

FOR IMMEDIATE RELEASE:

**COMMENTS OF THE SIERRA CLUB
ON APRIL 15, 2008 PROPOSED SETTLEMENT IN
TRAILCO PROCEEDING BEFORE WEST VIRGINIA
PUBLIC SERVICE COMMISSION**

On May 24, 1626, Peter Minuit, a 36-year old Walloon from Wesel , Germany, and then Director-General of the Dutch colony of New Netherland, purchased the island then known as Manna-hata from the Canarsee Native Americans for what has been passed down in popular folklore, and some history books, as the equivalent of \$24 worth of beads or “wampum.” The sale of Manhattan for \$24 worth of beads has historically been viewed as a very sweet deal indeed for the Dutch, but a conspicuously bad bargain for the Native Americans. And the 1626 transfer of beads to unsophisticated native peoples is regarded by history as the first of many exploitive transfers of an indigenous people’s national patrimony in exchange for woefully inadequate, if not downright fraudulent, consideration. The term “wampum” has developed over time as a sort of short-hand for the transfer of items of illusory or temporary value in exchange for items of permanent importance not subject to any valuation.

The presence of signatures of representatives from the offices of the PSC Staff and the Consumer Advocates Division, and others, on the April 15, 2008 proposed settlement with TrAILCo shows that the tradition of transferring wampum for national patrimony is alive and well. We do not question for a moment the good faith of the signatories on behalf of the public entities, and plainly no one can criticize the TrAILCo representatives for seeking an advantageous bargain. However, we cannot avoid the conclusion that the proposed settlement is anything other than one more bad bargain between the unsophisticated “locals” and the folks on the big ships in the harbor with all those flashy beads.

In short, once again the citizens of West Virginia are being offered the opportunity to strike a horrible bargain with the coal industry, an industry that has for more than a century dominated the economy of the state, but has left the state in the undesirable position of at, or near, dead last in all significant economic indicators. According to the 2005-2006 Census, West Virginia has the dubious distinction of having a median income higher than only three of the fifty-one reporting entities known as the United States, those states being well known to us: Louisiana, Arkansas and Mississippi.

In short, one might fairly ask if this deal, and all our prior deals with the coal industry, are so compelling as to require us to suspend our powers of critical analysis, why is the adverse outcome for West Virginia so consistently and unambiguously clear; year in and year out, we are the loser, again, and again and again.

The proposed settlement is particularly unfortunate in this case. Any fair-minded review of the evidence in this case makes it painfully clear that the TrAILCo application was not supported by anything remotely approaching substantial evidence -- a point made most powerfully in the brief submitted by

the PSC Staff in this proceeding. No signatures on a proposed settlement can alter the evidence in this case. The evidence was demonstrably insufficient when the evidentiary hearing closed on January 19, 2008, and no new evidence is offered by the proposed settlement. No testimony from any witness for a party that opposed the TrAILCo application has been retracted.

The TrAILCo application has from day one been justified not by any economic needs of the citizens of this state – West Virginia is, as the record unambiguously documents, a very significant net exporter of electricity. Dr. Ronald Klein of West Virginia University laid out the cold, clear numbers with great precision. In 2005, the last year for which data is available, West Virginia West Virginia generated 93,626,286 megawatt-hours (MWh), and West Virginia retail sales consumed 30,152,069 MWh, yielding an excess of 63,474,217 MWh of electric generation. West Virginia exports more than twice the amount of electric energy than it consumes.

TrAILCo's attempt to justify the nearly one billion dollar cost of the proposed electric transmission line on the grounds of purported "reliability" issues literally evaporated in front of their own eyes in the testimony before the PSC. Anyone in the PSC hearing room on the last day of testimony knows the testimony that was presented that day – TrAILCo's application was exposed as a colossal engineering error. They simply used the wrong rating on the Mt Storm – Doubs line, and their application for authority to construct the TrAIL line sunk in the plain view of all witnesses, their counsel and the PSC Commission and Staff.

What else did the record in this case show on the questions of electrical need as determined by PJM, the Regional Transmission Organization that directed Allegheny Energy to build the transmission line?

