

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Metropolitan	:	
Edison Company, Pennsylvania Electric	:	
Company, Pennsylvania Power Company,	:	A-2023-3038771
West Penn Power Company, Keystone	:	A-2023-3038792
Appalachian Transmission Company,	:	A-2023-3038793
Mid-Atlantic Interstate Transmission, LLC,	:	A-2023-3038794
and FirstEnergy Pennsylvania Electric	:	A-2023-3038795
Company for All of the Necessary Authority,	:	A-2023-3038807
Approvals, and Certificates of Public	:	A-2023-3038808
Convenience for (1) the Agreements and Plans of	:	G-2023-3038818
Merger; (2) the Establishment of FirstEnergy	:	G-2023-3038819
Pennsylvania Holding Company LLC as an	:	G-2023-3038820
Intermediate Holding Company in the	:	G-2023-3038821
Chain of Ownership of FirstEnergy Pennsylvania	:	G-00020956
Electric Company; (3) the Merger of Metropolitan	:	
Edison Company, Pennsylvania Electric Company,	:	
Pennsylvania Power Company, and West Penn	:	
Power Company with and into FirstEnergy	:	
Pennsylvania Electric Company; (4) the Initiation	:	
by FirstEnergy Pennsylvania Electric Company of	:	
Electric Service in All Territories in this	:	
Commonwealth where Metropolitan Edison	:	
Company, Pennsylvania Electric Company,	:	
Pennsylvania Power Company, and West Penn	:	
Power Company Do or May Provide Electric	:	
Service; (5) the Abandonment by Metropolitan	:	
Edison Company, Pennsylvania Electric Company,	:	
Pennsylvania Power Company, and West Penn	:	
Power Company of All Electric Service in this	:	
Commonwealth; (6) the Adoption by FirstEnergy	:	
Pennsylvania Electric Company of Metropolitan	:	
Edison Company, Pennsylvania Electric Company,	:	
Pennsylvania Power Company, and West Penn	:	
Power Company's Existing Tariffs and their	:	
Application within New Service and Rate	:	
Districts of FirstEnergy Pennsylvania Electric	:	
Company Corresponding to their Existing Service	:	
Territories as the Met-Ed Rate District, Penelec	:	
Rate District, Penn Power Rate District, West Penn	:	
Rate District, and The Pennsylvania State	:	
University Rate District, Respectively; (7) the	:	

Sale of Class B Membership Interests in :
Mid-Atlantic Interstate Transmission, LLC :
held by Met-Ed and Penelec to FirstEnergy Corp.; :
(8) the Contribution of West Penn Power :
Company's Transmission Assets to Keystone :
Appalachian Transmission Company; (9) a :
Certificate of Public Convenience Conferring Upon :
Keystone Appalachian Transmission Company the :
Status of a Pennsylvania Public Utility; (10) Where :
Necessary, Associated Affiliated Interest :
Agreements; and (11) Any Other Approvals :
Necessary to Complete the Contemplated :
Transaction :

RECOMMENDED DECISION

Before

Conrad A. Johnson
Administrative Law Judge

Emily I. DeVoe
Administrative Law Judge

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I. INTRODUCTION

This decision recommends approving without modification the Joint Petition for Approval of Settlement of All Issues (Joint Petition for Settlement or Settlement) filed by Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), West Penn Power Company (West Penn), Keystone Appalachian Transmission Company (KATCo), Mid-Atlantic Interstate Transmission, LLC (MAIT) and FirstEnergy Pennsylvania Electric Company (FE PA) (collectively, Joint Applicants); the Office of Consumer Advocate (OCA); the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); the Met-Ed Industrial Users Group (MEIUG), Penelec Industrial Customer Alliance (PICA), and West Penn Power Industrial Intervenors (WPPII) (collectively, Industrial Customer Groups); the Industrial Energy Consumers of Pennsylvania (IECPA); and The Pennsylvania State University (PSU) (collectively, Joint Petitioners). This decision also recommends approving the Joint Application filed by the Joint Applicants in this proceeding and deeming as withdrawn OCA's and the Industrial Customer Groups' respective Protests to the Joint Application.

While the Commission's Bureau of Investigation and Enforcement (I&E), the Office of Small Business Advocate (OSBA), Calpine Retail Holdings, LLC (Calpine), and the Retail Energy Supply Association (RESA) entered appearances in these proceedings, they did not join in the Settlement. However, I&E filed a letter stating it was not opposing the Joint Petition for Settlement. OSBA, Calpine and RESA did not file any opposition to the Settlement. Additionally, this decision recommends dismissing OSBA's Protest to the Joint Application.

The Settlement represents a full settlement of all issues and concerns raised in the instant proceeding.

II. HISTORY OF THE PROCEEDINGS

A. The Joint Application

On March 6, 2023, Joint Petitioners filed a Joint Application Seeking all Necessary Approvals and Certificates of Public Convenience for the merger of the FirstEnergy Companies into FirstEnergy Pennsylvania Electric Company (FE PA) 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 (Joint Application). Specifically, The Joint Application requests certain approvals from the Commission associated with: (1) the proposed merger of Met-Ed, Penelec, Penn Power, and West Penn with and into FE PA (Proposed Consolidation); (2) the proposed sale of Class B membership interests in MAIT held by Met-Ed and Penelec to FirstEnergy Corp. (FirstEnergy) (Proposed Sale of MAIT Class B Interests); and (3) the proposed contribution of West Penn's Transmission Assets to KATCo (Proposed Transmission Contribution). These three items are collectively referred to as the Transaction.

The Joint Applicants request that the Commission grant certificates of public convenience pursuant to Section 1102(a)(3) of the Public Utility Code (Code) necessary to authorize the proposed merger Transaction. Applicants also seek all other approvals necessary under the Public Utility Code to carry out the proposed Transaction in a lawful manner. Joint Applicants filed their written direct testimony along with the Application.

As noted in the Application, Met-Ed, Penelec, West Penn, KATCo, Ohio Edison Company, and FirstEnergy Pennsylvania Holding Company (FE Pa HoldCo) are direct subsidiaries of FirstEnergy. Penn Power and FE PA are indirect subsidiaries of FirstEnergy.¹ FirstEnergy is an electric distribution company under the provisions of Section 2803 of the Code, 66 Pa.C.S. § 2803, and many of the administrative functions are under common management and control. Further, Joint Applicants seek to consolidate the existing Pennsylvania retail electric

¹ Application ¶¶ 11, 19, 35, 48, 55, 47, 27, 43.

service tariffs into one combined retail electric service tariff and seek to consolidate the electric generation supplier coordination tariffs into one combined electric generation supplier coordination tariff.²

Pursuant to the merger agreement filed with the Application, Joint Applicants propose that all the electric distribution assets owned by Met-Ed, Penelec, Penn Power, and West Penn will be owned by FE PA, and Met-Ed, Penelec, Penn Power, and West Penn will be dissolved.³ As the surviving company, FE PA seeks: (1) all the service rights and certificates of public convenience of Met-Ed, Penelec, Penn Power, and West Penn; (2) ownership interests in the post-transaction facilities of Met-Ed, Penelec, Penn Power, and West Penn; and (3) five rate districts in Pennsylvania: ME Rate District, PN Rate District, PP Rate District, WP Rate District, and the PSU Rate District, each of which will correspond to the service territories of Met-Ed, Penelec, Penn Power, West Penn, and West Penn's service provided to the Pennsylvania State University, respectively.⁴

The Joint Applicants propose the consolidation of Met-Ed, Penelec, Penn Power, and West Penn with and into FE PA, the sale of Class B membership interests in MAIT held by Met-Ed and Penelec to FirstEnergy Corp., and the contribution of West Penn's Transmission Assets to KATCo.⁵ In order to accomplish this, the Joint Applicants propose an eight step plan: (1) FirstEnergy will form a company called FE PA HoldCo; (2) FE PA HoldCo will form FE PA; (3) FirstEnergy will form Pennsylvania Electric Company LLC, Metropolitan Edison Company LLC, and West Penn Power Company LLC and each of those LLC's issue 100% of their equity to FirstEnergy, the LLCs will then be merged into their respectively named company

² *Id.* ¶¶ 83, 84.

³ *Id.* ¶ 64.

⁴ *Id.* ¶ 75. FE PA will have a sixth rate district, the Waverly Rate District, which lies in New York State. In December 2022, Penelec merged with its subsidiary, The Waverly Electric Light & Power Company, and now serves approximately 4,000 customers in the Waverly, New York vicinity. Joint Applicant's St. No. 1 at 8, fn. 3.

⁵ Application ¶ 4.

with the LLC surviving the merger; (4) Pennsylvania Electric Company LLC and Metropolitan Edison Company LLC will sell their respective Class B membership interests in MAIT to FirstEnergy; (5) West Penn Power Company LLC will exchange its Transmission Assets for shares of KATCo stock, and then sell the stock to FirstEnergy; (6) FirstEnergy and FE PA HoldCo will contribute all of its equity in Pennsylvania Electric Company LLC and Metropolitan Edison Company LLC to FE PA which will merge Pennsylvania Electric Company LLC and Metropolitan Edison Company LLC into FE PA, with FE PA as the surviving corporation; (7) FirstEnergy and FE PA HoldCo will contribute all of its equity in West Penn Power Company LLC to FE PA which will merge West Penn Power Company LLC into FE PA, FE PA as the surviving corporation; and (8) Penn Power will merge into FE PA, with FE PA as the surviving corporation.⁶ FE PA seeks a certificate of public convenience to confer public utility status upon FE PA and authorize it to provide electric distribution service within the service territories of Met-Ed, Penelec, Penn Power and West Penn.⁷ Per the Joint Application, the end result of the transaction will be the separation of FirstEnergy's Pennsylvania distribution assets, which will be owned by FE PA, from FirstEnergy's Pennsylvania transmission assets, which will be owned by KATCo and MAIT.

Upon closing, FE PA will have five rate districts in Pennsylvania: ME Rate District, PN Rate District, PP Rate District, WP Rate District, PSU Rate District, and the, each of which will correspond to Met-Ed, Penelec, Penn Power, West Penn, and West Penn's service provided to The Pennsylvania State University, respectively.⁸ The rate districts created by the proposed merger will continue the current rate structure of Met-Ed, Penelec, Penn Power, and West Penn until a future base rate case filing.⁹ Joint Applicants state that the base rate filings of Met-Ed, Penelec, Penn Power, and West Penn will be consolidated into one base rate filing submitted by FE PA reflective of the consolidated Pennsylvania operations.¹⁰ Joint Applicants

⁶ *Id.* ¶¶ 66-74.

⁷ *Id.* ¶ 141.

⁸ *Id.* ¶ 75.

⁹ *Id.* ¶ 83.

¹⁰ *Id.* ¶ 128.

request that the overall merger be approved by December 2023, so that the merger may close and become effective on January 1, 2024.¹¹

B. Publication of Application and Prehearing Conference Notice

On March 18, 2023, the Commission published notice of the Application, as well as a copy of the Prehearing Conference Notice in the *Pennsylvania Bulletin*.¹² The Prehearing Conference Notice assigned the above-captioned proceeding to the undersigned Administrative Law Judge Conrad A. Johnson (ALJ Johnson) and Administrative Law Judge Emily I. DeVoe (ALJ DeVoe) (the Presiding ALJs), scheduled the prehearing conference for 1:30 pm on April 25, 2023, and set a deadline of April 17, 2023, for all protests and petitions to intervene.

On April 17, 2023, the Joint Applicants filed their Proofs of Publication evidencing that the notice of the Joint Application was published in newspapers of general circulation, including *The Bedford Gazette*, *The Bradford Era*, *The Progress*, *The Erie Times-News*, *The Indiana Gazette*, *The Tribune-Democrat*, *The Lewistown Sentinel*, *The Meadville Tribune*, *The Derrick*, *The News-Herald*, *The Punxsutawney Spirit*, *The Courier Express*, *The Somerset Daily American*, *The Daily Review*, *The Morning Times*, *The Warren Times Observer*, *the Corry Journal*, *The Daily News*, *The Altoona Mirror*, *The Tri-County Independent*, *The Herald*, *The Beaver County Times/Ellwood City Ledger*, *The New Castle News*, *The Record-Argus*, *The Butler Eagle*, *The Center Daily Times*, *The Public Opinion*, *The Tribune-Review*, *The Leader Times*, *The Pittsburgh Post-Gazette*, *The Daily Press*, *The Herald-Standard*, *The Observer Reporter*, *The Express Times*, *The Evening Sun*, *The Lebanon Daily News*, *The York Daily Record*, *The York Dispatch*, *The Gettysburg Times*, *The Patriot News*, *The Reading Eagle*, *The Mercury*, *The Daily Local News*, *The Pocono Record*, and *The Intelligencer*.

¹¹ *Id.* ¶ 1

¹² *See* 53 Pa.B. 1615 (March 18, 2023).

C. Petitions to Intervene, Notices of Appearance and Protests

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

On March 23, 2023, OSBA filed a Notice of Appearance, Protest, and Notice of Intervention. On March 29, 2023, I&E filed its Notice of Appearance. On April 4, 2023, OCA filed a Protest, and on April 5, 2023, IECPA filed a Petition to Intervene.

On April 14, 2023, the Industrial Customer Groups¹³ filed a Joint Petition to Intervene and Protest.

On April 17, 2023, Calpine, RESA, and PSU separately filed Petitions to Intervene.

D. Prehearing Conference

On April 13, 2023, a Prehearing Conference Order was issued. On April 21, 2023, Prehearing Memorandums were filed by the Joint Applicants, OCA, OSBA, I&E, CAUSE-PA, the Industrial Customer Groups, RESA, PSU, Calpine, and IECPA, respectively.

On April 25, 2023, a prehearing conference was held as scheduled. The Joint Applicants, OCA, I&E, OSBA, CAUSE-PA, Industrial Customer Groups, PSU, Calpine, RESA, and IECPA were represented by their respective counsel at the conference. The parties discussed the Petitions to Intervene, discovery rule modifications, and the litigation schedule. There was no objection to the Petitions to Intervene filed by CAUSE-PA, PSU, Calpine, and RESA.

¹³ The Industrial Customer Groups are *ad hoc* associations of energy-intensive customers receiving electric service in the territories of Met-Ed, Penelec, and West Penn. The Industrial Customer Groups' manufacturing processes require significant amounts of electricity. As a result, the Industrial Customer Groups were concerned that the proposed consolidation could have an adverse impact on their production costs. *See* Industrial Customer Groups' Statement in Support at 3.

Accordingly, those Petitions to Intervene were granted. The Petitions to Intervene filed by Industrial Customers Groups and IECPA were granted subject to there not being a duplication of an individual intervening party. Also, all twelve above-captioned dockets were consolidated under Docket Number A-2023-3038771.

E. Hearing Notice, Prehearing Order and Written Testimony

On April 27, 2023, the Commission issued a Hearing Notice, which scheduled an evidentiary hearing for August 10, 2023, and August 11, 2023.

A Prehearing Order was entered on April 28, 2023, which, among other things, confirmed the granting of the Petitions to Intervene, consolidation of the above-captioned cases at Docket No. A-2023-3038771, establishment of the litigation schedule, and modification of the discovery rules.

On June 15, 2023, the Industrial Customer Groups and IECPA (collectively, Industrial Customers), OCA, CAUSE-PA, and PSU served their written direct testimony and exhibits.

Also on June 15, 2023, I&E, OSBA, RESA, and Calpine filed letters stating they would not be serving direct testimony.

On July 14, 2023, the Joint Applicants served their written rebuttal testimony and exhibits.

Also on July 14, 2023, OCA, CAUSE-PA, OSBA, Industrial Customers, PSU, I&E, RESA, and Calpine filed letters stating they would not be serving rebuttal testimony.

On August 1, 2023, OCA, CAUSE-PA, and Industrial Customers served their written surrebuttal testimony. Also on August 1, 2023, the Joint Applicants, I&E, and PSU filed letters stating they would not be serving surrebuttal testimony.

F. Settlement in Principle

On August 8, 2023, the Joint Applicants and the other active parties reached an agreement in principle to settle all issues in this proceeding. Therefore, the Joint Applicants contacted the presiding ALJs and requested that all witnesses be excused from the hearings and that all testimony and exhibits be admitted via stipulation at the evidentiary hearing scheduled for Thursday, August 10, 2023.

Subsequently on August 8, 2023, ALJ Johnson granted the Joint Applicants' request and provided information for the telephonic evidentiary hearing to be held on August 10, 2023.

On August 9, 2023, the Joint Applicants served their written rejoinder testimony and exhibits. The Joint Applicants also filed a Motion for Protective Order. On August 11, 2023, the Presiding ALJs issued an Order Granting Joint Applicants' Unopposed Motion for Protective Order.

G. Evidentiary Hearing

On August 10, 2023, a telephonic evidentiary hearing was held for the purpose of admitting pre-served testimony and exhibits into the record.

The following exhibits and testimonies were admitted into the record:

- Joint Applicants' Statement No. 1 – Direct Testimony of JoAnn M. Savage, with Exhibits JMS-1 through JMS12.
- Joint Applicants' Statement No. 2 – Direct Testimony of Amy S. Patterson, with Exhibits AP-1 through AP 10.
- Joint Applicants' Statement No. 3 – Direct Testimony of Earmle Fatusha, with Exhibits EF-1 through EF-6.

- Joint Applicants’ Statement No. 4 – Direct Testimony of Sally A. Thomas.
- Joint Applicants’ Statement No. 1-R – Rebuttal Testimony of JoAnn Savage, with Exhibits JMS-13 through JMS-15.
- Joint Applicants’ Statement No. 2-R – Rebuttal Testimony of Amy S. Patterson, with Exhibits AP-11A through AP-11C, and AP-12.
- Joint Applicants’ Statement No. 3-R – Rebuttal Testimony of Earmle Fatusha, with Exhibit EF-7.
- Joint Applicants’ Statement No. 1-RJ – Rejoinder Testimony of JoAnn M. Savage.
- Joint Applicants’ Statement No. 3-RJ – Rejoinder Testimony of Earmle Fatusha (public and confidential versions), with Exhibit EF-8 (confidential).
- OCA Statement No. 1. – Direct Testimony of Dr. Sirhan Ogar.
- OCA Statement No. 2 – Direct Testimony of Barbara R. Alexander, with Exhibits BA-1 through BA-3.
- OCA Statement No. 1-SR – Surrebuttal Testimony of Dr. Surhan Ogar.
- OCA Statement No. 2-SR – Surrebuttal Testimony of Barbara R. Alexander.
- CAUSE-PA Statement No. 1 – Direct Testimony of Mitchell Miller Revised, with Appendices A and B.
- CAUSE-PA Statement No. 1-SR – Surrebuttal Testimony of Mitchell Miller.
- IECAP/Industrial Groups’ Statement No. 1 – Direct Testimony of Kathleen Kelly.
- IECAP/Industrial Groups’ Statement No. 1-SR – Surrebuttal Testimony of Kathleen Kelly.
- PSU Statement No. 1 – Direct Testimony of James L. Crist, with Exhibits JC 1.1 and JC 1.2.

The ALJs further directed that any settlement and associated proposed findings of fact, proposed conclusions of law, proposed ordering paragraphs, and statements in support of the Settlement be submitted by August 30, 2023. Following the adjournment of the hearing on August 10, 2023, a Hearing Cancellation Notice was issued cancelling the remaining hearing day scheduled for August 11, 2023.

H. Joint Petition for Settlement

On August 30, 2023, Joint Petitioners filed a Joint Petition for Approval of Settlement of All Issues. There were ten appendices to the Settlement: (1) a *pro forma* tariff supplement (Appendix A); (2) proposed findings of Fact (Appendix B); (3) proposed conclusions of law (Appendix C); (4) proposed ordering paragraphs (Appendix D); (5) Joint Applicants' Statement in Support (Appendix E); (6) OCA's Statement in Support (Appendix F); (7) CAUSE-PA's Statement in Support (Appendix G); (8) Industrial Customer Groups' Statement in Support (Appendix H); (9) IECPA's Statement in Support (Appendix I); and (10) PSU's Statement in Support (Appendix J).

On August 30, 2023, I&E filed a letter stating it did not oppose the Joint Petition for Settlement (I&E's Non-Opposition Letter dated August 30, 2023).

I. Joint Applicants' Post-Settlement Filing

On September 28, 2023, Joint Applicants filed a letter with the Commission's Secretary's Bureau clarifying the corporate names of the entities resulting from the proposed Transaction (Joint Applicants' Clarification Letter dated September 28, 2023). The clarifying letter states as follows:

After the Settlement was filed, Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power"), West Penn Power Company ("West Penn"), Keystone Appalachian Transmission Company ("KATCo"), Mid-Atlantic Interstate Transmission, LLC ("MAIT"), and FirstEnergy Pennsylvania Electric Company ("FE PA") (collectively, "Joint Applicants") discovered that the names of the "Merger LLCs" (i.e., Pennsylvania Electric Company LLC, Metropolitan Edison Company LLC, and West Penn Power Company LLC) would need to be changed because the entities' names cannot exactly mirror the existing names of Penelec, Met-Ed, and West Penn

As set forth in Proposed Finding of Fact No. 18, the “Merger LLCs are being formed for the purpose of effectuating certain steps of the Transaction – specifically, the transfer of the MAIT Class B membership interests and the West Penn transmission assets.” Ultimately, as explained in Proposed Findings of Fact Nos. 25 and 26, the Merger LLCs will be merged with and into FE PA, with FE PA as the surviving entity.

The Joint Applicants respectfully submit this letter clarifying that the names of the Merger LLCs will be Pennsylvania Electric Company Merger Sub LLC, Metropolitan Edison Company Merger Sub LLC, and West Penn Power Merger Sub LLC, instead of Pennsylvania Electric Company LLC, Metropolitan Edison Company, LLC, and West Penn Power Company, LLC, respectively. Therefore, any references in the evidentiary record or the Settlement to the prior names of the Merger LLCs should be replaced with these new names accordingly.

In addition, the Joint Application included the following forms of Affiliated Interest Agreements that contain the prior names of the Merger LLCs: Joint Applicants Exhibits EF-2(a), EF-2(b), EF-2(c), EF-2(d), EF-3, EF-4, and AP-7. The final forms of these Affiliated Interest Agreements will contain the new names of the Merger LLCs. The Joint Applicants will file the final versions of these Affiliated Interest Agreements at this docket after the Agreements are executed.

Finally, before filing this letter, the Joint Applicants shared a copy of the letter with the other parties in this proceeding. The Joint Applicants are authorized to represent that the other parties have no objections to this letter clarifying the Merger LLCs’ names.

Copies of this filing will be provided as indicated on the [attached] Certificate of Service.

Joint Applicants’ Clarification Letter dated September 28, 2023.

J. Interim Order Closing the Record

By Interim Order entered October 18, 2023, the Joint Petitioner’s Joint Petition for Approval of Settlement of All Issues with Appendices filed on August 30, 2023, I&E’s Non-

Opposition Letter dated August 30, 2023, and the Joint Applicants' Clarification Letter dated September 28, 2023, were admitted into the record, the record was closed.

The record in this proceeding consists of the transcripts of the prehearing conference and evidentiary hearing; the parties' written testimonies and exhibits; orders issued herein; the Joint Petition for Settlement with Appendices; I&E's Non-Opposition Letter dated August 30, 2023; and the Joint Applicants' Clarification Letter dated September 28, 2023.

This Recommended Decision recommends the Settlement be adopted without modification as it is in the public interest and there are no objections thereto.

III. DESCRIPTION AND TERMS OF SETTLEMENT

In accordance with Rule 5.231 of the Commission's Rules of Practice and Procedure, 52 Pa. Code § 5.231, the parties explored the possibility of settlement. As a result of settlement discussions, the parties achieved a settlement in principle under which all issues are resolved. The Settlement, which is fully executed by the Joint Applicants, OCA, CAUSE-PA, the Industrial Customer Groups, IECPA, and PSU, consists of 23 pages.

The essential terms of Settlement are as follows.¹⁴

A. General

30. The following terms of this Settlement reflect a carefully balanced compromise of the Joint Petitioners' positions on various issues. The Joint Petitioners agree that the Settlement is in the public interest.

31. The Joint Petitioners agree that the Joint Application should be approved, including those tariff changes included in and

¹⁴ For ease of reference, the essential terms of the Settlement, including footnotes, have been adopted verbatim and using the same paragraph numbering as found in the original. Although no substantive modifications were made, the formatting, including footnote numbers, may have been slightly modified consistent with the formatting and footnote numbering found within this recommended decision.

specifically identified in **Appendix A**, subject to the terms and conditions of this Settlement that are specified below.

B. Rates

32. In line with the concept of gradualism, the Joint Applicants will not propose to reach full base distribution rate unification of all classes until the conclusion of three rate cases, filed on or after January 1, 2025, or a period of ten years from the date of the Commission's approval of the Transaction, whichever occurs first, except that any newly introduced base distribution rate, for which no customers are currently receiving service and on which any customers eligible to take service on this newly introduced rate would voluntarily enroll, can be charged as one FE PA uniform rate (*e.g.*, new EV or lighting rates), as approved by the Commission in any subsequent rate case. FE PA is not precluded from proposing unification of any of its tariff rules and regulations of service and associated fees prior to January 1, 2025.

33. The Joint Applicants commit to filing four cost of service models, one for each Rate District with PSU as part of the West Penn Rate District, as well as a consolidated FE PA cost of service model, in the next rate case after the Proposed Consolidation is approved, and in each of the subsequent rate cases until full rate consolidation is achieved.

34. The Joint Applicants agree to track savings in operating expenses achieved as a result of the proposed Transaction attributable to Met-Ed, Penelec, Penn Power, and West Penn (collectively, "Pennsylvania OpCos"), related to the categories listed in 34(a) through (e) below. These savings will be placed into a regulatory liability account to be flowed back to ratepayers in each next applicable base rate case for five years following entry of a final Commission order on this Settlement. Any savings remaining at the conclusion of the five-year period will be flowed back at the first available rate proceeding. FE PA will include as part of each base rate case filing during this period incremental and cumulative data quantifying the financial benefits provided to ratepayers as a result of the consolidation related to the following categories of savings:

- a. Cost of debt savings associated with any new financings by FE PA or refinancing of the Pennsylvania OpCos' existing debt as assumed by FE PA, using an

assumption of a five basis point savings for each such financing/refinancing;

b. Reduced contractor reliance in support of non-extraordinary storm restoration events that are not otherwise reflected as real-time savings in the Pennsylvania OpCos' storm reserve accounts;

c. Efficiencies gained due to consolidation of the Pennsylvania OpCos' substation planning and scheduling operations;

d. Reduced contractor reliance due to increasing the ability to share resources across territorial boundaries as union contracts permit; and

e. Any pre-existing financial or regulatory reports that can be consolidated or streamlined, as such takes place.

35. With respect to the amounts that will be tracked and recorded to a regulatory account as set forth in Paragraph 34, all parties reserve the right to raise all arguments with respect to the determination of any savings, the attribution of any savings to the former Pennsylvania OpCos, and whether any or all of the amounts to be determined should be flowed through to ratepayers in each base rate case that occurs over the period contemplated by Paragraph 34.

36. It is the intent of all parties to this Settlement that no customer group in any FE PA Rate District should be extraordinarily disadvantaged or harmed in the event of a rate unification and that such rate unification should adhere to the principle of gradualism.

37. To the extent FE PA seeks to include in distribution rates the revenue requirement related to any underlying land, or a proportional share of underlying land, that is subject to the Ground Lease, FE PA agrees that any Ground Lease revenues associated with that underlying land, or proportional share of the underlying land, will also be included as a component of its distribution revenue in the future FE PA distribution rate proceedings before the Commission where such revenue requirements are claimed.

38. KATCo will file an annual report with the Commission on May 1 of each year for five years after the contribution of the transmission assets from West Penn to KATCo has been completed that identifies the calculation of the Ground Lease payments.

The Joint Applicants agree to maintain a list on the FE PA website of the historical rate schedules for each of the Rate Districts on a rolling five-year basis, including zonal and system scaling factors for the industrial classes, by Rate District, applicable during each rate term.

