

COMMONWEALTH OF PENNSYLVANIA



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June 5, 2023

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

Re: Joint Application Of American Transmission Systems, Incorporated, MidAtlantic Interstate Transmission, LLC, And Trans-Allegheny Interstate Line Company For All Of The Necessary Authority, Approvals, And Certificates Of Public Convenience Required 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  
Docket Nos. A-2023-3040481; A-2023-3040482; A-2023-3040483; G-2023-3040484;  
G-2023-3040485; G-2023-3040486

Dear Secretary Chiavetta:

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

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

Respectfully submitted,

/s/ Harrison W. Breitman  
Harrison W. Breitman  
Assistant Consumer Advocate  
PA Attorney I.D. # 320580  
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Enclosures:

cc: The Honorable Charles E. Rainey (**email only:** [crainey@pa.gov](mailto:crainey@pa.gov))  
Bureau of Technical Utility Services (**email only:** [pdiskin@pa.gov](mailto:pdiskin@pa.gov))  
Office of Special Assistants (**email only:** [ra-OSA@pa.gov](mailto:ra-OSA@pa.gov))  
Certificate of Service

\*347209

CERTIFICATE OF SERVICE

Joint Application Of American Transmission Systems, : Docket Nos. A-2023-3040481  
Incorporated, MidAtlantic Interstate Transmission, : A-2023-3040482  
LLC, And Trans-Allegheny Interstate Line Company : A-2023-3040483  
For All Of The Necessary Authority, Approvals, : G-2023-3040484  
And Certificates Of Public Convenience Required : G-2023-3040485  
To Lawfully Effectuate (1) The Purchase And Sale : G-2023-3040486  
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 :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Protest and Public Statement, 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 5<sup>th</sup> day of June 2023.

**SERVICE BY E-MAIL ONLY**

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**SERVICE BY E-MAIL ONLY (continued)**

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Phone: (717) 783-5048  
Dated: June 5, 2023  
\*347210

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOINT APPLICATION OF AMERICAN	:	
TRANSMISSION SYSTEMS,	:	A-2023-3040481
INCORPORATED (ATSI),	:	A-2023-3040482
MID-ATLANTIC INTERSTATE	:	A-2023-3040483
TRANSMISSION, LLC	:	G-2023-3040484
("MAIT"), AND TRANS-ALLEGHENY	:	G-2023-3040485
INTERSTATE LINE COMPANY ("TrAILCo")	:	G-2023-3040486

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PROTEST OF THE  
OFFICE OF CONSUMER ADVOCATE

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Pursuant to 52 Pa. Code Sections 5.51, *et seq.*, the Office of Consumer Advocate (OCA) files this Protest to the Joint Application of American Transmission Systems, Incorporated (ATSI), Mid-Atlantic Interstate Transmission, LLC (MAIT), and Trans-Allegheny Interstate Line Company (TrAILCo) (collectively, the Joint Applicants). The Joint Applicants requests all of the necessary authority, approvals, and certificates of public convenience for: (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); (2) the transfer of Class B Membership Interests in MAIT held by FirstEnergy Corp. (FirstEnergy) to FET; and (3) when necessary, associated affiliated interest agreements.

The OCA files this Protest in order to ensure that the approvals and certificates of public convenience are granted only if they are “necessary or proper for the service, accommodation, convenience or safety of the public,” pursuant to 66 Pa. C.S. Sections 1102, 1103(a), Chapters 21 and 28, and meet all legal requirements of the Public Utility Code.

Specifically, the OCA avers as follows:

1. The protestant is:

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

Throughout this Protest, the protestant will be referred to as the Office of Consumer Advocate or OCA.

2. The OCA's attorneys are:

Darryl Lawrence  
Senior Assistant Consumer Advocate  
Harrison W. Breitman  
Assistant Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
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3. The OCA is authorized by law to represent the interests of Pennsylvania's utility consumers in all matters before the Pennsylvania Public Utility Commission (Commission). 71 Pa. Stat. Ann. §§ 309-1 *et seq.* (Purdon's 1990).

4. Section 1102(a)(3) of the Public Utility Code requires a public utility to obtain a certificate of public convenience prior to acquiring or transferring any tangible or intangible property used or useful in the public service. 66 Pa. C.S. § 1102(a)(3).

5. The Code further requires that a certificate shall only be granted upon findings 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).

6. Section 1103 explicitly allows the Commission to impose conditions upon the issuance of a certificate of public convenience. 66 Pa. C.S. § 1103(a). Section 1103(a) of the

Code provides: “The Commission, in granting such a certificate, may impose such conditions as it may deem to be just and reasonable.” The OCA submits that the Commission may wish to consider the imposition of conditions in order to ensure that the public interest standard is met.

