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August 16, 2024

PARTIES OF RECORD

Re: Case No. 2023-00416

Notice is given to all parties that the attached memo of the Emergency Amended After Comments regulation 807 KAR 005:015E has been filed into the record of this proceeding.

If you have any comments you would like to make regarding the contents of the document, please do so within five days of receipt of this letter. If you have any questions, please contact John E.B. Pinney, Executive Advisor at Jeb.Pinney@ky.gov.

Sincerely,

A handwritten signature in blue ink that reads "Linda C. Bridwell".

Linda C. Bridwell, PE
Executive Director

Attachment

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MEMORANDUM

TO: John E.B. Pinney, Executive Advisor, Public Service Commission

FROM: Emily Caudill, Regulations Compiler

RE: Amended After Comments – 807 KAR 005:015E.

DATE: August 15, 2024

A copy of the Emergency Amended After Comments regulation listed above along with the required Statement of Consideration are enclosed for your files.

This administrative regulation is scheduled to be reviewed by the Administrative Regulation Review Subcommittee at its **SEPTEMBER 2024** meeting. Please notify the proper person(s) of this meeting.

If you have questions, please contact us at RegsCompiler@LRC.ky.gov or (502) 564-8100.

Enclosure

FILED WITH LRC
TIME: 10:00 AM
AUG 15 2024
Emily B Caudill
REGULATIONS COMPILER

1 ENERGY AND ENVIRONMENT CABINET

2 Public Service Commission

3 (Emergency Amended After Comments)

4 807 KAR 5:015E. Access and attachments to utility poles and facilities.

5 RELATES TO: KRS Chapter 278, 47 U.S.C. 224(c)

6 STATUTORY AUTHORITY: KRS 278.030(1), 278.040(2), 278.5464

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission
8 to promulgate administrative regulations to implement the provisions of KRS Chapter 278. KRS
9 278.040(2) requires the commission to have exclusive jurisdiction over the regulation of rates and
10 service of utilities. KRS 278.030(1) authorizes utilities to demand, collect, and receive fair, just,
11 and reasonable rates. KRS 278.030(2) requires every utility to furnish adequate, efficient, and
12 reasonable service. KRS 278.5464 requires the commission to promulgate administrative
13 regulations regarding pole attachments under its jurisdiction, including those necessary for the
14 provision of broadband. 47 U.S.C.A. 224(c) requires that state regulation of pole attachments shall
15 only preempt federal regulation of poles under federal jurisdiction if the state regulates the rates,
16 terms, and conditions of access to those poles, has the authority to consider and does consider the
17 interest of the customers of attachers and the pole owning utilities, has effective rules and
18 administrative regulations governing attachments, and addresses complaints regarding pole
19 attachments within 180~~[360]~~ days. This administrative regulation establishes the process by which
20 the commission regulates the rates, terms, and conditions of utility pole attachments and access to
21 other utility facilities, establishes specific criteria and procedures for obtaining access to utility

1 poles within the commission's jurisdiction, and establishes a process by which the complaints of
2 those seeking to access utility facilities shall be addressed within the period established by federal
3 law. The amendments establish an expedited complaint process to address issues pertaining to
4 contract negotiations. 2024 Kentucky S.J.R. 175, 2024 Regular Session requires the Commission
5 to promulgate emergency regulations addressing issues pertaining to broadband attachments to
6 utility poles.

7 Section 1. Definitions.

8 (1) "Attachment" means any attachment by a cable television system operator, telecommunications
9 carrier, broadband internet provider, or governmental unit to a pole owned or controlled by a
10 utility.

11 (2) "Broadband internet provider":

12 (a) Means a person who owns, controls, operates, or manages any facility used or to be used to
13 offer internet service to the public with download speeds of at least twenty-five (25) megabits per
14 second and upload speeds of at least three (3) megabits per second; and

15 (b) Does not mean a utility with an applicable joint use agreement with the utility that owns or
16 controls the poles to which it is seeking to attach.

17 (3) "Communications space" means the lower usable space on a utility pole, which is typically
18 reserved for low-voltage communications equipment.

19 (4) "Complex make-ready" means any make-ready that is not simple make-ready, such as the
20 replacement of a utility pole; splicing of any communication attachment or relocation of existing
21 wireless attachments, even within the communications space; and any transfers or work relating
22 to the attachment of wireless facilities.

23 (5) "Existing attacher" means any person or entity with equipment lawfully on a utility pole.

1 (6) "Governmental unit" means an agency or department of the federal government; a department,
2 agency, or other unit of the Commonwealth of Kentucky; or a county or city, special district, or
3 other political subdivision of the Commonwealth of Kentucky.

4 (7) "Macro cell facility" means a wireless communications system site that is typically high-power
5 and high-sited, and capable of covering a large physical area, as distinguished from a distributed
6 antenna system, small cell, or WiFi attachment, for example.

7 (8) "Make-ready" means the modification or replacement of a utility pole, or of the lines or
8 equipment on the utility pole, to accommodate additional facilities on the utility pole.

9 (9) "New attacher" means a cable television system operator, telecommunications carrier,
10 broadband internet provider, or governmental unit requesting to attach new or upgraded facilities
11 to a pole owned or controlled by a utility, except that a new attacher does not include a utility with
12 an applicable joint use agreement with the utility that owns or controls the pole to which it is
13 seeking to attach or a person seeking to attach macro cell facilities.

14 (10) "Red tagged pole" means a pole that a utility that owns or controls the pole that:

15 (a) Is designated for replacement based on the pole's non-compliance with an applicable safety
16 standard;

17 (b) Is designated for replacement within two (2) years of the date of its actual replacement for any
18 reason unrelated to a new attacher's request for attachment; or

19 (c) Would have needed to be replaced at the time of replacement even if the new attachment were
20 not made.

21 (11) "Telecommunications carrier":

22 (a) Means a person who owns, controls, operates, or manages any facility used or to be used for or
23 in connection with the transmission or conveyance over wire, in air, or otherwise, any message by

1 telephone or telegraph for the public, for compensation; and

2 (b) Does not mean a utility with an applicable joint use agreement with the utility that owns or
3 controls the poles to which it is seeking to attach.

4 (12) "Simple make-ready" means make-ready in which existing attachments in the
5 communications space of a pole could be rearranged without any reasonable expectation of a
6 service outage or facility damage and does not require splicing of any existing communication
7 attachment or relocation of an existing wireless attachment.

8 Section 2. Duty to Provide Access to Utility Poles and Facilities.

9 (1) Except as established in paragraphs (a) through (c) of this subsection, a utility shall provide
10 any cable television system operator, telecommunications carrier, broadband internet provider, or
11 governmental unit nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or
12 controlled by it.

13 (a) A utility may deny access to any pole, duct, conduit, or right-of-way on a non-discriminatory
14 basis if there is insufficient capacity or for reasons of safety, reliability, or generally applicable
15 engineering purposes.

16 (b) A utility shall not be required to provide access to any pole that is used primarily to support
17 outdoor lighting.

18 (c) A utility shall not be required to secure any right-of-way, easement, license, franchise, or permit
19 required for the construction or maintenance of attachments or facilities from a third party for or
20 on behalf of a person or entity requesting access pursuant to this administrative regulation to any
21 pole, duct, conduit, or right-of-way owned or controlled by the utility.

22 (2) A request for access to a utility's poles, ducts, conduits or rights-of-way shall be submitted to
23 a utility in writing, either on paper or electronically, as established by a utility's tariff or a special

1 contract between the utility and person requesting access.

2 (3) If a utility provides access to its poles, ducts, conduits, or rights-of-way pursuant to an
3 agreement that establishes rates, terms, or conditions for access not contained in its tariff:

4 (a) The rates, terms, and conditions of the agreement shall be in writing; and

5 (b) The utility shall file the written agreement with the commission pursuant to 807 KAR 5:011,
6 Section 13.

7 Section 3. Pole Attachment Tariff Required.

8 (1) A utility that owns or controls utility poles located in Kentucky shall maintain on file with the
9 commission a tariff that includes rates, terms, and conditions governing pole attachments in
10 Kentucky that are consistent with the requirements of this administrative regulation and KRS
11 Chapter 278.

12 (2) The tariff may incorporate a standard contract or license for attachments if its terms and
13 conditions are consistent with the requirements of this administrative regulation and KRS Chapter
14 278.

15 (3) Standard contracts or licenses for attachments permitted by subsection (2) of this section shall
16 prominently indicate that the contracts or licenses are based wholly on the utility's tariff and that
17 the tariff shall control if there is a difference.

18 (4) The tariff may include terms, subject to approval by the commission, that are fair, just, and
19 reasonable and consistent with the requirements of this administrative regulation and KRS Chapter
20 278, such as certain limitations on liability, indemnification and insurance requirements, and
21 restrictions on access to utility poles for reasons of lack of capacity, safety, reliability, or generally
22 applicable engineering standards.

23 (5)

1 (a) The tariff shall include the URL for a utility-maintained Web site.

