UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ANERGY REGULATORY COMMISSION

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THE OFFICE OF THE OHIO CONSUMERS' COUNSEL	*	Docket No. EL23-105
v.	*	
PJM INTERCONNECTION, L.L.C., *et al*.	*	

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COMMENTS OF THE MARYLAND OFFICE OF PEOPLE'S COUNSEL

Pursuant to Rule 211 of the Federal Energy Regulatory Commission ("FERC" or the "Commission"), 18 C.F.R. § 385.202, the Maryland Office of People's Counsel ("MD-OPC") respectfully submits the following comments with the respect to and in support of the complaint of the Office of the Ohio Consumers' Counsel ("OCC)" filed with FERC on September 28, 2023.[1] MD-OPC filed a doc-less motion to intervene in this proceeding on November 11, 2023.

OCC's complaint alleges that PJM Interconnection, L.L.C's ("PJM's") Tariff and Operating Agreement does not protect Ohio consumers from the costs of excessive transmission projects and is inconsistent with the Federal Power Act's requirements that rates to consumers be lawful, just, reasonable and not unduly discriminatory or preferential.[2] OCC identifies a significant regulatory gap concerning local transmission

[1] The Commission issued an initial notice, dated September 29, 2023, with respect to OCC's filing establishing an initial deadline for interventions, protests, and comments of October 18, 2023. On October 11, 2023, FERC issued a notice extending the dealing for interventions, protests, and comments to November 17, 2023.
[2] OCC Complaint at 3.

projects—also referred to as Supplemental Projects —developed by Ohio transmission owners. As the complaint explains, the reviewing authority of the Ohio Power Siting Board ("OPSB")—the state authority overseeing transmission infrastructure siting—is limited to assessing the need and environmental effects of alternative locations for proposed transmission facilities exceeding 100 kV.[3] OPSB does not review projects for cost-effectiveness, nor does OPSB review proposed rebuilds of existing transmission lines, unless those rebuilds include expansions of capacity.[4] The Public Utility Commission of Ohio has expressly declined to review the need, prudence and cost effectiveness of such supplemental projects;[5] and PJM's governing documents do not obligate it to undertake such a review.

OCC observes that, since 2017, electric utilities have added more than $6 billion in Supplemental Projects to their local transmission plans in Ohio.[6] While these significant costs are paid by customers, there is currently no authority reviewing and approving the planning, need, prudence, and cost-effectiveness of these facilities.

Maryland is plagued by a similar oversight issue concerning Supplemental Projects. State-level regulatory review of proposed transmission projects in Maryland is focused on project need and environmental impact.[7] Cost-effectiveness is not a required consideration for state regulatory review. Moreover, because alternative solutions are only evaluated for new construction, end-of-life driven projects are subject to a less

[3] OCC Complaint at 22–23.
[4] OCC Complaint at 22–23.
[5] OCC Complaint at 23–24.
[6] OCC Complaint 24–25.
[7] Md. Code Ann., Pub. Util. Art. ("Maryland PUA") §§ 7-207(e), (f).

rigorous review standard.[8] MD-OPC shares the OCC's concerns regarding the proliferation of, substantial costs of, and lack of regulatory oversight over Supplemental Projects. As will be discussed below, MD-OPC agrees that PJM's Tariff and Operating Agreement are unjust, unreasonable, unduly discriminatory, and preferential because they fail to protect consumers from excessive transmission rates driven by Supplemental Projects. OPC supports OCC's complaint and respectfully requests that any relief granted by the Commission in this matter extend to Maryland customers as well.

I. Maryland's transmission siting process does not involve a review of the costs of Supplemental Projects.

The Maryland Public Service Commission ("MPSC") oversees electric transmission facilities siting pursuant to Maryland Public Utilities Article ("Maryland PUA") § 7-207. Section 7-207 requires an award of a certificate of public convenience and necessity ("CPCN") to construct an overhead transmission line designed to carry voltage in excess of 69 kV. The CPCN requirement may be waived for projects that (1) do not require new or additional property rights-of-way or require higher or larger structures to accommodate increased voltage or larger conductors, or (2) are "necessary to avoid an imminent safety hazard or reliability risk."[9] In awarding a CPCN, the MPSC must consider a number of factors, including the stability and reliability of the electric system, economics, the effect of climate change on the overhead transmission line, and the need to meet existing and future electricity needs.[10]

[8] *Id.*; Proposed Order at 76 ¶ 218, *aff'd* Order No. 90684, *In re Doubs-Goose Creek 500 kV Transmission Line* (Case No. 9669, 2023).
[9] Maryland PUA § 7-207(b)(4).
[10] Maryland PUA §§ 7-207(e), (f).

