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May 11, 2026

***VIA ELECTRONIC FILING***

Matthew L. Homsher, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Second Floor  
Harrisburg, Pennsylvania 17120

**Re: 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**

**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**

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Dear Secretary Homsher:

Enclosed for filing please find the Brief in Opposition of NextEra Energy Transmission MidAtlantic, Inc. to the Office of Consumer Advocate's Petition for Interlocutory Review and Answer to Material Questions in the above-referenced proceedings.

Copies will be provided as indicated on the Certificate of Service.

Matthew L. Homsher, Secretary  
May 11, 2026  
Page 2

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Garrett P. Lent". The signature is written in a cursive style with a large initial "G" and "L".

Garrett P. Lent

GPL/sll  
Enclosures

cc: Administrative Law Judge John M. Coogan (*Via Email Only*)  
Administrative Law Judge Erin L. Gannon (*Via Email Only*)  
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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Application has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 57.72(d)(3).

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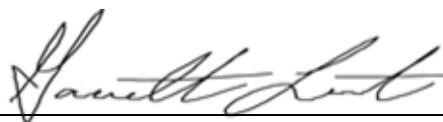
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Dated: May 11, 2026



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Garrett P. Lent

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of NextEra Energy : Docket Nos. A-2026-3060921  
Transmission MidAtlantic, Inc., for All of : G-2026-3060941  
the Necessary Authority, Approvals, and : G-2026-3060942  
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 :

Application of NextEra Energy : Docket No. A-2026-3060856  
Transmission MidAtlantic, Inc., Filed :  
Pursuant to 52 Pa. Code Chapter 5 :  
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 :

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**BRIEF IN OPPOSITION OF NEXTERA ENERGY TRANSMISSION  
MIDATLANTIC, INC. TO THE OFFICE OF CONSUMER ADVOCATE'S PETITION  
FOR INTERLOCUTORY REVIEW AND ANSWER TO MATERIAL QUESTIONS**

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## I. INTRODUCTION

Pursuant to Section 5.302(b) of the regulations of the Pennsylvania Public Utility Commission (“Commission”),<sup>1</sup> NextEra Energy Transmission MidAtlantic, Inc. (“NEET MA” or the “Company”) hereby files this Brief in Opposition to the Petition for Interlocutory Review and Answer to Material Questions submitted by the Office of Consumer Advocate (“OCA”) on May 1, 2026 (the “OCA Petition”). For the reasons explained herein, the OCA Petition does not present a genuine question or dispute that warrants interlocutory review. Rather, OCA asks the Commission to issue advisory rulings premised upon on an undisputed legal issue that the Commission need not answer. In the alternative, if the Commission determines to answer the questions presented by the OCA Petition, then NEET MA submits that the only lawful answers to those questions 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?<sup>2</sup>

Suggested answer, if the question is answered: *Yes*.

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?<sup>3</sup>

Suggested answer, if the question is answered: *No*.

Any other answers to these questions would not only fail to prevent substantial prejudice or expedite the conduct of this proceeding,<sup>4</sup> but would violate the preemption principles applicable

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<sup>1</sup> 52 Pa. Code § 5.302(b).

to this matter that were clearly and unequivocally set forth in *Transource*.<sup>5</sup> For the reasons discussed herein, the Commission need not answer either question presented but, if it does, it can only answer the questions advanced by the OCA Petition as stated by NEET MA.

## **II. PROCEDURAL SUMMARY**

The above-captioned proceeding was initiated on March 3, 2026, when NEET MA contemporaneously filed an application for a certificate of public convenience pursuant to the Pennsylvania Public Utility Code at 66 Pa.C.S. §§ 1101, 1103, and 2102 (“CPC Application”), and an application to approve the siting and construction of the MidAtlantic Resiliency Link Project (“MARL Project”) pursuant to 52 Pa. Code Ch. 57, Subch. G (“Siting Application”).

OCA filed its Protest to the CPC Application and Siting Application on May 1, 2026. Also on May 1, 2026, OCA filed the instant Petition. On May 4, 2026, OCA submitted a Corrected Petition, which appended an Exhibit A that was previously, inadvertently omitted, but did not otherwise change the content of the Petition.

