AN ACT relating to the Energy Planning and Inventory Commission and declaring an emergency.

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

➔Section 1. KRS 164.2807 is amended to read as follows:

(1) The General Assembly finds and declares that:

(a) The long-term economic health and well-being of the citizens of the Commonwealth and the United States depends upon the availability of reliable sources of energy;

(b) The Commonwealth has abundant reserves of coal, natural gas, and other natural resources;

(c) The energy needs of the Commonwealth are best met by continuing to engage in an all-of-the-above approach to electric generation resources, including but not limited to coal, oil, natural gas, wind, solar, hydropower, nuclear, and any future or emerging technologies like hydrogen power;

(d) The current economy and future economic development of the Commonwealth requires reliable, resilient, dependable, and abundant supplies of electrical power;

(e) The demand for reliable, resilient, dispatchable electrical power is anticipated to significantly increase in the coming decades as the Commonwealth becomes home to additional manufacturing and other economic development projects which increase demand for electrical power;

(f) It is in the interest of the Commonwealth that it be able to generate sufficient electricity within its borders to serve its own industrial, residential, and commercial demand and to power its own economy;

(g) The electrification of the United States' economy combined with unprecedented federal regulatory pressures have created an electric generation resource crisis in the Commonwealth;

(h) Existing state and federal policies with respect to energy do not adequately address the concerns of the General Assembly or citizens of the Commonwealth such that a comprehensive Kentucky energy policy is required;

(i) Current policies at the state and federal level do not adequately assess capacity, availability, reliability, or resilience attributes of existing and new fossil fuel-fired, nuclear, or other emerging dispatchable electric generating resources;

(j) It is the policy of the Commonwealth to maintain adequate capacity of available, reliable, dispatchable, and resilient electric generation to provide for the existing and reasonably projected future energy consumption needs of all wholesale, retail, and other consumers of electricity in the Commonwealth;

(k) Further retirement of fossil fuel-fired electric generating resources is not necessary for the protection of the environment or the health, safety, and welfare of the citizens of the Commonwealth;

(l) The health, happiness, safety, economic opportunity, and general welfare of the citizens of the Commonwealth will be promoted and protected by the operation of fossil fuel-fired electric generating resources and, conversely, those interests would be harmed by the premature retirement of those generating resources;

(m) The Commonwealth can support a multitude of potential electric generating resources and energy fuel supply sources so as to be the national leader in the production of energy in all forms;

(n) Local economic development is essential to the health, happiness, safety, and general welfare of the citizens of the Commonwealth;

(o) Local economic development requires an adequate supply of electricity to support new and expanding industries and is enhanced by robust employment

in coal mining and coal transportation and at electric generating facilities, the local job multiplier effect of employment in the coal, natural gas, and electric generating industries, and state and local taxes and other forms of economic value creation for the Commonwealth; and

(p) The numerous energy policy challenges facing the Commonwealth require a comprehensive energy policy informed by the input, judgment, experience, and expertise of diverse stakeholders representing a variety of interests and energy resources, including but not limited to coal, oil, natural gas, wind, solar, hydropower, nuclear, and any future or emerging resources to achieve the best results for the citizens of the Commonwealth.

(2) ***As used in***~~[For the purposes of]~~ this section:

(a) "Commission" means the Energy Planning and Inventory Commission established in this section;

(b) "Dispatchable" means a source of electric power generation that is available on demand, that is not intermittent, and that can be adjusted to increase or decrease its power output upon request of a power grid operator or otherwise upon demand or request, or that can have its power output adjusted in response to market or system needs;

(c) "Generation and transmission cooperative" has the same meaning as in KRS 278.010;

(d) "Intermittent" means:

1. A source of electric power generation from a solar photovoltaic, solar thermal heating, concentrating solar thermal collector, or other solar energy collection or generation system;

2. A source of electric power that generates energy by harnessing wind power or energy, whether through a turbine or other device;

3. Geothermal energy, biomass energy, anaerobic digestion, or combined

heat and power from solar, wind, geothermal, or anaerobic digestion sources;

