

December 23, 2021

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Docket No. C-2021-3028278
Rebecca Walizer v. Metropolitan Edison Company
Motion of Met-Ed for Judgement on the Pleadings**

Dear Secretary Chiavetta:

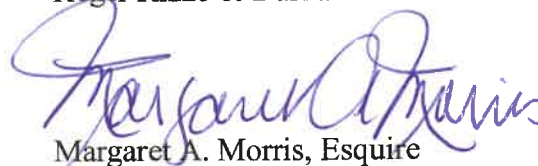
Attached for filing is the Motion of Metropolitan Edison Company for Judgement on the Pleadings (Motion) in the above-captioned proceeding.

A copy of the enclosed Motion has been forwarded to the Complainant in the manner indicated on the attached Certificate of Service.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris, Esquire

MAM/co
Enclosures

cc: The Hon. Mark A. Hoyer, PA Public Utility Commission [w/encls.]
The Hon. John Coogan, PA Public Utility Commission [w/encls.]
Tori Giesler, Esquire, FirstEnergy Service Company [w/encls.]
Rebecca Walizer [w/encls.]

**Re: Docket No. C-2021-3028278
Rebecca Walizer v. Metropolitan Edison Company
Motion of Met-Ed for Judgement on the Pleadings**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

Via First Class and Electronic Mail

Rebecca Sue Walizer
60 Bittersweet Drive
Hershey, PA 17033
Rswalizer79@comcast.net

Dated: December 23, 2021


Margaret A. Morris, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

REBECCA WALIZER

v.

METROPOLITAN EDISON COMPANY

:
:
:
:
:

Docket No. C-2021-3028278

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.102, you are hereby notified that if you do not file a written response answering the enclosed Motion for Judgement on the Pleadings of Metropolitan Edison Company **within twenty (20) days from service of this notice**, the facts set forth by Metropolitan Edison Company in the Motion may be deemed to be true, whereby requiring no other proof. All pleadings, such as an Answer to the Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with an electronic copy served to counsel for Metropolitan Edison Company, Margaret A. Morris, Esq., and to the Honorable Mark A. Hoyer and the Honorable John Coogan, the Presiding Officers in the above-captioned proceeding.

File by Mail or e-filing with:

Rosemary Chiavetta, Esquire
Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

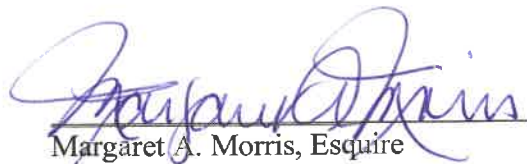
With a copy to:

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The Hon. Mark A. Hoyer
mhoyer@pa.gov

The Hon. John Coogan
jcoogan@pa.gov

Date: December 23, 2021



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Counsel for Metropolitan Edison Company

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

REBECCA WALIZER :
v. : Docket No. C-2021-3028278
METROPOLITAN EDISON COMPANY :

**MOTION OF METROPOLITAN EDISON COMPANY FOR
JUDGMENT ON THE PLEADINGS**

Metropolitan Edison Company (Met-Ed), by and through its attorneys, Reger Rizzo & Darnall LLP, pursuant to 52 Pa. Code § 5.102, hereby submits its Motion for Judgment on the Pleadings to the Complaint filed by Rebecca Walizer (Complainant). Met-Ed avers and represents as follows:

PROCEDURAL BACKGROUND

1. On September 1, 2021, the Complainant filed a Formal Complaint against “First Energy/Met-Ed” disputing the decision to replace overhead transmission facilities for the Campbell-Middleton-North Hershey 69 kV Transmission Line (Transmission Line). the Complainant is not a customer of Met-Ed.; the Complainant is a customer of PPL Electric Utilities, Inc. (PPL).¹

2. On September 21, 2021, Met-Ed efiled its Answer and New Matter arguing that the Transmission Line, which is owned exclusively by Mid-Atlantic Interstate Transmission, LLC (MAIT), does not cross the Complainant’s property. Met-Ed averred that the Complainant filed against the wrong party.