C. Low-Income Programs

39. The staffing levels of FE PA’s Universal Service Program(s) will not be reduced as a result of the Transaction for the duration of its pending Universal Service and Energy Conservation Plan (“USECP”), from 2024 through 2028, at Docket Nos. M-2022-3036532, *et al.* Staffing levels will be maintained, notwithstanding retirements and voluntary separations.

40. As of the date of the final Order in this matter, and until a modification is agreed by all interested parties, the Joint Petitioners commit that FE PA will host its Universal Service Advisory Committee (“USAC”) on a quarterly basis through each calendar year for the purpose of presenting any proposed changes or amendments to program design or administration prior to advancing a formal proposal or otherwise implementing such changes, and discussing issues and questions that may be occurring in the communities it serves related to Consolidation or its Universal Service Program(s).

41. FE PA commits to share program data with USAC members in advance of each USAC meeting to help facilitate informed discussions. Data will include program participant data, spending levels (including but not limited to current spending levels and remaining funding of hardships grants), and other relevant program metrics as agreed upon by the parties for each USECP (including number of new enrollees in USECPs, number of new customers who were removed from the Pennsylvania Customer Assistance Program (“PCAP”) and the reason for removal, new outreach activities and efforts by FE PA, the number of PCAP participants who have reached 90% and 100% of their maximum CAP credit limits).

42. While USAC meetings are intended to provide a platform for open dialogue and feedback regarding programming, the parties agree that the meetings are not a forum where USECP cost allocation to other customer classes will be deliberated.

43. In an effort to increase the diversity and range of community voices in the USAC, FE PA will recruit additional members to its USAC from groups such as local housing providers, food assistance providers, weatherization and home repair providers, community health clinics, domestic violence agencies, immigrant and refugee resettlement organizations, and other local community-based organizations serving low-income individuals and communities within the FE PA service territory.

44. The Joint Applicants are committed to making the transfer of a PCAP enrollment status as seamless as possible for PCAP enrollees who move from one Rate District to another. There are currently system limitations that prevent FE PA from automatically moving customers into and out of different Rate District across the service territory. The Joint Applicants commit to conducting further analysis of possible options for providing this optionality across the entire Pennsylvania footprint. The Joint Applicants will provide an update to its USAC as a standing agenda item until such time as FE PA reaches full implementation of the ability to provide seamless transition of enrollment for PCAP enrollees who move from one Rate District to another.

45. The Joint Applicants agree to make contributions of \$150,000 annually to the Hardship Fund of FE PA, incremental to the current “matching contribution,” for a period of three years after Commission approval of the Transaction. The Joint Applicants additionally agree to make contributions of \$100,000 annually to the Hardship Fund of FE PA, incremental to the current “matching contribution,” for the following two years. Any unspent funding from the annual contributions will be rolled over to be used for Hardship funding for the subsequent program year. These will be shareholder contributions and not recovered from ratepayers.

46. Subject to the provisions of any implementation orders or other direction issued by the Commission, at such time that the Pennsylvania Department of Human Services notifies the Low-Income Home Energy Assistance Program (“LIHEAP”) Advisory Committee that it is ready to share LIHEAP participant income data with utilities, currently anticipated to begin in Fall 2024, FE PA will implement required modifications to its Information Technology (“IT”) system and processes, within a reasonable time frame not to exceed one year, to automatically recertify an existing PCAP participant’s income and eligibility. Until such time as IT system and process changes are made, the Company will use best efforts to implement manual processing to recertify LIHEAP recipients for PCAP purposes as soon as practicable. All related costs to modify

IT systems and processes shall be eligible for timely recovery, including any related interim costs related to manual processing. All LIHEAP recipients identified in the data exchange will be deemed by FE PA as confirmed low-income customers and will be eligible for winter shutoff protections. FE PA commits to conducting outreach to all LIHEAP recipients identified in the data exchange that are not current PCAP participants to encourage enrollment in the program.

D. Operations And Customer Service

47. The Joint Applicants shall not withdraw transmission facilities from the operational control of PJM Interconnection, LLC (“PJM”) unless KATCo has first applied for, and obtained, authorization by order of the Commission.

48. FE PA will commit to the following related to its call center operations:

a. Maintaining the location of a Pennsylvania call center for a period of five years;

b. If, subject to the commitment reflected in Paragraph 49(a), *supra*, future business circumstances support a change in contact center location or construct, FE PA will take steps to ensure that a Pennsylvania-focused presence and awareness is represented within its contact center operations through means including targeted recruiting efforts for Pennsylvania-based representatives, inclusion of a Pennsylvania-focused refresher training module to be provided to all representatives taking calls from FE PA customers, and advance notice and discussion with the parties to this settlement of FE PA’s plans to eliminate and otherwise provide for the services enjoyed by the Joint Applicants’ customers by the Reading, Pennsylvania contact center;

c. Maintaining the services offered to residential customers by its call centers as of July 2023 for a period of 5 years. The services are as follows:

i. Support during outages – Log power out reports from customers, provide updates to customers on estimated time of restoration for outages, log reports from customers of downed powerlines and equipment, etc.;

- ii. Planning for a move – Assist customers before, during and after the move process (start / stop / transfer of service);
 - iii. Submit service requests for tree problems, lighting problems, and electrical work;
 - iv. Answer billing questions – Questions pertaining to high bills, high usage, and bills based on estimated meter readings rather than actual readings;
 - v. Take payments and answer payment questions – Offer payment plans/arrangements to customers in need of extra time to pay their electricity bills;
 - vi. Provide information on all Universal Service Programs and assistance from other community-based organizations;
 - vii. Provide information on ways to save energy – Information on energy audits, energy efficiency programs, etc.;
 - viii. Provide information on products and services – Information on electrical work, tree trimming, electric vehicle charging installation, outdoor lighting, surge assistance, etc.;
- d. Maintaining minimum hours that call centers are available to customers of Monday through Friday, 8:00 AM to 6:00 PM; and
- e. Maintaining the use of IVR systems during business and nonbusiness hours as in place as of July 2023.¹⁵

49. FE PA shall conduct a monthly review of customer disputes, complaints, and the Commission’s Bureau of Consumer Services compliance findings to identify and respond to root cause(s) based

¹⁵ Changes in this settlement related to call center hours/day of operation and use of Interactive Voice Response (IVR) systems shall not be construed to alter the changes and/or enhancements to call center operations set forth in the Joint Settlement approved at Docket Nos. P-2019-3013979, *et al.* See *Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co., and West Penn Power Co. for Approval of their Involuntary Remote Disconnect Procedures*, Docket Nos. P-2019-3013979, *et al.* (Final Order entered July 3, 2023).

on patterns and practices reflected in these indicia of customer dissatisfaction to ensure high level performance for its customers. The review will identify trends and areas for performance improvement and will be reported out to management. The monthly reports and management response will be shared at each quarterly meeting with the USAC.

50. FE PA commits to maintaining its customer service performance for customer call center, reliability of service, billing, meter reading, and response to customer complaints and disputes at levels consistent with the Pennsylvania OpCos' five-year historical average as reported to the Commission. To the extent that FE PA's performance does not meet this level, FE PA agrees to meet with the parties as requested to discuss those areas of challenge and its plans to improve service levels.

E. The Pennsylvania State University (University Park Campus)

51. The Joint Applicants accept the tariff modifications proposed by James Crist in his Direct Testimony on behalf of PSU dated on June 15, 2023. Such tariff modifications are incorporated in the *pro forma* tariff supplement included with **Appendix A** and will be incorporated in the compliance tariff filings in this proceeding.

52. The Joint Applicants commit to maintaining a separate Rate District and base distribution rates for PSU.

F. Additional Provisions

53. The Joint Applicants reaffirm that they will not seek recovery of any transaction and transition costs related to PA Consolidation from distribution or transmission rates.

Transition costs are defined as those costs necessary to integrate assets into a single utility before and after the transaction is approved. Such costs include reporting, accounting and rates, including IT costs, internal labor, and any outside consulting costs. Transaction-related costs are all costs, including internal labor and other than labor costs, beginning with costs incurred to discuss, gather information

and investigate the feasibility of the proposed Transaction and continuing through the completion of the Transaction.

b. Transition costs will be treated in the same manner as transaction-related costs and tracked through work orders to be recorded to FERC Account 426.5 – Other deductions.

54. FE PA will hold collaborative meetings in advance of filings for modifications to the Joint Applicants’ regulatory-required plans or its next scheduled plan filings, to include Default Service Plan, USECP, Energy Efficiency and Conservation Plan, Long-Term Infrastructure Improvement Plan and, in the event that PJM implements a seasonal capacity construct, any filings related to revisions to the Joint Applicants’ recovery methodology concerning those capacity market changes. The collaborative meetings will be used to discuss the consolidation’s impact on each of the respective filings and FE PA’s plans to unify such programs moving forward.

55. The Joint Applicants commit to initiate twice-yearly meetings with the Industrial User Groups (“IUGs”), including IECPA and the Industrial Customer Groups, to discuss topics of interest, including general reliability, calculation of individual customer peak load contributions, and rate overviews. As part of these meetings, IUG members will be able to provide advance notice of topics of interest for addition to the agenda, which may include individual reliability and/or power quality concerns that will be investigated and addressed as breakout topics with those specific customers, including root cause analysis and options for corrective action.

56. All prior settlements entered into by the Joint Applicants will survive any approved consolidation or merger and will be enforceable against FE PA to the extent applicable.^[16]

Notably, the Settlement sets forth customary provisions that the Settlement is made without prejudice to each party’s litigation position, that it is conditioned upon the Commission’s approval without modification, that the parties agree to waive the filing of exceptions, if the Commission approves the Settlement without modification, that if the Commission fails to grant approval or modifies any material term or condition of the Settlement,

¹⁶ Settlement ¶¶ 30-57.

any party may elect to withdraw from the Settlement upon written notice to the Commission and the other parties within five business days and the Settlement will be of no force and effect. Additionally, attached to the Settlement as **Appendices E through J** are the Joint Petitioners' respective Statements in Support which submit that the Settlement is in the public interest.¹⁷

IV. FINDINGS OF FACT¹⁸

1. Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”), and West Penn Power Company (“West Penn”) (collectively, “Pennsylvania OpCos”) are corporations organized and existing under the laws of the Commonwealth of Pennsylvania. Joint Applicants St. No. 1 at 7.

2. Each of the Pennsylvania OpCos is a “public utility” as defined in Section 102 of the Pennsylvania Public Utility Code (“Code”), 66 Pa.C.S. § 102. Joint Applicants St. No. 1 at 7.

3. The Pennsylvania OpCos are also “electric distribution companies” and “default service providers” as defined in Section 2803 of the Code, 66 Pa.C.S. § 2803. Joint Applicants St. No. 1 at 7.

4. Met-Ed provides service to more than 587,000 electric utility customers within 3,300 square miles of eastern and southeastern Pennsylvania. Met-Ed has a summer peak load of about 3,021 megawatts (“MW”), with about two-thirds of that load attributable to residential and small commercial customers. Joint Applicants St. No. 1 at 8.

5. Penelec provides service to more than 588,000 electric utility customers within 17,600 square miles in northern and central Pennsylvania and western New York.

¹⁷ Settlement ¶ 59.

¹⁸ For ease of reference, the Findings of Fact, including footnotes, have been adopted verbatim and using the same paragraph numbering as found in the original. Although no substantive modifications were made, the formatting, including footnote numbers, may have been slightly modified consistent with the formatting and footnote numbering found within this recommended decision.

Penelec has a summer peak load of about 2,838 MW, with about two-thirds of that load attributable to residential and small commercial customers. Joint Applicants St. No. 1 at 8.

6. The transmission facilities located within the Met-Ed and Penelec service territories are owned by Mid-Atlantic Interstate Transmission, LLC (“MAIT”) and are under the functional control of the PJM Interconnection, LLC (“PJM”) as the regional transmission organization (“RTO”). Joint Applicants St. No. 1 at 8.

7. The Commission previously approved MAIT’s acquisition of Met-Ed’s and Penelec’s transmission facilities and issued MAIT a certificate of public convenience, evidencing its status as a public utility.¹⁹ Joint Applicants St. No. 1 at 8.

8. Penn Power provides service to about 171,000 electric utility customers within 1,100 square miles in western Pennsylvania. Penn Power has a summer peak load of about 944 MW, with about three-quarters of that load attributable to residential and small commercial customers. Joint Applicants St. No. 1 at 9.

9. Penn Power is a direct subsidiary of Ohio Edison Company (“Ohio Edison”), which is a direct subsidiary of FirstEnergy, and both of which are wholly-owned subsidiaries of FirstEnergy. Joint Applicants St. No. 1 at 7.

10. The transmission facilities located within the Penn Power service territory are owned by American Transmission Systems Incorporated (“ATSI”) and are under the functional control of PJM as the RTO. The Commission previously approved ATSI’s acquisition

¹⁹ *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) (MAIT Order).*

of Penn Power's transmission facilities and issued ATSI a certificate of public convenience, evidencing its status as a public utility.²⁰ Joint Applicants St. No. 1 at 9.

11. West Penn provides transmission and distribution service to about 737,000 electric utility customers within 10,400 square miles in central and southwestern Pennsylvania. West Penn has a summer peak load of about 3,827 MW, with about two-thirds of that load attributable to residential and small commercial customers. Joint Applicants St. No. 1 at 9.

12. While West Penn currently owns its transmission facilities, those facilities will be contributed to Keystone Appalachian Transmission Company ("KATCo"), a subsidiary of FirstEnergy Corp. ("FirstEnergy") that was set up in anticipation of the contribution of the West Penn Transmission Assets to a separate entity. Joint Applicants St. No. 1 at 8, 10.

13. On March 6, 2023, the above captioned proceedings were initiated when Met-Ed, Penelec, Penn Power, West Penn, KATCo, MAIT, and FirstEnergy Pennsylvania Electric Company ("FE PA") filed the "Joint Application of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company, Keystone Appalachian Transmission Company, Mid-Atlantic Interstate Transmission, LLC, and FirstEnergy Pennsylvania Electric Company for All of the Necessary Authority, Approvals, and Certificates of Public Convenience for (1) the Agreements and Plans of Merger; (2) the Establishment of FirstEnergy Pennsylvania Holding Company LLC as an Intermediate Holding Company in the Chain of Ownership of FirstEnergy Pennsylvania Electric Company; (3) the Merger of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company with and into FirstEnergy Pennsylvania Electric Company; (4) the Initiation by FirstEnergy Pennsylvania Electric Company of Electric Service in All Territories in this Commonwealth where Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company Do or May Provide Electric Service; (5) the Abandonment by Metropolitan Edison Company, Pennsylvania

²⁰ *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 (July 14, 2000) (ATSI Order).

Electric Company, Pennsylvania Power Company, and West Penn Power Company of All Electric Service in this Commonwealth; (6) the Adoption by FirstEnergy Pennsylvania Electric Company of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company’s Existing Tariffs and their Application within New Service and Rate Districts of FirstEnergy Pennsylvania Electric Company Corresponding to their Existing Service Territories as the Met-Ed Rate District, Penelec Rate District, Penn Power Rate District, West Penn Rate District, and The Pennsylvania State University Rate District, Respectively; (7) the sale of Class B Membership Interests in Mid-Atlantic Interstate Transmission, LLC held by Met-Ed and Penelec to FirstEnergy Corp.; (8) the Contribution of West Penn Power Company’s Transmission Assets to Keystone Appalachian Transmission Company; (9) a Certificate of Public Convenience Conferring Upon Keystone Appalachian Transmission Company the Status of a Pennsylvania Public Utility; (10) Where Necessary, Associated Affiliated Interest Agreements; and (11) Any Other Approvals Necessary to Complete the Contemplated Transaction” 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 “Joint Application”).

14. The Joint Application requests Commission approval of: (1) the merger of Met-Ed, Penelec, Penn Power, and West Penn, FirstEnergy’s wholly-owned and commonly managed and operated Pennsylvania utility subsidiaries, into one legal entity, FE PA, which will be a wholly-owned subsidiary of a new intermediate holding company, FirstEnergy Pennsylvania Holding Company LLC (“Proposed Consolidation”)²¹; (2) FirstEnergy’s purchase of Class B interests in MAIT from Met-Ed and Penelec (“Proposed Sale of MAIT Class B Interests”); and (3) the contribution of West Penn’s Transmission Assets to KATCo (“Proposed Transmission Contribution”) (collectively, “Transaction”). Joint Applicants St. No. 1 at 5.

²¹ As noted below and explained in greater detail in the testimony of Mr. Ermal Fatusha (Joint Applicants Statement No. 3), before the Pennsylvania OpCos are merged with and into FE PA, FirstEnergy will first form three transitory limited liability companies (i.e., “Penelec LLC,” “Met-Ed LLC,” and “West Penn LLC”). Each of Met-Ed, Penelec, and West Penn will be merged with and into the associated limited liability company as a part of this initial step.

15. In the first step of the Transaction, FirstEnergy formed a new, wholly owned Delaware limited liability company called FirstEnergy Pennsylvania Holding Company LLC (“FE 5 PA HoldCo”) consistent with Delaware state laws. Joint Applicants St. No. 3 at 5.

16. In the second step of the Transaction, FirstEnergy formed FE PA consistent with Pennsylvania state laws. FE PA will be a wholly owned subsidiary of FE PA HoldCo, which itself will function as an intermediate holding company. Joint Applicants St. No. 3 at 5.

17. In the third step of the Transaction, FirstEnergy will form, not later than the date of closing, three new wholly-owned Pennsylvania limited liability companies: Pennsylvania Electric Company LLC (“Penelec LLC”); Metropolitan Edison Company LLC (“Met-Ed LLC”); and West Penn Power Company LLC (“West Penn LLC”) (each, a “Merger LLC” and collectively, the “Merger LLCs”), each consistent with the applicable laws of Pennsylvania. Joint Applicants St. No. 3 at 5.

18. The Merger LLCs are being formed for the purpose of effectuating certain steps of the Transaction – specifically, the transfer of the MAIT Class B membership interests and the West Penn transmission assets. Joint Applicants St. No. 3 at 5.

19. Immediately following formation of the Merger LLCs, each of the Merger LLCs will merge with and into its respectively named operating utility, with the Merger LLC surviving. Joint Applicants St. No. 3 at 5.

20. Each surviving Merger LLC will be the successor, by operation of law, to all rights, assets, liabilities and obligations of the corresponding operating utility company, and no separate assignments or transfers of rights, assets, liabilities, or obligations will be required. Joint Applicants St. No. 3 at 5-6.

21. In the fourth step of the Transaction, Penelec LLC and Met-Ed LLC will sell their respective Class B membership interests in MAIT to FirstEnergy in exchange for cash. Joint Applicants St. No. 3 at 6.

22. In the fifth step of the Transaction, West Penn LLC will contribute its transmission assets to KATCo in exchange for shares of KATCo stock. Joint Applicants St. No. 3 at 6.

23. Immediately following the contribution of assets, West Penn LLC will sell to FirstEnergy all of its shares of KATCo stock in exchange for cash. Joint Applicants St. No. 3 at 6.

24. The cash consideration in this step will be equal to the value of the newly-issued KATCo shares. Joint Applicants St. No. 3 at 6.

25. In the sixth step of the Transaction, FirstEnergy and FE PA HoldCo will contribute all of the equity of both Penelec LLC and Met-Ed LLC to FE PA and, thereafter, each of Penelec LLC and Met-Ed LLC will merge with and into FE PA, with FE PA as the surviving entity. Joint Applicants St. No. 3 at 6.

26. In the seventh step of the Transaction, FirstEnergy and FE PA HoldCo will contribute all the equity of West Penn LLC to FE PA and, shortly thereafter, West Penn LLC will merge with and into FE PA with FE PA as the surviving corporation. Joint Applicants St. No. 3 at 8.

27. In the eighth and final step of the Transaction, Penn Power (which is a wholly owned subsidiary of Ohio Edison) will merge with and into FE PA, with FE PA as the surviving entity. Joint Applicants St. No. 3 at 9.

28. As consideration for this merger, Ohio Edison will receive cash from FE PA in an amount equal to the net book value of Penn Power at the time of the transaction. Joint Applicants St. No. 3 at 9.

29. FE PA will assume all the rights, assets, liabilities and obligations of Penn Power and no separate assignments or transfers of rights, assets, liabilities or obligations will be required. Joint Applicants St. No. 3 at 9.

30. The merger will be accomplished by executing an Agreement and Plan of Merger signed by these entities and will become effective upon the filing of a statement of merger with the Pennsylvania Secretary of State. Joint Applicants St. No. 3 at 9.

31. Upon the Transaction's closing, FE PA will own all of the Pennsylvania OpCos' electric distribution assets, the Pennsylvania OpCos will be dissolved, and KATCo will own all of West Penn's Transmission Assets. Joint Applicants St. No. 1 at 5; Joint Applicants St. No. 3 at 9.

32. In their testimony, the Joint Applicants asserted that the proposed Transaction will produce substantial affirmative public benefits upon closing and additional benefits in the future, including, but not limited to, financing benefits, regulatory and administrative efficiency benefits, improved service quality benefits, and potential for increased investment. Joint Applicants St. No. 1 at 31-41; Joint Applicants St. No. 2 at 14-16; Joint Applicants St. No. 3 at 15-18; Joint Applicants St. No. 4 at 10-11.

33. The Joint Applicants averred that these benefits will result from combining the four commonly-owned Pennsylvania OpCos into a single EDC that will be more efficient in its operations and have a greater access to capital markets. Joint Applicants St. No. 1 at 31-41; Joint Applicants St. No. 2 at 14-16; Joint Applicants St. No. 3 at 15-18; Joint Applicants St. No. 4 at 10-11.

34. The Joint Applicants claimed that the proposed Transaction's financing benefits will result from interest expense savings on the issuance of new long-term debt, including any refinancing of existing debt. Joint Applicants St. No. 1 at 34; Joint Applicants St. No. 3 at 16.

35. The Joint Applicants stated that hypothetical scenarios can be used to demonstrate the expected type of benefit that the Companies anticipate could be realized by virtue of their improved access to capital on a consolidated basis. Joint Applicants St. No. 3R at 10.

36. As an example, the Joint Applicants asserted that for every 10 basis points (or 0.1%) reduction in the coupon, or interest rate, of a new \$500 million debt offering under more favorable terms, annual interest expense would be reduced by \$500,000. Joint Applicants St. No. 3R at 10.

37. For a range of reference, the Pennsylvania OpCos currently have \$4.2 billion of outstanding debt. Joint Applicants St. No. 3R at 10.

38. FE PA also will become a Securities and Exchange Commission (“SEC”) registrant, which the Joint Applicants asserted will enable FE PA to have greater access to capital markets. Joint Applicants St. No. 1 at 34; Joint Applicants St. No. 3 at 16.

39. The Joint Applicants argued that this benefit will later be reflected in a lower cost of debt in base rates for FE PA. Joint Applicants St. No. 1 at 34; Joint Applicants St. No. 3 at 16-17.

40. As for regulatory and administrative efficiencies, the Joint Applicants asserted that the Proposed Consolidation will reduce the number of filings and reports currently required to be submitted by each Pennsylvania OpCo and will allow the submission of a single company filing by FE PA. Joint Applicants St. No. 1 at 34; Joint Applicants St. No. 2 at 15; Joint Applicants St. No. 1R at 6-7.

41. Additionally, the Joint Applicants stated that certain business tasks, currently performed in duplicative manners by the current Pennsylvania OpCos, would be consolidated and performed by a single company post-merger. Joint Applicants St. No. 1 at 34.

42. Moreover, the Joint Applicants contended that there will be several benefits from the Proposed Sale of MAIT Class B Interests and the Proposed Transmission Contribution. Joint Applicants St. No. 1 at 36-40; Joint Applicants St. No. 3 at 17; Joint Applicants St. No. 3R at 3-4.

43. The Joint Applicants stated that the capital received from the sale of the passive Class B membership interests in MAIT to FirstEnergy Corp. will be used with the goal of strengthening Met-Ed's and Penelec's credit profiles, balance sheets, and funding their capital expenditures. Joint Applicants St. No. 3 at 17.

44. Meanwhile, the Joint Applicants averred that the Proposed Transmission Contribution will principally result in increased transparency with respect to West Penn's distribution and transmission businesses and will further streamline the Pennsylvania OpCos' consolidation of electric distribution assets by separating West Penn's Transmission Assets. Joint Applicants St. No. 1 at 37; Joint Applicants St. No. 3R at 4.

45. The Joint Applicants asserted that investors perceive the transmission-only and distribution-only models as having clear investment purposes which should benefit each Company long-term, respectively. Joint Applicants St. No. 3 at 17.

46. The Proposed Transmission Contribution will align the structure of West Penn's transmission facilities with the structure of the other Pennsylvania OpCos, as the Commission previously authorized MAIT's acquisition of Met-Ed's transmission facilities and ATSI's acquisition of Penn Power's transmission facilities. Joint Applicants St. No. 1 at 37.

47. From a transmission perspective, the Joint Applicants argued that the consolidation of Transmission Assets within KATCo will allow interested parties to easily review the annual updates to the transmission revenue requirement because that review can be focused on a single entity that owns only transmission assets. Joint Applicants St. No. 1 at 37.

48. The Joint Applicants claimed that this increased clarity and transparency will also help attract capital because the added transparency investors favor in a transmission-only model will have no retail customers and receive its revenue from PJM.²² Joint Applicants St. No. 1 at 37; Joint Applicants St. No. 3 at 17-18.

49. The Joint Applicants also asserted that the proposed Transaction will provide the benefit of creating a corporate separation of the transmission business, in addition to the functional separation that exists today. Joint Applicants St. No. 1 at 37.

50. The Office of Consumer Advocate (“OCA”), Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), and Met-Ed Industrial Users Group (“MEIUG”), the Penelec Industrial Customer Alliance (“PICA”), the West Penn Power Industrial Intervenors (“WPPII”), and the Industrial Energy Consumers of Pennsylvania (“IECPA”) (collectively, MEIUG, PICA, WPPII, and IECPA are referred to as “Industrial Customers”) disputed the Joint Applicants’ assertions that the proposed Transaction will produce substantial affirmative public benefits and recommended that various conditions be placed on any Commission approval of the Joint Application. OCA St. No. 1 at 3-5, 10-29; OCA St. No. 2 at 3-10; CAUSE-PA St. No. 1 at 6-33; Industrial Customers St. No. 1 at 4-28.

51. The Pennsylvania State University (“PSU”) proposed that the Joint Applicants make certain revisions to their proposed *pro forma* tariff that was submitted as Joint Applicants Exhibit JMS-8 so that the tariff, according to PSU, “accurately reflect[s] the rates and terms of service currently applicable to PSU.” PSU St. No. 1 at 7.

52. The Settlement reflects a carefully balanced compromise of the Joint Petitioners’ positions on various issues. Settlement ¶ 30.

53. The Joint Petitioners agree that the Settlement is in the public interest. Settlement ¶ 30.

²² *Id.*; Joint Applicants St. No. 3 at 17-18.

54. The Joint Petitioners agree that the Joint Application should be approved, including those tariff changes included in and specifically identified in Appendix A attached to the Settlement, subject to the terms and conditions of the Settlement. Settlement ¶ 31.

55. In their direct testimony, the Joint Applicants explained that following the merger, the existing tariffs for the Pennsylvania OpCos, including West Penn's tariff for PSU, will be combined, such that each will operate as a "rate district" under FE PA's tariff. Joint Applicants St. No. 1 at 10.

56. The rate districts will be named as follows: Met-Ed; Penelec; Penn Power; West Penn; and PSU. Joint Applicants St. No. 1 at 12.

57. FE PA will provide retail distribution services in each rate district through this consolidated tariff, and each rate will correspond with the Pennsylvania OpCos' historical geographic service territories. Joint Applicants St. No. 1 at 12.

58. FE PA will provide electric service to each rate district under the same rates, terms, and conditions for service as the existing Pennsylvania OpCos. Joint Applicants St. No. 1 at 12.

