

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

The Office of the Ohio Consumers' Counsel,	)	
Complainant,	)	
	)	
v.	)	Docket No. EL23-105-000
	)	
PJM Interconnection, L.L.C., American	)	
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.	)	

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**PUBLIC INTEREST ORGANIZATIONS COMMENTS IN SUPPORT OF THE  
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**

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**I. Introduction.**

Natural Resources Defense Council, Sustainable FERC Coalition, Earthjustice, and Sierra Club ("Public Interest Organizations" or "PIOs") file these comments to support the filing of the Ohio Consumers' Counsel ("OCC") to protect Ohio consumers under the PJM tariff from the failures of multiple agencies to oversee the need, prudence, and cost-effectiveness of hundreds of millions of dollars of electric transmission charges for so-called Supplemental Projects planned by Ohio electric utilities, and Natural Resources Defense Council, Sustainable FERC Coalition,

and Sierra Club seek to intervene<sup>1</sup> as they have affected members in Ohio that share OCC's concerns and injuries regarding this regulatory gap.

As demonstrated in the Complaint filed by OCC (the "Complaint"), Ohio consumers are being charged for billions of dollars in local transmission upgrades with no demonstration by the utilities that the rates associated with these projects are just and reasonable and no regulatory oversight as to the need, prudence, or cost effectiveness of these projects. As the Complaint notes, in 2022, over \$658 million in Supplemental Projects were planned for construction in Ohio and involved charges to consumers of AEP, AES, Duke and First Energy.<sup>2</sup> Since 2017, these utilities have added more than \$6 billion in Supplemental Projects to their local transmission plans in Ohio.<sup>3</sup> Between 2018 and 2022, Ohio utilities spent more than 85% of the estimated costs for proposed new transmission on Supplemental Projects, and as the Complaint notes, this trend is likely to continue.<sup>4</sup> These Supplemental Projects are significantly increasing transmission rates to consumers in Ohio.

Rates in Ohio are unjust, unreasonable, and unduly discriminatory, and FERC's continued approval of the PJM tariff and the 205 filings despite the complete lack of oversight of monopoly utilities violates Orders 890, 1000, and 2000, and has resulted in unjust, unreasonable, and unduly discriminatory rates and planning practices/procedures. FERC itself has acknowledged in recent proceedings that the current rates, practices, and procedures around local transmission

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<sup>1</sup> These parties have also filed Motions to Intervene in this Docket. *See* Motion to Intervene of Natural Resources Defense Council et al., (Oct. 5, 2023), Docket No. EL23-105-000, Accession No. 20231005-5081 and Motion to Intervene of the Sierra Club (Nov. 17, 2023), Docket No. EL23-105-000, Accession No. 20231117-5119.

<sup>2</sup> OCC Complaint at 1-4.

<sup>3</sup> Complaint at 2.

<sup>4</sup> *Id.* at 25-26 (noting AEP's announcement in 2021 that it plans to spend \$10 billion in new transmission investments between 2021 and 2025 and FirstEnergy's announcement to shareholders in 2023 that it planned to spend \$8 billion in new transmission between 2021 and 2025).

planning are unjust, unreasonable, and unduly discriminatory. For these reasons, FERC should grant the 206 complaint and provide appropriate relief.

**II. FERC has a duty to ensure that local transmission rates, practices, and procedures in all jurisdictions are just, reasonable, and non-discriminatory.**

**a. The Federal Power Act gives FERC broad jurisdiction to regulate the nation’s transmission system**

As OCC explained,<sup>5</sup> the plain language of the Federal Power Act (“FPA”) gives FERC sweeping authority and an obligation to regulate the nation’s transmission system – including planning practices. FPA section 201 establishes the guiding principle of the FPA that because the sale and transmission of electricity “is affected with a public interest,” federal regulation of the transmission of electricity in interstate commerce “is necessary” to serve that interest.<sup>6</sup> Thus, FPA section 201 vests FERC with exclusive jurisdiction over “the transmission of electric energy in interstate commerce.”<sup>7</sup>

Pursuant to FPA Section 205, FERC is tasked with determining the justness and reasonableness of rates, terms, and conditions of services and practices that affect rates – such as transmission planning.<sup>8</sup> When a transmission owner wishes to recover costs for its investments, it must file with the Commission under FPA section 205.<sup>9</sup> The plain language of FPA section 205(e) states that “the burden of proof to show that the increased rate or charge is just and reasonable *shall be upon the public utility.*”<sup>10</sup> Counter to this plain language, FERC has decided that “as a matter of procedural practice to ensure that rate cases are manageable,” transmission investments for which cost recovery is sought are presumptively prudent, effectively shifting the

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<sup>5</sup> Complaint at 27–29.

<sup>6</sup> 16 U.S.C. § 824(a).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* § 824d(a).

<sup>9</sup> *Id.* § 824d(d).

<sup>10</sup> *Id.* § 824d(e) (emphasis added).

burden to consumers to “create[] serious doubt as to the prudence of an expenditure,” thus rendering the section 205 review process all but meaningless.<sup>11</sup>

This practice flies in the face of the plain language of Section 205 as well as the Commission’s broad obligation and authority to ensure that transmission rates and practices result in a just, reasonable, and reliable system that serves the public interest. The Supreme Court elaborated on the scope of FERC’s authority over transmission in *New York v. FERC*, 535 U.S. 1 (2002). The Court explained that, through the FPA, Congress gave FERC jurisdiction in areas traditionally beyond state authority but also extended federal jurisdiction into areas traditionally reserved to the states.

Specifically, in § 201(b) of the FPA, Congress recognized the FPC’s [now FERC’s] jurisdiction as including “the transmission of electric energy in interstate commerce” and “the sale of electric energy at wholesale in interstate commerce.” 16 U.S.C. § 824(b). Furthermore, § 205 of the FPA prohibited, among other things, unreasonable rates and undue discrimination “with respect to any transmission or sale subject to the jurisdiction of the Commission,” 16 U.S.C. §§ 824d(a)-(b), and § 206 gave the FPC the power to correct such unlawful practices, 16 U.S.C. § 824e(a).<sup>12</sup>

The Court then upheld FERC’s broad jurisdiction over transmission based on FPA sections 201, 205, and 206. Specifically, the Court held that the plain language of the FPA supports that “[t]he unbundled retail transmissions targeted by FERC are indeed transmissions of ‘electric energy in interstate commerce,’ *because of the nature of the national grid.*”<sup>13</sup> The text of FPA section 201 “unambiguously authorizes FERC to assert jurisdiction over two separate activities—transmitting and selling.”<sup>14</sup> And while the text confines FERC’s jurisdiction of selling

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<sup>11</sup> *Minnesota Power & Light Co*, 11 FERC ¶ 61,312, 61,644–45 (1980); *See also* Ari Peskoe, *Is the Utility Syndicate Forever?* 42 Energy L.J. 1, 58, n. 387 (2021); *Transmission Planning and Cost Management*, Comment of the Harvard Electricity Law Initiative, Docket No. AD22-8, 1–2, 37, Accession No. 20230323-5083.

<sup>12</sup> *New York v. FERC*, 535 U.S. 1, 6–7, 19 (2002).

<sup>13</sup> *Id.* at 17 (emphasis added).

<sup>14</sup> *Id.* at 19.

to the wholesale market, the text contains no such limitation over FERC’s jurisdiction of transmission.<sup>15</sup> Thus, as the Court held in *New York v. FERC* and as OCC explains in its complaint, FERC has jurisdiction over all transmission – regardless of whether the transmission line crosses state borders – because of the integrated nature of the modern transmission grid.<sup>16</sup>

**b. FERC has a decades-long record establishing that local transmission planning practices must be regulated to protect consumers from unjust and unreasonable transmission rates.**

Through the issuance of a series of foundational orders over the last three decades, FERC has recognized that comprehensive transmission planning is necessary to ensure that the nation’s energy grid provides reliable electricity at just, reasonable, and not unduly discriminatory rates. To that end, the Commission has steadfastly exercised its authority over transmission owners and operators under Section 206 to require transmission planning that is designed to meet local, regional, and interregional needs efficiently and affordably.

After issuance of the landmark reforms requiring open access to transmission service in 1996 with Order No. 888, the Commission found that continued reform was necessary. In 2007, the Commission issued Order 890 to address continuing opportunities for undue discrimination and underinvestment in grid infrastructure by mandating an open, transparent, and coordinated transmission planning process.<sup>17</sup> FERC found transmission planning to be a critical function of open access tariffs “because it is the means by which customers consider and access new sources of energy and have an opportunity to explore the feasibility of non-transmission alternatives.”<sup>18</sup> The Commission also found that because transmission providers have inherent disincentives to

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<sup>15</sup> *Id.*

<sup>16</sup> Complaint at 27–28.

<sup>17</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Rule No. 890, 72 Fed. Reg. 12,266–67 (Mar. 15, 2007) (“Rule No. 890”).

