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December 10, 2008

*VIA HAND DELIVERY*

Ms. Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First St. NE  
Washington DC, 20426

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

Dear Ms. Bose:

In accordance with Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”),<sup>1</sup> 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, American Municipal Power-Ohio, Inc. and Blue Ridge Power Agency (collectively the “Settling Parties”) hereby submits for filing a Settlement Agreement and Offer of Settlement (“Settlement”) and related materials that would resolve the issues in the captioned proceeding. All of the parties in the proceeding, including those not listed above, have indicated that they do not intend to file comments in opposition to the Settlement.<sup>2</sup>

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<sup>1</sup> 18 C.F.R. § 385.602 (2008).

<sup>2</sup> These parties include Commission Trial Staff, the Maryland Office of People’s Counsel, North Carolina Electric Membership Corporation, the Consumer Advocate Division of the Public Service Commission of West Virginia, the Pennsylvania Office of Consumer Advocate, the New Jersey Division of Rate Counsel and Virginia Office of the Attorney General's Division of Consumer Counsel.

On December 28, 2007, PATH filed proposed tariff sheets for inclusion in the Open Access Transmission Tariff administered by PJM Interconnection, L.L.C. pursuant to Section 205 of the Federal Power Act ("FPA").<sup>3</sup> In an order issued on February 29, 2008, the Commission accepted, subject to nominal suspension, refund, and conditions, the proposed formula rate.<sup>4</sup> On March 6, 2008, the Chief Administrative Law Judge issued an order designating Administrative Law Judge Judith A. Dowd as the Settlement Judge in this proceeding. The Settling Parties request that these materials be transmitted to Judge Dowd for certification to the Commission promptly following the close of the comment period.

In addition, PATH is submitting (on this date under a different cover) a Motion for Interim Rates and Request for Expedited Action ("Motion"). The Motion requests a shortened, five day, comment period and expeditious ruling on the Motion by the Chief Administrative Law Judge.

Included with this filing are the following materials:

1. Settlement Agreement and Offer of Settlement (Attachment 1)
  - a. Exhibit 1 (revised tariff sheets Attachment H-19A and Attachment H-19B in a form suitable for inclusion in the PJM Tariff);<sup>5</sup>
  - b. Exhibit 2 (redlined tariff sheets Attachment H-19A and Attachment H-19B);
  - c. Exhibit 3 (descriptive list of changes to the Formula Rate);
  - d. Exhibit 4 (populated Formula Rate);
  - e. Exhibit 5 (template for historical operations & maintenance reports for PATH-WV);

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<sup>3</sup> 16 U.S.C. § 824d.

<sup>4</sup> *Potomac-Appalachian Transmission Highline, L.L.C.* 122 FERC ¶ 61,188 (2008), *reh'g pending*.

<sup>5</sup> The revised tariff sheets are for Attachment H-19A and Attachment H-19B. A complete set of tariff sheets, including Attachment H-19, where there are no changes to the currently effective tariff sheets, are included.

- f. Exhibit 6 (template for historical operations & maintenance reports for PATH-Allegheny);
  - g. Exhibit 7 (template for historical capital investment reports for PATH-WV);
  - h. Exhibit 8 (template for historical capital investment reports for PATH-Allegheny);
  - i. Exhibit 9 (template for capital and O&M budgets for PATH-WV);
  - j. Exhibit 10 (templates for capital and O&M budgets for PATH-Allegheny);
2. Explanatory Statement (Attachment 2); and
  3. Draft letter order approving the Settlement Agreement in hard copy and on diskette (Attachment 3).

Copies of the Settlement are being electronically served on all parties in this proceeding in accordance with Rule 2010 of the Commission's Rules.<sup>6</sup> In accordance with Rule 602,<sup>7</sup> comments on the Settlement are due December 30, 2008 and reply comments are due January 9, 2009.

Pursuant to Section 35.2(d) of the Commission's regulations, a copy of this filing is being served on representatives of PJM Interconnection, L.L.C ("PJM"). In addition, PJM has served a copy of this filing on all PJM Members and on all state utility regulatory commissions in the PJM Region by posting this filing electronically. Electronic service is permitted as of November 3, 2008, under the Commission's regulations pursuant to Order No. 714 and the Commission's Notice of Effectiveness of Regulations issued on October 28, 2008, in Docket No. RM01-5-000. In compliance with these regulations, PJM will post a copy of this filing to the FERC filings section of its internet site, located at the following link: <http://www.pjm.com/documents/ferc.html> with a specific link to the newly-filed document, and will send an e-mail on the same date as this filing to all PJM Members

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<sup>6</sup> 18 C.F.R. § 385.2010.

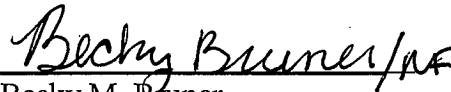
<sup>7</sup> 18 C.F.R. § 385.602(f).

Ms. Kimberly D. Bose, Secretary  
December 10, 2008  
Page 4

and all state utility regulatory commissions in the PJM Region alerting them that this filing has been made today and is available by following such link.

