

278.706 Application for certificate to construct merchant electric generating facility -- Requirements -- Fees -- Replacement or repair does not constitute construction -- Administrative regulations. (Effective until July 15, 2026)

- (1) Any person seeking to obtain a construction certificate from the board to construct a merchant electric generating facility shall file an application at the office of the Public Service Commission.
- (2) A completed application shall include the following:
 - (a) The name, address, and telephone number of the person proposing to construct and own the merchant electric generating facility;
 - (b) A full description of the proposed site, including a map showing the distance of the proposed site from residential neighborhoods, the nearest residential structures, schools, and public and private parks that are located within a two (2) mile radius of the proposed facility;
 - (c) Evidence of public notice that shall include the location of the proposed site and a general description of the project, state that the proposed construction is subject to approval by the board, and provide the telephone number and address of the Public Service Commission. Public notice shall be given within thirty (30) days immediately preceding the application filing to:
 1. Landowners whose property borders the proposed site; and
 2. The general public in a newspaper of general circulation in the county or municipality in which the facility is proposed to be located;
 - (d) A statement certifying that the proposed plant will be in compliance with all local ordinances and regulations concerning noise control and with any local planning and zoning ordinances. The statement shall also disclose setback requirements established by the planning and zoning commission as provided under KRS 278.704(3);
 - (e) If the facility is not proposed to be located on a site of a former coal processing plant and the facility will use on-site waste coal as a fuel source or in an area where a planning and zoning commission has established a setback requirement pursuant to KRS 278.704(3), a statement that the exhaust stack of the proposed facility and any wind turbine is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and all proposed structures or facilities used for generation of electricity are two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility, unless facilities capable of generating ten megawatts (10MW) or more currently exist on the site. If the facility is proposed to be located on a site of a former coal processing plant and the facility will use on-site waste coal as a fuel source, a statement that the proposed site is compatible with the setback requirements provided under KRS 278.704(5). If the facility is proposed to be located in a jurisdiction that has established setback requirements pursuant to KRS 278.704(3), a statement that the proposed site is in compliance with those established setback requirements;
 - (f) A complete report of the applicant's public involvement program activities undertaken prior to the filing of the application, including:

1. The scheduling and conducting of a public meeting in the county or counties in which the proposed facility will be constructed at least ninety (90) days prior to the filing of an application, for the purpose of informing the public of the project being considered and receiving comment on it;
 2. Evidence that notice of the time, subject, and location of the meeting was published in the newspaper of general circulation in the county, and that individual notice was mailed to all owners of property adjoining the proposed project at least two (2) weeks prior to the meeting; and
 3. Any use of media coverage, direct mailing, fliers, newsletters, additional public meetings, establishment of a community advisory group, and any other efforts to obtain local involvement in the siting process;
- (g) A summary of the efforts made by the applicant to locate the proposed facility on a site where existing electric generating facilities are located;
- (h) Proof of service of a copy of the application upon the chief executive officer of each county and municipal corporation in which the proposed facility is to be located, and upon the chief officer of each public agency charged with the duty of planning land use in the jurisdiction in which the facility is proposed to be located;
- (i) An analysis of the proposed facility's projected effect on the electricity transmission system in Kentucky;
- (j) An analysis of the proposed facility's economic impact on the affected region and the state;
- (k) A detailed listing of all violations by it, or any person with an ownership interest, of federal or state environmental laws, rules, or administrative regulations, whether judicial or administrative, where violations have resulted in criminal convictions or civil or administrative fines exceeding five thousand dollars (\$5,000). The status of any pending action, whether judicial or administrative, shall also be submitted;
- (l) A site assessment report as specified in KRS 278.708. The applicant may submit and the board may accept documentation of compliance with the National Environmental Policy Act (NEPA) rather than a site assessment report; and
- (m) A decommissioning plan that shall describe how the merchant electric generating facility will be decommissioned and dismantled following the end of its useful life. The decommissioning plan shall, at a minimum, include plans to:
1. Unless otherwise requested by the landowner, remove all above-ground facilities;
 2. Unless otherwise requested by the landowner, remove any underground components and foundations of above-ground facilities. Facilities removed under this subparagraph shall be removed to a depth of three (3) feet below the surface grade of the land in or on which the component was installed, unless the landowner and the applicant

otherwise agree to a different depth;