Administrative Law Judges John M. Coogan and Erin L. Gannon (the “ALJs”) scheduled a prehearing conference for May 6, 2026. At the May 6 prehearing conference, the ALJs consolidated the CPC Application and the Siting Application.<sup>6</sup> They also decided that NEET MA would be permitted to respond to any protests and/or petitions to intervene filed on or before May 29, 2026, on or before June 12, 2026.<sup>7</sup> Because of this, and because of the OCA Petition, the parties did not agree upon or set a procedural schedule for the proceedings.

Further, at the prehearing conference, counsel for NEET MA raised the issue that the OCA Petition did not conform to 52 Pa. Code § 5.302(a), which limits a petition to three pages, and did

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<sup>5</sup> *Transource Pa., LLC v. DeFrank*, 156 F.4th 351 (3rd Cir. 2025), *affirming Transource Pa., LLC v. DeFrank*, 705 F. Supp. 3d 266 (M.D. Pa. 2023) (“*Transource*”).

<sup>6</sup> Tr. 11.

<sup>7</sup> Tr. 47-48.

not conform to 52 Pa. Code § 5.302(b), which limits a brief regarding a petition for interlocutory review to 15 pages.<sup>8</sup> On May 7, 2026, OCA filed a letter with the Commission, stating that it would not be filing a Brief in support, and requesting that its Corrected Petition be treated as inclusive of both the petition for interlocutory review and a brief in support. NEET MA does not object to this request.

### **III. LEGAL STANDARD**

The Pennsylvania Public Utility Code (“Code”) states that:

an interlocutory appeal from a ruling of the presiding officer on discovery shall be allowed only upon certification by the presiding officer that the ruling involves an important question of law or policy which should be resolved at that time.... An interlocutory appeal shall not result in a stay of the proceedings except upon a finding by the presiding officer and the commission that extraordinary circumstances exist.<sup>9</sup>

Interlocutory review will not be granted except upon a showing by a petitioner that “extraordinary circumstances” or “compelling reasons” for review exist.<sup>10</sup> Interlocutory review is appropriate only where an applicant proves “that without interlocutory review some harm would result which would not be reparable through normal avenues, that the relief sought should be granted now rather than later, and that granting interlocutory review would ‘prevent substantial prejudice or expedite the proceeding.’”<sup>11</sup>

The Commission has explained:

[T]he correctness or erroneousness of the ALJ’s ruling...is not a relevant consideration...The pertinent consideration is whether interlocutory review is necessary, in order to prevent substantial prejudice, that is that the error and any

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<sup>8</sup> Tr. 62-63; 52 Pa. Code § 5.302(b).

<sup>9</sup> 66 Pa. C.S. § 333(h).

<sup>10</sup> See *In re Application of Knights Limousine Service, Inc.*, 59 Pa. PUC 538, 540, 1985 Pa. PUC LEXIS 46, at \*4 (Order entered July 11, 1985) (“*Knights Limousine*”).

<sup>11</sup> *Pa. PUC v. Philadelphia Gas Works*, Docket Nos. R-2022-3034229 et al., 2023 PA. PUC LEXIS 129, at \*23 (Order entered May 18, 2023) (quoting *Knights Limousine*).

prejudice flowing therefrom, could not be satisfactorily cured during the normal Commission review process.<sup>12</sup>

In addition, the “avoidance of reversal and remand is not the type of expedition of the proceeding which our rule contemplates.”<sup>13</sup>

The Commission has made clear that “interlocutory review is disfavored,” especially where “the Material questions pertain to matters within the presiding ALJ’s authority[.]”<sup>14</sup> Among the matters within the law judge’s authority are evidentiary decisions and the power to “impose reasonable limitations on discovery and to otherwise regulate the course of the proceeding.”<sup>15</sup>

#### **IV. ARGUMENT**

The OCA Petition cannot be answered by the Commission as the OCA seeks. The First Question asks the Commission to simply confirm the clearly articulated, undisputed, and binding law of the land:<sup>16</sup> “when an RTO has selected a 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.’”<sup>17</sup> The only answer that can lawfully be supplied to the First Question is in the affirmative. The Second Question then asks the Commission to ignore the law of the land, and permit the OCA and parties to take discovery and present evidence to challenge the “primary function,” *i.e.*, the “need,” for the MARL Project and the electric transmission service that NEET MA is obligated to provide.<sup>18</sup> The only answer that can lawfully be supplied to the Second Question is in the negative.