<sup>18</sup> *Id.*

remedy congestion, it could not “rely on the self-interest of transmission providers to expand the grid in a nondiscriminatory manner,” and found that the existing OATT did not counteract these disincentives because there were no clear criteria regarding the transmission providers’ planning obligation.<sup>19</sup> Specifically, there was no requirement that the overall planning process be open to customers, competitors, and state commissions; and there was no requirement that critical assumptions and data underlying transmission plans be made available. “Taken together, this lack of coordination, openness, and transparency results in opportunities for undue discrimination in transmission planning.”<sup>20</sup>

The Commission determined that the reforms of Order 890 were necessary because:

These deficiencies are serious, given the substantial need for new infrastructure in this Nation. We act today to remedy these deficiencies by requiring transmission providers to open their transmission planning process to customers, coordinate with customers regarding future system plans, and share necessary planning information with customers.

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[B]y adopting these and other reforms, the Final Rule facilitates the use of clean energy resources such as wind power. Conditional firm service is particularly important to wind resources that can provide significant economic and environmental value even if curtailed under limited circumstances. Open and coordinated transmission planning will enhance the ability of customers to access clean energy resources as part of their future resource portfolio.<sup>21</sup>

To remedy these deficiencies, Order No. 890 drew in part upon the Commission’s authority under the then-recent FPA Section 217, which requires the Commission to exercise its authority “in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy [their] service obligations”—including requirements to provide service under federal, state, or local law, or under long-term contracts.<sup>22</sup> The reforms of Order 890 center around the Commission’s determination that “it is

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<sup>19</sup> *Id.* at 12,318.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 12,267–68 (citation omitted).

<sup>22</sup> *Id.* at 12,271.

necessary to amend the existing pro forma OATT to require coordinated, open, and transparent transmission planning *on both a local and regional level.*”<sup>23</sup> It then specifically requires each transmission provider to comply with nine planning principles in establishing an open, coordinated, and transparent planning process, namely:

- *Coordination* between transmission providers, their customers, and interconnected neighbors to develop a transmission plan on a nondiscriminatory basis;<sup>24</sup>
- *Openness* of transmission planning meetings to all affected parties, including customers, State commissions, and other stakeholders;<sup>25</sup>
- *Transparency* to customers and stakeholders of basic criteria, methodology, assumptions, and data that underlie transmission system plans, including:
  - the treatment of native loads
  - the status of upgrades identified in transmission plans in addition to underlying plans and related studies
  - this information is to be provided in a manner and for the purpose of permitting customers, stakeholders, independent third-parties, and regulatory bodies to replicate the results of planning studies, reduce after-the-fact disputes regarding whether planning has been conducted in an unduly discriminatory fashion, and *facilitate coordination and oversight;*<sup>26</sup>
- *Information Exchange* developed in consultation with customers and stakeholders, provided at regular intervals and in advance and with a *meaningful opportunity to engage in planning*, that ensures the planning process and all of the relevant information required

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<sup>23</sup> *Id.* at 12,320 (emphasis added).

<sup>24</sup> *Id.* at 12321.

<sup>25</sup> *Id.* at 12,323.

<sup>26</sup> *Id.* at 12,325 (emphasis added).

to do it effectively is as open and transparent as possible to *ensure effective planning and comparability*;<sup>27</sup>

- *Comparability* whereby transmission plans meets the service requests of its customers in a manner treating similarly situated customers (e.g., network and retail native load, including demand resources) comparably in system planning;<sup>28</sup>
- *Dispute Resolution* processes that manage disputes over implementation;<sup>29</sup>
- *Regional Participation* that includes transmission providers, customers, affected State authorities, and other stakeholders and is designed to counter the economic self-interest of transmission providers to evade expansions of the grid that would subject access to competing sources of supply by requiring transmission planning coordination and openness “*on both a local and regional level*” that will “increase the efficiency through the coordination of transmission upgrades that have region-wide benefits, as opposed to pursuing transmission expansion on a piecemeal basis;”<sup>30</sup>
- *Economic Planning Studies* to ensure that the transmission planning process “encompasses more than reliability considerations” and also includes economic considerations, by requiring transmission providers to identify significant and recurring congestion with studies that analyze and report on: the location and magnitude of the congestion; possible remedies (in whole or in part); associated costs of congestion; and costs of relieving that congestion;<sup>31</sup>

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<sup>27</sup> *Id.* at 12,327.

<sup>28</sup> *Id.* at 12,327–28.

<sup>29</sup> *Id.* at 12,328.

<sup>30</sup> *Id.* at 12,331–32 (emphasis added).

<sup>31</sup> *Id.* at 12,332–33.



- *Cost Allocation* processes for new projects that fairly assigns costs among participants and beneficiaries, provides adequate incentives to construct new transmission, and is generally supported by States and participants.<sup>32</sup>

The Commission also considered a requirement to require the use of an independent third party coordinator at the time of Order 890's issuance and agreed that there were significant benefits to be gained from independent third party oversight.<sup>33</sup> The Commission encouraged transmission providers and stakeholders to incorporate the use of independent coordinators but declined to formally require them at that time because it believed that it was possible to comply with the principles of Order 890 without the use of an independent party as it assumed that compliance with the principles would institute the type of benefits an independent party would provide.<sup>34</sup> Moreover, the Commission expected that if non-compliance could not be resolved using the dispute resolution mechanisms of the planning process, FERC would “*resolve them ourselves if a complaint is filed.*”<sup>35</sup>

Despite the comprehensive reforms designed to ensure comprehensive and efficient planning in Order 890, the Commission determined in 2011 that further transmission planning requirements were necessary to address significant changes in the nation's power sector—including the failure to plan for transmission needs driven by public policy requirements established by federal, state, or local laws.<sup>36</sup> FERC attempted to address concerns that have only grown more critical today through the issuance of Order No. 1000, noting that:

The need for additional transmission facilities is being driven, in large part, by changes in the generation mix. As NERC notes in its 2009 Assessment, existing

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<sup>32</sup> *Id.* at 12,335–36.

<sup>33</sup> *Id.* at 12,337.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* (emphasis added).

<sup>36</sup> Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Order No. 1000, 136 FERC ¶ 61,051, July 21, 2011 (“Order No. 1000”).

and potential environmental regulation and state renewable portfolio standards are driving significant changes in the mix of generation resources, resulting in early retirements of coal-fired generation, an increasing reliance on natural gas, and large-scale integration of renewable generation. NERC has identified approximately 131,000 megawatts of new generation planned for construction over the next ten years, with the largest fuel-type growth in gas-fired and wind generation resources. These shifts in the generation fleet increase the need for new transmission. Additionally, the existing transmission system was not built to accommodate this shifting generation fleet. Of the total miles of bulk power transmission under construction, planned, and in a conceptual stage, NERC estimates that 50 percent will be needed strictly for reliability and an additional 27 percent will be needed to integrate variable and renewable generation across North America.

Rather than demonstrating a lack of need for action, as claimed by some commenters, the recent increases in constructed and planned transmission facilities supports issuance of this Final Rule at this time *to ensure that the Commission's transmission planning and cost allocation requirements are adequate to support more efficient and cost-effective investment decisions*. The increased focus on investment in new transmission projects makes it even more critical to implement these reforms to ensure that the more efficient or cost-effective projects come to fruition. The record in this proceeding and the reports cited above confirm that additional, and potentially significant, investment in new transmission facilities will be required in the future to meet reliability needs and integrate new sources of generation. It is therefore critical that the Commission act now to address deficiencies to ensure that more efficient or cost-effective investments are made as the industry addresses its challenges.<sup>37</sup>

The need for expanded bulk power transmission to meet both reliability needs and integrate new generation resources motivating the Commission to act in Order No. 1000 has only become more acute over the last decade. What was once a critical need to address the failure of RTOs and transmission providers to plan for a grid that ensures efficient and cost-effective transmission investment decisions has reached near-emergency levels given the impending state deadlines for a transition to clean energy and the need to expedite implementation of the grid

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<sup>37</sup> Order No. 1000 at PP 45–46.

infrastructure investments set forth in the Inflation Reduction Act and Infrastructure Investment and Jobs Act.<sup>38</sup>

As part of Order No. 1000, the Commission grounded its reforms in the requirement that all transmission providers participate in a planning process that complies with Order No. 890.<sup>39</sup> FERC then proposed additional reforms to correct the deficiencies of Order No. 890 designed to enhance the ability of the grid to support wholesale power markets and thereby ensure that Commission jurisdictional services are provided at rates, terms, and conditions that are just, reasonable, and not unduly discriminatory. The Order No. 1000 planning process is intended to assess regional solutions that address all types of transmission needs, including “transmission facilities needed to meet reliability requirements, address economic considerations, and/or meet transmission needs driven by Public Policy Requirements.”<sup>40</sup> As part of this, Order No. 1000 requires identification of “alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process.”<sup>41</sup>

As pointed out by OCC’s Complaint,<sup>42</sup> where utilities are members of a regional transmission organization, such as PJM, the Commission has permitted delegation of transmission planning and cost allocation oversight to RTOs pursuant to Order No. 2000, which

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<sup>38</sup>See, e.g., Princeton University Zero Lab, *Electricity Transmission is Key to Unlock the Full Potential of the Inflation Reduction Act*, Sept. 2022, at 4, [https://repeatproject.org/docs/REPEAT\\_IRA\\_Transmission\\_2022-09-22.pdf](https://repeatproject.org/docs/REPEAT_IRA_Transmission_2022-09-22.pdf); S&P Global Market Intelligence, “As IRA drives renewables investment, attention turns to transmission upgrades,” Sept. 27, 2022, at: <https://www.spglobal.com/marketintelligence/en/news-insights/research/as-ira-drives-renewables-investment-attention-turns-to-transmission-upgrades>.

