

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND**

IN THE MATTER OF THE APPLICATION OF	*	
C.P. CRANE LLC FOR A CERTIFICATE OF		
PUBLIC CONVENIENCE AND NECESSITY	*	Case No. 9482
AUTHORIZING THE MODIFICATION OF		
THE CHARLES P. CRANE GENERATING	*	
STATION IN BALTIMORE COUNTY,		
MARYLAND	*	

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REPLY MEMORANDUM ON APPEAL OF C.P. CRANE LLC

C.P. Crane LLC (“CP Crane” or “Applicant”) hereby submits this Reply Memorandum on Appeal with the Public Service Commission of Maryland (the “Commission”). This Reply Memorandum on Appeal is submitted pursuant to Section 20.07.02.13 of the Code of Maryland Regulations (“COMAR”) and responds to the May 29, 2019 Memorandum on Appeal filed by Blue Water Baltimore, the Gunpowder Riverkeeper, and the Essex-Middle River Civic Council (“Intervenors”) regarding the Proposed Order of Public Utility Law Judge issued May 22, 2019 (“Proposed Order”) in the above-captioned matter.¹

I. STATEMENT OF THE CASE

This is an appeal of a Proposed Order of the Public Utility Law Judge (“PULJ”) granting CP Crane a Certificate of Public Convenience and Necessity (“CPCN”) to modify the Charles P. Crane Generating Station in Baltimore County through permanently retiring its existing coal-fired units and installing and operating three combustion turbines fired primarily with natural gas (the “Repowering Project”). Issuance of the CPCN is subject to a number of licensing conditions recommended by the Power Plant Research Program (“PPRP”) and the Commission’s Technical

¹ Citation to the Intervenors’ Memorandum on Appeal, filed May 29, 2019, will be to “Intervenors’ Memo.”

Staff (“Staff”) and accepted by CP Crane.² PPRP, Staff, and the Office of People’s Counsel (“OPC”) all recommended that the CPCN be granted subject to the recommended licensing conditions.³ The CPCN is also subject to an additional licensing condition agreed to by CP Crane and Baltimore Gas and Electric Company (“BGE”).⁴ CP Crane incorporates by reference the relevant background information included in the Proposed Order at Sections I, II, and III. Intervenor also adopted the procedural history and other background information provided in Sections I, II, and III of the Proposed Order.⁵ Additional relevant facts are provided below in connection with the respective arguments.

II. SUMMARY OF REPLY

Despite having every opportunity during this proceeding to call witnesses, present evidence, present argument, or otherwise contribute to or contest the record of this case, and despite having affirmatively declined to do so, Intervenor now improperly appeal the Proposed Order, arguing that the record of this case is incomplete. Intervenor’s arguments on appeal are without merit and should be disregarded. PUA § 7-207(e) addresses the factors that the Commission must consider in approving an application for a CPCN. The PULJ thoroughly considered each of the requirements of PUA § 7-207(e) and the record evidence in the case and found that approval of the CPCN is in the public interest.⁶ In their appeal, Intervenor primarily allege that the Proposed Order was arbitrarily issued because the record does not include information related to the potential impact of climate change on the construction and operation of the Repowering Project.⁷ Intervenor also argue that the Proposed Order is based on an

² Proposed Order at 10, 29 and Attachments A and B.

³ Proposed Order at 10.

⁴ Proposed Order at 29 and Attachment C.

⁵ See Intervenor’s Memo at 2.

⁶ Proposed Order at 29.

⁷ Intervenor’s Memo at 1-2, 4-7.

incomplete application, ignoring the PULJ's September 2018 administrative completeness determination.⁸ Intervenors have waived these arguments by failing to raise them before the PULJ, and regardless, they lack merit.