Thank you for your attention to this matter. If there are any questions concerning this filing, please contact the undersigned.

Respectfully submitted,



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*Counsel for Potomac-Appalachian  
Transmission Highline, LLC*

cc: Hon. Curtis L. Wagner, Jr.  
Hon. Judith A. Dowd  
Official Service List, Docket No. ER08-386

# **ATTACHMENT 1**

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

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

**SETTLEMENT AGREEMENT AND OFFER OF SETTLEMENT**

Pursuant to Rule 602 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.602 (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") enter into this Settlement Agreement and Offer of Settlement including Exhibit Nos. 1 through 10 attached hereto ("Settlement") and submit it to the Commission for approval. The Settlement, if approved by the Commission without conditions or modifications, will resolve all issues set for hearing in *Potomac-Appalachian Transmission Highline, LLC*, 122 FERC ¶ 61,188 (2008), *rehearing pending* ("Hearing Order"). The Settling Parties seek all necessary authorizations under the Federal Power Act ("FPA") and the Commission's Rules of Practice and Procedure ("Rules"), as well as any waivers of such Rules as may be necessary in order to implement fully the Settlement and the provisions thereof. This Settlement is supported or not opposed by all parties who have been active in this proceeding, and the Commission Staff supports the Settlement.<sup>1</sup>

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<sup>1</sup> In addition to the Settling Parties, these include Commission Trial Staff, the Maryland Office of People's Counsel, North Carolina Electric Membership Corporation, the Consumer Advocate Division of the Public Service Commission of West Virginia, the Pennsylvania Office of Consumer Advocate, the New Jersey Division of Rate Counsel, and the Virginia Office of the Attorney General's Division of Consumer Counsel.

**Article I**  
**Procedural Background and Scope of Settlement**

On December 28, 2007, PATH filed proposed tariff sheets with the Commission, pursuant to Section 205 of the FPA,<sup>2</sup> 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 Project. PATH requested that the Commission affirm or otherwise grant its proposed incentive rate treatments pursuant to Order No. 679.<sup>3</sup>

In the February 29, 2008 Hearing Order, the Commission accepted the proposed Formula Rate subject to conditions and suspended it for a nominal period, to become effective on March 1, 2008. 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 PATH. These discussions culminated in this Settlement which resolves all issues set for hearing.

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<sup>2</sup> 16 U.S.C. § 824d (2000).

<sup>3</sup> *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).

To the extent that pending requests for rehearing of the Hearing Order seek rehearing of issues not set for hearing, the Settlement does not affect such rehearing requests.

Unless defined otherwise, capitalized terms in this 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 this Settlement. Subject to the conditions set forth in this Settlement, including the acceptance of the Settlement in its entirety without condition or modification by the Commission, and with the understanding that each term of the Settlement is in consideration and support of every other term, the Settling Parties agree as follows:

**Article II**  
**Formula Rate, Protocols and Inputs for 2008 Rate Year**

2.1 Subject to Section 2.2 below, 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 for Attachment H-19, Attachment H-19A and Attachment H-19B to the PJM OATT set forth in Exhibit Nos. 1 and 2 to this Settlement, in clean and redlined format respectively, and shall not be changed except pursuant to a Section 205 or Section 206 filing. Attachment H-19A contains the agreed-upon Formula Rate and attachments. Attachment H-19B contains the agreed-upon Protocols.

2.2 Subject to resolution of issues not set for hearing, the revised tariff sheets in Exhibit No. 1 to this 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 shall be incorporated into the PJM OATT and posted on the PJM website promptly following the Commission's approval of this Settlement.

2.3 A descriptive list of changes to the Formula Rate agreed upon by the Settling Parties and reflected in the revised tariff sheets is set forth in Exhibit No. 3 to this Settlement.

2.4 Subject to resolution 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 this 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 shall be posted on the PJM website promptly following the Commission's acceptance or approval of this Settlement.

2.5 This 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 resolution of issues not set for hearing in the Hearing Order.

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

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

2.8 Exhibit Nos. 9 and 10 to this 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.

2.9 Nothing in this Settlement is intended to resolve or otherwise affect pending requests for rehearing of issues not set for hearing in the Hearing Order.

**Article III**  
**Interim Rates and Supplemental Initial Annual Update**

3.1 Contemporaneous with the filing of this Settlement, PATH shall file with the Commission a request for authorization to implement the revised Formula Rate and Protocols on an interim basis pending approval of the Settlement.

3.2 PATH shall file a supplemental informational filing to its Initial Annual Update submitted on September 2, 2008. The supplemental informational filing shall be 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.

**Article IV**  
**Non-severability and Conditions Precedent to Effectiveness of Settlement**

4.1 It is agreed and understood that the various provisions of this Settlement are not severable and shall not become operative unless and until the Commission issues a Final Order (as defined in Section 4.3 hereof) approving this Settlement as to all its terms and conditions without modification.

4.2 Neither this Settlement, nor any of the provisions hereof, shall be effective unless and until each of following shall have occurred.

