UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Valley Link Transmission Maryland, LLC, Valley Link Transmission Virginia, LLC, and Valley Link Transmission West Virginia, LLC	Docket No. ER25-1633-000

PROTEST AND REQUEST FOR EVIDENTIARY HEARING OF THE MARYLAND OFFICE OF PEOPLE'S COUNSEL

The Maryland Office of People's Counsel ("MPC"), pursuant to Rules 211 and 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 C.F.R. §§ 385.211 and 385.212, submits this Protest and Request for Evidentiary Hearing[1] in response to the Formula Rate Filing and Request for Authorization of Transmission Rate Incentives (the "Application") under Sections 205 and 219 of the Federal Power Act ("FPA"),[2] Part 35 of the regulations of the Federal Energy Regulatory Commission,[3] Order No. 679[4] and the Commission's November 15, 2012 policy statement on transmission rate incentives ("2012 Incentives Policy Statement")[5] filed by Valley Link Transmission LLC, Valley Link Transmission Maryland, LLC, Valley Link Transmission Virginia LLC, and Valley Link Transmission

[1] GDS Associates, Inc. assisted MPC in the analysis incorporated into this Protest.
[2] 16 U.S.C. §§ 824d, 824s.
[3] 18 C.F.R. Part 35 (2024).
[4] *Promoting Transmission Inv. Through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057 ("Order No. 679"), *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006) ("Order No. 679-A"), *order on reh'g,* 119 FERC ¶ 61,062 (2007).
[5] *Promoting Transmission Inv. Through Pricing Reform*, 141 FERC ¶ 61,129 (2012) ("2012 Incentives Policy Statement").

West Virginia, LLC (each a "company," and together "Valley Link" or the "companies") on March 14, 2025.

MPC filed a timely motion for leave to intervene in this proceeding on March 21, 2025, which the Commission accepted.[6] MPC is the statutory representative of the residential ratepayers of utility services in Maryland. Pursuant to Maryland Public Utility Companies Code Annotated, Section 2-205(b), the People's Counsel "may appear before any federal or state agency as necessary to protect the interests of residential…users of [gas, electricity or other regulated services]."

INTRODUCTION

Valley Link Transmission is the parent company of its wholly-owned operating companies, Valley Link Maryland, Valley Link West Virginia, and Valley Link Virginia, and is a joint venture amongst Transource Energy LLC, FirstEnergy Transmission, LLC, and Dominion Energy, Inc (together, the "participants"). Each participant holds a roughly one-third interest in Valley Link Transmission, with the initial equity percentages at 36 percent for Transource, 34 percent for FirstEnergy, and 30 percent for Dominion Energy.[7]

The Valley Link project portfolio consists of several project components, including multi-zonal, extra high voltage projects and two new 765 11 kV backbone transmission lines. Together, these components represent approximately 417 miles of new transmission facilities and four new substations. The total estimated cost of the

[6] GDS Associates, Inc. assisted MPC in the analysis incorporated into this Protest.
[7] Transmittal Letter at 4.

Valley Link project portfolio, inclusive of all components, is approximately $3.0 billion. The PJM Board approved the Valley Link project portfolio on February 26, 2025 with an in-service date of December 15, 2029.[8]

The Commission should grant an evidentiary hearing because (1) issues of material fact demonstrate that the proposed return on equity ("ROE") is not just and reasonable, (2) the regional transmission operator ("RTO") incentive adder is unjustified, and (3) as a whole, the requested incentive package is unjust and unreasonable. As discussed more fully below, both the requested base ROE and incentive ratemaking treatment, resulting in a total ROE of 11.4 percent, as well as the proposed capital structure, are excessive, and therefore will result in unjust and unreasonable rates.

Valley Link also requests a comprehensive suite of rate incentives, such as recovery for Construction Work in Progress ("CWIP"), project abandonment, and regulatory asset treatment for pre-commercial costs, which when considered collectively, result in an impermissible transfer of risk onto ratepayers. Accordingly, the Application raises various issues of fact that warrant further examination. MPC therefore respectfully requests that the Commission conduct a hearing to evaluate the reasonableness of Valley Link's proposed Formula Rate and incentives.

[8] Exhibit No. JLL-001 at 7:9-7:16.

ARGUMENT

I. Valley Link's base ROE request is inconsistent with FERC policy.

The recommendation of Valley Link's witness, Mr. Adrien McKenzie, for a 10.90 percent base ROE, is premised upon the use of four ROE analytical models, namely: (1) the Discounted Cash Flow ("DCF") model; (2) the Capital Asset Pricing Model ("CAPM"); (3) the Risk Premium method, and (4) Expected Earnings.[9] Mr. McKenzie explains that his recommendation is informed by the median and midpoint values produced by these four models.[10] Additionally, Mr. McKenzie turns to a DCF model that relies on a proxy group of non-electric utilities to support his recommendation.[11]

Through his primary reliance on these four analytical models, it is evident that, in many respects, Mr. McKenzie's analysis significantly departs from Commission precedent and norms. In particular, Mr. McKenzie's risk premium and expected earnings methods, constitute a key departure from the Commission's methodological approach as articulated in Opinion 569-A.[12] Additionally, Mr. McKenzie presents results that are allegedly in line with the Commission's order on remand's analytical approach, but for the reasons discussed herein, these results are unreliable. Making certain modifications to Mr. McKenzie's analysis produces a revised median result of 10.81 percent, which is lower than Valley Link's requested base ROE of 10.90 percent. Additionally, when using more recent betas as part of the CAPM analysis, the overall median decreases to 9.98

[9] Exhibit NO. AMM-001 at 13:16-18.
[10] Exhibit No. AMM-001 at 15:9 – 18:9.
[11] Exhibit No. AMM-001 at 18:10 – 19-2.
[12] *See Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc., Order on Remand*, 189 FERC ¶ 61,036 (2024) ("Opinion 569-A").

percent. For these reasons, an evidentiary hearing is necessary to determine the appropriate ROE methodology, inclusive of the issues identified herein, for use in the determination of the just and reasonable ROE for Valley Link's formula rate. In the alternative, settlement negotiations may provide a suitable process to arrive at an appropriate ROE.

