

1 AN ACT relating to merchant electric generating facilities.

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

3 ➔Section 1. KRS 278.212 is amended to read as follows:

4 (1) No utility shall begin the construction or installation of any property, equipment, or
5 facility to establish an electrical interconnection with a merchant electric generating
6 facility ***that either operates at an aggregate capacity*** in excess of ten megawatts
7 (10MW) ***or occupies in aggregate ten (10) acres or more of land*** until the plans
8 and specifications for the electrical interconnection have been filed with the
9 commission.

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

15 ➔Section 2. KRS 278.216 is amended to read as follows:

16 (1) Except for a utility as defined under KRS 278.010(9) that has been granted a
17 certificate of public convenience and necessity prior to April 15, 2002, no utility
18 shall begin the construction of a facility for the generation of electricity ***that either***
19 ***is*** capable of generating in aggregate more than ten megawatts (10MW) ***or occupies***
20 ***in aggregate ten (10) acres or more of land*** without having first obtained a site
21 compatibility certificate from the commission.

22 (2) An application for a site compatibility certificate shall include the submission of a
23 site assessment report as prescribed in KRS 278.708(3)***(a), (b), (c), (d), and (e)*** and
24 (4), except that a utility which proposes to construct a facility on a site that already
25 contains facilities capable of generating ten megawatts (10MW) or more of
26 electricity shall not be required to comply with setback requirements established
27 pursuant to KRS 278.704(3). A utility may submit and the commission may accept

1 documentation of compliance with the National Environmental Policy Act (NEPA)
2 rather than a site assessment report.

3 (3) The commission may deny an application filed pursuant to, and in compliance with,
4 this section. The commission may require reasonable mitigation of impacts
5 disclosed in the site assessment report including planting trees, changing outside
6 lighting, erecting noise barriers, and suppressing fugitive dust, but the commission
7 shall, in no event, order relocation of the facility.

8 (4) The commission may also grant a deviation from any applicable setback
9 requirements on a finding that the proposed facility is designed and located to meet
10 the goals of this section and KRS 224.10-280, 278.010, 278.212, 278.214, 278.218,
11 and 278.700 to 278.716 at a distance closer than those provided by the applicable
12 setback requirements.

13 (5) Nothing contained in this section shall be construed to limit a utility's exemption
14 provided under KRS 100.324.

15 (6) Unless specifically stated otherwise, for the purposes of this section, "utility" has
16 the same meaning as in KRS 278.010(3)(a) or (9).

17 ➔Section 3. KRS 278.700 is amended to read as follows:

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

19 (1) "Board" means the Kentucky State Board on Electric Generation and Transmission
20 Siting created in KRS 278.702;

21 (2) "Merchant electric generating facility" means, except for a qualifying facility as
22 defined in subsection (7) of this section, an electricity generating facility or facilities
23 that, together with all associated structures and facilities:

24 (a) **Either occupy in aggregate ten (10) acres or more of land or** are capable of
25 operating at an aggregate capacity of ten megawatts (10MW) or more; and

26 (b) Sell the electricity they produce in the wholesale market, at rates and charges
27 not regulated by the Public Service Commission;

- 1 (3) "Person" means any individual, corporation, public corporation, political
2 subdivision, governmental agency, municipality, partnership, cooperative
3 association, trust, estate, two (2) or more persons having a joint or common interest,
4 or any other entity, and no portion of KRS 224.10-280, 278.212, 278.214, 278.216,
5 278.218, and 278.700 to 278.716 shall apply to a utility owned by a municipality
6 unless the utility is a merchant plant as defined in this section;
- 7 (4) "Commence to construct" means physical on-site placement, assembly, or
8 installation of materials or equipment which will make up part of the ultimate
9 structure of the facility. In order to qualify, these activities must take place at the
10 site of the proposed facility or must be site-specific. Activities such as site clearing
11 and excavation work will ~~not~~ satisfy the commence to construct requirements;
- 12 (5) "Nonregulated electric transmission line" means an electric transmission line and
13 related appurtenances for which no certificate of public convenience and necessity
14 is required; which is not operated as an activity regulated by the Public Service
15 Commission; and which is capable of operating at or above sixty-nine thousand
16 (69,000) volts;
- 17 (6) "Residential neighborhood" means a populated area of five (5) or more acres
18 containing at least one (1) residential structure per acre;
- 19 (7) "Qualifying facility" means a cogeneration facility as defined in 16 U.S.C. sec.
20 796(18)(b) which does not exceed a capacity of one hundred fifty megawatts
21 (150MW) that is located on site at a manufacturer's plant and that uses steam from
22 the cogeneration facility in its manufacturing process, or an industrial energy facility
23 as defined in KRS 224.1-010 that does not generate more than one hundred fifty
24 megawatts (150MW) for sale and has received all local planning and zoning
25 approvals; and
- 26 (8) "Carbon dioxide transmission pipeline" means the in-state portion of a pipeline,
27 including appurtenant facilities, property rights, and easements, that is used

1 exclusively for the purpose of transporting carbon dioxide to a point of sale, storage,
2 or other carbon management applications.

3 ➔Section 4. KRS 278.704 is amended to read as follows:

4 (1) No person shall commence to construct a merchant electric generating facility until
5 that person has applied for and obtained a construction certificate for the facility
6 from the board. The construction certificate shall be valid for a period of **three**
7 **(3)**~~two (2)~~ years after the issuance date of the last permit required to be obtained
8 from the Energy and Environment Cabinet, after which the certificate shall be void.
9 The certificate shall be conditioned upon the applicant obtaining necessary air,
10 water, and waste permits. If an applicant has not obtained all necessary permits and
11 has not commenced to construct prior to the expiration date of the certificate, the
12 applicant shall be required to obtain a **new** valid certificate from the board.

