

March 1, 2006

Magalie Roman Salas, Secretary
Federal Energy Regulatory
Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: American Electric Power Service
Corporation
Docket No. EL06-50-000

Dear Secretary Salas:

Please find for e-filing the Joint Consumer Advocates' Motion for Leave to Intervene and Protest, in the above-referenced proceeding.

Copies of this document have been served upon all parties designated on the Commission's official service list, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure.

Respectfully submitted,

--filed electronically--

Darryl Lawrence
Assistant Consumer Advocate

Enclosure
cc: All parties of record

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

American Electric Service
Power Corporation

:

Docket No. EL06-50-000

MOTION FOR LEAVE TO INTERVENE AND PROTEST
OF THE JOINT CONSUMER ADVOCATES

Joint Consumer Advocates:

Pennsylvania Office of Consumer Advocate
Maryland Office of People's Counsel
Office of the Ohio Consumers' Counsel
D.C. Office of People's Counsel
N.J. Division of the Ratepayer Advocate

Dated: March 1, 2006

Pursuant to Rules 211, 212 and 214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, 385.212 and 385.214, the Pennsylvania Office of Consumer Advocate (Pa. OCA), the Maryland Office of People's Counsel (MPC), the Office of the Ohio Consumers' Counsel (OCC), the New Jersey Division of the Ratepayer Advocate (NJ RPA), and the D.C. Office Of People's Counsel (D.C. OPC) (collectively referred to as Joint Consumer Advocates or JCA) hereby move for leave to intervene collectively and individually in the above-captioned proceeding and submit this Protest. In support of this Motion and Protest, JCA state the following:

1. The Pennsylvania Office of Consumer Advocate is an independent state office within the Pennsylvania Office of Attorney General. It is empowered by Pennsylvania statute to represent the interests of consumers before the Pennsylvania Public Utility Commission and equivalent federal regulatory agencies and before state and federal courts.

2. The name, address, telephone, facsimile and e-mail address of the Pa. OCA's designated representatives for receipt of service in this proceeding are:

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3. The Maryland Office of People's Counsel is an independent state agency that was established to represent the interests of residential consumers in utility cases. Maryland Public Utility Companies Code Annotated, Section 2-205(b)(1999). The People's Counsel may

appear before any federal or state agency as necessary to protect the interests of residential...users of [gas, electricity or other regulated services].

4. The name, address, telephone, facsimile and e-mail address of the Maryland Office of People's Counsel's designated representative for receipt of service in this proceeding are:

William F. Fields
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5. The Office of the Ohio Consumers' Counsel is Ohio's residential utility consumer advocate, empowered under Chapter 4911, Ohio Rev. Code Ann. (Anderson 2000), to represent the interests of Ohio's approximately 4 million residential utility consumers in proceedings before state and federal administrative agencies and courts. OCC has actively participated in numerous regulatory proceedings at the state and federal level.

6. The name, address, telephone, facsimile and e-mail address of OCC's designated representative for receipt of service in this proceeding are:

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7. The D.C. Office of People's Counsel is an independent agency of the District of Columbia government and is the statutory representative of District of Columbia

consumers in public utility issues in proceedings before the District of Columbia Public Service Commission, federal regulatory agencies, and state and federal courts.

8. The name, address, telephone, facsimile and e-mail address of the D.C. OPC's designated representative for receipt of service in this proceeding are:

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9. The NJ RPA is a statutory representative of residential, commercial and industrial public utility customers in the State of New Jersey. *See Reorganization Plan No. 001-1994*, printed at *N.J.S.A. 13:1D-1*; *see also N.J.S.A. 52:27E-50 et. seq.* This representation consists of proceedings before the New Jersey Board of Public Utilities, similar federal agencies, offices of administrative law, federal and state courts.

10. The name, address, telephone number, facsimile number and e-mail address of the NJ RPA representative authorized to receive service are:

Henry M. Ogden, Esquire
Assistant Deputy Ratepayer Advocate
N.J. Division of the Ratepayer Advocate
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11. On January 31, 2006, American Electric Power Service Corporation (AEP) filed a petition for declaratory order, pursuant to Rule 207, 18 C.F.R. § 385.207, seeking incentive rate treatment for its proposed 765 kV transmission line project (AEP Project or Project). AEP's subsidiary, AEP Transmission Company, LLC (AEP Transco) is the entity charged with construction of the AEP Project. At a projected cost of \$3 billion dollars, the rate treatment of the AEP Project is a concern to all utility ratepayers that receive service from within the PJM footprint.

