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7 February 2005

Mr. Ray Bourland
Executive Secretary
Public Service Commission
William Donald Schaefer Tower
6 St. Paul Street
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Dear Mr. Bourland,

IN THE MATTER OF THE APPLICATION OF CATOCTIN POWER, LLC FOR A CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

CASE NO. 8997

Final Brief

Attached is my final brief related to this case.

As directed at the hearing on January 12th, this will be emailed to all parties on February 7th, and the 14 copies plus the floppy disk with the brief in .pdf format will be sent by first class mail.

Respectfully Submitted,

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

IN THE MATTER OF THE APPLICATION)
OF CATOCTIN, POWER LLC FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE) CASE NO. 8997
AND NECESSITY TO CONSTRUCT A)
NOMINAL 600 MW GENERATING)
FACILITY IN FREDERICK COUNTY, MARYLAND)

As we have all been through the major issues in excruciating detail, I will make this relatively short. The points I plan to cover include:

- My Final Position
- Proposed Water Condition
- The Frederick County BOCC Proposed Land Donation Condition
- Air Quality – New Information
- Proposed Air Quality Testing Condition

My Final Position

I am still opposed to the CPCN for the Catocin Power Plant project being granted for the following reasons.

First: While not discussed in too much detail, I feel that an operational power plant will contribute to a decrease in property values in the immediate area. The contention that the plant will not be seen is mostly true, but even though the highest point of the plant is only 7 feet taller than the height of existing EastAlco structures, the base of the plant is already 14 feet higher thus resulting in the stacks being 21 feet higher than the Eastalco structures. While the economic impact is minimal at this time due to the housing boom that continues in the DC Metro area, when the market cools off, it will be a factor. Speaking for myself, if I had the choice of a home by a power plant, or elsewhere, I would choose elsewhere, even if it was a bit smaller and with less land. I believe it will be harder for the residents to sell if they want, or need to move. While I do not plan to move from here for a very long time, there is always the possibility that we will need to move for job related reasons, so this is a concern. Deserved or not, Power Plants have a negative connotation.

Second: Unknown Air Quality. As stated again and again and again, we do not know what the actual air quality is in this area. Without that information, I must continue to officially oppose the approval of the CPCN. The State and other experts can sit on the stand and say that everything is fine, and all of the EPA guidelines are being met, but that still does NOT tell us what the actual air quality is right here, with EastAlco, Essroc, Dickerson and TransTek all within shouting distance.

Proposed Water Condition

My proposed condition is:

The approval of the CPCN application should be contingent on Catoctin Power's use of the effluent from Frederick County, even if it takes a while to work out the details.

I hereby withdraw this proposed condition.

The intent of this condition was to try to draw attention to the fact that Frederick County has not fulfilled what I and others consider being their responsibility to adequately review this potential source of water for the power plant and source of revenue to the County. While the County has made no progress on this evaluation that I am aware of since I proposed my condition, the conditions proposed in this venue should relate to Catoctin, not Frederick County. While I still feel that the water source should be County effluent, this is not an appropriate condition to be included in a legal agreement between the PSC and Catoctin Power.

The Frederick County BOCC Proposed Land Donation Condition

There are two differing schools of thought on this issue from the residents of Adamstown. As a representative of both my neighbors and myself, I will present both views.

First View: Some people believe a land donation is appropriate to show that Catoctin wants to become a member of the community and to buffer the community from the plant. By placing some property (and specifically the property mentioned in the BOCC request) they believe that it will add to the quality of life in Adamstown.

Second View: Some people (including myself) believe that this is not the appropriate venue for this request. In addition some people do not believe that the land that was specified in the request would provide any additional buffer as the land is already zoned agricultural and is severely limited as to what can be done with it. The County has control over changes to the zoning.

Personally, I oppose this for the same reasons I dropped my water condition. I do not feel that this is the appropriate place for the PSC to levy a condition on anyone besides Catoctin Power. This condition will impact EastAlco, or some other land owner that Catoctin ends up working with. If Catoctin was purchasing hundreds of acres of land on which to place this plant, I would wholeheartedly support the placement of a significant portion of their land into preservation as a permanent buffer, but that is not the case here. Catoctin is leasing a handful of acres.

