

**PUBLIC SERVICE COMMISSION OF WEST VIRGINIA  
AT CHARLESTON**

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**CASE NO. 07-0508-E-CN**

**TRANS-ALLEGHENY INTERSTATE LINE COMPANY**

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**REPLY OF THE SIERRA CLUB, INC.  
TO APPLICANT'S OPPOSITION TO PETITION  
FOR CONTINUING PRUDENCE REVIEW**

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In its November 26, 2008 opposition, TrAILCo characterizes the Sierra Club's Petition for Continuing Prudence Review as an effort to "undermine the finality of the August 1, 2008 Commission Final Order in this matter." Instead, TrAILCo suggests that this Commission treat the Sierra Club's petition as a "collateral attack" on the August 1, 2008 order.

Referring to prior briefing, TrAILCo contends that the Sierra Club's effort to bring to the Commission's attention the most recent PJM study – which pushes out the in-service date for the construction of PATH's electric transmission line from 2012 to 2013 – "is contrary to their earlier positions as to both the January hearing and the May 30 hearing" and is nothing more than a for an "additional evidentiary development ... on the same issue" addressed previously.

In virtually the same breath, TrAILCo asserts that "A later decision to push back PATH's in-service date says nothing about the continuing need for TrAIL, and does not justify reopening the evidentiary record with respect to TrAIL's certification." Continuing, TrAILCo argues that "an opponent who requests that the Commission reassess a certificate must present 'compelling' information that is not 'substantially similar' to evidence that has already been considered by the Commission. The recycled testimony and recent *Wall Street Journal* article presented by the Sierra Club fail to satisfy this test."

Because the Sierra Club, despite "continuing fervor," has not "fully set forth" evidence warranting a reopening of the evidentiary record, TrAILCo requests that the Commission deny the continuing prudence review.

On the issue of finality, as TrAILCo well knows, because the Sierra Club filed a petition for reconsideration (as TrAILCO itself did also), the August 1, 2008 decision is not final, and will not be until the Commission issues a decision to the at least three timely filed motions for reconsideration.

Moreover, as TrAILCo also well knows, the Sierra Club Petition for Continuing Prudence Review is not addressed to the issues raised previously but is explicitly based on matters that have occurred since August 1, 2008 and the filing of motions for reconsideration by the parties. Surely, TrAILCo's parent Allegheny Energy is as aware of the changes in the economy as Michael Miller, the CEO of American Electric Power, its partner in PATH, whose quote could not be more germane to the Commission's consideration of the pending petition for continuing prudence review.

If Mr. Miller is unambiguously admonishing his fellow utility operators to "be cautious about what you build because you may not have the demand" to justify the expense, is the appropriate response for this Commission blindly march forward, blinkers firmly in place, to finalize an order compelling the construction of \$1 billion dollars worth of very possibly unneeded hardware?

If PJM itself, according to the PATH press release, has put off the in-service date for PATH from 2012 to 2013, as a "result of an ongoing, dynamic process by PJM that considers the projected growth in electricity demand, the planned construction and retirement of power plants,

the effect of demand-response initiatives and other factors” shouldn't this Commission's readiness to certify TRAIL be informed by information at least as current as that available to PJM?

It is specious of TrAILCo to suggest that merely because "PJM's Regional Transmission Expansion Program ("RTEP") for the 2008-2022 Period presumed that TrAIL will be operational on PATH's in-service date," and caused PJM to order the construction of the PATH line, that current information should not be assessed. PJM *itself* – not the Sierra Club -- has undercut the continuing wisdom of relying on the old RTEP. It is the revised RTEP, referred to in PATH's press release, not the older RTEP, that needs to be reviewed.

Plainly, what worries TrAILCo is not a rehash of the past; it is the possible updating of obsolete data, not some fantasy revisiting of old data that worries TrAILCo. To be sure, TrAILCo is correct that Sierra has not "fully set forth" the new PJM data; the Sierra Club has not set forth the data at all because it is not publicly available.

In assessing the desirability of ordering TrAILCo to file the revised PJM data now, this Commission should consider the boiler plate disclaimer that has now found a home at the bottom of every press release from every publicly traded company in the United States. TrAILCo's October 2, 2008 press release announcing its quarterly \$0.15 per share dividend contains the following "Forward-Looking Statement," omitted from the PATH press release filed with the Sierra Club petition, but obviously germane to non-financial projections:

### **Forward-Looking Statements**

*In addition to historical information, this release contains a number of "forward-looking statements" as defined in the Private Securities Litigation Reform Act of 1995. Words such as anticipate, expect, project, intend, plan, believe, and words and terms of similar substance used in connection with any discussion of future plans, actions, or events identify forward-looking statements. These include statements with respect to: rate regulation and the status of retail generation service supply competition in states served by Allegheny Energy's distribution business, Allegheny Power; financing plans; demand for energy and the cost and availability of raw materials, including coal; provider-of-last-resort and power supply contracts; results of litigation; results of operations; internal controls and procedures; capital expenditures; status and condition of plants and equipment; capacity purchase commitments; regulatory matters; and accounting issues. Forward-looking statements involve estimates, expectations and projections and, as a result, are subject to risks and uncertainties. There can be no assurance that actual results will not materially differ from expectations. Actual results have varied materially and unpredictably from past*

*expectations. Factors that could cause actual results to differ materially include, among others, the following: plant performance and unplanned outages; changes in the price of power and fuel for electric generation; general economic and business conditions; changes in access to capital markets; complications or other factors that render it difficult or impossible to obtain necessary lender consents or regulatory authorizations on a timely basis; environmental regulations; the results of regulatory proceedings, including proceedings related to rates; changes in industry capacity, development and other activities by Allegheny Energy's competitors; changes in the weather and other natural phenomena; changes in customer switching behavior and their resulting effects on existing and future load requirements; changes in the underlying inputs and assumptions, including market conditions used to estimate the fair values of commodity contracts; changes in laws and regulations applicable to Allegheny Energy, its markets or its activities; the loss of any significant customers or suppliers; dependence on other electric transmission and gas transportation systems and their constraints or availability; changes in PJM, including changes to participant rules and tariffs; the effect of accounting policies issued periodically by accounting standard-setting bodies; and the continuing effects of global instability, terrorism and war. Additional risks and uncertainties are identified and discussed in Allegheny Energy's reports filed with the Securities and Exchange Commission.*

TrAILCo's attorneys, who also represent PATH, clearly possess -- but oddly did not file with their November 26, 2008 pleading -- a copy of the revised PJM projections referred to in PATH's October 31, 2008 press release.

What interest justifies denying this Commission access to the same information?

Respectfully submitted,

**THE SIERRA CLUB, INC.**

By Counsel

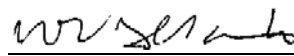


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**CERTIFICATE OF SERVICE**

I certify service of this pleading by email or US mail on November 28, 2008, to the following:

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