

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Kathryn L. Zerfuss
John F. Coleman, Jr., Concurring in result only
Ralph V. Yanora, Dissenting

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

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

A-2026-3060921
G-2026-3060941
G-2026-3060942

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Interlocutory Review and Answer To Material Question (Petition),¹ filed by the Office of Consumer Advocate (OCA) (Petitioner) pursuant to Section 5.301, *et seq.*, of the Commission’s Regulations, 52 Pa. Code § 5.301, *et seq.*, on May 3, 2026, in the above-captioned proceeding. On May 4, 2026, the OCA filed a Corrected Petition. The Petition poses two questions involving the extent of the preemption of the Commission’s authority over the siting and construction of transmission lines based on a recent decision of the United States Court of Appeals for the Third Circuit (Third Circuit) and whether, despite such preemption, the Commission may consider evidence of the costs and benefits of a project when deciding on an application that is before the Commission.

Specifically, the Petitioner seeks Commission review of, and answer to, the following proposed Material Questions:

- (1) Whether the Commission is preempted based on the Third Circuit’s recent decision in *Transource Pa., LLC v. DeFrank*^[2] from modifying or denying the Pennsylvania portions of the Mid-Atlantic Reliability Link Project (MARL Project or 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

¹ We note that, while the OCA’s Petition references multiple dockets, the questions raised pertain only to the NextEra Siting Application at Docket No. A-2026-3060856. At the time of the filing of the Petition, the above-referenced dockets had not been formally consolidated. The ALJs’ Procedural Order consolidating the dockets was issued on May 18, 2026.

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

MARL Project in the PJM region and has selected the MARL Project to address that need?^[3]

- (2) 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?

Petition at 2.

On May 7, 2026, the OCA filed a letter that it was not filing a Brief in support and addressing the merits of the Petition, as the Petition is inclusive of an integral Brief which provides the OCA's support for and addresses the merits of the Petition.

On May 11, 2026, NextEra Energy Transmission MidAtlantic, Inc. (NextEra) filed a Brief in Opposition to the Petition.

For the reasons discussed below, we shall decline to answer the Material Questions at this time.

I. Background and History of the Proceeding

The MARL Project is proposed construction for a new 500-kilovolt (kV) interstate transmission line of approximately 107.5 miles that will cross Maryland,

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.”).

Pennsylvania, West Virginia and Virginia.⁴ As proposed, the portion of the Project that will involve Pennsylvania is as follows: the line would extend approximately 10.7 miles from the existing FirstEnergy Corp. 502 Junction Substation in Greene County, Pennsylvania for about 2.7 miles to the border of West Virginia, then proceed for approximately 3.1 miles through West Virginia, and would then re-enter Pennsylvania in Greene County where it would cross through Greene and Fayette Counties for 8.0 miles and then head back into West Virginia.⁵

On March 3, 2026, NextEra filed the above-referenced Application seeking Commission approval to site and construct a high-voltage (HV) 500 kV transmission line associated with the MARL Project in Dunkard Township in Greene County and Springhill Township in Fayette County, Pennsylvania under 52 Pa. Code Sections 57.71-57.77 (Siting Application) at Docket No. A-2026-3060856.

Also on March 3, 2026, NextEra filed an Application requesting that the Commission grant all of the necessary authority, approvals, and certificates of public convenience for NextEra to become a public utility, under 66 Pa.C.S. Sections 1101, 1103 and 2102, that can, furnish and supply electric transmission service in Greene and Fayette Counties via the Project (CPC Application) (collectively, the Applications) at Docket Nos. A-2026-3060921, G-2026-3060941, and G-2026-3060942.

On March 21, 2026, each of the Applications was published in the *Pennsylvania Bulletin* with⁶ May 1, 2026 as the deadline for the filing of interventions and protests.

⁴ Siting Application at ¶ 6, Petition at 3.

⁵ Siting Application at ¶ 6, Petition at 3.

⁶ Notice of the Siting Application and the May 6, 2026 Prehearing Conference was published in the *Pennsylvania Bulletin*, at 56 *Pa.B.* 1659. The CPC Application was published at 56 *Pa.B.* 1660.

On May 1, 2026, the OCA filed its Protest to the Applications.

As noted, *supra*, the OCA filed a Petition for Interlocutory Review and Answer to Material Question on May 4, 2026.

On May 7, 2026, the OCA filed a letter advising the Commission that it would not be filing a Brief in support, as the Petition was inclusive of an integral Brief which provides OCA's support for, as well as addresses, the merits of the Petition.

On May 11, 2026, NextEra filed a Brief In Opposition to the Petition.

