

Bond Case Briefs

Municipal Finance Law Since 1971

ZONING - MARYLAND

Dominion Transmission, Inc. v. Summers

United States Court of Appeals, District of Columbia Circuit - July 19, 2013 - F.3d - 2013 WL 3762937

Natural gas storage company petitioned for review of an order of the Maryland Department of the Environment, which twice refused to process company's application for an air quality permit necessary to proceed with construction of natural gas compressor station.

The Court of Appeals held that:

- Court of Appeals had jurisdiction under the Natural Gas Act;
- Department did not have Eleventh Amendment immunity;
- Natural Gas Act did not preempt Maryland statute requiring a demonstration that the proposed natural gas compressor station be in compliance with local laws; and
- Department was required to determine which local laws were applicable and whether company had complied with such laws.

Where Maryland Department of the Environment had refused to issue, condition, or deny an air quality permit, necessary to proceed with construction of natural gas compressor station, Court of Appeals had jurisdiction under the Natural Gas Act to consider whether the Department's decision was lawful.

Under *Ex Parte Young*, Maryland Department of the Environment did not have Eleventh Amendment immunity from natural gas storage company's action seeking review of the Department's reasons for refusing to process its application for air quality permit necessary to proceed with construction of natural gas compressor station, where action was seeking prospective relief only.

Natural Gas Act did not preempt Maryland statute requiring a demonstration that the proposed natural gas compressor station be in compliance with local laws; Congress expressly saved states' Clean Air Act powers from preemption, and Maryland provision was part of Maryland's state implementation plan.

Maryland Department of the Environment was required to determine whether local zoning and land use requirements were preempted by Federal Energy Regulation Commission certificate, which approved construction of natural gas compressor station, and whether company seeking to build compressor had complied with any applicable zoning or land use requirements. Department could not simply refuse to act on company's application for air quality permit. Natural Gas Act.