13 (2) **(a)** Except as provided in subsections (3), (4), and (5) of this section, no
14 construction certificate shall be issued to construct a merchant electric
15 generating facility unless:

16 **1.** The exhaust stack of the proposed facility and any wind turbine is at
17 least one thousand (1,000) feet from the property boundary of any
18 adjoining property owner;

19 **2. The nearest electricity-generating component of a proposed ground-**
20 **mounted solar facility is at least fifty (50) feet from the property**
21 **boundary of any nonparticipating adjoining property that is in any**
22 **nonindustrial use and at least one hundred (100) feet from a residence**
23 **located on a property other than the one on which the facility is**
24 **proposed to be installed, unless waived in writing by the owner of the**
25 **property;** and

26 **3. Except with regard to proposed solar merchant electric generating**
27 **facilities,** all proposed structures or facilities used for generation of

1 electricity are two thousand (2,000) feet from any residential
2 neighborhood, school, hospital, or nursing home facility.

3 (b) For purposes of applications for site compatibility certificates pursuant to
4 KRS 278.216, only the exhaust stack of the proposed facility to be actually
5 used for coal or gas-fired generation or, beginning with applications for site
6 compatibility certificates filed on or after January 1, 2015, the proposed
7 structure or facility to be actually used for solar or wind generation shall be
8 required to be at least one thousand (1,000) feet from the property boundary of
9 any adjoining property owner and two thousand (2,000) feet from any
10 residential neighborhood, school, hospital, or nursing home facility.

11 (3) If the merchant electric generating facility is proposed to be located in a county or a
12 municipality with planning and zoning, then setback requirements from a property
13 boundary, residential neighborhood, school, hospital, or nursing home facility may
14 be established by the planning and zoning commission. Any setback established by
15 a planning and zoning commission for a facility in an area over which it has
16 jurisdiction shall:

17 (a) Have primacy over the setback requirement in subsections (2) and (5) of this
18 section; and

19 (b) Not be subject to modification or waiver by the board through a request for
20 deviation by the applicant, as provided in subsection (4) of this section.

21 (4) The board may grant a deviation from the requirements of subsection (2) of this
22 section on a finding that the proposed facility is designed to and, as located, would
23 meet the goals of KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218,
24 and 278.700 to 278.716 at a distance closer than those provided in subsection (2) of
25 this section.

26 (5) If the merchant electric generating facility is proposed to be located on a site of a
27 former coal processing plant in the Commonwealth where the electric generating

1 facility will utilize on-site waste coal as a fuel source, then the one thousand (1,000)
 2 foot property boundary requirement in subsection (2) of this section shall not be
 3 applicable; however, the applicant shall be required to meet any other setback
 4 requirements contained in subsection (2) of this section.

5 (6) **For an application for a construction certificate pursuant to Section 5 of this Act**
 6 **filed one hundred eighty (180) days or more after the effective date of this Act**~~if~~
 7 ~~requested~~, a merchant electric generating entity considering construction of a
 8 facility for the generation of electricity or a person acting on behalf of such an entity
 9 shall, **no later than one hundred eighty (180) days prior to filing the application,**
 10 **notify the county judge/executive or mayor of all governmental entities of**
 11 **jurisdiction where the interest is being acquired by mail or electronic mail. After**
 12 **the notice has been received, the county judge/executive, the mayor, the board, or**
 13 **any city or county governmental entity may request that the merchant electric**
 14 **generating entity** hold a public meeting in any county where ~~any~~~~acquisition of~~
 15 real estate or any interest in real estate is being **included in the construction**
 16 **certificate application**~~considered~~ for the facility.~~A request for such a meeting~~
 17 ~~may be made by the commission, or by any city or county governmental entity,~~
 18 ~~including a board of commissioners, planning and zoning, fiscal court, mayor, or~~
 19 ~~county judge/executive.~~ The meeting shall be held not more than thirty (30) days
 20 from the date of the request.

21 (7) The purpose of the meeting under subsection (6) of this section is to fully inform
 22 landowners and other interested parties of the **proposed nature and scope**~~full~~
 23 ~~extent~~ of the project being considered, including the project time line. One (1) or
 24 more representatives of the entity with full knowledge of all aspects of the project
 25 shall be present and shall answer questions from the public. **Upon filing its**
 26 **application for a construction certificate pursuant to Section 5 of this Act, the**
 27 **merchant electric generating entity shall post any material changes to the plans**

1 for the project that occurred after the public meeting held under subsection (6) of
 2 this section, including but not limited to changes to the properties involved or the
 3 project timeline, on its Web site and shall inform the county judge/executive or
 4 mayor of all governmental entities of jurisdiction where the project is planned of
 5 the changes by mail or electronic mail no later than the time at which the
 6 information is posted on its Web site.

7 (8) Notice of the time, subject, and location of the meeting under subsection (6) of this
 8 section shall be posted in both a local newspaper, if any, and a newspaper of general
 9 circulation in the county. Notice shall also be placed on the Web sites of the
 10 unregulated entity, and any local governmental unit. Owners of real estate known to
 11 be included in the project and any person whose property adjoins at any point any
 12 property to be included in the project shall be notified personally by mail. All
 13 notices must be mailed or posted at least two (2) weeks prior to the meeting.

14 (9) The merchant electric generating entity or a person acting on behalf of a merchant
 15 electric generating entity shall, on or before the date of the public meeting held
 16 under subsection (6) of this section, provide notice of all research, testing, or any
 17 other activities being planned or considered to:

- 18 (a) The Energy and Environment Cabinet;
- 19 (b) The Public Service Commission;
- 20 (c) The Transportation Cabinet;
- 21 (d) The Attorney General; and
- 22 (e) The Office of the Governor.

23 ~~(10) [A person that, on or before April 10, 2014, has started acquiring interests in real~~
 24 ~~estate for a project as described in subsection (6) of this section shall hold a meeting~~
 25 ~~that complies with this section within thirty (30) days of April 10, 2014.~~

26 ~~(11)~~ Subsections (6) to (9)~~[(10)]~~ of this section shall not apply to any facility or project
 27 that has already received a certificate of construction from the board.

