

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

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

Case No. 9482

**MEMORANDUM OF APPEAL OF INTERVENORS BLUE WATER BALTIMORE,
THE GUNPOWDER RIVERKEEPER, AND THE ESSEX-MIDDLE RIVER CIVIC
COUNCIL**

On May 22, 2019, the Public Utility Law Judge Law (PULJ) issued a proposed order (“Order”) granting to C.P. Crane (“Applicant”) a Certificate of Public Necessity and Convenience to modify the Charles P. Crane Generating Station (“Crane Station”) in Baltimore County, Maryland. The Applicant seeks to modify the existing facility by repowering Crane Station through permanently retiring its existing coal-fired units and installing and operating three combustion turbines fired primarily with natural gas (“Repowering Project”).

Blue Water Baltimore, the Gunpowder Riverkeeper, and the Essex-Middle River Civic Council, (“Intervenors”) through undersigned counsel, submit this memorandum on appeal of Public Utility Law Judge Lawrence’s (PULJ) Proposed Order (“Order”) dated May 22, 2019. The notice of appeal was filed concurrently with this memorandum.

Intervenors appeal the issuance of the Order as being based on an arbitrary decision-making process and based on an erroneous determination of law. The Order was arbitrarily issued because it is based on a Record that is incomplete and lacks the inclusion of highly relevant information to a CPCN determination. This information relates to climate change and its potential to negatively impact the facility. The record is devoid of any consideration of how climate change impacts that generally affect Maryland, such as sea level rise, storm surges, and increases in storms

and extreme weather events, will specifically impact the construction and operation of the repowering project. The lack of consideration of this highly relevant information renders the Order arbitrary and the PSC should reopen the case and require the applicant and the relevant permitting agencies to conduct an analysis of the risk and potential impacts of climate change on this facility. Furthermore, this Order is based on a CPCN application that was never compliant with minimum filing requires and therefore its issuance is based on an erroneous determination of law and should not be granted until the Applicant has supplemented their Application to meet minimum regulatory requirements. Lastly, the due consideration analysis performed in granting this CPCN is faulty because of the Record's missing information. As such, Intervenor request the Commission deny the Order and require the Applicant and pertinent regulators to supplement the record with the missing information and analyses to allow for a more robust consideration of the project.

BACKGROUND

Relevant background information for this case is found in the Order at Parts I, II, and III.

STANDARD OF REVIEW

Public Utilities Article 7-207(e) details the analysis the PSC must take prior to taking final action on a CPCN application.¹ This analysis requires the commission take “due consideration” of a number of factors.²

Additionally, decisions of the PSC, which is not an agency covered by the Maryland Administrative Procedures (“APA”) act are reviewed largely in the same fashion as decisions of agencies regulated by the Maryland APA.³ Therefore, the decision of the PULJ in this case can be

¹ PUA 7-207(e).

² *Id.*

³ *Bergman v. Bd. of Regents of Univ. Sys. of Md.*, 167 Md. App. 237, 268-69, 892 A.2d 604 (2006).

overturned if unconstitutional, if it exceeds statutory authority, if based on an error of law, if unsupported by substantial evidence in the record as a whole, or if the decision was arbitrary and capricious.

ARGUMENT

I. THE PROPOSED ORDER IS BASED ON AN INCOMPLETE APPLICATION AND ITS APPROVAL IS THEREFORE AN ERRONEOUS DETERMINATION OF LAW.

COMAR 20.79.01.04 states that a CPCN Application shall include:

“A list of each local, state, or federal government agency having authority to approve or disapprove the construction or operation of the project and containing a statement:

- (1) Indicating whether the necessary approval from each agency has been obtained, with a copy of each approval or disapproval attached,
- (2) If necessary, approval has not been obtained, the reason why, and
- (3) Indicating whether any waiver or variance has been granted or requested with a copy of each attached;”⁴

The Applicant submitted an Environmental Review Document (“ERD”) as part of their Application. The ERD at page 1-6 Table 1.3-1 lists the permit/approvals “required for the CP Crane CT Repowering Project. This list is incomplete, to the best of Intervenors’ knowledge. The following permits are also required and not listed on ERD Table 1.3-1: Individual State Discharge Permit/NPDES Permit MD0001511; General State Discharge Permit for Construction Stormwater Discharges⁵; State Permit to Operate⁶; State Part 70 (Title V Operating Permit)⁷; Baltimore County Industrial Wastewater Discharge Permit⁸; Notice of Exemption from Maryland Department of

⁴ COMAR 20.79.01.04.E. (2019)

⁵ COMAR 26.08.04.09.A.