4. Any short duration energy storage, which includes any method of storing generated electricity for later dispatch to the grid, whether alone or in conjunction with any other intermittent sources described in this paragraph, that is equivalent to less than forty-eight (48) hours of the average peak generation of the unit it is used to offset; or

5. Conventional hydropower and pumped storage hydropower, unless they are capable of providing energy on demand, in which case they shall be deemed to be dispatchable;

(e) "Public Service Commission" means the Kentucky Public Service Commission established under KRS Chapter 278, or any successor entity having the power to regulate rates and services of public utilities pursuant to the powers enumerated in KRS Chapter 278; and

(f) "Utility" has the same meaning as in KRS 278.010.

(3) ***(a)*** The Energy Planning and Inventory Commission is hereby established and administratively attached to the University of Kentucky Center for Applied Energy Research, but ***only for those limited functions and purposes expressly requested by the commission, including but not limited to accounting, human resources administration, purchasing assistance, and payroll processing. The commission***~~[it]~~ shall otherwise be independent from the University of Kentucky and ***shall exercise its authority to conduct energy planning, assess energy supply adequacy, and review proposed electric generating facility requirements without interference or influence from*** any Kentucky executive branch agency.

(b) The commission shall maintain separate accounts for all funds appropriated to it, with the University of Kentucky providing accounting,

payroll, and financial services.

(c) The executive director of the commission shall have the sole authority to hire staff, retain contractors and other parties, and otherwise manage the commission in accordance with applicable law and with human resources administrative support provided by the University of Kentucky.

(d) Notwithstanding any provision of KRS Chapter 18A to the contrary, the commission may in its sole discretion identify and determine the compensation for categories of its professional employees at the amounts it deems necessary to recruit and retain employees who have the experience, expertise, and education required to perform their job responsibilities with the commission. Noncontractual employees of the commission shall otherwise be subject to the requirements and benefits of KRS Chapter 18A.

(e) Notwithstanding any law to the contrary, the commission shall conduct all procurements necessary for the performance of its duties in accordance with the procurement procedures outlined in KRS Chapter 45A, but the commission shall not be subject to any provision of KRS Chapter 45A that requires the approval of any Finance and Administration Cabinet official for the commission to proceed with any aspect of the procurement process. The executive director shall be deemed the chief purchasing officer for the purposes of conducting procurements for the commission and shall have all the authority and responsibility with regard to the commission's procurements as the secretary of the Finance and Administration Cabinet has for procurements under KRS Chapter 45A. All commission personal service contracts shall be subject to review by the Government Contract Review Committee established by KRS 45A.705.

(f) In its bidding and negotiation processes, the commission shall perform its own bidding and procurement in accordance with the procedures

established by KRS Chapter 45A.

(g) The affairs of the commission shall be governed exclusively by~~[the provisions of]~~ this section. The exercise of the commission's powers conferred by this section and the carrying out of its purposes and duties are essential governmental functions and are conducted for public purposes.

(4) (a) The commission ***board*** shall be composed of an eighteen (18) member board and a five (5) member executive committee ***of the board***. Except for the state government officials and the ex officio nonvoting commission board members appointed by the President of the Senate and the Speaker of the House of Representatives, each member of the commission board shall be appointed by the Governor and confirmed by the Senate as set forth in this subsection. The commission board shall be composed of the following members***, no more than two (2) of whom shall reside outside of the Commonwealth***:

1. One (1) representative of a Kentucky investor-owned utility;
2. One (1) representative of a Kentucky generation and transmission cooperative, nominated by the chief operating officer of the Kentucky Association of Electric Cooperatives;
3. One (1) representative of Kentucky coal producers, nominated by the president of the Kentucky Coal Association;
4. One (1) representative of Kentucky oil and gas producers, nominated by the executive director of the Kentucky Oil and Gas Association;
5. One (1) representative of an industry or business engaged in the transportation of coal;
6. One (1) representative of a business engaged in the transportation or distribution of natural gas, nominated by the president of the Kentucky Gas Association;
7. One (1) representative with professional experience in the purchasing or

sale of fossil fuels, nominated by the president of the Kentucky Coal Association;