Like Ohio, Maryland's CPCN process as overseen by the MPSC does not cover customer-cost considerations. As explained below, Maryland has not reviewed the cost-effectiveness of any transmission facilities, and end-of-life driven projects are subject to limited alternatives considerations and are not assessed for cost-effectiveness.

A. Like Ohio, Maryland has not reviewed the cost-effectiveness of any transmission facilities.

The MPSC's review of project cost effectiveness has been insufficient. The MPSC interprets the consideration of "economics" under PUA § 7-207(e) as excluding cost-effectiveness. As explained in a recent MPSC decision awarding a CPCN for the rebuild of a 500 kV transmission line:

> The [MPSC] has not previously treated the PUA § 7-207(e) economics prong in the same or similar vein as cost-effectiveness in other proceedings. Traditionally, this requirement has been addressed by the applicant and [Power Plant Research Program] and considers a project's potential socioeconomic and net economic impacts on the State and local economies, i.e., jobs that will be created, taxes that will be generated, capital costs, etc., not whether a project is cost effective or the least cost option.[11]

Though the MPSC's regulations require an application for a CPCN to include an explanation of a project's cost effectiveness,[12] this explanation does not need to include a cost-effectiveness analysis of the project relative to other options.[13] Rather, it is satisfied by a discussion of the project's estimated costs and the associated customer bill impact.

[11] Proposed Order at 76 ¶ 218, *aff'd* Order No. 90684, *In re Doubs-Goose Creek 500 kV Transmission Line* (Case No. 9669, 2023).
[12] Code of Maryland Regulations ("COMAR") 20.79.04.01A(4).
[13] Order No. 90684 at 18 ¶ 40.

For transmission facilities proposed for Maryland, the *only* consideration of cost-effectiveness prior to construction occurs through PJM's competitive planning process. But PJM's competitive planning process only applies to certain transmission projects. It primarily applies to transmission upgrades necessary to comply with system reliability, operational performance, or economic criteria.[14] For non-immediate need projects[15] addressing reliability violations or transmission congestion, PJM opens a project window and solicits proposals from developers.[16] The proposals are first subject to an engineering screen. Projects that pass the engineering screen are then comparatively assessed for cost effectiveness.[17]

PJM does not assess the cost-effectiveness of Supplemental Projects, however. Because Supplemental Projects are, by definition, not necessary for meeting PJM criteria, such projects are not subject to PJM's competitive planning process. Instead, PJM's review of Supplemental Projects is limited to determining whether a proposed project will negatively impact system reliability. Thus, whether cost-effectiveness is considered at all prior to construction depends on the State siting review authority.

Because Maryland law does not require the MPSC to consider a project's cost-effectiveness when awarding a CPCN, Maryland ratepayers suffer from the same

[14] *See* PJM Operating Agreement, Schedule 6. Projects necessary to meet public policy goals are also coordinated through the competitive planning process. PJM Manual 14F, section 5.1.
[15] Projects PJM identifies as "immediate need"—i.e. resolving a reliability violation arising in less than three years—are assigned directly to the Transmission Owner and are generally not subject to PJM's competitive planning process. PJM Operating Agreement, Schedule 6, section 1.5.8(m)(1). PJM may, at its discretion, open a shortened proposal window to accept proposals for such projects; cost-effectiveness would be considered as part of PJM's reviewing of the submitted proposals. *Id.* section 1.5.8(m)(2).
[16] PJM Operating Agreement, section 1.5.8(c).
[17] PJM Operating Agreement, sections 1.5.8(d), (e); PJM Manual 14F, section 8.4

regulatory gap that prompted OCC's complaint—no Supplemental Projects constructed in Maryland *are evaluated for cost-effectiveness prior to construction*.

