**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio to Update its Transmission Cost Recovery Rider. | )  )  )  ) | Case No. 24-196-EL-RDR |

**CONSUMER PROTECTION COMMENTS**

**BY**

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# INTRODUCTION

Beginning June 1, 2024, Dayton Power and Light Company d/b/a AES Ohio (“AES Ohio”) seeks a massive 53% increase in the rates it charges to residential electricity consumers through its Transmission Cost Recovery Rider (“TCRR”).[[1]](#footnote-1) The TCRR is a non-bypassable rider that allows AES Ohio to collect tens of millions of dollars from its 519,000 consumers for transmission-related costs.[[2]](#footnote-2) OCC has filed a complaint with FERC regarding these supplemental transmission projects, asking FERC to step in to regulate the projects since they receive no review by the state or PJM for their reasonableness or prudence.[[3]](#footnote-3) That complaint is pending.

Despite the Ohio regulatory gap where consumers are left unprotected, AES Ohio has asked to increase the unreviewed transmission charges that are collected from residential consumers. If AES Ohio’s application is approved, residential consumers will be paying $55 million per year for transmission charges. This represents a massive (53%) increase in transmission rates charged to consumers.[[4]](#footnote-4) A 1,000 kWh per month residential consumer is currently paying $6.61 per month for Rider TCRR. That will jump to $10.11 under the proposed Rider TCRR.[[5]](#footnote-5)

Part of the increase in transmission charges to residential consumers is a consequence of AES Ohio reducing the charges to other consumers. But AES Ohio provides no explanation whatsoever as to why residential consumers should be burdened with this significantly higher allocation of transmission charges under the TCRR rider.

This large increase in TCRR charges to residential consumers is unfair, unjust and unreasonable to residential consumers. This is on top of the rate increases under AES Ohio’s most recent electric security plan, which in total will lead to a $385 million rate increase for consumers.[[6]](#footnote-6) The PUCO should outright reject AES Ohio’s proposal.

# RECOMMENDATIONS

## The PUCO should reject AES Ohio’s massive 53% increase in transmission rates to residential consumers as unfair, unjust, and unreasonable.

The TCRR allows AES Ohio to collect from consumers transmission-related costs, imposed by FERC or PJM. These charges include tens of millions of dollars for AES Ohio’s Supplemental Transmission Projects. These are projects that largely escape regulatory review by the PUCO or FERC for reasonableness or prudence.[[7]](#footnote-7)AES Ohio’s residential consumers have no choice but to pay what AES Ohio charges them for these supplemental transmission projects. Residential consumers do not have any opportunity to opt out of these charges.

Certain larger AES Ohio consumers, however, don’t have to pay because they can “opt out” of paying the TCRR rate under a pilot program.[[8]](#footnote-8) A PUCO audit of FirstEnergy’s similar transmission rider (“Rider NMB”) charged to consumers confirmed that allowing large industrial and commercial consumers to opt out of paying the rider improperly shifted costs to residential utility consumers.[[9]](#footnote-9)

Here, AES Ohio proposes to dramatically increase what residential consumers will pay under the TCRR by an enormous 53%over what they currently pay.[[10]](#footnote-10) It appears that part of the dramatic increase to residential consumers is attributable to AES Ohio reducing the transmission charges to smaller non-residential consumers by almost 22%.[[11]](#footnote-11)

DP&L’s proposal to shift transmission costs from non-residential consumers to residential consumers appears to be unjust, unreasonable, unjustly discriminatory, unjustly preferential and in violation of Ohio law (R.C. 4905. 33 and 4905.35). AES Ohio’s proposal is on top of AES Ohio already allowing certain large industrial and commercial consumers to opt out from paying *any* TCRR charges through AES Ohio’s TCRR pilot program.

AES Ohio provides little evidence to support this burdensome 53% increase to residential consumers. The PUCO should say no.

## The PUCO should order an audit of AES Ohio’s Pilot Program and make Tariff TCRR subject to refund based on the auditor’s findings regarding cost shifting.

