

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

The Office of the Ohio Consumers' Counsel,	)	
Complainant,	)	
	)	
v.	)	
	)	
PJM Interconnection, L.L.C., American	)	Docket No. EL23-105-000
Electric Power Service Corporation, on behalf of	)	
Ohio Power Company and AEP Ohio Transmission	)	
Company, American Transmission Systems, Inc.,	)	
AES Ohio, a/k/a The Dayton Power and Light	)	
Company, and Duke Energy Ohio, LLC,	)	
Respondents.	)	

**ANSWER IN SUPPORT OF MOTION TO LODGE AND
REQUEST FOR COMMISSION ACTION TO GRANT COMPLAINT**

Pursuant to Rule 213¹ of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure, the PJM Industrial Customer Coalition ("PJMICC"), the Industrial Energy Consumers of America ("IECA"), the American Forest and Paper Association ("AF&PA") (collectively, "Industrial Customers"), the Ohio Manufacturers Association, the Maryland Office of People's Counsel ("OPC"), and the New Jersey Division of Rate Counsel (collectively, "PJM Customers") hereby submit this Answer ("Answer") in support of the Office of the Ohio Consumers' Counsel's ("OCC") *Motion For Expedited Action and Motion to Lodge New Information* ("OCC Motion") in the above-captioned docket.² The OCC Motion renews OCC's request that the FERC address the transmission rates and planning processes contained in PJM Interconnection, L.L.C.'s ("PJM") Open Access Transmission Tariff

¹ 18 C.F.R. § 385.213.

² PJMICC filed a doc-less motion to intervene on October 4, 2023. IECA and AF&PA filed doc-less motions to intervene in this proceeding on October 27, 2023.

(“Tariff”) and conducted by the Ohio Transmission Utilities³ relative to transmission projects in Ohio, which was initiated by a Complaint (“OCC Complaint”) filed nearly three years ago on September 28, 2023, in the above-referenced docket.⁴ OCC, and by extension, the consumers it represents, are still waiting for relief.

The Commission should grant the OCC Motion, address the OCC Complaint in a timely fashion, and require PJM to modify its Tariff to address the deficiencies discussed in the Complaint and in the Industrial Customers’ subsequent Comments in Support of Complaint (“Industrials Comments”), which were filed on November 17, 2023.

I. BACKGROUND AND THE NEED FOR ACTION

In its Complaint against PJM and the Ohio Transmission Utilities, OCC alleged that there is no oversight for “need, prudence, and cost-effectiveness” for local transmission facilities by any regulatory agencies.⁵ The OCC Complaint argued that over “85% of the estimated costs for proposed new transmission between 2018 and 2022 in Ohio are a function of utilities’ spending on Supplemental Projects.”⁶ Because these capital investments are rolled into rate base, the OCC Complaint alleged that the resulting transmission rates are unjust, unreasonable, and unduly discriminatory. The OCC advocated for amendments to the PJM Tariff, which would institute an

³ The Ohio Transmission Utilities include affiliates of American Electric Power Corporation (“AEP”), being Ohio Power Company (“AEP Ohio Power”) and AEP Ohio Transmission Company, Inc. (“AEP Ohio Transmission”); the FirstEnergy affiliate American Transmission Systems, Inc. (“ATSI”); AES Ohio, a/k/a The Dayton Power and Light Company (“AES Ohio” or “DP&L”); and Duke Energy Ohio, LLC (“Duke”) (collectively, “Ohio Transmission Utilities”).

⁴ See *The Office of the Ohio Consumers’ Counsel v. PJM Interconnection, L.L.C.*, Complaint of the Office of the Ohio Consumers’ Counsel to Protect Ohio Consumers Under the PJM Tariff From the Failures of Multiple Agencies to Regulate Hundreds of Millions of Dollars in Monopoly Electric Transmission Charges for “Supplemental Projects” Planned by AEP, AES, Duke, and FirstEnergy and Request for Fast-Track Processing, Docket No. EL23-105-000 (filed Sept. 28, 2023) (“OCC Complaint”).

