UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

FirstEnergy Service Company, The Potomac Edison Company	Docket No. ER25-3095-000

MOTION TO INTERVENE, 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, 212, and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or the "Commission"),[1] submits this Motion to Intervene, Protest, and Request for Evidentiary Hearing in response to the Potomac Edison Company's ("PE") request for authorization to recover 100% of Construction Work in Progress costs in rate base ("CWIP incentive") that are related to the construction of new major baseline wholesale electric transmission projects under Sections 205 and 219 of the Federal Power Act ("FPA"),[2] Part 35 of the regulations of the Commission,[3] Order No. 679[4] and the Commission's November 15, 2012 policy statement on transmission rate incentives[5] filed by FirstEnergy Service Company ("FirstEnergy"), on behalf of its affiliate PE on August 6, 2025.

[1] 18 C.F.R. §§ 385.211, 385.212, and 385.214.
[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).

MPC hereby seeks leave to intervene in the above-captioned proceeding. 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]."

PE has retail customers within Maryland, and these Maryland ratepayers stand to be financially affected in a direct and significant manner by the outcome of this proceeding. The specific interests of Maryland residential consumers are not adequately represented by other parties to this matter, thus MPC's intervention is necessary in order to protect these interests.

MPC requests that all communications related to this proceeding be addressed to the following persons:

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INTRODUCTION

The PJM 2022 Regional Transmission Expansion Plan, Window 3 is a large-scale transmission upgrade designated to PE by PJM to address reliability risks caused by rapid data center load growth in northern Virginia. The project consists of multiple new 500 kV transmission lines, substations, transformers, and rebuilds, with an estimated cost of $1.1 billion for PE. FERC has already granted an abandoned plant incentive for the project in 2024. PE now requests CWIP treatment due to credit agency concerns about financial strain. To support its request, PE cites the project's scale and its potential impact on credit ratings, debt costs, and customer rates.

The Commission should deny PE's requested CWIP incentive, or in the alternative, grant an evidentiary hearing because (1) the Window 3 project is being developed in PE's service territory (*i.e.* Maryland and West Virginia), but its primary driver is data center growth in northern Virginia, raising questions about whether the proposal would unfairly burden Maryland ratepayers, and whether Maryland customers are the recipients of the benefits of the project; (2) PE is seeking additional financial incentives (CWIP), which utilizes a rate of return higher than the Allowance for Funds Used During Construction ("AFUDC") rate, beyond the already-approved abandoned plant incentive, increasing the financial burden on customers; (3) the request introduces generational ratepayer cost shifts together with cost shifts between ratepayers within PJM; (4) PE misrepresented its application to PJM by stating it would utilize AFUDC rather than CWIP for the Window 3 project; (5) PE's financial pressures result from its decision to bid on the Window 3 project and its request unduly burdens ratepayers with the consequence of its decisions; and (6) the filing lacks specific and detailed support to substantiate its request for the CWIP incentive.

The Commission has acknowledged that granting the CWIP incentive is a departure from standard ratemaking principles, as it provides for the recovery of costs in the form of a "return on" capital expenditure related to plant that is not used and useful. Therefore, close examination is merited for the instances where the Commission does depart from its standard ratemaking practices, such as PE's request for a CWIP incentive in respective of the construction of the Window 3 project. As discussed herein, there are sufficient grounds to deny PE's request and, failing that, to set the matter for an evidentiary hearing.

ARGUMENT

I. PE's proposal would result in an unjust and unreasonable cost shift to current ratepayers.

According to Order No. 679, to substantiate a departure from its standard ratemaking policies, the Commission must reasonably balance consumers' interest in fair rates against investors' interest in maintaining financial integrity and access to capital markets.[6] Here, a reasonable balance is not achieved because of an expected near-term generational shift in load. The need for the Window 3 project is driven in large part by the new and unprecedented data center load locating in northern Virginia and the need to manage that new load growth from a transmission reliability perspective.[7] Therefore, to

[6] Order No. 679, at P 117.
[7] See Transmittal Letter at page 4.

the extent that new load, estimated at 7,500 MW by PJM,[8] is not interconnected and paying network integration transmission service charges, the burden of paying for a "return on" capital expenditure during the project's construction phase will be entirely shouldered by existing PJM ratepayers. Existing customers will pay the costs despite the new data center load creating the need for the transmission project. This generational ratepayer cost shift is not a just and reasonable outcome.

