

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Chair Carl Holmes at 9:00 A.M. on February 16, 2011, in Room 785 of the Docking State Office Building.

All members were present except:

Representative Rob Bruchman-excused
Representative Stan Frownfelter-excused

Committee staff present:

Matt Sterling, Office of the Revisor of Statutes
Mary Torrence, Office of the Revisor of Statues
Cindy Lash, Kansas Legislative Research Department
Corey Carnahan, Kansas Legislative Research Department
Renaë Hansen, Committee Assistant

Conferees Appearing Before the Committee:

Tom Day, KCC
Representative Forrest Knox, 13th District
Dave Springe, CURB
Dick Rohlf, Westar

Others Attending:

Twenty Three including the attached list.

Chairman Carl Holmes allowed Representatives Finney, Proehl, Schroeder, Sloan, and Kuether to introduce their high school and middle school shadows for the day.

Action on:

HB 2143-Electric generation, transmission and distribution; relating to recovery of costs for energy storage devices.

Representative Tom Sloan spoke to the committee about the value of this piece of proposed legislation.

Representative Tom Sloan moved to pass HB2143 favorably to the House chamber as proposed. Seconded by Representative Nile Dillmore.

Discussion ensued between Representatives: Annie Kuether and Tom Sloan.

Motion to pass the bill out failed 6-8.

Action on HB 2143 was closed.

Chairman Holmes handed out (Attachment 1) background information on an article entitled, "Wyoming challenges EPA greenhouse regulations in court" out of Cheyenne, Wyoming.

Tom Day announced to the committee that there would be a round table on telecommunications at the KCC, scheduled for March 4 from 8-12 and 1-4.

Hearing on:

HB 2267-Utilities; electric supply and demand reports.

Matt Sterling explained HB 2267 to the committee.

Questions were asked and comments made by Representatives: Annie Kuether and Carl Holmes.

Proponents:

Tom Day, KCC, spoke to the committee (Attachment 2) as a proponent to HB 2267. He noted that the KCC does do this report regularly, but this bill would put its requirement in statute.

CONTINUATION SHEET

The minutes of the House Energy and Utilities Committee at 9:00 A.M. on February 16, 2011, in Room 785 of the Docking State Office Building.

Questions were asked and comments made by Representative: Reynaldo Mesa and Carl Holmes.

The hearing on **HB 2267** was closed.

Action on:

HB 2267-Utilities; electric supply and demand reports.

Representative Tom Sloan moved the committee pass **HB 2267** favorably for passage and put in on the consent calendar. Seconded by Representative Mike Burgess. Motion passed unanimously.

Action on **HB 2267** was closed.

Hearing on:

HB 2303-Utilities; rate-making and variable time-of-day pricing.

Matt Sterling gave the committee a brief overview (Attachment 3) of **HB 2303**. He noted that the bill would require that any electric public utility that had deployed smart meters to a majority of its residential customers within the boundaries of a corporate city, on or before July 1, 2012, file a tariff to be used within in that city for variable time-of-day pricing of electricity used and a cost-based customer charge for residential customers and to begin billing such customers pursuant to the tariff on January 1, 2013.

Proponents:

Representative Forrest Knox presented testimony (Attachment 4) in support of **HB 2303**. He noted that the bill requires: variable time-of day pricing, cost based customer charge, filed on or before July 1, 2012, start billing customers on January 1, 2013, provide access to hourly prices, and provide hourly electricity usage data. He noted that this bill would be implemented crudely at first, then eventually become more sophisticated over time.

Questions were asked and comments made by Representatives: Joe Seiwert, Richard Proehl, Phil Hermanson, and Gail Finney.

Opponents:

Dave Springe, CURB, (Attachment 5), spoke in opposition to **HB 2303**. He commented that the bill as written does not make sense. He noted that CURB is not opposed to exploring the many different pricing options that new "smart meter" technology may allow, including time-of-day rates.

Dick Rohlfs, Westar, (Attachment 6), offered testimony in opposition to **HB 2303**. Mr. Rohlfs noted that the goal of the bill is noble, but the path suggested in this bill to get there is not appropriate. He spent time explaining how they are planning to implement the federally funded smart grid system in Lawrence. During the pilots Westar hopes to gain knowledge of:

- customer understanding of dynamic pricing alternative,
- what technology is best suited for customers to receive information on energy prices and how frequently,
- the extent residential and commercial energy is modified by energy prices,
- what customer protections need to be updated for a digital age, and
- operational and customer services efficiencies arising from the use of this technology.