INTERVENTION

12. The Pennsylvania General Assembly passed a statute in December, 1996, opening up the Pennsylvania retail electric supply market to competition beginning January 1, 1999. 66 Pa. C.S. §§ 2801 *et seq.* (1999). By January of 2001, all Pennsylvania retail electric consumers, including all of the retail electric consumers served by the Pennsylvania electric utilities operating in PJM, obtained the right to choose their electric generation supplier.

13. In January 1999, the Maryland General Assembly passed the Electric Customer Choice and Competition Act of 1999. Maryland Public Utility Companies Code Annotated, Section 7-501, *et. seq.* (1999). This act institutes competition for retail electric service beginning July 1, 2000. The majority of retail customers in Maryland purchase electricity from suppliers that operate in the PJM market.

14. In July 1999, the Ohio General Assembly's Am. Sub. Senate Bill No. 3 became effective. Ohio Revised Code Chapter 4928. This legislation provided for competition for retail electric generation service in Ohio beginning January 1, 2001.

15. In December 1999, the City Council of the District of Columbia passed the Retail Electric Competition and Consumer Protection Act of 1999. D.C. Code section 34-1501, *et. seq.* (2001). The Act provides for implementation of competition for retail electric service in the District of Columbia no later than January 1, 2004, leaving the precise date for implementation to be set by the Public Service Commission of the District of Columbia. By Order No. 11796, the Public Service Commission set January 1, 2001 as the implementation date for retail competition in the District of Columbia. Suppliers operating in the PJM market will serve all retail customers in the District of Columbia.

16. The New Jersey Legislature passed a statute opening up the New Jersey retail electric supply market to competition beginning on August 1, 1999. *N.J.S.A. 48:3-49(1) et. seq.* Thus, all of New Jersey's retail consumers have the ability to choose their electric generation supplier. *Id.* Those customers who choose to switch will still rely upon their electric utility for distribution and transmission services. As a result of the introduction of retail electric competition in New Jersey, a significant portion of retail electric customers already have or will soon have the opportunity to be served by suppliers who operate within PJM. These suppliers and the electric utilities buy and/or sell capacity in PJM's market.

17. The AEP Project is currently planned to originate in West Virginia, proceed through Pennsylvania, Maryland, and arrive at the end of its 550-mile length just after entering New Jersey. Based on AEP's Petition, the JCA reasonably believe that all retail consumers within the PJM footprint may be affected by the AEP Project.

18. The JCA represent the interests of retail consumers in Maryland, Ohio residential, Pennsylvania, New Jersey, and Washington D.C. who receive their energy from load serving entities within PJM. Thus, AEPs Petition may affect the interests of the retail consumers the JCA represent.

19. No other party can adequately represent the interests of the JCA in this proceeding. The load serving entities such as utilities and alternative suppliers who supply service to residential and retail consumers have a number of interests to protect, including the interests of the shareholders in their corporations. The state utility commissions likewise have a number of interests to represent in this proceeding, including the broader public interest. The wide array of interests represented by these other parties can, and sometimes do, conflict with the narrower array of consumer interests represented by the JCA.

20. The Commission noticed AEP's Petition on February 1, 2006, requiring that all protests and motions to intervene in this docket be filed by March 1, 2006.

21. The JCA, individually and collectively, satisfy the Commission's requirements for intervention and seek approval of their timely intervention in this proceeding.

STATEMENT OF ISSUES

1. Whether AEP's Petition should be rejected as premature because AEP's Project has not gone through the PJM Regional Transmission Expansion Plan (RTEP) process; the Department of Energy has yet to establish national transmission corridors; and, the Petition relies on ratemaking methodologies that are still being reviewed by the Commission. Energy Policy Act of 2005, Pub.L. 109-58, Section 1221 (2005); Notice of Proposed Rulemaking at Docket No. RM06-4-000.
2. Whether AEP's Petition should be denied because the return on equity sought is likely to result in rates that are unjust and unreasonable. Federal Power Act (FPA), 16 U.S.C. § 824; *Alabama Elec. Coop v. FERC*, 285 F.3d 1 (D.C. Cir. 2002); *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Bluefield Waterworks & Improvement Company v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923).
3. Whether AEP's Petition should be denied because the extraordinary rate treatment sought for CWIP and pre-project/construction costs has no basis in existing Commission Regulations and violates the used and useful doctrine. *Tennessee Gas Pipeline Co. v. FERC*, 606 F.2d 1094 (D.C. Cir. 1979); *Boston Edison Co.*, 109 FERC ¶ 61,300 (2004).
4. Whether AEP's Petition if considered at all, should be resolved through full evidentiary hearings to advise genuine issues of material fact that can only be resolved through such a process. *Ohio Power Co. v. FERC*, 744 F.2d 162 (D.C.Cir.1984).

