

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Ohio Power Siting)
Board's Review of Ohio Adm. Code) Case No. 21-902-GE-BRO
Chapters 4906-1, 4906-2, 4906-3, 4906-4,)
4906-5, 4906-6, and 4906-7

INITIAL COMMENTS OF BUCKEYE POWER, INC.

Buckeye Power, Inc. ("Buckeye") hereby submits its Initial Comments in response to the Ohio Power Siting Board's ("Board" and "OPSB") June 16, 2022, Entry issued in the above-captioned proceeding, which invited interested parties to file comments and reply comments related to the Board's review of Ohio Administrative Code Chapters 4906-1, 4906-2, 4906-3, 4906-4, 4906-5, 4906-6, and 4906-7 in accordance with Ohio Revised Code Sections 111.15(B) and 106.03(A). In its June 16 Entry, the OPSB Staff recommended a number of changes to the aforementioned rules. Buckeye appreciates the opportunity to comment on these proposed changes.

I. BUCKEYE'S INTEREST

Buckeye Power, Inc. is an Ohio non-profit corporation with its principal place of business located at 6677 Busch Boulevard, Columbus, Ohio 43229. Buckeye is a generation and transmission cooperative that produces, procures, and provides at wholesale all the electric capacity and energy required by its member electric distribution cooperatives.¹ In addition,

¹ The 25 distribution cooperative members of Ohio Rural Electric Cooperatives, Inc. are: Adams Rural Electric Cooperative, Inc.; Buckeye Rural Electric Cooperative, Inc.; Butler Rural Electric Cooperative, Inc.; Carroll Electric Cooperative, Inc.; Consolidated Cooperative, Inc.; Darke Rural Electric Cooperative, Inc.; Firelands Electric Cooperative, Inc.; The Frontier Power Company; Guernsey-Muskingum Electric Cooperative, Inc.; Hancock-Wood Electric Cooperative, Inc.; Holmes-Wayne Electric Cooperative, Inc.; Licking Rural Electrification, Inc.; Logan County Cooperative Power and Light Association, Inc.; Lorain-Medina Rural Electric Cooperative, Inc.; Mid-Ohio Energy Cooperative, Inc.; North Central Electric Cooperative, Inc.; North Western Electric Cooperative, Inc.; Paulding-Putnam Electric Cooperative, Inc.; Pioneer Rural Electric Cooperative, Inc.; South Central Power Company; Tricounty Rural Electric Cooperative, Inc.; Union Rural Electric Cooperative, Inc.; Washington Electric Cooperative, Inc., and Midwest Energy & Communications, which is based in Michigan with a portion of its electric load in Ohio.

Buckeye arranges transmission services for the delivery of generation to its member electric distribution cooperatives in the State of Ohio. Those member distribution cooperatives serve nearly 400,000 residential, commercial, and industrial customers in service territories encompassing primarily rural areas in 77 of Ohio's 88 counties.

Buckeye is a Transmission Dependent Utility ("TDU"), meaning that it depends almost exclusively on PJM Interconnection, LLC ("PJM") and the four transmission owners in Ohio (Duke Energy Ohio ("Duke"), Ohio Power Company/AEP Ohio Transmission Company, Inc. ("AEP Transmission"), American Transmission Systems, Inc. ("ATSI"), and the Dayton Power & Light Company ("DPL")) for transmission of electricity to its member cooperatives. As a TDU, Buckeye is subject to PJM's Open Access Transmission Tariff ("PJM Tariff"), which includes cost recovery for transmission upgrades and expansions made by each transmission owner in Ohio.

The interconnections between the transmission facilities of the Ohio transmission owners and the electric distribution facilities of the Buckeye members are called transmission delivery points. As a TDU, Buckeye requests new delivery points from the Ohio transmission owners on behalf of the Buckeye members and pursuant to the PJM Tariff. New transmission delivery points may need to be established to provide electricity to new electric customers of the Buckeye members or to support increased demand of the distribution systems of one or more Buckeye members. There are approximately 360 delivery points in the State of Ohio between electric cooperative and Ohio transmission owner facilities.²

In most cases, new delivery point requests require the transmission owner to construct new transmission facilities. In most cases, the Buckeye member will be required to construct

