STATE OF TENNESSEE

EXECUTIVE ORDER

BY THE GOVERNOR

NO. 31

AN ORDER CONCERNING THE PERMITTING OF MERCHANT ELECTRIC GENERATING PLANTS

As used in this Order, a "merchant electric generating plant" is an electric generating facility of 50 megawatts or larger. It is a private entity that operates a generation facility and sells power to electric utilities for resale to retail customers. These do not include electric generating plants owned and operated by an agency of the state, local or federal government.

WHEREAS, there are a growing number of proposals for the construction and operation of merchant electric generating plants; and

WHEREAS, the development of new electric generating capacity may have significant economic and environmental impacts on the State and its communities; and

WHEREAS, merchant electric generating plants place demands on natural resources including air, groundwater and surface waters; and

WHEREAS, these facilities may benefit economically the areas where they are located and may play a significant role in meeting the energy needs of this state and the nation; and

WHEREAS, it is necessary to examine the economic and environmental impacts of merchant electric generating plants; and

WHEREAS, the Governor's Interagency Energy Policy Work Group has made recommendations concerning a pilot program for the permitting of merchant electric generating plants;

NOW, THEREFORE, I, Don Sundquist, Governor of the State of Tennessee, by virtue of the power and authority vested in me by the Constitution and Laws of the State of Tennessee, do order and direct the following:

1. Pursuant to T.C.A. Section 4-3-709, to gain maximum benefit for citizens of Tennessee from the state's natural energy resources and in order to coordinate the development of merchant electric generating plants, no permit or other authorization shall be issued by any state or local government agency for a merchant electric generating plant until the applicant has received a certificate to proceed with permitting and transmission provider agreements for the plant from the Department of Economic and Community Development. Unless they seek an expansion, this Order does not apply to merchant electric generating plants existing on August 9, 2001, or to those that had initiated the air pollution control permitting process with a state or local agency on or before August 9, 2001.

2. In order for the Department of Economic and Community Development to adequately review new merchant electric generating plants, prior to January 1, 2004, no more than four certificates to proceed with permitting and transmission provider agreements shall be issued to new merchant electric generating plants. Certificates to proceed with expansions of existing merchant electric generating plants may be issued by the Department of Economic and Community Development in addition to the four pilot projects. The energy division of the Department of Economic and Community Development may restrict the number of applications that it will accept for review during each year after January 1, 2004. Upon request by the energy division of the Department of Economic and Community Development, an applicant for a certificate to proceed with permitting and transmission provider agreements shall submit any plans, studies, analysis, surveys or other information that the energy division deems necessary for review.

3. The Department of Economic and Community Development's energy division shall not issue a certificate to proceed with permitting and transmission provider agreements until the applicant has submitted a complete application for review by the energy division. The application must include documentation that:

- The proposed merchant electric generating plant will have a significant positive economic impact on local governments;
- The proposed merchant electric generating plant is supported by the local government(s) of the area in which it will be located;
- Electric transmission capacity is readily available and will not be negatively impacted;

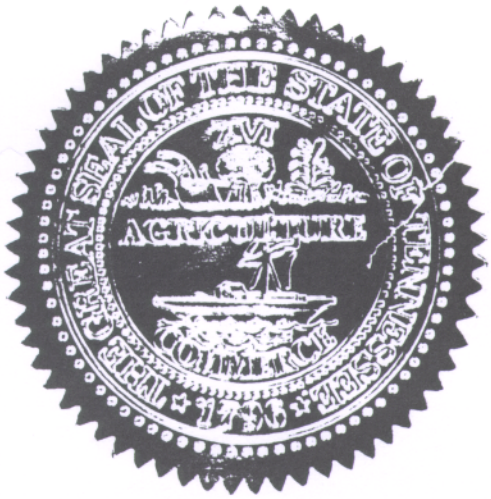
- Includes a signed and stamped report from an independent registered professional engineer that provides clear and convincing evidence that: the maximum possible water withdrawal necessary for the plant is fully supportable by the proposed water supply during all flow conditions, including low flow; and, the maximum possible withdrawal necessary for the plant, during low flow conditions, will not adversely affect existing water users, damage endangered species, or otherwise impair the current water quality {This report does not supercede or substitute for any permit or other approval required by federal, state or local agencies};
- The applicant has submitted a signed and stamped report from an independent registered professional engineer, that: the plant will not be located in an area that has been designated a non-attainment area for air quality or a maintenance area for air quality and the cumulative effect of the plant's air emissions will not significantly contribute to the inability of the area of the plant's location to maintain ambient air quality standards {This report does not supercede or substitute for any permit or other approval required by federal, state or local agencies};
- The facility has a long-range solid waste and by-product management and disposal plan; and,
- The applicant has the financial resources, deemed necessary by the Department of Economic and Community Development's energy division, to properly complete and maintain the plant.

4. All air pollution control permits issued, by the state or a local air pollution control agency, for new merchant electrical generating plants shall require the use of Best Available Control Technology (BACT) regardless of whether or not the plant is a major source for Prevention of Significant Deterioration (PSD) review. Additionally, any permitting authority issuing a permit for a new merchant electrical generating plant shall notify federal land managers of any proposed such plant regardless of whether the source would be considered a major source for purposes of PSD review.

IN WITNESS WHEREOF, I have subscribed my signature and have caused the Great Seal of the State of Tennessee to be affixed this 20th day of March, 2002.

Don Sundquist

GOVERNOR

Riley C. Darnell

SECRETARY OF STATE