

SENATE BILL 50

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2001 Regular Session
(11r0122)

ENROLLED BILL
-- Finance/Environmental Matters --

Introduced by **Chairman, Finance Committee (Departmental - Public Service Commission)**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Public Service Commission - Certificate of Public Convenience and**
3 **Necessity**

4 FOR the purpose of requiring that any person who constructs a generating station
5 and associated overhead transmission lines follow certain procedures to obtain a
6 certificate of public convenience and necessity from the Public Service
7 Commission; requiring that any person who modifies a generating station
8 obtain a certificate of public convenience and necessity from the Commission;
9 clarifying that the grant of a certificate of public convenience and necessity
10 constitutes registration and a permit to construct; clarifying that the
11 Department of the Environment is prohibited from requiring a registration or
12 permit for the construction of a generating station by any person required to
13 obtain a certificate of public convenience and necessity; clarifying when an
14 applicant for an operating permit issued by the Department must send a copy of
15 the application to the Commission; clarifying when the Department must
16 request the Commission to institute a hearing prior to issuing an operating

1 permit; and generally relating to the authority of the Public Service Commission
 2 to issue certificates of public convenience and necessity and the authority of the
 3 Department of the Environment to issue permits to construct and issue
 4 operating permits for generating stations.

5 BY repealing and reenacting, with amendments,
 6 Article - Environment
 7 Section 2-402 and 2-405
 8 Annotated Code of Maryland
 9 (1996 Replacement Volume and 2000 Supplement)

10 BY repealing and reenacting, with amendments,
 11 Article - Public Utility Companies
 12 Section 7-205, 7-206, and 7-208
 13 Annotated Code of Maryland
 14 (1998 Volume and 2000 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article - Environment**

18 2-402.

19 The Department may not require a permit or registration for:

20 (1) Any machinery or equipment that normally is used in a mobile
 21 manner;

22 (2) Any boiler used exclusively to operate steam engines for farm and
 23 domestic use;

24 (3) The construction of a generating station constructed by [an electric
 25 company] ANY PERSON REQUIRED TO OBTAIN A CERTIFICATE OF PUBLIC
 26 CONVENIENCE AND NECESSITY UNDER TITLE 2, SUBTITLE 7 §§ 7-207 AND 7-208 OF
 27 THE PUBLIC UTILITY COMPANIES ARTICLE AND REGULATIONS ADOPTED BY THE
 28 PUBLIC SERVICE COMMISSION;

29 (4) Actual construction of buildings, apart from any possible emission
 30 producing machinery housed in the buildings;

31 (5) Any parking garage; or

32 (6) Any parking lot.

1 2-405.

2 (a) (1) Whenever the Public Service Commission notifies the Secretary of an
3 application for a certificate of public convenience and necessity under § 7-207 of the
4 Public Utility Companies Article, the Secretary shall prepare a recommendation in
5 connection with the permit or registration required by this subtitle. The
6 recommendation shall be presented at the hearing required by § 7-207 of the Public
7 Utility Companies Article.

8 (2) The recommendation shall identify the requirements of all applicable
9 federal and State environmental laws and standards and shall recommend and
10 evaluate various methods and conditions for compliance.

11 (3) If [an electric company] A PERSON files an application for an
12 operating permit UNDER THIS SUBTITLE simultaneously with an application for a
13 certificate, the Department shall consolidate its procedures for the issuance of the
14 operating permit with the Public Service Commission's proceedings for issuance of the
15 certificate and shall issue the operating permit simultaneously with the certificate
16 unless consolidation would be inconsistent with the procedures set forth in the federal
17 Clean Air Act.

18 (4) The Department shall incorporate into the initial operating permit
19 the conditions of the certificate which relate to air quality control.

20 (b) Subject to judicial review as provided under Title 3, Subtitle 2 of the Public
21 Utility Companies Article, the decision of the Public Service Commission in
22 connection with a certificate of public convenience and necessity or a filing under §
23 7-206 of the Public Utility Companies Article is binding on the Secretary.

24 (c) [Any electric company] WHEN A PERSON THAT IS REQUIRED TO OBTAIN A
25 CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY APPLIES [upon
26 application] for an operating permit for a generating station under this subtitle, THE
27 PERSON shall send a copy of the application, at the time of filing, to the Public Service
28 Commission.

