

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 ninety (90) days of the effective date of this Act, a municipal electric utility  
17           shall issue and maintain a tariff that includes the following minimum  
18           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 resource, interconnection, pricing,  
17                   and any other studies necessary to determine the manner in which to safely  
18                   and efficiently serve the data center's requirements in a way that does not  
19                   have any negative service or rate impact to the municipal electric utility's  
20                   non-data center customer classes and preserves the municipal electric  
21                   utility's 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 credits  
7                   or repayments by the municipal utility if the actual costs of those  
8                   investments are less than the prepayments made by the data center  
9                   customer;  
10                   (f) Require a dedicated resource to serve the data center if the data center's  
11                   peak load at any point during the term of the contract will exceed twenty-  
12                   five (25) megawatts; and  
13                   (g) Fairly allocate any curtailment obligations between a data center and non-  
14                   data center customer classes in a manner that is consistent with the rules  
15                   and requirements of the municipal electric utility's transmission grid  
16                   operator.

17                   (5) The requirements of this section shall not apply to distributors of electricity  
18                   supplied by the Tennessee Valley Authority to the extent that they conflict with  
19                   requirements imposed by the Tennessee Valley Authority.

20                   → SECTION 2. A NEW SECTION OF KRS CHAPTER 96 IS CREATED TO  
21                   READ AS FOLLOWS:

22                   A municipal utility subject to the requirements of this chapter shall not charge or  
23                   allocate any of the costs associated with serving or constructing any new infrastructure  
24                   to serve a data center to any other customers served by the utility with regard to the  
25                   following utility services that it provides to the public for compensation:

26                   (1) The diverting, developing, pumping, impounding, distributing, or furnishing of  
27                   water;

1    (2) The collection, transmission, or treatment of sewage; or  
2    (3) The production, manufacture, storage, distribution, sale, or furnishing of natural  
3    or manufactured gas, or a mixture of both.

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

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

7       (a) "Contract" means the service agreement between a retail electric supplier  
8       and a customer that owns or operates a data center, which for any retail  
9       electric service agreement involving a retail electric supplier formed under  
10    KRS Chapter 279 shall also include the generation and transmission  
11    cooperative from which the retail electric supplier is contractually obligated  
12    to purchase electricity;

13       (b) "Contract capacity" means the mutually agreed amount of monthly peak  
14       load requirements for each month during the remaining term of the  
15       contract after the load ramp period has expired;

16       (c) "Data center" means:

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

19          2. A centralized facility that:

20             a. Is used primarily or exclusively for electronic information  
21             services, including but not limited to the management, storage,  
22             processing, and dissemination of electronic data and information  
23             through the use of computer systems, servers, networking  
24             equipment, and related components;

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

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

3                   d. Has an expected or actual monthly load factor of sixty percent  
4                   (60%) or greater;

5                   (d) "Data center customer" means a customer of a retail electric supplier that  
6                   owns or operates, or proposes to own or operate, a data center or who is  
7                   otherwise responsible for paying for electric utility service for a data center;  
8                   and

9                   (e) "Dedicated resource" means one (1) or more sources of electric power or  
10                   capacity that is sufficient to serve the contract capacity needs of the data  
11                   center from:

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

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

17                   3. Any combination of both.

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

21                   (3) Within ninety (90) days of the effective date of this Act, the commission shall  
22                   promulgate administrative regulations in accordance with KRS Chapter 13A to  
23                   require each retail electric supplier to file and maintain a tariff to serve data  
24                   centers located within its service territory. Each retail electric supplier shall  
25                   thereafter file a data center tariff that conforms to the requirements of the  
26                   commission's administrative regulations within ninety (90) days of the  
27                   promulgation of the administrative regulations. The commission shall require

1       that each data center tariff include the following minimum requirements for  
2       serving a data center:

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

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

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

- 17      1. The data center customer shall be required to pay the full actual cost  
18      of the retail electric supplier's study and development of the  
19      requirements to serve the data center consistent with this section;
- 20      2. The retail electric supplier shall require payment of supplemental  
21      application fees as are necessary to recover its full actual costs of  
22      undertaking activities set forth in this section; and
- 23      3. Any overpayment of actual costs beyond the initial application fee  
24      shall be refunded or credited toward satisfying financial obligations  
25      for procurement or interconnection agreements at the same  
26      geographic site;

27      (c) Preparation within a reasonable time of load, interconnection,

1                   infrastructure, pricing and any other studies necessary to determine the  
2                   manner in which to safely and efficiently serve the data center's  
3                   requirements in a way that does not have any negative service or rate impact  
4                   to the retail electric supplier's non-data center customer classes and  
5                   preserves the retail electric supplier's existing generation margins and  
6                   excess capacity. For a retail electric supplier formed under KRS Chapter  
7                   279, the existing generation margins and excess capacity of the generation  
8                   and transmission cooperative from which the retail electric supplier is  
9                   contractually obligated to purchase electricity shall be preserved; and

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

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

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

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

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

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

22                (e) Require the data center customer to tender prepayment of all estimated  
23                capital costs incurred by the retail electric supplier, and as applicable, its  
24                generation and transmission cooperative, to invest in new or existing  
25                infrastructure to serve the data center, subject to any subsequent credits or  
26                repayments by the retail electric supplier, or as applicable the generation  
27                and transmission cooperative, if the actual costs of those investments are

1                   *less than the prepayments made by the data center customer;*

