

**BEFORE THE
PUBLIC SERVICE COMMISSION OF MARYLAND**

IN THE MATTER OF:

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THE APPLICATION OF CATOCTIN
POWER LLC FOR A CERTIFICATE
OF PUBLIC CONVENIENCE AND
NECESSITY TO CONSTRUCT A
NOMINAL 600-MW GENERATING
FACILITY IN FREDERICK COUNTY,
MARYLAND

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Case No. 8997

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**REPLY BRIEF ON BEHALF OF THE
BOARD OF COUNTY COMMISSIONERS OF
FREDERICK COUNTY, MARYLAND**

The Board of County Commissioners of Frederick County, Maryland, a body corporate and politic of the State of Maryland (“Board”), appreciates this opportunity to address certain issues that have been raised during the submittal of initial briefs in this proceeding, including those relating to the limited conditions that the Board has requested be made part of any certificate of public convenience and necessity (“CPCN”) that the Maryland Public Service Commission (“PSC”) might issue Catoctin Power, LLC, a wholly owned subsidiary of Sempra Generation (collectively “Sempra”), in this matter.

STANDARD FOR DECISION

In February 2004, Sempra asked the PSC to authorize the siting, construction and operation of an approximate 640 MW gas fired electric power generating plant, costing an estimated \$300 million, in south Frederick County, that would directly impact the quality of life for the citizens of Frederick County, particularly those residents of the Adamstown area. Since this filing, the Board has considered Sempra’s proposed project in several public work sessions and hearings, independent of this PSC proceeding, and submitted testimony to the PSC on

several aspects of concern with Sempra's proposed project. As part of its testimony, the Board requested that certain conditions be made part of any CPCN that the PSC might issue Sempra. The conditions that the Board believes necessary are set forth in Exhibit A to the Board's initial brief in this proceeding.

Sempra's application for this CPCN, page 1, acknowledges that the application is submitted "Pursuant to Sections 7-207 and 7-208 of the Code of Maryland..." These Code references are to the Public Utility Companies Article of the Annotated Code of Maryland, which sets forth the factors that the PSC must consider before issuing a CPCN. Section 7-207 (e) "*Final action by Commission*" requires:

The Commission (PSC) 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 ... in which any portion of the construction of the generating station ... is proposed to be located....

Additional factors that the PSC must consider in deciding whether to issue a CPCN then follow in subsection (2) of Section 7-207.

As noted, during the course of this PSC proceeding the Board also considered Sempra's proposed project at a public hearing and at several public work sessions where Frederick County citizens could testify. In addition, Sempra's proposed project site plan was reviewed by the Board's staff and by the Frederick County Planning Commission, which process also included the opportunity for public input. Finally, the Board was aware of the testimony submitted by the parties in this PSC proceeding. During this process, the Board determined that certain conditions (relating to the project site plan, ambient air quality, water and quality of life issues) should be made part of any CPCN that the PSC might issue to Sempra. As mentioned, the limited conditions the Board believes necessary are set forth in Exhibit A to the Board's initial brief filed

in this proceeding. The Board respectfully submits that the PSC should accept the Board's determination that these minimal conditions are necessary and require compliance with these conditions as a part of any CPCN that the PSC might choose to issue Sempra. The Board further submits that its conditions do not conflict with those submitted by the State of Maryland; rather they are complimentary to those proposed conditions submitted by the State.

LAND PRESERVATION

Further, given Sempra and EastAlco Aluminum Company ("EastAlco") comments on the Board's land preservation request that were contained in the initial briefs filed by these parties in this proceeding, apparently additional explanation of this request might be helpful. The Board has requested that as a condition of receiving a CPCN from the PSC in this proceeding, Sempra be required to first attempt to work with EastAlco - the entity that requested Sempra to develop and operate this electric power generating project and from whom Sempra would lease the real property on which the proposed plant would be located - to place approximately 250 acres of land located in the general vicinity of the proposed plant into permanent agricultural preservation. If this is not successful, the Board asked that Sempra be required to work with the Carrollton Manor Land Trust (a repository of knowledge concerning land located in the general vicinity of Sempra's proposed plant that might be available for permanent agricultural preservation) to achieve this same result. The Board also expressed a preference for two specific parcels of land owned by EastAlco, totaling approximately 300 acres, presently zoned agricultural, located north of the proposed Sempra plant and which are partially in-between the proposed plant and St. Matthew's Lutheran Church (this property wraps around St. Matthew's Church and graveyards).

To the extent that EastAlco believes that the Board is asking that EastAlco be required to place land in permanent agricultural preservation as a condition of Sempra receiving a CPCN in this proceeding, EastAlco is flat out wrong. The Board has simply asked that Sempra attempt to convince EastAlco to place either the two parcels of EastAlco property preferred by the Board into permanent agricultural preservation or approximately 250 acres of other land (or a combination of the preferred parcels and other EastAlco land) into permanent agricultural preservation. Nothing requires EastAlco to transfer any property to Sempra or to place any land into permanent agricultural preservation; EastAlco could tell Sempra that it will neither transfer any property to Sempra for this purpose nor place a permanent agricultural easement on its land (even though EastAlco would be paid for this easement as well as retain title to the land). Contrary to EastAlco's protests, the Board's request does not take EastAlco property.

Focusing for a moment on the Board's purpose in presenting this land preservation request, EastAlco could not have chosen a more appropriate portion of the transcript of the Board's October 2004 public work session to quote on pages 9 and 10 of EastAlco's initial brief in this proceeding. EastAlco noted that one member of the Board at this public work session stated "There is a purpose behind this (the land preservation request), and it's a quality of life issue. And it's also to ... provide a buffer between it (the Sempra plant) and the surrounding community." Realizing that one member of the Board does not generally speak for the Board, a reading of the complete transcript of the Board's October 2004 hearing, introduced as Catocin Exhibit 27 in this proceeding, and the Board's testimony on this request submitted to the PSC in this proceeding, reflects that, in fact, the Board's purpose in asking that approximately 250 acres be set-aside in permanent agricultural preservation was (1) to address impacts of the proposed plant on the quality of life of Frederick County citizens, and (2) to serve as a buffer between the

plant and the community, a buffer that would be in addition to what is otherwise required by the project site plan. Without reiterating the testimony concerning this Board request, it is entirely proper and not surprising that the Board seeks to mitigate project impacts on the community and help preserve the quality of life for the residents of the Adamstown area through land preservation.

BOARD OF COUNTY COMMISSIONERS' REQUEST

Therefore, the Board, again, respectfully requests that the PSC respect the Board's determination as to those limited conditions that the Board believes are necessary and require that they be made part of any CPCN that the PSC might choose to issue Sempra for this estimated Three hundred million dollar (\$300,000,000.00) approximate 640 MW gas fired electric power generating plant proposed to be located in Frederick County, Maryland.

CERTIFICATE OF SERVICE

PSC Case 8997

I hereby certify that on this 18th day of February 2005, I served by first class mail, postage prepaid, copies of the Reply Brief on Behalf of the Board of County Commissioners of Frederick County, Maryland to the parties listed on the official service list for PSC Case 8997 dated December 13, 2004.

_____/s/_____
Richard J. McCain