The PUCO should order an independent audit of AES Ohio’s pilot program to determine the extent of cost-shifting to residential consumers as a result of the pilot. This is especially important given the audit of FirstEnergy’s similar Rider NMB disclosed improper cost shifting to consumers who could not participate in the pilot, including residential consumers.[[12]](#footnote-12)

Further, an independent audit becomes critical because the PUCO has turned the pilot into a permanent, ongoing preferential tariffed rate to non-residential consumers. Even though the opt out pilot is scheduled to end, AES Ohio will bill all “non-residential customers taking service at primary voltage and above, and any non-residential customers taking service at secondary voltage that opt-in, for all Transmission Cost Recovery Rider (TCRR) demand charges on the basis of their Network Service Peak Load (NSPL).”[[13]](#footnote-13) The Pilot Opt-Out Program will end once the NSPL billing is effective.[[14]](#footnote-14) In other words, even though the pilot is ending, AES Ohio will be allowed to separately bill all non-residential consumers based on their own load, as opposed to billing them under the transmission rider. This accomplishes the same objective as the pilot.

Although the PUCO has directed that “(t)his change in transmission billing shall not shift any transmission costs to residential customers,”[[15]](#footnote-15) the FirstEnergy audit shows just how much cost shifting can occur when non-residential consumers are able to secure transmission based on their unique load. And if no cost shifting is supposed to occur, then why is DP&L seeking to increase the allocation of transmission costs to residential consumers? This effectively undermines the protection residential consumers thought they had when the PUCO said there will not be shifting of transmission costs to residential consumers under the new transmission NPSL billing.

The PUCO should solicit bids to secure an independent auditor to audit the pilot program. The Auditor should also be exploring the impact of allowing all non-residential consumers to be billed for transmission based on their own unique load. Once complete, the PUCO should consider the audit findings and determine whether billing non-residential consumers under their own NSPL is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential or in violation of Ohio law. In addition, the TCRR Tariff should be collected subject to refund if the auditor finds that cost-shifting has occurred.

## If the PUCO approves the TCRR, then the PUCO should protect consumers by ordering the TCRR be collected subject to refund pending two FERC rulings regarding possible improper charges to consumers

If the PUCO approves the TCRR, then it should order AES Ohio to collect the TCRR rates subject to refund. The need for refund language in AES Ohio’s tariff arises from both OCC’s complaint pending before FERC[[16]](#footnote-16) and a new FERC rulemaking on reactive power.[[17]](#footnote-17)

### **If the PUCO approves the TCRR it should be made subject to refund pending the outcome of OCC’s Complaint at FERC.**

Ohio utility consumers face an immediate risk of substantial harm. OCC has long warned of the harm to consumers from utility charges for costly and unnecessary supplemental transmission projects.[[18]](#footnote-18) There is little to no regulatory oversight of the necessity or prudence of supplemental transmission project costs at the state or federal level. The PUCO recently acknowledged this “regulatory gap” in First Energy’s annual Rider NMB update case.[[19]](#footnote-19) Consistent with the PUCO’s recognition of this “regulatory gap” and to protect consumers by addressing these supplemental transmission cost issues, OCC in September 2023 filed a complaint regarding supplemental transmission projects at FERC.[[20]](#footnote-20) In response to the complaint, the PUCO’s Office of the Federal Energy Advocate agreed that there is a “regulatory gap” regarding supplemental transmission projects.[[21]](#footnote-21)

PUCO Chair French, in remarks before the General Assembly, testified that to the extent the law allows, the PUCO can and has allowed for consumer refunds.[[22]](#footnote-22) And she testified she intends to continue that practice.

Consistent with Chair French’s remarks, and to prevent injury to the public and avoid irreparable harm to consumers, the PUCO should exercise its discretionary power under Ohio law to protect AES Ohio consumers.[[23]](#footnote-23) The PUCO should require that AES Ohio include in its tariffs language providing for refunds to consumers if FERC determines, as a result of OCC’s Complaint, that supplemental transmission project costs charged to consumers are improper and unreasonable.

