

141 FERC ¶ 61,177
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

PJM Interconnection, LLC and
Potomac-Appalachian Transmission
Highline, L.L.C.

Docket No. ER12-2708-000

ORDER ACCEPTING IN PART AND REJECTING IN PART ABANDONED PLANT
COST RECOVERY AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES SUBJECT TO CONDITIONS

(Issued November 30, 2012)

1. On September 28, 2012, pursuant to section 205 of the Federal Power Act (FPA) and 18 C.F.R. §35.13 of the Commission's regulations,¹ PJM Interconnection, L.L.C. (PJM) filed with the Commission, on behalf of Potomac-Appalachian Transmission Highline, LLC (PATH) and its operating companies, PATH West Virginia Transmission Company, LLC (PATH-WV) and PATH Allegheny Transmission Company, LLC (PATH-Allegheny) (PATH-WV and PATH-Allegheny collectively referred to as PATH Companies), proposed tariff revisions to Attachment H-19A of PJM's Open Access Transmission Tariff (OATT) to recover prudently-incurred abandoned plant costs associated with the Potomac-Appalachian Transmission Project (Project). In this order, we accept in part and reject in part the proposed rates effective December 1, 2012, and set them for hearing and settlement judge proceedings, subject to nominal suspension and refund as conditioned below. We deny continued application of the incentive return on equity (ROE) of 50 basis points for membership in PJM effective the date of this order. We also accept PATH's proposed reduction in its ROE of 10.9 percent effective September 1, 2012, as requested.

¹ 16 U.S.C. § 824d (2006).

I. Background

A. The Applicant and Upstream Owners

2. PATH was organized as a joint venture between American Electric Power Company, Inc. (AEP) and Allegheny Energy, Inc. (Allegheny) in 2007.² PATH's operating companies, PATH-WV, which is owned jointly by AEP and Allegheny, and PATH-Allegheny, which is owned solely by Allegheny, were organized to finance, construct, own, operate, and maintain certain transmission upgrades approved by PJM as baseline reliability projects under the PJM Regional Transmission Expansion Plan (collectively, the PATH Project).

3. PATH-WV and PATH-Allegheny each formed, respective, single-purpose wholly-owned subsidiaries – PATH-WV Land Acquisition Co. and PATH Allegheny Land Acquisition Co –to acquire, hold and/or transfer legal interests in real property acquired by eminent domain on behalf of their immediate parent for the purposes of developing the PATH Project. PATH-Allegheny subsequently formed PATH Allegheny Virginia Transmission Corp. (PATH-VA) as a wholly-owned subsidiary to finance, construct, own, operate and maintain the PATH Project in Virginia. PATH-Allegheny and its affiliate, the Potomac Edison Co. (Potomac Edison), formed PATH Allegheny Maryland Transmission Company, LLC (PATH-MD), and agreed that Potomac Edison would construct, operate, and maintain the PATH Project in Maryland while PATH-MD would finance and own the project in Maryland.

B. The PATH Project

4. The PATH Project concept was originally introduced by PJM in May 2005 at a Commission technical conference as Project Mountaineer- a major east-to-west transmission corridor.³ In early 2006, AEP and Allegheny separately filed petitions for declaratory order with the Commission requesting transmission incentives to build this multi-corridor concept in their respective zones in Docket Nos. EL06-50-000 and EL06-54-000, respectively. The Commission affirmed abandoned plant recovery for the proposals subject to approval in the PJM Regional Transmission Expansion Plan (RTEP) and requiring a future section 205 filing, among other things. On June 27, 2007, PJM's

² Allegheny merged with FirstEnergy Corp. (FirstEnergy) on February 25, 2011, and FirstEnergy became the ultimate upstream owner of Allegheny's interests in the PATH Project at that time.

³ See, PATH Filing, Docket No. ER08-386-000, Ex. No. PTH-100 at 9, Ex. No. PTH-101.

Board of Directors approved the projects for inclusion in PJM's RTEP, changing the route and scope from those originally conceived, combining portions of both AEP and Allegheny's projects into a single project (the PATH Project) with a requested completion date of June 2012.⁴

5. On December 28, 2008, PATH filed a section 205 filing seeking certain incentive rate treatments under Order No. 679⁵ for its PATH Project.⁶ Through a series of orders, the Commission granted the PATH Project a base return on equity (ROE) of 10.4 percent resulting from a settlement along with (1) an incentive ROE of 150 basis points for constructing the transmission project; (2) an incentive ROE of 50 basis point for membership in PJM; (3) 100 percent of Construction Work in Progress (CWIP) associated with the project included in rate base; (4) 100 percent recovery of abandoned transmission facilities for costs prudently incurred if the PATH Project, or a portion thereof, was cancelled due to factors beyond PATH's control and subject to a separate demonstration in a future section 205 filing; (5) permission to use a hypothetical capital structure of 50 percent debt and 50 percent equity; and (6) authority to amortize and recover pre-commercial costs during the construction period.⁷

6. PJM changed the configuration and in-service dates for the PATH Project several times as a result of retool analyses taking into account a variety of independent variables.

⁴ See, PATH filing in Docket No. ER08-386-000, Ex. No. PTH-100 at 9-12, Ex. No. PTH-101 through Ex. No. PTH-105; PATH filing, Docket No. ER12-2708-000, at 6. At the time the approved configuration was for a \$1.8 billion transmission line consisting of approximately 244 miles of one 765kV line starting at the Amos Substation in Putnam County, West Virginia, to the Bedington substation near Martinsburg, West Virginia, then continuing on another 46 miles as a twin circuit 500 kV line to the Kempton substation in Frederick County, Maryland.

⁵ *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).

⁶ PATH filing in Docket No. ER08-386-000.

⁷ *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188 (2008), *on reh'g and settlement agreement*, 133 FERC ¶ 61,152 (2010); *Potomac-Appalachian Transmission Highline, L.L.C., on reh'g*, 137 FERC ¶ 63,003 (2011); *Potomac-Appalachian Transmission Highline, L.L.C., approving settlement agreement*, 138 FERC ¶ 61,113 (2012).

In 2008, the PATH Project was reconfigured to accommodate state siting restrictions.⁸ Also in 2008, PJM changed the required in-service date for the PATH Project to 2013 as a result of changes in forecasted load, generation retirements and additions.⁹ In 2009, PJM again changed the required in-service date of the PATH Project to 2014 due to actual and forecasted decreases in load resulting from the downturn in the U.S. national economy and increased levels of demand response.¹⁰ Again in 2010, PJM changed the required in-service date of the PATH Project to June 2015, while indicating that it continued to support the PATH Project as the “most robust solution” to resolve reliability concerns, and increasing the estimated cost to \$2.1 billion. In 2011 PJM conducted additional analyses and concluded that due to decreasing customer load growth, increasing participation in demand response, and the expected addition of new generation in the region, the need for the PATH Project no longer existed throughout PJM’s 15 year planning horizon. On February 28, 2011, pursuant to a preliminary analysis, PJM directed the PATH Companies to suspend development of the PATH Project, (other than those activities necessary to maintain the project in its then current state) pending a more complete analysis.¹¹ On August 24, 2012, following a conclusive analysis, PJM terminated the PATH Project and removed it from the RTEP.¹²

7. PATH began collecting costs from consumers in 2008 through the PATH Companies formula rates¹³ as the PATH Project continued to be developed and

⁸ PJM 2008 Regional Transmission Expansion Plan Report at 67 found at, <http://www.pjm.com/documents/reports/rtep-documents/2008-rtep.aspx>.

