

Kentucky Department for Environmental Protection
 Division of Waste Management
 Solid Waste Branch
 300 Sower Boulevard, Second Floor
 Frankfort, KY 40601
 (502) 564-6716

*FOR OFFICIAL USE ONLY. DO NOT
 WRITE IN THIS SPACE*

Merchant Electric Generating Facility (MEGF) Escrow Agreement

1. Agency Interest Number			
2. Board Case No. (if applicable):			
3. Escrow Agent Information			
Escrow Agent Name:		Mailing Address:	
City:	State:	Zip Code:	
Contact Person:		Title:	
Email Address:	Phone Number: () -	Cell Number (optional): () -	
Certificate Amount:	Certificate Number:	Issue Date: - -	
4. MEGF Construction Certificate Holder Information			
Company Name:		Mailing Address:	
City:	State:	Zip Code:	
Contact Person:		Title:	
Email Address:	Phone Number: () -	Cell Number: () -	
5. MEGF Information			
Facility Name:		Physical Address:	
City:	State:	Zip Code:	

6. Escrow Agreement

This agreement, made, executed and delivered this day of , 20 , among , as Merchant Electric Generating Facility (hereinafter Applicant), and , as Escrow Agent, and the Kentucky Energy and Environment Cabinet (hereinafter Cabinet).

Witnesseth:

Whereas, the laws of the Commonwealth require that a mechanism for financial assurance be posted to insure proper completion of the decommissioning plan to guarantee performance of the requirements in KRS Chapter 224 and the regulations promulgated pursuant thereto; and

Whereas, the Applicant desires to meet the financial assurance requirements for the Board construction certificate issued to the MEGF in the Commonwealth of Kentucky by executing such mechanism for financial assurance and posting surety in the sum of dollars (\$) with the Cabinet to be held by Escrow Agent, which sum is hereby acknowledged by the Cabinet to be sufficient and acceptable for the facility located at ; and

Whereas, such sum shall be placed in the safe custody of the Escrow Agent and the Agent is directed to purchase certificates of deposit, which certificates of deposit are hereinafter referred to as The Certificates, and are more fully described as follows, to wit:

CERTIFICATE(S) #:

DATE OF ISSUANCE: - -

PRINCIPAL AMOUNT:

And Whereas, this Agreement is a supplement to the mechanism for financial assurance filed by the Applicant for a permit to operate a merchant electric generating facility.

Now, therefore, in consideration of the premises set forth herein, the parties hereto mutually agree as follows:

1. The Escrow Agent hereby acknowledges receipt of The Certificates above listed, to be safely and securely kept for the stated purposes of this Agreement and subject to the terms and conditions herein, and hereby binds itself to perform completely under the terms of this Agreement and to dispose of The Certificates or the proceeds there from only as provided herein. The Escrow Agent further agrees to exercise due care in the safekeeping and delivery of The Certificates;
2. The parties agree The Certificates or any subsequent Certificates are and shall be made payable in favor of the Escrow Agent only and the parties further agree that until such time as the Cabinet orders the mechanism for financial assurance for the Board construction certificate issued to the MEGF be forfeited or until such time as the mechanism for financial assurance is released, all interest accruing on The Certificates shall be disposed of in accordance with paragraphs 4 and 5 of this Agreement;
3. The parties agree that the Escrow Agent is hereby authorized and directed to insure The Certificates remain in full force during the term of this Agreement and the Escrow Agent may, upon notice to all parties, and upon the maturity of The Certificates, issue new Certificates of face value equal to the outstanding amount of the financial assurance. In the event of such issuance, the new Certificates shall replace The Certificates herein for all purposes and shall be subject to the conditions of this Agreement;
4. Any interest accruing on The Certificates shall be held by the Escrow Agent until such time as the mechanism for financial assurance has been released or forfeited or The Certificates have matured and been replaced by new Certificates. No interest shall be paid to the Applicant on any Certificate until such time as the Certificate matures or a full release has been obtained from the Cabinet or until the mechanism for financial assurance has been forfeited and any penalty resulting from the cashing of the Certificate has been satisfied;
5. In the event of the Cabinet's demand for payment of the escrow agreement herein and upon the Cabinet's written notice of such demand for payment to the Escrow Agent, the Escrow Agent shall promptly cash The Certificates and forward to the Cabinet a Cashier's Check in the outstanding amount of the escrow agreement, pay any escrow penalties which result from the cashing of The Certificates from the interest accrued thereon, and remit any remaining interest and principal to the Applicant;
6. The parties agree that neither the Escrow Agent nor the Cabinet shall be liable for any loss of interest which may result to the Applicant as a result of a demand for payment;

