



January 22, 2010

James J. McNulty  
Secretary  
Pennsylvania Public Utility Commission  
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RE: Application of PPL Electric Utilities Corporation Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the Pennsylvania Portion of the Proposed Susquehanna-Roseland 500 kV Transmission Line in Portions of Lackawanna, Luzerne, Monroe, Pike and Wayne Counties, Pennsylvania, Docket No. A-2009-2082652, A-2009-2082382, al.

Dear Mr. McNulty:

Pursuant to 53 Pa. Code Sec. 5.408 the Energy Conservation Council of Pennsylvania requests the Public Utility Commission to take official notice of the following facts attached to this letter as attachments A-D which are relevant to a determination of the instant matter:

1. Attachment A: January 6, 2009 notice in NJ BPU Docket No. EM09010035 regarding the proposed Susquehanna to Roseland line taking official notice of the December 21, 2009 Motion to Withdraw Application and Terminate Proceeding, and the December 29, 2009 Amendment to that Motion (together, the "PATH Withdrawl"), filed with the Virginia State Corporation Commission by PATH Allegheny Virginia Transmission Corporation in Case No. PUE-2009-00043 (the "PATH Proceeding"). The NJ BPU took official notice of those documents based on the following:
  - They state that updated queue information and load forecasts, as well as the availability of additional demand response resources, suggest that Potomac Appalachian Transmission Highline ("PATH") appears not to be needed in 2014 as a result of a reduction in the scope and severity of observed NERC reliability violations;

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- They further state that PJM will consider PATH in its 2010 Regional Transmission Expansion Plan, to determine when PATH will be needed to resolve NERC reliability violations;
  - In response to these statements, the Applicant in the PATH Proceeding has stated that it “no longer supports the Application on file with the Commission” in the PATH Proceeding, has sought to withdraw its application for the certification of PATH, and has stated that it does not expect to file a future application earlier than the third quarter of 2010 and has not stated any time by which it will file such an application;
  - If updated queue information and load forecasts, and availability of additional demand response resources, were to affect need for the Susquehanna-Roseland project, that would be relevant to a decision in this matter, and
  - ...taking official notice of that evidence pursuant to N.J.A.C. 1:1-15.2 will enable the Board to consider the evidence with only the slightest delay in the proceeding.
2. Attachment B: January 4, 2010 correspondence from the Potomac Edison Company et. al to the Maryland Public Service Commission and January, 4, 2010 letter from PATH Allegheny Virginia Transmission Company in Case No. PUE-2009-00043 enclosing the results of modeling runs performed, as ordered by the Virginia Hearing Examiner.
  3. Attachment C: January 6, 2010 Report of Virginia Senior Hearing Examiner Alexander F. Skirpan, Jr., recommending that the Applicant’s Motion to withdraw its application for the proposed PATH line in Virginia should be granted.
  4. Attachment D: January 8, 2010 letter from Pepco Holdings, Inc. to the Maryland Public Service Commission in Case No. 9179 regarding the proposed Mid-Atlantic Power Pathway (MAPP) high voltage line, requesting that the procedural schedule be suspended so PJM could analyze, whether in light of the fact that the PATH line was not needed in 2014, the MAPP line was still needed. In addition, because the underlying assumptions changed, PJM needed to perform additional

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analysis because the one that was submitted for the MAPP line was “now outdated”.

The Energy Commission Council respectfully submits that judicial notice of the above referenced facts and the attached documents is in the public interest, will make for a more complete and comprehensive record.

Very truly yours,



Willard R. Burns

WRB/bw  
Enclosures  
cc: Certificate of Service

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In Re: Application of PPL Electric Utilities Corporation for  
Approval of the Siting and Construction of the Pennsylvania  
Portion of the Proposed Susquehanna-Roseland 500 kV  
Transmission Line

Docket Nos.  
A-2009-2082652  
A-2009-2082832

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CERTIFICATE OF SERVICE

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I hereby certify that on this day I have caused to be served true copies of the foregoing letter from the Energy Conservation Council of Pennsylvania ("ECC") requesting that the PUC take official and judicial notice of facts, upon the parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed on the attached Service List.



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*Attorneys for:*  
*Energy Conservation Council*

Dated: January 22, 2010

**SERVICE LIST**

Via Email of Letter, Certificate, and First Class Mail of Letter and Certificate

<p>Honorable Susan D. Colwell, ALJ Office of Administrative Law Judge Pennsylvania Public Utility Commission Commonwealth Keystone Building 400 North Street Harrisburg, PA 17120</p>	
<p>Dianne E. Dusman, Esquire Darryl Lawrence, Esquire Office of Consumer Advocate 555 Walnut Street, Forum Place, 5th Floor Harrisburg, PA 17101-1923</p>	<p>Charles Daniel Shields, Esquire Adeolu Bakare, Esquire PA PUC Office of Trial Staff P.O. Box 3265 Harrisburg, PA 17105-3265</p>
<p>Edmund Berger, Esquire Berger Law Firm, P.C. 2104 Market Street Camp Hill, PA 17011</p>	<p>Kent D. Murphy, Esquire UGI Corporation 406 North Gulph Road King of Prussia, PA 19406</p>
<p>John H. Isom, Esquire Andrew S. Tubbs, Esquire Post &amp; Schell, P.C. 17 North Second Street, 12th Floor Harrisburg, PA 17101-1601</p>	<p>Denise Foster, Esquire Joe Dominguez, Esquire Exelon Generation Co., LLC 300 Exelon Way Kennett Square, PA 19425</p>
<p>Shelby A Linton-Keddie Esquire Pamela C. Polacek, Esquire McNees Wallace &amp; Nurick, LLC 100 Pine Street, P.O. Box 1166 Harrisburg, PA 17108-1166</p>	<p>Paul E. Russell, Esquire Associate General Counsel PPL Services Corporation Two North Ninth Street Allentown, PA 18101</p>
<p>Willard R. Burns, Esquire Burns Law Firm, LLC 390 Oak Spring Road Marianna, PA 15345</p>	<p>Susan Simms Marsh, Esquire Pennsylvania American Water Company 800 West Hershey Park Drive Hershey, PA 17033</p>

David B. McGregor, Esquire Post & Schell, P.C. Four Penn Center 1600 John F. Kennedy Boulevard Philadelphia, PA 19103-2808	Michael F. Faherty, Esquire Lavery Faherty Young & Patterson 225 Market Street, P.O. Box 1245 Harrisburg, PA 17108-1245
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Via First Class Mail of Letter and Certificate

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D&L Realty Company 400 Mill Street Dunmore, PA 18512	Kenneth Powell & Linda Powell 1305 Justus Boulevard Clarks Summit, PA 18411
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Geff Blake, Esquire Wright & Reihner, P.C. 148 Adams Avenue Scranton, PA 18503	Robert Fagan Synapse Energy Economics, Inc. 22 Pearl Street Cambridge, MA 02139
Al Spinelli 249 At The Falls Bushkill, PA 18324	Robyn Long 1176 Saw Creek Estates Bushkill, PA 18324

# Attachment C

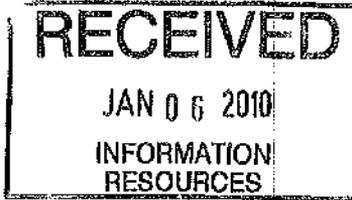
COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

APPLICATION OF

PATH ALLEGHENY VIRGINIA  
TRANSMISSION CORPORATION

CASE NO. PUE-2009-00043

For certificates of public convenience  
and necessity to construct facilities:  
765 kV Transmission Line through  
Loudoun, Frederick, and Clarke Counties



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 DOCUMENT CONTROL

REPORT OF ALEXANDER F. SKIRPAN, JR., SENIOR HEARING EXAMINER

January 6, 2010

In its application, PATH sought authority to build the Virginia portion of the proposed 765 kV transmission line from the existing Amos Substation in Putnam County, West Virginia, to the proposed Kemptown Substation in Frederick County, Maryland. The Virginia segments of the proposed transmission project consist of two non-contiguous segments totaling approximately 31 miles and crossing portions of Frederick, Clarke, and Loudoun Counties. In recent pleadings, PATH indicated that additional load flow analyses show that the project would not be needed to resolve NERC reliability violations in 2014, as indicated in the pending application. PATH now asks the Commission to grant PATH's request to withdraw its application. Because PATH no longer supports its own application, and as further discussed below, I find that PATH should be permitted to withdraw its application.

