

COMMONWEALTH OF PENNSYLVANIA



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May 4, 2026

Via Electronic Filing

Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Re: Application of NextEra Energy Transmission MidAtlantic, Inc., filed pursuant to 52 Pa. Code Chapter 57 Subchapter G, for approval to site and construct a 500 kV transmission line associated with the MidAtlantic Resiliency Link Project located in portions of Greene County and Fayette County, Pennsylvania; Docket No. A-2026-3060856; and

Application of NextEra Energy Transmission MidAtlantic, Inc., for All of the Necessary Authority, Approvals, and Certificates of Public Convenience (1) to Begin to Furnish and Supply Electric Transmission Service in Greene County and Fayette County, Pennsylvania; (2) for Certain Affiliated Interest Agreements; and (3) for any Other Approvals Necessary to Complete the Contemplated Transactions; Docket No. A-2026-3060921

Dear Secretary Homsher:

For electronic filing, please find enclosed the Corrected Petition for Interlocutory Review and Answer to Material Question of the Office of Consumer Advocate. The OCA requests that the Petition filed on Friday, May 1, 2026, be rejected because it erroneously did not contain an Exhibit A.

Respectfully submitted,

/s/ Jacob Guthrie
Jacob Guthrie, PA Attorney I.D. # 334367
Assistant Consumer Advocate

Enclosures

cc: Administrative Law Judge John M. Coogan (Via Email Only: jcoogan@pa.gov)
Administrative Law Judge Erin L. Gannon (Via Email Only: egannon@pa.gov)
Certificate of Service

CERTIFICATE OF SERVICE

Application of NextEra Energy Transmission :
MidAtlantic, Inc., filed pursuant to 52 Pa. Code :
Chapter 57 Subchapter G, for approval to site : Docket No. A-2026-3060856
and construct a 500 kV transmission line :
associated with the MidAtlantic Resiliency Link :
Project located in portions of Greene County :
and Fayette County, Pennsylvania :

Application of NextEra Energy Transmission :
MidAtlantic, Inc., for All of the Necessary :
Authority, Approvals, and Certificates of Public : Docket No. A-2026-3060921
Convenience (1) to Begin to Furnish and Supply :
Electric Transmission Service in Greene County :
and Fayette County, Pennsylvania; (2) for :
Certain Affiliated Interest Agreements; and (3) :
for any Other Approvals Necessary to Complete :
the Contemplated Transactions :

I hereby certify that I have this day filed electronically on the Commission’s electronic filing system and served a true copy of the following document, the Corrected Petition for Interlocutory Review and Answer to Material Question of the Office of Consumer Advocate, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below.

Dated this 4th day of May 2026.

SERVICE BY E-MAIL ONLY

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Dated: May 4, 2026

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of NextEra Energy Transmission :
MidAtlantic, Inc., filed pursuant to 52 Pa. Code :
Chapter 57 Subchapter G, for approval to site : Docket No. A-2026-3060856
and construct a 500 kV transmission line :
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and Fayette County, Pennsylvania; (2) for :
Certain Affiliated Interest Agreements; and (3) :
for any Other Approvals Necessary to Complete :
the Contemplated Transactions :

**PETITION FOR INTERLOCUTORY REVIEW
AND ANSWER TO MATERIAL QUESTIONS
OF THE OFFICE OF CONSUMER ADVOCATE**

Before the Pennsylvania Public Utility Commission (Commission), pursuant to 52 Pa. Code Sections 5.302-5.303 and 5.41 of the Commission’s regulations, the Pennsylvania Office of Consumer Advocate (OCA) submits this Petition for Interlocutory Review and Answer to Material Questions (Petition) in the above-captioned proceedings. In this Petition, the OCA requests that the Commission grant this Petition and answer a Material Questions of law that have arisen in this proceeding in order to prevent

substantial prejudice to the parties and to expedite the conduct of the proceedings.¹ More specifically, the OCA requests the Commission to answer the first Material Question of whether the Commission is preempted based on the U.S. Third Circuit Court of Appeals' recent decision in *Transource Pa., LLC v. DeFrank*² from modifying or denying the Pennsylvania portions of the Mid-Atlantic Reliability Link (MARL) Project, which are the subject of these proceedings, on the basis of insufficient need for the Project given that PJM Interconnection, LLC (PJM) has made a determination that there is a reliability-based need for the MARL Project in the PJM region and has selected the MARL Project to address that need.³ Additionally, the OCA requests the Commission to answer the second Material Question of whether the Commission can consider evidence of the costs and benefits of the MARL Project in rendering a determination to approve, reject, modify, or condition the Applications, notwithstanding an affirmative answer to the first Material Question.