⁶ COMARE 16.11.02.14.

⁷ COMAR 26.11.03.02

⁸ <https://www.baltimorecountymd.gov/Agencies/publicworks/faq/iwwpermitfaq.html> Accessed 4/2/2019.

Environment (“MDE”) water supply program⁹. Additionally, Table 1.3-1 and the Application do not contain a “copy of each approval” or a statement indicating why listed approvals have not been obtained. On February 19, 2019, the Intervenor requested Applicant update Table 1.3-1 to include all required permits, as well as provide statements in the ERD explaining why each approval had not yet been obtained.¹⁰ The Applicant did not update the ERD, instead confining their updates to a Data Request response that is not published in the public PSC docket.

The Applicant failed to update their application during the proceeding for case # 9482. This failure to update results in an incomplete application being presented to the PSC. The Application does not comply with COMAR 20.79.01.04 and therefore, the grant of a CPCN to the Applicant based on this incomplete application results in an error of law that must be reversed.

II. THE RECORD FAILS TO INCLUDE ANY DISCUSSION OR CONSIDERATION FOR CLIMATE CHANGE AND THEREFORE THE ISSUANCE OF THIS ORDER WAS ARBITRARY AND CAPRICIOUS

In 2019, climate change is arguably the most pressing issue facing this state, the country and the world, it impacts almost every facet of modern society.¹¹ The Chesapeake Bay and Maryland face a number of challenges as a result of climate change. The most pertinent to this case are sea level rise in the Bay and an increase in storms and extreme precipitation events in Maryland.¹² These issues are highly relevant to the construction and operation of this project located on a peninsula in the Chesapeake Bay that is directly subject to sea level rise and increased extreme precipitation events. Climate change and its impacts and the potential of these impact to

⁹ PPRP Draft Licensing Conditions Part VI.C-1.

¹⁰ See Environmental Groups DR-2

¹¹ *Special Report Global Warming of 1.5°* Intergovernmental Panel on Climate Change <https://www.ipcc.ch/sr15/> (Last Accessed 5/20/2019).

¹² Virginia Institute of Marine Science Chesapeake Bay Sea-Level Report Card https://www.vims.edu/bayinfo/bay_slrc/index.php (Last accessed 4/10/2019) and <https://www.sciencedaily.com/releases/2018/07/180731164106.htm>

negatively affect the day to day operation of the facility including specific impacts on stormwater management and flooding and infrastructure damages are highly relevant in this case.¹³

In the face of conclusive scientific consensus, it is no longer acceptable for state regulators to ignore the interplay between permitting decisions and climate change. Climate change and its impacts must be front and center in all permitting decisions, especially for decisions regarding facilities, such as the CP Crane facility, that are sited in susceptible areas and house sensitive infrastructure like natural gas pipelines, compressor stations, and above ground fuel tanks, not to mention sites with ongoing remediation of contaminated soil and groundwater like the CP Crane site. All of these site specifics plus the unique climate change impacts facing Maryland make the lack consideration or even the mention of climate change in the record all the more glaring. As such, the Commission should reverse the Order and require the Applicant and pertinent regulators to conduct an analysis of climate change's potential to negatively impact the construction and operation of this repowering project.

The failure of an agency to consider relevant facts in a determination results in an arbitrary decision by that agency. Here, the relevant fact that was not considered was the fact that climate change is real and is impacting Maryland in a number of specific and quantifiable ways. The Record does not contain an analysis or even a discussion of how climate change may impact the repowering project. The Record nor the Order contain any explanation as to why this fact was not considered.

As such, the Order was issued on an arbitrary basis without considering the pertinent fact of climate change or explaining why climate change was not considered. The Commission should

¹³ For a longer list of how climate change impacts this project see Intervenor's Public Comment Submitted May 3, 2019, Pg 7. Comment 12.

therefore reverse the Order granting the CPCN and require the Applicant and pertinent regulators to supplement the Record with adequate considerations for this fact.

Despite the relevancy of climate change to this project a discussion and consideration for these issues is missing from the Record. It was therefore arbitrary to issue an Order without having considered climate change and how it may impact the construction and operation of the Repowering Project.

