

May 14, 2026

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

Via Electronic Filing

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 Necessary Authority Approvals and Certificates of Public Convenience to furnish electric transmission service in Greene and Fayette Counties, Pennsylvania and for related approvals
Docket No. A-2026-3060921

Dear Secretary Homsher:

Enclosed for filing please find Proposed Intervenor Charity Grimm Krupa's Response in Both Opposition and in Support of the Office of Consumer Advocate's ("OCA") Petition for Interlocutory Review and in Support of Full Commission Review of Issues Concerning Public Need, Siting Authority, Costs, Benefits and Eminent Domain in the above-referenced proceedings.

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

Respectfully submitted,



Charity Grimm Krupa,
Individually and as
State Representative for the
51st House District

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Proposed Intervenor Charity Grimm Krupa's Response in Both Opposition and in Support of the Office of Consumer Advocate's ("OCA") Petition for Interlocutory Review and in Support of Full Commission Review of Issues Concerning Public Need, Siting Authority, Costs, Benefits and Eminent Domain upon all parties of record in this proceeding in accordance with the Pennsylvania Public Utility Commission's Rules of Practice and Procedure, 52 Pa. Code § 1.54.

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Respectfully submitted,

Date: 5/14/26

/s/ Charity Grimm Krupa
Charity Grimm Krupa,
Individually and as
State Representative for the
51st House District

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 :
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 Necessary Authority :
Approvals and Certificates of Public Convenience :
to furnish electric transmission service :
in Greene and Fayette Counties, Pennsylvania :
and for related approvals : Docket No. A-2026-3060921

RESPONSE OF PROPOSED INTERVENOR CHARITY GRIMM KRUPA IN BOTH OPPOSITION AND SUPPORT TO THE OFFICE OF CONSUMER ADVOCATE’S PETITION FOR INTERLOCUTORY REVIEW AND IN SUPPORT OF FULL COMMISSION REVIEW OF ISSUES CONCERNING PUBLIC NEED, SITING AUTHORITY, COSTS, BENEFITS, AND EMINENT DOMAIN

Proposed Intervenor Charity Grimm Krupa (“Proposed Intervenor” or “Krupa”), hereby submits this Response in Both Opposition and in Support of the Office of Consumer Advocate’s (“OCA”) Petition for Interlocutory Review and in Support of Full Commission Review of Issues Concerning Public Need, Siting Authority, Costs, Benefits and Eminent Domain and respectfully avers as follows:

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding arises from Applications filed by NextEra Energy Transmission MidAtlantic, Inc. (“NEET MA” or “Company”) seeking approval from the Pennsylvania Public Utility Commission (“Commission” or “PUC”) to construct, operate, and maintain the Pennsylvania portions of the proposed Mid-Atlantic Resiliency Link (“MARL”)

Project, a major interstate high-voltage electric transmission project traversing portions of the Commonwealth and implicating substantial impacts upon Pennsylvania landowners, ratepayers, environmental resources, local governments, and constitutionally protected private property rights.

The Applications seek Commission approval for the siting and construction of transmission infrastructure within Pennsylvania together with the attendant exercise of eminent domain authority necessary to acquire rights-of-way and property interests for the proposed facilities.

Following the filing of the Applications, the Commission instituted these proceedings and assigned the matters for evidentiary development pursuant to the Pennsylvania Public Utility Code and the Commission's regulations governing high-voltage transmission siting proceedings. Numerous parties and stakeholders (including the undersigned, individually and as State Representative for the 51st Legislative House District in the Commonwealth of Pennsylvania) thereafter entered appearances and sought intervention, including affected landowners, businesses, public interest organizations, and other participants whose economic interests, environmental concerns, constitutional protections, and property rights may be substantially affected by the proposed Project.

At issue in the instant Petition are fundamental disputes concerning the scope of Pennsylvania's sovereign siting authority, the Commission's obligation to independently evaluate "public need" under Pennsylvania law, and the extent to which federal transmission planning determinations allegedly preempt the Commission's statutory review obligations.

These disputes arise against the backdrop of ongoing federal litigation involving similar questions concerning Pennsylvania’s transmission siting authority. Specifically, in *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), the federal courts addressed whether portions of the Commission’s prior transmission siting analysis concerning the Transource project intruded upon federally regulated transmission planning authority. That litigation remains the subject of continued appellate proceedings. See Supreme Court Docket No. 25-1095, *Sunday v. Transource Pennsylvania, LLC*.