59. Although the Joint Applicants made revisions to consolidate the existing retail tariffs into a single tariff, the proposed revisions do not alter the currently existing rates, terms, or conditions of service provided in the Pennsylvania OpCos' individual tariffs. Joint Applicants St. No. 1 at 13; Joint Applicants Exhibit JMS-11.

60. Rather, any changes reflect the consolidation of the historically separate tariffs into a single tariff. Joint Applicants St. No. 1 at 13.

61. Consequently, customers will not experience any impact to their current rates as a result of the Transaction. Joint Applicants St. No. 1 at 10.

62. The distribution rates will be the same as the rates that were approved by the Commission in each of the Pennsylvania OpCos' distribution rate cases effective January 27, 2017, and rider rates in effect at the time the Transaction is approved will also remain unchanged. Joint Applicants St. No. 1 at 10.

63. Other parties raised issues and concerns about the alleged impact of the Transaction on customers' rates. *See* OCA St. No. 1 at 16; Industrial Customers St. No. 1 at 26-27.

64. OCA recommended that the Commission condition the transaction on the requirement that "no customer group in any Pennsylvania Op Co or FE PA rate district be extraordinarily disadvantaged or harmed, and that such rate unification adhere to the principle of gradualism." OCA St. No. 1 at 16.

65. Industrial Customers recommended that the Commission condition its approval on a requirement that the Joint Applicants "not seek total consolidation of rates in fewer than three rate cases." Industrial Customers St. No. 1 at 26-27.

66. Industrial Customers also recommended that the Commission condition its approval on the Joint Applicants "provid[ing] a report to stakeholders twice annually during consolidation, and prepare for filing during each of the consolidating rate cases in the future two cost of service studies: one showing rate consolidation impacts only on what are presently separate classes of customers in each organization, and the second showing full rate changes associated with the single company rate consolidation." Industrial Customers St. No. 1 at 28.

67. OCA and Industrial Customers also recommend that the Commission condition its approval of the Joint Application on imposing a three-year base rate case stay-out." OCA St. No. 1 at 27; Industrial Customers St. No. 1 at 26.

68. OCA further proposed that FE PA should provide an "informative/illustrative filing" with the Commission showing elements such as cost of design,

rate design, rate allocation, at least one year prior to a rate case filing with rate unification. OCA St. No. 1 at 28.

69. Industrial Customers recommended that impose certain audit requirements before the next base rate case during the proposed base rate case stay-out period. Industrial Customers St. No. 1 at 15-16, 27.

70. The Joint Applicants agreed that any future rate unification should account for the principle of gradualism. Joint Applicants St. No. 1R at 16.

71. However, the Joint Applicants stated that the extent of any rate increases or decreases as part of that rate unification effort is an issue best reserved for FE PA's future base rate cases. Joint Applicants St. No. 1R at 16.

72. The Joint Applicants asserted that it is premature to determine how many rate cases it will take to consolidate FE PA's rate divisions' rates. Joint Applicants St. No. 1R at 16.

73. Although the Joint Applicants expect that it will take at least two cases, the Joint Applicants averred that it is inappropriate to impose a condition that such rate consolidation occur over no fewer than three base rate cases as part of this proceeding. Joint Applicants St. No. 1R at 17.

74. In regard to filing a cost of service for each rate district and for FE PA combined, the Joint Applicants agreed with the recommendation to file the two cost of service studies in its next base rate case. Joint Applicants St. No. 1R at 17.

75. The Joint Applicants disagreed with the recommendation that the Joint Applicants provide a report to stakeholders twice annually during consolidation, asserting that it was unclear what this report would provide and why it is necessary. Joint Applicants St. No. 1R at 17.

76. The Joint Applicants also disputed the proposed three-year base rate case stay-out on various grounds. Joint Applicants St. No. 1R at 19.

77. As for OCA's proposal for an "informative/illustrative filing" one year before the base rate case, the Joint Applicants disagreed with that recommendation because the financials of that period would not reflect the actual numbers of the rate case filed one year later. Joint Applicants St. No. 1R at 19.

78. The Joint Applicants asserted that implementing complex analysis and modeling would result in additional regulatory expenses with no cognizable benefit to the Commission, customers, or stakeholders. Joint Applicants St. No. 1R at 19.

79. The Joint Applicants also claimed that Industrial Customers' audit recommendations assume that a three-year rate case stay-out is imposed and averred that it would be unrealistic to complete an audit after the Commission rules on the Joint Application and before FE PA files a base rate case in 2024. Joint Applicants St. No. 1R at 20.

80. OCA and Industrial Customers stood by their recommendations in their surrebuttal testimony. OCA St. No. 1SR at 8-9; Industrial Customers St. No. 1SR at 12.

81. Under the Settlement, in line with the concept of gradualism, the Joint Applicants will not propose to reach full base distribution rate unification of all classes until the conclusion of three rate cases, filed on or after January 1, 2025, or a period of 10 years from the date of the Commission's approval of the Transaction, whichever occurs first, except that any newly introduced base distribution rate, for which no customers are currently receiving service and on which any customers eligible to take service on this newly introduced rate would voluntarily enroll, can be charged as one FE PA uniform rate (*e.g.*, new EV or lighting rates), as approved by the Commission in any subsequent rate case. Settlement ¶ 32.

82. FE PA is not precluded from proposing unification of any of its tariff rules and regulations of service and associated fees prior to January 1, 2025. Settlement ¶ 32.

83. The Joint Applicants also will file four cost of service models, one for each Rate District with PSU as part of the West Penn Rate District, as well as a consolidated FE PA cost of service model, in the next rate case after the Proposed Consolidation is approved, and in each of the subsequent rate cases until full rate consolidation is achieved. Settlement ¶ 33.

84. Further, the Joint Petitioners' intent is that no customer group in any FE PA Rate District should be extraordinarily disadvantaged or harmed in the event of a rate unification and that such rate unification should adhere to the principle of gradualism. Settlement ¶ 36.

85. The Joint Applicants also will maintain a list on the FE PA website of the historical rate schedules for each of the Rate Districts on a rolling five-year basis, including zonal and system scaling factors for the industrial classes, by Rate District, applicable during each rate term. Settlement ¶ 39.

86. In its direct testimony, OCA recommended that FE PA be required to identify and track the merger savings in a regulatory liability account to be flowed back to ratepayers in a future rate case. OCA St. No. 1 at 10.

87. Similarly, CAUSE-PA recommended that the Joint Applicants “be required to develop a proposal for how it will quantify and track cost savings as a result of the Transaction – including any savings derived as a result of changes to FirstEnergy’s operations and management as a result of the Transaction– and how identified cost savings will be used to benefit its customers” and that FE PA be required “to set forth its proposal in the context of its next base rate proceeding or within six months of approval of the Transaction, whichever is sooner.” CAUSE-PA St. No. 1 at 30.

88. The Joint Applicants asserted that tracking savings is unnecessary, as FE PA savings will automatically flow to customers through base rate cases. Joint Applicants St. No. 1R at 10.

89. Also, the Joint Applicants stated that FE PA expects to file a rate case in 2024 and that FE PA will pass any savings from Transaction results to customers through the base rate case test year. Joint Applicants St. No. 1R at 10.

90. Under the Settlement, the Joint Applicants will track savings in operating expenses achieved as a result of the proposed Transaction attributable to the Pennsylvania OpCos related to the categories listed in Paragraph 34(a) through (e) of the Settlement. Settlement ¶ 34.

91. These savings will be placed into a regulatory liability account to be flowed back to ratepayers in each next applicable base rate case for five years following entry of a final Commission order on this Settlement. Settlement ¶ 34.

92. Any savings remaining at the conclusion of the five-year period will be flowed back at the first available rate proceeding. Settlement ¶ 34.

93. FE PA will include as part of each base rate case filing during this period incremental and cumulative data quantifying the financial benefits provided to ratepayers as a result of the consolidation related to the following categories of savings:

- a. Cost of debt savings associated with any new financings by FE PA or refinancing of the Pennsylvania OpCos' existing debt as assumed by FE PA, using an assumption of a five basis point savings for each such financing/refinancing;
- b. Reduced contractor reliance in support of non-extraordinary storm restoration events that are not otherwise reflected as real-time savings in the Pennsylvania OpCos' storm reserve accounts;
- c. Efficiencies gained due to consolidation of the Pennsylvania OpCos' substation planning and scheduling operations;
- d. Reduced contractor reliance due to increasing the ability to share resources across territorial boundaries as union contracts permit; and

- e. Any pre-existing financial or regulatory reports that can be consolidated or streamlined, as such takes place.

Settlement ¶ 34.

94. With respect to the amounts that will be tracked and recorded to a regulatory account as set forth in Paragraph 34, all parties reserve the right to raise all arguments with respect to the determination of any savings, the attribution of any savings to the former Pennsylvania OpCos, and whether any or all of the amounts to be determined should be flowed through to ratepayers in each base rate case that occurs over the period contemplated by Paragraph 34. Settlement ¶ 35.

95. Under the Proposed Transmission Contribution, West Penn LLC will not contribute land or other real estate interests associated with the transferred transmission assets. Joint Applicants St. No. 2 at 12.

96. Instead, West Penn LLC and KATCo will enter into the Ground Lease, and all of West Penn LLC's rights and obligations under the Ground Lease will transfer to FE PA by operation of law following the merger of West Penn LLC with and into FE PA. Joint Applicants St. No. 2 at 12.

97. The associated transmission land and other real estate interests, as well as the Ground Lease payments from KATCo to FE PA will be excluded from future distribution base rate cases. Joint Applicants St. No. 1 at 18.

98. The Joint Applicants asserted that this exclusion is consistent with the existing ratemaking treatment for land interests that are booked to Federal Energy Regulatory Commission ("FERC") Account 350. Joint Applicants St. No. 1 at 18.

99. Under the Settlement, to the extent FE PA seeks to include in distribution rates the revenue requirement related to any underlying land, or a proportional share of underlying land, that is subject to the Ground Lease, FE PA agrees that any Ground Lease

revenues associated with that underlying land, or proportional share of the underlying land, will also be included as a component of its distribution revenue in the future FE PA distribution rate proceedings before the Commission where such revenue requirements are claimed. Settlement ¶ 37.

100. Also, KATCo will file an annual report with the Commission on May 1 of each year for five years after the contribution of the transmission assets from West Penn to KATCo has been completed that identifies the calculation of the Ground Lease payments. Settlement ¶ 38.

101. The Joint Applicants averred that the Transaction will not affect the service provided to low-income customers who participate in the current Universal Service Programs or those low-income customers who do not participate in such programs. Joint Applicants St. No. 1 at 29.

102. The Pennsylvania OpCos' Universal Service Programs are managed by Customer Service and share a common set of systems, rules, and processes. Joint Applicants St. No. 1 at 29-30.

103. FE PA did not propose to make any changes to the Companies' programs included in the Universal Service and Energy Conservation Plan ("USECP") approved by the Commission on July 11, 2019, at Docket Nos. M-2017-2636976, *et al.* or to the pending USECP for 2024 through 2028 at Docket Nos. M-2022-3036532, *et al.* Joint Applicants St. No. 1R at 11.

104. If the Joint Application is approved, the Joint Applicants stated that the Commission-approved USECP programs will be reviewed for the need to make any changes in light of consolidation and any changes will be filed for Commission approval. Joint Applicants St. No. 1R at 11.

105. Otherwise, the then-effective programs will remain in effect until they are consolidated in a future proceeding. Joint Applicants St. No. 1R at 11.

106. OCA and CAUSE-PA recommended that FE PA allow Pennsylvania Customer Assistance Programs (“PCAP”) enrollees who move within the consolidated service territory post-merger to automatically maintain their PCAP enrollment. OCA St. No. 2 at 4; CAUSE-PA St. No. 1 at 28.

107. CAUSE-PA also made recommendations related to the existing USECP programs of the Pennsylvania OpCos that FE PA will maintain in the applicable rate districts if the Transaction is approved, including: (1) increasing the Pennsylvania OpCos’ annual contribution to their Hardship Funds to \$800,000; (2) ensuring that PCAP customers moving within rate districts retain their PCAP status and do not have to reenroll independently; (3) making changes to the Universal Service Advisory Committee (“USAC”) meetings, such as holding quarterly USAC meetings and committing to collaborate with USAC members on certain topics; (4) requiring FE PA to maintain the structure and staffing levels for its USECP programs consistent through the term of its pending proposed USECP at Docket Nos. M-2022-3036532, *et al.*; and (5) requiring FE PA, before making a proposal to consolidate its USECPs, to discuss merging the programs at its USAC meetings and seek input and recommendations from the USAC members. CAUSE-PA St. No. 1 at 26-29, 31-32.

108. In rebuttal, the Joint Applicants agreed with most of these recommendations, except for the proposed increase in annual contribution to the Hardship Funds to \$800,000. Joint Applicants St. No. 1R at 11-16.

109. In surrebuttal, CAUSE-PA maintained that its proposed increase to the Hardship Fund was appropriate. CAUSE-PA St. No. 1SR at 12-13.

110. The Settlement provides that the staffing levels of FE PA’s Universal Service Program(s) will not be reduced as a result of the Transaction for the duration of its

pending USECP, from 2024 through 2028, at Docket Nos. M-2022-3036532, *et al.* Settlement ¶ 40.

111. Staffing levels will be maintained, notwithstanding retirements and voluntary separations. Settlement ¶ 40.

112. Moreover, as of the date of the final Order in this matter, and until all interested parties agree to a modification, the Joint Petitioners commit that FE PA will host its USAC on a quarterly basis through each calendar year for the purpose of presenting any proposed changes or amendments to program design or administration prior to advancing a formal proposal or otherwise implementing such changes, and discussing issues and questions that may be occurring in the communities it serves related to Consolidation or its Universal Service Program(s). Settlement ¶ 41.

113. FE PA also commits to share program data with USAC members in advance of each USAC meeting to help facilitate informed discussions. Settlement ¶ 42.

114. Data will include program participant data, spending levels (including but not limited to current spending levels and remaining funding of hardships grants), and other relevant program metrics as agreed upon by the parties for each USECP (including number of new enrollees in USECPs, number of new customers who were removed from the [Pennsylvania Customer Assistance Program (PCACP)] and the reason for removal, new outreach activities and efforts by FE PA, the number of PCAP participants who have reached 90% and 100% of their maximum CAP credit limits). Settlement ¶ 42.

115. While USAC meetings are intended to provide a platform for open dialogue and feedback regarding programming, the Joint Petitioners agree that the meetings are not a forum where USECP cost allocation to other customer classes will be deliberated. Settlement ¶ 43.

116. Further, in an effort to increase the diversity and range of community voices in the USAC, FE PA will recruit additional members to its USAC from groups such as local housing providers, food assistance providers, weatherization and home repair providers, community health clinics, domestic violence agencies, immigrant and refugee resettlement organizations, and other local community-based organizations serving low-income individuals and communities within the FE PA service territory. Settlement ¶ 44.

117. The Settlement further provides that the Joint Applicants are committed to making the transfer of a PCAP enrollment status as seamless as possible for PCAP enrollees who move from one Rate District to another. Settlement ¶ 45. There are currently system limitations that prevent FE PA from automatically moving customers into and out of different Rate District across the service territory. Settlement ¶ 45. The Joint Applicants commit to conducting further analysis of possible options for providing this optionality across the entire Pennsylvania footprint. Settlement ¶ 45. The Joint Applicants will provide an update to its USAC as a standing agenda item until such time as FE PA reaches full implementation of the ability to provide seamless transition of enrollment for PCAP enrollees who move from one Rate District to another. Settlement ¶ 45.

118. As for the Hardship Fund, the Joint Applicants agree to make contributions of \$150,000 annually to the Hardship Fund of FE PA, incremental to the current “matching contribution,” for a period of three years after Commission approval of the Transaction. Settlement ¶ 46.

119. The Joint Applicants additionally agree to make contributions of \$100,000 annually to the Hardship Fund of FE PA, incremental to the current “matching contribution,” for the following two years. Settlement ¶ 46.

120. Any unspent funding from the annual contributions will be rolled over to be used for Hardship funding for the subsequent program year. Settlement ¶ 46.

121. These will be shareholder contributions and not recovered from ratepayers. Settlement ¶ 46.

122. The Settlement also provides that subject to the provisions of any implementation orders or other direction issued by the Commission, at such time that the Pennsylvania Department of Human Services notifies the Low-Income Home Energy Assistance Program (“LIHEAP”) Advisory Committee that it is ready to share LIHEAP participant income data with utilities, currently anticipated to begin in Fall 2024, FE PA will implement required modifications to its Information Technology (“IT”) system and processes, within a reasonable time frame not to exceed one year, to automatically recertify an existing PCAP participant’s income and eligibility. Settlement ¶ 47.

123. Until such time as IT system and process changes are made, the Company will use best efforts to implement manual processing to recertify LIHEAP recipients for PCAP purposes as soon as practicable. Settlement ¶ 47.

124. All related costs to modify IT systems and processes shall be eligible for timely recovery, including any related interim costs related to manual processing. Settlement ¶ 47.

125. All LIHEAP recipients identified in the data exchange will be deemed by FE PA as confirmed low-income customers and will be eligible for winter shutoff protections. Settlement ¶ 47.

126. FE PA commits to conducting outreach to all LIHEAP recipients identified in the data exchange that are not current PCAP participants to encourage enrollment in the program. Settlement ¶ 47.

127. As part of their direct testimony, the Joint Applicants stated that operationally, the Pennsylvania OpCos’ customers will continue to receive safe and reliable service after the merger. Joint Applicants St. No. 1 at 29.

128. The branding of the individual companies will not change in the near-term, and in the long-term, customers will benefit from the various advantages identified in the Joint Applicant's testimony. Joint Applicants St. No. 1 at 29.

129. OCA expressed a concern about KATCo and FE PA potentially withdrawing from PJM and recommended that the Commission condition its approval of the Joint Application on KATCo and FE PA agreeing to remain in PJM. OCA St. No. 1 at 26, 28.

130. Industrial Customers also relayed a similar concern and recommendation. Industrial Customers St. No. 1 at 27.

131. Additionally, CAUSE-PA raised concerns about FE PA's commitment to maintaining a Pennsylvania presence and recommended that the Commission require FE PA to obtain Commission approval before moving or otherwise making changes to its call centers in Pennsylvania. CAUSE-PA St. No. 1 at 30-31.

132. In rebuttal, the Joint Applicants confirmed that KATCo will not withdraw transmission facilities from the operational control of PJM unless KATCo has first applied for and obtained authorization by order of the Commission. Joint Applicants St. No. 1R at 18.

133. The Joint Applicants also stated that FE PA does not intend to change its call center services or hours as a result of this Transaction and plans to keep FE PA's business address in Pennsylvania. Joint Applicants St. No. 1R at 15.

134. OCA stated that the Joint Applicants adequately addressed its concern about KATCo and FE PA potentially withdrawing from PJM. OCA St. No. 1SR at 10.

135. CAUSE-PA asserted that the Commission should still require FE PA to maintain call center presence in Pennsylvania and to maintain the structure staffing levels for its USECP programs through the term of the proposed USECP. CAUSE-PA St. No. 1SR at 14.

136. Under the Settlement, the Joint Applicants shall not withdraw transmission facilities from the operational control of PJM unless KATCo has first applied for, and obtained, authorization by order of the Commission. Settlement ¶ 48.

137. Moreover, the Settlement provides that FE PA will commit to the following related to its call center operations:

- a. Maintaining the location of a Pennsylvania call center for a period of five years;
- b. If, subject to the commitment reflected in Paragraph 49(a), future business circumstances support a change in contact center location or construct, FE PA will take steps to ensure that a Pennsylvania-focused presence and awareness is represented within its contact center operations through means including targeted recruiting efforts for Pennsylvania-based representatives, inclusion of a Pennsylvania-focused refresher training module to be provided to all representatives taking calls from FE PA customers, and advance notice and discussion with the parties to this settlement of FE PA's plans to eliminate and otherwise provide for the services enjoyed by the Joint Applicants' customers by the Reading, Pennsylvania contact center;
- c. Maintaining the services offered to residential customers by its call centers as of July 2023 for a period of 5 years. The services are as follows:
 - i. Support during outages – Log power out reports from customers, provide updates to customers on estimated time of restoration for outages, log reports from customers of downed powerlines and equipment, etc.;
 - ii. Planning for a move – Assist customers before, during and after the move process (start / stop / transfer of service);
 - iii. Submit service requests for tree problems, lighting problems, and electrical work;
 - iv. Answer billing questions – Questions pertaining to high bills, high usage, and bills based on estimated meter readings rather than actual readings;
 - v. Take payments and answer payment questions – Offer payment plans/arrangements to customers in need of extra time to pay their electricity bills;
 - vi. Provide information on all Universal Service Programs and assistance from other community-based organizations;

- vii. Provide information on ways to save energy – Information on energy audits, energy efficiency programs, etc.;
- viii. Provide information on products and services – Information on electrical work, tree trimming, electric vehicle charging installation, outdoor lighting, surge assistance, etc.;
- d. Maintaining minimum hours that call centers are available to customers of Monday through Friday, 8:00 AM to 6:00 PM; and
- e. Maintaining the use of Interactive Voice Response (“IVR”) systems during business and nonbusiness hours as in place as of July 2023.

Settlement ¶ 49.

138. In addition, the Settlement states that FE PA shall conduct a monthly review of customer disputes, complaints, and the Commission’s Bureau of Consumer Services compliance findings to identify and respond to root cause(s) based on patterns and practices reflected in these indicia of customer dissatisfaction to ensure high level performance for its customers.²³ Settlement ¶ 50.

139. The review will identify trends and areas for performance improvement and will be reported out to management. Settlement ¶ 50.

140. The monthly reports and management response will be shared at each quarterly meeting with the USAC. Settlement ¶ 50.

141. Under the Settlement, FE PA commits to maintaining its customer service performance for customer call center, reliability of service, billing, meter reading, and response to customer complaints and disputes at levels consistent with the Pennsylvania OpCos’ five-year historical average as reported to the Commission. Settlement ¶ 51.

²³

Settlement ¶ 50.

142. To the extent that FE PA's performance does not meet this level, FE PA agrees to meet with the parties as requested to discuss those areas of challenge and its plans to improve service levels. Settlement ¶ 51.

143. The Joint Applicants proposed to consolidate the five individual retail tariffs of the Pennsylvania OpCos into one combined retail tariff using the five rate districts to continue the current rate structure until a future base rate case filing. Joint Applicants St. No. 1 at 12.

144. In its direct testimony, PSU noted certain changes that should be made to the PSU Rate District's tariff page, specifically, revising the Transformer Loss adjustment language and making corrections to the DSS Rider, Smart Meter Rider, and the Hourly Pricing Default Service Rider. PSU St. No. 1 at 5-7.

145. In rebuttal, the Joint Applicants agreed to incorporate those changes into its compliance tariff filing.²⁴ Joint Applicants St. No. 1R at 21.

146. Furthermore, the Joint Applicants identified additional tariff changes that need to be made, such as updating the DSS Rider billing method for industrial customers in the West Penn and Penelec Rate Districts. Joint Applicants St. No. 1R at 21.

147. All of those changes were shown in redline form in Joint Applicants Exhibit JMS-15. Joint Applicants St. No. 1R at 21.

148. Under the Settlement, the Joint Applicants accept the tariff modifications proposed by PSU. Settlement ¶ 52.

149. Such tariff modifications are incorporated in the *pro forma* tariff supplement included with Appendix A attached to the Settlement and will be incorporated in the compliance tariff filings in this proceeding. Settlement ¶ 52.

²⁴ Joint Applicants St. No. 1R at 21.

150. The Joint Applicants also commit to maintaining a separate Rate District and base distribution rates for PSU. Settlement ¶ 53.

151. In their direct testimony, the Joint Applicants stated that transaction-related costs are all costs, including internal labor and other than labor costs, beginning with costs incurred to discuss, gather information, and investigate the feasibility of the proposed Transaction and continuing through the completion of the Transaction. Joint Applicants St. No. 2 at 14.

152. All Transaction-related costs are being charged to work orders and are recorded to FERC Account 426.5 – Other Deductions on the financial statements of the Pennsylvania OpCos prior to the Transaction, and on the financial statements of FE PA and KATCo after the completion of the proposed Transaction. Joint Applicants St. No. 2 at 14.

153. Industrial Customers averred that the Joint Applicants did not address how transition costs would be handled. Industrial Customers St. No. 1 at 19.

154. The Joint Applicants asserted in rebuttal that transition costs (*i.e.*, costs necessary to consolidate reporting, accounting and rates, including IT costs, internal labor, and any outside consulting costs) would be treated in the same manner as Transaction-related costs and tracked through work orders to be recorded to FERC Account 426.5 – Other deductions. Joint Applicants St. No. 2R at 6.

155. Further, the Joint Applicants confirmed that they are committed to excluding all Transaction-related and transition costs from rates charged to customers of all affected companies. Joint Applicants St. No. 2R at 6.

156. Under the Settlement, the Joint Applicants reaffirm that they will not seek recovery of any transaction and transition costs related to Proposed Consolidation from distribution or transmission rates. Settlement ¶ 54.

157. For added clarity, the Settlement defines transition and Transaction-related costs. Settlement ¶ 54.

158. Also, under the Settlement, FE PA will hold collaborative meetings in advance of filings for modifications to the Joint Applicants' regulatory-required plans or its next scheduled plan filings, to include Default Service Plan, USECP, Energy Efficiency and Conservation Plan, Long-Term Infrastructure Improvement Plan and, in the event that PJM implements a seasonal capacity construct, any filings related to revisions to the Joint Applicants' recovery methodology concerning those capacity market changes. Settlement ¶ 55.

159. The collaborative meetings will be used to discuss the consolidation's impact on each of the respective filings and FE PA's plans to unify such programs moving forward. Settlement ¶ 55.

160. The Joint Applicants also commit to initiate twice-yearly meetings with the Industrial User Groups ("IUGs"), including IECPA and the Industrial Customer Groups, to discuss topics of interest, including general reliability, calculation of individual customer peak load contributions, and rate overviews. Settlement ¶ 56.

161. As part of these meetings, IUG members will be able to provide advance notice of topics of interest for addition to the agenda, which may include individual reliability and/or power quality concerns that will be investigated and addressed as breakout topics with those specific customers, including root cause analysis and options for corrective action. Settlement ¶ 56.

162. The Settlement also clarifies that all prior settlements entered into by the Joint Applicants will survive any approved consolidation or merger and will be enforceable against FE PA to the extent applicable. Settlement ¶ 57.^[25]

²⁵ Settlement, App. B.

V. LEGAL STANDARDS

A. **Actions Requiring a Certificate of Public Convenience**

Under Section 1102 of the Code, a public utility, only upon application and approval of the application by the Commission as evidenced by a certificate of public convenience, may undertake certain actions. Specifically, Section 1102(3)(a) of the Code requires an application and Commission approval of the following:

For any public utility or an affiliated interest of a public utility ... to acquire from, or to transfer to, any person or corporation, including a municipal corporation, by any method or device 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.²⁶

The acquisition proposed under the Joint Petition is within the scope of Section 1102(a)(3) of the Code.

When a certificate of public convenience is required under Section 1102, pursuant to Section 1103(a) of the Code, 66 Pa.C.S. § 1103(a), the Commission may issue the certificate only upon a finding or determination that the granting of such certificate is “necessary or proper for the service, accommodation, convenience, or safety of the public.”

The Pennsylvania Supreme Court has explained the Commission, in issuing a certificate of public convenience, must find that a proposed transaction would “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.”²⁷ In addition, Section 1103(a) allows the Commission to impose upon its issuance of a

²⁶ 66 Pa.C.S. § 1102(a)(3).

²⁷ *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825, 828 (Pa. 1972) (*City of York*); *see also*, *Popowsky v. Pa. Pub. Util. Comm’n*, 611, 937 A.2d 1040, 1057 (Pa. 2007) (when addressing the issue of affirmative public benefits “the appropriate legal framework requires a reviewing court to determine whether substantial evidence

certificate of public convenience “such conditions as it may deem to be just and reasonable.”
66 Pa.C.S. § 1103(a).