A. The Commission should not rely on the expected earnings method.

Mr. McKenzie's reliance on the expected earnings method strays from Commission precedent and norms. The Commission has rightly rejected use of the expected earnings method because it is not a market-based method and therefore does not satisfy the requirements of *Hope*.[13] The arguments Mr. McKenzie raises in favor of the expected earnings method in his current testimony are similar to those raised in a recently litigated Pacific Gas & Electric Company ("PG&E") transmission rate proceeding. There, PG&E presented an ROE developed, in part, using the expected earnings methodology and argued use of the method was reasonable because understanding investors' expected return based in part on the book value "is an important component in determining a just and reasonable ROE."[14] PG&E further argued that the expected earnings model "offers a valuable and relevant alternative analysis," is "less subjective" than market-based

[13] *Association of Business Advocating Tariff Equity, et al*., Opinion No. 569, 169 FERC ¶ 61,129 at P 200–202 ("Opinion No. 569"(citing *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) ("*Hope*")).
[14] *Pac. Gas & Elec. Co.*, 178 FERC ¶ 61,175, at P 27 (2022).

models, and "complements the use of market-based approaches."[15] The Commission found PG&E's arguments to be unavailing.[16] As the Commission explained:

> [T]he return on book value is not indicative of what return an investor requires to invest in the utility's equity or what return an investor receives on the equity investment because those returns are determined with respect to the current market price that an investor must pay in order to invest in the equity, not book value.[17]

The Commission should continue to adhere to its precedent and reject placing any reliance on the expected earnings method.

B. Valley Link's reliance on the midpoint is misplaced.

As noted above, Mr. McKenzie explains that his base ROE recommendation of 10.90 percent is informed by the median and midpoint values produced by these four models.

Notwithstanding Mr. McKenzie's position that the Commission should consider the midpoint of the ROE results alongside the median result, it has been longstanding Commission policy to rely on the median result in proceedings involving individual electric utilities with risks comparable to the average for the proxy group.[18] As explained in *Southern California Edison Co*,[19] the midpoint measurement simply averages the top and bottom ROE result and fails to consider the ROE results between these two points.[20]

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[15] *Id.* at P 240–43.
[16] *Id.* at P 254 ("We are not persuaded by PG&E's arguments to include the Expected Earnings model when determining the just and reasonable ROE in this proceeding, most of which constitute collateral attacks on the Commission's findings in Opinion Nos. 569 and 569-A.").
[17] *See Pac. Gas & Elec. Co.*, 178 FERC ¶ 61,175, at P 197 and P 254 (2022) (cites omitted).
[18] *S. Cal. Edison Co*., 131 FERC ¶ 61,020 (2010), *aff'd S. Cal. Edison Co. v. FERC*, 717 F.3d 177 (D.C. Cir. 2013).
[19] *Id.*
[20] *Id.* at P 86.

However, it is the ROE around which the results cluster, not the extreme ROEs from the proxy group, that are representative of the return required by investors for the average amount of risk represented by the proxy group. Although the midpoint "is clearly subject to distortion by extremely high or low value," the median measurement identifies the value for which there is an equal number of higher and lower proxy group ROE results.[21] This is a more appropriate representation of where the ROE results cluster together.[22]

Given that the median measurement is the Commission's preferred methodology when determining ROE for a single utility of average risk, Mr. McKenzie's reliance on the midpoint measurement is misplaced.

C. The use of alternative non-value line betas produces unjust and unreasonable results.

In the initial Opinion No. 569 set of decisions, the Commission found it appropriate to rely on beta estimates published by Value Line.[23] In subsequent decisions, however, the Commission expressed a preference for the use of alternative Bloomberg-based betas.[24] The Commission further clarified that it will accept the use of Value Line betas in the absence of Bloomberg-based betas in the record.[25] Given that the alternative Bloomberg-based beta calculation can be configured to utilize the S&P 500 index,

[21] *Id.* at P 86, 87.
[22] *Id.* at P 87 ("The Commission believes that using the median "is advantageous for a single utility of average risk because it takes into account more of the companies in the proxy group, and not just those at the top and the bottom.").
[23] Opinion No. 569 at P. 297.
[24] *See Constellation Mystic Power, LLC*, 176 FERC ¶ 61,019 at P. 85 (2021). *See also DATC Path 15, LLC*, 177 FERC ¶ 61,115 at P 111 (2021).
[25] *See Pacific Gas & Elec. Co.*, 178 FERC ¶ 61,175 at P 178, n. 406 (2022).

Bloomberg-based alternative betas are preferable as they address the imperfect correspondence of relying on the S&P 500 index for computing the market return estimate and the NYSE Composite Index for the computation of the beta, as done by Value Line.[26] Additionally, the Commission explained that the alternative Bloomberg-based beta can be synchronized with the end of the study period, whereas the Value Line betas cannot be updated in such a manner.[27]

In his direct testimony, Mr. McKenzie contends that a high degree of correlation between the movements of the NYSE and S&P 500 addresses the Commission's concerns about relying on Value Line betas.[28] However, the Commission previously considered similar arguments in *DATC Path 15, LLC* and determined that alternative Bloomberg-based betas were more appropriate to rely upon.[29]

To gauge the importance of the beta estimate used in the CAPM, MPC analyzed the impact on Mr. McKenzie's wider CAPM analysis when using alternative non-Value Line betas that were computed in a manner consistent with the computation of the Bloomberg-based betas the Commission has relied upon in recent decisions.[30] The modified CAPM analysis is set out in Appendix A. The average Value Line beta for Mr. McKenzie's proxy group is 0.95 and the average alternatively sourced beta is

[26] *See DATC Path 15, LLC*, 177 FERC ¶ 61,115 at P 111 (2021).
[27] *Id.*
[28] Exhibit No. AMM-001 at 66:1–5.
[29] *See DATC Path 15, LLC*, 177 FERC ¶ 61,115 at P 107 and P. 111 (2021).
[30] To determine the beta for each electric utility company in Mr. McKenzie's proxy group, five years of weekly electric utility stock prices and S&P 500 Index price level data through January 31, 2024 (consistent with the end of Mr. McKenzie's study period) was sourced from the S&P Capital IQ Pro platform and Blume adjusted betas were computed using this data.

