

1 AN ACT relating to solar merchant electric generating facilities.

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

3 ➔Section 1. KRS 278.704 is amended to read as follows:

4 (1) No person shall commence to construct a merchant electric generating facility until  
5 that person has applied for and obtained a construction certificate for the facility  
6 from the board. The construction certificate shall be valid for a period of three (3)  
7 years after the issuance date of the last permit required to be obtained from the  
8 Energy and Environment Cabinet after which the certificate shall be void. The  
9 certificate shall be conditioned upon the applicant obtaining necessary air, water,  
10 and waste permits. If an applicant has not obtained all necessary permits and has  
11 not commenced to construct prior to the expiration date of the certificate, the  
12 applicant shall be required to obtain a new valid certificate from the board.

13 (2) Except as provided in subsections (3), (4), and (5) of this section, no construction  
14 certificate shall be issued to construct a merchant electric generating facility unless  
15 the exhaust stack of the proposed facility and any wind turbine is at least one  
16 thousand (1,000) feet from the property boundary of any adjoining property owner  
17 and all proposed structures or facilities used for generation of electricity are two  
18 thousand (2,000) feet from any residential neighborhood, school, hospital, or  
19 nursing home facility. For purposes of applications for site compatibility certificates  
20 pursuant to KRS 278.216, only the exhaust stack of the proposed facility to be  
21 actually used for coal or gas-fired generation or, beginning with applications for site  
22 compatibility certificates filed on or after January 1, 2015, the proposed structure or  
23 facility to be actually used for solar or wind generation shall be required to be at  
24 least one thousand (1,000) feet from the property boundary of any adjoining  
25 property owner and two thousand (2,000) feet from any residential neighborhood,  
26 school, hospital, or nursing home facility.

27 (3) If the merchant electric generating facility is proposed to be located in a county or a

1 municipality with planning and zoning, then decommissioning and setback  
2 requirements from a property boundary, residential neighborhood, school, hospital,  
3 or nursing home facility may be established by the planning and zoning  
4 commission. Any decommissioning requirement or setback established by a  
5 planning and zoning commission for a facility in an area over which it has  
6 jurisdiction shall:

- 7 (a) Have primacy over the decommissioning requirements in KRS 278.706(2)(m)  
8 and the setback requirement in subsections (2) and (5) of this section; and  
9 (b) Not be subject to modification or waiver by the board through a request for  
10 deviation by the applicant, as provided in subsection (4) of this section or  
11 otherwise.

12 (4) **(a) Except as provided in paragraph (b) of this subsection,** the board may grant  
13 a deviation from the requirements of subsection (2) of this section on a  
14 finding that the proposed facility is designed to and, as located, would meet  
15 the goals of KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218,  
16 and 278.700 to 278.716 at a distance closer than those provided in subsection  
17 (2) of this section.

18 **(b) For an application made for the siting of a solar merchant electric**  
19 **generating facility after January 1, 2026, the board shall not grant a**  
20 **deviation that would allow for the siting of a proposed structure or facility to**  
21 **be used for solar generation closer than three hundred fifty (350) feet from**  
22 **the property boundary of any adjoining property owner to whom the solar**  
23 **setback requirements of subsection (2) of this section would apply unless a**  
24 **closer distance is consented to in writing by the adjoining property owner**  
25 **and approved by the legislative body of the local government where the**  
26 **adjoining property is located.**

27 (5) If the merchant electric generating facility is proposed to be located on a site of a

1 former coal processing plant in the Commonwealth where the electric generating  
2 facility will utilize on-site waste coal as a fuel source, then the one thousand (1,000)  
3 foot property boundary requirement in subsection (2) of this section shall not be  
4 applicable; however, the applicant shall be required to meet any other setback  
5 requirements contained in subsection (2) of this section.

