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May 14, 2026

**BY ELECTRONIC FILING**

**Matthew L. Homsher, Secretary**  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
400 North Street  
Harrisburg, Pennsylvania 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**

**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 and Fayette Counties, Pennsylvania; (2) for certain Affiliated Interest Agreements; and (3) for any other approvals necessary to complete the contemplated transactions**

**Docket Nos. A-2026-3060921, G-2026-3060941, G-2026-3060942**

Dear Secretary Homsher,

Please find enclosed for filing in the above-captioned cases the Center for Coalfield Justice's Answer and Brief in Response to the Office of Consumer Advocate's Petition for Interlocutory Review and Answer to Material Questions. Please don't hesitate to contact me with any questions about this filing.

Thank you,

**Evan Dimond Johns**

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**BEFORE THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

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**Docket Nos. A-2026-3060921  
G-2026-3060941  
G-2026-3060942**

**CENTER FOR COALFIELD JUSTICE’S ANSWER & BRIEF IN RESPONSE  
TO OFFICE OF CONSUMER ADVOCATE’S PETITION FOR  
INTERLOCUTORY REVIEW & ANSWER TO MATERIAL QUESTIONS**

In accordance with Rules 5.61 and 5.302(b) of the Commission’s Rules of Administrative Practice and Procedure, the Center for Coalfield Justice (CCJ) submits this response to the Office of Consumer Advocate’s (OCA) May 4, 2026 Petition for Interlocutory Review and Answer to Material Questions (the Petition).<sup>1</sup> As detailed below, CCJ supports the Petition. A threshold determination of the OCA’s questions will spare the Commission and parties from an unenviable dilemma: invest significant time and expense in technical analyses that will ultimately prove

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<sup>1</sup> In a May 11, 2026 brief opposing the Petition, NextEra Energy Transmission MidAtlantic Inc. (NextEra) notes that the Petition was originally filed on May 1, 2026, and then re-filed on May 4, 2026, with an exhibit inadvertently omitted from the original filing. CCJ was unable to access the original, uncorrected Petition on the Commission’s web docket, and thus did not receive notice of the Petition until the corrected filing was docketed on May 4, 2026.

irrelevant under prevailing law, or ignore an important issue of state sovereignty that is likely dispositive of NextEra’s requests. The Commission’s material-question rules exist precisely to cut through that kind of Gordian knot.

CCJ cannot, however, endorse the OCA’s answer to the primary question as framed in its Petition. While we agree that the Third Circuit’s *Transource* ruling obviates any need analysis within the framework of the Subchapter G siting regulations,<sup>2</sup> the Court explicitly disclaimed any preemption of Pennsylvania’s “robust process” for “empower[ing] private part[ies] to wield the sovereign power of eminent domain.”<sup>3</sup> As described in *Transource*, that process begins with the Commission’s statutory duty to evaluate public need before issuing a certificate under Section 1103 of the Public Utility Code.<sup>4</sup> For all of its faults, the panel opinion recognizes that the constitutional implications that Section 1103 analysis place it above the fray of statutory preemption.

*Transource* also resolves the OCA’s secondary question, as it expressly preserves the Commission’s authority to “grant or deny a siting application for reasons other than a disagreement with PJM’s FERC-approved basis for selecting the project.”<sup>5</sup> It even goes so far as to identify “public safety and environmental concerns” as among the reasons that the Commission “may, consistent with [*Transource*], grant or deny a siting application.”<sup>6</sup> It is

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2 See generally *Transource Pennsylvania v. DeFrank*, 156 F.4th 351 (3d Cir. 2025).

3 *Id.* at 382.

4 66 Pa. C.S. § 1103(a).

5 156 F.4th at 379 (cleaned up).

6 *Id.*

difficult to square NextEra’s answer to the contrary with its refrain that *Transource* is, indeed, “the law of the land.”<sup>7</sup>

**1. The unique circumstances of this case militate in favor of interlocutory review.**

NextEra correctly points out that interlocutory review requires “compelling reasons,”<sup>8</sup> and not every new ruling that touches on the Commission’s authority is so extraordinary as to warrant preliminary review. But *Transource* is an extraordinary case.

