

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 )

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REPLY BRIEF OF EASTALCO ALUMINUM COMPANY  
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The procedural schedule established at the conclusion of the January 12, 2005 evidentiary hearing set February 7, 2005 as the date for filing initial briefs and set February 18, 2005 as the date for filing reply briefs (Tr.1254). Initial briefs were filed on February 7, 2005 by Eastalco Aluminum Company ( Eastalco ); Catocin Power, LLC ( Catocin ); PSC Staff; Maryland Department of Natural Resources/Power Plant Research Program ( DNR or PPRP ); and jointly by the U.S. Army Corps of Engineers, the Fairfax County Water Authority, and the Washington Suburban Sanitary Commission. On February 9, 2005, the Board of County Commissioners of Frederick County ( Frederick County ) filed its initial brief. On February 10, 2005, the final brief of Donald L. James was filed. Herewith follows the Reply Brief of Eastalco.

## INTRODUCTION

Eastalco's Reply Brief is limited to the land use condition requested by Frederick County, and will not address all of the potential issues relating to the requested CPCN.<sup>1</sup> As set forth more fully in Eastalco's Initial Brief, Frederick County's requested condition is unsupported by any evidence, is outside the scope of the Commission's jurisdiction, and would be unconstitutional. For these reasons, there is no merit to Frederick County's requested condition and Eastalco respectfully requests that it be denied.

## ARGUMENT

According to Frederick County's witnesses, the reason for requesting its three-tiered condition<sup>2</sup> is to create a buffer between the community, including St. Matthew's Church, and the site of the proposed generating unit (Frederick County Ex. No. 4, pp. 4-5; Tr. 1053). Nonetheless, the evidence in this proceeding demonstrated the fallacy in Frederick County's reasoning (see Eastalco Initial Brief, pp. 7-10). On brief, Frederick County offers the additional purpose of offsetting negative impacts of the proposed plant on the quality of life of Frederick County citizens (Frederick County Initial Brief, p. 7). Frederick County posits impacts from construction and plant operation traffic and noise, increased pollutants, increased demand upon fire and rescue services, increased exposure to hazardous materials, and decreased property values (id., pp. 7-8). These bald assertions lack evidentiary support and Frederick County failed to provide any legal basis to support its position. More importantly, Frederick County failed to explain how its requested condition would alleviate these speculative impacts, thereby failing to

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<sup>1</sup>See Transcript of January 12, 2005, p. 1252.

<sup>2</sup>This three-tiered condition was described fully in Eastalco's Initial Brief (see, e.g., p. 3).

demonstrate any rational link between the alleged impacts and its requested condition. There is no merit to Frederick County's requested condition and it should be denied.

Frederick County proffered no evidence of adverse impacts and the credible evidence in this proceeding demonstrated that construction and operation of the proposed generating facility is unlikely to cause significant adverse impacts. Regarding traffic, Mr. Zwolak testified that [h]ighway transportation associated with Project operation will have a minimal impact on local roadways and only temporary impacts during construction (Catocin Ex. No. 5, pp. 4-5). The results of the modeling show that all road segments that will be impacted by construction traffic will continue to operate at an acceptable level of service (*id.*, p. 6). Mr. Zwolak further testified that [o]nce operational, impacts from workers commuting to the Project site will be minimal and not expected to affect the [level of service] on local roadways (*id.*, p. 7). Moreover, DNR's witness, Dr. Hall, likewise testified that construction traffic would have minimal impacts (PPRP Ex. No. 13, pp. 9-10) and that the Catocin facility would not be a source of traffic congestion during the operations phase (*id.*, p. 10). Catocin and DNR agreed to eight conditions to further minimize potential effects from traffic (*see* PPRP Ex. No. 15, pp. 37-38, Conditions 91-98). Thus, the unrefuted evidence in the proceeding demonstrated that there are unlikely to be adverse impacts from traffic, either during construction or operation of the proposed generating facility.

Mr. Kosky described the modeling used to predict noise levels associated with the project; he testified that noise levels from construction and operation of the proposed generating facility would fall far below and comply with the State of Maryland's and Frederick County's noise standards (Catocin Ex. No. 7, pp. 6, 10-12). Mr. Zwolak also testified that effects from noise would be insignificant (Catocin Ex. No. 5, pp. 9, 16). DNR's witness, Mr. Letty, testified

that [n]oise emissions from the proposed power plant are expected to comply with all applicable rules regarding allowable noise (PPRP Ex. No. 12, p. 5). Mr. Letty's conservative methodology calculated that at the closest residential areas, the proposed facility would contribute sound pressure levels at least 4 dBA below the noise limit (*id.*). Moreover, Catoctin and DNR agreed to four conditions to further minimize potential effects from noise (see PPRP Ex. No. 15, pp. 39-40, Conditions 105-108). The unrefuted evidence in the proceeding demonstrated that effects from noise would be minimal and would be below Frederick County's allowable levels.