1 ➔Section 5. KRS 278.706 is amended to read as follows:

- 2 (1) Any person seeking to obtain a construction certificate from the board to construct a
3 merchant electric generating facility shall file an application at the office of the
4 Public Service Commission.
- 5 (2) A completed application shall include the following:
- 6 (a) The name, address, and telephone number of the person proposing to
7 construct and own the merchant electric generating facility;
- 8 (b) A full description of the proposed site, including a map showing the distance
9 of the proposed site from residential neighborhoods, the nearest residential
10 structures, schools, and public and private parks that are located within a two
11 (2) mile radius of the proposed facility;
- 12 (c) Evidence of public notice that shall include the location of the proposed site
13 and a general description of the project, state that the proposed construction is
14 subject to approval by the board, and provide the telephone number and
15 address of the Public Service Commission. Public notice shall be given within
16 thirty (30) days immediately preceding the application filing to:
- 17 1. Landowners whose property borders the proposed site; and
- 18 2. The general public in a newspaper of general circulation in the county or
19 municipality in which the facility is proposed to be located;
- 20 (d) A statement certifying that the proposed plant will be in compliance with all
21 local ordinances and regulations concerning noise control and with any local
22 planning and zoning ordinances. The statement shall also disclose setback
23 requirements established by the planning and zoning commission as provided
24 under KRS 278.704(3);
- 25 (e) If the facility is not proposed to be located on a site of a former coal
26 processing plant and the facility will use on-site waste coal as a fuel source or
27 in an area where a planning and zoning commission has established a setback

1 requirement pursuant to KRS 278.704(3), a statement that the exhaust stack of
2 the proposed facility and any wind turbine is at least one thousand (1,000) feet
3 from the property boundary of any adjoining property owner, any proposed
4 ground-mounted solar facility complies with the setback requirements of
5 subsection (2)(a)2. of Section 4 of this Act unless exempted or waived, and
6 all proposed structures or facilities used for generation of electricity, except
7 with regard to proposed solar merchant electric generating facilities, are two
8 thousand (2,000) feet from any residential neighborhood, school, hospital, or
9 nursing home facility, unless facilities capable of generating ten megawatts
10 (10MW) or more currently exist on the site. If the facility is proposed to be
11 located on a site of a former coal processing plant and the facility will use on-
12 site waste coal as a fuel source, a statement that the proposed site is
13 compatible with the setback requirements provided under KRS 278.704(5). If
14 the facility is proposed to be located in a jurisdiction that has established
15 setback requirements pursuant to KRS 278.704(3), a statement that the
16 proposed site is in compliance with those established setback requirements;

17 (f) A complete report of the applicant's public involvement program activities
18 undertaken prior to the filing of the application, including:

- 19 1. The scheduling and conducting of a public meeting in the county or
20 counties in which the proposed facility will be constructed at least ninety
21 (90) days prior to the filing of an application, for the purpose of
22 informing the public of the project being considered and receiving
23 comment on it, unless a public meeting has already been held
24 pursuant to subsection (6) of Section 4 of this Act;
- 25 2. Evidence that notice of the time, subject, and location of the meeting
26 was published in the newspaper of general circulation in the county, and
27 that individual notice was mailed to all owners of property adjoining the

- 1 proposed project at least two (2) weeks prior to the meeting; and
- 2 3. Any use of media coverage, direct mailing, fliers, newsletters, additional
- 3 public meetings, establishment of a community advisory group, and any
- 4 other efforts to obtain local involvement in the siting process;
- 5 (g) A summary of the efforts made by the applicant to locate the proposed facility
- 6 on a site where existing electric generating facilities are located;
- 7 (h) Proof of service of a copy of the application upon the chief executive officer
- 8 of each county and municipal corporation in which the proposed facility is to
- 9 be located, and upon the chief officer of each public agency charged with the
- 10 duty of planning land use in the jurisdiction in which the facility is proposed
- 11 to be located;
- 12 (i) An analysis of the proposed facility's projected effect on the electricity
- 13 transmission system in Kentucky;
- 14 (j) An analysis of the proposed facility's economic impact on the affected region
- 15 and the state;
- 16 (k) A detailed listing of all violations by it, or any person with an ownership
- 17 interest, of federal or state environmental laws, rules, or administrative
- 18 regulations, whether judicial or administrative, where violations have resulted
- 19 in criminal convictions or civil or administrative fines exceeding five
- 20 thousand dollars (\$5,000). The status of any pending action, whether judicial
- 21 or administrative, shall also be submitted; and
- 22 (l) A site assessment report as specified in KRS 278.708. The applicant may
- 23 submit and the board may accept documentation of compliance with the
- 24 National Environmental Policy Act (NEPA) rather than a site assessment
- 25 report.
- 26 (3) Application fees for a construction certificate shall be set by the board and
- 27 deposited into a trust and agency account to the credit of the commission.

1 (4) Replacement of a merchant electric generating facility with a like facility, or the
2 repair, modification, retrofitting, enhancement, or reconfiguration of a merchant
3 electric generating facility shall not, for the purposes of this section and KRS
4 224.10-280, 278.704, 278.708, 278.710, and 278.712, constitute construction of a
5 merchant electric generating facility.

6 (5) The board shall promulgate administrative regulations prescribing fees to pay
7 expenses associated with its review of applications filed with it pursuant to KRS
8 278.700 to 278.716. All application fees collected by the board shall be deposited in
9 a trust and agency account to the credit of the Public Service Commission. If a
10 majority of the members of the board find that an applicant's initial fees are
11 insufficient to pay the board's expenses associated with the application, including
12 the board's expenses associated with legal review thereof, the board shall assess a
13 supplemental application fee to cover the additional expenses. An applicant's failure
14 to pay a fee assessed pursuant to this subsection shall be grounds for denial of the
15 application.

16 ➔Section 6. KRS 278.708 is amended to read as follows:

17 (1) Any person proposing to construct a merchant electric generating facility shall file a
18 site assessment report with the board as required under KRS 278.706(2)(1).

19 (2) A site assessment report shall be prepared by the applicant or its designee.