7. The Escrow Agent shall not be liable for inquiring whether there has been performance by the Applicant or to see the application of any monies paid on the instruction of the Cabinet and in such matters the Escrow Agent may rely upon the instructions of the Cabinet executed by the Secretary of the Cabinet, his designee, or his successor or the successor agency as provided by law. The Escrow Agent need not verify the apparent authority of an agent of the Cabinet in carrying out the Cabinet's instructions. Nothing herein shall prevent the Commonwealth from designating a person authorized to act for it in any other lawful manner;

8. That for value received the Applicant does hereby assign, transfer, and set over to the Commonwealth of Kentucky all right, title, and interest which the Applicant may have in The Certificates. The parties agree that The Certificates are being held solely for the benefit of the Commonwealth of Kentucky and that the Applicant has relinquished all right, title, and interest to The Certificates as provided herein. The Applicant may not pledge or encumber in any manner The Certificates or any renewal certificates, or the interest due thereon, so long as the same are subject to the conditions of the mechanism for financial assurance herein;

9. The Cabinet agrees that upon proper completion of the decommissioning plan for the Board construction certificate issued to the MEGF in accordance with 401 KAR Chapter 103, the Cabinet shall release the mechanism for financial assurance herein and promptly notify the Escrow Agent and the Applicant of such release.

10. It is agreed, as between the parties, that in the event the Escrow Agent closes or goes into receivership, any Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or National Credit Union Administration insurance proceeds paid on, to, or as a result of The Certificates, shall first be applied to cover The Certificates;

11. The parties agree that the Escrow Agent shall be the Cabinet's agent for holding The Certificates for the purpose of perfecting the Cabinet's security interest in those Certificates under KRS Chapter 355.

12. This agreement shall be binding upon the successors and assigns of the respective parties; and

13. Upon receipt by the Escrow Agent of a demand for payment or the release by the Cabinet of the mechanism for financial assurance herein, following disbursement pursuant to this agreement by the Escrow

Agent, the Escrow Agent shall be discharged of any and all duties and liabilities as a result of this Agreement.

This escrow agreement is subject to the Uniform Customs and Practice for Documentary Credits (2007 revision) International Chamber of Commerce (Publication No. 600).

The Applicant and Escrow Agent further agree that unless expressly stated otherwise herein, the terms and obligations represented by this escrow agreement shall be governed by the Uniform Commercial Code of the Commonwealth of Kentucky and/or any other pertinent Kentucky law.

Litigation concerning this Escrow Agreement shall be taken to the Franklin Circuit Court, Commonwealth of Kentucky.

SIGNED, the day and date first above written by the appropriately authorized officers.

7. Certification of Escrow Agent

Name of Escrow Agent:

Name of Escrow Agent Signatory:

Signature:

Title:

Date: / /

Subscribed and sworn to before me by

Notary public signature:

My commission expires: / /

8. Certification of Applicant

Name of Applicant:

Name of Applicant Signatory:

Applicant Signature:

Title:

Date: / /

Subscribed and sworn to before me by

Notary public signature:

My commission expires: / /

IMPORTANT NOTE: All information submitted on this form will be subject to public disclosure to the extent provided by Kentucky law. Persons filing this form may make claims of confidentiality in accordance with 400 KAR 1:060.