While reception has been sharply divided, commentators on both sides recognize that *Transource* was “no ordinary pedestrian dispute.”<sup>9</sup> To its detractors—including former state utility commissioner and FERC Chairman Mark Christie—it is an “outrageous” decision “of monumental proportions,”<sup>10</sup> which “fundamentally conflict[s] with a near century’s worth of Supreme Court precedent affecting the most important invention and largest machine in the U.S.”<sup>11</sup> A more reportorial account by another former FERC commissioner emphasizes the decision’s certiorari-worthy “implications for federalism and energy infrastructure

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7 NextEra Response at 9.

8 *Id.* at 3.

9 Steven Ferrey, *Constitutional Cutting Edge: Where Federal Planning Implied Preempts State Power*, 27 VERMONT JOURNAL OF ENVIRONMENTAL LAW 112, 153 (2025), available at <https://bit.ly/4woAMyV>.

10 *PJM Interconnection*, 191 FERC ¶ 61,056 (April 17, 2025) (Christie, concurring).

11 Steven Ferrey, *Going ‘Rouge’: Supreme Court ‘Major Questions Doctrine’ Preempting Presidential Power Over Power*, 18 KENTUCKY JOURNAL OF EQUINE, AGRICULTURE & NATURAL RESOURCES LAW 1, 56 (2026), available at <https://bit.ly/3R7Yhfk>.

development.”<sup>12</sup> Even *Transource*’s defenders describe the case as “pivotal,” a “critical precedent” with “far-reaching implications beyond the fate of a single transmission project.”<sup>13</sup>

Some uncertainty around *Transource*’s precise scope and effects is unavoidable given its undisputed place at the “constitutional cutting edge.”<sup>14</sup> While CCJ believes that both questions posed in the OCA’s Petition are answered by *Transource* itself, the decision still represents a “significant shift in analysis,” as applied to similar, but nonetheless distinct, facts.<sup>15</sup> And as the OCA points out, the Commission’s grounds for forgoing a request for certiorari or en banc rehearing reflect a “reasoning or theory of [the] case [that] is ‘clearly irreconcilable’ with the reasoning or theory of [the] intervening higher authority.”<sup>16</sup> Both of those factors mark this case as an ideal candidate for interlocutory review.<sup>17</sup>

The Commission can also rest assured that the OCA’s Petition is not an invitation to “borrow trouble as to questions which may remain dormant.”<sup>18</sup> NextEra’s Response makes clear its intent to resist any attempt by “the OCA and parties to take discovery and present evidence”

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12 See Willie L. Phillips Jr. *et al.*, *Third Circuit Upholds FERC Jurisdiction Over Regional Transmission Planning in PJM Dispute*, HOLLAND & KNIGHT (September 12, 2025), available at <https://bit.ly/3PERucA>

13 Michelle Embury *et al.*, *Transource Pennsylvania v. DeFrank: The New Frontier of Transmission Line Challenges*, NISKANEN CENTER (January 16, 2025), available at <https://bit.ly/491Ko8F>.

14 See generally Ferrey, *supra* note 9.

15 *Sessa v. Ancestry.com Operations*, 713 F. Supp. 3d 997, 1002 (D. Nev. 2024) (quoting *Castellar v. Mayorkas*, No. 17-CV-00491-BAS-AHG, 2021 WL 3856488, at \*4 (S.D. Cal. August 30, 2021)) (internal alterations omitted).

16 *Id.*

17 *Id.*; see also *Grimm v. Gloucester County School Board*, 302 F. Supp. 3d 730, 741 (E.D. Va. 2018) (“[A] court may review an interlocutory order under the same circumstances in which it may depart from the law of the case.”).

