

CHAPTER 365**(SB 257)**

AN ACT relating to electric generating facilities and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 9 of this Act, unless the context requires otherwise:

- (1) "Board" means the Kentucky State Board on Electric Generation and Transmission Siting created in Section 2 of this Act;*
- (2) "Merchant electric generating facility" means, except for a qualifying cogeneration facility as defined in subsection (7) of this section, an electricity generating plant, together with associated facilities, that:*
 - (a) Is capable of operating at a capacity of ten megawatts (10MW) or more; and*
 - (b) Sells the electricity it produces in the wholesale market, at rates and charges not regulated by the Public Service Commission;*
- (3) "Person" means any individual, corporation, public corporation, political subdivision, governmental agency, municipality, partnership, cooperative association, trust, estate, two (2) or more persons having a joint or common interest, or any other entity, and no portion of Sections 1 to 9, 10, 11, 12, 13, or 14 of this Act shall apply to a utility owned by a municipality unless the utility is a merchant plant as defined in this section;*
- (4) "Commence to construct" means physical on-site placement, assembly, or installation of materials or equipment which will make up part of the ultimate structure of the facility. In order to qualify, these activities must take place at the site of the proposed facility or must be site-specific. Activities such as site clearing and excavation work will not satisfy the commence to construct requirements;*
- (5) "Nonregulated electric transmission line" means an electric transmission line and related appurtenances for which no certificate of public convenience and necessity is required; which is not operated as an activity regulated by the Public Service Commission; and which is capable of operating at or above sixty-nine thousand (69,000) volts;*
- (6) "Residential neighborhood" means a populated area of five (5) or more acres containing at least one (1) residential structure per acre; and*
- (7) "Qualifying cogeneration facility" means a facility as defined in 16 U.S.C. sec. 796(18)(b), which does not exceed a capacity of one hundred fifty megawatts (150MW), that is located on site at a manufacturer's plant and that uses steam from the cogeneration facility in its manufacturing process.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) There is hereby established the Kentucky State Board on Electric Generation and Transmission Siting. The board shall be composed of seven (7) members as follows:*
 - (a) The three (3) members of the Kentucky Public Service Commission;*

- (b) *The secretary of the Natural Resources and Environmental Protection Cabinet or the secretary's designee;*
 - (c) *The secretary of the Cabinet for Economic Development or the secretary's designee;*
 - (d)
 1. *If the facility subject to board approval is proposed to be located in one (1) county, two (2) ad hoc public members to be appointed by the Governor from a county where a facility subject to board approval is proposed to be located:*
 - a. *One (1) of the ad hoc public members shall be the chairman of the planning commission with jurisdiction over an area in which a facility subject to board approval is proposed to be located. If the proposed location is not within a jurisdiction with a planning commission, then the Governor shall appoint either the county judge/executive of a county that contains the proposed location of the facility or the mayor of a city, if the facility is proposed to be within a city; and*
 - b. *One (1) of the ad hoc public members shall be appointed by the Governor and shall be a resident of the county in which the facility is proposed to be located.*
 2. *If the facility subject to board approval is proposed to be located in more than one (1) county, two (2) ad hoc public members to be chosen as follows:*
 - a. *One (1) ad hoc public member shall be the county judge/executive of a county in which the facility is proposed to be located, to be chosen by majority vote of the county judge/executives of the counties in which the facility is proposed to be located; and*
 - b. *One (1) ad hoc public member shall be a resident of a county in which the facility is proposed to be located, and shall be appointed by the Governor.*

If a member has not been chosen by majority vote, as provided in subdivision a. of this subparagraph, by thirty (30) days after the filing of the application, the Governor shall directly appoint the member.
 3. *Ad hoc public members appointed to the board shall have no direct financial interest in the facility proposed to be constructed.*
- (2) *The term of service for the ad hoc members of the board shall continue until the board issues a final determination in the proceeding for which they were appointed. The remaining members of the board shall be permanent members.*
 - (3) *The board shall be attached to the Public Service Commission for administrative purposes. The commission staff shall serve as permanent administrative staff for the board. The members of the board identified in subsection (1)(a) to (d) of this section shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement Sections 1 to 9 of this Act.*
 - (4) *No member of the board shall receive any salary or fee for service on the board or shall have any financial interest in any facility the application for which comes before the board, but each member shall be reimbursed for actual travel and expenses directly related to service on the board.*

