

**BEFORE
THE OHIO POWER SITING BOARD**

IN THE MATTER OF THE OHIO POWER)	
SITING BOARD'S REPORT TO THE)	CASE No. 21-796-EL-UNC
GENERAL ASSEMBLY REGARDING THE)	
POWER TRANSMISSION SYSTEM.)	

**COMMENTS OF AMERICAN MUNICIPAL POWER, INC.
AND OHIO MUNICIPAL ELECTRIC ASSOCIATION**

On September 24, 2021, pursuant to Ohio Revised Code (“RC”) Section 4906.105, which requires the Ohio Power Siting Board (“Board”) to submit a report to the General Assembly as to whether the current transmission planning and siting requirements are cost effective and in the interest of consumers, Board Staff issued a proposed draft of the report. The same day, Administrative Law Judge Walstra issued an Entry soliciting comments on the draft report from interested stakeholders. The Entry directed written comments on the proposed report be filed by October 8, 2021 and noted that a public hearing be held on October 21, 2021. On August 4, 2021, American Municipal Power, Inc. (“AMP”) and Ohio Municipal Electric Association (“OMEA”) submitted comments in response to a Board Entry requesting feedback on whether the current transmission planning and siting requirements are cost effective and in the interest of consumers prior to the Board’s issuance of the draft Report. AMP and OMEA now respectfully submit the following comments on the draft Report for the Board’s consideration. For ease of reference, hereinafter, AMP and OMEA will be referred to as “AMP” but the comments are supported by both parties.

I. COMMENTS

A. Transmission Oversight Authority

The draft Report spends a significant portion of the total information summarizing federal matters where regional transmission planning is being discussed or challenged. The draft report provides only a cursory review of the federal authority over transmission rate and planning and the regional process.¹ The draft Report accurately notes that the Federal Energy Regulatory Commission (“FERC”) retains jurisdiction over the transmission of electric energy in interstate commerce and the facilities for such sales or transmission, but that the state and municipalities retain jurisdiction over facilities used for the generation of electric energy and facilities used in local distribution.² The draft Report also notes that FERC delegated transmission planning and operation to regional transmission organizations (“RTOs”), including PJM Interconnection, L.L.C. (“PJM”), which covers a 13-state footprint, including Ohio.³ However, the draft Report: (1) overstates the breadth and depth of the regional transmission planning and review process; and (2) fails to include any discussion of the Board’s authority or statutory obligations with regards to transmission siting.

The draft Report would have the General Assembly believe that proposed transmission projects are reviewed and approved by PJM and/or FERC. That is simply incorrect.

¹ Draft Report at 3.

² *Id.* at 3.

³ *Id.* at 3-4.

The draft Report states that “PJM reviews each category of transmission projects (i.e., baseline, supplemental, and network upgrades) through its RTEP process.”⁴ The draft Report further asserts that “the projects that the OPSB currently reviews at 100 kV and above, those projects are subject to an additional level of review at the regional level by PJM to examine various aspects of those projects in the context of the larger regional transmission plan.”⁵ Notably, the draft Report also highlights the exorbitant costs to Ohio customers of Supplemental Projects, which make up over 97% of transmission investments in Ohio.⁶

PJM has a transmission planning process called the Regional Transmission Expansion Plan (“RTEP”). However, while transmission projects get rolled up into RTEP, it is incorrect that “PJM reviews each category of transmission project... through its RTEP process.”⁷ Supplemental Projects are defined as transmission expansions or enhancements that are not required for compliance with the following PJM criteria: system reliability, operational performance or economic criteria, pursuant to a determination by PJM, and are not state public policy projects pursuant to section 1.5.9(a)(ii) of Schedule 6 of the PJM Operating Agreement. Although there have been some minor improvements to the Supplemental Project process in PJM over the last several years, there is still no regulatory authority that reviews or approves Supplemental Projects. There is no confirmation of the transmission owner’s assertion of the need for the project. And there is no determination that the project is the more

⁴ *Id.* at 5.

⁵ *Id.* at 9.

⁶ *Id.* at 5.

