

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application Of American Transmission	:	
Systems, Incorporated, MidAtlantic Interstate	:	
Transmission, LLC, And Trans-Allegheny	:	
Interstate Line Company For All Of The	:	A-2023-3040481
Necessary Authority, Approvals, And Certificates	:	A-2023-3040482
Of Public Convenience Required To Lawfully	:	A-2023-3040483
Effectuate (1) The Purchase And Sale Agreement	:	G-2023-3040484
Of An Incremental Thirty Percent Equity Interest	:	G-2023-3040485
In FirstEnergy Transmission, LLC By North	:	G-2023-3040486
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	:	

RECOMMENDED DECISION

Before
Conrad A. Johnson
Administrative Law Judge

Emily I. DeVoe
Administrative Law Judge

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I. INTRODUCTION

This decision recommends approving without modification the Joint Petition for Approval of Settlement of All Issues (Joint Petition for Settlement or Settlement) filed by American Transmission Systems, Incorporated, MidAtlantic Interstate Transmission, LLC and Trans-Allegheny Interstate Line Company, North American Transmission Company II L.P. (NATCo II),¹ and the Office of Consumer Advocate (collectively, Joint Petitioners).

The Office of Small Business Advocate (OSBA) and Joint Intervenors 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.²

This decision also recommends approving the Joint Application filed in this proceeding by American Transmission Systems, Incorporated, MidAtlantic Interstate Transmission, LLC and Trans-Allegheny Interstate Line Company and deeming as withdrawn OCA's Protest to the Joint Application and dismissing MEIUG's and PICA's respective Protests to the Joint Application.

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

¹ As explained at 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 See Settlement n. 1.

II. HISTORY OF THE PROCEEDINGS

A. The Joint Application

On May 5, 2023, American Transmission Systems, Incorporated (ATSI), MidAtlantic Interstate Transmission, LLC (MAIT), and Trans-Allegheny Interstate Line Company (TrAILCo), (collectively Joint Applicants) filed the “Joint Application Of American Transmission Systems, Incorporated, Mid-Atlantic Interstate Transmission, LLC, And Trans-Allegheny Interstate Line Company For All Of The Necessary Authority, Approvals, And Certificates Of Public Convenience Required To Lawfully Effectuate (1) The Purchase And Sale Agreement Of An Incremental Thirty Percent Equity Interest In FirstEnergy Transmission, LLC By North American Transmission Company II L.P.; (2) The Transfer Of Class B Membership Interests In Mid-Atlantic Interstate Transmission, LLC Held By FirstEnergy Corp. To FirstEnergy Transmission, LLC; (3) Where Necessary, Associated Affiliated Interest Agreements; And (4) Any Other Approvals Necessary To Complete The Contemplated Transaction” at Docket Nos. A-2023-3040481, A-2023-3040482, A-2023-3040483, G-2023-3040484, G-2023-3040485, and G-2023-3040486 (the Joint Application). The Joint Applicants requested that the Joint Application and any related dockets be consolidated for purposes of discovery, litigation, and disposition.

The Joint Application seeks certain approvals from the Pennsylvania Public Utility Commission (Commission) granting all necessary authority, approvals and certificates of public convenience pursuant to Sections 1102(a)(3), 1103, 2102(a), and 2811(e) of the Public Utility Code (Code), 66 Pa.C.S. §§ 1102(a)(3), 1103, 2102(a), and 2811(e), required to lawfully effectuate: (1) the Purchase and Sale Agreement of an incremental thirty (30) percent equity interest in FirstEnergy Transmission, LLC (FET) by North American Transmission Company II L.P. (NATCo II); (2) the transfer of Class B Membership Interests in MAIT held by FirstEnergy Corp. (FirstEnergy) to FET; and (3) where necessary, associated affiliated interest agreements. The Joint Applicants further seek all other approvals and certificates appropriate, customary, or necessary under the Code to carry out the transactions contemplated in the Joint Application in a lawful manner.

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

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

B. Protests, Interventions, and Publication of Application

On May 25, 2023, as authorized by the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50, the Office of Small Business Advocate (OSBA) filed a Notice of Appearance, Notice of Intervention, Public Statement, and Verification.

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

On June 5, 2023, OCA filed a Protest and Public Statement; MEIUG and PICA filed a Joint Petition to Intervene and Protest; and the Joint Applicants filed Proofs of Publication of the Public Notice.

C. Prehearing Conference Notice and Order and Prehearing Conference

On June 27, 2023, the Commission issued a Call-In Prehearing Conference Notice, informing the parties that a Prehearing Conference in this matter would be convened by Administrative Law Judges Conrad A. Johnson and Emily I. DeVoe (ALJs) on August 7, 2023, at 10:00 a.m. The Commission's Bureau of Investigation and Enforcement (I&E) received notice of the prehearing conference; however, I&E did not participate in this proceeding.

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

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

The prehearing conference convened as scheduled on August 7, 2023. The Joint Applicants, OCA, OSBA, Intervenor NATCo II, and Joint Intervenors MEIUG and PICA were present and represented by counsel. The parties discussed the Petitions to Intervene, discovery rule modifications, and the litigation schedule. There was no objection to the Petitions to Intervene. Accordingly, the intervention petitions were granted. Also, the above dockets were consolidated at Docket No. A-2023-3040481.

D. Hearing Notice, Prehearing Order, Protective Order and Written Testimony

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, Pennsylvania.