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<sup>12</sup> *Re Pennsylvania Gas and Water Company*, Docket Nos. I-840377 et al, 58 Pa.P.U.C. 411, 415-16 (Order entered June 22, 1984) (emphasis in original).

<sup>13</sup> *Id.* at 415.

<sup>14</sup> *Pa. PUC v. Philadelphia Gas Works*, Docket Nos. R-2020-3017206, et al., 2020 PA. PUC LEXIS 394, at \*13 (Order entered Aug. 6, 2020); *Pa. PUC v. Philadelphia Gas Works*, 2023 PA PUC LEXIS 129, at \*7.

<sup>15</sup> 52 Pa. Code § 5.483; *see also* 66 Pa. C.S. § 331(d).

<sup>16</sup> OCA Petition 8 (“ . . . 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.”).

<sup>17</sup> *Transource*, 156 F.4th 351 at 379.

<sup>18</sup> *See* OCA Petition at 14-16 (claiming that OCA is concerned about the “primary function,” *i.e.*, **the need**, for the MARL Project and seeks to present cost and benefit evidence related to the same). Furthermore, to the extent that

At its core, the Petition is asking the Commission to view the issue of “need” related to the proposed high-voltage (“HV”) transmission line and proposed electric transmission service that are the subject of the MARL Project as “Schrödinger’s cat.”<sup>19</sup> OCA asserts that, without an answer to its Petition,<sup>20</sup> the Commission is simultaneously (a) preempted from second-guessing PJM Interconnection, LLC’s (“PJM”) determination of need,<sup>21</sup> and (b) empowered to permit discovery and take evidence the sole purpose of which is to second-guess the PJM-determined need for the MARL Project and the electric transmission service it will provide to the region.<sup>22</sup> However, unlike the unobserved cat in Schrödinger’s thought experiment, the scope of the Commission’s authority to second-guess PJM’s determination of need is not in question; it is clear, defined, and undisputed that the Commission is preempted from such action.<sup>23</sup>

Thus, the paradox the OCA Petition tries to present is easily unwound. There is no dispute regarding the applicability of *Transource* and, therefore, no compelling reasons or extraordinary circumstances exist that warrant an answer to the OCA Petition. In the alternative, if the Commission answers the First Question, it must answer it *in the affirmative* (as it is required by law to do). If it answers the Second Question, which is premised upon an affirmative answer to the First Question, then it must answer the Second Question *in the negative*. Any other answers to these questions would neither prevent substantial prejudice nor expedite the conduct of the

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OCA submits that this “cost benefit” evidence is related to an investigation regarding electric transmission costs, or the allocation of those costs within the PJM region, it is again asking the Commission to intrude upon the exclusive jurisdiction of FERC to regulate electric transmission costs and rates. 16 U.S.C. § 824(b).

<sup>19</sup> “Schrödinger’s cat” is a famous thought experiment, wherein, a paradox associated with quantum superposition is illustrated by a hypothetical cat in a closed box that is considered simultaneously both alive and dead while unobserved, but can only be alive or dead once observed. See Jim Baggott, *The Cat That Won't Die*, Aeon (Apr. 28, 2025), <https://aeon.co/essays/no-schrodingers-cat-is-not-alive-and-dead-at-the-same-time>; see also *Rivera v. Sharp*, 2022 U.S. App. LEXIS 19276, at \*1 (3rd. Circ. 2022) (discussing a party’s position that a settlement agreement was both unenforceable and a binding unilateral agreement).

<sup>20</sup> The observation of the cat (i.e., a determination regarding need).

<sup>21</sup> The cat (i.e., need) is dead.

<sup>22</sup> The cat (i.e., need) is alive.

<sup>23</sup> *Transource*, at 379; OCA Petition at 8 (admitting *Transource* is the “law of the land” and that “the Commission cannot, consistent with the Supremacy Clause, reject the Project based on a lack of need.”).

proceeding. Contrary answers would, however, violate federal law. For these reasons, and those explained below, the OCA Petition should be denied.

