

§ 7-205

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~~Bouton, 48 Md. App. 371, 405 A.2d 755 (1979),
vacated on other grounds, 285 Md. 305, 418
A.2d 1166 (1980).~~

§ 7-205. Electric companies — Modification of power plant.

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

(2) "Modification" does not include:

- (i) routine maintenance or repairs of the facilities of a power plant; or
- (ii) a change that the Commission determines will not result in an increase in air emissions from the plant or from a generating unit of the plant.

(b) *Prior approval of Commission required.* — Subject to subsections (c) through (e) of this section, a person may not commence a modification without the prior approval of the Commission under this title.

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

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

- (i) detailed plans and specifications; and
- (ii) the impact of the modification on air quality.

(d) *Decision.* — The Commission shall render its decision within 150 days after the day the application is filed.

(e) *Applicability of temporary fuel variances.* — Notwithstanding the provisions of this section, a modification to a power plant that involves the short-term inability to obtain the type of fuel normally used by the plant is subject to Title 2, Subtitle 5 of the Environment Article. (An. Code 1957, art. 78, § 54-1; 1998, ch. 8, § 2; 2001, ch. 347; 2006, ch. 162.)

~~Effect of amendments. — Chapter 162, Acts 2006, effective July 1, 2006, in (a)(9)(ii), substituted "the Commission . . . of the plant" for "would result in ambient air quality levels less than or equal to the levels that were a basis for the issuance of a prior certificate of public convenience and necessity under § 7-207 of this subtitle."~~

~~§ 7-206. Electric companies — Clean Air Act modifications.~~

~~(a) *Scope of section.* — This section applies to the installation of pollution control equipment or a change in the method of operation at a generating station that a person performs in order to comply with Phase II pollution control requirements of the federal Clean Air Act.~~

~~(b) *Commission review and approval.* — Any person that performs an installation or change in operation under subsection (a) of this section shall obtain prior review and approval of the Commission in accordance with~~

- (1) §§ 7-203, 7-207, and 7-208 of this subtitle; and
 (2) the procedures set forth in § 7-205 of this subtitle and § 2-405 of the Environment Article.

(c) *Expedited review and approval.* — In order to meet compliance dates established under Title 2, Subtitle 10 of the Environment Article or the federal Clean Air Act, a Commission review and approval, or processing of an application for a certificate of public convenience and necessity under § 7-207 of this subtitle, shall be expedited and take precedence over other review and approval by the Commission if the review and approval or certificate of public convenience and necessity is required:

- (1) for pollution control equipment or a change in the method of operation at a generating station; and
 (2) for compliance with:
 (i) Title 2, Subtitle 10 of the Environment Article;
 (ii) regulations adopted by the Department of the Environment under Title 2, Subtitle 10 of the Environment Article; or
 (iii) the federal Clean Air Act. (An. Code 1957, art. 78, § 54L; 1998, ch. 8, § 2; 1999, ch. 34, § 1; 2001, ch. 347; 2006, chs. 23, 301.)

Effect of amendments. — Chapters 23 and 301, Acts 2006, effective July 1, 2006, are identical. Each added (c).

Bill review letter. — Chapter 23, Acts 2006 (Senate Bill 154) was approved for constitutionality and legal sufficiency as it was concluded that the provision establishing a penalty of

surrender of sulfur dioxide allowances for certain failures to achieve compliance is not preempted by the federal Clean Air Act. However, if this provision is in fact preempted, it is severable and the remainder of the bill may be given effect. (Letter of the Attorney General dated April 5, 2006.)

§ 7-207. Generating stations or transmission lines — General certification procedure. [Amendment subject to abrogation].

(a) *"Construction" defined.* — (1) In this section and § 7-208 of this subtitle, "construction" means:

- (i) any physical change at a site, including fabrication, erection, installation, or demolition; or
 (ii) 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.

(2) "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.

(b) *Certificate of public convenience and necessity required.* — (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 a generating station.

(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.

~~(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) Unless a certificate of public convenience and necessity for the construction is first obtained from the Commission, an electric company 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.~~

(c) *Notice to interested persons.* — (1) On receipt of an application for a certificate of public convenience and necessity under this section, the Commission shall provide notice to the Department of Planning and to all other interested persons.

(2) The Department of Planning shall forward the application to 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.

(d) *Public hearing.* — (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 or of an overhead transmission line designed to carry a voltage in excess of 69,000 volts 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 or overhead transmission line is proposed to be located, unless the governing body declines to participate in the hearing.

(3) 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 by advertisement in a newspaper of general circulation in the county or municipal corporation affected by the application.

(4) (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.

(e) *Final action by Commission.* — 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 or overhead transmission line is proposed to be located; and

(2) the effect of the generating station or overhead transmission line on:

- (i) the stability and reliability of the electric system;
- (ii) economics;
- (iii) esthetics;
- (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.

