

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

<b>Application of Dayton Power &amp; Light Company to Establish Incentive Rate Treatment for Qualifying Transmission Projects Pursuant to Sections 205 and 219 of The Federal Power Act and Request for Waivers</b>	)	<b>Docket No. ER20-1068</b>
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<b>The Dayton Power and Light Company Application to Establish a Formula Rate; Modify Rates in the PJM Open Access Tariff, And for Waivers of Specified Filing Requirements Associated with Rate Changes</b>	)	
	)	
	)	<b>Docket No. ER20-1150</b>
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**COMMENTS AND PROTEST  
SUBMITTED ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF OHIO’S  
OFFICE OF THE FEDERAL ENERGY ADVOCATE**

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**I. Introduction**

Pursuant to the Federal Energy Regulatory Commission’s (Commission or FERC) Rules of Practice and Procedure, 18 C.F.R. § 385.211, the Public Utilities Commission of Ohio’s Office of the Federal Energy Advocate (Ohio FEA) submits the following comments and protest in response to Dayton Power & Light Company’s (DP&L or the Company) applications to both establish a formula rate mechanism, including a Return on Equity (ROE) for all its transmission services in Docket No. ER20-1150 and to adopt incentive rates for recovery of costs for certain transmission projects planned to be in service before the end of 2024 in Docket No. ER20-1068. The incentive-based projects, part of DP&L’s Transmission Enhancement Plan (TEP), are estimated to cost \$170 million and represent a 40 percent increase from the Company’s 2018 gross

transmission investment. DP&L asserts that the projects are needed to meet North American Electric Reliability Corporation (NERC) reliability criteria and to reduce outages in the Dayton zone of the PJM Interconnection, LLC (PJM).

The Ohio FEA provides comments and protests this application to the extent, as described more fully below, that it produces an unjust and unreasonable outcome to Ohio retail customers of DP&L's transmission services. The Ohio FEA intervened in these dockets on March 11, 2020. Comments are due on or before March 17, 2020 in Docket No. ER20-1068 and March 24, 2020 in Docket No. ER20-1150.

## **II. Background**

To allow for the implementation of the requested incentives and their reflection in rates, DP&L asked FERC in Docket No. ER20-1150 to allow DP&L to diverge from the company's fixed, stated rates and to establish a formula-rate mechanism, including a base ROE, to set transmission rates that would be trued-up and reset annually. DP&L forecasts that under its current stated rate, its revenues will not be sufficient to maintain reliable service. DP&L asserts that it has not had a transmission rate increase since 1998 and has the lowest network transmission rate of Ohio's investor-owned utilities.

DP&L explains that its ROE, reflected in its proposed transmission formula rate, is based on analysis by DP&L witness McKenzie. Mr. McKenzie supports a 10.39% ROE within a zone of reasonableness identified as 7.71% to 12.91% with a 50-basis point adder for DP&L's membership in PJM. The results in DP&L's proposed overall ROE in the formula rate of 10.89%. DP&L states that the remaining elements of its formula rate establish an overall return on investment are DP&L's actual debt costs and actual capital structure.

While DP&L looks to the future to establish its formula rate mechanism, it relies upon the past to make its case for transmission incentives in Docket No. ER20-1068 that FERC itself has called into question. Section 1241 of the Energy Policy Act of 2005 (EPAct 2005),<sup>1</sup> added a new section 219 to the Federal Power Act (FPA).<sup>2</sup> In 2006, the Commission implemented section 219 by issuing Order No. 679,<sup>3</sup> which established by rule incentive-based rate treatments for investment in electric transmission infrastructure for the purpose of ensuring reliability and reducing transmission congestion. Among other things, Order 679 established a 50 basis-point incentive for RTO membership, allowed 100 percent of prudently incurred costs for abandoned projects in rate base, and created ROE adders for transmission development and including 100 percent of Construction Work in Progress (CWIP) to be added to rate base. DP&L relies upon those elements of Order 679 in its application for incentive rates now.

The Ohio FEA, acting on behalf of Ohio's retail customers, submitted comments in the Transmission Incentive NOIs on June 26, 2019 that advocate moderation, if not outright elimination, of the Order 679 incentives and complete revision of FERC's existing ROE methodology.<sup>4</sup> To date, almost a year after initiation of the Transmission Incentive NOIs, FERC has not taken any further action.

