

ATTACHMENT 2

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Potomac-Appalachian Transmission Highline, LLC) Docket No. ER08-386-000

**EXPLANATORY STATEMENT IN SUPPORT OF THE SETTLEMENT AGREEMENT
AND OFFER OF SETTLEMENT**

As required by Rule 602(c)(1)(ii) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(c)(1)(ii) (2008), Potomac-Appalachian Transmission Highline, LLC ("PATH"), on behalf of its operating companies PATH West Virginia Transmission Company, L.L.C. ("PATH-WV") and PATH Allegheny Transmission Company, L.L.C. ("PATH-Allegheny"), Old Dominion Electric Cooperative ("ODEC"), American Municipal Power-Ohio, Inc. ("AMP-Ohio") and Blue Ridge Power Agency ("BRPA") (each a "Settling Party" and collectively the "Settling Parties") hereby submits this Explanatory Statement to accompany the attached Settlement Agreement and Offer of Settlement ("Settlement"). This Explanatory Statement is not intended to alter any of the provisions of the Settlement, but is for the purpose of providing further information on the provisions of the Settlement. In the event of potential conflict between this Explanatory Statement and the Settlement, the latter shall be deemed controlling. The Settlement provides that unless defined otherwise, capitalized terms in the Settlement shall have the meaning provided in the Formula Rate Implementation Procedures and Protocols ("Protocols") set forth in the revised tariff sheets shown in Exhibit No. 1 to the Settlement.

I. PROVISIONS OF THE SETTLEMENT

A. Article I: Procedural Background and Scope of Settlement

Article I of the Settlement describes the procedural background and scope of the Settlement. On December 28, 2007, PATH filed proposed tariff sheets with the Commission, pursuant to Section 205 of the Federal Power Act (“FPA”),¹ for inclusion within the Open Access Transmission Tariff (“OATT”) administered by PJM Interconnection, L.L.C. (“PJM”). The tariff sheets sought to implement a transmission cost of service Formula Rate for a proposed transmission project (“PATH Project”) and to implement incentive rate authorization for the PATH Project. PATH requested that the Commission affirm or otherwise grant its proposed incentive rate treatments pursuant to Order No. 679.²

On February 29, 2008, the Commission accepted the proposed Formula Rate subject to conditions and suspended it for a nominal period, to become effective on March 1, 2008.³ The Commission granted PATH’s requested incentive rate treatment for the PATH Project subject to certain modifications. Finally, the Commission resolved certain issues by summary disposition and set other issues related to PATH’s proposed tariff sheets, including the Formula Rate and Protocols, for hearing and settlement judge procedures. Several parties filed requests for rehearing that remain pending before the Commission.

Judge Judith A. Dowd was appointed Settlement Judge. Judge Dowd conducted several settlement conferences at which the Settling Parties, along with other parties and the Commission Staff, engaged in extensive settlement negotiations in an effort to resolve the issues set for hearing in this proceeding, including changes to the Formula Rate and Protocols filed by

¹ 16 U.S.C. § 824d (2000).

² *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, order on reh’g, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), order on reh’g, 119 FERC ¶ 61,062 (2007).

³ *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188 (2008), reh’g pending.

PATH. These discussions culminated in this Settlement which resolves all issues set for hearing. Drafts of the Settlement and this Explanatory Statement were distributed to Commission Staff and all intervenors in the proceeding. Upon Commission acceptance or approval of the Settlement, all issues set for hearing in this proceeding will be deemed resolved in accordance with and subject to the terms of the Settlement. To the extent that pending requests for rehearing of the Hearing Order seek rehearing of issues not set for hearing, the Settlement does not resolve or affect such rehearing requests.

B. Article II: Formula Rate, Protocols and Inputs for 2008 Rate Year

Article II of the Settlement provides that the annual transmission revenue requirement for the PATH Project shall be determined in accordance with the agreed-upon revised tariff sheets for Attachment H-19, Attachment H-19A and Attachment H-19B to the PJM OATT as set forth in Exhibit No. 1 (clean format) and Exhibit No. 2 (redlined format) to the Settlement.⁴ Until changed pursuant to a FPA Section 205 or Section 206 filing, the annual transmission revenue requirement, including the True-up Adjustment, for the PATH Project shall be determined in accordance with the agreed-upon revised tariff sheets.

Subject to rehearing of issues not set for hearing, the revised tariff sheets in Exhibit No. 1 to the Settlement are to become effective as of March 1, 2008, without further proceedings or compliance filings. The revised tariff sheets contained in Exhibit No. 1 are to be incorporated into the PJM OATT and posted on the PJM website promptly following the Commission's approval of the Settlement.