**HISTORY OF THE CASE**

On May 19, 2009, PATH Allegheny Virginia Transmission Corporation ("PATH" or "Applicant") filed an application with the State Corporation Commission ("Commission") for approval and certification of electric transmission facilities, pursuant to the Utility Facilities Act<sup>1</sup> and § 56-46.1 of the Virginia Code ("Application"). In support of its application, PATH filed the direct testimony of Lawrence A. Hozempa, consulting engineer in the Transmission Planning Department of Allegheny Energy Service Corporation ("Allegheny Service"); Takis Laios, supervisor, planning and engineering in the Transmission Asset Management Department of American Electric Power Service Corporation ("AEP Service"); Dr. Mark A. Joensen, employed by Allegheny Service and director of finance for Allegheny Power, Trans-Allegheny Interstate Line Company ("TrAILCo"), and AET PATH Company, L.L.C. ("AET PATH"); Milorad Pokrajac, general manager, regulatory finance and cost allocation for Allegheny Service; William A. Bosta, director of regulatory services VA/TN for AEP Service; Steven R. Herling, vice president of planning for PJM Interconnection, L.L.C. ("PJM"); Paul F. McGlynn, manager of PJM's Transmission Planning Department; John M. Reynolds, senior economic analyst in PJM's Capacity Adequacy Planning Department; Jay A. Ruberto, director of transmission siting for Allegheny Service; Ronald L. Poff, senior project manager for AEP Service; Cyril Welter, senior project

<sup>1</sup> Virginia Code § 56-265.1 *et seq.*

manager for the Environmental Studies and Permitting Division of Burns & McDonnell Engineering Company, Inc. ("Burns & McDonnell"); Tim Gaul, senior environmental scientist and manager of The Louis Berger Group's ("Berger") Transmission Services Division; James Michael Silva, P.E., president of ENERTECH Consults; Dr. Linda S. Erdreich, senior managing scientist at Exponent; and Dr. Mark A. Israel, director of the Norris Cotton Cancer Center at Dartmouth Medical School.

On May 27, 2009, PATH filed a Motion for Entry of a Protective Order for the establishment of procedures for the protection of confidential information in this proceeding. Such procedures were adopted in the Hearing Examiner's Protective Ruling dated June 29, 2009.

On June 12, 2009, the Commission issued its Order for Notice and Hearing. Among other things, the Commission prescribed the required notice and appointed a Hearing Examiner to conduct all further proceedings in this matter.

On June 15, 2009, PATH filed a Motion for Extended Discovery Response Time in which it requested that the period for responding to interrogatories and the production of documents be extended to ten business days. PATH's motion was denied by a Hearing Examiner's Ruling dated July 10, 2009.

On June 18, 2009, the Piedmont Environmental Council ("Piedmont") filed a Notice of Participation and a Motion for Admission *Pro Hac Vice* for Robert G. Marmet. Piedmont's motion was granted by a Hearing Examiner's Ruling dated July 14, 2009.

On June 22, 2009, July 16, 2009, and July 28, 2009, PATH filed its proof of publication and notice as directed in the Commission's Order for Notice and Hearing.

Other Notices of Participation were received from Alfred T. and Irene A. Ghiorzi (June 30, 2009); James K. Crowley and Beatriz Ribeiro da Luz (July 16, 2009); Josephine B. Dellano (July 22, 2009); Robert J. Kershner (July 23, 2009); Board of Supervisors of Frederick County, Virginia ("Frederick County") (July 23, 2009); Dr. Thomas J. Ghiorzi and Dr. Joyce J. Ghorzi (July 23, 2009); River's Edge Community Association, Inc. ("River's Edge") (July 24, 2009); James F. Wallington and Mary L. Wallington (July 24, 2009); Irene Randles and Kenneth Randles (July 24, 2009); Pamela Lane Baldwin (July 24, 2009); Theresa Ghiorzi (July 24, 2009); Angela Ghiorzi Baus (July 24, 2009); Michael and Lauren Johnson (July 24, 2009); Mark A. Malick (July 24, 2009); Charles R. Rodriguez (July 24, 2009); Kendall B. Randolph (July 24, 2009); Robert N. Meiser and Hala A. Meiser (July 24, 2009); Franklin J. Hyatt and Shauna Hyatt (July 24, 2009); Dawn L. Rosenthal and Glenn K. Rosenthal (July 24, 2009); Kevin F. Cadden (July 24, 2009); Doreen O. Hyatt (July 24, 2009); Hanno Rittner, Dawn Rittner, Jacob Jay Silverman, Deanna Silverman, Tim Murphy, Camille Murphy, Casimir Casey Chlebowski, and Tracy Nickola (July 27, 2009); Nicholas L. Mohler (July 27, 2009); William A. and Christy A. Matarazzo (July 27, 2009); Gordon M. and Carol L. Hodgson (July 27, 2009); David and Louise Zwicker (July 27, 2009); James and Valerie Dunagin (July 27, 2009); J. G. Mac Horton (July 27, 2009); Kenneth M. Fognano (July 27, 2009); the Sierra Club (July 27, 2009); Patricia A. Hall (July 27, 2009); Board of Supervisors of Loudoun County, Virginia ("Loudoun County") (July 27, 2009); Alejandra Omes Urbany (July 27, 2009); Keith and Daren Lawson (July 28, 2009);

Daniel C. Dunlap and Elizabeth S. Dunlap (July 28, 2009); Donald A. Ulmer and Tylee M. Ulmer (August 17, 2009); James S. Hoffman and Aimee E. Hoffman (August 24, 2009); Peter A. Guarino and Taina G. Fisher-Guarino (August 24, 2009); John D. Burger and Mary S. Burger (August 31, 2009); and Don C. Cardamon and Ana I. Cardamon (September 1, 2009).

On July 6, 2009, Alfred T. and Irene A. Ghiorzi filed a Motion to Dismiss, to Amend Commission's Order for Notice and Hearing, and to Establish an Escrow Fund. More specifically, in the motion it was requested that (i) this proceeding be dismissed because PATH is not a public utility corporation; (ii) the Commission's Order for Notice and Hearing be amended to provide for notice by first-class mail to all property owners within the 1200-foot Virginia Route Corridor, public hearings in mid-September 2009, and an extension of the date for filing a notice of participation until August 31, 2009; and (iii) an escrow fund for counsel and experts on the health effects of electro-magnetic fields ("EMF") be authorized. On July 21, 2009, PATH filed its response in opposition to the motion. On July 22, 2009, Staff filed its response in opposition to the motion. On July 28, 2009, Alfred T. and Irene A. Ghiorzi filed their reply in support of their motion. The date for respondents to file their notices of participation was extended from July 27, 2009, to August 31, 2009, and all other aspects of the motion were denied in a Hearing Examiner's Ruling dated July 31, 2009.

On July 27, 2009, the Sierra Club filed a Motion for Admission *Pro Hac Vice* for Abigail Dillen. The Sierra Club's motion was granted by a Hearing Examiner's Ruling dated August 17, 2009.

On July 28, 2009, Alfred T. and Irene A. Ghiorzi filed a Motion for the Imposition of Sanctions Against Path Allegheny Virginia, contending that letters mailed to property owners by PATH to provide the Commission-required notice of the Application contained language that inappropriately lobbied for the PATH project. On August 12, 2009, PATH filed its response in which it asked the Commission to dismiss the motion. On August 18, 2009, Alfred T. Ghiorzi filed his reply in support of the motion. The motion was denied in a Hearing Examiner's Ruling dated August 24, 2009.

On August 3 and 4, 2009, public hearings were held in the John Handley High School Auditorium in Winchester, Virginia. In addition to this hearing examiner, Commissioner Mark C. Christie, chairman, attended the hearings. Richard D. Gary, Esquire, appeared on behalf of PATH. Robert G. Marmet, Esquire, appeared on behalf of Piedmont. Abigail Dillen, Esquire, appeared on behalf of the Sierra Club. Frederick D. Ochsenhirt, Esquire, appeared on behalf of Staff. Public testimony was received from Congressman Frank R. Wolf; Michael Sproull; Senator Jill Vogel; Jerome Lane; Tim Riley; Austin Kane; Vicki Robb; Frances Molinengo; Jan Phillips; Julia Moss; Thomas M. Wolden; Donald Atkins; Kristin DeHaven; Carmine Russo; Pamela A. Bell; Maria Padgett; Mike McIntire; Keryn Newman; Shirley Yost; David Didawick; Annette Walsh; Rene Pope; Matt Parrill; Ellen Rivers; Linda Burchfield; Ralph Mitchell; Bonnie Aitken; Mary Owen Chatfield-Taylor; Kristina Miles; Craig Gallagher; Melvin W. Crowe; Jeff Hickerson; Marc Savitt; Linda Ingle; Darla Barrett; Victor Canfield; Tammara Canfield; Stephen L. Pettler, Jr.; Ellen Adams; Evan H. Clark; Roger Eitelman; Linda Russell; Melissa Stubblefield; David E. Scanlan; Ann Grogg; Gregg Hewitt; Suzette Chick; Chris A. Brown; Bob Grove; Sortis J. Pappas; Robert T.

Hughes; Stacy Cornwell; Mark Bayliss; Karen Maples; Norma Byron; Lisa Pianalto; Richard L. Brown; and C. William Orndoff, Jr.