3. Return the land to a substantially similar state as it was prior to the commencement of construction;
4. Unless otherwise requested by the landowner, leave any interconnection or other facilities in place for future use at the completion of the decommissioning process;
5. Secure a bond or other similar security for the project to assure financial performance of the decommissioning obligation, provided that:
 - a. The amount of the proposed bond or similar security shall be determined by an independent, licensed engineer who is experienced in the decommissioning of solar electric generating facilities and has no financial interest in either the merchant electric generating facility or any parcel of land upon which the merchant electric generating facility is located. The proposed amount of the bond or similar security shall be either:
 - i. The net present value of the total estimated cost of completing the decommissioning plan, less the current net salvage value of the merchant electric generating facility's components; or
 - ii. The bond amount required by a county or municipal government that has established a decommissioning bond requirement or similar security obligation in the county or municipality where the merchant electric generating facility will be located. If the facility will be located in more than one (1) county or municipality that has established a decommissioning bond or similar security obligation, then the higher amount shall be required for the facility;
 - b. The bond or other similar security names:
 - i. For property that is leased by the applicant, each landowner from whom the applicant leases land and the Energy and Environment Cabinet as the primary co-beneficiaries; or
 - ii. For property that is owned by the applicant, the Energy and Environment Cabinet as the primary beneficiary;
 - c. If the merchant electric generating facility is to be located in a county or municipality that has not established a decommissioning bond or other similar security obligation, the bond or other similar security shall name the county or municipality as a secondary beneficiary with the county's or municipality's consent;
 - d. The bond or other similar security shall be provided by an insurance company or surety that shall at all times maintain at least an "Excellent" rating as measured by the AM Best rating agency or an investment grade credit rating by any national credit rating agency and, if available, shall be noncancelable by the provider or the customer until completion of the decommissioning plan or

until a replacement bond is secured; and

- e. The bond or other similar security shall provide that at least thirty (30) days prior to its cancellation or lapse, the surety shall notify the applicant, its successor or assign, each landowner, the Energy and Environment Cabinet, and the county or city in which the facility is located of the impending cancellation or lapse. The notice shall specify the reason for the cancellation or lapse and provide any of the parties, either jointly or separately, the opportunity to cure the cancellation or lapse prior to it becoming effective. The applicant, its successor, or its assign, shall be responsible for all costs incurred by all parties to cure the cancellation or lapse of the bond. Each landowner, or the Energy and Environment Cabinet with the prior approval of each landowner, may make a demand on the bond and initiate and complete the decommissioning plan.
 6. Communicate with each affected landowner at the end of the merchant electric generating facility's useful life so that any requests of the landowner that are in addition to the minimum requirements set forth in this paragraph and in addition to any other requirements specified in the lease with the landowner may, in the sole discretion of the applicant or its successor or assign, be accommodated; and
 7. Incorporate the requirements of subparagraphs 1. to 6. of this paragraph into the applicant's leases with landowners.
- (3) Application fees for a construction certificate shall be set by the board and deposited into a trust and agency account to the credit of the commission.
 - (4) Replacement of a merchant electric generating facility with a like facility, or the repair, modification, retrofitting, enhancement, or reconfiguration of a merchant electric generating facility shall not, for the purposes of this section and KRS 224.10-280, 278.704, 278.708, 278.710, and 278.712, constitute construction of a merchant electric generating facility.
 - (5) The board shall promulgate administrative regulations prescribing fees to pay expenses associated with its review of applications filed with it pursuant to KRS 278.700 to 278.716. All application fees collected by the board shall be deposited in a trust and agency account to the credit of the Public Service Commission. If a majority of the members of the board find that an applicant's initial fees are insufficient to pay the board's expenses associated with the application, including the board's expenses associated with legal review thereof, the board shall assess a supplemental application fee to cover the additional expenses. An applicant's failure to pay a fee assessed pursuant to this subsection shall be grounds for denial of the application.

Effective: June 29, 2023

History: Amended 2023 Ky. Acts ch. 140, sec. 3, effective June 29, 2023. -- Amended 2014 Ky. Acts ch. 88, sec. 3, effective April 10, 2014. -- Created 2002 Ky. Acts ch. 365, sec. 4, effective April 24, 2002.