BEFORE THE OHIO GENERAL ASSEMBLY

In the Matter of the Ohio Power Siting Board's Report to the General Assembly Regarding the Power Transmission System	: : : :	PUCO Case Number 21-796-EL-UNC

OHIO POWER SITING BOARD
REPORT TO THE GENERAL ASSEMBLY
REGARDING THE POWER TRANSMISSION SYSTEM

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The Ohio Power Siting Board (OPSB) respectfully submits this report in response to Amended Substitute House Bill 128 of the 134th Ohio General Assembly (H.B. 128), effective June 30, 2021.[1]

I. Introduction

Ohio Revised Code 4906.105 requires the OPSB to submit a report to the Ohio General Assembly by December 1, 2021, regarding whether the current requirements for the planning of the power transmission system and associated facilities investment in Ohio are cost effective and in the interest of consumers.[2] The Ohio General Assembly provided a series of topics for which the OPSB could review and recommend legislative changes.[3] This report provides the OPSB's analysis of all areas of review suggested by the Ohio General Assembly.

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[1] Am. Sub. H.B. 128, 134th Gen. Assemb., (Ohio 2021).
[2] R.C. 4906.105.
[3] Those areas included:

> (A) 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;
> (B) Whether the criteria for an accelerated certificate application should be modified;
> (C) Whether the certification process is sufficiently transparent;
> (D) Whether the board should require the following for, or determine if the following apply to, a transmission project certification application:
>
> > (1) That alternative transmission projects were considered;

(footnote continued on next page)

The OPSB met with and elicited comments from interested stakeholders. The feedback evidenced a focus on the first topic outlined by the General Assembly: whether the statutory definition of a major utility facility should include electric transmission lines at or above 69 kilovolts (kV). The OPSB has jurisdiction over every major utility facility as defined by statute, which currently includes transmission lines but only at 100 kV and above.[4] The feedback and the public comments received recognize that the jurisdictional question is tied to the overarching question for the report: whether current requirements "are *cost effective* and in the interest of consumers." Because the federal government has jurisdiction over transmission, the OPSB will discuss this jurisdiction component—how the Federal Energy Regulatory Commission (FERC) has jurisdiction over transmission cost allocation and PJM reviews transmission projects—before providing responses on the remaining areas for analysis.

Through this report, the OPSB aims to provide its technical input to the Ohio General Assembly. The OPSB's mission is to support sound energy policies that provide for the installation of energy capacity and transmission infrastructure for the benefit of Ohio citizens, promote the state's economic interests, and protect the environment and land use. The OPSB appreciates this opportunity to provide feedback to the Ohio General Assembly.

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(2) That the project was competitively bid or compared to the results of a competitive bid;
(3) That the project has been considered in the context of the utility's larger transmission plan;
(4) That the project has been considered in the context of the regional transmission planning process of PJM interconnection regional transmission organization, L.L.C.;
(5) That the project could not have been deferred or redesigned to achieve the same operational result at a lower overall cost;
(6) That the project has provided historical information for an existing transmission project or information for a planned or proposed project.

[4] R.C. 4906.105 (emphasis added).

II. Background

In Ohio, a consumer's electric bill consists of charges for three areas: transmission (the transportation of electricity over greater distance with higher-voltage wires); generation (the production of electricity); and distribution (lower-voltage wire service). The Federal Power Act provides jurisdiction to the FERC over the transmission of electric energy in interstate commerce, the sale for resale of electric energy in interstate commerce, and the facilities for such sales or transmission.[5] However, FERC does not have jurisdiction over facilities used for the generation of electric energy or over facilities used in local distribution.[6]

In the transmission arena, FERC has created avenues to spur competition in transmission service, including through the incentivization of regional transmission organization formation, which are entities having a regional scope of operation, as well as planning and expansion authority of transmission facilities within that region.[7] In fact, in Ohio, transmission owners are required to join a regional transmission organization.[8] PJM is the only such organization controlling transmission

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[5] *See* 16 U.S.C. 824; *see also Mississippi Power & Light Co. v. Mississippi ex rel. Moore* (487 U.S. 354, 375 (1988)), wherein the U.S. Supreme Court determined that where FERC has allocated costs, state proceedings may not be used as a forum for a collateral attack on the reasonableness of those costs.

[6] *See* 16 U.S.C. 824(b)(1), stating FERC "shall not have jurisdiction …over facilities used for the generation of electric energy or over facilities used in local distribution…" *See also AEP Texas N. Co. v. Hudson*, 389 F.Supp.2d 759, 765, *aff'd sub nom. AEP Texas N. Co. v. Texas Indus. Energy Consumers*, 473 F.3d 581 stating: "Any state action is therefore preempted if its effect is to interfere with FERC's interstate allocation of costs among the companies of an integrated power system."

[7] *See* Order No. 2000, *Regional Transmission Organizations*, 89 FERC ¶ 61,285 (codified at 18 C.F.R. 35.34). *See also* 18 C.F.R. 35.34(j)(3) and (7).

For other major FERC orders related to the incentivization of competition in transmission service, *see also* Order No. 1000, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 136 FERC ¶ 61,051; *see also* Order No. 888, *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, FERC Stats. & Regs. ¶ 31,036 (1996) (cross-referenced at 75 FERC ¶ 61,080), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998); *see also* Order No. 679, *Promoting Transmission Investment through Pricing Reform*, 71 Fed. Reg. 43,294 (2006), (cross-referenced at FERC Stats. & Regs. ¶ 31,222 and 116 FERC ¶61,057), order on reh'g Order No. 679-A, 72 Fed. Reg. 1152 (2007) (cross referenced at FERC Stats. & Regs. ¶ 31,236). *See also* 18 C.F.R. 2.21.

[8] R.C. 4928.12.

facilities in Ohio. PJM has a process, termed the Regional Transmission Expansion Plan (RTEP), through which it plans, reviews, and approves transmission projects and their costs within the PJM region. Once approved at PJM, the projects are then filed at FERC for approval and cost allocation through the FERC-authorized formula rates of each transmission utility.

Additionally, FERC has multiple open proceedings and forums through which it is actively seeking stakeholder comment related to transmission planning and associated cost recovery. Through the Public Utilities Commission of Ohio's (PUCO or Commission) comments and reply comments submitted on its behalf or by the PUCO's Federal Energy Advocate (FEA),[9] the PUCO or FEA is participating in these proceedings to ensure transmission costs are reviewed appropriately and within the proper venue.

III. Transmission Costs and Oversight at the Regional and Federal Levels

Transmission Costs and Project Types

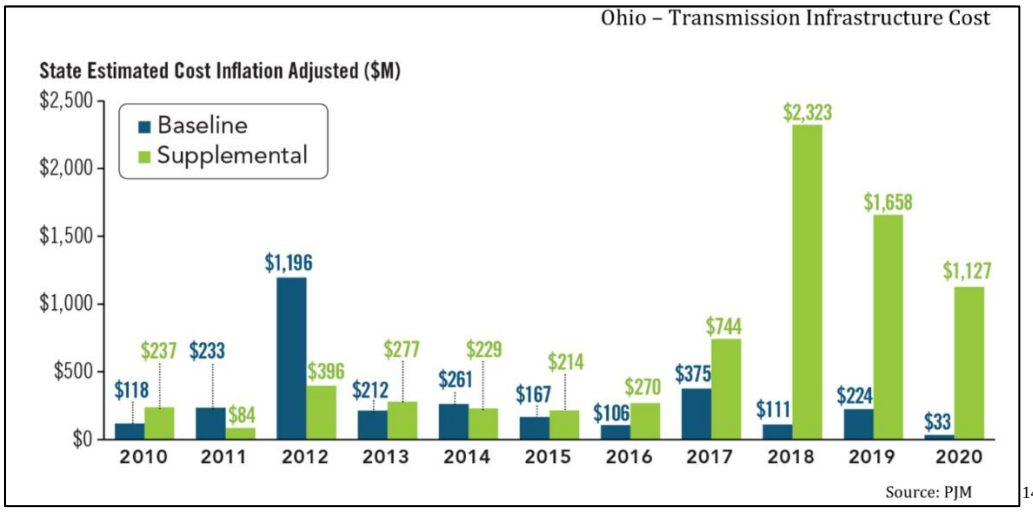
In reviewing transmission projects, PJM categorizes projects as: (1) baseline projects; (2) supplemental projects; and (3) network upgrades.[10] Sixty-nine kV projects can be reviewed in any of these three categories but are frequently listed as supplemental projects.[11] For supplemental projects of any voltage level, including but not limited to 69 kV, the PJM independent market monitor (IMM)

[9] R.C. 4928.24 provides for the PUCO to employ a federal energy advocate to advocate on behalf of the interests of retail service consumers in the state.

[10] Baseline projects address violations of PJM reliability criteria, projects for economic efficiency, as well as transmission-owner criteria. Network upgrades are for new generation and merchant transmission projects to interconnect reliably to the grid through PJM's interconnection queue. Supplemental projects are for addressing local transmission needs. *See* PJM, "The Benefits of the PJM Transmission System," p. 10, available at https://www.pjm.com/-/media/library/reports-notices/special-reports/2019/the-benefits-of-the-pjm-transmission-system.pdf.

[11] As of August 21, 2021, of the 50 supplemental projects that were under construction in Ohio: 15 were 69 kV lines; four were for higher voltage lines but also involved 69 kV lines; and five others involved lines below 69 kV. As of the same date, of the 38 baseline and network projects that were under construction in Ohio: four were 69 kV lines; three were for higher voltage lines but involved 69 kV lines as well; and none involved lines below 69 kV. *See* PJM, "Project Status & Cost Allocation," available at https://www.pjm.com/planning/project-construction.
Therefore, 69 kV projects comprised 30-38% of under-construction supplemental projects in Ohio as of that date, and they comprised approximately 10-18% of baseline projects.

indicated supplemental projects have increased by 795 percent for years 1998 through 2021.[12]Additionally, the graph below illustrates in 2020, approximately 97 percent of Ohio transmission investments represented supplemental projects. Notably, these investment figures represent only projects that cost at least $5 million.[13]



[14]

Appendix B contains additional graphs and data showing transmission charges as paid by Ohio customers.

PJM RTEP Review

PJM reviews each category of transmission projects (i.e., baseline, supplemental, and network upgrades) through its RTEP process.[15] PJM's RTEP process is a detailed planning process governed by an extensive series of manuals, tariffs, and agreements at PJM.[16] The purpose of the RTEP process

[12] Monitoring Analytics, LLC, "State of the Market Report for PJM: January through March," pg. 598, available at https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2021/2021q1-som-pjm.pdf (May 13, 2021).
[13] *See also* PJM, "2020 Ohio State Infrastructure Report," April 2021, p. 3, available at https://www.pjm.com/-/media/library/reports-notices/state-specific-reports/2020/2020-ohio-state-infrastructure-report.ashx.
[14] The data in this graph are continuously updated; current data are available from PJM.
[15] *See* PJM Operating Agreement, Schedule 6, FERC Docket ER11-4040, effective July 14, 2011, setting forth the PJM RTEP process. *See also* "Regional Transmission Expansion Planning: Planning the Future of the Grid, Today," available at https://www.pjm.com/-/media/library/reports-notices/2019-rtep/regional-transmission-expansion-planning-planning-the-future-of-grid-today.ashx.
[16] *See, e.g.*, PJM Manual 14B: PJM Region Transmission Planning Process, effective June 23, 2021; PJM Operating Agreement, Schedule 6, Regional Transmission Expansion Planning Protocol.

is to consolidate the transmission needs of the region into a single plan assessed on the bases of (1) maintaining the reliability of the PJM region in an economic and environmentally acceptable manner, (2) supporting competition in the PJM region, (3) striving to maintain and enhance the market efficiency and operational performance of wholesale electric service markets, and (4) considering federal and state public policy requirements.[17]

The RTEP process involves a long-term (i.e. 15-year) outlook at regional transmission planning and includes an evaluation of reliability criteria of the North American Electric Reliability Corporation; competition; market efficiency; operational performance; expected generation additions and retirements; public policy engineering studies; load and capacity forecasts; system constraints; interregional transmission congestion; an examination of the ability of companies to adhere to the construction, maintenance, and operating practices; an in-depth cost-benefit analysis and many other matters.[18]

While stakeholders have raised concerns about the PJM review process, particularly in relation to the FERC-approved PJM Tariff framework for planning Supplemental Projects under the PJM Open Access Transmission Tariff (OATT) Attachment M-3 (the "M-3 Process"), the avenue for review of these PJM processes is through PJM, whose processes are then ultimately approved by FERC.[19] One example of stakeholder concern with the M-3 process is that the process provides only

[17] *Supra* FN 14 at Section 1.4.
[18] *Supra* FN14. *See also* PJM Manual 14B: PJM Region Transmission Planning Process Revision: 49, Effective Date: June 23, 2021, available at https://pjm.com/-/media/documents/manuals/m14b.ashx.
[19] *See* PJM Transmission Owners Attachment M-3 Process Guidelines, Version 0.1, p. 8, available at https://www.pjm.com/-/media/planning/rtep-dev/pjm-to-attachment-m3-process-guidelines.ashx.

