

166 FERC ¶ 61,035
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

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

Docket Nos. ER09-1256-004
ER12-2708-006

ORDER ON COMPLIANCE

(Issued January 17, 2019)

1. In this order, we find that Potomac-Appalachian Transmission Highline, LLC (PATH)¹ has complied in part, and not complied in part, with Opinion No. 554² concerning its Formula Rates³ and its abandonment recovery. We order PATH to recalculate its recoverable cost of service and submit a compliance report and a refund report, as discussed below.

I. Background

2. A more detailed factual background of this proceeding is described in Opinion No. 554 and the Initial Decision, and we will not repeat that level of detail here.⁴ As explained there, PATH is a limited liability company that was created to construct the Potomac-Appalachian Transmission Highline Project (Project), a 765 kV transmission

¹ PATH is a pass-through subsidiary of American Electric Power Corp. and FirstEnergy Corp. (the Parent Companies). While there are multiple operating company affiliates of the PATH enterprise, PATH has two revenue requirements on file with the Commission that are the subject of compliance herein; one for PATH West Virginia Transmission Company, L.L.C. (herein, PATH-WV, jointly owned by the Parent Companies), and one for PATH Allegheny Transmission Company, LLC (herein, PATH-AYE, owned solely FirstEnergy Corp.), which comprise PATH's Formula Rate.

² *Potomac-Appalachian Transmission Highline, LLC*, Opinion No. 554, 158 FERC ¶ 61,050 (2017) (Opinion No. 554).

³ PJM Open Access Transmission Tariff, Attachment H-19, "Annual Transmission Rates – Potomac-Appalachian Transmission Highline, LLC." (Formula Rate).

⁴ *Potomac-Appalachian Transmission Highline, LLC*, 152 FERC ¶ 63,025 (2015) (Initial Decision).

line through West Virginia, Virginia, and Maryland that was approved by PJM Interconnection, L.L.C. (PJM). The Parent Companies created PATH for the sole purpose of building and operating the Project. PATH's Formula Rates and Protocols⁵ were developed over multiple settlement agreements and proceedings before the Commission.⁶

3. The Commission granted PATH an abandonment incentive permitting PATH to recover abandonment costs subject to a Federal Power Act (FPA) section 205 filed with the Commission if the Project is cancelled for reasons beyond the control of PATH.⁷ After authorizing the Project, PJM later determined that it no longer required the Project and cancelled the Project. When PJM cancelled the Project, the need for PATH ceased.⁸ No construction ever began on the Project.

4. Relevant to this compliance proceeding, on January 21, 2011 and December 23, 2011, *Pro Se* Challengers also separately filed two formal challenges pursuant to PATH's Protocols in Docket No. ER09-1256-000, disputing PATH's Annual Updates⁹ for 2009,

⁵ PJM Open Access Transmission Tariff Attachment H-19B – Formula Rate Implementation Protocols, 2.0.0. (Protocols).

⁶ PATH's return on equity is currently 8.11 percent. Opinion No. 554, 158 FERC ¶ 61,050 at PP 231-232, 270. For the purposes of calculating refunds pursuant to Opinion No. 554, from 2008 through December 31, 2010, PATH's return on equity was 14.3 percent. *Potomac-Appalachian Transmission Highline, LLC*, 122 FERC ¶ 61,188 (2008). From January 1, 2011 to September 1, 2012 PATH's return on equity was 12.4 percent. *Potomac-Appalachian Transmission Highline, LLC*, 138 FERC ¶ 61,113 (2012). From December 1, 2012 to January 18, 2017, PATH's return on equity was 10.4 percent. *Potomac-Appalachian Transmission Highline, LLC*, 141 FERC ¶ 61,177, at PP 1, 4 (2012), *reh'g denied*, 153 FERC ¶ 61,308 (2015) (Abandonment Hearing Initiation Order).

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

⁸ Ex. JCA-96, Testimony of Mark Joensen; PATH application for abandonment, Docket No. ER12-2708-000, Transmittal at 3-4.

⁹ PATH's Annual Updates are informational updates to the Formula Rate calculations, filed each June, and covering the previous calendar year.

2010, and 2011 Rate Years.¹⁰ On September 20, 2012, the Commission set these two formal challenges for settlement and hearing procedures.¹¹ On September 28, 2012, PATH filed with the Commission to recover the net amount of approximately \$121.5 million in abandonment costs it incurred between January 1, 2008 and August 31, 2012, proposing to subtract revenues from the closing out of future transactions (such as land sales) through PATH's formula rates. The Commission set the proceeding for hearing, which was ultimately consolidated with the Formal Challenge Proceedings.¹²

5. The Presiding Judge issued his Initial Decision on September 14, 2015, and addressed all outstanding issues in the Formal Challenge Proceedings and the abandonment proceedings.¹³

6. On January 19, 2017, the Commission issued Opinion No. 554, in which it generally affirmed the Presiding Judge's findings. The Commission ordered compliance on several matters, including: (1) PATH's civic and political costs at issue in the Formal Challenge Proceedings; (2) advertising costs also at issue in the Formal Challenge Proceedings; (3) losses on the sale of real estate purchased for the Project; (5) the allowed return; and (6) the appropriate amortization period for abandoned plant. The Commission directed compliance and ordered PATH to make refunds with interest "when it submits its next Formula Rate Annual Update" ... "consistent with its [Protocols]."¹⁴

7. As described below, Opinion No. 554 disallowed some of the expenses at issue in the Formal Challenge Proceedings. PATH also flowed a portion of these amounts into the abandonment costs for which PATH sought recovery. Opinion No. 554 disallowed that portion of abandonment costs related to the costs at issue in the Formal Challenge

¹⁰ Two electric consumers from the state of West Virginia, Karen Newman and Allison Haverty (*Pro Se* Challengers), challenged the PATH Companies' accounting and placement of certain expenses in accounts that rendered the expenses recoverable from ratepayers.

¹¹ *Potomac-Appalachian Transmission Highline, LLC*, 140 FERC ¶ 61,229 (2012); *Potomac-Appalachian Transmission Highline, LLC*, 143 FERC ¶ 61,208 (2013) (collectively, Formal Challenge Proceedings).