29 (d) The Department shall consolidate procedures for the issuance of the
30 operating permit with procedures of the Public Service Commission for the approval
31 of the installation of pollution control equipment or a change in the method of
32 operation unless consolidation would be inconsistent with the procedures set forth in
33 the federal Clean Air Act.

34 (e) (1) Before issuing an operating permit which requires the installation of
35 pollution control equipment or a change in the method of operation of the generating
36 station or unit TO ANY PERSON REQUIRED TO OBTAIN A CERTIFICATE OF PUBLIC
37 CONVENIENCE AND NECESSITY, the Secretary shall notify the applicant and the
38 Public Service Commission and request that the Public Service Commission institute
39 a hearing as required by § 7-206 of the Public Utility Companies Article.

1 (2) In addition to the notification, the Secretary shall file the record of
2 the operating permit proceeding and the Department's reasons for requiring the
3 installation of pollution control equipment or change in method of operation.

4 (f) (1) The Commission shall conduct the hearing required by subsection (e)
5 of this section in the manner set forth in §§ 7-205 and 7-207 of the Public Utility
6 Companies Article.

7 (2) The Department shall incorporate the Commission's order rendered
8 in accordance with § 7-206 of the Public Utility Companies Article.

9 (g) Except as provided in subsection (h) of this section, the Secretary shall
10 consult with the Public Service Commission concerning the impact of any operating
11 permit, order or injunction on the supply and cost of electricity in this State before
12 issuing any operating permit, issuing any order, or seeking any injunction under this
13 subtitle that:

14 (1) Significantly impacts the supply of electricity from a generating
15 station owned or operated by [an electric company] ANY PERSON REQUIRED TO
16 OBTAIN A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY; or

17 (2) Significantly affects the cost of electricity provided by [an electric
18 company] ANY PERSON THAT IS REQUIRED TO OBTAIN A CERTIFICATE OF PUBLIC
19 CONVENIENCE AND NECESSITY.

20 (h) (1) The Secretary need not consult with the Commission before issuing
21 an order or seeking an injunction if the Secretary concludes that the delay during
22 consultation could harm public health or the environment.

23 (2) If the Secretary does not consult with the Commission before the
24 issuance of the order or of the seeking of an injunction, the Secretary shall consult
25 with the Commission as soon thereafter as practicable.

26 (i) The failure of the Department or the Public Service Commission to comply
27 with this section is not a defense to an action against [an electric company] A
28 PERSON to enforce, to obtain, or to punish for noncompliance with any permit,
29 certificate, order, or injunction.

30 (j) The Secretary may adopt regulations to carry out the provisions of this
31 section. The Secretary may not require a permit nor require the payment of a permit
32 fee in violation of the federal Clean Air Act.

33 **Article - Public Utility Companies**

34 7-205.

35 (a) (1) In this section, "modification" means a physical alteration of,
36 replacement of, or other change to the facilities at a power plant, or a change in the
37 fuel used by the plant, that could result in a change of the air emissions from the
38 plant or from a generating unit of the plant.

1 (2) "Modification" does not include:

2 (i) routine maintenance or repairs of the facilities of a power plant;
3 or

4 (ii) a change that would result in ambient air quality levels less
5 than or equal to the levels that were a basis for the issuance of a prior certificate of
6 public convenience and necessity under § 7-207 of this subtitle.

7 (b) Subject to subsections (c) through (e) of this section, [an electric company]
8 A PERSON may not commence a modification without the prior approval of the
9 Commission under this title.

10 (c) (1) Unless the Commission orders otherwise, an application for a
11 modification to a power plant shall be filed with the Commission at least 180 days
12 before the date on which the modification is to commence.

13 (2) The applicant for the modification shall submit to the Commission
14 and to the Department of the Environment all information relating to the
15 modification, including:

16 (i) detailed plans and specifications; and

17 (ii) the impact of the modification on air quality.

18 (d) The Commission shall render its decision within 150 days after the day the
19 application is filed.

20 (e) Notwithstanding the provisions of this section, a modification to a power
21 plant that involves the short-term inability to obtain the type of fuel normally used
22 by the plant is subject to Title 2, Subtitle 5 of the Environment Article.

23 7-206.