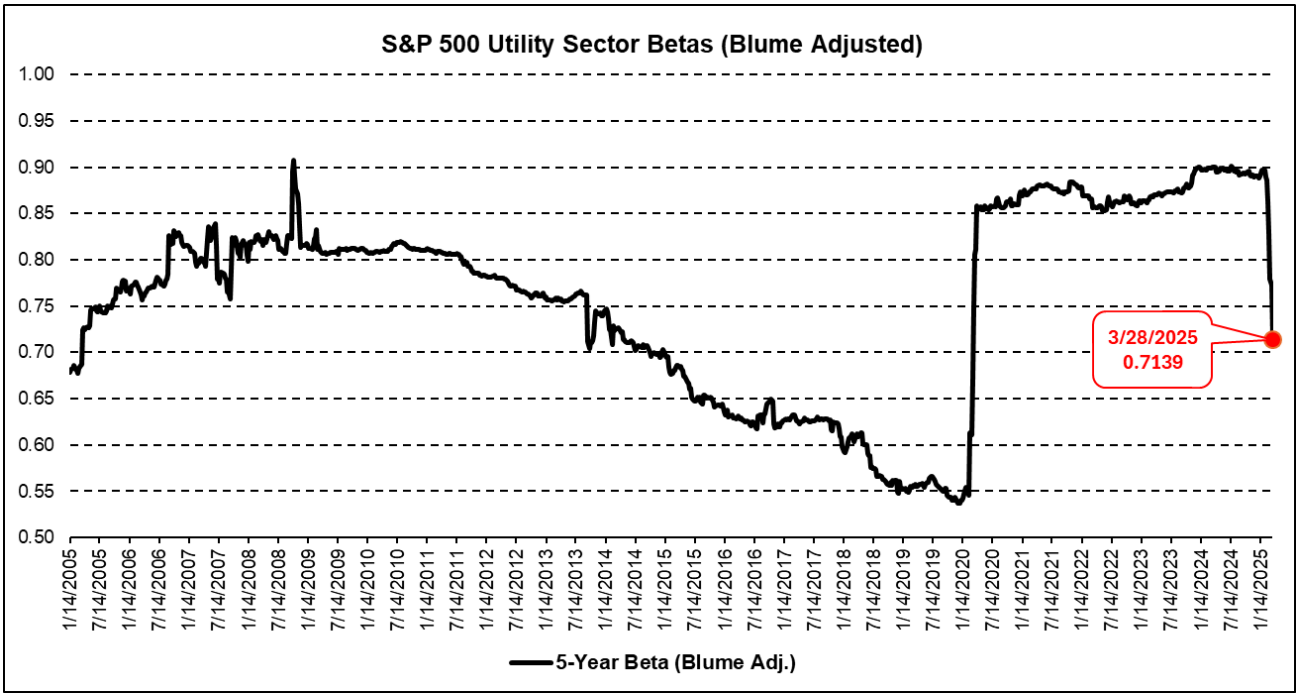
approximately 0.89. When the lower alternative betas are used in Mr. McKenzie's CAPM – Institutional Brokers' Estimate System ("IBES") earnings growth rate model, the median result declines from 12.27 percent to 11.77 percent. In other words, use of the alternatively sourced betas reduces the CAPM results by approximately 50 basis points. This indicates that Mr. McKenzie's CAPM analysis may be producing unjust and unreasonable results. Using this lower CAPM result together with Mr. McKenzie's DCF IBES growth rate analysis median result of 9.85 percent[31] produces an overall median outcome of 10.81 percent. Ultimately, the question of which beta source to rely upon is a dispute of material fact which can only be properly resolved through an evidentiary hearing.

D. Recent decreases in betas should be considered in determining a just and reasonable ROE.

Mr. McKenzie's broad ROE analysis was completed using financial data for the six-month period through January 2025. The betas the Commission has relied on in recent years have been based on five years of financial data,[32] and since the time of Mr. McKenzie's study period, the five-year betas have experienced a rapid decline. For example, as shown in Figure 1 below, the S&P 500 Utility Sector five-year beta estimate declined from 0.90 at the end of January 2025 to 0.71 at end of March 2025, a decline of 0.19. This can be explained by the early 2020 COVID-19 related market turmoil period falling out from the five-year dataset used to compute the beta estimate.

[31] Exhibit No. AMM-005 at 1.
[32] *See, e.g., Constellation Mystic Power, LLC*, 177 FERC ¶ 61,019 at P 77 and 85 (2021).

Figure 1:S&P 500 Utility Sector 5-Year Beta



Once again, to gauge the impact of this important development, MPC analyzed the bearing of using the most recently available betas as part of Mr. McKenzie's wider CAPM analysis. The average Value Line beta for Mr. McKenzie's proxy group is 0.95 and the average alternatively sourced and updated betas is approximately 0.68. When the lower alternative betas are used in Mr. McKenzie's CAPM – IBES earnings growth rate model, the median result declines from 12.27 percent to 10.10 percent. Using alternatively sourced betas reduces the CAPM result by approximately 217 basis points. In turn, using this lower CAPM result together with Mr. McKenzie's DCF IBES growth rate analysis with a median result of 9.85 percent[33] produces an overall median outcome

[33] Exhibit No. AMM-005 at 1.

of 9.98 percent.[34] These figures demonstrate the importance of setting this matter for hearing, subject to settlement discussions, to provide for the opportunity to assess the appropriate base ROE using the most current capital market conditions and data.

D. Valley Link's proposed market return component is excessive.

Mr. McKenzie's market risk premium is excessive when compared to other third-party estimates of the market return. For example, Kroll recommends a 5.0 percent market risk premium,[35] whereas Mr. McKenzie's market risk premium is 7.74 percent, when using IBES growth rates. The difference in these recommendations raises a question of whether the Commission's approach to estimating the market return remains appropriate. For example, it may be appropriate to apply a two-step DCF analysis to compute a market return rather than the one-step DCF analysis adopted by the Commission. The reliance on a one-step DCF models fails to recognize that all company earnings growth rates are constrained in the long run by the rate of growth in the economy as a whole.[36]

Furthermore, in his testimony, Mr. McKenzie disputes the relevancy of using an economic-wide growth rate, such as the GDP projected rate, in a DCF analysis.[37] He

[34] MPC acknowledges that a complete update of all financial data is required when updating the ROE analysis. Nevertheless, this indicative datapoint illustrates how ROE results may change when utilizing post-COVID-19 impacted betas in the analysis.
[35] Kroll Cost https://www.kroll.com/en/insights/publications/cost-of Capital Recommendations - capital/recommended-us-equity-risk-premium-and Potential Upcoming Changes – March 2025 Update, issued on March 19, 2025. The report is available at https://www.kroll.com/en/insights/publications/cost-of-capital/recommended-us-equity-risk-premium-and-corresponding-risk-free-rates (*last accessed* April 4, 2025) ("The Kroll Recommended U.S. ERP is being reaffirmed at 5.0 percent when developing USD-denominated discount rates as of February 28, 2025, but it could be increased in the near future.").
[36] *E.g.*, *Risk and Return for Regulated Industries (Elsevier Inc., 2017)* at 101 & n.12 ("[N]o company can grow at a rate above that of the general economy forever.") ("*Risk and Return for Regulated Industries*").
[37] *See, e.g.*, Exhibit No. AMM-001 at 51:1–61:13.