¹² Abandonment Hearing Initiation Order, 141 FERC ¶ 61,177, *reh'g denied*, 153 FERC ¶ 61,308.

¹³ Initial Decision, 152 FERC ¶ 63,025.

¹⁴ Opinion No. 554, 158 FERC ¶ 61,050 at PP 86, 190, 192, Ordering Paragraph C.

Proceedings. Opinion No. 554 also reduced PATH's return on equity pursuant to FPA section 206.¹⁵

8. Opinion No. 554 required PATH to refile "draft revised FERC Form No. 1 [] with adjustments made to reflect the corrected accounting findings and determinations ... for each year from 2009 to the present." PATH was also required to "recalculate its recoverable cost of services for each year from 2009 through the present under its approved Formula Rate." In addition, PATH was required to "provide the support for the recalculated cost of service for each period in spreadsheet format, including all formulas."¹⁶

9. PATH's Formula Rate combines projected cost data and historical cost data with a Rate Year¹⁷ of January 1 to December 31, updated annually. PATH's Formula Rate is derived and populated from three sources depending on the component of the rates. Some components are stated, such as the return on equity. Other components of the Formula Rate are derived from company records, such as revenue credits, pension-related assets, and amounts within the cost of debt calculation such as origination fees. The remaining amounts are populated based on the Commission's Uniform System of Accounts number (FERC Accounts) from PATH's FERC Form No. 1.¹⁸ PATH files a Formula Rate Annual Update by June 1 of each year with the Commission in Docket No. ER09-1256-000. PATH's Formula Rate specifies the FERC Accounts under which it is permitted to recover costs and, as described below, in some cases does not permit recovery of costs booked to certain FERC Accounts.

10. PATH also submits a "Projected Transmission Revenue Requirement" by September 1 of each year to PJM, which is posted on PJM's website (and not filed with the Commission).¹⁹ This Projected Transmission Revenue Requirement is the sum of the

¹⁵ Opinion No. 554, 158 FERC ¶ 61,050 at P 275.

¹⁶ Opinion No. 554, 158 FERC ¶ 61,050 at P 85.

¹⁷ PJM Open Access Transmission Tariff, Attachment H-19 - Potomac-Appalachian Transmission Highline, LLC, 2.0.0 (Protocols), Article VIII. Article I defines Rate Year as "the period that corresponds to the calendar year during which charges are assessed under the Formula Rate populated with inputs set forth in any given calendar year's Projected Transmission Revenue Requirement."

¹⁸ The FERC Form No. 1 is an annual financial report of a public utility providing detailed accounting information used primarily to support the development of rates and is prepared in conformance with the Commission's Uniform System of Accounts in 18 C.F.R. Part 101.

¹⁹ The Projected Transmission Revenue Requirement means the projected net revenue requirement shown on page 1, line 6 of the Formula Rates calculated for the

estimated revenue requirement for the immediately forthcoming year plus a “True-up Adjustment”²⁰ for the Rate Year two years prior, an “Accelerated True-up Adjustment.”

A. Compliance Filings and Related Proceedings

11. This order addresses the following five filings PATH filed to comply with Opinion No. 554. On March 20, 2017, PATH submitted a compliance filing pursuant to Opinion No. 554 in Docket Nos. ER09-1256-004 and ER12-2708-006, (March 20 Filing). On May 22, 2017, PATH submitted a second compliance filing in Docket Nos. ER09-1256-004 and ER12-2708-006 (May 22 Filing). On September 27, 2017, PATH submitted a third compliance filing in Docket Nos. ER09-1256-004 and ER12-2708-006.²¹ PATH submitted Annual Updates on June 1, 2017 (2016 Rate Year Annual Update) and June 1, 2018 (2017 Rate Year Annual Update) in Docket No. ER09-1256-000. PATH states that the 2016 Rate Year Annual Update and the 2017 Rate Year Annual Update are part of its compliance to Opinion No. 554.²² Jointly, these five filings are referenced in this order as Compliance Filings.²³

12. PATH also submitted the below filings which will not be addressed in this order. In Docket Nos. ER09-1256-003 and ER12-2708-004, PATH requested rehearing of

forthcoming Rate Year, which may include the most recently-calculated True-up Adjustment, with interest. Protocols, Section I, Section IV.

²⁰ True-up Adjustment means the difference between the Projected Transmission Revenue Requirement or Revised Projected Transmission Revenue Requirement for a Rate Year, and the Actual Transmission Revenue Requirement for the same Rate Year, calculated without interest, and provided in the Annual Update on June 1 of the year subsequent to the Rate Year. PJM Open Access Transmission Tariff, Attachment H-19 - Potomac-Appalachian Transmission Highline, LLC, 2.0.0, Protocols, Section I.Q.

²¹ PATH submitted the September 27, 2017 compliance filing (September 27 Filing) in response to the Commission staff data request issued in Docket Nos. ER12-2708-006 and ER09-1256-004 on July 27, 2017.

²² March 20 Filing, Transmittal at 13. Also, in its May 22 Filing, PATH states that Opinion No. 554 only required PATH to file estimated refunds, “with actual refunds to be provided in its next Formula Rate Annual Update.” PATH states that interested parties will have an opportunity to confirm whether PATH correctly implemented the determinations in Opinion No. 554 when PATH files that Formula Rate Annual Update. May 22 Filing at 1-2,

²³ In sum, this order addresses the March 20 Filing, the May 22 Filing, the September 27 Filing, the 2016 Rate Year Annual Update, and the 2017 Rate Year Annual Update.

Opinion No. 554. These pending requests for rehearing will not be addressed in this order.

13. In anticipation of winding down, on July 23, 2018, PATH filed petitions for declaratory orders requesting that the Commission determine that PATH's distribution of \$70 million in cash to its equity investors, the Parent Companies, will not violate FPA section 305(a).²⁴

14. On March 20, 2017, in Docket No. ER12-2708-005, PATH also filed tariff sheets reducing its return on equity from 10.4 percent to 8.11 percent, effective January 17, 2017 (herein, Return on Equity Compliance Filing). PATH also adjusted its long-term cost of debt downward from 6.64 percent (for PATH-WV) and 6.76 percent (for PATH-AYE) to 4.7 percent, pursuant to the stipulation agreement between PATH and Commission Trial Staff, effective December 1, 2012. This Return on Equity Compliance Filing will not be addressed in this order.²⁵

B. Notice and Responsive Pleadings

15. Notice of PATH's March 20 Filing was published in the *Federal Register*, 82 Fed. Reg. 15,218 (2017).²⁶ Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,²⁷ the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. No one filed a new intervention.