2 (b) The Web site shall include:

3 1. A certificate form that a new attacher shall submit to the utility that shall require a new attacher
4 to:

5 a. Certify that the person filing the application has reviewed the utility's requirements, pole
6 attachment tariff, and applicable law and that the application meets these requirements to the best
7 of the new attacher's knowledge and ability;

8 b. Designate appropriate personnel responsible for overseeing all attachments with the utility;

9 c. Identify appropriate personnel associated with each application, who shall be responsible for
10 coordinating with the utility and ensuring that attachment-related issues are addressed in a timely
11 manner;

12 2. Pole attachment information including the identity and contact information for contractors
13 approved to conduct surveys and make-ready self-help;

14 3. Construction standards for attachments; and

15 4. The identity and contact information for:

16 a. The primary utility personnel responsible for invoicing, payment, make-ready work, and
17 escalation of disputes; and

18 b. The alternate utility personnel responsible for invoicing, payment, make-ready work, and
19 escalation of disputes if the primary personnel are unavailable.

20 (6) Overlashing.

21 (a) A utility shall not require prior approval for:

22 1. An existing attacher that overlashes its existing wires on a pole; or

23 2. A third party overlashing of an existing attachment that is conducted with the permission of an

1 existing attacher.

2 (b)

3 1. A utility shall not prevent an attacher from overlashing because another existing attacher has
4 not fixed a preexisting violation.

5 2. A utility shall not require an existing attacher that overlashes its existing wires on a pole to fix
6 preexisting violations caused by another existing attacher, unless failing to fix the preexisting
7 violation would create a capacity, safety, reliability, or engineering issue.

8 (c)

9 1. A utility shall not require more than thirty (30) days' advance notice of planned overlashing.

10 2. If a utility requires advance notice for overlashing, then the utility shall include the notice
11 requirement in its tariff or include the notice requirement in the attachment agreement with the
12 existing attacher.

13 3. If, after receiving advance notice, the utility determines that an overlash would create a capacity,
14 safety, reliability, or engineering issue, it shall provide specific documentation of the issue to the
15 party seeking to overlash within the thirty (30) day advance notice period and the party seeking to
16 overlash shall address any identified issues before continuing with the overlash either by
17 modifying its proposal or by explaining why, in the party's view, a modification is unnecessary.

18 (d)

19 1. A party that engages in overlashing shall be responsible for its own equipment and shall ensure
20 that it complies with reasonable safety, reliability, and engineering practices.

21 2. If damage to a pole or other existing attachment results from overlashing or overlashing work
22 causes safety or engineering standard violations, then the overlashing party shall be responsible at
23 its expense for any necessary repairs.

1 (e) An overlashing party shall notify the affected utility within fifteen (15) days of completion of
2 the overlash on a particular pole.

3 1. The notice shall provide the affected utility at least ninety (90) days from receipt in which to
4 inspect the overlash.

5 2. The utility shall have fourteen (14) days after completion of its inspection to notify the
6 overlashing party of any damage or code violations to its equipment caused by the overlash.

7 3. If the utility discovers damage or code violations caused by the overlash on equipment belonging
8 to the utility, then the utility shall inform the overlashing party and provide adequate
9 documentation of the damage or code violations.

10 4. The utility shall either:

11 a. Complete any necessary remedial work and bill the overlashing party for the reasonable costs
12 related to fixing the damage or code violations; or

13 b. Require the overlashing party to fix the damage or code violations at its expense within fourteen
14 (14) days following notice from the utility.

15 ~~(7)~~ Signed standard contracts or licenses for attachments allowed by subsection (2) of this
16 section shall be submitted to the commission but shall not be filed pursuant to 807 KAR 5:011,
17 Section 13.

18 ~~(8)~~ Tariffs conforming to the requirements of this administrative regulation and with a
19 proposed effective date no later than ~~October~~~~August~~~~March~~ 31, ~~2024~~~~2022~~, shall be filed by
20 ~~November 30~~~~July 31~~~~February 28~~, ~~2024~~~~2022~~.

21 Section 4. Procedure for New Attachers to Request Utility Pole Attachments.

22 (1) All time limits established in this section shall be calculated according to 807 KAR 5:001,
23 Section 4(7).

- 1 (2) Application review and survey.
- 2 (a) Application completeness.
- 3 1. A new attacher shall:
- 4 a. Prior to submitting a pole attachment application to a utility:
- 5 (i) Review the application for completeness and;
- 6 (ii) Submit the information required by Section 3(5) of this administrative regulation; and
- 7 b. Submit the written certification with the pole attachment application. If the utility uses an
- 8 electronic system to manage pole attachments, this certification shall be uploaded to the utility's
- 9 designated system.
- 10 2. A utility shall review a new attacher's pole attachment application for completeness before
- 11 reviewing the application on its merits and shall notify the new attacher within **the time**
- 12 **established in subparagraph 8. of this paragraph**~~[ten (10) business days]~~ after receipt of the
- 13 new attacher's pole attachment application if the application is incomplete.
- 14 3.~~[2.]~~ A new attacher's pole attachment application shall be considered complete if the application
- 15 provides the utility with the information necessary under its procedures, as established in the
- 16 utility's applicable tariff or a special contract regarding pole attachments between the utility and
- 17 the new attacher, to begin to survey the affected poles.
- 18 4.~~[3.]~~ If the utility notifies a new attacher that its attachment application is not complete, then the
- 19 utility shall state all reasons for finding it incomplete.
- 20 5. A utility shall not require a new attacher to submit a survey or pole loading analysis as a filing
- 21 requirement for an application.
- 22 6. A new attacher may submit a survey with an application of 500 poles or less, which the utility
- 23 shall accept if the new attacher used an approved contractor listed on the utility's Web site and the

1 survey was conducted no longer than thirty (30) days prior to submission. A utility shall conduct
2 the survey for applications exceeding 500 poles.

3 7. If a utility rejects an application the rejection shall state the reason for the denial and shall
4 include specific citations to this administrative regulation and the utility's tariff that form the basis
5 of the rejection.

6 8. A utility shall complete a review of an application of 500 poles or less within ten (10) business
7 days after receipt of the application. A utility shall have an additional one (1) business day to
8 complete its review for each additional 500-pole increment in an application.

9 9. A new attacher, if it submits an application while a previous application is still under review,
10 may prioritize the order in which a utility shall review the applications. Prioritizing a new
11 application resets the respective review time period of the new attacher's deprioritized applications
12 currently under review over which the new application is being prioritized.

13 10.[4-] If the utility does not respond within the time prescribed in subparagraph 8. of this
14 paragraph[ten (10) business days] after receipt of the application, or if the utility rejects the
15 application as incomplete but fails to state any reasons in the utility's response, then the application
16 shall be deemed complete and the time for the utility's next procedural step begins to run.

17 (b) Survey and application review on the merits.

18 1. A utility shall complete a survey of poles for which access has been requested within forty-five
19 (45) days of receipt of a complete application to attach facilities to its utility poles (or within
20 **120[105]**[sixty (60)] days in the case of larger orders as established in subsection (8)[(7)] of this
21 section) for the purpose of determining if the attachments may be made and identifying any make-
22 ready to be completed to allow for the attachment.

23 2. Participation of attachers in surveys conducted by a utility.

- 1 a. A utility shall allow the new attacher and any existing attachers on the affected poles to be
2 present for any field inspection conducted as part of a utility's survey conducted pursuant
3 paragraph (b)1. of this subsection.
- 4 b. A utility shall use commercially reasonable efforts to provide the affected attachers with advance
5 notice of not less than five (5) business days of any field inspection as part of the survey and shall
6 provide the date, time, and location of the inspection, and name of the contractor, if any,
7 performing the inspection.
- 8 3. If a new attacher has conducted a survey pursuant to subsection ~~(11)~~~~(10)~~(b) of this section, or
9 a new attacher has otherwise conducted and provided a survey, after giving existing attachers
10 notice and an opportunity to participate in a manner consistent with subsection ~~(11)~~~~(10)~~(b), a
11 utility may elect to satisfy survey obligations established in this paragraph by notifying affected
12 attachers of the intent to use the survey conducted by the new attacher and by providing a copy of
13 the survey to the affected attachers within the time period established in subparagraph 1. of this
14 paragraph.
- 15 4. Based on the results of the applicable survey and other relevant information, a utility shall
16 respond to the new attacher either by granting access or denying access within forty-five (45) days
17 of receipt of a complete application to attach facilities to its utility poles (or within 120~~105~~~~[sixty~~
18 ~~(60)]~~ days in the case of larger orders as described in subsection ~~(8)~~~~(7)~~ of this section).
- 19 5. A utility's denial of a new attacher's pole attachment application shall be specific, shall include
20 all relevant evidence and information supporting the denial, and shall explain how the evidence
21 and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or
22 engineering standards.
- 23 6. Payment of survey costs and estimates.

1 a. A utility's tariff may require prepayment of the costs of surveys made to review a pole attachment
2 application, or some other reasonable security or assurance of credit worthiness before a utility
3 shall be obligated to conduct surveys pursuant to this section.

4 b. If a utility's tariff requires prepayment of survey costs, the utility shall include a per pole estimate
5 of costs in the utility's tariff and the payment of estimated costs shall satisfy any requirement that
6 survey costs be prepaid.

