

FILED WITH LRC TIME: <u>noon</u>
FEB 15 2024
<i>Emily B Caudill</i> REGULATIONS COMPILER

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amended After Comments)

5 401 KAR 103:030. Financial requirements.

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 224.10-100(28) authorizes the cabinet  
10 to promulgate administrative regulations not inconsistent with the provisions of law administered  
11 by the cabinet. KRS 224.10-285 requires the Energy and Environment Cabinet to establish  
12 monitoring and enforcement requirements for the obligation set for in KRS 278.710(3), (4), (5),  
13 (7) through (10) and KRS 224.10-100(30) and (31). KRS 224.10-100(30) requires the Energy  
14 and Environment Cabinet to monitor and enforce compliance of a merchant electric generating  
15 entity to which a construction certificate has been issued and has generated pursuant to  
16 obligations set forth in KRS 278.710(3), (4), (5), (7) through (10). KRS 224.10.100(31)  
17 authorizes the cabinet to draw upon the financial assurance for which it is named as a beneficiary  
18 and decommission a merchant generating facility in accordance with its approved  
19 decommissioning plan. This administrative regulation establishes procedures to administer the  
20 financial assurance mechanisms for the decommissioning responsibilities of merchant electric  
21 generating facilities.

1           Section 1. Applicability. The financial assurance criteria and requirements apply to all  
2 applicants, construction certificate holders~~[owner-operators]~~, or person who controls or owns  
3 the right to control a merchant electric generating facility, except as stated in KRS 278.706 and  
4 278.710.

5           Section 2. Financial Assurance Criteria.

6           (1) Applicants, construction certificate holders~~[owner-operators]~~, or person who  
7 controls or owns the right to control a merchant electric generating facility shall:

8           (a) Ensure the financial assurance mechanisms is sufficient to cover the costs of  
9 decommissioning pursuant to KRS 278.706;

10          (b) ~~[Ensure the financial assurance mechanisms be available no later than thirty (30)~~  
11 ~~days after the issuance of a cabinet demand letter.]~~

12          (c) ~~[Complete and notarize a revised financial assurance mechanism form, in~~  
13 ~~accordance with Section 3 of this administrative regulation, for the revised financial~~  
14 ~~assurance mechanism; and~~

15          (d) Ensure the coverage of the financial assurance mechanism does not lapse, in  
16 accordance with KRS 278.710(4); and

17          ~~(e)~~ Meet the requirements pursuant to KRS 278.706 and KRS 278.710.

18          (2) The applicant, construction certificate holder~~[owner-operator]~~, or person who  
19 controls or owns the right to control a merchant generating facility shall execute and submit a  
20 performance agreement for decommissioning, as established in Section 3 of this administrative  
21 regulation, with one (1) or more of the financial mechanisms established in Section 3 of this  
22 administrative regulation that satisfy the following criteria:

1           ~~[(a)]~~ The amount of the financial assurance provided by a single surety provider shall not  
2 exceed the limits of the most current United States Department of the Treasury's Circular 570.

3           ~~[(b) Upon receiving notice from the surety of the impending cancellation or lapse of~~  
4 ~~the financial assurance mechanism, the cabinet shall seek agreement of any landowners~~  
5 ~~who have not previously agreed pursuant to paragraph (c) below to make a demand on the~~  
6 ~~financial assurance mechanism.~~

7           ~~(c) The cabinet may seek agreement of the landowners to allow it to make a demand~~  
8 ~~on the bond prior to receiving notice of impending cancellation or lapse.~~

9           ~~(d) A landowner's agreement to allow the cabinet to make a demand on a bond~~  
10 ~~pursuant to clause a. of this subparagraph may only be revoked in writing bearing a~~  
11 ~~notarized signature of the landowner.]~~

12           (3) ~~[Pursuant to Section 3 of this administrative regulation, financial assurance~~  
13 ~~mechanism shall be:~~