I. Background

On March 3, 2026, NextEra Energy Transmission MidAtlantic, Inc. (NEET MA or Company) filed two applications with the Commission, including (1) its Application under 52 Pa. Code Sections 57.71-57.77, seeking approval from the Commission to site

¹ 52 Pa. Code § 5.302(a).

² *Transource Pa., LLC v. DeFrank*, 156 F.4th 351, 379 (3d Cir. 2025), affirming *Transource Pa., LLC v. DeFrank*, 705 F. Supp. 3d 266 (M.D. Pa. 2023) (*Transource*).

³ 52 Pa. Code § 57.76(a)(1) (“The Commission will issue its order, with its opinion, if any, either granting or denying the application, in whole or in part, as filed or upon the terms, conditions or modifications, of the location, construction, operation or maintenance of the line as the Commission may deem appropriate. The Commission will not grant the application, either as proposed or as modified, unless it finds and determines as to the proposed HV line: (1) That there is a need for it.”).

and construct a high-voltage (HV) 500 kilovolt (kV) transmission line associated with the MidAtlantic Resiliency Link Project (MARL Project or Project) located in Dunkard Township in Greene County and Springhill Township in Fayette County, Pennsylvania (Siting Application); and (2) its Application under 66 Pa.C.S. Sections 1101, 1103, and 2102, seeking the Commission to grant all of the necessary authority, approvals, and certificates of public convenience for NEET MA to become a public utility that can, via the MARL Project, furnish and supply electric transmission service in Greene and Fayette Counties (CPC Application).

As explained in the Company's Siting Application, the MARL Project involves the proposed construction of a new approximately 107.5-mile 500-kV interstate transmission line that traverses Maryland, Pennsylvania, West Virginia, and Virginia.⁴ The Pennsylvania portion of the MARL Project would extend approximately 10.7 miles from the existing FirstEnergy Corp. 502 Junction Substation in Greene County, Pennsylvania for approximately 2.7 miles to the West Virginia border, extend through West Virginia for 3.1 miles, and then re-enter Pennsylvania in Greene County, and traverse through Greene and Fayette Counties for 8.0 miles, and then proceed back into West Virginia.⁵

On March 21, 2026, the Siting Application and the CPC Application were published in the *Pennsylvania Bulletin*, setting a deadline for interventions and protests of May 1, 2026.

⁴ Siting Application ¶ 6.

⁵ Siting Application ¶ 6.

On May 1, 2026, the OCA filed a Protest to the Siting Application and CPC Application.

II. Legal Standards

A party may file a petition at any time seeking interlocutory review of an issue which arises or may arise in a proceeding.⁶ A petitioner must provide a statement of “the question to be answered and the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceedings.”⁷ The “compelling reasons” for interlocutory review are the reasons establishing that such review is necessary to either prevent substantial prejudice or to expedite the conduct of the proceeding.⁸ A petition must allege compelling reasons why any alleged prejudice flowing therefrom could not be rectified during the normal Commission review process.⁹

Based on the Commission’s determination as to whether interlocutory review is necessary to either prevent the alleged substantial prejudice or expedite the proceedings, the Commission can: (1) continue, revoke or grant a stay of the proceedings, if necessary; (2) determine that the petition was improper and return the matter to the presiding officer; (3) decline to answer the question; or (4) answer the question.¹⁰

⁶ 52 Pa. Code §§ 5.302, 5.572(c). See *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-2020-3017206 (August 6, 2020), 2020 PA. PUC LEXIS 394, *5 (PGW).

⁷ 52 Pa. Code § 5.302(a); PGW at *5.

⁸ PGW at *5.

