UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	)	Docket Nos. ER18-459-000
Ohio Valley Electric Corporation	)	ER18-460-000

COMMENTS
OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

The proposed integration of Ohio Valley Electric Corporation ("OVEC") into PJM Interconnection, LLC ("PJM") would be costly and risky for Ohioans and provides no benefits to customers. The proposal should be rejected.

Integration of OVEC provides no known benefits for consumers in Ohio, or for consumers in any other state in PJM. The proposal would allow OVEC's subsidized resources to continue to participate in and distort PJM's wholesale capacity and energy markets to the detriment of consumers. It would also transfer to Ohio consumers, and other PJM consumers, the risk that OVEC's aging transmission system may soon need tens of millions, if not hundreds of millions, of dollars in transmission upgrades to continue to satisfy PJM deliverability and reliability criteria. It could be expected that OVEC's costs for transmission upgrades would ultimately become consumers' burden in increased electric bills.

The Office of the Ohio Consumers' Counsel ("OCC") is the statutory representative of Ohio's residential utility consumers.[1] To protect Ohio consumers, OCC provides the following comments on the joint filing of PJM and OVEC in this proceeding, which seeks Federal Energy Regulatory Commission ("FERC") authorization for the integration of OVEC's transmission system into the PJM Regional Transmission Organization.[2]

OVEC's owners may benefit from the integration by transferring the risk of OVEC's aging transmission infrastructure to consumers in Ohio and other states in PJM. But those consumers would not benefit because: there would be no increase in access to new economic power supplies; no decrease in production costs; and no decrease in congestion costs expected as a result of the proposed integration. Nor would the OVEC integration bring additional customers into PJM to help offset the likely near-term future increase in transmission upgrade costs. To protect Ohio consumers and others, FERC should reject OVEC's unprecedented proposal, which provides no value to consumers in the PJM region.

II. COMMENTS

To implement the integration, OVEC and PJM filed amendments to the PJM Open Access Transmission Tariff and to various other FERC-jurisdictional PJM agreements pursuant to Section 205 of the Federal Power Act.[3] In analyzing proposed amendments to tariffs and rate schedules under Section 205, FERC's responsibility is not

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[1] See R.C. Chapter 4911.

[2] OCC filed a motion to intervene in this proceeding on January 3, 2018.

[3] 16 U.S.C. § 824d.

merely to determine whether the amendments are consistent with the existing PJM Tariff and governing documents on file with FERC. Instead, FERC must determine whether the public utilities proposing the revisions have demonstrated that the integration will result in just and reasonable rates for consumers.[4] An analysis of the filings in these dockets demonstrates that the proposed integration of OVEC into PJM will not result in just and reasonable rates for Ohio consumers and other PJM consumers.

Eight Sponsoring Companies own OVEC and its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation ("IKEC"): American Electric Power, FirstEnergy, Duke Energy, Dayton Power & Light, Buckeye Power, Wolverine Power Supply Cooperative, Louisville Gas & Electric Company ("LG&E"), Kentucky Utilities, and Vectren.[5] OVEC's transmission lines interconnect with the major power transmission networks of three of those Sponsoring Companies: AEP, LG&E and Duke Energy Ohio.[6] The Sponsoring Companies created OVEC, and in turn, IKEC, to own two coal

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[4] *PJM Interconnection, LLC*, 135 FERC ¶ 61,198 at P 61 (2011) ("regardless of whether the applicant is joining a new RTO or switching RTOs, the applicant must demonstrate that the proposed rates are just and reasonable."); s*ee also Midwest Independent Transmission System Operator, Inc.* 132 FERC ¶ 61,184 at P 36 (2010) ("section 205 of the FPA requires the Midwest ISO to bear the burden of showing that its proposed change in the tariff is just and reasonable"); *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,213 at P 22 (2016) ("[W]e find that PJM has not met its burden under section 205 of the FPA to justify its proposed tariff revisions. Thus, we reject PJM's proposal.").

