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File #: 198560

August 24, 2023

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Joint Application of American Transmission Systems, Incorporated, Mid-Atlantic Interstate Transmission, LLC, and Trans-Allegheny Interstate Line Company, 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 filing is the Motion for Protective Order of American Transmission Systems, Incorporated (“ATSI”), Mid-Atlantic Interstate Transmission, LLC (“MAIT”), and Trans-Allegheny Interstate Line Company (“TrAILCo”), hereinafter, collectively, the “Joint Applicants.” Copies will be provided as indicated on the Certificate of Service.

Please direct any questions regarding this submission to the undersigned.

Respectfully submitted,



Garrett P. Lent
Principal

GPL/kl
Attachment

Rosemary Chiavetta, Secretary
August 24, 2023
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cc: The Honorable Conrad A. Johnson (*via email; w/att.*)
The Honorable Emily I. DeVoe (*via email; w/att.*)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA EMAIL ONLY

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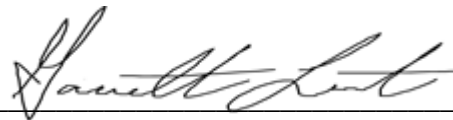
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Date: August 24, 2023



Garrett P. Lent

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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	:	A-2023-3040481 A-2023-3040482 A-2023-3040483 G-2023-3040484 G-2023-3040485 G-2023-3040486
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MOTION FOR PROTECTIVE ORDER

TO ADMINISTRATIVE LAW JUDGES CONRAD A. JOHNSON AND EMILY I. DEVOE:

American Transmission Systems, Incorporated (“ATSI”), MidAtlantic Interstate Transmission, LLC (“MAIT”), and Trans-Allegheny Interstate Line Company (“TrAILCo”), collectively, the “Joint Applicants,” hereby request that the Honorable Administrative Law Judges Conrad A. Johnson and Emily I. Devoe (the “ALJs”) enter the attached Protective Order in this proceeding pursuant to the provisions of 52 Pa. Code §§ 5.362(a)(7) and 5.365(a), and in support thereof state as follows:

1. The above captioned proceedings were initiated on May 5, 2023, when ATSI, MAIT, and TrAILCo, 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.

2. 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”)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

¹ As explained in greater length in the Joint Application, 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”).

lawful manner.

3. 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”).

4. 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.

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

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

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 The non-voting Class B Membership Interests in MAIT are currently held by Metropolitan Edison Company (“Met-Ed”) and Pennsylvania Electric Company (“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 the Joint 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.

7. On June 5, 2023, the Office of Consumer Advocate (“OCA”) filed a Protest and Public Statement.

8. Also on June 5, 2023, Met-Ed Industrial Users Group (“MEIUG”) and the Penelec Industrial Customer Alliance (“PICA”) filed a Joint Petition to Intervene and Protest.

9. Also on June 5, 2023, the Joint Applicants filed Proofs of Publication of the Public Notice.

10. On June 27, 2023, the Commission issued a Call-In Prehearing Conference Notice, scheduling a Prehearing Conference for August 7, 2023, at 10:00 a.m.

11. 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. before the ALJs; and (2) directed the parties to file Prehearing Conference Memoranda on or before 4:00 p.m. on Monday, July 31, 2023.

12. On July 31, 2023, the Joint Applicants, OCA, OSBA, MEIUG and PICA, and NatCo II filed Prehearing Conference Memorandums.

13. On August 7, 2023, the Prehearing Conference was held as scheduled. There, a procedural schedule and modified discovery rules were agreed upon, among other things.

14. Confidential and Proprietary Information within the scope of 52 Pa. Code § 5.365 has been provided and requested during the course of this proceeding, which justifies the issuance of a Protective Order. This motion requests that such Proprietary Information be appropriately protected against public disclosure throughout the course of this proceeding. Treatment of such information as set forth in the attached proposed Protective Order is justified because unrestricted disclosure of such information is not in the public interest. These considerations constitute cause for the restrictions specified in 52 Pa. Code § 5.365 and in Administrative Law Judge or

Commission Orders granting relief pursuant to said regulation.

