

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Metropolitan Edison	:	
Company, Pennsylvania Electric Company,	:	
Pennsylvania Power Company, West Penn	:	Docket Nos. A-2023-_____
Power Company, Keystone Appalachian	:	A-2023-_____
Transmission Company, Mid-Atlantic	:	A-2023-_____
Interstate Transmission, LLC, and	:	A-2023-_____
FirstEnergy Pennsylvania Electric	:	A-2023-_____
Company for All of the Necessary	:	A-2023-_____
Authority, Approvals, and Certificates of	:	A-2023-_____
Public Convenience for (1) the Agreements	:	G-2023-_____
and Plans of Merger; (2) the Establishment	:	
of FirstEnergy Pennsylvania Holding	:	
Company LLC as an Intermediate Holding	:	
Company in the Chain of Ownership of	:	
FirstEnergy Pennsylvania Electric	:	
Company; (3) the Merger of Metropolitan	:	
Edison Company, Pennsylvania Electric	:	
Company, Pennsylvania Power Company,	:	
and West Penn Power Company with and	:	
into FirstEnergy Pennsylvania Electric	:	
Company; (4) the Initiation by FirstEnergy	:	
Pennsylvania Electric Company of Electric	:	
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Commonwealth where Metropolitan	:	
Edison Company, Pennsylvania Electric	:	
Company, Pennsylvania Power Company,	:	
and West Penn Power Company Do or	:	
May Provide Electric Service; (5) the	:	
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 (10) Where Necessary, Associated :  
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 Any Other Approvals Necessary to :  
 Complete the Contemplated Transaction :  
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**JOINT APPLICATION OF  
 METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY,  
 PENNSYLVANIA POWER COMPANY, WEST PENN POWER COMPANY,  
 KEYSTONE APPALACHIAN TRANSMISSION COMPANY, MID-ATLANTIC  
 INTERSTATE TRANSMISSION, LLC, AND FIRSTENERGY PENNSYLVANIA  
 ELECTRIC COMPANY**

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Dated: March 6, 2023

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and FirstEnergy Pennsylvania Electric  
Company

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## **I. INTRODUCTION**

1. By this Joint Application, Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”), West Penn Power Company (“West Penn”),<sup>1</sup> Keystone Appalachian Transmission Company (“KATCo”), Mid-Atlantic Interstate Transmission, LLC (“MAIT”) and FirstEnergy Pennsylvania Electric Company (“FE PA”) (hereinafter, collectively, the “Joint Applicants”) hereby request all necessary authority, approvals and certificates of public convenience from the Pennsylvania Public Utility Commission (the “Commission”) pursuant to Sections 1101, 1102(a)(1)-(3), 2102(a), and 2811(e) of the Public Utility Code (“Code”), 66 Pa.C.S. §§ 1101, 1102(a)(1)-(3), 2102(a), and 2811(e), authorizing: (1) the Agreements and Plans of Merger; (2) the establishment of FirstEnergy Pennsylvania Holding Company LLC (“FE PA HoldCo”) as an intermediate holding company in the chain of ownership of FE PA; (3) the merger of Met-Ed, Penelec, Penn Power, and West Penn Power with and into FE PA; (4) the initiation by FE PA of electric service in all territories in this Commonwealth where Met-Ed, Penelec, Penn Power, and West Penn do or may provide electric service; (5) the abandonment by Met-Ed, Penelec, Penn Power, and West Penn of all electric service in this Commonwealth; (6) the adoption by FE PA of Met-Ed, Penelec, Penn Power, and West Penn’s existing tariffs and their application within new service and rate districts of FE PA corresponding to their existing service territories as Met-Ed (“ME”) Rate District, Penelec (“PN”) Rate District, Penn Power (“PP”) Rate District, West Penn (“WP”) Rate District, and The Pennsylvania State University (“PSU”) Rate District, respectively; (7) the sale of the Class B membership interests in MAIT held by Met-Ed and Penelec to FirstEnergy Corp. (“FirstEnergy”); (8) the contribution of West Penn’s transmission

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<sup>1</sup> Together, Met-Ed, Penelec, Penn Power, and West Penn are referred to as the “Pennsylvania OpCos.”

assets to KATCo (“Transmission Assets”); (9) a certificate of public convenience conferring upon KATCo public utility status; and (10) to the extent necessary, associated affiliated interest agreements. The Joint Applicants further seek all other approvals and certificates appropriate, customary, or necessary under the Code to carry out the transactions contemplated in this Joint Application in a lawful manner. The Joint Applicants request further that the Commission grant these authorizations by no later than the Commission’s December 7, 2023 public meeting, so that the merger may close and become effective on or before January 1, 2024.

2. The complete names and addresses of the Joint Applicants are as follows:

Metropolitan Edison Company  
2800 Pottsville Pike  
Reading, PA 19605

Pennsylvania Electric Company  
76 S. Main Street  
Akron, OH 44308

Pennsylvania Power Company  
920 North Cedar Street  
New Castle, PA 16102

West Penn Power Company  
800 Cabin Hill Drive  
Greensburg, PA 15601

Keystone Appalachian Transmission Company  
76 S. Main Street  
Akron, OH 44308

Mid-Atlantic Interstate Transmission, LLC  
76 South Main Street  
Akron, OH 44308

FirstEnergy Pennsylvania Electric Company  
800 Cabin Hill Drive  
Greensburg, PA 15601

3. The attorneys for Joint Applicants are:

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The Joint Applicants' attorneys are authorized to receive all notices and communications regarding this Joint Application.

4. This Joint Application seeks certain approvals from the Commission associated with: (1) the proposed merger of Met-Ed, Penelec, Penn Power, and West Penn with and into FE PA ("Proposed Consolidation"); (2) the proposed sale of Class B membership interests in MAIT held by Met-Ed and Penelec to FirstEnergy Corp. ("Proposed Sale of MAIT Class B Interests"); and (3) the proposed contribution of West Penn's Transmission Assets to KATCo ("Proposed Transmission Contribution"). These three items are collectively referred to as the "Transaction." The proposed Transaction will be effectuated pursuant to various effectuating documents, including Agreements and Plans of Merger, that are exhibits to the direct testimony of Mr. Ermal Fatusha (Joint Applicants St. No. 3).

5. As further explained in this Joint Application, the Transaction will result in numerous substantial affirmative public benefits, including, but not limited to: (1) the unification of four affiliated electric distribution companies into one company and the separation of transmission and distribution assets prior to this unification; (2) increased uniformity of system



operations and processes; (3) increased administrative, managerial, and operational efficiencies; and (4) certain financial benefits.

6. Overall, the Proposed Consolidation will:
  - a. Amend the corporate structure of Met-Ed, Penelec, Penn Power, and West Penn to match their operating structure;
  - b. Align with the FirstEnergy five-state operating model and corresponding changes to FirstEnergy's organizational structure, which are designed to centralize decision-making, lead to greater consistency across the company, and enable FirstEnergy to streamline efforts and make it easier for teams to develop and implement solutions;
  - c. Increase regulatory and administrative benefits by reducing the number of filings and required reports that need to be prepared by Met-Ed, Penelec, Penn Power, and West Penn, submitted to the Commission, and ultimately reviewed by the Commission and other parties;
  - d. Obtain financing benefits on the issuance of new long-term debt through, among other things, more competitive pricing and broadening the base of potential investors; and
  - e. Lay the foundation for an eventual unification of rates and charges for electric service in a subsequent base rate case(s).
7. Similarly, the Proposed Sale of MAIT Class B Interests will:
  - a. Remove certain interests in transmission assets from the books of distribution entities, which will further clarify the separation of transmission and distribution operations in Pennsylvania from an accounting perspective;

- b. Generate capital that will be used to lower outstanding debt, make investments into FE PA, and/or lower operating costs, which by extension will benefit FE PA and/or its ratepayers; and
  - c. Produce additional capital that can be used to strengthen the credit profile and balance sheet of FE PA.
8. Likewise, the Proposed Transmission Contribution will:
- a. Increase transparency with respect to West Penn's distribution and transmission businesses;
  - b. Further streamline the consolidation of electric distribution assets by separating the transmission assets from the only FirstEnergy operating company in Pennsylvania that still owns transmission facilities;
  - c. Allow FE PA to focus exclusively upon distribution projects, rather than balancing consideration of distribution projects with the consideration of transmission projects driven by continuously changing grid requirements with potentially multi zonal benefits;
  - d. Align the structure of West Penn with the structure of the other FirstEnergy operating companies in Pennsylvania;
  - e. Provide both the Federal Energy Regulatory Commission ("FERC") and the Commission increased clarity with respect to the business functions each one regulates, resulting in greater certainty that there is no misallocation between the transmission and distribution functions of what currently are treated as common assets and common costs;