⁹ PGW at *6 (citing *Joint Application of Bell Atlantic Corp. and GTE Corp.*, Docket No. A-310200F0002, *et al.* (Order entered June 14, 1999); *Pa. PUC v. Frontier Communications of Pa. Inc.*, Docket No. R-00984411 (Order entered February 11, 1999); *In re: Knights Limousine Service, Inc.*, 59 Pa. P.U.C. 538 (1985).

¹⁰ 52 Pa. Code § 5.303(a)(1)-(4).

Petitions for interlocutory review regarding evidentiary matters within the ALJ's authority are not favored and allowed only in the most extraordinary circumstances.¹¹ The Commission's preferred approach is to permit proceedings to move forward in the normal course to provide all parties, the presiding officer, and the Commission, with a full opportunity to develop the record, brief issues, and present arguments at each stage.¹² In a petition for interlocutory review involving the scope and admissibility of evidence in a proceeding, the Commission will consider the presiding ALJ's authority to oversee and rule on the scope of and admissibility of evidence in a proceeding.¹³

III. Material Questions

1. Pursuant to *Transource*, is the Commission preempted from modifying or denying the Pennsylvania portions of the MARL Project on the basis of insufficient need for it given that PJM has made a determination that there is a reliability-based need for the MARL Project and has selected the MARL Project to address the need?

Suggested Answer: *Yes*.

2. Notwithstanding an affirmative answer to the first Material Question, can the Commission consider evidence of the costs and benefits of the MARL Project in rendering a determination to approve, reject, modify, or condition the Applications?

Suggested Answer: *Yes*.

¹¹ *PGW* at *5, 7 (citing *Re: Philadelphia Gas Works Universal Service and Energy Conservation Plan*, Docket No. M-00072021 (Order entered October 23, 2009) at 3).

¹² *PGW* at *7 (citing *Re: Philadelphia Gas Works Universal Service and Energy Conservation Plan*, Docket No. M-00072021 (Order entered October 23, 2009) at 3).

¹³ *PGW* at *6-7 (citing 66 Pa. C.S. § 331(d)(3) (pertaining to authority of the presiding officer); 52 Pa. Code § 5.483 (pertaining to authority of presiding officer); 52 Pa. Code §§ 5.403 (pertaining to control of receipt of evidence), 5.103 (pertaining to authority to rule on motions), 5.222 (pertaining to prehearing conference in non-rate proceedings to oversee evidentiary matters for orderly conduct and disposition of the proceeding and furtherance of justice), 5.223 (pertaining to authority of presiding officer at conferences)).

IV. The Commission should grant this Petition and answer the Material Questions in the affirmative to prevent substantial prejudice to the parties to these proceedings and expedite the conduct of the proceedings.

A. First Material Question

The first Material Question and suggested answer are as follows:

Pursuant to *Transource*, is the Commission preempted from modifying or denying the Pennsylvania portions of the MARL Project on the basis of insufficient need for it given that PJM has made a determination that there is a reliability-based need for the MARL Project and has selected the MARL Project to address the need?

Suggested Answer: *Yes*.

The Public Utility Code provides, in pertinent part, that the Commission cannot grant a certificate of public convenience unless it finds and determines that the applicant has demonstrated a public need for the service.¹⁴ The Commission's regulations provide, in pertinent part, that the Commission cannot grant the Siting Application unless it finds and determines as to the proposed HV line "that there is a need for it" among other criteria.¹⁵

In its Siting Application, NEET MA has asserted that the "Commission is preempted from denying the MARL Project based upon a finding that there is not sufficient need for it."¹⁶ In support of this assertion, NEET MA quoted the holding of

¹⁴ See 66 Pa. C.S. 1103(a); see also *Chester Water Authority v. Pa. PUC*, 868 A.2d 384 (Pa. 2005); see also *Application of Newtown Artesian Water Company*, 2003 Pa. PUC LEXIS 40 (entered July 1, 2003).

¹⁵ 52 Pa. Code § 57.76(a).