⁹ *Id.* at 57-58, 67-68 located at <http://www.pjm.com/documents/reports/rtep-documents/~//media/documents/reports/2008-rtep/2008-section4.ashx>.

¹⁰ PJM 2009 Regional Transmission Expansion Plan Report at 81-82 located at <http://www.pjm.com/documents/reports/rtep-documents/2009-rtep.aspx>.

¹¹ PATH filing in Docket No. ER12-2708-000, Ex. No. PTH-100 at 15.

¹² PJM 2011 Regional Transmission Expansion Plan Report at 25 located at <http://www.pjm.com/documents/reports/rtep-documents/2011-rtep.aspx>.

¹³ PATH’s formula rates have three components. The first is a consolidated statement combining the individual annual transmission revenue requirements (ATTR) of PATH-WV and PATH-Allegheny. This is included as Attachment H-19 of the PJM Tariff. The second component is each company’s individual ATRR--- one for PATH-WV and one for PATH-Allegheny-- and the supporting worksheets included as Attachment H-19A for each company. The final component is the formula rates implementation protocols in Attachment H-19B.

re-evaluated in the PJM planning process and as PATH sought approval in various state siting and permitting proceedings. As a baseline reliability project in the PJM RTEP, these costs were largely regionally allocated and recovered from customers across PJM. The PATH Companies use a forward-looking formula rate to calculate their Annual Transmission Revenue Requirement for the PATH Project.¹⁴ The formula rate is based on projected costs of a particular year, that are reconciled to actual costs in the following year using the True-Up Adjustment process set forth in PATH's Protocols (Annual Update). The PATH Companies are required to post their Annual Update on the PJM website on or before June 1 of each year.

II. Docket No. ER12-2708-000

8. In its filing, PATH contends that the PATH Project was abandoned for reasons beyond its control -- due to PJM's decision to remove the project from the RTEP as described above. PATH proposes to recover \$121.5 million in costs associated with the abandoned PATH Project that it contends were prudently-incurred from January 1, 2008 through August 31, 2012 and that will not be double-recovered as part of other Commission-approved rates, such as the pre-commercial cost recovery. The abandoned plant costs include: (i) \$40 million in engineering, procurement, and design costs; (ii) \$67 million associated with siting and rights-of-way (including \$20.8 million associated with the purchase of 662 acres of land and land options); (iii) \$8.7 million associated with the filing of Certificates of Public Convenience and Necessity and related testimony; and (iv) \$6 million in administrative costs associated with legal fees, PATH Board meetings, and related activities. PATH is proposing to amortize and recover the costs over a five-year period through the PATH Companies' formula rate, effective December 1, 2012. PATH also proposes to change the PATH Companies' existing approved ROE of 12.4 percent, using instead a 10.9 percent ROE (the 10.4 percent base ROE plus 50 basis points for RTO participation) effective September 1, 2012.¹⁵

9. PATH represents that the \$40 million in engineering, procurement, and design costs were driven mainly by the compressed schedule and the complexity of the PATH Project. PATH states that for example, portions of the PATH Project were to be constructed near existing extra-high voltage (EHV) transmission lines and double-circuited with existing local transmission lines, which PATH asserts required detailed

¹⁴ The Commission accepted PATH's formula rates and Protocols in *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, *order on reh'g*, 133 FERC ¶ 61,152.

¹⁵ PATH filing, Docket No. ER12-2708-000, at 9-16; App. C; App. E and App. D.

plans for safety and outage mitigation. PATH states that much of the preliminary engineering analysis was completed between 2009 and 2010, during which the PATH Companies also conducted the following final engineering development activities: (1) technical studies of induced voltage impact of the PATH Project on adjacent transmission lines; (2) developing mitigation plans for the close proximity to gas lines and local transmission infrastructure; (3) conducting ground field reconnaissance of roads to proposed structure locations; and (4) providing technical support for the development of materials needed to support procurement of lattice, tubular steel, line hardware, wire and cable, and major substation equipment.¹⁶

10. PATH represents that the \$67 million associated with siting and rights-of-way include costs for preparing line route evaluations, aerial mapping, consultants, environmental and property assessments, land surveys, title searches, substation and transmission line designs, and siting and right-of-way (ROW) acquisitions. PATH states that once the general line route was established, the PATH Companies began the title searches and negotiations with landowners regarding property needed for ROW, staging locations, and access roads for delivery of materials and supplies. PATH asserts that due to the compressed schedule and the number of agreements that would be needed for the project, ROW acquisition (most of which were land options) began shortly after the certificate of public convenience and necessity (CPCN) applications were filed with the respective state agencies. PATH states that it chose land options to achieve the highest percentage of mutually agreed upon acquisitions as possible to minimize costly eminent domain proceedings.¹⁷

11. PATH states that no costs will be double-recovered because it will use separate funding project numbers and unique work orders to track costs, both capital and expense, identified in monthly invoices and work orders by cost element (such as labor, materials, land), ROW or tract of land, and state. PATH states that the detail provided by its funding project number and work order system allows for significant granularity in tracking costs. Further, PATH contends that its abandoned plant costs were recorded in accordance with the Commission's Uniform System of Accounts (USofA).¹⁸ PATH states that the costs were recorded in plant asset accounts, including electric plant in

¹⁶ PATH filing in Docket No. ER12-2708-000, at 10; App. C, Ex. No. PTH-100 at 18-21.

*¹⁷ PATH filing in Docket No. ER12-2708-000, at 11-12; (citing Prepared Direct Joint Test. of Archie D. Pugh and Jay A. Ruberto Ex. No. PTH-100 at 21-24).

¹⁸ 18 C.F.R. Part 101.

service, electric plant held for future use, and construction work in progress prior to being transferred as abandoned plant to Account 182.3, Other Regulatory Assets. PATH acknowledges that it transferred the costs to Account 182.3 following PJM's decision to cancel the PATH Project.¹⁹

12. PATH proposes to recover the abandoned plant costs recorded in Account 182.3 over a five-year period. PATH indicates that the abandoned plant costs will be amortized over the period and included in total depreciation expense each year recovered under the PATH Companies' formula rate. Further, PATH indicates that it will earn a return on the unamortized portion of the abandoned plant costs through inclusion of the costs in rate base. PATH contends that because the abandoned plant balance is not likely to decrease in a linear fashion due to expected real property sales and transfers, an average of thirteen monthly values yields a more accurate average annual rate base compared to average rate base determined using the average of beginning and ending balances. Accordingly, PATH proposes that the unamortized abandoned plant, monthly amortization amount, and annual amortization expense be calculated based on 13-month average balances. PATH states that the proposed amortization period of five years will result in an average annual revenue requirement of approximately \$29.4 million for the abandoned PATH Project recovered through the PATH Companies' formula rate.

