

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Ohio Power)	
Siting Board's Report to the)	Case No. 21-796-EL-UNC
General Assembly Regarding the)	
Power Transmission System.)	

**COMMENTS OF
INDUSTRIAL ENERGY USERS-OHIO**

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Industrial Energy Users–Ohio (“IEU-Ohio”) appreciates the opportunity to present these Comments to the Ohio Power Siting Board (“OPSB” or “Board”) regarding the current requirements for the planning of the power transmission system and associated facilities in the state of Ohio. IEU-Ohio’s members include manufacturers and energy-intensive consumers of electricity that are subject to transmission rates which are affected by transmission planning and capital investment. Accordingly, IEU-Ohio’s members will be directly affected by this proceeding and any future legislation regarding the Board’s authority over the siting and planning of major utility facilities in Ohio.

The current regulatory oversight of transmission siting and planning at both the state and federal levels is insufficient to ensure that investment in the transmission grid is done in a manner that ensures an adequate and reliable electric grid at costs that are just and reasonable. Over the past few years, the costs for transmission service have increased at a remarkable pace and show no sign of letting up. Numerous reasons exist for the increase in transmission costs to consumers, including growth in the use of formula transmission rates and unchecked transmission utility investment in assets known as supplemental transmission projects. Supplemental transmission projects are defined in

PJM Interconnection, LLC's ("PJM") PJM Manual 14B as transmission expansion or enhancements not needed to comply with PJM reliability, operational performance, FERC Form No. 715, or economic criteria. Transmission rates themselves are FERC-jurisdictional, while the siting and construction for the capital investments that lead to those rates falls under state jurisdiction. There exists a regulatory gap whereby neither states, the federal government, nor PJM are reviewing the public need or impacts to consumers resulting from potentially excessive spending on supplemental projects. That regulatory gap needs filled, and Ohio can do more to help fill some of that gap.

In its Entry requesting Comments, the Board identified six items for consideration that could be adopted as part of its review of transmission projects, and these items are a great starting point for Ohio to begin filling the regulatory gap to ensure that transmission utilities are not exercising market power or making unnecessary investments in the transmission system. The Board should adopt each of its proposed considerations regarding transmission project certification applications, including:

- (1) That alternative transmission projects were considered;
- (2) That the project was competitively bid or compared to the results of a competitive bid;
- (3) That the project has been considered in the context of the utility's larger transmission plan;
- (4) That the project has been considered in the context of the regional transmission planning process of PJM Interconnection, LLC;
- (5) That the project could not have been deferred or redesigned to achieve the same operational result at a lower overall cost;
- (6) That the project has provided historical information for an existing transmission project or information for a planned or proposed project.

Further, to ensure that capital investments in the transmission grid serve the public interest, convenience, and necessity, electric transmission utilities should be required to provide the Board with long-term projections of planned supplemental projects, including the need for such projects, projected costs for the projects, projected impacts on transmission rates, and projected impacts on customer bills. Such a report could be filed in its own docket on an annual basis, not unlike how electric utilities file long-term forecast reports with the Public Utilities Commission of Ohio (“PUCO”) each year. Electric transmission utilities should then be required in a certificate proceeding to discuss how the individual project subject to the Board’s consideration fits within the more wholistic long-term plan.

This type of report would also provide the Board and customers with much needed transparency into the cost associated with planned transmission upgrades, and over a planning horizon that will allow customers to appropriately capture the cost increases into their planning processes. This could assist transmission customers to better budget for the future and to proactively respond to rising transmission rates with customer-sited capabilities and resources, such as the installation of distributed energy resources. Further, a report like this could be required under current statutory authority as part of the Board’s statutory mandate to ensure that projects under its jurisdiction “will serve the public interest, convenience, and necessity.”¹ However, additional statutory authority would certainly enhance and make clear the Board’s authority to require electric transmission utilities to provide additional transparency to the Board and transmission customers.