¹⁶ Siting Application at 9, n. 9. Citing *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1964), NEET MA also reserved its right to seek adjudication of federal claims in federal court, should state tribunals hold against NEET MA on questions of state law, including but not limited to (a) federal law preempting state regulators from finding there is not a need for

Transource, which provided: “when an RTO has selected [a multi-state transmission line project] for inclusion in a regional transmission plan as part of its federal mandate, a state regulator cannot, consistent with the Supremacy Clause, reject the project based on a lack of ‘need.’”¹⁷ NEET MA explained that “PJM has already determined that there is a need for the MARL Project.”¹⁸ In its CPC Application, NEET MA likewise asserts that, given that the Commission cannot deny the MARL Project based on PJM’s determination of need, “PJM’s determination that there is a need for transmission service over the MARL Project and determination that NEET MA should construct, own, and operate the transmission facilities required to address this need demonstrates that there is a need for the electric transmission service contemplated by” the CPC Application.¹⁹

The OCA does not dispute, for the purposes of this Petition, NEET MA’s representations in its Siting Applications at paragraphs 23-34 regarding PJM, PJM’s Regional Transmission Expansion Plan (RTEP) process, and PJM’s determination during the 2022 RTEP process of the need for a solution based on PJM’s identification of reliability violations based on anticipated load growth and generation resource retirements within the PJM region, and PJM’s selection of multiple transmission projects

a multi-state transmission line project that PJM has determined for inclusion in its regional transmission plan, (b) violation(s) of the Supremacy Clause of the United States Constitution, and/or (c) violation(s) of the Dormant Commerce Clause of the United States Constitution. Siting Application at 9, n. 9.

¹⁷ Siting Application at 9 (citing *Transource* at 379.)

¹⁸ Siting Application at 9.

¹⁹ CPC Application at 6, n. 4 (recognizing that *Transource* did not interpret a determination of whether there is a public need for the service contemplated by a new utility for purposes of obtaining a certificate of public convenience under Sections 1101 and 1103(a)).

and improvements as solutions, including but not limited to the MARL Project, to meet the reliability-based needs.²⁰

Additionally, the OCA recognizes that the *Transource* decision is the law of the land and further does not dispute NEET MA's legal assertions regarding preemption over the "need" determination for the MARL Project. This concession is made notwithstanding the OCA's strong belief that the *Transource* decision is fundamentally misguided and wrong²¹ as well as the OCA's support for the Pennsylvania Office of Attorney General's pursuit of further review of the Third Circuit's decision before the Supreme Court of the United States (SCOTUS).

In summary, NEET MA and the OCA agree that, based on the holding of *Transource*, because PJM, the RTO, has selected the MARL Project, a multi-state transmission line project for inclusion in the 2022 RTEP, as part of its federal mandate, the Commission cannot, consistent with the Supremacy Clause, reject the Project based on a lack of need.²²

Despite there being no factual or legal dispute between the OCA and NEET MA as to the applicability of the conflict preemption holding of *Transource* in this matter, this Petition is nevertheless proper because the Chairman of the Commission, in a public document attached as **Exhibit A**, explained the Commission's legal reasoning for not

²⁰ Siting Application at 14-20.

²¹ Indeed, it is the OCA's position that PJM, a Regional Transmission Organization (RTO) and private entity, and its *ex parte*, administrative transmission planning processes, cannot preempt the quasi-judicial exercise of a state's sovereign police power to permit the siting and construction of specific transmission facilities within the state's boundaries.

²² Siting Application at 9 (citing *Transource* at 379.)

appealing the Third Circuit’s decision to SCOTUS and part of such reasoning reached a legal conclusion that is different from the OCA’s and NEET MA’s.²³

More specifically, in an October 16, 2025 letter to the General Assembly, Chairman DeFrank explained the legal basis for the Commission’s decision to not appeal the Third Circuit’s decision to SCOTUS. Among other things, he asserted that the *Transource* decision “does not address other types of transmission projects beyond market efficiency projects, which are designed to reduce regional congestion and are less common than other projects...”²⁴ Indeed, the *Transource* decision involved an HV transmission line project selected by PJM to meet a market efficiency-based need determined by PJM. In contrast, the MARL Project was selected by PJM to meet a reliability-based need determined by PJM. If the Commission were to agree with the Chairman’s assertions in the October 16, 2026 letter, it would possibly mean that because MARL is a reliability, not market efficiency, project, the Commission can render a determination on the question of need for the Pennsylvania portions of the MARL Project, under 52 Pa. Code Section 52.76(a), that can conflict with PJM’s determination of need for the MARL Project.