14           ~~(a) Submitted;~~

15           ~~(b) Reviewed; and~~

16           ~~1. Approved by the cabinet if the applicant, owner-operator, or person who controls~~  
17 ~~or owns the right to control a merchant electric generating facility is in compliance with the~~  
18 ~~requirements of this administrative regulation; or~~

19           ~~2. Denied by the cabinet if the updated or replacing financial assurance mechanism~~  
20 ~~does not meet the requirements stated KRS 278.706, KRS 278.710, and this administrative~~  
21 ~~regulation.~~

22           (4) Any applicant, construction certificate holder~~[owner-operators]~~, or person who  
23 controls or owns the right to control a merchant electric generating facility who fail to meet the

requirements established in this Section of this administrative regulation, KRS 278.706, and 278.710 may be subject to penalties established in KRS 224.99-010.

Section 3. Financial Assurance Mechanisms. The mechanisms used to demonstrate financial assurance in accordance with this administrative regulation shall ensure that the funds necessary to meet the costs of decommissioning the merchant generating facility upon the expiration of its useful life.

(1) **A financial assurance mechanism shall be:**

**(a) Submitted;**

**(b) Reviewed; and**

- 1. Approved by the cabinet if the applicant, construction certificate holder, or person who controls or owns the right to control a merchant electric generating facility is in compliance with the requirements of KRS 278.706 and 278.710 and this administrative regulation; or**
- 2. Denied by the cabinet if the financial assurance mechanism does not meet the requirements established in KRS 278.706 and 278.710 and this administrative regulation.**

(2) Before the cabinet approves ~~a~~**[an updated or replacement]** financial assurance mechanism, the **applicant or construction certificate holder**~~[successor]~~ shall:

(a) Complete and **submit a notarized MEGF**~~[notarize a]~~ Performance Agreement, **form DWM 4651**~~[of decommissioning pursuant to paragraph (c) of this section]; and~~

(b) Post at least one (1) of the following financial assurance mechanisms pursuant to KRS 278.706**(2)(m)5**:

1. A surety bond as established in subsection **(3[2])** of this section;

2. An escrow agreement as established in subsection ~~(4[3])~~ of this section; or

3. Other similar security pursuant to KRS 278.706.

~~[(c) A performance agreement, guaranteeing performance of decommissioning to allowable limits, shall be completed, and notarized on MEGF Performance Agreement Form, DWM 4651.]~~

~~(3[2])~~ A surety bond shall:

(a) Be completed and notarized on MEGF Surety Bond Form, DWM 4653. The requirements contained in the surety bond are incorporated in this administrative regulation by reference.

~~(4[3])~~ An escrow agreement shall:

(a) Be completed on MEGF Escrow Agreement Form, DWM 4654. The requirements contained in the escrow agreement are incorporated in this administrative regulation by reference.

(b) If a certificate of deposit is used in conjunction with the escrow agreement, it shall be made payable to the financial institution as the escrow agent.

~~(5[4])~~ Other financial assurance as specified in KRS 278.706 and KRS 278.710.

~~(6[5])~~ The applicant, construction certificate holder~~[owner-operator]~~, or person who controls or owns the right to control a merchant electric generating facility by establishing more than one (1) financial mechanism shall be limited to the following:

(a) Surety bonds;

(b) Escrow agreements;

(c) Other financial assurance, pursuant to subsection ~~(5[4])~~ of this section.

1 (d) A combination of mechanisms established in this administrative regulation, rather  
2 than each single mechanism, that shall provide financial assurance for an amount at least equal to  
3 the financial assurance requirements established in KRS 278.706.