- f. Provide an additional level of assurance that customers and suppliers have nondiscriminatory access to the transmission system; and
  - g. Enable KATCo to address needed investments in the transmission system, which will, in turn, improve the reliability, capacity, operating flexibility, security, and resiliency of the transmission system for existing and new customers in West Penn's service territory.
9. The Joint Application is organized as follows:
- Section II provides a description of the Joint Applicants and other related entities;
  - Section III sets forth an overview of the Transaction;
  - Section IV provides an overview of the post-consolidation operation and rates of Met-Ed, Penelec, Penn Power, and West Penn;
  - Section V sets forth the legal standards applicable to the approvals requested in the Joint Application;
  - Section VI demonstrates that the Transaction should be approved;
  - Section VII addresses the Joint Applicants' requests for a certificate of public convenience, including FE PA's and KATCo's certificates to operate as public utilities in the Commonwealth;
  - Section VIII concerns affiliated interest agreements;
  - Section IX addresses the effect of the Transaction on retail electric competition;
  - Section X sets forth the precedent on similar public utility mergers that the Commission approved;
  - Section XI provides an overview of the Joint Applicants' direct testimony filed in support of the Joint Application;
  - Section XII addresses other required regulatory approvals;
  - Section XIII provides an overview of additional supporting exhibits;

- Section XIV addresses the Joint Applicants’ request for consolidation of related filings;
- Section XV sets forth the Joint Applicants’ proposed procedural schedule;
- Section XVI addresses notice of the Joint Application; and
- Section XVII sets forth the conclusion and requested approvals.

10. The Joint Applicants submit, as explained in more detail herein, that all criteria necessary for granting the required approvals pursuant to the Code have been met and, therefore, the Commission should approve the Joint Application without conditions to, or modification of, the Transaction.

## **II. THE JOINT APPLICANTS AND RELATED ENTITIES**

### **A. MET-ED**

11. Met-Ed is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. Met-Ed is a wholly-owned subsidiary of FirstEnergy that provides service to more than 592,000 electric utility customers within 3,300 square miles of eastern and southeastern Pennsylvania. Met-Ed has a summer peak load of about 3,021 megawatts (“MW”) with about two-thirds of that load attributable to residential and small commercial customers.

12. Met-Ed is a “public utility” as defined in Section 102 of the Public Utility Code, 66 Pa.C.S. § 102, and an “electric distribution company” and “default service provider” as defined in Section 2803 of the Public Utility Code, 66 Pa.C.S. § 2803.

13. Met-Ed was formed through the mergers of numerous predecessor companies dating back to the 19th century.

14. A list of communities served by Met-Ed and a service territory map are attached as Joint Applicants Exhibit JMS-1.

15. All the annual reports, tariffs, certificates, applications, and other documents filed with the Commission by Met-Ed are made a part hereof by reference.

16. An excerpt of Met-Ed's FERC Form No. 1 containing the comparative balance sheet and statement of income for this entity for the year ended December 31, 2021 is attached as Joint Applicants Exhibit AP-1.<sup>2</sup>

17. Following the merger, Met-Ed will become the ME Rate District of FE PA and will continue providing electric service to customers in its service area.

18. Met-Ed has paid all special and general assessments pursuant to 66 Pa.C.S. § 510. Following the merger, FE PA will be responsible for the payment of any and all lawful special and general assessments related to the operation of the ME Rate District for purposes of 66 Pa.C.S. § 510.

## **B. PENELEC**

19. Penelec is a wholly-owned subsidiary of FirstEnergy that provides service to more than 597,000 electric utility customers within 17,600 square miles in northern and central Pennsylvania and western New York.<sup>3</sup> Penelec has a summer peak load of about 2,838 MW with about two-thirds of that load attributable to residential and small commercial customers.

20. Penelec is a "public utility" as defined in Section 102 of the Public Utility Code, 66 Pa.C.S. § 102, and an "electric distribution company" and "default service provider" as defined in Section 2803 of the Public Utility Code, 66 Pa.C.S. § 2803.

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<sup>2</sup> The full document is publicly accessible at: [https://s27.q4cdn.com/655807321/files/doc\\_downloads/FERC-Form1/2022/FERC-Form-1-2021-ME.pdf](https://s27.q4cdn.com/655807321/files/doc_downloads/FERC-Form1/2022/FERC-Form-1-2021-ME.pdf).

<sup>3</sup> In December 2022, Penelec merged with its subsidiary, the Waverly Electric Light & Power Company, and now serves approximately 4,000 customers in the Waverly, New York vicinity.

21. Penelec was formed through the mergers of numerous predecessor companies dating back to the 19th century.

22. A list of communities served by Penelec and a service territory map are attached as Joint Applicants Exhibit JMS-2.

23. All the annual reports, tariffs, certificates, applications, and other documents filed with the Commission by Penelec are made a part hereof by reference.

24. An excerpt of Penelec's FERC Form No. 1 containing the comparative balance sheet and statement of income for this entity for the year ended December 31, 2021 is attached as Joint Applicants Exhibit AP-2.<sup>4</sup>

25. Following the merger, Penelec will become the PN Rate District of FE PA and will continue providing electric service to customers in its service area.

26. Penelec has paid all special and general assessments pursuant to 66 Pa.C.S. § 510. Following the merger, FE PA will be responsible for the payment of any and all lawful special and general assessments related to the operation of the PN Rate District for purposes of 66 Pa.C.S. § 510.

### **C. PENN POWER**

27. Penn Power is a wholly-owned subsidiary of Ohio Edison Company, which, in turn, is a wholly-owned subsidiary of FirstEnergy. Penn Power provides service to about 173,000 electric utility customers within 1,100 square miles in western Pennsylvania. Penn Power has a summer peak load of about 944 MW with about three-quarters of that load attributable to residential and small commercial customers.

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<sup>4</sup> The full document is publicly accessible at: [https://s27.q4cdn.com/655807321/files/doc\\_downloads/FERC-Form1/2022/FERC-Form-1-2021-PN.pdf](https://s27.q4cdn.com/655807321/files/doc_downloads/FERC-Form1/2022/FERC-Form-1-2021-PN.pdf).

28. Penn Power is a “public utility” as defined in Section 102 of the Public Utility Code, 66 Pa.C.S. § 102, and an “electric distribution company” and “default service provider” as defined in Section 2803 of the Public Utility Code, 66 Pa.C.S. § 2803.

29. Penn Power was acquired by Ohio Edison in 1944.<sup>5</sup>

30. A list of communities served by Penn Power and a service territory map are attached as Joint Applicants Exhibit JMS-3.

31. All the annual reports, tariffs, certificates, applications, and other documents filed with the Commission by Penn Power are made a part hereof by reference.

32. An excerpt of Penn Power’s FERC Form No. 1 containing the comparative balance sheet and statement of income for this entity for the year ended December 31, 2021 is attached as Joint Applicants Exhibit AP-3.<sup>6</sup>

33. Following the merger, Penn Power will become the PP Rate District of FE PA and will continue providing electric service to customers in its service area.

34. Penn Power has paid all special and general assessments made pursuant to 66 Pa.C.S. § 510. Following the merger, FE PA will be responsible for the payment of any and all lawful special and general assessments related to the operation of the PP Rate District for purposes of 66 Pa.C.S. § 510.

**D. WEST PENN**

35. West Penn is a wholly-owned subsidiary of FirstEnergy. West Penn provides transmission and distribution service to about 746,000 electric utility customers within 10,400 square miles in central and southwestern Pennsylvania. West Penn has a summer peak load of

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<sup>5</sup> As described below and in the Joint Applicants’ direct testimony, a necessary step to effectuate this Transaction is the removal of Penn Power from Ohio Edison’s ownership.

<sup>6</sup> The full document is publicly accessible at: [https://s27.q4cdn.com/655807321/files/doc\\_downloads/FERC-Form1/2022/FERC-Form-1-2021-PP.pdf](https://s27.q4cdn.com/655807321/files/doc_downloads/FERC-Form1/2022/FERC-Form-1-2021-PP.pdf).

about 3,827 MW with about two-thirds of that load attributable to residential and small commercial customers.

36. In contrast to Met-Ed, Penelec, and Penn Power, West Penn currently owns its electric transmission facilities, which are classified as all facilities with voltage levels at or above 100 kilovolts (“kV”).

37. West Penn is a “public utility” as defined in Section 102 of the Public Utility Code, 66 Pa.C.S. § 102, and an “electric distribution company” and “default service provider” as defined in Section 2803 of the Public Utility Code, 66 Pa.C.S. § 2803.

38. A list of communities served by West Penn and a service territory map are attached as Joint Applicants Exhibit JMS-4.

39. All the annual reports, tariffs, certificates, applications, and other documents filed with the Commission by West Penn are made a part hereof by reference.