Importantly, however, the *Transource* litigation involved materially different project characteristics and regulatory circumstances than those presented here. As OCA itself acknowledges, the project at issue in *Transource* involved a market-efficiency based need transmission project selected by PJM to reduce regional congestion, whereas the MARL Project was selected by PJM to address an asserted reliability-based need. OCA further recognizes that former Chairman DeFrank publicly explained that the *Transource* decision did not necessarily resolve the treatment of other categories of transmission projects beyond market-efficiency projects.

Thus, even under OCA’s own framing, substantial unresolved questions remain regarding the applicability and scope of *Transource* in the context of reliability-based transmission projects such as MARL. At minimum, *Transource* does not conclusively eliminate Pennsylvania’s historic authority to independently evaluate public need, siting necessity, and public impacts under Pennsylvania law.

The Amici Curiae Brief filed by select members of the Pennsylvania General Assembly in the *Transource* appeal forcefully defended Pennsylvania’s historic and sovereign authority to independently determine whether proposed transmission facilities are “necessary or proper” for Pennsylvania citizens before Pennsylvania landowners may be subjected to eminent domain. Proposed Intervenor respectfully adopts and incorporates herein by reference the arguments, authorities, and constitutional analyses set forth in the Brief of Amici Curiae Select Members of the Pennsylvania General Assembly filed in *Transource Pennsylvania, LLC v. DeFrank*, No. 24-1045 (3d Cir.), including, but not limited to, the arguments concerning Pennsylvania’s historic transmission siting authority, the presumption against federal preemption, the Commonwealth’s sovereign eminent domain powers, and the continuing validity of Pennsylvania’s public need requirements under 66 Pa.C.S. § 1501 and 52 Pa. Code § 57.76(a).

Against this factual and procedural backdrop, OCA filed a Petition for Interlocutory Review presenting two “Material Questions” for Commission review:

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?

OCA’s Suggested Answer: YES

NEET MA’s Suggested Answer: YES

Proposed Intervenor’s Suggested Answer: NO

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?

OCA's Suggested Answer: YES

NEET MA's Suggested Answer: NO

Proposed Intervenor's Suggested Answer: YES

The Commission should reject any interpretation of *Transource* that would improperly transform Pennsylvania's historic siting authority into a ministerial ratification of PJM transmission planning determinations or foreclose the development of a complete evidentiary record concerning public need, routing, alternatives, environmental impacts, ratepayer burdens, costs, benefits, and eminent domain implications.

II. RESPONSE TO MATERIAL QUESTION NO. 1

The Commission Is Not Preempted From Independently Evaluating Public Need Under Pennsylvania Law

OCA's first material question asks whether, "Pursuant to *Transource*," the Commission is preempted from modifying or denying the Pennsylvania portions of the MARL Project on the basis of insufficient need because PJM has identified a reliability-based need and selected the MARL Project. The correct answer is no.

Pennsylvania law independently requires the Commission to determine whether proposed transmission facilities are “necessary or proper” for Pennsylvania citizens before siting approval may be granted. Section 1501 of the Public Utility Code provides that public utilities must furnish and maintain service and facilities that are “necessary or proper for the accommodation, convenience, and safety” of the public. 66 Pa.C.S. § 1501.

Likewise, Commission regulations governing high-voltage transmission facilities expressly require proof “[t]hat there is a need for it.” 52 Pa. Code § 57.76(a)(1). The regulations further direct the Commission to evaluate “the present and future necessity of the proposed line in furnishing service to the public.” 52 Pa. Code § 57.75(e)(1). These provisions necessarily contemplate an independent Commission determination regarding need and necessity.

Nothing in the Federal Power Act expressly eliminates Pennsylvania’s historic siting authority. Nothing in FERC Order No. 1000 expressly strips Pennsylvania of its authority to determine whether a project is necessary and proper for Pennsylvania citizens. To the contrary, FERC Order No. 1000 expressly states that regional transmission planning “in no way involves an exercise of authority over those specific substantive matters traditionally reserved to the states.” Thus, transmission siting authority plainly constitutes such a traditional sovereign state function.

As explained in the Brief of Amici Curiae Select Members of the Pennsylvania General Assembly filed in *Transource*: “For over a century, Congress has repeatedly refused to remove transmission siting authority from the States.” The amici further explained that “Pennsylvania law requires entities seeking to site and construct high voltage transmission lines within its borders to establish, by a preponderance of the

evidence, that there is a public ‘need’ for the project.” See Brief of Amici Curiae Select Members of the Pennsylvania General Assembly filed in *Transource Pennsylvania, LLC v. DeFrank*, No. 24-1045 (3d Cir.).