Mr. Rohlfs noted that the bill requires them to implement a pricing schedule so quickly that their experience tells them it would be difficult for their customers to adopt and embrace. He reiterated that Westar is supportive of the concept of the bill but the path is too quick to be accepted by the public.

Written Opponents:

CONTINUATION SHEET

The minutes of the House Energy and Utilities Committee at 9:00 A.M. on February 16, 2011, in Room 785 of the Docking State Office Building.

Tom Day, KCC, (Attachment 7) submitted writing comments concerning **HB 2303** in opposition.

Questions were asked and comments made by Representatives: Phil Hermanson, Carl Holmes, Forrest Knox, Nile Dillmore, Tom Sloan, and Mike Burgess.

Hearing on **HB 2303** was suspended until February 17, 2011.

The next meeting is scheduled for February 17, 2011.

The meeting was adjourned at 10:47 A.M.

HOUSE ENERGY AND UTILITIES COMMITTEE

GUEST LIST

DATE: February 16, 2011

NAME	REPRESENTING
Joe Dick	KCBPU
Colin Curtis	Sandstone Group
Phil Wages	KEPCO
MARK SCHROEDER	WESTAR
Dick Roulfs	WESTAR
Dave Holtzner	KEC
Larry Berg	MIDWEST ENERGY
Mick Urban	INELC
Dan O'Sperry	Curb
TOM DAY	KCC
Berend Keefe	Hein Law Firm
Jimmy Brown	
Kimberly Cook	GEPA
George Steward	Clean Line
Scott Jones	KCP

Wyoming challenges EPA greenhouse regs in court

Wyoming challenges EPA greenhouse regs in court

MEAD GRUVER Associated Press writer | Posted: Tuesday, February 15, 2011 1:00 am

CHEYENNE — Wyoming has filed a legal challenge to the U.S. Environmental Protection Agency's regulation of greenhouse gas emissions in the state.

State officials say the EPA gave Wyoming just nine days to come up with a state plan to regulate greenhouse gases before a Dec. 22 deadline, and that wasn't enough time.

Without state rules, the EPA stepped in Jan. 2 and has taken charge of issuing greenhouse gas permits in the state since then.

A two-tiered, federal-state permitting process is now in effect for any large, new industrial facility, such as a coal-fired power plant, that emits large amounts of carbon dioxide or other greenhouse gas, said Renny MacKay, spokesman for Gov. Matt Mead.

"If somebody wants to build a facility, they come to Wyoming and get permitting for everything but greenhouse gases. For greenhouse gases, they have to go to EPA," MacKay said.

Wyoming filed a petition Thursday asking the 10th U.S. Circuit Court of Appeals in Denver to review the process that led to federal permitting of greenhouse gas emissions in the state.

EPA officials didn't respond to a request for comment Monday.

Six other states missed the deadline: Arizona, Arkansas, Florida, Idaho, Kansas and Oregon. Texas also has been in a dispute with the EPA over the regulation of greenhouse gases, which scientists say are causing global climate change.

Wyoming could have taken another year to develop a plan to regulate greenhouse emissions, but during that time no greenhouse gas permits could have been issued in the state. Wyoming officials didn't see that as a reasonable option.

"So essentially we didn't have a year, we had a very short number of days," said Kari Gray, Mead's chief of staff.

The dispute dates to the final months of Gov. Dave Freudenthal's administration, when Freudenthal told the EPA last fall that Wyoming law didn't allow greenhouse gas regulation.

In 1999, the Wyoming Legislature passed a law saying Wyoming wouldn't enact rules reducing emissions under the Kyoto Protocol, a 1997 treaty calling on industrial nations to cut greenhouse emissions.

Freudenthal told the EPA that Wyoming would need to change that law to comply with federal greenhouse gas rules, but it would be unable to do that until the 2011 legislative session.

The session began Jan. 12 — 10 days after the rules went into effect.