B. End-of-life driven projects are subject to limited alternatives considerations and are not assessed for cost-effectiveness.

In PJM, end-of-life driven projects are typically developed as Supplemental Projects pursuant to PJM OATT Attachment M-3. Transmission owners are responsible for identifying transmission facilities approaching the end of their useful life and are primarily responsible for developing any solutions to address identified end-of-life issues. Unless a transmission owner has memorialized its end-of-useful-life planning criteria in its FERC Form No. 715,[18] end-of-life driven projects may only be pursued as Supplemental Projects. In short, unlike baseline reliability projects, end-of-life driven projects proposed for Maryland are not subject to PJM's competitive planning process.

PJM's review of Supplemental Projects is far less rigorous and more constrained than its review of baseline reliability projects. Unlike baseline projects, PJM is not involved in project development. PJM may review the assumptions, methodology, and solutions provided by a transmission owner, but PJM does not assess the viability of alternative solutions or the cost-effectiveness of the transmission owner's proposed solution. Rather, PJM's analysis is limited to a "do no harm" analysis—an evaluation of whether the developer's identified solution would adversely affect reliability.[19] Thus, for end-of-life projects, any regulatory review of need, alternatives, and or cost-effectiveness

[18] *See* PJM Manual 14B, section 1.4.1.4. Violations of utility planning criteria identified in FERC Form No. 715 are considered baseline reliability projects and subject to PJM's competitive planning process. No Maryland utilities have memorialized their end-of-life planning criteria in FERC Form No. 715.
[19] PJM Manual 14B, section 1.1 at 19, https://www.pjm.com/~/media/documents/manuals/m14b.ashx.

must occur at the state level. As indicated above, Maryland's CPCN process does not require any assessment of cost-effectiveness. And, as discussed below, Maryland's treatment of end-of-life driven projects does not include a consideration of alternatives.

Maryland PUA § 7-207 distinguishes construction related to new overhead transmission lines from modifications to existing lines. For construction "related to a new overhead transmission line," the MPSC must consider any alternative rights-of-way, the capital and operating costs of each route, and the reason why the route was rejected.[20] Maryland PUA § 7-209 further obligates the MPSC to examine alternatives to construction only for new transmission lines.[21] These requirements to consider alternatives do not apply to projects categorized as modifications to an existing line.

End-of-life driven transmission line rebuilds are not subject to any mandatory alternatives assessment. The MPSC categorizes such projects as a modification to existing lines.[22] As explained in a recent order, a line that has been in existence for decades "cannot be found to be *new* regardless of the scope of work."[23] In short, Maryland law does not require an alternatives assessment for *any* transmission line rebuild in Maryland. Without a robust consideration of alternatives, Maryland customers are paying for new transmission solutions that could prove less operationally effective—and potentially more costly—over the long term.

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[20] Maryland PUA § 7-207(f)(1)(ii).
[21] Maryland PUA § 7-209(a) ("The Commission shall examine alternatives to the construction of a new transmission line in a service area, including the use of an existing transmission line of another company, if: (1) the existing transmission line is convenient to the service area; or (2) the use of the transmission line will best promote economic and efficient service to the public.").
[22] *See* COMAR 20.79.01.02B(28).
[23] Order No. 90684 at 14 ¶ 15.

II. MD-OPC agrees with the OCC that the PJM Tariff and Operating Agreement does not protect consumers from excessive transmission rates.

OCC's complaint aptly observes that "PJM's current tariff authority to review the need, prudence and cost-effectiveness of transmission expansion extends only to transmission projects needed to resolve region-wide system reliability violations . . . or for projects needed to meet state public policy goals."[24] Therefore, consumer advocates are wholly dependent on state authority for regulatory review of Supplemental Projects addressing more localized transmission needs. As OCC's complaint shows, despite the numerous concerns raised by consumer advocates regarding insufficient cost-containment of Supplemental Projects, PJM's Tariff and Operating Agreement's treatment of Supplemental Projects has not meaningfully changed.