20 (3) A completed site assessment report shall include:

21 (a) A description of the proposed facility that shall include a proposed site
22 development plan that describes:

23 1. Surrounding land uses for residential, commercial, agricultural, and
24 recreational purposes;

25 2. The legal boundaries of the proposed site;

26 3. Proposed access control to the site;

27 4. The location of facility buildings, transmission lines, and other

- 1 structures;
- 2 5. Location and use of access ways, internal roads, and railways;
- 3 6. Existing or proposed utilities to service the facility;
- 4 7. Compliance with applicable setback requirements as provided under
- 5 KRS 278.704(2), (3), (4), or (5); and
- 6 8. Evaluation of the noise levels expected to be produced by the facility;
- 7 (b) An evaluation of the compatibility of the facility with scenic surroundings;
- 8 (c) The potential changes in property values and land use resulting from the
- 9 siting, construction, and operation of the proposed facility for property owners
- 10 adjacent to the facility;
- 11 (d) Evaluation of anticipated peak and average noise levels associated with the
- 12 facility's construction and operation at the property boundary;~~and~~
- 13 (e) The impact of the facility's operation on road and rail traffic to and within the
- 14 facility, including anticipated levels of fugitive dust created by the traffic and
- 15 any anticipated degradation of roads and lands in the vicinity of the facility;
- 16 and
- 17 (f) A decommissioning plan specifically formulated for the proposed facility
- 18 based on the proposed site development plan. The decommissioning plan
- 19 shall explain in detail how the applicant proposes to effectuate the removal
- 20 of all above-ground and underground facility components, excluding
- 21 interconnection facilities that will remain in use, according to the
- 22 timeframes established in subsection (3)(c) of Section 7 of this Act. A
- 23 decommissioning plan for a proposed solar merchant electric generating
- 24 facility shall at a minimum provide for:
- 25 1. The removal of underground components and the foundations for any
- 26 above-ground components to a depth of at least three (3) feet below
- 27 the surface grade of the land in or on which the component was

- 1 installed; and
- 2 2. If requested by the landowner:
- 3 a. The filling of any holes or cavities created by the removal of a
- 4 component or its foundation with soil of the same or similar type
- 5 as the predominant soil found on the property;
- 6 b. The removal of any roads made on the property by the applicant;
- 7 c. The removal of all rocks over twelve (12) inches in diameter
- 8 excavated during the decommissioning process; and
- 9 d. The returning of the property to a substantially similar state,
- 10 including revegetation and restoration, as it was prior to the
- 11 commencement of construction.

12 (4) The site assessment report shall also suggest any mitigating measures to be
13 implemented by the applicant to minimize or avoid adverse effects identified in the
14 site assessment report.

15 (5) The board shall have the authority to hire a consultant to review the site assessment
16 report and provide recommendations concerning the adequacy of the report and
17 proposed mitigation measures. The board may direct the consultant to prepare a
18 separate site assessment report. Any expenses or fees incurred by the board's hiring
19 of a consultant shall be borne by the applicant.

20 (6) The applicant shall be given the opportunity to present evidence to the board
21 regarding any mitigation measures. As a condition of approval for an application to
22 obtain a construction certificate, the board may require the implementation of any
23 mitigation measures that the board deems appropriate. After the facility for which
24 an application for a construction certificate has been approved is constructed and
25 begins generating electricity for sale, the secretary of the Energy and
26 Environment Cabinet shall ensure ongoing compliance with the mitigation
27 measures that were conditions of the application approval.

1 ➔Section 7. KRS 278.710 is amended to read as follows:

- 2 (1) Within one hundred twenty (120) days of receipt of an administratively complete
3 application, or within one hundred eighty (180) days of receipt of an
4 administratively complete application if a hearing is requested, the board shall, by
5 majority vote, grant or deny a construction certificate, either in whole or in part,
6 based upon the following criteria:
- 7 (a) Impact of the facility on scenic surroundings, property values, the pattern and
8 type of development of adjacent property, and surrounding roads;
 - 9 (b) Anticipated noise levels expected as a result of construction and operation of
10 the proposed facility;
 - 11 (c) The economic impact of the facility upon the affected region and the state;
 - 12 (d) Whether the facility is proposed for a site upon which existing generating
13 facilities, capable of generating ten megawatts (10MW) or more of electricity,
14 are currently located;
 - 15 (e) Whether the proposed facility will meet all local planning and zoning
16 requirements that existed on the date the application was filed;
 - 17 (f) Whether the additional load imposed upon the electricity transmission system
18 by use of the merchant electric generating facility will adversely affect the
19 reliability of service for retail customers of electric utilities regulated by the
20 Public Service Commission;
 - 21 (g) Except where the facility is subject to a statewide setback established by a
22 planning and zoning commission as provided in KRS 278.704(3) and except
23 for a facility proposed to be located on a site of a former coal processing plant
24 and the facility will use on-site waste coal as a fuel source, whether the
25 exhaust stack of the proposed merchant electric generating facility and any
26 wind turbine is at least one thousand (1,000) feet from the property boundary
27 of any adjoining property owner and all proposed structures or facilities used

1 for generation of electricity, except for solar merchant electric generating
2 facilities, are two thousand (2,000) feet from any residential neighborhood,
3 school, hospital, or nursing home facility, unless a different setback has been
4 requested and approved under KRS 278.704(4). If a planning and zoning
5 commission has established setback requirements that differ from those under
6 KRS 278.704(2), the applicant shall provide evidence of compliance. If the
7 facility is proposed to be located on site of a former coal processing plant and
8 the facility will use on-site waste coal as a fuel source, the applicant shall
9 provide evidence of compliance with the setback requirements provided in
10 KRS 278.704(5);

11 (h) The efficacy of any proposed measures to mitigate adverse impacts that are
12 identified pursuant to paragraph (a), (b), (e), or (f) of this subsection from the
13 construction or operation of the proposed facility; ~~and~~

14 (i) Whether the applicant has a good environmental compliance history; and

15 (j) Whether the proposed decommissioning plan is complete and meets the
16 requirements of subsection (3)(f) of Section 6 of this Act and any other local
17 requirements that may apply.