In relation to FERC-required approval of rates, charges, classification, services, and contracts related thereto, see 16 U.S.C. 824d (i.e. Section 205 of the Federal Power Act). Under a 205 proceeding, an entity seeking a change in rate, term, or condition carries the legal burden of demonstrating the proposal is just and reasonable. 16 U.S.C. 824d(e).

an opportunity to discuss supplemental projects. The projects may then proceed without specific approval by PJM or stakeholders.[20]

Therefore, in addition to the existing review of transmission infrastructure projects and their costs through PJM's RTEP process, transmission infrastructure replacement and associated costs *can be and are presently* under review at FERC, where state commissions, such as the PUCO may timely intervene as a matter of right.[21] A sampling of current federal matters where the PUCO and/or its statutorily required Federal Energy Advocate[22] have intervened, provided comments, or otherwise participated include:

- **PJM M-3 Review**: On June 12, 2020, the PJM transmission owners and, separately, the PJM stakeholders, applied with FERC to expand the M-3 process, in order to incorporate an additional category of projects for replacing existing infrastructure that is at or approaching the end of its useful life (i.e., end-of-life or EOL projects).[23] Both cases are on appeal at the DC Circuit court.[24]
- **FERC-NARUC Task Force**: In June 2021, FERC announced a collaboration with the National Association of Regulatory Utility Commissioners (NARUC) to establish a joint federal-state task force to evaluate barriers to, and solutions to facilitate, enhanced transmission development, including: "mechanisms to ensure that transmission investment is cost effective, including approaches to enhance transparency and improve oversight of

[20] *See, e.g.*, PJM Presentation Attachment M-3 Update, Aaron Berner, Manager of Transmission Planning, available at https://www.pjm.com/-/media/committees-groups/committees/pc/2021/20210309/20210309-item-08-attachment-m-3-update.ashx (March 9, 2021).
[21] 18 C.F.R. 385.214.
[22] R.C. 4928.24: The public utilities commission shall employ a federal energy advocate to monitor the activities of the federal energy regulatory commission and other federal agencies and to advocate on behalf of the interests of retail electric service consumers in this state.
[23] PJM Interconnection, L.L.C. Tariff Filing: Amendments to Attachment M-3, FERC Docket Nos. ER20-2046 and ER20-2308.
[24] *American Municipal Power, Inc. et al., v. FERC,* Case Nos. 20-1449, 21-1006 (D.C. Cir.) (Consolidated appeals of FERC orders in Docket No. ER20-2046, et al.).

transmission investment including, potentially, through enhanced federal-state coordination."[25] The task force had its first meeting on November 10, 2021. Questions discussed included, "Is there sufficient transparency in the existing regional transmission planning process and are state perspectives sufficiently considered and incorporated?"[26]

- **PJM Workshop Series on Interconnection Policy**: PJM is currently hosting an interconnection policy workshop series to focus on issues that affect interconnection with transmission facilities.[27]
- **FERC Transmission Planning and Cost Allocation Rulemaking:** On July 15, 2021, FERC issued an Advanced Notice of Proposed Rulemaking (ANOPR) seeking comment to "consider the need for more holistic transmission planning and cost allocation and generator interconnection processes, to plan the grid for the future, and to do so in a way that results in rates that are just and reasonable."[28] FERC sought comment on "whether there is sufficient clarity on the roles and responsibilities between state and federal regulators regarding the local transmission planning criteria and the development of local transmission facilities (e.g., "Supplemental Projects" in PJM). We [FERC] seek comment on whether such transmission facilities require additional oversight and whether additional coordination among state and federal regulators would be beneficial. Similarly, we [FERC] seek comment on whether and how greater oversight may improve coordination between individual transmission provider's

[25] *See* Order Establishing Task Force and Soliciting Nominations, *Joint Federal-State Task Force on Electric Transmission*, 75 FERC ¶ 61,224, FERC Docket No. AD21-15-000, at p. 3 (Issued June 17, 2021).
[26] FERC, Joint Federal-State Task Force on Electric Transmission, available at https://www.ferc.gov/TFSOET.
[27] PJM, Planning Committee, available at https://www.pjm.com/committees-and-groups/committees/pc and PJM, Cost Allocation Today and Possible Alternatives: Interconnection Policy Workshop: Session 2, June 24, 2021, available at https://www.pjm.com/-/media/committees-groups/committees/pc/2021/20210624/20210624-presentation-on-possible-cost-allocation-alternatives.ashx.
[28] Advanced Notice of Proposed Rulemaking, Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection, 176 FERC ¶ 61,024, FERC Docket No. RM21-17 (Issued July 15, 2021).

planning processes and regional transmission planning processes."[29] In comments that have been filed, numerous stakeholders, including the PUCO's Office of the Federal Energy Advocate and NARUC, have called upon FERC to improve the transmission planning process for supplemental or local projects due to the rising cost of those projects and their absence from regional transmission planning. NARUC stated that FERC "should further examine how to buttress the way in which local transmission or supplemental transmission projects and regional generation or reliability needs are interwoven. Current methods, such as 'do no harm' assessments, are not always sufficient in this regard."[30] Other parties have proposed ideas such as prohibiting federal incentives for local transmission projects, narrowing the scope of what constitutes a local project, and classifying 69 kV facilities with benefits to two or more zones or retail distribution service territories as interregional transmission facilities.[31]

The OPSB submits there are many processes, cases, and other efforts currently underway at the federal and regional levels to address regional and national concerns regarding transmission costs and transmission planning. Regardless of the direction the General Assembly chooses going forward, these pending federal and regional matters should be carefully monitored for their impact on the matters raised in this report.

[29] Id., at para. 171.

[30] Motion to Intervene and Initial Comments of NARUC at 15, FERC Docket No. RM21-17, October 12, 2021. *See also* PJM Transmission Owners Attachment M-3 Process Guidelines, Version 0.1, p. 8, available at https://www.pjm.com/-/media/planning/rtep-dev/pjm-to-attachment-m3-process-guidelines.ashx (discussing how supplemental projects are subject to a do-no-harm analysis).

[31] Comments of the Public Utilities Commission of Ohio's Office of the Federal Energy Advocate at 10-11, FERC Docket No RM21-17, October 12, 2021; Comments of the Pennsylvania Public Utility Commission at 16-17, October 12, 2021; Comments of the New Jersey Board of Public Utilities at 4-7, October 12, 2021; Initial Comments of the California Public Utilities Commission at 36-37, October 12, 2021; Comments of American Municipal Power, Inc. at 21-22, October 12, 2021; Comments of LS Power Grid, LLC in Response to the Commission's Advanced Notice of Proposed Rulemaking at 48 and 50, October 12, 2021; Comment of the Harvard Electricity Law Initiative at 20-26, October 12, 2021; Initial Comments of the Edison Electric Institute at 13-18, October 12, 2021.

IV. Examining a Potential OPSB Jurisdictional Change

Expanding the OPSB's jurisdiction to transmission facilities at 69 kV is a potential solution for providing increased oversight over transmission projects. However, while the OPSB looks at the need for transmission facilities that are currently within the OPSB's jurisdiction, the OPSB is not a regional transmission planner like PJM. And with 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. Lowering the OPSB's jurisdiction would not accomplish the same effect that could be accomplished by FERC directing the regional transmission planner, PJM, to review and approve those projects.

What is more, cost allocation would not change if the General Assembly were to lower the OPSB's jurisdiction to 69 kV. As previously explained, cost allocation for transmission projects is subject to FERC jurisdiction. FERC currently requires that all lower voltage transmission projects costs are allocated entirely to customers in the entire transmission zone or "footprint" of the transmission utility within PJM. A transmission utility's zone can cross state boundaries. This is true of several Ohio transmission utilities who currently operate in Ohio and other neighboring states in PJM. If a transmission utility sites or upgrades a lower-voltage project in any state in its multi-state territory within PJM, the costs will apply to all of its customers, including those in Ohio, that fall in that utility's zone or footprint.

If the General Assembly were to lower the OPSB's jurisdiction to 69 kV, there are a number of considerations that should be a part of the legislative deliberations to effect that change. First, as many stakeholders have indicated, lowering the jurisdiction to 69 kV would increase the number of

applications that the OPSB would be responsible for reviewing and approving.[32] Next, as stakeholders have mentioned, the application process with the OPSB involves costs for the applicant. The OPSB charges an application fee as prescribed in OPSB rules, and the applicants incur additional costs to prepare the application and advocate for the application's approval through the OPSB process. These costs will be passed on to customers. While there would be benefits to these customers from the OPSB's review of these projects, these benefits should be weighed against the potential for increased costs that would be imposed on customers.

Factors that should go into the determination of whether an OPSB jurisdictional change would accomplish the purposes described in R.C. 4906.105 include, first and foremost, the items that would be reviewed and evaluated by the OPSB and the basis upon which the OPSB would approve, modify and approve, or deny a 69 kV project. Other factors that should be considered involve the type of process that the 69 kV facilities would be subject to, the length of that process, and the cost-benefit analysis of the legislative change. This determination should involve considering whether the changes being made to the regulatory process would slow or impede important investments in Ohio transmission infrastructure that are needed for economic development or as discussed by Buckeye Power, to improve transmission in rural areas of the state—or other areas where investment is needed for reliability. Regulatory certainty and expediency are of paramount importance in this regard.

As mentioned above, the OPSB is not a regional transmission planner. When the OPSB reviews proposed facilities under the current regulatory framework, it reviews the need for the project and how the facility fits into "regional expansion plans."[33] The need review that is currently

[32] *See, e.g.,* Ohio transmission projects, including 69 kV lines, underway by AEP Transmission, available at: https://www.aeptransmission.com/ohio/ (accessed Sept. 20, 2021).
[33] R.C. 4906.10(A)(1) and (4).

undertaken by the OPSB is a very different analysis than that which goes on through the PJM RTEP process.

In sum, lowering the OPSB's jurisdiction to 69 kV, or removing the voltage threshold, would undoubtedly increase oversight for those projects. However, the OPSB's review would not be a substitute for the RTEP review that is done by PJM for all transmission projects or the approval that should be done by PJM for supplemental transmission projects.

V. Criteria for Accelerated Certificate Review

The OPSB notes that the criteria for accelerated certificate applications for transmission facilities are currently set forth in the OPSB's rules, Ohio Administrative Code Chapter 4906-6.[34] The OPSB is currently conducting rulemaking, allowing for a holistic stakeholder discussion on those accelerated certification criteria.[35] However, the OPSB also notes that if the jurisdictional threshold is changed to encompass additional transmission projects, changes to the current criteria for accelerated applications could contribute to efficiency for siting of those projects. As discussed earlier, efficiency and timely certification of these projects is essential for economic development in this state.

VI. Transparency of Certification Process

As to transparency in the certification, this section will address certification at both the state and federal level: (1) whether the current OPSB process for certification of transmission facilities is

[34] Of note, in 2020, the OPSB received 84 accelerated applications, six amended application, and 15 standard applications. As of September 20, 2021, the OPSB has received 55 accelerated applications, seven amended applications, and 24 standard applications.

[35] In the Matter of the Ohio Power Siting Board's Review of Ohio Adm.Code Chapters 4906-1, 4906-2, 4906-3, 4906-4, 4906-5, 4906-6, and 4906-7, Case No. 21-902-GE-BRO (initiated Aug. 31, 2021; workshops were initiated in early October).

sufficiently transparent; and (2) whether the current process for certification of transmission facilities at the regional level is sufficiently transparent.

As to the latter, as explained above, the PJM process for supplemental projects, the M-3 process, is not a process for certification. The PUCO's FEA has advocated with other parties, as discussed above, that the current M-3 process would benefit from reform to increase transparency. The OPSB supports this position and notes that the EOL cases are pending in the DC Circuit and the PUCO's FEA will continue to advocate for transparency in the M-3 process.[36]

But ultimately, transparency is only a window into what is happening, and not necessarily an avenue to change what is happening. As stated in PJM's Guidelines for the M-3 Process:

> Supplemental Projects are critical to the transmission system. They are transmission expansions or enhancements that 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.[37]

Given the importance of these projects, they should be reviewed by an authority that may deny a project if it does not meet these criteria.

