

IN THE MATTER OF THE : BEFORE THE PUBLIC SERVICE
APPLICATION OF THE POTOMAC : COMMISSION OF MARYLAND
EDISON COMPANY D/B/A :
ALLEGHENY POWER FOR A : Case No. 9223
CERTIFICATE OF PUBLIC :
CONVENIENCE AND NECESSITY :
TO CONSTRUCT THE :
MARYLAND SEGMENTS OF A 765 KV :
ELECTRIC TRANSMISSION LINE AND :
A SUBSTATION IN FREDERICK :
COUNTY, MARYLAND :

**SUGARLOAF CONSERVANCY, INC.'S
OPPOSITION TO APPLICANT'S MOTION
TO EXTEND PROCEDURAL SCHEDULE
AND
MOTION TO DISMISS**

Sugarloaf Conservancy, Inc., by its counsel, Amy C. H. Grasso, and Miller, Miller & Canby, Chtd., files this response to the Applicant's Motion to Extend Procedural Schedule, and in support states:

OVERVIEW

Potomac Edison Company, d/b/a Allegheny Power Company ("Applicant") filed its application ("Application") for the issuance of a certificate of convenience and necessity ("CPCN") in December of 2009. Its application as originally filed, however, was incomplete. See Order No. 83469. It was not until July 16, 2010—seven months later—that applicant supplemented its application. Thereafter, on July 28, 2010, the Commission determined the Application was complete and sufficient to be accepted for filing. Order No. 83501.

In September of 2010, after the parties were unable to agree on a proposed procedural schedule, the matter was considered before the Hearing Examiner. At that time, various parties, including Office of the People's Counsel, the Sierra Club, and Citizens Against Kempton Electric Substation requested modest extensions—of solely one week for surrebuttal testimony—

and the Applicants opposed, claiming that brief extensions were unacceptable as it could not suffer even an additional week's delay of the case. Now, however, as the Applicant is unable to satisfy its burden with the testimony it has already filed, it has requested its own extension of the procedural schedule to allow it to supplement its testimony through March 31, 2011, and to extend other various deadlines in this matter. With its requested extension, evidentiary hearings would not even begin until November 21, 2011. Applicant's basis for this extension is that the load projections of PJM's 2011 Load Forecast Report are different from those in the 2010 report, upon which PJM has heretofore based its Application and demonstration of need.

A. Any Further Delay is Prejudicial

The parties, including Sugarloaf as well as all of the individual intervenors, have invested countless hours, dollars, and energy in representing their interests in this matter. One cannot deny the "David vs. Goliath" aspect of this case; it is undisputed that Applicant has much greater resources than do most (and probably all) of the opponents to its Application. And, it is evident that the Applicant has had no reservations in taking advantage of this position and testing the endurance of its opponents. The question is when will the delays end? At some point, a determination needs to be made by the Commission and the parties need to be aware of what testimony the Applicant will be relying upon in attempting to satisfy its burden.

Although the rules of the Circuit Courts of Maryland are not binding before the Public Service Commission, Rule 1-341 is instructive. It provides, in part, that if the conduct of any party in maintaining a proceeding is in bad faith, it may require that party to pay the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees, incurred by the adverse party in opposing it. And, indeed, "bad faith" "exists when a party litigates with the purpose of intentional harassment or unreasonable delay." *E.g., Garcia v. Foulger Pratt*

Development, Inc., 155 Md. App. 634, 676 (2003) (emphasis added); *see also Seney v. Seney*, 97 Md.App. 544, 549, (1993). Here, too, if the Applicant has continued to delay these proceedings intentionally, for the purposes suggested above, at some point the repeated delays will rise to the level that the prejudiced parties will have no choice but to seek that the Applicant reimburse them for the fees they have incurred in defending against its ever-changing theories of entitlement to a CPCN.

Not only will the extension—and subsequent amendments to testimony and exhibits—result in increased costs to all of the parties involved, but it will risk the Commission losing jurisdiction to FERC. The Applicant—who conveniently uses the threat of FERC backstop authority when it wishes to advance proceedings—has not provided any assurance or legal basis for its claim that it can waive FERC backstop authority as a bargaining tool.

For these reasons, Sugarloaf opposes the Applicant's motion for an extension. However, as is discussed further below, Sugarloaf further requests that the Application be dismissed with prejudice, or denied, as it is lacking in crucial elements necessary to the support of its case. Further, the repeated requests to supplement testimony and exhibits, and the ever-changing landscape relating to the need for PATH in general, require the Application be dismissed.

B. The Applicant Cannot Proceed with its Application as It Has Nowhere to Place its Substation.

The Frederick County Board of Zoning Appeals has denied the Applicant's request to locate the Kemptown Substation at the proposed location in Kemptown, in Frederick County. And the Planning Commission has found the substation to be inconsistent with the Countywide Comprehensive Plan¹. *See, e.g.*, Docket Item No. 162, Letter from Board of County

¹ The Planning Commission also found the transmission line to be inconsistent with the Comprehensive Plan. As no substation location is approved, Sugarloaf submits that the transmission line also cannot be deemed consistent with the Comprehensive Plan.

Commissioners of Frederick County, Maryland. This is not merely a tangential issue. The application itself, in order to be complete, relies in several instances on the location of the substation in Kemptown. As it states, “The Maryland Segments of PATH will consist of approximately 20 miles of transmission line in Frederick County, Maryland, entering north of Point of Rocks, Maryland, and terminating at the Kemptown Substation to be constructed southeast of New Market in Frederick County, Maryland.” App. at 2. It repeatedly asserts that the substation itself is an “integral” component of the transmission line. The question is, therefore, can the Applicant satisfy its burden of proof, in demonstrating the feasibility of the transmission line under the applicable statutes and regulations, when it does not have a location for its substation? Sugarloaf submits that the answer to that question is, “no.”

1. Statutory and Regulatory Requirements

Md. Code Ann, Public Util. Comp. § 7-207 (e) provides that the commission shall take final application on an application for a CPCN after consideration of:

- ...
- (2) the effect of the generating station or overhead transmission line on:
 - (i) the stability and reliability of the electric system;
 - (ii) economics;
 - (iii) esthetics;
 - (iv) historic sites;
 - (v) aviation safety . . .
 - (vi) . . . air and water pollution;
 - (vii) the availability of means for the required timely disposal of wastes produced by any generating station.