- (5) *The chairman of the Public Service Commission shall be the chairman of the board. The chairman shall designate one (1) member of the board as vice chairman. A majority of the members of the board shall constitute a quorum for the transaction of business. No vacancy on the board shall impair the right of the remaining members to exercise all of the powers of the board. The board shall convene upon the call of the chairman.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) *No person shall commence to construct a merchant electric generating facility until that person has applied for and obtained a construction certificate for the facility from the board. The construction certificate shall be valid for a period of two (2) years after the issuance date of the last permit required to be obtained from the Natural Resources and Environmental Protection Cabinet after which the certificate shall be void. The certificate shall be conditioned upon the applicant obtaining necessary air, water, and waste permits. If an applicant has not obtained all necessary permits and has not commenced to construct prior to the expiration date of the certificate, the applicant shall be required to obtain a valid certificate from the board.*
- (2) *Except as provided in subsections (3), (4), and (5) of this section, no person shall commence to construct a merchant electric generating facility unless the exhaust stack of the proposed facility is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility.*
- (3) *If the merchant electric generating facility is proposed to be located in a county or a municipality with planning and zoning, then setback requirements from a residential neighborhood, school, hospital, or nursing home facility may be established by the planning and zoning commission. Any setback established by a planning and zoning commission for a facility in an area over which it has jurisdiction shall:*
- (a) *Have primacy over the setback requirement in subsections (2) and (5) of this section; and*
- (b) *Not be subject to modification or waiver by the board through a request for deviation by the applicant, as provided in subsection (4) of this section.*
- (4) *The board may grant a deviation from the requirements of subsection (2) of this section on a finding that the proposed facility is designed and located to meet the goals of the Act at a distance closer than those provided in subsection (2) of this Section.*
- (5) *If the merchant electric generating facility is proposed to be located on a site of a former coal processing plant in the Commonwealth where the electric generating facility will utilize on-site waste coal as a fuel source, then the one thousand (1,000) foot property boundary requirement in subsection (2) of this section shall not be applicable; however, the applicant shall be required to meet any other setback requirements contained in subsection (2) of this section.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) *Any person seeking to obtain a construction certificate from the board to construct a merchant electric generating facility shall file an application at the office of the Public Service Commission.*

- (2) *A completed application shall include the following:*
- (a) *The name, address, and telephone number of the person proposing to construct and own the merchant electric generating facility;*
 - (b) *A full description of the proposed site, including a map showing the distance of the proposed site from residential neighborhoods, the nearest residential structures, schools, and public and private parks that are located within a two (2) mile radius of the proposed facility;*
 - (c) *Evidence of public notice that shall include the location of the proposed site and a general description of the project, state that the proposed construction is subject to approval by the board, and provide the telephone number and address of the Public Service Commission. Public notice shall be given within thirty (30) days immediately preceding the application filing to:*
 - 1. *Landowners whose property borders the proposed site; and*
 - 2. *The general public in a newspaper of general circulation in the county or municipality in which the plant is proposed to be located;*
 - (d) *A statement certifying that the proposed plant will be in compliance with all local ordinances and regulations concerning noise control and with any local planning and zoning ordinances. The statement shall also disclose setback requirements established by the planning and zoning commission as provided under subsection (3) of Section 3 of this Act;*
 - (e) *If the facility is not proposed to be located on site of a former coal processing plant and the facility will use on-site waste coal as a fuel source or in an area where a planning and zoning commission has established a setback requirement pursuant to subsection (3) of Section 3 of this Act, a statement that the proposed site is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility, unless facilities capable of generating ten megawatts (10MW) or more currently exist on the site. If the facility is proposed to be located on site of a former coal processing plant and the facility will use on-site waste coal as a fuel source, a statement that the proposed site is compatible with the setback requirements provided under subsection (5) of Section 3 of this Act. If the facility is proposed to be located in a jurisdiction that has established setback requirements pursuant to subsection (3) of Section 3 of this Act, a statement that the proposed site is compatible with those established setback requirements;*
 - (f) *A complete report of the applicant's public involvement program activities undertaken prior to the filing of the application, including any use of media coverage, direct mailing, fliers, newsletters, public meetings, establishment of a community advisory group, and any other efforts to obtain local involvement in the siting process;*
 - (g) *A summary of the efforts made by the applicant to locate the proposed facility on a site where existing electric generating facilities are located;*
 - (h) *Proof of service of a copy of the application upon the chief executive officer of each county and municipal corporation in which the proposed facility is to be located,*

