



Kentucky Resources Council

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Good morning, Chairman Smith, and honorable members of the Senate

My name is Audrey Ernstberger, a staff attorney and lobbyist for Kentucky Resources Council- a non-profit and nonpartisan group of lawyers, policy experts, and advocates working for environmental quality, justice, and health across the Commonwealth. As you know, KRC provides legal assistance to individuals on a range of environmental and energy issues without charge and has represented the interests of low-and fixed-income ratepayers in many utility cases.

I appreciate the opportunity to appear before you this morning, to ask that you vote no on SB349. There are three major issues with this bill it could: (1) jeopardize the affordability of electricity for utility ratepayers, (2) impair and interfere with the Public Service Commission decision-making process, and (3) create structural conflicts of interest through the creation of the “energy planning and inventory commission.”

First, this bill would end Kentucky’s long held energy policy that has governed utility regulation- that utilities should meet the electricity needs of ratepayers through the most reasonable, lowest-cost option – whether that is new generation from coal, natural gas, renewables, or through energy efficiency. While many Senators and Representatives have professed the need for “all of the above” energy sources to meet electricity demands, SB 349 revises Public Service Commission (PSC) rules and standards in a way that will thwart the diversification of utility generation profiles to incorporate more renewables and will increase the burden on utility ratepayers by imposing new delays and barriers to the retirement of uneconomic units by disallowing the replacement of that capacity with renewable energy- and increasingly low-cost option. The reasonable lowest-cost standard has served this state well, yet this bill jettisons that standard and in doing so, will invariably increase costs to ratepayers.

As our national perspective changes to require accounting for pollution in the cost of our fuel choices- natural gas and renewable energy sources are increasingly surpassing coal as the affordable, lowest-cost options. This bill is notably silent on the issue of “affordability.” And as it prioritizes “reliable, resilient, dependable, and abundant” energy – it specifically excludes renewable power from being considered in resource planning as replacements for aging and uneconomic fossil fuel electricity plants. Even if the General Assembly doesn’t include “affordability” in its priorities, renewable power should be included for the purposes of “reliability.” Especially, considering the experience during Winter Storm Elliot- which involved failures of the natural gas delivery and deratings for several coal plants, and subsequent

purchase wind power from MISO to help keep the lights on, no source of power should be categorically discounted.

Second, the bill impairs the Public Service Commission's decision-making process. It would impose an unworkable 6-month deadline on PSC decisions, resulting in rushed and less thorough decisions on complex issues affecting essential utility service to residential, commercial, and industrial customers. And it would further stretch already burdened agency staff, resulting in more difficulty hiring and retaining staff. It would also impact the ability of the PSC to use consultants to assist in evaluation of cases by subjecting those consultants to cross-examination even though they are producing no evidence that would be relied on in a case. It is unlikely that consultants would accept employment under such conditions.

Third, the creation of a new "energy planning and inventory commission" (EPIC) is imbued with structural conflicts of interest and creates procedural problems. For example, the board is stacked with representatives of energy sectors that have a financial interest in advocating against the retirement of fossil fuel plants and have an inherent conflict of interest by virtue of the interests they are appointed to represent, while including only one slot for residential customers who will bear the costs of continued operation of uneconomic generating plants and the increased cost of replacement of those units with uneconomic fossil-fired units.

The new commission would produce reports and recommendations that under the current rules could not be considered by the Commission without sworn testimony and an opportunity for other parties to cross-examine. This statute would violate the due process rights of other parties by requiring the commission to consider a report developed by a nonparty who is not subject to discovery or cross examination.

It empowers the new planning and inventory commission to consider numerous issues that the PSC has considered to be outside its jurisdiction, such as external economic impacts like the impact of generation retirements on local communities and governments. Yet it does not consider other important issues such as public health, climate change impacts, and environmental justice.

In conclusion, the bill would "game" the regulatory process against renewable energy that is in fact dispatchable and clean, in favor of retaining uneconomic, polluting, aging fossil fuel plants, in a manner that will make more costly and lengthy the inevitable transition to lower-carbon, renewable energy future. It further erodes state policy of meeting ratepayers' energy needs in the lowest cost, reasonable fashion, for interfering with Commission decisions to help protect the market share of coal interests.

For these reasons, please vote 'no' to SB 349 today in committee.