

**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 10<sup>th</sup> 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) stays the current procedural schedule, (ii) grants the parties additional time to file recommendations regarding the Commission Staff motion to dismiss, and (iii) grants the request of two parties to withdraw from the case.

**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 September 18, 2009, the Commission issued an Order addressing (i) a concern regarding filings with the Commission, (ii) Woody family interest interventions, (iii) affidavits of publication, (iv) proposed intervenor groups, (v) petitions to intervene, (vi) Mr. Cassell's petition for reconsideration and motion, and (vii) a typographical error on the procedural schedule.

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

## DISCUSSION

### *I. Staff Motion 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 Applicants failure to re-file its 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 are being 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 concurrently with the filing of a proper certificate application before the Maryland Public Service Commission; and (iii) require the Applicants to support the re-filed application with the forthcoming updated PJM annual load forecast, and the updated RTEP. In the alternative Staff recommended proceeding with the pending application if the Applicants submit, no later than November 2, 2009, a written document requesting to toll the statutory time line until such time as Potomac Edison files a proper application before the Maryland PSC, reflecting an agreement to (a) file updated information within this proceeding including the forthcoming updated PJM annual load forecast and the updated RTEP, and (b) accept a procedural schedule, at the expiration of tolling, which provides sufficient time for review of the updated information.

On November 4, 2009, the Applicants filed a response to the Staff motion to dismiss stating 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; (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; and (iv) 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. Accordingly, the Applicants are willing to toll the statutory decision due date in West Virginia if a satisfactory extension of the current procedural schedule is put into place.

On November 10, 2009, Staff filed a Response to the Applicants' Response. Staff stated that (i) the Applicants' offer to toll the statutory deadline was not acceptable, (ii) the Commission should not hold two hearings to address need and non-need testimony, and (iii) in any event the parties should be given more time to file the non-need testimony.

In addition, 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.

### *Commission Decision*

Staff filed its motion to dismiss over a month and a half after the Maryland Public Service Commission dismissed the related transmission line filing in that state. The Applicants filed their offer to toll this proceeding with less than two weeks before the Staff and Intervenors are required to file testimony. Both filings are directed toward assuring that the Commission has access to the most up-to-date information when making its decision in this case.

After a preliminary analysis, given the size and complexity of this case, the attempt to split the issues for purposes of either hearing or testimony may create an untenable morass. However, the Commission is willing to consider further argument on this point.

At present, the Commission is prepared to do two things. First, the Commission will suspend the current procedural schedule, as contained in the September 4, 2009 order. In particular, this means that the Staff and Intervenors will not be required to submit pre-filed testimony on November 17, 2009. If the Commission does not grant the Staff motion to dismiss, the Commission will issue a revised procedural schedule.

Second, the Commission will grant the parties until 12:00 noon, Tuesday November 17, 2009, for the purpose of filing a final response to the Staff motion to dismiss and offer to toll tendered by the Applicants. As to the Applicants' filing, the Commission would be interested in receiving recommendations for a workable procedural schedule that does not require separating the testimony between need and non-need issues.

## ***II. Motions to Withdraw As a Party***

On November 2, 2009, Elmer and Kim Bumbray filed a motion to withdraw as parties to this case.

On November 2, 2009, Fred Moore asked to be removed from the email/ mailing list

of this case.

### *Commission Decision*

The Commission will grant these motions to withdraw as parties to this case. Mr. Moore and Judith A. Moore petitioned jointly to intervene. The Commission will treat Mr. Moore's request as a request to withdraw on behalf of both Fred Moore and of Judith A. Moore. Ms. Moore should notify the Commission if this assumption is incorrect and she wishes to remain as a party.

### **FINDINGS OF FACT**

1. Staff filed a motion to dismiss that was responded to by the Applicants along with several other parties.
2. Both the Bumbrays and Mr. Moore asked to withdraw as parties.

### **CONCLUSIONS OF LAW**

1. It is reasonable to suspend the current procedural schedule while the Commission reviews the Staff motion to dismiss.
2. It is reasonable to allow the Bumbrays and the Moores to withdraw from this case.

### **ORDER**

IT IS THEREFORE ORDERED that the procedural schedule as contained in the September 4, 2009 order is suspended. The Staff and Intervenors are not required to submit pre-filed testimony on November 17, 2009.

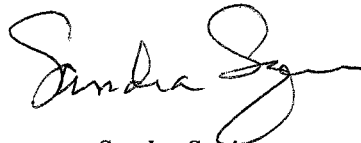
IT IS FURTHER ORDERED that all parties are granted until 12:00 noon, Tuesday November 17, 2009, to file a final response to the Staff motion to dismiss and offer to toll tendered by the Applicants.

IT IS FURTHER ORDERED that the Bumbray request to withdraw as a party is granted.

IT IS FURTHER ORDERED that the Moore request to withdraw as a party is granted.

IT IS FURTHER ORDERED that the Commission Executive Secretary serve a copy of this Order upon 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, Teste:

A handwritten signature in black ink, appearing to read "Sandra Squire". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

**Sandra Squire  
Executive Secretary**

JJW/slc  
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