

(PRE-FILED)

By: **Chairman, Finance Committee (Departmental - Public Service
Commission)**

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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
17 permit; and generally relating to the authority of the Public Service Commission
18 to issue certificates of public convenience and necessity and the authority of the
19 Department of the Environment to issue permits to construct and issue
20 operating permits for generating stations.

21 BY repealing and reenacting, with amendments,
22 Article - Environment
23 Section 2-402 and 2-405
24 Annotated Code of Maryland

1 (1996 Replacement Volume and 2000 Supplement)

2 BY repealing and reenacting, with amendments,

3 Article - Public Utility Companies

4 Section 7-205, 7-206, and 7-208

5 Annotated Code of Maryland

6 (1998 Volume and 2000 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

8 MARYLAND, That the Laws of Maryland read as follows:

9 **Article - Environment**

10 2-402.

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

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

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

16 (3) The construction of a generating station constructed by [an electric
17 company] ANY PERSON REQUIRED TO OBTAIN A CERTIFICATE OF PUBLIC
18 CONVENIENCE AND NECESSITY UNDER TITLE 2, SUBTITLE 7 OF THE PUBLIC UTILITY
19 COMPANIES ARTICLE AND REGULATIONS ADOPTED BY THE PUBLIC SERVICE
20 COMMISSION;

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

23 (5) Any parking garage; or

24 (6) Any parking lot.

25 2-405.

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

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

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

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

10 (b) Subject to judicial review as provided under Title 3, Subtitle 2 of the Public
11 Utility Companies Article, the decision of the Public Service Commission in
12 connection with a certificate of public convenience and necessity or a filing under §
13 7-206 of the Public Utility Companies Article is binding on the Secretary.

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

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

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

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

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

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

38 (g) Except as provided in subsection (h) of this section, the Secretary shall
39 consult with the Public Service Commission concerning the impact of any operating
40 permit, order or injunction on the supply and cost of electricity in this State before

1 issuing any operating permit, issuing any order, or seeking any injunction under this
 2 subtitle that:

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

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

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

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

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

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

22 **Article - Public Utility Companies**

23 7-205.

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

28 (2) "Modification" does not include:

29 (i) routine maintenance or repairs of the facilities of a power plant;
 30 or

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

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

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

4 (2) The applicant for the modification shall submit to the Commission
5 and to the Department of the Environment all information relating to the
6 modification, including:

7 (i) detailed plans and specifications; and

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

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

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

14 7-206.

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

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

22 (1) §§ 7-203, 7-207, and 7-208 of this subtitle; and

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

25 7-208.

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

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

29 (2) exercising the right of condemnation in connection with the
30 construction.

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

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

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

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

6 (2) furnish any additional information that the Commission requests
7 subsequently.

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

11 (i) all interested persons;

12 (ii) the Department of Agriculture;

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

14 (iv) the Department of the Environment;

15 (v) the Department of Natural Resources;

16 (vi) the Department of Transportation; and

17 (vii) the Department of Planning.

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

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

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

23 (3) (i) At the public hearing, the Commission shall ensure
24 presentation of the information and recommendations of the State units specified in
25 paragraph (1) of this subsection and shall allow the official representative of each unit
26 to sit during hearing of all parties.

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

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

32 (1) (i) grant a certificate of public convenience and necessity
33 unconditionally;

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

3 (iii) deny the certificate; and

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

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

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

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

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

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

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

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

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

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

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

