GPU NUCLEAR

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June 19, 2015
TMI-15-065

ATTN: Document Control Desk
Director, Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

SUBJECT:
Three Mile Island Nuclear Station, Unit 2
Docket No. 50-320, License No. DPR-73
Notice of Transfer of Transmission Assets

On March 7, 2001, the Nuclear Regulatory Commission (NRC) approved an indirect transfer of control of the Three Mile Island Nuclear Station, Unit 2 (TMI-2) license in connection with the merger of GPU, Inc. and FirstEnergy Corp. GPU, Inc. was the parent holding company of Metropolitan Edison Company (Met Ed), Jersey Central Power & Light Company (JCP&L), and Pennsylvania Electric Company (Penelec). These companies are the owner licensees of TMI-2. Met Ed owns 50 percent (%) of TMI-2, while JCP&L and Penelec each own 25% of TMI-2. Met Ed, JCP&L, and Penelec are wholly-owned subsidiaries of FirstEnergy Corp. (the surviving corporation in the merger).

The indirect license transfer was approved subject to the condition that the TMI-2 owners:

> provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Met Ed, JCP&L, or Penelec, respectively, to its proposed direct or indirect parent or to any affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of the subject licensee's consolidated net utility plant, as recorded on the respective licensee's books of account.

To effectuate planned future transmission investment, the TMI-2 owners intend to transfer their transmission assets to Mid-Atlantic Interstate Transmission, LLC (MAIT), a newly-formed affiliated company, in exchange for passive, dividend-

paying, Class B membership interests in MAIT. The TMI-2 owners will also receive lease payments from MAIT for access to and use of the land on which the transmission assets are located.

The electric energy transmission facilities involved in the transfer have a depreciated book value exceeding 10% of each of the owner's consolidated net utility plant.[1] Thus, pursuant to the terms of the March 7, 2001 indirect transfer order, the TMI-2 owners hereby provide copies of the relevant applications being submitted today to the Federal Energy Regulatory Commission, the Pennsylvania Public Utility Commission, and the New Jersey Board of Public Utilities (Enclosures A, B, and C, respectively). The applications do not include referenced exhibits, appendices, statements/testimonies, or attachments. This transfer will not affect the funding for the decommissioning of TMI-2.[2]

There are no regulatory commitments contained in this letter. If there are any questions or if additional information is required, please contact Mr. Thomas A. Lentz, Manager - FirstEnergy Nuclear Operating Company Fleet Licensing, at (330) 315-6810.

Sincerely,

Gregory H. Halnon
Director, Fleet Regulatory Affairs

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1 As of December 31, 2014, the depreciated book value of the assets being transferred represents the following percentages of consolidated net utility plant: 11.9% for Met Ed, 19.1% for JCP&L, and 14.8% for Penelec. The actual book value of the assets at transfer may vary from these percentages, but will still exceed 10% of each owner's consolidated net utility plant.

2 TMI-2 has permanently ceased operation and is in a non-operating status under a possession-only license. A decommissioning funding status report, which included a decommissioning cost analysis, was submitted to the NRC on March 27, 2015 (Accession No. ML15086A337).

Enclosures:

A. Application for Authorization Pursuant to Sections 203(a)(1)(A) and 203(a)(2) of the Federal Power Act and Request for Waivers of Certain Filing Requirements [Federal Energy Regulatory Commission Filing]
B. Joint Application of Mid-Atlantic Interstate Transmission LLC, Metropolitan Edison Company, and Pennsylvania Electric Company [Pennsylvania Public Utility Commission]
C. Verified Petition of Jersey Central Power & Light Company [State of New Jersey Board of Public Utilities]

cc: NRC Region I Administrator
NRC Project Manager
NRC Resident Inspector

Enclosure A
TMI-15-065

Application for Authorization Pursuant to Sections 203(a)(1)(A) and 203(a)(2) of the Federal Power Act and Request for Waivers of Certain Filing Requirements
[Federal Energy Regulatory Commission Filing]
(41 pages follow)

**UNITED STATES OF AMERICA**
**BEFORE THE**
**FEDERAL ENERGY REGULATORY COMMISSION**

| | | |
|---|---|---|
| **Pennsylvania Electric Company,** | ) | |
| **Metropolitan Edison Company,** | ) | |
| **Jersey Central Power & Light** | ) | **Docket No. EC15-___-000** |
| **Company,** | ) | |
| **FirstEnergy Transmission, LLC,** | ) | |
| **and** | ) | |
| **Mid-Atlantic Interstate** | ) | |
| **Transmission, LLC** | | |

# APPLICATION FOR AUTHORIZATION PURSUANT TO SECTIONS 203(a)(1)(A) AND 203(a)(2) OF THE FEDERAL POWER ACT AND REQUEST FOR WAIVERS OF CERTAIN FILING REQUIREMENTS

**CONTAINS REQUEST FOR CEII TREATMENT OF EXHIBIT K**

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*Jersey Central Power & Light Company,*
*FirstEnergy Transmission LLC, and*
*Mid-Atlantic Interstate Transmission, LLC*

June 19, 2015

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**BEFORE THE**
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| **Company,** | ) | |
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**APPLICATION FOR AUTHORIZATION PURSUANT TO SECTIONS 203(a)(1)(A) AND 203(a)(2) OF THE FEDERAL POWER ACT AND REQUEST FOR WAIVERS OF CERTAIN FILING REQUIREMENTS**

FirstEnergy Corp. ("FirstEnergy") is currently implementing its Energizing the Future ("EtF") transmission program across its transmission system. EtF is designed to increase the reliability of the FirstEnergy transmission system, improve the condition of equipment, enhance system performance, and improve operational flexibility. To facilitate significant planned transmission investment under the EtF program in their respective service territories, Pennsylvania Electric Company ("Penelec"), Metropolitan Edison Company ("Met-Ed"), and Jersey Central Power & Light Company ("JCP&L") (collectively, the "FirstEnergy East Operating Companies") intend to contribute their transmission assets to Mid-Atlantic Interstate Transmission, LLC ("MAIT"), a newly-formed subsidiary of FirstEnergy Transmission, LLC ("FET").

The creation of a separate, stand-alone transmission company better aligns FirstEnergy's corporate structure with the operational function of the utility. FET formed MAIT as a stand-alone transmission company as the preferred vehicle for owning and operating—under the functional control of PJM Interconnection, L.L.C. ("PJM")—all existing transmission assets in

the regions that are currently served by the FirstEnergy East Operating Companies, as well as developing, owning and operating new transmission assets.

Consistent with FirstEnergy's objectives and pursuant to Sections 203(a)(1)(A) and 203(a)(2) of the Federal Power Act ("FPA")[1] and Part 33 of the regulations of the Federal Energy Regulatory Commission ("FERC" or the "Commission"),[2] the FirstEnergy East Operating Companies, FET, and MAIT (collectively, "Applicants") seek Commission authorization to complete a transaction whereby: (i) FET will make a cash investment in MAIT in exchange for the Class A membership interest in and sole operational control and management of MAIT; and (ii) the FirstEnergy East Operating Companies will contribute their transmission assets to MAIT in a tax-free contribution in exchange for passive, Class B membership interests in MAIT (the "Transaction").[3] Applicants anticipate consummating the Transaction in mid-2016.

As described below and in the accompanying witness testimony, the Transaction will facilitate the planned investment in transmission infrastructure in the territories served by the FirstEnergy East Operating Companies. FirstEnergy plans to invest approximately \$2.5 to \$3 billion over the next five to ten years under the EtF program to upgrade and modernize its transmission system in those service territories. MAIT, as a stand-alone transmission company, will not have to compete with other non-transmission lines of business for capital, and this lender- and Commission-preferred corporate structure will allow the company to finance its

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[1] 16 U.S.C. §§ 824b(a)(1)(A), 824b(a)(2) (2012).

