

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

<b>The Dayton Power and Light Company</b>	)	<b>Docket Nos. ER20-1068-000 ER20-2100-000</b>
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**MOTION TO INTERVENE OUT-OF-TIME OF  
WIRES**

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”),<sup>1</sup> WIRES hereby submits this Motion to Intervene Out-of-Time in the above-captioned proceeding.<sup>2</sup> On August 17, 2020, the Commission issued an order in the instant proceeding establishing paper hearing procedures on Dayton Power and Light Company’s (“Dayton”) request for, among other things, a 50 basis point adder to its return on equity (“ROE”) to reflect Dayton’s continued membership in PJM Interconnection, L.L.C. (“PJM”) (“RTO Participation Adder”).<sup>3</sup> As explained further below, good cause exists to grant WIRES’ motion to intervene out-of-time.

**I. BACKGROUND**

On February 25, 2020, as supplemented on June 18, 2020, Dayton submitted a request for approval of certain transmission rate incentives for investment in transmission

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<sup>1</sup> 18 C.F.R. §§ 385.212 and 385.214 (2019).

<sup>2</sup> This filing is supported by the full supporting members of WIRES but does not necessarily reflect the views of the RTO/ISO associate members of WIRES.

<sup>3</sup> *The Dayton Power and Light Co.*, 172 FERC ¶ 61,140, at P 22 (2020) (“August 17 Order”).

projects.<sup>4</sup> Among other things, Dayton requested that the Commission grant the 50 basis point RTO Participation Adder, with the resulting ROE not to exceed the upper end of the zone of reasonableness, to apply to Dayton’s entire transmission rate base.<sup>5</sup> Dayton explained that the Commission has a long-standing policy to provide a 50 basis point adder to the base ROE of a transmission owner’s entire rate base, to encourage transmission-owning utilities to join a RTO.<sup>6</sup> Dayton has been a PJM member since 2004 but has not had a rate case since then to seek this incentive.<sup>7</sup>

On August 17, 2020, the Commission issued its order establishing paper hearing procedures on Dayton’s request for the RTO Participation Adder.<sup>8</sup> The Commission explained that a paper hearing was necessary to “explore whether Dayton has shown that its participation in PJM or another RTO is voluntary, as required for it to be entitled to the adder, or if such participation is mandated by Ohio law.”<sup>9</sup>

## II. STATEMENT OF INTEREST

WIRES is an international non-profit trade association of investor-, publicly-, and cooperatively- owned transmission providers, transmission customers, regional grid managers, and equipment and service companies. WIRES promotes investment in electric transmission and state and federal policies that advance energy markets, economic

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<sup>4</sup> *Id.* at P 1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at P 15.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at P 22.

<sup>9</sup> *Id.* (citing *CPUC v. FERC*, 879 F.3d 966, 979 (2018)).

efficiency, grid resilience, and consumer and environmental benefits through development of electric power infrastructure. WIRES members support investment in needed and beneficial transmission infrastructure – investments that are critical to ensure a reliable, cost-effective, and modern bulk power system. In a recently proposed rule that is currently pending, the Commission proposed to provide a transmitting utility that joins and remains a member of an RTO with a standardized RTO Participation Adder of 100 basis points regardless of the voluntariness of the utility’s participation in the RTO.<sup>10</sup> WIRES strongly supported the Commission’s proposal.<sup>11</sup> WIRES is moving to intervene in the instant proceeding now because, as discussed below, the Commission’s decision to set for hearing of Dayton’s request for an RTO Participation Adder has potential impacts for WIRES members that were not reasonably foreseeable prior to the issuance of the August 17 Order.

### **III. MOTION TO INTERVENE OUT-OF-TIME**

In deciding whether to grant late intervention, the Commission considers whether (i) the movant had good cause for failing to file a motion to intervene within the time prescribed; (ii) any disruption of the proceeding might result from permitting intervention; (iii) the movant’s interest is not adequately represented by other parties in the proceeding; and (iv) any prejudice to, or additional burdens upon, the existing parties might result from

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<sup>10</sup> *Elec. Transmission Incentives Policy Under Section 219 of the Federal Power Act*, 170 FERC ¶ 61,204 at P 98 (2020) (“Proposed Incentives Rule”).

<sup>11</sup> *See* Comments of WIRES, Docket No. RM20-10 at 10-15 (filed July 1, 2020).

permitting intervention.<sup>12</sup> Because WIRES satisfies these criteria it should be granted late intervention.

