

COMMONWEALTH OF PENNSYLVANIA



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April 4, 2023

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Re: 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 for All of the Necessary Authority, Approvals, and Certificates of Public Convenience for (1) the Agreements and Plans of Merger Docket Nos. A-2023-3038771, A-2023-3038792, A-2023-3038793, A-2023-3038794, A-2023-3038795, A-2023-3038807, A-2023-3038808, G-2023-3038818, G-2023-3038819, G-2023-3038820, G-2023-3038821, G-00020956

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Protest in the above-referenced proceedings.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Andrew J. Zerby  
Andrew J. Zerby  
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Enclosures:

cc: The Honorable Charles E. Rainey, Jr. (**email only:** [crainey@pa.gov](mailto:crainey@pa.gov))  
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Certificate of Service

\*343895

CERTIFICATE OF SERVICE

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 for All of the Necessary Authority, Approvals, and Certificates of Public Convenience for (1) the Agreements and Plans of Merger	:	:	Docket Nos. A-2023-3038771
	:	:	A-2023-3038792
	:	:	A-2023-3038793
	:	:	A-2023-3038794
	:	:	A-2023-3038795
	:	:	A-2023-3038807
	:	:	A-2023-3038808
	:	:	G-2023-3038818
	:	:	G-2023-3038819
	:	:	G-2023-3038820
	:	:	G-2023-3038821
	:	:	G-00020956

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Protest, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 4<sup>th</sup> day of April 2023.

**SERVICE BY E-MAIL ONLY**

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Phone: (717) 783-5048  
Dated: April 4, 2023  
\*343878

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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 for All of the Necessary Authority, Approvals, and Certificates of Public Convenience for (1) the Agreements and Plans of Merger	:	Docket Nos.	A-2023-3038771
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	:		G-2023-3038820
	:		G-2023-3038821
	:		G-00020956

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**PROTEST OF THE  
OFFICE OF CONSUMER ADVOCATE**

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The Office of Consumer Advocate (OCA) files this Protest in the above-captioned Joint Application (Application) of Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), West Penn Power Company (West Penn), Keystone Appalachian Transmission Company (KATCo), Mid-Atlantic Interstate Transmission, LLC (MAITCo), and FirstEnergy Pennsylvania Electric Company (FE PA) (hereafter, Joint Applicants) pursuant to 53 Pa. B. 1615, and the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (Commission), 52 Pa. Code §§5.51-5.53 and Chapters 11, 13, 21, and 22 of the Public Utility Code.

The Application seeks to merge Met-Ed, Penelec, Penn Power, and West Penn into FE PA. Application at 1. As part of the transactions, Met-Ed, Penelec, Penn Power, and West Penn seek to

abandon their right and obligation to provide electric service in their service territories, with the intention of FE PA being issued a Certificate of Public Convenience to serve those customers. *Id.* ¶ 76. The Application also seeks to transfer, through a series of sales and contributions, all of the transmission assets owned by West Penn to KATCo, and the Class B membership interest in MAITCo held by Met-Ed and Penelec to FirstEnergy Corp. (FirstEnergy). *Id.* KATCo also is seeking a Certificate of Public Convenience to confer upon it public utility status. *Id.* ¶ 1. Per the Application, the end result of the transactions will be the separation of FirstEnergy's Pennsylvania distribution assets, which will be owned by FE PA, from FirstEnergy's Pennsylvania transmission assets, which will be owned by KATCo and MAITCo.

The OCA files this Protest in order to ensure that the Application is approved only if it meets all legal requirements of the Public Utility Code, applicable Commission rules and regulations, and Pennsylvania law and to ensure that the interests of Pennsylvania ratepayers are protected in this proceeding.