6 (6) If requested, a merchant electric generating entity considering construction of a  
7 facility for the generation of electricity or a person acting on behalf of such an  
8 entity shall hold a public meeting in any county where acquisition of real estate or  
9 any interest in real estate is being considered for the facility. A request for such a  
10 meeting may be made by the commission, or by any city or county governmental  
11 entity, including a board of commissioners, planning and zoning, fiscal court,  
12 mayor, or county judge/executive. The meeting shall be held not more than thirty  
13 (30) days from the date of the request.

14 (7) The purpose of the meeting under subsection (6) of this section is to fully inform  
15 landowners and other interested parties of the full extent of the project being  
16 considered, including the project time line. One (1) or more representatives of the  
17 entity with full knowledge of all aspects of the project shall be present and shall  
18 answer questions from the public.

19 (8) Notice of the time, subject, and location of the meeting under subsection (6) of this  
20 section shall be posted in both a local newspaper, if any, and a newspaper of  
21 general circulation in the county. Notice shall also be placed on the websites of the  
22 unregulated entity, and any local governmental unit. Owners of real estate known to  
23 be included in the project and any person whose property adjoins at any point any  
24 property to be included in the project shall be notified personally by mail. All  
25 notices must be mailed or posted at least two (2) weeks prior to the meeting.

26 (9) The merchant electric generating entity or a person acting on behalf of a merchant  
27 electric generating entity shall, on or before the date of the public meeting held

1 under subsection (6) of this section, provide notice of all research, testing, or any  
2 other activities being planned or considered to:

- 3 (a) The Energy and Environment Cabinet;
- 4 (b) The Public Service Commission;
- 5 (c) The Transportation Cabinet;
- 6 (d) The Attorney General; and
- 7 (e) The Office of the Governor.

8 (10) Subsections (6) to (9) of this section shall not apply to any facility or project that  
9 has already received a certificate of construction from the board.

10 **(11) For the purposes of applying the minimum setback distances for solar merchant**  
11 **electric generating facilities required under subsections (2) and (4) of this**  
12 **section:**

13 **(a) The following components of a solar merchant electric generating facility**  
14 **shall be located no closer than the required minimum setback distance from**  
15 **the property boundary of an adjoining property owner:**

- 16 **1. Solar panels;**
- 17 **2. Substations;**
- 18 **3. Central inverters; and**
- 19 **4. Energy storage systems;**

20 **(b) Any planting or revegetation that is required by the board or by a local**  
21 **government entity shall not be used in the minimum setback distance**  
22 **calculation and may be located closer than the required minimum setback**  
23 **distances from the property boundary of an adjoining property owner; and**

24 **(c) The minimum setback requirements shall not apply to any property owners**  
25 **who are parties to an agreement to provide a location to site the solar**  
26 **merchant electric generating facility or to property boundaries that are**  
27 **within the solar merchant electric generating facility's proposed**

1                   *development site.*

2                   ➔Section 2. KRS 278.710 is amended to read as follows:

- 3                   (1) Within one hundred twenty (120) days of receipt of an administratively complete  
4                   application, or within one hundred eighty (180) days of receipt of an  
5                   administratively complete application if a hearing is requested, the board shall, by  
6                   majority vote, grant or deny a construction certificate, either in whole or in part,  
7                   based upon the following criteria:
- 8                   (a) Impact of the facility on scenic surroundings, property values, the pattern and  
9                   type of development of adjacent property, and surrounding roads;
  - 10                  (b) Anticipated noise levels expected as a result of construction and operation of  
11                  the proposed facility;
  - 12                  (c) The economic impact of the facility upon the affected region and the state;
  - 13                  (d) Whether the facility is proposed for a site upon which existing generating  
14                  facilities, capable of generating ten megawatts (10MW) or more of electricity,  
15                  are currently located;
  - 16                  (e) Whether the proposed facility will meet all local planning and zoning  
17                  requirements that existed on the date the application was filed;
  - 18                  (f) Whether the additional load imposed upon the electricity transmission system  
19                  by use of the merchant electric generating facility will adversely affect the  
20                  reliability of service for retail customers of electric utilities regulated by the  
21                  Public Service Commission;
  - 22                  (g) Except where the facility is subject to a statewide setback established by a  
23                  planning and zoning commission as provided in KRS 278.704(3) and except  
24                  for a facility proposed to be located on a site of a former coal processing plant  
25                  and the facility will use on-site waste coal as a fuel source, whether the  
26                  exhaust stack of the proposed merchant electric generating facility and any  
27                  wind turbine is at least one thousand (1,000) feet from the property boundary