The PUCO’s authority can be found under various statutes (including R.C. 4905.04 and R.C. 4905.06) and case precedent.[[24]](#footnote-24)

Indeed, the Ohio Supreme Court recognized there is an apparent unfairness when a decision is determined to be unlawful, yet consumers get no refund of charges that were unlawful from the get-go.[[25]](#footnote-25) Here, to avoid that unfairness, and consistent with the PUCO’s own recognition of the supplemental transmission cost issues, the PUCO should clearly direct that the TCRR be collected subject to refund pending FERC’s decision in the OCC Complaint action.

The PUCO has acted to prevent harm from occurring to consumers by ordering utilities, on an ongoing basis, to collect an existing rate increase subject to refund and subject to appropriate interest charges. The PUCO has used this approach to permit it to explore the reasonableness of rates in light of events that occurred after the issuance of its orders. For instance, the PUCO granted rehearing and ordered rates to be collected subject to refund in a rate case filed by the Columbus & Southern Ohio Electric Company.[[26]](#footnote-26) In that rate case, one week after the issuance of the PUCO’s rate order, the Nuclear Regulatory Commission issued an Order that suspended construction at the Zimmer Nuclear Power Plant (“Zimmer”). The original Opinion and Order included a rate base allowance for construction work in progress (“CWIP”) for Zimmer.[[27]](#footnote-27)

In its order setting the rehearing, the PUCO approved the utility’s filed tariffs but expressly found the portion of the increase granted attributable to Zimmer CWIP “should be made subject to refund, pending a rehearing on the CWIP issue.”[[28]](#footnote-28) A rehearing was held, and the PUCO ordered that all of the Zimmer costs should be excluded from CWIP. The PUCO ordered the utility to file tariffs reducing the total revenue requirements by approximately $13 million.[[29]](#footnote-29) The utility appealed and sought a stay of the PUCO’s Order on Rehearing from the Supreme Court of Ohio. The Court granted the stay but subsequently affirmed the PUCO’s denial of a CWIP allowance.[[30]](#footnote-30) After the PUCO’s action was upheld on appeal,[[31]](#footnote-31) the PUCO ordered the utility to refund approximately $4.5 million to its customers.[[32]](#footnote-32) The PUCO ordered the collection, subject to refund to protect customers in the event of a later decision that the utility was collecting more from customers than warranted by law, rule, or reason.

Another example where the PUCO has collected rates subject to refund involved the Ohio Utilities Company.[[33]](#footnote-33) After a rate order was issued,[[34]](#footnote-34) legislation was enacted that changed Ohio’s ratemaking formula. The PUCO opened an investigation to determine if the previously-established rates were still reasonable in light of the new law.[[35]](#footnote-35) The PUCO determined that the rates were excessive, taking into account the new law, and ordered the utility to withdraw its tariffs and file new lower rates consistent with the PUCO’s findings.[[36]](#footnote-36) The utility sought a stay of the PUCO’s order, pending further review, which was granted with the condition that the utility was required to collect rates subject to refund.[[37]](#footnote-37)

In a case involving AEP’s Rate Stability Rider (“RSR”), the PUCO ordered that the RSR be collected subject to refund after the case was remanded by the Court.[[38]](#footnote-38) The PUCO “direct[ed] AEP Ohio to file revised tariffs that provide that the RSR is being collected subject to refund” in order to protect consumers from irreparable harm – continuing to pay the RSR without the potential of getting a refund.[[39]](#footnote-39) And in a case involving Dayton Power & Light’s Rate Stability Charge (“RSC”), the PUCO said that it did “not seek to evade Supreme Court review of [its] decisions” and made collection from consumers of charges under the RSC subject to refund.[[40]](#footnote-40)

