

**PUBLIC SERVICE COMMISSION OF WEST VIRGINIA
CHARLESTON**

CASE NO. 07-0508-E-CN

TRANS-ALLEGHENY INTERSTATE LINE COMPANY

Application of Trans-Allegheny Interstate Line Company for a certificate of public convenience and necessity under W. Va. Code § 24-2-11a authorizing the construction and operation of the West Virginia segments of a 500 kV electric transmission line and related facilities in Monongalia, Preston, Tucker, Grant, Hardy, and Hampshire Counties, and for related relief

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**PETITION FOR RECONSIDERATION
UNDER RULE 19.3 OF THE RULES OF PRACTICE AND PROCEDURE
BEFORE THE PUBLIC SERVICE COMMISSION**

Pursuant to Rule 19.3¹ of the Rules of Practice and Procedure before the Public Service Commission (the Commission), the Sierra Club, Inc. (Sierra Club) submits this Petition for Reconsideration of the August 1, 2008 Decision and Order issued under W. Va. Code § 22-4-11 granting an application for a certificate of necessity and convenience to Trans-Allegheny Interstate Line Company to construct and operate an interstate electric transmission line across the state of West Virginia. In support of its Petition for Reconsideration, the Sierra Club submits the following matters.

¹ West Virginia Code of State Regulations, Part 150, §150-1-19, subpart 19.3, entitled "Petition for Reconsideration," provides that: "Petitions for reconsideration after entry of a Commission order must be made by petition, duly verified, filed with the Commission within ten (10) days from the date of mailing by certified mail of the Commission order. Such petition shall state specifically the grounds relied upon, and shall be filed with the Commission and a copy served by the petitioner upon the attorney for each adverse party."

1. The August 1, 2008 Decision Was Based On Matters Not Made A Part of the Record.

TrAILCo Witness Flitman and PSC Engineering Chief Melton both admitted that matters not made a part of the public record in this proceeding, were considered by the PSC Staff as part of their decision to enter into the April 15, 2008 Joint Stipulation, which the Commission then adopted in the August 1, 2008 Decision. At pages 62-63 of the transcript of the May 30, 2008 hearing, David Flitman, the President of TrAILCo, acknowledged under oath the following ex parte communications with the PSC staff:

Q. Can you identify any topics or arguments that
13 you were able to make to either CAD or the Staff in those
14 private meetings that you were not able to make at the
15 evidentiary hearings between January 9th and January
16 19th?

17 A. We reinforced strongly the need for the line.
18 There was detailed discussion about some information that
19 had come up in our previous jurisdiction that resulted in
20 additional analysis that had been done on the need for
21 line, which simply reported back and further supported
22 the significant need for this line to be built in the
23 time line we have here.

24 Q. What information was that?

25 A. That was some analysis that was required in the
evidentiary hearing in Virginia by which I PJM had to study
2 and provide an updated study in that hearing. I don't
3 recall all the details exactly, but the essence of it was
4 they wanted an updated study and all the generations up
5 through, I believe, it was February of this year as
6 opposed to the analysis that had previously been done.
7 And as you're aware of, generation is announced to be
8 built as time goes on. There might be a generation that
9 was in the QRA (phonetic) that had been retracted and
10 decided not to be built so ---.

11 Q. What was the alternative?

12 A. The Administrative Law Judges asked for an
13 updated --- a quick study to be done.

14 Q. Was that study reduced to writing?

15 A. It was.

16 Q. And was that provided to the Staff?

17 A. It was.

Transcript of May 30, 2008 Hearing on Joint Stipulation at pp. 61-63.

Similarly, Earl Melton, Chief Engineer for the PSC staff testified that he had received communications from TrAILCo that were not a part of the public record in this proceeding, and considered as part of his decision to join in support of the April 14, 2008 Joint Stipulation. Initially PSC Staff counsel attempted to get Mr. Melton to state that he had confined his opinions to matters of record in this proceeding:

...the Staff position

24 is that in light of the eminent need the Staff is
25 satisfied that the TrAILCo line with the Graffton route
presents a suitable or certifiable option for the
2 Commission?

3 A. Yes.

4 Q. And did you come to this conclusion by
5 evaluating not only the Staff's presented evidence but
6 also the expert evidence of other parties including but
7 not limited to TrAILCo?