**A. THE COMMISSION SHOULD DECLINE TO ANSWER THE PETITION**

Interlocutory review is disfavored, particularly where the questions presented pertain to matters within the presiding ALJs' authority, which includes determinations of scope related to discovery and evidentiary purposes.<sup>24</sup> Despite its representations to the contrary,<sup>25</sup> OCA seeks a determination as to discovery and evidentiary issues.<sup>26</sup> Such disputes can be addressed through the Commission's normal processes. OCA has failed to show otherwise.

Moreover, and importantly, the keystone legal question presented by the OCA Petition is not in dispute. OCA admits that *Transource* is the law of the land and binding upon the parties and the Commission, and agrees with NEET MA regarding its applicability.<sup>27</sup> The OCA Petition further admits that:

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 and improvements as solutions, including but not limited to the MARL Project, to meet the reliability-based needs.<sup>28</sup>

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<sup>24</sup> See e.g., *Pa. PUC v. Philadelphia Gas Works*, 2020 PA. PUC LEXIS 394, at \*6-7 (internal citations omitted); *Schell v. PPL Elec. Utils. Corp.*, Docket No. C-2016-2535220, at pp. 3-5 (Opinion and Order entered Nov. 6, 2016).

<sup>25</sup> OCA Petition at 12 (“...this Petition is proper because it does not involve reviewing an evidentiary ruling within the ALJ's authority and these circumstances are extraordinary...”).

<sup>26</sup> OCA Petition at 12, (“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”), 16 (identifying the “need” for the Project, and indicating that “OCA is concerned about the costs and benefits of this Project and seeks to investigate” the same due to one of the PJM-identified needs being regional load growth”), 16-17 (“Other intervenors and protestants in 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.”)

<sup>27</sup> OCA Petition at 8 (“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.”).

<sup>28</sup> OCA Petition at 6-7. While OCA initially attempts to qualify that these admissions are “for the purposes of this Petition,” this qualification has no effect. By filing the Petition, which is a both a formal pleading under 52 Pa. Code § 5.1(a)(4) and a brief under 52 Pa. Code § 5.501 (see OCA Letter Not Filing A Brief in Support of its Petition for

OCA then acknowledges, as it must, that based upon this process the Commission is preempted from rejecting the MARL Project by determining the project is not needed.<sup>29</sup> Indeed, “when an RTO has selected a 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.’”<sup>30</sup> With OCA’s admission that there is no dispute regarding the law applicable to the need for the MARL Project, there is no “material question” or compelling reasons or extraordinary circumstances warranting review.<sup>31</sup> Therefore, interlocutory review is neither necessary nor proper, and it appears that OCA is seeking improper advisory rulings from the Commission regarding the undisputed law of the land.

The OCA attempts to manufacture a dispute through its reference to the 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) (the “Letter”).<sup>32</sup> NEET MA does not dispute the Chairman’s ability to communicate his views to members of the General Assembly. The problem is OCA’s attempt to convert the Letter into a Commission ruling.<sup>33</sup> However, the Letter is neither an order issued by a quorum of the Commission nor a regulation

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Interlocutory Review and Answer to Material Question, Docket Nos. A-2026-3060856 and A-2026-3060921, et al. (filed May 7, 2026)), the OCA is bound by this admission for the purposes of this proceeding. *In re Adoption of S.A.J.*, 575 Pa. 624, 838 A.2d 616, 623 (Pa. 2003) (“[T]he purpose of judicial estoppel is to uphold the integrity of the courts by ‘preventing parties from abusing the judicial process by changing positions as the moment requires’”); *Tops v. Apparel Mfg. Co. v. Rothman*, 430 Pa. 583, 244 A.2d 436, 438 (Pa. 1968) (“Admissions . . . contained in pleadings, stipulations, and the like are usually termed ‘judicial admissions’ and as such cannot be later contradicted by the party who made them.”). OCA should not be permitted, and cannot be permitted, to take a contrary position at a future stage of these proceedings on these admitted issues.

<sup>29</sup> OCA Petition at 8 (“ . . . NEET MA and the OCA agree that . . . the Commission cannot, consistent with the Supremacy Clause, reject the Project based on a lack of need.”).

