

*Public Service Commission
Of West Virginia*

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October 28, 2009

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09 OCT 28 PM 3:50
WV PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

Re: 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

Dear Ms. Squire:

Enclosed is an original and twelve (12) copies of the "Staff's Motion to Dismiss the Filing as Insufficient or in the Alternative, Require Path to Request a Tolling and Implement Further Case Processing Procedures" in the above-referenced proceeding.

A copy has been served upon all parties of record in this proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Auville".
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JRA/lcw
Enclosures

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

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**

**STAFF'S MOTION TO DISMISS THE FILING AS INSUFFICIENT
OR IN THE ALTERNATIVE, REQUIRE PATH TO REQUEST A TOLLING
AND IMPLEMENT FURTHER CASE PROCESSING PROCEDURES**

Comes now the Staff of the West Virginia Public Service Commission Staff ("Staff") by John R. Auville, Counsel, and respectfully submits Staff's Motion, requesting that the Commission dismiss this certificate application as insufficient, or in the alternative, require the Applicant to request a tolling and implement further case processing procedures. Staff asserts that the Applicant's failure to seek all necessary regulatory approval for the proposed transmission line in a timely manner prejudices Staff's ability to accurately evaluate this certificate application and prepare its case on the statutory deadline applicable in this case. Forthcoming economic forecasts, PJM load forecasts, and an updated RTEP will contain crucial information and present a compelling reason to require PATH to file updated information for this Commission's consideration. As a result of the prejudice resulting from PATH's failure to seek all necessary regulatory approval in a timely manner, Staff moves that the Commission either dismiss this case or require PATH to request a tolling sufficient to allow the Commission to implement further case processing procedures for the parties and assure a complete review of the application.

Introduction

On May 15, 2009, PATH West Virginia Transmission Company, LLC, PATH Allegheny Transmission Company, LLC, PATH-WV Land Acquisition Company and PATH-Allegheny Land Acquisition Company (PATH or Applicant) filed an application before the Commission, seeking a certificate of convenience and necessity, pursuant to *W. Va. Code* §24-2-11a, for the construction and operation of the West Virginia segments of a 765kV electric transmission line, towers, conductors, terminal equipment, and related facilities. The certificate application (Application) proposes the PATH transmission line will begin at the John Amos substation in Putnam County, exit West Virginia in Hampshire County, cross into Frederick County, Virginia, re-enter West Virginia in Jefferson County, and then exit West Virginia a second time into Loudon County, Virginia. The ultimate intended terminus for the PATH transmission line is a substation at Kemptown, Maryland. As proposed in the application, West Virginia will bear the burden of approximately of 224 miles, the longest of any state affected by PATH.

PATH previously made a filing before the Public Service Commission of Maryland (Maryland PSC) on May 19, 2009, seeking a certificate of convenience and necessity to construct the Maryland segments of the PATH transmission line and connections to the Kemptown substation in Frederick County, Maryland.¹ Through an Order entered September

¹*In the Matter of the Application of the Potomac Edison Company on Behalf of the PATH Allegheny Transmission Company, LLC for a Certificate of Public Convenience and Necessity*, Public Service Commission of Maryland, Case No. 9198.

9, 2009,² the Maryland PSC determined that the certificate application was improperly filed because PATH is not an “electric company” within the meaning of applicable Maryland law; dismissed PATH’s pending certificate application for the Maryland segments of the transmission line and the Kemptown substation as improperly filed; and directed the Potomac Edison Company (PE) to notify the Maryland PSC, within thirty days, as to whether it intended to re-file an appropriate certificate application before the Maryland PSC and to identify the time line for re-filing. On October 9, 2009, thirty days after the Maryland PSC’s dismissal PATH’s application, PE filed a letter indicating that it was continuing to consider its filing options, including whether to re-file an application before the Maryland PSC, and was unable to confirm whether or when it would re-file the certificate application. Thus, there is no certificate application pending for the Maryland segments of PATH and or proposed the Kemptown substation terminus, and it remains unclear when a certificate application will be filed.