8. One (1) member representing the nuclear electric generation industry, nominated by the executive director of the United States Nuclear Industry Council;

9. One (1) member representing the interests of businesses or entities engaged in activities related to the mining, milling, conversion, enrichment, or fabrication of nuclear fuel or involved in the remediation of past enrichment of nuclear fuels in the Commonwealth;

10. One (1) member representing commercial and industrial consumers of electrical power, nominated by Kentucky Industrial Utility Customers;

11. One (1) member representing Kentucky economic interests, nominated by the chief executive officer of the Kentucky Chamber of Commerce;

12. One (1) member representing producers of renewable electricity;

13. One (1) member with experience in investment banking or utility finance, nominated by the president of the Kentucky Banker's Association;

14. One (1) member representing residential electricity consumers;

15. One (1) member of the House of Representatives, who shall be an ex officio nonvoting member, nominated by the Speaker of the House of Representatives;

16. One (1) member of the Senate, who shall be an ex officio nonvoting member, nominated by the President of the Senate;

17. The secretary of the Energy and Environment Cabinet, or designee; and

18. The secretary of the Cabinet for Economic Development, or designee.

(b) The executive committee of the board ***is established and*** shall include the following five (5) members:

1. ***The chair of the commission board selected under paragraph (e) of this subsection;***

2. The ***vice chair of the commission board selected under paragraph (e) of this subsection***~~[director of the University of Kentucky Center of Applied Energy Research]~~;

3.~~[2.]~~ One (1) member appointed by the ***Attorney General***~~[Governor]~~ who has the same level of education, training, and professional experience as would be required to serve in the role of chief executive officer or board member of a company engaged in the production of coal;

4.~~[3.]~~ One (1) member appointed by the ***Attorney General***~~[Governor]~~ who has the same level of education, training, and professional experience as would be required to serve in the role of chief executive officer or board member of an investor-owned, cooperative, or municipal electric utility; and

5. One (1) member~~[4. Two (2) members]~~ elected by the commission board from the commission board membership. Any vacancy in an executive committee position under this subparagraph shall be filled in the same manner as the original election.

(c) Any appointment made by the Governor to the commission board or ***by the Attorney General to*** the executive committee shall be subject to confirmation by the Senate. If a pending appointment to the board or executive committee requiring confirmation is not confirmed by the Senate upon the conclusion of the legislative session during or before which the appointment was made, then the member's position on the board or executive committee shall become vacant, either upon sine die adjournment of the legislative session or the date that the Senate votes to decline to confirm appointment, and the ***official who made the appointment***~~[Governor]~~ shall appoint a different replacement.

(d) After the expiration of their initial terms, members who are not members of the legislative or executive branch shall serve for terms of four (4) years and until a successor is appointed and confirmed by the Senate. Legislative members shall serve during the terms of their elected positions in the General Assembly, and executive branch members shall serve during the appointed terms of their state government positions. In the event of a vacancy prior to the expiration of a term for member appointed by the Governor ***or the Attorney General***, the ***official who made the appointment***[~~Governor~~] shall appoint a replacement in the same manner as the original appointment, and the appointment shall be subject to the same Senate confirmation process. Members appointed by the Governor ***or the Attorney General*** shall not be full-time employees of the Commonwealth as defined in KRS 18A.005, and shall not be compensated for their service on the board, but they shall be subject to the requirements of the executive branch code of ethics established under KRS Chapter 11A.

(e) A majority of the commission board may select one (1) member of the commission board to serve as chair of the commission board and one (1) member of the commission board to serve as vice chair of the commission board.

(f) The executive committee may adopt rules of procedure or bylaws governing the conduct of the commission's business.

(g) Other than being a customer of retail electric service, no member of the executive committee shall have any current employment, contractual, or other direct financial relationship with any utility at the time of their appointment or during their service on the executive committee.

