

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

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

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

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

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

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

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

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

1 278.704(3). A utility may submit and the commission may accept documentation of  
 2 compliance with the National Environmental Policy Act (NEPA) rather than a site  
 3 assessment report.

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

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

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

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

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

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

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

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

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

27 (b) Sell the electricity they produce in the wholesale market, at rates and charges

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

1 including appurtenant facilities, property rights, and easements, that is used  
2 exclusively for the purpose of transporting carbon dioxide to a point of sale, storage,  
3 or other carbon management applications.

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

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

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

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

20 2. *The nearest manufactured component of a proposed ground-mounted*  
21 *solar facility is at least fifty (50) feet from the property boundary of*  
22 *any nonparticipating adjoining property that is in any nonindustrial*  
23 *use and at least one hundred (100) feet from a residence located on a*  
24 *property other than the one on which the facility is proposed to be*  
25 *installed, unless waived in writing by the owner of that residence. The*  
26 *setback requirements of this subparagraph shall not apply to ground-*  
27 *mounted solar facilities that are proposed to be located on brownfield*

1 sites as defined in KRS 65.680, state or federal Superfund sites under  
2 42 U.S.C. secs. 9601 et seq., secondary sites as designated by the  
3 Cabinet for Economic Development, or reclaimed coal mine sites; and

4 **3.** All proposed structures or facilities used for generation of electricity are  
5 two thousand (2,000) feet from any residential neighborhood, school,  
6 hospital, or nursing home facility.

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

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

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

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

25 (4) The board may grant a deviation from the requirements of subsection (2) of this  
26 section on a finding that the proposed facility is designed to and, as located, would  
27 meet the goals of KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218,

1 and 278.700 to 278.716 at a distance closer than those provided in subsection (2) of  
2 this section.

3 (5) If the merchant electric generating facility is proposed to be located on a site of a  
4 former coal processing plant in the Commonwealth where the electric generating  
5 facility will utilize on-site waste coal as a fuel source, then the one thousand (1,000)  
6 foot property boundary requirement in subsection (2) of this section shall not be  
7 applicable; however, the applicant shall be required to meet any other setback  
8 requirements contained in subsection (2) of this section.

9 (6) **Before exercising an option to acquire any interest in real estate in the county**~~if~~  
10 ~~requested~~, a merchant electric generating entity considering construction of a  
11 facility for the generation of electricity or a person acting on behalf of such an entity  
12 shall **notify the county/judge executive or mayor of all governmental entities of**  
13 **jurisdiction where the interest is being acquired by mail or electronic mail. After**  
14 **the notice has been received, the county/judge executive, the mayor, the**  
15 **commission, or any city or county governmental entity may request that the**  
16 **merchant electric generating entity** hold a public meeting in any county where **the**  
17 **option to acquire**~~acquisition of~~ real estate or any interest in real estate is being  
18 **exercised**~~considered~~ for the facility.~~A request for such a meeting may be made~~  
19 ~~by the commission, or by any city or county governmental entity, including a board~~  
20 ~~of commissioners, planning and zoning, fiscal court, mayor, or county~~  
21 ~~judge/executive.~~ The meeting shall be held not more than thirty (30) days from the  
22 date of the request.

23 (7) The purpose of the meeting under subsection (6) of this section is to fully inform  
24 landowners and other interested parties of the **proposed nature and scope**~~full~~  
25 ~~extent~~ of the project being considered, including the project time line. One (1) or  
26 more representatives of the entity with full knowledge of all aspects of the project  
27 shall be present and shall answer questions from the public. **After the meeting**