13. PATH contends that a five year amortization period is reasonable under the particular circumstances in this case for three reasons: 1) it allows time for PATH to sell or transfer parcels of land originally acquired for the PATH Project and thus reduces the overall amount of abandonment costs recovered from ratepayers, 2) it results in an annual revenue requirement which represents less than one percent of the average zonal revenue requirement within the PJM region, and 3) it will result in lower carrying costs charged to ratepayers than would an amortization period matching the life of the facilities had they been placed into service. PATH asserts that its current actual capital structure consists of 100 percent equity, however it proposes to continue to use the Commission approved hypothetical capital structure of 50 percent debt and 50 percent equity. PATH contends that this proposal is reasonable because use of the hypothetical capital structure will be less costly to ratepayers.²⁰

¹⁹ PATH filing in Docket No. ER12-2708-000, at 13; (citing Prepared Direct Joint Test. of Diana L. Gregory and Cheryl L. Gonder, Ex. No. PTH-200 at 3-4).

²⁰ PATH filing in Docket No. ER12-2708-000, at 13-14; App. E, Mr. Pokrajak Test., Ex. No. PTH-300 at 4-9.

14. PATH requests waiver of the Commission's regulations requiring cost support related to Period I and Period II data because the proposed abandonment cost recovery reflects costs derived from the FERC Form No. 1. PATH also requests waiver of the Commission's requirements for footnote disclosures on CWIP and pre-commercial cost recovery arguing that the requirements have been superseded by the instant proceeding. PATH requests an effective date of December 1, 2012 for the abandoned plant recovery, and September 1, 2012 for the lower ROE of 10.9 percent.

III. Procedural History, Notice, Interventions, and Responsive Pleadings

15. Notice of PATH's filing was published in the *Federal Register*, 77 Fed. Reg. 61,403 (2012), with interventions and comments due on or before October 19, 2012.

16. Timely motions to intervene were filed by Exelon Corp.; PJM Industrial Customer Coalition; the Maryland Public Service Commission; Dominion Resources Services, Inc.; Public Service Electric & Gas Co.; Kenneth E. Sanders; David Fenstermacher; Catherine M. Combs; PJM; Bill Howley (Mr. Howley); Pennsylvania Public Utility Commission; Ms. Alison Haverty (Ms. Haverty); Ms. Keryn Newman (Ms. Newman); Virginia L. MacColl; Ricky F. Young; Lisa Jarosinski; Brent W. Simmons; Rockland Electric Co.; LSP Transmission Holdings, LLC; Mary Ann Aellen; North Carolina Electric Membership Corp.; Public Service Commission of West Virginia; Office of Ohio Consumers' Counsel; and American Municipal Power, Inc.. Untimely motions to intervene were filed by the New Jersey Board of Public Utilities and the Delaware Public Service Commission.

17. Notice of intervention and comments were filed by the Illinois Commerce Commission (Illinois Commission). Notice of intervention and protest were filed by the Indiana Utility Regulatory Commission (Indiana Commission); Old Dominion Electric Cooperative (ODEC); Maryland Public Service Commission (Maryland PSC); Ms. Haverty; Virginia State Corporation Commission (Virginia Commission); Ms. Newman; Pennsylvania Office of Consumer Advocate, Maryland Office of People's Counsel, New Jersey Division of Rate Counsel, Consumer Advocate Division of the Public Service Commission of West Virginia, Delaware Division of Public Advocate, Division of Consumer Counsel of the Virginia Office of Attorney General (herein, Joint Consumer Advocates); Bill Howley (Mr. Howley); and Patience C. Wait (Ms. Wait).

18. Several parties request that the Commission deny PATH's request for summary disposition and set PATH's formula rates, return on equity, and incentives for full

evidentiary hearing.²¹ The Illinois Commission requests that the Commission reject PATH's filing, stating that the filing is not clear on whether or not PATH is requesting a simple change to the formula in its formula rate in order to recover abandonment costs in subsequent annual formula rate cases or if PATH is more broadly requesting the Commission to make a prudence determination of the costs at issue. The Illinois Commission suggests that the Commission take one of two possible paths: apply normal hearing procedures allowing for interested parties to conduct discovery and challenge prudence of costs, or direct the assessment of prudence of costs be determined through annual PATH formula rate update filings over the course of the amortization period and that discovery and challenge procedures be made available to interested parties.²²

19. As discussed more fully below, parties request that the Commission deny PATH's request for summary disposition and set PATH's formula rates, return on equity, and incentives for full evidentiary hearing.²³ Parties allege PATH's filing is deficient and does not provide enough information to establish that abandonment of the project was beyond PATH's control or that the abandoned plant costs were prudently-incurred. Several parties state that PATH provided no explanation or financial information supporting its request for a 10.9 percent ROE on the amortization of abandoned plant costs, as discussed further below.

20. On October 26, 2012, PATH filed a motion to consolidate Docket No. ER12-2708-000 with the ongoing settlement and hearing proceedings in Docket No. ER09-1256-000 pertaining to formal challenges of PATH's formula rate annual updates (Formal Challenge proceedings). Ms. Newman filed a motion opposing consolidation on October 30, 2012, and Mr. Howley filed a motion opposing consolidation on November 2, 2011. On November 5, 2012, PATH filed a request for leave to answer protests and answer (Answer). On November 8, 2012, ODEC filed a motion for leave to answer and limited answer. On November 14, 2012, PATH filed a motion for leave to file a limited response and limited response (November 14 Answer).

²¹ Joint Consumer Advocates Protest at 12, 23. Maryland Public Service Commission Protest at 2, Ms. Haverty Protest at 2 and Ms. Newman Protest at 2.

²² Illinois Commission Comments at 3-4.

²³ Joint Consumer Advocates Protest at 12, 23; Maryland Public Service Commission Protest at 2; Ms. Haverty Protest at 2; and Ms. Newman Protest at 2.

A. Prudence

21. Joint Consumer Advocates argue at the outset that not one electron has ever flowed to ratepayers from the PATH Project, nor has there been any construction with even a shovel in the ground and therefore, PATH's tens of millions of dollars in costs it seeks to recover are only in preparation for building, rather than costs for actual utility plant.²⁴

22. Joint Consumer Advocates are concerned about the prudence of the high level spending during the past two years, after the "Great Recession" of 2008 had caused demand to drop precipitously from former forecasts. Joint Consumer Advocates and Mr. Howley argue that PJM's numerous successive suspensions of the PATH Project after this point would have made a lower amount of investment more reasonable and prudent. Ms. Wait states that PATH never received a CPCN in any of the three states and as such, all of PATH's actions were taken speculatively.

