

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

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 8997

PROPOSED ORDER OF HEARING EXAMINER

Appearances:

James R. Barrett, George D. Cannon, Jr., Stephanie S. Lim, and Rebecca N. Brandt, for Catoctin Power, LLC.

M. Brent Hare and Ransom E. Davis, for the Maryland Department of Natural Resources, Power Plant Research Program.

Jeral A. Milton, for Eastalco Aluminum Company.

Robert A. Ganton and Carl J. Lorenz, for the U.S. Army Corps of Engineers, Baltimore District-Washington Aqueduct Division.

John S. Mathias and Richard J. McCain, for Board of County Commissioners of Frederick County, Maryland.

Margaret W. Tindall, Jill M. Dennis, and Stuart A. Raphael, for the Fairfax County Water Authority.

Joel A. Kramer, for Washington Suburban Sanitary Commission.

Cynthia Green-Warren and Donald F. Rogers, for the Office of People's Counsel.

M. Catherine Dowling, Annette B. Garofalo, and Lloyd J. Spivak, for the Staff of the Public Service Commission of Maryland.

Rolan O. Clark, *pro se*.

Thomas Mangold, *pro se*.

Donald L. James, *pro se*.

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I. INTRODUCTION

On February 25, 2004, Catoctin Power, LLC ("Catoctin", Applicant" or "Company") filed an application with the Commission for a Certificate of Public Convenience and Necessity ("CPCN") to construct and operate a nominal 600 megawatt ("MW") combined-cycle natural gas-fired electric power generating facility at the Eastalco industrial site located in Frederick County, Maryland. The application notes that Catoctin is a wholly owned subsidiary of Sempra Energy Resources and was formed to develop the project. The application was filed pursuant to §§ 7-207 and 7-208 of the Public Utility Companies Article, *Md. Ann. Code*, and includes substantial supporting information. Also, the application requests a waiver of the two-year notice requirement of § 7-208(b) to allow construction to commence in spring 2005.

Following delegation of this matter to the Hearing Examiner Division, a pre-hearing conference was held on April 14, 2004, in Baltimore, Maryland, notice of which was published in a newspaper of general circulation throughout the County. At the pre-hearing conference, a procedural schedule was developed and interventions of parties were granted. In addition to the Applicant, parties granted intervention included the following: Eastalco Aluminum Company ("Eastalco"); U.S. Army Corps of Engineers, Baltimore District-Washington Aqueduct Division ("Washington Aqueduct Division"); Board of County Commissioners of Frederick County, Maryland ("Frederick County"); Power Plant Research Program

of the Department of Natural Resources, representing various State Agencies ("PPRP" or "State Agencies"); the Fairfax County Water Authority ("Fairfax County"); the Washington Suburban Sanitary Commission ("WSSC"); the Office of People's Counsel ("OPC"); the Commission Staff ("Staff"); and *pro se* intervenors Rolan O. Clark, Thomas Mangold, and Donald L. James.

A status conference in this matter was held on June 25, 2004, and evidentiary hearings in this matter were conducted on July 19, 2004, July 20, 2004, July 22, 2004, October 14, 2004, December 9, 2004, and January 12, 2005. In addition to the evidentiary hearings, all of which were conducted in Frederick, Maryland, an evening hearing for the purpose of receiving public comment was also held on January 12, 2005 at Tuscarora High School located near the proposed project, notice of which was advertised to the community through newspaper publication.

A. Summary of Witnesses

The witnesses who appeared during the course of the evidentiary hearings on behalf of the Applicant included the following consultants: Brent B. Waters, Senior Hydrogeologist with Golder Associates, Inc., who testified with respect to water supply and quality, as well as impacts on the Potomac River; Gregory M. Powell, Senior Engineer with Golder Associates, who testified with respect to Potomac River water flow and low flow augmentation proposals; Richard Zwolak, Director of Environmental Planning for Golder Associates, who testified with respect to project effects on

land use, socioeconomic impacts, aesthetics, landmarks, compatibility with the Adamstown land use plans, project buffers, and water supply and pipeline proposals; and Karl Bullock, Staff Ecologist with Golder Associates, who presented ecological analysis and impacts testimony. In addition, other witnesses for the Applicant included Kennard F. Kosky, Environmental Engineer, Project Director and Project Manager for the Air Permitting and Environmental Impact Assessments; and Robert C. McCann, Manager-Air Resources Group at Golder Associates, who presented testimony regarding air quality impacts and noise impacts. In addition, the following witnesses employed by Sempra Energy Resources ("Sempra") also testified on behalf of the application: Gordon Chirdon, the Project Development Director for the project, who testified on various overall aspects of the project including its benefits; and Keith Latham, the Permitting Manager, who testified with respect to air plans, water and discharge plans, and permitting matters.