Although Intervenors have been a party to the case since July 2018, Intervenors chose not to register any objections to the issuance of the CPCN until well after the evidentiary hearing and deadline for briefing on contested issues.⁹ Instead, Intervenors misled all of the parties and the PULJ by maintaining that they did not contest any issues in the case.¹⁰

Moreover, even if Intervenors are permitted to raise these arguments on appeal, the Proposed Order is supported by substantial evidence and is not arbitrary or capricious. Intervenors fail to provide legal authority in support of their allegations of an "arbitrary decision-making process and erroneous determinations of law."¹¹ To the extent Intervenors' Memo repeats the same arguments as Intervenors' May 3, 2019 public comments, the PULJ fully considered these argument in issuing the Proposed Order.¹² Contrary to Intervenors' vague and conclusory arguments on appeal, the PULJ appropriately considered all factors under PUA § 7-207(e) and issued a well-reasoned decision based on her consideration of the record of the proceeding.¹³ Accordingly, the Commission should reject Intervenors' appeal and affirm the Proposed Order.

⁸ Intervenors' Memo at 3-4.

⁹ Intervenors submitted public comments on May 3, 2019. The public comment period was originally scheduled for February 26, 2019 through April 4, 2019. *See* Dkt. Item No. 33. On April 3, 2019, following a request by Intervenors and others at the public hearing, the PULJ extended the public comment period for an additional 30 days, until May 3, 2019. Dkt. Item No. 46.

¹⁰ *See* Proposed Order at 4-5; *see also* Dkt. Items Nos. 43 and 51.

¹¹ Intervenors' Memo at 1; *see also* COMAR 20.07.02.13(B)(1)(d) (stating that a Memorandum on Appeal shall contain "the argument in support of the appeal with appropriate references to the record and legal authorities").

¹² Proposed Order at 7-8 (summarizing the environmental concerns expressed by Intervenor Blue Water in public comments and emphasizing that all of the public comments were reviewed).

¹³ *See* Md. Code Ann., Pub. Util. § 3-113(a).

III. ARGUMENT

A. Intervenor Waived Their Arguments by Failing to Raise Them Before the Public Utility Law Judge

Intervenors have failed to preserve their arguments and are otherwise estopped from challenging the Proposed Order because they did not file any evidence or briefing with the PULJ. Furthermore, Intervenor stipulated that there were no contested issues in the case.¹⁴

Intervenors have been a party to this matter from the beginning. Intervenor's Petition to Intervene was granted on July 10, 2018, immediately following the prehearing conference.¹⁵ PUA § 3-106 provides that an Intervenor has all of the rights of a party to a proceeding. Intervenor had the right to summon witnesses, present evidence, present argument, conduct cross-examinations, submit rebuttal evidence, and take depositions.¹⁶ Yet Intervenor failed to submit evidence or testimony in the proceeding, remaining silent as Applicant worked with the reviewing state agencies and another intervenor, Baltimore Gas & Electric Company, to address all contested issues.¹⁷ Prior to the April 1, 2019 public hearing, Intervenor's only involvement in the proceeding was to serve Applicant with two small sets of data requests. Applicant responded to these data requests; however, Intervenor did not elect to enter the responses into the record.

Having (i) failed to enter any documents into evidence, (ii) proffered to the parties and the Law Judge that they would not contest the issues,¹⁸ and (iii) confirmed this decision by failing to file a brief, Intervenor should not be permitted to seek the Commission's appellate review by criticizing alleged deficiencies that they had every opportunity to address with the

¹⁴ Proposed Order at 4 (explaining that on March 22, 2019, the parties submitted a settlement status update "indicating that there were no contested issues between Applicant, PPRP, Staff, OPC, and/or Blue Water."); *see also* Dkt. Item No. 43.

¹⁵ Proposed Order at 2; *see also* Dkt. Item No. 19.

¹⁶ Md. Code Ann., Pub. Util. § 3-107.

¹⁷ Proposed Order at 5; Applicant Ex. 13.

¹⁸ Proposed Order at 4; *see also* Dkt. Item No. 51.