3. On September 27, 2021, the Complainant efiled a Reply to the New Matter admitting that MAIT owns the Transmission Line admitting that MAIT is the owner of the Transmission Line. Reply at 1.

4. The Formal Complaint was only served on Met-Ed and the caption only lists Met-Ed as the respondent.

¹ The Transmission Line originates in Met-Ed’s service territory, crosses into PPL’s service territory and terminates in Met-Ed’s service territory.

5. By Notice, dated November 29, 2021, a Call-in Telephonic evidentiary hearing before Administrative Law Judges Mark A. Hoyer and John Coogan was scheduled for Monday, January 10, 2022.

LEGAL STANDARD

6. In accordance with the Commission's regulations, after the pleadings are closed but within such time as to not delay a hearing, a party may move for judgment on the pleadings. 52 Pa. Code § 5.102(a).

7. A presiding officer should grant a motion for judgment on the pleadings "if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issues as to a material fact and that the moving participant is entitled to judgment as a matter of law." 52 Pa. Code § 5.102 (d)(1). *Hammerstein v. Lindsay, M.D.*, 655 A.2d 597 (Pa. Super. 1995).

8. When deciding whether a motion for judgment on the pleadings should be granted the court must examine the record in the light most favorable to the non-moving party and all doubts as to the existence of a genuine issue of material fact must be resolved in favor of the non-moving party. *First Mortgage Co. of Pennsylvania v. McCall*, 459 A.2d 406 (Pa. Super. 1983).

9. The Commission's regulations related to a motion for judgment on the pleadings serves judicial economy where no factual dispute exists. If no factual dispute exists, a hearing is wholly unnecessary. 66 Pa.C.S. § 703(b). *Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission*, 563 A.2d 557 (Pa. Cmwlth. 1989).

10. Section 5.102 of the Commission regulations provides for the granting of a Motion where there is no genuine issue as to a material fact and Respondent is entitled to a judgment as a matter of law. 52 Pa. Code § 5.102.

11. Section 701 of the Pennsylvania Public Utility Code (Code), 66 Pa.C.S. § 701, allows any person, having an interest in the subject matter, to file a formal complaint in writing with the Commission setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the Commission has jurisdiction to administer. *See also*, 52 Pa. Code § 5.21(a).

12. By *Opinion and Order*, entered August 24, 2016, at Docket No. A-2015-2488903, the Commission approved the Joint Petition for Full Settlement and approved the Joint Application of MAIT, Met-Ed and Penelec and took the following action: (1) issued to MAIT a Certificate of Public Convenience under 66 Pa.C.S. § 1102(a)(3) authorizing the transfer of certain transmission assets from Met-Ed and Penelec to MAIT; (2) a Certificate of Public Convenience conferring upon MAIT the status of a Pennsylvania Public Utility under 66 Pa.C.S. § 102; and (3) approval of certain affiliate Interest Agreements under 66 Pa.C.S. § 2102. A copy of the *Opinion and Order* is provided as Attachment 1.

13. Met-Ed is not the owner of the Transmission Line in question; Met-Ed has no decision in the replacement of the overhead transmission facilities.

14. MAIT is the legal owner of the Transmission Line.

15. The Complainant has filed against the wrong party.

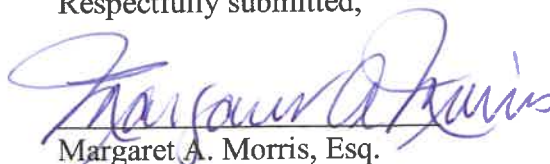
CONCLUSION

There is no dispute that the owner of the Transmission Line is MAIT. The Complainant has filed against the wrong party. The hearing scheduled for January 10, 2022, is not required. Met-Ed is entitled to judgment as a matter of law; judgment on the pleadings is appropriate.

WHEREFORE, Respondent, Metropolitan Edison Company, requests that the Commission grant this Motion for Judgment on the Pleadings and dismiss, with prejudice, the Formal Complaint of Rebecca Walizer against Metropolitan Edison Company, in its entirety.