A Prehearing Order was entered on August 8, 2023, which, among other things, confirmed the granting of the Petitions to Intervene, consolidation of the cases at Docket No. A-2023-3040481, establishment of the litigation schedule, and modification of the discovery rules.

On August 24, 2023, the Joint Applicants filed a Motion for Protective Order. On August 28, 2023, an Order Granting Joint Applicants' Unopposed Motion for Protective Order was issued. 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. On September 28, 2023, the Joint Applicants served their written rebuttal testimony. On October 16, 2023, OCA served its written surrebuttal testimony. MEIUG and PICA filed a letter stating they would not be serving surrebuttal testimony.

E. Settlement In Principle

On October 30, 2023, via email, counsel for the Joint Applicants informed the ALJs that the active parties had reached an agreement in principle to settle all issues in this proceeding. Consequently, 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. Subsequently on October 31, 2023, the ALJs granted the Joint Applicants' requests and provided information for the telephonic evidentiary hearing to be held on November 1, 2023.

F. Evidentiary Hearing

On November 1, 2023, the telephonic evidentiary hearing was held for the purpose of admitting pre-served testimony and exhibits into the record.

The following Joint Applicants' exhibits and testimonies were admitted into the record:

Exhibit No. 1 - Statement No. 1 – Direct Testimony of Mark D. Mroczynski including Exhibits MDM-1, MDM-2, MDM-3, and MDM-4

Exhibit No. 2 - Statement No. 2 – Direct Testimony of Steven R. Staub including Exhibits SRS-1 (CONFIDENTIAL), SRS-2, SRS-3, SRS-4, and SRS-5

Exhibit No. 3 - Statement No. 3 – Direct Testimony of Jeffrey Rosenthal including Appendix A and Exhibit JR-1 (HIGHLY CONFIDENTIAL)

Exhibit No. 4 - Statement No. 4 – Direct Testimony of Toby Bishop including Exhibits TB-1 and TB-2

Exhibit No. 1R - Statement No. 1R – Rebuttal Testimony of Mark D. Mroczynski

Exhibit No. 2R - Statement No. 2R – Rebuttal Testimony of Steven R. Staub

Exhibit No. 3R - Statement No. 3R – Rebuttal Testimony of Jeffrey Rosenthal including Exhibit JR-2.

OCA offered exhibits which were admitted into the record.

Exhibit 1 Direct Testimony of Lafayette K. Morgan, Jr. including Appendix A

Exhibit 1-SR - Surrebuttal Testimony of Lafayette K. Morgan, Jr.

Additionally, the Joint Applicants represented it was the intent of the Joint Petitioners to file and serve any petition for settlement and associated proposed findings of fact,

proposed conclusions of law, proposed ordering paragraphs, and statements in support of the petition for settlement on or before November 20, 2023.

At the request of OCA, and with no opposition from the other parties, the ALJs extended the date for the filing of the settlement documents to November 30, 2023.

G. Joint Petition for Settlement

On November 30, 2023, Joint Petitioners filed a Joint Petition for Approval of Settlement of All Issues. There were six appendices to the Settlement: (1) Proposed Findings of Fact (Appendix A); (2) Proposed Conclusions of Law (Appendix B); (3) Proposed Ordering Paragraphs (Appendix C); (4) Joint Applicants' Statement in Support (Appendix D); (5) NATCo's Statement in Support (Appendix E); and (6) OCA's Statement in Support (Appendix F).

H. Interim Order Closing the Record

By Interim Order entered January 30, 2024, the Joint Petitioner's Joint Petition for Approval of Settlement of All Issues with Appendices filed on November 29, 2023, was admitted into the record, the record closed, and the order was served on January 31, 2024.

The record in this proceeding consists of the transcripts of the prehearing conference and evidentiary hearing; the parties' written testimonies and exhibits; orders issued herein; and the Joint Petition for Settlement of All Issues with Appendices.

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

III. DESCRIPTION AND TERMS OF SETTLEMENT

The Settlement, which is fully executed by the Joint Applicants, NATCo II, and OCA, consists of 16 pages.

The essential terms of Settlement are as follows.³

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

³ For ease of reference, the essential terms of the Settlement, including footnotes, have been adopted using the same paragraph numbering as found in the original. Although no substantive modifications were made, the formatting, including footnote numbers, have been slightly modified consistent with the formatting and footnote numbering found within this recommended decision.

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;^[4] 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 ten business days, which will state the reason for the downgrade and remedial actions intended to strengthen credit ratings.

⁴ 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.

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.^{5]} 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

⁵ 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.

Notably, the Settlement sets forth customary provisions that the Settlement is made without prejudice to each party's litigation position, that it is conditioned upon the Commission's approval without modification, that the parties agree to waive the filing of exceptions, if the

Commission approves the Settlement without modification, that if the Commission fails to grant approval or modifies any material term or condition of the Settlement, any party may elect to withdraw from the Settlement upon written notice to the Commission and the other parties within five business days and the Settlement will be of no force and effect. Additionally, attached to the Settlement as **Appendices D, E and F** are the Joint Petitioners' respective Statements in Support which contend that the Settlement is in the public interest.⁶

IV. FINDINGS OF FACT⁷

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.

⁶ Settlement ¶ 41.

⁷ For ease of reference, the Findings of Fact, including footnotes, have been adopted, using the same paragraph numbering as found in the original. Although no substantive modifications were made, the formatting, including footnote numbers, have been slightly modified consistent with the formatting and footnote numbering found within this Recommended Decision.

