the potential for time-consuming mistakes, especially given that the Proposed Amendments do not provide guidance regarding how the de-prioritization process should work. To the extent attachers prefer an arrangement that accommodates reprioritization of applications, the proper vehicle for accommodating this is the special contract. Second, the proposed amendment sends the wrong signal to attachers. Attachers

should be planning their deployments and prioritizing their routes before submitting applications to a pole owner. The proposed amendment removes the incentive for attachers to perform this important work upfront. This will not only force utilities into the role of project manager for an attacher's deployment, but it will also ultimately result in the inefficient consumption of scarce utility resources. Third, the proposed amendment is susceptible to gamesmanship that could result in discriminatory outcomes.

H. Section 4(2)(e): Helping Utilities Track Make-Ready Payments [*SUPPORT*]

The Proposed Amendments include a new requirement that attachers "identify the application or project" in their payments of make-ready estimates. *See* Section 4(2)(e). The Companies support the proposed Section 4(2)(e) and believe that it will reduce the administrative burden associated with third-party pole attachments. The Companies also acknowledge the concerns raised by KBCA during the May 17, 2024 Informal Conference—that it would be difficult to comply with this requirement if the application is not identified in the invoice. The Companies agree that attachers should not be expected to comply with this requirement if the invoice does not include the application number.

I. Section 4(4)(a)2: Expanding the Time to Complete Communication Space Make-Ready [*NO OBJECTION*]

The Proposed Amendments would lengthen the timeline for existing attachers to complete make-ready within the communications space under Section 4(4)(a)2. In particular, the Proposed Amendments would extend the standard timeline from thirty (30) days to forty-five (45) days, and would extend the longest timeline from seventy-five (75) days to 120 days.[2] Although the Companies have no objection to these proposed revisions, the Companies believe that extending

[2] The 120-day timeline appears to be an error. Pursuant to Section 4(7)(c) of the Proposed Amendments, the longest regulatory timeline would actually be 145 days (based on an additional twenty (20) days for each 500-pole increment up to 3,000 poles).

the timeline for completing communication space make-ready is a step in the wrong direction (regardless of the Commission's proposed increases to the application-size thresholds). Extending the timeline for communication space make-ready will almost certainly result in slower deployments, as the existing attachers responsible for completing such make-ready have an anti-competitive motive to slow roll their make-ready. To the extent the Commission is seeking to bring further efficiency and predictability to communications space make-ready, the Commission should adopt the Companies' Enhanced OTMR framework.[3] Enhanced OTMR facilitates broadband deployment by requiring the party most incentivized to perform the work quickly and efficiently—the new attacher—to complete all required make-ready work within the communication space. Under the Companies' proposal, the new attacher would be required to perform this work through the use of a qualified contractor, which reduces the risk of damage to third-party equipment and service outages. Moreover, by requiring the new attacher to complete all communication space make-ready, Enhanced OTMR would result in a single "roll" of the truck for work in the communications space; under the current process, make-ready is performed in a piecemeal fashion that requires multiple, redundant trips to the pole.

J. Section 4(6): Requiring Attachers to Provide Timely Notice of Attachment [*SUPPORT*]

The Proposed Amendments add a new Section 4(6) that would require attachers to provide written notice to the pole owner within five (5) business days of completing their attachment installations. The Companies support this proposed rule because it would promote the safety and reliability of electric distribution facilities, as well as reduce unnecessary costs and disputes.

[3] *See* Louisville Gas & Electric Company's and Kentucky Utilities Company's Proposed Amendments to 807 KAR 5:015 at 2 (filed Apr. 19, 2024); Kentucky Power Company's Notice in Support of Louisville Gas & Electric's and Kentucky Utilities' Proposed Amendments to 807 KAR 5:015 (filed Apr. 19, 2024).

K. Section 4(7)(a): Increasing the Application-Size Thresholds for the Baseline Regulatory Timelines[4] [*NO OBJECTION*]

The Proposed Amendments would extend the application-size threshold for the standard timelines applicable to surveys and make-ready. Under the existing rules, the standard timelines for completing surveys and make-ready apply to applications involving 300 or fewer poles. The Proposed Amendments to Section 4(7)(a) would increase this application-size threshold to 500 or fewer poles. For context, a Kentucky Power distribution line comprised of 300 poles would span approximately 14 miles; a pole line comprised of 500 poles would span approximately 23.5 miles. The Companies do not oppose increasing the application-size threshold for the Commission's standard timelines. In fact, the Companies believe this change serves the goals of SJR 175 if all applications exceeding 500 poles (or at least where application volume over a several month period will exceed 500 poles per month) are subject to the "good faith negotiation" requirement. As explained in more detail below, though, the Companies believe that applying regulatory timelines to applications in excess of 500 poles per month does not address the resource bottleneck or serve the goals of SJR 175.