Exhibit No. 3 to the Settlement contains a descriptive list of changes to the Formula Rate agreed upon by the Settling Parties and reflected in the revised tariff sheets.

⁴ Attachment H-19A contains the agreed-upon Formula Rate and attachments. Attachment H-19B contains the agreed-upon Protocols.

Subject to rehearing of issues not set for hearing and subject to the True-up Adjustment set forth in the Protocols, the populated Formula Rate set forth in Exhibit No. 4 to the Settlement establishes the agreed-upon inputs and Projected Transmission Revenue Requirement for the 2008 Rate Year, *i.e.*, the period from March 1, 2008 through December 31, 2008. The populated Formula Rate set forth in Exhibit No. 4 is to be posted on the PJM website promptly following the Commission's approval of the Settlement.

Exhibit Nos. 5 and 6 to the Settlement are templates for historical Operations & Maintenance ("O&M") reports for PATH-WV and PATH-Allegheny, respectively. PATH's Annual Updates shall complete these templates with historical O&M data for the Rate Year under review in such Annual Update.

Exhibit Nos. 7 and 8 to the Settlement are templates for historical Capital Investment reports for PATH-WV and PATH-Allegheny, respectively. PATH's Annual Update shall complete these templates with historical Capital Investment data for the Rate Year under review in such Annual Update.

Exhibit Nos. 9 and 10 to the Settlement are templates for Capital and O&M budgets for PATH-WV and PATH-Allegheny, respectively. During the Discovery Period and subject to the terms of a confidentiality agreement or protective order, PATH shall provide to an Interested Party who has agreed in writing to such confidentiality agreement or protective order these Capital and O&M templates completed with data derived from the budgets for the forthcoming Rate Year.

The Settlement does not require PJM to assess any refunds or surcharges in connection with its assessment of charges for the 2008 Rate Year. However, charges assessed for the 2008

Rate Year are subject to the True-up Adjustment set forth in the Protocols and subject to rehearing of issues not set for hearing.

C. Article III: Interim Rates and Supplemental Initial Annual Update

Article III of the Settlement provides that PATH is to file, contemporaneous with the filing of the Settlement, a request for authorization to implement the revised Formula Rate and Protocols on an interim basis pending approval of the Settlement. Article III also requires PATH to file a supplemental informational filing to its Initial Annual Update submitted on September 2, 2008. The supplemental informational filing is for the limited purpose of: i) providing the most recent estimate of the Projected Transmission Revenue Requirement for the 2009 Rate Year, and ii) applying inputs for such estimate to the revised Formula Rate.

D. Article IV: Non-severability and Conditions Precedent to Effectiveness of Settlement

Article IV provides that the provisions of the Settlement are not severable and will not become effective unless and until the Commission issues a Final Order (as defined in Section 4.3) accepting or approving the Settlement as to all of its terms and conditions without modification. Article IV states that the Settlement becomes effective when accepted or approved by the Commission without modification or condition through a Final Order. It provides that an order of the Commission becomes a "Final Order" as of the date rehearing is denied by the Commission, or if rehearing is not sought, the day following the date by which any request for rehearing would have been required to be filed with the Commission. Article IV further specifies as a condition that the Commission will grant PATH such waivers of any otherwise applicable regulations as necessary to effectuate all the provisions of the Settlement. This includes the Commission providing that all rate tariff filings made pursuant to the Settlement will be permitted to become effective as of the date contemplated by the Settlement, without

suspension and without conditions other than those specified in the Settlement. Finally, Article IV provides that no Settling Party is bound or prejudiced by any part of the Settlement unless and until it becomes effective in the manner provided by Article IV.

E. Article V: Reservations

Article V provides that the Settlement is provided under Rule 602 and is privileged, inadmissible as evidence in any state or federal proceeding, and of no effect unless it is approved and made effective as to all of its terms and conditions without modification in accordance with Article IV. Article V provides further that if the Settlement does not become effective, it is deemed to be withdrawn, shall not be considered to be part of the record in this proceeding, and shall be null and void and of no force and effect, unless all of the Settling Parties otherwise agree in writing to such modification or condition. Under Article V, if the Commission does not accept or approve the Settlement, it shall not be binding on any of the Settling Parties, shall not obligate the Settling Parties to further negotiations, other than good faith discussions to consider whether the Commission's conditions or modifications are acceptable, and the Settling Parties are deemed to have reserved all of their rights and remedies, including the right to proceed to hearing on all issues properly raised in the proceeding. Finally, Article V provides that the Settlement may not be used as precedent or referenced in any state or federal proceeding and that it does not constitute a "settled practice" as the term is interpreted in *Public Service Commission of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980). The Settlement is a negotiated settlement and, except as explicitly set forth therein, no Settling Party shall be deemed to have approved, accepted, agreed or consented to any principle or position in this proceeding, or to have prejudiced positions taken or that may be taken in this or any other proceedings.