5. Each of the Joint Applicants has been issued certificates of public convenience by the 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.^[8]

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.

⁸ 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 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 No. A-110171, 2008 Pa. PUC LEXIS 35 (Order entered Nov. 13, 2008).

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.

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 instant 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,^[9] 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).^[10] 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.

⁹ 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.

¹⁰ The non-voting Class B Membership Interests in MAIT are currently held by Met-Ed and Pennsylvania Penelec. Met-Ed and Pennsylvania 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.

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.

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 ten 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.^[11] Settlement ¶ 34. Therefore, ATSI and MAIT agree to the reliability commitments as set forth in 35 of the Settlement. Settlement ¶ 34.

61. Paragraph 35 [of the Settlement] 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 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.

¹¹ See Joint Applicants St. No. 1 at pp. 12-17 and Joint Applicants St. No. 2 at pp. 12-18.

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

V. LEGAL STANDARDS

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

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

[f]or any public utility or an affiliated interest of a public utility to acquire from, or to transfer to, any person or corporation, including a municipal corporation, by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service.^[12]

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

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

The Pennsylvania Supreme Court has explained the Commission, in issuing a certificate of public convenience, must find that a proposed transaction would “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial

¹² 66 Pa.C.S. § 1102(a)(3).

way.”¹³ In addition, Section 1103(a) allows the Commission to impose upon its issuance of a certificate of public convenience “such conditions as it may deem to be just and reasonable.” 66 Pa.C.S. § 1103(a).

B. Burden of Proof

Since Joint Applicants are the parties that filed the Application at issue in this proceeding, the Joint Applicants have the burden of proof to establish they are entitled to the relief requested.¹⁴ Pursuant to Section 1103 of the Code, Joint Applicants must show that that they are technically, legally, and financially fit to own and operate the assets of the utilities that they seek to consolidate.¹⁵ As certificated public utilities, there is a rebuttable presumption that the Joint Applicants possesses the requisite fitness.¹⁶

C. Settlements

Commission policy promotes settlements.¹⁷ 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.¹⁸ The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof”

¹³ *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825, 828 (Pa. 1972) (*City of York*); *see also*, *Popowsky v. Pa. Pub. Util. Comm’n*, 937 A.2d 1040, 1057 (Pa. 2007) (when addressing the issue of affirmative public benefits “the appropriate legal framework requires a reviewing court to determine whether substantial evidence supports the Commission’s finding that a merger will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way”).

¹⁴ 66 Pa.C.S. § 332(a).

¹⁵ *Seaboard Tank Lines v. Pa. Pub. Util. Comm’n*, 502 A.2d 762 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d 240 (Pa. Super. 1958).

¹⁶ *South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n*, 601 A.2d 1308 (Pa. Cmwlth. 1992); *see also*, 66 Pa.C.S. § 1329.

¹⁷ 52 Pa. Code § 5.231.

¹⁸ 52 Pa. Code § 69.401.

standard, as is utilized for contested matters.¹⁹ Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest.²⁰ In addition, the Commission has held that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest.²¹

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

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

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

¹⁹ *Pa. Pub. Util. Comm’n v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011) (*Lancaster*).

²⁰ *Id.* (citing, *Warner v. GTE North, Inc.*, Docket No. C00902815 (Opinion and Order entered Apr. 1, 1996) (Warner)); *Pa. Pub. Util. Comm’n v. CS Water & Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991).

²¹ *Pa. Pub. Util. Comm’n v. MXenergy Elec. Inc.*, Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

VI. DISCUSSION

A. Settlement Overview

The Joint Petitioners have agreed to a settlement of all issues in this proceeding, including issues arising under Sections 66 Pa.C.S. §§ 1101-03, 2101-03, 2811(e) of the Code.²² The Joint Petitioners submitted separate Statements in Support of the Settlement, which are attached to the Settlement, and they averred the Settlement benefits the public interest. The Joint Petitioners noted the Commission's policy to encourage settlements, as outlined in 52 Pa. Code § 5.231 and various case law.

1. Joint Applicants' Statement Supporting the Settlement

The Joint Petitioners agree that the Settlement is in the public interest.²³ The Settlement was achieved only after a comprehensive investigation of the Joint Applicants' proposals set forth in the Joint Application.²⁴ In addition to informal discovery, the Joint Applicants responded to many formal discovery requests.²⁵ In addition, the active parties submitted multiple rounds of testimony, including the Joint Applicants' direct testimony, OCA's direct testimony, the Joint Applicants' rebuttal testimony, and OCA's surrebuttal testimony.²⁶ Further, the parties engaged in numerous settlement discussions and formal negotiations, which ultimately led to the Settlement.²⁷

²² As mentioned in the Introduction, OSBA, MEIUG, and PICA were also parties to this proceeding. However, OSBA, MEIUG, and PICA represented that they are not opposing the Settlement. *See* Settlement pg. 2, n 2.

²³ Settlement ¶¶ 24, 38-41.

²⁴ Joint Applicants' Statement in Support at 4.

²⁵ *Id.*

²⁶ Joint Applicants' Statement in Support at 5.

²⁷ *Id.*

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.²⁸ 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.²⁹ As such, in determining whether the Settlement is reasonable and in the public interest, the Settlement should be viewed as a whole.³⁰

The Settlement reflects a carefully balanced compromise of the competing interests of the active parties in this proceeding.³¹ The parties in this proceeding, their counsel, and their expert consultants have considerable experience in merger and acquisition proceedings.³² 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.³³ 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.³⁴

In addition, the Transaction, as conditioned by the Settlement, will produce substantial affirmative public benefits upon closing and additional public benefits in the future.³⁵ 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

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*; Settlement ¶ 24.

