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1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amended After Comments)

5 401 KAR 103:005. Definitions related to 401 KAR Chapter 103.

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

7 STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-100(30) and (31), 224.10-  
8 285, 224.43-345, KRS 278.710(3), (4), (5), (7) through (10)

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-285 requires the Energy and  
10 Environment Cabinet to establish monitoring and enforcement requirements for the obligation  
11 set for in KRS 278.710(3), (4), (5), (7) through (10) and KRS 224.10-100(30) and (31). This  
12 administrative regulation defines essential terms that are used in this chapter.

13 Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 and  
14 Chapter 278, terms in 401 KAR Chapter 103 shall have the meanings given in this section.

15 (1) "Abandon" or "Abandonment" means the relinquishment of all rights, title, or claim  
16 to the merchant electric generating facility;

17 (2) "Above-ground facilities" means any portion of a system or structure located on the  
18 surface of the site;

19 (3) "Annual report" means a yearly document that describes all operational activities in  
20 the previous year;

(4) "Applicant" means any person ~~[who received a construction certificate pursuant to KRS 278.710, or]~~ who is seeking the transfer of a construction certificate for ownership or control, or rights and obligations under a construction certificate, ~~[controlling rights, or ownership]~~ of a constructed and generating merchant electric generating facility;

(5) "Cabinet" is defined in KRS 224.1-010;

(6) "Commence to construct" is defined in KRS 278.700;

(7) "Components" means either the solar panel or ancillary equipment of a solar array or solar panel system, or a constituent part;

(8) "Construction certificate" means a formal certification approved and issued by the Kentucky State Board on Electric Generation and Transmission Siting ("Siting-board") ~~[to an owner-operator, or persons who have controlling rights, of a merchant electric generating facility]~~ that authorizes a person[s] to construct and operate a merchant generating facility;

(9) "Construction certificate holder" means any person who received board approval to construct a merchant electric generating facility pursuant to KRS 278.710(1) or any person who received approval to acquirer rights and obligations under the construction certificate pursuant to KRS 278.710(3)(b).

(10) "Control" is defined by KRS 278.010;

~~(11)~~ (14) "Current net salvage value" means the value of an asset expressed in current US dollars after it has become useless to the owner or the amount expected to be obtained when a fixed asset is disposed of at the end of its useful life and pursuant to KRS 278.706;

~~(12)~~ (14) "Decommission" means the process of removing components ~~[removal]~~ or ~~[closing of] facilities[solar panel system]~~ at the end of the useful life;

1           ~~[(12) “Decommission bond” or “Decommissioning bond” means an approved~~  
2   ~~financial assurance mechanism used to guarantee the land used for a merchant electric~~  
3   ~~generating facility will be returned to a substantially similar state upon decommissioning~~  
4   ~~or abandonment of the project, unless otherwise requested by the landowner;]~~

5           (13) “Decommission costs” or “Decommissioning costs” means the amount of all costs  
6   and expenses incurred in connection with the decommissioning~~[dismantlement, removal, and~~  
7   ~~disposal of structures, systems, and components]~~ of a merchant electric generating facility ~~[at~~  
8   ~~the time of decommissioning]~~ pursuant to KRS 278.706;

9           (14) “Decommission plan” or “Decommissioning plan” means a plan to retire physical  
10   facilities of a merchant electric generating facility, pursuant to KRS 278.706;

11          (15) “Disposal” is defined in KRS 224.1-010;

12          (16) “Facility” is defined by KRS 278.010;

13          (17) “Hazardous substance” is defined by KRS 224.1-400;

14          (18) “Land disposal” is defined in KRS 224.1-010;

15          (19) “Landowner” means a person who has legal ownership of land where a merchant  
16   electric generating facility is located;

17          (20) “Megawatt” means a unit of power equal to one million watts, measure of output of  
18   electrical power;

19          (21) “Merchant electric generating facility” is defined in KRS 278.700;

20          (22) “Mitigation measures” means an act or requirement established by the siting board  
21   pursuant to KRS 278.708;

22          (23) “Modification” means a change in existing order or certificate, necessary to cure an  
23   error;

(24) "Monitoring" is defined as the act of systematically inspecting and collecting data on operational parameters or on the quality of a merchant electric generating facility;

(25) "Municipal government" means a city, town, or other local authority with an elected governing body;

(26) "Net present value" means the difference between the present value inflow and outflow over a period of time and pursuant to KRS 278.706;

(27) "Ordinance" means an official written act of a local government, the effect of which is general and permanent in nature, which is enforceable by the enacting local government as a local law within its jurisdiction;

~~[(28) "Owner-operator" is defined as any person who owns a merchant electric generating facility or is responsible for overall operation of a merchant electric generating facility, including any contractor conducting operational activities;]~~

~~(28)~~<sup>(29)</sup> "Person" is defined in KRS 278.700;

~~(29)~~<sup>(30)</sup> "Professional Engineer" is defined in KRS 322.010; an independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be experienced to engage in the decommissioning of solar electric generating facilities;

~~(30)~~<sup>(31)</sup> "Recycling" is defined in KRS 224.1-010;

~~(31)~~<sup>(32)</sup> "Secretary" is defined in KRS 224.1-010;

~~(32)~~<sup>(33)</sup> "Service" is defined by KRS 278.700;

~~(33)~~<sup>(34)</sup> "Solar panel" means a panel or device containing photovoltaic cells designed to absorb and convert sunlight into a source of generating electricity;

~~(34)~~<sup>(35)</sup> "Successor" means one who succeeds to the rights to own or control a merchant electric generating facility;