<sup>30</sup> *Transource*, 156 F.4th at 379.

<sup>31</sup> 52 Pa. Code § 5.302(a).

<sup>32</sup> OCA Petition at 8-9. The Letter is appended to the OCA Petition as Exhibit A.

<sup>33</sup> Contrary to OCA’s claim that the Letter offers “the Commission’s legal reasoning” (OCA Petition at 9), the Letter repeatedly makes clear that it is offering the views of the Chairman himself, and not of the Commission as a body. Letter, Exhibit A at 1 (“I am writing today . . .”), 1-2 (“As I have discussed, I do not envision . . .”), 2 (“Additionally, I am cognizant . . .” and “Finally, in my view, the opinion . . .”) (emphasis added).

promulgated by the Commission.<sup>34</sup> It also not a “policy statement,” which itself is not binding under Pennsylvania law.<sup>35</sup> Thus, the Letter does not have the force and effect of law and does not create any dispute regarding the law, which is the entire premise of the OCA Petition.<sup>36</sup>

Given that there is no dispute as to the First Question, an answer is not required to “prevent substantial prejudice or expedite the conduct of the proceeding.”<sup>37</sup> Likewise, an answer is not required for the Second Question because it is premised upon an affirmative answer to the First Question, which does not involve a dispute that must be resolved.<sup>38</sup> OCA then doubles-down on this improper request by attempting to extract an additional advisory ruling about undefined “costs and benefits” evidence that is not the subject of any live dispute. Either OCA is seeking improper advisory opinions, or it is attempting to obtain permission to relitigate PJM’s regional planning determination under the guise of considering “costs and benefits.” In neither case does OCA satisfy the standard for interlocutory review.

For these reasons, the Commission should deny the OCA Petition and decline to answer either of the questions presented.

**B. IF THE COMMISSION ANSWERS THE FIRST QUESTION, THE ONLY LAWFUL ANSWER IS IN THE AFFIRMATIVE**

If the Commission answers the Petition, then the only lawful answer to the First Question, as conceded by the OCA, is that the Commission is preempted from modifying or denying the Pennsylvania portions of the MARL Project on the basis of insufficient need because PJM

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<sup>34</sup> 66 Pa. C.S. § 501 (Commission has authority to carry out the purposes of the Code “by its regulations, orders, or otherwise”); 45 P.S. §§ 1102, *et seq.*; *Corman v. Acting Secy. of the Pa. Dep’t of Health*, 266 A.3d 452, 462 (Pa. 2021) (an agency may “formulate policy that has the force of law in one of two ways: by promulgating substantive rules, or via binding, precedential adjudications.”).

<sup>35</sup> *Department of Environmental Resources v. Rushton Mining Company*, 591 A.2d 1168, 1173 (Pa. Cmwlth. 1991).

<sup>36</sup> See OCA Petition at 9-10 (claiming the Letter creates uncertainty as to the Commission’s legal interpretation of the legal impacts of *Transource*).

<sup>37</sup> 52 Pa. Code § 5.302(a).

determined there is a reliability-based need for the MARL Project and directed NEET MA to complete the MARL Project to address that need.

*Transource* is the law of the land.<sup>39</sup> It is binding upon the Commission and the parties to this proceeding.<sup>40</sup> NEET MA does not dispute this.<sup>41</sup> OCA does not dispute this.<sup>42</sup> A contrary determination by the Commission would create a dispute where none exists. It would also violate the boundaries set by the Code with respect to interstate commerce,<sup>43</sup> and violate a binding constitutional mandate that the Commission must respect, even when exercising its traditional siting authority.<sup>44</sup> Indeed, an answer to this question in the negative would have the same result that the Third Circuit stated “clearly violate[d]” the Supremacy Clause of the United States Constitution.<sup>45</sup> For these reasons, if the Commission answers the First Question, then the only lawful answer is *Yes*.

**C. IF THE COMMISSION ANSWERS THE SECOND QUESTION, THEN THE ONLY LAWFUL ANSWER IS IN THE NEGATIVE**

**1. The Commission Need Not Answer The Second Question Because The Only Lawful Answer To The First Question Is In The Affirmative**

If the Commission answers the First Question in the affirmative, it need not answer and should decline to answer the Second Question.<sup>46</sup> Despite admitting that *Transource* is the law of the land, and summarizing PJM’s regional transmission planning process which led to the approval

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<sup>39</sup> OCA Petition at 8.

