

November 17, 2023

Via eFiling in Docket No. EL23-105-000

The Honorable Willie Phillips, Chairman
The Honorable James Danly, Commissioner
The Honorable Allison Clements, Commissioner
The Honorable Mark Christie, Commissioner

Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Parties Urge Commission Support of Ohio Regulatory Gap Complaint

Dear Chairman Phillips and Commissioners Danly, Clements, and Christie:

The signatories of this letter are energy consumer groups as well as the R Street Institute, a pro-market think tank. We write in support of a transmission grid sufficient to accommodate a dynamic, growing economy. Achieving such a transmission grid requires substantial additions to the existing grid as well as use of advanced grid technologies and supportive management practices. We commend the Federal Energy Regulatory Commission (Commission) for its progress on generator interconnection reform and related areas.¹ However, we observe Commission-approved rules are being employed in ways that frustrate efficient transmission development.

On September 28, 2023, the Office of the Ohio Consumers' Counsel (OCC) filed a complaint with the Commission against PJM Interconnection and Ohio transmission-owning utilities alleging the PJM Open Access Transmission Tariff and Operating Agreement are unjust, unreasonable, and unduly discriminatory and preferential, because they contain no mechanism by which the Commission can oversee the need, prudence, and cost-effectiveness of local transmission projects in Ohio.² The Complaint requests that the Commission develop a mechanism by which it will oversee the need, prudence, and cost-effectiveness of local transmission projects in Ohio, and for other relief.

At issue in the OCC complaint is the ability of Ohio transmission utilities to spend on what are termed "Supplemental Projects" in PJM's tariff and operating agreement. These projects are not identified through PJM's regional transmission planning process but rather move forward on the utilities' own initiative. Such projects are not approved by the PJM Board, nor subject to PJM review for need, prudence, or cost-effectiveness for consumers. PJM only screens Supplemental Projects for potential negative impacts on the operation of the broader grid. Ohio transmission

¹ *Improvements to Generator Interconnection Procedures and Agreements*, Order No. 2023, 184 FERC ¶ 61,054 (July 28, 2023).

² *Office of the Ohio Consumers' Counsel v. PJM Interconnection, LLC*, et al., Docket No. EL21-105-000, Notice of Complaint (Sept. 28, 2023).

owners seem to exercise a nearly unchecked ability to spend on local transmission projects at ratepayer expense.

Since 2017, according to the OCC complaint, transmission utilities in Ohio spent more than \$6 billion on Supplemental Projects.³ While the transmission projects are described as “local,” they are portions of the interstate transmission grid and subject to Commission regulation and oversight. As such, the Commission retains responsibility to ensure the resulting transmission rates are just and reasonable.

While the complaint addresses local transmission spending, we emphasize that we file in opposition to unchecked spending without regulatory oversight and not in opposition to local transmission development *per se*. Local transmission investment is essential to meeting customer needs in a dynamic economic environment. However, such local transmission investment must be coordinated with regional transmission planning for reliability, generator interconnection, and other regional and interregional needs to ensure cost-effectiveness of local spending.

Regulatory Gap Concerns Not Limited to Ohio

The regulatory gap issue identified in the OCC complaint is not limited to the state of Ohio nor to utilities operating within the PJM market. Remarks of state commissioners from Maine to California at last year’s technical conference on transmission planning and cost management and comments filed subsequently in that docket revealed concern about the ability of transmission owners to spend on their systems at consumer expense with inadequate oversight.⁴ For example, at the conference, Commissioner Sarah Freeman of the Indiana Utility Regulatory Commission, then president of the Organization of MISO States, said her state has no process for reviewing transmission projects.⁵ Other state commissioners described limits to legal authority to review transmission spending or practices that allow certain kinds of project spending to go unexamined.⁶

The consequences of the regulatory gap go beyond excessive local transmission spending. The complex nature of the interconnected grid means that spending on local transmission projects will have direct and indirect consequences for the value of generators and of other transmission components. For example, it is hypothetically possible for local transmission spending to increase the value of generation resources owned or controlled by a corporate affiliate of the transmission company. When local transmission investment is not coordinated with regional transmission plans, such investments have the potential to diminish the efficiency or wholly undermine the value of planned regional projects. Recall that in the case of PJM, the Regional

³ *Ibid*, p. 24.

⁴ "Transmission Planning and Cost Management: Technical Conference." Docket No. AD22-8-000. Transcript. October 6, 2022. See pp. 81-82, 217-218. <https://www.ferc.gov/media/transcript-docket-no-ad22-8-000>.

⁵ Rich Heidorn Jr., “FERC Tech Conference Highlights Regulatory Gaps on Transmission Oversight,” *RTOInsider*, Oct. 10, 2022. <https://www.rtoinsider.com/articles/30933-ferc-tech-conference-highlights-regulatory-gaps-tx-oversight>.

⁶ Heidorn, 2022; see also Devin Hartman and Kent Chandler, “Stakeholder Soapbox: A Transmission Planning Resolution Emerges,” *RTOInsider*, Dec. 13, 2022. <https://www.rtoinsider.com/articles/31281-stakeholder-soapbox-tx-planning-resolution-emerges>.

Transmission Organization (RTO) reviews local transmission only for possible adverse reliability effects, not for effects on market efficiency or the value of planned transmission projects.⁷

We raise these concerns not to distract from the OCC complaint, but rather to point out that resolution of the OCC complaint will influence stakeholder expectations and thereby encourage or discourage efforts to resolve regulatory gap issues elsewhere through the complaint process.

