

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 19th day of January 2018.

CASE NO. 17-1450-E-CS-PC

LONGVIEW POWER, LLC

Application of Longview Power, LLC for waiver of material modification requirements or for modification of siting certificate.

COMMISSION ORDER

This Order grants a siting certificate to the modification consisting of discontinuance of the conveyor commitment, subject to certain conditions.

I. BACKGROUND

By Orders issued August 27, 2004, in Case No. 03-1860-E-CS-CN (2004 Order), and June 26, 2006¹ in that case and in Case No. 05-1467-E-CN (2006 Order), the Commission granted certificates, subject to certain conditions, to Longview Power, LLC (Longview) to construct a 600 MW coal-fired electric power plant (Facility) and associated transmission line in Monongalia County, West Virginia, at an estimated cost of over \$2 billion. Longview completed construction of the Facility in 2011, and the Facility has, by and large, been in operation since that time.

On October 10, 2017, Longview filed an application for waiver of material modification requirements or for modification of its siting certificate (Application for Waiver or Modification). Longview asked the Commission to determine that a change in the Longview fuel delivery plan is not a “material modification” of Longview’s Facility or its siting certificate (Certificate) within the meaning of W.Va. Code §24-2-1(c)(5) and Rule 6.1 of the Commission Rules Governing Siting Certificates for Exempt Wholesale Generators (150 CSR 30) (Siting Rules). In the event the Commission determines that

¹ A Commission Order entered August 11, 2006 provided clarification regarding an escrow account maintained pursuant to the June 26, 2006 Order. A Commission Order issued February 16, 2007, determined that proposed changes to the project, consisting of changes to the boiler design, turbine blades, an increase in the sizes of the steam boiler building and the steam turbine building, and a twelve percent increase in water usage, and resulting in an increase in capacity of 95 MW, at a cost of \$60 million, did not constitute a material modification to the terms of the siting certificate.

the change would constitute a material modification to the Certificate, Longview asked that the Commission approve the modification and amend the Certificate accordingly.

The requested change concerns the conveyor commitment, an operational condition of the 2004 Order that was included at the suggestion and agreement of Longview. The 2006 Order did not list the conveyor commitment as an operational condition, but referenced it in Finding of Fact No. 53 (2006 Order at 114) and noted Longview's agreement that if fuel delivery by truck were to become necessary, Longview would seek Commission approval for that change. 2006 Order at 31.

Pursuant to the 2004 Order, the coal used by the Facility would be delivered by a 4.5 mile conveyor belt, running from the supplying coal mine, owned by MEPCO, Inc. (MEPCO), to the Facility. According to the Application for Waiver or Modification, subsequent changes in the coal market and mining constraints at the MEPCO mines resulted in Longview no longer being able to rely on the MEPCO mines for a substantial portion of its fuel supply. MEPCO has supplemented its coal supplies through purchases from other mines, trucking the coal to the conveyor, for delivery to the plant. Longview claims that constraints on the roads leading to the conveyor and at the loading area further constrain this alternative.

Longview's proposal would convert an existing MEPCO dock facility on the Monongahela River at a location about 1.5 miles from the plant from a MEPCO coal loading facility for MEPCO coal for buyers other than Longview, to a coal barge unloading facility for coal to supply Longview's operations. Previously, MEPCO had delivered coal from its yard next to the Longview plant to the barge facility by truck. Under the revised delivery proposed by Longview, coal would travel by barge to the MEPCO dock facility and then be transported 1.5 miles by truck to the MEPCO coal yard next to the Longview plant. Coal would also continue to be delivered by conveyor from the MEPCO coal yard to the Longview plant.

Longview asserted that eliminating the conveyor commitment is not a material modification of its Certificate, and that a Commission waiver was appropriate. If the Commission does not believe a waiver is appropriate, Longview asked that the Commission approve the elimination of the conveyor commitment from the Certificate.