³² Joint Applicants' Statement in Support at 5.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

benefits, operations benefits, economic benefits, and employee, environmental, social, and governance (EESG) benefits.³⁶ 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.³⁷

For these reasons and the more specific reasons set forth in Joint Applicants’ Statement in Support, Joint Applicants aver that 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 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.³⁸

2. OCA’s Statement Supporting the Settlement

While OCA raised various concerns in its testimony, OCA submits that the terms of the Settlement represent a compromise of the parties’ positions on various issues and believes it is in the public interest.³⁹ As such, the OCA agrees that the Settlement should be approved without modification.⁴⁰

³⁶ 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.

³⁷ 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.

³⁸ Settlement ¶ 25.

³⁹ Settlement ¶ 24.

⁴⁰ OCA’s Statement in Support, pg. 3.

3. NATCo II's Statement Supporting the Settlement

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 OCA's concerns.⁴¹ 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.⁴²

The Settlement reflects a carefully balanced compromise of the Joint Petitioners' interests.⁴³ 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.⁴⁴

B. Positions of the Parties on the Settlement Issues

The Settlement specifically addresses six issues: (1) Reporting, Books, and Records, (2) Transaction/Transition Costs, (3) Corporate Structure Protections, Financial Conditions, and Governance, (4) Ring-Fencing and Credit Provisions, (5) PJM Interconnection Control, and (6) Transmission Service Reliability. The Joint Petitioners' respective positions on these issues is discussed as follows.

⁴¹ NATCo. II's Statement in Support, pg. 11.

⁴² *Id.*

⁴³ *Id.* at 3.

⁴⁴ *Id.*

1. Reporting, Books, and Records

a. Joint Applicants' Position on 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.⁴⁵ 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.⁴⁶ 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.⁴⁷ 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.⁴⁸ 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.⁴⁹

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

⁴⁵ OCA St. No. 1 at 9, 14.

⁴⁶ Joint Applicants St. No. 3R at 12.

⁴⁷ *Id.* at 12-13.

⁴⁸ *Id.* at 13.

⁴⁹ *Id.*

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.⁵⁰ 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.⁵¹ 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.⁵² This is to be filed each year commencing on March 31, 2025, and ending on March 31, 2033.⁵³ 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.⁵⁴

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 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.⁵⁵ These provisions are in the public interest and should be approved.

⁵⁰ Settlement ¶ 26.

⁵¹ *Id.*

⁵² *Id.* ¶ 27.

⁵³ *Id.*

⁵⁴ Joint Applicants’ Statement in Support, pg. 9.

⁵⁵ *Id.*

b. OCA’s Position on Reporting, Books, and Records

OCA explains that its 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.⁵⁶

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.⁵⁷ 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.⁵⁸

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.⁵⁹ This Settlement provision represents a reasonable resolution of the OCA’s concerns regarding transparency and is in the public interest.⁶⁰

c. NATCo II’s Position on Reporting, Books, and Records

The OCA argued in testimony that NATCo II’s books and records should be “available to be reviewed by the Commission and other stakeholders as situations may require.”⁶¹

⁵⁶ OCA St. 1 at 14.

⁵⁷ Settlement ¶ 26.

⁵⁸ *Id.* ¶ 27.

⁵⁹ OCA St. 1 at 14.

⁶⁰ OCA Statement in Support, pgs. 3-4.

⁶¹ OCA St. No. 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.”⁶² In surrebuttal testimony, OCA accepted this proposal in satisfaction of its proposed condition.⁶³ NATCo II argues 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.⁶⁴

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 this Settlement.⁶⁵

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.⁶⁶

⁶² NATCo. II’s Statement in Support, pg. 11; Joint Applicant Statement No. 3R at 13:15-18.

⁶³ OCA Statement No. 1-SR at 11:17-21.

⁶⁴ NATCo. II’s Statement in Support, pg. 11; *see* Settlement at ¶ 26.

⁶⁵ Settlement at ¶ 27.

⁶⁶ NATCo. II’s Statement in Support, pg. 11.

2. Transaction/Transition Costs

a. Joint Applicants' Position on Transaction/Transition 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.⁶⁷ The Joint Applicants did not object to this recommendation.⁶⁸

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.⁶⁹ It further defines "Transaction-related costs,"⁷⁰ 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,⁷¹ 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.⁷²

Therefore, the Settlement incorporates the parties' agreement that Transition-related costs and Transaction-related costs will generally not be recovered through distribution or transmission rates and help provides clarity by defining what is included in those cost categories.

⁶⁷ OCA St. No. 1 at 16.

⁶⁸ Joint Applicants' Statement in Support, pg. 10.

⁶⁹ Settlement ¶ 27.

⁷⁰ *Id.* ¶ 27(a).

⁷¹ *Id.* ¶ 27(b).

⁷² *Id.* ¶ 27(c).

Thus, these Settlement provisions are just and reasonable and should be approved without modification.

b. OCA’s Position on Transaction/Transition Costs

In testimony, OCA witness Morgan recommended that all transaction and transition costs must be permanently excluded from rates.⁷³ 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.⁷⁴ 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.⁷⁵ 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.⁷⁶ 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.⁷⁷

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

⁷³ OCA St. No. 1 at 10, 16.

