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Attorneys for Environment New Jersey, The New Jersey Highlands Coalition, Sierra Club - New Jersey Chapter, Stop the Lines, and New Jersey Environmental Federation

IN THE MATTER OF THE PETITION OF
PUBLIC SERVICE ELECTRIC AND GAS
COMPANY FOR A DETERMINATION
PURSUANT TO THE PROVISIONS OF
N.J.S.A. 40:55D-19
(SUSQUEHANNA-ROSELAND)

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

Docket No. EM-09010035

**MOTION TO REOPEN PROCEEDING BY ENVIRONMENT NEW JERSEY, THE
NEW JERSEY HIGHLANDS COALITION, SIERRA CLUB – NEW JERSEY
CHAPTER, STOP THE LINES, AND NEW JERSEY ENVIRONMENTAL
FEDERATION**

Pursuant to N.J. Stat. Ann. § 48:2-40 (West 2010) and N.J. Admin. Code §§ 14:1-8.5, 14:1-8.6 (2010), Environment New Jersey, The New Jersey Highlands Coalition, Sierra Club - New Jersey Chapter, Stop the Lines, and New Jersey Environmental Federation (“Intervenors”) hereby move to reopen the above-captioned proceeding in light of recent developments and changed circumstances that warrant a reassessment of the April 21, 2010 Decision and Order of the New Jersey Board of Public Utilities (“Board”). Specifically, the delay of the in-service date for the Susquehanna to Roseland transmission line from 2012 to 2015 at the earliest and the release by PJM Interconnection, LLC (“PJM”) of its 2011 Load Forecast Report significantly

alter the factual basis for the Board's earlier decision and necessitate a reconsideration of the Board's approval of this \$750 million transmission line.

The Board has the authority to order a rehearing and revoke or modify any order it has issued "at any time." N.J. Stat. Ann. § 48:2-40; *see also* N.J. Admin. Code § 14:1-8.6(b) ("The Board at any time may order a rehearing, reargument or reconsideration on its own motion and extend, revoke or modify any decision or order made by it."). This authority arises out of a "legislative design" tailored towards "continuous supervision," which authorizes the Board "to institute corrective proceedings . . . especially where experience furnishes evidence of failure of an earlier order to accomplish its intended purpose." *Cent. R.R. Co. of N.J. v. Dep't of Pub. Utils.*, 81 A.2d 162, 165 (N.J. 1951). A party also "may file for the reopening of the proceeding" after the Board issues a final decision. N.J. Admin. Code § 14:1-8.5(a). "[W]here there is a new development or new evidence relating to established facts . . . , there is a reasonable basis for reconsideration of the Board's Order." *In re Pub. Serv. Elec. & Gas Co.*, 1999 WL 33178824, *6 (N.J.B.P.U. Oct. 19, 1999) (citing *In re Trantino Parole Application*, 89 N.J. 347, 365 (1982)).

In approving the Susquehanna-Roseland line, the Board recognized the evolving nature of PJM's Regional Transmission Expansion Planning ("RTEP") process and contemplated the possibility of reopening the proceeding if the line were later shown to be unnecessary or significantly delayed. *See* N.J. Bd. of Pub. Utils., Decision and Order, Docket No. EM09010035 at 78-79 (April 21, 2010)¹ ("Decision") ("The Board ORDERS that . . . PSE&G report to the Board the findings of PJM's next completed RTEP. If that RTEP deems that this Project may no longer appear to be necessary, or can be delayed significantly, the Board's authority to reopen

¹ The Board approved the Susquehanna-Roseland line on February 11, 2010, but issued the written Decision and Order on April 21, 2010.

this matter remains.”). As explained below, significant delay in the anticipated completion date of the line and new information about projected peak loads on the transmission system are developments that both obviate the need for the Susquehanna-Roseland line in the near term and raise serious questions about the need for the line in the long term. The Board should revisit its approval of the line in light of these questions.