<sup>39</sup> *Id.* at P 146.

<sup>40</sup> *Id.* at P 148.

<sup>41</sup> *Id.*

<sup>42</sup> Complaint at 8–9.

sets requirements that RTOs meet or exceed the requirements of the Commission’s pro forma tariff.<sup>43</sup> The Commission was also clear that:

As noted above, the RTO should have ultimate responsibility for both transmission planning and expansion within its region. The rationale for this requirement is that a single entity must coordinate these actions to ensure a least cost outcome that maintains or improves existing reliability levels. In the absence of a single entity performing these functions, there is a danger that separate transmission investments will work at cross-purposes and possibly even hurt reliability.<sup>44</sup>

As the Commission noted, eventually an “RTO will have ultimate responsibility for planning *the entire transmission system* within its region.”<sup>45</sup> The Commission also “emphasize[d] that, as the transmission provider in the region, the RTO is required to provide service under a tariff that is consistent with or superior to the Commission’s pro forma tariff. That tariff obligates the transmission provider to expand and modify its system to provide the services requested under the pro forma tariff.”<sup>46</sup> Consequently, the RTO also assumes responsibility for compliance with the transmission planning requirements of Order Nos. 890 and 1000. This dovetails with Order 890’s clear requirement that RTOs must coordinate the entire transmission planning process – including the integration of local planning needs into the regional planning process.<sup>47</sup> The Commission noted that:

This is important because, in many cases, RTO planning processes may focus principally on regional problems and solutions, not local planning issues that may be addressed by individual transmission owners. *These local planning issues, however, may be critically important to transmission customers, such as those embedded within the service areas of individual transmission owners. Consequently, the intent of the Final Rule will not be realized if only the regional planning process conducted by the RTOs and ISOs is shown to be consistent with or superior to the Final Rule.* To ensure full compliance, individual transmission owners must, to the extent that they perform transmission planning within an RTO or ISO, comply with the Final Rule as well. Without such a requirement, the more regional RTO or ISO planning process will not comply with the requirements of the

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<sup>43</sup> Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 810, 909 (2000) (“Order No. 2000”).

<sup>44</sup> Order No. 2000 at 909.

<sup>45</sup> *Id.* at 910.

<sup>46</sup> *Id.* at 909.

<sup>47</sup> Order No. 890 at 12,320.

Final Rule to the extent they incorporate and rely on information prepared by underlying transmission owners that, in turn, have not complied with the Final Rule. Accordingly, as part of their compliance filings in this proceeding, RTOs and ISOs *must indicate how all participating transmission owners within their footprint will comply with the planning requirements of this Final Rule*. While we leave the mechanics of such compliance to each RTO and ISO, we emphasize that the RTO's or ISO's planning processes will be insufficient if its underlying transmission owners are not also obligated to engage in transmission planning that complies with Final Rule.<sup>48</sup>

**c. FERC has recently recognized that existing local transmission practices fail to meet regulatory requirements and are systemically unjust, unreasonable, and unduly discriminatory.**

While the Commission's open access and transmission planning rules have led to some significant improvements, those improvements are uneven and transmission owner market power continues to dominate the transmission system, both within RTOs and especially in non-RTO regions. Regional transmission projects are more of an exception than the norm, and overwhelming evidence indicates that transmission owners are largely able to evade the requirements of Order No. 1000 and, in the decade since its issuance, have primarily invested in local projects where they maintain a right of first refusal and complete control of what is built.<sup>49</sup> This has led to a system that is failing to meet current needs and is ill-prepared for fast-approaching deadlines to meet state and local generation requirements—the very future threat that Order Nos. 890 and 1000 were trying to address.

**i. Proposed Regulatory Reforms**

In July 2021, the Commission opened a rulemaking docket designed to address the systemic evasion by transmission owners and operators of the goals and requirements of FERC's transmission planning orders.<sup>50</sup> As part of this effort, the Commission requested comment on

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<sup>48</sup> *Id.* at 12,320–21 (emphases added).

<sup>49</sup> See, e.g., *Comments of Public Interest Organizations*, at 32–44, Docket No. RM21-17-000 (Oct. 12, 2021), Accession No. 20211012-5519 (“PIOs’ ANOPR Comments”).

<sup>50</sup> *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 176 FERC ¶ 61,024 (2021), 86 Fed. Reg. 40,266 (July 27, 2021) (“ANOPR”).

“whether oversight of the planning and approval of local transmission facilities is necessary to ensure that transmission rates are just and reasonable” and “whether there is a need to delineate more clearly the oversight roles of federal and state regulators over local transmission planning . . . and the development of local transmission facilities (e.g., ‘Supplemental Projects’ in PJM).”<sup>51</sup> The Commission has received extensive evidence from hundreds of stakeholders affirming the need for both.

For example, the Commission received widespread comments and expert testimony that “overwhelming evidence indicates that transmission owners are largely able to evade the requirements of Order No. 1000 and, in the decade since its issuance, have primarily invested in local projects where they maintain a right of first refusal and complete control of what is built . . . This has also led to billions of dollars in excessive costs for consumers.”<sup>52</sup> This is primarily because most local projects involve “in-kind” replacement of facilities where the public utility transmission owner replaces an aging transmission facility with a new transmission facility that does not expand the transmission capacity of the line. These projects are directly incorporated into regional transmission plans as inputs with minimal if any opportunity for stakeholder review and a limited analysis designed only to ensure that local transmission plans do not negatively affect the reliability of the regional transmission system.<sup>53</sup> Moreover, there is no requirement for transmission providers to provide information on asset age or pending in-kind transmission replacements to transmission planners, foreclosing the kind of consideration of more efficient

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<sup>51</sup> ANOPR at PP 170–71.

<sup>52</sup> PIOs’ ANOPR Comments, at 23 (citing The Brattle Group and Grid Strategies, *Transmission Planning for the 21st Century: Proven Practices that Increase Value and Reduce Cost* (Oct. 2021)).

<sup>53</sup> *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 179 FERC ¶ 61,028, at P 383 (Apr. 21, 2022) (“NOPR”).

alternatives that Order No. 1000 had aimed to achieve—including through eliminating often redundant local projects with more efficient regional transmission projects.

Additionally, public utility transmission providers in Ohio—and elsewhere—have every incentive to rely as much as possible on local projects because these projects are currently presumed prudent by FERC, face no competition, lack regulatory oversight, and bring high returns on investment. Utilities have consequently dramatically ramped up local transmission projects, while evading building regional or interregional projects necessary to bring new generating resources online—a primary source of interconnection queue delays. While failing to build out a regional transmission system that more efficiently addresses local needs and allows newer, cheaper resources to interconnect to the grid harms system reliability and grid customers, spending billions of ratepayer dollars on local transmission while leaving the overall system severely constrained is extremely lucrative for incumbent generation assets often owned by transmission owners or their affiliates.

In its Notice of Proposed Rulemaking issued on April 21, 2022, the Commission acknowledged the widespread concerns and perverse incentives around local transmission planning that were identified across multiple stakeholder groups<sup>54</sup> and expressed its shared concern that transmission provider compliance with Order No. 890’s requirements that local transmission planning comply with established principles—including coordination, openness, transparency, information exchange—appeared uneven.<sup>55</sup> Specifically, the Commission found that the lack of minimal standards or specified procedures to implement these principles “may contribute to inadequate transparency and opportunities for stakeholders to engage in local

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<sup>54</sup> *Id.* at PP 391–94.

<sup>55</sup> *Id.* at P 398.

transmission planning processes.”<sup>56</sup> The Commission observed that “[the] vast majority of investment in transmission facilities since the issuance of Order No. 1000 has been in local transmission facilities”<sup>57</sup> and thus reforms to better ensure more consistent implementation of Order No. 890 principles may be timely and important in light of the significant investments in local transmission planning projects.<sup>58</sup>

The Commission also noted how incumbent transmission providers are replacing aging infrastructure without coordinating with regional planners to evaluate whether the replacement transmission facilities could be sized to more efficiently or cost-effectively address long-term transmission needs.<sup>59</sup> The Commission found that this failure “appears to be resulting in piecemeal transmission expansion”<sup>60</sup> that “may result in the development of duplicative or unnecessary transmission facilities that increase costs to consumers and render Commission-jurisdictional rates unjust and unreasonable.”<sup>61</sup>

Noting its “obligation under the FPA to ensure that those rates are just and reasonable and not unduly discriminatory or preferential,”<sup>62</sup> the Commission has proposed a number of reforms “to require public utility transmission providers to conduct long-term regional transmission planning on a sufficiently long-term, forward-looking basis to identify and plan for transmission needs driven by changes in the resource mix and demand.”<sup>63</sup> As part of these reforms, the Commission has proposed minimum standards designed to improve transparency and stakeholder participation in local transmission planning, including:

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<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at P 40.

