

143 FERC ¶ 61,208  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Potomac-Appalachian Transmission Highline, LLC                      Docket Nos. ER09-1256-000  
ER12-2708-000

ORDER ON FORMAL CHALLENGE,  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES,  
AND CONSOLIDATING PROCEEDINGS

(Issued June 5, 2013)

1. On June 1, 2012, Potomac-Appalachian Transmission Highline, LLC (PATH)<sup>1</sup> made an informational filing in order to update its transmission rates for rate year 2011 (2012 Annual Update),<sup>2</sup> pursuant to its Formula Rate<sup>3</sup> in the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT), and the Formula Rate Implementation Protocols (Protocols)<sup>4</sup> to its Formula Rate. On April 1, 2013, Keryn Newman and Alison Haverty (Challengers), electric consumers from the state of West Virginia, filed a Formal Challenge (Third Formal Challenge)<sup>5</sup> pursuant to the Protocols. Challengers dispute PATH's 2012 Annual Update, and request that the Commission set it for hearing. Challengers also request that the Commission consolidate the Third Formal Challenge

---

<sup>1</sup> PATH files on behalf of its operating companies PATH West Virginia Transmission Company, LLC and PATH Allegheny Transmission Company, LLC.

<sup>2</sup> PATH June 1, 2012, Electronic Informational Filing of Formula Rate Annual Update.

<sup>3</sup> PJM Open Access Transmission Tariff, Attachment H-19, "Annual Transmission Rates – Potomac-Appalachian Transmission Highline, L.L.C."

<sup>4</sup> PJM OATT Attachment H-19B – Formula Rate Implementation Protocols, 2.0.0.

<sup>5</sup> Challengers' April 1, 2013, Formal Challenge to PATH 2011 Annual Transmission Revenue Requirement.

with the First Formal Challenge<sup>6</sup> and Second Formal Challenge<sup>7</sup> previously set for hearing. As discussed below, we will set the Third Formal Challenge for hearing and settlement judge procedures, and consolidate it with the ongoing proceeding established pursuant to the November 2012 Order in this docket.<sup>8</sup>

## **Background**

### **A. Formula Rate and Protocols**

2. PATH is a joint venture between American Electric Power Company, Inc. (AEP) and Allegheny Energy, Inc. (Allegheny). PATH consists, in part, of two operating companies including PATH West Virginia Transmission Company, L.L.C. (PATH WV), which is owned jointly by AEP and Allegheny, and PATH Allegheny Company, L.L.C. (PATH AYE), which is owned solely by Allegheny. These companies were organized to finance, construct, own, operate, and maintain the PATH project (Project).

3. PATH WV and PATH AYE each have parallel Formula Rates for calculating their individual revenue requirements, which are combined to result in a single revenue requirement for the PATH transmission project as a whole. The Formula Rates are populated using data from each company's FERC Form No. 1 (Form 1) for the prior year, and projections of costs which are trued up in subsequent years.

4. PATH's transmission Formula Rates are filed with the Commission as Attachment H-19 to the PJM tariff. Attachment H-19A is the transmission formula rate. The main body of H-19A (labeled Attachment A) is the summary of the cost of service formula including rate base<sup>9</sup> allocated on the basis of wages and salaries, administrative and general expenses, operations and maintenance expenses, taxes, and return. All of these line items form a basic cost of service equation to produce a total annual transmission revenue requirement.

---

<sup>6</sup> Challengers' January 21, 2011, Formal Challenge to PATH 2009 Annual Transmission Revenue Requirement.

<sup>7</sup> Challengers' December 23, 2011, Formal Challenge to PATH 2010 Annual Transmission Revenue Requirement.

<sup>8</sup> *PJM Interconnection, LLC and Potomac-Appalachian Transmission Highline, L.L.C., Alison Haverty v. Potomac-Appalachian Transmission Highline, Keryn Newman v. Potomac-Appalachian Transmission Highline*, 141 FERC ¶ 61,177 (2012) (November 2012 Order).

<sup>9</sup> The rate base includes transmission plant in service, construction work in progress, accumulated depreciation, and cash working capital, among other things.