[2] 18 C.F.R. Part 33 (2015).

[3] The FirstEnergy East Operating Companies, which, as described below, are public utilities under the FPA, are seeking approval of the Transaction pursuant to FPA Section 203(a)(1)(A). FET, which, as described below, is a "holding company in a holding company system that includes a transmitting utility or an electric utility," is seeking approval of the Transaction pursuant to Section 203(a)(2). Because MAIT is neither a public utility for purposes of Section 203(a)(1)(A) nor a "holding company" for purposes of Section 203(a)(2) as of the date of this filing, Applicants do not believe that MAIT requires FPA Section 203 approval with respect to the Transaction. However, Applicants are seeking any and all approvals pursuant to FPA Section 203 that may be required to implement the Transaction described herein.

operations on more commercially reasonable terms. As a result, the Transaction will enable FirstEnergy to address infrastructure needs in the service territories of the FirstEnergy East Operating Companies in a timely and cost-effective manner.

Applicants respectfully request that the Commission, consistent with its precedent, grant limited waivers of its Part 33 filing requirements to the extent the information required by Part 33 is not necessary for the Commission to determine that the Transaction meets the statutory requirements of Section 203. Applicants request further that the Commission issue an order granting the requested authorizations as expeditiously as possible and, in any event, by no later than six months from the filing of this Application (i.e., by December 19, 2015).

Finally, pursuant to Section 388.112 of the Commission's regulations[4] and as described further below, Applicants request critical energy infrastructure information ("CEII") protection for the maps identifying the locations of the transmission assets to be contributed.

## I. SUMMARY

The Transaction will result in the consolidation of the FirstEnergy East Operating Companies' transmission assets into MAIT, a newly-formed, stand-alone transmission company.[5] The transmission assets to be contributed are located in the "PENELEC," "ME," and "JCPL" transmission zones of PJM.[6] Upon consummation of the Transaction, MAIT will succeed to the transmission rights and obligations of the FirstEnergy East Operating Companies and will provide service over the transmission assets pursuant to the PJM Open Access Transmission

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[4] 18 C.F.R. § 388.112 (2015).

[5] As described below, the FirstEnergy East Operating Companies will contribute as part of the Transaction transmission assets as identified through the application of the Commission's "seven-factor test." As discussed more fully below and in the testimony of Mr. Jeffrey J. Mackauer, FirstEnergy intends to reclassify as distribution a limited number of 34.5 kV facilities that are currently classified as transmission facilities in Met-Ed's FERC Form No. 1. The FirstEnergy East Operating Companies will retain ownership of those facilities deemed to have a distribution function, including these reclassified Met-Ed assets.

[6] *See* PJM Tariff, Attachment J (depicting the location of PJM transmission zones).

Tariff ("PJM Tariff"), including the provision of transmission service at distribution voltage levels to certain Penelec and Met-Ed wholesale customers.[7]

The FirstEnergy East Operating Companies currently provide service over their transmission assets pursuant to a Commission-approved "stated" rate.[8] After the Commission authorizes the Transaction, MAIT will submit an application under FPA Section 205 for Commission authorization to provide service over its transmission assets pursuant to a formula rate. This formula rate will apply to service over the existing transmission assets that the FirstEnergy East Operating Companies will contribute to MAIT as part of the Transaction, as well as over new transmission assets that MAIT develops and owns within the PENELEC, ME, and JCPL transmission zones in PJM.[9]

As a result of the Transaction, the FirstEnergy East Operating Companies will not own transmission assets. The FirstEnergy East Operating Companies will continue to own and operate distribution facilities and provide retail electric service within their respective service territories, and JCP&L will continue to own and operate a single generating facility. The FirstEnergy East Operating Companies also will retain ownership of the land on which the transmission assets are located and will grant MAIT access to and use of such land in exchange for lease payments.

[7] *See* PJM Tariff, Attachment H-5A, Other Supporting Facilities – Metropolitan Edison Company; PJM Tariff, Attachment H-6A, Other Supporting Facilities Charges – Pennsylvania Electric Company.

[8] *See GPU Serv. Corp.*, 85 FERC ¶ 61,348 (1998) (approving settlement rates for JCP&L, Met-Ed, and Penelec); *see also* PJM Tariff, Attachment H-4, Annual Transmission Rates – Jersey Central Power & Light Company for Network Integration Transmission Service; PJM Tariff, Attachment H-5, Annual Transmission Rates – Metropolitan Edison Company for Network Integration Transmission Service; PJM Tariff, Attachment H-6, Annual Transmission Rates – Pennsylvania Electric Company for Network Integration Transmission Service.

[9] Applicants are not seeking FPA Section 205 approval of rates in this proceeding. Nothing in this Application, other than MAIT's commitment to apply a 50% equity/50% debt capital structure for ratemaking purposes for a transition period as described below, is intended to preclude MAIT from demonstrating in a subsequent Section 205 proceeding that its proposed formula rate is just and reasonable.

Applicants are seeking approval of the Transaction concurrently from the Pennsylvania Public Utility Commission ("PaPUC") and the New Jersey Board of Public Utilities ("NJBPU"), the regulatory commissions of the two states where all of the FirstEnergy East Operating Companies' transmission assets are located.[10] In addition, after the Commission issues an order in this proceeding, MAIT intends to submit an application with the Commission pursuant to FPA Section 204 seeking authorization to issue (i) equity to FET and the FirstEnergy East Operating Companies in the form of, respectively, Class A and Class B membership interests, and (ii) long- and short-term debt securities to fund its operations. Applicants anticipate closing the Transaction only after (i) the Commission grants the authorizations requested in this Application; (ii) the Commission grants the authorizations requested in MAIT's FPA Section 204 application; (iii) the Commission authorizes MAIT to recover its transmission costs pursuant to a formula rate; and (iv) the PaPUC and the NJBPU grant the necessary approvals.

For the reasons described below, the Commission should authorize the Transaction as consistent with the public interest. The Transaction does not raise any horizontal or vertical market power concerns because it will result in the transfer of ownership and control of the FirstEnergy East Operating Companies' transmission assets only and will not result in a change in ownership or control of any generating facilities or inputs to power production. Moreover, MAIT will continue to provide service over the transmission assets pursuant to the PJM Tariff, thereby ensuring that all transmission customers will continue to have open access to transmission service over the transmission assets.

The Transaction also does not have an adverse impact on any wholesale power or transmission rates. Applicants' only wholesale power customers are served pursuant to the

[10] Penelec also provides retail service to customers in the Waverly, New York vicinity through its subsidiary, The Waverly Electric Light & Power Company ("Waverly"). Waverly does not own any transmission facilities.

FirstEnergy East Operating Companies' Commission-approved market-based rate tariffs. The Commission holds that wholesale power sales made pursuant to a seller's market-based rate authority do not raise any concerns about a transaction's possible adverse effect on rates.

In addition, Applicants commit to hold MAIT's transmission customers harmless from Transaction-related costs. Specifically, consistent with Commission precedent, Applicants commit that MAIT will not collect through transmission rates any Transaction-related costs except to the extent MAIT can demonstrate (through a separate filing under FPA Section 205) that the Transaction-related savings equal or exceed such Transaction-related costs. In accordance with the Commission's Proposed Policy Statement on Hold Harmless Commitments issued January 22, 2015,[11] Applicants identify in the attached testimony of Mr. K. Jon Taylor the Transaction-related costs that will be covered by this hold harmless commitment and the means by which MAIT will track and exclude such costs from future transmission rates.

