

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application Of American Transmission :
Systems, Incorporated, Mid-Atlantic Interstate :
Transmission, LLC, And Trans-Allegheny : Docket Nos. A-2023-_____
Interstate Line Company For All Of The : A-2023-_____
Necessary Authority, Approvals, And : A-2023-_____
Certificates Of Public Convenience Required : G-2023-_____
To Lawfully Effectuate (1) The Purchase And :
Sale Agreement Of An Incremental Thirty :
Percent Equity Interest In FirstEnergy :
Transmission, LLC By North American :
Transmission Company II L.P.; (2) The :
Transfer Of Class B Membership Interests In :
Mid-Atlantic Interstate Transmission, LLC :
Held By FirstEnergy Corp. To FirstEnergy :
Transmission, LLC; (3) Where Necessary, :
Associated Affiliated Interest Agreements; :
And (4) Any Other Approvals Necessary To :
Complete The Contemplated Transaction :

**JOINT APPLICATION OF
AMERICAN TRANSMISSION SYSTEMS, INCORPORATED, MID-ATLANTIC INTERSTATE
TRANSMISSION, LLC, AND TRANS-ALLEGHENY INTERSTATE LINE COMPANY**

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I. INTRODUCTION AND OVERVIEW

1. By this Joint Application, American Transmission Systems, Incorporated (“ATSI”), Mid-Atlantic Interstate Transmission, LLC (“MAIT”) and Trans-Allegheny Interstate Line Company (“TrAILCo”) (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 1102(a)(3), 1103, 2102(a), and 2811(e) of the Public Utility Code (“Code”), 66 Pa.C.S. §§ 1102(a)(3), 1103, 2102(a), and 2811(e), required to lawfully effectuate: (1) the Purchase and Sale Agreement of an incremental thirty percent equity interest in FirstEnergy Transmission, LLC (“FET”) by North American Transmission Company II L.P. (“NATCo II”)¹; (2) the transfer of Class B Membership Interests in MAIT held by FirstEnergy Corp. (“FirstEnergy”) to FET; and (3) where 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.

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

American Transmission Systems, Incorporated
76 South Main Street
Akron, OH 44308

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

Trans-Allegheny Interstate Line Company
800 Cabin Hill Drive
Greensburg, PA 15601

¹ As explained below, NATCo II is a controlled investment vehicle of Brookfield Super-Core Infrastructure Partners GP LLC (“Brookfield GP”), an indirect wholly owned subsidiary of Brookfield Corporation (f/k/a Brookfield Asset Management Inc.) and Brookfield Asset Management Ltd (“BAM Ltd”). BAM Ltd manages the various investment entities and funding vehicles that are ultimately controlled by Brookfield Corporation (BAM Ltd and Brookfield Corporation, collectively “Brookfield”).

3. The attorneys for the Joint Applicants are:

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

4. The Joint Application seeks certain approvals from the Commission associated with: (1) the Purchase and Sale Agreement dated February 2, 2023 (the "PSA") between FirstEnergy, NATCo II and the Brookfield Guarantors,² pursuant to which FirstEnergy agreed to sell to NATCo II at the closing an incremental thirty (30) percent equity interest in FET for a purchase price of \$3.5 billion (the "FET Transaction"); and (2) FirstEnergy will contribute its passive Class B membership interests in MAIT to FET in exchange for a new class of FET Special Purpose Membership Interests (the "Special Purpose Membership Interests") (the "MAIT Class B Interests Transfer")³ (hereinafter, the FET Transaction and the MAIT Class B Interests Transfer are collectively referred to as the "Transaction").

² The "Brookfield Guarantors" refers to Brookfield Super-Core Infrastructure Partners L.P., Brookfield Super-Core Infrastructure Partners (NUS) L.P., and Brookfield Super-Core Infrastructure Partners (ER) SCSp.

³ See footnote 8, *infra*.

5. NATCo II currently owns a 19.9% interest in FET.⁴ Upon consummation of the FET Transaction, NATCo II will own a 49.9% equity interest in FET and, indirectly, in the Joint Applicants, whereas FirstEnergy will retain a 50.1% majority interest in FET and will continue to operate the Joint Applicants' transmission facilities. In connection with the Transaction, NATCo II will obtain various rights and obligations with respect to FET and the Joint Applicants pursuant to the "Fourth Amended and Restated Limited Liability Company Agreement of FirstEnergy Transmission, LLC" (the "LLCA"), which is included as an exhibit to the PSA and provided as Joint Applicants Exhibit SRS-2. The rights provided to NATCo II under the LLCA include the right to appoint two out of the five directors of the FET board (with the remaining three directors being appointed by FirstEnergy) and governance rights that require the consent, vote or approval of NATCo II before certain actions can be taken by FET and the Joint Applicants.⁵

6. As further explained in this Joint Application, the Transaction will not result in (1) the creation of a new largest voting interest in a utility or a utility's parent, or (2) the dissipation of the largest voting interest in a utility or a utility's parent. 52 Pa. Code § 59.901(b)(1). Therefore, the Transaction does not appear to require a certificate of public convenience under the Commission's *Utility Stock Transfer Under 66 Pa.C.S. § 1102(a)(3)—Statement of Policy* at 52 Pa. Code § 69.901 (the "Policy Statement"). However, due to the various rights and obligations that NATCo II will obtain with respect to FET and the Joint Applicants under the LLCA, the Joint Applicants request that the Commission issue all necessary authority, approvals and certificates of

⁴ See *FirstEnergy Transmission, LLC et al.*, 179 FERC ¶ 61,059 (2022); see also *FirstEnergy Transmission, LLC et al.*, Notice of Consummation, Docket No. EC22-33-000 (filed June 2, 2022). The transaction approved by the Federal Energy Regulatory Commission ("FERC") at this docket will be referred to as the "Original FET Transaction." The Original FET Transaction only involved the purchase of a 19.9% interest in FET by Brookfield and did not involve the additional governance rights described in Section IV of this Joint Application and in the direct testimony of Mr. Rosenthal (Joint Applicants Statement No. 3).

⁵ The additional governance rights provided to NATCo II are summarized in Section IV, *infra*, and further details are provided in the direct testimony of Mr. Rosenthal (Joint Applicants Statement No. 3).

public convenience required to lawfully effectuate the Transaction, as contemplated by the PSA and LLCA and other associated documents.

