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February 18, 2004

The Honorable Joel M. Bright
Public Service Commission of Maryland
6 St. Paul Street, 19th Floor
Baltimore, Maryland 21202

Case No. 8997, In the Matter of 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

Dear Hearing Examiner Bright:

The Staff of the Public Service Commission of Maryland ("Staff") hereby submits this letter in lieu of a Reply Brief for the purpose of responding to the position of Catoctin Power, LLC ("the Company") regarding Staff's proposed conditions. Staff reasserts its initial position that its conditions be adopted in full as contained in the testimony of Staff Witness Taborsky. In addition Staff asks that the conditions be fulfilled 30 days in advance of the Company's proposed plant going on line. This 30-day window will give Staff an opportunity to inspect the upgrades and interconnection requirements of PJM Interconnection, LLC ("PJM").

In its Brief, the Company states

Staff has proposed three conditions which are reflected in Attachment 2 hereto. Catoctin has committed to comply with each of these conditions as part of any CPCN that the Commission issues in this proceeding.¹

The restatement of the Company's agreement to comply with Staff's proposed conditions is consistent with its position on the record.² However, the conditions contained in the Company's brief deviate materially from those proposed by Staff.

¹ Catoctin Brief at 4.

² TR at 1217.

Specifically, Staff proposed the following conditions:

- 1) Prior to putting any portion of the project in service, the applicant shall file with the Commission a listing of the transmission system improvements required by PJM and certification that the improvements have been completed; and
- 2) Prior to putting any portion of the project in service, the applicant shall file with the Commission a listing of the interconnection requirements of the interconnecting transmission line owner and certification that the interconnection requirements have been met.³

In its Brief, the Company restates Staff's proposed conditions as follows:

Catoctin Power shall file with the Public Service Commission a listing of the transmission system improvements required by PJM and certification that the improvements have been completed

Catoctin Power shall file with the Public Service Commission a listing of the interconnecting transmission line owner and certification that the interconnection requirements have been met.⁴⁵

Although most of the discussion on the record dealt with the Company's reluctance to certify work that it had not done itself, the issue on brief became not certification but the timing of the certification. Staff would like to make clear that its conditions, being conditions precedent to operating the proposed plant, are rendered meaningless unless performed *prior to the plant being put into service*. By these conditions Staff attempts to assure that an applicant exercises its best efforts to obtain the necessary information and assurances that all transmission system improvements have been completed and all interconnection requirements deemed necessary have been completed.

Staff's conditions are designed to provide assurances that the stability and reliability of the electric system are not negatively affected by a proposed generating station and, thus, are consistent with the governing statute.⁶ Moreover, imposition of the conditions is supported by Public Service Commission precedent.⁷ Staff reiterates its position in testimony and on brief that, if a Certificate of Public Convenience and Necessity is made subject to Staff's conditions

³ Testimony of Staff Witness Taborsky at 2.

⁴ Brief of Catoctin Power, LLC, unlettered Attachment at 1.

⁵ There is no dispute regarding Staff's proposed condition 3.

⁶ PUC Article §7-207(e)(2)(i), *Annotated Code of Maryland*.

⁷ See e.g. Case No. 8956, *In re Easton Utilities Commission*, wherein the following condition was contained: "Prior to putting any portion of the project in service, Easton Utilities Commission shall file with the Public Service Commission a listing of the transmission system improvements and interconnection facility changes required by PJM and certification that such improvements and changes have been completed. Easton Utilities Commission shall endeavor in good faith to make such a filing at least 30 days prior to putting any portion of the project in service." See also Case No. 8888, *In re Mirant Dickerson Development, LLC*.

precedent, the issue of reliability and stability of the electric system should be decided favorably for the Company. However, without Staff's proposed conditions precedent, the record does not support a positive finding, and Staff recommends that the Company's application be denied.

Finally, Staff would like to respond to the Maryland Office of People's Counsel ("OPC"). Although Staff did not require that its conditions addressed in this letter be satisfied 30 days in advance of bringing the plant on line, Staff supports OPC's suggested language. It has become apparent that Staff will need to inspect the PJM-mandated transmission system improvements and interconnection requirements. Thirty days will be needed for this task.

Very truly yours,

Annette B. Garofalo
Assistant Staff Counsel

cc: O. Ray Bourland, for filing