

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

The Office of the Ohio Consumers' Counsel,)	
Complainant,)	
)	
v.)	Docket No. EL23-__-000
)	
PJM Interconnection, L.L.C., American)	
Electric Power Service Corporation, on behalf of)	
Ohio Power Company and AEP Ohio Transmission)	
Company, American Transmission Systems, Inc.,)	
AES Ohio, a/k/a The Dayton Power and Light)	
Company, and Duke Energy Ohio, LLC)	
Respondents.)	

**COMPLAINT OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
TO PROTECT OHIO CONSUMERS UNDER THE PJM TARIFF
FROM THE FAILURES OF MULTIPLE AGENCIES TO REGULATE
HUNDREDS OF MILLIONS OF DOLLARS IN MONOPOLY ELECTRIC
TRANSMISSION CHARGES FOR "SUPPLEMENTAL PROJECTS" PLANNED BY
AEP, AES, DUKE, AND FIRSTENERGY
AND
REQUEST FOR FAST-TRACK PROCESSING**

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September 28, 2023

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I. INTRODUCTION

Millions of Ohio consumers have fallen into a regulatory gap. They are being charged for billions of dollars in monopoly local transmission facilities that no authority, such as the PUCO, FERC or PJM, oversees as to the need, prudence and cost-effectiveness of those projects. Regulatory relief for consumers is long overdue. The magnitude of the problem is enormous and shows up on Ohioans' electric bills. Finger-pointing between regulatory authorities should end, in the interest of protecting millions of Ohio consumers.

Last year, over \$658 million in local, so-called Supplemental Projects were planned for construction in Ohio by Ohio electric utilities (involving charges to consumers by AEP, AES,

Duke and FirstEnergy). Since 2017, these same utilities have added more than \$6 billion in Supplemental Projects to their local transmission plans in Ohio. Ohio consumers pay for these projects in the transmission rates they pay to their electric utility providers. These Supplemental Projects are significantly increasing electric transmission rates to consumers in Ohio.

The Federal Energy Regulatory Commission (“FERC”) has jurisdiction over the transmission rates paid by Ohio consumers. FERC, however, has delegated authority for transmission planning and oversight of transmission expansion costs to PJM Interconnection, L.L.C. (“PJM”). PJM is a Regional Transmission Organization (“RTO”) operating the transmission facilities of utilities serving the Mid-Atlantic region of the nation, including Ohio. In addition to inaction by FERC and PJM, the Public Utilities Commission of Ohio (“PUCO”) has not taken action for consumer protection, instead deferring to others for such action.¹

The electric utilities providing transmission services in Ohio include: affiliates of American Electric Power Corporation (“AEP”), being Ohio Power Company (“AEP Ohio Power”) and AEP Ohio Transmission Company, Inc. (“AEP Ohio Transmission”); the FirstEnergy affiliate American Transmission Systems, Inc. (“ATSI”); AES Ohio, a/k/a The Dayton Power and Light Company (“AES Ohio” or “DP&L”); and Duke Energy Ohio, LLC (“Duke”). Each of these utilities has turned over control and transmission planning for their systems to PJM. Their transmission rates and planning processes are part of the PJM Open Access Transmission Tariff (“Tariff”). The Office of the Ohio Consumers’ Counsel (“OCC”) refers to these Ohio transmission utilities collectively as the “Ohio Transmission Utilities.”

¹ See, e.g., *In The Matter Of The Application Of Duke Energy Ohio, Inc. To Adjust And Set Its Base Transmission Rate Rider*, PUCO Case No. 23-457-EL-RDR (Sept. 20, 2023), available at <https://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=3021fd2d-3a5a-4d98-8470-94758058366f>.

The PJM Tariff and the Amended and Restated Operating Agreement (“PJM Operating Agreement”) obligate PJM to review and approve the planning, need, prudence and cost-effectiveness of certain *regional* transmission facilities in the PJM region. But the Tariff and Operating Agreement do not contain similar protections regarding *local* transmission projects, identified in the PJM Tariff and Operating Agreement as “Supplemental Projects.” PJM provides no independent oversight of the need, prudence and cost-effectiveness of local transmission projects. *Instead, these PJM governing documents assume that state regulatory authorities will adequately protect consumers regarding the need, prudence and cost of Supplemental Projects.* That assumption is misplaced.

Not every state in PJM has authority to review all local transmission projects to determine whether they are needed, prudent and cost-effective before their costs are charged to consumers. And not all states recognize or exercise their authority to review all local transmission projects for need, prudence and cost effectiveness. Ohio is one such state. Ohio consumers are paying billions of dollars for new, locally-planned Supplemental Projects whose need, prudence, and cost-effectiveness are evading all regulatory review. Regulators are failing to make the monopoly utilities prove consumer need, prudence and the reasonableness of the costs of Supplemental Projects in Ohio.

The PJM Tariff and Operating Agreement are inconsistent with the Federal Power Act’s requirements that rates to consumers be lawful, just, reasonable and not unduly discriminatory or preferential. That is because these governing documents do not protect consumers in Ohio from excessive rates for transmission services.

To remedy this serious deficiency, FERC should develop and implement a backstop mechanism for Ohio consumer protection. The mechanism should be included in the PJM Tariff

and Operating Agreement. By this mechanism, FERC would review the need, prudence and cost-effectiveness of local transmission projects in Ohio. Any utility gold-plating (Averch-Johnson effect) should be ferreted out by regulators.

FERC also should appoint an Independent Transmission Monitor (“ITM”). The ITM should assist FERC in reviewing the planning, need, prudence and cost-effectiveness of local transmission projects for consumers in Ohio. OCC recognizes that it could take some time to develop an ITM entity. The remedy proposed in this Complaint of having FERC review the local transmission projects of the Ohio Transmission Utilities should not wait for the implementation of the ITM. The ITM review process could be woven into the FERC review process at a later date. Ohio consumers have already waited long enough for a remedy to the serious problem that billions are being spent on local transmission infrastructure in Ohio with no regulatory oversight for need, prudence and cost-effectiveness of those projects.

Additionally, FERC should consider precluding the Ohio Transmission Utilities from using formula rates for establishing transmission rates. Instead, there could be a default to a stated rates approach under which the Ohio Transmission Utilities would be required to obtain prior FERC approval for all local transmission projects at or exceeding a set cost threshold. That process also could include a competitive bidding process.

Expedited action is needed to halt the harm to consumers in Ohio. These Supplemental Projects in Ohio have evaded regulatory oversight for the past 20 years, to the detriment of consumers. The cost of Supplemental Projects in Ohio has vastly exceeded the cost of regional transmission projects in the past six years. The price tag for Ohio consumers continues to grow as Ohio transmission utilities add hundreds of millions and billions of dollars in new, locally-

planned Supplemental Projects each year. FERC needs to step in now and halt the harm to Ohio consumers.

II. COMMUNICATIONS

Communications regarding this matter should be addressed to the following persons, who also should be designated for service on FERC's official service list:

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III. THE PARTIES

A. The Office of the Ohio Consumers' Counsel

Under Ohio Revised Code Chapter 4911, Complainant, OCC, is the state agency that is the statutory representative of millions of Ohio residential utility consumers in proceedings before state and federal administrative agencies and the courts. OCC advocates positions and policies that will protect Ohio residential consumers from unreasonable, unjust and unlawful utility rates and charges.

Ohio is a restructured state for electricity, a retail choice state.² Electric consumers choose their energy supplier. The Ohio utilities' standard service offers for consumers are based

² Ohio Revised Code, § 4928.02.

on competitively bid auctions (to procure power for Ohio consumers who do not switch to an energy marketer). Both the utility standard service offers and the marketers depend on the PJM markets for power supplies. Ohio consumers also depend on the transmission rates set by FERC to protect them against unjust and unreasonable rates for the transmission of electricity to their homes. Transmission service remains a monopoly service, subject to FERC's cost-based ratemaking policies. Because electric service in Ohio is unbundled, the rates charged for the interstate transmission service provided to these Ohio consumers are regulated by FERC.

B. Respondents

1. PJM Interconnection, L.L.C.

PJM is an RTO, authorized by FERC to provide open access transmission service and to administer the transmission grid and the wholesale energy, capacity, and ancillary services markets through all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia. PJM also administers the operations of the RTO, including all actions taken under the PJM Operating Agreement and Tariff, such as the administration of the regional, sub-regional and local transmission planning processes in its operating area. PJM also administers the PJM Transmission Owners formula rates reflected in Attachment H of the PJM Tariff.

2. The Ohio Transmission Utilities

Respondent AEP's affiliates, AEP Ohio Power and AEP Ohio Transmission, are regulated public utilities, primarily engaged in the transmission, distribution and sale of electricity to consumers in Ohio. AEP owns additional affiliates serving multiple states across the Midwest. In addition to Ohio, these states include Indiana, Michigan, Kentucky, Tennessee, Virginia and West Virginia. AEP and its affiliates, AEP Ohio Power and AEP Ohio Transmission, are headquartered in Columbus, Ohio. The transmission services and wholesale

sales of power supply provided by AEP Ohio Power and AEP Ohio Transmission are subject to regulation by FERC under the Federal Power Act (“FPA”).

Respondent ATSI is a wholly-owned, direct operating subsidiary of FirstEnergy Transmission, LLC, which in turn is a wholly-owned subsidiary of FirstEnergy Corp. (“FirstEnergy”). ATSI provides transmission service in Ohio to FirstEnergy Ohio affiliates: Ohio Edison Company, The Toledo Edison Company and The Cleveland Electric Illuminating Company. ATSI is a regulated public utility primarily engaged in the transmission of electricity in Ohio, and in portions of Maryland, New Jersey, Pennsylvania, Virginia and West Virginia, and is headquartered in Akron, Ohio. ATSI’s transmission service is subject to regulation by FERC under the FPA.