18 (2) When considering an application for a construction certificate for a merchant
19 electric generating facility, the board may consider the policy of the General
20 Assembly to encourage the use of coal as a principal fuel for electricity generation
21 as set forth in KRS 152.210, provided that any facility, regardless of fuel choice,
22 shall comply fully with KRS 224.10-280, 278.212, 278.216, and 278.700 to
23 278.716.

24 (3) (a) Upon the approval of an application for a construction certificate for a
25 merchant electric generating facility, the board shall require the approved
26 applicant, before commencing to construct the facility, to furnish a bond or
27 other similar security to ensure the decommissioning of the facility

1 according to the timeframes established in paragraph (c) of this subsection.
2 The amount of the bond or other similar security shall be set by the board
3 and shall be at least equal to the estimated cost of fully completing the
4 decommissioning plan approved by the board, less the salvage value for the
5 decommissioned facilities and components. In proposing the amount of the
6 bond, the approved construction certificate applicant shall provide evidence
7 of the decommissioning costs and the salvage value as determined by an
8 independent, third-party person with experience and expertise in
9 decommissioning the type of electric generating facility to be constructed.
10 To meet the requirements of this paragraph, a bond or other similar
11 security shall be provided by an insurance company or surety that shall at
12 all times maintain at least an "A" rating as measured by the A.M. Best
13 rating agency and shall be noncancelable by the provider or the customer
14 until completion of the decommissioning plan pursuant to the requirements
15 of Section 6 of this Act or until a replacement bond is secured in
16 compliance with this paragraph.

17 (b) If the facility for which a bond or similar security has been furnished under
18 this subsection is located on leased property, the bond or similar security
19 shall name the landowner or landowners where the bonded facility is
20 located as the primary beneficiaries of the bond. If the facility for which a
21 bond or similar security is furnished under this subsection is located on
22 property owned by the party responsible for completing the
23 decommissioning plan, the bond or similar security shall name the
24 governing bodies of the cities or counties where the facility is located as the
25 primary beneficiaries, but only with the consent of those governing bodies.
26 If in any event a bond or similar security has been forfeited for failure to
27 begin or complete the decommissioning plan as required under paragraph

1 (c) of this subsection and there is no person or entity able or willing to claim
2 the bond or similar security to effectuate the decommissioning plan, the
3 Energy and Environment Cabinet shall claim the bond funds and perform
4 the decommissioning plan. A city, a county, or the board shall not be
5 financially or legally responsible for the decommissioning of any merchant
6 electric generating facility.

7 (c) The bond or similar security required under this subsection shall be
8 forfeited if the person responsible for completing the decommissioning plan
9 approved by the board either fails to begin work on the plan within twelve
10 (12) months of the date that the facility ceases to produce electricity for sale,
11 or fails to complete the plan within eighteen (18) months of the date that the
12 facility ceases to produce electricity for sale. The secretary of the Energy
13 and Environment Cabinet may extend either of the deadlines established
14 under this paragraph for good cause shown.

15 (d) Any funds from a bond or similar security required under this subsection
16 that are forfeited for failure to begin or complete a decommissioning plan in
17 a timely manner shall only be used to complete the decommissioning of
18 facilities on the property or properties for which the bond or similar security
19 was posted.

20 (4) Notwithstanding any provision of law to the contrary, including any order issued
21 by the board prior to the effective date of this Act, after the board has approved
22 an application for a construction certificate for a merchant electric generating
23 facility under this section, the approved applicant has posted the bond or similar
24 security required under subsection (3)(a) of this section, and the facility is
25 constructed and begins generating electricity for sale, the board's authority to
26 enforce any conditions of the construction certificate, including bonding and
27 decommissioning requirements, shall end and the secretary of the Energy and

1 Environment Cabinet shall monitor and enforce the construction certificate
 2 holder's compliance with the requirements of KRS 278.700 to 278.716 and the
 3 conditions of its construction certificate application approval. In addition to all
 4 compliance monitoring and enforcement performed by the secretary of the
 5 Energy and Environment Cabinet, the secretary shall also review the
 6 decommissioning plan required by Section 6 of this Act and the bond or similar
 7 security amount required under subsection (3)(a) of this section as needed,
 8 including any time a transfer determination is made under subsection (5) of this
 9 section, but in any event at least once every five (5) years. Upon review, the
 10 secretary of the Energy and Environment Cabinet shall require the
 11 decommissioning plan to be updated and the bond amount to be changed to
 12 match any significant change in circumstances or change to the estimated cost of
 13 effectuating the decommissioning plan or to the salvage value of the facility or its
 14 components.

15 (5) (a) Except with regard to a solar merchant electric facility as provided in
 16 subsection (6) of this section, a person that has received a construction
 17 certificate for a merchant electric generating facility shall not transfer rights
 18 and obligations~~[obligation]~~ under the certificate without having first applied
 19 for and received a~~[board]~~ determination from the secretary of the Energy
 20 and Environment Cabinet that:

21 1.[(a)] The acquirer or transferee has a good environmental compliance
 22 history, and meets the same requirements as in subsection (6)(b)2.a. of
 23 this subsection; and

24 2.[(b)] The acquirer or transferee has the financial, technical, and
 25 managerial capacity to, and has agreed to assume responsibility to,
 26 meet the obligations imposed by the terms of the construction
 27 certificate, including performance of the decommissioning plan

1 required under Section 6 of this Act and has posted the bond or other
2 similar security required under subsection (3)(a) of this section
3 approval or has the ability to contract to meet these obligations].

4 (b) The secretary of the Energy and Environment Cabinet shall make a
5 determination under this subsection within ninety (90) days of its
6 application, and shall issue findings at that time explaining the reasons for
7 denying or approving any transfer application.