In the present action, AES Ohio’s proposed TCRR Tariff includes a narrow reconciliation provision. The provision states that the TCRR Tariff “is subject to reconciliation, including but not limited to, refunds to customers, based upon the results of audits as approved and ordered by the Commission.”[[41]](#footnote-41) The current language fails to incorporate any refunds that should result if FERC finds as a result of the OCC Complaint Action that supplemental transmission costs have been improperly charged to consumers. To provide a remedy if FERC does determine there to be improper charges, OCC specifically recommends the following additional language be added to the TCRR Tariff: “Further, the TCRR Tariff is subject to refund if FERC determines as a result of *The Office of the Ohio Consumers’ Counsel v. PJM Interconnection, L.L.C., et al.,* Docket No. EL23-105-000, Complaint (Sept. 28, 2023) that supplemental transmission costs have been improperly charged to consumers.”

The PUCO can act now to prevent harm to consumers from supplemental transmission projects. It should do so. The PUCO should order that Rider TCRR charges be collected subject to refund if FERC determines that any supplemental transmission costs have been improperly charged to consumers. Failing to do so results in a TCRR Tariff that is unjust and unreasonable for residential consumers.

### **If the PUCO approves the TCRR Tariff it should also include language making it subject to refund pending FERC’s reactive power proceedings.**

In the reactive power rulemaking, FERC will decide whether to prohibit, within the open-access transmission tariff of regional transmission operators like PJM, the inclusion in transmission rates of unjust and unreasonable charges related to the provision of reactive power within the standard power factor range by generating facilities.[[42]](#footnote-42) AES Ohio proposes to charge residential consumers approximately $1 million dollars for reactive power through the TCRR, or approximately $1.89 per residential consumer.[[43]](#footnote-43)

Reactive power is supplied by generating units.[[44]](#footnote-44) The current PJM open access transmission tariff allows generators to be compensated for reactive power as a separate charge in addition to the normal capacity and energy charge.[[45]](#footnote-45) The question to be decided by FERC is whether this provides generators with a double recovery.[[46]](#footnote-46) MISO and certain other regional transmission operators have eliminated the reactive power charge. [[47]](#footnote-47) It is possible that PJM will be required to eliminate this charge as a result of the rulemaking. Hence, to protect consumers, the PUCO should include the following language in the TCRR Tariff: “If FERC in the Reactive Power Action finds any charges made to consumers are improper then to the extent such charges have been included in the TCRR Tariff they are subject to refund.”

# CONCLUSION

The PUCO should protect consumers from unjust and unreasonable charges through AES Ohio’s TCRR rates. Consistent with OCC’s recommendations, the PUCO should reject AES Ohio’s Application, which would unnecessarily force residential utility consumers to pay more than they should for transmission costs.

The PUCO should also order an audit of AES Ohio’s TCRR pilot program to examine whether the opt-out is shifting transmission costs to residential consumers who cannot opt-out of paying the TCRR rider. As part of the audit, the Auditor should determine whether AES Ohio’s revised allocation for smaller secondary and primary non-residential customers unfairly shifts costs to residential consumers. The auditor should also explore the impact of allowing all non-residential consumers to be billed for transmission based on their own unique load. Does doing so under the new billing cause cost-shifting to residential consumers? If so, how much is shifted? After the audit, the PUCO should examine whether billing non-residential consumers based on their unique load is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential or in violation of law.

If the PUCO approves the TCRR, then the PUCO should order AES Ohio to include refund language in the tariff specifically addressing the pending FERC proceedings as well as the refund of any improper cost-shifting discovered through the audit discussed above.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Intervene has been served electronically upon those persons listed below this 24th day of April 2024.