8 A. Yes, and particularly in light of the
9 stipulation and all the conditions that are included
10 therein.

11 Q. In your role as the Director of Engineering and
12 advisor to the Commission, are you also aware of the
13 regulated entity before this Commission and proceeding
14 they may have another jurisdiction?

15 A. Somewhat, yes.

16 Q. Sir, your earlier testimony was you were aware,

17 generally, of the testimony and the retensioning and
18 reconductoring evidence presented in the Virginia
19 proceedings?

20 A. Yes.

21 Q. But did you use that as a basis for evaluating,
22 in your engineering opinion, that there was an eminent
23 need?

24 A. I think it served to remove some doubt that I
25 might have had.

Q. But is it true to say 1 ---. Go ahead.

2 A. Just like the emergency rating of the Mount
3 Storm-Doubs, you know, was left here as a big mystery.
4 That was explained better in the testimony in June.

5 Q. Which the Staff's settlement position of a
6 finding of eminent need Staff relies on the evidence
7 presented before this Commission from January 9th to the
8 19th; is that correct?

9 A. Well, I think we can take into consideration
10 anything else that we learned, the Commission can, but if
11 that has a role in influencing, you know, Staff I think
12 we can consider it.

Transcript of May 30, 2008 Hearing on Joint Stipulation at pp. 246-248.

Understandably, PSC Staff counsel attempted to get Mr. Melton to affirm that he had only considered matters of record in this proceeding in agreeing to the Joint Stipulation:

Q. And is it true that your decision, the Staff
12 decision jointly, in entering into this settlement with
13 the exception to the representation and agreement that
14 the company has made as we've discussed before with the
15 Williams or to participate in management that are in the
16 records, that the Staff decision and basis for this
17 settlement, the terms and conditions are confined to the

18 settlement document?

19 A. That's correct.

Transcript of May 30, 2008 Hearing on Joint Stipulation at p. 250.

However, on cross examination, Mr. Melton conceded that he'd also considered matters submitted by TrAILCo in the Virginia and Pennsylvania proceedings:

...you were not limited to
20 the matters in the record ... you took into
21 consideration of other matters including the matters in
22 the Virginia and the Pennsylvania proceedings; is that
23 correct?

24 A. That's a fair representation.

Transcript of May 30, 2008 Hearing on Joint Stipulation at p. 253.

Apart from the patent impropriety of staff's consideration of matters outside the record, and the Commission's adoption of findings based upon those matters, the mere fact that TrAILCo embarked upon an extended series of meetings with PSC staff – all behind closed doors – is devastating evidence of one other fact: TrAILCo was among those who knew that they had not carried their burden of proof at the close of the record on January 19, 2008. What other persuasive explanation exists for the full court press to “fix” the case after the record was closed. The fact that the PSC Staff had to complete a total back flip to arrive at the Joint Stipulation, incorporated into the August 1, 2008 decision, eliminates any remaining doubt on the question of the status of the record at 5 PM on January 19, 2008

2. The August 1, 2008 Decision Is Not Supported by Substantial Evidence

TrAILCo readily admitted under oath that it had not conducted any study of the possibility of reconductoring, and other reasonable alternatives, as a means of dealing with any purported reliability issues. Engineer Melton conceded at the May 30, 2008 hearing that such studies should have accompanied the TrAILCo:

Q. And look at page 15 [of the April 15, 2008 Joint Stipulation], the bottom of page 15 and

13 carry over to page 16, and I believe that deals broadly
14 with the commitment to include an analysis of
15 re-conductoring and/or double-circuiting other devices in
16 the future; correct?

17 A. That's correct.

18 Q. But it's your view based on the evidence in the
19 record that as filed --- I mean, as supplemented in the
20 course of proceeding, in fact, the TrAILCo application
21 with the Board Commission was and is still inadequate, in
22 that it doesn't consider re-tensioning, double
23 circuiting, re-conductoring those lines?

24 A. I know my consultant when they asked about the
25 possibilities of re-conductoring, felt that the answer
they got didn't constitute a major study of any type.
2 Whether or not the record shows that ---.