and upon the chief officer of each public agency charged with the duty of planning land use in the jurisdiction in which the facility is proposed to be located;

- (i) An analysis of the proposed facility's projected effect on the electricity transmission system in Kentucky;*
 - (j) An analysis of the proposed facility's economic impact on the affected region and the state;*
 - (k) A detailed listing of all violations by it, or any person with an ownership interest, of federal or state environmental laws, rules, or administrative regulations, whether judicial or administrative, where violations have resulted in criminal convictions or civil or administrative fines exceeding five thousand dollars (\$5,000). The status of any pending action, whether judicial or administrative, shall also be submitted; and*
 - (l) A site assessment report as specified in Section 5 of this Act. The applicant may submit and the board may accept documentation of compliance with the National Environmental Policy Act (NEPA) rather than a site assessment report.*
- (3) Application fees for a construction certificate shall be set by the board and deposited into a trust and agency account to the credit of the commission.*
- (4) Replacement of a merchant electric generating facility with a like facility, or the repair, modification, retrofitting, enhancement, or reconfiguration of a merchant electric generating facility shall not, for the purposes of Sections 3, 4, 5, 6, 7 and 10 of this Act, constitute construction of a merchant electric generating facility.*
- (5) The board shall promulgate administrative regulations prescribing fees to pay expenses associated with its review of applications filed with it pursuant to Sections 1 to 9 of this Act. All application fees collected by the board shall be deposited in a trust and agency account to the credit of the Public Service Commission. If a majority of the members of the board find that an applicant's initial fees are insufficient to pay the board's expenses associated with the application, including the board's expenses associated with legal review thereof, the board shall assess a supplemental application fee to cover the additional expenses. An applicant's failure to pay a fee assessed pursuant to this subsection shall be grounds for denial of the application.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) Any person proposing to construct a merchant electric generating facility shall file a site assessment report with the board as required under subsection (2)(l) of Section 4 of this Act.*
- (2) A site assessment report shall be prepared by the applicant or its designee.*
- (3) A completed site assessment report shall include:*
 - (a) A description of the proposed facility that shall include a proposed site development plan that describes:*
 - 1. Surrounding land uses for residential, commercial, agricultural, and recreational purposes;*
 - 2. The legal boundaries of the proposed site;*
 - 3. Proposed access control to the site;*

4. *The location of facility buildings, transmission lines, and other structures;*
 5. *Location and use of access ways, internal roads, and railways;*
 6. *Existing or proposed utilities to service the facility;*
 7. *Compliance with applicable setback requirements as provided under subsections (2), (3), or (5) of Section 3 of this Act; and*
 8. *Evaluation of the noise levels expected to be produced by the facility;*
- (b) *An evaluation of the compatibility of the facility with scenic surroundings;*
 - (c) *The potential changes in property values resulting from the siting, construction, and operation of the proposed facility for property owners adjacent to the facility;*
 - (d) *Evaluation of anticipated peak and average noise levels associated with the facility's construction and operation at the property boundary; and*
 - (e) *The impact of the facility's operation on road and rail traffic to and within the facility, including anticipated levels of fugitive dust created by the traffic and any anticipated degradation of roads and lands in the vicinity of the facility.*
- (4) *The site assessment report shall also suggest any mitigating measures to be implemented by the applicant including planting trees, changing outside lighting, erecting noise barriers, and suppressing fugitive dust.*
 - (5) *The board shall have the authority to hire a consultant to review the site assessment report and provide recommendations concerning the adequacy of the report and proposed mitigation measures. The board may direct the consultant to prepare a separate site assessment report. Any expenses or fees incurred by the board's hiring of a consultant shall be borne by the applicant.*
 - (6) *The applicant shall be given the opportunity to present evidence to the board regarding any mitigation measures. As a condition of approval for an application to obtain a construction certificate, the board may require the implementation of any mitigation measures that the board deems appropriate.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) *Within ninety (90) days of receipt of an administratively complete application, or within one hundred twenty (120) days of receipt of an administratively complete application if a hearing is requested, the board shall, by majority vote, grant or deny a construction certificate, either in whole or in part, based upon the following criteria:*
 - (a) *Impact of the facility on scenic surroundings, property values, the pattern and type of development of adjacent property, and surrounding roads;*
 - (b) *Anticipated noise levels expected as a result of construction and operation of the proposed facility;*
 - (c) *The economic impact of the facility upon the affected region and the state;*
 - (d) *Whether the facility is proposed for a site upon which existing generating facilities, capable of generating ten megawatts (10MW) or more of electricity, are currently located;*