7 c. The new attacher shall be responsible for the costs of surveys made to review the new attacher's
8 pole attachment application even if the new attacher decides not to go forward with the
9 attachments.

10 (3) Payment of make-ready estimates.

11 (a) Within fourteen (14) days of providing a response granting access pursuant to subsection
12 (2)(b)4. of this section, a utility shall send a new attacher whose application for access has been
13 granted a detailed, itemized estimate in writing, on a pole-by-pole basis if requested and reasonably
14 calculable, and consistent with subsection (6)(b) of this section, of charges to perform all necessary
15 make-ready.

16 (b) A utility shall provide documentation that is sufficient to determine the basis of all estimated
17 charges, including any projected material, labor, and other related costs that form the basis of the
18 estimate.

19 (c) A utility may withdraw an outstanding estimate of charges to perform make-ready beginning
20 fourteen (14) days after the estimate is presented.

21 (d) A new attacher may accept a valid estimate and make payment any time after receipt of an
22 estimate, except a new attacher shall not accept the estimate after the estimate is withdrawn.

23 (e) Invoices for estimates shall clearly identify the application or project for which payment is

1 requested.

2 (f) Payment for the estimate shall clearly identify the application(s) or project(s) for which payment
3 is made.

4 (4) Make-ready. Upon receipt of payment for survey costs owed pursuant to the utility's tariff and
5 the estimate specified in subsection (3)(d) of this section, a utility shall, as soon as practical but in
6 no case more than seven (7) days, notify all known entities with existing attachments in writing
7 that could be affected by the make-ready.

8 (a) For make-ready in the communications space, the notice shall:

9 1. State where and what make-ready will be performed;

10 2. State a date for completion of make-ready in the communications space that is no later than
11 forty-five (45)[thirty (30)] days after notification is sent (or up to 120[105]~~[seventy-five (75)]~~ days
12 in the case of larger orders as established in subsection (8)[(7)] of this section);

13 3. State that any entity with an existing attachment may modify the attachment. Modification shall
14 be consistent with the specified make-ready before the date established for completion;

15 4. State that, if make-ready is not completed by the completion date established by the utility in
16 subparagraph 2. of this paragraph, the new attacher may complete the make-ready, which shall be
17 completed as specified pursuant to subparagraph 1. of this paragraph; and

18 5. State the name, telephone number, and email address of a person to contact for more information
19 about the make-ready procedure.

20 (b) For make-ready above the communications space, the notice shall:

21 1. State where and what make-ready will be performed;

22 2. State a date for completion of make-ready that is no later than ninety (90) days after notification
23 is sent (or 165[135] days in the case of larger orders, as established in subsection (8)[(7)] of this

1 section).

2 3. State that any entity with an existing attachment may modify the attachment. Modification shall
3 be consistent with the specified make-ready before the date established for completion;

4 4. State that the utility may assert the utility's right to up to fifteen (15) additional days to complete
5 make-ready;

6 5. State that if make-ready is not completed by the completion date established by the utility in
7 subparagraph 2. of this paragraph (or, if the utility has asserted its fifteen (15) day right of control,
8 fifteen (15) days later), the new attacher may complete the make-ready, which shall be completed
9 as specified pursuant to subparagraph 1. of this paragraph; and

10 6. State the name, telephone number, and email address of a person to contact for more information
11 about the make-ready procedure.

12 (c) Once a utility provides the notices required by this subsection, the utility shall provide the new
13 attacher with a copy of the notices and the existing attachers' contact information and address
14 where the utility sent the notices. The new attacher shall be responsible for coordinating with
15 existing attachers to encourage completion of make-ready by the dates established by the utility
16 pursuant to paragraph (a)2. of this subsection for communications space attachments or paragraph
17 (b)2. of this subsection for attachments above the communications space.

18 (5) A utility shall complete its make-ready in the communications space by the same dates
19 established for existing attachers in subsection (4)(a)2. of this section or its make-ready above the
20 communications space by the same dates for existing attachers in subsection (4)(b)2. of this section
21 (or if the utility has asserted its fifteen (15) day right of control, fifteen (15) days later).

22 (6) An attacher shall, within fifteen (15) business days following completion of all attachments
23 within an application, provide written notice to a utility in the manner and form stated in the utility's

1 tariff.

2 (7)~~(6)~~ Final invoice.

3 (a) Within a reasonable period, not to exceed 120 days after a utility completes the utility's make-
4 ready, the utility shall provide the new attacher:

5 1. A detailed, itemized final invoice of the actual survey charges incurred if the final survey costs
6 for an application differ from any estimate previously paid for the survey work or if no estimate
7 was previously paid; and

8 2. A detailed, itemized final invoice, on a pole-by-pole basis if requested and reasonably
9 calculable, of the actual make ready costs to accommodate attachments if the final make-ready
10 costs differ from the estimate provided pursuant to subsection (3)(d) of this section.

11 (b) Limitations on make ready costs.

12 1. A utility shall not charge a new attacher, as part of any invoice for make-ready, to bring poles,
13 attachments, or third-party or utility equipment into compliance with current published safety,
14 reliability, and pole owner construction standards if the poles, attachments, or third-party or utility
15 equipment were out of compliance because of work performed by a party other than the new
16 attacher prior to the new attachment.

17 2. A utility shall not charge a new attacher, as part of any invoice for make ready, the cost to
18 replace any red tagged pole with a replacement pole of the same type and height.

19 3. If a red tagged pole is replaced with a pole of a different type or height, then the new attacher
20 shall be responsible, as part of any invoice for make ready, only for the difference, if any, between
21 the cost for the replacement pole and the cost for a new utility pole of the type and height that the
22 utility would have installed in the same location in the absence of the new attachment.

23 4. The make ready cost, if any, for a pole that is not a red tagged pole to be replaced with a new

1 utility pole to accommodate the new attacher's attachment shall be charged in accordance with the
2 utility's tariff or a special contract regarding pole attachments between the utility and the new
3 attacher.

4 ~~(8)~~~~(7)~~ For the purposes of compliance with the time periods in this section:

5 (a) A utility shall apply the timeline as established in subsections (2) through (4) of this section to
6 all requests for attachment up to the lesser of 500~~[300]~~ poles or .75~~[zero and five tenths (0.5)]~~
7 percent of the utility's poles in the state;

8 (b) A utility may, for every ~~full~~ 500-pole increment, add up to fifteen (15) days to the survey
9 period established in subsection (4) of this section to larger orders up to the lesser of 3,000~~[1,000]~~
10 poles or three (3)~~[1.50]~~ percent of the utility's poles in Kentucky;

11 (c) A utility may, for every ~~full~~ 500-pole increment, add up to fifteen (15)~~[forty five (45)]~~ days
12 to the make-ready periods established in subsection (4) of this section to larger orders up to the
13 lesser of 3,000~~[1,000]~~ poles or three (3)~~[1.50]~~ percent of the utility's poles in Kentucky;

14 (d) A utility and a new attacher, unless the utility owns or controls fewer than 500 poles, shall
15 negotiate a special contract in good faith ~~[the timing of]~~ all requests for attachment larger than the
16 lesser of 3,000~~[1,000]~~ poles or three (3)~~[1.50]~~ percent of the utility's poles in Kentucky ~~[, or upon~~
17 ~~receipt of three (3) separate applications averaging 1,000 poles or one (1) percent of the~~
18 ~~utility's poles in Kentucky for any three (3) months over a five (5) month period]. The special~~
19 contract, at a minimum, shall contain:~~;~~

- 20 1. An agreement for a prepaid account from the new attacher to cover the cost of the request;
- 21 2. Direction from the new attacher regarding make ready work that the utility can complete without
22 further direction from the new attacher including;
 - 23 a. The maximum cost per pole;

1 b. The total cost for make ready work for each project or line of each project;
2 3. The new attacher's prioritization of projects if the new attacher has submitted multiple requests
3 for attachment;
4 4. Contact information, including phone numbers and email addresses, for all necessary utility and
5 new attacher personnel;
6 5. The cadence, location, and necessary personnel for each project; and
7 6. The timing of surveys and make ready.
8 (e) If a special contract identified in paragraph (d) of this subsection cannot be agreed to within
9 fifteen (15) business days from submission of a formal written request to engage from the attacher,
10 the new attacher may file a complaint with the commission, with a copy served contemporaneously
11 to the utility, on which the commission shall rule within twenty (20) business days of filing of the
12 complaint.
13 (f)(e) **For the calculation of any deadlines in this regulation a[A]** utility may treat multiple
14 **applications[requests]** from a single new attacher as one (1) **application[request]** if the
15 **applications[requests]** are submitted **within thirty (30) days of[during the same calendar**
16 **month as][within thirty (30) days of]** one another; and
17 (g)(f) As soon as reasonably practicable, but no less than ninety (90)[sixty (60)] days before the
18 new attacher expects to submit an application in which the number of requests exceed the lesser
19 of the amounts identified in paragraph (a) of this subsection, a new attacher shall provide written
20 notice to a utility in the manner and form stated in the utility's tariff that the new attacher expects
21 to submit a [high volume-]request.
22 (9)(8) Deviations from make-ready timeline.
23 (a) A utility may deviate from the time limits specified in this section before offering an estimate

1 of charges if the new attacher failed to satisfy a condition in the utility's tariff or in a special
2 contract between the utility and the new attacher.