3 Q. Well, for purposes of our analysis today ---?

4 ATTORNEY MELICK:

5 Objection. I'd like this witness to
6 answer that last question before the next one is
7 propounded.

8 BY ATTORNEY DEPAULO:

9 Q. Were you finished?

10 A. I don't know. What was the question?

11 Q. I guess my question was was it your view that as
12 the record stands --- what I asked you was --- your
13 comment was, you're not sure what was in the record? I
14 hope I'm letting him answer the question correctly. What
15 I was getting at was simply that as long as your
16 consultant's testimony is what's in the record --- or
17 what recommendations or the findings of what's in the
18 record then that ought to be adequate for the Commission
19 to assess that re-tensioning, double-circuiting?

20 A. Well, our consultant's testimony is in the
21 records and it can speak for itself.

22 Q. I don't want to belabor this needlessly, but
23 they did conclude that the studies of re-tensioning,
24 double-circuiting and reconductoring were inadequate;
25 didn't they?

A. I don't know that they concluded 1 that. They
2 noted that they were not given substantial evidence of
3 whether reconductoring --- and that's talking about work
4 that the men may have done.

5 Q. As part of an application you would expect them
6 to consider it seriously, would you not?

7 A. Yes.

Transcript of May 30, 2008 Hearing on Joint Stipulation at pp. 210-212.

Moreover, Engineer Melton testified under oath at the May 30, 2008 hearing that, in his considered judgment, TrAILCo had not established that additional electric transmission capacity as requested by TrAILCo in June 2011 vs. 2014:

13 Q. And as we sit here today, you still believe that
14 the showing of meeting has only been made in respect to
15 the time arising around 2014, not [2011]; correct?

16 A. I believe it's fair to say if you're talking
17 about 2014 versus 2011, it is not that big of a
18 difference really. So I would not really agree with your
19 precise characterization.

20 Q. Okay. Well, let's explore this a little bit.
21 If I understood your testimony, it was that the outside
22 consultants who you engaged back and I understood that
23 the testimony wasn't --- their analysis was that it was
24 basically a question of time and they could see that the
25 need might arise by 2014 at least in their judgement but
couldn't see it in [2011]; is that a fair summary?

2 A. Yes.

3 Q. Okay. Now, the consultants work were not

4 consulted with respect to the joint stipulation, were
5 they?

6 A. No.

7 Q. And as you describe the trade offs, if you will,
8 between what you may have preferred and what you ended up
9 with from TrAILCo, that doesn't reflect an altered view
10 of the evidence so much as it reflects --- so that what
11 you were able to get as a result of the bargaining
12 process if I understand your testimony; is that correct?

13 A. I believe that's fair.

Transcript of May 30, 2008 Hearing on Joint Stipulation at pp. 207-209

3. The August 1, 2008 Decision Misapplied the Balancing Test of W. Va. Code § 22-4-11.

The uncontraverted evidence was that so-called Route A, which passes through Maryland, was in fact the route with the least environmental impacts. The only position urged by PSC Staff on the issue of routing at the May 30, 2008 hearing was that, as a matter of law, the PSC was not required to demand use of the best route. Engineer Melton of the PSC staff, endorsed the testimony of James Ellars, also of the PSC engineering staff, to the effect that the Maryland route was -- by any test other than expedience to TrAILCo -- the best route:

Q. And if [the Commission] accepted your testimony that, in
24 fact, Maryland Route A is the best route and that the
25 time horizon identified by the experts was 2014 rather
than 2011, they wouldn't need TrAILCo's 1 signature to
2 basically say, you know, granted subject to it being
3 built through Maryland; would it?

4 A. The Commission could do that.

5 Q. And when you were discussing Route A I think you
6 said that Maryland was, quote, better in every way;
7 correct? That was your initial reaction when you first
8 saw the application?

9 A. Most of the objective criteria that TrAILCo's

10 consultants used, it was the least impact route.

11 Q. Can you think of any reason based upon the
12 evidence in the record why the Commission shouldn't go
13 ahead and either deny the application or condition its
14 grant upon rerouting the matter through Maryland?

15 A. Well if you believe the need is in 2011 I doubt
16 if you're going to be able to get it done by then with
17 the refilling and the two states that are new filing.

18 Q. I understand that. And that's what I preface my
19 question was based on the matters in evidence which
20 includes your consultant's testimony that the need
21 doesn't exist until 2014; correct?