⁷⁴ Settlement ¶ 28.

⁷⁵ *Id.* ¶ 28(a).

⁷⁶ *Id.* ¶ 28(b).

⁷⁷ *Id.* ¶ 28(c).

ratepayers the transition-related costs associated with the proposed transaction.⁷⁸ 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.⁷⁹

c. NATCo II’s Position on Transaction/Transition Costs

OCA’s 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.”⁸⁰ NaATCo II recognizes the validity of OCA’s concerns and maintains that the Settlement commits the Joint Applicants to refrain from seeking recovery of such costs in distribution or transmission rates, thus, providing an additional benefit from the Transaction.⁸¹

3. Corporate Structure Protections, Financial Conditions, and Governance

a. Joint Applicants’ Position on Corporate Structure Protections, Financial Conditions, and Governance

The Joint Applicants’ direct testimony set forth the proposed post-Transaction structure of the Joint Applicants⁸² 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.⁸³ OCA raised concerns in its direct testimony regarding the potential duration of Brookfield’s ownership

⁷⁸ OCA St. No. 1 at 16.

⁷⁹ OCA Statement in Support, pg. 5.

⁸⁰ OCA Statement 1 at 16:1-11.

⁸¹ NATCo. II’s Statement in Support, pg. 12; *see* Settlement at ¶ 28.

⁸² Joint Applicants Ex. MDM-1.

⁸³ Joint Applicants Ex. SRS-2; Joint Applicants St. No. 2 at 7; Joint Applicants St. No. 3 at 19-20.

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 ten years.⁸⁴

The Joint Applicants aver they rebutted OCA's concerns regarding the potential duration of Brookfield's ownership interest in FET.⁸⁵ In particular, the Joint Applicants maintain they 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 exit from its investment.⁸⁶ In addition, the Joint Applicants explained that Brookfield has a strong record of long-term investments in infrastructure assets.⁸⁷ They presented evidence that 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.⁸⁸ Joint Applicants demonstrated that Brookfield also has significant experience with investing in and supporting regulated public utility assets;⁸⁹ it also has significant investments in Pennsylvania across a range of sectors, including infrastructure, renewable power, real estate, and private equity.⁹⁰

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.⁹¹ Critically, the varying levels of rights and obligations set forth in the LLCA reflect a prudent up-front agreement as to the parties'

⁸⁴ OCA St. No. 1 at 10-14.

⁸⁵ Joint Applicants' Statement in Support, pg. 11.

⁸⁶ Joint Applicants St. No. 3R at 9-10.

⁸⁷ *Id.* at 10-11.

⁸⁸ Joint Applicants St. No. 3 at 7-8.

⁸⁹ *Id.* 3 at 8-9.

⁹⁰ *Id.* at 11.

⁹¹ Joint Applicants St. No. 2 at 7; Joint Applicants St. No. 3 at 19-20.

respective rights in the event ownership percentages change.⁹² 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.⁹³

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.⁹⁴ 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.⁹⁵ This provision will ensure that the Transaction's impact on NATCo II's ownership interest in FET, and the additional rights and obligations attendant with that increase interest, will not 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.

⁹² Joint Applicants St. No. 3R at 11-12.

⁹³ *Id.*

⁹⁴ Settlement ¶ 28.

⁹⁵ *Id.* ¶ 29.

b. OCA’s Position on Corporate Structure Protections, Financial Conditions, and Governance

OCA witness Morgan recommended that Brookfield be required to hold the Assets involved in the Transaction 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.⁹⁶ 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.⁹⁷ 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 laws and the terms of such affiliated agreements to avoid cross subsidization.⁹⁸

OCA witness Morgan also 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.⁹⁹ Under these Settlement provisions, there is some assurance that any change in ownership would be subject to Commission approval.¹⁰⁰ In addition, other Settlement terms represent ongoing reporting requirements that last for at least five years.¹⁰¹ 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, OCA argues these Settlement provisions are in the public interest.

⁹⁶ OCA St. No. 1 at 11.

⁹⁷ Settlement ¶ 29.

⁹⁸ *Id.* ¶ 30.

⁹⁹ OCA St. No. 1 at 11-12.

¹⁰⁰ OCA Statement in Support, pg. 5.

¹⁰¹ *Id.*

c. NATCo II's Position on Corporate Structure Protections, Financial Conditions, and Governance

OCA argued 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 ten years.¹⁰² 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.¹⁰³ 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 ten-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.¹⁰⁴

The Settlement addresses this contentious 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.¹⁰⁵ 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.¹⁰⁶

¹⁰² OCA Statement No. 1 at 11:17-20.

¹⁰² Joint Applicants Statement in Support No. 3R at 7:7-12:5.

¹⁰⁵ Settlement at ¶ 29.

¹⁰⁶ NATCo. II's Statement in Support, pg. 13.

4. Ring-Fencing and Credit Provisions

a. Joint Applicants' Position on Ring-Fencing and Credit Provisions

The Joint Applicants aver that one of the primary benefits of the Transaction is that it would result in an improvement to FirstEnergy's and its subsidiaries' financial metrics and credit ratings.¹⁰⁷ The OCA, however, raised concerns regarding the impact of the Transaction on the Joint Applicants' capital structure.¹⁰⁸ The 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.¹⁰⁹

The Joint Applicants responded to 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.¹¹⁰ 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.¹¹¹

Under the Settlement, the Joint Applicants have committed to establishing the various ring-fencing provisions, to the extent applicable to their ownership structure.¹¹² Furthermore, in the event any of the Joint Applicants experience a credit downgrade to below

¹⁰⁷ Joint Applicants St. No. 2 at 14.