Respondent AES Ohio, formerly known as The Dayton Power & Light Company (“DP&L”), is a wholly-owned operating subsidiary of AES Corporation. It is a regulated public utility primarily engaged in the transmission, distribution and sale of electricity in portions of Ohio, and is headquartered in Dayton, Ohio. AES Ohio’s transmission service and wholesale sales of power supply are subject to regulation by FERC under the FPA.

Respondent Duke is a wholly-owned operating subsidiary of Duke Energy Corporation. It is a regulated public utility primarily engaged in the generation, transmission, distribution and sale of electricity in portions of Ohio, and is headquartered in Charlotte, North Carolina. Duke’s transmission service and wholesale sales of power supply are subject to regulation by FERC under the FPA.

AEP Ohio Power, AEP Ohio Transmission, ATSI, AES Ohio, and Duke collect their costs of providing transmission service through FERC-authorized formula transmission rates.³

³*American Electric Power Service Co.*, 124 FERC ¶ 61,306 at P 22 (2008) and *AEP Appalachian Transmission Co., et al.*, 130 FERC ¶ 61,075 at PP 1, 30 (2010); *PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,106 at PP 1, 3 (2015),

These costs include new transmission facilities added each year by the utilities. Their transmission plans address both regional and local transmission facilities, including Supplemental Projects.

IV. COMPLAINT

OCC files this Complaint under FPA sections 206, 306 and 309, 16 U.S.C. §§ 824e, 825e and 825h, and pursuant to Rule 206 of the Commission’s Rules of Practice and Procedure ,18 C.F.R. § 385.206 (2023).

A. The PJM Tariff and Operating Agreement are unjust, unreasonable, and unduly discriminatory and preferential because they do not protect Ohio consumers from excessive transmission rates.

In Order No. 2000,⁴ FERC delegated its authority for oversight of the planning and cost of transmission facilities to RTOs. While the creation of an RTO in a particular service area is generally voluntary, to the extent that such entities formed, FERC required “that the RTO must have ultimate responsibility for both transmission planning and expansion within its region that will enable it to provide efficient, reliable and non-discriminatory service and coordinate such efforts with the appropriate state authorities.”⁵ FERC explained that:

[t]he rationale for this requirement is that a single entity must coordinate these actions to ensure a least cost outcome [for consumers] that maintains or improves existing reliability levels. In the absence of a single entity performing these functions, there is a danger that separate transmission investments will work at cross-purposes and possibly even hurt reliability.⁶

Letter Order dated October 29, 2015 (accepting the Settlement Agreement and Offer of Settlement for establishing a formula transmission rate); *Duke Energy Ohio, et al.*, 151 FERC ¶ 61,029 at PP 2, 14 (2015); *The Dayton Power & Light Co.*, 175 FERC ¶ 61,021 (2021).

⁴ *Regional Transmission Organizations*, Order No. 2000, 89 FERC ¶ 61,285, FERC Stats. & Regs. ¶ 31,089 (1999) (“Order No. 2000”); *order on reh’g*, Order No. 2000-A, 90 FERC 61,201 (2000) (“Order No. 2000-A”).

⁵ Order No. 2000 at 31,163.

⁶ *Id.* at 31,164

FERC stated that it would give each RTO “considerable flexibility in designing a planning and expansion process that works best for its region,”⁷ and would “evaluate each RTO proposal to ensure that the RTO can direct or arrange for the construction of expansion projects that are needed to ensure reliable transmission services.”⁸ FERC made no distinction in these directives between regional and local transmission planning processes.

PJM is an RTO. As such, PJM has the obligation to plan for transmission expansion and associated cost recovery in its region.⁹ The PJM Tariff and the PJM Operating Agreement provide extensive oversight for regional transmission planning and cost recovery in the RTO. The PJM transmission planning and cost recovery and allocation process is called the Regional Transmission Expansion Plan (“RTEP”), which is set forth in Schedule 6 of the PJM Operating Agreement.¹⁰ Through this process, PJM plans, reviews and approves regional transmission projects and their costs to consumers in the PJM region.¹¹ Once approved by the PJM Board of Managers (“PJM Board”), PJM submits a filing with FERC for approval of the projects and allocation of the costs to consumers through the FERC-authorized rates for each transmission provider.¹²

The problem is that PJM’s current tariff authority to review the need, prudence and cost-effectiveness of transmission expansion extends only to transmission projects needed to resolve region-wide system reliability violations based on PJM criteria, or for projects needed to meet

⁷ *Id.*

⁸ *Id.*

⁹ *PJM Interconnection, L.L.C.*, 101 FERC ¶ 61,345 at PP 9, 24 (2002); *order on reh’g*, 104 FERC ¶ 61,124 at P 54 (2003).

¹⁰ Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., Schedule 6, Section 1.1.

¹¹ *Id.* at Schedule 6, Section 1.5.6; *see also* Section 1.6(a).

¹² *Id.* at Section 1.6(a); *see also* PJM Tariff, Attachment H.

state public policy goals such as renewable portfolio standards.¹³ The projects subject to PJM Board oversight and approval are often called regional baseline projects, regional network upgrades or Public Policy Projects.

Local projects, identified as “Supplemental Projects” in PJM’s Operating Agreement and Tariff, are included in the RTEP, but are only reviewed by PJM for the potential negative impact they might have on the regional system.¹⁴ Section 1.5.6(n) of Schedule 6 of the PJM Operating Agreement states that:

Certain Regional RTEP Project(s) and Subregional RTEP Project(s) may not be required for compliance with the following PJM criteria: system reliability, market efficiency or operational performance, pursuant to a determination by the Office of the Interconnection. *These Supplemental Projects shall be separately identified in the RTEP and are not subject to approval by the PJM Board.*¹⁵

The important point here is that, unlike regional RTEP projects, Supplemental Projects are not approved by the PJM Board. They are not reviewed by PJM for their need, prudence or their cost-effectiveness and cost efficiency for utility consumers.¹⁶

Neither the PJM Tariff nor the PJM Operating Agreement provide any oversight of the need, prudence and cost-effectiveness of Ohio local transmission projects despite the requirement that local transmission planning be part of the Order No. 890¹⁷ requirements. In Order No. 890, FERC required that each transmission provider’s tariff, including RTO tariffs,

¹³ PJM Operating Agreement, Schedule 6, Section 1.5.6(n).

¹⁴ *Id.*

¹⁵ *Id.* (emphasis added).

¹⁶ *Id.*; see also PJM Operating Agreement, Schedule 6, section 1.6(a).

¹⁷ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119 at P 3, FERC Stats. & Regs. ¶ 31,241 (2007) (“Order No. 890”), *order on reh’g*, Order No. 890-A, 121 FERC ¶ 61,297, FERC Stats. & Regs. ¶ 31,261 (2007) (“Order No. 890-A”); *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008); *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a basis that is just, reasonable, and not unduly discriminatory or preferential.¹⁸

In PJM’s compliance filing to implement the Order No. 890 obligations in Docket No. OA08-32-000, FERC found that the Order No. 890 transmission planning obligations extend to local as well as regional transmission planning processes.¹⁹ In that case, FERC determined that PJM’s proposed RTEP process at that time did not comply with the Order No. 890 obligations because it lacked sufficient clarity as to how the local transmission planning process fit within the overall PJM RTEP process.²⁰ FERC directed PJM to revise the Tariff to “clearly state how such Supplemental Projects [local transmission projects] will fit into the regional planning process.”²¹ FERC did, however, accept PJM’s proposal for not allocating the costs of Supplemental Projects on a regional basis, indicating that “these projects are not eligible for PJM OATT [Open Access Transmission Tariff] Schedule 12 cost allocation.”²²

In Order No. 1000,²³ FERC expanded on the Order No. 890 transmission planning requirements. FERC directed Transmission Owners participating in an RTO to participate in a

¹⁸ *Monongahela Power Co., et al.*, 162 FERC ¶ 61,129 at P 5 (“*Monongahela Power*”), *order on reh’g*, 164 FERC ¶ 61,217 at P 3 (2018) (“*Monongahela Rehearing*”).

¹⁹ *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,163 at PP 140-41 (2008) (“However, the Commission is not convinced that such local planning procedures will allow stakeholders to participate at an early stage in the transmission planning associated with these local plans. Customers must not be excluded from the development of aspects of what eventually will become the regional plan implemented by the RTO or ISO. Accordingly, we find that Schedule 6 of PJM’s OA fails to adequately describe how its planning process will satisfy Order No. 890.”).

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at P 142.

²³ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 76 FR 49842 (Aug. 11, 2011), 136 FERC ¶ 61,057, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132 (“*Order No. 100-A*”); *order on reh’g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

regional transmission planning process that results in a single, regional plan that identifies the more efficient or cost-effective solutions to *all* the region's transmission needs.²⁴

The Order No. 1000 regional planning process must determine whether there is a more efficient or cost-effective regional solution, even for locally planned transmission projects.²⁵

FERC directed that:

Through the regional transmission planning process, public utility transmission providers will be required to evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process. This could include transmission facilities needed to meet reliability requirements, address economic considerations, and/or meet transmission needs driven by Public Policy Requirements, as discussed further below. When evaluating the merits of such alternative transmission solutions, public utility transmission providers in the transmission planning region also must consider proposed non-transmission alternatives on a comparable basis. If the public utility transmission providers in the transmission planning region, in consultation with stakeholders, determine that an alternative transmission solution is more efficient or cost-effective than transmission facilities in one or more local transmission plans, then the transmission facilities associated with that more efficient or cost-effective transmission solution can be selected in the regional transmission plan for purposes of cost allocation.²⁶

In other words, Order No. 1000 requires an RTO to look at local transmission plans and determine if there are more cost-effective regional solutions. Although the Order No. 1000 transmission planning process requires RTOs to look at whether a more cost-effective regional solution exists for Supplemental Projects, that requirement excludes regulatory oversight of the

²⁴ *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 68 (D.C. Cir. 2014), citing Order No. 1000-A at P 60 “regional transmission planning is more effective if it results in a transmission plan, is open and transparent, and considers all transmission needs.”).