3 (b) A utility may deviate from the time limits established in this section during performance of
4 make-ready for good and sufficient cause that renders it infeasible for the utility to complete make-
5 ready within the time limits established in this section. A utility that so deviates shall immediately
6 notify, in writing, the new attacher and affected existing attachers and shall identify the affected
7 poles and include a detailed explanation of the reason for the deviation and a new completion date.
8 The utility shall deviate from the time limits established in this section for a period no longer than
9 necessary to complete make-ready on the affected poles and shall resume make-ready without
10 discrimination once the utility returns to routine operations.

11 (c) An existing attacher may deviate from the time limits established in this section during
12 performance of complex make-ready for reasons of safety or service interruption that renders it
13 infeasible for the existing attacher to complete complex make-ready within the time limits
14 established in this section. An existing attacher that so deviates shall immediately notify, in
15 writing, the new attacher and other affected existing attachers and shall identify the affected poles
16 and include a detailed explanation of the basis for the deviation and a new completion date, which
17 shall not extend beyond sixty (60) days from the completion date provided in the notice specified
18 in subsection (4) of this section as sent by the utility (or up to **120[105]** days in the case of larger
19 orders specified in subsection ~~(8)~~~~(6)~~(b) and (c) of this section). The existing attacher shall not
20 deviate from the time limits established in this section for a period for longer than necessary to
21 complete make-ready on the affected poles.

22 ~~(10)~~~~(9)~~ Self-help remedy.

23 (a) Surveys. If a utility fails to complete a survey as established in subsection (2)(b) of this section,

1 then a new attacher may conduct the survey in place of the utility by hiring a contractor to complete
2 a survey, which shall be completed as specified in Section 5 of this administrative regulation.

3 1. A new attacher shall allow the affected utility and existing attachers to be present for any field
4 inspection conducted as part of the new attacher's survey.

5 2. A new attacher shall use commercially reasonable efforts to provide the affected utility and
6 existing attachers with advance notice of not less than five (5) business days of a field inspection
7 as part of any survey the attacher conducts.

8 3. The notice shall include the date and time of the survey, a description of the work involved, and
9 the name of the contractor being used by the new attacher.

10 (b) Make-ready. If make-ready is not complete by the applicable date established in subsection (4)
11 of this section, then a new attacher may conduct the make-ready in place of the utility and existing
12 attachers by hiring a contractor to complete the make-ready, which shall be completed as specified
13 in Section 5 of this administrative regulation. The make-ready shall be performed in compliance
14 with this administrative regulation, the utility's tariff, and the construction standards listed on the
15 utility's Web site. Make-ready work performed by the new attacher within the electric space shall
16 be conducted by an approved contractor listed on the utility's Web site.

17 1. A new attacher shall allow the affected utility and existing attachers to be present for any make-
18 ready.

19 2. A new attacher shall use commercially reasonable efforts to provide the affected utility and
20 existing attachers with advance notice of not less than seven (7) days of the impending make-
21 ready.

22 3. The notice shall include the date and time of the make-ready, a description of the work involved,
23 and the name of the contractor being used by the new attacher.

1 (c) The new attacher shall notify an affected utility or existing attacher immediately if make-ready
2 damages the equipment of a utility or an existing attacher or causes an outage that is reasonably
3 likely to interrupt the service of a utility or existing attacher.

4 (d) Pole replacements. Self-help shall not be available for pole replacements.

5 ~~(11)~~~~(10)~~ One-touch make-ready option. For attachments involving simple make-ready, new
6 attachers may elect to proceed with the process established in this subsection in lieu of the
7 attachment process established in subsections (2) through (6) and (9) of this section.

8 (a) Attachment application.

9 1. A new attacher electing the one-touch make-ready process shall elect the one-touch make-ready
10 process in writing in its attachment application and shall identify the simple make-ready that it will
11 perform. It is the responsibility of the new attacher to ensure that its contractor determines if the
12 make-ready requested in an attachment application is simple.

13 2. Application completeness.

14 a. The utility shall review the new attacher's attachment application for completeness before
15 reviewing the application on its merits and shall notify the new attacher within ten (10) business
16 days after receipt of the new attachers attachment application whether or not the application is
17 complete.

18 b. An attachment application shall be considered complete if the application provides the utility
19 with the information necessary under its procedures, as established in the utility's applicable tariff
20 or a special contract regarding pole attachments between the utility and the new attacher, to make
21 an informed decision on the application.

22 c. If the utility notifies the new attacher that an attachment application is not complete, then the
23 utility shall state all reasons for finding the application incomplete.

1 d. If the utility fails to notify a new attacher in writing that an application is incomplete within ten
2 (10) business days of receipt, then the application shall be deemed complete.

3 3. Application review on the merits. The utility shall review on the merits a complete application
4 requesting one-touch make-ready and respond to the new attacher either granting or denying an
5 application within fifteen (15) days of the utility's receipt of a complete application (or within
6 thirty (30) days in the case of larger orders as established in subsection (8)~~(7)~~(b) of this section
7 or within a time negotiated in good faith for requests equal to or larger than those established in
8 (8)~~(7)~~(d)).

9 a. If the utility denies the application on its merits, then the utility's decision shall be specific, shall
10 include all relevant evidence and information supporting its decision, and shall explain how the
11 evidence and information relate to a denial of access.

12 b. Within the fifteen (15) day application review period (or within thirty (30) days in the case of
13 larger orders as established in subsection (8)~~(7)~~(b) of this section or within a time negotiated in
14 good faith for requests equal to or larger than those established in (8)~~(7)~~(d)), a utility or an
15 existing attacher may object to the designation by the new attacher's contractor that certain make-
16 ready is simple.

17 c. An objection made pursuant to clause b. of this subparagraph shall be specific and in writing,
18 include all relevant evidence and information supporting the objection, be made in good faith, and
19 explain how the evidence and information relate to a determination that the make-ready is not
20 simple.

21 d. If the utility's or the existing attacher's objection to the new attacher's determination that make-
22 ready is simple complies with clause c. of this subparagraph, then the make-ready shall be deemed
23 to be complex and the new attacher shall not proceed with the affected proposed one-touch make-

1 ready.

2 (b) Surveys.

3 1. The new attacher shall be responsible for all surveys required as part of the one-touch make-
4 ready process and shall use a contractor as established in Section 5(2) of this administrative
5 regulation to complete surveys.

6 2. The new attacher shall allow the utility and any existing attachers on the affected poles to be
7 present for any field inspection conducted as part of the new attacher's surveys.

8 3. The new attacher shall use commercially reasonable efforts to provide the utility and affected
9 existing attachers with advance notice of not less than five (5) business days of a field inspection
10 as part of any survey and shall provide the date, time, and location of the surveys, and name of the
11 contractor performing the surveys.

12 (c) Make-ready. If the new attacher's attachment application is approved by the pole owner and if
13 the attacher has provided at least fifteen (15) days prior written notice of the make-ready to the
14 affected utility and existing attachers, the new attacher may proceed with make-ready. The new
15 attacher shall use a contractor in the manner established for simple make-ready in Section 5(2) of
16 this administrative regulation.

17 1. The prior written notice shall include the date and time of the make-ready, a description of the
18 work involved, the name of the contractor being used by the new attacher, and provide the affected
19 utility and existing attachers a reasonable opportunity to be present for any make-ready.

20 2. The new attacher shall notify an affected utility or existing attacher immediately if make-ready
21 damages the equipment of a utility or an existing attacher or causes an outage that is reasonably
22 likely to interrupt the service of a utility or existing attacher.

23 3. In performing make-ready, if the new attacher or the utility determines that make-ready

1 classified as simple is complex, then all make-ready on the impacted poles shall be halted and the
2 determining party shall provide immediate notice to the other party of its determination and the
3 impacted poles. All remaining make-ready on the impacted poles shall then be governed by
4 subsections (2) through (9) of this section, and the utility shall provide the notices and estimates
5 required by subsections (2)(a), (3), and (4) of this section as soon as reasonably practicable.

6 (d) Post-make-ready timeline. A new attacher shall notify the affected utility and existing attachers
7 within fifteen (15) days after completion of make-ready on a one-touch make ready application.

8 Section 5. Contractors for Survey and Make-ready.

9 (1) Contractors for self-help complex and above the communications space make-ready. A utility
10 shall make available and keep up-to-date a reasonably sufficient list of contractors the utility
11 authorizes to perform self-help surveys and make-ready that is complex and self-help surveys and
12 make-ready that is above the communications space on the utility's poles. The new attacher shall
13 use a contractor from this list to perform self-help work that is complex or above the
14 communications space. New and existing attachers may request the addition to the list of any
15 contractor that meets the minimum qualifications in subsection (3) of this section and the utility
16 shall not unreasonably withhold its consent.

