

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke )  
Energy Ohio, Inc. to Adjust and Set the ) Case No. 23-457-EL-RDR  
Rate for Rider BTR. )

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

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**I. INTRODUCTION**

Duke Energy Ohio, Inc. (“Duke”) wants to collect more than \$88 million from residential consumers beginning October 2, 2023 and continuing through September 2024 through its Base Transmission Rate Rider (“BTR”).<sup>1</sup> A significant portion of these charges result from unregulated transmission project costs known as “supplemental projects.”<sup>2</sup> There is no justification for why these charges are necessary to provide consumers with transmission service. And there is no evidence that these charges are just and reasonable for Ohio consumers.

To protect consumers, the PUCO should conduct a review of the necessity and prudence of supplemental projects charged to Ohio consumers through Duke’s BTR. The review should include a hearing regarding Duke’s proposed charges to consumers for supplemental transmission projects. Such review and hearing would be consistent with the PUCO’s acknowledgement that supplemental transmission project costs charged

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<sup>1</sup> Application at Schedule B-2, column H, line 1 (July 14, 2023).

<sup>2</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 p. 4.

through utilities’ transmission cost recovery riders like the BTR “warrant further attention.”<sup>3</sup>

## II. RECOMMENDATIONS

Electric transmission is a monopoly service that requires regulatory oversight to protect consumers. Regulatory oversight can occur at the federal level, through PJM or FERC, and/or at the state level, through state utility commissions, such as the PUCO. Unfortunately, utility supplemental transmission projects have fallen into a regulatory black hole where costs and reliability are not adequately reviewed - if they are reviewed at all. The PUCO should plug this regulatory hole.

FERC has delegated its authority over transmission planning to PJM.<sup>4</sup> But PJM only oversees transmission projects that are intended to resolve system-wide reliability, market efficiency, operational performance, or state public policy needs.<sup>5</sup> This regulatory gap exists because neither the Federal Energy Regulatory Commission (“FERC”) nor PJM review supplemental transmission projects for need, cost-effectiveness, or prudence.

As PUCO Commissioner Dan Conway commented to FERC:

A supplemental (local) project is defined in the PJM Operating Agreement as an expansion or enhancement not

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<sup>3</sup> *In the Matter of the Review of the Non-Market-Based Services Rider Contained in the Tariffs of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 23-51-EL-RDR, Finding and Order (March 22, 2023), at ¶ 14; and *In the Matter of the Application of Ohio Power Company to Update Its Basic Transmission Cost Rider*, Case No. 23-57-EL-RDR, Finding and Order (March 22, 2023), at ¶ 14.

<sup>4</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>5</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).

required for compliance with PJM system reliability, operational performance, or economic criteria.

Supplemental projects are included in the RTEP [Regional Transmission Expansion Plan], at least nominally. However, because on a case-by-case basis they are determined not to be *required* to meet regional reliability standards, **the PJM RTEP process does not substantively review them, either for their reliability or cost impacts.** Rather, the TO identifies a local need, proposes a supplemental (local) project to solve that need, and determine the project that it then implements.<sup>6</sup> [Emphasis added].

At the state level, the Ohio Power Siting Board (“OPSB”) does not even review supplemental transmission projects between 69 kV and 100 kV. The OPSB only has jurisdiction over “major utility facilit[ies],” which include transmission facilities of 100 kV or more.<sup>7</sup> As a result, Duke’s supplemental transmission projects are not adequately reviewed for reasonableness or prudence.

Further, the American Power Association has recognized that:

Supplemental transmission projects do not receive the same rigorous review by PJM that baseline transmission projects do, even though the costs for these projects are also passed on to consumers. This lack of true oversight means it is nearly impossible for energy consumers—who ultimately bear the costs of these projects—to verify that they are getting their money’s worth.<sup>8</sup>

In his comments to FERC, PUCO Commissioner Conway further spotlighted how the PUCO itself is concerned about these hidden costs:

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<sup>6</sup> Written Comments of Commissioner Dan Conway, Public Utilities Commission of Ohio FERC Technical Conference regarding Transmission Planning and Cost Management Conference, October 6, 2022, FERC Docket AD22-8-000 and PUCO Docket 22-7000-EL-FAD, at p. 2.

<sup>7</sup> R.C. 4906.01(B)(1)(b).

<sup>8</sup> *See* Oversight and Transparency of Supplemental Transmission Projects | American Public Power Association.

Although the RTEP process may have generally worked well with respect to baseline transmission projects, and with addressing, solving, and achieving regional reliability objectives, Ohio is concerned with the extent of supplemental (local) projects that the Ohio TOs have planned and developed over the last 5 to 10 years. More specifically, Ohio is concerned about the magnitude of capital expenditures on them, and the rate impacts that result. **We are concerned about the lack of sufficient oversight with respect to local planning and the impacts it might be having on costs that our ratepayers ultimately bear.**<sup>9</sup> [Emphasis added].

In its Responses to OCC's First Set of Interrogatories Duke refused to provide OCC with the dollar amount of the supplemental projects that it has included in the proposed BTR. Duke claimed that this was "beyond the scope of the Commission's audit of Rider BTR...."<sup>10</sup> Duke further claimed the information was available publicly as it was based on "FERC Form 1 and the OATT process at FERC."<sup>11</sup>

Regardless of any public information about supplemental projects, only Duke can confirm the charges that it is seeking to have the PUCO approve through its BTR. Duke is denying Ohio consumers the right to know how much they are charged for supplemental project costs through the BTR.

Publicly available information about Duke's supplemental project costs demonstrates the following:

- PJM data shows that the cost of seven supplemental projects placed in service during 2022 and included by Duke in its BTR request is over \$50 million. This cost is for local electric transmission projects not needed for PJM's region-wide reliability, market efficiency, operational performance purposes, or state public policy initiatives.

