

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

The Dayton Power and Light Company	)	Docket No. ER20-1068-000
	)	Docket No. ER20-2100-000

---

**MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO’S  
OFFICE OF THE FEDERAL ENERGY ADVOCATE**

---

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213, the Public Utilities Commission of Ohio’s Office of the Federal Energy Advocate (“Ohio FEA”) hereby moves for leave to answer and submits this answer to the Request for Rehearing and Clarification of the Dayton Power and Light Company (“Dayton Power”), filed on September 16, 2020. Dayton Power filed its request in response to the Commission order issued in the above-captioned dockets on August 17, 2020 (“August 17 Order”). The Ohio FEA intervened in Docket No. ER20-1068-000 on March 11, 2020 and moved to intervene out-of-time in Docket No. ER20-2100-000 on September 14, 2020.

**I. MOTION FOR LEAVE TO ANSWER**

While the Commission’s Rules of Practice and Procedure generally do not permit answers to requests for rehearing,<sup>1</sup> the Commission may accept these types of filings where,

---

<sup>1</sup> 18 C.F.R. § 385.213(a)(2) and 713(d).

as here, they will assist the Commission in its analysis, provide useful and relevant information, or otherwise facilitate a full and complete record.<sup>2</sup>

Portions of this answer respond to requests for clarification and, accordingly, should be permitted. For the portions of this pleading that respond to requests for rehearing, the Ohio FEA respectfully requests that the Commission grant the Ohio FEA leave to file this answer as it will provide relevant information and assist in providing a complete and accurate record for FERC's consideration.

## **II. BACKGROUND**

On February 25, 2020, as supplemented on June 18, 2020, Dayton Power submitted, pursuant to §§ 205 and 219 of the Federal Power Act ("FPA"),<sup>3</sup> Part 35 of the Commission's regulations,<sup>4</sup> and Order No. 679,<sup>5</sup> a request for approval of certain transmission rate incentives for investment in transmission projects that Dayton Power asserted were needed for reliability. Dayton Power is one of the regulated electric distribution utilities serving Ohio consumers. Dayton Power also owns transmission facilities subject to the functional control of PJM Interconnection, L.L.C. ("PJM"), and is a signatory to the PJM Amended and Restated Operating Agreement. In its submission, Dayton Power requested the following three incentives:

---

<sup>2</sup> See, e.g., *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,030 at P 12 (2009) ("The Commission grants PJM's motion for leave to answer the requests for rehearing and clarification, as PJM's answer has assisted us in the decision-making process."); *PJM Interconnection L.L.C.*, 104 FERC 61,154 at 61,547 (2003).

<sup>3</sup> 16 U.S.C. §§ 824d and 824s.

<sup>4</sup> 18 C.F.R. pt. 35 (2019).

<sup>5</sup> *Promoting Transmission Inv. through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, Order on Rehearing, Order No. 679-A, 117 FERC ¶ 61,345 (2006), Order on Rehearing, 119 FERC ¶ 61,062 (2007).

- (1) A 50-basis point adder to the authorized return on equity (“ROE”) to reflect Dayton Power’s continued membership in PJM, not to exceed the upper end of the zone of reasonableness, to apply to Dayton Power’s entire transmission rate base;
- (2) Inclusion of 100% Construction Work in Progress (“CWIP”) in its rate base for Transmission Enhancement Plan (“TEP”) Projects only (“CWIP Incentive”);
- (3) 100% recovery of all prudently incurred transmission-related development and construction costs if one or more TEP Projects are cancelled or abandoned, in whole or in part, as a result of factors beyond Dayton Power’s control (“Abandoned Plant Incentive”).

On August 17, 2020, the Commission approved certain elements of Dayton Power’s application for specified transmission incentive rate treatment, rejected one element, and set another for a paper hearing. On September 16, 2020, Dayton Power filed a Request for Rehearing and Clarification of the Commission’s August 17 Order.

### **III. ANSWER**

#### **A. Incentives for Category 3 Projects**

Dayton Power argues that the Commission should find that the reliability benefits of its Category 3 Projects (not subject to state or federal review) were sufficiently established to justify granting the CWIP and Abandoned Plant Incentives to the Category 3 Projects. In the alternative, Dayton Power requests that a rehearing order clarify that the rejection of the Category 3 projects is without prejudice and that Dayton Power could make a subsequent

filing in a new docket presenting evidence and studies of the reliability benefits for the Category 3 projects and renew its request for the CWIP and Abandoned Plant Incentives.<sup>6</sup>