I. Background

On February 11, 2010, the Board approved the construction and operation of the 45-mile New Jersey portion of the 145-mile, 500 kV transmission line from Susquehanna, Pennsylvania to Roseland, New Jersey as reasonably necessary for the service, convenience or welfare of the public. *See* N.J. Stat. Ann. 40:55D-19. The procedural history of this matter is detailed in the Board’s Decision. *See* Decision 2-8.

The Board’s approval of this major transmission project was premised on several findings – most notably that the Susquehanna-Roseland line is needed by 2012. *See id.* at 53 (“[R]eliability violations are . . . projected to occur as early as 2012 and . . . the Project is reasonably necessary to address those violations.”). The Board acknowledged that projected reliability issues had significantly decreased in both number and severity as between the 2008 RTEP and the March 2009 Retool.² *See* Decision 51. Nevertheless, the Board concluded that “through each RTEP there continues to be reliability violations identified as early as 2012” and “the Project remain[s] the most robust solution to solve those reliability violations,” *id.* at 53. *See id.* at 52 (“Despite the changing nature of the violations, the record is clear that PJM will be in violation of NERC reliability criteria in each analysis that was performed if appropriate steps are not taken to resolve the potential violations by 2012.”).

² The 2008 RTEP identified two Category A, 21 Category B, and 27 Category C violations whereas the March 2009 Retool identified thirteen Category B and ten Category C. *See* Decision 51.

In reaching this conclusion, the Board specifically emphasized its concerns about the immediacy of projected reliability issues in the 2012 to 2015 timeframe, noting that the March 2009 Retool projected Category B violations “on two bulk power lines by 2012 with an additional three lines exceeding NERC Category B criteria over the following three years (2013-2015)” as well as Category C violations “on five bulk power lines by 2012 with an additional four lines in violation of over the next three years (2013-2015).” Decision 51; *see also id.* at 53 (“In particular, the most updated analysis, the March 2009 Retool, shows two Category B and five Category C projected violations in 2012 with the Project not in service.”); *id.* at 56 (“At most, any delay [as a result of demand response capacity] of the Category B violations projected to occur in 2012 would only be one or two years. However, the Category C violations are also projected to occur in 2012 and . . . these violations cannot be resolved with demand response.”).

These allegedly imminent reliability issues gave rise to a sense of urgency that animated the Board’s decision to approve the line even before cost determinations and required state and federal agency reviews were completed. *See id.* at 73 (“The Board is cognizant that, with a Project of this scope with an estimated two year construction period, and potential reliability violations occurring in 2012, that it would not be prudent for the Board to wait to make a decision until every detail of Project routing and construction were finalized by [PSE&G] and the other regulatory agencies.”); *id.* at 75 (“With PJM’s assertion that reliability violations are set to begin in New Jersey in 2012, and PSE&G’s lengthy construction schedule, the Board must make a decision in this matter without an absolutely certainty with respect to cost allocation to New Jersey ratepayers.”); *id.* (“[T]he Board is faced with a decision that is time-sensitive, considering the construction schedule and Petitioner’s and PJM’s assertion that the Project must be in service by 2012 to forestall reliability violations.”).

At the same time, the Board acknowledged the concerns of the intervenors that the need for the line was legitimately in question given the decreasing number of violations from the 2008 RTEP to the March 2009 Retool, the possibility that PJM's load forecasts were inflated, and the potential for increased availability of demand response resources to eliminate the need for this expensive new line by decreasing the perceived need for increased transfer capacity between eastern and western PJM. The Board consequently ordered that "PSE&G notify the Board of the results of the next RTEP and, should there be a substantial delay or change in projected reliability violations, the Board shall take appropriate action." *Id.* at 53; *see also id.* at 56 ("[B]ecause the Board understands intervenors['] concerns [regarding the potential increase in future demand response capacity], it is ordering PSE&G to notify it of the next RTEP results to ensure that the Project remains needed, and on a similar timeframe."); *id.* at 58 ("[A]s noted above, [if] the next RTEP or retool shows that the Project is not necessary or can be delayed significantly, the Board will retain the authority to reopen this proceeding.")³

