**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application Of American Transmission : A-2023-3040481

Systems, Incorporated, MidAtlantic Interstate : A-2023-3040482

Transmission, LLC, And Trans-Allegheny : A-2023-3040483

Interstate Line Company For All Of The : G-2023-3040484

Necessary Authority, Approvals, And Certificates : G-2023-3040485

Of Public Convenience Required To Lawfully : G-2023-3040486

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 :

**PREHEARING ORDER**

On May 5, 2023, American Transmission Systems, Incorporated (ATSI), MidAtlantic Interstate Transmission, LLC (MAIT), and Trans-Allegheny Interstate Line Company (TrAILCo), (collectively Joint Applicants) filed the “Joint Application Of American Transmission Systems, Incorporated, Mid-Atlantic 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” at Docket Nos. A-2023-3040481, A-2023-3040482, A-2023-3040483, G-2023-3040484, G-2023-3040485, and G-2023-3040486 (the Joint Application). The Joint Applicants requested that the Joint Application and any related dockets be consolidated for purposes of discovery, litigation, and disposition.

The Joint Application seeks certain approvals from the Pennsylvania Public Utility Commission (Commission) granting all necessary authority, approvals and certificates of public convenience 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 (30) 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) 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.

The Joint Application seeks certain approvals from the Commission associated with: (1) the Purchase and Sale Agreement (the PSA) dated February 2, 2023, between FirstEnergy, NATCo II and the Brookfield Guarantors, 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) (hereinafter, the FET Transaction and the MAIT Class B Interests Transfer are collectively referred to as the Transaction).

On May 8, 2023, the Commission issued a Secretarial Letter, which: (1) acknowledged receipt of the Joint Application; and (2) enclosed a copy of the Public Notice to be published by the Joint Applicants in a newspaper having general circulation in the area involved on or before June 5, 2023, and that would appear in the Pennsylvania Bulletin in the May 20, 2023, issue. *See*53 Pa.B. 2819.

On May 25, 2023, the Office of Small Business Advocate (OSBA) filed a Notice of Appearance, Notice of Intervention, Public Statement, and Verification.

On June 1, 2023, NATCo II filed a Petition to Intervene.

On June 5, 2023, the Office of Consumer Advocate (OCA) filed a Protest and Public Statement; Met-Ed Industrial Users Group (MEIUG) and the Penelec Industrial Customer Alliance (PICA) (Joint Intervenors) filed a Joint Petition to Intervene and Protest; and the Joint Applicants filed Proofs of Publication of the Public Notice.

On June 27, 2023, the Commission issued a Call-In Prehearing Conference Notice, informing the parties that a Prehearing Conference in this matter would be convened by Administrative Law Judges Conrad A. Johnson and Emily I. Devoe (ALJs) on August 7, 2023, at 10:00 a.m.

On July 7, 2023, the ALJs issued a Prehearing Conference Order, which: (1) confirmed the telephonic prehearing conference would be held on August 7, 2023, at 10:00 a.m.; and (2) directed the parties to file Prehearing Conference Memoranda on or before 4:00 p.m. on Monday, July 31, 2023.

On July 31, 2023, pursuant to 52 Pa. Code § 5.222(d) and the Prehearing Conference Order, the Joint Applicants, OCA, OSBA, Intervenor NATCo II, and Joint Intervenors MEIUG and PICA filed their respective Prehearing Conference Memoranda.

The prehearing conference convened as scheduled on August 7, 2023. The Joint Applicants, OCA, OSBA, Intervenor NATCo II, and Joint Intervenors MEIUG and PICA 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 |
| August 28, 2023 | Written Direct Testimony of All Other Parties Due In-Hand  (Joint Applicants Filed Written Direct Testimony on May 5, 2023) |
| September 28, 2023 | Written Rebuttal Testimony Due In-Hand |
| October 16, 2023 | Written Surrebuttal Testimony Due In-Hand |
| November 1 and 2, 2023 | Evidentiary Hearings and oral rejoinder In-Person in Pittsburgh |
| November 20, 2023 | Main Briefs Due In-Hand |
| December 8, 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 parties agreed to electronic service. 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 November 1, 2023, and November 2, 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 to avoid “holes” or “dead time” during the hearings.

On or before **Monday, October 30, 2023, counsel for the Joint Applicants** shall provide the Presiding ALJs and opposing parties a witness cross-examination matrix, which identifies the witnesses that are anticipated to be cross-examined and the anticipated length of such cross-examination.

**Intervention**

There was no objection to the Petitions to Intervene filed by Intervenor NATCo II and Joint Intervenors MEIUG and PICA. Accordingly, those Petitions to Intervene were granted.

**Parties**

As of the date of this Order, the Joint Applicants, OCA, OSBA, Intervenor NATCo II and Joint Intervenors MEIUG and PICA are the only parties involved in this case. However, the Commission’s Bureau of Enforcement and Investigation has been added to the Service List which is appended to this Order.

**Consolidation**

At the prehearing conference, all six of the above-captioned cases were consolidated under Docket Number A-2023-3040481.

**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 that they may wish to pursue. The reader is directed to those 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.

The Joint Applicants proposed the use of electronic service of discovery responses, and the other parties did not object. Specifically, the Joint Applicants will post all discovery responses to a Microsoft OneDrive site operated by Post & Schell, P.C. The Joint Applicants will file and serve a letter notifying the parties when the applicable discovery responses have been posted to the OneDrive site. Once posted, parties will be able to access, review, download, and/or print the discovery responses as needed.

**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 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, October 30, 2023**. If the parties reach a full settlement, they must still plan on convening as scheduled on November 1, 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 Friday, December 8, 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: August 8, 2023

/s/

Emily I. DeVoe

Administrative Law Judge

**A-2023-3040481 - Joint Application of American Transmission Systems, Incorporated, Mid-Atlantic Interstate Transmission, LLC, and Trans-Allegheny Interstate Line Company**

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