¹⁰⁸ OCA St. No. 1 at 15.

¹⁰⁹ *Id.*

¹¹⁰ Joint Applicants St. No. 2R at 7.

¹¹¹ *See* Joint Applicants St. No. 3R at 14-17.

¹¹² Settlement ¶ 30.

BBB or its equivalent, the affected company(ies) will provide notice to the Commission within ten business days, which will state the reason for the downgrade and remedial actions intended to strengthen credit ratings.¹¹³

The Joint Applicants aver that these 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.¹¹⁴ In addition, these 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.¹¹⁵ The Joint Applicants therefore submit that these provisions are just, reasonable, and in the public interest, and should be approved without modification.

b. OCA's Position on Ring-Fencing and Credit Provisions

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.¹¹⁶ As such, Mr. Morgan recommended that the Commission impose ring-fencing measures to adequately protect ratepayers.¹¹⁷ Mr. Morgan recommend various types of measures be imposed.¹¹⁸

Under the terms of the Settlement, the Joint Applicants commit to establish appropriate ring-fencing protections, to the extent applicable to their structure.¹¹⁹ Additionally,

¹¹³ *Id.* ¶ 31.

¹¹⁴ Joint Applicant's Statement in Support, pg. 15.

¹¹⁵ *Id.*

¹¹⁶ OCA St. No. 1 at 15.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Settlement ¶ 31.

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 ten business days, which will state the reason for the downgrade and remedial actions intended to strengthen credit ratings.¹²⁰

The Settlement adopts the ring-fencing measures recommended in OCA witness Morgan’s testimony.¹²¹ These ring-fencing measures will help ensure that FirstEnergy’s ratepayers are shielded from the business activities carried out by Brookfield and its subsidiaries.¹²² OCA submits that the ring-fencing measures contained in the proposed Settlement are in the public interest and should be approved.¹²³

c. NATCo II’s Position on Ring-Fencing and Credit Provisions

OCA argued 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.¹²⁴ 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.¹²⁵

¹²⁰ *Id.* ¶ 32.

¹²¹ OCA Statement in Support pg. 8.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ OCA Statement No. 1 at 15:13-26.

¹²⁵ NATCo II’s Statement in Support, pg. 13; *see* Settlement at ¶ 31.

5. PJM Interconnection Control

a. Joint Applicants' Position on PJM Interconnection Control

Each of the Joint Applicants is currently a transmission owner member of PJM.¹²⁶ 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.¹²⁷ 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.¹²⁸

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.¹²⁹ This provision memorializes the Joint Applicants' commitment from their rebuttal testimony. Therefore, Joint Applicants argue it is just, reasonable, and in the public interest, and should be approved without modification.

b. OCA's Position on PJM Interconnection 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.¹³⁰ Under the Settlement, the Joint Applicants will

¹²⁶ Joint Applicants St. No. 1 at 6-7.

¹²⁷ OCA St. No. 1 at 18.

¹²⁸ Joint Applicants St. No. 1R at 9.

¹²⁹ Settlement ¶ 32.

¹³⁰ OCA St. No. 1 at 18.

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.¹³¹ The proposed Settlement provision adopts the OCA’s recommendation and helps to ensure continued reliability for the transmission system.¹³² As such, OCA argues this Settlement provision is in the public interest.

c. NATCo II’s Position on PJM Interconnection Control

OCA argued 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.¹³³ 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.¹³⁴ 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.¹³⁵

6. Transmission Service Reliability

a. Joint Applicants’ Position on Transmission Service Reliability

The Joint Applicants aver they 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

¹³¹ Settlement ¶ 33.

¹³² OCA Statement in Support, pg. 8.

¹³³ OCA Statement No. 1 at 18:3-9.

¹³⁴ Joint Petition at ¶ 33.

¹³⁵ NATCo II’s Statement in Support, pg. 14.

system performance and the operational flexibility of the transmission system.¹³⁶ 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,¹³⁷ the Joint Applicants aver they addressed this concern in their rebuttal testimony.¹³⁸ They 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.¹³⁹ 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.¹⁴⁰

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.¹⁴¹ 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 Eastern time on December 31, 2028.¹⁴² The Joint Applicants further committed to meet 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

¹³⁶ Joint Applicants Statement No. 1 at 12-17; Joint Applicants Statement No. 2 at 12-18.

¹³⁷ OCA St. No. 1 at 17.

¹³⁸ Joint Applicants Statement in Support, pg. 16.

¹³⁹ Joint Applicants St. No. 1R at 3-5, 7-8.

¹⁴⁰ *Id.* at 5-6.

¹⁴¹ Settlement ¶¶ 34-37. Paragraph 37 defines certain terms used in paragraphs 35 and 36 of the Settlement.

¹⁴² 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.

in the upcoming calendar year, and an overview of the past year's transmission system reliability.¹⁴³

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, Joint Applicants argue these provisions are just, reasonable, and in the public interest, and should be approved without modification.

b. OCA's Position on 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.¹⁴⁴ 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.¹⁴⁵ 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

¹⁴³ Settlement ¶ 36.

¹⁴⁴ OCA St. No. 1 at 17.