1 of any adjoining property owner and all proposed structures or facilities used  
2 for generation of electricity are two thousand (2,000) feet from any residential  
3 neighborhood, school, hospital, or nursing home facility, unless a different  
4 setback has been requested and approved under KRS 278.704(4). If a  
5 planning and zoning commission has established setback requirements that  
6 differ from those under KRS 278.704(2), the applicant shall provide evidence  
7 of compliance. If the facility is proposed to be located on site of a former coal  
8 processing plant and the facility will use on-site waste coal as a fuel source,  
9 the applicant shall provide evidence of compliance with the setback  
10 requirements provided in KRS 278.704(5);

11 (h) The efficacy of any proposed measures to mitigate adverse impacts that are  
12 identified pursuant to paragraph (a), (b), (e), or (f) of this subsection from the  
13 construction or operation of the proposed facility;

14 (i) Whether the applicant has a good environmental compliance history; and

15 (j) Whether the decommissioning plan is complete and complies with the  
16 requirements of KRS 278.706(2)(m) and any other local requirements that  
17 may apply.

18 (2) When considering an application for a construction certificate for a merchant  
19 electric generating facility, the board may consider the policy of the General  
20 Assembly to encourage the use of coal as a principal fuel for electricity generation  
21 as set forth in KRS 152.210, provided that any facility, regardless of fuel choice,  
22 shall comply fully with KRS 224.10-280, 278.212, 278.216, and 278.700 to  
23 278.716.

24 (3) A person that has received a construction certificate for a merchant electric  
25 generating facility shall:

26 (a) File with the Energy and Environment Cabinet the copy of the bond or other  
27 similar security that, pursuant to KRS 278.706(2)(m)5., is required by a

- 1 county or a municipal government or as part of a decommissioning plan, no  
2 later than the date upon which the construction of the merchant generating  
3 facility commences, and refile an updated copy at least once every five (5)  
4 years thereafter;
- 5 (b) Not transfer rights and obligation under the certificate without having first  
6 applied for and received a board determination that:
- 7 1. The acquirer has a good environmental compliance history; and
  - 8 2. The acquirer has the financial, technical, and managerial capacity to  
9 meet the obligations imposed by the terms of the approval or has the  
10 ability to contract to meet these obligations;
- 11 (c) File with the Energy and Environment Cabinet a notice of the date that  
12 construction is complete and the merchant electric generating facility begins  
13 producing electricity for sale. At the time of the filing of the notice required  
14 by this paragraph, a construction certificate holder for a solar merchant  
15 electric generating facility shall also file a report with the Energy and  
16 Environment Cabinet detailing all federal and state incentives utilized by  
17 the construction certificate holder relating to the siting, construction, and  
18 operation of the facility. The Energy and Environment Cabinet shall  
19 compile a report of all of the state and federal incentive disclosures made by  
20 solar merchant electric generating facilities under this paragraph each year  
21 and submit it annually to the Legislative Research Commission on or before  
22 December 1; and
- 23 (d) Following the date the merchant electric generating facility begins producing  
24 electricity for sale, file a notice of any transaction involving the transfer or  
25 sale of ownership, control, or the right to control the merchant electric  
26 generating facility, with lessors of property where the merchant electric  
27 generating facility is located, the Energy and Environment Cabinet, the county

1 judge/executive of a county and, if applicable, the mayor of a municipality in  
2 which the merchant electric generating facility is located, within ten (10) days  
3 of completing the transaction. The notice shall include the name, street  
4 address, telephone number, and e-mail address of the person acquiring  
5 ownership, control, or the right to control the merchant electric generating  
6 facility.