PROTEST

JCA protest the AEP Petition in this docket on the basis that the Petition: (A) is premature because AEP's Project has not been reviewed or analyzed as part of any PJM process and precedes the completion of the Commission's Notice of Proposed Rulemaking regarding incentive ratemaking for transmission projects; (B) seeks a return on equity that is unlikely to result in a level of rates that is just and reasonable; (C) seeks extraordinary ratemaking treatment of expenses from ratepayers for a capital construction project, such as CWIP and pre-project/construction expenses before the Project has been reviewed or approved through the PJM RTEP process, before the Project has been determined to be cost beneficial, and before the Project is used and useful in the public service; and, (D) raises genuine issues of material fact which can only be resolved through evidentiary hearings on this matter.

- A. AEP's Petition Is Premature At This Time Because It Seeks Extraordinary Rate Treatment For A Transmission Project That Has Not Proceeded Through Any Review Process, Including the PJM Regional Transmission Expansion Planning Process And Before The Commission Has Completed Its NOPR Regarding Incentive Ratemaking

AEP has filed a Petition for Declaratory Order with this Commission before there has been any review, or determination, as to whether the Project in question is needed for either reliability or economic purposes, before any criteria have been developed regarding how such projects, if deemed to be needed, will be sited, and before the Commission has completed its proposed rulemaking regarding the need for any incentives for transmission construction. JCA submit that without the necessary review of this Project through the PJM RTEP process, without completion of the Department of Energy (DOE) congestion study or DOE criteria for establishing transmission corridors, and in the absence of a final Commission rule regarding incentive rate treatment, AEP's Petition is simply premature. Neither the Commission nor any

party should spend valuable time and resources evaluating the merits of incentive ratemaking for such a project.

A critical first step in the process of planning any new transmission facility is to ascertain that there is a need for such a project. For PJM, the RTEP process determines whether a project should be included in the Regional Transmission Expansion Plan because it resolves reliability problems or cost effectively reduces congestion. A project that is included in the Regional Transmission Plan, and is subsequently constructed, would receive the ratemaking treatment provided for such projects through Schedule 12 of the PJM OATT. Projects that are initiated outside of the PJM planning process must nonetheless be reviewed in the PJM RTEP process to determine the impact of the project on the reliability of the system and to determine other system upgrades that might be needed for reliability purposes if the transmission project is constructed.

The AEP Project has not been reviewed by PJM at this time for either inclusion in the Regional Transmission Expansion Plan or for the reliability impacts to the system from the Project. AEP's Petition simply presupposes that acceptance of its Project into the PJM Plan is a foregone conclusion, and is asking the Commission to pre-authorize preferential rate treatment as contained in its Petition.¹ The JCA submit that AEP should withdraw its Petition until its Project has been analyzed through the PJM RTEP process so that all costs (including costs of any other needed system upgrades) and all benefits can be identified and analyzed.

The JCA would also note that AEP assumes the existence of a national transmission corridor that will follow the corridor it has identified for its Project. The

¹ AEP appears to reach this conclusion due to some similarities between a PJM concept project referred to as the "Mountaineer Project" and the AEP Project. AEP Petition at 8. The Mountaineer Project, though, is to stimulate thinking about large, multi-state projects and is not a final approved project in the PJM Plan and it has not undergone any actual cost benefit analysis. Additionally, there is no evidence that the AEP project will meet the same needs as identified for the Mountaineer Project.