In short, the Board's Decision to approve the Susquehanna-Roseland line hinged on its finding that the transmission line was necessary to address reliability violations *by 2012*, and the Board therefore recognized the importance of future projections to this determination and specifically entertained the possibility of reopening the proceeding if later information were to "show[] that the Project is not necessary or can be delayed significantly." *Id.* at 58. As set forth below, developments since the Board's Decision demonstrate that the Project not only can, but

³ Notably, the Pennsylvania Public Utility Commission had similar concerns and ordered Pennsylvania Power & Light ("PPL"), the public utility constructing and operating the 100 miles of the Susquehanna-Roseland line in Pennsylvania, to report any delay in the construction of the line: "[I]f PJM were to find that construction could be significantly delayed for whatever reason, PPL should notify the Commission of this development. There would be a public benefit from a reasonable deferral of this project due to the delayed incurrence of costs and the associated impacts on the environment and property owners" *In re PPL Electric Utils. Corp.*, 2010 WL 637063 (Pa. P.U.C. Feb. 12, 2010).

will, be delayed significantly, and new information regarding PJM's 2011 load forecast suggests that the proposed in-service date for the line may be pushed back even beyond 2015.

II. The Susquehanna-Roseland Line Is Not Needed Before 2015.

Despite the Board's findings that the Susquehanna-Roseland line is needed to address reliability violations beginning in 2012, the entire line is not expected to go into service until 2015 or later due to outstanding state and federal permits that PSE&G has yet to obtain. Pushing back the line's in-service date by three years means that, contrary to PJM's assertions and the Board's previous findings, the Susquehanna-Roseland line actually is not needed by 2012 to avoid reliability violations in 2012.

At the end of March 2010, PSE&G reported that "[t]he eastern portion of the project is currently expected to be in service by June 2012" and "[t]he targeted completion date for [the western] portion of the project is the end of 2013." Pub. Serv. Elec. & Gas Co., Quarterly Report (Form 10-Q) 70-71 (May 6, 2010) (for the quarterly period ending March 31, 2010). Just a few months later, however, PSE&G reported that it had "not obtained from the [New Jersey Department of Environmental Protection] certain environmental approvals that are required for each of the Eastern and Western segments of the line" or permits from the National Park Service for the western portion of the line: "[c]onsequently, at this time, we do not expect the Eastern portion of the line to be in service before June 2014, and do not expect the Western portion to be in service before June 2015. *Further delays are possible for both portions.*" Pub. Serv. Elec. & Gas Co., Quarterly Report (Form 10-Q) 83 (July 30, 2010) (emphasis added) (for the quarterly period ending June 30, 2010).⁴ These delayed in-service dates were confirmed in PSE&G's most

⁴ PPL similarly reported increasing delays to the in-service date of the Pennsylvania portion of the line. As of the end of March 2010, PPL reported that it "anticipate[d] the delays in the approval process will delay the in-service date to after 2013." Pa. Power & Light Corp., Quarterly Report (Form 10-Q) (May 6, 2010) (for the quarterly period ending March 31, 2010). By the end of September 2010, PPL reported that it "anticipate[d] the delays in the

recent filing with the Securities and Exchange Commission. *See* Pub. Serv. Elec. & Gas Co., Quarterly Report (Form 10-Q) 85 (Oct. 30, 2010) (for the quarterly period ending September 30, 2010). At the very least, construction of the line will not commence before fall of 2012, when the National Park Service anticipates it will complete the NEPA process. *See* PSE&G Susquehanna-Roseland Fact Sheet, http://www.pseg.com/family/pseandg/powerline/pdf/Susquehanna_FactSheet_10_2010.pdf (last visited Feb. 2, 2011) (explaining that the New Jersey Department of Environmental Protection “has indicated that it will not issue environmental permits for the project until the National Park Service has completed the NEPA Environmental Impact Statement and issued its Record of Decision”); National Park Service Plan Process, <http://parkplanning.nps.gov/PlanProcess.cfm?projectID=25147> (last visited Feb. 2, 2011) (indicating that the agency will not issue the Record of Decision until September-October 2012).