However, in the OCA’s view, for purposes of the conflict preemption analysis presented in the *Transource* decision, the distinction between market efficiency projects versus reliability projects within PJM is immaterial because in both cases PJM makes the

²³ See Letter of Chairman Stephen M. DeFrank to Members of the Pennsylvania House of Representatives re: *Transource Pennsylvania, LLC v. Stephen M. DeFrank, et al.* (October 16, 2025).

²⁴ See *id.*

need determination using FERC-approved criteria and selects the specific project to meet the need in accordance with a FERC-approved process.²⁵ Contrast market efficiency and reliability projects with supplemental projects, which are HV transmission lines where the public utility/transmission owner, not PJM, makes the need determination for the project and selects the specific facilities to meet the need. For supplemental projects, there is no conflict preemption, and the Commission can make a determination of need that is different from the public utility's need determination.²⁶

²⁵ In Order No. 2000, FERC delegated its authority for oversight of the planning and cost of transmission facilities to Regional Transmission Organizations (RTOs). *Regional Transmission Organizations*, Order No. 2000, 89 FERC ¶ 61,285, FERC Stats. & Regs. ¶ 31,089 (1999) (“Order No. 2000”); *order on reh’g*, Order No. 2000-A, 90 FERC 61,201 (2000) (“Order No. 2000-A”). While the creation of an RTO in a particular service area is generally voluntary, to the extent that such entities formed, FERC required “that the RTO must have ultimate responsibility for both transmission planning and expansion within its region that will enable it to provide efficient, reliable and non-discriminatory service and coordinate such efforts with the appropriate state authorities.” Order No. 2000 at 31,163. FERC explained that there was a risk of a balkanized grid unless a single entity, the RTO, coordinates the transmission planning. *Id.* at 31,164. PJM is an RTO. Accordingly, PJM has the obligation to plan for transmission expansion and associated cost recovery in its region. *PJM Interconnection, L.L.C.*, 101 FERC ¶ 61,345 at PP 9, 24 (2002); *order on reh’g*, 104 FERC ¶ 61,124 at P 54 (2003). The PJM Tariff and the PJM Operating Agreement provide extensive oversight for regional transmission planning and cost recovery in the RTO. The PJM transmission planning and cost recovery and allocation process is called the RTEP, which is set forth in Schedule 6 of the PJM Operating Agreement. Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., Schedule 6, Section 1.1. Through this process, PJM plans, reviews and approves regional transmission projects and their costs to consumers in the PJM region. *Id.* at Schedule 6, Section 1.5.6; *see also* Section 1.6(a). Once approved by the PJM Board of Managers (“PJM Board”), PJM submits a filing with FERC for approval of the projects and allocation of the costs to consumers through the FERC-authorized rates for each transmission provider. *Id.* at Section 1.6(a); *see also* PJM Tariff, Attachment H.

²⁶ PJM’s current tariff authority to review the need, prudence and cost-effectiveness of transmission expansion extends only to transmission projects needed to resolve region-wide system reliability violations based on PJM criteria, or for projects needed to meet state public policy goals such as renewable portfolio standards. PJM Operating Agreement, Schedule 6, Section 1.5.6(n). The projects subject to PJM Board oversight and approval are often called regional baseline projects, regional network upgrades or Public Policy Projects. Local projects, identified as “Supplemental Projects” in PJM’s Operating Agreement and Tariff, are included in

