

**STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES**

**BPU DOCKET NO. EM09010035**

IN THE MATTER OF THE PETITION OF  
PUBLIC SERVICE ELECTRIC AND GAS  
COMPANY FOR A DETERMINATION  
PURSUANT TO THE PROVISIONS OF  
N.J.S.A. 40:55D-19

(SUSQUEHANNA- ROSELAND)

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**RESPONSE BRIEF OF THE MUNICIPAL INTERVENORS**

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## INTRODUCTION

Perhaps the most remarkable aspect of its Initial Brief is Public Service Electric and Gas Company's ("PSE&G") assumption that whatever testimony, discovery data or other information it placed on the record is, as PSE&G is wont to say, indisputable. This incorrect view of the evidence and the Board's responsibilities in this matter sets the tone for PSE&G's argument, which is, essentially, that PSE&G's evidence must be presumed true, and it is the Intervenor's task to prove PSE&G wrong. This approach is contrary to law, and so blatantly skewed in PSE&G's favor that the Board's required independent consideration of the evidence would be suspect if the Board used this approach to assess PSE&G's Petition. Particularly in a process in which no underlying data was produced, no depositions were taken, and the lion's share of support for the Project is presented by PJM, the regional power czar which stands to benefit greatly from a Project that will insure PJM's preferred form of energy -- cheap, dirty coal -- will be transmitted from Ohio to the east. PSE&G's evidence must be carefully scrutinized by this Board, and considered in light of the doubt the Intervenor has raised with respect to it. Any lesser level of review would be, under these circumstances, arbitrary and capricious.

In its brief, PSE&G does an exemplary job of parroting of PJM's exhortations that without the Project, 23 reliability violations will occur in the existing transmission lines. For itself, PSE&G makes numerous statements and opinions, which tempt the Board to just acquiesce and give PSE&G the benefit of the doubt. As a matter of law, the Board may not do this because PSE&G must prove its case by a preponderance of the evidence. If there is doubt regarding PSE&G's evidence, the Board must find in favor of the Intervenor. Furthermore, many of PSE&G's statements and opinions are unsubstantiated. For example, PSE&G renders an unsupported opinion that the values of properties along the right of way will not be affected by the Project. Equally without merit is PSE&G's insistence that PJM's data is faultless.

PSE&G performed no independent analysis or objectively reviewed the PJM data that allegedly justifies the Project. PSE&G simply takes the PJM data on face value. The Board, however, may not do so. The Board is required to thoroughly examine and consider the data upon which PSE&G's Petition relies. Obviously, if the data is flawed, the Board's approval of the Petition in spite of questionable data would be arbitrary.

As the Intervenor has argued at length in their Initial Brief, PSE&G has not shown this Board, by a preponderance of the evidence, that the Project is reasonably necessary for the service, convenience or welfare of the public. Instead, the Intervenor has shown that the data underlying PJM's mandate to PSE&G to build the Project is skewed in PJM's favor. Furthermore, current economic forecasts, as well as data on energy use and demand evidence that the reliability violations PJM claims the Project will prevent have been reduced since 2007, when PJM ordered the Project to be built, by almost half. The 2009 RTEP data, which should be published in February or March, 2010, may well show that demand has reduced even further. Thus, even assuming there may have been a need for the Project in 2007, the alleged need no longer exists.

This Board has a history of progressive thinking about renewable and green energy and conserving resources. It should not take lightly PSE&G's out-of-hand dismissal of the New Jersey Energy Master Plan and other state and federal energy policies. Yet, because PSE&G seems to be a house divided between proponents of old-style, fossil-fuel dependent power projects -- like this Project -- and those, like CEO of PSEG Corporation Ralph Izzo, who favor local generation, renewable energy and conservation, its sheepish comments that this Project was forced upon it by PJM, suggests its own disquiet about building the proposed coal-fired power colossus.

In this Response Brief, the Municipal Intervenors will point out the inconsistencies and errors in PSE&G's presentation before the Board and argument, and once again urge this Board to deny the Petition. Should the Board, however, determine that the Petition is not ripe for adjudication, or that the record is incomplete, the Board may defer its vote and allow PSE&G to present updated forecasting data from the 2009 RTEP process, a more complete review of alternatives to the Project, and incorporation of state and federal energy policies. At that time, even PJM may be compelled to admit that this Project, like others PJM recently ordered, is not needed now (or possibly ever) because of significant decreases in demand for electricity. PSE&G's insistent reminder that the Board has a one-year deadline in which to rule on the Petition is nothing more than a diversion which seeks to spur the Board on to a vote. The Board may defer its vote for as long as it needs in order to make a thorough examination of the record and give due consideration to every aspect of this Project. Federal law permits PSE&G to file an application for the Project with the Federal Energy Regulatory Commission ("FERC"), and begin the approval process in that body even while the instant matter is proceeding. The filing with FERC does not give PSE&G automatic approval, nor does the FERC action divest this Board of its jurisdiction.

Simply put, there is no reason for the Board to rush to judgment on PSE&G's Petition. The Pennsylvania Public Utility Commission reviewing the judge's decision on the Pennsylvania portion of the Susquehanna-Roseland line has just extended by one month the time in which it will enter its order.<sup>1</sup> This Project is too significant in size and scope, it is too expensive, and will bring too many permanent negative effects on the lives of thousands of people in Morris, Sussex and Warren counties to be approached with anything less than extreme

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<sup>1</sup> *Time Frame for Power Line Approval Extended*, Jan. 6, 2010, <http://thetimes-tribune.com/news/time-frame-for-power-line-approval-extended> - 1.527669.



caution and thorough examination. If the Board is convinced, as the Municipal Intervenor are, that the record does not contain sufficient proof that the Project is needed, the residents and ratepayers of New Jersey should not be asked to bear the burden PSE&G would impose upon them.

### ARGUMENT

The Intervenor have no objections to PSE&G's very thorough description of the process PJM undertakes to determine when and where new or upgraded transmission lines should be constructed. The Intervenor's objections lie not with the process, but with the facts derived from the process PJM used to conclude that this Project is necessary. These underlying facts are unsupported in the record. In other words, PSE&G simply parrots PJM's facts and findings without ever considering their validity or accuracy. PSE&G presented PJM's findings to the Board, declaring their truth, and effectively asked the Board to accept them without question. Then, PSE&G urges, because the Intervenor did not prove that the findings are flawed or inaccurate, the Board must find in PSE&G's favor. As a legal concept, this is as absurd in practice as in theory. PSE&G completely misses the point that it is PSE&G which must show by a preponderance of the evidence that the Project is reasonably necessary for the service, convenience or welfare of the public. N.J.S.A. 40:55D-19. It is not the Intervenor's burden to prove the negative.

Under the preponderance standard, "a litigant must establish that a desired inference is more probable than not. If the evidence is in equipoise, the burden has not been met." *Liberty Mut. Ins. Co. v. Land*, 186 N.J. 163, 169 (2006) (quoting Biunno, *Current N.J. Rules of Evidence*, comment 5a on *N.J.R.E.* 101(b)(1)). The preponderance standard is the usual burden of proof for contested administrative adjudications. *Id.* (quoting *In re Polk License Revocation*,

90 N.J. 550, 560 (1982)). The Intervenors have already set forth the multitude of reasons why PSE&G has failed to meet its burden. PSE&G has not established on the record its contention that the need for the Susquehanna Roseland Project is more probable than not. In fact, the record shows that any alleged need for the Project may, at best, arise some 10 years or more in the future. At this time, and in the near future, however, the record shows that the need does not exist. PSE&G's insistence that it does -- despite the depressed economy, the hard statistics that reflect a marked decline in energy consumption, statutory and voluntary energy conservation efforts, and econometric forecasts that predict a leveling off, but not an imminent increase, in energy-using activities -- is nothing more than an attempt to bootstrap its Petition with a pseudo-rational analysis of the data and forecasting, all geared to support PJM's foregone conclusion that the Project must be built.

PSE&G is not entitled to a rubber-stamp approval of the Project by this Board. *See In re Hackensack Water Co.*, 41 N.J. Super. 408, 419 (App. Div. 1956). The Board must assess the evidence in the record and approve the Petition only if, on balance, the evidence tips in PSE&G's favor. *Liberty Mut. Ins. Co.*, 186 N.J. at 169. Because in this case, the record does not contain sufficient evidence to support a finding in favor of the Project, the Board may not approve the Petition.

## **POINT ONE**

### **THE BOARD NEED NOT ACQUIESCE TO PSE&G'S WARNING THAT IT WILL INVOKE FERC'S BACKSTOP AUTHORITY IF THE BOARD DOES NOT ACT ON THE PETITION BY JANUARY 15, 2009.**

PSE&G maintains that this Board should grant its Petition, despite the significant changes made to the Project's design since the filing of the Petition, and despite the fact that the information relied upon by PSE&G in support of its need argument has become outdated. In its Initial Brief, PSE&G's asks the Board to grant its Petition, and include in the Order a provision that would allow PSE&G to continue to change and alter its design and construction plans without further review.<sup>2</sup> This is simply unacceptable under the Board's Rules, *see* N.J.A.C. 14:1-4.7, which require Petition documents to be revised where there are any changes in facts or circumstances.<sup>3</sup> To issue an order based upon the record developed thus far, without providing the parties any recourse to evaluate the changes PSE&G makes in the future to the Project following the issuance of such an order, would constitute a departure from the Board's obligations under N.J.S.A. 40:55D-19. Simply put, PSE&G's request for relief invites this Board to act arbitrarily.

The pressure being imposed by PSE&G to have this Board act by January 15, 2010 is completely unnecessary. In its Petition papers, PSE&G maintained that the primary basis for its request of an accelerated schedule was that the Project must be in service by June 2012. *See* Ex.