23. Joint Consumer Advocates point to PATH-VA's withdrawal of its siting application in Virginia as early as December 2009 because PATH-VA stated the load sensitivity analyses at the time "raise questions about the ability of PATH-VA to support the Application now on file with the Commission that is based on a need for the PATH Project in 2014" and that "[i]n light of the current analyses, approval of the PATH Project will not be pursued through the currently filed Application."²⁵ Joint Consumer Advocates argue that further discovery is needed to determine how far in advance PATH's management knew of PJM's actions to first suspend, and then terminate the PATH Project in deciding whether PATH's costs were prudently-incurred.²⁶

24. Joint Consumer Advocates argues that PATH's request dwarfs by more than 1,000 percent the abandonment cost recovery sought in other cases before the Commission.²⁷ Joint Consumer Advocates state that from January 1, 2008 through

²⁴ Joint Consumer Advocates Protest at 14.

²⁵ Joint Consumer Advocates Protest at 14-15 (citing Order Granting Withdrawal at p. 2, *Application Of PATH-Allegheny Virginia Transmission Corporation For Certificates Of Public Convenience And Necessity To Construct Facilities: 765 kV Transmission Line through Loudoun, Frederick, and Clarke Counties*, Case No. PUE-2009-00043, Virginia State Corporation Commission (January 27, 2010)).

²⁶ Joint Consumer Advocates Protest at 15.

²⁷ Joint Consumer Advocates Protest at 19-22.

December 31, 2011 PATH collected \$82.5 million already through the PJM Tariff, with an additional \$18.5 million revenue requirement approved for 2012. Joint Consumer Advocates state that if PATH's filing is accepted by the Commission, PATH will have collected almost a quarter of a billion dollars on a project that has never, and now will never, exist.²⁸

25. The Indiana Commission argues that PATH does not provide sufficient explanation as to how and why it incurred the costs it did given that the project's in-service date was moved back on multiple occasions. The Indiana Commission also questions the prudence of incurring project costs prior to obtaining CPCN's from state utility commissions.²⁹

26. Ms. Newman argues that PATH's abandoned plant cost "represents a massive planning failure on the part of both PATH and PJM" because both PATH and PJM indicated that load forecasts were revised downward several years prior to the abandonment filing, but PATH did not take action to mitigate potential abandoned plant costs until February 28, 2011. Ms. Newman points out that although PATH asserts that the in-service date was never more than 5 years away, the in-service date never got any closer than more than 5 years into the future.³⁰

27. The Illinois Commission argues that it is not possible for the prudence of the abandoned costs to be determined in this instant proceeding since PATH will have future, undetermined credits and debits to the to the abandoned plant account. Additionally, The Illinois Commission states that the prudence of costs already incurred have not adequately been demonstrated by submitted testimony. The Virginia Commission urges the Commission to investigate whether PATH continued to throw "good money after bad" as it became increasingly apparent that the Project would not be built.

28. In its answer, PATH argues that parties provide no support for their assertions that the abandonment of the Project was within PATH's control, and reiterates that the abandonment decision was solely the PJM Board of Managers' to make.³¹ In its answer, PATH argues that there is a presumption of prudence, and reiterates the prudence of decisions made during the construction phase. PATH argues that in Order No. 679, the

²⁸ Joint Consumer Advocates Protest at 22-23.

²⁹ Indiana Commission Protest at 4

³⁰ Ms. Newman Protest at 2-4.

³¹ PATH Answer at 2-5.

Commission specifically stated that it “is making no change in the long-standing regulatory presumption in a section 205 proceeding that costs are prudently-incurred but parties are free to provide evidence to the contrary; and ultimately, the burden is on the applicant to demonstrate that its proposal is just and reasonable.” PATH states, however, it is not opposed to the requests for hearing and settlement judge proceedings.³²

1. Administrative Costs

29. Ms. Newman argues that PATH’s \$6 million of administrative costs associated with “administrative oversight and support” should be expensed, not included in rate base to earn a return on and of equity. Ms. Newman also states that these costs may not have been prudently-incurred³³ and should be set for hearing.

2. Prudence of Certificate of Public Convenience and Necessity Costs (CPCN Costs)

30. Ms. Newman states that PATH’s \$8.7 million in CPCN costs may not have been prudently-incurred because PATH requested and received numerous tolls and withdrawals from three states and one federal permitting process. Ms. Newman requests that the CPCN costs be examined to determine what portion were prudently-incurred and what portion were the result of PATH’s own procedural errors.³⁴

31. While Joint Consumer Advocates acknowledge that generally the costs of preparing, filing, and prosecuting CPCN cases in the three states through which the PATH Project was intended to traverse could ordinarily be charged to ratepayers, Joint Consumer Advocates and Mr. Howley argue that at least a portion of the \$8.7 million of the CPCN costs were imprudently-incurred. Specifically, Mr. Howley and Joint Consumer Advocates state that the first two of PATH’s CPCN applications were improperly filed and consumers should not be charged the costs and fees associated with improper filings.³⁵ Mr. Howley indicates that he was an intervener in the West Virginia

³² PATH Answer at 9-18 (internal citations omitted).

³³ Ms. Newman Protest at 4.

³⁴ Ms. Newman Protest at 3-4.

³⁵ Mr. Howley Protest at 2-3. Joint Consumer Advocates Protest at 15-16 (citing PATH-Allegheny’s applications with the Maryland Public Service Commission and Virginia State Corporation Commission, and PATH-WV’s application with the West Virginia Public Service Commission which were either tolled as premature and insufficient to evaluate or cited as being filed by the wrong party).

state proceedings and moved on two occasions for the West Virginia Public Service Commission to reject the PATH Companies' motions to delay the proceedings, and no other parties in the state cases ever requested delay except PATH.³⁶

32. PATH answers that the Joint Consumer Advocates mischaracterize the CPCN cases, and cites to the dissenting opinion of one Commissioner in the state proceedings to indicate that the issues raised were novel but by no means improper, imprudent, premature, or incomplete.³⁷

3. Prudence of Engineering Costs

33. Ms. Newman argues that PATH's statements regarding PATH's expenditures of engineering and design costs fail to establish the prudence of these costs.³⁸

4. Prudence of Siting and Rights-of Way (ROW)

34. Joint Consumer Advocates and Ms. Wait argue that PATH's land purchases were executed despite the fact that PATH had not received a single regulatory approval for the PATH Project in any of the three state siting proceedings.³⁹ Joint Consumer Advocates acknowledge that while PATH was under an obligation to PJM to pursue the project in 2010 and 2011, it was not obligated to construct the project until it received the CPCNs and therefore, the prudence of purchasing \$30 million in real estate must at least be subject to hearing.⁴⁰ Mr. Howley argues that PATH knew as early as 2009 that energy trends in the PJM system indicated to a prudent person that the PATH Project would be dropped from the RTEP. Mr. Howley states that PATH went so far as to make an outright purchase of real estate in Mount Airy, MD, before it had any regulatory approvals and such a decision fails the test of prudence.⁴¹

³⁶ Mr. Howley Protest at 3.

³⁷ PATH Answer at 20-22.

³⁸ Ms. Newman Protest at 4, citing PATH filing, Ex. No. PTH-100 at 21, lines 3-9.

³⁹ Ms. Wait Protest at 2.

⁴⁰ Joint Consumer Advocates Protest at 17.

⁴¹ Mr. Howley Protest at 2.