L. Section 4(7)(b): Revising the Survey Timeline for "Larger Orders" [*OBJECTION*]

The existing rules apply longer timelines for completing surveys to "larger orders"—i.e., applications involving between 301 and 1,000 poles (i.e., pole lines spanning, in the case of Kentucky Power, from approximately 14 miles to 47 miles). Specifically, existing Section 4(7)(b) extends the standard timeline for completing surveys (45 days) by fifteen (15) additional days for "larger orders." The Proposed Amendments substantively change this framework by incrementally increasing the survey timeline for incremental increases in application size:

[4] Because the Proposed Amendments would add a new Section 4(6), this Section should be revised to Section 4(8).

> A utility may, for every 500-pole increment, add up to fifteen (15) days to the survey period established in subsection (4) of this section to larger orders up to the lesser of 3,000 poles or 3 percent of the utility's poles in Kentucky[.]

Proposed Amendments, Section 4(7)(b). Insofar as the Commission retains its timelines for "larger orders," the Companies support the Commission's proposal to use an incremental approach to survey timelines for "larger orders."

However, as the Companies have consistently maintained, regulatory timelines are **not** the solution for large deployments. Expanding the "good faith negotiation" requirement to all applications involving more than 500 poles (or at least where application volume will exceed 500 poles per month over a several month period[5]) **is** the solution. The single biggest hurdle for large deployments is marshalling and matching the necessary resources. Extended regulatory timelines do not address this logistical problem. If the Companies miss the extended survey timelines in the Proposed Amendments, the delay will likely be attributable to shortages in approved survey contractor resources. If the Companies cannot secure the approved contractor resources needed to complete the surveys, then the attachers will likely face the same resource constraints should they attempt to exercise their right to perform self-help surveys once the survey timeline expires. This problem can only be solved by marshalling and matching resources in advance of a deployment, which requires early coordination and "good faith negotiation."

M. Section 4(7)(c): Revising the Make-Ready Timeline for "Larger Orders" [*QUALIFIED OBJECTION*]

Existing Section 4(7)(c) extends the timeline to complete make-ready by forty-five (45) days for "larger orders." As with the survey timeline for "larger orders," the Proposed Amendments would also apply the incremental approach to the make-ready timeline:

[5] *See* Proposed Amendments, Section 4(7)(d) (creating a new framework that applies the "good faith negotiation" standard when the new attacher intends to submit multiple "larger orders" over a 5-month period).

> A utility may, for every 500-pole increment, add up to twenty (20) days to the make-ready periods established in subsection (4) of this section to larger orders up to the lesser of 3,000 poles or 3 percent of the utility's poles in Kentucky[.]

Proposed Amendments, Section 4(7)(c). Again, insofar as the Commission intends to retain its timelines for "larger orders," the Companies support the proposed incremental approach to make-ready timelines for "larger orders." However, the Companies urge the Commission to move away from this approach and instead (1) expand the use of the "good faith negotiation" requirement and (2) embrace the Companies' Enhanced OTMR proposal.

N. Section 4(7)(d): Revising the Threshold for "Good Faith Negotiation" [*SUPPORT WITH MODIFICATIONS*]

Section 4(7)(d) of the Proposed Amendments provides, in relevant part, as follows:

> A utility and a new attacher shall negotiate a special contract in good faith the timing of all requests for attachment larger than the lesser of 3,000 poles or 3 percent of the utility's poles in Kentucky, or upon receipt of three (3) separate applications for [sic] averaging 1,000 poles or 3 percent of the utility's poles in Kentucky for any three (3) months over a five (5) month period….

Proposed Amendments, Section 4(7)(d). As noted above, the Proposed Amendments modify Section 4(7)(d) in two important ways. First, the Proposed Amendments greatly increase the application-size threshold for the "good faith negotiation" requirement from 1,000 poles to 3,000 poles. The Companies strongly oppose this change. For context, within Kentucky Power's service area, 3,000 poles represent a pole line stretching approximately 140 miles. Completing surveys and power space make-ready in a timely manner for a deployment of this size (or even half this size) requires a significant amount of approved contractor resources. These resources can only be marshalled and matched through early coordination and negotiated solutions. Expanding the use of regulatory timelines does nothing to address these logistical challenges and often sends the wrong signal to attachers (i.e., just dump your applications on pole owners and let them figure out

the logistics). Therefore, the Companies again encourage the Commission to move in the other direction and expand the use of the "good faith negotiation" requirement.

