

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

Office of the Ohio Consumers' Counsel v. American)
Electric Power Service Corporation, *et al.*)

Docket No. EL22-34-000

COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF OHIO

I. Procedural Background

This proceeding involves a complaint filed against American Electric Power Service Corporation, American Transmission Systems, Inc., and Duke Energy Ohio on February 24, 2022. The Public Utilities Commission of Ohio (PUCO) timely filed a motion to intervene in this docket on March 23, 2022 and is therefore a party to this proceeding. The Federal Energy Regulatory Commission (FERC or Commission) has set a comment deadline of March 31, 2022.¹

On February 25, 2020, as supplemented on June 18, 2020, the Dayton Power & Light Company (before the company rebranded to AES Ohio²) requested approval of certain transmission rate incentives for investment in transmission projects. AES Ohio is one of the PUCO-regulated electric distribution utilities serving Ohio consumers. The Dayton Power & Light Company is a member of PJM as a transmission owner.³ In its

¹ Docket No. EL22-34, Notice Extending Comment Period, March 8, 2022.

² See “The DP&L Foundation rebrands as AES Ohio Foundation and awards grants totaling \$1.5 million,” available at <https://www.aes-ohio.com/dpl-foundation-rebrands-aes-ohio-foundation-and-awards-grants-totaling-15-million>.

³ PJM Member List, available at <https://www.pjm.com/about-pjm/member-services/member-list>.

2020 FERC submission, The Dayton Power & Light Company requested an incentive 50-basis point adder to the authorized return on equity (“ROE”) for its membership in PJM.

On August 17, 2020, FERC set the issue of the incentive adder for a paper hearing. After the paper hearing period, FERC denied the request on July 15, 2021.

The Dayton Power & Light Company,⁴ and separately a group of other companies (specifically American Electric Power Service Corporation, on behalf of its affiliates Ohio Power Company and AEP Ohio Transmission Company, Inc.; Duke Energy Ohio, Inc.; and FirstEnergy Service Company, on behalf of its affiliates American Transmission Systems, Incorporated, Jersey Central Power & Light Company, Mid-Atlantic Interstate Transmission LLC, West Penn Power Company, The Potomac Edison Company, and Monongahela Power Company⁵), applied for rehearing of FERC’s July 15, 2021 order. On September 16, 2021, FERC issued a Notice of Denial of Rehearings by Operation of Law and Providing for Further Consideration, stating that the rehearing requests would be addressed in a future order. Then, The Dayton Power & Light Company, dba AES Ohio, American Electric Power Service Corporation, Duke Energy Ohio, Inc., and FirstEnergy Service Company petitioned for judicial review in the U.S. Court of Appeals for the Sixth Circuit on November 15, 2021.⁶ The case was put in abeyance, which the court has recently extended until May 2, 2022.⁷

⁴ FERC Docket No. ER20-1068, Request for Rehearing of the Dayton Power & Light Company, August 13, 2021.

⁵ FERC Docket No. ER20-1068, Request for Rehearing of the Indicated Transmission Owners, August 13, 2021, n. 1.

⁶ Available in FERC Docket No. ER20-1068, filed with FERC on Nov. 22, 2021.

⁷ Case No. 21-4072, Order, March 21, 2022.

While the federal court case was in abeyance, FERC issued, on February 17, 2022, an Order Addressing Arguments Raised on Rehearing. In this Order, FERC reiterated its previous decision to preclude The Dayton Power & Light Company from having the incentive adder, on the basis that the Company’s participation in a regional transmission organization (RTO) is not voluntary, per Ohio state law.⁸ FERC limited its holding to The Dayton Power & Light Company, stating that: “Any issues regarding the RTO Adder and the voluntariness requirement that go beyond Dayton’s application or Ohio’s statute would be more properly addressed in potential future proceedings involving other utilities.”⁹

II. Comments

A. FERC Found the RTO Participation Incentive Adder to be Unnecessary Due to Ohio State Law

The complaint in this proceeding utilizes for its basis that FERC’s finding in the Dayton Power & Light Company case may be extended to other companies. There are other transmission owners, which own transmission in Ohio, that were granted the incentive for RTO participation or membership years ago through FERC formula rate cases.¹⁰ In the latest FERC order regarding The Dayton Power & Light Company, FERC arrived at the conclusion above, which is that Ohio law renders it unnecessary for The Dayton Power & Light Company to have the RTO participation adder.¹¹ The PUCO

⁸ Paragraph 10; *see* Ohio Revised Code (O.R.C.) 4928.12.

⁹ 178 FERC ¶ 61,102, ¶ 47.

¹⁰ *See* Complaint at 10.

