

WESTLAW

NOTES OF DECISIONS (11)

West's Annotated Code of Maryland
Public Utilities (Refs & Annos)
Division I. Public Services and Utilities [Titles 1-15] (Refs & Annos)
§ 7-207. Certificate of public convenience and necessity required before construction of generation station or qualified generator lead line
West's Annotated Code of Maryland Public Utilities Effective: October 1, 2017 (Approx. 5 pages)
SUBTITLE 2. ELECTRIC GENERATION FACILITY REGULATING (REFS & ANNOS)

In general
Construction and application
Findings
Review
Sufficiency of evidence

Proposed Legislation

Effective: October 1, 2017

MD Code, Public Utilities, § 7-207
Formerly cited as MD PUBLIC UTIL COMP § 7-207

§ 7-207. Certificate of public convenience and necessity required before construction of generation station or qualified generator lead line

Currentness

Definitions

(a)(1)(i) In this section and § 7-208 of this subtitle, "construction" means:

1. any physical change at a site, including fabrication, erection, installation, or demolition; or
2. the entry into a binding agreement or contractual obligation to purchase equipment exclusively for use in construction in the State or to undertake a program of actual construction in the State which cannot be canceled or modified without substantial loss to the owner or operator of the proposed generating station.

(ii) "Construction" does not include a change that is needed for the temporary use of a site or route for nonutility purposes or for use in securing geological data, including any boring that is necessary to ascertain foundation conditions.

(2) In this section, "qualified generator lead line" means an overhead transmission line that is designed to carry a voltage in excess of 69,000 volts and would allow an out-of-state Tier 1 or Tier 2 renewable source to interconnect with a portion of the electric system in Maryland that is owned by an electric company.

Certificate of public convenience and necessity required before construction of generation station or qualified generator lead line

(b)(1)(i) Unless a certificate of public convenience and necessity for the construction is first obtained from the Commission, a person may not begin construction in the State of:

1. a generating station; or
2. a qualified generator lead line.

(ii) If a person obtains Commission approval for construction under § 7-207.1 of this subtitle, the Commission shall exempt a person from the requirement to obtain a certificate of public convenience and necessity under this section.

(iii) Notwithstanding subparagraph (i) of this paragraph, a person may not apply to obtain a certificate of public convenience and necessity for construction of a qualified generator lead line unless:

1. at least 90 days before the filing of an application for a certificate of public convenience and necessity, the person had in good faith offered the electric company that owns that portion of the electric grid in Maryland to which the qualified generator lead line would interconnect a full and fair opportunity for the electric company to construct the qualified generator lead line; and

2. at any time at least 10 days before the filing of an application for a certificate of public convenience and necessity, the electric company:

- A. did not accept from the person a proposal or a negotiated version of the proposal under which the electric company would construct the qualified generator lead line; or

- B. stated in writing that the electric company did not intend to construct the qualified generator lead line.

(2) Unless a certificate of public convenience and necessity for the construction is first obtained from the Commission, and the Commission has found that the capacity is necessary to ensure a sufficient supply of electricity to customers in the State, a person may not exercise a right of condemnation in connection with the construction of a generating station.

(3)(i) Except as provided in paragraph (4) of this subsection, unless a certificate of public convenience and necessity for the construction is first obtained from the Commission, a person may not begin construction of an overhead transmission line that is designed to carry a voltage in excess of 69,000 volts or exercise a right of condemnation with the construction.

(ii) For construction related to an existing overhead transmission line, the Commission may waive the requirement in subparagraph (i) of this paragraph for good cause.

(iii) Notwithstanding subparagraph (i) of this paragraph and subject to subparagraph (iv) of this paragraph, the Commission may issue a certificate of public convenience and necessity for the construction of an overhead transmission line only if the applicant for the certificate of public convenience and necessity:

1. is an electric company; or

2. is or, on the start of commercial operation of the overhead transmission line, will be subject to regulation as a public utility by an officer or an agency of the United States.

(iv) The Commission may not issue a certificate of public convenience and necessity for the construction of an overhead transmission line in the electric distribution service territory of an electric company to an applicant other than an electric company if:

1. the overhead transmission line is to be located solely within the electric distribution service territory of that electric company; and

2. the cost of the overhead transmission line is to be paid solely by that electric company and its ratepayers.

(v) 1. This subparagraph applies to the construction of an overhead transmission line for which a certificate of public convenience and necessity is required under this section.

2. On issuance of a certificate of public convenience and necessity for the construction of an overhead transmission line, a person may acquire by condemnation, in accordance with Title 12 of the Real Property Article, any property or right necessary for the construction or maintenance of the transmission line.

