

**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 10th day of September 2010.

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) grants the Applicants Revised Proposal, (ii) further tolls the running of the statutory suspension period, (iii) adopts a revised procedural schedule, and (iv) denies motions to dismiss or suspend this proceeding.

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 as part of the PATH Project a certificate of public convenience and necessity to (i) jointly construct, own, operate, and maintain the new Welton Spring Substation to be constructed two miles north of Old Fields in Hardy County, and (ii) construct, own, operate, and maintain certain modifications to the Amos Substation owned by Appalachian Power Company and Ohio Power Company.

Background Regarding Previous Proposals to Toll the Statutory Due Date Filed by the Applicants

On November 4, 2009, the Applicants filed a proposal to toll the statutory due date stating that (i) when they filed their applications they fully expected that the procedural schedules in West Virginia, Maryland and Virginia would be “reasonably well aligned”, (ii) such alignment would ensure that the same testimony, particularly on need, could be presented in each jurisdiction, and (iii) reasonably comparable case processing time frames would simplify the final disposition of cases if one or more of the three jurisdictions conditioned approval on the receipt of regulatory approval in the other jurisdictions.

On November 24, 2009, the Commission issued an Order granting the Applicants proposal to toll the running of the statutory due date. In doing so, the Commission stated “All things considered, it is beneficial to have the proceedings before the utility commissions of Virginia and Maryland moving forward at a pace at least roughly parallel to our own.” Commission Order November 24, 2009, at page 4.

On May 3, 2010, the Applicants filed a second proposal to toll the statutory decision due date. As cause the Applicants stated that extending the procedural schedule would give Staff additional time to review supplemental testimony on need and would allow the schedule in this proceeding to align more closely with the procedural schedules that were likely to be established in Maryland and Virginia.

On June 3, 2010, the Commission issued an Order granting the second proposal to toll, reiterating the benefit of the Maryland and Virginia cases moving forward at a pace roughly parallel to our own.

Present Proposal to Toll the Statutory Decision Due Date Filed by the Applicant

On August 10, 2010, the Applicants filed a letter stating that because of an error in the base case analysis used in the development of the 2010 Regional Transmission Expansion Plan, the Applicants will propose a tolling of the running of the statutory period in this case until July 29, 2011, and a corresponding extension of the current procedural schedule.

On August 20, 2010, the Applicants filed a Revised Proposal to Toll Statutory Decision Due Date and Extend Procedural Schedule (Revised Proposal). The Applicants proposed a procedural schedule to include a statutory deadline of July 28, 2011, and an evidentiary hearing to begin March 21, 2011. The Applicants stated that (i) it did not expect the Virginia certificate filing would incorporate any routing changes that would require corresponding route changes in West Virginia, but if such were necessary the Applicants committed to recommending a revision to the discovery deadline as necessary, and (ii) if the Commission adopts the Revised Proposal, the Applicants will not seek to invoke backstop authority under Section 216(b) of the Federal Power Act during the period between the expiration of the one-year period following the filing of the application and July 28, 2011.

On August 25, 2010, the Commission issued an Order, which among other things, required the Applicants to file a response regarding the status, timing, and alignment of transmission line proceedings in Maryland and Virginia.

On September 2, 2010, the Applicants filed a letter stating that (i) it is anticipated that revised testimony will be filed in Maryland by mid-September 2010, (ii) a final order on the merits by the Maryland Commission is expected by September 14, 2011, (iii) the certificate filing is expected in Virginia by September 30, 2010, and (iv) a final order on the merits by the Virginia Commission is expected by September 30, 2011.

The Applicants asserted that the revised procedural schedule in its Revised Proposal (i) corresponded with the anticipated schedules in Maryland and Virginia, (ii) will ensure that the Maryland and Virginia hearing dates will not overlap the March 2011 proposed hearing dates in this case, and (iii) will allow this Commission additional time to adjudicate any petitions for reconsideration or rehearing prior to the issuance of certificate hearings in the other jurisdictions. The Applicants requested that the Commission enter an order adopting the revised procedural schedule.

On September 7, 2010, Intervenor Tina Rappaport filed a Motion requesting the Commission suspend this case until procedural schedules are filed in Maryland and Virginia.

On September 8, 2010,¹ the Commission received a motion from Intervenor Alison Haverty requesting that the Commission suspend the proceedings in this case until procedural schedules are established in Maryland and Virginia.

On September 8, 2010, the Commission received separate motions from Intervenor Bill Howley and David W. Cassell, each requesting that the Commission dismiss this proceeding, or, in the alternative, suspend it until Maryland and Virginia have established procedural schedules in their respective proceedings. Mr. Howley also described events in Maryland and Virginia that he claimed could impact the filings in those states.

