

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND**

**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 )**

**Case No. 9482**

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**DEPARTMENT OF NATURAL RESOURCES/ POWER PLANT RESEARCH  
PROGRAM'S REPLY BRIEF ON APPEAL**

The Maryland Department of Natural Resources, Power Plant Research Program (hereafter, "PPRP"), through undersigned counsel, submits this Reply brief in response to the arguments set forth in the Appeal brief filed by counsel for intervenors Blue Water Baltimore, the Gunpowder Riverkeeper, and the Essex-Middle River Civic Council (hereafter, "Blue Water") on May 29, 2019.

**BACKGROUND**

Blue Water's brief asserts that the Proposed Order issued by Public Utility Law Judge ("PULJ") Lawrence on May 22, 2019, in which the PULJ recommended approval of CP Crane's application for a CPCN, is based on "an arbitrary decision-making process and based on an erroneous determination of law," (Blue Water brief at 1)<sup>1</sup> and that the CP Crane CPCN application "was never compliant with minimum filing requirements and therefore its issuance (sic) is based on an erroneous determination of law . . . ." (Blue Water brief at 2).

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<sup>1</sup> Blue Water's brief is not paginated, and page references herein are to Blue Water's brief starting with the title page as page 1, and proceeding to the end at page 9.

## **STATEMENT OF FACTS**

The Proposed Order sets forth the procedural history of this case (Proposed Order at 1-5, hereafter PO at \_\_\_\_), and Blue Water adopted this recitation of facts without any addition or challenge. Blue Water brief at 2. PPRP adopts the facts set forth in the PO, and incorporates them in the additional facts recited here.

1. CP Crane filed its CPCN application on May 31, 2018. PO at 1.
2. On July 10, 2018, Blue Water was granted status as a party. PO at 2, PSC 9482 docket entry 19. Thus, Blue Water was a party to the case within six weeks of the CPCN filing.
3. Also on July 10, 2018, PPRP filed a notice of deficiency in accordance with the process for advising the Commission on the application's completeness in accordance with COMAR 20.79.01.08.
4. On July 26, 2018, CP Crane filed a notice on intent to cure the deficiency noted by PPRP, and did so on August 31, 2018. PSC 9482 docket entry 26.
5. On September 12, 2018, PPRP advised the Commission that the application was complete, and Judge Lawrence issued a determination of completeness on September 19, 2018. PSC 9482 docket entries 27 and 28.
6. A Modified Procedural Schedule was issued on October 5, 2018, directing the parties, other than applicant, to file direct testimony by March 4, 2019, and scheduling an evidentiary hearing for April 4, 2019. PSC 9482 docket entry 30.
7. The record and case jacket for PSC 9482 show that Blue Water did not file any direct testimony or supporting exhibits by March 4, 2019.

8. A settlement update provided to Judge Lawrence by counsel for the applicant on March 22, 2019 advised that “there were no contested issues between Applicant, PPRP, Staff, OPC, and or Blue Water.” PO at 4. On April 1, 2019, BGE indicated that it no longer had any contested issues, PO at 5.
9. An evidentiary hearing on the CPCN application was held on April 4, 2019. PSC 9482 docket entry 48. The transcript of the evidentiary hearing, which is noted in the case jacket but not part of the record, will, on information and belief, show that Blue Water did not provide any testimony or exhibits at the hearing, but did ask that the public comment hearing period be extended.
10. On April 22, 2019, counsel for CP Crane sent a letter to Judge Lawrence stating that “counsel for each party has authorized me to state that they will not be submitting briefs in this proceeding.” PSC 9482, docket entry 51.
11. The deadline for submitting written public comments was extended to May 3, 2019. PO at 7.
12. At the close of the extended public comment period, a number of public comments were filed, noted and given due consideration in the Proposed Order (PO at 7-8).

### **STANDARD OF REVIEW**

In conducting its independent review of an application for a CPCN, PPRP is guided by the criteria set forth in the Maryland Annotated Code, Public Utilities Article §7-207, which contains three categories of criteria to which the Commission must give “due consideration.” The first matter for consideration is the recommendation of the host county or local jurisdiction in which the project will be located. *See* Public Utilities Article §7-207(e)(1). The second category is a listing of seven subject-matter topics, which generally outline the areas that PPRP’s

recommended conditions seek to address in cases where the reviewing State agencies recommend approval of the CPCN. Public Utilities Article §7-207(e)(2)(i)-(vii). The final category, which became effective October 1, 2017, and only applies to generating stations, requires due consideration of the consistency of the CPCN application with the local government's comprehensive plan and zoning, and the applicant's efforts to resolve issues raised by the local government. Public Utilities Article §7-207(e)(3)(i)-(ii). These criteria are not all equally weighted, and the PULJ has discretion to give different weights to each criterion as part of the due consideration analysis. *See Mills Branch*, Order No. 88021 at 30 (February 10, 2017). In addition, Public Utilities Article §3-111(b)(2), addressing which evidence is part of the official record, states that "[f]actual information or evidence not made part of the record may not be considered in the determination of a case." The Proposed Order in this case makes clear that the PULJ carefully considered all of the criteria in the record, giving due consideration to numerous factors.