⁷ Draft Report at 5.

efficient or cost-effective transmission facility. The PJM Board does not approve Supplemental Projects. FERC does not review or approve Supplemental Projects on any level unless a complaint is filed wherein the complainant bears the burden of providing the Supplemental Project is not prudent – often after it is already in service. While AMP agrees that these are shortcomings with the regional and federal processes that are being addressed through other venues and not up for debate here, the Board should recognize that there is not any other entity, let alone one with more expertise than the Board staff, that is thoroughly vetting and approving Supplemental Projects. As the draft Report notes, Supplemental Projects make up the vast majority of transmission projects in Ohio – costing Ohio ratepayers well over \$5 Billion in the last three years. Accordingly, it is critical for the Board to recognize the importance of its role in transmission planning, which the draft Report fails to do.

As AMP noted in the August 4, 2021 Comments, Sections 4906.03 and 4906.10, Revised Code, require the Board to approve, disapprove, or modify and approve applications for certificates of environmental compatibility and public need (“certificates”) for any “major utility facility.”⁸ Under Section 4906.10, RC, for transmission facilities, the Board may not grant a certificate unless it finds, in pertinent part:

- (1) The basis of the need for the facility;
- (2) The nature of the probable environmental impact;
- (3) That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;
- (4) That the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;

⁸ Section 4906.04, Revised Code.

- (5) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters and under section 4561.32 of the Revised Code; and,
- (6) That the facility will serve the public interest, convenience, and necessity.

Thus, the Board has a regulatory obligation that is unique and distinct from any regional or federal review – namely to determine that there is a need for the facility and that the facility is in the public interest. No other entity performs this review.

As the Board of Directors of the National Association of Regulatory Utility Commissioners (“NARUC”) stated in a 2005 resolution, “State commissions have been, and are likely to continue to be, the regulatory agencies that have the closest contact with the providers of retail electric service and that best understand the needs of retail customers....”⁹ FERC recently recognized that “states or other local governing bodies may be uniquely situated in... providing information related to infrastructure siting or resource mix as influenced by state and local policies” and sought comment on how state and local input should be reflected by RTOs like PJM in developing future scenarios including the more efficient or cost-effective transmission facilities that may be necessary to facilitate those future scenarios.¹⁰

The draft Report notes that the Board’s siting review process “would not be a substitute for the [Regional Transmission Planning and Expansion Process] review that is done by PJM for all transmission projects or the approval that should be done by PJM for supplemental transmission projects.” There is no question that the siting process is distinct from the PJM RTEP and is not intended to substitute the State’s judgment for

⁹ NARUC Resolution Relating To the Federal/State Jurisdictional Boundaries in Setting Generation Resource Adequacy Standards (available at: <https://pubs.naruc.org/pub.cfm?id=539FD10C-2354-D714-5144-F7199C39CAFE>).

¹⁰ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 176 FERC 61,024, Advanced Notice of Proposed Rulemaking at P 52 (July 15, 2021) (“ANOPR”).

the RTO's. However, the draft Report fails to acknowledge the Board's obligations and authority. The State's determination of need through the siting process serves as an important foundation for FERC's and PJM's regional and federal transmission planning.

However, current law severely limits the transmission projects that are defined as "major utility facilities." Section 4906.01(B)(1)(b), RC, defines a major utility facility as an electric transmission line and associated facilities of 100 kilovolts ("kV") or more. Additionally, the replacement of an existing facility with a like facility, as determined by the Board, "shall not constitute construction of a major utility facility." Section 4906.04, RC. These two limitations exclude the vast majority of transmission projects being planned and constructed by the Ohio transmission owners as they either fall below the 100 kV threshold or are replacements of existing infrastructure.

The draft Report refers to the guidelines in PJM's process for transmission owners to identify Supplemental Projects, presumably for the purpose of noting the criticality of Supplemental Projects.¹¹ The quoted language indicates that Supplemental Projects "enable the continued reliable operation of the transmission system by meeting customer service needs, enhancing grid resilience and security, promoting operational flexibility, addressing transmission asset health, and ensuring public safety, among other things."¹² The draft Report concludes, "[g]iven the importance of these projects, they should be reviewed by an authority that may deny a project if it does not meet these criteria." AMP agrees.