Since the Board’s Decision, then, it has become evident that the Susquehanna-Roseland line will not be in service until at least three years after the projected occurrence of alleged reliability issues that the project is purportedly intended to address. This change in circumstances fundamentally negates the basis for the Board’s approval of the line and plainly shows that – regardless of whether the Susquehanna-Roseland line would have been *preferred* as the solution to projected violations by 2012 – the Susquehanna-Roseland line will not be needed until at least 2015 *because it will not be completed until 2015*. Indeed, PSE&G itself has conceded that the line is not needed until at least 2015, announcing its intention to “work with PJM to ensure the reliability of the system to tie us over to when the [Susquehanna-Roseland]

approval process will delay the in-service date to 2014 or later.” Pa. Power & Light Corp., Quarterly Report (Form 10-Q) (Oct. 29, 2010) (for quarterly period ending September 30, 2010). The PJM website notes that PPL is “now targeting in-service of April 2015.” *See* PJM Susquehanna-Roseland, <http://www.pjm.com/planning/rtep-upgrades-status/backbone-status/susquehanna-roseland.aspx> (last visited Feb. 2, 2011).

line can be completed.” PSE&G Updates and Reports, http://www.pseg.com/family/pseandg/powerline/updates_reports.jsp#anchor2 (last visited Feb. 2, 2011). Thus, to the extent that any of the near-term reliability concerns raised by PSE&G were well-founded, they can and will now be addressed by far less costly and less intrusive solutions. Whether construction of the Susquehanna to Roseland line is still needed to address potential reliability needs after 2015 is now an open question – particularly in light of projected declines in peak load demand.

III. PJM’s 2011 Load Forecast Report Raises Questions About The Need For The Susquehanna-Roseland Line Beyond 2015.

PJM’s 2011 Load Forecast Report, issued on January 14, 2011, concludes that “[a] downward revision to the economic outlook for the PJM area has resulted in lower peak and energy forecasts in this year’s report, compared to the same year in last year’s report.” PJM Res. Adequacy Planning Dep’t, *2011 PJM Load Forecast Report 1* (Jan. 14, 2011), <http://pjm.com/~media/documents/reports/2011-pjm-load-report.ashx>. This load forecast will be incorporated into the 2010 RTEP, expected to be released in early 2011, and raises serious questions about whether the Susquehanna-Roseland line will be further delayed or eliminated altogether as the preferred solution for maintaining electric reliability.

The peak load forecast is a major driver in determining transmission needs and assessing the potential for and timing of reliability criteria violations. *See* Decision 39. Reduction in peak load forecasts as between the 2008 RTEP and the March 2009 Retool contributed to a significant decrease in the number and nature of reliability violations, from two Category A, 21 Category B, and 27 Category C violations in the 2008 RTEP to thirteen Category B and ten Category C violations in the March 2009 Retool. *See* Decision 51-53.

In its Decision, the Board rejected intervenors' call for consideration of the need for the project in light of the 2010 peak load forecast because the Board believed the 2010 forecast was substantially similar to the 2009 peak load forecast relied upon in the March 2009 Retool:

[T]he modeling of the Project with an updated load forecast projection . . . would not change the results of the analysis. . . . During cross examination at the supplementary hearing of February 4, 2010, PSE&G witness Steven Herling stated that the "[2010] peak load forecasts are almost identical to those included in the 2009 load forecast," and that "therefore, there will be no significant difference in the results of the 2010 RTEP by virtue of the change in load." Therefore, using the 2010 load forecast report in an updated RTEP analysis . . . will not have any meaningful impact on projected reliability violations.

