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MEMORANDUM

To: Senate Committee on Utilities

From: Office of Revisor of Statutes

Date: March 17, 2025

Subject: Substitute for House Bill 2149 – As Amended by House Committee of the Whole

Substitute for House Bill 2149 (HB 2149) is a bill that relates to distributed energy systems which, in this case, are typically smaller electric generation systems that are installed on a retail electric customer's property and interconnected to a utility's electric grid. Such interconnection allows the customer to generate power for consumption by such customer and to export any excess power generated to the electric grid.

HB 2149 would primarily do two things relating to such distributed energy systems. First, HB 2149 would enact three new sections of law to establish certain consumer protection provisions that would require a distributed energy retailer to disclose certain information to certain customers who are offered a contract to construct, install and operate a distributed energy system. Second, HB 2149 would amend current law pertaining to parallel generation and net metering interconnection arrangements to establish and expand upon existing statutory requirements regarding interconnection, system size, system operation, and customer billing and credits.

New Section 1 - Consumer Protection

New section 1 of HB 2149 would enact a new section of law to require retailers of distributed energy systems to make certain disclosures to certain customers prior to entering into a contract with the customer for the installation of such a distributed energy system.

Application of Section

New section 1 of HB 2149 would apply to any distributed energy retailer when such retailer sells, markets, solicits or advertises a distributed energy system to a distributed energy customer

who is a property owner of a single-family dwelling or multifamily dwelling of two units or fewer. Under HB 2149, a distributed energy system would be defined as any system that is capable of feeding excess electrical power generated by a customer's energy producing system to the utility's system and will be interconnected pursuant to the net metering and easy connection act, K.S.A. 66-1263 et seq., a parallel generation service contract under K.S.A. 66-1,184, or a net metering tariff that was voluntarily established by a utility.

Engaging in Business as a Distributed Energy Retailer

Section 1(b) of HB 2149 would prohibit any person or entity that is required to register with the secretary of state pursuant to the business entity standard treatment act from engaging in the business of a distributed energy retailer within this state unless such person or entity is registered with the secretary of state, in good standing and authorized to conduct business in this state.

Required Disclosures to Customers

Section 1(c) of HB 2149 would require that, prior to entering into a contract with a distributed energy customer for a distributed energy system, the distributed energy retailer shall provide the customer with a separate disclosure document that:

1. Is written in at least 10-point font;
2. Is written in the language used to speak to the customer or the language requested by the customer;
3. Includes a description of the make and model of the system and the expected useful life of the system;
4. Includes a guarantee concerning the quantity of energy that the system will generate and a remedy if such system does not comply with such guarantee within one year following the system's operation;
5. Does not contain blank spaces that may subsequently be filled in to establish contractually binding terms and conditions unless such terms and conditions are separately acknowledged by the customer;
6. Includes the total aggregate cost that will be incurred by the customer in bold and highlighted type which shall be separately acknowledged by the customer;
7. Includes a description of the ownership and transferability of any tax credits or other rebates or incentives relating to such system;
8. Includes the name and certification number of an individual who is certified by the North American board of energy practitioners or the name and license number of the

master electrician or electrical contractor who will oversee the permitting and installation of the system;