### **III. Summary of Recommendations**

The Ohio FEA does not disagree that formula-based transmission rates may more appropriately balance revenues and investments. However, as FERC is aware, moving from a

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<sup>1</sup> Energy Policy Act of 2005, Pub. L. No. 109-58, sec. 1261 et seq., 119 Stat. 594 (2005).

<sup>2</sup> 16 U.S.C. 824s (2006).

<sup>3</sup> Promoting Transmission Investment through Pricing Reform, Order No. 679, 116 FERC ¶ 61,057, order on reh'g, Order No. 679-A, 117 FERC ¶ 61,345 (2006), order on reh'g, 119 FERC ¶ 61,062 (2007).

<sup>4</sup> Public Utilities Commission of Ohio's Federal Energy Advocate Comments, Docket Nos. PL19-3 and PL19-4 (June 26, 2019).

stated rate to a formula rate shifts business and financial risks from the Company's shareholders to its customers, and, therefore, the capital structure and other components in the compensation formula must be fully examined by FERC to ensure that the end result, ROE, and any incentives are properly aligned with the public interest, as discussed in greater detail, below.

The Ohio FEA renews its support, on behalf of Ohio retail customers, for an evaluation of transmission owner's capitalization ratio to ensure it is reasonable, in a formula rate context and does not incent the Company to overinvest in or underutilize transmission assets. FERC's formula rate option combined with FERC incentives offers transmission owners very weak incentives against both. The business and financial risks transferred to customers through a formula rate compel that careful attention be paid to the establishment and administration of the formula-based compensation mechanism. Thus, consistent with previous comments, the Ohio FEA objects to the following proposals within DP&L's applications:

- A proposed ROE of 10.39 in the mid-point of DP&L's range;
- 50 basis point adder to the ROE for membership in an RTO;
- 100 percent recovery of CWIP;
- Application of transmission incentives to supplemental projects that receive no review or approval from PJM or FERC; and
- Traditional ratemaking that allows for upfront recovery of transmission costs without a phase-in or some other form of gradualism to lower immediate bill impacts to customers and without allowing for demand response opportunities.

#### **IV. Comments**

##### **A. Proposed ROE**

DP&L proposes, in its application, a capital structure of 51.34% debt and 48.66% equity.<sup>5</sup> DP&L seeks a return on equity of 10.39% with an additional 50-point adder for RTO membership for a total ROE of 10.89%. This structure results in an overall rate of return on rate base of 7.36%. DP&L's witness McKenzie indicates that he utilized several financial models to determine a range of reasonableness for its proposed ROE. Witness McKenzie then selected the ROE (10.39%) in the mid-point of the range of 7.71% to 12.91%.

The Ohio FEA urges FERC to thoroughly review DP&L's ROE methodology in light of current market conditions. For example, interest rates have fallen significantly since the time the data was provided by DP&L to support its application, and in most cases is now less than 1%. The COVID-19 impacts on financial markets are causing further downward pressure on interest rates. The data to support DP&L's proposed ROE was based on information from November of 2019.<sup>6</sup> FERC should require DP&L to provide updated information to the end of the first quarter of this year or no earlier than the end of January 2020 to support its ROE data and methodology. Due to the shifting of the risk to transmission customers through the formula rate and guaranteed return, FERC should hold a hearing to determine whether the proposed ROE is just and reasonable at the mid-point rather than the lower quartile of DP&L's proposed range or reasonable returns. Furthermore, FERC should reconsider approving a static ROE in a formula rate. To the extent that DP&L is proposing to revise its costs in an annual true-up filing, the capitalization ratio and cost of capital components should likewise be part of the review. As FERC is aware, the economy and other financial inputs to the ROE do not remain static; neither should the ROE.

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<sup>5</sup> DP&L Attachment H15-A. Formula Rate Attachment, Docket No. ER20-1150, at P 2 of 6 (March 3, 2020).

<sup>6</sup> Direct Testimony of Mr. Adrien McKenzie and associated exhibits and workpapers, Exhibit Nos. AAM-1 through AAM-9, Docket No. ER20-1150 (March 3, 2020).

## **B. Proposed Incentives**

The Ohio FEA objects first and foremost to DP&L's proposed 50 basis point adder to its base ROE for RTO membership. The adder to incent RTO membership, as DP&L recognizes, predates FERC Order 679 in 2006. As FERC is aware, the transmission landscape has greatly grown in size and scope and RTO membership has become the rule rather than the exception in much of the country. The Ohio FEA notes that PJM has robust transmission planning processes that address reliability and allow projects to be built for economic reasons, including reduced congestion. It is clear that there is no longer a need to incent voluntary participation by the Company in an RTO. What is more, under state law in Ohio, all transmission owners with facilities in Ohio, are required to be members of a fully-functional RTO.<sup>7</sup> It makes no sense to incent an activity that has already been accomplished and is required in any event under applicable law. Thus, DP&L's request for the RTO membership incentive is unjust and unreasonable.

