
The Potomac Highland Steward

JANUARY 2010

STUMBLE ON THE PATH

West Virginia, Virginia, and Maryland, are once again under seige by profit-hungry energy companies. This time, however, it looks like we citizens may have caught a break. *This is a complex and evolving story, so check out the full story and the latest news on our website at PotomacStewards.com/PATH*

PATH BACKGROUND

The Potomac-Appalachian Transmission Highline (PATH) is a boondoggle of a 765kV power line project proposed by American Electric Power (AEP) and Allegheny Energy. This comes hot on the heels of the Trans-Allegheny Interstate Line (TrAIL) project, approved in early 2008, that is currently carving up the Potomac Highlands and other areas of West Virginia, Virginia, and Pennsylvania.

The proposed PATH is a behemoth – it starts west of Charleston, WV and travels a total of 275 miles, across WV, into VA, back through the WV panhandle, ticks back through VA, and finally ends at a proposed new Kempton Substation east of Frederick, MD. If you live in the area, you may have seen the pro-PATH TV and newspaper ads that have been running constantly since Summer 2009.

For PATH, AEP and Allegheny created a dizzying array of shell companies – all operating as members of the Regional Transmission Operator PJM Interconnection – that we will collectively call PATHco. They filed for approval with the WV Public Service Commission (WV-PSC), the VA State Corporation Commission (VA-SCC), and the MD-PSC in Spring 2009. They claim that PATH is needed to prevent a variety of electrical grid problems in the future. A problem for them is that electricity use has been declining, especially since the economic collapse in 2008. They have already changed their predictions more than once, and, based on filings with WV-PSC and VA-PSC, will do so yet again. Their numbers are not adding up.

So if electricity demand is going down – and many experts think that it will take many years to recover, if it ever does – why build this massive new power line? Why now? The answer, as it so often seems to be, is *greed*.



Thanks to the Federal Energy Regulatory Commission (FERC – see sidebar Page 5), PATHco is guaranteed a whopping **14.3% profit** on every dollar they spend on PATH, *even if PATH is never built*. The lawyers, the helicopter rides for reporters, the TV ads, the land purchases, the surveying – including, of course, the actual construction costs should it get approved – all of this money is recouped, plus 14.3%, from us, their captive electricity customers in the 11 states in which AEP and Allegheny operate.

It gets worse. If PATH does get built, it will connect AEP's dirty, cheap, coal-fired power plants up and down the Ohio River valley – including the John Amos Power Plant where PATH starts – to the lucrative East Coast market. Angry yet? Yeah, us too.

PATH GETS SNAGGED

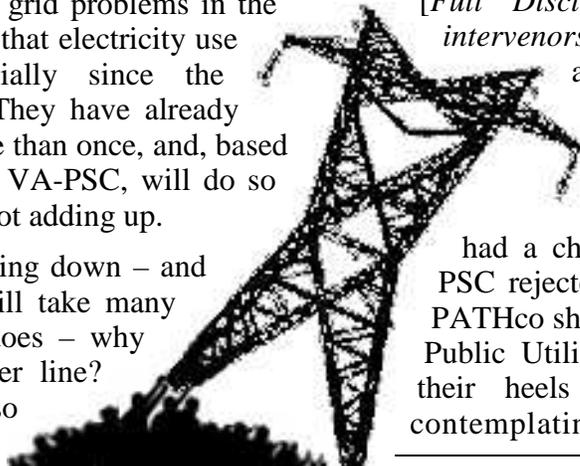
The regulatory process has not been kind to PATH, thanks in large part to an actively engaged citizenry.

In WV, after the TrAIL line was approved, warnings about the upcoming PATH case spread over backyards, farm fences, and the internet. In just a few months, the WV-PSC had received *over 200* petitions to intervene (formally participate) in the PATH case.

[Full Disclosure: Two of our Officers are intervenors in this case.] This has provided both

an unprecedented challenge to the PSC in managing the case, as well as a golden opportunity for citizens' concerns and opinions to be heard.

In MD, the intervenors have not yet had a chance. In early September 2009 MD-PSC rejected the PATH application because the PATHco shell company on the application is not a Public Utility under MD law. PATHco dragged their heels about refileing in MD, brazenly contemplating bypassing the State Commissions



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protect our Potomac
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**WE'RE ALWAYS LOOKING
FOR NEW MEMBERS**

INTERESTED?