² Buckeye has over 450 actively metered points. About 360 of these are delivery points where power is delivered from Buckeye Power to its member cooperatives via facilities owned by Ohio's IOUs. The remaining metered points are used internally by Buckeye Power and are not located at points of delivery from transmission providers.

and own a new substation stepping down voltage from the transmission level to the Buckeye member's distribution facilities and voltage (referred to as a distribution substation). The construction of the Ohio transmission owner's new transmission facilities are commonly subject to the jurisdiction of the OPSB and require OPSB review prior to construction. Buckeye and its members are therefore affected by the OPSB's review and approval of transmission facilities owned by Ohio transmission owners, like ATSI, DPL, AEP Transmission, and Duke. In rare cases, the Buckeye members construct transmission facilities themselves, which may be directly subject to OPSB jurisdiction and review.

Buckeye appreciates the opportunity to offer its comments on the proposed rule changes. As discussed below, Buckeye raises concerns with certain proposed rule changes, certain recent policy changes implemented by OPSB Staff, and proposes a new change to the rules.

II. COMMENTS

Buckeye raises three major concerns with the proposed rules: (1) the definition of "associated facilities" in O.A.C. 4906-1-01(F)(2)(b) improperly expands OPSB jurisdiction to include distribution substations, including ones owned by the Buckeye members; (2) the Board should not approve or allow conditions in the OPSB Staff Reports of Investigation relating to the allocation of transmission costs because transmission cost allocation is subject to the exclusive jurisdiction of the FERC; and (3) the Board should adopt rules addressing station power for generation interconnections so that retail station power arrangements are put in place prior to a generation facility becoming operational.

A. The Proposed Definition of "Associated Facilities" Improperly Expands OPSB Jurisdiction

OPSB Staff has proposed revising the definition of "Associated facility" or "associated facilities" in O.A.C. 4906-1-01(F)(2)(b) relating to substations to include distribution

substations. This means that distribution substations located along or receiving service from electric transmission projects submitted for OPSB review could be subject to the OPSB certification process placing significant additional costs on distribution utilities like electric cooperatives, as well as slowing down the OPSB process with little added benefit. This could also lead to inconsistent OPSB decisions on separate applications – one by the owner of the transmission project and another by the owner of the associated distribution substation – for the same project, creating confusion about whether the overall project (transmission project and associated distribution substation) is approved and authorized to proceed or not, and on what terms.

An owner of a distribution substation should not, therefore, be required to submit an OPSB application separate and apart from the OPSB application for the associated transmission line. At a minimum, distribution substations that are owned by distribution entities unaffiliated with the owner of the associated transmission line should be exempted from OPSB jurisdiction. If distribution substations will be subject to OPSB review, the owner of the associated transmission line should be required to include the associated distribution substation as part of the OPSB application for the associated transmission line, rather than the distribution substation owner being responsible for a separate OPSB submission.

1. Proposed Rule Change for “Associated Facilities”

The OPSB Staff proposes the following change:

~~Transmission voltage switching substations and Both~~ substations that change ~~electricity~~ line voltage from one transmission voltage to another transmission voltage and substations that change line voltage between transmission voltage and distribution voltage ~~shall be classified~~ are considered as transmission substations and are considered associated facilities of transmission lines. ~~Pole-mounted transmission switching substations are excluded. Those stations that change electricity from transmission voltage to distribution voltage shall be classified as~~

~~distribution substations, and are not considered associated facilities of transmission lines.~~

As currently written, the rules place under OPSB jurisdiction transmission voltage switching stations that have transmission level voltages on both sides of the switching station. This proposed rule revision expands OPSB jurisdiction to include switching stations and substations that change voltage level from transmission to distribution level voltages. This change means that any distribution substations located along or receiving service from electric transmission projects submitted for OPSB review could be subject to the OPSB certification process.

2. Distribution Substation Ownership

Distribution substations are often owned and operated by a separate entity from the entity that owns the transmission lines and thus may not be owned by the same entity submitting the electric power transmission line project for OPSB review. For investor-owned distribution utilities (IOUs), their distribution substations may be owned by the same entity, or an affiliate, that owns the transmission lines that interconnect to the substation. However, in most cases, this is not true for electric cooperatives. Electric cooperatives own and operate distribution substations and are separate entities, in most cases, completely unaffiliated with the transmission line owner submitting the OPSB filing. Under some circumstances, if the transmission lines are serving a large end-use customer, like a large manufacturing facility or a data center, the distribution substation could be owned by the customer.