<sup>58</sup> *Id.* at P 398.

<sup>59</sup> *Id.* at P 399.

<sup>60</sup> *Id.* at P 25.

<sup>61</sup> *Id.* at P 399.

<sup>62</sup> *Id.* at P 25.

<sup>63</sup> *Id.* at P 27.



- Requiring regional transmission planning processes to include additional provisions to enhance the transparency of: (1) the criteria, models, and assumptions used in the local transmission planning process, (2) the local transmission needs identified through that process, and (3) the potential local or regional transmission facilities that will be evaluated to address those local transmission needs.<sup>64</sup>
- Establishing an iterative process to ensure that stakeholders have meaningful opportunities to participate and provide feedback on local transmission planning throughout the regional transmission planning process. At a minimum, at least three stakeholder meetings concerning the local transmission planning process of each regional transmission provider would be required before a transmission provider's local transmission plan can be incorporated into the transmission planning region's planning models.<sup>65</sup> Specifically, prior to submission of local transmission planning information to a regional planner for incorporation, as part of the regional transmission planning process transmission providers must hold at least one of each of the following types of meetings, with all meeting materials posted publicly and opportunities for public comment made available before and after each meeting:
  - Assumptions Meeting: a collective regional stakeholder meeting to review the criteria, assumptions, and models related to each transmission provider's local transmission planning;
  - Needs Meeting: a collective regional stakeholder meeting to review identified reliability criteria violations and other transmission needs driving need for local

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<sup>64</sup> *Id.* at P 400.

<sup>65</sup> *Id.*

transmission facilities, to be held no fewer than twenty-five days after the Assumptions Meeting; and

- Solutions Meeting: a collective regional stakeholder meeting to review potential solutions to the identified reliability criteria violations and other local transmission needs.<sup>66</sup>

Additionally, the Commission has also proposed to require transmission providers to evaluate whether the potential replacement within the next ten years of any existing facilities operating at or above 230 kV can be “right-sized”—or modified to increase the facility’s transfer capacity—in order to more efficiently or cost-effectively address regional transmission needs identified in the long-term regional transmission planning process.<sup>67</sup> As part of this reform, the Commission has proposed requiring each transmission provider to submit a list of existing 230 kV assets that may need to be replaced within the next ten years as part of the long-term regional planning process and requiring that this process evaluate whether the facilities on each such list can be right-sized to address long-term transmission needs.<sup>68</sup> If, as part of the long-term regional planning process, a right-sized replacement transmission facility is found to be a more efficient or cost-effective solution to an identified long-term transmission need, then it may be selected in the regional transmission plan for purposes of cost allocation.<sup>69</sup>

The Commission has stated that it believes these proposed requirements are needed to ensure just and reasonable rates:

because the information provided will better facilitate the identification of regional transmission facilities that may be more efficient or cost-effective than proposed local transmission facilities through the regional transmission planning process . . . [and] will enable customers and other stakeholders alike to evaluate or replicate the findings of

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<sup>66</sup> *Id.* at P 401.

<sup>67</sup> *Id.* at P 403.

<sup>68</sup> *Id.* at PP 404–05.

<sup>69</sup> *Id.* at P 407.

public utility transmission providers so as to reduce after-the-fact disputes regarding whether local transmission planning has been conducted in an unjust and unreasonable or unduly discriminatory or preferential fashion . . . . [These reforms will also] reduce after-the-fact disputes regarding transmission system needs or cost allocation.<sup>70</sup>

The Commission has further stated that, “without these reforms, we believe that regional transmission planning processes *are unlikely to identify the more efficient or cost-effective solutions to transmission needs* driven by changes in the resource mix and demand,” and made a preliminary finding that “*these reforms are necessary* to ensure that Commission-jurisdictional rates remain just and reasonable and not unduly discriminatory or preferential.”<sup>71</sup>

## ii. 2022 Technical Conference

In addition to FERC’s transmission planning reforms, on October 6, 2022, the Commission held a technical conference (“October Conference”) that focused on concerns around containing local transmission costs. Specifically, the October Conference examined: “(1) the role of cost management measures in ensuring the cost-effective identification of local transmission needs (e.g., planning criteria) and solutions to address identified local transmission and regional reliability-related transmission needs; and (2) cost considerations and the processes through which transmission developers recover their costs to ensure just and reasonable transmission rates.”<sup>72</sup> The all-day conference was divided into five discussions with panelists across a variety of system stakeholders and included an examination of the development and use of local transmission planning criteria and facility cost management cost practices as well as a discussion of how coordination between local and regional transmission planning processes can better manage cost containment.<sup>73</sup>

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<sup>70</sup> *Id.* at P 402 (*citing* Order No. 890, at P 471); *id.* at P 413.

<sup>71</sup> *Id.* at P 27 (*emphasis added*).

<sup>72</sup> Supp. Notice of Tech. Conf., at 1, Docket No. AD22-8-000 (Oct. 4, 2022) (“Supp. Notice”).

<sup>73</sup> *Id.* at 3–10.

Testimony from several stakeholders comported with the findings the Commission made in its proposed regulatory reform effort, namely that across the country, local projects are receiving disproportionate amounts of investment but that “the local planning processes that should feed into that approval are not . . . undergoing scrutiny for consideration, and a consolidated needs assessment.”<sup>74</sup> State officials testified that even when they have authority to review local transmission projects they lack the information or expertise necessary to determine whether such projects are necessary or whether more efficient alternative solutions exist.<sup>75</sup> Testimony also pointed out that one of the fundamental reasons why local asset replacement projects have successfully undermined the regional transmission planning requirements of Order Nos. 890 and 1000 is that despite its “very clear jurisdiction to act on . . . all of these issues,” the Commission has “issued a blank check to utilities with essentially no oversight.”<sup>76</sup>

Widespread written testimony submitted to the Commission as part of the October Conference further supports the conclusion that the current practices for local transmission planning, including in PJM, do not result in just and reasonable rates. Panelists across the nation confirmed that meaningful regulatory review of local projects is not occurring, for a variety of reasons, and those responsible for oversight described structural barriers around the asymmetry of information and resources between transmission providers and those tasked with oversight.<sup>77</sup>

For example, Gregory Poulos, Executive Director of Consumer Advocates of PJM States,

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<sup>74</sup> Tech. Conf. Tr., at 76, 81–82, 98–99, 101, 107, 115, 131–32, Docket No. AD22-8-000 (Oct. 6, 2022) (“Trans.”) (Testimony of Jennifer Easler, Office of Consumer Advocate of Iowa; Testimony of Simon Hurd, California Public Utilities Commission, Testimony of James McLawhorn, North Carolina Utilities Commission; Testimony of Erik Heinle, Office of the People’s Counsel for the District of Columbia).

<sup>75</sup> *Id.* at 76–77.

<sup>76</sup> *Id.* at 77–78 (Testimony of Ari Peskoe, Harvard Law School).

<sup>77</sup> *See, e.g.*, summary of testimony provided in: Post-tech. Conf. Comments of Pub. Interest Orgs., at 45–49, Docket Nos. AD22-8-000 and AD21-15-000 (Mar. 23, 2023) (“PIO Conf. Comments”), Accession No. 20230323-5185; Comment of the Harvard Elec. Law Initiative, at 7–9, 16–18, Docket No. AD22-8-000 (Mar. 23, 2023), Accession No. 20230323-5189.

provided a vivid account of how the near-total lack of information and the “absurd” paucity of time given to stakeholders charged with reviewing and providing input on proposed Supplemental Projects within PJM.<sup>78</sup> Advanced Energy United pointed out that the inadequacy of the PJM review process leaves stakeholders unable to evaluate projects and test transmission provider assumptions in order to ensure that such projects are efficient and cost-effective solutions.<sup>79</sup> This lack of oversight has predictably enabled transmission providers to act in accordance with their financial incentive to maximize profits and minimize competition. Over the past decade PJM has had a 67% *decrease* in new transmission line investment while overall spending on transmission has increased by 14%.<sup>80</sup> Because Supplemental Projects have no meaningful review at either the state or federal level, the Commission “cannot reasonably assume a transmission owner’s expenses are prudent.”<sup>81</sup> As pointed out by the Public Interest Organizations:

To the extent FERC believes that these projects are being reviewed for prudence somewhere, the facts do not bear that out. Neither would such review absolve the Commission of its core duty to ensure that the wholesale rates resulting from the cost of these transmission facilities are just and reasonable. Thorough state review is uncommon and even when available, it is often narrowly focused on project-specific approval instead of system-wide analysis. This gap of regulation and oversight prevents the selection and development of a cost-effective mix of local, asset management, and regional reliability transmission projects.<sup>82</sup>

The costs at issue in this complaint are Commission-jurisdictional costs and, under the FPA, it is *the utilities* who bear the burden of establishing that a proposed rate is just and reasonable.<sup>83</sup>

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<sup>78</sup> Post-tech. Conference Comments of Gregory J. Poulos, at 2–3, Docket Nos. AD22-8-000 and AD21-15-000 (Mar. 23, 2023), Accession No. 2023032405016.