On August 5 and 6, 2009, public hearings were held in the Loudoun Valley High School Auditorium in Purcellville, Virginia. In addition to this hearing examiner, Commissioners Judith Williams Jagdmann and James C. Dimitri attended the hearings. Charlotte McAfee, Esquire, and Jennifer Petrisek, Esquire, appeared on behalf of the Applicant. Robert G. Marnet, Esquire, appeared on behalf of Piedmont. Wayne N. Smith, Esquire, appeared on behalf of Staff. Public testimony was received from Malcolm Baldwin; Edythe Dunn; Shannon Morris; P. C. Wait; Pam Gearhart; Thomas Meisling; Steven Bruckner; Roger Diedrich; Anthony Noerpel; Timothy Wyant; Mayor Elaine Walker; James G. Burton; Jon Rosenberger; Gladys Lewis; Raymond A. Hoover; Michael Aaron; George Melik; Pat Taylor; Pam Wayland; John P. Flannery; Deborah Bryan; Marcia deGarmo; John C. Lindsey; Bill Druhan; Franklin Hyatt; Mary Moorcones; Jeremiah Austin; John R. Ross, III; Alfred Patrick Ghiorzi; Diana Dezem; Penny Loeb; Brad Wike; Bronwen Souders; Shaun Staley; Judith Randal; Senator Mark Herring; Delegate Joe May; Tracey Nickola; Dean Settle; Ken Fognano; Sally Kurtz; Keith Nusbaum; Debra Jenkins; Bruce Huffstickler; Maggie Malick; Jane Twitmyer; Jim Crumley; LaVern Jackson; Erin Fuller; Carolyn N. Davis; Peter Kalaris; Nancy Doane; William Blevins; Lori Kimball; Kathryn Rauh; Erin Austin; Patrick J. Ryan, II; Louis Kroiz; Juanita Tool; Laura Davimes; Susan Butler; and Thomas Bullock.

On August 17, 2009, Staff filed a response to objections made by PATH concerning several definitions provided by Staff as part of its interrogatories to the Applicant. Pursuant to a Hearing Examiner's Ruling dated August 18, 2009, PATH filed its reply on August 24, 2009. PATH's objections were overruled in a Hearing Examiner's Ruling dated August 27, 2009.

On September 8, 2009, Alfred T. Ghiorzi, James K. Crowley, and Beatriz Ribeiro da Luz filed a Response to the objections of PATH to their interrogatories and requests for production of documents. Pursuant to a Hearing Examiner's Ruling dated September 9, 2009, PATH filed its Reply on September 14, 2009. Certain of the objections were sustained and certain of the objections were overruled in a Hearing Examiner's Ruling dated September 17, 2009.

On September 17, 2009, Pamela L. Baldwin and Alfred T. Ghiorzi filed a Motion Challenging PATH Allegheny Virginia's Claim of Confidentiality for certain documents provided in response to interrogatories. On September 24, 2009, Piedmont filed in support of the motion in regard to documents provided in response to one interrogatory. On September 29, 2009, PATH filed its response in opposition to the motion. On October 6, 2009, Mr. Ghiorzi filed his reply. The motion was denied in a Hearing Examiner's Ruling dated October 16, 2009.

On September 24, 2009, forty-six Respondents<sup>2</sup> filed their Joint Motion to Change Venue of January 2010 Hearings From Richmond, Virginia to Leesburg, Virginia, seeking a change of venue

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<sup>2</sup> The Respondents include River's Edge, Pamela L. Baldwin, Tracey Nickola, James K. Crowley, Beatriz Ribeiro da Luz, Josephine A. Dellano, Daniel C. Dunlap, Elizabeth S. Dunlap, Angela Ghiorzi Baus, Alfred T. Ghiorzi, Irene A. Ghiorzi, Theresa A. Ghiorzi, Doctor Thomas J. Ghiorzi, Doctor Joyce J. Ghiorzi, Gordon M. Hodgson, Carol Hodgson, Robert J. Kershner, Keith Lawson, Karen Lawson, J.G. MacHorton, Mark Malick, William Matarazzo, Christy A. Matarazzo, Charles

for the evidentiary hearing scheduled to begin in the Commission's courtroom in Richmond beginning on January 19, 2010. The Respondents' motion was denied in a Hearing Examiner's Ruling dated September 25, 2009.

On October 5, 2009, the Sierra Club filed its Motion for Extension of Time to File Expert Testimony. The Sierra Club stated that its expert witnesses had not received information requested from PATH and requested that the deadline for the submission of the testimony and exhibits of witnesses Hyde M. Merrill, George Loehr, and Robert Fagan be extended from October 14, 2009, to October 23, 2009. On October 6, 2009, PATH filed its response in which it criticized the Sierra Club for waiting more than three months from the filing of the Application to begin requesting information. Nonetheless, PATH stated that it neither supported nor opposed the extension. The motion was granted in Hearing Examiner's Ruling dated October 9, 2009.

A hearing to receive the testimony of public witnesses was scheduled for Thursday, November 19, 2009, at Lovettsville, Virginia, in a Hearing Examiner's Ruling dated October 7, 2009. In addition, two prehearing conferences, one scheduled for November 19, 2009, in Lovettsville, and the second scheduled for December 3, 2009, in Richmond, also were scheduled in Hearing Examiner's Ruling dated October 7, 2009.

On October 8, 2009, Respondent James K. Crowley, research geologist with the United States Geological Survey, filed direct testimony. On October 13, 2009, Alfred T. Ghiorzi and Irene A. Ghiorzi filed the direct testimony of Alfred T. Ghiorzi, and Professor Martin Blank, Department of Physiology and Cellular Biophysics, College of Physicians and Surgeons, Columbia University. On October 14, 2009, River's Edge filed the direct testimony of Dawn L. Rosenthal, CFO/controller of Ulyssix Technologies, Inc. On October 14, 2009, the Sierra Club filed the direct testimony of Christopher A. James, senior associate at Synapse Energy Economics, Inc. On October 14, 2009, Frederick County filed the direct testimony of Richard C. Shickle, chairman at-large of the Frederick County Board of Supervisors, and vice president of Administration and Finance at Shenandoah University; Eric R. Lawrence, director of Planning and Development for Frederick County; and Patrick Barker, executive director of the Winchester-Frederick County Economic Development Commission. On October 14, 2009, Loudoun County filed the direct testimony of Charles Yudd, deputy county administrator for Loudoun County. On October 14, 2009, Respondents Pamela Baldwin, Hanno Rittner, Donald A. Ulmer, Tylee M. Ulmer, Michael E. Johnson, Daniel C. Dunlap, Elizabeth S. Dunlap, Franklin J. Hyatt, Shauna Hyatt, Beatriz Ribeiro da Luz and Charles R. Rodriguez filed their direct testimonies.

On October 15, 2009, River's Edge filed the direct testimony of Nick Mohler, community resident. On October 15, 2009 Respondents John D. Burger, Mary S. Burger, William Matarazzo, Theresa Ghiorzi, and Robert N. Meiser filed their direct testimonies. On October 19, 2009, Respondent Mark Malick filed his direct testimony.

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Rodriguez, Glenn K. Rosenthal, Dawn L. Rosenthal, David Zwicker, Louise Zwicker, Don C. Cardamon, Ana I. Cardamon, Donald A. Ulmer, Tylee M. Ulmer, Taina G. Fisher-Guarino, Peter Guarino, Nicholas Mohler, James F. Wallington, Mary L. Wallington, Frank Hyatt, Shawna Hyatt, Doreen Hyatt, Hanno Ritter, Dawn Ritter, Kendall B. Randolph, Mrs. Valerie Dunagin, Patricia Hall, and Carolyn N. Davis.

On October 23, 2009, the Sierra Club filed the direct testimony of George C. Loehr, independent consultant; Dr. Hyde Merrill, independent consultant; and Robert M. Fagan, senior associate at Synapse Energy Economics, Inc.

On October 26, 2009, Respondent Gordon M. Hodgson filed his direct testimony.

On October 26, 2009, River's Edge filed its Motion to Enlarge Time to Submit Expert Testimony by Dr. James E. Hansen, World Renowned Climatologist, and a copy of Dr. James E. Hansen's direct testimony. The motion was granted during oral arguments held on November 19, 2009.

On October 19, 2009, Staff filed its Motion to Dismiss Application and to Certify Issue to the Commission ("Staff's Motion to Dismiss"). Staff pointed out that on September 9, 2009, the Maryland Public Service Commission ("Maryland PSC") dismissed PATH's companion application in Maryland and that the utility failed to advise the Maryland PSC of its plans regarding the project within the provided thirty-day period. Staff argued that without an application in Maryland, PATH's proposed transmission line lacks a termination point, which renders a complete analysis and investigation impossible.

On October 19, 2009, River's Edge joined Staff's Motion to Dismiss, but recommended that PATH's Application be dismissed with prejudice. On October 20, 2009, Charles Rodriguez and Alfred T. and Irene A. Ghorzi joined Staff's Motion to Dismiss. Both parties recommended that PATH's Application be dismissed with prejudice. Alfred T. and Irene A. Ghorzi also asked for reimbursement of costs.

On October 23, 2009, Piedmont filed in support of Staff's Motion to Dismiss. On October 26, 2009, Loudoun County and Frederick County filed in support of Staff's Motion to Dismiss.

On October 26, 2009, PATH filed its response to Staff's Motion to Dismiss. PATH maintained that the terminus for the proposed line had not changed and that a new application for approval of the Maryland segment of the proposed project would be filed either before the Maryland PSC or before the Federal Energy Regulatory Commission ("FERC").

On October 28, 2009, the Sierra Club and River's Edge filed replies in support of Staff's Motion to Dismiss. River's Edge continued to recommend dismissal with prejudice.

On November 2, 2009, Taina G. Fisher-Guarino and Peter A. Guarino filed in support of Staff's Motion to Dismiss, but recommended dismissal with prejudice.