3. Impacts to Ohio Customers and Unaffiliated Distribution Companies

This rule change could require distribution utilities to follow the OPSB application process, including spending thousands of dollars to conduct public hearings, obtain environmental and cultural resource surveys, consider alternative locations, and comply with the

myriad of other OPSB rules, for any distribution substations associated with electric transmission projects.³ This could have significant cost and process impacts on distribution utilities, particularly those unaffiliated with the transmission entity. For example, in a recent project in Washington County in which AEP Transmission replaced a section of aging 23 kV facilities with new 138 kV transmission lines to improve reliability in the area⁴, four electric cooperative distribution substations were served off the new line (*i.e.*, there were four delivery points to serve electric cooperative members from the replaced transmission line). With this proposed new rule, each of these distribution substations would be subject to OPSB certification processes and the electric cooperative owning these substations could be required to submit a separate OPSB application for each of those delivery points impacted. This change would have increased the project cost by tens of thousands of dollars—all of which would have been placed on the cooperative and its member-owners. In the case of distribution substations owned by large end-users, these costs and regulatory hurdles will be placed on the end-user, potentially impacting new customer site selection and economic development.

Not only does this change place unnecessary costs on distribution utilities, or, in some cases, large end-use customers, it will also create delays in implementing these projects with no

³ It is unclear whether this rule change will apply to any distribution substations along an electric transmission project, or just those distribution substations being built as a delivery point in an electric transmission project. Either way, this rule change will place unnecessary costs on electric cooperatives and their members and unnecessarily delay projects.

⁴ See *In the Matter of the Application of AEP Ohio Transmission Company, Inc. for a Certificate of Environmental Compatibility and Public Need for the Bell Ridge-Devola 138kV Transmission Line Project*, Case No. 17-1907-EL-BTX; *In the Matter of the Application of AEP Ohio Transmission Company, Inc. for a Certificate of Environmental Compatibility and Public Need for the Macksburg-Devola 138kV Transmission Line Project*, Case No. 16-0702-EL-BTX; *In the Matter of the Application of AEP Ohio Transmission Company, Inc. for a Certificate of Environmental Compatibility and Public Need for the Lamping-Rouse 138kV Transmission Line Project*, Case No. 16-0701-EL-BTX; *In the Matter of the Application of AEP Ohio Transmission Company, Inc. for a Certificate of Environmental Compatibility and Public Need for the Rouse-Bell Ridge 138kV Transmission Line Project*, Case No. 17-1908-EL-BTX; *In the Matter of the Application of AEP Ohio Transmission Company, Inc. for a Certificate of Environmental Compatibility and Public Need for the South Caldwell-Macksburg 138kV Transmission Line Project*, Case No. 15-0329-EL-BTX.

added benefit to the OPSB process. Further, this expansion is not consistent with the OPSB mandate and jurisdiction, which is to review projects that are at the transmission level, not the distribution level. (See R.C. Section 4906.01(B)(1)(c), which excludes from the definition of “major utility facility” “electric distributing lines and associated facilities.”).

Even in circumstances where the transmission entity submitting the application and the owners of the effected distribution substations are affiliated, this expansion in oversight and application requirements will result in some increased costs to customers. Further, adding more administrative hurdles for electric transmission projects may result in delays of needed projects as OPSB applicants must spend more time preparing applications and the OPSB must spend more time reviewing those applications.

4. OPSB Should Reject this Change, Or Limit its impact on unaffiliated distribution companies

Accordingly, Buckeye asks the Board to reject the changes proposed by OPSB Staff to O.A.C. 4906-1-01(F)(2)(b) that would subject any distribution substations to OPSB jurisdiction. At a minimum, distribution substations that are owned by end-use customers or distribution entities unaffiliated with the owner of the associated transmission line should be exempted from OPSB jurisdiction. If distribution substations will be subject to OPSB review, the owner of the associated transmission line should be the entity required to include the associated distribution substation as part of the OPSB application for the associated transmission line. Requiring separate applications for distribution substations that are “associated facilities” could result in different OPSB outcomes for the transmission line applications versus the distribution substation applications relating to the same project, which could lead to confusion about whether the overall project is authorized to proceed or not. As a result, in no event should an owner of a distribution

substation be required to submit an OPSB application separate and apart from the OPSB application for the associated transmission line.