Frederick County's brief posited that there would be increased pollutants; however, evidence in the proceeding demonstrated that the air emissions resulting from the Project will not adversely impact air quality and will comply with all applicable air standards, regulations and requirements under federal and state law (Catoctin Ex. No. 8, p. 3). Moreover, emissions associated with the project will not cause or contribute to an exceedance of the National Ambient Air Quality Standards or the Maryland Ambient Air Quality Standards (*id.*, p. 4). DNR's witness, Mr. Garrison, testified that maximum impacts for all pollutants of concern and for all relevant averaging periods are less than applicable significant impact levels (PPRP Ex. No. 7, pp. 10-11). He further testified to his conclusion that impacts from the Catoctin facility will not cause harmful effects on local soils and vegetation and that growth associated with the project will not have a significant effect on air quality (*id.*, p. 12; see also PPRP Ex. No. 3, p. 4-51). Catoctin and DNR agreed to numerous conditions regarding air quality, testing, best available control technology, and other issues relating to potential emissions from the proposed generating facility (see PPRP Ex. No. 15, pp. 1-23, Conditions 3-45). The evidence in the proceeding refuted the bald and unsupported allegation of increased pollutants.

On brief, Frederick County further speculated that there would be increased demand upon fire and rescue services; however, the evidence demonstrated that this allegation was without merit. Mr. Zwolak testified that with the exception of the minor use of transient accommodations and related potable water and sanitary sewer services, no new impacts are expected on community services and facilities within the region as a result of the construction effort (Catoctin Ex. No. 5, p. 4). Catoctin would also be liable for the Carroll Manor Fire and Ambulance Tax (PPRP Ex. No. 13, p. 5) and no expenditures for public services are expected to be required from State or County governments if the project is developed as planned (*id.*, p. 6). PPRP's Environmental Review states that the proposed location for the facility satisfies Frederick County's adequacy guidelines for fire and rescue services (PPRP Ex. No. 3, p. 5-39). Moreover, Catoctin and DNR agreed to a condition requiring Catoctin to conduct a detailed assessment of the capabilities of the Carroll Manor Volunteer Fire Company and, if necessary to provide adequate services for the proposed power plant, to reimburse the volunteer fire company or appropriate agency for these expenses (*see* PPRP Ex. No. 15, p. 39, Condition 104). Thus, there is no merit to Frederick County's speculation.

In its brief, Frederick County also alleged increased exposure to hazardous materials as support for its requested condition. Although Frederick County was not specific, it is presumed that this was a reference to the transportation of aqueous ammonia. Nevertheless, DNR found that accident statistics, as well as the risk analysis prepared by DNR, demonstrate that aqueous ammonia transport is not likely to pose a significant hazard to area residents (PPRP Ex. No. 3, pp. 4-89 and 4-90, 5-30 and 5-31). Moreover, Catoctin and DNR agreed to conditions requiring

truck traffic, particularly trucks transporting aqueous ammonia, to use the designated truck route that would not pass by schools or housing developments (see PPRP Ex. No. 15, pp. 37-38, Conditions 92-94, 98). Accordingly, the unrefuted evidence demonstrated that this is not a significant risk.

Frederick County's brief also speculated about decreased property values as support for its requested condition. There was no evidence in the proceeding that the proposed generating facility would cause a decrease in property values and Frederick County's speculation should be disregarded. Instead, the evidence in the proceeding demonstrated that the proposed generating facility would have a positive impact on Frederick County through increased job opportunities and increased tax revenues (Catoctin Ex. No. 5, pp. 12-13; PPRP Ex. No. 13, pp. 4-6; see also PPRP Ex. No. 3, Sections 5.4.1 and 5.4.5). Accordingly, there is no merit to Frederick County's allegation.

It is important to remember that the location of the proposed natural gas-fired generating unit is property currently zoned for industry and adjacent to an existing industrial facility (Catoctin Ex. No. 26, p. 16). In fact, the location is consistent with Frederick County's comprehensive plan (id., p. 18; see also Tr. 1069-70 (cross-examination of Hessong); Catoctin Ex. No. 5, pp. 13-14). Mr. Zwolak testified that the location was selected in coordination with the local community and places the facility within the Eastalco fenceline in close proximity to the existing Eastalco structures (Catoctin Ex. No. 24, p. 3). The location of the proposed generating facility is consistent with Frederick County's existing zoning and the project is compatible with

existing land use patterns (Catoctin Ex. No. 5, p. 15). There is no evidence to support Frederick County's allegations of adverse impacts, nor is there a rational link between those alleged impacts and Frederick County's requested condition. Accordingly, for the reasons set forth more fully in Eastalco's Initial Brief, the Hearing Examiner should deny the condition.

#### CONCLUSION

The substantial evidence in this proceeding demonstrated that the proposed generating facility would not cause significant adverse impacts. This evidence was unrefuted and the Commission should grant the CPCN without Frederick County's requested three-tiered condition. Indeed, the evidence demonstrated that Frederick County's requested condition is contrary to the substantial evidence in the proceeding and, therefore, is arbitrary and capricious. Moreover, imposition of such a condition in the CPCN, especially upon Eastalco, is beyond the Commission's jurisdiction and would be unconstitutional.

WHEREFORE, for the reasons set forth more fully above and in Eastalco's Initial Brief, Eastalco respectfully urges the Hearing Examiner to deny Frederick County's requested condition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this \_\_\_\_ Day of February 2005, I mailed, by first class mail, and/or by electronic mail, a copy of the foregoing REPLY BRIEF OF EASTALCO ALUMINUM COMPANY to all parties listed on the Commission s official service list dated December 13, 2004.

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Jeral A. Milton