**BEFORE THE**

 **PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Mid-Atlantic Interstate : A-2015-2488903

Transmission, LLC (“MAIT”); Metropolitan: A-2015-2488904

Edison Company (“Met-Ed”) and : A-2015-2488905

Pennsylvania Electric Company (“Penelec”) : G-2015-2488906

for: (1) a Certificate of Public Convenience : G-2015-2488907

Under 66 Pa.C.S. § 1102(A)(3) Authorizing : G-2015-2489542

the Transfer of Certain Transmission Assets : G-2015-2489543

from Met-Ed and Penelec to MAIT; (2) a : G-2015-2489544

Certificate of Public Convenience Conferring : G-2015-2489545

Upon MAIT the Status of a Pennsylvania : G-2015-2489547

Public Utility Under 66 Pa.C.S. § 102; and (3) : G-2015-2490801

Approval of Certain Affiliate Interest : G-2015-2490802

Agreements Under 66 Pa.C.S. § 2102 :

**INITIAL DECISION**

Before

Mark A. Hoyer

Deputy Chief Administrative Law Judge

Mary D. Long

Administrative Law Judge

I. INTRODUCTION

 This decision approves the proposed transfer of transmission assets from two electric distribution companies to a jointly-owned limited liability company. The transaction, as modified by the joint settlement of the parties, is in the public interest.

A. History of the Proceeding

 On June 19, 2015, Mid-Atlantic Interstate Transmission, LLC (MAIT), Metropolitan Edison Company (Met-Ed) and Pennsylvania Electric Company (Penelec) (together, the “Joint Applicants”) filed a Joint Application to obtain the approval of the Pennsylvania Public Utility Commission under Chapters 11, 21 and 28 of the Public Utility Code: (1) for Met-Ed and Penelec to contribute their existing transmission assets to MAIT; (2) for MAIT to be a certificated Pennsylvania public utility; and (3) for approval of certain affiliated interest agreements (hereafter, “Proposed Transaction.”)

 Notice of the applications was published in the Pennsylvania Bulletin on July 4, 2015.[[1]](#footnote-1) Notice was also published in the *Erie Times-News, The Tribune-Democrat, The York Dispatch,* and *Reading Eagle.*

 The Commission’s Bureau of Technical Utility Services examined the filing and propounded data requests upon the Joint Applicants, to which they responded. The Commission has also issued two Secretarial Letters dated August 10, 2015 and October 1, 2015, directing the parties to answer a number of specific questions about the Proposed Transaction and to place certain documents into the record of this proceeding. The October 1, 2015 Secretarial Letter specifically referred the proceeding to the Office of Administrative Law Judge for decision.

 The Commission’s Bureau of Investigation and Enforcement (BIE) entered its appearance in this proceeding, while the Office of Consumer Advocate (OCA) filed a protest and the Office of Small Business Advocate (OSBA) filed a notice of intervention. Petitions to Intervene were filed by: International Brotherhood of Electrical Workers Locals 459 and 777 (collectively, Labor Intervenors); Pennsylvania State University (PSU); Noble Americas Energy Solutions LLC; Wellsboro Electric Company; [[2]](#footnote-2) Met-Ed Industrial Users Group (MEIUG) and Penelec Industrial Users Group (PICA).[[3]](#footnote-3)

 A prehearing conference was held on Tuesday, October 27, 2015. Counsel for Joint Applicants, the statutory parties and the interveners attended the conference. At the prehearing conference a litigation schedule was established; the petitions to intervene of Wellsboro, the Labor Intervenors, PSU, Noble and the Industrials were granted; the various docket numbers assigned to the Joint Application were consolidated; modifications to the procedures for formal discovery set forth in the Commission’s regulations were adopted; and we granted the Joint Applicants’ request to address the issues identified in the Commission’s August 10, 2015 Secretarial Letter by the submission of supplemental direct testimony. On November 2, 2015, we issued a prehearing order memorializing the decisions made at the prehearing conference.

 On February 16, 2016, Wellsboro filed with the Commission its Notice of Withdrawal of Intervention of Wellsboro Electric Company and, from and after that date, Wellsboro is no longer a party to this proceeding. No party opposed the withdrawal of Wellsboro.

 Negotiations were conducted by the parties. By email dated February 19, 2016, the parties informed us that they were able to achieve a resolution of their disputes. An evidentiary hearing was held on February 29, 2016. The parties waived cross examination of all witnesses and presented their written testimony and exhibits for admission into the record. On March 4, 2016, the parties submitted a Joint Petition for Full Settlement. The Joint Petition includes the terms of the settlement agreement. The statements in support of each party are attached to the Joint Petition as Appendices C-I. Noble America’s letter of non-opposition to the settlement is included as Appendix J. The Joint Petition also includes Appendix A and Appendix B, which include information required by the Commission. (See below).

B. Description of the Proposed Transaction

 On June 19, 2015, the Joint Applicants filed the Joint Application to obtain the Commission’s approval under Chapters 11, 21 and 28 of the Public Utility Code: (1) for Met-Ed and Penelec to contribute their existing transmission assets to MAIT; (2) for MAIT to be a certificated Pennsylvania public utility; and (3) for approval of certain affiliated interest agreements. Accompanying their Joint Application, the Joint Applicants submitted the written direct testimony of four witnesses and associated exhibits, as more fully described hereafter.

 At the same time the Joint Application was filed, two proceedings were initiated before other regulatory authorities. Jersey Central Power & Light Company (JCP&L, together with Met-Ed, Penelec and MAIT, hereinafter referred to as the “Operating Companies”), an affiliate of the Joint Applicants that provides electric distribution service in the State of New Jersey, filed an application at Docket Nos. EM15060733 and EF02030185 seeking the New Jersey Board of Public Utilities’ (NJBPU) approval to contribute its transmission assets to MAIT; for MAIT to be granted public utility status in New Jersey; and for approval of certain affiliated interest agreements.

 Also, the Operating Companies and FirstEnergy Transmission, LLC (FET)[[4]](#footnote-4) filed at the Federal Energy Regulatory Commission (FERC) an *Application for Authorization Pursuant to Sections 203(a)(1)(A) and 203(a)(2) of the Federal Power Act and Request for Waivers of Certain Filing Requirements* seeking approval of the transfer of the Operating Companies’ transmission assets to MAIT. On February 18, 2016, the FERC issued a final order at Docket No. EC15-157-000 granting the Application and the approvals requested, including the transfer of the Operating Companies’ transmission assets to MAIT.

 MAIT is a newly-formed limited liability company to be jointly owned by the Operating Companies and FET that will provide interstate electric transmission service subject to the jurisdiction of the FERC. Upon obtaining the necessary approvals from the Commission and the NJBPU, the Operating Companies will contribute their transmission assets to MAIT in exchange for membership interests in MAIT pursuant to certain agreements among the Operating Companies, FET and MAIT. As noted, MAIT is also seeking a certificate of public convenience conferring the status of a Pennsylvania public utility under Section 102 of the Public Utility Code.[[5]](#footnote-5)

 The principal elements of the Proposed Transaction are as follows:

 (a) The Operating Companies will make a one-time contribution of their existing transmission assets to MAIT as a tax-free transfer in exchange for Class B membership interests in MAIT. As owners of Class B membership interests, the Operating Companies will have voting rights over various fundamental structural matters, namely, the filing of a voluntary petition in bankruptcy, a merger or the sale of substantially all the assets of MAIT. FET, in turn, will make a cash contribution to MAIT in exchange for Class A membership interests, which will give FET operating and management control of MAIT. For financial reporting purposes, MAIT will be treated as a consolidated subsidiary of FET, and the Operating Companies will record their investment in MAIT as an investment in subsidiary companies (*see* Joint Application ¶ 12; Joint Applicants’ Statement No. 4, pp. 4, 10).

 (b) As a result of the Proposed Transaction, the Operating Companies will no longer own facilities serving a transmission function. All transmission services over the transmission facilities will be provided by MAIT pursuant to the terms of the PJM Interconnection L.L.C.’s (PJM) Open Access Transmission Tariff (OATT), which is consistent with the current operation of these facilities by the Operating Companies. The transmission facilities will remain subject to the terms of the PJM OATT. Rates for transmission service will remain subject to the jurisdiction of the FERC as administered by PJM through its OATT. The Operating Companies will continue to own and operate their distribution facilities and will continue to provide retail electric service within their existing service territories (*see* Joint Application ¶ 13; Joint Applicants’ Statement No. 1, pp. 6, 21).

 (c) The Operating Companies’ existing transmission assets, including transmission-related regulatory assets, will be contributed to MAIT at book value (original cost less depreciation reserve). The goodwill associated with those transmission assets, as recorded on the Operating Companies’ books of account, will also be transferred to MAIT (*see* Joint Application ¶ 14; Joint Applicants’ Statement No. 4, pp. 10-12).