<sup>79</sup> Post-tech. Conference Comments of Advanced Energy United, at 7–8, Docket Nos. AD22-8-000 and AD21-15-000 (Mar 23, 2023), Accession No. 20230323-5248.

<sup>80</sup> *Id.* at 10.

<sup>81</sup> *Id.* at 16; Post-tech. Conference Comments of Google, at 14–15, Docket Nos. AD22-8-000 and AD21-15-000 (Mar 23, 2023), Accession No. 20230323-5188; *see also* PIO Conf. Comments at 43.

<sup>82</sup> PIO Conf. Comments at 38.

<sup>83</sup> 16 U.S.C. § 824d(e).

Ultimately it is the Commission’s responsibility to ensure that Section 205 rates are just, reasonable, and not unduly discriminatory or preferential.<sup>84</sup> Where, as here, the overwhelming weight of evidence shows a systematic failure to demonstrate that local transmission projects in PJM meet Section 205 requirements, the Commission can no longer extend assumptions of prudence and must instead correct the unjust, unreasonable, and unduly discriminatory practices regarding local transmission planning.

**III. Local Transmission Planning in Ohio fails to comply with the FERC requirements to ensure that local transmission planning is just, reasonable, and not unduly discriminatory.**

**a. The OCC Complaint demonstrates that neither the PJM tariff nor Ohio regulations meet FERC requirements for just and reasonable local transmission planning.**

As the OCC Complaint makes clear, neither PJM’s tariff nor Ohio regulations provide any oversight over the need, prudence, and cost effectiveness of local projects. PJM’s current tariff to review the need for and cost-effectiveness of transmission planning only extends to transmission projects needed to resolve regional-wide system reliability violations based on PJM criteria, or projects needed to meet state policy goals.<sup>85</sup> Local projects, referred to as “Supplemental Projects” in PJM’s Operating Agreement and Tariff, are included as part of the Regional Transmission Expansion Plan (“RTEP”), but are only reviewed for the potential negative impact they may have on the regional transmission system.<sup>86</sup> They are not approved by the PJM Board, nor are they reviewed by PJM for their need, prudence, or cost-effectiveness.<sup>87</sup> This structure fails to meet the requirements of the Commission’s transmission planning orders,

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<sup>84</sup> *Id.* § 824d(a)–(b).

<sup>85</sup> Complaint at 9–10 (citing PJM Operating Agreement, Schedule 6, Section 1.5.6(n)).

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* (“Certain Regional RTEP Project(s) and Subregional RTEP Project(s) may not be required for compliance with the following PJM criteria: system reliability, market efficiency or operational performance, pursuant to a determination by the Office of Interconnection. *These Supplemental Projects shall be separately identified in the RTEP and are not subject to approval by the PJM Board.*”) (emphasis added).

which clearly require open, coordinated, holistic transmission planning that counters transmission providers' natural economic disincentives to streamline ratepayer costs and open themselves up to competition from cheaper resources and providers—disincentives known to exist for over a century and at the heart of Order 890's requirement that the transmission planning process focus not just on regional solutions but local planning issues as well.<sup>88</sup>

Similarly, as the Complaint notes, Ohio regulatory agencies do not review the need for transmission facilities under 100 kV, nor do they review the cost effectiveness of any transmission facilities in the state.<sup>89</sup> The Ohio Power Siting Board (“OPSB”), which was established to review the need for certain transmission facilities in Ohio, as well as the environmental effects and alternative locations for these facilities,<sup>90</sup> has authority to review and site projects rated at 100 kV and above.<sup>91</sup> Any projects below 100 kV are not reviewed for need. Many supplemental projects are below this threshold.<sup>92</sup> Moreover, OPSB does not review *any* project for cost effectiveness.<sup>93</sup> It also does not review proposed replacements of existing transmission lines, unless these include expansions of capacity.<sup>94</sup>

The Ohio Public Utility Commission (“PUCO”) has similarly declined to review local projects for need or cost effectiveness. As the Complaint notes, OCC requested that PUCO do so in a recent rate case involving Duke Energy Ohio, Inc., noting that it believed “that the

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<sup>88</sup> See, e.g., Order No. 890 at 12,320–21.

<sup>89</sup> Complaint at 22–24.

<sup>90</sup> Ohio Rev. Code § 4906.03.

<sup>91</sup> *Id.* at § 4906.04 (subjecting “major utility facility” construction projects to OPSB oversight, but exempting replacements of an existing facility); see also Ohio Rev. Code § 4906.01(B)(1)(b) (defining a major utility facility as electric transmission facilities rated at 100 kV or larger).

<sup>92</sup> See Complaint at 22.

<sup>93</sup> See Complaint at 22, n. 67 (noting that in a November 2021 OPSB report to the General Assembly that the “need review that is currently undertaken by the OPSB is a very different analysis than that which goes on through the PJM RTEP Process” and noting that “the report recognizes the rising transmission costs, but finds FERC and PJM are the most appropriate forums to address the issues.”).

<sup>94</sup> See Ohio Rev. Code § 4906.04.

supplemental transmission projects, ultimately charged to customers, are not being thoroughly reviewed at any level, whether federal, state, or local” and requesting that PUCO “conduct a prudency review of the Company’s increased charges—including an analysis of the criteria for each project, the associated costs, and whether reliability improvements or other benefits are realized—before approving the application.”<sup>95</sup> Citing its participation in the October Conference, PUCO noted that it was not, at that time, “‘persuaded that OCC’s concerns regarding supplemental transmission projects are cause to reject the Company’s otherwise properly supported application’ to flow through transmission rate increases to retail customers and thus approved the tariffs.”<sup>96</sup> Moreover, even if OPSB and PUCO reviewed supplemental projects for need and cost effectiveness, the Commission has never established a policy of deferring to states on transmission rates, and thus cannot rely on state regulation in any case.

Given this lack of oversight concerning the need, prudence and cost effectiveness of supplemental projects, there is no means by which PJM can ensure Ohio consumers that the rates they pay for transmission service are just, reasonable, and unduly discriminatory. Further, since consumer advocates, including OCC, have repeatedly attempted to avail themselves of dispute resolution mechanisms and litigation to address the continued noncompliance of PJM with Order No. 890’s requirements to conduct holistic planning that accounts for local transmission issues, OCC has exercised the very option the Commission established for such situations—without success. The Commission must now step in and resolve the dispute itself as it stated it would do.<sup>97</sup>

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<sup>95</sup> Complaint at 23 (citing *In the Matter of the Application of Duke Energy Ohio, Inc. To Adjust and Set Its Base Transmission Rate Rider*, at ¶ 10, PUCO Case No. 23-457-EL-RDR (Sept. 20,2023), <https://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=3021fd2d-3a5a-4d98-8470-94758058366f>).

<sup>96</sup> *Id.* at 24 (citing *In the Matter of the Application of Duke Energy Ohio, Inc. To Adjust and Set Its Base Transmission Rate Rider*, at ¶ 14, PUCO Case No. 23-457-EL-RDR (Sept. 20,2023)).

<sup>97</sup> See Order No. 890 at 12,337.



**b. Supplemental projects constitute the vast majority of transmission charges in Ohio and throughout PJM and track the delays in regional transmission expansion necessary to accommodate new generation resources.**

As the Complaint notes, from 2018 to 2022, supplemental projects constituted 85% of proposed new transmission in Ohio, outstripping regional projects by 4–1.<sup>98</sup> In fact, Supplemental Projects constitute a large majority of projects throughout PJM. In 2019, PJM approved eighty regionally planned baseline projects totaling \$1.27 billion<sup>99</sup> versus 383 transmission owner-planned supplemental projects totaling \$3.5 billion.<sup>100</sup> In 2020, these numbers were even more disproportionate, with only 43 baseline investment projects totaling \$413 million versus 236 supplemental projects costing \$4.7 billion.<sup>101</sup> In these two years, owner-initiated projects constituted 75% and 91% respectively of total transmission investments approved. Competitive procurement has been even worse, with a study by The Brattle Group finding that from 2013 to 2017, only 5.1% of transmission investment in PJM was made under open competitive processes.<sup>102</sup> Local or “end of life” projects are now responsible for the vast majority of new transmission built in PJM. Since Order No. 1000 went into effect, spending on these local projects has tripled and is now three times greater than spending on regional projects.<sup>103</sup>

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<sup>98</sup> Complaint at 25; *id.*, n.74.

<sup>99</sup> PJM, *2019 Regional Transmission Expansion Plan*, at 3, 4 (Feb. 29, 2020), <https://www.pjm.com/-/media/library/reports-notices/2019-rtep/2019-rtep-book-1.ashx?la=en>.

<sup>100</sup> *Id.* at 50.

<sup>101</sup> PJM, *2020 Regional Transmission Expansion Plan*, at 4 (Feb. 28, 2021),

<https://www.pjm.com/-/media/library/reports-notices/2020-rtep/2020-rtep-book-1.ashx>.