16. On April 19, 2017, *Pro Se* Challengers protested PATH's March 20 Filing in Docket Nos. ER09-1256-004 and ER12-2708-006. As described further below, *Pro Se* Challengers argue that it is not clear whether PATH fixed several of the accounting errors that were the subject of the Formal Challenge Proceeding. No protests were filed in the

²⁴ 16 U.S.C. § 825d(a) (2012); see PATH Allegheny Transmission Company, LLC, Petition for Declaratory Order, Docket No. EL18-186-000 (filed July 23, 2018); PATH West Virginia Transmission Company, L.L.C., Petition for Declaratory Order, Docket No. EL18-187-000, at 4 (filed July 23, 2018) ("The PATH Companies have no ongoing operations and the owners are in the process of winding down the entity.").

²⁵ This filing was made in compliance with Opinion No. 554, 158 FERC ¶ 61,050 at P 273. None of the other compliance filings that PATH submitted contained any tariff sheets.

²⁶ Opinion No. 554, 158 FERC ¶ 61,050 at P 86.

²⁷ 18 C.F.R. § 385.214 (2018).

two Annual Updates filed in compliance with Opinion No. 554. PATH filed an answer on May 22, 2017 as part of the May 22 Filing.

17. Rule 213(a) of the Commission's Rules of Practice and Procedure²⁸ prohibits an answer to a protest, unless otherwise permitted by the decisional authority. We accept PATH's answer because it has provided information that assisted us in our decision-making process.

II. Expenditures for Civic, Political, and Advertising Activities

A. Opinion No. 554

18. In Opinion No. 554, the Commission found that, based on its Formula Rate, PATH could not recover certain costs related to civic and political activities. Because the PATH formula rate permitted the recovery of costs in particular FERC Accounts and prohibited the recovery of costs from other FERC Accounts, the Commission in Opinion No. 554 had to determine whether PATH properly had booked costs to the correct FERC Accounts. As discussed below, the Commission found in certain cases that PATH had booked amounts to improper FERC Accounts.

19. Specifically, the Commission found that PATH had improperly accounted for numerous costs related to civic and political activities by including the amounts in FERC Accounts that were in PATH's Formula Rate.²⁹ Opinion No. 554 found that PATH should have recorded these costs in below the line accounts which PATH's Formula Rate excludes: Account 426.4 (Expenditures for certain civic, political and related activities)³⁰ or Account 426.5 (Other Deductions) (herein, jointly referred to as civic and political activities).

20. Opinion No. 554 also found that PATH's Formula Rate limits PATH's recovery of Account 930.1 (General Advertising) costs to only those that are "Safety Related

²⁸ *Id.* § 385.213(a)(2).

²⁹ Opinion No. 554 found that PATH erroneously recorded civic and political activities to Account 107 (Construction Work in Progress) and subsequently abandoned plant, Account 923 (Outside Services Employed); Account 930.1 (General Advertising Expenses); and Account 930.2 (Miscellaneous General Expenses).

³⁰ Account 426.4 includes expenditures for the purpose of influencing public opinion on new referenda, legislation, ordinances, or approval of franchises; or for the purpose of influencing the decisions of public officials.

Advertising, Education and Out Reach [sic] Cost Support.”³¹ Opinion No. 554 disallowed costs from rates where PATH had failed its burden of proving that these amounts should neither have been recorded to Account 426.4, nor should they have been considered an includable “Safety Related Advertising, Education and Out Reach [sic] Cost Support” expense in PATH’s Formula Rates.³² Opinion No. 554 found that PATH had joined and supported approximately 80 community and professional organizations, recorded the related expenses to Account 930.2 (Miscellaneous General Expenses), which should have instead been recorded to Account 426.5 (Other Deductions) and excluded from its rates.³³

B. Compliance Filings and Responsive Pleadings

21. In its March 20 Filing, PATH first reclassified the civic and political activities and certain advertising costs out of several FERC Accounts³⁴ to Account 426.4 and 426.5. Of the expenditure adjustments, PATH is proposing to reclassify \$2,373,480 of General Advertising to Account 426.4 (Expenditures for certain civic, political and related activities).³⁵ After reclassifying the amounts, PATH then recalculated its estimated recoverable cost of service (revenue requirement) for the 2008-2015 Rate Years. This recalculation produced a revised transmission revenue requirement for each year, for each PATH entity with a filed revenue requirement (i.e., PATH-WV and PATH-AYE) (for a total of 16 revenue requirements). For each Rate Year and for each (PATH-WV’s and PATH-AYE) revenue requirement, PATH took the difference between the original revenue requirement and the recalculated revenue requirement, and calculated refunds based on that difference in accordance with its Protocols. As a result of these

³¹ Opinion No. 554, 158 FERC ¶ 61,050 at P 57 (citing PATH Formula Rates at PATH-WV Attachment 4 and PATH-AYE Attachment 4).

³² *Id.* PP 58, 63.

³³ Opinion No. 554, 158 FERC ¶ 61,050 at P 75.

³⁴ Account 107 (Construction Work in Progress); Account 923 (Outside Services Employed); Account 930.1 (General Advertising Expenses); and Account 930.2 (Miscellaneous General Expenses).