Longview also requested the Commission (i) waive the thirty-day advance notice of the initial application filing, per Siting Rule 2.1, (ii) waive the publication notice required for initial applications under Siting Rule 2.2, (iii) waive the filing of information otherwise applicable to a material modification request where that material is inapplicable to the proposed modification, per Siting Rule 6.3, and (iv) return its filing fee if a modification of the certificate is not required. Longview noted that notice and publication are not specifically required for modification filings, but included a proposed notice in the event the Commission deems notice to be necessary.

On October 30, 2017, the Commission issued an Order requiring, among other things, that Longview publish notice of its Application for Waiver or Modification. The publication included a thirty-day intervention period, resulting in an intervention deadline of Monday, December 4, 2017. Affidavits of publication filed November 13, 2017.

On November 7, 2017, Monongahela Power Company (Mon Power) and The Potomac Edison Company (PE) (collectively, the Companies) filed a petition to intervene, request for a hearing, and request for additional notice. The Commission, among other things, granted the petition to intervene. December 7, 2017 Commission Order.

On December 8, 2017, the Consumer Advocate Division (CAD) filed a petition to intervene.

On December 11, 2017, Mon Power and PE filed a request for leave to withdraw its intervention, and to be relieved from further participation, in this case. The Companies stated that they support the Longview Application for Waiver or Modification and urged the Commission to approve it.

On December 11, 2017, the Commission issued an Order that, among other things, granted the Companies' request to withdraw its intervention, and to be relieved from further participation, in this case.

On December 13, 2017, CAD filed a motion for reconsideration of the December 11, 2017 Order. CAD questioned the rationale for the Companies' decision to withdraw from this case, and subsequent support for the Longview petition. On December 18, 2017, the Companies filed a response to the CAD motion for reconsideration. On December 20, 2017, CAD filed a reply in support of its motion for reconsideration.

On December 22, 2017, the Commission issued an Order (i) determining that the conveyor commitment was a material modification of the Certificate, (ii) granting a petition to intervene filed by the CAD, (iii) denying the CAD motion for reconsideration of the December 11, 2017 Commission decision to allow the Companies to withdraw as intervenors, (iv) waiving the filing requirements for certain information required by the Siting Rules, and (v) directing Longview to file additional information pursuant to Siting Rule 3.1.m.5, regarding traffic.

Regarding the Siting Rule information required of Longview, the Commission determined that Siting Rules 3.1.a through 3.1.l; 3.1.m.1 through 4; and 3.1.n through 3.1.p, were inapplicable to the current filing. In particular, the Commission noted that

Siting Rule 3.1.m.4 regarding noise, and in particular operational noise, is limited to noise emanating from the plant, and thus not applicable.

The Commission directed that Longview, within ten working days, file support for a material modification of its Certificate regarding discontinuance of the conveyor commitment as it pertains to Siting Rules 3.1.m.5.C (operational traffic). The Order stated, in part:

In particular, Longview should focus on Siting Rules 3.1.m.5.C.4 regarding its plans to mitigate the effects of traffic attributable to project operations with respect to traffic sensitive areas within a five-mile radius of the generating facility. We instruct Longview to promptly file with us a list of conditions or actions that they believe will ameliorate the impact of increased truck traffic on Route 53. We urge Longview to consult with Staff in this endeavor.

On December 27, 2017, Staff filed a petition for reconsideration of the Commission decision to waive the requirement to provide information required by Siting Rule 3.1.m.4 regarding noise.

On December 28, 2017, Longview filed a response in opposition to the Staff petition for reconsideration.

On January 3, 2018, Longview filed a list of “Potential Longview Commitments in Support of Material Modification Application” (Longview Commitments). Those Longview Commitments, according to Longview, ameliorate the impact of increased truck traffic on Route 53. In the cover letter to that document, Longview included a statement that (i) Staff’s final position in this case is subject to modification based on the Commission’s adjudication of Staff’s December 27, 2017 petition for reconsideration, and (ii) at the request of CAD, a statement that CAD could not comment on, nor endorse the modifications suggested by Longview as being in the public interest or protecting customers.