8 (6) With regard only to solar merchant electric generating facilities:

9 (a) As used in this subsection, the term "control" means the possession of the
10 power to direct or cause the direction of the management and policies of a
11 person, whether through the ownership of voting securities, by effecting a
12 change in the composition of the board of directors, by contract or
13 otherwise. Control shall be presumed to exist if any individual or entity
14 owns fifty-one percent (51%) or more of the voting securities of the person
15 having received and holding a construction certificate from the board. This
16 presumption may be rebutted by a showing that ownership does not in fact
17 confer control. For the avoidance of doubt, it shall not be considered a
18 change of control or transfer if the person is subject to an internal
19 restructuring or if a financing arrangement involves ownership of shares in
20 such person.

21 (b) A person that has received a construction certificate for a solar merchant
22 electric generating facility shall not transfer control, including rights and
23 obligations under the certificate, without having:

24 1. Provided notification within fourteen (14) days, by mail or electronic
25 mail, to the landowner, the county judge/executive, or mayor of
26 jurisdiction where the facility is located. Notification shall include the
27 name, street address, telephone number, and e-mail address of the

1 person acquiring control of the solar merchant electric generating
2 facility; and

3 2. Submitted a notification and attestation in the form and manner
4 required by the Energy and Environment Cabinet that the acquirer or
5 transferee assuming control has:

6 a. Not had a final determination that the acquirer or transferee
7 violated any federal or state environmental law, including but
8 not limited to violations of KRS Chapter 224, 349, 350, 351, 352,
9 or 353, or KRS 278.700 to 278.718, or any other laws regulating
10 the bonding or decommissioning of solar merchant electric
11 facilities that the acquirer or transferee has not fully resolved
12 with the applicable regulatory authority and for which the
13 acquirer or transferee has not been assessed with a penalty in an
14 amount greater than ten thousand dollars (\$10,000) in the last
15 three (3) years; and,

16 b. Has the financial, technical, and managerial capacity to, and
17 has agreed to assume responsibility to, meet the obligations
18 imposed by the terms of the construction certificate, including
19 performance of the decommissioning plan required under
20 Section 6 of this Act and posting or maintenance of the bond or
21 other similar security required under subsection (3)(a) of this
22 section.

23 (c) If the acquirer or transferee cannot attest to the stipulations in
24 subparagraphs 2.a. and b. of paragraph (b) of this subsection, it may
25 request an exception from the secretary of the Energy and Environment
26 Cabinet that permits the transfer of control, including rights and
27 obligations under the construction certificate. A determination by the

1 secretary, approving or denying the exception, shall be made within
2 fourteen (14) days of the request. Any denial of an exception request shall
3 meet a reasonableness standard and may be appealed by the acquirer or
4 transferee.

5 ➔SECTION 8. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER
6 224 IS CREATED TO READ AS FOLLOWS:

7 (1) Within ninety (90) days of the effective date of this Act, the Energy and
8 Environment Cabinet shall promulgate administrative regulations pursuant to
9 KRS Chapter 13A to establish the monitoring and enforcement requirements
10 necessary to ensure that each merchant electric generating facility complies with
11 the requirements of KRS 278.700 to 278.716 and the conditions of its
12 construction certificate application approval, including but not limited to all
13 decommissioning and bonding requirements. The administrative regulations
14 shall include the establishment of fees that are reasonably necessary to cover the
15 cabinet's monitoring and enforcement costs to be collected from merchant
16 electric generating facilities.

17 (2) (a) As part of its enforcement authority, the cabinet may, upon good cause
18 shown, impose civil penalties not to exceed two thousand five hundred
19 dollars (\$2,500) per day on a merchant electric generating facility to ensure
20 its compliance with the administrative regulations promulgated under this
21 section, the requirements of KRS 278.700 to 278.716, and the conditions of
22 its construction certificate approval, including but not limited to
23 decommissioning and bonding requirements.

24 (b) In determining the civil penalty to be imposed pursuant to paragraph (a) of
25 this subsection, the cabinet shall consider all relevant circumstances
26 including, but not limited to, the extent of harm or potential harm caused by
27 the violation, the nature and duration of the violation, the number of past

1 violations, and any corrective action taken by the merchant electric
 2 generating facility owner. If a merchant electric generating facility fails to
 3 pay any civil penalty for noncompliance under paragraph (a) of this
 4 subsection for a period of three hundred sixty-five (365) days after a final
 5 determination of the assessment of the civil penalty, or fails to post a bond
 6 or replacement bond in compliance with Section 7 of this Act within ninety
 7 (90) days of a final determination that the bond or replacement bond is
 8 required, the cabinet may order suspension of its operations until it is
 9 brought back into compliance and all civil penalties have been paid or the
 10 bond or replacement bond is posted. If after a final determination that the
 11 cabinet's order suspending operations of the facility is valid, and the
 12 merchant electric generating facility fails to bring the facility back into
 13 compliance by paying all outstanding civil penalties or posting the bond or
 14 replacement bond within ninety (90) days of that final determination, the
 15 cabinet may order the decommissioning of the facility to commence.

16 ➔Section 9. KRS 224.10-100 is amended to read as follows:

17 In addition to any other powers and duties vested in it by law, the cabinet shall have the
 18 authority, power, and duty to:

- 19 (1) Exercise general supervision of the administration and enforcement of this chapter,
 20 and all rules, regulations, and orders promulgated thereunder;
- 21 (2) Prepare and develop a comprehensive plan or plans related to the environment of
 22 the Commonwealth;
- 23 (3) Encourage industrial, commercial, residential, and community development which
 24 provides the best usage of land areas, maximizes environmental benefits, and
 25 minimizes the effects of less desirable environmental conditions;
- 26 (4) Develop and conduct a comprehensive program for the management of water, land,
 27 and air resources to assure their protection and balance utilization consistent with

