

COMMONWEALTH OF PENNSYLVANIA



PATRICK M. CICERO
Consumer Advocate

OFFICE OF CONSUMER ADVOCATE
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
(800) 684-6560

 @pa_oca
 /pennoca
FAX (717) 783-7152
consumer@paoca.org
www.oca.pa.gov

April 21, 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 Prehearing Memorandum 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
Assistant Consumer Advocate
PA Attorney I.D. # 332222
E-Mail: AZerby@paoca.org

Enclosures:

cc: The Honorable Conrad A. Johnson (**email only**)
The Honorable Emily I. DeVoe (**email only**)
Nicholas Miskanic, Legal Assistant (**email only**: nmiskanic@pa.gov)
Certificate of Service

*344687

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
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	:	:	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 Prehearing Memorandum, 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 21st day of April 2023.

SERVICE BY E-MAIL ONLY

Scott B. Granger, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120
sgranger@pa.gov
Counsel for I&E

Sharon E. Webb, Esquire
Nakea S. Hurdle, Esquire
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101-1923
swebb@pa.gov
nhurdle@pa.gov
Counsel for OSBA

Tori L. Giesler, Esquire
Darshana Singh, Esquire
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
tgiesler@firstenergycorp.com
singhd@firstenergycorp.com
*Counsel for FirstEnergy Companies,
KATCO, MAIT, LLC, &
FirstEnergy PA Electric Company*

David B. MacGregor, Esquire
Devin T. Ryan, Esquire
Garrett P. Lent, Esquire
Megan E. Rulli, Esquire
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
dmacgregor@postschell.com
dryan@postschell.com
glent@postschell.com
mrulli@postschell.com
*Counsel for FirstEnergy Companies,
KATCO, MAIT, LLC, & FirstEnergy PA
Electric Company*

SERVICE BY E-MAIL ONLY (continued)

Ria M. Pereira, Esquire
Elizabeth R. Marx, Esquire
John W. Sweet, Esquire
Lauren N. Berman, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@pautilitylawproject.org
Counsel for CAUSE-PA

Derrick Price Williamson, Esquire
Barry A. Naum, Esquire
Steven W. Lee, Esquire
Spilman Thomas & Battle, PLLC
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
dwilliamson@spilmanlaw.com
bnaum@spilmanlaw.com
slee@spilmanlaw.com
Counsel for "IECPA"

Susan E. Bruce, Esquire
Charis Mincavage, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
sbruce@mcneeslaw.com
cmincavage@mcneeslaw.com
Counsel for "Industrial Customer Groups"

John F. Lushis, Jr., Esquire
David Berger, Esquire
Norris McLaughlin, P.A.
515 W. Hamilton Street
Suite 502
Allentown, PA 18101
jlushis@norris-law.com
dberger@norris-law.com
Counsel for Calpine Retail Holdings, LLC

Deanne M. O'Dell, Esquire
Karen O. Moury, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
P.O. Box 1248
Harrisburg, PA 17101
dodell@eckertseamans.com
kmoury@eckertseamans.com
Counsel for "RESA"

Whitney E. Snyder, Esquire
Thomas J. Sniscak, Esquire
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
wesnyder@hmslegal.com
tjsniscak@hmslegal.com
Counsel for The "PSU"

/s/ Andrew J. Zerby
Andrew J. Zerby
Assistant Consumer Advocate
PA Attorney I.D. # 332222
E-Mail: AZerby@paoca.org

Christy M. Appleby
Senior Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CAAppleby@paoca.org

Aron J. Beatty
Senior Assistant Consumer Advocate
PA Attorney I.D. # 86625
E-Mail: ABeatty@paoca.org

Counsel for:
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Dated: April 21, 2023
*344130

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-2023-3038821
	:		G-00020956

PREHEARING MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. § 333, and in response to the Prehearing Conference Order issued in the above-captioned matter, the Office of Consumer Advocate (OCA) provides the following information:

I. INTRODUCTION

On March 6, 2023, 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) (collectively, the Joint Applicants) filed the instant Application with the Commission seeking approval to merge Met-Ed, Penelec, Penn Power, and West Penn into FE Pa. Specifically, the Applicants request that the Commission grant Certificates of Public Convenience pursuant to

Section 1102(a)(3) of the Public Utility Code necessary to authorize the proposed merger transaction. Applicants also seek all other approvals necessary under the Public Utility Code to carry out the proposed transaction in a lawful manner.

As noted in the Application, Met-Ed, Penelec, West Penn, KATCo, Ohio Edison, and First Energy Pennsylvania Holding Company (FE Pa HoldCo) are direct subsidiaries of FirstEnergy. Penn Power, and FE PA are indirect subsidiaries of FirstEnergy. Application ¶¶ 11, 19, 35, 48, 55, 47, 27, and 43. FirstEnergy is an electric distribution company under the provisions of Section 2803 of the Public Utility Code, 66 Pa. C.S. §2803, and many of the administrative functions are under common management and control. Further, Joint Applicants seek to consolidate the existing Pennsylvania retail electric service tariffs into one combined retail electric service tariff, and seek to consolidate the electric generation supplier coordination tariffs into one combined electric generation supplier coordination tariff. *Id.* ¶¶ 83 84.

