

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Ohio Power Siting            )  
Board’s Review of Ohio Adm. Code            ) Case No. 21-902-GE-BRO  
Chapter 4906-1, 4609-2, 4906-3, 4906-4        )  
4906-5, 4906-6 and 4906-7.                 )

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**CONSUMER PROTECTION COMMENTS  
BY  
OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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**I. INTRODUCTION**

The PUCO has invited interested stakeholders to provide comments on the rules governing the Ohio Power Siting Board (“OPSB”).<sup>1</sup> OCC appreciates the opportunity to do so, given that important consumer protection matters are at issue. Electric transmission costs have increased at a staggering rate. As an example, AEP Ohio’s residential consumers have seen an 81% increase in their Basic Transmission Cost Rider between 2017 and 2022.<sup>2</sup> Much of this increase can be attributed to supplemental transmission projects<sup>3</sup> that receive little to no regulatory oversight at the state or federal level.<sup>4</sup>

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<sup>1</sup> Entry, June 16, 2022 (“June 16, Entry”).

<sup>2</sup> 4<sup>th</sup> Revised Sheet No. 474-1 of the Ohio Power Company effective September 1, 2017 (\$0.0172194/kWh) versus 1<sup>st</sup> Revised Sheet No. 400-1 of the Ohio Power Company effective April 1, 2022 (\$0.0311199/kWh).

<sup>3</sup> Supplemental projects are defined by PJM as projects that are initiated by the transmission owner that are not needed for reliability, operational performance or economic benefit. *See* PJM Transmission Owners Attachment M-3 Process Guidelines October 4, 2019 at page 4.

<sup>4</sup> *See* PJM Transmission Owners Attachment M-3 Process Guidelines, Version 0.1, p. 8, available at <https://www.pjm.com/-/media/planning/rtep-dev/pjm-to-attachment-m3-process-guidelines.ashx>. In relation to FERC-required approval of rates, charges, classification, services, and contracts related thereto, *see* 16 U.S.C. 824d (i.e. Section 205 of the Federal Power Act). Under a 205 proceeding, an entity seeking a change in rate, term, or condition carries the legal burden of demonstrating the proposal is just and reasonable. 16 U.S.C. 824d(e).

To ensure that Ohio consumers pay only just and reasonable rates for transmission services, the OPSB should modify its rules to mandate its review of supplemental transmission projects for need and cost effectiveness. The OPSB should also modify its rules to require utilities to demonstrate that they utilize competitive solicitation for all transmission utility supplemental projects as a means of containing costs being charged to consumers. The competitive solicitation should include the entire project and alternatives to the project.

## II. RECOMMENDATIONS

### A. **For consumer protection the OPSB should modify its rules to expand its authority for review of supplemental transmission projects for need and cost effectiveness.**

As with any monopoly service, such as electric transmission lines, there needs to be regulatory oversight to protect consumers from unfair and unreasonable charges. Regulatory oversight can occur either at the federal level, through PJM or FERC, or at the state level, through state utility commissions. Supplemental projects have fallen into a regulatory “Catch-22.” FERC has delegated its authority over transmission planning to PJM.<sup>5</sup> PJM only oversees transmission projects that are intended to resolve system-wide reliability, market efficiency, operational performance, or state public policy needs.<sup>6</sup> The unfortunate reality for consumers is that neither FERC nor PJM review supplemental projects for need or cost-effectiveness. But these transmission projects are a part of the

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<sup>5</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. 31,241 (2007) (Order No. 890), order on reh’g, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007) (Order No. 890-A).

<sup>6</sup> Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., Schedule 6, Section 1.5.6(n) (although Supplemental Projects are included in the Regional Transmission Expansion Plan, they are reviewed by PJM only for the potential impact they may have on the regional system; unlike RTEP projects, Supplemental Projects are not approved by the PJM Board of Managers).

charges passed through to Ohio electric consumers. This regulatory loophole needs to be addressed in this OPSB rulemaking.

PJM defines supplemental transmission projects as a transmission expansion or enhancement that is not needed for system reliability, operational performance, or economic criteria.<sup>7</sup> The costs of these projects are charged to consumers through PJM but are not reviewed for prudence or cost. These projects are basically rubber stamped by PJM then charged to consumers.

For 2021 there were 67 supplemental projects in Ohio with a price tag of over \$1.2 billion.<sup>8</sup> This compares to 2016 when there were five supplemental transmission projects charged to consumers for “only” \$258 million. PJM’s Independent Market Monitor (“IMM”) reported that supplemental projects have increased 795 percent for 1998 through 2021.<sup>9</sup> Transmission utilities are taking advantage of the loophole in the system that allows them to escape any regulatory review. The OPSB, as the designated entity that oversees transmission infrastructure, should include cost and prudence review of supplemental projects as part of its duties.

The OPSB should insert in O.A.C 4906-1-01 the definition of a supplemental project as follows:

(NN) “Supplemental transmission project” means any transmission project designated by PJM, or its successor, as supplemental and not required for reliability, economic efficiency or operational performance criteria.