B. The Board Should Not Condition Certificate Approvals on the Allocation of Transmission Costs

Certain recent OPSB Staff Reports of Investigation have contained conditions directing costs associated with electric transmission projects to be directly assigned to the customer. The customer means the owner of the delivery point, which could be an electric cooperative, a municipal utility, or a distribution affiliate of an Ohio transmission owner, on behalf of multiple retail customers, or it could be on behalf of a single customer, if a delivery point is being constructed for a single large retail load, like a large manufacturing facility or data center. For example, in a recent Letter of Notification filing, the OPSB Staff's Report included a condition that "[t]he Applicant shall ensure, to the maximum extent practical, that the customer contributes an amount that is appropriate under the present project."⁵ It is Buckeye's understanding that this is a recent change in OPSB policy and historically OPSB did not wade into transmission cost allocations that are properly left to the Federal Energy Regulatory Commission (FERC). These OPSB Staff conditions caused some, and may cause other, Ohio transmission owners to change their transmission cost allocation policies—contrary to FERC precedent and policy.

Presumably, these conditions have been added as an attempt to save transmission project costs for Ohio ratepayers. Instead, these conditions, in most cases, simply pick winners and losers amongst Ohio ratepayers contrary to FERC policy, and, in some cases, may ultimately reduce economic development in the State of Ohio. The only way this policy can actually reduce transmission costs rather than simply reallocate costs amongst Ohio ratepayers (in a manner

⁵ See *In the Matter of the Letter of Notification Application by American Transmission Systems, Inc. for a Certificate of Environmental Compatibility and Public Need for the London-Tangy 138 kV Transmission Line Tap to Mitchells Delivery Point Substation Project*, Case No. 22-0007-EL-BLN. Staff Report issued April 15, 2022 and automatically approved by the Board.

contrary to FERC precedent) is by causing requests for needed transmission projects to be withdrawn. And presumably the reason requests for needed transmission projects would be withdrawn is because the affected electric customers, having been directly assigned transmission upgrade costs, would cancel their plans for new factories, data centers, and other electric consuming facilities, or relocate them to states other than Ohio, where transmission system upgrades are rolled into transmission rates and shared amongst all transmission customers, rather than directly assigned to the customer. Certainly, it cannot be the policy goal of the OPSB to reduce transmission costs by having new economic development opportunities and associated jobs and economic growth in Ohio cancelled or moved to other states.

The transmission costs at issue can range from \$100,000 to millions of dollars per delivery point for necessary transmission system upgrades and interconnection costs. This is real money for electric cooperatives and, as non-profits, owned by the members they serve, these additional costs will be borne by the members of the electric cooperatives in the State of Ohio, not external or out-of-state shareholders/investors.

The OPSB and its Staff should not address transmission cost allocation in reports and orders approving projects that come before the Board. The Board should explicitly issue a finding in this docket that Staff Reports, which are frequently automatically approved by the Board, cannot condition or address the allocation of transmission costs to customers, and to the extent necessary, the Board should include a provision in the Ohio Administrative Code to that effect. The Board should make this finding because: (1) transmission cost allocation is FERC, not OPSB, jurisdictional; therefore the OPSB has no jurisdiction to address transmission costs allocations (certainly not in a manner directly contrary to the applicable FERC policy); (2) such a policy is directly contrary to FERC's preference for roll-in of transmission costs; and (3) these

actions have negative impacts on economic development in Ohio and are, therefore, not sound public policy and should be withdrawn.

1. Transmission Cost Allocation is FERC, Not OPSB, Jurisdictional

The issue of how transmission costs should be allocated is firmly within FERC's jurisdiction and not within the jurisdiction of OPSB, which only has jurisdiction over the *siting* of transmission-level facilities.⁶ OPSB may grant or deny project certificates based on a determination of need and considering environmental and agricultural impacts of the facilities, and, in the context of electric transmission lines or generating facilities, whether the facilities are consistent with regional plans for expansion of the power grid and will serve the interest of electric system economy and reliability.⁷ Nothing in the Ohio Revised Code grants OPSB the authority to allocate or assess the costs of electric transmission projects to customers. To the contrary, this authority is squarely within the scope of FERC's exclusive jurisdiction.