B. Burden of Proof

Since Joint Applicants are the parties that filed the Application at issue in this proceeding, the Joint Applicants have the burden of proof to establish they are entitled to the relief requested. 66 Pa.C.S. § 332(a). Pursuant to Section 1103 of the Code, Joint Applicants must show that that they are technically, legally, and financially fit to own and operate the assets of the utilities that they seek to consolidate.²⁸ As certificated public utilities, there is a rebuttable presumption that the Joint Applicants possesses the requisite fitness.²⁹

C. Settlements

Commission policy promotes settlements.³⁰ Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding.³¹ The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters.³² Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions

supports the Commission's finding that a merger will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way”).

²⁸ *Seaboard Tank Lines v. Pa. Pub. Util. Comm'n*, 502 A. 2d 762 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240 (Pa. Super. 1958).

²⁹ *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308 (Pa. Cmwlth. 1992); *see also*, 66 Pa.C.S. § 1329.

³⁰ 52 Pa. Code § 5.231.

³¹ 52 Pa. Code § 69.401.

³² *Pa. Pub. Util. Comm'n v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011) (*Lancaster*).

are in the public interest.³³ In addition, the Commission has held that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. *Pa. Pub. Util. Comm'n v. MXenergy Elec. Inc.*, Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

The Commission encourages parties in contested on-the-record proceedings to settle cases. Settlements eliminate the time, effort, and expense of litigating a matter to its ultimate conclusion, which may result in review of the Commission's decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a "settlement" reflects a compromise of the parties' competing positions. A compromise arguably fosters and promotes the public interest. When settling parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest.

As discussed below, this decision recommends approval of the Settlement.

VI. DISCUSSION

A. Settlement Overview

The Joint Petitioners have agreed to a settlement of all issues in this proceeding, including issues arising under Sections 66 Pa.C.S. §§ 1101, 1102, 1103, 2101, 2102, 2103, 2811(e) of the Code. The Joint Petitioners submitted separate Statements in Support of the Settlement, which are attached to the Settlement, and they averred the Settlement benefits the public interest. The Joint Petitioners noted the Commission's policy to encourage settlements, as outlined in 52 Pa. Code § 5.231 and various case law.

³³ *Id.* (citing, *Warner v. GTE North, Inc.*, Docket No. C00902815 (Opinion and Order entered Apr. 1, 1996) (Warner)); *Pa. Pub. Util. Comm'n. v. CS Water and Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991).

1. Joint Applicants' Statement Supporting the Settlement

The Joint Petitioners agree that the Settlement is in the public interest.³⁴ The Settlement was achieved only after a comprehensive investigation of the Joint Applicants' proposals set forth in the Joint Application.³⁵ In addition to informal discovery, the Joint Applicants responded to many formal discovery requests.³⁶ The active parties submitted multiple rounds of testimony, including the Joint Applicants' direct testimony, the other parties' direct testimony, the Joint Applicants' rebuttal testimony, the other parties' surrebuttal testimony, and the Joint Applicants' rejoinder testimony.³⁷ Further, the parties engaged in numerous settlement discussions and formal negotiations, which ultimately led to the Settlement.³⁸

The active parties undertook significant time and effort to reach a full settlement of all issues in an abbreviated period. To achieve the Settlement, the active parties each had to compromise on different and competing issues and proposals raised in this case.³⁹ In some instances, and in exchange for reaching an agreement on other issues, the parties collectively agreed to accept or reject a certain party's litigation position or to meet somewhere in between competing litigation positions.⁴⁰ As such, in determining whether the Settlement is reasonable and in the public interest, the Settlement should be viewed as a whole.⁴¹

³⁴ Settlement ¶ 30.

³⁵ Joint Petitioners' Statement in Support at 3.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Joint Petitioners' Statement in Support at 3-4.

⁴¹ *Id.* at 4.

The Settlement reflects a carefully balanced compromise of the competing interests of the active parties in this proceeding.⁴² The parties in this proceeding, their counsel, and their expert consultants have considerable experience in merger and acquisition proceedings.⁴³ Their knowledge, experience, and ability to evaluate the strengths and weaknesses of their litigation positions provided a strong base upon which to build a consensus in this proceeding on the settled issues.⁴⁴ The fact that the Settlement is unopposed, in and of itself, provides strong evidence that the Settlement is reasonable and in the public interest, particularly given the diverse interests of these parties and the active role they have taken in this proceeding.⁴⁵ In addition, the proposed merger, as conditioned by the Settlement, will produce substantial affirmative public benefits upon closing and additional public benefits in the future.⁴⁶

As explained in the Joint Application and the Joint Applicants' testimony, the Proposed Consolidation will produce both short-term and long-term public benefits, including, but not limited to, financing benefits, regulatory and administrative efficiency benefits, improved service quality benefits, and potential for increased investment.⁴⁷ These benefits will result from combining the four commonly-owned electric distribution companies (EDCs), *i.e.*, Met-Ed, Penelec, Penn Power, and West Penn (Pennsylvania OpCos), into a single EDC that will be more efficient in its operations and have a greater access to capital markets.⁴⁸

⁴² *Id.*; Settlement ¶ 30.

⁴³ Joint Petitioners' Statement in Support at 4.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*; *see, e.g.*, Joint Application ¶¶ 6, 121-130; Joint Applicants' St. No. 1 at 34-35.

⁴⁸ Joint Petitioners' Statement in Support at 4.

2. OCA’s Statement Supporting the Settlement

OCA asserts the Settlement addresses the core of many of the concerns raised by the OCA and, thus, it supports the Settlement as it is in the public interest.⁴⁹ This Settlement represents a balanced compromise between the Joint Applicants and the various other parties.⁵⁰ When all of the conditions of the Settlement are considered with the Application, there exists an affirmative public benefit resulting from the transaction.⁵¹

3. CAUSE-PA’s Statement Supporting the Settlement

CAUSE-PA asserts that the terms contained in the Settlement reflect a careful balancing of the varied interests of the Joint Petitioners.⁵² While providing for approval of the proposed Transaction, the proposed Settlement sets forth important enhancements to FirstEnergy’s current policies and procedures to help ensure that FirstEnergy’s customers – particularly its low income customers – can realize tangible and substantial benefits as a result of the proposed Transaction.⁵³ CAUSE-PA asserts that the Settlement is just, reasonable, and in the public interest.⁵⁴

⁴⁹ OCA’s Statement in Support at 3.

⁵⁰ *Id.* at 4.

⁵¹ *Id.*

⁵² CAUSE-PA’s Statement in Support at 5; *see also* Settlement ¶ 30.

⁵³ CAUSE-PA’s Statement in Support at 5.

⁵⁴ *Id.*

4. Industrial Customer Groups' Statement Supporting the Settlement

The Industrial Customer Groups explain they filed Petitions to Intervene to ensure the Commission reviewed several aspects of the Joint Application, including whether the proposed Joint Application demonstrates that an affirmative benefit to the public will result upon approval of the Joint Application; whether the proposed transactions set forth in the Joint Application affirmatively promote the service, accommodation, convenience, or safety of the public in a substantial way; whether further Commission review is required to determine whether the benefits claimed by the Joint Applicants are substantive and result in an affirmative benefit to the public; whether the alleged benefits of the consolidation are outweighed by the costs of the consolidation; whether additional information is required to confirm that the costs to achieve the consolidation are properly allocated between ratepayers and shareholders; and what impact the consolidation will have on both current and future rates, including the timing of future distribution rate cases, Default Service Plan (DSP) proceedings, and Energy Efficiency and Conservation (EE&C) Plans.⁵⁵

The Industrial Customer Groups agree that approval of the proposed Settlement is overwhelmingly in the best interest of the parties involved and that the Joint Application should be approved.⁵⁶ They also aver the Settlement specifically satisfies their concerns.

5. IECPA's Statement Supporting the Settlement

IECPA generally avers the Settlement is in the public interest and should be approved without modification.⁵⁷

⁵⁵ Industrial Customer Groups' Statement in Support at 3-4.

⁵⁶ *Id.* at 6.

⁵⁷ IECPA's Statement in Support at 5.

6. PSU's Statement Supporting the Settlement

PSU generally avers the Settlement is in the public interest and should be approved without modification.⁵⁸

B. Positions of the Parties on the Settlement Issues

The Settlement specifically addresses five issues: (1) Rates; (2) Low-Income Programs, (3) Operations and Customer Service, (4) The Pennsylvania State University (University Park Campus), and (5) Additional Provisions (recovery of transaction and transition costs, collaborative meetings with stakeholders, and the survivability of prior settlements). The Joint Petitioners' respective positions on these issues is discussed as follows.

1. Joint Applicants' Position on Rates, Cost of Services and Leases

a. Rates Unification

Even though the Joint Applicants were not proposing changes to current rates in this proceeding, other parties raised issues and concerns about the alleged impact of the Transaction on customers' rates.⁵⁹ Specifically, OCA recommended that the Commission condition the Transaction on the requirement that "no customer group in any Pennsylvania OpCo or FE PA rate district be extraordinarily disadvantaged or harmed, and that such rate unification adhere to the principle of gradualism."⁶⁰ Relatedly, Industrial Customers recommended that the Commission condition its approval on a requirement that the Joint Applicants "not seek total consolidation of rates in fewer than three rate cases."⁶¹ OCA and Industrial Customers also

⁵⁸ PSU's Statement in Support at 2.

⁵⁹ Joint Petitioners' Statement in Support at 9.

⁶⁰ OCA St. No. 1 at 16.

⁶¹ Industrial Customers St. No. 1 at 26-27.

recommended that the Commission condition its approval of the Joint Application on imposing a three-year base rate case stay-out.”⁶² OCA further proposed that FE PA should provide an “informative/illustrative filing” with the Commission showing elements such as cost of design, rate design, rate allocation, at least one year prior to a rate case filing with rate unification,⁶³ and Industrial Customers recommended the imposition of certain audit requirements before the next base rate case during the proposed base rate case stay-out period.⁶⁴

In rebuttal, the Joint Applicants responded to all of these recommendations. The Joint Applicants agreed that any future rate unification should account for the principle of gradualism.⁶⁵ However, the extent of any rate increases or decreases as part of that rate unification effort is an issue best reserved for FE PA’s future base rate cases.⁶⁶ Moreover, the Joint Applicants maintained that it is premature to determine how many rate cases it will take to consolidate FE PA’s rate divisions’ rates.⁶⁷ Although the Joint Applicants expect that it will take at least two cases, the Joint Applicants averred that it is inappropriate to impose a condition that such rate consolidation occur over no fewer than three base rate cases as part of this proceeding.⁶⁸ Such an issue is best left to the actual base rate cases, where FE PA’s proposed rates will be evaluated by all interested parties and the Commission.⁶⁹ In regard to filing a cost of service for each rate district and for FE PA combined, the Joint Applicants agreed with the recommendation to file the two cost of service studies in its next base rate case.⁷⁰ However, the Joint Applicants disagreed with the recommendation that the Joint Applicants provide a report to

⁶² OCA St. No. 1 at 27; Industrial Customers St. No. 1 at 26.

⁶³ OCA St. No. 1 at 28.

⁶⁴ Industrial Customers St. No. 1 at 15-16, 27.

⁶⁵ Joint Applicants St. No. 1R at 16.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 17.

⁶⁹ *Id.*

⁷⁰ *Id.*

stakeholders twice annually during consolidation, reasoning that it was unclear what this report would provide and why it is necessary.⁷¹

The Joint Applicants also disputed the proposed three-year base rate case stay-out. The decision to file a base rate case is driven by capital expenditures and expenses projected to be incurred by FE PA, as well as the operating revenues to be received, in the test year.⁷² The Joint Applicants also were unaware of any case where the Commission imposed a three-year base rate case stay-out as a condition on a merger of affiliated public utilities.⁷³ As for OCA's proposal for an "informative/illustrative filing" one year before the base rate case, the Joint Applicants disagreed with that recommendation because the financials of that period would not reflect the actual numbers of the rate case filed one year later.⁷⁴ The Joint Applicants asserted that implementing complex analysis and modeling would result in additional regulatory expenses with no cognizable benefit to the Commission, customers, or stakeholders.⁷⁵ Additionally, Industrial Customers' audit recommendations assume that a three-year rate case stay-out is imposed.⁷⁶ It would be unrealistic to complete an audit after the Commission rules on the Joint Application and before FE PA files a base rate case in 2024.⁷⁷ Also, the Commission oversees periodic management audits of Pennsylvania utilities in accordance with Section 516 of the Public Utility Code, so implementing additional audits is unnecessary and will only create extra work for the Commission and add more expenses.⁷⁸

⁷¹ *Id.*

⁷² Joint Applicants St. No. 1R at 19.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* at 20.

⁷⁷ *Id.*

⁷⁸ *Id.* at 20.

The Settlement represents a reasonable compromise of the parties' positions on the impact of the Transaction on customers' rates.⁷⁹ Under the Settlement, in line with the concept of gradualism, the Joint Applicants will not propose to reach full base distribution rate unification of all classes until the conclusion of three rate cases, filed on or after January 1, 2025, or a period of 10 years from the date of the Commission's approval of the Transaction, whichever occurs first, except that any newly introduced base distribution rate, for which no customers are currently receiving service and on which any customers eligible to take service on this newly introduced rate would voluntarily enroll, can be charged as one FE PA uniform rate (*e.g.*, new EV or lighting rates), as approved by the Commission in any subsequent rate case.⁸⁰ FE PA is not precluded from proposing unification of any of its tariff rules and regulations of service and associated fees prior to January 1, 2025.⁸¹

b. Cost of Service Models and Savings Tracking

The Joint Applicants also will file four cost of service models, one for each Rate District with PSU as part of the West Penn Rate District, as well as a consolidated FE PA cost of service model, in the next rate case after the Proposed Consolidation is approved, and in each of the subsequent rate cases until full rate consolidation is achieved.⁸² Further, the Joint Petitioners' intent is that no customer group in any FE PA Rate District should be extraordinarily disadvantaged or harmed in the event of a rate unification and that such rate unification should adhere to the principle of gradualism.⁸³ The Joint Applicants also will maintain a list on the FE PA website of the historical rate schedules for each of the Rate Districts on a rolling five-year basis, including zonal and system scaling factors for the industrial classes, by Rate District,

⁷⁹ Joint Petitioners' Statement in Support at 12.

⁸⁰ Settlement ¶ 32.

⁸¹ *Id.*

⁸² *Id.* ¶ 33.

⁸³ *Id.* ¶ 36.

applicable during each rate term.⁸⁴ Therefore, the Settlement sets forth reasonable parameters and filing requirements for the unification of FE PA's rates in future base rate cases.⁸⁵

In addition, as part of their dispute over whether the Transaction will produce substantial affirmative public benefits, other parties recommended that the Joint Applicants be required to track savings resulting from the Transaction.⁸⁶

The Joint Applicants countered these recommendations. The Joint Applicants explained that tracking savings is unnecessary, as FE PA savings will automatically flow to customers through base rate cases.⁸⁷ Also, FE PA expects to file a rate case in 2024, and it will pass any savings from Transaction results to customers through the base rate case test year.⁸⁸

The Settlement represents a reasonable compromise of the parties' positions regarding the tracking of savings resulting from the Transaction. The Joint Applicants will track savings in operating expenses achieved as a result of the proposed Transaction attributable to the Pennsylvania OpCos related to the categories listed in Paragraph 34(a) through (e) of the Settlement.⁸⁹ These savings will be placed into a regulatory liability account to be flowed back to ratepayers in each next applicable base rate case for five years following entry of a final Commission order on this Settlement.⁹⁰ Any savings remaining at the conclusion of the five-year period will be flowed back at the first available rate proceeding.⁹¹ FE PA will include as part of each base rate case filing during this period incremental and cumulative data quantifying

⁸⁴ *Id.* ¶ 39.

⁸⁵ Joint Petitioners' Statement in Support at 13.

⁸⁶ OCA St. No. 1 at 10; CAUSE-PA St. No. 1 at 30.

⁸⁷ Joint Applicants St. No. 1R at 10.

⁸⁸ *Id.*

⁸⁹ Settlement ¶ 34.

⁹⁰ *Id.*

⁹¹ *Id.*

the financial benefits provided to ratepayers as a result of the consolidation related to specific categories.⁹²

With respect to the amounts that will be tracked and recorded to a regulatory account as set forth in Paragraph 34, all parties reserve the right to raise all arguments with respect to the determination of any savings, the attribution of any savings to the former Pennsylvania OpCos, and whether any or all of the amounts to be determined should be flowed through to ratepayers in each base rate case that occurs over the period contemplated by Paragraph 34.⁹³ Thus, the Settlement specifically addresses the other parties' recommendations for the establishment of a savings tracker mechanism, while reserving the treatment of those savings to future base rate cases.

c. Ground Leases

Lastly, the Joint Applicants noted in direct testimony that a Ground Lease will be put into place between FE PA (as lessor) and KATCo (as lessee).⁹⁴ Under the Proposed Transmission Contribution, West Penn LLC will not contribute land or other real estate interests associated with the transferred transmission assets.⁹⁵ Instead, West Penn LLC and KATCo will enter into the Ground Lease, and all of West Penn LLC's rights and obligations under the Ground Lease will transfer to FE PA by operation of law following the merger of West Penn LLC with and into FE PA.⁹⁶ The associated transmission land and other real estate interests, as well as the Ground Lease payments from KATCo to FE PA will be excluded from future distribution base rate cases.⁹⁷ This exclusion is consistent with the existing ratemaking treatment

⁹² *Id.*

⁹³ *Id.* ¶ 35.

⁹⁴ Joint Applicants Statement in Support at 16. A copy of the Ground Lease was provided as Joint Applicants Exhibit No. AP-8.

⁹⁵ Joint Applicants St. No. 2 at 12.

⁹⁶ *Id.*

⁹⁷ Joint Applicants St. No. 1 at 18.

for land interests that are booked to Federal Energy Regulatory Commission (FERC) Account 350.⁹⁸ Such costs have historically been reflected in the determination of West Penn's transmission rates but have been excluded from the determination of West Penn's distribution rate base as non-jurisdictional.⁹⁹

The Settlement addresses the ratemaking treatment of the Ground Lease.¹⁰⁰ In particular, to the extent FE PA seeks to include in distribution rates the revenue requirement related to any underlying land, or a proportional share of underlying land, that is subject to the Ground Lease, FE PA agrees that any Ground Lease revenues associated with that underlying land, or proportional share of the underlying land, will also be included as a component of its distribution revenue in the future FE PA distribution rate proceedings before the Commission where such revenue requirements are claimed.¹⁰¹ Also, pursuant to Paragraph 38 of the Settlement, KATCo will file an annual report with the Commission on May 1 of each year for five years after the contribution of the transmission assets from West Penn to KATCo has been completed that identifies the calculation of the Ground Lease payments.¹⁰²

The Joint Petitioners argue that these provisions help clarify the ratemaking treatment of the Ground Lease revenues and will provide interested stakeholders with information to help them track the Ground Lease revenues.¹⁰³ As such, Joint Petitioners aver the Settlement reasonably addresses rate-related issues concerning the Ground Lease.¹⁰⁴ The Joint Petitioners assert the Settlement addresses and reasonably resolves all of the rate-related issues

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Joint Applicants' Statement in Support at 17.

¹⁰¹ Settlement ¶ 37.

¹⁰² *Id.* ¶ 38.

¹⁰³ Joint Applicants' Statement in Support at 17.

¹⁰⁴ *Id.*

that were raised in this proceeding, and as such, these provisions are just and reasonable and should be approved without modification.¹⁰⁵

2. OCA's Position on Rates, Costs of Services and Leases

a. Rate Unification

The OCA's witness, Dr. Serhan Ogur, addressed his concerns regarding rate unification following the Application.¹⁰⁶ In his Direct Testimony, Dr. Ogur stated that if the transaction were to be approved, any future rate consolidation between the currently existing operating companies should adhere to the principles of gradualism.¹⁰⁷

Under the terms of the Settlement, the Company will not propose any rate consolidation until January 1, 2025, at the earliest.¹⁰⁸ This restriction will allow the Companies time to assess the merger process and incorporate any savings that may accrue.¹⁰⁹

In addition, the Settlement requires that any Company proposed unification of rates would occur over either a ten-year period or three rate cases filed after January 1, 2025, whichever occurs first.¹¹⁰ Therefore, any impacts of unification can be phased in reducing any negative impact on customers of the currently separate utilities who pay significantly different distribution rates based on separate cost of service studies.¹¹¹

¹⁰⁵ *Id.* at 17-18.

¹⁰⁶ *See* OCA St. 1; OCA St. 1-SR.

¹⁰⁷ OCA St. 1 at 16, 28.

¹⁰⁸ Settlement ¶ 32.

¹⁰⁹ OCA's Statement in Support at 5.

¹¹⁰ Settlement ¶ 32.

¹¹¹ OCA's Statement in Support at 5.

Moreover, the Settlement specifically provides that the rate unification will adhere to principles of gradualism.¹¹² The proposed Settlement language addresses the OCA’s concerns regarding the need for mitigation of rate impacts on customers.¹¹³ In addition, while the Settlement speaks to the ability of the Company to propose rate consolidation over the applicable period, it does not commit any of the parties to the settlement to support the Company’s proposals thus reserving for future rate cases the question of how quickly, if at all, full rate consolidation progresses.¹¹⁴

The overall provisions and conditions placed on the Settlement improve on the Application, as filed. In the Application, the Companies stated that they intend to consolidate rates over time. The OCA was concerned that, as rates are merged into uniform rates throughout the existing four service territories, there may be “winners” and “losers” through that process.¹¹⁵ Under the Settlement, the merged EDC, PA FE, has agreed that it will not pursue consolidation on an expedited basis. Specifically, the Company is not permitted to propose any rate mergers if it files for a base rate increase in 2024.¹¹⁶ Thereafter, the Companies have agreed that it will not propose to fully merge any rate schedules over a period of either ten years, or three rate cases (whichever is shorter). The OCA submits that the impact of any rate consolidation must be carefully assessed over time to ensure that the benefits that may accrue to customers through this merger are not offset by the potential harm of rate consolidation.¹¹⁷ The Settlement reaches a reasonable balance on this issue while allowing parties the opportunity to assess any rate consolidation proposals over time.¹¹⁸

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*; See Settlement ¶ 32.

¹¹⁷ OCA’s Statement in Support at 5-6.

¹¹⁸ *Id.* at 6.

b. Cost of Service Models and Savings Tracking

In Direct Testimony, OCA witness Dr. Ogur expressed concerns regarding the savings resulting from the merger and how those savings would be flowed through to provide a benefit to ratepayers.¹¹⁹ Dr. Ogur recommended that the savings be tracked and placed into a regulatory liability account so that they could be identified, quantified, and flowed back to ratepayers to ensure that consumers benefited from the transaction.¹²⁰

The Settlement adopts Dr. Ogur's recommendation to implement a regulatory liability account to be flowed back to ratepayers in each next applicable base rate case for five years following the entry of a Commission Order on the Settlement.¹²¹ The regulatory liability account will track the savings as related to Cost of debt savings, reduced contractor reliance in support of non-extraordinary storm restoration, efficiencies gained due to consolidation of substation planning and scheduling, reduced contractor reliance due to shared resources, and any preexisting regulatory report or financial report streamlining.¹²² The Settlement also provides that the Company will file four cost of service models, one for each Rate District (with the PSU Rate District reported as part of as the West Penn Rate District), well as a consolidated cost of service model in each rate case until full consolidation is achieved.¹²³

The Settlement improves upon the as filed Application by providing a mechanism to track the cost savings and credit them through the regulatory liability account and to pass those savings on to consumers.¹²⁴ By effectively tracking and recording savings and costs, the OCA and all parties will be able to better see the effects of the joint application and ensure that

¹¹⁹ OCA St. 1 at 10, 16, 27.

¹²⁰ *Id.* at 27.

¹²¹ Settlement ¶ 34.

¹²² *Id.*

¹²³ *Id.* at ¶ 33.

¹²⁴ OCA's Statement in Support at 6.

any savings flow to consumers.¹²⁵ In addition, the requirement to continue to file cost of service models based on the now separate utilities will improve visibility into any rate consolidation proposals brought forth by the Company.¹²⁶ Therefore, these provisions of the Settlement reasonably address the OCA's concerns regarding savings tracking and is in the public interest.¹²⁷

c. Ground Leases

In Direct Testimony, Dr. Ogur recommended that if the Joint Application were to be approved, that any revenue related to underlying land or a proportional share of underlying land that is subject to a ground lease, any ground lease revenues will also be included as a component of distribution revenue.¹²⁸

The Settlement provides that for any distribution rate revenue requirement related to underlying land, or a proportional share of underlying land subject to a ground lease, FE PA agrees to include the ground lease revenues as a component of distribution revenue.¹²⁹ Furthermore, KATCO agrees to file an annual report with the Commission on May 1 of each year after contribution of transmission assets from West Penn that identifies the calculation of Ground Lease payments.¹³⁰ With this provision, OCA explains that its concerns regarding the ground leases are addressed in the Settlement.¹³¹

¹²⁵ *Id.* at 6-7.

¹²⁶ *Id.* at 7.

¹²⁷ *Id.*

¹²⁸ OCA St. 1 at 28.

¹²⁹ Settlement ¶ 37.

¹³⁰ *Id.* ¶ 38

¹³¹ OCA's Statement in Support at 7.

3. CAUSE-PA’s Position on Rates, Costs of Services and Leases

a. Rate Unification

CAUSE-PA was initially concerned that Joint Applicants were failing to address multiple issues. In his Direct Testimony, CAUSE-PA’s witness, Mr. Miller, explained that the Joint Applicants sought to delay numerous important considerations resulting from the Transaction, including the unification of rates and programs across FirstEnergy’s OpCos.¹³² As Mr. Miller explained, deferral of these considerations was inappropriate and impacted whether consumers would ultimately realize benefits – or incur potential harms – as a result of the Transaction.¹³³

The proposed Settlement provides that, in line with the concept of gradualism, the Joint Applicants will not propose to reach full base distribution rate unification of all classes until the conclusion of three rate cases, filed on or after January 1, 2025, or a period of ten years from the date of the Commission’s approval of the Transaction, whichever occurs first – except that any newly introduced base distribution rate, for which no customers are currently receiving service and on which any customers eligible to take service on this newly introduced rate would voluntarily enroll, can be charged as one FE PA uniform rate (e.g. new EV or lighting rates), as approved by the Commission in any subsequent rate case.¹³⁴ Further, FE PA is not precluded from proposing unification of any of its tariff rules and regulations of service and associated fees prior to January 1, 2025.¹³⁵

¹³² CAUSE-PA’s Statement in Support at 5; *see* CAUSE-PA St. No. 1 at 15.

¹³³ *See* CAUSE-PA St. No. 1 at 15.

¹³⁴ Settlement ¶ 32.

¹³⁵ *Id.*

b. Cost of Service Models and Savings Tracking

CAUSE-PA submits that Paragraph 33 of the proposed Settlement provides that the Joint Applicants commit to filing four cost of service models, one for each Rate District in Pennsylvania (with the PSU Rate District reported as part of the West Penn Rate District), as well as a consolidated FE PA cost of service model, in the next rate case after the Proposed Consolidation is approved, and in each of the subsequent rate cases until full rate consolidation is achieved.¹³⁶

CAUSE-PA explains that these Settlement provisions, taken together with other key Settlement provisions (including Paragraph 36, which requires consumer-facing considerations and gradualism, and Paragraph 55, which establishes a collaborative stakeholder process in advance of any subsequent program unification), will help to ensure that any subsequent rate unification is completed gradually.¹³⁷ According to CAUSE-PA, these terms reasonably balance the interests of the settling parties by carving out exceptions that allow for earlier unification of newly introduced base distribution rates, and tariff rules and regulations of service and associated fees.¹³⁸ Further, these terms will help to ensure that, until rate consolidation is achieved, the Commission and parties are provided with robust information related to FE PA's consolidated cost of service model.¹³⁹

CAUSE-PA's witness, Mr. Miller, also raised concerns in his Direct Testimony that Joint Applicants did not quantify the level of savings that may be derived as a result of the proposed Transaction.¹⁴⁰ Mr. Miller explained that it was unclear based on the filings and information provided by the Joint Applicants whether any specific, quantifiable financial benefits

¹³⁶ *Id.* at ¶ 33.