Furthermore, in January 2018, the US Court of Appeals for the 9<sup>th</sup> Circuit, in *CPUC v. FERC*, 879 F.3d 966 (2018), held that FERC was arbitrary and capricious in awarding PG&E an RTO participation adder. The court explained that the Commission has "a longstanding policy that incentives should only be awarded to induce future behavior" and that awarding an RTO-participation incentive to a utility that is required to remain in an RTO conflicted with that policy. In its order on remand,<sup>8</sup> FERC approved PG&E's RTO participation adder because it determined that PG&E's participation in CAISO was voluntary. Nevertheless, as Commissioner Glick states in his concurring opinion, "FERC's reasoning—particularly its decision to resolve this proceeding based entirely on an inquiry into whether PG&E is required to remain in CAISO—suggests that if

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<sup>7</sup> R.C. 4928.12.

<sup>8</sup> *PG&E*, 168 FERC P 61,038, Docket No. ER14-2529, et. al, (July 18, 2019).

state law actually required PG&E to remain in CAISO, an RTO-participation incentive might well be inappropriate.”<sup>9</sup>

Similarly, DP&L provides no detailed justification for recovery of 100 percent CWIP in rate base for its proposed TEP projects. In addition to satisfying the section 219 requirement of ensuring reliability or reducing the cost of delivered power by reducing congestion, FERC requires an applicant to demonstrate that there is a nexus between the incentive sought and the investment being made. In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is “tailored to address the demonstrable risks or challenges faced by the applicant.”<sup>10</sup> Applicants must provide sufficient support to allow the Commission to evaluate each element of the package and the interrelationship of all elements of the package.<sup>11</sup> The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.<sup>12</sup>

In support of its 100 percent CWIP recovery proposal, DP&L simply and generally references the same incentive granted to other transmission utilities, most recently Duquesne Light Company and the CWIP incentive referenced in FERC Order 679. Notwithstanding the reasonableness of a CWIP incentive, the Ohio FEA, as expressed in previous comments, believes that transmission incentives should not be granted automatically, but rather, evaluated on a project-by-project basis. DP&L has made no attempt to do that here; rather DP&L has included “placeholders but no positive values for an additional return incentive (above the RTO

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<sup>9</sup> Id., Concurring Opinion of Commissioner Richard Glick at P 4.

<sup>10</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 27.

<sup>11</sup> Transmission Incentives Policy Statement, 141 FERC ¶ 61,129 at P 10 (quoting Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 27).

<sup>12</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 43.

participation adder) for qualified projects.<sup>13</sup> DP&L should be required, for each proposed project, to demonstrate that the CWIP is necessary for the individual project to proceed. Otherwise, if the CWIP incentive is not necessary, the resulting formula rate for that project is not just and reasonable.

### **C. Supplemental Transmission Projects**

According to DP&L the incentives sought for DP&L's TEP projects are necessary to resolve NERC reliability violations (baseline) or to address other needed reliability improvements (supplemental) to the Dayton transmission system. Of these, the greatest amount of dollars, not surprisingly, belongs to the supplemental project category; \$86.2 million for supplemental projects as opposed to \$82.5 million for baseline projects. DP&L indicates that they have identified two categories of supplemental projects. The first are those subject to Ohio Power Siting Board (OPSB) jurisdiction; the other is for the transmission facilities at voltage levels that are not subject to OPSB authority.<sup>14</sup>

The Ohio FEA renews its request for FERC to directly address the question of PJM's authority over supplemental projects and its obligation to review transmission plans just as it does today as the regional planner for other transmission projects. As FERC is aware, transmission service and pricing are under its exclusive jurisdiction. PJM's alleged uncertainty as to its authority to review and evaluate supplemental projects leaves an "attractive gap" between state and federal jurisdiction that results in, practically speaking, no regulatory supervision over actions taken by transmission owners that are causing a large uptick in investment in transmission assets

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<sup>13</sup> DP&L Application in Docket No. ER20-1150 at P 9.