Respectfully submitted,

Date: December 23, 2021



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Counsel for Metropolitan Edison Company

Docket No. C-2021-3028278
Rebecca Walizer v. Metropolitan Edison Company

Attachment 1

Docket No. A-2015-2488903

Opinion and Order

Entered August 24, 2016

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held July 21, 2016

Commissioners Present:

Gladys M. Brown, Chairman
Andrew G. Place, Vice Chairman
John F. Coleman, Jr.
Robert F. Powelson
David W. Sweet, Absent

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.	

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (I.D.) of Deputy Chief Administrative Law Judge (ALJ) Mark A. Hoyer and ALJ Mary D. Long, issued on April 18, 2016, in the above-captioned proceeding. Exceptions have not been filed. However,

we exercised our right to review the Initial Decision pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h).

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 the above-captioned Joint Application (Application) to obtain Commission approval for the following: (1) for Met-Ed and Penelec to transfer their existing transmission assets to a newly created, stand-alone transmission affiliate, MAIT; (2) for MAIT to be granted a Certificate of Public Convenience (Certificate) conferring Pennsylvania public utility status on MAIT under 66 Pa. C.S. § 102; and (3) for approval of certain affiliated interest agreements under 66 Pa. C.S. § 2102 (hereafter, Proposed Transaction).

At the same time the Application was filed with the Commission, two proceedings were initiated before other regulatory authorities. Jersey Central Power & Light Company (JCP&L),¹ together with Met-Ed, Penelec, and MAIT (collectively, the Operating Companies), filed an application seeking the New Jersey Board of Public Utilities' approval to transfer its transmission assets to MAIT; for MAIT to be granted public utility status in New Jersey; and for approval of certain affiliated interest agreements. The Operating Companies and MAIT also sought and received an approval by the Federal Energy Regulatory Commission (FERC) for the contribution of the transmission assets to MAIT under Section 203 of the Federal Power Act (FPA), 16 U.S.C. § 824(b).

¹ JCP&L is an affiliate of the Joint Applicants that provides electric distribution service in the State of New Jersey.

Notice of the Application was published in the *Pennsylvania Bulletin* on July 4, 2015, at 45 *Pa. B.* 3643. 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 (TUS) examined the filing and propounded two sets of Data Requests on the Joint Applicants regarding the MAIT filing. The Joint Applicants responded to the requests on August 21, 2015, and September 25, 2015. Additionally, the Commission issued two Secretarial Letters, on August 10, 2015, and on 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 referred the proceeding to the Office of Administrative Law Judge (OALJ) for decision.

On August 3, 2015, the Office of Consumer Advocate (OCA) filed a Protest and Public Statement. On August 28, 2015, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance. On July 9, 2015, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention and Protest. Petitions to Intervene were filed by the following: International Brotherhood of Electrical Workers Locals 459 and 777 (collectively, Labor Intervenors); the Pennsylvania State University (PSU); Noble Americas Energy Solutions LLC (Noble); Wellsboro Electric Company (Wellsboro); the Met-Ed Industrial Users Group (MEIUG) and the Penelec Industrial Customer Alliance (PICA) (collectively, the Industrials).

A prehearing conference was held on October 27, 2015. Counsel for the Joint Applicants, the OCA, I&E, the OSBA, and the intervenors 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 Application were consolidated; modifications to the procedures for formal discovery set forth in the Commission's

Regulations were adopted; and 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 was granted. On November 2, 2015, the ALJs issued a prehearing order memorializing the decisions made at the prehearing conference.

On February 16, 2016, Wellsboro filed a Notice of Withdrawal of Intervention and, after that date, Wellsboro was no longer a party to this proceeding.

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, MAIT, Met-Ed, Penelec, I&E, the OCA, the OSBA, the Industrials, PSU, and the Labor Intervenors (collectively, Joint Petitioners) submitted a Joint Petition for Full Settlement (Settlement), as well as statements in support of the Settlement. The Settlement also includes Appendix A and Appendix B, which contain information consistent with the directives of the Commission.

