

ORDER NO. 87243

IN THE MATTER OF THE APPLICATION * BEFORE THE
OF MATTAWOMAN ENERGY, LLC FOR A PUBLIC SERVICE COMMISSION
CERTIFICATE OF PUBLIC CONVENIENCE * OF MARYLAND
AND NECESSITY TO CONSTRUCT A *
NOMINALLY RATED 859 MW GENERATING *
FACILITY IN PRINCE GEORGE'S COUNTY, *
MARYLAND. * CASE NO. 9330
*
Issued: October 13, 2015

PROPOSED ORDER OF PUBLIC UTILITY LAW JUDGE

Appearances:

Suedeem G. Kelly, Esquire, J. Porter Wiseman, Esquire,
and Kenneth G. Hurwitz, Esquire, for Mattawoman Energy,
LLC.

Paula M. Carmody, Esquire, and Theresa V. Czarski,
Esquire, for the Maryland Office of People's Counsel.

Brent A. Bolea, Esquire, and Steven M. Talson, Esquire,
for the Maryland Department of Natural Resources, Power
Plant Research Program.

Michael L. Casillo, Esquire, Cara M. Johnson, Esquire,
and Frank W. Miller, Esquire, for the United States Air
Force - Joint Base Andrews.

Jennifer J. Grace, Esquire, for the Staff of the Public
Service Commission of Maryland.

**Background and Description of Requested Certificate of Public
Convenience and Necessity**

This case was instituted upon a filing by Mattawoman
Energy, LLC ("Mattawoman") requesting the issuance of a Certificate
of Public Convenience and Necessity ("CPCN") to allow it to
construct a nominally rated 859 megawatt ("MW") combined-cycle

combustion turbine electric generating facility in Prince George's County, Maryland ("the Project"). Changes to the Project now have the specifications including a 990 MW generating facility, a substation, a lead line, a water pipeline, and a gas pipeline, part of which is in Charles County, Maryland.

The site is on an 88 acre property that is 12.1 miles from Washington, D.C. It is in an area zoned by the County for industrial use and sits just south of a Super Fund site as designated by the Environmental Protection Agency ("EPA").

Procedural History

Mattawoman filed, on July 19, 2013, an application for a CPCN to construct a nominally rated 859 MW electric generating station in Prince George's County, Maryland. By letter dated July 22, 2013, the Commission delegated this proceeding to the Public Utility Law Judge Division to conduct the proceedings. A pre-hearing conference was held on August 23, 2013.

Appearances in the case were entered by the Staff of the Public Service Commission ("Staff"); the Maryland Office of People's Counsel ("OPC"); and the Maryland Department of Natural Resources, Power Plant Research Program ("PPRP"). A petition to intervene was granted to the United States Air Force - Joint Base Andrews ("JBA").

On September 10, 2013, Mattawoman filed its Environmental Review Document ("ERD") along with the direct testimony of Steven Tessem, Senior Vice President for Business

Development for Panda Power Funds, the parent company of Mattawoman; Thomas W. Davis, Principal Engineer and Vice President of Environmental Consulting & Technology, Inc. ("ECT"); Paul Scheuren, Principal of Impact DataSource, LLC; Darren Stowe, Principal Planner and Environmental Consultant of ECT; David Hessler, Acoustic Engineer of Hessler Associates, Inc.; Lisa D. (Ricker) Walker, Staff Scientist and Senior Ecologist of ECT; and David Nelson, President of Street Traffic Studies, Ltd.

On January 15, 2014, supplemental direct testimony was filed by Mattawoman's witnesses Tessem, Walker, and Stowe. Additional supplemental testimony was filed, on June 30, 2014, by Mattawoman's witnesses Tessem and Walker along with a substitute ERD.

