



February 9, 2016

The Honorable Mitch McConnell
Majority Leader
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Harry Reid
Minority Leader
522 Hart Senate Office Building
Washington, DC 20510

The Honorable Lisa Murkowski
709 Hart Senate Building
Washington, D.C. 20510

The Honorable Maria Cantwell
511 Hart Senate Office Building
Washington, D.C. 20510

RE: NASUCA Opposition to the King-Reid Amendment #3120

Dear Majority Leader McConnell, Minority Leader Reid, Chair Murkowski and Ranking Member Cantwell:

On behalf of the National Association of State Utility Consumer Advocates (NASUCA) I am writing today to express opposition to Amendment #3120 offered by Senators King and Reid to the Senate Energy Bill.

NASUCA's members represent utility customers before state regulatory authorities and the courts in over 40 states and in the District of Columbia. Many of those states are currently engaged in proceedings to evaluate the costs and benefits of having distributed generation on a utility system. NASUCA members represent both customers that own distributed generation and customers that do not own distributed generation. As such, NASUCA members have a keen interest in making sure that the costs and benefits of distributed generation are fairly apportioned among utility customers. No customer should be unfairly burdened by having to pay additional costs to support another customer's distributed generation facility. Likewise, no customer that owns distributed generation should be unfairly denied the appropriate benefit of that facility.

NASUCA opposes Amendment #3120 because the language in the amendment amounts to a federal override of the express provisions of the Federal Power Act recognizing state authority over retail utility rates. Federal regulation was put in place to address gaps in state regulatory authority. There are no such gaps here. How to value distributed generation resources on a utility system and whether to advance policies supportive of distributed generation resources through the retail ratemaking process is clearly and historically within the purview of state law and state authority.

Amendment #3120 is also inconsistent with other provisions of the Public Utility Regulatory Policy Act of 1978 (PURPA). Where PURPA requires compensation for generation, the generation is treated as wholesale supply and the compensation is traditionally based on avoided generation costs. The provisions in Amendment #3120 differ by creating a presumption in favor of full net metering, or the requirement to pay costs beyond the traditional avoided generation cost. In addition to generation cost, full retail rates include the cost of transmission, distribution, IT and cyber security, metering, billing,

administrative and general services, depreciation, taxes, shareholder profit and every other cost that added together become the full retail rate. If the Congress takes PURPA as its guide, it would seem a more appropriate starting point to enshrine distributed generation as supply that is due the traditional avoided generation cost payment rather than requiring full net metering. State commissions may decide to make adjustments based on unique transmission and distribution circumstances of a utility's system, for example, but these considerations are highly local in nature.

Further, the language in Amendment #3120 is vague and ambiguous and will certainly lead to additional litigation and expense. For instance, the Amendment will preclude state authorities from changing the rate classification of a net metered customer unless it can be demonstrated in an evidentiary hearing in a general rate case that the current and future net benefits of the net metered system to the distribution, transmission and generation systems of the electric utility are less than the full retail rate. (Section 3801(a)(20)(A)) This proposal in the Amendment raises many unanswered questions: What is the definition of rate classification? Why must this process take place in a rate case? How do we define current and future net benefits? How long into the future must we consider to meet this ambiguous standard? What assumptions are we allowed to make about the future and who becomes the arbiter of the reasonableness of those standards? Is comparing the net benefit (usually expressed in positive or negative total dollars) to the retail rate (usually expressed in cents per kilowatt hour) even a meaningful comparison to support this restriction? What is the proper comparison for rate classes that have three part rates? How will this be enforced? Is the Federal Energy Regulatory Commission going to begin reviewing state rate case proceedings? Or will federal courts review the assumptions used by state commissions? The amendment does not define these terms and offers no guidance on how to meet the terms of the required analysis.

Ultimately, NASUCA believes that state authorities are in the best position to understand the nuances of each local utility's system, in the best position to gather the appropriate evidence, in the best position to hear and understand local concerns and in the best position to make the most appropriate decisions for all utility customers in the most cost-effective manner possible.

For the above reasons, NASUCA, on behalf of its members respectfully urges the Congress to reject the federal override of state legal and rate making authority embodied in Amendment #3120.

Thank you for your time and consideration. Please do not hesitate to contact me or David Springe, NASUCA's Executive Director at 785-550-7606 or david.springe@nasuca.org should you have any questions.

Sincerely,



Robert A. Nelson
NASUCA President
Montana Consumer Counsel
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