- (e) Whether the proposed facility will meet all local planning and zoning requirements that existed on the date the application was filed;*
 - (f) Whether the additional load imposed upon the electricity transmission system by use of the merchant electric generating facility will adversely affect the reliability of service for retail customers of electric utilities regulated by the Public Service Commission;*
 - (g) Except where the facility is subject to a statewide setback established by a planning and zoning commission as provided in subsection (3) of Section 3 of this Act and except for a facility proposed to be located on site of a former coal processing plant and the facility will use on-site waste coal as a fuel source, whether the exhaust stack of the proposed merchant electric generating facility is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility. If a planning and zoning commission has established setback requirements that differ from those under subsection (2) of Section 3 of this Act, the applicant shall provide evidence of compliance. If the facility is proposed to be located on site of a former coal processing plant and the facility will use on-site waste coal as a fuel source, the applicant shall provide evidence of compliance with the setback requirements provided in subsection (5) of Section 3 of this Act;*
 - (h) The efficacy of any proposed measures to mitigate adverse impacts that are identified pursuant to paragraphs (a), (b), (e), or (f) of this subsection from the construction or operation of the proposed facility; and*
 - (i) Whether the applicant has a good environmental compliance history.*
- (2) When considering an application for a construction certificate for a merchant electric generating facility, the board may consider the policy of the General Assembly to encourage the use of coal as a principal fuel for electricity generation as set forth in KRS 152.210, provided that any facility, regardless of fuel choice, shall comply fully with Sections 1 to 9, 10, 11, and 13 of this Act.*
- (3) A person that has received a construction certificate for a merchant electric generating facility shall not transfer rights and obligation under the certificate without having first applied for and received a board determination that:*
- (a) The acquirer has a good environmental compliance history; and*
 - (b) The acquirer has the financial, technical, and managerial capacity to meet the obligations imposed by the terms of the approval or has the ability to contract to meet these obligations.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) The board may convene a local public hearing upon receipt of a request by not less than three (3) interested persons that reside in a county or municipal corporation in which the facility is proposed to be constructed to consider the application for a construction certificate. The board shall convene a local public hearing in response to a request from the planning and zoning commission, mayor of a city, or county fiscal court of a jurisdiction where the facility is proposed to be located. If the facility is proposed to be located in more than one (1) county, the board may convene a local public hearing and*

the hearing shall be held in the county with the largest population not more than sixty (60) days after receipt of a completed application. Absent the minimum number of requests for a local public hearing, the board may conduct all evidentiary proceedings in Franklin County.

