

1 AN ACT relating to solar energy.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 96 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in this section:*

6 *(a) "Eligible electric generating facility" has the same meaning as in KRS*
7 *278.465;*

8 *(b) "Merchant electric generating facility" has the same meaning as in KRS*
9 *278.700;*

10 *(c) "Net metering" has the same meaning as in KRS 278.465; and*

11 *(d) 1. "Solar electric generating facility" means any:*

12 *a. Solar powered merchant electric generating facility;*

13 *b. Solar powered electric generating facility that is owned or*
14 *operated by a municipality or combined water and electric plant*
15 *board operating under this chapter; and*

16 *c. Solar powered electric generating facility that is owned or*
17 *operated by a utility or electric cooperative regulated by the*
18 *Public Service Commission under KRS Chapter 278 or 279.*

19 *2. "Solar electric generating facility" does not include any eligible*
20 *electric generating facility used for net metering.*

21 *(2) Notwithstanding any provision of law to the contrary, no utility operating under*
22 *the provisions of this chapter shall construct a facility that generates electricity*
23 *using solar energy if constructing the facility would result in more than one*
24 *percent (1%) of the total land area of any county where the proposed construction*
25 *is to be located being occupied by solar electric generating facilities.*

26 ➔Section 2. KRS 278.020 is amended to read as follows:

27 (1) (a) No person, partnership, public or private corporation, or combination thereof

1 shall commence providing utility service to or for the public or begin the
2 construction of any plant, equipment, property, or facility for furnishing to the
3 public any of the services enumerated in KRS 278.010, except:

- 4 1. Retail electric suppliers for service connections to electric-consuming
5 facilities located within its certified territory;
- 6 2. Ordinary extensions of existing systems in the usual course of business;
7 or
- 8 3. A water district created under KRS Chapter 74 or a water association
9 formed under KRS Chapter 273 that undertakes a waterline extension or
10 improvement project if the water district or water association is a Class
11 A or B utility as defined in the uniform system of accounts established
12 by the commission according to KRS 278.220 and:
 - 13 a. The water line extension or improvement project will not cost
14 more than five hundred thousand dollars (\$500,000); or
 - 15 b. The water district or water association will not, as a result of the
16 water line extension or improvement project, incur obligations
17 requiring commission approval as required by KRS 278.300.

18 In either case, the water district or water association shall not, as a result
19 of the water line extension or improvement project, increase rates to its
20 customers;

21 until that person has obtained from the Public Service Commission a
22 certificate that public convenience and necessity require the service or
23 construction.

- 24 (b) Upon the filing of an application for a certificate, and after any public hearing
25 which the commission may in its discretion conduct for all interested parties,
26 the commission may issue or refuse to issue the certificate, or issue it in part
27 and refuse it in part, except that the commission shall not refuse or modify an

1 application submitted under KRS 278.023 without consent by the parties to
2 the agreement.

3 (c) The commission, when considering an application for a certificate to construct
4 a base load electric generating facility, may consider the policy of the General
5 Assembly to foster and encourage use of Kentucky coal by electric utilities
6 serving the Commonwealth.

7 (d) The commission, when considering an application for a certificate to construct
8 an electric transmission line, may consider the interstate benefits expected to
9 be achieved by the proposed construction or modification of electric
10 transmission facilities in the Commonwealth.

11 (e) Unless exercised within one (1) year from the grant thereof, exclusive of any
12 delay due to the order of any court or failure to obtain any necessary grant or
13 consent, the authority conferred by the issuance of the certificate of
14 convenience and necessity shall be void, but the beginning of any new
15 construction or facility in good faith within the time prescribed by the
16 commission and the prosecution thereof with reasonable diligence shall
17 constitute an exercise of authority under the certificate.