PULJ during the almost yearlong proceedings, but instead denied existed.¹⁹ To permit Intervenor to appeal would encourage parties to expend as little effort as possible in the initial proceedings, with the knowledge that if they disapprove of the proposed order, they can appeal. Not only does this frustrate the purpose of delegating to an administrative law judge,²⁰ but it also wastes the Commission's resources and delays resolution of a case.²¹ In short, requiring parties to bring alleged errors and omissions to the attention of the judge hearing the case "is a matter of basic fairness to the trial court and to opposing counsel, as well as being fundamental to the proper administration of justice."²²

Moreover, Intervenor's belated attempt to supplement the record on appeal through citation to supporting authority in its appeal memorandum is not permitted under the statute, which requires parties to "offer[] and ma[k]e part of the record" "[a]ny evidence, including records possessed by the Commission, that the Commission or a party in a proceeding before the

¹⁹ *In the Matter of the Formal Complaint of New Frontiers Telecommunications, Inc. v. Verizon Maryland LLC*, No. 9452, 2018 WL 1110386, at *4 (Feb. 20, 2018) ("New Frontiers had every reason to know if and when to engage in discovery. Rather, it appears that New Frontiers' approach to taking discovery was simply a continuation of the inactive behaviors displayed throughout this matter."); *In Re Verizon Maryland Inc.*, No. 78924, 2004 WL 1049285 (Jan. 30, 2004) ("It may accordingly be laid down as a broad proposition that one who, without mistake induced by the opposite party, has taken a particular position deliberately in the course of litigation, must act consistently with it; one cannot play fast and loose... . [A] party will not be permitted to occupy inconsistent positions or to take a position in regard to a matter which is directly contrary to, or inconsistent with, one previously assumed by him, at least where he had, or was chargeable with, full knowledge of the facts and another will be prejudiced by his actions." (quoting *Matthews v. Underwood-Gary*, 133 Md. App. 570, 579-80 (2000)); *Martingham Prop. Owners Ass'n, Inc.*, 74 Md. P.S.C. 379, 382 (Aug. 9, 1983) (noting that because the parties had not raised any objections to an issue, it "was neither challenged nor preserved on the record by the parties for purposes for appeal to the Commission"). Appellate courts are similarly restricted, because, as is the case here, "[f]acts outside the record cannot be argued to or considered by the trial court, and thus have no influence on its judgment. Accordingly, an appellate court must confine its review to the evidence actually before the trial court when it reached its decision." *Cochran v. Griffith Energy Serv., Inc.*, 191 Md. App. 625, 663, 993 A.2d 153, 175 (2010).

²⁰ Md. Code Ann., Pub. Util. § 3-104(d)(1).

²¹ *Clayman v. Prince George's Cty.*, 266 Md. 409, 416, 292 A.2d 689, 693 (1972) (explaining that the rules do not permit an appellate court to pass on issues and facts not presented to the trial court because to do so "would frustrate the principal purposes of [the rule, which] were (a) to require counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings, and (b) to prevent the trial of cases in a piecemeal fashion, thus accelerating the termination of litigation" (citations omitted)).

²² *Medley v. State*, 52 Md. App. 225, 231, 448 A.2d 363, 366 (1982); see also *In re Kaleb K.*, 390 Md. 502, 513, 889 A.2d 1019, 1025 (2006) (explaining that parties cannot raise issues for the first time on appeal because that would effectively "sandbag[]" the other parties and the court).

Commission desires to use.”²³ “As observed by the Commission in the past, a prerequisite for any evidence to be considered by the Commission for the purposes of an appeal is that a party to the proceeding must have proffered such evidence and made it a part of the official record.”²⁴ “Factual information or evidence not made part of the record may not be considered in the determination of a case.”²⁵ Intervenors are attempting to circumvent this procedural requirement by invoking constitutional rights, but in reality they simply chose not to exercise their rights under the statute; nothing prevented them from presenting the information they claim is needed.

