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November 29, 2023

VIA ELECTRONIC FILING

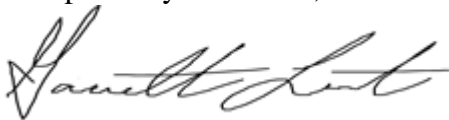
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Joint Application of American Transmission Systems, Incorporated, Mid-Atlantic Interstate Transmission, LLC, and Trans-Allegheny Interstate Line Company, Docket Nos. A-2023-3040481, A-2023-3040482, A-2023-3040483, G-2023-3040484, G-2023-3040485, G-2023-3040486

Dear Secretary Chiavetta:

Attached for filing please find the Joint Petition for Settlement of All Issues in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Garrett P. Lent
Principal

GPL/kl
Attachment

cc: The Honorable Conrad A. Johnson (*via email*)
The Honorable Emily I. DeVoe (*via email*)
Certificate of Service

CERTIFICATE OF SERVICE

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

VIA EMAIL ONLY

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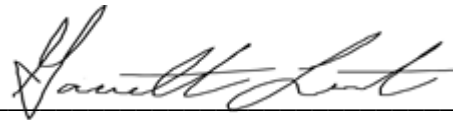
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Date: November 29, 2023



Garrett P. Lent

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application Of American :
Transmission Systems, Incorporated, Mid- :
Atlantic Interstate Transmission, LLC, : Docket Nos. A-2023-3040481
And Trans-Allegheny Interstate Line : A-2023-3040482
Company For All Of The Necessary : A-2023-3040483
Authority, Approvals, And Certificates Of : G-2023-3040484
Public Convenience Required To Lawfully : G-2023-3040485
Effectuate (1) The Purchase And Sale : G-2023-3040486
Agreement Of An Incremental Thirty :
Percent Equity Interest In FirstEnergy :
Transmission, LLC By North American :
Transmission Company II L.P.; (2) The :
Transfer Of Class B Membership Interests :
In Mid-Atlantic Interstate Transmission, :
LLC Held By FirstEnergy Corp. To :
FirstEnergy Transmission, LLC; (3) :
Where Necessary, Associated Affiliated :
Interest Agreements; And (4) Any Other :
Approvals Necessary To Complete The :
Contemplated Transaction :

JOINT PETITION FOR APPROVAL OF SETTLEMENT OF ALL ISSUES

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

I. INTRODUCTION

American Transmission Systems, Incorporated (“ATSI”), MidAtlantic Interstate Transmission, LLC (“MAIT”) and Trans-Allegheny Interstate Line Company (“TrAILCo”) (collectively, the “Joint Applicants”), North American Transmission Company II L.P. (“NATCo II”),¹ and the Office of Consumer Advocate (“OCA”), all active parties in the above-captioned

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

proceeding and hereinafter collectively referred to as the “Joint Petitioners,” hereby file this Joint Petition for Approval of Settlement of All Issues (“Settlement”) and respectfully request that Administrative Law Judge Conrad A. Johnson (“ALJ Johnson”) and Administrative Law Judge Emily I. DeVoe (“ALJ DeVoe”) (collectively, “ALJs”) and the Pennsylvania Public Utility Commission (“Commission”) approve the Joint Application subject to the terms and conditions of the Settlement.²

This Settlement represents a full settlement of all issues and concerns raised in the instant proceeding. Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs are provided as **Appendices A, B, and C**, respectively. Finally, the Joint Petitioners’ respective Statements in Support of the Settlement are included as **Appendices D through F**.

In support of the Settlement, the Joint Petitioners state the following:

II. BACKGROUND

1. The above captioned proceedings were initiated on May 5, 2023, when ATSI, MAIT, and TrAILCo, filed the “Joint Application Of American Transmission Systems, Incorporated, Mid-Atlantic Interstate Transmission, LLC, And Trans-Allegheny Interstate Line Company For All Of The Necessary Authority, Approvals, And Certificates Of Public Convenience Required To Lawfully Effectuate (1) The Purchase And Sale Agreement Of An Incremental Thirty Percent Equity Interest In FirstEnergy Transmission, LLC By North American Transmission Company II L.P.; (2) The Transfer Of Class B Membership Interests In Mid-Atlantic Interstate Transmission, LLC Held By FirstEnergy Corp. To FirstEnergy Transmission, LLC; (3) Where Necessary, Associated Affiliated Interest Agreements; And (4) Any Other Approvals

² The Office of Small Business Advocate (“OSBA”), the Met-Ed Industrial Users Group (“MEIUG”), and Penelec Industrial Customer Alliance (“PICA”) were also parties to this proceeding. OSBA, MEIUG, and PICA represented that they are not opposing the Settlement.

Necessary To Complete The Contemplated Transaction” at Docket Nos. A-2023-3040481, A-2023-3040482, A-2023-3040483, G-2023-3040484, G-2023-3040485, and G-2023-3040486 (the “Joint Application”). The Joint Applicants requested that the Joint Application and any related dockets be consolidated for purposes of discovery, litigation, and disposition.

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

3. On May 8, 2023, the Commission issued a Secretarial Letter, which: (1) acknowledged receipt of the Joint Application; and (2) enclosed a copy of the Public Notice to be published by the Joint Applicants in a newspaper having general circulation in the area involved

³ The “Brookfield Guarantors” refers to Brookfield Super-Core Infrastructure Partners L.P., Brookfield Super-Core Infrastructure Partners (NUS) L.P., and Brookfield Super-Core Infrastructure Partners (ER) SCSp.

⁴ The non-voting Class B Membership Interests in MAIT are currently held by Metropolitan Edison Company (“Met-Ed”) and Pennsylvania Electric Company (“Penelec”). Met-Ed and Penelec have requested all necessary Commission approvals to transfer the subject Class B Membership Interests to FirstEnergy, as a part of the consolidation of FirstEnergy’s Pennsylvania electric distribution companies (“EDCs”) pending at Docket Nos. A-2023-3038771, A-2023-3038792, A-2023-3038793, A-2023-3038794, A-2023-3038795, A-2023-3038807, A-2023-3038808, G-2023-3038818, G-2023-3038819, G-2023-3038820, G-2023-3038821, G-00020956 (the “PA Consolidation”). The transfer of the MAIT Class B Membership Interests contemplated by the Joint Application is limited to the subsequent transfer of these interests from FirstEnergy to FET, which will occur after the approval and closing of the PA Consolidation. As of the time of filing this Settlement, a recommended decision has been issued that recommends the approval of the PA Consolidation subject to the terms and conditions of a settlement of all issues. No exceptions to this recommended decision were filed.

on or before June 5, 2023, and that would appear in the *Pennsylvania Bulletin* in the May 20, 2023, issue.

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

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

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

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

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

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

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

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

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

13. Also on August 7, 2023, the Commission issued an Evidentiary Hearing Notice, which scheduled an Initial In-Person Evidentiary Hearing for November 1, 2023, and November

2, 2023, before the ALJs in Pittsburgh, PA.

14. A Prehearing Order was entered on August 8, 2023, which, among other things, granted the Petitions to Intervene, consolidated the above-captioned cases at Docket No. A-2023-3040481, established a litigation schedule, and modified the discovery rules.

15. On August 24, 2023, the Joint Applicants filed a Motion for Protective Order.

16. On August 28, 2023, the ALJs issued an Order Granting Joint Applicants' Unopposed Motion for Protective Order.

17. Also on August 28, 2023, OCA served its written direct testimony. OSBA, MEIUG, and PICA filed letters stating they would not be serving direct testimony.

18. On September 28, 2023, the Joint Applicants served their written rebuttal testimony.

19. On October 16, 2023, OCA served its written surrebuttal testimony. MEIUG and PICA filed a letter stating they would not be serving surrebuttal testimony.

20. On October 30, 2023, as a result of settlement discussions held in this proceeding, and the efforts of the parties to examine the issues raised, the Joint Applicants and the other active parties reached an agreement in principle to settle all issues in this proceeding. Therefore, the Joint Applicants 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 Wednesday, November 1, 2023. Further, the Joint Applicants requested that the November 1, 2023 evidentiary hearing be converted from in-person to telephonic, and that the November 2, 2023 hearing date be cancelled.

21. Subsequently on October 31, 2023, ALJ Johnson granted the Joint Applicants' requests and provided information for the telephonic evidentiary hearing to be held on November

1, 2023.

22. On November 1, 2023, a telephonic evidentiary hearing was held for the purpose of admitting pre-served testimony and exhibits into the record. The Joint Applicants further advised the ALJs that they intended to file and serve any settlement and associated proposed findings of fact, proposed conclusions of law, proposed ordering paragraphs, and statements in support of the Settlement on or before November 20, 2023.

23. As a result of the settlement efforts described above, the Joint Petitioners have agreed to a settlement that fully resolves all issues among them. The Joint Petitioners are in full agreement that the Settlement is in the public interest as a reasonable resolution of their respective interests and should be approved without modification. The Settlement agreed to by the Joint Petitioners is set forth in the following Section III.

III. SETTLEMENT

A. GENERAL

24. 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.

25. The Joint Petitioners agree that the Joint Application should be approved, and that all approvals and certificates of public convenience appropriate, customary, or necessary under the Public Utility Code to carry out Transaction in a lawful manner should be granted, subject to the terms and conditions of this Settlement that are specified below.

B. REPORTING, BOOKS, AND RECORDS

26. Upon written request, the Joint Applicants will provide the Commission and the statutory advocates (i.e., OCA, OSBA, and the Commission's Bureau of Investigation and

Enforcement) reasonable access to their books and records, officials and staff. However, nothing set forth herein shall constitute or be interpreted as a waiver by the Joint Applicants of their right to raise traditional discovery or other objections to any such requests, including, but not limited to, objections on the basis of relevance and privilege. In addition, before responding to any such requests, the Joint Applicants shall be permitted to require the imposition of protections they deem necessary to prohibit disclosure of proprietary or confidential information.

27. Commencing March 31, 2025 and through March 31, 2033, the Joint Applicants will provide an annual report to the Commission as to the status of all commitments made in this Settlement.

C. TRANSACTION/TRANSITION COSTS

28. The Joint Applicants reaffirm that they will not seek recovery of any “Transaction-related” or “Transition-related” costs associated with the proposed Transaction from distribution or transmission rates.

- a) 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) The Joint Applicants do not anticipate there being material or significant Transition-related costs associated with this Transaction. To the extent any should arise, Transition-related costs will be treated in the same manner as Transaction-related costs and tracked through work orders to be recorded to Federal Energy Regulatory Commission (“FERC”) Account 426.5 – Other deductions.
- c) If the Joint Applicants seek to recover Transaction-related costs not expressly identified above through their transmission or wholesale requirements rates, the

Joint Applicants must: (1) specifically identify the Transaction-related costs they are seeking to recover; and (2) demonstrate that those Transaction-related costs provide a benefit to ratepayers.

D. CORPORATE STRUCTURE PROTECTIONS, FINANCIAL CONDITIONS, AND GOVERNANCE

29. The Joint Applicants will not permit a change in their ownership without prior Commission approval if such change would result in a change in control under the then-applicable Commission standards.

30. The Joint Applicants will seek Commission approval of all new or amended agreements with affiliates consistent with Chapter 21 of the Public Utility Code and will conduct all transactions pursuant to all applicable law and the terms of such affiliated agreements to avoid cross subsidization.

E. RING-FENCING AND CREDIT PROVISIONS

31. The Joint Applicants commit to establish appropriate ring-fencing protections, to the extent applicable to their structure. Such protections, to the extent applicable, will include:

- a) Standalone credit facilities will be established/maintained for FET on the one hand and its subsidiaries on the other;
- b) FET and the Joint Applicants will maintain the ability to issue their own long-term debt separate from NATCo II and its corporate affiliates;
- c) Limits on money pool will be implemented such that FET and its subsidiaries will only borrow/lend amongst themselves consistent with the terms of the “Third Revised and Restated Utility Money Pool Agreement,” as filed in the PA Consolidation;

- d) The Joint Applicants will maintain their status as corporate subsidiaries with their own corporate officers;
- e) Each of the Joint Applicants will issue its own set of financial statements pursuant to FERC requirements;
- f) Each Joint Applicant will maintain its own credit ratings from at least two major credit ratings agencies;
- g) Each Joint Applicant will maintain the capability to issue its own long-term debt (with such debt issuances subject to Commission approval, if required) to the extent each subsidiary remains active;
- h) NATCo II and its corporate affiliates will not lend to the Joint Applicants (or vice versa) for a term in excess of one year;
- i) The Joint Applicants and NATCo II agree that NATCo II and its corporate affiliates will not unilaterally pledge or encumber the underlying assets of the Joint Applicants;⁵ and
- j) The Joint Applicants and NATCo II agree to seek Commission approval of all new or amended agreements with affiliated interests of the Joint Applicants consistent with Chapter 21 of the Public Utility Code, 66 Pa.C.S. § 2101, et seq.

32. In the event any of the Joint Applicants experience a credit downgrade to below BBB or its equivalent, the affected company(ies) will provide notice to the Commission within 10

⁵ For the avoidance of doubt, the Fourth Amended and Restated Limited Liability Company Agreement of FET also permits a member of FET to encumber its membership interests in FET or any equity interests of such member in connection with debt financing, the proceeds of which are used by the member to finance its purchase of the membership interests, but this encumbrance of structurally subordinated equity interests is not an encumbrance of the Joint Applicants' underlying assets.

business days, which will state the reason for the downgrade and remedial actions intended to strengthen credit ratings.

F. PJM INTERCONNECTION, L.L.C. (“PJM”) CONTROL

33. The Joint Applicants shall not withdraw transmission facilities that are located in Pennsylvania from the operational control of PJM unless the Joint Applicants have first applied for, and obtained, authorization by order of the Commission.

G. TRANSMISSION SERVICE RELIABILITY

34. The Joint Applicants’ assertions about (i) substantial improvement to FirstEnergy’s and the Joint Applicants’ financial strength, (ii) the Joint Applicants’ enhanced ability to finance transmission system investments, and (iii) the Joint Applicants’ expectations about improvements to the system performance and the operational flexibility of the transmission system are outlined in the testimony of Mark D. Mroczynski and Steven R. Staub.⁶ Therefore, ATSI and MAIT agree to the reliability commitments as set forth in paragraph 35 below.

35. Using the three-year average of 2020-2022 as a baseline, ATSI and MAIT will achieve a five percent (5%) reduction in annual transmission outages, as set forth in the table below and as measured by the transmission outages in the calendar year ending at 11:59 p.m. prevailing Eastern time on December 31, 2028. Adjustments to the outage calculation will be made for six sigma exclusions. Further, scheduled outages, emergency forced outages, and operational outages are excluded from the calculation.