Many of these cannot be properly considered without knowledge of where the substation will be located. For example, how is the Commission to consider the esthetics until and unless it first knows where the substation will be located? Similarly, how will it consider the impact on any historic site until the substation has a location. More practically speaking, the Applicant cannot

attempt to satisfy its burden of proof until and unless it has a location for the substation that it proclaims to be so “integral” to the transmission lines’ existence.

This is evidenced by the application requirements of the Code of Maryland Regulations (“COMAR”) provided at 20.79.04.00, et seq. Indeed, the application itself requires, among other things: a description of the engineering and construction features of the proposed transmission line (20.79.04.02); the property or property right acquired or to be acquired (*id.*); the access roads for construction or maintenance either existing or to be built (*id.*); the location and identification of the historical, institutional land, recreational area, esthetic, archeological, wildlife management area, and park/forest sites from which the project would be clearly visible (*id.*); the location and identification of all portions of the right-of-way requiring construction within the 100-year floodplain of any stream (*id.*); a description of alternative routes considered (20.79.04.03); environmental information, including the physical, biological, aesthetic, cultural features, and conditions of the site (20.79.04.04); a summary of the environmental and socioeconomic effects of construction and operation of the project (*id.*); description of the unavoidable impacts (*id.*). The Applicant addressed all of these in its Application. It did so, however, under the assumption that the substation would be located in Kemptown. If its prima facie application relied on the substation being located in Kemptown, then the application itself is rendered meaningless until a new location for the substation is found and identified in support of the application. And certainly, regardless of whether a prima facie case can be made in spite of the absence of a location for the substation, the Applicant can surely not meet its burden of proof in proving these things in the context of an evidentiary hearing. See, for example, Exhibit 8, Testimony of John R. Bodenschatz. The entire line of testimony regarding the substation, including the location, the changes to existing facilities at the location, the size and layout of the

substation, whether the size of the substation property provides sufficient space for the proposed substation, and the visual impact of the proposed substation, all assume the substation will be located in Kemptown. As the Board of Zoning Appeals has denied the special exception for the construction of the substation, this portion of the application is no longer accurate, and cannot be used to support the Application.

The Applicant has the burden of proving its case. At this time, with no home for its substation, it is simply incapable of satisfying the statutory requirements of § 2-207(e), or the elements laid out in COMAR 20.79.04.00, *et seq.*

2. The Commission Does Not Have Authority to Site the Substation in Kemptown, and the Applicant is Estopped from Arguing Otherwise

The Applicant has maintained that—although it would entertain Frederick County, and go through the motion of seeking a special exception for siting the Kemptown Substation—it was never actually *necessary* for Applicant to seek a special exception.² Instead, the Applicant argues that the Commission is vested with the capacity to site the Substation regardless of the findings of the Frederick County Commissioners and the Board of Zoning Appeals. In that regard, it cites to the Commission’s Order No. 82892, in case No. 9198, for the proposition that—pursuant to § 7-207(b)(3), if the substation is “integral” to the transmission lines, the Commission’s authority trumps that of Frederick County and it can authorize construction of the facility.

To start, Sugarloaf asks the Commission to reconsider its holding, in Case No. 9198, that it can preempt the authority of the County Commissioners and the Board of Zoning Appeals, under the guise of § 7-207(b)(3). That section provides as follows:

² In spite of this assertion, the Applicant has apparently appealed the holding of the Board of Zoning Appeals of Frederick County, evidencing its recognition that seeking Board of Zoning Appeals’ approval was not merely a superfluous act.

Unless a certificate of public convenience and necessity for the construction is first obtained from the Commission, an electric company may not begin construction of an overhead transmission line that is designed to carry a voltage in excess of 69,000 volts or exercise a right of condemnation with the construction.

To start, this section does not speak of the *Commission's authority* to do anything. Instead, it simply identifies *what an electric company cannot do*—it cannot begin construction of the type of transmission line described therein, prior to first obtaining a CPCN. The section also makes no mention whatsoever of substations³, and certainly not the Commission's authority to site one, much less of the Commission's authority to preempt the authority of the County's various bodies.

The Applicant's assertion that the Commission has the authority to site a 42-acre substation on property comprising approximately 170 acres, in spite of the fact that it is inconsistent with the Countywide Comprehensive Plan, is absurd and contradicts Md. Code Ann., Article 66B § 3.08. Section 3.08 provides that where a county has adopted a comprehensive plan, a "public utility may not be constructed or authorized in the local jurisdiction or the major geographic section of the local jurisdiction *until* the location, character, and extent of the development has *been submitted to and approved by the planning commission* as consistent with the plan." The determination has to also be supported by the Board of County Commissioners. *Id.*, § 14.06. No such approvals have been received here! The Commission cannot force Frederick County to suffer a substation that it has determined, in line with its statutory authority, to be inconsistent with its comprehensive plan. *See, e.g., Ad + Soil, Inc. v.*

³ There is logic behind this distinction between transmission lines versus substations. Transmission lines (especially those underground) do not necessarily have the same destructive potential, for land-use planning purposes, as does a substation. Preemption, therefore would be disastrous in the context of a substation, where their siting would be extremely disruptive to the local master plan.

County Comm'rs, 307 Md. 307 (1986) (county's zoning ordinance had not been impliedly preempted by state law). The Commission cannot "impliedly" preempt state law, and there is absolutely no statutory authority for it to do so. *See also Holiday Point Marina Partners v. Anne Arundel County*, 107 Md. App. 160, 170-171 (1995), *rev'd on other grounds* (in determining whether or not a county ordinance is preempted by state law, the lack of reference to a pre-existing local law is a factor to be considered.)

In any event, the Applicant is estopped from arguing to the contrary. In Case No. 9018, it argued:

. . . it is the Company's position that because the Commission has no jurisdiction to consider the siting of a substation, it must under the law approve some transmission line route that connects the existing Lime Kiln-Montgomery 230 kV transmission line with the existing Urbana Substation.

...

Because the Commission has no jurisdiction over substation sites, it is the Company's position that the Public Service Commission law does not allow the Commission to make a finding that an existing substation is not properly located.