B. The Proposed Order Fully Considered All Factors Under PUA § 7-207(e) and the Record Evidence in the Case and Found that Granting the CPCN is in the Public Interest

Even if Intervenors are permitted to raise waived arguments on appeal, their appeal should be denied. PUA § 7-207(e) sets out the factors to which the Commission must give due consideration prior to taking action on an application for a CPCN:

- (e)(1) the recommendation of the governing body of each county or municipal corporation in which any portion of the construction of the generating station, overhead transmission line, or qualified generator lead line is proposed to be located;
- (2) the effect of the generating station, overhead transmission line, or qualified generator lead line on:
 - (i) the stability and reliability of the electric system;
 - (ii) economics;
 - (iii) esthetics;
 - (iv) historic sites;
 - (v) aviation safety as determined by the Maryland Aviation Administration and the administrator of the Federal Aviation Administration;
 - (vi) when applicable, air and water pollution; and

²³ Md. Code Ann., Pub. Util. § 3-111(b)(1); § 3-113(3)(i) (“On appeal, the Commission promptly shall: (i) consider the matter on the record before the commissioner or public utility law judge . . .”).

²⁴ *In the Matter of the Inquiry into the Payphone Tariffs of Bell Atl.-Maryland, Inc.*, No. 76787, 2001 WL 36653165 (2001); *see also Cmty. Realty Co. v. Siskos*, 31 Md. App. 99, 102, 354 A.2d 181, 183 (1976) (“The parties are not entitled to supplement the record [on appeal] by inserting into their record extract such foreign matter as they may deem advisable.”).

²⁵ Md. Code Ann., Pub. Util. § 3-111(b)(2).

(vii) the availability of means for the required timely disposal of wastes produced by any generating station; and

(3) for a generating station:

(i) the consistency of the application with the comprehensive plan and zoning of each county or municipal corporation where any portion of the generating station is proposed to be located; and

(ii) the efforts to resolve any issues presented by a county or municipal corporation where any portion of the generating station is proposed to be located.

“[T]he public convenience and necessity standard of PUA 7-207(e) requires that the Commission consider all relevant facts and factors and exercise reasonable judgment, not that the Commission employ a particular formula or method.”²⁶ “Overall, the courts will not disturb a decision of the Commission except upon clear and satisfactory evidence that it was unlawful and unreasonable.”²⁷ Section V of the Proposed Order contains an in-depth analysis of each of the applicable factors in PUA § 7-207(e), including discussion of the various Parties’ positions as well as findings and recommendations.²⁸ In addition, the Proposed Order describes the PULJ’s consideration of the public comments filed by Intervenors and other members of the public.²⁹ As discussed below, Intervenors have failed to show that the PULJ’s decision was unsupported by substantial evidence or arbitrary or capricious. The Proposed Order should be affirmed because the PULJ correctly and thoroughly carried out her Commission-delegated duty by considering all of the facts in the record and granting a Certificate of Public Convenience and Necessity to CP Crane.

²⁶ See *Accokeek, Mattawoman, Piscataway Creeks Communities Council, Inc. v. Maryland Pub. Serv. Comm’n*, 227 Md. App. 265, 288, 133 A.3d 1228, 1241, *aff’d sub nom. Accokeek, Mattawoman, Piscataway Creeks Cmty. Council, Inc. v. Pub. Serv. Comm’n of Maryland*, 451 Md. 1, 150 A.3d 856 (2016).

²⁷ *Id.* at 283, 133 A.3d at 1239 (internal citation omitted).

²⁸ Proposed Order at 10-24.

²⁹ Proposed Order at 7-8, 18, 28.