²⁵ Order No. 1000 at P 148.

²⁶ *Id.*

planning, need, prudence and cost-effectiveness for consumers associated with Supplemental Projects where no regional alternative solutions are identified.

FERC accepted PJM's Order No. 1000 compliance filing, subject to certain modifications, in 2013.²⁷ FERC recognized that PJM's Order No. 1000 compliance filing proposed Tariff and Operating Agreement amendments were intended "to comply with the local and regional transmission planning requirements of Order No. 1000."²⁸ FERC also noted that "Order No. 1000's requirements are intended to apply to new transmission facilities, which are those transmission facilities that are subject to evaluation, or reevaluation as the case may be, within a public utility transmission provider's *local or regional transmission planning process* after the effective date of the public utility transmission provider's compliance filing."²⁹ FERC found PJM's proposed Tariff and Operating Agreement revisions in the compliance filing "allow[] PJM to evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the transmission needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning processes."³⁰

Nevertheless, litigation over the insufficiency of PJM's Supplemental Project, or local transmission planning, process continued. In 2016 in *Monongahela Power Co., et al.*,³¹ FERC initiated a show-cause proceeding against PJM and the PJM Transmission Owners. FERC directed them to show cause why the then-current PJM Tariff provisions governing the

²⁷ *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 21 (2013).

²⁸ *Id.* at P 1.

²⁹ *Id.* at P 24 (emphasis added).

³⁰ *Id.* at P 65.

³¹ *Monongahela Power Co., et al.*, 156 FERC ¶ 61,134 at P 15 (2016) ("Show Cause Order").

Supplemental Project planning process should not be considered unjust and unreasonable. That was because those provisions failed to provide for sufficient and timely input by consumers and other affected stakeholders into the local transmission planning process. FERC stated:

it appears that some PJM Transmission Owners are conducting significant local transmission planning activities *before* the need for a Supplemental Project is brought to PJM for discussion in the stakeholder process. In addition, certain of the PJM Transmission Owners appear to be identifying—and even taking steps toward developing—Supplemental Projects before providing any opportunity for stakeholders to participate in the development of those projects through the PJM RTEP process.³²

FERC directed PJM and the PJM Transmission Owners to show cause why the Tariff should not be revised to implement an Order No. 890-compliant transmission planning process for local transmission projects.³³ PJM and the PJM Transmission Owners argued in their response to the Show-Cause Order that their existing process was sufficient to comply with Order No. 890.³⁴ But FERC disagreed.³⁵

FERC found that PJM had not sufficiently demonstrated that its then-existing local transmission planning process complied with Order No. 890 requirements. Nevertheless, FERC found that a proposal to implement reforms to the local transmission planning process in the form of Attachment M-3 to the PJM Tariff, with certain modifications, could provide an acceptable level of transparency to the local transmission planning process.³⁶

In so doing, FERC rejected concerns expressed by certain transmission customers that the local transmission planning process still failed to comply with the transparency and collaborative

³² Show Cause Order at P 13.

³³ *Id.* at P 15.

³⁴ Monongahela Rehearing, 164 FERC ¶ 61,217 at P 5.

³⁵ *Id.* at P 7.

³⁶ *Id.* at PP 8, 11.

planning obligations imposed by Order No. 890.³⁷ FERC stated that “[u]nlike the RTEP transmission projects, for which the PJM Transmission Owners have ceded planning to PJM as part of establishing an RTO, the PJM Transmission Owners remain responsible for planning Supplemental Projects, and we find that it is just and reasonable for the PJM Transmission Owners to establish the process for planning these transmission projects and to initiate under section 205 any proposed revisions.”³⁸

Still, these reforms to the local transmission planning process did not resolve stakeholder concerns related to the PJM local transmission planning process. After contentious stakeholder proceedings regarding this matter, certain of PJM’s Transmission Owners filed for further modifications to the Attachment M-3 local planning process.³⁹ The PJM Transmission Owners proposed to require that each Transmission Owner annually present its criteria for assessing whether a need exists for certain asset management projects known as End-of-Life projects, and whether that concern could be resolved by a single RTEP solution in conjunction with other RTEP projects.⁴⁰

OCC pointed out in its protest of that filing that the PJM Transmission Owners’ proposal did not address the main problem with the local transmission planning process – the lack of regulatory oversight for the local transmission planning process.⁴¹ OCC advised FERC that the

³⁷ *Id.* at PP 13-14.

³⁸ *Id.* at P 14, citing Order No. 2000.

³⁹ *American Transmission system, Inc., et al. and PJM Interconnection, L.L.C.*, Docket No. ER20-2046-000 (Jun. 12, 2020).

⁴⁰ Amendments to Attachment M-3 to the PJM Interconnection, L.L.C. Open Access Transmission Tariff, Transmittal Letter at 5 (Jun. 12, 2020), filed by certain PJM Transmission Owners in *American Transmission system, Inc., et al. and PJM Interconnection, L.L.C.*, Docket No. ER20-2046-000, (“PJM Transmission Owners’ Attachment M-3 Proposal”), located on FERC’s e-library website as Accession Document No. 20200612-5124

⁴¹ Protest by The Office of The Ohio Consumers’ Counsel at 11-12 (July. 6, 2020), filed in *American Transmission system, Inc., et al. and PJM Interconnection, L.L.C.*, Docket No. ER20-2046-000, located on FERC’s e-library website as Accession Document No. 20200706-5221 (“OCC Protest”).

PJM Transmission Owners’ Proposal lacked provisions for effective regulation of costs because it failed to provide for any timely regulatory review of the need for, and costs of, the proposed project before the projects are selected, constructed and charged to consumers.⁴² OCC stated that “[i]n short, effective regulation of the costs at issue would be where PJM or some regulatory authority reviews the need for and cost of proposed Supplemental Projects including asset management and end-of-life projects.”⁴³

Nevertheless, FERC accepted the PJM Transmission Owners’ Attachment M-3 proposal over protests submitted by OCC and other consumer stakeholders.⁴⁴ FERC found that the “planning activities addressed by the Attachment M-3 Revisions Filing are within the exclusive rights and responsibilities retained by the PJM TOs [Transmission Owners] under the CTOA [Consolidated Transmission Owners’ Agreement].”⁴⁵ FERC further found that asset management activities that result in only incidental expansion of capacity are beyond the scope of the Order No. 890 transmission planning obligations.⁴⁶ Finally, FERC rejected protesters’ concerns that the majority of transmission planning in PJM is occurring outside the purview of the PJM RTEP process on the basis that those arguments too were beyond the scope of PJM’s FPA section 205 filing in that case.⁴⁷ This order is on appeal to the United States Court of Appeals for the District of Columbia Circuit.⁴⁸

⁴² OCC Protest in Docket no. ER20-2046 at 13.

⁴³ *Id.*

⁴⁴ *PJM Interconnection, L.L.C., et al.*, 172 FERC ¶ 61,136; *order on reh’g*, 173 FERC ¶ 61,225 (2020).

⁴⁵ *Id.* at P 81.

⁴⁶ *Id.* at P 89.

⁴⁷ *Id.* at P 90.

⁴⁸ *See American Municipal Power Inc., et al. v. FERC*, D.C. Circuit Court Case Nos. 20-1449, *et al.* The Court held oral argument on November 9, 2022, but has not yet issued an opinion.

In a related proceeding in Docket No. ER20-2308-000, PJM filed on behalf of consumer stakeholders a proposal to further modify the Attachment M-3 process to include greater transparency and opportunities for stakeholders to participate in the overall local transmission planning process. FERC rejected that filing for the same reason it accepted PJM's filing in Docket No. ER20-2046, *i.e.*, the "PJM Transmission Owners retained the right to 'maintain' their transmission facilities and generally reserved all rights not specifically granted to PJM."⁴⁹ That filing too is on appeal to the D.C. Circuit Court of Appeals, and those appeals are consolidated with the appeals from Docket No. ER20-2046.⁵⁰

These rulings did not resolve the concern raised by OCC that, to the detriment of Ohio consumers, the Supplemental Project local transmission planning process in Ohio, and the costs of those projects, evade any regulatory oversight. Nor do FERC's earlier rulings determine the outcome of this Complaint. The issues there involved whether the PJM Transmission Owners retained the right to undertake planning for their asset management or End-of-Life projects, a subset of Supplemental Projects. FERC found that they did.

But that ruling does not resolve the fundamental question in this Complaint. That is, FERC must decide in this Complaint whether the local transmission planning process in PJM, regardless of whether conducted by the PJM Transmission Owners or by PJM, is insufficient and thus unjust unreasonable, and unduly discriminatory and preferential because there is *no* regulatory oversight for the local transmission costs paid by consumers in Ohio.

⁴⁹ *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,242 at P 51 (2020), *reh'g denied*, 176 FERC ¶ 61,053 at P 7 (2021).

⁵⁰ See *American Municipal Power, Inc., et al. v. FERC*, D.C. Circuit Court Case Nos. 21-1090, *et al.* The Court consolidated these cases with Case No. 20-1449, in which it held oral argument on November 9, 2022. No order has yet been issued.

FERC’s rulings in Docket Nos. ER20-2046 and ER20-2308 implicitly assume that state regulation is protecting consumers by reviewing the need, prudence and cost-effectiveness of these Supplemental Projects. However, as OCC will demonstrate below, Ohio is not reviewing local transmission projects for need, prudence and cost-effectiveness. In fact, no regulatory authority is conducting that review.