Mattawoman then made, on January 30, 2015, a third filing of supplemental direct testimony of its witnesses Tessem, Davis, Hessler, Walker, Stowe, and Nelson; Jennifer C. Leonard, a Registered Landscape Architect and Project Manager employed by Dewberry Consultants, LLC; and along with the panel testimony and supporting attachments of Vilma Brueggmeyer, a Senior Principal Engineer and former Vice President at Environmental & Technology, Inc.; Bradley Scott Pekas, Senior Professional Engineer at TriHydro; and Marianne Horinko, President of The Horinko Group. An errata to this testimony was filed on March 4, 2015, to correct mis-statements contained in that filing.

Mattawoman made a fourth filing of supplemental direct testimony of a panel of its witnesses, Walker and Leonard, on

April 16, 2015. On the same date its witness Stowe filed a Substation Supplemental ERD.

On July 2, 2015, Mattawoman filed its June 2015 Ecological Survey and Comprehensive Project Impact Summary.

On July 10, 2015, Staff filed the direct testimony and exhibits of Ralph DeGeeter, the Commission's Generation and Transmission Engineer.

On July 10, 2015, PPRP filed the direct testimony of Frederick S. Kelly, Program Manager; William V. Paul, Chief of the Combustion and Metallurgical Division of the Air and Radiation Management Administration, Maryland Department of the Environment; Mark DiPrinzo, a partner and Senior Air Quality Professional at Environmental Resources Management, Inc. ("ERM"); Thomas S. Wickstrom, a Senior Air Quality Professional at ERM; John W. Grace, Chief of the Resources Protection and Appropriation Division of the Maryland Department of the Environment, Water Management Division; Robert W. Keating, a Geologist at ERM; Kristine B. Sillett, an Environmental Scientist and the National Environmental Policy Act Coordinator at Versar, Inc; Peter D. Hall, President of Metametrics, Inc.; and Diane Mountain, Senior Project Manager at ERM. It also filed its Initial Recommended Licensing Conditions.

Mattawoman then filed, on July 10, 2015, an Agreement of Stipulation and Settlement between Mattawoman and Joint Base Andrews. Then, on July 16, 2015, the State Agencies filed Revised Recommended Licensing Conditions, and, on August 20, 2015, PPRP filed the EPA Region Three's comments in review of the air condi-

tions contained in the Initial Licensing Conditions and supporting documents for the CPCN, followed by its reply comments on September 16, 2015.

An extensive volume of public comments were also filed during the pendency of this case.

Legal Standards

This application has been filed pursuant to Sections 7-207 and 7-208 of the Public Utilities Article ("PUA"). Pursuant to Section 7-207(e) of the PUA, the Commission shall take action on an application for a CPCN only after due consideration of the following factors:

- 1) the recommendation of the governing body of each county or municipal corporation in which any portion of the construction of the generating station or overhead transmission line is proposed to be located; and
- (2) the effect of the generating station or overhead transmission 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

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

Under Section 7-208, the Commission shall include in the CPCN it issues the requirements of the federal and state environmental laws and standards that are identified by the Department of the Environment, and the methods and conditions that the Commission determines are appropriate to comply with those environmental laws and standards.¹

Public Comments

A large number of individuals and groups offered public comment in this case. Three evening hearings for public comment were held, two in Prince George's County and one in Charles County, where a portion of the gas pipeline is proposed to be located. The time period for public comment was extended on two occasions to allow for a complete opportunity to be available to those who wished to comment.

Public comment was voluminous and strident. Those who spoke in favor emphasized the economic benefits. They spoke of the construction and permanent jobs for local residents. These were stated to be well paying union jobs. Those same people spoke about the need for clean gas-generated electricity to replace the dirty coal production which is now in service. Those same people were

¹ In addition, the Commission may not adopt any method, or condition under these provisions that the Department of the Environment determines is inconsistent with federal and state environmental laws and standards. Section 7-208(f).

confident that this plant would not damage the environment as it would meet all applicable standards. The local elected representatives were either in favor of or silent about this Project within this hearing process (with the exception of the State Senator for this district, who was opposed).