Department of Energy has been charged with first studying congestion within the various regions of the United States and then determining criteria for establishing national transmission corridors that will address reliability problems. Energy Policy Act of 2005, Pub.L. 109-58, Section 1221 (2005). This process has just been initiated and determinations as to criteria and standards are not scheduled to be completed until August of 2006. As part of the process for determining criteria for establishing national transmission corridors, DOE will evaluate and identify what corridors should be fast-tracked. It is premature to assume that the AEP Project would meet the criteria established by DOE or resolve the transmission problems that DOE is to address. Should it be a critical project, DOE will identify it as such and fast-track the project. This will allow the PJM RTEP process to proceed concurrently with the DOE process. Until these processes are complete, AEP's Petition is premature.

Finally, AEP has assumed that it can request, and is entitled to, the forms of incentive ratemaking treatment that have been identified in the Commission's on-going Notice of Proposed Rulemaking at Docket No. RM06-4-000. The NOPR is not final; however, and the JCA have joined with the National Association of State Utility Consumer Advocates (NASUCA) in comments that identify a number of significant flaws with the incentive proposals contained in the NOPR. Rulemaking Comments of NASUCA, *et al.*, Docket No. RM06-4-000, filed January of 2006. As NASUCA pointed out in its Comments, some of the broad-based incentives proposed are contrary to sound ratemaking principles, contrary to sound economic efficiency principles, and are not in keeping with fair rate of return principles or the principles requiring rates to be just and reasonable. There is no reason to award AEP any of these extraordinary

incentives when the Commission has yet to resolve the significant issues raised regarding the NOPR.²

The JCA submit that the AEP Petition should be denied as premature. If the Commission entertains the Petition, the JCA submit that AEP has failed to make any showing that the forms of incentive rate treatment it seeks are necessary to protect reliability or promote more efficient markets, and it has failed to establish that such ratemaking treatment will result in just and reasonable rates.

B. Extraordinary Rate Treatment Is Not Warranted And Will Not Result In Rates That Are Just and Reasonable.

1. Introduction

Through its Petition, AEP seeks to receive three forms of extraordinary rate treatment. AEP asks: (1) that a return on equity in the high end of the range of reasonableness, or in the alternative a 200 basis point adder, be awarded; (2) that it be allowed full recovery of Construction Work in Progress (CWIP) on an expedited basis; and (3) that it be allowed to recover all of the costs associated with planning and implementing the project on an on-going basis. AEP Petition at 3. AEP's Petition asks the Commission to approve these items, as those items were discussed in the Commission's *Promoting Transmission Investment Through Pricing Reform* proposed rulemaking at Docket Number RM06-4-000, or alternatively, under the Commission's existing rules and orders regarding incentive ratemaking. If the Commission were to consider AEP's Petition, the JCA submit that these requests for extraordinary rate treatment should be denied. AEP seeks ratemaking treatment that is inconsistent with sound ratemaking principles, relies heavily on a proposed rulemaking that has not been completed, fails to make

² If AEP's Petition would be considered at all, it should be considered under existing Commission rules regarding incentive rate treatment. As discussed in more detail below, AEP's Petition fails to make any necessary showing that it is entitled to such treatment.

the necessary showings under existing Commission rules and Orders and will not result in rates that are just and reasonable.

2. AEP's Petition Requesting An Incentive Return On Equity Will Result In Rates That Are Unjust And Unreasonable
 - a. Long-standing Ratemaking Principles Provide A Reasonable Opportunity for AEP to Earn A Fair Rate of Return.

Without any analysis of its cost of capital, AEP asks the Commission to increase any return on equity (ROE) it may eventually allow for this project in one of two ways: (1) arrive at the range of reasonableness and then set the ROE at the high end of that scale; or (2) using the midpoint of the aforementioned range, add 200 basis points. AEP contends that this is the proper methodology for treating its Project based on what AEP calls the substantial "risk" involved. The JCA submit that AEP has not shown that a return on equity based on its cost of capital does not fairly compensate AEP for the risks associated with such a project, or that any incentives are justified or warranted under the Commission standards for incentive ratemaking. The Commission must not lose sight of the fact that interstate electric transmission companies such as AEP have an affirmative obligation to serve, and to do so in an efficient and reasonable manner. Federal Power Act (FPA), 16 U.S.C. § 824. The goal of the FPA is to protect consumers from excessive rates and charges and to ensure that rates are just and reasonable. Interpreting this mandate, the Commission and the Courts have found that rates should be based primarily on the cost of providing service to the utility's customers, including a just and reasonable return on equity. *Alabama Elec. Coop v. FERC*, 285 F.3d 1, 5 (D.C. Cir. 2002).