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<sup>2</sup> In its request for relief in its Petition, PSE&G never made this request, but instead represented to the Board and the parties involved in these proceedings, that PSE&G was prepared to commence construction with the Project proposed in its Petition papers. During these accelerated proceedings, it has come to light that PSE&G is not ready to commence construction activities, and instead anticipates having to continue to make changes to the Project's design (referred to as "design optimizations" by PSE&G in its brief) even after an Order is entered by this Board.

<sup>3</sup> It is worth noting, again, that the changes made to the Project since the filing of the Petition have been described as "significant" by PSE&G (Ex. 196), "major" by the Highlands Council and "substantive" by Commissioner Fiordaliso (Tr. 316).

1 at 20. However, the Project is still in preliminary design phase. PSE&G had not demonstrated that it is in a position to commence construction activities. There are other approvals that it must obtain before PSE&G can implement a realistic construction schedule. Thus, the June 2012 date is no longer the actual date by which this Project must be up and running. If June 2012 was truly the date PSE&G was working toward to avoid any electric violations with its transmission system, its design and construction plans would have been further along by the time it filed its Petition documents in January 2009.

Instead, this Board should dismiss PSE&G's Petition, without prejudice, allowing PSE&G the opportunity to refile its Petition when it is in a position to provide a full record upon which this Board can evaluate the Project in accordance with N.J.S.A. 40:55D-19. Alternatively, the Board should not issue a final order by the PSE&G-imposed deadline of January 15, 2009, and instead defer making a final decision until PSE&G provides in connection with these proceedings, updated information regarding the need for the Project, final designs and studies that will be required before construction for the Project may commence.

If the Board decides to defer a final decision on PSE&G's Petition, it has been suggested by PSE&G that it will seek to have FERC invoke its backstop authority over the Project pursuant to Section 216(b)(1) of the Federal Power Act if the Board does not act by the one-year anniversary of PSE&G's filing of the Petition. This threat (which, as explained *infra*, is nothing more than an empty threat) is intended to suggest that FERC would divest this Board of its jurisdiction over the Project. Like so many statements made in these proceedings, this is somewhat of an overstatement of how PSE&G will proceed if this Board does not issue a final decision by January 15.

Section 216(b)(1) of the Federal Power Act provides FERC with the authority, in limited circumstances, to issue construction permits for the construction or modification of electric

transmission facilities in areas designated in the national interest corridors by the Secretary of Energy. The statute recognizes that the States still retain primary jurisdiction in the siting of transmission facilities; however, in limited circumstances, a public utility may seek a construction permit from FERC when the State entity with siting authority withholds approval for more than one year after an application is filed. 16 U.S.C. §§824p(b); 824p(b)(1)(C)(i).

Before PSE&G could invoke FERC's jurisdiction over this matter under the Federal Power Act, it would need to comply with FERC's pre-filing procedures. 18 C.F.R. §50.5.

Only after the pre-filing period is complete may PSE&G request FERC to act. However, as noted by FERC, this process can take up to two years to complete. The pre-filing process begins with an initial consultation with FERC. *Id.* at §50.5(b). The ongoing state proceedings must be considered during the initial consultation. *Id.* at §50.5(a)(3). After the initial consultation phase, PSE&G must provide a great deal of information to FERC. *Id.* at §50.5(c). Again, the status of ongoing State siting proceedings is a consideration during this phase. Further, the information that FERC requires to be provided during the pre-filing process includes information that has not even been presented in the context of these proceedings. For instance, PSE&G must provide a proposed project schedule, which includes the proposed project operating date. 18 C.F.R. §50.5(c)(1). The project schedule provided by PSE&G in these proceedings is now outdated. Indeed, the project operating date is no longer June 2012 – the actual date is unknown.

PSE&G would also be required to provide a “detailed description of the project, including location maps and plot plans to scale showing all major components, including a description of zoning and site availability for any permanent facilities.” *Id.* at §50.5(c)(2). As it was made clear during these proceedings, the plans for this Project continue to evolve, or as PSE&G puts it – the design continues to be “optimized.” Regardless of how the significant

changes made to the Project since the filing of the Petition are described, it is undisputed that the location of permanent facilities for the Project, such as the switching stations, for instance, is still not finalized. This may be an issue during the pre-filing stage of any FERC proceedings.

PSE&G would also be required, during the pre-filing stage, to provide a list of all affected landowners and stakeholders (including contact names and telephone numbers) that have been contacted, or have contacted the applicant, about the project. 18 C.F.R. §50.5(c)(4). PSE&G must also provide a description of work performed already, which includes “contacts made with stakeholders, agencies and Indian tribe consultations, project engineering, route planning, environmental and engineering contractor engagement, environmental studies and surveys, open houses, any work or action taken in conjunction with state proceedings.” As noted during these proceedings, PSE&G still needs to prepare numerous studies for the Project.

If the pre-filing request is approved by FERC, a notice will be issued informing the public of the initiation of the pre-filing process. 18 C.F.R. §50.5(d). As part of the pre-filing process, an applicant is required to implement a Project Participation Plan that identifies specific tools and actions to facilitate stakeholder communication and dissemination of public information to those who are interested in the proposed transmission project. 18 C.F.R. §50.4. During the pre-filing process, FERC staff will review the applicant's proposal and assist the applicant in the preparation of a complete application. Staff activities may include: conducting environmental site reviews, facilitating the identification and resolution of issues, and initiating the environmental review of the proposed project. The work performed in the pre-filing process will form the basis for the application that is subsequently filed with FERC. The Commission decides when the pre-filing process is concluded, and only when it is deemed complete can PSE&G file an application with FERC. 18 C.F.R. §50.5(f).

Based upon a review of FERC's regulations regarding the pre-filing application phase, it is clear that this Board's review of this Project will not be infringed upon if it does not act by January 15, 2010. Instead, the FERC-process allows state agencies with siting authority, like this Board, an opportunity to complete the review of applications for electric transmission projects. In fact, an argument can be made that PSE&G would prefer to continue with the Board's procedures rather than having to seek FERC's approval for the Project, as the FERC-process appears to be more onerous than the process required to obtain approval for the Project from this Board. A copy of this regulation that outlines the information to be provided to FERC during the application process is attached hereto as Exhibit A. *See, e.g.*, 18 C.F.R. §§50.5, 50.6, 50.7. Indeed, PSE&G is in no position to provide the information necessary to file an application with FERC. *See* 18 C.F.R. §§ 50.6, 50.7.

As noted by FERC in its adoption of rules to implement §824p(b), the pre-filing process with FERC "can occur at the same time as parallel State proceedings" and that it is "inevitable" there will be some overlap in State and Federal Proceedings. *Regulations for Filing Applications for Permits to Site Interstate Electric Transmission Corridors*, 71 Fed. Reg. 69,440 (Dec. 1, 2006) at ¶¶19-20 (Final Rule). In fact, FERC also explained that it would retain the discretion to allow any ongoing State proceedings to be completed beyond the one-year period provided by in statute:

[I]n many cases, [the States will] have more than *two* years to complete their action, and thereby avoid issuance of a construction permit by this Commission, because our pre-filing and construction permit processes typically take more than one year to complete (which is in addition to the one year provided to State authorities). (*Id.* at ¶31)

There is no need, therefore, for this Board to rush to judgment on PSE&G's Petition based upon the incomplete record presented by PSE&G in these proceedings. The one-year time

period provided by Section 216(b)(1) of the Federal Power Act is only intended to provide state siting authorities with breathing room to review an electric transmission application before any federal proceedings may commence. Section 215(b)(1) is not intended to divest this Board of jurisdiction to review PSE&G's Petition. Thus, whether PSE&G commences a proceeding with FERC should not be a factor for this Board when deciding whether to act by January 15, 2010.

In light of the changes to the data relied upon by PSE&G/PJM to support the Project and the uncertainty regarding the Project's design and construction schedule, a more prudent course of action would be to require PSE&G to provide updated information regarding demand forecasts and reliability violations before issuing a final decision. This was the approach adopted by State Corporation Commission for Virginia (Virginia Commission), which is the state agency reviewing the application for another PJM backbone project -- the proposed Potomac Appalachian Transmission Highline Project ("PATH Project"). Attached hereto as Exhibit B is a copy of the Motion papers filed by PATH Allegheny Virginia Transmission Corporation (the applicant for the PATH Project), in which it seeks to withdraw its application for the PATH Project and terminate the proceedings pending in Virginia. In those motion papers, it is noted that the Hearing Examiner for the Virginia Commission required that the record be supplemented with updated load flow analyses so that it could better ascertain the need for the project. (Ex. A at 2) PJM thereafter conducted those tests in accordance with the Hearing Examiner's direction, and based upon its preliminary findings, it was determined that the PATH Project was no longer needed by the date that had originally anticipated by PJM's studies. (*Id.*) PJM determined a more thorough analysis will be required during its 2010 RTEP process in order to determine whether the PATH Project would be needed. (*Id.*) Thus, PATH-VA sought to withdraw its application, and noted that if withdrawal was granted, it would not



request action by FERC for a construction permit pursuant to Section 216(b) of the Federal Power Act. (*Id.*)

If this Board is not willing to dismiss PSE&G's Petition at this time, the Municipal Intervenor would therefore respectfully request that this Board defer from issuing a final decision until a more complete and detailed record regarding the need for the Project can be developed. Indeed, as noted *infra*, the data upon which PSE&G relied to support its need argument in this proceeding has been debunked by more recent data. It appears there is a change that the updated information regarding this Project will call into question the need for this Project by 2012. Like the Hearing Officer reviewing the PATH Project, the Municipal Intervenor request that this Board order PSE&G to provide updated information regarding the need for the Project, as well as the Project's design and further studies before a final decision is issued.