As a starting point, under Maryland law, the Commission has no authority over where electric substations are located. Section 7-207(b)(3) of the Public Utilities Companies article grants the Commission jurisdiction over overhead transmission lines in excess of 69 kV, not over electric substations or the sites for electric substations. The location of a substation is a matter for approval by local authorities under applicable zoning ordinances. In this case, the Urbana substation was approved for future 230 kV service by the Frederick County Planning and Zoning Commission under the provisions of Frederick County's Zoning Ordinance (see Potomac Ex. Nos. 15, 23 and 26).

...

. . . there is simply no jurisdictional basis upon which the Commission can make a finding that the Urbana Substation is not properly located. For the Commission to find that the Urbana Substation is improperly sited (despite the lack of any evidence supporting such a finding) would be tantamount to the Commission finding that an airport, or an army base, or a sports stadium is not properly sited. The Public Service Commission simply has no jurisdiction to make such a finding.

Second, and perhaps more importantly, the Commission has no authority to order Frederick County to grant the Company a site in the County for a new transmission

substation. Without that authority, the Commission is powerless to address the need identified in this case.

...

Since the Commission cannot order Frederick County to approve a site for a new transmission substation, it cannot simply "pass the buck" to Frederick County to solve the impending reliability problems.

...

Case No. 9018, Allegheny Power Initial Brief, Docket No. 116. It cannot now in good faith argue that the Commission possesses the very jurisdiction that it previously argued it was dispossessed of.

Judicial estoppel, also known as the "doctrine against inconsistent positions," and "estoppel by admission," prevents "a party who successfully pursued a position in a prior legal proceeding from asserting a contrary position in a later proceeding." *Gordon v. Posner*, 142 Md. App. 399, 424 (2002). Several factors typically inform the decision regarding whether the doctrine applies. First, the subsequent position must be "clearly inconsistent" with the party's earlier position. *Id.* at 426. There is no dispute, here, that the position that the Applicant's position now—that the Commission has authority over the Kemptown substation—is clearly inconsistent with its prior position, as described above.

The second inquiry is whether the party succeeded in persuading a court to accept its earlier position, so that the judicial acceptance of an inconsistent position in a later proceeding would give the appearance of one of the courts having been misled. The Proposed Order in Case No. 9018 reflects that the hearing examiner recognized that Potomac Edison agreed that the Commission had no jurisdiction over substations.

The third consideration is whether the Applicant would derive unfair advantage or impose an unfair detriment to the opposing party if not estopped. *Id.* at 427. Again, this element

is satisfied. For the Applicant to now argue—in spite of its contrary assertions to many of the same parties, and the public in general—that the Commission is with both jurisdiction and authority to site the Substation, smacks of unfair advantage over the parties presently (and consistently) opposing the jurisdiction of the Commission. Indeed, there is no question that the Applicant simply chooses whichever position satisfies him at any given instance.

C. Uncertainties in PATH's Future Require Dismissal.

1. The Need for “Supplemental Testimony” Evidences the Unpredictability of the PATH Project.

The Applicant's current Application is undoubtedly insufficient; hence, the need to supplement with new information. It is, however, difficult to conceive of how this “new” information—so substantial that it has now caused the Applicant to seek postponement of a two-billion dollar project in three different states—will be reflected solely in “supplements” to the testimony and exhibits. To the contrary, it is likely that the Applicant has, instead, realized that it will need to present a whole new case.

Indeed, the Applicant's desire to supplement its testimony with revised information regarding the need simply reflects that its application as-stated is insufficient and inaccurate, and that the Applicant is incapable of satisfying its evidentiary burden at this time. At some point, however, the supplementation has got to stop, and the opposing parties have to be permitted to challenge that insufficient application as it stands.

Mr. Herling admits in his direct testimony, without apology, that the Commission can expect fluctuations in the need for path, continuing to push the need out further into the future. Application, Ex. 1, Direct Testimony of Herling, pp. 27-31. This carefree attitude toward the constant decrease in demand begs the question, when will PJM recognize that PATH is unnecessary? According to Herling, regardless of decrease in demand, “PATH will remain

necessary for the long-term reliability of the system, and will continue to be a long-lead time project, the development schedule for which will not tolerate a stop-and-start, wait-and-see approach to certification.” This simply cannot be tolerated. The opponents to this project cannot be required to continue dangling on the whims of the Applicant, and the whims of the market, while PJM maintains an unrelenting commitment to pursuing a transmission project that may, in the end, be unnecessary.

2. Questions regarding the Methods used by PJM

Simply put, PJM did not compare “apples to apples” when comparing PATH with its alternatives. Instead, PATH is based up on 2007 costs, repeatedly revised by PATH. The cost projections for one of the alternatives—the Liberty alternative—however, were apparently independently valuated by a separate consulting firm Burns & McDonnell. No such separate firm, however, has been consulted to carry out a comparable analysis of PATH costs. This concern has been voiced to the PJM Board of Managers without success. See Ex. 1. It is improper, then, for PJM to determine that PATH is the reasonable alternative, when the costs have not been presented and reviewed on a comparable basis.

Similarly of concern is that PATH had also apparently engaged Burns & McDonnell for work on the PATH project. This conflict compromises the legitimacy of the claimed need for PATH.

3. Alternatives that May Impact PATH

PJM has indicated that Dominion will move forward with the Mt. Storm-Doubs rebuild. With the rebuild of this line, the transfer thermal capability of this line will increase by approximately 65%. It is uncertain to what degree this will affect the need for the PATH project,

but the change in status of the Mt. Storm-Doubs rebuild from a possibility to a near-certainty is sure to impact the overall need.

Similarly, the filing of the MAPP⁴ project before this Commission may have a similar impact on the need for PATH. Indeed, as reflected in Ex. 2, the MAAP line plus the rebuild of the Mt. Storm-Doubs line leaves no reactive criteria violations through 2019.⁵ Accordingly, the timing of the need for PATH is simply unclear. The supplementation of testimony can only begin to resolve a minor portion of the outstanding issues and deficiencies in the application and the need for PATH in general.

Indeed, the Governors of 11 East-Coast states have voiced their support of a “strong federal-regional-state partnership that advances cost-effective renewable energy sources and technologies, diversifies our energy supply through coordination and cooperation, decreases greenhouse gas emissions, and reduces our dependence on foreign sources of energy.” See Ex.