- (2) In any hearing on an application for a construction certificate, the board shall not be bound by the technical rules of legal evidence. Any hearing shall be conducted pursuant to and in conformance with rules and requirements set forth by the board in administrative regulations promulgated pursuant to subsection (2) of Section 2 of this Act.*
- (3) The parties to a proceeding before the board shall include:
 - (a) The applicant; and*
 - (b) Any person having been granted the right of intervention pursuant to subsection (4) of this section.**
- (4) Any interested person, including a person residing in a county or municipal corporation in which the facility is proposed to be constructed may, upon motion to the board, be granted leave to intervene as a party to a proceeding held pursuant to this section.*
- (5) Any party to a proceeding held pursuant to this section or any final determination pursuant to Section 6 of this Act may, within thirty (30) days after service of the board's final ruling, bring an action against the board in the Circuit Court of the county in which the facility is proposed to be constructed to vacate or set aside the ruling on grounds that the ruling is arbitrary, capricious, or otherwise unlawful or unreasonable. Any party instituting an action for review of the board's ruling in the Circuit Court of the county in which the facility is proposed to be constructed shall give notice to all parties of record in the board's proceeding.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) No person shall commence to construct a nonregulated electric transmission line without a construction certificate issued by the board. An application for a construction certificate shall be filed at the offices of the Public Service Commission along with an application fee as set forth in subsection (5) of this section.*
- (2) A completed application shall include the following:
 - (a) The name, address, and telephone number of the person proposing construction of the nonregulated transmission line;*
 - (b) A full description of the proposed route of the transmission line and its appurtenances. The description shall include a map or maps showing:
 - 1. The location of the proposed line and all proposed structures that will support it;*
 - 2. The proposed right-of-way limits;*
 - 3. Existing property lines and the names of persons who own the property over which the line will cross; and*
 - 4. The distance of the proposed line from residential neighborhoods, schools, and public and private parks within one (1) mile of the proposed facilities;***

- (c) *A full description of the proposed line and appurtenances, including the following:*
 - 1. *Initial and design voltages and capacities;*
 - 2. *Length of line;*
 - 3. *Terminal points; and*
 - 4. *Substation connections;*
 - (d) *A statement that the proposed transmission line and appurtenances will be constructed and maintained in accordance with accepted engineering practices and the National Electric Safety Code;*
 - (e) *Evidence that public notice has been given by publication in a newspaper of general circulation in the general area concerned. Public notice shall include the location of the proposed line, shall state that the proposed line is subject to approval by the board, and shall provide the telephone number and address of the Public Service Commission; and*
 - (f) *Proof of service of a copy of the application upon the chief executive officer of each county and municipal corporation in which the proposed line is to be located, and upon the chief officer of each public agency charged with the duty of planning land use in the general area in which the line is proposed to be located.*
- (3) *Within ninety (90) days of receipt of the application, or one hundred twenty (120) days if a local public hearing is held, the board shall, by majority vote, grant or deny the construction certificate either in whole or in part. Action to grant the certificate shall be based on the board's determination that the proposed route of the line will minimize significant adverse impact on the scenic assets of Kentucky and that the applicant will construct and maintain the line according to all applicable legal requirements. If the board determines that locating the transmission line will result in significant degradation of scenic factors or if the board determines that the construction and maintenance of the line will be in violation of applicable legal requirements, the board may deny the application or condition the application's approval upon relocation of the route of the line, or changes in design or configuration of the line.*
- (4) *A public hearing on an application to construct a nonregulated electric transmission line may be held in accordance with the provisions of Section 7 of this Act.*
- (5) *The board shall promulgate administrative regulations to establish an application fee for a construction certificate for a nonregulated transmission line in accordance with subsection (3) of Section 4 of this Act.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby created a trust and agency account in the Public Service Commission called the "siting fund."*
- (2) *All fees received by the board for the purpose of administering Sections 1 to 9 of this Act shall be deposited into the siting fund. The fund shall not lapse and all expenditures from the fund shall be used to implement Sections 1 to 9 of this Act.*

