

1 AN ACT relating to data centers.

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 and Section 2 of this Act:

6 (a) "Contract" means the electric service agreement between a municipal
7 electric utility and a customer that owns or operates a data center;

8 (b) "Data center" means:

9 1. A qualified data center project that has been preliminarily approved or
10 approved for a certificate of exemption under KRS 139.499; or

11 2. A centralized facility that:

12 a. Is used primarily or exclusively for electronic information
13 services, including but not limited to the management, storage,
14 processing, and dissemination of electronic data and information
15 through the use of computer systems, servers, networking
16 equipment, and related components;

17 b. Has electrical load that is either fixed, portable, or distributable,
18 including but not limited to structures that are not affixed to the
19 ground or are easily removed from a location;

20 c. Has an expected or actual peak of real-time energy demand of
21 fifteen (15) megawatts or greater; and

22 d. Has an expected or actual monthly load factor of sixty percent
23 (60%) or greater;

24 (c) "Data center customer" means a customer of a municipal electric utility
25 that owns or operates, or proposes to own or operate, a data center or who is
26 otherwise responsible for paying for municipal electric utility service for a
27 data center;

1 (d) "Dedicated resource" means one (1) or more sources of electric power or
2 capacity that is sufficient to serve the contract capacity needs of the data
3 center from:

4 1. All or any portion of an electric generation facility that is owned or
5 leased by the municipal electric utility or, to the extent permitted by
6 law, the data center customer;

7 2. Bilateral power and capacity agreements entered into by the municipal
8 electric utility; or

9 3. Any combination of both; and

10 (e) "Municipal electric utility" means any city or municipal corporation that is
11 engaged in the furnishing of electric utility service to a consumer for
12 ultimate consumption.

13 (2) A municipal electric utility shall only provide electric service to a data center
14 customer through a contract that conforms to the requirements of this section
15 and Section 2 of this Act.

16 (3) Within one hundred eighty (180) days of the effective date of this Act, a
17 municipal electric utility shall issue and maintain a tariff that includes the
18 following minimum requirements for serving a data center:

19 (a) A process for submission of an application for service, in the form and
20 manner required by the municipal electric utility, that sets forth the data
21 center customer's:

22 1. Location for the data center, including the status of the data center
23 customer's control over the premises;

24 2. Requirements for electric service, including a load ramp schedule;

25 3. Proposed dedicated resource if the data center's contract capacity
26 exceeds twenty-five (25) megawatts; and

27 4. Any other information as the municipal electric utility may determine

1 is necessary to develop a resource supply plan and to conduct
2 necessary interconnection, infrastructure, and pricing studies for
3 service to the data center;

4 (b) Payment of an initial nonrefundable application fee with a minimum fee of
5 not less than seventy-five thousand dollars (\$75,000), provided that:

6 1. The data center customer shall be required to pay the full actual cost
7 of the municipal electric utility's study and development of the
8 requirements to serve the data center consistent with this section;

9 2. The municipal electric utility shall require payment of any
10 supplemental application fees as are necessary to recover its full
11 actual costs of undertaking activities set forth in this section; and

12 3. Any overpayment of actual costs beyond the initial application fee
13 shall be refunded or credited toward satisfying financial obligations
14 for procurement or interconnection agreements at the same
15 geographic site; and

16 (c) Preparation within a reasonable time of load, interconnection, pricing, and
17 any other studies necessary to determine the manner in which to safely and
18 efficiently serve the data center's requirements in a way that does not have
19 any negative service or rate impact to the municipal electric utility's non-
20 data center customer classes and preserves the municipal electric utility's
21 existing generation margins and excess capacity.

22 (4) A contract between a data center customer and a municipal electric utility shall:

23 (a) Be in the form and manner required by the municipal electric utility;

24 (b) Be consistent with the results of the studies described in subsection (3)(c) of
25 this section;

26 (c) Prevent the subsidization of data center customers by non-data center
27 customers through rates or by any other means;

1 (d) Include terms and conditions to ensure that all fixed and variable capital
2 and operating costs attributable to serving a data center are fully allocated
3 to the data center regardless of category, form, purpose, nature, or label;

4 (e) Require the data center customer to tender prepayment of all estimated
5 capital costs incurred by the municipal electric utility to invest in new or
6 existing infrastructure to serve the data center, subject to subsequent
7 credits, payments, or repayments by the municipal utility if the actual costs
8 of those investments are less than or greater than the prepayments made by
9 the data center customer;

10 (f) Require an identified dedicated resource be available to serve the data
11 center if the data center's peak load at any point during the term of the
12 contract will exceed twenty-five (25) megawatts; and

13 (g) Allocate any curtailment obligations between a data center and non-data
14 center customers in a manner that is consistent with the rules and
15 requirements of the municipal electric utility's transmission grid operator
16 and that fairly allocates any mandated curtailment as between a data center
17 customer and non-data center customer classes.