18 *Fanchon & Marco v. Paramount Pictures*, 202 F.2d 731, 735 (2d Cir. 1953).

on matters that fall within its expansive reading of *Transource*.<sup>19</sup> Declining to define the parameters of the case at the outset will merely set the parties on a collision course. Perhaps withholding guidance will, as the OCA fears, deter parties from investing the time and resources necessary to investigate, interpret, and advise the Commission on the matters NextEra seeks to preclude.<sup>20</sup> But that is not a legitimate reason to deny the Petition: the Public Utility Code and the Commission’s rules reflects a commitment to “full and true disclosure of the facts” relevant to matters brought before the Commission.<sup>21</sup> If those facts include certain costs and benefits that fall outside of *Transource*’s preemptive reach, then answering the Petition will remove substantial barriers to the development of a complete and useful evidentiary record. If, however, the Commission agrees with NextEra that this case is a virtual *fait accompli*, then the OCA’s Petition presents an opportunity to avoid significant waste and protracted litigation.

**2. Although *Transource* plainly applies to this case, it does not and cannot preclude the Commission’s evaluation of public need under Section 1103.**

CCJ agrees with the OCA and NextEra that *Transource* is, for better or worse, “the law of the land.”<sup>22</sup> And like those parties, CCJ believes MARL’s designation as a reliability-based, rather than market efficiency-based, project is not a material distinction.<sup>23</sup> But in answering the Petition’s primary question in the affirmative, both the OCA and NextEra have overlooked an

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19 NextEra Response at 4.

20 Petition at 11–12.

21 66 Pa. C.S. § 332(c).

22 Petition at 8; NextEra Response at 9.

23 Petition at 9–10; NextEra Response at 9.

important carve-out from *Transource*'s preemptive effect, which preserves a long-standing limitation on the exercise of eminent domain.

The Court of Appeals expressly disclaimed any preemption of Pennsylvania's "robust process" for delegating eminent domain authority to public utilities, and further cautioned against reading its opinion "to suggest that the PUC is required to rubber-stamp [that delegation] to a project that PJM has approved."<sup>24</sup> As described in *Transource*, that "robust process" starts with certification under Section 1101: "holding a certificate of public convenience is a prerequisite to exercising eminent domain authority."<sup>25</sup> Nothing in the opinion purports to diminish the Commission's role in that first and integral step; to the contrary, *Transource* affirms that a necessary trigger for the delegation of eminent domain authority is a finding by the Commission that "such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public."<sup>26</sup>

As the Commonwealth and OCA have pointed out,<sup>27</sup> there is apparent tension between, on the one hand, *Transource*'s prohibition on second-guessing PJM need determinations and, on the other, its assurance that the Commission is not resigned to rubber-stamping requests for delegation of eminent domain authority. After all, the statute that allows such delegation is

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24 156 F.4th at 382.

25 *Id.* at 381.

26 *Id.* (quoting 66 Pa. C.S. § 1103(a)).

27 *See Sunday v. Transource Pennsylvania*, No. 25-1095, Petition for Writ of Certiorari, at 26–27 (March 16, 2026), available at <https://bit.ly/4dsGsz3>.

satisfied upon a showing of public need for the proposed service.<sup>28</sup> But the emphasis on Section 1101's role in the *eminent domain* process resolves that tension, as the “public need” relevant to the delegation of eminent domain power is entirely separate from the system-wide, regional needs served by the RTEP process. As a matter of constitutional law, in fact, it *must* be.

The Supreme Court of Pennsylvania has held in no uncertain terms:

The state may take the property of a citizen for public use by virtue of its right of eminent domain, but it cannot take it for the benefit of another sovereignty, for the use of the citizens of the latter, nor can it delegate its right of eminent domain to another sovereignty for such purpose.<sup>29</sup>

This is because the

foundation of the right of eminent domain is necessity. The reason utterly fails when one sovereignty proceeds to take land for the use of another sovereignty. . . . The proper view of the right of eminent domain seems to be, that it is a right belonging to a sovereignty to take private property for its own public uses, and not for those of another. Beyond this there exists no necessity which alone is the foundation of the right.<sup>30</sup>

While our Supreme Court has not recently had occasion to reaffirm that holding, the principle is consistently followed in more contemporary decisions from other state high courts.<sup>31</sup> Most recently, the West Virginia Supreme Court cited those authorities in addressing the survey

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28 See 66 Pa. C.S. § 1103(a) (allowing certificate to issue upon, among other things, a “determin[ation] that the granting of such certificate is necessary . . . for the service . . . of the public”)

29 *Darlington v. United States*, 82 Pa. 382, 387 (1876).