*Send an email to
info@PotomacStewards.com*

or mail a note to

**PO Box 455
Wardensville, WV 26851**

STEWARDS OF THE POTOMAC HIGHLANDS

We are an all-volunteer nonprofit 501(c)(4) citizens group addressing ways to live and work in respect and harmony with nature and people in the beautiful Potomac Highlands of West Virginia, Virginia and Maryland. We aim to strengthen citizens' efforts by sharing information and promoting networking among our neighbors. We lend our support to other groups who lobby for changes in laws and policies.

We work primarily in the northeastern-most eight counties in West Virginia (Pendleton, Grant, Mineral, Hardy, Hampshire, Morgan, Berkeley, Jefferson), but we reach out to our friends in Virginia's Shenandoah Valley counties (Shenandoah, Frederick, Clarke, Loudon) and Maryland's Allegheny Highland counties (Garrett, Allegany, Washington).

Among the leadership of Stewards, we have personal experience in small scale vegetable and livestock farming; history, arts and nature tourism; land use planning; transportation; quarry, construction, water quality regulation; environmental education; gas and wind power. We invite you to use our newsletter and website to find information on the issues you care about.

STEWARDS AND ALLIES WIN SEWAGE CASE IN JEFFERSON COUNTY

Last August Stewards of the Potomac Highlands won a case for better treatment of local sewage. We had joined with the Chesapeake Bay Foundation, WV Rivers Coalition, and the Jefferson County Sewer Board to support limits on nitrogen and phosphorus, set by the WV Department of Environmental Protection. Sewer boards for Charles Town, Martinsburg, Berkeley County and Morgan County were protesting a DEP proposal to impose limits in 2012, and took the issue to the WV Environmental Quality Board.

Nitrogen and Phosphorus fertilize our food, so they are in the food, then in us, then go into our sewers, rivers and the Chesapeake Bay. In the water they continue to be fertilizers, so too many algae grow, which shade out the submerged plants where marine life breeds. Furthermore the algae die, and bacteria which eat them take too much oxygen from the water, killing fish.

The sewer boards were told that, *yes*, they *do* have to limit Nitrogen and Phosphorus by 2012. We didn't even have to put on our expert witnesses. The EQB gave a directed verdict that the limits were right. The sewer boards now have only three years left to upgrade their sewer plants, but instead of getting busy on the problem, they have asked the EQB to re-open the case.

A Berkeley County manager insisted his county is really trying to improve sewer treatment, to get out of the way of the oncoming "train" of tighter limits on N & P. An EQB member, Edward Ambrecht, jokingly chided them that the goal is to get on the train.

Stewards was represented by Joe Lovett of the Appalachian Center for the Economy and the Environment, and Amy McDonnell of the Chesapeake Bay Foundation.

POTOMAC BASIN CLEAN-UP MONEY FLOWS

Congress is considering adding more money and muscle to the cleanup of the Chesapeake Bay watershed, which includes all the streams feeding the Potomac River in Maryland, West Virginia, Virginia, DC, and Pennsylvania. The Chesapeake Clean Water and Ecosystem Restoration Act, a bill (S. 1816/H.R. 3852), is the first realistic and comprehensive effort to clean up Mid-Atlantic and Potomac Highlands waters since the early 1970s. This legislation aims to protect clean streams from being polluted, and sets the year 2025 as a deadline to complete restoration of polluted waters. With all the problems of intersex and diseased fish, and fertilizer runoff from agriculture and suburban lawns, this date is none too soon. But according to Peter Marx of the Chesapeake Bay Watershed Coalition, 2025 is a realistic deadline.

In 2009 West Virginia's Headwater State Grant was \$500,000. The new bill in Congress would raise that annual grant to \$2.7 million, with at least \$530,000 in technical assistance for agriculture and forestry. Already, West Virginia farmers will be getting \$2.7 million in 2010 from the 2008 federal farm bill. The government sets limits on how much fertilizer (Nitrogen and Phosphorus) and sediment are allowed in a stream. This limit is known as TMDL or "total maximum daily load." The program offers farmers help in controlling runoff to meet the regulation. Under the bill, local governments in West Virginia would also be eligible for \$1.5 billion in handling storm water. Please let Congress members know of your support for H.R. 3852, known as Chesapeake Clean Water and Ecosystem Restoration Act.