35. Ms. Newman argues that PATH's siting and right-of-way costs of \$67 million including property acquisition through purchase or option may not have been prudently-incurred. Ms. Newman points to comments filed by PATH's parent company, American Electric Power Corp., illustrating a typical schedule for EHV electric transmission line projects where negotiation for rights-of-way and purchase of land does not begin until after the CPCN process concludes.⁴² Ms. Haverty argues that prudent utility management purchase land and rights-of-way after the government approvals are obtained, noting that both OGE Energy Corp. and Great River Energy indicate on their websites that easements and land are acquired after a route permit or government approvals are received, and not before.⁴³ Ms. Newman states that PATH's explanation for its departure from industry practice was a "compressed schedule" but such a compressed schedule was actually expanded three years by PJM. Ms. Newman states that for example, PATH purchased a number of properties between February and April of 2009, several months before the CPCN proceedings began. Ms. Newman states that PATH also chose to purchase several properties well above market value, rather than optioning the property.⁴⁴

36. In another example, Ms. Newman states that in 2009, PATH optioned a property located in a very small subdivision in Summit Point, West Virginia, paying an option purchase price of \$687,500 when the property value was assessed at \$211,100. Ms. Newman states that PATH made payments to the property owner totaling \$345,325.51 in 2009 and 2010 before cancelling the option, but PATH made no effort to salvage any

⁴² Ms. Newman Protest at 5, ex. A (AEP's expedited schedule for EHV Transmission Line Project consistent with the process needing approval under the Federal National Environmental Policy Act).

⁴³ Ms. Newman Protest at 6 (citing OGE's website page titled "How are Power Line Easements Obtained?" found at, <http://www.oge.com/ABOUT/TRANSMISSIONLINES/Pages/BusinessPractices.aspx> and Great River Energy's Environmental Assessment Proposed Sartell Substation and 115 kV Transmission Line, Stearns County found at, <http://mn.gov/commerce/energyfacilities/documents/3855/EA%201%20of%207.pdf> (May 2009)).

⁴⁴ Ms. Newman includes a list of more than 50 properties purchased by PATH throughout 2009 and 2010, including the Purchase Price, Option for Fee Purchase, or Option for Easement price and the associated acreage in Ex. B of her protest.

option value that remained for any of its property options and expensed several released options totaling \$2.5 million in 2011.⁴⁵

37. Ms. Newman also points out that PATH paid over \$10 million to “Contract Land Staff LLC” in 2009 which may be excessive and should be explored. Ms. Wait argues that in Virginia, PATH purchased six lots - three of them with houses - for \$4.8 million in the River’s Edge community in Loudoun County, comprising approximately 180 acres. Ms. Wait states that for one 53 acre lot with a county assessment of \$477,000, PATH paid \$1.175 million. Ms. Wait states that PATH made these purchases in order to become the majority property owner in the subdivision to give it standing to ask the Loudoun County Board of Supervisors in May 2009 to release the conservation easement held by the county for this subdivision.⁴⁶

38. Ms. Newman points to the three most recent abandonment cases before the Commission and notes that none of these cases included costs for land acquisition, or the extent of abandonment recovery. Ms. Newman and Ms. Haverty argue that in *Public Serv. Elec. & Gas Co.*, the utility requested \$3.6 million recovery on a \$1.1 billion project, but incurred no costs for land acquisition; in *Southern Calif. Edison Co.*, the utility requested \$11 million recovery on a \$600 million project; and in *Pacific Gas & Elec. Co.*, the utility requested \$8.4 million on a \$1.9 billion project.⁴⁷ Therefore, Ms. Newman argues that PATH has not demonstrated the standard for prudence; that these “are costs which a reasonable utility management (or that of a jurisdictional entity) would have made, in good faith, under the same circumstances, and at the relevant point in time.”⁴⁸

39. PATH answers that contrary to the assumptions of parties, it is common practice to negotiate ROW options and to purchase property needed for transmission and related

⁴⁵ Ms. Newman Protest at 8-9.

⁴⁶ Ms. Wait Protest at 2-3. Ms. Wait gives several other examples of land purchases and land clearing that PATH undertook that are purportedly imprudent given the lack of CPCN and PJM’s decision to suspend the PATH Project on February 25, 2011.

⁴⁷ Ms. Newman Protest at 11 (citing *PJM Interconnection L.L.C.* and *Public Serv. Elec. & Gas Co.*, 140 FERC ¶ 61,197 (2012); *Southern Calif. Edison Co.* 137 FERC ¶ 61,252 (2011); *Pacific Gas & Elec. Co.*, 137 FERC ¶ 61,193 (2011)).

⁴⁸ Ms. Newman Protest at 5-7 (citing *Violet v. FERC*, 800 F.2d 280, 283 (1st Cir. 1986) (*Violet v. FERC*)).

substation projects before siting approvals are obtained, particularly with respect to very large projects where approvals can take several years to obtain. PATH cites to the Commission's publication, "A Guide To The FERC Electric Transmission Facilities Permit Process" at 11, which suggest obtaining easement agreements prior to regulatory approval of the project.⁴⁹

5. The Prudence of Future Business Transactions and Land Sales

40. Ms. Newman argues that PATH does not provide any evidence demonstrating the justness and reasonableness of its going-forward accounting entries involving the disposition of property and closing of business, and questions whether ratepayers should be responsible for such unknown variables.⁵⁰

41. The Illinois Commission is concerned about the lack of a proposed oversight mechanism which would ensure that PATH property is sold at maximum value in order to minimize abandonment costs for ratepayers. The Illinois Commission suggests that the Commission require the sale of PATH property to be conducted through a public auction process or require that documentation of previous property sales be submitted for comparison.⁵¹

42. The Virginia Commission argues that FERC Staff should provide regulatory oversight of PATH's asset sales used to offset plant abandonment costs and reduce consumer rates.⁵²

43. PATH answers that it will transfer or sell all land acquired at fair market value, and the sales or transfer price will be credited to mitigate the overall abandonment costs.

B. Return on Equity, Capital Structure and Continued Eligibility for Incentives

44. The Joint Consumer Advocates state that section 3.2(b) of PATH's 2011 Settlement Agreement states: "[s]hould the PATH Project be cancelled, the terms of this

⁴⁹ PATH Answer at 19 (citing <http://www.ferc.gov/industries/electric/industryact/siting.asp>).

⁵⁰ Ms. Newman Protest at 10.

⁵¹ Illinois Commission Protest at 5-7.

⁵² Virginia Commission Protest at 10-11.

Settlement Agreement will remain in full force and effect, except that the rate moratorium on proposed changes to the ROE shall have no further force or effect and, in particular, *shall not limit the rights of any party to argue what the proper ROE (if any), including both the base ROE and any adders, should be in calculating any abandoned plant recovery ultimately sought by PATH LLC.*⁵³ Joint Consumer Advocates argues that at minimum, PATH bears the burden of proving the amount of any ROE it requests is just and reasonable.

