

1           AN ACT relating to energy planning.

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

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

4    (1) The General Assembly finds and declares that:

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

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

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

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

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

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

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

27           (h) Existing state and federal policies with respect to energy do not adequately

1                   address the concerns of the General Assembly or citizens of the  
2                   Commonwealth such that a comprehensive Kentucky energy policy is  
3                   required;

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

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

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

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

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

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

25                   (o) Local economic development requires an adequate supply of electricity to  
26                   support new and expanding industries and is enhanced by robust employment  
27                   in coal mining and coal transportation and at electric generating facilities, the

1                   local job multiplier effect of employment in the coal, natural gas, and electric  
2                   generating industries, and state and local taxes and other forms of economic  
3                   value creation for the Commonwealth; and

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

10                   (2) For the purposes of this section:

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

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

18                   (c) "Generation and transmission cooperative" has the same meaning as in KRS  
19                   278.010;

20                   (d) "Intermittent" means:

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

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

26                   3. Geothermal energy, biomass energy, anaerobic digestion, or combined  
27                   heat and power from solar, wind, geothermal, or anaerobic digestion

1 sources;

2           4. Any short duration energy storage, which includes any method of  
3           storing generated electricity for later dispatch to the grid, whether alone  
4           or in conjunction with any other intermittent sources described in this  
5           paragraph, that is equivalent to less than forty-eight (48) hours of the  
6           average peak generation of the unit it is used to offset; or  
7           5. Conventional hydropower and pumped storage hydropower, unless they  
8           are capable of providing energy on demand, in which case they shall be  
9           deemed to be dispatchable;

10          (e) "Public Service Commission" means the Kentucky Public Service  
11           Commission established under KRS Chapter 278, or any successor entity  
12           having the power to regulate rates and services of public utilities pursuant to  
13           the powers enumerated in KRS Chapter 278; and  
14          (f) "Utility" has the same meaning as in KRS 278.010.

15          (3) The Energy Planning and Inventory Commission is hereby established and  
16           administratively attached to the University of Kentucky Center for Applied Energy  
17           Research, but it shall otherwise be independent from the University of Kentucky  
18           and any Kentucky executive branch agency. The affairs of the commission shall be  
19           governed exclusively by the provisions of this section. The exercise of the  
20           commission's powers conferred by this section and the carrying out of its purposes  
21           and duties are essential governmental functions and are conducted for public  
22           purposes.

23          (4) (a) The commission shall be composed of an eighteen (18) member board and a  
24           five (5) member executive committee. Except for the state government  
25           officials and the ex officio nonvoting commission board members appointed  
26           by the President of the Senate and the Speaker of the House of  
27           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:

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  
2 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  
5 finance, nominated by the president of the Kentucky Banker's  
6 Association;
14. One (1) member representing residential electricity consumers;
15. One (1) member of the House of Representatives, who shall be an ex  
9 officio nonvoting member, nominated by the Speaker of the House of  
10 Representatives;
16. One (1) member of the Senate, who shall be an ex officio nonvoting  
12 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.

15 (b) The executive committee of the board shall include the following five (5)  
16 members:

- 17 1. The director of the University of Kentucky Center of Applied Energy  
18 Research;
- 19 2. One (1) member appointed by the Governor who has the same level of  
20 education, training, and professional experience as would be required to  
21 serve in the role of chief executive officer or board member of a  
22 company engaged in the production of coal;
- 23 3. One (1) member appointed by the Governor who has the same level of  
24 education, training, and professional experience as would be required to  
25 serve in the role of chief executive officer or board member of an  
26 investor-owned, cooperative, or municipal electric utility; and
- 27 4. Two (2) members elected by the commission board from the

