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June 5, 2019

Ms. Terry J. Romine  
Executive Secretary  
Public Service Commission of Maryland  
6 St. Paul St., 16th Floor  
Baltimore, Maryland 21202-6806

Re: Reply Memorandum - Application of CP Crane, LLC for a  
Certificate of Public Convenience and Necessity - Case  
No. 9482

Dear Ms. Romine:

Enclosed is a Reply Memorandum which is being filed on  
behalf of the Staff of the Public Service Commission in the  
above referenced case.

Sincerely,

Michael A. Dean  
Assistant Staff Counsel

In the matter of the application  
of CP Crane LLC for a \*  
Certificate of Public \*  
Convenience and Necessity \*  
authorizing the modification of \*  
the Charles P. Crane Generating \*  
Station in Baltimore County, \*  
Maryland \*

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BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

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Case No. 9482

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REPLY MEMORANDUM

In accordance with Pub. Utils. § 3-113(d)(2) and COMAR 20.07.02.13, the Staff of the Public Service Commission files this Reply Memorandum regarding the Appeal filed by Blue Water Baltimore, the Gunpowder Riverkeeper, and the Essex-Middle River Civic Council (collectively, "Blue Water"),<sup>1</sup> of the Proposed Order in the Application for a certificate of public convenience and necessity ("CPCN") filed by CP Crane LLC ("Crane" or "Applicant") to modify the Charles P. Crane Generating Station in Case No. 9482. Staff recommends that the Commission deny the Appeal.

1. Background.

On May 31, 2018, Crane filed an Application for a CPCN to modify the Charles P. Crane Generating Station by repowering its existing coal-fired units with three combustion turbines fired primarily with natural gas (the "Project"). The Application,

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<sup>1</sup> Blue Water is the collective name used in the Proposed Order. In some of their documents, Blue Water describes themselves collectively as the "Intervenors."

which was accompanied by an Environmental Review Document ("ERD") and supporting testimony, was docketed as Case No. 9482 and delegated to the Public Utility Law Judge ("PULJ") Division. Parties to the case included the Baltimore Gas and Electric Company ("BGE"), the Power Plant Research Program ("PPRP") of the Department of Natural Resources, and Blue Water.

Initially, the Application was deemed deficient, but after supplementation by the Applicant, PPRP filed a notice that the Application was administratively complete. Consistent with the modified procedural schedule, direct testimony was filed by BGE, PPRP, and Staff, and rebuttal testimony was filed by Crane. PPRP then filed a Revised Project Assessment Report along with its proposed licensing condition. Blue Water did not file any testimony in the proceeding. Staff filed revised testimony with its proposed conditions, and the Applicant and BGE filed a status report on April 1, 2019, indicating that they had agreed to the proposed listed therein, removing the only remaining reported dispute among the parties.

An evening public comment hearing was also held on April 1, 2019. The public notices for the hearing published in local newspapers stated that written public comments could be filed with the Public Service Commission until April 4, 2019.<sup>2</sup>

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<sup>2</sup> A copy of the Certificate of Publication for Public Comment Hearing was filed on April 18, 2019, as Mail Log No. 224494.

On April 4, 2019, a hearing was held for taking evidence where pre-filed testimony was entered into the administrative record and witnesses were cross-examined by the PULJ. Blue Water did not submit any testimony or other evidence into the administrative record. PPRP filed its final recommended licensing conditions on April 15, 2019.

On May 3, 2019, Blue Water filed a public comment letter, Mail Log No. 225104, which included several of the same arguments and claims made in its later Appeal.<sup>3</sup>

On May 17, 2019, PPRP filed documentation showing that the Maryland Department of the Environment had responded to particular comments required by the United States Environmental Protection Agency for the State Implementation Plan.

On May 22, 2019, the PULJ, finding that the criteria of Pub. Utils. § 7-207 were satisfied, issued a Proposed Order that approved the Application for the CPCN. The Proposed Order stated that parties wishing to appeal the Proposed Order had to file their Notice of Appeal and associated Memorandum of Appeal by May 29, 2019, and that any Reply Memorandum would be due by June 5, 2019.

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<sup>3</sup> This public comment letter, similar to other written public comments received by the Public Service Commission, is not in the electronic docket for Case No. 9482. The Blue Water public comment letter was filed after the April 4, 2019 deadline for receipt of public comments listed in the public notice for the case.

On May 22, 2019, Blue Water filed its Notice of Appeal and Memorandum of Appeal.

2. Basis of Appeal.

The Blue Water Memorandum of Appeal essentially argues that the Proposed Order (1) is based on an incomplete record as the Applicant's ERD was incomplete, (2) is arbitrary and capricious as it failed to include a discussion or consideration of climate change, (3) that the evaluation of Pub. Utils. § 7-207 criteria was deficient for not including climate change and its impact on some of the criteria, and (4) is based on a faulty premise that there is an economic need for the Project or that it supports the stability of the grid.

3. Argument.

- (a) The Appeal of Blue Water, which complains that the Proposed Order does not address climate change and that the public record fails to include certain documents and information, should be denied as Blue Water failed to participate and submit testimony or other evidence into the administrative record or make its argument during the proceeding.