⁵ See *id.* at 1.

⁶ *Id.* at 25.

Independent Transmission Monitor, the use of stated-rate approaches for transmission rates, and the development of a different remedy should the FERC reject its other proposals.⁷

In the OCC Motion, OCC restates many of the issues outlined in the OCC Complaint and requests expedited action from the Commission. OCC requests that the FERC “issue an order without delay either granting the Complaint or establish an expedited process to resolve the issues raised,” and requests that the FERC grant OCC’s three Motions to Lodge in this proceeding.⁸ OCC further states that “Ohio consumers should not be held hostage to a known, flawed regulatory process that results in excessive, unjust, unreasonable, and unaffordable transmission rates.”⁹

On December 19, 2024, 22 consumer-related organizations filed a complaint (“Regional Planning Complaint”) in FERC Docket No. EL25-44-000 against PJM and all other FERC-jurisdictional public utility transmission providers with local planning tariffs. The Regional Planning Complaint was in response to the proliferation of inefficiently planned “local projects,” (such as PJM Supplemental Projects) that do not have sufficient regulatory oversight and do not result in just and reasonable rates.¹⁰ Like the OCC Complaint, the Regional Planning Complaint alleged that the FERC-jurisdictional tariffs “inappropriately authorize individual transmission owners to plan FERC-jurisdictional transmission facilities at 100 kilovolts (‘kV’) and above” without regard to whether such local planning “is the more efficient or cost-effective transmission project for the interconnected transmission grid and cost effective for electric consumers.”¹¹ The Regional Planning Complaint remains pending.

⁷ *Id.* at 33-37.

⁸ OCC Motion at 15.

⁹ *Id.*

¹⁰ See *Industrial Energy Consumers of America et al. v. Avista Corp. et al.*, Docket No. EL25-44-000 (filed Dec. 19, 2024) (“Regional Planning Complaint”).

¹¹ Regional Planning Complaint at 6.

The escalation in FERC-jurisdictional transmission rates is a longstanding and ongoing issue that remains unaddressed.¹² The Commission initiated a *Notice of Technical Conference regarding Transmission Planning and Cost Management under AD22-8* on April 21, 2022. Yet, the Commission has not implemented any cost management reforms as a result of the evidence submitted in Docket No. AD22-8, including RMI's local transmission report that was filed in that docket on December 12, 2024.¹³

It bears emphasizing that the Commission also did not address nor implement any meaningful cost-containment reforms in Order No. 1920 issued in the Spring of 2024, but instead concluded:

We also find outside the scope of this proceeding various commenters' statements regarding cost containment. We note that the Commission is examining issues related to transmission planning and cost containment in other proceedings.¹⁴

Despite the above commitment to address transmission planning and cost containment reforms in another docket like AD22-8 or in a pending complaint docket, the Commission has not taken any action to protect consumers from unjust and unreasonable transmission planning practices and the ensuring rates produced by those practices.

On a related note, the Independent Market Monitor ("IMM") for PJM has continuously recommended Supplemental Project reforms. In the most recent State of the Market Report, the IMM highlighted continued and additional growth in PJM Supplemental Projects, as reflected in

