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December 21, 2009

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Via Electronic Filing

Hon. Joel H. Peck
Clerk
State Corporation Commission
Document Control Center
Tyler Building, 1st Floor
1300 East Main Street
Richmond, Virginia 23219

**Application of
PATH Allegheny Virginia Transmission Corporation for
Certificates of Public Convenience and Necessity to Construct Facilities:
765 kV Transmission Line through Loudoun, Frederick, and Clarke Counties
Case No. PUE-2009-00043**

Dear Mr. Peck:

Enclosed is PATH Allegheny Virginia Transmission Corporation's Motion to Withdraw Application and Terminate Proceeding in Case No. PUE-2009-00043.

Sincerely yours,

Richard D. Gary

RDG/tms
Enclosure

cc: Hon. Alexander F. Skirpan, Jr.
William H. Chambliss, Esq.
Service List
Noelle J. Coates, Esq.

**BEFORE THE
STATE CORPORATION COMMISSION
COMMONWEALTH OF VIRGINIA**

APPLICATION OF)	
)	
PATH ALLEGHENY VIRGINIA)	
TRANSMISSION CORPORATION)	Case No. PUE-2009-00043
)	
For certificates of public convenience)	
and necessity to construct facilities:)	
765 kV Transmission Line through)	
Loudoun, Frederick, and Clarke Counties)	

MOTION TO WITHDRAW APPLICATION AND TERMINATE PROCEEDING

PATH Allegheny Virginia Transmission Corporation (“PATH-VA”) moves the State Corporation Commission (the “Commission”) to allow the withdrawal of the Application it filed on May 19, 2009 that requested the Commission’s approval and certification of electric transmission facilities (the “Potomac Appalachian Transmission Highline,” or “PATH Project”). PATH-VA’s current intention is to file a new application in early 2010 based on the most current information then available with regard to the PATH Project and to propose a procedural schedule for the Commission’s consideration that will be coordinated with the procedural schedules for the West Virginia and Maryland Public Service Commissions’ consideration of the portions of the PATH Project that will be constructed in those states. In support of this Motion, PATH-VA states the following.¹

In May 2009, applications for certification of the PATH Project were filed in Virginia, West Virginia and Maryland with the expectation that the procedural schedules in those three states would be reasonably well aligned. Due to intervening events, these schedules are now out

¹ PATH-VA filed a Motion to Suspend Procedural Schedule concurrently with this Motion.

of alignment. The West Virginia Public Service Commission issued a procedural order on November 24, 2009 that, among other things, delayed the hearing on the West Virginia portion of the PATH Project until October 18, 2010.² In addition, the West Virginia procedural schedule provides for the supplementation of testimony on June 29, 2010. In Maryland, an application for approval and certification of the PATH Project is being filed concurrently with the filing of this motion and consideration of the Maryland portion of the PATH Project is also expected to proceed to evidentiary hearings in the second half of 2010. Thus, under the current schedule in Virginia the evidentiary hearings will conclude several months before the consideration of the other segments of the PATH Project begin.

The withdrawal of this pending Application in Virginia and a subsequent filing of a new application will allow the Commission and PATH-VA to coordinate the procedural schedule in Virginia with those of the other jurisdictions.³ In addition, withdrawal of the application and the filing of a new application will permit this Commission to consider the electrical need for the PATH Project based on the same facts considered by its counterparts in West Virginia and Maryland.⁴ Moreover, withdrawal of the Application now will allow the parties to avoid the significant preparation that will be required for the filing of PATH-VA's rebuttal testimony on

² PATH West Virginia Transmission Company, LLC, PATH Allegheny Transmission, LLC, *et al.*, Order, Case No. 09-0770-E-CN (Nov. 24, 2009). Attached as Exhibit 1.

³ The withdrawal of the Application will eliminate any legal right of the PATH-VA to seek a federal construction permit regarding the current Application pursuant to Section 216(b)(1)(c)(i) of the Federal Power Act ("FPA"). The filing of the new application would initiate the one-year time period for the Commission's consideration of the application under that section of the FPA.

⁴ PATH-VA and The Potomac Edison Company, the PATH Project applicant in Maryland, expect to file supplemental testimony supporting their new applications in Virginia and Maryland, respectively, contemporaneously with the filing of supplemental testimony in the West Virginia proceeding.