~~(d) Construction of overhead transmission lines. — For the construction of an overhead transmission line, in addition to the considerations listed in subsection (e) of this section, the Commission shall 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.~~

~~(g) Transmission lines near airport runway. — (1) The Commission may not authorize, and an electric company 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.~~

~~(h) Action on certain applications for certificates of public convenience and necessity. — The Commission shall consider and take final action on an application for a certificate of public convenience and necessity in an expeditious manner if the application is for the construction of a generating station:~~

~~(1) that is designed to provide electricity for a single electric customer that uses at least 1,500,000,000 kilowatt hours of electricity each year; and~~

~~(2) with a generating capacity that does not exceed 750 megawatts. (An. Code 1957, art. 78, § 54A; 1998, ch. 8, § 2; ch. 653; 1999, ch. 3, § 1; ch. 4, § 1; 2000, ch. 209, § 2; 2001, ch. 655; 2005, ch. 110; 2006, ch. 630; 2007, ch. 163.)~~

~~Effect of amendments. — Chapter 110, Acts 2006, effective October 1, 2005, substituted "means" for "means the clearing of land, excavation, or other action that affects the natural environment of a site or route of a bulk power supply facility", added (a)(1)(i) and (a)(1)(ii); inserted "provide an opportunity for public comment and" after "The Commission shall" in (d)(1) and substituted "4 successive weeks" for "2 successive weeks" in (d)(3).~~

~~Chapter 630, Acts 2006, effective June 1, 2006, added (h).~~

~~Chapter 163, Acts 2007, effective July 1, 2007, reenacted (b) without change.~~

~~Editor's note. — Section 2, ch. 630, Acts 2006, provides that "this Act shall take effect June 1, 2006. It shall remain effective for a period of 5 years and 1 month, and, at the end of June 30, 2011, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect."~~

~~Filing held not in accordance with requirements of subtitle. — Because of the omission of the civil disorder loading and the~~

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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

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.

(2006, ch. 630.)

Editor's note. — Section 2, ch. 630, Acts 2006, provides that "this Act shall take effect June 1, 2008. It shall remain effective for a period of 5 years and 1 month, and, at the end of June 30, 2011, with no further action re-

quired by the General Assembly, this Act shall be abrogated and of no further force and effect." This section is set out above as it will appear after June 30, 2011, unless further action is taken by the General Assembly.

§ 7-207.1. Generating stations or transmission lines — On-site generated electricity; approval process.

(a) Application. — This section applies to a person who:

(1) constructs a generating station:

(i) designed to provide on-site generated electricity if:

1. the capacity of the generating station does not exceed 70 megawatts; and

2. the electricity that may be exported for sale from the generating station to the electric system is sold only on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company; or

(ii) that produces electricity from wind if:

1. the generating station is land-based;

2. the capacity of the generating station does not exceed 70 megawatts;

3. the electricity that may be exported for sale from the generating station to the electric system is sold only on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company; and

4. the Commission provides an opportunity for public comment at a public hearing as provided in subsection (e) of this section; or

(2) constructs a generating station if:

(i) the capacity of the generating station does not exceed 25 megawatts;

(ii) the electricity that may be exported for sale from the generating station to the electric system is sold only on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company; and

(iii) at least 10% of the electricity generated at the generating station each year is consumed on-site.

~~(b) *Requirements.* — (1) The Commission shall require a person that is exempted from the requirement to obtain a certificate of public convenience and necessity to obtain approval from the Commission under this section before the person may construct a generating station described in subsection (a) of this section.~~

~~(2) An application for approval under this section shall:~~

~~(i) be made to the Commission in writing on a form adopted by the Commission;~~

~~(ii) be verified by oath or affirmation; and~~

~~(iii) contain information that the Commission requires, including:~~

~~1. proof of compliance with all applicable requirements of the independent system operator; and~~

~~2. a copy of an interconnection, operation, and maintenance agreement between the generating station and the local electric company.~~

~~(c) *Review of applications.* — When reviewing an application for approval under this section, the Commission shall:~~

~~(1) ensure the safety and reliability of the electric system;~~

~~(2) require the person constructing the generating station to notify the Commission 2 weeks before the first export of electricity from a generating station approved under this section; and~~

~~(3) conduct its review and approval in an expeditious manner.~~

~~(d) *Waiver.* — The Commission may waive an element of the approval process under this section if the Commission determines that the waiver is in the public interest.~~

~~(e) *Public comment, notice, and hearing.* — (1) The Commission shall provide an opportunity for public comment and hold a public hearing as provided under this subsection on an application for approval made under subsection (a)(1)(ii) of this section in each county and municipal corporation in which any portion of the construction of a generating station is proposed to be located.~~