III. THE DUE CONSIDERATION ANALYSIS CANNOT BE COMPLETED WITH PERTINENT FACTS MISSING FROM THE RECORD.

As stated above, the failure to consider climate change and the potential for climate change to negatively impact the construction and operation of the repowering project is fatal to the Order and it must be reversed. The failure to include and consider climate change in the record is also fatal to the Judge Lawrence's due consideration analysis of water quality impacts and economics. Climate change can adversely impact both of these factors and with the information and analysis missing from the Record it is impossible for the due consideration analysis to be completed.

Climate change combined with the construction and operation of the repowering project may result in enhanced negative impacts to the surrounding water quality. This may result from increases in stormwater runoff offsite during storms as well as impacts to dewatering and onsite hydrocarbon remediation projects that could result in impacts to the surrounding water quality. The record contains no indication that climate change impacts on water quality at the facility was considered. Furthermore, there is no indication in the Record that climate change and its potential negative impacts on water quality was a factor in the due consideration analysis of the environmental impacts. Therefore, proper due consideration analysis is impossible with this information missing from the Record.

Furthermore, without any information regarding climate change in the Record a complete due consideration analysis of the project's effect on economics and the potential and risk of the facility being rendered inoperable because of flooding or other climate change impact must be included in the economic analysis. Additionally, any negative environmental impacts of the facility stemming from climate change must also be factored into the economic analysis. As the Record is now, with this information and analysis missing, it is impossible for Judge Lawrence and the public to determine if the economic benefits outweigh the risk. If this facility becomes a stranded asset because of these climate change impacts, it surely will not have any economic benefit to Maryland and its citizens. It is risk like this and others that must be reviewed when determining the economic impact of the repowering project.

As such the PSC should reverse the Order and require that the Applicant and the relevant agencies go back and analyze the potential for climate change to impact water quality and economics during the construction and operation of the repowering project. With this information supplemented into the Record then Judge Lawrence will be provided with adequate information upon which to conduct the due consideration analysis.

IV. THE ORDER IS BASED ON A FAULTY PREMISE THAT THERE IS AN ECONOMIC NEED FOR THIS PROJECT AND THAT IT SUPPORTS THE STABILITY AND RELIABILITY OF THE GRID

In the Applicant's ERD it states that the repowering project will "continue" to support grid reliability and stability.¹⁴ Yet the record indicates the project has not provided energy to the grid since at least June 2018. Therefore, the facility has not been providing energy to the grid for almost a year. So, in fact, the repowering project will not "continue" to support anything because the grid

¹⁴ ERD at 3-29.

has been reliable and stable for at least the last year without the addition of CP Crane's electricity. The repowering project will provide 164 MW to the PJM system that manages 178,600 MW¹⁵. This means that CP Crane would provide approximately .09% of the energy to PJM when operating at full capacity. Furthermore, documentation with FERC detailed that CP Crane did not have a market for its energy production for the 2018-2019 and 2019-2020 delivery years.¹⁶ This FERC documentation is highly relevant to the case at hand and was not included in the Record. On top of that it demonstrates that CP Crane has known for more than a year now that they have no buyers of their electricity yet all the while they have pursued this repowering project.

The Applicant made no attempt to demonstrate there is an actual market for their energy production or that repowering project will support grid stability and reliability. Instead the Record merely contains self-serving declarations¹⁷ by the Applicant that are not support by documentation or adequately reviewed by the relevant agencies.

As such, the Order granting the CPCN is not supported by actual documentation that there is a market need for the repowering project and that it would support grid stability and reliability. Therefore, the Order should be reversed, and the Applicant should be required to provide actual demonstration for how the repowering project will serve a market need for their generation capacity and that the repowering project supports grid reliability and stability.

¹⁵ ERD at 3-29

¹⁶ ¹⁶ FERC Approval Letter to CP Crane Re: Limited Waiver Request. 162 FERC ¶ 61,016, FERC Docket No. ER18-344-00, January 12, 2018. <https://www.ferc.gov/CalendarFiles/20180112124840-ER18-344-000.pdf>

¹⁷ *Id.* at 3-28 and 3-29.

CONCLUSION

WHEREFORE, for the following reasons, the Commission should REJECT the proposed order to issue a CPCN to CP Crane for the Repowering of the CP Crane Generating Station and require the Applicant and pertinent regulators to supplement the record with analysis and facts to address the deficiencies detailed above.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Patrick DeArmey', written over a horizontal line.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of May 2019, a copy of the foregoing Memorandum of Appeal was served by electronic mail to all parties listed on the official service list in this proceeding.

A handwritten signature in black ink, appearing to read 'Patrick F. DeArmey', is written over a horizontal line.

Patrick F. DeArmey