UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

FirstEnergy Service Company Request for	**)**	
Order Authorizing Abandoned Plant Incentive	**)**	**Docket No. ER24-1998-000**

COMMENTS OF KERYN NEWMAN

On May 13, 2024, FirstEnergy Service Company, on behalf of Potomac Edison Company, Mid-Atlantic Interstate Transmission LLC, Trans-Allegheny Interstate Line Company, and Keystone Appalachian Transmission Company, submitted its request for an order authorizing the Commission's Abandoned Plant Incentive for transmission work it was assigned as part of PJM Interconnection's 2022 Window 3 competitive process.

I am an electric ratepayer in the PJM Interconnection (PJM) region who would be responsible for the costs of a project that is not used and useful in the event that it is abandoned. I object to the authorization of the Abandoned Plant Incentive for Potomac Edison covering PJM Baseline Upgrade ID numbers b3800.103, 104 and 105, which consist of a wreck and rebuild of an existing 138kV transmission line, and the addition of a new 500kV line on the same transmission structures.

The award of this project to FirstEnergy was not the result of a transparent and competitive stakeholder process at PJM. In fact, FirstEnergy never proposed such a rebuild project, but was nevertheless awarded the project by PJM behind the scenes. FirstEnergy proposed a new 500kV transmission line parallel to its existing 138kV line, completely on a new right-of-way. It was NextEra that proposed rebuilding the 138kV transmission line and adding a new 500kV line partially on FirstEnergy's existing right-of-way. When questioned during the

October 31, 2023 Transmission Expansion Advisory Committee (TEAC) meeting regarding the ability of NextEra to use FirstEnergy's right-of-way for the rebuild portion of its MidAtlantic Resiliency Link (MARL) proposal (PJM project number 853), PJM's representative said it was possible for NextEra to do so. However, prior to the next TEAC, PJM revised its October 31 maps to reflect that it had reassigned the rebuild portion of MARL in Frederick County, Virginia, and Jefferson County, West Virginia, to FirstEnergy.[1]

The MARL project provided a cost cap and other financial concessions that were figured into NextEra's original bid to build the entire 500kV line that PJM selected, however when PJM re-assigned that portion of the project to FirstEnergy, the financial concessions did not go with it. FirstEnergy is not held to the same promises for its section of the MARL project. FirstEnergy's cost estimate for the rebuild section is $341M, however it not held to that number and may spend more. There is no public information about how much the rebuild would have cost if NextEra had been assigned that portion of the project instead. Are ratepayers paying more, or less, and was cost even a factor when PJM reassigned the project to FirstEnergy?

If FirstEnergy was truly concerned about any financial risks from this project, it did not have to demand to construct a portion of the project that NextEra proposed and PJM selected. It is doubtful that granting the Abandoned Plant Incentive to FirstEnergy for the rebuild portion of the MARL project "…encourages the development of much needed transmission facilities…"[2] FirstEnergy did not have to compete to be assigned this part of the project, it was given to FirstEnergy because it owned the right of way that may be used for part of the rebuilt project. Without knowing the criteria PJM used to re-assign the rebuild portion, it can only be assumed

[1] See PJM Transmission Expansion Advisory Committee Reliability Analysis Update, October 31, 2023, page 61. Available at https://www.pjm.com/-/media/committees-groups/committees/teac/2023/20231031/20231031-item-15---reliability-analysis-update.ashx

[2] S. Cal. Edison Co., 133 FERC ¶ 61,107, at P 60

that FirstEnergy would have exclusive rights to use the right of way it owns (purchased with ratepayer funds) in any case, and no other company may use that right of way. Therefore FirstEnergy does not need an incentive to exercise its exclusive right to build in its own right of way.

Perhaps the most famous, and costly, use of the Commission's Abandoned Plant Incentive happened when the Potomac-Appalachian Transmission Highline (PATH) project was cancelled after three years of fruitless attempts at securing state permits. During those three years, PATH's in-service date kept slipping into the future, year by year. What was originally "needed" by 2012 was extended to 2013, then 2014, and finally to 2015, after which PJM finally had to admit that the PATH project wasn't actually needed at all.

