**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Metropolitan Edison : A-2023-3038771, A-2023-3038792,

Company, Pennsylvania Electric Company, : A-2023-3038793, A-2023-3038794,

Pennsylvania Power Company, West Penn : A-2023-3038795, A-2023-3038807,

Power Company, Keystone Appalachian : A-2023-3038808, G-2023-3038818,

Transmission Company, Mid-Atlantic : G-2023-3038819, G-2023-3038820,

Interstate Transmission, LLC, and FirstEnergy : G-2023-3038821, G-00020956

Pennsylvania Electric Company for All of the :

Necessary Approvals and Certificates of Public :

Convenience :

**PREHEARING ORDER**

On March 6, 2023, Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), West Penn Power Company (West Penn or WPP), Keystone Appalachian Transmission Company (KATCo), Mid-Atlantic Interstate Transmission, LLC (MAIT), and FirstEnergy Pennsylvania Electric Company (FE PA) (collectively, Joint Applicants) filed a Joint Application seeking all the necessary authority, approvals, and certificates of public convenience for the merger of Met-Ed, Penelec, PennPower, and WPP into FE PA. Specifically, the Joint Applicants request that the Commission grant certificates of public convenience pursuant to Section 1102(a)(3) of the Public Utility Code (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. Joint Applicants filed their direct testimony along with the Application.

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.[[1]](#footnote-1) FirstEnergy is an electric distribution company under the provisions of Section 2803 of the 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.[[2]](#footnote-2)

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.[[3]](#footnote-3) 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.[[4]](#footnote-4)

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.[[5]](#footnote-5)

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.[[6]](#footnote-6) 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 4 will merge into FE PA, with FE PA as the surviving corporation.[[7]](#footnote-7) 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.[[8]](#footnote-8) Joint Applicants request that the overall merger be approved by December 2023, so that the merger may close and become effective on January 1, 2024.[[9]](#footnote-9)

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 a 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.[[10]](#footnote-10) 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.[[11]](#footnote-11)

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.[[12]](#footnote-12) 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.[[13]](#footnote-13) 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.[[14]](#footnote-14)

On March 18, 2023, the Commission published notice of the Application, as well as a copy of the Prehearing Conference Notice in the *Pennsylvania Bulletin.*[[15]](#footnote-15) The Prehearing Conference Notice assigned the above-captioned proceeding to the undersigned Administrative Law Judge Conrad A. Johnson (ALJ Johnson) and Administrative Law Judge Emily I. DeVoe (ALJ DeVoe) as the Presiding ALJs, scheduled the prehearing conference for 1:30 pm on April 25, 2023, and set a deadline of April 17, 2023, for all protests and petitions to intervene.

On March 16, 2023, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed a Petition to Intervene and Answer.

On March 23, 2023, the Office of Small Business Advocate (OSBA) filed a Notice of Appearance, Protest, and Notice of Intervention.

On March 29, 2023, the Commission’s Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance.

On April 4, 2023, the Office of Consumer Advocate (OCA) filed a Protest.

On April 5, 2023, the Industrial Energy Consumers of Pennsylvania (IECPA) filed a Petition to Intervene.

On April 5, 2023, the Commission again issued a copy of the Prehearing Conference Notice.

On April 13, 2023, ALJ Johnson and ALJ DeVoe issued a Prehearing Conference Order.

On April 14, 2023, the Met-Ed Industrial Users Group (MEIUG), the Penelec Industrial Customer Alliance (PICA), and the West Penn Power Industrial Intervenors (WPPII) (collectively, Industrial Customer Groups) filed a Joint Petition to Intervene and Protest.

On April 17, 2023, Calpine Retail Holdings, LLC (together with its operating subsidiaries, Calpine), the Retail Energy Supply Association (RESA), and the Pennsylvania State University (PSU) each filed Petitions to Intervene.

On April 17, 2023, Joint Applicants filed proof of publication of the Application and the prehearing conference in the *Bedford Gazette* on April 5, 2023.[[16]](#footnote-16)

On April 21, 2023, Joint Applicants, OCA, I&E, OSBA, CAUSE-PA, Industrial Customer Groups, PSU, Calpine, RESA, and IECPA filed prehearing memoranda.

A prehearing conference was held on April 25, 2023, as scheduled. Joint Applicants, OCA, I&E, OSBA, CAUSE-PA, Industrial Customer Groups, PSU, Calpine, RESA, and IECPA were present and represented by counsel. The parties discussed a variety of matters detailed below.