7. The Commission should approve the Transaction because it is necessary or proper for the service or convenience of the public, and the Transaction will result in numerous public benefits. Overall, the proposed Transaction will:

- Improve FirstEnergy's financial strength and enhance its ability to finance anticipated transmission and distribution system investments over the next decade, which will be required to meet the needs of the evolving electric grid;
- Enhance FirstEnergy's existing partnership with Brookfield related to FET and the Joint Applicants, and facilitate the continued sharing of operational best practices;
- Optimize capital investments to support improvements to the operational flexibility of the transmission system, enhancing its reliability, robustness, security, and resistance to extreme weather events; and
- Enhance FirstEnergy's ability to undertake future investments in Pennsylvania that are anticipated to generate approximately \$19.5 billion in economic activity over the 2023-2032 period in Pennsylvania.

8. Therefore, and for the reasons more fully explained herein, the Joint Applicants submit that all criteria necessary for granting all 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 contemplated Transaction.

II. THE JOINT APPLICANTS AND RELATED ENTITIES

A. THE JOINT APPLICANTS

1. ATSI

9. ATSI is a wholly owned subsidiary of FET.
10. ATSI is a corporation organized and existing under the laws of the State of Ohio.
11. The Commission previously approved ATSI's acquisition of the transmission facilities of Pennsylvania Power Company,⁶ and issued ATSI a certificate of public convenience that authorizes ATSI to operate as a public utility in Pennsylvania.⁷ ATSI is subject to the Commission's jurisdiction regarding the reliability, safety, siting, and construction of transmission facilities; however, ATSI's rates and terms of service are subject to the exclusive jurisdiction of the FERC.
12. ATSI is a transmission-only public utility which owns, operates, and maintains transmission facilities in Ohio and western Pennsylvania located within the PJM Interconnection, L.L.C. ("PJM") Balancing Authority Area ("BAA"). ATSI owns and operates high-voltage transmission facilities consisting of approximately 7,900 circuit miles of transmission lines in the PJM region. ATSI is a transmission-owner ("TO") member of PJM.
13. ATSI's transmission facilities are subject to the functional control of PJM, which is a Regional Transmission Operator ("RTO") that provides transmission service to customers pursuant to the PJM Open Access Transmission Tariff ("OATT").

⁶ 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 (Order entered July 14, 2000).

⁷ *Application of American Transmission Systems, Incorporated for a Certificate of Public Convenience conferring upon American Transmission Systems, the Status of a Pennsylvania Public Utility*, Docket No. A-2016-2566365 (Order entered Dec. 8, 2016).

14. ATSI is not a generation provider and provides no retail utility service. ATSI plans, operates, and maintains its transmission system in accordance with North American Electric Reliability Corporation (“NERC”) reliability standards.

15. Joint Applicants Exhibit MDM-2 is a map depicting where ATSI operates in Pennsylvania.

2. MAIT

16. MAIT is a subsidiary of FET.

17. MAIT is a limited liability company organized and existing under the laws of the State of Delaware. MAIT is managed by its Class A member, FET. Pennsylvania Electric Company (“Penelec”) and Metropolitan Edison Company (“Met-Ed”) each currently hold passive Class B Membership Interests in MAIT.⁸

18. The Commission previously approved MAIT’s acquisition of the transmission facilities of Met-Ed and Penelec and issued a certificate of public convenience authorizing MAIT to operate as a public utility in Pennsylvania.⁹ MAIT is subject to the Commission’s jurisdiction regarding the reliability, safety, siting, and construction of transmission facilities; however, MAIT’s rates and terms of service are subject to the exclusive jurisdiction of FERC.

⁸ The non-voting Class B Membership Interests in MAIT are currently held by Met-Ed and Penelec. Met-Ed and Penelec have requested all necessary Commission approvals to transfer the subject Class B Membership Interests to FirstEnergy, as a part of the consolidation of FirstEnergy’s Pennsylvania electric distribution companies (“EDCs”) pending at 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 (the “PA Consolidation”). The transfer of the MAIT Class B Membership Interests contemplated by this Application is limited to the subsequent transfer of these interests from FirstEnergy to FET, which will occur after the approval and closing of the PA Consolidation.

⁹ *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).

19. MAIT is a transmission-only public utility which owns, operates, and maintains transmission facilities in eastern and south-central Pennsylvania located within the PJM BAA. MAIT owns and operates high-voltage transmission facilities consisting of approximately 4,300 circuit miles of transmission lines in the PJM region. MAIT is a TO member of PJM. Like ATSI, MAIT's transmission facilities are subject to the functional control of PJM.

20. MAIT is not a generation provider and provides no retail utility service. MAIT plans, operates, and maintains its transmission system in accordance with NERC reliability standards.

21. Joint Applicants Exhibit MDM-3 is a map depicting where MAIT operates.

3. TrAILCo

22. TrAILCo is a wholly owned subsidiary of FET.

23. TrAILCo is a corporation organized and existing under the laws of Maryland and Virginia.

24. The Commission previously issued TrAILCo a certificate of public convenience that authorizes TrAILCo to operate as a public utility in Pennsylvania.¹⁰ TrAILCo is subject to the Commission's jurisdiction regarding the reliability, safety, siting, and construction of transmission facilities; however, TrAILCo's rates and terms of service are subject to the exclusive jurisdiction of FERC.

¹⁰ *In Re: Application of Trans-Allegheny Interstate Line Company (TrAILCo) For approval: 1) for a certificate of public convenience to offer, render, furnish or supply transmission service in the Commonwealth of Pennsylvania; 2) authorization and certification to locate, construct, operate and maintain certain high-voltage electric substation facilities; 3) authority to exercise the power of eminent domain for the construction and installation of aerial electric transmission facilities along the proposed transmission line routes in Pennsylvania; 4) approval of an exemption from municipal zoning regulation with respect to the construction of buildings; and 5) approval of certain related affiliated interest arrangements*, Docket Nos. A-110171, et al., 2008 Pa. PUC LEXIS 35 (Order entered Nov. 13, 2008).

25. TrAILCo is a transmission-only public utility which owns, operates, and maintains transmission facilities in Maryland, West Virginia, Pennsylvania, and Virginia located within the PJM BAA. TrAILCo owns and operates high-voltage transmission facilities consisting of approximately 260 circuit miles of transmission lines, including a 500 kV transmission line extending approximately 150 miles from southwestern Pennsylvania through West Virginia to a point of interconnection with Virginia Electric and Power Company in northern Virginia. TrAILCo also owns several transmission substation assets. TrAILCo is a TO member of PJM. Like both ATSI and MAIT, TrAILCo's transmission facilities are subject to the functional control of PJM.

26. TrAILCo is not a generation provider and provides no retail utility service. TrAILCo plans, operates, and maintains its transmission system in accordance with NERC reliability standards.