Decision 54. The factual basis for the Board's conclusion that an updated load forecast projection would not alter the need for the Susquehanna-Roseland line has changed, however. The most recently released 2011 Load Forecast Report, in contrast to the 2009 and 2010 forecasts, revises peak and energy forecasts significantly downward. Thus, using the 2011 Load Forecast Report in an updated RTEP analysis may well have a "meaningful impact on projected reliability violations."

Already, PJM is revisiting the need for a similar transmission project designed to increase transfer capacity between western and eastern PJM in light of its 2011 Load Forecast Report. In a recent submission to the Public Service Commission of West Virginia, applicants proposing to construct the Potomac-Appalachian Transmission Highline ("PATH") alerted the Commission to the release of the 2011 Draft Load Forecast Report and reported PJM's conclusion that the new load forecast "will require a revision of certain analyses by [PJM]." Applicants' Response in Opposition to Staff Motion to Dismiss and Applicants' Proposal to Toll Statutory Decision Due Date and Extend Procedural Schedule at 1, Joint application for certificates of public convenience and necessity under W. Va. Code § 24-2-11a authorizing the construction and

operation of the West Virginia segments of a 765 kV electric transmission line and related facilities, No. 09-0770-E-CN (Dec. 20, 2010) (Exhibit A):

PJM has just advised that its 2011 Load Forecast Report, to be released today in draft form, includes load projections that are different from those incorporated in the 2010 Load Forecast Report on which PJM's current need analyses are based. PJM has further advised that these revised load projections may have an impact on the current in-service date for the PATH Project In view of this development, Applicants fully expect that Staff and intervenors will urge the Commission to require, and that the Commission will wish to see, a thorough presentation of how the revised load projections affect the in-service date for the PATH Project and Applicants' need evidence. . . . *[T]he 2011 Load Forecast may have an appreciable effect on the current PATH in-service date, and it is appropriate for the Commission and other parties to have updated information reflecting this development.*

Id. at 5-6 (emphasis added). Just as the downward revision in PJM's 2011 Load Forecast Report potentially affects the in-service date for the PATH project and accordingly warrants consideration by the West Virginia Public Service Commission, so too, the 2011 Load Forecast Report could delay the required in-service date for the Susquehanna-Roseland Line and deserves consideration by this Board.

IV. PJM's New 2011 Load Forecast Likely Overestimates Future Loads.

It is further important for this Board to revisit the need for the Susquehanna-Roseland line in light of peak load reductions that PJM has yet to consider. PJM's downward revisions to the load forecast, as substantial as they are, do not reflect the full extent of peak load reductions that will be achieved in the PJM region over the next ten years. A recent report examining the impact of federal and state public policy mandates on the bulk power system concluded that energy efficiency programs in place in many states "are sufficient to stabilize load growth or even reduce load growth over the next ten years" and "the failure to account for these significant reductions in load growth during the planning process . . . create a significant risk of overbuilding the grid and/or over-investing in new generation, ultimately at the expense of

ratepayers.” Paul Peterson et al., Public Policy Impacts on Transmission Planning E-3 (2010), available at <http://www.synapse-energy.com/Downloads/SynapseReport.2010-12.EJ.Public-Policy-Impacts-on-Transmission.10-064.pdf>. In PJM, specifically, the report estimates that existing energy efficiency programs will reduce PJM’s forecasted 2030 peak load by over 17%. *See id.* at E-3, 34.⁵ These anticipated load reductions may eliminate any need for the Susquehanna-Roseland line even in the long term.

