



500 LEE STREET EAST • SUITE 1600 • P.O. BOX 553 • CHARLESTON, WEST VIRGINIA 25322 • TELEPHONE: 304-340-1000 • TELECOPIER: 304-340-1130
www.jacksonkelly.com

(304) 340-1251
Internet: ccallas@jacksonkelly.com
Telecopier: (304) 340-1080
WV State Bar ID 5991

December 20, 2010

Via Hand Delivery

Sandra Squire, Executive Secretary
Public Service Commission of WV
201 Brooks Street
Charleston, WV

Re: Case No. 09-0770-E-CN
Joint application for W. Va. Code § 24-2-11a certification and related relief
PATH West Virginia Transmission Company, LLC; PATH Allegheny
Transmission Company, LLC; PATH-WV Land Acquisition Company;
and PATH-Allegheny Land Acquisition Company.

Dear Ms. Squire:

Enclosed please find an original and twelve copies of Applicants' Response in Opposition to Staff Motion to Dismiss and Applicants' Proposal to Toll Statutory Decision Due Date and Extend Procedural Schedule. Copies are being served on counsel and unrepresented parties.

Please file this document and circulate the additional copies to the appropriate parties at the Commission. We also ask that you date-stamp the extra copies provided and return them with our messenger. As always, we appreciate your assistance in this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'C. Callas', is written over a horizontal line.

Christopher L. Callas

CLC/s

Cc: Parties shown on certificate of service

**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 a 765 kV 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.

**APPLICANTS' RESPONSE IN OPPOSITION TO STAFF MOTION TO DISMISS
AND APPLICANTS' PROPOSAL TO TOLL STATUTORY DECISION
DUE DATE AND EXTEND PROCEDURAL SCHEDULE**

Applicants oppose the Staff Motion to Dismiss filed on December 10, 2010 ("Staff Motion"), and assert that none of the arguments Staff presents justifies either dismissal or a forced tolling of the statutory decision due date. Nevertheless, Applicants wish to alert the Commission to an independent development that will require a revision of certain analyses by PJM Interconnection, L.L.C. ("PJM") supporting the need for the PATH Project. For this reason, Applicants recommend that the statutory decision due date be tolled and the existing procedural schedule be extended.

I. Opposition to Staff Motion

1. In view of the relief requested in Section II of this response, an extended response in opposition to the Staff Motion is unnecessary. Still, Applicants do not concede any of the

bases for the Staff Motion as grounds for either a dismissal with prejudice or an involuntary tolling.

a. Staff's Claimed Entitlement to Determine Sufficiency of Evidence. The Staff Motion presumes that unless the prefiled evidence is, in its view, adequately supportive of Applicants' requested relief, the Application and supporting testimony is necessarily "insufficient," and either dismissal, or the filing of additional testimony and Staff-defined studies, is required. This concept, which permeates the Staff Motion, lacks any justification whatsoever. If a party determines that the evidence does not support the relief an applicant seeks, it is free to advance that position in its prefiled testimony and at hearing. However, it is not entitled to dismissal of the applicant's case merely because it questions the sufficiency of the applicant's evidence, or otherwise purports to be unpersuaded by some aspect of the applicant's case. In its evaluation of the Application and supporting testimony in view of recent events (pages 4-8), as well as its recommendation that Applicants be required to file even more information (pages 8-12), the Staff effectively claims the prerogative not to proceed to hearing unless the entire body of evidence Staff would prefer to see is first filed with the Commission. No litigant – including the Staff – is so entitled.