Area	2020	2021	2022	Total	Avg	5% Reduction Target
ATSI	291	290	303	884	295	280
MAIT	231	251	209	691	230	219

⁶ See Joint Applicants Statement No. 1 at pp. 12-17 and Joint Applicants Statement No. 2 at pp. 12-18.

36. The Joint Applicants commit to meet with the parties to this proceeding annually for a period of five years, with the meeting to be held no later than April 30 each year, in order to review the past calendar year's transmission system improvements, planned transmission system improvements in the upcoming calendar year, and an overview of the past year's transmission system reliability, including the relevant data to reflect and discuss performance against the commitment outlined in paragraph 35, above. In advance of such meetings, the Joint Applicants will provide the parties to this proceeding with the necessary documents and data to aid in these discussions.

37. For purposes of paragraphs "35" and "36" above, the following terms have the following meanings:

- a) "transmission outages" means the total number of circuit outages on 46 kV to 500 kV transmission circuits after adjustments; provided that adjustments to the outage calculation will be made for six sigma exclusions;
- b) "six sigma exclusions" means the calendar days that are excluded based on an outage threshold of five (5) years of historical data
- c) "scheduled outage" means any outage taken as a result of operator command or direction;
- d) "emergency forced outage" means an outage manually taken to protect life, limb, and/or to prevent equipment damage; and
- e) "operational outage" means an outage manually taken as a result of pre-agreed limits regarding system stability, voltage control, thermal limits, contingency plans, and the like.

IV. THE SETTLEMENT IS IN THE PUBLIC INTEREST

38. Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. 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. *See id.* § 69.401. To accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. PUC v. C.S. Water & Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991).

39. This Settlement was achieved by the Joint Petitioners after an extensive investigation of the Joint Applicants' filing, including extensive formal discovery and the filing of substantial testimony by the active parties.

40. Approval of the Settlement without modification will reduce the time and expenses that the active parties and the Commission must expend on the proceeding.

41. The Joint Petitioners will further supplement the reasons that the Settlement is in the public interest in their Statements in Support. The Statements in Support are attached to this Settlement as **Appendices D through F**. In their respective Statements in Support, each Joint Petitioner explains why, in its view, the Settlement is fair, just, and reasonable and reflects a reasonable compromise of the disputed issues in this proceeding.⁷

⁷ It is noted that, because certain Joint Petitioners only participated with regard to certain issues in this proceeding, some of the Statements in Support may be limited in the scope of issues addressed.

V. SETTLEMENT CONDITIONS

42. The placement of any provision within this document does not indicate the level of importance of such provision to any Joint Petitioner.

43. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Settlement without modification. If the Commission modifies the Settlement, any Joint Petitioner may elect to withdraw from the Settlement and may proceed with litigation, and, in such event, the Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission, and served upon all Joint Petitioners within five business days after the entry of an Order modifying the Settlement.

44. This Settlement is proposed by the Joint Petitioners to settle all issues in the instant proceeding. If the Commission does not approve the Settlement without modification and the proceeding continues, the Joint Petitioners reserve their respective procedural rights to evidentiary hearings, submission of additional testimony and exhibits, cross-examination of witnesses, briefing, and argument of their respective positions. The Settlement is made without any admission against, or prejudice to, any position that any Joint Petitioner may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

45. The Joint Petitioners acknowledge that the Settlement reflects a compromise of competing positions and does not necessarily reflect any Joint Petitioner's position with respect to any issues raised in this proceeding. The terms and conditions of the Settlement are limited to the facts of this specific case and are the product of compromise for the sole purpose of settling this case. This Settlement is presented without prejudice to any position which any of the Joint Petitioners may have advanced and without prejudice to the position that any of the Joint Petitioners may advance on the merits of the issues in future proceedings.

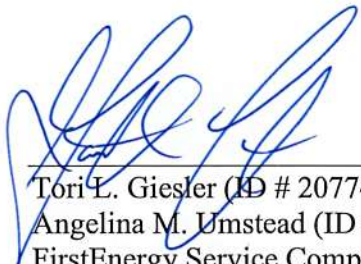
46. If the ALJs recommend adopting the Settlement without modification, the Joint Petitioners waive their right to file Exceptions.

VI. CONCLUSION

WHEREFORE, the Joint Petitioners respectfully request that the Administrative Law Judges Conrad A. Johnson and Emily I. DeVoe recommend approval of, and the Pennsylvania Public Utility Commission approve, this Joint Petition for Approval of Settlement of All Issues without modification.

Respectfully submitted,

Date: November 29, 2023



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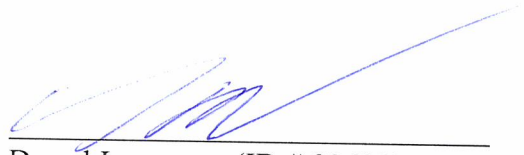
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Date: November 29, 2023

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Date: November 29, 2023

Counsel for the Office of Consumer Advocate

APPENDIX A

APPENDIX A

PROPOSED FINDINGS OF FACT

1. American Transmission Systems, Incorporated (“ATSI”), Mid-Atlantic Interstate Transmission, LLC (“MAIT”) and Trans-Allegheny Interstate Line Company (“TrAILCo”) (hereinafter, collectively, the “Joint Applicants”) are each wholly-owned subsidiaries of FirstEnergy Transmission, LLC (“FET”). Joint Applicants St. No. 1 at 5-8.

2. ATSI is an Ohio corporation and a transmission-only public utility which owns, operates, and maintains transmission facilities in Ohio and western Pennsylvania. Joint Applicants St. No. 1 at 5-6.

3. MAIT is a limited liability company organized under Delaware law and a transmission-only public utility which owns, operates, and maintains transmission facilities in Pennsylvania. Joint Applicants St. No. 1 at 6.

4. TrAILCo is a Maryland and Virginia corporation and a transmission-only public utility which owns, operates, and maintains transmission facilities in Maryland, West Virginia, Pennsylvania, and Virginia. Joint Applicants St. No. 1 at 6.

5. Each of the Joint Applicants has been issued certificates of public convenience by the Pennsylvania Public Utility Commission (“Commission”) that authorize each entity to operate as a public utility in Pennsylvania. Joint Applicants St. No. 1 at 7.

6. Each of the Joint Applicants is subject to the jurisdiction of the Commission regarding the reliability, safety, and siting and construction of transmission facilities in Pennsylvania; however, the rates and terms of service for each of these entities are subject to the exclusive jurisdiction of FERC.¹

¹ See *Application Of Pennsylvania Power Co. For (1) A Certificate Of Public Convenience Authorizing The Transfer Of Certain Transmission Assets To American Transmission Systems, Inc., And (2) Approval Of Certain*

7. ATSI owns and operates high-voltage transmission facilities consisting of approximately 7,900 circuit miles of transmission lines in the PJM region. ATSI is a transmission owner (“TO”) member of PJM. ATSI is not a generation provider and also provides no retail utility service. ATSI plans, operates, and maintains its transmission system in accordance with NERC reliability standards. Joint Applicants St. No. 1 at 6.

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

9. MAIT owns and operates high-voltage transmission facilities consisting of approximately 4,300 circuit miles of transmission lines in the PJM region. MAIT is a TO member of PJM. MAIT is not a generation provider and also provides no retail utility service. MAIT plans, operates, and maintains its transmission system in accordance with NERC reliability standards. Joint Applicants St. No. 1 at 6.

10. MAIT is managed by its Class A member (i.e., FET). Pennsylvania Electric Company (“Penelec”) and Metropolitan Edison Company (“Met-Ed”), each a wholly owned subsidiary of FirstEnergy Corp. (“FirstEnergy”), currently hold passive Class B ownership interests in MAIT.

Affiliated Interest Agreements Necessary To Effect The Transfer, Docket No. A-110450F0016 (Final Order entered July 14, 2000); *Application of American Transmission Systems, Incorporated for a Certificate of Public Convenience conferring upon American Transmission Systems, the Status of a Pennsylvania Public Utility*, Docket No. A-2016-2566365 (Order entered Dec. 8, 2016); *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); *In Re: Application of Trans-Allegheny Interstate Line Company (TrAILCo) For approval: 1) for a certificate of public convenience to offer, render, furnish or supply transmission service in the Commonwealth of Pennsylvania; 2) authorization and certification to locate, construct, operate and maintain certain high-voltage electric substation facilities; 3) authority to exercise the power of eminent domain for the construction and installation of aerial electric transmission facilities along the proposed transmission line routes in Pennsylvania; 4) approval of an exemption from municipal zoning regulation with respect to the construction of buildings; and 5) approval of certain related affiliated interest arrangements*, Docket Nos. A-110171, et al., 2008 Pa. PUC LEXIS 35 (Order entered Nov. 13, 2008).

11. Joint Applicants Exhibit MDM-3 is a map depicting where MAIT operates.
12. TrAILCo owns and operates high-voltage transmission facilities consisting of approximately 260 circuit miles of transmission lines, including a 500 kV transmission line extending approximately 150 miles from southwestern Pennsylvania through West Virginia to a point of interconnection with Virginia Electric and Power Company in northern Virginia. TrAILCo also owns several other substation assets. TrAILCo is a TO member of PJM. TrAILCo is not a generation provider and also provides no retail utility service. TrAILCo plans, operates, and maintains its transmission system in accordance with NERC reliability standards and has FERC authority to operate in all of FirstEnergy's service territory. Joint Applicants St. No. 1 at 6-7.
13. Joint Applicants Exhibit MDM-4 is a map depicting where TrAILCo operates, including its Pennsylvania operations.
14. FirstEnergy is an Ohio corporation and a public utility holding company. Joint Applicants St. No. 1 at 4.
15. FirstEnergy's ten utility operating companies comprise one of the nation's largest investor-owned electric systems, based on serving over six million customers in the Midwest and Mid-Atlantic regions. Joint Applicants St. No. 1 at 4.
16. FirstEnergy's transmission operations include over 24,000 miles of transmission lines and two regional transmission operation centers. Joint Applicants St. No. 1 at 4.
17. FET is a limited liability company organized and existing under the laws of the State of Delaware. Joint Applicants St. No. 1 at 5.
18. FET is a direct subsidiary of FirstEnergy, which currently holds 80.1% of FET's issued and outstanding membership interests. Joint Applicants St. No. 1 at 5.

19. North American Transmission Company II L.P. (“NATCo II”), owns the remaining 19.9% of the issued and outstanding membership interests in FET. Joint Applicants St. No. 1 at 5.

20. NATCo II acquired its 19.9% interest in FET on May 31, 2022. Joint Applicants St. No. 2 at 4-5.

21. NATCo II is a Delaware limited partnership that was formed for the purpose of effectuating Brookfield Asset Management Ltd.’s (“BAM Ltd”) and Brookfield Corporation’s (f/k/a Brookfield Asset Management Inc.), collectively referred to as “Brookfield,” investments in FET. Joint Applicants St. No. 3 at 5.

22. NATCo II is a direct, wholly owned subsidiary of its limited partner North American Transmission Company I L.P. (“NATCo I”). Joint Applicants St. No. 3 at 5.

23. Brookfield Super-Core Infrastructure Partners GP LLC (“Brookfield GP”) is the general partner of both NATCo I and NATCo II. Joint Applicants St. No. 3 at 5.

24. Brookfield GP is an indirect, wholly owned subsidiary of Brookfield Asset Management ULC, an unlimited liability company formed under the laws of British Columbia, which is owned by Brookfield Corporation (75%) and BAM Ltd (25%). Joint Applicants St. No. 3 at 5.

25. At present, NATCo II is 100% controlled by NATCo I, which is 100% controlled by Brookfield GP, which, in turn, is 100% controlled by Brookfield. Joint Applicants St. No. 3 at 5-6.

26. Brookfield’s asset management business is currently one of the largest and fastest growing alternative asset managers globally, with operations spanning more than 30 countries on five continents. Joint Applicants St. No. 3 at 7-8.

27. Brookfield is a leading global alternative asset manager with over \$800 billion of managed assets, 200,000 operating employees and 1,200 investment professionals across North America, South America, Europe, the Middle East, and Asia-Pacific. Joint Applicants St. No. 3 at 10.

28. Brookfield has significant experience with investing in and supporting regulated public utility assets. Joint Applicants St. No. 3 at 8-9.

29. In Pennsylvania specifically, Brookfield has significant investments that support assets and businesses located within the Commonwealth across a range of sectors, including infrastructure, renewable power, real estate, and private equity. Joint Applicants St. No. 3 at 11.

30. The above-captioned proceedings were initiated on May 5, 2023, when ATSI, MAIT, and TrAILCo, filed the “Joint Application Of American Transmission Systems, Incorporated, Mid-Atlantic Interstate Transmission, LLC, And Trans-Allegheny Interstate Line Company For All Of The Necessary Authority, Approvals, And Certificates Of Public Convenience Required To Lawfully Effectuate (1) The Purchase And Sale Agreement Of An Incremental Thirty Percent Equity Interest In FirstEnergy Transmission, LLC By North American Transmission Company II L.P.; (2) The Transfer Of Class B Membership Interests In Mid-Atlantic Interstate Transmission, LLC Held By FirstEnergy Corp. To FirstEnergy Transmission, LLC; (3) Where Necessary, Associated Affiliated Interest Agreements; And (4) Any Other Approvals Necessary To Complete The Contemplated Transaction” at Docket Nos. A-2023-3040481, A-2023-3040482, A-2023-3040483, G-2023-3040484, G-2023-3040485, and G-2023-3040486 (the “Joint Application”).

31. The Joint Application seeks certain approvals from the Commission associated with: (1) the Purchase and Sale Agreement dated February 2, 2023 (the “PSA”) between

FirstEnergy, NATCo II, and the Brookfield Guarantors,² pursuant to which FirstEnergy agreed to sell to NATCo II at the closing an incremental thirty (30) percent equity interest in FET for a purchase price of \$3.5 billion (the “FET Transaction”); and (2) FirstEnergy’s contribution of its passive Class B membership interests in MAIT to FET in exchange for a new class of FET Special Purpose Membership Interests (the “Special Purpose Membership Interests”) (the “MAIT Class B Interests Transfer”).³ Joint Applicants St. No. 1 at 8.

32. Together, the FET Transaction and the MAIT Class B Interests Transfer are collectively referred to as the “Transaction.” Joint Applicants St. No. 1 at 8.