Witnesses for intervening parties in this proceeding included the following: Dr. Roland Steiner, Regional Water and Wastewater Manager for WSSC; and Erik Hagen, Director of Cooperative Water Supply Operations at the Interstate Commission on the Potomac River Basin, who testified as a panel on behalf of water suppliers who utilize the Potomac River (which includes WSSC, Fairfax County, and the Washington Aqueduct Division). Craig Taborsky, Transmission/Generation Engineer for the Commission Staff, testified with respect to project interconnection and reliability concerns, including proposed conditions. Intervenor

Donald L. James, a nearby resident, testified and expressed general opposition to the project, but noted certain proposed conditions in the event the project is granted, including additional air monitoring near the facility.

Intervenor Frederick County presented three witnesses in this proceeding: Michael Marschner, Director of Frederick County Division of Utilities and Solid Waste Management; Betsy Smith, Chief of the Department of Development Review and Engineering for Frederick County Division of Permitting and Development Review; and Mr. Gary Hessong, the Director of the Division of Permitting and Development Review, which witnesses presented the recommendations of the Frederick County Board of Commissioners including various proposed conditions in the event that a CPCN is granted by the Commission.¹

PPRP, which coordinated an extensive review of the project on behalf of various State Agencies,² presented numerous witnesses in this proceeding, including Diane H. Brown, PPRP Project Manager for review of the application, who presented overview testimony of the State Agencies review as well as the

¹ Frederick County proposed conditions include a proposal that the Applicant seek to obtain a permanent agricultural preservation easement for 250 acres of land currently owned by the Eastalco Aluminum plant as a further buffer area between the project and neighboring property sites, or obtain alternative parcels in consultation with the Carrollton Manor Land Trust. Other County proposed conditions involve site plan, air quality, and water use, in addition to land preservation.

² The State Agencies review coordinated by PPRP includes the Department of Natural Resources (of which PPRP is a part), as well as the State Departments of Agriculture, Business and Economic Development, Environment, Planning and Transportation, and also the Maryland Energy Administration ("MEA").

environmental review document prepared on their behalf. Also, PPRP presented an air quality panel of Julia B. Ross, Senior Air Quality Professional and partner with Environmental Resources Management, Inc.; William V. Paul, Combustion and Metallurgical Division Chief with the Air and Radiation Management Administration ("ARMA"), Maryland Department of the Environment ("MDE"); and Mark E. Garrison, Air Quality Meteorologist with Environmental Resources Management, which panel on air quality presented testimony regarding air quality emissions and impacts of the project. The PPRP water panel included John Grace, Chief of the Source Protection and Appropriations Division of the Maryland Department of the Environment, Water Management Administration; Robert W. Keating, Hydrogeologist with Environmental Resources Management; Gary L. Walters, Environmental Engineer and Manager of the Engineering Group with Environmental Resources Management; and Dr. Stephen Schreiner, Senior Scientist and Program Manager with Versar, Inc., a consultant to PPRP in this matter, which panel testified on the project's water use alternative proposals and effects on surface water resources. Richard M. Letty, Senior Consultant with KM Chng Environmental, Inc., presented testimony with respect to noise impacts, and Dr. Peter D. Hall, President of Metametrics, a consulting economist to PPRP, presented testimony regarding a socioeconomic impact analysis of the project.

At the evening hearing held in this matter on January 12, 2005, numerous interested persons residing near the vicinity of the project commented. The comments from the members

of the public noted concerns regarding potential loss of value of residential properties in the area, concerns regarding effects on water availability, concerns regarding emissions from the area, truck traffic concerns, and specific concerns regarding crossings of water pipes over park service land. In addition, several written comments were filed by nearby citizens, further expressing opposition and concerns with the project, including the need for such a project and alleged detriments that will result to the area, with one commentator indicating the area already suffers from higher risks of health detriments from pre-existing nearby industry affecting the environment.

