

154.27-030 Application for incentives -- Review -- Approval -- Approval of projects involving new, retrofitted, or upgraded alternative fuel facilities.

- (1) A company with an eligible project may submit an application for incentives to the authority prior to making any capital investment it will seek to recover.
- (2) The application shall include:
 - (a) The name of the applicant and identification of any affiliates of the applicant;
 - (b) The type of eligible project;
 - (c) A description of the location;
 - (d) A full description of the eligible project scope, including but not limited to:
 1. A list and the status of permits, certificates, or approvals required by the federal government, the Commonwealth, or any jurisdiction within the Commonwealth;
 2. A description of the carbon capture readiness of the facility, if the proposed eligible project is an alternative fuel facility or a gasification facility;
 3. Any feasibility studies, including supporting documents;
 4. Anticipated sources of eligible project funding;
 5. The total anticipated capital investment and the time period over which the capital investment will occur;
 6. The proposed feedstock and the estimated volume of feedstock use per year;
 7. A description of the proposed products to be produced by the facility and the process that will be used to produce the products;
 8. The planned capacity of the facility after construction, retrofit, or upgrade;
 9. The estimated output of the facility upon completion; and
 10. A plan for and description of how the company will employ Kentucky residents at the facility and how the company will ensure, to the extent possible, that workers employed during construction, retrofit, or upgrade of the facility are Kentucky residents. The plan shall include projected numbers;
 - (e) Identification of the specific incentives sought;
 - (f) Payment of any applicable application fees required by the authority to offset reasonable costs of reviewing and processing the application; and
 - (g) Other information as required by the authority.
- (3) The authority shall forward the application to the Department of Revenue and the Department for Energy Development and Independence for review and comment with a date by which comments shall be provided back to the authority. The authority may forward the application to the Center for Applied Energy Research for review and comment as well.
- (4) (a) The authority shall review the application and shall verify that:

1. The applicant has met all of the statutory and regulatory requirements established by this subchapter and regulations promulgated thereunder;
 2. The applicant has secured or is in the process of securing all necessary permits, certificates, or approvals required by the federal government, the Commonwealth, or any jurisdiction within the Commonwealth;
 3. The proposed facility is carbon capture ready, if the proposed facility is an alternative fuel facility or gasification facility;
 4. The company has a plan that includes a projected number of Kentucky residents that will be employed during the construction, retrofit, or upgrade of the facility and at the facility upon completion; and
 5. Any other requirements established by the authority.
- (b) The Department of Revenue and the Department for Energy Development and Independence shall review the application and shall verify that the company seeking approval and all affiliate companies are in good standing with the department.
- (c) The authority may engage the services of outside consultants to assist in the review of the application. Costs associated with the engagement of outside consultants shall be borne by the applicant.
- (5) (a) Upon the earlier of:
1. The receipt of comments and recommendations from the Department for Energy Development and Independence, the Department of Revenue, and the Center for Applied Energy Research, if applicable; or
 2. The expiration of the time period established by the authority for receiving comments pursuant to subsection (3) of this section;
- the authority may, through the adoption of a resolution, preliminarily approve an applicant for incentives under this subchapter.
- (b) Preliminary approval shall be based upon representations of the applicant in the application and attachments as well as other information submitted with the application. The authority shall make a finding that, based upon the applicant's representations, the project appears to be eligible for incentives pursuant to this subchapter.
- (c) Prior to final approval:
1. The applicant shall:
 - a. Provide all supportive data requested by the authority;
 - b. Secure all required permits or take appropriate steps to do so; and
 - c. Cooperate with the authority to obtain opinions or recommendations from any outside consultants; and
 2. The authority shall, in consultation with the Department for Energy Development and Independence or any other entity, verify the representations of the applicant.

- (d)
 1. A preliminarily approved company seeking an advance disbursement employment incentive under KRS 154.27-090 shall, prior to receiving final approval from the authority, provide to the authority a labor market analysis prepared by a public postsecondary education institution in the Commonwealth with knowledge of the labor market in the region in which the eligible project will be located.
 2. The labor market analysis shall evaluate the construction market in the region where the proposed project is to be located and the estimated labor component of the proposed project. The public postsecondary education institution may consult with the Center for Applied Energy Research or the Department for Energy Development and Independence in determining the types of laborers required for the construction, retrofit, or upgrade of the eligible facility.
 3. The labor market analysis shall include an estimate of the percentage of the estimated labor component that constitutes wages to be paid to Kentucky residents.
- (e) Based upon all of the information available, the authority may, through adoption of a resolution, give its final approval and authorize the execution of a tax incentive agreement to be negotiated pursuant to KRS 154.27-040.
- (6) The authority may request any materials and make any inquiries concerning an application that the authority deems necessary.
- (7) The actual capital investment that may be recovered and percentages of each incentive that an approved company may receive shall be negotiated between the approved company and the authority and shall not exceed the limitations established by KRS 154.27-020.
- (8) The General Assembly recognizes that the incentives offered under this subchapter include the possibility of the release of incentives to approved companies prior to construction completion, and that the release of these incentives may present more risk for the Commonwealth. The authority is directed to consider the possible increased risk to the Commonwealth when negotiating tax incentive agreements that include incentives prior to construction completion, and to incorporate repayment or similar remedy provisions in the tax incentive agreement to the extent the authority determines such provisions are necessary to protect the investment made by the Commonwealth if the approved company fails to comply with the terms of the tax incentive agreement.
- (9) The authority and the approved company shall enter into a tax incentive agreement in accordance with KRS 154.27-040.
- (10) The authority, with input from the Department for Energy Development and Independence and the Department of Revenue, shall establish additional standards and requirements for the application process through the promulgation of administrative regulations in accordance with KRS Chapter 13A. The standards shall include but not be limited to the creditworthiness of eligible companies and the likelihood of economic success of the economic development project.

(11) Notwithstanding any other provision of this subchapter, the authority may approve a maximum of five (5) projects under this subchapter that involve an alternative fuel facility located in Kentucky that:

- (a) Is newly constructed on or after August 1, 2010, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 1, 2010;
- (b) After the new construction, retrofit, or upgrade, primarily produces for sale alternative transportation fuels using natural gas or natural gas liquids as the primary feedstock; and
- (c) Has a minimum capital investment of one million dollars (\$1,000,000).

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 200, effective July 15, 2010; and ch. 139, sec. 7, effective July 15, 2010. -- Created 2007 (2d Extra. Sess.) Ky. Acts ch. 1, sec. 3, effective August 30, 2007.

Legislative Research Commission Note (7/15/2010). This section was amended by 2010 Ky. Acts chs. 24 and 139, which do not appear to be in conflict and have been codified together.