b. Staff's Interpretation of Evidence to Support Dismissal. Moreover, the Staff's requested dismissal is premised on its own value judgments and its interpretations of the evidence filed to date. Examples abound: Staff holds forth on the kind of "need" evidence Applicants must offer ("[a]t some point, the need for a project becomes too distant and uncertain" to justify certification, page 7), the "bias" that the Staff perceives in PJM's transmission planning (questioning PJM's preference for solutions that resolve

all violations within a fifteen-year planning horizon, page 7), and its dissatisfaction with PJM's insistence on identifying "the most robust solution" to identified reliability violations (pages 7-8). The Staff Motion is also founded on Staff's speculation on what the future might hold, including its complaint that PATH "might not be needed for ten years or more," a period in which it is "hard to imagine what changes in the energy industry, economy, or planning process" might occur – all the while acknowledging PJM's ongoing efforts to refine the RTEP process to address such uncertainties (page 8). Staff asks that the Commission accept these skeptical interpretations of the Applicants' case at face value and, having done so, to determine that the Application and testimony are so inadequate that dismissal is warranted. Staff's arguments on these points are just that – arguments. The adequacy of the Application and supporting evidence are matters for Commission adjudication, in the context of an evidentiary hearing and post-hearing briefing.

c. Staff's Disregard for Procedural Impact of Updated Data. The Staff Motion completely disregards the nature of the transmission expansion planning process and its unavoidable impact on case processing. The Commission has already rejected another Staff complaint that developments subsequent to Applicants' filing of direct testimony necessitate dismissal of the Application or a delay in the Commission's consideration of it. The Commission has held that the benefit of updated information is not unique to this case – specifically, that the "task of defining and measuring" the need for the PATH Project creates the "illusion that better and more accurate information is just beyond the horizon and that the Commission cannot issue a fair decision unless it first considers that future information." *See* Commission Order dated November 24,

2009 at 4 (rejecting previous Staff motion to dismiss). Staff's position also ignores its opportunity to develop information on PJM's ongoing assessment of need through the discovery process, a mechanism other parties have used in this case to obtain updated information on PJM's continuing work. Applicants have no doubt that, as the hearing approaches, other parties (including Staff) will ask that PJM provide the most recent analysis available on the need for PATH. The Commission's entitlement to the best available information at the time of hearing does not dictate, as Staff appears to suggest here, that the hearing never actually occur.

d. Inaccuracies in the Staff's Interpretation of the Facts. Woven throughout the Staff Motion are mistaken interpretations of fact, some of which actually mischaracterize the Applicants' prefiled evidence. As with the value judgments and interpretations of evidence Staff asks the Commission to accept without the benefit of a hearing, these errors and mischaracterizations are offered as critical elements of the Staff Motion and as justification for the dismissal Staff seeks. These include (i) Staff's uncritical acceptance that the Mt. Storm-Doubs rebuild will be completed by June 2015 (page 4, an assessment directly questioned in Applicants' testimony); (ii) its assertion that the same rebuild, in conjunction with the refiled "MAPP" project, will eliminate reactive violations through 2019 (page 6, an assertion based on an analysis performed *before* the TrAIL impedance error was corrected); (iii) its implicit suggestion that the Pruntytown-Mt. Storm 500 kV line could be rebuilt, as part of Dominion "Alternative 1," at the same time the Mt. Storm-Doubs line is being rebuilt (pages 8-9); and (iv) its assertion that there are "viable alternatives" to the PATH Project that "provide most of the same benefits"

(page 10, an allegation undermined by Tables I and J of Mr. McGlynn's September 2010 supplemental direct testimony).

e. Staff's Claimed Entitlement to Comparative Environmental Analyses.

Staff asserts that Applicants are required to submit environmental analyses of various alternatives to the PATH Project in order to adequately inform the Commission's application of W. Va. Code § 24-2-11a(d)(3), which requires the Commission to assess whether a project will "result in an acceptable balance between reasonable power needs and reasonable environmental factors." Staff is incorrect. The statute on its face contemplates only a balancing of a project's satisfaction of power needs with its attendant environmental effects. Nothing in § 24-2-11a, nor in the Commission's *Electric Rule 9*, would require any comparative environmental assessment among alternative projects. Staff's argument is also contrary to the Commission's most recent consideration of an application under W. Va. Code § 24-2-11a in Trans-Allegheny Interstate Line Company, Case No. 07-0508-E-CN, where no such comparison of alternatives to TrAIL was presented.

