

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
		Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 7/31/2020

2. COMAR Codification

Title Subtitle Chapter Regulation

20 79 01 00, .01, .02, .04, and .05-.08

3. Name of Promulgating Authority

Public Service Commission

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6. Check applicable items:

- X- New Regulations
- X- Amendments to Existing Regulations
Date when existing text was downloaded from COMAR online: 6/3/2020.
- _ Repeal of Existing Regulations
- X- Recodification

Authority: Public Utilities Article, §§2-113, 2-121 and 7-205—7-208, Annotated Code of Maryland

Notice of Proposed Action

□

The Maryland Public Service Commission proposes to amend Regulations .00, .01, .02, .04, .05, .06, .07, and .08 under COMAR 20.79.01 General and adopt new Regulation .04 under COMAR 20.79.01 General.

This action was considered by the Maryland Public Service Commission at a scheduled rule making (RM 69) meeting held on May 21, 2020, notice of which was given under General Provisions Article, §3-302, Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to revise the Code of Maryland Regulations governing applications for a Certificate of Public Convenience and Necessity (CPCN) to include certain notice and application requirements, including the establishment of a new pre-application process and pre-application requirements, for the construction of certain fossil-fueled generating stations.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

The proposed regulations will have an economic impact on persons who intend to submit an application for a Certificate of Public Convenience and Necessity (CPCN) for the construction of a qualifying fossil fuel generating station, as defined under COMAR 20.79.01.02, that is over 70 megawatts in nameplate capacity and subject to the requirements under Public Utilities Article, §§7-207 and 7-208, Annotated Code of Maryland.

II. Types of Economic Impact.

- A. On issuing agency:
- B. On other State agencies:
- C. On local governments:

Revenue (R+/R-)	Magnitude
Expenditure (E+/E-)	Magnitude

NONE	
NONE	
NONE	

Benefit (+)	Magnitude
Cost (-)	Magnitude

- D. On regulated industries or trade groups: NONE
- E. On other industries or trade groups: (-) \$400 - \$1,000
- F. Direct and indirect effects on public: NONE <\$100

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

- E. (\$400 - \$1,000) Advertising Expenses, Meeting Location Rental Expenses and Personnel Expenses.
- F. (

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has an impact on individuals with disabilities as follows:
 The proposed action does not directly impose any requirements or obligations on individuals with disabilities. In a broader sense, the proposed action could have an indirect, positive impact, qualitatively, on individuals with disabilities insofar as it creates a pre-application requirement for a CPCN applicant seeking to construct a qualifying large fossil fuel generating station—i.e., with a nameplate capacity of over 70 MW—to provide a meaningful opportunity to engage the community that would be most affected by the proposed project, before the applicant files its CPCN application. The “affected community” would include residents, including those with disabilities, within a set geographic radius of the proposed facility.

Opportunity for Public Comment

Comments may be sent to Andrew S. Johnston, Executive Secretary, Maryland Public Service Commission, 6 St. Paul Street, Baltimore, Maryland 21202, or call 410-767-8067, or email to , or fax to 410-333-6495. Comments will be accepted through 8/31/2020. A public hearing has not been scheduled.

Economic Impact Statement Part C

- A. Fiscal Year in which regulations will become effective: FY 2021
- B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?
 Yes
- C. If 'yes', state whether general, special (exact name), or federal funds will be used:
 Special Fund – The Public Utility Regulation Fund
- D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

It is not anticipated that a small business will apply for a Certificate of Public Convenience and Necessity (CPCN) to construct a qualifying fossil fuel generating station greater than 70 megawatts (MW) in nameplate capacity under this Subtitle and incur the expenses contemplated under this Chapter. Rather, typical CPCN applicants that seek PSC approval for fossil fuel generating stations 70 MW in capacity or greater—and thus would be affected by the proposed action—are larger companies. From the standpoint of the local economy, however, it is possible that small businesses in the affected area, i.e., where the facility is proposed to be located, could benefit from the proposed project in the creation of jobs, additional revenues from providing local services, and taxes. It is difficult to quantify these benefits, however.

G. Small Business Worksheet:

1a. Intended Beneficiaries

The intended beneficiaries of the proposed action are: (1) the nearby communities that would be most affected by the siting of the proposed qualifying fossil fuel-fired generating station, defined as the “affected communities” under the proposed revisions to COMAR 20.79.01.02; (2) the reviewing state agencies that are regular participants to the PSC’s Certificate of Public Convenience and Necessity (CPCN) review process; and (3) the PSC’s decision-making body—i.e., the Public Utility Law Judges and Commissioners. The objectives of the proposed action are two-fold: First, to ensure that the affected communities are provided with advanced notification of a proposed qualifying fossil fuel-fired generating station and a meaningful opportunity to engage the applicant developer prior to the filing of a CPCN application. Second, the proposed action will provide the reviewing state agencies will additional information regarding potential environmental hazard risks from the proposed project that could have a disproportionate impact on sensitive populations within the affected communities.