FERC’s rulings in Docket Nos. ER20-2046 and ER20-2308 create a regulatory gap in which most transmission projects being constructed in Ohio evade any consumer-protection review of the need, prudence, and cost-effectiveness of these projects. Even if FERC had accepted the additional consumer protection proposals put forth by consumer stakeholders in Docket No. ER20-2308, those protections still would have fallen short of what is needed to protect Ohio consumers and remedy this unjust and unreasonable situation. Such proposals fail to adequately protect Ohio consumers.

FERC reopened this issue in 2021 with the issuance of an Advanced Notice of Proposed Rulemaking (“NOPR”) in Docket No. RM21-17-000.⁵¹ In that Advanced NOPR, FERC sought comments on a number of issues related to regional, inter-regional and local transmission planning. In its notice, comments were sought on “whether it is necessary, and how, to more clearly identify the lines of regulatory authority and oversight between states and federal authorities with regard to regional and local transmission facilities to ensure appropriate vetting of transmission infrastructure.”⁵² FERC stated that:

The potential for a significant investment in the transmission system in the coming years underscores the importance of ensuring that ratepayers are not saddled with costs for transmission facilities that are unneeded or

⁵¹ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Advanced Notice of Proposed Rulemaking, 176 FERC ¶ 61,024 (2021) (“2021 Advanced Transmission NOPR”).

⁵² 2021 Advanced Transmission NOPR at P 5.

imprudent. As part of this package of potential reforms, we are considering whether reforms may be needed to enhance oversight of transmission planning and transmission providers' spending on transmission facilities to ensure that transmission rates remain just and reasonable.⁵³

In its Notice of Proposed Rulemaking that succeeded the Advanced NOPR, FERC noted that “[t]he vast majority of investment in transmission facilities since the issuance of Order No. 1000 has been in local transmission facilities.”⁵⁴ In 2020, FERC stated that “in PJM, about two-thirds of the total transmission investment in the region went to resolving local needs.”⁵⁵

FERC thus proposed in the NOPR “to require that public utility transmission providers in each transmission planning region revise the regional transmission planning process in their OATTs with additional provisions to enhance transparency of: (1) the criteria, models, and assumptions that they use in their local transmission planning process, (2) the local transmission needs that they identify through that process, and (3) the potential local or regional transmission facilities that they will evaluate to address those local transmission needs.”⁵⁶

FERC also proposed to “require that the regional transmission planning process include at least three stakeholder meetings concerning the local transmission planning process of each public utility transmission provider that is a member of the transmission planning region before each public utility transmission provider’s local transmission plan can be incorporated into the

⁵³ *Id.* at P 159.

⁵⁴ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Notice of Proposed Rulemaking, 179 FERC ¶ 61,028 at P 40 (2021) (“2022 Transmission NOPR”).

⁵⁵ *Id.*

⁵⁶ *Id.* at P 400.

transmission planning region’s planning models.”⁵⁷ Additionally, FERC proposed to require a process for “right sizing” the local facilities.⁵⁸

FERC concluded that “these proposed requirements are needed to ensure just, reasonable and not unduly discriminatory or preferential Commission-jurisdictional rates because the information provided will enable customers and other stakeholders alike to evaluate or replicate the findings of public utility transmission providers so as to reduce after-the-fact disputes regarding whether local transmission planning has been conducted in an unjust and unreasonable or unduly discriminatory or preferential fashion.”⁵⁹

FERC has not yet issued a final rule in this proceeding. More importantly, although the proposed reforms would help resolve some of the problems identified in this Complaint, they still would not ensure sufficient regulatory oversight of the consumer-protection need, prudence and cost-effectiveness of local transmission projects in Ohio as requested in this Complaint.

FERC followed up on this inquiry in 2022 with the issuance of a Notice of Technical Conference in Docket No. AD22-8-000.⁶⁰ In that proceeding, FERC issued a Supplemental Notice of Technical Conference, noting that:

The purpose of this conference is to explore measures to ensure sufficient transparency into and cost effectiveness of local and regional transmission planning decisions, including: (1) the role of cost management measures in ensuring the cost-effective identification of local transmission needs (e.g., planning criteria) and solutions to address identified local transmission and regional reliability-related transmission needs; and (2) cost considerations and the processes through which transmission developers recover their costs to ensure just and reasonable transmission rates. Additionally, this conference will also discuss potential approaches to providing enhanced cost management measures and greater

⁵⁷ *Id.*

⁵⁸ *Id.* at PP 403 - 407.

⁵⁹ *Id.* at P 402

⁶⁰ *Transmission Planning and Cost Management*, Notice of Technical Conference, Docket No. AD22-8-000 (Apr. 21, 2022).

transparency and oversight if needed to ensure just and reasonable transmission rates.⁶¹

FERC described Panel 2 in that Technical Conference as exploring whether local transmission facility costs are adequately scrutinized,⁶² identifying the following issues for discussion:

Specifically, panelists will discuss challenges associated with cost management during all stages of the local transmission planning process: the identification of a local transmission need; the transmission provider's evaluation of potential local transmission facilities to address an identified local transmission need; the transmission provider's decision to choose a specific local transmission facility to meet that need; and the development of the local transmission facility. Additionally, this panel will explore whether there are any best practices in local transmission cost management. Finally, this panel will also discuss the roles that the Commission could play in ensuring appropriate cost management practices are in place.⁶³

Another year has passed since FERC opened this inquiry. It is unknown when or if FERC will act in Docket Nos. RM21-17 and AD22-8, or whether it will address the problem raised in this Complaint. FERC action is needed now in this docket. Consumers in Ohio are paying billions for new local transmission infrastructure that is evading review by any regulatory authority.

When an issue is properly brought to FERC's attention in the context of a complaint proceeding, FERC responds to that complaint by acting on the issues raised regardless of whether a similar issue is pending in rulemaking proceedings.⁶⁴ OCC properly brings to FERC's attention the insufficient oversight of local transmission projects in Ohio. It has been at least five

⁶¹ *Transmission Planning and Cost Management*, Supplemental Notice of Technical Conference at 1, Docket No. AD22-8-000 (Jul., 22, 2022)

⁶² *Id.*, Agenda at 1.

⁶³ *Id.*

⁶⁴ *Indianapolis Power & Light, Co. v. Midcontinent Independent System Operator, Inc.*, 158 FERC ¶ 61,107 at P 71 (2017); *order on reh'g*, 162 FERC ¶ 61,266 at PP 46-47 (2018).

years since these concerns first surfaced. Ohio utilities continue to charge Ohio consumers for these costs, without the protection of regulatory oversight. It is unknown when, or if, FERC will act on this issue in the pending NOPR and Technical Conference proceedings. FERC must act on this Complaint now to rectify this problem for consumers in Ohio and other PJM states.

B. Ohio does not oversee the need for transmission facilities under 100 kV, and does not review the cost-effectiveness of any transmission facilities in Ohio.

The Ohio legislature established the Ohio Power Siting Board (“OPSB”) to oversee the environmental effects from, alternative locations for, and need for certain electric transmission facilities in Ohio.⁶⁵ Its authority is limited to siting transmission facilities rated at 100 kV and above.⁶⁶ However, many Supplemental Projects are rated below 100 kV. The OPSB does not review any these projects, regardless of size, for “cost effectiveness.” In its Report to the General Assembly, the OPSB stated that:

When the OPSB reviews proposed facilities under the current regulatory framework, it reviews the need for the project and how the facility fits into “regional expansion plans.” The need review that is currently undertaken by the OPSB is a very different analysis than that which goes on through the PJM RTEP process.”⁶⁷

The OPSB also does not review proposed rebuilds of existing transmission lines (unless those rebuilds include expansions of capacity). End-of-life projects could, but do not necessarily fall into this category. Ohio Rev. Code section 4906.04 states that “[t]he replacement of an

⁶⁵ Ohio Rev. Code, § 4906.03.

⁶⁶ *Id.* at § 4906.04 (subjecting “major utility facility” construction projects to OPSB oversight, but exempting replacements of an existing facility); *see also* Ohio Rev. Code at § 4906.01 (B)(1)(b) (defining a major utility facility as electric transmission facilities rated at 100 kV or larger).

⁶⁷ *In the Matter of the Ohio Power Siting Board’s Report to The General Assembly Regarding the Power Transmission System*, Public Utilities Commission of Ohio Case No. 21-796-EL-UNC (Nov. 18, 2021) (“OPSB Report Order”) (adopting the “Ohio Power Siting Board Report to the General Assembly Regarding the Power Transmission System”) (“OPSB Report”). This quote is found in the OPSB Report at 11-12. The OPSB Report Order concludes that “the report recognizes the rising transmission costs, but finds FERC and PJM are the most appropriate forums to address the issues.” OPSB Report Order at P 15, available on the web at <https://dis.puc.state.oh.us/ViewImage.aspx?CMID=A1001001A21K18B61640F01982>.

existing facility with a like facility, as determined by the power siting board, shall not constitute construction of a major utility facility.”⁶⁸

Moreover, the OPSB Report states:

...the OPSB is not a regional planner like PJM. And with the projects the OPSB currently reviews at 100 kV and above, those projects are subject to an additional level of review at the regional level by PJM to examine various aspects of those projects in the context of the larger regional transmission plan. Lowering the OPSB’s jurisdiction would not accomplish the same effect that could be accomplished by FERC directing the regional transmission planner, PJM, to review and approve those projects.

What is more, cost allocation would not change if the General Assembly were to lower the OPSB’s jurisdiction to 69 kV. As previously explained, cost allocation for transmission projects is subject to FERC jurisdiction. FERC currently requires that all lower voltage transmission projects costs are allocated entirely to customers in the entire transmission zone or “footprint” of the transmission utility within PJM.⁶⁹

In other words, the OPSB recommended that the Ohio General Assembly should not increase OPSB’s authority over local transmission project planning in Ohio. Rather, OPSB recommended leaving that regulatory oversight to FERC and PJM.