In an Initial Decision, issued on April 18, 2016, the ALJs approved the Settlement without modification. The ALJs determined that the Proposed Transaction, as modified by the Settlement was in the public interest and that a Certificate and the related affiliated interest agreements were appropriate. I.D. at 35. The ALJs noted that the Commission has approved the transfer of transmission assets and approved Certificates to transmission companies previously. *Id.* (citing *Application of Trans-Allegheny Interstate Line Company*, Docket No. A-110172 (Order entered December 12, 2008); *Application of Pennsylvania Power Company*, Docket No. A-110450F0016 (Final Order entered July 14, 2000)). The ALJs additionally found that the Proposed Transaction protects the distribution companies from additional debt burden and resolved the ground lease issue to protect ratepayers. Further, the ALJs concluded that the reporting requirements in the

Settlement permit the Commission and the statutory advocates to monitor the potential rate effects of the transaction. I.D. at 35.

Discussion

Initially, we note that any issue or argument that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The ALJs reached six Conclusions of Law. I.D. at 35-36. We shall adopt and incorporate herein by reference the ALJs' Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

Legal Standards

Because the Joint Applicants have reached a settlement, they have the burden to prove that the Settlement is in the public interest. Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. Settlement terms often are preferable to those achieved at the conclusion of a fully litigated proceeding. In addition, a full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding. Settlements allow the Parties to avoid the substantial costs of preparing and serving testimony, cross-examining witnesses in lengthy hearings, and preparing and serving briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yielding significant

expense savings for the company's customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Pa. PUC v. C.S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985). In order to accept a settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C.S. Water and Sewer Assoc.*, *supra*. Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

Additionally, as MAIT seeks public utility status from the Commission, this part of the transaction requires the issuance of a Certificate under Section 1102(a)(3) of the Code, 66 Pa. C.S. § 1102(a)(3). To grant a Certificate, the Commission must "find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." In granting a Certificate, the Commission may impose conditions that it deems are just and reasonable. 66 Pa. C.S. § 1103(a). In an acquisition context, in considering the public interest, the Commission will evaluate the benefits and detriments of the acquisition as they impact all affected parties, not one particular group or geographic area. *Middletown Twp. v. Pa. PUC*, 482 A.2d 674 (Pa. Cmwlth. 1984). In determining whether to approve a merger, the Commission will "consider whether the proposed merger, consolidation, acquisition or disposition is likely to result in anticompetitive or discriminatory conduct, including the 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.” 66 Pa. C.S. § 2811(e). Further, the Commission will only approve contracts with affiliated interests, if such contracts are reasonable and consistent with the public interest. 66 Pa. C.S. § 2102.

The Settlement

As a result of the transaction proposed in the Settlement, the Operating Companies will no longer own facilities serving a transmission function. MAIT will assume Met-Ed’s and Penelec’s obligations to serve Pennsylvania transmission customers in the two electric distribution companies’ (EDCs’) service territories pursuant to FERC-approved interstate transmission tariffs; and Met-Ed and Penelec will have ownership interests in MAIT.

The Settlement terms and conditions are as follows:

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 [Energizing the Future [(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.

Settlement at 15-22.

Additionally, the Settlement provides that the terms and conditions of the Settlement may not be cited as legal precedent in any future proceeding, except to the extent required to implement the Settlement. The Joint Petitioners represent that the Settlement is presented without prejudice to any position the Joint Petitioners may have advanced and may advance on the merits of the issues in future proceedings. Further, the Settlement is conditioned on the Commission's approval of its terms and conditions without modification. *Id.* at 24. The Settlement provides that, if the Commission disapproves the Settlement or modifies any of its terms and conditions, any of the Joint

Petitioners may elect to withdraw from the Settlement by providing written notice to the Commission and all active Parties within five business days following the entry of this Opinion and Order. *Id.* at 24-25.

Disposition

We find that the Settlement reflects a carefully balanced compromise of the interests of the Joint Petitioners and is in the public interest. Nevertheless, we find that some modifications to the Settlement are necessary.