[5] PJM Interconnection, LLC and Ohio Valley Electric Corporation, Docket Nos. ER18-459-000 and ER18-460-000, Transmittal Letter at 2 (December 15, 2017) ("Transmittal Letter") ("The Sponsoring Companies are: Allegheny Energy, Inc. (a subsidiary of FirstEnergy Corporation); American Electric Power Company, Inc. ("AEP"); Buckeye Power Generating, LLC (a subsidiary of Buckeye Power, Inc.); The Dayton Power and Light Company (a subsidiary of The AES Corporation) ("Dayton"); Duke Energy Ohio, Inc. (a subsidiary of Duke Energy Corporation) ("Duke Energy Ohio"); Kentucky Utilities Company (a subsidiary of PPL Corporation) ("KU"); Louisville Gas and Electric Company (a subsidiary of PPL Corporation)("LG&E"); Ohio Edison Company (a subsidiary of FirstEnergy Corporation); Ohio Power Company (a subsidiary of AEP); Peninsula Generation Cooperative (a subsidiary of Wolverine Power Supply Cooperative, Inc.); Southern Indiana Gas and Electric Company (a subsidiary of Vectren Corporation) ("SIGECO"); and The Toledo Edison Company (a subsidiary of FirstEnergy Corporation.").

[6] Transmittal Letter at 3.

generating facilities constructed in the 1950s.[7] OVEC was formed to provide electricity to a uranium enrichment facility then-owned by the Atomic Energy Commission, predecessor to the United States Department of Energy ("DOE"), near Piketon, Ohio.[8] That facility's load peaked at 2,000 MW, but the facility ceased production in 2001.[9] The DOE gave notice to the Sponsoring Companies in 2000 of its intent to cancel the contract for the Piketon Plant. The OVEC-DOE power supply arrangements terminated in 2003, but OVEC owners twice[10] elected to extend the OVEC contract to allow OVEC's capacity and energy from its two generating facilities to be sold to its Sponsoring Companies under a cost-based power purchase agreement that extends through June 30, 2040.[11] The Sponsoring Companies knew that their main customer was leaving and fully understood the ramifications of becoming a merchant transmission owner and now are looking to shift the risk to other customers. While OVEC is guaranteed recovery of its power supply costs under that contract, it sells the capacity and energy from the two generating facilities into the PJM markets.[12] In turn, certain Ohio-jurisdictional Sponsoring Companies (AEP Ohio, DP&L, and Duke) have received approval from the Public Utilities Commission of Ohio ("PUCO") to charge captive Ohio retail consumers, through retail rate riders, the difference between any costs incurred

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[7] Transmittal Letter at 2.

[8] Transmittal Letter at 2.

[9] Ohio Valley Electric Corporation and its wholly owned subsidiary, Indiana Kentucky Electric Corporation Implementation Plan, presented to the PJM Markets and Reliability Committee on November 7, 2017, slides 2-3 ("OVEC Integration Plan"), available at http://www.pjm.com/-/media/committees-groups/committees/mrc/20171107-special-ovec/20171107-item-02-ovec-integration-presentation.ashx

[10] The Sponsoring Companies elected to extend the Intercompany Power Agreement in 2006 and 2011 well after the DOE contract was cancelled.

[11] Transmittal Letter at 2.

[12] *Ohio Valley Electric Corporation*, 154 FERC ¶ 61,238 at PP 4-5 (2016).

under the contract and the revenues received from the sale of the capacity and energy into the PJM markets.[13]

The proposed "OVEC Zone" would be unprecedented for any RTO integration. It would consist of 2,200 MW of coal-fired generation built in the 1950s, 705 circuit miles of 345-KV transmission facilities that are generally just as old, and for a short time, merely 45 MW of load.[14] In the OVEC Integration Plan provided to stakeholders, PJM represented that DOE load is now less than 45 MW, soon will be zero, and there are plans to transfer OVEC's retail load to another provider.[15] In other words, there will be virtually no customer consumption added to the PJM region as a result of the proposed integration of OVEC's generation and transmission facilities into PJM.