³⁵ March 20 Filing, Transmittal at 6. PATH does not explain why its proposed advertising reclassification is \$245,260 less than the \$2,618,740 that Opinion No. 554 directed to be reclassified. PATH states that “[a]lthough Opinion No. 554 categorized \$6,237,472 [inclusive of General Advertising amounts] as having been recorded as expense, in fact, \$229,001 of this amount was originally recorded to [...] the abandoned plant balance and is being adjusted accordingly in this compliance filing.”

calculations,³⁶ PATH estimates total refunds with interest of \$18,633,124, for Rate Years 2008-2015. PATH explains that these revised revenue requirements resulting in the estimated refunds were calculated using a lower return on rate base, a reduction of rate base itself, and resulting tax impacts.³⁷

22. PATH estimated additional smaller refund amounts of \$334,737 and \$277,838 for 2016 and 2017, respectively. PATH did not include these estimated refund calculations in its March 20 Filing due to the nature of PATH's four year Formula Rate estimation and true-up cycle under PATH's Protocols.³⁸ At the time of the March 20 Filing, PATH had already submitted its 2017 Projected Transmission Revenue Requirement to PJM on September 1, 2016, which contained the 2017 Rate Year revenue requirements for the PJM billing cycle. In its March 20 Filing, PATH stated that it would make at least three additional filings or submissions containing compliance to Opinion No. 554:

PATH's next Formula Rate Annual Update is scheduled to be filed [with the Commission] on or about June 1, 2017. This update will calculate PATH's [Annual Transmission Revenue Requirement] for the 2016 Rate Year, as well as a True-up Adjustment for the 2016 Rate Year. Pursuant to the [Protocols], as required by Opinion No. 554, the refunds for Rate Year 2008 through Rate Year 2015 will be included in PATH's True-up Adjustment for the 2016 Rate Year, which will be reflected in PATH's Projected Transmission Revenue Requirement [filed with PJM on or before September 1, 2017] for Rate Year 2018. [...] Similarly, the refund for Rate Year 2017 will be included in PATH's True-up Adjustment for the 2017 Rate Year, which will be reflected in PATH's PTRR For Rate Year 2019 [submitted to PJM] on or before September 1, 2018.³⁹

³⁶ PATH recalculated its revenue requirement from 2008-2015, based on Opinion No. 554's directives regarding the Uniform System of Accounts. March 20 Filing, Attachment A-1 through A-8. This recalculation produced a revised transmission revenue requirement for each year, and for the two affiliates with a revenue requirement on file (for a total of 16 revenue requirements).

³⁷ March 20 Filing, Transmittal at 12-13.

³⁸ Opinion No. 554 directed compliance and ordered PATH to make refunds with interest "when it submits its next Formula Rate Annual Update" ... "consistent with its [Protocols]." Opinion No. 554, 158 FERC ¶ 61,050 at PP 86, 190, 192, Ordering Paragraph C.

³⁹ March 20 Filing, Transmittal at 13.

23. In its March 20 Filing, PATH notes that the Initial Decision and Opinion No. 554 called on PATH to refund \$6,237,472.17 in expenditures with \$2,373,480 of this being advertising expenditures.⁴⁰ However, PATH disputes the Commission's \$6,237,472.17 amount associated with advertising, civic, and political expenditures. Specifically, PATH states that \$229,001 of this total was "originally recorded to a capital account and is included in the abandoned plant balance and is being adjusted accordingly in this compliance filing."

24. *Pro Se* Challengers argue that it is impossible to tell whether PATH complied with Opinion No. 554 due to: (1) missing information; (2) incorrect numbers; and (3) prior year rate corrections were not performed properly.

25. First, *Pro Se* Challengers argue that PATH only provided hand-written changes to its Form 1 data, making it impossible to tell what was removed from, or added to, the FERC Accounts at issue in Opinion No. 554. *Pro Se* Challengers state that contrary to Opinion No. 554, PATH's calculation of new account balances was not transparent, not supported, and not clearly identified.⁴¹

26. Second, *Pro Se* Challengers argue that PATH did not include the Form 1 data showing the amounts removed from the expense accounts in its rates. Instead, PATH-WV provided summary income statement and balance sheet data from its Form 1. *Pro Se* Challengers argue that PATH failed to correct pre-existing erroneous FERC Form No. 1 inputs.⁴²

27. Third, *Pro Se* Challengers also argue that for the 2009 and 2010 Adjusted Transmission Revenue Requirements, PATH did not remove the General Advertising expenses from "Safety, Education, Siting and Outreach" as directed by Opinion No. 554.⁴³ *Pro Se* Challengers argue that because PATH's Formula Rate is a compilation of both historical and projected amounts populated by PATH's FERC Form No. 1s, if PATH-WV and PATH-AYE do not correct the recorded amounts in their FERC Form No. 1s in an earlier year, the errors perpetuate and accrue in future years. *Pro Se* Challengers assert that the errors in Rate Year 2010 alone create a difference of

⁴⁰ March 20 Filing, Transmittal at 6. Opinion No. 554, 158 FERC ¶ 61,050 at P 22.

⁴¹ *Pro Se* Challengers' Protest at 1-2 (citing Opinion No. 554, 158 FERC ¶ 61,050 at PP 85-86 n.135).

⁴² *Pro Se* Challengers' Protest at 2-3, citing Opinion No. 554, 158 FERC ¶ 61,050, at P 85-86, n.135.

⁴³ *Pro Se* Challengers' Protest at 1, 3, citing Opinion No. 554, 158 FERC ¶ 61,050, at P 85-86, n.135.

\$1,138,309 between the actual filed rate and the rate PATH used to calculate refunds, lowering the refund obligation. *Pro Se* Challengers request that the Commission require PATH to provide the additional information necessary to determine compliance, and recalculate its refunds starting with the incorrect revenue requirement amounts in 2010.⁴⁴

28. In its May 22 Filing, PATH disputed *Pro Se* Challengers' protest, but nevertheless provided some of the additional data *Pro Se* Challengers requested.⁴⁵ In the May 22 Filing, PATH also revised its Annual Transmission Revenue Requirements for the 2009, 2010, 2012, 2013, and 2015 Rate Years for PATH-WV to correct certain inadvertent omissions.⁴⁶

29. In its 2016 Rate Year Annual Update, PATH recalculated a total estimated refund amount, including interest, of \$19,912,947. PATH states that this estimated refund is increased from the prior estimated refund amount of \$18,633,124 because it includes 2016 estimated refund data which was not in the prior filings, and: (1) a true-up of projected costs for the 2016 Rate Year; (2) the true-up of the estimated interest rates to actual interest rates applied to the refunds for 2008-2016 included in the 2016 Rate Year;⁴⁷ and (3) the 2016 Rate Year corrections PATH filed in the May 22 Filing.⁴⁸

30. In its September 27 Filing, PATH also provided updated accounting numbers, such that PATH reclassified advertising expenses resulting in refunds *less* than the amount stated in Opinion No. 554. PATH reiterates that, for 2008-2012, it will only remove \$2,373,480 from General Advertising costs rather than the \$2,618,740 directed by Opinion No. 554, and will pass through \$1,219,979 in General Advertising cost onto

⁴⁴ *Pro Se* Challengers' Protest at 4.