2                   *(f) Require a dedicated resource to serve the data center if the data center's*

3                   *peak load at any point during the term of the contract will exceed two*

4                   *hundred fifty (250) megawatts;*

5                   *(g) Fairly allocate any curtailment obligations between a data center and non-*

6                   *data center customer classes in a manner that is consistent with the rules*

7                   *and requirements of the transmission grid operator of the retail electric*

8                   *supplier or as applicable, its generation and transmission cooperative; and*

9                   *(h) Include any other terms and conditions as the commission may require to*

10                   *isolate and insulate non-data center customers from the costs, risks and*

11                   *liabilities incurred by the retail electric supplier or as applicable, its*

12                   *generation and transmission cooperative, in serving a data center.*

13                   *(5) If the commission has previously approved the data center tariff of a generation*

14                   *and transmission cooperative from which a retail electric supplier formed under*

15                   *KRS Chapter 279 is contractually obligated to purchase electricity, then the retail*

16                   *electric supplier may adopt and incorporate the data center tariff of the*

17                   *generation and transmission cooperative in lieu of developing and submitting its*

18                   *own unique tariff to serve data centers as otherwise required by this section.*

19                   *(6) This section shall not be construed to limit or abrogate a retail electric supplier's*

20                   *exclusive right to serve an electric consuming facility pursuant to KRS 278.016,*

21                   *278.017, and 278.018.*

22                   *(7) The requirements of this section shall not apply to the distributors of electricity*

23                   *supplied by the Tennessee Valley Authority to the extent that they conflict with*

24                   *requirements imposed by the Tennessee Valley Authority.*

25                   ➔ SECTION 4. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO

26                   READ AS FOLLOWS:

27                   *A utility providing a service described in KRS 278.010(3)(b), (d), or (f) to a data center*

1     *subject to the requirements of Section 3 of this Act shall not charge or allocate any of*  
2     *the costs associated with serving or constructing any new infrastructure to serve the*  
3     *data center to any other customer classes served by the utility.*

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

5     The authority, with preliminary approval of an eligible company, may execute a  
6     memorandum of agreement with the eligible company. The terms and conditions of the  
7     memorandum of agreement shall be negotiated between the authority and the company.  
8     The terms of the memorandum of agreement shall include but not be limited to the  
9     following provisions:

- 10    (1) The estimated capital investment for the qualified data center project;
- 11    (2) That the preliminarily approved company shall provide the authority with all  
12        documentation requested in a manner acceptable to the authority and within the  
13        timeframes required by the authority related to the minimum capital investment  
14        requirement to be used in monitoring compliance of the memorandum of  
15        agreement;
- 16    (3) That failure of a preliminarily approved company to meet the minimum capital  
17        investment on or before the fifth anniversary of the preliminary approval shall result  
18        in cancellation of the memorandum of agreement with the preliminarily approved  
19        company;
- 20    (4) The term of the agreement, which shall not exceed:
  - 21        (a) Fifteen (15) years for a qualified data center project of a project organizer; or
  - 22        (b) 1. Fifty (50) years for a qualified data center project having a capital  
23            investment of at least four hundred fifty million dollars (\$450,000,000);  
24            or
  - 25        2. Twenty-five (25) years for any other qualified data center project;
- 26    (5) A provision requiring the preliminarily approved company to notify the authority  
27        immediately if the eligible company sells or otherwise transfers or disposes of the

1        land on which a qualified data center project is located;

2    (6) Authorization for the department to issue a certificate of exemption to the  
3        preliminarily approved company under KRS 139.499;

4    (7) A provision detailing the elimination of the sales and use tax exemption and the  
5        notice of assessment by the department provided under KRS 139.499 that shall  
6        occur if the preliminarily approved company fails to make the minimum capital  
7        investment;

8    (8) (a) A statement that the memorandum of agreement may remain in effect, even if  
9        there is a future transfer, sale, or disposition, directly or indirectly, of the  
10        qualified data center project, upon the adoption of a resolution by the  
11        authority to that effect.

12        (b) If continuation of the sales and use tax exemption is desired by the subsequent  
13        owner:

14            1. The memorandum of agreement may be assigned to that owner under  
15            paragraph (a) of this subsection provided the subsequent owner assumes  
16            the prior owner's obligations under that agreement; or

17            2. The subsequent owner shall enter into a memorandum of agreement  
18            with the authority for the remainder of the eligibility period.

19        (c) The authority shall notify the department regarding the events that transpire  
20        under paragraphs (a) and (b) of this subsection;

21    (9) That the approved company shall make available to the authority all of its records  
22        pertaining to the qualified data center project, including but not limited to records  
23        relating to eligible costs and any other records pertaining to the project that the  
24        authority may require;

25    (10) (a) That the authority may share information with the department; and  
26            (b) That the department may share information with the authority;  
27        for the purposes of monitoring and enforcing the terms of the memorandum of

1           agreement;

2   (11) That, if the preliminarily approved company fails to comply with its obligations  
3           under the memorandum of agreement by the fifth anniversary of the preliminary  
4           approval, the authority shall:

5           (a) Suspend the memorandum of agreement;

6           (b) Terminate the incentives available to the preliminarily approved company  
7           under the memorandum of agreement;

8           (c) Notify the department of the authority's actions;

9           (d) Instruct the department to proceed with the notice of assessment; and

10          (e) Pursue any other remedy set forth in the memorandum of agreement or to  
11           which it may be entitled by law; ~~and~~

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

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