*/s/ John Finnigan*

John Finnigan

Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

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1. *In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio to Update its Transmission Cost Recovery Rider,* Case No. 24-196-EL-RDR, Application at Schedule B-2 (March 15, 2024). [↑](#footnote-ref-1)
2. *Id. at ⁋ 3.* [↑](#footnote-ref-2)
3. *The Office of the Ohio Consumers’ Counsel v. PJM Interconnection, L.L.C., et al.,* Docket No. EL23-105-000, Complaint (Sept. 28, 2023) (“OCC Complaint Action”). [↑](#footnote-ref-3)
4. Application at Schedule B-2. [↑](#footnote-ref-4)
5. *Id.* at Schedule B-3 (current rate of $.0066108 per kWh increasing to $.0101098 per kWh). [↑](#footnote-ref-5)
6. *In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Approval of its Electric Security Plan,* Case No. 22-900-EL-SSO, *et al*., Opinion and Order (Aug. 9, 2023). [↑](#footnote-ref-6)
7. *See* the 2017-2021 PJM Ohio State Infrastructure Report. This data includes only projects that exceed $5 million. [↑](#footnote-ref-7)
8. Application at ⁋ 5 (noting that the Opt-Out Pilot Program for the TCRR was originally approved by the PUCO in Case No. 16-395-EL-SSO, *et al.,* Opinion and Order (Oct. 20, 2017)). [↑](#footnote-ref-8)
9. *In the Matter of the Review of the Non-Market-Based Services Rider Pilot Program Established by Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company,* Case No. 22-391-EL-RDR, Exeter Associates, Inc., Review of the Non-Market Based Services Riders Established by Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (July 17, 2023) (“Audit Report”) at 20. [↑](#footnote-ref-9)
10. Application at Schedule B-2, B-3. [↑](#footnote-ref-10)
11. Application at Schedule B-3. [↑](#footnote-ref-11)
12. Audit Report at 20. [↑](#footnote-ref-12)
13. *In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Approval of its Electric Security Plan,* Case No. 22-900-EL-SSO, *et al*., Opinion and Order (Aug. 9, 2023) at p. 40. [↑](#footnote-ref-13)
14. *Id.* [↑](#footnote-ref-14)
15. *Id.* [↑](#footnote-ref-15)
16. *The Office of the Ohio Consumers’ Counsel v. PJM Interconnection, L.L.C., et al.,* Docket No. EL23-105-000, Complaint (Sept. 28, 2023) (“OCC Complaint Action”). [↑](#footnote-ref-16)
17. *Compensation for Reactive Power within the Standard Power Factor Range,* Docket No. RM22-2-000, 186 FERC ¶ 61,203 (March 21, 2024)(the “Reactive Power Action”). [↑](#footnote-ref-17)
18. *See, e.g., In the Matter of The Ohio Power Company Application to Update Its Basic Transmission Cost Rider,* Case No. 23-57-EL-RDR, OCC’s Consumer Protection Comments (Feb. 27, 2023). [↑](#footnote-ref-18)
19. *See In the Matter of the Review of the Non-Market Based Services Rider Contained in the Tariffs of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co*., Case No. 23-51-EL-RDR, Finding and Order ¶ 14 (March 22, 2023). [↑](#footnote-ref-19)
20. *The Office of the Ohio Consumers’ Counsel v. PJM Interconnection, L.L.C., et al.,* Docket No. EL23-105-000, Complaint (Sept. 28, 2023) (“OCC Complaint Action”). [↑](#footnote-ref-20)
21. *Id.,* Comments of the Public Utilities Commission of Ohio’s Office of the Federal Energy Advocate (Nov. 17, 2023) at 3-5. [↑](#footnote-ref-21)
22. Confirmation Hearing, Ohio Senate Energy and Public Utilities Committee (April 9, 2024), <https://ohiochannel.org/video/ohio-senate-energy-and-public-utilities-committee-4-9-2024>. [↑](#footnote-ref-22)
23. The reconciliation/refund language contained in the BTCR Tariff should expressly reference and include the availability of refunds pending FERC’s decision in *The Office of the Ohio Consumers’ Counsel v. PJM Interconnection, L.L.C., et al.,* Docket No. EL23-105-000, Complaint (Sept. 28, 2023). [↑](#footnote-ref-23)