Determining a just and reasonable return on equity necessarily involves a balancing of the interests of consumers and investors. Consumers must have access to safe, reliable and reasonably priced utility service, whereas investors must have the opportunity to

earn a reasonable return on their investment. However, the Commission has no duty to ensure that investors profit from their enterprise – only the duty to afford them the opportunity for profit.³ See *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).

As a general rule, a public utility, whose facilities and assets have been dedicated to public service, is entitled to a reasonable opportunity to earn a fair rate of return on its investment. The standard to evaluate what is a fair rate of return was established by the United States Supreme Court in *Bluefield Waterworks & Improvement Company v. Public Service Commission of West Virginia*, wherein the Court provided:

The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to raise the money necessary for the proper discharge of public duties.

Bluefield, 262 U.S. 679, 693 (1923). The Supreme Court further held in *Bluefield* that the allowed rate of return should reflect:

[A] return on the value of the [utility's] property which it employs for the convenience of the public equal to that being made at the same time on investments in other business undertakings which are attended by corresponding risks and uncertainties.

Id. at 692.

Twenty-one years later, the United States Supreme Court revisited the issue of fair rate of return in *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591 (1944). In *Hope*, the Supreme Court held that a fair rate of return “should be commensurate with returns on investments in other enterprises having corresponding risks” while being sufficient “to

³ It is notable that if the Commission were to allow AEP all of the extraordinary rate treatments that it requests, it would be guaranteed full recovery of every dollar that it puts into the Project, whether the Project was completed or not, and it would be guaranteed to earn the increased rate of return that it seeks. AEP's requests are completely out of step with sound ratemaking principles.

assure confidence in the financial integrity of the enterprise, so as to maintain its credit and attract capital.” *Id.* at 603.

In 1968, the Supreme Court set forth the parameters for the Commission’s weighing of competing investor and consumer interests. The Court stated:

The Commission cannot confine its inquiries either to the computation of costs of service or to conjectures about the prospective responses of the capital market; it is instead obliged at each step of its regulatory process to assess the requirements of the broad public interests entrusted to its protection by Congress. Accordingly, the ‘end result’ of the Commission’s orders must be measured as much by the success with which they protect those interests as by the effectiveness with which they ‘maintain * * * credit and * * * attract capital.

In Re Permian Basin Area Rate Cases, 390 U.S. 747, 791 (1968). The Court required that this balancing of interests provide “appropriate protection to the relevant public interests, both existing and foreseeable.” *Id.* at 792. Quoting from a 1959 Supreme Court decision, the Court stated:

The consumer is thus obliged to rely upon the Commission to provide ‘a complete, permanent and effective bond of protection from excessive rates and charges.’

Id. at 794-795, citing *Atlantic Refining Co. v. Public Service Commission*, 360 U.S. 378, 388 (1959).

The Court has made it clear that protection of consumer interests from excessive rates and exploitation at the hands of utilities must be given as much weight by the Commission as the interests of the utilities themselves. Here, the extraordinary rate treatments sought by AEP will not only afford the investors an opportunity to generate profits, it will allow AEP an unreasonable level of profit by setting the ROE number at an artificially high mark. JCA submit

that setting ROE numbers at unreasonably high levels favors the investor to the detriment of the consumer and could violate the just and reasonable rate doctrine.⁴

b. The Petition Does Not Establish That An Incentive Return On Equity Is Justified Under The Commission's Standards For Incentive Rate Treatment.

The JCA recognize that in limited situations the Commission has decided that incentive rate treatments, particularly increased returns on equity, are necessary to accomplish a certain desirable objective. While the JCA are not in full agreement with the Commission on all of these points, the Commission has established certain principles that must be followed to ensure the resulting rates are just and reasonable. These principles in determining whether incentive returns on equity are to be allowed, have been set forth in a number of cases, rulemakings, and in Order No. 2000. In its 1992 Rulemaking, the Commission affirmed four standards and issued a fifth standard designed to assure that incentive ratemaking is fair. The five standards are: (1) incentive mechanisms must be prospective; (2) participation must be voluntary; (3) incentive mechanisms must be understood by all parties; (4) benefits to consumers must be quantifiable; and (5) quality of service must be maintained. *Re: Incentive Rate Making for Interstate Natural Gas Pipelines, Oil Pipelines, and Electric Utilities*, 61 F.E.R.C. ¶61,168 at 61,589-61,590 (1992). In Order No. 2000, the Commission approved the use of incentive rate mechanisms under conditions consistent with these standards.