<sup>40</sup> U.S. Const., art. VI, cl. 2.

<sup>41</sup> Siting Application at 9.

<sup>42</sup> OCA Petition at 8.

<sup>43</sup> 66 Pa.C.S. § 104 (“the provisions of the Code “shall not apply, or be construed to apply, to commerce...among the several states, except insofar as the same may be permitted under the provisions of the Constitution of the United States and the acts of Congress.”).

<sup>44</sup> *Transource*, 156 F.4th at 382.

<sup>45</sup> *Transource*, 156 F.4th at 357. Because of that clear violation, the Third Circuit did not address the dormant Commerce Clause claim. *Id.* Pursuant to *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1964), NEET MA continues to reserve its rights 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 the issues stated in Siting Application ¶ 13, n.9 and issues related to the OCA Petition.

<sup>46</sup> 52 Pa. Code § 5.303(a)(3).

of, *inter alia*, the MARL Project,<sup>47</sup> OCA ignores the fact that, as a part of this process, PJM considered the costs and benefits of the MARL Project in its RTEP.

Indeed, NEET MA witness Dr. Sami Abdulsalam described the criteria that PJM studied to determine whether proposed enhancements or expansions to the transmission system would be the more efficient or cost-effective solution to address the 2022 Window 3 reliability violations.<sup>48</sup> Specifically, Dr. Abdulsalam explained that PJM considered project performance, scalability, impact, cost, risks, and efficiencies as a part of its evaluation of the solutions proposed in response to the 2022 Window competitive solicitation.<sup>49</sup> He then explains how PJM determined that the MARL Project was a part of the “Revised Western Cluster Solution,” which was determined to be a cost-effective and efficient solution to address regional reliability needs.<sup>50</sup> It is clear that, as a part of its regional transmission planning analysis, PJM considered the “costs and benefits” of the MARL Project to determine the Project was needed to address regional reliability issues.

OCA is clearly aware of this process.<sup>51</sup> Nevertheless, the Petition advances the Second Question, in a blatant backdoor attempt to challenge PJM’s determination of need.<sup>52</sup> Clearly, rather than “prevent[ing] substantial prejudice or expedit[ing] the conduct of the proceeding,” answering the Second Question as proposed by OCA would have the opposite result. It would authorize OCA and others to proceed with an improper litigation strategy to challenge issues of

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<sup>47</sup> See OCA Petition at 6-8.

<sup>48</sup> See generally NEET MA Statement No. 3.

<sup>49</sup> NEET MA Statement No. 3, at p. 57 (emphasis added).

<sup>50</sup> NEET MA Statement No. 3, at pp. 8-9 (“The PJM Board approved the Revised Western Cluster Solution on August 7, 2024 . . .”) (“The portion of the Revised Western Cluster Solution that is designated to NEET MA is referred to herein as the [MARL Project].”) (PJM determined that the Initial Western Cluster Solution (including the MARL Project) was needed by June 1, 2027 . . .”), 71 (“PJM selected the PJM Combination – 500 kV Scenario, which includes the Initial Western Cluster Solution (including the MARL Project), as more efficient and cost-effective to address those identified reliability needs . . .”); see also Exhibit SA-6 (Reliability Analysis Report, 2022 Window 3 (December 8, 2023)), Exhibit SA-8 (Constructability & Financial Analysis Report, 2022 Window 3 (November 17, 2023), and Exhibit SA-9 (TEAC Materials, Reliability Analysis Update, 2022 Window 3 Upgrades – Scope Changes / Cancellations Baseline Reliability Projects (July 9, 2024)).

<sup>51</sup> OCA Petition at 6-8, 9-10.

<sup>52</sup> See Section IV.C., *infra*.

need for the MARL Project that are within PJM’s purview. Such a result will prejudice NEET MA, protract the conduct of this proceeding, and result in a determination that violates the same principles at issue in *Transource*. Therefore, the Commission need not and should not answer the Second Question as proposed by the OCA Petition.