Although it obtained party status in the proceeding, Blue Water did not submit any testimony or other evidence into the administrative record as allowed by Pub. Utils. § 3-107<sup>4</sup> and

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<sup>4</sup> In addition to any other right a party in a proceeding before the Commission may be entitled to, the party may:

failed to comply with its obligations under § 3-111(b)(1).<sup>5</sup> As a result, the issues and lack of evidence of concern to Blue Water is not included in the administrative record of the proceeding. Under Pub. Utils. § 3-113(a), a Proposed Order, which may become a Commission order under the statute, can only be based on consideration of the administrative record in the proceeding.<sup>6</sup> "Factual information or evidence not made part of the record may not be considered in the determination of the case."<sup>7</sup>

Blue Water in its Appeal now argues that the Proposed Order is deficient because it is not based upon or lacks a discussion of evidence that Blue Water failed to place into the

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(1) summon witnesses, **present evidence**, and present argument;

(2) conduct cross-examination and **submit rebuttal evidence**; and

(3) take depositions in or outside of the State, subject regulation by the Commission to prevent undue delay, and in accordance with the procedure provided by law or rule of court with respect to civil actions.

Pub. Utils. § 3-107 (emphasis added).

<sup>5</sup> Any evidence, including records possessed by the Commission, that the Commission or a party in a proceeding before the Commission desires to use, **shall be offered and made part of the record**.

Pub. Utils. § 3-111(b)(1) (emphasis added).

<sup>6</sup> A decision and order of the Commission in a contested proceeding shall:

(1) **be based on consideration of the record**;

(2) be in writing;

(3) state the grounds for the conclusions of the Commission; and

(4) in the case of a complaint proceeding between two public service companies, be issued within 180 days after the close of the record.

Pub. Utils. § 3-113(a) (emphasis added).

<sup>7</sup> Pub. Utils. § 3-111(b)(2).

administrative record. Blue Water should not be permitted, as a party, to fail to actively participate in the proceeding and then complain that the Proposed Order is in any way deficient. The lack of participation of Blue Water, as required by statute of a party, is fatal to its argument, and requires dismissal of the Appeal.

- (b) The Proposed Order should not be rejected for failing to include a discussion of climate change or its effects upon the Pub. Utils. § 7-207 criteria.

Blue Water argues that the Proposed Order is deficient for failure to include a discussion of climate change and its effects upon the criteria of § 7-207 for reviewing a CPCN. However, no part of § 7-207 explicitly requires that a discussion of climate change be included as part of the approval of an Application for a CPCN, and the Commission has never required that any consideration of climate change and its effects be included in a Proposed Order or CPCN proceeding. As Staff is bound by Commission precedent, Staff recommends that the Commission reject this argument of the Blue Water Appeal.<sup>8</sup>

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<sup>8</sup> Should the Commission wish to change its policy regarding consideration of climate change in proceedings such as those for approval of a CPCN, it should provide notice to the public and regulated persons and obtain their input by proceeding by rulemaking, and not through orders in a contested case proceeding. See *Delmarva Power & Light Co. v. Pub. Serv. Comm'n of Md.*, 370 Md. 1, 803 A.2d 460 (2002).

- (c) The claim that the Application was incomplete is not a sufficient basis for not upholding the Proposed Order.

Blue Water states that the Application was incomplete as the ERD filed with it failed to have a complete list of required permits and approvals, and that the Proposed Order is thus based on incomplete information. However, this is not a sufficient reason for rejection of the Proposed Order, as it is easily cured. The Blue Water public comment letter states that the list of additional permits and approvals was provided by Crane in a response to a data request, but that the Crane ERD was not updated.<sup>9</sup> As the information regarding any permits or approvals missing from the ERD is readily available, at most the Commission in its order should direct that the Applicant file an update to the ERD prior to commencing construction of the Project.<sup>10</sup>

- (d) The questioning of the need for the Project by Blue Water is not a basis for overturning the Proposed Order.

Blue Water asserts that the Proposed Order is based upon a faulty premise that there is an economic need for the project or that the Project will provide any support for the stability or reliability of the grid. However, the Proposed Order notes that

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<sup>9</sup> Blue Water public comment letter, pp. 2-3.

<sup>10</sup> Staff notes that there is no claim being made that the CPCN licensing conditions recommended by PPRP are in any way deficient.

the new combustion turbines that will be installed at the generating station will be used as peaking units that can be quickly started when needed.<sup>11</sup> The new units "will provide PJM with additional generating flexibility, including faster startups and faster load changing capability."<sup>12</sup> The need for peaking units to support grid stability is well established. This Blue Water concern is neither a valid or sufficient basis for not affirming the Proposed Order.

4. Conclusion.

For the reasons stated above, the Commission should reject the Appeal of Blue Water, and affirm the Proposed Order of the PULJ.

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Michael A. Dean  
Assistant Staff Counsel

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<sup>11</sup> Prop. Order p. 6.

<sup>12</sup> Prop. Order pp. 11-12.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above Reply Memorandum of the Staff of the Public Service Commission of Maryland was provided electronically by e-mail this 5th day of June, 2019, to the Service List of Case No. 9482.

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Michael A. Dean