On January 4, 2018, the Commission (i) denied the Staff petition for reconsideration, (ii) reiterated that appropriate focus of this case is Siting Rule 3.1.m.5.C regarding operational traffic, and particularly on Siting Rule 3.1.m.5.C.4 regarding mitigation of the effect of traffic, (iii) noted that CAD had opted not to comment on the Longview Commitments, and (iv) provided Staff with ten days to file its final recommendation in this case.

On January 8, 2018, Staff filed its Final Joint Staff Memorandum. Staff asserted that Longview represents a sizeable investment in this state and should be given every reasonable opportunity to succeed. Staff stated that the requested modification should

afford Longview with access to lower priced fuel supplies. Staff confirmed that the Longview Commitments were developed in conjunction with Staff. Staff recommended that the Commission grant the Longview modification to the Certificate. Staff also recommended that Longview be required to report to the Commission the results of its meeting with the West Virginia Department of Highways regarding addition of a passing lane.

On January 10, 2018, Longview filed a letter concurring with the Staff recommendation.

Public Comment

The Commission received various letters of protest to the proposed modification, but no further requests for intervention. The letters of the protestants asked (i) that the residents in the area be given notice with a full description of the modification, along with options and alternatives, (ii) for a State Route 53 road integrity study, (iii) about alternatives to increased truck traffic, and (iv) that the Commission consider the impact on air quality created by diesel trucks.

II. DISCUSSION

A. Original Grant of the Siting Certificate in the 2004 and 2006 Orders.

The Commission 2004 Order and 2006 Order granted a Certificate to the Longview Facility pursuant to W.Va. Code §24-2-11c. In granting the Certificate, the Commission performed the appraisal and balancing required by W.Va. Code §24-2-11c(c).

An appeal of the 2006 Order was refused by the West Virginia Supreme Court of Appeals. Thus, the Certificate itself, and the conditions accompanying it, are not subject to question in the present proceeding.

By Order issued December 22, 2017, the Commission determined that discontinuance of the conveyor commitment constituted a material modification of the Certificate.

B. Determining the Standard for Granting a Certificate for a Material Modification of a Siting Certificate.

This case is the first instance of the Commission deciding whether to grant a siting certificate for a modification as contemplated by W.Va. Code §§24-2-1(d)(5) and

24-2-11c.¹ As will be described below, the standard applied when reviewing a siting certificate necessarily differs from that applicable to a material modification of the type before the Commission in the instant case.

1. Application of W.Va. Code §24-2-1(d)(5).

W.Va. Code §24-2-1(d)(5) requires that the owner or operator of an electric-generating facility obtain a siting certificate (pursuant to W.Va. Code §24-2-11c, as opposed to a certificate under W.Va. Code §24-2-11), prior to making or constructing a material modification of a facility “that is not within the terms of any certificate of public convenience and necessity or siting certificate previously issued for the facility or an earlier material modification thereof.” The statute states:

(d) Any other provisions of this chapter to the contrary notwithstanding:

(5) An owner or operator of an electric-generating facility described in this subsection shall, before making or constructing a material modification of the facility that is not within the terms of any certificate of public convenience and necessity or siting certificate previously issued for the facility or an earlier material modification thereof, obtain a siting certificate for the modification from the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate of public convenience and necessity for the modification pursuant to the provisions of section eleven of this article and, except for the provisions of section eleven-c of this article, shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such modification.

The conveyor commitment was an operational condition of the Longview Certificate. Eventual conversion to a truck-based delivery system for coal was not specifically set forth as a term of the Certificate, and thus it is necessary that the Commission determine whether a siting certificate should be granted for the material modification.

¹ The Commission has issued multiple orders granting waivers of the need to obtain a material modification of a siting certificate. For example, the Commission determined that proposed changes to the Longview Facility, consisting of changes to the boiler design, turbine blades, an increase in the sizes of the two buildings, a twelve percent increase in water usage, and resulting in an increase in capacity of 95 MW at a cost of \$60 million, did not constitute a material modification to the terms of the Certificate. February 16, 2007 Order in Case Nos. 03-1860-E-CS-CN and 05-1467-E-CN (2007 Order). In that 2007 Order, the Commission decided that the change in capacity of the plant from 600 MW to 695 MW did not alone provide sufficient information to conclude whether a material modification exists. The Commission looked at the component parts necessary to increase capacity and whether the proposed changes created a material modification within the terms of the issued Certificate. In its review of the individual components, the Commission determined that the change in capacity did not constitute a material modification.