 (d) Because the Proposed Transaction will be structured to be a tax-free exchange of assets for ownership interests in a new limited liability company, the Operating Companies will not recognize taxable gain or loss on the Proposed Transaction. Also, because the Transaction is a tax-free exchange, the Accumulated Deferred Income Taxes (ADIT) associated with transmission assets recorded on the Operating Companies’ books of account will transfer to MAIT’s books. Transferring the transmission-related ADIT to MAIT will assure that MAIT’s FERC-jurisdictional rate base, like the existing FERC-jurisdictional rate bases of Met-Ed and Penelec, reflects the credit balance of ADIT (*see* Joint Application ¶ 14; Joint Applicants’ Statement No. 4, pp. 12-13).

 (e) The Operating Companies will not transfer a fee interest in land and other real estate to MAIT in connection with the contribution of transmission assets, and such fee interests will remain on the Operating Companies’ books. MAIT will enter into a ground lease with each of the Operating Companies to govern those interactions (“Ground Leases”) (*see* Joint Application ¶ 15; Joint Applicants’ Statement No. 4, pp. 5-7).

 (f) The Operating Companies will have no continuing obligation to contribute equity to MAIT after the initial contribution of their transmission assets occurs. MAIT will pay dividends at regular intervals to the Operating Companies and FET in proportion to each company’s ownership interest in MAIT. The capital structure of each Operating Company will remain unchanged as a result of the Proposed Transaction, and the Operating Companies and FET will not provide parent guarantees for MAIT’s debt (see Joint Application ¶ 16; Joint Applicants’ Statement No. 3, pp. 5-6; Joint Applicants’ Statement No. 4, pp. 13-15).

 Pursuant to Section 2102 of the Public Utility Code,[[6]](#footnote-6) the Joint Applicants are requesting that the Commission approve as affiliated interest agreements the ground leases between MAIT and each Joint Applicant. Forms of the ground leases are provided as Joint Applicants’ Exhibit KJT-2 accompanying Joint Applicants’ Statement No. 4. Pursuant to the ground leases, each Joint Applicant will lease the real estate rights associated with the transmission assets being contributed to MAIT by that Joint Applicant.

 The Joint Applicants are also requesting Commission approval of modifications to four existing affiliated interest agreements to include MAIT in order to facilitate its transmission-related activities and business operations:

 Under the FirstEnergy Service Agreement, MAIT will be entitled to receive administrative, management, and other services from FirstEnergy Service Company (FESC). A copy of this agreement, as amended, is provided as Joint Applicants’ Exhibit KJT-5 and is addressed in Joint Applicants’ Statement No. 4.

 A copy of the Mutual Assistance Agreement (MAA) is Joint Applicants’ Exhibit KJT-6 and is also addressed in Joint Applicants’ Statement No. 4. Under the amended MAA, MAIT will be able to request and receive non-power goods and services from any of the FirstEnergy operating companies, including Met-Ed and Penelec, consistent with the terms and conditions of the MAA (e.g., technical support services and workers to assist MAIT in the performance of its operations as a stand-alone transmission asset owner).

 Under the Intercompany Income Tax Allocation Agreement, MAIT will be able to participate in FirstEnergy’s filing of a consolidated tax return. A copy of this agreement is Joint Applicants’ Exhibit KJT-7 and is discussed in Joint Applicants’ Statement No. 4.

 Under the FirstEnergy Regulated Money Pool Agreement, MAIT will become a member of the FirstEnergy Regulated Money Pool and will be able to borrow from, or lend to, other regulated companies to manage its working capital requirements. A copy of this agreement is Joint Applicants’ Exhibit SRS-4 and is discussed in Joint Applicants’ Statement No. 3.

 The Joint Applicants have also filed with the Joint Application the Capital Contribution Agreement (Joint Applicants’ Exhibit KJT-1), which is the agreement pursuant to which the transfer of transmission assets to MAIT will be effected. As such, the Capital Contribution Agreement embodies the Transaction for which the Joint Applicants seek approval under Section 1102(a)(3) of the Public Utility Code.[[7]](#footnote-7) Accordingly, approval of the Proposed Transaction by the Commission as requested by the Joint Applicants will grant all of the approvals necessary to consummate the transaction, including approval of the Capital Contribution Agreement under Chapter 21, if necessary (see Joint Application ¶ 46(5) requesting all approvals “as may be necessary to consummate the Transaction”).

C. Secretarial Letters

 On August 10, 2015, the Commission directed the parties to address several issues in eight categories regarding the Proposed Transaction. The purpose of this mandate was to provide the Commission with important information on significant issues, particularly in regard to the jurisdiction of the Commission over MAIT, and other impacts raised by the requested approvals. By letter dated October 1, 2015, the Commission further directed that the Joint Applicants present for the record the Navigant study which classified the transmission assets which were subject to the requested approval. The Commission also directed that a list of those assets be made a part of the record.

 The Navigant study and listing of transmission assets were submitted for admission into the record by the Joint Applicants and are identified as Joint Applicants Exs. CVF-2 and KJT-9. While the parties have, in large part, addressed the issues raised in the August 10, 2015 Secretarial Letter, in their written testimony which was admitted into the record, they were also directed to provide specific answers to each issue raised by the Commission. Their answers can be found in question and answer format in Appendix B of the Joint Petition for Full Settlement.

II. TERMS OF THE SETTLEMENT

A. Terms

 The Settlement consists of the following terms and conditions:

 18. The Joint Petitioners agree that: (i) MAIT should be issued a certificate of public convenience by the Commission under Section 1101 conferring public utility status under Section 102; (ii) Met-Ed and Penelec should each be issued certificates of public convenience under Section 1102 approving the contribution of their transmission assets to MAIT on the terms set forth in the Joint Application, as modified by the terms of this Joint Petition, and, thereby, reflecting a finding, pursuant to Section 2811(e)(1), that the Transaction will not adversely affect the competitive retail electric market in Pennsylvania; (iii) the affiliated interest agreements filed by the Joint Applicants should be approved by the Commission under Section 2102; and (iv) upon issuing the foregoing certificates of public convenience and granting the foregoing approvals the Joint Applicants will have all of the approvals required from the Commission to consummate the Transaction.

 19. The Joint Petitioners agree that the certificate of public convenience issued to MAIT under Section 1101 should demarcate a service area for MAIT that is coextensive with the combined service territories of Met-Ed and Penelec and should expressly state that MAIT is not thereby authorized to furnish any intrastate public utility service within Pennsylvania.

 20. MAIT agrees that, after the Transaction is consummated, the Commission will retain the same jurisdiction over MAIT’s transmission assets that the Commission currently retains over Met-Ed and Penelec’s transmission assets.

 21. The Joint Petitioners will not object to the exclusion of the Ground Lease revenue as a component of distribution revenue in a Met-Ed or Penelec distribution base rate case as non-jurisdictional, and Met-Ed and Penelec will exclude Accounts 350.11, 350.12 and 350.22 and their associated depreciation reserves and deferred taxes from the companies’ distribution rate bases and will also exclude depreciation expense associated with accounts 350.12 and 350.22 and all other expenses associated with transmission land and transmission rights-of-way from the determination of their distribution revenue requirement as non-jurisdictional. Met-Ed and Penelec may seek Commission approval to have distribution customers bear the revenue requirement related to the underlying land, or a proportional share of the underlying land, that is utilized for distribution purposes and is subject to the Ground Leases. If Met-Ed and/or Penelec seek to include in distribution rates the revenue requirement related to any underlying land, or a proportional share of underlying land, that is subject to the Ground Leases, Met-Ed and Penelec agree that any Ground Lease revenues associated with that underlying land, or proportional share of the underlying land, will also be included as a component of their distribution revenue in the future Met-Ed and Penelec distribution rate proceedings before the Commission where such revenue requirements are claimed.

 22. For purposes of the Ground Leases, the Net Book Value of the Premises shall be defined as assets included in the following FERC accounts, or the equivalent FERC accounts if changed in the future by FERC: 350.11 – Transmission Substation Land, 350.12 Transmission Substation Easements, 350.21 – Transmission Lines Land, and 350. 22 Transmission Line Easements, less the depreciation reserve balances assigned to those accounts.

 23. For purposes of the Ground Leases, Depreciation Expense will include depreciation expense associated with FERC Accounts 350.12 and 350.22, or the equivalent FERC accounts if changed in the future by FERC.

 24. Joint Applicants agree that customers will be held harmless in the event of the loss of the ADIT credit to MAIT as a result of the Transaction.

 25. MAIT shall finance new capital investments over the next five to ten years through the issuance of debt in its own name, and shall not utilize equity financing to finance new capital investments unless: (1) MAIT’s actual capital structure is within the range of FERC-approved capital structures; or (2) MAIT is unable to raise the necessary capital through the issuance of debt. In the event that Joint Applicants seek to invoke exceptions (1) or (2) of this paragraph, Joint Applicants shall first inform the Joint Petitioners and convene a meeting, as necessary, with the Joint Petitioners prior to taking any action to implement equity financing. The Joint Petitioners reserve all rights to participate in and challenge any filing or annual formula rate update made by MAIT under this paragraph. Notwithstanding the foregoing, in no event shall this paragraph be construed to require MAIT to return capital to Met-Ed and Penelec or pay dividends not otherwise required by Paragraph 35, infra.