27. Joint Applicants Exhibit MDM-4 is a map depicting where TrAILCo operates, including its Pennsylvania operations. TrAILCo has FERC authority to operate in all of FirstEnergy's service territory.

B. FIRSTENERGY-RELATED ENTITIES

1. FET

28. FET is a limited liability company organized and existing under the laws of the State of Delaware.

29. FET is a direct subsidiary of FirstEnergy, which currently holds 80.1% of FET's issued and outstanding membership interests. Brookfield currently owns the remaining 19.9% of the issued and outstanding membership interests in FET, as a result of the Original FET Transaction.

30. FET does not directly own or operate jurisdictional facilities, but has three subsidiaries: ATSI, MAIT, and TrAILCo, each of which own and operate high-voltage transmission facilities in the PJM Region and are subject to regulation by FERC, NERC, ReliabilityFirst, and applicable state regulatory authorities.

2. FirstEnergy

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

32. Headquartered in Akron, Ohio, FirstEnergy includes one of the nation's largest investor-owned electric systems, approximately 24,000 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.

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

C. BROOKFIELD-RELATED ENTITIES

1. Brookfield

34. Brookfield Corporation and BAM Ltd are publicly traded companies listed on the Toronto Stock Exchange and New York Stock Exchange with headquarters located in Toronto, Canada. Brookfield Corporation owns 75% of the common shares of Brookfield Asset Management ULC, an unlimited liability company formed under the laws of British Columbia, with BAM Ltd owning the other 25%, through which BAM Ltd manages, and Brookfield Corporation ultimately controls, the various investment entities and funding vehicles of Brookfield. Brookfield's history is explained in detail in the direct testimony of Mr. Jeffrey Rosenthal (Joint Applicants Statement No. 3).

35. Brookfield's asset management business is currently one of the largest and fastest growing alternative asset managers globally, with operations spanning more than 30 countries on five continents. Brookfield has 1,200 investment and asset management professionals who employ a disciplined investment approach to create value and deliver strong risk-adjusted returns to clients across a diverse set of public and private fund offerings. The business has grown from its infancy 25 years ago to approximately \$800 billion of assets under management today with deep relationships with more than 2,000 clients.

36. Brookfield invests capital on behalf of financial institutions, pension plans, insurance companies, foundations, endowments, sovereign wealth funds and high net worth investors across North America, South America, Europe, Asia-Pacific and the Middle East. A further description of Brookfield's investments and asset portfolio is provided in the direct testimony of Mr. Rosenthal (Joint Applicants Statement No. 3).

2. Brookfield Super-Core Infrastructure Partners ("BSIP")

37. BSIP is an open-end private fund controlled by Brookfield Super-Core Infrastructure Partners GP LLC ("Brookfield GP"). Brookfield GP is an indirect, wholly-owned subsidiary of Brookfield Asset Management ULC.

38. The BSIP fund includes two Delaware limited partnerships, BSIP Aggregator III L.P. and BSIP NATC Sidecar LP (collectively, the "Existing Brookfield LPs"), both of which are controlled by Brookfield GP, the general partner.

39. BSIP, Brookfield's core infrastructure investment fund, is a perpetual investment fund that makes long-term investments in high-quality, core infrastructure assets located principally in North America, Western Europe and Australia with a focus on long-term stable cash flows. Many of Brookfield's utility investments (including its current interest in FET) are held on

a perpetual hold basis in BSIP. BSIP builds upon the success of Brookfield’s infrastructure track record and draws on its long history of managing and operating infrastructure assets.

40. BSIP currently holds 24 operating businesses across a variety of countries, including the United States, United Kingdom, Denmark, Norway, Finland, Sweden, Spain, and Australia. BSIP has a current enterprise value of \$35 billion.

41. Accompanying the direct testimony of Mr. Rosenthal is **HIGHLY CONFIDENTIAL** Joint Applicants Exhibit JR-1, which contains additional financial information regarding BSIP.

3. North American Transmission Company I L.P. (“NATCo I”)

42. NATCo I is a limited partnership organized and existing under the laws of the State of Delaware.

43. Brookfield GP is the general partner of NATCo I. Additionally, all of the limited partnership interests in NATCo I are currently directly owned by the Existing Brookfield LPs.

44. As part of the Transaction, North American Transmission FinCo L.P. (“NATFinCo”), a limited partnership organized and existing under the laws of the State of Delaware, will become a direct equity holder and receive limited partner interests of NATCo I. Platinum Compass B 2018 RSC Limited (“Platinum Compass”), a direct wholly-owned subsidiary of the Abu Dhabi Investment Authority (“ADIA”),¹¹ will be a Co-Investor¹² as defined under the Purchase and Sale Agreement and will receive limited partner interests in NATFinCo,¹³ acquiring

¹¹ ADIA is a public institution established by the Government of the Emirate of Abu Dhabi in 1976 as an independent investment institution. ADIA manages a global investment portfolio that is diversified across more than two dozen asset classes, including energy infrastructure in the United States.

¹² The Purchase and Sale Agreement also provides NATCo II the right, but not the obligation, to use additional Co-Investors as is customary in the asset management industry, with such Co-Investors having similar limited protective rights to those held by Platinum Compass.

¹³ After closing the Transaction, NATFinCo may be liquidated with its direct investors redeeming their interests in NATFinCo for direct interests in NATCo I. This would have no substantive effect on the governance or control of the investment.

an indirect interest of approximately 10% in FET and certain limited protective rights, in exchange for equity financing to complete the Transaction. The rights of Platinum Compass are discussed in Section IV, *infra*, and in the direct testimony of Mr. Rosenthal (Joint Applicants Statement No. 3). As with the Existing Brookfield LPs and NATCo I, the general partner interests in NATFinCo will be directly-owned and controlled by Brookfield GP, and therefore, indirectly controlled by Brookfield.

45. Further details regarding the current investment structure of NATCo I and the investment structure in this entity contemplated by the Transaction are provided in the direct testimony of Mr. Rosenthal (Joint Applicants Statement No. 3).

4. NATCo II

46. NATCo II is a limited partnership organized and existing under the laws of the State of Delaware. NATCo II is a direct, wholly owned subsidiary of its limited partner NATCo I. Brookfield GP is also the general partner of NATCo II.

47. NATCo II presently is 100% controlled by NATCo I, which is 100% controlled by Brookfield GP, which, in turn, is 100% controlled by Brookfield.

48. NATCo II is a controlled investment vehicle of Brookfield. NATCo II was established through BSIP's wholly controlled NATCo I for purposes of effectuating the Original FET Transaction.