17 (2) Contractors for surveys and simple work. A utility may keep up-to-date a reasonably sufficient
18 list of contractors the utility authorizes to perform surveys and simple make-ready. If a utility
19 provides this list, then the new attacher shall choose a contractor from the list to perform the work.
20 New and existing attachers may request the addition to the list of any contractor that meets the
21 minimum qualifications in subsection (3) of this section and the utility shall not unreasonably
22 withhold its consent.

23 (a)

1 1. If the utility does not provide a list of approved contractors for surveys or simple make-ready
2 or no utility-approved contractor is available within a reasonable time period, then the new attacher
3 may choose its own qualified contractor that shall meet the requirements in subsection (3) of this
4 section.

5 2. If choosing a contractor that is not on a utility-provided list, the new attacher shall certify to the
6 utility that the attacher's contractor meets the minimum qualifications established in subsection (3)
7 of this section upon providing notices required by Section 4(9)(a)2., (9)(b)2., (10)(b)3., and (10)(c)
8 of this administrative regulation.

9 (b)

10 1. The utility may disqualify any contractor chosen by the new attacher that is not on a utility-
11 provided list, but a disqualification shall be based on reasonable safety or reliability concerns
12 related to the contractor's failure to meet any of the minimum qualifications established in
13 subsection (3) of this section or to meet the utility's publicly available and commercially reasonable
14 safety or reliability standards.

15 2. The utility shall provide notice of the utility's objection to the contractor within the notice
16 periods established by the new attacher in Section 4(9)(a)2., (9)(b)2., (10)(b)3., and (10)(c) of this
17 administrative regulation and in the utility's objection must identify at least one available qualified
18 contractor.

19 (3) Contractor minimum qualification requirements. Utilities shall ensure that contractors on a
20 utility-provided list, and new attachers shall ensure that contractors selected pursuant to subsection
21 (2)(a) of this section, meet the minimum requirements established in paragraphs (a) through (e) of
22 this subsection.

23 (a) The contractor has agreed to follow published safety and operational guidelines of the utility,

1 if available, but if unavailable, the contractor shall agree to follow National Electrical Safety Code
2 (NESC) guidelines.

3 (b) The contractor has acknowledged that the contractor knows how to read and follow licensed-
4 engineered pole designs for make-ready, if required by the utility.

5 (c) The contractor has agreed to follow all local, state, and federal laws and regulations including
6 the rules regarding Qualified and Competent Persons under the requirements of the Occupational
7 and Safety Health Administration (OSHA) rules.

8 (d) The contractor has agreed to meet or exceed any uniformly applied and reasonable safety and
9 reliability thresholds established by the utility, if made available.

10 (e) The contractor shall be adequately insured or shall establish an adequate performance bond for
11 the make-ready the contractor will perform, including work the contractor will perform on
12 facilities owned by existing attachers.

13 (4) A consulting representative of a utility may make final determinations, on a nondiscriminatory
14 basis, if there is insufficient capacity and for reasons of safety, reliability, and generally applicable
15 engineering purposes.

16 Section 6. Notice of Changes to Existing Attachers.

17 (1) Unless otherwise established in a joint use agreement or special contract, a utility shall provide
18 an existing attacher no less than sixty (60) days written notice prior to:

19 (a) Removal of facilities or termination of any service to those facilities if that removal or
20 termination arises out of a rate, term, or condition of the utility's pole attachment tariff or any
21 special contract regarding pole attachments between the utility and the attacher; or

22 (b) Any modification of facilities by the utility other than make-ready noticed pursuant to Section
23 4 of this administrative regulation, routine maintenance, or modifications in response to

1 emergencies.

2 (2) Stays from removals, terminations, and modifications noticed pursuant to subsection (1) of this
3 section.

4 (a) An existing attacher may request a stay of the action contained in a notice received pursuant to
5 subsection (1) of this section by filing a motion pursuant to 807 KAR 5:001, Section 4 within
6 fifteen (15) days of the receipt of the first notice provided pursuant to subsection (1) of this section.

7 (b) The motion shall be served on the utility that provided the notice pursuant to 807 KAR 5:001,
8 Section 5(1).

9 (c) The motion shall not be considered unless it includes the relief sought, the reasons for such
10 relief, including a showing of irreparable harm and likely cessation of cable television system
11 operator or telecommunication service, a copy of the notice, and a certification that service was
12 provided pursuant to paragraph (b) of this subsection.

13 (d) The utility may file a response within ten (10) days of the date the motion for a temporary stay
14 was filed.

15 (e) No further filings under this subsection shall be considered unless requested or authorized by
16 the commission.

17 (3) Transfer of attachments to new poles.

18 (a) Unless an applicable tariff or special contract or Section 4 of this administrative regulation
19 establishes a different timeframe, existing attachers shall transfer their attachments within sixty
20 (60) days of receiving written notice from the utility pole owner.

21 (b) Existing attachers may deviate from the time limit established in paragraph (a) of this
22 subsection for good and sufficient cause that renders it infeasible for the existing attacher to
23 complete the transfer within the time limit established. An existing attacher that requires such a

1 deviation shall immediately notify, in writing, the utility and shall identify the affected poles and
2 include a detailed explanation of the reason for the deviation and the date by which the attacher
3 shall complete the transfer. An existing attacher shall deviate from the time limits established in
4 paragraph (a) of this subsection for a period no longer than is necessary to complete the transfer.

5 (c) If an existing attacher fails to transfer its attachments within the timeframe established in
6 paragraph (a) of this subsection and the existing attacher has not notified the utility of good and
7 sufficient cause for extending the time limit pursuant to paragraph (a) of this subsection, a utility
8 pole owner may transfer attachments and the transfer shall be at the existing attacher's expense.

9 (d) A utility pole owner may transfer an existing attacher's attachment prior to the expiration of
10 any period established by paragraph (a) or (b) of this subsection if an expedited transfer is
11 necessary for safety or reliability purposes.

12 Section 7. Complaints for Violations of This Administrative Regulation.

13 (1) Contents of complaint. Each complaint shall be headed "Before the Public Service
14 Commission," shall establish the names of the complainant and the defendant, and shall state:

15 (a) The full name and post office address of the complainant;

16 (b) The full name and post office address of the defendant;

17 (c) Fully, clearly, and with reasonable certainty, the act or omission, of which complaint is made,
18 with a reference, if practicable, to the law, order, or administrative regulation, of which a failure
19 to comply is alleged, and other matters, or facts, if any, as necessary to acquaint the commission
20 fully with the details of the alleged failure; and

21 (d) The relief sought.

22 (2) Signature. The complainant or his or her attorney, if applicable, shall sign the complaint. A
23 complaint by a corporation, association, or another organization with the right to file a complaint,

1 shall be signed by its attorney.

2 (3) How filed.

3 (a) Complaints shall be filed in accordance with the electronic filing procedures in 807 KAR 5:001,
4 Section 8; and

5 (b) The complainant shall serve a copy of the complaint on the defendant at the same time as it
6 files the complaint with the commission.~~[The filing party shall file two (2) copies in paper medium~~
7 ~~with the commission in the manner required by 807 KAR 5:001, Section 8(12)(a)2.]~~

8 (4) Procedure on filing of complaint.

9 (a) Upon the filing of a complaint, the commission shall immediately examine the complaint to
10 ascertain if it establishes a prima facie case and conforms to this administrative regulation.

11 1. If the commission finds that the complaint does not establish a prima facie case or does not
12 conform to this administrative regulation, the commission shall notify the complainant and provide
13 the complainant an opportunity to amend the complaint within a stated time.

14 2. If the complaint is not amended within the time or the extension as the commission, for good
15 cause shown, shall grant, the complaint shall be dismissed.

16 (b) If the complaint, either as originally filed or as amended, establishes a prima facie case and
17 conforms to this administrative regulation, the commission shall serve an order upon the person
18 complained of, accompanied by a copy of the complaint, directed to the person complained of and
19 requiring that the matter complained of be satisfied, or that the complaint be answered in writing
20 within ten (10) days from the date of service of the order. The commission may require the answer
21 to be filed within a shorter period if the complaint involves an emergency situation or otherwise
22 would be detrimental to the public interest.

23 (5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he or she shall

1 submit to the commission, within the time allowed for satisfaction or answer, a statement of the
2 relief that the defendant is willing to give. Upon the acceptance of this offer by the complainant
3 and with the approval of the commission, pursuant to KRS Chapter 278 and this administrative
4 regulation, the case shall be dismissed.

5 (6) Answer to complaint. If the complainant is not satisfied with the relief offered, the defendant
6 shall file an answer to the complaint within the time stated in the order or the extension as the
7 commission, for good cause shown, shall grant.

8 (a) The answer shall contain a specific denial of the material allegations of the complaint as
9 controverted by the defendant and also a statement of any new matters constituting a defense.

10 (b) If the defendant does not have information sufficient to answer an allegation of the complaint,
11 the defendant may so state in the answer and place the denial upon that ground.

12 (7) Burden of proof.

13 (a) The complainant has the burden of establishing it is entitled to the relief sought.

