

SUGGESTED SUBSTITUTE – TO AMENDED AFTER COMMENTS VERSION

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**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management**

401 KAR 103:020. Decommissioning standards.

RELATES TO: KRS 224.10-100, 224.10-285, 224.43-345, 278.700 - 278.716

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-100(30), (31), 224.10-285, ~~[224.43-345,]~~ 278.710(3) ~~[-(4),]~~ (5), (7) - (10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-285(2) requires the Energy and Environment Cabinet to establish monitoring and enforcement requirements for the obligation **established~~[set for]~~** in KRS 278.710(3) **through~~[-(4),]~~** (5) **and~~[-]~~** (7) through (10) and 224.10-100(30) and (31). KRS 224.10-100(30) requires the Energy and Environment Cabinet to monitor and enforce compliance of a merchant electric generating entity to which a construction certificate has been issued and has generated pursuant to obligations **established~~[set forth]~~** in KRS 278.710(3) **through~~[-(4),]~~** (5) **and~~[-]~~** (7) through (10). This administrative regulation establishes procedures **pertaining to merchant electric generating facilities** for decommissioning plan technical requirements, decommissioning plan updates, decommissioning cost estimate updates, and cases of abandonment.

Section 1. Technical Requirements of Decommissioning Plan. The **construction certificate holder~~[owner-operator,]~~** or person who controls or owns right to control any MEGF **shall comply with~~[are subject to]~~** decommissioning requirements and mitigation measures **established~~[outlined]~~** in KRS **278.706 and~~[278.704 through]~~** 278.710.

- (1) This plan shall be certified by an independent professional engineer prior to submission to the cabinet.
- (2) Unless otherwise stated in an accommodation **included~~[contained within]~~** a lease agreement with the affected landowner, the decommissioning plan shall be designed to return the land to a substantially similar state as it was prior to the commencement of construction.
- (3) Decommissioning plans filed with the cabinet shall ~~[-minimally]~~ meet the following technical requirements:
 - (a) Provide an estimated lifespan of the MEGF, including an estimated period of useful life for system components;
 - (b) Identify the party responsible for decommissioning;
 - (c) Define conditions upon which decommissioning will be **implemented~~[initiated]~~**, including a statement defining how notification will be made **to the cabinet, affected landowners, and local county or municipality in regard to implementation** of ~~[intent to start]~~ the decommissioning process, **pursuant to 401 KAR 103:010, Section 1(1)~~[103:010(1)]~~**;
 - (d) The **estimated** timeframe for commencement and completion of decommissioning activities;
 - (e) Include a revegetation plan, with native seed mixes, excluding any invasive species;
 - (f) Cost itemization of all estimated costs that factor into decommissioning the MEGF;
 - (g) Include the financial assurance mechanisms, in accordance with KRS 278.706 and 401 KAR 103:030;

(h) Describe any agreement with landowners regarding decommissioning, including any special accommodations made to any affected landowner, pursuant to KRS 278.706(2)(m)6;[.]

~~[1.] [Incorporate the accommodations as requirements into the lease agreement with landowners and the decommissioning plan; or]~~

~~[2.] [Deny the request to accommodate and submit a detailed correspondence to the landowner, county or municipal government, and cabinet.]~~

~~[3.] [The owner-operator or person who controls or owns the right to control shall provide the landowner, county or municipal government, and cabinet with a timeline of any agreed upon accommodated request from the landowner or county or municipal government in accordance with paragraph (h) of this subsection.]~~

(i) Removal of any MEGF owned equipment and facilities, including:

1. Structures;
2. Fencing;
3. Roads;
4. Foundations or pads;
5. Erosion, sediment, and water control measures;
6. Modules or solar panels;
7. Racks;
8. Cables or wires;
9. Conduit;
10. Inverters; and
11. Transformers;[.]