b. Intended Beneficiaries: Households

Under the proposed revisions to COMAR 20.79.01.02, an “affected community” refers to the residential individuals, organizations, and other entities, residing within a one-mile radius of a proposed electric generating station fence line for an urban area, as the term “urban” is defined by the Census Bureau, and within a three-mile radius of the proposed generation station fence line for a rural area, as the term “rural” is defined by the Census Bureau. The proposed regulations do not target specific households.

c. Intended Beneficiaries: Businesses

The proposed regulations do not directly target small businesses. In the general sense, small businesses within the affected communities, along with other community members, will likely benefit from receiving advance notice of a proposed fossil fuel-fired generation project as well as the opportunity to engage with the applicant developer to learn more about the project, its benefits and impacts, and to raise any concerns prior to the filing of the CPCN application.

2a. Other Direct or Indirect Impacts: Adverse

It is not anticipated that the proposed action will have other direct or indirect adverse impacts on small businesses separate and apart from those impacts normally associated with the Maryland PSC's CPCN review process. As previously stated, the anticipated cost impacts from the proposed action are likely to affect larger businesses that apply for a CPCN to construct a qualifying large fossil fuel-fired generating station.

b. Other Direct or Indirect Impacts: Positive

While the proposed action does not directly affect small businesses, businesses within an affected community may benefit from the project's contributions to the local economy, revenues and taxes. This can include added jobs, and additional revenues from providing local area services during project construction. These positive impacts would not be a direct result of the proposed action, however. Rather, they are normally evaluated as part of the PSC's CPCN review for any generating station or transmission line.

3. Long Term Impacts

The proposed action is not anticipated to have long-term economic impacts on small businesses.

4. Estimate of Economic Impact

As previously stated, the proposed action is not anticipated to have any meaningful economic impact on small businesses. Typically, small businesses do not file CPCN applications to construct large fossil fuel-fired generating stations 70 MW in capacity or greater. The anticipated economic impacts associated with the proposed action will pertain only to those persons seeking to construct qualifying large fossil fuel-fired generating stations. From the standpoint of the local economy, however, it is possible that small businesses in an affected community, i.e., where the facility is proposed to be located, could benefit from the proposed project in added jobs, additional revenues from providing local area services, and local taxes. The degree of economic benefit cannot be estimated at this time and will likely depend on the scope of work for any given CPCN project.

Narrative: The Maryland PSC has jurisdictional authority under Public Utilities Article, §§7-207 and 7-208, to approve the construction of a fossil fuel generating station greater than 70 megawatts (MW) in capacity, through the issuance of a Certificate of Public Convenience and Necessity (CPCN). Currently, the CPCN review process is initiated when an applicant/applicant developer files a CPCN application with the PSC. Under current law and COMAR requirements, the applicant provides copies of the CPCN application to various state and local government recipients as well as to other interested persons. The applicant is not, however, required to first notify or meet with any reviewing state agency or the local community prior to filing its application. Consequently, in many instances, affected community members first receive constructive notice of a CPCN application filing via newspaper publication announcing both the PSC's pre-hearing conference date and any deadlines for filing requests to intervene. The

proposed action will improve the CPCN process by, among other things, ensuring that those communities that would be most affected by a proposed qualifying large fossil fuel-fired generating station, due to their proximity to the project, will have sufficient notice of the project and a meaningful opportunity to engage with the applicant/applicant developer prior to the filing of a CPCN application. This could help inform community members in deciding whether to participate in the permitting process. The proposed action would also ensure that communities with sensitive populations that could disproportionately experience the adverse impacts from a fossil fuel-fired power plant are identified as part of the permitting process.

Attached Document:

Title 20 PUBLIC SERVICE COMMISSION

Subtitle 79 APPLICATIONS CONCERNING THE CONSTRUCTION OR MODIFICATION OF GENERATING STATIONS, *QUALIFIED GENERATOR LEAD LINES*, AND OVERHEAD TRANSMISSION LINES

Chapter 01 General

.01 Scope.

The regulations in this subtitle apply to:

A. A person applying for a Certificate of Public Convenience and Necessity for the construction of a generating station, *qualified generator lead line*, or *overhead transmission line*, or modification to an existing electric generating station, or an *overhead transmission line*;

[B. An electric company applying for a Certificate of Public Convenience and Necessity for the construction of an overhead transmission line or modification to an existing overhead transmission line;]

[C.] B. A person requesting an exemption from the requirement to obtain a Certificate of Public Convenience and Necessity for the construction of a generating station under Regulation .03 of this chapter; or

[D.] C. A person making a modification under Public Utilities Article, §7-205, Annotated Code of Maryland.

