

STATEMENT OF EMERGENCY

807 KAR 5:015E.

This emergency amendment is being promulgated to meet an imminent deadline for promulgation of amendments to regulations established by the General Assembly during the 2024 Regular Session in Senate Joint Resolution 175. The Resolution states that access to 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 (BEAD) Program and the Rural Digital Opportunity Fund (RDOF) that will be used to assist in deploying broadband internet service to unserved and underserved areas. The Resolution states that the deployment of broadband internet access will require attaching to utility poles. The Resolution directs the Commission to promulgate emergency regulations on pole attachments not later than sixty (60) days after the effective date of the Joint Resolution, and that the "new or amended emergency regulations are tailored to advance the buildout of broadband service to unserved or underserved areas." The Resolution was signed by the Governor on April 4, 2024, and enrolled with the Secretary of State the same day. This emergency administrative regulation will not be replaced with an ordinary regulation because the Public Service Commission anticipates that further amendments to this administrative regulation will be necessary upon observing the effects of the emergency regulation and what future amendments will be necessary to accomplish the goals enumerated in Senate Joint Resolution 175.

ANDY BESHEAR, Governor

KENT A. CHANDLER, Chairman

ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(Emergency Amendment)

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

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

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.040(2) requires the commission to have exclusive jurisdiction over the regulation of rates and service of utilities. KRS 278.030(1) authorizes utilities to demand, collect, and receive fair, just, and reasonable rates. KRS 278.030(2) requires every utility to furnish adequate, efficient, and reasonable service. KRS 278.5464 requires the commission to promulgate administrative regulations regarding pole attachments under its jurisdiction, including those necessary for the provision of broadband. 47 U.S.C.A. 224(c) requires that state regulation of pole attachments shall only preempt federal regulation of poles under federal jurisdiction if the state regulates the rates, terms, and conditions of access to those poles, has the authority to consider and does consider the interest of the customers of attachers and the pole owning utilities, has effective rules and administrative regulations governing attachments, and addresses complaints regarding pole attachments within 180 days. This administrative regulation establishes the process by which the commission regulates the rates, terms, and conditions of utility pole attachments and access to other utility facilities, establishes specific criteria and procedures for obtaining access to utility poles within the 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 amendments establish an expedited complaint process to address issues pertaining to contract negotiations. 2024 Kentucky S.J.R. 175, 2024 Regular Session requires the Commission to promulgate emergency regulations addressing issues pertaining to broadband attachments to utility poles.

Section 1. Definitions.

- (1) "Attachment" means any attachment by a cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit to a pole owned or controlled by a utility.
- (2) "Broadband internet provider":
 - (a) Means a person who owns, controls, operates, or manages any facility used or to be used to offer internet service to the public with download speeds of at least twenty-five (25) megabits per second and upload speeds of at least three (3) megabits per second; and
 - (b) Does not mean a utility with an applicable joint use agreement with the utility that owns or controls the poles to which it is seeking to attach.
- (3) "Communications space" means the lower usable space on a utility pole, which is typically reserved for low-voltage communications equipment.
- (4) "Complex make-ready" means any make-ready that is not simple make-ready, such as the replacement of a utility pole; splicing of any communication attachment or relocation of existing wireless attachments, even within the communications space; and any transfers or work relating to the attachment of wireless facilities.
- (5) "Existing attacher" means any person or entity with equipment lawfully on a utility pole.
- (6) "Governmental unit" means an agency or department of the federal government; a department, agency, or other unit of the Commonwealth of Kentucky; or a county or city,

special district, or other political subdivision of the Commonwealth of Kentucky.

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

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

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

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

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

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

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

(11) "Telecommunications carrier":

(a) Means a person who owns, controls, operates, or manages any facility used or to be used for or in connection with the transmission or conveyance over wire, in air, or otherwise, any message by telephone or telegraph for the public, for compensation; and

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

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

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

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

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

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

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

(2) A request for access to a utility's poles, ducts, conduits or rights-of-way shall be submitted to a utility in writing, either on paper or electronically, as established by a utility's tariff or a special contract between the utility and person requesting access.

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

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

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

Section 3. Pole Attachment Tariff Required.

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

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

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

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

(5)

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

(b) The Web site shall include:

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

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

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

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

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

3. Construction standards for attachments; and

4. The identity and contact information for:

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

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

(6) Overlashing.