 26. MAIT will propose in its FERC formula rate filing a two-year commitment to use a transitional capital structure of 50% equity/50% debt. The Joint Petitioners agree that the two-year commitment will begin on the effective date of the formula rate approved by FERC as part of MAIT’s formula rate proceeding.

 27. Joint Applicants commit to exclude all costs to achieve the Transaction (i.e., both Transaction-related and transition costs associated with the transfer of assets) from distribution and transmission rates. For purposes of this paragraph, “transition costs” are defined as costs to integrate assets into the acquiring utility as a result of the Transaction, and are incurred after the Transaction is consummated. Transition costs include components such as, internal costs of employees spending time working on transition issues; external costs paid to consultants and advisers; operational integration costs; accounting and operating systems integration costs; and costs to terminate any duplicative leases, contracts, and operations. Additionally, for purposes of this paragraph, “transfer of assets” refers to the transfer of assets that will occur upon obtaining all necessary approvals requested in the following: (i) the Joint Application file in this proceeding; (ii) the NJBPU Proceeding and (iii) the FERC Proceeding (approval obtained on February 18, 2016). Joint Applicants expect that the transition period for the Transaction will be no more than one year.

 28. Met-Ed and Penelec-incurred costs that were previously assigned or allocated to transmission activities shall be reflected in the Mutual Assistance Agreement and Service Company Agreement as a result of the Transaction. Any future changes to these agreements shall be filed with the Commission for approval.

 29. MAIT shall be permitted to seek a return on equity incentive or premium at FERC, except that MAIT shall not, in any future FERC filing, seek an incentive or premium on the basis that it is a new company with no credit rating or that it is a single purpose entity, which causes greater risk. The Joint Petitioners reserve all rights to participate in or challenge any filing or update made under this provision.

 30. The formula rate to be developed by MAIT shall reflect the benefits of any ADIT, inter-company tax costs, or deferred taxes associated with the transferred assets to the extent such benefits are consistent with FERC-approved practice.

 31. MAIT will give the Joint Petitioners thirty (30) days prior notice that a formula rate filing will be made, will do a pre-filing meeting with the Joint Petitioners and will serve the filing on the Joint Petitioners.

 32. Met-Ed and Penelec shall seek Commission approval prior to making any additional capital investment in MAIT. The Joint Petitioners reserve all rights to participate in and challenge any filing made by Joint Applicants under this paragraph.

 33. MAIT agrees that it remains bound by the condition imposed by the Commission on its approval of the merger of GPU Inc. and FirstEnergy at Docket Nos. A-110200F0095 and
A-110400F0040 that the merged company shall not withdraw the transmission facilities from the operational control of PJM unless MAIT has first applied for and obtained authorization by order of the Commission.

 34. The Joint Applicants agree to provide an annual report to the other Joint Petitioners on May 1st of each year for five years after the contribution of the transmission assets from Met-Ed and Penelec to MAIT has been completed that identifies: (1) the calculation of the Ground Lease payments; (2) the annual dividends paid by MAIT to Met-Ed and Penelec during the prior calendar year; and (3) the actual costs assigned or allocated between MAIT and Met-Ed and Penelec by FESC. MAIT further agrees to provide as part of the annual report a brief explanation as to why such costs were assigned or allocated in the manner that they were. The Joint Applicants agree to convene a technical session to answer questions regarding the report if requested to do so by the other Joint Petitioners.

 35. MAIT’s total annual dividend payments shall be in an amount equal to or greater than 50% of MAIT’s net income for such year (the “Threshold Dividend Amount”). MAIT shall make dividend payments to Met-Ed and Penelec each year after the consummation of the Transaction and continuing until at least the five-year anniversary of the completion of the contribution of the transmission assets from Met-Ed and Penelec to MAIT. However, MAIT shall not be required to pay the Threshold Dividend Amount if: (1) the authorization of such dividend by the managers of MAIT would cause such managers to violate their fiduciary duties; or (2) if the payment of any such dividend would cause MAIT to violate (a) applicable law or (b) any applicable debt covenant. In the event that either scenarios (1) or (2) herein could occur, MAIT agrees to notify the Joint Petitioners and convene a meeting to discuss as may be necessary. Further, the Joint Petitioners agree that unforeseen events could occur that could cause MAIT to seek prior Commission approval to be relieved of paying the Threshold Dividend Amount as set out herein. In that scenario, MAIT agrees to provide the Joint Petitioners notice prior to making such filing at the Commission. The Joint Petitioners reserve all rights to participate in and challenge any filing made by Joint Applicants under this paragraph.

 36. The Joint Applicants shall annually convene a meeting with the other Joint Petitioners until the five-year anniversary of the completion of the contribution of the transmission assets from Met-Ed and Penelec to MAIT for the purpose of providing updates on the status of the EtF program for the upcoming year.

 37. The Joint Applicants shall ensure that transmission regulatory assets related to storm damage and vegetation management are transferred with the transmission assets.

 38. Appendix A to this Joint Petition is the list of facilities to be transferred to MAIT as of December 31, 2014, which consists of the facilities listed in Joint Applicants’ Exhibit KJT-1 that was submitted with the Direct Testimony of K. Jon Taylor and includes, in addition, a delineation of functions served by the facilities to be transferred. Because Joint Applicants’ Exhibit KJT-1 was necessarily prepared before the date that the contribution of assets to MAIT would occur, it is not the final list of facilities to be transferred. Therefore, the final list of assets transferred will be filed with the Commission when the transfer of the transmission assets to MAIT is completed.

 39. The Joint Petitioners stipulate to the admission, in full, of the Joint Applicants’ responses to TUS’s data requests. Specifically, this shall include responses to TUS Set I, Questions A1 – A5, B1-B3, C1-C2, D1- D15, E1-E5, F1 – F4; TUS Set II, Questions 1-5; and TUS Revised Response to Set I, F1. (Those responses were marked for identification as Joint Applicants’ Exhibit 1-Settlement and moved into the record at the hearing on February 29, 2016.) The Joint Petitioners further stipulate that the foregoing responses and the Direct and Supplemental Direct Testimony of Joint Applicants and accompanying exhibits respond to all of the questions posed by the Commission in its Secretarial letters dated August 10 and October 1, 2015. Additionally, as directed by the ALJs at the February 29, 2016 hearing, the Joint Petitioners have prepared and attached as Appendix B hereto their respective responses to the questions posed by the Commission in the August 10 and October 1, 2015 Secretarial letters, which were previously described in Paragraph Nos. 6 and 8, supra. As also directed by the ALJs, Appendix B sets forth proposed ordering paragraphs.

 40. The Companies agree that in future distribution base rate filings made during a period of five years from the date that the contribution of the transmission assets from Met-Ed and Penelec to MAIT is completed, they will provide a detailed breakdown of mutual assistance revenues received from MAIT for transmission activities performed by Met-Ed and Penelec during the historical test year used in such filing.

 41. The conditions and commitments set forth herein shall become effective only upon the completion of the contribution of the transmission assets from Met-Ed and Penelec to MAIT.

B. Additional Conditions

 The Parties’ agreement is conditioned on the following:

 44. The Commission’s approval of the Settlement shall not be construed as approval of any Joint Petitioner’s position on any issue, except to the extent required to effectuate the terms and agreements of the Settlement. Accordingly, this Settlement may not be cited as legal precedent in any future proceeding, except to the extent required to implement this Settlement.

 45. It is understood and agreed among the Joint Petitioners that the Settlement is the result of compromise and does not necessarily represent the position(s) that would be advanced by any Joint Petitioner in this or any other proceeding, if it were fully litigated.

 46. This Settlement is being presented only in the context of this proceeding in an effort to fully resolve the issues presented in this proceeding in a manner that is fair and reasonable. The Settlement is the product of compromise. This Settlement is presented without prejudice to any position which any of the Joint Petitioners may have advanced and without prejudice to the position any of the Joint Petitioners may advance on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement.

 47. This Settlement is conditioned upon the Commission’s approval of the terms and conditions contained herein without modification. If the Commission should disapprove the Settlement or modify any terms and conditions herein, this Settlement may be withdrawn upon written notice to the Commission and all active parties within five (5) business days following entry of the Commission’s Order by any of the Joint Petitioners and, in such event, shall be of no force and effect. In the event that the Commission disapproves the Settlement or the Joint Applicants or any other Joint Petitioner elect to withdraw the Settlement as provided above, the Joint Petitioners reserve their respective rights to fully litigate this case, including, but not limited to, presentation of witnesses, cross-examination and legal argument through submission of Briefs, Exceptions and Replies to Exceptions.

