UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

The Dayton Power and Light Company Docket No. ER23-764

**Motion to Intervene and Comment of Public Citizen, Inc.**

On December 30, 2022, the The Dayton Power and Light Company applied for incentive rate treatment for transmission projects in the AES Ohio system. Among the requested rate incentives are “authorization for inclusion of 100% Construction Work in Progress in rate base”.[[1]](#footnote-1) We ask that the Commission disallow Dayton Power and Light to include Construction Work in Progress in its rate base.

**Motion to Intervene**

Established in 1971, Public Citizen is a national, not-for-profit, non-partisan, research and advocacy organization representing the interests of household consumers. Public Citizen is active before FERC promoting just and reasonable rates, and supporting efforts for utilities to be accountable to the public interest. Our interests in this proceeding are unique, and cannot be represented by any other party. Financial details about our organization are on our web site.[[2]](#footnote-2)

**Public Citizen Comment**

On April 21, 2022, the Commission proposed a rulemaking *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation* that proposes “to not permit public utility transmission providers to take advantage of the construction-work-in-progress (CWIP) incentive”.[[3]](#footnote-3)

It is imprudent for the Commission to formally consider ending the CWIP incentive while at the same time granting it on an ad hoc basis to applicants such as Dayton Power.

As Commissioner Mark C. Christie recently articulated:

*A core principle of utility law and regulation for decades is that consumers can only be forced to pay costs for assets that are “used and useful” to them. In Order No. 679, the Commission determined that it may be necessary to depart from this long-standing ratemaking principle to “address the substantial challenges and risks in constructing new transmission.” In my concurrence to a prior order . . . I questioned, among other concerns, whether the Commission’s determination of whether “substantial challenges and risks” exist when granting the abandoned plant and other incentives has become nothing more than a check-the-box exercise. As I have previously discussed: The Commission’s incentive policies—particularly the CWIP Incentive, which allows recovery of costs before a project has been put into service—run the risk of making consumers “the bank” for the transmission developer; but, unlike a real bank, which gets to charge interest for the money it loans, under our existing incentives policies the consumer not only effectively “loans” the money through the formula rates mechanism, but also pays the utility a profit, known as Return on Equity, or “ROE,” for the privilege of serving as the utility’s de facto lender.[[4]](#footnote-4)*

FERC Order 679 states that “The purpose of our Rule is to benefit customers by providing real incentives to encourage new infrastructure, not simply increasing rates in a manner that has no correlation to encouraging new investment. The Final Rule, therefore, makes clear that not every incentive identified herein will be necessary or appropriate for every new transmission investment”; that incentive rates are required only if there are “substantial challenges and risks in constructing new transmission”; that “the Commission will permit incentives only if the incentive package as a whole results in a just and reasonable rate”; and acknowledged that the certain rate incentives departed from the existing ratemaking doctrine that rates should be based on plant costs that are *used and useful*.[[5]](#footnote-5)

The Commission’s purpose in considering whether to allow incentive rate treatment therefore is conditioned on whether the incentives are necessary to encourage new transmission investment, and that they be just and reasonable. The Application fails to make the case that “substantial challenges and risks” exist requiring the incentive rates.

Indeed, recent Congressional action mitigates risk for transmission projects like Dayton Power’s. On November 15, 2021, President Biden signed H.R.3684 into law, establishing new authority for the Commission to expedite transmission siting, and a $10 billion loan fund to help finance transmission projects like Dayton Power’s.[[6]](#footnote-6) And on August 16, 2022, President Biden signed into law the Inflation Reduction Act of 2022.[[7]](#footnote-7) Section 50151 (*Transmission Facility Financing*) of the IRA appropriates $2 billion for a direct loan program for the development of transmission projects, and Section 50152 (*Grants to Facilitate the Siting of Interstate Electricity Transmission Lines)* spends $760 million for grants aimed at facilitating the siting of transmission lines.

In conclusion, we ask that the Commission disallow the use of Construction Work in Progress in Dayton Power’s rate base.

Respectfully submitted,

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1. Application, at page 1. [↑](#footnote-ref-1)
2. www.citizen.org/about/annual-report/ [↑](#footnote-ref-2)
3. Docket No. RM21-17, at 5. [↑](#footnote-ref-3)
4. Commissioner Christie concurring statement, *Order Granting Abandoned Plant Incentive*, Docket No. ER22-1886, Issued July 15, 2022. [↑](#footnote-ref-4)
5. *Promoting Transmission Investment through Pricing Reform*, Docket No. RM06-4, issued July 20, 2006, at paragraphs 6, 26, 2 and 116, www.ferc.gov/sites/default/files/2020-05/E-3\_69.pdf [↑](#footnote-ref-5)
6. www.congress.gov/bill/117th-congress/house-bill/3684/text [↑](#footnote-ref-6)
7. www.congress.gov/bill/117th-congress/house-bill/5376 [↑](#footnote-ref-7)