

278.710 Granting or denial of construction certificate -- Policy of General Assembly -- Duties upon receipt of construction certificate -- Compliance and monitoring.

- (1) Within one hundred twenty (120) days of receipt of an administratively complete application, or within one hundred eighty (180) days of receipt of an administratively complete application if a hearing is requested, the board shall, by majority vote, grant or deny a construction certificate, either in whole or in part, based upon the following criteria:
 - (a) Impact of the facility on scenic surroundings, property values, the pattern and type of development of adjacent property, and surrounding roads;
 - (b) Anticipated noise levels expected as a result of construction and operation of the proposed facility;
 - (c) The economic impact of the facility upon the affected region and the state;
 - (d) Whether the facility is proposed for a site upon which existing generating facilities, capable of generating ten megawatts (10MW) or more of electricity, are currently located;
 - (e) Whether the proposed facility will meet all local planning and zoning requirements that existed on the date the application was filed;
 - (f) Whether the additional load imposed upon the electricity transmission system by use of the merchant electric generating facility will adversely affect the reliability of service for retail customers of electric utilities regulated by the Public Service Commission;
 - (g) Except where the facility is subject to a statewide setback established by a planning and zoning commission as provided in KRS 278.704(3) and except for a facility 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, whether the exhaust stack of the proposed merchant electric generating 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 a different setback has been requested and approved under KRS 278.704(4). If a planning and zoning commission has established setback requirements that differ from those under KRS 278.704(2), the applicant shall provide evidence of compliance. If the facility is proposed to be located on site of a former coal processing plant and the facility will use on-site waste coal as a fuel source, the applicant shall provide evidence of compliance with the setback requirements provided in KRS 278.704(5);
 - (h) The efficacy of any proposed measures to mitigate adverse impacts that are identified pursuant to paragraph (a), (b), (e), or (f) of this subsection from the construction or operation of the proposed facility;
 - (i) Whether the applicant has a good environmental compliance history; and
 - (j) Whether the decommissioning plan is complete and complies with the requirements of KRS 278.706(2)(m) and any other local requirements that

may apply.

- (2) When considering an application for a construction certificate for a merchant electric generating facility, the board may consider the policy of the General Assembly to encourage the use of coal as a principal fuel for electricity generation as set forth in KRS 152.210, provided that any facility, regardless of fuel choice, shall comply fully with KRS 224.10-280, 278.212, 278.216, and 278.700 to 278.716.
- (3) A person that has received a construction certificate for a merchant electric generating facility shall:
 - (a) File with the Energy and Environment Cabinet the copy of the bond or other similar security that, pursuant to KRS 278.706(2)(m)5., is required by a county or a municipal government or as part of a decommissioning plan, no later than the date upon which the construction of the merchant generating facility commences, and refile an updated copy at least once every five (5) years thereafter;
 - (b) Not transfer rights and obligation under the certificate without having first applied for and received a board determination that:
 1. The acquirer has a good environmental compliance history; and
 2. The acquirer has the financial, technical, and managerial capacity to meet the obligations imposed by the terms of the approval or has the ability to contract to meet these obligations;
 - (c) File with the Energy and Environment Cabinet a notice of the date that construction is complete and the merchant electric generating facility begins producing electricity for sale; and
 - (d) Following the date the merchant electric generating facility begins producing electricity for sale, file a notice of any transaction involving the transfer or sale of ownership, control, or the right to control the merchant electric generating facility, with lessors of property where the merchant electric generating facility is located, the Energy and Environment Cabinet, the county judge/executive of a county and, if applicable, the mayor of a municipality in which the merchant electric generating facility is located, within ten (10) days of completing the transaction. The notice shall include the name, street address, telephone number, and e-mail address of the person acquiring ownership, control, or the right to control the merchant electric generating facility.
- (4) A person that has acquired ownership, control, or the right to control a merchant electric generating facility from the applicant or its successor or assign shall file with the Energy and Environment Cabinet within ten (10) days of completing the acquisition:
 - (a) A written consent to assume the obligations set forth in the decommissioning plan as of the date the acquisition occurred; and
 - (b) A notice of adoption of an existing bond or other similar security previously filed pursuant to subsection (3)(a) of this section or a replacement bond or other similar security that complies with KRS 278.706(2)(m)5. An existing

bond or other similar security shall be adopted, or a replacement bond or other similar security shall be in place, as of the date the acquisition occurs so that there is no lapse in coverage of the decommissioning bond or other similar security. A person making a filing pursuant to this subsection shall file an updated bond or other similar security that complies with KRS 278.706(2)(m)5. at least once every five (5) years.

- (5) Any person who transfers or sells ownership, control, or the right to control a merchant electric generating facility shall remain liable for all existing decommissioning obligations and bond requirements until the person who acquires ownership, control, or the right to control the merchant electric generating facility files with the Energy and Environment Cabinet the documents required by subsection (4) of this section and they are accepted as complete by the secretary.
- (6) Any application approval condition that requires the approval of the transfer of control of a merchant electric generating facility after construction is complete shall be void and unenforceable, but any transfer of control of a merchant electric generating facility shall be subject to compliance with the requirements of subsections (3)(d), (4), and (5) of this section.
- (7) Notwithstanding any provision of law to the contrary, including any order issued by the board prior to June 29, 2023, after the board has approved an application for a construction certificate for a merchant electric generating facility under this section, the approved applicant has posted the bond or similar security required under KRS 278.706(2)(m)5., and the facility is constructed and begins generating electricity for sale, the board's authority to enforce any conditions of the construction certificate, including bonding and decommissioning requirements, shall end and the secretary of the Energy and Environment Cabinet shall monitor and enforce the construction certificate holder's compliance with the requirements of KRS 278.700 to 278.716 and the conditions of its construction certificate application approval.
- (8) In addition to all compliance monitoring and enforcement performed by the secretary of the Energy and Environment Cabinet, and notwithstanding any provision of law to the contrary, the secretary shall also review the decommissioning plan required by KRS 278.706(2)(m) or by local ordinance, license, or permit and the bond or similar security amount required by KRS 278.706(2)(m)5. or by local ordinance, license, or permit as needed, including any time a transfer determination is made under subsection (5) of this section, but in any event at least once every five (5) years. Upon review, the secretary of the Energy and Environment Cabinet shall require the decommissioning plan to be updated and the bond amount to be changed to match any significant change in circumstances or change to the estimated cost of effectuating the decommissioning plan or to the salvage value of the facility or its components.
- (9) After the facility for which an application for a construction certificate has been approved is constructed and begins generating electricity for sale, the secretary of the Energy and Environment Cabinet shall ensure ongoing compliance with the mitigation measures that were conditions of the application approval under KRS 278.708(6) and any enforcement by the board of the mitigation measures shall cease.

- (10) During the period that the merchant electric generating facility is operational, if solar panels are replaced and discarded, the facility owner-operator shall remove discarded solar panels from the site within ninety (90) days of completion of the work. Upon request of the facility owner-operator, the secretary of the Energy and Environment Cabinet may extend the time period under this subsection for removing discarded solar panels.

Effective: June 29, 2023

History: Amended 2023 Ky. Acts ch. 140, sec. 5, effective June 29, 2023. -- Amended 2014 Ky. Acts ch. 88, sec. 5, effective April 10, 2014. -- Created 2002 Ky. Acts ch. 365, sec. 6, effective April 24, 2002.