33. Under the PSA, FirstEnergy agreed to sell to NATCo II at the closing, and NATCo II agreed to purchase from FirstEnergy, an incremental 30% equity interest in FET for a purchase price of \$3.5 billion. Joint Applicants St. No. 1 at 8.

34. The purchase price may be payable, in part, by the issuance of a promissory note in the principal amount of up to \$1.75 billion. The remaining amount of the purchase price will be payable in cash at the closing of the transaction. Joint Applicants St. No. 1 at 8.

35. Joint Applicants Exhibit SRS-1 is a copy of the PSA.

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

³ The non-voting Class B Membership Interests in MAIT are currently held by Met-Ed and Pennsylvania Penelec. Met-Ed and Penelec have requested all necessary Commission approvals to transfer the subject Class B Membership Interests to FirstEnergy, as a part of the consolidation of FirstEnergy’s Pennsylvania electric distribution companies (“EDCs”) pending at Docket Nos. A-2023-3038771, A-2023-3038792, A-2023-3038793, A-2023-3038794, A-2023-3038795, A-2023-3038807, A-2023-3038808, G-2023-3038818, G-2023-3038819, G-2023-3038820, G-2023-3038821, G-00020956 (the “PA Consolidation”). The transfer of the MAIT Class B Membership Interests contemplated by the Joint Application is limited to the subsequent transfer of these interests from FirstEnergy to FET, which will occur after the approval and closing of the PA Consolidation. As of the time of filing this Settlement, a recommended decision has been issued that recommends the approval of the PA Consolidation subject to the terms and conditions of a settlement of all issues. No exceptions to this recommended decision were filed.

36. Upon closing of the FET Transaction, NATCo II's interest in FET will increase from 19.9% to 49.9%, while FirstEnergy will retain the remaining 50.1% ownership interests of FET. Joint Applicants St. No. 1 at 9.

37. Under its current 19.9% ownership interest NATCo II is provided with certain rights and obligations under the Third Amended and Restated Limited Liability Company Agreement of FirstEnergy Transmission, LLC, which is referred to as the "Original Operating Agreement" in the PSA. Joint Applicants St. No. 1 at 9; *see also* Joint Applicants Exhibit JR-2.

38. The Original Operating Agreement provided NATCo II with rights as are necessary to protect its economic investment interests. Joint Applicants St. No. 1 at 9.

39. The PSA contemplates the execution of the Fourth Amended and Restated Limited Liability Company Agreement of FirstEnergy Transmission, LLC (the "LLCA"), which was provided as Joint Applicants Exhibit SRS-2. Joint Applicants St. No. 1 at 10.

40. The LLCA provides that FirstEnergy will continue to manage and operate FET and will remain the beneficial holder of the largest voting interest in FET and, indirectly, the Joint Applicants. Joint Applicants St. No. 1 at 10.

41. The LLCA, however, provides NATCo II with certain additional rights and obligations related to its ownership interest in FET. Joint Applicants Exhibit SRS-2; Joint Applicants St. No. 2 at 7; Joint Applicants St. No. 3 at 19-20.

42. Under the MAIT Class B Interests Transfer, and assuming approval of the PA Consolidation and the transfer of MAIT Class B membership interests from Met-Ed and Penelec to FirstEnergy, FirstEnergy will then contribute the MAIT Class B membership interests to FET in exchange for a new class of equity in FET (i.e., the Special Purpose Membership Interests). Joint Applicants St. No. 1 at 9.

43. FET's ownership of MAIT's Class A and Class B interests will be memorialized in the Second Amended and Restated Limited Liability Company Operating Agreement of MAIT. Joint Applicants St. No. 2 at 7; Joint Applicants Exhibit SRS-3.

44. FirstEnergy's ownership of FET's Special Purpose Membership Interests will be effectuated by the Contribution Agreement. Joint Applicants St. No. 2 at 7; Joint Applicants Exhibit SRS-4.

45. 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, financial benefits, continuity benefits, operations benefits, economic benefits, and employee, environmental social and governance ("EESG") benefits. Joint Applicants St. No. 1 at 12-17; Joint Applicants St. No. 2 at 12-18; Joint Applicants St. No. 3 at 25-26; Joint Applicants St. No. 4 at 5-20.

46. The Office of Consumer Advocate ("OCA") 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 3-4, 8-18.

47. The Settlement reflects a carefully balanced compromise of the Joint Petitioners' positions on various issues. Settlement ¶ 23.

48. The Joint Petitioners agree that the Settlement is in the public interest. Settlement ¶ 23.

49. The Joint Petitioners agree that the Joint Application should be approved, and that all approvals and certificates of public convenience appropriate, customary, or necessary under the

Public Utility Code to carry out the Transaction in a lawful manner should be granted, subject to the terms and conditions that are in the Settlement. Settlement ¶ 24.

50. Under the Settlement, upon written request, the Joint Applicants will provide the Commission and the statutory advocates (i.e., OCA, OSBA, and the Commission’s Bureau of Investigation and Enforcement) reasonable access to their books and records, officials and staff. However, nothing set forth in the Settlement shall constitute or be interpreted as a waiver by the Joint Applicants of their right to raise traditional discovery or other objections to any such requests, including, but not limited to, objections on the basis of relevance and privilege. In addition, before responding to any such requests, the Joint Applicants shall be permitted to require the imposition of protections they deem necessary to prohibit disclosure of proprietary or confidential information. Settlement ¶ 25.

51. In addition, the Joint Applicants committed that, commencing March 31, 2025 and through March 31, 2033, they will provide an annual report to the Commission as to the status of all commitments made in this Settlement. Settlement ¶ 26.

52. The Settlement reaffirms the Joint Applicants’ commitment that they will not seek recovery of any “Transaction-related” or “Transition-related” costs associated with the proposed Transaction from distribution or transmission rates. Settlement ¶ 27.

53. The Settlement further defines “Transaction-related costs” (Settlement ¶ 27(a)), provides that Transition-related costs will be treated in the same manner as Transaction-related costs and tracked through work orders to be recorded to Federal Energy Regulatory Commission (“FERC”) Account 426.5 – Other deductions, to the extent any Transition-related costs arise (Settlement ¶ 27(b)), and requires the Joint Applicants to (1) specifically identify the Transaction-related costs they are seeking to recover, and (2) demonstrate that those Transaction-related costs

provide a benefit to ratepayers, if the Joint Applicants seek to recover Transaction-related costs not expressly identified above through their transmission or wholesale requirements rates (Settlement ¶ 27(c)).

54. Under the Settlement, the Joint Applicants committed that they will not permit a change in their ownership without prior Commission approval if such change would result in a change in control under the then-applicable Commission standards. Settlement ¶ 28.

55. In addition, the Joint Applicants will seek Commission approval of all new or amended agreements with affiliates consistent with Chapter 21 of the Public Utility Code and will conduct all transactions pursuant to all applicable law and the terms of such affiliated agreements to avoid cross subsidization. Settlement ¶ 29.

56. Under the Settlement, the Joint Applicants commit to establish appropriate ring-fencing protections, to the extent applicable to their structure. Settlement ¶ 30(a)-(j).

57. In addition, in the event any of the Joint Applicants experience a credit downgrade to below BBB or its equivalent, the affected company(ies) will provide notice to the Commission within 10 business days, which will state the reason for the downgrade and remedial actions intended to strengthen credit ratings. Settlement ¶ 31.

58. Under the Settlement, the Joint Applicants shall not withdraw transmission facilities that are located in Pennsylvania from the operational control of PJM unless the Joint Applicants have first applied for, and obtained, authorization by order of the Commission. Settlement ¶ 32.

59. Under the Settlement, the Joint Applicants have made several commitments related to transmission service reliability metrics. Settlement ¶¶ 34-37.

60. Specifically, the Settlement recognizes that the Joint Applicants’ assertions about (i) substantial improvement to FirstEnergy’s and the Joint Applicants’ financial strength, (ii) the Joint Applicants’ enhanced ability to finance transmission system investments, and (iii) the Joint Applicants’ expectations about improvements to the system performance and the operational flexibility of the transmission system are outlined in the testimony of Mark D. Mroczynski and Steven R. Staub.⁴ Settlement ¶ 34. Therefore, ATSI and MAIT agree to the reliability commitments as set forth in 35 of the Settlement. Settlement ¶ 34.

61. Paragraph 35 states that, using the three-year average of 2020-2022 as a baseline, ATSI and MAIT will achieve a five percent (5%) reduction in annual transmission outages, as set forth in the table below and as measured by the transmission outages in the calendar year ending at 11:59 p.m. prevailing Eastern time on December 31, 2028. Adjustments to the outage calculation will be made for six sigma exclusions. Further, scheduled outages, emergency forced outages, and operational outages are excluded from the calculation. Settlement ¶ 35.

Area	2020	2021	2022	Total	Avg	5% Reduction Target
ATSI	291	290	303	884	295	280
MAIT	231	251	209	691	230	219

62. In addition, paragraph 36 of the Settlement sets forth the Joint Applicants’ commitment to meet with the parties to this proceeding annually for a period of five years, with the meeting to be held no later than April 30 each year, in order to review the past calendar year’s transmission system improvements, planned transmission system improvements in the upcoming calendar year, and an overview of the past year’s transmission system reliability, including the

⁴ See Joint Applicants Statement No. 1 at pp. 12-17 and Joint Applicants Statement No. 2 at pp. 12-18.

relevant data to reflect and discuss performance against the commitment outlined in paragraph 35 of the Settlement. Settlement ¶ 36. In advance of such meetings, the Joint Applicants also committed that they will provide the parties to this proceeding with the necessary documents and data to aid in these discussions. Settlement ¶ 36.

63. Paragraph 37 of the Settlement defines certain terms used in paragraphs 35 and 36. Settlement ¶ 37.

APPENDIX B

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

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

2. Section 1102(a)(3) of the Code, 66 Pa.C.S. §1102(a)(3), provides, in pertinent part, that the Commission’s prior approval, evidenced by a certificate of public convenience, is required:

For any public utility or an affiliated interest of a public utility . . . to acquire from, or to transfer to, any person or corporation . . . by any method or devise whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service.

3. Section 1103 of the Code sets forth the procedure to obtain certificates of public convenience under Sections 1101 and 1102 of the Code.

4. A certificate of public convenience may be required to complete the Transaction. *See* 66 Pa.C.S. § 1102(a)(3).

5. 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).

6. In transactions involving the merger or acquisition of utilities, the Commission must find that the Transaction will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pa. PUC*, 295 A.2d 825, 828 (Pa. 1972).

7. Where a utility undergoes an internal reorganization, rather than a transaction that results in the combination of two separate public utilities, the Commission should instead assess whether the transaction is “necessary or proper” for the service of the public. *See PPL Electric*

Utilities Corp. v. Pa. PUC, 241 A.3d 121, 2020 Pa. Commw. Unpub. LEXIS 521, at *33 (Pa. Cmwlth. 2020) (emphasis added); *Elite Industries, Inc. v. Pa. PUC*, 574 Pa. 476, 832 A.2d 428, 430-31 (Pa. 2003).

8. To obtain a certificate of public convenience under Sections 1102 and 1103 of the Code, the Joint Applicants must demonstrate that Brookfield is legally, technically, and financially fit. See *Seaboard Tank Lines v. Pa. PUC*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Township Mun. Auth. v. Pa. PUC*, 138 A.2d 240, 243 (Pa. Super. 1958).

9. 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).

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

11. Under Section 2102 of the Code, Commission approval is required for any affiliated interest contract before it can become effective. 66 Pa.C.S. § 2102(a). Section 2101(a) defines an

“affiliated interest” to include the following: “(1) Every corporation and person owning or holding directly or indirectly 5% or more of the voting securities of such public utility; and (2) Every corporation and person in any chain of successive ownership of 5% or more of voting securities.”

66 Pa.C.S. § 2101(a)(1)(2).

12. 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.

13. 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).

14. 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).

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

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

17. To accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. UGI Utilities, Inc. – Gas Division*, Docket Nos. R-2015-2518438, *et al.* (Order entered Oct. 14, 2016); *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered Jan. 7, 2004).

18. The Joint Petitioners have the burden to prove that the Settlement is in the public interest. *Pa. PUC v. Pike Cnty. Light & Power (Electric)*, Docket Nos. R-2013-2397237, C-2014-2405317, *et al.* (Order entered Sept. 11, 2014).

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

20. “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 & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

21. The terms and conditions of the Settlement are supported by substantial evidence and are in the public interest. Therefore, consistent with the terms and conditions set forth in the Settlement, the Joint Application should be approved as modified by the Settlement.

APPENDIX C

APPENDIX C

PROPOSED ORDERING PARAGRAPHS

1. That the Pennsylvania Public Utility Commission approve the Joint Petition for Approval of Settlement of All Issues without modification;

2. That the Joint Application Of American Transmission Systems, Incorporated, Mid-Atlantic Interstate Transmission, LLC, And Trans-Allegheny Interstate Line Company For All Of The Necessary Authority, Approvals, And Certificates Of Public Convenience Required To Lawfully Effectuate (1) The Purchase And Sale Agreement Of An Incremental Thirty Percent Equity Interest In FirstEnergy Transmission, LLC By North American Transmission Company II L.P.; (2) The Transfer Of Class B Membership Interests In Mid-Atlantic Interstate Transmission, LLC Held By FirstEnergy Corp. To FirstEnergy Transmission, LLC; (3) Where Necessary, Associated Affiliated Interest Agreements; And (4) Any Other Approvals Necessary To Complete The Contemplated Transaction” at Docket Nos. A-2023-3040481, A-2023-3040482, A-2023-3040483, G-2023-3040484, G-2023-3040485, and G-2023-3040486 be approved as modified 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 to be satisfied and thus closed;

5. That the Protest filed by the Met-Ed Industrial Users Group, and Penelec Industrial Customer Alliance is hereby deemed to be satisfied and thus closed;

6. That the Secretary of the Pennsylvania Public Utility Commission shall issue all necessary certificates of public convenience evidencing approval under 66 Pa.C.S. § 1102(a)(3) of the proposed transactions set forth in the Joint Application; and

7. That this matter be marked closed.

APPENDIX D

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application Of American	:	
Transmission Systems, Incorporated, Mid-	:	
Atlantic Interstate Transmission, LLC,	:	Docket Nos. A-2023-3040481
And Trans-Allegheny Interstate Line	:	A-2023-3040482
Company For All Of The Necessary	:	A-2023-3040483
Authority, Approvals, And Certificates Of	:	G-2023-3040484
Public Convenience Required To Lawfully	:	G-2023-3040485
Effectuate (1) The Purchase And Sale	:	G-2023-3040486
Agreement Of An Incremental Thirty	:	
Percent Equity Interest In FirstEnergy	:	
Transmission, LLC By North American	:	
Transmission Company II L.P.; (2) The	:	
Transfer Of Class B Membership Interests	:	
In Mid-Atlantic Interstate Transmission,	:	
LLC Held By FirstEnergy Corp. To	:	
FirstEnergy Transmission, LLC; (3)	:	
Where Necessary, Associated Affiliated	:	
Interest Agreements; And (4) Any Other	:	
Approvals Necessary To Complete The	:	
Contemplated Transaction	:	

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

**STATEMENT IN SUPPORT OF
JOINT PETITION FOR APPROVAL OF
SETTLEMENT OF ALL ISSUES**

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I. INTRODUCTION

American Transmission Systems, Incorporated (“ATSI”), MidAtlantic Interstate Transmission, LLC (“MAIT”) and Trans-Allegheny Interstate Line Company (“TrAILCo”) (collectively, the “Joint Applicants”) hereby submit this Statement in Support of the Joint Petition for Settlement of All Issues (“Settlement”) entered into by the Joint Applicants, North American Transmission Company II L.P. (“NATCo II”),¹ and the Office of Consumer Advocate (“OCA”), all parties to the above-captioned proceeding (hereinafter, collectively the “Joint Petitioners”).² The Settlement represents a full resolution of all issues raised in the instant proceeding.