If conversion to a truck-based delivery system had been specifically set forth as a term of the Certificate, this proceeding would not have been necessary. Nevertheless, conversion was recognized as a distinct possibility in the original certificate. Below are portions of the 2004 and 2006 Orders discussing the possibility of coal truck deliveries. References in the quotes are to the respective records of the 2004 and 2006 cases.

Mr. Colbert acknowledged that if the conveyor belt is not constructed for some reason, then one option would be to have the coal trucked to the plant. (Tr. I, p. 117). [2004 Order at 32 and 147.]

All coal will be provided by MEPCO Inc. MEPCO's prep plant is adjacent to Longview's site. Coal will be moved by conveyor or truck. If trucked, a separate haul road will be used and coal will be trucked across a portion of County routes 53 and 53/2, and West Virginia Route 100 and County Route 19/5. [2004 Order at 39 and 153-154.]

Longview represented that its coal will come from a local coal operator with mines in West Virginia and Pennsylvania. The coal operator will build a conveyor system transporting coal from each of the mines. Truck shipments will also occur. [2004 Order at 80.]

Mr. Perdue stated that Longview's construction and operation would increase truck traffic on already heavily-traveled State Route 53 and county route 53/2. Truck deliveries of coal, limestone, materials/supplies, and waste removal would occur. (Id). [2004 Order at 182.]

Longview will have the coal transported to the facility via two coal conveyors. The conveyors will be constructed, operated and owned by MEPCO, the coal supplier. The on-site storage and the design of the conveyor systems provide a cushion for time to respond if the conveyors are down or some other even occurs that prevents coal from being delivered. Longview's plans do not include using trucks to deliver coal. Longview would seek Commission approval should its plans change to use trucks for coal delivery. (Tr. pp. 91-93) [2006 Order at 31.]

The proposed Longview power plant will increase the truck traffic on WV Route 53 and Seece Lane. Trucks will be arriving to deliver a wide range of supplies and materials, including fuel oil for starting up the power plant, or restarting after downtime or an outage of any kind. Trucks will be arriving regularly to deliver limestone for the stack gas scrubbers. Trucks will be needed to haul coal into the plant to make up for shortages from or downtime from the coal conveyor system. Trucks will be bringing in fuel oil for to start the primary boiler and fuel to auxiliary boiler, diesel fuel for

plant vehicles, water treatment chemicals and demineralization chemicals, aqueous ammonia, nitrogen gas, hydrogen gas, carbon dioxide gas, and miscellaneous supplies and equipment. Some of these trucks will be transporting hazardous materials through the Fort Martin community and into the plant. The spent limestone (gypsum) will be transported out of the plant as well. Longview Exhibit WB3 identifies a coal haulage truck dump with a capacity of 23 tons per truck and Bousquet Exhibit WB4 shows a limestone handling system with a truck hopper capacity of 35 tons per truck. [2006 Order at 70.]

Mr. William D. Bousquet's testimony presents a list of many of the materials that will be going in and out of the proposed plant. Although the coal, coal ash and water will be moved by conveyor and pipeline to the extent feasible, these may need to be moved in and out of the plant by truck in some circumstances involving supply system outages or maintenance. [2006 Order at 76.]

MEPCO will be responsible for the construction and operation of all "overland" coal conveyors from each of its mines to the project site. Despite the receipt of coal via an overland conveyor, it appears the project will construct a truck dumping facility to allow the project to receive coal via truck shipment, if needed. (Exhibit WB3). Staff believes the drawings/diagrams provided by Longview delivers added information to sufficiently illustrate the overall impact of the project on the community. [2006 Order at 87.]

2. The Two-Part Test Applicable to a New Facility under W.Va. Code §24-2-11c(c) does not Apply to a Modification Request.