Compelling reasons to grant interlocutory review and answer the first Material Question are present here in order to prevent substantial prejudice to the OCA and to expedite the conduct of the proceeding.²⁷ On preventing substantial prejudice, given the OCA's and NEET MA's shared legal conclusion that the Third Circuit's holding on conflict preemption applies to the MARL Project, the OCA does not intend to present evidence in this proceeding on the question of whether there is a need for this project as doing so would be a waste of ratepayer dollars.²⁸ Indeed, expert witnesses who can address the question of need are uniquely specialized as they are able to conduct specialized power flow engineering analyses and develop related expert opinion testimony. Such analyses and testimony are very time consuming to develop and costly for ratepayer dollars to fund. However, if the Commission legally concludes that it can render a determination that conflicts with PJM's determination as to the MARL Project,

the RTEP, but are only reviewed by PJM for the potential negative impact they might have on the regional system. PJM Operating Agreement, Schedule 6, Section 1.5.6(n). Indeed, Section 1.5.6(n) specifically states:

Certain Regional RTEP Project(s) and Subregional RTEP Project(s) may not be required for compliance with the following PJM criteria: system reliability, market efficiency or operational performance, pursuant to a determination by the Office of the Interconnection. *These Supplemental Projects shall be separately identified in the RTEP and are not subject to approval by the PJM Board.*

Id. (emphasis added). The important point here is that, unlike regional RTEP projects, Supplemental Projects are not approved by the PJM Board. They are not reviewed by PJM for their need, prudence or their cost-effectiveness and cost efficiency for utility consumers. *Id.*; see also PJM Operating Agreement, Schedule 6, section 1.6(a).

²⁷ *PGW* at *5.

²⁸ See 52 Pa. Code § 57.75(e)(1) (“At hearings held under this section, the Commission will accept evidence upon, and in its determination of the application it will consider, *inter alia*, the following matters: (1) The present and future necessity of the proposed HV line in furnishing service to the public.”).

the OCA would be substantially prejudiced as to the presentation of its case. The Commission can prevent substantial prejudice to the OCA, and the utility consumer interests that it represents, by granting this Petition and answering the first Material Question.

On expediting the conduct of the proceeding, the OCA is aware of public interest in this case based on the communications it has received from affected landowners and ratepayers and the invitations it has accepted to give townhall presentations on these Applications. Other intervenors and protestants in this proceeding may seek to present evidence and raise arguments on the question of whether there is a need for it. Judicial economy would be served by answering the first Material Question.

Finally, this Petition is proper because it does not involve reviewing an evidentiary ruling within the ALJ's authority and these circumstances are extraordinary given the Chairman's public letter explaining the legal reasons for the Commission's decision to not appeal the Third Circuit's decision to SCOTUS.²⁹ If the Commission rejects this Petition or declines to answer the first Material Question presented, and, instead, if the Commission decides to permit proceedings to move forward in the normal course and later in a final order it answers the first Material Question in the negative, the OCA, and the interests of utility consumers that it represents, would be substantially prejudiced.

²⁹ *PGW* at *5, 7 (citing *Re: Philadelphia Gas Works Universal Service and Energy Conservation Plan*, Docket No. M-00072021 (Order entered October 23, 2009) at 3).

B. Second Material Question

The second material question and suggested answer are as follows:

Notwithstanding an affirmative answer to the first Material Question, can the Commission consider evidence of the costs and benefits of the MARL Project in rendering a determination to approve, reject, modify, or condition the Applications?

Suggested Answer: *Yes.*

To the extent that the Commission answers the first Material Question in the affirmative, it should clarify the breadth of the answer by answering the second Material Question in the affirmative. Otherwise, the Commission would stand to interpret the *Transource* decision in an overly expansive way that would have sweeping and negative consequences for state law.

The Commission's siting regulations at 52 Pa. Code Sections 57.71-57.76 were promulgated pursuant to the Commission's statutory authority under Sections 1501 and 2805.³⁰ Section 1501 requires that public utility service and facilities be efficient and reasonable "as shall be necessary *or* proper for the accommodation, convenience, and safety of" NEET MA's patrons and the public.³¹ Section 2805 requires the Commission and Pennsylvania electric utilities to work with the Federal Government, other states in the region, and PJM to ensure the continued provision of adequate, safe and reliable

³⁰ Re: Interim Guidelines for the Filing of Electric Transmission Line Siting Applications, Docket No. M-2009-2141293 (Nov. 5, 2010), 2010 Pa. PUC LEXIS 2069 *1 ("The current regulatory filing requirements utilized by this Commission for the siting of high voltage electric utility transmission lines are governed generally by Sections 1501 and 2805 of the Public Utility Code...").