4 **(7) If the cabinet receives notice from the financial guarantor of the impending**  
5 **cancellation or lapse of the financial assurance mechanism, the cabinet may seek**  
6 **agreement of any landowners who have not previously agreed pursuant to subsection (8) of**  
7 **this section, to make a demand on the financial assurance mechanism. A landowner's**  
8 **agreement to allow the cabinet to make a demand on a financial assurance mechanism shall**  
9 **only be revoked with a notarized signature of the landowner.**

10 **(8) Pursuant to KRS 224.10-100(31), the cabinet may seek an agreement with the**  
11 **landowner to allow the cabinet to make a demand on the financial assurance mechanism**  
12 **prior to receiving notice of impending cancellation. If the cabinet makes a demand on the**  
13 **financial assurance mechanism, the construction certificate holder or person who controls**  
14 **or owns the right to control the facility shall ensure the financial assurance mechanism be**  
15 **available no later than thirty (30) days after issuance of the demand letter.**

16 Section 4. Release of Financial Assurance.

17 (1) Financial assurance mechanisms posted to assure the proper decommissioning of the  
18 MEGF shall be released by the cabinet ~~if~~**when** the ~~construction certificate holder~~**owner-**  
19 **operator**], or person who controls or owns the right to control the MEGF demonstrates to the  
20 satisfaction of the cabinet that all decommissioning requirements pursuant to the  
21 decommissioning plan are complete in conformance with KRS 278.706, 278.710 and 401 KAR  
22 103:020.

(2) To demonstrate that all decommissioning requirements have been satisfied, the **construction certificate holder**~~[owner-operator]~~, or person who controls or owns the right to control the MEGF shall submit an assessment report certifying the facility is fully decommissioned pursuant to subsection (1) of this section.

Section 5. Incorporated by Reference.

(1) The following material is incorporated by reference:

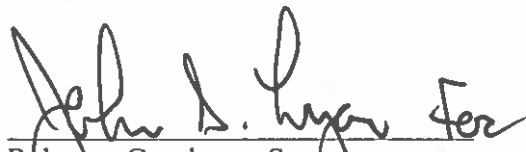
(a) "MEGF Performance Agreement" Form, DWM 4651, **January 2024**~~[July 2023]~~;

(b) "MEGF Surety Bond" Form, DWM 4653, **January 2024**~~[July 2023]~~; and

(c) "MEGF Escrow Agreement" Form, DWM 4654, **January 2024**~~[July 2023]~~.

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

401 KAR 103:030 Merchant Electric Generating facilities financial requirements amended 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 103:030

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 procedures for the financial assurance of MEGFs, including applicability, criteria, mechanisms of financial assurance, and conditions on which financial assurance will be released.
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for assuring entities provide adequate financial assurance to decommission the MEGF upon the end of its useful life.
  - (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 requires the establishment of the procedures to monitor and enforce requirements obligations set forth in 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 procedures to ensure MEGFs have adequate financial assurance for decommissioning responsibilities, pursuant to requirements set for in KRS 278.710.
- (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 provide clarity for financial assurance criteria and mechanisms, terms used referencing financial assurance, and obligations and requirements for financial assurance liability.
  - (b) The necessity of the amendment to this administrative regulation: The proposed amendments are necessary to address concerns received during the public comment period.
  - (c) How the amendment conforms to the content of the authorizing statutes: The proposed amendments clarify financial assurance criteria and mechanisms, and address liability for financial assurance obligations pursuant to KRS 278.706, 278.710, and 224.10-100(30) and (31).

- (d) How the amendment will assist in the effective administration of statutes: The proposed amendments will assist the cabinet with review of financial assurance (bonding) requirements, pursuant to KRS 278.710.
- (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 applicants, construction certificate holders, and successors of merchant electric generating facilities. There are thirty-eight (38) filed cases for MEGF construction certificates issued by the Kentucky State Board on Electric Generation and Transmission Siting (board). Each MEGF that is or has been approved will be required to adhere to the requirements established in this regulation. As of February 1, 2024, nineteen (19) counties or local municipal governments have established ordinances for decommissioning and financial assurance requirements. Pursuant to KRS 278.718, these local ordinances shall have primacy over KRS 278.704 through 278.708.