"There are endless possibilities that would have occurred if we could have actually considered that in a reasonable kind of a fashion. But we couldn't because the Legislature wasn't in session and in reality there was this very short period of time to make a decision," Gray said.

State lawmakers have yet to take up any bill directly involving greenhouse gases or climate change during this year's legislative session.

HOUSE ENERGY AND UTILITIES

DATE: 2/16/2011

ATTACHMENT 1

1500 SW Arrowhead Road
Topeka, KS 66604-4027

Thomas E. Wright, Chairman
Ward Loyd, Commissioner



Corporation Commission

phone: 785-271-3100
fax: 785-271-3354
<http://kcc.ks.gov/>

Sam Brownback, Governor

Before the House Energy and Utilities Committee
Comments of Tom Day
On Behalf of the Kansas Corporation Commission Staff
House Bill 2267
February 16, 2011

Chairman Holmes and Committee Members:

House Bill 2267 requires the Kansas Corporation Commission to issue a report on electric supply and demand for all electric utilities in Kansas biennially beginning February 1, 2013. The report shall include, but not to, generation capacity needs, system peak capacity needs, and renewable generation needs associated with the 2009 Kansas renewable energy standards. The Commission shall submit the report every two years to the House energy and utilities and Senate utilities committees.

One issue the Commission wishes to point out to the committee is the lack of timeframe not addressed in the bill. The system and load forecasting models should look into the future for a period of time. What timeframe is relevant data for the Legislature? 10-year? 20-year? The Commission suggests a 10-year forecast period, updated biennially. Ten year forecasting makes the data relevant and useful for the commission and utility interests.

Thank you for the opportunity to support House Bill 2267.

HOUSE ENERGY AND UTILITIES

DATE: 2/16/2011

ATTACHMENT 2

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

MEMORANDUM

To: Chairman Holmes and members of the House Energy and Utilities Committee
From: Matt Sterling, Assistant Revisor of Statutes
Date: February 16, 2011
Subject: House Bill 2303

HB 2303 would require that any electric public utility that had deployed smart meters to a majority of its residential customers within the boundaries of a corporate city, on or before July 1, 2012, file a tariff to be used within that city for variable time-of-day pricing of electricity used and a cost-based customer charge for residential customers and to begin billing such customers pursuant to the tariff on January 1, 2013. The tariff would be required to describe:

The KCC would be directed to create a cost-based customer charge classification system that divided residential electric consumers into categories and determines the average fixed costs for providing electric service for customers within each classification. The commission would also adopt rules and regulations to establish a system for determining the hour-to-hour rates for variable time-of-day pricing.

The bill also amends K.S.A. 66-1,184, concerning parallel generation and K.S.A. 66-1264 and 66-1266, concerning net metering, to apply the provisions of the act to customers that would be within the tariff and were engaged in parallel generation or net metering.

HOUSE ENERGY AND UTILITIES

DATE: 2/16/2011

300 SW TENTH AVE - STE 010-E, Statehouse—TOPEKA, K,
PHONE (785) 296-2321 FAX (785) 296-6668 E-mail: Re

ATTACHMENT 3

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

13TH DISTRICT
STATE CAPITOL
TOPEKA, KS 66612
(785) 296-7678
forrest.knox@house.ks.gov



17120 UDALL RD.
ALTOONA, KS 66710
(785) 783-5564
reprok@gmail.com

FORREST J. KNOX

Testimony advocating the passage of

HB 2303

Variable Time-of-Day Pricing for Smart Meters

For Smart Customers

Applies only to **investor owned utilities** (not municipally owned or cooperatives),

that have deployed smart meters to a **majority of their residential customers within a corporate city.**

Requires: **Variable time-of-day pricing.**

Cost based customer charge.

Filed on or before July 1, 2012.

Start billing customers on January 1, 2013.

Provide access to hourly prices.

Provide hourly electricity usage data.

Applies to: **Parallel generation.**

Net metering.

Allows the state to take full advantage of the investments of the federal government and Westar in the smart meter pilot project in Lawrence, Kansas.

Makes full use of the KCC investment in their current rate study.

- They will have to develop real world time-of-day pricing with actual hourly electricity costs.