The PUCO likewise has declined to review the need, prudence and cost-effectiveness of these planned local transmission facilities in Ohio, despite OCC requesting it to do so.⁷⁰ In a recent order in a Duke transmission rate proceeding, the PUCO rejected OCC’s request. The PUCO explained that it was “participating in the active FERC case dockets to raise this very issue, among other transmission-related concerns, for FERC’s consideration,” citing the Docket

⁶⁸ Ohio Rev. Code, § 4906.04.

⁶⁹ OPSB Report Order, OPSB Report at 10.

⁷⁰ *In The Matter Of The Application Of Duke Energy Ohio, Inc. To Adjust And Set Its Base Transmission Rate Rider*, PUCO Case No. 23-457-EL-RDR (Sept. 20,2023), available at <https://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=3021fd2d-3a5a-4d98-8470-94758058366f>.

No. AD22-8 Technical Conference.⁷¹ The PUCO committed to remain “thoroughly engage[d]” with FERC to address this issue.⁷²

The PUCO further found that it was not, at that time, “persuaded that OCC’s concerns regarding supplemental transmission projects are cause to reject the Company’s otherwise properly supported application” to flow through transmission rate increases to retail customers.⁷³ In other words, the PUCO continues to sit on the sidelines and leave it to FERC to develop a plan for regulatory oversight of local transmission projects charged to Ohio consumers.

C. Supplemental Project costs comprise a significant part of the overall transmission charges to consumers in Ohio.

Based on the late-2021 OPSB Report and the existing PJM Tariff and Operating Agreement, it is not surprising that many of the Supplemental Projects in Ohio have not undergone regulatory review at the federal or state level for need, prudence or cost-effectiveness. The amounts at stake for Ohio consumers on their electric bills are enormous, totaling more than \$6 billion in Supplemental Projects over just the past six years.

⁷¹ *Id.* at P 14.

⁷² *Id.*

⁷³ *Id.*

Calendar Year ⁷⁴	Total Ohio Transmission Infrastructure (millions)	Supplemental Projects in Ohio (millions)	Supplemental Projects as a Percentage of Total
2022	\$761.97	\$658.34	86.4%
2021	\$1,630	\$1,244.2	76%
2020	\$1,120	\$1,093	97.6%
2019	\$1,000	\$775	77.5%
2018	\$2,300	\$2,189	95.2%
2017	\$1,370	\$527.5	38.5%

In other words, more than 85% of the estimated costs for proposed new transmission between 2018 and 2022 in Ohio are a function of utilities' spending on Supplemental Projects. Supplemental Projects in Ohio outstrip regional projects by 4 – 1. In 2019 alone, throughout PJM, planned Supplemental Projects totaled \$4.8 billion, of which more than 75% were end-of-life projects.⁷⁵ This trend is likely to continue. That is evidenced by AEP's announcement at investor meetings in 2021 that it plans to invest more than \$10 billion in new transmission

⁷⁴ The source for all years except 2018 is the PJM Annual Ohio Infrastructure Reports for 2017, 2019, 2020, 2021 and 2022. These reports are available on PJM's website at <https://www.pjm.com/-/media/library/reports-notices/state-specific-reports/2022/2022-ohio-state-infrastructure-report.ashx> (2022 Report); <https://www.pjm.com/-/media/library/reports-notices/state-specific-reports/2021/2021-ohio-state-infrastructure-report.ashx> (2021 Report); <https://www.pjm.com/-/media/library/reports-notices/state-specific-reports/2020/2020-ohio-state-infrastructure-report.ashx> (2020 Report); <https://www.pjm.com/-/media/library/reports-notices/state-specific-reports/2019/2019-ohio-state-infrastructure-report.ashx> (2019 Report); and <https://www.pjm.com/-/media/library/reports-notices/state-specific-reports/2017/2017-ohio-state-infrastructure-report.ashx> (2017 Report). The source for the 2018 data is the Ohio Power Siting Board Report to the General Assembly Regarding the Power Transmission system at 5 (Nov. 16, 2021). This Report is attached to the OPSB Report Order, available at <https://dis.puc.state.oh.us/ViewImage.aspx?CMID=A1001001A21K18B61640F01982>.

⁷⁵ Stakeholders' Proposal for End-of-Life Transmission Facilities at Slide 4, Presentation to the PJM Markets and Reliability Committee (Apr. 30, 2020), available at <https://pjm.com/-/media/committees-groups/committees/mrc/2020/20200430/20200430-item-08a-1-joint-stakeholder-package-end-of-life-package-presentation.ashx>.

facilities in PJM between 2021 and 2025.⁷⁶ Based on recent trends, 85% of that amount on average is likely to be local, Supplemental Projects. FirstEnergy also announced to shareholders in 2023 its continued commitment to an \$8 billion plan for new transmission between 2021 and 2025 “to help increase operational flexibility while allowing grid operations to respond more swiftly to variable conditions.”⁷⁷ It should be noted that, not incidentally, the utilities will charge consumers a profit on these enormous expenditures.

No regulatory authority stands between the utility and the Ohio consumers it will charge for these Supplemental Projects. Also, no regulatory body reviews the significant portion of Supplemental Projects known as End-of-Life projects, even when those End-of-Life projects are associated with regional transmission lines. This is because FERC has allowed these Supplemental Projects to evade PJM and FERC oversight for need, prudence and cost-effectiveness,⁷⁸ notwithstanding the requirements in Order Nos. 890 and 1000 requiring such review.

These Supplemental Projects in Ohio transmission have directly led to significant increases in Ohio consumers’ bills. Most of this increase is related to the significant expenditures Ohio utilities have funneled to Supplemental Projects that result in essentially unregulated charges on Ohioans’ regulated utility bills.

There currently is no means by which FERC can assure Ohio consumers that the rates they pay for transmission service are just, reasonable and not unduly discriminatory or

⁷⁶ Morgan Stanley Fireside Chat and Investors Meeting, Slide 40, American Electric Power (June 1, 2021), available at <http://www.aep.com/Assets/docs/investors/events/presentationsandwebcasts/MSFiresideChatPresentation060121.pdf>

⁷⁷ Remarks of Board Chair, Interim President and Chief Executive Officer John W. Somerhalder, 2023 Annual Meeting of Shareholders (May 24, 2023), available at https://www.firstenergycorp.com/newsroom/news_articles/2023-shareholder-address.html.

⁷⁸ *PJM Interconnection, L.L.C., et al.*, 172 FERC ¶ 61,136 at P 81.

preferential. Neither FERC nor the states are overseeing the planning, need, prudence and cost-effectiveness of such projects. This regulatory Catch 22 leads to unjust, unreasonable, and duly discriminatory and preferential transmission rates for consumers in Ohio. Ohio consumers deserve better, much better, from their government. FERC should provide a solution for Ohio consumers.

D. FERC has jurisdiction over transmission rates and thus transmission planning processes in retail choice states.

FERC has the jurisdictional obligation and authority to oversee the justness and reasonableness of transmission rates for Ohio consumers. In *New York v. FERC*,⁷⁹ the United States Supreme Court (“Supreme Court”) found that FERC may properly exercise authority over electric transmission service in retail choice states like Ohio.⁸⁰ In that case, the Supreme Court upheld FERC’s decision in Order No. 888 to exercise jurisdiction over unbundled transmission rates, but to defer to the states with respect to bundled transmission rates. The Supreme Court stated:

To remedy the wholesale discrimination it found, FERC chose to regulate all wholesale transmissions. It also regulated unbundled retail transmissions, as was within its power to do. See Part III, *supra*.⁸¹

Here, planning for local transmission facilities should not be misunderstood as planning over local distribution facilities that are uniquely subject to exclusive state jurisdiction. Local transmission projects are not the same as local distribution projects. The former are integrated with the interstate transmission system, and are subject to FERC’s jurisdiction over transmission

⁷⁹ *New York v. FERC*, 535 U.S. 1 (2002) (affirming FERC’s authority to regulate unbundled transmission rates in retail choice states).

⁸⁰ *Id.* at 23-24, 26-28.

⁸¹ *Id.* at 26-27.

services.⁸² *New York* makes clear that all transmission facilities, regardless of size or the local nature of the transmission, are subject to FERC's jurisdiction.

The integrated nature of the PJM transmission grid makes all transmission capable of being used for interstate commerce, regardless of whether the lines cross a state's boundary or a transmission owner's zone. In *New York*, the Supreme Court found that:

Section 201(b) of the FPA states that FERC's jurisdiction includes "the transmission of electric energy in interstate commerce" and "the sale of electric energy at wholesale in interstate commerce." 16 U. S. C. § 824(b). The unbundled retail transmissions targeted by FERC are indeed transmissions of "electric energy in interstate commerce," because of the nature of the national grid.⁸³

Thus, FERC has an obligation to protect all transmission customers with respect to the cost, and planning for the integrated transmission grid whether those transmission projects be local or regional in nature.⁸⁴

FERC's authority over transmission extends to planning and rates to consumers. FPA section 205 makes clear that FERC has jurisdiction to determine the justness and reasonableness of rates, terms and conditions of services, and practices that directly affect rates.⁸⁵ Because the costs of new additions to transmission plant will be included in the rates paid by consumers, the need for these new transmission projects and the related costs drive many transmission rate increases. Thus, the planning for these local plant additions is a practice that directly affects rates – especially where no regulatory authority is overseeing that process, much to the detriment

⁸² *Id.* at 17.

⁸³ *Id.* at 16-17.

