

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION OF

PATH ALLEGHENY VIRGINIA
TRANSMISSION CORPORATION

CLERK'S OFFICE
CASE NO. PUE-2009-00043
2009 OCT 19 P 1:38

For certificates of public convenience
and necessity to construct facilities:
765 kV Transmission Line through
Loudoun, Frederick, and Clarke Counties

DOCUMENT CONTROL

To Senior Hearing Examiner Alexander Skirpan, Jr.

COMMISSION STAFF MOTION TO DISMISS APPLICATION
AND TO CERTIFY ISSUE TO THE COMMISSION

Before the State Corporation Commission ("Commission") is the application of PATH Allegheny Virginia Transmission Corporation ("PATH-VA" or "Company")¹ for approval and certification of electric transmission facilities pursuant to the Utility Facilities Act (§ 56-265.1 et seq. of the Code of Virginia ("Code")) and § 56-46.1 of the Code. PATH-VA proposes a plan to construct, own, operate, and (maintain the portions of the Potomac-Appalachian Transmission Highline ("PATH Project") that are located in Virginia. As set out in the Company's application and prepared testimony and exhibits filed on May 19, 2009, the PATH Project is a proposed 765 kV transmission line that would originate at the existing Amos Substation near St. Albans, West Virginia; cross the Virginia counties of Frederick, Loudoun, and Clarke; and terminate at the proposed Kemptown Substation near New Market, Maryland. As explained in this motion, there now exists such a level of uncertainty as to the termination point of the PATH Project that the Staff cannot discharge its duty to analyze the application and to advise the Commission on whether the project should be approved and, if approved, where it should be routed.

¹PATH-VA is a Virginia public service corporation and a subsidiary of PATH Allegheny Transmission Company, LLC. Allegheny Energy ("Allegheny Energy") Inc. controls PATH Allegheny Transmission Company, LLC.

Accordingly, the Staff moves that the application be dismissed on the grounds that it is incomplete. The Staff further respectfully moves the hearing examiner to certify to the Commission this material issue as provided by the State Corporation Commission Rules of Practice and Procedure, 5 VAC 5-20-120 B.

Background

In In the Matter of the Application of the Potomac Edison Company on behalf of Path Allegheny Transmission Company, LLC For a Certificate of Public Convenience and Necessity to Construct the Maryland Segments of a 765 kV Electric Transmission Line and a Substation in Frederick County, Maryland, Maryland Public Service Commission Case No. 9198, a subsidiary of Allegheny Energy filed for approval of the terminal portion of the PATH project, which would run from the Virginia-Maryland boundary at the Potomac River to the proposed Kemptown Substation. In its Order No. 82892 of September 9, 2009, the Maryland Commission determined that the application in Case No. 9198 had not been properly filed and could not be considered as PATH Allegheny Transmission Company, LLC is not an "electric company" as that term is defined in Maryland law.² Order No. 82892 further directed The Potomac Edison Company to advise within 30 days if it would re-file an appropriate application and, if so, when it intends to submit the application.³ By letter of October 9, 2009, The Potomac Edison Company advised the Maryland Commission as follows:

At this time, the [Potomac Edison] Company continues to consider its filing options, including whether to re-file an application with the Commission, and intends to inform the Commission of its decision as soon as possible.

² Maryland Public Service Commission Order No. 82892 of September 9, 2009, at 5-6, 13. Available at http://webapp.psc.state.md.us/Intranet/Casenum/submit_new.cfm?DirPath=C:\Casenum\9100-9199\9198\Item_060\&CaseN=9198\Item_060 (reviewed October 16, 2009).

³ *Id.* at 13-14.

Letter of October 9, 2009, from J. Joseph Curran, III, Esquire, to Terry J. Romine, Executive Secretary, Maryland Public Service Commission.⁴

Argument

It is well established in Virginia law that the Commission must find that there is a need for the proposed transmission line and the approved route must minimize adverse environmental impact. *Board of Supervisors v. Appalachian Power Co.*, 216 Va. 93, 93, 215 S.E.2d 918, 920 (1975). In the absence of an identified terminus, the Commission cannot discharge its responsibilities identified by the Virginia Supreme Court in the referenced decision.

