UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Industrial Energy Consumers of America, *et al.* v. Avista Corporation, *et al.*	))	Docket No. EL25-44-000

COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF OHIO'S OFFICE OF THE FEDERAL ENERGY ADVOCATE

The Office of the Federal Energy Advocate (Ohio FEA) of the Public Utilities Commission of Ohio (PUCO), fulfilling its statutory duty to advocate on behalf of Ohio's retail electricity consumers,[1] submits the following in response to the December 19, 2024 filing before the Federal Energy Regulatory Commission (FERC or Commission), pursuant to section 206 of the Federal Power Act (FPA), by a large coalition of energy users and ratepayer advocates (collectively, Complainants) against certain public utilities and grid operators, including regional transmission organizations and independent system operators (RTOs/ISOs) and FERC-jurisdictional transmission owners that are not members of an RTO/ISO. The complaint asserts that provisions in existing tariffs of the named public utilities and RTOs/ISOs are unjust and unreasonable because they inappropriately authorize individual transmission owner local planning of FERC-jurisdictional transmission facilities at 100 kilovolts (kV) and above without regard to whether such local planning results in the more efficient or cost-effective transmission project for the interconnected transmission grid and electric consumers.[2]

[1] Ohio Revised Code 4928.24.
[2] In PJM Interconnection, LLC (PJM), "local planning" includes Asset Management Projects as defined in PJM's Open Access Transmission Tariff [Attachment M-3], Supplemental Projects as defined in PJM's Operating Agreement, and any other transmission expansion or enhancement of transmission facilities not planned by PJM.

I. Background

The Commission has a long history of significant action on transmission planning and cost allocation, beginning in 1996 with Order No. 888, which implemented open, nondiscriminatory access to utility owned transmission facilities and included certain minimum requirements for transmission planning.[3] In Order No. 2000 in 1999, FERC delegated its authority to oversee the planning and cost of transmission facilities to RTOs/ISOs, such as PJM, and encouraged state RTO participation.[4] With Order No. 890 in 2007, FERC sought to improve transmission access rules and to establish open, transparent, and coordinated local transmission planning processes. Order No. 890 required all local transmission planning processes conducted by utility owned transmission providers to satisfy nine transmission planning principles: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects.[5]

In 2011, landmark Order No. 1000 expanded upon Order No. 890 by requiring utility owned transmission providers to participate in a regional transmission process that produces a regional transmission *plan*. The primary objectives of the new requirements placed on transmission providers through Order No. 1000 were to ensure that 1) regional planning processes were adequate to identify and evaluate transmission facilities that could meet transmission needs more efficiently and cost-effectively than local planning processes, and 2) the costs of transmission facilities chosen to meet regional transmission needs were allocated fairly

[3] *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 75 FERC ¶ 61,080 (1996).
[4] *Regional Transmission Organizations*, Order No. 2000, 89 FERC ¶ 61,285 (1999).
[5] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119 (2007).

to those who benefit from them.[6] Through Order No. 1000, the Commission *inter alia* adopted a package of reforms "to support the development of those transmission facilities identified by each transmission planning region as necessary to satisfy reliability standards, reduce congestion, and allow for consideration of transmission needs driven by public policy requirements established by state or federal laws or regulations."[7]

Amid years of ensuing litigation and stakeholder concerns related to transmission planning processes, PJM's Regional Transmission Expansion Plan (RTEP) was formed largely around addressing baseline reliability and congestion-driven upgrades to "regional facility" lines sized at 345 kV and above as well as "necessary lower voltage facility" lines over 200 kV. [8] These lines have been deemed *regional* and thus associated projects must be approved by the PJM Board and FERC and are ultimately subject to PJM's FERC-approved regional cost allocation methodology.