<sup>102</sup> Johannes P. Pfeifenberger et. al., *Cost Savings Offered by Competition in Electric Transmission*, Brattle Group, at 5 (Apr. 2019), [https://www.brattle.com/wp-content/uploads/2021/05/16726\\_cost\\_savings\\_offered\\_by\\_competition\\_in\\_electric\\_transmission.pdf](https://www.brattle.com/wp-content/uploads/2021/05/16726_cost_savings_offered_by_competition_in_electric_transmission.pdf).

<sup>103</sup> PJM Transmission Expansion Advisory Committee, *2019 Project Statistics* (May 12, 2020), *in passim*, <https://www.pjm.com/-/media/committees-groups/committees/teac/2020/20200512/20200512-item-10-2019-project-statistics.ashx>. Annual spending on Supplemental Projects ballooned in the aftermath of Order No. 1000. In the fourteen years between 2005 and 2013, spending on supplemental projects averaged \$1.25 billion a year (\$11.3 billion total). That number increased to an average of \$3.73 billion a year (\$22.4 billion total) for the six years between 2014 to 2019 alone. At the same time, spending on regional projects declined from an average of \$2.76 billion to \$1.86 billion per year. *See id.* at 3.

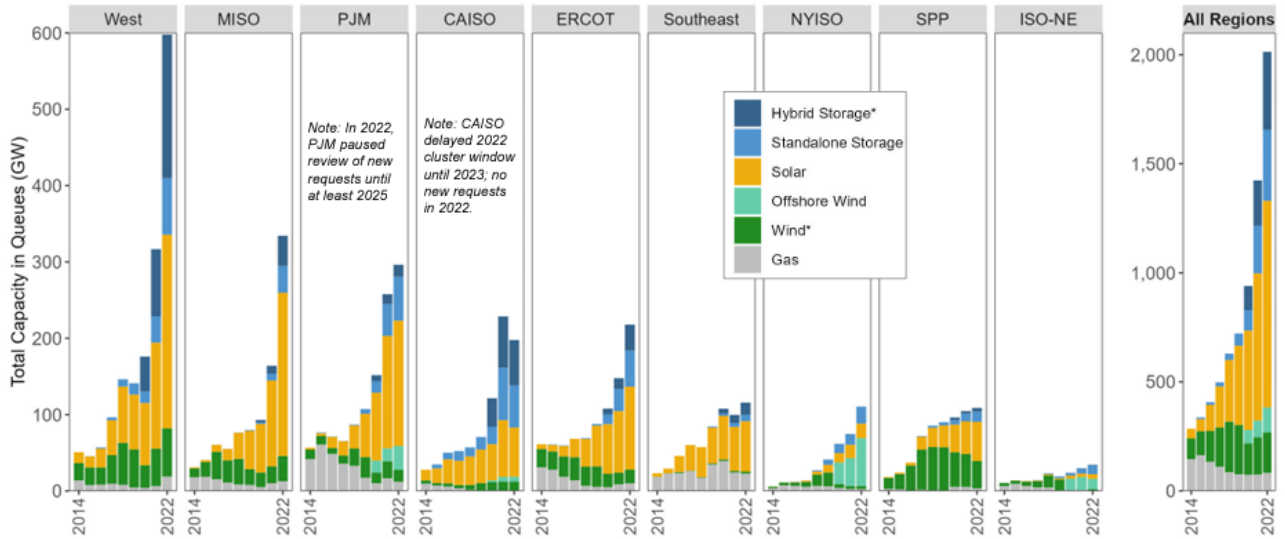
However, there is no evidence to suggest that this switch from regional to local transmission construction is due to a decrease in need for regional transmission projects and increase in local needs; in fact, quite the opposite is true. This precipitous shift from regional to local projects coincides with the competitive pressures coming from Orders No. 890 and 1000 as well as the increase in applications for new energy resources trying to enter the market that both of those orders were intended to address. In 2013, PJM’s compliance filing with Order No. 1000 altered the tariff to require regional transmission projects to be competitively bid, but established the oversight-free process for transmission providers to build local projects that underlies the subject of this proceeding.<sup>104</sup> But as foreseen by the Commission, the need for regional transmission has grown steadily and significantly since that time. As explained by the Lawrence Berkley National Laboratory, requests by new resources to connect to the grid have skyrocketed across the nation, with PJM having the third highest amount of capacity waiting to interconnect in an interconnection queue so backlogged that PJM stopped accepting new applications.<sup>105</sup>

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<sup>104</sup> See OCC Complaint at 12-17

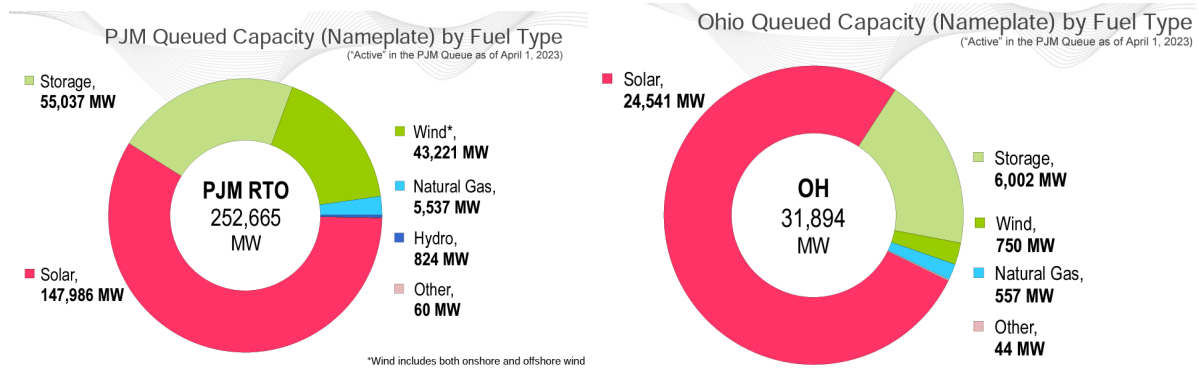
<sup>105</sup> See Lawrence Berkley National Labs, *Queued Up: Characteristics of Power Plants Seeking Transmission Interconnection As of the End of 2022*, at 9 (Apr. 2023), [https://emp.lbl.gov/sites/default/files/queued\\_up\\_2022\\_04-06-2023.pdf](https://emp.lbl.gov/sites/default/files/queued_up_2022_04-06-2023.pdf) (“Queued Up”); American Council on Renewable Energy, *Power Up PJM*, at 5 (June 2023), <https://acore.org/wp-content/uploads/2023/06/ACORE-Power-Up-PJM-Report.pdf>.

**Active queue capacity highest in the non-ISO West (598 GW), followed by MISO (339 GW) and PJM (298 GW). Solar and storage requests are booming in most regions.**



Notes: (1) \*Hybrid storage capacity is estimated for some projects using storage:generator ratios from projects that provide separate capacity data, and that value is only included starting in 2020. Storage duration is not provided in interconnection queue data. (2) Wind capacity includes onshore and offshore for all years, but offshore is only broken out starting in 2020. (3) Hybrid generation capacity is included in all applicable generator categories. (4) Not all of this capacity will be built.

Moreover, while Ohio has an existing installed capacity of approximately 24 GW, nearly 32 GW of new capacity is languishing in PJM’s interconnection queue, requests that make up over 12% of the resources trying to connect to the PJM grid:<sup>106</sup>



<sup>106</sup> PJM, 2022 Ohio State Infrastructure Report (January 1, 2022–December 31, 2022), at 8–10 (May 2023), <https://www.pjm.com/-/media/library/reports-notice/state-specific-reports/2022/2022-ohio-state-infrastructure-report.ashx>.

Unfortunately, PJM also has one of the longest average wait times and, at only 16%, among the lowest rates of completion nationwide for projects that enter the queue.<sup>107</sup> While PJM has attempted to deflect criticism by accusing developers of flooding the queue with speculative connection requests, the fact remains that the primary reason projects drop out of the queue is due to prohibitive interconnection costs caused by the lack of regional transmission capacity:

The current [interconnection] process places nearly all costs of network upgrades on the energy project developer, even though many others will benefit from the construction of the project. Until a few years ago, these interconnection charges for new renewable resources would comprise under 10 percent of the total project cost for most projects. In recent years - due to the lack of sufficient large-scale transmission build - these costs have dramatically risen and interconnection charges now can comprise as much as 50 to 100 percent of the generation project costs. The system has reached a breaking point recently as spare transmission has been used up. Presently in most regions, new network capacity is needed for almost all of the projects in the queues.<sup>108</sup>

Whatever may be said by PJM or developers regarding the causes of queue processing delays, there is no dispute that there has been a significant need for greater regional transmission investment while transmission providers in Ohio and across PJM have been spending considerably more ratepayer money to build drastically less of it—further evidence of the systemic injustice and imprudence of transmission planning and implementation in Ohio and across PJM.

**c. The lack of comprehensive regional planning that properly assesses the role of local transmission is systemic across the nation**

While the Complaint before FERC is strictly focused on the particular problems with Ohio, the failure of PJM to meet Order No. 890's requirements for holistic, coordinated

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<sup>107</sup> Queued Up at 21.