15. Under 52 Pa. Code §§ 5.632(a)(7) and 5.635, the Office of Administrative Law Judge or the Commission may issue a Protective Order to limit or prohibit disclosure of confidential commercial information where the potential harm to a participant would be substantial and outweighs the public's interest in having access to the confidential information. In applying this standard, relevant factors to be considered include: (1) the extent to which disclosure would cause unfair economic or competitive damage; (2) the extent to which the information is known by others and used in similar activities; and (3) the worth or value of the information to the party and to the party's competitors. 52 Pa. Code § 5.365(a)(1)-(3).

16. The documents sought to be protected by the Proposed Order may also contain proprietary information as described in 66 Pa.C.S. § 335(d), which provides:

[I]f a document contains trade secrets or proprietary information and it has been determined by the commission that harm to the person claiming the privilege would be substantial or if a document required to be released under this section contains identifying information which would operate to the prejudice or impairment of a person's reputation or personal security, or information that would lead to the disclosure of a confidential source or subject a person to potential economic retaliation as a result of their cooperation with a commission investigation, or information which, if disclosed to the public, could be used for criminal or terroristic purposes, the identifying information may be expurgated from the copy of the document made part of the public record.

Therefore, treatment of such information as set forth in the attached proposed Protective Order is justified under 66 Pa.C.S. § 335(d).

17. The attached proposed Protective Order defines four categories of protected information. The first is "CONFIDENTIAL" information, which is defined in Paragraph 3 of the attached proposed Protective Order as "those materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely,

would subject that party or its clients to risk of competitive disadvantage or other business injury.”

The second is “HIGHLY CONFIDENTIAL” information, which is defined in Paragraph 3 of the attached proposed Protective Order as “those materials that are of such a commercially sensitive nature among the parties or of such a private, personal nature that the producing party is able to justify a heightened level of confidential protection with respect to those materials.” The third is “CONFIDENTIAL SECURITY INFORMATION,” which is defined in Paragraph 3 of the attached proposed Protective Order as “those materials, as defined in Section 2 of Act 156 of 2006, P.L. 1425, No. 156, 35 P.S. § 2141.2 *et seq.*, The Public Utility Confidential Security Information Disclosure Protection Act, the disclosure of which creates a reasonable likelihood of endangering the physical security of public utility resources, infrastructure, facility or information storage system; and information regarding computer hardware, software and networks, including administrative and technical records, which, if disclosed, would be reasonably likely to jeopardize computer security.” The fourth is “CRITICAL ENERGY INFRASTRUCTURE INFORMATION,” which is defined in Paragraph 4 of the attached proposed Protective Order as it is defined in 18 C.F.R. § 388.113(c)(1).⁴

18. Paragraph 17 of the attached proposed Protective Order guards against overly broad designations of protected information by giving all parties the right to question or challenge the confidential or proprietary nature of the information deemed “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” “CONFIDENTIAL SECURITY INFORMATION,” or “CRITICAL

⁴ 18 C.F.R. § 388.113(c)(2) defines “Critical Energy Infrastructure Information” as “specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) Relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) Could be useful to a person in planning an attack on critical infrastructure; (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552; and (iv) Does not simply give the general location of the critical infrastructure.” Moreover, 18 C.F.R. § 388.113(c)(4) defines “Critical Infrastructure” as “existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.”

ENERGY INFRASTRUCTURE INFORMATION.”

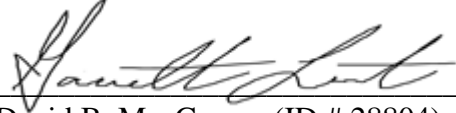
19. Limitation on the disclosure of information deemed “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” “CONFIDENTIAL SECURITY INFORMATION,” or “CRITICAL ENERGY INFRASTRUCTURE INFORMATION” will not prejudice the rights of the participants, nor will such limitation frustrate the prompt and fair resolution of this proceeding. The proposed Protective Order balances the interests of the parties, the public, and the Commission.

20. The attached Protective Order sought by the Joint Applicants will also protect the proprietary nature of competitively valuable information while allowing the parties to use such information for purposes of the instant litigation. The proposed Protective Order applies the least restrictive means of limitation that will provide the necessary protections from disclosure.