states, "there is no evidence that investment advisory services view GDP growth as a direct guide to long-term expectations for a particular firm—much less every firm in an entire industry."[38] However, an illuminating counter example to this statement is evident in the treatise *Risk and Return for Regulated Industries* where the manner in which Bloomberg incorporates GDP projections as part of its calculation to estimate a projection of the market risk premium is described as follows:

> [C]ommercial data providers such as Bloomberg also produce [market risk premium] forecasts, which are based on the major market index in the country of interest (e.g., the S&P 500 in the US, the S&P/TSX in 9 Canada, the FTSE in the UK, and the DAX in Germany). The Bloomberg forecasted [market risk premium] uses a normalized cash flow (rather than dividends) and a payout ratio for the initial yield and analyst forecasts that converge to the GDP growth rate over a period of 8-15 years, with mature companies being in the lower range and start-ups being in the longer range. Thus, the convergence to GDP growth is faster for established companies and slower for growth companies…The Bloomberg [market risk premium] forecast is based on the local market index (e.g., the S&P 500) and is over the 10-20 year risk-free rate.[39]

The approach taken by Bloomberg lends further support to the reasonableness of utilizing a two-step DCF model for purposes of estimating a market return value for use in the CAPM.

Further skewing the CAPM analysis, Mr. McKenzie adds a "size risk premium" adjustment, which increases the company's proposed IBES CAPM analysis ROE to a range of 10.56 percent to 13.65 percent from an already unreasonable base rate range of 10.23

[38] Exhibit No. AMM-001 at 54:5-7.
[39] *Risk and Return for Regulated Industries* at 71 (footnotes omitted) (emphasis added).

percent to 13.32 percent.[40] Empirical evidence for the size risk premium is weak. In fact, the "size-effect phenomenon"—that stocks from small firms had higher adjusted risk returns than larger firms—reversed within a few years after it was first discovered in 1981.[41] Even if small, unregulated companies do face greater risk than larger ones, utilities are regulated monopolies which benefit from a defined service territory and captive customer base.[42] Therefore, the Commission should disregard the size risk premium.

E. The source of the growth rate for the DCF analysis is presently unsettled.

When relying on the DCF model, the Commission has long relied on IBES earnings per share projected growth rates that were made available on the Yahoo! Finance website, with the Commission expressing a preference for this source as it was widely available and reflected a consensus analyst projection.[43] However, the Yahoo! Finance website no longer provides IBES growth rates. In his analysis, Mr. McKenzie turns to IBES growth rates made available on the Fidelity Investments website together with Value Line and Bloomberg growth rates. An issue with relying on the Fidelity website is that in order to access the data a person needs to register for an account and as part of that process it requires the input of personal social security information. Additionally, as seen with Mr. McKenzie's exhibit, Fidelity did not have IBES growth

[40] Exhibit No. AMM-006.
[41] Elroy Dimson, Paul Marsh & Mike Staunton, *Triumph of the Optimists: 101 Years of Global Investment Returns* at 131 (Princeton University Press 2002).
[42] *See, e.g.,* Alessandra Papa, CROSSED WIRES AND SPLIT CIRCUITS: TRANSMISSION RIGHTS OF FIRST REFUSAL, 53 Envtl. L. Rep. (ELI) 10372, 10373 (2023) ("In exchange for exclusive territories and the benefits of monopoly economics, FERC and state agencies regulate the rates that transmission companies charge to make sure they are just and reasonable.").
[43] Opinion No. 569 at P 123.

rates for seven of his thirty-two member proxy group.[44] Furthermore, in recent decisions, the Commission did not find merit in relying on Value Line growth rates.[45] As a result of the unsettled nature of the appropriate source of the key input for the DCF analysis it is appropriate to set the matter for hearing in order to provide an opportunity for the Commission to develop a fulsome record to assess the merits of different sources of growth rates for use in the ROE models.

F. Relying on data produced by a non-utility proxy group is inappropriate.

Mr. McKenzie seeks to rely on ROE results produced from applying a one-step DCF model to a proxy group of non-electric utilities as a form of cross-check on the reasonableness of his broader analysis. However, the Commission has previously stated that it will not consider non-utility DCF analysis,[46] especially given electric utilities' unique industry and regulatory characteristics. Mr. McKenzie's non-utility DCF analysis further departs from Commission precedent by not including a GDP long-term growth rate and producing analyses that use several different short-term growth rates. The Commission should therefore disregard the non-utility proxy group.

[44] *See* Exhibit No. AMM-005 at 1. The seven proxy group electric utility members without IBES growth rates were (1) Ameren Corp.; (2) Eversource Energy; (3) Fortis Inc.; (4) IDACORP, Inc.; (5) Otter Tail Corp.; (6) Sempra; and (7) WEC Energy Group.
[45] *See, e.g.*, *Constellation Mystic Power, LLC*, 176 FERC ¶ 61,019, P 70 (2021) (subsequent history omitted); DATC Path 15, LLC, 177 FERC ¶ 61,115, P 110 (2021) (subsequent history omitted); *Pacific Gas & Elec. Co.*, 178 FERC ¶ 61,175, P 197 (2022).
[46] *See Coakley v. Bangor Hydro-Elec. Co*., Opinion No. 531, 147 FERC ¶ 61,234, at P. 146, n.288.

G. Valley Link has failed to adequately support the reasonableness of its proposed hypothetical capital.

Valley Link's proposed capital structure will impose an undue burden on ratepayers because the equity ratio is unreasonably high. Valley Link requests the use of a hypothetical capital structure of 60 percent common equity and 40 percent long-term debt until the earlier of December 31, 2030 or when certain components of the transmission facilities are placed in service.[47] Mr. Prabir Purohit, a witness for Valley Link, explains that the primary risk that the capital structure incentive addresses is the volatile, actual capital structure that it expects during the construction period of the transmission projects, asserting that the fixed ratemaking capital structure will provide certainty to lenders for the purpose of securing construction-related financing.[48] However, Valley Link offers little in the way of specific support for its requested 60 percent equity ratio. Mr. Purohit simply refers to the Commission having granted incentive capital structures with 60 percent equity ratios to other nonincumbent transmission developers,[49] but no rationale is provided that is tailored to the specific risks and challenges faced by the Valley Link companies.