PE's witness, Bill Wang, shares a simplified message that the primary impact to PE customers from the CWIP incentive will be the timing of payments for the return on the capital expenditure of the Window 3 projects (*i.e.*, paying the costs upfront as opposed to later through the capitalized AFUDC) and allegedly reducing rate shock for ratepayers.[9] Mr. Wang provided no further information to substantiate these claims and makes broad statements throughout his testimony. Mr. Wang's claims that the timing and reduction of rate shock is the only impact on customers is simply not the case when considering the generational cost shift discussed above. It matters "who" the ratepayers are that are paying the rate. The PJM ratepayers impacted here include a large number of Maryland residents and businesses who will be paying increased rates as a result of PE's CWIP request while the potential customers causing the increased costs will not be paying those rates.

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[8] RTEP - 2022 RTEP Proposal Window #3 available at https://www.pjm.com/-/media/DotCom/committees-groups/committees/teac/2023/20231205/20231205-pjms-role-in-regional-planning-2022-rtep-window-3.ashx.
[9] Attachment B at 9:16-17.

II. PE's proposal inequitably allocates costs amongst ratepayers within PJM.

As discussed in the PJM Manual 14f – Competitive Bidding Process, Section 1,[10] Commission Order No. 1000, issued on July 21, 2011, requires that PJM "[e]nsure that the costs of transmission solutions chosen to meet regional transmission needs *are allocated fairly to those who receive benefits from them*."[11]

PE's proposal to include a CWIP incentive creates inequities between the current ratepayers as determined through the PJM RTEP allocation process and the ratepayers who will benefit from these projects once PJM revises its RTEP allocations when the Window 3 project is energized. Because PJM deemed Window 3 projects to be "needed for reliability" and the line is high-voltage, half of the costs will be spread out across PJM's 13 states and the District of Columbia, based on a measure of their Load Ratio Share on the transmission system. The other half is allocated based on what PJM calls its "DFAX" methodology, which uses a power flow analysis to estimate the relative use of the new transmission facility by power flows into each PJM zone (referred to as locational deliverability areas or "LDAs"). Since these projects are not currently in-service, the ratepayers who will pay the CWIP incentive are based on the current topology of the transmission system and assumptions being included in a DFAX analysis. However, once these projects go into service PJM will re-evaluate the load ratio shares

[10] https://www.pjm.com/-/media/DotCom/documents/manuals/m14f.pdf.

[11] *Transmission Plan. & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 76 FR 49842 (Aug. 11, 2011), 136 FERC ¶ 61,051 (2011) at P 4 [emphasis added], Order No. 1000-A, 77 FR 32184 (May 31, 2012), 139 FERC ¶ 61,132 (2012), *order on reh'g & clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

and DFAX analysis to determine the true beneficiaries of the projects. This reevaluation will result in changes in the cost allocation for the projects. Moreover, PJM's method to allocate RTEP projects based on a load-ratio share and DFAX analysis—which would be applied to the requested CWIP incentive but which will change once the project is energized—has no mechanism to true-up any over or under charges based on the customers who ultimately benefit from the project. This would result in an unjust and unreasonable cost shift between ratepayers and a violation of Order No. 1000.

III. PE bears the responsibility to manage its financial wellbeing, not ratepayers.

In support of its CWIP incentive request, PE and its witness Mr. Wang point to financial pressures resulting from the need to manage the significant cash outlays associated with the project pursuant to the standard utility cost recovery framework.[12] It was PE, however, that made the decision to provide a proposal to the 2022 RTEP Window 3 Update process. PJM Manual 14f - Competitive Planning Process[13] ("PJM Manual 14f"), Section 2.2 – Pre-qualification Application establishes the requirements for an entity to be eligible to be a "Designated Entity." Item 6 of this section states that PJM requires "[f]inancial statements of the entity or its affiliate, partner or parent company for the most recent fiscal quarter, as well as the most recent three fiscal years, or the period of the entity's existence, if shorter, or such other evidence demonstrating an entity's or its affiliates, partner's or parent company's current and expected financial capability acceptable to PJM." Therefore, as a requirement of the application process,

[12] Attachment B at 3:9-22.
[13] https://www.pjm.com/-/media/DotCom/documents/manuals/m14f.pdf.

PJM evaluated PE’s financial strength and determined that it had the financial capability to accept this project by awarding PE the project.