Pursuant to the merger agreement filed with the Application, Joint Applicants propose that 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. *Id.* ¶ 64. As the surviving company, FE PA seeks: (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. *Id.* ¶ 75.

The Joint Applicants argue that upon closing of the merger, 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. The Joint Applicants also argue that additional operational efficiencies are expected to be realized through the merger by elimination, over time, of inefficiencies related to separate administration and operations required while the individual companies remained separate corporate entities. Application ¶ 88.

The Joint Applicants propose the consolidation of Met-Ed, Penelec, Penn Power, and West Penn with and into FE PA, the sale of Class B membership interests in MAIT held by Met-Ed and Penelec to FirstEnergy Corp., and the contribution of West Penn's Transmission Assets to KATCo. Application ¶ 4. In order to accomplish this, the Joint Applicants propose an eight step plan: (1) FirstEnergy will form a company called FE PA HoldCo; (2) FE PA HoldCo will form FE PA; (3) FirstEnergy will form Pennsylvania Electric Company LLC, Metropolitan Edison Company LLC, and West Penn Power Company LLC and each of those LLC's issue 100% of their equity to FirstEnergy, the LLCs will then be merged into their respectively named company with the LLC surviving the merger; (4) Pennsylvania Electric Company LLC and Metropolitan Edison Company LLC will sell their respective Class B membership interests in MAIT to FirstEnergy; (5) West Penn Power Company LLC will exchange its Transmission Assets for shares of KATCo stock, and then sell the stock to FirstEnergy; (6) FirstEnergy and FE PA HoldCo will contribute all of its equity in Pennsylvania Electric Company LLC and Metropolitan Edison Company LLC to FE PA which will merge Pennsylvania Electric Company LLC and Metropolitan Edison Company LLC into FE PA, with FE PA as the surviving corporation; (7) FirstEnergy and FE PA HoldCo will contribute all of its equity in West Penn Power Company LLC to FE PA which will merge West Penn Power Company LLC into FE PA, FE PA as the surviving corporation; and (8) Penn Power

will merge into FE PA, with FE PA as the surviving corporation. Application ¶¶ 66-74. FE PA seeks a certificate of public convenience to confer public utility status upon FE PA and authorize it to provide electric distribution service within the service territories of Met-Ed, Penelec, Penn Power and West Penn. *Id.* ¶ 141. Joint Applicants request that the overall merger be approved by December 7, 2023, so that the merger may close and become effective on January 1, 2024. *Id.* ¶ 1.

Joint Applicants maintain that the merging of Met-Ed, Penelec, Penn Power, and West Penn with and into FE PA is supported by the fact that: (1) FE PA is technically, financially, and legally fit to operate as public utility in Pennsylvania, and (2) if permitted, FE PA will be the new electric distribution company for Met-Ed, Penelec, Penn Power, and West Penn abandoned customers. Application ¶¶ 140, 156. Additionally, the electric procurement process and policies of Met-Ed, Penelec, Penn Power, and West Penn have already been made consistent under the common ownership of the FirstEnergy Company. *Id.* ¶¶ 11, 19, 27, 35.

Upon closing, FE PA will have 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. *Id.* ¶ 75. 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. *Id.* ¶ 83. Joint Applicants state that the base rate filings of Met-Ed, Penelec, Penn Power, and West Penn will be consolidated into one base rate filing submitted by FE PA reflective of the consolidated Pennsylvania operations. *Id.* ¶ 128.

The OCA filed a Protest and Public Statement in this matter on April 4, 2023.

II. ISSUES AND SUB-ISSUES

Based upon a preliminary analysis of the Company's filing, the OCA has compiled a list of issues that it will raise before the Commission. The OCA reserves the right to raise additional issues as necessary.

1. Continued Technical Fitness: 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.
2. Affirmative Ratepayer Benefits: 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.

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.

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. 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.

3. Merger Savings/Synergies: 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.
4. Costs to Achieve: 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.
5. Quality of Service: 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.
6. Universal Service: 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 Joint Applicants is made. The Commission must examine whether the proposed consolidation at the Company level will have an 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.

7. Impact on Rates: The OCA will look at the potential impact on both current and future rates as a result of the merger. The OCA will examine 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. 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 consolidation that is requested now.
8. Market Power and Effects on Competitive Markets: The Application asserts that the merger 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. Joint Applicants assert that the merger will result in customers continued access to the competitive market because the existing contracts for Met-Ed, Penelec, Penn Power, and West Penn will be maintained with FE PA. Application ¶¶ 171-172. As part of its review under Section 2210 of the Public Utility Code, the OCA will review the Joint Applicants' claims regarding the effect of the merger on the retail market for electricity in Pennsylvania.

9. Ringfencing: The OCA will review the appropriateness of ringfencing provisions to ensure that ratepayers are adequately protected.

