

**NUMBER:** S-816  
**DATE:** October 23, 2006  
**MAIL LOG NO.:** 103408

**TO:** Kenneth D. Schisler, Chairman  
Harold D. Williams, Commissioner  
Allen M. Freifeld, Commissioner  
Charles R. Boutin, Commissioner

**FROM:** Anthony Myers, Assistant Executive Director

**RE:** Catoctin Power, LLC -- Motion to Amend its Certificate of Public Convenience and Necessity

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**Description of Application:**

On October 16, 2006, Catoctin Power, LLC ("Applicant") filed a Motion to Amend ("Motion") its Certificate of Public Convenience and Necessity ("CPCN"). Specifically, the Applicant seeks to extend the deadlines of certain CPCN conditions and incorporate into the CPCN new environmental standards promulgated since the CPCN was granted in April 2005.

**Groups which should receive a copy of Staff Recommendations:**

Applicant  
Service List for Case No. 8997

**Recommended Action (Including Conditions):**

Staff recommends that the Commission (1) note the filing, (2) direct the Applicant to publish notice of the proposed amendments to the CPCN, and (3) consider the merits of the Motion and any comments submitted thereon at a subsequent administrative meeting.

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Andrew N. Beach  
Staff Counsel

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James R. Schaefer  
Chief Engineer

Commission Action on: \_\_\_\_\_

Approved \_\_\_\_\_ Disapproved \_\_\_\_\_ Accept for Filing \_\_\_\_\_

cc: Craig B. Chesek, Director of Administration and Operations  
Susan S. Miller, General Counsel  
O. Ray Bourland, Executive Secretary  
Bryan Moorhouse, Chief Hearing Examiner  
Office of External Relations

**Comments of the Office of Staff Counsel (S-816)**  
**RE: Catoctin Power, LLC – Motion to Amend its Certificate of Public  
Convenience and Necessity**  
**Page 2**

**Background**

On April 25, 2005, the Commission issued Order No. 79923 in Case No. 8997, granting a CPCN to the Applicant to construct and operate a 600 MW natural gas-fired electric generating facility in Frederick County, Maryland.<sup>1</sup> The CPCN incorporates over 100 conditions addressing primarily environmental issues.

On October 16, 2006, the Applicant filed its Motion requesting that the Commission amend certain conditions to reflect that the construction of the facility has not begun as initially expected. The Applicant identifies four conditions (Condition Nos. 10, 50, 52 and 61) that impose a deadline on when construction must commence under the CPCN.<sup>2</sup>

On October 19, 2006, the Departments of Environment and Natural Resources (“State Agencies”) filed a Response to the Motion. The State Agencies recommend that the Commission (1) grant an 18-month extension for the Applicant’s air permit to construct, which is part of the air quality provisions under the CPCN, and (2) approve the Applicant’s request to extend the water appropriation and supply conditions that are also incorporated in the CPCN. The State Agencies proffer a Supplemental Review Document supporting the recommendations. Finally, recognizing that the Commission does not have a formal review process for modifications to CPCN conditions in its regulations, the State Agencies discuss the federal guidelines for extending the air quality provisions of the CPCN.<sup>3</sup>

**Comments**

Unless the Applicant is able to modify the conditions, certain air quality and water provisions under the CPCN will expire and preclude or limit the Applicant’s ability

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<sup>1</sup> *In the Matter of the Application of Catoctin Power LLC for a [CPCN] to Construct a Nominal 600 MW Generating Facility in Frederick County, Maryland*, 96 Md. PSC \_\_\_\_ (2005).

<sup>2</sup> Condition Nos. 10 (Air Quality Provisions) and 50 (Water Supply) impose an 18-month deadline. Condition Nos. 52 (Water Appropriation for Direct Withdrawal from the Potomac River, if applicable) and 61 (Wastewater Effluent Use for Cooling, if applicable) impose a 2-year deadline.

<sup>3</sup> The Commission’s regulations address the review of applications for a CPCN to construct electric generating facilities and overhead transmission lines, as well as applications for a CPCN to modify existing electric generating facilities and transmission lines. The Commission has addressed CPCN amendment issues that do not involve the modification of existing facilities on a case-by-case basis.

**Comments of the Office of Staff Counsel (S-816)**  
**RE: Catoctin Power, LLC – Motion to Amend its Certificate of Public  
Convenience and Necessity**  
**Page 3**

to construct the facility. For guidance regarding the review process, the State Agencies provide guidelines established by the Environmental Protection Agency (“EPA”) Region 9.<sup>4</sup> The guidelines specify administrative, technical and procedural requirements that are necessary under the federal air laws, which are administered by the State, in order to extend the 18-month commencement of construction deadline imposed on the air quality provisions (Condition No. 10) of the CPCN.

Pursuant to the administrative requirements the Motion must be filed prior to the expiration of the condition (by October 25, 2006), the Applicant must provide justification for extending the deadline, and the Motion must be signed by an appropriate official of the Applicant. The technical requirements call for reanalysis of best available control technology assessments, additional prevention of significant deterioration (“PSD”) review and incorporation of new PSD regulations and requirements. The procedural requirements in relevant part include a caveat that EPA may limit the extension period and that EPA will require a 30-day public comment period, during which a public hearing may be requested pursuant to 40 CFR Part 124.

Based on a preliminary review of the Motion, it appears that the Applicant has satisfied the EPA guidelines for the administrative and technical requirements. In addition, the State Agencies evaluated compliance with the technical requirements and have concluded that extending the deadlines as proposed is in accordance with applicable environmental requirements.<sup>5</sup>

Staff recommends that the Applicant also comply with the EPA procedural guidelines in this matter and publish Notice consistent with the guidelines. The notice should inform the public of the Motion, the State Agencies’ Response, the particulars regarding the submission of comments to the Commission, and information regarding when the Commission will continue this matter and consider the merits of the Motion, the State Agencies’ Response and any public

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<sup>4</sup> Region 9 covers the western portion of the United States. Staff spoke to the Chief of Permits and Technical Assessments Branch, Air Division, of EPA Region 3, which includes Maryland, and it is Staff’s understanding that Region 3 supports the procedural course outlined in the guidelines.

<sup>5</sup> The State Agencies have been discussing this matter with the Applicant since August 2006. Condition Nos. 50 and 52 may be extended at the discretion of the Maryland Department of the Environment Water Management Administration (“MDE-WMA”). The Applicant provides a letter from the MDE-WMA to the Applicant recommending that the Commission extend the deadlines for Condition Nos. 50 and 52.

**Comments of the Office of Staff Counsel (S-816)**  
**RE: Catoctin Power, LLC – Motion to Amend its Certificate of Public  
Convenience and Necessity**  
**Page 4**

comments.<sup>6</sup> Staff recommends that this matter be further considered at an administrative meeting, or immediately following if necessary, approximately two weeks after the 30-day notice period expires.<sup>7</sup>

**Recommendation**

Staff recommends that the Commission (1) note the filing, (2) direct the Applicant to publish notice of the proposed amendments to the CPCN, and (3) consider the merits of the Motion and any comments submitted thereon at a subsequent administrative meeting.

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James W. Boone  
Deputy Staff Counsel

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<sup>6</sup> These requirements are consistent with the Maryland Department of the Environment's notice requirements under COMAR 26.11.02.12 regarding approvals for PSD sources.

<sup>7</sup> If requested by the Applicant, Staff will review the notice prior to publication. The Applicant should also consult with the State Agencies for their input on the contents of the notice.