18 (2) For the purposes of this section, construction of any electric transmission line of
19 one hundred thirty-eight (138) kilovolts or more and of more than five thousand
20 two hundred eighty (5,280) feet in length shall not be considered an ordinary
21 extension of an existing system in the usual course of business and shall require a
22 certificate of public convenience and necessity. However, ordinary extensions of
23 existing systems in the usual course of business not requiring such a certificate shall
24 include:

25 (a) The replacement or upgrading of any existing electric transmission line; or

26 (b) The relocation of any existing electric transmission line to accommodate
27 construction or expansion of a roadway or other transportation infrastructure;

1 or

2 (c) An electric transmission line that is constructed solely to serve a single
3 customer and that will pass over no property other than that owned by the
4 customer to be served.

5 (3) Prior to granting a certificate of public convenience and necessity to construct
6 facilities to provide the services set forth in KRS 278.010(3)(f), the commission
7 shall require the applicant to provide a surety bond, or a reasonable guaranty that
8 the applicant shall operate the facilities in a reasonable and reliable manner for a
9 period of at least five (5) years. The surety bond or guaranty shall be in an amount
10 sufficient to ensure the full and faithful performance by the applicant or its
11 successors of the obligations and requirements of this chapter and of all applicable
12 federal and state environmental requirements. However, no surety bond or guaranty
13 shall be required for an applicant that is a water district or water association or for
14 an applicant that the commission finds has sufficient assets to ensure the continuity
15 of sewage service.

16 (4) No utility shall exercise any right or privilege under any franchise or permit, after
17 the exercise of that right or privilege has been voluntarily suspended or
18 discontinued for more than one (1) year, without first obtaining from the
19 commission, in the manner provided in subsection (1) of this section, a certificate of
20 convenience and necessity authorizing the exercise of that right or privilege.

21 (5) No utility shall apply for or obtain any franchise, license, or permit from any city or
22 other governmental agency until it has obtained from the commission, in the
23 manner provided in subsection (1) of this section, a certificate of convenience and
24 necessity showing that there is a demand and need for the service sought to be
25 rendered.

26 (6) No person shall acquire or transfer ownership of, or control, or the right to control,
27 any utility under the jurisdiction of the commission by sale of assets, transfer of

1 stock, or otherwise, or abandon the same, without prior approval by the
2 commission. The commission shall grant its approval if the person acquiring the
3 utility has the financial, technical, and managerial abilities to provide reasonable
4 service.

5 (7) No individual, group, syndicate, general or limited partnership, association,
6 corporation, joint stock company, trust, or other entity (an "acquirer"), whether or
7 not organized under the laws of this state, shall acquire control, either directly or
8 indirectly, of any utility furnishing utility service in this state, without having first
9 obtained the approval of the commission. Any acquisition of control without prior
10 authorization shall be void and of no effect. As used in this subsection, the term
11 "control" means the possession, directly or indirectly, of the power to direct or
12 cause the direction of the management and policies of a utility, whether through the
13 ownership of voting securities, by effecting a change in the composition of the
14 board of directors, by contract or otherwise. Control shall be presumed to exist if
15 any individual or entity, directly or indirectly, owns ten percent (10%) or more of
16 the voting securities of the utility. This presumption may be rebutted by a showing
17 that ownership does not in fact confer control. Application for any approval or
18 authorization shall be made to the commission in writing, verified by oath or
19 affirmation, and be in a form and contain the information as the commission
20 requires. The commission shall approve any proposed acquisition when it finds that
21 the same is to be made in accordance with law, for a proper purpose and is
22 consistent with the public interest. The commission may make investigation and
23 hold hearings in the matter as it deems necessary, and thereafter may grant any
24 application under this subsection in whole or in part and with modification and
25 upon terms and conditions as it deems necessary or appropriate. The commission
26 shall grant, modify, refuse, or prescribe appropriate terms and conditions with
27 respect to every such application within sixty (60) days after the filing of the

1 application therefor, unless it is necessary, for good cause shown, to continue the
2 application for up to sixty (60) additional days. The order continuing the application
3 shall state fully the facts that make continuance necessary. In the absence of that
4 action within that period of time, any proposed acquisition shall be deemed to be
5 approved.