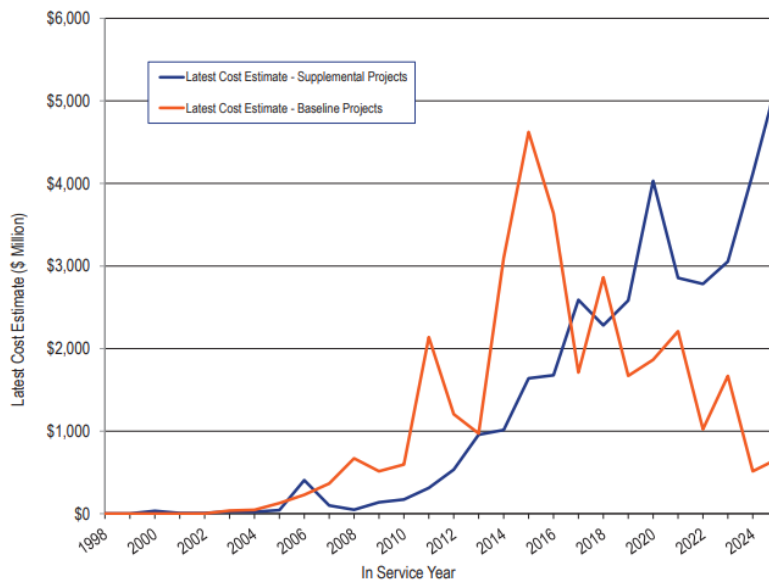
¹² See IECA-US.org, *PJM Transmission Costs*, available at <https://www.ieca-us.org/wp-content/uploads/All-Electricity-slides.pdf> (last accessed Sept. 11, 2026) (highlighting 10-year escalation in PJM transmission costs from 2014-2024 while demand had remained flat).

¹³ Comments of RMI, *Mind the Regulatory Gap: How to Enhance Local Transmission Oversight*, Docket No. AD22-8 (Dec. 12, 2024).

¹⁴ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation*, FERC Order No. 1920, at P 1523. 187 FERC ¶ 61,068 at P 1523, 89 Fed. Reg. 49,280 (June 11, 2024) (emphasis added).

the chart below.¹⁵ The IMM has explained that the “average number of supplemental projects expected in each in service year increased by 1,150.0 percent, from 20 for years 1998 through 2007 (pre Order No. 890) to 250 for years 2008 through 2026.”¹⁶ See Figure 12-6 below from the 2026 Quarterly Report.

Figure 12-6 Cost estimate of baseline and supplemental projects by expected in service year: January 1, 1998 through December 31, 2026



II. ANSWER

The PJM Customers offer this brief Answer to the OCC Motion. First, the PJM Customers reiterate that the OCC Complaint has substantial merit and warrants the Commission’s attention. Second, the Commission should grant the OCC’s Motion to Lodge. Third, the FERC has both the authority and the obligation to address the Complaint, and it should do so in a timely fashion.

¹⁵ Monitoring Analytics, LLC, *Quarterly State of the Market Report for PJM: January through June 2026* (Aug. 13, 2026) (hereinafter “2026 Quarterly Report”), available at https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2026/2026q2-som-pjm.pdf (last accessed Sept. 9, 2026).

¹⁶ *Id.* at p. 827.

A. The OCC Complaint has substantial merit and warrants the Commission's attention.

Using Supplemental Projects to effectuate transmission grid expansion is a practice that affects rates under the Federal Power Act. When a Transmission Owner builds a new transmission facility as a Supplemental Project, the capital cost of the project gets rolled into rate base. This practice enables the utility to earn a return on its capital investment. Because this practice impacts rates, the Commission has a statutory duty to provide oversight and regulation of these projects to ensure that transmission rates remain just and reasonable under Sections 205 and 206 of the Federal Power Act.¹⁷

Unfortunately, as set forth at length in the OCC Complaint, the OCC Motion, and other filings in this docket and other dockets, the formula rate structure does not provide substantial review of the expense of these projects, which are passed on to ratepayers. Consequently, utilities are incentivized to spend more than a societally optimal amount on transmission improvements.

As stated by OCC in the OCC Motion:

As OCC demonstrates in the Complaint, unlike regional projects, Supplemental Projects in PJM are local transmission projects that are not reviewed (or even approved) by FERC, PJM, the Ohio Power Siting Board or the Public Utilities Commission of Ohio for need, prudence and/or cost-effectiveness. The only review of these projects is that accorded under PJM's transmission planning process for a "do no harm" analysis, which considers only the impact of the project on the reliability of the transmission system.¹⁸

¹⁷ 16 U.S. Code § 824d-824e. *See California Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395, 400 (D.C. Cir. 2004) ("Congress empowered the Commission not merely to effect a reformation of some 'practice' in a more traditional sense of actions habitually being taken by a utility in connection with a rate found to be unjust or unreasonable . . ."); *see also S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) ("a failure to act qualifies as a 'practice' under Section 206 that it must remedy when the failure to act is 'unjust, unreasonable, unduly discriminatory or preferential,' 16 U.S.C. § 824e(a), and directly affects or is closely related to jurisdictional rates . . .").