V. Reopening The Above-Captioned Proceeding Is In The Public Interest.

The Board’s consideration of this new information will in no way prejudice PSE&G or jeopardize the public interest in maintaining electric reliability given that construction of the line will not even begin until fall of 2012 at the earliest. Rather, the failure to revisit the need for this project could saddle ratepayers with significant costs that are unwarranted. The transmission system in 2015 will be different from the system that was contemplated when the Board approved the Susquehanna-Roseland line, not least because PSE&G will be implementing solutions needed to address near-term reliability issues through 2015. For instance, on January 28, 2011, Governor Christie signed a law that will require the Board to acquire 2,000 MW of new capacity, with preference for generators that can enter commercial operation for delivery year 2015. *See* S. 2381, 214th N.J. Legis. (as passed by the Senate, Jan. 10, 2011). Thus, whether the Susquehanna-Roseland line will be needed *after* 2015 notwithstanding interim transmission upgrades and the addition of substantial new generation capacity in load centers is an unanswered question.

⁵ The increasing supply of demand response resources in PJM’s capacity market is also contributing to significant load reduction. PJM’s May 2010 RPM auction for resources to meet electricity demand in the June 1, 2013 to May 31, 2014 delivery year procured 152,743 megawatts of capacity resources, including 9,282 megawatts of demand response – a 32 percent increase over the 2009 auction results. *See* Press Release, PJM, Renewable Resources Grow In PJM’s RPM Auction (May 14, 2010), <http://pjm.com/~media/about-pjm/newsroom/2010-releases/20100514-rpm-auction-results-2013-2014.ashx/>. These auction results, which occurred after the Board’s Decision, will substantially reduce peak load demand and correspondingly the need for the Susquehanna-Roseland line.

In fulfilling its obligation to provide “continuous supervision” as envisioned by the legislature, *see Cent. R.R. Co. of N.J. v. Dep’t of Pub. Utils.*, 81 A.2d at 165, the Board should not allow a \$750 million project to go forward based on assertions of near-term needs that have proven to be incorrect and speculative concerns about long-term transmission needs that appear to be unwarranted.

VI. Conclusion

For all of the reasons set forth above, Environment New Jersey, The New Jersey Highlands Coalition, Sierra Club - New Jersey Chapter, Stop the Lines, and New Jersey Environmental Federation request that the Board reopen the above-captioned proceeding.

Respectfully submitted,



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*Motion for admission *pro hac vice* pending

Dated: February 3, 2011

EXHIBIT A



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December 20, 2010

Via Hand Delivery

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

04:41 PM DEC 20 2010 PSC EXEC SEC DIV

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

Dear Ms. Squire:

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

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

Very truly yours,

Christopher L. Callas

CLC/s

Cc: Parties shown on certificate of service

{C1871944.1}

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

CASE NO. 09-0770-E-CN

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

Joint application for certificates of public convenience and necessity under W. Va. Code § 24-2-11a authorizing the construction and operation of the West Virginia segments of a 765 kV electric transmission line and related facilities in Putnam, Kanawha, Roane, Calhoun, Braxton, Lewis, Upshur, Barbour, Tucker, Preston, Grant, Hardy, Hampshire, and Jefferson Counties, including modifications to the Amos Substation in Putnam County and a new substation in Hardy County, and for related relief.

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

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

I. Opposition to Staff Motion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted this 20th day of December, 2010.

PATH WEST VIRGINIA TRANSMISSION COMPANY, LLC
PATH ALLEGHENY TRANSMISSION COMPANY, LLC
PATH-WV LAND ACQUISITION COMPANY and
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Appendix A to Applicants' December 20, 2010 Filing
 Comparison of Schedule Event Intervals – Current Schedule vs. Proposed Schedule

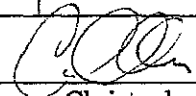
Event	Current Date	Current Interval	Proposed Date	New Interval
Applicants file supplemental testimony on issues of electrical need and any other issues requiring supplementation	Noon, Tuesday, September 14, 2010		Noon, Thursday, March 31, 2011	
Staff and intervenors propound discovery on supplemental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

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

CERTIFICATE OF SERVICE

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

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