- (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: Entities will have to comply with procedures within this administrative regulation for a MEGF that is constructed and operating within a city or county that has not established financial assurance requirements. Entities will have to submit the new forms incorporated in this administrative regulation, as well as provide copies of financial assurance, pursuant to KRS 278.710.
  - (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 has financial assurance costs pursuant to KRS 278.706 and 278.710, equaling, at a minimum, the cost of decommissioning the facility.
  - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits to compliance with this administrative regulation include the release of the financial assurance upon completion of the decommissioning plan.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
  - (a) Initially: The agency will incur programmatic costs pursuant to cabinet obligations within KRS 278.710.
  - (b) On a continuing basis: The agency will incur programmatic costs pursuant to cabinet obligations within KRS 278.710.
- (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. Implementation and enforcement of this administrative regulation would be achieved by the annual fee payment provided by MEGFs, in addition to potential penalties collected under KRS 224.99-010.

- (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 fees but does establish procedures for financial assurance mechanisms for the costs of decommissioning the facility.

- (9) TIERING: Is tiering applied? (Explain why or why not)

No tiering is applied to this administrative regulation. There is no driving need to tier the applicability, criteria, or the potential financial mechanisms described in this administrative regulation.

## FEDERAL MANDATE ANALYSIS COMPARISON

401 KAR 103:030

Contact person: Tyler Shields Environmental Control Supervisor

Phone: (502) 782-5325

E-mail: [Tyler.Shields@ky.gov](mailto:Tyler.Shields@ky.gov)

1. Federal statute or regulation constituting the federal mandate.

Not applicable.

2. State compliance standards.

KRS 224.10-100, KRS 224.10-285, KRS 224.43-345, and KRS 278.700 through 278.716

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 103:030

Contact Person: Tyler Shields, Environmental Control Supervisor

Phone: (502) 782-5325

Email: [Tyler.Shields@ky.gov](mailto:Tyler.Shields@ky.gov)

(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 own or operate a merchant electric generating facility as well as the Division of Waste Management. Local governments who have not established financial assurance requirements for MEGFs within their ordinance(s) will be held to standards and requirements within this administrative regulation.

(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, KRS 224.10-285, KRS 278.706 and KRS 278.710

(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 generate revenue for state or local governments in the first year.

(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?

This administrative regulation will not generate revenue for state or local government for subsequent years.

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

The cost to administer the program the thirty-eight (38) filed MEGF construction certificate cases 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. 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) filed MEGF construction certificate cases 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. 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.

Revenues (+/-): If all thirty-eight (38) of the MEGF construction certificate cases filed are constructed and generating electricity, revenues generated from annual fees are estimated to total \$228,000. 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 if or when all facilities will be constructed and generating electricity it is challenging to estimate the total amount of revenue generated by the program on a yearly basis.

Expenditures (+/-): Assuming all thirty-eight (38) MEGF construction certificate cases filed are constructed and generate electric for sale, pursuant to responsibilities and requirements within KRS 278.710, the cabinet estimates the cost of administering the program to be \$163,300.

Other Explanation: .

(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?

This administrative regulation will present a financial assurance cost to the regulated entity, at a minimum, equal to the cost of decommissioning the facility.

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

There is potential for the cost of financial assurance to rise or decline in subsequent years, depending on modifications to the facility, equipment, or decommissioning plans. As technology within the industry advances, advancements could potentially raise, or lower costs required for financial assurance. Inflation could also cause financial assurance costs to rise or decline 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 establishes financial assurance procedures for the decommissioning of MEGFs. The cost of the financial assurance shall, at a minimum, equal the cost of decommissioning the facility. The financial assurance can change over the life of the facility, depending on modifications to the facility, equipment, or decommissioning plans. KRS 278.706 establishes how decommissioning costs are calculated.

(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.

## SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

- I. This administrative regulation incorporates by reference the “MEGF Performance Agreement” Form, DWM 4651, **January 2024**~~**July 2023**~~. This document was amended to use terms in accordance with statute and this chapter.

This document consists of two pages.