- 6 (8) Subsection (7) of this section shall not apply to any acquisition of control of any:
- 7 (a) Utility which derives a greater percentage of its gross revenue from business
8 in another jurisdiction than from business in this state if the commission
9 determines that the other jurisdiction has statutes or rules which are applicable
10 and are being applied and which afford protection to ratepayers in this state
11 substantially equal to that afforded such ratepayers by subsection (7) of this
12 section;
- 13 (b) Utility by an acquirer who directly, or indirectly through one (1) or more
14 intermediaries, controls, or is controlled by, or is under common control with,
15 the utility, including any entity created at the direction of such utility for
16 purposes of corporate reorganization; or
- 17 (c) Utility pursuant to the terms of any indebtedness of the utility, provided the
18 issuance of indebtedness was approved by the commission.

19 (9) In a proceeding on an application filed pursuant to this section, any interested
20 person, including a person over whose property the proposed transmission line will
21 cross, may request intervention, and the commission shall, if requested, conduct a
22 public hearing in the county in which the transmission line is proposed to be
23 constructed, or, if the transmission line is proposed to be constructed in more than
24 one county, in one of those counties. The commission shall issue its decision no
25 later than ninety (90) days after the application is filed, unless the commission
26 extends this period, for good cause, to one hundred twenty (120) days. The
27 commission may utilize the provisions of KRS 278.255(3) if, in the exercise of its

1 discretion, it deems it necessary to hire a competent, qualified and independent firm
2 to assist it in reaching its decision. The issuance by the commission of a certificate
3 that public convenience and necessity require the construction of an electric
4 transmission line shall be deemed to be a determination by the commission that, as
5 of the date of issuance, the construction of the line is a prudent investment.

6 (10) The commission shall not approve any application under subsection (6) or (7) of
7 this section for the transfer of control of a utility described in KRS 278.010(3)(f)
8 unless the commission finds, in addition to findings required by those subsections,
9 that the person acquiring the utility has provided evidence of financial integrity to
10 ensure the continuity of sewage service in the event that the acquirer cannot
11 continue to provide service.

12 (11) The commission shall not accept for filing an application requesting authority to
13 abandon facilities that provide services as set forth in KRS 278.010(3)(f) or to cease
14 providing services unless the applicant has provided written notice of the filing to
15 the following:

- 16 (a) Kentucky Division of Water;
- 17 (b) Office of the Attorney General; and
- 18 (c) The county judge/executive, mayor, health department, planning and zoning
19 commission, and public sewage service provider of each county and each city
20 in which the utility provides utility service.

21 (12) The commission may grant any application requesting authority to abandon
22 facilities that provide services as set forth in KRS 278.010(3)(f) or to cease
23 providing services upon terms and conditions as the commission deems necessary
24 or appropriate, but not before holding a hearing on the application and no earlier
25 than ninety (90) days from the date of the commission's acceptance of the
26 application for filing, unless the commission finds it necessary for good cause to act
27 upon the application earlier.

1 (13) (a) The commission shall not grant an application for a certificate of public
 2 convenience and necessity for a utility to construct any facilities that use
 3 solar energy to provide the services set forth in KRS 278.010(3)(a) if
 4 granting the application would result in more than one percent (1%) of the
 5 total land area of any county where the proposed construction is to be
 6 located being occupied by solar electric generating facilities.

7 (b) As used in this subsection:

8 1. "Solar electric generating facility" means any:

9 a. Solar powered merchant electric generating facility, as that term
 10 is defined in KRS 278.700;

11 b. Solar powered electric generating facility owned or operated by a
 12 municipality or combined water and electric plant board
 13 operating under KRS Chapter 96; and

14 c. Solar powered electric generating facility that is owned or
 15 operated by a utility or electric cooperative regulated by the
 16 commission under this chapter or KRS Chapter 279; and

17 2. "Solar electric generating facility" does not include any eligible
 18 electric generating facility used for net metering, as those terms are
 19 defined in KRS 278.465.

20 (14) If any provision of this section or the application thereof to any person or
 21 circumstance is held invalid, the invalidity shall not affect other provisions or
 22 applications of this section which can be given effect without the invalid provision
 23 or application, and to that end the provisions are declared to be severable.