F. Article VI: Modifications and Standard of Review

Article VI provides that nothing in the Settlement shall be construed as affecting in any way the right of PATH unilaterally to make an application of any type to the Commission to modify prospectively, in whole or in part, the Formula Rate or Protocols under Section 205 of the FPA and pursuant to the Commission's Rules, or to make any other filing under Section 205 of the FPA, or to oppose any filing made or action taken under Section 206 of the FPA.

Similarly, Article VI provides that nothing in the Settlement shall be construed as affecting in any way the right of any other Settling Party unilaterally to make an application of any type to the Commission to modify prospectively, in whole or in part, the Formula Rate or Protocols under Section 206 of the FPA and pursuant to the Commission's Rules or to make any other filing under Section 206 of the FPA, or to oppose any filing made under Sections 205 or 206 of the FPA or for declaratory order.

Article VI provides that nothing in the Settlement shall be construed as affecting in any way the right of the Commission acting *sua sponte* to modify prospectively, in whole or part, the Formula Rate or Protocols under Section 206 of the FPA. The standard of review the Commission shall apply when acting on proposed modifications to the Settlement or to the tariff sheets submitted as part of this Settlement shall be the "just and reasonable" standard of review rather than the "public interest" standard of review. Changes proposed by a non-party or by the Commission acting *sua sponte* shall also be subject to the "just and reasonable" standard of review.

G. Article VII: Miscellaneous

Article VII of the Settlement states that the making of the Settlement and its acceptance or approval by the Commission shall not in any respect constitute an admission by any Settling Party, or a determination by the Commission, that any allegation or contention in these

proceedings, or concerning any of the foregoing matters, is true or valid. Article VII also states that discussions among the Settling Parties were conducted with the explicit understanding and agreement that all offers of settlement and discussions relating thereto are and shall be privileged, shall be without prejudice to the positions of any Settling Party or participant presenting any such offer or participating in any such discussion, and are not to be used in any manner in connection with this proceeding or otherwise.

Each Settling Party agrees to cooperate with and support, and not take any actions inconsistent with: (i) the filing of the Settlement with the Commission, and (ii) efforts to obtain Commission acceptance or approval of the Settlement.

No provision of the Settlement may be waived except through a writing signed by an authorized representative of the waiving Settling Party. Waiver of any provision of the Settlement shall not be deemed to waive any other provision and shall not be deemed a waiver by any other Settling Party.

The Settlement is binding upon and for the benefit of the Settling Parties and their successors and assigns.

Each person executing the Settlement on behalf of a Settling Party represents and warrants that he or she is duly authorized and empowered to act on behalf of, and to authorize the Settlement to be executed on behalf of, the Settling Party that he or she represents.

Section headings are used in the Settlement solely for convenience of reference and shall not be used to interpret or modify the terms of the Settlement. Finally, the Settlement reflects that it may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

II. POLICY CONSIDERATIONS OF THE SETTLEMENT

A. What are the issues underlying the settlement and what are the major implications?

The Settlement resolves all issues set for hearing in this proceeding. Under the Settlement, the Settling Parties have agreed to the PATH Formula Rate and the Protocols, as set forth in Exhibit Nos. 1 and 2 to the Settlement, subject to rehearing of the Hearing Order. The Settling Parties have also agreed to the initial inputs to the Formula Rate for Rate Year 2008, subject to the True-up Adjustment of the Formula Rate and Protocols and subject to rehearing of the Hearing Order. These issues and the Settlement's resolution of them raise no major policy issues for the Commission. The Settlement is fair, reasonable, and in the public interest, and should be approved by the Commission.

B. Whether any of the issues raise policy implications?

The Settlement does not raise any policy implications.

C. Whether any other pending cases will be affected?

No other pending cases will be affected by the Settlement, except that the Settlement requires PATH to file a supplemental informational filing to its Initial Annual Update submitted on September 2, 2008 in Docket No. ER08-1492-000. The supplemental informational filing will be for the limited purpose of: 1) providing the most recent estimate of the Projected Transmission Revenue Requirement for the 2009 Rate Year, and (ii) applying inputs for such estimate to the revised Formula Rate.