18 (5) The requirements of this section shall not apply to:

19 (a) Distributors of electricity supplied by the Tennessee Valley Authority;

20 (b) Data centers constructed on sites owned by the United States Department of
21 Energy; or

22 (c) An electric service contract entered into prior to the effective date of this
23 Act.

24 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 96 IS CREATED TO
25 READ AS FOLLOWS:

26 (1) A municipal utility subject to the requirements of this chapter shall not charge or
27 allocate any of the costs associated with serving or constructing any new

1 infrastructure to serve a data center to any other customers served by the utility
2 with regard to the following utility services that it provides to the public for
3 compensation:

4 (a) The diverting, developing, pumping, impounding, distributing, or
5 furnishing of water;

6 (b) The collection, transmission, or treatment of sewage; or

7 (c) The production, manufacture, storage, distribution, sale, or furnishing of
8 natural or manufactured gas, or a mixture of both.

9 (2) The provisions of this section shall not apply to data centers constructed on sites
10 owned by the United States Department of Energy.

11 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO
12 READ AS FOLLOWS:

13 (1) As used in this section and Section 4 of this Act:

14 (a) "Contract" means the electric service agreement between a retail electric
15 supplier and a customer that owns or operates a data center, which for any
16 retail electric service agreement involving a retail electric supplier formed
17 under KRS Chapter 279 shall also include the generation and transmission
18 cooperative from which the retail electric supplier is contractually obligated
19 to purchase electricity;

20 (b) "Data center" means:

21 1. A qualified data center project that has been preliminarily approved or
22 approved for a certificate of exemption under KRS 139.499; or

23 2. A centralized facility that:

24 a. Is used primarily or exclusively for electronic information
25 services, including but not limited to the management, storage,
26 processing, and dissemination of electronic data and information
27 through the use of computer systems, servers, networking

1 equipment, and related components;

2 b. Has electrical load that is either fixed, portable, or distributable,
3 including but not limited to structures that are not affixed to the
4 ground or are easily removed from a location;

5 c. Has an expected or actual peak of real-time energy demand of
6 fifteen (15) megawatts or greater; and

7 d. Has an expected or actual monthly load factor of sixty percent
8 (60%) or greater;

9 (c) "Data center customer" means a customer of a retail electric supplier that
10 owns or operates, or proposes to own or operate, a data center or who is
11 otherwise responsible for paying for electric utility service for a data center;

12 (d) "Dedicated resource" means one (1) or more sources of electric power or
13 capacity that is sufficient to serve the contract capacity needs of the data
14 center from:

15 1. All or any portion of an electric generation facility that is owned or
16 leased by the retail electric supplier or its generation and transmission
17 cooperative, or to the extent permitted by law, the data center
18 customer;

19 2. Bilateral power and capacity agreements entered into by the retail
20 electric supplier or its generation and transmission cooperative; or

21 3. Any combination of both;

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

24 (f) "Retail electric supplier" has the same meaning as in KRS 278.010.

25 (2) A retail electric supplier shall only provide electric service to a data center
26 customer through a contract approved by the commission that is consistent with
27 the retail electric supplier's data center tariff and this section.