As to the current OPSB process for certification of transmission facilities, the OPSB again notes that this process is subject to a pending rulemaking proceeding where the OPSB has been holding workshops for stakeholders and the public to engage in a discussion about ways to increase transparency. [38] The OPSB supports the increase of transparency in its own processes and will consider feedback from the public and stakeholders about ways in which the processes may be improved.

[36] *Supra* FN22.
[37] P. 4.
[38] *Supra* FN29.

The applications that come before the OPSB are filed in a public docket, which provides open transparency on pending cases. The process for certification before the OPSB currently offers several ways for the public to participate. If the transmission line is a major utility facility following the standard application process, the Applicant is required to hold a public informational meeting. The purpose of this meeting is for company representatives to inform stakeholders about plans to file an application with the OPSB. The meeting also serves as an opportunity to gather public input and hear the public's concerns, which the company considers in developing its application. In a standard application, a public hearing is also conducted to enable citizens, interest groups and government entities to present testimony. In all cases, whether involving a standard or accelerated application, interested persons are encouraged to submit written comments to the case for consideration of the OPSB.

Accelerated applications also require notice to the public and local government. Under Ohio Adm.Code 4906-6-07, a copy of the application must be served on the chief executive officer of each municipal corporation, county, township, and the head of each public agency charged with the duty of protecting the environment or of planning land use in the area in which any portion of such facility is to be located. The Applicant is also required to place a copy of the application or place a notice of the availability of such application in the main public library of each political subdivision as referenced in division (B) of section 4906.06 of the Revised Code. The applicant must also maintain on its website information as to how to request an electronic or paper copy of the application.

The accelerated review process carries with it an automatic approval date that generally ranges from 21 to 90 days after the application filing.[39] The standard application process, on the other hand, does not involve a deadline for an OPSB decision on an application.

[39] O.A.C. 4906-6-03.

VII. Other Potential Requirements for Transmission Applications

The chart below indicates the six criteria that have been set forth in R.C. 4906.105 and compares how those criteria currently factor into the application process, as well as the OPSB's recommendations regarding changes.

Criteria	Current requirements		OPSB recommendation
	Standard applications for transmission facilities	**Accelerated applications for transmission facilities**	
That alternative transmission projects were considered.	Currently addressed in multiple rules. Applicants must provide an analysis and evaluation of the options considered that would have eliminated the need for the proposed line, including changes to existing and planned transmission substations.[40] Also, design and equipment alternatives must be included where they influenced siting decisions.[41] Finally, applicants must submit cost estimates for various components of transmission facility alternatives.[42]	Not currently addressed in OPSB rules.	The OPSB supports an examination of an applicant's consideration of alternatives for transmission projects.
That the project was competitively bid or compared to the	Not currently part of OPSB rules.	Not currently addressed in OPSB rules.	The OPSB supports an examination of competitive bidding and a requirement for

[40] O.A.C. 4906-5-03.
[41] O.A.C. 4906-5-04(B).
[42] O.A.C. 4906-5-06(B).

Criteria	Current requirements		OPSB recommendation
	Standard applications for transmission facilities	**Accelerated applications for transmission facilities**	
results of a competitive bid.			an explanation if a project was not competitively bid. The OPSB is not recommending that projects must be competitively bid for certification. The OPSB should have the authority to weigh the factor of competitive bidding in its approval process. A competitive bidding requirement, for some projects, could slow down the certification process and impede economic development.
That the project has been considered in the context of the utility's larger transmission plan.	Currently encompassed in OPSB statute and rules. OPSB rules require applicants to explain how a proposed facility fits into regional expansion plans and include references to the proposed facility in long-term forecast reports.[43]	Required in the Revised Code[44] and OPSB rules require that the applicant include a statement explaining the need for the facility.[45]	For any change in jurisdiction, the OPSB recommends that this criterion would reflect and be consistent with OPSB rules and the PJM process.
That the project has been considered in the context of the regional transmission planning process of PJM.	As referenced above, currently encompassed in OPSB rules insofar as those rules require	Not currently addressed in OPSB rules, other than a requirement that the applicant include a	For any change in jurisdiction, the OPSB recommends that this criterion would reflect and be consistent with

[43] R.C. 4906.10(A)(1) and (4); O.A.C. 4906-5-03.
[44] R.C. 4906.10(A)(4).
[45] O.A.C. 4906-6-05(B)(2).

Criteria	Current requirements		OPSB recommendation
	Standard applications for transmission facilities	**Accelerated applications for transmission facilities**	
	applicants to explain how a proposed facility fits into regional expansion plans.[46] Rules also require applicants, in the application need assessment, to include relevant load flow studies depicting impacts on the larger transmission system.[47]	statement explaining the need for the facility.[48]	OPSB rules and the PJM process.
That the project could not have been deferred or redesigned to achieve the same operational result at a lower overall cost.	As referenced above, currently addressed in OPSB rules requiring applicants to provide an analysis and evaluation of the options considered that would have eliminated the need for the proposed line, including changes to existing and planned transmission substations.[49]	Not currently addressed in OPSB rules.	The OPSB supports an examination of this criterion for transmission projects, generally.
That the project has provided historical information for an existing transmission project or information for a planned or proposed project.	Not currently addressed in OPSB rules in relation to historical information, but frequently is provided in relation to an applicant's basis of need evaluation.	Not currently addressed in OPSB rules in relation to historical information, but frequently is provided in relation to an applicant's basis of need evaluation.	The OPSB generally supports provision of historical information, but urges specificity in the type of historical information that would be provided, and supports that any provision on historical information would be consistent with

[46] O.A.C. 4906-5-03.
[47] O.A.C. 4906-5-03(A) and (C).
[48] O.A.C. 4906-6-05(B)(2).
[49] O.A.C. 4906-5-03(D).

Criteria	Current requirements		OPSB recommendation
	Standard applications for transmission facilities	Accelerated applications for transmission facilities	
			applicable laws on confidentiality of this information and consistent with the PJM processes.

VIII. Conclusion

The OPSB respectfully submits these comments for the consideration and information of the General Assembly. The OPSB remains committed to serving as a resource in the General Assembly's deliberations and supports the General Assembly's efforts to ensure that Ohioans receive safe, reliable, cost-effective transmission service through a process that ensures the public interest and transparency.

IX. APPENDIX A: Summary of Initial Comments Received

Initial Comments Submitted on August 4, 2021

OPSB Staff met informally with stakeholders prior to H.B. 128's effective date, using these meetings to gather data, further the Staff's understanding of the issues, and develop understanding of the landscape in which the investigation for the report would be conducted. The OPSB Staff consulted with JobsOhio throughout the process. On July 14, 2021, the OPSB's administrative law judge opened a docket for the report, specifically Case No. 21-796-EL-UNC. The administrative law judge also issued an Entry on this date inviting any interested stakeholder to submit comments on the statutory report provisions by August 4, 2021.

Comments were filed on August 4, 2021, by the following stakeholders: (1) the public utility transmission owners (AEP Ohio Transmission Company, Inc, American Transmission Systems, Inc, Duke Energy Ohio, Inc, and Dayton Power and Light Company d/b/a AES Ohio, which filed jointly with Duke); (2) Buckeye Power, Inc; (3) American Municipal Power, Inc and the Ohio Municipal Electric Association, which filed jointly; (4) consumer representatives: the Ohio Consumers' Counsel, the Industrial Energy Users-Ohio, the Ohio Manufacturers' Association Energy Group, and the Ohio Energy Group; and (5) the Independent Market Monitor for PJM.

Comments of public utility transmission owners

The public utility transmission owners generally agreed that current certification—both the OPSB process and the regional and federal processes—are sufficiently transparent. AEP explained that for transmission projects under OPSB jurisdiction and non-OPSB-jurisdictional projects, AEP complies with all applicable laws and permitting requirements. AEP also mentioned additional steps they take to notify authorities such as the Ohio Historic Preservation Office.[50] AEP also noted the review of formula rates for transmission by the Federal Energy Regulatory Commission (FERC).[51]

Regarding consideration of alternatives, deferral, or redesign, and provision of historical information, the transmission owners argued that these should not be required. Reasons cited by AEP included the potential for outages from deferral and increased costs for designing and planning alternatives.[52] Duke and AES noted that consideration of alternatives may be appropriate under certain circumstances.[53] As for competitive bidding, AEP noted that only projects that meet the FERC Order No. 1000 criteria are eligible to be competitively bid, and a new competitive bidding requirement is unnecessary.[54] Duke and AES asserted that competitive bidding is already

[50] AEP p. 9-10.
[51] AEP, p. 10.
[52] AEP, p. 15.
[53] Duke and AES, p. 7.
[54] AEP, p. 11.

required, because utilities must demonstrate their expenditures are prudent. The companies further explained that prudency determinations should remain at the PUCO, as the OPSB is not set up to examine prudency of expenditures.[55] Finally, AES and Duke noted historical information provided through the M-3 process is often confidential.[56]

In response to the statute's question of whether projects should be considered as part of the utility's larger transmission plan, Duke and AES indicated that consideration already occurs through the regional planning process and state long-term forecast reports.[57]

On the question of whether the OPSB's current accelerated application process should be modified, the responses from the utilities were varied. AEP requested specific statutory changes.[58] ATSI suggested a workshop for stakeholders to exchange ideas on the existing certification process. ATSI also raised concerns that the criteria suggested in the statute, if added to the OPSB's review, may duplicate or conflict with regional and federal review.[59] Duke and AES advocated for (1) accelerated review of economic development projects; (2) immediate repair or replacement of facilities on an emergency basis; and (3) clearer rules regarding changes, such as a shift in the project path.[60]

As to whether the OPSB's jurisdiction should be lowered to 69 kV, the utility transmission owners generally disfavored the change. ATSI urged consideration of whether the resulting increased costs of the change would match the benefit to consumers.[61] AEP asserted there would be no benefit to consumers in making the change, and that it would double the number of transmission applications to the OPSB.[62] Duke and AES also referenced increased costs that would be passed on to customers, and implied that the smaller structures for 69 kV lines did not trigger the diverse set of interests represented on the OPSB.[63] Duke and AES also noted that 69 kV lines are often used to connect a new, industrial customer, and a regulatory delay of more than a few months would be a negative for economic development.[64]

Comments of the Ohio Consumers' Counsel

The Ohio Consumers' Counsel (OCC) is Ohio's statutory residential utility consumer advocate. The OCC, in its comments, provides, as an attachment, a legislative proposal for expanding the OPSB's jurisdiction to 69 kV to allow the OPSB to review those projects. The issue, as characterized by OCC, is that there is currently no regulatory oversight for "supplemental projects" in which Ohio utilities make significant investments. OCC cites cost numbers from the 2020 State

[55] Duke and AES, p. 7.
[56] Duke and AES, p. 9.
[57] Duke and AES, p. 7-8.
[58] AEP, p. 6-8.
[59] ATSI, p. 4-7.
[60] Duke and AES, p. 5.
[61] ATSI, p. 1-4.
[62] AEP, p. 4.
[63] Duke and AES, p. 3.
[64] Duke and AES, p. 4.

of the Market Report for PJM by the Independent Market Monitor for PJM: supplemental projects in 2020 totaled more than $4.3 billion versus $1.7 billion for baseline reliability projects.[65] OCC advocates that changes are needed to protect consumers from unreasonable charges.[66]

OCC further explained that recent efforts at the federal level to close the regulatory gap for supplemental projects have failed (see "Competing proposals for M-3 changes on end-of-life transmission planning," below). OCC also asserts, it is appropriate for the General Assembly to use its authority to create oversight for supplemental projects.[67]

OCC supports a competitive bidding requirement for all transmission projects at 69 kV and above and advocates the OPSB recommend the General Assembly prohibit state-authorized transmission rate incentives for any project not subject to competitive bidding.[68] The OPSB notes rate incentives are not criteria suggested in H.B. 128 but agrees with OCC that state rate incentives would be inappropriate for projects not competitively bid.