The Joint Petitioners unanimously agree that the Joint Application should be approved, subject to the terms and conditions of the Settlement. The Settlement will facilitate, among other things: (1) the Purchase and Sale Agreement dated February 2, 2023 (the “PSA”) between FirstEnergy Corp. (“FirstEnergy”), NATCo II and the Brookfield Guarantors,³ pursuant to which FirstEnergy agreed to sell to NATCo II at closing an incremental thirty (30) percent equity interest in FirstEnergy Transmission, LLC (“FET”) for a purchase price of \$3.5 billion (the “FET Transaction”); and (2) FirstEnergy’s contribution of its passive Class B membership interests in MAIT to FET in exchange for a new class of FET Special Purpose Membership Interests (the “Special Purpose Membership Interests”) (the “MAIT Class B Interests Transfer”).⁴ Together, the

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

² As stated in footnote 2 of the Settlement, the Office of Small Business Advocate (“OSBA”), the Met-Ed Industrial Users Group (“MEIUG”), and Penelec Industrial Customer Alliance (“PICA”) were also parties to this proceeding. OSBA, MEIUG, and PICA represented that they are not opposing the Settlement.

³ The “Brookfield Guarantors” refers to Brookfield Super-Core Infrastructure Partners L.P., Brookfield Super-Core Infrastructure Partners (NUS) L.P., and Brookfield Super-Core Infrastructure Partners (ER) SCSp.

⁴ The non-voting Class B Membership Interests in MAIT are currently held by Metropolitan Edison Company (“Met-Ed”) and Pennsylvania Electric Company (“Penelec”). Met-Ed and Penelec have requested all necessary Commission approvals to transfer the subject Class B Membership Interests to FirstEnergy, as a part of the consolidation of FirstEnergy’s Pennsylvania electric distribution companies (“EDCs”) pending at Docket Nos. A-

FET Transaction and the MAIT Class B Interests Transfer are collectively referred to as the “Transaction.” As set forth in the Joint Application, the Joint Applicants respectfully request that Administrative Law Judges Conrad A. Johnson and Emily I. DeVoe (“ALJs”) and the Pennsylvania Public Utility Commission (“Commission”) approve the Settlement promptly and no later than a February 2024 public meeting date.

The Joint Applicants herein submit this Statement in Support of the Joint Application as modified and subject to the terms and conditions of the Settlement. The Settlement reflects a carefully balanced compromise of the Joint Petitioners’ interests. The Joint Applicants submit that the Settlement is in the public interest, just and reasonable, and supported by substantial evidence and, therefore, should be approved without modification.

For the reasons explained below, the Joint Applicants respectfully request that the ALJs and the Commission approve the proposals set forth in the Joint Application, subject to the terms and conditions of the Settlement.

2023-3038771, A-2023-3038792, A-2023-3038793, A-2023-3038794, A-2023-3038795, A-2023-3038807, A-2023-3038808, G-2023-3038818, G-2023-3038819, G-2023-3038820, G-2023-3038821, G-00020956 (the “PA Consolidation”). The transfer of the MAIT Class B Membership Interests contemplated by the Joint Application is limited to the subsequent transfer of these interests from FirstEnergy to FET, which will occur after the approval and closing of the PA Consolidation. As of the time of filing this Settlement, a recommended decision has been issued that recommends the approval of the PA Consolidation subject to the terms and conditions of a settlement of all issues. No exceptions to this recommended decision were filed.

II. STANDARD FOR APPROVAL OF A SETTLEMENT

Commission policy promotes settlements.⁵ Settlements lessen the time and expense that 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.⁶

The Commission has explained that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest.⁷ To approve a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest.⁸

As explained in the next section of this Statement in Support, the Joint Applicants believe that the Settlement is just and reasonable and in the public interest and, therefore, should be approved without modification.

III. THE SETTLEMENT IS IN THE PUBLIC INTEREST

A. GENERAL

The Joint Petitioners agree that the Settlement is in the public interest.⁹ The Settlement was achieved only after a comprehensive investigation of the Joint Applicants' proposals set forth in the Joint Application. The Joint Applicants responded to many formal discovery requests during the course of the proceeding. In addition, the active parties submitted multiple rounds of testimony, including the Joint Applicants' direct testimony, OCA's direct testimony, the Joint

⁵ See 52 Pa. Code § 5.231.

⁶ See *id.* § 69.401.

⁷ *Pa. PUC v. MXenergy Electric Inc.*, Docket No. M-2012-2201861, 2013 Pa. PUC LEXIS 789, 310 P.U.R.4th 58 (Opinion and Order entered Dec. 5, 2013).

⁸ *Pa. PUC v. Windstream Pennsylvania, LLC*, Docket No. M-2012-2227108, 2012 Pa. PUC LEXIS 1535 (Opinion and Order entered Sept. 27, 2012); *Pa. PUC v. C.S. Water and Sewer Assoc.*, Docket No. R-881147, 74 Pa. PUC 767 (Opinion entered July 22, 1991).

⁹ Settlement ¶¶ 24, 38-41.

Applicants' rebuttal testimony, and OCA's surrebuttal testimony. Further, the parties engaged in numerous settlement discussions and formal negotiations, which ultimately led to the Settlement.

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. 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 Settlement reflects a carefully balanced compromise of the competing interests of the active parties in this proceeding.¹⁰ The parties in this proceeding, their counsel, and their expert consultants have considerable experience in merger and acquisition proceedings. 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. 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.

In addition, the Transaction, as conditioned by the Settlement, will produce substantial affirmative public benefits upon closing and additional benefits in the future. As explained in the Joint Application and the Joint Applicants' testimony, the Transaction will result in numerous public benefits, including, but not limited to, financial benefits, continuity benefits, operations benefits, economic benefits, and employee, environmental, social, and governance ("EESG")

¹⁰ Settlement ¶ 24.

benefits.¹¹ These benefits will result from the Transaction strengthening FirstEnergy's corporate profile and allowing FirstEnergy to attract additional capital to support major infrastructure investments in its regulated distribution and transmissions businesses.¹²

For example, the Transaction will result in financial benefits because it will allow FirstEnergy to improve its balance sheet, which will in turn broaden its access to capital markets, both debt and equity, on the basis that the proposed Transaction is expected to improve FirstEnergy's financial metrics to a level that is consistent with investment grade credit ratings.¹³ As the Joint Applicants explained, a better credit rating is an indicator of lower investor risk and, therefore, a better credit rating will enhance FirstEnergy's and its subsidiaries' ability to attract capital.¹⁴ Furthermore, an improvement in the credit ratings of FirstEnergy's regulated utilities, facilitated by the proposed Transaction, is expected to improve the utilities' individual ability to raise additional funds at a lower cost of capital.¹⁵ Lowering the cost of capital will, in turn, directly benefit customers by reducing the Joint Applicants' costs of debt.¹⁶

As for operational benefits, the Transaction will (1) provide financial flexibility for FirstEnergy to deploy additional capital across FirstEnergy's regulated utilities, including the Joint Applicants, which will in turn further enhance the reliability of the distribution and transmission grids and support wholesale customers and (2) result in Brookfield being able to share with FirstEnergy its knowledge of operational best practices with respect to optimal capital deployment, process excellence, and portfolio planning and analytics with respect to FET and the Joint

¹¹ See, e.g., Joint Application ¶¶ 7, 91-104; Joint Applicants St. No. 1 at 12-17; Joint Applicants St. No. 2 at 12-18; Joint Applicants St. No. 3 at 25-26; Joint Applicants St. No. 4 at 5-20.

¹² Joint Application ¶¶ 7, 91-104; Joint Applicants St. No. 1 at 12-17; Joint Applicants St. No. 2 at 12-18; Joint Applicants St. No. 3 at 25-26; Joint Applicants St. No. 4 at 5-20.

¹³ Joint Applicants St. No. 2 at 14.

¹⁴ Joint Applicants St. No. 2 at 14.

¹⁵ Joint Applicants St. No. 2 at 15.

¹⁶ Joint Applicants St. No. 2 at 16.

Applicants.¹⁷ The Transaction will also support the improvement of the operational flexibility of FirstEnergy's transmission system, enhancing its reliability, robustness, security, and resistance to extreme weather events.¹⁸

Moreover, the Joint Applicants explained that the Transaction will result in significant economic benefits and it will enhance FirstEnergy's ability to undertake future investments in Pennsylvania.¹⁹ Indeed, these future investments are anticipated to generate approximately \$19.5 billion in economic output over the 2023-2032 period in Pennsylvania.²⁰ This economic activity would create approximately \$11.2 billion in incremental gross regional product in Pennsylvania, which is inclusive of \$648 million in additional state and municipal tax revenue for local communities in Pennsylvania.²¹ In turn, this economic activity is expected to support between approximately 9,500 and 11,200 jobs annually over the 2023-2032 period.²²

Finally, the Transaction will result in EESG benefits because NATCo II's incremental investment is expected to facilitate the deployment of additional capital for strategic EESG initiatives in the regulated transmission segment that will help enable a clean, reliable, resilient, and secure electric grid, including initiatives related to transmission asset health, integrating digital technology, exploring real time technologies in data collection, and smart investments to modernize the grid to integrate future renewables.²³

For these reasons and the more specific reasons set forth below, the Joint Application, as conditioned by the Settlement, will produce substantial affirmative public benefits. Therefore, the Settlement as a whole is just, reasonable, and in the public interest. Accordingly, the Joint

¹⁷ Joint Applicants St. No. 1 at 13-14.

¹⁸ Joint Applicants St. No. 1 at 15.

¹⁹ Joint Applicants St. No. 4 at 5-20.

²⁰ Joint Applicants St. No. 4 at 17.

²¹ Joint Applicants St. No. 4 at 17.

²² Joint Applicants St. No. 4 at 17.

²³ Joint Applicants St. No. 1 at 17.

Application should be approved, and all approvals and certificates of public convenience appropriate, customary, or necessary under the Public Utility Code to carry out Transaction in a lawful manner should be granted, subject to the terms and conditions of the Settlement.²⁴

B. REPORTING, BOOKS, AND RECORDS

Even though the Joint Applicants did not propose any changes to existing reporting requirements, or the Commission's access to their books and records, the OCA asserted that FET and NATCo II, as joint owners, should commit to continuing open access to FET's books and commit to open access to the books and records of NATCo II and NATCo I as a condition of the Transaction.²⁵ The Joint Applicants fully responded to these proposals.

Specifically, in their rebuttal testimony the Joint Applicants explained that, as regulated utilities, they already provide the Commission with access to their books and records and that access to the books and records of FET is already provided to the extent the information is jurisdictional and relevant to the Joint Applicants' operations.²⁶ Moreover, the Joint Applicants explained that access to the books and records of NATCo II was not necessary because any transactions between NATCo II and FET would already be reflected in FET's books and records.²⁷ The Joint Applicants further explained that NATCo I's books and records were even further removed and that this entity would have no direct dealings with FET and/or the Joint Applicants.²⁸ Nevertheless, the Joint Applicants indicated that NATCo II would cooperate with any lawful Commission inquiry and provide any material and relevant documents in any future proceeding where necessary and as appropriate under the law.²⁹

²⁴ Settlement ¶ 25.

²⁵ OCA St. No. 1 at 9, 14.

²⁶ Joint Applicants St. No. 3R at 12.

²⁷ Joint Applicants St. No. 3R at 12-13.

²⁸ Joint Applicants St. No. 3R at 13.

²⁹ Joint Applicants St. No. 3R at 13.

The Settlement reflects a reasonable compromise of the parties' positions regarding access to the books and records of the entities involved in this Transaction. Under the Settlement, the Joint Applicants have committed to continue providing the Commission and the statutory advocates with reasonable access to their books and records, officials, and staff.³⁰ The Settlement also preserves the Joint Applicants' rights to raise traditional discovery or other objections to these requests, and require that protections be imposed where necessary to prohibit disclosure of proprietary or confidential information.³¹ These limitations appropriately balance the interests of the Commission and the statutory advocates in maintaining access to the Joint Applicants books and records, as they are certificated public utilities, with the Joint Applicants' interests in protecting certain information from public disclosure (e.g., privileged, proprietary, and/or confidential information).

In addition, the Settlement contains a requirement that the Joint Applicants will provide an annual report to the Commission as to the status of all commitments made in the Settlement.³² This be filed each year commencing on March 31, 2025, and ending on March 31, 2033.³³ By reporting on the status of the commitments made in the Settlement, the Joint Applicants have reaffirmed that the Transaction, as conditioned by the terms and conditions of the Settlement, will result in substantial affirmative public benefits. Moreover, these status reports will keep the Commission and the statutory advocates apprised of the Joint Applicants' satisfaction of the Settlement commitments over a number of years.

Therefore, the Settlement sets forth reasonable parameters and requirements for the Commission and the statutory advocates to maintain access to the Joint Applicants' books and

³⁰ Settlement ¶ 26.

³¹ Settlement ¶ 26.

³² Settlement ¶ 27.

³³ Settlement ¶ 27.

records, and for the Joint Applicants to advise the Commission and the statutory advocates of their progress towards satisfying the commitments made in this Settlement. These provisions are in the public interest and should be approved.