(h) No person shall serve as a member of the commission board or executive committee if the service would cause a conflict with, or result in the

disclosure of confidential information relating to, any research projects performed by or in partnership with the University of Kentucky Center for Applied Energy Research.

(i) If the review of a notice given under subsection ***(8)***[~~(7)~~] of this section would result in the disclosure of confidential information to an executive committee member that is prohibited under subsection ***(8)***[~~(7)~~](c)3. of this section, the executive committee member shall recuse himself or herself, and the remaining executive committee members shall name a replacement from the membership of the commission board solely for the purpose of reviewing the notice that caused the recusal.

(j) A majority of the executive committee shall constitute a quorum, and the affirmative vote of the majority of the members present during a meeting is necessary for any action taken by vote of the executive committee.

(k) The Governor shall not have reorganization power over the commission, the structure of the commission, its board, the executive committee, or the hiring, compensation, or termination of its executive director. Only the General Assembly may reorganize or restructure the commission or the commission board by legislative act.

(5) ***(a)*** The commission ***shall***[~~may~~] employ an executive director who shall be selected and hired by the executive committee, subject to confirmation by the Senate. If a pending selection for an executive director is not confirmed by the Senate upon the conclusion of the legislative session during or before which the selection was made, then the executive director's position shall become vacant, either upon ***the*** sine die adjournment of the legislative session or the date that the Senate votes to decline to confirm appointment, and the executive committee shall select a different replacement. Until an executive director is selected and hired, or in the event of a vacancy in the role of

executive director, the director of the University of Kentucky Center for Applied Energy Research shall serve in the role of executive director of the commission.

(b) The executive director shall be entitled to attend all commission and executive committee meetings and shall at all times have access to all information, records, and data considered or produced at those meetings.

(6) ***(a) The executive director shall have full authority to act on behalf of the commission in all matters. The commission board, including the executive committee, shall serve in an advisory capacity to the executive director. The executive director shall keep the executive committee timely advised of material decisions relating to the commission.***

(b) The executive director shall only be terminated for cause by majority vote of all the members of the executive committee, after delivery in writing of the cause of termination to the executive director and affording him or her the opportunity for an administrative hearing conducted in accordance with KRS Chapter 13B.

(c) By a majority vote of all its members, the executive committee may increase either or both of the following for the executive director as warranted:

1. His or her compensation, not to exceed ten percent (10%) annually; and

2. His or her benefits.

(7) The commission shall be authorized to:

(a) Take all necessary measures to effectuate the public purposes described in subsection (1) of this section;

(b) Assist in fulfilling the executive committee's ***and the executive director's*** mandatory duties regarding review of planned retirement decisions described in subsection ***(8)***[~~(7)~~] of this section;

(c) Engage in the examination and study of:

1. The adequacy of the Commonwealth's existing and anticipated future electric generation and transmission resources and the existing and anticipated future electric demand;
2. The continued operation, retirement, divestiture, or other major action impacting any electric power generating unit, or any pollution control equipment associated with any such unit, located in the Commonwealth;
3. Issues concerning the adequacy of the Commonwealth's energy supply, including but not limited to the economic impact of energy production and consumption in the Commonwealth, the Kentucky energy grid's response to severe weather events, projected power demand and growth in demand, land use impacts from power generation, local economic impacts resulting from the closure of electric generating resources, and whether alternatives to decommissioning electric generating resources exist;
4. The effect of any federal policy which may impact the availability of dispatchable power or the adequacy of energy supplies in the Commonwealth;
5. The Commonwealth's ability to participate in energy markets or in the production, transmission, or distribution of energy;
6. The Commonwealth's ability to finance or provide financing assistance to energy producers to encourage additional energy production in the Commonwealth;
7. New and emerging electric generating technologies that could supply future electric demand in the Commonwealth;~~[and]~~
8. Whether the Commonwealth's energy resources are sufficiently dispatchable to ensure against loss of electrical power supply in the

event of extreme weather or other unexpected or catastrophic events that may challenge the ability of the Commonwealth's electrical grid to meet demand; and