¹³⁷ CAUSE-PA's Statement in Support at 6.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ CAUSE-PA St. 1 at 11.

to consumers would result without incurring substantial additional costs.¹⁴¹ Mr. Miller recommended that, assuming the Transaction is approved, FE PA be required to develop a proposal for how it would quantify and track cost savings as a result of the proposed Transaction, and how identified cost savings would benefit customers.¹⁴² Mr. Miller further recommended that FE PA be required to set forth its proposal in the context of its next base rate case or within six months of the approval of the Transaction, whichever is sooner.¹⁴³

The Settlement requires the Joint Applicants to track savings in operating expenses achieved as a result of the proposed Transaction attributable to the Pennsylvania OpCos related to certain categories outlined in the Settlement.¹⁴⁴ The Settlement further requires that tracked savings will be placed into a regulatory liability account to be flowed back to ratepayers in the next applicable base rate case for five years following the entry of the final Commission order related to the proposed Settlement.¹⁴⁵

The Settlement further provides that, related to the amounts to be tracked and recorded to the regulatory account, the parties reserve their rights to raise all arguments regarding determination of savings, the attribution of any savings to the former Pennsylvania OpCos, and whether any or all amounts to be determined should flow through to ratepayers in each base rate case that occurs over the period contemplated by Paragraph 34 of the Settlement.¹⁴⁶

CAUSE-PA asserts that these Settlement provisions are just, reasonable, and in the public interest.¹⁴⁷ CAUSE-PA argues these terms reasonably address Mr. Miller's concerns

¹⁴¹ *Id.*

¹⁴² *Id.* at 30.

¹⁴³ *Id.*

¹⁴⁴ Settlement ¶ 34.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at ¶ 35.

¹⁴⁷ CAUSE-PA's Statement in Support at 8.

that the Joint Applicants failed to provide adequate specificity related to how cost savings as a result of the Transaction would be returned to customers.¹⁴⁸ Requiring the Joint Applicants to track savings by specified categories and flow savings back to customers will help ensure that any resulting savings will be returned to ratepayers through a transparent process.¹⁴⁹ The process delineated in the Settlement will allow the Commission and parties to better evaluate the longer-term financial benefits from the Transaction and determine whether the Joint Applicants are appropriately tracking and returning savings to ratepayers.¹⁵⁰

In his Direct Testimony, Mr. Miller also raised concerns that the Joint Applicants sought to delay numerous important considerations stemming from the Transaction to future litigation, including the unification of rates and programs across its four operating companies.¹⁵¹ Mr. Miller explained that the deferred treatment of these critical issues impacted the ability to determine whether consumers would ultimately realize benefits – or incur potential harms – as a result of the Transaction.¹⁵²

The Settlement provides that it is the parties’ intent that no consumer group in any FE PA Rate District should be extraordinarily disadvantaged or harmed in the event of a rate unification, and that such rate unification adheres to the principle of gradualism.¹⁵³

CAUSE-PA argues that, these Settlement terms, taken together with other key Settlement provisions (including Paragraph 32, which requires any subsequent rate unification to be gradual, and Paragraph 55, which establishes a collaborative stakeholder process in advance of any subsequent program unification), will help to bring important customer-facing

¹⁴⁸ *Id.*; CAUSE-PA St. 1 at 11: 13-20; CAUSE-PA St. 1-SR at 7-9.

¹⁴⁹ CAUSE-PA’s Statement in Support at 8.

¹⁵⁰ *Id.*

¹⁵¹ CAUSE-PA St. No. 1 at 15.

¹⁵² *See Id.* at 15.

¹⁵³ Settlement ¶ 36.

considerations to the forefront in the event of rate and program unification.¹⁵⁴ While balancing the varied interests of the Settling parties, CAUSE-PA avers these provisions help to reasonably address Mr. Miller’s concerns that FirstEnergy customers would be harmed as a result of deferral of important considerations related to rate unification.¹⁵⁵

The Settlement also provides that the Joint Applicants agree to maintain a list on FE PA’s website of the historical rate schedules for each of the Rate Districts on a rolling five-year basis, including zonal and system scaling factors for the industrial classes, by Rate District, applicable during each rate term.¹⁵⁶ CAUSE-PA did not take a formal position in this proceeding related to the provision of historical rate schedules set forth in Paragraph 39 of the proposed Settlement.¹⁵⁷ Nevertheless, CAUSE-PA asserts that these provisions are reasonable and should be approved.¹⁵⁸

CAUSE-PA maintains that these provisions will help provide important information to consumers related to historical rates, improving transparency for FirstEnergy’s customers.¹⁵⁹ CAUSE-PA asserts that historical rate information can help consumers gain important insight into how their rates have changed over past years and may help to inform consumer participation in a myriad of proceedings, including future rate increase proposals.¹⁶⁰ For these reasons, CAUSE-PA argues that these provisions contained in Paragraph 39 of the Settlement are reasonable, in the public interest, and should be approved without modification.¹⁶¹

¹⁵⁴ CAUSE-PA’s Statement in Support at 9.

¹⁵⁵ *Id.*

¹⁵⁶ Settlement ¶ 39.

¹⁵⁷ CAUSE-PA’s Statement in Support at 9-10.

¹⁵⁸ *Id.* at 10.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

c. Ground Leases

CAUSE-PA did not specifically take a position in this proceeding related to the Ground Lease issues set forth in Paragraph 37 of the proposed Settlement, nor did CAUSE-PA specifically take a position in this proceeding related to the transmission asset issues set forth in Paragraph 38 of the proposed Settlement.¹⁶²

4. Industrial Customer Group’s Position on Rates, Costs of Services and Leases

a. Rate Unification

The Industrial Customer Groups submit that the Joint Applicants agree to unify full base distribution rates for all rate classes at the conclusion of three rate cases, filed on or after January 1, 2025, or for a period of ten years from the date the Commission approves the Joint Application, whichever occurs first.¹⁶³ As noted by the Industrial Customer Groups in this proceeding, rate consolidation matters can produce winners and losers as rates move towards consolidation.¹⁶⁴ By unifying distribution rates over three rate cases or for a period of ten years, the Settlement recognizes the need for gradualism with respect to this concern.

b. Cost of Service Models and Savings Tracking

The Industrial Customer Groups assert that the Joint Applicants also agree to file four cost of service models, one for each Rate District in Pennsylvania (with the PSU Rate District reported as part of the West Penn Rate District), as well as a consolidated FE PA cost of service model, in the next rate case after approval of the Joint Application, as well as in each subsequent rate case until full rate consolidation is achieved.¹⁶⁵ As noted by the Industrial

¹⁶² *Id.* at 9.

¹⁶³ Joint Petition ¶ 32.

¹⁶⁴ Industrial Customers St. No. 1 at 18, 26-27.

¹⁶⁵ Joint Petition ¶ 33.

Customer Groups, providing separate cost of service models would allow both customers and the Commission to compare and contrast the rate impacts associated with consolidation, thereby providing the ability to appropriately modify such rates if needed to ensure gradualism.¹⁶⁶ Accordingly, this term of the Settlement addresses the Industrial Customer Groups' concerns regarding the need for gradualism as the consolidation occurs.

The Industrial Customer Groups contend that the Joint Applicants agree to track savings in operating expenses achieved from the transaction regarding the Pennsylvania OpCos,¹⁶⁷ which will be placed into a regulatory liability account to be flowed back to ratepayers in each base rate case for five years after Commission approval of the Joint Petition.¹⁶⁸ Any savings remaining at the end of the five-year period will be flowed back to ratepayers in the first available rate proceeding.¹⁶⁹ As part of each base rate case filing during that same period, FE PA will include incremental and cumulative data quantifying the financial benefits provided to ratepayers as a result of the consolidation.¹⁷⁰ As raised by the Industrial Customer Groups, tracking of the costs and benefits of the consolidation, as well as flowing any benefits back to customers, is important to ensure adequate protections for ratepayers.¹⁷¹ This term of the Settlement addresses the Industrial Customer Groups' concerns regarding this issue.

The Industrial Customer Groups argue that the Joint Applicants agree to maintain a list on the FE PA website of the historical rate schedules for each of the Rate Districts on a rolling five-year basis, including zonal and system scaling factors for the Industrial classes, by Rate District, applicable during each rate term.¹⁷² As consolidation of rates occurs over the

¹⁶⁶ Industrial Customers St. No. 1 at 28.

¹⁶⁷ Joint Petition ¶ 34.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ Industrial Customers St. No. 1 at 6, 28; Industrial Customers Statement No. 1SR at 6, 10-12.

¹⁷² Joint Petition ¶ 39.

coming year, providing this information to customers via an easily accessible process will ensure that customers are able to adequately track rate changes.¹⁷³

c. Ground Leases

The Industrial Customer Groups did not specifically take a position in this proceeding related to the Ground Lease issues set forth in Paragraph 37 of the proposed Settlement, nor did they take a position in this proceeding related to the transmission asset issues set forth in Paragraph 38 of the proposed Settlement.¹⁷⁴

5. IECPA's Position on Rates, Costs of Services and Leases

a. Rate Unification

IECPA and the other industrial groups expressed concerns regarding the potential impact that rate cases resulting from this consolidation may have on customers by potentially creating winners and losers through the unification of rate schedules.¹⁷⁵ To address this potential problem, particularly in the short-term where affirmative benefits of the consolidation may not be realized, at least in comparison with short-term reporting and increased regulatory costs, IECPA and the other industrial groups recommended that the Commission impose a limited "stay-out" of rate case filings.¹⁷⁶

b. Cost of Service Models and Savings Tracking

To address concerns related to future rate cases and rate increases after consolidation, IECPA asserts that the Settlement includes provisions in Paragraphs 32-39. These

¹⁷³ Industrial Customers St. No. 1 at 19-20, 28.

¹⁷⁴ CAUSE-PA's Statement in Support at 9.

¹⁷⁵ IECPA's Statement in Support at 5; *See* Industrial Customer Statement No. 1 at 17-20.

¹⁷⁶ IECPA's Statement in Support at 5; *See* Industrial Customer Statement No. 1 at 26.

provisions reflect substantial compromise among the parties that IECPA supports as being in the public interest.¹⁷⁷ Of particular note and importance to IECPA, the Settlement provides that unification of customer rates will occur over a ten-year period or three rate cases after January 1, 2025; these rate filings will include multiple cost of service models for each distinct Rate District; FE PA will track important operating expense savings with a "flow back" provision to customers; FE PA commits to gradualism and fairness in establishing unified rates; and FE PA agrees to maintain historical rates schedules and associated scaling factors for industrial customers on a rolling five-year basis.¹⁷⁸ IECPA supports these provisions as a good faith compromise and effort on the part of the Joint Applicants to quantify and demonstrate affirmative benefits of this consolidation.¹⁷⁹

c. Ground Leases

IECPA did not specifically take a position in this proceeding related to the Ground Lease issues set forth in Paragraph 37 of the proposed Settlement, nor did IECPA specifically take a position in this proceeding related to the transmission asset issues set forth in Paragraph 38 of the proposed Settlement.¹⁸⁰

6. PSU's Position on Rates, Costs of Services and Leases

a. Rate Unification

PSU submits that the Joint Applicants have agreed that FE PA will apply gradualism to the process of attempting to unitize/consolidate rates over the four FE Companies, utilizing an approximately 10-year period over which to unitize rates,¹⁸¹ and that FE PA will also

¹⁷⁷ IECPA's Statement in Support at 5.

¹⁷⁸ Settlement ¶¶ 32-34, 36, 39.

¹⁷⁹ IECPA's Statement in Support at 5-6.

¹⁸⁰ CAUSE-PA's Statement in Support at 9.

¹⁸¹ Joint Petition ¶ 32.

provide historical rate schedules on a rolling five year basis and a cost of service study for each rate district in each rate case until unitization is achieved.¹⁸² Further, the parties have agreed that rate unitization should not extraordinarily disadvantage or harm any customer group.¹⁸³

PSU posits that these commitments protect all ratepayers by applying gradualism over an approximately 10-year period through a series of base rate cases while still ensuring evidence of cost of service of each operating territory will be present to allow parties to present their respective views on whether gradualism and cost of service are working in cooperation to develop just, reasonable, and non-discriminatory rates.¹⁸⁴ These terms will also provide parties with additional time and data to examine and present positions on how unitization should occur throughout multiple rate proceedings. Moreover, with the staggered moves towards unitization, the Commission will be able to monitor impacts and results of each step.¹⁸⁵

PSU explains it is a major generation, transmission, and distribution service customer of West Penn at its University Park campus receiving service through West Penn's Tariff Electric – Pa. P.U.C. No. 38 (Tariff 38).¹⁸⁶ PSU is the only customer taking service under Tariff 38. PSU also receives generation, transmission, and distribution service from West Penn under rate schedules other than Tariff 38 for approximately one hundred (100) additional accounts at the University Park campus, including the airport and campuses at New Kensington, Fayette and Mont Alto.¹⁸⁷ PSU is also a customer of Penelec taking service at Penn State Erie, The Behrend College and the Altoona and Dubois campuses, along with some accounts near University Park.¹⁸⁸ PSU also receives service from Met-Ed at its campuses at York and at the

¹⁸² *Id.* ¶¶ 33, 39.

¹⁸³ *Id.* ¶ 36.

¹⁸⁴ PSU's Statement in Support at 3.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

Fruit Research and Extension Center in Biglerville.¹⁸⁹ Lastly, the Shenango campus receives service from Penn Power.¹⁹⁰

Thus, PSU is a customer of all four companies that will comprise FE PA, in addition to taking service under Tariff 38 which is specific to the University Park campus.¹⁹¹ The Settlement provisions regarding rates and unitization of rates are of particular importance to PSU, which will participate in FE PA future rate proceedings and has raised cost of service and gradualism concerns in past base rate proceedings.¹⁹² Thus, PSU asserts that the settlement provisions provide a fair process for seeking rate unitization that allows for all parties to be heard in multiple proceedings over time on these issues.¹⁹³

b. Cost of Service Models and Savings Tracking

PSU states that FE PA has agreed to specifically track savings in operating expenses as a result of the Transaction for various categories of information and that savings will be flowed back to ratepayers in FE PA's future base rate proceedings.¹⁹⁴ PSU avers this term results in cost savings attributable to the Transaction flowing to customers, and this is a benefit to all customers.¹⁹⁵

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² PSU's Statement in Support at 3.

¹⁹³ *Id.* at 4.

¹⁹⁴ Joint Petition ¶¶ 34-35.

¹⁹⁵ PSU's Statement in Support at 4.

c. Ground Leases

PSU notes that the Settlement provides that, to the extent FE PA seeks to include in rates any revenue requirement related to land subject to the Ground Lease, any related revenues will also be included as a component of distribution revenue in future base rate proceedings and to provide related information.¹⁹⁶ PSU argues that this term is a benefit to all customers and ensures that to the extent customers pay for land, customers also reap the financial benefits associated with the land.¹⁹⁷

7. Joint Applicants' Position on Low-Income Programs

a. Low-Income Program Staffing

In the Application, the Joint Applicants averred that the Transaction will not affect the service provided to low-income customers who participate in the current Universal Service Programs or those low-income customers who do not participate in such programs.¹⁹⁸ The Pennsylvania OpCos' Universal Service Programs are managed by Customer Service and share a common set of systems, rules, and processes.¹⁹⁹ Also, FE PA did not propose to make any changes to the Companies' programs included in the Universal Service and Energy Conservation Plan (USECP) approved by the Commission on July 11, 2019, at Docket No. M-2017-2636976, or to the pending USECP for 2024 through 2028 at Docket No. M-2022-3036532.²⁰⁰ Staffing levels will be maintained, notwithstanding retirements and voluntary separations.²⁰¹

¹⁹⁶ Joint Petition ¶¶ 37-38.

¹⁹⁷ PSU's Statement in Support at 4.

¹⁹⁸ Joint Applicants St. No. 1 at 29.

¹⁹⁹ *Id.* at 29-30.

²⁰⁰ Joint Applicants St. No. 1R at 11.

²⁰¹ *Id.*

b. Universal Service Advisory Committee (USAC) and USECP

Joint Applicants noted that CAUSE-PA made recommendations related to the existing USECP programs of the Pennsylvania OpCos that FE PA will maintain in the applicable rate districts if the Transaction is approved, that is, (1) making changes to the Universal Service Advisory Committee (USAC) meetings, such as holding quarterly USAC meetings and committing to collaborate with USAC members on certain topics and (2) requiring FE PA, before making a proposal to consolidate its USECPs, to discuss merging the programs at its USAC meetings and seek input and recommendations from the USAC members.²⁰²

The Joint Applicants submit that the Settlement memorializes the USECP-related recommendations to which the Joint Applicants agreed and then reasonably addresses the other low-income issues raised by CAUSE-PA as well as OCA. Additionally, the Joint Applicants explain that as of the date of the final Order in this matter, and until all interested parties agree to a modification, the Joint Petitioners commit that FE PA will host its USAC on a quarterly basis through each calendar year for the purpose of presenting any proposed changes or amendments to program design or administration prior to advancing a formal proposal or otherwise implementing such changes, and discussing issues and questions that may be occurring in the communities it serves related to Consolidation or its Universal Service Program(s).²⁰³ FE PA also commits to share program data with USAC members in advance of each USAC meeting to help facilitate informed discussions.²⁰⁴ Data will include program participant data, spending levels (including but not limited to current spending levels and remaining funding of hardship grants), and other relevant program metrics as agreed upon by the parties for each USECP (including number of new enrollees in USECPs, number of new customers who were removed from the PCACP and the reason for removal, new outreach activities and efforts by FE PA, the

²⁰² CAUSE-PA St. No. 1 at 26-29, 31-32.

²⁰³ Settlement ¶ 41.

²⁰⁴ *Id.* ¶ 42.

number of PCAP participants who have reached 90% and 100% of their maximum CAP credit limits).²⁰⁵

The Joint Applicants further comment that while USAC meetings are intended to provide a platform for open dialogue and feedback regarding programming, the Joint Petitioners agree that the meetings are not a forum where USECP cost allocation to other customer classes will be deliberated.²⁰⁶ Further, in an effort to increase the diversity and range of community voices in the USAC, FE PA will recruit additional members to its USAC from groups such as local housing providers, food assistance providers, weatherization and home repair providers, community health clinics, domestic violence agencies, immigrant and refugee resettlement organizations, and other local community-based organizations serving low-income individuals and communities within the FE PA service territory.²⁰⁷

c. PCAP Enrollment and Hardship Fund

The Settlement provides that the Joint Applicants are committed to making the transfer of a PCAP enrollment status as seamless as possible for PCAP enrollees who move from one Rate District to another.²⁰⁸ The Joint Applicants explain there are currently system limitations that prevent FE PA from automatically moving customers into and out of different Rate Districts across the service territory.²⁰⁹ The Joint Applicants also commit to conducting further analysis of possible options for providing this optionality across the entire Pennsylvania footprint.²¹⁰ The Joint Applicants will provide an update to its USAC as a standing agenda item

²⁰⁵ *Id.*

²⁰⁶ *Id.* ¶ 43.

²⁰⁷ Settlement ¶ 44.

²⁰⁸ *Id.* ¶ 45.

²⁰⁹ Joint Petitioners' Statement in Support at 22.

²¹⁰ Settlement ¶ 45.

until such time as FE PA reaches full implementation of the ability to provide seamless transition of enrollment for PCAP enrollees who move from one Rate District to another.²¹¹

As for the Hardship Fund, the Joint Applicants agree to make contributions of \$150,000 annually to the Hardship Fund of FE PA, incremental to the current “matching contribution,” for a period of three years after Commission approval of the Transaction.²¹² The Joint Applicants additionally agree to make contributions of \$100,000 annually to the Hardship Fund of FE PA, incremental to the current “matching contribution,” for the following two years.²¹³ Any unspent funding from the annual contributions will be rolled over to be used for Hardship funding for the subsequent program year.²¹⁴ These will be shareholder contributions and not recovered from ratepayers.²¹⁵

The Joint Applicants submit that the Settlement incorporates the commitments agreed to by them in testimony and reasonably balances the parties’ positions on other low-income program issues.²¹⁶ They aver the Settlement reflects a reasonable compromise of the parties’ positions on the increase in contributions to the Hardship Fund and establishes processes to help ensure that customers enrolled in PCAP can move between rate districts without having to reenroll in the program.²¹⁷ The Settlement’s provisions also are designed to improve the recertification process for PCAP customers and the identification of confirmed low-income customers by leveraging the Pennsylvania Department of Human Services’ data sharing of LIHEAP participants’ income data.²¹⁸ For these reasons, The Joint Applicants argue the

²¹¹ *Id.*

²¹² Settlement ¶ 46.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ Joint Petitioners’ Statement in Support at 23.

²¹⁷ *Id.*

²¹⁸ *Id.* at 24.

Settlement’s provisions resolve these low-income related issues, are just and reasonable, are in the public interest, and should be approved without modification.²¹⁹

8. OCA’s Position on Low-Income Programs

a. Low-Income Program Staffing

OCA asserts that its witness, Barbara Alexander, addressed that one way the Joint Applicants could improve the Transaction to provide substantial affirmative public benefits is to ensure that unifying the four Universal Service programs will not lower the benefits or staffing levels for the programs.²²⁰

OCA notes, as part of this Settlement, the Joint Applicants agree that staffing levels will be maintained and will not be reduced as a result of this transaction for the duration of the 2024-2028 Universal Service and Energy Conservation Plan, notwithstanding voluntary separations and retirements.²²¹ OCA explains that this portion of the Settlement addresses the OCA’s concern regarding a reduction in universal services staff.²²² By maintaining staffing levels, the risks of decreased performance levels are reduced.²²³

b. Universal Service Advisory Committee (USAC)

One of the additional conditions recommended by Ms. Alexander was that FirstEnergy should commit to a collaborative discussion to improve its universal service program.²²⁴

²¹⁹ *Id.*

²²⁰ OCA St. 2 at 3.

²²¹ Settlement ¶ 40.

²²² OCA’s Statement in Support at 8.

²²³ *Id.*

²²⁴ OCA St. 2 at 10.

OCA maintains that the Settlement provides that Joint Petitioners agree to host Universal Service Advisory Committee meetings on a quarterly basis to informally discuss proposed changes or amendments prior to formal proposals.²²⁵ Additionally, FE PA Commits to sharing program data with members of the Universal Service Advisory Committee, and, in Paragraph 44, FE PA commits to recruiting additional members to the Universal Service Advisory Committee so that more diverse voices may be heard.²²⁶

The combination of these paragraphs addresses the concerns that the OCA had raised.²²⁷ By committing to host more meetings, recruiting diverse members, and sharing program data, FE PA will work toward collaborating with stakeholders in the continuing operation, and future integration, of the universal service programs.²²⁸

c. PCAP Enrollment and Hardship Fund

Continuing with its position, OCA notes that Ms. Alexander specifically identified that the current corporate organization of the Joint Applicants does not allow customers to be automatically enrolled in PCAP when moving between FirstEnergy EDCs.²²⁹ The Settlement provides that the Joint Applicants will commit to making the transfer of PCAP Enrollment from one rate district to another as seamless as possible, and that the Joint Applicants will provide an update to its USAC as a standing agenda item until they have achieved full implementation of seamless PCAP transition.²³⁰

²²⁵ Settlement ¶ 41.

²²⁶ *Id.* ¶¶ 42, 44.

²²⁷ OCA's Statement in Support at 9.

²²⁸ *Id.*

²²⁹ OCA St. No. 2.

²³⁰ Settlement ¶ 45.

In addition to the commitment to working toward a seamless transition for PCAP customers, OCA contends that the Settlement provides that Joint Applicants will make contributions of \$150,000 annually to the hardship fund, incremental to its matching contributions, for three years.²³¹ For two years following the three the Joint Applicants agree to make \$100,000 donations to the hardship fund, incremental to its matching contributions.²³²

According to OCA, the Hardship Fund commitment will provide five years of additional financial support for assistance for low-income customers to maintain essential electric service.²³³ The proposed grants will help to ensure that a benefit from the transaction is provided to low-income customers and to help mitigate the harm from future rate increases or rate integration on low-income customers.²³⁴ OCA submits that these commitments are a step in the right direction and will help to ensure that consumers receive the assistance that they need and is a large improvement compared to the Application as filed.²³⁵

9. CAUSE-PA's Position on Low-Income Programs

a. Low-Income Program Staffing

CAUSE-PA raised concerns that the Transaction may result in detrimental changes to low-income customers. In his Direct Testimony, Mr. Miller raised concerns that – despite express statements by FirstEnergy that it did not intend to implement changes to its current or pending USECP – they acknowledged through discovery that they will pursue universal service program changes if the Transaction is granted.²³⁶ Mr. Miller explained that

²³¹ *Id.* ¶ 46.

²³² *Id.*

²³³ OCA's Statement in Support at 9.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ CAUSE-PA St. 1 at 15.

FirstEnergy was explicitly delaying implementation of planned universal service changes that will determine whether low income customers ultimately realize benefits or incur potential harms as a result of the proposed Transaction.²³⁷ Mr. Miller recommended that, prior to approval of any proposed consolidation, FirstEnergy should be required to maintain the structure and staffing levels for its Universal Service Programs consistent through the term of its pending proposed USECP at Docket Nos. M-2022-3036532, M-2022-3036533, M-2022-3036534, M-2022-3036535.²³⁸

CAUSE-PA notes that Paragraph 40 of the proposed Settlement provides that the staffing levels of FE PA’s Universal Service Program(s) will not be reduced as a result of the Transaction for the duration of its pending USECP, from 2024 through 2028, at Docket Nos. M-2022-3036532, etc.²³⁹ Paragraph 40 also provides that staffing levels will be maintained, notwithstanding retirements and voluntary separations.²⁴⁰

CAUSE-PA asserts that the provisions at Paragraph 40 of the proposed Settlement are reasonable and should be approved.²⁴¹ CAUSE-PA argues that, together with other key provisions of the Settlement (such as paragraph 55, which requires FirstEnergy to engage in a collaborative stakeholder process before unification of customer programs, including universal service programs), these provisions help to reasonably address Mr. Miller’s recommendations that FE PA be required to maintain staffing levels for its Universal Service Programs through at least the duration of FirstEnergy’s pending USECP.²⁴² Requiring maintenance of Universal Service Staff through the period of FirstEnergy’s proposed Plan will help to ensure that low-income customers do not see a degradation in services as a result of staffing reductions through

²³⁷ *Id.*

²³⁸ *Id.* at 31.

²³⁹ Settlement ¶ 40.

²⁴⁰ *Id.*

²⁴¹ CAUSE-PA’s Statement in Support at 11.

²⁴² CAUSE-PA St. 1 at 31.

at least the proposed Plan period.²⁴³ Ensuring that these staffing levels will be maintained, notwithstanding retirements and voluntary separations, helps to ensure continuity in program administration despite the realities of workforce changes.²⁴⁴

b. Universal Service Advisory Committee (USAC)

Continuing with its position, CAUSE-PA notes that Mr. Miller raised concerns that FirstEnergy’s Universal Service Advisory Committee (USAC) has met only five times in recent years (June 2019, November 2019, May 2020, March 2022, and October 2022) – and that its last meeting was approximately 8 months ago.²⁴⁵ To help ensure that low-income customers and their communities learn about and are able to access universal service programs after consolidation, Mr. Miller recommended robust engagement through FirstEnergy’s USAC.²⁴⁶ Mr. Miller specifically recommended that FirstEnergy be required to meet with its USAC on a quarterly basis throughout each calendar year.²⁴⁷ Mr. Miller also recommended that, to the extent FE PA proposes further consolidation of its USECP in the context of future proceedings, it should be required to vet such proposals through its USAC through deliberative processes through the course of multiple meetings.²⁴⁸ Mr. Miller further recommended that FirstEnergy expand the membership of its USAC to increase the diversity within the Committee, and bring in new perspectives from the communities FirstEnergy serves.²⁴⁹ Mr. Miller also recommended that FirstEnergy share standard program data with USAC members in advance of each USAC meeting to help facilitate meaningful and informed discussion and recommendations.²⁵⁰

²⁴³ *Id.*; CAUSE-PA Statement in Support at 11.