EPA has been explaining the TMDL limits at public meetings, including sessions in Martinsburg and Moorefield this fall. The audience in Martinsburg, including Stewards president Paul Burke, asked why the pollution estimated by EPA's model differs from actual stream measurements. Only then did EPA admit their slides were showing *modeled* progress, not *measured* progress. They promised to show measured progress in some undefined future, but we feel it would be more helpful to be using real data from our streams now. Many groups measure water quality in our region. These statistics are used for

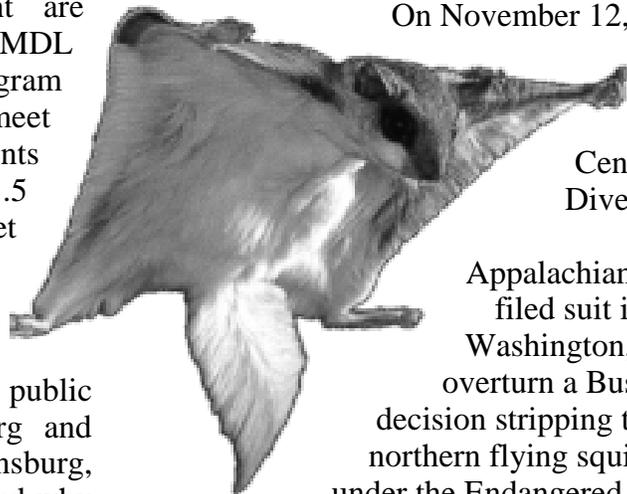
education, for measuring cleanups, for filing lawsuits. The Stewards website has links to all the water quality data we've found, so you can use the links when you need data. If you know other sources of data, please send us the data or the link, so we can all share it.

Can you as a homeowner or farmer help control river pollution? Yes, especially if you live in a suburban-style development where paved streets and parking lots keep rain from soaking into the soil. The runoff carries oil, lawn chemicals and other pollutants directly into nearby ditches, which lead to streams and then to rivers. You can plant a curbside or back yard wildflower garden to catch the rain, allow the soil to filter out pollutants, and attract interesting birds and insects. The Interstate Commission on the Potomac River Basin is mapping and recognizing citizens' watershed-friendly gardens.

The ICPRB also has a rain barrel program to help gardeners capture rain to water their plants. Details on this and more are at PotomacRiver.org.

WV FLYING SQUIRREL

GROUPS FILE SUIT TO RESTORE PROTECTION



On November 12, 2009, Friends of Blackwater, the Wilderness Society, the Center for Biological Diversity, WildSouth, and the Southern Appalachian Forest Coalition filed suit in federal court in Washington, D.C., seeking to overturn a Bush-administration decision stripping the West Virginia northern flying squirrel of protection under the Endangered Species Act. The case has been assigned to Judge Emmet G. Sullivan, who is currently presiding over another case involving endangered elephants.

FOB Director Judy Rodd said, "We're going to bat for 'Ginny,' the West Virginia northern flying squirrel. The decision to take the flying squirrel off the endangered species list was a political move, to

See **SQUIRREL** Page 4 ▶

I-81 PLANNING

STATES SEEK TRUCK-RAIL FUNDING

A coalition of states is seeking \$300 million in federal stimulus funds to improve rail lines and intermodal terminals in an effort to reduce truck traffic on congested Interstate 81, Virginia's transportation chief said in October.

According to the Philadelphia Bulletin, Transportation Secretary Pierce Homer told state officials at a conference on I-81 that moving more freight by rail is needed to reduce congestion on the 855-mile highway that runs north to south through six states.

The proposed federal grant would provide \$2.1 billion to improve intermodal terminals where freight is transferred between trucks and rail cars. The improvements could reduce the number of trucks on I-81 by 15%, according to VDOT's documents. Trucks are now 23 percent of the traffic on Virginia's 325 miles of the I-81. Other states joining to ask for the terminal improvements are New York, Pennsylvania, Tennessee, Alabama, Mississippi and Louisiana, though I-81 does not run through the latter three states.

This is a good start. But we wonder where West Virginia officials are? And is removing 15% of the trucks an ambitious enough goal? What about adding



parallel track which could accommodate more freight and possible passenger service? This would take more trucks and cars off I-81, saving land from being gobbled by additional highway lanes; it would save fuel and pollution.

