

MARYLAND REGISTER

**Proposed Action on Regulations**

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
		Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

**1. Desired date of publication in Maryland Register: 7/31/2020**

**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

20 79 03 03 and .04

**3. Name of Promulgating Authority**

Public Service Commission

**4. Name of Regulations Coordinator**

Tonya L Johnson

**Telephone Number**

410-767-8381

**Mailing Address**

6 St. Paul Street, 16th Floor

**City State Zip Code**

Baltimore MD 21202

**Email**

tonya.johnson3@maryland.gov

**5. Name of Person to Call About this Document**

Andrew S. Johnston

**Telephone No.**

410-767-8067

**Email Address**

andrew.johnston@maryland.gov

**6. Check applicable items:**

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: 6/3/2020.

Repeal of Existing Regulations

**X- Recodification**

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R  
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

**7. Is there emergency text which is identical to this proposal:**

Yes **X- No**

**8. Incorporation by Reference**

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

**9. Public Body - Open Meeting**

**X- OPTIONAL** - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

**OPTIONAL** - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

**10. Children's Environmental Health and Protection**

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

**11. Certificate of Authorized Officer**

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by H. Robert Erwin, General Counsel, (telephone #410-767-8039) on 6/17/2020. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Andrew S. Johnston

**Title**

Executive Secretary

**Telephone No.**

410-767-8067

**Date**

6/17/2020

**Title 20**

**PUBLIC SERVICE COMMISSION**

**Subtitle 79 APPLICATIONS CONCERNING THE CONSTRUCTION OR  
MODIFICATION OF GENERATING STATIONS AND OVERHEAD  
TRANSMISSION LINES**

### **20.79.03 Details of Filing Requirements — Generating Stations**

Authority: Public Utilities Article, §§2-113, 2-121 and 7-205—7-208, Annotated Code of Maryland

#### **Notice of Proposed Action**

□

The Maryland Public Service Commission proposes to amend Regulation .03 under COMAR 20.79.03 Details of Filing Requirements — Generating Stations and adopt new Regulations .03 and .04 under COMAR 20.79.03 Details of Filing Requirements — Generating Stations.

This action was considered

#### **Statement of Purpose**

The purpose of this action is to amend the Code of Maryland Regulations governing the filing requirements for an application for a Certificate of Public Convenience and Necessity (CPCN), for a qualifying fossil fuel generating station that is greater than 70 megawatts (MW) in nameplate capacity.

#### **Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

#### **Estimate of Economic Impact**

The proposed action has no economic impact.

#### **Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

#### **Impact on Individuals with Disabilities**

The proposed action has an impact on individuals with disabilities as follows: The proposed action does not directly impose any requirements or obligations on individuals with disabilities. In a broader sense, the proposed action could have an indirect, positive impact, qualitatively, on individuals with disabilities insofar as it requires the CPCN applicant to certify its efforts to meaningfully engage those affected communities—that is, communities most likely affected by the siting of the qualifying fossil fuel generating station (as that term is defined under proposed COMAR 20.79.01.02)—with regard to discussing the project before the CPCN application is filed. The proposed regulation would also require the applicant to describe any terms, incentives, or resolutions reached as a result of this engagement. Affected community members would include residents and individuals with disabilities located within the

defined geographic radius of the proposed facility, as described in proposed COMAR 20.79.01.02.

### **Opportunity for Public Comment**

Comments may be sent to Andrew S. Johnston, Executive Secretary, Maryland Public Service Commission, 6 St. Paul Street, Baltimore, Maryland 21202, , or call 410-767-8067, or email to , or fax to 410-333-6495. Comments will be accepted through 8/31/2020. A public hearing has not been scheduled.

### **Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 2021

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:  
Special Fund – The Public Utility Regulation Fund

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:  
The proposed regulations pertain to CPCN filing requirements for a qualifying (large) fossil fuel-fired generating station that is greater than 70 megawatts (MW) in nameplate capacity. They only require a CPCN applicant, for such a facility, to include with its CPCN application additional documents to help inform the record and the Parties to the CPCN proceeding.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

It is not anticipated that a small business will apply for a Certificate of Public Convenience and Necessity (CPCN) to construct a qualifying fossil fuel generating station greater than 70 megawatts (MW) in nameplate capacity under this Subtitle and incur the expenses contemplated under this Chapter. Rather, the entities that normally seek CPCN approvals for fossil fuel-fired generating states that are 70 MW in capacity or greater are large companies. Unless the small business is the CPCN applicant, the additional filing requirements will not apply.