²⁴⁴ CAUSE-PA Statement in Support at 11.

²⁴⁵ CAUSE-PA St. No. 1 at 28.

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 28-29.

²⁴⁸ *Id.* at 29.

²⁴⁹ *Id.*

²⁵⁰ *Id.*

Program data should include program enrollment and recertification, spending levels, and other pertinent information necessary for USAC members to be fully engaged.²⁵¹

Concerning Paragraphs 41 through 44 of the Settlement, CAUSE-PA submitted the following.

Paragraph 41 of the proposed Settlement provides that, as of the date of the final Order in this matter, and until a modification is agreed to by all interested parties, the Joint Petitioners commit that FE PA will host its USAC on a quarterly basis throughout the calendar year for the purpose of presenting any proposed changes or amendments to program design or administration prior to advancing a formal proposal or otherwise implementing such changes, and discussing issues and questions that may be occurring in the communities it serves related to consolidation or its Universal Service Program(s).²⁵²

Paragraph 42 of the proposed Settlement provides that FE PA commits to share program data with USAC members in advance of each USAC meeting to help facilitate informed discussions.²⁵³ Paragraph 42 sets forth that data will include program participant data, spending levels (including but not limited to current spending levels and remaining funding of hardship grants), and other relevant program metrics as agreed upon by the parties for each USECP (including number of new enrollees in USECPs, number of new customers who were removed from the Pennsylvania Customer Assistance Program and the reason for removal, new outreach activities and efforts by FE PA, the number of PCAP participants who have reached 90% and 100% of their maximum CAP credit limits).²⁵⁴

Paragraph 43 of the proposed Settlement provides that, while USAC meetings are intended to provide a platform for open dialogue and feedback regarding programming, the

²⁵¹ *Id.*

²⁵² Settlement ¶ 41.

²⁵³ *Id.* ¶ 42.

²⁵⁴ *Id.*

parties agree that the meetings are not a forum where universal service program cost allocation to other customer classes will be deliberated.²⁵⁵

Paragraph 44 of the proposed Settlement provides that, in an effort to increase the diversity and range of community voices to its USAC, FE PA will recruit additional members to its USAC from groups such as local housing providers, food assistance providers, weatherization and home repair providers, community health clinics, domestic violence agencies, immigrant and refugee resettlement organizations, and other local community-based organizations serving low-income individuals and communities within the FE PA service territory.²⁵⁶

CAUSE-PA submits that the provisions contained in Paragraphs 41-44 of the proposed Settlement represent important commitments and enhancements to FirstEnergy's USAC.²⁵⁷ By requiring quarterly USAC meetings to be held throughout the program year, Paragraph 41 of the proposed Settlement will help to ensure that FE PA is required to engage with community stakeholders through its USAC on a regular and consistent basis.²⁵⁸ These are essential points of contact to ensure that stakeholders are able to engage in dialogue and provide feedback related to Universal Service Programs, and changes thereto.²⁵⁹ Paragraph 41 further requires FE PA to present any proposed changes or amendments to program design or administration to its USAC prior to advancing formal proposals or implementing changes. This provision will help to ensure that FE PA's USAC members are provided important and timely information necessary to analyze the effectiveness of FE PA's programs and/or proposed program changes, and the opportunity to provide feedback in advance of formal processes or implementation of changes that may significantly affect low-income customers' ability to access and afford services.²⁶⁰ The provisions contained in Paragraph 41 help to reasonably address

²⁵⁵ *Id.* ¶ 43.

²⁵⁶ *Id.* ¶ 44.

²⁵⁷ CAUSE-PA's Statement in Support at 13.

²⁵⁸ *Id.* at 13-14; Settlement ¶ 41.

²⁵⁹ CAUSE-PA's Statement in Support at 14.

²⁶⁰ *Id.*

Mr. Miller’s concerns and recommendations - helping ensure that any future consolidation of FE PA’s Universal Service programs will be informed by the concerns and recommendations of diverse community stakeholders.²⁶¹

Paragraph 42 of the proposed Settlement also provides important enhancements to help ensure that robust program data will be provided to USAC members.²⁶² In particular, Paragraph 42 delineates specific data to be shared – including program participation data and spending levels – that are essential to determining whether FE PA’s Universal Service Programs are adequately serving the needs of its low-income customers both prior to and after any consolidation.²⁶³ These provisions help to reasonably address Mr. Miller’s recommendations that FE PA be required to share standard program data with its USAC – including data on program enrollment, recertification, and spending levels.²⁶⁴

Paragraph 43 of the proposed Settlement represents a balancing of the varied interests of the Settlement parties.²⁶⁵ While this Paragraph sets forth the parties understanding that USAC meetings are not a forum to deliberate universal service program cost allocation to other customer classes, the provisions at Paragraph 43 also make clear that USAC meetings are intended to provide a platform for open dialogue and feedback related to Universal Service Programming.²⁶⁶ These provisions thus maintain the understanding of the importance of open dialogue during USAC meetings, while balancing other Settling parties’ interests related to issues of cost allocation.²⁶⁷

²⁶¹ *Id.*

²⁶² CAUSE-PA’s Statement in Support at 14; Settlement ¶ 42.

²⁶³ CAUSE-PA’s Statement in Support at 14; CAUSE-PA St. No. 1 at 29.

²⁶⁴ CAUSE-PA’s Statement in Support at 14.

²⁶⁵ *Id.*

²⁶⁶ *Id.* at 15; Settlement ¶ 43.

²⁶⁷ CAUSE-PA’s Statement in Support at 15; Settlement ¶ 43.

Finally, CAUSE-PA asserts that Paragraph 44 of the proposed Settlement reasonably addresses Mr. Miller’s recommendation that FE PA be required to expand membership and diversity of its USAC.²⁶⁸ By requiring FE PA to recruit additional USAC members from a delineated list of local service providers, the provisions in Paragraph 44 will help to expand and diversify USAC membership to be inclusive of organizations serving low income consumers and other vulnerable customer groups in FE PA’s service territory.²⁶⁹ Expansion of USAC membership to a broader range of local community organizations will help to enhance the feedback and discussion during USAC meetings, ensuring FE’s decisions are better grounded in the needs of the communities FE PA serves.²⁷⁰ This expansion will also help to more accurately gauge consumer questions and issues that may arise as a result of the proposed Transaction, if approved.²⁷¹

c. PCAP Enrollment and Hardship Fund

FirstEnergy customers are currently required to complete a new application and submit income documentation to enroll or re-enroll in PCAP when they move from one of the Pennsylvania OpCos to another.²⁷² This requires PCAP participants who move to provide duplicative household information to maintain PCAP enrollment and poses a significant impediment for customers to maintain PCAP enrollment.²⁷³ Mr. Miller expressed concern through testimony that FirstEnergy only generally indicated that they intend, if the Transaction is granted, to allow customers who move within the new service territory to maintain PCAP enrollment.²⁷⁴ However, it was unclear when FirstEnergy intended to implement this change.²⁷⁵

²⁶⁸ CAUSE-PA St. 1 at 29.

²⁶⁹ CAUSE-PA’s Statement in Support at 15.

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.* at 28.

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*

Mr. Miller recommended that, upon implementation of any approved consolidation, FirstEnergy be required to revise its policies and procedures so that PCAP customers who move within the newly-formed service territory will automatically maintain PCAP enrollment.²⁷⁶

As to Paragraphs 42 through 47 of the Settlement, CAUSE-PA asserted the following.

Paragraph 45 of the proposed Settlement provides that the Joint Applicants are committed to making the transfer of PCAP enrollment status as seamless as possible for PCAP enrollees who move from one Rate District to another.²⁷⁷ However, Paragraph 45 explains that there are current system limitations that prevent FE PA from automatically moving customers into and out of different Rate Districts across the service territory.²⁷⁸ As a result, Paragraph 45 provides that the Joint Applicants commit to conducting further analysis of possible options for providing this optionality across its Pennsylvania footprint.²⁷⁹ The Joint Applicants will provide an update to its USAC as a standing agenda item until such time as FE PA reaches full implementation of the ability to provide seamless transition of enrollment for PCAP enrollees who move from one Rate District to another.²⁸⁰

The provisions contained in Paragraph 45 of the proposed Settlement represent a reasonable compromise and should be approved.²⁸¹ CAUSE-PA argues that, while Mr. Miller's recommendation that FirstEnergy immediately allow for customers to continue PCAP enrollment if they move within FE PA's new service territory was not adopted in its entirety, Paragraph 45 provides important touchpoints related to the portability of PCAP service, while taking into

²⁷⁶ *Id.*

²⁷⁷ Settlement ¶ 45.

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ CAUSE-PA Statement in Support at 16.

consideration FirstEnergy’s current system limitations.²⁸² In particular, providing regular updates at each USAC meeting will provide parties and stakeholders important information about the progress of implementing these changes and keep the need to implement this change at the forefront of USAC conversations.²⁸³

As previously mentioned, Mr. Miller raised concerns in his Direct Testimony that FirstEnergy was seeking to defer important considerations related to its USECP to later proceedings.²⁸⁴ Mr. Miller noted that programmatic variables – including the distribution of hardship fund assistance across FE PA’s newly-formed service territory – would ultimately determine whether customers would realize benefits, or be adversely impacted, as a result of the proposed Transaction.²⁸⁵ Mr. Miller explained that the Joint Applicants should be required to specifically show that low-income customers would realize substantial benefits from the Transaction, if approved.²⁸⁶ So that low income customers could realize substantial benefits from the Transaction, Mr. Miller recommended that FirstEnergy should be required to increase contributions to its Hardship Fund program by \$800,000 per program year (along with a proportional increase in administrative funding), with any unspent funding for the previous program year being rolled over to be used for hardship grant funding for the subsequent program year.²⁸⁷

Paragraph 46 of the proposed Settlement provides that the Joint Applicants agree to make contributions of \$150,000 annually to the Hardship Fund of FE PA, incremental to the current “matching contribution,” for a period of three years after PUC approval of the Transaction.²⁸⁸ The Joint Applicants additionally agree to make contributions of \$100,000

²⁸² *Id.* at 16-17.

²⁸³ *Id.*

²⁸⁴ CAUSE-PA St. No. 1 at 15-16.

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.* at 25.

²⁸⁸ Settlement ¶ 46.

annually to the Hardship Fund of FE PA, incremental to the current “matching contribution,” for the following two years.²⁸⁹ Any unspent funding from the annual contributions will be rolled over to be used for Hardship funding for the subsequent program year.²⁹⁰ Finally, Paragraph 46 provides that these additional Hardship Funds will be from shareholder contributions and not recovered from ratepayers.²⁹¹

CAUSE-PA argues the provisions contained in Paragraph 46 represent important improvements to FirstEnergy’s Hardship Fund.²⁹² While Mr. Miller’s proposed increases to the Hardship Fund were not adopted in their entirety, the increases to the Hardship Fund contained in Paragraph 46 will help to ensure that tangible public benefits will flow to FirstEnergy’s economically vulnerable customers for the next five years.²⁹³ By requiring that any unspent funding from annual contributions to be rolled over to the Hardship Fund for the subsequent program year, Paragraph 46 will help to ensure that any underutilization of this additional Hardship Funding can subsequently be accessed by low income customers.²⁹⁴ CAUSE-PA asserts that, as a whole, the provisions contained at Paragraph 46 of the proposed Settlement represent important enhancements to FirstEnergy’s Hardship Fund, are reasonable and squarely in the public interest, and should be approved.²⁹⁵

In his Direct Testimony, Mr. Miller concluded that FirstEnergy’s proposed Transaction would fail to result in substantial benefits to the public, and, more specifically, to residential low income customers.²⁹⁶ Mr. Miller explained that FirstEnergy’s purported benefits

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² CAUSE-PA Statement in Support at 18.

²⁹³ *Id.*; see CAUSE-PA St. 1 at 26.

²⁹⁴ CAUSE-PA Statement in Support at 18.

²⁹⁵ *Id.*

²⁹⁶ CAUSE-PA St. 1 at 6.

as a result of the Transaction were illusory and short-lived, and are unlikely to result in tangible benefits to FirstEnergy customers.²⁹⁷ Mr. Miller recommended several enhancements to FirstEnergy’s policies and procedures so that low income residential customers would be able to realize substantial benefits as a result of the proposed Transaction.²⁹⁸

Paragraph 47 of the Proposed Settlement provides that, subject to the provisions of any implementation order or other direction issued by the Commission, at such time as the Pennsylvania Department of Human Services (DHS) notifies the LIHEAP Advisory Committee that it is ready to share LIHEAP participant income data with utilities (currently anticipated to begin in Fall 2024), FE PA will implement required modifications to its IT system and processes – within a reasonable timeframe not to exceed one year – to automatically recertify existing PCAP participant’s income and eligibility.²⁹⁹ Until such time as IT system and process changes are made, FE PA will use best efforts to implement manual processing to recertify LIHEAP recipients for CAP purposes as soon as practicable.³⁰⁰

Paragraph 47 further provides that related costs to modify IT systems and processes will be eligible for timely recovery, including any related interim costs related to manual processing.³⁰¹ Further, pursuant to Paragraph 47, all LIHEAP recipients identified in the data exchange will be deemed by FE PA as confirmed low income customers and will be eligible for winter shutoff protections.³⁰² Finally, Paragraph 47 provides that FE PA commits to conducting outreach to all LIHEAP recipients identified in the data exchange that are not current PCAP participants to encourage enrollment in the program.³⁰³

²⁹⁷ *Id.* at 7.

²⁹⁸ *Id.* at 33.

²⁹⁹ Settlement ¶ 47.

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ *Id.*

CAUSE-PA asserts that the provisions contained in Paragraph 47 are squarely in the public interest and should be approved without modification.³⁰⁴ These provisions will help to eliminate PCAP enrollees having to provide duplicative information already provided for LIHEAP recipients during the PCAP recertification process.³⁰⁵ This will help to eliminate unnecessary barriers for PCAP customers to recertify their eligibility and remain in PCAP.³⁰⁶ By requiring FE PA to conduct outreach to all LIHEAP recipients identified in the data exchange who are not currently PCAP participants, Paragraph 47 meaningfully advances targeted outreach activities so that low-income customers are better informed of and able to more easily enroll in PCAP.³⁰⁷ Further, by requiring that the income status of all LIHEAP recipients identified through this data exchange be deemed confirmed low-income customers, these provisions will help to ensure that more vulnerable low income customers are protected from termination in the cold winter months, and will improve the ability to accurately assess the need for assistance.³⁰⁸ Finally, the provisions in Paragraph 47 help to reasonably balance the varied interests of the Joint Applicants by providing that related costs to modify IT systems and processes will be eligible for timely recovery, including any related interim costs related to manual processing.³⁰⁹

10. Industrial Customer Groups' Position on Low-Income Programs

The Industrial Customers Groups commented that the Joint Petitioners agree that allocation of USECP costs to other customer classes, including the Industrial class, will not be discussed at the USAC meetings.³¹⁰ Because the Industrial Customer Groups do not benefit

³⁰⁴ CAUSE-PA Statement in Support at 19.

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ Joint Petition ¶ 43.

from USECP programs, the Industrial Customer Groups would prefer to limit resources related to USAC meetings. By ensuring that the issue of cost allocation will not be deliberated during these meetings, the Industrial Customer Groups state that they are able to conserve such resources.

11. IECPA’s Position on Low-Income Programs

IECPA does not take a position on the various measures within the Settlement addressing low-income programs, with one exception.³¹¹ Specifically, Paragraph 43 ensures that USAC meetings will not be a venue for the deliberation of possible cost allocation revisions for universal service costs.³¹² As an association of energy-intensive and trade-exposed industrial customers who will not likely participate in these USAC meetings, IECPA views this provision as a critical protection of all parties' interests in this issue which – per the Commission's guidance³¹³ – should be reserved for deliberation, if at all, in the context of FirstEnergy PA's future Section 1308 base rate proceedings.³¹⁴

12. PSU’s Position on Low-Income Programs

PSU takes no position on these issues other than stating that it does not oppose paragraphs 40-47 of the Joint Petition.³¹⁵

³¹¹ IECPA’s Statement in Support at 6.

³¹² IECPA’s Statement in Support at 6; Settlement ¶ 43.

³¹³ *2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261-69.267*, Docket No. M-2019-3012599 at 7 (Final Policy Statement Order entered Nov. 5, 2019).

³¹⁴ IECPA’s Statement in Support at 6.

³¹⁵ PSU Statement in Support at 4.

13. Joint Petitioners' Operations and Customer Service

a. Transmission Facilities

As part of their direct testimony, the Joint Applicants stated that operationally, the Pennsylvania OpCos' customers will continue to receive safe and reliable service after the merger.³¹⁶ The branding of the individual companies will not change in the near-term, and in the long-term, customers will benefit from the various advantages identified in the Joint Applicant's testimony.³¹⁷

The Joint Applicants noted that OCA expressed a concern about KATCo and FE PA potentially withdrawing from PJM and recommended that the Commission condition its approval of the Joint Application on KATCo and FE PA agreeing to remain in PJM.³¹⁸ The Joint Applicants also noted that the Industrial Customers relayed a similar concern and recommendation.³¹⁹

Under the Settlement, the Joint Applicants agree they shall not withdraw transmission facilities from the operational control of PJM unless KATCo has first applied for, and obtained, authorization by order of the Commission.³²⁰

b. Call Center Operations

Addressing call center operations, the Joint Applicants noted that CAUSE-PA raised concerns about FE PA's commitment to maintaining a Pennsylvania presence and recommended that the Commission require FE PA to obtain Commission approval before

³¹⁶ Joint Applicants St. No. 1 at 29.

³¹⁷ *Id.*

³¹⁸ OCA St. No. 1 at 26, 28.

³¹⁹ Industrial Customers St. No. 1 at 27.

³²⁰ Joint Applicants' Statement in Support at 25; Settlement ¶ 48.

moving or otherwise making changes to its call centers in Pennsylvania.³²¹ Also CAUSE-PA had asserted that the Commission should still require FE PA to maintain call center presence in Pennsylvania and to maintain the structure staffing levels for its USECP programs through the term of the proposed USECP.³²²

In the Settlement, Joint Applicants make various commitments regarding the maintenance and operations of its call centers in Pennsylvania.³²³ Joint Applicants agree to maintain the location of a Pennsylvania call center for a period of five years, and if future business circumstances support a change in contact center location or construct, FE PA will take steps to ensure that a Pennsylvania-focused presence and awareness is represented within its contact center operations.³²⁴ Joint Applicants also agree to maintain minimum hours of call center operations, maintain the use Interactive Voice Response (IVR) systems during business and nonbusiness hours as in place as of July 2023, conduct monthly reviews of customer disputes and complaints, and maintain customer service performance at average historical levels.³²⁵

Joint Applicants maintain that the above Settlement provisions are carefully crafted to address parties' issues about FE PA's operations and customer service after the proposed merger is approved, including CAUSE-PA's concern about the location, operation, and availability of FE PA's call centers.³²⁶ Moreover, the Settlement outlines processes for FE PA and interested stakeholders to review its customer service performance on an ongoing basis.³²⁷ As such, the Settlement is designed to help ensure that customer service performance does not

³²¹ CAUSE-PA St. No. 1 at 30-31.

³²² CAUSE-PA St. No. 1SR at 14.

³²³ Settlement ¶ 49-51.

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ Joint Petitioners' Statement in Support at 27.

³²⁷ *Id.*

deteriorate due to the Proposed Consolidation.³²⁸ Accordingly, Joint Applicants argue these Settlement provisions are just and reasonable and should be approved without modification.³²⁹

14. OCA's Position on Operations and Customer Service

a. Transmission Facilities

OCA submits that one of the conditions for approval recommended by Dr. Ogur is that KATCo will not remove the transmission facilities from operational control of PJM without first obtaining authorization by the Commission.³³⁰ The Settlement adopts this recommendation and provides that Joint Applicants will not withdraw transmission facilities from operational control of PJM without first obtaining Commission approval.³³¹ This Settlement provision ensures that KATCo will remain bound by the condition imposed by the Commission in its approval of the merger of GPU Inc. and FirstEnergy at Docket Nos. A-110200F0095 and A-110400F0040.³³²

b. Call Center Operations

In Direct Testimony, Ms. Alexander expressed concerns regarding the effects the transaction would have on the call center. In particular, she testified that there would be no benefit offered through the Joint Application regarding Call Center performance because an affiliate would continue to operate the Call Center and no improvements had been offered.³³³ Ms. Alexander also recommended requirements that should take place should the Joint

³²⁸ *Id.*

³²⁹ *Id.*

³³⁰ OCA St. 1 at 28.

³³¹ Settlement ¶ 48.

³³² OCA Statement in Support at 10; *see* OCA St. 1 at 28.

³³³ OCA St. 2 at 6-9.

Application be approved.³³⁴ Ms. Alexander recommended that the Companies should improve call center performance and the handling of customer complaints by conducting a regular root cause analysis of customer disputes, complaints, and BCS compliance findings to share best practices, and to ensure a comparable and high-level performance for all its customers.³³⁵

The Settlement provides for additional conditions to maintain continuity of quality of customer service operations.³³⁶ The Settlement provides that the Joint Applicants will maintain a call center in Pennsylvania for five years, or if business circumstances require a change in location a “Pennsylvania focused presence and awareness” when recruiting representatives.³³⁷ The Settlement also provides that services offered to residential customers by the call center will be maintained for five years and that the call centers will maintain the minimum hours of Monday – Friday 8:00 AM to 6:00 PM.³³⁸ OCA suggests these terms are in the public interest because they will ensure FE PA maintains a Pennsylvania presence for the Call Center and will ensure the maintenance of the existing Call Center hours.³³⁹

Furthermore, the Settlement provides that FE PA will conduct OCA witness Alexander’s recommended root cause analysis that will provide a monthly review of customer disputes, complaints and Consumer Services compliance findings to respond based on the patterns that are identified.³⁴⁰ The monthly reports, along with the management responses, will be shared at USAC meetings.³⁴¹

³³⁴ *Id.* at 10.

³³⁵ *Id.* at 10.

³³⁶ OCA Statement in Support at 11.

³³⁷ Settlement ¶ 49.

³³⁸ *See* Settlement ¶ 49.

³³⁹ OCA’s Statement in Support at 11.

³⁴⁰ *Id.*

³⁴¹ *Id.*; *see* Settlement ¶ 50.

15. CAUSE’s Position on Operations and Customer Service

a. Transmission Facilities

CAUSE-PA did not take a position on the issues related to operational control of transmission facilities by PMJ.

b. Call Center Operations

CAUSE-PA explains that FirstEnergy, in its initial filings, indicated that it did not seek to change its location, management, available hours, or services for its call centers within the context of the present proceeding – though it did not specify whether and when it may seek to consolidate call center operations.³⁴²

Mr. Miller, CAUSE-PA’s witness, expressed some concerns in his written testimony. He noted that FirstEnergy failed to set forth any customer service improvements related to its call center policies, procedures, and operations.³⁴³ Mr. Miller also expressed concern that FirstEnergy failed to provide any assurances that the location, management, operations, policies, and procedures of its call centers would not be altered if the proposed Transaction was granted.³⁴⁴ Mr. Miller recommended that, if the Transaction were approved, FirstEnergy be required to maintain operations rooted in Pennsylvania, including in the context of its call center operations.³⁴⁵ Mr. Miller further recommended that the Commission required FE PA to seek Commission approval moving or otherwise making changes to its call centers that serve Pennsylvania consumers.³⁴⁶

³⁴² CAUSE-PA St. 1 at 4-5.

³⁴³ *Id.* at 12.

³⁴⁴ *Id.*

³⁴⁵ *Id.* at 30-31.

³⁴⁶ *Id.* at 31.

Paragraph 49 of the proposed Settlement provides that FE PA will maintain the locations and operations of its call centers in Pennsylvania. CAUSE-PA asserts that this portion of the proposed Settlement represents important agreements by the Joint Applicants.³⁴⁷ While Mr. Miller’s recommendations related to call center maintenance were not adopted in their entirety, these Settlement provisions help to ensure that the location and services of FirstEnergy call centers will be maintained for at least 5 years – helping ease any transition period.³⁴⁸ Further, these provisions will help to ensure the maintenance of call center hours and the continued use of IVR systems for FE PA’s call centers to help ensure that customers do not see a degradation in these services as a result of the Transaction.³⁴⁹ Finally, in the event that FE PA does intend to change the location or construct of its call centers, the Settlement helps to ensure call centers will continue to be rooted in Pennsylvania – and that advance discussion is available to help ensure the same.³⁵⁰ While Mr. Miller’s recommendations were not adopted in their entirety,³⁵¹ CAUSE-PA maintains that these provisions represent a balanced compromise of the parties that will help to ensure continuity of call center operations if the proposed Transaction is granted.³⁵²

The proposed Settlement also requires FE PA to conduct monthly reviews of customer disputes, complaints, and BCS compliance findings to identify and respond to the root cause(s) that lead to indicia of customer dissatisfaction.³⁵³ This review will identify trends and areas of performance improvement and will be reported out to management.³⁵⁴ In addition, monthly reports and management response will be shared annually with the USAC.³⁵⁵

³⁴⁷ CAUSE-PA’s Statement in Support at 21.

³⁴⁸ *Id.*

³⁴⁹ *Id.* at 21-22.

³⁵⁰ CAUSE-PA’s Statement in Support at 22.

³⁵¹ *See* CAUSE-PA St. 1 at 31.

³⁵² CAUSE-PA’s Statement in Support at 22.

³⁵³ Settlement ¶ 50.

³⁵⁴ *Id.*

³⁵⁵ *Id.*

CAUSE-PA did not take a position in the current proceeding related to the complaint and performance issues in this section of the proposed Settlement.³⁵⁶ However, Mr. Miller recommended in his Direct Testimony that FirstEnergy be required to meet with its USAC on a quarterly basis throughout each calendar year.³⁵⁷ Mr. Miller explained that, by requiring quarterly meetings, FirstEnergy will be able to hear about and discuss issues and questions that may be occurring in communities related to the consolidation.³⁵⁸ These provisions help to further Mr. Miller’s recommended engagement with FirstEnergy’s USAC.³⁵⁹ Specifically, these provisions will help to ensure that important data and information related to customer dissatisfaction and operational performance are reported to and discussed with the USAC.³⁶⁰ This delineated process will help the USAC provide important feedback related to the quality of FE PA’s customer services and address ongoing concerns related to the same.³⁶¹

The proposed Settlement also requires FE PA to maintain its customer service performance for customer call center, reliability of service, billing, meter reading, and response to customer complaints and disputes at levels consistent with the Pennsylvania OpCos’ 5-year historical average, as reported to the Commission.³⁶² To the extent that FE PA’s performance does not meet these levels, FE PA agrees to meet with the parties as requested to discuss areas of challenges and plans to improve service levels.³⁶³

³⁵⁶ CAUSE-PA’s Statement in Support at 22.

³⁵⁷ *See* CAUSE-PA St. 1 at 28.

³⁵⁸ *Id.* at 29.

³⁵⁹ CAUSE-PA’s Statement in Support at 23.

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² Settlement ¶ 51.