The Ohio FEA supports FERC's decision in the August 17 Order that the Category 3 Projects are not eligible for the CWIP and Abandoned Plant Incentives.<sup>7</sup> As explained by the Commission in the August 17 Order, under Order No. 679, an applicant may seek incentives for transmission infrastructure investment that satisfies the requirements of section 219. To do this, the applicant must show that "the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion."<sup>8</sup> The Commission established a rebuttable presumption that this standard is met if:

- (1) The transmission project results from a fair and open regional planning process that considers and evaluates the project for reliability and/or congestion and is found to be acceptable to the Commission; or
- (2) A project has received construction approval from an appropriate state commission or state siting authority.<sup>9</sup>

As these Category 3 projects are subject to neither a regional planning process (PJM review under the Regional Transmission Expansion Plan) nor a state siting process (Ohio Power Siting Board ("OPSB") review), the Ohio FEA agrees with the Commission that these projects do not qualify for the rebuttable presumption.<sup>10</sup>

---

<sup>6</sup> Dayton Power Request at 9.

<sup>7</sup> Commission Order at 28.

<sup>8</sup> Order No. 679, 116 FERC ¶ 61,057 at P 76.

<sup>9</sup> *Id.* at P 58.

<sup>10</sup> Commission August 17 Order at P 36.

As the Commission further explains, FERC has previously granted transmission incentives for projects that do not rely on the rebuttable presumption but instead make an actual showing that the projects ensure reliability or reduce the cost of delivered power by reducing transmission congestion. But as the Commission notes, Dayton Power provided no congestion analysis nor any third-party analyses of reliability benefits for the Category 3 Projects. The Ohio FEA underscores that applicants unable to meet the rebuttable presumption should support incentive requests with comprehensive and clear data and internal and external studies.<sup>11</sup>

As the Ohio FEA has discussed in Docket No. ER20-2046-000, the rapid pace of transmission plant investment and sharp escalation in transmission service prices are likely to continue.<sup>12</sup> Much of the investor-owned utilities' projected earnings growth is tied to continuing investment in transmission plant and facilities and FERC's formula rate recovery.<sup>13</sup> The lack of review over these projects by PJM and FERC<sup>14</sup> has created an "attractive regulatory gap" that has fostered this fast-paced investment in facilities that are not being evaluated for their benefits to reliability or cost reduction. The first step in addressing this dysfunctional status quo should be the establishment of an open,

---

<sup>11</sup> *Id.* at P 37.

<sup>12</sup> *Amendments to Attachment M-3 to the PJM Interconnection, L.L.C. Open Access Transmission Tariff*, Comments and Protest of the Public Utilities Commission of Ohio's Office of the Federal Energy Advocate at 7-9 (July 6, 2020).

<sup>13</sup> See American Electric Power 1st Quarter 2020 Earnings Call Presentation, Appendix at 33, available via the Internet at <https://www.aep.com/newsroom/resources/earnings/2020-05/1Q20EarningsReleasePresentation.pdf>; See FirstEnergy Corp. 1st Quarter 2020 Earnings Call Investor Fact Book at pages 11-15 available via the Internet at <https://investors.firstenergycorp.com/Cache/IRCache/9e6967be-f8be-554e-c044-6c0d93f82739.PDF?O=PDF&T=&Y=&D=&FID=9e6967be-f8be-554e-c044-6c0d93f82739&iid=4056944>.

<sup>14</sup> As Ohio FEA has asserted, PJM's designation as regional planner extends to all facilities the cost of which rolls up into rates and charges for transmission service and that its expertise needs to be coextensive with this scope of responsibility. The Ohio FEA continues to advocate for review by PJM over supplemental projects as is consistent with its responsibility as regional planner. The Ohio FEA notes that transmission projects under 100 kV are exempt from review by OPSB per state law (Ohio Revised Code (O.R.C.) 4906.01(B)(1)(b)).

transparent, meaningful process by PJM to review the benefits of supplemental transmission investment. To approve transmission incentives for these projects without any evidence that they meet the Order No. 679 standard would be at best putting the cart before the horse and at worst pouring gasoline on a fire. The Commission's decision in the August 17 Order on the Category 3 Projects should stand.

### **B. Characterization of CWIP Costs**

Dayton Power, in its Request for Rehearing, appears to be asking the Commission to confirm Dayton Power's interpretation of the Commission's August 17 Order that amounts spent prior to May 3, 2020 for Category 1 and Category 2 projects, plus any accrued Allowance for Funds Used During Construction (AFDUC), would be recharacterized as of May 3, 2020, as CWIP. Dayton Power also asks the Commission to confirm Dayton Power's interpretation that, with respect to the CWIP incentive, once a compliance filing is made with the FERC, all costs incurred, including those incurred prior to May 3, 2020, are eligible for CWIP treatment. Finally, Dayton Power asks the Commission to clarify, regarding the Abandoned Plant Incentive for Category 1 and 2 projects already approved by the OPSB, whether: (1) costs incurred after August 17, 2020 (the date of the FERC order) are eligible for recovery, or (2) if eligibility is instead prospective from the date of OPSB approval. Dayton Power avers that the timing of an OPSB order merely confirms the purpose of costs as enhancing reliability; it should not determine a start date of eligibility of costs.

