

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.) Docket Nos. EL05-121-006
EL05-121-007

**ANSWER OF
THE DAYTON POWER AND LIGHT COMPANY
IN OPPOSITION TO PLEADINGS FILED
FEBRUARY 19 AND 22, 2010 BY
EXELON CORPORATION**

The Dayton Power and Light Company (“DP&L”), pursuant to Rule 213 of the Federal Energy Regulatory Commission’s (“FERC”) Rules of Practice and Procedure, 18 C.F.R. §385.213, hereby files an answer in opposition to the pleading filed in this proceeding on February 19, 2010, by Exelon Corporation (“Exelon”). While Exelon’s pleading was styled as an answer to an earlier motion filed February 16, 2010 by PJM Interconnection, L.L.C. (“PJM”), Exelon’s pleading is in fact a motion requesting affirmative and new action by the FERC to direct PJM to prepare analyses and provide data relating to the costs of new transmission facilities operating at 345 kV. Exelon’s motion raises issues beyond those remanded to the Commission by the 7th Circuit and seeks information beyond that which the FERC required of PJM in its order on remand of January 21, 2010. Yesterday, on February 22, 2010, Exelon filed a request for rehearing of that January 21, 2010, order. Exelon’s request for rehearing seeks the same FERC action as urged in its February 19, 2010 pleading.

DP&L respectfully submits that this answer to Exelon’s pleading of January 19, 2010, is timely and permitted under the Commission’s Rules. To the extent that the Commission views Exelon’s pleading as an answer to PJM and not a separate motion of its own, DP&L respectfully requests that it be permitted to respond to Exelon’s pleading so as to clarify the issues presented

and assist the Commission in its decision making process. Similarly, DP&L requests that the Commission accept DP&L's answer here to apply equally to Exelon's request for rehearing. Since the two Exelon pleadings are virtually identical, DP&L's answer is identical to both. Thus, acceptance of this answer for both purposes will not burden the record, will enhance the Commission's understanding of the issues and aid in the Commission's decision making process.¹

In support of its answer to Exelon's pleadings, DP&L states as follows:

1. The Commission should reject Exelon's attempt, or any other party's attempts, to reopen issues that have previously been decided by the Commission in Opinion Nos. 494 and 494-A and not vacated by the 7th Circuit.² The Commission's order on remand correctly focused on the specific issue remanded back to the Commission by the 7th Circuit – how best to allocate the costs of new transmission facilities operating at 500 kV and above.³ In doing so, the Commission correctly followed the mandate of the 7th Circuit. The 7th Circuit did not direct the Commission, the parties or PJM to start this multi-year case over again and consider all potential variations of all potential cost allocation schemes. The 7th Circuit explicitly affirmed that portion of the Commission's Opinions with respect to how the costs of pre-existing transmission

¹ The Commission has permitted answers to pleadings not expressly authorized by the Commission when they clarify the record, contribute to an understanding of the issues or assist the decision-making process. *See, e.g., Pepco Holdings, Inc.*, 125 FERC ¶61,130 at ¶24 (2008) (accepted answer as it aided in the decision-making process; *New York Independent System Operator, Inc.*, 121 FERC ¶ 61,112 at ¶ 4 (2007) (answer to protest accepted because it provided information that assisted the Commission in its decision making process).

² *PJM Interconnection, L.L.C.*, Opinion No. 494, Docket Nos. EL05-121-000, *et al.*, 119 FERC ¶ 61,063 (2007), *reh'g*, Opinion No. 494-A, 122 FERC ¶ 61,082 (2008), *aff'd in part and vacated and remanded in part, Illinois Commerce Commission v. FERC*, 576 F.3d 470 (7th Cir. 2009), *reh'g and reh'g en banc denied*, Oct. 20, 2009.

³ *PJM Interconnection, L.L.C.*, Docket No. EL05-121-006, 130 FERC ¶61,052 (Jan. 21, 2010).

facilities, large and small, will be recovered in rates. The 7th Circuit did not disturb that portion of the Commission's Opinions with respect to how the costs of new transmission facilities operating below 500 kV will be allocated. The 7th Circuit summarized its ruling as follows:

To summarize, the petitions for review that concern the pricing of existing facilities are denied, but the petitions concerning the pricing of new facilities that have a capacity of 500 kilovolts or more are granted.⁴

2. The FERC's order on remand correctly focused on the issue remanded to the Commission and established a paper hearing process that starts with a direction to PJM that it run analyses and provide data on the differences in end-result between socializing the costs of new 500 kV transmission facilities and the use of a Distribution Factor (DFAX) method of cost allocation. In DP&L's view, the Commission's focus is justified and correct. Absent such a focus, the paper hearing process is likely to devolve into a morass of competing and contradictory proposals. In the earlier litigation, there were proponents of socialization of facilities down to 200 kV; there were proponents of socialization of all new and existing facilities. But this is not "opening day" of a new season where everyone starts at 0-0 and all parties get to litigate all the issues and every variation that they can think of. The Commission should affirm the focus of its January 21, 2010, order and, if necessary, explicitly direct the parties including PJM not to seek to reinject questions of how to allocate the costs of lower voltage facilities. That issue was previously decided by the Commission and was not vacated by the 7th Circuit.