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<sup>7</sup> PJM Transmission Owners Attachment M-3 Process Guidelines October 4, 2019 at page 4.

<sup>8</sup> PJM’s 2021 Ohio State Infrastructure Report, updated July 2022 at pages 27-48.

<sup>9</sup> Monitoring Analytics, LLC, “State of the Market Report for PJM: January through March,” pg. 598, available at [https://www.monitoringanalytics.com/reports/PJM\\_State\\_of\\_the\\_Market/2021/2021q1-som-pjm.pdf](https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2021/2021q1-som-pjm.pdf) (May 13, 2021).

Additionally, all supplemental transmission projects should be subject to a prudence review and a cost/benefit analysis. O.A.C 4906-2-4(C)(1) requires applicants to disclose the costs and benefits of a proposed project. The rule should also require a prudence review. OCC suggests the following addition after 4906-2-4(C):

- (2) The prudence of the project, including all other options considered.

The applicant should bear the burden of proof that the project will provide its consumers tangible benefits. The OPSB needs to provide regulatory oversight and consumer protection for these projects that are being ignored at PJM and FERC.

**B. To protect consumers, the OPSB should require a competitive solicitation for all transmission projects in the state.**

Competition has brought lower prices to Ohioans through participation in the PJM generation markets and competitive auctions to procure electricity for consumers that do not shop. Requiring transmission projects to be subject to competitive bidding can bring lower costs and more innovation to the transmission system Ohio consumers rely on. Last year the New York Independent System Operator (“NYISO”) performed a competitive solicitation for a 20-mile 345 kV transmission line. The line was recently completed by NextEra Energy (an independent transmission owner).<sup>10</sup> This shows there are non-utility affiliated transmission owners that are willing to compete and take on the risk that utilities have been putting on consumers for decades.

Competitive solicitations will not only bring lower prices and more innovation. It will bring some much-needed transparency to supplemental transmission projects. Supplemental transmission projects are planned and approved by the monopoly transmission utility because no regulatory authority is reviewing them for need or cost

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<sup>10</sup> <https://www.empirestateline.com/>.

effectiveness. Competition for all transmission projects should improve service and make winning bidders more responsive to consumers' needs.

Competitive solicitation should be for the entire transmission project, not just for individual contractors on the project. A request for proposal for a competitively developed solution to the problem the supplemental project is trying to solve should be required. By opening-up the process to competition, new and “out of the box” solutions could be presented. This may prove beneficial to consumers, instead of the current process that simply allows the utility to build out their transmission system, increase their rate base, and increase their profits.

OCC suggest the following language to be inserted into O.A.C. 4906-2-4(C):

- (3) How the applicant will conduct a competitive procurement for the construction of the projects. This shall include oversight by an independent third-party that shall design the solicitation, administer the bidding, and ensure the solicitation is fair.

### **III. CONCLUSION**

Ohio consumers have been facing significant increases to their transmission costs over the past five years. A large amount of this is due to unregulated supplemental transmission projects. Transmission utilities taken advantage of a loophole to the tune of \$1.2 billion in 2021. The OPSB needs to close the loophole. It needs to step up and review these projects for both need and cost effectiveness. The OPSB should also protect consumers by requiring that all electric transmission project be competitively bid. This would help bring lower costs and greater innovation to consumers.

To protect consumers, the PUCO should adopt OCC's recommendations.

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

*/s/ William J. Michael*

William J. Michael (0070921)  
Counsel of Record  
Ambrosia E. Wilson (0096598)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

65 East State Street, Suite 700  
Columbus, Ohio 43215

Telephone [Michael]: (614) 466-1291

Telephone [Wilson]: (614) 466-1292

[william.michael@occ.ohio.gov](mailto:william.michael@occ.ohio.gov)

[ambrosia.wilson@occ.ohio.gov](mailto:ambrosia.wilson@occ.ohio.gov)

(willing to accept service by email)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Comments were served on the persons stated below via electronic transmission this 5<sup>th</sup> day of August 2022.

*/s/ William J. Michael* \_\_\_\_\_  
William J. Michael  
Assistant Consumers' Counsel

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

**SERVICE LIST**

[john.jones@ohioAGO.gov](mailto:john.jones@ohioAGO.gov)

Attorney Examiner:

[mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)  
[kboehm@BKLawfirm.com](mailto:kboehm@BKLawfirm.com)  
[kylercohn@BKLawfirm.com](mailto:kylercohn@BKLawfirm.com)  
[kshimp@ohiochamber.com](mailto:kshimp@ohiochamber.com)  
[garry.george@audubon.org](mailto:garry.george@audubon.org)  
[adam.forrer@audobon.org](mailto:adam.forrer@audobon.org)  
[lcurtis@ofbf.org](mailto:lcurtis@ofbf.org)  
[rob@ooga.org](mailto:rob@ooga.org)  
[randall.griffin@aes.com](mailto:randall.griffin@aes.com)  
[ktreadway@oneenergyllc.com](mailto:ktreadway@oneenergyllc.com)  
[jdunn@oneenergyllc.com](mailto:jdunn@oneenergyllc.com)

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