³¹ 66 Pa. C.S. § 1501 (emphasis added).

electric service to the citizens and businesses of this Commonwealth.³² The Commission's regulations contemplate the Commission being able to accept evidence regarding and consider additional information that the Commission may require.³³ The Commission's regulations further contemplate the Commission may grant, deny, condition, or modify a Siting Application as it may deem appropriate.³⁴

Additionally, the Commission is empowered to grant or conditionally grant a certificate of public convenience if doing so is "necessary or proper for the service, accommodation, convenience, or safety of the public."³⁵ Indeed, NEET MA admitted in its CPC Application that *Transource* did not interpret a determination of whether a transmission line meets this legal standard for purposes of obtaining a certificate of public convenience under Sections 1101 and 1103(a).³⁶

The OCA is concerned by the estimated cost of building this Project. NEET MA currently estimates a \$1.1 billion total cost in 2031 dollars, including an \$87.6 million cost for the Pennsylvania portion.³⁷ The OCA is also concerned that the primary function

³² 66 Pa. C.S. § 2805.

³³ See 52 Pa. Code §§ 57.72(c)(15) ("an application shall contain "Additional information as the Commission may require."), 57.75(e) (providing that at hearings, the Commission "will accept evidence upon, and in its determination of the application it will consider, *inter alia*, the following"), 57.76(a) (providing a floor of criteria to be met for approval of a siting application). See 66 Pa. C.S. § 1103(a) (providing that the Commission must find that granting or conditionally granting a certificate of public convenience is "necessary *or* proper for the service, accommodation, convenience, or safety of the public").

³⁴ 52 Pa. Code § 57.76(a).

³⁵ 66 Pa.C.S. § 1103(a).

³⁶ CPC Application at 6, n. 4

³⁷ NEET MA Siting Application at 36.

of this line may be to serve AI data center electricity demand in other states and resolve the transmission problems caused by out-of-state AI data centers.³⁸

On March 4, 2026, the White House held an event regarding the Ratepayer Protection Pledge signed by Amazon, Google, Meta, Microsoft, OpenAI, Oracle, and xAI. The second and third provisions provide the following:

2. Paying for New Power Delivery Infrastructure Upgrades

- **WHAT:** Companies will pay for all new power delivery infrastructure upgrades required to service their data centers, including adequate network upgrade costs to ensure that these expenses are not passed on to the ordinary household.
- **WHY:** This way, data centers can benefit all ratepayers and the grid.

3. Paying Whether They Use the Power or Not

- **WHAT:** Companies will voluntarily negotiate new, separate rate structures with their utilities and relevant State governments wherever they build data centers. Importantly, they will pay these rates for the power and related infrastructure that are brought online to service their data centers, whether they use the electricity or not.
- **WHY:** This will protect the American people from increased utility bills as a result of the development of these data centers.³⁹

³⁸ See *2023 Regional Transmission Expansion Plan Report*, PJM at 1, 5, 17-18, 38, 46, 229, 234-243 (Mar. 7, 2024), <https://www.pjm.com/-/media/DotCom/library/reports-notice/2023-rtep/2023-rtep-report.pdf> (identifying role of data center load growth in RTEP that produced MARL, B3800); Sami Abdulsalam, *Reliability Analysis Update*, PJM at 2-9 (Dec. 5, 2023), <https://www.pjm.com/-/media/DotCom/committees-groups/committees/teac/2023/20231205/20231205-item-15---reliability-analysis-update-2022-window-3.ashx> (identifying data center load growth in Dominion and APS as focus of PJM 2022 RTEP Window 3).

³⁹ The White House, *Ratepayer Protection Pledge*, March 4, 2026, <https://www.whitehouse.gov/articles/2026/03/ratepayer-protection-pledge/> (bold emphasis in original); see also The White House, *Fact Sheet: President Donald J. Trump Advances Energy Affordability with the Ratepayer Protection Pledge*, March 4, 2026,

PJM indicated that a high concentration of new, large, AI data center customer interconnections in other states drove the reliability “need” for MARL, which the OCA intends to investigate further. The OCA is concerned about the costs and benefits of this Project and seeks to investigate the extent to which state, regional, and national public policy objectives regarding allocation of costs for the siting and construction of large, AI data centers is consistent with the proposals in, and assumptions underlying, the Applications.

