



CONSUMER ADVOCATE DIVISION  
STATE OF WEST VIRGINIA  
PUBLIC SERVICE COMMISSION  
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723 Kanawha Boulevard, East  
Charleston, West Virginia 25301  
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WVA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

October 30, 2009

Sandra Squire  
Executive Secretary  
Public Service Commission of West Virginia  
201 Brooks Street  
Charleston, West Virginia 25301

RE: PATH WEST VIRGINIA TRANSMISSION COMPANY, LLC;  
PATH ALLEGHENY TRANSMISSION COMPANY, LLC;  
PATH-WV LAND ACQUISITION COMPANY; and  
PATH-ALLEGHENY LAND ACQUISITION COMPANY  
CASE NO. 09-0770-E-CN

Dear Ms. Squire:

Enclosed for filing in the above-captioned matter are an original and twelve (12) copies of the **Response of the Consumer Advocate Division in Support of Commission 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.**

Sincerely,

David A. Sade  
Deputy Consumer Advocate  
State Bar No. 3229

DAS/cf

Enclosures

cc: John Philip Melick, Esq.  
John Auville, Esq.  
Parties requesting First Class Mail Service

**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

Joint application for certificates of public convenience  
and necessity under *W. Va. Code* § 24-2-11a and  
for related relief.

**RESPONSE OF THE CONSUMER ADVOCATE DIVISION  
IN SUPPORT OF COMMISSION 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**

The Consumer Advocate Division of the Public Service Commission of West Virginia ("CAD" ) concurs with and endorses the Commission 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* filed on October 28, 2009. The Public Service Commission of Maryland's dismissal of the application filed in that jurisdiction for approval of the Maryland portion of the proposed transmission line and related facilities<sup>1</sup>, and the concomitant failure of the applicant in that proceeding to timely file an appropriate application for approval of transmission facilities, fatally impede this Commission's ability to continue processing the request for approval of the West Virginia portion of the line.

The bulk of the relevant procedural background of this matter is set forth in the introductory

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<sup>1</sup> *Order No. 82892*, September 9, 2009, Public Service Commission of Maryland 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 Electric Transmission Line and a Substation in Frederick County Maryland*).

portion of Staff's "*Motion*"<sup>2</sup> and will not be repeated here. The CAD simply would note that in addition to the dismissal of the Maryland application, Staff of the Virginia State Corporation Commission also has moved to dismiss the pending application for approval and certification of the Virginia portion of the facilities<sup>3</sup> on the grounds that, given the events in Maryland, ". . . 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."<sup>4</sup> The applicant has filed a response to the Virginia Staff's "*Motion*"<sup>5</sup> asserting, among other grounds, the need to proceed with the project to address anticipated violations of NERC reliability standards, and offering an emphatic declaration that the terminus of the line has always been and will remain the proposed Kemptown Substation in Frederick County, Maryland. The Virginia applicant's assertions regarding the termination of the line remain just that—assertions in a pleading—given that no application currently is on file in Maryland that would reflect the location of the end point of the line or the proposed location of any other facilities in that state. As the reformulation of the proposed route in West Virginia has revealed<sup>6</sup>, there certainly is more than one way to achieve the routing objectives of the entities proposing the construction of this transmission line and related facilities. Until such time as a new, proper application has been filed in Maryland, there is no way for the West Virginia Commission and its Staff to properly

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<sup>2</sup> "*Staff Motion*", p. 2-3.

<sup>3</sup> *Commission Staff Motion to Dismiss Application and to Certify Issue to the Commission*, October 19, 2009, Virginia State Corporation Commission Case No. PUE-2009-00043 (*Application of PATH Allegheny Transmission Corporation For Certificates of Public Convenience and Necessity to Construct Facilities: 765 kV Transmission Line through Loudoun, Frederick, and Clarke Counties*).

<sup>4</sup> *Id.*, p. 1.

<sup>5</sup> PATH Allegheny Virginia Transmission Corporation's *Response to Commission Staff Motion to Dismiss Application* ("Virginia Response") October 26, 2009.

<sup>6</sup> See, e.g., *Direct Testimony of Jay A. Ruberto*, May 15, 2009.

evaluate the application filed here to know what impacts, if any, Maryland routing and siting proposals will have on the West Virginia portion of the project and on the citizens, businesses, ratepayers and environment of the State.

This uncertainty is compounded by the fact that Potomac Edison ("PE") appears not to be particularly close to completing the "significant analysis of a myriad of issues" that it believes must take place before it decides whether to file a new application in Maryland.<sup>7</sup> Additionally, PE apparently is contemplating eschewing state regulatory review of the Maryland portion of the project entirely and instead seeking authorization to construct the Maryland facilities from the Federal Energy Regulatory Commission ("FERC").<sup>8</sup> The full impact of such a drastic departure from the customary approach to obtaining siting and construction approval, not only on the outcome in Maryland but on the proceedings in West Virginia and Virginia as well, is hard to assess at this juncture and injects further uncertainty into the matter before this Commission.

The CAD also supports the West Virginia Commission Staff's concern that this Commission have in hand the most current economic, forecasting, and planning information before it proceeds with consideration of the pending application. As the Commission is well aware, the significant increases in electric rates approved in recent ENEC proceedings (and sought in others still pending) have occurred in large part because of the drastic decline in off-system sales revenues earned by West Virginia's major electric utilities. Given the extent to which the justification for the proposed transmission line is based on energy demand created outside West Virginia's borders, it is vitally important that the Commission be able to assess the

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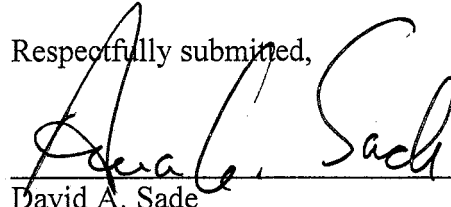
<sup>7</sup> "Virginia Response", p. 4. See, October 9, 2009, letter submitted by counsel for Potomac Edison to the Maryland Public Service Commission stating that:

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.

<sup>8</sup> PATH Allegheny Virginia Transmission Corporation's *Response to Commission Staff Motion to Dismiss Application*, p. 4.

impact that such alterations in the demand/consumption landscape will have, or already have had, on the need to construct this expensive and disruptive transmission line.

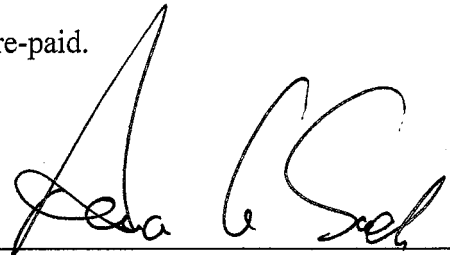
Respectfully submitted,

A handwritten signature in black ink, appearing to read "David A. Sade". The signature is written in a cursive style and is positioned above a horizontal line.

David A. Sade  
Deputy Consumer Advocate  
State Bar No. 3229

## CERTIFICATE OF SERVICE

I, David A. Sade, counsel for the Consumer Advocate Division of the Public Service Commission of West Virginia ("CAD"), hereby certify that I have served a PAPER copy of the foregoing **Response of the Consumer Advocate Division in Support of Commission 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** upon the applicants, the Commission's Staff, and all parties who have stated that they are unwilling or unable to participate in the case by email by First Class, U.S. Mail, postage pre-paid.

A handwritten signature in black ink, appearing to read "David A. Sade", written over a horizontal line.

David A. Sade  
Deputy Consumer Advocate  
State Bar No. 3229

Dated: October 30, 2009