21. The Joint Applicants have consulted with the active parties and intervenors in this proceeding: OCA, OSBA, MEIUG and PICA, and NATCo II. At the time of this filing, no parties have objected to the proposed Protective Order.

WHEREFORE, for all the reasons set forth above, American Transmission Systems, Incorporated, Mid-Atlantic Interstate Transmission, LLC, and Trans-Allegheny Interstate Line Company respectfully request that Your Honors issue the attached Protective Order.

Respectfully submitted,



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Dated: August 24, 2023

*Attorneys for American Transmission Systems,
Incorporated, Mid-Atlantic Interstate
Transmission, LLC, and Trans-Allegheny
Interstate Line Company*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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	:	A-2023-3040481 A-2023-3040482 A-2023-3040483 G-2023-3040484 G-2023-3040485 G-2023-3040486
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PROTECTIVE ORDER

Upon consideration of the Motion for a Protective Order that was filed by American Transmission Systems, Incorporated, Mid-Atlantic Interstate Transmission, LLC, and Trans-Allegheny Interstate Line Company on August 24, 2023:

IT IS ORDERED THAT:

1. The Motion is hereby granted with respect to all materials and information identified in Paragraphs 2 – 3 below.
2. The information subject to this Protective Order is all correspondence, documents, data, information, studies, methodologies and other materials, furnished in this proceeding, which are believed by the producing party to be of a proprietary or confidential nature and which are so designated by being marked “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” “CONFIDENTIAL SECURITY INFORMATION,” or “CRITICAL ENERGY INFRASTRUCTURE INFORMATION.” Such materials will be collectively referred to below as

“Proprietary Information.” When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be designated as such for the record.

3. The parties may designate as “CONFIDENTIAL” those materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that party or its clients to risk of competitive disadvantage or other business injury. The parties may designate as “HIGHLY CONFIDENTIAL” those information and materials that are of such a commercially sensitive nature among the parties or of such a private, personal nature that the producing party is able to justify a heightened level of confidential protection with respect to those materials. The parties shall endeavor to limit their designation of information and materials as HIGHLY CONFIDENTIAL. The parties agree that materials containing specific, individual customer information shall be identified as HIGHLY CONFIDENTIAL and that access to these materials may be further restricted by the producing party. The parties may designate as “CONFIDENTIAL SECURITY INFORMATION” those materials, as defined in Section 2 of Act 156 of 2006, P.L. 1425, No. 156, 35 P.S. § 2141.2 *et seq.* “The Public Utility Confidential Security Information Disclosure Protection Act,” the disclosure of which creates a reasonable likelihood of endangering the physical security of public utility resources, infrastructure, facility or information storage system; and information regarding computer hardware, software and networks, including administrative and technical records, which, if disclosed, would be reasonably likely to jeopardize computer security. If the material contains CONFIDENTIAL SECURITY INFORMATION, the Parties producing such information shall mark on each page containing information the words “HIGHLY CONFIDENTIAL – CSI – CONTAINS CONFIDENTIAL SECURITY INFORMATION – DO NOT RELEASE.” The parties may designate materials containing critical energy infrastructure information (“CEII”), as

defined in 18 C.F.R. § 388.113(c)(1),⁵ as “CRITICAL ENERGY INFRASTRUCTURE INFORMATION.” If the material contains CEII, the parties producing such information shall mark on each page containing information the words “HIGHLY CONFIDENTIAL – CEII – CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION – DO NOT RELEASE.”

4. Proprietary Information shall be made available to counsel for a party, subject to the terms of this Protective Order. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, cross examination, argument, or settlement in this proceeding. To the extent required for participation in this proceeding, counsel for a party may afford access to Proprietary Information subject to the conditions set forth in this Protective Order.

5. Information and materials deemed as “CONFIDENTIAL”, shall be made available to a “Reviewing Representative” who is a person that has signed a Non-Disclosure Certificate attached as Appendix A or Appendix B, and who is:

- (a) An attorney who has entered an appearance in this proceeding for a party or a statutory advocate pursuant to 52 Pa. Code § 1.8, if not an attorney;
- (b) Attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in subparagraph 4(a);
- (c) An expert or an employee of an expert retained by a party for the purpose of advising, preparing for or testifying in this proceeding; or
- (d) Employees or other representatives of a party appearing in this proceeding with significant responsibility for this docket.