As noted above, while the FirstEnergy East Operating Companies currently provide service over their transmission assets pursuant to a stated rate,[12] MAIT intends to file a request for Commission authorization under FPA Section 205 for a formula rate. Because the FirstEnergy East Operating Companies are not transferring debt to MAIT as part of the Transaction, Applicants anticipate that MAIT's capital structure on "day one" of its operations after consummation of the Transaction will consist of all equity. To mitigate against a rate impact resulting from a change to the implied capital structure underlying the current stated rate,

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[11] *Policy Statement on Hold Harmless Commitments*, 150 FERC ¶ 61,031 (2015) ("Proposed Policy Statement").

[12] The FirstEnergy East Operating Companies also provide service pursuant to certain fixed-price, pre-Order No. 888 agreements relating to transmission service, which are identified in Exhibit G. There is no mechanism for Applicants to pass through any Transaction-related costs in those agreements.

which is based on a ratio of almost 50% equity,[13] MAIT commits that, in its future Section 205 formula rate filing, it will apply a 50% equity/50% debt capital structure for ratemaking purposes for a transition period. This transition period will last for up to two years, until MAIT establishes an actual capital structure consistent with Commission precedent.[14] The transitional capital structure of 50% equity/50% debt is comparable to the capital structure implied in the FirstEnergy East Operating Companies' existing stated rate and is within the range of capital structures approved by the Commission.[15]

The Transaction also will have no adverse effect on regulation by the Commission. The Commission will continue to regulate the rates, terms, and conditions of transmission service over the transmission assets the FirstEnergy East Operating Companies will contribute to MAIT, and inter-affiliate transactions involving MAIT will be subject to the Commission's affiliate transaction rules and pricing policies.

In addition, the Transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. The Transaction will not result in any new issuances of securities by MAIT for the benefit of an associate company, or any pledge or encumbrance of assets by MAIT for the benefit of an associate company.

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[13] *See GPU Serv. Corp.*, 85 FERC ¶ 61,348 (1998) (approving a settlement rate found to be consistent with staff's recommended equity ratios of 48.69% for Pennsylvania Electric, 49.45% for Metropolitan Edison, and 47.92% for Jersey Central); *see also* Direct Testimony of Gary S. Wright, Docket No. ER97-3189-004 (filed Feb. 20, 1998) (including equity ratios of 47.36% for Penelec, 48.3% for Met-Ed, and 53.04% for JCP&L).

[14] As noted above, MAIT intends to file an application with the Commission pursuant to FPA Section 204 to issue equity and long- and short-term debt securities to fund its activities.

[15] *See, e.g.*, *Morongo Transmission LLC*, 148 FERC ¶ 61,139, at P 19 (2014) (approving a 50% equity capital structure); *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,263, at P 25 (2013) (same); *Green Power Express LP*, 127 FERC ¶ 61,031, at PP 68, 72 (2009) (approving a 60% equity capital structure).

The Transaction also does not involve "a franchised public utility with captive customers."[16] None of the FirstEnergy East Operating Companies have captive retail customers because Pennsylvania and New Jersey have each adopted retail choice. The FirstEnergy East Operating Companies provide transmission service over their transmission assets pursuant to the PJM Tariff, and MAIT will continue to provide transmission service over the transmission assets pursuant to the PJM Tariff after consummation of the Transaction. FET, as a holding company with no operations, has no captive customers. Accordingly, because no captive customers are involved, there is no potential for cross-subsidization.[17]

## II. DOCUMENTS SUBMITTED WITH THIS APPLICATION

*Exhibits Required Under 18 C.F.R. Part 33*

| | |
|---|---|
| Exhibit B | Energy Subsidiaries and Energy Affiliates of Applicants |
| Exhibit C | Current and Post-Transaction Organizational Charts |
| Exhibit E | Common Officers or Directors |
| Exhibit G | Jurisdictional Facilities Owned, Operated, or Controlled by Applicants |
| Exhibit I | Transaction Documents |
| Exhibit K | Map of the Transmission Assets |
| Exhibit M | Cross-Subsidizations, Pledges or Encumbrances of Utility Assets |
| Exhibit N | Proposed Accounting Entries |

*Attachments*

| | |
|---|---|
| Attachment 1 | Verifications of Application |
| Attachment 2 | Prepared Direct Testimony of David W. Pinter, Executive Director, Business Development for FirstEnergy Service Company ("FESC"), a |

[16] *Federal Power Act Section 203 Supplemental Policy Statement*, 120 FERC ¶ 61,060, at P 17 (2007) ("*Supplemental Policy Statement*").

[17] *Id.*

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| | direct, wholly-owned subsidiary of FirstEnergy.[18] Mr. Pinter provides an overview of the Transaction and introduces the witnesses who provide more details about the Transaction. |
| Attachment 3 | Prepared Direct Testimony and Exhibit of Mr. Steven R. Staub, Vice President and Treasurer of FESC. Mr. Staub describes the corporate and financial aspects of the Transaction, including the agreements and financings necessary to effectuate the Transaction. |
| Attachment 4 | Prepared Direct Testimony of Mr. K. Jon Taylor, Vice President, Controller, and Chief Accounting Officer of FirstEnergy, describing the various tax and accounting aspects of the Transaction and explaining how the proposed accounting entries are consistent with Generally Accepted Accounting Principles ("GAAP") and the Commission's Uniform System of Accounts. Mr. Taylor also identifies "Transaction-related" costs and provides a description of how these costs will be tracked and excluded from MAIT's transmission rate going forward. |
| Attachment 5 | Prepared Direct Testimony and Exhibit of Mr. Jeffrey Mackauer, Director of Transmission Planning & Protection of FESC, providing an account of FirstEnergy's planned transmission investment in the service territories of the FirstEnergy East Operating Companies. |
| Attachment 6 | Proposed Protective Order |

## III. DESCRIPTION OF APPLICANTS AND CERTAIN OF THEIR AFFILIATES

### A. Description of FirstEnergy

Each Applicant is a wholly-owned subsidiary of FirstEnergy, a diversified energy company headquartered in Akron, Ohio. FirstEnergy is a holding company under the Public Utility Holding Company Act of 2005[19] that has both regulated and unregulated subsidiaries and affiliates. FirstEnergy's subsidiaries and affiliates are involved in the generation, transmission, and distribution of electricity, as well as energy management and other energy-related services.

[18] FESC provides legal, financial, and other corporate support services to all of FirstEnergy's subsidiaries and affiliates.

[19] 42 U.S.C. § 16451 *et seq.*

## B. Description of Applicants

### 1. Description of the FirstEnergy East Operating Companies

Each FirstEnergy East Operating Company is a franchised retail utility with facilities and operations in either Pennsylvania or New Jersey.

Penelec is a Pennsylvania corporation that does business as an electric public utility in Pennsylvania. Penelec provides distribution and retail electric services in 17,600 square miles of western, northern, and south-central Pennsylvania, covering an area with a population of approximately 1.3 million. Penelec's retail and distribution operations in Pennsylvania are regulated by the PaPUC.[20] Penelec currently owns 2,877 miles of transmission lines and related facilities within its service territory under the functional control of PJM.

Met-Ed is a Pennsylvania corporation that does business as an electric public utility in Pennsylvania. Met-Ed provides retail electric and distribution services in 3,300 square miles of eastern and south-central Pennsylvania, covering an area with a population of approximately 1.2 million. Met-Ed's retail and distribution operations are regulated by the PaPUC. Met-Ed currently owns 1,406 miles of transmission lines and related facilities within its service territory under the functional control of PJM.

JCP&L is a New Jersey corporation that does business as an electric public utility in New Jersey. JCP&L provides retail electric and distribution services in 3,200 square miles of northern, western, and east-central New Jersey, covering an area with a population of approximately 2.7 million. JCP&L's retail and distribution operations are regulated by the NJBPU. JCP&L currently owns 2,569 circuit miles of transmission lines and related facilities within its service territory under the functional control of PJM. JCP&L also owns an undivided

[20] As mentioned above, Penelec also provides retail service to customers in the Waverly, New York vicinity through a subsidiary.