¹⁸ OCC Motion at 6 (citing OCC Complaint at 3-4, 9-22; PJM Operating Agreement, Schedule 6, section 1.5.6(n); PJM Tariff, Attachment M-3, section (a)(5)).

The existing practice of allowing Supplemental Projects to be built and then rolled into rate base without any meaningful regulatory oversight is unjust, unreasonable, unduly burdensome, and preferential. No practical review exists of Supplemental Projects. Prudence challenges are not viable and very rarely succeed. As set forth in great detail in the Industrials Comments, the Formula Rate Transmission Protocols of the Ohio Transmission Utilities suffer from serious inadequacies that cause them to fail to protect consumers and deny consumers due process.¹⁹ The PJM Attachment M-3 process, which the Commission adopted several years ago as a hopeful mechanism for reviewing Supplemental Projects for need and cost-effectiveness, is seriously deficient and deprives consumers of any meaningful review and engagement that would enable consumers to fairly scrutinize Supplemental Projects. In Ohio and in many other states, Certificate of Convenience and Public Necessity (“CPCN”) application processes at the state commissions are insufficient to enable a thorough review of Supplemental Projects for both need and cost-effectiveness. In light of this, a reasonable observer might ask where a real review exists regarding the level of Supplemental Project spending. Unfortunately, there is none—and exponentially increasing transmission rates is the inevitable consequence. As noted by the IMM, Supplemental Projects are also exempt from competition, thereby removing price-lowering competitive pressures from the project development process.²⁰ The result is unjust and unreasonable rates, which must be corrected according to the Federal Power Act.²¹ The Commission must act.

¹⁹ Industrials Comments at 7-11.

²⁰ See 2026 Quarterly Report at 90-91, 93.

²¹ 16 U.S.C. § 824e(a).

B. The Commission should grant the OCC's Motion to Lodge.

The OCC has, throughout this proceeding, continued to provide data and information useful to the Commission's review of the issues that are the subject of the OCC Complaint. In its most recent Motion to Lodge, OCC provides new evidence demonstrating the concrete inadequacy of PJM's Attachment M-3 stakeholder process in practice. Specifically, OCC has submitted stakeholder comments and information requests to PJM and the Ohio Transmission Utilities regarding proposed Supplemental Projects, and to date, has not received substantive responses to those requests for information.²² This lack of response provides additional support for OCC's contention that the Attachment M-3 process—upon which Respondents rely as a reason to dismiss the Complaint—fails to provide the transparency, meaningful stakeholder participation, and cost-effectiveness review that the FERC's policies require.

Additionally, since the filing of the OCC Complaint in September 2023, Ohio Transmission Utilities have added more than \$4.3 billion in additional Supplemental Projects to PJM's Regional Transmission Expansion Plan, bringing the total unreviewed investment to over \$10 billion over a nine-year period.²³ This updated information is directly relevant to the Commission's determination of the magnitude of harm to consumers and the urgency of remedy. The FERC should accept the Motion to Lodge to ensure a complete record that accurately reflects the ongoing costs and regulatory deficiencies that consumers continue to face while this proceeding remains unresolved.

²² OCC Motion at 12.

²³ OCC Motion at 3-4.