SECTION 10. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *Except for a person that commenced construction of a facility prior to April 15, 2002, or that has received a certificate of public convenience and necessity from the Public Service Commission prior to April 15, 2002, no person shall commence to construct a facility to be used for the generation of electricity unless the person:*
 - (a) *Submits a cumulative environmental assessment to the cabinet with the permit application; and*
 - (b) *Remits a fee set pursuant to KRS 224.10-100(20) by the cabinet to defray the cost of processing the cumulative environmental assessment.*
- (2) *The person may submit and the cabinet may accept documentation of compliance with the National Environmental Policy Act (NEPA) as satisfying the requirements to file a cumulative environmental assessment under subsection (1) of this section.*
- (3) *The cumulative environmental assessment shall contain a description, with appropriate analytical support, of:*
 - (a) *For air pollutants:*
 1. *Types and quantities of air pollutants that will be emitted from the facility; and*
 2. *A description of the methods to be used to control those emissions;*
 - (b) *For water pollutants:*
 1. *Types and quantities of water pollutants that will be discharged from the facility into the waters of the Commonwealth; and*
 2. *A description of the methods to be used to control those discharges;*
 - (c) *For wastes:*
 1. *Types and quantities of wastes that will be generated by the facility; and*
 2. *A description of the methods to be used to manage and dispose of such wastes; and*
 - (d) *For water withdrawal:*
 1. *Identification of the source and volume of anticipated water withdrawal needed to support facility construction and operations; and*
 2. *A description of the methods to be used for managing water usage and withdrawal.*
- (4) *The cabinet may impose such conditions regarding the timing, volume, duration, or type of pollutants on a permit, registration, general permit, or permit-by-rule for a facility subject to this section as are necessary to comply with applicable standards.*
- (5) *The cabinet may promulgate administrative regulations to implement the provisions of this section.*

SECTION 11. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

- (1) *No utility shall begin the construction or installation of any property, equipment, or facility to establish an electrical interconnection with a merchant electric generating facility in excess of ten megawatts (10MW) until the plans and specifications for the electrical interconnection have been filed with the commission.*

- (2) *Notwithstanding any other provision of law, any costs or expenses associated with upgrading the existing electricity transmission grid, as a result of the additional load caused by a merchant electric generating facility, shall be borne solely by the person constructing the merchant electric generating facility and shall in no way be borne by the retail electric customers of the Commonwealth.*

SECTION 12. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

When a utility or generation and transmission cooperative engaged in the transmission of electricity experiences on its transmission facilities an emergency or other event that necessitates a curtailment or interruption of service, the utility or generation and transmission cooperative shall not curtail or interrupt retail electric service within its certified territory, or curtail or interrupt wholesale electric energy furnished to a member distribution cooperative for retail electric service within the cooperative's certified territory, except for customers who have agreed to receive interruptible service, until after service has been interrupted to all other customers whose interruption may relieve the emergency or other event.

SECTION 13. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

- (1) *Except for a utility as defined under subsection (9) of Section 15 of this Act that has been granted a certificate of public convenience and necessity prior to April 15, 2002, no utility shall begin the construction of a facility for the generation of electricity capable of generating in aggregate more than ten megawatts (10MW) without having first obtained a site compatibility certificate from the commission.*
- (2) *An application for a site compatibility certificate shall include the submission of a site assessment report as prescribed in subsections (3) and (4) of Section 5 of this Act, except that a utility which proposes to construct a facility on a site that already contains facilities capable of generating ten megawatts (10MW) or more of electricity shall not be required to comply with setback requirements established pursuant to subsection (3) of Section 3 of this Act. A utility may submit and the board may accept documentation of compliance with the National Environmental Policy Act (NEPA) rather than a site assessment report.*
- (3) *The commission may deny an application filed pursuant to, and in compliance with, this section. The commission may require reasonable mitigation of impacts disclosed in the site assessment report including planting trees, changing outside lighting, erecting noise barriers, and suppressing fugitive dust, but the commission shall, in no event, order relocation of the facility.*
- (4) *The commission may also grant a deviation from any applicable setback requirements on a finding that the proposed facility is designed and located to meet the goals of the Act at a distance closer than those provided by the applicable setback requirements.*
- (5) *Nothing contained in this section shall be construed to limit a utility's exemption provided under KRS 100.324.*
- (6) *Unless specifically stated otherwise, for the purposes of this section, "utility" has the same meaning as in KRS 278.010(3)(a) or (9).*

SECTION 14. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

- (1) *No person shall acquire or transfer ownership of or control, or the right to control, any assets that are owned by a utility as defined under subsection (3)(a) of Section 15 of this Act without prior approval of the commission, if the assets have an original book value of one million dollars (\$1,000,000) or more and:*
 - (a) *The assets are to be transferred by the utility for reasons other than obsolescence; or*
 - (b) *The assets will continue to be used to provide the same or similar service to the utility or its customers.*
- (2) *The commission shall grant its approval if the transaction is for a proper purpose and is consistent with the public interest.*