**2. If The Commission Answers The Second Question, It Can Only Lawfully Answer It In The Negative**

While the Commission should decline to answer OCA’s Second Question, if it does answer the Second Question, it should make clear that no party may use “costs and benefits” evidence to relitigate PJM’s regional planning determination, PJM’s selection of the MARL Project, Federal Energy Regulatory Commission (“FERC”)-jurisdictional transmission rates, or regional cost allocation. OCA has already admitted that there is a reliability-based need for the MARL Project that was determined by PJM through its regional transmission planning process.<sup>53</sup> Under the reasoning of *Transource*, the Commission is preempted from second-guessing that determination.<sup>54</sup> Yet, through the Second Question, OCA permission to advocate for the very action that it has admitted the Commission is preempted from taking: second-guessing the need for the MARL Project and the electric transmission service to be provided by NEET MA based upon a different analysis of costs and benefits than the one performed by PJM.

While the OCA attempts to couch its arguments in the Commission’s authority to determine whether the service to be provided by a proposed utility is “necessary or proper for the service, accommodation, convenience, or safety of the public,”<sup>55</sup> its Petition concedes that it is seeking to use this authority as a backdoor means to attack PJM’s determination of need.<sup>56</sup> Indeed,

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<sup>53</sup> OCA Petition at 7-9.

<sup>54</sup> OCA Petition at 8; *Transource*, 156 F.4th at 379.

<sup>55</sup> See OCA Petition at 13-15.

<sup>56</sup> OCA attempts to rely upon NEET MA’s statement in the CPC Application 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).” OCA Petition at 14 (quoting CPC Application

OCA cites concerns regarding project cost, and that the “primary function of [the MARL Project] 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.”<sup>57</sup> By attempting to argue about the “primary function” of the proposed HV line and proposed electric transmission service, *i.e.*, the need for the line and the service, OCA is clearly asking the Commission to second-guess (or at least provide OCA with an avenue to argue the Commission should second-guess) PJM’s determination of need.

Furthermore, OCA reads language into the Commission’s siting regulations to attempt to assert those regulations are broad enough for it to conduct its backdoor challenge of need. They are not. Section 57.76(a) sets forth the four findings and determinations the Commission must make to authorize the siting and construction of a proposed HV line.<sup>58</sup> This is not a “floor” of determinations, as OCA asserts. These criteria are the only required determinations the Commission must make to approve the siting and construction of a proposed HV line.<sup>59</sup>

In addition, while 52 Pa. Code §§ 57.72(c)(15) and 57.75(e) may contemplate additional information and evidence beyond that specifically enumerated, such evidence must still be relevant to the Commission’s material determinations at 52 Pa. Code § 57.76(a).<sup>60</sup> OCA’s claim that it should be permitted to take discovery and/or present information on the costs and benefits of the MARL Project simply begs the question of what material purpose this information would serve if

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¶ 9, n.6). However, OCA ignores the remainder of the applicable footnote, and ignores that PJM found the MARL Project is needed, *i.e.*, necessary, and that NEET MA is obligated to complete the MARL Project in order to provide electric transmission service.

<sup>57</sup> OCA Petition at 14-15 (emphasis added).

<sup>58</sup> 52 Pa. Code § 57.76(a)(1)-(4).

<sup>59</sup> *Schappel v. Motorists Mutual Insurance Company*, 934 A.2d 1184, 1187 (Pa. 2007) (explaining that in interpreting an administrative regulation, as in interpreting a statute, the plain language of the regulation is paramount); *Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Benny Enterprises, Inc.*, 669 A.2d 1018, 1021 (Pa. Cmwlth. 1996), *appeal denied*, 681 A.2d 1344 (Pa. 1996) (explaining that the principles of statutory construction apply to regulatory provisions as well as statutory provisions).

<sup>60</sup> 52 Pa. Code § 5.321(b) (“a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . .”); 52 Pa. Code § 5.401(a) (“Relevant and material evidence is admissible subject to objections on other grounds.”).

not to address the need for the MARL Project. Indeed, if information is offered to show that the MARL Project is too costly, insufficiently beneficial, unnecessary, not justified by regional load growth, or not properly selected by PJM, then such information would go directly to the federally preempted issue of regional need. If such information is not for this purpose, then it would have no material purpose for which it is offered. OCA's attempt to maneuver around *Transource* should be rejected.