W.Va. Code §24-2-11c(c) generally describes the Commission's duties in assessing an application for a siting certificate and for a material modification of a siting certificate. W.Va. Code §24-2-11c(c) states:

(c) In deciding whether to issue, refuse to issue, or issue in part and refuse to issue in part a siting certificate, the commission shall appraise and balance the interests of the public, the general interests of the state and local economy, and the interests of the applicant. The commission may issue a siting certificate only if it determines that the terms and conditions of any public funding or any agreement relating to the abatement of property taxes do not offend the public interest, and the construction of the facility or material modification of the facility will result in a substantial positive impact on the local economy and local employment. The commission shall issue an order that includes appropriate findings of fact and conclusions of

law that address each factor specified in this subsection. All material terms, conditions and limitations applicable to the construction and operation of the proposed facility or material modification of the facility shall be specifically set forth in the commission order.

The Commission has viewed W.Va. Code §24-2-11c(c) as setting forth a two-part balancing test. Beginning with the 2004 Order in Longview, the Commission described the analysis as follows:

In Part One of the analysis, the Commission will perform its duty to appraise and balance: (a) an applicant's interest to construct an electric wholesale generation facility; (b) the State's and region's need for new electrical generating plants; and (c) the economic gain to the State and the local economy, against: (i) community residents' interest in living separate and apart from such facility; (ii) a community's interest that a facility's negative impacts be as minimally disruptive to existing property uses as is reasonably possible; and (iii) the social and environmental impacts of the proposed facility on the local vicinity, the surrounding region, and the State.

The Commission performs Part Two of its analysis only if it determines in Part One that, taken as a whole, positive impacts relating to the various interests outweigh the negative impacts on the various interests. (See W.Va. Code §24-2-11c(c)) In Part Two the Commission decides whether a project's public funding, if any, and property tax abatement, if any, offends the public interest. (W.Va. Code §24-2-11c(c)).

2004 Order at 114. Most recently this two-part test was applied in ESC Harrison County Power, LLC, Case No. 17-0036-E-CS (October 27, 2017).

The two-part analysis was designed to address an application to build a new facility.² The two-part analysis, however, is not directly applicable to a modification of a siting certificate as in the present case. For example, Part One of the analysis at sub-parts (a), (b), and (c), contemplates construction of a new facility. That is clearly not the situation here. The Longview Facility was completed in 2011 and has, by and large, been in operation since that time.

² Full application of the balancing aspects of Part One of the two-part analysis could conceivably apply to an application for a material modification where the applicant seeks to build a new facility – effectively constructing what could be considered a new, stand-alone facility.

Part Two of the two-part analysis looks to whether a project's public funding and property tax abatement, if any, offends the public interest. Funding for the Facility was addressed in the 2006 Order, and is moot for present purposes.

The W.Va. Code §24-2-11c(c) prohibition against issuing a siting certificate without a determination regarding funding and taxes, does not apply in the current context. Similarly, the requirement of a determination that construction of the material modification of the facility will result in a substantial positive impact on the local economy and local employment, would not be measurable in any meaningful way in the present case.

3. The Standard for Review in this Case Should Focus on the Impact of the Modification.

The material modification sought by this Application has a very specific impact that will reduce truck traffic overall, but will increase traffic along a length of State Route 53. The modification may impact the lives of those living along side, and using, that road. It is reasonable that the standard of review should focus on that impact. Part One of the two-part analysis described above provides guidance in fashioning a standard applicable in this matter. Specifically, the Part One balancing test, at sub-part (ii)³ looks to:

[A] community's interest that a facility's negative impacts be as minimally disruptive to existing property uses as is reasonably possible.

The Commission will use this as a guide in reviewing the request for a material modification in this case.