On November 6, 2009, PATH filed its Motion for Modification of Procedural Schedule ("PATH's Motion for Modification"). PATH asked that the procedural schedule for the "need" portion of the proceeding be adjusted, with hearings to be held in early September 2010. PATH stated that the procedural schedule for "non-need" issues should remain as scheduled currently. PATH supported its requests by pointing to the development of updated information, such as PJM's

2010 load forecast and the May 2010 Reliability Pricing Model market auction. PATH contended that its revised schedule for the "need" issues would allow coordination with the projected procedural schedules in the other jurisdictions.

On November 9, 2009, Staff filed a reply on Staff's Motion to Dismiss in which it continued to recommend that the Application be dismissed.

On November 9, 2009, River's Edge and Pamela Lane Baldwin objected to PATH's Motion for Modification and contended that the Application should be dismissed with prejudice.

On November 9, 2009, PATH filed a letter advising that the Potomac Edison Company intends to file a new application with the Maryland PSC for approval of the PATH Project by December 31, 2009.

On November 10, 2009, Gordon M. Hodgson, and James K. Crowley and Beatriz Ribeiro da Luz filed responses in opposition to PATH's Motion for Modification and recommended that the Application be dismissed with prejudice.

A Hearing Examiner's Ruling dated November 10, 2009, scheduled oral arguments on Staff's Motion to Dismiss and PATH's Motion for Modification to be held on November 19, 2009, during the pre-hearing conference at the Lovettsville Community Center.

On November 12, 2009, Respondents Frederick County, Tylee M. Ulmer, Piedmont, and Charles Rodriguez filed oppositions to PATH's Motion for Modification. Frederick County recommended that the PATH Motion for Modification be denied or that the need and non-need hearings be consolidated. Piedmont agreed that the hearings should be consolidated and recommended that the Commission wait to see what actions are taken in Maryland. Tylee M. Ulmer and Charles Rodriguez recommended that the Application be dismissed with prejudice.

On November 13, 2009, Loudoun County and Alfred and Irene Ghiorzi filed in opposition to PATH's Motion for Modification. Loudoun County recommended that the Application be dismissed without prejudice and the Ghiorzis contended that the Application should be dismissed with prejudice.

On November 17, 2009, Staff filed its response to PATH's Motion for Modification. Staff continued to recommend that the Application be dismissed without prejudice. In the alternative, Staff advocated adhering to the current case schedule.

On November 18, 2009, PATH filed its Reply on its Motion for Modification. PATH proposed a new schedule that would delay all portions of the evidentiary hearing until September 13, 2010.

On November 19, 2009, the Sierra Club filed a Reply in Support of Motion to Dismiss. The Sierra Club contended that Staff's Motion to Dismiss should be granted. The Sierra Club also contended that PATH's proposed new schedule would be prejudicial and unworkable.

Oral arguments were held as scheduled on November 19, 2009, at the Lovettsville Community Center. Attorneys appearing at the oral arguments included William H. Chambliss, Esquire, on behalf of Staff; Richard Gary, Esquire, on behalf of PATH; Jack Roberts, Esquire, on behalf of Loudoun County; Roderick Williams, Esquire, on behalf of Frederick County; Abigail Dillen, Esquire, and Willard R. Burns, Esquire, on behalf of the Sierra Club; Robert Marmet on behalf of Piedmont; and John P. Flannery, Esquire, on behalf of River's Edge. *Pro se* Respondents participating in the oral arguments included Charles R. Rodriguez, Frank and Shauna Hyatt, Thomas Lindsey, Mike Johnson; James Crowley and Beatriz Ribeiro da Luz, William Matarazzo, Gordon Hodgson, Pamela Baldwin, Hanno Rittner, Dawn Rittner, Robert N. Meiser, Nicholas L. Mohler, Alfred T. Ghiorzi, Theresa Ghiorzi, Tylee Ulmer, and Elizabeth Dunlap.

Respondents' request that the case be dismissed with prejudice, Staff's Motion to Dismiss, and PATH's Motion for Modification were denied in a Hearing Examiner's Ruling dated November 24, 2009. That ruling maintained the existing procedural schedule, without change.

On November 25, 2009, Staff filed its Motion to Extend Filing Dates in which it requested a one-week extension for the filing of its direct testimony. On November 25, 2009, PATH filed a response to Staff's motion. PATH did not oppose Staff's motion, but asked that the date for the filing of its rebuttal testimony be discussed during the December 3, 2009, prehearing conference. The Staff motion and PATH's request were granted in a Hearing Examiner's Ruling dated November 25, 2009.

On December 2, 2009, Alfred T. and Irene A. Ghiorzi filed a Motion in Limine in which they asked that PATH be precluded from introducing a new needs justification for the PATH Project, whether in the form of rebuttal testimony, supplemental testimony, an updated load flow analysis, or other new data or modeling. On December 8, 2009, PATH filed a response in opposition to the motion. On December 14, 2009, Alfred T. and Irene A. Ghiorzi filed their reply in which they referenced the substantial efforts and resources already expended to refute PATH's alleged need and maintained that such efforts could not be duplicated in the ten business days before the evidentiary hearing begins. The motion was denied in a Hearing Examiner's Ruling dated December 17, 2009.

On December 3, 2009, the prehearing conference was held as scheduled. Based on the discussions during the prehearing conference, the filing date for PATH's rebuttal was extended from Tuesday, December 22, 2009, to Thursday, December 31, 2009. No other change in the procedural schedule was adopted. Thus, the Richmond hearings continued to be scheduled to begin on Tuesday, January 19, 2010. In addition, based on the discussion during the prehearing conference, PATH was directed to produce additional updated load flow analyses and file the results of these analyses with its rebuttal testimony. These rulings, as well as a more specific description of the updated load flow analyses were provided in a Hearing Examiner's Ruling dated December 4, 2009 ("December 4<sup>th</sup> Ruling").

On December 8, 2009, Staff filed the direct testimony of Wayne D. McCoy, president of Mid Atlantic Environmental LLC; Howard M. Spinner, director of the Commission's Division of Economics and Finance; James F. Wilson, independent consultant; and Dr. Eddie S. Dehdashti, president of Power Applications and Research Systems, Inc.

On December 21, 2009, PATH filed a Motion to Withdraw Application and Terminate Proceeding ("Motion to Withdraw") and a Motion to Suspend Procedural Schedule ("Motion to Suspend"). In its Motion to Withdraw, PATH requested that it be permitted to withdraw its current Application and refile a new application that would align the procedural schedule in Virginia with current procedural schedules in West Virginia and Maryland. PATH noted that the hearings in West Virginia have been delayed until October 18, 2010, with supplemental testimony to be filed on June 29, 2010. PATH indicated that it has filed a new application for the PATH Project in Maryland concurrently with its Motion to Withdraw and Motion to Suspend in Virginia. PATH anticipated evidentiary hearings in Maryland in the second half of 2010. Furthermore, PATH maintained that the withdrawal of its Application and the filing of a new application would permit the Commission to consider the electrical need for the PATH Project on the same facts considered by its counterparts in West Virginia and Maryland.

In its Motion to Suspend, PATH contended that if the Motion to Withdraw is granted, PATH's rebuttal testimony and additional load flow studies requested by the Hearing Examiner will become unnecessary. Thus, PATH requested an immediate suspension of the current procedural schedule while the Motion to Withdraw was being considered.

An oral argument on the Motion to Withdraw was scheduled for Wednesday, December 30, 2009, at 10:00 a.m. in the Commission's courtroom in a Hearing Examiner's Ruling dated December 21, 2009 ("December 21<sup>st</sup> Ruling"). Counsel and *pro-se* Respondents were provided the option of participating in the oral argument telephonically. In addition, to maintain the option of completing the case as filed within the federally-mandated one-year period, PATH's Motion to Suspend was denied in the December 21<sup>st</sup> Ruling.

On December 22, 2009, Respondents Robert N. Meiser and Hala A. Meiser filed a response in opposition to PATH's Motion to Withdraw.

On December 22, 2009, the Sierra Club filed a Motion to Compel in which it requested that PATH be directed to respond to discovery requests regarding the additional load flow studies by January 10, 2010, and that the procedural schedule be modified to ensure that Respondents and the Commission Staff have adequate time to prepare for a hearing.

On December 23, 2009, the Sierra Club and Piedmont filed in opposition to the Motion to Withdraw. The Sierra Club pointed out that the "new" Maryland application appears to be based on the same information as in the original Maryland and Virginia applications.

On December 28, 2009, Alfred T. and Irene A. Ghiorzi filed a Motion for Reimbursement of Expert Witness Fees Incurred in Responding to PATH-VA's Second Set of Interrogatories and Request for Production of Documents.

On December 28, 2009, River's Edge; Pamela Lane Baldwin, James K. Crowley, and Beatriz Ribeiro da Luz; and Alfred T. and Irene A. Ghiorzi filed in opposition to PATH's Motion to Withdraw.