24. *See, e.g.*, *In re Columbus & Southern Ohio Electric Co.*, Case No. 83-1058-EL-AIR, Entry (Nov. 17, 1982); *Cinnamon Lake Utility Co. v. Public. Util. Comm*. (1975), 42 Ohio St.2d 259 (where the Ohio Supreme Court noted that R.C. 4909.16 exists to protect the public interest as well as the interests of the public utility). [↑](#footnote-ref-24)
25. *See* *In re Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788 at ¶ 17. [↑](#footnote-ref-25)
26. *In re Columbus & Southern Ohio Electric Co*., Case No. 83-1058-EL-AIR, Entry (Nov. 17, 1982). [↑](#footnote-ref-26)
27. *Id*., Opinion and Order at 8-14 (Nov. 5, 1982). [↑](#footnote-ref-27)
28. *Id*., Entry at 1 (Nov. 17, 1982). [↑](#footnote-ref-28)
29. *Id*., Order on Rehearing (March 16, 1983). [↑](#footnote-ref-29)
30. *Columbus & Southern Ohio Electric Co. v. Pub. Util. Comm*., (1984) 10 Ohio St.3d 12. [↑](#footnote-ref-30)
31. *Id.* [↑](#footnote-ref-31)
32. *In re Columbus & Southern Ohio Electric Co.*, Case No. 81-1058-EL-AIR, Order on Rehearing (May 1, 1984). [↑](#footnote-ref-32)
33. *In the Matter of the Commission’s Investigation of the Current Rates, Revenues, Rate Base, and Rate of Return of the Ohio Utilities Company*, Case No. 77-1073-WS-COI, Entry at 2 (June 7, 1978). [↑](#footnote-ref-33)
34. *In the Matter of the Ohio Utilities Co. Application for an Increase in Rates*, Case No. 79-529-WS-AIR, Opinion and Order (Jan. 18, 1977). [↑](#footnote-ref-34)
35. *In the Matter of the Commission’s Investigation of the Current Rates, Revenues, Rate Base, and Rate of Return of the Ohio Utilities Company*, Case No. 77-1073-WS-COI, Entry (Sept. 7, 1977). [↑](#footnote-ref-35)
36. *In the Matter of the Commission’s Investigation of the Current Rates, Revenues, Rate Base, and Rate of Return of the Ohio Utilities Company*, Case No. 77-1073-WS-COI, Opinion and Order (May 18, 1978). [↑](#footnote-ref-36)
37. *In the Matter of the Commission’s Investigation of the Current Rates, Revenues, Rate Base, and Rate of Return of the Ohio Utilities Company*, Case No. 77-1073-WS-COI, Entry (June 7, 1978). The utility was also required to file an “undertaking” consisting of a promise to refund any amount collected for service rendered after the date of the Entry by a method later determined by the Commission (either cash refund or as a credit to future bills). The undertaking was required to be under oath by an officer of the company and was to include a promise to include interest. The amount ordered for refund was the amount collected for service in excess of those rates ultimately determined to be lawful. *Id*. [↑](#footnote-ref-37)
38. *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, et al. (May 18, 2016). [↑](#footnote-ref-38)
39. *Id.* at 4. [↑](#footnote-ref-39)
40. *In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan,* Case No. 08-1094-EL-SSO, Fifth Entry on Rehearing at ¶ 64 (June 16, 2021). [↑](#footnote-ref-40)
41. Application (March 15, 2024), Schedule A-1 Copy of Proposed Tariff Schedules, P.U.C.O. Electric Transmission Service Cost Recovery Rider (TCRR), Twenty-Third Revised Sheet No. T8, at p. 4 of 5. [↑](#footnote-ref-41)
42. *Compensation for Reactive Power within the Standard Power Factor Range,* Docket No. RM22-2-000, 186 FERC ¶ 61,203 (March 21, 2024). [↑](#footnote-ref-42)
43. Application at 44. [↑](#footnote-ref-43)
44. *Compensation for Reactive Power within the Standard Power Factor Range,* Docket No. RM22-2-000, 186 FERC ¶ 61,203 (March 21, 2024). [↑](#footnote-ref-44)
45. *Id.* [↑](#footnote-ref-45)
46. *Id.* [↑](#footnote-ref-46)
47. *Id.* [↑](#footnote-ref-47)