A decade after Order No. 1000, in July 2021, in acknowledgement of a changing landscape and changing generation resource mix, the Commission issued an Advance Notice of Proposed Rulemaking (ANOPR) under section 206 of the FPA on potential reforms to regional transmission, cost allocation, and generator interconnection processes.[9] Then in April 2022, the Commission followed the ANOPR with a Notice of Proposed Rulemaking (NOPR) to reform its electric regional transmission planning and cost allocation requirements.[10] The NOPR proposed significant changes, including the introduction of a mandated long-term transmission planning

[6] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities,* Order No. 1000, 136 FERC ¶ 61,051 (2011), at P 4.
[7] *Id.* at P 2.
[8] PJM Open Access Transmission Tariff, Schedule 12.
[9] *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 176 FERC ¶ 61,024 (2021).
[10] *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 179 FERC ¶ 61,028 (2022).

horizon of 20 years and a process to develop a regional cost allocation methodology(s) for long-term regional transmission planning projects. On October 6, 2022, the Commission held a Technical Conference and subsequently invited comments on Transmission Planning and Cost Management.[11]

On May 13, 2024, the Commission issued landmark Order No. 1920 "to remedy deficiencies in existing regional and local transmission planning and cost allocation requirements by requiring transmission providers to conduct Long-Term Regional Transmission Planning and to expand or alter current transmission planning processes as necessary to more efficiently or cost-effectively address Long-Term Transmission Needs."[12] As noted by the Complainants in the instant filing, the Commission did not substantively address local planning in Order No. 1920, concluding that issues related to local planning "are beyond the scope of this final rule."[13]

Concurrent with the evolution of regional transmission planning, and perhaps resulting from it, local transmission planning has garnered escalating concern in recent years. It is widely understood that many transmission assets across the country have exceeded or are reaching the end of their useful lives, resulting in "end of life" (EOL) projects. In addition, an influx of "supplemental projects" are built outside of regional planning processes to accommodate local needs. As noted above in footnote two, Asset Management Projects (which include EOL projects) and Supplemental Projects in the PJM region are planned by local transmission owners and are not a fundamental part of PJM's RTEP. These are the types of locally planned projects

[11] *Transmission Planning and Cost Management*, Notice Inviting Post-Technical Conference Comments, Docket No. AD22-8-000 (December 23, 2022).
[12] *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation*, Order No. 1920, 187 FERC ¶ 61,068 (2024), at P 1.
[13] Complaint at 64.

that have become the subject of debate and concern by many stakeholders in various proceedings, giving rise to the Complainants' filing.

II. Comments

A. The Ohio FEA Agrees that the Cumulative Effect of a Regulatory Gap Is Unjust and Unreasonable Rates.

The PUCO and the Ohio FEA have expressed concerns related to local planning and the scrutiny of local projects in PJM's transmission planning process on numerous occasions, starting in 2019, and agree that a regulatory gap exists.[14] It is well documented that a significant increase in capital spending on local transmission emerged following Order No. 1000, and the phenomenon of Supplemental Projects outpacing baseline RTEP projects in Ohio has occurred annually for a decade. By definition, Supplemental Projects in PJM are *supplemental to* and outside of the regional transmission planning process. Supplemental Projects follow the prescribed "Attachment M-3" (M-3) process, but within that process the transmission owner identifies both local transmission needs and local transmission solutions with essentially no regulatory scrutiny.

As summarized, generally, in the Complainants' filing:

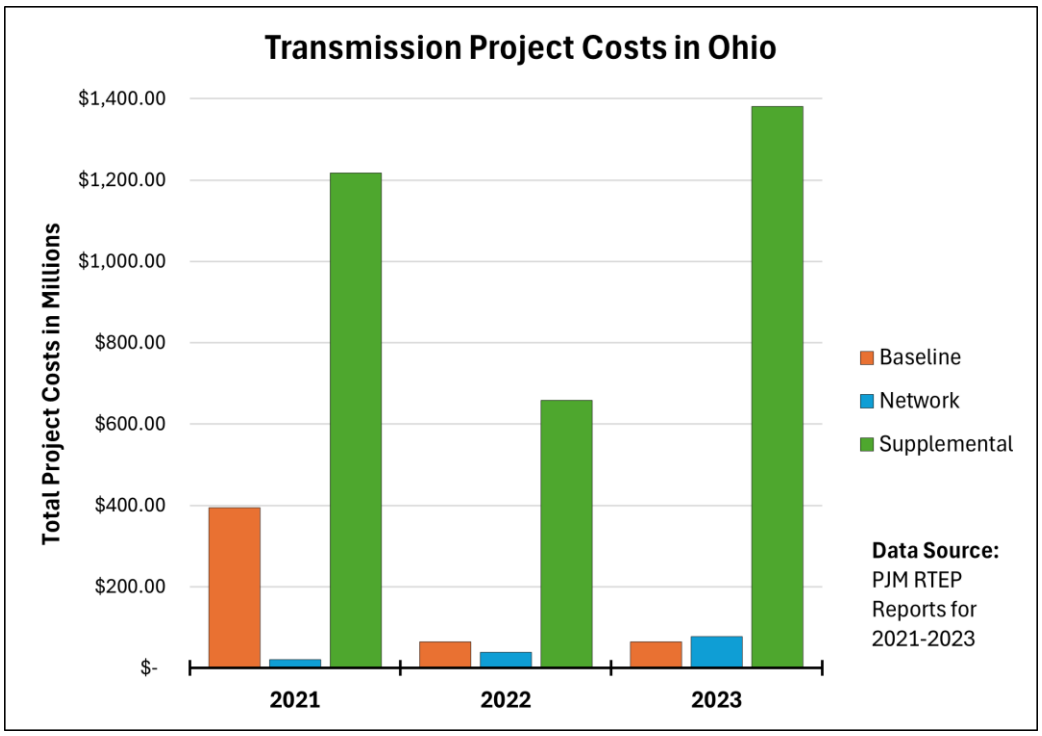
> Local projects, often exempt from rigorous review by state regulators, regional planning entities, and FERC, have become a low-risk investment for utilities. According to researchers, the regulatory gap has led to a significant shift in spending toward smaller, uncoordinated projects that fail to meet broader regional needs, contributing to rising costs, inefficient grid

