

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

CASE NO. 10-0713-E-PC

MONONGAHELA POWER COMPANY,  
THE POTOMAC EDISON COMPANY,  
TRANS-ALLEGHENY INTERSTATE LINE COMPANY,  
and  
FIRSTENERGY CORP.

JOINT PETITIONERS' RESPONSE  
TO JCIG PETITION TO INTERVENE

Joint Petitioners oppose the intervention of the Jefferson County Intervenor Group ("JCIG"). Joint Petitioners are before the Commission pursuant to W. Va. Code § 24-2-12(g) for consent and approval of a merger ("Merger") that will result in Allegheny Energy, Inc., becoming a direct wholly-owned subsidiary of FirstEnergy Corp. JCIG has no legal interest in the Merger sufficient to entitle it to party status.

All But One JCIG Member Is Represented by the CAD

Only those "having a legal interest in the subject matter of any hearing or investigation pending before the Commission" may intervene. CSR §150-1-12.6.a. JCIG has proffered as its legal interest the fact that its members are retail electric customers of Potomac Edison:

JCIG is a group comprised of 168 individuals owning or otherwise residing upon real estate in Jefferson County, West Virginia, one West Virginia limited liability company based in Jefferson County, and one Jefferson County homeowners' association incorporated in West Virginia. Each of the individual members of JCIG is either a residential electric customer of The Potomac Edison Company or a member of a household receiving electric service from Potomac Edison.

Because the interests of residential electric customers are already represented by the Consumer Advocate Division, the JCIG may not be added as a party, as the Commission has already ruled in this case:

The Commission does not typically grant intervention to individual residential utility customers unless those customers can show a legal interest separate from other residential customers. This particular proceeding involves a half a million customers, and it would simply be unworkable for the Commission and the parties to process this matter if even a fraction of the individual customers were granted party status as an intervenor.

In his petition, Mr. Hairston has not presented an interest separate from other individual customers that would cause us to reconsider our usual practice. We have granted the petition to intervene of the CAD, which has the statutory right to represent the interests of residential ratepayers. Accordingly, we will not grant Mr. Hairston's petition to intervene.

See "Commission Order" entered July 16, 2010 at 4.<sup>1</sup> The same principles apply to the 166 individuals who belong to JCIG, as well as to the "Jefferson County homeowners' association" whose individual constituents are likewise residential electric customers of Potomac Edison.<sup>2</sup>

The JCIG's Concerns About PATH Are Already  
Before the Commission in Another Proceeding

As appropriately acknowledged in its petition, "JCIG has been granted intervenor status in Case No. 09-0770-E-CN, an active matter before the Commission ..." Much of that activity has involved JCIG, which has served dozens of discovery requests that have generated the production of literally thousands of pages of documents. This vigorous JCIG opposition to PATH's certification should remain confined to Case No. 09-0770-E-CN.

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<sup>1</sup> See also, e.g., Hope Gas, Inc. dba Dominion Hope, Case No. 04-1188-G-30C (Procedural Order dated November 23, 2004) at 9 (concerns about proposed rate increase did not amount to a "sufficiently independent interest to warrant a separate intervention"); Appalachian Power Company and Wheeling Power Company dba American Electric Power, Case No. 09-0177-E-GI (Commission Order dated May 29, 2009) 3-5 (petitioner's opposition to rate increase "will be adequately considered by CAD, Commission Staff, and other consumer interest groups," and petitioner "has not presented any interest that would require separate representation."); Monongahela Power Company and The Potomac Edison Company, Case No. 06-0960-E-42T (Commission Order dated January 26, 2007) at 3-4 (customers' interests as residential ratepayers were adequately represented by the CAD).

<sup>2</sup> The only JCIG member whose interest as a Potomac Edison customer may not technically be represented by the CAD is the unnamed "West Virginia limited liability company." The record in Case No. 09-0770-E-CN reflects that this entity is Beverly-Burns Farm, LLC. To the best information and belief of Joint Petitioners, that entity is not involved in the electric industry other than as a Potomac Edison retail customer and it will not otherwise be affected by the Merger in any way that would distinguish its interest from those of the other JCIG members.