⁴⁵ May 22 Filing, Transmittal at 7-8, n.16, and Attachment A.

⁴⁶ May 22 Filing, Transmittal at 5-6.

⁴⁷ PATH's Annual Updates include such refund adjustments in part because PATH's Protocols require "Interest on any True-up Adjustment or Accelerated True-up Adjustment shall be based on the Commission's interest rate on refunds (18 C.F.R. § 35.19a). The interest payable shall be [...] the average of the interest rates [...] for the period that True-up Adjustment exists. The interest rate [...] will be the average rate for the twenty (20) months preceding September of the current year." This Annual Update also included a final calculation of interest rates on an expired construction loan, for each and every Rate Year, as required by PATH's Protocols. Protocols, Attachment H-19B, Section IV.B.

⁴⁸ PATH 2016 Rate Year Annual Update, Transmittal at 4.

ratepayers, including advertising amounts after the Project was cancelled.⁴⁹ PATH explains that PATH states that “[a]lthough Opinion No. 554 categorized \$6,237,472 [inclusive of General Advertising amounts] as having been recorded as expense, in fact, \$229,001 of this amount was originally recorded to [...] the abandoned plant balance and is being adjusted accordingly in this compliance filing.” PATH also points out that the Commission’s directives noted PATH’s Protocols require PATH to correct errors occurring in a period prior to the period under review,⁵⁰ and explains that a small portion of this \$6,237,472.17 in expenses (\$9,440) and capital amounts (\$183,529 out of the \$229,001) also relate to 2008 costs.⁵¹

C. Commission Determination

31. We find that PATH has complied with Opinion No. 554 with respect to some amounts capitalized to plant accounts and reclassified to Account 426.4, but not with respect to advertising expenses. For Account 930.1, General Advertising, the Commission directed PATH to either to Account 426.4, or to the portion of Account 930.1 that PATH’s formula rate excludes.⁵² Opinion No. 554 found that PATH’s tariff only permits recovery under Account 930.1 if those costs are “Safety Related Advertising, Education and Out Reach [sic] Cost Support.” We find discrepancies between the General Advertising amounts reclassified by PATH in its Compliance Filings compared to the General Advertising amounts the Commission required PATH to reclassify in Opinion No. 554.⁵³

32. In its March 20 filing, PATH notes that “PATH’s Formula Rate limits the recovery of costs recorded in Account 930.1 to costs that are ‘Safety Related Advertising, Education and Out Reach [sic] Cost Support,’”⁵⁴ and accordingly it reduces its proposed recovery from the entire \$2.6 million to \$36,484 for the 2009 Rate Year. In its May 22 Filing and September 27 Filing, however, PATH reports that \$344,963 is the “final

⁴⁹ See also March 20 Filing, Transmittal at 6. Appendix B to this order contains table breaking down the general advertising expenditures by year and company.

⁵⁰ March 20 Filing, Transmittal at 12-13.

⁵¹ March 20 Filing, Transmittal at 6-7, nn.17 & 29.

⁵² Opinion No. 554, 158 FERC ¶ 61,050 at PP 62-69.

⁵³ Appendix B contains the breakdown of advertising amounts by year and company.

⁵⁴ March 20 Filing, Transmittal at 6-7.

corrected amount in the Form 1 and Rate Recalculation” for the 2009 Rate Year.⁵⁵ We find that when PATH proposed to increase the recoverable amount in Account 930.1, however, PATH failed to demonstrate that this \$344,963 in costs for the 2009 Rate Year qualify for recovery under its Formula Rate.

33. On compliance, PATH must eliminate all General Advertising costs from its recoverable amounts, or else specifically justify each item in light of Opinion No. 554. In making the compliance filing, PATH must provide the journal entries to reflect the adjustments, and workpapers necessary to explain the accounting corrections for that FERC Form No. 1 input that references back to the journal entries; and the revised/corrected draft Form No. 1 inputs.

III. Land Transactions

A. Opinion No. 554

34. PATH proposed to collect \$29 million for real estate losses on the 20 properties that it purchased for the Project.⁵⁶ At the time of Opinion No. 554, PATH reported that it had already sold twelve properties. Of the remaining eight properties comprising approximately 700 acres purchased for \$24 million, PATH proposed to sell four to unaffiliated third parties and transfer four to its affiliates “at a fair market value to be determined by an independent appraisal.”⁵⁷ The four properties that PATH proposed to transfer to affiliates were two Welton Springs Properties (consisting of two tracts of land

⁵⁵ Appendix B to this order lists the General Advertising amounts PATH proposes to remove for the 2008-2012 Rate Years, with reference cites to PATH’s compliance filings. PATH-WV also passed through additional advertising expenses after the cancellation of the PATH project. PATH-AYE did not.

⁵⁶ Ex. PTH-9; Ex. JCA-9 (Purchase and Sale Agreements for Judy Poultry Farm and Wilt Farm); Ex. JCA-10 (Response of PATH to JCA on list of properties, amount paid, amount offered for sale, address and description, along with the advertising for such properties).

⁵⁷ PATH Initial Brief, filed May 14, 2014, Test. of Jay A. Ruberto, Ex. PTH-7 at 14-15. *See also* Ex. JCA-92 (PATH declined to provide “standards or policies governing transactions of sales, leases or other conveyances of **real property and/or business personal property** between it and sister subsidiary companies owned by [the Parent Companies]”, arguing “[t]his request seeks information and documents from affiliates of the PATH Companies that are not in the PATH Companies’ possession or control). *See Williams Natural Gas Co.*, 72 FERC ¶ 61,170, at 61,849 (1995). *Cf.* 18 C.F.R. § 385.407(a)(1) (2018) (limiting discovery to information within a participant’s “possession, custody, or control.”) (emphasis in original).

purchased for \$8,000,000 and \$6,000,000),⁵⁸ the Kemptown Property (consisting of two tracts of land purchased for a combined price of \$6,830,553),⁵⁹ and 3038 Big Woods Road, Ijamsville, MD (purchased for \$879,040.50).