[14] *See, e.g.*, Ohio FEA Comments, Docket. No. EL23-105-000 (November 17, 2023), Ohio FEA Comments, Docket No. AD22-8-000 and AD21-15-000 (March 23, 2023); Comments of Commissioner Dan Conway, Docket No. AD22-8-000 (October 5, 2022); Ohio FEA Comments, Docket No. RM21-17-000 (August 17, 2022); Ohio FEA Comments, Docket No. AD21-15-000 (April 1, 2022); Ohio FEA Comments, Docket No. RM21-17-000 (October 12, 2021); Ohio FEA Comments, Docket No. RM20-16-000 (March 22, 2021); Ohio FEA Comments, Docket No. ER20-2308-000 (July 23, 2020); Ohio FEA Comments, Docket No. ER20-2046- 000 (July 6, 2020); Ohio FEA Comments, Docket No. RM20-10-000 (July 1, 2020); Ohio FEA Comments and Limited Protest, Docket No. ER20-1740 (May 29, 2020); Ohio FEA Comments and Protest, Docket No. ER20-1068 and ER20-1150 (March 16, 2020); Ohio FEA Comments, Docket No. ER20-45-000 and EL19-61-000 (October 28, 2019).

> development, and missed opportunities for system-wide benefits like reduced land use and environmental impact.[15]

Various attempts have been made over recent years to address this regulatory gap, which the Ohio FEA has supported. In Docket No. ER20-2308-000, the Ohio FEA supported the PJM Joint Stakeholders in proposed reforms on EOL planning procedures.[16] In that filing, the Joint Stakeholders proposed transferring EOL planning activities to a new category under PJM's RTEP as opposed to its current placement under the M-3 process that is driven nearly exclusively by the transmission owner. Similarly, in Docket No. ER20-45-000, the Ohio FEA supported a competitive process and demonstration of need for "Form 715" projects.[17] The Ohio FEA and PUCO repeatedly commented on the escalating number of Supplemental Projects in the PJM region and expressed concern that Supplemental Projects are not receiving sufficient regulatory scrutiny. Most recently, in Docket No. EL23-105-000, the Ohio FEA supported certain arguments raised by the Ohio Consumers' Counsel in its FPA section 206 complaint on Supplemental Projects and described the unprecedented increase in the volume and cost of Supplemental Projects in Ohio over the last ten years.[18] We illustrate that recent cost data here:

[15] Complaint at Attachment C (Declaration of Michael A. Giberson, R Street Institute), at 27.
[16] Ohio FEA Comments, Docket No. ER20-2308-000 (July 23, 2020).
[17] Ohio FEA Comments, Docket. No. ER20-45-000 and EL19-61-000 (October 28, 2019).
[18] Ohio FEA Comments, Docket No. EL23-105-000 (November 17, 2023), at 4-5.