¹¹ Draft Report at 12.

¹² *Id.* at 12.

PJM and FERC do not make those determinations and have no authority to deny a Supplemental Project that is not needed and is not in the public interest. The PJM Operating Agreement that delineates the RTEP process specifically provides:

“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 the Interconnection. **These Supplemental Projects shall be separately identified in the RTEP and are not subject to approval by the PJM Board.**”¹³

Rather, the planning process for Supplemental Projects — those that are not required to satisfy reliability, operational performance or economic criteria — is left up to individual transmission owners, receives minimal oversight by PJM, and is not approved by PJM or FERC. In compliance with a recent FERC directive, the PJM Transmission Owners have implemented a process to provide stakeholders a minimum amount of information about the proposed supplemental transmission projects. However, there is not sufficient information to enable stakeholders to replicate or verify the plans. And, Supplemental Projects are not subject to competition. Additionally, even many baseline projects in PJM that are below a 200 kV voltage threshold are not included in the normal, more rigorous competitive process.¹⁴ Thus, for many transmission projects, PJM lacks a process to thoroughly vet transmission proposals or determine the need or other criteria embedded in the Ohio siting process. Nonetheless, transmission project costs are passed along to consumers without a determination that they are necessary or prudent

¹³ PJM Operating Agreement, Schedule 6, Section 1.5.6(n) (emphasis added) (available at: <https://agreements.pjm.com/oa/4773>).

¹⁴ See PJM Operating Agreement, Schedule 6, Section 1.5.8(n) Reliability Violations on Transmission Facilities Below 200 kV.

before they go into service. This means that most of the transmission projects that are being planned and constructed in Ohio (below 100 kV) do not receive any review or approval from the Power Siting Board, PJM, FERC, or any other regulatory agency. Consequently, there is no verification of need or cost effectiveness of the transmission being built and no determination that the Supplemental Projects are in the public interest. The Power Siting Board cannot and should not rely on PJM for regulatory oversight or any determination of need for transmission projects in Ohio.

The draft Report notes that lowering the voltage threshold for Board jurisdiction would not change the cost allocation of transmission as it is federally regulated.¹⁵ While AMP agrees that lowering the voltage threshold for power siting review will not have any impact on either rates or cost allocation, both of which are regulated at the federal level,¹⁶ Ohio customers deserve the right to trust that the transmission assets that they pay for have been determined to be needed and in the public interest. Without including 69 kV transmission projects in the Power Siting Board's authority, no such determination is made but the costs roll through transmission rates. Lower voltage transmission and sub-transmission provide critical reliability and resilience to the transmission grid in Ohio, and Ohio's transmission owners are recovering the costs of lower voltage transmission through FERC-accepted rates that all Ohio customers pay. Each of the Ohio transmission owners recover through FERC-accepted transmission rates the costs associated with 69 kV transmission facilities and, in some cases, transmission facilities of lower voltage levels. For example, PJM's Tariff identifies that the Dayton Power and Light Company ("DP&L"), American Transmission Systems,

¹⁵ Draft Report at 9.

¹⁶ *Id.* at 9.

Incorporated (“ATSI”), and Duke Energy Ohio (“DEOK”) each recover costs from customers of transmission service over their respective “69 kV and higher transmission facilities.”¹⁷ Several transmission owners determine whether rates include costs for voltage thresholds below 69 kV on a case-by-case basis. Expanding the OPSB’s jurisdiction will not change the FERC-approved rates of Ohio’s transmission owners. However, it will require a determination of need and that the public interest is served by the transmission projects Ohio customers are paying for.