¹ R.C. 4906.10.

I. THE CURRENT TRANSMISSION PLANNING PROCESS IS NOT SUFFICIENTLY TRANSPARENT DUE TO A LACK OF MEANINGFUL REVIEW AT THE STATE OR FEDERAL LEVELS.

There is little federal review by the Federal Energy Regulatory Commission (“FERC”) or PJM of supplemental transmission projects, despite their respective authority over rate-setting and reliability. Further, the Board currently lacks or is not exercising jurisdiction over transmission projects under 100kV. Accordingly, supplemental transmission projects, which are often are lines and associated facilities with rated voltage capacities less than 100kV, are falling within the regulatory gap between state and federal review. For this reason, the transmission planning process is not sufficiently transparent.

Supplemental transmission projects are transmission expansion projects or enhancements that are not needed to comply with PJM reliability, operational performance, FERC Form No. 715, or economic criteria. Transmission utilities in PJM plan supplemental transmission projects under Attachment M-3 of the PJM Tariff. This “M-3 Process” was added to the PJM Tariff to address the framework for planning supplemental transmission projects in accordance with the requirements of FERC Order No. 890.² While FERC has found that the M-3 Process at PJM provides transparency regarding the planning criteria, assumptions, and data underlying transmission system planning,³ neither FERC nor PJM has taken a direct role in reviewing whether supplemental transmission projects are being planned, sited, and constructed in a manner that serves the public interest. FERC has even noted that “When transmission

² *Preventing Undue Discrimination and Preference in Transmission System Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (“Order No. 890”), *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *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, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

³ See *Monongahela Power Co.*, 162 FERC ¶ 61,129, *on reh’g and compliance*, 164 FERC ¶ 61,217 at P 30, citing Order No. 890 FERC Stats. & Regs. ¶ 31,241 at PP 454, 461, 471 (2018).

owners participate in an RTO, the Commission [FERC] did not require them to allow the RTO to do all planning for local or Supplemental Projects. Rather, the Commission recognized ‘RTO planning processes may focus principally on regional problems and solutions, not local planning issues that may be addressed by individual transmission owners.’”⁴ To this end, supplemental projects are not PJM Board approved. PJM is not a regulator and does not review utility spending on or the need for supplemental transmission projects. The only analysis that PJM performs on a supplemental transmission project is a “Do No Harm” analysis to ensure that a supplemental transmission project will not cause reliability issues for other facilities, but such assessment does not consider whether supplemental transmission projects are needed, prudent, or would cause harm through unnecessary rate increases.

The PJM Market Monitor found in the 2020 PJM State of the Market Report:

“The process for determining the reasonableness or purpose of supplemental transmission projects that are asserted to be not needed for reliability, economic efficiency or operational performance as defined under the RTEP [Regional Transmission Expansion Planning] process needs additional oversight and transparency. If there is a need for a supplemental project, that need should be clearly defined and there should be a transparent, robust, and clearly defined mechanism to permit competition to build the project. If there is no defined need for a supplemental project for reliability, economic efficiency, or operational performance then the project should not be included in rates.”

Accordingly, even the PJM Market Monitor has noted that certain aspects of transmission planning, particularly as related to supplemental transmission projects, are not being conducted in a manner that serves the public interest.

⁴ *Monongahela Power Co*, 164 FERC ¶ 61,217 at P 13, *quoting* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at PP 440.

Transmission owners in PJM have asserted that PJM's authority is limited to only those planning aspects that are turned over to PJM by the transmission owners. The planning and review of supplemental transmission projects has not been handed over to PJM by the transmission owners. While the M-3 Process may give the impression that PJM has some level of authority over these projects, the reality is that nobody is conducting a meaningful review of the spending or needs for supplemental transmission projects. Accordingly, the Board should review supplemental transmission projects and transmission investments below 100kV to determine if they are being planned and constructed in a manner that serves the public interest.