## **POINT TWO**

### **THE RECORD EVIDENCE DOES NOT SUPPORT A NEED FOR THE PROJECT**

There is a glaring absence in the record of this matter of current, reliable data that support a need for the Project. There is also scant evidence of the alternatives PJM claims it considered before it ordered PSE&G to build the Project, and also of the role conservation and energy management capabilities might play in mitigating any possible need for the Project. Below, the Intervenor will reiterate the salient points of their arguments, to illustrate the failure of PSE&G to prove to this Board that the Project is reasonably necessary within the meaning of N.J.S.A. 40:55D-19.

A. At Least Ten Of The Initially Identified Reliability Violations Have Evaporated.

In its Initial Brief, PSE&G repeatedly asserts its support for the Project, which, in reality is PSE&G's testament of faith in PJM's ability to make accurate calculations and correctly forecast future electricity needs. But, underlying PSE&G's over-confidence in PJM is the nagging fact that PJM's rationale for the Project is self-serving. The evidence shows that no matter what the data indicates, PJM wants the Project built.

Of the original 23 potential reliability violations that PSE&G asserted as the basis of need for the Project, the March 2009 RTEP re-tool shows that ten of them have been pushed out beyond the 15-year planning horizon and are no longer relevant to this proceeding. Many of the potential reliability violations remaining after the March 2009 re-tool are now projected to occur at a later date than was originally forecast. Most significantly, the 500 kV reliability standard violation was pushed out even beyond the fifteen-year planning horizon. (*Compare* EAK-3a (Ex. 19) (2007 RTEP "violations") with PFM-2 and PFM-3 (2009 RTEP "violations"); *see also* T6 at 8-9). Yet, in August 2009 the number of projected violations surged again to 23 because at that time, PJM and PSE&G added ten never before considered Category C double circuit tower contingencies. (See Ex. 120; PFM-3) There was no testimony as to why these contingencies suddenly became significant. Furthermore, as the Environmental Intervenors stated in their Initial Brief, the NERC standards consider double circuit tower contingencies improbable, so improbable in fact, that the standards permit load curtailment to mitigate for such events.<sup>4</sup> (Environmental Intervenors Br. at 21). Thus, Category C violations do not, in and of themselves, justify the construction of an entirely new transmission line. Yet, without offering any evidence of the actual risk of these contingencies occurring, or discussing the mitigation for Category C contingencies built into the NERC standards via load curtailment, PJM and PSE&G

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<sup>4</sup> NERC Reliability Standards are available at <http://www.nerc.com/page.php?cid=2>

simply tossed these new violations into the mix. Apparently, PSE&G and PJM are so wedded to their claim that 23 projected reliability violations will occur unless the Project is built, that they will utilize any possible combination of data to achieve their goal, even to the point of "identifying" a few new -- and highly improbable -- NERC Category C violations.

With the number of predicted violations cut almost in half, it is time for PJM and PSE&G to take a fresh look at this Project and possible alternative solutions to what current data indicate will be a decreased or flat need, if any, for electrical power over the next several years. A new analysis and re-tool incorporating all relevant data would be a valuable asset for the Board to analyze whether the Project is reasonably necessary. In fact, it is the only way PSE&G can provide the Board with a true and up to date Petition. It is, after all, PSE&G's burden to show that the Project is the best alternative, taking into account all aspects of the Project, such as cost, location, site disturbance, environmental impact, and so on. *See In re Public Serv. Elec. & Gas Co., et al.*, 35 N.J. 358 (1961). As the record shows, the evolution of the RTEP re-tools from 2006 through March 2009 reveals that over time, PJM's projected reliability criteria became fewer and less severe, and also that demand for electricity declined. The question this Board must consider is whether, with the passage of even more time, will the alleged need for the Project continue to fall away, perhaps even to the point of no longer existing at all. Given the enormous scope and cost of this Project, and its permanent impact on residents, ratepayers, property values, and the environment, the Board owes the public, and itself, the opportunity to review the 2009 RTEP data before it makes a decision.

B. PSE&G's Testimony on Demand Response is Inconsistent.

In its written and oral testimony, PJM claimed that it considers future demand response, but not historic demand response. (T6 at 10; *see also* T6 at 39-40; Ex. 339; Ex. 12 at 32-25; Ex. 14 at 7-8) But, PJM also testified that it does not implement demand response, so any

assumptions about increases in demand response are not relevant to its Re-tools. (T8 at 13). In fact, when the Intervenors inquired about PJM's inclusion of Demand Response resources data in the 2009 RTEP Re-tool, PSE&G's evaded the direct question, and advised that its methodology for analyzing the effects of DR Resources would be corrected in the 2010 RTEP and all subsequent analyses. (Discovery Response Munis-General 17; Discovery Response S-PP-45).

If in fact, as PJM has stated on the record, the 2010 RTEP will incorporate Demand Response resources, this Board should be hesitant to approve a Petition based on an alleged need that may be diminished by an appropriate application of DR to the forecast models. In short, the Board should defer its vote until the 2010 RTEP data is available for analysis.

C. PJM's Use Of Weather Data Is Questionable.

PSE&G's record testimony regarding its application of actual and forecasted weather to the task of forecasting peak load shows that the forecasting is inconsistent because the tests used to determine if weather, and not economic conditions, is responsible for a drop in demand are unevenly applied. (*See, e.g.*, Ex. 239) There are two tests that PJM utilizes; one involves comparing weather-normalized peak loads to the forecast peak load (which can illustrate errors in the forecast), and the other involves re-estimating the load forecast model using actual weather data and comparing the re-simulated peak loads using the actual weather that occurred in the most recent summer. (*Id.*; T6 at 18) PSE&G testified that it "uses the method described above to account for load forecasting errors that result from extreme weather conditions like those experienced in 2006 and 2008." (Ex. 239)

At the Hearings, PJM testified that in the second "weather" test, a comparison of the re-simulated forecast using actual weather data, indicates the degree to which unusual weather contributed to forecast error. (T6 at 18) The second of these two tests is the more accurate.

However, the results of the second test were not included in the 2006 forecast. The record shows also that PJM did not include the second test data in the 2007, 2008 or 2009 forecasts either. (T6 at 19) The curious omission of this test data is important because it points to a flaw in PJM's forecasting process. It shows that PJM cannot say for certain whether, based on the forecast models it has used throughout this process, declines in electricity demand are due to unusual weather or other reasons, such as a depressed economy. Clearly, it is imperative to understand the nature of diminishing demand to properly plan for future needs. Without understanding the underlying reasons for a past demand drop, how can PJM possibly forecast future use? Yet, this is exactly what PJM has done to support its future projected reliability violations. The Intervenor submit that in light of PJM's questionable application of weather data, its projections are, at best, speculative.

D. PSE&G Considered Only Limited Alternatives To The Project.

The record evidences that PSE&G gave lip-service, but little more, to alternatives that could displace the alleged need for the Project. In its Initial brief, PSE&G admits that the two possible transmission solutions it considered, namely a Brossards-Jefferson 500kV line and a Stanton-Roseland 230 kV line, would provide relief and resolve many of the projected violations for two or three years. (PSE&G Br. at 43-43) PSE&G states that this relief would be "less" than that which the Project would provide, but does not quantify how much "less" relief could be expected, only that these alternative transmission solutions would not be sufficiently robust. Nor did PSE&G explain how many of the projected reliability violations might be avoided if the alternative transmission lines were installed. Instead, PSE&G simply reasserts its proposition that the Project is better; it is the preferred solution. Aside from the fact that the only alternatives PSE&G offered were transmission based, it appears that PJM and PSE&G never seriously considered even these possibilities, which illustrates once again that PJM and PSE&G

are determined to construct the Project despite the availability of possible alternatives. Presumably, these “non-robust” alternatives do not satisfy PJM’s desire to install the Susquehanna Roseland backbone to move coal-power from the mid-West to the Northeast.

PJM and PSE&G scoffed at energy efficiencies as a method of remedying the potential violations (at least in part). (Discovery Response S-PP-1) PJM claims that energy efficiencies will be included in PJM’s forecasting in the future, built into the RPM auctions as a product, but they are not included in the forecasting PJM relies upon to substantiate the need for the Project. (T6 at 28). Load shifting and Smart Grid initiatives, and conservation policies and mandates, according to PJM, were not considered either. (T6 at 21, 24; T7 at 9) And, the New Jersey Energy Master Plan was relegated to the outskirts. (T5 at 38). Indeed, PSE&G mocked the Intervenor’s expert witnesses, Dr. Sovacool and Mr. Cooper, pointing out that they have no “hands-on” experience with building or managing transmission systems, (PSE&G Br. at 44-45), and their advocate an impossible utopian world where all energy comes from renewable resources.

Aside from the fact that PSE&G’s characterization of Dr. Sovacool’s and Mr. Cooper’s testimony is inaccurate and unduly mean-spirited, PSE&G’s caustic dismissal of the Intervenor’s experts does not prove PSE&G’s case. Given the fact that energy consumption has decreased since 2007 when PJM ordered the Project to be built, and given the ever-increasing impact of energy efficiencies, federal and state mandates for conservation, load shifting, Smart Grid initiatives, to name but a few programs that effect energy production and transmission, the Board should require PSE&G to complete the record. PSE&G should fully explain to the Board the potential impact of the two alternative transmission lines it considered. If in fact such upgrades could resolve reliability issues for two or three years, when considered in conjunction with declining demand and energy-saving and energy-shifting schemes, two or three years might

just be sufficient time in which other alternatives can be considered to displace the Project altogether.