⁴ An additional concern with AEP's Petition is that the Commission has been asked to set a return on equity at the high end of an unknown range or to add 200 basis points to an unknown ROE. There is no way for the Commission to balance the interests of investors and consumers in such a vacuum.

In its Petition, AEP relies primarily on 18 C.F.R. Section 35.34, which codifies the innovative rate treatment for RTO's that resulted from Order 2000, and on the pending NOPR on transmission pricing reform.⁵ In Order No. 2000, the Commission has stated that applications for innovative rate treatments:

must explain how the proposed rate treatment would help achieve the goals of RTOs, including efficient use of and investment in the transmission system and reliability benefits to consumers; provide a cost-benefit analysis, including rate impacts; and explain why the proposed rate treatment is appropriate for the RTO proposed by the Applicant.

Order No. 2000 at 31, 171. Order No. 2000 also requires that the proponent of the incentive ratemaking demonstrate that the proposal is appropriate, just, reasonable and nondiscriminatory.

Id.

Order No. 2000 has been codified at 18 C.F.R. Section 35.34, which provides in relevant part:

(e) Innovative transmission rate treatments for Regional Transmission Organizations.

(1) The Commission will consider authorizing any innovative transmission rate treatment, as discussed in this paragraph (e), for an approved Regional Transmission Organization. An applicant's request must include:

(i) A detailed explanation of how any proposed rate treatment would help achieve the goals of Regional Transmission Organizations, including efficient use of and investment in the transmission system and reliability benefits to consumers;

(ii) A cost-benefit analysis, including rate impacts; and

(iii) A detailed explanation of why the proposed rate treatment is appropriate for the Regional Transmission Organization.

⁵ AEP's Petition specifically references 18 C.F.R. Section 35.34(e) as that part of the Commission's Regulations that support its request for innovative rate treatment. AEP Pet. at 1, fn1.

The applicant must support any rate proposal under this paragraph (e) as just, reasonable, and not unduly discriminatory or preferential.

18 C.F.R. Section 35.34(e)(1)(ii).⁶

AEP's Petition is deficient in several respects. First, the Petition has not demonstrated how it achieves efficient use of and investment in the RTO's transmission system or what reliability benefits will be provided to ratepayers. Additionally, a review of the reliability impacts of the project on the PJM system, including any reliability upgrades that may be necessitated by the project, has not been completed. The Petition also lacks a cost/benefit analysis, an identification of specific rate impacts, and other specific facts to show the appropriateness or reasonableness of the Project that would warrant an incentive return on equity.

Critically, the JCA submit that a higher allowable ROE translates to higher Project costs and higher rates for consumers. The level of extraordinary rates sought in AEP's Petition will result in ratepayers paying substantial additional costs without any assurance that they will realize benefits in excess of these costs. The JCA submit that this type of rate premium was not necessary in the past to enable necessary growth of the transmission infrastructure and may not be necessary now simply because a company is proposing to embark on a large project.

c. The California Cases That AEP Relies On For Support Are Not Comparable Or Applicable To This Project.

AEP points to two narrow and focused equity return incentive cases regarding the construction of new or upgraded transmission capacity in California for support of its Petition. The two California cases relied on by AEP, *Trans Bay Cable* and *Western Area Power*

⁶ The JCA reasonably believe that Section 35.34 may not apply to AEP. It appears that this Section of the Regulations only applies to filings made by an RTO, not on behalf of one, nor in some type of surrogacy arrangement. In *Pacific Gas & Electric*, the Commission stated "It is first important to clarify that only approved RTOs may make filings under Section 35.34(e)." *Pacific Gas & Electric*, 106 FERC ¶ 61,242 at *7 (2004).

Administration are dissimilar to the proposed AEP Project on a number of levels. *Trans Bay Cable, LLC*, 112 FERC ¶ 61,095 (2005); *Western Area Power Administration*, 99 FERC ¶ 61,306 (2002) (Path 15). In *Trans Bay Cable*, the Commission approved an incentive return on equity because it found that Trans Bay was a new and independent entity that was assuming significant risk. The Commission also found that both the California ISO (CAISO) and Trans Bay had provided a list of benefits, including enhanced reliability and more efficient dispatch that would result if the Trans Bay project were selected by the CAISO for development. 112 FERC 61,095 at *5. Here, AEP Transco is not a fledgling start-up; rather it is a wholly-owned subsidiary of AEP. Moreover, as previously discussed, the reliability and economic benefits of this Project cannot be determined since the Project has not yet been through the necessary review by PJM.