1 (3) Within ninety (90) days of the effective date of this Act, the commission shall
2 promulgate administrative regulations in accordance with KRS Chapter 13A to
3 require each retail electric supplier to file and maintain a tariff to serve data
4 centers located within its service territory. Each retail electric supplier shall
5 thereafter file a data center tariff that conforms to the requirements of the
6 commission's administrative regulations within ninety (90) days of the
7 promulgation of the administrative regulations. The commission shall require
8 that each data center tariff include the following minimum requirements for
9 serving a data center:

10 (a) A process for the submission of an application for service, in the form and
11 manner required by the retail electric supplier, that sets forth the following
12 information about the data center:

- 13 1. The location for the data center, including the status of the data center
14 customer's control over the premises;
- 15 2. Requirements for its electric service, including a load ramp schedule;
- 16 3. A proposed dedicated resource if the data center's contract capacity
17 exceeds two hundred fifty (250) megawatts; and
- 18 4. Any other information as the retail electric supplier may determine is
19 necessary to develop a resource supply plan and conduct necessary
20 interconnection, infrastructure, and pricing studies for the data
21 center;

22 (b) Payment of an initial nonrefundable application fee with a minimum fee of
23 not less than seventy-five thousand dollars (\$75,000), provided that:

- 24 1. The data center customer shall be required to pay the full actual cost
25 of the retail electric supplier's study, including but not limited to third-
26 party transmission studies and other third-party costs, and the full
27 actual costs for the development of the requirements to serve the data

1 center consistent with this section;

2 2. The retail electric supplier shall require payment of supplemental
3 application fees as are necessary to recover its full actual costs of
4 undertaking activities set forth in this section; and

5 3. Any overpayment of actual costs beyond the initial application fee
6 shall be refunded or credited toward satisfying financial obligations
7 for procurement or interconnection agreements at the same
8 geographic site;

9 (c) Preparation within a reasonable time of load, interconnection,
10 infrastructure, pricing and any other studies necessary to determine the
11 manner in which to safely and efficiently serve the data center's
12 requirements in a way that does not have any negative service or rate impact
13 to the retail electric supplier's non-data center customer classes and
14 preserves the retail electric supplier's existing generation margins and
15 excess capacity. For a retail electric supplier formed under KRS Chapter
16 279, the existing generation margins and excess capacity of the generation
17 and transmission cooperative from which the retail electric supplier is
18 contractually obligated to purchase electricity shall be preserved; and

19 (d) An itemization of the types of terms and conditions that shall be included
20 within each contract.

21 (4) A contract between a data center customer and a retail electric supplier shall:

22 (a) Be in the form and manner required by the retail electric supplier and, as
23 applicable, its generation and transmission cooperative;

24 (b) Be consistent with the results of the studies described in subsection (3)(c) of
25 this section;

26 (c) Prevent the subsidization of data center customers by non-data center
27 customers through rates or by any other means;

- 1 (d) Include terms and conditions to ensure that all fixed and variable capital
2 and operating costs attributable to serving a data center are fully allocated
3 to the data center regardless of category, form, purpose, nature, or label;
- 4 (e) Require the data center customer to tender prepayment of all estimated
5 capital costs incurred by the retail electric supplier, and as applicable, its
6 generation and transmission cooperative, to invest in new or existing
7 infrastructure to serve the data center, subject to any subsequent credits,
8 payments, or repayments by the retail electric supplier, or as applicable the
9 generation and transmission cooperative, if the actual costs of those
10 investments are less than or greater than the prepayments made by the data
11 center customer;
- 12 (f) Require an identified dedicated resource be available to serve the data
13 center if the data center's peak load at any point during the term of the
14 contract will exceed two hundred fifty (250) megawatts;
- 15 (g) Allocate any curtailment obligations between a data center and non-data
16 center customers in a manner that is consistent with the rules and
17 requirements of the transmission grid operator of the retail electric supplier
18 or, as applicable, its generation and transmission cooperative, and that
19 fairly allocates any mandated curtailment as between a data center
20 customer and non-data center customer classes; and
- 21 (h) Include any other terms and conditions as the commission may require to
22 isolate and insulate non-data center customers from the costs, risks and
23 liabilities incurred by the retail electric supplier or as applicable, its
24 generation and transmission cooperative, in serving a data center.
- 25 (5) If the commission has previously approved the data center tariff of a generation
26 and transmission cooperative from which a retail electric supplier formed under
27 KRS Chapter 279 is contractually obligated to purchase electricity, then the retail

1 electric supplier may adopt and incorporate the data center tariff of the
2 generation and transmission cooperative in lieu of developing and submitting its
3 own unique tariff to serve data centers as otherwise required by this section.

4 (6) This section shall not be construed to limit or abrogate a retail electric supplier's
5 exclusive right to serve an electric consuming facility pursuant to KRS 278.016,
6 278.017, and 278.018.