35. The Commission required PATH “to provide a property-by-property breakdown of the losses that it has passed through and/or *proposes to pass through* for its real estate purchases and sales, separating out associated taxes, any labor, or other costs, consistent with Commission regulations.”⁶⁰ The Commission found that, “[c]onsistent with Commission precedent that utilities may recover *actual losses*, PATH may recover its *losses* on future land sold to non-affiliates, but only after PATH sells the property or can estimate with reasonable accuracy its losses in its compliance filing.”⁶¹ The Commission concluded that if PATH could not reconcile prices on compliance, PATH may only pass through the lowest conflicting purchase price and the highest conflicting sales prices in rates.⁶²

36. For land sales after the issuance of Opinion No. 554, the Commission found that, “[c]onsistent with Commission precedent that utilities may recover actual losses, PATH may recover its losses on future land sold to non-affiliates, but only after PATH sells the property or can estimate with reasonable accuracy its losses in its compliance filing.”⁶³

37. The Commission ruled that, if PATH failed to sell or transfer a property by December 2017, it must return to ratepayers the original purchase price of the property plus the return on equity received since December 2012.⁶⁴ The Commission directed the

⁵⁸ Ex. PTH-9; Ex. JCA-9 (Purchase and Sale Agreements for Judy Poultry Farm and Wilt Farm).

⁵⁹ Ex. PTH-9 (Response of PATH to JCA on list of properties, amount paid, amount offered for sale, address and description, along with the advertising for such properties); Ex. PTH-117.

⁶⁰ Opinion No. 554, 158 FERC ¶ 61,050 at P 189 (citing 18 C.F.R., Part 101, Electric Plant Instructions 6 and 7) (emphasis added).

⁶¹ Opinion No. 554, 158 FERC ¶ 61,050 at P 185.

⁶² Opinion No. 554, 158 FERC ¶ 61,050 at PP 172, 189 (emphasis added).

⁶³ Opinion No. 554, 158 FERC ¶ 61,050 at P 185.

⁶⁴ Opinion No. 554, 158 FERC ¶ 61,050 at PP 190-191 (emphasis added).

methods for “dispos[ition] of the property *at cost or market values*,” noting the cost value of sale for affiliate transfers is original cost.⁶⁵

38. For third party sales at arm’s length, Opinion No. 554 found that evidence that properties were sold on the open market, advertised through listing services and marketed through licensed real estate associations, and sold to parties offering the best prices was sufficient to determine market value.⁶⁶

39. For affiliate transfers which were not at arm’s length, the Commission directed PATH to demonstrate that:

(1) a competitive solicitation process was designed and implemented without undue preference for an affiliate;

(2) the analysis of bids did not favor affiliates, particularly with respect to non-price factors; and

(3) the affiliate was selected based on some reasonable combination of price and non-price factors.⁶⁷

40. Opinion No. 554 directed PATH “in its compliance filing, to reflect either the original value of assets transferred to an affiliate or establish the asset’s fair market value...,”⁶⁸ providing a detailed explanation of how to make such a demonstration. Opinion No. 554 allowed parties to “file comments on PATH’s compliance filing 30 days from the date PATH makes its compliance filing.”⁶⁹ Opinion No. 554 directed that

⁶⁵ Opinion No. 554, 158 FERC ¶ 61,050 at PP 185, 187 (emphasis added). (“[T]he Commission generally requires utilities to use original cost in acquiring or transferring property, land, and land rights,”) (citing *Repeal of the Public Utility Holding Co. Act of 1935 & Enactment of the Public Utility Holding Co. Act of 2005*, Order No. 667, FERC Stats. & Regs. ¶ 31,197, at P 169 (2005); *Iowa Southern Utilities Co.*, 58 FERC ¶ 61,317, at 62,014, *reh’g denied*, 59 FERC ¶ 61,193 (1992); *Ohio Power Co. v. FERC*, 954 F.2d 779, 785, *cert. denied*, 113 S.Ct. 483 (1992)).

⁶⁶ Opinion No. 554, 158 FERC ¶ 61,050 at PP 170-172.

⁶⁷ Opinion No. 554, 158 FERC ¶ 61,050 at P 187 (citing *Connecticut Light & Power Co.*, 90 FERC ¶ 61,195, at 61,633-34 (2000); *Aquila Energy Marketing Corp.*, 87 FERC ¶ 61,217, at 61,857-58 (1999); *MEP Pleasant Hill, LLC*, 88 FERC ¶ 61,027, at 61,059-60 (1999); *Edgar Electric Energy Co.*, 55 FERC ¶ 61,382, at 62,167-69 (1991)).

⁶⁸ Opinion No. 554, 158 FERC ¶ 61,050 at P 188.

⁶⁹ Opinion No. 554, 158 FERC ¶ 61,050 at P 192.

revenues resulting from the closing out of transactions would apply to reduce the overall abandonment recovery, subject to additional reductions of this amount from refunds and revenues resulting from land sales and the closing out of transactions occurring after the issuance of Opinion No. 554.⁷⁰

B. Compliance Filing and Responsive Pleadings

41. In its March 20 Filing, PATH provided a property-by-property breakdown of the losses that it passed through as rates for its past real estate purchases and sales, with separate line items for associated taxes, labor, and other costs for land sold prior to the issuance of Opinion No. 554. PATH shows an additional credit of \$2,790,668 in revenues from land sales occurring prior to the issuance of Opinion No. 554.⁷¹ The March 20 Filing notes a total loss of \$4,149,091, including various costs associated with the sales occurring prior to the issuance of Opinion No. 554, such as taxes and title charges. PATH notes that real estate broker commissions accounted for approximately six percent of the sales price for each property sold. PATH also claims that it reconciled inconsistent purchase and sale prices for land sales prior to the issuance of Opinion No. 554.⁷²

42. In its September 27 Filing, PATH states with respect to its post Opinion No. 554 land sales:

on August 22 and 23, 2017, an auction of the PATH Companies' remaining properties took place. All properties were sold, with the sales scheduled to close before November 30, 2017. The various purchasers are unaffiliated with the PATH Companies, and the PATH Companies will credit the net proceeds of the land sales to customers through their annual update process as specified in their Formula Rate Protocols.