Further, some projects that qualify for the M-3 Process, such as Asset Management Projects and supplemental transmission projects, are not subject to RTO/ISO (in this case, PJM) planning responsibilities under Order 890 because they do not increase transmission capacity by more than an incidental amount. Accordingly, these facilities and their needs remain the responsibility of the PJM Transmission Owners to identify and construct.⁵ The problem here is that those Asset Management Projects and supplemental transmission projects, which may just increase capacity by an incidental amount, are having a much greater than incidental effect on transmission rates.

Under the M-3 Process for these projects, the Transmission Owners present their transmission needs, as identified by themselves, and discuss those needs and potential solutions. In other words, the monopoly transmission utilities have established a process at PJM whereby they give the impression of self-regulating the needs and solutions for

⁵ See *Southern California Edison Co., et al.*, 164 FERC ¶ 61,160 (2018) ("SCE Order") at PP 30-32 and n. 55, *reh'g denied*, 168 FERC ¶ 61,170 (2019); *California Pub. Util. Commission v. Pacific Gas & Elec. Co.*, 164 FERC ¶ 61,161 (2018) ("PG&E Order") at PP 66-68 and n. 119, *reh'g denied*, 168 FERC ¶ 61,171 (2019).

certain transmission investments. A multi-faceted solution to this regulatory gap may be needed, but the Board should take a role and do its part to ensure that those aspects of transmission planning, siting, and construction that fall within the scope of its jurisdiction are being conducted in a manner that serves the public interest. Further, the Board should work with stakeholders, the Ohio Federal Energy Advocate, the General Assembly, and transmission utilities to consider how the requirements for the planning of the power transmission system and associated facilities investment in the state of Ohio can be amended or changed so that it is cost effective and in the interest of consumers.

FERC has jurisdiction over transmission rates, while the state of Ohio has jurisdiction over the siting and construction over transmission lines and facilities. For transmission lines and associated facilities with rated capacities below 100 kV, the Board should take a more assertive role in ensuring that such projects are being done to serve the public interest. To not act would be for the Board to allow the regulatory gap between state and federal jurisdiction to continue, with transmission utilities exploiting the lack of regulatory oversight to the detriment of consumers.

II. THE DEFINITION OF “MAJOR UTILITY FACILITY” IN R.C. CHAPTER 4906 SHOULD INCLUDE ALL ELECTRIC TRANSMISSION LINES AND ASSOCIATED FACILITIES, REGARDLESS OF RATED CAPACITY.

The Board should have authority over the siting of all transmission projects, regardless of voltage to allow the Board to determine if the planning of the power transmission system and investment in associated facilities in Ohio, in their totality, are cost effective and in the public interest. Currently, R.C. 4906.01 defines a major utility facility as an electric transmission line and associated facilities with a design capacity of 100 kV or more. However, the bulk of Ohio transmission investment in recent years has been in facilities rated below 100kV and thus outside of any review by Ohio. As explained

above, PJM is also not conducting any robust review of supplemental projects under 100 kV sited in Ohio.

Recognizing the apparent regulatory gap and lack of oversight of spending and construction in supplemental transmission projects, in 2019 the PUCO conducted a stakeholder workshop to consider the impacts to consumers of transmission utility spending on supplemental transmission projects. The PUCO's own slides demonstrate the scope of the problem for the state of Ohio.