(4)(i) Except as provided in subparagraph (ii) of this paragraph, for construction related to an existing overhead transmission line designed to carry a voltage in excess of 69,000 volts, the Commission shall waive the requirement to obtain a certificate of public convenience and necessity if the Commission finds that the construction does not:

1. require the person to obtain new real property or additional rights-of-way through eminent domain; or

2. require larger or higher structures to accommodate;

A. increased voltage; or

B. larger conductors.

(l) 1. For construction related to an existing overhead transmission line, including repairs, that is necessary to avoid an imminent safety hazard or reliability risk, a person may undertake the necessary construction.

2. Within 30 days after construction is completed under subsubparagraph 1 of this subparagraph, a person shall file a report with the Commission describing the work that was completed.

Notice to interested persons

(c)(1) On receipt of an application for a certificate of public convenience and necessity under this section, the Commission shall provide notice immediately or require the applicant to provide notice immediately of the application to:

(i) the Department of Planning;

(ii) the governing body, and if applicable the executive, of each county or municipal corporation in which any portion of the generating station, overhead transmission line, or qualified generator lead line is proposed to be constructed;

(iii) the governing body, and if applicable the executive, of each county or municipal corporation within 1 mile of the proposed location of the generating station, overhead transmission line, or qualified generator lead line;

(iv) each member of the General Assembly representing any part of a county in which any portion of the generating station, overhead transmission line, or qualified generator lead line is proposed to be constructed;

(v) each member of the General Assembly representing any part of each county within 1 mile of the proposed location of the generating station, overhead transmission line, or qualified generator lead line; and

(vi) all other interested persons.

(2) The Commission, when sending the notice required under paragraph (1) of this subsection, shall forward a copy of the application to:

(i) each appropriate State unit and unit of local government for review, evaluation, and comment regarding the significance of the proposal to State, area-wide, and local plans or programs; and

(ii) each member of the General Assembly included under paragraph (1)(iv) and (v) of this subsection who requests a copy of the application.

Public hearing required

(d)(1) The Commission shall provide an opportunity for public comment and hold a public hearing on the application for a certificate of public convenience and necessity in each county and municipal corporation in which any portion of the construction of a generating station, an overhead transmission line designed to carry a voltage in excess of 69,000 volts, or a qualified generator lead line is proposed to be located.

(2) The Commission shall hold the public hearing jointly with the governing body of the county or municipal corporation in which any portion of the construction of the generating station, overhead transmission line, or qualified generator lead line is proposed to be located, unless the governing body declines to participate in the hearing.

(3)(i) Once in each of the 4 successive weeks immediately before the hearing date, the Commission shall provide weekly notice of the public hearing and an opportunity for public comment:

1. by advertisement in a newspaper of general circulation in the county or municipal corporation affected by the application;

2. on two types of social media; and

3. on the Commission's Web site.

(II) Before a public hearing, the Commission shall coordinate with the governing body of the county or municipal corporation in which any portion of the construction of the generating station, overhead transmission line, or qualified generator lead line is proposed to be located to identify additional options for providing, in an efficient and cost-effective manner, notice of the public hearing through other types of media that are familiar to the residents of the county or municipal corporation.

(4)(I) On the day of a public hearing, an informational sign shall be posted prominently at or near each public entrance of the building in which the public hearing will be held.

(II) The informational sign required under subparagraph (I) of this paragraph shall:

1. state the time, room number, and subject of the public hearing; and
2. be at least 17 by 22 inches in size.

(5)(I) The Commission shall ensure presentation and recommendations from each interested State unit, and shall allow representatives of each State unit to sit during hearing of all parties.

(II) The Commission shall allow each State unit 15 days after the conclusion of the hearing to modify the State unit's initial recommendations.

Final action by Commission required

(e) The Commission shall take final action on an application for a certificate of public convenience and necessity only after due consideration of:

(1) the recommendation of the governing body of each county or municipal corporation in which any portion of the construction of the generating station, overhead transmission line, or qualified generator lead line is proposed to be located;

(2) the effect of the generating station, overhead transmission line, or qualified generator lead line on:

(i) the stability and reliability of the electric system;

(ii) economics;

(iii) aesthetics;

(iv) historic sites;

(v) aviation safety as determined by the Maryland Aviation Administration and the administrator of the Federal Aviation Administration;

(vi) when applicable, air and water pollution; and

(vii) the availability of means for the required timely disposal of wastes produced by any generating station; and

(3) for a generating station:

(i) the consistency of the application with the comprehensive plan and zoning of each county or municipal corporation where any portion of the generating station is proposed to be located; and

(ii) the efforts to resolve any issues presented by a county or municipal corporation where any portion of the generating station is proposed to be located.