22 A. They can use that if they want.

Transcript of May 30, 2008 Hearing on Joint Stipulation at pp. 208-209.

The August 1, 2008 Decision misapplies the balancing standard of W. Va. Code § 22-4-11 by concluding that a balance exists where all of the *benefits* of increased electric generation and transmission are received by consumers in the DC-Md-Va market, while all *costs* of that generation and transmission is borne by the citizens of West Virginia. The 1978 legislature that passed the current statute, long before the electric grid became integrated across state lines, never contemplated, and surely never would have approved, the gross imbalance in costs and benefits deemed to constitute a "balance" in the August 1, 2008 Decision.

Even if one takes the expansive extra-territorial reach for assessing balance, as is used in the August 1, 2008 Decision, the use of the entire PJM Mid-Atlantic region as the target for benefits, vs the Allegheny region alone, which excludes the high demand areas of DC and Northern Virginia and the Maryland suburbs of DC, is simply ultra vires, i.e., it violates the terms of the statute limiting an assessment of need and or balance to the applicant's customers which for Allegheny is limited to the Allegheny region. The argument for need or balance is not assisted by arguing that Dominion serves those customers, and is a partner in the TrAILCo. TrAILCo is the applicant, not Allegheny, and not Dominion. And as of this date TrAILCo has not customers anywhere.

The fact that West Virginia derives no benefit from the construction of the TrAILCo line is further testified to by Governor Manchin's proposal to impose a tax on the transmission line and his objection to FERC's allocation of any cost of the line's construction to West Virginia

consumers – precisely because all of the electrical benefits from the line go to consumers outside West Virginia. Only by a tax, Governor Manchin reasons, will West Virginia obtain any benefits.

4. The August 1, 2008 Decision Failed to Address Controlling Issues of Fact and Law.

One can read the entire the 183-page decision issued on August 1, 2008, which if affirmed will set the course for electric transmission in this state for decades to come, and not learn the most basic facts of electricity in West Virginia.

First, as Ron Klein, the WVU Electric Engineering PhD, testified, without contradiction, West Virginia produces 90 million gigawatt hours of electricity per year, consumes barely 30 million gigawatt hours (a number that is declining) and exports, year in and year out, more than 60 million gigawatt hours to the other 49 states in the union. Plainly, West Virginia consumers, whether commercial or individual, have no need whatsoever for additional generation or transmission capacity.

Moreover, any illusion that the so-called “reliability” issues were anything more than convenient pretext to put a “West Virginia” tilt on purported benefits, was contradicted by the sworn testimony of Steven Herling, Planning Chairman for PJM, on the first day of evidentiary hearings when he blurted out the inconvenient truth that the entire enterprise now known as TrAILCo had its genesis in a 2002 directive from unnamed FERC officials who told PJM to find a way to move large amounts of coal from west to east. Mr. Herling’s testimony was as follows:

Q. Let me back up and see if maybe our timing's just a little offset. It's my understanding that the TrAIL proposal was actually in response to a PJM initiative. The Project Mountaineer Initiative that was announced in May of 2005 for PJM said, we'd like 5,000 megawatts of new transfer capability west to east to address transmission constraints, and that proposal was an economic type enhancement.

A. The Mountaineer concept was not an initiative of PJM. **There was a specific FERC technical conference, and the question they raised was, what would it take to move, you know, for example, large amounts of coal.**

Q. At the public forum and thereafter, PJM didn't identify generation in the east that could address the constraints that led to the Project Mountaineer suggestion; correct?

A. Well, again, remember that Project Mountaineer was a specific question, **what would it take to move coal**, so that question, there is no generation alternative.

Transcript of January 9, 2008 Evidentiary Hearing at p. 57-58 (emphasis added).

The August 1, 2008's elaborate discussion of the purported "reliability" issues – without once acknowledging the foregoing testimony – is a patent example of the myopic decision making driven by a predetermined outcome.

5. The August 1, 2008 Decision Failed to Consider the Environmental and Economic Impact of Increased Green House Gases Generated by the Increased Infrastructure for the Use of Coal.

The August 1, 2008 decision's description of electric transmission lines as "electron neutral", i.e., indifferent to the source of generation of the electron, is simultaneously accurate, as a technical matter, and totally disingenuous as an evidentiary matter.