5. The Formula Rate Protocols, set forth in the PJM tariff as Attachment H-19B, establish the legal framework for the development and review of the Formula Rates. The utility submits its initial calculations to informal review by interested parties, and then files the results with the Commission. The Commission has ruled that this annual update is “an informational filing only... Upon receipt, the Commission will not act on or notice the informational filing because the formula rate implementation protocols provide specific procedures for notice, review, and challenges to the Annual Updates.”<sup>10</sup>

6. The Formula Rate Protocols also establish the burden of proof in a Formal Challenge filed with the Commission, stating:

PATH shall bear the burden of proving that it has reasonably applied the terms of the Formula Rate, including the calculation of the True-up Adjustment and/or reasonably adopted and applied Material Accounting Changes, if any, consistent with the applicable procedures in these Protocols, in that year’s Annual Update. Nothing herein is intended to alter the burdens applied by the FERC with respect to prudence challenges.<sup>11</sup>

7. PATH’s Formula Rate Protocols state that “[a]ny modification of the Formula Rate shall be made through a Federal Power Act Section 205 or Section 206 filing, and not through ... a Formal Challenge.”<sup>12</sup> Section VII.C.2 of the Formula Rate Protocols states that nothing in the Formula Rate Protocols shall be deemed to limit the right of any party to request changes to the Formula Rate or any of its stated values pursuant to section 206.

## **B. Procedural History**

8. PATH submitted its 2010 Annual Update to the Commission as an informational filing on June 1, 2010. Challengers filed their First Formal Challenge to this update on January 21, 2011. PATH submitted its 2011 Annual Update on June 3, 2011. On December 23, 2011, Challengers filed a Second Formal Challenge. On June 27, 2012, in Docket No. EL12-79-000, Ms. Haverty filed a complaint alleging that PATH denied her status as an Interested Party in the customer review proceedings for its 2012 Annual Update. On July 18, 2012, in Docket No. EL12-85-000, Ms. Newman filed a complaint

---

<sup>10</sup> *Potomac-Appalachian Transmission Highline, L.L.C.*, Docket No. ER09-1256-000 (February 2, 2010) (unpublished letter order).

<sup>11</sup> Formula Rate Protocols, § VII.C.1.

<sup>12</sup> Formula Rate Protocols, § II.C.

alleging that PATH was refusing to provide information to Ms. Newman because she was not an Interested Party.

9. The Commission resolved all of the above filings in the November 2012 Order in this docket. The November 2012 Order granted the complaints, finding that the Challengers have standing under Section 206 of the Federal Power Act.<sup>13</sup> The November 2012 Order dismissed in part, granted in part, and set for hearing the First Formal Challenge and Second Formal Challenge. The Commission found that some issues were outside the scope of a Formal Challenge,<sup>14</sup> but considered the remaining issues on the merits,<sup>15</sup> then resolved them or set them for hearing accordingly.

### **C. Third Formal Challenge and Answer**

10. The Third Formal Challenge was filed in this proceeding pursuant to the Formula Rate Protocols. The Formula Rate Protocols define a Formal Challenge as “a filing made by an Interested Party to FERC in accordance with the terms of Section VII of these Formula Rate Protocols, and which shall include the information required under 18 C.F.R. § 385.206 (b)(1), (2), (3), (4), and (7).”<sup>16</sup>

11. In the Third Formal Challenge, claims under the following subsections of the Formula Rate Protocols Section VII.A.1 were raised by Challengers:

- (a) The extent or effect of a Material Accounting Change;
- (b) Whether a True-up Adjustment includes only properly recorded data in accordance with Section III and IV;
- (e) The proper application by PATH of the Formula Rate and the procedures in these Formula Rate Protocols;
- (f) The accuracy of the data and the consistency with the Formula Rate of the charges shown in the Annual Update (including the True-up Adjustment);
- (h) The prudence of the actual costs and expenditures.

---

<sup>13</sup> November 2012 Order, 141 FERC ¶ 61,177 at P 105.

<sup>14</sup> *Id.* PP 25-27.

<sup>15</sup> *Id.* P 43.