On December 29, 2009, PATH filed an Amendment to Motion to Withdraw Application and Terminate Proceeding (“Amended Motion to Withdraw”). PATH stated that preliminary results from the updated load flow analyses, directed to be produced in the December 4<sup>th</sup> Ruling, indicate that the PATH Project will not be needed to resolve NERC reliability violations in 2014 as indicated in the pending Application. PATH advised that PJM would perform a complete analysis as part of its 2010 Regional Transmission Expansion Plan (“RTEP”) process. Indeed, in a December 28, 2009 letter from PJM’s vice president of planning, Steven R. Herling, to PATH vice president, James R. Haney (“Herling Letter”), PJM acknowledged:

PJM is, at this time, completing a number of sensitivity analyses, as ordered by the Hearing Examiner in the Virginia proceeding, Case No. PUE-2009-00043, with respect to the need for the PATH Project. These analyses are nearing completion but suggest a delay in the need date for the Project. Specifically, scenarios that include the demand response resources that cleared through the 2012/13 RPM Base Residual Auction, as well as updated queue information and load forecasts, suggest that the PATH Project appears not to be needed in 2014 as a result of a reduction in the scope of the severity of observed NERC reliability violations. Consistent with PJM processes, the PATH Project will be considered in the 2010 RTEP next year to determine when it will be needed to resolve NERC reliability violations.<sup>3</sup>

PATH noted that a future application for the PATH Project “is not expected to be earlier than the third quarter of 2010.”<sup>4</sup> As for its pending Application, PATH asked that these proceedings be ended promptly as “[i]n light of PJM’s current analyses, approval of the PATH Project will not be pursued through the currently filed Application.”<sup>5</sup>

On December 29, 2009, Charles R. Rodriguez filed in opposition to the Motion to Withdraw.

On December 29, 2009, Pamela Lane Baldwin, James K. Crowley, and Beatriz Ribeiro da Luz filed an amended answer in opposition to PATH’s Amended Motion to Withdraw. Based on the latest developments, the Respondents asked that the Application be dismissed with prejudice. In addition, the Respondents requested that “[i]n the event PATH that files and the Commission accepts a new application at any time in the future for the same or virtually same project, the applicant should be required to bear all costs borne by respondents in connection with both the original case and the newly filed case.”<sup>6</sup>

On December 30, 2009, the oral argument was held as scheduled. Richard Gary, Esquire; Noelle Coates, Esquire; Randy Palmer, Esquire; and Charles Bayless, Esquire, appeared on behalf

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<sup>3</sup> PATH’s Amended Motion to Withdraw at 2-3.

<sup>4</sup> *Id.* at 2 n.2.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> Pamela Lane Baldwin, James K. Crowley, and Beatriz Ribeiro da Luz Amended Answer at 1.

of PATH. Abigail Dillen, Esquire, and Willard R. Burns, Esquire, (via telephone) appeared on behalf of the Sierra Club. Jack Roberts, Esquire, (via telephone) appeared on behalf of Loudoun County. Roderick Williams, Esquire, (via telephone) appeared on behalf of Frederick County. Robert Marnet, Esquire, appeared on behalf of Piedmont. John P. Flannery, Esquire, (via telephone) appeared on behalf of River's Edge. William H. Chambliss, Esquire; Wayne N. Smith, Esquire; and Frederick D. Ochsenhirt, Esquire, appeared on behalf of Staff. *Pro se* Respondents participating in the oral arguments included Alfred T. Ghiorzi, Irene Ghiorzi, Theresa Ghiorzi, Robert N. Meiser (via telephone), Pamela L. Baldwin (via telephone), Michael Johnson (via telephone), and Charles R. Rodriguez (via telephone).

On January 4, 2010, Alfred T. Ghiorzi and Irene A. Ghiorzi filed a response to the Amended Motion to Withdraw. On January 4, 2010 Charles R. Rodriguez filed an Amended Answer in opposition to the Amended Motion to Withdraw. On January 5, 2010, Piedmont filed in opposition to the Amended Motion to Withdraw. On January 6, Alfred T. Ghiorzi and Irene A. Ghiorzi filed an amended filing in opposition to the Amended Motion to Withdraw. None of these filings were made within established procedures and were not considered.

On January 5, 2010, PATH filed the updated load flow analyses based on the December 4<sup>th</sup> Ruling and as directed during the oral arguments held on December 30, 2009.

## DISCUSSION

After the considerable expenditure of resources briefly outlined above, PATH no longer supports its Application for certification of the PATH Project and requests its withdrawal. The discussion will begin with a summary of the arguments presented during the oral arguments held on December 30, 2009.

Counsel for PATH began the oral arguments by stating that PATH no longer supported its Application.

Now, on the basis of [the Herling Letter], [PATH] no longer supports the application on file with the Commission that is based on a need for . . . the PATH Project in 2014. . . .

As we stand here today, in December of 2009 – and also will be true in January 2010 – the studies appear not to support a 2014 need date for the PATH project. And the Applicant and PJM will not testify in support of a 2014 date.

Now, as we forecasted in the amendment we filed yesterday, because the Applicant no longer supports the application on file here, we think the proceeding should end, immediately, and no further resources, time or money, should be expended . . . .

...

So, . . . instead of this being a procedural motion, this is now a substantive motion, because the Applicant cannot testify in favor of the application that's now on file with the Commission.<sup>7</sup>

As for the pending applications by PATH affiliates in West Virginia and Maryland, counsel for PATH stated that the West Virginia procedural schedule provides for the filing of an update on June 29, 2010, to reflect PJM's 2010 RTEP process. Counsel for PATH advised that the procedural schedule for Maryland has yet to be set, but is expected to be similar to the schedule in West Virginia.<sup>8</sup> This is consistent with PATH's Amended Motion to Withdraw which indicated that any future Virginia certificate application for the PATH Project will depend on PJM's 2010 RTEP and will not be filed earlier than the third quarter of 2010.<sup>9</sup>

Counsel for Staff indicated that while it opposed PATH's original Motion to Withdraw, Staff did not oppose the Amended Motion to Withdraw.<sup>10</sup> Counsel for Staff expressed concern regarding future coordination of procedural schedules in Virginia, West Virginia, and Maryland; and for the costs, both monetary and emotional, incurred by the participants in this proceeding.<sup>11</sup> Nonetheless, counsel for Staff advised that the Commission's responsibility to the broader public interest means that the Application cannot be dismissed with prejudice and prohibited from filing for a transmission line over the same or similar route.<sup>12</sup>

Counsel for Staff offered several recommendations to reduce the burden on Respondents in a future proceeding related to the PATH Project. First, counsel for Staff suggested that the protective ruling be modified to permit Respondents in this case that have confidential material to retain that material until the deadline for filing notices of participation of a respondent in any subsequent case passed.<sup>13</sup> Second, counsel for Staff recommended that the Applicant in any future proceeding be directed to serve copies of its application on all Respondent households in this proceeding.<sup>14</sup> Third, counsel for Staff urged that prepared testimony filed in this proceeding be treated as prepared testimony in any subsequent proceeding, if that Respondent becomes a Respondent in the future proceeding.<sup>15</sup> Finally, counsel for Staff asked that PATH be required to file its rebuttal testimony and respond to outstanding interrogatories.<sup>16</sup>

Counsel for the Sierra Club asked that the December 4<sup>th</sup> Ruling be enforced to require PATH to file the modeling runs that are serving as the basis for its Amended Motion to Withdraw.<sup>17</sup> Counsel for the Sierra Club requested that the Commission use the updated modeling runs to

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<sup>7</sup> Gary, Oral Argument Tr. at 10, 12.

<sup>8</sup> *Id.* at 11-12.

<sup>9</sup> PATH Amended Motion to Withdraw at 2.

<sup>10</sup> Smith, Oral Argument Tr. at 16.

<sup>11</sup> *Id.* at 17-19.

<sup>12</sup> *Id.* at 19-20.

<sup>13</sup> *Id.* at 21.

<sup>14</sup> *Id.* at 22.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 24.

<sup>17</sup> Dillen, Oral Argument Tr. at 27.

establish a period of time in which this Application should not be put forward again.<sup>18</sup> Counsel for the Sierra Club maintained that it should be of concern to this Commission that the Applicant can concede in Virginia that this Application does not support the need for the PATH Project, while continuing applications in West Virginia and Maryland.<sup>19</sup>

Counsel for Piedmont questioned whether PJM has withdrawn its order to build the PATH transmission line.<sup>20</sup> Counsel for Piedmont further questioned the nature of the pleadings now before the Commission.

[Has PJM] ordered that [the PATH transmission line] be built in Maryland, stop at the Virginia border, be built in West Virginia, stop at the Virginia border, but not be built in Virginia?<sup>21</sup>

Counsel for Piedmont asked that the entire Herling Letter and the results of the updated load flow analyses directed by the December 4<sup>th</sup> Ruling be placed before the Commission to determine whether this is a dismissal based on the merits or whether it is a dismissal based on a technicality.<sup>22</sup> Counsel for Piedmont advised that Piedmont supported only a dismissal based on the merits.<sup>23</sup>

Counsel for River's Edge asserted that the current PATH application in Maryland "has no updated data, and it uses the same old data which is the subject of criticism in this proceeding."<sup>24</sup> Counsel for River's Edge accused PATH of gaming the system and now struggling to find a way to avoid "this day of reckoning."<sup>25</sup> Counsel for River's Edge recommended that the Application be denied with prejudice.<sup>26</sup> Counsel for River's Edge also sought the recovery of costs and legal fees as sanctions.<sup>27</sup>

Respondent Robert Meiser took the position that if the withdrawal of the Application is allowed, that it be with prejudice.<sup>28</sup> Mr. Meiser asserted that PATH has admitted they have no case now on the merits.<sup>29</sup> Mr. Meiser asserted that the deregulated national grid is competitive.<sup>30</sup> Mr. Meiser contended that the route chosen is not the only available route and PATH the only option. "We don't need this Applicant in a . . . competitive market over this route to find a solution to New Jersey's problem, if they have a problem . . ."<sup>31</sup>

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<sup>18</sup> *Id.* at 29.