49. As a result of the Original FET Transaction, NATCo II currently holds a 19.9% interest in FET. NATCo II's existing ownership of 19.9% of the membership interests in FET provides it with certain rights and obligations under the "Third Amended and Restated Limited Liability Company Agreement of FirstEnergy Transmission, LLC," which is referred to as the "Original Operating Agreement" in the PSA.

50. Upon closing of the proposed Transaction, NATCo II will own a 49.9% investment in FET. Additionally, after the consummation of the transaction, NATCo II will receive various rights and obligations that will be effectuated by the “Fourth Amended and Restated Limited Liability Company Agreement of FirstEnergy Transmission, LLC” (the “LLCA”), which is attached to the testimony of Mr. Steven Staub as Joint Applicants Exhibit SRS-2. The rights and obligations provided under the LLCA are discussed in Section IV, *infra*, and in the direct testimony of Mr. Rosenthal (Joint Applicants Statement No. 3).

51. Notwithstanding these rights and obligations, after the proposed Transaction has closed, FirstEnergy will retain majority ownership and control over FET and the day-to-day operations of FET’s transmission subsidiaries ATSI, MAIT, and TrAILCo, except to the extent NATCo II’s approval is expressly required under the LLCA.

III. DESCRIPTION OF THE TRANSACTION

A. OVERVIEW OF THE TRANSACTION

52. The Joint Applicants respectfully request that the Commission approve the Transaction, which consists of: (1) the FET Transaction; and (2) the MAIT Class B Membership Interests Transfer. Each of these aspects of the Transaction is discussed below.

53. Joint Applicants Exhibit MDM-1 sets forth the pre-Transaction and post-Transaction corporate ownership structure of the Joint Applicants. The post-Transaction corporate ownership structure set forth in this exhibit reflects each aspect of the Transaction.

B. DESCRIPTION OF THE FET TRANSACTION

54. On February 2, 2023, FirstEnergy, along with FET, entered into the PSA with NATCo II and the Brookfield Guarantors, pursuant to which FirstEnergy agreed to sell to NATCo II at the closing, and NATCo II agreed to purchase from FirstEnergy, an incremental 30% equity

interest in FET for a purchase price of \$3.5 billion. A copy of the PSA is provided as Joint Applicants Exhibit SRS-1.

55. Under the terms of the PSA, the amount shall be payable, in part, by the issuance of a promissory note by NATFinCo to FirstEnergy; a copy of the form of this promissory note is included as a part of Joint Applicants Exhibit SRS-1. The balance of the purchase price not covered by the Parent Note amount will be paid in cash on or before the closing date of the FET Transaction.

56. As a result of the FET Transaction, NATCo II will increase its current membership interest in FET from 19.9% to 49.9%. FirstEnergy will retain majority ownership (i.e., ownership of 50.1% interest) and control over FET and the day-to-day operations of the Joint Applicants, except to the extent NATCo II's approval is expressly required under the LLCA that is contemplated by the PSA. NATCo II's rights and obligations under the contemplated LLCA are described in Section IV, *infra*, and in the direct testimony of Mr. Rosenthal (Joint Applicants Statement No. 3).

C. DESCRIPTION OF THE MAIT CLASS B MEMBERSHIP INTERESTS TRANSFER

57. The Joint Applicants are also requesting Commission approval to transfer the non-voting MAIT Class B Membership Interests from FirstEnergy to FET in exchange for certain Special Purpose Membership Interests in FET. Met-Ed and Penelec currently hold the non-voting MAIT Class B Membership Interests and expect to sell their respective interests in MAIT to FirstEnergy subject to the Commission's approval of the PA Consolidation.¹⁴ The transfer of the MAIT Class B Membership Interests contemplated by this Application is limited to the transfer of

¹⁴ See footnote 8, *supra*.

these interests from FirstEnergy to FET, which will occur after the approval and closing of the PA Consolidation.

58. As a result of the transfer of the MAIT Class B Membership Interests from FirstEnergy to FET in exchange for certain Special Purpose Membership Interests in FET, FET will become the sole owner of all membership interests in MAIT.

59. This aspect of the Transaction will be effectuated pursuant to the Second Amended and Restated Limited Liability Company Operating Agreement of Mid-Atlantic Interstate Transmission, LLC provided as Joint Applicants Exhibit SRS-3, and the Contribution Agreement provided as Joint Applicants Exhibit SRS-4.

IV. POST-TRANSACTION OPERATION OF ATSI, MAIT AND TRAILCO

60. Upon Commission approval of this Joint Application, and the completion of the Transaction, FirstEnergy will retain the majority ownership interest in FET and will continue to control FET and the day-to-day transmission operations of the Joint Applicants.

61. The PSA contemplates that NATCo II will be provided with various rights and obligations with respect to the operations of FET and the Joint Applicants under the LLCA. A copy of the LLCA is provided as Joint Applicants Exhibit SRS-2.

62. Specifically, under the terms of the LLCA of FET, NATCo II will be entitled to appoint two out of the five directors of the FET board (with the remaining three directors being appointed by FirstEnergy), as well as up to four observers to the FET board. In addition, for so long as NATCo II maintains at least a 30.0% ownership interest in FET, the LLCA provides NATCo II with, among other things, certain governance, consent, and approval rights. Furthermore, the LLCA also provides NATCo II with certain “consultation rights.” The additional rights and obligations are more fully described in the direct testimony of Mr. Rosenthal (Joint

Applicants Statement No. 3) and are set forth in the LLCA that is provided as Joint Applicants Exhibit SRS-2.

63. Additionally, as discussed in the direct testimony of Mr. Rosenthal (Joint Applicants Statement No. 3), Platinum Compass, as a Co-Investor as defined under the terms of the Purchase and Sale Agreement, will receive limited protective rights through its indirect interest in FET, including the right to designate one of NATCo II's four non-voting board observers to the FET board, limited consent and consultation rights regarding the exercise by NATCo II of certain consent rights granted to NATCo II under the LLCA, and, subject to certain confidentiality provisions, access to certain financial information and reports provided by FET to NATCo II under the LLCA.

64. Following the closing of the Transaction, the Joint Applicants will continue to be regulated by the Commission in the same manner that they are today, as transmission-only entities. Each of the Joint Applicants will remain subject to the Commission's jurisdiction regarding the reliability, safety, and siting and construction of transmission facilities; however, the rates and terms of service for each of the Joint Applicants will remain subject to the exclusive jurisdiction of FERC as these matters are today.

