

CHAPTER 172

(SB 349)

AN ACT relating to energy policy and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

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

- (a) *The long-term economic health and well-being of the citizens of the Commonwealth and the United States depends upon the availability of reliable sources of energy;*
- (b) *The Commonwealth has abundant reserves of coal, natural gas, and other natural resources;*
- (c) *The energy needs of the Commonwealth are best met by continuing to engage in an all-of-the-above approach to electric generation resources, including but not limited to coal, oil, natural gas, wind, solar, hydropower, nuclear, and any future or emerging technologies like hydrogen power;*
- (d) *The current economy and future economic development of the Commonwealth requires reliable, resilient, dependable, and abundant supplies of electrical power;*
- (e) *The demand for reliable, resilient, dispatchable electrical power is anticipated to significantly increase in the coming decades as the Commonwealth becomes home to additional manufacturing and other economic development projects which increase demand for electrical power;*
- (f) *It is in the interest of the Commonwealth that it be able to generate sufficient electricity within its borders to serve its own industrial, residential, and commercial demand and to power its own economy;*
- (g) *The electrification of the United States' economy combined with unprecedented federal regulatory pressures have created an electric generation resource crisis in the Commonwealth;*
- (h) *Existing state and federal policies with respect to energy do not adequately address the concerns of the General Assembly or citizens of the Commonwealth such that a comprehensive Kentucky energy policy is required;*
- (i) *Current policies at the state and federal level do not adequately assess capacity, availability, reliability, or resilience attributes of existing and new fossil fuel-fired, nuclear, or other emerging dispatchable electric generating resources;*
- (j) *It is the policy of the Commonwealth to maintain adequate capacity of available, reliable, dispatchable, and resilient electric generation to provide for the existing and reasonably projected future energy consumption needs of all wholesale, retail, and other consumers of electricity in the Commonwealth;*
- (k) *Further retirement of fossil fuel-fired electric generating resources is not necessary for the protection of the environment or the health, safety, and welfare of the citizens of the Commonwealth;*
- (l) *The health, happiness, safety, economic opportunity, and general welfare of the citizens of the Commonwealth will be promoted and protected by the operation of fossil fuel-fired electric generating resources and, conversely, those interests would be harmed by the premature retirement of those generating resources;*
- (m) *The Commonwealth can support a multitude of potential electric generating resources and energy fuel supply sources so as to be the national leader in the production of energy in all forms;*
- (n) *Local economic development is essential to the health, happiness, safety, and general welfare of the citizens of the Commonwealth;*
- (o) *Local economic development requires an adequate supply of electricity to support new and expanding industries and is enhanced by robust employment in coal mining and coal transportation and at electric generating facilities, the local job multiplier effect of employment in the coal, natural*

gas, and electric generating industries, and state and local taxes and other forms of economic value creation for the Commonwealth; and