December 31, 2009, for discovery by the parties as to that rebuttal testimony and, of course, for the lengthy hearing scheduled to begin on January 19, 2010.⁵

The Hearing Examiner, through the Commission's delegation of authority in the Order for Notice and Hearing, dated June 12, 2009, and Rule 5 VAC 5-20-120.A, Procedure Before Hearing Examiners, has authority to "rule on motions, matters of law and procedural questions," and thereby has the authority to grant this Motion.⁶ Due to the straightforward nature of this Motion, PATH-VA requests that the Hearing Examiner grant the Motion or recommend promptly to the Commission that the Motion be granted and establish an expedited schedule for comments to the Commission pursuant to Rule 5 VAC 5-20-120.

PATH-VA does not take lightly the decision to delay any aspect of this proceeding. The PATH Project is an important baseline transmission project with a long lead-time for construction. Yet in view of the current procedural status of this multi-state project, the most reasonable course of action is to coordinate the schedules in Virginia, West Virginia and Maryland.

WHEREFORE, PATH-VA requests that the Commission expeditiously grant this Motion, allow it to withdraw its Application, and terminate the proceeding.


⁵ To the extent appropriate and applicable, PATH-VA is amenable to the moving of the testimony that has been pre-filed in this current proceeding into the next proceeding.

⁶ Hearing Examiners have granted Motions to Withdraw Applications on several occasions. *See, e.g. Application of Robert A. Winney d/b/a The Waterworks Company of Franklin County*, Case No. PUE-2000-00665, Report of Hearing Examiner (March 16, 2001) (finding that a motion to withdraw is "analogous to that of a nonsuit..."); *Commission v. Smith Mountain Water Co.*, Case No. PUE-1992-00082, Ruling of Hearing Examiner (July 16, 1993); *and Commission v. Tidewater Water Co.*, Case. No. PUE-1991-00078, Ruling of Hearing Examiner (March 16, 1992).

Respectfully submitted,

PATH ALLEGHENY VIRGINIA
TRANSMISSION CORPORATION

Dated: December 21, 2009

By  _____
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**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 24th day of November 2009.

CASE NO. 09-0770-E-CN

PATH WEST VIRGINIA TRANSMISSION COMPANY, LLC;
PATH ALLEGHENY TRANSMISSION COMPANY, LLC;
PATH-WV LAND ACQUISITION COMPANY; AND
PATH-ALLEGHENY LAND ACQUISITION COMPANY

Joint application for Certificate of Convenience and Necessity for the construction and operation of the West Virginia segments of a 765kV electric transmission line and related facilities in Putnam, Kanawha, Roane, Calhoun, Braxton, Lewis, Upshur, Barbour, Tucker, Preston, Grant, Hardy, Hampshire, and Jefferson Counties, including modifications to the Amos Substation in Putnam County and a new substation in Hardy County, and for related relief.

COMMISSION ORDER

This order (i) denies the motions to dismiss, (ii) tolls the statutory due date, and (iii) establishes a procedural schedule.

BACKGROUND

On May 15, 2009, the PATH West Virginia Transmission Company, LLC (“PATH-WV”), PATH Allegheny Transmission Company, LLC (“PATH-Allegheny”), the PATH-WV Land Acquisition Company, and the PATH-Allegheny Land Acquisition Company (all four, collectively, “Applicants”) filed a joint application for certificates of public convenience and necessity and for related relief (“Joint Application”) pursuant to W.Va. Code §§24-2-11 and 24-2-11a. The PATH Project is approximately 225 miles of 765 kV electric transmission line and related facilities in the fourteen counties of Putnam, Kanawha, Roane, Calhoun, Braxton, Lewis, Upshur, Barbour, Tucker, Preston, Grant, Hardy, Hampshire, and Jefferson. The Applicants also seek a certificate of public convenience and necessity (i) to jointly construct, own, operate, and maintain the new Welton Spring Substation, as another part of the PATH Project in West Virginia to be constructed two miles north of Old Fields in Hardy County, and (ii) to construct, own, operate, and maintain certain modifications to the Amos Substation owned by Appalachian Power Company and Ohio Power Company.