 48. If the ALJs, in their Initial Decision, recommend that the Commission adopt the Settlement as herein proposed without modification, the Joint Petitioners agree to waive the filing of Exceptions with respect to any issues addressed by the Settlement. However, the Joint Petitioners do not waive their rights to file Exceptions with respect to any modifications to the terms and conditions of this Settlement or any additional matters proposed by the ALJs in the Initial Decision. The Joint Petitioners also reserve the right to file Replies to any Exceptions that may be filed.

III. DISCUSSION

A. Legal Standards

 MAIT seeks public utility status from the Commission. This aspect of the transaction requires the approval of the Commission as evidenced by its issuance of a certificate of public convenience.[[8]](#footnote-8) Before the Commission may issue a certificate of public convenience it must find that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.[[9]](#footnote-9) Even where the Commission finds sufficient public benefit to find that the granting of a certificate of public convenience is necessary or proper for the service, accommodation, convenience, or safety of the public without imposing any conditions, the Commission nevertheless has discretion to impose conditions which it deems to be just and reasonable.[[10]](#footnote-10) In an acquisition context, when the Commission considers the public interest it is contemplated that the benefits and detriments of the acquisition will be measured as they impact on all affected parties and not merely on one particular group or geographic subdivision.[[11]](#footnote-11)

 Competitive impact is a substantial component of a rational net public benefits evaluation in a merger context.[[12]](#footnote-12) The Commission will not approve an acquisition if the acquisition “is likely to result in anticompetitive or discriminatory conduct, including unlawful exercise of market power, which will prevent retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market.”[[13]](#footnote-13)

 The burden of proof in this proceeding is upon the Joint Applicants.[[14]](#footnote-14) As the parties bearing the burden of proof, the Joint Applicants must prove by a preponderance of the evidence that the Commission’s issuance of a certificate of public convenience approving the Proposed Transaction as modified by the Joint Petition for Full Settlement is in the public interest because it will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.[[15]](#footnote-15) However, the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible in determining if the proposed transaction will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.[[16]](#footnote-16) Instead, the Commission “applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.” [[17]](#footnote-17)

The Commission encourages parties in contested on-the-record proceedings to settle cases.[[18]](#footnote-18) Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission’s decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a “settlement” reflects a compromise of the positions that the parties of interest have held, which arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest.[[19]](#footnote-19) In their supporting statements, the parties conclude, after extensive discovery and discussion, that this settlement resolves the issues in this case, it fairly balances the interests of the Operating Companies and their ratepayers, is in the public interest, is consistent with the requirements of Sections 1102 and 2102 of the Public Utility Code,[[20]](#footnote-20) and should be approved.

The issues specifically addressed by the parties are discussed below. Not every party expressed a position on every issue. Noble Americas Energy Solutions states that although it is not a signatory to the settlement, it does not oppose it and submits that it reflects a carefully balanced compromise of interests and is in the public interest.

B. The Parties’ Positions Regarding the Settlement

 1. Joint Applicants

 The Joint Applicants take the position that the settlement, both in its specific terms and viewed holistically, is reasonable, supported by record evidence, and is in the public interest. Specifically in the Joint Applicants’ view, the creation of MAIT and the contribution to it of Met-Ed’s and Penelec’s transmission assets will establish a transparent, stand-alone transmission entity that is expected to reduce investors’ perception of financial risk, strengthen the credit profile of the transmission function and, as a consequence, provide improved access to capital at reasonable rates. Better credit metrics and improved access to capital are important at this time because FirstEnergy is expanding the scope of the “Energizing the Future” program (EtF) to include transmission investments in the Met-Ed, Penelec and JCP&L zones. The purpose of the expansion is to increase the reliability of the transmission system, improve the condition of equipment on the transmission system, enhance system performance and improve operational flexibility. A preliminary assessment indicates that increased transmission system capital investments in the Operating Companies’ transmission zones could total as much as $2.5 billion to $3.0 billion over the next five to ten years.

 The expected stronger credit metrics of MAIT and the cost savings expected to be realized by having one company issue all of the debt needed to finance future transmission investments (conservatively estimated to total $135 million for Met-Ed and Penelec over a 30-year asset life), rather than separate issuances by each company, will contribute to successfully implementing the expansion of the EtF program. It will also benefit Met-Ed and Penelec by relieving them of the obligation to finance those significant transmission investments in addition to the financings required to support their continuing investment in distribution plant additions and enhancements.

 The Commonwealth of Pennsylvania is also expected to realize an economic benefit from the expansion of the EtF, including spurring job creation.

 In reaching this Settlement, the Joint Petitioners thoroughly considered all issues, including those raised in the testimony and evidence presented by the parties to this proceeding. They also carefully considered the information provided in responses to interrogatories and informal discovery. As a result of that consideration, the Joint Petitioners have agreed to the Settlement as a lawful and reasonable resolution of the issues in this case.

 Further, according to the Joint Applicants, the Proposed Transaction and accompanying agreements will not have an anti-competitive impact. Met-Ed and Penelec seek to separate their transmission facilities from their distribution facilities in order to pave the way for a more efficient vehicle to finance significant investment in transmission assets (Joint Applicants’ Statement No. 1, p. 18). MAIT does not currently own any generation or transmission facilities and will not own or control any generation upon completion of the proposed Transaction. *Id*. When the contribution of the Companies’ transmission assets to MAIT is completed, Met-Ed and Penelec will no longer own any facilities serving a transmission function. *Id*. Consequently, the proposed contribution will have no effect on the concentration of generation or transmission assets or upon market power. *Id*. Moreover, the Proposed Transaction will leave the transmission facilities under the operational control of an RTO and, therefore, it will have no adverse effect on competition in the wholesale power market. *Id*. The undisputed record evidence fully supports a Commission finding under Section 2811(e)(1) of the Public Utility Code[[21]](#footnote-21) that the Proposed Transaction will not result in the unlawful exercise of market power that would prevent retail electricity customers in Pennsylvania from obtaining the benefits of a properly functioning and workable competitive retail electricity market.

 2. BIE

 BIE generally agrees with the assessment of the Joint Applicants. According to BIE, all signatories to the Joint Petition actively participated in and vigorously represented their respective positions during the course of the settlement process in this proceeding. As such, the issues raised by BIE have been satisfactorily resolved through discovery and discussions with the parties and are incorporated in the Joint Petition. BIE represents that the Settlement satisfies all applicable legal standards and results in terms that are preferable to those that may have been achieved at the end of a fully litigated proceeding. BIE draws attention to specific aspects of the Settlement which address concerns raised in BIE’s review of the application, which are discussed below. BIE maintains that the proposed Settlement is in the public interest and requests that the Settlement be approved by the ALJs and the Commission without modification.

 The Joint Applicants proposed that revenue received for ground leases would be excluded in determining the revenue requirement in future distribution base rate cases.[[22]](#footnote-22) BIE recommended that ground lease revenues be considered above the line as part of distribution revenue in determining the revenue requirement in a distribution base rate case.[[23]](#footnote-23)

 As part of the Settlement, the Joint Petitioners have agreed that:

 [t]he Joint Petitioners will not object to the exclusion of the Ground Lease revenue as a component of distribution revenue in a Met-Ed or Penelec distribution base rate case as non-jurisdictional…[i]f Met-Ed and/or Penelec seek to include in distribution rates the revenue requirement related to any underlying land, or a proportional share of underlying land, that is subject to the Ground Leases, Met-Ed and Penelec agree that any Ground Lease revenues associated with that underlying land, or proportional share of the underlying land, will also be included as a component of their distribution revenue in the future Met-Ed and Penelec distribution rate proceedings before the Commission where such revenue requirements are claimed.[[24]](#footnote-24)

 This provision addresses BIE’s concern and is in the public interest. The choice to utilize ground leases is a more efficient and less costly option than the undertaking necessary to transfer the transmission land to MAIT.[[25]](#footnote-25) However, if the distribution companies, Met-Ed and Penelec, choose to add land to rate base where distribution facilities exist and meet the “used and useful” requirement, any revenues received for rental of that land for other uses would correctly be considered “above-the-line” for distribution revenue purposes. Therefore, BIE believes this provision is in the public interest, and BIE’s concerns about the ground lease revenues has been satisfied.

As part of the Settlement, the Joint Applicants also have agreed to an annual reporting mechanism which will enhance BIE’s ability to evaluate the rate impacts of the transaction. Specifically, May 1st of each year for five years after the MAIT transaction has been completed an annual report will be provided to the Joint Petitioners that identifies the following: (1) the calculation of Ground Lease payments; (2) the annual dividends paid by MAIT to Met-Ed and Penelec during the prior calendar year; and (3) the actual costs assigned or allocated between MAIT, Met-Ed, and Penelec by the FirstEnergy Service Company (FESC). Further the Joint Applicants have agreed to provide a brief explanation as to why costs were assigned in the manner that they were and convene a technical session to answer any further questions if necessary.[[26]](#footnote-26)

 One of BIE’s main concerns in this proceeding was that costs be assigned and allocated correctly. At the close of a transaction such as this, it can take a few years for costs to stabilize. The provision of the data required by the Settlement will allow BIE to better analyze how costs are being assigned and allocated. In future base rate proceedings BIE will be able to more easily determine whether certain O&M costs were correctly allocated and make recommendations as to cost allocations.