<sup>108</sup> Americans for a Clean Energy Grid, *Disconnected: The Need for a New Generator Interconnection Policy*, at 6 (Jan. 2021), <https://www.cleanenergygrid.org/wp-content/uploads/2021/01/Disconnected-The-Need-for-a-New-Generator-Interconnection-Policy-1.14.21.pdf>.

transmission planning that includes consideration of local planning issues is systemic across the country. A 2021 report issued by Americans for a Clean Energy Grid provides statistics demonstrating this systemic problem: “According to analysis by the Brattle Group, between 2013 and 2017, “about one-half of the approximately \$70 billion of aggregate transmission investments by FERC-jurisdictional transmission owners in ISO/RTO regions [was] approved outside the regional planning processes or with limited ISO/RTO stakeholder engagement.”<sup>109</sup> Further, the remaining transmission infrastructure that was included within regional transmission plans was skewed largely toward local projects, and projects built to meet near-term reliability needs.<sup>110</sup> In addition, the Brattle Group analysts found that 97% of all transmission approved in their study period was not subject to a competitive selection process, either because it was built to address a near-term reliability need, upgraded existing infrastructure, or fell below RTO thresholds for competitive process, such as a specified voltage level.”<sup>111</sup>

While MISO has approved a recent expansion of regional transmission projects, local transmission project approval in MISO also faces the same lack of scrutiny and there exists a similar lack of regional transmission investment. For example, from 2003 to 2020 the overwhelming majority of the \$40 billion spent on approved transmission projects have addressed local needs or are reliability-driven:<sup>112</sup>

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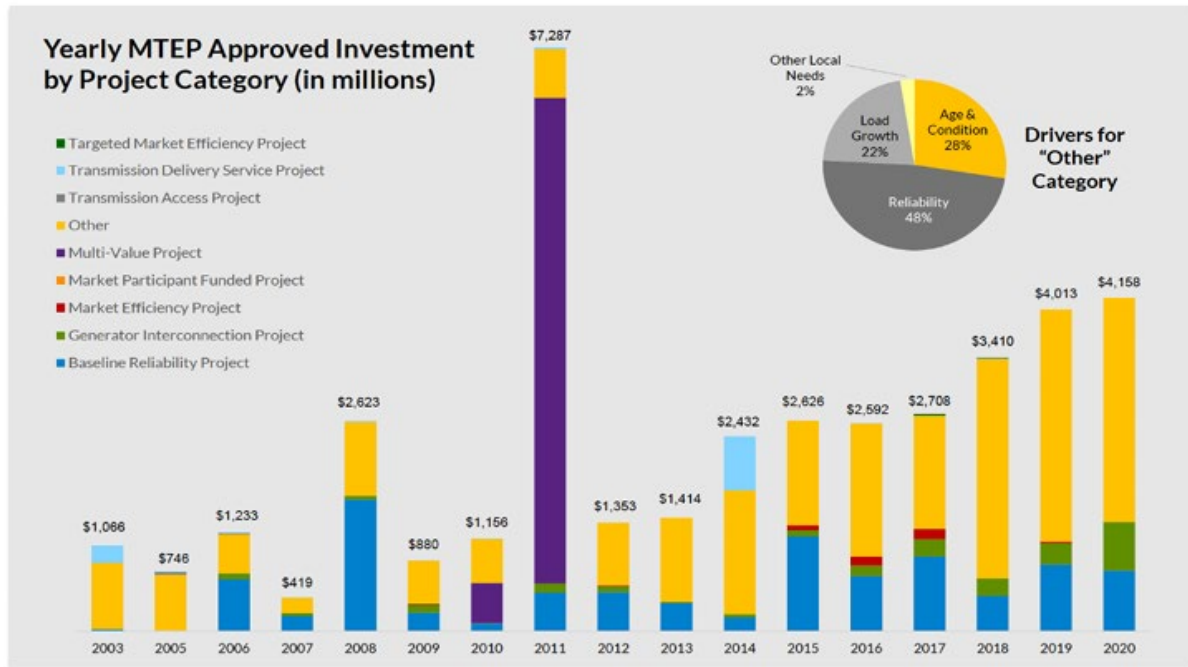
<sup>109</sup> Americans for A Clean Energy Grid, *Planning for the Future: FERC’s Opportunity to Spur More Cost-Effective Transmission Infrastructure*, at 26 (Jan. 2021), [https://cleanenergygrid.org/wp-content/uploads/2021/01/ACEG\\_Planning-for-the-Future1.pdf](https://cleanenergygrid.org/wp-content/uploads/2021/01/ACEG_Planning-for-the-Future1.pdf).

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> PIO ANOPR Comments at 36; *see also* Complaint of Coalition of MISO Transmission Customers, Docket No. EL20-19-000 (Jan. 21, 2020), Accession No. 20200121-5333 at 31-32.

## MTEP projects approved since MTEP03\*



\* Other = Projects based on local Transmission Owner needs including reliability, economics, equipment age and condition, environmental, etc. Numbers provided are as approved by the Board of Directors (2020 pending approval).

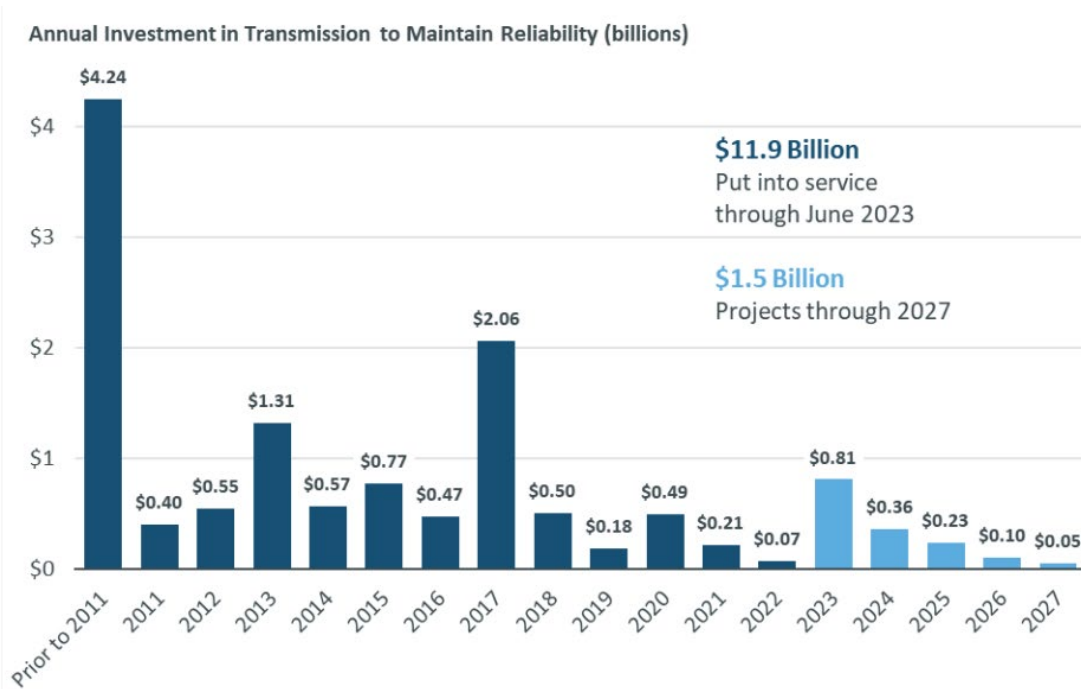


Similarly, in ISO-NE, as of June 2023, the total estimated cost of reliability transmission upgrades currently proposed, planned, or under construction was approximately \$1.5 billion.<sup>113</sup>

There are no public policy-driven transmission projects planned in New England:<sup>114</sup>

<sup>113</sup> See ISO-NE, 2023 Regional System Plan (Nov. 1, 2023), at 24 <https://www.iso-ne.com/static-assets/documents/100004/10-2023-draft-rsp23-public-meeting.pdf>.

<sup>114</sup> *Id.* at Sec. 5.8



**Figure 5-2: Transmission investment by year that projects are in service (capital costs)**

In SPP, 241 of the 386 projects in SPP’s 2021 plan were “regional reliability” projects totaling \$1.7 billion in estimated costs, representing 51% of estimated total costs across all projects currently included in the expansion plan. In contrast, only 44 of the 386 projects were “economic” projects, with an estimated cost of \$419 million, representing 13% of estimated costs across all projects.<sup>115</sup>

While unanimity in the electric industry is exceedingly rare, there is widespread consensus among stakeholder groups across the country—from state utility commissions and regional transmission organizations to resource developers (including merchant transmission providers) and consumer groups—that this gross imbalance of investment in local transmission

<sup>115</sup> See PIO ANOPR Comments at 34.

combined with the systemic lack of oversight has led to unjust, unreasonable, and unduly discriminatory rates, practices, and procedures that require Commission action to remedy.<sup>116</sup>

#### **IV. Cases consolidated under *American Municipal Power Inc., et al. v. FERC* do not resolve this issue**

In 2020, in FERC Docket ER20-2046, certain PJM Transmission Owners filed amendments to Attachment M-3 of the PJM tariff.<sup>117</sup> These amendments would modify the process by which each Transmission Owner would present its criteria for determining whether End-of-Life projects are needed and whether those projects could be otherwise resolved by a single regionally planned solution.<sup>118</sup>

OCC and others protested the proposed changes to Attachment M-3, arguing that the changes were not sufficient to resolve the overarching problems with the lack of oversight of local projects.<sup>119</sup> The Commission, however, rejected OCC's argument about the need for broad local project reform as out-of-scope for the Attachment M-3 proceeding.<sup>120</sup> The order is on appeal to the United States Court of Appeals for the District of Columbia Circuit.<sup>121</sup>

Also in 2020, in FERC Docket ER20-2308, PJM filed with FERC to further modify Attachment M-3 to include greater transparency and stakeholder participation in local project planning processes for end-of-life projects.<sup>122</sup> FERC rejected this filing, stating that it is the PJM

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<sup>116</sup> See, e.g., Reply Comment of the Harvard Law Electricity Law Initiative, at 12-16, Docket No. RM21-17, (Nov. 30, 2021), Accession No. 20211130-5205.