45. Ms. Newman states that PATH should not be rewarded for its failed project by being allowed to retain the benefit of any above-cost incentives, including the 50 basis point ROE adder for RTO participation. Ms. Newman asserts that ratepayers do not benefit from PATH's continued participation in PJM and therefore, ratepayers should not continue to pay the incentives for it.⁵⁴ Ms. Haverty argues that as the PATH Project is no longer in RTEP, it now fails to satisfy any requirement that an applicant must have in order to receive incentive rate treatment under Section 219 of the FPA. Ms. Haverty argues that the purpose of incentives is to induce investment by reducing risk, but giving PATH a 50 basis point ROE adder for RTO participation on its abandoned plant is not incentivizing anything but hubris.⁵⁵ ODEC states that the Commission should summarily reject PATH's proposal to use a 50 basis point adder in its proposed ROE. ODEC argues that, subsequent to cancellation of the PATH Project, there does not appear to be any reason for PATH to remain in existence. Consequently, ODEC states that it would be unjust and unreasonable to permit PATH to collect an incentive adder intended to promote its continuing voluntary membership in PJM.⁵⁶

46. The Virginia Commission argues that applying ROE adders of any kind to abandonment costs in this case would be unjust, unreasonable and inconsistent with Section 219 of the FPA since consumers have not received either reliability or economic benefits from the PATH Project.⁵⁷ The Virginia Commission also argues that the proposed 10.9 percent ROE on abandonment costs does not appear to properly reflect the limited risk remaining for the PATH Project relative to the risk the Project faced before

⁵³ Joint Consumer Advocates Protest at 19.

⁵⁴ Ms. Newman Protest at 10-11.

⁵⁵ Ms. Haverty Protest at 4-5.

⁵⁶ ODEC Protest at 5-6.

⁵⁷ Virginia Commission Protest at 7-8.

cancellation.⁵⁸ Finally, the Virginia Commission states that FERC's approval of the 50/50 hypothetical capital structure and its contemplated replacement with an actual capital structure explicitly assumed PATH LLC would issue debt to finance the Project. The Virginia Commission argues that PATH's filing provides no rationale maintaining itself, before or after the Project was cancelled, at a 100percent equity level.⁵⁹

47. In its answer, PATH states that should the Commission set for hearing the determination of the appropriate base ROE for the formula rate, it will provide evidentiary support for the 10.4 percent base ROE at that time.⁶⁰ PATH argues that the PATH Companies will continue to be members of PJM for the duration of the amortization period required to complete the recovery of prudently-incurred abandonment costs, and thus the 50 basis point adder previously approved by the Commission should remain in place. PATH states that there is no basis under current Commission policy and precedent to remove the 50 basis point adder, so long as PATH continues to participate in PJM. PATH states that the Commission has explained that the ROE adders for participation in an RTO are "unrelated to any particular project" but rather are intended as incentives for "joining and remaining" in an RTO.⁶¹ PATH points out that the Commission did not require Public Service Electric and Gas Company (PSE&G) to remove the adder from the PSE&G formula rate being used to calculate abandoned plant recovery for the Branchburg-Roseland-Hudson 500kV Project prior to setting the PSE&G abandoned plant filing for hearing. PATH argues that revisiting the 50 basis point ROE adder would deny AEP and FirstEnergy an opportunity to apply the ROE-based incentive adder to their abandoned plant investment in the PATH Project merely because of the business structure they chose as a vehicle for fulfilling construction obligations assigned to them by PJM.⁶²

48. In its answer, ODEC argues that, from the outset, PATH stated that its status as a separate "start-up" transmission company with no operating assets meant the company faced relatively greater risk and therefore justified a higher ROE. ODEC argues that, given these previous statements by PATH, the Commission should not entertain current

⁵⁸ Virginia Commission Protest at 5-6.

⁵⁹ Virginia Commission Protest at 6-7.

⁶⁰ PATH Answer at 3.

⁶¹ PATH Answer at 7-8 (citing *PPL Elec. Util. Serv. Corp. and Pub. Serv. Elec. and Gas Co.* 123 FERC ¶ 61,068, at P 35 (2008)).

⁶² PATH Answer at 8-9 (citing *Pub. Serv. Elec. and Gas Co.* 140 FERC ¶ 61,197).

arguments by PATH that it should be able to keep the adder based on AEP's and FirstEnergy's continued PJM membership.

49. In its November 14 Answer, PATH states that ODEC's answer muddles the record with mischaracterizations of PATH's answer by stating that PATH is seeking approval for the RTO participation adder in this proceeding. PATH states that its filing in this proceeding does not seek approval of the 50 basis point adder for RTO participation based on AEP and FirstEnergy's participation in PJM. Rather, PATH states that the Commission has already approved the RTO participation adder for PATH based on PATH's membership in PJM.⁶³ PATH reiterates its position from its earlier answer, that the RTO membership adder is not based on risk or corporate structure, but membership.

C. Amortization Period

50. Joint Consumer Advocates argues that a five year amortization period results in a total of \$147.3 million recovery over the life of the amortization period, with ratepayers incurring \$25.8 million in carrying charges if PATH is allowed to recover the 10.9 percent ROE. Joint Consumer Advocates argue that PATH's filing lacks any evidence as to how five years is an appropriate period for the liquidation of land. Joint Consumer Advocates state that a just and reasonable amortization period can only be properly determined by obtaining evidence on the current real estate market, expert appraisals on the current value of the property, the ability to sell property within a much shorter time and comparisons of the prices to be obtained in the current market versus what experts forecast for the market in one through five year periods.⁶⁴

D. Cost Allocation

51. The Illinois Commission argues that PATH, relying on a Remand Order in Docket No. EL05-121-006 which may be subject to rehearing and appeal, provides no evidence to support allocation of abandoned project costs using the postage stamp method. The Illinois Commission states that if the Commission accepts PATH's proposed cost allocation, the decision is subject to modification depending on the outcome of the

⁶³ PATH November 14 Answer at 2-3 (citing *Potomac-Appalachian Transmission Highline, LLC*, 122 FERC ¶ 61,188 at P 28 (“We will grant PATH's request to increase its ROE by 50 basis points conditioned upon PATH's membership application being approved by PJM, and conditioned upon the final ROE being within the zone of reasonable returns.”)).

⁶⁴ Joint Consumer Advocates Protest at 18.

Commissions pending order on request for rehearing of its Remand Order in Docket No. EL05-121-006.⁶⁵

E. Formal Challenges

52. Ms. Newman states that while PATH claims no costs included in its filing have been judged to be illegal, duplicative, or unnecessary, two formal challenges to PATH's rates in 2009 and 2010 have recently been set for hearing and contain allegations of double recovery of costs, imprudence, and recovery of prohibited costs. Ms. Newman states that PATH should not be allowed to recover costs in this proceeding until the formal challenges are resolved.⁶⁶ Mr. Howley states that because of the facts brought to light in the formal challenge proceedings, there are likely accounting errors and mischaracterized costs, and as such, requests that the Commission review the abandoned plant costs in great detail.⁶⁷

53. PATH answers that it has requested the Commission consolidate these proceedings because many of the activities and costs cut across rate years and are closely intertwined. Nevertheless, PATH argues that the allegations in the formal challenge proceedings are false and without merit.⁶⁸

F. Motions on Consolidation

54. In its motion to consolidate, PATH states that both cases raise allegations of imprudence by some of the same parties. PATH states that failure to consolidate prudence and related issues that are so closely intertwined in the two proceedings would lead to administrative inefficiencies, including duplicative discovery and hearings, and potentially inconsistent evidentiary records and findings of fact, and would unduly prejudice the PATH Companies by requiring the companies to respond to duplicative or overlapping discovery and to present duplicative or overlapping evidentiary support for the same activities undertaken to develop the PATH Project. Finally, failure to consolidate prudence and related issues would be a significant hindrance to settlement because settlement of prudence and related issues in one proceeding would be fruitless if the same issues were to remain open in another proceeding.