30 *Id.* (quoting *Kohl v. United States*, 91 U.S. 367 (1875)).

31 See, e.g., *Mountain Valley Pipeline v. McCurdy*, 793 S.E.2d 850, 862 (W. Va. 2016); *Adams v. Greenwich Water*, 83 A.2d 177, 182 (Conn. 1951); *Square Butte Electric Cooperative v. Hilken*, 244 N.W.2d 519, 525 (N.D. 1976).

rights of another interstate energy project that, like MARL, was designed primarily to facilitate the movement of in-state supply to out-of-state demand:

The sovereign's power of eminent domain, whether exercised by it or delegated to another, is limited to the sphere of its control and within the jurisdiction of the sovereign. A state's power exists only within its territorial limits for the use and benefit of the people within the state. Thus, property in one state cannot be condemned for the sole purpose of serving a public use in another state.<sup>32</sup>

While this rule acknowledges that some projects provide benefits both within and beyond a state's borders,<sup>33</sup> "the public in the state which authorizes the taking must derive a substantial and direct benefit, something greater than an indirect advantage."<sup>34</sup>

Our Supreme Court has repeatedly emphasized the need to read statutory delegations of eminent domain authority narrowly and in light of the inherent limitations on that power.<sup>35</sup> Thus, while the Commission may consider various forms of need in other contexts,<sup>36</sup> it must consider *Pennsylvania's* needs where, as here, it is asked to delegate *Pennsylvania's* eminent domain authority. *Transource* itself acknowledges that the Commission, not PJM or FERC, remains the

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32 *Mountain Valley*, 793 S.E.2d at 862 (quoting *Clark v. Gulf Power*, 198 So.2d 368, 371 (Fla. Dist. Ct. App. 1967)).

33 *Cf., e.g., Stone v. Public Utility Commission*, 162 A.2d 18, 21 (Pa. Super. 1960) (affirming Commission's finding of public necessity for a project that provided reciprocal benefits to customers in both Pennsylvania and Maryland).

34 *Mountain Valley*, 793 S.E.2d at 862 (quoting *Square Butte*, 244 N.W.2d at 525); *Cf. Dunk v. Public Utility Commission*, 232 A.2d 231, 189–90 (Pa. Super. 1967) (holding that utility project was for public use despite the "purely incidental" benefits "that may accrue to other utilities").

35 *See Hughes v. UGI Storage*, 263 A.3d 1144, 1156 (Pa. 2021) ("Since the Legislature cannot generally abridge the constitutional rights of citizens . . . we construe [eminent domain] statutes in a manner which is most consistent with constitutional norms.").

36 *See, e.g., Transource*, 156 F.4th at 379.

arbiter of that delegation, and that its role in that respect amounts to more than “rubber-stamp[ing] an eminent-domain application related to a project that PJM has approved.”<sup>37</sup> In fact, if NextEra’s expansive reading of *Transource* were correct,<sup>38</sup> the need of the sovereign would effectively be the *only* inquiry in a Section 1103 proceeding.

To be sure, *Transource* recognizes that a certificate of public convenience does not consummate the full and final delegation of condemnation power.<sup>39</sup> Section 1511(c) of the Business Corporations Law<sup>40</sup> outlines a process for Commission approval of specific condemnations, and the Commission has held that this process is mandatory even if the utility already holds a certificate of public convenience.<sup>41</sup> But both the Section 1511(c) process and the subsequent court of common pleas proceedings are focused on the right to condemn specific property for a specific purpose—not on whether a utility is even eligible to wield eminent domain authority in the first place given the nature of its service. In fact, the Commission’s ability to consider that question in a subsequent Section 1511(c) proceeding is doubtful given the statutory

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37 *Id.* at 382.