FERC's regulatory authority is derived from the Federal Power Act (FPA) which grants FERC exclusive authority pertaining to the regulation of rates and service for the interstate transmission or wholesale sale of electric energy.⁸ Preemption principles require that where FERC has exclusive jurisdiction over the rates and charges relating to interstate transmission service, state agencies cannot set policies that would interfere with this exclusive authority,⁹

⁶ See Ohio Revised Code Chapter 4906.

⁷ See R.C. § 4906.10.

⁸ See 16 U. S. C. § 824(b) (vesting FERC with exclusive jurisdiction over "the transmission of electric energy in interstate commerce"); 16 U. S. C. § 824d (placing under FERC jurisdiction the determination of whether "rates and charges...for or in connection with the transmission or sale of electric energy, and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable" and prohibiting maintaining any unreasonable difference in rates, charges, service or facilities); 16 U. S. C. § 824e (upon a finding that any "rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission" is unjust, unreasonable, or unduly discriminatory and preferential, charging FERC with determining the just and reasonable replacement rate). See also *New England Power Co. v. New Hampshire*, 455 U.S. 331, 340 (finding that Congress assigned to FERC the "exclusive authority to regulate the transmission and sale at wholesale of electric energy in interstate commerce.").

⁹ See e.g., *Hughes v. Talen Energy Marketing*, 136 S. Ct. 1288 (2016) (in a unanimous decision, the Supreme Court found based on preemption principles that FERC had exclusive jurisdiction over rates and charges received in

including by second-guessing FERC-mandated cost allocations.¹⁰ *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 966 (1986) (finding that state regulators could not allocate costs inconsistently with FERC-mandated cost allocations, as “FERC clearly has exclusive jurisdiction over the rates to be charged Nantahala’s interstate wholesale customers. . . . Once FERC sets such a rate, a State may not conclude in setting retail rates that the FERC-approved wholesale rates are unreasonable. A State must rather give effect to Congress’ desire to give FERC plenary authority over interstate wholesale rates, and to ensure that the States do not interfere with this authority”). Transmission rates and costs are governed by the FERC-approved Open Access Transmission Tariffs and, as discussed below, FERC has clearly ruled on the issue of transmission cost allocations in numerous cases, thus preempting any action by the OPSB on this issue.

2. Direct Assignment of Costs is Contrary to FERC Precedent

Transmission costs that are “directly assigned” to customers mean that the customer who is associated with a particular transmission upgrade will bear 100% of the costs associated with that project. Transmission costs that are “rolled in”, rather than directly assigned, become part of the transmission provider’s overall transmission zonal revenue requirement. This means these costs are recovered from all customers in the applicable PJM transmission zone¹¹ based on the ratio of the customer’s load in the zone to the total load in the zone (referred to as the load ratio share). While certain costs are already directly assigned by transmission owners to customers in

connection with interstate wholesale sales and Maryland was infringing on FERC’s authority by requiring participation in an auction but guaranteeing a different rate); *Nat’l Ass’n of Regul. Util. Comm’rs v. FERC*, 964 F.3d 1177, 1187 (D.C. Cir. 2020); *FERC v. EPSA*, 136 S. Ct. 760 (2016).

¹⁰ See also *Entergy La., Inc. v. La. PSC*, 539 U.S. 39, 49-50 (2003).

¹¹ The transmission zone is the area that is served by that particular transmission owner within the PJM region. For example, in the case of AEP, one of the four major TOs operating in Ohio, its transmission zone in the PJM region includes parts of seven states—Ohio, Indiana, Kentucky, Tennessee, West Virginia, Virginia, and Michigan.

some cases (such as meter reading), transmission facilities themselves are generally rolled-in and not directly assigned according to FERC policy and precedent.

To give an example of the impact on Buckeye's members of the difference between direct assignment of transmission costs and rolled-in treatment, under rolled-in rate treatment, Buckeye and its members pay between 1% and 8% of zonal transmission project costs based on Buckeye's load ratio share, depending on the transmission zone.¹² Under direct assignment, Buckeye and its members pay 100% of the cost of direct assignment facilities, which can range from \$100,000 to over \$1 million per new delivery point. Any increased transmission costs are passed through to Buckeye and its members and their predominantly rural residential retail customers in the State of Ohio through increased rates. This is an unfair cost shift to Buckeye and its members contrary to FERC precedent and policy.