Ohio New Baseline and Supplemental Projects

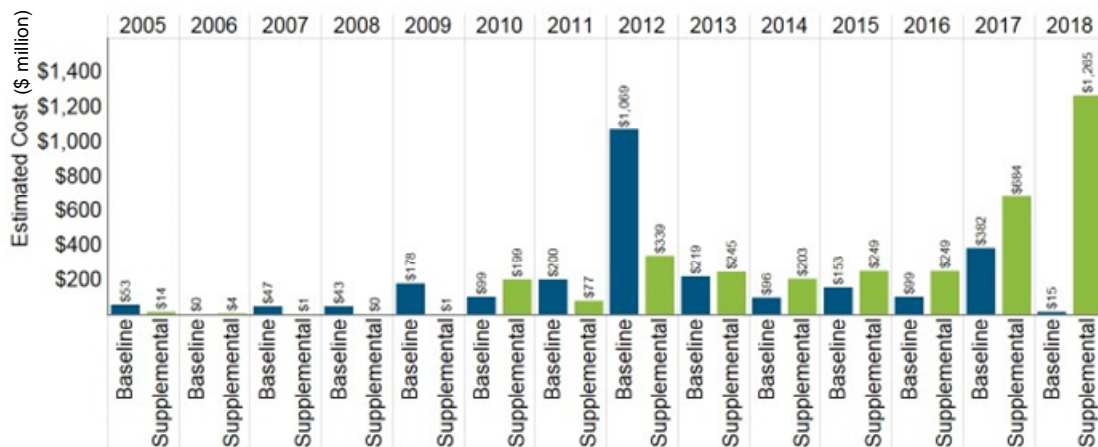


Figure 1. Chart sourced from PJM TEAC, 2019.

Baseline projects are PJM Board approved;
Supplemental projects are reviewed at TEAC stakeholder meetings

The first slide in the report (copied above), identifies the magnitude of the increase in capital spending on supplemental transmission since 2005.

Ohio New Baseline and Supplemental Project Detail: 2015-2018

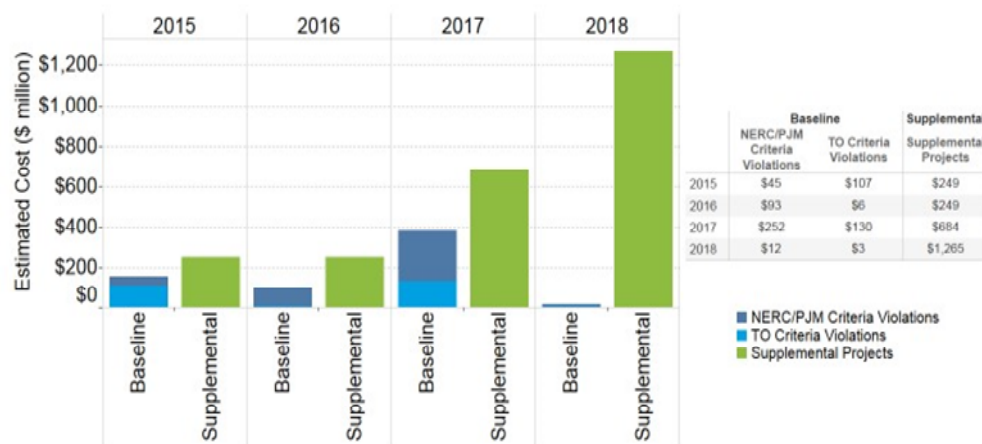


Figure 2. Chart sourced from PJM TEAC, 2019.

Baseline projects are PJM Board approved; Supplemental projects are reviewed at TEAC stakeholder meetings ⁴

Further, the second PUCO slide (copied above) indicates that spending on supplemental transmission projects exceeded \$1.2 billion in 2018, while baseline projects approved by the PJM Board totaled only \$15 million.