40. An excerpt of West Penn’s FERC Form No. 1 containing the comparative balance sheet and statement of income for this entity for the year ended December 31, 2021 is attached as Joint Applicants Exhibit AP-4.<sup>7</sup>

41. Following the merger, West Penn will become the WP Rate District of FE PA and will continue providing electric service to customers in its service area. Relatedly, the service provided by West Penn to the Pennsylvania State University pursuant to its Tariff – Electric Pa. P.U.C. No. 38, will continue to be provided under the same rates, terms, and conditions by the PSU Rate District of FE PA.

42. West Penn has paid all special and general assessments pursuant to 66 Pa.C.S. § 510. Following the merger, FE PA will be responsible for the payment of any and all lawful

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<sup>7</sup> The full document is publicly accessible at: [https://s27.q4cdn.com/655807321/files/doc\\_downloads/FERC-Form1/2022/FERC-Form-1-2021-WPP.pdf](https://s27.q4cdn.com/655807321/files/doc_downloads/FERC-Form1/2022/FERC-Form-1-2021-WPP.pdf).



special and general assessments related to the operation of the WP Rate District for purposes of 66 Pa.C.S. § 510.

**E. FE PA**

43. FE PA is a new Pennsylvania corporation that is a direct, wholly-owned public utility subsidiary of FE PA HoldCo. FE PA is managed by a board of directors and has governing documents containing provisions that are customary for wholly-owned subsidiaries operating as regulated electric utilities in Pennsylvania.

44. If the Commission grants the approvals requested in this Joint Application, FE PA will become a “public utility” as defined in Section 102 of the Public Utility Code, 66 Pa.C.S. § 102, and an “electric distribution company” and “default service provider” as defined in Section 2803 of the Public Utility Code, 66 Pa.C.S. § 2803, and its service territory will correspond with the current service territories of the Pennsylvania OpCos.

45. A list of communities served by FE PA and a service territory map, which reflects the ME, PN, PP and WP Rate Districts, are attached as Joint Applicants Exhibit JMS-6.

46. A *pro forma* balance sheet and income statement for FE PA as of December 31, 2021 is attached as Joint Applicants Exhibit AP-5.

**F. FE PA HOLDCO**

47. FE PA HoldCo is a new Delaware utility holding company formed to facilitate the Transaction. FE PA HoldCo is a manager-managed limited liability company formed under the laws of the State of Delaware with governing documents containing provisions that are customary for wholly-owned subsidiaries. FE PA HoldCo is a wholly-owned subsidiary of FirstEnergy.

**G. KATCO**

48. KATCo is a wholly-owned subsidiary of FirstEnergy.

49. KATCo was incorporated in the Commonwealth of Virginia in anticipation of the contribution of West Penn’s transmission assets to a separate entity.

50. Currently, KATCo contains no assets.

51. If the Commission grants the approvals requested in this Joint Application, KATCo will be a public utility that provides interstate electric transmission service in the Commonwealth of Pennsylvania.<sup>8</sup>

#### **H. MAIT**

52. The transmission facilities located within the Met-Ed and Penelec service territories are owned by MAIT and are under the operational control of the PJM Interconnection, LLC (“PJM”) as the regional transmission organization (“RTO”).

53. The Commission previously approved MAIT’s acquisition of Met-Ed and Penelec’s transmission facilities and issued MAIT a certificate of public convenience evidencing its status as a public utility in Pennsylvania.<sup>9</sup>

54. As such, MAIT is a public utility that provides interstate electric transmission service in the Commonwealth of Pennsylvania, pursuant to its certificate of public convenience.

#### **I. OHIO EDISON**

55. Ohio Edison is a wholly-owned subsidiary of FirstEnergy Corp.

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<sup>8</sup> As explained in further detail below and in the direct testimony of Joanne M. Savage (Joint Applicants St. No. 1), KATCo acknowledges that, as the holder of a certificate of public convenience, it will be required to comply with the Code and the Commission’s regulations and orders, excluding those provisions that expressly or by reasonable implication apply only to a public utility that furnishes intrastate service within Pennsylvania or that are preempted by FERC’s exclusive jurisdiction over interstate transmission service and rates. However, KATCo reserves the right to hereafter petition the Commission to be relieved of requirements that, given KATCo’s provision of only interstate transmission service subject to the exclusive jurisdiction of FERC, would not serve a reasonable regulatory purpose to impose on KATCo.

<sup>9</sup> *Joint Application of Mid-Atlantic Interest Transmission, LLC (“MAIT”); Metropolitan Edison Company (“Met-Ed”) And Pennsylvania Electric Company (“Penelec”) For: (1) 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, Docket Nos. A-2015-2488903, et al. (Opinion and Order entered Aug. 24, 2016) (“MAIT Order”).*

56. Ohio Edison was organized under Ohio law in 1930 and owns property and does business as an electric public utility subject to the jurisdiction of the Public Utilities Commission of Ohio. Ohio Edison engages in the distribution and sale of electric energy to communities in a 7,000 square mile area of central and northeastern Ohio. The area it serves has a population of approximately 2.3 million.

57. Relevant to this Joint Application, Ohio Edison acquired Penn Power in 1944 and owns all of Penn Power's outstanding common stock.

58. As noted below, one of the steps necessary to effectuate the Transaction is the removal of Penn Power from Ohio Edison's ownership.

**J. FIRSTENERGY**

59. FirstEnergy is a corporation organized and existing under the laws of the State of Ohio.

60. Headquartered in Akron, Ohio, FirstEnergy includes one of the nation's largest investor-owned electric systems, approximately 24,500 miles of transmission lines that connect the Midwest and Mid-Atlantic regions, and a regulated generating fleet with a total capacity of more than 3,500 megawatts.

61. FirstEnergy has a combined utility service area encompassing approximately 65,000 square miles in Ohio, Pennsylvania, West Virginia, Maryland, New Jersey, and New York.

62. Joint Applicants Exhibit JMS-5 contains a pre-transaction corporate organization chart showing FirstEnergy, Met-Ed, Penelec, Ohio Edison, West Penn, and subsidiaries of those utilities, including Penn Power.

### **III. DESCRIPTION OF THE TRANSACTION**

63. The Joint Applicants respectfully request that the Commission approve the Transaction, which consists of: (1) the Proposed Consolidation; (2) the Proposed Sale of MAIT Class B Interests; and (3) the Proposed Transmission Contribution.

64. Upon closing of all aspects of the Transaction, all the electric distribution assets owned by Met-Ed, Penelec, Penn Power, and West Penn will be owned by FE PA, and Met-Ed, Penelec, Penn Power, and West Penn will be dissolved.

65. In addition, KATCo will own all Transmission Assets formerly owned by West Penn.

66. The Transaction will be accomplished through eight sequential steps in order to effectuate the consolidation in a tax-efficient manner and, where applicable, to comply with the limitations imposed by the indentures signed by the operating utilities. However, for all intents and purposes, the following steps will occur near-simultaneously on the date chosen for closing.

67. First, FirstEnergy formed a new wholly-owned Delaware limited liability company called FE PA HoldCo by filing a certificate of formation of FE PA HoldCo with the Delaware Secretary of State on February 21, 2023. FirstEnergy contributed net book value in cash to FE PA HoldCo in exchange for all of the outstanding equity in FE PA HoldCo. FE PA HoldCo intends to use the capital contribution for FE PA HoldCo and FE PA organizational matters and to fund the acquisition of Penn Power described in step eight.

68. Second, FE PA HoldCo formed a new wholly-owned Pennsylvania corporation called FE PA by filing the articles of incorporation of FE PA with the Pennsylvania Secretary of State on February 21, 2023. FE PA HoldCo contributed net book value in cash to FE PA in exchange for all of the issued and outstanding common stock of FE PA. FE PA intends to use

the capital contribution from FE PA HoldCo for organizational matters and to fund the acquisition of Penn Power described in step eight.

69. Third, FirstEnergy will form three new wholly-owned Pennsylvania limited liability companies: Pennsylvania Electric Company LLC; Metropolitan Edison Company LLC; and West Penn Power Company LLC (each a “Merger LLC” and together, the “Merger LLCs”). Each of the Merger LLCs will be a manager-managed limited liability company formed under the laws of the Commonwealth of Pennsylvania with governing documents containing provisions that are customary for wholly-owned subsidiaries. Each of the Merger LLCs will issue 100% of their equity to FirstEnergy upon formation. FirstEnergy will file the certificate of organization for each Merger LLC with the Pennsylvania Secretary of State. Immediately following formation of the Merger LLCs, each of the Merger LLCs will merge with and into its respectively named operating utility, with the Merger LLC surviving. The surviving Merger LLC will be the successor, by operation of law, to all assets and liabilities of its corresponding operating utility company, and no separate assignments or transfers of assets or liabilities will be required.

70. Fourth, Pennsylvania Electric Company LLC and Metropolitan Edison Company LLC, *i.e.*, the Merger LLCs established for Penelec and Met-Ed, respectively, will sell their respective Class B membership interests in MAIT to FirstEnergy in exchange for cash.