⁵ 18 C.F.R. § 388.113(c)(2) defines “Critical Energy Infrastructure Information” as “specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) Relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) Could be useful to a person in planning an attack on critical infrastructure; (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552; and (iv) Does not simply give the general location of the critical infrastructure.” Moreover, 18 C.F.R. § 388.113(c)(4) defines “Critical Infrastructure” as “existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.”

With regard to the Bureau of Investigation and Enforcement (“I&E”), information and materials deemed as “CONFIDENTIAL” shall be made available to I&E Prosecutors subject to the terms of this Protective Order. The I&E Prosecutors shall use or disclose the CONFIDENTIAL information and materials only for purposes of preparing or presenting evidence, cross examination, argument, or settlement in this proceeding. To the extent required for participation in this proceeding, the I&E Prosecutors may afford access to CONFIDENTIAL information and materials only to I&E’s experts, supervisors of experts, Chief Prosecutor, Deputy Chief Prosecutor, and administrative support staff without the need for the execution of a Non-Disclosure Certificate, who are full-time employees of the Commission and bound by all the provisions of this Protective Order by virtue of the I&E Prosecutors’ execution of a Non-Disclosure Certificate(s).

6. Information and materials deemed as “HIGHLY CONFIDENTIAL”, may be provided to a “Reviewing Representative” who has signed a Non-Disclosure Certificate attached as Appendix B and who is:

- (a) An attorney who has entered an appearance in this proceeding for a party or a statutory advocate pursuant to 52 Pa. Code § 1.8, if not an attorney;
- (b) An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph 6(a);
- (c) An outside expert or an employee of an outside expert retained by a party for the purposes of advising, preparing for or testifying in this proceeding;
or
- (d) A person designated as a Reviewing Representative for purposes of HIGHLY CONFIDENTIAL information and materials.

With regard to I&E, information and materials deemed as “HIGHLY CONFIDENTIAL” shall be made available to the I&E Prosecutors subject to the terms of this Protective Order. The

I&E Prosecutors shall use or disclose the HIGHLY CONFIDENTIAL information and materials only for purposes of preparing or presenting evidence, cross examination, argument, or settlement in this proceeding. To the extent required for participation in this proceeding, the I&E Prosecutors may afford access to HIGHLY CONFIDENTIAL information and materials, only to I&E's experts, supervisors of experts, Chief Prosecutor, Deputy Chief Prosecutor, and administrative support staff without the need for the execution of a Non-Disclosure Certificate, who are full-time employees of the Commission and bound by all the provisions of this Protective Order by virtue of the I&E Prosecutors' execution of a Non-Disclosure Certificate(s).

Provided, further, that in accordance with the provisions of Sections 5.362 and 5.365(e) of the Commission's Rules of Practice and Procedure, 52 Pa. Code §§ 5.362, 5.365(e), any party may, by subsequent objection or motion, seek further protection with respect to HIGHLY CONFIDENTIAL information and materials, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular parties.

7. Information and materials deemed as "CONFIDENTIAL SECURITY INFORMATION", may be provided to a "Reviewing Representative" who has signed a Non-Disclosure Certificate attached as Appendix B and who is:

- (a) An attorney who has entered an appearance in this proceeding for a statutory advocate pursuant to 52 Pa. Code § 1.8, or a statutory advocate if not an attorney;
- (b) An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph 7(a); or
- (c) An outside expert or an employee of an outside expert retained by a statutory advocate for the purposes of advising, preparing for or testifying in this proceeding.

CONFIDENTIAL SECURITY INFORMATION will only be provided for inspection via in-person review at the offices of Post & Schell, P.C., 17 N. Second Street, 12th Floor, Harrisburg,

PA 1701, or upon request of a statutory advocate or an attorney for a statutory advocate, at another location in the Harrisburg-metro area of the Commonwealth, between the hours of 9 A.M. to 5 P.M., Monday through Friday. Such review may be proctored, and the Reviewing Representatives are prohibited from reproducing such information in any form without the prior authorization of Joint Applicants' counsel (including taking detailed notes, making photocopies, or taking pictures). If a statutory advocate determines that it is necessary to use CONFIDENTIAL SECURITY INFORMATION as part of their presentation of evidence in this proceeding, such statutory advocate shall request a copy from counsel for the Joint Applicants, which permission shall not be unreasonably withheld and subject to that party confirming it understands and will abide by the terms of this Protective Order concerning use of such materials.