<sup>19</sup> *Id.* at 33.

<sup>20</sup> Marmct, Oral Argument Tr. at 36.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 37.

<sup>23</sup> *Id.*

<sup>24</sup> Flannery, Oral Argument Tr. at 38.

<sup>25</sup> *Id.* at 39.

<sup>26</sup> *Id.* at 42.

<sup>27</sup> *Id.* at 43.

<sup>28</sup> Meiser, Oral Argument Tr. at 47.

<sup>29</sup> *Id.* at 47-48.

<sup>30</sup> *Id.* at 48.

<sup>31</sup> *Id.* at 49.

Alfred T. Ghiorzi focused on the admission by counsel for PATH that the Applicant no longer supports the need for the project and will not testify in support of the Application.<sup>32</sup> Mr. Ghiorzi contended, “[o]n that basis alone – you don’t need any other testimony – on that basis alone, the application can be denied.”<sup>33</sup> Mr. Ghiorzi asserted that by asking that the Application be withdrawn, “PATH is reserving to itself the right to go to FERC on the basis it was not denied here in Virginia, meaning they will be stripping the Commonwealth of Virginia of its sovereign authority to make their decision in this case.”<sup>34</sup> Mr. Ghiorzi addressed the issue of denial with prejudice and stated that to grant withdrawal and termination without any conditions lets PATH continue to game the system.<sup>35</sup> Mr. Ghiorzi recommended instituting a rulemaking proceeding to address the filing of new applications when the original application is denied.<sup>36</sup>

Theresa Ghiorzi pointed out that the case involved more than just the issue of need and that several witnesses challenged routing and other aspects of the Application.<sup>37</sup>

Irene A. Ghiorzi agreed with the testimony of her husband and daughter and asserted that PATH was trying to game the system.<sup>38</sup> Mrs. Ghiorzi contended that “[d]enial on the merits is probably the only way to retain sovereignty.”<sup>39</sup>

Pamela Baldwin noted that the Amended Motion to Withdraw only changes the date on which they wish to proceed.<sup>40</sup> Ms. Baldwin recommended that the Application be dismissed with prejudice, that PATH be denied the right to re-file the same or virtually the same project, and that if such a filing were made, that PATH be held responsible for the costs of all parties for both the present and future case.<sup>41</sup> Ms. Baldwin agreed with the arguments of others seeking submission of the new PJM data and with the arguments for denial.<sup>42</sup> Ms. Baldwin underscored the terrible personal hardships faced by those property owners most directly affected by the proposed project.<sup>43</sup>

Counsel for the Sierra Club addressed the Sierra Club’s pending motion to compel and asked that the information requested in the December 4<sup>th</sup> Ruling continue to be required to be produced on January 4, 2010.<sup>44</sup> Counsel for the Sierra Club pointed out that the need for most of

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<sup>32</sup> A. Ghiorzi, Oral Argument Tr. at 51.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 52.

<sup>35</sup> *Id.* at 53.

<sup>36</sup> *Id.* at 54.

<sup>37</sup> T. Ghiorzi, Oral Argument Tr. at 55.

<sup>38</sup> I. Ghiorzi, Oral Argument Tr. at 58.

<sup>39</sup> *Id.* at 59.

<sup>40</sup> Baldwin, Oral Argument Tr. at 61.

<sup>41</sup> *Id.* at 61-62.

<sup>42</sup> *Id.* at 62.

<sup>43</sup> *Id.*

<sup>44</sup> Burns, Oral Argument Tr. at 64.

the information that is the subject of the Sierra Club's motion to compel depends on whether and when the hearing occurs.<sup>45</sup>

Counsel for Frederick County agreed with the concerns expressed by the Sierra Club and Piedmont and maintained that "it would be manifestly unfair for PATH to be able to come back a short time later and file the same application, or substantially same application that has no more, or little more support than the current one that's before the Commission."<sup>46</sup> Counsel for Frederick County advised that the Commission has the discretion to deny dismissal or to grant a dismissal with certain terms.<sup>47</sup>

Counsel for Loudoun County agreed with and supported the comments of the other Respondents and recommended three actions.<sup>48</sup> Counsel for Loudoun County recommended that: (i) the Application be denied with a specific finding that PATH admits the line is not needed; (ii) that PATH be required to file the additional PJM load flow analyses, its rebuttal testimony, and responses to all outstanding data requests; and (iii) if the Commission has the power to do so, direct PATH to reimburse the Respondents and Staff for their costs in responding to the need issue.<sup>49</sup>

In response to the arguments of Staff and Respondents, counsel for PATH stated the transmission owners that comprise PATH were required by the Virginia General Assembly to join a regional transmission entity such as PJM, and PJM is required by law to assure that the NERC reliability criteria are carried forward in its planning.<sup>50</sup> Counsel for PATH maintained that such requirements have produced complex planning criteria and planning regimens. Counsel for Path stated:

No one is gaming the system. No one is trying to pull the wool over anybody. We're fully transparent. We do what we have to do.<sup>51</sup>

Counsel for PATH contended that filing all the rebuttal testimony and discovery answers is a lot of material for an application the Applicant no longer supports.<sup>52</sup> Counsel for PATH did not object to filing the additional load flow runs requested in the December 4<sup>th</sup> Ruling.<sup>53</sup>

As for sanctions and costs, counsel for PATH argued that the Commission has no authority to grant such requests.<sup>54</sup> Counsel for PATH acknowledged that there are specific instances where

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<sup>45</sup> *Id.* at 65-66.

<sup>46</sup> Williams, Oral Argument Tr. at 67.

<sup>47</sup> *Id.*

<sup>48</sup> Roberts, Oral Argument Tr. at 68.

<sup>49</sup> *Id.* at 68-69.

<sup>50</sup> Gary, Oral Argument Tr. at 70.

<sup>51</sup> *Id.* at 71.

<sup>52</sup> *Id.* at 74-75.

<sup>53</sup> *Id.* at 75. As outlined above, this information was filed on January 4, 2010.

<sup>54</sup> Gary, Oral Argument Tr. at 75-76.

attorneys' fees are provided for by statute, including Virginia Code §§ 56-231.34:2, 56-231.50:2, 56-235.8, and 56-479.2.<sup>55</sup> Counsel for PATH argued:

So, where the General Assembly gave the Commission authority to award fees and expenses, it's set out in the Code. There is no . . . such similar authority for participating in a transmission line application under either the Facilities Act or 56-46.1.<sup>56</sup>

In regards to PATH's intentions to go to FERC, counsel for PATH pointed to Footnote 3 of its Amended Motion to Withdraw which states: "[i]f withdrawal is granted, [PATH], as a result of such withdrawal, will not request action by FERC as to a construction permit for the PATH Project in Virginia pursuant to Section 216(b)(1)(C) of the Federal Power Act."<sup>57</sup> Indeed, counsel for PATH agreed that PATH would lack authority to go to FERC if the application is withdrawn.<sup>58</sup>

In response to a question on the legal difference between the Commission denying the Application based on an admission and the alternative of permitting PATH to withdraw its Application, counsel for PATH provided the following response:

As far as the difference between dismissal and withdrawal, . . . I'm not sure standing in front of you I could tell you a big difference, except that when the applicant files an application and no longer supports it, then the applicant moves the Commission to withdraw it. And so, we move to withdraw the application we put in front of you. I think that technically is what we should do.

There's no record, as you pointed out several times, on which the Commission to base any kind of dismissal on the merits of any sort, the merits being, . . . that it's been proven . . . if you want to call it admission, . . . we have our communication from PJM that it's not needed apparently in 2014, but there's no record here other than that. So I don't think a dismissal is appropriate when we're prepared to withdraw it. It just seems to make it easier.<sup>59</sup>

In response to Staff's suggestion that the protective ruling be modified to permit Staff and the Respondents to keep confidential information beyond the end of this proceeding, counsel for PATH saw no need for the information to be kept, but did not object if the confidentiality of the information continued to be protected and the information would be kept for only a finite period of time.

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<sup>55</sup> *Id.* at 76-77.

<sup>56</sup> *Id.* at 77.

<sup>57</sup> *Id.* see, Amended Motion to Withdraw at 3 n.3.

<sup>58</sup> Gary, Oral Argument Tr. at 78.

<sup>59</sup> *Id.* at 79-80.

At the conclusion of the oral arguments, this examiner suspended the remainder of the procedural schedule, including the beginning of the hearing, the filing of PATH's rebuttal testimony, and the filing of responses to interrogatories and data requests.<sup>60</sup> However, PATH still was required to file the additional load flow analyses as directed by the December 4<sup>th</sup> Ruling.<sup>61</sup> Though not specifically addressed at the conclusion of the oral arguments, with the suspension of the procedural schedule and the suspension of discovery, I find that rulings on all outstanding motions to compel should be held in abeyance, to be addressed only if the case proceeds and a new procedural schedule is established.