9. Provides a description of the process and any fees or agreements necessary to transfer the system to a new owner;
10. Includes the name, phone number, email and mailing address of the person or entity that the customer may contact for questions regarding the system;
11. Includes a description of the assumptions used for any savings estimates that are provided to the customer and the utility's billing structure;
12. Includes a statement that the distributed energy retailer will provide proof within 30 days after installation that all permits, inspections, applications and documentation were obtained or properly submitted;
13. Includes a statement that any recurring payments shall be paused if the system does not receive permission to operate from the utility within 90 days following the first payment being made;
14. Includes a statement that describes any rate escalation, balloon payment or potential reconfiguration of payment structure;
15. Includes a statement as to whether operations and maintenance services are included as part of the original contract price and whether costs to remove, reinstall or repair the system are included as part of the contract price;
16. Includes a statement describing the expected start and completion date for the installation;
17. Includes a statement indicating whether any warranty or maintenance obligations may be transferred by the distributed energy retailer to a third party and, if so, includes a specific disclosure statement regarding such option;
18. Includes a statement indicating whether the distributed energy retailer shall place a lien, notice or other filing against the real property;
19. Includes a statement, in bold and highlighted type, that indicates whether the distributed energy retailer will impose any fees or other costs upon the customer and, if so, the aggregate total of such fees and costs which shall be separately acknowledged by the customer;
20. Includes a statement, in capital letters and bold and highlighted type, that states the distributed energy retailer is not affiliated with any utility company or governmental agency; and
21. Includes any additional information from the distributed energy retailer as long as such information is not intended to conceal or obscure the required disclosures.

Violations - Civil Penalty

Section 1(e) of HB 2149 would establish a maximum $10,000 civil penalty that may be imposed upon any person or entity that violates Section 1(b) or that fails to provide and perform

the disclosures required pursuant Section 1. The violator would be liable to the aggrieved party, or to the state, for payment of such civil penalty in an action brought by the aggrieved party, the attorney general, county attorney or district attorney. Such civil penalty would be authorized to be imposed in addition to any other relief that may be granted pursuant to any other remedy available in law or equity.

Additional Requirements

HB 2149 would require the disclosure statement to be signed and dated by the distributed energy customer at least one calendar day after the date that the contract for the distributed energy system is executed. Additionally, if a distributed energy retailer fails to comply with any provision of HB 2149, the contract pertaining to such system would be deemed null and void. Section 1 of HB 2149 would not apply to real property transactions that involve a distributed energy system that is already installed on the property.

Section 2 – Utility Disclosures

Section 2 of HB 2149 would require electric utilities to disclose to distributed energy retailers the utility's applications, rules, service standards, forms or other documents required for interconnection of the distributed energy system pursuant to the net metering and easy connection act in K.S.A. 66-1263 et seq., a parallel generation service contract in K.S.A. 66-1,184 or any net metering tariff that was voluntarily established by a utility. Additionally, utilities would be required to disclose the historic amount of compensation provided to customers per kilowatt-hour and the current compensation amount.

Section 3 – Attorney General Development of Standard Form for Disclosures

Section 3 of HB 2149 would require the attorney general to convene an advisory group to develop, approve and periodically revise a standard form that may be used by distributed energy retailers to provide disclosures required pursuant to section 1. Such advisory group shall consist of the attorney general or his designee, representatives of interested parties, one or more members of the general public who owns residential real property in the state, one or more assistant attorneys general and any other members deemed appropriate by the attorney general. The attorney general would be required to publish the standard form on the attorney general's website with the first publication of the standard form required on or before July 1, 2025.

Section 4 – Parallel Generation Service Requirements

K.S.A. 66-1,184 requires utilities to enter into parallel generation service contracts with customers of the utility who have a renewable energy system subject to certain limitations. The provisions of the parallel generation statute apply to all electric public utilities, including investor-owned utilities, cooperative utilities and municipal utilities. HB 2149 would amend the statute to modify the parameters of such parallel generation contracts and service requirements and to establish general requirements relating to a customer's interconnection of distributed energy system. HB 2149 does not modify the utilities to which the parallel generation statute applies.

Distributed Energy System Interconnection and Parallel Generation Service Contracts

Section 4 of HB 2149 would amend K.S.A. 66-1,184 relating to the operation and interconnection of a customer's renewable energy system with the utility's electric grid. As is provided in current law, section 4(b) HB 2149 would continue to require that a utility shall enter into a parallel generation service contract with any customer of the utility for the purpose of operating a distributed energy system. The bill would require that the interconnection be done using a listed device that has been tested and certified to meet the institute of electrical and electronics engineers safety standards.