71. Fifth, West Penn Power Company LLC, *i.e.*, the Merger LLC established for West Penn, will contribute its Transmission Assets to KATCo in exchange for shares of KATCo stock. Immediately following the contribution of assets, West Penn LLC will sell to FirstEnergy all of its shares of KATCo stock in exchange for cash. The cash consideration in this step will be equal to the value of the newly-issued KATCo shares.

72. Sixth, FirstEnergy and FE PA HoldCo will contribute all of the equity of both Pennsylvania Electric Company LLC and Metropolitan Edison Company LLC to FE PA and, thereafter, each of Pennsylvania Electric Company LLC and Metropolitan Edison Company LLC will merge with and into FE PA, with FE PA as the surviving corporation.

73. Seventh, FirstEnergy and FE PA HoldCo will contribute all of the equity of West Penn Power Company LLC to FE PA and, shortly thereafter, West Penn Power Company LLC will merge with and into FE PA with FE PA as the surviving corporation.

74. Eighth, Penn Power will merge with and into FE PA, with FE PA as the surviving corporation. As consideration for this merger, Ohio Edison will receive cash from FE PA in an amount equal to the net book value of Penn Power.

75. Upon closing, FE PA will have: (1) all the service rights and certificates of public convenience of Met-Ed, Penelec, Penn Power, and West Penn; (2) ownership interests in the post-Transaction facilities of Met-Ed, Penelec, Penn Power, and West Penn; and (3) six rate districts: ME Rate District, PN Rate District, PP Rate District, WP Rate District, PSU Rate District, and the Waverly Rate District, each of which will correspond to Met-Ed, Penelec, Penn Power, West Penn, and West Penn's service provided to The Pennsylvania State University, respectively.

76. A map of the combined service territory with each of the separate rate districts is provided as Joint Applicants Exhibit JMS-6.

77. Relatedly, Met-Ed, Penelec, Penn Power, and West Penn will, subject to Commission approval as part of this proceeding, abandon their right and obligation to provide electric service in their existing service territories, given that FE PA will be issued a certificate of public convenience authorizing it to provide electric service to customers in the existing service

territories of Met-Ed, Penelec, Penn Power, and West Penn and will render and furnish electric service to customers in those areas pursuant to that authority.

78. The Transaction will be effectuated pursuant to the Agreements and Plans of Merger set forth in Joint Applicants Exhibits EF-2(a)-(d), the Share Purchase Agreement set forth in Joint Applicants Exhibit EF-3, agreements and documents related to the disposition of the MAIT Class B membership interests set forth in Joint Applicants Exhibit EF-4, and the Contribution Agreement set forth in Joint Applicants Exhibit AP-7.

79. A *pro forma* post-Transaction corporate organization chart is provided as Joint Applicants Exhibit JMS-7.

80. The pre-transaction excerpts of the FERC Form No. 1 for each of Met-Ed, Penelec, Penn Power, and West Penn, which contain comparative balance sheets and statements of income for each entity, are set forth in Joint Applicants Exhibits AP-1 through AP-4. The post-Transaction *pro forma* balance sheet and income statement representing the merged utilities into FE PA as of December 31, 2021 is provided as Joint Applicants Exhibit AP-5.

#### **IV. POST-MERGER OPERATION AND RATES**

81. As noted above, upon Commission approval of this Joint Application and the completion of the merger, Met-Ed, Penelec, Penn Power, and West Penn will become separate rate districts of FE PA.

82. FE PA will seamlessly provide electric distribution service and supplier coordination services to existing and new customers and electric generation suppliers within the former service territories of Met-Ed, Penelec, Penn Power, and West Penn.

83. As explained in the direct testimony of Ms. Savage (Joint Applicants St. No. 1), the Joint Applicants have consolidated the existing Pennsylvania retail electric service tariffs into

one combined retail electric service tariff. The rate districts created by the proposed merger will continue the current rate structure of Met-Ed, Penelec, Penn Power, and West Penn until a future base rate case filing. A copy of the proposed consolidated retail electric service tariff is set forth in Joint Applicants Exhibit JMS-8. A table showing the retail tariff revisions that will result from the Proposed Consolidation is provided in Joint Applicants Exhibit JMS-11.<sup>10</sup>

84. The Joint Applicants also have consolidated the electric generation supplier coordination tariffs into one combined electric generation supplier coordination tariff. The process used to consolidate the tariffs is explained in the direct testimony of Ms. Savage (Joint Applicants St. No. 1). The proposed revisions shown on Joint Applicants Exhibit JMS-11 do not alter the currently existing rates, terms, or conditions of service provided in existing individual tariffs. A copy of the proposed consolidated electric generation supplier coordination tariff is set forth in Joint Applicants Exhibit JMS-9. The table showing the electric generation supplier coordination tariff revisions that will result from the Proposed Consolidation is provided in Joint Applicants Exhibit JMS-12.

85. In addition, the Joint Applicants have consolidated the third-party data access tariffs into one combined third-party data access tariff. The four individual third-party data access tariffs for Met-Ed, Penelec, Penn Power, and West Penn were nearly identical, aside from the operating company name. A copy of the proposed consolidated third-party data access tariff is set forth in Joint Applicants Exhibit JMS-10.

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<sup>10</sup> The Joint Applicants are not proposing any change to the existing rates of Met-Ed, Penelec, Penn Power, or West Penn as a part of this Application. Any change in rates will be subject to approval by the Commission in a future proceeding(s).



86. Following the closing of the merger, FE PA will, pending the Commission's approval of further consolidation in future proceedings, maintain as appropriate the following for the rate districts, such as:

- a. Default service portfolios and rates;
- b. Energy Efficiency and Conservation ("EE&C") programs;
- c. Universal Service Program Budgets and targets;
- d. Long-Term Infrastructure Plans ("LTIP");
- e. Distribution System Improvement Charges ("DSIC");
- f. State Tax Adjustment Surcharge ("STAS") rates;
- g. Tax Cuts and Jobs Act Voluntary Surcharges;
- h. Reliability performance metrics;
- i. Inspection and Maintenance Plans;
- j. Smart Meter Technologies Charge Riders; and
- k. Any other separately filed Commission-approved plan or program not explicitly articulated here.

87. Following Commission approval and the completion of the merger, FE PA shall submit financial reports required under Chapter 71 of the Commission's regulations, annual reports required under 52 Pa. Code § 57.47, and other regulatory reports on a consolidated basis.

88. As explained in Section VI below, merging the operations and management of Met-Ed, Penelec, Penn Power, and West Penn will improve the overall management and administrative efficiency of the merged utilities over time, consistent with FirstEnergy's ongoing efforts to streamline, simplify, and modernize its management structure and operations. While Met-Ed, Penelec, Penn Power, and West Penn have achieved substantial inter-company

efficiencies since coming under common management and control, additional operational efficiencies are expected to be realized through the Transaction by the elimination, over time, of inefficiencies related to separate administration and operations required while the individual companies remained separate corporate entities.

## **V. LEGAL STANDARDS AND APPROVALS REQUESTED**

### **A. SECTIONS 1101, 1102, AND 1103 OF THE PUBLIC UTILITY CODE**

89. Section 1101 of the Code states that Commission approval, as evidenced by a certificate of public convenience and necessity, is required for a proposed public utility to begin to offer, render, furnish, or supply service within the Commonwealth. *See* 66 Pa.C.S. § 1101.

90. The proposed public utility must file an application with the Commission to receive such approval. *See id.*

91. Moreover, the Commission’s grant of authority “shall include a description of the nature of the service and of the territory in which it may be offered, rendered, furnished or supplied.” *Id.*

92. Relevant to the Transaction, Section 1102(a)(1) of the Code specifies that a public utility must receive Commission approval before “begin[ning] to offer, render, furnish or supply within this Commonwealth service of a different nature or to a different territory than that authorized by” a certificate of public convenience or an unregistered right, power or privilege preserved by Section 103 of the Code. 66 Pa.C.S. § 1102(a)(1).

93. Further, Section 1102(a)(2) of the Public Utility Code states that a public utility must obtain Commission approval before “abandon[ing] or surrender[ing], in whole or in part, any service . . . .” *Id.* § 1102(a)(2).

94. Also, Section 1102(a)(3) of the Code, 66 Pa.C.S. §1102(a)(3), provides, in pertinent part, that the Commission's prior approval, evidenced by a certificate of public convenience, is required:

For any public utility or an affiliated interest of a public utility . . . to acquire from, or to transfer to, any person or corporation . . . by any method or devise whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service.

95. Section 1103 of the Code sets forth the procedure to obtain certificates of public convenience under Sections 1101 and 1102 of the Code.

96. Here, Commission approvals under Sections 1101, 1102(a)(1)-(3), and 1103 are required to complete the Transaction.

97. First, a certificate of public convenience is required to be issued to FE PA to establish FE PA HoldCo as an intermediate holding company in the chain of ownership of FE PA. *See id.* §§ 1101, 1102(a)(3).