To determine a just and reasonable capital structure, a comparable proxy group must be chosen and then compared to a reasonable equity ratio range for transmission companies.[50] Based on Mr. Purohit's testimony, the Commission would have to accept

[47] Transmittal Letter at 38.
[48] Exhibit No. PP-001 at 19:5 – 20:5.
[49] Exhibit No. PP-001 at 21: 5 – 7.
[50] *Cf. Epsilon Trading, LLC, Chevron Products Co., & Valero Mktg. & Supply Co. v. Colonial Pipeline Co. BP Products N. Am., Trafigura Trading LLC, & TCPU*, 185 FERC ¶ 61126, P 175 (F.E.R.C. 2023)

the proposed capital structure on Valley Link's good faith alone. Good faith alone is insufficient, as analysis of the debt ratios of a comparable proxy group are essential to ensure that the Commission's determination is not arbitrary and capricious.[51] By definition, any fixed capital structure will address the primary risk of a volatile capital structure identified by Mr. Purohit, not just the use of a 60 percent equity ratio.

Moreover, other non-incumbent transmission developers have been granted hypothetical capital structures that provided for a lower equity ratio than that requested.[52] It is not apparent why these lower equity ratios are less appropriate for Valley Link than its requested 60 percent equity ratio. Importantly, regulated utilities can afford to take on more debt than other industries because they have large amounts of fixed assets, stable earnings, and lower risk levels.[53] Pointing to another Commission decision that authorized a 60 percent equity ratio is thus an insufficient justification.

In his testimony, Mr. Purohit refers to a target minimum investment credit rating of BBB- from S&P and Baa3 from Moody's and that the requested incentives will help bolster the companies' financial position. However, Valley Link's request is inconsistent with what is required to obtain these target credit ratings. For instance, Moody's Rating

(comparing hypothetical capital structure to proxy group, determining a range of reasonable hypothetical capital structures for oil pipelines, and ultimately imputing the parent company capital structure).

[51] *See, e.g. Emera Maine v. FERC*, 854 F.3d 9, 22 (D.C. Cir. 2017) (*quoting Town of Norwood, Mass. v. FERC*, 80 F.3d 526, 533 (D.C. Cir. 1996)) (inquiring whether "the Commission's judgment is supported by substantial evidence and that the methodology used in arriving at that judgment is either consistent with past practice or adequately justified.").

[52] *See e.g*., *XETD*, 149 FERC ¶ 61,181 at P 13.

[53] *See Jersey Cent. Power & Light Co. v. FERC*, 810 F.2d 1168, 1189 (D.C. Cir. 1987) (Starr, J., concurring) ("As a general rule, utility investors are provided a level of stability in earnings and value less likely to be attained in the unregulated or moderately regulated sector; in turn, ratepayers are afforded universal, non-discriminatory service and protection from monopolistic profits through political control over an economic enterprise.").

Methodology for Regulated Electric and Gas Networks,[54] which may be an appropriate rating methodology for a non-incumbent transmission developer, such as Valley Link, indicates that a Net Debt to Regulatory Asset Base (which is similar to a capital structure metric) of 60 percent to 75 percent debt, or 25 percent to 40 percent equity, is sufficient to support a Baa3 category rating. Additionally, turning to Moody's Rating Methodology for Regulated Electric and Gas Utilities,[55] which is typically used for traditional rate regulated electric utilities, shows that a 45 percent to 55 percent capital structure is consistent with the Baa rating category. This shows that the 60 percent equity ratio requested by Valley Link is excessive.

Mr. McKenzie's recommended base ROE of 10.90 percent was formed using an electric utility proxy group developed through the reliance on the credit ratings of the participant owners of Valley Link. Therefore, to the extent that a hypothetical capital structure is to be used, a rationale link can be made between the capital structure of those participants and the ROE determined for Valley Link using such a proxy group. The table below provides the average capital structure for each participant and an overall average equity ratio of 41.7 percent. This suggests an equity ratio between 40 and 44 percent is more appropriate for Valley Link.

[54] Moody's Ratings, Rating Methodology, Regulated Electric and Gas Networks, April 13, 2022.
[55] Moody's Ratings, Rating Methodology, Regulated Electric and Gas Utilities, August 6, 2024.

Table 1: Participants' Equity Ratios[56]

Participants	Equtiy Ratio
Dominion Energy, Inc.	44.0%
FirstEnergy Transmission, LLC	28.8%
Transsource Energy LLC	52.4%
Average	**41.7%**

The Companies' have therefore not shown that setting Valley Link's request for a hypothetical capital structure of 60 percent equity and 40 percent long-term debt would result in just and reasonable rates.

H. Valley Link's requested incentives are not justified because the companies lack independence from market participants, mitigating their risk.

Valley Link contends that the purpose of the requested incentives is to mitigate and lower the risks it faces as a non-incumbent transmission developer. The incentives are further deemed as leveling the playing field with incumbent utilities.[57] Mr. Purohit also highlights that "the Companies are new entrant transmission developers, [so] they are in essence [a] start-up businesses without financial statements, a history of cash flow, an established credit rating, a debt repayment history, or an earnings history."[58] Although on its face this may be true, Valley Link is no ordinary start-up company given that its participant owners are all well-established and significant electric utility entities. The

[56] The Dominion Energy, Inc.'s 2024 equity ratio was sourced from the Value Line report dated February 7, 2025. The equity ratio for FirstEnergy Transmission, LLC equity was based on 2024 data provided by S&P Capital IQ. The Transource Energy LLC equity ratio is the weighted average equity source from the 2023 annual transmission revenue requirements for its Maryland, Pennsylvania and West Virginia formula rates.
[57] Exhibit No. PP-001 at 10:10-14.
[58] Exhibit No. PP-001 at 6: 11-14.

participants, and their employees, will provide equity investment together with "diverse experience and knowledge to successfully develop projects of significant size and scope."[59] As described by Valley Link's witnesses, it will not have any employees and will depend on inter-company service agreements to construct the transmission facilities.[60] Indeed, Mr. Purohit concludes that "[t]he joint venture structure enables the participants to manage the risks and challenges associated with the need for large infrastructure development."[61]

The companies fail to recognize that Dominion, FirstEnergy, and Transource (a joint venture between transmission owning utilities) already have established service companies and affiliates with employees and established organizational structures to manage this new transmission company; therefore, the start-up risk is minimal and the requested incentives are unwarranted. A hearing is merited to determine whether the unique arrangements pertaining to Valley Link render it sufficiently similar to incumbent utilities without the need for the incentives to level the playing field.