JCIG might argue that its circumstances differ from those of Mr. Hairston because JCIG is particularly interested in how the Merger might relate to certification of PATH. However, every PATH-related issue that “JCIG seeks to inquire about and address,” to the extent those issues are relevant at all, can be taken up in Case No. 09-0770-E-CN. JCIG can serve another discovery request in that docket to ascertain “the extent to which First Energy or any of its affiliates have participated in the formation or management of PATH Ohio Transmission Company.” See JCIG Petition, ¶ 3.g. Likewise, “whether First Energy or any of its affiliates intend to construct or operate a new transmission line that would have a direct electrical connection to the PATH line as presently conceived” (see JCIG Petition, ¶ 3.g), “whether, and the extent to which, the merger may present opportunities for alternatives to the construction and operation of the PATH line” (see JCIG Petition, ¶ 3.h), and “whether FirstEnergy or any of its affiliates have proposed or studied the construction and operation of an electric transmission line that would parallel, in whole or in part, the existing right-of-way of the Mt. Storm-Doubs 500-kV line or the proposed right-of-way of PATH in Jefferson County” (see JCIG Petition, ¶ 3.i) can be addressed in Case No. 09-0770-E-CN. Such information may (or may not) bear on PATH’s certification under W. Va. Code § 24-2-11a, but the docket, if any, in which to propound those questions and resolve their relevance is Case No. 09-0770-E-CN, not this one.<sup>3</sup>

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<sup>3</sup> Cf., “Commission Order” entered July 16, 2010 at 2-3, noting the concerns of the WVEUG:

Among other issues, WVEUG wants to analyze whether the transaction is in the public interest; whether the wholesale market power concentration caused by the merger will adversely impact retail rates; the calculation and allocation of net synergy savings to Mon Power and PE; and whether the merger will impact quality of service and system reliability. Petition pp. 1-2.

These issues are far more pertinent to the Commission’s consideration of the Merger under W. Va. Code § 24-2-12(g) than are the proffered concerns of the JCIG.

Joint Petitioners are concerned that JCIG may hope to hamper Commission review of the Merger for tactical advantage or other leverage against PATH. Tellingly, the first issue that “JCIG seeks to inquire about and address” is “whether the proposed merger may delay or accelerate the various regulatory proceedings relating to PATH.” See JCIG Petition, ¶ 3.a. JCIG knows full well that nothing in this docket will “accelerate” the Commission’s disposition of Case No. 09-0770-E-CN. On the other hand, JCIG may use its participation here to “delay” PATH. One can imagine JCIG using a petition for reconsideration or appeal in this proceeding to bargain with the applicants in the PATH proceeding. With due respect to zealous, creative advocacy, the Commission should not condone any effort on the part of JCIG to use this proceeding for such purposes.

JCIG’s Other Concerns Are Not Properly  
Before the Commission in This Proceeding

JCIG has also asserted that it wishes to address “the extent to which the projected utilization, post-merger, of generating units owned or operated by FirstEnergy or its affiliates may negatively impact the quality of the environment in West Virginia or elsewhere.” See JCIG Petition, ¶ 3.f. Such analyses are not pertinent to the Commission’s consideration of the Merger.

In Trans-Allegheny Interstate Line Company (“TrAILCo”), Case No. 07-0508-E-CN, the Commission rejected the Sierra Club’s argument that TrAIL should not be certified because it would facilitate coal-fired generation of electricity. See “Commission Order” entered August 1, 2008 at 63, 115. The statute governing both TrAILCo and Case No. 09-0770-E-CN is W. Va. Code § 24-2-11a(d), which explicitly requires consideration of “reasonable environmental factors.” The Commission “determined that the pollution associated with existing or potential future coal-fired generating plants is not before the Commission in [such proceedings].” See Sierra Club, Inc., et al. v. Public Service Commission of West Virginia, et al., Supreme Court of

Appeals of West Virginia, Nos. 090379 and 090382, “Statement of the Respondent, Public Service Commission of West Virginia” filed April 13, 2009 at 25.