2. Even this abbreviated presentation of these weaknesses is sufficient to directly undermine the Staff's request for dismissal or an involuntary tolling. Applicants reserve the right to present further argument on these issues should they be advanced in the future.

II. Request for Tolling of Decision Due Date and Extended Procedural Schedule

3. PJM has just advised that its 2011 Load Forecast Report, to be released today in draft form, includes load projections that are different from those incorporated in the 2010 Load Forecast Report on which PJM's current need analyses are based. PJM has further advised that these revised load projections may have an impact on the current in-service date for the PATH

Project, although other factors may moderate that impact when incorporated into PJM's revised analysis.¹ In view of this development, Applicants fully expect that Staff and intervenors will urge the Commission to require, and that the Commission will wish to see, a thorough presentation of how the revised load projections affect the in-service date for the PATH Project and Applicants' need evidence.

4. For these reasons, PJM has advised that it intends to conduct a revised analysis in early 2011 which will incorporate the 2011 Load Forecast as well as PJM's preliminary analyses in connection with the development of the 2011 RTEP. The 2011 Load Forecast will be only one of several factors PJM will consider in this revised analysis. PJM has further advised that these supplemental analyses can be completed on a schedule that will allow the filing of supplemental direct testimony by March 31, 2011. This supplemental testimony will provide the Commission and the parties with a thorough explanation of the impact, if any, of the 2011 Load Forecast on the PATH Project's in-service date.

5. By an Order dated September 10, 2010, the Commission established the current procedural schedule, which contemplates an evidentiary hearing beginning March 21, 2011 and a decision deadline date of July 28, 2011. In view of the events discussed above, Applicants now propose to toll the existing statutory decision due date, with a new deadline of Thursday, February 9, 2012 and an evidentiary hearing beginning Monday, October 3, 2011.

6. Commission approval of this proposal is appropriate. First, the 2011 Load Forecast may have an appreciable effect on the current PATH in-service date, and it is appropriate for the Commission and the other parties to have updated information reflecting this development. Second, Staff and intervenors should be provided with a reasonable amount of

¹ Note that the PATH Project continues to be a PJM Board-approved RTEP baseline project with an in-service date of June 1, 2015. Based on its earlier analysis, the PJM Board reiterated its support for the PATH Project and the June 1, 2015 in-service date.

additional time in which to review the results of the resulting analysis. The schedule proposed below is designed to avoid prejudice to these parties in the time available for preparation of their direct testimony as compared with the current schedule.

7. Accordingly, Applicants extend their offer to toll the current decision due date for an additional 196 days, to February 9, 2012:

Event	Date
Applicants file supplemental testimony on issues of electrical need and any other issues requiring supplementation	Noon, Thursday, March 31, 2011
Staff and intervenors propound discovery on supplemental testimony filed 3/31/11	Noon, Friday, July 22, 2011
Staff's and Intervenors' prepared direct testimony and rebuttal to the direct testimony of Applicants	Noon, Thursday, August 11, 2011
Deadline for propounding discovery in response to testimony due 8/11/2011	Noon, Wednesday, August 24, 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, Friday, September 9, 2011
Deadline for propounding discovery in response to the rebuttal testimony due 9/9/11	Noon, Wednesday, September 21, 2011
Written opening statements	Noon, Wednesday, September 28, 2011
Evidentiary hearing begins	Monday, October 3, 2011
Evidentiary hearing ends	Tuesday, October 18, 2011
Initial briefs and proposed orders	Tuesday, November 15, 2011
Reply briefs	Thursday, December 1, 2011
Deadline for Commission decision	Thursday, February 9, 2012

In developing this schedule, Applicants sought to make the new schedule event intervals as close as possible to those embedded in the current schedule. Appendix A to this Response shows the proposed intervals for comparison purposes, and identifies the few instances in which the proposed intervals vary slightly from the current ones. The voluntary schedule extension set forth above is comparable to that which the Commission approved in its September 10, 2010 order in this docket.