7. Section 2102 requires the Commission to approve, in writing, any contract or arrangement between a public utility and an affiliated interest. 66 Pa. C.S. § 2102(a). The OCA submits that the Commission should carefully consider all of the proposed affiliated interest agreements to ensure that the public interest standard is met.

8. Preliminarily, the OCA has identified the following areas that require further consideration by the Commission and must be resolved prior to Commission approval of this Application:

- a. Operational and Financial Impacts – the Commission should examine whether the operational and financial impacts of the transaction negatively affects ratepayers.
- b. Costs and Benefits of Transaction –The Commission should investigate the Joint Applicants’ claim to ensure that the program will create new jobs in Pennsylvania.
- c. Impacts on Competition – The Joint Applicants suggest that there will be no impacts on competition. The Commission should examine the Applicants’ claims.
- d. Affiliated Interest Agreements – the Joint Applicants proposed a number of affiliated interest agreements as part of the transaction. Each of these Affiliated Interest Agreements should be examined by the Commission to ensure that no cross-subsidization results. Additionally, the Commission should consider how the Proposed Transaction may raise issues related to the interaction of affiliated interest agreements, siting of facilities, and rates.
- e. Continuity of Service – The Commission should ensure that the transaction includes all necessary commitments to ensure continuity of safe and reliable transmission service. The Commission should examine the Joint Applicant’s claims that 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.

- f. Employee Environmental, Social, and Governance Benefits – The Commission should examine the claim that FET and the Joint Applicants will benefit from working with a collaborative partner to achieve FirstEnergy’s Employee Environmental, Social, and Governance (ESG) goals through the sharing of Brookfield’s ESG practices.
- g. Penn Estates Criteria – The Commission should examine the Joint Applicants’ claim that the Penn Estates criteria has been satisfied. The Penn Estates Criteria requires the examination of (1) Capital Allocation to Operating and Maintenance Expenses; (2) Corporate Governance/Sarbanes-Oxley Compliance; (3) Expected Term of Ownership; (4) Experience as an Owner and Operator of Utilities; (5) Community Presence; (6) Nature and Objectives for the Various Affiliated Relationships; (7) Fees Paid to and Services Performed By Affiliates; (8) Limits on Usage of Leverage and Other Capital Structure Protections; (9) Transparency on Corporate Structure Issues; and (10) Creditworthiness.

9. The contribution of transmission assets may have an impact on FirstEnergy’s ratepayers, as well as on Pennsylvania and the public interest. The Proposed Transaction should be reviewed to ensure it complies with Section 1103 of the Public Utility Code. Further, the affiliated interest agreements should be reviewed to ensure that they comply with the requirements of Chapter 21 of the Public Utility Code, 66 Pa. C.S. § 2101, *et. seq.*

10. The OCA respectfully requests that the Commission ensure that all other sections of the Public Utility Code and the Commission’s regulations are being observed throughout this proceeding and that the results of the Proposed Transaction are reasonable and consistent with the law and the public interest.

WHEREFORE, the Office of Consumer Advocate requests that the Pennsylvania Public Utility Commission investigate and decide the Application, hold evidentiary hearings, impose conditions if supported by the evidentiary record, and take such other actions as are found to be appropriate under the circumstances.

Respectfully submitted,

/s/ Harrison W. Breitman  
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(717) 783-5048  
Dated: June 5, 2023



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

Act 161 of the Pennsylvania General Assembly, 71 P.S. Section 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (Commission). In accordance with Act 161, and for the following reasons, the Consumer Advocate determined to file a Notice of Intervention and Protest and participate in proceedings before the Commission involving the proposed Joint Application of American Transmission Systems, Incorporated (ATSI), Mid-Atlantic Interstate Transmission, LLC (MAIT), and Trans-Allegheny Interstate Line Company (TrAILCo) (collectively, the Joint Applicants).

On June May 5, 2023, the Joint Applicants filed a Joint Application requesting all of the necessary authority, approvals, and certificates of public convenience for: (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); (2) the transfer of Class B Membership Interests in MAIT held by FirstEnergy Corp. (FirstEnergy) to FET; and (3) When necessary, associated affiliated interest agreements.

The OCA has determined to participate in these proceedings in order to protect the interests of FirstEnergy's customers. Through its participation in this proceeding the OCA seeks to ensure that the contribution of transmission assets, approvals, granting of certificates, and other transactions occur only if it is "necessary or proper for the service, accommodation, convenience, or safety of the public" and that FirstEnergy's customers are afforded the protections to which they are entitled under the Public Utility Code and the Commission's regulations.