COMMITTEE ASSIGNMENTS: ENERGY & UTILITIES (VICE CHAIRMAN)
FEDERAL & STATE AFFAIRS
SOCIAL SERVICE BUDGET
JT. COMMITTEE ON STATE-TRIBAL RELATIONS (CO-)

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- They will have to develop a fair cost-based customer charge with residential customers categorized by usage.

This puts economic theory into practice; real world, real costs, real market forces

real opportunity for customers to save money by voluntarily altering their usage habits.

Key Points

No intrusion into people's homes.

No required actions by customers.

Simply a new tool in the hands of customers.

People will be motivated to:

Cut electricity usage.

Cut peak electricity usage.

Invest in state-of-the-art technology – appliances, heating & cooling equipment.

Install solar electric generation?

Everybody gains.

Citizens' Utility Ratepayer Board

Board Members:

Nancy Jackson, Chair
A. W. Dirks, Vice-Chair
Carol I. Faucher, Member
Stephanie Kelton, Member
Kenneth Baker, Member



State of Kansas

Sam Brownback, Governor

David Springe, Consumer Counsel
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: (785) 271-3200
Fax: (785) 271-3116
<http://curb.kansas.gov>

HOUSE UTILITIES COMMITTEE

H.B. 2303

Testimony on Behalf of the Citizens' Utility Ratepayer Board

By David Springe, Consumer Counsel

February 16, 2011

Chairman Holmes and members of the committee:

Thank you for this opportunity to offer testimony on H.B. 2303. The Citizens' Utility Ratepayer Board is opposed to this bill for the following reasons:

Sections 1 through 3 of H.B. 2303 will require an electric utility (Westar Energy, Kansas City Power & Light and the Empire District Electric Company only) to file a tariff that allows "variable time-of-day" pricing in any city where the utility has deployed smart meters to a majority of its residential customers. The bill appears to suggest that the tariffs be city specific and requires a "cost based customer charge" be created and charged to residential customers in each city. The bill requires that the variable time-of-day rates reflect "market prices" and that customers who will be billed using variable time-of-day rates be provided ready access to "hourly market prices, including, but not limited to, day-ahead hourly energy prices". The state corporation commission is also required to create a "cost based customer charge classification system that divides residential electric customers...into categories and determines the average fixed costs for providing electric service for customers within each classification".

CURB is not opposed to exploring the many different pricing options that new "smart meter" technology may allow, including time-of-day rates. However, the language in this bill is not well defined and is in many respects contrary to how utility rates are currently set. For example:

- There are no "market prices" for Kansas or for individual cities within Kansas. There are also no "day ahead hourly energy prices". The utilities impacted by this bill are rate of return regulated with prices set by the state corporation commission. Kansas chose not to de-regulate generation or to institute retail wheeling, so there is no central market where generation is bid in, and purchased out at market prices.
- Rates are not, and should not be determined city-by-city. Implementing a city-by-city tariff structure would not be efficient, economic or equitable.
- The "cost based customer charge" is undefined. If taken as a charge intended to recover the fixed cost of utility service in one monthly customer charge, then the current \$7-\$9 monthly customer charge on bills will go up to a \$40-\$50 a month charge, regardless of

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use. Rates can be designed in this manner to recovery fixed costs, but there is no evidence to suggest that customers will accept this change.

- Pricing based on marginal internal utility cost (hour-by-hour cost of fuel in the marginal plant) may lead to excess revenue paid by customers and kept by the utilities. On the hottest hour of the year, the marginal plant is likely a natural gas plant. However in that hottest hour, 60% - 80% of all kilowatt hours are generated by coal and nuclear. If every kilowatt hour produced in that hour is priced based on the marginal cost of natural gas, then customers will be overpaying for every kilowatt hour generated from a coal or nuclear plant. The utilities cannot be allowed to keep this excess payment. If the legislature moves towards a marginal cost pricing structure (if that is the intent of the bill), then there should also be a discussion about decoupling revenue from sales to insure customers do not overpay for service, like has happened in many deregulated states
- While it is possible to break the residential class into sub-classes, and generate cost-of-service data, this is a data intensive process and may generate concerns about the legality of unduly discriminatory rate structures. As noted above, it is doubtful this can be done city-by-city.