Direct assignment of transmission costs is also bad for ratepayers in Ohio generally. When transmission costs are rolled-in, they are spread amongst ratepayers in the entire transmission zone—which includes ratepayers in other states.¹³ Spreading these transmission costs across the entire zone through rolled-in treatment reduces Ohio ratepayers' overall costs. By directly assigning transmission costs to the customers of specific electric distribution utilities in Ohio, the OPSB is putting costs that would have otherwise been borne by the entire region directly on Ohioans.

¹² All transmission customers receiving service from a transmission owner in that transmission owner's zone pay transmission costs associated with the operation, maintenance, and construction of transmission facilities in that zone based on their load ratio share. The load ratio share varies based on the applicable transmission zone. The transmission costs are determined under the applicable Open Access Transmission Tariff approved by FERC.

¹³ For example, a project located in the AEP Transmission Zone receiving "rolled-in" treatment would be borne by ratepayers in Ohio, Indiana, Kentucky, Tennessee, West Virginia, Virginia, and Michigan. If that same project were to be directly assigned to an Ohio electric distribution utility, only the members/customers of that utility would pay these costs. These other states in the zone presumably follow FERC precedent and will have transmission project costs allocated on a "rolled-in" basis and borne by everyone in the zone, including Ohio customers.

FERC has a strong preference for rolled-in rate treatment of all transmission facilities; even radial transmission lines are commonly rolled in. Rolled-in rate treatment applies when the facilities at issue have “any degree of integration” with the transmission system.¹⁴ This strong preference for rolled-in treatment is encompassed in the FERC’s so-called *Mansfield* test.¹⁵ Under the *Mansfield* test, integration is established if any one of five criteria are met. These criteria are:

1. Whether the facilities are radial, or whether they loop back into the transmission system;
2. Whether energy flows only in one direction, from the transmission system to the customer over facilities, or in both directions;
3. Whether the transmission provider is able to provide transmission service to itself or other transmission customers over the facilities;
4. Whether the facilities provide benefits to the transmission grid in terms of capability or reliability, and whether they can be relied on for coordinated operation of the grid;
5. Whether an outage on the facilities would affect the transmission system.¹⁶

Manifesting FERC’s strong preference for rolled-in rate treatment, satisfying even just one of these five criteria suffices to indicate rolled-in treatment. A recent FERC case has specifically confirmed that radial lines should receive rolled-in treatment if they satisfy one of the other four applicable criteria.¹⁷

The condition recommended by OPSB requiring that costs be directly assigned to the maximum extent possible is directly contrary to the FERC’s strong preference for rolled-in rate treatment for transmission facilities. FERC’s preference for rolled-in rate treatment is based on

¹⁴ *Northeast Texas Elec. Coop., Inc., et al.*, 108 FERC ¶ 61,084, at P 48, 51 (2004), *reh’g denied*, 111 FERC ¶ 61,189 (2005).

¹⁵ *See Mansfield Mun. Elec. Dep’t v. New England Power Co.*, 97 FERC ¶ 61,134, at 61,613 (2001), *reh’g denied*, 98 FERC ¶ 61,115 (2002).

¹⁶ *Id.*

¹⁷ *See Duke Energy Carolinas, LLC*, 168 FERC ¶ 61,190 (Order Rejecting NITSA) (2019) (Applying the *Mansfield* test, FERC found that the radial line satisfied one or more of the *Mansfield* criteria and therefore the cost of the radial facility should be rolled-into the Duke Energy transmission revenue requirement rather than directly assigned to the cooperative); *see also Buckeye Power, Inc. v. American Transmission Systems Incorporated*, 148 FERC ¶ 61,174 (2014) (FERC rejected voltage differentiated rates finding that the transmission provider’s system was fully integrated, that the lower voltage facilities satisfied one or more of the *Mansfield* criteria and, therefore, should be rolled-in with the higher voltage facilities).

the sound principle that the cost of any transmission facilities that benefit and support the transmission system, even minimally, should be shared by all transmission customers rather than directly assigned to the transmission customer requiring the incremental transmission system upgrades to be made.