38 *See infra* note 52 and accompanying text.

39 156 F.4th at 381 (“Even after the PUC authorizes a utility exercise the power of eminent domain, a condemnation is far from final.”); *cf. also Southeastern Pennsylvania Transportation Authority v. Public Utility Commission*, 991 A.2d 1021, 1023–24 (Pa. Cmwlth. 2010) (“The legislature and our Supreme Court have made it very clear that a challenge to the authority of the utility to *condemn property* is properly raised in proceedings before common pleas, not the PUC.”) (emphasis added).

40 15 Pa. C.S. § 1511(c).

41 *See, e.g., Application of New York State Electric & Gas Corporation for Approval of Abandonment of Electric Services*, Docket No. A-93538 (Order entered January 17, 1991).

proviso that “the power of the public utility corporation to condemn the subject property . . . shall not be an issue in the commission proceedings held [there]under.”<sup>42</sup>

Nor is the delegation question appropriate for subsequent judicial proceedings. *Transource* rightly identifies preliminary objections in the court of common pleas as “‘the exclusive method of challenging’ [a] condemnation,”<sup>43</sup> but the Commission’s role in delegating eminent domain authority does not infringe on that exclusivity. The courts of common pleas consider the propriety of condemning specific property; the initial delegation of eminent domain authority at the certificate stage entails a broader inquiry into “the nature of the service and . . . the territory in which it may be offered, rendered, furnished or supplied.”<sup>44</sup> The Commission is far better equipped to perform that sort of analysis, as it has in past certificate proceedings,<sup>45</sup> in a single certificate proceeding rather than a series of piecemeal common pleas cases.

Remember, too, that subsequent administrative and judicial proceedings are necessary only to *condemn* property. Other forms of eminent domain authority follow directly and automatically from the issuance of a certificate of public convenience. As NextEra notes in its

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42 15 Pa. C.S. § 1511(c).

43 156 F.4th at 382 (citing 26 Pa. C.S. § 306(a)(3)).

44 66 Pa. C.S. § 1101.

45 For example in *New York State Electric & Gas*, supra note 41, the Commission acknowledged that an electric distribution company that served only New York residents did not require a certificate of public convenience—even though it operated a FERC-regulated transmission line running through Pennsylvania and fed by a Pennsylvania power plant. The Commission found it “[c]lear[ ]” that the company was “not a public utility in Pennsylvania in that it does not provide electric service ‘for the public for compensation.’” Given that the company *did* serve retail customers in New York, the relevant “public” can only be understood as the *Pennsylvania* public.

Siting Application,<sup>46</sup> a certificate immediately imbues an entity with authority to enter and survey property under Section 309 of the Pennsylvania Eminent Domain Code,<sup>47</sup> following notice to a non-consenting landowner. That is, to be sure, a form of eminent domain.<sup>48</sup> And sovereignty-based limits apply not just to condemnation but to lesser forms of eminent domain as well: “whenever the power of eminent domain is exercised, whether by private corporations with authorization of the Legislature or by governmental entities, this power may be exercised only for a public use.”<sup>49</sup>

In sum, an application for a certificate of public convenience is the proper vehicle for evaluating whether a proposed service promises sufficient benefits to Pennsylvania as to justify the awesome power of dispossession. The Commission has previously acknowledged the Pennsylvania-specific focus of certificate proceedings. And rightly so, as they remain the primary trigger for eminent domain authority, and neither the General Assembly nor the Commission may delegate that sovereign power without a demonstration that its exercise is consistent with the needs of their constituents. Nothing in *Transource* purports to preempt that inquiry. To the contrary, the panel’s endorsement of a continued role for the Commission as gatekeeper of

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46 Siting Application ¶ 71.