In the *Path 15* proceeding, Western Area Power Administration (WAPA), Trans-Elect, Inc., and Pacific Gas & Electric (Applicants) submitted a plan to the Commission whereby Applicants were planning to build a new 500 kV line to relieve a heavily-congested north/south corridor known as Path 15. *Path 15*, at *62277-278. WAPA had publicly sought bids for a project to relieve the Path 15 congestion as that area had been identified by the Secretary of Energy, at the behest of President George W. Bush, as a bottleneck that needed correction by the addition of new transmission facilities. *Id.* This extraordinary process was necessary because even though the Commission had issued an order seeking new transmission projects in the heavily-congested California markets, none were being built. *Path 15* at *62277; *Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States*, 94 FERC ¶ 61,272, *reh'g denied*, 95 FERC ¶ 61,225, *order on requests for reh'g and*

clarification, 96 FERC ¶ 61,155, *further order on requests for reh'g and clarification*, 97 FERC ¶ 61,024 (2001) (*Removing Obstacles Orders*).

Contrary to the *Path 15* facts, no federal authorities have specifically sought a project such as the one AEP currently advances, nor has the specific corridor been identified as necessary. In the *Western Order*, the Commission noted the extraordinary circumstances it was addressing, as follows:

We noted that we adopted these incentives due to the extraordinary circumstances surrounding the ongoing imbalances in California's electricity power supply system, as reflected by the severity of the power shortages in the WSCC in general and in California, specifically. Due to the need for immediate relief, the Mat 16 Order departed from the Commission's normal process for determining the case-by-case return on equity allowances.

Western Order, 96 F.E.R.C. ¶61,155 at 61,670.

The incentives were linked to specific activities that addressed market conditions in order to benefit consumers – benefits that outweighed the costs, including the incentives. The incentives also required projects to be placed in service by specific dates in order to relieve the California energy market crisis as quickly as possible. The circumstances in the current case do not share any similarities to the circumstances in California that led the Commission to consider an incentive return on equity.⁷

d. Conclusion

In its Petition, AEP requests extraordinary rate treatments that, if granted, would exceed the “fair return” standard, and inevitably result in rates that are unjust and unreasonable. Moreover, AEP's request for incentive rates fails because the Petition relies in part on Commission Regulations that do not apply to AEP, and even if such Regulations did apply, AEP

⁷ Moreover, the 84-mile line in *Path 15*, at a projected cost of \$300 million in the California power markets does not represent a reasonable comparison to the 550-mile, \$3 billion project that AEP wishes to construct within the PJM footprint. *Path 15* at * 62280.

has failed to make the required evidentiary showing that it has met the standards for incentive rate treatment. As such, the JCA submit that if the Commission considers AEP's Petition, it should deny its requests for an incentive return on equity.

C. AEP's Request To Collect Its CWIP And Pre-Project/Construction Costs Is Contrary To Sound Ratemaking Principles And Unfairly Shifts The Risk Of The AEP Project To PJM Consumers

Not only is AEP asking for an incentive rate of return, AEP is asking the Commission to allow it to recover all of its costs associated with the planning and implementation of its Project from the ratepayers before the project is completed, in an effort to ensure its own liquidity, and is asking for full recovery of CWIP on an on-going basis. JCA submit that such an approach is inconsistent with sound ratemaking principles, particularly the long-standing used and useful doctrine. The Commission should always contemplate "the wisdom of requiring current rate payers to bear costs of providing future service", before it carves out an exception to long-standing ratemaking principles. See *Tennessee Gas Pipeline Co. v. FERC*, 606 F.2d 1094, 1109 (D.C. Cir. 1979).