II. Valley Link has not justified its RTO participation adder.

Section 219(c) of the FPA mandates the Commission to provide "incentives to each transmitting utility that joins an [RTO]."[62] The intent behind Section 219(c) is to ensure reliability, reduce transmission congestion, and consequently, reduce the cost of

[59] Exhibit No. PP-001 at 5:11–12.
[60] *See, e.g.*, Exhibit No. PP-001 at 5:3–6:5; Exhibit No. CKD-001 at 12:14-15.
[61] Exhibit No. PP-001 at 5:16–17.
[62] 16 U.S.C. § 824s(c).

delivered power and ultimately benefit customers. The existence of "[a] prior contractual commitment or statute may have a bearing" on the Commission's "evaluation of individual [incentive] applications."[63]

Valley Link requests an additional 50 basis points as a reward for becoming a member of PJM and turning over operational control of its transmission facilities to PJM. Valley Link believes that this incentive is consistent with the Commission's policy to incentivize utilities to place their transmission facilities under the control of an RTO. This ROE incentive, however, is not reflective of the risks Valley Link would face given that it is a joint venture between three of the largest transmission owners in the PJM region – Transource, Dominion, and FirstEnergy. Although still just a proposed rule, the Commission itself expressed concern over allowing receipt of the RTO incentive "for transmission plant if the asset was already under operational control of a Transmission Organization, whether as part of an affiliate or a separate owner." The fear there is that it could encourage corporate restructurings for the sake of the incentive.[64] Here, forming a joint venture, like Valley Link, amongst three dominant transmission owners to build new plant poses similar risks to shuffling existing plant amongst different corporate entities – both encourage crafting specific corporate structures for the sake of the incentive even if the affiliates already participate in an RTO.

[63] Order 679-A ¶ 122.
[64] *Elec. Transmission Incentives Policy Under Section 219 of the Fed. Power Act*, Supplemental Notice of Proposed Rulemaking, 175 FERC ¶ 61,035, at P 9 (2021).

Significantly, portions of AEP and FirstEnergy are already *mandatory* members of PJM pursuant to Ohio law because they own transmission assets in that state.[65] Although Valley Link is technically a new entity, the Commission should not ignore that in practice it is a leviathan composed of its participants that are already members of PJM. The RTO incentive is meant to incentivize *new* membership and reward *voluntary members* for remaining in PJM.[66] RTO membership is not new for the participants and not mandatory for two-thirds of them. By using a creative corporate structure, each participant that is a mandated member of PJM would therefore, in essence, receive an incentive for something they practically cannot be incentivized to do because they are already mandated to participate. Such a reward for past behavior is in contravention of the congressional intent of Section 219(c) of the FPA.[67]

The 50-basis point adder for PJM membership should not be applied where Valley Link is selected to construct transmission facilities as a result of the PJM planning process and receives rate-based treatment. Under such circumstances, Valley Link will be *required*, not volunteer, to turn over operational control of its transmission facilities to

[65] Ohio Rev. Code Ann. § 4928.12 (West). AEP and FirstEnergy are mandatory members through Ohio Power and Ohio Transmission, and American Transmission Systems, Inc., respectively. See *Monitoring Analytics*, 2017 State of the Market Report for PJM, "Appendix A: PJM Geography," chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.monitoringanalytics.com/reports/pjm_state_of_the_market/2017/2017-som-pjm-volume2-appendix.pdf. Ohio Rev. Code Ann. § 4928.12 (West)

[66] *See, e.g., Dayton Power & Light Co. v. FERC*, 126 F.4th 1107, 1124 (6th Cir. 2025).

[67] *Id.* ("Giving an RTO adder to a utility that is mandated by state law to participate in an RTO would only increase the rate for that utility's transmission services—not "reduc[e] the cost"—and give the utility an unearned windfall. Such an interpretation would not only fail to advance the statute's goals but actively subvert them.").

PJM. Accordingly, the RTO participation adder is unwarranted, lacks a rational basis, and should be denied by the Commission.

III. External factors already mitigate the risks the requested incentives aim to mitigate, thus rendering incentives unnecessary when viewed as a package.

The grant of a transmission incentive is not automatic; each utility "must demonstrate that it meets the criteria for that incentive, that the total package of requested incentives is tailored to demonstrable risks or challenges of a project, and that the overall return on equity is just and reasonable."[68]

Valley Link is simultaneously seeking a myriad of risk-reducing incentives – CWIP and Project Abandonment Incentives – plus regulatory asset treatment for pre-commercial costs. However, there are redundancies and overlaps in risk mitigation efforts, either already in place or being proposed, that undermine Valley Link's request. Specifically, the ability of the participants to guarantee debt financing reduces the need for the CWIP incentive and the regulatory asset treatment for pre-commercial costs. Mr. Purohit refers to Valley Link as a "start-up" which will be treated with more scrutiny from lenders as the primary reasoning for awarding the CWIP and abandonment incentives.[69] However, the repeated references to Valley Link's "start-up" nature are disingenuous because the participants are well established utilities with strong credit ratings. Failing to acknowledge how such guarantor power would be insufficient to

[68] 18 C.F.R. § 35.35(c)-(e); *see also San Diego Gas & Elec. Co. v. FERC*, 913 F.3d 127, 131 (D.C. Cir. 2019) (discussing the incentives rule and Order No. 679).
[69] Exhibit No. PP-001 at

mitigate this risk and granting the CWIP incentive unduly shifts financial risk onto the ratepayers at a point where the participants should bear such risk.

Mr. Purohit also generally cites to the interstate nature of the project increasing the regulatory risk, thus justifying the abandoned plant incentive. Although a demonstrable challenge, Valley Link's testimony is taciturn regarding the fact that it need not rely on market-based revenues because it will be able to recover its costs under PJM's Open Access Transmission Tariff ("OATT").[70] PJM selected the Valley Link projects through the Regional Transmission Expansion Planning ("RTEP") process because they are comparatively "more efficient or cost-effective solutions to the challenges facing the grid operator, as informed by load growth and the changing resource mix."[71] The competitive solicitation and assurance of cost recovery decreases regulatory risk – the risk the abandonment incentive is designed to combat. Awarding the abandonment incentive despite such decrease in risk would be an unjust extraction of wealth from ratepayers. Because these low risks were used as a basis in selecting the project, Valley Link's claims that such risk must now be mitigated through extensive incentives should be rejected, lest the ratepayers not only be the *de facto* "bankers" but also the "insurers" for Valley Link.[72]

[70] Transmittal Letter at 10.
[71] Exhibit No. JLL-001 at 13:14-16.
[72] *Order on Abandoned Plant Incentive*, 188 FERC ¶ 61,084 (2024) (Christie, Comm'r, dissenting at P 8) (*citing* Order No. 1920 Dissent at P 118 (*citing*, *inter alia*, *NextEra Energy Transmission Sw., LLC*, 178 FERC ¶ 61,082 (2022) (Christie, Comm'r, concurring at P 3); *NextEra Energy Transmission Sw., LLC*, 180 FERC ¶ 61,032 (2022) (Christie, Comm'r, concurring at P 2) ("The Commission's incentive policies—particularly the CWIP Incentive, which allows recovery of costs *before* a project has been put

CONCLUSION

The Commission should deny the application as filed because Valley Link has not fully demonstrated that the ROE and transmission incentives do not lead to unjust and unreasonable rates. Valley Link relies on faulty financial modeling to attain an inflated ROE and then requests an RTO incentive although its market affiliates are well-established utilities. Based on those facts, the Commission should set the matter for an evidentiary hearing, or alternatively, a hearing and settlement procedures conference. Additional evidentiary proceedings in this matter will provide the Commission with a full analysis of the effects of the incentives and whether a joint venture such as Valley Link should be eligible for such incentives. Therefore, MPC submits that, unless the Commission denies the application, further evidentiary proceedings in this case are warranted.