- II. This administrative regulation incorporates by reference the “MEGF Surety Bond” Form, DWM 4653, **January 2024**~~**July 2023**~~. This document was amended to use terms in accordance with statute and this chapter.

This document consists of two pages.

- III. This administrative regulation incorporates by reference the “MEGF Escrow Agreement” Form, DWM 4654, **January 2024**~~**July 2023**~~. This document was amended to use terms in accordance with statute and this chapter.

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

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### Merchant Electric Generating Facility (MEGF) Performance Agreement

<b>1. Agency Interest Number:</b>			
<b>2. Board Case No.:</b>			
<b>3. MEGF Construction Certificate Holder Information</b>			
Company Name:		Mailing Address:	
City:	State:	Zip Code:	
Contact Person:		Title:	
Email Address:	Phone Number: (     )     -	Cell Number: (     )     -	
<b>4. MEGF Information</b>			
Facility Name:		Physical Address:	
City:	State:	Zip Code:	
<b>5. Type of Financial Assurance for Decommissioning Plan</b>			
Date of Issuance:	Surety Bond Number:	Escrow Agreement Number:	
<b>6. Performance Agreement</b>			
<p>Note – All financial instruments and performance agreements must be executed pursuant to KRS 278.706 and 278.710. If the MEGF executes multiple financial instruments for the facility, each instrument must have a separate corresponding performance agreement.</p>			
<p>Know all persons by these presents, that the undersigned, _____, as MEGF, is held and firmly bound unto the Energy and Environment Cabinet in the penal sum of _____ dollars (\$ _____) which sum is herewith deposited by the submission of the financial assurance mechanism identified above.</p>			
<p>The MEGF posts this financial assurance mechanism by and through its agent(s) as a guarantee that the provisions of the construction certificate associated with Board Case Number listed above, all applicable laws, rules, and regulations will be observed and hereby bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. This agreement is effective upon receipt by the Division of Waste Management (hereinafter Division).</p>			
<p>The condition of the above obligation is such, that, whereas, the above bound MEGF pursuant to the provisions of KRS Chapter 278 and 401 KAR Chapter 103, as applicable, did file with the Board, an application for a construction certificate in the Commonwealth of Kentucky; that in said application the MEGF construction certificate holder identified the area to be a MEGF located at or near the community of _____; and whereas the above described area will be affected</p>			

during the life of the activity and until the MEGF has completed the decommissioning plan and the Cabinet has accepted the same.

Furthermore, it is understood that the obligation under this agreement extends to environmental degradation occurring off the MEGF area but proximately resulting from the construction, operation or decommissioning of the area.

Now, if the MEGF construction certificate holder, shall faithfully perform all the requirements of the above designed application, the construction certificate issued pursuant thereto and the applicable laws, rules, and regulations, and the terms of this agreement, then this obligation shall be released; otherwise, it is agreed that said penal sum shall be paid to the Commonwealth of Kentucky, Energy and Environment Cabinet, upon receipt of a Demand Letter.

#### 7. Certification

**"I certify under penalty of law that this documentation and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that KRS 224.99-010 provides for penalties."**

Name of MEGF:

Name of MEGF Signatory:

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.

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

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### Merchant Electric Generating Facility (MEGF) Performance Agreement