3. Exelon seeks a FERC directive to have PJM expand its analyses to show the zonal impacts of socialization of new facilities down to the 345 kV level. DP&L was one of the lead

⁴ *Illinois Commerce Commission v. FERC*, 576 F.3d 470 (7th Cir. 2009), mimeo at 12.

appellants who opposed the socialization of new facilities operating at the 500 kV and above level because it would have resulted in millions of dollars being allocated to DP&L with zero benefits to it. Exelon supported that position before the 7th Circuit. Exelon's proposal here is a precursor to renew its litigation position, socialization of facilities operating at 345 kV and above, that was rejected by the Commission and not vacated by the 7th Circuit. DP&L would further note that socialization down to the 345 kV level is not a "compromise" position, at least not for DP&L. It would result in an even worse outcome for DP&L than the allocation method previously adopted by FERC, appealed by DP&L and rejected by the 7th Circuit. It would result in even more costs being allocated to DP&L of facilities for which it derives no benefit.

4. It is patently obvious why Exelon would propose such an approach –in June 2008 it completed a \$350 million project to complete a 345 kV loop in and around Chicago. http://www.comed.com/sites/partnersbusiness/Pages/reliability_westloop.aspx . While Exelon stood aligned with DP&L before the 7th Circuit Court in arguing that it is unfair and unjust for it to be allocated costs of 500 kV facilities that are being built in the Eastern portions of PJM, Exelon can significantly reduce the impact of that socialization if it is given the opportunity to off-load 90% or more of the costs of its own construction program to others.

5. DP&L, however, benefits from none of these projects and Exelon's proposal is just as violative of the 7th Circuit's directives. The Appeals Court rejected FERC's rationale for socializing costs of new large facilities, while affirming the FERC's decision not to socialize the costs of existing facilities and leaving in place the DFAX method for allocating costs of new facilities operating below 500 kV. The Court explicitly and favorably recognized that there are existing analytic tools (i.e., the DFAX method) that FERC has approved to identify the beneficiaries of proposed projects and that FERC and PJM uses those tools in allocating costs of

new facilities that operate at voltages under 500 kV.⁵ The Court also found as a matter of law that:

FERC is not authorized to approve a pricing scheme that requires a group of utilities to pay for facilities from which its members derive no benefits, or benefits that are trivial in relation to the costs sought to be shifted to its members.⁶

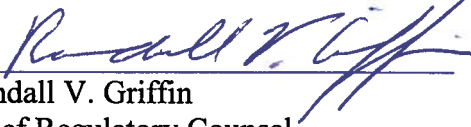
6. The FERC has an exceptionally difficult task to perform in this proceeding. It must make reasoned judgments to balance competing interests and to achieve just and reasonable results that do not unduly subsidize one group at the expense of another. The socialization method for new transmission facilities operating at 500 kV or more would have doubled DP&L's transmission rates, assuming all the planned projects were built, with no showing of any benefits to DP&L. It would be no "compromise" to continue that method or an alternative approach such as that suggested by Exelon that could triple DP&L's transmission rates with no showing of benefits. Ultimately, FERC will need to implement a mechanism that protects the interests of all, including the minority. Those interests could be protected by the use of the beneficiary-pays method, or some form of allocation trigger that ensures that entities that receive zero benefits are not allocated costs, or through some form of cap on the percentage increases to the zonal transmission rate that will be allowed to be caused by socialization.

⁵ *Id.*, mimeo at 7.

⁶ *Id.*, mimeo at 9.

WHEREFORE, for the foregoing reasons, DP&L respectfully requests that the Commission reject Exelon's request as seeking to reopen issues not properly before the Commission on remand.

Respectfully submitted,
The Dayton Power and Light Company



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Dated: February 23, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day, February 2010 served via e-mail or by first-class mail, a copy of the foregoing on each party on the official service list compiled by the Secretary in this proceeding.

On behalf of

The Dayton Power and Light Company



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