C. TRANSACTION/TRANSITION COSTS

Another issue raised in the proceeding was the treatment “Transaction-related” and “Transition-related” costs. During its direct testimony, OCA recommended that the Commission condition approval of the Transaction upon a commitment that all transition and transaction costs be borne by the Joint Applicants.³⁴ The Joint Applicants did not object to this recommendation.

The Settlement reaffirms the Joint Applicants’ commitment that they will not seek recovery of any “Transaction-related” or “Transition-related” costs associated with the proposed Transaction from distribution or transmission rates.³⁵ It further defines “Transaction-related costs,”³⁶ provides that Transition-related costs will be treated in the same manner as Transaction-related costs and tracked through work orders to be recorded to Federal Energy Regulatory Commission (“FERC”) Account 426.5 – Other deductions, to the extent any Transition-related costs arise,³⁷ and requires the Joint Applicants to (1) specifically identify the Transaction-related costs they are seeking to recover, and (2) demonstrate that those Transaction-related costs provide a benefit to ratepayers, if the Joint Applicants seek to recover Transaction-related costs not expressly identified above through their transmission or wholesale requirements rates.³⁸

Therefore, the Settlement incorporates the parties’ agreement that Transition-related costs and Transaction-related costs will generally not be recovered through distribution or transmission

³⁴ OCA St. No. 1 at 16.

³⁵ Settlement ¶ 27.

³⁶ Settlement ¶ 27(a).

³⁷ Settlement ¶ 27(b).

³⁸ Settlement ¶ 27(c).

rates and help provides clarity by defining what is included in those cost categories. Thus, these Settlement provisions are just and reasonable and should be approved without modification.

D. CORPORATE STRUCTURE PROTECTIONS, FINANCIAL CONDITIONS, AND GOVERNANCE

The Joint Applicants' direct testimony set forth the proposed post-Transaction structure of the Joint Applicants³⁹ and explained the additional rights and obligations that would be provided to NATCo II under the Fourth Amended and Restated Limited Liability Company Agreement of FirstEnergy Transmission, LLC (the "LLCA") after the Transaction closed.⁴⁰ OCA raised concerns in its direct testimony regarding the potential duration of Brookfield's ownership of its interest in FET and the nature of its ownership interest, and recommended that the Commission require Brookfield to maintain its 49.9% interest in FET for a period of 10 years.⁴¹

OCA's concerns regarding the potential duration of Brookfield's ownership interest in FET were rebutted by the Joint Applicants. In particular, the Joint Applicants showed that NATCo II has demonstrated its commitment to be an equity partner in FET perpetually into the future with no foreseeable time horizon for an exist from its investment.⁴² In addition, the Joint Applicants explained that Brookfield has a strong record of long-term investments in infrastructure assets.⁴³ Indeed, Brookfield's asset management business is currently one of the largest and fastest growing alternative asset managers globally, with operations spanning more than 30 countries on five continents.⁴⁴ Brookfield also has significant experience with investing in and supporting regulated

³⁹ Joint Applicants Exhibit MDM-1

⁴⁰ Joint Applicants Exhibit SRS-2; Joint Applicants St. No. 2 at 7; Joint Applicants St. No. 3 at 19-20.

⁴¹ OCA St. No. 1 at 10-14.

⁴² Joint Applicants St. No. 3R at 9-10.

⁴³ Joint Applicants St. No. 3R at 10-11.

⁴⁴ Joint Applicants St. No. 3 at 7-8.

public utility assets;⁴⁵ it also has significant investments in Pennsylvania across a range of sectors, including infrastructure, renewable power, real estate, and private equity.⁴⁶

While the Joint Applicants recognized that the subject PSA contemplates the execution of the LLCA, which will provide NATCo II with certain additional rights and obligations related to its ownership interest in FET, the Joint Applicants fully explained the reasoning and necessity for those rights and obligations.⁴⁷ Critically, the varying levels of rights and obligations set forth in the LLCA reflect a prudent up-front agreement as to the parties' respective rights in the event ownership percentages change.⁴⁸ These up-front agreements do not signal NATCo II's intent to divest its ownership interest in FET at any point in time, but ensure that there is certainty regarding any change in the level of ownership interest in FET well in advance of such change.⁴⁹

Under the Settlement, the Joint Applicants committed that they will not permit a change in their ownership without prior Commission approval if such change would result in a change in control under the then-applicable Commission standards.⁵⁰ This provision addresses OCA's concerns regarding the duration of Brookfield's ownership of FET, but ensures that any change in the Joint Applicants' ownership that results in a change in control will be subject to review by the Commission and appropriate stakeholders. In addition, the Settlement provides that the Joint Applicants will seek Commission approval of all new or amended agreements with affiliates consistent with Chapter 21 of the Public Utility Code and will conduct all transactions pursuant to all applicable law and the terms of such affiliated agreements to avoid cross subsidization.⁵¹ This provision will ensure that the Transaction's impact on NATCo II's ownership interest in FET, and

⁴⁵ Joint Applicants St. No. 3 at 8-9.

⁴⁶ Joint Applicants St. No. 3 at 11.

⁴⁷ Joint Applicants St. No. 2 at 7; Joint Applicants St. No. 3 at 19-20.

⁴⁸ Joint Applicants St. No. 3R at 11-12.

⁴⁹ Joint Applicants St. No. 3R at 11-12.

⁵⁰ Settlement ¶ 28.

⁵¹ Settlement ¶ 29.

the additional rights and obligations attendant with that increase interest, will not result in result in new or amended affiliate agreements without those agreements being subject to review by the Commission. Each of these Settlement terms is just, reasonable, and in the public interest. Therefore, they should be approved without modification.

E. RING-FENCING AND CREDIT PROVISIONS

As explained above, one of the primary benefits of the Transaction is that it would result Transaction would result in an improvement to FirstEnergy's and its subsidiaries' financial metrics and credit ratings.⁵² The OCA, however, raised concerns regarding the impact of the Transaction on the Joint Applicants' capital structure.⁵³ OCA also recommended that the Commission impose various ring-fencing measures to shield the Joint Applicants from the business activities of Brookfield and its subsidiaries.⁵⁴

The Joint Applicants responded to the OCA's proposed ring-fencing measures in their rebuttal testimony. The Joint Applicants explained that they already had strong ring-fencing measures in place but planned to further strengthen those measures with respect to FET and the Joint Applicants by, among other things, establishing a stand-alone credit facility for FET.⁵⁵ The Joint Applicants further explained that either (a) they were already committed to implementing the ring-fencing recommendations advanced by OCA, (b) they were willing to accept those additional ring-fencing measures advanced by OCA, or (c) certain of the measures recommended by OCA were not necessary.⁵⁶

⁵² Joint Applicants St. No. 2 at 14.

⁵³ OCA St. No. 1 at 15.

⁵⁴ OCA St. No. 1 at 15.

⁵⁵ Joint Applicants St. No. 2R at 7.

⁵⁶ See Joint Applicants St. No. 3R at 14-17.

Under the Settlement, the Joint Applicants have committed to establishing the following ring-fencing provisions, to the extent applicable to their ownership structure.⁵⁷

- a) Standalone credit facilities will be established/maintained for FET on the one hand and its subsidiaries on the other;
- b) FET and the Joint Applicants will maintain the ability to issue their own long-term debt separate from NATCo II and its corporate affiliates;
- c) Limits on money pool will be implemented such that FET and its subsidiaries will only borrow/lend amongst themselves consistent with the terms of the “Third Revised and Restated Utility Money Pool Agreement,” as filed in the PA Consolidation;
- d) The Joint Applicants will maintain their status as corporate subsidiaries with their own corporate officers;
- e) Each of the Joint Applicants will issue its own set of financial statements pursuant to FERC requirements;
- f) Each Joint Applicant will maintain its own credit ratings from at least two major credit ratings agencies;
- g) Each Joint Applicant will maintain the capability to issue its own long-term debt (with such debt issuances subject to Commission approval, if required) to the extent each subsidiary remains active;
- h) NATCo II and its corporate affiliates will not lend to the Joint Applicants (or vice versa) for a term in excess of one year;
- i) The Joint Applicants and NATCo II agree that NATCo II and its corporate affiliates will not unilaterally pledge or encumber the underlying assets of the Joint Applicants; and
- j) The Joint Applicants and NATCo II agree to seek Commission approval of all new or amended agreements with affiliated interests of the Joint Applicants consistent with Chapter 21 of the Public Utility Code, 66 Pa.C.S. § 2101, et seq.

Furthermore, in the event any of the Joint Applicants experience a credit downgrade to below BBB or its equivalent, the affected company(ies) will provide notice to the Commission within 10

⁵⁷ Settlement ¶ 30.

business days, which will state the reason for the downgrade and remedial actions intended to strengthen credit ratings.⁵⁸

The agreed upon ring-fencing measures directly address OCA's concerns regarding the need to shield the Joint Applicants and their ratepayers from the impacts of business activities carried on by Brookfield and its subsidiaries. In addition, the agreed upon ring-fencing measures are a reasonable compromise of the parties' positions on the need for the implementation of specific ring-fencing measures and the impact of the Transaction on the Joint Applicants' credit ratings. The Joint Applicants therefore submit that these provisions are just, reasonable, and in the public interest, and should be approved without modification.

F. PJM INTERCONNECTION, L.L.C. ("PJM") CONTROL

Each of the Joint Applicants is currently a transmission owner ("TO") member of PJM.⁵⁹ OCA recommended in direct testimony that the Joint Applicants be required to commit that all assets involved in the Transaction remain under the functional control of PJM.⁶⁰ While the Joint Application contained no proposal to withdraw the Joint Applicants assets from PJM, the Joint Applicants affirmed in their rebuttal testimony that they will not withdraw transmission facilities from the operational control of PJM unless they have first applied for and obtained authorization to do so by order of the Commission.⁶¹

The Settlement states that the Joint Applicants shall not withdraw transmission facilities that are located in Pennsylvania from the operational control of PJM unless the Joint Applicants have first applied for, and obtained, authorization by order of the Commission.⁶² This provision

⁵⁸ Settlement ¶ 31.

⁵⁹ Joint Applicants St. No. 1 at 6-7.

⁶⁰ OCA St. No. 1 at 18.

⁶¹ Joint Applicants St. No. 1R at 9.

⁶² Settlement ¶ 32.

memorializes the Joint Applicants' commitment from their rebuttal testimony. Therefore, it is just, reasonable, and in the public interest, and should be approved without modification.

G. TRANSMISSION SERVICE RELIABILITY

The Joint Applicants demonstrated that the Transaction will (i) substantially improve to FirstEnergy's and the Joint Applicants' financial strength, (ii) enhance the Joint Applicants' ability to finance transmission system investments, and (iii) improve the system performance and the operational flexibility of the transmission system.⁶³ While the OCA asserted that the operational benefits associated with improvements to transmission system reliability that were identified by the Joint Applicants were not firm or quantifiable,⁶⁴ the Joint Applicants' rebuttal testimony explained that additional investment in the Pennsylvania transmission system will continue to yield reliability improvements, and explained that they already report transmission metrics (i.e., Outage Frequency and Misoperations) to the North American Electric Reliability Corporation ("NERC") and PJM.⁶⁵ The Joint Applicants further explained that, by facilitating further improvements to the transmission system, the Transaction would also facilitate significant positive impacts to the distribution system of FirstEnergy's Pennsylvania subsidiaries.⁶⁶

The Settlement reflects a number of commitments related to transmission service reliability metrics, which bolster the Joint Applicants' expectations that the Transaction will benefit the performance and operational flexibility of the transmission system.⁶⁷ Specifically, using the three-year average of 2020-2022 as a baseline, ATSI and MAIT will achieve a five percent (5%) reduction in annual transmission outages, as set forth in the table in paragraph 35 of the Settlement and as measured by the transmission outages in the calendar year ending at 11:59 p.m. prevailing

⁶³ Joint Applicants Statement No. 1 at 12-17 and Joint Applicants Statement No. 2 at 12-18.

⁶⁴ OCA St. No. 1 at 17.

⁶⁵ Joint Applicants St. No. 1R at 3-5, 7-8.

⁶⁶ Joint Applicants St. No. 1R at 5-6.

⁶⁷ Settlement ¶¶ 34-37. Paragraph 37 defines certain terms used in paragraphs 35 and 36 of the Settlement.

Eastern time on December 31, 2028.⁶⁸ The Joint Applicants further committed to meter annually for a period of five years with the parties to this proceeding, to review the past calendar year's transmission system improvements, planned transmission system improvements in the upcoming calendar year, and an overview of the past year's transmission system reliability.⁶⁹

The provisions of the Settlement related to transmission service reliability reaffirm the Joint Applicants' representations that the Transaction will result in substantial operational benefits for the transmission system. Achieving specific outage metric reductions provide concrete and specific benefits to customers in Pennsylvania. Moreover, regularly meeting with the parties to this proceeding, including stakeholders that represent the interests of residential customers (i.e., OCA), small business customers (i.e., OSBA), and industrial customers (i.e., MEIUG and PICA), will ensure that these groups are provided regular updates regarding improvements planned and made to the Joint Applicants' transmission systems. Therefore, these provisions are just, reasonable, and in the public interest, and should be approved without modification.

IV. SETTLEMENT CONDITIONS

The Settlement also sets forth typical terms and conditions governing the Settlement's interpretation, the Joint Petitioners' reservations of rights, and the procedures that apply when the Settlement is approved or modified by the ALJs or Commission.⁷⁰ These provisions are just and reasonable because they help clarify the Settlement and the Joint Petitioners' obligations thereunder. Specifically, the Settlement provides that the placement of any provision within the Settlement does not indicate the level of importance of such provision to any Joint Petitioner.⁷¹

⁶⁸ Settlement ¶ 35. This provision of the Settlement also provides for what adjustments can be made to the outage calculation and what events are excluded from the calculation.

⁶⁹ Settlement ¶ 36.

⁷⁰ Settlement ¶¶ 42-46.

⁷¹ Settlement ¶ 42.

Moreover, the Settlement states that it is conditioned upon the Commission's approval of the terms and conditions contained in this Settlement without modification.⁷² If the Commission modifies the Settlement, any Joint Petitioner may elect to withdraw from the Settlement and may proceed with litigation, and, in such event, the Settlement shall be void and of no effect.⁷³ Also, if the proceeding continues, the Joint Petitioners reserve their respective procedural rights to evidentiary hearings, submission of additional testimony and exhibits, cross-examination of witnesses, briefing, and argument of their respective positions.⁷⁴ Further, the Settlement is the product of compromise and is being presented without prejudice to the positions that the Joint Petitioners have advanced or may advance in the future.⁷⁵ Finally, if the ALJs recommend adopting the Settlement without modification, the Settlement states that the Joint Petitioners waive their right to file Exceptions.⁷⁶

⁷² Settlement ¶ 43.