C. Review of Longview's Support for a Material Modification.

The Siting Rules recognize that not all information necessary to support a siting certificate for a new facility will be necessary in support of a modification. Siting Rule 6.2 requires an application for a modification to include all of the information required by Siting Rules 3.1.a through 3.1.p – in effect requiring support for every aspect of a new facility. Specifically, those rules require filings in support of need, description of the facility, interconnection studies, a Gantt chart of the project schedule, technical data, maps, impact on public utilities, renderings of the facility, hydrology and wind, financial and economic data, cultural impact, public responsibility, and environmental impact including species, view, noise, and traffic. Siting Rule 6.3, however, allows for

³ Part One of the balancing test at sub-part (i) looks to "community residents' interest in living separate and apart from such facility" and sub-part (iii) looks to "the social and environmental impacts of the proposed facility on the local vicinity, the surrounding region, and the State." Similar to sub-parts (a), (b), and (c) of Part One of the two part analysis, sub-parts (i) and (iii) are applicable to construction of a new facility.

waivers of the filing requirements for information inapplicable to the proposed modification or amendment.

Our December 22, 2017 Order waived the need for all supporting information save that required by Siting Rule 3.1.m.5.C regarding operational traffic. Further, the Commission directed Longview to focus on mitigation as described by Siting Rule 3.1.m.5.C.4.

In determining how to ensure that the Facility's negative impacts are as minimally disruptive to existing property uses as is reasonably possible, it is first necessary to acknowledge the obvious: The Longview Facility requires a steady supply of coal to maintain its operations. Further, transporting coal via the conveyor is no longer a viable option because of the dwindling supply and increasing cost of coal from the MEPCO mine. Application for Waiver or Modification.

Transporting coal by truck to the Facility is the only option presented by any of the parties to this case.

Exhibit B to the Application shows that in total, post-conversion traffic will decrease, modestly, when compared to all truck traffic used to support the conveyor delivery system. There will be a marked increase (83 percent) in truck traffic along State Route 53.⁴ This is not surprising. It is logical and necessary to transport the coal via the shortest public roadway that can accommodate the vehicles. We recognize that the increased traffic along this stretch of Route 53 may impact the lives of those living along, and those using, the road.

To mitigate that potential impact, we will direct Longview to abide by the conditions contained in its January 3, 2018 Longview Commitments. Specifically,

1. Truck operations. Longview will take appropriate and effective steps to ensure that after the Dock Conversion, trucks transporting coal on the segment of State Route 53 from the converted dock to the MEPCO coal yard near the plant site ("Truck Route") and trucks returning from the coal yard to the dock on the Truck Route:
 - a. will be tarped to minimize the release of coal or coal dust in transit;
 - b. will not exceed applicable weight limits for each type of truck used;
 - c. will wash tires before each trip, other than when freezing temperatures and/or road conditions make truck washing potentially unsafe;

⁴ Public protest in this case focused on the impact of increased traffic on Route 53.

d. will be subjected to safety inspection by the trucking contractors operating them in accordance with industry best practices;

e. will utilize sound abatement equipment and techniques in accordance with industry best practices; and

f. will occur between the hours of 6:00 a.m. and 10:00 p.m. on Monday through Saturday, except in circumstances where plant operations would be constrained by these temporal limitations (e.g., weather conditions, mechanical or equipment breakdowns, or other unforeseen circumstances).

2. Traffic safety coordination. Longview will provide and maintain, or will require MEPCO to provide and maintain, personnel responsible for truck traffic safety and logistics coordination. The responsibilities of the personnel managing truck traffic safety and logistics will include:

a. monitoring traffic flow on the Truck Route;

b. coordinating with trucking contractors, personnel at the converted dock, and where necessary the West Virginia Department of Transportation, Division of Highways (WVDOH) to identify and manage burdensome traffic situations caused by traffic congestion, rail-related backups, adverse road or weather conditions, and the like;

c. routing or re-routing coal trucks when necessary to address such situations and maintain normal traffic flow on the Truck Route;

d. keeping track of Monongalia County Schools bus schedules to minimize or avoid the potential for school buses on the Truck Route to be impeded or delayed by coal truck traffic on the Truck Route;

e. monitoring weather conditions, coordinating with WVDOH, and supporting winter road condition management efforts by WVDOH to provide plowing and salt/sand application to improve vehicle passage on the Truck Route;

f. identifying road drainage and tree fall problems on the Truck Route, reporting those problems to WVDOH and appropriate public safety officials as indicated, and addressing emergent problems when it is feasible and safe to do so;

g. coordinating the operations of MEPCO and third-party trucking contractors to ensure that operational requirements (item 1 above) are maintained and speed limits are observed on the Truck Route; and

h. ensuring compliance with any applicable reporting requirements of the Commission's Transportation Division.

