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Commissioner

February 18, 2019

**VIA EMAIL**

Senator Brandon Smith  
Chair, Natural Resources  
and Energy Committee  
702 Capital Avenue  
Annex Room 252  
Frankfort, KY 40601

Re: Senate Bill 100, House Floor Amendment 1

Dear Senator Smith:

Because of the extensive changes to Senate Bill 100 (SB 100) adopted by the House of Representatives in House Floor Amendment 1 (HFA 1), the Public Service Commission is compelled to oppose the bill. As explained in our Feb. 14, 2019 letters to you and Rep. Gooch, the original language in SB 100 would have established a practical approach to addressing a utility's compensation for net-metered systems through the ratemaking process. In its current form, however, SB 100 is fatally flawed.

First, there are the procedural challenges presented by the provision in HFA 1 requiring the establishment of a ratemaking proceeding before the Commission no later than one year from the effective date of the Act. The Commission does not have sufficient staff to adequately conduct concurrent ratemaking proceedings for all retail electric suppliers during such a compressed timeframe. Utilities and the territories they serve have quite distinct differences, and it is because of these variations that the ratemaking process should reflect a utility's unique characteristics and the specific cost of serving that utility's customers. The same holds true for examining the quantifiable benefits and costs of net-metered systems. Attempting to rush the consideration of these issues within an artificially compressed timeframe or trying to force the Commission to address the issue for all electric utilities and customer-generators in one administrative case, as HFA 1 appears to be aimed at doing, is not in the best interests of ratepayers or any other stakeholder.

Second, the Commission has concerns regarding the language describing what the Commission *shall* consider in reviewing a net metering tariff. The Commission has

broad authority to consider all relevant factors presented during a rate proceeding, which would include evidence of the quantifiable benefits and costs of a net-metered system. See *Kentucky Public Service Com'n v. Commonwealth ex rel. Conway*, 324 S.W.3d 373, 383 (Ky. 2010) (The Commission has “plenary authority to regulate and investigate utilities and to ensure that rates charged are fair, just, and reasonable under KRS 278.030 and KRS 278.040.”). Benefits of generation from net-metered systems vary for a number of reasons, including locational benefits, specific utility load factors, etc. Statutory language explicitly dictating *only* what the Commission is to consider in a rate proceeding (as HFA 1 does in Section 2, paragraph 5) is antithetical to standard principles of utility ratemaking.

Third, the Commission questions the rationale behind the provision in HFA 1 mandating that an entity representing solar installer interests be granted intervenor status when the existing statute applies not only to solar systems but also to wind, biomass and hydro energy generating systems as well. This provision seems to indicate that solar installer interests are driving this discussion, perhaps to the detriment of the broader interests of all stakeholders, especially ratepayers. With a few limited exceptions<sup>1</sup>, the Attorney General is the only entity granted the statutory right to intervene in proceedings before the Commission. KRS 367.150(8)(b). All other intervention before the Commission is permissive, and granting or denying intervention is within the Commission’s discretion. In making its determinations, the Commission considers whether the prospective intervenor (1) has a special interest in the case that is not otherwise adequately represented; or (2) is likely to present issues or to develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. 807 KAR 5:001, Section 4(11)(a). As these factors appropriately assess the need for intervention in a given proceeding, HFA 1’s grant of special status to a particular commercial interest is both unusual and unnecessary.<sup>2</sup>

Finally, that a sentence allowing third-party leased systems is included in an amendment with no discussion of the possible implications highlights the need for more robust discussion. These issues are larger than net metering. As the electric utility sector undergoes significant and rapid changes, more holistic, forward-thinking examination is due. Addressing these complex issues and the positions of competing stakeholder interests is not only a priority of the Commission, but it is our mandate.

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<sup>1</sup> See, e.g., KRS 278.020(9), granting a person over whose property a proposed electric transmission line will cross a right to intervene in the proceeding addressing the construction.

<sup>2</sup> Also, it should be noted that the issue of intervention before the Commission is currently the subject of litigation in both the Franklin Circuit Court and the Kentucky Court of Appeals as the General Assembly oft has been reluctant to enact legislation dealing with an issue that is the subject of pending litigation.

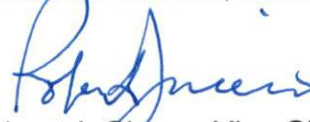
The original provisions of Senate Bill 100 create a transparent process that would have allowed broad participation among all stakeholder interests with the ability of the Commission to fulfill its statutory directive to establish rates that are fair, just and reasonable to all ratepayers. Unfortunately, instead of permitting the Commission to conduct proceedings addressing net-metered systems using established principles of utility ratemaking, the provisions of HFA 1 create a process that appears to favor the interests of a particular group over other stakeholders, including ratepayers. As such the Commission requests that the Senate reject HFA 1 to Senate Bill 100.

Sincerely,

Kentucky Public Service Commission



Michael J. Schmitt, Chairman



Robert J. Cicero, Vice Chairman



Talina R. Mathews, Commissioner

cc: President Robert Stivers II  
Kentucky Senate

Speaker David Osborne  
Kentucky House of Representatives