

CHAPTER 88

(HB 291)

AN ACT relating to construction of unregulated electric generation facilities and declaring an emergency.

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

➔Section 1. KRS 278.700 is amended to read as follows:

As used in KRS 278.700 to 278.716, unless the context requires otherwise:

- (1) "Board" means the Kentucky State Board on Electric Generation and Transmission Siting created in KRS 278.702;
- (2) "Merchant electric generating facility" means, except for a qualifying facility as defined in subsection (7) of this section, an electricity generating **facility or facilities that**~~plant~~, together with **all** associated **structures and** facilities~~, that~~:
 - (a) ~~Are~~**Is** capable of operating at **an aggregate**~~ta~~ capacity of ten megawatts (10MW) or more; and
 - (b) ~~Sell~~**Sells** the electricity **they produce**~~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 KRS 224.10-280, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716 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;
- (7) "Qualifying facility" means a cogeneration 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, or an industrial energy facility as defined in KRS 224.1-010 that does not generate more than one hundred fifty megawatts (150MW) for sale and has received all local planning and zoning approvals; and
- (8) "Carbon dioxide transmission pipeline" means the in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, that is used exclusively for the purpose of transporting carbon dioxide to a point of sale, storage, or other carbon management applications.

➔Section 2. KRS 278.704 is amended 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 Energy and Environment 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 **construction certificate shall be issued**~~person shall commence~~ to construct a merchant electric generating facility unless the exhaust stack of

the proposed facility *and any wind turbine* is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and *all proposed structures or facilities used for generation of electricity are* two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility. *For purposes of applications for site compatibility certificates pursuant to KRS 278.216, only the exhaust stack of the proposed facility to be actually used for coal or gas-fired generation or, beginning with applications for site compatibility certificates filed on or after January 1, 2015, the proposed structure or facility to be actually used for solar or wind generation shall be required to be 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 *property boundary*, 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 *to* and, *as* located, *would* ~~to~~ meet the goals of KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716 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.
- (6) *If requested, a merchant electric generating entity considering construction of a facility for the generation of electricity or a person acting on behalf of such an entity shall hold a public meeting in any county where acquisition of real estate or any interest in real estate is being considered for the facility. A request for such a meeting may be made by the commission, or by any city or county governmental entity, including a board of commissioners, planning and zoning, fiscal court, mayor, or county judge/executive. The meeting shall be held not more than thirty (30) days from the date of the request.*
- (7) *The purpose of the meeting under subsection (6) of this section is to fully inform landowners and other interested parties of the full extent of the project being considered, including the project time line. One (1) or more representatives of the entity with full knowledge of all aspects of the project shall be present and shall answer questions from the public.*
- (8) *Notice of the time, subject, and location of the meeting under subsection (6) of this section shall be posted in both a local newspaper, if any, and a newspaper of general circulation in the county. Notice shall also be placed on the Web sites of the unregulated entity, and any local governmental unit. Owners of real estate known to be included in the project and any person whose property adjoins at any point any property to be included in the project shall be notified personally by mail. All notices must be mailed or posted at least two (2) weeks prior to the meeting.*
- (9) *The merchant electric generating entity or a person acting on behalf of a merchant electric generating entity shall, on or before the date of the public meeting held under subsection (6) of this section, provide notice of all research, testing, or any other activities being planned or considered to:*
 - (a) *The Energy and Environment Cabinet;*
 - (b) *The Public Service Commission;*
 - (c) *The Transportation Cabinet;*
 - (d) *The Attorney General; and*
 - (e) *The Office of the Governor.*

- (10) *A person that, on or before the effective date of this Act, has started acquiring interests in real estate for a project as described in subsection (6) of this section shall hold a meeting that complies with this section within thirty (30) days of the effective date of this Act.*
- (11) *Subsections (6) to (10) of this section shall not apply to any facility or project that has already received a certificate of construction from the board.*

➔Section 3. KRS 278.706 is amended 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 ~~facility~~~~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 KRS 278.704(3);
 - (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 KRS 278.704(3), a statement that the ***exhaust stack of the proposed facility and any wind turbine is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and all proposed structures or facilities used for generation of electricity are two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility,*** ~~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 KRS 278.704(5). If the facility is proposed to be located in a jurisdiction that has established setback requirements pursuant to KRS 278.704(3), a statement that the proposed site is ***in compliance*** ~~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:
 1. ***The scheduling and conducting of a public meeting in the county or counties in which the proposed facility will be constructed at least ninety (90) days prior to the filing of an application, for the purpose of informing the public of the project being considered and receiving comment on it;***
 2. ***Evidence that notice of the time, subject, and location of the meeting was published in the newspaper of general circulation in the county, and that individual notice was mailed to all owners of property adjoining the proposed project at least two (2) weeks prior to the meeting; and***

3. Any use of media coverage, direct mailing, fliers, newsletters, *additional* 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 KRS 278.708. 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 this section and KRS 224.10-280, 278.704, 278.708, 278.710, and 278.712, 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 KRS 278.700 to 278.716. 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 4. KRS 278.708 is amended 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 KRS 278.706(2)(1).
- (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 KRS 278.704(2), (3), (4), or (5); 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 *and land use* 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 *to minimize or avoid adverse effects identified in the site assessment report* ~~[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 5. KRS 278.710 is amended to read as follows:

- (1) Within *one hundred twenty (120)* ~~[ninety (90)]~~ days of receipt of an administratively complete application, or within one hundred *eighty (180)* ~~[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 KRS 278.704(3) 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 *and any wind turbine* is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and *all proposed structures or facilities used for generation of electricity are* two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility, *unless a different setback has been requested and approved under KRS 278.704(4)*. If a planning and zoning commission has established setback requirements that differ from those under KRS 278.704(2), 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 KRS 278.704(5);
 - (h) The efficacy of any proposed measures to mitigate adverse impacts that are identified pursuant to paragraph (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 KRS 224.10-280, 278.212, 278.216, and 278.700 to 278.716.
- (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 6. KRS 278.714 is amended to read as follows:

- (1) No person shall commence to construct a nonregulated electric transmission line or a carbon dioxide transmission pipeline 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 (6) of this section. The board may hire a consultant to review the transmission line or carbon dioxide pipeline and provide recommendations concerning the adequacy of the application and proposed mitigation measures. The board may direct the consultant to prepare a report recommending changes in the route of the carbon dioxide pipeline or the route of the electric transmission line. Any consultant expenses or fees shall be borne by the applicant.
- (2) A completed application shall include the following:
 - (a) The name, address, and telephone number of the person proposing construction of the nonregulated electric transmission line or the carbon dioxide transmission pipeline;
 - (b) A full description of the proposed route of the electric transmission line or the carbon dioxide transmission pipeline and its appurtenances. The description shall include a map or maps showing:
 1. The location of the proposed line or pipeline 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 or pipeline will cross; and
 4.
 - a. The distance of the proposed electric transmission line from residential neighborhoods, schools, and public and private parks within one (1) mile of the proposed facilities; or
 - b. The distance of the proposed carbon dioxide transmission pipeline from residential neighborhoods, schools, and parks, either private or public, within one thousand (1,000) feet of the proposed facilities;
 - (c) With respect to electric transmission lines, 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 electric transmission line and appurtenances will be constructed and maintained in accordance with accepted engineering practices and the National Electric Safety Code;
 - (e) With respect to both electric transmission lines and carbon dioxide transmission pipelines, 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 electric transmission line or carbon dioxide pipeline, shall state that the proposed line or pipeline 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 electric transmission line or carbon dioxide transmission pipeline 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 or pipeline is proposed to be located.
- (3) With respect to electric transmission lines, within **one hundred twenty (120)**~~ninety (90)~~ days of receipt of the application, or one hundred **eighty (180)**~~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. In addition, the board may consider the interstate benefits expected to be achieved by the proposed construction or modification of electric transmission facilities in the Commonwealth. 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 KRS 278.712.
- (5) The board shall convene a local public information meeting upon receipt of a request by not less than three (3) interested persons that reside in the county or counties in which the carbon dioxide pipeline is proposed to be constructed. If the board convenes the local public information meeting, the meeting will be in the county seat of one (1) of the counties, as determined by the board, in which the proposed carbon dioxide pipeline will be located. The meeting shall provide an opportunity for members of the public to be briefed and ask the party proposing the carbon dioxide pipeline questions about the pipeline.
- (6) Pursuant to KRS 278.706(3) and (5), the board shall promulgate administrative regulations to establish an application fee for a construction certificate for:
- (a) A nonregulated transmission line; and
 - (b) A carbon dioxide transmission pipeline.
- (7) With respect to carbon dioxide transmission lines, within **one hundred twenty (120)**~~ninety (90)~~ days of receipt of the application or one hundred **eighty (180)**~~twenty (120)~~ days if a local public information meeting 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 pipeline 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. In addition, the board may consider the interstate benefits expected to be achieved by the proposed carbon dioxide transmission pipeline in the Commonwealth. If the board determines that locating the transmission line will result in significant degradation of scenic factors or if the board determines that locating the carbon dioxide transmission 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 pipeline.

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

The provisions of Sections 1, 2, 3, 4, and 5 of this Act shall be in addition to, and shall not supplant any other state or federal law, including the powers available to local governments under the provisions of home rule under KRS 67.080, 67.083, 67.850, 67.922, 67A.060, 67C.101, and 82.082.

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 96 IS CREATED TO READ AS FOLLOWS:

- (1) *Any city-owned or controlled electric generating entity shall hold a public meeting in any county where acquisition of real estate or any interest in real estate is being considered for construction of a wind-based electric generating facility. A request for a public meeting may be made by any city or county governmental entity with jurisdiction. The meeting shall be held not more than thirty (30) days from the date of the request.*
- (2) *The purpose of the meeting is to fully inform the public, landowners, and other interested parties of the full extent of the project being considered, including the project time line. One (1) or more representatives of the*

city-owned or controlled electric generating entity with full knowledge of all aspects of the project shall be present and shall answer questions from the public.

- (3) *Notice of the time, subject, and location of the meeting shall be posted in both a local newspaper, if any, and a newspaper of general circulation in the county. Notice shall also be placed on the Web site of the city-owned or controlled electric generating entity.*
- (4) *A person that, on or before the effective date of this Act, has started acquiring interests in real estate for a project as described in subsection (1) of this section shall hold a meeting that complies with this section within thirty (30) days of the effective date of this Act.*

➔Section 9. Whereas efforts are currently underway to determine suitability and buy easements for the construction of merchant electric generating facilities in the Commonwealth, an emergency is declared to exist, and this Act takes effect on its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor April 10, 2014.