⁶⁵ Illinois Commission Protest at 9-11.

⁶⁶ Ms. Newman Protest at 9-10; Ms. Haverty Protest at 3.

⁶⁷ Mr. Howley Protest at 3.

⁶⁸ PATH Answer at 22.

55. In her motion opposing consolidation, Ms. Newman states that while both cases raise issues of prudence, they do not contain common issues of fact and law because one proceeding involves historical costs passed through the formula rates in 2009 and 2010, while this instant proceeding involves the recovery of capital costs associated with plant, land, and construction work in progress. Ms. Newman argues that the proceedings in Docket No. ER09-1256-000 involve double-counting of costs between rate base and expense items in PATH's formula rates which is not at issue here. Ms. Newman points out that under PATH's proposed consolidation, the parties to the proceedings increase from three parties to potentially 29 parties. Ms. Newman avers that any changes resulting from the abandoned plant proceedings in Docket No. ER12-2708-000 will have no effect on the formula rate inputs at issue in the Formal Challenge proceedings in Docket No. ER09-1256-000.⁶⁹

56. In his motion opposing consolidation, Mr. Howley argues that these cases do not involve the same legal and procedural issues; this case involves whether the abandonment of the PATH project was, to a large degree, within the control of the PATH companies and this is not at issue in the Formal Challenge case in Docket No. ER09-1256-000. Mr. Howley also states that the two cases are at completely different stages of development, noting that the Formal Challenge proceedings in Docket No. ER09-1256-000 have already been set for hearing. Finally, Mr. Howley states that the two cases do not involve the same facts. Mr. Howley states that the challenged costs in the Formal Challenge proceedings revolve largely around accounting errors and interpretation of FERC regulations governing certain promotional activities, which are not raised in the instant proceeding. Mr. Howley states that the instant proceeding involves a much more complex determination of the value of assets and whether the PATH companies showed prudence in incurring expenses after the companies should have recognized that the PATH project would be cancelled. Mr. Howley argues that common phrases and common parties do not in and of themselves justify consolidation, because if that were the case then the Commission could likely combine hundreds if not thousands of its current cases.

IV. Discussion

A. Procedural Matters

57. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁷⁰ the notice of intervention and timely, unopposed motions to intervene serve to make the

⁶⁹ Ms. Newman motion in opposition to consolidate at 4-6.

⁷⁰ 18 C.F.R. § 385.214 (2012).

entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant New Jersey Board of Public Utilities and Delaware Public Service Commission's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

58. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PATH's and ODEC's answers because they have provided information that assisted us in our decision-making process.

B. Suspension and Consolidation with Ongoing Hearing and Settlement Judge Procedures

59. We find that PATH is eligible to recover its prudently incurred costs associated with the abandonment of the PATH Project, and thus we grant PATH's request to recover those costs. We find that during the development of the PATH Project circumstances arose that resulted in PATH's abandonment of the project, and that those circumstances were beyond PATH's control. However, as discussed below, the specific amount of abandoned plant costs that PATH proposes to recover as prudently-incurred costs raises issues of material fact that cannot be resolved based upon the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

60. Our preliminary analysis indicates that PATH's request to recover abandonment costs associated with the PATH Project has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.⁷¹ Accordingly, we will accept PATH's proposed revised tariff sheets, filed to recover abandoned plant cost associated with the PATH Project, nominally suspend it to

⁷¹ We note that calculations for certain abandoned plant amounts within PATH's proposed formula rate may be unclear and we direct these issues be addressed as part of the hearing and settlement judge procedures ordered herein. For example, it appears the same numerical value populates both the Unamortized Abandoned Plant and the Amortized Abandoned Plant. ("The 13-month average balance shown on Attachment 4, Line 137, will be linked to Attachment A, Line 34 (Unamortized Abandoned Plant), as a rate base adjustment. The annual amortization expense shown on Attachment 4, Line 137, will be linked to Attachment A, Line 62 (Amortization of Abandoned Plant) as an increase to total depreciation expense shown on Attachment A, Line 63.") Pokrajac Test., at 4, lines 14-22, at 5, lines 1-9.

become effective December 1, 2012, subject to refund, and set PATH's proposed abandonment recovery for hearing and settlement judge procedures. We will set all issues raised by the parties for hearing and settlement judge procedures except for the continuation of the 50 basis point ROE adder for RTO participation, which we discuss below. Because Docket Nos. ER12-2708-000 and ER09-1256-000 may raise common issues of law and fact, we direct the Chief Administrative Law Judge to consider and decide whether to consolidate these proceedings for purposes of settlement, hearing, and decision.⁷²

61. PATH requests waiver of the Commission's regulations which require PATH to explain whether the parent company contributions from Allegheny and AEP were debt-financed or equity-financed and waiver of section 35.13 of the regulations,⁷³ including waiver of the full Period I and Period II, and 35.13(a)(2)(iv) to determine if a proposed change constitutes a rate increase based on Period I-Period II rates and billing determinants. Protestors request that the Commission deny PATH's request for waiver and require PATH to provide full cost support as required under 18 C.F.R. § 35.13 in order to allow adequate review of the abandoned plant costs.

62. We will deny waiver of our requirements as to the filing of the requirement of section 35.13 to provide full Period I and Period II data, and require PATH to file cost support, including testimony, exhibits, and workpapers supporting its application, including capital structure as part of the case in chief in the settlement and hearing proceedings discussed herein within 30 days of the date of this order. Any questions regarding support for the rate can be pursued in the course of the hearing. Having evaluated PATH's submittal, we believe it minimally satisfies our threshold filing requirements and is not patently deficient. We therefore deny the Illinois Commission's request to reject PATH's filing.

63. PATH also requests waiver of a requirement for footnote disclosures on CWIP in rate base and pre-commercial cost recovery.⁷⁴ We grant the waiver because the requirements will be superseded by the instant proceeding as the PATH Companies will no longer have CWIP in rate base nor will the companies incur and recover pre-commercial costs.

⁷² Pursuant to Rule 503 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.503(2012).

⁷³ 18 C.F.R. § 35.13 (2012).

⁷⁴ See Commission requirement for footnote disclosures in *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188 at PP 155-156.

64. As noted, PATH requests a September 1, 2012 effective date for its downward revised ROE of 10.9 percent. We will accept that effective date as it results in a reduction in rates.

65. While we are setting this matter for trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁷⁵ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁷⁶

66. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to the presiding judge. We make specific findings on the below issues.