98. Second, certificates of public convenience are required for FE PA and KATCo to operate as public utilities in the Commonwealth. *See id.* §§ 1101, 1102(a)(1).

99. Third, certificates of public convenience are required for Met-Ed, Penelec, Penn Power, and West Penn to abandon their authority to provide electric service in their existing service territories. *See id.* § 1102(a)(2).

100. Fourth, certificates of public convenience are required to complete the Transaction, including the Proposed Consolidation, the Proposed Sale of MAIT Class B Interests, and the Proposed Transmission Contribution. *See id.* § 1102(a)(3).

101. To provide direction for future Section 1102(a)(3) applicants, the Commission issued a Statement of Policy on October 22, 1994, to establish standards regarding the

circumstances under which a transfer of voting interest constitutes a change in *de facto* control of the utility, which provides, in pertinent part, as follows:

- (1) A transaction or series of transactions resulting in a new controlling interest is jurisdictional when the transaction or transactions result in a different entity becoming the beneficial holder of the largest voting interest in the utility or parent, regardless of the tier. A transaction or series of transactions resulting in the elimination of a controlling interest is jurisdictional when the transaction or transactions result in the dissipation of the largest voting interest in the utility or parent, regardless of the tier.
- (2) For purposes of this section, a controlling interest is an interest, held by a person or group acting in concert, which enables the beneficial holders to control at least 20% of the voting interest in the utility or its parent, regardless of the remoteness of the transaction. In determining whether a controlling interest is present, voting power arising from a contingent right shall be disregarded.

52 Pa. Code § 69.901. Thus, Commission approval is required for any transaction that creates or eliminates a controlling interest and results in a different entity becoming the largest voting interest in a public utility company. The determination of the interests involved in a transaction considers all tiers of interest in the utility or parent of the utility. Therefore, both direct and indirect ownership interests in a utility are considered under the Commission's Policy Statement.

102. In this case, the Transaction will merge Met-Ed, Penelec, Penn Power, and West Penn, which are all electric distribution companies certificated by the Commission, into FE PA. The Transaction also will result in the sale by Met-Ed and Penelec of their respective Class B membership interests in MAIT (*i.e.*, a public utility) to FirstEnergy. Further, the Transaction will result in West Penn's Transmission Assets being contributed to KATCo. As such, certificates of public convenience under Section 1102(a)(3) of the Code are required to complete the Transaction.

103. The Commission may issue a certificate of public convenience upon a finding that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa.C.S. § 1103(a).

104. This standard requires the Commission to find that the Transaction will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pa. PUC*, 295 A.2d 825, 828 (Pa. 1972). The “substantial public interest” standard is satisfied by a simple preponderance of the evidence of benefits, and such burden can be met by showing a likelihood or probability of public benefits that need not be quantified or guaranteed. *Popowsky v. Pa. PUC*, 937 A.2d 1040, 1057 (Pa. 2007). Further, the substantial public benefit test does not require that every customer receive a benefit from the Transaction. *Id.* at 1061.

105. The substantial affirmative benefits of the Transaction are explained in Section VI of this Joint Application.

106. In addition, under Sections 1102 and 1103 of the Code, the Joint Applicants must demonstrate that FE PA and KATCo, which are applying for public utility status and will acquire public utility assets, are legally, technically, and financially fit. *See Seaboard Tank Lines v. Pa. PUC*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Township Mun. Auth. v. Pa. PUC*, 138 A.2d 240, 243 (Pa. Super. 1958).

107. The Commission has held that “fitness” encompasses: (1) the technical capacity to fulfill the identified service in a satisfactory fashion; (2) the financial capacity to obtain the plant and equipment needed to perform the proposed service in a reliable and responsible fashion; and (3) a propensity to operate safely and legally. *See Re William O’Connor*, 54 Pa. P.U.C. 547, 549 (1980).

108. The fitness of FE PA and KATCo are addressed in Section VII of this Joint Application.

**B. CHAPTER 21 OF THE PUBLIC UTILITY CODE**

109. Under Section 2102 of the Code, Commission approval is required for any affiliated interest contract before it can become effective. 66 Pa.C.S. § 2102(a). Section 2101(a) defines an “affiliated interest” to include the following: “(1) Every corporation and person owning or holding directly or indirectly 5% or more of the voting securities of such public utility; and (2) Every corporation and person in any chain of successive ownership of 5% or more of voting securities.” 66 Pa.C.S. § 2101(a)(1)(2).

110. Under Section 2103, the Commission has continuing supervision and jurisdiction over affiliated interest contracts, including the “modification or amendment” of such contracts or agreements. 66 Pa.C.S. § 2103.

111. Sections 2102(b) and (c) provide the standard for Commission review of an affiliate interest agreement:

(b) Filing and Action on Contract.... The commission shall approve such contract or arrangement made or entered into after the effective date of this section only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest. If at the end of 30 days after the filing of a contract or arrangement, no order of rejection has been entered, such contract or arrangement, whether written or unwritten, shall be deemed, in fact and law, to have been approved. The commission may, by written order, giving reasons therefor, extend the 30-day consideration period. No such contract or arrangement shall receive the commission’s approval unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service described herein to the public utility....

(c) Disallowances of Excessive Amounts.... If the commission shall determine that the amounts paid or payable under a contract or arrangement filed in accordance with this section are in excess of the reasonable price for furnishing the services provided for in

the contract, or that such services are not reasonably necessary and proper, it shall disallow such amounts, insofar as found excessive, in any proceeding involving the rates or practices of the public utility. In any proceeding involving such amounts, the burden of proof to show that such amounts are not in excess of the reasonable price for furnishing such services, and that such services are reasonable and proper, shall be on the public utility.

66 Pa.C.S. § 2102(b) and (c).

112. The requirements of Sections 2102 and 2103 are addressed in Section VIII of this

Joint Application.

**C. CHAPTER 28 OF THE PUBLIC UTILITY CODE**

113. Section 2811(e) of the Code provides as follows:

(1) In the exercise of authority the commission otherwise may have to approve the mergers or consolidations by electric utilities or electricity suppliers, or the acquisition or disposition of assets or securities of other public utilities or electricity suppliers, the commission shall 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.

(2) Upon request for approval, the commission shall provide notice and an opportunity for open, public evidentiary hearings. If the commission finds, after hearing, that a 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, the commission shall not approve such proposed merger, consolidation, acquisition or disposition, except upon such terms and conditions as it finds necessary to preserve the benefits of a properly functioning and workable competitive retail electricity market.

66 Pa.C.S. § 2811(e).

114. The requirements of Section 2811(e) are addressed in Section IX of this Joint Application.

**D. BURDEN OF PROOF**

115. Section 332(a) of the Code provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. 66 Pa. C.S. § 332(a). It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Cmwlth. v. Williams*, 732 A.2d 1167 (Pa. 1999). Consequently, as the parties seeking relief, the Applicants bear the burden of proving that the Transaction satisfies the requirements of Sections 1102, 1103, 2102, and 2210.

116. Additionally, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Group v. Pa. PUC*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa. C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm’n*, 942 A.2d 274, 281 (Pa. Cmwlth. 2008). The “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mechanical and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).



**VI. THE TRANSACTION IS IN THE PUBLIC INTEREST AND SHOULD BE APPROVED**

**A. BACKGROUND ON FE FORWARD**

117. The Transaction is the next logical step in realizing the benefits of “FE Forward,” a FirstEnergy initiative launched in February 2021 focused on transforming how FirstEnergy operates by identifying opportunities to enhance its organization, focus on performance excellence, and refocus its investment strategy. Further details regarding FE Forward are provided in the direct testimony of Ms. Joanne Savage (Joint Applicants St. No. 1).

118. By restructuring FirstEnergy’s organization, streamlining and centralizing its processes and practices, and implementing more modern tools, FE Forward is helping reshape the company as it strives to emerge as a premier utility.

119. The five-state operating model and corresponding changes to FirstEnergy’s organizational structure resulting from FE Forward are designed to centralize decision-making, leading to greater consistency across the company. The model enables FirstEnergy to streamline efforts and make it easier for teams to develop and implement business solutions.

120. Met-Ed, Penelec, Penn Power, and West Penn have made major strides to combine the operations and administration of the four separate electric utilities, including for operational processes and procedures. The Transaction will allow these changes to happen in a more seamless manner and help eliminate unnecessary organizational separations where possible.

**B. THE TRANSACTION WILL PRODUCE SUBSTANTIAL AFFIRMATIVE PUBLIC BENEFITS**

121. The Transaction should be approved because it will produce substantial affirmative public benefits, as explained below and in the Joint Applicants’ supporting direct testimony.

## **1. Benefits of the Proposed Consolidation**

122. Several public benefits will accrue from the merger for the short- and long-term benefit of the consolidated company's customers, including increased regulatory and administrative efficiencies and streamlined operational functions. The Proposed Consolidation will produce immediate benefits and is a critical first step to achieve and realize longer-term future benefits once rates and other terms of service are unified.