With regard to I&E, information and materials deemed as "CONFIDENTIAL SECURITY INFORMATION" shall be made available to the I&E Prosecutors subject to the terms of this Protective Order. The I&E Prosecutors shall use or disclose the CONFIDENTIAL SECURITY INFORMATION only for purposes of preparing or presenting evidence, cross examination, argument, or settlement in this proceeding. To the extent required for participation in this proceeding, the I&E Prosecutors may afford access to CONFIDENTIAL SECURITY INFORMATION only to I&E's experts, supervisors of experts, Chief Prosecutor, Deputy Chief prosecutor, and administrative support staff without the need for the execution of a Non-Disclosure Certificate, who are full-time employees of the Commission and bound by all the provisions of this Protective Order by virtue of the I&E Prosecutors' execution of a Non-Disclosure Certificate.

Provided, further, that in accordance with the provisions of Sections 5.362 and 5.365(e) of the Commission's Rules of Practice and Procedure, 52 Pa. Code §§ 5.362, 5.365(e), any party may, by subsequent objection or motion, seek further protection with respect to CONFIDENTIAL

SECURITY INFORMATION, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular parties.

8. Information deemed as “CRITICAL ENERGY INFRASTRUCTURE INFORMATION” may be made available for inspection and review by a “Reviewing Representative” who has signed a Non-Disclosure Certificate attached as Appendix B and who is:

- (a) An attorney who has entered an appearance in this proceeding for a party;
- (b) An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph 8(a); or
- (c) An outside expert or an employee of an outside expert retained by a party for the purposes of advising, preparing for or testifying in this proceeding.

CRITICAL ENERGY INFRASTRUCTURE INFORMATION will only be provided for inspection via in-person review at the offices of Post & Schell, P.C., 17 N. Second Street, 12th Floor, Harrisburg, PA 17101. Such review may be proctored, and the Reviewing Representatives are prohibited from reproducing such information in any form without the prior authorization of the Joint Applicants’ counsel (including taking detailed notes, making photocopies, or taking pictures). This provision does not apply to attorneys, expert witnesses and/or employees of the Joint Applicants or the Joint Respondents that are otherwise authorized to review CEII.

With regard to I&E, information and materials deemed as “CRITICAL ENERGY INFRASTRUCTURE INFORMATION” shall be made available to the I&E Prosecutors subject to the terms of this Protective Order. The I&E Prosecutors shall use or disclose the CRITICAL ENERGY INFRASTRUCTURE INFORMATION only for purposes of preparing or presenting evidence, cross examination, argument, or settlement in this proceeding. To the extent required for participation in this proceeding, the I&E Prosecutors may afford access to CRITICAL ENERGY INFRASTRUCTURE INFORMATION only to I&E’s experts, supervisors of experts,

Chief Prosecutor, Deputy Chief prosecutor, and administrative support staff without the need for the execution of a Non-Disclosure Certificate, who are full-time employees of the Commission and bound by all the provisions of this Protective Order by virtue of the I&E Prosecutors' execution of a Non-Disclosure Certificate.

Reviewing Representatives who gain access to CRITICAL ENERGY INFRASTRUCTURE INFORMATION undertake the obligation to protect the confidentiality of CEII and undertake all other obligations resulting from having access to this confidential information, in accordance with 18 C.F.R. 388.113(h), as well as all other applicable federal and state laws and other legal rules, which are incorporated by reference herein. Any copies of CEII shall also be deemed to be CRITICAL ENERGY INFRASTRUCTURE INFORMATION.

Provided, further, that in accordance with the provisions of Sections 5.362 and 5.365(e) of the Commission's Rules of Practice and Procedure, 52 Pa. Code §§ 5.362, 5.365(e), any party may, by subsequent objection or motion, seek further protection with respect to CRITICAL ENERGY INFRASTRUCTURE INFORMATION, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular parties.