65. Following the closing of the Transaction, FirstEnergy's ownership interest in FET will fall below 80%, and as a result, the Joint Applicants will be deconsolidated from FirstEnergy's consolidated federal income tax group. As explained in Mr. Staub's direct testimony (Joint Applicants Statement No. 2), effective on the first day following the Closing Date, FET and its subsidiaries will form a new consolidated federal income tax group that will file a consolidated federal income tax return for tax periods beginning on and after that date. Thereafter, FET and its subsidiaries will execute a new tax sharing agreement that will set forth the terms for allocating

the consolidated tax liability of the FET consolidated federal income tax group, for reimbursing FET for payment of such tax liability, and for compensating any member of the group for use of its tax losses or credits.

66. The new tax sharing agreement, provided as Joint Applicants Exhibit SRS-5, will be effective for all tax periods beginning after the closing date of the FET Transaction. The new tax sharing agreement is substantially similar to the existing FirstEnergy Income Tax Allocation Agreement approved by the Commission on January 3, 2023 at Docket No. G-2022-3034933.

67. Finally, the FET Transaction will not affect the consolidation of FET by FirstEnergy under Generally Accepted Accounting Principles in the United States (“GAAP”), and the MAIT Class B Interests Transfer will not result in any change in FET’s or the Joint Applicants’ equity (Joint Applicants Statement No. 2).

V. REQUESTED APPROVALS AND LEGAL STANDARDS FOR COMMISSION APPROVAL

A. SECTIONS 1102(A)(3) AND 1103 OF THE PUBLIC UTILITY CODE

68. 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.

69. Section 1103 of the Code, *id.* § 1103, sets forth the procedure to obtain certificates of public convenience under Section 1102 of the Code.

70. Here, a certificate of public convenience may be required to complete the Transaction. *See id.* § 1102(a)(3).

71. To provide direction for future Section 1102(a)(3) applicants, the Commission issued the Policy Statement 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 would result 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.

72. Under the Policy Statement, a certificate of public convenience does not appear to be required to authorize the FET Transaction. FirstEnergy is currently the holder of the largest voting interest in FET and holds 80.1% of all voting interests in FET. After the closing of the FET Transaction, FirstEnergy will remain the holder of the largest voting interest in FET and hold 50.1% of all voting interests in FET. Therefore, the FET Transaction will not result in either (a) the creation of a new largest voting interest or (b) the elimination of a largest voting interest.

73. In one of the operative cases cited in the Policy Statement, the Commission explained that it treated certain sales and transfers of stock as jurisdictional under Section 1102(a)(3) because:

[f]rom a practical view, the transfer of equity control of a utility parent or grandparent can directly affect the management of the utility. Stockholders exercising a controlling interest in a parent or grandparent can affect the Board of Directors, utility personnel and utility management philosophy and can ultimately have a direct effect on the cost and quality of service to the public.¹⁵

74. Here, certain of the governance rights provided to NATCo II under the LLCA could be construed to afford Brookfield, through NATCo II, the right to directly affect the personnel, management philosophy, cost, and/or quality of public utility service provided by FET and the Joint Applicants in Pennsylvania. The Joint Applicants also recognize that whether the rights and obligations provided to NATCo II under the LLCA—and in particular the board seats and governance rights provided so long as NATCo II maintains a 30% interest in FET—taken as a whole, constitute the “use” of public utility property under Section 1102(a)(3) of the Code is an issue that has not been previously determined by the Commission or the courts. For these reasons, the Joint Applicants request that the Commission issue all necessary authority, approvals and certificates of public convenience required to lawfully effectuate the Transaction.

75. 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).

¹⁵ *Joint Application of Cmwth. Telephone Co., Cmwth. Long Distance Co. and Paging Plus, Inc., for approval of the transfer of a majority voting interest in the stock of the utilities' direct or indirect parent, C-TEC Corp, to RCN Corp.*, Docket No. A-310800.F0006, 1993 Pa. PUC LEXIS 159, at *6 (Opinion and Order Entered Oct. 22, 1993).

76. In transactions involving the merger or acquisition of utilities, the Commission must 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); *see also Popowsky v. Pa. PUC*, 937 A.2d 1040, 1057 (Pa. 2007). Where a utility undergoes an internal reorganization, rather than a transaction that results in the combination of two separate public utilities, the Commission should instead assess whether the transaction is “necessary or proper” for the service of the public. *See PPL Electric Utilities Corp. v. Pa. PUC*, 241 A.3d 121, 2020 Pa. Commw. Unpub. LEXIS 521, at *33 (Pa. Cmwlth. 2020) (emphasis added); *Elite Industries, Inc. v. Pa. PUC*, 574 Pa. 476, 832 A.2d 428, 430-31 (Pa. 2003).

77. Section VI of the Joint Application explains why the Transaction is in the public interest and should be approved.

78. To obtain a certificate of public convenience under Sections 1102 and 1103 of the Code, the Joint Applicants must demonstrate that Brookfield is 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).

79. 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).

80. Fitness is addressed in Section VII of this Joint Application.

81. Finally, the Commission has considered certain “public interest” factors (i.e., the “Penn Estates criteria”) in cases involving an investment fund acquiring complete ownership of a

Pennsylvania public utility: (a) capital to be allocated to ongoing operating and maintenance expenses; (b) corporate governance/Sarbanes-Oxley compliance; (c) expected term of ownership; (d) experience as an owner and operator of utilities; (e) community presence; (f) nature and objectives of the various affiliated relationships involved; (g) fees paid to and services performed by affiliates; (h) limits on use of leverage and other capital structure protections; (i) transparency on corporate structure issues; and (j) creditworthiness. *Application of Penn Estates Utilities, Inc.*, Docket Nos. A-210072F0003, *et al.* (Order entered Oct. 2, 2006).

82. As the Transaction does not involve an investment fund acquiring complete ownership of the Joint Applicants, the Joint Applicants do not believe these criteria must be satisfied. Nevertheless, the Joint Applicants address the Penn Estates criteria in Section X of this Joint Application to the extent such criteria apply.

B. CHAPTER 21 OF THE PUBLIC UTILITY CODE

83. 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).

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

85. 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).

86. The requirements of Sections 2102 and 2103 are addressed in Section VIII of this Joint Application.

C. CHAPTER 28 OF THE PUBLIC UTILITY CODE

87. 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).

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

D. BURDEN OF PROOF

89. 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.