50% ownership interest (representing 200 MW) in the 400 MW Yards Creek pumped storage plant (the "Yards Creek Facility"), a hydroelectric generation station located in northwest New Jersey. JCP&L operates the Yards Creek Facility pursuant to a Commission-approved operating license.[21]

The rate that each FirstEnergy East Operating Company charges for service on its respective transmission assets is currently fixed under a Commission-approved stated annual revenue requirement.[22] Each of the FirstEnergy East Operating Companies is also authorized by the Commission to sell electric energy, capacity, and ancillary services at market-based rates.[23]

### 2. Description of FET

FET, formerly known as Allegheny Energy Transmission, LLC, is a direct, wholly-owned subsidiary of FirstEnergy. FET is the parent company of two stand-alone transmission subsidiaries, American Transmission Systems, Incorporated ("ATSI") and Trans-Allegheny Interstate Line Company ("TrAILCo"), and has an ownership interest in Potomac-Appalachian Transmission Highline, LLC ("PATH").[24]

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[21] *Jersey Cent. Power & Light Co.*, 143 FERC ¶ 62,102 (2013).

[22] PJM Tariff, Attachment H-4 (JCP&L); PJM Tariff, Attachment H-5 (Met-Ed); PJM Tariff, Attachment H-6 (Penelec); *see also GPU Serv. Corp.*, 85 FERC ¶ 61,348 (1998) (approving settlement rate for Penelec, Met-Ed, and JCP&L).

[23] *FirstEnergy Serv. Co.*, 117 FERC ¶ 61,081 (2006); *Jersey Cent. Power & Light Co.*, Docket No. ER04-366-000 (Mar. 16, 2004) (unpublished letter order).

[24] ATSI owns and operates approximately 7,500 pole miles of transmission lines across Ohio and western Pennsylvania in the PJM "ATSI" transmission zone under the functional control of PJM. TrAILCo was formed to finance, construct, own, and maintain high-voltage transmission assets under the functional control of PJM, including the 500 kV Trans-Allegheny Interstate Line, which extends approximately 150 miles from southwestern Pennsylvania through West Virginia to a point of interconnection with Virginia Electric and Power Company in northern Virginia. PATH is a joint venture between American Electric Power Company, Inc. and the former Allegheny Energy, Inc. ("Allegheny") that was formed to finance, construct, own, and maintain a 244-mile, 765 kV project known as the Potomac-Appalachian Transmission Highline, which PJM canceled in 2012. FirstEnergy also provides transmission service in Pennsylvania, West Virginia, Maryland, and Virginia through its franchised utility subsidiaries West Penn Power Company, Monongahela Power Company, and The Potomac Edison Company. Those franchised public utility subsidiaries of FirstEnergy will not be impacted by the Transaction.

### 3. Description of MAIT

MAIT is a newly-formed Delaware limited liability company that will provide transmission services in the PENELEC, ME, and JCPL zones of PJM pursuant to the terms of the PJM Tariff. MAIT is also a wholly-owned subsidiary of FET. Upon consummation of the Transaction, FET will have the controlling Class A membership interest in MAIT, and each FirstEnergy East Operating Company will have passive Class B membership interests in MAIT.

## IV. DESCRIPTION OF THE TRANSACTION AND THE TRANSMISSION ASSETS

### A. The Transaction

There are two primary components to the proposed Transaction. First, FET will make a cash investment in MAIT. In exchange for this equity investment, FET will receive 100% of the Class A membership interest in MAIT, along with the sole authority to appoint the Board of Managers that will operate and manage MAIT. The Class A membership interest will represent initially approximately 5% of MAIT's total equity as reflected in FET's capital account maintained by MAIT.

Second, and simultaneous with FET's cash investment in MAIT and receipt of MAIT's Class A membership interest, the FirstEnergy East Operating Companies will contribute their transmission assets to MAIT in a tax-free transfer. The transmission assets to be contributed to MAIT are all assets classified by an independent consultant as serving a "transmission function,"[25] together with associated regulatory assets and liabilities, interconnection agreements, and certain pre-Order No. 888 agreements related to transmission service.[26] In exchange, the FirstEnergy East Operating Companies will receive passive, Class B membership interests in MAIT. The Class B membership interests will be allocated to each FirstEnergy East Operating

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[25] *See supra* Section IV.B.

[26] These agreements are identified in Exhibit G to this Application.

Company in proportion to the percentage of the total value of the transmission assets contributed by that company to MAIT. The FirstEnergy East Operating Companies' Class B ownership interests collectively will initially amount to the remaining approximately 95% of MAIT's total equity as reflected on the FirstEnergy East Operating Companies' respective capital accounts maintained by MAIT. Penelec's investment will total approximately 23%, Met-Ed's investment will total approximately 17%, and JCP&L's investment will total approximately 55%. MAIT will make distributions to FET and each FirstEnergy East Operating Company pro rata in accordance with each entity's capital account balance.

The Class B membership interests grant the FirstEnergy East Operating Companies only veto and consent rights on certain limited matters, specifically: (a) an action to voluntarily initiate any liquidation, dissolution or winding up of MAIT or to permit the commencement of a proceeding for bankruptcy, insolvency, receivership or similar action against MAIT; (b) an action to sell or dispose of MAIT or substantially all of the assets of MAIT (whether by merger, sale of equity, recapitalization or otherwise); and (c) an action to amend the operating agreement among MAIT and the FirstEnergy East Operating Companies.[27] As such, the FirstEnergy East Operating Companies will have passive membership interests in MAIT.[28]

As Mr. Taylor explains, the contribution of the FirstEnergy East Operating Companies' transmission assets to MAIT will be structured as a tax-fee contribution of assets as opposed to an asset sale to preserve transmission-related accumulated deferred taxes and avoid a rate shift between transmission customers and distribution customers. Provisions of the Internal Revenue

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[27] *See* Amended and Restated Limited Liability Company Agreement of Mid-Atlantic Interstate Transmission, LLC at 3-4.

[28] *See AES Creative Res., L.P.*, 129 FERC ¶ 61,239, at P 25 (2009) (identifying factors the Commission will evaluate in determining if market participants are passive equity owners in FERC-jurisdictional public utilities); *see also generally Policy Statement Regarding Evaluation of Indep. Ownership & Operation of Transmission*, 111 FERC ¶ 61,473 (2005) (identifying factors the Commission will evaluate in determining if market participants are passive equity owners in proposed independent transmission companies).

Code permit one or more shareholders to achieve a non-taxable contribution of assets to a corporation in exchange for stock, which results in a "carry over" of the existing tax basis of the assets being contributed. This transaction structure differs from an asset sale where the tax basis of the assets being sold would be "stepped-up" to the amount of consideration paid for the assets. Therefore, since the book basis of the assets being contributed to MAIT will be at the assets' carrying values, and the tax basis will be "carried over," the accumulated deferred taxes, representing the difference between the book and tax basis of the assets being contributed, will also be included in the assets contributed by the FirstEnergy East Operating Companies to MAIT.[29] Consequently, the Transaction will not result in any cost shifting between transmission customers and distribution customers, and the rate base attributable to the contributed transmission assets will not increase solely as a result of the Transaction.

As described in Section IV.B below, Met-Ed has six 34.5 kV facilities that are currently classified as transmission facilities in Met-Ed's FERC Form No. 1 and in the PJM Tariff.[30] At the recommendation of an independent consultant, FirstEnergy will reclassify those facilities as distribution facilities at the close of the Transaction to reflect the fact that those facilities are no longer used to provide transmission service. Accordingly, Met-Ed will retain these assets and will not contribute them to MAIT.