There is ample legal authority, as cited above, for the Commission to consider the costs and benefits of the MARL Project and whether the Project is consistent with state, regional, and national public policy objectives regarding allocation of costs for the siting and construction of large, AI data centers, notwithstanding PJM’s separate determination that there is a reliability need for the Project. These issues should not be conflated with the reliability need determination that PJM made in its RTEP process.

Compelling reasons to grant interlocutory review and answer the second Material Question are present here to expedite the conduct of the proceeding.⁴⁰ If the Commission were to decline to answer the question, discovery disputes and motions practices may flood the docket, wasting ratepayer dollars. On expediting the conduct of the proceeding, the OCA is aware of public interest in this case based on the communications it has received from affected landowners and ratepayers and the invitations it has accepted to give townhall presentations on these Applications. Other intervenors and protestants in

<https://www.whitehouse.gov/fact-sheets/2026/03/fact-sheet-president-donald-j-trump-advances-energy-affordability-with-the-ratepayer-protection-pledge/>.

⁴⁰ *PGW* at *5.

this proceeding may seek to present evidence and raise arguments on the costs/benefits of the project and whether the Applications align with state, regional, and federal policy objectives as to cost allocation for infrastructure to serve data centers. Judicial economy would be served by answering the second Material Question.

V. Conclusion

For the foregoing reasons, the OCA respectfully requests that the Commission grant this Petition and answer the Material Questions that have arisen in this proceeding in order to prevent substantial prejudice to the parties and to expedite the conduct of the proceedings.

Respectfully submitted,

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PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG, PENNSYLVANIA

STEPHEN M. DeFRANK
CHAIRMAN

October 16, 2025

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Re: Transource Pennsylvania, LLC v. Stephen M. DeFrank, *et al.*

Dear Representatives Kauffman, Reichard, Irvin, Jones, and Fink,

I am writing today to respond to your letter dated October 3, 2025, concerning the request for the Pennsylvania Public Utility Commission (PUC) to seek reargument *en banc* before the United States Court of Appeals for the Third Circuit in the above-referenced matter. First, thank you for your steadfast support of the PUC's position in your *Amici Curiae* brief. Preserving powers reserved to the States is a worthy cause upon which we all agree.

The opinion of the Third Circuit – that the PUC is preempted from altering the cost-benefit methodology approved by the Federal Energy Regulatory Commission (FERC) and implemented by PJM Interconnection LLC (PJM) for market efficiency transmission projects – is the second adverse federal judicial opinion against the PUC on this project. As I have discussed, I do not

envision that the two lower court opinions would be overturned upon reargument or an appeal. Additionally, I am cognizant of the steep costs of appellate litigation, with Pennsylvania taxpayers funding the PUC and Pennsylvania ratepayers funding Transource Pennsylvania, LLC (Transource). Finally, in my view, the opinion of the Third Circuit Court of Appeals, while a loss, is an improvement upon the opinion of the U.S. District Court for the Middle District of Pennsylvania in that it:

- Finds that PJM is not entitled to exercise eminent domain authority, preserving the procedural protections of Pennsylvania landowners in eminent domain proceedings;
- Does not address other types of transmission projects beyond market efficiency projects, which are designed to reduce regional congestion and are less common than other projects;
- Retains Pennsylvania's authority to approve construction in a particular place, preserving public safety and environmental rights; and
- Preserves Pennsylvania's ability to evaluate the need for a transmission project that does not originate with regional planning.

Additional appeals could risk creating broader, precedent-setting losses that may weaken Pennsylvania's authority in future cases.

I understand and share the disappointment of the many residents and communities who opposed the project. Their voices have been heard and remain vital as the PUC re-focuses its efforts to ensure that local viewpoints are included in transmission planning.

Sincerely,



Stephen M. DeFrank, Chairman
Pennsylvania Public Utility Commission