

4/27/16  
Fast Track

IN THE MATTER OF THE PETITION \*  
OF JOHN T. BRADLEY, *et al.* \*

Petitioners \*

IN THE  
CIRCUIT COURT  
OF MARYLAND  
FOR BALTIMORE CITY  
Case No. 24-C-15-006830

\* \* \* \* \*

MEMORANDUM AND ORDER

This matter was before the Court for a judicial review of a decision rendered by the Public Service Commission's November 13, 2015 approval of Mattawoman Energy, LLC's application for a Certificate of Public Convenience and Necessity (Order NO. 87234) and a ruling dated September 25, 2015 denying a petition for intervention filed by Petitioners. This Court has considered the briefs of the parties and the oral argument presented to the Court on April 27, 2016.

I. Background

On July 19, 2013 Mattawoman Energy, LLC filed an application with the Maryland Public Service Commission ("PSC") for a Certificate of Public Convenience and Necessity ("CPCN") to construct a nominally rated 859 MW, natural gas-fired, electric power generating facility on approximately 88 acres of land located at 14175 Brandywine Road in Brandywine, Prince George's County, Maryland. The case was assigned to the Public Utility Law Judge Division ("PULJ"). PSC Staff, Maryland Office of People's Counsel, and the Maryland Department of Natural Resources Power Plant Research Program ("PPRP") entered their appearances in the case.

As required by the Commission's regulations, Mattawoman served a copy of its application on 15 public agencies and provided a copy to the Prince George's County Memorial

Library for public inspection. The PULJ set forth a procedural schedule in compliance with COMAR 20.79.02.03B which states that “[i]n order to ensure timely completion of the proceedings, the Commission may impose a schedule of procedural dates which is subject to change only for good cause shown.”

The PULJ directed Mattawoman to publish a notice of the August 23, 2013 pre-hearing conference in a newspaper of general circulation throughout Prince George’s County and directed that the notice advise persons seeking to intervene in the proceeding that petitions shall be filed by August 22, 2013. The Commission did not receive petitions to intervene from Petitioners or any other members of the public before the intervention deadline. On November 13, 2013, the PULJ granted a petition to intervene filed by the Joint Base Andrews, United States Air Force.

Over the next year, Mattawoman submitted several sets of extensive testimony. On July 10, 2015, the PPRP submitted a comprehensive and detailed draft environmental review document, accompanied by testimony and initial recommended licensing conditions. On July 10, 2015, PSC Staff submitted the detailed testimony of Ralph De Geeter. On the same date, Mattawoman filed an Agreement of Stipulation and Settlement between Mattawoman and Joint Base Andrews, which expressly incorporated the PPRP conditions. On July 16, 2015, the PPRP filed revised licensing conditions. Three of the Petitioners requested that they be added as interested parties and the PULJ granted their request. The Commission kept these three Petitioners abreast of the proceedings by adding them to the Commission’s service list.

The PULJ held an evidentiary hearing on July 21, 2015. Mattawoman informed the Commission of its acceptance of the proposed Staff conditions and the revised PPRP conditions. On the evening of July 21, 2015, the PULJ also convened a public comment hearing at the

Volunteer Fire Department in Brandywine. At that hearing, numerous citizens and environmental organizations testified in opposition to Mattawoman's application for reasons relating to traffic, environmental justice, general environmental harm, and air quality. A second public hearing to address air quality and related issues took place at the Brandywine Fire Department on August 17, 2015.

On August 19, 2015, the EPA submitted written comments to ensure that the project meets all federal Clean Air Act requirements. The PPRP submitted detailed responses to each of the EPA's comments. On August 20, 2015, a third evening hearing took place at the Charles County Public Library. Again, several of the Petitioners commented at the hearing.

On August 17, 2015, a group of citizens filed a Joint Petition to Intervene. The petition requested the right to submit written rebuttal expert testimony on the air quality and related environmental and social justice impacts. The PULJ held a hearing on the petition to intervene and on September 25, 2015 he issued a ruling denying the petition.

On October 13, 2015, the PULJ issued a Proposed Order in Case No. 9330, approving Mattawoman Energy, LLC's application for a CPCN (Order No. 87234). No formal party to the proceeding noted an appeal to the Commission and the Commission adopted the proposed order on November 13, 2015. On December 11, 2015, Petitioners filed for judicial review of the decision of the Public Service Commission. (Docket No. 1).

The Circuit Court for Baltimore City received the Administrative Agency Record on February 4, 2016. (Docket No. 6). Maryland Public Service Commission, Department of Natural Resources – Power Plant Research Program, and Mattawoman Energy LLC indicated their intent to participate, and have in fact participated, in the appeal. (Docket Nos. 1/1, 1/2, 1/3). On March 10, 2016, Petitioners filed a Memorandum in support of Petition for Judicial Review. (Docket



No. 9). On April 6, 2016, Respondent Mattawoman Energy LLC filed a Memorandum in Opposition of the Petition for Judicial Review. (Docket No. 9/3). On April 6, 2016, the PSC and PPRP also filed memoranda in opposition of the Petition for Judicial Review. (Docket Nos. 1/4, 9/3). On April 21, 2016, Petitioners filed a Reply Brief (Docket No. 9/4).