.02 Definitions.

A. In this subtitle, the following terms have the meanings indicated.

B. Terms Defined.

(1) (text unchanged)

(2) "*Affected community*" means the residential individuals, organizations, and other entities, residing:

(a) *Within a one-mile radius of a proposed electric generating station fence line for an urban area, as defined by the Census Bureau in 76 Fed. Reg. 53043; and*

(b) *Within a three-mile radius of the proposed electric generating station fence line for a rural area, as defined by the Census Bureau in 76 Fed. Reg. 53043.*

[(2) Applicant.

(a) "Applicant" means a person applying for a Certificate of Public Convenience and Necessity to construct or modify an electric generating station including its associated transmission line, if applicable, or for an exemption from the requirement to obtain a Certificate of Public Convenience and Necessity to construct a generating station.

(b) "Applicant" also means an electric company applying for a Certificate of Public Convenience and Necessity to construct or modify an overhead transmission line.]

(3) "*Applicant*" means a person applying for a Certificate of Public Convenience and Necessity to construct or modify an electric generating station including its associated transmission line, if applicable, to:

(a) *Construct a qualified generator lead line; or*

(b) *Construct or modify a transmission line; or*

(c) *Apply for an exemption from the requirement to obtain a Certificate of Public Convenience and Necessity to construct a generating station.*

[(3)] (4) "Application" means a request for:

(a) A Certificate of Public Convenience and Necessity *under Public Utilities Article, §§7-207 and 7-208, Annotated Code of Maryland* for the construction of an electric generating station including its associated transmission line, if applicable, *a qualified generator lead line*; or a [overhead] transmission line [under Public Utilities Article, §§7-207 and 7-208, Annotated Code of Maryland];

(b) A Certificate of Public Convenience and Necessity and any other approvals necessary *under Public Utilities Article, §§7-205, 7-206, 7-207, or 7-208, Annotated Code of Maryland* to begin a modification to an electric generating station or an existing [overhead] transmission line [under Public Utilities Article, §7-205, 7-206, 7-207, or 7-208, Annotated Code of Maryland]; or

(c) (text unchanged)

[(4)](5)—[(6)](7) (text unchanged)

(8) "*Brownfields site*" has the meaning stated in *Public Utilities Article, §7-207(a)(2)(I)-(III), Annotated Code of Maryland*.

[(7)] (9) Commence.

(a) "Commence" means, with respect to a modification [means,] *and* in general, initiation of physical on-site construction activities that are of a permanent nature, including [installation of] *installing* building supports and foundations, laying of underground pipework, and [construction of] *constructing* permanent storage structures.

(b) "Commence" means, with respect to a change in the method of operation, [means] those on-site activities, other than preparatory activities, that mark the initiation of the change.

(10) "*Community Liaison Officer*" refers to an individual designated by the applicant to communicate information and coordinate activities between the applicant and the affected communities, and with whom members of the public can raise questions or concerns about the proposed project.

[(8)] (11) Construction.

(a) (text unchanged)

(b) "Construction" does not mean a change needed for temporary use of a site or a route for a nonutility purpose or for use in securing geological data, including borings necessary to ascertain foundation conditions.

[(9)] (12) (text unchanged)

(13) *EJSCREEN*.

(a) "*EJSCREEN*" means the U.S. Environmental Protection Agency environmental justice screening and mapping tool.

(b) "*EJSCREEN Standard Report*" means a printable report using the *EJSCREEN* tool that displays the environmental and demographic indicators and indexes for the area selected.

(c) "*EJSCREEN ACS Report*" means a printable report using the *EJSCREEN* tool and generated with demographic data from the U.S. Census Bureau American Community Survey, which include demographic indicators for race/ethnicity, poverty, age, educational level and language barriers.

[(10)](14)—[(12)](16) (text unchanged)

[(13)] (17) "Linear facilities" means ancillary components of a generating station that may have environmental or land use impacts in Maryland, including:

(a) (text unchanged)

(b) An associated transmission line *or qualified generator lead line*.

[(14)] (18) Modification.

(a) (text unchanged)

(b) "Modification" to an existing [overhead] transmission line means:

(i)—(ii) (text unchanged)

(c) (text unchanged)

[(15)] (19) (text unchanged)

[(16)](20)—[(17)](21) (text unchanged)

[(18)] (22) "Project" means a proposed generating station, including linear facilities, *existing* generating station modification, *qualified generator lead line*, transmission line, or [modification to an] existing transmission line modification.

[(19)] (23) (text unchanged)

(24) "*Qualified generator lead line*" has the meaning stated in *Public Utilities Article, §7-207(a)(2)(IV), Annotated Code of Maryland*.

(25) "*Qualifying generating station*" means a proposed fossil fuel generating station, as defined under this subtitle, that is over 70 megawatts in nameplate capacity and subject to the requirements under *Public Utilities Article, §§7-207 and 7-208, Annotated Code of Maryland*.