- 1 the environmental policy of the Commonwealth;
- 2 (5) Provide for the prevention, abatement, and control of all water, land, and air
3 pollution, including but not limited to that related to particulates, pesticides, gases,
4 dust, vapors, noise, radiation, odor, nutrients, heated liquid, or other contaminants;
- 5 (6) Provide for the control and regulation of surface coal mining and reclamation in a
6 manner to accomplish the purposes of KRS Chapter 350;
- 7 (7) Secure necessary scientific, technical, administrative, and operational services,
8 including laboratory facilities, by contract or otherwise;
- 9 (8) Collect and disseminate information and conduct educational and training programs
10 relating to the protection of the environment;
- 11 (9) Appear and participate in proceedings before any federal regulatory agency
12 involving or affecting the purposes of the cabinet;
- 13 (10) Enter and inspect any property or premises for the purpose of investigating either
14 actual or suspected sources of pollution or contamination or for the purpose of
15 ascertaining compliance or noncompliance with this chapter, or any regulation
16 which may be promulgated thereunder;
- 17 (11) Conduct investigations and hold hearings and compel the attendance of witnesses
18 and the production of accounts, books, and records by the issuance of subpoenas;
- 19 (12) Accept, receive, and administer grants or other funds or gifts from public and
20 private agencies including the federal government for the purpose of carrying out
21 any of the functions of the cabinet. The funds received by the cabinet shall be
22 deposited in the State Treasury to the account of the cabinet;
- 23 (13) Request and receive the assistance of any state or municipal educational institution,
24 experiment station, laboratory, or other agency when it is deemed necessary or
25 beneficial by the cabinet in the performance of its duties;
- 26 (14) Advise, consult, and cooperate with other agencies of the Commonwealth, other
27 states, the federal government, and interstate and interlocal agencies, and affected

- 1 persons, groups, and industries;
- 2 (15) Formulate guides for measuring presently unidentified environmental values and
3 relationships so they can be given appropriate consideration along with social,
4 economic, and technical considerations in decision making;
- 5 (16) Monitor the environment to afford more effective and efficient control practices, to
6 identify changes and conditions in ecological systems, and to warn of emergency
7 conditions;
- 8 (17) Adopt, modify, or repeal with the recommendation of the commission any standard,
9 regulation, or plan;
- 10 (18) Issue, after hearing, orders abating activities in violation of this chapter, or the
11 provisions of this chapter, or the regulations promulgated pursuant thereto and
12 requiring the adoption of the remedial measures the cabinet deems necessary;
- 13 (19) Issue, continue in effect, revoke, modify, suspend, or deny under such conditions as
14 the cabinet may prescribe and require that applications be accompanied by plans,
15 specifications, and other information the cabinet deems necessary for the following
16 permits:
- 17 (a) Permits to discharge into any waters of the Commonwealth, and for the
18 installation, alteration, expansion, or operation of any sewage system;
19 however, the cabinet may refuse to issue the permits to any person, or any
20 partnership, corporation, etc., of which the person owns more than ten percent
21 (10%) interest, who has improperly constructed, operated, or maintained a
22 sewage system willfully, through negligence, or because of lack of proper
23 knowledge or qualifications until the time that person demonstrates proper
24 qualifications to the cabinet and provides the cabinet with a performance
25 bond;
- 26 (b) Permits for the installation, alteration, or use of any machine, equipment,
27 device, or other article that may cause or contribute to air pollution or is

- 1 intended primarily to prevent or control the emission of air pollution; or
- 2 (c) Permits for the establishment or construction and the operation or
- 3 maintenance of waste disposal sites and facilities;
- 4 (20) May establish, by regulation, a fee or schedule of fees for the cost of processing
- 5 applications for permits authorized by this chapter, and for the cost of processing
- 6 applications for exemptions or partial exemptions which may include but not be
- 7 limited to the administrative costs of a hearing held as a result of the exemption
- 8 application, except that applicants for existing or proposed publicly owned facilities
- 9 shall be exempt from any charge, other than emissions fees assessed pursuant to
- 10 KRS 224.20-050, and that certain nonprofit organizations shall be charged lower
- 11 fees to process water discharge permits under KRS 224.16-050(5);
- 12 (21) May require for persons discharging into the waters or onto the land of the
- 13 Commonwealth, by regulation, order, or permit, technological levels of treatment
- 14 and effluent limitations;
- 15 (22) Require, by regulation, that any person engaged in any operation regulated pursuant
- 16 to this chapter install, maintain, and use at such locations and intervals as the
- 17 cabinet may prescribe any equipment, device, or test and the methodologies and
- 18 procedures for the use of the equipment, device, or test to monitor the nature and
- 19 amount of any substance emitted or discharged into the ambient air or waters or
- 20 land of the Commonwealth and to provide any information concerning the
- 21 monitoring to the cabinet in accordance with the provisions of subsection (23) of
- 22 this section;
- 23 (23) Require by regulation that any person engaged in any operation regulated pursuant
- 24 to this chapter file with the cabinet reports containing information as to location,
- 25 size, height, rate of emission or discharge, and composition of any substance
- 26 discharged or emitted into the ambient air or into the waters or onto the land of the
- 27 Commonwealth, and such other information the cabinet may require;

1 (24) Promulgate regulations, guidelines, and standards for waste planning and
2 management activities, approve waste management facilities, develop and publish a
3 comprehensive statewide plan for nonhazardous waste management which shall
4 contain but not be limited to the provisions set forth in KRS 224.43-345, and
5 develop and publish a comprehensive statewide plan for hazardous waste
6 management which shall contain but not be limited to the following:

- 7 (a) A description of current hazardous waste management practices and costs,
8 including treatment and disposal, within the Commonwealth;
- 9 (b) An inventory and description of all existing facilities where hazardous waste
10 is being generated, treated, recycled, stored, or disposed of, including an
11 inventory of the deficiencies of present facilities in meeting current hazardous
12 waste management needs and a statement of the ability of present hazardous
13 waste management facilities to comply with state and federal laws relating to
14 hazardous waste;
- 15 (c) A description of the sources of hazardous waste affecting the Commonwealth
16 including the types and quantities of hazardous waste currently being
17 generated and a projection of such activities as can be expected to continue for
18 not less than twenty (20) years into the future; and
- 19 (d) An identification and continuing evaluation of those locations within the
20 Commonwealth which are naturally or may be engineered to be suitable for
21 the establishment of hazardous waste management facilities, and an
22 identification of those general characteristics, values, and attributes which
23 would render a particular location unsuitable, consistent with the policy of
24 minimizing land disposal and encouraging the treatment and recycling of the
25 wastes.