If the intent of the bill is to create a rate structure that provides a financial incentive to customers to modify electric usage, and be rewarded for doing so, there are other equally effective and perhaps less costly means of achieving this objective. The KCC is currently evaluating different types of rate structures and it is anticipated that there will be pilot programs to test the design and customer acceptance of these types of rate structures. Offering these types of rate structures is very data intensive. Simply having a smart meter does not necessarily mean the utility's back office accounting and billing systems are capable of pairing 24 hourly prices with 24 hourly meter reads every day for 30 days (17,280 data points) and generating a bill. What is contemplated in this bill is premature for residential customers.

Sections 4 through 6 of the bill amend the Kansas parallel generation statute (K.S.A. 66-1,184) and the Kansas net metering and easy connection act (K.S.A. 66-1263 *et seq.*) to require customers that are billed under a variable time-of-day tariff shall also be compensated for generation at the time-of-day rates being charged. While this appears to make the parallel generation statutes and the net metering statutes track the above section on time-of-day pricing, at this time CURB cannot comment on the impact these changes will have without further clarification of the outstanding questions raised with respect to the above language in the bill.

For the above reasons, CURB does not support passage of this bill and asks that the bill not be passed out of Committee.



Testimony of Dick Rohlf
Westar Energy
Before the House Energy and Utilities Committee
On HB 2303
February 16, 2011

Good morning Chairman Holmes and members of the committee. Thank you for the opportunity to testify in opposition to HB 2303.

HB 2303 requires, within the next 16 months, a utility that has deployed smart meters to the majority of residential customers in a city to file a tariff with the KCC for "variable time of day pricing" and a "cost-based customer charge". Customers must be billed according to this tariff beginning January 1, 2013. Currently, the only utility this bill would apply to is Westar Energy, and the only city it would apply to is Lawrence. Our opposition is not with the goal, but the path to achieving it.

Let me first review with you our SmartStar program.

SmartStar will first be used in Lawrence. By starting in one city, Westar and our customers will learn more about smart grids and that will help us in the future if we expand to other cities. We chose Lawrence for a number of reasons, including size and the wide variety of customers, such as a mobile student population, commercial/industrial customers and educational institutions.

SmartStar Lawrence will install about 45,000 new meters across the city. It also includes significant upgrades at Westar's data center to support all the new technology. SmartStar is about a \$40 million project. Westar Energy was awarded a Department of Energy smart grid investment grant of \$19 million for the project. One-third of the cost is for the purchase and installation of smart meters in Lawrence and other distribution system upgrades that are a part of the project. The remaining two-thirds will be spent on technology infrastructure improvements that will serve all of Westar's customers.

While there are many anticipated benefits of the smart grid for both customers and Westar, we are taking a more cautious approach before making a much larger financial commitment. Implementing smart grid technology in one town will allow Westar to determine the best approach for the smart grid system in the

Westar service territory. We'll also be able to work with our customers to identify the most meaningful types of information and services to offer through the smart grid.

The smart meter will allow Westar to create programs that offer alternatives to using electricity during peak energy-use hours. These programs are voluntary and may include things such as controllable thermostats, time-of-use pricing plans and in-home energy management approaches. Westar has informed the KCC's staff, CURB's staff and others that we intend to file Dynamic Pricing Pilot programs concurrent with or subsequent to deployment of the meters. These programs will be designed to gain information about what options customers want or don't want and also their level of comfort and acceptance. Regulatory history has shown that moving customers from one rate model to another requires time for acceptance and must be done incrementally so customers don't abandon a favorable technology.

During the pilots, which could range from two to four years, Westar hopes to gain knowledge of:

- a. Customer understanding of dynamic pricing alternatives,
- b. What technology is best suited for customers to receive information on energy prices and how frequently,
- c. The extent residential and commercial energy is modified by energy prices,
- d. What customer protections need to be updated for a digital age, and
- e. And operational and customer service efficiencies arising from the use of this technology.

From research, Westar believes the form of dynamic pricing to propose to the KCC is a form of Time of Day pricing. The Time of Day pricing pilot will be able to be billed using Westar's existing billing system with some modifications. It is also easier for customers to accept and understand at this early stage.