Further, it appears that PE represented to PJM that it would utilize AFUDC as its component of recovery from ratepayers. As part of PJM planning process, as required in the PJM Manual 14f, Section 8.4.2 – Assessment of Project Proposal with Cost Commitment Provisions, “A cost commitment provision submitted as part of a project proposal may include, but is not limited to, the capital structure (debt to equity ratio) and caps on: initial capital costs (total costs associated with bringing the project into service); the annual revenue requirement; the rate of return on equity (ROE); the debt cost; the total capital cost; *allowance for funds used during construction (AFUDC); construction work in progress (CWIP)*; abandonment costs and schedule guarantees. A cost commitment proposal may also exclude defined cost elements from the cost commitment provision” [emphasis added]. In the PJM financial analysis report, Transource was identified as the only bidder that requested CWIP. Specifically, the PJM financial analysis states: “The associated financing costs of construction are modeled using either return on Construction Work In Progress (CWIP) or AFUDC for each proposal. Both returns on CWIP and AFUDC are calculated using the developer-specific after-tax WACC. If a developer does not specify collecting a return on CWIP versus AFUDC, Consultant modeled AFUDC. Transource is the only developer that clearly claimed a return on CWIP."[14]

As noted in the transmittal letter, the Window 3 procurement was a competitive process, with 72 proposals from 10 entities received by PJM. It now appears that after successfully winning the Window 3 projects that PE is seeking to improve its financial wellbeing and minimize its risks on an ex-post basis, and on the backs of ratepayers. PE had the option to provide a cost proposal that indicated that it wanted to use CWIP rather than AFUDC in the PJM bidding process. While we do not know whether the outcome of PJM's selection process would have changed had PE disclosed its desire to recover CWIP rather than AFUDC, PE would have had to meet the financial metrics under the PJM bidding process in order to be selected. Given the magnitude of this project, the financial considerations of bidding on the project should have been at the forefront of PE's decision to bid. If PE was uncomfortable with its financial metrics as a result of the process, it could have simply let other bidders proceed with the project and avoided the financial pressures it now seeks to mitigate with the CWIP incentive.

IV. PE's filing in support of its CWIP incentive request lacks specific and detailed support.

Mr. Wang's testimony explains that the large capital expenditure associated with the Window 3 projects will put downward pressure on the PE's credit metrics and may impact its ability to maintain its current credit rating. Mr. Wang argues that the CWIP

[14] https://www.pjm.com/-/media/DotCom/committees-groups/committees/teac/2023/20231205/20231205-2022-rtep-window-3-constructability--financial-analysis-report.pdf at 104.

incentive will help improve PE's credit metrics and in turn benefit ratepayers through a lower cost of debt.[15] Additionally, Mr. Wang states that the CWIP incentive will reduce rate shock for ratepayers[16] and the additional cash flow the incentive provides will reduce PE's overall need to raise capital during the construction period.[17] None of these stated benefits, however, are actually quantified by Mr. Wang, and therefore one cannot readily determine from the testimony what the impact of granting the CWIP incentive will be for both PE and ratepayers.[18] Notwithstanding the fact that PE would have already considered its financials as part of the PJM bidding process, in determining whether to grant the CWIP incentive, the Commission must reasonably balance consumers' interest in fair rates against investors' interest in maintaining financial integrity and access to capital markets.[19] The PE filing fails to provide a minimum level of information necessary for this assessment.

Furthermore, PE's filing fails to provide sufficient insight regarding the manner in which PE will manage the financing of the Window 3 project and the expected timing of the pressure on its credit metrics resulting from its utility-wide capital expenditure plans. PE is investing a large amount of capital in other projects beyond the Window 3 project. Mr. Wang describes that the $1,054,000,000 Window 3 project amounts to 41 percent of

[15] Attachment B at 7:20 – 8:2.
[16] *Id*. at 9:14-23.
[17] *Id*. at 8:20-23.
[18] Additionally, it is noted that the MPC did not have access to the confidential version of the Exhibit 1, Copy of Potomac Edison's Corporate Credit Ratings Report, accompanying Mr. Wang's direct testimony. MPC did not have time to sign a confidentiality agreement in order to view these files and reserves its right to supplement comments once they have been reviewed.
[19] Order No. 679, at P 117.

the utility's total capital spend for the 2025-2029 period with the other 59 percent of capital spend on other transmission and distribution projects.[20] Additionally, Mr. Wang explains that the Window 3 project represents 65 percent of the transmission capital expenditure for this projected period.[21] On this basis, it would appear PE is planning to spend approximately $2,256,000,000 over the 2025-2029 period consisting of (a) $925,000,000 for the Window 3 project,[22] (b) $498,000,000 for other transmission projects and (c) $833,000,000 on distribution projects. Thus, the majority of its capital expenditure over the 2025-2029 period will be on projects other than the Window 3 project. In turn, these other large-scale projects will also be putting PE's credit metrics under pressure and a holistic assessment is necessary to understand how PE will be recovering and financing these expenditures, and how the CWIP incentive interacts with the overall financing plan.