9. Other topics at the discretion of the executive director;

(d) ***Through the executive director, request that state agencies, including but not limited to the Energy and Environment Cabinet and the Office of Energy Policy, cooperate with and provide data, records, reports, and other information that are reasonably necessary for the commission to carry out its duties and obligations under this section. Requests for data, records, reports or other information made pursuant to this paragraph shall be fulfilled within thirty (30) days unless the executive director otherwise grants an extension; and***

(e) On or before[~~ December 1, 2024, and~~] each December 1[~~ thereafter~~], submit a report with recommendations, including but not limited to recommendations for statutory changes or budgetary proposals, to the Legislative Research Commission, the Governor, and the Public Service Commission concerning any of the issues examined or studied by the commission pursuant to paragraph (c) of this subsection.

(8)[~~(7)~~] (a) Notwithstanding any provision of law to the contrary, no utility shall retire any existing coal, oil, or natural gas-fired electric generating plant, or any unit within the plant, prior to submitting notice to the commission and receiving the findings ***and recommendations*** from the executive committee ***and the executive director***, as described in this subsection.

(b) A utility proposing to retire any existing coal, oil, or natural gas-fired power plant, or unit within such plant, shall give notice to the commission's executive committee, in the form and manner as the executive committee may require, at least one hundred eighty (180) days prior to submitting the

retirement application to the Public Service Commission required by KRS 278.264(1). The utility may include with its notice any information the utility believes will assist in the executive committee's review of the proposed activity.

(c) 1. The executive committee or executive director may require a utility filing notice under this subsection to provide any information, records, or data that the executive committee or executive director deems reasonably necessary to make its findings under this subsection, and the utility shall respond to all such requests within a reasonable timeframe as established by the executive committee or executive director.

2. A utility responding to an information request ***or otherwise providing information to the commission*** may designate ***the*** information, records, or data provided~~[in the response]~~ as confidential business information, and the information, records, or data shall be exempt from disclosure under the requirements of KRS 61.870 to 61.884.

3. A utility responding to an information request ***or otherwise providing information to the commission*** may indicate in its response ***or submission*** that the information, records, or data provided should not be shared with specific members of the commission board or executive committee to avoid an unfair competitive or market advantage, in which case the confidential information, records, or data shall not be shared with or made available to that member or members.

4. Any information, records, data, files, documents, or correspondence produced by the members or staff of the commission in the course of carrying out any of their responsibilities under this section shall be exempt from disclosure under the requirements of KRS 61.870 to 61.884.

(d) Other than being a customer of retail electric service, any member of the commission board who has an employment or contractual relationship with the utility filing the notice required by this subsection shall have no contact with the executive director or any member of the executive committee concerning the proposed activities described in the notice.

(e) Within ninety (90) days of its receipt of the notice required by this section, the commission shall hold a public hearing in the county in which the retirement is proposed to occur in order to receive public comments on the proposed activity.

(f) Within one hundred thirty-five (135) days of receiving a utility's notice of a proposed retirement, but following the public hearing described in paragraph (e) of this subsection, the executive committee shall issue a final report containing written findings and recommendations concerning the proposed retirement. The executive committee's written findings and recommendations shall include:

1. The impact of the proposed activity on the available supply of dispatchable and reliable power within the Commonwealth, including the ability of the Commonwealth to meet future demand growth or respond to extreme weather events;

2. Whether alternatives to the proposed activity exist, and whether those alternatives should be further evaluated prior to proceeding with the proposed activity;

3. Whether the replacement of the generating unit or units subject to the proposed activity with other generating resources will result in any adverse land use impacts in the Commonwealth;

4. Whether the proposed activity will result in loss of revenue to the Commonwealth or any local government unit;

5. The positive or negative economic impact of the proposed activity on the local economy of the area in which the proposed activity will take place;
6. The economic impact of the proposed activity on the Commonwealth as a whole; and
7. The impact of the proposed activity on the Commonwealth's ability to increase the available supply of electrical power for current or future economic development purposes.