Issues remaining to be decided include the following: (i) whether PATH should be permitted to withdraw its Application or whether PATH's Application should be denied based on its admission regarding the lack of need for 2014; (ii) whether the Commission should place any conditions on the withdrawal or denial of the Application; and (iii) whether the Commission should assess any sanctions or impose costs. Each of these issues is addressed separately below.

### **Withdrawal or Denial**

Based on the arguments and pleadings of the parties, the only legal significance between whether the Commission permits PATH to withdraw its Application or whether it denies PATH's Application based on its admissions may be in regard to possible FERC jurisdiction. Under either option, this proceeding is at an end and no certificate of public convenience and necessity will be issued for the construction of the proposed PATH project in Virginia without the filing of a new application. The Respondents maintained that a withdrawal does not prevent PATH from re-filing the same Application. However, the decision in this proceeding to withdraw or deny the Application should have no impact on the filing of a new application for a certificate for the PATH Project. Aside from the possible loss of the Commission's jurisdiction to FERC, the only other distinction offered between withdrawal and denial was PATH's contention that permitting it to withdraw the Application is more technically correct and easier.

As for possible FERC jurisdiction, in his arguments, Alfred T. Ghiorzi referred to the terms of the federal legislation and contended that a withdrawal is not a denial within the statutory one-year period.<sup>62</sup> More specifically, § 216(b)(1)(C)(i) of the Federal Power Act,<sup>63</sup> grants jurisdiction for transmission projects to FERC when a State commission has:

Withheld approval for more than 1 year after the filing of an application seeking approval pursuant to applicable law or 1 year after the designation of the relevant national interest electric transmission corridor, whichever is later; . . . .

In *Piedmont v. FERC*,<sup>64</sup> the Fourth Circuit Court of Appeals held that the language of this section does not apply when a State commission affirmatively denies an application.

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<sup>60</sup> Oral Argument Tr. at 83-84.

<sup>61</sup> *Id.* at 83.

<sup>62</sup> A. Ghiorzi, Oral Argument Tr. at 52.

<sup>63</sup> Codified as 16 U.S.C. § 824p(b)(1)(C)(i).

<sup>64</sup> *Piedmont Environmental Council v. FERC*, 558 F.3d 304 (4<sup>th</sup> Cir. 2009) ("*Piedmont v. FERC*").

FERC interprets § 216(b)(1)(C)(i)'s phrase "withheld approval for more than 1 year after the filing of [a permit] application" to include a state's outright denial of an application within one year. We conclude that FERC's interpretation is contrary to the plain meaning of the statute. Simply put, the statute does not give FERC permitting authority when a state has affirmatively denied a permit application within the one-year deadline.<sup>65</sup>

Mr. Ghiorzi contended that if the Commission permits PATH to withdraw its Application, such an action is not a denial within the statutory one-year period.<sup>66</sup> Thus, Mr. Ghiorzi argued that "PATH is reserving to itself the right to go to FERC on the basis it was not denied here in Virginia . . . ."<sup>67</sup>

On the other hand, PATH in its pleadings and by counsel has stated that PATH will not request action by FERC.<sup>68</sup> During the oral arguments, counsel for PATH affirmed that if its Virginia Application is withdrawn, PATH would not have the authority to go to FERC.<sup>69</sup>

My reading of § 216(b)(1)(C)(i)'s phrase "withheld approval for more than 1 year after the filing of an application" is that a voluntary withdrawal by an applicant would deprive the State commission of its one-year period. Consequently, I agree with counsel for PATH that in this case, if PATH's Application is withdrawn, there would be no FERC jurisdiction to permit the proposed line.

Going back to Mr. Ghiorzi's assertion that denial of the Application would best protect this Commission's jurisdiction over the proposed PATH Project, Mr. Ghiorzi's assertion rests solely on *Piedmont v. FERC* and on the assumption that a denial in this case based on admissions made in regard to need for 2014 would constitute an "affirmative denial." Both of these facets of Mr. Ghiorzi's assertion add some level of risk to the Commission's jurisdiction. For example, if FERC's original interpretation of the federal statute eventually is adopted by the federal courts, then a denial of the Application would serve to invite FERC jurisdiction. This is not an attempt to second-guess the decision in *Piedmont v. FERC*, but only recognizes that the decision is very recent and may be addressed again by the federal courts.

In summary, I find little if any difference in the resolution of this case between granting PATH's Amended Motion to Withdraw, and dismissing the Application based on PATH's admissions. Based on counsel for PATH's affirmation of FERC's lack of jurisdiction if the Application is withdrawn, I find that withdrawal of the Application is the safest alternative to preserve this Commission's jurisdiction. Therefore, I find PATH's Amended Motion to Withdraw should be granted.

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<sup>65</sup> *Id.* at 313.

<sup>66</sup> A. Ghiorzi, Oral Argument Tr. at 52.

<sup>67</sup> *Id.*

<sup>68</sup> Gary, Oral Argument Tr. at 77-78; Amended Motion to Withdraw at 3 n.3.

<sup>69</sup> Gary, Oral Argument Tr. at 78.

## Conditions

Regardless of whether the Application is withdrawn or denied, the question remains: What happens next? Many of the Respondents asked that this proceeding be concluded "with prejudice" whereby the PATH Project could not be proposed again, any time soon. As addressed by Staff, the Commission's responsibility to the public interest means that PATH cannot be precluded from filing a new application for the same or similar route.<sup>70</sup> Respondents, such as the Sierra Club, recognized that the need for the line could change over time, but asked that PATH be prohibited from filing the same or a similar application.<sup>71</sup> PATH has indicated that any new application would be based on an analysis of PJM's 2010 RTEP and would not be filed earlier than the third quarter of 2010.<sup>72</sup> As the current case was based on PJM's 2008 RTEP, updated through April 2009, an application based on PJM's 2010 or a later RTEP would appear to satisfy a prohibition of filing the same application.

Furthermore, to provide value to the efforts undertaken in this proceeding, any future application for approval of the PATH Project should contain the updated load flow analysis filed on January 4, 2010, as directed by the December 4<sup>th</sup> Ruling, which served as the basis for PATH's withdrawal of its current Application; along with an analysis of changes in circumstances, including changes in generation, demand response and energy efficiency resources. During this proceeding, Staff raised several routing questions related to the project's original configuration, which had substantially less of an impact on Virginia. Many of these questions remain unanswered. Thus, any future application for approval of the PATH Project should also provide information on the project's original routes, consistent with other proposed and alternative routes.

Regarding Staff's recommendations for the use of information and testimony provided or prepared for this proceeding in any new application, I find that Paragraph 18 of the Protective Ruling should be modified to permit the retention of confidential information for one year after the conclusion of this proceeding, rather than requiring the return or destruction of the confidential information at the conclusion of this proceeding. As already provided by Paragraph 18, the restrictions on the use and protection of confidential information continue to be binding after the conclusion of this proceeding. Furthermore, Paragraph 5 of the Protective Ruling should be modified to permit the use of confidential information in a future, related application for the PATH Project, but only with leave of the Commission. No purpose would be served to permit participants in this case to retain confidential information if such information could not be used in a new application for the PATH Project. Requiring leave of the Commission would provide all parties with notice that confidential information retained from the current proceeding is being used in the new proceeding. Amended Paragraphs 5 and 18 are provided below.

(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

<sup>70</sup> Smith, Oral Argument Tr. at 19-20.

<sup>71</sup> Dillen, Oral Argument Tr. at 32-33.

<sup>72</sup> PATH Amended Motion to Withdraw at 2 n2.

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) One year 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.

### **Sanctions**

Several of the Respondents requested sanctions or the awarding of attorneys fees' and costs associated with their participation in these proceedings. I agree with the arguments of counsel for PATH that the Commission lacks the authority to impose sanctions or costs in this case.

### **FINDINGS AND RECOMMENDATIONS**

In conclusion, based on the pleadings and argument, I find that:

(1) PATH's Amended Motion to Withdraw should be granted;

(2) Any future application for the PATH Project must be based on PJM's 2010 or later RTEP;

(3) Any future application for the PATH Project should contain the updated load flow analysis filed on January 4, 2010, as directed by the December 4<sup>th</sup> Ruling and an analysis of changes in circumstances, including changes in generation, demand response and energy efficiency resources;

(4) Any future application for the PATH Project should provide information on the PATH Project's original routes, consistent with other proposed and alternative routes;

(5) The Protective Ruling in this proceeding should be amended as provided herein; and

(6) The Commission lacks the authority to award any of the requested sanctions, attorneys fees or costs associated with participating in this proceeding.

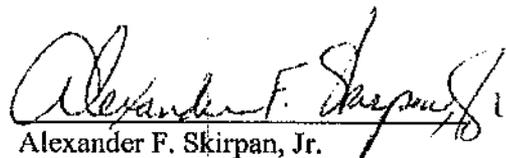
In accordance with the above findings, *I RECOMMEND* the Commission enter an order that:

1. *ADOPTS* the findings in this Report;
2. *GRANTS* PATH's Amended Motion to Withdraw; and
3. *DISMISSES* this case from the Commission's docket of active cases and passes the papers herein to the file for ended causes.

