

CHAPTER 18

(HB 388)

AN ACT relating to best system emission reduction for existing electric generating units.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

The Kentucky General Assembly hereby finds and declares that:

- (1) *The United States Environmental Protection Agency intends to adopt guidelines to reduce carbon dioxide emissions from existing fossil fuel-fired electric generating units under 42 U.S.C. sec. 7411(d);*
- (2) *The United States Congress charges states, rather than the United States Environmental Protection Agency, with establishing standards of performance under 42 U.S.C. sec. 7411(d) for existing stationary sources including fossil fuel-fired electric generating units as a means of furthering the scheme of cooperative federalism under the federal Clean Air Act and with ensuring that the states have the primary role in managing their own economic and environmental resources; and*
- (3) *Providing reliable and affordable electricity through using various energy feedstocks for electric generation including coal, natural gas, nuclear, and renewable resources, as well as using energy efficiently will provide economic and environmental benefits for the citizens of the Commonwealth of Kentucky;*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *In developing and implementing any plan to control emissions of carbon dioxide the cabinet shall establish separate standards of performance for carbon dioxide emissions in accordance with:*
 - (a) *Section 3 of this Act for existing coal-fired electric generating units; and*
 - (b) *Section 4 of this Act for existing natural gas-fired electric generating units.*
- (2) *Performance standards shall be adjusted on a case-by-case basis in accordance with Section 5 of this Act and shall be implemented in accordance with Section 6 of this Act.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

Except for adjustments of the performance standard on a case-by-case basis under Section 5 of this Act, the performance standard that shall be established for existing coal-fired electric generating units shall be based on the following:

- (1) *The best system of emission reduction which has been adequately demonstrated for coal-fired electric generating units subject to the performance standard. Best system of emission reduction shall take into account the cost of:*
 - (a) *Achieving the emission reduction;*
 - (b) *Impacting non-air quality health and the environment; and*
 - (c) *Maintaining energy requirements needed to serve the load on the electric generating unit;*
- (2) *Reductions in emissions of carbon dioxide that can reasonably be achieved through measures undertaken at each coal-fired electric generating unit; and*
- (3) *Efficiency and other measures that can be undertaken at each coal-fired electric generating unit to reduce its carbon dioxide emissions without doing the following:*
 - (a) *Switching from coal to other fuels;*
 - (b) *Co-firing other fuels with coal; or*
 - (c) *Limiting the utilization of the electric generating unit.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

Except for adjustments of the performance standard on a case-by-case basis under Section 5 of this Act, the performance standard that shall be established for existing gas-fired electric generating units shall be based on the following:

- (1) *The best system of emission reduction which has been adequately demonstrated for gas-fired electric generating units subject to the performance standard. Best system of emission reduction shall take into account the cost of:

 - (a) *Achieving the emission reduction;*
 - (b) *Impacting non-air quality health and the environment; and*
 - (c) *Maintaining energy requirements needed to serve the load of the electric generating unit;**
- (2) *Reductions in emissions of carbon dioxide that can reasonably be achieved through measures undertaken at each gas-fired electric generating unit; and*
- (3) *Efficiency and other measures that can be undertaken at the unit to reduce carbon dioxide emissions from the unit without switching from natural gas to other fuels that emit less carbon dioxide than natural gas or by limiting the utilization of the electric generating unit.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

In establishing a performance standard for any existing fossil fuel-fired electric generating unit, the cabinet shall consider, in all cases, whether to adopt less stringent performance standards or longer compliance schedules for those units than are established in applicable federal rules or guidelines. The decision to adopt a less stringent performance standard or longer compliance schedules shall be based on the following:

- (1) *Consumer impacts including any disproportionate energy price increases on lower income populations;*
- (2) *Unreasonable costs of reducing emissions of carbon dioxide resulting from the age, location, or basic process design of the electric generating unit;*
- (3) *Physical difficulties with or the impossibility of implementing emission reduction measures for carbon dioxide;*
- (4) *The absolute cost of applying the performance standard to the electric generating unit;*
- (5) *The expected remaining useful life of the electric generating unit;*
- (6) *The economic impacts of closing the electric generating unit, including expected job losses, if the unit is unable to comply with the performance standard; and*
- (7) *Any other factors specific to the electric generating unit that make application of a less stringent performance standard or longer compliance schedule more reasonable.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

To the maximum extent permissible, the cabinet may develop a method for electric generating units to implement the performance standards that gives the electric generating units flexibility to comply with the performance standards.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet shall not propose or submit to the United States Environmental Protection Agency any plan establishing performance standards for existing fossil fuel-fired electric generating units unless the plan is:

 - (a) *Consistent with Sections 1 to 7 of this Act; and*
 - (b) *Prepared in consultation with the Kentucky Public Service Commission to:

 1. *Ensure that the plan minimizes the impacts on current and future industrial, commercial, and residential consumers; and*
 2. *Does not threaten the affordability of Kentucky's rates or the reliability of electricity service.***
- (2) *The cabinet shall promulgate administrative regulations for the establishment and implementation of any state plan to regulate emissions of carbon dioxide emissions from existing fossil fuel-fired electric generating units under 42 U.S.C. sec. 7411(d).*

- (3) *Any state plan established by the cabinet to regulate emissions of carbon dioxide pursuant to Sections 1 to 7 of this Act shall have no legal effect if:*
- (a) *The United States Environmental Protection Agency:*
1. *Fails to issue federal rules or guidelines for reducing carbon dioxide emissions from existing fossil fuel-fired electric generating units under 42 U.S.C. sec. 7411(d); or*
 2. *Withdraws its federal rules or guidelines for reducing carbon dioxide emissions from existing fossil fuel-fired electric generating units; or*
- (b) *A court of competent jurisdiction invalidates the United State Environmental Protection Agency's federal rules or guidelines issued to regulate emissions of carbon dioxide from existing fossil fuel-fired electric generating units.*

Signed by Governor April 2, 2014.