Second, the Proposed Amendments modify Section 4(7)(d) so that the "good faith negotiation" requirement cannot be evaded through strategically timed applications. Under the current version of Section 4(7)(d), the "good faith negotiation" requirement only applies when an attacher applies for more than 1,000 poles within a 30-day period. Therefore, an attacher could submit an additional 1,000-pole application on day 31, thereby forcing the pole owner to process applications that are nearly double the threshold for the "good faith negotiation" requirement under the Commission's regulatory timelines. The Proposed Amendments seek to curb this practice by using a longer time horizon (applications submitted over a 5-month period) to determine whether the "good faith negotiation" requirement applies. The Companies generally support this idea as a step in the right direction.

However, the Companies are concerned about how this framework would apply in practice. The relevant language from Section 4(7)(d) of the Proposed Amendments provides:

> A utility and a new attacher shall negotiate a special contract in good faith the timing of all requests…upon receipt of three (3) separate applications for [sic] averaging 1,000 poles or 3 percent of the utility's poles in Kentucky for any three (3) months over a five (5) month period…

This language raises several questions. For example, does the "good faith negotiation" requirement only apply once the threshold is met (i.e., potentially 5 months into a large deployment), or does it require the attacher to anticipate the total volume of its applications over the proceeding 5-month period upfront for purposes of determining whether the "good faith negotiation" requirement applies? If the former is correct, then the Proposed Amendments to Section 4(7)(d) would seemingly be at odds with the other timelines in Section 4(7)(a)-(c). Moreover, under this construction, the Proposed Amendments would not provide pole owners with

much relief, as the pole owner would have already incurred most of the burden (i.e., because it would have been performing its work under the Section 4(7)(a)-(c) timelines) by the time the attacher submits the last application within the five (5) month period. These issues can be resolved in one of two ways. The simplest path forward is to eliminate "larger orders" from the Commission's timelines and require "good faith negotiation" for any application involving more than 500 poles. If, however, the Commission intends to retain this framework, the Commission should clarify the triggering mechanism for the "good faith negotiation" requirement by requiring "good faith negotiation" whenever an attacher intends to submit applications involving more than 1,500 poles over any 6-month period.

O. Section 4(7)(e): Incorporating Backstop for "Good Faith Negotiation" Requirement [*SUPPORT WITH MODIFICATIONS*]

The Proposed Amendments incorporate a new Section 4(7)(e) that provides attachers with the right to seek expedited relief from the Commission if good faith negotiations reach an impasse. The Companies support this new rule. With this new rule, there is absolutely no downside risk to adopting the Companies' proposal to steer more deployments (rather than fewer deployments) to the good faith negotiation model. The only revision the Companies propose to Section 4(7)(e) is extending the 15-day negotiation period to at least 30 days to allow a reasonable time for the parties to reach a negotiated solution and minimize the number of disputes brought to the Commission. A slightly expanded negotiation period is warranted because the applicability of the 60-day notice requirement in Section 4(7)(f) is not perfectly congruous with the volumetric trigger for special contracts; in other words, there will be applications that trigger the proposed negotiation provisions but not the 60-day notice requirement.

P. Section 4(9)(b): Revising the Self-Help Remedy for Make-Ready [*OBJECTION*]

Section 4(9)(b) outlines the right to perform self-help make-ready, including both make-ready within the communications and make-ready within the power space.[6] For self-help make-ready within the communications space, the Companies neither require new attachers to use approved contractors nor keep any sort of "list" of contractors approved to perform such work. Form the Companies' perspective, this work can be performed by any qualified contractor. Moreover, the Companies are not in the best position to evaluate contractors for purposes of communications space make-ready. The Proposed Amendments, however, would seemingly require new attachers to use approved contractors for self-help make-ready within the power space **and** within the communication space. Therefore, the Companies believe the Commission should remove the stricken-through language below from Section 4(9)(b) of the Proposed Amendments:

> If make-ready is not complete by the applicable date established in subsection (4) of this section, then a new attacher may conduct the make-ready in place of the utility and existing attachers by hiring a contractor ~~**from the utility's list of approved contractors on the utility's website**~~ to complete the make-ready, which shall be completed as specified in Section 5 of this administrative regulation. The make-ready shall be performed in compliance with this regulation, the utility's tariff, and the construction standards listed on the utility's website.