E. PSE&G Fails To Give Adequate Consideration To Decreased Energy Consumption.

The significant decrease in demand for electricity that has occurred in the past few years cannot be overlooked by the Board, or overemphasized by the Intervenors as definitive evidence that even if a need once existed for the Project, the need has evaporated and is unlikely to arise sharply again in the near future. This decreased demand is so substantial that several of the PJM backbone projects have been delayed or altogether withdrawn. In 2008, the PATH project announced a delay in its in-service date, and another delay was announced in 2009. (Ex. 79; Ex. 80). Just a week ago, on December 29, 2009, PATH Allegheny Virginia Transmission Corporation moved before the Virginia State Corporation Commission to withdraw its application and terminate the proceeding in which PATH sought certificates of public convenience and necessity to construction a 765kV transmission line through three counties. (A copy of the filing is attached hereto as Ex. A) The utilities involved in the PATH, American Electric Power Co. Inc and Allegheny Energy Inc., had projected a need for the line in 2012 or 2013, but because increases in state programs for energy efficiency and locally generated power such as from solar panels are reshaping projections of future energy demands, the utilities have determined that their project may not be needed until 2016, if then.<sup>5</sup>

There is no doubt that the decrease in peak demand, overall demand for electrical energy, and sales of electricity in the region over the past two years is so significant that current and projected consumption rates cancel out all of PSE&G's claims that the Project is needed. In the first nine months of 2009, demand in the PJM region was down 3.2 %, following a first half of

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<sup>5</sup> *Two-State Power Line Is Put Off*, Wall Street Journal, Jan. 2, 2010; <http://online.wsj.com/article/SB126239144004113055.html>

2009 in which demand decreased 4.45<sup>6</sup> Weak demands on power continued through 2009, and current forecasts show little sign of increased demand in the near future, if ever, because so many factories have closed.<sup>7</sup> The cost of energy has also declined. PJM's 2009 Quarterly Report shows that the price of a megawatt hour dropped an unprecedented 43.6% in the first nine months of 2009.<sup>8</sup>

PJM itself reports that due to the substantial decrease in demand and the concurrent decrease in prices, the electricity market is glutted with supply. In addition, electrical constraints have been relieved, meaning the system is less congested and implementation of Transmission Loading Relief (TLR) has lessened. Congestion is no longer an overriding problem.<sup>9</sup> The inescapable data show that for the nine months ended September 30, 2009 the PJM system peak load was 126,805 MW, while the PJM peak load for the same period in 2008 was 129,481. The 2009 third quarter peak load was 2,676 MW, or 2.1 percent, lower than the third quarter 2008 peak load. Also, on average, PJM real-time load decreased in the first nine months of 2009 by 4.5 percent as compared to the first nine months of 2008, falling from 80,611 MW to 76,956 MW. PJM day-ahead load decreased in the first nine months of 2009 by 8.0 percent from the first nine months of 2008.<sup>10</sup> These same downward trends are reflected in the Real-Time Annual and Monthly Load, Day-Ahead Load, Average Locational Marginal Price (LMP) Real-Time Load-Weighted LMP, Day-Ahead Load-Weighted LMP (*Id.*)

The most recent illustration of decreased demand is found in PJM's Load Forecast Report dated January 2010.<sup>11</sup> This Report includes historical peaks (MW) for Summer, 1998 through

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<sup>6</sup> [http://www.monitoringanalytics.com/reports/PJM/State\\_of\\_the\\_Market/2009/shmtl](http://www.monitoringanalytics.com/reports/PJM/State_of_the_Market/2009/shmtl) at \_\_\_\_.

<sup>7</sup> <http://wsj.com> Smith, Rebecca, *Weak Power Demand Dims Outlook*, Nov. 21, 2009

<sup>8</sup> [http://www.monitoringanalytics.com/reports/PJM\\_State\\_of\\_the\\_Market/2009.q3.shtml](http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2009.q3.shtml) at 23.

<sup>9</sup> [http://www.monitoringanalytics.com/reports/PJM\\_State\\_of\\_the\\_Market/2009.q3.shtml](http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2009.q3.shtml) at 72.

<sup>10</sup> *Id.* at 6-7.

<sup>11</sup> <http://www.pjm.com/planning/resource-adequacy-planning/load-forecast-dev-process.aspx> at 70, 24.



2009. Following an all-time high of 145,951 MW in 2006, the unrestricted peak dropped to 140,948 MW in 2007, to 130,792 MW in 2008, and to 126,944 MW in 2009. From 2006 to 2009, the decrease was 13 percent.

Clearly, the statistics illustrate more than just a single-occurrence drop in demand. The facts show that there is declining energy consumption that is, at best, projected to level out, but not again reach the high-water marks of the early part of the past decade. The economy is certainly inexorably intertwined with energy consumption and, of course, with the need for electric power. In light of the recent decreases, and the unlikelihood of commanding growth spurts in the economy or the energy market in the near to mid-range future, (*see, e.g.*, The Conference Board Economic Forecast for the U.S. Economy, Dec. 8, 2009;<sup>12</sup> Congressional Budget Office, The Budget and Economic Outlook: Fiscal Years 21009 to 2019, Jan. 2009), the Board should be reluctant to approve a Project that may prove to be a very huge white elephant sitting on the back of the ratepayers and the residents of Morris, Sussex and Warren counties.

### **POINT THREE**

#### **PSE&G'S "EVIDENCE" REGARDING THE IMPACT THE PROJECT WILL HAVE ON PROPERTY VALUES IS NOT RELIABLE AND SHOULD BE DISREGARDED.**

In its brief, PSE&G submits to this Board that it is "undisputed" that property values for the properties located along the right of way for the proposed Project will not be diminished or negatively impacted. *See PSE&G Br. at 64-65.* The rationale offered by PSE&G in support of this sweeping statement is contained within its responses to discovery, S-ENR-32, in which PSE&G opines that property values will not depreciate as a result of the Project. PSE&G,

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<sup>12</sup> [http://docs.google.com/viewer?a=v&q=cache:ryZ3sD0Zth4J:www.conference-board.org/pdf\\_free/economics/2009\\_12\\_08.pdf+Conference+Board+Economic+Forecast+for+the+U.S.+Economy,+December+2009&hl=en&gl=us&sig=AHIEtbQnXg2Uj7xhlf3gRmB03qKjaavHQ](http://docs.google.com/viewer?a=v&q=cache:ryZ3sD0Zth4J:www.conference-board.org/pdf_free/economics/2009_12_08.pdf+Conference+Board+Economic+Forecast+for+the+U.S.+Economy,+December+2009&hl=en&gl=us&sig=AHIEtbQnXg2Uj7xhlf3gRmB03qKjaavHQ)

however, admits to having not performed any appraisals, surveys or property value studies to support this statement. *See* ENV-21, -22; S-ENR-32, STL-D-GIBBS-2, -4, -5; STL-GIBBS-5, -6, -7, -12, -13. Instead, it simply offered the testimony of its Manager of Corporate Properties, Richard Franklin, to vouch for PSE&G's unsubstantiated real estate valuation assessment. (Tr. at 43-44)

In general, expert testimony is required to provide evidence regarding the value of real estate. *See Torres v. Schripps, Inc.*, 342 N.J. Super. 419 (App. Div. 2001); *Jacobitti v. Jacobitti*, 263 N.J. Super. 608, 613-14 (App. Div. 1993); *aff'd* 135 N.J. 571 (1994). Expert testimony shall be provided by a witness that is shown to have certain skills, knowledge or training in a technical area or one that is not common to the world. *See, e.g.*, N.J.R.E. 702; *see also* Biunno, *Current N.J. Rules of Evidence*, comment 2 on *N.J.R.E.* 702 (gathering cases). In this State, an appraisal or other real estate evaluation must be performed by a licensed or certified appraiser, or under the direction of a licensed or certified appraiser. N.J.S.A. 45:14F-21. While tax assessors are permitted to opine on real estate values in court proceedings, this exception has been permitted because tax assessors must satisfy certain statutory requirements to be certified. *See, e.g., Little Egg Harbor Twp. v. Bonsangue*, 316 N.J. Super. 271 (App. Div. 1998)(noting that tax assessor was qualified to provide expert testimony on value of property because he was certified). Mr. Franklin, however, is neither a certified nor licensed appraiser. (Tr. at 43) He has a degree in Business Marketing. (Ex. 116 at 2) Thus, Mr. Franklin lacks the sufficient credentials to opine regarding the impact this Project will have on property values. *See* N.J.S.A. 45:14F-21; *see also* Biunno, *Current N.J. Rules of Evidence*, comment 2 on *N.J.R.E.* 702 (gathering cases that hold that expert witness shall generally be a licensed member of the profession when the subject matter of expert testimony falls distinctly within the province of a particular profession).

While the administrative rules provide some latitude in admitting evidence during the context of administrative proceedings, an expert opinion still must be based upon factual evidence. *See* N.J.A.C. 1:1-15.9; *see also Marago v. Daimler Chrysler Motors Co.*, OAL Dkt. No. CMA 8775-05, Final Decision (Dec. 22, 2005). PSE&G maintains that it has not conducted any study or appraisal to evaluate the impact this Project will have on property values for those neighborhoods directly impacted by the Project. Thus, even if this Board was willing to consider the real estate valuation testimony of Mr. Franklin, it should decline to do so because Mr. Franklin did not have sufficient data upon which to rely. *Id.* Mr. Franklin's testimony is purely speculative and should be disregarded by this Board. *See, e.g., Glen Wall Assoc. v. Wall Twp.*, 6 N.J. Tax 24, 31-33 (1983)(reliable sources from the real estate market, not the unsupported opinions of experts, is the evidence upon which a court can establish value of real estate); *see also Buckelew v. Grossbard*, 87 N.J. 512, 524 (1981)("net opinion" rule establishes that "an expert's bare conclusions, unsupported by factual evidence, is in admissible"); *Beadling v. William Bowman Associates*, 355 N.J. Super. 70, 87-88 (App. Div. 2002)(explaining that "[a]n expert opinion that is not factually supported is a net opinion or mere hypothesis to which no weight need be accorded.")