Mr. Flitman affirmed the facts, stated in Allegheny's global warming report, which he authenticated and was admitted into evidence, that Allegheny was disproportionately dependent on coal for generation of electricity, to the tune of 95% of all electricity it generated. Further, Dr. Tom Witt, the economist called by TrAILCo to testify on economic benefits of the proposed \$1 billion transmission line, testified that fully 80% of the economic activity generating benefits would result from the construction of four new IGCC coal fired electric generation plants at a cost of \$1 billion each, or a total of \$4 billion.

The Commission has totally ignored the overriding environmental issue in the case. Allegheny already generates, according to its own global warming report, 45 million tons of CO₂ annually. The addition of four new IGCC plants to the mix will greatly increase that emission level.

Moreover, the August 1, 2008 decision totally disregards the fact that the financial viability of increased reliance on coal generated electricity will have a devastating economic impact on West Virginia businesses and consumers. Allegheny's global warming report is far more candid than the August 1, 2008 decision. Indeed, Allegheny candidly acknowledges that West Virginia will take an enormous economic hit from the now inevitable "cap and trade" cost increases certain to be placed on high carbon fuels like coal:

[C]urrent proposals range from cap-and-trade schemes with \$12 safety-valve allowance prices to direct taxation of tons emitted on the order of \$50 per ton. Based on estimates from a 2007 Department of Energy National Electric Technology Laboratory report, it could cost as much

as \$3,000 per kilowatt to replace existing coal-based power generation with fossil-fuel stations capable of capturing and sequestering carbon dioxide emissions. Recent project announcements suggest these costs could be substantially higher, but exact estimates are difficult because of the extreme dynamics of the legislative proposals and the lack of deployable technology. Regardless of the eventual mechanism, for Allegheny Energy this quickly becomes a major challenge. Most notable will be the potential impact on customer bills and disproportionate increases in energy cost in areas which have built their energy and industrial infrastructure over the past century based on coal-fired electric generation.

Sierra Club Exhibit (emphasis added).

If Allegheny can candidly acknowledge reality, surely this Commission must, under the controlling statute. Simply closing one's eyes to the facts is not an acceptable method for assessing the balance of electrical benefits and environmental or economic costs. The implicit assertion that the Commission does not know where the electrons will come from, and therefore does not need to include the consequences of the known sources, on this record, in this state, is an affront to all thinking people.

6. The August 1, 2008 Decision Approval of the Grafton Route Was Arbitrary and Capricious.

A. The Maryland Route Was By Far The Least Environmentally Damaging Route.

Table 2-3 submitted by TrAILCo on August 10, 2007 as part of the amended Line Route Evaluation and Environmental Report evaluates the desirability of the alternative routes based upon the criteria identified by TrAILCo. Route A is the Maryland route which Mr. James Ellars of the PSC Staff testified on January 18, 2008 was the shortest route and the route which had the least environmental impact. Route H was TrAILCo's initial proposed route, with respect to which testimony was elicited during the January 9 to 19, 2008 evidentiary hearing.

Table 2-3 makes patent the facts testified to in Mr. Ellars testimony. Based upon the unweighted assessment of TrAILCo's own criteria, the Maryland Route has fewer environmental impacts than the TrAILCo preferred route by a factor of 124 to 169, where fewer impacts is, obviously, a "better" score. The intervening routes B through G have scores varying from 140 to 190. For purposes of the current analysis, however, only Route A (the shorter Maryland route) and Route H (TrAILCo's initial proposed route) are germane.

B. Comparison of Environmental Impacts of Grafton Area Route vs. Route H

Table 2-2, submitted by TrAILCo on August 10, 2007 as part of the amended Line Route Evaluation and Environmental Report, purports to assess Grafton Area Route options A, B, C and D vis a vis the "Proposed Route," referred to in Table 2-3 discussed above as Route H.

Because the Joint Stipulation proposes only alternative B of the four Grafton Area Routes assessed. Table 2-2 reveals that TrAILCO determined, on an unweighted basis, that TrAILCo's initial Proposed Route had fewer impacts than the selected Grafton Area Route by a factor of 21 to 6. Stated otherwise, on 21 of the 27 criteria TrAILCo purports to apply, the initial Proposed Route has fewer environmental impacts; the Grafton Area Route has fewer environmental impacts on 6 of the 27 criteria.

