AN ACT relating to decommissioning costs for electric generating units.

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

➔Section 1. KRS 278.264 is amended to read as follows:

(1) Notwithstanding any provision of law to the contrary, the commission shall have the authority to approve or deny the retirement of an electric generating unit owned by a utility. Prior to retiring an electric generating unit, a utility shall apply to the commission for an order approving the retirement, and shall give the commission thirty (30) days' notice of the application. The application shall include a statement certifying the applicant's compliance with the requirements of KRS 164.2807. The commission shall enter an order approving, approving with conditions, or denying the application within one hundred eighty (180) days of receiving an administratively complete application.

(2) There shall be a rebuttable presumption against the retirement of a fossil fuel-fired electric generating unit. ***Subject to the provisions of subsection (6) of this section,*** the commission shall not approve the retirement of an electric generating unit, authorize a surcharge for the decommissioning of the unit, or take any other action which authorizes or allows for the recovery of costs for the retirement of an electric generating unit, including any stranded asset recovery, unless the presumption created by this section is rebutted by evidence sufficient for the commission to find that:

(a) The utility will replace the retired electric generating unit with new electric generating capacity that:

1. Is dispatchable by either the utility or the regional transmission organization or independent system operator responsible for balancing load within the utility's service area;

2. Maintains or improves the reliability and resilience of the electric transmission grid;

3. Maintains the minimum reserve capacity requirement established by the utility's reliability coordinator; and

4. Has the same or higher capacity value and net capability, unless the utility can demonstrate that such capacity value and net capability is not necessary to provide reliable service;

(b) The retirement will not harm the utility's ratepayers by causing the utility to incur any net incremental costs to be recovered from ratepayers that could be avoided by continuing to operate the electric generating unit proposed for retirement in compliance with applicable law;

(c) The decision to retire the fossil fuel-fired electric generating unit is not the result of any financial incentives or benefits offered by any federal agency; and

(d) The utility shall not commence retirement or decommissioning of the electric generating unit until the replacement generating capacity meeting the requirements of paragraph (a) of this subsection is fully constructed, permitted, and in operation, unless the utility can demonstrate that it is necessary under the circumstances to commence retirement or decommissioning of the existing unit earlier.

(3) The utility shall at a minimum provide the commission with evidence of all known direct and indirect costs of retiring the electric generating unit and demonstrate that cost savings will result to customers as a result of the retirement of the electric generating unit.

(4) The commission shall prepare and submit an annual report to the Legislative Research Commission by December 1 of each year detailing:

(a) The number of requests by utilities to retire electric generating units in the Commonwealth, the nameplate capacity of each of those units, and whether the request was approved or denied by the commission;

(b) The impact of any commission-approved retirement of an electric generating unit on the:

1. Commonwealth's generation fuel mix;
2. Required capacity reserve margins for the utility;
3. Need for capacity additions or expansions at new or existing facilities as a result of the retirement; and
4. Need for additional purchase power or capacity reserve arrangements; and

(c) Whether the retirement resulted in stranded costs for the ratepayer that will be recovered by the utility through a surcharge or some other separate charge on the customer bill.

(5) As used in this section:

(a) "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; and

(b) "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.

(6) Notwithstanding any provision of law to the contrary, this section shall not be construed as limiting the commission's authority to approve a utility's right to record and seek, prior to retirement authorization, the recovery of any electric generating unit's decommissioning, removal and salvage costs, and depreciation expenses through rates over the electric generating unit's estimated depreciable life.