Section 4(c) of HB 2149 would authorize a utility to require any customer who is seeking to construct and install a distributed energy system to submit an application prior to any interconnection of the system with the utility's system. A utility would be authorized to assess upon any customer requesting parallel generation service a fair and reasonable nonrefundable interconnection application fee. Additionally, a utility would be required to provide notice to a customer that the utility received the customer's application within 30 days following receipt of such application and act on such application within 90 days. If an application is denied, the utility would be required to provide to the applicant the reasons for such denial and the corrective actions needed for approval.

A utility would also be authorized to require a customer to pay any costs incurred by the utility for any study that is required to be conducted regarding the customer's proposed distributed energy system and costs associated with any system upgrades that are required to be furnished by the utility relating to the customer's system.

Section 4(f) of HB 2149 would amend current law relating to the terms and conditions of parallel generation service contracts. Generally, HB 2149 would maintain the requirements that the utility shall furnish all necessary meters for billing, may install additional load research meters at the utility's expense, retains the right to curtail exports from a customer's system when operating conditions warrant and may install a disconnecting device.

HB 2149 would also authorize and require additional terms and conditions of parallel generation service contracts. HB 2149 would authorize the utility to require the customer to provide a mechanism that would allow utility personnel to manually disconnect the system. HB 2149 would provide the right and authority for a utility to disconnect and isolate a customer's distributed energy system without notice to the customer under certain circumstances. Prior to granting permission to operate, HB 2149 would authorize a utility to require a witness test of the customer's system and equipment. A utility would also be authorized to require a customer to provide the certificate of inspection that was completed pursuant to any municipal regulation or a certification from an electrician or electrical engineer that the system was installed according to code. Lastly, once the customer's system is operational, HB 2149 would authorize the utility to periodically conduct witness testing of the system and equipment.

Customer Compensation for Exported Power under Parallel Generation

Currently, K.S.A. 66-1,184 provides that compensation shall be provided to customers for energy supplied by the customer at a rate of 150% of the utility's monthly system average cost of energy per kilowatt hour for any system at 200 kW or less and at a rate of 100% of the utility's monthly system average cost of energy per kilowatt hour for any system above 200kW.

Section 4(d)(1) of HB 2149 would remove these current compensation provisions and would require a utility to provide compensation for energy exported by a customer's system at a rate of 100% of the utility's monthly avoided cost.

In the alternative, section 4(d)(4) would authorize any utility to determine the compensation to be provided to customers, at least annually, using the locational marginal price (LMP) for such power or using the monthly system average cost of energy per kilowatt hour. Locational marginal price is defined in the bill as the hourly average market price of alternating current energy per kilowatt hour that is established by the applicable LMP pricing node of the Southwest Power Pool. If such utility uses LMP to determine compensation, HB 2149 would

require the utility to provide on the customer's bill, the details of the LMP that was applied to the energy exported by the customer's system to the utility's system. Additionally, a utility would be prohibited from issuing the customer an invoice for any such compensation provided pursuant to LMP or monthly system average cost of energy per kilowatt hour. HB 2149 would sunset the authorization to use LMP or monthly system average cost of energy per kilowatt hour to determine compensation on July 1, 2030.

Customer System Size Limitations

Currently, K.S.A. 66-1,184 provides that a residential customer may have a system that is 25 kW or less, a commercial customer may have a system that is 200 kW or less and that certain community colleges may have a system that is 1.5 MW or less. HB 2149 would remove those current statutory limitations for the size of a customer's distributed energy system but would maintain the requirement that a distributed energy system be appropriately sized for the customer's anticipated electric load.

Section 4(g) of HB 2149 would establish a system sizing formula that shall be applied to determine the appropriate system size of a customer's renewable energy system. For investor-owned electric utilities, such system size formula would essentially be the same formula that is used to determine appropriate system size under the net metering and easy connection act, K.S.A. 66-1263 et seq., that is applicable to investor-owned utilities. For cooperatives and municipal electric utilities, HB 2149 would establish an appropriate system size formula that is similar to the formula for investor-owned utilities but with a slightly different calculation than the formula used for investor-owned utilities.

