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Honorable Members of the Senate Natural Resources & Energy Committee,

My name is Audrey Ernstberger, and I am a staff attorney with the Kentucky Resources Council. The Council, as many of you know, is a nonprofit, nonpartisan organization providing free legal and technical assistance to citizens and community groups on a range of environmental and energy related issues.

The Council opposes SB 220 and appreciates this opportunity to share the concerns with you and to ask that you do not support the bill. We shared the following concerns previously with the sponsor.

We have three concerns with the bill: (1) it makes it harder for combined electric and water boards to offer ancillary services that are of value to the customers on a non-profit basis; (2) it constrains the Mayor's power to appoint a member to the governing body that adequately represents city customers of a combined municipal electric and water utility; and (3) it inappropriately directs the Public Service Commission to assist with the resolution of customer complaints which is beyond the PSC's jurisdiction.

First, this bill would make it harder for combined electric and water boards to offer ancillary services that are of value to customers, on a non-profit basis, such as broadband service. In Section 5(4) of the bill there is a prohibition against the Board using revenues from the provision of electric or water utility service to subsidize activities unrelated to the provision of electric or water utility service." While KRC agrees the revenues and expenses associated with ancillary services, like broadband, should be separately accounted for, we are concerned that the language could be read to prohibit the pledging of electric or water utility assets in a manner that would help fund the build out and upgrading of internet broadband service.

The General Assembly, in the past two sessions, codified and expanded the ability of electric co-operatives to pledge assets in that manner to help extend broadband to underserved rural areas. This bill seems to run counter to the Commonwealth's efforts to provide universal high-speed broadband to all communities, to attempt to constrain the ability of municipal combined boards to do so. To the extent that it would lessen the availability of municipal broadband service and leave only for-profit private carriers, there is a real risk of uneven or no coverage, since many for-profit providers did not historically extend their service into underserved rural areas, even areas close to municipalities, absent significant federal subsidy that is now being provided. There are significant public benefits related the competition created by allowing non-profit providers of essential communications services.

Second, this bill places constraints on the power of a Mayor and city commission to appoint a member representing city customers of a commission. Section 2 of this bill would require the Mayoral appointee be from a list of nominees generated by business, development, or area development corporation recommendations. This fails to assure that the interests of residential customers are adequately represented, and delegates effective control over the appointment to non-governmental interests representing a small bandwidth of the public. Just as the elected county judge executive does so in the county, the control over appointments within the city should rest solely with the Mayor, and no third party or parties should be able to dictate the potential appointee or appointees.

Third and lastly, is that Section 10 of the bill requires the Public Service Commission to “assist in the resolution of consumer complaints of customers of any water or electric utility service provided by combined electric and water systems or plant boards established under KRS Chapter 96.171 to 96.188, and shall review the rates of the customers of each of those combined electric and water systems or plant boards at least once per year.”

The PSC has no jurisdiction over combined electric and water systems and boards, and no authority to direct the resolution of citizen complaints. The Attorney General’s Office is the more appropriate place to direct concerns regarding the provision of municipal services, as are the elected representatives of customers of the municipal system. An already strapped PSC staff should not be required to assist in resolution of complaints against systems outside of their jurisdiction and ability to control.

With respect to rate reviews, the PSC does not review, or control rates charged by municipal utilities, and the statute provides no benchmark against which such a review would occur. Nor would it allow the PSC access to the books and records necessary to allow for a meaningful review of rates. Placing municipal utilities under PSC jurisdiction for rates and service is a proposition that KRC believes worthy of discussion, but selectively requiring PSC review of rates of a municipal combined system when it has no standard against which to review the rates, no authority to approve or reject the rates regardless of how reasonable or not, and no authority to request access to records needed to allow for such a review, is not a solution to concerns about combined municipal system rates.

For each and all these reasons, KRC respectfully requests that you to vote “no” to SB 220.