Staff moves to dismiss this Application, as follows:

- 1. PATH’s failure to seek all necessary regulatory approval has left the Commission to evaluate an incomplete project.*

No certificate application is currently pending for the proposed connection to the Kemptown substation terminus of the PATH transmission line and it is currently unclear when, or if, PE will file a certificate application before the Maryland PSC to obtain the

²Order No. 82892

necessary regulatory approval in Maryland. This Commission should not be required to review an incomplete project. PATH has long been aware that the proposed project would transverse three states and that it would be required to obtain regulatory in West Virginia, Virginia, and Maryland. Without consideration to the review process currently pending in West Virginia and Virginia or the ticking of the applicable statutory clock in West Virginia, however, PATH has failed to facilitate the filing of a proper certificate application in Maryland. In light of PATH's failure to facilitate a proper filing in Maryland almost fifty days after dismissal, any claims that time is of the essence in these proceedings certainly seem disingenuous.

Overall, the Application describes PATH as a complete project, originating at the John Amos substation and delivering electricity at the terminus at the Kemptown substation. Almost fifty days after the dismissal by the Maryland PSC, however, PATH's joint venturer, PE, has not filed an application for regulatory approval in Maryland, and has left this Commission with the possibly futile task of reviewing an application for an incomplete project. The lack of a pending application for lines and facilities necessary to connect PATH to the Kemptown substation is particularly troubling, as it is physically impossible for PATH, as presented in the Application, to deliver electricity from its transmission line to ultimate utility customers without traveling through Maryland and connecting to the Kemptown substation. Through its failure to assertively seek regulatory approval from the Maryland PSC, PATH has placed this Commission in a difficult analytical position and has required it to analyze the need to deliver electricity to a currently hypothetical terminus. Therefore, this

certificate application should be dismissed without prejudice until such time as a proper application is filed in Maryland and PATH can present this Commission with a complete project with a certain terminus.

2. This Commission requires the most current economic forecast and PJM load forecast to determine whether a need exists for PATH.

Time elapses while PATH delays facilitating filing an appropriate certificate application before the Maryland PSC, the information presented in PATH's Application grows stale and less reflective of a fluctuating economy. In early November 2009, Moody's/Economy.com will issue its revised economic forecast, the multi-year "Gross Metropolitan Product." PJM then uses the November Moody's forecast and other factors to develop its annual load forecast. Typically, the PJM annual load forecast is completed each November-December and released each January. PJM then uses the annual load forecast to develop an RTEP, which is typically released each February. These combined forecasts will provide crucial information concerning the need for PATH, as this information will be more current than information contained in the Application.

It is crucial to determine whether the updated information shows that the economic landscape developed differently in the last year than was expected. For example, the Commission recently noted these are difficult economic times for utilities and their customers.³ Additionally, the most recent Expanded Net Energy Cost (ENEC) proceeding

³Case No. 09-0177-E-GI, *Appalachian Power Company and Wheeling Power Company, dba American Electric Power*. (September 30, 2009), at p. 9, and Case No. 08-0900-W-42T, *West Virginia*

filed by Monongahela Power Company and PE, both subsidiaries of Allegheny Power, it appears Allegheny Power is showing a loss of Firm Transmission Right revenues.⁴ The implication of reduced Firm Transmission Right revenues is that transmission congestion within PJM is decreasing. Rather than requiring speculation whether the most current load forecasts will confirm or disprove the information filed with the Application, PATH should provide the parties and the Commission with updated economic forecast and load forecast information.

Staff is seeking to present the Commission with the most current and accurate information concerning the need for PATH. The economic landscape may have changed so drastically as to have rendered the information reflected in the Application stale. Through discovery requests served October 16, 2009, Staff requested PATH provide information related to updates of the PJM January 2009 load forecast reflecting new forecasts of economic growth since the formulation of the prior Moody's/Economy.com forecast, which formed the basis for the January 2009 RTEP. Staff also asked if PJM carried out further contingency analysis of the PJM system that considers the latest level of demand response and energy efficiency resources that cleared in the May 2009 RPM Auction. Through responses filed October 22, 2009, PATH explained,

American Water Company. (March 25, 2009), at p. 50.

⁴Case No. 09-1485-E-P, *Monongahela Power Company and The Potomac Edison Company, dba Allegheny Power, Petition to initiate the annual review and to update the ENEC rates currently in effect.*

No. PJM is still working to complete a range of planning process activities, within the scope of the 2009 RTEP, that are unrelated to the PATH line. Model development for the 2010 RTEP will begin in November and December of 2009. If time permits, further sensitivity analyses could be performed to examine changes to 2009 RTEP modeling assumptions. One such sensitivity could examine the latest level of demand response and energy efficiency resources that cleared in the May 2009 RPM auction. However, PJM will be developing the 2010 Load Forecast over the next two months, factoring in the most recent information about the potential for economic recovery in the region. Additionally, a number of announced and/or potential generation retirements may need to be factored into the development of the 2010 RTEP. Any decision regarding the performance of sensitivity analyses will have to weigh the range of modeling assumptions that should be included to ensure the provision of meaningful results.