26 The statewide waste management plans shall be developed consistent with state and
27 federal laws relating to waste;

- 1 (25) Perform other acts necessary to carry out the duties and responsibilities described in
2 this section;
- 3 (26) Preserve existing clean air resources while ensuring economic growth by issuing
4 regulations, which shall be no more stringent than federal requirements, setting
5 maximum allowable increases from stationary sources over baseline concentrations
6 of air contaminants to prevent significant deterioration in areas meeting the state
7 and national ambient air quality standards;
- 8 (27) Promulgate regulations concerning the bonding provisions of subsection (19)(a) of
9 this section, setting forth bonding requirements, including but not limited to
10 requirements for the amount, duration, release, and forfeiture of the bonds. All
11 funds from the forfeiture of bonds required pursuant to this section shall be placed
12 in the State Treasury and credited to a special trust and agency account which shall
13 not lapse. The account shall be known as the "sewage treatment system
14 rehabilitation fund" and all moneys placed in the fund shall be used for the
15 elimination of nuisances and hazards created by sewage systems which were
16 improperly built, operated, or maintained, and insofar as practicable be used to
17 correct the problems at the same site for which the bond or other sureties were
18 originally provided;
- 19 (28) Promulgate administrative regulations not inconsistent with the provisions of law
20 administered by the cabinet;~~{and}~~
- 21 (29) Through the secretary or designee of the secretary, enter into, execute, and enforce
22 reciprocal agreements with responsible officers of other states relating to
23 compliance with the requirements of KRS Chapters 350, 351, and 352 and the
24 administrative regulations promulgated under those chapters; and
- 25 **(30) Monitor compliance with and enforce the requirements of KRS 278.700 to**
26 **278.716 and the conditions of merchant electric generating facility construction**
27 **certificate approvals, including decommissioning and bonding requirements.**

1 ➔Section 10. KRS 278.702 is amended to read as follows:

- 2 (1) There is hereby established the Kentucky State Board on Electric Generation and
3 Transmission Siting. The board shall be composed of seven (7) members as
4 follows:
- 5 (a) The three (3) members of the Kentucky Public Service Commission;
- 6 (b) The secretary of the Energy and Environment Cabinet or the secretary's
7 designee;
- 8 (c) The secretary of the Cabinet for Economic Development or the secretary's
9 designee;
- 10 (d) 1. If the facility subject to board approval is proposed to be located in one
11 (1) county, two (2) ad hoc public members to be appointed by the
12 Governor from a county where a facility subject to board approval is
13 proposed to be located:
- 14 a. One (1) of the ad hoc public members shall be the chairman of the
15 planning commission with jurisdiction over an area in which a
16 facility subject to board approval is proposed to be located. If the
17 proposed location is not within a jurisdiction with a planning
18 commission, then the Governor shall appoint either the county
19 judge/executive of a county that contains the proposed location of
20 the facility or the mayor of a city, if the facility is proposed to be
21 within a city; and
- 22 b. One (1) of the ad hoc public members shall be appointed by the
23 Governor and shall be a resident of the county in which the facility
24 is proposed to be located.
- 25 2. If the facility subject to board approval is proposed to be located in more
26 than one (1) county, two (2) ad hoc public members to be chosen as
27 follows:

- 1 a. One (1) ad hoc public member shall be the county judge/executive
2 of a county in which the facility is proposed to be located, to be
3 chosen by majority vote of the county judge/executives of the
4 counties in which the facility is proposed to be located; and
- 5 b. One (1) ad hoc public member shall be a resident of a county in
6 which the facility is proposed to be located, and shall be appointed
7 by the Governor.

8 If a member has not been chosen by majority vote, as provided in
9 subdivision a. of this subparagraph, by thirty (30) days after the filing of
10 the application, the Governor shall directly appoint the member.

11 3. Ad hoc public members appointed to the board shall have no direct
12 financial interest in the facility proposed to be constructed.

13 (2) The term of service for the ad hoc members of the board shall continue until the
14 merchant electric generating facility~~[board issues a final determination in the~~
15 ~~proceeding]~~ for which they were appointed has been constructed and begins
16 generating electricity for sale. The remaining members of the board shall be
17 permanent members.

18 (3) The board shall be attached to the Public Service Commission for administrative
19 purposes. The commission staff shall serve as permanent administrative staff for the
20 board. The members of the board identified in subsection (1)(a) to (d) of this section
21 shall promulgate administrative regulations in accordance with KRS Chapter 13A to
22 implement KRS 278.700 to 278.716.

23 (4) No member of the board shall receive any salary or fee for service on the board or
24 shall have any financial interest in any facility the application for which comes
25 before the board, but each member shall be reimbursed for actual travel and
26 expenses directly related to service on the board.

27 (5) The chairman of the Public Service Commission shall be the chairman of the board.

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

6 ➔Section 11. (1) Except as otherwise provided in subsection (2) of this
7 section, all requirements of this Act shall apply to all new and current applicants for
8 construction certificates under Section 5 of this Act that have not received application
9 approval prior to the effective date of this Act.

10 (2) A merchant electric generating entity filing an application for a construction
11 certificate pursuant to KRS 278.704 within 180 days of the effective date of this Act shall
12 comply with the requirements of KRS 278.704(6) in effect prior to the effective date of
13 this Act.

14 ➔Section 12. Whereas it is critical to update and provide clarity on the siting
15 process for the wave of merchant electric generation facilities wishing to locate in the
16 Commonwealth, which could result in thousands of acres of land being converted to
17 energy production, an emergency is declared to exist, and this Act takes effect upon its
18 passage and approval by the Governor or upon its otherwise becoming a law.