COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION OF

PATH ALLEGHENY VIRGINIA TRANSMISSION CORPORATION

CASE NO. PUE-2009-00043

For certificates of public convenience
and necessity to construct facilities:
765 kV Transmission Line through
Loudoun, Frederick, and Clarke Counties

NOTICE OF PARTICIPATION

The Sierra Club respectfully submits this notice of participation as a respondent pursuant to 5 VAC § 5-20-80. Sierra Club and its members will be directly harmed if the proposed Potomac Appalachian Transmission Highline ("PATH") is approved. Because PATH will help coal-fired power plants to generate significantly more electricity, it will increase dangerous air pollution, including emissions of greenhouse gases that are responsible for global warming. At the same time, it will increase reliance on coal with all of the attendant environmental harms cause by coal mining and coal combustion waste. None of these impacts can be justifies as PATH will not serve any genuine power needs.

FACTUAL BACKGROUND

PATH is a joint-venture of Allegheny Energy ("Allegheny") and American Electric Power ("AEP"). The proposed project entails construction of a 765-kilovolt transmission line that would begin at the Amos Substation in Putnam County, West Virginia, near the John E. Amos coal plant, and extend approximately 275 miles to the proposed Kemptown Substation

southeast of New Market, Maryland. The proposal also includes a new substation in northwest Hardy County, West Virginia.

PATH's intended purpose is to bring coal-fired power from western states within the PJM region to the east coast.[1] In 2005, the Federal Energy Regulatory Commission ("FERC") convened a technical conference to answer the express question: "What additional transmission would be needed to get 5,000 MW [megawatts] of additional coal-fired generation to eastern markets?" In answer to that question, Allegheny and AEP proposed PATH as well as the Trans-Allegheny Interstate Line ("TrAIL"), which also is slated to run through Virginia. If PATH is built, industry anticipates that it will "help[] increase the amount of low-cost, coalfired generation dispatched into the regional grid." Letter from Bill Raney, President, West Virginia Coal Association to Sandra Squire, West Virginia Public Service Commission (May 18, 2009). As industry has been quick to recognize, increased coal generation in this region:

> . . . helps preserve the future of existing power plants already on line, justifies additional investment in these plants and increases the likelihood that new, clean-coal electric fired generation will be constructed in the state. Additionally, the activation of this new line could also lead to an increase in West Virginia coal production . . .

Id. In short, PATH will increase reliance on coal in the PJM region — and thus exacerbate immense existing problems caused by coal mining, coal combustion, and disposal of coal combustion waste.

Increased coal-fired power production, particularly at aging coal plants such as the John E. Amos plant, which is ranked as one of the dirtiest coal plants in America based on its high mercury, sulfur dioxide ("SO_2"), and carbon dioxide ("CO_2") emissions, will translate into

[1] PJM is regional transmission organization that administers the transmission grid in Virginia, West Virginia, Ohio, Pennsylvania, Maryland, Delaware, the District of Columbia, New Jersey and portions of Illinois, Indiana, Michigan, Kentucky, Tennessee, and North Carolina.

dramatic increases in harmful air pollution, including global warming pollution, from dozens of old coal-fired plants that are operating well below maximum capacity in the PJM region.

In addition, increased coal use may well translate into expanded mining operations in Appalachia, resulting in further devastation from mountaintop removal. Undoubtedly, ramping up production at coal plants will produce millions of tons of coal combustion waste laden with toxic heavy metals — further exacerbating the country's largest-scale waste problem.

Compounding these severe environmental costs, PATH would inflict considerable economic costs on ratepayers. The estimated capital cost of this project is $1.9 billion, which will be passed on to ratepayers even before the new transmission lines are in service. On top of this rate increase, electric bills will reflect a 14.3 percent return on equity for PATH's proponents, as well as start-up business and administrative costs. Ultimately, if PATH is abandoned for reasons that are beyond the control of the project proponents, ratepayers still will be obliged to cover the sunk development and construction costs.

