

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

1 the Governor and confirmed by the Senate as set forth in this subsection. The
2 commission board shall be composed of the following members:

- 3 1. One (1) representative of a Kentucky investor-owned utility;
- 4 2. One (1) representative of a Kentucky generation and transmission
5 cooperative, nominated by the chief operating officer of the Kentucky
6 Association of Electric Cooperatives;
- 7 3. One (1) representative of Kentucky coal producers, nominated by the
8 president of the Kentucky Coal Association;
- 9 4. One (1) representative of Kentucky oil and gas producers, nominated by
10 the executive director of the Kentucky Oil and Gas Association;
- 11 5. One (1) representative of an industry or business engaged in the
12 transportation of coal;
- 13 6. One (1) representative of a business engaged in the transportation or
14 distribution of natural gas, nominated by the president of the Kentucky
15 Gas Association;
- 16 7. One (1) representative with professional experience in the purchasing or
17 sale of fossil fuels, nominated by the president of the Kentucky Coal
18 Association;
- 19 8. One (1) member representing the nuclear electric generation industry,
20 nominated by the executive director of the United States Nuclear
21 Industry Council;
- 22 9. One (1) member representing the interests of businesses or entities
23 engaged in activities related to the mining, milling, conversion,
24 enrichment, or fabrication of nuclear fuel or involved in the remediation
25 of past enrichment of nuclear fuels in the Commonwealth;
- 26 10. One (1) member representing commercial and industrial consumers of
27 electrical power, nominated by Kentucky Industrial Utility Customers;

- 1 11. One (1) member representing Kentucky economic interests, nominated
- 2 by the chief executive officer of the Kentucky Chamber of Commerce;
- 3 12. One (1) member representing producers of renewable electricity;
- 4 13. One (1) member with experience in investment banking or utility
- 5 finance, nominated by the president of the Kentucky Banker's
- 6 Association;
- 7 14. One (1) member representing residential electricity consumers;
- 8 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;
- 11 16. One (1) member of the Senate, who shall be an ex officio nonvoting
- 12 member, nominated by the President of the Senate;
- 13 17. The secretary of the Energy and Environment Cabinet, or designee; and
- 14 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

1 commission board membership. Any vacancy in an executive committee
2 position under this subparagraph shall be filled in the same manner as
3 the original election.

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:

20 1. The adequacy of the Commonwealth's existing and anticipated future
21 electric generation and transmission resources and the existing and
22 anticipated future electric demand;

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;

26 3. Issues concerning the adequacy of the Commonwealth's energy supply,
27 including but not limited to the economic impact of energy production

- 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*

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

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

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

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

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

1 exempt from disclosure under the requirements of KRS 61.870 to
2 61.884.

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.