

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

PJM Interconnection, L.L.C.,)	
Potomac-Appalachian)	
Transmission Highline, LLC)	Docket No. ER12-269-000
)	
)	

**MOTION TO FILE COMMENTS OUT OF TIME AND COMMENTS OF THE
MARYLAND OFFICE OF PEOPLE’S COUNSEL**

Pursuant to Rules 211 and 212 of the Federal Energy Regulatory Commission’s (“**Commission**”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, 385.212, the Maryland Office of People’s Counsel (“**MPC**”) respectfully submits the following motion to file comments out of time and comments in the above-captioned docket. These comments address the October 31, 2011 filing of PJM Interconnection, L.L.C. (“**PJM**”), and Potomac Appalachian Transmission Highline (“**PATH**”), L.L.C., on behalf of its operating companies, PATH West Virginia Transmission Company, LLC (“**PATH-WV**”) and PATH Allegheny Transmission Company, LLC (“**PATH-Allegheny**”) (collectively, “**the PATH Companies**”) in Attachment H-19B of the PJM Open Access Transmission Tariff (“**Tariff**”), to change the definition of an “Interested Party” under its Formula Rate Protocols (“**October 31 Filing**”).

MPC previously and timely filed a Motion To Intervene on November 21, 2011. While MPC was unable to meet the comment date for substantive comments, good cause exists to allow these comments into the record only ten (10) days out of time.

I. MOTION TO FILE COMMENTS OUT OF TIME

Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.212, MPC hereby submits this motion to file comments out of time in the above-captioned docket. Given MPC's limited personnel and resources, and very active current engagement in a large number of cases before the Maryland Public Service Commission, MPC was unable to meet the November 21, 2011 comment date for this case. Because the outcome of this proceeding will have impacts in Maryland, however, MPC believes that its Comments are in the public interest.

MPC, however, does not wish to disrupt or delay the proceeding with these Comments. Because it is still very early in the proceeding, because of both the significant import yet brevity of these Comments, because of the lack of prejudice to any party if the Commission were to accept these Comments, because the resolution of this issue might well have an effect upon other cases beyond the issue in this proceeding, and because no other party can adequately represent MPC's interests, good cause exists to grant this motion to accept these Comments out of time.¹

II. COMMENTS

In a nutshell, the PATH Companies seek to revise the language of its Protocols for the annual review of PATH's formula rate update, arrived at through settlement proceedings, so that only "entities" rather than "individuals" may participate in the discovery and challenge phases of the annual reviews of PATH's formula rates. *See* PATH Formula Rate Implementation Protocols in Attachment H-19B of the PJM Tariff.

¹ *See, Trans Alaska Pipeline System, et al.*, 104 FERC ¶ 61,201, at 61,706 (2003) and *Natural Gas Pipeline Company of America*, 66 FERC ¶ 61,310 (1994) (motion granted for good cause shown).

Currently, the language allows for the involvement of any affected “party,” a term which usually is construed to include individuals as well as entities.

PATH states that the phrase “other affected party” in the definition of “Interested Party,” however, is intended to cover only an *entity* that is able to demonstrate standing at the Commission in a Section 206 proceeding. Consequently, the PATH Companies propose to reform the definition of “Interested Party” to precisely state this intent and purpose, as follows:

An entity that is or may become a customer taking transmission service under this [PJM] Tariff, a state public utility commission or state consumer advocate agency in Maryland, Pennsylvania, Virginia, West Virginia, Delaware, New Jersey or the District of Columbia, or ~~other affected party~~ any entity having standing under Section 206 of the Federal Power Act. (Italics added).

What seemingly prompted the instant filing is that PATH was piqued at the temerity of some individuals who (in related cases) filed a formal -- and at least partially valid - challenge to PATH’s annual rate update in compliance with the governing rules and procedures.²

For its substantive comments, MPC supports the Comments filed out-of-time by the Illinois Commerce Commission (“ICC”) on November 23, 2011,³ and adopts and incorporates the ICC’s Comments herein as if they were restated in full. Thus, they need not be repeated here.

MPC offers only two additional comments. MPC was an active participant in the Settlement Judge Proceedings in Docket No. ER08-386 which resulted in the final

² Newman & Haverty Formal Challenge, Docket No. ER-08-386-000, at 3 (filed Jan. 21, 2011); PATH admitted that the citizens uncovered certain errors in responding to their preliminary challenge. *See* Letter from R. Palmer to Sec. Bose Re: Correction to PATH LLC Electronic Informational Filing of 2010 Formula Rate Annual Update, Dec. 28, 2010, Docket. Nos. ER-386-000, ER 09-1256-000.