I. Sierra Club Has a Substantial Interest in these Proceedings

The Sierra Club, founded by John Muir in 1892, is among the oldest environmental organizations in the United States and is dedicated to the preservation of America's natural heritage. The Sierra Club is a nonprofit, California corporation with approximately 750,000 members, including approximately 15,298 members in Virginia and 15,923 members in West Virginia and Maryland.

The Sierra Club and its members have a substantial interest in these proceedings. Several Sierra Club members in Virginia, West Virginia, and Maryland live and own property directly adjacent to the new proposed lines. Many Sierra Club members are ratepayers who would face

higher electricity bills in the event PATH is approved. Many more Sierra Club members will be harmed by increased air pollution that would result from PATH.

More broadly, the Sierra Club has a core institutional interest in PATH. For decades, the Sierra Club has worked to clean up air pollution from coal-fired power plants, and in recent years, the Sierra Club has devoted substantial resources to reducing greenhouse gas emissions from the coal-fired power sector. Further, the Sierra Club is actively engaged in national efforts to reduce coal use in order to stop devastating coal-mining practices and irresponsible disposal of coal combustion waste. By promoting increased use of coal-fired power, these new transmission lines would undercut the Sierra Club's efforts to reduce air pollution, combat global warming, and address the exceedingly destructive life-cycle environmental impacts associated with coal-fired power.

II. Sierra Club Requests that this Commission Deny the Application to Build PATH

The Sierra Club respectfully requests that this Commission deny PATH Allegheny Virginia Transmission Corporation's ("PATH Allegheny") application for a Certificate of Convenience and Necessity for the PATH project.

III. The Applicant Cannot Make the Requisite Showing of Convenience and Necessity

PATH Allegheny cannot make a credible showing of convenience and necessity in these proceedings as the law requires. *See* Va. Code §§ 56-46.1, 56-265.2. In order to obtain the requisite approvals to build this major transmission project, PATH Allegheny must establish that "the line is needed and that the corridor or route the line is to follow will reasonably minimize adverse impact on the scenic assets, historic districts and environment of the area concerned." *Id.* § 56-46.1(B); *see also id.* § 56-46.1 (providing that the Commission "shall give consideration to the effect of that facility [including a transmission facility] on the environment"). To make

this showing, PATH must present persuasive evidence. As the governing statutory provision makes clear: "In making the determinations about need, corridor or route, and method of installation, the Commission shall verify the applicant's load flow modeling, contingency analyses, and reliability needs presented to justify the new line and its proposed method of installation." *Id.*

Here, PATH Allegheny has not — and cannot — demonstrate a legitimate need for the PATH project. Nor can the serious environmental harms threatened by PATH be avoided or mitigated as the law requires.

A. PATH Is Not Needed To Increase Reliability

First, PATH Allegheny wrongly contends that PATH is needed to improve reliability. Yet the purported reliability violations that PATH proposes to address are derived from analytical studies that pre-date the significant economic downturn that started in the Fall of 2008. Current load demand forecasts do not justify construction of the PATH line.

Furthermore, PATH is premised on projections that inflated demand in the first instance. PJM modeling and testing is far more conservative than what the North American Electric Reliability Corporation (NERC) requires.

In any case, PJM's Regional Transmission Expansion Plan ("RTEP"), which purports to justify PATH, is not credible in light of significant changes to the proposed project and its allegedly required in-service date. When PATH initially was approved in PJM's 2007 RTEP, it involved a different line route, a different substation, and different construction than the

currently-proposed project,[2] and the "required in-service date" for the PATH line has been moved back at least twice.[3]

Finally, the threshold premise that long-distance, high-voltage lines will increase reliability is suspect. In reality, additional reliance on long-distance transmission on high-voltage lines is likely to increase the risk of large-scale black-outs and prolong recovery time in the event of outages.