8. In response to the developments outlined above, and in order to preserve a reasonable alignment of evidentiary hearings in the PATH proceedings in each of the three jurisdictions, the PATH Project applicants in Virginia and Maryland are expected to file similar motions for extension of the procedural schedules in those states.

9. Applicants do not expect that the proceedings in the Virginia certificate case for the PATH Project will incorporate any routing changes in Virginia that would necessitate corresponding route changes in West Virginia. In the unlikely event that this should occur, however, Applicants commit to recommend a revision to the discovery deadline component of this procedural schedule to permit full discovery of any such route changes in West Virginia.

10. Applicants represent that if the Commission grants this motion to toll and adopts the revised procedural schedule outlined above, they will not seek to invoke backstop authority under Section 216(b) of the Federal Power Act with respect to the West Virginia portions of the PATH Project during the period between the expiration of the one-year period following the filing of the application and February 9, 2012.

For the reasons identified above, and in the interest of schedule certainty for all parties, Applicants request that the Commission enter an order denying the Staff Motion and adopting Applicants' motion to toll and proposed new schedule at its first opportunity.

Respectfully submitted this 20th day of December, 2010.

PATH WEST VIRGINIA TRANSMISSION COMPANY, LLC
PATH ALLEGHENY TRANSMISSION COMPANY, LLC
PATH-WV LAND ACQUISITION COMPANY and
PATH-ALLEGHENY LAND ACQUISITION COMPANY



John Philip Melick (WVSB #2522)
Christopher L. Callas (WVSB #5991)
James Matthew Davis (WVSB #10820)
Elizabeth A. Amandus (WVSB #11062)
JACKSON KELLY PLLC
Post Office Box 553
Charleston, WV 25322
(304) 340-1000

By Counsel

Randall B. Palmer, Assistant General Counsel
Jeffrey Trout, Assistant General Counsel
Jennifer Petrisek, Senior Attorney
Allegheny Energy, Inc.
800 Cabin Hill Drive
Greensburg, PA 15601-1689
(724) 838-6000

Hector Garcia, Senior Counsel
James R. Bacha, Assistant General Counsel
Janet J. Henry, Associate General Counsel
American Electric Power Service Corporation
1 Riverside Plaza
Columbus, OH 43215
(614) 716-1000

**Appendix A to Applicants' December 20, 2010 Filing
Comparison of Schedule Event Intervals – Current Schedule vs. Proposed Schedule**

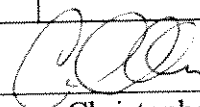
Event	Current Date	Current Interval	Proposed Date	New Interval
Applicants file supplemental testimony on issues of electrical need and any other issues requiring supplementation	Noon, Tuesday, September 14, 2010		Noon, Thursday, March 31, 2011	
Staff and intervenors propound discovery on supplemental testimony filed 9/14/2010	Noon, Wednesday, January 5, 2011	113 days	Noon, Friday, July 22, 2011	113 days
Staff's and Intervenors' prepared direct testimony and rebuttal to the direct testimony of Applicants	Noon, Tuesday, January 25, 2011	133 days from supplemental testimony	Noon, Thursday, August 11, 2011	133 days from supplemental testimony
Deadline for propounding discovery in response to testimony due 1/25/11	Noon, Monday, February 7, 2011	13 days from Staff/intervenor testimony	Noon, Wednesday, August 24, 2011	13 days from Staff/intervenor testimony
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	29 days from Staff/intervenor testimony	Noon, Friday, September 9, 2011	29 days from Staff/intervenor testimony
Deadline for propounding discovery in response to the rebuttal testimony due 2/23/11	Noon, Monday, March 7, 2011	12 days from rebuttal testimony	Noon, Wednesday, September 21, 2011	12 days from rebuttal testimony
Written opening statements	Noon, Wednesday, March 16, 2011	5 days before hearing	Noon, Wednesday, September 28, 2011	5 days before hearing

