

Nos. 24-1304, 24-1318

IN THE
Supreme Court of the United States

FIRSTENERGY SERVICE COMPANY,

Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION, *et al.*,

Respondents.

[Additional Caption Listed On Inside Cover]

ON PETITIONS FOR WRITS OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

**BRIEF OF RESPONDENT
PJM INTERCONNECTION, L.L.C.
IN SUPPORT OF CERTIORARI**

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AMERICAN ELECTRIC
POWER SERVICE CORPORATION,

Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION, *et al.*,

Respondents.

QUESTIONS PRESENTED

PJM Interconnection, L.L.C. adopts the below Questions Presented by Petitioners in No. 24-1304 and No. 24-1318, which address the interpretation of 16 U.S.C. § 824s(c):

Question #2 (No. 24-1304): Whether a federal statute stating that the Federal Energy Regulatory Commission “shall . . . provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization,” 16 U.S.C. § 824s(c), applies regardless whether the utility joined a Transmission Organization voluntarily or pursuant to a state-law mandate.

Question #2 (No. 24-1318): Whether RTO mandates render utilities ineligible for incentives under 16 U.S.C. § 824s(c) (as the Sixth Circuit held) or not (as two FERC Chairmen found).

PARTIES

Respondent PJM Interconnection, L.L.C. files this brief in support of the Petitions for writs of certiorari in No. 24-1304 and No. 24-1318, which seek review of the United States Court of Appeals for the Sixth Circuit decision in *Dayton Power & Light Company v. FERC*, 126 F.4th 1107 (6th Cir. 2025).

Petitioners are FirstEnergy Services Company (No. 24-1304) and American Electric Power Service Corporation (No. 24-1318). PJM Interconnection, L.L.C. submits this brief in support of certiorari for Question 2 in both Petitions addressing the interpretation of 16 U.S.C. § 824s(c).

Respondents include the Office of the Ohio Consumers' Counsel and the Federal Energy Regulatory Commission. Other parties in the court of appeals included Buckeye Power, Inc., and the Public Utilities Commission of Ohio, Duke Energy Ohio, Inc., Dayton Power & Light Company, and the MISO Transmission Owners, which include Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois, and Ameren Transmission Company of Illinois; American Transmission Company LLC; Cleco Power LLC; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; Entergy Arkansas, LLC; Entergy Louisiana, LLC; Entergy Mississippi, LLC; Entergy New Orleans, LLC; Entergy Texas, Inc.; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC Transmission; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power

(and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company LLC; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Indiana Gas & Electric Company (d/b/a CenterPoint Energy Indiana South); and Wolverine Power Supply Cooperative, Inc.

CORPORATE DISCLOSURE STATEMENT

PJM Interconnection, L.L.C. (“PJM”) is a limited liability company organized and existing under the laws of the State of Delaware. PJM is a regional transmission organization (“RTO”) for all or portions of Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

PJM is authorized by Respondent Federal Energy Regulatory Commission (“FERC”) to administer an Open Access Transmission Tariff (“Tariff”), provide transmission service under the Tariff on the electric transmission facilities under PJM’s control, operate an energy market and other markets, and otherwise conduct the day to day operations of the bulk power system of a multi-state electric control area. PJM was approved by FERC first as an independent system operator and then as an RTO. *See Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 (1997), *reh’g denied*, 92 FERC ¶ 61,282 (2000), *modified sub nom. Atl. City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002); *PJM Interconnection, L.L.C.*, 101 FERC ¶ 61,345 (2002).

PJM has no parent companies. Under Delaware law, the members of a limited liability company have an “interest” in the company. *See* Del. Code Ann. tit. 6, § 18-701 (2024). PJM members do not purchase their interests or otherwise provide capital to obtain their interests. Rather, the PJM members’ interests are determined pursuant to a formula that considers various attributes of the member, and the interests are used only for the limited purposes of: (i) determining the amount of working capital

contribution for which a member may be responsible in the event financing cannot be obtained; and (ii) dividing assets in the event of liquidation. PJM is not operated to produce a profit, has never made any distributions to members, and does not intend to do so (absent dissolution). In addition, “interest” as defined above does not enter into governance of PJM and there are no individual entities that have a 10% or greater voting interest in the conduct of any PJM affairs.