Moreover, the transmittal letter[23] and Mr. Wang's testimony[24] appear to suggest that the Window 3 project will be in-service at single point of time on December 31, 2030, but information contained in the January 30, 2024, Designated Entity letter from FirstEnergy to PJM,[25] indicates that individual projects within the wider Window 3 project are planned to go into commercial operation across several years during the 2027

[20] Attachment B at 5:14-19.
[21] *Id*. at 5:18-19.
[22] Note Figure 1 of Attachment B indicates the total cost for the Window 3 projects is $1,054 million over the 2024-2030 period and provide an annual projected spend for each year during that period. The total cost for the 2025-2029 period is approximately $925 million.
[23] Transmittal letter at 10.
[24] Attachment B at 4:23 – 5:2.
[25] Attachment C – Designated Entity Notification Letters.

through 2030 period.[26] Therefore, PE would be earning a return on the additional plant-in-service across this period which would reduce the downward pressure on credit metrics that PE seeks to address with the CWIP incentive. Moreover, the PJM transmission rate template is designed as a projected transmission rate with an annual true-up that reduces regulatory lag for transmission investments. In light of these facts, PE should be required to provide detailed financial projections and analysis to demonstrate the need for the CWIP incentive. Without such detailed and substantial justification, the CWIP incentive should not be granted.

V. PE's request for a CWIP incentive produces a higher return compared to the AFUDC rate.

In instances where the Commission has granted a CWIP incentive, the CWIP order usually takes the form of adding the CWIP balance to rate base, such that the utility is earning the rate of return as established in the formula rate on the CWIP balance. The rate of return determined in the formula rate utilizes long-term debt and common equity. This method typically results in a higher return compared to the Commission's approach to determining the AFUDC rate which assumes that short-term debt is the first source of construction funds, before permanent long-term sources of capital are utilized.[27] For example, PE's 2023 actual transmission formula rate had a rate of return of 7.45 percent, which is greater than PE's Q1 2023 to Q4 2023 AFUDC rates that ranged from 6.18% to 6.78%. This inconsistency between CWIP and AFUDC erodes the proposition that

[26] Attachment C – Designated Entity Notification Letters at Attachment A: New required RTEP Projects.
[27] Order No. 561 at *608.

ratepayers should be indifferent to the recovery method of construction period financing costs as part of the CWIP incentive as opposed to the AFUDC recovery method and, in fact, this design imperfection can have measurable consequences for ratepayers.

If the Commission grants the CWIP incentive to PE, it should limit the rate that can be charged so that it is no higher than what would be produced under PE's AFUDC rate.

CONCLUSION

MPC respectfully requests that the Commission deny PE's request for the CWIP incentive, or, in the alternative, set this matter for evidentiary hearing. Granting the requested CWIP incentive in this case would unreasonably favor PE's financial interests, resulting in a higher rate of return compared to the AFUDC rate, and unjust and unreasonable rates for consumers. Given that the need for PE's transmission project is driven by unprecedented load growth demand from data center loads in northern Virginia, it is unreasonable to foist upon existing PJM ratepayers the burden of paying the return on PE's capital expenditure during the construction phase of PE's transmission project. There is also no mechanism to true-up over or under charges for existing customers once the projects are energized and the true beneficiaries of the projects are determined. Furthermore, PE's bid for the project did not disclose that it planned to request the CWIP incentive, and it is unknown whether PE's bid would have met the financial metrics for selection if PE had made that disclosure. Additionally, PE's filing lacks the specific and detailed support necessary to demonstrate the need for the CWIP incentive.

Respectfully submitted,

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Dated: August 27, 2025

<u>CERTIFICATE OF SERVICE</u>

I HEREBY CERTIFY that, on this 27th day of August 2025, the foregoing "Motion to Intervene, 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,

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