1. The Proposed Order is Based on an Administratively Complete Application and the Final Licensing Conditions Require Applicant to Obtain All Required Permits and Approvals for Construction and Operation of the Repowering Project

Intervenors allege that the Proposed Order is based on an “incomplete application” and therefore issuance of the CPCN is based on an erroneous determination of law.³⁰ COMAR 20.79.01.08 requires the Commission to make an administrative completeness determination before proceeding on review of the Application. PPRP determined that the amended Application was administratively complete on September 12, 2018.³¹ The PULJ then issued a Notice of Completeness Determination on September 17, 2018, stating that the amended Application was administratively complete, and that review of the Application could proceed.³² Therefore, contrary to Intervenors’ assertions, the Application, including Applicant’s Environmental Review Document (“ERD”), complied with COMAR 20.79.01.04.

The PULJ found that “the Applicant’s compliance with the Final Licensing Conditions will result in the Repowering Project satisfying the federal and State environmental laws and local permitting regulations and ordinances.”³³ Intervenors do not allege that any required permits or approvals are not included in the Final Licensing Conditions. Therefore, the permits required for construction and operation of the Repowering Project were fully considered by the PULJ in the Proposed Order and the Final Recommended Licensing Conditions.

2. Section 7-207(e)(2) of the Public Utilities Article Does Not Require Due Consideration of the Effect of Climate Change on the Construction and Operation of the Repowering Project

Intervenors allege that the Proposed Order is arbitrary because it failed to consider “climate change’s potential to negatively impact the construction and operation of this

³⁰ Intervenors’ Memo at 3.

³¹ Proposed Order at 3 (citing Dkt. Item No. 27).

³² Dkt. Item No. 28.

³³ Proposed Order at 29.

repowering project.”³⁴ Intervenor’s are incorrect -- PUA § 7-207(e) does not require any consideration of how “climate change impacts that generally affect Maryland”³⁵ may potentially affect the Repowering Project. The plain language of PUA § 7-207(e)(2) requires due consideration of “*the effect of the generating station, overhead transmission line, or qualified generator lead line on*” seven specific, definite factors: the stability and reliability of the electric system, economics, esthetics, historic sites, aviation safety, air and water pollution, and waste disposal. The appropriate analysis under PUA § 7-207(e)(2) is on how the construction and operation of the generating station *itself* affects the seven enumerated factors. Thus, PUA § 7-207(e)(2) cannot be read to require the record to include an analysis of the effects of climate change on the Repowering Project.

The arbitrary or capricious standard requires a showing that the agency exercised its discretion unreasonably or without a rational basis.³⁶ “Whether an agency decision is arbitrary or capricious also depends, to some extent, on the degree of discretion that the Legislature has conferred on the particular agency with respect to the particular decision.”³⁷ Given the clear language of PUA § 7-207(e)(2), the Proposed Order is not “arbitrary” for lacking a discussion of the potential effects of climate change on the construction and operation of the Repowering Project.

³⁴ Intervenor’s Memo at 5-6.

³⁵ Intervenor’s Memo at 1.

³⁶ *Maryland Office of People’s Counsel v. Maryland Pub. Serv. Comm’n*, 461 Md. 380, 398, 192 A.3d 744, 755-56 (2018) (citing *Harvey v. Marshall*, 389 Md. 243, 297-304, 884 A.2d 1171 (2005)).

³⁷ *Id.* (citing *Communication Workers of America*, 424 Md. 418, 434, 36 A.3d 449, 458 (2012)).

3. The Proposed Order and the Record Include Discussion and Consideration of Issues Related to Climate Change

Intervenors allege that climate change is not mentioned in the record.³⁸ To the contrary, the record reflects consideration of issues related to climate change as well as the public comments regarding climate change. As stated in the Proposed Order, the Repowering Project will reduce emissions of air pollutants as compared to the former coal-fired plant.³⁹ The Proposed Order also found that the Repowering Project, as a natural gas peaker plant, will only operate during times of peak load or system outages.⁴⁰