3. The following policy incentives represent the minimum:

- Strengthen and extend voluntary renewable energy incentives that are sufficient, simple, transparent, and technology neutral;
- Encourage FERC to support and facilitate robust planning within regional transmission organizations that provides and promotes local renewable resource integration and preserves local oversight and review;
- Promote America’s offshore wind industry

See also O’Malley Letter at Ex. 4.

In light of the ever-changing landscape of the possibility of alternatives, their failure to have been properly considered by PJM and the Applicant, the possibility that PATH may not be

⁴ Mid-Atlantic Power Pathway, Case No. 9179.

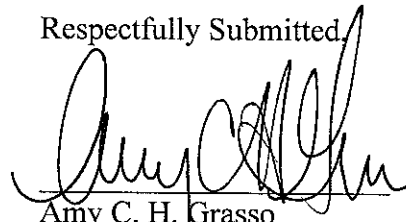
⁵ The Commission shall examine alternatives to the construction of a new transmission line in a service area, including the use of an existing transmission line of another company, if: (1) the existing transmission line is convenient to the service area; or (2) the use of the transmission line will best promote economic and efficient service to the public. Md. Code Ann., Public Util. § 7-209.

needed for many years longer in light of the alternatives, and the Applicant's repeated failure to provide a complete and satisfactory Application, it seems absurd to continue moving forward in such an uncertain environment where major changes continue to take place, which need to be factored into an assessment of the need for PATH.

CONCLUSION

Wherefore, for the foregoing reasons, Sugarloaf Conservancy, Inc., asks this Court to DISMISS the Application with PREJUDICE or, in the alternative, to deny it.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 2011, I served this all known parties of record to this proceeding by electronic mail to the e-mail addresses of record and, by first-class mail, postage-prepaid, to the following individuals, who had no e-mail of record:

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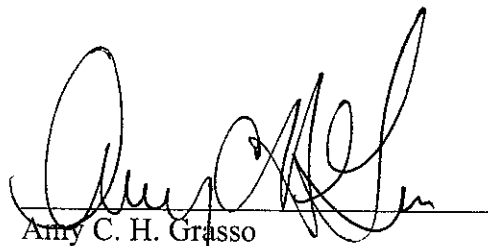
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Amy C. H. Grasso

November 24, 2010

Via Electronic Mail

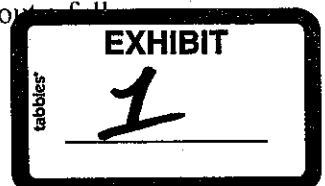
Howard Schneider
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The PJM Board of Managers
PJM Interconnection, L.L.C.
955 Jefferson Avenue
Norristown, Pennsylvania 19403-2497

**re: 2010 RTEP Analysis of PATH and
Alternative Transmission Expansion Projects**

Dear Mr. Schneider and Members of the Board of Managers:

As representatives of the Consumer Advocate Division of the West Virginia Public Service Commission, the Maryland Office of People's Counsel, the Virginia Office of Attorney General's Division of Consumer Counsel, Citizens Utility Board of Illinois, Office of the People's Counsel, District of Columbia, The Office of the Ohio Consumers' Counsel, The New Jersey Division of Rate Counsel, and the State of Delaware Consumer Advocate, we are compelled to bring to your attention what we believe to be significant disparities in the evaluation of key elements in transmission expansion projects that have been recommended to you by PJM management and which are actively under your consideration.

We are concerned both about the methods used by PJM to determine the costs of competing transmission projects and how those cost differences will be weighed by PJM in determining which project(s) should go forward. In addition, we believe that the decision by Dominion Virginia Power to rebuild the Mt. Storm-Doubs line has not been adequately considered in the analysis of whether to require construction of PATH or any of its alternatives. Given the magnitude of PATH and the alternative proposals in terms of size and cost to consumers, we do not believe it is prudent for PJM to make this crucial decision without a full



vetting of all of the issues involved, including the ones we have previously identified in the TEAC, both in meetings and formally in the attached letter.

First, the evaluation of the costs of PATH and the proposed alternatives were not conducted on a basis that allowed any meaningful comparison of costs. PATH is based upon 2007 costs that we understand have been revised by PATH three times and not independently evaluated. The cost projections for the Liberty alternative were independently evaluated by Burns & McDonnell. We appreciate that PJM management saw the value in the independent evaluation of project costs; however PJM management did not require a comparable analysis of the PATH costs using the same assumptions as those used in evaluating the Liberty costs (or any other PATH alternative). While no doubt this gave PJM management a better understanding of the Liberty costs, it provided no information whatsoever of how the PATH and Liberty costs compare, or whether the PATH costs are themselves reasonably projected.

Given this disparity, we do not believe TEAC meaningfully reviewed, compared, and recommended to you, the Board, to approve one project over the other. For you to consider PATH and the alternative projects on their merits you should have available for your review the costs of these projects presented on a comparable basis so that you can make a reasoned, fact-basis determination of the cost component of the analysis of which project should move forward. We requested that the PATH costs be evaluated on the same basis as Liberty – independently – but were told at the October 28 TEAC meeting that PJM would not honor this request. To ensure that these projects are evaluated in an “apples-to-apples” comparison, and to ensure that the process is transparent, we formally renewed our request to PJM management to independently evaluate the PATH costs. This was not done and even a cursory review of the

Liberty cost evaluation reveals that there were different assumptions for contingencies (10% for PATH, 15% - 40% for Liberty), there was no environmental assessment or feasibility for PATH, and the real estate costs for Liberty appear excessive (four times the real estate costs for MAPP), to name a few.

Finally as it relates to the evaluation of the Liberty costs, we were surprised to learn that PJM engaged Burns & McDonnell for the independent evaluation. PJM management never disclosed to the TEAC Committee participants – or at least to the consumer advocates – that PATH had engaged Burns & McDonnell for significant work on the PATH project. The conflict of interest is undeniable and should have been immediately disclosed. For a project of the magnitude of PATH it is unrealistic that Burns & McDonnell should be expected to objectively evaluate a competing project regardless of what specific employees may or may not have been assigned to the project.

Second, PJM has indicated that Dominion will move forward with the Mt. Storm – Doubs rebuild. This rebuild, according to the TEAC meeting materials, could be completed by 2015. The filing in West Virginia for approval of the project represents the new line will be energized by 2015. Nevertheless, at the November 10, 2010 TEAC meeting, PJM declined to adopt this projection or include Mt. Storm – Daubs in the 2010 RTEP even though PJM management announced construction would commence in the spring of 2010. We believe this project should have been included in the RTEP analysis for this year or evaluated through retooling or a sensitivity study that included an in-service date of 2015. We made this request at the October 28, 2010 TEAC meeting and formally renewed this request in advance of the November 10, 2010 TEAC meeting in the attached letter.