 Finally, BIE points to the settlement provision wherein Met-Ed and Penelec have agreed that for future distribution base rate filings made during the five-year period from the date the contribution of transmission assets from Met-Ed and Penelec to MAIT is completed, they will provide a detailed breakdown of mutual assistance revenues received from MAIT. [[27]](#footnote-27) This provision will assist the parties to any future base rate filings to more accurately assess each utility’s financial picture. The costs and revenue concerns identified by BIE in testimony can be addressed in future base rate proceedings. In order to accurately address the cost and revenue concerns, each company must include a detailed breakdown of MAIT FESC allocated costs and of MAIT MAA revenues paid to the operating companies. With this information, parties to a base rate case will be able to determine whether costs have been accurately assigned.

 In sum, BIE represents that all issues raised in testimony have been satisfactorily resolved through discovery and discussions with the Company or are incorporated or considered in the resolution proposed in the Settlement. The very nature of a settlement requires compromise on the part of all parties. This Settlement exemplifies the benefits to be derived from a negotiated approach to resolving what can appear at first blush to be irreconcilable regulatory differences. Joint Petitioners have carefully discussed and negotiated all issues raised in this proceeding, and specifically those addressed and resolved in this Settlement. BIE is satisfied that no further action is necessary and considers its investigation of this filing complete.

 3. OCA

 OCA observes that for the Proposed Transaction to be approved, the Commission must find that it will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” [[28]](#footnote-28) In OCA’s view, the Proposed Transaction, modified by the Settlement, satisfies that standard.

 Like BIE, OCA points to certain specific elements of the Settlement that addressed OCA’s concerns raised by its expert witness. First, the Joint Petitioners determined which assets qualified as transmission assets and therefore should be transferred to MAIT by applying FERC’s seven factor test.[[29]](#footnote-29) OCA witness Mr. Hahn reviewed the results of the Navigant Study applying the seven factor test, and testified that he found the results to be reasonable. *See* OCA St. 1 at 9. Regarding the transmission assets that would be transferred to MAIT if the Proposed Transaction is approved, Mr. Hahn recommended that the regulatory assets related to storm damage and vegetation management that are associated with the transmission facilities being transferred to MAIT should also be transferred to MAIT. OCA St. No. 1 at 9. Mr. Hahn explained that those “regulatory assets were created through the ownership of transmission facilities, and thus should be transferred with the transmission assets.” *Id*. at 10.

 Under the Settlement, Joint Applicants agree to “ensure that transmission regulatory assets related to storm damage and vegetation management are transferred with the transmission assets.” Settlement ¶ 37. This settlement term adopts Mr. Hahn’s recommendation and protects the distribution customers of Met-Ed and Penelec from being responsible for transmission costs through their distribution rates once the companies no longer own the transmission assets. The Settlement further provides that the Joint Petitioners will include as part of the Settlement the list of facilities as of December 31, 2014 to be transferred to MAIT. The Joint Applicants agree to file with the Commission an updated and final list of assets transferred to MAIT when the Proposed Transaction is completed. This settlement provision ensures that at the conclusion of the Proposed Transaction, the Commission, as well as the statutory parties, have an accurate record of which assets have been transferred from Met-Ed and Penelec to MAIT. This provision also responds to the Commission’s October 1st Secretarial Letter, which directed the Joint Applicants to provide in the record a listing of the transmission assets to be transferred to MAIT.

 Next, OCA witness Hahn reviewed the Proposed Transaction for anti-competitive impacts. *See* OCA St. No. 1 at 10. Mr. Hahn noted that the transmission assets owned by Met-Ed and Penelec are controlled by PJM under PJM’s Open Access Transmission Tariff (OATT). Mr. Hahn explained that the OATT is designed to provide non-discriminatory access to all shippers using the transmission facilities, and that the assets being transferred to MAIT would

remain subject to the OATT under the Proposed Transaction. Mr. Hahn testified that the Proposed Transaction should not have any anti-competitive impacts so long as the transmission assets remain under PJM’s control. As such, Mr. Hahn recommended that approval of the Proposed Transaction be conditioned on MAIT not removing the transmission assets from PJM’s operation and control without the Commission’s prior approval. *Id.*

 Under the Settlement, the Joint Applicants agree not to remove the transmission assets from PJM’s control unless MAIT seeks and obtains the Commission’s approval to do so. Settlement ¶ 33. The OCA submits that this term is in the public interest because it confirms that the transmission assets being transferred to MAIT will remain under PJM’s operation and control, eliminating the potential for adverse impacts on the competiveness of transmission service.

 In the August 10th Secretarial Letter, the Commission requests that the parties address whether the Commission will retain oversight over the transmission assets being transferred. OCA witness Mr. Hahn specifically addressed this issue in his testimony, stating that approval of the Proposed Transaction should be conditioned on the Commission retaining “all of the oversight rights it currently has.” OCA St. No. 1 at 11. Under the Settlement, MAIT agrees that the Commission retains the same jurisdiction over MAIT’s transmission assets as it currently has over the transmission assets owned by Met-Ed and Penelec. Settlement ¶ 20. According to OCA, including this term in the Settlement is in the public interest because it confirms that the Commission will retain its jurisdiction over the transmission assets being transferred to MAIT.

 The operation of the ground leases was also a concern raised by OCA. Under the Proposed Transaction, Met-Ed and Penelec will transfer their transmission assets to MAIT and lease the related land and right-of-ways to MAIT. MAIT, in turn, will make rent payments to Met-Ed and Penelec. The amount of rent that MAIT will pay Met-Ed and Penelec is established by the rent payment formula provided in the ground lease. Although OCA witness Mr. Hahn questioned why Met-Ed and Penelec would lease its lands instead of transferring the land to MAIT, Mr. Hahn did not object to Met-Ed and Penelec proceeding in this manner. *See*OCA St. 1 at 11-12. Mr. Hahn, however, did address how Met-Ed and Penelec should reflect the rent payments received from MAIT in future distribution rates, testifying that the rent payments should be applied as a credit to the revenue requirement of Met-Ed and Penelec. *Id.* at 13. Mr. Hahn stated that applying the rent payments in this manner would pass on some benefit of the Proposed Transaction to the customers of Met-Ed and Penelec. *See Id*.

 To settle the issue of how the ground lease payments should be applied, the Joint Petitioners agreed that both the revenues and expenses associated with the land subject to the ground lease will be excluded from future distribution rates. Settlement ¶ 20. In other words, under the Settlement, Met-Ed is not required to apply the rent payments they receive from MAIT as a credit to future distribution rates, as Mr. Hahn recommended, but Met-Ed and Penelec may not seek to recoup any expenses associated with the land subject to the ground lease through future distribution rates. In OCA’s view, this compromise achieves a balance for the customers of Met-Ed and Penelec because although they will not receive the benefit of the rent payments, they will not be harmed either.

 The Settlement also addresses the situation where Met-Ed or Penelec may need to use a portion of the land subject to the ground lease for distribution-related purposes. In this situation Met-Ed and Penelec are permitted to seek Commission approval to include in their revenue requirement expenses related to the land that is utilized for distribution purposes and is subject to the Ground Leases, but Met-Ed and Penelec agree that any revenues associated with that underlying land will also be included as a component of their distribution revenue in the future Met-Ed and Penelec distribution rate proceedings. Settlement ¶ 20. This provision maintains the balance between rent payments and expenses associated with the ground leases.

 The Settlement also provides clarity to the rent formula contained in the ground lease. Settlement ¶ 22-23. OCA asserts that these two paragraphs address Mr. Hahn’s concern that there was ambiguity in the rent formula. *See* OCA St. No. 1 at 15-16. Removing ambiguity before the ground lease takes effect should prevent disputes from arising between the Joint Petitioners in future proceedings where the rent payments are at issue.

 Finally, in this proceeding, the OCA had several major concerns regarding the Proposed Transaction’s financing arrangement. These concerns related to MAIT’s projected capital structure, the dividend payments to be made from MAIT to Met-Ed and Penelec, and the transfer of Accumulated Deferred Income Tax (ADIT) to MAIT. OCA submits that the Settlement addresses the OCA’s concerns with the proposed financing arrangement, as set forth in more detail below.