14 (b) The commission may presume that a pole replaced to accommodate a new attachment was a
15 red tagged pole if:

- 16 1. There is a dispute regarding the condition of the pole at the time it was replaced; and
- 17 2. The utility failed to document and maintain records that inspections were conducted pursuant to
18 807 KAR 5:006 and that no deficiencies were found on the pole or poles at issue, or if inspections
19 of poles are not required pursuant to 807 KAR 5:006, the utility failed to periodically inspect and
20 document the condition of its poles.

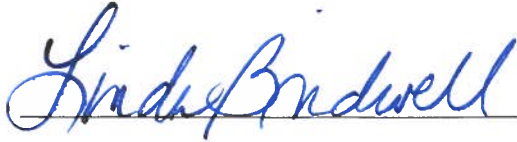
21 (8) Time for final action.

22 (a) The commission shall take final action on a complaint regarding the rates, terms, or conditions
23 for access to a utility's pole, duct, conduit, or right-of-way within sixty (60)~~[180]~~ days of a


1 complaint establishing a prima facie case being filed, unless the commission finds it is necessary
2 to continue the proceeding for good cause for up to 180~~[360]~~ days from the date the complaint
3 establishing a prima facie case is filed.

4 (b) The period within which final action shall be taken may be extended beyond 180~~[360]~~ days
5 upon agreement of the complainant and defendant and approval of the commission.

This is to certify that the Public Service Commission approved promulgation of this emergency administrative regulation amended after comment, pursuant to KRS 278.040(3), on August 15, 2024.



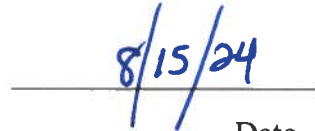
Linda Bridwell, P.E., Executive Director
Public Service Commission



Date



Angie Hatton, Chairman
Public Service Commission



Date

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

807 KAR 5:015E

Contact Person: John E.B. Pinney, phone 502-782-2587, email Jeb.Pinney@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the process by which the commission regulates the rates, terms, and conditions of utility pole attachments and access to other utility facilities, amends the specific criteria and procedures for certain types of pole attachment applications for obtaining access to utility poles within the Kentucky Public Service Commission's jurisdiction, and establishes a process by which the complaints of those seeking to access utility facilities shall be addressed within the period established by federal law. The emergency amendments address issues pertaining to expediting certain applications to attach broadband facilities to the poles of utilities subject to the jurisdiction of the Public Service Commission.

(b) The necessity of this administrative regulation: Senate Joint Resolution 175 from the 2024 Regular Session mandates that the Public Service Commission promulgate emergency regulations, or emergency amendment to existing regulations, to address issues pertaining to certain applications to attach broadband facilities to the poles of utilities subject to the jurisdiction of the Public Service Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. KRS 278.040(2) states that the PSC has exclusive jurisdiction over the regulation of rates and services of utilities. KRS 278.030(1) provides that all rates received by a utility shall be fair, just, and reasonable. KRS 278.030(2) provides that every utility shall furnish adequate, efficient, and reasonable service. In *Kentucky CATV Ass'n v. Volz*, 675 S.W.2d 393 (Ky. App. 1983), the Court of Appeals held that utility pole attachments are a service that is provided for a rate. Senate Joint Resolution 175 from the 2024 Regular Session mandates that the Public Service Commission promulgate emergency regulations, or emergency amendment to existing regulations, to address issues pertaining to certain applications to attach broadband facilities to the poles of utilities subject to the jurisdiction of the Public Service Commission.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendments will expedite deployment of

broadband internet service in rural areas of the Commonwealth places unserved and underserved citizens at a disadvantage and recounts that funds from the Broadband Equity, Access, and Deployment Program and the Rural Digital Opportunity Fund that will be used to assist in deploying broadband internet service to unserved and underserved areas.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The proposed amendments after comment: (1) clarify which timelines apply to which size of pole attachment application; (2) amend several timelines which the emergency regulation had incorrectly stated; (3) remove confusing language regarding how to calculate when a special contract is required for multiple orders for attachments received over a period of time; and (4) corrects an inadvertent omission of changing reference to a specific subsection from the emergency regulation

(b) The necessity of the amendment to this administrative regulation: The original emergency amendments to the regulation expanded from 1,000 poles to 3,000 poles the threshold for when an attached must request a special contract with a pole owner. The emergency amendment also established new deadlines by which certain actions must be taken by a pole owner. The new deadlines proved the actions must be completed within 45 days of receipt of an application, and the deadline would increase 15 days for each 500 pole increment. For example, for an application for 500 poles or less, the deadline is 45 days, for 501-1,000 poles the deadline is 60 day, and for an application of 2,501-3,000 poles the deadline is 120 days. The Commission, in several instances in the emergency regulation, incorrectly stated the maximum deadline was 105 days. The amendments after comment correct this and other errors in calculating deadlines.

The amendments after comment address ambiguity noted by several commenters concerning when a special contract is required under Section 4(8)(d). Commenters specifically noted that it was difficult to calculate when applications over a five (5) month period would trigger the requirement for a special contract. The Commission has deleted the ambiguous language because it was not helpful and could cause confusion.

The amendments after comment also amended Section 4(8)(f) to clarify how multiple applications may be considered one application for the purposes of applying relevant timelines in the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. 2024 KY S.J.R. 175, 2024 Regular Session requires the Commission to promulgate emergency regulations addressing issues pertaining to broadband attachments to utility poles. The amendments after comment should assist in the processing of broadband attachments by providing clarity and correcting statements of deadlines, clarifying the applicable deadlines, and removing ambiguity from how numbers of poles are calculated in multiple attachments which triggers the need for a special contract.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will hasten the review the processing of pole attachment applications and increase the speed at which pole attachments are made which meet the requirements of 2024 KY S.J.R. 175, 2024 Regular Session directing the Public Service Commission to promulgate emergency amendments to promote the deployment of broadband in unserved or underserved areas of the Commonwealth. The amendments after comment should assist in the faster processing of broadband attachments by providing clarity and correcting statements of deadlines, clarifying the applicable deadlines, and removing ambiguity from how numbers of poles are calculated in multiple attachments which triggers the need for a special contract.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will primarily affect regulated utilities in Kentucky that own or control utility poles, including investor owned electric utilities, rural electric cooperatives, and incumbent local exchange carriers. There are currently four investor owned electric utilities, 21 rural electric cooperates, and 20 incumbent local exchange carriers, which include investor owned telephone utilities and telephone cooperatives, operating in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The commission does not anticipate the regulated entities having to take additional actions to comply with the amendments after comment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulated entities will incur

some initial costs in updating their tariffs to comply with the original emergency administrative regulation. However they will not be required to file additional tariffs in response to the amendments after comment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The adoption of a uniform process to expedite broadband deployment should reduce potential conflicts in the future that would have to be resolved through the complaint process. This should reduce the overall cost of pole attachments for utilities and attachers by reducing or eliminating costly delays. The amendments after comment remove ambiguities that could have contributed to unnecessary delays.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Zero Dollars, no fiscal impact.

(b) On a continuing basis: Zero Dollars, no fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission does not anticipate this amendment increasing its enforcement cost. The commission currently funds enforcement of this regulation through its general operating budget funded through annual assessments paid by regulated utilities pursuant to KRS 278.130, *et. seq.*, and this amendment has no effect on that funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fiscal impact.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees are established and existing fees will not be affected.

(9) TIERING: Is tiering applied? Yes. The speed at which utilities are required to process applications and complete make ready is tiered based on the number of poles owned the utility. Tiering the regulation in this manner, which is consistent with how the federal regulation is tiered, will allow smaller utilities to process pole attachment applications at slower rates, while maintaining a relatively consistent attachment speed throughout the state.

FISCAL IMPACT STATEMENT

Contact Person: John E.B. Pinney, phone 502-782-2587, mobile 502-545-6180, email Jeb.Pinney@ky.gov

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040, HB 320 (2021,) SJR 175 (2024).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

(a) Estimate the following for the first year:

Expenditures: Zero Dollars; no fiscal impact.

Revenues: Zero Dollars; no fiscal impact.

Cost Savings: Zero Dollars; no fiscal impact.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?
No fiscal impact.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): These entities will be affected to the extent that they are seeking to attach to poles owned or controlled by regulated utilities of which there should be few requests.

(a) Estimate the following for the first year:

Expenditures: Zero Dollars; no fiscal impact.

Revenues: Zero Dollars; no fiscal impact.

Cost Savings: Zero Dollars; no fiscal impact.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?
Zero Dollars; no fiscal impact.

(4) Identify additional regulated entities not listed in questions (2) or (3): Utilities, as defined by KRS 278.010(3), that own utility poles.

(a) Estimate the following for the first year:

Expenditures: It is not possible to estimate the expenditures for the first year. The amount of expenditures will depend upon the volume of applications for pole

attachments, as well as the utilities' costs to engage the resources necessary to meet the requirements of the amendments to the regulation.

Revenues: It is not possible to estimate the revenues for the first year. The revenues should approximately match the expenditures incurred to process pole attachments although there may be some lag in recovery. Utilities are allowed to recover the cost of pole attachments from attachers through rates and billing of other costs.