We greatly appreciate the well-attended meeting arranged by Evelyn Robinson that allowed Steve Herling to brief us about TEAC/transmission planning. While these efforts by PJM are to be commended, we continue to believe that our voices – representing the consumers who will ultimately pay for the billions of dollars of costs for these projects – are underrepresented and that PJM must be even more diligent in evaluating and addressing the issues we have raised, including concerns regarding the costs of PATH or its alternatives.

Given the concerns we have expressed, we again respectfully request that the Board of Managers direct the PJM Planning Department to immediately undertake (whether in-house or by an outside consultant) a study that will independently evaluate the costs of the PATH project (and other alternative projects) in the same manner and on the same basis as was performed on the Liberty project. Only through a comparison of the results of these *two* studies will the PJM Board of Managers have the requisite information upon which to base its review and subsequent approval of transmission projects.

We also request that:

- (1) PJM runs a sensitivity analysis of Mt. Storm – Doubs on the RTEP base case for this year;
- (2) PJM consider the impacts on the consumers of electricity who will bear these costs by placing weight on the cost factor of the projects under consideration; and that
- (3) the Board of Managers refrains from evaluating PATH and the alternatives without this essential information.

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In evaluating PATH and its alternatives, the perspectives of stakeholders that represent the interests of the consumers who will pay for these transmission projects and minimizing those cost impacts to the greatest extent possible should also be considered.

As always, we appreciate your consideration of the issues we have raised and look forward to working productively with PJM in all our interests.

Very truly yours,

/s/ William F. Fields
William F. Fields
Senior Assistant People's Counsel
Maryland Office of People's Counsel

/s/ Chris Thomas
Christopher Thomas
Director of Policy
Citizens Utility Board of Illinois

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**Office of the People's Counsel for
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/s/ Michael D. Sheehy
Deputy Public Advocate
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/s/ Stefanie A. Brand
Stefanie A. Brand, Director
**New Jersey Division of Rate
Counsel**

cc: Terry Boston, President & CEO
Andy Ott, Senior Vice President Operations
Evelyn Robinson, Manager Regulatory/Legislative Affairs
Dave Anders, Manager Member Services

ATTACHMENT

November 9, 2010

Via Electronic Mail

Andy Ott, Senior Vice President
Steve Herling, Vice President of Planning
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**re: 2010 RTEP Analysis of PATH and
Alternative Transmission Expansion Projects**

Dear Messrs. Ott and Herling:

As representatives of the Consumer Advocate Division of the West Virginia Public Service Commission, the Maryland Office of People's Counsel, the Virginia Office of Attorney General's Division of Consumer Counsel, Citizens Utility Board, and Office of the Ohio Consumers' Counsel, we are compelled to bring to your attention what we believe to be the disparity of key elements in transmission expansion projects actively under consideration.

We are concerned both about the methods used by PJM to determine the costs of competing transmission projects and how those cost differences will be weighed by PJM in determining which project(s) should go forward. In addition, we believe that the decision by Dominion Virginia Power to rebuild the Mt. Storm-Doubs line has not been adequately considered in the analysis of whether to require construction of PATH or any of its alternatives. Given the magnitude of PATH and the alternative proposals in terms of size and cost to consumers, we do not believe it is prudent for PJM to make this crucial decision without a full vetting of all of the issues involved, including the ones we have identified in the TEAC process and this letter.

First, the evaluation of the costs of PATH and the proposed alternatives are not being performed on a comparable basis that will allow a meaningful analysis of the costs. PATH is

based upon 2007 costs that we understand have been revised by PATH three times. The cost projections for the Liberty alternative are being independently evaluated by a consultant. We appreciate that PJM will consider, comment on, and make recommendations to the PJM Board about the results of this cost study and believe this will provide valuable information to PJM and the stakeholders. Nonetheless, if PJM does not require a comparable analysis of the PATH costs using the same assumptions as those used in evaluating the Liberty costs (or any other PATH alternative), the result will be a better understanding and validation of Liberty costs, but there will be no better understanding of how the PATH and Liberty costs compare, or whether the PATH costs are themselves reasonable.

Given this disparity, we do not believe TEAC can meaningfully review, compare, and recommend the Board approve one project over the other. For the Board to consider these projects on their merits, at the very least, the costs of these projects should be presented on a comparable basis so that the Transmission Planning Department, in the first instance, and the Board ultimately, can make a reasoned, fact-basis determination of the cost component of the analysis of which project should move forward. We requested that the PATH costs be evaluated on the same basis as Liberty – independently – but were told at the October 28 TEAC meeting that PJM would not honor this request. To ensure that these projects are evaluated on an “apples-to-apples” comparison, however, and to ensure that the process is transparent, we respectfully but fervently renew our request that PJM have the PATH costs independently evaluated.

Second, PJM has indicated that it will move forward with the Mt. Storm – Doubs rebuild. This rebuild, according to the TEAC meeting materials, could be completed by 2015. We believe this project should have been included in the RTEP analysis for this year or evaluated through retooling or a sensitivity study. We formally renew our request at the October 28, 2010

TEAC meeting for a sensitivity analysis for Mt. Storm – Doubs that includes an in-service date of 2015.

As you know, despite severe budget limitations, many of our offices attend and participate in TEAC meetings. We greatly appreciate the well-attended meeting arranged by Evelyn Robinson that allowed Steve to brief us about TEAC/transmission planning. While these efforts by PJM are to be commended, we continue to believe that our voices – representing the consumers who will ultimately pay for the billions of dollars of costs for these projects – are underrepresented and that PJM must be even more diligent in evaluating and addressing concerns regarding the costs of PATH or its alternatives.

Given the concerns we have expressed, we again respectfully request that either the PJM Planning Department be directed to immediately undertake (whether in-house or by an outside consultant) a study that will independently evaluate the costs of the PATH project (and other alternative projects) in the same manner as is being performed on the Liberty project. Only through a comparison of the results of these *two* studies will TEAC have the requisite information upon which to base its review and subsequent comments and recommendations.