90. 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 A CERTIFICATE OF PUBLIC CONVENIENCE SHOULD BE ISSUED

91. The Transaction is proper because it will strengthen FirstEnergy’s corporate profile and allow FirstEnergy to attract additional capital to support major infrastructure investments in its regulated distribution and transmissions businesses. To attract this additional capital, FirstEnergy must compete with regulated and non-regulated businesses. To compete with these businesses, FirstEnergy must improve its balance sheet by increasing equity which will improve its ability to attract capital and lower its cost of capital as explained in the direct testimony of Mr. Staub (Joint Applicants Statement No. 2).

92. The Transaction will also result in numerous public benefits, as described below and in the Joint Applicants’ testimony.

A. FINANCIAL BENEFITS

93. The Transaction will substantially improve FirstEnergy’s financial strength and its ability to finance necessary transmission and distribution system investments over the next decade. As explained in the direct testimony of Mr. Mark Mroczynski (Joint Applicants Statement No. 1), a significant amount of capital investment will be needed to meet the growing challenges of the evolving electric grid. In order to address these challenges, the Joint Applicants will require broad

access to capital markets. In turn, the Joint Applicants will need strong financial metrics to attract the necessary investor capital on reasonable terms and conditions and at a reasonable cost.

94. The Transaction is anticipated to facilitate FirstEnergy's ability to attract necessary investor capital by providing for a stronger, more robust balance sheet and improved credit metrics. Specifically, improved credit metrics will enhance FirstEnergy's, and its transmission and distribution subsidiaries', ability to attract capital on commercially reasonable terms, thereby improving financial flexibility with respect to transmission and distribution development. These downstream benefits will accrue to FirstEnergy's transmission and distribution subsidiaries because improving a holding company's credit rating will improve the credit ratings of its subsidiaries. As explained by Mr. Staub (Joint Applicants Statement No. 2), these improved credit ratings will translate into an otherwise lower cost of capital. In turn, a lower cost of capital will reduce the cost of incremental cost of debt and equity needed to finance FirstEnergy's regulated subsidiaries' operations, which directly benefits customers.

95. Moreover, in the case of FET and its subsidiaries' transmission operations, any future required equity needs will be financed by both NATCo II and FirstEnergy in proportion to their respective ownership share. As such, the proposed Transaction provides FirstEnergy added flexibility to raise equity capital for transmission operations through multiple avenues, whether public or private. The Transaction therefore has the added benefit of augmenting FirstEnergy's ability to finance its distribution business, because any future financings of transmission operations will be shared proportionally by FirstEnergy and Brookfield, rather than FirstEnergy alone.

B. CONTINUITY BENEFITS

96. The Transaction does not alter FirstEnergy's ability to control the day-to-day transmission operations of the Joint Applicants. Moreover, and in addition to the commitments contained in the PSA to ensure that these entities continue to provide safe, reasonable and reliable

transmission service during the time between the PSA's execution and closing of the Transaction, the Joint Applicants are committed to ensuring ATSI, MAIT, and TrAILCo continue to provide safe, reasonable and reliable transmission service after the Transaction closes.

97. Similarly, Brookfield is committed to supporting continued investment in the ATSI, MAIT and TrAILCo transmission systems. This continued investment will improve transmission reliability and resiliency while also providing for renewable generation connection and capacity to add new customer loads in a reasonable time frame.

C. OPERATIONS BENEFITS

98. As previously explained, the Transaction increases NATCo II's interest in FET by an incremental 30.0%, which will result in FirstEnergy owning 50.1% of the interest in FET and NATCo II owning 49.9% of the interests in FET. In recognition of that incremental interest, Brookfield, as the ultimate controlling entity of NATCo II, will be entitled to various rights and obligations with respect to FET and the Joint Applicants' operations that are proportional to the size of its investment.¹⁶

99. The Transaction will, therefore, enhance FirstEnergy's existing partnership with Brookfield related to FET and the Joint Applicants. Relative to the transmission operations of ATSI, MAIT, and TrAILCo, Brookfield can share with FirstEnergy its knowledge of operational best practices with respect to optimal capital deployment, process excellence and portfolio planning and analytics with respect to FET and the Transmission Subsidiaries.

100. Importantly, the Joint Applicants have already experienced benefits from Brookfield's initial investment in FET, which provided financial flexibility for FirstEnergy that resulted in plans for additional capital deployment in its distribution and transmission companies.

¹⁶ See Section IV, *supra*; see also Joint Applicants Statement No. 3.

As explained by Mr. Mroczynski (Joint Applicants Statement No. 1) and Mr. Staub (Joint Applicants Statement No. 2), the Transaction is expected to have similar beneficial impacts with respect to FET's and the Joint Applicants' abilities to attract debt and equity capital and, in turn, permit even more efficient capital deployment for their operations. More efficient deployment of capital can be expected to enhance service reliability for customers at a lower cost to customers than would otherwise be anticipated absent the Transaction.

101. While the Joint Applicants' transmission facilities will remain under the operational control of PJM after the Transaction closes, the proceeds from the Transaction will support and provide the ability for FirstEnergy to deploy continued capital investments in its distribution and transmission systems. As explained by Mr. Mroczynski (Joint Applicants Statement No. 1), increased capital investments in the transmission system will assist with upgrading existing infrastructure, and deploying new infrastructure and technology, to improve the safety, reliability, and quality of existing service. The Transaction will also support improving the operational flexibility of the transmission system, enhancing its reliability, robustness, security, and resistance to extreme weather events. Moreover, as explained by Mr. Mroczynski (Joint Applicants Statement No. 1) and Mr. Rosenthal (Joint Applicants Statement No. 3), FirstEnergy can utilize the investment and operations experience of Brookfield to help FET and the Joint Applicants leverage cost and delivery improvements beyond what they could otherwise achieve on their own.

102. A strong, resilient transmission system is the backbone for its connected wholesale customers. Continued investment to improve the system performance and operational flexibility will inherently have positive impacts on the performance of the connected loads, including connected distribution systems. This impact can include enhanced networking of transmission

lines serving wholesale customers, margin to accommodate new or increased customer loads, and flexibility to connect new renewable or low emitting generating units.

D. ECONOMIC BENEFITS

103. The Joint Applicants also expect that the proposed Transaction will result in significant economic benefits throughout the Commonwealth. As explained in the direct testimony of Mr. Toby Bishop (Joint Applicants Statement No. 4), the proposed Transaction will enhance FirstEnergy's ability to undertake future investments in Pennsylvania. These future investments are anticipated to generate approximately \$19.5 billion in economic output over the 2023-2032 period in Pennsylvania. This economic activity would create approximately \$11.2 billion in incremental gross regional product in Pennsylvania, which is inclusive of \$648 million in additional state and municipal tax revenue for local communities in Pennsylvania. Finally, this economic activity is expected to support between approximate 9,500 and 11,200 jobs annually over the 2023-2032 period.