1 *under subsection (6) has been held, the merchant electric generating entity shall*  
 2 *post any material changes to the plans for the project, including but not limited to*  
 3 *changes to the properties involved or the project timeline, on its Web site and*  
 4 *shall inform the county judge/executive or mayor of all governmental entities of*  
 5 *jurisdiction where the project is planned of the changes by mail or electronic mail*  
 6 *no later than the time at which the 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 are two  
7 thousand (2,000) feet from any residential neighborhood, school, hospital, or  
8 nursing home facility, unless facilities capable of generating ten megawatts  
9 (10MW) or more currently exist on the site. If the facility is proposed to be  
10 located on a site of a former coal processing plant and the facility will use on-  
11 site waste coal as a fuel source, a statement that the proposed site is  
12 compatible with the setback requirements provided under KRS 278.704(5). If  
13 the facility is proposed to be located in a jurisdiction that has established  
14 setback requirements pursuant to KRS 278.704(3), a statement that the  
15 proposed site is in compliance with those established setback requirements;

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

- 18 1. The scheduling and conducting of a public meeting in the county or  
19 counties in which the proposed facility will be constructed at least ninety  
20 (90) days prior to the filing of an application, for the purpose of  
21 informing the public of the project being considered and receiving  
22 comment on it;
- 23 2. Evidence that notice of the time, subject, and location of the meeting  
24 was published in the newspaper of general circulation in the county, and  
25 that individual notice was mailed to all owners of property adjoining the  
26 proposed project at least two (2) weeks prior to the meeting; and
- 27 3. Any use of media coverage, direct mailing, fliers, newsletters, additional

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

1 electric generating facility shall not, for the purposes of this section and KRS  
2 224.10-280, 278.704, 278.708, 278.710, and 278.712, constitute construction of a  
3 merchant electric generating facility.

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

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

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

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

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

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

21 1. Surrounding land uses for residential, commercial, agricultural, and  
22 recreational purposes;

23 2. The legal boundaries of the proposed site;

24 3. Proposed access control to the site;

25 4. The location of facility buildings, transmission lines, and other  
26 structures;

27 5. Location and use of access ways, internal roads, and railways;

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

1           2. A right of entry document signed by the landowner granting the  
 2           county government in the county where the proposed facility is to be  
 3           located, or its designee, the right to access the property in order to  
 4           complete the decommissioning if the owner of the facility fails to begin  
 5           or complete the decommissioning in the timeframes required under  
 6           subsection (4) of Section 7 of this Act; and

7           3. If requested by the landowner:

8           a. The filling of any holes or cavities created by the removal of a  
 9           component or its foundation with soil of the same or similar type  
 10           as the predominant soil found on the property;

11           b. The removal of any roads made on the property by the applicant;

12           c. The removal of all rocks over twelve (12) inches in diameter  
 13           excavated during the decommissioning process;

14           d. The returning of the property to a substantially similar state as it  
 15           was prior to the commencement of construction; and

16           e. The revegetation and restoring of the property to its original  
 17           condition or condition compatible with the zoning of the parcel.

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

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

26 (6) The applicant shall be given the opportunity to present evidence to the board  
 27 regarding any mitigation measures. As a condition of approval for an application to

1 obtain a construction certificate, the board may require the implementation of any  
2 mitigation measures that the board deems appropriate.

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

4 (1) Within one hundred twenty (120) days of receipt of an administratively complete  
5 application, or within one hundred eighty (180) days of receipt of an  
6 administratively complete application if a hearing is requested, the board shall, by  
7 majority vote, grant or deny a construction certificate, either in whole or in part,  
8 based upon the following criteria:

9 (a) Impact of the facility on scenic surroundings, property values, the pattern and  
10 type of development of adjacent property, and surrounding roads;

11 (b) Anticipated noise levels expected as a result of construction and operation of  
12 the proposed facility;

13 (c) The economic impact of the facility upon the affected region and the state;

14 (d) Whether the facility is proposed for a site upon which existing generating  
15 facilities, capable of generating ten megawatts (10MW) or more of electricity,  
16 are currently located;

17 (e) Whether the proposed facility ***has provided documentation of compliance***  
18 ***with***~~will meet~~ all local planning and zoning requirements that existed on the  
19 date the application was filed, ***including any applicable zoning or***  
20 ***conditional use permit requirement. If the board finds that the proposed***  
21 ***facility has not documented compliance with all local planning and zoning***  
22 ***requirements that existed on the date the application was filed, it shall deny***  
23 ***the construction certificate until compliance can be documented;***