We also request that:

(1) PJM run a sensitivity analysis of Mt. Storm – Doubs on the RTEP base case for this year;

(2) PJM consider the impacts on the consumers of electricity who will bear these costs by placing weight on the cost factor of the projects under consideration; and that,

(3) PJM does not permit PATH to go forward without a full Board of Managers evaluation of PATH and the alternatives. This evaluation should include the perspectives of stakeholders that represent the interests of the consumers who will pay for these transmission

projects and minimizing those cost impacts to the greatest extent possible while still meeting the goals of the TEAC process.

We understand that you intend to disclose at the November 10, 2010 TEAC meeting the identity of the projects which will be recommended to the Board for approval. We truly hope that these requests will be granted and that the issues identified herein, which are issues of enormous magnitude to the PJM transmission planning analysis, will be thoroughly vetted through TEAC.

As always, we appreciate your consideration of the issues we have raised and look forward to working productively with PJM in all our interests.

Very truly yours,

/s/ William F. Fields
William F. Fields
Senior Assistant People's Counsel
Maryland Office of People's Counsel

/s/ Chris Thomas
Christopher Thomas
Director of Policy
Citizens Utility Board of Illinois

JANINE MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Jody M. Kyler
Jody M. Kyler
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel

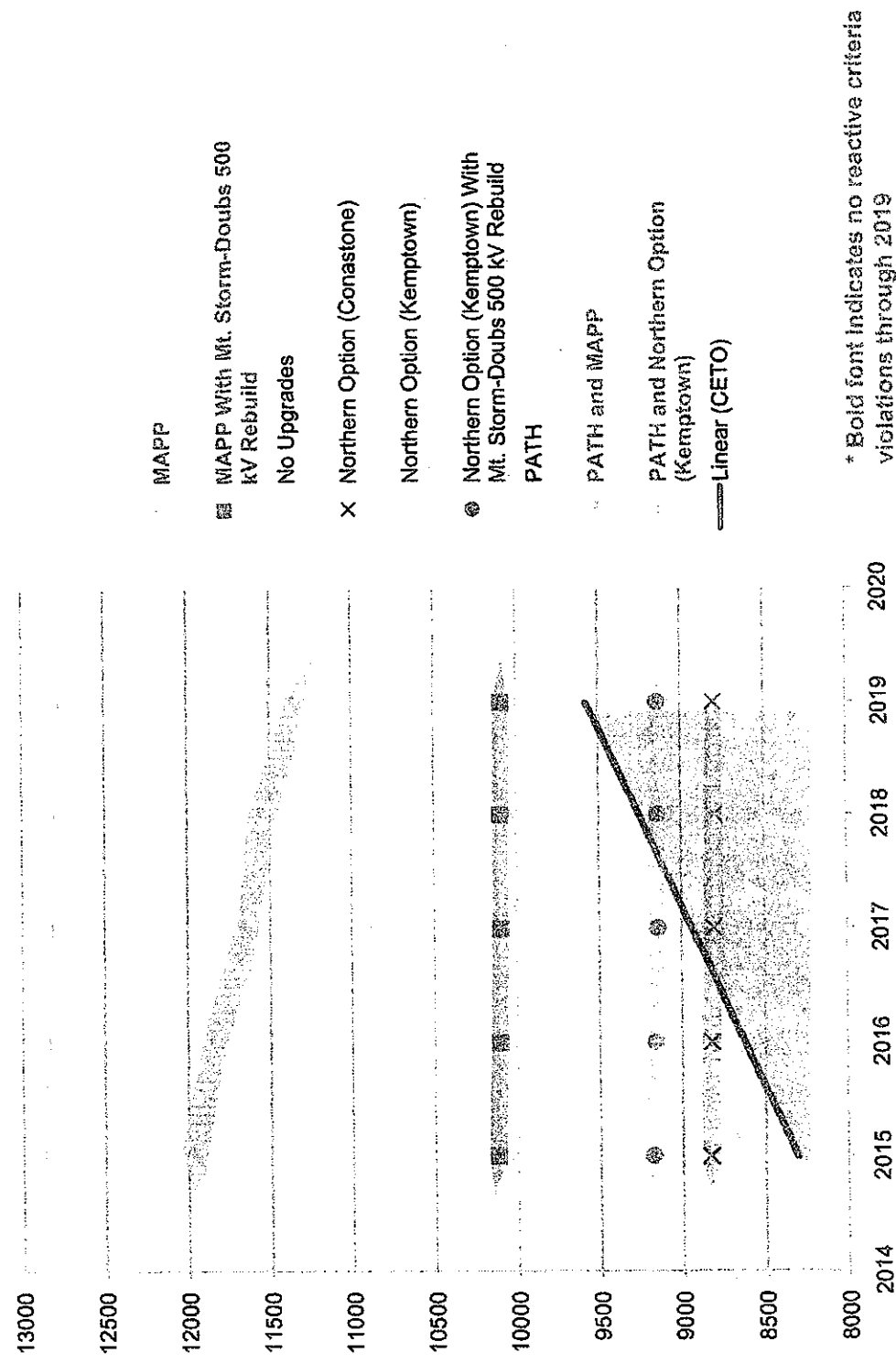
/s/ David A. Sade
Deputy Consumer Advocate
Consumer Advocate Division
Public Service Commission of
West Virginia

/s/ C. Meade Browder Jr.
C. Meade Browder Jr.
Senior Assistant Attorney General
Division of Consumer Counsel
Virginia Office of the Attorney General

/s/ Brian O. Edmonds, Esq.
Assistant People's Counsel
Litigation Policy Director
Office of the People's Counsel for
the District of Columbia

cc: Evelyn Robinson, Manager Regulatory/Legislative Affairs
Dave Anders, Manager Member Services

Compare Reactive Performance of Most Limiting Contingency for All Alternatives



* Bold font indicates no reactive criteria violations through 2019



Massachusetts



Rhode Island



Connecticut



Delaware



Maine



Maryland



New Hampshire



New Jersey



New York



Vermont



Virginia

July 12, 2010

The Honorable Harry Reid
Majority Leader
United States Senate
Washington D.C. 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington D.C. 20510

Dear Senator Reid and Senator McConnell:

We write to express our continued opposition to establishing and enacting new national transmission policy as encompassed in the American Clean Energy Leadership Act (S.1462). We believe it is important to reiterate our position on this critical issue in context of current discussions surrounding development of proposed energy legislation. It is not our intention to take a position on S.1462, but to express emphatically our concerns over the bill's transmission provisions and their adverse impact on a variety of important energy policy goals.