Cost Savings: None. Expenditures and revenue should roughly match.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? While the amount of expenditures and revenues will vary in subsequent years the expenditures and revenues should roughly match because utilities are allowed to recover the cost of pole attachments from attachers through rates and billing of costs.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact to the Public Service Commission. Pole-owning utilities are already under an obligation to allow broadband attachment to their poles at rates, terms, and conditions in their tariffs. The emergency amendments will increase the speed at which these attachments are made, but should have no significant fiscal impact over the current obligation to provide attachments.

(b) Methodology and resources used to determine the fiscal impact: The Public Service Commission will not require additional resources to implement the emergency amendment. Pole-owning utilities are under an existing obligation to provide access to their poles and the emergency amendment does not increase the fiscal impact of attachments that does not already exist.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate). There will be no major economic impact to the Public Service Commission which will have no increased costs resulting from the emergency regulation. Other public entities that attach to utility poles will see no negative or positive fiscal impact. Pole-owning utilities will see increased costs of operation due to an increase of pole attachment requests. These costs, however, will ultimately be recovered from the entities requesting attachment to the poles.

(b) The methodology and resources used to reach this conclusion: The Public Service Commission initiated a docket at the end of 2023 to review the application of 807 KAR 5:015 and invited the participation of pole-owning utilities and pole attachers. The Public Service Commission has held several conferences in this docket, during which the attachers and utilities introduced information that the incoming funds from the Broadband Equity, Access, and Deployment (BEAD) Program and the Rural Digital Opportunity Fund (RDOF) will result in a significant increase in pole attachment applications. Pole owning utilities will have to acquire the necessary personnel and resources to meet this increase in attachment applications, which will increase the utilities' up-front expenses. The costs, however, will ultimately be recovered from the attaching entities once attachments are completed.

FEDERAL MANDATE ANALYSIS COMPARISON

807 KAR 5:015E

Contact Person: John E.B. Pinney, phone 502-782-2587, mobile 502-545-6180, email Jeb.Pinney@ky.gov

- (1) Federal statute or regulation constituting the federal mandate: Currently not applicable to the regulation.
- (2) State compliance standards: Currently not applicable to the regulation.
- (3) Minimum or uniform standards contained in the federal mandate: Currently not applicable to the regulation.
- (4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Currently not applicable to the regulation.
- (5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Currently not applicable to the regulation.

STATEMENT OF CONSIDERATION
Relating to 807 KAR 5:015E

Public Service Commission
(Amended After Comments)

- I. The public hearing on 807 KAR 5:015E scheduled for July 30, 2024, at 10:00 a.m. at the Kentucky Public Service Commission was cancelled; however, written comments were received during the public comment period.
- II. The following people submitted written comments:

<u>Name and Title</u>	<u>Organization/Entity/Other</u>
M. Todd Osterloh, Counsel for KBCA	Sturgill, Turner, Barker, and Maloney PLLC
Tip Depp, Counsel for Cooperatives	Dinsmore and Shohl LLP
Holly Wallace, Counsel for Cooperatives	Dinsmore and Shohl LLP
John D. A. Lavanga, Counsel for Cooperatives	Dinsmore and Shohl LLP
M. Evan Buckley, Counsel for Cooperatives	Dinsmore and Shohl LLP
Robert J. Patton, Counsel for Kentucky Power	Kinner & Patton
Allyson K. Sturgeon Vice President and Deputy General Counsel	PPL Services Corporation
Sara V. Judd, Senior Counsel	LG&E and KU Services Company

- III. The following people from the promulgating administrative body responded to the comments:

Name and Title
J.E.B. Pinney, Executive Advisor

IV. Summary of Comments and Responses

- (1) Subject Matter: Applications v. Poles: Use of threshold number of poles is problematic.
- (a) Comments: M. Todd Osterloh – Mr. Osterloh, on behalf of the Kentucky Broadband and Cable Association (“KBCA”) states that the emergency regulation’s use of a threshold number of poles in an application causes problems. For example, Section 4(2)(a)(6) states that a utility shall conduct a survey for “applications exceeding 500 poles.” KBCA contends that most applications are for smaller numbers, averaging 75 poles per application, and that there are very few, if any, applications for 500 poles or more. KBCA contends that the Commission should clarify this by adopting the proposed definitions of “small” and “large” orders in its proposed edits attached to KBCA’s comments.
- (b) Response: The Commission has will amend Section 4(8)(f) to clarify that multiple applications received within a 30-day period may be aggregated and used to determine the applicable deadlines. Adopting the “small” and “large” proposed language is unnecessary with these changes.
- (2) Subject Matter: Timeline Alignment: several of the deadlines in the emergency amendment are inconsistent.
- (a) Comments: M. Todd Osterloh – Mr. Osterloh, on behalf of the KBCA, points out that many timelines in the emergency amendments are inconsistent. KBCA correctly claims that the maximum deadline for completing a make-ready survey is 120 days and not 105 days. KBCA suggest correcting this by adopting its definition of “small” and “large” orders, but, in the alternative, recommends amending the regulation to reflect the correct number. Mr. Osterloh also points out that the emergency amendments has conflicting deadlines for make ready work as in the above issue raised by KBCA, KBCA points out that the deadlines in the emergency amendments of 105 days and 135 days should be 120 days and 165 days, respectively.

Comments: Robert J. Patton, counsel for Kentucky Power, and Allyson Sturgeon, counsel for LG&E/KU, (“Joint Commenters”) correctly note that the additional time to perform various tasks, adding an additional 15 days for each 500 pole increment, does not start until an application reaches 1,000 poles. The Commenters note that this gives pole owners less time to perform these tasks for a 1,000 pole application than they did in the original regulation. The Commenters state that, if the Commission will not move towards requiring more special contracts, the Commission should, at the very least, clarify that the emergency amendments and make the following changes (in bold):

A utility may, for every **full** 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 three (3) percent of the utility's poles in Kentucky. **By way of example, if an attacher submits an application for 600 poles, the utility will have 60 days to complete the survey.**

A utility may, for every **full** 500-pole increment, add up to fifteen (15) 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 three percent of the utility's poles in Kentucky. **By way of example, if an attacher submits an application for 600 poles, existing attachers will have 60 days to complete make-ready within the communications space, and the utility will have 105 days to complete make-ready within the power space.**

- (b) Response: It is reasonable to make some of the suggested changes by removing "full" from the above. The intent of the Commission was not to give 45 days to perform surveys for applications of 1,000 poles or less, but to allow the extra 15 days for each increment after the first increment, therefore an application over 500 poles would be subject to a 60-day timeline. Removing "full" will be sufficient to make it clear, as well as revising the affected timelines referenced throughout the regulation that both KBCA and the Commenters have noted. The amendments after comment also correct the application of these revised deadlines to the maximum time allowed to perform certain functions.
- (3) Subject Matter: Application Review for Completeness: Confusing timelines in the emergency amendments.
- (a) Comments: M. Todd Osterloh – Mr. Osterloh, on behalf of KBCA, claims that the eReg contains conflicting deadlines for when a utility must review an application for completeness in Section 4(2)(a)2, which is ten business days. KBCA claims, though, that Section 4(2)(a)8 causes confusion because it then adds an additional day for review for each 500 pole increment.
- (b) Response: The Commission will amend Section 4(2)(a)2 to make clear the timelines in Section 4(2)(a)8 apply.
- (4) Subject Matter: When a Special Contract Is Required: Section 4(8)(d) is ambiguous and confusing as to what triggers a special contract.
- (a) Comments: M. Todd Osterloh – Mr. Osterloh, on behalf of the KBCA notes that a special contract is required for an application exceeding 3,000 poles. KBCA notes, however, that the language in the emergency amendments requiring special contracts for "three (3) separate applications averaging 1,000 poles or one (1) percent of the utility's poles in Kentucky for any three (3) months over a five (5) month period." is confusing and recommends deleting it.

Comments: Robert J. Patton and Allyson Sturgeon on behalf the Joint Commenters state that Section 4(8)(d) of the Emergency Regulation is ambiguous. The Commenters state that they are not clear how the framework would apply in practice. The Commenters wonder what is the triggering mechanism for the special contract etc. The Commenters suggest that it would be better to return to the preexisting limits for special contracts (anything over 1,000 poles) and delete this section.

(b) Response: This language is ambiguous and should be deleted. However the thresholds for special contracts should still be 3,000 poles, as it is with the FCC regulations. See, *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Fourth Reporter & Order, Declaratory Ruling, & Third Further Notice of Proposed Rulemaking, FCC 23-109, paras. 39 & 50 (2023). The Emergency Amendments, however, adopt a staggered and more lenient timeline than the FCC regulation.

(5) Subject Matter: Expanding the Use of Regulatory Timelines Will Not Facilitate Large Deployments: the primary constraint on broadband deployment is access to resources, primarily approved contractors.

(a) Comments: Robert J. Patton and Allyson Sturgeon, on behalf the Joint Commenters, note that the emergency regulation made significant changes to the regulatory timelines for surveys and conducting make-ready work. The Commenters state that these create several problems.