1. Agency Interest Number:			
2. <del>Board</del> <del>[Public Service Commission]</del> Case No.:			
<b>3. MEGF <del>Construction Certificate Holder</del><del>[Owner-Operator]</del> Information</b>			
Company Name:		Mailing Address:	
City:	State:	Zip Code:	
Contact Person:		Title:	
Email Address:	Phone Number: (     )     -	Cell Number: (     )     -	
<b>4. MEGF Information</b>			
Facility Name:		Physical Address:	
City:	State:	Zip Code:	
<b>5. Type of Financial Assurance for Decommissioning Plan</b>			
Date of Issuance:	Surety Bond Number:	Escrow Agreement Number:	
<b>6. Performance Agreement</b>			
Note – All financial instruments and performance agreements must be executed pursuant to KRS 278.706 and <u>278.710</u> . If the MEGF executes multiple financial instruments for the facility, each instrument must have a separate corresponding performance agreement.			
<p>Know all persons by these presents, that the undersigned, _____, as MEGF, is held and firmly bound unto the Energy and Environment Cabinet in the penal sum of _____ dollars (\$ _____) which sum is herewith deposited by the submission of the financial assurance mechanism identified above.</p> <p>The MEGF posts this financial assurance mechanism by and through its agent(s) as a guarantee that the provisions of the construction certificate associated with <del>Board</del><del>[Public Service Commission]</del> Case Number listed above, all applicable laws, rules, and regulations will be observed and hereby bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. This agreement is effective upon receipt by the Division of Waste Management (hereinafter Division).</p> <p>The condition of the above obligation is such, that, whereas, the above bound MEGF pursuant to the provisions of KRS Chapter 278 and 401 KAR Chapter[s <del>45, 46, 47 or 48</del>] <u>103</u>, as applicable, did file with the <del>Board</del><del>[Public Service Commission]</del>, an application for a construction certificate in the Commonwealth of Kentucky; that in said application the MEGF <u>construction certificate holder</u><del>[owner-operator]</del> identified the area to be a MEGF located at or near the</p>			

community of \_\_\_\_\_; and whereas the above described area will be affected during the life of the activity and until the MEGF has completed the decommissioning plan and the Cabinet has accepted the same.

Furthermore, it is understood that the obligation under this agreement extends to environmental degradation occurring off the MEGF area but proximately resulting from the construction, operation or decommissioning of the area.

Now, if the MEGF construction certificate holder~~[owner-operator]~~, shall faithfully perform all the requirements of the above designed application, the construction certificate issued pursuant thereto and the applicable laws, rules, and regulations, and the terms of this agreement, then this obligation shall be released; otherwise, it is agreed that said penal sum shall be paid to the Commonwealth of Kentucky, Energy and Environment Cabinet, upon receipt of a Demand Letter.

#### 7. Certification

**"I certify under penalty of law that this documentation and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that KRS 224.99-010 provides for penalties."**

Name of MEGF:

Name of MEGF Signatory:

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.

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

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 WRITE IN THIS SPACE*

### Merchant Electric Generating Facility (MEGF) Surety Bond

<b>1. Agency Interest Number</b>			
<b>2. Board Case No (If applicable):</b>			
<b>3. Issuer Information</b>			
Surety Issuer Name:		Mailing Address:	
City:	State:	Zip Code:	
Agency Name:		Mailing Address:	
City:	State:	Zip Code:	
Agency Contact Person:		Title:	
Email Address:	Phone Number: ( ) -	Cell Number (optional): ( ) -	
Bond Amount:	Bond Number:	Issue Date: - -	
<b>4. MEGF Construction Certificate Holder Information</b>			
Company Name:		Mailing Address:	
City:	State:	Zip Code:	
Contact Person:		Title:	
Email Address:	Phone Number: ( ) -	Cell Number: ( ) -	
<b>5. MEGF Information</b>			
Facility Name:		Physical Address:	
City:	State:	Zip Code:	
<b>6. Surety Bond</b>			

Know all persons by these presents, that the undersigned, \_\_\_\_\_, as Surety for the MEGF, \_\_\_\_\_, is held and firmly bound unto the Energy and Environment Cabinet in the penal sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) by the submission of this surety bond.

The penal sum is to assure the proper completion of the decommissioning plan in accordance with the Board construction certificate issued to the MEGF, for the site located at or near \_\_\_\_\_ (insert county, state), and all applicable laws, rules, and regulations.

Furthermore, it is understood that the obligation under this surety bond extends to environmental degradation occurring off the MEGF site but proximately resulting from the construction, operation, or closure of approved facility activity.