- 4 (c) Any appointment made by the Governor to the commission board or the  
5 executive committee shall be subject to confirmation by the Senate. If a  
6 pending appointment to the board or executive committee requiring  
7 confirmation is not confirmed by the Senate upon the conclusion of the  
8 legislative session during or before which the appointment was made, then the  
9 member's position on the board or executive committee shall become vacant,  
10 either upon sine die adjournment of the legislative session or the date that the  
11 Senate votes to decline to confirm appointment, and the Governor shall  
12 appoint a different replacement.
- 13 (d) After the expiration of their initial terms, members who are not members of  
14 the legislative or executive branch shall serve for terms of four (4) years and  
15 until a successor is appointed and confirmed by the Senate. Legislative  
16 members shall serve during the terms of their elected positions in the General  
17 Assembly, and executive branch members shall serve during the appointed  
18 terms of their state government positions. In the event of a vacancy prior to  
19 the expiration of a term for member appointed by the Governor, the Governor  
20 shall appoint a replacement in the same manner as the original appointment,  
21 and the appointment shall be subject to the same Senate confirmation process.  
22 Members appointed by the Governor shall not be full-time employees of the  
23 Commonwealth as defined in KRS 18A.005, and shall not be compensated for  
24 their service on the board, but they shall be subject to the requirements of the  
25 executive branch code of ethics established under KRS Chapter 11A.
- 26 (e) A majority of the commission board may select one (1) member of the  
27 commission board to serve as chair of the commission board and one (1)

1                   member of the commission board to serve as vice chair of the commission  
2                   board.

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

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

9                   (h) No person shall serve as a member of the commission board or executive  
10                  committee if the service would cause a conflict with, or result in the  
11                  disclosure of confidential information relating to, any research projects  
12                  performed by or in partnership with the University of Kentucky Center for  
13                  Applied Energy Research.

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

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

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

1 board by legislative act.

2 (5) The commission may employ an executive director who shall be selected and hired  
3 by the executive committee, subject to confirmation by the Senate. If a pending  
4 selection for an executive director is not confirmed by the Senate upon the  
5 conclusion of the legislative session during or before which the selection was made,  
6 then the executive director's position shall become vacant, either upon sine die  
7 adjournment of the legislative session or the date that the Senate votes to decline to  
8 confirm appointment, and the executive committee shall select a different  
9 replacement. Until an executive director is selected and hired, or in the event of a  
10 vacancy in the role of executive director, the director of the University of Kentucky  
11 Center for Applied Energy Research shall serve in the role of executive director of  
12 the commission.

13 (6) The commission shall be authorized to:

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

16 (b) Assist in fulfilling the executive committee's mandatory duties regarding  
17 review of planned retirement decisions described in subsection (7) of this  
18 section;

19 (c) Engage in the examination and study of:

23           2. The continued operation, retirement, divestiture, or other major action  
24           impacting any electric power generating unit, or any pollution control  
25           equipment associated with any such unit, located in the Commonwealth;

1 and consumption in the Commonwealth, the Kentucky energy grid's  
2 response to severe weather events, projected power demand and growth  
3 in demand, land use impacts from power generation, local economic  
4 impacts resulting from the closure of electric generating resources, and  
5 whether alternatives to decommissioning electric generating resources  
6 exist;

7 4. The effect of any federal policy which may impact the availability of  
8 dispatchable power or the adequacy of energy supplies in the  
9 Commonwealth;

10 5. The Commonwealth's ability to participate in energy markets or in the  
11 production, transmission, or distribution of energy;

12 6. The Commonwealth's ability to finance or provide financing assistance  
13 to energy producers to encourage additional energy production in the  
14 Commonwealth;

15 7. New and emerging electric generating technologies that could supply  
16 future electric demand in the Commonwealth; and

17 8. Whether the Commonwealth's energy resources are sufficiently  
18 dispatchable to ensure against loss of electrical power supply in the  
19 event of extreme weather or other unexpected or catastrophic events that  
20 may challenge the ability of the Commonwealth's electrical grid to meet  
21 demand; and

22 (d) On or before December 1, 2024, and each December 1 thereafter, submit a  
23 report with recommendations, including but not limited to recommendations  
24 for statutory changes or budgetary proposals, to the Legislative Research  
25 Commission, the Governor, and the Public Service Commission concerning  
26 any of the issues examined or studied by the commission pursuant to  
27 paragraph (c) of this subsection. **The annual report shall also include a**

1                   current inventory of the Commonwealth's existing electric generation and  
2                   transmission resources, the commission's forecast for any changes in  
3                   demand for electric generation and transmission resources for the next five  
4                   (5) years, and recommendations for how to best address any discrepancies  
5                   between the current electric resource inventory and forecasted future  
6                   demand.