In support of this Protest, the OCA avers as follows:

1. The name and contact information of the Protestant is as follows:

Patrick M. Cicero  
Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
Telephone: (717) 783-5048

2. The names and contact information of the Protestant's attorneys for the purpose of receiving service of all documents in this proceeding are:

Aron Beatty, Senior Assistant Consumer Advocate  
Christy Appleby, Senior Assistant Consumer Advocate  
Andrew Zerby, Assistant Consumer Advocate

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3. The OCA is authorized by law to represent the interests of Pennsylvania’s utility consumers in all matters before the Commission. 71 P.S. §§309-1 *et seq.*
4. The Joint Applicants filed the Application on March 6, 2023.
5. The Application must be examined pursuant to Chapters 11, 21, and 28 of the Public Utility Code.
6. Section 1102 of the Public Utility Code requires that the Commission issue a Certificate of Public Convenience as a legal prerequisite to offering service, abandoning service and certain property transfers by public utilities or their affiliated interests. 66 C.S. § 1102. Section 1102(a)(3) specifically requires a Certificate to be issued for a public utility to transfer its stock, by way of merger, sale otherwise, to any person or corporation, when such merger or sale results in the transfer of the title, possession or use of property used in public utility service. 66 C.S. § 1102(a)(3).
7. Section 1103(a) of the Public Utility Code requires that in order for a Certificate of Public Convenience to be granted the Commission must find 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). The Supreme Court has construed this section of the Code as requiring a finding that a proposed merger will affirmatively benefit the public and specifically 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); *Popowsky v. Pa. PUC*, 937 A.2d 1040 (Pa. 2007).

8. Section 1103 of the Public Utility Code also allows for the Commission to impose conditions upon the issuance of a Certificate of Public Convenience. Section 1103(a) of the Code provides: “The Commission, in granting such a certificate, may impose such conditions as it may deem to be just and reasonable.” 66 C.S. § 1103(a). The OCA submits that the Commission may wish to consider the imposition of conditions in order to ensure the public interest standard is met. 66 Pa. C.S. § 1103.

9. The Application raises a number of important issues that must be resolved by the Commission before granting approval of this merger and issuing Certificates of Public Convenience in this matter. Based on the OCA’s preliminary review, as filed, the OCA is concerned that the Application does not appear to demonstrate any substantial, affirmative benefits to the public. It is also unclear as to whether the proposed transactions will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.

10. Through a preliminary review, the OCA has identified the following areas that will require close consideration by the Commission and must be examined and resolved prior to Commission approval.

- a. Whether FE PA will retain sufficient technical capability to operate across the entirety of the proposed service area in a manner that does not pose risk to ratepayers and the general public.
- b. The Joint Applicants claim that “the Transaction will result in numerous substantial affirmative public benefits”. Application ¶ 5. The Application claims that through the merging of the various subsidiaries, the Companies will be streamlined and experience benefits from such. *Id.* ¶122. The OCA submits that in order to verify these claims a cost benefit analysis must be conducted.

- c. The Joint Applicants claim an alleged benefit from “[a]llow[ing] 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”. *Id.* ¶ 8(c). The OCA submits that any benefit arising from this portion of the transaction will have to be closely examined to determine whether it is substantive.
- d. The Joint Applicants claim an alleged benefit of “[p]rovid[ing] an additional level of assurance that customers and suppliers have nondiscriminatory access to the transmission system”. *Id.* ¶ 8(f). The OCA submits that this alleged benefit will need to be closely examined to ensure that there is in fact a quantifiable benefit.
- e. The OCA also seeks to ensure that any alleged benefits of the transaction are not outweighed by the costs of the mergers, therefore creating a burden upon the ratepayers.
- f. The Application and accompanying testimony detail anticipated benefits and efficiencies to be realized from the merger. The OCA submits that the Applicants’ proposal must be examined to determine whether these benefits and efficiencies will translate into synergies and savings that will result in substantial, affirmative benefits to ratepayers. The Applicants’ claims must be thoroughly reviewed and substantiated.
- g. Additional information regarding the costs to achieve the merger may be necessary before the Commission can determine that the costs associated with this merger are reasonable. Further review is needed to ensure that the costs incurred to complete the merger are properly allocated between ratepayers and shareholders, and



between corporate functions and subsidiaries. Any costs that are incurred must be examined to determine whether ratepayers are receiving an appropriate share of the net benefits alleged from this merger.