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SUMMARY OF ARGUMENT

This case is about whether a federal agency may graft a condition that does not exist onto a statute's plain terms. The Sixth Circuit's decision reads a "voluntariness" requirement into Federal Power Act section 219(c) that Congress never intended.

PJM Interconnection, L.L.C. ("PJM") is the independent Transmission Organization at the center of this dispute about the interpretation of section 219(c), although the question stands to potentially impact all independent Transmission Organizations nationwide.¹ PJM agrees with the textual arguments advanced by Petitioners in their discussions of this issue, and writes to illustrate its significance and provide additional historical and legislative context supporting Petitioners' interpretation.

Independent Transmission Organizations provide billions of dollars of value to their regions each year, in the form of reliability savings, transmission congestion cost reductions, lower reserve margins, market competition, and other services. At a time when our nation's grid is facing additional stressors, including from load growth driven by the development of large

1. Section 219 refers to "Transmission Organizations," a term which includes both Regional Transmission Organizations, like PJM, and Independent System Operators. For simplicity, PJM will use the term "Transmission Organizations" to refer to both throughout. Transmission Organizations are "independent" in the sense they must meet minimum regulatory independence criteria to ensure they are not controlled by market participants. *See Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607, 611-12 (D.C. Cir. 2001).

data centers and artificial intelligence, the services that independent Transmission Organizations provide are more important than ever. Legislative history shows that Congress considered the burdens that utilities bear from membership alongside the benefits customers would enjoy from participation. Recognizing the value of growing and maintaining participation in independent Transmission Organizations—given that such participation is generally voluntary for utilities—Congress provided the section 219(c) incentive to partially offset those burdens.

Additionally, historical and legislative context shows that, on the heels of the California energy crisis and the 2003 Northeast blackouts, Congress recognized the benefits independent Transmission Organizations could provide in securing electric system reliability and modernizing the nation’s transmission system. There was considerable debate in Congressional hearings about how to effectively incentivize independent Transmission Organization membership. In that context, section 219(c) was intended to broadly support independent Transmission Organization growth and participation nationwide to enhance grid reliability and spur transmission development.

Congress at the time was aware of existing state mandates for independent Transmission Organization participation. Importantly, two states—Ohio and Illinois—had already adopted such mandates years before Congress enacted section 219(c), as part of their state electric restructuring statutes. Yet Congress declined to include a “voluntariness” requirement in section 219(c) or limit the Federal Energy Regulatory Commission’s (“FERC”) authority to extend incentives applied to states

such as Ohio and Illinois, where state law mandated independent Transmission Organization membership.

The Sixth Circuit’s re-interpretation of section 219(c) contravenes Congress’s intent to encourage broad independent Transmission Organization participation and could have negative ramifications at a time when our nation’s electric grid is facing significant reliability challenges.

The Petitions should be granted as to Question 2 in both No. 24-1304 and No. 24-1318.

ARGUMENT

I. Independent Transmission Organizations Have Provided a More Reliable and Efficient Electric Grid yet the Sixth Circuit’s Interpretation of Section 219 Now Changes the Balance of Burdens and Benefits For Their Members at a Time When Their Services Are More Critical than Ever.

Independent Transmission Organizations have contributed tremendous value to the nation’s grid since section 219 was passed in 2005. *See Morgan Stanley Cap. Grp. Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527, 536 (2008) (explaining how FERC encouraged the establishment of Transmission Organizations “[t]o further pry open the wholesale-electricity market,” “reduce technical inefficiencies,” and to perform certain market services); *Pub. Util. Dist. No. 1*, 272 F.3d at 611 (reciting FERC findings that Transmission Organizations would “remedy ‘economic and engineering inefficiencies and the continuing opportunity for undue discrimination,’” improve