B. There Are Viable Alternatives to Meet Electricity Demand

In an effort to promote coal-fired power, PJM and PATH Allegheny have failed to consider viable alternatives. Even if PJM were correctly forecasting reliability violations — which it is not — these violations could be avoided at far lower cost to both ratepayers and the environment by upgrading existing transmission lines and facilities, either alone or in combination with demand side management techniques, energy efficiency and conservation.

C. PATH Would Undermine State Energy Goals

This proposed expenditure of $1.9 billion dollars on an unnecessary and environmentally destructive high-voltage electric transmission line diverts scarce funds that otherwise would be available to promote Virginia's energy efficiency goals. In April 2007, the General Assembly passed a resolution providing:

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[2] As originally proposed, the project included: a 765-kV transmission line that ran from the Amos substation near St. Albans, West Virginia, to the Bedington substation near Martinsburg, West Virginia; and twin-circuit 500-kV lines from Bedington to the proposed Kemptown substation southeast of Frederick, Maryland. On October 17, 2008, Potomac-Appalachian Transmission Highline, LLC announced a "reconfiguration" of the PATH project to the currently-proposed PATH project.

[3] Initially, as described in PJM's 2007 RTEP, the PATH line was "required" by June 2012. Then, on October 31, 2008, the Company announced that the required in-service date was pushed to June, 2013. Earlier this year, on April 15, 2009, the Company announced that the required in-service date could be delayed for yet another year — until June, 2014.

> That it is in the public interest, and is consistent with the energy policy goals in § 67-102 of the Code of Virginia, to promote cost-effective conservation of energy through fair and effective demand side management, conservation, energy efficiency, and load management programs, including consumer education. These programs may include activities by electric utilities, public or private organizations, or both electric utilities and public or private organizations. The Commonwealth shall have a stated goal of reducing the consumption of electric energy by retail customers through the implementation of such programs by the year 2022 by an amount equal to ten percent of the amount of electric energy consumed by retail customers in 2006.

PATH not only diverts scarce resources away from the achievement of this important goal, it will make the goal very difficult, if not impossible, to achieve.

D. PATH Would Result In Unacceptable Environmental Harms

Finally, PATH's environmental impacts should preclude issuance of a certificate of convenience and necessity. If built, the PATH line will allow coal plants in West Virginia, Pennsylvania, Ohio and Kentucky, some of the oldest and dirtiest coal plants in the country, to increase output and pollution accordingly. That pollution will travel east, exacerbating mercury contamination, ground-level ozone formation, regional haze, acid rain, fine particulate pollution and, as a result, asthma and other respiratory illnesses, heart attacks, and premature deaths.

Significant increased in CO_2 emissions also will hasten climate change. In Virginia, global warming is projected to contribute to more severe storms and droughts, which already are occurring. By 2100, as a result of unchecked greenhouse gas emissions, sea level rise along Virginia's 3,300 miles of coast will destroy private property along with marshes and other critical wildlife habitat. EPA estimates that it will be necessary to spend $1.2 billion in the next century to compensate for a possible 20-inch sea level rise.

This estimate does not account for damage to fisheries from global warming. Warmer water temperatures are expected to cause perilous declines in trout populations in the Appalachian region and a 90 percent loss of habitat for brook trout in headwater streams. In

addition, warmer water would encourage the spread of diseases among oysters in the Chesapeake Bay, threatening the state's valuable oyster fishery.

Most immediately, increased coal use in the PATH region would create an incentive for coal companies to scale up mountaintop removal mining operations in Appalachian. Already, this practice tragically has transformed the landscape and historically rich natural system in West Virginia and Virginia, leveling and deforesting an area the size of Delaware and burying an estimated 1,200 miles of streams. Once coal-fired power is held to account for these extreme environmental costs, it can no longer be considered "cheap."

CONCLUSION

For all of the foregoing reasons, the Sierra Club seeks to participate as a respondent in these proceedings.

Respectfully submitted on this 27th day of July, 2009,

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**Motion for Pro Hac Vice Admission Pending*