### **a. Short-term benefits of the Proposed Consolidation**

123. Customers can expect to see short-term benefits, including but not limited to:

124. **Financing benefits on issuance of new long-term debt.** Initial sale of long-term debt securities has not yet been determined, but FE PA intends to seek all applicable regulatory authorizations to issue long-term debt securities at the appropriate time. The larger combined structure will add efficiencies into the process and is expected to allow for more competitive pricing on any new long-term debt transactions, including refinancings of existing debt maturities, in the form of lower spreads, thus lowering the interest expense.

125. **Increased regulatory and administrative efficiency.** Increased efficiency in these areas is the most readily apparent benefit to merging the four companies into one company. These benefits will be notable for the Legal department, Regulatory Reporting, the Rates & Regulatory Affairs ("Rate") department and the Commission. Forming a consolidated entity will reduce the number of filings and required reports allowing these departments to submit a single company filing in the future. For the Rate department, it will allow employees to focus on analytical tasks and to work on other multi-year corporate improvement initiatives, such as planning longer-term infrastructure betterment projects.

126. **Improved service quality.** The efficiencies gained by streamlining the filings and reports described above following consummation of the Transaction will allow employees to

focus on analytical tasks performed and to work on other multi-year corporate improvement initiatives, such as planning longer-term infrastructure projects. Moreover, certain business tasks, currently performed in duplicative manners by the current Pennsylvania OpCos, would be consolidated and performed by a single company post-merger.

**b. Long-term benefits of the Proposed Consolidation**

127. Customers can expect to see long-term benefits, including but not limited to:

128. **Additional regulatory and administrative efficiencies as rates are unified in the future.** The above-described short-term efficiencies would be built upon in the future, as certain future regulatory or rate increase filings would be reduced. For instance, rather than four separate base rate filings being submitted by each of the Pennsylvania OpCos, FE PA would submit one base rate filing reflective of the consolidated Pennsylvania operations. The Pennsylvania OpCos currently submit a substantial number of annual, quarterly, and other periodic filings to the PaPUC, including but not limited to: Annual Reports filed pursuant to 52 Pa. Code § 59.48; Chapter 71 earnings reports; Chapter 73 depreciation reports; DSIC filings; LTIP filings; and Annual Asset Optimization Plan (“AAOP”) filings. Currently, each report and filing is submitted and made for each Pennsylvania OpCo separately. The need for multiple submissions places duplicative and inefficient resource burdens on each of the Pennsylvania OpCos as well as on several departments within the Commission to process, review and act upon issues in a piecemeal manner. Over time, the filings would be reduced to a quarter of the pre-consolidation level. As rider rates become unified, workpapers will become shorter and more streamlined. These burdens are also experienced by the statutory public parties and other interested parties to these proceedings. Less filings, and less pages in those filings, is also helpful to customers looking to understand their bill and other offerings of the utility.

129. **Financing benefits on long-term debt.** As FE PA begins to issue its own long-term debt in amounts greater than that currently issued by the Pennsylvania OpCos, it additionally expects to attract potential investors that were previously only able to invest in offerings above a certain threshold. Also, at current market conditions, larger debt offerings would be expected to have lower anticipated spreads, thus lowering interest expenses.

130. In addition, FE PA will have the option to become a Securities and Exchange Commission (“SEC”) registrant, which is also expected to provide additional efficiencies associated with the issuance of long-term debt. Specifically, as an SEC registrant, FE PA would be expected to have access to investors that previously could not participate in private placement or 144A offerings, thus resulting in a larger pool of potential investors.

## **2. Benefits of the Proposed Sale of MAIT Class B Interests and the Proposed Transmission Contribution**

131. Public benefits also will be produced from the Proposed Sale of MAIT Class B Interests and the Proposed Transmission Contribution.

132. First, the capital received from the sale of the Class B membership interests will be used to lower outstanding debt, make investments into FE PA, and/or lower operations and maintenance costs, which by extension will benefit FE PA and its ratepayers. In addition, this capital will strengthen the credit profile and balance sheet of FE PA.

133. Second, the contribution of West Penn’s Transmission Assets to KATCo will increase transparency with respect to West Penn’s distribution and transmission businesses and will further streamline the consolidation of electric distribution assets by separating the transmission assets from the only FirstEnergy operating company in Pennsylvania that still owns transmission facilities. A transmission-only company improves transparency for investors. Such transparency can reduce perceived investor risk and increase investor interest. As a

transmission-only company, KATCo will have no retail customers and will receive its revenue from PJM.

134. Third, separating the transmission assets will leave FE PA as a more transparent distribution-only company under the Commission’s jurisdiction whose investments will be solely dedicated to serving its retail customers. As such, FE PA will no longer be responsible for financing transmission projects driven by continuously changing grid requirements with potentially multi-zonal benefits. Both of these factors will increase the transparency of the entities and simplify their operating structure, which should lower borrowing cost for future issuance.

135. Fourth, the contribution aligns the structure of West Penn with the structure of the other Pennsylvania OpCos. The Commission previously authorized the acquisition of the transmission facilities of Met-Ed and Penelec by MAIT<sup>11</sup> and the transmission facilities of Penn Power by American Transmission Systems Incorporated (“ATSI”).<sup>12</sup> The contribution of West Penn’s transmission facilities to KATCo, aligns its operation with those of its peers.

136. Fifth, from a transmission perspective, the consolidation of West Penn’s transmission assets within KATCo will allow interested parties to easily review the annual updates to the transmission revenue requirement because that review can be focused on a single entity that owns only Transmission Assets. The Proposed Transmission Contribution will also provide both FERC and the Commission increased clarity with respect to the business functions each one regulates, resulting in greater certainty that there is no misallocation between the

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<sup>11</sup> See note 9, *supra*.

<sup>12</sup> See *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) (“ATSI Order”).

transmission and distribution functions of what currently are treated as common assets and common costs.

137. Sixth, the Proposed Transmission Contribution will provide the benefit of creating a corporate separation of the transmission business, in addition to the functional separation that exists today.

138. Seventh, with the consummation of the proposed contribution, KATCo will own the Transmission Assets with a singular focus on efficiently and effectively operating, maintaining, and where necessary, expanding, its transmission system. KATCo, through the application of the FirstEnergy reliability enhancement process and Energizing the Future (“EtF”) program, will address needed investments in the transmission system, which will, in turn, improve the reliability, capacity, operating flexibility, security, and resiliency of the transmission system for existing and new customers in West Penn’s service territory.

139. Through the EtF program, FirstEnergy identifies and makes the needed investments in the FirstEnergy transmission system. EtF supports the health, reliability, and capacity of the FirstEnergy transmission system for existing and new customer loads. EtF is designed to fulfill the obligations of FirstEnergy’s companies under the PJM Regional Transmission Expansion Plan (“RTEP”) process, upgrade the condition of equipment, enhance system performance, improve operational flexibility, improve the IT network infrastructure, upgrade system cyber and physical security, and evaluate the health and inventory of the transmission system.

## **VII. REQUESTS FOR CERTIFICATES OF PUBLIC CONVENIENCE**

### **A. FE PA IS TECHNICALLY, FINANCIALLY, AND LEGALLY FIT TO OPERATE AS A PUBLIC UTILITY IN PENNSYLVANIA**

140. After Met-Ed, Penelec, Penn Power, and West Penn are merged with and into FE PA, each will be operated as a separate rate district within the boundaries of their existing service territories.

141. In order to permit FE PA to provide service in accordance with the aforementioned rate district structure, a certificate of public convenience conferring public utility status upon FE PA and authorizing it to provide electric distribution service within the combined service territories of Met-Ed, Penelec, Penn Power, and West Penn is being requested.

142. The Commission should grant such a certificate to FE PA because FE PA is technically, financially, and legally fit to operate as a public utility in Pennsylvania.

143. As to technical fitness, Met-Ed, Penelec, Penn Power, and West Penn currently provide safe and reliable service to customers throughout their service territories. They also prepare and file all necessary regulatory reports in a timely matter. In addition, they maintain an open and transparent relationship with the Commission and New York Public Service Commission (“NYPSC”). The consolidation of Met-Ed, Penelec, Penn Power, and West Penn into a single entity will further strengthen overall management and administrative efficiencies and support the efforts to streamline, simplify, and modernize the management structure and operations.

144. FE PA is financially fit to provide electric service in the Commonwealth. The capital structure of FE PA is expected to be approximately 50% debt and 50% equity, which is consistent with the current capital structures of Met-Ed, Penelec, Penn Power, and West Penn. The existing long-term debt obligations, both senior unsecured and secured (first mortgage

bonds), will be transferred to FE PA by operation of law and will be secured by the assets acquired by FE PA as a result of the Proposed Consolidation. FE PA also will have access to the FirstEnergy regulated money pool and a \$950 million revolving credit facility.