⁷³ Settlement ¶ 43.

⁷⁴ Settlement ¶ 44.

⁷⁵ Settlement ¶ 45.

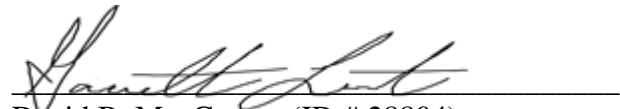
⁷⁶ Settlement ¶ 46.

V. **CONCLUSION**

The Settlement is the result of a detailed examination of the Joint Applicants' proposals, discovery requests, the parties' testimony, numerous settlement discussions, and compromise by all active parties. The Joint Applicants believe that fair and reasonable compromises have been achieved on the settled issues in this case, particularly given the fact that the active parties have reached an agreement on all issues. The Joint Applicants fully support this Settlement and respectfully request that Administrative Law Judges Conrad A. Johnson and Emily I. DeVoe and the Pennsylvania Public Utility Commission:

- (i) Approve the Joint Petition for Settlement of All Issues without modification; and
- (ii) Approve the proposals set forth in the Joint Application, subject to the terms and conditions of the Joint Petition for Settlement of All Issues.⁷⁷

Respectfully submitted,



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Dated: November 29, 2023

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

⁷⁷ The Joint Applicants reiterate their request that the Commission grant these approvals by no later than a February 2024 public meeting, so that the Transaction may promptly close and become effective thereafter.

APPENDIX E

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application Of American	:	
Transmission Systems, Incorporated, Mid-	:	
Atlantic Interstate Transmission, LLC,	:	Docket Nos. A-2023-3040481
And Trans-Allegheny Interstate Line	:	A-2023-3040482
Company For All Of The Necessary	:	A-2023-3040483
Authority, Approvals, And Certificates Of	:	G-2023-3040484
Public Convenience Required To Lawfully	:	G-2023-3040485
Effectuate (1) The Purchase And Sale	:	G-2023-3040486
Agreement Of An Incremental Thirty	:	
Percent Equity Interest In FirstEnergy	:	
Transmission, LLC By North American	:	
Transmission Company II L.P.; (2) The	:	
Transfer Of Class B Membership Interests	:	
In Mid-Atlantic Interstate Transmission,	:	
LLC Held By FirstEnergy Corp. To	:	
FirstEnergy Transmission, LLC; (3)	:	
Where Necessary, Associated Affiliated	:	
Interest Agreements; And (4) Any Other	:	
Approvals Necessary To Complete The	:	
Contemplated Transaction	:	

**NORTH AMERICAN TRANSMISSION COMPANY II L.P.’S
STATEMENT IN SUPPORT OF
JOINT PETITION FOR APPROVAL OF SETTLEMENT OF ALL ISSUES**

I. INTRODUCTION

Intervenor North American Transmission Company II L.P. (“NATCo II”) submits this Statement in Support of Joint Petition for Approval of Settlement of All Issues (“Joint Petition” or “Settlement”) entered into by American Transmission Systems, Incorporated (“ATSI”), Mid-Atlantic Interstate Transmission, LLC (“MAIT”) and Trans-Allegheny Interstate Line Company (“TrAILCo”) (collectively, “Joint Applicants”), NATCo II, and the Office of Consumer Advocate

("OCA") (collectively, "Joint Petitioners").¹ The Joint Petition presents a comprehensive resolution of all issues raised in this proceeding, as set forth in the Settlement among the Joint Petitioners.

In this proceeding, the Joint Applicants seek all necessary approvals and certificates of public convenience from the Pennsylvania Public Utility Commission ("Commission") pursuant to Sections 1102(a)(3), 1103, 2102(a), and 2811(e) of the Public Utility Code ("Code"), 66 Pa.C.S. §§ 1102(a)(3), 1103, 2102(a), and 2811(e), required to lawfully effectuate: (1) the Purchase and Sale Agreement ("PSA") whereby FirstEnergy Corp. ("FirstEnergy") agreed to sell to NATCo II at closing an incremental thirty (30) percent equity interest in FirstEnergy Transmission, LLC ("FET"); (2) the transfer of Class B Membership Interests in MAIT held by FirstEnergy to FET; and (3) where necessary, associated affiliated interest agreements. The Joint Petitioners unanimously agree that the Joint Applicants' Application ("Joint Application") should be approved, subject to the terms and conditions of the Settlement.

NATCo II, a controlled investment vehicle of Brookfield Corporation ("Brookfield"), presently owns a 19.9% interest in FET. Pursuant to the PSA dated February 2, 2023, between FirstEnergy, NATCo II and the Brookfield Guarantors,² FirstEnergy has agreed to sell to NATCo II at the closing an incremental thirty (30) percent equity interest in FET for a purchase price of \$3.5 billion, thereby increasing NATCo II's ownership interest in FET to 49.9%. Also at closing, FirstEnergy will contribute its passive Class B membership interests in MAIT to FET in exchange

¹ The Office of Small Business Advocate ("OSBA"), the Met-Ed Industrial Users Group ("MEIUG"), and the Penelec Industrial Customer Alliance ("PICA") represented that they are not opposing the Settlement.

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

for a new class of FET equity interests (“Special Purpose Membership Interests”). Together, the incremental sale of equity interests in FET to NATCo II and the transfer by FirstEnergy of its passive Class B membership interests in MAIT to FET comprise the transaction (“Transaction”) for which Joint Applicants seek approval and to which the Joint Petitioners have agreed in the Settlement.

The Settlement reflects a carefully balanced compromise of the Joint Petitioners’ interests. NATCo II believes that the Settlement is in the public interest, just and reasonable, and supported by substantial evidence and, therefore, should be approved without modification. Thus, as set forth in the Joint Application, NATCo II respectfully requests that Administrative Law Judges Conrad A. Johnson and Emily I. DeVoe (“ALJs”) and the Pennsylvania Public Utility Commission (“Commission”) approve the Settlement promptly and no later than a February 2024 public meeting date.

II. STANDARD FOR APPROVAL OF SETTLEMENT

It is the Commission’s policy to encourage settlements. 52 Pa. Code § 5.231. The Commission reviews proposed settlements to determine whether the terms are in the public interest. *Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates*, 74 Pa. PUC 767, 711 (1991); *Pa. Pub. Util. Comm’n v. Philadelphia Electric Co.*, 60 Pa. PUC 1, 21 (1985). For the reasons set forth below, adoption of the Settlement embodied in the Joint Petition is in the public interest, and it should be approved without modification.

III. THE SETTLEMENT IS IN THE PUBLIC INTEREST

A. General

In transactions involving the merger or acquisition of utilities, the Commission must find that the transaction will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pa. PUC*, 295 A.2d 825, 828 (Pa.

1972); *see also Popowsky v. Pa. PUC*, 937 A.2d 1040, 1057 (Pa. 2007). Where a utility undergoes an internal reorganization, rather than a transaction that results in the combination of two separate public utilities, the Commission should instead assess whether the transaction is “necessary or proper” for the service of the public. *See PPL Electric Utilities Corp. v. Pa. PUC*, 241 A.3d 121, 2020 Pa. Commw. Unpub. LEXIS 521, at *33 (Pa. Cmwlth. 2020) (emphasis added); *Elite Industries, Inc. v. Pa. PUC*, 574 Pa. 476, 832 A.2d 428, 430-31 (Pa. 2003).

Moreover, to obtain a certificate of public convenience under Sections 1102 and 1103 of the Code, the Joint Applicants must demonstrate that Brookfield is legally, technically, and financially fit. *See Seaboard Tank Lines v. Pa. PUC*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Township Mun. Auth. v. Pa. PUC*, 138 A.2d 240, 243 (Pa. Super. 1958). 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).

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

Assuming these standards apply here,³ the Transaction satisfies these standards because the Joint Applicants have presented sufficient and substantial evidence demonstrating the legal, technical, and financial fitness of Brookfield, including evidence satisfying the *Penn Estates* criteria, and that the Transaction will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pa. PUC*, 295 A.2d at 828).

There is ample evidence demonstrating the financial and operational strength that Brookfield, through NATCo II, brings to FirstEnergy and FET as an equity partner. As Jeffrey Rosenthal, Vice Chair and Operating Partner in Brookfield Asset Management Ltd., explained, “the Brookfield Super-Core Infrastructure Partners (“BSIP”) fund, a perpetual investment fund that invests in high-quality, core infrastructure assets, indirectly owns a majority voting interest in NATCo II.” Joint Applicants Statement No. 3 at 5:7-9. Brookfield (acting through BSIP and NATCo II) is an experienced and widely respected partner that brings both financial strength and operational ability and knowledge to FET. As Mr. Rosenthal further explained:

Many of Brookfield’s utility investments (including its interest in FET) are held in BSIP, its core infrastructure investment fund, which

³ Following the Transaction, NATCo II, which presently has an equity interest of 19.9% in FET, will increase its ownership interest to 49.9%; FirstEnergy’s equity interest in FET, which presently stands at 80.1%, will decrease to 50.1%. As a consequence, the Transaction will not result in (1) the creation of a new largest voting interest in a utility or a utility’s parent, or (2) the dissipation of largest voting interest in a utility or a utility’s parent, under the Commission’s *Utility Stock Transfer Under 66 Pa.C.S. § 1102(a)(3)—Statement of Policy* at 52 Pa. Code § 69.901 (Policy Statement). Therefore, the Transaction does not appear to require a certificate of public convenience under the Policy Statement. However, due to the various rights and obligations that NATCo II will obtain with respect to FET and the Joint Applicants under the Fourth Amended and Restated Limited Liability Company Agreement of FirstEnergy Transmission, LLC (“LLCA”) (for example, NATCo II will have the right to appoint two out of the five members of the FET board, with the remaining three directors being appointed by FirstEnergy, and governance rights that require the consent, vote or approval of Brookfield before certain actions can be taken by FET), it is possible that the Commission could conclude that approval is required under Section 1102(a)(3) of the Code.

is ultimately controlled by Brookfield. BSIP builds upon the success of Brookfield's infrastructure track record and draws on its long history of managing and operating infrastructure assets. BSIP seeks to invest in high-quality, core infrastructure assets located principally in North America, Western Europe and Australia with a focus on long-term stable cash flows. BSIP seeks to generate stable returns by investing in a diversified portfolio of mature, high-quality assets on a perpetual hold basis, meaning BSIP is an open-ended fund with no finite life. BSIP principally targets sectors in which we believe Brookfield has established operations and significant expertise. Brookfield seeks to leverage its business groups and implement an operations-oriented approach to generate consistent yield and preserve capital post-acquisition.

As an owner-operator of critical infrastructure globally, a strong ESG practice has always been an integral part of Brookfield's investment and asset management approach. Guided by Brookfield's ESG policy, our practices are based on four fundamental principles: (i) mitigating the impact of our portfolio companies' operations on the environment; (ii) ensuring the well-being and safety of employees; (iii) upholding strong governance practices; and (iv) being good corporate citizens.

Brookfield is a leading global alternative asset manager with over \$800 billion of managed assets, 200,000 operating employees and 1,200 investment professionals across North America, South America, Europe, the Middle East, and Asia-Pacific. Brookfield's Infrastructure Group has \$208 billion in assets under management through various public and private vehicles, one of which is BSIP.

BSIP leverages Brookfield's extensive operating expertise to target lower-risk, essential infrastructure assets. BSIP currently holds interests in 24 operating businesses across a variety of countries, including the U.S., UK, Denmark, Norway, Finland, Sweden, Spain, and Australia. BSIP has an enterprise value of \$35 billion. Each of BSIP's investments is in mature core infrastructure assets with stable cash flow profiles and investment grade credit ratings across each investment.

For both controlling and non-controlling investments, Brookfield's approach is to provide oversight and support to the utility businesses in which it invests. Brookfield seeks to maintain the local and regional management teams when it invests in such businesses and

to provide them with the tools and capital they need to operate and improve their businesses.

Moreover, as a manager of assets and businesses that provide essential services, Brookfield understands the importance of its role in the communities in which Brookfield's portfolio companies operate. Brookfield's investment philosophy aims to couple sound investment return with responsible and sustainable investing. This includes detailed reporting to investors and stakeholders on ESG performance.

Lastly, Brookfield views itself as an experienced, long-term investor in infrastructure assets that works closely with its portfolio companies to share best practices in areas such as optimal capital deployment, process excellence, portfolio planning and analytics. As BSIP is a perpetual, open-ended fund with no finite life, Brookfield seeks to develop long-term relationships with its BSIP-portfolio companies, as is the case with its investment in FET.

Joint Applicants Statement No. 3 at 9-12; *see also* Joint Applicants St. 3R at 3:15 – 5:19.

Moreover, as set forth in the Joint Application and as further supported by the Joint Applicants' Direct Testimony, the Transaction satisfies the *Penn Estates* criteria to the extent they apply:

Capital to be allocated to ongoing Operating and Maintenance Expenses. As regulated public utilities, the Joint Applicants recover revenue from rates for their operations, including operations and maintenance expenses. Brookfield is also well positioned to finance its proportionate share of FET's equity needs, including, as required, funds for ongoing operation and maintenance expenses (Joint Applicants Statement No. 3).

Corporate Governance/Sarbanes-Oxley Compliance. Following the close of the Transaction FirstEnergy, FET, and the Joint Applicants will continue to be subject to certain reporting requirements of the U.S. Sarbanes-Oxley Act of 2002, as amended (the "Sarbanes-Oxley Act"). The same is true for Brookfield Corporation and BAM Ltd (Joint Applicants Statement No. 3).

Expected Term of Ownership. BSIP is a perpetual, open-ended fund with no finite life. As such, Brookfield seeks to develop long-term relationships with its BSIP-portfolio companies, as is the case with its investment in FET (Joint Applicants Statement No. 3). Moreover, FirstEnergy will continue to remain the majority owner

of FET and the FET Transmission Subsidiaries as it has been since FET's formation.

Experience as an Owner and Operator of Utilities. Brookfield has extensive experience as an owner and operator of utilities (Joint Applicants Statement No. 3). Moreover, FirstEnergy will continue to control the day-to-day operations of FET and the Joint Applicants, except to the extent Brookfield's consent is required under the terms of the LLCA.