<sup>16</sup> Formula Rate Protocols, § I.E.

12. Challengers raised eight issues in their Third Formal Challenge:

- A. PATH's promotional expenditures belong below-the-line in non-operating accounts unless and until sufficient showing is made that they benefit ratepayers;
- B. PATH's promotional expenditures are not properly and accurately recorded;
- C. PATH's Annual Update data is not accurate or consistent with the Formula Rate, with regard to Regulatory Accounts 426.1 and 426.4, Property Purchase Option Expenses, and the Recording of Land and Land Rights;
- D. PATH was not prudent in 2011 Property Purchase and Option Expenses, or in the assets and expenses of PATH's Right-of-Way Offices;
- E. PATH's Annual Update data is not accurate or prudent, with regard to rental properties, rental contracts, and amounts recorded in plant accounts;
- F. Other charges shown in the Annual Update are not accurate or based on generally accepted accounting principles;
- G. Material Accounting Changes regarding corporate re-organization have not been shown to be reasonable;
- H. PATH has not properly followed the Protocols.

13. On April 19, 2013, PATH filed an answer to the Third Formal Challenge. PATH categorically denies the allegations of imprudence, stating Commission policy allows recovery of utility expenses to educate the public on matters of reliability and quality of service resulting from construction of grid updates. PATH asserts the expenditures included in the 2012 Annual Update comport with Commission policy. However, PATH also acknowledges that the Third Formal Challenges raises the same issues that the Commission set for hearing on the First and Second Formal Challenges. Accordingly, to the extent that the Third Formal Challenges raises issues of material fact, PATH suggests this challenge be consolidated with the on-going hearing and settlement judge procedures.<sup>17</sup>

---

<sup>17</sup> PATH April 19, 2013 Answer at 4.

## Discussion

14. In their Third Formal Challenge, the Challengers raise issues with the 2012 Annual Update that are largely identical to the issues raised in the 2010 and 2011 Annual Updates that the November 2012 Order set for hearing. Indeed, while PATH has filed detailed responses in its answer to the substance of Challengers' claims, they acknowledge that the objections in the Third Formal Challenge are substantively the same as those already set for hearing. Indeed, PATH argues that if the Commission does not resolve the Third Formal Challenge in its favor, the Commission should instead establish a hearing on the Third Formal Challenge that is immediately consolidated with the pre-existing hearing and settlement proceedings in this docket.

15. We find that the issues raised in the Third Formal Challenge concern activities and cost incurrences that overlap with and are inextricably related to the matters previously set for hearing in the November 2012 Order. We further find that the Third Formal Challenge is limited to issues that are within the scope of the Protocols, and also limited to issues in which the parties dispute the material facts, and are thus ripe for hearing or settlement.

16. The Commission may opt for hearing and settlement judge procedures rather than rule summarily when presented with a Formal Challenge under the previously approved settlement and the Protocols adopted therein. Here, as noted above, Challengers' challenges raise genuine issues of material fact. Accordingly, we will set them for hearing and settlement judge procedures. Because Docket Nos. ER12-2708-000 and ER09-1256-000 raise common issues of law and fact, we direct the Chief Administrative Law Judge to consolidate these proceedings for purposes of settlement, hearing, and decision. The previously-designated settlement judge shall determine the procedures best suited to accommodate the consolidation ordered herein.<sup>18</sup>

### The Commission orders:

(A) Challengers' Third Formal Challenge is hereby granted pending further review, as discussed in the body of this order.

(B) 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, 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 PATH's 2012 Annual Update and Challengers' Third Formal Challenge, as discussed in the body of this order.

---

<sup>18</sup> 18 C.F.R. § 385.503 (2012).

(C) The hearing and settlement judge procedures ordered for the 2012 Annual Update and Third Formal Challenge are hereby consolidated with those previously ordered for the 2010 and 2011 Annual Updates and the First and Second Formal Challenges, for purposes of settlement, hearing, and decision.

(D) The previously-designated settlement judge or presiding judge, as appropriate, shall determine the procedures best suited to accommodate the consolidation ordered herein.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.