

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
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APPLICATION OF

PATH ALLEGHENY VIRGINIA
TRANSMISSION CORPORATION

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 GRANTING WITHDRAWAL

On September 20, 2010, PATH Allegheny Virginia Transmission Corporation ("PATH-VA") filed a second application ("Application") with the State Corporation Commission ("Commission") for approval and certification of electric transmission facilities pursuant to the Utility Facilities Act, § 56-265.1 *et seq.* of the Code of Virginia ("Code"), and § 56-46.1 of the Code.¹ PATH-VA requests authority to construct, own, operate, and maintain the Virginia portions of the proposed Potomac-Appalachian Transmission Highline ("PATH Project"). The PATH Project is a proposed 765 kilovolt ("kV") transmission line that would originate at the existing Amos Substation near St. Albans, West Virginia; cross the Virginia counties of Frederick, Loudoun, and Clarke; and terminate at the proposed Kemptown Substation near New Market, Maryland.

On October 20, 2010, the Commission issued an Order for Notice and Hearing that, among other things, directed notice of the Application, established a procedural schedule, and appointed a Hearing Examiner to conduct all further proceedings in this matter.

¹ PATH-VA's initial application was considered in *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, 2010, PATH-VA filed a Motion to Hold Proceeding in Abeyance ("Motion for Abeyance"), which proposed extensions to the procedural schedule based on updated load flow projections conducted by PJM Interconnection, LLC ("PJM"). Senior Hearing Examiner Alexander F. Skirpan, Jr., denied the Motion for Abeyance but convened a prehearing conference for the purpose of determining scenarios for updated analyses to be conducted by PATH-VA and PJM.

By Ruling dated January 19, 2011, the Senior Hearing Examiner directed PATH-VA to file specific updated analyses by March 15, 2011, and approved a corresponding extension of the procedural schedule. The updated PJM analyses directed by the Senior Hearing Examiner were as follows:

1. **Updated Base Case** - The Updated Base Case load flow analysis shall reflect: (i) PJM's 2011 Load Forecast; (ii) the most currently available generation and generation queues; (iii) the results of PJM's May 2010 [Reliability Pricing Model] auction, including demand response; and (iv) an update of PJM-approved transmission system projects, including reactive power support. The Updated Base Case scenario should not include: (i) the PATH Project; (ii) the rebuilding of the Mt. Storm - Doubs line; (iii) Dominion Alternative 1 (the rebuilding of the Mt. Storm - Doubs line, the installation of a 900 MVAR SVC on the 230 kV bus at Loudoun and the T157 tap 500 kV bus, the installation of 900 MVAR of static capacitors at other locations, the installation of series compensation on the Meadow Brook - Loudoun 500 kV line, and the rebuilding of the Pruntytown - Mt. Storm 500 kV line); (iv) the Liberty Project;
2. **PATH Case** - This scenario shall include the Updated Base Case load flow analysis and the PATH Project;
3. **Mt. Storm - Doubs Rebuild Case** - This scenario shall include the Updated Base Case load flow analysis and the rebuilding of the Mt. Storm - Doubs line;
4. **Dominion Alternative 1 Case** - This scenario shall include the Updated Base Case load flow analysis and Dominion Alternative 1; and

5. **Liberty Case** - This scenario shall include the Updated Base Case load flow analysis and the Liberty Project.²

On February 28, 2011, PATH-VA filed a Motion to Withdraw Application ("Motion to Withdraw"), in which PATH-VA stated as follows:

PJM has now advised PATH-VA that using the updated load forecast and current transmission topology, the projected appearance of violations of [North American Electric Reliability Corporation ("NERC")] Reliability Standards that the PATH Project was designed to resolve has advanced into the future. Consequently, the PJM Board of Managers has taken official action to hold the PATH Project in abeyance as an [Regional Transmission Expansion Plan ("RTEP")] baseline project. . . . PATH-VA still believes that underlying system weaknesses eventually will require backbone transmission projects to ensure the future stability of the regional transmission grid. Under the present circumstances, however, withdrawing the Application is in the public interest, and the PATH applicants in Maryland and West Virginia today will be taking steps to withdraw the pending applications in those jurisdictions. PATH-VA will await further direction from PJM and will continue to fulfill its obligations under the PJM Tariff and the Consolidated Transmission Owners Agreement.³

On March 17, 2011, the Senior Hearing Examiner received oral argument on PATH-VA's Motion to Withdraw. During oral argument, counsel to PATH-VA indicated that reliability violations previously cited by PATH-VA in support of constructing the PATH Project no later than 2015 had moved beyond 2026 based on certain updated studies conducted by PJM.⁴ These updated results were illustrated, in part, by a slide presented to the PJM Transmission Expansion Advisory Committee ("TEAC Slide") dated March 10, 2011.⁵ The TEAC Slide summarizes the

² Jan. 19, 2011, Senior Hearing Examiner's Ruling at 2.

³ Motion to Withdraw at 2.

⁴ Tr. 415-21 (Gary).