On November 10, 2009, the Commission issued an Order (i) staying the current procedural schedule, (ii) granting the parties additional time to file recommendations regarding the Commission Staff motion to dismiss, and (iii) granting the request of two parties to withdraw from the case.

Additional procedural information will be addressed as necessary in the Discussion section of this Order.

DISCUSSION

Motions To Dismiss

On October 28, 2009, Staff filed a Motion to Dismiss the Filing as Insufficient or in the Alternative, Require Path to Request a Tolling and Implement Further Case Processing Procedures. Staff argued that (i) the failure to re-file the dismissed Maryland proceeding renders this project incomplete, (ii) the application should be supported by current economic and PJM load forecast information to determine the need for the PATH Project and that the updated information in the 2010 Regional Transmission Expansion Plan ("RTEP") was not included in updates to the 2009 RTEP but is potentially crucial in determining the need for the PATH Project, and (iii) Staff and Intervenors will be prejudiced by expending limited resources to review an incomplete project and stale need-related information, and then analyze updated information as it becomes available.

Staff asked that the Commission (i) dismiss this case without prejudice, (ii) permit the Applicants to re-file concurrent with the filing of a proper certificate application before the Maryland Public Service Commission ("Maryland PSC"), and (iii) require the Applicants to support the re-filed West Virginia application with the updated PJM annual load forecast and February 2010 RTEP. In the alternative Staff recommended proceeding with the pending application if the Applicants request to toll the statutory due date subject to certain other conditions.

On November 4, 2009, the Applicants filed a response to the Staff motion to dismiss. In opposition to the Staff motion the Applicants stated that (i) the Staff bases to dismiss or toll this case are not warranted; (ii) the absence of a pending application for certification of the PATH Project in Maryland does not support any delay in the West Virginia portion of the proceeding; and (iii) feasibility of further study cannot be asserted as a justification for postponing the evidentiary hearing because there is always more up-to-date analysis that can be performed. In support of an alternate tolling of the statutory deadline Applicants conceded that delayed consideration and certification of the Maryland segments of the project provide an opportunity for this Commission and its sister commission in Virginia to base their decisions on updated evidence of electrical need. The Applicants proposed tolling the statutory decision due date in West Virginia if a satisfactory extension of the current procedural schedule were put into place.

On November 10, 2009, Staff filed a reply to the Applicants' response. Staff stated that (i) the Applicants' offer to toll the statutory deadline contingent on a specific procedural schedule was not acceptable, (ii) the Commission should not hold two hearings to address need and non-need testimony, and (iii) the parties should be given more time to file testimony on non-need issues.

Numerous parties filed in support of the Staff motion to dismiss. Several of those supportive filings made further recommendations that the Commission extend or stay the procedural deadline pending a decision on the Applicants offer to toll.

On November 10, 2009, the Commission issued an order (i) suspending the procedural schedule in this case and (ii) granting the parties until November 17, 2009 to file a final response to the Staff motion to dismiss and offer to toll tendered by the Applicants.

Several intervenors filed responses as permitted by the November 10, 2009 order. In addition to those described below, the majority of the comments opposed splitting the testimony and hearing between need and non-need issues as proposed by the Applicants.

On November 16, 2009, Intervenors Eric Burleyson and Kirsten Weiblen filed a Motion to Dismiss the Filing as Insufficient arguing that the Commission should (i) dismiss the case without prejudice; (ii) allow re-filing concurrently with the filing of a proper certificate application before the Maryland PSC and before the Virginia State Corporation Commission; and (iii) require any re-filed application to be supported with the forthcoming PJM annual load forecast and the updated RTEP. The Intervenors also described a scenario under which the Applicants might file for approval of the proposed line before the Federal Energy Regulatory Commission ("FERC") under the "backstop" provision of Section 216 of the Federal Power Act ("FPA").

On November 17, 2009, (i) the Sierra Club, Inc., and the West Virginia Highlands Conservancy, (ii) the Jefferson County Intervenor Group and the Tucker County Landowners, and (iii) the Consumer Advocate Division, each filed separate responses to the Staff motion to dismiss. While recommending the Commission grant the motion to dismiss, each also provided the Commission with a proposed procedural schedule for use in this case in the event the Commission decided not to dismiss. All of the parties were opposed to splitting the testimony and hearing between the need and non-need issues.