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

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

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

(b)

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

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

(c)

1. A utility shall not require more than thirty (30) days' advance notice of planned overlashing.
2. If a utility requires advance notice for overlashing, then the utility shall include the notice requirement in its tariff or include the notice requirement in the attachment agreement with the existing attacher.
3. If, after receiving advance notice, the utility determines that an overlash would create a capacity, safety, reliability, or engineering issue, it shall provide specific documentation of the issue to the party seeking to overlash within the thirty (30) day advance notice period and the party seeking to overlash shall address any identified issues before continuing with the overlash either by modifying its proposal or by explaining why, in the party's view, a modification is unnecessary.

(d)

1. A party that engages in overlashing shall be responsible for its own equipment and shall ensure that it complies with reasonable safety, reliability, and engineering practices.
2. If damage to a pole or other existing attachment results from overlashing or overlashing work causes safety or engineering standard violations, then the overlashing party shall be responsible at its expense for any necessary repairs.

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

1. The notice shall provide the affected utility at least ninety (90) days from receipt in which to inspect the overlash.
2. The utility shall have fourteen (14) days after completion of its inspection to notify the overlashing party of any damage or code violations to its equipment caused by the overlash.
3. If the utility discovers damage or code violations caused by the overlash on equipment belonging to the utility, then the utility shall inform the overlashing party and provide adequate documentation of the damage or code violations.
4. The utility shall either:
 - a. Complete any necessary remedial work and bill the overlashing party for the reasonable costs related to fixing the damage or code violations; or
 - b. Require the overlashing party to fix the damage or code violations at its expense within fourteen (14) days following notice from the utility.

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

(8) Tariffs conforming to the requirements of this administrative regulation and with a proposed effective date no later than August 31, 2024, shall be filed by July 31, 2024.

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

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

(2) Application review and survey.

(a) Application completeness.

1. A new attacher shall:

a. Prior to submitting a pole attachment application to a utility:

(i) Review the application for completeness and;

(ii) Submit the information required by Section 3(5) of this administrative regulation; and

b. Submit the written certification with the pole attachment application. If the utility uses an electronic system to manage pole attachments, this certification

shall be uploaded to the utility's designated system.

2. A utility shall review a new attacher's pole attachment application for completeness before reviewing the application on its merits and shall notify the new attacher within ten (10) business days after receipt of the new attacher's pole attachment application if the application is incomplete.

3. A new attacher's pole attachment application shall be considered complete if the application provides the utility with the information necessary under its procedures, as established in the utility's applicable tariff or a special contract regarding pole attachments between the utility and the new attacher, to begin to survey the affected poles.

4. If the utility notifies a new attacher that its attachment application is not complete, then the utility shall state all reasons for finding it incomplete.

5. A utility shall not require a new attacher to submit a survey or pole loading analysis as a filing requirement for an application.

6. A new attacher may submit a survey with an application of 500 poles or less, which the utility shall accept if the new attacher used an approved contractor listed on the utility's Web site and the survey was conducted no longer than thirty (30) days prior to submission. A utility shall conduct the survey for applications exceeding 500 poles.

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

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

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

10. If the utility does not respond within the time prescribed in subparagraph 8. of this paragraph after receipt of the application, or if the utility rejects the application as incomplete but fails to state any reasons in the utility's response, then the application shall be deemed complete and the time for the utility's next procedural step begins to run.

(b) Survey and application review on the merits.

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

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

a. A utility shall allow the new attacher and any existing attachers on the affected poles to be present for any field inspection conducted as part of a utility's survey conducted pursuant paragraph (b)1. of this subsection.

b. A utility shall use commercially reasonable efforts to provide the affected attachers with advance notice of not less than five (5) business days of any field inspection as part of the survey and shall provide the date, time, and location of the inspection, and name of the contractor, if any, performing the inspection.

3. If a new attacher has conducted a survey pursuant to subsection (11)(b) of this section, or a new attacher has otherwise conducted and provided a survey, after giving existing attachers notice and an opportunity to participate in a manner consistent with subsection (11)(b), a utility may elect to satisfy survey obligations established in this paragraph by notifying affected attachers of the intent to use the survey conducted by the new attacher and by providing a copy of the survey to the affected attachers within the time period established in subparagraph 1. of this paragraph.

4. Based on the results of the applicable survey and other relevant information, a utility shall respond to the new attacher either by granting access or denying access within forty-five (45) days of receipt of a complete application to attach facilities to its utility poles (or within 105 days in the case of larger orders as described in subsection (8) of this section).