Ohio Project Detail: 2015-2018

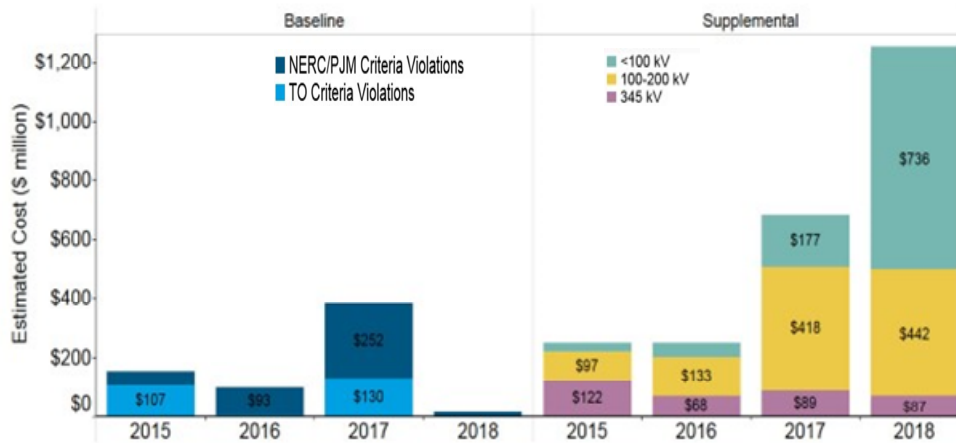


Figure 3. Chart sourced from PJM TEAC, 2019.

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As indicated in another slide from that PUCO presentation, in 2018 alone there were \$736M of Ohio-based supplemental projects below 100kV.

As discussed in more detail above, PJM is not conducting a robust regulatory review of any supplemental projects, and the Board is currently not reviewing any supplemental projects below 100kV. IEU-Ohio would support revisions to the definition of “Major Utility Facility,” but IEU-Ohio believes the definition should apply to all transmission facilities regardless of voltage. While 69kV is generally recognized as the voltage at which a facility is considered transmission instead of distribution, there can be (and are) facilities rated at voltages below 69kV that are classified as transmission facilities. Accordingly, IEU-Ohio believes the definition of major utility facility should include all facilities classified as transmission by an electric utility.

III. ACCELERATED REVIEW FOR SMALLER PROJECTS IS REASONABLE, SUBJECT TO THE SIX CRITERIA IDENTIFIED IN R.C. 4905.105(D)

Any accelerated review process should require electric transmission utilities to present information on the six criteria outlined in R.C. 4906.105(D) and the Board's Entry. The provisions in Ohio Adm.Code 4906-6-05 include the requirements of an accelerated application. The rule requires an applicant to identify alternatives considered but does not explicitly require an electric utility to identify the process it arrived at in determining the need or cost including whether it competitively bid the project. The Board should adopt each of its proposed considerations regarding transmission project certification applications, including:

- (1) That alternative transmission projects were considered;
- (2) That the project was competitively bid or compared to the results of a competitive bid;
- (3) That the project has been considered in the context of the utility's larger transmission plan;
- (4) That the project has been considered in the context of the regional transmission planning process of PJM Interconnection, LLC;
- (5) That the project could not have been deferred or redesigned to achieve the same operational result at a lower overall cost;
- (6) That the project has provided historical information for an existing transmission project or information for a planned or proposed project.

Additionally, while the Rule requires an identification of capital costs, additional information should be required so that the Board and customer can better translate capital costs into bill impacts. Accordingly, IEU-Ohio recommends that in addition to capital costs, the Board require electric transmission utilities to identify the impacts that facilities will have on transmission rates.

IV. CONCLUSION

IEU-Ohio appreciates the opportunity to present these Comments to the Ohio Power Siting Board regarding transmission planning, siting, and construction. The Board should undertake efforts to improve transparency and expand its role in reviewing transmission projects with rated capacities below 100 kV. Further, Ohio law should not establish arbitrary capacity limits on projects that would otherwise fall within the Board's jurisdiction. The Board should have jurisdiction over the siting and construction of all transmission facilities, but may, for the purposes of administrative efficiency, undertake more through process review for transmission projects with higher rated capacities.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4906-2-02, Ohio Administrative Code, the Board's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Comments of Industrial Energy Users-Ohio* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio, to the following parties of record this 4th day of August 2021, *via* electronic transmission.

/s/ Bryce A. McKenney

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Summary: Comments of Industrial Energy Users-Ohio electronically filed by Bryce A McKenney on behalf of Industrial Energy Users-Ohio