

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

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

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

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

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