47 26 Pa. C.S. § 309(a).

48 See, e.g., *Property Reserve Inc. v. San Joaquin County Superior Court*, 375 P.3d 887, 916 n.20 (Cal. 2016); *State ex rel. Rhodes v. Crouch*, 621 S.W.2d 47, 48 (Mo. 1981) (“[P]re-condemnation surveying is not only necessary to the exercise of the right of eminent domain, it is a part of eminent domain.”); see also, e.g., *State v. Crosby*, 410 P.2d 724, 728 (Alaska 1966) (recognizing that eminent domain encompasses forms of appropriation for public use short of full condemnation).

49 *Vernocy v. T. W. Phillips Gas & Oil*, 545 A.2d 969, 970 (Pa. Cmwlth. 1988).

eminent domain delegations makes sense only if Section 1103’s sovereign-need analysis remains intact.

**3. *Transource* explicitly preserves the Commission’s authority to consider—and even deny a proposal based on—costs and benefits of a PJM-approved project without “second-guessing” the basis for its approval.**

Just as it preserves the Commission’s role in evaluating need before delegating eminent domain authority, *Transource* is also explicit in upholding the Commission’s authority to consider “public safety and environmental concerns” in a siting proceeding.<sup>50</sup> The ruling even acknowledges the Commission’s authority to *deny* a siting application on those grounds—or any others save mere “disagreement with PJM’s FERC-approved basis for selecting the projects.”<sup>51</sup>

*Transource*’s express affirmation of Commission siting authority is wholly at odds with NextEra’s claim that “no party may use ‘costs and benefits’ evidence” in this proceeding.<sup>52</sup> Just because PJM’s need analysis is couched in terms of “costs and benefits” does not mean that any attempt to quantify MARL’s positive and negative impacts is improper. Environmental analyses are often expressed in terms of costs and benefits.<sup>53</sup> Regulating public safety may entail an evaluation of resource costs for incremental risk reductions.<sup>54</sup> In neither of those domains is the Commission bound by some “mathematical straitjacket.”<sup>55</sup> But proportionality is inherent to all

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50 156 F.4th at 379.

51 *Id.*

52 NextEra Response at 11.

53 *See generally, e.g., Michigan v. Environmental Protection Agency*, 576 U.S. 743 (2015).

54 *See generally, e.g., Industrial Union Department AFL-CIO v. American Petroleum Institute*, 448 U.S. 607 (1980).

55 *Id.* at 655.

reasoned regulation. NextEra’s proposal for a blanket prohibition on considering costs and benefits would eviscerate what remains of the Commission’s regulatory authority.

Moreover, as discussed above, the Commission’s statutory charge to consider public necessity before delegating the Commonwealth’s eminent domain authority requires that it consider the specific subset of project benefits that inure to the benefit of Pennsylvanians. Although that sovereign-specific analysis goes more towards NextEra’s certification as a public utility than approval of the MARL Project itself, the OCA’s Petition seeks guidance on “evidence of the costs and benefits of the MARL Project in rendering a determination to approve, reject, modify, or condition *the Applications*.”<sup>56</sup> Because the MARL Project is the sole basis of NextEra’s application for a certificate of public convenience,<sup>57</sup> the benefits of that Project to Pennsylvanians, if any, are relevant to the Commission’s resolution of that request.

## CONCLUSION

The Commission should grant the OCA’s Petition for Interlocutory Review and answer the material questions posed therein as follows:

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?

► NO

2. Notwithstanding an affirmative answer to the first Material Question, can the Commission consider evidence of the costs and

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<sup>56</sup> Petition at 5 (emphasis added).

<sup>57</sup> See Certificate Application ¶ 38.

benefits of the MARL Project in rendering a determination to approve, reject, modify, or condition the Applications?

► YES

Dated: May 14, 2026

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on May 14, 2026, I sent a true copy of the foregoing by electronic mail to:

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**The Honorable Erin L. Gannon**  
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