Finally, PSE&G should have performed appraisals and property valuation studies so that it could have advised this Board regarding the impact the Project will have on property values. Indeed, this information would assist the Board in its analysis of the impact of the Project on local neighborhoods and communities, as is required by *In re PSE&G*, 35 N.J. 358, 376-77 (1961). *See also In re PSE&G*, 100 N.J. Super. 1, 14-15 (1968)(Board must consider impact of proposed project on community in its analysis). It would have also instructed the Board regarding the actual costs of the Project. As it stands now, it appears PSE&G's cost estimates do not include costs associated with inverse condemnation claims that may be pursued by

property owners to be compensated for their loss of value in their properties. *See, e.g., Tennessee Gas Transmission Co. v. Maze*, 45 N.J. Super. 496 (App. Div. 1957)(property owners may pursue inverse condemnation claim against utility for devaluation of property caused by installation of electric line along utility easement; finding, in this case, property owners did not present sufficient expert testimony to sustain inverse condemnation claim); *In re Jersey Central Power and Light Co.*, 166 N.J. Super. 540 (App. Div. 1979)(noting that property owners may pursue Superior Court claim of inverse condemnation against utility constructing nuclear power plant for impact to property value).

PSE&G instead chose to keep this Board and the intervenors in the dark on this relevant issue. Its failure to provide sufficient information in the context of these hearings for this Board to assess the need of the Project under N.J.S.A. 40:55D-19 should not go unnoticed and favors for deferring any final decision regarding PSE&G's Petition until the PSE&G can provide the Board with all relevant data to assist it in its review.

#### **POINT FOUR**

#### **IF THE BOARD DEEMS THE PARTIES' EMF EVIDENCE INCONCLUSIVE, IT MUST DECIDE THE ISSUE IN FAVOR OF THE INTERVENORS.**

As stated, *supra*, if the Board determines that the parties' evidence regarding the hazards of EMF is in equipoise, PSE&G has not met its burden of persuasion on this important issue. *Liberty Mut. Ins. Co. v. Land*, 186 N.J. 163, 169 (2006).

The record reveals disagreement between two qualified EMF witnesses as to whether there is a nexus between EMF and illnesses such as childhood leukemia and, perhaps, other diseases. PSE&G's witness Dr. William Bailey admitted that although there is no proven causal link between EMF exposure and childhood leukemia, it is possible for EMF to affect

human health. (Ex. 11 at 16; T9 at 42). Dr. Blank, the Municipal Intervenor's witness, testified that there is a very strong link between EMF exposure and childhood leukemia. (Ex. 56 at 6-7). This "battle of the experts" makes the point that it is difficult to pin down the effects of EMF exposure, and even the studies undertaken to measure them have only in some instances established more than a likelihood of a link between exposure and illness. (See Ex. 56 at 9-14). Thus, the issue is whether there is any safe level of EMF, and if not, whether this Board should approve a Project that might negatively affect the health and welfare of the public by increasing EMF levels at and near the ROW.

In its initial Brief, PSE&G goes to great lengths to undermine Dr. Blank and attack his credibility. The record, however, shows that Dr. Blank's research on the effects of EMF is valid, and, moreover, he has adopted the standard of the World Health Organization ("WHO") which has determined that humans should not be exposed to EMF levels exceeding 3 to 4 mG. (Ex. 56 at 9)

The record reveals, too, that EMF levels at the existing 230kV line, and predicted for the 500kV line, far exceed the levels recommended by Dr. Blank and the WHO. (Ex. 10 at 8) Mr. King's calculations are premised on a median current, which is the level that will be that will be exceeded 50% of the time. (*Id.*) This means that even the lowest levels of EMF Mr. King predicted (*see, generally* Ex. 49 and Ex. 125), which far exceed Dr. Blank's and the WHO's recommended levels, will also exceed the predicted levels one-half of the time the Project is operating. Assuming that the Project will operate continuously, it is logical to assume too that incidences of high-level EMF will occur on a daily basis. Furthermore, Mr. King's calculations present likely EMF measurements only for 2013. (Ex. 10 at 6). There is no evidence concerning the potential EMF levels in 2014 and beyond. Also, PSE&G has stated that in the

future, a second 500kV line could be added to Project. (Ex. 2 at 23). Obviously, the EMF levels would increase even more with the addition of another 500kV line.

The uncertainty of the effects of EMF exposure, coupled with the evidence of EMF levels that will far exceed the levels deemed "safe" by the WHO should cause this Board to err on the side of caution, and reject a Project that will undoubtedly raise the EMF levels. In other words, if the Board finds the EMF evidence in equipoise, it must follow the law and find that PSE&G has failed to meet its burden of persuading the Board that EMF presents no risk to the people who live, work, recreate and attend school in shadow of the proposed Project.

#### **POINT FIVE**

#### **THE PETITION SHOULD NOT BE APPROVED BECAUSE PSE&G FAILED TO INCORPORATE THE GOALS AND POLICIES OF THE NJEMP.**

The Board should not take lightly PSE&G's cavalier dismissal of New Jersey Energy Master Plan. This Board has been a national leader in developing and promoting energy efficiency, conservation, and the utilization of renewable generation resources. It should insure that PSE&G's Project incorporate and adhere to its policies, and the goals of the NJEMP.

The EMP warns that New Jersey cannot stake its energy future on increased imports of coal-based electricity (Ex. 105 at 9, 37, 93-94), and invites this State to work closely with PJM to insure that transmission planning reflects the State's desire to increase in-state supply and reduce demand, while enhancing the State's economic and environmental goals. PSE&G's Project meets none of the EMP's goals. Further, PSE&G did not even attempt to calculate an estimate of the leakage that will occur from the Project, as required under the State's Greenhouse Gas Emissions directives. (Ex. 391; T10 at 38-39).

At a time when New Jersey is contributing carbon dioxide emissions at a rate that is 16% higher in 2009 than it was in 1990,<sup>13</sup> largely because of energy transmission and creation, this Board must insist that the Project not proceed until and unless PSE&G can demonstrate that it will comply with the New Jersey EMP and that it will limit its dependence on fossil fuels.

The time for building massive projects to accommodate long-distance transmission of electricity, spawned by pollution-belching coal-burning generators has passed. This State, like many others, and in particular, this Board, have come to understand that the well-being of its residents, and indeed, the earth itself, is threatened by the by-products of centuries of disregard for the effects of mining, transporting and burning fossil fuels to create energy. With this new understanding, it is imperative that no project be approved that disregards modern, forward-thinking federal and State energy policies.

PJM testified that the predominant energy sources for the power that will be transmitted by the Project will be coal and nuclear, thus fulfilling PJM's commitment to deliver coal-fired resources to the East. (T6 at 26) Indeed, PJM was vague throughout its testimony as to the percentages of energy for the Project that would be derived from various sources. (*Id.*) ("It's a pretty wide range of resources—coal, nuclear, natural gas – are the major fuel types. There is some hydro, some biomass, some wind, very tiny bit of oil."). However, the record reveals that coal is the predominant source of generation for PJM customers. Of PJM's total installed capacity at the end of September 2009, 40.7 percent was coal; 29.2 percent was natural gas; 18.4 percent was nuclear; 6.4 percent was oil; 4.7 percent was hydroelectric; 0.4 percent was solid waste, and 0.2 percent was wind.<sup>14</sup>

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<sup>13</sup> <http://www.nj.com/news/ledger/jersey/index.ssf?/base/news-15/125807671169770.xml&coll=1>

<sup>14</sup> [http://www.monitoringanalytics.com/reports/PJM\\_State\\_of\\_the\\_Market/2009.q3.shtml](http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2009.q3.shtml) at 46.

The Board must agree that this Project is out of step with federal and State policies that seek to curb global warming. It may please PJM to approve a project that will fulfill PJM's plan to transmit coal-fired resources from the mid-West to the Northeast, but it should not please the Board to have its policies ignored, nor should it please the residents of New Jersey who depend upon the Board to make sensible, thoughtful decisions about energy projects, if the Board approves the Project.

#### **POINT SIX**

**SHOULD THIS BOARD AGREE TO  
APPROVE THE PROJECT, IT SHOULD  
ALSO IMPOSE CONDITIONS ON PSE&G IN  
THE INTEREST OF THE PUBLIC.**

In the event that, despite the conflicting evidence, and, in many instances, the lack of evidence supporting a need for the Project, the Board sees fit to grant PSE&G's Petition and approve the Project, it may impose conditions on PSE&G going forward. The Board has the legal authority to and, indeed, often does, condition its approval of a petition. For example, just recently in *In the Matter of the Appeal of Jersey Central Power and Light Company*, Docket No. EO 09010010 (Sept. 14, 2009), the Board approved the petitioner's request to construct a substation in the Township of Tewksbury. The Board ordered, among other things, that the petitioner work with the fire and safety officials in Tewksbury and surrounding communities to insure that they have adequate equipment and training in the event of an emergency at the substation. (Decision and Order at 16) Similarly, this Board should require PSE&G to insure that the fire and safety officials of the municipalities in which the two substations will be located, as well as surrounding municipalities, are adequately trained and have the proper equipment to respond to fires and other emergencies at the substations.

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PSE&G also should be required to work with local officials to insure that local protections for steep slopes and other physical constraints on the land that will be affected by construction activities, are respected and that PSE&G will be financially responsible for damages resulting from its activities in sensitive areas.