Respectfully submitted,

DAVID S. LAPP
People's Counsel

/electronic signature/
William F. Fields
Deputy People's Counsel

Alexis H. Lewis
Assistant People's Counsel

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into service—run the risk of making consumers "the bank" for the transmission developer; but, unlike a real bank, which gets to charge interest for the money it loans, under our existing incentives policies the consumer not only effectively "loans" the money through the formula rates mechanism, but also pays the utility a profit, known as Return on Equity, or "ROE," for the privilege of serving as the utility's *de facto* lender.").

Baltimore, Maryland 21202
(410) 767-8171

Dated: April 4, 2025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 4th day of April 2025, the foregoing "Protest and Request for Evidentiary Hearing of the Maryland Office of People's Counsel" was either hand-delivered, e-mailed or mailed first-class, postage prepaid to all parties of record to this proceeding.

Respectfully submitted,

/electronic signature/
Alexis H. Lewis
Assistant People's Counsel

CAPM

IBES

Line No.	Company	Ticker	Market Return (R_m) Div Yield	Proj. Growth	Cost of Equity	Risk-Free Rate	Risk Premium	Beta	K_e	Size Adj.	Adjusted K_e
	(a)		(b)	(c)	(d) (b) + (c)	(e)	(f) (d) - (e)	(g)	(h) [(f) * (g)] + (e)	(i)	(j) (h) + (i)
1	Exelon Corp.	EXC	1.61%	10.55%	12.16%	4.42%	7.74%	0.9415	11.71%	0.33%	12.04%
2	CenterPoint Energy	CNP	1.61%	10.55%	12.16%	4.42%	7.74%	1.1028	12.96%	0.33%	13.29%
3	OGE Energy Corp.	OGE	1.61%	10.55%	12.16%	4.42%	7.74%	1.0181	12.30%	0.50%	12.80%
4	Black Hills Corp.	BKH	1.61%	10.55%	12.16%	4.42%	7.74%	1.0175	12.30%	0.74%	13.04%
5	PPL Corp.	PPL	1.61%	10.55%	12.16%	4.42%	7.74%	1.0482	12.53%	0.33%	12.86%
6	NorthWestern Energy	NWE	1.61%	10.55%	12.16%	4.42%	7.74%	0.9876	12.06%	1.00%	13.06%
7	Edison International	EIX	1.61%	10.55%	12.16%	4.42%	7.74%	0.9642	11.88%	0.33%	12.21%
8	Avista Corp.	AVA	1.61%	10.55%	12.16%	4.42%	7.74%	0.8234	10.79%	1.00%	11.79%
9	Otter Tail Corp.	OTTR	1.61%	10.55%	12.16%	4.42%	7.74%	0.9605	11.85%	1.00%	12.85%
10	NextEra Energy, Inc.	NEE	1.61%	10.55%	12.16%	4.42%	7.74%	0.9224	11.56%	-0.01%	11.55%
11	Sempra	SRE	1.61%	10.55%	12.16%	4.42%	7.74%	0.9459	11.74%	-0.01%	11.73%
12	Portland General Elec.	POR	1.61%	10.55%	12.16%	4.42%	7.74%	0.8713	11.16%	0.74%	11.90%
13	DTE Energy Co.	DTE	1.61%	10.55%	12.16%	4.42%	7.74%	0.9068	11.44%	0.33%	11.77%
14	Entergy Corp.	ETR	1.61%	10.55%	12.16%	4.42%	7.74%	0.9612	11.86%	0.33%	12.19%
15	Pub Sv Enterprise Grp.	PEG	1.61%	10.55%	12.16%	4.42%	7.74%	0.9423	11.71%	0.33%	12.04%
16	TXNM Energy	TXNM	1.61%	10.55%	12.16%	4.42%	7.74%	0.9099	11.46%	1.00%	12.46%
17	Pinnacle West Capital	PNW	1.61%	10.55%	12.16%	4.42%	7.74%	0.9377	11.68%	0.50%	12.18%
18	Evergy Inc.	EVRG	1.61%	10.55%	12.16%	4.42%	7.74%	0.8876	11.29%	0.49%	11.78%
19	Eversource Energy	ES	1.61%	10.55%	12.16%	4.42%	7.74%	0.8834	11.26%	0.33%	11.59%
20	Alliant Energy	LNT	1.61%	10.55%	12.16%	4.42%	7.74%	0.8701	11.15%	0.49%	11.64%
21	Southern Company	SO	1.61%	10.55%	12.16%	4.42%	7.74%	0.8777	11.21%	-0.01%	11.20%
22	IDACORP, Inc.	IDA	1.61%	10.55%	12.16%	4.42%	7.74%	0.8586	11.07%	0.74%	11.81%
23	Ameren Corp.	AEE	1.61%	10.55%	12.16%	4.42%	7.74%	0.8272	10.82%	0.33%	11.15%
24	FirstEnergy Corp.	FE	1.61%	10.55%	12.16%	4.42%	7.74%	0.8475	10.98%	0.33%	11.31%
25	Dominion Energy	D	1.61%	10.55%	12.16%	4.42%	7.74%	0.7684	10.37%	-0.01%	10.36%
26	Duke Energy Corp.	DUK	1.61%	10.55%	12.16%	4.42%	7.74%	0.8115	10.70%	-0.01%	10.69%
27	CMS Energy Corp.	CMS	1.61%	10.55%	12.16%	4.42%	7.74%	0.8284	10.83%	0.33%	11.16%
28	WEC Energy Group	WEC	1.61%	10.55%	12.16%	4.42%	7.74%	0.8152	10.73%	0.33%	11.06%
29	Xcel Energy Inc.	XEL	1.61%	10.55%	12.16%	4.42%	7.74%	0.8135	10.72%	0.33%	11.05%
30	Consolidated Edison	ED	1.61%	10.55%	12.16%	4.42%	7.74%	0.6897	9.76%	0.33%	10.09%
31	American Elec Pwr	AEP	1.61%	10.55%	12.16%	4.42%	7.74%	0.8248	10.80%	-0.01%	10.79%
32	Fortis Inc.	FTS	1.61%	10.55%	12.16%	4.42%	7.74%	0.7530	10.25%	0.33%	10.58%
33											
34	Average		1.61%	10.55%	12.16%	4.42%	7.74%	0.89	11.34%		11.75%
35											
36	Low								9.76%		10.09%
37	High								12.96%		13.29%
38	Median								11.27%		11.77%
39	Midpoint								11.36%		11.69%
40											
41											
42			Threshold								
43	**Low-End Outlier Test**		7.26%								
44	**High-End Outlier Test**		23.55%								