C. Comparison of Environmental Impact of Grafton Area Route vs. Maryland Route

Table 2-2 reflects that one of the criteria on which the Grafton Area Route has a "better" score than the initial Proposed Route was in the area of Rights of Way (Table 2-2 at p. 3) which recites that Grafton Area Route option B paralleled existing rights of way for 63,850 feet, approximately 12 miles. By contrast, the "Proposed Route" parallels zero feet, as indicated in the column to the far right opposite the entries for rights of way.

However, Table 2-3 reflects that the Maryland Route (Route A) parallels existing rights of way for 83,450 feet, some 16 miles. Thus, although in one area of conspicuous impact, the Grafton Area Route has a "better" score than the initial "Proposed Route," the Maryland alternative on that particular criteria is clearly "better" than the Grafton Area Route. Coupling that fact with the fact that the Maryland Route had better scores than the Proposed Route overall, and the additional fact that the Proposed Route itself scored better than the Grafton Area Route in 21 of the 27 criteria, it is obvious that the Maryland Route – overall – is again superior to the Grafton Area Route proposed by the April 15, 2008 Joint Stipulation and adopted in the August 1, 2008 decision.

The August 1, 2008 Decision adopted a route with a worse environmental impact than the initially proposed route – as measured by TrAILCo's own criteria – and worse by far than the Maryland route, which demonstrably has the fewest impacts of all routes considered.

D. Ignored Electric Generation

Without adequate explanation the Commission's August 1, 2008 order ignores the uncontroverted testimony that PJM's 2006 RTEP ignored nearly 2,500 megawatts of generation in the Allegheny region, all of which was available for supply to the target market to be served here, DC-Md-Va.

E. Ignored Conservation Efforts and Laws

The August 1, 2008 order accepts without criticism the testimony of TrAILCo witnesses that demand side management cannot alleviate any real congestion issues, where the TrAILCo witness relied upon studies rejected by PJM, and where the PJM load model does not take statutorily mandated electric reductions (15% in Maryland and 10% in Virginia) into account

until the savings are part of a historic record, i.e., the PJM load model has no value as a predictive tool, but is used here to order construction of a \$1 billion transmission line.

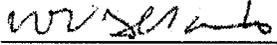
7. Conclusion

For all of the foregoing reasons, the Sierra Club respectfully requests that the Commission reconsider the August 1, 2008 decision approving the certificate of convenience and necessity for TrAILCo.

Respectfully submitted,

THE SIERRA CLUB

By Counsel



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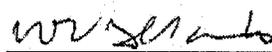
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CERTIFICATE OF SERVICE

I certify service of this Petition for Reconsideration by email on August 5, 2008, to the following:

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STATE OF WEST VIRGINIA
PUBLIC SERVICE COMMISSION
CHARLESTON

CASE NO. 07-0508-E-CN

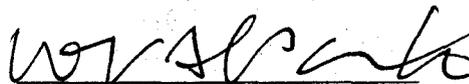
THE SIERRA CLUB, INC.

Petition for Reconsideration of August 1, 2008 Decision
approving a certificate of convenience and necessity
to Trans-Allegheny Interstate Line Company

Comes now the above-named Sierra Club, Inc., by its undersigned Counsel, petitioning for reconsideration under Rule 19.3, of the Commission's Rules of Practice and Procedure, and upon oath, states to the Commission as follows:

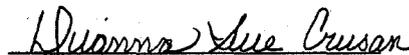
1. That the Sierra Club, Inc. was by order of the Commission permitted to intervene in the underlying administrative proceeding commenced in March 2007 by Trans-Allegheny Interstate Line Company.
2. That the Petition for Reconsideration is submitted in good faith and not for purposes of delay, obstruction or any other improper purpose.
3. That the matters stated in the Petition for Reconsideration are true and accurate to the extent of the personal knowledge of affiant, and to the extent based upon information and belief, are believed to be true and accurate.

Dated this 5th day of August, 2008.



William V. DePaulo, Esq. #995
Counsel for the Sierra Club, Inc.
179 Summers Street, Suite 232
Charleston, WV 25301
Tel: 304-342-5588

Subscribed and sworn before me this 5th day of August, 2008.


Notary Public

My commission expires: August 12, 2008