The draft Report states that expanding the OPSB’s jurisdiction to transmission facilities at 69 kV “is a potential solution for providing increased oversight over transmission projects.”¹⁸ However, the draft Report then dances around what such a jurisdictional change would not achieve and notes that the General Assembly should consider the costs, regulatory certainty and expediency associated with the change. Ultimately, the draft Report falls short of making a recommendation on whether “the definition of a major utility facility should include an electric transmission line of a design capacity at or above sixty-nine kilovolts and associated facilities the costs of which are recovered as a transmission asset by the transmission owners” as specifically requested by the General Assembly.¹⁹ The Power Siting Board should recommend that

¹⁷ See, for example, PJM Open Access Transmission Tariff, Attachments H-14, H-15, H-21 and H-22. Although AEP’s tariff sheet is not as clear about the voltage threshold above which it includes in its revenue requirement, AEP Ohio announces transmission plans that include transmission facilities below 100 kV in rates. See, for example, “AEP Ohio to upgrade about 25 miles of 34.5-kV line to 69-kV standards in Ohio” (available at: <https://www.aepohio.com/company/news/view?releaseID=6047>) (On March 16, 2021, AEP Ohio announced plans to upgrade 25 miles of 34.5 kV transmission line to 69 kV standards, including building 10 miles of new 69 kV transmission line and building three new substations, impacting customers in four northwest counties. The upgrade will become part of AEP Ohio’s revenue requirement.

¹⁸ Draft Report at 9.

¹⁹ Am. Sub. H.B. 128, 134th Gen. Assemb., (Ohio 2021).

the General Assembly change the definition of “major utility facility” to expand the transmission proposals subject to OPSB jurisdiction to electric transmission lines of a design capacity at or above sixty-nine kilovolts and associated facilities, the costs of which are recovered as a transmission asset by the transmission owners.

Additionally, Sections 4906.03 and 4906.04, RC, should be revised to remove the exclusion for “replacement of an existing facility with a like facility” from the definition of a “major utility facility.” End of life projects that replace aging infrastructure are a significant portion of the transmission planning and construction in Ohio – considered a subset of Supplemental Projects by PJM transmission owners. At the very least, proposed projects that replace existing facilities should require certificates if they increase the capability of existing facilities or require expanded or new right of way. Transmission owners proposing End of Life projects should be required to demonstrate that the replacement is actually a “like facility” and does not expand the transmission grid or right of way.

These two changes would expand the certification process to ensure that the majority of transmission projects in Ohio are determined to be needed and serve the public interest. Moreover, the changes would align the transmission planning and siting process in Ohio with goals of building the grid of the future that accommodates a long-term planning horizon, includes improvements that help the grid adapt to change and become more resilient, and facilitates the shifting fleet of generation resources, rather than simply rebuilding the grid of the past.²⁰

AMP recognizes that the proposed modifications to the “major utility facility” definition would result in increased workload for the Power Siting Board and its staff and

²⁰ See <https://insidelines.pjm.com/how-pjms-regional-planning-process-prepares-the-grid-for-the-future/>.

AMP is sensitive to the corresponding need for increased resources. For this reason, AMP recommends that Section 4906.02, RC, be modified to permit the Power Siting Board chairperson to hire technical and/or legal staff as full-time employees of the Board or through consulting agreements. Funding for these staff additions and/or consultants could be funded through an assessment on applicants seeking a certificate. This would ensure that Board has the resources and technical capabilities to properly review proposed projects.

Additionally, to the extent that the Board determines it is necessary, Section 4906.03, Revised Code, should permit the Board to extend the duration available to render a decision on an application for a construction certificate from 90 days to 180 days. This would ensure there is adequate time for the Board and staff to thoroughly and properly review proposed projects.

B. Other Potential Requirements for Transmission Applications

AMP agrees with the draft Report's support for additional measures to be considered in the siting process, including an examination of an applicant's consideration of alternatives for transmission projects and competitive bidding processes; whether the project could have been deferred or redesigned to achieve the same operational results at a lower overall cost; and that historical information for an existing transmission project or information for a planned or proposed project be provided. AMP also agrees that if the General Assembly expands the OPBS's jurisdiction, these criteria should be consistently applied.

II. CONCLUSION

AMP appreciates the opportunity to provide these comments to the Board for consideration by the Board and JobsOhio as they complete the important report

required by Section 4906.105, RC to the General Assembly as to whether the current transmission planning and siting requirements are cost effective and in the interest of consumers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of American Municipal Power, Inc. and Ohio Municipal Electric Association was served upon the following parties of record this 8th day of October, 2021, via electronic transmission or first class mail, postage prepaid.

/s/ Lisa G. McAlister

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