7 (7) The requirements of this section shall not apply to:

8 (a) Distributors of electricity supplied by the Tennessee Valley Authority;

9 (b) Data centers constructed on sites owned by the United States Department of
10 Energy; or

11 (c) An electric service contract entered into prior to the effective date of this
12 Act.

13 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO
14 READ AS FOLLOWS:

15 (1) A utility providing a service described in KRS 278.010(3)(b), (d), or (f) to a data
16 center subject to the requirements of Section 3 of this Act shall not charge or
17 allocate any of the costs associated with serving or constructing any new
18 infrastructure to serve the data center to any other customer classes served by the
19 utility.

20 (2) The provisions of this section shall not apply to data centers constructed on sites
21 owned by the United States Department of Energy.

22 ➔Section 5. KRS 154.20-229 is amended to read as follows:

23 The authority, with preliminary approval of an eligible company, may execute a
24 memorandum of agreement with the eligible company. The terms and conditions of the
25 memorandum of agreement shall be negotiated between the authority and the company.
26 The terms of the memorandum of agreement shall include but not be limited to the
27 following provisions:

- 1 (1) The estimated capital investment for the qualified data center project;
- 2 (2) That the preliminarily approved company shall provide the authority with all
3 documentation requested in a manner acceptable to the authority and within the
4 timeframes required by the authority related to the minimum capital investment
5 requirement to be used in monitoring compliance of the memorandum of
6 agreement;
- 7 (3) That failure of a preliminarily approved company to meet the minimum capital
8 investment on or before the fifth anniversary of the preliminary approval shall result
9 in cancellation of the memorandum of agreement with the preliminarily approved
10 company;
- 11 (4) The term of the agreement, which shall not exceed:
 - 12 (a) Fifteen (15) years for a qualified data center project of a project organizer; or
 - 13 (b) 1. Fifty (50) years for a qualified data center project having a capital
14 investment of at least four hundred fifty million dollars (\$450,000,000);
15 or
 - 16 2. Twenty-five (25) years for any other qualified data center project;
- 17 (5) A provision requiring the preliminarily approved company to notify the authority
18 immediately if the eligible company sells or otherwise transfers or disposes of the
19 land on which a qualified data center project is located;
- 20 (6) Authorization for the department to issue a certificate of exemption to the
21 preliminarily approved company under KRS 139.499;
- 22 (7) A provision detailing the elimination of the sales and use tax exemption and the
23 notice of assessment by the department provided under KRS 139.499 that shall
24 occur if the preliminarily approved company fails to make the minimum capital
25 investment;
- 26 (8) (a) A statement that the memorandum of agreement may remain in effect, even if
27 there is a future transfer, sale, or disposition, directly or indirectly, of the

- 1 qualified data center project, upon the adoption of a resolution by the
2 authority to that effect.
- 3 (b) If continuation of the sales and use tax exemption is desired by the subsequent
4 owner:
- 5 1. The memorandum of agreement may be assigned to that owner under
6 paragraph (a) of this subsection provided the subsequent owner assumes
7 the prior owner's obligations under that agreement; or
- 8 2. The subsequent owner shall enter into a memorandum of agreement
9 with the authority for the remainder of the eligibility period.
- 10 (c) The authority shall notify the department regarding the events that transpire
11 under paragraphs (a) and (b) of this subsection;
- 12 (9) That the approved company shall make available to the authority all of its records
13 pertaining to the qualified data center project, including but not limited to records
14 relating to eligible costs and any other records pertaining to the project that the
15 authority may require;
- 16 (10) (a) That the authority may share information with the department; and
17 (b) That the department may share information with the authority;
18 for the purposes of monitoring and enforcing the terms of the memorandum of
19 agreement;
- 20 (11) That, if the preliminarily approved company fails to comply with its obligations
21 under the memorandum of agreement by the fifth anniversary of the preliminary
22 approval, the authority shall:
- 23 (a) Suspend the memorandum of agreement;
24 (b) Terminate the incentives available to the preliminarily approved company
25 under the memorandum of agreement;
26 (c) Notify the department of the authority's actions;
27 (d) Instruct the department to proceed with the notice of assessment; and

1 (e) Pursue any other remedy set forth in the memorandum of agreement or to
2 which it may be entitled by law;~~[-and]~~

3 (12) A certification from the preliminarily approved company that the data center
4 project complies or will comply with all applicable local requirements, the
5 applicable requirements of Sections 1, 2, 3, and 4 of this Act, and any
6 administrative regulations promulgated thereunder; and

7 (13) Any other provisions not inconsistent with this subchapter and determined to be
8 necessary or appropriate by the parties to the memorandum of agreement.