The subject Potomac Edison project is already slipping, perhaps the first mile marker on its road to abandonment. As shown on FirstEnergy's acceptance of PJM's designation letter,[3] PJM planned for the FirstEnergy portion of MARL to be in-service June 1, 2027. FirstEnergy has already extended the in-service date to 2028 for the Virginia segments of the project, and to 2030 for the West Virginia segment. MARL's in-service date is already slipping. Why is that relevant? Because the electric grid abhors a vacuum. When a planned transmission (or generation) project fails to come online when needed, other projects will take its place. That's exactly what happened with the PATH project, and what is likely to happen with the MARL project, including the Potomac Edison portion that is the subject of this filing.

It must be acknowledged that the MARL project is needed for the sole purpose of supplying "data center alley" in Loudoun County, Virginia, with an additional supply of power for new and expanded data centers. If MARL cannot keep up with Virginia's development and

[3] Testimony of Jacquelyn Lee Lojek, Attachment B

be there when it's needed, the data center industry may leave for new locations where power is cheap and plentiful. This is happening already, with new data centers springing up in different parts of the country. Data centers are moving where the power is, not waiting for MARL or any other hotly contested transmission extension cord to be plugged in. In addition, it is possible that data centers may be required to become independent from the grid and no longer require new transmission lines from other states simply because Loudoun County has reached a tipping point.[4]

The Commission should also consider that this project connects West Virginia coal-fired generators[5] with Loudoun County's "data center alley" much like a giant electrical extension cord. Recent carbon rules issued by the U.S. Environmental Protection Agency will require coal-fired power stations like the ones connected by this transmission project to capture their emissions beginning in 2032. It's very early yet to predict whether the plants feeding this transmission line will even stay open more than two years past the project's in-service date. If West Virginia's coal-fired power stations close, rather than upgrade their operations, what's the point of this transmission line? Plans may change.

This transmission project may never happen, but PJM and the utilities involved feel they should pursue it anyhow. Is that because there are no other options? Or is it because there's no harm done to them if it fails. All the burden of failure falls on ratepayers, and this encourages the utilities to take more of a chance than they would it they had some skin in the game. Utilities shoulder no risk, while collecting all the rewards.

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[4] 'New Paradigm' Turner Calls for New Methods, Community Collaboration to Address Power Constraints, Loudoun Now, June 24, 2024, available at: https://www.loudounnow.com/news/new-paradigm-turner-calls-for-new-methods-community-collaboration-to-address-power-constraints/article_0bcad410-325e-11ef-920e-6fffaacd1e96.html

[5] Mitchell Power Station (1,632MW), Longview Power Station (700MW), Ft. Martin Power Station (1,098MW), and Harrison Power Station (1,984MW). On MARL's journey east, it also makes a connection to Virginia's Mt. Storm Power Station (1,662MW).

If the Commission can't find its way to reject this request for the Abandoned Plant Incentive, it should at least attempt to staunch the bleeding by limiting project expenditures to only those necessary to pursue state and other approvals. Expensive land purchases, land agent contractors, site surveys, and project components should be excluded from prudent expenditures until **after** state approvals. Utilities with the Abandoned Plant Incentive routinely "work ahead" and begin acquiring land and performing site surveys before state approvals. If the project is not approved and land acquisition has already happened, these unnecessary costs fall on consumers. Utilities will sell unneeded land for pennies on the dollar when they abandon a project that has acquired land, and consumers pick up the enormous difference between purchase price and sale price. Consumers ended up paying around $20M for land purchased for the PATH project, even after all PATH's land was sold during abandonment. Consumer risk could be reduced somewhat by limiting spending.

In addition, the Commission must consider that the request for the Abandoned Plant Incentive for this proposed transmission project comes before any state approvals. In fact, it comes even before the project has announced a route and held public meetings. How can the project's risk of opposition and delay be properly evaluated before it has even been presented to the public?