First, we will modify the Settlement as it applies to the scope of the Commission's certification of MAIT. The Settlement provides as follows:

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.

Settlement at 15. We disagree with this limitation of service rights to interstate service only.

There does not appear to be any dispute that the facilities being transferred under the Application are providing interstate service under FERC's rate jurisdiction. The Navigant Study, which classified the assets utilizing the seven-factor test set forth by the FERC in Order No. 888,² were submitted for admission into the record as Joint

² *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996) (Order No. 888). The seven factor test was articulated by FERC in Order No. 888 as a guide for determining the primary function of a facility for ratemaking purposes.

Applicants Exhibits CVF-2 and KJT-9. The Parties reviewed this document and the OCA's witness Mr. Hahn testified that the results were "reasonable." OCA St. 1 at 9.

However, under a system of shared jurisdiction, the limitation contained in Paragraph No. 19 of the Settlement would create unnecessary complexity and confusion. Therefore, we modify Paragraph No. 19 of the Settlement to read as follows:

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 authorize MAIT to furnish public utility service in Pennsylvania.

Additionally, we emphasize that the scope of Commission jurisdiction and regulation over the assets transferred to MAIT will not change under the terms of the Settlement. Although rates will continue to be regulated by the FERC, as Met-Ed and Penelec's transmission services are currently provided under the terms and rates specified in the PJM Interconnection L.L.C.'s (PJM) Open Access Transmission Tariff (OATT),³ States can exercise their traditional authority over reliability, safety, and adequacy of the *bulk* transmission system to the extent such actions are not inconsistent with FERC's and the North American Electric Reliability Corporation's jurisdiction.⁴ For example, Pennsylvania's vertically integrated EDCs provide transmission service to their distribution customers as jurisdictional public utilities under the Commission's service,

³ MAIT will also operate under this existing OATT.

⁴ 16 U.S.C. § 824(o)(i)(3). Therefore, the FPA provides for the sharing of state and federal jurisdiction in the area of safety, adequacy, and reliability of the bulk power system, but States retain their traditional exclusive jurisdiction over the reliability, safety, service, siting, affiliate relationships, and cybersecurity of lower voltage transmission facilities. *See also Petition of American Transmission Systems, Inc. for a Declaratory Order that it is not a Public Utility as Defined in 66 Pa. C.S. § 102*, Docket No. P-2013-2388149 at 24-30 (Order entered August 11, 2016). It is with respect to these non-rate areas that we will exercise our jurisdictional authority over MAIT as a public utility.

but not rate, Regulations. As such, the Commission will retain jurisdiction over MAIT⁵ with respect to oversight of the safety and reliability of its transmission facilities, while FERC will regulate MAIT with respect to rates.

The terms of the Settlement are consistent with this shared federal-state responsibility and read as follows:

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.⁶

Settlement at 15. Consistent with the terms of the Settlement, MAIT will be subject to Commission jurisdiction regarding reliability, safety, transmission siting, and other relevant provisions, including Chapter 28 of the Code, to the same extent that Met-Ed and Penelec are subject to our jurisdiction over these matters today.⁷

Second, we will make some modifications to the Settlement regarding reporting requirements. Because the creation of standalone transmission companies is a

⁵ Consistent with the definition of a "public utility" as set forth in the Code, MAIT will use its facilities for "transmitting ... electricity ... for the production of light, heat, or power to or for the public for compensation." 66 Pa. C.S. § 102.

⁶ MAIT has elsewhere in the Settlement assured the Commission that it is not requesting "any exemption from the jurisdiction the Commission may lawfully exercise over the safety, adequacy, and reliability of electric service under Chapter 15 of the Public Utility Code and 52 Pa. Code §§ 57.191, *et seq.*" Settlement, Appendix B at 12. MAIT does list several provisions of the Code and our Regulations that it believes do not apply. Settlement, Appendix B at 15-16. These provisions include the following: Sections 510 and 1703 of the Code, as well as Chapters 13, 14, and 28 of the Code; and Chapters 54, 56, 58, 71, 73, 75, 111, and 121 of our Regulations in Title 52 of the Pennsylvania Code. We do not here render any specific ruling on MAIT's position, except to state that the rules addressing retail regulation and customer choice do not apply.