- (p) *The numerous energy policy challenges facing the Commonwealth require a comprehensive energy policy informed by the input, judgment, experience, and expertise of diverse stakeholders representing a variety of interests and energy resources, including but not limited to coal, oil, natural gas, wind, solar, hydropower, nuclear, and any future or emerging resources to achieve the best results for the citizens of the Commonwealth.*
- (2) *For the purposes of this section:*
- (a) *"Commission" means the Energy Planning and Inventory Commission established in this section;*
 - (b) *"Dispatchable" means a source of electric power generation that is available on demand, that is not intermittent, and that can be adjusted to increase or decrease its power output upon request of a power grid operator or otherwise upon demand or request, or that can have its power output adjusted in response to market or system needs;*
 - (c) *"Generation and transmission cooperative" has the same meaning as in KRS 278.010;*
 - (d) *"Intermittent" means:*
 - 1. *A source of electric power generation from a solar photovoltaic, solar thermal heating, concentrating solar thermal collector, or other solar energy collection or generation system;*
 - 2. *A source of electric power that generates energy by harnessing wind power or energy, whether through a turbine or other device;*
 - 3. *Geothermal energy, biomass energy, anaerobic digestion, or combined heat and power from solar, wind, geothermal, or anaerobic digestion sources;*
 - 4. *Any short duration energy storage, which includes any method of storing generated electricity for later dispatch to the grid, whether alone or in conjunction with any other intermittent sources described in this paragraph, that is equivalent to less than forty-eight (48) hours of the average peak generation of the unit it is used to offset; or*
 - 5. *Conventional hydropower and pumped storage hydropower, unless they are capable of providing energy on demand, in which case they shall be deemed to be dispatchable;*
 - (e) *"Public Service Commission" means the Kentucky Public Service Commission established under KRS Chapter 278, or any successor entity having the power to regulate rates and services of public utilities pursuant to the powers enumerated in KRS Chapter 278; and*
 - (f) *"Utility" has the same meaning as in KRS 278.010.*
- (3) *The Energy Planning and Inventory Commission is hereby established and administratively attached to the University of Kentucky Center for Applied Energy Research, but it shall otherwise be independent from the University of Kentucky and any Kentucky executive branch agency. The affairs of the commission shall be governed exclusively by the provisions of this section. The exercise of the commission's powers conferred by this section and the carrying out of its purposes and duties are essential governmental functions and are conducted for public purposes.*
- (4) (a) *The commission shall be composed of an eighteen (18) member board and a five (5) member executive committee. Except for the state government officials and the ex officio nonvoting commission board members appointed by the President of the Senate and the Speaker of the House of 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 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 finance, nominated by the president of the Kentucky Banker's Association;*
 14. *One (1) member representing residential electricity consumers;*
 15. *One (1) member of the House of Representatives, who shall be an ex officio nonvoting member, nominated by the Speaker of the House of Representatives;*
 16. *One (1) member of the Senate, who shall be an ex officio nonvoting 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.*
- (b) *The executive committee of the board shall include the following five (5) members:*
1. *The director of the University of Kentucky Center of Applied Energy Research;*
 2. *One (1) member appointed by the Governor who has the same level of education, training, and professional experience as would be required to serve in the role of chief executive officer or board member of a company engaged in the production of coal;*
 3. *One (1) member appointed by the Governor who has the same level of education, training, and professional experience as would be required to serve in the role of chief executive officer or board member of an investor-owned, cooperative, or municipal electric utility; and*
 4. *Two (2) members elected by the commission board from the commission board membership. Any vacancy in an executive committee position under this subparagraph shall be filled in the same manner as the original election.*
- (c) *Any appointment made by the Governor to the commission board or the executive committee shall be subject to confirmation by the Senate. If a pending appointment to the board or executive committee requiring confirmation is not confirmed by the Senate upon the conclusion of the legislative session during or before which the appointment was made, then the member's position on the board or executive committee shall become vacant, either upon sine die adjournment of the legislative session or the date that the Senate votes to decline to confirm appointment, and the Governor shall appoint a different replacement.*
- (d) *After the expiration of their initial terms, members who are not members of the legislative or executive branch shall serve for terms of four (4) years and until a successor is appointed and confirmed by the Senate. Legislative members shall serve during the terms of their elected positions*

in the General Assembly, and executive branch members shall serve during the appointed terms of their state government positions. In the event of a vacancy prior to the expiration of a term for member appointed by the Governor, the Governor shall appoint a replacement in the same manner as the original appointment, and the appointment shall be subject to the same Senate confirmation process. Members appointed by the Governor shall not be full-time employees of the Commonwealth as defined in KRS 18A.005, and shall not be compensated for their service on the board, but they shall be subject to the requirements of the executive branch code of ethics established under KRS Chapter 11A.