A 2015 Transmission Study conducted by AEP on behalf of OVEC concluded that "the existing and planned OVEC system is expected to meet the NERC TPL standards without any additional transmission reinforcements or upgrades through

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[13] *See, e.g., In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R. C. 4928.143, in the Form of an Electric Security Plan*, PUCO Case No. 13-2385-EL-SSO et al., Opinion and Order at 24-25 (Feb. 25, 2015); *In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to R. C. 4928.143, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, PUCO Case No. 14-841-EL-SSO et al., Opinion and Order at 46-47 (Apr. 2, 2015) (Duke ESP III Order) (Duke's rider is currently set at an initial rate of $0.00. It's pending Electric Security Plan seeks to begin charging customers. See PUCO Case No. 17-1263-EL-SSO); *In the Matter of the Application of the Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan,* Case No. 16-395-EL-SSO, Opinion and Order at 34-35 (October 20, 2017). AEP's retail rate rider is currently under appeal at the Supreme Court of Ohio in *OCC and OMA v. PUC,* Supreme Ct. No. 17-0749 and *OCC and OMA v. PUC*, Supreme Ct. No. 17-752.

[14] OVEC Integration Plan at slide 2.

[15] *Id.*

2024."[16] However, PJM has identified certain transmission upgrades for the 2018 – 2022 transmission planning period that are required to ensure deliverability of OVEC's generation to PJM loads and the reliability of the PJM system.[17] Although the dollar impact of those identified upgrades is not significant, a number of stakeholders have criticized the sufficiency of that study. Additionally, the study itself states that the analysis covered the period through July 1, 2017, and that PJM's 2018 Regional Transmission Expansion Plan "(RTEP") Baseline report "will include a continued review of all applicable North American Electric Reliability Corporation ("NERC"), PJM, Reliability*First* Corporation ("RFC"), and OVEC planning criteria."[18]

Given the 60-year age of these OVEC transmission facilities, and the stringent reliability criteria traditionally applied by PJM in its RTEP studies, it is highly probable that these facilities, like so many other aging transmission facilities in PJM, will soon require significant upgrades to continue to meet reliability criteria or address congestion concerns. Those upgrades could cost consumers dearly.

The lack of commensurate customer demand to accompany the integration of the OVEC facilities raises serious concerns as to who will bear the costs of any upgrades deemed necessary for these facilities in the near future. As a stand-alone entity before

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[16] Ohio Valley Electric Corporation 2015 Transmission Plan at 1, Prepared on OVEC's Behalf by East Transmission Planning, American Electric Power (November 2015), available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiNp6Tdsr3YAhWj2YMKHcBZAfYQFggnMAA&url=http%3A%2F%2Fwww.oatioasis.com%2FOVEC%2FOVECdocs%2F2015_-_OVEC_Transmission_system_plan-annotated_and_bookmarked.pdf&usg=AOvVaw3x5TG7qah2jPSxTRHapDpP.

[17] See PJM Baseline Integration RTEP Report for the 2018 – 2022 transmission planning period.

[18] Baseline Integration RTEP Report at 1, Ohio Valley Electric Corporation (OVEC), for the 2018-2022 Period, PJM Transmission Planning (October 2017), available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiQuq_rtL3YAhXHqYMKHVvhBm0QFggnMAA&url=https%3A%2F%2Fwww.pjm.com%2F-%2Fmedia%2Fplanning%2Frtep-dev%2Fbaseline-reports%2Fovec-rtep-baseline-integration-report.ashx%3Fla%3Den&usg=AOvVaw3ykFmpf6uPftSCEAWzlQ6i.

integration into PJM, any transmission upgrade costs would be borne appropriately by OVEC's transmission customers. OVEC's current tariff indicates that it has only two such customers.