Because of the incomplete record in this matter, the fact that final designs and construction plans will not be available for several months, and the recent significant declines in demand for electricity and decreased loads, PSE&G should also be required to meet the following additional conditions:

- PSE&G must establish an escrow account, or post a bond sufficient to insure that if landowners have any structural damage, drainage or well problems, during construction or afterward, attributable to PSE&G and/or its contractors, that those issues be addressed promptly through correction, rehabilitation and compensation.
- In light of the Court's dismantling of the cost-allocation scheme for the Project, PSE&G must not be permitted to proceed with the Project until an acceptable cost-allocation scheme is in place. If the new scheme increases the cost of the Project to New Jersey ratepayers, PSE&G should be required to resubmit its Petition.
- PSE&G must establish a "hot line" or other system through which any resident who experiences problems with construction or operation with the Project may obtain relief, including, but not limited to, monetary damages, quickly and efficiently.
- PSE&G must not be permitted to begin construction until it has received all applicable federal and state reviews and approvals.
- PSE&G must submit 2010 load forecast data to the Board, and, in the event the data show continuing load decreases for 2010 and 2011, PSE&G should be required to resubmit its Petition based on the updated data.
- PSE&G must submit data from the 2009 RTEP (to be published in February or March 2010) to show that the number and estimated dates of projected reliability violations remains unchanged.
- PSE&G must re-analyze the Project to include the policy goals of the New Jersey Energy Master Plan.

- PSE&G must present a fair and equitable compensation plan for property owners on or abutting the ROW who wish to relocate. The plan must be acceptable to the parties, and in the event PSE&G and the parties cannot agree on terms, the Board will assist the negotiations.

### CONCLUSION

As the Intervenors have amply shown, PSE&G has failed to meet its burden of persuading this Board that its Petition should be granted. For this reason, the Board may deny the Petition, and retain jurisdiction over the matter, so as to give PSE&G the opportunity to refile it when updated data supporting need is available, and after PSE&G has provided better (and public) information about the design and construction changes, siting changes, and other signification modifications it has made to its January 2009 Petition. Alternatively, the Board may defer its vote and require PSE&G to make the aforementioned submissions in the context of this instant proceeding.

PJM and PSE&G state that they are willing, and able to proceed with this Project. Indeed, it appears they are ready, willing and able to build a transmission project that, as the Intervenors have shown, is not reasonably necessary for the service, convenience or welfare of the public. This Project will cost New Jersey ratepayers at least \$750,000; it will damage air quality, cause environmental degradation, and generally create a less secure energy future for the residents of New Jersey, the public this Board serves. As a matter of law, the record evidence weighs against PSE&G and in favor of the Intervenors. If, however, this Board finds itself in equipoise, the law requires it to rule against the Petition, or, at the least, defer its decision at this time.

Respectfully submitted,

DeCotiis, FitzPatrick & Cole, LLP  
*Attorneys for the Municipal Intervenors*

By: 

Catherine E. Tamasik

Dated: January 6, 2010

## EXHIBIT A



1 of 1 DOCUMENT

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\*\*\* THIS SECTION IS CURRENT THROUGH THE DECEMBER 23, 2009 ISSUE OF \*\*\*  
 \*\*\* THE FEDERAL REGISTER \*\*\*

TITLE 18 -- CONSERVATION OF POWER AND WATER RESOURCES  
 CHAPTER I -- FEDERAL ENERGY REGULATORY COMMISSION, DEPARTMENT OF ENERGY  
 SUBCHAPTER B -- REGULATIONS UNDER THE FEDERAL POWER ACT  
 PART 50 -- APPLICATIONS FOR PERMITS TO SITE INTERSTATE ELECTRIC TRANSMISSION  
 FACILITIES

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*18 CFR 50.5*

§ 50.5 Pre-filing procedures.

(a) Introduction. Any applicant seeking a permit to site new electric transmission facilities or modify existing facilities must comply with the following pre-filing procedures prior to filing an application for Commission review.

(b) Initial consultation. An applicant must meet and consult with the Director concerning the proposed project.

(1) At the initial consultation meeting, the applicant must be prepared to discuss the nature of the project, the contents of the pre-filing request, and the status of the applicant's progress toward obtaining the information required for the pre-filing request described in paragraph (c) of this section.

(2) The initial consultation meeting will also include a discussion of whether a third-party contractor is likely to be needed to prepare the environmental documentation for the project and the specifications for the applicant's solicitation for prospective third-party contractors.

(3) The applicant also must discuss how its proposed project will be subject to the Commission's jurisdiction under section 216(b)(1) of the Federal Power Act. If the application is seeking Commission jurisdiction under section 216(b)(1)(C) of the Federal Power Act, the applicant must be prepared to discuss when it filed its application with the State and the status of that application.

(c) Contents of the initial filing. An applicant's pre-filing request will be filed after the initial consultation and must include the following information:

(1) A description of the schedule desired for the project, including the expected application filing date, desired date for Commission approval, and proposed project operation date, as well as the status of any State siting proceedings.

(2) A detailed description of the project, including location maps and plot plans to scale showing all major components, including a description of zoning and site availability for any permanent facilities.

(3) A list of the permitting entities responsible for conducting separate Federal permitting and environmental reviews and authorizations for the project, including contact names and telephone numbers, and a list of local entities with local authorization requirements. The filing must include information concerning:

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(i) How the applicant intends to account for each of the relevant entity's permitting and environmental review schedules, including its progress in DOE's pre-application process; and

(ii) When the applicant proposes to file with these permitting and local entities for the respective permits or other authorizations.

(4) A list of all affected landowners and other stakeholders (include contact names and telephone numbers) that have been contacted, or have contacted the applicant, about the project.

(5) A description of what other work already has been done, including, contacting stakeholders, agency and Indian tribe consultations, project engineering, route planning, environmental and engineering contractor engagement, environmental surveys/studies, open houses, and any work done or actions taken in conjunction with a State proceeding. This description also must include the identification of the environmental and engineering firms and sub-contractors under contract to develop the project.

(6) Proposals for at least three prospective third-party contractors from which Commission staff may make a selection to assist in the preparation of the requisite NEPA document, if the Director determined a third-party contractor would be necessary in the Initial Consultation meeting.

(7) A proposed Project Participation Plan, as set forth in § 50.4(a).

(d) Director's notice. (1) When the Director finds that an applicant seeking authority to site and construct an electric transmission facility has adequately addressed the requirements of paragraphs (a), (b), and (c) of this section, and any other requirements determined at the Initial Consultation meeting, the Director will so notify the applicant.

(i) The notification will designate the third-party contractor, and

(ii) The pre-filing process will be deemed to have commenced on the date of the Director's notification.

(2) If the Director determines that the contents of the initial pre-filing request are insufficient, the applicant will be notified and given a reasonable time to correct the deficiencies.

(e) Subsequent filing requirements. Upon the Director's issuance of a notice commencing an applicant's pre-filing process, the applicant must:

(1) Within 7 days, finalize and file the Project Participation Plan, as defined in § 50.4(a), and establish the dates and locations at which the applicant will conduct meetings with stakeholders and Commission staff.

(2) Within 14 days, finalize the contract with the selected third-party contractor, if applicable.

(3) Within 14 days:

(i) Provide all identified stakeholders with a copy of the Director's notification commencing the pre-filing process;

(ii) Notify affected landowners in compliance with the requirements of § 50.4(c); and

(iii) Notify permitting entities and request information detailing any specific information not required by the Commission in the resource reports required under § 380.16 of this chapter that the permitting entities may require to reach a decision concerning the proposed project. The responses of the permitting entities must be filed with the Commission, as well as being provided to the applicant.

(4) Within 30 days, submit a mailing list of all stakeholders contacted under paragraph (e)(3) of this section, including the names of the Federal, State, Tribal, and local jurisdictions' representatives. The list must include information concerning affected landowner notifications that were returned as undeliverable.

(5) Within 30 days, file a summary of the project alternatives considered or under consideration.

(6) Within 30 days, file an updated list of all Federal, State, Tribal, and local agencies permits and authorizations that are necessary to construct the proposed facilities. The list must include:

(i) A schedule detailing when the applications for the permits and authorizations will be submitted (or were submitted);

(ii) Copies of all filed applications; and

(iii) The status of all pending permit or authorization requests and of the Secretary of Energy's pre-application process being conducted under section 216(h)(4)(C) of the Federal Power Act.

(7) Within 60 days, file the draft resource reports required in § 380.16 of this chapter.

(8) On a monthly basis, file status reports detailing the applicant's project activities including surveys, stakeholder communications, and agency and tribe meetings, including updates on the status of other required permits or authorizations. If the applicant fails to respond to any request for additional information, fails to provide sufficient information, or is not making sufficient progress towards completing the pre-filing process, the Director may issue a notice terminating the process.

(f) Concluding the pre-filing process. The Director will determine when the information gathered during the pre-filing process is complete, after which the applicant may file an application. An application must contain all the information specified by the Commission staff during the pre-filing process, including the environmental material required in part 380 of this chapter and the exhibits required in § 50.7.

**HISTORY:** [71 FR 69440, 69465, Dec. 1, 2006, as corrected at 72 FR 198, Jan. 3, 2007]

**AUTHORITY:** AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

16 U.S.C. 824p, DOE Delegation Order No. 00-004.00A.

**NOTES:** [EFFECTIVE DATE NOTE: 71 FR 69440, 69465, Dec. 1, 2006, added Part 50, effective Jan. 30, 2007.]

NOTES APPLICABLE TO ENTIRE TITLE:

CROSS REFERENCES: Applications and entries conflicting with lands reserved or classified as power sites, or covered by power applications: See Public Lands, Interior, 43 CFR subpart 2320.

Interstate Commerce Commission: See Transportation, 49 CFR chapter X.