3. Traffic flow. Within six months of a final Commission Order approving Longview's material modification filing, Longview will conduct substantive discussions with WVDOH to assess the addition of a passing lane on the Truck Route, including evaluations of such a project from the perspectives of cost/benefit, engineering/technical feasibility, and property acquisition feasibility.

We will modify item 3 to require that Longview make a closed filing reporting on its meeting with WVDOH.

The Longview Commitments, as modified herein, are designed to mitigate the impact of the switch from conveyor to truck for the delivery of coal. It should be understood however, that primary jurisdiction over traffic and the roads in this state lies with the Department of Transportation and the state and local police. Complaints regarding alleged traffic and roadway violations should be directed to the appropriate authorities.

D. Grant of a Siting Certificate to the Modification, Subject to Conditions.

We will grant a siting certificate to the modification, consisting of discontinuation of the conveyor commitment and substituting coal trucks, subject to the terms of the Longview Commitments, as modified herein.

The Longview Commitments, as modified herein, will be material terms, conditions and limitations applicable to the operation of the material modification of the Facility, as described by W.Va. Code §24-2-11c(c).

FINDINGS OF FACT

1. Longview filed an application for waiver of material modification requirements or for modification of its Certificate regarding discontinuance of the conveyor commitment. Application for Waiver or Modification.

2. Discontinuance of the conveyor commitment will reduce truck traffic overall, but will increase traffic along a length of State Route 53. Id.

3. The Longview Facility requires a steady supply of coal to maintain its operations. Id.

4. Transporting coal via the conveyor is no longer a viable option because of the dwindling supply and increasing cost of coal from the MEPCO mine. Id.

5. Transporting coal by truck to the Facility was the only option presented by the parties to this case. Application for Waiver or Modification and file generally.

6. Post-conversion traffic will decrease, modestly, when compared to all truck traffic used to support the conveyor delivery system. Application for Waiver or Modification at Exhibit B.

7. There will be a marked increase (83 percent) in truck traffic along State Route 53. Id.

CONCLUSIONS OF LAW

1. Discontinuance of the conveyor commitment constituted a material modification of the Certificate. December 22, 2017 Commission Order.

2. W.Va. Code §24-2-1(d)(5) requires that the owner or operator of an electric-generating facility obtain a siting certificate (pursuant to W.Va. Code §24-2-11c, as opposed to a certificate under W.Va. Code §24-2-11), prior to making or constructing a material modification of a facility “that is not within the terms of any certificate of public convenience and necessity or siting certificate previously issued for the facility or an earlier material modification thereof.”

3. Conversion to a truck-based delivery system for coal was not specifically set forth as a term of the Certificate.

4. W.Va. Code §24-2-11c(c) describes the Commission’s duties in assessing an application for a siting certificate in the form of a two-part test. 2004 Order at 114.

5. The two-part analysis was designed to address an application to build a new facility.

6. The two-part analysis is not directly applicable to a modification of a siting certificate as in the present case.

7. Part One of the two-part analysis at sub-parts (a), (b), (c), (i), and (iii) contemplates construction of a new facility.

8. Part Two of the two-part analysis looks to whether an as yet un-built project's public funding and property tax abatement offends the public interest.

9. The W.Va. Code §24-2-11c(c) prohibition against issuing a siting certificate without a determination regarding funding and taxes, does not apply in the current context, because funding and taxes are not impacted by discontinuance of the conveyor commitment.

10. The statutory determination that construction of the material modification of the facility will result in a substantial positive impact on the local economy and local employment, would not be measurable in any meaningful way in the present case.

11. Noting that discontinuance of the conveyor commitment may impact the lives of those living along and using State Route 53, a reasonable standard of review derived from Part One of the two-part analysis should focus on that impact; specifically, the community's interest that a facility's negative impacts be as minimally disruptive to existing property uses as is reasonably possible.