In this instance with only two customers, these costs would be borne by the transmission owners. Therefore, it is obvious why the Sponsoring Companies would prefer to have others in the PJM footprint subsidizing these costs. It is not surprising given the declining demand on this system that OVEC's Sponsoring Companies would seek to lower their risks attendant to these aging facilities by seeking integration into PJM. And they seek to lower their risks by increasing the risks for consumers who would pay for the upgrades.

Under PJM's RTEP, the significant and costly upgrades that will inevitably be necessary to maintain OVEC's vintage transmission facilities are most likely to fall on the backs of Ohio consumers. OVEC's double-circuit 345 kV transmission lines would be treated as "Regional Facilities" under the RTEP provisions in PJM's Tariff. That means 50% of any necessary transmission upgrade costs would be allocated to all transmission zones in PJM on a load-ratio basis, and the remaining 50% would be allocated on PJM's distribution factor ("DFAX") basis. The DFAX allocates costs based on the transmission zones that receive the reliability or transmission congestion relief benefits from the upgrades.[19] The location of the OVEC transmission facilities are near Ohio's western border. That means there is a significant probability that the bulk of the costs to be allocated on a DFAX basis would be charged to Ohio retail consumers served

[19] PJM Tariff, Schedule 12; *see also PJM Interconnection, L.L.C.*, 142 ¶ 61,214 at PP 345-49 (2013).

by OVEC's Ohio-regulated Sponsoring Companies: AEP, FirstEnergy, Duke Energy Ohio, and Dayton Power & Light.

Moreover, because the OVEC Zone, for all intents and purposes, serves no customer, it is unclear who would pay the load-ratio share of any transmission upgrade costs allocated to that zone. It is also unclear whether those upgrades are associated with OVEC's transmission facilities or are associated with regional facility upgrades in other PJM transmission zones. Just as 50% of OVEC's transmission system upgrade costs would be spread to other zones in PJM on a load ratio share basis, so too would the costs of regional facilities in other PJM zones be spread to the OVEC zone. FERC has made clear that a new PJM entrant cannot escape its obligation to fund approved upgrades through the RTEP.[20] However, the current PJM Tariff does not include provisions governing how costs are to be allocated when a zone has no load. Nor do PJM and OVEC propose any revisions to PJM's governing documents addressing such concerns. Under the current Tariff, a zone without customers would show up as a zero in the allocation methodology, resulting in other PJM zones bearing OVEC's portion of any regional facility costs allocated on a load ratio share basis. Under such a method, both OVEC system upgrade costs and other zones' regional facility upgrade costs would fall even more heavily on Ohio consumers. Further, OVEC and PJM's filing also raises additional concerns related to their request for an annual transmission revenue requirement for OVEC of more than $11.4 million.[21] It is unclear who will pay these costs given the depleted customer consumption on the OVEC system.

[20] *American Transmission Systems, Inc.*, 129 FERC ¶ 61,249 at PP 111-13 (2009).

[21] Transmittal Letter at 14-15.

In short, OVEC's proposed integration into PJM seeks to transfer to Ohio consumers, and other consumers in PJM, the risks associated with OVEC's aging transmission assets, while bringing in essentially no new load to help pay for the anticipated upkeep for these facilities. OCC understands that FERC has previously found that RTO participation is voluntary, and has presumed that the benefits of RTO formation overall outweigh the costs of integration of any particular transmission system into the region.[22] Here, however, the extreme imbalance between costs and benefits renders this presumption inapplicable. In fact, it is difficult to discern how *any* of the benefits that are normally associated with RTO formation would materialize in this instance.

In prior integration proceedings, FERC has determined that the benefit of increased access to competitive supply options generally supports a finding that the proposed integration will result in just and reasonable rates for consumers.[23] However, that presumption does not come into play in this proceeding. OVEC and PJM's proposal here would add no new economic generation supplies to PJM's markets, given that these resources are already pseudo-tied to the PJM region and are already participating in the PJM markets. Instead, the proposal would continue to provide financial support for two 70-year- old, coal-fired generators that are uneconomic in today's competitive energy markets and that rely on state subsidies to stay afloat.[24] Instead of providing increased access to competitive supplies, OVEC and PJM's proposal would only provide further

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[22] *California Independent System Operator Corp.*, 107 FERC ¶ 61,150 at P 14 (2004).