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<sup>9</sup> Written Comments of Commissioner Dan Conway, Public Utilities Commission of Ohio FERC Technical Conference regarding Transmission Planning and Cost Management Conference, October 6, 2022, FERC Docket AD22-8-000 and PUCO Docket 22-7000-EL-FAD, at p. 3.

<sup>10</sup> Duke's response to OCC's INT-01-005 relevant page of which is attached hereto as Exhibit 1.

<sup>11</sup> *Id.*

- Duke has approximately \$252.42 million in planned regional transmission expansion projects planned for the years 2023 through 2028. Of that \$44.3 million is “baseline”, \$7.47 million is “network”, and \$200.43 million is for “supplemental projects”. 79.4% of all transmission construction costs during the years 2023 through 2028 will be essentially unregulated supplemental projects.
- This complete transformation towards unregulated supplemental projects gets consistently worse during the five-years 2023 through 2028. For 2026 through 2028, Duke has approximately \$80.92 million in planned regional transmission expansion projects. The entire amount - one hundred percent - is for these effectively unregulated supplemental projects.

Despite this ever-expanding impact of supplemental project costs, there is precious little protection of *consumers* from charges for supplemental projects through the BTR. This gap in consumer protection harms consumers and it should end now.

The Ohio Power Siting Board (“OPSB”) reported to the General Assembly that in 2020, “approximately 97 percent of Ohio transmission investments represented supplemental projects” with a price tag of \$1.12 billion.<sup>12</sup> Unfortunately for consumers, there is little to no regulatory oversight of the costs, necessity, or prudence of supplemental transmission projects at the state or federal level.<sup>13</sup> This lack of oversight is unacceptable for Ohio residential consumers.

Consumers should not be forced to pay Duke for unreviewed and costly supplemental transmission projects. The PUCO should fully examine Duke’s BTR charges to consumers for supplemental transmission projects. This review should include analyzing the criteria for each project, the costs, and verifying that reliability improvements or some other benefits are achieved. Residential consumers should not be

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<sup>12</sup> *In the Matter of the Ohio Power Siting Board’s Report to the General Assembly Regarding the Power Transmission System*, Case No. 21-796-EL-UNC, OPSB Report (November 18, 2021) at 5.

<sup>13</sup> See PJM Transmission Owners Attachment M-3 Process Guidelines, Version 0.1 at 8.

forced to pay BTR charges where the costs are not justified. A blank check for unreviewed and ever-expanding supplemental transmission project costs should not be foisted onto residential consumers - the PUCO should protect these consumers.

The PUCO should review Duke's proposed BTR charges which include these supplemental transmission projects.

There is no justification in this case for charging residential consumers more than \$88 million in BTR charges. If approved without the recommended oversight, Duke's residential consumers will have little understanding of (1) *what* they are paying for through the BTR, (2) whether the costs were necessary and prudent in the first place, or (3) what value they are gaining in exchange for the BTR charges. That result is unacceptable.

### **III. CONCLUSION**

The PUCO should protect Duke's residential consumers from more than \$88 million in unreviewed supplemental transmission charges. The PUCO should conduct a full review Duke's proposed BTR charges for supplemental transmission projects. This review should include a determination of whether the investments are prudent and necessary to bring meaningful and measurable service and/or reliability improvements to consumers who will pay the increased charges.

Respectfully submitted,

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Ohio Consumers' Counsel

*/s/ Donald J. Kral*

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Consumer Protection Comments has been served electronically upon those persons listed below this 6<sup>th</sup> day of September 2023.

*/s/ Donald J. Kral*  
Donald J. Kral  
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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**Duke Energy Ohio  
Case No. 23-457-EL-RDR  
OCC First Set of Interrogatories  
Date Received: July 28, 2023**

**OCC-INT-01-005**

**REQUEST:**

If the answer to INT-01-004 is in the affirmative,

- a. how many Supplemental Transmission Projects (as defined above) are included?
- b. please identify and describe each project, including when each project was approved.
- c. what was the total dollar amount included for each project to date and over how many years for each project?
- d. when was each project complete?
- e. what is the total dollar amount included for each project in the current BTR?
- f. what governmental (jurisdictional) authority (*e.g.*, FERC, PJM, PUCO) approved each project? Please provide a case number or other identifier for each project approved at each approving entity.

**RESPONSE:**

Objection. This interrogatory is overly broad, unduly burdensome, and designed to elicit information that is both irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Objecting further, this interrogatory seeks information and analysis that is beyond the scope the Commission's audit of Rider BTR as Rider BTR is based on calculations made pursuant to the FERC-approved Open Access Transmission Tariff ("OATT"). Objecting further, this Interrogatory seeks information that is of public record and thus equally accessible to OCC as it is based on information filed in the FERC Form 1 and in the OATT process at FERC. Objecting further, this interrogatory seeks information regarding supplemental projects and OATT inputs that are governed by the FERC OATT, including the FERC-approved OATT process for planning supplemental projects under OATT Attachment M-3, and the Formula Rate Implementation Protocols in OATT Attachment H-22B. OCC has the ability to participate in the Attachment M-3 process and the Annual Update discovery process set forth in Attachment H-22B, and those processes are the appropriate forums to request this information. Without waiving said objection, to the extent discoverable, and in the spirit of discovery, said FERC processes are complete with regard to the current BTR rate.

**PERSON RESPONSIBLE:** Legal

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**Case No(s). 23-0457-EL-RDR**

Summary: Comments Consumer Protection Comments by Office of the Ohio  
Consumers' Counsel electronically filed by Ms. Alana M. Noward on behalf of Kral,  
Donald J. Mr..