OCA’s proposed answer to Material Question No. 1 would effectively erase these longstanding statutory obligations and reduce the Commission’s review to a ministerial implementation of PJM determinations. That is not Pennsylvania law nor is it compelled by federal law.

Moreover, the district court decision in *Transource Pennsylvania, LLC v. DeFrank*, No. 1:21-CV-01101, 2023 WL 8457071 (M.D. Pa. Dec. 6, 2023), is not binding precedent upon this Commission in this proceeding. Even assuming portions of the Commission’s prior analysis in *Transource* were deemed improper, that does not mean Pennsylvania has been stripped of all independent authority to evaluate public necessity under Pennsylvania law.

At most, *Transource* presents unresolved questions concerning the interaction between federal transmission planning and traditional state siting authority. Those unresolved issues are even more pronounced here given the distinction between the market-efficiency project involved in *Transource* and the reliability-based MARL Project at issue in this proceeding.

The Supreme Court has repeatedly held that courts must apply a strong presumption against federal preemption where historic state police powers are implicated. In *New York v. FERC*, 535 U.S. 1, 18 (2002), the Court explained that courts “start with the assumption that the historic police powers of the States were not to be superseded

unless that was the clear and manifest purpose of Congress.” No such clear congressional directive exists here.

Accordingly, the Commission is not preempted from independently evaluating whether the MARL Project satisfies Pennsylvania’s public need requirements or whether approval, denial, modification, or conditioning of the Project is warranted under Pennsylvania law.

III. RESPONSE TO MATERIAL QUESTION NO. 2

The Commission May — And Must — Consider Evidence Concerning Costs, Benefits, Burdens, and Public Impacts

OCA’s second material question asks whether the Commission may consider evidence concerning the costs and benefits of the MARL Project in rendering a determination regarding the Applications. The answer is unequivocally yes. Indeed, such evidence is central to the Commission’s statutory obligations under Pennsylvania law.

Proposed Intervenor respectfully adopts and incorporates herein by reference those portions of OCA’s Petition addressing Material Question No. 2, including OCA’s arguments that the Commission retains authority to consider evidence concerning the costs, benefits, burdens, impacts, and broader public interest implications of the MARL Project when determining whether to approve, reject, modify, or condition the Applications.

IV. THE COMMISSION SHOULD PERMIT FULL DEVELOPMENT OF THE EVIDENTIARY RECORD

OCA seeks extraordinary interlocutory relief before the development of a full evidentiary record concerning disputed constitutional, statutory, jurisdictional, and federalism questions. Proposed Intervenor Krupa opposes any evidentiary limitations on the basis of *Transource* due to the unresolved federal preemption questions which remain actively contested in that case and the fact that the underlying facts in *Transource* are distinguishable from the instant case as discussed above.

Given the Commission's own statutory authority and eminent domain implications, at minimum, the Commission should permit full factual development concerning public need, reliability, alternatives, routing, congestion, environmental impacts, ratepayer burdens, costs and benefits, public interest considerations, and the propriety of authorizing eminent domain authority for the proposed Project which is likely to have no benefit for the people of Pennsylvania.

The Commission should not artificially constrain its statutory review authority or prematurely foreclose evidentiary development based upon disputed and unresolved preemption theories.

V. CONCLUSION

Pennsylvania law independently requires the Commission to determine whether proposed transmission facilities are necessary and proper for the public. That obligation not only permits but requires consideration of evidence concerning public need, costs, benefits, alternatives, routing, environmental impacts, ratepayer effects, public burdens, and eminent domain implications. Neither Congress nor FERC has clearly displaced

Pennsylvania's historic sovereign authority over transmission siting and public necessity determinations.

Accordingly, Proposed Intervenor respectfully requests that the Commission:

1. Reject OCA's and NEET MA's proposed affirmative answer to Material Question No. 1;
2. Answer Material Question No. 2 in the affirmative;
3. Permit full development of the evidentiary record;
4. Preserve the Commission's independent statutory siting authority under Pennsylvania law; and
5. Grant such other relief as may be just and proper.

Respectfully submitted,



Charity Grimm Krupa,
Individually and as
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51st House District

Date: 5/14/26