**Litigation Schedule**

The following litigation schedule was adopted:

|  |  |
| --- | --- |
| Date | Event |
| June 15, 2023 | Written Direct Testimony of All Other Parties Due In-Hand |
| July 14, 2023 | Written Rebuttal Testimony Due In-Hand |
| August 1, 2023 | Written Surrebuttal Testimony Due In-Hand |
| August 10 and 11, 2023 | Evidentiary Hearings and oral rejoinder In-Person in Pittsburgh |
| August 30, 2023 | Main Briefs Due In-Hand |
| September 12, 2023 | Reply Briefs Due In-Hand or Submission of Joint Settlement Petition Executed By Representatives of All Parties, Together With All Parties’ Statements In Support of Settlement |

The parties are reminded of the Commission’s requirements for the preparation and filing of written testimony. 52 Pa.Code §§ 5.412 and 5.412a. Written testimony must be accompanied by all exhibits to which it relates. Technical terms and concepts are to be clearly defined and explained in the testimonies and briefs. **No written testimony will be admitted into evidence unless accompanied by a verification or affidavit of the witness**.

Parties serving prepared testimony in proceedings pending before the Commission pursuant to 52 Pa.Code § 5.412(f) shall be required, within thirty (30) days after the final hearing in an adjudicatory proceeding, to e-file with the Secretary’s Bureau a copy of all testimony furnished to the court reporter during the proceeding consistent with 52 Pa.Code § 5.412a.

The above-stated dates are in-hand dates for service on the parties and the Presiding ALJs. The Presiding ALJs agree to accept email transmission of such material, so long as: (1) the subject email for written surrebuttal testimony is received by 4:00 p.m. on the date due. The email addresses of the Presiding ALJs are [cojohnson@pa.gov](mailto:cojohnson@pa.gov) and [edevoe@pa.gov](mailto:edevoe@pa.gov).

Hearings will begin promptly at **10:00 a.m. on August 10, 2023, and August 11, 2023, in-person, at the Commission’s Office of Administrative Law Judge, 301 Fifth Avenue, 2nd Floor Hearing Room, Piatt Place, Pittsburgh, PA 15222**. The parties must confer before commencement of the hearings to schedule their witnesses so as to avoid “holes” or “dead time” during the hearings.

**Intervention**

There was no objection to the Petitions to Intervene filed by CAUSE-PA, PSU, Calpine, and RESA. Accordingly, those Petitions to Intervene were granted. The Petitions to Intervene filed by Industrial Customers Groups and IECPA were granted subject to there not being a duplication of an individual intervening party.

**Parties**

As of the date of this Order, Joint Applicants, OCA, I&E, OSBA, CAUSE-PA, the Industrial Customer Groups, PSU, Calpine, RESA, and IECPA are the only parties involved in this case. A Service List of these parties is appended to this Order.

**Consolidation**

At the prehearing conference, all twelve of the above-captioned cases were consolidated under Docket Number A-2023-3038771.

**Public Input Hearings**

At present, no party has identified a need to conduct a public input hearing. If consumer interest arises, however, the parties are hereby directed to give this matter their prompt attention and notify the Presiding ALJs immediately of the change in circumstances.

## Issues

In their respective prehearing memoranda, the parties identified various issues they may wish to pursue. The reader is directed to these documents to review a recitation of these issues. Additional issues may arise as the discovery process unfolds.

**Discovery**

The parties shall engage in informal discovery whenever and wherever possible in an attempt to resolve any discovery disputes amicably. 52 Pa.Code § 5.322. If this process fails, the parties have recourse to the Commission’s procedures for formal discovery, as herein modified. 52 Pa.Code §§ 5.321, *et* *seq*. The parties must not send the Presiding ALJs discovery material or cover letters, unless attached to a motion to compel. **All motions to compel must contain a certification of counsel of the informal discovery undertaken and their efforts to resolve their discovery disputes informally.** If a motion to compel fails to contain such certification, the Presiding ALJs will contact the parties and direct them to pursue informal discovery.

At the prehearing conference, the following modifications of the Commission’s procedures for formal discovery were adopted, effective upon the conclusion of the prehearing conference:

1. 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.
2. 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.
3. 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.
4. 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.
5. Requests for admission be deemed admitted unless answered within ten (10) days or objected to within five (5) days of service.
6. 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.
7. Answers to on the Record Data requests will be served within five (5) calendar days.