## **II. Questions presented**

A. Whether the Petitioners are entitled to seek judicial review of the Commission's decision.

B. Whether the Commission's Order adequately articulates the basis of the Commission's decision at a level sufficient for judicial review of the legality of the decision.

C. Whether the Public Utility Law Judge erred when he denied Petitioners' Joint Petition to Intervene.

## **III. Analysis**

### **A. Standing to Seek Judicial Review**

Judicial review of a decision or order by the Commission is controlled by section 3-202(a) of the PUA, which provides: "[e]xcept for the staff of the Commission, a party *or person in interest*, including the People's Counsel, that is dissatisfied by a final decision or order of the Commission may seek judicial review of the decision or order as provided in this subtitle." PUA §3-202(a)(emphasis added). The Court concludes that Petitioners are "persons in interest" and therefore have standing to appear before this Court for judicial review of the instant matter.

### **B. Articulation of the basis of the Commission's decision**

In contested proceedings, the Commission is required to issue a written decision and order that "state[s] the grounds for the conclusions of the Commission." PUA §3-113(a)(3). This requirement facilitates judicial review. However, where parties stipulate to a factual record, an

administrative tribunal may reasonably adopt the parties' agreed facts and conditions. *Blue Bird Cab Co. v. Maryland Dep't of Employment Sec.*, 251 Md. 458, 466 (1968). Additionally, not every administrative statute requires the tribunal to set out explicit findings of fact or comprehensive recitations of evidence. *Mid-Atl. Power Supply Ass'n v. Maryland Pub. Serv. Comm'n*, 143 Md. App. 419, 436-39 (2002) [hereinafter *MAPSA*] (rejecting challenge to PSC order for failing to analyze certain enumerated factors and noting that statute's language only called on Commission to consider those factors in making decision).

While Petitioners assert that the PULJ failed to adopt the licensing conditions or any other record evidence as part of his findings, the judge expressly adopted the PPRP licensing conditions. Proposed Order, at 13. Furthermore, the PULJ's decision shows due consideration of the statutory factors in Section 7-207(e) and adequately explains his reasons for approving the CPCN. This Court concludes that the record "supports the conclusion that the Commission considered" the statutory factors, thus satisfying section 7-207(e). *MAPSA*, 143 Md. App. at 439.

The Petitioners have failed to overcome the statutory presumption that the PSC's decision is correct and their challenge to the substantial and undisputed factual basis supporting the PSC's decision is without merit. Petitioners cite to no evidence raising a question about the technical sufficiency of the PPRP package, the testimony of Mr. DeGeeter, the JBA settlement, or the extensive license conditions. In the absence of disputed facts, it was entirely reasonable for the PULJ to rely on the stipulated record in approving the CPCN. This Court concludes that the adoption of the stipulated record was both lawful and reasonable. The stipulated record adopted by the PULJ is thorough, detailed and scientifically grounded.

C. Denial of Joint Petition to Intervene

This Court finds that the PULJ reasonably exercised his broad discretion to deny Petitioners' untimely request to intervene in the PSC proceedings. Four of the Petitioners moved to intervene on August 17, 2015 – one month after the close of the July 21 evidentiary hearing, two years after the deadline set forth in the case management order, and just before the close of the official record in the case. Thus, the statutory condition precedent to the right to intervene under Section 3-202(a), the filing of a timely application, was never met.

Petitioners cite to *Clipper Windpower Inc. v. Sprenger*, 399 Md. 539, 562 (2007). However, their citation from *Clipper I* is dicta and taken out of context. In a discussion of the process for seeking intervention, the Court noted that one entity in that case had sought to intervene in the PSC proceedings, but only after improperly attempting to seek rehearing of the final PSC order – and thus “well after it would have been timely to intervene (*i.e.* prior to the close of proceedings).” *Id.* at 562. The Court in *Clipper I* had no occasion to consider the timeliness of any motion to intervene made before the close of proceedings, as in the instant matter.


Petitioners further challenge the sufficiency of notice of the proceedings and, in doing so, Petitioners' criticisms focus on the periodical in which the notice appeared. The criticisms are unsupported by the record and it is clear that the publication was appropriate to satisfy the notice requirement. Moreover, some of the Petitioners themselves were actual participants in the PSC proceedings as interested parties and thus clearly were on notice.

This Court agrees that the PULJ's decision to deny the petition to intervene reflects a prudent exercise of his discretion to manage cases in an orderly way and avoid prejudice to the parties. In a five-page written decision, Judge Sober denied the request as untimely and

prejudicial because Petitioners filed to intervene so late in the proceedings. When asked at oral argument on the instant Petition, counsel for the Petitioners could offer no good cause as to why the Motion to Intervene was so late. There is simply no plausible argument as to why Petitioners waited until after the close of the record, and just prior to issuance of a decision.

WHEREFORE, it is this 2<sup>nd</sup> day of June, 2016,

**ORDERED** that the decision of the Public Service Commission be, and hereby is, **AFFIRMED**.

  
**Judge Jeffrey M. Geller**  
Judge's Signature Appears on Original Document  
Circuit Court for Baltimore City