The information Staff requested is potentially crucial in determining the need for PATH and PJM has failed to include it in any revisions to the 2009 RTEP and does not have plans to do so in the future. However, that information will most certainly be reflected in the 2010 RTEP that will be released in January or February. Furthermore, the 2010 RTEP will reflect the more current economic information. Thus, it is unclear how the Commission can make a determination on this application without the updated information.

In the absence of a proper filing before the Maryland PSC, PATH is creating a timing problem whereby this Commission will be forced to proceed along one statutory time line with older information while the Maryland PSC will be proceeding along a different time line with more current information. The vintage of the load forecast and the underlying economic forecast presented to the Commission is a crucial factor in determining need for the project because of the nature of the need determination and the unique characteristics of the economic

environment. Towards those ends, PATH should be required to re-file its application containing the most current economic forecast and load forecast information if this Application is dismissed. Likewise, PATH should be required to submit the most current load forecast reflecting the most current economic forecast within this proceeding in the event that the Commission declines to dismiss this Application.

3. Staff and Intervenors are being prejudiced by expending limited resources to review an incomplete project and stale need-related information.

Staff and Intervenors are being placed in the difficult position of being forced to review an incomplete project based on stale need-related information. Staff and Intervenors, including the Commission's Consumer Advocate Division, must prepare and file direct testimony no later than November 17, 2009, and present Staff's case in accordance with the Procedural Order entered August 21, 2009. To analyze the Application, Staff and the Intervenors must assume that a complete project exists and that details of the project, route, and terminus remain unchanged. Further, Staff and Intervenors are required initially to expend limited public resources to evaluate information that is aging to the point of unreliability and then to expend limited public resources to evaluate crucial economic and load forecasts as they become available. Literally, as Staff and Intervenors file testimony on November 17, 2009, it will become outdated. In light of limited public resources, it is prejudicial to both Staff and Intervenors to require a double evaluation. This prejudice could be cured if this Application is dismissed and re-filed at a time when PATH is able to present

a complete project supported by viable load forecast information.

THEREFORE, Staff moves the Commission (1) to dismiss PATH's Application without prejudice; (2) permit for re-filing concurrently with the filing of a proper certificate Application before the Maryland PSC; and (3) require PATH to support the re-filed Application with the forthcoming updated PJM annual load forecast, and the updated RTEP.

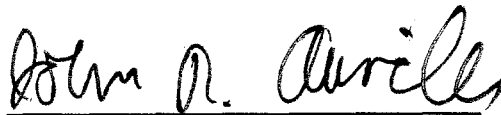
Alternatively, Staff does not object to proceeding with PATH's pending application if PATH submits, no later than Monday, November 2, 2009, a written document requesting to toll the statutory time line until such time as PE files a proper application before the Maryland PSC, and also reflects (1) PATH's agreement to file updated information within this proceeding including the forthcoming updated PJM annual load forecast and the updated RTEP, and (2) PATH's agreement to accept a procedural schedule, at the expiration of tolling, which provides sufficient time for review of the updated information.

Parties, including Staff and the CAD, will soon expend significant resources on expert fees and filing direct testimony. Accordingly, Staff asks the Commission to rule on this motion **as expeditiously as possible**.

Respectfully submitted this 28th day October 2009.

STAFF OF THE PUBLIC SERVICE
COMMISSION OF WEST VIRGINIA

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CERTIFICATE OF SERVICE

I, John R. Auville, Counsel for the Public Service Commission of West Virginia, do hereby certify that a copy of the foregoing "Staff's Motion to Dismiss the Filing as Insufficient or in the Alternative, Require Path to Request a Tolling and Implement Further Case Processing Procedures" has been served upon all the following parties of record this 28th day of October 2009. Parties who have not requested electronic service are being served by First Class, United States Mail, postage prepaid. Parties who have requested electronic service are being served in that manner.

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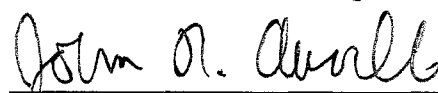
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