

Sugarloaf Conservancy

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May 22, 2011

Governor Martin O'Malley
100 State Circle
Annapolis, Maryland 21401-1925

Subject: PATH

Dear Governor O'Malley:

The Sugarloaf Conservancy respectfully asks you, as defender of the rights of ratepayers in your state, to consider filing a Section 206 Complaint with the Federal Energy Regulatory Commission (FERC) asking that the Potomac-Appalachian Transmission Highline (PATH) PROJECT be considered abandoned. As demonstrated below, all evidence points toward justification of discontinuing the incentive to build, especially since the applicant/PJM has stated that the need for the PATH Project is more than 15 years away, if then.

PATH No Longer Part of RTEP: Abeyance vs. Abandonment

In Section 45 of the February 29, 2008 FERC order regarding the Potomac-Appalachian Transmission Highline, L.L.C. (Docket No. ER08-386-000 ORDER ACCEPTING AND SUSPENDING FORMULA RATES, SUBJECT TO CONDITIONS, AND ESTABLISHING HEARING AND SETTLEMENT PROCEDURES) it states, "We will grant PATH's request for recovery of 100 percent of prudently-incurred costs associated with abandonment of the Project, provided that the abandonment is a result of factors beyond the control of PATH, which must be demonstrated in a subsequent Section 205 filing for recovery of abandoned plant." Therefore, if no further action is taken, PATH will continue to profit from the project as approved. This is unfair to ratepayers -- the project should not be permitted to continue "abeyance" indefinitely. Rather, the applicant should be submitting a Section 205 for recovery of abandoned plant.

PJM issued a press release on February 28, 2011 (see attachment number 1) where they state: "The Board has decided to hold the PATH project in abeyance in its 2011 Regional Transmission Expansion Plan, (RTEP). The Board further directs the sponsoring Transmission Owners to suspend current development efforts on the PATH project, subject to those activities necessary to maintain the project in its current state.... This action, however, does not, at this time, constitute a directive by PJM to sponsoring Transmission Owners to cancel or abandon the PATH project."

All evidence, on the other hand, demonstrates abandonment is occurring. On February 28, 2011, PATH filed with the Virginia State Corporation Commission and the West Virginia Public Service Commission a Motion to Withdraw and on the same date filed with the Maryland Public Service Commission a Notice of Withdrawal. This was based on the above referenced letter. The motions in Virginia and West Virginia were accepted, with some conditions in Virginia's acceptance. In Maryland, Sugarloaf Conservancy, the Sierra Club and John and Terri Armand filed requests seeking that conditions be placed on the PATH filing. To date the Hearing Examiner/Commissioners have not ruled on this request.

Subsequently a number of comments were filed with FERC. In response to these Comments PATH sent a letter to FERC that included exaggerated and misleading statements (see attachment number 2), such as stating that, "PJM determined that the expected reliability violations that necessitated the PATH

Project had moved **several** (emphasis added) years into the future." PJM's planning window is fifteen (15) years; if it does not foresee need for PATH within its planning window, then stating that the need for the project is just "several years" in the future is misleading.

In Section 25 of the FERC order, it is stated, "Pursuant to Section 219, an applicant must show that "the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion." In pulling PATH from the 2011 RTEP, the applicant no longer seeks to show that reliability is ensured NOR that cost of delivered power will be reduced by the PATH project.

PATH states that, "the Commission has designated PJM to be the independent Regional Transmission Organization (RTO) in charge of the regional stakeholder planning process set forth in the PJM Operating Agreement and Open Access Transmission Tariff (OATT) approved by the Commission." PATH additionally claims that "PJM's decision to suspend the PATH Project provides no basis for the Commission to second guess PJM or to interfere with its ability to carry out its responsibilities as transmission planner for the PJM region..." If the Commission had given authority to PJM to set "rate incentives," then this logic might have some merit. However, FERC gave no such authority and in fact was the entity providing PATH the "rate incentive."

Incentives Test No Longer Met

In the Commission Determination, Section 31, it is stated, "We find the Project satisfies the requirements for a rebuttable presumption for eligibility for transmission incentives under section 219. As PATH noted in its filing, the Project has been vetted and approved as part of PJM's 2007 RTEP, which constitutes 'a fair and open regional planning process'. Moreover, there is substantial evidence that the Project ensures reliability by substantially reducing overloads on the current system and reduces the cost of delivered power by reducing congestion on 12 major 500 kV transmission routes in the region. Accordingly, we find that PATH has satisfied the first prong of the Commission's incentives test under section 219."