~~(2) Upon the request of the governing body of a county or municipal corporation in which any portion of the construction of a generating station is proposed to be located, the Commission shall hold the public hearing jointly with the governing body.~~

~~(3) Once in each of 2 successive weeks immediately before the hearing date, the Commission, at the expense of the applicant, shall provide weekly notice of the public hearing and opportunity for public comment by advertisement in a newspaper of general circulation in the county or municipal corporation affected by the application. (2001, ch. 655; 2005, ch. 156; 2007, ch. 163.)~~

~~*Effect of amendments.* — Chapter 156, Acts 2005, effective October 1, 2005, added (a)(2) and made related changes.~~

~~Chapter 163, Acts 2007, effective July 1, 2007, added (a)(1)(ii) and made related changes; and added (e).~~

~~*Editor's note.* — Section 2, ch. 163, Acts 2007, provides that on or before February 1 of each year, the Public Service Commission shall~~

~~report to the Governor and, in accordance with § 2-1248 of the State Government Article, the Senate Finance Committee and the House Economic Matters Committee on:~~

~~(1) the number of applications for and the locations of wind-powered generating stations for which approval is sought under § 7-207.1(a)(1)(ii) of the Public Utility Companies Article, as enacted by this Act;~~

~~(2) the status of the applications and the extent to which the wind-powered generating stations have been constructed after obtaining approval from the Commission in accordance with this Act; and~~

~~(3) the status of any regulatory actions undertaken by other State or local agencies with respect to the wind-powered generating stations." Pursuant to § 4, ch. 163, § 2 shall abrogate on June 30, 2010.~~

Section 3, ch. 163, Acts 2007, provides that "this Act may not be construed to limit the regulatory authority of any State or local agency with respect to matters relating to a wind-powered generating station that is exempt from the requirement to obtain a certificate of public convenience and necessity under §§ 7-207 and 7-208 of the Public Utilities Article."

§ 7-208. Generating stations or transmission lines — Joint construction of station and associated lines.

(a) *Scope of section.* — This section applies to any person:

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

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

(b) *Filing with Commission.* — (1) To obtain the certificate of public convenience and necessity required under § 7-207 of this subtitle for construction under this section, a person shall file an application with the Commission at least 2 years before construction of the facility will commence.

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

(c) *Contents.* — The applicant shall:

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

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

(d) *Notice and public hearing.* — (1) On the receipt of an application under this section, together with any additional information requested under subsection (c)(2) of this section, the Commission shall provide notice to:

- (i) all interested persons;
- (ii) the Department of Agriculture;
- (iii) the Department of Business and Economic Development;
- (iv) the Department of the Environment;
- (v) the Department of Natural Resources;
- (vi) the Department of Transportation; and
- (vii) the Department of Planning.

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

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

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

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

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

(e) *Commission decision.* — Within 90 days after the conclusion of the hearing on an application under this section, the Commission shall:

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

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

(iii) deny the certificate; and

(2) notify all interested parties of its decision.

(f) *Inclusion of federal and State environmental laws and standards in certificate.* — (1) The Commission shall include in each certificate it issues under subsection (e) of this section:

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

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

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

~~(g) *Majority required.* — (1) A decision of the Commission regarding the issuance of a certificate requires the vote of a majority of the members of the Commission.~~

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

(h) *Additional authority to construct.* — The grant of a certificate by the Commission to any person under subsection (e) of this section constitutes:

~~(1) authority for the person to dredge and construct bulkheads in the waters or private wetlands of the State and to appropriate or use the waters; and~~

(2) registration and a permit to construct, as required under Title 2, Subtitle 4 of the Environment Article. (An. Code 1957, art. 78, § 54B(a); 1998, ch. 8, § 2; 2000, ch. 209, § 2; 2001, ch. 347.)

~~Certificate of public convenience and necessity prerequisites to eminent domain. — A prerequisite to the exercise of a power company's right of eminent domain was that it obtain from the Commission a certificate of public convenience and necessity for the construction of a power line. *Bouton v. Potomac Edison Co.*, 282 Md. 142, 383 A.2d 669 (1978).~~

~~Eminent domain is judicial question. — Whether there is any necessity whatever to justify the taking of private land for a public purpose by the exercise of eminent domain is a judicial question. *Bouton v. Potomac Edison Co.*, 282 Md. 142, 383 A.2d 669 (1978).~~

~~Owner had no right of notice of deliberations as to location of power lines. — Property owner had no federal constitutional right of notice with respect to deliberations as to location of power transmission line. *Bouton v. Potomac Edison Co.*, 282 Md. 142, 383 A.2d 669 (1978).~~

~~Personal service of notice of hearing not required. — Petitioner's action for declaratory relief pursuant to § 3-409(a) of the Courts Article challenging approval of a plan to build a wind power facility was properly denied, because there was no requirement in either § 7-207(c) or 7-208(d) of this subtitle that personal~~