⁸⁴ *Id.*

⁸⁵ 16 U.S.C. § 824d(a); *see e.g., Monongahela Power*, 162 FERC ¶ 61,129 at P 97 ("given that the PJM Transmission Owners bear primary responsibility to plan Supplemental Projects, we find that it is just and reasonable for the provisions governing the Supplemental Project transmission planning process to be contained within the PJM OATT").

of the Ohio consumers paying those rates. As FERC recognized in Order Nos. 2000, 890 and 1000, transmission planning is an integral part of ensuring that transmission rates are just and reasonable.⁸⁶ That is especially true when considering the integrated nature of the transmission grid. Thus, even though a particular part of the grid may be considered local rather than regional, it is still possible for interstate power to flow over local transmission lines. It is this interstate potential that subjects these local transmission lines to FERC's jurisdiction.

FERC has an obligation to protect Ohio consumers from unjust and unreasonable rates associated with the planning, need, prudence and cost-effectiveness of new transmission infrastructure. As evidenced by its orders in PJM Docket No. ER20-2046, FERC has deferred to state regulation over the cost and planning for local or Supplemental Projects, even in retail choice states. However, as discussed in section IV.B above, neither the PUCO nor the Ohio Power Siting Board reviews local transmission projects for the need, prudence and cost-effectiveness of locally planned transmission expansions in Ohio. PJM's Tariff defines transmission facilities as all lines performing a transmission function rated at 69 kV and above. That means that a large category of Supplemental Projects in Ohio currently escape any regulatory oversight for need, prudence, and cost-effectiveness.

The PUCO and Ohio Power Siting Board have declined to review the justness and reasonableness of the rates charged to consumers for these Supplemental Projects. The Ohio Power Sighting Board concluded that FERC and PJM should address the issues. The Board also reported that that even if the board's jurisdiction could be changed to address transmission

⁸⁶Order No. 2000 at 31,164; Order No. 890 at P 495; Order No. 1000 at P 148.

facilities at 69 kV (which would largely be supplemental projects), it could not accomplish the type of review and approval that PJM could.⁸⁷

Whether the regulatory gap is due to perceived lack of jurisdiction or inaction by the PUCO and the Ohio Power Siting Board or by other authorities, Ohio consumers are the ones paying the price, and that is wrong. FERC should end the finger-pointing and exercise jurisdiction over Supplemental Projects in Ohio for the protection that Ohio consumers are not receiving from their government. All four of the major Ohio transmission utilities have formula transmission rates on file with FERC. Any changes to those rates are subject to FERC's jurisdiction including the annual review processes provided for in each utility's FERC-jurisdictional formula rate protocols.

In Order No. 1000, FERC found that “there is a fundamental link between cost allocation and planning, as it is through the planning process that benefits which are central to cost allocation can be assessed.”⁸⁸ Cost allocation determinations, in turn, are inherently a fundamental component of the determination of the justness and reasonableness of transmission rates. Yet no entity – not the PUCO, not the Ohio Power Siting Board, not PJM and not FERC oversees the planning process for most local projects in Ohio, or the need, prudence and cost-effectiveness of those planned local transmission projects. Billions of dollars are being spent on transmission infrastructure in Ohio, at consumer expense, with no regulatory oversight for those projects.

The sheer magnitude of expenditures for local transmission projects in Ohio demands the need for federal regulatory oversight for Ohio consumers. FERC should meet its obligation to

⁸⁷ See *supra*, n.67.

⁸⁸ Order No. 1000 at P 559.

oversee the planning for these Supplemental Projects and the justness and reasonableness of transmission rates to consumers to collect the costs of these projects. FERC is obligated to review the need, prudence and cost-effectiveness of these projects to consumers in retail choice states. The fact that FERC has generally deferred to state regulatory authorities for the exercise of that oversight does not mean that FERC can ignore its obligation for transmission planning and cost oversight when serious inadequacies in the process are brought to its attention.

The fact that some states have no oversight authority for some or all local transmission projects requires that FERC fulfill its primary obligation to provide a “complete, permanent and effective bond of protection from excessive rates and charges” for consumers.⁸⁹ FERC can and should require a backstop mechanism to review the need, prudence and cost-effectiveness of local transmission projects in Ohio, where no state regulatory authority undertakes that task. To protect Ohio consumers, these projects should not escape regulatory oversight for even another day, much less years.

E. FPA Section 206 complaints and formula rate review processes are inadequate remedies for consumers because the projects are often already constructed by the time the complaint or challenge is resolved.

FERC procedures for review of the costs associated with Supplemental Projects through FPA section 206 complaints or through rate cases do not provide adequate remedies to Ohio consumers. FPA section 206 provides consumers the right to file a complaint against a public utility for excessive rates. However, that statute provides both insufficient protection and an inefficient solution for consumers.

First, the filing of the complaint means that the cost review will occur after the project has already been selected for construction, and after construction starts. Section 206 complaints

⁸⁹ *Atl. Ref. Co. v. Pub. Serv. Comm'n*, 360 U.S. 378, 388 (1959).

often take a year, or longer if the case is set for hearing or settlement procedures, before a final order is issued. By that time, construction on the challenged project has often already begun.

Second, the statute imposes on consumers filing the complaint a hard-to-meet burden to prove that the existing rates are unjust and unreasonable. That burden is difficult to meet in an environment where the transmission owners control access to the information. Additionally, there is no obligation on the Transmission Owner to consider potentially lower cost alternatives.

Third, complaint proceedings often entail lengthy and expensive litigation for consumers operating on limited budgets, against lawyered-up monopolies. Finally, the refund protection provided in FPA section 206 is insufficient because it is in effect only for the first 15 months of a litigation process that could last several years. During this period, construction is likely continuing and could indeed be completed on the local project. Once the project is started or completed, it will be extremely difficult to convince a regulatory authority that a less expensive project should have been considered, or that the costs of the existing construction should not be collected from consumers.

This same timing problem exists with the rate review alternative under an FPA section 205 rate case filed by the utility. In such a proceeding, the burden of proof on the consumer is lower and refund protection is better than in complaint proceeding. But where those FPA section 205 proceedings are formula rate proceedings, they do not provide sufficient consumer protection.

FERC has authorized transmission utilities operating in Ohio to use formula transmission rates. Consumers would be able to ask for discovery on the new transmission facilities in rates. But, like the formal complaint process, the length of full evidentiary hearings, whether undertaken in a FPA section 205 proceeding or a transmission formula rate annual update review

process, will delay relief until after construction of the project has begun or has been completed. Post-construction relief will be difficult to formulate and thus provides an inadequate remedy for consumers.

Ohio consumers need a pre-construction review process for Supplemental Projects to ensure that the Order No. 890 and Order No. 1000 objectives of cost-efficient planning and lower costs is achieved. Both Order Nos. 890 and 1000 recognize the importance of pre-construction review and the need for consumer input during the planning stage for both local and regional transmission projects.⁹⁰ Moreover, requiring RTOs to undertake the obligation for planning for all transmission projects in their footprint is consistent with Order No. 2000. That order recognizes the important benefits to be gained regarding cost-effective pre-construction transmission planning and expenditures.⁹¹ Post-construction remedies for consumers will not allow FERC to achieve these policy objectives.

F. Remedy: FERC should implement a backstop mechanism that would require it to review the need, prudence and cost-effectiveness of Supplemental Projects in Ohio.

No project should fall into the regulatory gap that currently exists where the need, prudence and cost-effectiveness of Supplemental Projects in Ohio are neither reviewed nor approved by federal or state regulatory authorities. This regulatory Catch 22 is an abdication of federal regulatory responsibility for consumer protection, with unfair results for consumers.⁹²

In Order No. 890, FERC extended the planning requirements to local transmission projects. It explained that both regional and local transmission planning processes should result

⁹⁰ Order No. 890 at P 425; Order No. 1000 at P 148.

⁹¹ Order No. 2000 at 31,163-64.

⁹² Currently, more than 75% of the costs of new transmission projects in Ohio escape review by both regional and state regulatory authorities, yet in Ohio, from 2018 through 2022, these local Supplemental Projects totaled more than \$5.9 billion. *See supra*, n.67. The PJM Reports do not include costs for Supplemental Projects under \$5 million.

in the most efficient, cost-effective solution for all the transmission needs in the region, including local needs. The concerns that led to that directive remain with respect to the local transmission planning process in Ohio.

FERC must develop an appropriate remedy when it finds an existing Tariff, rate or practice unjust and unreasonable. *See, e.g.,* 16 U.S.C. §824e⁹³; *see also La. Pub. Serv. Comm’n v. FERC*, 522 F.3d 378, 394 (D.C. Cir. 2008) and *Verso Corp. v. FERC*, 898 F.3d 1 (D.C. Cir. 2018), *cert. denied*, 139 S. Ct. 2044 (2019) (affirming in section 206 complaint proceeding implementation of tariff remedy and refunds to correct unjust and unreasonable cost allocation). In a section 206 proceeding, “FERC’s remedial choice is lawful if the agency has examined the relevant data and articulated a rational connection between the facts found and the choice made.” *La. Pub. Serv. Comm’n v. FERC*, 522 F.3d at 391 (internal quotations omitted).

OCC is proposing additional recommendations FERC should consider to redress this problem – in order of preferred remedy. Any remedy should incorporate the following fundamental objectives.

- The remedy should provide for timely regulatory review of local transmission planning projects before construction starts to ensure that utilities are constructing only local transmission projects that are needed, prudent and cost-effective.
- The remedy should provide for an expedited process for immediate-need reliability projects regulated by FERC and should include a cost threshold at which, or above which, all local transmission projects in Ohio will be reviewed by a regulatory authority.

Each of these objectives is incorporated in the alternative proposals suggested below.

⁹³ FPA section 206 states that “[w]henver the Commission, after a hearing held upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order.”