Section 15. KRS 278.010 is amended to read as follows:

As used in KRS 278.010 to 278.450, and in KRS 278.990, unless the context otherwise requires:

- (1) "Corporation" includes private, quasipublic, and public corporations, and all boards, agencies, and instrumentalities thereof, associations, joint-stock companies, and business trusts;
- (2) "Person" includes natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest;
- (3) "Utility" means any person except, for purposes of paragraphs (a), (b), (c), (d), and (f) of this subsection, a city, who owns, controls, operates, or manages any facility used or to be used for or in connection with:
 - (a) The generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses;
 - (b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses;
 - (c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation;
 - (d) The diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation;
 - (e) The transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation; or
 - (f) The collection, transmission, or treatment of sewage for the public, for compensation, if the facility is a subdivision collection, transmission, or treatment facility plant that is affixed to real property and is located in a county containing a city of the first class or is a sewage collection, transmission, or treatment facility that is affixed to real property, that is located in any other county, and that is not subject to regulation by a metropolitan sewer district or any sanitation district created pursuant to KRS Chapter 220;
- (4) "Retail electric supplier" means any person, firm, corporation, association, or cooperative corporation, excluding municipal corporations, engaged in the furnishing of retail electric service;

- (5) "Certified territory" shall mean the areas as certified by and pursuant to KRS 278.017;
- (6) "Existing distribution line" shall mean an electric line which on June 16, 1972, is being or has been substantially used to supply retail electric service and includes all lines from the distribution substation to the electric consuming facility but does not include any transmission facilities used primarily to transfer energy in bulk;
- (7) "Retail electric service" means electric service furnished to a consumer for ultimate consumption, but does not include wholesale electric energy furnished by an electric supplier to another electric supplier for resale;
- (8) "Electric-consuming facilities" means everything that utilizes electric energy from a central station source;
- (9) "Generation and transmission cooperative," or "G&T," means a utility formed under KRS Chapter 279 that provides electric generation and transmission services;
- (10) "Distribution cooperative" means a utility formed under KRS Chapter 279 that provides retail electric service;
- (11) "Facility" includes all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility;
- (12) "Rate" means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof;
- (13) "Service" includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure, and quantity of water, and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility;
- (14) "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service;
- (15) "Commission" means the Public Service Commission of Kentucky;
- (16) "Commissioner" means one (1) of the members of the commission;
- (17) "Demand-side management" means any conservation, load management, or other utility activity intended to influence the level or pattern of customer usage or demand, including home energy assistance programs;
- (18) "Affiliate" means a person that controls or that is controlled by, or is under common control with, a utility;
- (19) "Control" means the power to direct the management or policies of a person through ownership, by contract, or otherwise;
- (20) "CAM" means a cost allocation manual which is an indexed compilation and documentation of a company's cost allocation policies and related procedures;

- (21) "Nonregulated activity" means the provision of competitive retail gas or electric services or other products or services over which the commission exerts no regulatory authority;
- (22) "Nonregulated" means that which is not subject to regulation by the commission;
- (23) "Regulated activity" means a service provided by a utility *or other person*, the rates and charges of which are regulated by the commission;
- (24) "USoA" means uniform system of accounts which is a system of accounts for public utilities established by the FERC and adopted by the commission;
- (25) "Arm's length" means the standard of conduct under which unrelated parties, each party acting in its own best interest, would negotiate and carry out a particular transaction;
- (26) "Subsidize" means the recovery of costs or the transfer of value from one (1) class of customer, activity, or business unit that is attributable to another;
- (27) "Solicit" means to engage in or offer for sale a good or service, either directly or indirectly and irrespective of place or audience;
- (28) "USDA" means the United States Department of Agriculture;
- (29) "FERC" means the Federal Energy Regulatory Commission; and
- (30) "SEC" means the Securities and Exchange Commission.

Section 16. The following KRS section is repealed:

278.025 Certificate of environmental compatibility -- Requirements.

Section 17. Whereas the regulatory agencies charged with the implementation of this Act will need time sufficient to revise administrative regulations and place them in effect prior to the expiration of the moratorium on the issuance of permits for new electricity generating facilities, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 24, 2002