Community Presence. The Joint Applicants have an established and productive presence in the Pennsylvania communities in which their facilities are located which will remain after the Transaction closes. In addition to its existing ownership interest in FET, Brookfield has interests in other local Pennsylvania-based assets (Joint Applicants Statement No. 3).

Nature and Objectives of the Various Affiliated Relationships. Brookfield presently has a successful and productive working relationship with FET through its existing investment, and the Transaction will enhance that collaboration. To the extent that the relationship creates future affiliations, the Joint Applicants will continue to comply with the requirements of Chapter 21 of the Public Utility Code, 66 Pa.C.S. §§ 2101 *et seq.* (regarding affiliated interest agreements).

Fees Paid to and Services Performed by Affiliates. There are no fees for service agreements between Brookfield and the Joint Applicants that are created as a result of the Transaction. To the extent that the relationship creates future affiliations, the Joint Applicants will continue to comply with the requirements of Chapter 21 of the Public Utility Code, 66 Pa.C.S. §§ 2101 *et seq.* (regarding affiliated interest agreements).

Limits on use of Leverage and other Capital Structure Protections. As Mr. Staub explained in his direct testimony, the Transaction will help FirstEnergy further improve its debt-to-total capitalization ratio to approximately 60% as well as drive additional improvements to several other financial indicators that are supportive of an investment grade credit rating (Joint Applicants Statement No. 2).

Transparency on Corporate Structure Issues. NATCo II's structure and its relationship to FET is explained in Mr. Rosenthal's testimony (Joint Applicants Statement No. 3). Mr. Mroczynski's Joint Applicants Exhibit MDM-4 depicts the post-Transaction ownership structure of FET and the Joint Applicants. Both

FirstEnergy and Brookfield have experts on staff to ensure compliance with applicable laws and regulations regarding corporate structure and transparency. Further, the Code requires Joint Applicants to furnish information to the Commission upon request. 66 Pa.C.S. § 501.

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

Joint Application at 32-35.

The Joint Applicants' testimony also demonstrates in detail, based on the Joint Application as filed, that the Transaction will confer affirmative public benefits. The Transaction will:

- **Substantially improve FirstEnergy's financial strength and its ability to finance necessary transmission and distribution system investments** over the next decade through a \$3.5 billion infusion of equity capital, which will improve FirstEnergy's balance sheet and credit metrics, and thereby its ability to attract credit on commercially reasonable terms. This, in turn, will improve financial flexibility with respect to transmission and distribution development, and improve the credit ratings of both FirstEnergy and the Joint Applicants. Improved credit ratings will translate into an otherwise lower cost of capital, and a lower cost of capital will, in turn, reduce the cost of incremental cost of debt and equity needed to finance FirstEnergy's regulated subsidiaries' operations, which directly benefits customers. Joint Applicants St. 1 at 14:6-18; *see also* Joint Applicants St. 2 at 14:5 – 16:18.
- **Augment FET's and the Joint Applicants' ability to finance improvements to transmission operations**, because any future financings of transmission operations will be shared by FirstEnergy and NATCo II in proportion to their

respective ownership shares, rather than by FirstEnergy alone. Joint Applicants St. 2 at 16:11-7; *see also* Joint Applicants St. 3R at 6:6-12.

Enhance FirstEnergy’s operational capabilities by expanding its existing partnership with Brookfield through NATCo II related to FET and the Joint Applicants. With a larger investment in and role in FET, Brookfield will be in a better position to share with FirstEnergy its knowledge of operational best practices with respect to optimal capital deployment, process excellence and portfolio planning and analytics with respect to FET and ATSI, MAIT, and TrAILCo. Joint Applicants St. 1 at 13:9 – 14:5; *see also* Joint Applicants St. 3 at 25:16 – 26:3.

- **Generate approximately \$11.2 billion in incremental gross regional product in Pennsylvania**, resulting in approximately 9,500 to 11, 200 jobs annually from 2023 through 2032. Joint Applicants St. 4 at 4:16 – 5:11.

Only the OCA opposed the Transaction in testimony. Although OCA witness Lafayette K. Morgan Jr. did not identify any detrimental effects of the Transaction, and agreed that NATCo II through Brookfield is “qualified to be an equity partner” of FET, OCA Statement 1 at 9:14-15, and “has the financial capacity to support FET,” OCA Statement 1 at 10:11-13, he expressed the view that the Transaction as presented failed to produce affirmative public benefits. Mr. Morgan proposed various conditions that in his view would produce effects sufficient to meet the affirmative public benefit standard, including: (a) requirements for reporting and records access, (b) exclusion of transaction and transition costs from rates, (c) a minimum period for NATCo II to maintain its ownership interest, (d) ring fencing and credit requirements, (e) a commitment to

remain in PJM, and (f) a commitment to achieve measurable reliability improvements. OCA Statement 1 at 4:3-10; 10-18.

The Joint Applicants and NATCo II engaged in a series of settlement discussions, first with the OCA and then with all of the Joint Petitioners, during the lead up to the scheduled hearing dates, in an attempt to address and negotiate agreement on the OCA's issues. The result is the Settlement embodied in the Joint Petition. Although NATCo II submits that the Transaction as originally presented meets the affirmative public benefit standard, the provisions negotiated in the Settlement address the OCA's issues and confer substantial additional public benefits.

B. Reporting, Books and Records

The OCA's litigation position was that NATCo II's books and records should be "available to be reviewed by the Commission and other stakeholders as situations may require." OCA Statement 1 at 14:11-12. NATCo II acknowledged in rebuttal testimony that it would already expect to "cooperate with any lawful PaPUC inquiry and provide any material and relevant documents in any future proceeding where necessary and as appropriate under the law and subject to traditional objections to such requests, such as on the basis of lack of relevance." Joint Applicant Statement No. 3R at 13:15-18. The OCA in surrebuttal testimony accepted this proposal in satisfaction of its proposed condition. OCA Statement 1-SR at 11:17-21. This understanding complements the commitment reached in the Settlement that "[u]pon written request, the Joint Applicants will provide the Commission and the statutory advocates reasonable access to their books and records, officials and staff," subject to traditional discovery or other objections and the right to protect proprietary or confidential information from public disclosure. Joint Petition at ¶ 26.

In addition, the Settlement commits the Joint Applicants to provide the Commission with an annual report through March 31, 2033 as to the status of all commitments made in this Settlement. Joint Petition at ¶ 27.

Both agreements provide a more ready source of information and thus greater transparency concerning NATCo II's involvement in FET than the Commission, the statutory advocates, or the public would have absent the commitments, and, thus, provide an additional public benefit of the Transaction.

C. Transaction/Transition Costs

OCA's litigation position was that transition and transaction costs of the Transaction should not be borne by ratepayers, and that requiring ratepayers to pay such costs "is not an affirmative public benefit." OCA Statement 1 at 16:1-11. The Settlement commits the Joint Applicants to refraining from seeking recovery of such costs in distribution or transmission rates, thus, providing an additional benefit from the Transaction. Joint Petition at ¶ 28.

D. Corporate Structure Protections, Financial Conditions and Governance

OCA's litigation position was that the Commission should condition approval of the Transaction on requiring Brookfield, through NATCo II, to hold its FET investment "under the same ownership structure and percentage of ownership" as set forth in the Joint Application for a period of 10 years. OCA Statement 1 at 11:17-20. In rebuttal, Brookfield's Jeffrey Rosenthal explained that FirstEnergy and NATCo II already negotiated a three-year lock-up period in the LLCA that ensures ownership stability and that the LLCA also provides FirstEnergy a Right of First Offer in the event NATCo II would seek to sell its interests in FET to a third party, thus providing an elevated level of additional protection to FET and the Joint Applicants. He further explained that although NATCo II is part of a Brookfield perpetual fund that invests in long term investments and that Brookfield has no plan to "buy and flip" its FET investment, a 10 year hold

requirement is neither prudent nor reasonable – and is not imposed on any Pennsylvania public utility, including First Energy, let alone an investor such as NATCo II that would own less than 50% of the utilities’ parent. Joint Applicants Statement No. 3R at 7:7-12:5.

The Settlement addresses this issue by committing the Joint Applicants to refuse to permit a change in their ownership absent prior Commission approval if such a change would result in a change in control under the then-applicable Commission standards. Joint Petition at ¶ 29. This ensures that the Commission and stakeholders will have the opportunity for oversight over any significant change in ownership, while maintaining the necessary ability of NATCo II to react to unexpected circumstances that could require a divestment of its interest in FET.

E. Ring Fencing and Credit Provisions

OCA’s litigation position was that the Commission should condition approval of the Transaction on several “ring fencing” provisions designed to shield FirstEnergy and its ratepayers from business activities carried on by Brookfield and its subsidiaries. OCA Statement 1 at 15:13-26. In the Settlement, the Joint Applicants and NATCo II have agreed to a series of such provisions, including that FET and the Joint Applicants will maintain their ability to issue long-term debt separate from NATCo II and its affiliates, that NATCo II and its affiliates will not lend to the Joint Applicants (and vice versa) for a term in excess of one year, that NATCo II will not unilaterally pledge or encumber the Joint Applicants’ assets, and that Joint Applicants will seek Commission approval of all new or amended agreements with affiliated interests of the Joint Applicants. Joint Petition at ¶ 31.

F. PJM Interconnection, L.L.C. (“PJM”) Control

OCA’s litigation position was that the Commission should condition approval of the Transaction on a requirement that all of the assets involved in the Transaction remain under the functional control of PJM. OCA Statement 1 at 18:3-9. The Joint Petitioners have agreed in the

Settlement that Joint Applicants shall not withdraw transmission facilities that are located in Pennsylvania from the operational control of PJM unless the Joint Applicants have first applied for, and obtained, authorization by order of the Commission. Joint Petition at ¶ 33. This resolution confers a benefit in that it provides assurance that the Commission and stakeholders will be able to review any such decision, while providing Joint Applicants the necessary flexibility to react to changing circumstances.

G. Transmission Service Reliability

OCA's litigation position was that the Commission should condition approval of the Transaction on a requirement that Joint Applicants commit to attaining specific transmission reliability improvements over specific time frames and that the results be provided to all stakeholders by way of an annual report. OCA Statement 1 at 17:19-18:2. In light of planned transmission system investments and the expectation that the Transaction will enhance FET's ability to finance those investments, ATSI and MAIT, whose transmission facilities serve Pennsylvania customers, have committed to a five percent (5%) reduction in annual transmission outages as measured by the transmission outages in the calendar year ending at 11:59 p.m. prevailing Eastern time on December 31, 2028. Joint Petition at ¶ 35. Per the Settlement, the Joint Applicants will also meet with the OCA and other stakeholders to share the results of these efforts on an annual basis:

The Joint Applicants commit to meet with the parties annually for a period of five years, with the meeting to be held no later than each April 30, in order to review the past calendar year's system improvements, planned improvements in the upcoming calendar year, and an overview of the past year's system reliability, including the relevant data to reflect and discuss performance against the commitment In advance of such meetings, the Joint Applicants will provide the parties with the necessary documents and data to aid in these discussions.

Joint Petition at ¶ 36.

This commitment to transmission service reliability improvements is specific and measurable, and provides a demonstrable affirmative benefit to the public, enabled by the Transaction. ATSI and MAIT planned these transmission upgrades to achieve greater reliability before FirstEnergy and NATCo II negotiated the Transaction, but, as the testimony of record reveals, the Transaction will enable FET, ATSI and MAIT to finance the investments more efficiently and at lower cost because it will place FirstEnergy and its subsidiaries on a stronger financial footing.

IV. SETTLEMENT CONDITIONS

The Settlement contains conditions pertaining to interpretation of its terms, the parties' reservation of rights in the event the Settlement is modified by the Commission, and the procedures that apply. In particular, the Settlement provides that it is conditioned upon the Commission's approval of the terms and conditions contained in this Settlement without modification, and that if the Commission modifies the Settlement, a party may withdraw from the Settlement and proceed with litigation. The Settlement also provides that if the ALJs recommend that the Commission approve the Settlement without modification, the Joint Petitioners waive their right to file exceptions. The Commission has approved settlements that contain such conditions. *See, e.g., Joint Application of Pike County Light and Power Company, Leatherstocking Gas Company, LLC, Corning Natural Gas Holding Corporation, ACP Series 3 Partnership L.P., Argo Capital Platform (P) 2017, L.P., Argo Capital Platform (K) Series 3, L.P., ACP Crotona Holdings LP, and ACP Crotona Corp. for Certificates of Public Convenience under Sections 1102(a)(3) and 1103 of the Public Utility Code and All Other Approvals Necessary Under the Public Utility Code to Carry Out the Indirect Transfer of Control of Pike County Light and Power Company's and Leatherstocking Gas Company, LLC's Parent Corporation Corning Natural Gas Holding*

Corporation by Merger, Docket Nos. A-2021-3025659, *et al.* (Initial Decision entered Dec. 20, 2021), *aff'd* (Order entered Feb. 3, 2022); *Joint Application for approval to Transfer the Interests and Shares in DQE Holdings LLC, currently owned by DUET Investment Holdings Limited, to Epsom Investment Pte Ltd, a subsidiary of GIC Infra Holdings Pte Ltd, and to approve the Resulting Change in control of Duquesne Light Company, et al.*, Docket Nos. A-2010-2213369 (Order entered Aug. 11, 2011).

V. CONCLUSION

The Settlement is the result of a detailed examination of the Joint Applicants' proposals, discovery requests, the parties' testimony, numerous settlement discussions, and compromise by all active parties. Approval of the Settlement is in the public interest. North American Transmission Company II L.P fully supports the Settlement and respectfully requests that Administrative Law Judges Conrad A. Johnson and Emily I. DeVoe and the Pennsylvania Public Utility Commission:

- (i) Approve the Joint Petition for Approval of Settlement of All Issues without modification; and
- (ii) Approve the proposals set forth in the Joint Application, subject to the terms and conditions of the Joint Petition for Approval of Settlement of All Issues.