7 (4) A person that has acquired ownership, control, or the right to control a merchant  
8 electric generating facility from the applicant or its successor or assign shall file  
9 with the Energy and Environment Cabinet within ten (10) days of completing the  
10 acquisition:

11 (a) A written consent to assume the obligations set forth in the decommissioning  
12 plan as of the date the acquisition occurred; and

13 (b) A notice of adoption of an existing bond or other similar security previously  
14 filed pursuant to subsection (3)(a) of this section or a replacement bond or  
15 other similar security that complies with KRS 278.706(2)(m)5. An existing  
16 bond or other similar security shall be adopted, or a replacement bond or other  
17 similar security shall be in place, as of the date the acquisition occurs so that  
18 there is no lapse in coverage of the decommissioning bond or other similar  
19 security. A person making a filing pursuant to this subsection shall file an  
20 updated bond or other similar security that complies with KRS  
21 278.706(2)(m)5. at least once every five (5) years.

22 (5) Any person who transfers or sells ownership, control, or the right to control a  
23 merchant electric generating facility shall remain liable for all existing  
24 decommissioning obligations and bond requirements until the person who acquires  
25 ownership, control, or the right to control the merchant electric generating facility  
26 files with the Energy and Environment Cabinet the documents required by  
27 subsection (4) of this section and they are accepted as complete by the secretary.



- 1 (6) Any application approval condition that requires the approval of the transfer of  
2 control of a merchant electric generating facility after construction is complete shall  
3 be void and unenforceable, but any transfer of control of a merchant electric  
4 generating facility shall be subject to compliance with the requirements of  
5 subsections (3)(d), (4), and (5) of this section.
- 6 (7) Notwithstanding any provision of law to the contrary, including any order issued by  
7 the board prior to June 29, 2023, after the board has approved an application for a  
8 construction certificate for a merchant electric generating facility under this section,  
9 the approved applicant has posted the bond or similar security required under KRS  
10 278.706(2)(m)5., and the facility is constructed and begins generating electricity for  
11 sale, the board's authority to enforce any conditions of the construction certificate,  
12 including bonding and decommissioning requirements, shall end and the secretary  
13 of the Energy and Environment Cabinet shall monitor and enforce the construction  
14 certificate holder's compliance with the requirements of KRS 278.700 to 278.716  
15 and the conditions of its construction certificate application approval.
- 16 (8) In addition to all compliance monitoring and enforcement performed by the  
17 secretary of the Energy and Environment Cabinet, and notwithstanding any  
18 provision of law to the contrary, the secretary shall also review the  
19 decommissioning plan required by KRS 278.706(2)(m) or by local ordinance,  
20 license, or permit and the bond or similar security amount required by KRS  
21 278.706(2)(m)5. or by local ordinance, license, or permit as needed, including any  
22 time a transfer determination is made under subsection (5) of this section, but in any  
23 event at least once every five (5) years. Upon review, the secretary of the Energy  
24 and Environment Cabinet shall require the decommissioning plan to be updated and  
25 the bond amount to be changed to match any significant change in circumstances or  
26 change to the estimated cost of effectuating the decommissioning plan or to the  
27 salvage value of the facility or its components.

- 1 (9) After the facility for which an application for a construction certificate has been  
2 approved is constructed and begins generating electricity for sale, the secretary of  
3 the Energy and Environment Cabinet shall ensure ongoing compliance with the  
4 mitigation measures that were conditions of the application approval under KRS  
5 278.708(6) and any enforcement by the board of the mitigation measures shall  
6 cease.
- 7 (10) During the period that the merchant electric generating facility is operational, if  
8 solar panels are replaced and discarded, the facility owner-operator shall remove  
9 discarded solar panels from the site within ninety (90) days of completion of the  
10 work. Upon request of the facility owner-operator, the secretary of the Energy and  
11 Environment Cabinet may extend the time period under this subsection for  
12 removing discarded solar panels.