On May 14, 2026, Proposed Intervenor Charity Grimm Krupa filed a Petition of Proposed Intervenor Charity Grimm Krupa For Stay of Proceedings Pending Final Resolution of *Transource* Litigation and Resolution of All Petitions to Intervene (Petition for Stay). The Petition for Stay requests a stay of these proceedings pending: (1) final resolution of the federal *Transource* litigation, including the pending petition for Writ of certiorari before the U.S. Supreme Court; and (2) disposition of all pending Petitions to Intervene.

On May 14, 2026, Proposed Intervenor Charity Grimm Krupa, individually, and as State Representative for the 51st House District, also filed a Response In Both Opposition and in Support to the Petition. In addition, the Center for Coalfield Justice filed an Answer and Brief supporting the Petition.⁷

As previously noted, on May 18, 2026, the proceedings were consolidated via the ALJs' Procedural Order.

⁷ Commission Regulations do not allow for the filing of Answers to a Petition for Interlocutory Review, *see* 52 Pa. Code §§ 5.301-5.306. Therefore, we will consider the filings as a brief in support of the Petition.

II. Discussion

A. Legal Standards

As a preliminary matter, we note that any issue we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

During a proceeding, and pursuant to the provisions of 52 Pa. Code § 5.302, a party may seek interlocutory review and answer to a material question which has arisen or is likely to arise. The standards for interlocutory review are well established. *See* 52 Pa. Code § 5.302(a). Section 5.302(a) of the Commission's Regulations require that the petitioning party "state . . . the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding." The pertinent consideration is whether interlocutory review is necessary to prevent substantial prejudice – that is, the error and any prejudice flowing therefrom could not be satisfactorily cured during the normal Commission review process. *Joint Application of Bell Atlantic Corp. and GTE Corp.*, Docket No. A-310200F0002, *et al.* (Opinion and Order entered June 14, 1999) (*Application of Bell Atlantic Corp.*); *Pa. PUC v. Frontier Communications of Pa. Inc.*, Docket No. R-00984411 (Opinion and Order entered February 11, 1999) (*Pa. PUC v. Frontier*); *In re: Knights Limousine Service, Inc.*, 59 Pa. P.U.C. 538 (1985) (*Knights Limousine*).

Pursuant to 52 Pa. Code § 5.303, the Commission may take one of the following courses of action on requests for interlocutory review and answer to a material question:

- (1) Continue, revoke or grant a stay of proceedings if necessary to protect the substantial rights of the parties.
- (2) Determine that the petition was improper and return the matter to the presiding officer.
- (3) Decline to answer the question.
- (4) Answer the question.

Generally, Petitions for Interlocutory Review are not favored, as the 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. *Re: Philadelphia Gas Works Universal Service and Energy Conservation Plan*, Docket No. M-00072021 (Opinion and Order entered October 23, 2009) at 3.

Under case law construing Section 5.302(a) of the Commission's Regulations, 52 Pa. Code § 5.302(a), 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. In other words, a petition under Section 5.302(a) must allege compelling reasons why any alleged prejudice flowing therefrom could not be rectified during the normal Commission review process. *Application of Bell Atlantic Corp.; Pa. PUC v. Frontier; Knights Limousine Service, Inc.*

The Commission has stated that it does not routinely grant interlocutory review, except upon a showing by the petitioner of extraordinary circumstances or compelling reasons. Such a showing may be made by a petitioner by establishing that,

without such 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. *Pa. PUC v. Philadelphia Gas Works*, Docket Nos. P-2009-2097639 and R-2009-2139884 (Opinion and Order entered April 15, 2010) (*PGW Order*).

B. Petition

In the Petition, the OCA requests that the Commission undertake an interlocutory review of the questions presented to prevent substantial prejudice to the parties and to expedite the conduct of the proceedings related to the NextEra Siting Application.

As noted above, the Petitioner requests that the Commission answer two Material Questions. The first Material Question is: “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?” The Petitioner suggests the answer is “yes.” Petition at 5.

The second material question is: “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?” The Petitioner suggests the answer is “yes.” Petition at 5.

Regarding the first Material Question, the Petitioner asserts, *inter alia*, that there are compelling reasons to grant interlocutory review and answer to the first Material Question to prevent substantial prejudice to the OCA and to expedite the

conduct of the proceeding. Concerning the prevention of substantial prejudice, the OCA contends that because it and NextEra both concur that the *Transource* decision of the Third Circuit on conflict preemption applies to the MARL Project, the OCA does not intend to present evidence on whether there is a need for this project. In addition, the OCA contends that the Commission should answer the first Material Question to expedite the proceeding given the public interest and to ensure judicial economy. The OCA contends that it would be substantially prejudiced if the Commission would legally conclude that it can render a determination that conflicts with PJM's determination as to the MARL Project. Petition at 6-12.

Concerning the second Material Question, the Petitioner asserts, *inter alia*, that if 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 because to do so otherwise, the Commission would stand to interpret the court's *Transource* decision in such an expansive way that it would pose very broad and negative consequences for state law. Petition at 13-17.