C. Future Transfers and Sales of Property

67. PATH states that it will reduce the amount of its abandoned plant costs by the amount of proceeds received from real property transfers and sales. PATH indicates that several of its historical and future costs will involve transactions between affiliates.⁷⁷ In addition, according to AEP and Allegheny's Form 561 filings in 2010, several of PATH's executives hold interlocking positions with the affiliates PATH transacts with.

68. Because PATH has not completed the sale and transfers of land and other assets, we cannot determine based on the record whether self-dealing or cross-subsidization will

⁷⁵ 18 C.F.R. § 385.603 (2012).

⁷⁶ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

⁷⁷ Docket No. ER12-2708-000, Prepared Direct Joint Testimony of Archie D. Pugh and Jay A. Ruberto, Ex. No. PTH-100 at 28.

occur as a result of these future transfers to affiliates,⁷⁸ and whether the proposed prices for sales to third parties are reasonable. As part of the hearing and settlement proceedings, we therefore direct parties to consider the reasonableness of such transfers and sales, including whether future transfers and sales of real property should be reported in periodic reports that identify the parties, date and price of each transaction. Parties in the hearing and settlement proceedings may also consider whether the formula rate should be modified to include such information, which would allow review of the asset sales and transfers under the formula rate annual update process.

69. Further, because the final abandoned cost of real property is unknown at this stage; the inclusion of abandoned cost associated with real property is conditioned on PATH expeditiously working to dispose of the property at cost or market values, by transfer or sale prior to the end of the five year amortization period. Gains and recoveries of the costs of real property must be used to decrease unamortized abandoned plant costs.

D. RTO Participation Adder

70. Regarding protests on the 50 basis point ROE adder for RTO participation, the Commission clarified its Order on Rehearing of Order No. 679-A that this particular incentive may be applied to jurisdictional facilities that have turned over operational control to an RTO/ISO:

FirstEnergy is correct that a public utility member of an RTO is eligible for the Transmission Organization incentive rate treatment as to all of its jurisdictional transmission facilities that have been turned over to the operational control of the Transmission Organization.⁷⁹

71. In these circumstances, because of the termination of the PATH project, PATH will not take any steps in the future to turn over operational control of its facilities to PJM, as there will be no future facilities. We therefore find that continued recovery of the 50 basis point adder for RTO participation is not appropriate for recovery in an

⁷⁸ For example, Order No. 707 places price restrictions on affiliate transactions for all power and non-power goods and services transactions between franchised public utilities with captive customers and provides that such sales should be made at the higher of cost or market. *Cross-Subsidization Restrictions on Affiliate Transactions*, Order No. 707, 73 FR 11,013 (Feb. 29, 2008), FERC Stats. & Regs. ¶ 31,264 (2008); *Minnesota Power & Light Co.*, Opinion No. 87, 11 FERC ¶ 61,313 (1980) (Where the Commission disallowed abandonment costs associated with self-dealing).

⁷⁹ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21.

abandonment application. This finding is appropriate in the context of an abandonment even though the Commission has found that the RTO participation incentive is unrelated to any particular project but instead is intended as an incentive for joining and remaining in an RTO. This is because even though the public utility project developer has joined an RTO, the facility at issue in an abandoned plant cost recovery situation will not be transferred to the RTO's control, and therefore the benefits from that project's inclusion in an RTO will not materialize. Furthermore, PATH contends that not requiring other utilities to remove the RTO adder from abandoned plant recovery prior to setting the abandoned plant recovery for hearing while requiring PATH to do so would amount to denying PATH the RTO adder as a result of its business structure. We disagree. Here, the issue of the appropriateness of PATH's requested RTO adder for abandoned plant was specifically raised for the Commission's consideration. Accordingly, we take this opportunity to clarify that continued recovery of a basis point adder for RTO participation is not appropriate for recovery in an abandonment application.

72. Our rejection of the 50 basis point adder pursuant to section 206 of the Federal Power Act results in an ROE of 10.4 percent to become effective as of the date of this order. PATH is directed to make a compliance filing within 30 days of the date of this order to revise its tariff provisions to reflect a 10.4 percent ROE as of the date of this order.

E. Accounting Issues

73. PATH indicates that it transferred abandoned plant costs of the PATH Project to Account 182.3 that were originally recorded in plant asset accounts, including Electric Plant in Service (Account 101), Electric Plant Held for Future Use (Account 105), and Construction Work in Progress (Account 107). PATH states that the amounts transferred to Account 182.3 are the net unamortized balance of the costs previously included in the asset accounts. PATH contends that none of the abandoned plant costs have been previously recovered under the PATH Companies formula rate or under any other rates or charges, and, on a going forward basis there will be no double recovery of the abandonment costs.⁸⁰

74. Account 182.3 provides for the recording of regulatory asset amounts not includible in other accounts.⁸¹ However, the abandoned plant costs at issue here are more appropriately recorded in Account 182.2, Unrecovered Plant and Regulatory Study Costs.

⁸⁰ PATH Filing, Docket No. ER12-2807-000, at 13.

⁸¹ Account 182.3, Other Regulatory Asset, Paragraph A, 18 C.F.R. Part 101 (2012).

Account 182.2, among other things, provides for recording significant unrecovered costs of plant facilities where construction has been cancelled, when authorized by the Commission. Therefore, in accordance with the instructions of Account 182.2, PATH must transfer the abandoned plant costs to Account 182.2.

75. Amounts recorded in Account 182.2 must be amortized to Account 407, Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs, over the period the costs are recovered through rates. In the event that the recovery of amounts recorded in the account is disallowed for rate recovery, the disallowed costs must be charged to Account 426.5, Other Deductions, in the year of such disallowance. Further, PATH must credit any gains or recoveries realized related to the cancelled project to the unamortized balance in Account 182.2. Gains or recoveries that exceed the unamortized balance in the account must be recorded as a regulatory liability in Account 254, Other Regulatory Liabilities, and used in the determination of rates. In addition, PATH must compute interest on amounts recorded in Account 254 from the date of collection until the date refunds are made in accordance with the requirements of 18 C.F.R. §35.19a. PATH is directed to amend its proposed formula rate incorporating Accounts 182.2, 254, and 407 into the formula.

The Commission orders:

- (A) The proposed filing is hereby accepted effective December 1, 2012, subject to refund and nominal suspension, and set for hearing and settlement judge proceedings.
- (B) PATH's ROE of 10.9 percent is accepted to become effective September 1, 2012.
- (C) Within 30 days of this order, PATH is required to file revised tariff provisions to reflect a 10.4 percent ROE, as discussed in the body of this order.
- (D) Within thirty (30) days of the date of this order, PATH shall file its case-in-chief, consisting of complete cost of service statements, as specified in section 35.13 of the regulations, together with testimony and complete work papers relevant to the abandoned plant costs, and including Accounts 182.2, 254, and 407 in the proposed PATH Companies formula rate.
- (E) The Chief Administrative Law Judge is authorized rule on all motions (except motions to dismiss) and consider whether to consolidate Docket Nos. ER12-2708-000 and ER09-1256-000 for purposes of settlement, hearing and decision.
- (F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and

Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the unexecuted agreements. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (G) and (H) below. Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(G) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(H) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.