The New Timelines for not address the primary cause of delays. The Joint Commenters contend that the changed timelines steer more applications away from the “special contract model,” which was required for applications over 1,000 poles but the emergency regulation increases this threshold to 3,000 poles. The Commenters assert that the case for delays in broadband deployment is largely a resource constraint issue due to the shortage of approved contactors, and shortening timelines in which to make attachments will not address the resource problem.

The Joint Commenters assert that if pole owners cannot obtain approved contractors, then neither can attachers when the attaches can exercise their right to self help (when a pole owner does not perform its duties within the time of the regulation).

The Joint Commenters therefore contend that the “special contract” model is the best way to achieve early coordination to acquire resources before attachments are necessary and the Commission should not extend the threshold of when a special contract is needed.

Comments: Tip Depp – Mr. Depp, on behalf of Kentucky’s Electric Cooperatives (“Cooperatives”) The Cooperatives, like the Joint Commenters, contend that the

use of rigid timelines in the emergency regulation, instead of replying upon commonsense good cause provisions, will compound the national approved contractor problem.

The Cooperatives assert that they have struggled to obtain make-ready contractors and, as a hedge against the timelines in the regulation, often retain contractors in anticipation of applications. When the applications fail to materialize the Cooperatives must decide between retaining the contractors and incurring additional costs while waiting for an application or let the contractors go and run the risk of not obtaining them when an application does appear.

The Cooperatives also take issue with the increased pole numbers and decreased processing time, stating this may simply overwhelm smaller utilities such as cooperatives. The Cooperatives state that the timeframes may need to be refined for smaller entities once actual data is available regarding the effect of the new timelines.

The Cooperatives, just like the Joint Commenters, take issue with the additional time to complete certain work to be triggered for every full 500 pole increment and assert that a partial increment should be adopted.

The Cooperatives do not provide any suggested changes to the emergency amendment but do state that once applications increase, as they are expected to do with the influx of federal broadband money, the Commission may have to revisit the timelines.

- (b) Response: Although access to resources, especially approved contractors, is a bottleneck to broadband deployment, the emergency amendments, in large part, mimic the Federal Communication Commission's pole attachment regulation with regard to the threshold of when a special contract is needed. *See, In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Fourth Reporter & Order, Declaratory Ruling, & Third Further Notice of Proposed Rulemaking, FCC 23-109, paras. 39 & 50 (2023). The Emergency Amendments, however, adopt a staggered and more lenient timeline than the FCC regulation.

Moving most applications towards special contracts removes certainty for attachers as to applicable timelines. If this proves unworkable the Commission, which has an open docket discussing ongoing issues with pole attachments, can address the issue when it replaces this emergency regulation with another regulation.

The Commission notes that it filed the emergency regulation without an ordinary amendment because the Commission expected that further changes would need to be made once applications increased because of the influx of federal money.

(6) Subject Matter: Treating Multiple Applications as One Can Be Manipulated

- (a) Comments: Robert J. Patton and Allyson Sturgeon, on behalf the Joint Commenters, take issue with the changes in Section 4(7)(e) which reads:

A utility may treat multiple requests from a single new attacher as one (1) request if the requests are submitted during the same calendar month as[within thirty (30) days of] one another; and

The Commenters contend that the regulation should be changed back to the thirty day window. In support of their contention the Commenters allege that an attacher could game the system and avoid the special contract requirement by filing an application for 2,999 poles on the last day of a month and one for 2,999 the first day of the month, causing undue hardship to pole owners.

- (b) Response: Given that the Commission will delete the ambiguous language in Section 4(8)(d) it is reasonable to protect the pole owners that the Commission delete calendar month and reinstate the 30 day limitation in Section 4(8)(f) and clarify that the 30-day limitation applies to calculating deadlines throughout the regulation.

(7) Subject Matter: Attachers Should Not Be Given a Regulatory Right to Perform Their Own Surveys

- (a) Comments: Robert J. Patton and Allyson Sturgeon, on behalf the Joint Commenters, note that the previous regulation and the FCC rules allow for attachers to perform their own surveys, but only after a utility fails to timely complete a survey. The Joint Commenters state that the emergency amendment greatly expands the attachers' right to perform a survey. Survey refers to the process whereby qualified personnel visit the poles in the field and collect information about the condition and capacity of each pole identified in an application. The Joint Commenters assert that if a survey is done incorrectly, it can corrupt the entire attachment process and should be stricken.

In the alternative, if the Commission will not strike this requirement, the Joint Commenters suggest that the Commission should make clear that Section 4(2)(a)6 applies only to data collection and not the subsequent engineering process.

- (b) Response: The Commission does not believe that a change is warranted at this point. The Commission has an open docket investigating issues surrounding broadband pole attachments. The Commission will take up this issue in the docket and, if allowing attachers to perform surveys is a problem, can correct the issue in any regulation promulgated after expiration of this emergency regulation.

(8) Subject Matter: Allowing Attachers To Reprioritize Applications Is Problematic

- (a) Comments: Robert J. Patton and Allyson Sturgeon, on behalf the Joint Commenters, take issue with the emergency amendments that allow an attachers to reprioritize an existing application for a new application regarding which a utility should process first. The section provides:

A new attachers, 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 a new application resets the respective review time of the new attachers's deprioritized applications currently under review over which the new application is being prioritized.

The Joint Commenters allege that this adds complexity and will not assist in the deployment of broadband. The Joint Commenters assert that the attachers should have planned ahead of time the priority of the applications. The Joint Commenters advocate a strict "first in and first out" policy.

Comments: Tip Depp – Mr. Depp, on behalf of the Cooperatives asserts that allowing an attachers to reprioritize applications makes it difficult to ascertain what contractor resources will be necessary. The Cooperatives assert that the attachers should figure this all out before they make their applications. Reprioritization creates additional administrative burdens and slows down the application process. The Cooperatives state that the Commission may have to revisit this section.

- (b) Response: In an open docket before the Commission attachers noted that this could assist in the deployment of broadband once information about a prior application comes in. While this might not happen often, it could occur. If the information in the open docket before the Commission, or in complaints filed pursuant to the regulation, indicate differently, the Commission can address this when it files a regulation replacing the emergency regulation.
- (9) Subject Matter: Timely Payment Considerations: Lack of timely payment from attachers negatively affects pole owners.

- (a) Comments: Tip Depp – Mr. Depp, on behalf of the Cooperatives, asserts that the regulation does not provide for adequate enforcement of timely payment. The Cooperatives assert that large outstanding balances from the attachers constitute unnecessary financial burdens for the cooperatives and their members. The Cooperatives assert that unless the Commission develops protocols to ensure that pole owners receive timed payment, the cost of broadband deployment will fall on the cooperatives and not the attachers.
- (b) Response: The Commission, in the emergency amendments, required attachers and pole owners to better state payment information before applications were made, including parties responsible for payments and requiring clarity on

invoices and payments. The Commission will also monitor these issues in the docket open before it and, if necessary, will make further changes to the regulation to assist in timely payment to the pole owners.

V. Summary of Statement of Consideration and Action Taken by Promulgating Administrative Body

The public hearing on this administrative regulation was cancelled; however written comments were received. The Commission responded to the comments and amends the administrative regulation as follows:

Page 10
Section 3(8)
Line 13

After “than” insert the following “**October**”.

Delete “August”.

Page 10
Section 3(8)
Line 14

At the beginning of Line 13 insert the following “**November 30**”.

Delete “July 31”.

Page 11
Section 4(2)(a)2
Line 6

After “within” insert the following:
the time established in subparagraph 8. of this paragraph

Delete “ten (10) business days”.

Page 12
Section 4(2)(b)1
Line 18

After “within” insert the following “**120**”.

Delete “105”.

Page 13
Section 4(2)(b)4

Line 18

After “within” insert the following “**120**”.

Delete “105”.

Page 15
Section 4(4)(a)2
Line 15

After “within” insert the following “**120**”.

Delete “105”.

Page 16
Section 4(4)(b)2
Line 8

After “or” insert the following “**165**”.

Delete “135”.

Page 19
Section 4(8)(b)
Line 1

After “every” delete “full”.

Page 19
Section 4(8)(c)
Line 4

After “every” delete “full”.

Page 19
Section 4(8)(d)
Lines 11-13

After “Kentucky” delete:

, or upon receipt of three (3) separate applications averaging 1,000 poles or one (1) percent of the utility's poles in Kentucky for any three (3) months over a five (5) month period

Page 20
Section 4(8)(f)
Line 8

After “(f) insert the following:

For the calculation of any deadlines in this regulation a

Delete “A”.

Page 20

Section 4(8)(f)

Line 8

After “multiple” insert the following **“applications”**.

Delete “requests”.

Page 20

Section 4(8)(f)

Line 9

At the beginning of line 9 insert the following **“application”**.

Delete “request”

Page 20

Section 4(8)(f)

Line 9

After “the” insert the following **“applications”**.

Delete “requests”.

Page 19

Section 4(8)(f)

Lines 9

After “submitted” insert the following

within thirty (30) days of.

Delete:

during the same calendar month as

Page 21

Section 4(9)(c)

Line 14

After “to” insert the following **“120”**.

Delete “105”.

Page 24
Section 4(9)(c)
Line 10

After “subsection” insert the following “**(8)**”.

Delete “(7)”.

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