Importantly, these are only the Supplemental Projects *located in* Ohio. Because Supplemental Projects are cost allocated to the transmission *zones* in which the projects are located, the significance is far greater. Four PJM transmission zones serve load in Ohio, with three of them crossing state lines.[19] The largest, the AEP transmission zone, covers parts of seven states: Michigan, Indiana, Ohio, Kentucky, West Virginia, Virginia, and a small piece of Tennessee. As a result, the cumulative impact of Supplemental Projects occurring in all seven states is borne by customers in the AEP transmission zone.

Of critical relevance here is that these local projects circumvent the more robust regional planning process intended to achieve efficiency and cost-effectiveness. States participating in RTOs have long promoted the benefits of regional coordination, and restructured states like Ohio rely on the benefits of competition to secure resource adequacy and deliver reliable service to electric customers at least cost. In this context, increased state oversight of local transmission is

[19] Available at https://www.pjm.com/-/media/DotCom/about-pjm/pjm-zones.pdf.

not a workable or appropriate solution. As noted above, local projects in PJM are cost allocated by transmission zones, and many zones cross state lines. As a result, in many cases, local transmission projects have an impact on ratepayers beyond the state borders where the project is located and outside that state's regulatory jurisdiction. This mismatch between state lines and transmission zones hampers the reasonableness of a state-by-state regulatory approach as it pertains to local projects.

Further, state oversight of transmission varies greatly across the PJM region, and in some areas, there is little or no state regulatory authority over transmission. Similarly, state authority over power siting varies significantly, including what states consider in determining whether a proposed project serves the public interest, convenience, and necessity, referred to as CPCN proceedings. In Ohio, the Ohio Power Siting Board (OPSB) oversees certification of major utility facilities, including certain electric transmission lines and associated facilities of a design capacity of 100 kV and above.[20] To certificate a transmission project subject to OPSB jurisdiction, the OPSB must determine that eight criteria are met, including consistency with regional plans for expansion of the electric grid. This determination is based on information provided to the OPSB by the applicant and PJM, both of whom analyze the project for compliance with North American Electric Reliability Corporation (NERC) reliability standards and PJM reliability criteria. Even if the threshold for OPSB jurisdiction were to change, the scope of OPSB's review does not include reviewing transmission projects for prudence or cost-effectiveness.

In the filing, the Complainants do not challenge the rates for any specific locally planned project as unjust and unreasonable. Instead, the complaint alleges that "the cumulative effect of

[20] Ohio Revised Code 4906.01 and 4906.04; Ohio Administrative Code 4906-1-01(LL).

tariff provisions allowing Local Planning of transmission projects 100 kV and above results in unjust and unreasonable transmission rates."[21] With insufficient regulatory oversight of local projects or their costs, there is no means by which the Commission can assure ratepayers that the rates they pay for transmission service are just and reasonable. The Ohio FEA recognizes the need for transmission investment and, like the Complainants, does not aver that any specific supplemental transmission investment was unneeded or imprudent. But with roughly two thirds of transmission projects in Ohio currently planned outside the regional process and with no meaningful regulatory scrutiny, as illustrated above, the Ohio FEA agrees the cumulative effect of this regulatory gap on rates is unjust and unreasonable.

B. The Ohio FEA Agrees that Significant Increases in Transparency Have Not Resulted in Just and Reasonable Rates.

The Complainants assert that issues surrounding local planning go beyond transparency and need to be addressed by a more significant change to both local and regional transmission planning processes. The Ohio FEA agrees. Efforts to increase transparency, while significant, have improved the local planning process but have not controlled costs. In its answer to the complaint in Docket No. EL23-105-000, PJM provides a thorough review of the M-3 process, including how local projects are presented and reviewed by stakeholders in PJM Subregional RTEP Committees and posted on PJM's website.[22] However, the Ohio FEA maintains that increased transparency into a unilateral decision will not close the regulatory gap.[23]

The Ohio FEA has a deep appreciation for the complexities of the electric grid and the responsibilities undertaken by transmission owners. We also have concern that local projects are

[21] Complaint at 11.
[22] PJM Answer, Docket No. EL23-105-000 (November 17, 2023), at 10-13.
[23] Ohio FEA Comments, Docket No. AD22-8-000 (March 23, 2023), at 7-8.

not subject to the cost-mitigating forces of competition or any means by which to assess the magnitude of capital expenditures spent on them and the rate impacts that result. Notwithstanding thorough and positive strides around transparency, the M-3 process remains a process driven nearly exclusively by the incumbent transmission owner and without any mechanism for it to justify, or incentive to control, costs. A stakeholder's ability to monitor a local project and file a FPA section 206 complaint for cost review *after* the project has already been selected, or with construction underway, is of no value to ratepayers.