Proposed Amendments, Section 4(9)(b). Section 5 of the existing regulation (which is referenced in Section 4(9)(b)) already identifies the type of contractor required for each type of make-ready work.

Q. Section 4(9)(d): Eliminating Prohibition on Self-Help Pole Replacements [*OBJECTION*]

The existing regulation bars attachers from performing self-help pole replacements. The Companies strongly oppose giving attachers the regulatory right to perform self-help pole replacements. Pole replacements are the most difficult type of make-ready to perform; allowing

[6] Because the Proposed Amendments add a new Section 4(6), this should be revised to Section 4(10)(b).

attachers to perform self-help pole replacements introduces a significant and unnecessary risk to the safety and reliability of electric distribution facilities. Even the FCC—notoriously unsympathetic to safety and reliability concerns—has seen clear to exclude pole replacements from the scope of self-help. Given that no stakeholder has claimed that pole replacements are delaying broadband deployment, and that no stakeholder has challenged this prohibition in the current docket or in the docket leading to the existing regulation, the Commission should retain its exclusion of pole replacements from self-help as well.

The Companies oppose self-help pole replacements for several reasons. From a safety standpoint, electric utility pole replacements should only be performed by personnel determined by the electric utility to be qualified. Merely requiring that self-help pole replacements be performed by an approved contractor does not eliminate the risks involved. Broadband providers have different motivations and incentive structures from electric utilities; an overhead electric contractor is likely to receive different work directives when working for a broadband provider than when working for an electric utility. Electric utilities must direct pole replacements to ensure that essential safety protocols, such as lockout-tagout and other coordination measures, are strictly followed. Self-help pole replacements are a safety incident waiting to happen.

Expansion of self-help to include pole replacement also introduces other concerns. Electric utilities are required to track both the frequency and duration of electric service outages—even those necessary to perform make-ready. They have regulatory and customer-service incentives to record and report this information accurately, and to ensure that affected customers have their electric service restored as quickly possible. A broadband provider performing a pole replacement is not well-situated to perform the reporting tasks and lacks the utility's service restoration incentives. The proposed regulation will lead to lower quality electric service in Kentucky.

If a utility allows an attacher to utilize approved contractors for pole replacements, it should only be through the specific protections and processes enumerated within the utility's tariff or a special contract. It should not be a regulatory right. In the event the Commission believes utilities are not already properly incentivized to ensure timely completion of pole replacements, the Companies respectfully submit that the Commission should address this concern through monetary penalties rather than through forced-placed safety and operational risk.

R. Section 7: Complaints [*NO REVISIONS REQUIRED*]

During the Informal Conference on May 17, 2024, the Commission asked whether any additional revisions need to be made to Section 7, which sets forth the complaint process applicable to pole attachment disputes. The Companies do not believe any revisions to Section 7 are necessary, especially given that there is no experience to indicate any deficiency in the rule. However, Section 4(7)(e) of the Proposed Amendments outlines a new expedited complaint process for disputes arising out of the "good faith negotiation" of special contracts. The proposed, new expedited complaint process should be limited to disputes arising out of the good faith negotiation requirement. If the Commission considers any expansion of the expedited complaint proceeding, it should be limited to complaints challenging a denial of access.[7] Tailoring the expedited complaint process in this manner is consistent with SJR 175, which directed the Commission to "ensure that any new or amended administrative regulations are tailored to advance the buildout of broadband service to unserved and underserved areas and does (sic) not result in an undue burden in processing pole attachment requests…." SJR, § 1((4).

[7] This would align the Commission's expedited relief provision with the Federal Communications Commission's new Rapid Broadband Assessment Team ("RBAT") Rule. *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking, WC Docket No. 17-84, at ¶¶ 8-22 (FCC Dec. 15, 2023).

CONCLUSION

The Companies appreciate the Commission's attention to these matters. As the Companies have stressed throughout the Informal Conferences, the most important piece of the puzzle in any significant deployment is ensuring that the right resources are available at the right time and in the right place. The only way this can happen is through the advance notice and coordination (and the contractual financial commitments) that come through good faith negotiations.

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Respectfully submitted,

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