You can see the original citizen "Steel Interstate I-81" proposal, which gained the support of many Virginia local governments, at www.railsolution.org.

CORRIDOR H UPDATE

ESCAPE TO NOWHERE

About 40 miles of Corridor H, the very costly and environmentally damaging highway proposed to run 100 miles from Strasburg VA to Elkins WV was

constructed from Wardensville to Moorefield, and as expected, has very little traffic. A bridge across the South Branch of the Potomac River was completed in September. An additional 19 mile stretch between Moorefield and Scherr is currently under construction, with the historic Greenland Gap area torn up and looking like a huge gravel pit. A 10.37-mile paving contract is underway, to connect the western edge of the Moorefield Bridge to Patterson Creek Road and Forman in Grant County, planned to open by fall 2010.

A 23 mile stretch connecting Scherr and Davis (Tucker County) is under final design and awaiting funding. Senator Robert C. Byrd got \$4.5 million and is trying to get Congress to reauthorize the Appalachian Development highway system. But, as Huntington Herald-Dispatch columnist Tom Miller pointed out Sept. 27, 2009, that's a drop in the bucket. Each mile is costing \$20 million to build, and Corridor H is running 300% over its initial \$1 billion budget. Final design has not started on the remaining 45 miles, which includes sections between Kerens and Davis and Wardensville, and Strasburg, Va. Virginia still has no plans to build its section.

The Obama administration cut Corridor H out of its budget, but Senator Byrd and Governor Manchin are trying to justify funding the unneeded four-lane as an escape route for thousands of DC residents fleeing a national disaster. Homeland security officials joined the usual poultry and real estate interests at a pep rally for Corridor H when the Moorefield bridge opened. We wonder what plans are being made to help Corridor H evacuees who run out of gas in the middle of the Mountain State? It's still a Road to Nowhere, folks.

SQUIRREL

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allow more destruction of the squirrel's habitat for timbering, energy extraction, and development."

The flying squirrel's habitat is also a key issue in the section of Corridor H proposed in the Blackwater Canyon area. With furry flaps of skin it glides through the branches of spruce and other high mountain trees at night. The squirrel's manure fertilizes mushrooms and plants that contribute to the ecology of the upland forest.

PATH

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altogether and going directly to FERC for approval (see sidebar.)

Meanwhile, since there was no longer an active MD application pending, VA-SCC and WV-PSC Staff made motions to dismiss the case, requesting that PATHco file new applications in all three states after the new electricity use data due out in February 2010 could be incorporated in the filings.

In response to the staff motions PATHco promised to re-file in MD by Dec 31, so the VA-SCC has decided to proceed on schedule, with a final hearing date of January 19th 2010. WV, on the other hand, has delayed the case by 8 months, with the evidentiary hearing now scheduled from 10/19/2010 through 11/02/2010. The final WV-PSC decision is due by February 24th 2011.

WHAT'S NEXT?

In VA, only the evidentiary hearing is left on the agenda, but MD is at the opposite end of the spectrum, with the PSC approval process just getting started and the opportunity for citizens to petition to intervene in that case. There will also be public hearings to attend – see the Action/Response card on the back of this newsletters for pointers.

In WV, we now have an additional 8 months to keep writing letters – to the editors of our local papers, the Charleston papers, the PSC, and Governor Manchin. We need our State legislators to resist the Governor's unconstitutional transmission tax scheme to tax other states on electricity coming out of WV so the PSC can claim that WV benefits from PATH. We also need to revise the WV-PSC process to be more even-handed for ordinary citizens. In 2009, in response to inadequacies in the TrAIL case, the *PSC Siting Reforms Bill* was introduced; it did not get to a vote, but a similar bill will almost surely be introduced at the 2010 regular legislative session.

DISTRUST OF WV DEP

FEDS ASKED TO STEP IN

The West Virginia Highlands Conservancy, Sierra Club, Coal River Mountain Watch, and Ohio Valley Environmental Coalition have asked the Federal Environmental Protection Agency to remove West

THE PATH PLAYERS: ELECTRIC COMPANIES

ALLEGHENY ENERGY is a utility holding company that owns these regulated utilities, doing business as Allegheny Power: West Penn Power Company (PA); Monongahela Power Company (WV); and The Potomac Edison Company (MD, VA, and WV).