efficiencies in grid management, impose grid reliability, improve market performance, and facilitate lighter-handed regulation (citation omitted)). Multi-state independent Transmission Organizations like PJM, Midcontinent Independent System Operator, Inc., and Southwest Power Pool, Inc. have conducted recent valuation studies estimating 3.2 to 4 billion, 5 billion, and 3.5 billion dollars' worth of benefits to their respective regions each year. See *PJM Value Proposition*, PJM Interconnection, L.L.C., 1 (June 26, 2019), <https://www.pjm.com/-/media/DotCom/about-pjm/pjm-value-proposition.pdf>; *MISO's Value Proposition Exceeded \$5 Billion in 2024*, Midcontinent Independent System Operator, Inc. ("MISO") (Mar. 6, 2025), [https://www.misoenergy.org/meet-miso/media-center/2025—news-releases/misos-value-proposition-exceeded-\\$5-billion-in-2024/](https://www.misoenergy.org/meet-miso/media-center/2025—news-releases/misos-value-proposition-exceeded-$5-billion-in-2024/); *Integration: SPP 2019 Annual Report*, Southwest Power Pool, Inc., 11 (Apr. 27, 2020), <https://www.spp.org/documents/62057/2019%20annual%20report%2020200428%20web.pdf>.

As these individual valuation reports explain, these benefits arise from reliability savings, reduced transmission congestion, lower reserve margins, market competition, integration of efficient resources, lower energy production costs, and other advantages of organized regional systems. See *Building for the Future Through Regional Transmission Planning and Cost Allocation*, Order No. 1920, 187 FERC ¶ 61,068, at P 91 n.196 (citing Transmission Organization value proposition calculations), *order on reh'g & clarification*, Order No. 1920-A, 189 FERC ¶ 61,126 (2024), *order on reh'g & clarification*, Order No. 1920-B, 191 FERC ¶ 61,026 (2025), *appeals pending*, Petition for Review, *Appalachian Voices v. FERC*, Nos. 24-1650, et al. (4th Cir. July 16, 2024);

Midwest Indep. Transmission Sys. Operator, Inc., 137 FERC ¶ 61,074, at P 126 n.274 (2011) (citing MISO’s value proposition document). No party to this proceeding has challenged that independent Transmission Organizations provide these benefits to consumers.

Today, the grid reliability and efficiency services that independent Transmission Organizations provide are more critical than ever to the nation. The White House has declared a “national energy emergency” due to, among other things, “an increasingly unreliable grid.” Exec. Order No. 14156, 90 Fed. Reg. 8433 (Jan. 20, 2025). As a recent Department of Energy report cautions, “[a]bsent intervention, it is impossible for the nation’s bulk power system to meet the AI growth requirements while maintaining a reliable power grid and keeping energy costs low for our citizens.” *Resource Adequacy Report: Evaluating the Reliability and Security of the United States Electric Grid*, U.S. Department of Energy, 1 (July 2025) https://www.energy.gov/sites/default/files/2025-07/DOE%20Final%20EO%20Report%20%28FINAL%20JULY%207%29_0.pdf. The immense increase in energy demand from artificial intelligence and other rapid changes in the energy industry represent challenges—and opportunities—for the continued growth and maintenance of independent Transmission Organizations and their services.

As Petitioners note, Transmission Organization membership mandates exist in Ohio, Michigan, Colorado, Illinois, Nevada, Virginia, Wisconsin, Ohio, and California.²

2. See Petition for a Writ of Certiorari of American Electric Power Service Corporation at 30, No. 24-1318, *Am. Elec. Power Serv. Corp. v. FERC* (S. Ct. June 24, 2025); Petition for a Writ of

The Sixth Circuit’s interpretation that these state mandates make utilities ineligible for section 219(c)’s membership incentive disrupts the balance between: (1) the burdens that utilities bear to participate in an independent Transmission Organization; and (2) the benefits that their customers enjoy as a result of their participation.

The decision has a significant impact because of how independent Transmission Organizations are structured. Despite the overall benefits of joining an independent Transmission Organization, participation is largely voluntary and imposes new costs and obligations on utilities. Member utilities must transfer functional control of their assets to the Transmission Organization, agree to its decisions on a range of matters impacting their businesses, and meet additional FERC requirements. Meanwhile, the benefits of an independent Transmission Organization system generally accrue to a member utility’s customers. As FERC explained, independent Transmission Organization efficiencies “will help improve power market performance, which will ultimately result in lower prices to the Nation’s electricity consumers.” *Regional Transmission Organizations*, Order No. 2000, 89 FERC ¶ 61,285, 1996–2000 FERC Stats. & Regs., Regs. Preambles ¶ 31,089, at 31,024 (1999), *order on reh’g*,

Certiorari of FirstEnergy Service Company at 19, No. 24-1304, *FirstEnergy Serv. Co. v. FERC* (S. Ct. June 20, 2025). As recently interpreted by the United States Circuit Court for the Ninth Circuit, California also has a mandate. *Pac. Gas & Elec. Co. v. FERC*, No. 24-2527 (9th Cir. July 11, 2025) (Memorandum). In doing so, the Ninth Circuit affirmed a FERC decision denying Pacific Gas and Electric Company’s request for a section 219(c) adder.