145. FE PA also is legally fit to provide electric service. FE PA is lawfully incorporated, has committed no violations of the Code, the Commission's orders, or the Commission's regulations, and has no outstanding compliance issues. Moreover, FE PA will continue the operations of Met-Ed, Penelec, Penn Power, and West Penn in a safe and legal manner.

146. Accordingly, FE PA is technically, financially, and legally fit to operate as a public utility in Pennsylvania and, therefore, should be granted a certificate of public convenience and necessity.

**B. KATCO IS TECHNICALLY, FINANCIALLY, AND LEGALLY FIT TO OPERATE AS A PUBLIC UTILITY IN PENNSYLVANIA**

147. KATCo is requesting that the Commission issue a certificate of public convenience that confers upon it public utility status and that expressly states that the requested certificate of public convenience does not confer upon KATCo the right to furnish any intrastate electric service in Pennsylvania.

148. If granted, the Transaction will not diminish the Commission's authority or ability as it exists today to monitor and investigate anti-competitive behavior in relation to the underlying transmission assets. Although FERC will have exclusive jurisdiction over the rates, terms, and conditions of KATCo's provision of transmission service, the issuance of a certificate of public convenience conferring public utility status upon KATCo will subject KATCo to the Commission's regulations pertaining to the siting of high voltage (i.e., greater than 100 kV) transmission lines.



149. As a consequence of the issuance and receipt of a certificate of public convenience and the Commission's jurisdiction over the siting and construction of KATCo's transmission facilities, KATCo's transmission facilities will be exempt from municipal zoning and land use regulations.

150. The Commission should grant the requested certificate to KATCo because KATCo is technically, financially, and legally fit to operate as a public utility in Pennsylvania.

151. Concerning technical fitness, KATCo will be a member of FirstEnergy's holding company system. As such, it will have access to the resources and expertise available from FirstEnergy in the same manner and on the same terms as West Penn does currently.

152. The FirstEnergy Service Company Agreement (see Joint Applicants Exhibit AP-9) and the MAA (see Joint Applicants Exhibit AP-10), for which approval as affiliated interest agreements is being sought in this Joint Application, will provide the legal basis for KATCo to request and obtain the full range of services enumerated under the terms of those agreements. KATCo will also be able to call upon and use the existing well-trained complement of West Penn employees, which have extensive experience in operating and maintaining West Penn's transmission systems.

153. KATCo is financially fit to provide electric transmission service. KATCo will be a member of FirstEnergy's regulated money pool pursuant to the terms of the FirstEnergy Regulated Money Pool Agreement (see Joint Applicants Exhibit EF-5), for which approval is requested in the Joint Application, and is expected to also have short-term borrowing capacity under a revolving credit facility. These two sources of short-term borrowing capacity should provide KATCo sufficient liquidity for all of its day-to-day operations. KATCo will have access

to long-term and short-term financing, through capital markets and a separate revolving credit facility, to finance the ownership and operation of the West Penn transmission assets.

154. KATCo also is legally fit to provide electric transmission service. KATCo is lawfully incorporated, has committed no violations of the Code, the Commission's orders, or the Commission's regulations, and has no outstanding compliance issues. Moreover, KATCo will continue the operation of West Penn's transmission facilities in a safe and legal manner.

155. For these reasons, KATCo is technically, financially, and legally fit to operate as a public utility in Pennsylvania and, therefore, should be granted a certificate of public convenience and necessity.

**C. MET-ED, PENELEC, PENN POWER, AND WEST PENN SHOULD BE PERMITTED TO ABANDON ELECTRIC SERVICE, AS FE PA WILL BE THE NEW ELECTRIC DISTRIBUTION COMPANY FOR THOSE CUSTOMERS**

156. The Commission should approve the Joint Applicants' request that Met-Ed, Penelec, Penn Power, and West Penn be permitted to abandon their right and obligation to provide electric service in their respective service territories.

157. Through the Proposed Consolidation, FE PA will assume the role as electric distribution company serving the customers located in those areas.

158. When a public utility is abandoning service so that another entity can assume that role, the Commission has analyzed whether the new service provider "will provide adequate, safe and reliable service."

159. Here, as explained in Section VII.A, *supra*, FE PA is technically, financially, and legally fit to operate as a public utility and will continue to provide adequate, safe, and reliable electric service in the service territories of Met-Ed, Penelec, Penn Power, and West Penn.

160. Thus, the Commission should grant certificates of public convenience authorizing Met-Ed, Penelec, Penn Power, and West Penn to abandon their right and obligation to provide electric service as of the date of closing on the Proposed Consolidation.

**D. THE ESTABLISHMENT OF FE PA HOLDCO AS AN INTERMEDIATE HOLDING COMPANY IN THE CHAIN OF OWNERSHIP OF FE PA IS PROPER**

161. The Commission should also approve the Joint Applicants' request that FE PA HoldCo be established as an intermediate holding company in the chain of ownership of FE PA.

162. As explained above, FE PA HoldCo will be the direct parent of FE PA. FE PA HoldCo is a new holding company formed to facilitate the Transaction; it will not provide public utility service.

163. The establish of FE PA HoldCo into the chain of ownership of FE PA results in a new intermediate holding company as between FirstEnergy and the jurisdictional Pennsylvania distribution utilities, which requires a certificate of public convenience. *PPL Electric Utilities Corp. v. Pa. PUC*, 241 A.3d 121, 2020 Pa. Commw. Unpub. LEXIS 521, at \*21-22 (Pa. Cmwlth. 2020) (holding that the Commission did not err in determining that a utility's proposed restructuring, which inserted new holding companies into the chain of ownership, would require approval and a certificate of public convenience for purposes of section 1102(a)(3)). However, the Commission's determination is whether the proposed establishment of FE PA HoldCo into the chain of ownership is "necessary or proper." *Id.* at \*32-33.

164. Here, the proposed establishment of FE PA HoldCo as an intermediate holding company in the chain of ownership is proper for the reasons explained above and in the Joint Applicants' testimony.

165. Thus, the Commission should grant the Joint Applicants a certificate of public convenience authorizing the establishment of FE PA HoldCo as an intermediate holding company in the chain of ownership of FE PA as part of the Transaction.

### **VIII. REQUESTS FOR APPROVAL OF AFFILIATED INTEREST AGREEMENTS**

166. The Joint Applicants also request Commission approval of certain affiliated interest agreements, including new agreements and revisions to existing agreements, in order to facilitate the Transaction.

167. Specifically, the Joint Applicants request Commission approval of the following: (1) the Agreements and Plans of Merger (see Joint Applicants Exhibit EF-2(a)-2(d)); (2) the Capital Contribution Agreement (see Joint Applicants Exhibit AP-7); (3) the West Penn Ground Lease (see Joint Applicants Exhibit AP-8); (4) the FirstEnergy Service Agreement (see Joint Applicants Exhibit AP-9); (5) the Revised Amended and Restated Mutual Assistance Agreement (see Joint Applicants Exhibit AP-10); (6) the Share Purchase Agreement between KATCo and FirstEnergy (see Joint Applicants Exhibit EF-3); (7) agreements and documents related to the disposition of the MAIT Class B membership interests (see Joint Applicants Exhibit EF-4); (8) the Third Revised and Restated Money Pool Agreement (see Joint Applicants Exhibit EF-5); and (9) the Form of Joinder Agreement that FirstEnergy will sign to be joined as a party to the Limited Liability Company Agreement of MAIT, in its capacity as a Class B shareholder (see Joint Applicants Exhibit EF-6).

168. Each of these agreements constitutes an affiliated interest agreement under Chapter 21 of the Code. Accordingly, Commission approval of these agreements is required before they can become effective.

169. As set forth in Section VI, *supra*, the Transaction will produce substantial affirmative public benefits. These affiliated interest agreements, or the revisions proposed to these agreements (as appropriate), are needed to complete the Transaction for the reasons explained in the Joint Applicants' direct testimony.

170. Therefore, the proposed affiliated interest agreements are reasonable and in the public interest and should be approved pursuant to Section 2102 of the Code. 66 Pa.C.S. § 2102.

## **IX. EFFECT OF THE TRANSACTION ON COMPETITION**

171. The Transaction will not result in anti-competitive or discriminatory conduct in the retail market for electricity in Pennsylvania, nor will it have any adverse effect on the retail electric market in Pennsylvania. *See* 66 Pa.C.S. § 2811(e).

172. The Transaction will have no effect on electric competition for customers of the Pennsylvania OpCos, nor will it have any impact on electric generation suppliers. The existing contracts for Met-Ed, Penelec, Penn Power, and West Penn will be maintained with FE PA, and customers will continue to have access to the competitive market as they do today.