 The Joint Application provides that MAIT will be financed initially with 100% equity, and that for the two years following the approval of the Proposed Transaction, MAIT will use a 50% equity ratio for ratemaking purposes. MAIT’s capital structure was a major concern for OCA in this proceeding. As OCA witness Mr. Hahn explained in his testimony, there would be no constraint on the capital structure used by MAIT to develop its rates. Mr. Hahn illustrated in his testimony that even if MAIT finances its new transmission facilities using 50% debt and 50% equity, a $1.0 billion investment would result in an equity ratio of 80%, and a $3.0 billion investment would result in an equity ratio of 67%. OCA St. 1 at 16-18. Mr. Hahn demonstrated that even after significant new investment, MAIT’s equity ratio would likely be high, resulting in higher rates for customers. OCA St. No. 1 at 18.

 The Settlement addresses the OCA’s concern with MAIT’s capital structure. Under the Settlement, MAIT will finance all new transmission investment over the next five to ten years through the issuance of debt only, unless (1) MAIT’s capital structure falls within the range of FERC-approved capital structures, or (2) MAIT is unable to obtain the necessary capital through debt. Settlement ¶ 24. According to OCA, requiring MAIT to finance new transmission investment only with debt for a period of time should bring its capital structure within a reasonable range more rapidly than if the new investment were financed by both debt and equity. OCA takes the position that this provision is in the public interest because it allows MAIT the flexibility to acquire the necessary capital while protecting customers from unduly high rates.

 The Settlement also addresses OCA’s concerns regarding the frequency of dividend payments. The Joint Application provides that the frequency of MAIT’s payment of dividends to Met-Ed and Penelec will be determined by the Board of MAIT*. See* Joint Application, Exhibit SRS-1 at 6. In other words, MAIT’s dividend payments to Met-Ed and Penelec would be at the discretion of MAIT’s Board. OCA witness Mr. Hahn testified that it is unclear whether Met-Ed and Penelec will receive more or less financial support from the dividends payment received from MAIT than by continuing to own the transmission assets. *See* OCA St. No. 1 at 21. The Settlement requires MAIT to make annual dividend payments until the five-year anniversary of the completion of the contribution of assets from Met-Ed and Penelec to MAIT, with limited exceptions. Settlement ¶ 35. The Settlement also establishes the minimum amount of the annual dividend payment (i.e., Threshold Dividend Amount). Establishing a minimum threshold for the frequency and amount of the dividend payments made by MAIT guarantees some cash dividends to Met-Ed and Penelec, and mitigates risk to Met-Ed and Penelec, and their customers.

 OCA initially took the position that a condition of approval of the Proposed Transaction should be that customers must be held harmless in the event that the ADIT is lost through the Proposed Transaction. OCA St. No. 1 at 34. Currently, Met-Ed and Penelec have Accumulated Deferred Income Tax (ADIT) associated with their transmission assets that acts as a credit to their FERC-jurisdictional rate bases. *See* Joint Applicants’ St. No. 4 at 12-13. According to the Joint Application, this ADIT will be transferred to MAIT as part of the Proposed Transaction and the ADIT will be applied as a credit to MAIT’s FERC-jurisdictional rate base. *See Id*. Under the Settlement, the Joint Applicants agree that customers will be held harmless in the event ADIT is not transferred to MAIT. Settlement ¶ 24. The OCA submits that including this guarantee in the Settlement protects the customers of the Joint Applicants because it ensures that these customers will continue to receive the benefit of ADIT in the rates that they pay for transmission service. This condition also places the risk of losing the ADIT on the Joint Applicants.

 Next, OCA points out that Met-Ed and Penelec must seek Commission approval prior to making any additional capital investment in MAIT. Settlement ¶ 32. This term specifically adopts the recommendation of OCA witness Mr. Hahn. In testimony, Mr. Hahn explained that if Met-Ed or Penelec invest additional equity in MAIT, this could cause the companies to have lower earnings and be less financially secure. OCA St. 1 at 21-22. By requiring the Joint Applicants to seek Commission approval prior to making additional investments in MAIT, the consequences of such a transaction can be examined, which protects customers from harm.

 Reliability, along with safety, is a primary issue for the OCA when reviewing any proposals regarding electric service. Electric distribution and transmission companies must provide reliable service, and expansion and upgrades to existing transmission facilities are often required to maintain reliable service. The Energizing the Future Program (EtF) is a FirstEnergy program designed to improve the reliability of its transmission systems by building transmission facilities identified by its Transmission Planning Process. The Joint Application provides that if the Proposed Transaction is approved, the EtF projects located within Met-Ed and Penelec’s operating zones will be completed at an accelerated rate due to MAIT having access to less expensive capital. *See* Joint Application ¶ 4; Joint Applicants’ St. No. 1 at 19. The Joint Application also states that MAIT is expected to invest between $2.5 and $3.0 billion on EtF projects over the next ten years if the Proposed Transaction is approved. However, as OCA witness Mr. Hahn noted in testimony, investment in transmission facilities should only be driven by need, not based on the availability of capital. See OCA St. No. 1 at 23. Mr. Hahn further testified that the Joint Applicants provided no evidence that Met-Ed and Penelec would be unable to expand and upgrade their transmission systems as necessary to meet reliability requirements. *Id*. at 27.

 As the Joint Applicants point to MAIT’s ability to accelerate the EtF projects in Met-Ed and Penelec’s service territories as a benefit of the Proposed Transaction, the Settlement requires that the Joint Applicants hold annual meetings with the other Joint Petitioners, until the five-year anniversary of the completion of the contribution of the transmission assets, to provide updates on the EtF projects for the upcoming year. Settlement ¶ 36. This Settlement provision gives the other parties, including OCA, the opportunity to monitor the progress of the EtF projects being undertaken in Met-Ed and Penelec’s service territories.

 Another major issue in this proceeding was how the Proposed Transaction would impact the distribution and transmission rates of customers. In the OCA’s view, the Proposed Transaction should not be approved unless customers are protected from increases in their distribution and transmission rates that would not have occurred but for the Proposed Transaction. As such, this Settlement contains provisions that will protect customers from adverse rate impacts.

 Regarding the transmission rate to be charged by MAIT, the return on equity (ROE) that will be included in MAIT’s proposed formula rate has not yet been determined. In testimony, OCA witness Mr. Hahn cautioned that FERC offers incentives and premiums to ROEs of transmission-only companies, such as MAIT, which can result in higher rates. OCA St. 1 at 25. Mr. Hahn testified that premium ROEs can be awarded based on the transmission company being a new company with no credit rating or because it is a single purpose entity with greater risk. *Id*. Mr. Hahn recommended that as a condition of approval for the Proposed Transaction, MAIT should not be allowed to seek a premium ROE in its FERC formula rate filing based on being a new company or because it is a single purpose entity. *Id*. Mr. Hahn explained that MAIT should not be permitted to seek such premiums because the Joint Applicants have asserted that MAIT will be more creditworthy than Met-Ed and Penelec. *Id*.

 The Settlement adopts Mr. Hahn’s recommendation. Under the Settlement, the Joint Applicants agree that MAIT will not seek, in any FERC filing, an incentive or premium on the basis that it is a new company with no credit rating or that it is a single purpose entity, which causes greater risk. Settlement ¶ 29. This settlement term ensures that MAIT’s formula rate filing with FERC will reflect MAIT’s creditworthiness, which the Joint Applicants assert is a primary reason for the Proposed Transaction. The Settlement also provides that the formula rate developed by MAIT must include the benefits of ADIT, inter-company tax costs, or deferred taxes associated with the transferred transmission assets. Settlement ¶ 30. Also, as discussed above, the Settlement includes a term aimed at protecting customers against MAIT’s unbalanced capital structure. See Settlement ¶¶ 25 & 26. Although the transmission rate will likely increase once MAIT is awarded a formula rate (as rates would also likely increase if Met-Ed and Penelec sought formula rates from FERC), these settlement terms seek to limit any such increases, and eliminate increases that could result from approval of the Proposed Transaction.

 Regarding both transmission and distribution rates, the Settlement provides that the Joint Applicants agree to exclude all “costs-to-achieve” arising from the Proposed Transaction from transmission and distribution rates. Settlement ¶ 27. This settlement term adopts the OCA recommendation included in Mr. Hahn’s testimony, and should ensure that no costs will be passed on to customers that would not otherwise exist but for the Proposed Transaction. The Settlement also requires the Joint Applicants to provide an annual report to the other Joint Petitioners for a period of five years that identifies certain costs and how the costs were assigned, and a brief explanation of why the costs were assigned or allocated as they were. Settlement ¶ 34. This term will aid the OCA and other statutory parties in ensuring that these costs have been properly assigned in future rate proceedings, and thereby protect customers from bearing any improper costs.

 As explained above, OCA witness Mr. Hahn recommended numerous conditions to the Proposed Transaction, if approved. Many of Mr. Hahn’s recommendations were adopted in the Settlement; other recommendations were used as a starting place in negotiations that resulted in other terms to the Settlement. These terms have been discussed above, and the OCA submits that approval of the Proposed Transaction should be conditioned on the terms of the Settlement.