- PJM disregarded more than 2400 MW of increased generation capacity
- PJM did not consider potential DSM savings in the Mid-Atlantic Region.
- PJM's "load model" has no value as a predictor of future electricity demand.
- PJM did not consider reconductoring the Mt. Storm –Doubs Line.
- PJM's 2006 RTEP used inaccurate line ratings to create "reliability" issues

None of these realities, documented in the evidence presented before the PSC in ten days of hearings from January 9, 2008 through January 19, 2008, are altered by the TrAILCo agreement with PSC Staff and CAD announced on April 15, 2008. And nothing in the April 15, 2008 proposed settlement eliminates the unambiguous environmental impacts documented in the ten-day hearing before the PSC. Those adverse impacts include the impacts on individual communities across the length of the proposed line, and they include the never assessed environmental impact of increased carbon dioxide emissions

from the four 650 MW coal-fired plants to be built in the future, at a cost of \$4 billion, and asserted as part of the economic justification for the proposed electric transmission line.

PSC Staff witness James Ellars testified, under oath at the January 2008 evidentiary hearing, that TrAILCo's obvious desire to avoid the much more burdensome environmental review required by Maryland, had the effect of transferring to West Virginia citizens, in its entirety, the environmental cost of the proposed line. This result was particularly offensive, Mr. Ellars testified, because the electrical benefits of the line, without exception, were conferred on the citizens of Maryland, whom the witness felt should be expected to pick up their fair share of the costs:

Q. DOES TRAILCO HAVE AN INCENTIVE TO SELECT A ROUTE WHICH DOES NOT PASS THROUGH THE STATE OF MARYLAND?

A. Absolutely. TrailCo states in its route report that one of its reasons for selecting the preferred route is that the entire project can be certificated in West Virginia. By selecting a route which avoids Maryland, TrailCo avoids having to file for approval of the project in that state.

Q. DO YOU FEEL THAT THE ABILITY TO CERTIFICATE A PROJECT ENTIRELY WITHIN A SINGLE STATE IS AN ACCEPTABLE REASON FOR SELECTING ONE ROUTE OVER ANOTHER?

A. No, especially when data exists which indicates that the unchosen route might have a lesser impact on the environment and its citizens. This shifts the massive burden of siting the TrailCo project upon the citizens of West Virginia, This is compounded by the fact that this project will not provide any substantive, permanent benefits to West Virginia as evidenced by Staff witnesses Lewis and Ileo.

Q. DO YOU HAVE ANY REASON TO BELIEVE THAT TRAILCO WOULD FACE GREATER DIFFICULTY IN OBTAINING APPROVAL FOR THIS PROJECT IN MARYLAND?

A. Yes. My understanding of Maryland's state environmental requirements is that they are more difficult to satisfy than West Virginia's requirements. It is my understanding that Maryland has its own statutes regarding certain environmental requirements, whereas

West Virginia largely relies on the federal statutes in the absence of certain state environmental statutes. If a filing in Maryland became necessary, TrailCo could stand a greater chance of being required to file more detailed impact studies. I also understand that TrailCo might not even be permitted to file a transmission siting case in Maryland because of certain provisions in the state law regarding filing eligibility. Assuming that is correct, then TrailCo might have to file directly with the Federal Energy Regulatory Commission (FERC) for siting approval for any project crossing through Maryland. Approval at the Federal level would likely include stricter filing requirements than what is currently required at the State level.

James Ellars Direct Testimony of December 5, 2007, at pp. 18-20 (emphasis added).

Plainly, the proposed settlement does not alter this testimony or the evidence of many others documenting the environmental costs of the proposed transmission line.

Once again West Virginia is asked to absorb the indirect environmental costs of economic benefits conferred to others, in this case the consumers of electricity in the Mid-Atlantic Region who should be building their own, locally based, generation capacity to serve their own needs or, alternatively, adopt energy consumption practices that eliminate the need to build more and more expensive and environmentally destructive generation capacity.

TrAILCo's first settlement with CAD was widely reported to include free electricity for all landowners in TrAILCo's path. In fact, TrAILCo's President admitted under cross examination that the so-called "free" electricity for landowners was not a bonus, but was in fact a deduction from the sums that would otherwise be due to the landowners as just compensation for the "taking" of their property, under the due process clause of the US Constitution. In plain English, there was no "free" anything.

What is West Virginia offered now in the new proposed settlement? Supposedly Allegheny will transfer some jobs to West Virginia. We have to ask: What are they saying to the PSC of Pennsylvania and Virginia? Are the jobs coming from those states? Where were those jobs going to be before the settlement was announced? Is this anything more than a game of moving the bean from one shell to another? Is this more "free" electricity?