As discussed at the January 12th meeting, I believe that if the PSC feels a land donation is appropriate to add to a buffer (beyond the buffer requirements that were agreed to by the County as part of the site plan review) then it should be land that is zoned Industrial right beside the power plant. This would ensure that no additional industrial facilities will be added between the plant and the community. Other people feel the selection of the two parcels proposed by the BOCC is appropriate.

Air Quality – New Information

It has been brought to my attention that the Adamstown area is potentially about to have another increase in the emission of criteria pollutants – right beside the proposed Power Plant. EastAlco has filed a PSD application with MDE which will allow them to increase their production – which will also increase their emissions. Based on their modeling this will require them to move their fence line outward in some areas and increase their stack height (possibly by ~30 feet) to demonstrate compliance with the NAAQS.

This is being done just yards away from where the new Power Plant source will be located. Last I was told, MDE has not made a preliminary recommendation on this request. Also, I have been unable up to this point to get an electronic copy of the filing to post to the Adamstown website so residents can look for themselves. For some reason MDE has not made it available on their site.

Proposed Air Quality Testing Condition

I stand by my previously proposed condition as stated:

Approval of the CPCN application should be contingent on quarterly air testing at a minimum of 3 locations surrounding the plant (one of which must be Carroll Manor Elementary School). These tests must be conducted by an independent third party and funded by Catoctin Power. The testing will continue until the plant has been in full operation for more than two years, however, if the testing during operations shows that there is a measurable difference in any of the pollutant levels, thus contradicting the modeling and expert assertions, then the testing will continue as long as the plant is in operation.

This contingency would only be required if Sempra approves the Catoctin power plant project for construction. Testing would begin immediately and continue quarterly.

In fact, due to the recent revelation that EastAlco is planning to increase the emissions from their plant – right beside the proposed plant – this is even more imperative.

Monitoring should include all criteria pollutants including CO, NO_x, VOCs, SO₂, Fluorides, PM₁₀ and PM_{2.5}.

The modeling that has been done has not included an increase in emissions from a source so close to the Catoctin plant. The cumulative analysis conducted as part of the PPRP report, Section 7, did not include increased EastAlco emissions and only updated an older analysis.

As I have asked from the start of this process – what are actual values of the criteria pollutants as measured at the Carroll Manor Elementary School or Saint Matthews Church? The answer to the question has been the same time and time again – we don't know, but it is fine.

I'm sorry, but as I have repeatedly said, the 'experts' can say that until they are blue in the face, but very few people in Adamstown are going to feel safe until we have numbers in front of us provided by an independent third party.

The State's position is that they are following the EPA guidelines and approved models and we are fine. Nothing further is necessary and no changes are required to the air monitoring system they have in place. I agree – that is not what I am proposing.

I want to have statistically valid sampling conducted in the area as specified in the proposed condition. This will tell us what the actual values are. Then the residents of the area will feel more comfortable that the stack emissions will not significantly impact the ambient air quality. We know that the EastAlco stack emissions are already monitored and reported on, and the Catocin Plant will also be monitoring their stack emissions and reporting on them.

In 40 CFR 52.21 it states that an exemption from the ambient air monitoring requirement can be requested if the air quality impacts are projected to be less than the *de minimis* levels. Accordingly, Catocin has requested the exemption –from the CPCN (6.3.6.3):

“As shown in Table 6.3-4, impacts are predicted to be below the applicable *de minimis* monitoring concentration for all pollutants. As such, Catocin Power, LLC is requesting an exemption from the preconstruction monitoring in accordance with the PSD regulations.”

I am asking that the PSC not grant this exemption – which it is well within its power. There is nothing in the regulations that require that the exemption be granted. I am asking that you use this proposed condition or something similar (the CFR is much more restrictive than what I proposed) to provide the level of comfort that the people of Adamstown should be able to expect from this process. We need to know that our children are safe spending their days at the school, and that all of us who spend our lives in the shadow of the plant are breathing air that will not harm us.

- Prove to us that our air is now and will continue to be safe after the plant is in operation.
- Prove to us that the experts and their models were right – that we are safe even with all of these pollutions sources right around us.
- All I ask is that the PSC require proof about the true ambient air quality to ease the concerns raised by the residents of the Adamstown area.

The only way to do that is to provide true ambient air quality testing by an independent source.

Respectfully,

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