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Kentucky Legislature Passes Bill to Protect Coal-Fired Energy Generation Fleet

A bill that was designed to prevent the retirement of coal-fired power plants owned by regulated utilities in Kentucky went into effect on March 24th, 2023. The bill, criticized both by electric utility executives and environmentalists, creates a rebuttable presumption against the retirement of fossil fuel-fired electric generating units—coal, natural gas, and oil—by utilities that are regulated by the Kentucky Public Service Commission (KPSC). The KPSC may not approve the retirement of a fossil fuel-fired electric generating unit (EGU), or any type of cost recovery associated with the retirement, unless the utility can overcome a rebuttable presumption against the retirement of fossil fuel-fired EGUs. To rebut the presumption, a utility must convince the KPSC that the following conditions will be met:

- The utility will replace the EGU with new generation capacity that:
 - Is dispatchable by the utility, the Regional Transmission Organization (RTO) or the Independent System Operator (ISO),
 - Maintains or improves the reliability and resilience of the electric transmission grid, and
 - Maintains the utility's minimum reserve capacity.
- The retirement will not cause the utility to incur any net incremental costs to be recovered from ratepayers that could be avoided by continuing to operate the EGU.
- The decision to retire the EGU is not the result of financial incentives or benefits offered by any federal agency.

The bill also requires the KPSC to prepare and submit an annual report to the Legislative Research Commission by December 1st of each year detailing:

- The number of requests by utilities to retire electric generating units in Kentucky, the remaining useful life of those units, and whether the request was approved or denied by the KPSC;
- The impact of any KPSC-approved retirement of an electric generating facility on: (1) Kentucky's generation fuel mix; (2) required capacity reserve margins for the utility; (3) the need for capacity additions or expansions at existing facilities; and (4) the need for additional power purchase arrangements; and
- Whether the retirement resulted in stranded utility costs that will be recovered through a surcharge or some other separate charge on the customer's bill.

Because the bill was [passed with an emergency clause](#), it went into effect immediately upon being sent to the Kentucky Secretary of State on March 24th. Governor Beshear had 10 days to sign or veto the bill, but after taking no action for 10 days, the bill became veto-proof under state law and was submitted to the Secretary of State.

For more information regarding the broader implications of this bill for Kentucky's energy sector, contact the authors of this article or any attorney with Frost Brown Todd's [Energy Industry Team](#).

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