Both Applicant's ERD⁴¹ and PPRP's Project Assessment Report ("PAR") included greenhouse gases, expressed as carbon dioxide equivalent (CO₂e),⁴² in the air emissions calculations and summary.⁴³ As stated in the PAR, the Repowering Project will result in an estimated net decrease of 576,499 tons per year of CO₂e emissions.⁴⁴ And pursuant to Conditions B-III-1 and B-IV-4 of Attachment A to the Proposed Order, the Repowering Project is subject to the mandatory reporting of greenhouse gas emissions and standards of performance for greenhouse gas emissions.⁴⁵

Moreover, the Proposed Order specifically discusses "climate change" in the summary of the public comments made at the public hearing and submitted during the extended public comment period.⁴⁶ Although PUA § 7-207 does not require any consideration of how climate

³⁸ Intervenors' Memo at 5.

³⁹ Proposed Order at 6; *see also* Applicant Ex. 7 (Application at 4; ERD at 1-5).

⁴⁰ Proposed Order at 2.

⁴¹ Applicant Ex. 7 at 3-19 (Table 3.2.6)

⁴² As explained in the testimony of PPRP witness, William Paul: "the pollutant GHG as CO₂e is the total of six individual gases: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆). *See* PPRP Ex. 5 at 4-5.

⁴³ *See, e.g.*, PPRP Ex. 9, at 4-9 to 4-12; 4-35.

⁴⁴ PPRP Ex. 9, at 4-12 (Table 4-7).

⁴⁵ Proposed Order at Attachment A.

⁴⁶ *Id.* at 7-8.

change impacts in Maryland may potentially affect the Repowering Project, the PULJ reviewed and considered: (1) Intervenors' comments related to climate change at the April 1, 2019 public hearing;⁴⁷ and (2) Intervenors' written public comments, submitted on the last day of the extended public comment period.⁴⁸ As explained in the Proposed Order, "Numerous written comments were received; all of the comments were reviewed."⁴⁹ As a party to the proceeding, Intervenors could have introduced evidence into the record regarding climate change impacts that generally affect Maryland if it felt this was "highly relevant information to a CPCN determination."⁵⁰ Instead, Intervenors, through counsel, elected not to place any information in the record. Intervenors' vague and conclusory statements about climate change impacts do not merit further review.

4. The Proposed Order Fully Considered the Effect of the Repowering Project on Economics and Water Quality

Intervenors appear to argue that in addition to considering the potential impact of climate change on the Repowering Project, the PULJ should have also considered the potential impact of climate change in the analysis of "water quality impacts and economics."⁵¹ For the same reasons discussed above, the Commission should reject this vague and highly speculative argument.⁵² As required by PUA § 7-207(e)(2), the effect of the Repowering Project on water quality and economics are fully addressed in the Proposed Order.⁵³ The Proposed Order contains

⁴⁷ Public Hearing Tr. at 13:18-14:5.

⁴⁸ Despite being a party to the case, Intervenors elected to submit public comments on May 3, 2019, the last day of an extended public comment period and a month after the evidentiary hearing.

⁴⁹ Proposed Order at 7.

⁵⁰ Intervenors' Memo at 1.

⁵¹ Intervenors' Memo at 6.

⁵² For example, Intervenors allege, without citation to any supporting authorities, that the economic analysis must include calculation of the risk that the facility could become a stranded asset because of climate change impacts. Intervenors' Memo at 7. Intervenor provides no direction on how the PULJ would quantify and review this unlikely and highly speculative risk. Furthermore, it appears Intervenors may mistakenly believe that ratepayers are responsible for the costs of the facility.

⁵³ Proposed Order at 13-15 (Economics) and 19-22 (Water Quality).

appropriate findings, based on the record before the PULJ, regarding the net economic benefits to Baltimore County and the State as a result of the Repowering Project.⁵⁴ Intervenor’s argument regarding the effects of climate change on the economics of the Repowering Project is sheer imagination, bereft of specific facts or authority.