E. EMPLOYEE, ENVIRONMENTAL, SOCIAL, AND GOVERNANCE BENEFITS

104. FirstEnergy's Energizing the Future ("EtF") Program, which launched in 2014, prioritizes improvements that emphasize grid modernization, new growth, and the transition to a clean, resilient, and secure electric grid. As part of the EtF Program, FirstEnergy seeks to cultivate a more innovative, diverse, and sustainable company centered on the pillars of employee, environmental, social, and governance ("EESG") priorities, which align with FirstEnergy's core values of integrity, safety, diversity, equity and inclusion, performance excellence, and stewardship. As explained in the Joint Applicants' direct testimony, FirstEnergy and its subsidiaries (i.e., the Joint Applicants) are dedicated to staying true to its mission and core values while supporting its EESG priorities, and Brookfield is similarly committed to its own

environmental, social, and governance (“ESG”) practices. Therefore, FET and the Joint Applicants will benefit from working with a collaborative partner to achieve FirstEnergy’s EESG goals and the sharing of ESG best practices by Brookfield.

VII. MAIT, ATSI AND TRAILCO WILL REMAIN TECHNICALLY, FINANCIALLY AND LEGALLY FIT

105. The Commission should grant a certificate of public convenience because the Joint Applicants will continue to be technically, financially, and legally fit to continue to operate as public utilities in Pennsylvania.

106. Importantly, after the close of the Transaction, the ultimate majority ownership and control of day-to-day operations of ATSI, MAIT, and TrAILCo will remain with FirstEnergy. FirstEnergy’s regulated distribution and transmission operating companies will remain one of the nation’s largest investor-owned electric systems. FirstEnergy’s regulated operations will continue to serve over six million customers in the Midwest and Mid-Atlantic regions, with a significant presence in Pennsylvania. Each of the Joint Applicants, as a part of FirstEnergy’s regulated transmission operations, presently are and will remain technically, legally and financially fit to own and operate transmission facilities. Therefore, where the ultimate majority ownership and control of day-to-day operations will not change, there is a presumption that the subject utilities will remain fit to operate. *See South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n*, 601 A.2d 1308 (Pa. Cmwlth. 1992); *Re Blue Bird Coach Lines, Inc.*, 72 PA PUC 262, 285-286 (1990); *Re V.I.P. Travel Services, Inc.*, 56 PA PUC 625, 631 (1982).

107. Brookfield has also demonstrated that it possesses technical, financial and legal fitness that will supplement and bolster the Joint Applicants’ existing fitness to own and operate electric transmission facilities.

108. NATCo II is and will be legally fit to acquire an additional 30% interest in FET. NATCo II already has a 19.9% interest that has enhanced and improved FET's ability to operate and serve its communities and the additional 30% interest will build upon and strengthen the cooperative relationship between FirstEnergy and Brookfield. Also, as set forth in the PSA, NATCo II has committed to obtain all necessary regulatory approvals needed to complete the Transaction.

109. NATCo II also has the requisite technical expertise demonstrating substantial experience with and investment in energy and utility assets. As explained by Mr. Rosenthal (Joint Applicants Statement No. 3), Brookfield is one of the world's largest infrastructure investors, owning and operating assets across the utilities, transport, midstream, and data sectors, and is eminently familiar with the regulatory needs and requirements of operating a regulated public utility business. Further, Brookfield, through NATCo II, will continue to rely on the technical and operational expertise of FirstEnergy and FET, with respect to the Joint Applicants' operations.

110. NATCo II is also financially fit to undertake the Transaction. NATCo II has access to and is supported by BSIP, a fund which is composed of core infrastructure assets held on a perpetual basis with a total enterprise value of \$35 billion, stable cash flows, and investment grade credit ratings across each investment.

111. For these reasons, the Joint Applicants expect that the Transaction will further enhance FirstEnergy's existing partnership with Brookfield related to FET and the Joint Applicants.

VIII. REQUESTS FOR APPROVAL OF AFFILIATED INTEREST AGREEMENTS

112. The Joint Applicants also request Commission approval of certain affiliated interest agreements, that will be entered into in order to facilitate the proposed Transaction.

113. Specifically, the Joint Applicants request Commission approval of the following: (1) the Amended and Restated Limited Liability Company Operating Agreement of Mid-Atlantic Interstate Transmission, LLC, which is provided as Joint Applicants Exhibit SRS-3; and (2) the Contribution Agreement, which is provided as Joint Applicants Exhibit SRS-4; and (3) the new tax sharing agreement that will be entered into by FET and its subsidiaries, which is provided as Joint Applicants Exhibit SRS-5.

114. 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.

115. As set forth in Section VI, *supra*, the Transaction is necessary or proper, and will produce numerous public benefits. These affiliated interest agreements are needed to complete the Transaction for the reasons explained in the Joint Applicants' direct testimony.

116. 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. EFFECTS OF THE PROPOSED TRANSACTION ON COMPETITION

117. 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.¹⁷ *See* 66 Pa.C.S. § 2811(e).

118. The Transaction will have no impact on electric competition for Pennsylvania consumers or electric generation suppliers. The Joint Applicants are transmission-only public utilities. The Joint Applicants' transmission facilities will continue to be subject to the functional

¹⁷ As noted in Section XIII, *infra*, the Transaction also requires regulatory approval by FERC. The FERC application will further examine the competitive effects of the Transaction on the wholesale power markets.

control of PJM, which is a RTO that provides transmission service to customers pursuant to the PJM OATT. In addition, the Transaction will not impact existing retail contracts and or the ability of customers to access the competitive market.

119. Furthermore, the Transaction will have no impact on the ability of the Commission to regulate the Joint Applicants. The Joint Applicants will remain certificated public utilities and continue to be subject to the oversight and regulation of the Commission as they are today.

X. TO THE EXTENT THAT THE *PENN ESTATES* CRITERIA APPLY WHERE A PRIVATE EQUITY INVESTOR DOES NOT ACQUIRE A NEW LARGEST CONTROLLING INTEREST OF PUBLIC UTILITIES, THE *PENN ESTATES* CRITERIA ARE SATISFIED

120. As the Transaction does not involve an investment fund acquiring complete ownership of the Joint Applicants, the Joint Applicants do not believe that the *Penn Estates* criteria must be satisfied. However, to the extent such criteria are deemed to apply, the Transaction satisfies them:

- **Capital to be allocated to ongoing Operating and Maintenance Expenses.** As regulated public utilities, the Joint Applicants recover revenue from rates for their operations, including operations and maintenance expenses. Brookfield is also well positioned to finance its proportionate share of FET's equity needs, including, as required, funds for ongoing operation and maintenance expenses (Joint Applicants Statement No. 3).
- **Corporate Governance/Sarbanes-Oxley Compliance.** Following the close of the Transaction FirstEnergy, FET, and the Joint Applicants will continue to be subject to certain reporting requirements of the U.S. Sarbanes-Oxley Act of 2002, as

amended (the “Sarbanes-Oxley Act”). The same is true for Brookfield Corporation and BAM Ltd (Joint Applicants Statement No. 3).