Respectfully,



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Dated: November 29, 2023

APPENDIX F

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application Of American	:	
Transmission Systems, Incorporated, Mid-	:	
Atlantic Interstate Transmission, LLC,	:	Docket Nos. A-2023-3040481
And Trans-Allegheny Interstate Line	:	A-2023-3040482
Company For All Of The Necessary	:	A-2023-3040483
Authority, Approvals, And Certificates Of	:	G-2023-3040484
Public Convenience Required To Lawfully	:	G-2023-3040485
Effectuate (1) The Purchase And Sale	:	G-2023-3040486
Agreement Of An Incremental Thirty	:	
Percent Equity Interest In FirstEnergy	:	
Transmission, LLC By North American	:	
Transmission Company II L.P.; (2) The	:	
Transfer Of Class B Membership Interests	:	
In Mid-Atlantic Interstate Transmission,	:	
LLC Held By FirstEnergy Corp. To	:	
FirstEnergy Transmission, LLC; (3)	:	
Where Necessary, Associated Affiliated	:	
Interest Agreements; And (4) Any Other	:	
Approvals Necessary To Complete The	:	
Contemplated Transaction	:	

STATEMENT IN SUPPORT OF THE
PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE

I. INTRODUCTION

The proposed Settlement represents a reasonable compromise of contentious issues related to the proposed Transaction in order to create an affirmative public benefit. The issues addressed in the Settlement and discussed below include (1) reporting, book, and records; (2) transaction/transition costs; (3) corporate structure protections, financial conditions, and governance; (4) ring-fencing and credit provisions; (5) PJM Interconnection, LLC Control, and; (6) transmission service reliability.

II. STANDARD FOR APPROVAL OF A SETTLEMENT

When they can be achieved and are in the public interest, the Pennsylvania Public Utility Commission (Commission) encourages parties to reach compromise and achieve settlement. *See* 52 Pa. Code § 5.231. A settlement, by definition, reflects a compromise of the parties' positions. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the settlement, as supported by the evidentiary record, serves the public interest. *Pa. PUC v. CS Water and Sewer Associates*, 74 Pa. PUC 767, 711 (1991); *Pa. PUC v. Philadelphia Electric Company*, 60 Pa. PUC 1, 21 (1985).

Based on the Office of Consumer Advocate (OCA)'s analysis of the Joint Application, discovery responses received, and testimony by all parties, the proposed transaction as modified by the Settlement represents a result that would be within the range of likely outcomes in the event of full litigation of the case and is in the public interest, particularly when accompanied by other important conditions contained in the Settlement.

The OCA submits that this Settlement, taken as a whole, is a reasonable compromise in consideration of likely litigation outcomes before the Commission. While the Settlement does not reach all the recommendations proposed by the OCA, the OCA recognizes that the Settlement is a product of compromise. As such, the OCA submits that the Settlement is in the public interest and should be approved by the Commission.

III. THE SETTLEMENT IS IN THE PUBLIC INTEREST

A. GENERAL

The OCA submits that the terms of the Settlement represent a compromise of the parties' positions on various issues to reach a result that American Transmission Systems Incorporated (ATSI), MidAtlantic Interstate Transmission, LLC (MAIT) and Trans-Alleghany Transmission Company (TrAILCo) (collectively, the "Joint Applicants"), North American Transmission

Company II L.P. (NATCo II)¹ and the OCA, (collectively, the “Joint Petitioners”) believe is in the public interest.² Settlement ¶ 24. As such, the OCA agrees that the Settlement should be approved without modification. Settlement ¶ 25.

B. REPORTING, BOOKS, AND RECORDS

OCA witness Lafayette K. Morgan recommended in testimony that, as a near-majority owner of vital public utility assets, the Commission should direct the Joint Applicants to ensure that all of NATCo II’s books and records are available to be reviewed and examined by the Commission and other stakeholders. OCA St. 1 at 14.

Under the terms of the Settlement, upon written request, the Joint Applicants will provide the Commission and the statutory advocates (i.e., OCA, OSBA, and the Commission’s Bureau of Investigation and Enforcement) reasonable access to their books and records, officials and staff. Settlement ¶ 26. Moreover, the settlement notes that, commencing March 31, 2025 and through March 31, 2033, the Joint Applicants will provide an annual report to the Commission as to the status of all commitments made in this Settlement. Settlement ¶ 27.

Under the Settlement, the Joint Applicants’ books and records, including NATCo II’s books and records, will be accessible upon written request. OCA witness Morgan noted that transparency is expected of Pennsylvania public utilities and that a lack of transparency would be a step in the wrong direction as compared to the status quo. OCA St. 1 at 14. This Settlement

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

² The Office of Small Business Advocate (“OSBA”), the Met-Ed Industrial Users Group (“MEIUG”), and Penelec Industrial Customer Alliance (“PICA”) were also parties to this proceeding. OSBA, MEIUG, and PICA represented that they are not opposing the Settlement.

provision represents a reasonable resolution of the OCA's concerns regarding transparency and are in the public interest.

C. TRANSACTION/TRANSITION COSTS

In testimony, OCA witness Morgan recommended that all transaction and transition costs must be permanently excluded from rates. OCA St. 1 at 10, 16. Under the Settlement, the Joint Applicants reaffirm that they will not seek recovery of any "Transaction-related" or "Transition-related" costs associated with the proposed Transaction from distribution or transmission rates. Settlement ¶ 28. Transaction-related costs are indicated in the settlement as 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. Settlement ¶ 28(a). The Settlement further notes that, while the Joint Applicants do not anticipate there being material or significant Transition-related costs associated with this Transaction, to the extent any should arise, Transition-related costs will be treated in the same manner as Transaction-related costs and tracked through work orders to be recorded to the Federal Energy Regulatory Commission (FERC) Account 426.5 – Other deductions. Settlement ¶ 28(b). Under the Settlement, if the Joint Applicants seek to recover Transaction-related costs not expressly identified above through their transmission or wholesale requirements rates, the Joint Applicants must: (1) specifically identify the Transaction-related costs they are seeking to recover; and (2) demonstrate that those Transaction-related costs provide a benefit to ratepayers. Settlement ¶ 28(c).

OCA witness Morgan acknowledged that rates for these assets are set by FERC, but testified to the fact that the Joint Applicants could make a commitment to not charge ratepayers the transition-related costs associated with the proposed transaction. OCA St. 1 at 16. This settlement provision adopts Mr. Morgan's recommendation and ensures that ratepayers are not

charged transaction/transition costs as a result of the proposed Transaction. As such, this Settlement provision is in the public interest.

D. CORPORATE STRUCTURE PROTECTIONS, FINANCIAL CONDITIONS, AND GOVERNANCE

OCA witness Morgan recommended that a condition should be imposed that Brookfield must hold these Assets under the same ownership structure and percentage of ownership as set out in the Application for a minimum period of ten years, as opposed to a short-term three-year commitment. OCA St. 1 at 11. Under the Settlement, the Joint Applicants will not permit a change in their ownership without prior Commission approval if such change would result in a change in control under the then-applicable Commission standards. Settlement ¶ 29. Moreover, the Joint Applicants will seek Commission approval of all new or amended agreements with affiliates consistent with Chapter 21 of the Public Utility Code and will conduct all transactions pursuant to all applicable law and the terms of such affiliated agreements to avoid cross subsidization. Settlement ¶ 30.

OCA witness Morgan recommended a ten-year commitment to provide some assurance that Brookfield is focused on providing potential long-term benefits to Pennsylvania's ratepayers as opposed to focusing on short term profits. OCA St. 1 at 11-12. Under these Settlement provisions, there is some assurance that any change in ownership would be subject to Commission approval. In addition, other Settlement terms as discussed below represent ongoing reporting requirements that last for at least five years. These various Settlement provisions, taken together, represent a reasonable compromise of a contentious issue. In the context of the proposed Settlement taken as a whole, these Settlement provisions are in the public interest.

E. RING-FENCING AND CREDIT PROVISION

In testimony, OCA witness Morgan recommended that FirstEnergy should be shielded from the various business activities carried on by Brookfield and any of its subsidiaries. OCA St. 1 at 15. As such, Mr. Morgan recommended that the Commission impose ring-fencing measures to adequately protect ratepayers. *Id.* Mr. Morgan recommend the following measures be imposed:

- All transactions between FET and its utility subsidiaries and NATCo II and its corporate affiliates should be conducted pursuant to the terms of a Commission-approved affiliated agreement to avoid cross subsidization;
- FET and its utility subsidiaries should maintain the capability to issue their own long-term debt separate from NATCo II and its corporate affiliates;
- No lending by NATCo II and its corporate affiliates to FET and its utility subsidiaries (or vice versa) for a term in excess of one year; and
- NATCo II and its corporate affiliates may not pledge or encumber the assets of FET and its utility subsidiaries or the provision of loan guarantees for the benefit of NATCo II and its corporate affiliates.

OCA St. 1 at 15.

Under the terms of the Settlement, the Joint Applicants commit to establish appropriate ring-fencing protections, to the extent applicable to their structure. Settlement ¶ 31. These protections will include:

- a) Standalone credit facilities will be established/maintained for FET on the one hand and its subsidiaries on the other;
- b) FET and the Joint Applicants will maintain the ability to issue their own long-term debt separate from NATCo II and its corporate affiliates;

- c) Limits on money pool will be implemented such that FET and its subsidiaries will only borrow/lend amongst themselves consistent with the terms of the “Third Revised and Restated Utility Money Pool Agreement,” as filed in the PA Consolidation;
- d) The Joint Applicants will maintain their status as corporate subsidiaries with their own corporate officers;
- e) Each of the Joint Applicants will issue its own set of financial statements pursuant to FERC requirements;
- f) Each Joint Applicant will maintain its own credit ratings from at least two major credit ratings agencies;
- g) Each Joint Applicant will maintain the capability to issue its own long-term debt (with such debt issuances subject to Commission approval, if required) to the extent each subsidiary remains active;
- h) NATCo II and its corporate affiliates will not lend to the Joint Applicants (or vice versa) for a term in excess of one year;
- i) The Joint Applicants and NATCo II agree that NATCo II and its corporate affiliates will not unilaterally pledge or encumber the underlying assets of the Joint Applicants;³ and
- j) The Joint Applicants and NATCo II agree to seek Commission approval of all new or amended agreements with affiliated interests of the Joint Applicants consistent with Chapter 21 of the Public Utility Code, 66 Pa.C.S. § 2101, et seq.

³ For the avoidance of doubt, the Fourth Amended and Restated Limited Liability Company Agreement of FET also permits a member of FET to encumber its membership interests in FET or any equity interests of such member in connection with debt financing, the proceeds of which are used by the member to finance its purchase of the membership interests, but this encumbrance of structurally subordinated equity interests is not an encumbrance of the Joint Applicants’ underlying assets.

Settlement ¶ 31.

Additionally, under the terms of the Settlement, in the event any of the Joint Applicants experience a credit downgrade to below BBB or its equivalent, the affected company(ies) will provide notice to the Commission within 10 business days, which will state the reason for the downgrade and remedial actions intended to strengthen credit ratings. Settlement ¶ 32.

The Settlement adopts the ring-fencing measures recommended in OCA witness Morgan's testimony. These ring-fencing measures will help ensure that FirstEnergy's ratepayers are shielded from the business activities carried out by Brookfield and its subsidiaries. The ring-fencing measures contained in the proposed Settlement are in the public interest and should be approved.

F. PJM INTERCONNECTION, L.L.C. ("PJM") CONTROL

OCA witness Morgan recommended in testimony that the Commission should impose a condition on any grant of approval that all of the assets involved in this transaction remain under the functional control of PJM. OCA St. 1 at 18. Under the Settlement, the Joint Applicants will not withdraw transmission facilities located in Pennsylvania from the operational control of PJM unless the Joint Applicants have first applied for, and obtained, authorization by order of the Commission. Settlement ¶ 33. The proposed Settlement provision adopts the OCA's recommendation and helps to ensure continued reliability for the transmission system. As such, this Settlement provision is in the public interest.

G. TRANSMISSION SERVICE RELIABILITY

In testimony, OCA witness Morgan recommended that the Joint Applicants identify the current transmission metrics for Outage Frequency and Misoperations, and then propose an improved level of metrics that they will attain within certain timeframes. OCA St. 1 at 17. OCA witness Morgan testified that an enforceable commitment should be included in any approval of this transaction that requires a percentage reduction in the number of outages on those systems to

be achieved over a period of years. OCA St. 1-SR at 7. In regard to distribution system reliability, OCA witness Morgan recommended that the same metrics currently used by the Commission for reliability reporting should be identified and a plan outlined to reach improved levels of performance with certain timeframes. OCA St. 1 at 17. Further, Mr. Morgan recommended that the results of these efforts should be provided to all stakeholders by way of an annual report. OCA St. 1 at 18.

Under the terms of the Settlement, using the three-year average of 2020-2022 as a baseline, ATSI and MAIT will achieve a five percent (5%) reduction in annual transmission outages, as set forth in the table below and as measured by the transmission outages in the calendar year ending at 11:59 p.m. prevailing Eastern time on December 31, 2028. Settlement ¶ 35. Adjustments to the outage calculation will be made for six sigma exclusions.⁴ *Id.* Further, scheduled outages, emergency forced outages, and operational outages are excluded from the calculation. *Id.*

Area	2020	2021	2022	Total	Avg	5% Reduction Target
ATSI	291	290	303	884	295	280
MAIT	231	251	209	691	230	219

As part of the Settlement, the Joint Applicants commit to meet with the parties to this proceeding annually for a period of five years, with the meeting to be held no later than April 30

⁴ For purposes of paragraphs “35” and “36” above, the following terms have the following meanings:

- a) “transmission outages” means the total number of circuit outages on 46 kV to 500 kV transmission circuits after adjustments; provided that adjustments to the outage calculation will be made for six sigma exclusions;
- b) “six sigma exclusions” means the calendar days that are excluded based on an outage threshold of five (5) years of historical data
- c) “scheduled outage” means any outage taken as a result of operator command or direction;
- d) “emergency forced outage” means an outage manually taken to protect life, limb, and/or to prevent equipment damage; and
- e) “operational outage” means an outage manually taken as a result of pre-agreed limits regarding system stability, voltage control, thermal limits, contingency plans, and the like.

each year, in order to review the past calendar year's transmission system improvements, planned transmission system improvements in the upcoming calendar year, and an overview of the past year's transmission system reliability, including the relevant data to reflect and discuss performance against the commitment outlined in paragraph 35. Settlement ¶ 36. In advance of such meetings, the Joint Applicants will provide the parties to this proceeding with the necessary documents and data to aid in these discussions. Settlement ¶ 36.

The Settlement Represents a reasonable compromise to help ensure that the proposed transaction will provide a measurable affirmative public benefit to Pennsylvania ratepayers in the form of reduced transmission outages and misoperations, which should reduce the likelihood of customer outages.

IV. SETTLEMENT CONDITIONS

The OCA has no further issues to discuss.

V. **CONCLUSION**

The Settlement is the result of extensive negotiations to achieve a benefit for FirstEnergy's ratepayers. For all of the foregoing reasons, the Office of Consumer Advocate submits that the terms and conditions of the Settlement are in the public interest and should be approved by the Commission without modification.

Respectfully submitted,

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