3. OPSB's Change in Policy is Bad for Economic Development in Ohio

Not only does OPSB's inclusion of cost allocation conditions have a negative impact on Buckeye, but it will have a negative impact on economic development in the State of Ohio. Applying the new condition, the costs of new delivery points dedicated to single large retail customers, such as large manufacturers or data centers, could end up being directly assigned to the new retail customer. This would have a negative impact on new customer site selection. Such customers may end up selecting a site in nearby states, rather than Ohio, to avoid this direct assignment of transmission costs (which, as noted above, could be millions of dollars).

Moreover, many of the transmission companies have multi-state transmission systems meaning that Ohio customers pay a share of the cost of transmission facilities in other states installed to serve new load locating in those other states (assuming that the other states do not also attempt to change the applicable FERC precedent favoring rolled-in rate treatment for transmission facilities). For example, the AEP transmission zone includes seven states, including Indiana. If a new manufacturing facility elected to locate in Indiana rather than Ohio due to lower transmission costs for the new load, Ohio customers served by AEP Transmission will still pay for the transmission costs associated with AEP providing transmission service to that load but Ohio customers will not receive any of the economic development benefits.

As a result, driving these customers to nearby states does not, in turn, save money for Ohioans in transmission costs, because, in accordance with FERC precedent, the transmission

costs associated with the delivery points will still be allocated to the applicable PJM transmission zone and paid by all customers in the zone. Thus, under this policy change, Ohioans stand to lose the benefits of economic development but still bear the costs. In sum, why would Ohio choose to have the cost of new transmission delivery point facilities directly assigned to Ohio customers rather than rolled into the multi-state transmission rates, a portion of which is paid by load in other states, when other states allow these costs to be rolled into zonal transmission rates and a portion paid by Ohioans?

The only scenario in which transmission costs are actually reduced, rather than just reallocated to different customer groups, is if the economic development project requiring the new delivery point is cancelled. Direct assignment of transmission costs may have this impact as new customers may look to scrap a new economic development project altogether rather than bear 100% of the costs of the transmission owner's transmission system upgrades. Reduction of transmission costs should not come at the cost of limiting economic development and the new jobs and growth that come with it. This is not good policy.

For the foregoing reasons, the OPSB should not force or encourage Ohio IOUs to alter their transmission cost allocation policies in a manner contrary to the precedent set by FERC, the applicable regulatory authority. Instead, the OPSB should focus on solutions that lower transmission costs by ensuring that needed transmission projects are completed in a timely, efficient, and least cost manner.

C. Proposed "Station Power" Rule for Electric Generation

The Board should adopt rules for the siting of electric generating plants and associated facilities requiring the applicant to notify the local electric distribution utility that the applicant will be locating in its certified territory at least 90 days prior to the time that the generation

facility goes into service. This rule will ensure that the electric distribution utility is made aware of the new generation facility and can set up timely retail station power service arrangements for the facility. This change will prevent PJM's default station power rules from applying where local retail station power rates schedules control and thus avoid unnecessary costs for the electric distribution utility and administrative complications for all parties involved.

Generating units, particularly those subject to OPSB jurisdiction, are commonly interconnected directly to transmission facilities. These generation facilities generally export power to the transmission system, but they also draw power when their systems are offline. This is called generator "station power" and, even though the generating units are interconnected to the transmission facilities, station power is a retail service (meaning, it would be served by the distribution utility in whose certified territory the generation facility is located). Several IOUs and electric cooperatives have retail station power rate schedules that are applicable to generators locating within their certified territories.¹⁸

PJM has certain default rules, primarily relating to billing, for generators interconnecting directly to transmission facilities which may be at odds with the process provided for under the distribution utility's retail station power rate schedule. In accordance with FERC precedent, the distribution utility's retail station power rate schedule controls over PJM's default rules.¹⁹

Because electric generators are typically interconnected at transmission voltages, if the electric distribution utility is not timely informed of the interconnection, a generator may commence commercial operations and consume station power under the default PJM rules, even if the electric distribution utility has a retail station power tariff different from the default PJM

¹⁸ See Ohio Power Company Tariff, Original Sheet No. 427-5, Schedule GSP (Generation Station Power) (filed pursuant to PUCO Case No. 18-1313-EL-ATA); Duke Energy Ohio Tariff, Original Sheet No. 51, Rate GSP (Generation Station Power) (filed pursuant to PUCO Case No. 17-1157-EL-ATA).