For purposes of this Answer, the Ohio FEA will not address Dayton Power's requests for clarification regarding the effective dates of the CWIP and Abandoned Plant

Incentives. However, the Ohio FEA fully supports the requirement that Category 1 and 2 Projects must be approved by the appropriate review authority in order to qualify for incentives. This aspect of FERC's order should be maintained.

### **C. Effective date of RTO Participation Adder**

Dayton Power argues for an effective date of May 3, 2020, for a 50-basis point adder to incentivize participation in an RTO, which the Commission has yet to grant. In its August 17, 2020, order, the Commission did not approve the request for the RTO Participation Adder and instead established a paper hearing with filings due in October and November. Dayton Power argues that the Commission found that Dayton Power's February 2020 filing provided sufficient adequate advance notice to permit a May 3, 2020 effective date for the CWIP incentive, which was granted. Therefore, Dayton Power argues, the same logic should apply to the RTO Participation Adder.

The Ohio FEA believes that Dayton Power's argument on this point is premature, as the RTO Participation Adder has not been granted. If the RTO Participation Adder is granted after the paper hearing concludes, the Commission can and should set an effective date that is commensurate with the arguments made during the hearing process, and the Ohio FEA advocates for an effective date that is no earlier than the end of the five-month suspension period<sup>15</sup> or the conclusion of the hearing process, whichever occurs later. However, the Ohio FEA reiterates that it believes Dayton Power is not eligible for the RTO Participation Adder as RTO participation is required by Ohio law.<sup>16</sup> Because the Ohio FEA

---

<sup>15</sup> In its August 17 Order, the Commission "accepted for filing and suspended for a five-month period, subject to refund and to the outcome of the paper hearing procedure," the RTO Participation Adder (P 2).

<sup>16</sup> O.R.C. 4928.12.

believes there is no legal basis for granting the RTO Participation Adder, the Ohio FEA does not believe there was reason to set the matter for a paper hearing. Nevertheless, the Ohio FEA will appreciate the opportunity to further supply the record as to the lack of a basis for the RTO Participation adder during the paper hearing process.

#### **IV. CONCLUSION**

The Ohio FEA recognizes that transmission incentives can serve a valuable role in the market, such as improving cash flow or incentivizing behavior that can lead to savings that are passed on to consumers. However, incentives can also increase costs to consumers and should therefore be granted only when it makes sense to do so and in accordance with applicable law. To advance this end, the Ohio FEA respectfully submits this answer and, for the foregoing reasons, reiterates that: (1) the Commission rightfully denied incentives for Category 3 projects that are not subject to regional or state review and for which Dayton Power failed to demonstrate either reliability benefits or reductions in the cost of delivered power; (2) oversight on Category 1 and 2 Projects by the appropriate review authority is essential for the awarding of incentives for those projects; and (3) an incentive for participation in an RTO is unnecessary for Dayton Power, which is obligated to participate in an RTO per Ohio state law.



Respectfully submitted,

**Dave Yost**  
Ohio Attorney General

**John H. Jones**  
Section Chief

*/s/ Thomas G. Lindgren*

---

**Thomas G. Lindgren**  
Assistant Attorney General  
Public Utilities Section  
30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215-3414  
614.466.4395 (telephone)  
614.644.8764 (fax)  
[john.jones@ohioattorneygeneral.gov](mailto:john.jones@ohioattorneygeneral.gov)  
[thomas.lindgren@ohioattorneygeneral.gov](mailto:thomas.lindgren@ohioattorneygeneral.gov)

**On Behalf of the Staff of  
The Public Utilities Commission of Ohio's  
Office of The Federal Energy Advocate**

September 25, 2020

## **CERTIFICATE OF SERVICE**

I hereby certify that I have on this date caused a copy of the foregoing document to be served on each person included on the official service list maintained for this proceeding by the Commission's Secretary, by electronic mail or such other means as a party may have requested, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010. Dated this the 25<sup>th</sup> day of September, 2020, at Washington, D.C.

/s/ Thomas G. Lindgren  
**Thomas G. Lindgren**  
Assistant Attorney General

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**9/25/2020 9:32:45 AM**

**in**

**Case No(s). 93-7000-EL-FAD**

Summary: Motion for Leave to File Answer and Answer 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