After the Transaction is consummated, the FirstEnergy East Operating Companies will not own any assets serving a transmission function. The FirstEnergy East Operating Companies will continue to own and operate their respective distribution facilities and will continue to provide retail electric service within their existing service territories, and JCP&L will continue to hold its ownership interest in the Yards Creek Facility. FESC will provide corporate and other

[29] Taylor Testimony at 8-9.

[30] *See Metro. Edison Co.*, FERC FORM No. 1: Annual Report of Major Electric Utilities, Licensees and Others at p. 422.1 (filed Mar. 31, 2015); Attachment H-5 of the PJM Tariff.

centralized services to MAIT at cost under the FirstEnergy Service Company Agreement and pursuant to the Commission's regulation regarding the provision of services by a service-company affiliate.[31]

The FirstEnergy East Operating Companies also will retain ownership of the land and other real estate interests (collectively, "land") on which the transmission assets are located and will grant MAIT access to and use of such land in exchange for lease payments pursuant to the Ground Leases described below and in accordance with the Commission's regulations regarding the provision of non-power services among affiliates.[32] The FirstEnergy East Operating Companies are retaining the land and entering into the Ground Leases with MAIT, rather than transferring the land to MAIT, for ease of administration given that both transmission and distribution facilities are often co-located on the land.[33] As provided in the Ground Leases, the formula for determining MAIT's lease payments is based on the book value of the land.

The Transaction will be carried out pursuant to the terms of the following documents and agreements (collectively, the "Transaction Documents"), which are attached hereto as Exhibit I:

- The Capital Contribution Agreement among FET, MAIT, and the FirstEnergy East Operating Companies (the "Contribution Agreement"), which identifies the transmission assets to be contributed by the FirstEnergy East Operating Companies to MAIT and memorializes their contribution;

- The Amended and Restated Limited Liability Company Agreement of MAIT (the "Amended LLC Agreement"), which describes the rights and obligations of FET and the FirstEnergy East Operating Companies as the holders of the Class A and B membership interests, respectively, in MAIT;

- The Ground Leases between MAIT and each FirstEnergy East Operating Company, pursuant to which MAIT will obtain access rights to the land associated with the transmission assets from the FirstEnergy East Operating Companies;

[31] *See id.* § 35.44(b)(4) (2015).

[32] *See* 18 C.F.R. §§ 35.43, 35.44 (2015).

[33] The ground lease structure is the same approach as that taken when various utility subsidiaries of FirstEnergy sold their transmission facilities to ATSI. *See FirstEnergy Operating Cos.*, 89 FERC ¶ 61,090 (1999) (approving sale of transmission facilities to ATSI).

- The Operating and Interconnection Agreements between MAIT and each of the FirstEnergy East Operating Companies, which set forth the respective rights and obligations of MAIT and the FirstEnergy East Operating Companies with respect to system planning, system operations and interconnection; and

- The Agency Agreements between MAIT and Penelec and MAIT and Met-Ed, pursuant to which the Penelec and Met-Ed will permit MAIT to act as their agent to make arrangements as necessary to provide transmission service over certain distribution facilities to customers at lower voltage delivery points pursuant to the PJM Tariff. The Agency Agreement is provided in Appendix A of the respective Operating and Interconnection Agreements.

**B. Classification of the Transmission Assets**

The Commission relies on the "seven-factor test," first articulated in Order No. 888,[34] to distinguish between "transmission" facilities, which are subject to the Commission's exclusive jurisdiction, and "local distribution" facilities, which are subject to state jurisdiction.[35] The seven factors are used to identify the "primary function of a facility."[36] If the primary function is transmission, the facility is subject to FERC's exclusive jurisdiction; if the primary function is distribution, the facility is subject to state jurisdiction. FirstEnergy engaged an independent consultant, Mr. Larry Gelbien of Navigant Consulting, Inc., to evaluate the appropriate classification of all transmission and distribution facilities owned by the FirstEnergy East Operating Companies using the Commission's seven-factor test. A copy of Mr. Gelbien's analysis and conclusions is attached as Exhibit JJM-1 to Mr. Mackauer's Testimony.

[34] *Promoting Wholesale Competition Through Open-Access Non-Discriminatory Transmission Serv. by Pub. Utils. & Recovery of Stranded Costs by Pub. Utils. & Transmitting Utils.*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,771, 31,981 (1996) ("Order No. 888"), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

[35] 16 U.S.C. § 824(b)(1) (granting the Commission exclusive jurisdiction over the "transmission of electric energy in interstate commerce" and "sale of electric energy at wholesale in interstate commerce," and preserving state jurisdiction "over facilities used . . . in local distribution.").

[36] *Cal. Pac. Elec. Co., LLC*, 133 FERC ¶ 61,018, at P 45 (2010) ("[E]ven when a distribution facility is used to facilitate a jurisdictional wholesale sale . . . , if the primary function of the facility is local distribution, only the use of the facility for the [FERC]-jurisdictional services will be subject to [FERC's] jurisdiction.").

In their respective FERC Form No. 1s, Penelec currently classifies all of its 500 kV, 345 kV, 230 kV, 138 kV, 115 kV, and 46 kV facilities as transmission; Met-Ed currently classifies all of its 500 kV, 230 kV, 138 kV, 115 kV, and 69 kV, and certain of its 34.5 kV delta facilities as transmission; and JCP&L currently classifies all of its 500 kV, 230 kV, 115 kV and 34.5 kV delta facilities as transmission. Mr. Gelbien's analysis confirms that all facilities with voltage levels at or above 46 kV in Penelec, 69 kV in Met-Ed, and 34.5 kV delta in JCP&L are properly classified as "transmission." Mr. Gelbien recommends that the six Met-Ed 34.5 kV delta facilities that are currently classified as transmission be reclassified as distribution to reflect the fact that those facilities are no longer used to provide transmission service. FirstEnergy has adopted Mr. Gelbien's analysis and recommendation. Specifically, Applicants have designated all of the FirstEnergy East Operating Companies' existing transmission assets as "transmission" that will be contributed to MAIT, except for the six Met-Ed 34.5 kV delta facilities currently classified as transmission, which will be reclassified as distribution. The FirstEnergy East Operating Companies will retain in their respective transmission accounts in the Commission's Uniform System of Accounts those assets—including the aforementioned Met-Ed 34.5 kV delta facilities—that operate at distribution voltages and are therefore not classified as transmission. After consummating the Transaction, consistent with Commission precedent, Applicants intend to file a petition for declaratory order recognizing this classification of assets.[37]

[37] *See, e.g.*, *FirstEnergy Operating Cos.*, Docket No. EL01-69-000 (June 13, 2001) (unpublished letter order) (granting application to classify facilities as local distribution or transmission in connection with sale of transmission facilities from certain FirstEnergy operating companies to ATSI).

A complete list of the transmission assets that will be contributed by the FirstEnergy East Operating Companies to MAIT as part of the Transaction is attached to the Contribution Agreement as Exhibit I.[38]

### C. Control and Operation of the Transmission Assets

MAIT will be a stand-alone transmission company that provides transmission service over the existing transmission network in the PENELEC, ME, and JCPL transmission zones of PJM. MAIT also will plan, construct, own, and operate new transmission assets in those zones.

MAIT will become a party to the Revised Amended and Restated Mutual Assistance Agreement among FirstEnergy's regulated affiliates (including the FirstEnergy East Operating Companies) and certain of FirstEnergy's non-regulated affiliates (the "Mutual Assistance Agreement").[39] Pursuant to the Mutual Assistance Agreement, FirstEnergy's regulated affiliates provide non-power goods and services to one another and to certain of their non-regulated affiliates at prices consistent with the Commission's regulations regarding the transfer of non-power goods or services among affiliates.[40] After the Transaction is consummated, pursuant to the Mutual Assistance Agreement, each FirstEnergy East Operating Company will provide services at cost with respect to MAIT's transmission assets within the FirstEnergy East Operating Company's respective service territory.