Irrigation projects; electrification, Bureau of Indian Affairs, Department of the Interior: See Indians, 25 CFR part 175  
Regulations of the Bureau of Land Management relating to rights-of-way for power, telephone, and telegraph purposes: See Public Lands, Interior, 43 CFR Group 2800.

Rights-of-way over Indian lands: See Indians, 25 CFR parts 169, 170, and 265.

Securities and Exchange Commission: See Commodity and Securities Exchanges, 17 CFR chapter II.

Withdrawal of public lands: See Public Lands, Interior, 43 CFR Group 2300.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATIONS: The following abbreviations are used in this chapter: M.c.f.=Thousand cubic feet. B.t.u.=British thermal units. ICC=Interstate Commerce Commission.

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter I Notice terminating proceedings, see: 73 FR 79316, Dec. 29, 2008.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter I Policy Statements, see: 74 FR 37098, July 27, 2009.]

1249 words



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\*\*\* THIS SECTION IS CURRENT THROUGH THE DECEMBER 23, 2009 ISSUE OF \*\*\*  
\*\*\* THE FEDERAL REGISTER \*\*\*

TITLE 18 -- CONSERVATION OF POWER AND WATER RESOURCES  
CHAPTER I -- FEDERAL ENERGY REGULATORY COMMISSION, DEPARTMENT OF ENERGY  
SUBCHAPTER B -- REGULATIONS UNDER THE FEDERAL POWER ACT  
PART 50 -- APPLICATIONS FOR PERMITS TO SITE INTERSTATE ELECTRIC TRANSMISSION  
FACILITIES

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*18 CFR 50.6*

§ 50.6 Applications: general content.

Each application filed under this part must provide the following information:

- (a) The exact legal name of applicant; its principal place of business; whether the applicant is an individual, partnership, corporation, or otherwise; the State laws under which the applicant is organized or authorized; and the name, title, and mailing address of the person or persons to whom communications concerning the application are to be addressed.
- (b) A concise description of applicant's existing operations.
- (c) A concise general description of the proposed project sufficient to explain its scope and purpose. The description must, at a minimum: Describe the proposed geographic location of the principal project features and the planned routing of the transmission line; contain the general characteristics of the transmission line including voltage, types of towers, origin and termination points of the transmission line, and the geographic character of area traversed by the line; and be accompanied by an overview map of sufficient scale to show the entire transmission route on one or a few 8.5 by 11-inch sheets.
- (d) Verification that the proposed route lies within a national interest electric transmission corridor designated by the Secretary of the Department of Energy under section 216 of the Federal Power Act.
- (e) Evidence that:
  - (1) A State in which the transmission facilities are to be constructed or modified does not have the authority to approve the siting of the facilities or consider the interstate benefits expected to be achieved by the proposed construction or modification of transmission facilities in the State;
  - (2) The applicant is a transmitting utility but does not qualify to apply for a permit or siting approval of the proposed project in a State because the applicant does not serve end-use customers in the State; or
  - (3) A State commission or other entity that has the authority to approve the siting of the facilities has:



(i) Withheld approval for more than one year after the filing of an application seeking approval under applicable law or one year after the designation of the relevant national interest electric transmission corridor, whichever is later; or

(ii) Conditioned its approval in such a manner that the proposed construction or modification will not significantly reduce transmission congestion in interstate commerce or is not economically feasible.

(f) A demonstration that the facilities to be authorized by the permit will be used for the transmission of electric energy in interstate commerce, and that the proposed construction or modification:

- (1) Is consistent with the public interest;
- (2) Will significantly reduce transmission congestion in interstate commerce and protects or benefits consumers;
- (3) Is consistent with sound national energy policy and will enhance energy interdependence; and
- (4) Will maximize, to the extent reasonable and economical, the transmission capabilities of existing towers or structures.

(g) A description of the proposed construction and operation of the facilities, including the proposed dates for the beginning and completion of construction and the commencement of service.

(h) A general description of project financing.

(i) A full statement as to whether any other application to supplement or effectuate the applicant's proposals must be or is to be filed by the applicant, any of the applicant's customers, or any other person, with any other Federal, State, Tribal, or other regulatory body; and if so, the nature and status of each such application.

(j) A table of contents that must list all exhibits and documents filed in compliance with this part, as well as all other documents and exhibits otherwise filed, identifying them by their appropriate titles and alphabetical letter designations. The alphabetical letter designations specified in § 50.7 must be strictly adhered to and extra exhibits submitted at the volition of applicant must be designated in sequence under the letter Z (Z1, Z2, Z3, etc.).

(k) A form of notice suitable for publication in the Federal Register, as provided by § 50.9(a), which will briefly summarize the facts contained in the application in such a way as to acquaint the public with its scope and purpose. The form of notice also must include the name, address, and telephone number of an authorized contact person.

**HISTORY:** [71 FR 69440, 69465, Dec. 1, 2006, as corrected at 72 FR 198, Jan. 3, 2007]

**AUTHORITY:** AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

16 U.S.C. 824p, DOE Delegation Order No. 00-004.00A.

**NOTES:** [EFFECTIVE DATE NOTE: 71 FR 69440, 69465, Dec. 1, 2006, added Part 50, effective Jan. 30, 2007.]

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Interstate Commerce Commission: See Transportation, 49 CFR chapter X.

Irrigation projects; electrification, Bureau of Indian Affairs, Department of the Interior: See Indians, 25 CFR part 175

Regulations of the Bureau of Land Management relating to rights-of-way for power, telephone, and telegraph purposes: See Public Lands, Interior, 43 CFR Group 2800.

Rights-of-way over Indian lands: See Indians, 25 CFR parts 169, 170, and 265.

Securities and Exchange Commission: See Commodity and Securities Exchanges, 17 CFR chapter II.

Withdrawal of public lands: See Public Lands, Interior, 43 CFR Group 2300.

**NOTES APPLICABLE TO ENTIRE CHAPTER:**

**ABBREVIATIONS:** The following abbreviations are used in this chapter: M.c.f.=Thousand cubic feet. B.t.u.=British thermal units. ICC=Interstate Commerce Commission.

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter I Notice terminating proceedings, see: 73 FR 79316, Dec. 29, 2008.]



1 of 1 DOCUMENT

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\*\*\* THIS SECTION IS CURRENT THROUGH THE DECEMBER 23, 2009 ISSUE OF \*\*\*  
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 FACILITIES

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*18 CFR 50.7*

**§ 50.7 Applications: exhibits.**

Each exhibit must contain a title page showing the applicant's name, title of the exhibit, the proper letter designation of the exhibit, and, if 10 or more pages, a table of contents, citing by page, section number or subdivision, the component elements or matters contained in the exhibit.

(a) Exhibit A--Articles of incorporation and bylaws. If the applicant is not an individual, a conformed copy of its articles of incorporation and bylaws, or other similar documents.

(b) Exhibit B--State authorization. For each State where the applicant is authorized to do business, a statement showing the date of authorization, the scope of the business the applicant is authorized to carry on and all limitations, if any, including expiration dates and renewal obligations. A conformed copy of applicant's authorization to do business in each State affected must be supplied upon request.

(c) Exhibit C--Company officials. A list of the names and business addresses of the applicant's officers and directors, or similar officials if the applicant is not a corporation.

(d) Exhibit D--Other pending applications and filings. A list of other applications and filings submitted by the applicant that are pending before the Commission at the time of the filing of an application and that directly and significantly affect the proposed project, including an explanation of any material effect the grant or denial of those other applications and filings will have on the application and of any material effect the grant or denial of the application will have on those other applications and filings.

(e) Exhibit E--Maps of general location of facilities. The general location map required under § 50.5(c) must be provided as Exhibit E. Detailed maps required by other exhibits must be filed in those exhibits, in a format determined during the pre-filing process in § 50.5.

(f) Exhibit F--Environmental report. An environmental report as specified in §§ 380.3 and 380.16 of this chapter. The applicant must submit all appropriate revisions to Exhibit F whenever route or site changes are filed. These revisions must identify the locations by mile post and describe all other specific differences resulting from the route or site

changes, and should not simply provide revised totals for the resources affected. The format of the environmental report filing will be determined during the pre-filing process required under § 50.5.

(g) Exhibit G--Engineering data.

(1) A detailed project description including:

(i) Name and destination of the project;

(ii) Design voltage rating (kV);

(iii) Operating voltage rating (kV);

(iv) Normal peak operating current rating;

(v) Line design features for minimizing television and/or radio interference cause by operation of the proposed facilities; and

(vi) Line design features that minimize audible noise during fog/rain caused by operation of the proposed facilities, including comparing expected audible noise levels to the applicable Federal, State, and local requirements.

(2) A conductor, structures, and substations description including:

(i) Conductor size and type;

(ii) Type of structures;

(iii) Height of typical structures;

(iv) An explanation why these structures were selected;

(v) Dimensional drawings of the typical structures to be used in the project; and

(vi) A list of the names of all new (and existing if applicable) substations or switching stations that will be associated with the proposed new transmission line.

(3) The location of the site and right-of-way including:

(i) Miles of right-of-way;

(ii) Miles of circuit;

(iii) Width of the right-of-way;

(iv) A brief description of the area traversed by the proposed transmission line, including a description of the general land uses in the area and the type of terrain crossed by the proposed line;

(4) Assumptions, bases, formulae, and methods used in the development and preparation of the diagrams and accompanying data, and a technical description providing the following information:

(i) Number of circuits, with identification as to whether the circuit is overhead or underground;

(ii) The operating voltage and frequency; and

(iii) Conductor size, type and number of conductors per phase.

(5) If the proposed interconnection is an overhead line, the following additional information also must be provided:

(i) The wind and ice loading design parameters;

(ii) A full description and drawing of a typical supporting structure including strength specifications;

(iii) Structure spacing with typical ruling and maximum spans;

(iv) Conductor (phase) spacing; and

(v) The designed line-to-ground and conductor-side clearances.