⁷ For example, 52 Pa. Code § 57.191, which relates to EDC transmission facilities, will apply to MAIT.

fairly new phenomenon, it is important to address some general reporting issues. MAIT has agreed to a number of provisions in the Settlement, such as providing annual reports for five years; providing thirty days' prior notice of future rate filings, including formula rate filings, before FERC; holding a technical session on issues such as lease payments, dividends, and cost allocation; and informing the Joint Petitioners of the progress of its EtF program. Settlement at ¶¶ 31, 34 and 36. While the Settlement does not require written follow-up to the Commission on these issues, we find it is important that MAIT notify the Commission in writing of such filings. Additionally, any and all annual reports provided to the Joint Petitioners under the terms of the Settlement should also be filed with the Commission's Secretary's Bureau, with copies provided to the Commission's Law Bureau and TUS.

Additionally, we note that MAIT has not yet provided a final list of all facilities to be transferred under the Settlement. Instead, as the Settlement indicates, MAIT will continue to supplement the list on file with the Commission and file a final list with the Commission upon the conclusion of the transfer set forth in the Application. With this in mind, we direct that the final list filed with the Commission of facilities to be transferred to MAIT include an analysis of the FERC's seven factors, as set forth by FERC in Order No. 888, for any facilities added.⁸ Furthermore, we will require that MAIT serve the Commission with a copy of any filing made by MAIT that initiates a

⁸ Order No. 888 set out seven indicators, a combination of functional and technical tests, to assist companies and state commissions with separating local distribution facilities from Commission jurisdictional transmission facilities on a case-by-case basis. The seven factors are as follows: (1) Local distribution facilities are normally in close proximity to retail customers; (2) Local distribution facilities are primarily radial in character; (3) Power flows into local distribution systems; it rarely, if ever, flows out; (4) When power enters a local distribution system, it is not reconsigned or transported on to some other market; (5) Power entering a local distribution system is consumed in a comparatively restricted geographical area; (6) Meters are based at the transmission/local distribution interface to measure flows into the local distribution system; and (7) Local distribution systems will be of reduced voltage. Order No. 888 at 31, 777.

new proceeding before FERC. These filings should also include a copy of MAIT's FERC Form 1.

Moreover, in the area of affiliated interests, there are various unexecuted ground leases and affiliated interest agreements contained in the Application and Settlement.⁹ These documents should be filed with the Commission upon execution. If any subsequently executed leases and/or agreements differ in any manner from the original submissions in the Application, the Joint Applicants should seek Commission approval for such modifications under our affiliated interest agreement provisions. Finally, all contracts entered into by MAIT with affiliates requiring approval by the Commission shall specify that the contract may not be terminated without prior approval by the Commission.

As we are approving the Settlement subject to modifications, the Joint Petitioners may elect to withdraw from the Settlement. If any Joint Petitioner wishes to withdraw from the Settlement, it shall file with the Secretary of the Commission, and serve on all Parties to this proceeding, an election to withdraw within five business days from the date that this Opinion and Order is entered. If such an election to withdraw is filed, the Initial Decision shall be reversed and the Settlement shall be disapproved, without further action by this Commission, and this matter shall be remanded to the OALJ for such further proceedings as may be necessary. If no Joint Petitioner elects to withdraw from the Settlement within five business days from the entry date of this Opinion and Order, then this Opinion and Order shall become final without further action

⁹ See Exhs. KJT-2 (Ground Leases), KJT-5 (FirstEnergy Service Agreement), KJT-6 (Mutual Assistance Agreement), KJT-7 (Intercompany Tax Allocation Agreement), and SRS-4 (FirstEnergy Regulated Money Pool Agreement), more fully-described in ¶¶ 26 and 27 of the Application.

by this Commission,¹⁰ and the Settlement, with the modifications discussed herein, will be approved without further action by this Commission.