Further, Section 110 of the FERC order refers to the possibility of the situation that now exists. "Protesters state that based upon the Commission's assumption (see prior paragraph) that the inclusion of the Project as a baseline PJM RTEP project establishes a presumption of reliability/congestion relief benefits, the presumption that the Project provides such cost-effective benefits should not continue to apply if the Project exceeds its estimated costs or is delayed beyond the proposed 2012 in-service date. Protesters assert that reliability benefits diminish the longer the Project is delayed, and cost overruns offset any congestion benefits the Project might provide. Protesters state that in such circumstances, the predicate for granting incentives no longer holds true."

FERC's approval was based on the projected need for a project as part of PJM's 2007 RTEP. PJM's projection in that 2007 RTEP, that the project would be needed in 2012 has now been acknowledged to be incorrect by PJM. They have repeatedly extended the needed in-service date from 2012 to now sometime beyond 2026 which they admit is outside their own planning horizon. Not only was the claim that the line was needed in four years now seen to be incorrect, but by their own admission, the project need has moved out at least 15 years beyond PJM's forecast.

All of the North American Electric Reliability Corporation (NERC) violations alleged by PJM in the 2010 PATH proceedings can be resolved by merely rebuilding the Pruntytown - Mt. Storm - Doubs line and Dominion's proposed building of a single new Warren gas power plant, as stated in testimony on March 17, 2011, before the Virginia Hearing Examiner (see attachment number 3), by Richard Gary, Esquire, on behalf of PATH. The apparent reason for PJM's decision to hold this project in "abeyance" instead of canceling the project, given the facts above, can only be to support one of its members at the expense of the ratepayers in the PJM region.

Section 205 requirements, p. 10, Section 33 of the FERC order states, "The Commission also finds that the Project satisfies the nexus requirement for each of the incentives as set forth below. PATH is undertaking considerable risk and challenges to develop and construct the Project. It has demonstrated a nexus between those risks and challenges and the incentives that it has requested. Accordingly, we will grant those incentives subject to the conditions set forth below." Now that the project has been deemed unnecessary in the 15-year planning window, the risk has ended and should be satisfied. This prong also is no longer met as PATH has been excluded from the 2011 RTEP, in effect negating the nexus condition.

There is also the fact that the consideration of the National Interest Electric Transmission Corridor (NIETC) corridors have been suspended. PATH's attorney before the Virginia State Corporation Commission noted the problem: "...the 9th Circuit ruling that was previously handed down remanded the designation of the National Corridors back to DOE and that puts the validity of the Mid-Atlantic National Interest Corridors certainly in question." (Transcript of 3/17/11 VSCC hearing at Line 15, page 420) In fact, any incentives may be illegal at this point.

Sugarloaf Conservancy disagrees with the applicant's intention to continue charging ratepayers for the PATH Project. We believe your state ratepayers should not have to continue to pay for legal and promotional expenses for an unneeded transmission line. We believe it is within the scope of your office to challenge PJM and PATH's attempt to hold the PATH project in abeyance indefinitely. PATH's letter to FERC (see attachment number 2) states unequivocally, "Thus, the PATH Formula Rate and Protocols will continue to apply during the Project's suspension." It is shameful that they are allowed to use FERC's 2008 Order allowing them a 14.3% incentive to pay for attorneys to write letters to FERC, in essence demanding that they be entitled to continue this exorbitant rate guarantee.

Again, The Sugarloaf Conservancy respectfully asks you to consider a Section 206 Complaint Filing with FERC asking that the PATH PROJECT be considered abandoned, and demanding that all incentives be limited to those allowed under the abandonment provisions rather than leave the current incentive formula rate indefinitely for a project that has no in service date, no defined need and for which they are not seeking permits.

Our opinion that ratepayers should not have to pay for an unneeded line is shared by Jeff Davis of the Missouri Public Service Commission. He writes the following in an article published in an industry magazine, *Transmission & Distribution World* (see attachment number 4).

"FERC's repudiation of the 'beneficiaries pay' doctrine along with all the 'candy' incentives they are offering have created a modern-day gold rush to the transmission sector. Unfortunately, all the gold in this mine winds up in the hands of the transmission owners who get paid handsomely to build assets they end up owning. Consumers won't even realize they have gotten 'the shaft' until a few years from now when their electric bills start going up to pay for these projects."

Sugarloaf Conservancy appreciates your due consideration of this request and would be happy and willing to discuss any questions you may have.

Very truly yours,

Douglas S. Kaplan
President