(j) Remove any underground components and foundations of above-ground facilities. Underground components and facilities under this paragraph 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 otherwise requested by the landowner; and

(k) Incorporate the requirements of paragraphs (a) through (j) of this subsection into the applicant's or construction certificate holder's leases with landowners.

Section 2. Decommissioning Plan Updates.

(1) Pursuant to KRS 278.710, all MEGFs shall submit an updated decommissioning plan at least once every five (5) years. Decommissioning plan updates shall be submitted no later than 180 days prior to the fifth anniversary of the commencement of generation of electricity unless permission for a later date has been granted in writing by the cabinet, as established in KRS 278.710(8). The cabinet may, at any time, request updated information necessary for reevaluating the decommissioning plan updates. Requests for updates shall include:

- (a) Additional construction of equipment or facilities;
- (b) Removal of equipment or facilities; or
- (c) Changes in the facilities estimated decommissioning costs.

(2) Decommissioning plan updates shall:

- (a) Be submitted in conjunction with a notarized MEGF Annual Report or Decommissioning Plan Update Form, DWM 4657, including all required attachments;
- (b) Include an updated estimation of decommissioning costs in accordance with Section 3 of this administrative regulation and 401 KAR 103:030; and
- (c) Include any proposed measures to mitigate adverse impacts pursuant to KRS 278.710.

(3) Any engineering evaluation procured by the cabinet or at the cabinet's request and referred to the secretary to inform a final decision shall be considered preliminary, confidential, and not open for public inspection until after final action by the secretary.

(4) Decommissioning plan updates that require new construction ***shall comply with***~~*will be subject to standards in*~~ KRS 278.704 through 278.714.

(5) Upon review and approval of the updated decommissioning plan by the cabinet, the ***construction certificate holder***~~*owner-operator*~~, or person who controls or owns the right to control the MEGF shall file with the cabinet an updated copy of the decommissioning bond or other similar security, in accordance with 401 KAR 103:030, to reflect changes to the estimated cost of effectuating the decommissioning plan or to the net present value or the net salvage value of the facility or its components.

Section 3. Decommissioning Cost Estimates.

(1) The ***construction certificate holder***~~*applicants, owner-operator*~~^{*[,]*} or person who controls or owns the right to control a merchant electric generating facility shall have a detailed, written estimate, in current US dollar, of the cost to decommission the MEGF in accordance with KRS 278.706 and 278.710.

(2) The estimated cost shall equal the cost of completing the decommissioning plan of the MEGF at the end of the useful life pursuant to the approved decommissioning plan. The cost estimate shall include:

- (a) Itemized costs for implementing, dismantling, removing, or disposing of all structures, systems, components, and requirements ***established***~~*described*~~ in Section 1 of this administrative regulation;
- (b) ~~*Incorporate*~~ An estimated decommissioning cost per megawatt valuation;
- (c) ***A recalculation***~~*Be recalculated*~~ at least once every five (5) years to accommodate for inflation or depreciation;
- (d) ~~*The*~~^{*Include a*} defined useful life period of the MEGF; and
- (e) ***Certification***~~*Be certified*~~ by an independent, licensed engineer pursuant to KRS 278.706.

Section 4. Abandonment. In the event of abandonment or failure to complete decommissioning obligations by the responsible party, pursuant to KRS 224.10-100, the cabinet ***may***~~*will*~~ draw upon the ***financial assurance***~~*decommissioning bond*~~ and implement the decommissioning plan. Pursuant to KRS 278.706, if any party makes a successful claim on the approved financial assurance, that party shall be responsible for the requirements ***established***~~*set forth*~~ in the decommissioning plan.

Section 5. Incorporation by Reference.

(1) "MEGF Annual Report or Decommissioning Plan Update" Form, DWM 4657, ***January 2024***~~*September 2023*~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Waste Management, 300 Sower Boulevard, 2nd floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 5:00 p.m., from the Web site at eec.ky.gov/environmental-protection/waste.

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