

**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 1st day of March 2011.

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) defers ruling on motions for protective treatment and (ii) grants the motion to withdraw filed by the Joint Applicants.

BACKGROUND

On May 15, 2009, the PATH West Virginia Transmission Company, LLC (PATH-WV), the PATH Allegheny Transmission Company, LLC (PATH-Allegheny), the PATH-WV Land Acquisition Company, and the PATH-Allegheny Land Acquisition Company (all four, collectively, Joint 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.

On January 7, 2011, the Commission issued an Order (i) denying motions to dismiss, (ii) further tolling the running of the statutory suspension period, (iii) adopting a revised procedural schedule, and (iv) deferring ruling on two motions to compel and a motion for protective treatment.

Further procedural history will appear in the Discussion section of this Order as necessary to address outstanding issues.

DISCUSSION

I. Motion to Withdraw

On February 28, 2011, the Joint Applicants filed a Motion to Withdraw the May 15, 2009 Joint Application in this case, without prejudice. As cause the Joint Applicants stated that the Board of Managers of PJM Interconnection, LLC, has taken action to hold the PATH Project in abeyance as a Regional Transmission Expansion Plan baseline project because the need for the project has been advanced into the future. The Joint Applicants asserted that withdrawing the Joint Application is in the public interest and that the PATH applicants in Maryland and Virginia were taking the necessary steps to withdraw the pending applications in those jurisdictions.

The Commission will (i) grant the Motion to Withdraw, (ii) cancel the procedural schedule, including the October 11-26, 2011 hearing, and (iii) dismiss the Joint Application.

II. Outstanding Motions

At the time the Motion to Withdraw was filed several motions were pending before the Commission. Specifically:

- A. On December 17, 2010, the Consumer Advocate Division (CAD) filed a Motion to Compel a response to its data request questions C-64 (CAD-III-2), C-68 (CAD-III-6), C-69 (CAD-III-7), and C-70 (CAD-III-8) by the Joint Applicants.
- B. On December 28, 2010, the Jefferson County Intervenors Group (JCIG) filed a Motion to Compel a response to its data request questions JCIG-VIII-2 and JCIG-VIII-3 by the Joint Applicants.
- C. On January 14, 2011, Intervenor Alison Haverty filed a Motion to Compel a response to her fourth set of discovery requests by the Joint Applicants.
- D. On January 21, 2011, the Joint Applicants filed a Fifth Amendment to Motion for Protective Order asking for permanent protective treatment of business confidential information provided in response to the CAD Fourth Request

(CAD-IV-8-SUPP-A-CONF and Attachments CAD-IV-03-A-CONF through CAD-IV-03-F-CONF) for information in this case.

- E. On February 3, 2011, the Joint Applicants filed a Sixth Amendment to Motion for Protective Order asking for permanent protective treatment of critical energy infrastructure information that the Joint Applicants provided in response to data requests submitted by (i) the CAD (request CAD-III-7-H-CEII) and (ii) the Sierra Club, Inc., and West Virginia Highlands Conservancy (request Sierra-XVI-38-B), because such data constitutes confidential CEII data or confidential business information.

Because the Commission is dismissing the Joint Application, the CAD, JCIG, and Haverty motions to compel are moot.

Regarding the Fifth and Sixth Amendments to Motion for Protective Order, the Commission concludes that it is not necessary to decide the permanent protected status of the items filed under seal by the Joint Applicants. The Commission will direct the Executive Secretary to segregate the documents currently filed under seal until such future time as the Commission receives a Freedom of Information Act (FOIA) request for any of those documents. After a FOIA request, the Commission will notify the Joint Applicants and provide them with an opportunity to justify protective treatment for those documents. The Commission notes that deferring a ruling on the status of these documents should not be interpreted as a ruling granting protective treatment.

FINDING OF FACT

The Joint Applicants filed a motion to withdraw this proceeding. February 28, 2011, Joint Applicant Motion to Withdraw.

CONCLUSIONS OF LAW

1. The Commission will grant the Joint Applicants Motion to Withdraw and dismiss the May 15, 2009 Joint Application.
2. The CAD, JCIG, and Haverty Motions to Compel are moot.
3. The Commission will defer consideration of the Fifth and Sixth Amendments to Motion for Protective Order and segregate the sensitive documents until such future time, if any, that the Commission receives a FOIA request for the documents

ORDER

IT IS THEREFORE ORDERED that the procedural schedule in this case, including the October 11-26, 2011 hearing, is cancelled.

IT IS FURTHER ORDERED that the May 15, 2009 Joint Application filed by the Joint Applicants is dismissed without prejudice.

IT IS FURTHER ORDERED that consideration of the sensitive documents in the Fifth and Sixth Amendments to Motion for Protective Order is deferred until the filing of a FOIA request. The Executive Secretary shall maintain the protected documents under seal, separate and apart from the rest of the file.

IT IS FURTHER ORDERED that on entry of this Order this case shall be removed from the Commission docket of open cases.

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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