The Commission should also consider the fact that NextEra has requested that the U.S. Department of Energy designate a National Interest Electric Transmission Corridor (NIETC) two miles wide that encompasses the MARL project's proposed route. Is there really any chance of the project's abandonment if the Commission itself has ultimate permitting authority? If there's little chance of abandonment, there's little chance of risk, and little need for an incentive that allows the collection of sunk costs from ratepayers in the event that the project is not approved.

In testimony submitted with its request for the Abandoned Plant Incentive, FirstEnergy's witness claims,

> "There is no guarantee that any of the agencies from which FirstEnergy needs a permit or other regulatory approval in order to construct the FE Projects will grant them…"[6]

But isn't that the purpose of NIETCs? To guarantee that a transmission project determined to be needed by the Department of Energy is built, despite opposition or state disagreement? Does such a guaranteed project actually need to reduce its miniscule risk with an incentive that allows its owner to collect 100% of its costs from consumers if it is abandoned against the federal government's best efforts to make it happen?

If the Commission grants the Abandoned Plant Incentive to this portion of the MARL project, it would actually be just and reasonable for Virginia's data center industry, or simply the local governments there who keep enticing and facilitating data center development, to be the ones who are saddled with the risk of MARL's abandonment. Of course I know that can't happen… but it should. Instead, consumers all across PJM will be left paying for a project they never needed in the first place, and the irresponsible development policies in certain states will continue.

It is way past time for the Commission to complete its examination and evaluation of its incentive policies that it began years ago but never completed.[7] Perhaps a logical first step would be to undertake the data collection requested in that docket by consumers, which would calculate the impact of the Abandoned Plant Incentive on electric consumers.[8] This incentive

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[6] Testimony of Jacquelyn Lee Lojek P. 11, Line 6-7
[7] Docket No. RM20-10
[8] Joint Comments of Consumer Organization Groups, Docket No. RM20-10, June 30, 2020, P. 20, "…we also believe that the Commission should collect and make available the cost of abandoned projects to measure whether its abandonment incentive is encouraging needed transmission, or just the risk-free proposal of "wish list" transmission expansion projects that are unlikely to be approved by states and built."

has become nothing more than a "check-the-box" exercise and is routinely awarded to every transmission project that requests it. It may be the single largest waste of consumer money that the Commission routinely approves, but we can't know that because the Commission refuses to examine its impacts.

In order to determine if the Abandoned Plant Incentive is just and reasonable (whether in individual awards of the incentive like this one, or in a collective manner in a rulemaking) the Commission should examine the following:

1. A list of all projects receiving the Abandoned Plant Incentive, including the project's total cost, and whether it was built or abandoned.
2. If a project receiving the incentive was abandoned, what was its total cost to consumers?
3. If a project was abandoned, what was the reason for the abandonment? The reasons for abandonment should be studied to determine if corrections to planning or execution must be made to protect consumers from similar abandonments. An abandonment is a failure and its cause must be determined.

Without knowing these things, it is impossible for the Commission to determine whether the Abandoned Plant Incentive itself is just and reasonable, and without a certainty that the Abandoned Plant Incentive is just and reasonable overall, how can the Commission determine whether Potomac Edison's requested incentive is just and reasonable?

The Commission needs to do more than "check-the-box" here, especially because it refuses to examine its Abandoned Plant Incentive in a rulemaking. Awarding the incentive to a project that was not awarded in a competitive process, and before it has any approvals, in order to make consumers responsible for the poor planning and execution of a speculative project is not just and reasonable. Consumers have zero control over the project's risk factors, but they are the ones left holding the bag when it fails. As consumers, we simply cannot afford to continue to financially cover the failures of grid planners and transmission developers simply because we are the one entity without a voice in incentive awards.

The box checking has to stop. Thoughtful consideration must begin. I urge you to take the first step here.

Respectfully submitted,

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