Closing the Regulatory Gap

While we recognize the importance of building more transmission, we recommend that rather than relying on complaints to drive piecemeal reform, the Commission pursue issues beyond the OCC complaint within the context of broader transmission planning and cost allocation reforms. State review authority and regulatory practices vary widely, and such variation changes the regulatory gap and consequent utility practices. As a result, it is unlikely the Commission's resolution of the OCC complaint will result in a simple template for addressing similar issues in other states.

To this end, we reiterate our position on several topics critical to closing the regulatory gap and ensuring a customer-focused transmission planning process.

- **Local Transmission Oversight:** We underscore the importance of assessing the need for local transmission projects to ensure that resources are allocated effectively and costs kept reasonable for captive ratepayers. Better information in RTO footprints on interaction between regional and local transmission investment would inform oversight of local transmission reviews. Much more attention is needed outside RTOs, where transmission planning opacity reigns supreme and the independence of transmission planning is not evident. Equalizing treatment of Order Nos. 890 and 1000 across RTO and non-RTO regions, especially regarding independent and transparent regional transmission planning, would be a major step forward.⁸
- **Formula Rates and Prudence Practices:** Transmission projects exempt from competition must face robust economic prudence scrutiny from regulators, which warrants reexamining the current policy of unconditional formula rate treatment under a presumption of prudence.⁹ Economic prudence scrutiny by regulators is the primary means of ensuring economic discipline and preventing overcapitalization by utilities. Consumers and regulators lack sufficient information to determine whether transmission provider expenditures are prudent consistent with the ability to challenge under the “serious doubt” standard that requires “reliable, probative, and substantial evidence.”¹⁰ Robust transparency criteria should be required for formula rates.

⁷ PJM Operating Agreement, Schedule 6, Section 1.5.6(n)

⁸ Hartman and Chandler, 2022.

⁹ “Comments of the Electricity Transmission Competition Coalition before the Federal Energy Regulatory Commission,” Docket No. RM21-17-000, Oct. 12, 2021, p. 36.

¹⁰ *Delmarva Power & Light Co.*, 172 FERC ¶ 61,175, at P 15 (2020) (citing *New Eng. PowerCo.*, Opinion No. 231, 31 FERC ¶ 61,047 (1985)).

- **Federal and State Regulation:** Closing the regulatory gap begins with a clear definition of “local” projects. We recommend facilities between 100 and 230 kilovolts, not be classified as local. Except when such transmission facilities are entirely radial to the bulk power grid, they typically help serve regional loads. An unambiguous jurisdictional threshold is essential to close the regulatory gap and ensure that both federal and state economic regulatory oversight is applied appropriately.¹¹ Further, the Commission should reject the presumption of prudence for formula rates for any local transmission project not subject to economic scrutiny for cost-effectiveness.
- **Independent Transmission Monitor (ITM):** The development of an ITM has been proposed as a solution to the information gap that hampers federal and state prudence reviews. An ITM could serve multiple functions, including enhancing transparency and evaluation of alternatives to utility-proposed projects. State regulators have pointed out that an ITM could help bridge the regulatory gap concerning local transmission projects.¹² The ITM proposal has been spearheaded by the ITM Coalition under the leadership of the Electricity Consumers Resource Council. Distinguishing an ITM’s role in and outside of RTO regions will be important because the lack of independent transmission planning outside of RTOs is a major deficiency requiring reforms in its own right.¹³

Procedurally, several possible courses of action are possible. For example, these issues may warrant a notice of inquiry or subsequent technical conference(s) to more thoroughly develop the record on these interrelated topics. Alternatively, the establishment of an Independent Transmission Monitor (ITM), the reassessment of Order No. 890 standards, and the revision of formula rates alongside prudence practices may warrant dedicated proceedings. The Commission may also consider synchronization of these topics with other pending proceedings, for example regulatory and information gaps in local transmission could be addressed in coordination with reforms in regional transmission planning.

Conclusion

The OCC identified a case of a serious lack of regulatory oversight of transmission spending by monopoly utilities. Commission-regulated transmission utilities responded to the lack of oversight by spending billions of dollars on local transmission projects without any review of project need or assessment of cost effectiveness. In addition, as the projects are not coordinated with PJM’s regional transmission planning process, they have the potential to hamper the efficiency of transmission projects developed within the process.

We urge the Commission to provide relief to Ohio ratepayers from unchecked spending and to address broader regulatory gap concerns in a more comprehensive manner.

¹¹ Hartman and Chandler, 2022; Related: the definition of the “Bulk Electric System” provided by the North American Electric Reliability Corporation, see *Bulk Electric System Definition Reference Document*, Version 2 (April 2014), p. 3. <https://www.nerc.com/pa/RAPA/Pages/BES.aspx>.

¹² Ethan Howland, “FERC, state regulators consider independent monitors as way to boost transmission oversight ‘gap,’” *Utility Dive*, November 16, 2022. <https://www.utilitydive.com/news/ferc-naruc-task-force-independent-monitor-itm/636677/>

¹³ “Joint Comments of the Non-RTO NASUCA States before the Federal Energy Regulatory Commission,” Docket No. RM21-17-000, Aug. 17, 2022, p. 8-9.

The undersigned parties respectfully request the Commission consider the comments herein.

Respectfully submitted,

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