If the MEGF faithfully performs all the requirements of the above designated Board construction certificate issued pursuant thereto, the applicable laws, rules, and regulations, then this obligation shall be released; otherwise, it is agreed that the undersigned, \_\_\_\_\_, as Surety, shall pay said penal sum to the Commonwealth of Kentucky, Energy and Environment Cabinet, upon receipt of a Demand Letter.

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

The Issuer further agrees that unless expressly stated otherwise herein, the terms and obligations represented by this surety bond shall be governed by the Uniform Commercial Code of the Commonwealth of Kentucky and/or any other pertinent Kentucky law.

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

NOTE: The person who signs for a surety company shall file, along with the bond, a copy of the Power of Attorney showing authority to sign.

#### 7. Certification

Name of MEGF:

Name of Signatory (Issuer):

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.

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

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### Merchant Electric Generating Facility (MEGF) Surety Bond

<b>1. Agency Interest Number</b>			
<b>2. Board[Public Service Commission] Case No (if applicable):</b>			
<b>3. Issuer Information</b>			
Surety Issuer Name:		Mailing Address:	
City:	State:	Zip Code:	
Agency Name:		Mailing Address:	
City:	State:	Zip Code:	
Agency Contact Person:		Title:	
Email Address:	Phone Number: ( ) -	Cell Number (optional): ( ) -	
Bond Amount:	Bond Number:	Issue Date: - -	
<b>4. MEGF Construction Certificate Holder[Owner-Operator] Information</b>			
Company Name:		Mailing Address:	
City:	State:	Zip Code:	
Contact Person:		Title:	
Email Address:	Phone Number: ( ) -	Cell Number: ( ) -	
<b>5. MEGF Information</b>			
Facility Name:		Physical Address:	
City:	State:	Zip Code:	
<b>6. Surety Bond</b>			

Know all persons by these presents, that the undersigned, \_\_\_\_\_, as Surety for the MEGF, \_\_\_\_\_, is held and firmly bound unto the Energy and Environment Cabinet in the penal sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) by the submission of this surety bond.

The penal sum is to assure the proper completion of the decommissioning plan in accordance with the **Board[Public Service Commission]** construction certificate issued to the MEGF, for the site located at or near \_\_\_\_\_ (insert county, state), and all applicable laws, rules, and regulations.



Furthermore, it is understood that the obligation under this surety bond extends to environmental degradation occurring off the MEGF site but proximately resulting from the construction, operation, or closure of approved facility activity.

If the MEGF faithfully performs all the requirements of the above designated **Board**~~[Public Service Commission]~~ construction certificate issued pursuant thereto, the applicable laws, rules, and regulations, then this obligation shall be released; otherwise, it is agreed that the undersigned, \_\_\_\_\_, as Surety, shall pay said penal sum to the Commonwealth of Kentucky, Energy and Environment Cabinet, upon receipt of a Demand Letter.

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

The Issuer further agrees that unless expressly stated otherwise herein, the terms and obligations represented by this surety bond shall be governed by the Uniform Commercial Code of the Commonwealth of Kentucky and/or any other pertinent Kentucky law.

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

**NOTE:** The person who signs for a surety company shall file, along with the bond, a copy of the Power of Attorney showing authority to sign.

#### 7. Certification

Name of MEGF:

Name of Signatory (Issuer):

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.

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

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### 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.

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

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### Merchant Electric Generating Facility (MEGF) Escrow Agreement

1. Agency Interest Number

2. ~~Board~~[Public Service Commission] 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~~[Owner-Operator] 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, Applicant desires to obtain a permit in the Commonwealth of Kentucky pursuant to 401 KAR Chapters 45, 46, 47 and 48, as applicable; and]~~

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~~[Public Service Commission]~~ 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~~[Public Service Commission]~~ 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**~~[Public Service Commission]~~ construction certificate issued to the MEGF in accordance with 401 KAR Chapter[s] **103**~~[45, 46, 47 or 48]~~, 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: / /

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