Under traditional ratemaking principles, utilities do not recover CWIP in rate base since the associated projects are not used and useful in service to the public. *Smith v. Ames*, 169 U.S. 466, 546 (1898); *City of Detroit v. Panhandle Eastern Pipeline Co.*, 3 FPC 273, 280 (1942). See also, *Goodman v. Public Service Commission*, 497 F.2d 661, 666-69 (D.C. Cir., 1974). In Commission Order No. 298, as explained in the *Boston Edison* case referenced by AEP, the Commission carved out an exception to the used and useful doctrine as it applies to CWIP. *Boston Edison Co.*, 109 FERC ¶ 61,300 (2004). Therein, the Commission explained that 50% of CWIP may be included in rate base, consistent with Order No. 298, providing that the utility had made certain evidentiary showings, including: a reliability problem exists, the proposed project is

the most economical means to address this problem, and that staff and interveners have the chance to review the prudence of construction costs along with possible alternative plans to address the reliability problem. *Boston Edison* at ¶ 62466.

Here, AEP requests *full* recovery of CWIP costs on an expedited basis, not just 50% of CWIP. But, there has been no evidentiary showing that the Project would address an existing reliability problem that the Project is the most economical means to address the problem if there were one or that there are not better alternatives.

AEP is also requesting to collect its legal, engineering, administrative, and all other costs from ratepayers on a current basis without any certainty that the Project will be completed, or that the Project will provide any benefits to ratepayers. Asking ratepayers to start paying now for a project that will not be in service for at least eight years, could end up costing more than AEP's initial \$3 billion projection, and could end up not being completed unfairly shifts all project risks to ratepayers.

Indeed, the recovery that AEP seeks, if granted, would effectively remove any risk from this Project as to AEP, AEP Transco (AEP's wholly owned subsidiary), and AEP's shareholders. JCA submit that the only risks assumed by AEP under its proposal are the costs it incurs up until such time as the Commission grants the rate incentives sought. If the Commission grants AEP's proposed rate incentives, the Project becomes a low-risk venture for AEP because the ratepayers will be paying for the Project on a cost-of-service basis as the Project progresses. Yet, AEP also seeks an incentive return on equity.

The JCA submits that AEP's proposal to fully recover CWIP and to fully recover all Project expenses on an on-going and current basis is contrary to sound ratemaking principles, allows full recovery of the costs of the Project even if it is never used and useful in service to the

public, and shifts all risks of this Project to ratepayers. Moreover, there has been no showing that an exception to these traditional ratemaking principles is necessary for this Project or that the Project meets any existing criteria established by the Commission for an exception to traditional ratemaking. The JCA submit that these proposals will not result in rates that are just and reasonable and should be rejected.

Conclusion

AEP is asking for a premium ROE rate, the ability to begin full recovery of its CWIP as the Project is constructed and the ability to expense its pre-project/construction costs and recover those items from ratepayers as the Project progresses. AEP seeks these extraordinary ratemaking treatments for a Project that has not been reviewed as part of the PJM RTEP process, has not been shown to be needed for reliability, has not been shown to be cost/beneficial, and has not been shown to be prudent. The JCA submit that there is no basis to approve any requests for incentive ratemaking or extraordinary recovery based on this Petition.

D. If AEP's Petition Is To Be Considered, It Presents Genuine Issues Of Material Fact That Can Only Be Fairly Resolved Through Evidentiary Hearings.

AEP's Petition makes numerous representations regarding its Project, including that it is similar to certain transmission projects that were approved by this Commission in the California marketplace, that it will provide certain benefits in PJM, and that it is consistent with PJM's vision for long-term transmission enhancements. AEP Petition at 6-8, 10-11. JCA submit that before the Commission can determine whether any incentive rate treatment is appropriate, the Commission must make findings regarding the costs and benefits of this Project, including the costs of all incentives. At this time, the Project has not been included in the PJM Regional

Plan, it has not been evaluated for reliability impacts on the PJM system, and AEP has not provided a cost benefit analysis.

Accordingly, the assertions contained in the Petition present genuine issues of material fact that can only be thoroughly explored and analyzed through full evidentiary hearings.

WHEREFORE, the Joint Consumer Advocates respectfully request permission to intervene, collectively and individually, in the above-captioned proceeding as parties and that the Commission deny AEP's Petition, or alternatively to schedule this matter for evidentiary hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

American Electric Service Power Corporation : Docket No. EL06-50-000

I hereby certify that I have this date served the foregoing document upon each person designated on the official service list compiled by the Secretary in the above-referenced proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Harrisburg, PA this 1st day of March, 2006.

Respectfully submitted,

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