(g) ***1.*** The findings ***and recommendations*** of the executive committee that are approved by a majority of the members of the executive committee shall be designated as findings of the commission and shall be submitted to the Public Service Commission ***and the utility***. If no majority decision of the executive committee is reached with respect to the findings, the report shall so indicate, and each member of the executive committee may make a written statement of position concerning the proposed activity by the deadline provided for in the report. Each written statement shall be included in the report and transmitted along with the report to the Public Service Commission ***and the utility***. Any executive committee member dissenting from the report, any portion of the report, or any specific findings in the report may, within one hundred eighty (180) days of the utility filing notice of the proposed activity, transmit separate dissenting findings ***and recommendations*** to the Public Service Commission ***and the utility***.

2. The executive committee shall provide the executive director with all information, records, and data considered in the proposal to retire and shall include the executive director in all associated deliberations. Within one hundred eighty (180) days of the utility filing notice of the

proposed activity, the executive director may submit his or her own written report with findings and recommendations, a written statement of position, or dissenting findings and recommendations to the Public Service Commission and the utility.

(h) The executive committee's written report, ***the executive director's written report or position statement,*** and any dissenting statements provided to the Public Service Commission ***and the utility***, shall be included in any retirement application made to the Public Service Commission under KRS 278.264, and the Public Service Commission shall not approve any retirement application without considering all information received from the executive committee***, the executive director,*** or any member of the executive committee. Any order of the Public Service Commission in a proceeding under KRS 278.264 shall contain specific written findings of fact or conclusions of law addressing whether the executive committee's ***and the executive director's*** findings and recommendations***, position statements, and dissenting statements*** were considered by the Public Service Commission.

(i) No retirement application to the Public Service Commission under KRS 278.264 shall be deemed administratively complete unless it includes~~[either]~~ the executive committee's ***and the executive director's*** report***, position statements, and dissenting statements*** submitted pursuant to this section or evidence that more than one hundred eighty (180) days have passed since notice was submitted to the commission as required in paragraph (b) of this subsection and no executive committee ***or executive director*** report***, position statement, or dissenting statement***~~[or determination]~~ has been provided to the ***Public Service Commission or the*** utility.

(9)~~[(8)]~~ ***(a) The Energy Planning and Inventory Commission fund is hereby established in the State Treasury and shall be administered by the executive***

director with the advice of the commission board. The fund shall be a trust and agency account and may receive state appropriations, gifts, grants, and federal funds. Monies in the fund shall only be disbursed for the purposes of carrying out this section.

(b) Notwithstanding KRS 45.229, state appropriations, gifts, grants, federal funds, and any interest earnings on those monies not expended at the close of a fiscal year shall not lapse, but shall be carried forward to the next fiscal year.

(10) Notwithstanding any provision of law to the contrary, the executive committee***, and*** [~~, or~~] the executive director***, jointly or separately***[~~ if authorized by the executive committee~~], shall have standing to participate as an intervening party in any case or other proceeding before the Public Service Commission[~~.~~

~~(9) Subject to available funding, the executive committee may employ administrative staff or third-party consultants with expertise in the subject matter of any study, examination, or review undertaken by the commission to assist in carrying out the commission's functions under this section~~].

(11)[~~(10)~~] The commission shall cease to exist on December 31, 2035.

➔Section 2. The Attorney General shall make the appointments to the executive committee of the Energy Planning and Inventory Commission board as provided under subsection (4) of Section 1 of this Act on or before August 1, 2026, who shall replace the current appointees for those positions whose terms shall be terminated on the effective date of this Act.

➔Section 3. Whereas it is critical that changes made to the composition of the Energy Planning and Inventory Commission executive committee, and the additional changes made to the authority of the executive director and the commission board, take effect as soon as possible to allow the commission to more effectively carry out its responsibilities, an emergency is declared to exist, and this Act takes effect upon its

1 passage and approval by the Governor or upon its otherwise becoming a law.