The build-out of the national transmission corridor implicit in S. 1462 is estimated to cost at least \$160 billion, the majority of which would be paid for by East Coast states, costing our ratepayers hundreds of dollars per year. In its current form, this legislation would harm regional efforts to promote local renewable energy generation, require our ratepayers to bear an unfair economic burden, unnecessarily usurp states' current authority on resource planning and transmission line certification and siting, and hamper efforts to create clean energy jobs in our states.

Fundamentally, we fail to see the value in reorganizing existing state and federal markets and authorities. In our regions, we are currently on track to meet, and in some cases exceed, state or potential federal renewable energy standards well into the future. Therefore, federal integrated resource planning or siting preemption simply is not needed. Several of our states already have significant land-based wind projects installed or underway and have established aggressive wind development goals. Moreover, according to DOE's National Renewable Energy Laboratory, the offshore wind energy potential off the Atlantic coast is estimated to be 620,000 megawatts, enough generation to meet the region's total electricity demand.

The transmission approach in S. 1462 threatens to undermine the significant renewable energy potential along the East Coast by subsidizing distant terrestrial wind resources which would stifle economic recovery and growth in the East by destabilizing competitive electricity market structures and increasing energy prices in regulated markets. It would also give the Fed



Energy Regulatory Commission (FERC) new resource planning authority, which would likely result in FERC imposing all transmission costs on ratepayers. In a deregulated market, generation facility owners and developers -- who stand to benefit the most from the construction of interstate transmission -- should contribute their fair share of the transmission costs.

Importantly, the Eastern Interconnection Planning Organizations (EIPC and EISPC) have established a comprehensive national stakeholder review of whether and how renewable energy can be integrated into the electric grid in a reliable and cost efficient manner. Policy should be informed by the results of this effort to address technical feasibility and economic issues, rather than precede it.

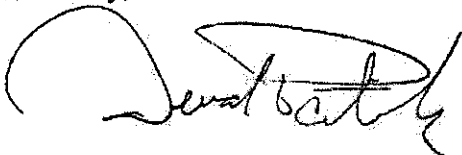
We support a strong federal-regional-state partnership that advances cost-effective renewable energy resources and technologies, diversifies our energy supply through coordination and cooperation, decreases greenhouse gas emissions and reduces our dependence on foreign sources of energy. In our view, legislation to promote renewable energy resources on a fair, equitable, and efficient basis should be consistent with state policy incentives and, at a minimum:

- Strengthen and extend voluntary renewable energy incentives that are sufficient, simple, transparent, and technology neutral;
- Encourage FERC to support and facilitate robust planning within regional transmission organizations that provides and promotes local renewable resource integration and preserves local oversight and review;
- Support Interior Secretary Salazar's efforts to promote America's offshore wind industry by expediting the permitting of offshore wind projects, provide tax incentives to enable the industry to create clean energy jobs and become cost competitive, and assist regional efforts to build offshore wind infrastructure, including vessels and port facilities.

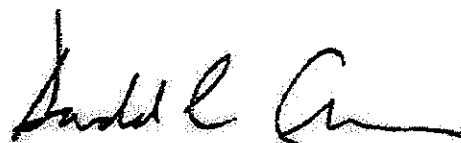
While our intent is not to express a position on the American Clean Energy and Security Act (H.R. 2454), the Transmission Planning Title (Subtitle F) describes a planning framework which maintains market competition in electricity markets, and encourages collaboration and coordination in cross regional transmission planning and integration in the eastern interconnection. Such a framework also provides sufficient incentives to develop needed transmission infrastructure without creating a framework for federal integrated resource planning or transmission subsidization.

Thank you for your attention to this critical issue.

Sincerely,




Governor Deval Patrick
Massachusetts



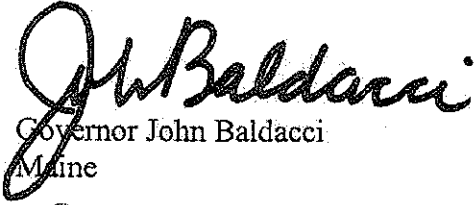
Governor Donald L. Carcieri
Rhode Island



Governor M. Jodi Rell
Connecticut



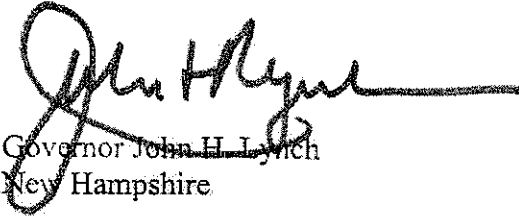
Governor Jack Markell
Delaware



Governor John Baldacci
Maine



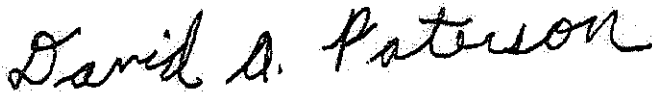
Governor Martin O'Malley
Maryland



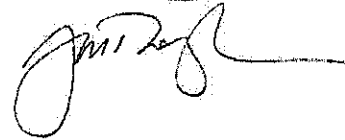
Governor John H. Lynch
New Hampshire



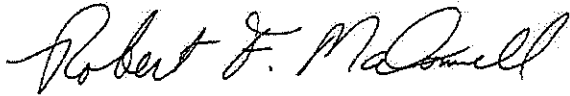
Governor Chris Christie
New Jersey



Governor David A. Paterson
New York



Governor James H. Douglas
Vermont



Governor Robert F. McDonnell
Virginia



MARTIN O'MALLEY
GOVERNOR

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410-974-3901
TOLL FREE: 1-800-811-8336

TTY USERS CALL VIA MD RELAY

December 18, 2009

Chairman Douglas R.M. Nazarian
Members, Maryland Public Service Commission

Dear Chairman Nazarian and Members of the Public Service Commission:

Working with key legislators, my Administration developed a rational reregulation proposal during the 2009 Session to take control of our energy future and ensure that all Marylanders have access to affordable, reliable and clean electricity. I proposed to reregulate Maryland's electricity markets going forward for the simple reason that deregulation has failed the vast majority of Marylanders who were promised lower rates and a reliable supply of electricity. While the legislation did not pass, I am convinced that we have no choice but to move forward to protect the interests of Maryland ratepayers.