Order No. 2000-A, 90 FERC ¶ 61,201, 1996–2000 FERC Stats. & Regs., Regs. Preambles ¶ 31,092 (2000), *petitions for review dismissed sub nom. Pub. Util. Dist. No. 1*, 272 F.3d 607; *see also Me. Pub. Utils. Comm’n v. FERC*, 454 F.3d 278, 280–81 (D.C. Cir. 2006) (“FERC anticipated that [Transmission Organizations] would eliminate certain transmission inefficiencies and opportunities for discrimination . . . and that these new structures would therefore result in significant benefits to the public.”). FERC found that more customers will enjoy “reliability and cost benefits” when the incentive is “widely available” to member utilities and “effective for the entire duration of a utility’s membership[.]” *Promoting Transmission Investment Through Pricing Reform*, Order No. 679-A, 117 FERC ¶ 61,345, at P 86 (2006), *order on reh’g*, Order No. 679-B, 119 FERC ¶ 61,062 (2007). Indeed, the stated purpose of section 219—“for the purpose of benefitting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion”—shows who Congress intended the system to benefit. 16 U.S.C. § 824s(a).

As a result, section 219(c) was written to provide some balance for the utilities bearing those additional burdens by including an incentive adder to the utility’s authorized return on equity, while maintaining such utility’s overall rates within the bounds of the just and reasonable standard under section 219(d). *See* Order No. 679-A at P 86 (stating that section 219 was meant to encourage “utilities to join, *and remain in*, Transmission Organizations”) (emphasis added).

This compromise is evident in the legislative history. An earlier bill provided that FERC “may encourage . . .

the voluntary formation of [Transmission Organizations],” but would have explicitly prohibited any requirement to transfer operational control of a utilities’ assets to the Transmission Organization. *Energy Policy Act of 2005*, S.10, 109th Cong. § 1232 (2005). By contrast, the final language strengthened “may” to “shall,” but also removed the reference to the transfer of operational control. One reading of this compromise is that the section 219(c) incentive was mandated *in exchange for* removing the provision protecting utilities from being forced to transfer operational control of their assets.

II. By 2005, Congress Already Understood the Benefits Independent Transmission Organizations Provided and Intended Section 219 to Broadly Incentivize Their Growth, with No Pre-Condition that Participation Be Voluntary.

Congress passed section 219 at a crucial time for the electric industry. The nation faced several energy crises in the early 2000s, including the California energy crisis and the 2003 Northeast blackouts, that spurred the passage of the Energy Policy Act of 2005. *See* 151 Cong. Rec. S. 9342-44 (daily ed. July 29, 2005) (Senators Feinstein and Cantwell discussing the Western energy crisis and Northeast blackouts in floor debates). FERC had jurisdiction over part of the solution, including transmission and electric system reliability.

At that time, FERC had already issued Order Nos. 888 and 2000 to increase electric market competition and encourage membership in Transmission Organizations. *Pub. Util. Dist. No. 1*, 272 F.3d at 610-11 (describing Order No. 888 as the “foundation” for the development

of competitive wholesale power markets and Order No. 2000 as the key to removing “remaining barriers” to electric market competition); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1364 (D.C. Cir. 2004) (explaining that FERC issued Order No. 2000 to address “inefficiencies in the transmission grid” and “lingering opportunities” for discrimination). In doing so, FERC found that independent Transmission Organizations provide tremendous benefits to the nation’s electric grid and American energy consumers by promoting efficient transmission grid planning and management, reducing congestion, improving grid reliability, reducing costs, and reducing discrimination in the electric industry. Order No. 2000 at 31,025-26 (detailing benefits of independent Transmission Organizations).