<sup>117</sup> Amendments to Attachment M-3 to the PJM Interconnection, L.L.C. Open Access Transmission Tariff, Transmittal Letter (Jun. 12, 2020) Docket No. ER20-2046-000, ("PJM Transmission Owners' Attachment M-3 Proposal"), Accession No. 20200612-5124, filed by certain PJM Transmission Owners in American Transmission system, Inc., et al. and PJM Interconnection, L.L.C.

<sup>118</sup> *Id.*

<sup>119</sup> Protest by The Office of The Ohio Consumers' Counsel, at 11-12, Docket No. ER20-2046-000 (July 6, 2020), Accession No. 20200706-5221.

<sup>120</sup> *PJM Interconnection, L.L.C., et al.*, 172 FERC ¶ 61,136 at P 90 (2020).

<sup>121</sup> Pet. for Review, *American Municipal Power Inc., et al. v. FERC*, Case No. 20-1449 (D.C. Cir. Nov. 12, 2020).

<sup>122</sup> PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): End of Life Joint Stakeholder Proposal Filing, Transmittal Letter, Docket No. ER20-2308 (July 2, 2020), Accession No. 20200702-5115.



Transmission Owners who have the right to maintain transmission facilities. The order is also on appeal to the United States Court of Appeals for the District of Columbia Circuit.<sup>123</sup>

The D.C. Circuit Court of Appeals consolidated both cases, and issued a decision on November 19, 2023 denying all of the petitioners' arguments.<sup>124</sup> However, this ruling does not resolve this complaint because those cases involved whether PJM Transmission Owners retain the right to undertake planning for their asset management for End-of-Life projects, not the lack of oversight for local projects writ large. Further, the D.C. Circuit agreed with the Commission that the issues raised in this complaint are beyond the scope of those cases.<sup>125</sup>

The Commission's rulings in ER20-2046 and ER20-2308 were limited to whether PJM Transmission Owners may control the planning for asset management or end-of-life projects. The cases did not, however, determine whether there is sufficient regulatory oversight by the Commission to ensure that the local planning transmission process at PJM is just and reasonable. That question, which is the thrust of this complaint, is unresolved and was thus not before the D.C. Circuit Court of Appeals. The Commission, therefore, must take up this complaint to determine whether the concerns that OCC has identified about the lack of regulatory oversight of local transmission projects leads to unjust and unreasonable rates.

**V. FERC should adopt a remedy that addresses the lack of oversight in Ohio's local transmission planning process.**

While the Commission has acknowledged in numerous orders that existing local transmission planning is unjust and unreasonable, the solutions the Commission has thus far provided focus on improving the regional transmission planning process and eliminating

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<sup>123</sup> See Pet. for Review, *American Municipal Power, Inc., et al. v. FERC*, Case No. 21-1090 (D.C. Cir. Aug. 13, 2021).

<sup>124</sup> *American Municipal Power, Inc., et al. v. FERC*, Case No. 20-1449 (D.C. Cir. Nov. 17, 2023), slip. op. at 3.

<sup>125</sup> *Id.* at 25.

loopholes that allow and encourage avoidance of the regional process. While this is an important step for the Commission to take, it has a broader duty to address the lack of oversight in the local transmission planning process.<sup>126</sup>

The Commission must make reliance on local projects less attractive to transmission owners. Currently, public utility transmission providers have at least three strong incentives to avoid independent transmission planning processes in favor of reliance on local projects. First, the Commission currently presumes that local projects are prudent. Second, local projects avoid competition. Third, transmission owners see high rates of return on local transmission projects despite little to no risk to them. In addition to OCC's proposed remedies, the Commission should ensure that transmission developers are sufficiently incentivized to propose and construct the best projects by eliminating presumptions of prudence and reducing the returns on low-risk local projects.

As demonstrated above, there is a lack of oversight for local projects in Ohio, whereby local projects are presumed prudent even though utilities are incentivized to build local projects in lieu of regional projects that bring greater benefits and may be more cost-effective. As PIOs explained in detail in the RM21-17 comment period, the lack of oversight combined with incentives to avoid regional planning mean that the Commission should do away with its presumption that local projects that have not gone through a regional planning process are prudent.<sup>127</sup> The Commission should issue a rule or policy statement that places the burden of proof back on public utility transmission providers to demonstrate that the cost of a proposed

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<sup>126</sup> See Section II, *supra*, concerning FERC's board authority over the nation's transmission system, including local transmission.

<sup>127</sup> PIOs' ANOPR Comments at 61-62.

transmission project is just and reasonable.<sup>128</sup> The Commission could maintain the presumption of prudence for local projects if the drivers (economic, reliability, public policy, or asset replacement) of the project have been reviewed as part of a regional planning process to determine whether or not more efficient alternatives exist. If, however, a public utility transmission provider seeks rate recovery for a project that is presented as a “surprise,” addressing needs not reported to a regional process, they would need to affirmatively demonstrate that the project is prudent through a normal prudency review.

PIOs recognize, however, that OCC’s solution of requiring all transmission projects 69 kV and above to file with the Commission for approval creates additional administrative burden. In addition, allowing local projects to continue to avoid regional planning processes means that local projects will not be efficiently integrated into the planning process even if the Commission reviews them for prudence, need, and cost-efficiency. Therefore, the Commission should require that all projects 100 kV or above go through PJM’s regional planning process. This would provide a vetting process through PJM’s existing planning process that would ensure that many local projects that currently receive no scrutiny are sufficiently vetted for their need. Where a project goes through PJM’s regional process, the Commission would not need to provide its own evaluation of a project’s prudence, need, and cost-efficiency. The Commission has already proposed a similar solution to the local projects problem in its proposed rulemaking in Docket No. RM21-17, which would require public utility transmission providers in each transmission

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<sup>128</sup> In its ANOPR Comment and its post-technical conference comments in the October 2022 conference concerning cost management of local projects, the Harvard Electricity Law Initiative lays out an extensive legal rationale for enhanced prudence review of transmission filings with which PIOs agree. *See* Comment of the Harvard Electricity Law Initiative, at Section II, Docket No. RM21-17 (Oct. 12, 2021), Accession No. 20211012-5710. *See also* Comment of the Harvard Electricity Law Initiative, at 1–6, Docket No. AD22-8 (Mar. 23, 2023), Accession No. 20230323-5189.

planning region to evaluate whether transmission facilities at or above 230 kV could be right-sized to meet transmission needs more efficiently or cost-effectively.<sup>129</sup>

The Commission should also revisit the rate of return that it provides for local projects. In ANOPR comments in RM21-17, PIOs explained that the lack of risk to developers for local projects should significantly reduce the rate of return for these projects. The Commission should reevaluate the rate of return and the capital structure of transmission investments for local projects made outside of regional planning processes.<sup>130</sup> The Commission should consider some form of “ROE subtractor” analogous to the ROE adders that exist today. ROE subtractors would automatically reduce the guaranteed returns for local projects that meet certain criteria, such as lack of review by regional planners, lack of competitive bidding, or untimely identification of project need.

Finally, PIOs support OCC’s proposed remedy to require the Commission to develop an Independent Transmission Monitor to review local transmission projects. The ITM would be helpful in evaluating any projects that do not go through the regional transmission planning process. In addition, the ITM would oversee PJM’s regional transmission planning process and provide FERC with recommendations about how to further improve the planning. Moreover, the Commission already has an extensive record that an independent transmission coordinator would provide useful benefits, especially where it has been shown—as here—that the regional planning process is not compliant with Order 890 planning principles.<sup>131</sup>

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<sup>129</sup> NOPR at P 403.

<sup>130</sup> PIO’s ANOPR Comments at 62–64.

<sup>131</sup> See Order No. 890 at 12,337.

## VI. Conclusion

For the foregoing reasons, PIOs support the filing of the OCC to protect Ohio consumers under the PJM tariff from the failures of multiple agencies to oversee the need, prudence, and cost-effectiveness of hundreds of millions of dollars of electric transmission charges for Supplemental Projects planned by Ohio electric utilities.

Respectfully submitted,

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