5. A utility's denial of a new attacher's pole attachment application shall be specific, shall include all relevant evidence and information supporting the denial, and shall explain how the evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.

6. Payment of survey costs and estimates.

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

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

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

(3) Payment of make-ready estimates.

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

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

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

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

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

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

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

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

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

2. State a date for completion of make-ready in the communications space that is no later than forty-five (45) days after notification is sent (or up to 105 days in the case of larger orders as established in subsection (8) of this section);
 3. State that any entity with an existing attachment may modify the attachment. Modification shall be consistent with the specified make-ready before the date established for completion;
 4. State that, if make-ready is not completed by the completion date established by the utility in subparagraph 2. of this paragraph, the new attacher may complete the make-ready, which shall be completed as specified pursuant to subparagraph 1. of this paragraph; and
 5. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.
- (b) For make-ready above the communications space, the notice shall:
1. State where and what make-ready will be performed;
 2. State a date for completion of make-ready that is no later than ninety (90) days after notification is sent (or 135 days in the case of larger orders, as established in subsection (8) of this section).
 3. State that any entity with an existing attachment may modify the attachment. Modification shall be consistent with the specified make-ready before the date established for completion;
 4. State that the utility may assert the utility's right to up to fifteen (15) additional days to complete make-ready;
 5. State that if make-ready is not completed by the completion date established by the utility in subparagraph 2. of this paragraph (or, if the utility has asserted its fifteen (15) day right of control, fifteen (15) days later), the new attacher may complete the make-ready, which shall be completed as specified pursuant to subparagraph 1. of this paragraph; and
 6. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.
- (c) Once a utility provides the notices required by this subsection, the utility shall provide the new attacher with a copy of the notices and the existing attachers' contact information and address where the utility sent the notices. The new attacher shall be responsible for coordinating with existing attachers to encourage completion of make-ready by the dates established by the utility pursuant to paragraph (a)2. of this subsection for communications space attachments or paragraph (b)2. of this subsection for attachments above the communications space.
- (5) A utility shall complete its make-ready in the communications space by the same dates established for existing attachers in subsection (4)(a)2. of this section or its make-ready above the communications space by the same dates for existing attachers in subsection (4)(b)2. of this section (or if the utility has asserted its fifteen (15) day right of control, fifteen (15) days later).
- (6) An attacher shall, within fifteen (15) business days following completion of all attachments within an application, provide written notice to a utility in the manner and form stated in the utility's tariff.
- (7) Final invoice.
- (a) Within a reasonable period, not to exceed 120 days after a utility completes the utility's make-ready, the utility shall provide the new attacher:
1. A detailed, itemized final invoice of the actual survey charges incurred if the final survey costs for an application differ from any estimate previously paid for the survey work or if no estimate was previously paid; and
 2. A detailed, itemized final invoice, on a pole-by-pole basis if requested and reasonably calculable, of the actual make ready costs to accommodate attachments if

the final make-ready costs differ from the estimate provided pursuant to subsection (3)(d) of this section.

(b) Limitations on make ready costs.

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

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

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

4. The make ready cost, if any, for a pole that is not a red tagged pole to be replaced with a new utility pole to accommodate the new attacher's attachment shall be charged in accordance with the utility's tariff or a special contract regarding pole attachments between the utility and the new attacher.

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

(a) A utility shall apply the timeline as established in subsections (2) through (4) of this section to all requests for attachment up to the lesser of 500 poles or .75 percent of the utility's poles in the state;

(b) 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;

(c) 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 (3) percent of the utility's poles in Kentucky;

(d) A utility and a new attacher, unless the utility owns or controls fewer than 500 poles, shall negotiate a special contract in good faith all requests for attachment larger than the lesser of 3,000 poles or three (3) percent of the utility's poles in Kentucky, 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.

The special contract, at a minimum, shall contain:

1. An agreement for a prepaid account from the new attacher to cover the cost of the request;

2. Direction from the new attacher regarding make ready work that the utility can complete without further direction from the new attacher including;

a. The maximum cost per pole;

b. The total cost for make ready work for each project or line of each project;

3. The new attacher's prioritization of projects if the new attacher has submitted multiple requests for attachment;

4. Contact information, including phone numbers and email addresses, for all necessary utility and new attacher personnel;

5. The cadence, location, and necessary personnel for each project; and

6. The timing of surveys and make ready.

(e) If a special contract identified in paragraph (d) of this subsection cannot be agreed to within fifteen (15) business days from submission of a formal written request to engage from the attacher, the new attacher may file a complaint with the commission,

with a copy served contemporaneously to the utility, on which the commission shall rule within twenty (20) business days of filing of the complaint.