C. Commission Determination

43. We find that PATH has complied in part with the directives in Opinion No. 554 regarding land transactions and direct PATH to make a further compliance filing. For the land sales that PATH made prior to the issuance of Opinion No. 554, PATH complied

⁷⁰ Abandonment Hearing Initiation Order, 141 FERC ¶ 61,177 at PP 8, 69 (requiring “[g]ains and recoveries of the costs of real property must be used to decrease unamortized abandoned plant costs.”).

⁷¹ March 20 Filing, Attachment F- Report on Land Net Proceeds and Losses.

⁷² March 20 Filing, Attachment E Report Addressing Appendix B Discrepancies.

with the land transaction directives by providing a property-by-property breakdown of the losses that it passed through as rates for its past real estate purchases and sales, with separate line items for associated taxes, labor, and other costs,⁷³ noting a loss of \$4,149,091, including various costs associated with the sales, such as taxes and title charges. PATH provided this sales and associated cost data, and reconciled inconsistent purchase and sale prices for land sales prior to the issuance of Opinion No. 554.⁷⁴

44. However, we find that PATH has not complied with the directives regarding land transactions for the eight properties it sold after the issuance of Opinion No. 554 (listed in Appendix A to this order). In the above-quoted statement from its September 27 Filing, PATH claims to have sold the properties, but fails to provide documentation to support its claim, and fails to provide any supporting documentation regarding affiliate transactions in any of its filings. As required by Opinion No. 554, PATH failed to “provide a property-by-property breakdown of the losses that it has passed through”⁷⁵ and failed to provide evidence that properties were sold on the open market,⁷⁶ or to otherwise establish the asset’s fair market value.⁷⁷

45. For the eight properties listed in Appendix A to this order, PATH must demonstrate and provide on compliance:

- a. Date of sale/transfer;
- b. The names of the buyers and sellers and their relationship to PATH affiliates and their parent companies;
- c. Sale/transfer price for each property;
- d. A breakdown of associated expenses (such as taxes or labor);
- e. Either (i) proof that the property was advertised and sold on the open market with arm’s length bargaining, or (ii) for any transaction not at

⁷³ March 20 Filing, Attachment F- Report on Land Net Proceeds and Losses.

⁷⁴ March 20 Filing, Attachment E Report Addressing Appendix B Discrepancies.

⁷⁵ Opinion No. 554, 158 FERC ¶ 61,050 at P 189.

⁷⁶ Opinion No. 554, 158 FERC ¶ 61,050 at PP 170-172.

⁷⁷ Opinion No. 554, 158 FERC ¶ 61,050 at PP 187-188.

arm's length, a detailed narrative showing whether the transaction nevertheless meets the standards laid out in Opinion No. 554;⁷⁸ and

- f. Calculation of the real estate losses that it has passed through and/or proposes to pass through to ratepayers.

46. To the extent that PATH cannot provide evidence that it has disposed of the properties listed in Appendix A to this order, PATH must, as required by Opinion No. 554, return to ratepayers the original purchase price of the property plus the associated return on equity that it has received since December 2012.⁷⁹

IV. Compliance Filing and Refund Report

47. We direct PATH to submit the required compliance filing within 30 days and the required refund report within 60 days of the date of this order. Interested parties may “file comments on PATH’s compliance filing 30 days from the date PATH makes its compliance filing.”⁸⁰

48. As PATH has now completed the sale of its assets and wishes to make distributions to its parents in contemplation of terminating operations,⁸¹ we will require PATH to file a refund report within 60 days of the date of this order, presenting PATH’s calculations of refunds paid or to be paid based on the Commission’s findings in this order. We note that PATH’s refund obligations may change as a result of further Commission orders in this proceeding.

49. As a single project entity whose project has been cancelled, PATH must submit a compliance filing with the Commission describing either: (1) its plan for ending its operations and a timeline for when it intends to file a notice of cancellation of its transmission formula rates, or (2) the type of “transmission or sale of electric energy” that

⁷⁸ Opinion No. 554, 158 FERC ¶ 61,050 at PP 170-172, 187-188.

⁷⁹ Opinion No. 554, 158 FERC ¶ 61,050 at PP 190-191 (citing Abandonment Hearing Initiation Order) (emphasis added).

⁸⁰ Opinion No. 554, 158 FERC ¶ 61,050 at P 192.

⁸¹ On July 23, 2018, PATH filed petitions for declaratory orders requesting that the Commission determine that PATH’s distribution of \$70 million in cash to its equity investors, the Parent Companies, will not violate section 305(a) of the FPA. These petitions are pending before the Commission. PATH Allegheny Transmission Company, LLC, Petition for Declaratory Order, Docket No. EL18-186-000; PATH West Virginia Transmission Company, L.L.C., Petition for Declaratory Order, Docket No. EL18-187-000.

requires its rates to stay in effect.⁸² We direct PATH to submit this compliance filing within 30 days of the date of this order. To the extent that PATH intends to unwind, PATH must make the appropriate filings under FPA section 205, as necessary, to implement this action.⁸³ PATH shall notify the Commission within 10 days of the date that the closing out of business is complete.

The Commission orders:

(A) PATH is directed to submit a compliance report, within 30 days of the date of the order, as discussed in the body of this order.

(B) PATH is directed to file a refund report within 60 days of the date of the order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁸² 16 U.S.C. § 824d (2012).

⁸³ Protocols, Article VIII (stating “actual refunds or surcharges (with interest determined in accordance with 18 C.F.R. §35.19a) for the then current rate year shall be made in the event the Formula Rate is replaced by a stated rate for PATH”). PATH proposes to make refunds in the 2018 Rate Year. *See* 2016 Rate Year Annual Update, Transmittal at 3.