Further, the fundamental concern remains that, currently, there is no clear authority or requirement for regional transmission planners to consider local projects in a way that could achieve efficiencies, optimize solutions, or control costs. Despite efforts to expand the RTEP, such as in the aforementioned dockets, the opposite has occurred. The exponential growth in Supplemental Projects in recent years suggests that local projects are crowding out projects that otherwise would have been considered in regional planning.[24] If so, that outcome significantly undermines the regional planning effort that has evolved over two decades and which is designed to aid our collective mission to deliver reliability at least cost. In the 2022 NOPR, the Commission recognized that "the vast majority of investment in transmission facilities since the issuance of Order No. 1000 has been in local transmission facilities."[25] This will continue to be the case unless and until the Commission requires change. The limited scope of regional planning has contributed to highly localized projects that do not contribute to meeting regional grid needs and that are implemented at an enormous cost to ratepayers unmitigated by competition.

[24] In 2018, 99% of the total capital investment in transmission in Ohio was spent on Supplemental Projects.
[25] NOPR at P 40.

C. The Complainants' Proposed 100 kV Threshold Is a Just and Reasonable Replacement Rate.

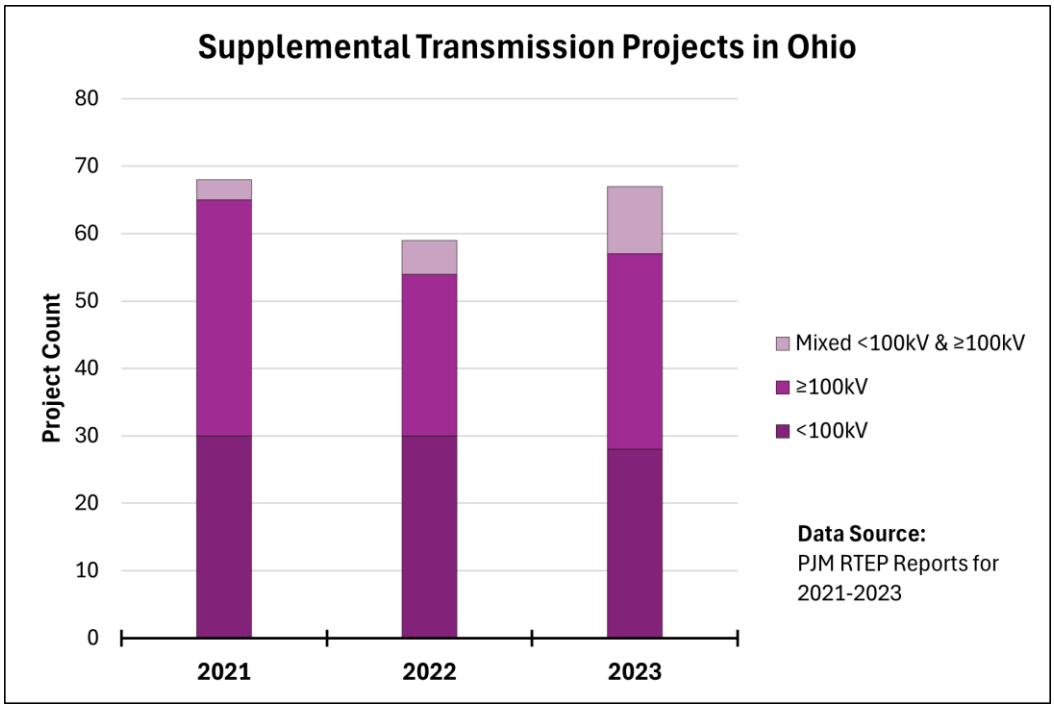
PJM has repeatedly declined to exercise additional control over local projects, asserting that such oversight is beyond its purview.[26] Appropriately, the Complainants take a wider view and assert that the issue is a national problem that only the Commission can remedy.[27] In the filing, the Complainants suggest the Commission direct all RTOs/ISOs to reform their tariffs to include oversight of transmission projects at 100 kV and above, and that non-RTOs/ISOs conversely prohibit local transmission planning for FERC-jurisdictional facilities at 100 kV or above. The complaint further suggests the Commission order that regional planning processes required by Order No. 1000 be revised to include regional planning for *all* transmission needs at 100 kV and above, including EOL and other needs currently excluded from regional planning. The Complainants argue these changes are necessary to efficiently and cost-effectively manage an increasingly integrated and complex grid and to ensure just and reasonable rates.