On September 9, 2010, the Commission received separate motions from Intervenor Myra Bonhage-Hale, Janice T. Cooper, Keith Lahti, and Melody Urbanic each requesting that the Commission suspend the proceedings in this case until procedural schedules are established in Maryland and Virginia.

¹ On September 8, 2010, the Commission also received a request from Franklin R. and Carolyn R. Mitchell that the Commission suspend the proceedings in this case until procedural schedules are established in Maryland and Virginia. The Mitchells were denied intervenor status in this case by Commission Order issued April 13, 2010. The Commission will treat their filing as a protest.

On September 9, 2010, the Barbour County Intervenors Group and the Williams-Costello Intervenor Group separately filed to join Mr. Howley's September 8, 2010 filing.

On September 9, 2010, the Applicants filed a letter noting that (i) none of the motions to dismiss or suspend this proceeding cite any legal basis for the relief sought and (ii) the exercise of Commission authority in this case is not subject to the pendency of proceedings in other states.

DISCUSSION

The assertions by the Applicants regarding the events in Maryland and Virginia describe a scenario that will result in a final decision in those jurisdictions within approximately the same time frame as the decision in this case. The request to revise the schedule is reasonable and will be granted. The revised procedural schedule provides the parties sufficient time to respond to the supplemental testimony of the Applicants.

The motions to dismiss are denied because the Applicants have agreed to an extension of the statutory decision due date. The motions to suspend indefinitely are denied because they fail to state a legal basis for doing so.

FINDINGS OF FACT

1. The Applicants have requested a third tolling of the running of the statutory suspension period. The need for the current Revised Proposal is based on an error in the base case analysis used in the development of the 2010 Regional Transmission Expansion Plan.

2. Several intervenors filed motions and requests for the Commission to dismiss this case or indefinitely suspend these proceedings until such time as procedural schedules are issued in the Maryland and Virginia proceedings.

CONCLUSIONS OF LAW

1. It is reasonable to (i) toll the running of the statutory suspension period, as requested by the Applicants, and extend the statutory due date, and (ii) adopt the procedural schedule in the Revised Proposal, because it will provide the Staff and Intervenors with sufficient opportunity to review the Applicants corrected testimony prior to filing their respective testimonies in this case.

2. The Commission will deny the motions to dismiss and to indefinitely suspend these proceedings for the reasons stated in the Discussion of this Order.

3. The Applicants agree they will not seek to invoke backstop authority under Section 216(b) of the Federal Power Act during the period between the expiration of the one-year period following the filing of the application and July 28, 2011.

ORDER

IT IS THEREFORE ORDERED that the Revised Proposal filed August 20, 2010 is hereby granted. The running of the statutory period applicable to the Commission's date to render a decision in this matter is tolled and extended until Thursday, July 28, 2011 at the request of the Applicants.

IT IS FURTHER ORDERED that the procedural schedule, including the January 10, 2011, evidentiary hearing, as adopted by the Commission Order of June 3, 2010, is cancelled.

IT IS FURTHER ORDERED that the procedural schedule shown below, including the hearing beginning Monday, March 21, 2011, is adopted for use in this proceeding.

Event	Date
Applicants file supplemental testimony on issues of electrical need and any other issues requiring supplementation	Noon, Tuesday, September 14, 2010
Staff and intervenors propound discovery on supplemental testimony filed September 14, 2010	Noon, Wednesday, January 5, 2011
Staff and Intervenors prepared direct testimony and rebuttal to the direct testimony of Applicants	Noon, Tuesday, January 25, 2011
Deadline for propounding discovery in response to testimony due January 25, 2011	Noon, Monday, February 7, 2011
Applicants rebuttal testimony to the direct testimony for Staff and Intervenors, and for Staff and Intervenor rebuttal testimony to the direct testimony of one another	Noon, Wednesday, February 23, 2011
Deadline for propounding discovery in response to the rebuttal testimony due February 23, 2011	Noon, Monday, March 7, 2011
Written opening statements	Noon, Wednesday, March 16, 2011
Evidentiary hearing begins	Monday, March 21, 2011
Evidentiary hearing ends	Tuesday, April 5, 2011
Initial briefs and proposed orders	Noon, Tuesday, May 3, 2011
Reply briefs	Noon, Thursday, May 19, 2011

IT IS FURTHER ORDERED that the motions to dismiss or suspend this proceeding as filed by Intervenors Barbour County Intervenors Group, Myra Bonhage-Hale, David W. Cassell, Janice T. Cooper, Alison Haverty, Bill Howley, Keith Lahti, Tina Rappaport, Melody Urbanic, and Williams-Costello Intervenor Group, are denied.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this order by electronic service on all parties of record who have filed an e-service agreement, by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Staff by hand delivery.

~~A True Copy. Teste:~~


Sandra Squire
Executive Secretary

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