¹⁴⁵ OCA St. No. 1-SR at 7.

certain timeframes.¹⁴⁶ Further, Mr. Morgan recommended that the results of these efforts should be provided to all stakeholders by way of an annual report.¹⁴⁷

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, 2028.¹⁴⁸ Adjustments to the outage calculation will be made for six sigma exclusions.¹⁴⁹ Further, scheduled outages, emergency forced outages, and operational outages are excluded from the calculation.¹⁵⁰

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 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 35.¹⁵¹ 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.¹⁵²

The Settlement represents a reasonable compromise to help ensure that the proposed transaction will provide a measurable affirmative public benefit to Pennsylvania

¹⁴⁶ OCA St. No. 1 at 17.

¹⁴⁷ *Id.* at 18.

¹⁴⁸ Settlement ¶ 35.

¹⁴⁹ Settlement ¶ 37.

¹⁵⁰ *Id.*

¹⁵¹ Settlement ¶ 36.

¹⁵² *Id.*

ratepayers in the form of reduced transmission outages and misoperations, which should reduce the likelihood of customer outages.¹⁵³

c. NATCo II’s Position on Transmission Service Reliability

OCA argued 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.¹⁵⁴ 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, 2028.¹⁵⁵ 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 for a period of five years.¹⁵⁶

The purpose of the meetings is 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.¹⁵⁷ In advance of such meetings, the Joint Applicants will provide the parties with the necessary documents and data to aid in these discussions.¹⁵⁸

This commitment to transmission service reliability improvements is specific and measurable, and provides a demonstrable affirmative benefit to the public, enabled by the

¹⁵³ OCA Statement in Support, pg. 10.

¹⁵⁴ OCA Statement No. 1 at 17:19-18:2.

¹⁵⁵ Settlement at ¶ 35.

¹⁵⁶ NATCo II’s Statement in Support, pg. 14.

¹⁵⁷ Settlement at ¶ 36.

¹⁵⁸ *Id.*

Transaction.¹⁵⁹ 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.¹⁶⁰

VII. RECOMMEDATION

A. Settlements Are Preferable.

Commission policy promotes settlements.¹⁶¹ Settlements eliminate the time, effort, and expense of litigating a matter to its conclusion, which may entail review of the Commission’s decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding.¹⁶²

By definition, a “settlement” reflects a compromise of the positions the parties of interest held, which arguably fosters and promotes the public interest. The Commission has explained that parties to settled cases are afforded flexibility in reaching amicable resolutions,¹⁶³ and the principal issue for the Commission to consider is whether the settlement is in the public interest.¹⁶⁴

¹⁵⁹ NATCo II’s Statement in Support, pg. 15.

¹⁶⁰ *Id.*

¹⁶¹ *See* 52 Pa. Code § 5.231.

¹⁶² 52 Pa. Code § 69.401.

¹⁶³ *Pa. Pub. Util. Comm’n v. CS Water & Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991).

¹⁶⁴ *Pa. Pub. Util. Comm’n v. MXenergy Elec. Inc.*, Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013). *Pa. Pub. Util. Comm’n v. Windstream Pa., LLC*, Docket No. M-2012-2227108 (Opinion and

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

B. Proposed Transaction

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

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

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

In addition, the Transaction, as conditioned by the Settlement, will produce substantial affirmative public benefits upon closing and additional public benefits in the future.¹⁶⁵

Order entered Sept. 27, 2012); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, Docket No. R-00881147 (Opinion and Order entered July 22, 1991).

¹⁶⁵ *Id.*

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) benefits.¹⁶⁶ 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.¹⁶⁷

Specifically, 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.¹⁶⁸ This will 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.¹⁶⁹ 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.¹⁷⁰ 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.¹⁷¹ Lowering the cost of capital will, in turn, directly benefit customers by reducing the Joint Applicants' costs of debt.¹⁷² Additionally, the Transaction will augment FET's and the Joint Applicants' ability to finance improvements to transmission operations, because any

¹⁶⁶ 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.

¹⁶⁷ 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.

¹⁶⁸ See NATCo II's Statement in Support, pg. 9.

¹⁶⁹ Joint Applicants St. No. 2 at 14.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 15.

¹⁷² Joint Applicants St. No. 1 at 14; *see also* Joint Applicants St. No. 2 at 14-16.

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.¹⁷³

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 Applicants.¹⁷⁴ 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.¹⁷⁵ 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.¹⁷⁶

Moreover, the Transaction will result in significant economic benefits and it will enhance FirstEnergy's ability to undertake future investments in Pennsylvania.¹⁷⁷ Indeed, these future investments are anticipated to generate approximately \$19.5 billion in economic output over the 2023-2032 period in Pennsylvania.¹⁷⁸ 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

¹⁷³ Joint Applicants St. No. 2 at 16; *see also* Joint Applicants St. No. 3R at 6.

¹⁷⁴ Joint Applicants St. No. 1 at 13-14.

¹⁷⁵ Joint Applicants St. No. 1 at 13-14; *see also* Joint Applicants St. No. 3 at 25-26.

¹⁷⁶ Joint Applicants St. No. 1 at 15.

¹⁷⁷ Joint Applicants St. No. 4 at 5-20.

¹⁷⁸ *Id.* at 17.