(f) 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 one another; and

(g) As soon as reasonably practicable, but no less than ninety (90) days before the new attacher expects to submit an application in which the number of requests exceed the lesser of the amounts identified in paragraph (a) of this subsection, a new attacher shall provide written notice to a utility in the manner and form stated in the utility's tariff that the new attacher expects to submit a request.

(9) Deviations from make-ready timeline.

(a) A utility may deviate from the time limits specified in this section before offering an estimate of charges if the new attacher failed to satisfy a condition in the utility's tariff or in a special contract between the utility and the new attacher.

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

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

(10) Self-help remedy.

(a) Surveys. If a utility fails to complete a survey as established in subsection (2)(b) of this section, then a new attacher may conduct the survey in place of the utility by hiring a contractor to complete a survey, which shall be completed as specified in Section 5 of this administrative regulation.

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

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

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

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

ready work performed by the new attacher within the electric space shall be conducted by an approved contractor listed on the utility's Web site.

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

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

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

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

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

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

(a) Attachment application.

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

2. Application completeness.

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

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

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

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

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

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

- b. Within the fifteen (15) day application review period (or within thirty (30) days in the case of larger orders as established in subsection (8)(b) of this section or within a time negotiated in good faith for requests equal to or larger than those

established in (8)(d)), a utility or an existing attacher may object to the designation by the new attacher's contractor that certain make-ready is simple.

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

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

(b) Surveys.

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

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

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

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

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

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

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

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

Section 5. Contractors for Survey and Make-ready.

(1) Contractors for self-help complex and above the communications space make-ready. A utility shall make available and keep up-to-date a reasonably sufficient list of contractors the utility authorizes to perform self-help surveys and make-ready that is complex and self-help surveys and make-ready that is above the communications space on the utility's poles. The new attacher shall use a contractor from this list to perform self-help work that is complex or above the communications space. New and existing

attachers may request the addition to the list of any contractor that meets the minimum qualifications in subsection (3) of this section and the utility shall not unreasonably withhold its consent.

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

(a)

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

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

(b)

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

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

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

(a) The contractor has agreed to follow published safety and operational guidelines of the utility, if available, but if unavailable, the contractor shall agree to follow National Electrical Safety Code (NESC) guidelines.

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

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

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

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

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

Section 6. Notice of Changes to Existing Attachers.

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

- (a) Removal of facilities or termination of any service to those facilities if that removal or termination arises out of a rate, term, or condition of the utility's pole attachment tariff or any special contract regarding pole attachments between the utility and the attacher; or
 - (b) Any modification of facilities by the utility other than make-ready noticed pursuant to Section 4 of this administrative regulation, routine maintenance, or modifications in response to emergencies.
- (2) Stays from removals, terminations, and modifications noticed pursuant to subsection (1) of this section.
- (a) An existing attacher may request a stay of the action contained in a notice received pursuant to subsection (1) of this section by filing a motion pursuant to 807 KAR 5:001, Section 4 within fifteen (15) days of the receipt of the first notice provided pursuant to subsection (1) of this section.
 - (b) The motion shall be served on the utility that provided the notice pursuant to 807 KAR 5:001, Section 5(1).
 - (c) The motion shall not be considered unless it includes the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of cable television system operator or telecommunication service, a copy of the notice, and a certification that service was provided pursuant to paragraph (b) of this subsection.
 - (d) The utility may file a response within ten (10) days of the date the motion for a temporary stay was filed.
 - (e) No further filings under this subsection shall be considered unless requested or authorized by the commission.
- (3) Transfer of attachments to new poles.
- (a) Unless an applicable tariff or special contract or Section 4 of this administrative regulation establishes a different timeframe, existing attachers shall transfer their attachments within sixty (60) days of receiving written notice from the utility pole owner.
 - (b) Existing attachers may deviate from the time limit established in paragraph (a) of this subsection for good and sufficient cause that renders it infeasible for the existing attacher to complete the transfer within the time limit established. An existing attacher that requires such a deviation shall immediately notify, in writing, the utility and shall identify the affected poles and include a detailed explanation of the reason for the deviation and the date by which the attacher shall complete the transfer. An existing attacher shall deviate from the time limits established in paragraph (a) of this subsection for a period no longer than is necessary to complete the transfer.
 - (c) If an existing attacher fails to transfer its attachments within the timeframe established in paragraph (a) of this subsection and the existing attacher has not notified the utility of good and sufficient cause for extending the time limit pursuant to paragraph (a) of this subsection, a utility pole owner may transfer attachments and the transfer shall be at the existing attacher's expense.
 - (d) A utility pole owner may transfer an existing attacher's attachment prior to the expiration of any period established by paragraph (a) or (b) of this subsection if an expedited transfer is necessary for safety or reliability purposes.

