

**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 7<sup>th</sup> day of December 2017.

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 intervention, sets a hearing, and requires notice of the hearing.

**BACKGROUND**

By Orders issued August 27, 2004 in Case No. 03-1860-E-CS-CN (2004 Order) and June 26, 2006<sup>1</sup> 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 and associated transmission line in Monongalia County, West Virginia.

On October 10, 2017, Longview filed an application for waiver of material modification requirements or for modification of its siting certificate (Application). Longview asked the Commission to determine that a change in the Longview fuel delivery plan is not a “material modification” of Longview’s generating facility (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 the change would constitute a material modification to the Certificate, Longview asked that the Commission approve the modification and amend the Certificate accordingly.

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<sup>1</sup> 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 January 11, 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 requested change concerns the “Conveyor Commitment,” an operational condition of the 2004 Order that was included at the suggestion and agreement by Longview. The 2006 Order did not list the Conveyor Commitment as an operational condition, but referenced it in Finding of Fact 53 (2006 Order at 53) 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 Conveyor Commitment, the entirety of 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 Longview, subsequent changes in the coal market and mining constraints in 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 its current function (of loading MEPCO coal into barges 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, coal will 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 asserts that eliminating the Conveyor Commitment is not a material modification of its Certificate, and that a Commission waiver is appropriate. Otherwise, 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.

Longview requested a final order in this case by January 12, 2018.

On October 13, 2017, Longview filed a letter representing that Commission Staff had agreed to the form of notice that accompanied Longview's initial filing. Longview asked that the Commission enter a publication order at the Commission's earliest convenience.

On October 30, 2017, the Commission issued an Order directing Longview to publish notice of the requested modifications to the Certificate.

On November 2, 2017, Longview filed a proposed procedural schedule developed in conjunction with Staff.

On November 7, 2017, Monongahela Power Company (Mon Power) and The Potomac Edison Company (PE), (collectively, the Companies) filed a petition to intervene, a request for a hearing, and request for additional notice. Mon Power operates the Fort Martin power station, located about one mile from the Longview Facility.

The Companies allege that the proposed modification will or may impact the Fort Martin Facility in that (i) Mon Power uses the MEPCO dock facility for coal delivery to the Fort Martin coal barge unloading facility for a substantial amount of its coal, (ii) increased truck traffic could detrimentally impact those living and working in the area, and (iii) increased truck traffic could result in new traffic regulations in the area that could have an adverse impact on Fort Martin operations.

The Companies requested that the Commission require Longview to serve notice on landowners and residents in the area.

On November 13, 2017, Longview filed affidavits indicating publication of the notice, as directed in the October 30, 2017 Commission Order.

On November 13, 2017, Longview filed a response in opposition to the Companies petition to intervene. Longview asserted that the petition to intervene appeared designed to impair the operations of Longview, a wholesale market competitor. Longview stated that after conversion of the MEPCO dock facilities, MEPCO will no longer supply coal to Mon Power, or anyone else, and the dock will no longer be used to make outgoing shipments of coal by barge. Longview asserted that to the extent Mon Power experiences any impact from the loss of MEPCO as a coal source, that impact will have arisen from a change in MEPCO's business, and not from conversion of the dock.

Longview asserted that even after the dock conversion, Mon Power would not be constrained from using its own barge unloading facilities located 2.3 miles from the MEPCO dock. Longview further stated that Mon Power does not have the right to insist on unrestricted barge traffic on the Monongahela River.

Longview stated that the Companies arguments regarding the reintroduction of truck traffic ignores the fact that the Companies benefitted from coal deliveries over a five-year period along the same road.

Longview asserted that the published notice ordered by the Commission and completed by Longview is appropriate.

Longview asked that the Commission deny the requested intervention.

On November 14, 2017, Commission Staff filed its Initial Joint Staff Memorandum. Staff recommended that the Commission (i) grant the intervention request by the Companies, noting the presence of the Companies in the underlying Certificate case and (ii) deny the request by the Companies for additional notice. Staff stated that under the circumstances the November 2, 2017 procedural schedule was no longer feasible. Staff stated that it would work with Longview and any intervenors to develop a new procedural schedule.

On November 17, 2017, Longview filed a letter in response to the Initial Joint Staff Memorandum. Longview noted that Mon Power's position as a party to the underlying Certificate is not related to the issues in the current Application.

The Commission has received several letters protesting increased coal truck traffic on the road.

### **DISCUSSION**

Siting Rule 6.1 reads, in part, as follows:

6.1. If an owner or operator of a 24-2-1(c) generating facility for which a Siting certificate has been issued plans to: construct the facility using engineering design plans different than those filed with its original Siting certificate application; modify the footprint of the 24-2-1(c) generating facility; increase the transmission or generation of the 24-2-1(c) generating facility; make any modification to the 24-2-1(c) generating facility with a potential for environmental impact, then the owner or operator must obtain prior Commission approval of such modification. If the owner or operator believes that when considering the totality of the circumstances surrounding any such modification, the modification is not material or that the modification will not materially affect the viewshed impacts, noise levels, emissions or other environmental impacts, it may petition the Commission for waiver of the requirement to obtain a modification or amendment to its Siting certificate. The Commission may deny or grant

such request or it may limit the information required to be filed, depending on the circumstances of the proposed modification.

The issue before the Commission is (i) whether eliminating the Conveyor Commitment is a material modification within the meaning of W.Va. Code §24-2-1(c)(5) and Siting Rule 6.1, and (ii) if it is, whether to modify the Certificate to eliminate the Conveyor Commitment.