C. Briefs in Opposition and/or Support

In its brief in opposition of the Petition, NextEra asserts, *inter alia*, (1) that given there is no dispute regarding the first Material Question, an answer is not required to prevent substantial prejudice or expedite the conduct of the proceeding; and (2) an answer is not required to the second Material Question because it is based on an affirmative answer to the first Material Question. Brief at 4-14.

In her response to the Petition, State Representative Ms. Krupa opposes the first Material Question on the grounds that 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 state law. Notably, *inter alia*, Pennsylvania law requires the Commission to determine whether proposed transmission facilities are “necessary or proper” before a siting request can be approved. Likewise, state regulations concerning high-voltage transmission facilities require proof that there is a need for the facility. Regarding the second Material Question, Representative Krupa supports the question noting, *inter alia*, that the Commission may, and must, consider evidence concerning costs, benefits, burdens, and public impacts, noting 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.

The Center for Coalfield Justice supports the Petition, asserting, *inter alia*, that the unique circumstances of the case militate in favor of the interlocutory review; that *Transource* does not and cannot preclude the Commission’s evaluation of public need under Section 1103 of the Pennsylvania Public Utility Code (Code), and that the Commission’s authority to consider and/or deny a proposal based on costs and benefits for a PJM-approved project without “second guessing” the basis for its approval is preserved by *Transource*.

D. Disposition

Section 5.303(a) of our Regulations deals with Commission action on a petition for interlocutory review and answer. That Section reads, in pertinent part, as follows:

- (a) Within 30 days of receipt of the petition, the Commission will, without permitting oral argument, do one of the following:

- (1) Continue, revoke or grant a stay of the proceedings if necessary to protect the substantial rights of the parties.
- (2) Determine that the petition was improper and return the matter to the presiding officer.
- (3) Decline to answer the question.
- (4) Answer the question.

On review, we determine that the petition is improper and we will return this matter to the presiding ALJs. Because the Petition pertains to substantive legal issues involved in the Siting Application, as a procedural matter, it would be premature to decide those issues, prior to the disposition of NextEra's CPC Application. Presently, NextEra's CPC Application has not been ruled upon. In addition, any interested parties were only recently advised of the Order formally consolidating the proceedings, which was issued on May 18, 2026. The CPC Application pertains to the prerequisite authority under Sections 1101 and 1102 of the Code to operate within a specific service territory of Greene and Fayette Counties in the Commonwealth. A decision regarding the CPC should be finally decided before the Commission considers the merits of a NextEra Siting Application. Because the Petition before us raises substantive legal questions pertaining to the disposition of the Siting Application, it would be improper, as a procedural matter, for us to address substantive legal matters for the Siting Application where a CPC has not been granted.

NextEra's concurrent filing of the Siting Application and CPC Application created a procedural dilemma, wherein NextEra seeks approval for a major transmission project without having first sought *and obtained* permission to operate in the Commonwealth in the territory which the project is proposed to reside. Therefore,

without authority to operate, NextEra’s Siting Application is premature.⁸ The matter of qualifying for a CPC must be fully vetted by the Commission in the context of the appropriate procedural process.⁹ We note also that the “necessary or proper” or “need test” under Section 1103 is not the same as the “present and future necessity of the

⁸ The Commission’s regulations provide that upon the application of a **public utility** for authorization to locate and construct a HV transmission line or any portion thereof, upon approval of the application by the Commission first had and obtained, and upon compliance with existing laws, it shall be lawful for a public utility to commence construction of the HV transmission line or portion thereof. 52 Pa. Code § 57.71. The plain language in this regulation indicates only a public utility can apply for authorization and NextEra is not a public utility as it holds no CPC. The Commission’s Policy Statement also states what information should be included in an application and that utilities are the applicants at 52 Pa. Code § 69.3105. These consolidated cases may be bifurcated with the Application for CPC proceeding to litigation while the siting application and petition are held in abeyance pending the outcome of the CPC Application. Alternatively, as the siting application and petition were prematurely filed, they could be dismissed without prejudice and later refiled by Applicant NextEra if it is granted a CPC to provide transmission service in a service territory covering the area of the proposed project.