MAIT will be a transmission-owning member of PJM, and the transmission assets that MAIT is acquiring from the FirstEnergy East Operating Companies as part of the Transaction

[38] Applicants intend to contribute *all* of the FirstEnergy East Operating Companies' transmission assets to MAIT. While Applicants believe that Exhibit I includes a comprehensive list of all the transmission assets that will be contributed, Applicants request Commission authorization to contribute all transmission assets, whether or not specifically identified in the Contribution Agreement.

[39] The non-regulated affiliates that are parties to the Mutual Assistance Agreement are FESC, Allegheny Energy Service Corporation, and GPU Nuclear, Inc., the licensed owner of the non-operational Three Mile Island Unit 2 nuclear generating station in Pennsylvania.

[40] *See* 18 C.F.R. §§ 35.43-35.44.

will remain under the functional control of PJM. MAIT will succeed to the transmission rights and obligations of the FirstEnergy East Operating Companies, including under the PJM Consolidated Transmission Owners Agreement ("CTOA"), and will continue to provide service over those transmission assets pursuant to the PJM Tariff.[41] MAIT will also become a registered entity at the North American Electric Reliability Corporation, subject to the mandatory electric reliability rules promulgated pursuant to FPA Section 215 and the Commission's regulations.[42]

## V. THE TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST

Section 203(a)(4) of the FPA provides that the Commission "shall approve [a] proposed disposition, consolidation, acquisition, or change in control, if it finds that the proposed transaction will be consistent with the public interest, and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company."[43] In determining whether a proposed transaction is in the public interest, the Commission considers whether it will have an adverse impact on competition, rates, or regulation.[44] As described below, the Transaction satisfies the requirements of FPA Section 203 and the Commission's implementing regulations. Moreover, because the Transaction results in the creation of a stand-alone transmission company, the Transaction provides a number of benefits to customers and the PJM region.

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[41] Consistent with past practice, Applicants anticipate that PJM will file with the Commission the appropriate revisions to the CTOA, in addition to any necessary revisions to the PJM Tariff and PJM's other governing documents, to reflect the change in transmission ownership as a result of the Transaction (*i.e.*, to replace, where appropriate, the FirstEnergy East Operating Companies with MAIT). *See, e.g., E. Ky. Power Coop., Inc.*, Docket Nos. ER13-1177-000 *et al.* (May 22, 2013) (unpublished letter order).

[42] 16 U.S.C. § 824o.

[43] *Id.* § 824b(a)(4).

[44] *Revised Filing Requirements Under Part 33 of the Comm'n's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000) ("Order No. 642"), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001).

### A. The Transaction Will Have No Adverse Effect on Competition

The Transaction satisfies the first prong of the Commission's public interest test because it presents neither horizontal nor vertical market power concerns. The Commission's Part 33 regulations provide that a Section 203 applicant must file a horizontal competitive analysis screen "if, as a result of the proposed transaction, a single corporate entity obtains ownership or control over the generating facilities of previously unaffiliated merging entities . . . "[45] and/or a vertical competitive analysis "if, as a result of the proposed transaction, a single corporate entity has ownership or control over one or more merging entities that provides inputs to electricity products and one or more merging entities that provides electric generation products . . . ."[46]

MAIT will own and operate only transmission assets. The Transaction does not involve a change of ownership of any generating facilities or entities that provide electric generation products and, as such, does not require horizontal market power or vertical competitive analyses.[47] The Commission has concluded that "anticompetitive effects are unlikely to arise with regard to internal corporate reorganizations or transactions that only involve the disposition of transmission assets."[48] Because the Transaction involves only the transfer of transmission assets and will not result in any change in ownership or control of generating assets or inputs to electricity products, the Transaction will have no anticompetitive effects.

### B. The Transaction Will Have No Adverse Effect on Rates

The Transaction satisfies the second prong of the Commission's public interest test because it will have no adverse effect on rates. When considering the impacts of a proposed

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[45] 18 C.F.R. § 33.3(a)(1).

[46] *Id.* § 33.4(a)(1).

[47] *See, e.g.*, *Union Elec. Co.*, 114 FERC ¶ 61,254, at P 36 (2006); *Exelon Corp*, 112 FERC ¶ 61,011, at P 198 (2005); *PSEG Waterford Energy, LLC*, 112 FERC ¶ 61,308, at P 32 (2005).

[48] *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200, at P 190 (2005) ("Order No. 669").

transaction on rates, the Commission looks primarily at impacts on transmission rates and on rates for captive wholesale requirements customers.[49]

### 1. The Transaction Will Have No Adverse Impact on Rates for Transmission Service.

The Transaction's structure ensures that the Transaction will not result in any cost shifting between transmission and distribution customers and that the rate base attributable to existing transmission assets will not increase solely as a result of the Transaction. Specifically, because the Transaction is a tax-free exchange, the Accumulated Deferred Income Taxes ("ADITs") associated with the transmission assets will transfer to MAIT, assuring that MAIT's expected transmission rate base for existing assets accurately reflects the credit balance of ADITs as a reduction, thereby avoiding a rate shift to transmission customers.

In addition, Applicants commit to hold MAIT's transmission customers harmless from Transaction-related costs. Specifically, Applicants commit that MAIT will not collect through transmission rates any Transaction-related costs, except to the extent it can demonstrate (through a separate future filing under FPA Section 205) that the Transaction-related savings equal or exceed all of the Transaction-related costs. The Commission deems such "hold harmless" commitments sufficient to demonstrate that a transaction will have no adverse effect on rates and approves transactions under Section 203 on that basis.[50]

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[49] *New England Power Co.*, 82 FERC ¶ 61,179, at 61,659 (1998); *see also Inquiry Concerning the Comm'n's Merger Policy Under the Fed. Power Act; Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044, at 30,123 (1996) ("Merger Policy Statement"), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997).

[50] *See, e.g., Upper Peninsula Power Co.*, 148 FERC ¶ 61,133 (2014); *Northwestern Corp.*, 147 FERC ¶ 62,138 (2014); *ITC Midwest LLC*, 147 FERC ¶ 62,139 (2014); *Fla. Power & Light Co.*, 147 FERC ¶ 62,012 (2014); *ITC Midwest LLC*, 146 FERC ¶ 62,076 (2014); *Portland Gen. Elec. Co.*, 145 FERC ¶ 62,213 (2013); *Silver Merger Sub, Inc.*, 145 FERC ¶ 61,261 (2013); *Kan. City Power & Light Co.*, 145 FERC ¶ 62,170 (2013); *NV Energy, Inc.*, 145 FERC ¶ 61,170 (2013); *Capital Power Investments, LLC*, 145 FERC ¶ 62,104 (2013); *Fla. Power & Light Co.*, 145 FERC ¶ 61,018 (2013); *Bangor Hydro Electric Co.*, 144 FERC ¶ 61,030 (2013); *ITC Midwest LLC*, 143 FERC ¶ 62,087 (2013); *Ohio Power Co.*, 143 FERC ¶ 61,075 (2013); *Appalachian Power Co.*, 143 FERC ¶ 61,074 (2013); *Mich. Elec. Transmission Co., LLC*, 143 FERC ¶ 62,004 (2013); *ITC Midwest LLC*, 142 FERC ¶ 62,106 (2013); *FirstEnergy Generation Corp.*, 141 FERC ¶ 61,239 (2012); *Dynasty Power Inc.*, 141 FERC ¶ 62,178 (2012);