1. FERC should develop a backstop mechanism that would be included in the PJM Tariff.

This remedial mechanism should require the Ohio Transmission Owners to file with FERC for approval of local transmission projects planned each year *prior to beginning construction of any of the local transmission projects*. This would include review of the need, prudence and cost-efficiency of these projects. The mechanism should include a relatively low construction cost threshold, to be determined by FERC, for seeking prior FERC approval of these Supplemental Projects. Such a threshold would avoid a situation in which a utility would have to seek prior FERC approval of every repair project on a local transmission line.

FERC also should require this mechanism to include an expedited process for prior FERC-approval of immediate-need reliability projects. That process should include the criteria for what would constitute an immediate-need reliability project. This process would work much as PJM's RTEP process works today. FERC would develop a plan that is consistent with Order Nos. 890 and 1000 transmission planning criteria. The plan would require the Ohio Transmission Utilities to hold at least three meetings with stakeholders, publish a list of local transmission needs, publish a list of possible solutions to these needs, solicit stakeholder comments and alternative suggestions, and result in an annual list of local transmission projects to be submitted to FERC for its approval each year.

2. FERC also should develop an Independent Transmission Monitor that would review all local transmission projects in Ohio.

The Independent Transmission Monitor would oversee the Ohio Transmission Utilities' local transmission planning processes. The ITM also could assist FERC in overseeing the PJM regional transmission planning process – including review of the need for the projects, the prudence of the projects, and the cost-effectiveness of the projects. The ITM would report recommendations to FERC. Regardless of whether FERC pursues this option, its review of all

Ohio Transmission Utilities Supplemental Projects should be put into effect immediately. FERC should not await the creation of an ITM before it implements a review remedy for Ohio consumers.

3. FERC also should consider requiring the Ohio Transmission Utilities to use only a stated-rate approach to determining transmission rates in Ohio.

Each of the current Ohio Transmission Utilities uses a formula rate approach to establishing transmission rates. However, as discussed in section IV.E above, that approach does not provide sufficient opportunity for regulatory oversight of local transmission project plans. A stated rate review process would better ensure that local transmission projects could be reviewed for need, prudence and cost-effectiveness in the confines of a full evidentiary hearing under FPA section 205. This approach would provide greater protections for consumers, allowing for sufficient time to investigate the need, prudence and cost-effectiveness of the proposed Supplemental Projects.

The Ohio Transmission Utilities would determine the need for and timing of such FPA section 205 rate cases. But they should not be allowed to include new local transmission projects in their rates until those planned projects have been subject to FERC scrutiny in a FPA section 205 rate case. This remedy also should include a separate process for immediate-need reliability projects and a threshold cost floor for local projects to be reviewed.

If FERC decides instead to retain a formula rate approach for collection of the costs of local transmission projects by Ohio Transmission Utilities, there should be no rebuttable presumption of reasonableness, need, prudence or cost-efficiency for Ohio local transmission projects. Instead, the utilities should be required to submit a *prima facie* case of reasonableness, need, prudence and cost-effectiveness with each annual update posting. Review of the *prima facie* evidence should occur before construction begins on these projects. In the alternative,

FERC could require the process to include an opportunity for consumers to request a stay of construction for contentious projects during the pendency of the review process if that process does not occur prior to the inclusion of the project costs in rates.

- 4. If FERC rejects all of the above proposals, it should develop a remedy that is just, reasonable, not unduly discriminatory and not unduly preferential for a pre-construction review of the need, prudence and cost efficiency of local transmission projects developed by Ohio Transmission Utilities.**

FERC retains the obligation to ensure that transmission rates charged by the Ohio Transmission Utilities are just, reasonable, not unduly discriminatory and not unduly preferential. The courts have found that FERC has considerable discretion in fashioning remedies. *See, e.g., Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967) (the scope of agency discretion is “at zenith” when the action assailed relates to fashioning remedies). FERC can develop that remedy from the facts submitted in the record. *Exxon Co., USA v. FERC*, 182 F.3d 30, 48 (D.C. Cir. 1999) (citing *Towns of Concord, Norwood, & Wellesley v. FERC*, 955 F.2d 67, 76 (D.C. Cir. 1992)).

A remedy to protect Ohio consumers should invoke both FERC’s and the state’s traditional regulatory roles in overseeing the provision of transmission service and transmission rates charged to Ohio consumers. FERC should set out the parameters for what an adequate remedy should include. The remedy should not be left to PJM or the Ohio Transmission Utilities.

Those parameters should satisfy the Order Nos. 890 and 1000 transmission planning requirements for regional transmission projects, as proposed in the 2022 NOPR in Docket No. RM21-17-000. The remedy should require FERC to adopt a mechanism that requires pre-approval of the Ohio local transmission projects each year, including a cost estimate and allocation for each project, as it does for the regional transmission project planning process.

V. ADDITIONAL INFORMATION REQUIRED BY RULE 206.

In compliance with Rule 206, OCC submits the following information:

1. Basis for Complaint (18 C.F.R. §§ 385.206(b)(1) and (2))

Billions of dollars in local transmission projects known as Supplemental Projects in PJM evade review by both state and federal regulatory authorities. Ohio consumers pay for these supplemental projects through transmission charges on their bills. FERC must fulfill its primary obligation of making sure that the transmission rates paid by consumers in Ohio are just, reasonable, and not unduly discriminatory or preferential. Where there is no regulatory authority overseeing the need for these projects or the justness and reasonableness of the associated costs, FERC has delegated this obligation to RTOs. But PJM's Tariff and the Ohio Transmission Utilities' formula rates included therein lack a process for guaranteeing adequate regulatory oversight of the need, prudence and cost-effectiveness of Supplemental Projects in Ohio. PJM's Tariff, the PJM Operating Agreement and the Ohio Transmission Utilities' transmission rates are thus unjust, unreasonable, and unduly discriminatory and preferential.

2. Business, Commercial, Economic or Other Issues Presented (18 C.F.R. § 385.206(b)(3))

The cost to consumers of no oversight of these Supplemental Projects is enormous. In the past six years, Ohio consumers have been charged for more than \$6 billion in Supplemental Projects that are planned, are already constructed, or will have construction underway. Ohio represents 20% of the load in PJM. These significant increases in transmission rates for 20% of the load in PJM, which receive no regulatory oversight, are not just and reasonable.

3. Good Faith Estimate of Financial Impact or Burden (18 C.F.R. § 385.206(b)(4))

OCC has been unable to determine the exact financial impact or burden being imposed on Ohio consumers or consumers region-wide in PJM. One reason quantification is so difficult is

that there is a lack of information as to whether there are less expensive alternatives that could have been chosen in the local transmission planning process. Nevertheless, OCC has estimated that since 2017, Ohio consumers have paid, and continue to pay, for more than \$6 billion and growing expenditures for new local transmission infrastructure in PJM.

4. Practical, Operational, or Other Nonfinancial Impacts Imposed (18 C.F.R. § 385.206(b)(5))

OCC is not aware of any practical, operational or other non-financial impacts associated with the concerns raised in this Complaint. The solution is within FERC's jurisdictional authority. FERC should develop a mechanism that will ensure that it reviews the need, prudence and cost-effectiveness of local transmission facilities in Ohio. Such a directive is consistent with FERC's Order No. 890 and 1000 transmission planning policies to ensure that all transmission in a region is planned in a cost-effective and cost-efficient manner for consumers. That mechanism should include an Independent Transmission Monitor to assist in the review. Additionally, FERC should consider requiring PJM and the Ohio Transmission Utilities to remove the formula transmission rate provisions for these utilities from the PJM Tariff, and require them instead to use stated rates moving forward.

5. Whether the Issues Presented Are Pending in Other Proceedings (18 C.F.R. § 385.206(b)(6))

The issue raised by OCC in this Complaint is whether the PJM Tariff and Operating Agreement are unjust and unreasonable because they lack regulatory oversight of the need, prudence and cost of local transmission projects in Ohio. No mechanism exists by which FERC can make sure that the need, prudence and cost-effectiveness of local transmission projects in

Ohio result in just and reasonable rates for Ohio consumers. To OCC's knowledge, this precise issue has not been raised in other adjudicative proceedings before FERC.

There are related proceedings pending in the District of Columbia Circuit Court of Appeals in Case Nos. 20-1449 *et al*, the appeals from FERC's orders in Docket Nos. ER20-2046 and ER20-2308. The issues raised in Docket Nos. ER20-2046 and ER20-2308 involve the question of whether PJM has the right to undertake local planning for Supplemental Projects. Any opinion issued by the D.C. Circuit Court appeals in those cases will not decide the question posed in this case. Those cases do not involve the issue here: FERC's obligation to ensure just, reasonable and not unduly discriminatory or preferential rates for consumers in Ohio. However, the remedy selected here may be affected by the outcome of the D.C. Circuit Court's opinion. That will turn upon whether the Court finds that FERC was correct in determining that PJM has no authority over the local transmission plans of its members.

Additionally, there is an issue pending before FERC in several rulemaking proceedings as to whether FERC should expand RTO transmission planning obligations to encompass local transmission plans. That issue is pending in Docket Nos. RM21-17 and AD22-8. However, where an issue is properly raised in a complaint proceeding, as it is here, the fact that the issue may be pending in a Notice of Proposed Rulemaking and a Technical Conference docket does not relieve FERC from the obligation of addressing the issue properly raised in the Complaint.

6. Specific Relief or Remedy Requested (18 C.F.R. § 385.206(b)(7))

OCC is requesting that FERC develop a mechanism for review of the need, prudence and cost-effectiveness of Supplemental Projects in Ohio, implement an Independent Transmission Monitor for local transmission project planning in Ohio, consider directing the Ohio Transmission Utilities to return to stated rates for transmission services, and/or implement a

solution that will provide the regulatory oversight needed in Ohio for such Supplemental Projects.