Considerations before final action on application

(f) For the construction of an overhead transmission line, in addition to the considerations listed in subsection (e) of this section, the Commission shall:

(1) take final action on an application for a certificate of public convenience and necessity only after due consideration of the need to meet existing and future demand for electric service; and

(2) require as an ongoing condition of the certificate of public convenience and necessity that an applicant complies with:

- (i) all relevant agreements with PJM Interconnection, L.L.C., or its successors, related to the ongoing operation and maintenance of the overhead transmission line; and
- (ii) all obligations imposed by the North America Electric Reliability Council and the Federal Energy Regulatory Commission related to the ongoing operation and maintenance of the overhead transmission line.

Construction of transmission lines near airport runway

(g)(1) The Commission may not authorize, and a person may not undertake, the construction of an overhead transmission line that is aligned with and within 1 mile of either end of a public airport runway, unless:

- (i) the Federal Aviation Administration determines that the construction of an overhead transmission line will not constitute a hazard to air navigation; and
- (ii) the Maryland Aviation Administration concurs in that determination.

(2) A privately owned airport runway shall qualify as a public airport runway under this subsection only if the runway has been on file with the Federal Aviation Administration for at least 2 years as being open to the public without restriction.

Credits

Added by Acts 1998, c. 8, § 2, eff. Oct. 1, 1998. Amended by Acts 1998, c. 653, § 1, eff. Oct. 1, 1998; Acts 1999, c. 3, § 1, eff. July 1, 1999; Acts 1999, c. 4, § 1, eff. July 1, 1999; Acts 2000, c. 209, § 2, eff. July 1, 2000; Acts 2001, c. 655, § 1, eff. Oct. 1, 2001; Acts 2005, c. 110, § 1, eff. Oct. 1, 2005; Acts 2006, c. 830, § 1, eff. June 1, 2006; Acts 2007, c. 163, § 1, eff. July 1, 2007; Acts 2011, c. 83, § 1, eff. April 12, 2011; Acts 2011, c. 84, § 1, eff. April 12, 2011; Acts 2012, c. 643, § 1, eff. June 1, 2012; Acts 2012, c. 644, § 1, eff. June 1, 2012; Acts 2013, c. 500, § 1, eff. Oct. 1, 2013; Acts 2013, c. 501, § 1, eff. Oct. 1, 2013; Acts 2015, c. 174, § 1, eff. Oct. 1, 2015; Acts 2016, c. 464, § 1, eff. Oct. 1, 2016; Acts 2017, c. 392, § 1, eff. Oct. 1, 2017; Acts 2017, c. 540, § 1, eff. Oct. 1, 2017.

Formerly Art. 78, § 54A.

Editors' Notes

LEGISLATIVE NOTES

Revisor's Note (Acts 1998, c. 8):

This section is new language derived without substantive change from former Art. 78, § 54A.

In subsection (b) of this section, the reference to "condemnation" is substituted for the former reference to "eminent domain", for accuracy.

In subsection (c)(1) of this section, the reference to an application "for a certificate of public convenience and necessity under this section" is added for clarity.

In subsections (d)(1), (2), and (3) and (e)(1) of this section, the references to a "county" and a "municipal corporation" are substituted for the former references to the "area" affected by a generating station or overhead transmission line for clarity.

In subsections (d)(2) and (e)(1), respectively, of this section, the requirement that the Commission hold a joint public hearing with, or consider the recommendations of, respectively, the governing body of the county or municipal corporation "in which any portion of the construction of the generating station or overhead transmission line is proposed to be located" is added for clarity.

In the introductory language of subsection (e) of this section, the requirement that the Commission take final action "on an application for a certificate of public convenience and necessity" is added for clarity.

In subsection (e)(2) of this section, the reference to "electric" service is added for clarity.

In subsection (e)(3) of this section, the reference to the effect "of the generating station or overhead transmission line" is added for clarity.

In subsection (e)(3)(vii) of this section, the former reference to any "fossil fuel or nonfossil fuel" generating station is deleted as surplusage.

Also in subsection (e)(3)(vii) of this section, the former reference to applications "received by the Commission after July 1, 1981" is deleted as obsolete.

In subsection (f)(1)(ii) of this section, the reference to the "Maryland Aviation Administration" is substituted for the former reference to the "State Aviation Administration" to reflect the current name of the unit.

Defined terms: "Commission" § 1-101

"Construction" § 7-207

"County" § 1-101

"Electric company" § 1-101

"Person" § 1-101

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Current through all legislation from the 2017 Regular Session of the General Assembly

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