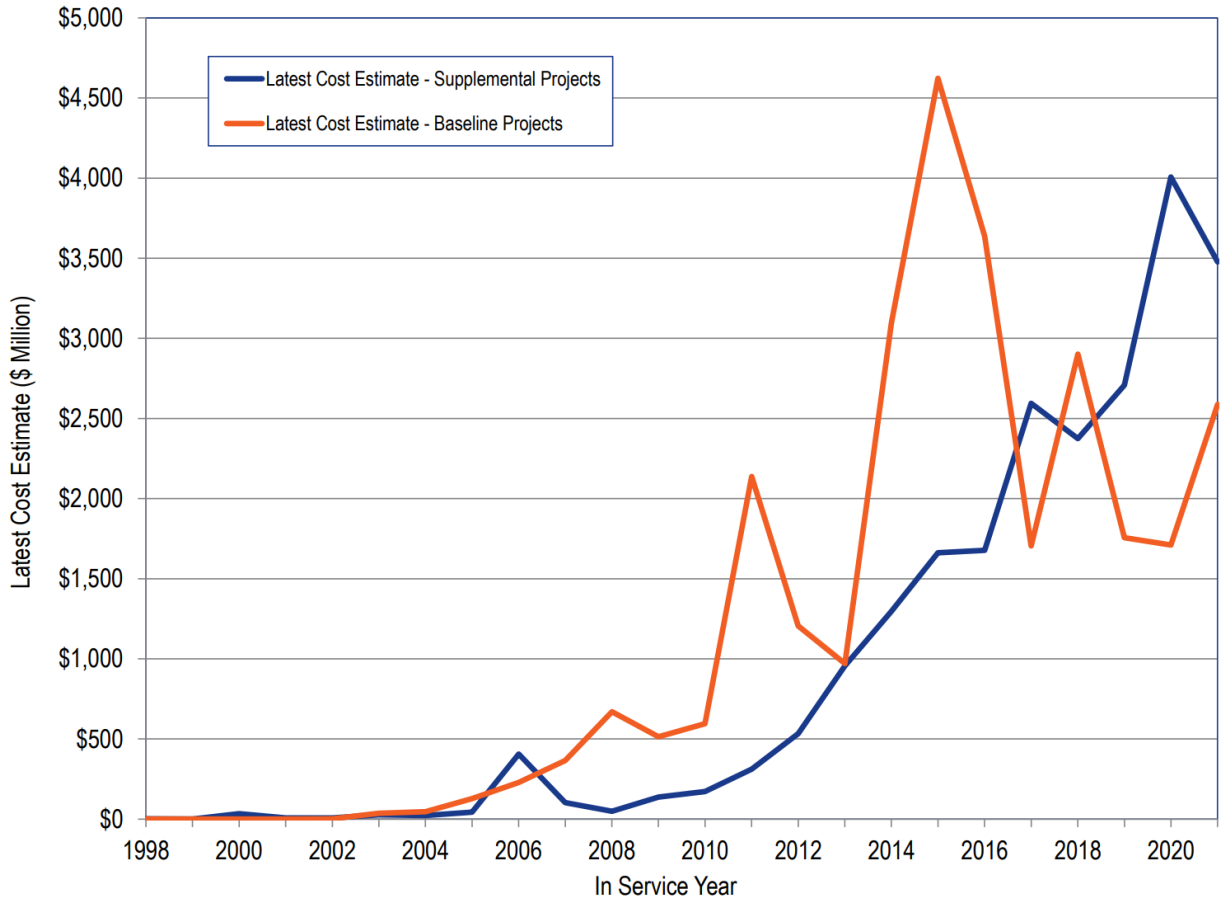
Comments of the Independent Market Monitor for PJM

The independent market monitor (IMM) for PJM advocates for a holistic consideration of all issues in siting determinations, from transmission provider competition, generation competition, cost allocation, transmission line ratings, to customer impacts. To this end, the IMM raises several issues being debated at the federal and regional levels with bearing on transmission consideration at the state level. These issues involve managing PJM's generation interconnection queue, including addressing where developers may put speculative projects into the interconnection queue that do not match the developers' intent to build, capacity interconnection rights, whether transmission owners should perform interconnection studies, and whether transmission owners should be allowed to require generation developers rely on the transmission owners for funding.

The IMM attached portions from the IMM's 2021 Quarterly State of the Market Report for PJM for January through March in their comments. The IMM indicated supplemental projects have increased by 795 percent for years 1998 through 2021.[69]

[65] OCC, p. 4, n. 11.
[66] OCC, p. 1-2.
[67] OCC, p. 8.
[68] OCC, p. 10.
[69] P. 598.

Figure 12-5 Cost estimate of baseline and supplemental projects by expected in service year: January 1, 1998 through March 31, 2021



70

The IMM advocates for increased transmission competition, and termination of the exemption of supplemental projects from competitive process to ensure that definition is not used to exempt those projects from the transparent and robust Regional Transmission Expansion Plan (RTEP) process at PJM.[71]

Comments of Buckeye Power

Buckeye is an unregulated, nonprofit electric cooperative, identifying as a "transmission dependent utility" relying on PJM and transmission owners for transmission service to its member cooperatives. As such, it is subject to cost recovery for that service.[72]

[70] P. 647.
[71] P. 600.
[72] Buckeye, p. 2.

Buckeye advocates for changes to control rising transmission costs, which it asserts, have tripled over the last decade.[73] In addressing the criteria listed in H.B. 128 that might be applied to transmission applications before the OPSB, Buckeye generally favors a competitive bidding requirement.[74] As for the other criteria, such as consideration of the proposed project as part of the larger transmission plan and provision of historical information for an existing or proposed project, Buckeye asserts these are already done through PJM. And requiring the same be done through an OPSB and PJM process could discourage important investments. Buckeye further cautions any additional requirements should not disincentivize reliability upgrades in rural areas, which have historically had disproportionately more reliability issues.[75] Buckeye notes that over the last five years, its members have averaged over 170 transmission outages per year, totaling over 20,000 outage minutes per year.[76] Buckeye believes expanding the OPSB's jurisdiction to 69 kV would have a negative effect on rural transmission, potentially slowing down needed investments and increasing costs for rural customers. Buckeye asserts appropriate oversight for these projects is provided through PJM's M-3 process, but as mentioned above, advocates for "reasonable steps that will provide a necessary check on transmission spending."[77]

Comments of American Municipal Power, Inc. and Ohio Municipal Electric Association

American Municipal Power, Inc. (AMP) and the Ohio Municipal Electric Association (OMEA) submitted joint comments. AMP is a nonprofit Ohio corporation organized in 1971. AMP describes itself as a wholesale power supplier and services provider to 135 municipal electric systems (accounting for 5 percent of Ohio electric sales) in nine states. OMEA provides legislative liaison services for AMP and 80 Ohio public power communities.[78]

AMP and OMEA assert that the current OPSB siting process is not cost effective nor in the interest of consumers.[79] AMP and OMEA argue most of the transmission projects being planned and constructed in Ohio are not reviewed or approved by the OPSB due to the 100 kV jurisdictional threshold. While AMP and OMEA do not expressly advocate for lowering the OPSB's jurisdiction to 69 kV, they urge the OPSB to consider measures to increase transparency in the certification process. As an example of a measure that could increase transparency, they suggest a review of actual versus estimated costs. It is not clear whether AMP and OMEA advocate for this review for projects that are currently jurisdictional.[80]

[73] Buckeye, p. 3.
[74] Buckeye, p. 4.
[75] Buckeye, p. 4-5.
[76] Buckeye, p. 6.
[77] Buckeye, p. 6-7 and 9.
[78] AMP and OMEA, p. 2.
[79] Id.
[80] AMP and OMEA, p. 4.

Comments of IEU-Ohio

IEU-Ohio (IEU) is an association of manufacturers and energy intensive consumers of electricity. IEU asserts the current regulatory process at both the state and federal levels is not sufficient to ensure just and reasonable rates for transmission service.[81] IEU cites the regulatory gap through which neither PJM nor the state reviews "supplemental projects."[82] IEU explains that PJM does a simple do-no-harm analysis for supplemental projects, and does not review need, prudency, or rate impacts.[83] They further assert the PJM M-3 process gives the impression PJM has some authority over the projects, but the process is more of a discussion, based on needs assessments as presented by the transmission owners.[84]

IEU also advocates for a statutory change in the OPSB's jurisdiction to remove, rather than change, the voltage level in the definition of a "major utility facility," which triggers OPSB jurisdiction.[85] IEU advocates for the OPSB to adopt all six considerations listed in the H.B. 128 statute to fill the regulatory gap regarding transmission planning for 69 kV investments.[86] The OPSB notes it does not currently have the statutory authority to do this for 69 kV investments. IEU asserts that additional statutory authority would enhance and clarify the OPSB's authority to increase transparency.[87] IEU also recommends transmission utilities be required to provide the OPSB with long-term projections of planned supplemental projects, including justification of need, similar to the long-term forecast reports currently filed with the PUCO.[88] IEU urges the OPSB to take a more assertive role in ensuring that transmission projects are serving the public interest.[89]

Comments of the Ohio Energy Group

The Ohio Energy Group (OEG) is an organization of large, energy-intensive, trade-exposed utility customers.[90] OEG supports changing the OPSB's jurisdiction to 69 kV to allow state review of more transmission projects. OEG cites rising transmission costs, and provides data on the increase in network integration transmission service costs since 2016.[91]

[81] IEU-Ohio, p. 2
[82] IEU-Ohio, p. 2-3.
[83] IEU-Ohio, p. 6.
[84] IEU-Ohio, p. 7.
[85] IEU-Ohio, p. 11.
[86] IEU-Ohio, p. 3.
[87] IEU-Ohio, p. 4.
[88] IEU-Ohio, p. 4.
[89] IEU-Ohio, p. 8.
[90] OEG, "Welcome to the Ohio Energy Group," available at https://ohioenergygroup.com/.
[91] OEG, p. 1-3.

Comments of the Ohio Manufacturers' Association Energy Group

The Ohio Manufacturers' Association Energy Group (OMAEG) provides energy-related services to the Ohio manufacturers community. Similar to OEG, OMAEG refers to rises in network integration transmission service charges as well as transmission enhancement charges, which OMAEG explains make up the bulk of a customer's transmission obligation.[92] OMAEG also refers to comments filed by the PUCO's Federal Energy Advocate (FEA) stating that in 2010, $355 million was spent on baseline and supplemental transmission projects. But in 2018 and 2019, investment ballooned to $2.4 billion and $1.9 billion respectively.[93] Also, similar to other consumer stakeholders, OMAEG explains that supplemental projects are a significant component of transmission investments and fall below the OPSB's jurisdictional threshold of 100 kV. OMAEG also provides data to explain that the average cost of a supplemental project is not significantly less than that of other transmission projects.

OMAEG generally supports additional oversight for supplemental transmission projects and the criteria posed in H.B. 128. OMAEG urges that changes are needed to protect the competitiveness of Ohio manufacturing in to scrutinize the need and cost benefit ratio for supplemental transmission projects. To that end, OMAEG supports evaluating whether non wire alternatives, including customer-sited non-wire alternatives, could achieve similar system reliability improvements. OMAEG encourages the OPSB to conduct a detailed evaluation in this report.[94]

[92] OMAEG, p. 2.
[93] OMAEG, p. 3, citing to Comments of the PUCO Ohio FEA at 6, Docket No. RM20-10-000 (June 25, 2021).
[94] OMAEG, p. 5-7.

X. APPENDIX B: Transmission Rates for Ohio Consumers

Transmission rates are billed to Ohio customers through transmission riders that are unique for each electric distribution utility, though some customers are in pilot programs through which they are exempt from transmission riders. Each distribution utility has different tariffs for transmission billing. Each tariff has a residential service classification for transmission charges. Chart 1 below demonstrates the changes in transmission charges across all four utility territories for residential consumers.

For other customer classes, there are varying methods of cost billing based on different voltage levels and other factors. For this reason, doing a commensurable comparison of transmission costs for nonresidential customers across all of the four utility service territories is not possible. But Chart 2 below presents the changes in transmission charges across all four utility territories for consumers at the utilities' "primary voltage level." The "primary voltage level" varies for each utility, but generally describes a describes larger commercial customer and industrial customer.

Charts 3 through 6 present data for primary voltage customers, including the percentage of a customer's bill that comes from transmission charges, for the individual utility territories.

Charts 7 through 10 present data for residential customers, including the percentage of a customer's bill that comes from transmission charges, for the individual utility territories.

Importantly, the utilities' riders are designed to recover their costs. And the utilities are situated differently in terms of what their costs are for providing transmission service and what affects those costs for each utility. This is why rates vary from one utility to the next. The numbers graphed below are the rider charges on residential and "primary voltage" customers' bills given typical consumption parameters, as well as the percentage of these charges of the total bill amount.

Also, it is worth noting that some utilities have additional transmission surcharges or credits that were included in their tariffs for shorter periods of time and were specific to the utility at the time. Finally, these graphs begin in 2016 because that is the point at which certain transitional proceedings regarding regional transmission organization membership and related provisions were resolved and the comparison between utilities becomes more standardized.