- h. The OCA also seeks to ensure that ratepayers, in particular low-income and vulnerable customers, are not otherwise harmed by the transaction. The OCA will examine the impact of the transaction on customers and customer service.
- i. The OCA will examine the potential impact of the Application on the FirstEnergy Companies' universal service programs. While FirstEnergy asserts that it is not proposing consolidation of those programs in this proceeding, the consolidation of the Companies' service territories will lead to future consolidation. It is appropriate to consider here whether Company-level consolidation will have adverse or other impacts to these programs at the time the request for consolidation of the Companies is made. The Commission must examine whether the proposed consolidation at the Company level will have adverse impact on the universal service programs to ensure that these programs receive appropriate funding and management attention and assure that the programs continue to improve to meet the needs of low-income and payment troubled customers in the FirstEnergy Companies' service territories.
- j. The OCA will look at the potential impact on both current and future rates as a result of the merger. The Commission must consider the potential impact that consolidation at the Company level will have on current and future rates, including future distribution base rate case filing timelines and default service plan procurement timing and impacts. These considerations are appropriate at this stage

because deferring consideration of potential impacts to some unknown time in the future may result in unintended consequences. Plans for future rate consolidation and consolidation of future default service procurements should be considered as a part of whether there is or is not public benefit from the consolidated action that is requested now.

- k. The OCA will review the appropriateness of ringfencing provisions to ensure that ratepayers are adequately protected.
11. The Application involves numerous transactions, parties, and counterparties, and requires substantial time and review. The OCA reserves the right to raise additional issues as the case proceeds and further information is obtained from the Joint Applicants.

**WHEREFORE,** the Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission investigate and hold hearings regarding the above captioned application. The OCA further requests that the Commission not approve this Application unless it finds that: (1) the Application is in the public interest; (2) it provides substantial, affirmative benefits to the ratepayers of the Joint Applicants and (3) it is in accordance with the Public Utility Code. Additionally, the OCA requests that the Commission impose such terms and conditions upon the proposed merger as are necessary to ensure that the Application meets the requirements set forth above.

Respectfully Submitted,

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Phone: (717) 783-5048  
Dated: April 4, 2023

**PUBLIC STATEMENT OF THE  
OFFICE OF CONSUMER ADVOCATE  
PURSUANT TO 71 P.S. SECTION 309-4(e)**

Act 161 of the Pennsylvania General Assembly, 71 P.S. Section 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interest of consumers before the Pennsylvania Public Utility Commission (Commission). In accordance with Act 161, and for the following reasons, the Consumer Advocate determined to file a Protest and participate in proceedings before the Commission involving 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 (collectively, the Joint Applicants).

The Joint Applicants filed the Joint Application on March 6, 2023. The Joint Applicants seek all necessary approvals and authority to accomplish the proposed consolidation of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company into FirstEnergy Pennsylvania (FE Pa). The Application also seeks to transfer certain transmission assets owned by West Penn to Keystone Appalachian Transmission Company and the sale of Class B membership interests in Mid-Atlantic Interstate Transmission LLC held by Metropolitan Edison and Pennsylvania Electric Company to FirstEnergy Corporation. The Application seeks to split the Pennsylvania Transmission assets owned by FirstEnergy Corp. from the Pennsylvania distribution assets.

The OCA has determined to participate in this proceeding to ensure that the Joint Application is approved only if it meets all legal requirements of the Public Utility Code, applicable Commission rules and regulations, and Pennsylvania law to ensure that the interest of the Joint Applicants' ratepayers are protected in this proceeding.