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November 6, 2009

AREA CODE 304
343-1654

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WV PUBLIC SERVICE
COMMUNICATIONS

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

RE: CASE NO. 09-0770-E-CN
PATH WEST VIRGINIA TRANSMISSION COMPANY, LLC *et al.*

Dear Ms. Squire:

Enclosed herein for filing on behalf of J.C. Baker & Son, Inc. ("J.C. Baker") please find the original and twelve (12) copies of its Reply to Applicants' Response to Staff Motion to Dismiss, etc., and Proposal to Toll Statutory Decision Due Date and Extend Procedural Schedule.

As evidenced by the Certificate of Service attached thereto, copies of the Reply have today been served upon all parties who have stated that they are unwilling or unable to participate in the case by e-mail.

Sincerely,



Robert R. Rodecker
WV State Bar No. 3145

/bg
enclosures
cc: parties of record
Jim Meckley

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 authorizing the construction and operation of the West Virginia segments of 765 kV electric transmission lines 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

**REPLY OF J.C. BAKER & SON, INC. TO
APPLICANTS' RESPONSE TO STATFF MOTION TO DISMISS, ETC.,
AND PROPOSAL TO TOLL STATUTORY DECISION DUE DATE
AND EXTEND PROCEDURAL SCHEDULE**

Now comes J.C. Baker & Son, Inc. ("J.C. Baker"), by counsel, and replies to the Applicants' Response to Staff Motion to Dismiss, Etc., and Proposal to Toll Statutory Decision Due Date and Extend Procedural Schedule ("Applicants' Response") and requests that, on the basis of the Applicants' Response, the Commission should grant the Staff's Motion to Dismiss and reject the Applicants' "Conditional Offer to Toll and Extend Procedural Schedule" ("Conditional Offer") In the alternative, in lieu of granting the Staff Motion at this time, the Commission should

set forth a reasonable procedural schedule (“Commission Revised Procedural Schedule”) which, if accepted by the Applicants no later than seven (7) days from the date of the Commission’s Order rejecting such Conditional Offer, shall govern the processing of this case. If such Commission Revised Procedural Schedule is not accepted by the Applicants within said seven (7) day period, the Staff Motion to Dismiss should be granted. Furthermore, it is respectfully requested that, in order to give the Commission sufficient time to maturely consider the matters related to the Staff Motion, the Applicants’ Response and Conditional Offer and this Reply, that the Commission suspend the current procedural schedule.

The grounds for this Reply are as follows:

1. West Virginia Code §24-2-11a(b)(1) requires that an application for a certificate of convenience and necessity under that section contain a description of the “location and type of line facilities which the applicant proposes to construct.” The term “location” as used in that section is not limited to the state of West Virginia.

On May 15, 2009, the Applicants submitted their application under West Virginia Code §24-2-11a (the “Application”). In paragraphs 11 through 16 of the Application, the Applicants set forth the description of the PATH project. That description included facilities to be constructed in the State of Maryland.¹

2. In the proposed Notice of Filing which accompanied the Application, the Applicants’ description of the project stated that the PATH Project includes approximately 20 miles of 765 kV transmission line “in Frederick County, Maryland, to

¹ See paragraphs 11 – 13 of Application.

a point near Kemptown, Maryland, where a proposed substation will be constructed at the endpoint of the PATH Project.”

3. The Applicants’ Response discloses that, as things now stand, the Application for the PATH Project as filed and Noticed in this case, is no longer complete in that “an application for certification of the PATH Project in Maryland is not presently pending, . . .”². Further, but for the submission of a copy of an affidavit filed in Virginia stating that “[t]he plan is to continue to move forward with the route detailed in [the Virginia] Application and in the supporting testimony”³(emphasis added), there is no assurance contained anywhere within the Applicants’ Response that an application for authority to construct the Maryland facilities of the PATH Project will ever be filed. Plans can and do change. In this case, a change in plans may have substantial bearing on the interests of many of the Intervenors in this case; including J.C. Baker & Son, Inc.

4. Even if an application for authority to construct the Maryland facilities is submitted to the Maryland Commission or the Federal Energy Regulatory Commission (FERC), there is no time period set forth in the Applicants’ Response as to when such application would be filed. Accordingly, the Application in this case should be dismissed as incomplete. In the alternative, this case should be tolled for a period at least until the Applicants can provide the Commission with evidence of the filing for approval of the Maryland segment of the PATH Project.

² See page 1 of Applicants’ Response.

³ See Hozempa Affidavit attached to Exhibit A to Applicants’ Response.