Pennsylvania.¹⁷⁹ In turn, this economic activity is expected to support between approximately 9,500 and 11,200 jobs annually over the 2023-2032 period.¹⁸⁰

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.¹⁸¹

OCA was the only party to oppose the Transaction in testimony. Through negotiations, the parties agreed on Settlement terms to address OCA's concerns. The Settlement terms ensure Joint Applicants will provide the Commission and the statutory advocates reasonable access to their books, records, officials, and staff, ensuring greater transparency and ongoing Commission oversight.¹⁸² 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, providing the Commission with necessary information and data to monitor Joint Applicants' compliance with the Settlement.¹⁸³

Further, the Settlement makes clear that Transaction/Transition costs will not be passed on to customers via distribution or transmission rates, insulating customers from the costs of the Transaction.¹⁸⁴

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ Joint Applicants St. No. 1 at 17.

¹⁸² Settlement ¶ 26.

¹⁸³ *Id.* ¶ 27.

¹⁸⁴ *Id.* ¶ 28.

Additionally, the Settlement provides 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.¹⁸⁵ This provides some assurance that any change in ownership would be subject to Commission approval, ensuring transparency and Commission oversight. 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 laws and the terms of such affiliated agreements to avoid cross subsidization.¹⁸⁶

Under the terms of the Settlement, the Joint Applicants commit to establish appropriate ring-fencing protections, to the extent applicable to their structure.¹⁸⁷ The Settlement adopts all the ring-fencing measures recommended in OCA witness Morgan’s testimony, and the ring-fencing measures will help ensure that FirstEnergy’s ratepayers are shielded from the business activities carried out by Brookfield and its subsidiaries. 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 ten business days, which will state the reason for the downgrade and remedial actions intended to strengthen credit ratings.¹⁸⁸ This, again, ensures transparency and Commission oversight.

Additionally, under the Settlement, the Joint Applicants agree to 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.¹⁸⁹ This Settlement provision helps to ensure continued reliability for the transmission system.

¹⁸⁵ *Id.* ¶ 29.

¹⁸⁶ *Id.* ¶ 30.

¹⁸⁷ Settlement ¶ 31.

¹⁸⁸ *Id.* ¶ 32.

¹⁸⁹ *Id.* ¶ 33.

Finally, in response to OCA’s concerns regarding transmission service reliability, the parties agreed that Joint Applicants will track and report various metrics with a goal of improving performance over time. 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 herein and as measured by the transmission outages in the calendar year ending at 11:59 p.m. prevailing Eastern time on December 31, 2028.¹⁹⁰ Adjustments to the outage calculation will be made for six sigma exclusions.¹⁹¹ Further, scheduled outages, emergency forced outages, and operational outages are excluded from the calculation.¹⁹²

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 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 35.¹⁹³ 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.¹⁹⁴ These Settlement terms 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.

For the foregoing reasons, we find that the Settlement is in the public interest, and that the Joint Applicants met their burden of proving that they are technically, legally, and financially fit to own and operate the assets of the utilities set forth under the proposed

¹⁹⁰ *Id.* ¶ 35.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ Settlement ¶ 36.

¹⁹⁴ *Id.*

Transaction. Accordingly, in the ordering paragraphs below, we recommend that the Settlement submitted in this proceeding be approved by the Commission without modification.

VIII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. *See* 66 Pa.C.S. §§ 1102-03, 2101-03, 2811(e).

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

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

66 Pa.C.S. §1102(a)(3)

3. Section 1103 of the Code sets forth the procedure to obtain certificates of public convenience under Sections 1101 and 1102 of the Code. 66 Pa.C.S. §1101-03.

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. Pub. Util. Comm’n*, 295 A.2d 825, 828 (Pa. 1972).

7. 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. Pub. Util. Comm'n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240, 243 (Pa. Super. 1958).

8. Commission approval is required for any affiliated interest contract before it can become effective. 66 Pa.C.S. § 2102(a).

9. An “affiliated interest” includes 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).

10. 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.

11. The standard for Commission review of an affiliate interest agreement includes:

(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).

12. 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).

13. Commission policy promotes settlements. 52 Pa. Code § 5.231.

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

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

16. The terms and conditions of the Settlement are supported by substantial evidence and are in the public interest.

ORDER

THEREFORE,

IT IS RECOMMENDED,

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

2. That the Joint Application of American Transmission Systems, Incorporated, MidAtlantic Interstate Transmission, LLC, and Trans-Allegheny Interstate Line Company For all of the Necessary Authority, Approvals, and Certificates of Public Convenience Required to Lawfully Effectuate (1) The Purchase And Sale Agreement of An Incremental Thirty Percent Equity Interest In FirstEnergy Transmission, LLC By North American Transmission Company II L.P.; (2) The Transfer of Class B Membership Interests In Mid-Atlantic Interstate Transmission, LLC Held by FirstEnergy Corp. to FirstEnergy Transmission, LLC; (3) Where Necessary, Associated Affiliated Interest Agreements; and (4) Any Other Approvals Necessary to Complete the Contemplated Transaction filed at Docket Nos. A-2023-3040481, A-2023-3040482,

A-2023-3040483, G-2023-3040484, G-2023-3040485, G-2023-3040486 be approved as clarified by the Joint Petition for Approval of Settlement of All Issues filed in this proceeding.

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 be deemed withdrawn.

5. That the Joint Protest filed by the Met-Ed Industrial Users Group and Penelec Industrial Customer Alliance be dismissed.

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

7. That this matter be marked closed.

Date: February 22, 2024

_____/s/
Conrad A. Johnson
Administrative Law Judge

_____/s/
Emily I. DeVoe
Administrative Law Judge