The Commission previously has accepted hold harmless commitments from Section 203 applicants that will remain in effect for a five-year period.[51] In its Proposed Policy Statement, the Commission is proposing to no longer accept hold harmless commitments that are limited in duration.[52] While the Commission intends for any changes to its hold harmless policies to take effect prospectively only after the issuance of the final Policy Statement,[53] Applicants nonetheless commit in this Application that their commitment to hold transmission customers harmless from Transaction-related costs will not expire after any period of time. However, consistent with the Proposed Policy Statement, Applicants retain the right to seek recovery of Transaction-related costs in a potential future FPA Section 205 filing (with a demonstration that the benefits derived from the Transaction exceed those costs).[54]

In accordance with the Proposed Policy Statement, Mr. Taylor identifies in his testimony the Transaction-related costs that will be covered by this hold harmless commitment and the means by which MAIT will track and exclude such Transaction-related costs from future transmission rates.[55] Applicants further note that, as the Commission recognizes in its recent Proposed Policy Statement, "protection from transaction-related costs does not mean that

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*Bangor Hydro Elec. Co.*, 141 FERC ¶ 62,138 (2012); *PacifiCorp*, 141 FERC ¶ 62,018 (2012); *Cinergy Corp.*, 140 FERC ¶ 61,180 (2012); *ITC Midwest LLC*, 140 FERC ¶ 61,125 (2012); *ITC Midwest LLC*, 140 FERC ¶ 62,030 (2012); *Emery Inc.*, 140 FERC ¶ 62,022 (2012); *International Transmission Co.*, 140 FERC ¶ 62,012 (2012); *Mich. Elec. Transmission Co., LLC*, 140 FERC ¶ 62,010 (2012); *Fortis Inc.*, 140 FERC ¶ 62,004 (2012); *PacifiCorp*, 139 FERC ¶ 62,259 (2012); *The Narragansett Elec. Co.*, 139 FERC ¶ 62,250 (2012); *Tucson Elec. Power Co.*, 139 FERC ¶ 62,046 (2012); *ITC Midwest LLC*, 139 FERC ¶ 62,020 (2012); *ITC Midwest LLC*, 139 FERC ¶ 62,019 (2012); and *Mich. Elec. Transmission Co.*, 139 FERC ¶ 62,018 (2012).

[51] *Policy Statement on Hold Harmless Commitments*, 150 FERC ¶ 61,031, at P 12 (2015) ("The Commission has previously found that hold harmless commitments under which applicants commit not to seek to recover transaction-related costs except to the extent that such costs are exceeded by demonstrated transaction-related savings for a period for five years to be 'standard.'") (internal citations omitted).

[52] *Id.* P 34.

[53] *Id.* P 20.

[54] *Id.* at 14.

[55] Taylor Testimony at 13.

consumers are necessarily insulated from any rate increase, such as those related to market conditions or those unrelated to the transaction."[56]

The Transaction will not result in the creation of any goodwill. However, the Transaction will result in the transfer of goodwill from the FirstEnergy East Operating Companies to MAIT. The associated goodwill derives from the 2001 merger between FirstEnergy and GPU, Inc. ("GPU"), the previous parent company of the FirstEnergy East Operating Companies.[57] In accordance with GAAP and Commission precedent, "[t]he amount of goodwill to be transferred to MAIT will be based on the relative fair value of the transmission assets being transferred to the fair value of the transmission assets being transferred plus the fair value of the remaining operations of each of the FirstEnergy East Operating Companies."[58] Consistent with the Commission's policy that acquisition premiums, including goodwill, must be excluded from jurisdictional rates absent a filing under FPA Section 205 and specific Commission authorization granting recovery of an acquisition premium in rates, MAIT affirms that it will not recover in its transmission rate any acquisition premium or goodwill that is transferred from the FirstEnergy East Operating Companies to MAIT absent a separate Section 205 filing and explicit Commission authorization to do so. Under long-standing precedent, the Commission relies on similar commitments in finding that a proposed transaction will not adversely affect transmission rates.[59]

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[56] *Proposed Policy Statement on Hold Harmless Commitments*, 150 FERC ¶ 61,031, at P 13 (2015); *see also Boston Generating, LLC*, 113 FERC ¶ 61,016, at P 26 (2005) ("In reviewing an application under section 203, the Commission looks at the effects of the transaction on rates, not at rate changes that may occur regardless of the transaction.").

[57] *See Ohio Edison Co.*, 94 FERC ¶ 61,291 (2001) (approving the proposed FirstEnergy/GPU merger).

[58] Taylor Testimony at 8.

[59] *See, e.g.*, *NorthWestern Corp.*, 147 FERC ¶ 62,138 (2014); *Kan. City Power & Light Co.*, 145 FERC ¶ 62,170 (2013); *MidAmerican Energy Holdings Co.*, 113 FERC ¶ 61,298 (2005).

Applicants commit to continue to comply with their prior Section 203 merger commitments as well. Specifically, when the Commission approved the FirstEnergy/GPU merger, it accepted a commitment by the applicants "to hold harmless all of their wholesale customers, including those that...purchase...transmission services and ancillary services at cost-based rates, from all merger-related costs in excess of merger-related savings."[60] Similarly, when the Commission approved the merger between FirstEnergy and Allegheny, it accepted the applicants' commitment that, for a period of five years, they would not seek to include merger-related costs in their transmission revenue requirements unless they could demonstrate merger-related savings equal to or in excess of the merger-related costs.[61] Applicants will continue to comply with the merger commitments made in those prior Section 203 proceedings.

Finally, the FirstEnergy East Operating Companies also provide service pursuant to certain fixed-price, pre-Order No. 888 agreements relating to transmission service.[62] Because there is no mechanism for the FirstEnergy East Operating Companies to pass through any Transaction-related costs to customers under those agreements, the Transaction will have no impact on those agreements.[63]

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[60] *Ohio Edison*, 94 FERC ¶ 61,291 at P 62,046.

[61] *FirstEnergy Corp.*, 133 FERC ¶ 61,222, at PP 58-64 (2010).

[62] The pre-Order No. 888 agreements include, among others, a Wheeling and Supplemental Power Agreement dated April 12, 1993, between Penelec and Allegheny Electric Cooperative, Inc., and the Extra High Voltage Transmission System Agreement dated April 27, 1967, the Lower Delaware Valley Transmission System Agreement dated September 30, 1977, the Susquehanna Eastern 500 kV Transmission System Agreement dated April 30, 1976, and a related Transmission Enhancement Facilities Agreement dated September 23, 1983. Those agreements are included in Exhibit G.

[63] The Commission has held that fixed-price wholesale contracts that will be unaffected by a transaction do not present rate effect concerns. *See Nevada Power Co. GenWest LLC*, 113 FERC 61,265, at PP 19-20 (2005).

### 2. Applicants Commit to Hold Transmission Customers Harmless from the Potential Rate Impacts of MAIT'S Initial, All-Equity Capital Structure.

As noted above, the FirstEnergy East Operating Companies currently provide service over the transmission assets pursuant to a Commission-approved stated rate. After the Commission authorizes the Transaction, MAIT will file a request under FPA Section 205 for Commission authorization for a formula rate for service over both the existing transmission assets (i.e., the transmission assets that MAIT acquires from the FirstEnergy East Operating Companies as part of the Transaction) as well as the transmission assets that MAIT develops and owns in the future. MAIT's formula rate will go into effect on the date that the Transaction closes, and will apply to the transmission rate charged by PJM for the use of MAIT's transmission facilities.