24 (f) Whether the additional load imposed upon the electricity transmission system  
25 by use of the merchant electric generating facility will adversely affect the  
26 reliability of service for retail customers of electric utilities regulated by the  
27 Public Service Commission;

1 (g) Except where the facility is subject to a statewide setback established by a  
2 planning and zoning commission as provided in KRS 278.704(3) and except  
3 for a facility proposed to be located on a site of a former coal processing plant  
4 and the facility will use on-site waste coal as a fuel source, whether the  
5 exhaust stack of the proposed merchant electric generating facility and any  
6 wind turbine is at least one thousand (1,000) feet from the property boundary  
7 of any adjoining property owner and all proposed structures or facilities used  
8 for generation of electricity are two thousand (2,000) feet from any residential  
9 neighborhood, school, hospital, or nursing home facility, unless a different  
10 setback has been requested and approved under KRS 278.704(4). If a planning  
11 and zoning commission has established setback requirements that differ from  
12 those under KRS 278.704(2), the applicant shall provide evidence of  
13 compliance. If the facility is proposed to be located on site of a former coal  
14 processing plant and the facility will use on-site waste coal as a fuel source,  
15 the applicant shall provide evidence of compliance with the setback  
16 requirements provided in KRS 278.704(5);

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

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

21 **(j) Whether the proposed decommissioning plan is in the public interest. The**  
22 **board may require a proposed decommissioning plan to be amended to**  
23 **ensure that it is in the public interest.**

24 (2) **Construction certificate approval under this section shall be subject to the**  
25 **ongoing compliance of the certificate holder, and any of its successors in interest,**  
26 **with the mitigation measures and any other conditions, including maintaining**  
27 **the bond or other similar security required under subsection (4) of this section,**

1 imposed by the board as a condition of construction certificate approval. The  
2 board may seek any available legal remedy in Franklin Circuit Court against a  
3 construction certificate holder or any of its successors in interest under this  
4 section for violation of a condition of the certificate's approval.

5 **(3)** When considering an application for a construction certificate for a merchant  
6 electric generating facility, the board may consider the policy of the General  
7 Assembly to encourage the use of coal as a principal fuel for electricity generation  
8 as set forth in KRS 152.210, provided that any facility, regardless of fuel choice,  
9 shall comply fully with KRS 224.10-280, 278.212, 278.216, and 278.700 to  
10 278.716.

11 ~~(4)~~**(3)** (a) The board shall require a person that has received a construction  
12 certificate for a merchant electric generating facility, before commencing to  
13 construct the facility, to furnish a bond or other similar security to assure  
14 the decommissioning of the facility at the end of its useful life. The amount  
15 of the bond or other similar security shall be set by the board and shall be at  
16 least equal to the estimated cost of fully completing the decommissioning  
17 plan approved by the board, less the salvage value for the decommissioned  
18 facilities and components. In proposing the amount of the bond, the holder  
19 of the construction certificate shall provide evidence of the  
20 decommissioning costs and the salvage value as determined by an  
21 independent, third-party person with experience and expertise in  
22 decommissioning the type of electric generating facility to be constructed.  
23 The bond amount shall be reviewed by the permanent board members  
24 periodically, and at least once every five (5) years, and shall be adjusted by  
25 the permanent board members to match any significant change to the  
26 estimated cost of effectuating the decommissioning plan or to the salvage  
27 value of the facility or its components.



1       **(b) If the facility for which a bond or similar security has been furnished under**  
2       **this subsection is located on leased property, the bond or similar security**  
3       **shall name the landowner or landowners where the bonded facility is**  
4       **located as the primary beneficiaries of the bond and the governing bodies of**  
5       **the cities or counties where the facility is located as secondary beneficiaries.**  
6       **If the facility for which a bond or similar security is furnished under this**  
7       **subsection is located on property owned by the party responsible for**  
8       **completing the decommissioning plan, the bond or similar security shall**  
9       **name the governing bodies of the cities or counties where the facility is**  
10       **located as the primary beneficiaries. Neither a city, a county, nor the board**  
11       **shall be financially or legally responsible for the decommissioning of any**  
12       **merchant electric generating facility.**