OCA's final two attempts to avoid the preemption principles clearly stated in *Transource* also fail. First, OCA alleges that it is concerned about the estimated cost of the MARL Project,<sup>61</sup> and the allocation of electric transmission costs for the MARL Project.<sup>62</sup> However, the Commission's determinations in both the CPC Application and the Siting Application do not include, and cannot include: (1) a determination regarding the reasonableness and recoverability of the costs of the Project in electric transmission rates subject to the exclusive jurisdiction of FERC; or (2) a determination regarding the appropriateness of the allocation of transmission costs subject to the exclusive jurisdiction of FERC.<sup>63</sup> Thus, these concerns are not relevant or material to the determinations that must be made in this proceeding and are far afield of the Commission's jurisdiction related to the siting and construction of HV transmission lines and the provision of electric transmission service.

Second, OCA states that it is focused, not upon the proposed HV line, but upon "the siting and construction of large, AI data centers."<sup>64</sup> However, when the Commission reviews a proposed HV line under 52 Pa. Code Ch. 57, Subch. G, its determinations are only with respect to the

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<sup>61</sup> OCA Petition at 14.

<sup>62</sup> OCA Petition at 16.

<sup>63</sup> *Transource*, 156 F.4th at 376.

<sup>64</sup> OCA Petition at 16.

proposed HV line.<sup>65</sup> The Commission makes no determination related to the “siting and construction” of an interconnecting customer based upon a customer’s end use. So, even if OCA is correct that its concerns do not go to the “need” determination that it concedes the Commission is preempted from second-guessing, those concerns go to a matter clearly outside the scope of this proceeding and outside the scope of the Commission’s jurisdiction.

In summary, the premise of the Second Question precludes any answer other than an answer in the negative. The Commission is preempted from second-guessing PJM’s determination that there is a need for the MARL Project, which obligates NEET MA to complete the Project in order to provide electric transmission service. As the Commission cannot second-guess PJM’s determination, it similarly should not and cannot permit OCA’s attempt to construct a backdoor challenge of PJM’s determination. Therefore, if the Commission answers the Second Question presented in the OCA Petition, the only lawful answer it can supply is *No*.

#### **D. NO STAY IS WARRANTED**

A stay is not necessary or appropriate.<sup>66</sup> Rather, the Petition itself confirms why no stay is warranted. OCA admits the First Question is undisputed. The Second Question is premised on the first, and premature and abstract. The ALJs retain authority to regulate discovery and evidence in the ordinary course. There is no ruling to stay, no prejudice to prevent, and no efficiency to be gained. A stay would only reward OCA’s attempt to sidetrack the proceeding before the record has developed. The Commission should deny any stay request and return the matter to the ALJs.

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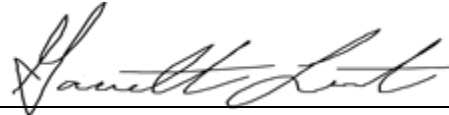
<sup>65</sup> See 52 Pa. Code §§ 57.71 (“...the application of a public utility for authorization to locate and construct a HV transmission line”), 57.75(e) (describing the evidence that may be received related to the “proposed HV line”), and 57.76(a) (setting forth the Commission’s findings and determinations regarding a “proposed HV line”).

<sup>66</sup> 52 Pa. Code § 5.302(b).

**V. CONCLUSION**

For the reasons set forth herein, NEET MA respectfully requests that the Commission deny OCA’s Petition. The Commission should decline to answer both proposed questions under 52 Pa. Code § 5.303(a)(3), and return this matter to the ALJs for orderly development of the record. In the alternative, if the Commission elects to answer either question, it should answer narrowly: *Transource* precludes the Commission from modifying or denying the MARL Project based on a state-law disagreement with PJM’s determination that the Project is needed, and no party may use “costs and benefits” evidence to relitigate PJM’s regional planning determination, PJM’s selection of the MARL Project, FERC-jurisdictional transmission rates, or regional cost allocation.

Respectfully submitted,



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