- (e) *A majority of the commission board may select one (1) member of the commission board to serve as chair of the commission board and one (1) member of the commission board to serve as vice chair of the commission board.*
- (f) *The executive committee may adopt rules of procedure or bylaws governing the conduct of the commission's business.*
- (g) *Other than being a customer of retail electric service, no member of the executive committee shall have any current employment, contractual, or other direct financial relationship with any utility at the time of their appointment or during their service on the executive committee.*
- (h) *No person shall serve as a member of the commission board or executive committee if the service would cause a conflict with, or result in the disclosure of confidential information relating to, any research projects performed by or in partnership with the University of Kentucky Center for Applied Energy Research.*
- (i) *If the review of a notice given under subsection (7) of this section would result in the disclosure of confidential information to an executive committee member that is prohibited under subsection (7)(c)3. of this section, the executive committee member shall recuse himself or herself, and the remaining executive committee members shall name a replacement from the membership of the commission board solely for the purpose of reviewing the notice that caused the recusal.*
- (j) *A majority of the executive committee shall constitute a quorum, and the affirmative vote of the majority of the members present during a meeting is necessary for any action taken by vote of the executive committee.*
- (k) *The Governor shall not have reorganization power over the commission, the structure of the commission, its board, the executive committee, or the hiring, compensation, or termination of its executive director. Only the General Assembly may reorganize or restructure the commission or the commission board by legislative act.*
- (5) *The commission may employ an executive director who shall be selected and hired by the executive committee, subject to confirmation by the Senate. If a pending selection for an executive director is not confirmed by the Senate upon the conclusion of the legislative session during or before which the selection was made, then the executive director's position shall become vacant, either upon sine die adjournment of the legislative session or the date that the Senate votes to decline to confirm appointment, and the executive committee shall select a different replacement. Until an executive director is selected and hired, or in the event of a vacancy in the role of executive director, the director of the University of Kentucky Center for Applied Energy Research shall serve in the role of executive director of the commission.*
- (6) *The commission shall be authorized to:*
 - (a) *Take all necessary measures to effectuate the public purposes described in subsection (1) of this section;*
 - (b) *Assist in fulfilling the executive committee's mandatory duties regarding review of planned retirement decisions described in subsection (7) of this section;*
 - (c) *Engage in the examination and study of:*
 - 1. *The adequacy of the Commonwealth's existing and anticipated future electric generation and transmission resources and the existing and anticipated future electric demand;*
 - 2. *The continued operation, retirement, divestiture, or other major action impacting any electric power generating unit, or any pollution control equipment associated with any such unit, located in the Commonwealth;*

3. *Issues concerning the adequacy of the Commonwealth's energy supply, including but not limited to the economic impact of energy production and consumption in the Commonwealth, the Kentucky energy grid's response to severe weather events, projected power demand and growth in demand, land use impacts from power generation, local economic impacts resulting from the closure of electric generating resources, and whether alternatives to decommissioning electric generating resources exist;*
 4. *The effect of any federal policy which may impact the availability of dispatchable power or the adequacy of energy supplies in the Commonwealth;*
 5. *The Commonwealth's ability to participate in energy markets or in the production, transmission, or distribution of energy;*
 6. *The Commonwealth's ability to finance or provide financing assistance to energy producers to encourage additional energy production in the Commonwealth;*
 7. *New and emerging electric generating technologies that could supply future electric demand in the Commonwealth; and*
 8. *Whether the Commonwealth's energy resources are sufficiently dispatchable to ensure against loss of electrical power supply in the event of extreme weather or other unexpected or catastrophic events that may challenge the ability of the Commonwealth's electrical grid to meet demand; and*
- (d) *On or before December 1, 2024, and each December 1 thereafter, submit a report with recommendations, including but not limited to recommendations for statutory changes or budgetary proposals, to the Legislative Research Commission, the Governor, and the Public Service Commission concerning any of the issues examined or studied by the commission pursuant to paragraph (c) of this subsection.*
- (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 subsection (1) of Section 4 of this Act. 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 exempt from disclosure under the requirements of KRS 61.870 to 61.884.*
3. *A utility responding to an information request may indicate in its response that the information, records, or data provided should not be shared with specific members of the commission board or executive committee to avoid an unfair competitive or market advantage, in which case the confidential information, records, or data shall not be shared with or made available to that member or members.*
- (d) *Other than being a customer of retail electric service, any member of the commission board who has an employment or contractual relationship with the utility filing the notice required by this subsection shall have no contact with the executive director or any member of the executive committee concerning the proposed activities described in the notice.*