13       **(c) The bond or similar security required under this subsection shall be**  
14       **forfeited if the person responsible for completing the decommissioning plan**  
15       **approved by the board either fails to begin work on the plan within twelve**  
16       **(12) months of the date that the facility ceases to produce electricity for sale,**  
17       **or fails to complete the plan within eighteen (18) months of the date that the**  
18       **facility ceases to produce electricity for sale.**

19       **(d) Any funds from a bond or similar security required under this subsection**  
20       **that is forfeited for failure to begin or complete a decommissioning plan in**  
21       **a timely manner shall only be used to complete the decommissioning of**  
22       **facilities on the property or properties for which the bond or similar security**  
23       **was posted.**

24       **(5) (a) A person that has received a construction certificate for a merchant electric**  
25       **generating facility, whether before or after the effective date of this Act, shall**  
26       **not transfer rights and obligations[~~obligation~~] under the certificate, and no**  
27       **transfer of control of the person shall be effective with respect to the facility,**

1 unless the person has~~[-without having]~~ first applied for and received a board  
2 staff determination that:

3 1.[(a)] The acquirer or transferee has a good environmental compliance  
4 history; and

5 2.[(b)] The acquirer or transferee has the financial, technical, and  
6 managerial capacity to, and has agreed to assume responsibility to,  
7 meet the obligations imposed by the terms of the construction  
8 certificate~~[- approval or has the ability to contract to meet these~~  
9 obligations].

10 (b) Any acquisition of control of a merchant electric generating facility without  
11 prior authorization shall be void and of no effect. As used in this subsection,  
12 the term "control" means the possession, directly or indirectly, of the power  
13 to direct or cause the direction of the management and policies of a person,  
14 whether through the ownership of voting securities, by effecting a change in  
15 the composition of the board of directors, by contract or otherwise. Control  
16 shall be presumed to exist if any individual or entity, directly or indirectly,  
17 owns ten percent (10%) or more of the voting securities of the person  
18 having received and holding a construction certificate from the board. This  
19 presumption may be rebutted by a showing that ownership does not in fact  
20 confer control. Application for any approval or authorization shall be made  
21 to the board in writing, verified by oath or affirmation, and be in a form and  
22 contain the information as the board requires. The permanent members of  
23 the board shall approve any proposed acquisition when it finds that the  
24 same is to be made in accordance with law, is for a proper purpose, and is  
25 consistent with the public interest. The permanent members of the board  
26 may make investigations and hold hearings in the matter as it deems  
27 necessary, and thereafter may grant any application under this subsection

1           *in whole or in part and with modification and upon terms and conditions as*  
2           *it deems necessary or appropriate. The permanent board members shall*  
3           *grant, modify, refuse, or prescribe appropriate terms and conditions with*  
4           *respect to every such application within ninety (90) days after the filing of*  
5           *the application therefor, unless it is necessary, for good cause shown, to*  
6           *continue the application for up to sixty (60) additional days. The order*  
7           *continuing the application shall state fully the facts that make continuance*  
8           *necessary. In the absence of that action within that period of time, any*  
9           *proposed acquisition shall be deemed to be approved.*

10           *(c) Notice of an application made under paragraph (a) or (b) of this subsection*  
11           *shall be made by the applicant to the county/judge executives and mayors of*  
12           *all governmental entities of jurisdiction where the facility is located.*

13           ➔Section 8. The requirements of this Act shall apply to all new and current  
14 applicants for construction certificates under Section 4 of this Act that have not received  
15 application approval prior to the effective date of this Act.

16           ➔Section 9. Whereas it is critical to update and provide clarity on the siting  
17 process for the wave of merchant electric generation facilities wishing to locate in the  
18 Commonwealth, which could result in thousands of acres of land being converted to  
19 energy production, an emergency is declared to exist, and this Act takes effect upon its  
20 passage and approval by the Governor or upon its otherwise becoming a law.