And TrAILCo offers to absorb, for some period of time, the costs that might otherwise be allocated to West Virginia as a result of the TrAILCo line. That cost was, from the beginning, a very, very small percentage of the total cost of TrAILCo's proposed cost in simple recognition of the obvious fact that West Virginia – a net exporter of electricity – had absolutely no economic need for this transmission line. Why should West Virginia pay any of the costs of TrAILCo?

And, yes, there are other trinkets, which we will study in the days ahead. But as that analysis goes forward, we suggest that PSC Commissioners Staats and McKinney focus on the evidence

submitted to them in ten days of hearings, subject to cross examination. In this regard, we note that Commissioners Staats and McKinney are now in an almost impossibly isolated situation. Both their Staff and CAD have signed off in favor of the modestly amended TrAILCo proposal. The Governor is a clear, public supporter of this proposal and its successor, PATH, which is proposed to run from Winfield, WV to New Jersey. The coal industry has organized a large display of public support for the TrAILCo proposal, currently scheduled for next week at a local hotel.

We believe this would be a good time for Commissioners Staats and McKinney to get out of town. Take a ride. It's Spring, and West Virginia is at its best. Commissioners Staats and McKinney should drive East from Charleston, out the Midland Trail towards Lewisburg, turn up 219 and go past Marlinton to Elkins, then take 33 east past Seneca Rock, turn left at 220 and go past Petersburg to Romney. Make a hard left on 50 and come all the way back to I-79. In the course of this little circuit, Commissioners Staats and McKinney will see all of the best of the area that is proposed to be sacrificed in the name of more "progress" from the coal industry. It will be a pretty ride.

But on their way home, we suggest that Commissioners Staats and McKinney come down I-79, get on I-77 headed south, and go right past Exit 99 that would let them off near the PSC. They should stay on I-77 for another 20 miles past Charleston to exit 79 for Cabin Creek. They should follow Cabin Creek Road past Leewood and Red Warrior down to Kayford Mountain Road, where they should drive to the top of Kayford Mountain. At the top of that mountain they will have a different vista. They will not look out on the beauty of the Eastern Panhandle.

Kayford Mountain used to be the lowest mountain peak in the area; today it is the highest. The coal industry has engaged in a large scale mountain top removal project in the area surrounding Kayford Mountain, and has lowered the old mountains by 900 feet. So Kayford is not now surrounded by other mountain top peaks – and the beauty they had for centuries. No, it is surrounded by a 12,000+ acre pancake -- a vast wasteland. This is the future of West Virginia faces if we blindly go forward with an ever increasing investment of all that we have in the coal industry.

It is often stated that West Virginia has two hundred and fifty years of coal reserves. Well, there's a little town in Canada named "Asbestos" and they have a five-hundred year reserve of asbestos. That does not mean either community will be better off mining the asbestos or coal at the expense of their health and environment.

We ask that Commissioners Staats and McKinney consider how their grandchildren will view the bargain offered today – give up your pristine land in exchange for some oh-so-pretty beads, very flashy beads, shiny beads. Will their grandchildren – sixty years from now --ask "Where is the shine now? Where is the pretty now? Where is flash in a land decimated by an industry that has already made us last, or near last, in all that is material?"

Or will they thank God these two men ignored the political pressure to go along, and instead looked at the evidence and concluded – as everyone else did in their courtroom on January 19, 2008 –

that nothing offered by the applicant demonstrated a need for this transmission line, or even began to offset the patent environmental costs, and simply deny the proposed certificate?

Or could Commissioner Staats' and McKinney's grandchildren have another, even bolder legacy?

Will they be able to look back and say, yes, our grandfathers approved the TrAILCo line, but only on the condition that Allegheny Energy (and American Electric Power, its partner in the successor proposal, PATH), committed not to spend the four billion dollars on four more 650 MW coal-fired plants. But instead committed to build \$4 billion worth of wind power and solar power in West Virginia, and other alternative energy sources, that allowed West Virginia to end its dependence on coal for 95%+ of its electric energy. And created even more jobs doing that than the coal industry ever dreamed it could. And avoided the environmental costs of emitting unending volumes of carbon dioxide into the atmosphere.

If TrAILCo and PATH will commit to that course of action, the Sierra Club will provide them the recycled paper on which to print their applications.

But our Commissioners need to decide what it will be. Wampum or wisdom?