9. For purposes of this Protective Order, a Reviewing Representative may not be a "Restricted Person."

(a) A "Restricted Person" shall mean: (i) an officer, director, stockholder, partner, or owner of any competitor of the parties or an employee of such an entity if the employee's duties involve marketing or pricing of the competitor's products or services; (ii) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of the parties (including any association of competitors of the parties) or an employee of such an entity if the employee's duties involve marketing

or pricing of the competitor's products or services; (iii) an officer, director, stockholder, owner or employee of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; or (iv) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; provided, however, that no expert shall be disqualified on account of being a stockholder, partner, or owner unless that expert's interest in the business would provide a significant motive for violation of the limitations of permissible use of the Proprietary Information. For purposes of this Protective Order, stocks, partnership or other ownership interests valued at more than \$10,000 or constituting more than a 1% interest in a business establishes a significant motive for violation.

(b) If an expert for a party, another member of the expert's firm or the expert's firm generally also serves as an expert for, or as a consultant or advisor to, a Restricted Person, said expert must: (i) identify for the parties each Restricted Person and each expert or consultant; (ii) make reasonable attempts to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a Restricted Person; and (iii) if segregation of such personnel is impractical, the expert shall give to the producing party written assurances that the lack of segregation will in no way jeopardize the interests of the parties or their customers. The parties retain the right to challenge the adequacy of the written assurances that the parties' or their customers' interests will not be

jeopardized. No other persons may have access to the Proprietary Information except as authorized by order of the Commission.

10. In the event that a party wishes to designate as a Reviewing Representative a person not described in Paragraphs 5(a)-(d), 6(a)-(d), 7(a)-(c), or 8(a)-(c) above, or a person that is a Restricted Person under Paragraph 9, the party shall seek agreement from the party providing the Proprietary Information. If an agreement is reached, that person shall be a Reviewing Representative with respect to those information and materials. If no agreement is reached, the party shall submit the disputed designation to the presiding Administrative Law Judges for resolution.

11. A qualified “Reviewing Representative” for “HIGHLY CONFIDENTIAL” information and materials may review and discuss “HIGHLY CONFIDENTIAL” information and materials with their client or with the entity with which they are employed or associated, to the extent that the client or entity is not a “Restricted Person,” but may not share with or permit the client or entity to review the “HIGHLY CONFIDENTIAL” information and materials. Such discussions must be general in nature and not disclose specific “HIGHLY CONFIDENTIAL” information and materials, provided however that counsel for I&E, the Office of Consumer Advocate (“OCA”), and the Office of Small Business Advocate (“OSBA”) may share proprietary information with the I&E Director, Consumer Advocate, Deputy Consumer Advocate, and Small Business Advocate, respectively, without obtaining a Non-Disclosure Certificate from these individuals, provided however, that these individuals otherwise abide by the terms of the Protective Order.

12. Information deemed Proprietary Information shall not be used except as necessary for the conduct of this proceeding, nor shall it be disclosed in any manner to any person except a

Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may not use information contained in any Proprietary Information obtained through this proceeding to give any party or any competitor of any party a commercial advantage.

13. Reviewing Representatives shall execute a Non-Disclosure Certificate in order to obtain access to Proprietary Information and will be subject to the following conditions:

(a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate, provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so, nor do Commission employees assisting I&E as noted above in Paragraphs 5 through 8 above. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Parties asserting confidentiality prior to disclosure of any Proprietary Information to that Reviewing Representative.

(b) Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with the Protective Order.

14. None of the parties waive their right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Proprietary Information.

15. The Parties shall designate data or documents as constituting or containing

Proprietary Information by marking the documents “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – CSI – CONTAINS CONFIDENTIAL SECURITY INFORMATION – DO NOT RELEASE,” or “HIGHLY CONFIDENTIAL – CEII – CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION – DO NOT RELEASE.” Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the parties, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents that constitute or contain Proprietary Information. The Proprietary Information shall be served upon the Parties hereto only and the materials shall be separate from the nonproprietary materials and conspicuously marked “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – CSI – CONTAINS CONFIDENTIAL SECURITY INFORMATION – DO NOT RELEASE,” or “HIGHLY CONFIDENTIAL – CEII – CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION – DO NOT RELEASE.” For filing purposes, Proprietary Information shall be filed separately from the nonproprietary materials and conspicuously marked “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – CSI – CONTAINS CONFIDENTIAL SECURITY INFORMATION – DO NOT RELEASE,” or “HIGHLY CONFIDENTIAL – CEII – CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION – DO NOT RELEASE.”