Appendix A: Properties with no record of sale

Entity	Date Secured	Tract	Acres	Property	Amount Paid
PATH-MD	12/16/2008	Map 0089 Grid 0015 Parcel 0021	152	Browning Bros. Kemptown Substation Bartholows Road, Mount Airy, Frederick Ct. MD	\$6,904,021.44
PATH-MD	9/14/2009	6-056-000- FM, 6-058- 000-FM	4.13	Moats/Fritts- 3038 Big Woods Rd., Ijamsville, Frederick Ct., MD	\$879,040.50
PATH- AYE	2/19/2010	4-125.000-JF	n/a	Wade- Bear Run, Harpers Ferry, Jefferson Ct., WV	\$50,000.00
PATH-VA	3/3/2009	5-059.000- LV	17.04	Rivers Edge Lot #5, 39901 Rivers Edge, Loudoun Ct., VA	\$309,685.00
PATH-VA	4/8/2009	5-057.000- LV	n/a	Rivers Edge Lot #2 Loudoun Ct., VA	\$438,265.44
PATH-WV	10/16/2009	2-060.000- HR	20.39	Bumbray- Lot 332 of Ashton Woods, Morefield, Hardy Ct. WV	\$822,936.47
PATH- WV, PATH-VA	9/9/2009	2-023.001- HR	248	PATH WV and AYE portion of Welton Spring, combined (Judy Poultry) Tax Map 185, Parcels 1, 4, 4.1, and 44. Tax Map 184, Parcels 12, 12.12, 12.11, 12.10, 12.9, 12.8, 12.7, 12.5, 12.4, 12.3, 12.2, and 12.1	\$8,000,000.00
PATH- WV, PATH- AYE	9/9/2009	1-021.000- HR	267	PATH WV and AYE portion of Welton Spring, combined (Wilt Farm) Tax Map 165, Parcel 1	\$6,000,000.00
				TOTAL	\$24,132,053.48

Appendix B: PATH's General Advertising in the September 27 Filing

Rate Year	Passed through in Rates	Removed from Rates
2008	\$772,159 ⁸⁴	\$0 ⁸⁵
2009	\$345,260 ⁸⁶	\$1,759,665 ⁸⁷
2010	\$0	\$613,815 ⁸⁸

⁸⁴ \$406,155 from PATH WV (March 20 Filing, Attachment B-1, Attachment H-19-A, Attachment 4, Line 142 "General Advertising Exp. Account 930.1." September 27 Filing, Attachment B., PATH-WV FERC Form No. 1 Adjustment Summary for 2008, Tab "08OM", col. J, line 192 "General Advertising Exp. Account 930.1") and \$366,004 from PATH-AYE (September 27 Filing, Attachment A, PATH-AYE FERC Form No. 1 Adjustment Summary for 2008. March 20 Filing, Attachment B-1, Attachment H-19-A, Attachment 4, Line 142).

⁸⁵ \$0 from PATH-WV (Data Response, Attachment B., PATH-WV FERC Form No. 1 Adjustment Summary for 2008, Tab "08OM", col. L, line 191 "General Advertising Exp. Account 930.1"). \$0 from PATH-AYE (September 27 Filing, Attachment B., PATH-AYE FERC Form No. 1 Adjustment Summary for 2009, Tab "09OM", col. L, line 191 "General Advertising Exp. Account 930.1").

⁸⁶ PATH-WV presented a pass-through in rates of \$36,484 in its March 20 Filing (Attachment B-2, Attachment H-19-A, Attachment 4, Line 142 "General Advertising Exp. Account 930.1"). In its May 22 Filing, *PATH-WV increased this amount passed through in rates to \$344,963* (May 22 Filing at 5-6, and Attachment A-2). (September 27 Filing, Attachment B., PATH-WV FERC Form No. 1 Adjustment Summary for 2009, Tab "09OM", col. O, line 191 "General Advertising Exp. Account 930.1") and \$297 from PATH-AYE (September 27 Filing, Attachment A, PATH-AYE FERC Form No. 1 Adjustment Summary for 2009.) In its September 27 Filing, PATH-AYE explains the changed amounts are due to the reclassification of costs to Account 426, while PATH-WV explains the increase in its amount is "[d]ue to disallowance of [PATH Educational Awareness Team], Coalition, and General Advertising costs per the Jan[uary] 2017 Order".

⁸⁷ \$1,373,456 from PATH-WV (September 27 Filing, Attachment B., PATH-WV FERC Form No. 1 Adjustment Summary for 2009, Tab "09OM", col. N, line 191). \$386,209 from PATH-AYE(Data Response, Attachment B., PATH-AYE FERC Form No. 1 Adjustment Summary for 2009, Tab "09OM", col. N, line 191).

⁸⁸ \$462,547 from PATH-WV (September 27 Filing, Attachment B., PATH-WV

2011	\$102,560 ⁸⁹	\$0 ⁹⁰
2012	\$0	\$0
2013	\$2,022 ⁹¹	\$0
2014	\$2,129 ⁹²	\$0
2015	\$40,935 ⁹³	\$0
2016	\$0	\$0

FERC Form No. 1 Adjustment Summary for 2010, Tab “10OM”, col. N, line 191). \$151,268 from PATH-AYE (September 27 Filing, Attachment B., PATH-AYE FERC Form No. 1 Adjustment Summary for 2010, Tab “10OM”, col. N, line 191).

⁸⁹ \$79,626 from PATH WV (September 27 Filing, Attachment B., PATH-WV FERC Form No. 1 Adjustment Summary for 2011) and \$22,934 from PATH-AYE (September 27 Filing, Attachment A, PATH-AYE FERC Form No. 1 Adjustment Summary for 2011).

⁹⁰ \$0 from PATH-WV (September 27 Filing, Attachment B., PATH-WV FERC Form No. 1 Adjustment Summary for 2011, Tab “11OM”, col. L, line 191). \$0 from PATH-AYE (September 27 Filing, Attachment B., PATH-AYE FERC Form No. 1 Adjustment Summary for 2009, Tab “11OM”, col. L, line 191).

⁹¹ \$2,022 from PATH-WV (September 27 Filing, Attachment B., PATH-WV FERC Form No. 1 Adjustment Summary for 2013, Tab “13OM”, col. N, line 191). PATH-AYE did not include any General Advertising expenses in its rate after 2010.

⁹² \$2,129 from PATH-WV (September 27 Filing, Attachment B., PATH-WV FERC Form No. 1 Adjustment Summary for 2014, Tab “14OM”, col. N, line 191). PATH-AYE did not include any General Advertising expenses in its rate after 2010.

⁹³ \$40,935 from PATH-WV (September 27 Filing, Attachment B., PATH-WV FERC Form No. 1 Adjustment Summary for 2015, Tab “15OM”, col. N, line 191). PATH-AYE did not include any General Advertising expenses in its rate after 2010.