 4. OSBA

 OSBA’s chief concerns were whether transferring ownership of transmission assets from Met-Ed and Penelec to MAIT, another company wholly-owned by FirstEnergy would be anti-competitive; and whether ratepayers would benefit or be harmed by the transfer of transmission assets from Met-Ed and Penelec to MAIT. In OSBA’s view, the Settlement sets forth a comprehensive list of issues that were resolved through the negotiation process. OSBA has concluded that the Settlement is in the best interests of small business customers.

After careful examination of the materials filed by the Joint Applicants, the OSBA has concluded that the Proposed Transaction, if approved, would not result in harm to the competitive market. Accordingly, the OSBA did not file any testimony regarding this issue. It is apparent that the transmission facilities consolidated under the MAIT umbrella will continue to be under the operational control of PJM, as they are now, and transmission rates will remain subject to the jurisdiction of the FERC as administered by PJM. According to the Proposed Transaction, MAIT will have the status of a regulated Pennsylvania public utility, and as such, will be subject to the Commission’s oversight with respect to its operations, including the Commission’s power to investigate anticompetitive behavior. Further, OSBA asserts that it has not found anything in the Proposed Transaction that would appear to negatively impact the current competitive market for the provision of retail electric service. The expressed purpose of this Proposed Transaction is to achieve a more efficient and attractive investment vehicle. The OSBA, therefore, is satisfied that its initial concern over possible anticompetitive effects of this asset transfer has been alleviated.

In reviewing the Proposed Transaction, OSBA explains that it could not determine whether there would be a disparate impact on small business rate payers that would result from Commission approval of the Joint Application. While the OSBA traditionally looks at such things as revenue allocation, rate design, and cost of service as those issues relate to small business customers, OSBA states that those are rate case issues that do not appear to be implicated in this proceeding. Consequently, it is more difficult to determine to what extent, if any, small business customers would either benefit or be harmed from this transaction, and particularly whether that benefit or harm might be unequal among the various classes of ratepayers. Both MAIT (on the transmission side) and Met-Ed/Penelec (on the distribution side) convincingly argue that approval of the Proposed Transaction will allow each entity to attract new and more favorable investment. OSBA therefore believes that all Met-Ed and Penelec ratepayers will benefit from the increased ability of the Joint Applicants to attract investment on beneficial terms, and this Joint Application deserves Commission approval.[[30]](#footnote-30)

 5. Industrial Intervenors

 Similarly, the Industrial Intervenors take the position that the Settlement is in the public interest from its point of view as an industrial consumer. The Settlement satisfies the specific concerns of the Industrials by providing for a commitment by MAIT that it will give the Joint Petitioners 30 days' prior notice of its formula rate filing, will convene a pre-filing meeting with the Settling Parties, and will serve the formula rate filing on the Joint Petitioners, see Settlement, ¶ 31; a commitment by the Joint Applicants to annually convene a meeting with the Joint Petitioners to provide updates on the status of the Energizing the Future program for the upcoming year, *see* *Id*. ¶ 36; and that the Joint Applicants will provide an annual report to the other Joint Petitioners on May 1st of each year for five years after the contribution of the transmission assets from Met-Ed and Penelec to MAIT has been completed, which will identify: (1) the calculation of ground lease payments; (2) the annual dividends paid by MAIT to Met-Ed and Penelec during the prior calendar year; and (3) the actual costs assigned or allocated between MAIT and Met-Ed, Penelec, by FESC, *see* *Id.* ¶ 34.

 6. Labor Intervenors

 The International Brotherhood of Electrical Workers Locals 459 and 777 (Labor Intervenors) represent hundreds of employees of Penelec and Met-Ed. The Labor Intervenors intervened in this proceeding to ensure that the proposed transfer of transmission assets from Met-Ed and Penelec to MAIT would not have an adverse effect on the members of Labor Intervenors, particularly those members who work on the transmission assets that would be transferred to MAIT. During the course of this proceeding, Met-Ed, Penelec, and MAIT have provided additional information about the effects of the Proposed Transaction on Labor Intervenors' members who work on the transmission system. Through that process, Met-Ed, Penelec, and MAIT have provided assurances that MAIT will use the highly skilled employees of Met-Ed and Penelec to perform work on the transmission system in a manner similar to the way in which those employees are used today by Met-Ed and Penelec.[[31]](#footnote-31) In addition, the Executive Director of Labor Relations for FirstEnergy (the ultimate parent company of Met-Ed, Penelec, and MAIT) has committed to Labor Intervenors that Met-Ed and Penelec employees "will continue to perform the same work on the transmission assets that they perform today." Joint Applicants' Ex. CVF-3. In addition, if FirstEnergy were ever to divest MAIT, the new owner would be required to "abide by the obligations imposed on successors" in the relevant collective bargaining agreements. *Id.*

 Finally, Labor Intervenors recognize the benefits to their members and the public from MAIT's plans to make substantial new investments in the transmission assets through EtF. Such investments should enhance reliability, improve the quality of service for customers, increase safety for Labor Intervenors' members who work on the transmission system, and create opportunities for new jobs and other economic benefits within the Commonwealth.[[32]](#footnote-32)

 Therefore, the Labor Intervenors are of the opinion that the Joint Petition for Full Settlement is consistent with the public interest. Labor Intervenors fully support the Settlement and respectfully request the Commission to approve the Proposed Transaction as modified by the Settlement.

 7. PSU

 PSU also believes that the Settlement is in the public interest for the following reasons. The Settlement will maintain and enhance Commission protection of customers’ interests. The Settlement confirms that the Commission will retain the jurisdiction over the transmission assets to be transferred (Joint Petition ¶ 20), and it includes a number of terms designed to ensure proper rate treatment of various costs associated with those assets (*Id*. ¶¶ 21-32). Further, the Settlement will provide increased transparency to customers with respect to the Joint Applicants’ transmission services and rates. For example, pursuant to the Settlement, MAIT will give the Joint Petitioners advance notice when a formula rate filing will be made, do a pre-filing meeting with the Joint Petitioners and serve the filing on the Joint Petitioners. (*Id*. ¶ 31.) The Joint Applicants will provide an annual report to the other Joint Petitioners for five years after the contribution of the transmission assets from Met-Ed and Penelec to MAIT has been completed that identifies payments made and costs assigned or allocated by and between MAIT, Med-Ed and Penelec, together with an explanation as to why such costs were assigned or allocated in the manner that they were; in addition, the Joint Applicants will convene a technical session to answer questions regarding the report if requested to do so by the other Joint Petitioners. (*Id*. ¶ 34.) The Joint Applicants will annually convene a meeting with the other Joint Petitioners until the five-year anniversary of the completion of the contribution of the transmission assets from Met-Ed and Penelec to MAIT for the purpose of providing updates on the status of FirstEnergy’s EtF program for the upcoming year. (*Id*. ¶ 36.)

 Finally, in PSU’s view, the transfer of transmission assets to MAIT facilitated by the Settlement will provide an additional level of assurance that customers and suppliers have nondiscriminatory access to the transmission system by replacing the current functional separation of the transmission system from the supply and distribution systems to a true corporate separation. The transfer and consolidation of transmission assets to MAIT will also reduce the potential for any misallocation between the transmission and distribution functions of what currently are treated as common assets and common costs, thus reducing potential anticompetitive cross-subsidization or price distortion.

C. Conclusion

Many interests and stakeholders were represented in this proceeding. The Joint Petitioners advocate on behalf of their corporate interests and shareholders. The Office of Consumer Advocate is tasked with advocacy on behalf of consumers in matters before the Commission.[[33]](#footnote-33) The Small Business Advocate represents the interests of the Commonwealth’s small businesses.[[34]](#footnote-34) The Bureau of Investigation and Enforcement is tasked with balancing these various interests and concerns on behalf of the general public interest. Large industrial, educational institutions, labor interests and suppliers were also represented. Not every party advanced a position on every issue raised in the original application or every issue raised by the terms of the Settlement. Rather, as described above, each discussed those terms which were of importance to each advocate’s particular stakeholders. Each advocate represents that the proposed transaction as modified by the Settlement is in the public interest. In reliance on these representations, we agree that a certificate of public convenience and the related affiliated interest agreements are appropriate. The Commission has approved the transfer of transmission assets and approved certificates of public convenience to transmission companies in the past.[[35]](#footnote-35) Further, this transaction protects the distribution companies from additional debt burden and resolved the ground lease issue to protect ratepayers. Finally, the reporting requirements that the parties have agreed to permit the Commission and the other advocates to monitor the potential rate effects and ensure that the parties will work collegially to ensure the public enjoys the benefits of the transmission investment and financial improvement of the distribution companies.

After due consideration of each party’s position and reviewing the application as modified by the Settlement, we approve the Joint Petition for Full Settlement and Joint Application.

IV. CONCLUSIONS OF LAW

 1. The Commission has jurisdiction over the subject-matter and parties to this proceeding. 66 Pa.C.S. §§ 501 *et seq.*

 2. The Joint Petition for Full Settlement is in the public interest.

 3. The Proposed Transaction as modified by the Joint Petition for full Settlement is not anti-competitive. 66 Pa.C.S. § 2811(e).