### **ARGUMENT**

Blue Water did not enter any evidence into the record, despite being a party to the proceeding almost since its inception. Public Utilities Article §3-107 allows a party such as Blue Water to summon witnesses, present evidence, present argument, conduct cross-examination, and submit rebuttal evidence. Blue Water did none of these, and the record is devoid of any evidence submitted by Blue Water that would support its appeal. Yet, Blue Water argues, throughout its brief, that the Judge committed error by not considering the adverse impact on climate change it alleges will result from recommending approval of the CP Crane application for a CPCN. Blue Water brief at 1-7. The brief fails to provide legal authority in

support of its vague allegations of error. Blue Water's argument is without substance and should be dismissed without further review.

As noted above, Blue Water's sparse citation to supporting authority in its brief is not record evidence, and Public Utilities Article §3-111(b)(2), prohibits Judge Lawrence from addressing "[f]actual information or evidence not made part of the record . . . ." Blue Water cites several reports on climate change in its brief, but these are not part of the case record, nor is there any specific requirement in Public Utilities Article §7-207(e)(2) to address climate change. Moreover, as noted in the Proposed Order, and unlike the CP Crane coal burning plant, this natural gas burning plant will only operate "during times of peak load or system outages." PO at 2. Operating as what is often called a "peaker" plant, the gas powered CP Crane will have substantially reduced carbon emissions due to substantially reduced operational time. Operating as a "peaker" also rebuts Blue Water's argument (Blue Water brief at 7-8) that there was no economic benefit that warranted recommending approval of the CPCN. It is precisely because the plant will only operate during peak loads or outages that it has value to the overall energy grid. In essence, it is an insurance policy for the rising energy load created by heat waves and arctic blasts, or the need to provide power when other sources are unavailable. Finally, the Proposed Order notes that the repowered CP Crane generating plant will provide PJM, the Regional Transmission Organization, "with additional generating flexibility, including faster startups and faster load changing capacity." PO at 11-12.

Blue Water's brief on appeal, even if considered well intentioned, amounts to an invitation to the Commission to wade into the national and global discourse on climate change, and add it to the statutory requirements for review of a CPCN that the legislature set forth in Public Utilities Article §7-207(e)(2). There is no basis to support such a request and Blue Water

fails to cite to any authority that would support such usurpation of controlling legislative authority.

In contrast, Judge Lawrence's Proposed Order carefully addresses the record evidence in the context of existing statutory requirements set forth in Public Utilities Article §7-207(e)(2), and is neither arbitrary nor based on erroneous law. In addition, the Proposed Order recommends extensive licensing conditions (PO, attachments A-C) submitted by PPRP and PSC Staff that are protective of human health, the environment, and other factors set forth in Public Utilities Article §7-207(e)(2). The Proposed Order also notes that Baltimore County "made no recommendations with regard to the Repowering Project, and Applicant's adherence to PPRP's recommended Licensing Conditions addresses concerns germane to Baltimore County." PO at 11.

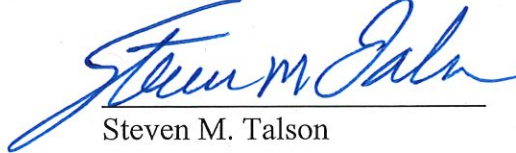
Accordingly, there is no error of law, nor is there any evidence of record that the Proposed Order is arbitrary and capricious. To the contrary, the Proposed Order carefully follows the requirements of Public Utilities Article §7-207 in reviewing the CPCN application and recommending approval of the CPCN.

### **CONCLUSION**

Judge Lawrence's Proposed Order is based on an extensive record and the Proposed Order properly follows the statutory requirements for evaluating an application for a CPCN within the facts set forth in the official record. Blue Water, as a party to the proceeding, failed to enter any evidence into the record. The findings and recommendation set forth in the Proposed Order are amply supported by evidence of record, and the Commission should affirm the Proposed Order and deny Blue Water's appeal.

Dated: June 4, 2019.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of this Reply brief on appeal were served on all parties of record via electronic mail on June 4, 2019.



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