The petition to intervene filed by Mon Power and PE should be granted. The Companies have a legal interest in this matter. As is true of all interventions, the Commission will not allow the parties to unduly broaden the issues already presented. No other petitions to intervene were filed. The period for intervention closed on December 3, 2017.

This matter is set for hearing on December 18, 2017 beginning at 9:30 a.m. At hearing, parties should have a witness available to address factual issues. As part of its direct presentation, Longview should present a map or graphic depiction of its proposed alternative to the Conveyor Commitment.

The request by the Companies for additional general notice of the filing should be denied, because it is not required by the statute. The Commission, however, will require notice of the pending hearing.

#### **FINDINGS OF FACT**

1. Mon Power and PE seek to intervene in this case.
2. The Mon Power Fort Martin plant is in close proximity to Longview and shares the use of WV Route 53.

#### **CONCLUSIONS OF LAW**

1. The petition to intervene filed by Mon Power and PE should be granted.
2. This matter should be set for hearing.
3. The request by Mon Power and PE for additional notice of the filing should be denied.

**ORDER**

IT IS THEREFORE ORDERED that the petition to intervene filed by Monongahela Power Company and The Potomac Edison Company, is granted.

IT IS FURTHER ORDERED that this matter is set for hearing on December 18, 2017, beginning at 9:30 a.m., in the Howard M. Cunningham Hearing Room at the Commission offices, 201 Brooks Street, Charleston, West Virginia.

IT IS FURTHER ORDERED that Longview Power, LLC, publish the notice of hearing attached to this Order as Attachment A once as provided in W.Va. Code §59-3-1 et seq., in a newspaper published and of general circulation in both the county where the project is located and in Kanawha County. Publication shall occur as soon as possible. Affidavits of publication should be filed on receipt.

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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**PUBLIC SERVICE COMMISSION  
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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.

**NOTICE OF HEARING**

By an order issued in Case No. 05-1467-E-CN on June 26, 2006 the Public Service Commission of West Virginia (Commission) granted Longview Power, LLC (Longview), a siting Certificate (Certificate) which authorized the construction and operation of a wholesale electric generating facility and a 500 kV electric transmission line (Project). The Project is located in the Fort Martin area of Monongalia County at the intersection of Routes 53 and 53/2 and has been in operation since 2011.

On October 10, 2017, Longview filed an Application requesting that the Commission: (i) determine that a proposed revision to Longview's siting certificate is not material and does not require modification of the siting certificate for the Longview plant; or (ii) in the alternative, modify the siting certificate to incorporate the proposed revisions to the Project. In the Application, Longview represents that a Certificate condition requiring the use of a conveyor to transport fuel to the plant is no longer feasible because geologic, engineering, permitting, and economic considerations will soon require it to use other fuel sources. Longview further represents that physical constraints and cost considerations will preclude normal plant operations if all of the plant's fuel supply must be transported by existing conveyor facilities and on the roads to those facilities.

According to the Application, Longview plans to convert an existing MEPCO, Inc., dock facility (i) from its current function of loading MEPCO coal onto barges for buyers other than Longview (ii) to a coal barge unloading facility for coal to supply Longview's operations (Dock Conversion). This facility is on the Monongahela River approximately 1.5 miles from the Longview plant. MEPCO's barge loading facility currently handles 1 million tons per year of outgoing coal, and as recently as two years ago, MEPCO delivered 2 million tons per year by truck to the barge facility from MEPCO's coal yard located next to the Longview plant. MEPCO plans to discontinue these outgoing truck shipments when it commences work on the Dock Conversion. When the Dock Conversion is complete, Longview plans to begin barge delivery of Cumberland coal to the newly converted MEPCO dock facility. Coal would travel 13.5 miles by barge to be delivered to the dock facility and would then be transported 1.5 miles by truck to the

MEPCO coal yard next to the Longview plant. Coal would continue to be delivered by conveyor from the MEPCO coal yard to the Longview plant. This change to Longview's fuel plan will enable Longview to increase its use of lower-cost coal Cumberland and potentially other sources over current levels.

Longview asserts that removing the conveyor condition does not materially change the Project design or footprint, does not increase the Project's transmission or generation capacity, and does not materially affect the Project's impact on viewshed, noise, emissions or other environmental resources. The purpose of this proceeding is to determine whether eliminating the Conveyor Commitment is a material modification within the meaning of W.Va. Code §24-2-1(c)(5) and Siting Rule 6.1, and if it is, whether to modify the Certificate to eliminate the Conveyor Commitment. The purpose of this proceeding is not to re-examine any other aspect of the Certificate or the Project.

Further information concerning the Application is available in the case file at the Commission offices at 201 Brooks Street, Charleston, West Virginia, or on the Commission's website, [www.psc.state.wv.us](http://www.psc.state.wv.us), under Case No. 17-1450-E-CS-PC.

A Notice of Filing that indicated a protest period and opportunity to intervene in this case was previously published. The period for interventions ended on December 3, 2017. The Commission will hold an evidentiary hearing on this petition at 9:30 a.m. on Monday, December 18, 2017, at the Commission offices, 201 Brooks Street, Charleston, West Virginia. Written public comments may be addressed to Ingrid Ferrell, Executive Secretary, Post Office Box 812, Charleston, West Virginia 25323.

LONGVIEW POWER, LLC