Notes:

(1) Data for columns (b), c), (e) and (i) sourced from Exhibit No. AMM-006.

(2) Data for column (g) sourced from the S&P Capital IQ platform. Betas calculated using five years of weekly electric utility stock prices and S&P 500 Index price level data through January 31, 2025.

CAPM

IBES

Line No.	Company	Ticker	Market Return (R_m) Div Yield	Proj. Growth	Cost of Equity	Risk-Free Rate	Risk Premium	Beta	K_e	Size Adj.	Adjusted K_e
	(a)		(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
					(b) + (c)		(d) - (e)		[(f) * (g)] + (e)		(h) + (i)
1	Exelon Corp.	EXC	1.61%	10.55%	12.16%	4.42%	7.74%	0.7674	10.36%	0.33%	10.69%
2	CenterPoint Energy	CNP	1.61%	10.55%	12.16%	4.42%	7.74%	0.7818	10.47%	0.33%	10.80%
3	OGE Energy Corp.	OGE	1.61%	10.55%	12.16%	4.42%	7.74%	0.7674	10.36%	0.50%	10.86%
4	Black Hills Corp.	BKH	1.61%	10.55%	12.16%	4.42%	7.74%	0.7781	10.44%	0.74%	11.18%
5	PPL Corp.	PPL	1.61%	10.55%	12.16%	4.42%	7.74%	0.7363	10.12%	0.33%	10.45%
6	NorthWestern Energy	NWE	1.61%	10.55%	12.16%	4.42%	7.74%	0.6989	9.83%	1.00%	10.83%
7	Edison International	EIX	1.61%	10.55%	12.16%	4.42%	7.74%	0.7684	10.37%	0.33%	10.70%
8	Avista Corp.	AVA	1.61%	10.55%	12.16%	4.42%	7.74%	0.6598	9.53%	1.00%	10.53%
9	Otter Tail Corp.	OTTR	1.61%	10.55%	12.16%	4.42%	7.74%	0.8424	10.94%	1.00%	11.94%
10	NextEra Energy, Inc.	NEE	1.61%	10.55%	12.16%	4.42%	7.74%	0.7943	10.57%	-0.01%	10.56%
11	Sempra	SRE	1.61%	10.55%	12.16%	4.42%	7.74%	0.7587	10.29%	-0.01%	10.28%
12	Portland General Elec.	POR	1.61%	10.55%	12.16%	4.42%	7.74%	0.6682	9.59%	0.74%	10.33%
13	DTE Energy Co.	DTE	1.61%	10.55%	12.16%	4.42%	7.74%	0.6442	9.41%	0.33%	9.74%
14	Entergy Corp.	ETR	1.61%	10.55%	12.16%	4.42%	7.74%	0.7008	9.84%	0.33%	10.17%
15	Pub Sv Enterprise Grp.	PEG	1.61%	10.55%	12.16%	4.42%	7.74%	0.7674	10.36%	0.33%	10.69%
16	TXNM Energy	TXNM	1.61%	10.55%	12.16%	4.42%	7.74%	0.5104	8.37%	1.00%	9.37%
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19	Eversource Energy	ES	1.61%	10.55%	12.16%	4.42%	7.74%	0.6744	9.64%	0.33%	9.97%
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21	Southern Company	SO	1.61%	10.55%	12.16%	4.42%	7.74%	0.6378	9.36%	-0.01%	9.35%
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23	Ameren Corp.	AEE	1.61%	10.55%	12.16%	4.42%	7.74%	0.6616	9.54%	0.33%	9.87%
24	FirstEnergy Corp.	FE	1.61%	10.55%	12.16%	4.42%	7.74%	0.6676	9.59%	0.33%	9.92%
25	Dominion Energy	D	1.61%	10.55%	12.16%	4.42%	7.74%	0.6141	9.17%	-0.01%	9.16%
26	Duke Energy Corp.	DUK	1.61%	10.55%	12.16%	4.42%	7.74%	0.5598	8.75%	-0.01%	8.74%
27	CMS Energy Corp.	CMS	1.61%	10.55%	12.16%	4.42%	7.74%	0.6260	9.27%	0.33%	9.60%
28	WEC Energy Group	WEC	1.61%	10.55%	12.16%	4.42%	7.74%	0.5797	8.91%	0.33%	9.24%
29	Xcel Energy Inc.	XEL	1.61%	10.55%	12.16%	4.42%	7.74%	0.6113	9.15%	0.33%	9.48%
30	Consolidated Edison	ED	1.61%	10.55%	12.16%	4.42%	7.74%	0.5286	8.51%	0.33%	8.84%
31	American Elec Pwr	AEP	1.61%	10.55%	12.16%	4.42%	7.74%	0.5955	9.03%	-0.01%	9.02%
32	Fortis Inc.	FTS	1.61%	10.55%	12.16%	4.42%	7.74%	0.6413	9.38%	0.33%	9.71%
33											
34	Average		1.61%	10.55%	12.16%	4.42%	7.74%	0.68	9.66%		10.07%
35											
36	Low								8.37%		8.74%
37	High								10.94%		11.94%
38	Median								9.58%		10.10%
39	Midpoint								9.66%		10.34%
40											
41											
42			Threshold								
43	**Low-End Outlier Test**		7.26%								
44	**High-End Outlier Test**		20.21%								

Notes:

(1) Data for columns (b), c), (e) and (i) sourced from Exhibit No. AMM-006.

(2) Data for column (g) sourced from the S&P Capital IQ platform. Betas calculated using five years of weekly electric utility stock prices and S&P 500 Index price level data through March 28, 2025.