¹⁹ *Indiana Municipal Power Agency vs. PJM Interconnection, LLC et al.*, 172 FERC ¶ 61,243 (2020) (affirming the right of local utilities to elect to provide station power service as a retail service).

rules. If a generating unit interconnects directly to the transmission facilities under the PJM default rules, rather than the applicable retail station power tariff, this can result in a very complicated situation where prior PJM default billings have to be undone and changed, adding costs and unnecessary burdens on the electric distribution company and the transmission owner. As a result, it is important that PJM be notified by the electric distribution utility that retail station power rate schedules apply, rather than PJM's default rules, prior to the generator commencing operations. Obviously, this cannot happen if the electric distribution utility is not notified of the interconnection.

This lack of coordination is particularly a problem where the generator is located in electric cooperative service territory. When a generation facility locates in the certified territory of an electric cooperative and is connected at a transmission voltage, the electric cooperative may not have knowledge of the new load because the generator interconnection may be taking place on transmission facilities not owned by the cooperative even though the generator is located in the cooperative's Ohio retail service territory, and neither the generator nor the transmission owner may notify Buckeye or the cooperative of the generator interconnection and need for retail generator station power.

If a generator commences service without notifying the retail service provider of its existence and without putting retail station power arrangements in place, this can create a situation where the default PJM rules will be in place until the jurisdictional utility finally finds out that the generator has gone into service. As noted above, this can create significant administrative issues between PJM, the electric distribution utility, the transmission owner, and the generation owner. As a result, it is much better for all parties involved to have the retail station power arrangements in place prior to any commencement of service by the generator.

This problem can be easily solved by simply requiring the generator to notify the distribution electric utility service provider prior to it going into service. Buckeye's proposed rule accomplishes this with little to no added burden to the parties.

Accordingly, Buckeye suggests that the Board adopt rules requiring generation facilities to notify the local distribution utility as part of the application process. Buckeye proposes the following language be added to O.A.C. 4906-4-05:

(C) The applicant shall provide written notice of the application to the electric light company as defined in section 4905.03 of the Revised Code, including electric light companies organized as nonprofit corporations, in whose certified territory the generation facility and associated facilities are located at least 90 days prior to the commencement of operations of the generation facility in order to ensure that any relevant retail station power agreements are put in place between the generation facility owner and the electric light company prior to the connection of service.

III. CONCLUSION

WHEREFORE, Buckeye respectfully requests that the Board consider Buckeye's foregoing comments in its review of the proposed rule changes.

Respectfully submitted,

BUCKEYE POWER, INC.

/s/ Lija Kaleps-Clark
Kurt P. Helfrich (0068017)
General Counsel
Lija Kaleps-Clark (0086445)
Associate General Counsel
Buckeye Power, Inc.
6677 Busch Blvd.
Columbus, OH 43229
(614) 846-5757
khelfrich@ohioec.org
lkaleps@ohioec.org

N. Trevor Alexander (0080713)
Steven D. Lesser (0020242)
BENESCH, FRIEDLANDER,
COPLAN & ARONOFF LLP
41 South High Street, Suite 2600
Columbus, Ohio 43215-6164
Telephone: 614.223.9300
talexander@beneschlaw.com
slesser@beneschlaw.com

(will accept service via email)

CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to these cases. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons below this 5th day of August, 2022.

Counsel:

john.jones@ohioAGO.gov
mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com
william.michael@occ.ohio.gov
ambrosia.wilson@occ.ohio.gov
ctavenor@theoec.org
knordstrom@theoec.org
rob@ooga.org
lcurtis@ofbf.org
garry.george@audubon.org
adam.forrer@audubon.org
kshimp@ohiochamber.com
jdunn@oneenergylc.com
ktreadway@oneenergylc.com

Administrative Law Judge:

michael.williams@puco.ohio.gov

/s/ Lija Kaleps-Clark
Lija Kaleps-Clark
Attorney for Buckeye Power, Inc.

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

8/5/2022 11:41:52 AM

in

Case No(s). 21-0902-GE-BRO

Summary: Comments electronically filed by Mr. N. Trevor Alexander on behalf of
Buckeye Power Inc.