16. The parties will consider and treat the Proprietary Information as within the exemptions from disclosure provided in Section 335(d) of the Public Utility Code, 66 Pa.C.S. § 335(d), and the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.*, until such time as the information is found to be non-proprietary. In the event that any person or entity seeks to compel

the disclosure of Proprietary Information, the non-producing party shall promptly notify the producing party in order to provide the producing party an opportunity to oppose or limit such disclosure.

17. Any public reference to Proprietary Information by a party or its Reviewing Representatives shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand fully the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

18. Part of any record of this proceeding containing Proprietary Information, including, but not limited to, all exhibits, writings, testimony, cross examination, arguments, and responses to discovery, and including reference thereto as mentioned in Paragraph 15 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties to this proceeding or pursuant to an order of the Commission.

19. The parties shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information and to question or challenge the admissibility of Proprietary Information. If a party challenges the designation of a document or information as proprietary, the party providing the information retains the burden of demonstrating that the designation is appropriate.

20. The parties shall retain the right to question or challenge the admissibility of Proprietary Information; to object to the production of Proprietary Information on any proper ground; and to refuse to produce Proprietary Information pending the adjudication of the objection.

21. Within 30 days after a Commission final order is entered in the above-captioned

proceeding, or in the event of appeals, within 30 days after appeals are finally decided, the parties, upon request, shall either destroy or return to the parties all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In the event that a party elects to destroy all copies of documents and other materials containing Proprietary Information instead of returning the copies of documents and other materials containing Proprietary Information to the parties, the party shall certify in writing to the producing party that the Proprietary Information has been destroyed.

Dated: _____

The Hon. Administrative Law Judge Conrad A. Johnson
The Hon. Administrative Law Judge Emily I. Devoe

APPENDIX A

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	:	A-2023-3040481
	:	A-2023-3040482
	:	A-2023-3040483
	:	G-2023-3040484
	:	G-2023-3040485
	:	G-2023-3040486

**NON-DISCLOSURE CERTIFICATE FOR
CONFIDENTIAL INFORMATION AND MATERIALS**

TO WHOM IT MAY CONCERN:

The undersigned is the _____ of _____ (the retaining party). The undersigned has read and understands the Protective Order and the required treatment of Proprietary Information. The undersigned agrees to be bound by and comply with the terms and conditions of said Protective Order.

SIGNATURE

NAME (Printed)

ADDRESS

EMPLOYER

APPENDIX B

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	:	A-2023-3040481 A-2023-3040482 A-2023-3040483 G-2023-3040484 G-2023-3040485 G-2023-3040486
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**NON-DISCLOSURE CERTIFICATE FOR
HIGHLY CONFIDENTIAL INFORMATION, CONFIDENTIAL SECURITY
INFORMATION, AND CRITICAL ENERGY INFRASTRUCTURE INFORMATION
AND MATERIALS**

TO WHOM IT MAY CONCERN:

The undersigned is the _____ of _____ (the retaining party). The undersigned has read and understands the Protective Order and the required treatment of information and materials designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” “CONFIDENTIAL SECURITY INFORMATION,” or “HIGHLY CONFIDENTIAL – CEII – CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION – DO NOT RELEASE” as defined in the Protective Order. The undersigned agrees to be bound by and comply with the terms and conditions of said Protective Order. The undersigned understands and agrees that, pursuant to Paragraphs 6, 7 and 8, a party providing HIGHLY CONFIDENTIAL information and materials, CONFIDENTIAL SECURITY INFORMATION, or “HIGHLY CONFIDENTIAL – CEII – CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION – DO NOT

RELEASE” may seek further protection, including, but not limited to, total prohibition of disclosure as to particular individuals, even where Appendix B has been executed.

SIGNATURE

NAME (Printed)

ADDRESS

EMPLOYER