Conclusion

For the reasons set forth herein, we shall modify the ALJs' Initial Decision and approve the Settlement, as modified by this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Initial Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Mary D. Long, issued on April 18, 2016, is modified, consistent with this Opinion and Order.

2. That the Joint Petition for Full Settlement, filed by Mid-Atlantic Interstate Transmission, LLC, Metropolitan Edison Company, Pennsylvania Electric Company, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Pennsylvania State University, and the International Brotherhood of Electrical Workers Locals 459 and 777, on March 4, 2016, is approved as modified by this Opinion and Order, subject to the condition in Ordering Paragraph No. 3.

3. That, if any of the Joint Petitioners wishes to withdraw from the Joint Petition for Full Settlement, that Joint Petitioner shall file with the Secretary of the

¹⁰ In the event that no Joint Petitioner withdraws from the Settlement, this Opinion and Order shall become final effective on the date that is six business days following the entry of this Opinion and Order.

Commission and serve on all Parties to this proceeding an election to withdraw within five (5) business days from the date that this Opinion and Order is entered. If such an election to withdraw is filed, the Initial Decision shall be reversed and the Joint Petition for Full Settlement shall be disapproved, without further action by this Commission, and this matter shall be remanded to the Office of Administrative Law Judge for such further proceedings as may be necessary.

4. That if no elections to withdraw are filed pursuant to Ordering Paragraph No. 3, this Opinion and Order shall become final without further Commission action, and it is further ordered:

a. 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 as modified by this Opinion and Order.

b. 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.

c. That the affiliated interest agreements filed by Mid-Atlantic Interstate Transmission, LLC, Metropolitan Edison Company, and Pennsylvania Electric Company 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.

d. That Paragraph No. 19 of the Joint Petition for Full Settlement is modified to read as follows:

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 authorize MAIT to furnish public utility service in Pennsylvania.

e. That Mid-Atlantic Interstate Transmission, LLC provide written notification to the Commission regarding the filings described in Paragraph Nos. 31, 34, and 36 of the Joint Petition for Full Settlement.

f. That Mid-Atlantic Interstate Transmission, LLC file with the Commission, with copies provided to the Commission's Law Bureau and Bureau of Technical Utility Services, any and all annual reports provided to the Joint Petitioners under the terms of the Joint Petition for Full Settlement.

g. That, when Mid-Atlantic Interstate Transmission, LLC files with the Commission a final list of the facilities to be transferred upon completion of the transfer of the transmission assets to Mid-Atlantic Interstate Transmission, LLC, consistent with Paragraph No. 38 of the Joint Petition for Full Settlement, this final list of facilities shall include an analysis of the Federal Energy Regulatory Commission's seven factors for any facilities added as articulated in Order No. 888.

h. That Mid-Atlantic Interstate Transmission, LLC shall serve the Commission with a copy of any filing made by Mid-Atlantic Interstate Transmission, LLC that initiates a new proceeding before the Federal Energy Regulatory Commission. Such filings should also include a copy of Mid-Atlantic Interstate Transmission, LLC's Federal Energy Regulatory Commission Form 1.

i. That Mid-Atlantic Interstate Transmission, LLC, Metropolitan Edison Company, and Pennsylvania Electric Company shall file with the Commission upon execution the various unexecuted ground leases and affiliated interest agreements contained in the Joint Petition for Full Settlement, Exhibits KJT-2, KJT-5, KJT-6, KJT-7, and SRS-4, and described in Paragraph Nos. 26 and 27 of the Joint Application. That, if any subsequently executed leases and/or agreements differ from the original submissions in the Joint Application, Mid-Atlantic Interstate Transmission, LLC, Metropolitan Edison Company, and Pennsylvania Electric Company shall seek Commission approval for such modifications.

j. That all contracts Mid-Atlantic Interstate Transmission, LLC enters into with affiliates requiring Commission approval shall specify that the contract may not be terminated without prior Commission approval.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: July 21, 2016

ORDER ENTERED: August 24, 2016