[23] *Id.*

[24] The Public Utilities Commission of Ohio has issued orders approving retail rate riders that allow certain Ohio utilities to recover from or refund to retail customers the difference between the costs of power that the utilities are entitled to purchase from OVEC and the revenues received from the sale of the OVEC entitlement power into the PJM wholesale market. *See, e.g., In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, 319 P.U.R. 4th 175 (Ohio P.U.C. 2015).

subsidies for OVEC's Sponsoring Companies by transferring the risk and costs for the aging transmission infrastructure to Ohio's and other PJM consumers.

The instant proposal stands in sharp contrast to past PJM integrations. For example, in connection with the integration of FirstEnergy's transmission system, American Transmission Systems, Inc. ("ATSI"), PJM conducted a "cost-benefit" study. The study demonstrated that the inclusion of ATSI zone load and generation in the PJM markets would reduce production costs by $26 million and reduce congestion costs by $91 million across both PJM and MISO.[25] PJM did not conduct a similar study in this case to justify and support OVEC's integration. There is thus no evidence that the proposed integration of OVEC into PJM will produce any benefits for Ohio and other PJM consumers. The application should be denied by FERC.

Consequently, the proposed integration of OVEC into PJM would directly contravene the "unremarkable principle" that "FERC is not authorized to approve a pricing scheme that requires a group of utilities to pay for facilities from which its members derive no benefits, or benefits that are trivial in relation to the costs sought to be shifted to its members."[26] Although FERC has in the past suggested that a cost-benefit analysis is not a required element for an RTO integration,[27] the U.S. Supreme Court has subsequently made clear that an administrative agency cannot ignore costs when taking regulatory action under a statute that requires cost consideration.[28]

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[25] *American Transmission*, 129 FERC ¶ 61,249 at P 18.

[26] *Illinois Commerce Comm'n v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009).

[27] *American Electric Power Service Corp.*, 103 FERC ¶ 61,008 at P 41 (2003).

[28] *Michigan v. EPA*, 135 S. Ct. 2699 (2015).

On its face, Section 205 of the Federal Power Act requires FERC to analyze the reasonableness of costs to be imposed on consumers.[29] As the D.C. Circuit Court of Appeals recently recognized, the mandate of the provision is to protect consumers against unjust and unreasonable rates.[30] In the instant case, PJM and OVEC have failed to demonstrate that their Section 205 proposal – which would impose massive costs on Ohio consumers absent any identifiable benefits – would result in just and reasonable rates for consumers.

III. CONCLUSION

OVEC and PJM are attempting to integrate older facilities with little to no load and no benefits for customers in the PJM region. That is a bad idea for Ohio consumers and others that would pay. OVEC and PJM failed to provide evidence of any benefits to be derived from the proposed integration. In fact, the integration poses significant risks and higher costs for Ohio consumers and others in PJM. FERC should reject the proposal.[31] Consumers in Ohio and other states in PJM should not be saddled with the OVEC owners' costly decision to enter into a service agreement contract, not once, but twice, after the DOE arrangement was terminated.

[29] See supra n. 4.

[30] *Xcel Energy Services Inc. v. FERC*, 815 F.3d 947, 956 (D.C. Cir. 2016).

[31] *See, e.g., Midwest Independent Transmission System Operator, Inc.* 132 FERC ¶ 61,184 at P 36 (2010) ("section 205 of the FPA requires the Midwest ISO to bear the burden of showing that its proposed change in the tariff is just and reasonable"); *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,213 at P 22 (2016) ("[W]e find that PJM has not met its burden under section 205 of the FPA to justify its proposed tariff revisions. Thus, we reject PJM's proposal.").

Respectfully submitted,

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January 5, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Columbus, Ohio this 5th day of January 2018.

/s/ Kevin Moore

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