In Ordering Paragraph (10) of the Order for Notice and Hearing entered in this case on June 12, 2009, the Commission ordered the Staff to investigate the reasonableness of PATH-VA's Application and to file on or before December 1, 2009, its testimony and exhibits regarding its investigation. Given the absence of a known Maryland termination, the Staff cannot complete its analysis. Any deviation from the Kempton location would impact study of alternative routing in Virginia. An alternative terminus could, depending upon the circumstances, alter the load flows and other electrical characteristics of the proposed line crossing Virginia. In short, without an identified terminus of the line, the Staff cannot provide complete its investigation of the reasonableness of the line and comply with Ordering Paragraph (10). Staff testimony and exhibits would provide analysis that was, at best, tentative and might border on the speculative. The application should be dismissed without prejudice to PATH-VA or Allegheny Energy filing a future application for this or a similar project with a known origin and termination.

⁴ Copy attached. Available at http://webapp.psc.state.md.us/Intranet/Casenum/CaseAction_new.cfm?CaseNumber=9198 (reviewed October 16, 2009).

The Staff respectfully urges certification of this issue of dismissal to the Commission in light of the approaching hearing date and the continuing costs incurred. Staff testimony is due in 43 days, but to allow for review and printing, drafts must be completed within a much shorter period. Because of the current financial situation of the Commonwealth, the resources provided by Virginia taxpayers and ratepayers are limited. The Staff is expending substantial scarce resources in its investigation of the application. At this point, the Staff is investigating a line that simply ends at the south bank of the Potomac River in Loudoun County. According to The Potomac Edison Company's counsel, Allegheny Energy is still considering whether even to file an application in Maryland.

In addition to the Staff, respondent counties Frederick and Loudoun are surely expending public funds in preparation for the hearing. While the Staff does not have any knowledge of the finances of these two counties, it is widely reported and understood that Virginia localities are financially stressed. In pleadings filed with the Commission, a number of individual respondents have noted the financial burden they anticipate from participation in the hearing. The rapid approach of the hearing and the continued expenditure, in Staff's view, warrant certification of this motion to dismiss to the Commission.

In conclusion, the Staff moves for dismissal of this application. Without a known termination point, a complete analysis and investigation of the application for approval of the line in Virginia is impossible. Further, the continuing cost to the Staff, as well as the burden on respondents, merits the prompt disposition of this motion that certification to the commission will assure. The Staff further requests an expedited schedule for addressing this motion.

Respectfully submitted,

The Staff of the State Corporation Commission

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Dated: October 19, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of October, 2009, a true copy of the foregoing Commission Staff Motion to Dismiss Application and to Certify Issue to Commission was served by first class mail, postage prepaid, on counsel and parties shown on the attached list.

Wayne A. Smith



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October 9, 2009

VIA HAND DELIVERY

Terry J. Romine, Executive Secretary
Maryland Public Service Commission
William Donald Schaefer Tower
6 St. Paul Street
Baltimore, Maryland 21202-6806

Re: Case No. 9198 – In the Matter of the Application of The Potomac Edison Company on Behalf of PATH Allegheny Transmission Company, LLC for a Certificate of Public Convenience and Necessity to Construct the Maryland Segments of a 765 kV Transmission Line and a Substation in Frederick County, Maryland

Dear Executive Secretary Romine:

In its recent Order No. 82892, dated September 9, 2009, the Commission directed The Potomac Edison Company (the "Company") to notify the Commission within 30 days whether the Company intends to re-file its application for a Certificate of Public Convenience and Necessity ("CPCN") on its own behalf for authorization to construct the Maryland portions of the Potomac Allegheny Transmission Highline. At this time, the Company continues to consider its filing options, including whether to re-file an application with the Commission, and intends to inform the Commission of its decision as soon as possible.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Joseph Curran, III".

J. Joseph Curran, III
Counsel for the Applicant

JJC/mmh

cc: Honorable Douglas R.M. Nazarian, Chairman
Honorable Harold D. Williams, Commissioner
Honorable Suzanne Brogan, Commissioner
Honorable Lawrence Brenner, Commissioner
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