

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 20, 2010

CLERK'S OFFICE

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APPLICATION OF

PATH ALLEGHENY VIRGINIA  
TRANSMISSION CORPORATION

DOCUMENT CONTROL

CASE NO. PUE-2010-00115

For approval and certification of electric transmission facilities under Va. Code § 56-46.1 and the Utility Facilities Act, Va. Code § 56-265.1 *et seq.*

ORDER

On September 20, 2010, PATH Allegheny Virginia Transmission Corporation ("PATH-VA") filed with the State Corporation Commission ("Commission") an application ("Application") seeking approval and certification of electric transmission facilities under § 56-46.1 of the Code of Virginia ("Code") and the Utility Facilities Act, § 56-265.1 *et seq.* of the Code. PATH-VA requests approval for the Virginia portions of the Potomac-Appalachian Transmission Highline ("PATH") Project, a 765 kilovolt transmission line that would extend from Putnam County, West Virginia, to Frederick County, Maryland. The transmission line, as proposed, would traverse the counties of Clarke, Frederick, and Loudoun within the Commonwealth of Virginia.

The September 20, 2010 Application is the second such application PATH-VA has filed with the Commission. On May 19, 2009, PATH-VA filed a similar application for approval and certification of electric transmission facilities, requesting authority to build the Virginia portion of the proposed 765 kilovolt transmission line from the existing Amos Substation in Putnam County, West Virginia, to the proposed Kemptown Substation in Frederick County, Maryland.<sup>1</sup>

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<sup>1</sup> *Application of PATH Allegheny Virginia Transmission Corporation, For certificates of public convenience and necessity to construct facilities: 765 kV transmission line through Loudoun, Frederick, and Clarke Counties, Case No. PUE-2009-00043.*

On December 21, 2009, in that first proceeding, PATH-VA filed a Motion to Withdraw Application and Terminate Proceeding ("Motion to Withdraw"). On January 27, 2010, the Commission granted the Motion to Withdraw ("Order Granting Withdrawal"). In the Order Granting Withdrawal, the Commission stated as follows:

We also direct that, in addition to the other requirements attendant to a transmission line application, any future application related to the PATH Project include information regarding:

- [PJM Interconnection, LLC's ('PJM')] 2010 or later [Regional Transmission Expansion Plan ('RTEP')], and PJM's 2010 or later [Reliability Pricing Model] auction;
- the updated load flow analyses filed on January 4, 2010 pursuant to the [Senior Hearing Examiner's December 4, 2009 Ruling];
- an analysis of changes in circumstances, including changes in generation, demand response, and energy efficiency resources; and
- the PATH Project's original routes (including routes that do not impact Virginia), consistent with the information provided regarding other proposed and alternative routes.<sup>2</sup>

On September 24, 2010, the Commission Staff ("Staff") filed, in the instant proceeding, a Motion to Hold Proceeding in Abeyance Pending Completion of the Application and for Expedited Waiver of 5 VAC 5-20-160 ("Motion"). Staff asserts that the Application "is incomplete because it fails to provide information required" in the Order Granting Withdrawal.<sup>3</sup> Specifically, Staff asserts that the Application does not include information regarding (1) PJM's 2010 or later RTEP, and (2) PATH's original routes (including routes that do not impact

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<sup>2</sup> *Application of PATH Allegheny Virginia Transmission Corporation, For certificates of public convenience and necessity to construct facilities: 765 kV transmission line through Loudoun, Frederick, and Clarke Counties*, Case No. PUE-2009-00043, Order Granting Withdrawal at 5, Doc. Con. Cen. No. 100130182 (Jan. 27, 2010).

<sup>3</sup> Motion at 2 (typeface and case modified).

Virginia), consistent with the information provided regarding other proposed and alternative routes.<sup>4</sup> In addition, Staff asserts that since PATH-VA proposes to operate transmission facilities within the certificated territories of Virginia Electric and Power Company ("Virginia Power"), Northern Virginia Electric Cooperative ("NOVEC"), and Shenandoah Valley Electric Cooperative ("Shenandoah"), the Application is incomplete because it fails to provide any evidence that current electric service in these territories "is inadequate to the requirements of the public necessity and convenience" under § 56-265.4 of the Code.<sup>5</sup>

On September 27, 2010, the Commission issued an Order on Motion, which permitted responses to Staff's Motion and allowed Staff to file a reply thereto.<sup>6</sup> Responses were filed by PATH-VA, Piedmont Environmental Council, River's Edge Community Association, Inc., Alfred T. and Irene A. Ghiorzi, Virginia Power, and Congressman Frank R. Wolf. Staff filed a reply. In addition, PATH-VA filed a Motion to Submit Additional Response, and an Additional Response.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows.

The Application comports with the filing requirements contained in the Order Granting Withdrawal. As required by the Order Granting Withdrawal, the Application includes "information regarding" (1) PJM's 2010 RTEP, and (2) original routes, consistent with

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<sup>4</sup> *Id.* at 2-6.