With respect to water quality, Intervenor’s offer unsupported arguments that climate change could cause negative impacts to surrounding water quality as a result of “stormwater runoff during storms as well as impacts to dewatering and onsite hydrocarbon remediation projects.”⁵⁵ But the Proposed Order discusses the Repowering Project’s comprehensive stormwater management system, minimal impacts as a result of construction dewatering, and conditions related to the ongoing hydrocarbon remediation.⁵⁶ The PULJ found that “subject to Licensing Conditions C-1, C-2, D-1, D-2, D-4, D-5, E-1, E-2, E-3, F-1, and F-2, the Repowering Project should not adversely impact wetlands, surface water, or groundwater.”⁵⁷ Intervenor’s argument that the Proposed Order fails to give these factors due consideration is untenable.

5. The Proposed Order Appropriately Considered the Record and Found that Applicant’s Compliance with the Final Licensing Conditions Will Ensure the Repowering Project Will Have No Adverse Impact on the Stability and Reliability of the Electric Transmission System

Intervenor’s allege that the record is deficient because CP Crane did not demonstrate an “actual market for their energy production or that the repowering project will support grid stability and reliability.”⁵⁸ Contrary to Intervenor’s assertions, there is substantial evidence in the record supporting the PULJ’s finding that the Repowering Project will have no adverse

⁵⁴ Proposed Order at 13-15.

⁵⁵ Intervenor’s Memo at 6.

⁵⁶ Proposed Order at 19-22.

⁵⁷ Proposed Order at 22.

⁵⁸ Intervenor’s Memo at 7-8.

impact on the stability and reliability of the electric transmission system.⁵⁹ The Proposed Order points to testimony from Staff Witness Zhong, PPRP Witness Seaman, the ERD, and PJM studies.⁶⁰ It also includes six Final Licensing Conditions recommended by Staff, including the requirement that CP Crane file a fully-executed Interconnection Services Agreement and Construction Services Agreement prior to the commencement of construction.⁶¹

Intervenors do not explain why they believe the Commission needs to consider the “market need” for the project or cite any authority in support of their assertion. Nonetheless, the Proposed Order explains, and Intervenors do not dispute,⁶² that the Repowering Project will provide PJM with additional generating flexibility including faster startups and faster load changing capacity.⁶³ Natural gas peaker plants serve the electric transmission system by providing clean, quick-start, dependent and efficient generating capacity. Therefore the FERC document cited in Intervenors’ Memo is irrelevant – it relates to the demand for energy from CP Crane’s former coal-fired plant.⁶⁴ The Repowering Project is a primarily natural gas-fired peaker plant, capable of start-up in no more than 10 minutes, which supplies electricity during relatively short periods of peak demand or during system outages.⁶⁵ In short, there is ample evidence in the record to support the PULJ’s consideration and findings regarding the Repowering Project’s effect on the stability and reliability of the electric transmission system.

⁵⁹ Proposed Order at 13.

⁶⁰ Proposed Order at 11-13.

⁶¹ *Id.* and Attachment B.

⁶² Intervenors Memo at 1.

⁶³ Proposed Order at 6.

⁶⁴ Intervenors’ Memo at 8.

⁶⁵ PPRP Ex. 9 at ES-1, 4-6.

IV. CONCLUSION

The Proposed Order fully considered all factors under PUA § 7-207(e) and the substantial record evidence in the case and found that granting the CPCN is in the public interest. The findings and recommendations in the Proposed Order are supported by substantial evidence and are not arbitrary or capricious. Intervenor failed to enter any evidence into the already expansive record and have failed to point to any issue that requires the Commission's review. For the reasons stated herein, CP Crane respectfully requests that the Commission affirm the PULJ's Proposed Order granting a CPCN to the Repowering Project.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 5th day of June, 2019, a copy of the foregoing Reply Memorandum on Appeal of C.P. Crane LLC was sent via electronic to all parties listed on the official service list in this proceeding.



Diana M. Krevor