**Protective Order**

The parties must comply with 52 Pa.Code § 5.362 regarding the preparation and filing of a motion for a protective order. If a party files a motion for a protective order, it must submit a copy of the proposed protective order to the Presiding ALJ by email **in a *Microsoft Office Word* format.**

**Settlement**

The parties are reminded it is the Commission’s policy to encourage settlements.

52 Pa.Code § 5.231(a). The parties are strongly urged to seriously explore this possibility.

In the event that a partial settlement is achieved, the parties should be prepared to proceed on the first scheduled day of hearing to present evidence on the non-resolved issues.

In the event that a full settlement is achieved, the parties should notify the Presiding ALJs as soon as possible prior to the scheduled hearings, but no later than **4:00 p.m. on Monday, August 7, 2023**. If the parties reach a full settlement, they must still plan on convening as scheduled on August 10, 2023.

A Joint Settlement Petition, if any, must be executed by representatives of all parties, and, together with all parties’ Statements In Support of Settlement, must be filed with the Secretary’s Bureau and received in-hand by the Presiding ALJs no later than **4:00 p.m. on September 12, 2023.**

**Stipulations**

If settlement is not feasible, the parties are encouraged to stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve precious administrative hearing resources. 52 Pa.Code §§ 5.232 and 5.234.

All stipulations entered into by the parties must be reduced to writing, signed by the parties to be bound thereby, and moved into the record in this case either orally at an evidentiary hearing or through a motion filed with the Secretary’s Bureau.

**Cross-Examination**

Friendly cross-examination or cumulative cross-examination during hearings will not be permitted. 52 Pa.Code §§ 5.76 & 5.243.

**Briefs**

The parties must comply with 52 Pa.Code §§ 5.501, *et* *seq*., regarding the preparation and filing of briefs. Page limitations on briefs will be discussed on or before the last day of hearing. The parties shall submit an electronic copy of all briefs to the Presiding ALJs **in a *Microsoft Office Word*format.**

**Modification**

Any of the provisions of this Prehearing Order may be modified upon motion and good cause shown by any party in interest.

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Date: April 28, 2023

/s/

Emily I. DeVoe

Administrative Law Judge

**A-2023-3038771, A-2023-3038793, A-2023-3038794, A-2023-3038795, A-2023-8807, A-2023-3038808, G-2023-3038818, G-2023-3038819, G-2023-3038820, G-2023-8821, G-00020956 - JOINT APPLICATION OF METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER COMPANY, WEST PENN POWER COMPANY, KEYSTONE APPALACHIA TRANSMISSION COMPANY, MID-ATLANTIC INTERSTATE TRANSMISSION, LLC, AND FIRST ENERGY PENNSYLVANIA ELECTRIC COMPANY FOR ALL OF THE NECESSARY APPROVALS AND CERTIFICATES OF PUBLIC CONVENIENCE**

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1. Application ¶ ¶ 11, 19, 35, 48, 55, 47, 27, and 43. [↑](#footnote-ref-1)
2. *Id.* ¶¶ 83 84. [↑](#footnote-ref-2)
3. *Id.* ¶ 64. [↑](#footnote-ref-3)
4. *Id.* ¶ 75. [↑](#footnote-ref-4)
5. *Id.* ¶ 88. [↑](#footnote-ref-5)
6. Application ¶ 4. [↑](#footnote-ref-6)
7. *Id.* ¶ ¶ 66-74. [↑](#footnote-ref-7)
8. *Id.* ¶ 141. [↑](#footnote-ref-8)
9. *Id.* ¶ 1 [↑](#footnote-ref-9)
10. *Id.* ¶ 140, 156. [↑](#footnote-ref-10)
11. *Id.* ¶ ¶ 11, 19, 27, 35. [↑](#footnote-ref-11)
12. *Id.* ¶ 75. [↑](#footnote-ref-12)
13. *Id.* ¶ 83. [↑](#footnote-ref-13)
14. *Id.* ¶ 128. [↑](#footnote-ref-14)
15. *See* 53 Pa.B. 1615. [↑](#footnote-ref-15)
16. Joint Applicants aver the *Bedford Gazette* is a newspaper of general circulation and is published every morning except Sunday. [↑](#footnote-ref-16)