1 (35[36]) "Useful life" means the estimated length of time that depreciable property will  
2 generate income;

3 (36[37]) "Waste" is defined in KRS 224.1-010;

4 Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context,  
5 acronyms and abbreviations used in 401 KAR Chapter 103 shall have the meaning as identified  
6 in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations	
KAR	Kentucky Administrative Regulations
KRS	Kentucky Revised Statutes
MEGF	Merchant Electric Generating Facility
MW	Megawatt

401 KAR 103:005 – Definitions related to 401 KAR Chapter 103 amendment after comments is approved for filing.

  
\_\_\_\_\_  
Rebecca Goodman, Secretary  
Energy and Environment Cabinet

2/15/24  
Date

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

401 KAR 103:005

Contact person: Tyler Shields, Environmental Control Supervisor

Phone: (502) 782-5325

Email: Tyler.Shields@ky.gov

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes definitions for Title 401 KAR Chapter 103, for which have not been established in KRS Chapter 224 or KRS Chapter 278.
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish definitions for the chapter.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: 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 authorizes the cabinet to promulgate administrative regulations to establish the monitoring and enforcement requirements for the obligations set forth in KRS 278.710(3), (4), (5), (7) through (10), and KRS 224.10-100(30) and (31).
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes definitions for Title 401 KAR Chapter 103 to assist in the comprehension of proposed administrative regulations.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this existing administrative regulation: The proposed amendments address concerns received during the public comment period providing clarification for the intended meaning of terms.
  - (b) The necessity of the amendment to this administrative regulation: The proposed amendments were necessary to address concerns received during the public comment period regarding comprehension of terms.
  - (c) How the amendment conforms to the content of the authorizing statutes: The proposed amendments provide clarification of terms used in 401 KAR Chapter 103. The amendments are in conformance with statutory language and KRS 224.10-285(2).
  - (d) How the amendment will assist in the effective administration of statutes: The proposed amendments provide clarification of the intended meaning of terms used throughout 401 KAR Chapter 103.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation.

This administrative regulation will affect construction certificate holders and persons who control or own rights to control a MEGF, organizations who represent landowners of which a MEGF is located, landowners where a MEGF is located, and state and local governing bodies who operate under the proposed chapter (401 KAR Chapter 103) of administrative regulations.

- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
  - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified will not have actions to comply with in relation to this administrative regulation.
  - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will not have a cost for the entities identified.
  - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified will not accrue benefits from this administrative regulation.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
  - (a) Initially: The agency will not incur any additional costs for the implementation of this administrative regulation.
  - (b) On a continuing basis: The agency will not incur any continuing costs for the implementation of this administrative regulation.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The merchant electric generating facility monitoring and enforcement fund.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No increase in fees or funding is necessary to implement this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any direct or indirect fees.
- (9) TIERING: Is tiering applied? (Explain why or why not) No. This administrative regulation establishes definitions for the chapter.



## FEDERAL MANDATE ANALYSIS COMPARISON

401 KAR 103:005

Contact person: Tyler Shields Environmental Control Supervisor

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1. Federal statute or regulation constituting the federal mandate.

Not applicable.

2. State compliance standards.

KRS 224.10-100(28), 224.10-100(30) and (31), 224.10-285, 224.43-345, KRS 278.710(3), (4), (5), (7) through (10)

3. Minimum or uniform standards contained in the federal mandate.

Not applicable.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

This administrative regulation imposes stricter requirements as there is no federal mandate for the decommissioning of merchant electric generating facilities.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

HB-4 mandated the Cabinet to promulgate administrative regulations for the monitoring and enforcement requirements for the obligations set forth in KRS 278.710(3), (4), (5), (7), (8), (9), and (10) and KRS 224.10-100(30) and (31).

## FISCAL NOTE

401 KAR 103:005

Contact Person: Tyler Shields, Environmental Control Supervisor.

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(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This administrative regulation will impact state or local governments that have, own, or operate a merchant electric generating facility in their jurisdiction, as well as the Energy and Environment Cabinet and Public Service Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 224.10-100(28), KRS 224.10-100(30), and KRS 224.10-285

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation will not affect the expenditures and revenues of a state or local government agency.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

The proposed administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year?

The cost to administer the program the current thirty-eight (38) construction certificate cases filed is estimated to total \$163,300 annually. The cabinet's estimation was determined by the resources required to implement and administer the program, pursuant to KRS 278.710 and KRS 224.10-285. At the time of drafting this regulation, only three (3) of the thirty-eight (38) projects were under construction. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of when these facilities will be constructed and begin generating electricity it is challenging to estimate the total costs in the first year of the program.

(d) How much will it cost to administer this program for subsequent years?

The cost to administer the program for the thirty-eight (38) construction certificate cases filed is estimated to total \$163,300 annually. The cabinet's estimation was determined by

the resources required to implement and administer the program, pursuant to KRS 278.710 and KRS 224.10-285. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of when these facilities will be constructed and begin generating electricity it is challenging to estimate the total costs for subsequent years of the program.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings(+/-): There is no known cost savings.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: This administrative regulation only establishes definitions for the chapter.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

The proposed administrative regulation will not generate cost savings for any regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

The proposed administrative regulation will not generate cost savings for any regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year?

There is no known cost to the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years?

There is no known cost to the regulated entities in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings(+/-): There is no known cost savings.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: This administrative regulation only establishes definitions for the chapter.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]

This proposed administrative regulation will not have a major economic impact.