24 ➔Section 3. KRS 278.706 is amended to read as follows:

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

- 1 (2) A completed application shall include the following:
- 2 (a) The name, address, and telephone number of the person proposing to
- 3 construct and own the merchant electric generating facility;
- 4 (b) A full description of the proposed site, including a map showing the distance
- 5 of the proposed site from residential neighborhoods, the nearest residential
- 6 structures, schools, and public and private parks that are located within a two
- 7 (2) mile radius of the proposed facility;
- 8 (c) Evidence of public notice that shall include the location of the proposed site
- 9 and a general description of the project, state that the proposed construction is
- 10 subject to approval by the board, and provide the telephone number and
- 11 address of the Public Service Commission. Public notice shall be given within
- 12 thirty (30) days immediately preceding the application filing to:
- 13 1. Landowners whose property borders the proposed site; and
- 14 2. The general public in a newspaper of general circulation in the county or
- 15 municipality in which the facility is proposed to be located;
- 16 (d) A statement certifying that the proposed plant will be in compliance with all
- 17 local ordinances and regulations concerning noise control and with any local
- 18 planning and zoning ordinances. The statement shall also disclose setback
- 19 requirements established by the planning and zoning commission as provided
- 20 under KRS 278.704(3);
- 21 (e) If the facility is not proposed to be located on a site of a former coal
- 22 processing plant and the facility will use on-site waste coal as a fuel source or
- 23 in an area where a planning and zoning commission has established a setback
- 24 requirement pursuant to KRS 278.704(3), a statement that the exhaust stack of
- 25 the proposed facility and any wind turbine is at least one thousand (1,000) feet
- 26 from the property boundary of any adjoining property owner and all proposed
- 27 structures or facilities used for generation of electricity are two thousand

- 1 (2,000) feet from any residential neighborhood, school, hospital, or nursing
2 home facility, unless facilities capable of generating ten megawatts (10MW)
3 or more currently exist on the site. If the facility is proposed to be located on a
4 site of a former coal processing plant and the facility will use on-site waste
5 coal as a fuel source, a statement that the proposed site is compatible with the
6 setback requirements provided under KRS 278.704(5). If the facility is
7 proposed to be located in a jurisdiction that has established setback
8 requirements pursuant to KRS 278.704(3), a statement that the proposed site
9 is in compliance with those established setback requirements;
- 10 (f) A complete report of the applicant's public involvement program activities
11 undertaken prior to the filing of the application, including:
- 12 1. The scheduling and conducting of a public meeting in the county or
13 counties in which the proposed facility will be constructed at least
14 ninety (90) days prior to the filing of an application, for the purpose of
15 informing the public of the project being considered and receiving
16 comment on it;
 - 17 2. Evidence that notice of the time, subject, and location of the meeting
18 was published in the newspaper of general circulation in the county, and
19 that individual notice was mailed to all owners of property adjoining the
20 proposed project at least two (2) weeks prior to the meeting; and
 - 21 3. Any use of media coverage, direct mailing, fliers, newsletters, additional
22 public meetings, establishment of a community advisory group, and any
23 other efforts to obtain local involvement in the siting process;
- 24 (g) A summary of the efforts made by the applicant to locate the proposed facility
25 on a site where existing electric generating facilities are located;
- 26 (h) Proof of service of a copy of the application upon the chief executive officer
27 of each county and municipal corporation in which the proposed facility is to