B. Settlement Agreements

Importantly, during the course of this proceeding, the Applicant has engaged in two settlement agreements with specific parties regarding important issues in this proceeding. Specifically, the water suppliers (Fairfax County, WSSC, and the U.S. Army Corps of Engineers-Washington Aqueduct Division), reached an agreement with the Applicant in October 2004 which has been filed in the record of this case (Catocin Exhibit No. 17, Docket Entry No. 57, filed November 24, 2004), concerning protection of the Potomac River water supply. This agreement contains a "trigger mechanism" which would require Catocin to either release additional water from secured sources to augment low flows in the Potomac River, or to reduce the consumptive water use if the specified conditions for such flow augmentation or use restriction

occur.³ The purpose of the agreement and augmentation/restriction provisions are to ensure that the project will not consume water during drought emergency periods, and that the facility will have no adverse effect on the adequacy of the existing reservoir system to meet water suppliers' needs. Pursuant to the agreement, the water suppliers request that certain proposed conditions of the settlement governing the low flow augmentation and water use reduction be included in the CPCN. These conditions are agreed by the Applicant, and are reiterated in the water suppliers February 4, 2005 final letter-brief.

In addition, the Applicant and PPRP have reached an Agreement of Stipulation and Settlement by which these parties recommend issuance of the CPCN subject to 110 conditions. The parties indicate that with these conditions, the project would meet or exceed requirements of all currently applicable environmental laws and regulations, including those relating to noise abatement and control of air and water pollution. The Settlement includes provisions regarding air quality requirements, including specific standards that require Catoctin to employ the Best Available Control Technology ("BACT") to control emissions of particulate matter, carbon monoxide ("CO"), sulfur dioxide ("SO₂"), and nitrogen oxide ("NO_x") from the combustion turbines and associated duct burners and heat recovery steam generators. The Agreement specifies

³ Catoctin has obtained two possible supply sources of water that can be released to bolster the water supply of the Potomac River when necessary. The second alternative is to decrease consumption at certain times.

emission limits for such pollutants with specified limits that may not be exceeded, as well as separate emission limits for such pollutants for the emergency diesel generator at the plant. The Agreement further states specific Lowest Achievable Emission Rate ("LAER") standards for NO_x emissions and Volatile Organic Compound emissions ("VOC") (which emissions affect ozone), and annual limits for the emissions are also specified as well as average hourly limits. Also, Catoctin must obtain emission reduction offsets for NO_x and VOC at a minimum ratio of 1.3 to 1, so that this project will actually reduce the level of NO_x and VOC by such offsets, thereby improving air quality with respect to ozone.

The PPRP Agreement also contains provisions regarding the water supply used for cooling purposes, addressing both proposed alternative water supply options for which the Applicant seeks authorization in this proceeding. In this regard, Catoctin proposes use of Frederick County wastewater as one cooling supply option, while an alternative option of utilizing Potomac River water is included, and conditions applicable to both options are included in the Agreement. The conditions also include specified provisions that Catoctin shall maintain the minimum amount of low flow augmentation storage of 468 million gallons at two quarries in Jefferson County, West Virginia, and the CPCN is specifically noted as not constituting an authorization to discharge waste water to waters of the State, for which Catoctin must obtain a discharge permit from the Maryland Department of the Environment.

Other aspects of the comprehensive agreement require Catoctin to conduct archeological surveys of selected pipeline corridors in accordance with the Maryland Historical Trust standards. Further, Catoctin shall develop a detailed visual impact mitigation and landscaping plan for above-ground facilities associated with water supply and discharge pipelines (including specific steps to mitigate visual impact on the C & O Canal national historical park and on the Potomac River), and Catoctin shall work with PPRP to prepare a forest planting plan to mitigate for incremental nitrogen deposition from the facility and mitigate forest losses associated with construction of linear facilities. Finally, provisions regarding cultural resources, traffic, other impact mitigation (including a lighting distribution plan to mitigate intrusive night lighting), security procedures, noise control, and land use (including designing the facility in substantial conformance with the site plan drawings reviewed by Frederick County) are included in the Agreement.

C. Close of Record

Following the hearings, parties have submitted briefs and reply briefs in this matter, which briefs contained the final recommendations and arguments of the parties. The briefs also contain the final recommendations of the State Agencies through the PPRP brief, although PPRP notes that it has engaged in discussions with the Federal Environmental Protection Agency regarding the

final air quality conditions relating to the project.⁴ However, as no further recommendations have been submitted subsequent to the final briefs, the decision will be based on the final record including the reply briefs of all parties.⁵

All of the evidence and testimony on the record, as well as the comments of the public and arguments of the parties on brief, have been carefully reviewed and given appropriate consideration in reaching a decision on this matter.