¹¹ 178 FERC ¶ 61,102, ¶ 26.

agrees with FERC: based on current law and circumstances, a transmission owner that owns or controls transmission facilities solely in Ohio should not receive an incentive for participating in PJM (or another FERC-approved RTO/independent system operator or ISO). The question remains whether, and to what extent, a transmission owner's facilities located in a PJM transmission zone or zones that cross state boundaries are subject to FERC's findings regarding Ohio's law. We agree with FERC that such findings are properly addressed in future proceedings involving those transmission owners.

In FERC's recent Supplemental Notice of Proposed Rulemaking on Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act ("Transmission Incentives Policy"), the PUCO's Office of the Federal Energy Advocate (FEA) noted in Comments that other states in PJM have similar requirements to Ohio's RTO participation requirement. In those comments, the FEA urged the "Commission to consider that an incentive is unwarranted when a network of state statutes requires participation in a FERC-approved RTO or ISO."¹² In that docket, FERC ordered multiple technical conferences after the FEA's comments were filed. FERC has yet to issue an order in the docket or respond to the FEA's comment described above. The PUCO also notes that the Organization of PJM States, Inc., has filed comments asserting that the RTO participation adder should not be awarded to utilities regardless of the existence of state laws requiring participation.¹³

¹² FERC Docket No. RM20-10, June 25, 2021, pg. 9.

¹³ FERC Docket No. RM20-10, June 23, 2021, pg. 3.

B. Regarding the Relief or Remedy Requested

It is unclear to the PUCO whether the complaint is seeking relief or refunds for Ohio customers of transmission owners with facilities in Ohio, and whether the complaint is limited to Ohio customers. The complaint states:

FERC should find that the charge for an incentive for participation in an RTO in the transmission rates of AEP, FirstEnergy (ATSI) and Duke is unjust and unreasonable because their participation in PJM, or in any substitute RTO, is mandated by Ohio law. FERC also should establish just and reasonable replacement rates for transmission service in Ohio that exclude the RTO Participation Adder from customers' rates.¹⁴

Specifically, the complaint is brought against “American Electric Power Service Corporation, American Transmission Systems, Inc. and Duke Energy Ohio, LLC.”¹⁵

While there is one AEP zone in PJM, comprising portions of Ohio, West Virginia (which is also wholly within PJM), Indiana, Michigan, Kentucky, Virginia, and Tennessee, the transmission service across the AEP zone is provided by different transmission companies.¹⁶ There is one formula rate for the “AEP East Companies,” with one ROE of 10.35%, which includes the membership adder,¹⁷ and another formula rate for “the AEP East Transmission Companies,” with one ROE of 10.35%, also including the membership

¹⁴ Pg. 16.

¹⁵ Complaint caption.

¹⁶ See PJM Open Access Transmission Tariff, Attachment H-14A provides: “The formula rate template (“Template”), and these formula rate implementation protocols (“Protocols”) together comprise the filed rate (“Formula Rate”) of Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company (collectively “AEP East Companies” or “AEP”) for transmission revenue requirement determinations under the PJM Interconnection, LLC (“PJM”) Open Access Transmission Tariff (“PJM Tariff”).” Pg. 2400 of the PDF available at <https://pjm.com/directory/merged-tariffs/oatt.pdf>.

¹⁷ *Id.* at OATT Attachment H14-B, Part I, pg. 2424 of the PDF, Note S.

adder.¹⁸ ATSI's zone is comprised of portions of Ohio and Pennsylvania, which is also wholly within PJM. ATSI has a single ROE of 10.38%, which also includes the membership adder.¹⁹

As for Duke, this complaint is brought against "Duke Energy Ohio, LLC,"²⁰ but the incentive adder was granted jointly to "Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc. (collectively, the 'Duke Companies')." ²¹ In granting the incentive in 2015, FERC stated: "the *Duke Companies'* revenue requirement for wholesale transmission service shall be a total of 11.38 percent, consisting of a 10.88 percent base cost of common equity and a 0.5 percent ROE adder for participation in a regional transmission organization...."²² These two companies, referred to as "DEOK" in PJM's Open Access Transmission Tariff, jointly own transmission facilities in one zone in PJM, known as the DEOK Zone, which is in both Ohio and Kentucky. But the complaint does not name Duke Energy Kentucky or DEOK.

The complaint states, "There are no material differences between DP&L and the other Ohio transmission owners. AEP, ATSI and Duke should be prohibited from charging Ohio consumers the RTO Participation Rider just as DP&L is prohibited."²³ However, DP&L's transmission service zone is limited to Ohio, while the zones of other

¹⁸ *Id.* at OATT Appendix A to Attachment H-20A, pg. 2791 of the PDF, and OATT Attachment H-20B, pg. 2827 of the PDF, Note S.

¹⁹ <https://www.pjm.com/-/media/about-pjm/pjm-zones.ashx>; see OATT, Attachment H-21A, pg. 2882 of the PDF, Note P and FERC Docket No. ER15-303, Settlement Agreement and Offer of Settlement [including Pro Forma sheets] of American Transmission Systems, Incorporated, American Municipal Power, Inc., Buckeye Power, Inc., and Industrial Energy Users-Ohio under ER15-303, July 20, 2015, pg. 4.