³ Along with its Comments, the ICC filed a still pending “Motion to File Comments Out of Time.”

documents that were ultimately approved by the Commission. Without discussing or revealing any details about those confidential proceedings, published Orders by the Settlement Judge reveal that settlement discussions ran for a lengthy period from March through November 2008, that the parties engaged in a number of settlement conferences that took place at the Commission, that a number of parties propounded data requests throughout the proceedings, and that, on August 6, 2008, for example, “a few of the questions/observations concerned *PATH’s proposed protocols*, and of these, a select few *generated substantial debate* lasting throughout the day.”⁴

From these public facts, it may fairly be inferred that the final language of the PATH formula rate annual update protocols was the product of a carefully tailored compromise entered into only after “substantial debate” amongst the parties. Thus, MPC urges the Commission to proceed with the utmost consideration and caution before undoing one of the many carefully threaded strands of which the final document was ultimately woven and which upon review the Commission deemed was “just and reasonable.”

Second and finally, consumer advocate offices (“CAOs”) (including MPC) and other load entities have long voiced concerns about the substitution of the formula rate process for actual rate cases. Because regulated utility companies generally file rate cases only once every 3 to 5 years, CAOs can target their limited staffing resources and budgets when regulated companies present a rate case. With formula rate annual updates being filed *every* year by *each* utility, however, CAOs simply do not have the in-house technical expertise, and do not have sufficient funds for retaining outside technical

⁴ “Report to the Commissioners and Order setting further settlement conference re Potomac-Appalachian Transmission Highline,” Issuance No. 20080807-3027 (August 7, 2008).

expertise, to review these financially complex formula rate update documents in anywhere near the depth that can be accomplished in occasional rate cases. While industrial and commercial load often do have in-house expertise, as for-profit businesses they also are constrained from spending money and reassigning staff to reviews of rates whose impact on any *single* industrial or commercial customer is deemed insufficient to justify the cost.

In MPC's experience, it is exceedingly rare for individual laypersons (i.e. those not employed within the energy sector) not only to seek to participate in a utility's annual formula rate update review but also to put in the requisite difficult and detailed work to review literally hundreds of data inputs and determine how they flow through the formula. In short, when that instance comes up (as it did in the last annual formula rate update for PATH), due to the reasons stated above, the Commission should welcome -- rather than deter -- such additional voluntary scrutiny to ensure that the formula rate as updated continues to be just and reasonable.

III. CONCLUSION

WHEREFORE, for the reasons set forth above, MPC respectfully requests the Commission to grant MPC's Motion to accept its Comments filed out-of-time, to give consideration to these Comments before issuing an order in these proceedings, and for any and all other appropriate relief.

[signatures on following page]

Respectfully submitted,

MARYLAND OFFICE OF PEOPLE'S COUNSEL

/s/ filed electronically

Gary L. Alexander

Assistant People's Counsel

(410) 767-8161 (direct dial)

E-mail: Garya@opc.state.md.us

/s/ signed electronically

Anne L. Johnson

Assistant People's Counsel

(410) 767-8160 (direct dial)

Email: Annej@opc.state.md.us

Maryland Office of People's Counsel

6 St. Paul Street, Suite 2102

Baltimore, Maryland 21202

(410) 333-3616 (facsimile)

Dated: December 1, 2011

**BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.,)	
Potomac-Appalachian)	
Transmission Highline, LLC)	Docket No. ER12-269-000
)	
)	

CERTIFICATE OF SERVICE

I hereby certify that, on the date below, we have served the “Motion To File Comments Out Of Time And Comments Of The Maryland Office Of People’s Counsel” upon each person designated on the official service list compiled by the Secretary in the above-referenced proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Baltimore, Maryland this 1st day of December, 2011.

Respectfully submitted,

MARYLAND OFFICE OF PEOPLE’S COUNSEL

/s/ filed electronically

Gary L. Alexander

/s/ filed electronically

Anne L. Johnson

December 1, 2011

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: *PJM Interconnection, L.L.C., Potomac-Appalachian Transmission Highline*
Docket No. ER12-269-000

Dear Secretary Bose:

Enclosed please find for e-filing in the above-referenced proceeding a “Motion To File Comments Out Of Time And Comments Of The Maryland Office Of People’s Counsel.”

Copies of this document have been served upon all parties designated on the Commission’s official service list, in accordance with Rule 2010 of the Commission’s Rules of Practice and Procedure.

Respectfully submitted,

--filed electronically--

Anne L. Johnson
Assistant People’s Counsel
Maryland Office of People’s Counsel
Direct Dial Tel.: (410) 767-8160

Enclosure
cc: All parties of record