<sup>5</sup> *Id.* at 6-8. Staff also sought a waiver or modification of Rule 5 VAC 5-20-160 of the Commission's Rules of Practice and Procedure, which requires Staff, within ten (10) days of the filing of an application, to file a memorandum stating whether such application meets "all necessary requirements imposed by statute or rule" for filing such an Application. *Id.* at 8 (quoting 5 VAC 5-20-160).

<sup>6</sup> The Order on Motion also granted Staff's request for waiver of 5 VAC 5-20-160 of the Commission's Rules of Practice and Procedure.

information regarding other proposed and alternative routes.<sup>7</sup> In addition, the Application is not required to include evidence that current electric service of Virginia Power, NOVEC, or Shenandoah "is inadequate to the requirements of the public necessity and convenience."<sup>8</sup> Accordingly, we will neither hold this case in abeyance, nor dismiss it as requested in various pleadings filed to date.<sup>9</sup>

We emphasize, however, that this is a procedural ruling, the effect of which permits this case to move forward.<sup>10</sup> PATH-VA retains the burden to satisfy the statutory criteria applicable for approval of the proposed transmission line. In addition, although we find that the Application is complete for purposes of initiating this case, we do not find that information absent from the Application is necessarily irrelevant to this proceeding, nor that the Application, as filed, satisfies the statutory requirements for approval. For example, we find that additional information and analyses – which have yet to be prepared or provided by PATH-VA – of original routes (including routes that do not impact Virginia) may be relevant for purposes of this proceeding and our evaluation of the statutory requirements attendant thereto. Thus, the Hearing Examiner shall further determine the additional information and analyses that must be prepared

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<sup>7</sup> See Order Granting Withdrawal at 5. Contrary to arguments from those seeking abeyance or dismissal, the Order Granting Withdrawal does not require a "complete" 2010 RTEP, nor does it require information on original routes that is substantially "identical" to other proposed routes.

<sup>8</sup> Va. Code § 56-265.4. We find that § 56-265.4 of the Code does not apply to the Application herein in the manner requested by Staff. Thus, we also deny Staff's request "that the Commission direct [Virginia Power], NOVEC, and Shenandoah to provide statements indicating whether any service deficiency currently exists within their respective territories...." Motion at 8.

<sup>9</sup> We do not find it necessary to rule on PATH-VA's Motion to Submit Additional Response in order to issue the ruling herein.

<sup>10</sup> Staff also states that "the ability to delay review of the PATH Project until some later, uncertain date is significantly constrained by federal law." *Id.* at 4. Specifically, Staff explains that "[b]ecause PATH-VA proposes constructing PATH within a National Interest Electric Transmission Corridor ... designated by the United States Department of Energy, federal siting jurisdiction over PATH can be invoked if the Commission has not acted within one year from the filing." *Id.* (citing 16 U.S.C. § 824p(b)(1)(C)(i)).

and provided by PATH-VA in a timely manner. Further, PATH-VA and PJM have represented that the 2010 RTEP is complete as to the PATH project;<sup>11</sup> we direct the Hearing Examiner to closely monitor these projections.

Similarly, based on initial information included in the Application (which is also discussed in the Motion), we find that Virginia Power's proposal to reconductor or rebuild an existing transmission line may be relevant for purposes of this proceeding and our evaluation of the statutory requirements attendant thereto.<sup>12</sup> Specifically, in direct testimony filed as part of the Application, PATH-VA includes a discussion of a project that has been proposed by Virginia Power – for evaluation in the RTEP process – "for reconductoring or rebuilding the Mt. Storm-Doubs line."<sup>13</sup> Indeed, maps filed by PATH-VA contemporaneously with the Application contain a signed statement from Virginia Power that, although it is not opposed to construction of PATH in its service territory, its "non-opposition to such construction does not constitute a waiver of its ability to advocate for alternative projects."<sup>14</sup> Having found that Virginia Power's reconductoring or rebuilding project may be relevant to this proceeding, we direct the Hearing Examiner to ensure that the record is developed on such project.

Accordingly, IT IS HEREBY ORDERED THAT:

- (1) Staff's Motion is denied as set forth herein.
- (2) This matter is continued pending further orders of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

Richard D. Gary, Esquire, Hunton & Williams LLP, 951 East Byrd Street, Richmond, Virginia

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<sup>11</sup> See, e.g., PATH-VA's Response at 6, Exh. A at 2.

<sup>12</sup> See Motion at 7-8.

<sup>13</sup> Application, Direct Testimony of Steven R. Herling at 54-56.

<sup>14</sup> See Motion at Attachment 1.

23219; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; and a copy shall be delivered to the Commission's Office of General Counsel and Divisions of Energy Regulation, Economics and Finance, and Public Utility Accounting.

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