AMERICAN ELECTRIC POWER (AEP) owns nearly 38,000 megawatts of generating capacity in the U.S. AEP also owns the nation's largest electricity transmission system, and utility units including Appalachian Power (VA and WV).

PJM INTERCONNECTION is a regional transmission organization (RTO) that coordinates the movement of wholesale electricity in all or parts of 13 states and the District of Columbia. Allegheny and AEP are members of PJM.

THE PATH PLAYERS: REGULATORY AUTHORITIES

STATE PUBLIC UTILITY COMMISSIONS: WV Public Service Commission (WV-PSC), the VA State Corporation Commission (SCC), and the Maryland Public Service Commission (MD-PSC) all regulate energy rates and utility siting within their states.

THE FEDERAL ENERGY REGULATORY COMMISSION (FERC) regulates the interstate transmission of energy. FERC claims that the Energy Policy Act of 2005 allows them to overturn a State Commission rejection of proposed power lines by considering regional benefits that the states cannot. This interpretation was rejected in February 2009 by the U.S. Court of Appeals 4th Circuit, but the electric companies want to keep testing this authority.

Virginia Department of Environmental Protection's authority over water pollution (NPDES). The 26-page petition is at http://wvgazette.com/static/coal_tattoo/epapetition.pdf.

EPA says it has never taken over a state program, but it could increase oversight or do more of its own inspections.

The petition points to the impairment of one-third of West Virginia's rivers, streams, and lakes, non-enforcement of city storm water rules, violations of federal law on backsliding, costs, and public notices. Since EPA does not enforce rules when DEP makes a settlement agreement, it says polluters "have flocked to DEP to negotiate settlement agreements to block legal action by citizens or EPA." A DEP attorney admitted they issue permits which will not be complied with; the Charleston Gazette reported the attorney as saying "if his agency did not renew permits for companies with outstanding water pollution violations, no mining permits would ever be renewed."



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 Wardensville WV 26851

RETURN SERVICE REQUESTED

PATH Powerline Delayed in MD & WV!

TRICKS OF THE TRADE?

When motivated corporations or agencies want to win government approval of their project, they have a bag of tricks. Here are some tactics that have been used in the approval process for windmills, power lines, and roads:

Their Actions	Possible Responses
Hire a lawyer from every law firm in town to do small tasks for them; keeps you from using a local lawyer.	Represent yourself or get advice from out-of town lawyer. Most work is done by phone and mail, so they don't have to be local.
Send spies to join your group.	Stay honest & legal. Be cagy with your strategy
Hold their own "public meetings" early in the process to sap your energy before the gov't hearings.	Don't publicize them. Explain to your supporters these are not the real place to speak or learn honestly about the project.
Pack the government public hearings with a paid crowd.	Get there early, speak knowledgeably. Most boards will approve unless you can show non-compliance, so research the board's criteria and the relevant law, and submit your points in writing at the hearing.
When you file petitions, they mail propaganda to the signers, saying they got the address from you, or that the government asked them to respond.	Be careful about submitting addresses of people with only a slight commitment to your cause. Since legal points are the main way to win anyway, use sign-up sheets instead of petitions to collect contact info.
Give verbal assurances that they later renege on	Insist that they put everything in writing up front.
Give written assurances, but do it anyway. "Oops! We're sorry. The contractor (or private landowner) did it, not us. Oh well, what's done is done."	Be aware of the specific issues that the government will enforce. Mistrust other written assurances, unless you'll have legal standing to go to court and let them know that you will do so if needed.
"We'll do some light trimming so our surveyors have clear sightlines." Then they clearcut.	Put it writing: "No cutting." Be there when they are working. Have a lawyer's phone number. Or don't let them survey before approval.
Say "Everything is preliminary, it's too early for that right now," then later you find out it is too late.	Raise all issues in writing as soon as you find them. Know the deadlines for government decisions and for your possible appeal.
Tell you it's a done deal, so take what you can get.	Check into the process, then negotiate or appeal to the next level.
Tell lies or exaggerations about you and your cause.	Sue for slander/libel (not a nuisance suit, though). Even if you represent yourself, they'll pay a lawyer, and may hesitate next time.