C. The Commission has the authority and obligation to address the OCC's concerns in a timely fashion.

The Commission has exclusive jurisdiction to set the just and reasonable rates for interstate electric transmission service provided by jurisdictional public utility transmission owners.²⁴ The FERC may exercise its authority by acting on tariffs filed by transmission owners or, where appropriate, by initiating a proceeding to set a new rate, charge, or classification where the existing one has become unjust, unreasonable, unduly discriminatory, or preferential.²⁵ The Commission's remedial authority is not confined to setting the new just and reasonable rate, but also extends to transmission planning and cost allocation practices.²⁶ Through orders and regulations, the Commission has successfully used its remedial authority under the Federal Power Act to mandate certain market monitoring functions in RTO and ISO regions, while relying on the same statutory provisions that govern its ratemaking authority over the transmission and sale of electric energy in interstate commerce.²⁷

The OCC Complaint proposed a few solutions to the problems caused by the current lack of a review process for Supplemental Projects, including amending the PJM Tariff; developing an Independent Transmission Monitor; using a stated-rate approach for transmission projects; and having the FERC develop its own solution to ensure just and reasonable rates, should the FERC reject the other proposed solutions.

²⁴ See 16 U.S.C. §§ 824d, 824e; *New York v. FERC*, 535 U.S. 1, 22 (2002).

²⁵ *Id.*

²⁶ *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 56, 70, 75-76 (D.C. Cir. 2014); see also *Trans. Access Policy Grp. v. FERC*, 225 F.3d 667, 687 (D.C. Cir. 2000).

²⁷ Regional Transmission Organizations, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999) (cross-referenced at 89 FERC ¶ 61,285, 65 Fed. Reg. 809, 904 (Jan. 6, 2000), order on reh'g, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000) (cross-referenced at 90 FERC ¶ 61,201), 65 Fed. Reg. 12,088 (Mar. 8, 2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish Cnty., Wash. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001). See also 18 C.F.R. § 35.34(k)(6).

While several of these options have merit, the PJM Customers strongly recommend a requirement of regional planning for all transmission projects 100 kV and above, which would provide fuller relief. As addressed in the Industrials Comments in 2023, the Commission should adopt a bright-line 100 kV threshold for transmission monitoring and regional planning to ensure consumers receive the full benefits of transmission development at just and reasonable rates.²⁸ That solution, combined with real opportunities for discovery and cross-examination that only stated rate cases can provide, would cure the process deficiencies that cause current rates to be unjust and reasonable. This threshold would not impose additional state jurisdiction oversight for local projects, but would ensure that regional planning, needs and cost-effectiveness reviews, and competition for regional projects are administered by PJM. Regional planning and competition for all projects is necessary to ensure just and reasonable rates.

Regardless of the solution chosen by the FERC, the Federal Power Act imposes an obligation that all transmission rates to be charged and paid are to be just and reasonable, and that the practices impacting those rates are also to be just and reasonable.²⁹ When customers must pay rates for Supplemental Projects that have costs that are not prudently incurred, with no effective means to challenge the prudence of the investment, rates are not just and reasonable. The PJM Customers respectfully request that the Commission grant the OCC Motion and address the merits of the underlying OCC Complaint in a timely fashion.

²⁸ A voltage threshold of 100 kV would provide a bright-line, non-subjective criterion for determining which transmission projects must be regionally planned, and the Commission and NERC have historically recognized that power lines 100 kV and above are considered transmission facilities and part of the bulk electric system. The pending complaint in Docket No. EL25-44 requests the implementation of a 100 kV threshold and planning standard for regional transmission planning. See Regional Planning Complaint at 229-244.

²⁹ See 16 U.S.C. § 824d(a).

III. CONCLUSION

WHEREFORE, the PJM Industrial Customer Coalition, the Industrial Energy Consumers of America, the American Forest and Paper Association, the Ohio Manufacturers Association, the Maryland Office of People's Counsel, and the New Jersey Division of Rate Counsel request that the Commission grant the Office of the Ohio Consumers' Counsel's *Motion For Expedited Action and Motion to Lodge New Information* and that the Commission act expeditiously to address the underlying *Complaint of the Office of the Ohio Consumers' Counsel to Protect Ohio Consumers Under the PJM Tariff From the Failures of Multiple Agencies to Regulate Hundreds of Millions of Dollars in Monopoly Electric Transmission Charges for "Supplemental Projects" Planned by AEP, AES, Duke, and FirstEnergy and Request for Fast-Track Processing*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served, via first-class mail, electronic transmission, or hand-delivery, the foregoing upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Matthew L. Garber _____

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