Section 7. Complaints for Violations of This Administrative Regulation.

- (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall establish the names of the complainant and the defendant, and shall state:
- (a) The full name and post office address of the complainant;
 - (b) The full name and post office address of the defendant;

- (c) Fully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a failure to comply is alleged, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure; and
- (d) The relief sought.
- (2) Signature. The complainant or his or her attorney, if applicable, shall sign the complaint. A complaint by a corporation, association, or another organization with the right to file a complaint, shall be signed by its attorney.
- (3) How filed.
 - (a) Complaints shall be filed in accordance with the electronic filing procedures in 807 KAR 5:001, Section 8; and
 - (b) The complainant shall serve a copy of the complaint on the defendant at the same time as it files the complaint with the commission.
- (4) Procedure on filing of complaint.
 - (a) Upon the filing of a complaint, the commission shall immediately examine the complaint to ascertain if it establishes a prima facie case and conforms to this administrative regulation.
 - 1. If the commission finds that the complaint does not establish a prima facie case or does not conform to this administrative regulation, the commission shall notify the complainant and provide the complainant an opportunity to amend the complaint within a stated time.
 - 2. If the complaint is not amended within the time or the extension as the commission, for good cause shown, shall grant, the complaint shall be dismissed.
 - (b) If the complaint, either as originally filed or as amended, establishes a prima facie case and conforms to this administrative regulation, the commission shall serve an order upon the person complained of, accompanied by a copy of the complaint, directed to the person complained of and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of the order. The commission may require the answer to be filed within a shorter period if the complaint involves an emergency situation or otherwise would be detrimental to the public interest.
- (5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he or she shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief that the defendant is willing to give. Upon the acceptance of this offer by the complainant and with the approval of the commission, pursuant to KRS Chapter 278 and this administrative regulation, the case shall be dismissed.
- (6) Answer to complaint. If the complainant is not satisfied with the relief offered, the defendant shall file an answer to the complaint within the time stated in the order or the extension as the commission, for good cause shown, shall grant.
 - (a) The answer shall contain a specific denial of the material allegations of the complaint as controverted by the defendant and also a statement of any new matters constituting a defense.
 - (b) If the defendant does not have information sufficient to answer an allegation of the complaint, the defendant may so state in the answer and place the denial upon that ground.
- (7) Burden of proof.
 - (a) The complainant has the burden of establishing it is entitled to the relief sought.
 - (b) The commission may presume that a pole replaced to accommodate a new attachment was a red tagged pole if:
 - 1. There is a dispute regarding the condition of the pole at the time it was replaced; and

2. The utility failed to document and maintain records that inspections were conducted pursuant to 807 KAR 5:006 and that no deficiencies were found on the pole or poles at issue, or if inspections of poles are not required pursuant to 807 KAR 5:006, the utility failed to periodically inspect and document the condition of its poles.

(8) Time for final action.

(a) The commission shall take final action on a complaint regarding the rates, terms, or conditions for access to a utility's pole, duct, conduit, or right-of-way within sixty (60) days of a complaint establishing a prima facie case being filed, unless the commission finds it is necessary to continue the proceeding for good cause for up to 180 days from the date the complaint establishing a prima facie case is filed.

(b) The period within which final action shall be taken may be extended beyond 180 days 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, pursuant to KRS 278.040(3), on June 3, 2024.

LINDA BRIDWELL, P.E., Executive Director

KENT A. CHANDLER, Chairman

APPROVED BY AGENCY: May 31, 2024

FILED WITH LRC: May 31, 2024 at 3:25 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held on July 30, 2024, at 10:00 a.m. Eastern Daylight Time at the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing is open to the public and instructions on how to attend and participate virtually will be published on the commission's website at psc.ky.gov. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: John E.B. Pinney, Executive Advisor, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-2587, fax (502) 564-7279, email jeb.pinney@ky.gov.