Chart 1: Residential Charges, All Utilities

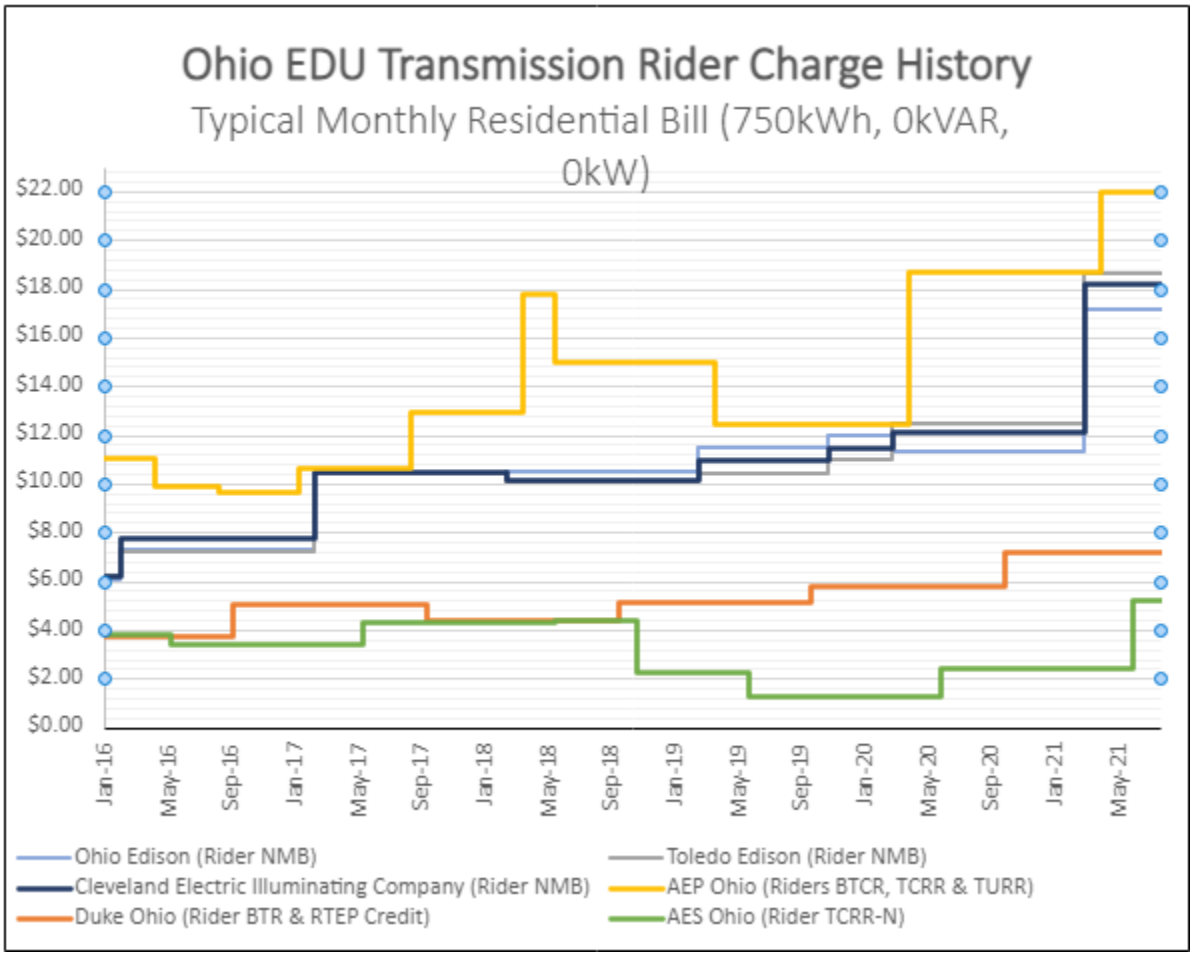


Chart 2: Primary Voltage Charges, All Utilities

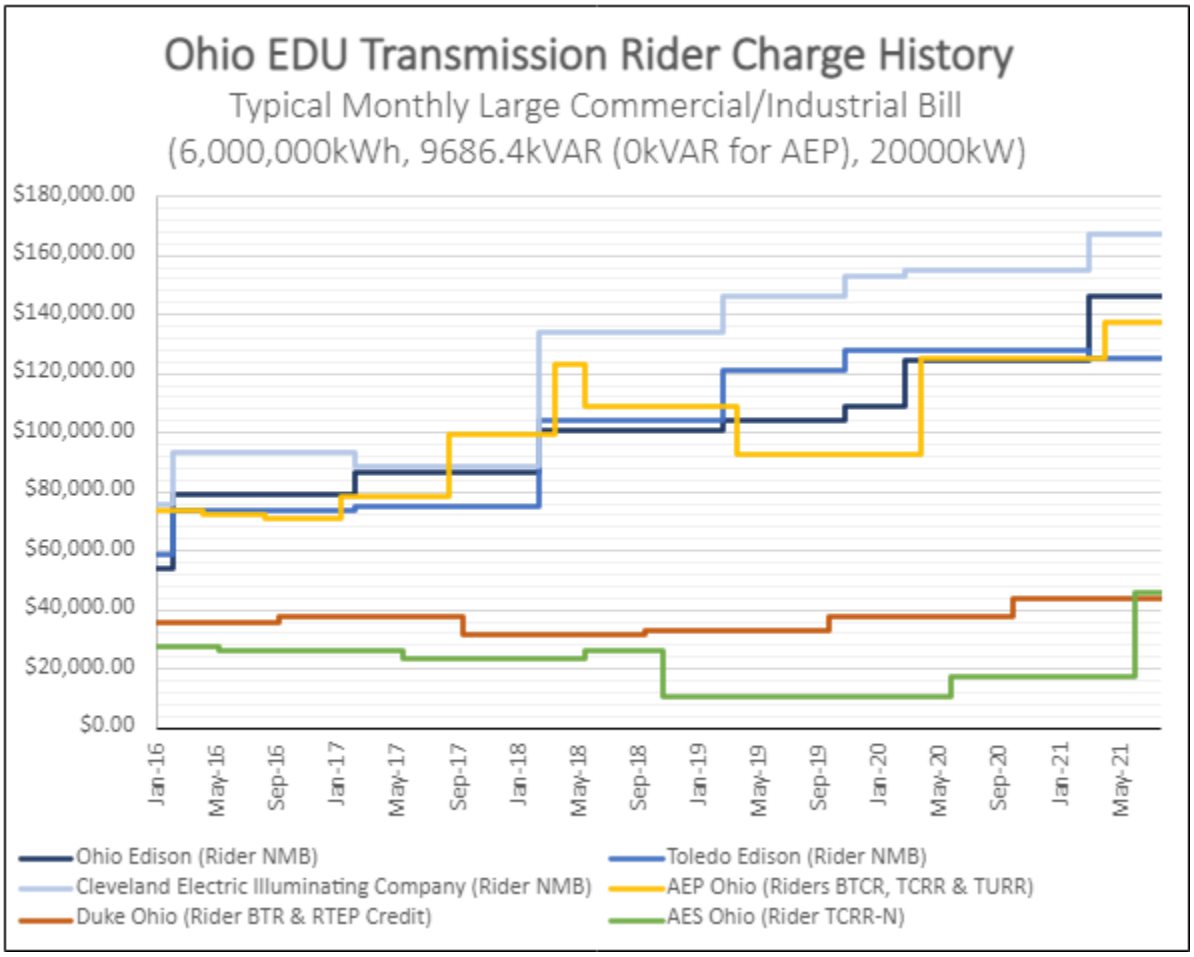


Chart 3: Primary Voltage Charges, AEP

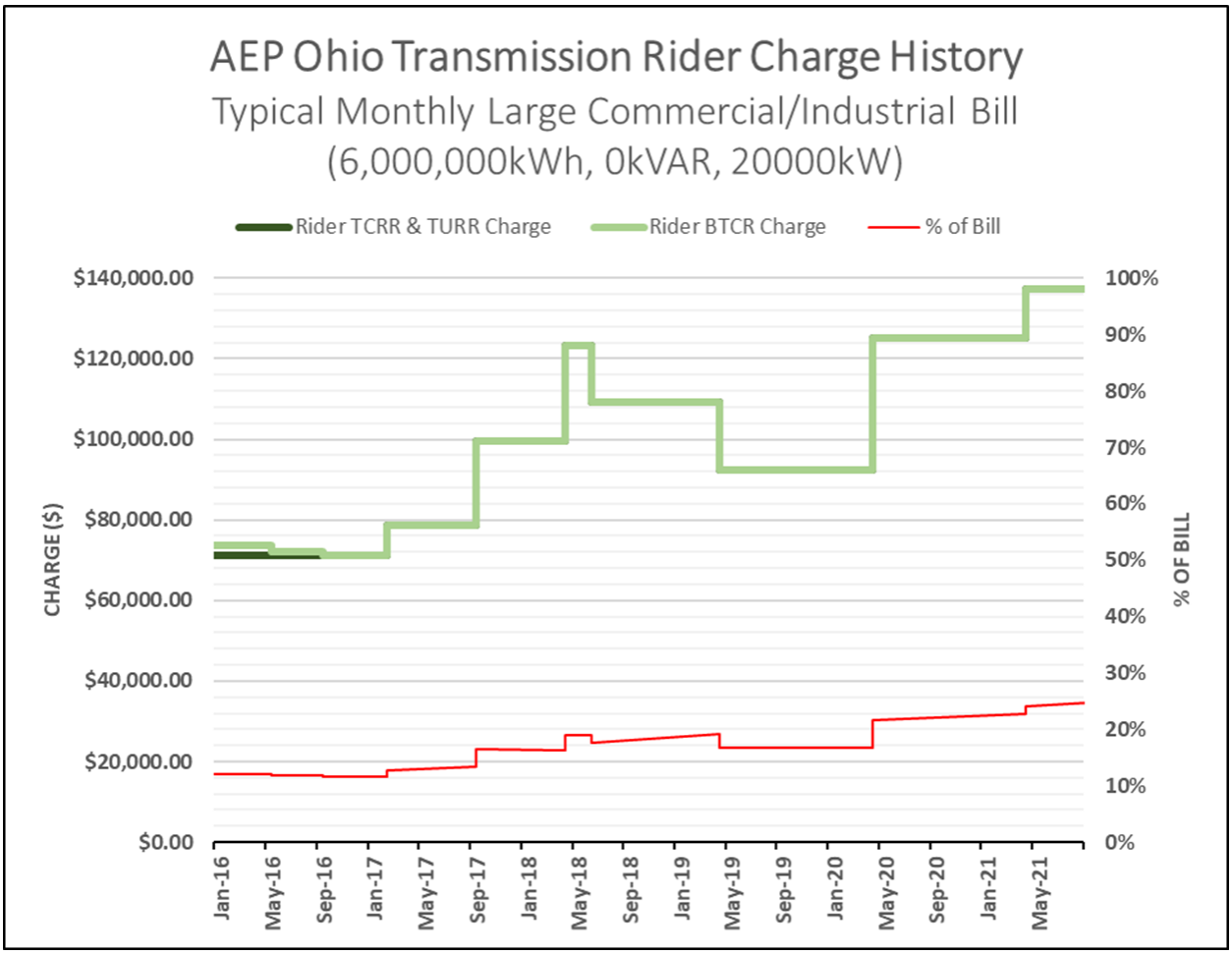


Chart 4: Primary Voltage Charges, FirstEnergy Utilities

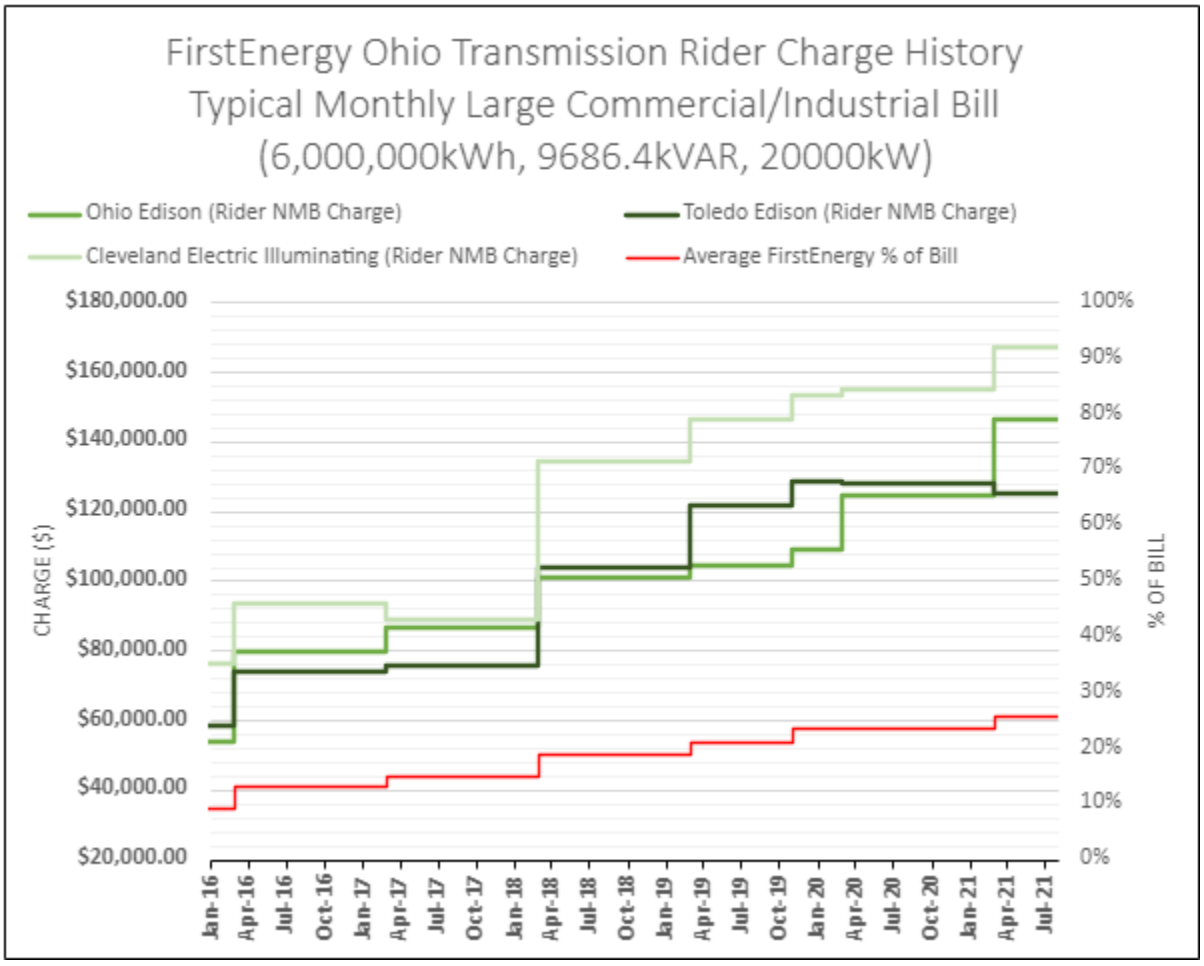


Chart 5: Primary Voltage Charges, Duke

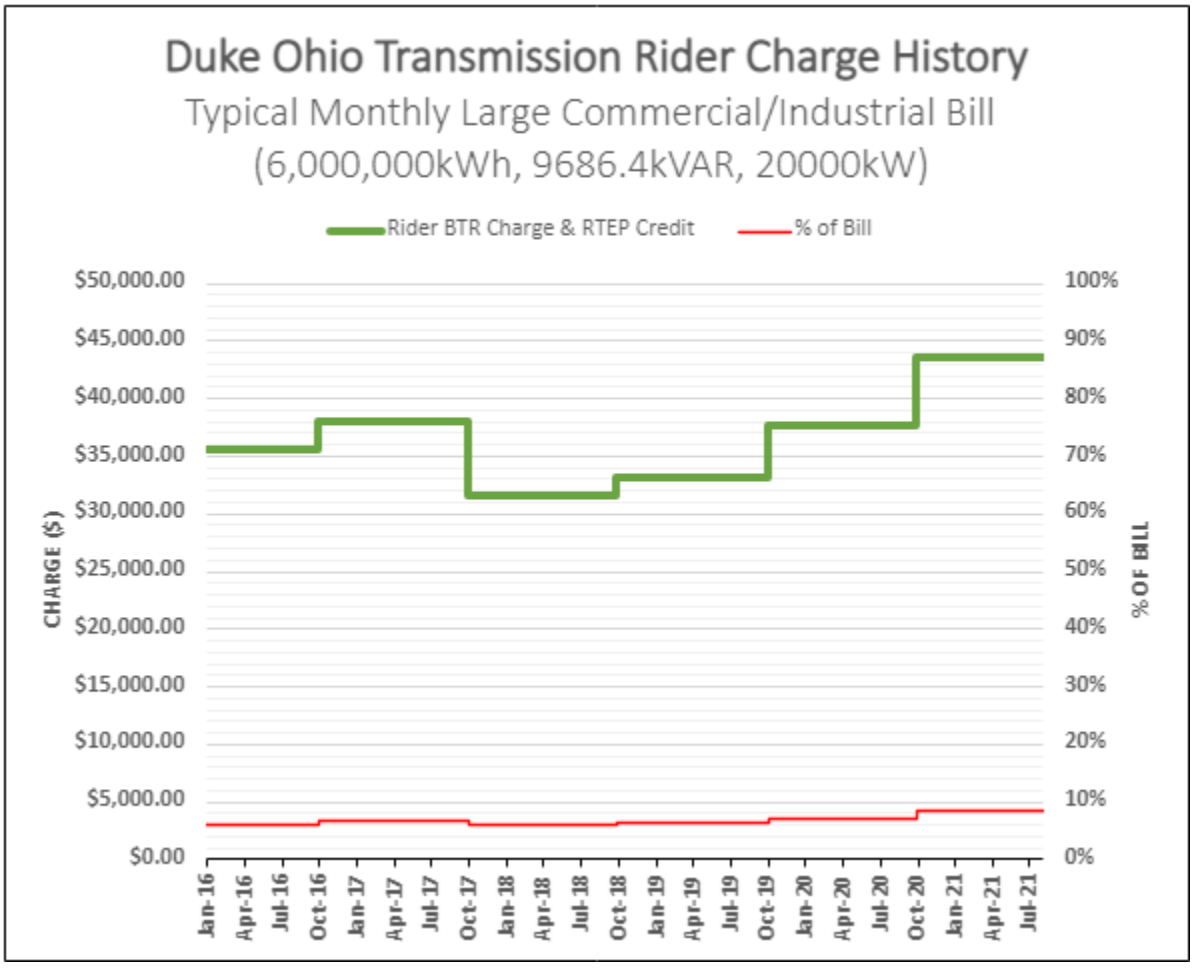


Chart 6: Primary Voltage Charges, AES Ohio

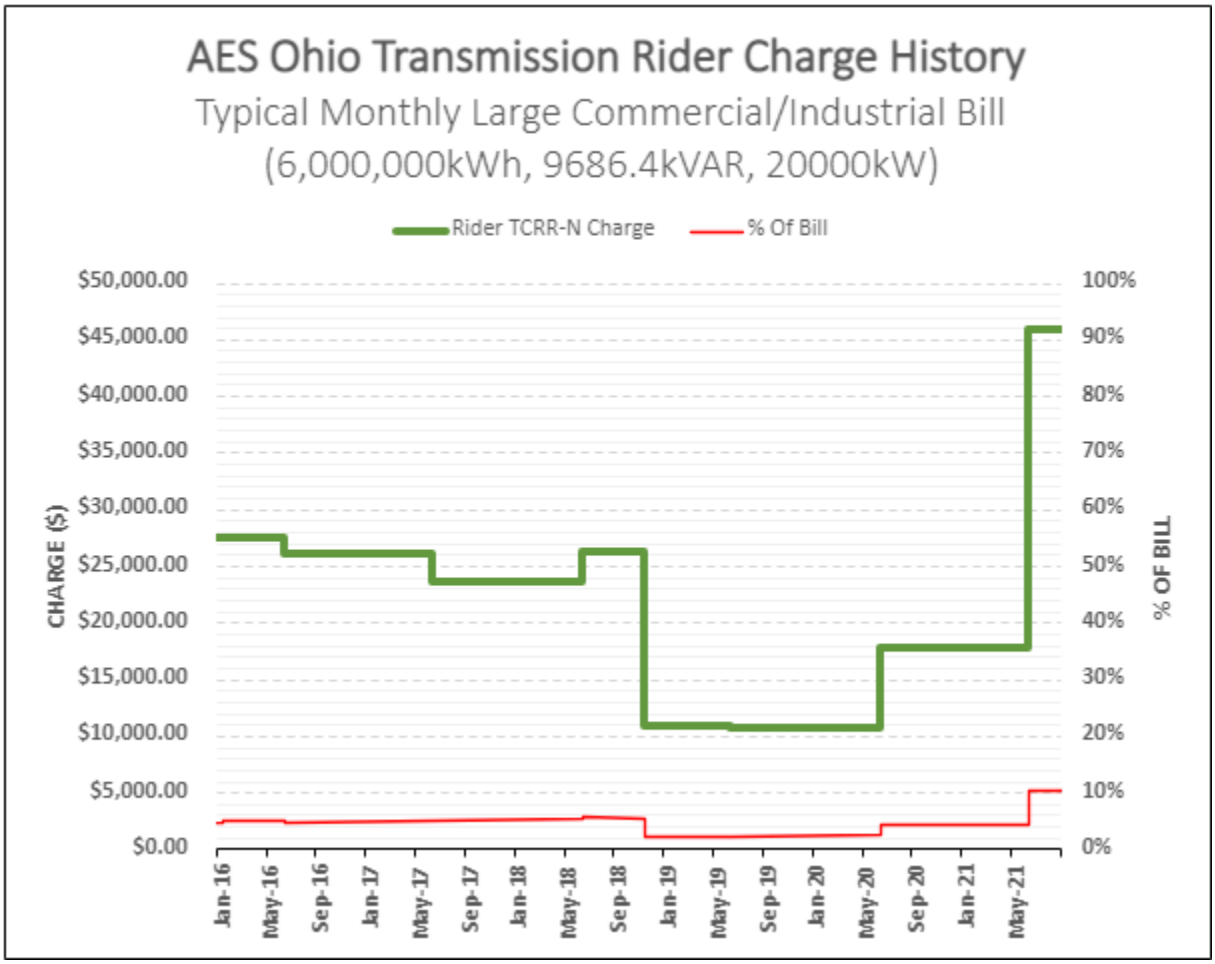