- 1 be located, and upon the chief officer of each public agency charged with the
2 duty of planning land use in the jurisdiction in which the facility is proposed
3 to be located;
- 4 (i) An analysis of the proposed facility's projected effect on the electricity
5 transmission system in Kentucky;
- 6 (j) An analysis of the proposed facility's economic impact on the affected region
7 and the state;
- 8 (k) A detailed listing of all violations by it, or any person with an ownership
9 interest, of federal or state environmental laws, rules, or administrative
10 regulations, whether judicial or administrative, where violations have resulted
11 in criminal convictions or civil or administrative fines exceeding five
12 thousand dollars (\$5,000). The status of any pending action, whether judicial
13 or administrative, shall also be submitted;
- 14 (l) A site assessment report as specified in KRS 278.708. The applicant may
15 submit and the board may accept documentation of compliance with the
16 National Environmental Policy Act (NEPA) rather than a site assessment
17 report;~~and~~
- 18 (m) A decommissioning plan that shall describe how the merchant electric
19 generating facility will be decommissioned and dismantled following the end
20 of its useful life. The decommissioning plan shall, at a minimum, include
21 plans to:
- 22 1. Unless otherwise requested by the landowner, remove all above-ground
23 facilities;
 - 24 2. Unless otherwise requested by the landowner, remove any underground
25 components and foundations of above-ground facilities. Facilities
26 removed under this subparagraph shall be removed to a depth of three
27 (3) feet below the surface grade of the land in or on which the

- 1 component was installed, unless the landowner and the applicant
2 otherwise agree to a different depth;
- 3 3. Return the land to a substantially similar state as it was prior to the
4 commencement of construction;
- 5 4. Unless otherwise requested by the landowner, leave any interconnection
6 or other facilities in place for future use at the completion of the
7 decommissioning process;
- 8 5. Secure a bond or other similar security for the project to assure financial
9 performance of the decommissioning obligation, provided that:
- 10 a. The amount of the proposed bond or similar security shall be
11 determined by an independent, licensed engineer who is
12 experienced in the decommissioning of solar electric generating
13 facilities and has no financial interest in either the merchant
14 electric generating facility or any parcel of land upon which the
15 merchant electric generating facility is located. The proposed
16 amount of the bond or similar security shall be either:
- 17 i. The net present value of the total estimated cost of
18 completing the decommissioning plan, less the current net
19 salvage value of the merchant electric generating facility's
20 components; or
- 21 ii. The bond amount required by a county or municipal
22 government that has established a decommissioning bond
23 requirement or similar security obligation in the county or
24 municipality where the merchant electric generating facility
25 will be located. If the facility will be located in more than
26 one (1) county or municipality that has established a
27 decommissioning bond or similar security obligation, then

- 1 the higher amount shall be required for the facility;
- 2 b. The bond or other similar security names:
 - 3 i. For property that is leased by the applicant, each landowner
 - 4 from whom the applicant leases land and the Energy and
 - 5 Environment Cabinet as the primary co-beneficiaries; or
 - 6 ii. For property that is owned by the applicant, the Energy and
 - 7 Environment Cabinet as the primary beneficiary;
- 8 c. If the merchant electric generating facility is to be located in a
- 9 county or municipality that has not established a decommissioning
- 10 bond or other similar security obligation, the bond or other similar
- 11 security shall name the county or municipality as a secondary
- 12 beneficiary with the county's or municipality's consent;
- 13 d. The bond or other similar security shall be provided by an
- 14 insurance company or surety that shall at all times maintain at least
- 15 an "Excellent" rating as measured by the AM Best rating agency
- 16 or an investment grade credit rating by any national credit rating
- 17 agency and, if available, shall be noncancelable by the provider or
- 18 the customer until completion of the decommissioning plan or
- 19 until a replacement bond is secured; and
- 20 e. The bond or other similar security shall provide that at least thirty
- 21 (30) days prior to its cancellation or lapse, the surety shall notify
- 22 the applicant, its successor or assign, each landowner, the Energy
- 23 and Environment Cabinet, and the county or city in which the
- 24 facility is located of the impending cancellation or lapse. The
- 25 notice shall specify the reason for the cancellation or lapse and
- 26 provide any of the parties, either jointly or separately, the
- 27 opportunity to cure the cancellation or lapse prior to it becoming

1 effective. The applicant, its successor, or its assign, shall be
 2 responsible for all costs incurred by all parties to cure the
 3 cancellation or lapse of the bond. Each landowner, or the Energy
 4 and Environment Cabinet with the prior approval of each
 5 landowner, may make a demand on the bond and initiate and
 6 complete the decommissioning plan.