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

11       (b) A utility proposing to retire any existing coal, oil, or natural gas-fired power  
12                  plant, or unit within such plant, shall give notice to the commission's  
13                  executive committee, in the form and manner as the executive committee may  
14                  require, at least one hundred eighty (180) days prior to submitting the  
15                  retirement application to the Public Service Commission required by KRS  
16                  278.264(1). The utility may include with its notice any information the utility  
17                  believes will assist in the executive committee's review of the proposed  
18                  activity.

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

25                  2. A utility responding to an information request may designate  
26                  information, records, or data provided in the response as confidential  
27                  business information, and the information, records, or data shall be

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

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

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

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

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

- 1                   2. Whether alternatives to the proposed activity exist, and whether those
- 2                   alternatives should be further evaluated prior to proceeding with the
- 3                   proposed activity;
- 4                   3. Whether the replacement of the generating unit or units subject to the
- 5                   proposed activity with other generating resources will result in any
- 6                   adverse land use impacts in the Commonwealth;
- 7                   4. Whether the proposed activity will result in loss of revenue to the
- 8                   Commonwealth or any local government unit;
- 9                   5. The positive or negative economic impact of the proposed activity on
- 10                   the local economy of the area in which the proposed activity will take
- 11                   place;
- 12                   6. The economic impact of the proposed activity on the Commonwealth as
- 13                   a whole; and
- 14                   7. The impact of the proposed activity on the Commonwealth's ability to
- 15                   increase the available supply of electrical power for current or future
- 16                   economic development purposes.

17                   (g) The findings of the executive committee that are approved by a majority of

18                   the members of the executive committee shall be designated as findings of the

19                   commission and shall be submitted to the Public Service Commission. If no

20                   majority decision of the executive committee is reached with respect to the

21                   findings, the report shall so indicate, and each member of the executive

22                   committee may make a written statement of position concerning the proposed

23                   activity by the deadline provided for in the report. Each written statement

24                   shall be included in the report and transmitted along with the report to the

25                   Public Service Commission. Any executive committee member dissenting

26                   from the report, any portion of the report, or any specific findings in the report

27                   may, within one hundred eighty (180) days of the utility filing notice of the

1 proposed activity, transmit separate dissenting findings to the Public Service  
2 Commission.

3 (h) The executive committee's written report, and any dissenting statements  
4 provided to the Public Service Commission, shall be included in any  
5 retirement application made to the Public Service Commission under KRS  
6 278.264, and the Public Service Commission shall not approve any retirement  
7 application without considering all information received from the executive  
8 committee or any member of the executive committee. Any order of the  
9 Public Service Commission in a proceeding under KRS 278.264 shall contain  
10 specific written findings of fact or conclusions of law addressing whether the  
11 executive committee's findings and recommendations were considered by the  
12 Public Service Commission.

13 (i) No retirement application to the Public Service Commission under KRS  
14 278.264 shall be deemed administratively complete unless it includes either  
15 the executive committee's report submitted pursuant to this section or  
16 evidence that more than one hundred eighty (180) days have passed since  
17 notice was submitted to the commission as required in paragraph (b) of this  
18 subsection and no executive committee report or determination has been  
19 provided to the utility.

20 (8) Notwithstanding any provision of law to the contrary, the executive committee, or  
21 the executive director if authorized by the executive committee, shall have standing  
22 to participate as an intervening party in any case or other proceeding before the  
23 Public Service Commission.

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

1 (10) The commission shall cease to exist on December 31, 2035.