- (e) *Within ninety (90) days of its receipt of the notice required by this section, the commission shall hold a public hearing in the county in which the retirement is proposed to occur in order to receive public comments on the proposed activity.*
- (f) *Within one hundred thirty-five (135) days of receiving a utility's notice of a proposed retirement, but following the public hearing described in paragraph (e) of this subsection, the executive committee shall issue a final report containing written findings and recommendations concerning the proposed retirement. The executive committee's written findings and recommendations shall include:*
 - 1. *The impact of the proposed activity on the available supply of dispatchable and reliable power within the Commonwealth, including the ability of the Commonwealth to meet future demand growth or respond to extreme weather events;*
 - 2. *Whether alternatives to the proposed activity exist, and whether those alternatives should be further evaluated prior to proceeding with the proposed activity;*
 - 3. *Whether the replacement of the generating unit or units subject to the proposed activity with other generating resources will result in any adverse land use impacts in the Commonwealth;*
 - 4. *Whether the proposed activity will result in loss of revenue to the Commonwealth or any local government unit;*
 - 5. *The positive or negative economic impact of the proposed activity on the local economy of the area in which the proposed activity will take place;*
 - 6. *The economic impact of the proposed activity on the Commonwealth as a whole; and*
 - 7. *The impact of the proposed activity on the Commonwealth's ability to increase the available supply of electrical power for current or future economic development purposes.*
- (g) *The findings of the executive committee that are approved by a majority of the members of the executive committee shall be designated as findings of the commission and shall be submitted to the Public Service Commission. If no majority decision of the executive committee is reached with respect to the findings, the report shall so indicate, and each member of the executive committee may make a written statement of position concerning the proposed activity by the deadline provided for in the report. Each written statement shall be included in the report and transmitted along with the report to the Public Service Commission. Any executive committee member dissenting from the report, any portion of the report, or any specific findings in the report may, within one hundred eighty (180) days of the utility filing notice of the proposed activity, transmit separate dissenting findings to the Public Service Commission.*
- (h) *The executive committee's written report, and any dissenting statements provided to the Public Service Commission, shall be included in any retirement application made to the Public Service Commission under Section 4 of this Act, and the Public Service Commission shall not approve any retirement application without considering all information received from the executive committee or any member of the executive committee. Any order of the Public Service Commission in a proceeding under Section 4 of this Act shall contain specific written findings of fact or conclusions of law addressing whether the executive committee's findings and recommendations were considered by the Public Service Commission.*
- (i) *No retirement application to the Public Service Commission under Section 4 of this Act shall be deemed administratively complete unless it includes either the executive committee's report submitted pursuant to this section or evidence that more than one hundred eighty (180) days have passed since notice was submitted to the commission as required in paragraph (b) of this subsection and no executive committee report or determination has been provided to the utility.*
- (8) *Notwithstanding any provision of law to the contrary, the executive committee, or the executive director if authorized by the executive committee, shall have standing to participate as an intervening party in any case or other proceeding before the Public Service Commission.*
- (9) *Subject to available funding, the executive committee may employ administrative staff or third-party consultants with expertise in the subject matter of any study, examination, or review undertaken by the commission to assist in carrying out the commission's functions under this section.*
- (10) *The Commission shall cease to exist on December 31, 2035.*

➔SECTION 2. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in KRS 278.010 to KRS 278.450, if the commission fails to issue a final order on any application submitted to it by a utility pursuant to KRS 278.018, 278.020, 278.216, 278.218, 278.271, and 278.300 within eight (8) months of the acceptance of the filing of the application, then the application shall be deemed approved by the commission and the relief requested shall be deemed to be granted.*
- (2) *The commission shall complete and issue a final order on all eight (8) month and two (2) year reviews of the operation of a utility's environmental surcharge and fuel adjustment clause within eight (8) months of commencing the review.*

➔Section 3. KRS 278.110 is amended to read as follows:

- (1) The commission acting through the executive director may employ such clerks, stenographers, rate experts, agents, special agents, engineers, accountants, auditors, inspectors, lawyers, hearing examiners, experts and other classified service employees and the commission may contract for services of persons in a professional or scientific capacity to make or conduct a hearing or a temporary or special inquiry, investigation or examination as it deems necessary to carry out the provisions of this chapter, or to perform the duties and exercise the powers conferred by law upon the commission.
- (2)
 - (a) *When the commission contracts for the services of a person in a professional or scientific capacity to conduct a hearing, temporary special inquiry, investigation, or examination, any nonprivileged final report or recommendation prepared in fulfillment of the contract shall be filed within the record for the case for which the final report or recommendation was prepared at the same time it is provided to the commission.*
 - (b) *A contracted person who has prepared and submitted a final report or recommendation pursuant to this subsection shall be required to respond to any written information requests regarding the final report or recommendation. Additionally, the contracted person shall be available for cross-examination as a witness in the case for which the final report or recommendation was prepared and filed at any public hearing held by the commission pursuant to the rules it has adopted.*

➔Section 4. KRS 278.264 is amended to read as follows:

- (1) Notwithstanding any provision of law to the contrary, the commission shall have the authority to approve or deny the retirement of an electric generating unit owned by a utility. Prior to retiring an electric generating unit, a utility shall apply to the commission for an order approving the retirement, and shall give the commission thirty (30) days' notice of the application. *The application shall include a statement certifying the applicant's compliance with the requirements of Section 1 of this Act.* The commission shall enter an order approving, approving with conditions, or denying the application within one hundred eighty (180) days of receiving an administratively complete application.
- (2) There shall be a rebuttable presumption against the retirement of a fossil fuel-fired electric generating unit. The commission shall not approve the retirement of an electric generating unit, authorize a surcharge for the decommissioning of the unit, or take any other action which authorizes or allows for the recovery of costs for the retirement of an electric generating unit, including any stranded asset recovery, unless the presumption created by this section is rebutted by evidence sufficient for the commission to find that:
 - (a) The utility will replace the retired electric generating unit with new electric generating capacity that:
 1. Is dispatchable by either the utility or the regional transmission organization or independent system operator responsible for balancing load within the utility's service area;
 2. Maintains or improves the reliability and resilience of the electric transmission grid;~~and~~
 3. Maintains the minimum reserve capacity requirement established by the utility's reliability coordinator; *and*
 4. *Has the same or higher capacity value and net capability, unless the utility can demonstrate that such capacity value and net capability is not necessary to provide reliable service;*
 - (b) The retirement will not harm the utility's ratepayers by causing the utility to incur any net incremental costs to be recovered from ratepayers that could be avoided by continuing to operate the electric generating unit proposed for retirement in compliance with applicable law;~~and~~

- (c) The decision to retire the fossil fuel-fired electric generating unit is not the result of any financial incentives or benefits offered by any federal agency; **and**
 - (d) ***The utility shall not commence retirement or decommissioning of the electric generating unit until the replacement generating capacity meeting the requirements of paragraph (a) of this subsection is fully constructed, permitted, and in operation, unless the utility can demonstrate that it is necessary under the circumstances to commence retirement or decommissioning of the existing unit earlier.***
- (3) The utility shall at a minimum provide the commission with evidence of all known direct and indirect costs of retiring the electric generating unit and demonstrate that cost savings will result to customers as a result of the retirement of the electric generating unit.
- (4) The commission shall prepare and submit an annual report to the Legislative Research Commission by December 1 of each year detailing:
- (a) The number of requests by utilities to retire electric generating units in the Commonwealth, the nameplate capacity of each of those units, and whether the request was approved or denied by the commission;
 - (b) The impact of any commission-approved retirement of an electric generating unit on the:
 1. Commonwealth's generation fuel mix;
 2. Required capacity reserve margins for the utility;
 3. Need for capacity additions or expansions at new or existing facilities as a result of the retirement; and
 4. Need for additional purchase power or capacity reserve arrangements; and
 - (c) Whether the retirement resulted in stranded costs for the ratepayer that will be recovered by the utility through a surcharge or some other separate charge on the customer bill.
- (5) ***As used in this section:***
- (a) ***"Dispatchable" means a source of electric power generation that is available on demand, that is not intermittent, and that can be adjusted to increase or decrease its power output upon request of a power grid operator or otherwise upon demand or request, or that can have its power output adjusted in response to market or system needs; and***
 - (b) ***"Intermittent" means:***
 1. ***A source of electric power generation from a solar photovoltaic, solar thermal heating, concentrating solar thermal collector, or other solar energy collection or generation system;***
 2. ***A source of electric power that generates energy by harnessing wind power or energy, whether through a turbine or other device;***
 3. ***Geothermal energy, biomass energy, anaerobic digestion, or combined heat and power from solar, wind, geothermal, or anaerobic digestion sources;***
 4. ***Any short duration energy storage, which includes any method of storing generated electricity for later dispatch to the grid, whether alone or in conjunction with any other intermittent sources described in this paragraph, that is equivalent to less than forty-eight (48) hours of the average peak generation of the unit it is used to offset; or***
 5. ***Conventional hydropower and pumped storage hydropower, unless they are capable of providing energy on demand, in which case they shall be deemed to be dispatchable.***

➔Section 5. All initial appointments to the Energy Planning and Inventory Commission board and executive committee shall be made on or before July 1, 2024. The initial terms of appointments made by the Governor who are not executive branch officials shall be staggered as follows: seven members shall serve until the July 1, 2025, seven members shall serve until July 1, 2026, and the two gubernatorial appointments to the executive committee shall serve until July 1, 2027.

➔Section 6. Whereas the continued unabated retirement of needed generating resources threatens to harm employment, tax revenue, and utility rates, and is creating a crisis with respect to the Commonwealth's ability to meet current and projected future energy demands, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Veto Overridden April 12, 2024.