7 6. Communicate with each affected landowner at the end of the merchant
 8 electric generating facility's useful life so that any requests of the
 9 landowner that are in addition to the minimum requirements set forth in
 10 this paragraph and in addition to any other requirements specified in the
 11 lease with the landowner may, in the sole discretion of the applicant or
 12 its successor or assign, be accommodated; and

13 7. Incorporate the requirements of subparagraphs 1. to 6. of this paragraph
 14 into the applicant's leases with landowners;

15 (n) A statement certifying that no portion of a proposed construction site for a
 16 solar powered merchant electric generating facility or any transmission
 17 facilities constructed to serve a solar electric generating facility will be
 18 located on land that was previously acquired by the applicant or by a
 19 commission-regulated utility through eminent domain pursuant to this
 20 chapter or KRS Chapter 279 or 416; and

21 (o) 1. A statement certifying that approval of the proposed site would not
 22 result in more than one percent (1%) of the total land area of any
 23 county where the proposed site is to be located being occupied by solar
 24 electric generating facilities.

25 2. As used in this paragraph:

26 a. "Solar electric generating facility" means any:

27 i. Solar powered merchant electric generating facility;

- 1 ii. Solar powered electric generating facility that is owned or
- 2 operated by a municipality or combined water and electric
- 3 plant board operating under KRS Chapter 96; and
- 4 iii. Solar powered electric generating facility that is owned or
- 5 operated by a utility or electric cooperative regulated by the
- 6 commission under this chapter or KRS Chapter 279; and
- 7 b. "Solar electric generating facility" does not include any eligible
- 8 electric generating facility used for net metering as those terms
- 9 are defined in KRS 278.465.

10 (3) Application fees for a construction certificate shall be set by the board and
 11 deposited into a trust and agency account to the credit of the commission.

12 (4) Replacement of a merchant electric generating facility with a like facility, or the
 13 repair, modification, retrofitting, enhancement, or reconfiguration of a merchant
 14 electric generating facility shall not, for the purposes of this section and KRS
 15 224.10-280, 278.704, 278.708, 278.710, and 278.712, constitute construction of a
 16 merchant electric generating facility.

17 (5) The board shall promulgate administrative regulations prescribing fees to pay
 18 expenses associated with its review of applications filed with it pursuant to KRS
 19 278.700 to 278.716. All application fees collected by the board shall be deposited in
 20 a trust and agency account to the credit of the Public Service Commission. If a
 21 majority of the members of the board find that an applicant's initial fees are
 22 insufficient to pay the board's expenses associated with the application, including
 23 the board's expenses associated with legal review thereof, the board shall assess a
 24 supplemental application fee to cover the additional expenses. An applicant's failure
 25 to pay a fee assessed pursuant to this subsection shall be grounds for denial of the
 26 application.

27 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 416 IS CREATED TO

1 READ AS FOLLOWS:

2 *Notwithstanding any provision of law to the contrary, no land condemned by eminent*
3 *domain under this chapter or any other grant of condemnation authority under state*
4 *law shall be used for the construction of a facility that generates electricity using solar*
5 *energy or any transmission facility constructed to serve a facility that generates*
6 *electricity using solar energy.*

7 →Section 5. KRS 416.570 is amended to read as follows:

8 Except as otherwise provided in KRS 416.560, a condemnor seeking to condemn
9 property or the use and occupation thereof, shall file a verified petition in the Circuit
10 Court of the county in which all or the greater portion of the property sought to be
11 condemned is located, which petition shall state that it is filed under the provisions of
12 KRS 416.550 to 416.670 and shall contain, in substance:

13 (1) Allegations sufficient to show that the petitioner is entitled, under the provisions of
14 applicable law, to exercise the right of eminent domain and to condemn the
15 property, or the use and occupation thereof, sought to be taken in such proceedings;

16 (2) *A statement certifying that the proposed condemnation will not violate Section 4*
17 *of this Act;*

18 (3) A particular description of the property and the use and occupation thereof sought
19 to be condemned; and

20 (4)~~(3)~~ An application to the court to appoint commissioners to award the amount of
21 compensation the owner of the property sought to be condemned is entitled to
22 receive therefor.