G. Small Business Worksheet:

1a. Intended Beneficiaries

The intended beneficiaries of the proposed action are: 1) the nearby communities what would be most affected by the siting of the proposed qualifying fossil fuel-fired generating station, defined as the “affected communities” under the proposed revisions to COMAR 20.79.01.02; 2) the reviewing State agencies that are regular participants to the PSC’s Certificate of Public Convenience and Necessity (CPCN) review process; and 3) the PSC’s decision-making body—i.e., the Public Utility Law Judges and

Commissioners. The proposed action will provide the Parties, including the reviewing State agencies, and the general public with additional information pertaining to potential environmental hazard risks from the proposed project that could have a disproportionate impact on sensitive populations within the affected communities.

b. Intended Beneficiaries: Households

The proposed action does not specifically target households.

c. Intended Beneficiaries: Businesses

The proposed action does not specifically target businesses.

2a. Other Direct or Indirect Impacts: Adverse

It is not anticipated that the proposed action will have additional direct or indirect adverse impacts on small businesses, including those business entities that seek to construct a qualifying fossil fuel generating station that is greater than 70 MW and subject to the CPCN requirement under Public Utilities Article, §§7-207 and 7-208.

b. Other Direct or Indirect Impacts: Positive

Apart from the identification of potentially sensitive communities within the vicinity of a proposed qualifying fossil fuel generating station greater than 70 MW in nameplate capacity, it is not anticipated that there will be additional impacts, direct or indirect, positive or adverse.

3. Long Term Impacts

The proposed action is not anticipated to have long-term economic impacts on small businesses.

4. Estimate of Economic Impact

N/A

Narrative: The Maryland PSC has jurisdictional authority under Public Utilities Article, §§7-207 and 7-208, to approve the construction of a fossil fuel generating station greater than 70 megawatts (MW) in capacity, through the issuance of a Certificate of Public Convenience and Necessity (CPCN). Currently, the CPCN review process is initiated when an applicant/applicant developer files an application with the PSC. Under current law and COMAR requirements, the applicant provides copies of the CPCN application to various state and local government recipients as well as to other interested persons. The applicant is not, however, required to first notify or meet with any reviewing state agency or the local community prior to filing its application. Consequently, in many instances, affected community members first receive constructive notice of a CPCN application filing via newspaper publication announcing both the PSC's pre-hearing conference date and any deadlines for filing requests to intervene. The proposed action will improve the CPCN process by, among other things, ensuring that those communities that would be most affected by a proposed qualifying large fossil fuel-fired generating station, due to

their proximity to the project, will have sufficient notice of the project and a meaningful opportunity to engage with the applicant/applicant developer prior to the filing of a CPCN application. This could help inform community members in deciding whether to participate in the permitting process. The proposed action would also ensure that communities with sensitive populations that could disproportionately experience the adverse impacts from a fossil fuel-fired power plant are identified as part of the permitting process.

Attached Document:

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## **Title 20 PUBLIC SERVICE COMMISSION**

### **Subtitle 79 APPLICATIONS CONCERNING THE CONSTRUCTION OR MODIFICATION OF GENERATING STATIONS, *QUALIFIED GENERATOR LEAD LINES*, AND OVERHEAD TRANSMISSION LINES**

#### **Chapter 03 Details of Filing Requirements — Generating Stations**

##### ***.03 EJSCREEN Reports.***

*An application for a proposed qualifying generating station shall be accompanied by:*

*A. A copy of the applicant's EJSCREEN Standard Report, or comparable report if the EJSCREEN is unavailable, which shall be based on a three-mile circular buffer centered at the Geographic Information System coordinates of the proposed qualifying generating station and shall include a statement of the numerical thresholds applied to generate the report as required under COMAR 20.79.01.04; and*

*B. A copy of the applicant's EJSCREEN ACS Report, which shall be based on the same three-mile circular buffer as the EJSCREEN Standard Report and shall utilize the U.S. Census Bureau American Community Survey data available through EJSCREEN.*

##### ***.04 Statement of Public Engagement and Participation Certification.***

*An application for a proposed qualifying generating station shall be accompanied by a signed statement of public engagement and participation, which shall include:*

*A. A description of the time, place, and manner in which the applicant held the public meeting with members of the affected communities;*

*B. A description of the manner in which the applicant provided notice to the affected communities of the proposed public meeting with members of the affected communities;*

*C. A copy of any meeting sign-in sheet voluntarily indicating persons of interest; and*

*D. A description of any terms, incentives, or resolutions reached between the applicant and the affected communities.*