24 (a) This section applies to the installation of pollution control equipment or a
25 change in the method of operation at a generating station that [an electric company]
26 A PERSON performs in order to comply with Phase II pollution control requirements of
27 the federal Clean Air Act.

28 (b) [An electric company] ANY PERSON that performs an installation or
29 change in operation under subsection (a) of this section shall obtain prior review and
30 approval of the Commission in accordance with:

31 (1) §§ 7-203, 7-207, and 7-208 of this subtitle; and

32 (2) the procedures set forth in § 7-205 of this subtitle and § 2-405 of the
33 Environment Article.

34 7-208.

35 (a) This section applies to [an electric company] ANY PERSON:

1 (1) constructing a generating station and its associated overhead
2 transmission lines designed to carry a voltage in excess of 69,000 volts; or

3 (2) exercising the right of condemnation in connection with the
4 construction.

5 (b) (1) To obtain the certificate of public convenience and necessity required
6 under § 7-207 of this subtitle for construction under this section, [an electric
7 company] A PERSON shall file an application with the Commission at least 2 years
8 before construction of the facility will commence.

9 (2) The Commission may waive the 2-year requirement on a showing of
10 good cause.

11 (c) [An electric company] THE APPLICANT shall:

12 (1) include in an application under this section the information that the
13 Commission requests initially; and

14 (2) furnish any additional information that the Commission requests
15 subsequently.

16 (d) (1) On the receipt of an application under this section, together with any
17 additional information requested under subsection (c)(2) of this section, the
18 Commission shall provide notice to:

19 (i) all interested persons;

20 (ii) the Department of Agriculture;

21 (iii) the Department of Business and Economic Development;

22 (iv) the Department of the Environment;

23 (v) the Department of Natural Resources;

24 (vi) the Department of Transportation; and

25 (vii) the Department of Planning.

26 (2) The Commission shall hold a public hearing on the application as
27 required by § 7-207 of this subtitle, after:

28 (i) the receipt of any additional information requested under
29 subsection (c)(2) of this section that the Commission considers necessary; and

30 (ii) any publication of notice the Commission considers to be proper.

31 (3) (i) At the public hearing, the Commission shall ensure
32 presentation of the information and recommendations of the State units specified in

1 paragraph (1) of this subsection and shall allow the official representative of each unit
2 to sit during hearing of all parties.

3 (ii) Based on the evidence relating to the unit's areas of concern, the
4 Commission shall allow each unit 15 days after the conclusion of the hearing to
5 modify or affirm the unit's initial recommendations.

6 (e) Within 90 days after the conclusion of the hearing on an application under
7 this section, the Commission shall:

8 (1) (i) grant a certificate of public convenience and necessity
9 unconditionally;

10 (ii) grant the certificate, subject to conditions the Commission
11 determines to be appropriate; or

12 (iii) deny the certificate; and

13 (2) notify all interested parties of its decision.

14 (f) (1) The Commission shall include in each certificate it issues under
15 subsection (e) of this section:

16 (i) the requirements of the federal and State environmental laws
17 and standards that are identified by the Department of the Environment; and

18 (ii) the methods and conditions that the Commission determines
19 are appropriate to comply with those environmental laws and standards.

20 (2) The Commission may not adopt any method or condition under
21 paragraph (1)(ii) of this subsection that the Department of the Environment
22 determines is inconsistent with federal and State environmental laws and standards.

23 (g) (1) A decision of the Commission regarding the issuance of a certificate
24 requires the vote of a majority of the members of the Commission.

25 (2) If a majority of the members of the Commission fails to reach
26 agreement on the conditions to be attached to a conditional certificate, the certificate
27 shall be denied.

28 (h) The grant of a certificate by the Commission to [an electric company] ANY
29 PERSON under subsection (e) of this section constitutes:

30 (1) authority for the [company] PERSON to dredge and construct
31 bulkheads in the waters or private wetlands of the State and to appropriate or use the
32 waters; and

33 (2) registration AND A PERMIT TO CONSTRUCT ~~for~~ [the construction of]
34 ~~any facility necessary to control emissions into the air resulting from the operation of~~
35 ~~the generating station~~, as required under Title 2, Subtitle 4 of the Environment
36 Article.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
2 effect ~~October~~ July 1, 2001.