Despite this progress, Congress understood that FERC needed legislative direction to encourage the growth and maintenance of independent Transmission Organizations through the use of financial incentives that would target both transmission investment generally and membership in such Transmission Organizations. For example, in 2001, FERC Chairman Pat Wood III told Congress that it would “significantly speed the advent of competitive markets if Congress clarified the Commission’s authority to promote large [Transmission Organizations].” *National Electricity Policy: Federal Government Perspectives: Hearing Before the Subcomm. on Energy & Air Quality of the H. Comm. on Energy & Com.*, 107th Cong. 58 (2001). In 2005, FERC’s general counsel testified that “action by the Congress on transmission incentives could provide greater certainty to investors and thus encourage quicker, appropriate investments in grid improvements” without the threat of extensive litigation. *Hearings before the Subcomm. on*

Energy and Air Quality of the H. Comm. on Energy and Com., 109th Cong. 30 (2005).

Congress provided that legal certainty with the passage of the Energy Policy Act of 2005. There, Congress enacted section 219(c), directing that FERC “shall . . . provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization.” 16 U.S.C. § 824s(c). It was broadly worded because Congress intended its broad application. Notwithstanding that several states had adopted participation mandates, the text contains no condition that a utility can receive the incentive *only if it voluntarily joins a Transmission Organization in a state that does not require Transmission Organization participation*. Separately, Congress also directed FERC to adopt financial incentives for transmission investment and development more generally. 16 U.S.C. § 824s(b). Together, the Transmission Organization membership and transmission investment incentives would broadly spur the modernization of the country’s grid. *See* 16 U.S.C. § 824s(a) (directing that these incentives must “ensur[e] reliability and reduc[e] the cost of delivered power by reducing transmission congestion”). Congress thus envisioned that the Transmission Organization membership incentive would work together with other transmission incentives to deliver benefits to American energy consumers, an objective indifferent to the reason why a utility joins the independent Transmission Organization. Because the statutory text is clear, the textual analysis should stop there.

Legislative history further supports this interpretation. Floor debates confirm that the Energy Policy Act of 2005 was intended to promote reliability and spur necessary upgrades to the transmission grid. Senator Levin offered

“2 key lessons” from the 2003 blackout: “the need for strong regional [T]ransmission [O]rganizations to ensure that reliability standards are carried out and enforced, and the need for additional transmission upgrades to maintain reliability.” 151 Cong. Rec. S. 9353 (daily ed. July 29, 2005) (statement of Sen. Carl Levin). These goals—reliability and transmission development—are long term benefits provided by stable, broad independent Transmission Organization participation. Indeed, transmission investment and membership in independent Transmission Organizations worked together to achieve the same aim of improving the nation’s grid after the energy crises of the early 2000s. Narrowing section 219(c) to utilities in states without a Transmission Organization participation mandate is inconsistent with both the plain language of the statute and Congressional intent.

This interpretation is also supported by the existence of Illinois and Ohio mandatory Transmission Organization participation laws at the time section 219(c) was passed. *See* 220 Ill. Comp. Stat. 5/16-126(a) (1997) (each Illinois utility “shall” submit an application to FERC to join a Transmission Organization); Ohio Rev. Code § 4928.12(A) (LexisNexis 1999) (“[N]o entity shall own or control transmission facilities” unless it is a Transmission Organization member). Congress knew about these existing state laws at the time section 219(c) was passed but chose not to impose a voluntariness requirement to remove the membership incentive from utilities in these states. *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990) (“We assume that Congress is aware of existing law when it passes legislation.”). Likewise, section 219(c) should not be read to be conditioned on the existence (or lack of) state mandates addressing independent Transmission

Organization participation. “[I]n the absence of a plain indication to the contrary, . . . Congress when it enacts a statute is not making the application of the federal act dependent on state law.” *Jerome v. United States*, 318 U.S. 101, 104 (1943); see *NLRB v. Nat. Gas Util. Dist.*, 402 U.S. 600, 603 (1971) (following *Jerome*, 318 U.S. 101); see also *Dickerson v. New Banner Inst.*, 460 U.S. 103, 119-20 (1983) (following *Jerome*, 318 U.S. 101, and *NLRB*, 402 U.S. 600).

As demonstrated above, Congress understood the benefits Transmission Organizations provided and intended for section 219(c) to be broadly applicable, rather than for FERC to graft a “voluntariness” requirement onto the plain terms of the statute.

CONCLUSION

For the foregoing reasons, the Petitions for writs of certiorari should be granted.

Respectfully submitted,

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