<sup>14</sup> OPSB jurisdiction extends to projects at or above 100 kV not 125 kV as reference by DP&L in its application. *See*, Ohio Revised Code 4906.01(B)(1)(b). <http://codes.ohio.gov/orc/4906.01v1>.



and the prices for transmission service. The Ohio FEA recommends that FERC not grant any incentives to the supplemental projects in this application without first ensuring that there is appropriate regulatory oversight and evaluation of these projects.

Furthermore, incentives should not be granted, *carte blanche*, to all of DP&L's TEP projects without a detailed showing on a project-by-project basis that such incentives are needed to offset the demonstrated risk of the particular project. DP&L should be required to revise its application to provide such additional information for *each* project prior to the receipt of any incentive. As stated previously, an incentive for which there is no demonstrated need should not be considered just and reasonable or authorized.

#### **D. Transmission Ratemaking Impacts**

Finally, the Ohio FEA takes this opportunity to urge FERC to revisit its current methodology for front-end loading costs for transmission services which decline over time under the traditional regulatory calculation. The current DP&L NITS rate is \$1,046.79 per MW per month. DP&L is initially proposing to increase the NITS rate by \$157.96 per MW per month, or a 15.1% increase. DP&L is further planning to construct approximately \$170 million in new or upgraded transmission facilities over the next five years and in addition to the transmission investments typically made for capitalized repairs and minor upgrades that has typically varied between \$5 million and \$14 million a year. DP&L projects that future investment in the TEP projects alone will increase DP&L's gross transmission plant in service by approximately 40% over the next four years and its net transmission investment by 90%.

If the full return of investment and return on investment is flowed through to customers using traditional ratemaking, the up-front rate impact to customers will be substantial every year

for the next five years. The Ohio FEA recommends FERC require DP&L to propose a phase-in plan for these future transmission investments to more gradually increase rates and mitigate customer bill impacts. The phase-in could be incorporated into DP&L's proposed formula rate proposal and should limit the annual increase to 5%-7% per year. The phase-in plan should comply with generally accepted accounting principles, so the plan does not have a negative financial impact.

Furthermore, the Ohio FEA believes that FERC should provide Ohio retail customers in the DP&L territory meaningful opportunities to use demand response for networked transmission services. Currently, commercial and industrial customers utilize demand response primarily to "chase the peaks" so that they can reduce demand coincident with the zonal peak billing determinant. However, since these zonal peaks occur most often at times when the transmission system is not under stress, this chasing-the peaks practice results in underutilization of transmission and other investment plus the imposition of an opportunity cost on the participating retail customer and the macro economy as a whole. FERC should require DP&L to explore, with its commercial and industrial customers, innovative ways that such customers can move away from this wasteful chasing-the-peaks rate design or structure while preserving the reliability benefits of end user demand response during periods when the transmission system is under stress. The current rate design is sending an unjust and unreasonable price signal. For example, FERC should require DP&L to offer non-firm network transmission service available to retail customers who have a demonstrated ability to reduce demand during a transmission emergency at a price sufficient to cover variable costs plus make some contribution to fixed costs. Subscriptions to non-firm network transmission service may operate to reduce incremental investment in transmission system and better indicate real demand for transmission betterments. There has to be more that can

be done by FERC, in the context of these applications, to enable customers to more effectively and efficiently deploy their demand response capabilities to affect their transmission service spend and billing determinants.

## **V. Conclusion**

The Ohio FEA supports transmission formula ratemaking and incentives that provide just and reasonable compensation for the appropriate demonstrated risks and rewards of the specific transmission projects. The proposed DP&L incentives discussed herein are sorely outdated and are, in any event unsupported. Therefore, the proposed incentives cannot and should not be found to be just and reasonable. Furthermore, DP&L's application highlights the urgency for FERC to immediately resolve the need for further metrics, prudence and ratemaking reviews, along with other controls that will support a movement to greater transmission owner accountability in exchange for a formula rate approach that transfers most, if not all, of the transmission owner's business and financial risks to customers.

Respectfully submitted,

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*/s/ Thomas W. McNamee*

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## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing has been served in accordance with 18 C.F.R. Section 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

*/s/ Thomas W. McNamee*

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**Thomas W. McNamee**

Assistant Attorney General

Dated at Columbus, Ohio, this March 16, 2020.

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Summary: Comments and Protest Submitted on Behalf of the Public Utilities Commission of Ohio's Office of the Federal Energy Advocate electronically filed by Mrs. Kimberly M Naeder on behalf of Ohio's Office of the Federal Energy Advocate