173. Likewise, the Proposed Transmission Contribution will not have any anti-competitive effect. As noted previously, West Penn seeks only to fully separate its transmission facilities from its distribution facilities. KATCo does not own any generation or distribution facilities, nor will it own or control any generation or any distribution assets upon completion of the Proposed Transmission Contribution. When the contribution of Transmission Assets to KATCo is completed, West Penn will no longer own transmission facilities. Consequently, the Transmission Contribution will have no effect on the concentration of generation or transmission assets or upon market power. Moreover, because the underlying transmission facilities will remain under the operational control of an RTO following the Proposed Transmission

Contribution's approval (as is presently the case), the Proposed Transmission Contribution will have no adverse effect on competition in the wholesale power market.

**X. COMMISSION PRECEDENT ON SIMILAR MERGERS OF PUBLIC UTILITIES**

174. The Joint Applicants note that the Transaction and related approvals requested in this Joint Application are not unprecedented. The Commission has approved similar mergers of public utilities, including the recent mergers of: (1) Peoples Gas Company LLC into Peoples Natural Gas Company LLC<sup>13</sup>; and (2) UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc. into UGI Utilities, Inc.<sup>14</sup>

175. In fact, all the major electric and natural gas utilities operating in Pennsylvania, besides Met-Ed, Penelec, Penn Power, and West Penn, have been successfully merged into single utilities. By approving this Joint Application, the Commission would finally consolidate the affiliated electric utilities Met-Ed, Penelec, Penn Power, and West Penn into a single electric utility.

176. Furthermore, the Commission previously approved the spinoffs of transmission facilities to MAIT and ATSI.<sup>15</sup> Through approval of the instant Joint Application, the Commission would complete the spinoff of the transmission facilities owned and operated by FirstEnergy operating companies in Pennsylvania.

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<sup>13</sup> See *Joint Application of Peoples Natural Gas Co. LLC & Peoples Gas Co. LLC*, 2022 Pa. PUC LEXIS 285 (Order entered Aug. 25, 2022).

<sup>14</sup> See *Joint Application of UGI Utils., Inc., UGI Penn Natural Gas, Inc. & UGI Central Penn Gas, Inc.*, 2018 Pa. PUC LEXIS 339 (Order entered Sept. 20, 2018), *became final*, Docket Nos. A-2018-3000381, *et al.* (Secretarial Letter dated Sept. 26, 2018).

<sup>15</sup> See notes 9 and 12, *supra*.

**XI. OVERVIEW OF THE JOINT APPLICANTS' DIRECT TESTIMONY FILED IN SUPPORT OF THE JOINT APPLICATION**

177. In support of the requested approvals, the Joint Applicants have filed the following direct testimony with the Joint Application:

- a. Joint Applicants Statement No. 1, the direct testimony of Joanne M. Savage. Ms. Savage, which: (1) provides an overview of the filing; (2) addresses the contribution of West Penn's transmission assets to KATCo; (3) discusses the sale of the MAIT Class B interests; (4) addresses the Joint Applicants' requests for certificates of public convenience; (5) discusses the corporate structure pre- and post-merger; (6) addresses the management structure pre- and post-merger; (7) explains the benefits of the Transaction; and (8) addresses the impact on customers, employees, and the competitive marketplace.
- b. Joint Applicants Statement No. 2, the direct testimony of Amy Patterson. Ms. Patterson addresses the accounting aspects and implications of the Transaction, tracking of Transaction-related costs, accounting benefits of the Transaction, and certain affiliated interest agreements.
- c. Joint Applicants Statement No. 3, the direct testimony of Ermal Fatusha. Mr. Fatusha addresses the steps necessary to effectuate the Transaction, the financing of the Transaction, the financial fitness of FE PA and KATCo, financial and long-term planning benefits of the Transaction, and certain affiliate interest agreements.
- d. Joint Applicants Statement No. 4, the direct testimony of Sally Thomas. Ms. Thomas provides an overview of the transmission planning and reliability

enhancement processes, explains KATCo's role in the construction, ownership, and operation of transmission assets in Pennsylvania, and provides details on the proposed projects and operational benefits related to the contribution of West Penn's transmission facilities to KATCo.

## **XII. OTHER REQUIRED REGULATORY APPROVALS**

178. The Joint Applicants plan to complete the Transaction as soon as possible after all regulatory approvals have been obtained.

179. In addition to approval from this Commission, the Transaction also requires approval from the NYPSC and FERC.

## **XIII. OVERVIEW OF ADDITIONAL SUPPORTING EXHIBITS**

180. All exhibits submitted in support of this Joint Application are appended to the Joint Applicants' direct testimony as exhibits.

181. All annual reports, tariffs, certificates of public convenience, applications, securities certificates, and similar documents of the Joint Applicants are made a part hereof by reference.

## **XIV. FORMAL REQUEST FOR CONSOLIDATION OF RELATED FILINGS**

182. The Joint Applicants respectfully request that the instant Joint Application and any related dockets be consolidated for purposes of discovery, litigation, and disposition.

183. For example, as explained in Section VIII, *supra*, affiliated interest agreement approvals are required to complete the Proposed Transaction.



184. Such related filings are integral to the instant Joint Application, and the Commission should not establish separately-docketed proceedings to address them.

185. Indeed, it would be a waste of administrative and judicial resources to litigate these matters separately.

186. Thus, the consolidation of the instant proceeding and any related proceedings will promote the efficient use of the time and resources of the parties and the Commission.

**XV. JOINT APPLICANTS' PROPOSED PROCEDURAL SCHEDULE**

187. The Joint Applicants propose the following procedural schedule, which contemplates Commission approval at a December 2023 public meeting date.

March 6, 2023	Joint Application filed with the Commission
March 18, 2023	Publication in Pennsylvania Bulletin
Week of April 24, 2023	Pre-hearing Conference
May 29, 2023	Intervenors' Direct Testimony
June 28, 2023	Rebuttal Testimony
July 19, 2023	Surrebuttal Testimony
July 25-26, 2023	Oral Rejoinder and Hearings
August 18, 2023	Main Briefs
September 1, 2023	Reply Briefs

**XVI. NOTICE**

188. A copy of this Joint Application is being served on the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate. Courtesy copies are also being provided to additional parties as indicated on the certificate of service.

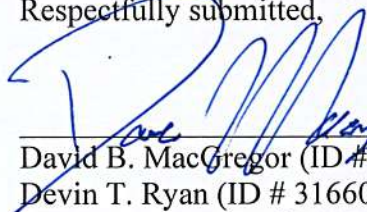
189. The Joint Applicants request that the Commission publish notice of this Joint Application in the Pennsylvania Bulletin pursuant to 52 Pa. Code § 5.14(a).

190. Pursuant to 52 Pa. Code § 5.14(b), the Joint Applicants will provide additional notice or service of this Joint Application as directed by the Commission's Secretary Bureau.

**XVII. CONCLUSION**

WHEREFORE, for all the foregoing reasons, the Joint Applicants respectfully request that the Pennsylvania Public Utility Commission grant all necessary authority, approvals and certificates of public convenience authorizing: (1) the Agreements and Plans of Merger; (2) the establishment of FE PA HoldCo as an intermediate holding company in the chain of ownership of FE PA; (3) the merger of Met-Ed, Penelec, Penn Power, and West Penn Power with and into FE PA; (4) the initiation by FE PA of electric service in all territories in this Commonwealth where Met-Ed, Penelec, Penn Power, and West Penn do or may provide electric service; (5) the abandonment by Met-Ed, Penelec, Penn Power, and West Penn of all electric service in this Commonwealth; (6) the adoption by FE PA of Met-Ed, Penelec, Penn Power, and West Penn's existing tariffs and their application within new service and rate districts of FE PA corresponding to their existing service territories as ME Rate District, PN Rate District, PP Rate District, WP Rate District and PSU Rate District, respectively; (7) the sale of Class B membership interests in MAIT held by Met-Ed and Penelec to FirstEnergy; (8) the contribution of West Penn's Transmission Assets to KATCo; (9) a certificate of public convenience conferring upon KATCo public utility status; (10) to the extent necessary, associated affiliated interest agreements; and (11) any other approvals or certificates appropriate, customary, or necessary under the Public Utility Code to carry out the transactions contemplated in this Joint Application in a lawful manner.

Respectfully submitted,



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Dated: March 6, 2023

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Pennsylvania Electric Company, Pennsylvania  
Power Company, West Penn Power Company,  
Keystone Appalachian Transmission Company,  
Mid-Atlantic Interstate Transmission, LLC,  
and FirstEnergy Pennsylvania Electric  
Company

## VERIFICATION

I, Joanne M. Savage, hereby state that the facts set forth above in the Joint Application of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company, Keystone Appalachian Transmission Company, Mid-Atlantic Interstate Transmission, LLC, and FirstEnergy Pennsylvania Electric Company are true and correct to the best of my knowledge, information and belief and that I expect the Joint Applicants to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904.

March 6, 2023  
Date



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Joanne M. Savage