Total Parallel Generation System Capacity Limitation

Currently, K.S.A. 66-1,184 provides that a utility shall not be required to purchase more than 4% of the utility's peak power requirement from systems subject to parallel generation and may limit the number of such parallel generation systems accordingly.

Section 4(h) of HB 2149 would amend this limitation and would instead establish that a utility shall not be required to accept further requests for parallel generation service if the utility's aggregate export capacity from all distributed energy systems, including systems that are subject

to parallel generation, statutory net metering, or voluntary net metering, equals or exceeds the following:

- Commencing July 1, 2025, 6% of the utility's historic peak demand;
- commencing July 1, 2026, 7% of the utility's historic peak demand; and
- commencing July 1, 2027, and each year thereafter, 8% of the utility's historic peak demand.

Section 4(i) of HB 2149 would provide that a utility shall not include as part of its historic peak demand any additional demand of any new or expanded facility of an industrial, commercial or data center customer that receives electric service at a voltage of 34.5 kilovolts or higher and that commences such electric service on or after July 1, 2025. Additionally, section 4(i) would also authorize a utility to deny parallel generation service to any customer who has a new or expanded facility that receives electric service at a voltage of 34.5 kilovolts or higher and that commences such electric service on or after July 1, 2025. These two requirements would sunset on July 1, 2026.

Other Requirements for Distributed Energy System

Section 4(j) of HB 2149 would establish requirements relating to interconnection of other distributed energy systems with the utility's system. Generally, HB 2149 would require certain measures to protect the electric grid, including that the customer shall provide an export limiting device, that the utility may require a witness test of the device, and that the utility may conduct periodic witness testing of the export limiting equipment. If any such export limiting equipment fails to properly limit the export of power, the customer would be required to cease operation of the customer's system until the export limiting device is functional.

KCC Oversight

Section 4(k) would amend K.S.A. 66-1,184 to provide that the Kansas corporation commission's oversight over parallel generation service tariffs and contracts only applies to utilities regulated by the Kansas corporation commission. Currently, the statute authorizes the Kansas corporation commission to establish the terms and conditions of any parallel generation service contract when the customer and utility cannot agree to the terms and conditions of a contract. Such authorization currently applies to customers of utilities that are not subject to the regulatory jurisdiction of the Kansas corporation commission.

Discontinued Systems

Section 4(m) of HB 2149 would require a customer to notify the utility within 30 days if the construction of a system is cancelled or if the system is permanently shut down. If a utility suspects that a system is no longer operational, HB 2149 would authorize the utility to request verification from the customer that the system is functioning or that the customer has a reasonable plan to reenergize the system. Should the customer fail to repair the system or provide a reasonable plan to complete such repairs within six months, the utility may cancel the parallel generation service contract and would be required to make such capacity available for other customers.

System Repairs and Rebuilds

Section 4(n) of HB 2149 would give customers the right to repair or rebuild the customer's renewable energy system if such repair does not increase the system's export capacity. If the customer repairs or replaces a system, the customer shall notify the utility and provide proof that the new equipment complies with the same requirements as the original installation. In this case, the customer would not be required to submit a new application for parallel generation service. If the customer's repair or replacement increases the export capacity of the system, the customer shall provide notice to the utility and the utility may require the customer to submit a new application.

Section 5 – Revisions to the Net Metering and Easy Connection Act

Section 5 of HB 2149 would amend K.S.A. 66-1268 of the net metering and easy connection act which applies only to investor-owned electric utilities. Such amendments would include the same provisions that pertain to the requirements relating to discontinued systems and system repairs and rebuilds.

Effective Dates

If enacted, HB 2149 would take effect upon publication in the Kansas register. Sections 1 and 2 would take effect on July 1, 2025. Sections 3, 4 and 5 would take effect upon publication in the Kansas register.