For the reasons outlined below, I call on the Public Service Commission to use its existing statutory authority to:

- order new electricity generation to be built in Maryland;
- adopt a more balanced, diversified energy mix for residential and small commercial customers; and
- include clean, renewable power as part of the State's long-term energy strategy.

Such steps will go a long way in reducing price pressure, minimizing potential reliability concerns, and steering Maryland towards a more sustainable energy future.

The Failure of the Electricity Market

Residential customers in Maryland are still waiting for the benefits of electricity deregulation promised in 1999. Deregulation was supposed to reduce electricity prices by spurring the development of energy supply competition and the construction of new merchant power plants to meet consumer demand. These benefits never materialized. This is the reality of deregulation:



- Energy generation companies have not built the new generation necessary to meet the State's growing energy needs. Since 2003, the PSC has approved 11 permits for new power plants representing several thousand megawatts of potential new generating capacity, but less than 300 megawatts of new generation has come on line.¹ Most projects have been delayed or abandoned because of financial or commercial uncertainties.
- The lack of in-state electric generation has constrained supply, resulting in higher electricity prices, higher congestion and capacity charges, and future reliability concerns.
- A perverse system of capacity charges imposed by the regional transmission organization, PJM Interconnection has been created, adding hundreds of dollars to residential bills with little benefit. From 2008 to 2013, it is estimated that Maryland ratepayers will pay nearly \$5 billion in capacity charges to incentivize the private sector to build new generation – enough to pay for seven new power plants - but no new baseload generation will be built as a result of these incentives.
- With no new generation, Maryland's power plants continue to age, posing ongoing reliability concerns. Over 67% of the State's total summer peak generating capacity is 30 or more years old.²
- Maryland now imports almost 30% of its energy from nearby states, mostly from coal-fired power plants in West Virginia and the Ohio Valley.³ This negatively impacts the State's efforts to meet its climate goals and reduce greenhouse gas emissions.
- Since 1999, fewer than 5% of Maryland's 2.1 million residential customers have chosen retail electricity supplier offers, much of this consisting of green choice.⁴

Essential Elements in Taking Control of our Energy Future

Maryland cannot be held hostage to the failure of deregulation and broken energy markets. We can no longer afford to passively wait for competitive energy prices or pay higher incentives for merchant generation. Marylanders deserve affordable, reliable and clean energy. To achieve these goals, I respectfully urge the Public Service Commission to use its existing statutory authority to take the following specific steps:

- 1. Order new generation to be built in Maryland under a traditional, rate-regulated, cost-of-service basis.**

¹ Maryland Public Service Commission, Ten-Year Plan (2008-2017) of Electric Companies in Maryland, February 2009, page 10-11, Ten-Year Plan (2007-2016) of Electric Companies in Maryland, December 31, 2007, page 9, Ten-Year Plan (2006-2015) of Electric Companies in Maryland, December 2006, page 27.

² Maryland Public Service Commission, Ten-Year Plan (2008-2017) of Electric Companies in Maryland, February 2009, Page 6.

³ Ibid, approximately 20,500 Gwhrs imported or 29.1% of total sales, Page 5.

⁴ PSC Electric Choice Enrollment Monthly Report, Month ending October 2009, http://webapp.psc.state.md.us/Intranet/CaseNum/submit_new.cfm?DirPath=\\Coldfusion\Electric Choice Reports\\2009 Electric Choice Enrollment Reports&CaseN=Electric Choice Enrollment Monthly Reports

In a December 2008 report, the PSC estimated that 1,080 megawatts of new generation in the State will result in \$4 billion in rate reductions over 20 years (saving consumers an average of \$200 million annually).⁵ Such new generation would also help address Maryland's aging electricity fleet, improve reliability, reduce PJM capacity charges, and reduce our dependence on highly congested transmission lines. While I am encouraged that the proposal to build the Calvert Cliffs 3 nuclear power plant continues to move forward, the project still faces many hurdles and the State cannot and must not rely on this project alone to meet its future energy needs.

It is my firm belief, after discussions with the Maryland Energy Administration, my energy advisors and others in the industry, that there is ample evidence to support the PSC ordering new generation through this case. I hope the Commission will conclude it as quickly as possible, and no later than this summer, to help Maryland ratepayers.

2. Restructure how the PSC procures electricity for residential and small commercial customers.

The PSC should adopt a more balanced, and diversified strategy for procuring electricity for residential and small commercial customers that includes a mix of demand resources, transmission supply, regulated generation and market based short term, mid-term and long term generation contracts. A managed portfolio approach provides a hedge against future price spikes, thereby reducing price volatility. Such an approach complements an order to build new, regulated generation as such generation would provide a small portion of Maryland's overall electricity supply.

3. Ensure that at least a portion of the power procured as either regulated or under a long term contract be generated from renewable energy sources.

Renewable energy sources, such as wind and solar, can serve as a valuable hedge against expected increases in traditional fossil fuel commodity costs and help to achieve Maryland's renewable portfolio goals. As such, renewables are an essential element in a balanced, diversified energy supply. Long-term power purchase agreements or construction contracts for new, renewable generation would help reduce price volatility, expand generation capacity and accelerate the transition to a more diverse and sustainable energy future. Such a step also would go a long way towards aligning sound energy policy with the state's environmental and climate goals.

⁵ Maryland Public Service Commission, Final Report Under Senate Bill 400: Options for Re-Regulation and New Generation, December 16, 2008, Slides 32-33,
http://webapp.psc.state.md.us/Intranet/sitesearch/whats_new/MD%20PSC%20Slide%20Presentation_12.16.08_Re%20SB%20400%20Final%20Report.pdf

Chairman Douglas R. M. Nazarian
Members, Maryland Public Service Commission
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I believe the above actions will help restore confidence in Maryland's electricity supply and secure significant benefits for Maryland citizens and future generations. The costs of inaction, namely higher energy prices, the threat of future electricity shortages, increased reliance on out-of-state coal-fired power, and fuel price volatility, can no longer be ignored. I therefore urge the Commission to seize this opportunity to secure an affordable, reliable and sustainable energy future for our State.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin O'Malley". The signature is fluid and cursive, with a large initial "M" and "O".

Governor Martin O'Malley