D. Whether the settlement involves issues of first impression, or if there are any previous reversals on the issues involved?

The Settlement does not involve any issues of first impression. The Settling Parties are not aware of any reversals of the issues involved.

E. Whether the proceeding is subject to the just and reasonable standard or whether there is *Mobile-Sierra* language making it the standard, i.e., the applicable standards of review?

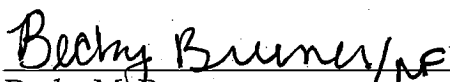
The standard of review for any modifications to the Settlement set forth in a written amendment executed by the Settling Parties shall be the "just and reasonable" standard. The Settlement further provides that modifications proposed by a non-party, or the Commission acting *sua sponte*, shall be subject to the just and reasonable standard of review.

III. CONCLUSION

The Settlement resolves all issues set for hearing in this proceeding and is consistent with the Commission's policies encouraging settlements. The Settlement resolves all issues set for hearing without protracted litigation, and is fair, reasonable and in the public interest.

Accordingly, Settling Parties request that the Commission approve the Settlement without condition or modification, and apply the terms and conditions of the Settlement as an offer of settlement binding upon all non-signatory parties.

Respectfully submitted,



Becky M. Bruner
Thomas C. Orvald
Natara G. Feller
Pillsbury Winthrop Shaw Pittman
2300 N Street, N.W.
Washington, D.C. 20037

Kathryn Patton
Deputy General Counsel
Allegheny Energy, Inc.
800 Cabin Hill Drive
Greensburg, PA 15601

Kevin F. Duffy
Assistant General Counsel
Monique Rowtham-Kennedy
Senior Counsel
American Electric Power Service Corporation
1 Riverside Plaza
Columbus, Ohio 43215

On behalf of Potomac-Appalachian Transmission Highline, LLC, on
behalf of its operating companies PATH West Virginia Transmission
Company, L.L.C. and PATH Allegheny Transmission Company, L.L.C.

David R. Straus
Thompson Coburn LLP
1909 K Street, N.W. Suite 600
Washington, D.C. 20006-1167
Tel: (202) 585-6921
Fax: (202) 508-1027
On behalf of American Municipal Power-Ohio, Inc.

Christopher G. Mackaronis
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, N.W.
8th Floor, West Tower
Washington, DC 20007-5201
Tel: (202) 342-0800
Fax: (202) 342-0807
cgm@bbrslaw.com
On behalf of Blue Ridge Power Agency

John E. McCaffrey
Stinson Morrison Hecker LLP
1150 18th Street, N.W.
Suite 800
Washington, DC 20036
Tel: (202) 728-3013
Fax: (202) 572-9976
jmccaffrey@stinson.com
On behalf of Old Dominion Electric Cooperative

ATTACHMENT 3

DRAFT ORDER APPROVING SETTLEMENT

[DATE]

Pillsbury Winthrop Shaw Pittman LLP
Attn: Becky M. Bruner
2300 N Street, NW
Washington, DC 20037

Re: Potomac-Appalachian Transmission Highline, LLC
Docket No. ER08-386-000
Settlement Agreement and Offer of Settlement

Dear Ms. Bruner:

On December 5, 2008, you filed on behalf of Potomac-Appalachian Transmission Highline, LLC ("PATH") and on behalf of its operating companies PATH West Virginia Transmission Company, L.L.C. and PATH Allegheny Transmission Company, L.L.C., Old Dominion Electric Cooperative, American Municipal Power-Ohio, Inc. and Blue Ridge Power Agency (collectively the "Settling Parties") a Settlement Agreement and Offer of Settlement ("Settlement") and accompanying materials pursuant to Rule 602 of the Commission's Rules of Practice and Procedure. The Settlement resolves the outstanding issues in the above-referenced proceeding.

Initial comments on the Settlement were filed by the Commission's Trial Staff on [DATE], and [PARTY] on [DATE]. **[No Reply comments were filed.]** On _____, the Settlement Judge certified the Settlement to the Commission as uncontested.

The Settlement is fair and reasonable and in the public interest, and is hereby approved. The Offer of Settlement is hereby accepted and made applicable to and binding upon all parties to this proceeding. Approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in any other proceeding. The Commission retains the right to investigate the rates, terms, and conditions under the applicable standard of review set forth in Article VI of the Settlement.

This letter terminates Docket No. ER08-386-000 and all subdockets.

By direction of the Commission.

[Seal]

Kimberly D. Bose
Secretary