



Feds Deny AEP More ‘FERC Candy,’ Repeal Transmission Subsidy, Order Refund

The Federal Energy Regulatory Commission (FERC) has granted the Ohio Consumers’ Counsel’s (OCC) complaint and withdrawn the electric transmission billing “adder” it previously awarded American Electric Power (AEP) on the argument Ohio law mandates participation in a regional transmission organization (RTO) like PJM Interconnection and therefore disqualifies AEP for the voluntary incentive.

After FERC pulled AES subsidiary Dayton Power & Light’s (DP&L) transmission adder on the same basis in 2021, OCC asked regulators in February to void similar subsidies to transmission utilities AEP Service Company, (AEPSC), FirstEnergy’s American Transmission Systems, Inc. (ATSI) and Duke Energy Ohio as a valid component of their return on equity (ROE).

OCC has estimated Ohio’s customer transmission charge at \$26 million or “significantly higher,” though it does not break this down by individual utilities. It has requested customer refunds and compounded interest as of Feb. 24, 2022, the date of its original complaint.

FERC denied the consumers’ counsel complaint against Duke and ATSI, finding their RTO adders were part of a “comprehensive settlement” rather than a standalone charge improperly allowed by regulators, but called OCC’s argument against AEPSC well taken.

“We agree with OCC that the RTO adder, as approved by the commission pursuant to Section 219 for [AEP subsidiary] Ohio Power and AEP Ohio Transmission, is no longer just and reasonable,” FERC ruled 4-1 last Thursday, noting that same conclusion did not apply to ATSI and Duke.

“We are not persuaded by OCC’s argument that it would be unduly discriminatory for the commission to allow certain entities, but not others, to retain the RTO adder,” commissioners said.

At the same time, they rejected AEPSC’s argument against the constitutionality of statutorily required RTO/PJM participation and the practicality of withdrawing transmission charges in Ohio while retaining them in other AEP states.

“It is just and reasonable for AEP to reduce the ROE component of its formula rate for Ohio Power and AEP Ohio Transmission without modifying the ROEs of the other AEPSC affiliates,”

FERC said. “We are similarly unpersuaded by AEPSC’s suggestion that granting the complaint would amount to giving priority to one state’s policy over another state’s policy.”

The commission has given AEPSC 30 days to demonstrate compliance with the order and 60 days to issue refunds and interest to Ohio ratepayers.

Commissioner James Danly concurred in part and dissented in part, agreeing with the majority that ATSI and Duke’s transmission charges were protected as part of a larger settlement, but rejected the transmission subsidy’s “voluntary” status as a product of a FERC rule rather than a congressional statute.

Commissioner Mark Christie offered a concurring opinion that quoted his previous comments from another case.

“An ROE adder for RTO participation is ‘by definition, a subsidy, as any ROE adder is -- more “FERC candy” taken directly from consumers and redistributed to transmission owners,” Christie observed, citing his previous call to remove such subsidies.

“As long as we do not, consumers will continue to pay these adders at a time when consumers are already facing rapidly rising monthly power bills,” he said.

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