- **Expected Term of Ownership.** BSIP is a perpetual, open-ended fund with no finite life. As such, Brookfield seeks to develop long-term relationships with its BSIP-portfolio companies, as is the case with its investment in FET (Joint Applicants Statement No. 3). Moreover, FirstEnergy will continue to remain the majority owner of FET and the FET Transmission Subsidiaries as it has been since FET’s formation.
- **Experience as an Owner and Operator of Utilities.** Brookfield has extensive experience as an owner and operator of utilities (Joint Applicants Statement No. 3). Moreover, FirstEnergy will continue to control the day-to-day operations of FET and the Joint Applicants, except to the extent Brookfield’s consent is required under the terms of the LLCA.
- **Community Presence.** The Joint Applicants have an established and productive presence in the Pennsylvania communities in which their facilities are located which will remain after the Transaction closes. In addition to its existing ownership interest in FET, Brookfield has interests in other local Pennsylvania-based assets (Joint Applicants Statement No. 3).
- **Nature and Objectives of the Various Affiliated Relationships.** Brookfield presently has a successful and productive working relationship with FET through its existing investment, and the Transaction will enhance that collaboration. To the extent that the relationship creates future affiliations, the Joint Applicants will

continue to comply with the requirements of Chapter 21 of the Public Utility Code, 66 Pa.C.S. §§ 2101 *et seq.* (regarding affiliated interest agreements).

- **Fees Paid to and Services Performed by Affiliates.** There are no fee for service agreements between Brookfield and the Joint Applicants that are created as a result of the Transaction. To the extent that the relationship creates future affiliations, the Joint Applicants will continue to comply with the requirements of Chapter 21 of the Public Utility Code, 66 Pa.C.S. §§ 2101 *et seq.* (regarding affiliated interest agreements).
- **Limits on use of Leverage and other Capital Structure Protections.** As Mr. Staub explains, the Transaction will help FirstEnergy further improve its debt-to-total capitalization ratio to approximately 60% as well as drive additional improvements to several other financial indicators that are supportive of an investment grade credit rating (Joint Applicants Statement No. 2).
- **Transparency on Corporate Structure Issues.** NATCo II's structure and its relationship to FET is explained in Mr. Rosenthal's testimony (Joint Applicants Statement No. 3). Mr. Mroczynski's Joint Applicants Exhibit MDM-4 depicts the post-Transaction ownership structure of FET and the Joint Applicants. Both FirstEnergy and Brookfield have experts on staff to ensure compliance with applicable laws and regulations regarding corporate structure and transparency. Further, the Code requires Joint Applicants to furnish information to the Commission upon request. 66 Pa.C.S. § 501.

- **Creditworthiness.** Brookfield is financially strong and well positioned to finance its proportionate share of FET's equity needs. (Joint Applicants Statement No. 3 and **HIGHLY CONFIDENTIAL** Joint Applicants Exhibit JR-1).

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

121. In support of this filing, the Joint Applicants have filed the following direct testimony with the Joint Application:

- Joint Applicants Statement No. 1, the direct testimony of Mark D. Mroczynski. Mr. Mroczynski: (1) provides an overview the Joint Applicants and the related entities involved in the Transaction; (2) provides an overview of the Transaction, including both the FET Transaction and the MAIT Class B Interests transfer; (3) discusses the impacts of the Transaction on the operations of ATSI, MAIT and TrAILCo; (4) discusses the benefits of the Transaction from an operations perspective; and (5) explains that the Transaction will not have any impacts on competition.
- Joint Applicants Statement No. 2, the direct testimony of Steven R. Staub. Mr. Staub: (1) provides an overview of the current ownership structure of FirstEnergy, FET, and the Joint Applicants; (2) provides an overview of the Transaction, as well as the accounting and tax impacts associated with it; and (3) discusses the benefits of the Transaction from a financial perspective.
- Joint Applicants Statement No. 3, the direct testimony of Jeffrey Rosenthal. Mr. Rosenthal: (1) describes Brookfield's experience as one of the world's largest infrastructure investors; and (2) its fitness for the Transaction.

- Joint Applicants Statement No. 4, the direct testimony of Toby Bishop. Mr. Bishop describes the economic benefits that will result from the Transaction.

XII. OVERVIEW OF ADDITIONAL SUPPORTING EXHIBITS

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

123. 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.

XIII. OTHER REQUIRED REGULATORY APPROVALS

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

125. In addition to approval from this Commission, the Transaction also requires approval from the Virginia Public Service Commission, FERC and the Committee on Foreign Investment in the United States.

XIV. FORMAL REQUEST FOR CONSOLIDATION OF RELATED FILINGS

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

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

XV. JOINT APPLICANTS' PROPOSED PROCEDURAL SCHEDULE

128. The Joint Applicants propose the following procedural schedule, which contemplates Commission approval at a February 2024 public meeting date.

May 5, 2023	Joint Application filed with the Commission
May 20, 2023	PA bulletin publication
June 21, 2023	Last day for Interventions to be filed
Week of June 26, 2023	Prehearing Conference
August 14, 2023	Intervenors' Direct Testimony
September 14, 2023	Rebuttal Testimony
October 2, 2023	Surrebuttal Testimony
Week of October 9, 2023	Oral Rejoinder and Hearings
October 30, 2023	Main Briefs
November 15, 2023	Reply Briefs

XVI. NOTICE

129. 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.

130. The Joint Applicants request that the Commission publish notice of this Joint Application in the May 20, 2023 edition of the *Pennsylvania Bulletin* pursuant to 52 Pa. Code § 5.14(a).


131. 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 required to lawfully effectuate: (1) the Purchase and Sale Agreement of an incremental 30% equity interest in FET by NATCo II; (2) the transfer of Class B Membership Interests in MAIT held by FirstEnergy to FET; (3) where necessary, associated affiliated interest agreements; and (4) any other authorizations, approvals or certificates appropriate, customary, or necessary under the Public Utility Code to carry out the Transaction contemplated in this Joint Application in a lawful manner.

Respectfully submitted,

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