[(20)] (26)—[(21)] (27) (text unchanged)

.04 Pre-Application Requirements for a Qualifying Generating Station.

Prior to filing an application for a Certificate of Public Convenience and Necessity for the construction of a new qualifying generating station, unless otherwise provided under this regulation or exempted under this subtitle, an applicant shall complete the following actions, as described:

A. Notify the Commission and the Maryland Department of Natural Resources Power Plant Research Program, in writing, of the applicant's intent to file an application for a qualifying generating station no less than 90 days prior to filing the application, and provide information on the proposed qualifying generating station, including without limitation the type, source, and location of the proposed facility;

B. Offer to engage the participation of the affected communities for the purpose of educating the affected communities concerning the proposed project and soliciting their feedback, including at minimum the following actions:

(1) Designate a community liaison officer for the proposed project; and

(2) Identify actual community members and community organizations within the affected communities and provide notification of the proposed project and any public meeting invitation concerning the project to those community members and organizations.

(3) Hold a minimum of one public meeting within the county or municipal corporation in which any portion of the construction of the qualifying generating station is proposed to be located, in accordance with the following requirements:

(a) The public meeting shall be scheduled at least 60 days before the filing of the application;

(b) The applicant shall provide notification of the public meeting, including the time, date, and location of the meeting, by:

(i) Placing a meeting invitation on the applicant's website, if any, or on the applicant's parent corporation's website;

(ii) Placing a meeting invitation on at least two types of social media platforms;

(iii) Publishing an advertisement in a newspaper of general circulation in the county or municipal corporation in which the proposed facility will be located; and

(iv) Providing a copy of the meeting invitation or newspaper advertisement to the governing body, as defined in Local Government Article, §1-101, Annotated Code of Maryland, and if applicable the executive, of each county or municipal corporation, wherein the proposed facility will be located; and

(c) The applicant shall take steps to accommodate reasonable requests to provide access to and participation in the public meeting by persons with disabilities or limited English proficiency;

C. Prepare a statement of public engagement and participation certification, which shall describe the applicant's efforts to provide notice to and engage the affected communities and shall include a summary discussion of what, if any, actions the applicant has agreed to take to address public concerns raised at the public meeting;

D. EJSSCREEN.

(1) The applicant shall use the EJSSCREEN, or if the EJSSCREEN is unavailable, a comparable environmental hazard risk assessment and mapping tool, as to identify areas within affected communities that may be subject to additional impacts as a result of permitting and operating the proposed qualifying generating station;

(2) For its numerical thresholds, the EJSSCREEN shall utilize a demographic index equal to or greater than the 80th percentile, as compared to the State of Maryland, for any single census block group within a three-mile circular buffer centered at the Geographic Information System coordinates of the proposed qualifying generating station; and

(3) The demographic index is the average of the percentage of the population that is minority and the percentage of the population that is low income, which is hereby defined as a household income less than or equal to twice, or 200 percent, of the federal poverty level.

[.04] .05 Application Filing Requirements.

Except for an application for exemption under Regulation .03, of this chapter, an application for a Certificate of Public Convenience and Necessity for the construction of a generating station or an [overhead] transmission line, or an application for modification to an existing electric generating station or transmission line, shall include the following information:

A.—B. (text unchanged)

C. The name, title, [and] mailing address, and email address of the person authorized to receive notices and communications with respect to the application;

D. For a proposed qualifying generating station, the name, title, mailing address, and email address of the community liaison officer, if different from the person named under §C of this regulation;

[D.]E.—[G]H. (text unchanged)

[H.] I. An implementation schedule for the project; [and]

[I.] J. The environmental information required under COMAR 20.79.03.02 for generating stations or COMAR 20.79.04.04 for transmission lines[.];

K. The EJSSCREEN reports required under COMAR 20.79.03.03 for a proposed qualifying generating station; and

L. A signed statement of public engagement and participation certification, required under COMAR 20.79.03.04 for a proposed qualifying generating station, that the applicant made at least one attempt to engage the affected communities pursuant to §B of Regulation .04 prior to filing the application.

[.08] .09 Completeness Determination and Availability of [CPCN] Applications and Related Materials for Proposed New and Modified Power Plants

A. A person shall submit [a] *an* [CPCN] application to construct a new or modified generating station to the Commission, which shall, within 45 days of issuing an order either delegating the [CPCN] application to the *Public Utility Law Judge Division*, or keeping it at the Commission, acknowledge receipt of the request and indicate whether the request is either:

(1)—(2) (text unchanged)

B. A copy of the [CPCN] application to construct a new or modified generating station, as well as any public comments and [State] *state* agency comments and recommendations thereon, shall be available for public inspection at the offices of the Commission.