5. As an alternative to the dismissal of the Application, and in recognition that the need for the line in the immediate future, if at all, is subject to continuing review, the Applicants propose a suspension of a part of the procedural schedule and a tolling of the Commission's statutory decision due date for a period of 217 days. The tolling is offered **only if** the Commission "is willing to adopt the **major** elements" of a proposed revised procedural schedule (emphasis added). The proposed procedural schedule contemplates that Intervenors would still file their direct testimony on November 17, 2009 on matters unrelated to need, and they propose the bifurcation of the case into a need portion and a prior non-need portion.

The Applicants provide no basis for establishing the time period of 217 days as the period for the tolling, and no justification for their proposal to continue to require the parties to adhere to the November 17, 2009 through December 29, 2009 dates in the current procedural schedule. Finally, no justification is provided for the proposed bifurcation of the need and non-need related issues.

6. Most, if not all, of the Parties' issues are related in some way to the electrical need for the line. If there is no need for the line, or if the need is delayed or found to require different routing or other adjustments, the non-need issues will either be eliminated or revised. Thus, it is totally unreasonable to separate the case into two segments with the hearing on need coming after the non-need issues. It is unreasonable for the Intervenors to have to prepare for two PATH Projects; one as originally filed which is no longer complete, and one that may or may not be filed in the future which may have substantial differences from the current Application.

7. It is unreasonable for the Applicants to reference the testimony of the Staff witness in the TrAIL case as somehow justifying the Commission continuing to go forward with an incomplete project on the basis that the Staff had decided in the TrAIL case that, in that case, there would be a need for the TrAIL line at some point in the future.

The parties in this case are not the same parties that appeared in the TrAIL case and did not have the opportunity to examine Mr. Melton on the basis for his conclusion there and the applicability of such conclusions to this case. Further, Mr. Melton's testimony in support of the Staff's revised conclusion of a need for the TrAIL line only came about after TrAIL offered substantial "sweeteners" to the Application in that case which are not currently present in this case. More importantly, transmission construction is based on serving load. If load doesn't grow, there is no need for the line. Thus, if current data, which is the basis for the tolling, establishes that load is not growing, there is no current or future need for the line and thus no justification for the continuation of this case.

8. The Applicants do not tell the Commission or the Parties what they consider to be the **major** elements of their revised procedural schedule. The Commission should not consider itself bound to a Conditional Offer of tolling. If the Commission believes that, rather than a dismissal of the Application, a tolling is appropriate to permit the Applicants to update and complete its Application, it should present the Applicants with a reasonable Commission Revised Procedural Schedule which suspends the filing dates for the Intervenors' testimony on all issues, for the

same period of time that the proceeding itself is suspended and provides all parties with a reasonable period of time to review and consider the updated information. In this way, all Parties will be assured that their efforts and costs will not be expended unnecessarily. It is patently unreasonable for PATH to take as long as it pleases to put its case together and then request a tolling of almost 2/3rd or a year, but expect the Intervenors, who may be limited in their ability to put on a case about need, to file their testimony about a case that may not go to hearing at all, but if it does, not for ten (10) months after filing direct testimony by the Intervenors. On top of that, PATH apparently has also not retreated from its position that Intervenors would be foreclosed from follow-up discovery on non-need related issues at any time between October 19, 2009 and the commencement of hearings in September, 2010. The Conditional Offer is an offer that can, and should, be refused.

WHEREFORE, based upon the foregoing, it is respectfully requested that the Commission reject the Applicants' Response and that it grant the Staff Motion to Dismiss. In the alternative, it is respectfully requested that the Commission establish its own Commission Revised Procedural Schedule which, if accepted by the Applicants within seven (7) days of the entry of the Order on the Staff's Motion, will result in the suspension of all elements of the current procedural schedule for the same period of time as the tolling that is approved by the Commission. It is further respectfully requested that the Commission grant the Staff Motion to Dismiss if the Applicants fail to accept the Commission Revised Procedural Schedule within seven (7) days of the entry of Order on the Staff's Motion. Finally, it is further requested

that the Commission suspend the current procedural schedule for a sufficient period of time to enable the Commission to consider the Staff Motion, Applicants' Response, and related filings.

Respectfully submitted,

J.C. BAKER & SON, INC.

By Counsel

A handwritten signature in cursive script that reads "Robert R. Rodecker". The signature is written in black ink and is positioned above a horizontal line.

Robert R. Rodecker [#3145]
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(304) 343-1654
rodecker@wvdsi.net

Dated: November 6, 2009

CERTIFICATE OF SERVICE

I, Robert R. Rodecker, counsel for J.C. Baker & Sons, Inc., do hereby certify that a copy of the foregoing document has been served upon all parties who have stated that they are unwilling or unable to participate in the case by e-mail by U.S. Mail, postage prepaid, on this 6th day of November, 2009.



ROBERT R. RODECKER