⁵ By filing dated March 18, 2011, PATH-VA filed the TEAC Slide in this docket.

results of four scenarios that incorporate the updated 2011 PJM Load Forecast, which are identified as "Base Case"; "Base Case + Warren"; "[Renewable Portfolio Standard ("RPS")] to Existing"; and "RPS to At Risk." The TEAC Slide also summarizes results that incorporate a different load forecast, which are identified as "Base Case" and "Base Case + Warren." The record indicates that "Warren," as referenced in the TEAC Slide, is a gas-fired generation project currently under development in Warren County, Virginia.⁶

On April 12, 2011, the Senior Hearing Examiner issued a report that explained the procedural history of this case and made certain findings and recommendations ("Senior Hearing Examiner's Report" or "Report"). Specifically, the Senior Hearing Examiner made the following findings:

- (1) PATH-VA's Motion to Withdraw should be granted;
- (2) PATH-VA should be directed to preserve the analyses underlying the TEAC Slide;
- (3) PATH-VA should be directed to file the following information in this docket: (i) the solution of the 'Base Case' and 'Base Case + Warren' as text files; (ii) the power flow tests used to identify NERC thermal violations for the 'Base Case' and 'Base Case + Warren' scenarios in PSS/e electronic format; (iv [sic])) the results of the studies summarized on the TEAC Slide for the 'Base Case' and 'Base Case + Warren' in a format and level of detail equivalent to Exhibit Nos. 1-3, of Mr. Paul McGlynn's prefiled direct testimony in this proceeding; and (iv) tables of generation loaded into the 'Base Case' and 'Base Case + Warren' and what generation was reduced in the at-risk scenario.
- (4) Any future application for the PATH Project should include information regarding PJM's 2012 or later RTEP;
- (5) Any future application for the PATH Project should include an analysis of changes in circumstances (as measured from the 'Base Case' of the TEAC Slide), including changes in generation, demand response, and energy efficiency resources;

⁶ Tr. 417 (Gary).

(6) Any future application for the PATH Project should provide information on the PATH Project's original routes (including routes that do not impact Virginia), consistent with other proposed and alternative routes; and

(7) The Protective Ruling in this proceeding should be amended as provided [in the Senior Hearing Examiner's Report].⁷

Based on these findings, the Senior Hearing Examiner's Report recommended that the Commission enter an order in this matter that adopts the findings of the Report, grants PATH-VA's Motion to Withdraw, and dismisses this case without prejudice.⁸

The following parties filed comments on the Senior Hearing Examiner's Report: PATH-VA; Piedmont Environmental Council ("Piedmont"); Theresa Ghiorzhi; and Alfred T. and Irene A. Ghiorzhi ("Ghiorzhis").

⁷ Senior Hearing Examiner's Report at 17-18. More specifically, the seventh recommendation in the Report was to modify paragraphs (5) and (18) of the October 21, 2010 Protective Ruling to read as follows:

(5) All Confidential Information filed or produced by a party shall be used solely for the purpose of this proceeding (including any appeals) and, by leave of the Commission, in any future, related application for the PATH Project. Any use of such Confidential Information at a hearing shall be governed by the notice requirements contained in Paragraph 15(a) herein.

(18) Two years from the conclusion of this proceeding (including any appeals), any originals or reproductions of any Confidential Information produced pursuant to this Protective Ruling shall be returned to the producing party, if requested by the producing party, or destroyed. In addition, at such time, any notes, analysis or other documents prepared containing Confidential Information shall be destroyed. At such time, any originals or reproductions of any Confidential Information, or any notes, analysis or other documents prepared containing Confidential Information in Staff's possession, will be returned to the producing party, destroyed or kept with Staff's permanent work papers in a manner that will preserve the confidentiality of the Confidential Information. Insofar as the provisions of this Protective Ruling restrict the communications and use of the Confidential Information produced thereunder, such restrictions shall continue to be binding after the conclusion of this proceeding (including any appeals) as to the Confidential Information.

Id. at 15.

⁸ *Id.* at 18.

NOW THE COMMISSION, having considered the pleadings and the record developed in this matter, finds as follows. We adopt the findings and recommendations of the Senior Hearing Examiner's Report. We grant the Motion to Withdraw subject to the requirements in the Report as set forth above. PATH-VA shall file forthwith the information that the Report recommends to be filed in this docket. We further clarify that this docket will remain open temporarily for the limited purpose of receiving this information from PATH-VA.⁹

In addition, the Senior Hearing Examiner explained that, under Virginia law, this legislative proceeding must be dismissed without prejudice:

In response to PATH-VA's Motion for Modification of Procedural Schedule in PUE-2009-00043, many respondents argued that that application be dismissed with prejudice. In the Hearing Examiner's Ruling dated November 24, 2009, in that case, the issue of dismissing with prejudice was addressed. In that ruling it was pointed out that the issuance of a certificate of public convenience and necessity generally falls within the Commission's legislative authority, which requires the Commission to determine if a proposed new facility is 'in the public interest.' Because the public interest may change over time due to changes in circumstances, a strict legal application of 'with prejudice' is not available in applications for certificates of public convenience and necessity under § 56-46.1 and the Utilities Facilities Act of the Code of Virginia.¹⁰

We adopt the Senior Hearing Examiner's recommendation and dismiss this case without prejudice.

Accordingly, IT IS ORDERED THAT this case is dismissed, subject to PATH-VA's compliance with the requirements set forth herein.

⁹ We note that no additional clarification is needed to ensure compliance with this Order. *See* Piedmont's Apr. 28, 2011 Comments at 3-4. Additionally, we reject outstanding requests for further clarification of the Senior Hearing Examiner's Report. *See id.* at 4; Ghiorzhis' Apr. 29, 2011 Comments at 1-2.

¹⁰ *See* Senior Hearing Examiner's Report at 10 (internal quotes omitted).

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219. A copy shall also be sent to the Commission's Office of General Counsel and Divisions of Energy Regulation, Public Utility Accounting, and Economics and Finance.