Event	Current Date	Current Interval	Proposed Date	New Interval
Evidentiary hearing begins	Monday, March 21, 2011	188 days from supplemental testimony	Monday, October 3, 2011	186 days from supplemental testimony (two fewer days than currently, to begin on Monday)
Evidentiary hearing ends	Tuesday, April 5, 2011	15 days	Tuesday, October 18, 2011	15 days
Initial briefs and proposed orders	Tuesday, May 3, 2011	28 days from end of hearing	Tuesday, November 15, 2011	28 days from end of hearing
Reply briefs	Thursday, May 19, 2011	16 days from initial briefs	Thursday, December 1, 2011	16 days from initial briefs (five more than currently)
Deadline for Commission decision	Thursday, July 28, 2011	317 days from supplemental testimony; 70 days from reply briefs	Thursday, February 9, 2012	315 days from supplemental testimony (two fewer days than currently); 69 days from reply briefs (one day fewer)

CERTIFICATE OF SERVICE

I certify service of APPLICANTS' RESPONSE IN OPPOSITION TO STAFF MOTION TO DISMISS AND APPLICANTS' PROPOSAL TO TOLL STATUTORY DECISION DUE DATE AND EXTEND PROCEDURAL SCHEDULE on December 20, 2010, by United States mail, postage prepaid, upon:

Helen C. Hottle 18270 Charlestown Road Harpers Ferry, WV 25425	Terry & Janet L. Kimble HC 36 Box 396 Tallmansville, WV 26237	James D. & Stella M. Bovard 432 Sanctuary Lane Charles Town, WV 25414
Marjorie A. Cook 243 Old Oak Lane Harpers Ferry, WV 25425	Ida Murphy P. O. Box 442 Thomas, WV 26292	Mary Katherine Cutlip 6343 Exchange Road Exchange, WV 26619
Vickie Manuel 2403 Summit Point Road Summit Point, WV 25446	Michael Costello 4021 Saint Clair Hill Road Morgantown, WV 26508	Steven & Cynthia Riggs HC 78, Box 402 Rock Cave, WV 26234
Rob't R. & T. Collette Hawes 152 Sanctuary Lane Charles Town, WV 25414	Frances Pipes 2403 Summit Point Road Summit Point, WV 25446	Fred & Judith Moore 68 Brookline Drive Charles Town, WV 25414
Thomas T & Pamela Thompson 130 James Allen Lane Summit Point, WV 25446	Melvin Adkins 2145 Speed Road Spencer, WV 25226	Silas Witzemann 2125 Location Road Parsons, WV 26287
Ronald D. & Lois F. Cummings 1105 West Fork Road Chloe, WV 25235	Paul L. Chamblin 6081 Leetown Road Kearneysville, WV 25430	Travis D. Cummings 1105 W. Fork Road Chloe, WV 25235-9703
Dallas R. & Pat Coen 1021 West Fork Road Chloe, WV 25235	Robert M. Eitelman 111 Foxall Road Charles Town, WV 25414	Tony Deprospero 5636 Fall Run Road Ireland WV 26376
Pamela Corey 229 Walker Creek Road Chloe, WV 25235	Brenda Jarvis P. O. Box 64 Flatwoods, WV 26621	Rosemary Tenney 52 Truby Run Road Buckhannon, WV 26201
Elizabeth Rivard HC 71 Box 855 Duck, WV 25063	Ida D. Keener Route 2 Box 178 Parsons WV 26287	Linda K. Stark 82 Sago Road Buckhannon, WV 26201
Franklin and Frances Price P. O. Box 265 Summit Point, WV 25446	Michael W. Strider 2595 Garrity Road St. Leonard, MD 20685	Paul Fuchs RR2 Box 401 Charlie Moore Road St. George, WV 26287
Orrain and Doreen Hersey HC 78 Box 115B Delray, WV 26714	Donald K. and Jennifer L. Haines P. O. Box 67 Capon Bridge, WV 26711	H. Charles Carl, III, Esq. Carl, Keaton & Frazer, PLLC 56 E. Main Street Romney, WV 26757
Debbie Royalty 199 Brannon Lane Charles Town, WV 25414		



Christopher L. Callas