9 ➔Section 6. KRS 278.466 is amended to read as follows:

10 (1) Each retail electric supplier shall make net metering available to any eligible
11 customer-generator that the supplier currently serves or solicits for service. If the
12 cumulative generating capacity of net metering systems reaches one percent (1%)
13 of a supplier's single hour peak load during a calendar year, the supplier shall have
14 no further obligation to offer net metering to any new customer-generator at any
15 subsequent time. For the purposes of this subsection, the load of a data center as
16 defined in Section 3 of this Act shall not be considered in determining a retail
17 electric supplier's single hour peak load.

18 (2) Each retail electric supplier serving a customer with eligible electric generating
19 facilities shall use a standard kilowatt-hour meter capable of registering the flow of
20 electricity in two (2) directions. Any additional meter, meters, or distribution
21 upgrades needed to monitor the flow in each direction shall be installed at the
22 customer-generator's expense. If additional meters are installed, the net metering
23 calculation shall yield the same result as when a single meter is used.

24 (3) A retail electric supplier serving an eligible customer-generator shall compensate
25 that customer for all electricity produced by the customer's eligible electric
26 generating facility that flows to the retail electric supplier, as measured by the
27 standard kilowatt-hour metering prescribed in subsection (2) of this section. The

1 rate to be used for such compensation shall be set by the commission using the
2 ratemaking processes under this chapter during a proceeding initiated by a retail
3 electric supplier or generation and transmission cooperative on behalf of one (1) or
4 more retail electric suppliers.

5 (4) Each billing period, compensation provided to an eligible customer-generator shall
6 be in the form of a dollar-denominated bill credit. If an eligible customer-
7 generator's bill credit exceeds the amount to be billed to the customer in a billing
8 period, the amount of the credit in excess of the customer's bill shall carry forward
9 to the customer's next bill. Excess bill credits shall not be transferable between
10 customers or premises. If an eligible customer-generator closes his or her account,
11 no cash refund for accumulated credits shall be paid.

12 (5) Using the ratemaking process provided by this chapter, each retail electric supplier
13 shall be entitled to implement rates to recover from its eligible customer-generators
14 all costs necessary to serve its eligible customer-generators, including but not
15 limited to fixed and demand-based costs, without regard for the rate structure for
16 customers who are not eligible customer-generators.

17 (6) For an eligible electric generating facility in service prior to the effective date of the
18 initial net metering order by the commission in accordance with subsection (3) of
19 this section, the net metering tariff provisions in place when the eligible customer-
20 generator began taking net metering service, including the one-to-one (1:1)
21 kilowatt-hour denominated energy credit provided for electricity fed into the grid,
22 shall remain in effect at those premises for a twenty-five (25) year period,
23 regardless of whether the premises are sold or conveyed during that twenty-five
24 (25) year period. For any eligible customer-generator to whom this subsection
25 applies, each net metering contract or tariff under which the customer takes service
26 shall be identical, with respect to energy rates, rate structure, and monthly charges,
27 to the contract or tariff to which the same customer would be assigned if the

1 customer were not an eligible customer-generator.

2 (7) Electric generating systems and interconnecting equipment used by eligible
3 customer-generators shall meet all applicable safety and power quality standards
4 established by the National Electrical Code (NEC), Institute of Electrical and
5 Electronics Engineers (IEEE), and accredited testing laboratories such as
6 Underwriters Laboratories.

7 (8) An eligible customer-generator installation is transferable to other persons at the
8 same premises upon notification to the retail electric supplier and verification that
9 the installation is in compliance with the applicable safety and power quality
10 standards in KRS 278.467 and in subsection (7) of this section.

11 (9) Any upgrade of the interconnection between the retail electric supplier and the
12 customer-generator that is required by commission-approved tariffs for the purpose
13 of allowing net metering shall be made at the expense of the customer-generator.