(6) If an underground or underwater interconnection is proposed, the following additional information also must be provided:

- (i) Burial depth;
  - (ii) Type of cable and a description of any required supporting equipment, such as insulation medium pressurizing or forced cooling;
  - (iii) Cathodic protection scheme; and
  - (iv) Type of dielectric fluid and safeguards used to limit potential spills in waterways.
- (7) Technical diagrams that provide clarification of any of the above items should be included.
- (8) Any other data or information not previously identified that has been identified as a minimum requirement for the siting of a transmission line in the State in which the facility will be located.
- (h) Exhibit H--System analysis data. An analysis evaluating the impact the proposed facilities will have on the existing electric transmission system performance, including:
- (1) An analysis of the existing and expected congestion on the electric transmission system.
  - (2) Power flow cases used to analyze the proposed and future transmission system under anticipated load growth, operating conditions, variations in power import and export levels, and additional transmission facilities required for system reliability. The cases must:
    - (i) Provide all files to model normal, single contingency, multiple contingency, and special protective systems, including the special protective systems' automatic switching or load shedding system; and
    - (ii) State the assumptions, criteria, and guidelines upon which they are based and take into consideration transmission facility loading; first contingency incremental transfer capability (FCITC); normal incremental transfer capability (NITC); system protection; and system stability.
  - (3) A stability analysis including study assumptions, criteria, and guidelines used in the analysis, including load shedding allowables.
  - (4) A short circuit analysis for all power flow cases.
  - (5) A concise analysis to include:
    - (i) An explanation of how the proposed project will improve system reliability over the long and short term;
    - (ii) An analysis of how the proposed project will impact long term regional transmission expansion plans;
    - (iii) An analysis of how the proposed project will impact congestion on the applicant's entire system; and
    - (iv) A description of proposed high technology design features.
  - (6) Detailed single-line diagrams, including existing system facilities identified by name and circuit number, that show system transmission elements, in relation to the project and other principal interconnected system elements, as well as power flow and loss data that represent system operating conditions.
- (i) Exhibit I--Project Cost and Financing. (1) A statement of estimated costs of any new construction or modification.
- (2) The estimated capital cost and estimated annual operations and maintenance expense of each proposed environmental measure.
- (3) A statement and evaluation of the consequences of denial of the transmission line permit application.
- (j) Exhibit J--Construction, operation, and management. A concise statement providing arrangements for supervision, management, engineering, accounting, legal, or other similar service to be rendered in connection with the construction or operation of the project, if not to be performed by employees of the applicant, including reference to any existing or contemplated agreements, together with a statement showing any affiliation between the applicant and any parties to the agreements or arrangements.

**HISTORY:** [71 FR 69440, 69465, Dec. 1, 2006, as corrected at 72 FR 198, Jan. 3, 2007]

**AUTHORITY:** AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

16 U.S.C. 824p, DOE Delegation Order No. 00-004.00A.

**NOTES:** [EFFECTIVE DATE NOTE: 71 FR 69440, 69465, Dec. 1, 2006, added Part 50, effective Jan. 30, 2007.]

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[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter I Policy Statements, see: 74 FR 37098, July 27, 2009.]

1388 words

## EXHIBIT B



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December 29, 2009

**Via Electronic Filing**

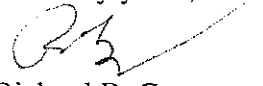
Hon. Joel H. Peck  
Clerk  
State Corporation Commission  
Document Control Center  
Tyler Building, 1<sup>st</sup> Floor  
1300 East Main Street  
Richmond, Virginia 23219

**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**

Dear Mr. Peck:

Enclosed is PATH Allegheny Virginia Transmission Corporation's Amendment to Motion to Withdraw Application and Terminate Proceeding in Case No. PUE-2009-00043.

Sincerely yours,



Richard D. Gary

RDG/tms  
Enclosure

cc: Hon. Alexander F. Skirpan, Jr.  
William H. Chambliss, Esq.  
Service List  
Noelle J. Coates, Esq.

BEFORE THE  
STATE CORPORATION COMMISSION  
COMMONWEALTH OF VIRGINIA

APPLICATION OF	)	
	)	
PATH ALLEGHENY VIRGINIA	)	
TRANSMISSION CORPORATION	)	Case No. PUE-2009-00043
	)	
For certificates of public convenience	)	
and necessity to construct facilities:	)	
765 kV Transmission Line through	)	
Loudoun, Frederick, and Clarke Counties	)	

**AMENDMENT TO  
MOTION TO WITHDRAW  
APPLICATION AND TERMINATE PROCEEDING**

PATH Allegheny Virginia Transmission Corporation ("PATH-VA") filed its Motion to Withdraw Application and Terminate proceeding ("Motion") on December 21, 2009, which requested the Commission's approval to withdraw the application for certification of electric transmission facilities (the "Potomac Appalachian Transmission Highline," or "PATH Project"). The Motion stated that PATH-VA's intention was to file a new application in early 2010 based on the most current information then available with regard to the PATH Project and to propose a procedural schedule for the Commission's consideration that would be aligned with the existing procedural schedule for the pending application in West Virginia and the recently-filed application in Maryland for the portions of the PATH Project that will be constructed in those states.<sup>1</sup>

---

<sup>1</sup> The West Virginia Public Service Commission recently granted a motion for modification of the procedural schedule in that state to consider the PATH Project's certification request. Simultaneous with the filing of the Motion, an application was filed in Maryland for authorization to construct the PATH Project.



On December 4, 2009, the Hearing Examiner requested that PATH-VA supplement the record in this proceeding with the results of additional load flow analyses. PJM has diligently pursued these sensitivity analyses, as requested by the Hearing Examiner. These sensitivity analyses, particularly Scenarios 3 and 4, include updated changes in generation projects with signed Interconnection Service Agreements, anticipated demand response and new energy efficiency resources that cleared the May 2009 RPM auction, and the 2009 load forecast (Scenario 3) and the recently released preliminary updated 2010 load forecast (Scenario 4). Although not fully completed, PJM's work has progressed to a point where, under Scenarios 3 and 4, the analysis indicates that the PATH Project would not be needed to resolve NERC reliability violations in 2014, as identified in the pending application. Consistent with its regional transmission planning responsibilities, PJM will incorporate the sensitivity analysis as noted above and perform a complete analysis through the more comprehensive 2010 RTEP process to determine when the PATH Project will be needed.<sup>2</sup> The sensitivity analyses noted above, are not comprehensive and are not sufficient for the purpose of determining a need date for the project.

PJM has acknowledged these results to PATH-VA and has stated:

PJM is, at this time, completing a number of sensitivity analyses, as ordered by the Hearing Examiner in the Virginia proceeding, Case No. PUE-2009-00043, with respect to the need for the PATH Project. These analyses are nearing completion but suggest a delay in the need date for the Project. Specifically, scenarios that include the demand response resources that cleared through the 2012/13 RPM Base Residual Auction, as well as updated queue information and load forecasts, suggest that the PATH Project appears not to be needed in 2014 as a result of a

---

<sup>2</sup> Although the Motion stated that PATH-VA's intention was to file a new application for the PATH Project in early 2010, there is no intention now to do so. PJM's ongoing review including the 2010 RTEP process will dictate when a future application for the PATH Project will be filed and that is not expected to be earlier than the third quarter of 2010.

reduction in the scope and severity of observed NERC reliability violations. Consistent with PJM processes, the PATH Project will be considered in the 2010 RTEP next year to determine when it will be needed to resolve NERC reliability violations. (Letter to James R. Haney, Vice President, PATH Allegheny Virginia Transmission Corporation and Michael Heyeck, Senior Vice President -Transmission, American Electric Power Service Corporation from Steven R. Herling, Vice President of Planning, PJM Interconnection L.L.C., dated December 28, 2009.)

These new developments 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. To avoid any further administrative burden and expenditures of time and resources by the Commission, Staff and Respondents, PATH-VA believes these proceedings should be ended promptly by granting PATH-VA's Motion and allowing the withdrawal of this Application. Consistent with that belief and request, PATH-VA will, at the oral argument on the Motion scheduled for Wednesday, December 30, 2009, renew its motion to suspend the procedural schedule immediately.<sup>3</sup> In light of PJM's current analyses, approval of the PATH Project will not be pursued through the currently filed Application. Once PATH-VA receives PJM's full analysis, as documented by PJM in its 2010 RTEP process, PATH-VA will determine when an application will be pursued.

---

<sup>3</sup> PATH-VA filed a Motion to Suspend Procedural Schedule coincidental with the filing of this Motion. The Hearing Examiner denied that Motion in his Ruling of December 21, 2009 because to do so would make it "unlikely that the hearing could begin on January 19, 2010 ..." and thereby make it "very difficult to complete the case within the federally-mandated one-year period." Because the Applicant no longer supports the Application on file with the Commission and there is no longer a reason to have a hearing beginning on January 19, 2010, a suspension of the procedural schedule would be most appropriate and would stop all further expenditures of time and resources on this Application. If withdrawal is granted, PATH-VA, as a result of such withdrawal, will not request action by the FERC as to a construction permit for the PATH Project in Virginia pursuant to Section 216(b)(1)(c) of the Federal Power Act.

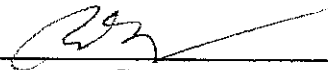
WHEREFORE, PATH-VA moves the Commission to grant its request to withdraw its application for certification of the PATH Project.

Respectfully submitted,

PATH ALLEGHENY VIRGINIA  
TRANSMISSION CORPORATION

Dated: December 29, 2009

By



Counsel

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