

## **FERC CASE NO. ER-08-386-**

Potomac Appalachian Transmission Highline, L.L.C. (“PATH”) is a joint venture between American Electric Power Company, Inc. (“AEP”) and Allegheny Energy, Inc. (“Allegheny”) organized to finance, construct, own, operate and maintain transmission and transmission-related facilities in connection with certain transmission infrastructure projects approved by PJM Interconnection, LLC (“PJM”) under the PJM Regional Transmission Expansion Plan (“RTEP”). PATH’s foremost projects are (1) a proposed 765 kV transmission line running 244 miles from AEP’s Amos Substation near St. Albans, West Virginia to Allegheny’s Bedington Substation located northwest of Martinsburg, West Virginia, and (2) two 200 kV lines, each 46 miles long, running from Bedington to a new substation to be constructed near Kemptown, Maryland (collectively, “PATH Project”).

In a December 28, 2007 filing pursuant to Section 205 of the Federal Power Act, PATH sought FERC approval of a formula rate under which PATH would collect a transmission revenue requirement for the PATH Project, as well as collect pre-construction expenses incurred by PATH prior to its filing. PATH also sought the inclusion of the 100% of construction work in progress (“CWIP”) in rate base, based on the projected cost of construction, and recovery of 100% of prudently-incurred costs in the event of abandonment of the PATH Project through no fault of PATH. In addition, PATH sought an aggregate return on equity (“ROE”) of 14.3%, which included a 50-basis point adder for PATH’s membership in PJM and a 150-basis point adder for, among other things, the risks assumed by PATH in connection with construction of the PATH Project. On January 18, 2008, OPC filed, on its own behalf and on behalf of consumer advocates for Pennsylvania, Ohio, the District of Columbia, New Jersey, West Virginia and Delaware (the “Joint Consumer Advocates”), a “Motion to Intervene, Protest and Request for Hearing of the Joint Consumer Advocates”.

On February 29, 2008, FERC issued an “Order Accepting and Suspending Formula Rates, Subject to Conditions, Establishing Hearing and Settlement Procedure,” wherein FERC granted PATH an ROE of 14.3% (inclusive of the 50 and 150 basis point adders), inclusion of 100% of CWIP in rate base, and recovery of costs in the event of abandonment.

On March 31, 2008, OPC filed a “Request For Rehearing of the Joint Consumer Advocates, Individually and Collectively,” requesting a rehearing by FERC on various grounds, including that the Order violated the due process rights of the JCA members and their respective clients and that the Order was arbitrary and capricious. The Request was supported by an affidavit of an expert witness on the issues regarding the ROE. A decision by FERC concerning the request for rehearing is pending.

The Order also directed that a public hearing be held concerning PATH’s proposed formula rates, which hearing was suspended pending a settlement conference among the parties. OPC, individually and on behalf of the JCA, has been an active participant in these settlement discussions.