12. The Longview Commitments, as modified herein, are designed to mitigate the impact of the switch from conveyor to truck for the delivery of coal.

13. Primary jurisdiction over traffic and the roads in this state lies with the Department of Transportation and the state and local police.

14. The Longview Commitments, as modified herein, will be material terms, conditions and limitations applicable to the operation of the material modification of the Facility, as described by W.Va. Code §24-2-11c(c).

15. For the reasons stated herein, the proposed modification, consisting of discontinuation of the conveyor commitment and substituting coal trucks, subject to the terms of the Longview Commitments as modified herein, should be granted a siting certificate.

ORDER

IT IS THEREFORE ORDERED that the Longview Power, LLC request for a proposed modification consisting of discontinuation of the conveyor commitment and substituting coal trucks for delivery of coal to the Longview Facility, is hereby granted a siting certificate, subject to the following material terms, conditions and limitations:

1. Truck operations. Longview will take appropriate and effective steps to ensure that after the Dock Conversion, trucks transporting coal on the segment of State Route 53 from the converted dock to the MEPCO coal yard near the plant

site (“Truck Route”) and trucks returning from the coal yard to the dock on the Truck Route:

- a. will be tarped to minimize the release of coal or coal dust in transit;
- b. will not exceed applicable weight limits for each type of truck used;
- c. will wash tires before each trip, other than when freezing temperatures and/or road conditions make truck washing potentially unsafe;
- d. will be subjected to safety inspection by the trucking contractors operating them in accordance with industry best practices;
- e. will utilize sound abatement equipment and techniques in accordance with industry best practices; and
- f. will occur between the hours of 6:00 a.m. and 10:00 p.m. on Monday through Saturday, except in circumstances where plant operations would be constrained by these temporal limitations (e.g., weather conditions, mechanical or equipment breakdowns, or other unforeseen circumstances).

2. Traffic safety coordination. Longview will provide and maintain, or will require MEPCO to provide and maintain, personnel responsible for truck traffic safety and logistics coordination. The responsibilities of the personnel managing truck traffic safety and logistics will include:

- a. monitoring traffic flow on the Truck Route;
- b. coordinating with trucking contractors, personnel at the converted dock, and where necessary the West Virginia Department of Transportation, Division of Highways (WVDOH) to identify and manage burdensome traffic situations caused by traffic congestion, rail-related backups, adverse road or weather conditions, and the like;
- c. routing or re-routing coal trucks when necessary to address such situations and maintain normal traffic flow on the Truck Route;
- d. keeping track of Monongalia County Schools bus schedules to minimize or avoid the potential for school buses on the Truck Route to be impeded or delayed by coal truck traffic on the Truck Route;

e. monitoring weather conditions, coordinating with WVDOH, and supporting winter road condition management efforts by WVDOH to provide plowing and salt/sand application to improve vehicle passage on the Truck Route;

f. identifying road drainage and tree fall problems on the Truck Route, reporting those problems to WVDOH and appropriate public safety officials as indicated, and addressing emergent problems when it is feasible and safe to do so;

g. coordinating the operations of MEPCO and third-party trucking contractors to ensure that operational requirements (item 1 above) are maintained and speed limits are observed on the Truck Route; and

h. ensuring compliance with any applicable reporting requirements of the Commission's Transportation Division.

3. Traffic flow. Within six months of a final Commission Order approving Longview's material modification filing, Longview will conduct substantive discussions with WVDOH to assess the addition of a passing lane on the Truck Route, including evaluations of such a project from the perspectives of cost/benefit, engineering/technical feasibility, and property acquisition feasibility. Longview will make a closed filing to the Commission reporting on its meeting with WVDOH, within thirty days of substantive discussions.

IT IS FURTHER ORDERED that on entry of this order this case shall be removed from the Commission docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this order by electronic service on all parties of record who have filed an e-service agreement, by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Staff by hand delivery.

A True Copy, Teste,



Ingrid Ferrell
Executive Secretary

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