On November 17, 2009, the Applicants filed a Revised Proposal to Toll Statutory Decision Due Date and Extend Procedural Schedule. The Applicants (i) stated that the Potomac Edison Company plans to re-file an application seeking certification of those portions of the PATH Project in Maryland, including a terminus at the Kemptown Substation, (ii) proposed tolling the statutory due date until February 24, 2011, and (iii) submitted a revised procedural schedule that did not require multiple hearings and testimony filings to address need and non-need issues.

Commission Decision Regarding the Motions to Dismiss

The motions to dismiss and filings in support thereof cited the (i) need for updated information on the question of need, and (ii) dismissal of the Maryland application, as sufficient reason to dismiss this case.

The benefit of updated information is not unique to this case. In addressing the need for updated information, we will begin by stating the obvious: If no one used electricity, there would be no need to build transmission lines. It follows that the amount of electricity required and the need for this particular line is a critical question underlying this proceeding. The task of defining and measuring that need creates the illusion that better and more accurate information is just beyond the horizon and that the Commission cannot issue a fair decision unless it first considers that future information. This belief manifests more frequently during a turbulent economy but is present in almost all cases that rely on projections of future demand. Nevertheless, the adjudicatory process requires that the Commission select a deadline for the submission of new information, and then make a decision based on the evidence.

The Maryland PSC dismissal of the PATH proceeding potentially exacerbates the problem described in the above paragraph. For instance, if the Commission moved forward in this case, but PATH does not re-file the application to build the transmission line in Maryland, the parties in this State would have expended time and resources for naught. Even a significant delay in a Maryland re-filing could create the need to reopen the proceedings in this State based on unanticipated routing or other changes dictated by the Maryland PSC. All things considered, it is beneficial to have the proceedings before the utility commissions of Virginia and Maryland moving forward at a pace at least roughly parallel to our own.

The proposed grounds to dismiss suggest that the Commission make a determination that either of the above reasons is sufficient as a matter of law to dismiss this case; i.e., the Commission should dismiss because the Applicants would be unable to support the need for a certificate unless (i) they were able to present updated information or (ii) the application had been re-filed in Maryland. Subsequent filings, however, have diluted the persuasiveness of the reasons to dismiss. First, the revised proposal to toll will assure the availability of updated information. Specifically, tolling the running of the statutory deadline will assure that the PJM February 2010 RTEP will be filed in this case and the parties, as well as the Commission, will have sufficient time to evaluate the issues presented by that updated study. Second, the assurance that the PATH Project will be re-filed in Maryland avoids proceeding in West Virginia without parallel filings in other affected jurisdictions.

The Commission will deny the motions to dismiss.

Procedural Schedule

Several parties submitted procedural schedules. The schedules were substantially similar. The Commission will adopt the schedule submitted by the Applicants and endorsed by Staff. There are several advantages afforded by the Applicants schedule: (i) the extended discovery period following issuance of the February 2010 RTEP and (ii) a submission date for the Applicants testimony to allow inclusion of the May 2010 RPM capacity auction. The Commission will adopt the following schedule for use in this case.

Event	Date
Discovery reopens on issues of electrical need.	Monday, February 1, 2010
Applicants file supplemental testimony on issue of electrical need and any other issues requiring supplementation.	Noon, Tuesday, June 29, 2010
Deadline for propounding discovery on supplemental testimony due June 29, 2010.	Noon, Tuesday, July 13, 2010
Staff's and Intervenors' prepared direct testimony and rebuttal to the direct testimony of Applicants.	Noon, Tuesday, August 31, 2010
Deadline for propounding discovery in response to testimony due August 31, 2010.	Noon, Tuesday, September 7, 2010
Applicants' rebuttal testimony to the direct testimony for Staff and Intervenors, and Staff and Intervenor rebuttal testimony to the direct testimony of one another.	Noon, Tuesday, September 28, 2010
Deadline for propounding discovery in response to the rebuttal testimony due September 28, 2010.	Noon, Tuesday, October 5, 2010
Written opening statements.	Noon, Thursday, October 14, 2010
Evidentiary hearing begins.	Monday, October 18, 2010
Evidentiary hearing ends.	Tuesday, November 2, 2010
Initial briefs and proposed orders.	Noon, Tuesday, November 30, 2010
Reply briefs.	Noon, Thursday, December 16, 2010
Deadline for Commission decision.	Thursday, February 24, 2011

The parties should note that the discovery period beginning February 1, 2010 and ending July 13, 2010 is limited to (i) the issue of need, and (ii) any issues supplemented by the June 29, 2010 testimony filed by the Applicants. Additionally, the “party responsibilities” outlined in the Commission August 4, 2009 order, and the specific rules regarding service and filings of documents and discovery described in the August 21, 2009 order remain in effect.