 4. The affiliated interest agreements filed by the Joint Applicants are reasonable and consistent with the public interest. 66 Pa.C.S. § 2102.

 5. The Proposed Transaction will produce an affirmative public benefit and meets the legal standard for issuance of certificates of public convenience established in *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825, 828 (Pa. 1972).

 6. The Joint Application as modified by the Joint Petition for Full Settlement is necessary or proper for the service, accommodation, convenience, or safety of the public. 66 Pa.C.S. § 1103(a).

ORDER

THEREFORE

IT IS ORDERED:

 1. That the Joint Petition for Full Settlement filed by the Joint Petitioners is granted and the Settlement embodied in the Joint Petition, including all terms and conditions thereof, is approved without modification;

 2. That a certificate of public convenience shall be issued to Mid-Atlantic Interstate Transmission, LLC, under Section 1101 of the Public Utility Code, 66 Pa.C.S. § 1101, conferring upon it the status of a Pennsylvania public utility as defined in Section 102 of the Public Utility Code, 66 Pa.C.S. § 102, pursuant to the terms of the Joint Petition for Full Settlement;

 3. That certificates of public convenience shall be issued to Metropolitan Edison Company and Pennsylvania Electric Company under Section 1102 of the Public Utility Code, 66 Pa.C.S. § 1102, evidencing the Commission’s approval of the contribution of their transmission assets to Mid-Atlantic Interstate Transmission, LLC on the terms set forth in the Joint Application, as modified by the terms of the Joint Petition for Full Settlement;

 4. That the affiliated interest agreements filed by the Joint Applicants with their Joint Application at Docket Nos. G-2015-2488906, G-2015-2488907, G-2015-2489542,

G-2015-2489543, G-2015-2489544, G-2015-2489545, G-2015-2489547, G-2015-2490801 and G-2015-2490802 are hereby approved under Section 2102 of the Public Utility Code, 66 Pa.C.S. § 2102.

 5. That the Secretary mark these dockets closed.

Date: April 1, 2016 /s/

 Mark A. Hoyer

 Deputy Chief Administrative Law Judge

 /s/

 Mary D. Long

 Administrative Law Judge

1. 45 Pa.B. 3643 (July 4, 2015). [↑](#footnote-ref-1)
2. Tri-County Rural Electric Cooperative filed a petition to intervene that was later withdrawn. [↑](#footnote-ref-2)
3. MEIUG and PICA may collectively be referred to as the “Industrials” or “Industrial Intervenors.” [↑](#footnote-ref-3)
4. FET is a subsidiary of FirstEnergy Corp. (“FirstEnergy”). FET’s subsidiaries include American Transmission Systems, Inc. (“ATSI”) and Trans-Allegheny Interstate Line Company (“TrAILCo”). ATSI provides transmission service in western Pennsylvania and Ohio and is comprised in large part of the transmission assets formerly owned by FirstEnergy’s operating utilities in those states (Pennsylvania Power Company or “Penn Power” in Pennsylvania) and (Toledo Edison Company, Ohio Edison Company and the Cleveland Electric Illuminating Company in Ohio). Penn Power’s transfer of its transmission assets to ATSI was approved by the Commission in 2000. *Application Of Pennsylvania Power Co. For (1) A Certificate Of Public Convenience Authorizing The Transfer Of Certain Transmission Assets To American Transmission Systems, Inc., And (2) Approval Of Certain Affiliated Interest Agreements Necessary To Effect The Transfer*, Docket No. A-110450F0016 (July 14, 2000). TrAILCo owns and maintains transmission facilities primarily located in Pennsylvania, West Virginia and Virginia that are used to furnish interstate transmission service. *See Application of Trans-Allegheny Line Company (TrAILCo) For Approval: 1) for a Certificate of Public Convenience to Offer, Render Furnish or Supply Transmission Service in the Commonwealth of Pennsylvania; (2) Authorization and Certification to Locate, Construct, Operate and Maintain Certain High-Voltage Electric Substation Facilities; 3) Authority to Exercise the Power of Eminent Domain for the Construction and Installation of Aerial Electric Transmission Facilities Along the Proposed Transmission Line Routes in Pennsylvania; 4) Approval of an Exemption from Municipal Zoning Regulation With Respect to the Construction of Buildings; and 5) Approval of Certain Related Affiliated Interest Arrangements*, Docket Nos. A-110172 et al. (December 13, 2008). [↑](#footnote-ref-4)
5. 66 Pa.C.S. § 102. [↑](#footnote-ref-5)
6. 66 Pa.C.S. § 2102. [↑](#footnote-ref-6)
7. 66 Pa.C.S. § 1102(a)(3). [↑](#footnote-ref-7)
8. 66 Pa.C.S. § 1102(a)(3). [↑](#footnote-ref-8)
9. 66 Pa.C.S. § 1103(a). [↑](#footnote-ref-9)
10. 66 Pa.C.S. § 1103(a). [↑](#footnote-ref-10)
11. *Middletown Twp. v. Pa. Pub. Util. Comm’n*, 482 A.2d 674 (Pa.Cmwlth. 1984). [↑](#footnote-ref-11)
12. *Popowsky v. Pa. Pub. Util. Comm’n*, 937 A.2d 1040 (Pa. 2007). [↑](#footnote-ref-12)
13. 66 Pa.C.S. § 2811(e). [↑](#footnote-ref-13)
14. 66 Pa.C.S. § 332(a). [↑](#footnote-ref-14)
15. *City Of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825 (Pa. 1972).

 [↑](#footnote-ref-15)
16. *Popowsky v. Pa. Pub. Util. Comm’n*, 937 A.2d 1040 (Pa. 2007). [↑](#footnote-ref-16)
17. *Id.* at 611, 937 A.2d at 1057. [↑](#footnote-ref-17)
18. *See* 52 Pa.Code § 5.231. [↑](#footnote-ref-18)
19. *Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates*, 74 Pa. PUC 767, 771 (1991). [↑](#footnote-ref-19)
20. 66 Pa.C.S. §§ 1102 and 2102. [↑](#footnote-ref-20)
21. 66 Pa.C.S. § 2811(e)(1). [↑](#footnote-ref-21)
22. Joint Application p. 8, ¶ 15. [↑](#footnote-ref-22)
23. BIE St. No. 1, p. 11. [↑](#footnote-ref-23)
24. Settlement Petition p. 15, ¶ 21. [↑](#footnote-ref-24)
25. Joint Applicants’ Statement No. 4-R, pp. 3-4. [↑](#footnote-ref-25)
26. Settlement Petition, p. 19, ¶ 34. [↑](#footnote-ref-26)
27. Joint Petition for Full Settlement, ¶ 40. [↑](#footnote-ref-27)
28. *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825, 828 (Pa. 1972). [↑](#footnote-ref-28)
29. *See* OCA St. No. 1 at page 8 for a listing of the factors included in the FERC Seven Factor Test. [↑](#footnote-ref-29)
30. *See generally*, Joint Applicants Statement No. 1, Direct Testimony of Charles V. Fullem; BIE Statement No. 1, Direct Testimony of Lisa A. Gumby; Joint Applicants Statement No. 3, Rebuttal Testimony of Steven R. Staub. [↑](#footnote-ref-30)
31. Joint Applicants' St. 1-R, pp. 12, 15. [↑](#footnote-ref-31)
32. Joint Applicants' St. 2, p. 23. [↑](#footnote-ref-32)
33. Section 904-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended,* 71 P.S. § 309-4. [↑](#footnote-ref-33)
34. Section 399.45 of the Small Business Advocate Act, Act of December 21, 1988, P.L. 1871, 73 P.S. § 399.45. [↑](#footnote-ref-34)
35. *Application of Trans-Allegheny Line Company (TrAILCo) For Approval: 1) for a Certificate of Public Convenience to Offer, Render Furnish or Supply Transmission Service in the Commonwealth of Pennsylvania; (2) Authorization and Certification to Locate, Construct, Operate and Maintain Certain High-Voltage Electric Substation Facilities; 3) Authority to Exercise the Power of Eminent Domain for the Construction and Installation of Aerial Electric Transmission Facilities Along the Proposed Transmission Line Routes in Pennsylvania; 4) Approval of an Exemption from Municipal Zoning Regulation With Respect to the Construction of Buildings; and 5) Approval of Certain Related Affiliated Interest Arrangements*, Docket Nos. A-110172 et al. (December 13, 2008); *Application* *Of Pennsylvania Power Co. For (1) A Certificate Of Public Convenience Authorizing The Transfer Of Certain Transmission Assets To American Transmission Systems, Inc., And (2) Approval Of Certain Affiliated Interest Agreements Necessary To Effect The Transfer*, Docket No. A-110450F0016 (July 14, 2000). [↑](#footnote-ref-35)