⁹ Although in a prior Commission proceeding, *In Re: Application of Trans-Allegheny Interstate Line Company (TrAILCo) For approval: 1) for a certificate of public convenience to offer, render, furnish or supply transmission service in the Commonwealth of Pennsylvania; 2) authorization and to locate, construct, operate and maintain certain high-voltage electric substation facilities; 3) authority to exercise the power of eminent domain for the construction and installation of aerial electric transmission facilities along the proposed transmission line routes in Pennsylvania; 4) approval of an exemption from municipal zoning regulation with respect to the construction of buildings; and 5) approval of certain related affiliated interest arrangements*, Docket Nos. A-110172, A-110172F0002, A-110172F0003, A-110172F0004, G-00071229 (Opinion and Order entered December 12, 2008) (*TrAILCo*), a CPC application and a Siting application were consolidated and ruled upon in the same Opinion and Order, the determination in that case to proceed by the consolidated record was agreed upon by all the parties, and the Opinion and Order specifically acknowledged that the ruling on the CPC application must be rendered, and granted, prior to consideration of the siting application. *TrAILCo* at 57; 57-72. Further, given the unique circumstances of NextEra’s Siting Application, and the pending legal questions regarding the impact of the *Transource* decision on the Commission’s authority, we find the procedural posture of *TrAILCo* to be distinguishable from the present case.

proposed HV line in furnishing service to the public” or “need test” under 52 Pa. Code § 57.75(e)(1). The former determines need for additional transmission service within the proposed service territory of Greene and Fayette Counties, and the latter is the first factor to be considered in the permitting and siting of the construction of a specific high-voltage transmission line project within the certificated service territory of the utility within the borders of the Commonwealth. Additionally, a CPC must include a description of the nature of the service and of the territory in which it may be offered, rendered, furnished or supplied. 66 Pa. C.S. §§ 1101, et seq.

Further, in the present circumstances, any consideration of the Siting Application prior to a determination on the CPC Application would pose due process concerns. We note that the period to intervene in the proceedings has not closed and thus there will not be a final determination concerning all the parties to the proceedings until after June 12, 2026. Without a final determination of the parties, it would be premature and potentially prejudicial to the intervening parties for the Commission to render a determination on the issues presented in the current Petition and, therefore, it is not in the public interest to do so.

We also note that the recently filed Petition for Stay in these proceedings raises the question of whether NextEra’s Siting Application should be held in abeyance pending the disposition of the appeal of the *Transource* decision. Petition for Stay at 3-5. The Petition for Stay asserts, *inter alia*, that the due process rights of the parties would be violated should the Commission render any legal determinations because the ALJs permitted NextEra to respond, on or before June 12, 2026, to protests and/or Petitions to Intervene filed on or before May 29, 2026. Thus, proposed intervenors presently remain in procedural limbo while critical issues involving jurisdictional and preemption issues are being actively litigated thereby creating due process and fairness concerns. The Petition for Stay further asserts that allowing the litigation to move forward prior to

resolving intervention status of entities that have submitted filings to intervene is adverse to the principles of equity, orderly adjudication, and procedural fairness. *Id.* at 1, 5-6.

While we make no finding on any assertions in the Petition for Stay, we conclude that the ruling on any substantive legal issues in the Siting Application prior to the determination whether to grant NextEra's CPC Application would violate the due process rights of the ultimate parties to the Siting Application. Those parties should not be required to engage in litigation on the merits of the Siting Application, if no CPC has been issued.¹⁰ Consequently, we find that the instant Petition does not support the necessity for interlocutory review to prevent substantial prejudice – that is, the error and any prejudice flowing therefrom could not be satisfactorily cured during the normal Commission review process. Rather, we conclude that if the Commission were to rule on the Petition, it would be prejudicial to procedural and substantive issues, as well as not in the public interest, if substantive legal issues pertaining to the Siting Application were to be resolved prior to the determination whether NextEra satisfies the criteria for approval of a CPC.

Based upon our review of the instant Petition for Interlocutory Review, the responsive Briefs, and the procedural posture of the proceeding, we find the Petition to be premature and improper.

In short, at this stage of the proceeding, we find that a ruling on the substantive legal issues involved in the Siting Application would be improper in the circumstances.

¹⁰ Our determination that NextEra's CPC Application should be disposed of prior to its Siting Application appears to be procedurally incompatible with the ALJs' recent determination to consolidate both Applications for purposes of proceedings. *See* Procedural Order at 8. We will defer to the parties and the ALJs to develop a procedural framework that is consistent with this Opinion and Order.

III. Conclusion

For the reasons set forth above, consistent with our authority under Section 5.303 (a)(2) of Commission regulations, 52 Pa. Code § 5.303(a)(2) (pertaining to Commission action on petition for interlocutory review and answer), we find that the Petition is improper and the matter will be returned to the Office of Administrative Law Judge for further proceedings, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Interlocutory Review of a Material Question, filed by the Office of Consumer Advocate on May 3, 2026, as amended by the May 4, 2026 filing, is improper.

2. That these consolidated cases at Docket Nos. A-2026-3060856, A-2026-3060921, G-2026-3060941, and G-2026-3060942 are hereby returned to the Office of Administrative Law Judge for further proceedings consistent with this Opinion and Order.

BY THE COMMISSION



Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: June 1, 2026

ORDER ENTERED: June 1, 2026