III. WITNESSES

The OCA’s expert witnesses in this proceeding will be Dr. Serhan Ogur and Mr. Lafayette Morgan of Exeter Associates and Ms. Barbara Alexander. The OCA’s witnesses will file Testimony and Exhibits, as may be necessary, in this proceeding. In order to expedite resolution of this proceeding, the OCA requests that copies of all interrogatories, testimony and answers be sent to the OCA’s group email OCAFEMerger2023@paoca.org. The name, business addresses, contact information, and subject matter of the OCA’s expert witnesses are:

Witness:	Subject Matter:
Dr. Serhan Ogur	Merger Policy, Market Power Issues
Lafayette Morgan	Accounting/ Business Formation Issues, Rate Issues
Barbara Alexander	Consumer Services, Reliability of Service, Default Service Policies, and Low Income Programs

Dr. Serhan Ogur
 Lafayette Morgan
 Exeter Associates
 10480 Little Patuxent Parkway
 Suite 300
 Columbia, MD 21044
 Phone: (410) 992-7500
 Fax (410) 992-3445
 E-mail: OCAFEMerger2023@paoca.org

Barbara Alexander
 Barbara Alexander Consulting LLC
 44 Bech St.
 Hallowell, ME 04347
 Phone: (207)458-1049
 E-mail: OCAFEMerger2023@paoca.org

The OCA specifically reserves the right to call additional witnesses as may be necessary. As soon as the OCA has determined whether an additional witness or witnesses will be necessary for any portion of its case, the OCA will promptly notify ALJs Johnson and DeVoe and all parties of record.

IV. EXHIBITS AND DOCUMENTS

The OCA will present Testimony, Exhibits and Documents in this proceeding, as may be necessary. At this time, the OCA has not identified any Testimony, Exhibits or Documents which will be presented.

V. PUBLIC INPUT HEARINGS

At this time, the OCA is not aware of any consumer interest in a public input hearing. If the OCA becomes aware of substantial public interest in a public input hearing, the OCA will promptly notify the ALJs and the parties and request that a public input hearing be scheduled.

VI. PROPOSED DISCOVERY MODIFICIATIONS

The OCA respectfully requests that consideration be given to adopting the following modifications to the Commission's discovery rules for this proceeding:

- a. Answers to interrogatories and responses to requests for document production, entry for inspection, or other purposes shall be served within ten (10) calendar days of service of the interrogatories or requests for production.
- b. Objections to interrogatories and/or requests for production shall be communicated orally to the propounding party within three (3) calendar days of service; unresolved objections shall be served in writing on the propounding party within five (5) calendar days of service of the interrogatories and/or requests for production.
- c. Motions to dismiss objections and/or direct the answering of interrogatories and/or requests for production shall be filed within three (3) calendar days of service of written objections.
- d. Answers to motions to dismiss objections and/or direct the answering of interrogatories and/or requests for production shall be filed within three (3) calendar days of service of such motions.

e. Requests for admission be deemed admitted unless answered within ten (10) days or objected to within five (5) days of service.

f. Discovery requests and discovery related pleadings (such as objections, motions, and answers to same) served after 4:30 p.m. Monday through Thursday or after 12:00 p.m. on a Friday or the day preceding a holiday shall be deemed to have been served on the next business day.

g. Answers to on the Record Data requests will be served within five (5) calendar days.

VII. PROPOSED SCHEDULE

The OCA, Joint Applicants, Calpine Retail Holdings, LLC, CAUSE-PA, PSU, IECPA, MEIUG/PICA/WPPII, I&E, OSBA, and RESA are all in agreeance with the below proposed schedule.

Event	Proposed Dates
Joint Application Filed with the Commission	March 6, 2023
Publication in Pennsylvania Bulletin	March 18, 2023
Pre-hearing Conference	April 25, 2023
Intervenor's Direct Testimony	June 15, 2023
Rebuttal Testimony	July 14, 2023
Surrebuttal Testimony	August 1, 2023
Oral Rejoinder and Hearings	August 8-9, 2023
Main Briefs	August 30, 2023
Reply Briefs	September 15, 2023

VIII. SERVICE ON THE OCA

The OCA will be represented in this case by Christy Appleby and Aron Beatty, Senior Assistant Consumer Advocates, and Andrew Zerby, Assistant Consumer Advocate. E-mail service of all documents should be served on the OCA as follows:

Christy M. Appleby
Aron J. Beatty
Senior Assistant Consumer Advocates
Andrew Zerby
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place

Harrisburg, PA 17101-1923
Telephone: (717) 783-5048
E-Mail: OCAFEMerger2023@paoca.org

IX. SETTLEMENT

The OCA is willing to participate in settlement discussions.

Respectfully submitted,

/s/ Andrew J. Zerby

Andrew J. Zerby
Assistant Consumer Advocate
PA Attorney I.D. # 332222
E-Mail: AZerby@paoca.org

Christy M. Appleby
Senior Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CApplby@paoca.org

Aron J. Beatty
Senior Assistant Consumer Advocate
PA Attorney I.D. # 86625
E-Mail: ABeatty@paoca.org

Counsel for:
Patrick Cicero
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Dated: April 21, 2023
*344317