7. Documents that Support the Facts in the Complaint (18 C.F.R. § 385.206(b)(8))

The documents that support the facts in the Complaint are cited in the Complaint. Where available, either links to the documents have been provided, or the FERC Accession Number is provided where the filing is available in FERC's e-library website.

8. Whether Alternative Dispute Resolution Processes Were Used and Whether Those Processes Might Resolve the Dispute (18 C.F.R. § 385.206(b)(9)(i) and (ii))

OCC has not made use of the Enforcement Hotline, Dispute Resolution Service, tariff-based dispute resolution mechanisms, or other informal dispute resolution procedures. Given the long and contentious history of the insufficiency of PJM's Supplemental Project transmission planning process and the pending litigation in the D.C. Circuit Court of Appeals in Case Nos. 20-1449 et al., OCC believes that further dispute resolution efforts would not be fruitful.

9. Form of Notice (18 C.F.R. § 385.206(b)(10))

A form of notice of the filing of this Complaint, suitable for publication in the Federal Register, is provided as Attachment 1.

10. Service (18 C.F.R. § 385.206(c))

A copy of this filing is being served on this date on the following representatives of PJM Interconnection, L.L.C. and the Ohio Transmission Utilities designated as corporate officials for each company, as required by FERC regulations and as found on <https://www.ferc.gov/electric-matters-d>:

For PJM Interconnection, L.L.C.

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The FERC website states that service should be made on Mr. DeVita and Mr. Pincus. It does not require service on Mr. O'Hara. We nevertheless included Mr. O'Hara because it is our understanding that he is the current in-house General Counsel for PJM.

For AEP Service Corporation, AEP Ohio Power and AEP Ohio Transmission:

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For AES Ohio (a/k/a The Dayton Power and Light Company):

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For Duke Energy Ohio, LLC:

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In addition, a copy of this Complaint is being served on this date on the following
“affected regulatory agencies” pursuant to Commission Rule 206(c):

<p>Ms. Tanowa M. Troupe, Secretary Public Utilities Commission of Ohio 180 East Broad Street, 11th Floor Columbus, Ohio 43215-3793 (614) 466-4095</p>	<p>Kentucky Public Service Commission Office of the Executive Director P. O. Box 615 211 Sower Boulevard Frankfort, Kentucky 40602-0615 (502) 564-3940</p>
<p>Indiana Utility Regulatory Commission Attn: General Counsel Suite 1500 East 101 W. Washington Street Indianapolis, Indiana 46204 (317) 233-6140 Email: urcgeneralcounsel@urc.in.gov</p>	<p>Maryland Public Service Commission Andrew S. Johnson, Executive Secretary William Donald Shaefer Tower 6 St. Paul Street, 16th Floor Baltimore, MD 21202 410-767-8067</p>
<p>New Jersey Board of Public Utilities Office of the Secretary – 609-292-1554 P. O. Box 350 44 S. Clinton Avenue Trenton, NJ 08625</p>	<p>Michigan Public Service Commission Executive Secretary and the Attorney General Public Service Division 7109 W. Saginaw Highway (Street Address) Lansing, MI 48917 P. O. Box 30221 (Mailing Address) Lansing, MI 48909 (517) 284-8140</p>
<p>Public Utilities Commission of Pennsylvania Secretary of the Commission Keystone Building, 2nd Floor 400 North Street Harrisburg, PA 17120 (717) 772-7777</p>	<p>Virginia State Corporation Commission Attn: Public Utility Regulatory Division 1300 East Main Street, 4th Floor Richmond, VA 23219 (804) 371-9611 UtilityReg@scc.virginia.gov</p>
<p>Attn: Karen Buckley, Executive Secretary Public Service Commission of West Virginia 201 Brooks Street Charleston, West Virginia 25301 (304) 340-0300</p>	<p>Attn: Brinda Westbrook, Secretary District of Columbia Public Service Commission 1325 G Street, N.W., Suite 800 Washington, D.C. 20005 202-626-5100</p>

<p>Matt Hartigan, Executive Director Delaware Public Service Commission 861 Silver Lake Boulevard Cannon Building, Suite 100 Dover, DE 19904 (302) 736-7500</p>	<p>Attn: CSD Illinois State Commerce Commission Leland Building 527 East capital Avenue Springfield, Illinois 62701 217-782-2024</p>
<p>Attn: Clerk’s Office North Carolina Utilities Commission 4325 Mail Service Center Raleigh, NC 27699 (919) 733-7328</p>	<p>Attn: Consumer Services Division Tennessee Public Utility Commission 502 Deaderick Street 4th Floor Nashville, TN 37243 (615) 741-2904</p>

OCC is not aware of other entities that it “reasonably knows may be expected to be affected by the complaint” on whom service would be required under Rule 206(c).

11. Request for Establishment of Refund Effective Date and Statement Regarding “Fast Track Processing.”

FERC should set a refund effective date in this proceeding that is the earliest date possible, *i.e.*, the date of the filing of the complaint. Federal Power Act section 206(b), provides in relevant part:

Whenever the Commission institutes a proceeding under this section, the Commission shall establish a refund effective date. In the case of a proceeding instituted on complaint, the refund effective date shall not be earlier than the date of the filing of such complaint nor later than 5 months after the filing of such complaint.

Setting the refund effective date at the earliest possible time would be consistent with the Commission’s long-standing policy of providing maximum refund protection to customers.⁹⁴

⁹⁴ See, e.g., *East Tex. Elec. Coop. v. Pub. Serv. Co. of Okla.*, 166 FERC ¶ 61,020, P 42 (2019), citing *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993) and *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539, *reh’g denied*, 47 FERC ¶ 61,275 (1989).

OCC is also requesting “Fast Track processing” of this Complaint under Commission Rule 206(h). There are no facts and no law in dispute. The PJM Tariff and Operating Agreement make clear that Supplemental Projects are not subject to PJM oversight. In states like Ohio there is no regulatory oversight for these projects and no means for FERC to make sure that transmission rates in these states are just and reasonable for consumers. The costs to consumers are enormous, totaling almost \$6 billion in Ohio in just the past six years.

There are no time limits within which FERC must act on a complaint filed under Rule 206. Consequently, Ohio consumer transmission rates are likely to continue to evade regulatory oversight for new transmission projects known as Supplemental Projects. Continued delay in providing appropriate pre-planning relief can only increase the harm for Ohio consumers as each day passes.

VI. CONCLUSION

FERC should grant the Ohio Consumers’ Counsel’s Complaint and expedite the processing of this Complaint to grant relief to Ohio consumers at the earliest possible date. FERC also should set the date of the filing of the Complaint as the refund effective date. And

FERC should grant such other and further relief as it deems appropriate for protection of Ohio consumers.

Respectfully submitted,

Bruce Weston
Ohio Consumers' Counsel

/s/ Angela O'Brien
Angela O'Brien
Deputy Consumers' Counsel

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Special Counsel to the Ohio Office of the Attorney
General for the Office of the Ohio Consumers'
Counsel

September 28, 2023

CERTIFICATE OF SERVICE

I hereby certify that I have on this date served a copy of the foregoing document via electronic mail upon PJM Interconnection, L.L.C., American Electric Power Service Corporation, AEP Ohio Power Company, AEP Ohio Transmission Company, American Transmission Systems, Inc., AES Ohio, a/k/a The Dayton Power and Light Company, and Duke Energy Ohio, LLC. I have also served a copy of the foregoing document via hard copy United States First Class Mail or overnight delivery to the Public Utilities Commission of Ohio, the Public Service Commission of Kentucky, the Indiana Utility Regulatory Commission, the Maryland Public Service Commission, the Michigan Public Service Commission, the New Jersey Board of Public Utilities, the Public Utilities Commission of Pennsylvania, the Virginia State Corporation Commission, the Public Service Commission of West Virginia, the Public Service Commission of the District of Columbia; the Delaware Public Service Commission; the Illinois State Commerce Commission; the North Carolina Utilities Commission; and the Tennessee Public Utility Commission.

Dated at Washington, D.C. this 28th day of September 2023.

By: /s/ Wendy Simon Pearson
Wendy Simon Pearson

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

The Office of the Ohio Consumers' Counsel, Complainant, v. PJM Interconnection, L.L.C., American Electric Power Service Corporation, on behalf of Ohio Power Company and AEP Ohio Transmission Company, American Transmission Systems, Inc., AES Ohio, a/k/a The Dayton Power and Light Company, and Duke Energy Ohio, LLC Respondents. Docket No. EL23-___-000

NOTICE OF COMPLAINT

(September __, 2023)

Take notice that on September 28, 2023, pursuant to sections 206, 306 and 309 of the Federal Power Act, 16 U.S.C. §§ 824e, 825e and 825h, and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2023), the Office of the Ohio Consumers' Counsel ("OCC" or "Complainant") filed a formal complaint against PJM Interconnection, L.L.C.; American Electric Power Service Corporation on behalf of Ohio Power Company and AEP Ohio Transmission Company; American Transmission Systems, Inc.; AES Ohio, a/k/a The Dayton Power and Light Company; and Duke Energy Ohio, LLC. The Complaint alleges that the PJM Open Access Transmission Tariff and Operating Agreement are unjust, unreasonable, and unduly discriminatory and preferential, because they contain no mechanism by which the Commission can oversee the need, prudence and cost-effectiveness of local transmission projects in Ohio. The Complaint requests that the Commission develop a mechanism by which it will oversee the need, prudence and cost-effectiveness of local transmission projects in Ohio, and for other relief as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts for each Respondent and on the each state regulatory commission in which each Respondents operates in PJM.

The Complaint seeks FAST TRACK PROCESSING.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on October __, 2023.

Kimberly D. Bose,
Secretary.