³⁶³ *Id.*

CAUSE-PA did not take a position in this proceeding related to the customer services issues in this portion of the proposed Settlement.³⁶⁴ However, Mr. Miller explained in his Direct Testimony that – despite allegations that the proposed Transaction would improve customer service – the Joint Applicants failed to indicate specific customer service and reliability improvements, or provide specific timeframes related to customer service improvements.³⁶⁵ Mr. Miller set forth recommendations that, if the proposed Transaction were approved, FE PA would be required to maintain certain Pennsylvania-based operations affecting customer service, including maintaining call center operations in the Commonwealth.³⁶⁶ The Settlement provisions contained in this section of the Settlement will help to ensure that customer service performance, including call center performance, is monitored and discussed with stakeholders.³⁶⁷ It sets forth critical requirements to help monitor potential impacts of the proposed Transaction on customer services on an ongoing basis.³⁶⁸

16. Industrial Customer Groups’ Position on Operations and Customer Service

The Industrial Customer Groups’ comment that the Joint Applicants agree not to withdraw transmission facilities from the operational control of PJM, unless KATCo first applies for, and obtains, Commission authorization.³⁶⁹ While the Joint Applicants would currently need to apply and obtain Commission authorization for withdrawal of KATCo from PJM, the Industrial Customer Groups appreciate this requirement being memorialized as part of the Settlement.³⁷⁰

³⁶⁴ CAUSE-PA’s Statement in Support at 23.

³⁶⁵ CAUSE-PA St. 1 at 10-11.

³⁶⁶ *Id.* at 30-31.

³⁶⁷ CAUSE-PA’s Statement in Support at 23-24.

³⁶⁸ CAUSE-PA’s Statement in Support at 24.

³⁶⁹ Settlement ¶ 48.

³⁷⁰ Industrial Customers St. No. 1 at 27.

17. IECPA’s Position on Operations and Customer Service

IECPA does not take a position on the provisions within the Settlement pertaining to Operations and Customer Service but does agree that these provisions reflect compromise among the affected parties that is in the public interest.³⁷¹

18. PSU’s Position on Operations and Customer Service

PSU takes no position on the issue relating to operations and customer service other than stating that it does not oppose paragraphs 48-51 of the Joint Petition.³⁷²

19. Joint Applicants’ Position on PSU (University Park Campus) Rate District

The Joint Applicants explain that they proposed to consolidate the five individual retail tariffs of the Pennsylvania OpCos into one combined retail tariff using the five Rate Districts in Pennsylvania to continue the current rate structure until a future base rate case filing.³⁷³ These five rate districts would be named Met-Ed, Penelec, Penn Power, West Penn, and PSU.³⁷⁴

The Joint Applicants note that in direct testimony PSU claimed that certain changes that should be made to the PSU Rate District’s tariff page, specifically, revising the Transformer Loss adjustment language and making corrections to the DSS Rider, Smart Meter Rider, and the Hourly Pricing Default Service Rider.³⁷⁵

³⁷¹ IECPA’s Statement in Support at 6.

³⁷² PSU Statement in Support at 4.

³⁷³ Joint Applicants St. No. 1 at 12.

³⁷⁴ *Id.*

³⁷⁵ PSU St. No. 1 at 5-7.

In rebuttal, the Joint Applicants agreed to incorporate those changes into its compliance tariff filing.³⁷⁶ Furthermore, the Joint Applicants identified additional tariff changes that need to be made, such as updating the DSS Rider billing method for industrial customers in the West Penn and Penelec Rate Districts.³⁷⁷ All of those changes were shown in redline form in Joint Applicants Exhibit JMS-15.³⁷⁸

Under the Settlement, the Joint Applicants accept the tariff modifications proposed by PSU.³⁷⁹ Such tariff modifications are incorporated in the *pro forma* tariff supplement included with Appendix A attached to the Settlement and will be incorporated in the compliance tariff filings in this proceeding.³⁸⁰ The Joint Applicants also commit to maintaining a separate Rate District and base distribution rates for PSU.³⁸¹ All of these Settlement provisions are consistent with the positions set forth by the Joint Applicants and PSU in their testimony and are designed to resolve any ambiguity or inconsistency in the originally-filed *pro forma* tariff supplement pages governing the PSU Rate District.³⁸² As such, the Joint Applicants aver the Settlement provisions are just and reasonable and should be approved without modification.

20. OCA's and CAUSE-PA's Positions on PSU (University Park Campus) Rate District

OCA and CAUSE-PA did not take a position in this proceeding on the Settlement terms maintaining PSU (University Park Campus) as a separate Rate District.

³⁷⁶ Joint Applicants' St. No. 1R at 21.

³⁷⁷ *Id.*

³⁷⁸ *Id.*

³⁷⁹ Settlement ¶ 52.

³⁸⁰ *Id.*

³⁸¹ Settlement ¶ 53.

³⁸² Joint Applicant's Statement in Support at 29.

21. Industrial Customer Groups' Position on PSU (University Park Campus) Rate District

The Industrial Customer Groups do not oppose the PSU-specific settlement terms set forth in the Joint Petition.³⁸³

22. IECPA's Position on PSU (University Park Campus) Rate District

IECPA does not take a position on the provisions within the Settlement pertaining to the Pennsylvania State University (University Park Campus) but does agree that these provisions reflect compromise among the affected parties that is in the public interest.³⁸⁴

23. PSU's Position on PSU (University Park Campus) Rate District

PSU submits that the Settlement provides that FE PA has committed making its proposed tariff modifications consistent with its representations in this proceeding and that FE PA will continue to provide service under the same rates, terms, and conditions for service as the existing Pennsylvania OpCos.³⁸⁵ Specifically, PSU Witness Mr. Crist pointed out in his testimony that FE PA's originally-filed proposed tariff modifications could change the rates and terms of service provided to PSU and provided suggested revisions to the tariff modification to provide clarity and address his concerns.³⁸⁶ PSU asserts by agreeing to change its tariff modifications, FE PA has ensured rates and terms of service to PSU will not change, and the Transaction will have no immediate negative impacts on PSU.³⁸⁷

³⁸³ Industrial Customer Groups' Statement in Support at 8; *See* Joint Petition ¶¶ 52-53.

³⁸⁴ IECPA's Statement in Support at 6.

³⁸⁵ Joint Petition ¶ 54.

³⁸⁶ PSU St. No. 1 at 3:17-7:22.

³⁸⁷ PSU Statement in Support at 5.

FE PA has also committed to maintaining the separate Rate District and base distribution rates for PSU currently reflected in West Penn Tariff 38.³⁸⁸ Thus, the Settlement provides assurances on a longer-term basis that the Transaction is unlikely to have negative impacts on PSU.³⁸⁹

24. Joint Applicants' Position on Additional Provisions

a. Recovery of Transaction Costs

In their direct testimony, the Joint Applicants explained that Transaction-related costs would be excluded from rates charged to customers.³⁹⁰ However, Industrial Customers averred that the Joint Applicants did not address how transition costs would be handled.³⁹¹ The Joint Applicants explained in rebuttal that transition costs (*i.e.*, costs necessary to consolidate reporting, accounting and rates, including IT costs, internal labor, and any outside consulting costs) would also be excluded from rates.³⁹²

Under the Settlement, the Joint Applicants reaffirm that they will not seek recovery of any Transaction or transition costs related to Proposed Consolidation from distribution or transmission rates.³⁹³ Therefore, the Joint Petitioners argue the Settlement incorporates the parties' agreement that transition costs and Transaction-related costs will not be recovered through distribution or transmission rates and help provides clarity by defining what is included in those cost categories. Thus, Joint Petitioners argue this Settlement provision is just and reasonable and should be approved without modification.³⁹⁴

³⁸⁸ Joint Petition ¶ 53.

³⁸⁹ PSU Statement in Support at 5.

³⁹⁰ Joint Applicants St. No. 2 at 14.

³⁹¹ Industrial Customers St. No. 1 at 19.

³⁹² Joint Applicants St. No. 2R at 6.

³⁹³ Settlement ¶ 54.

³⁹⁴ Joint Petitioners' Statement in Support at 30.

b. Collaborative Meetings

The Settlement also incorporates several provisions designed to improve the collaboration between FE PA and stakeholders. Specifically, under the Settlement, FE PA will hold collaborative meetings in advance of filings for modifications to the Joint Applicants' regulatory-required plans or its next scheduled plan filings, to include Default Service Plan (DSP), USECP, Energy Efficiency and Conservation Plan (EE&C Plan), Long-Term Infrastructure Improvement Plan (LTIP) and, in the event that PJM implements a seasonal capacity construct, any filings related to revisions to the Joint Applicants' recovery methodology concerning those capacity market changes.³⁹⁵ The collaborative meetings will be used to discuss the consolidation's impact on each of the respective filings and FE PA's plans to unify such programs moving forward.³⁹⁶

Similarly, the Joint Applicants commit to initiate twice-yearly meetings with the Industrial User Groups (IUGs), including IECPA and the Industrial Customer Groups, to discuss topics of interest, including general reliability, calculation of individual customer peak load contributions, and rate overviews.³⁹⁷ As part of these meetings, IUG members will be able to provide advance notice of topics of interest for addition to the agenda, which may include individual reliability and/or power quality concerns that will be investigated and addressed as breakout topics with those specific customers, including root cause analysis and options for corrective action.³⁹⁸ Through these Settlement provisions, the Joint Petitioners aim to improve the collaboration among these interested stakeholders on a variety of subjects and help ensure the Proposed Consolidation does not adversely affect FE PA's service and programs.³⁹⁹ As such, the

³⁹⁵ Joint Petitioners' Statement in Support at 30-31; *see* Settlement ¶ 55.

³⁹⁶ Joint Petitioners' Statement in Support at 31.

³⁹⁷ *Id.*; Settlement ¶ 56.

³⁹⁸ Joint Petitioners' Statement in Support at 31.

³⁹⁹ *Id.*

Joint Petitioners argue these Settlement provisions are just and reasonable and should be approved without modification.⁴⁰⁰

c. Survivability of Prior Settlements

The Joint Applicants assert that the Settlement clarifies that all prior settlements entered into by them will survive any approved consolidation or merger and will be enforceable against FE PA to the extent applicable.⁴⁰¹ The Joint Applicants maintain that this provision resolves any doubt as to the applicability of prior settlements to FE PA.⁴⁰² Such certainty benefits FE PA, the Commission, and interested stakeholders.⁴⁰³ Thus, the Joint Applicants argue that this Settlement provision is just and reasonable and should be approved without modification.⁴⁰⁴

25. OCA's Position on Additional Provisions

a. Recovery of Transaction Costs

The Settlement provides that the Joint Applicants will not seek any recovery of Transaction and transition costs related to the consolidation.⁴⁰⁵ OCA submits that this portion of the Settlement benefits consumers as it protects them from an increase in rates associated with the costs of this transaction.⁴⁰⁶

⁴⁰⁰ *Id.*

⁴⁰¹ Settlement ¶ 57.

⁴⁰² Joint Petitioners' Statement in Support at 31.

⁴⁰³ *Id.*

⁴⁰⁴ Joint Petitioners' Statement in Support at 32.

⁴⁰⁵ Settlement ¶ 54.

⁴⁰⁶ OCA's Statement in Support at 12.

b. Collaborative Meetings

In the Settlement, FE PA commits to holding collaborative meetings in advance of filings for modification of regulatory-required plans or scheduled filings such as DSPs, USECPs, EE&C Plans, LTIPs, and “in the event that PJM implements a seasonal capacity construct, any filings related to revisions to the Joint Applicants’ recovery methodology concerning those capacity market changes.”⁴⁰⁷ This commitment will allow all parties and the OCA to work together in the future to best determine and shape filings that balance the needs of FE PA and the public.⁴⁰⁸

c. Survivability of Prior Settlements

OCA did not specifically take a position on the Settlement terms set forth in Paragraph 57 concerning the survivability of prior settlements.

26. CAUSE-PA’s Position on Additional Provisions

a. Recovery of Transaction Costs

CAUSE-PA did not take a position on the Joint Applicants’ reaffirmation that they will not seek recovery of any transaction and transition costs related to the consolidation as set forth at Paragraph 54 of the proposed Settlement. However, CAUSE-PA maintains that this term is squarely in the public interest to ensure that the Joint Applicants do not seek to recover the cost of the Transaction.⁴⁰⁹

⁴⁰⁷ Settlement ¶ 55.

⁴⁰⁸ OCA’s Statement in Support at 12.

⁴⁰⁹ CAUSE-PA’s Statement in Support at 24.

b. Collaborative Meetings

Here, CAUSE-PA notes that its witness, Mr. Miller, raised concerns in his Direct Testimony that FirstEnergy was delaying implementation of planned universal service changes that would determine whether low-income customers ultimately realize benefits – or incur potential harms – as a result of the proposed Transaction.⁴¹⁰ Mr. Miller recommended enhancements within the context of this proceeding that would constitute substantial benefits to low income consumers, as previously discussed.⁴¹¹ To the extent that FirstEnergy proposes further consolidation of its USECP in the context of future proceedings, Mr. Miller also recommended that it should be required to vet such proposals within its USAC through a deliberative process over the course of multiple meetings.⁴¹²

CAUSE-PA further notes that Paragraph 55 of the proposed Settlement provides that FE PA will hold collaborative meetings in advance of filing modifications to the Joint Applicants’ regulatory-required plans or its next scheduled plan filings, to include DSP, USECP, EE&C Plan, LTIP, and (in the event PJM Interconnection, LLC implements a seasonable capacity construct) any filings related to revisions to the Joint Applicants’ recovery methodology related to those capacity market changes.⁴¹³ This Paragraph further provides that the collaborative meetings will be used to discuss the consolidation’s impact on each of the respective filings and FE PA’s plans to unify such programs moving forward.⁴¹⁴

CAUSE-PA represents that the Settlement provisions contained in Paragraph 55 represent important enhancements to FirstEnergy’s USAC.⁴¹⁵ While Mr. Miller’s

⁴¹⁰ CAUSE-PA St. 1 at 15.

⁴¹¹ *Id.* at 28-29.

⁴¹² *Id.* at 29.

⁴¹³ Settlement ¶ 55.

⁴¹⁴ *Id.*

⁴¹⁵ CAUSE-PA’s Statement in Support at 25.

recommendations were not fully adopted, these provisions set forth important touchpoints so that parties and stakeholders are given advance notice and an opportunity to provide initial feedback related to important modification proposals.⁴¹⁶ This will help to potentially address initial questions and concerns related prior to filings and streamline the process of reviewing and integrating changes into these filings.⁴¹⁷ Requiring that these collaborative meetings address how consolidation impacts respective filings will also help to shed light on the ongoing effects of the proposed Transaction on FirstEnergy’s customers.⁴¹⁸ As such, the provisions at Paragraph 55 of the proposed Settlement represent a reasonable balancing of the varied interests of the settling parties, and are in the public interest.

c. Survivability of Prior Settlements

CAUSE-PA asserts that Paragraph 57 of the proposed Settlement provides that all prior settlements entered by the Joint Applicants will survive any approved consolidation or merger and will be enforceable against FE PA to the extent applicable.⁴¹⁹

CAUSE-PA contends that the provisions contained at Paragraph 57 of the proposed Settlement are just, reasonable, and in the public interest.⁴²⁰ The provisions in Paragraph 57 will ensure that a myriad of critical terms contained in previously agreed-to settlements will not be vitiated because of the proposed Transaction. Ensuring enforcement of previous Settlement terms also protects a parties’ ability of enforcing Settlements before the Commission – and thus serves a broader public interest of promoting the continued use of Settlements in litigated proceeding before the Commission.⁴²¹

⁴¹⁶ *Id.*

⁴¹⁷ *Id.*

⁴¹⁸ *Id.*

⁴¹⁹ Settlement ¶ 57.

⁴²⁰ CAUSE-PA’s Statement in Support at 26.

⁴²¹ *Id.*

27. Industrial Customer Groups' Position on Additional Provisions

a. Recovery of Transaction Costs

The Industrial Customer Groups note that the Joint Applicants reaffirm that they will not seek to recover any Transaction or transition costs, as defined in the Joint Petition, related to the consolidation from distribution or transmission rates.⁴²² According to the Industrial Customer Groups, such costs may limit the benefits stemming from consolidation. Joint Applicants' reaffirmation not to recover these costs ensures that resulting benefits to ratepayers will not be reduced by these costs.⁴²³

b. Collaborative Meetings

According to the Industrial Customer Groups, FE PA agrees to hold collaborative meetings in advance of filing regulatory-required plans, including DSPs, USECPs, EE&C Plans, LTIIPs and, in the event that PJM implements a seasonal capacity construct, any filings revising the Joint Applicants' capacity market recovery methodology.⁴²⁴ Such collaboratives will be used to discuss the consolidation's impact on these filings and FE PA's plans to unify the programs going forward.⁴²⁵ The Industrial Customer Groups noted that consolidation of the Pennsylvania OpCos may impact the aforementioned regulatory-required plans. The Industrial Customer Groups submit that allowing for collaborative meetings in advance of these filings should assist in lessening the impact on ratepayers.⁴²⁶

⁴²² Settlement ¶ 54.

⁴²³ Industrial Customers St. No. 1 at 17, 27; Industrial Customer Groups' Statement in Support at 9.

⁴²⁴ Settlement ¶ 55.

⁴²⁵ *Id.*

⁴²⁶ Industrial Customer Groups' Statement in Support at 9.

Continuing with their position, the Industrial Customer Groups state that the Joint Applicants confirm that they will initiate bi-annual meetings with the Industrial Customer Groups and IECPA to discuss reliability, calculation of individual customer Peak Load Contributions (PLCs), and rates.⁴²⁷ During these meetings, the Industrial Customer Groups and IECPA may provide advance notice of additional topics for the agenda, which may include individual reliability and/or power quality concerns that will be investigated and addressed as breakout topics with those specific customers, including root cause analyses and options for corrective actions.⁴²⁸ Because consolidation of the Pennsylvania OpCos may impact ratepayers, including Industrial customers, these bi-annual meetings will provide Industrial customers the opportunity to address and discuss any resulting issues of concern with the Joint Applicants.⁴²⁹

c. Survivability of Prior Settlements

The Industrial Customer Groups did not specifically take a position on the Settlement terms set forth in Paragraph 57 concerning the survivability of prior settlements.

28. IECPA's Position on Additional Provisions

a. Recovery of Transaction Costs

IECPA raised a concern regarding the possible collection of transition costs related to the proposed consolidation.⁴³⁰ IECPA submits that the Settlement contains a critical provision both defining what the transition costs of the consolidation will be and assurance that neither these costs, nor the transaction costs of the consolidation, will be recovered in distribution or transmission rates.⁴³¹

⁴²⁷ Joint Petition ¶ 56.

⁴²⁸ *Id.*

⁴²⁹ Industrial Customer Groups' Statement in Support at 9.

⁴³⁰ Industrial Customer Statement No. 1 at 19.

⁴³¹ Settlement ¶ 54.

b. Collaborative Meetings

IECPA asserted that it and other industrial groups noted in this proceeding that the proposed Transaction, as filed, did not provide adequate assurances of “improved service quality” on the Joint Applicants' system in Pennsylvania.⁴³² Although not mentioned specifically in testimony, the question of service quality in the form of reliability improvements, PJM capacity constructs, customer peak load contributions, and other issues did arise in the context of settlement negotiations between the parties.⁴³³

IECPA submits that in response to the above issues, and directly related to the question of improved service quality, the Settlement provides that the Joint Applicants will hold collaborative meetings in advance of its rate filings for modifications to the Joint Applicants' regulatory-required plans or its next scheduled plan filings, to include DSP, USECP, EE&C Plan, LTIIP and, in the event that PJM implements a seasonal capacity construct, any filings related to revisions to the Joint Applicants' recovery methodology concerning those capacity market changes.⁴³⁴

Additionally, the Settlement specifically establishes twice-yearly meetings with the industrial parties to discuss topics of interest, including general reliability, calculation of individual customer peak load contributions, and rate overviews.⁴³⁵ IECPA supports both of these provisions of the Settlement as means of addressing issues of material relevance to stakeholders – including industrial ratepayers – going forward, thus evidencing the presentation of affirmative ratepayer benefits that IECPA believes is necessary for this consolidation transaction.⁴³⁶

⁴³² See Industrial Customer Statement No. 1 at 13-14.

⁴³³ IECPA's Statement in Support at 7.

⁴³⁴ Settlement ¶ 55.

⁴³⁵ Settlement ¶ 56.

⁴³⁶ IECPA's Statement in Support at 7-8.

c. **Survivability of Prior Settlements**

The IECPA did not specifically take a position on the Settlement terms set forth in Paragraph 57 concerning the survivability of prior settlements.

29. **PSU's Position on Additional Provisions**

a. **Recovery of Transaction Costs**

In the Settlement, FE PA commits to not seek recovery of transaction or transition fees.⁴³⁷ PSU explains that this provision protects customers from having to pay for the Transaction from rates.⁴³⁸

b. **Collaborative Meetings**

PSU submits that FE PA's commitment to hold collaborative meetings in advance of filing with the Commission for modifications to the Joint Applicants' regulatory-required plans or its next scheduled plan filings, to include DSP, USECP, EE&C Plan, etc., is a benefit to PSU and all parties that participate in these consolidation proceedings.⁴³⁹ This settlement term will enable parties to have advance notice of the filing, allowing parties to be prepared and giving them additional time to consider proposed changes to any of these programs prior to having to do so in a litigated proceeding with limited time periods for litigation and decision.⁴⁴⁰

⁴³⁷ Joint Petition ¶ 54.

⁴³⁸ PSU's Statement in Support at 5.

⁴³⁹ *Id.*

⁴⁴⁰ *Id.*

c. Survivability of Prior Settlements

The PSU did not specifically take a position on the Settlement terms set forth in Paragraph 57 concerning the survivability of prior settlements.

VII. RECOMMEDATION

A. Settlements Are Preferable.

Commission policy promotes settlements.⁴⁴¹ Settlements eliminate the time, effort, and expense of litigating a matter to its conclusion, which may entail review of the Commission’s decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding.⁴⁴²

By definition, a “settlement” reflects a compromise of the positions the parties of interest held, which arguably fosters and promotes the public interest. The Commission has explained that parties to settled cases are afforded flexibility in reaching amicable resolutions,⁴⁴³ and the principal issue for the Commission to consider is whether the settlement is in the public interest.⁴⁴⁴

⁴⁴¹ See 52 Pa. Code § 5.231.

⁴⁴² 52 Pa. Code § 69.401.

⁴⁴³ *Pa. Pub. Util. Comm’n v. CS Water & Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991).

⁴⁴⁴ *Pa. Pub. Util. Comm’n v. MXenergy Elec. Inc.*, Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013). *Pa. Pub. Util. Comm’n v. Windstream Pa., LLC*, Docket No. M-2012-2227108 (Opinion and Order entered Sept. 27, 2012); *Pa. Pub. Util. Comm’n v. C.S. Water and Sewer Assocs.*, Docket No. R-00881147 (Opinion and Order entered July 22, 1991).

Weighing the evidence and duly considering the positions of the Joint Petitioners competing interests, we find the Settlement is in the public interest as analyzed below.

B. Proposed Consolidation

The Joint Petitioners agree that the Settlement is in the public interest. The Settlement was achieved only after a comprehensive investigation, including formal and informal discovery, multiple rounds of testimony, and numerous settlement discussions and formal negotiations, which ultimately led to the Settlement.

The Joint Petitioners agree they undertook significant time and effort to reach a full settlement of all issues in an abbreviated period. They each compromised on different and competing issues and proposals raised in this case. In some instances, and in exchange for reaching an agreement on other issues, the parties collectively agreed to accept or reject a certain party's litigation position or to meet somewhere in between competing litigation positions. As such, in determining whether the Settlement is reasonable and in the public interest, the Settlement should be viewed as a whole.

The fact that the Settlement is unopposed, in and of itself, provides strong evidence that the Settlement is reasonable and in the public interest, particularly given the diverse interests of these parties and the active role they have taken in this proceeding.

The Joint Petitioners agree the Settlement will produce substantial affirmative public benefits upon closing and additional benefits in the future. The Proposed Consolidation will produce both short-term and long-term benefits, including, but not limited to, financing benefits, regulatory and administrative efficiency benefits, improved service quality benefits, and potential for increased investment.⁴⁴⁵ These benefits will result from combining the four commonly-owned electric distribution companies, *i.e.*, Met-Ed, Penelec, Penn Power, and West

⁴⁴⁵ See, *e.g.*, Joint Application ¶¶ 6, 121-130; Joint Applicants' St. No. 1 at 34-35.

Penn, into a single EDC that will be more efficient in its operations and have a greater access to capital markets.⁴⁴⁶

For example, as explained by Joint Petitioners, the proposed Transaction's financing benefits will result from interest expense savings on the issuance of new long-term debt, including any refinancing of existing debt.⁴⁴⁷ As the Joint Applicants explained, hypothetical scenarios can be used to demonstrate the expected type of benefit that the Pennsylvania OpCos anticipate could be realized by virtue of their improved access to capital on a consolidated basis.⁴⁴⁸ For example, for every 10 basis points (or 0.1%) reduction in the coupon, or interest rate, of a new \$500 million debt offering under more favorable terms, annual interest expense would be reduced by \$500,000.⁴⁴⁹ For a range of reference, the Pennsylvania OpCos currently have \$4.2 billion of outstanding debt.⁴⁵⁰ Further, FE PA will become a Securities and Exchange Commission (SEC) registrant and, thus, have greater access to capital markets.⁴⁵¹ This immediate benefit will later be reflected in a lower cost of debt in base rates for FE PA.⁴⁵²

As for regulatory and administrative efficiencies, the Proposed Consolidation will reduce the number of filings and reports currently required to be submitted by each Pennsylvania OpCo and will allow the submission of a single company filing by FE PA.⁴⁵³ Indeed, almost 75% of the Pennsylvania OpCos' filings and reports with the Commission will be streamlined in some way.⁴⁵⁴ By reducing these redundancies, the Proposed Consolidation will produce

⁴⁴⁶ Joint Petitioners' Statement in Support at 4.

⁴⁴⁷ Joint Applicants St. No. 1 at 34; Joint Applicants St. No. 3 at 16.

⁴⁴⁸ Joint Applicants St. No. 3R at 10.

⁴⁴⁹ *Id.*

⁴⁵⁰ *Id.*

⁴⁵¹ Joint Applicants St. No. 1 at 34; Joint Applicants St. No. 3 at 16.

⁴⁵² Joint Applicants St. No. 1 at 34; Joint Applicants St. No. 3 at 16-17.

⁴⁵³ Joint Applicants St. No. 1 at 34; Joint Applicants St. No. 2 at 15; Joint Applicants St. No. 1R at 6-

7.

⁴⁵⁴ Joint Applicants St. No. 1R at 6-7; *see* Joint Applicants Exhibit JMS-13.

efficiencies for both the companies and regulatory staff that will only grow with time.⁴⁵⁵ Also, the efficiencies produced by the Proposed Consolidation would allow employees to focus on improving the quality of the tasks performed and to work on other multi-year corporate improvement initiatives, such as planning longer-term improvement projects.⁴⁵⁶ Additionally, certain business tasks, currently performed in duplicative manners by the current Pennsylvania OpCos, would be consolidated and performed by a single company post-merger.⁴⁵⁷

Additionally, there will be several benefits from the Proposed Sale of MAIT Class B Interests and the Proposed Transmission Contribution.⁴⁵⁸ The capital received from the sale of the passive Class B membership interests in MAIT to FirstEnergy Corp. will be used with the goal of strengthening Met-Ed's and Penelec's credit profiles, balance sheets, and funding their capital expenditures.⁴⁵⁹ Meanwhile, the Proposed Transmission Contribution will principally result in increased transparency with respect to West Penn's distribution and transmission businesses and will further streamline the Pennsylvania OpCos' consolidation of electric distribution assets by separating West Penn's transmission assets.⁴⁶⁰ Also, investors perceive the transmission-only and distribution-only models as having clear investment purposes, which should benefit Joint Applicants in the long-term.⁴⁶¹ The Proposed Transmission Contribution also will align the structure of West Penn's transmission facilities with the structure of the other Pennsylvania OpCos, as the Commission previously authorized MAIT's acquisition of Met-Ed's transmission facilities and American Transmission Systems Incorporated's (ATSI) acquisition of

⁴⁵⁵ Joint Applicants St. No. 1 at 34; Joint Applicants St. No. 1R at 6-7.

⁴⁵⁶ Joint Applicants St. No. 1 at 34.