- (a) The Commission shall have issued a Final Order approving all of the terms and provisions of this Settlement without modification or condition;
- (b) The Commission in its Final Order approving this Settlement shall have waived compliance by PATH with any otherwise applicable regulations only to the extent necessary to effectuate all the provisions of this Settlement alone, and the Commission shall have provided that all rate and tariff filings made pursuant to this Settlement shall be permitted to become effective as of the dates specified herein, without suspension and without condition other than those specified herein; and
- (c) The Commission shall have issued a Final Order approving the tariff sheets.

4.3 For purposes of this Settlement, an order shall be deemed to be a "Final Order" as of the date rehearing is denied by the Commission, or if rehearing is not sought, the date on which the right to seek Commission rehearing expires.

4.4 No Settling Party shall be bound or prejudiced by any part of this Settlement unless and until it becomes effective in the manner provided by this Article IV.

#### **Article V** **Reservations**

5.1 This Settlement is submitted pursuant to Rule 602 of the Commission's Rules 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 hereof.

5.2 If this Settlement is not accepted or approved in its entirety without modification or conditions it shall be 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.

5.3 If this Settlement is not accepted or approved by the Commission without modification, then:

- (a) it shall not be binding on the Settling Parties;
- (b) the Settling Parties shall not be obligated to negotiate further, other than to discuss in good faith whether the modifications or conditions required by the Commission are acceptable; and
- (c) the Settling Parties shall be deemed to have reserved all of their respective rights and remedies in this proceeding, including the right to proceed to hearing on all issues properly raised in this proceeding.

5.4 In consideration of all elements of this negotiated settlement, no element of this Settlement constitutes precedent or should be deemed "settled practice" as that term was interpreted in *Public Service Commission of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980). It is further specifically understood and agreed that this Settlement constitutes a negotiated agreement and, except as explicitly set forth herein, 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 proceeding of any kind, and none of the provisions of this Settlement shall be cited or referenced by any party in any federal or state proceeding as establishing any precedent or "settled practice."

**Article VI**  
**Modifications and Standard of Review**

6.1 Nothing contained herein 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.

6.2 Nothing contained herein 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.

6.3 Nothing contained herein 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.

6.4 The standard of review the Commission shall apply when acting on proposed modifications to this 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.

**Article VII**  
**Miscellaneous**

7.1 The making of this 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.

7.2 The discussions among the Settling Parties have been conducted with the explicit understanding and agreement, pursuant to Rule 602(e) of the Commission's Rules, 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.

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

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

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

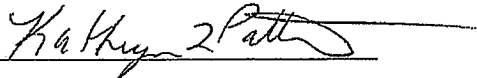
7.6 Each person executing this Settlement on behalf of a Settling Party represents and warrants that he or she is duly authorized and empowered to act on behalf of, and to authorize this Settlement to be executed on behalf of, the Settling Party that he or she represents.

7.7 Section headings are used in this Settlement solely for convenience of reference and shall not be used to interpret or modify the terms of this Settlement.

7.8 This Settlement 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.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, this Settlement is entered into by and between the Settling Parties through their authorized representatives, who represent that they are fully authorized to do so on behalf of their principals. Each of the Settling Parties through its authorized representative has authorized the undersigned to execute and file this Settlement on its behalf.

By: 

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

On behalf of PATH Allegheny Transmission Company, L.L.C.

By: \_\_\_\_\_

Kevin F. Duffy  
Assistant General Counsel  
American Electric Power Service Corporation  
1 Riverside Plaza  
Columbus, Ohio 43215

On behalf of PATH West Virginia Transmission Company, L.L.C.

IN WITNESS WHEREOF, this Settlement is entered into by and between the Settling Parties through their authorized representatives, who represent that they are fully authorized to do so on behalf of their principals. Each of the Settling Parties through its authorized representative has authorized the undersigned to execute and file this Settlement on its behalf.

By: \_\_\_\_\_

Kathryn Patton  
Deputy General Counsel  
Allegheny Energy, Inc.  
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Greensburg, PA 15601

On behalf of PATH-Allegheny Transmission Company, L.L.C.

By: \_\_\_\_\_

Kevin F. Duffy  
Assistant General Counsel  
American Electric Power Service Corporation  
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Columbus, Ohio 43215

On behalf of PATH-West Virginia Transmission Company, L.L.C.

By: David R. Straus

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On behalf of American Municipal Power-Ohio, Inc.

By: \_\_\_\_\_

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On behalf of Blue Ridge Power Agency

By: \_\_\_\_\_

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On behalf of Old Dominion Electric Cooperative

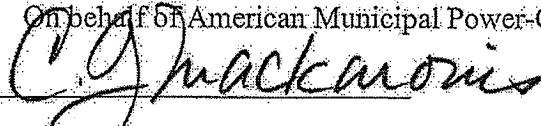
Date: December 5, 2008

By: \_\_\_\_\_

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By: \_\_\_\_\_

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On behalf of Old Dominion Electric Cooperative

Date: December 5, 2008

By: \_\_\_\_\_


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On behalf of American Municipal Power-Ohio

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On behalf of Blue Ridge Power Agency

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On behalf of Old Dominion Electric Cooperative

Date: December 5, 2008