Chart 7: Typical Residential Charges, AEP

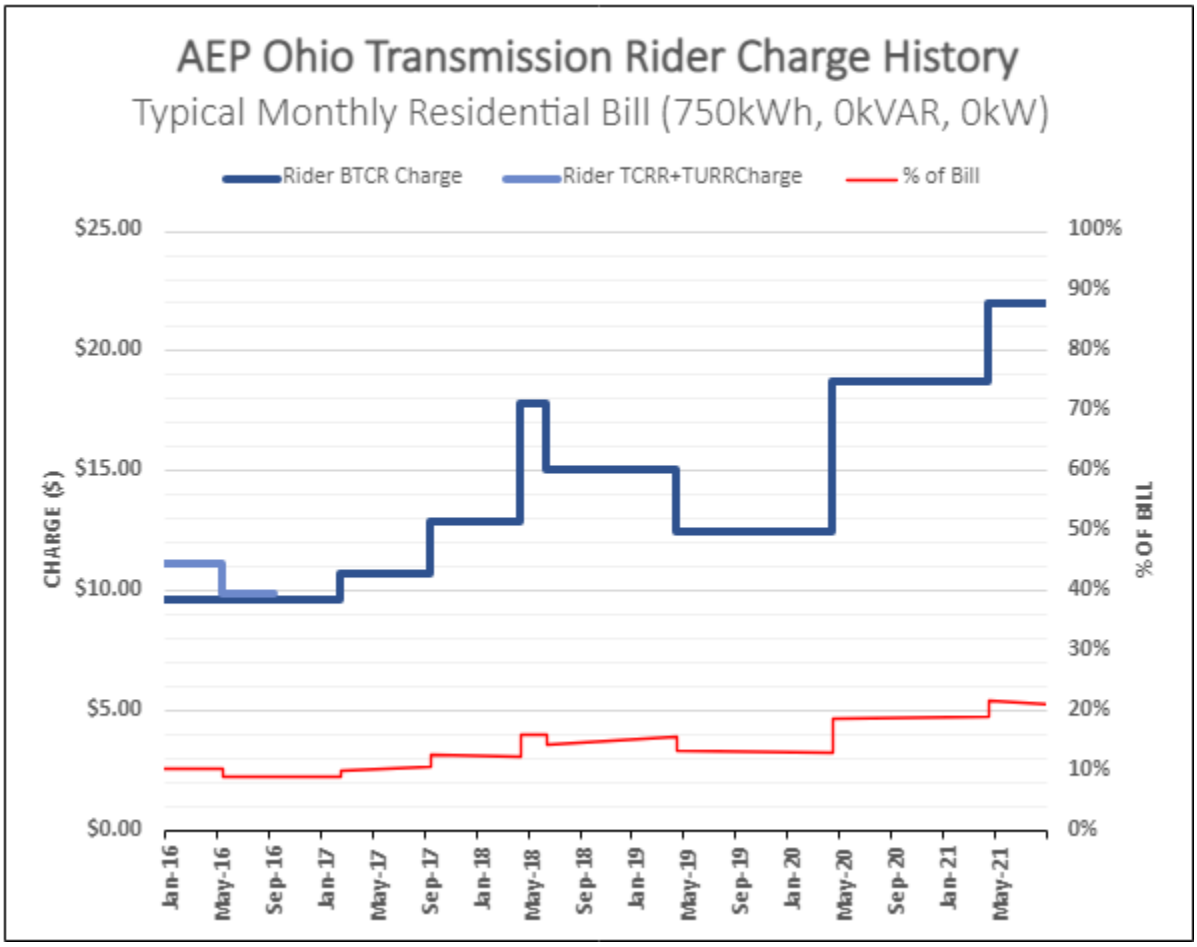


Chart 8: Typical Residential Charges, FirstEnergy Utilities

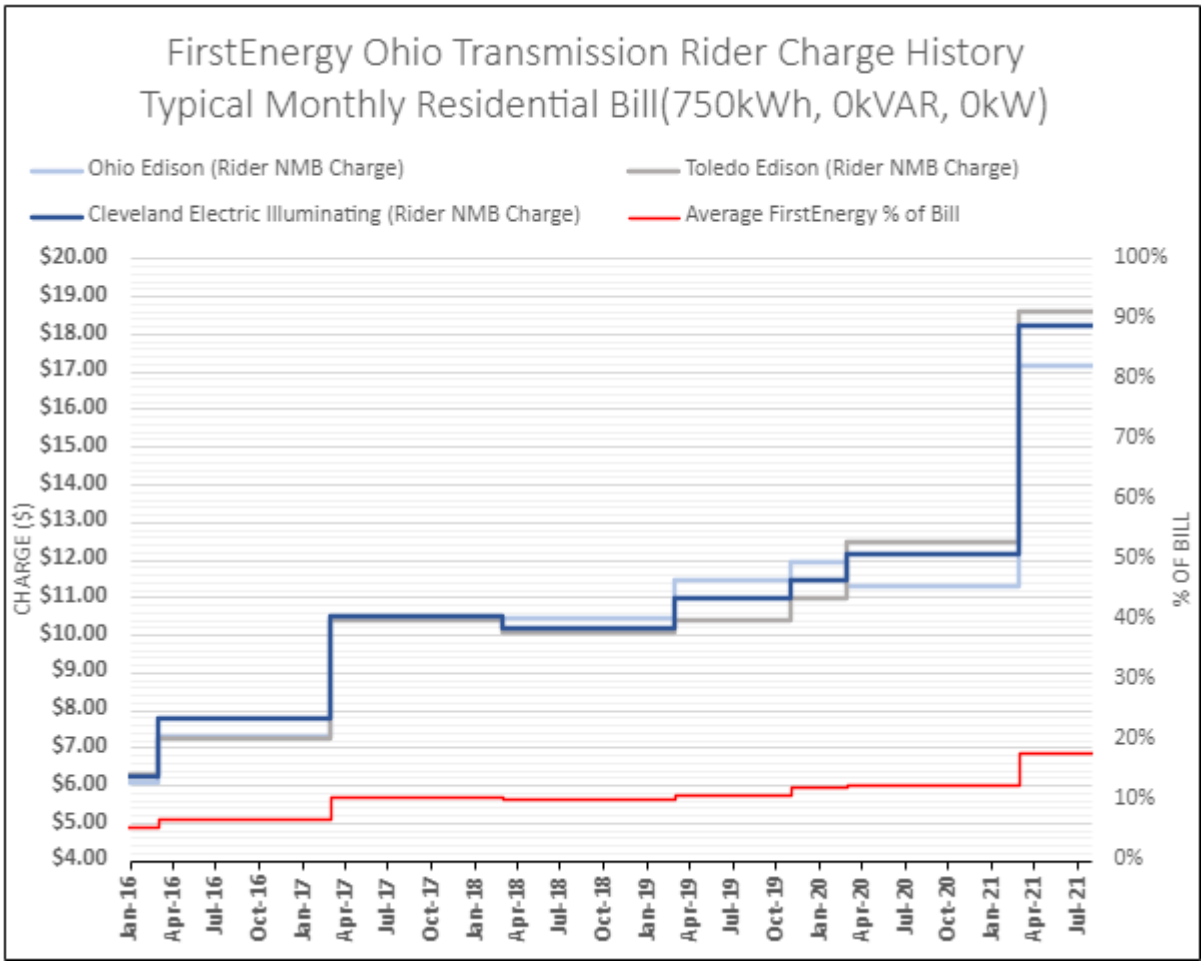


Chart 9: Typical Residential Charges, Duke

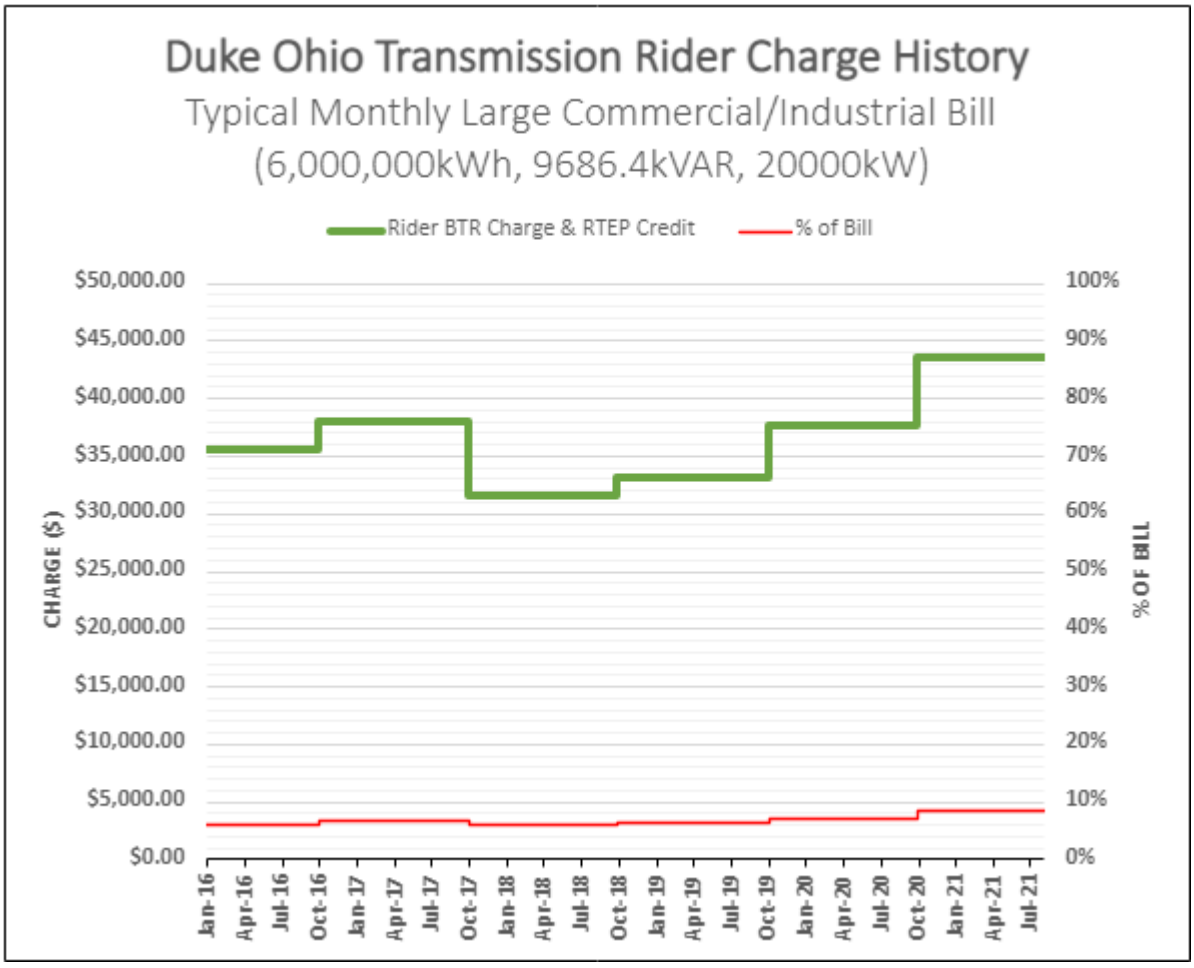
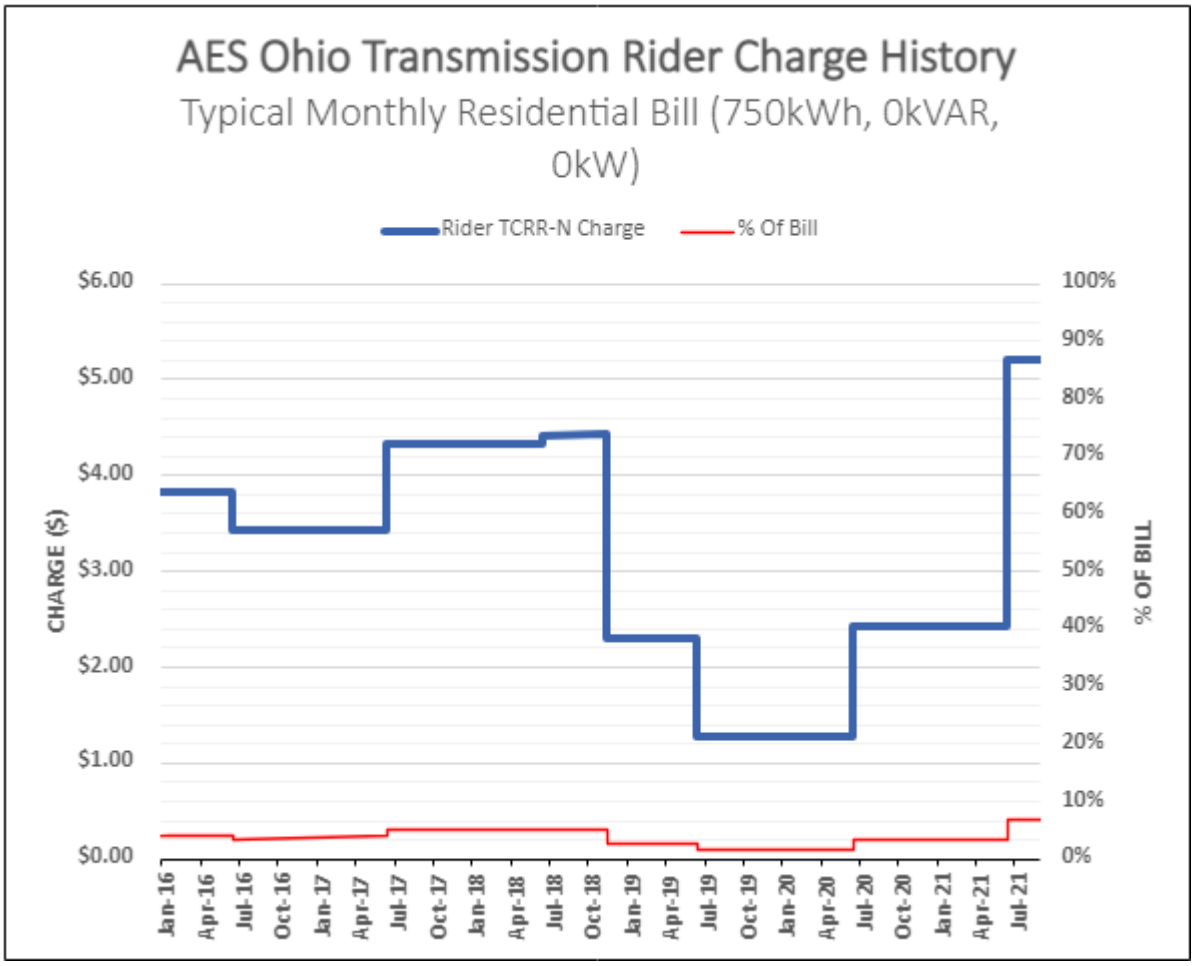


Chart 10: Typical Residential Charges, AES Ohio



XI. APPENDIX C: Summary of Initial Comments on Draft Report

By Entry issued September 24, 2021, the Board solicited comments from interested stakeholders to assist in the review of the Draft Report. Initial comments were timely filed by the Ohio Consumers' Counsel (OCC), Buckeye Power, Inc., American Transmission Systems, Inc. (ATSI), Industrial Energy Users-Ohio (IEU), American Municipal Power, Inc. (AMP) and the Ohio Municipal Electric Association (OMEA) jointly, One Energy Enterprises LLC (One Energy), AEP Ohio Transmission Company, Inc. (AEP), and the Ohio Manufacturers' Association Energy Group (OMAEG) on October 8, 2021.