JCIG has even suggested in its petition that the Commission can disapprove the Merger under W. Va. Code § 24-2-12 – which makes *no* reference to the environment – on the basis of pollution arising from First Energy “generating units” in other jurisdictions. Respectfully, that argument is even more attenuated than the flawed Sierra Club argument rejected in TrAILCo.

The remaining issues that “JCIG seeks to inquire about and address” also lie well beyond this docket. Indeed, they would not be appropriately raised in Case No. 09-0770-E-CN or any other Commission matter:

- “how the proposed merger relates to the previously announced integration of the transmission facilities owned by FirstEnergy affiliate American Transmission Systems, Inc. (“ATSI”) into PJM” (*see* JCIG Petition, ¶ 3.b)
- “whether the integration of ATSI facilities into PJM or any aspect of the proposed merger may have exacerbated the extent of, or hastened the identification of, violations of NERC Reliability Standards in recent PJM Regional Transmission Expansion Plan (“RTEP”) analyses” (*see* JCIG Petition, ¶ 3.c)
- “the extent to which FirstEnergy and its affiliates have participated in, or otherwise influenced, the development of recent PJM RTEPs” (*see* JCIG Petition, ¶ 3.d)
- “the extent to which the projected utilization, post-merger, of generating units owned or operated by FirstEnergy or its affiliates may exacerbate or ameliorate violations of NERC Reliability Standards identified in present and future PJM RTEP analyses” (*see* JCIG Petition, ¶ 3.e)

These are matters that have been addressed by the Congress through its charge to the Federal Energy Regulatory Commission. *See generally*, TrAILCo, “Commission Order” entered August 1, 2008 at 12-13. The Commission certainly has authority under W. Va. Code § 24-2-11a to certify the construction of facilities like TrAIL and PATH. But even in those proceedings it has recognized the primacy of national energy policy:

This proceeding is inter-related with federal policies regarding interstate electric transmission lines. Congress and federal agencies have identified the continued reliability of the Nation’s bulk electric transmission system as a national imperative, and have mandated processes for identifying threats to that reliability, defining solutions, and compelling reinforcements to electric transmission infrastructure. The role of PJM, as a federally-designated RTO, in this process is a critical one. PJM’s responsibilities and authority to identify transmission system reliability problems over a wide area and affecting multiple electric utility service areas and to participate in the regional planning for the construction of transmission facilities to resolve them, are at the core of this proceeding. Neither this regulatory framework, nor any of its particulars, was disputed at hearing.

*Id.* at 12. The Commission’s subsequent discussion in TrAILCo specifically mentioned the NERC, RTEPs, reliability standards and the other issues raised by JCIG in its petition as matters lying beyond state jurisdiction.

### Conclusion

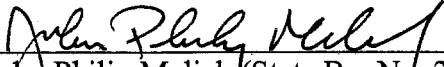
Joint Petitioners acknowledge that JCIG members are sincere in their opposition to PATH and in their concerns about how the Congress has crafted the Nation’s energy policy. However, neither that opposition nor those concerns are matters to be litigated before the Commission in respect of the Merger. The Commission should resolve in Case No. 09-0770-E-CN any further JCIG discovery or other efforts concerning PATH.

Joint Petitioners respectfully request that the Commission deny the JCIG petition.

Respectfully submitted this 3<sup>rd</sup> day of August, 2010.

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CERTIFICATE OF SERVICE

I certify service on August 3, 2010, of JOINT PETITIONERS' RESPONSE TO JCIG PETITION TO INTERVENE by email to those parties or putative parties for whom email addresses have been provided, and by U.S. Mail to Mr. Shields:

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