The vast majority of the speakers at the public comment hearings and of the written comments were opposed to the granting of a CPCN.

Those opposed were individuals and groups which mostly were concerned with the environmental harm that the plant would cause. These concerns covered the entire environmental spectrum. Issues were raised as to noise pollution; traffic congestion; water use; dewatering and the negative impacts on nearby streams; air pollution; viewsapes; gas issues, including fracking, pipeline safety, and gas quality safety; propane storage; injury to local flora and fauna; and social equity issues. The social issues raised stated that this geographic area was targeted due to its minority population and economic demographics, and the area is also being targeted and overburdened by the concentration of power plants within a small local area. This concentration of plants was stated to be intentionally discriminatory, and the cumulative effects of the cluster of power plants were not properly considered.

On September 17, 2015, a group of residents and organizations filed a petition to intervene in order to offer expert testimony on these issues, but the petition was denied due

to its late filing and prejudicial impacts on the hearing process. The filings by that group were included in the record as public comment.

Discussion and Findings

This request for a CPCN is for the final form of the amended request filed by Mattawoman. The current form has been amended since its initial filing so that it meets and complies with the requests of the other parties and with all applicable laws and regulations.

The scope of a CPCN case, as with all proceedings before the Public Service Commission, are limited to those areas and powers assigned to it by the Legislature. Issues and matters that do not fall under those limits cannot be part of this case. As stated above in the "Legal Standards" section, which stated the legal considerations in a CPCN case, each area of consideration will be analyzed, based upon the evidence in this case, and a determination will be made as to whether the facts in the record comply with those legal requirements. If all the requirements are met that will allow the plant to operate in compliance with the law, and if it is in the public convenience and necessity, a CPCN will be granted. If the applicant fails to meet any of the requirements, the CPCN request will be denied.

A waiver of the two-year notice requirement was granted in this case, and the governing bodies of the two counties involved (Prince George's and Charles) did not choose to jointly sit with

this Public Utility Law Judge at the public hearings that were held.

All of the parties filed extensive and greatly detailed expert testimony that addressed collectively all of the statutory requirements.

As noted above, a petition to intervene filed on October 16, 2013, by JBA was granted.

On July 10, 2015, an Agreement of Stipulation and Settlement ("Settlement") between Mattawoman and JBA was filed. The Settlement addressed the significant impacts that the Project has on the functions and facilities at JBA. No party objected to the Settlement which contained licensing conditions to be added as conditions to any CPCN to be granted.

On July 16, 2015, PPRP filed the final version of its Revised Recommended Licensing Conditions.

Staff also included in its testimony proposed licensing conditions that it wants incorporated into the CPCN, if it is granted.

Mattawoman has accepted all of the licensing conditions proposed by the parties in this case.

There were, however, no recommendations provided by the local or county governing units, so no consideration can be given to their wishes when deciding this case.

I find that several of the issues raised in the public comments need to be analyzed, even though they are not solely determinative of the final outcome of this case.

Some public comments alleged that notice to the citizens of Brandywine was ineffective as it was placed in newspapers, which are not read by the public. This may be true, but the notice requirements contained in the statute require notice in newspapers as a means to notify the public. This process depends on people reading newspapers, which may not be as effective a notice mechanism as it was in the past when newspapers were the main source of dissemination of information. While this is an issue that needs attention by the Legislature and the Commission, I find that Mattawoman met and exceeded the legal notice requirements for the issuance of a CPCN.

An allegation was made in public comments that the Brandywine area was targeted for new projects by power plant companies due to its racial and economic demographics. I find that there is no evidence of any improper motive or conduct by Mattawoman in its choice of a location for the Project. **It is very hard to find locations in Maryland which have the infrastructure needed to support a power plant that does not have other areas of legal restrictions which makes those locations unsuitable. It is unfortunate for Brandywine that it is a suitable and legally available area for proposed power plant projects. If a proposed plant to be sited in Brandywine meets all legal requirements (at all governmental levels), the fact that other plants are located nearby is not a legal restriction to another one being built. This is true even though the negative impacts of a plant fall most severely**

upon Brandywine while the benefits are distributed across a much larger geographic area.