⁴⁵⁷ *Id.*

⁴⁵⁸ Joint Application ¶¶ 131-139; Joint Applicants St. No. 1 at 36-40; Joint Applicants St. No. 3 at 17; Joint Applicants St. No. 3R at 3-4.

⁴⁵⁹ Joint Applicants St. No. 3 at 17.

⁴⁶⁰ Joint Applicants St. No. 1 at 37; Joint Applicants St. No. 3R at 4.

⁴⁶¹ Joint Applicants St. No. 3 at 17.

Penn Power's transmission facilities.⁴⁶² Therefore, the contribution of West Penn's transmission assets to KATCo will align its operations with those of its peers.⁴⁶³

From a transmission perspective, the consolidation of Transmission Assets within KATCo will allow interested parties to easily review the annual updates to the transmission revenue requirement because that review can be focused on a single entity that owns only transmission assets.⁴⁶⁴ This increased clarity and transparency will also help attract capital because the added transparency investors favor in a transmission-only model will have no retail customers and receive its revenue from PJM.⁴⁶⁵ Indeed, by creating separate companies with clear operating businesses, where FE PA will be a distribution only company and KATCo will be a transmission only company, these companies are expected to attract investors that will offer competitive pricing for each company's future financings that should benefit customers in the long-term.⁴⁶⁶ The Transaction also will provide the benefit of creating a corporate separation of the transmission business, in addition to the functional separation that exists today.

The Commission has previously recognized the benefits of proposals akin to the Proposed Consolidation, Proposed Sale of MAIT Class B Interests, and Proposed Transmission Contribution. Particularly, in the *Joint Application of UGI Utilities, Inc., UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc.*,⁴⁶⁷ the Commission recognized that a consolidation of public utility companies that performed certain business functions in duplicate and/or triplicate would be performed on a consolidated basis by a single company in the future. Later, in the *Joint Application of Peoples Natural Gas Co. LLC and Peoples Gas Co. LLC*, the Commission recognized that the proposed merger would allow for customer service uniformity and the

⁴⁶² Joint Applicants St. No. 1 at 37.

⁴⁶³ *Id.*

⁴⁶⁴ *Id.*

⁴⁶⁵ *Id.*; Joint Applicants St. No. 3 at 17-18.

⁴⁶⁶ Joint Applicants St. No. 3 at 18.

⁴⁶⁷ Docket No. A-2018-3000381, (Order entered Sept. 20, 2018).

elimination of duplicative business activities (i.e., the installation of duplicative facilities in overlapping service territories).⁴⁶⁸ As for the Proposed Sale of MAIT Class B Interests and the Proposed Transmission Contribution, the Commission and other regulatory bodies have recognized the benefits of separating the transmission and distribution functions of electric utilities into separate companies.⁴⁶⁹

C. Rates

1. Rate Unification

The Settlement represents a reasonable compromise of the parties' positions on the impact of the Transaction on customers' rates. Under the Settlement, in line with the concept of gradualism, the Joint Applicants will not propose to reach full base distribution rate unification of all classes until the conclusion of three rate cases, filed on or after January 1, 2025, or a period of 10 years from the date of the Commission's approval of the Transaction, whichever occurs first, except that any newly introduced base distribution rate, for which no customers are currently receiving service and on which any customers eligible to take service on this newly introduced rate would voluntarily enroll, can be charged as one FE PA uniform rate (*e.g.*, new EV or lighting rates), as approved by the Commission in any subsequent rate case.⁴⁷⁰ This Settlement term ensures any impacts of unification will be phased in reducing any negative impact on customers, and reaches a reasonable balance while allowing parties the opportunity to assess any rate consolidation proposals over time.

In addition, the Settlement does not commit any of the parties to the settlement to support the Company's proposals thus reserving for future rate cases the question of how

⁴⁶⁸ Docket No. A-2021-3029831, (Order entered Aug. 25, 2022).

⁴⁶⁹ See Joint Applicants St. No. 1 at 38-40.

⁴⁷⁰ Settlement ¶ 32.

quickly, if at all, full rate consolidation progresses.⁴⁷¹ This preserves the parties' ability to participate in future rate filings, advocating for their respective interests.

2. Cost of Service Models and Savings Tracking

The Joint Applicants also will file four cost of service models, one for each Rate District with PSU as part of the West Penn Rate District, as well as a consolidated FE PA cost of service model, in the next rate case after the proposed Consolidation is approved, and in each of the subsequent rate cases until full rate consolidation is achieved.⁴⁷² Further, the Joint Petitioners' agree that no customer group in any FE PA Rate District should be extraordinarily disadvantaged or harmed in the event of a rate unification and that such rate unification should adhere to the principle of gradualism.⁴⁷³

By effectively tracking and recording savings and costs, all parties will be able to better see the effects of the Transaction and ensure that any savings flow to consumers. In addition, the requirement to continue to file cost of service models based on the now separate utilities will improve visibility into any rate consolidation proposals brought forth by the Company. The process delineated in the Settlement will allow the Commission and parties to better evaluate the longer-term financial benefits from the Transaction and determine whether the Joint Applicants are appropriately tracking and returning savings to ratepayers.

The Settlement also provides that the Joint Applicants will maintain a list on FE PA's website of the historical rate schedules for each of the Rate Districts on a rolling five-year basis, including zonal and system scaling factors for the industrial classes, by Rate District, applicable during each rate term. This provision will help provide important information to consumers related to historical rates, improving transparency for FirstEnergy's customers. Historical rate information can help consumers gain important insight into how their rates have

⁴⁷¹ OCA's Statement in Support at 5.

⁴⁷² Settlement ¶ 33.

⁴⁷³ *Id.* ¶ 36.

changed over past years and may help to inform consumer participation in a myriad of proceedings, including future rate increase proposals. As consolidation of rates occurs over the coming year, providing this information to customers via an easily accessible process will ensure that customers are able to adequately track rate changes.

Taken together, the Settlement terms regarding rate unification and cost tracking protect all ratepayers by applying gradualism over an approximately 10-year period through a series of base rate cases while still ensuring evidence of cost of service of each operating territory will be present to allow parties to present their respective views on whether gradualism and cost of service are working in cooperation to develop just, reasonable, and non-discriminatory rates. These terms also provide parties with additional time and data to examine and present positions on how unitization should occur and throughout multiple rate proceedings. Moreover, with the staggered moves towards unitization, the Commission will be able to monitor impacts and results of each step.

3. Ground Leases

As part of the proposed Transaction, a Ground Lease will be put into place between FE PA (as lessor) and KATCo (as lessee).⁴⁷⁴ OCA was concerned that any revenue related to underlying land or a proportional share of underlying land that is subject to a ground lease should be included as a component of distribution revenue.⁴⁷⁵

The Settlement addresses the ratemaking treatment of the Ground Lease.⁴⁷⁶ In particular, to the extent FE PA seeks to include in distribution rates the revenue requirement related to any underlying land, or a proportional share of underlying land, that is subject to the Ground Lease, FE PA agrees that any Ground Lease revenues associated with that underlying

⁴⁷⁴ Joint Applicants Statement in Support at 16. A copy of the Ground Lease was provided as Joint Applicants Exhibit No. AP-8.

⁴⁷⁵ OCA St. 1 at 28.

⁴⁷⁶ Joint Applicants' Statement in Support at 17.

land, or proportional share of the underlying land, will also be included as a component of its distribution revenue in the future FE PA distribution rate proceedings before the Commission where such revenue requirements are claimed.⁴⁷⁷ Also, pursuant to Paragraph 38 of the Settlement, KATCo will file an annual report with the Commission on May 1 of each year for five years after the contribution of the transmission assets from West Penn to KATCo has been completed that identifies the calculation of the Ground Lease payments.⁴⁷⁸

This portion of the Settlement helps clarify the ratemaking treatment of the Ground Lease revenues and will provide interested stakeholders with information to help them track the Ground Lease revenues.

B. Low-Income Programs

1. Low-Income Program Staffing

As part of the Settlement, the Joint Applicants agree that staffing levels will be maintained and will not be reduced as a result of this transaction for the duration of the 2024-2028 Universal Service and Energy Conservation Plan, notwithstanding voluntary separations and retirements. This will help reduce the risks of decreased performance levels, and will help to ensure continuity in program administration so that low-income customers do not see a degradation in services as a result of staffing reductions through at least the proposed Plan period.

2. Universal Service Advisory Committee (USAC)

The Settlement provides that Joint Petitioners agree to host Universal Service Advisory Committee meetings on a quarterly basis to propose changes or amendments prior to

⁴⁷⁷ Settlement ¶ 37.

⁴⁷⁸ *Id.* ¶ 38.

formal proposals.⁴⁷⁹ Additionally, FE PA commits to sharing program data with members of the Universal Service Advisory Committee, and, in Paragraph 44, FE PA commits to recruiting additional members to the Universal Service Advisory Committee so that more diverse voices may be heard.⁴⁸⁰ By requiring FE PA to recruit additional USAC members from a delineated list of local service providers, the provisions in Paragraph 44 will help to expand and diversify USAC membership to be inclusive of organizations serving low income consumers and other vulnerable customer groups in FE PA's service territory.⁴⁸¹ Expansion of USAC membership to a broader range of local community organizations will help to enhance the feedback and discussion during USAC meetings, ensuring FE PA's decisions are better grounded in the needs of the communities FE PA serves.

By committing to host more meetings, recruiting diverse members, and sharing program data, FE PA will collaborate with stakeholders in the continued operation, and future integration, of the universal service programs. This will ensure that stakeholders are able to engage in dialogue and provide feedback related to Universal Service Programs. FE PA's USAC members will be provided important and timely information necessary to analyze the effectiveness of FE PA's programs and/or proposed program changes, and the opportunity to provide feedback in advance of formal processes or implementation of changes that may significantly affect low-income customers' ability to access and afford services.

Importantly, the Settlement ensures the USAC meetings will not be a venue for the deliberation of possible cost allocation revisions for universal service costs. Consequently, parties like the IECPA and the Industrial Customer Groups will be able to conserve resources, by choosing not to participate.

⁴⁷⁹ Settlement ¶ 41.

⁴⁸⁰ Settlement ¶¶ 42, 44.

⁴⁸¹ CAUSE-PA's Statement in Support at 15.

3. PCAP Enrollment and Hardship Fund Settlement

The Transaction will not affect the service provided to low-income customers who participate in the current Universal Service Programs or those low-income customers who do not participate in such programs. While FirstEnergy's current corporate organization does not allow customers to be automatically enrolled in PCAP when moving between FirstEnergy EDCs, the Settlement provides that the Joint Applicants will commit to making the transfer of PCAP enrollment from one rate district to another as seamless as possible. Additionally, the Joint Applicants will provide an update to its USAC as a standing agenda item until they have achieved full implementation of seamless PCAP transition. By providing regular updates at each USAC meeting, FE PA will provide parties and stakeholders important information about the progress of implementing these changes and keep the need to implement this change at the forefront of USAC conversations.

The Settlement also provides that Joint Applicants will make contributions of \$150,000 annually to the Hardship Fund, incremental to its matching contributions, for three years.⁴⁸² For two years following the three the joint applicants agree to make \$100,000 donations to the Hardship Fund, incremental to its matching contributions.⁴⁸³ The Settlement provides that these additional Hardship Funds will be from shareholder contributions and not recovered from ratepayers and any unspent funding from the annual contributions will be rolled over to the subsequent program year.

The Hardship Fund commitment will provide five years of additional financial support for assistance for low-income customers to maintain essential electric service. This will help mitigate the effects of future rate increases, ensure low-income customers receive the assistance that they need, and guarantee that any underutilization of this funding will subsequently be accessed by low-income customers.

⁴⁸² Settlement ¶ 46.

⁴⁸³ *Id.*

Paragraph 47 of the Proposed Settlement provides that, at such time as the Pennsylvania Department of Human Services (DHS) notifies the LIHEAP Advisory Committee that it is ready to share LIHEAP participant income data with utilities, FE PA will implement required modifications to its IT system and processes – within a reasonable timeframe not to exceed one year – to automatically recertify existing PCAP participant’s income and eligibility.⁴⁸⁴ Until such time as IT system and process changes are made, the Company will use best efforts to implement manual processing to recertify LIHEAP recipients for PCAP purposes as soon as practicable.⁴⁸⁵

The Settlement provides that costs required to modify IT systems and processes will be eligible for timely recovery, all LIHEAP recipients identified in the data exchange will be deemed by FE PA as confirmed low-income customers and will be eligible for winter shutoff protections, and FE PA will conduct outreach to all LIHEAP recipients identified in the data exchange that are not current PCAP participants to encourage enrollment in the program.⁴⁸⁶

These provisions will help make it so that PCAP enrollees will not have to provide duplicative information required for both LIHEAP eligibility and PACP recertification. This will help eliminate unnecessary barriers for PCAP customers to recertify their eligibility and remain in PCAP. Also, FE PA’s outreach to all LIHEAP recipients identified in the data exchange, will ensure low-income customers are better informed of PCAP and enrollment procedures.

⁴⁸⁴ Settlement at ¶ 47.

⁴⁸⁵ *Id.*

⁴⁸⁶ *Id.*

C. Operations and Customer Service

1. Transmission Facilities

As part of the Settlement, the Joint Applicants agree they shall not withdraw transmission facilities from the operational control of PJM unless KATCo has first applied for, and obtained, authorization by order of the Commission. This Settlement provision ensures that KATCo will remain bound by the condition imposed by the Commission in its approval of the merger of GPU Inc. and FirstEnergy at Docket Nos. A-110200F0095 and A-110400F0040.⁴⁸⁷

2. Call Center Operations

In the Settlement, Joint Petitioners make various commitments regarding the maintenance and operations of its call centers in Pennsylvania. Joint Petitioners agree to maintain the location of a Pennsylvania call center for a period of five years, and if future business circumstances support a change in contact center location or construct, FE PA will take steps to ensure that a Pennsylvania-focused presence and awareness is represented within its contact center operations. Joint Petitioners also agree to maintain minimum hours of call center operations, maintain the use Interactive Voice Response systems during business and nonbusiness hours as in place as of July 2023, conduct monthly reviews of customer disputes and complaints, and maintain customer service performance at average historical levels.

These Settlement provisions are designed to address parties' issues about FE PA's operations and customer service after the proposed merger is approved, including parties' concerns about the location, operation, and availability of FE PA's call centers. These Settlement provisions help to ensure that the location and services of FirstEnergy call centers will be maintained to ease the transition period for customers. The Settlement is designed to ensure that customer service performance does not deteriorate due to the Proposed Consolidation.

⁴⁸⁷ OCA Statement in Support at 10; *see* OCA St. 1 at 28.

The Settlement outlines processes for FE PA and interested stakeholders to review its customer service performance on an ongoing basis. The proposed Settlement requires FE PA to conduct monthly reviews of customer disputes, complaints, and BCS compliance findings to identify and respond to the root cause(s) that lead to indicia of customer dissatisfaction. This review will identify trends and areas of performance improvement and will be reported out to management. In addition, monthly reports and management response will be shared annually with the USAC so that issues may be identified and discussed.

D. The Pennsylvania State University (University Park Campus)

The Joint Applicants propose to consolidate the five individual retail tariffs of the Pennsylvania OpCos into one combined retail tariff using the five rate districts in Pennsylvania to continue the current rate structure until a future base rate case filing.⁴⁸⁸ These five rate districts would be named Met-Ed, Penelec, Penn Power, West Penn, and PSU.⁴⁸⁹ PSU noted certain changes that should be made to the PSU Rate District's tariff page, specifically, revising the Transformer Loss adjustment language and making corrections to the DSS Rider, Smart Meter Rider, and the Hourly Pricing Default Service Rider.⁴⁹⁰

Under the Settlement, the Joint Applicants accept the tariff modifications proposed by PSU.⁴⁹¹ Such tariff modifications are incorporated in the *pro forma* tariff supplement included with Appendix A attached to the Settlement and will be incorporated in the compliance tariff filings in this proceeding.⁴⁹² The Joint Applicants also commit to maintaining a separate Rate District and base distribution rates for PSU.⁴⁹³ All of these Settlement provisions

⁴⁸⁸ Joint Applicants St. No. 1 at 12.

⁴⁸⁹ *Id.*

⁴⁹⁰ PSU St. No. 1 at 5-7.

⁴⁹¹ Settlement ¶ 52.

⁴⁹² *Id.*

⁴⁹³ Settlement ¶ 53.

are consistent with the positions set forth by the Joint Applicants and PSU in their testimony and are designed to resolve any ambiguity or inconsistency in the originally-filed *pro forma* tariff supplement pages governing the PSU Rate District.⁴⁹⁴ These Settlement terms ensure that rates and terms of service to PSU will not change, and the Transaction will have no immediate negative impacts on PSU.

E. Additional Provisions

1. Recovery of Transaction Costs

Under the Settlement, the Joint Applicants reaffirm that they will not seek recovery of any Transaction or transition costs related to Proposed Consolidation from distribution or transmission rates.⁴⁹⁵ Therefore, the Settlement incorporates the parties' agreement that transition costs and Transaction-related costs will not be recovered through distribution or transmission rates and provides clarity by defining what is included in those cost categories. The Settlement benefits ratepayers because it protects them from an increase in rates associated with the costs of the Transaction.

2. Collaborative Meetings

The Settlement also incorporates several provisions that are designed to improve the collaboration between FE PA and stakeholders. Specifically, under the Settlement, FE PA will hold collaborative meetings in advance of filings for modifications to the Joint Applicants' regulatory-required plans or its next scheduled plan filings, to include DSP, USECP, EE&C Plan, LTIIP and, in the event that PJM implements a seasonal capacity construct, any filings related to revisions to the Joint Applicants' recovery methodology concerning those capacity

⁴⁹⁴ Joint Applicant's Statement in Support at 29.

⁴⁹⁵ Settlement ¶ 54.

market changes.⁴⁹⁶ The collaborative meetings will be used to discuss the consolidation's impact on each of the respective filings and FE PA's plans to unify such programs moving forward.⁴⁹⁷

These terms will allow all parties to work together in the future to best determine and shape filings that balance the needs of FE PA and its customers. They ensure parties and stakeholders will be given advance notice and an opportunity to provide initial feedback related to important modification proposals. This will help address initial questions and concerns and streamline the review process of future filings.

Similarly, the Joint Applicants commit to initiate twice-yearly meetings with the Industrial User Groups, including IECPA and the Industrial Customer Groups, to discuss topics of interest, including general reliability, calculation of individual customer peak load contributions, and rate overviews.⁴⁹⁸ As part of these meetings, IUG members will be able to provide advance notice of topics of interest for addition to the agenda, which may include individual reliability and/or power quality concerns that will be investigated and addressed as breakout topics with those specific customers, including root cause analysis and options for corrective action.⁴⁹⁹ Because the Transaction may impact ratepayers, including industrial customers, these bi-annual meetings will provide industrial customers the opportunity to address and discuss any resulting issues of concern with the Joint Applicants, and will improve collaboration generally.

3. Survivability of Prior Settlements

Finally, the Settlement clarifies that all prior settlements entered into by the Joint Applicants will survive any approved consolidation or merger and will be enforceable against FE

⁴⁹⁶ Joint Petitioners' Statement in Support at 30-31; *see* Settlement ¶ 55.

⁴⁹⁷ Joint Petitioners' Statement in Support at 31.

⁴⁹⁸ *Id.*; Settlement ¶ 56.

⁴⁹⁹ Joint Petitioners' Statement in Support, at 31.

PA to the extent applicable.⁵⁰⁰ This provision resolves any doubt as to the applicability of prior settlements to FE PA. Such certainty benefits FE PA, the Commission, and interested stakeholders. These provisions ensure that previously agreed-to settlements will not be affected as a result of the proposed Transaction. They also protect parties' ability to enforce prior settlements before the Commission and promote the continued use of Settlements in litigated proceedings before the Commission.

F. Settlement Approval Recommendation

Since we find that the Settlement is in the public interest, we also find that the Joint Applicants met their burden of proving that they are technically, legally, and financially fit to own and operate the assets of the utilities set forth under the proposed Transaction. Accordingly, in the ordering paragraphs below, we will recommend that the Settlement submitted in this proceeding be approved by the Commission.

VIII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. §§ 1101, 1102, 1103, 2101, 2102, 2103, 2811(e).

2. Commission approval, as evidenced by a certificate of public convenience and necessity, is required for a proposed public utility to begin to offer, render, furnish, or supply service within the Commonwealth. 66 Pa.C.S. § 1101.

3. The proposed public utility must file an application with the Commission to receive such approval. 66 Pa.C.S. § 1101.

⁵⁰⁰ Settlement ¶ 57.

4. The Commission’s grant of authority “shall include a description of the nature of the service and of the territory in which it may be offered, rendered, furnished or supplied.” 66 Pa.C.S. § 1101.

5. A public utility must receive Commission approval before “begin[ning] to offer, render, furnish or supply within this Commonwealth service of a different nature or to a different territory than that authorized by” a certificate of public convenience or an unregistered right, power or privilege preserved by Section 103 of the Code. 66 Pa.C.S. § 1102(a)(1).

6. A public utility must obtain Commission approval before “abandon[ing] or surrender[ing], in whole or in part, any service[.]” 66 Pa.C.S § 1102(a)(2).

7. The Commission’s prior approval, evidenced by a certificate of public convenience, is required:

(3) 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.

66 Pa.C.S. §1102(a)(3).

8. Section 1103 of the Code sets forth the procedure to obtain certificates of public convenience under Sections 1101 and 1102 of the Code. 66 Pa.C.S. § 1103.

9. Commission approvals under Sections 1101, 1102(a)(1)-(3), and 1103 are required to complete the Transaction. 66 Pa.C.S. §§ 1101, 1102, 1103.

10. First, a certificate of public convenience is required to be issued to FE PA to establish FE PA HoldCo as an intermediate holding company in the chain of ownership of FE PA. 66 Pa.C.S. §§ 1101, 1102(a)(3).

11. Second, certificates of public convenience are required for FE PA and KATCo to operate as public utilities in the Commonwealth. 66 Pa.C.S. §§ 1101, 1102(a)(1).

12. Third, certificates of public convenience are required for Met-Ed, Penelec, Penn Power, and West Penn to abandon their authority to provide electric service in their existing service territories. 66 Pa.C.S. § 1102(a)(2).

13. Fourth, certificates of public convenience are required to complete the Transaction, including the Proposed Consolidation, the Proposed Sale of MAIT Class B Interests, and the Proposed Transmission Contribution. 66 Pa.C.S. § 1102(a)(3).

14. The Commission issued a Statement of Policy on October 22, 1994 establishing 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.

15. Certificates of public convenience under Section 1102(a)(3) of the Code are required to complete the Transaction because the Transaction will: (a) merge Met-Ed, Penelec, Penn Power, and West Penn, which are all electric distribution companies certificated

by the Commission, into FE PA; (b) result in the sale by Met-Ed and Penelec of their respective Class B membership interests in MAIT (*i.e.*, a public utility) to FirstEnergy; and (c) result in West Penn's Transmission Assets being contributed to KATCo. 66 Pa.C.S. § 1102(a)(3).

16. 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).

17. The Transaction must “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pa. Pub. Util. Comm'n*, 295 A.2d 825, 828 (Pa. 1972).

18. The “substantial public interest” standard is satisfied by a simple preponderance of the evidence of benefits, and such burden can be met by showing a likelihood or probability of public benefits that need not be quantified or guaranteed. *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040 (Pa. 2007).

19. The substantial public benefit test does not require that every customer receive a benefit from the Transaction. *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040, 1061 (Pa. 2007).

20. Under Sections 1102 and 1103 of the Code, FE PA and KATCo, which are applying for public utility status and will acquire public utility assets, must be legally, technically, and financially fit. *See Seaboard Tank Lines v. Pa. Pub. Util. Comm'n*, 502 A.2d 762 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240 (Pa. Super. 1958).

21. 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).

22. Under Section 2102 of the Code, Commission approval is required for any affiliated interest contract before it can become effective. 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).

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

24. 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).

25. 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)(1),(2).

26. Commission policy promotes settlements. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. 52 Pa. Code § 5.231.

27. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

28. To accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. UGI Utils., Inc. – Gas Div.*, Docket Nos. R-2015-2518438, *et al.* (Opinion and Order entered Oct. 14, 2016); *Pa. Pub. Util. Comm'n v. Phila. Gas Works*, Docket No. M-00031768 (Opinion and Order entered Jan. 7, 2004).

29. The Joint Petitioners have the burden to prove that the Settlement is in the public interest. *Pa. Pub. Util. Comm'n v. Pike Cnty. Light & Power (Electric)*, Docket No R-2013-2397237 (Opinion and Order entered Sept. 11, 2014).

30. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

31. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. Of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Comm., Dept. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

32. The terms and conditions of the Settlement are supported by substantial evidence and are in the public interest. *Pa. Pub. Util. Comm'n v. CS Water & Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991).

IX. ORDER

THEREFORE,

IT IS RECOMMENDED,

1. That the Pennsylvania Public Utility Commission approve the Joint Petition for Approval of Settlement of All Issues, filed in this proceeding, without modification.

2. That the Joint Application of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company, Keystone Appalachian Transmission Company, Mid-Atlantic Interstate Transmission, LLC, and FirstEnergy Pennsylvania Electric Company for All of the Necessary Authority, Approvals, and Certificates of Public Convenience for (1) the Agreements and Plans of Merger; (2) the Establishment of FirstEnergy Pennsylvania Holding Company LLC as an Intermediate Holding Company in the Chain of Ownership of FirstEnergy Pennsylvania Electric Company; (3) the Merger of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company with and into FirstEnergy Pennsylvania Electric Company; (4) the Initiation by FirstEnergy Pennsylvania Electric Company of Electric Service in All Territories in this Commonwealth where Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company Do or May Provide Electric Service; (5) the Abandonment by Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company of All Electric Service in this Commonwealth; (6) the Adoption by FirstEnergy Pennsylvania Electric Company of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company's Existing Tariffs and their Application within New Service and Rate Districts of FirstEnergy Pennsylvania Electric Company Corresponding to their Existing Service Territories as the Met-Ed Rate District, Penelec Rate District, Penn Power Rate District, West Penn Rate District, and The Pennsylvania State University Rate District, Respectively; (7) the sale of Class B Membership Interests in Mid-Atlantic Interstate

Transmission, LLC held by Met-Ed and Penelec to FirstEnergy Corp.; (8) the Contribution of West Penn Power Company's Transmission Assets to Keystone Appalachian Transmission Company; (9) a Certificate of Public Convenience Conferring Upon Keystone Appalachian Transmission Company the Status of a Pennsylvania Public Utility; (10) Where Necessary, Associated Affiliated Interest Agreements; and (11) Any Other Approvals Necessary to Complete the Contemplated Transaction filed 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 be approved as clarified by the Joint Petition for Approval of Settlement of All Issues.

3. That the Joint Petitioners shall comply with the terms and conditions of the Settlement submitted in this proceeding as though each term and condition stated therein had been the subject of an individual ordering paragraph.

4. That the Protest filed by the Office of Consumer Advocate in this proceeding is hereby deemed withdrawn.

5. That the Protest filed by the Industrial Customer Groups in this proceeding is hereby deemed withdrawn.

6. That the Protest filed by the Office of Small Business Advocate in this proceeding is hereby dismissed.

7. That the Secretary shall issue certificates of public convenience evidencing approval under Section 1102(a)(3) of the Pennsylvania Public Utility Code 66 Pa.C.S. § 1102(a)(3) of the proposed transactions set forth in ordering Paragraph 2 above.

8. That the Commission authorize the filing of the *pro forma* tariff supplements attached to the Joint Petition for Approval of Settlement of All Issues as Appendix A to become effective on one day's notice after entry of the Commission's Order approving the Settlement.

9. That upon acceptance and approval by the Commission of the filing of *pro forma* tariff supplements set forth in Paragraph 8 above and consistent with this Order, the Commission's Secretary's Bureau shall mark the dockets in this proceeding closed.

Date: October 19, 2023

/s/
Conrad A. Johnson
Administrative Law Judge

/s/
Emily I. DeVoe
Administrative Law Judge