In the filing, the Complainants highlight the historic and current application of a 100 kV threshold as the demarcation of the "Bulk Electric System" for purposes of reliability standards administered by NERC that apply to that system. The filing explains that "compelling technical reasons" contributed to the establishment of a 100 kV bright-line threshold (with limited exceptions) by the Commission in Order No. 743 in 2010 and argues that extending that rationale now to the planning of all FERC-jurisdictional transmission facilities is warranted. The Complainants also describe the "Seven Factor Test" established in Order No. 888 and used to distinguish between Commission-jurisdictional and non-jurisdictional electric facilities. This well-established mechanism would continue to be used to determine whether specific facilities

[26] *See, e.g.*, PJM Tariff Filing, Docket No. ER20-2308-000 (July 2, 2020), at 4.
[27] Complaint at 36.

are FERC jurisdictional and thus subject to the reforms in the filing. The Complainants conclude that "for facilities above 100 kV that are jurisdictional transmission and part of the Bulk Electric System, they are by definition regional in nature and regionally impactful."[28] In turn, they conclude that "a uniform 100 kV threshold for mandatory regional planning is both natural and overdue, and necessary to obtain just and reasonable rates."[29]

As illustrated below, the Ohio FEA agrees that expanding regional planning to all transmission needs at 100 kV and above would meaningfully increase the scope of regional planning and significantly improve the potential for transmission planning processes to identify solutions that could cost-effectively address multiple needs at the same time.



It is widely understood, in PJM and elsewhere, that enormous challenges currently face transmission planners, grid operators, and regulators alike. Meeting these challenges, which stem primarily from the energy transition and significant anticipated load growth, demands effective

[28] Complaint at 224.
[29] *Id*. at Attachment C (Declaration of Michael A. Giberson, R Street Institute), at 5.

utilization of the existing transmission system and a comprehensive and coordinated approach to cost-effective transmission expansion.

D. The RTO/ISO Should Serve as the Independent Transmission Planner.

The other key element included in the Complainants' proposed replacement rate requires that regional planning be conducted by an independent transmission planner (ITP) to "address inefficiencies and biases in current planning processes."[30] In the 2021 ANOPR, the Commission posed questions related to monitoring transmission planning and its associated costs through an independent transmission monitor. The Ohio FEA responded that the RTO/ISO is the appropriate entity to accomplish transmission monitoring activities for all transmission projects in its region.[31] The Ohio FEA maintains that PJM can, and should, perform broad-based regional transmission planning and, importantly, do so with proper independence from transmission owners. For RTO/ISO regions, the Ohio FEA requests the Commission clarify how the proposed ITP function is or may be accomplished by the RTO/ISO instead of creating another separate entity to oversee transmission planning.

III. Conclusion

The Ohio FEA agrees that continued local planning by individual transmission owners of regionally integrated and FERC-jurisdictional transmission circumvents the benefits of regional planning. The widely disproportionate investment in local projects not subject to regional processes threatens the Commission's goal of an efficient grid at just and reasonable rates and runs counter to the goals of regional coordination sought by the Commission since Order No. 2000. FERC has broad authority over electric transmission under the FPA and must exercise that

[30] *Id.* at Attachment C (Declaration of Michael A. Giberson, R Street Institute), at 34.
[31] Ohio FEA Comments, RM21-17-000 (October 12, 2021), at 23.

authority to ensure efficient utilization of the existing transmission system and the cost-effective, comprehensive, and coordinated enhancement of transmission infrastructure across the country. The time has come for an increased number of local projects to be subject to regional planning and regulatory oversight and approval.

Respectfully submitted,

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On Behalf of the Public Utilities Commission of Ohio's Office of the Federal Energy Advocate

March 20, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have on this date caused a copy of the foregoing document to be served on each person included on the official service list maintained for this proceeding by the Commission's Secretary, by electronic mail or such other means as a party may have requested, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010. Dated this the 20th day of March 2025, at Columbus, Ohio.

/s/ Thomas G. Lindgren
Thomas G. Lindgren
Assistant Attorney General