**A. Good Cause Exists For WIRES Not Intervening Within the Prescribed Period.**

WIRES has good cause for filing a motion to intervene after the issuance of the August 17 Order. It was not reasonably foreseeable that the Commission's order addressing Dayton's request for a 50 basis point RTO Participation Adder would potentially conflict with the proposal in the Proposed Incentives Rule to provide a standardized RTO Participation Adder regardless of the voluntariness of a utility's participation in an RTO. WIRES submitted comments and actively participated in the Proposed Incentives Rule proceeding. Under the circumstances, it was not reasonably foreseeable that the Commission would issue an order in this specific proceeding that has implications regarding a utility's eligibility for an RTO Participation Adder. This changed when the Commission issued its August 17 Order setting for paper hearing Dayton's request for an RTO Participation Adder based on the interpretation of an Ohio law and how that Ohio law affected Dayton's eligibility for the RTO Participation Adder for its participation in PJM. Accordingly, the Commission should find that good cause exists for WIRES to intervene at this time and permit WIRES to address the industry-wide implications of setting for hearing Dayton's request for an RTO Participation Adder that were not reasonably foreseeable before the issuance of that order.

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<sup>12</sup> 18 C.F.R. § 385.214(d).

**B. WIRES' Intervention Will Not Disrupt the Proceeding, Prejudice Existing Parties, or Create Additional Burden for Existing Parties.**

Granting WIRES' motion to intervene will not disrupt the proceeding, prejudice existing parties, or create additional burdens for existing parties. WIRES is requesting to intervene prior to any submissions in the paper hearing and, given the early stage of the proceeding, its participation will not cause any disruption or delay. The Commission has previously accepted late motions to intervene in proceedings that involve issues that have potentially broad implications.<sup>13</sup> Granting WIRES' late intervention would not prejudice or create additional burdens for existing parties because WIRES is intervening to provide additional industry perspective on the potential implications of the Commission's consideration of Dayton's request for an RTO Participation Adder. Accordingly, the Commission should grant WIRES' motion to intervene because it will provide the Commission with a unique additional industry perspective to aid in its decision-making and will not prejudice or burden any existing party.

**C. WIRES' Interests Are Not Adequately Represented.**

WIRES' interests are not adequately represented in this proceeding. WIRES represents the interests of its diverse membership which seeks to promote investment in transmission. In support of its comments in the Proposed Incentives Rule, WIRES

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<sup>13</sup> See e.g., *Pub. Serv. Comm'n of Wisc. v. Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,104 at P 69 (2015) (granting late-filed motion to intervene of the City of Escanaba which sought rehearing of a Commission order that raised issues with implications beyond the current proceeding); *S. Nat. Gas Co.*, 130 FERC ¶ 61,193 at PP 5-7 (2010) (granting trade association's late-filed motion to intervene for the purpose of seeking rehearing of an issue with broad industry implications). See also *Paiute Pipeline Co.*, 70 FERC ¶ 61,227 at 3 (1995) (stating that trade association's motion to intervene out of time is granted and that the Commission will address the simultaneously filed request for rehearing).

submitted a comprehensive white paper detailing the risks, burdens, and responsibilities that RTO participation presents for utilities and supporting the basis for compensating utilities for these added responsibilities, burdens, and risks, which ultimately accrue to the benefit of customers. The Commission has long recognized the value of perspectives from industry organizations such as WIRES in considering matters with broad policy implications, noting previously that “[w]here membership associations meet the standard of Rule 214, [the Commission] should encourage informed pleadings . . . .”<sup>14</sup> Accordingly, WIRES is able to provide a unique and well-informed industry perspective on the issues decided in this proceeding that cannot be adequately represented by any other existing party.

#### **IV. COMMUNICATIONS**

All correspondence, communications, pleadings, and other documents related to this proceeding should be addressed to the following representative:

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<sup>14</sup> *Am. Elec. Power Serv. Corp.*, 120 FERC ¶ 61,265, at P 9 (2007). *See also S. Nat. Gas Co.*, 130 FERC ¶ 61,193 at PP 5-7 (granting trade association’s late-filed motion to intervene and noting that the trade association “is able in this proceeding to present [its members’] common views regarding an issue of continued significance for the industry”).



**V. CONCLUSION**

For the foregoing reasons, WIRES respectfully requests that the Commission grant this motion to intervene out-of-time.

Respectfully submitted,

/s/ Larry Gasteiger

Larry Gasteiger

WIRES

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September 10, 2020



**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC this 10th day of September, 2020.

/s/ Larry Gasteiger

Larry Gasteiger

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