Comments of the Ohio Consumers' Counsel

OCC asserts that a majority of recent transmission projects are considered supplemental projects that escape any review from the Federal Energy Regulatory Commission (FERC) and PJM. OCC contends this is a loophole being exploited by utilities that then pass on costs to customers.[95] OCC further explains that while the Draft Report advocates for additional federal oversight of such projects, recent federal rulings demonstrate such changes are not likely to take place.[96] Therefore, because of this regulatory gap, OCC argues the final report should ask the General Assembly to expand the Board's jurisdiction over transmission projects.[97]

Furthermore, while the Draft Report proposes an examination of competitive bidding, OCC avers that competitive bidding should be a requirement for certification. OCC maintains that competitive bids will result in lower prices and greater innovations. OCC avers that competitive development should be required and that entire transmission projects should be subject to bidding, with ownership of the project awarded to the winning bidder.[98]

Comments of Buckeye Power

Buckeye Power supports the Draft Report's response regarding the expansion of the Board's jurisdiction.[99] Buckeye Power agrees with the Board's concern over rising transmission costs, but also agrees with the assessment in the Draft Report that increasing transmission costs are being addressed in various ways at PJM, FERC, and in federal courts.[100] Buckeye Power observes that cost allocation for transmission projects is in the exclusive jurisdiction of FERC and would not be affected by additional Board review. If Board jurisdiction is expanded, Buckeye Power contends that the result could have negative unintended consequences. Buckeye Power avers that the

[95] OCC, p. 2 and 3.
[96] OCC, p. 11-13.
[97] OCC, p. 9 and 13.
[98] OCC, p. 8-9.
[99] Buckeye, p. 3.
[100] Buckeye, 2-3.

utilities' costs to comply with additional regulation will be passed on to customers and that additional Board review will result in delays for projects that are needed to maintain reliability.[101]

Comments of American Transmission Systems, Inc.

ATSI argues that expanding the Board's jurisdiction would be duplicative to regional review and supports viewing the expansion of the Board's jurisdiction cautiously.[102] ATSI maintains that the FERC and PJM forums discussed in the Draft Report may significantly impact planning and cost recovery of transmission projects. ATSI supports a cost/benefit framework for analyzing the proposed jurisdictional expansion, arguing that the increased regulatory burden and compliance costs will be passed onto customers.[103]

While the Draft Report proposes an examination of competitive bidding, ATSI cautions that a requirement for competitive bidding is unnecessary. According to ATSI, it already competitively procures labor and materials. Further, ATSI states that all utilities are required to demonstrate that project expenditures are prudent.[104] ATSI also notes the difference between competitive bidding for labor and materials and competitive development. As explained by ATSI, competitive development would be inefficient and would potentially conflict with PJM and FERC-approved planning processes.[105]

Comments of Industrial Energy Users-Ohio

IEU recommends a limited expansion of the Board's jurisdiction over transmission projects to increase transparency. As described by IEU, transmission utilities should be required to file an annual report that documents transmission projects of all voltages and includes necessary information such as forecasted project planning over the next five years.[106] IEU supports the Board's assessment of rising transmission costs, and believes the reporting requirement would create additional transparency to benefit Ohio businesses until the regulatory gap is resolved at the federal level.[107]

Comments of One Energy

One Energy is an installer of behind-the-meter wind projects for industrial and manufacturing companies, and is based in Findlay, Ohio. One Energy expresses concerns about a potential expansion of the Board's jurisdiction to 69 kV transmission. One Energy submits that expansion

[101] Buckeye, p. 3-4.
[102] ATSI, p. 1-2.
[103] ATSI, p. 2-3.
[104] ASI, p. 4.
[105] ATSI, p. 4-5.
[106] IEU, p. 2-3.
[107] IEU, p. 4-6.

of the Board's jurisdiction may increase costs to consumers and asks that the final report clarify that any potential expansion does not affect or apply to behind-the-meter distributed generation.[108]

Comments of American Municipal Power and the Ohio Municipal Electric Association

AMP and OMEA submit that the final report should recommend expansion of the Board's jurisdiction to include 69 kV projects.[109] AMP and OMEA note that FERC retains jurisdiction over transmission and that FERC delegates transmission planning and operation to regional transmission organizations, including, for Ohio, PJM.[110] According to AMP and OMEA, the oversight of 69 kV projects by FERC and PJM is insufficient and the Draft Report overstates the current review process by FERC and PJM. AMP and OMEA assert that a majority of recent transmission projects are considered supplemental projects that escape any review from FERC and PJM. AMP and OMEA also note that supplemental projects are not subject to competition.[111]

Therefore, because of this regulatory gap, AMP and OMEA argue the final report should ask the General Assembly to expand the Board's jurisdiction over transmission projects, with additional modifications to the Board's siting authority to accommodate the change.[112] AMP and OMEA emphasize that R.C. 4906.10(A) requires the Board to consider the need for a facility before certifying a facility and that this is a necessary analysis that should be provided for supplemental transmission projects.[113] AMP and OMEA also note that if the Board's jurisdiction is expanded, the additional criteria posed by the General Assembly, such as an examination of competitive bidding, should be applied.[114] In addition to 69 kV projects, AMP and OMEA propose that the replacement of an existing facility with a like facility should also be considered construction of major utility facility, giving the Board jurisdiction. AMP and OMEA note that R.C. 4906.04 currently excludes such construction from Board review and utilities should at least be required to demonstrate to the Board that the venture is a like-for-like construction.[115]

Comments of AEP Ohio Transmission Company

AEP supports that allocation and prudency review of transmission costs is solely under FERC jurisdiction.[116] In response to discussions of increasing supplemental projects, AEP cites to aging infrastructure and reliability concerns.[117] AEP also argues that PJM's M-3 Process is open and transparent; stakeholders may provide additional electrical solutions that transmission owners

[108] One Energy, p. 1-2.
[109] AMP and OMEA, p. 9-10.
[110] AMP and OMEA, p. 2.
[111] AMP and OMEA, p. 3-4 and 7.
[112] AMP and OMEA, p. 9-11.
[113] AMP and OMEA, p. 5.
[114] AMP and OMEA, p. 11.
[115] AMP and OMEA, p. 10.
[116] AEP, p. 2.
[117] AEP, p. 2-3.

should consider.[118] Finally, as to a potential requirement to show that a project could not have been deferred or redesigned, AEP submits that such a requirement would discourage solutions that may provide long-term value.[119]

Comments of the Ohio Manufacturers' Association Energy Group

OMAEG submits that the General Assembly and the Board should expand the Board's jurisdiction to all supplemental projects, citing to data on increasing transmission costs from construction of supplemental projects.[120] According to OMAEG, the oversight of supplemental projects by FERC and PJM is insufficient and the Draft Report overstates the current review process by FERC and PJM, which is only to examine whether the grid is not worse off with the projects.[121] OMAEG emphasizes that current law gives the Board jurisdiction over transmission applications and requires the Board to consider the need for a facility and whether it is in the public interest.[122] While further review by Board staff of supplemental projects may result in some additional costs to utilities and customers, OMAEG submits that if even one unnecessary project is prevented it would accomplish a net savings for customers.[123]

While the Draft Report proposes an examination of competitive bidding, OMAEG avers that competitive bidding should be a requirement for certification. OMAEG states it has been demonstrated that competitively bid transmission projects are constructed for significantly reduced costs.[124]

Finally, in an overall critique of the Draft Report, OMAEG submits the final report should provide more empirical data to the General Assembly. OMAEG opines that the report should state, among other statistics, how many transmission projects the Board approves each year and for each transmission utility. Further, per OMAEG, the report should show the cost of projects and explain that the Board evaluates cost effectiveness. OMAEG additionally comments that many of the conclusions in the Draft Report are unsupported by data and contain ambiguous language. OMAEG asks that the final report clarify the language and provide empirical support for its conclusions.[125]

[118] AEP, p. 3.
[119] AEP, p. 4.
[120] OMAEG, p. 7 and 13-14.
[121] OMAEG, p. 3-5.
[122] OMAEG, p. 3-4 and 8.
[123] OMAEG, p. 9.
[124] OMAEG, p. 10.
[125] OMAEG, p. 11-13.

XII. APPENDIX D: Summary of Reply Comments and Public Hearing

By Entry issued September 24, 2021, the Board solicited comments from interested stakeholders to assist in the review of the proposed draft. After initial comments were filed on October 8, 2021, reply comments were timely filed by the Ohio Consumers' Counsel (OCC), Buckeye Power, Inc., the Ohio Manufacturers' Association Energy Group (OMAEG), and the Ohio Energy Group (OEG) on October 15, 2021. Additionally, a public hearing was held as scheduled on October 21, 2021. At the hearing, Industrial Energy Users-Ohio (IEU) and American Transmission Systems, Inc. (ATSI) provided oral comments.

Reply Comments of the Ohio Consumers' Counsel

OCC urges the Board to recommend the legislative adoption of competitive bidding for development of entire transmission projects. OCC asserts that project ownership should be awarded to the transmission operator with the most competitive bid.[126]

As to IEU's recommendation of a reporting requirement, OCC is supportive, but recommends this be done in addition to expanding the Board's jurisdiction to review the necessity and cost effectiveness of supplemental projects at 69 kV and above.[127]

Reply Comments of Buckeye Power

Buckeye responds to OMAEG's assertion that Buckeye did not provide data showing that a jurisdiction expansion could impede rural transmission development. Buckeye asserts that it is axiomatic that regulatory hurdles can delay or preclude projects or create additional costs, and notes that regulatory hurdles could shift investment to other states.[128] Buckeye further asserts that this should be considered when evaluating AMP and OMEA's suggestion that the Board's review timeframe be lengthened.[129] Buckeye supports reasonable measures, such as increased scrutiny over competitive bid processes, but states that the General Assembly should carefully consider whether any suggested measures aimed to reduce transmission costs will have unintended consequences.[130]

[126] OCC, p. 2-3.
[127] OCC, p. 3-4.
[128] Buckeye, p. 1-2.
[129] Buckeye, p. 3.
[130] Buckeye, p. 4.

Reply Comments of the Ohio Manufacturers' Association Energy Group

OMAEG reiterates its concerns regarding the lack of federal oversight for supplemental transmission projects.[131] Further, OMAEG submits that, while ATSI contends transmission projects are already required to be competitively bid, PJM supplemental projects are exempt from the competitive bidding requirement of the RTEP.[132]

Reply Comments of the Ohio Energy Group

OEG urges the Board to reconsider its position as to a jurisdictional expansion. OEG asserts that the Draft Report does not provide a comprehensive cost-benefit analysis regarding supplemental transmission projects. As to additional review criteria, OEG supports the additional criteria, and recommends a requirement that all transmission be subject to competitive bidding unless there is a demonstrable and compelling economic development interest in waiving the requirement.[133]

Oral Comments of Industrial Energy Users-Ohio

IEU encouraged the Board to take on a more active role in reviewing, investigating, and reporting on supplemental projects.[134] IEU asked the General Assembly to clarify that the Board has authority to request information from transmission utilities on supplemental projects over a five-year planning period.[135] IEU argues this would allow IEU and others to evaluate whether spending on supplemental projects is in the public interest.[136]

Oral Comments of American Transmission Systems, Inc.

ATSI provided comments on two points. First, ATSI asked the Board to reconsider its position on competitive bidding, arguing that a competitive bidding criterion would be redundant to the federal prudency review. ATSI further stated that parties may bring a formal challenge to FERC on prudence grounds.[137] Second, ATSI asserted that state-level competitive solicitations are contrary to standards for federal planning and cost allocation.[138]

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[131] OMAEG, p. 2-4.
[132] OMAEG, p. 4-5.
[133] OEG, p. 1-2.
[134] Transcript of Public Hearing, p. 7.
[135] Transcript, p. 9.
[136] Transcript, p. 11.
[137] Transcript, p. 14-15.
[138] Transcript, p. 16-17.