The “Backstop” Provision

The Energy Policy Act of 2005 added Section 216(b) to the FPA giving the FERC “backstop” transmission siting authority under certain conditions. The language in Section 216(b)(1)(C)(i) allows FERC to permit the siting and construction of new transmission lines when the state authority has withheld approval for more than one year after the filing of an application seeking approval. The Commission does not have authority to modify the one year triggering period in the FPA. The Commission interprets the Applicants proposal to toll this proceeding as an indication that the Applicants will not avail themselves of the backstop provision pending resolution of the current proceeding. The Applicants should immediately notify the Commission if this interpretation is not correct.

FINDINGS OF FACT

1. The motions to dismiss primarily focus on updating information on the question of need and the current state of the PATH Project filing before the Maryland PSC.
2. The Applicants submitted a revised proposal to toll, a revised procedural schedule endorsed by Staff, and an assertion that the PATH Project will be re-filed in Maryland by the end of this year.
3. The procedural schedule submitted by the Applicants and endorsed by Staff will provide (i) an extended discovery period on the question of need and (ii) revised testimony on need including the February 2010 RTEP and the May 2010 RPM capacity auction.

CONCLUSIONS OF LAW

1. The revised proposal to toll supported by the Applicant and assertion regarding re-filing of the PATH Project in Maryland renders it unnecessary for the Commission to deliberate further on the motions to dismiss.
2. It is reasonable to deny the motions to dismiss.
3. It is reasonable to grant the Applicants revised proposal to toll the running of the statutory deadline in this proceeding for 247 days, which shall establish a new deadline of February 24, 2011 for a Commission decision.

4. The procedural schedule proposed by the Applicants and endorsed by Staff is reasonable and will be adopted by the Commission in this case. The “party responsibilities” outlined in the Commission August 4, 2009 order, and the specific rules regarding service and filings of documents and discovery described in the August 21, 2009 order remain in effect.

5. It is reasonable to interpret the Applicants proposal to toll the running of the statutory deadline in this proceeding as an indication that the Applicants will not avail themselves of the right to seek a permit from the Federal Energy Regulations Commission pursuant to §216(b) of the Federal Power Act a provision pending resolution of the current proceeding.

ORDER

IT IS THEREFORE ORDERED that the Staff and the Burleyson/Weiblen motions to dismiss this proceeding are denied.

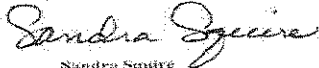
IT IS FURTHER ORDERED that the Applicants revised proposal to toll is hereby granted. The statutory due date in this matter is tolled until Thursday, February 24, 2011.

IT IS FURTHER ORDERED that the procedural schedule established herein, including the hearing beginning October 18, 2010, is adopted for use in this proceeding.

IT IS FURTHER ORDERED that the Applicants must notify the Commission within five days of the date of this Order if they disagree that their proposal to delay a decision in this case by tolling the West Virginia statutory suspension period is also an agreement by the Applicants that they will not avail themselves of the Federal permitting process pursuant to §216(b) of the Federal Power Act of 2005.

IT IS FURTHER ORDERED that the Commission Executive Secretary serve a copy of this Order on all parties of record via electronic mail or United States First Class Mail as appropriate, and on Commission Staff by hand delivery.

A True Copy, Testes


Sandra Squire
Executive Secretary

JJW/slc
090770cg.wpd

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of December 2009, a true copy of the foregoing Motion was delivered by hand or mailed, first-class, postage prepaid, to the attached service list, which was copied from the Commission's electronic service list in Case No. PUE-2009-00043 on December 21, 2009 and to the following:

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A handwritten signature in black ink, appearing to be 'CMB', is written above a horizontal line.