The spectrum of pricing alternatives from least influence on customer behavior to the highest influence is:

- a. Flat prices year-round,
- b. Seasonally different prices,
- c. Time of Use,
- d. Critical Peak Pricing or Peak Time Rebate,
- e. Hourly pricing.

At each incremental advance, the communication between the utility and the customer must increase to allow the customer to make energy use decisions. Those communication advances must be preceded by extensive advances of the information technology and billing system.

In section 4(B)(2), the bill requires a utility to pay compensation to the customer based on a variable time of use tariff. Westar had a one-time option whereby a customer under the parallel generation could be compensated based on real time pricing as described in the bill. However, not one customer was interested. We believe it would be better to leave this as an option rather than as a requirement.

Section 6(d) seems inconsistent with net metering. Net metering allows the customer to take any excess generation and net that excess – offset – energy consumed at another time period regardless of the hourly price. The alternative is to monetize the energy delivered and the energy received and offset dollars not energy. This would require extensive programming on behalf of Westar and all other utilities.

Overall, Westar is opposed to HB 2303. It requires Westar to implement a pricing schedule so quickly that our experience tells us will be difficult for our customers to adopt and embrace. It requires us to change our customer charge to a cost-based charge, which would significantly increase (possibly as much as 800%) the customer charge we have today. In addition, we would not be able to meet the schedule for implementing such broad changes in our billing system. We look forward to future discussions about our SmartStar program, but respectfully ask the committee to not advance this bill.

1500 SW Arrowhead Road
Topeka, KS 66604-4027

Thomas E. Wright, Chairman
Ward Loyd, Commissioner



Corporation Commission

phone: 785-271-3100
fax: 785-271-3354
<http://kcc.ks.gov/>

Sam Brownback, Governor

Before the House Energy and Utilities Committee
Comments of the Kansas Corporation Commission Staff
House Bill 2303
February 16, 2011

Chairman Holmes and Committee Members:

The Kansas Corporation Commission Staff opposes House Bill 2303 as introduced. While there is some degree of agreement that the intent may be good, it seems that the bill is unworkable given some of the provisions, and other provisions may have unintended consequences. The Commission is presently studying pricing and ratemaking policy issues, so the concerns expressed in this document are from Staff only.

First, it seems the objective is unclear -- or what the perceived reward is for the consumer. It should be understood that customers may not end up with a lower bill, but may end up using energy more efficiently and therefore help the utility avoid or delay future peak generation costs or expensive market based purchases of electricity during peak periods.

New Section 1 requires new tariffs to be filed by July 1, 2012 and implemented by January 1, 2013. It is unclear whether any utility contemplating having smart meters to the majority of its customers in a city in place anytime before July 1, 2012, including June 30, 2012, must file a tariff. It is also unclear if this will be applicable to any utility that does not have smart meters in place for the majority of customers in a particular city until after July 1, 2012. Additionally, there isn't a wholesale day-ahead price on which to base the variable time-of-day prices.

Until smart meters are installed and operating for a period of time (at least a year) it wouldn't be possible to develop the customer charge as required in New Section 3. The utilities don't collect data in a manner currently that would allow for a class cost of service to be constructed that accurately separates out those customers with smart meters and their demand and usage habits. This data is necessary to construct the customer charge described in New Section 3. When the data becomes available, new class cost of service study would need to be conducted, (which implies that a rate case will be necessary) in order to set the new charges. Staff assumes the language in New Section 3 is asking for categories to be developed for customer charges based on whether the customer is served by a smart meter or not served by a smart meter; however, there is concern that this language is broad enough that it could be construed to require the Commission to define additional categories of customers which might lead to discriminatory treatment.

Even if this could be accomplished without the smart meter data, there is concern that it is impractical to impose hourly rates on residential customers. Most customers are not going to want to attempt to monitor pricing that frequently but there may be some value in a study or pilot to determine the level of acceptance this pricing scheme would receive.

The language added to the existing parallel generation and net metering statutory provisions may actually end up penalizing customers that have smart meters -- meaning they may be compensated less than other customers. Staff does not believe that is the intent.

In order to be workable, there would need to be many suggested changes to the language and future study of variable time-of-day pricing.

Thank you for the opportunity to provide comments regarding HB 2303.

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ATTACHMENT 7