#### COMMENTS

The parties are advised that pursuant to Rule 5 VAC 5-20-120 C of the Commission's Rules of Practice and Procedure, any comments to this Report must be filed with the Clerk of the Commission in writing, in an original and fifteen copies, within five business days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document certifying that copies have been mailed or delivered to all counsel of record and any such party not represented by counsel.

Respectfully submitted,



Alexander F. Skirpan, Jr.  
Senior Hearing Examiner

A 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, VA 23219.

# Attachment D



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Assistant General Counsel

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January 8, 2010

The Honorable David L. Moore  
Hearing Examiner  
Maryland Public Service Commission  
William Donald Schaefer Tower  
6 St. Paul Street  
Baltimore, Maryland 21202

***Re: Case No. 9179 - Request to Suspend the Procedural Schedule***

Dear Hearing Examiner Moore:

On behalf of the Applicants in the above-captioned case, Potomac Electric Power Company, Delmarva Power & Light Company, and Baltimore Gas and Electric Company ("Applicants"), I am writing to respectfully request suspension of the procedural schedule in the above-referenced matter pending submission of a subsequent proposed procedural schedule anticipated to be made in June 2010. The Applicants make this request on the basis of recent developments outlined below that potentially impact the Mid-Atlantic Power Pathway ("MAPP") project.

On December 29, 2009, PATH Allegheny Virginia Transmission Corporation, the sponsor of the Potomac-Appalachian Transmission Highline ("PATH") 765 kV transmission line in Virginia, in a filing with the Virginia State Corporation Commission ("Virginia Commission"), provided notice that certain sensitivity analyses conducted by PJM Interconnection, LLC ("PJM") as requested by the Virginia Commission suggest that the PATH project appears not to be needed in 2014. This is a result of a reduction in the scope and severity of observed North American Electric Reliability Corporation ("NERC") reliability violations. PJM advised that it would re-evaluate the need for PATH in its studies to be undertaken in conjunction with its 2010 Regional Transmission Expansion Plan ("RTEP"), which studies are expected to be completed in June 2010.

The significance to MAPP of this development in the PATH Virginia transmission case is that the studies PJM has conducted for the MAPP Project all rely on the assumption that PATH would be in service in 2014. With that underlying assumption having changed, PJM and the Applicants will need to reassess the load studies for the MAPP Project. Moreover, as indicated in the attached letter, dated January 8, 2010, from Steven R. Herling, Vice President of Planning for PJM, the appropriate process for PJM to follow in performing additional analysis for the backbone projects including MAPP is to incorporate these changes and others that may be indicated in the normal course into

The Honorable David L. Moore  
Hearing Examiner  
January 8, 2010  
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PJM's studies in conjunction with the annual 2010 RTEP process. The comprehensive review of the 2010 RTEP process will reflect the new transmission that has been approved since the last plan, new and retired generation, the new load forecasts, and demand response and energy efficiency programs that clear the Reliability Pricing Model ("RPM") auction. It is based upon the outcome of these PJM studies that the Applicants would anticipate being in a position to work with all the parties in submitting a proposal to Your Honor with respect to reinstatement of a procedural schedule.

The past studies conducted by PJM concerning the MAPP project were valid and demonstrated a need for the MAPP project to address NERC reliability criteria violations. However, because of a significant change in circumstances (PATH will not be in service in 2014), the analysis that PJM conducted for MAPP is now outdated and needs to be redone to determine the impact of a delay of the PATH project. Under these circumstances, the Applicants submit that it is both prudent and efficient to suspend the procedural schedule at this time, pending release of the results from the 2010 RTEP process. To do otherwise and proceed at this time with the current schedule in Case No. 9179, relying on studies that are now outdated, would not be an efficient use of time and resources of the parties involved in this matter, including the Commission and the state agencies. For these reasons, the Applicants respectfully request that the procedural schedule in this case, including both rebuttal and surrebuttal testimony and the hearing dates set for the weeks of March 1 and March 8, 2010, be suspended and that a revised schedule be established in June 2010. Rebuttal testimony is currently due January 21, 2010, and expedited consideration of this request before that date would be greatly appreciated.

The Applicants will be in contact with the Intervenor regarding this request. We will report back to you once we have contacted the Intervenor. A proposed Order is attached. Thank you for your consideration in this regard.

Please do not hesitate to contact me if you have questions regarding this matter.

Respectfully submitted,

  
James W. Boone

cc: Ms. Terry J. Romine (for filing)  
All Parties in Case No. 9179

Attachments



955 Jefferson Avenue  
Valley Forge Corporate Center  
Norristown, PA 19403-2497

Steven R. Herling  
Vice President - Planning

January 8, 2010

William M. Gausman  
Senior Vice President  
Asset Management and Planning  
Peppo Holdings, Inc.  
701 Ninth Street, N.W.  
Washington, DC 20068

**Re: MAPP Project**

Dear Mr. Gausman:

PJM Interconnection, L.L.C. (PJM) continues to be committed to the need for backbone extra high voltage transmission to support the reliability and operation of the electric grid in the PJM region. PJM has recently completed a number of sensitivity analyses, as ordered by the Hearing Examiner in the Virginia proceeding, Case No. PUE-2009-00043, with respect to the need for the PATH Project and has notified PATH Allegheny Virginia Transmission Corporation (PAVTC) that the PATH Project appears not to be needed in 2014 as a result of a reduction in the scope and severity of observed NERC reliability violations. PJM also notified PAVTC that, consistent with PJM processes, the PATH Project will be examined in a more comprehensive manner, in the 2010 Regional Transmission Expansion Plan (RTEP) process to determine when it will be needed to resolve reliability violations. I should point out that the PATH Project sensitivity analyses continue to show a number of voltage and reactive issues in the Eastern Mid-Atlantic zones. The 2010 RTEP analysis related to the PATH and MAPP Projects is expected to be completed in June 2010.

The studies conducted by PJM to date concerning the MAPP Project remain valid, based on the assumptions appropriate to those studies at the time they were performed, and demonstrated a need for the MAPP Project to address NERC reliability criteria violations. However, those studies, which formed the basis of PJM's testimony in proceedings before the Maryland Public Service Commission related to the MAPP Project (Case No. 9179), assumed, among other things, that the PATH Project would be in service in 2014. Based on the current status of the PATH Project, this analysis should be redone to determine the impact to the MAPP Project as a result of a delay in

William M. Gausman  
Re: MAPP Project  
January 8, 2010  
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the PATH Project. PJM has not, as of this date, completed any analysis to evaluate the MAPP Project without the PATH Project. Moreover, the only reasonable way to complete such an analysis at this time is within the context of a full and comprehensive 2010 RTEP analysis. The studies completed as part of the 2010 RTEP process will reflect the new transmission that has been approved since the last RTEP, new and retired generation, the new load forecast, and demand response and energy efficiency programs that clear the RPM auction.

Under the current RTEP, the Applicants in Case No. 9179 are under the direction to build their portions of the MAPP Project for an in-service date of June 2014. Nevertheless, PJM would support the Applicants seeking a suspension in the procedural schedule in Case No. 9179 in order to permit supplemental findings from the studies conducted in conjunction with the 2010 RTEP to be presented to the Hearing Examiner in that proceeding, which are expected to be completed by the end of June, 2010.

Sincerely,



Steven R. Herling  
Vice President, Planning  
PJM Interconnection, L.L.C.

cc: Mike Kormos, PJM  
SRH/nbm

IN THE MATTER OF THE APPLICATIONS: \*  
(1) TO ESTABLISH THE OVERALL NEED FOR \*  
CONSTRUCTION OF A NEW TRANSMISSION \*  
LINE KNOWN AS THE MID-ATLANTIC POWER \*  
PATHWAY (MAPP) PROJECT; (2) TO MODIFY \*  
THE CERTIFICATE OF PUBLIC CONVENIENCE \*  
AND NECESSITY IN CASE NO. 6526 TO \*  
CONSTRUCT AN ALREADY APPROVED \*  
SECOND 500 kV CIRCUIT ON NEW SUPPORTING \*  
STRUCTURES ACROSS THE POTOMAC RIVER; \*  
AND (3) TO MODIFY THE CERTIFICATE OF \*  
PUBLIC CONVENIENCE IN CASE NO. 6984 TO \*  
CONSTRUCT A SECOND 500 kV CIRCUIT \*  
BETWEEN CHALK POINT AND CALVERT \*  
CLIFFS, MARYLAND AND TO REPLACE \*  
CERTAIN EXISTING STRUCTURES FOR THE \*  
EXISTING 500 kV CIRCUIT IN CALVERT \*  
COUNTY. \*

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

CASE NO. 9179

\_\_\_\_\_, 2010

**HEARING EXAMINER'S RULING ON  
APPLICANTS' REQUEST TO SUSPEND THE PROCEDURAL SCHEDULE**

The Applicants, Potomac Electric Power Company, Delmarva Power & Light Company, and Baltimore Gas and Electric Company, have filed a request to suspend the Procedural Schedule entered in this proceeding. After considering the request, it is determined that the Procedural Schedule should be suspended. The parties are hereafter directed to engage in consultations to prepare and propose another mutually agreed upon schedule that leads to the resolution of this proceeding.

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David L. Moore  
Hearing Examiner