Another allegation in the comments questioned the bias of the expert testimony. I find from my analysis of the expert testimony from Mattawoman that it clearly supports its position. This is to be expected as the applicant gets to choose its experts. The testimony from the Staff and PPRP does not suffer from this same orientation. I find that the testimony from the Staff and PPRP is not tainted with any bias, and I therefore give it the consideration appropriate for its weight and provativeness. The governmental structures in place are there to protect and serve the citizens of Maryland, and the professionals at PPRP and the Commission do not take lightly the burdens upon them or the trust placed upon them in the performance of their duties.

I find that the evidence proves that the Project will enhance the stability and reliability of the electric system. It will add needed capacity in a constrained area and will help speed up the decommissioning of older, dirtier, and less reliable generating stations.

I find that there are both short-term and long-term economic benefits to the Project. The short-term benefits are the construction jobs, construction materials bought, and the influx of workers shopping in the area during construction. The long-term benefits include the permanent jobs created, the local taxes paid, and the increased stability of reliable power to run the businesses and infrastructure of our modern technological society.

I find that the site of the Project is zoned for industrial use by Prince George's County, and this Project is designed to have a small visual impact on the area and limited levels of noise addition to the environment. The aesthetic impacts are minor in nature as compared to other like-sized industrial facilities. I find that no historic sites are impacted by this Project, and all aviation safety issues are resolved.

The issues of air and water pollution are areas of concern to the public in Brandywine and its vicinity. I find that the licensing conditions which are to be made a part of any CPCN are very detailed and quite extensive in nature. These comprehensive conditions ensure that the Project can be constructed and function within all applicable air and water laws and regulations. If the state experts were not convinced that this was the case, they would have testified to that effect and would have opposed the Project's construction. I place my trust in their experience in this area to make my findings on this aspect of the analysis herein.

This same consideration applies to the question of disposal of waste produced by this Project and the water usage issues. I find that the licensing conditions and the design of the Project cover the legal requirements of these issues, and I find that these requirements are not a road block to the issuance of a CPCN.

This Project will also have a positive impact on the future needs for electric service in Maryland by adding capacity with the production of electricity within a constrained area.

I therefore find that the CPCN requested, inclusive of all of the licensing conditions proposed by the parties in this case and accepted by Mattawoman, is in the public convenience and necessity. The conditions included, which are attached hereto and made a part hereof, are those contained in the Settlement between Mattawoman and JBA; the proposed conditions contained in the testimony of Staff witness DeGeeter; and the Revised Recommended Licensing Conditions filed by PPRP.

IT IS, THEREFORE, this 13th day of October, in the year Two Thousand Fifteen,

ORDERED: (1) That the application for a Certificate of Public Convenience and Necessity to construct a 990 MW generating facility in Prince George's County, Maryland is hereby granted to Mattawoman Energy, LLC in accordance with the findings and decisions rendered herein.

(2) That all of the proposed conditions of the parties accepted by Mattawoman Energy, LLC are incorporated herein and accepted as licensing conditions of the Certificate of Public Convenience and Necessity in accordance with the findings of this Proposed Order.

(3) This Proposed Order will become a final order of the Commission on November 13, 2015, unless before that date an appeal is noted with the Commission by any party to this

proceeding as provided in Section 3-113(d)(2) of the Public Utilities Article, or the Commission modifies or reverses the Proposed Order or initiates further proceedings in this matter as provided in Section 3-114(c)(2) of the Public Utilities Article.

Dennis H. Sober
Public Utility Law Judge
Public Service Commission of Maryland