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Before the House Committee on Energy, Utilities, and Telecommunications

February 2, 2021

Opponent Testimony  
On House Bill 2227

Submitted by Jeff McClanahan, Director, Utilities Division  
On Behalf of  
The Staff of the Kansas Corporation Commission

Chair Delperdang, Vice Chair Turner, Ranking Minority Member Ohaebosim, and members of the Committee, thank you for the opportunity to provide testimony to your Committee today on behalf of the Staff of the Kansas Corporation Commission (Commission).

The Staff of the Commission (Staff) is opposed to House Bill 2227 (HB 2227). HB 2227 will allow a non-utility third-party (renewable energy supplier) to install, own, and operate a renewable electric generation facility that is to be located on the premises controlled by a retail customer. This type of arrangement is often described as a third-party power purchase agreement (PPA). The bill also allows a renewable energy supplier to be exempted from both the definition of a public utility under K.S.A. 66-104 and to be exempted from the Retail Electric Suppliers Act under K.S.A. 66-1,170. The bill further allows a renewable energy supplier to enter into a purchase power agreement to sell electricity directly to the retail customer on whose premises the generation is located.

Staff is opposed to HB 2227 because it may significantly increase electric rates of Kansas utilities. Allowing non-utility renewable energy suppliers to sell electricity via a purchase power agreement to retail customers will result in the loss of volumetric sales to incumbent utilities. While rate regulation is complicated, the final calculation of rates is a straightforward calculation whereby the total revenues to be collected from a rate class (residential, commercial, and industrial) are broken into the various rates for the class and divided by the volumetric sales for the rate class.<sup>1</sup> Thus, if the revenues to be collected remain constant, lower volumetric sales will result in a higher overall rate for the class. This will create a potentially significant cross-subsidization between members of the same rate class – with those availing themselves of third-party PPAs being subsidized by the remaining customer base.

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<sup>1</sup> Examples of the various rates within a residential rate class are a fixed customer charge, a variable charge based on kWh sales, and a fuel charge. Notably, the majority of fixed costs are assigned to the variable kWh sales charge.

HB 2227 applies to “any electric customer of a utility and any successor...”<sup>2</sup> and “is designed to offset part or all of the host customer-generator’s electrical energy requirements.”<sup>3</sup> Therefore, residential, commercial and industrial utility customers will be eligible to contract with renewable energy suppliers, with large commercial and industrial customers the most likely to do so because they can afford to and will most likely have the needed vacant land on their premises. If these large customers offset a portion or all of their electrical energy needs for the majority of the hours in a given year, then the incumbent utility will lose a significant amount of volumetric sales. These lost volumetric sales will drive rate increases for the non-participating customers. In addition, utilities recover most of their fixed costs via a volumetric rate. Because of this method of calculating rates, the host-customer generator will avoid paying for perhaps a significant portion of their respective fixed costs, while enjoying the benefit of utilizing the incumbent utility’s electrical system to provide energy when needed to offset the renewable generators shortfall or outage. In addition, a utility has an obligation to serve all of its customers so it must have sufficient generation resources to be prepared to provide the full energy needs of a host customer-generator at all times.

A utility’s lost fixed costs – and the resulting subsidization of customers with third-party PPAs by the remaining customer base – could be resolved with the addition of a charge to host customer-generators designed to collect the costs. However, recovering lost fixed costs from a customer-generator is currently legally-questionable in Kansas because of two statutes not addressed in this bill. First, HB 2228 revises K.S.A. 66-1265(d) (net metering law) to prohibit charging a customer-generator any additional standby, capacity, interconnection or other fee or charge that would not otherwise be charged if the customer-generator were not an eligible customer generator. The second is K.S.A. 66-117d, which prohibits an electric utility from considering any renewable energy source used by a customer as a basis for establishing higher rates or charges for any service or commodity sold to such customer. If the Legislature wishes to pass HB 2227, but also wishes to resolve the cross-subsidization issue, the above statutes will need to be amended.

In addition to the increased rate concerns addressed above, HB 2227 can be considered a first step towards partial deregulation. Typically, states that have partial deregulation allow only commercial and industrial customers to contract for competitive non-regulated electric generation sources. Under HB 2227, any customer class can acquire non-regulated renewable energy via a purchase power agreement. And, as the renewable energy supplier uptake rate increases, rate-relief pressure through any means will be brought to bear by non-participating customers because they will be paying higher rates for their electricity. To resolve this issue, utilities will need to collect lost fixed costs from customer-generators by one of the few means available to them. That is, by implementing a demand charge, customer charge, or minimum bill designed to collect all fixed costs for *all* customers so that there is no violation of the two statutes addressed above. For comparison purposes, a residential solar customer would pay between \$70 to \$100 in demand charges per month, while a non-solar residential customer would pay approximately the same or slightly less. Staff would also note that high fixed charges and minimum bills are not popular with customers because they heavily diminish a customer’s control over his or her total bill, which is why the majority of a utility’s fixed costs are recovered via a volumetric rate.

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<sup>2</sup> HB 2227(b)(2).

<sup>3</sup> HB 2277 (b)(1)(C).

Finally, as noted above, staff emphasizes one area of improvement for this bill would be statutory changes to K.S.A. 66-1265 and K.S.A. 66-117d that would allow a utility to recover a host customer-generators fixed costs via a specific charge.

Thank you for the opportunity to offer our perspective on the proposed bill and the opportunity to appear before your committee.