²⁰ FERC Docket No. EL22-34, Complaint caption.

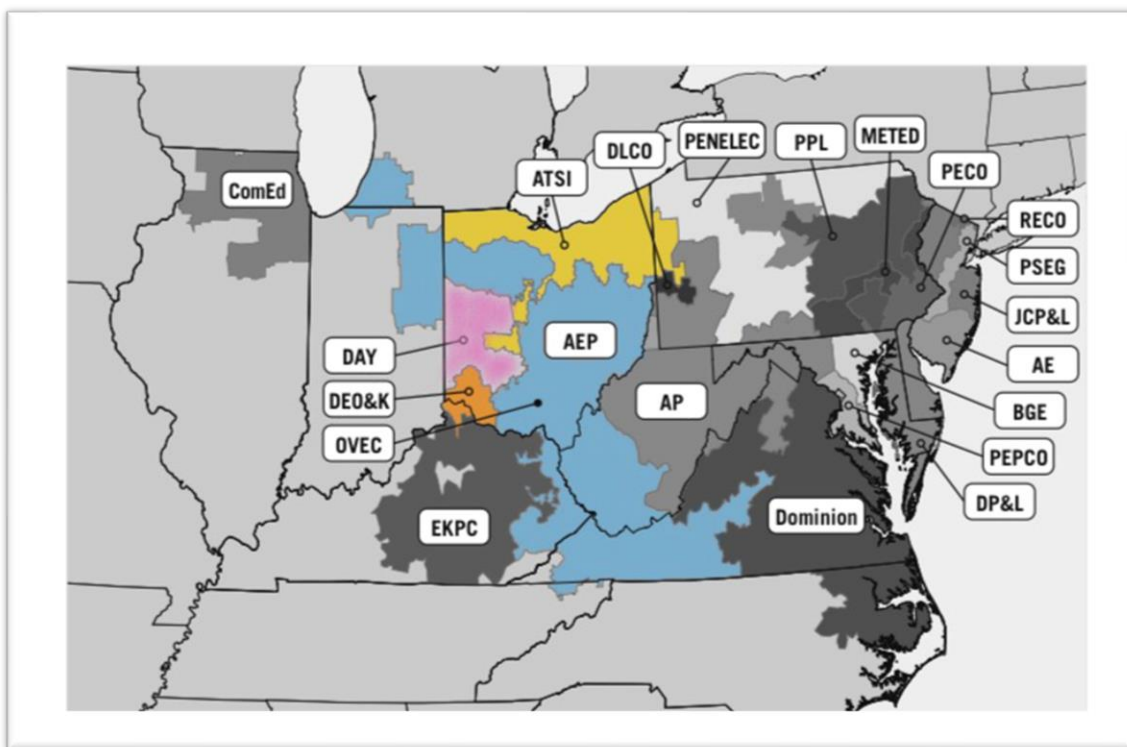
²¹ FERC Docket Nos. ER12-91-008, ER12-92-008, 151 FERC ¶ 61,029 at ¶ 1 (2015).

²² *Id.* at ¶ 10 (emphasis added).

²³ Pg. 11.

transmission owners are not. The RTO incentive adder is generally a 0.5% increase to a company's (or companies') return on equity (ROE), and not a charge applied to specific customers. The PUCO therefore looks forward to further discussion of the legal foundation and feasibility of whether it may be possible to apply different ROE percentages to different states within a PJM transmission zone, if that is the remedy requested. Or if it is not, the PUCO looks forward to clarification in that regard as well.

The following map highlights the transmission zones at issue in the complaint. Note that the map shows the full DEOK zone.



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²⁴ Edited from 20210510_PJM Zone Map, available at <https://www.pjm.com/-/media/about-pjm/pjm-zones.ashx>.

III. Conclusion

The PUCO appreciates the opportunity to provide comments in this proceeding. The PUCO agrees with the FERC's decisions as explained in both the July 15, 2021, and the February 17, 2022, orders in the case regarding the application of The Dayton Power & Light Company, and further supports the advocacy and position taken by the PUCO's FEA in that case and the related appeal in the U.S. Court of Appeals for the Sixth Circuit. The PUCO looks forward to further discussion and clarification in the instant complaint case as explained in more detail above.

Respectfully submitted,

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**On Behalf of The Public Utilities
Commission of Ohio**

Dated: March 31, 2022

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 31st day of March 2022, at Columbus, Ohio.

/s/ Thomas G. Lindgren

Thomas G. Lindgren

Assistant Attorney General

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Summary: Comments of the Public Utilities Commission of Ohio under EL22-34-000 electronically filed by Mrs. Kimberly M. Naeder on behalf of PUCO