OCC correctly notes that FERC's rulings upholding PJM's current treatment of Supplemental Projects assume that state regulation is sufficiently protecting consumers by reviewing the need, prudence, and cost-effectiveness of Supplemental Projects.[25] But as explained above, Maryland's regulatory process is deficient. The MPSC's limited economic oversight over Supplemental Project costs is reflected in the ballooning level of such costs driving up the rates of Maryland's transmission owning utilities. As Table 1 below shows, since 2015, Supplemental Projects account for more than 76 percent of total Maryland transmission infrastructure investment, at a cost of more than $1 billion.

[24] OCC Complaint at 9–10.
[25] OCC Complaint at 18.

Table 1[26]

Calendar Year	Total Maryland Transmission Infrastructure Capex (millions)	Supplemental Projects Capex (millions)	Supplemental Projects as a Percent of Total
2022	$36.62	$31.31	85%
2021	$48.90	$4.85	10%
2020	$152.90	$137.90	90%
2019	$162.50	$147.00	90%
2018	$498.40	$446.80	90%
2017	$233.20	$219.90	94%
2016	$137.00	-	0%
2015	$64.20	$27.70	43%
8 Year Totals	**$1,333.72**	**$1,015.46**	**76%**

Like customers in Ohio, there currently are no means by which FERC or PJM reviews prior to construction in Maryland whether a Supplemental Project is necessary and, if so, or whether it is the least-cost option. The result is a deficiency in assuring that the rates Maryland customers pay for transmission services are just, reasonable, and not unduly discriminatory or preferential. Without better regulatory oversight over the planning, need, prudence, and cost-effectiveness of such facilities, Maryland customers will be subject to paying unjust and unreasonable rates for the ever-increasing costs of transmission projects not subject to any review of cost-effectiveness or alternatives.

III. OCC's requested relief should apply to Supplemental Projects proposed in Maryland.

OCC's complaint requests three potential remedies. OCC's preferred remedy is for FERC to require transmission owners to file for approval of local transmission projects

[26] Data compiled from PJM's State Specific Reports for Maryland & DC for 2015-2022, https://www.pjm.com/library/reports-notices.

above an identified construction cost threshold planned each year before beginning construction.[27] Under this mechanism, FERC would assess the need, prudence, and cost-efficiency of these projects. MD-OPC agrees that, without any changes to state law or PJM's tariff that requires consideration of the need and cost-effectiveness of Supplemental Projects, only a FERC backstop can ensure adequate consideration of the costs of proposed Supplemental Projects.

OCC also recommends FERC to develop an Independent Transmission Monitor ("ITM") to oversee the local transmission planning process. MD-OPC has supported the creation of an ITM in prior proceedings[28] and encourages FERC to continue to consider this solution.

MD-OPC also agrees with OCC's recommendation that FERC consider requiring utilities to use only a stated-rate approach to determining transmission rates in Maryland. Like Ohio's transmission utilities, Maryland transmission utilities use formula rates to establish transmission rates. As OCC's compliantly aptly explains, formula rates do not provide sufficient opportunity for regulatory oversight of local transmission plans, including Supplemental Projects.[29] A stated-rate review process for Supplemental Projects would better ensure that such projects are reviewed for need, prudence, and cost effectiveness before any related costs are included in transmission rates. MD-OPC also supports OCC's recommendation that, should FERC retain a formula-rate approach, it

[27] OCC Complaint at 35.
[28] *See* Post-Technical Conference Comments of the ITM Coalition, Docket No. AD22-8, Accession No. 20230323-5102 (March 23, 2023).
[29] OCC Complaint at 31–33.

should require utilities to submit a *prima facie* case of reasonableness, need, prudence, and cost-effectiveness in each annual formula rate update.[30]

Regardless of the remedy FERC may choose, MD-OPC requests that any remedy fully apply to Maryland.

CONCLUSION

The issues raised by OCC's complaint identifies are not unique to Ohio. Maryland customers, like Ohio customers, are similarly burdened by excessive Supplemental Project costs. And like Ohio, the costs and prudence of such projects are not subject to regulatory review in Maryland before construction. MD-OPC supports OCC's complaint and agrees that OCC's requested remedies would better ensure that the costs of Supplemental Projects are thoroughly considered before inclusion in transmission rates.

Respectfully submitted,

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[30] OCC Complaint at 36–37.