The FirstEnergy East Operating Companies are not transferring debt to MAIT as part of the Transaction.[64] As a result, MAIT's capital structure will consist of all equity on "day one" of its operations after consummation of the Transaction. MAIT, after the Commission issues an order in this proceeding, intends to file an application with the Commission pursuant to FPA Section 204 to issue debt to fund its planned transmission investment over the first two years of operations. Applicants anticipate that, once MAIT issues those debt securities, it will have an actual capital structure within the range of Commission-approved capital structures.[65]

Applicants acknowledge that the Commission in the past has held that a change in capital structure associated with the formation of a stand-alone transmission company could be

[64] No debt is being transferred to MAIT because the FirstEnergy East Operating Companies' debt is composed of general obligations that are not secured by, or associated with, the transmission assets to be contributed to MAIT.

[65] *See, e.g., Morongo Transmission LLC*, 148 FERC ¶ 61,139, at P 19 (2014) (approving a 50% equity capital structure); *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,263, at P 25 (2013) (same); *Green Power Express LP*, 127 FERC ¶ 61,031, at PP 68, 72 (2007) (approving a 60% equity capital structure).

considered a "rate effect" of the transaction.[66] Here, the FirstEnergy East Operating Companies' stated rate is based on an implied capital structure with an equity ratio of almost 50%.[67] Applicants recognize that there may be a potential concern that MAIT's initial, temporary, all-equity capital structure could result in an increase in transmission customers' rates when MAIT's formula rate becomes effective. Applicants do not believe that the impact of MAIT's initial capital structure on transmission rates under a formula rate mechanism would constitute a Transaction-related cost for purposes of the Commission's FPA Section 203 analysis of whether the Transaction would have an adverse rate impact.[68] Nevertheless, to mitigate against a rate change resulting from a change to the implied capital structure underlying the current state rate, MAIT commits that, in its future Section 205 formula rate filing, it will apply a 50% equity/50% debt capital structure for ratemaking purposes for a two-year transition period.[69] At the end of this transition period, MAIT will have established an actual capital structure consistent with Commission precedent.

### 3. The Transaction Will Have No Adverse Impact on Rates for Wholesale Power Sales.

The Transaction will have no adverse effect on the rates for wholesale power sales. FET, as the holding company of transmission-only companies (i.e., ATSI, TrAILCo, PATH, and

[66] *See ITC Holdings Corp.*, 143 FERC ¶ 61,256, at P 119 (2013).

[67] *GPU Service Corp.*, 85 FERC ¶ 61,348 (1998) (approving a settlement rate found to be consistent with staff's recommended equity ratios of 48.69% for Pennsylvania Electric, 49.45% for Metropolitan Edison, and 47.92% for Jersey Central); *see also* Direct Testimony of Gary S. Wright, Docket No. ER97-3189-004) (filed Feb. 20, 1998) (including equity ratios of 47.36% for Penelec, 48.3% for Met-Ed, and 53.04% for JCP&L).

[68] The Commission has long held that its evaluation of the rate effects of a proposed transaction under Section 203 differs from its analysis of whether rates are just and reasonable under Section 205. *See, e.g., ALLETE, Inc.*, 129 FERC ¶ 61,174, at P 19 (2009); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,307, at P 25 (2008).

[69] The Commission has recognized that a newly-formed company may need time to develop into a mature company with an actual capital structure appropriate for use in setting its rates. In those instances, FERC has found it appropriate to use a transitional capitalization for the duration of time it will take for the company to reach its final capital structure. *See, e.g., TransBay Cable LLC*, 112 FERC 61,095, at P 27 (2005) (permitting a newly-formed transmission-only company to use a target capital structure of 50% equity/50% debt for the first 36 months of operation before transitioning to the use of its actual capital structure); *Western Area Power Admin.*, 100 FERC ¶ 61,331, at PP 9, 9 n.5 (2002) (same).

MAIT), does not have wholesale power sales customers, and MAIT, as a transmission-only company, will not have wholesale power sales customers. While the FirstEnergy East Operating Companies make wholesale power sales pursuant to their Commission-accepted market-based rate tariffs, the Commission has concluded that such market-based rate sales do not raise any concerns about a transaction's possible adverse effects on rates.[70]

### C. The Transaction Will Have No Adverse Effect on Regulation

The Transaction satisfies the third prong of the Commission's public interest test because it will have no adverse effect on regulation. The Commission will continue to regulate the rates, terms, and conditions of transmission service over the transmission assets the FirstEnergy East Operating Companies will contribute to MAIT, and inter-affiliate transactions involving MAIT will be subject to the Commission's affiliate transaction rules and pricing policies. With the minor exception of the six Met-Ed 34.5 kV facilities that are being reclassified from transmission to distribution,[71] all of the transmission assets to be contributed will remain subject to the Commission's jurisdiction following the Transaction. In addition, any inter-affiliate transactions entered into by MAIT—including the Ground Leases, Operating and Interconnection Agreements, Mutual Assistance Agreement and FirstEnergy Service Company Agreement—will be subject to the Commission's affiliate transaction rules and pricing policies.[72]

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[70] *Cinergy Corp.*, 140 FERC ¶ 61,180, at P 41 (2012) (citing *Duquesne Light Holdings, Inc.*, 117 FERC ¶ 61,326, at P 25 (2006)) ("The Commission has previously stated that, when there are market-based rates, the effect on rates is not of concern. The effect on rates is not of concern in these circumstances because market-based rates will not be affected by the seller's cost of service and, thus, will not be adversely affected by the Proposed Transaction.").

[71] *See supra* Section IV.B.

[72] 18 C.F.R. §§ 35.43, 35.44; *see also Cross-Subsidization Restrictions on Affiliate Transactions*, Order No. 707, 122 FERC ¶ 61,155 (2008); *order on rehearing*, Order No. 707-A, 124 FERC ¶ 61,047 (2008).

### D. The Transaction Will Not Result in Proscribed Cross-Subsidization or the Pledge or Encumbrance of Utility Assets.

FPA Section 203(a)(4) requires the Commission to approve an acquisition or disposition of jurisdictional assets if the Commission determines that the proposed transaction will be consistent with the public interest and "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company . . . ."[73] Consistent with this provision of the statute, the Commission states that its goal is to "ensure that public utilities with captive customers do not cross-subsidize 'non-regulated' associate companies, *i.e.*, companies that are not subject to traditional cost-based regulation."[74] In the *FPA Section 203 Supplemental Policy Statement*, the Commission explained that Section 203 applicants can "demonstrate that a proposed transaction will not result in inappropriate cross-subsidization . . . either through meeting one of the safe harbor demonstrations [recognized in the Supplemental Policy Statement] . . . or demonstrating that there are no potential cross-subsidy issues associated with the proposed transactions."[75]

The Transaction falls within the Commission's safe harbor "where the applicant shows that a franchised public utility with captive customers is not involved."[76] None of the FirstEnergy East Operating Companies has captive retail customers because Pennsylvania and New Jersey have each adopted retail choice.[77] FET, as a holding company with no operations,

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[73] 16 U.S.C. § 824b(a)(4).

[74] Order No. 669 at P 91.

[75] *Supplemental Policy Statement*, 120 FERC ¶ 61,060 at P 23.

[76] *Id.* P 17.

[77] *See FirstEnergy Solutions Corp.*, 125 FERC ¶ 61,356, at P 27 (2008) ("In Order No. 697, the Commission addressed the issue of whether customers are 'captive' if they have retail choice. The Commission stated that the definition of 'captive customers' does not include those customers who have retail choice, i.e., the ability to select a retail supplier based on the rates, terms, and conditions of service offered. The Commission stated that retail customers who choose to be served under cost-based rates but have the ability, by virtue of state law, to choose one retail supplier over another, are not considered to be under 'cost-based regulation' and therefore are not 'captive.' The Commission went on to state that 'retail customers in retail choice states who choose to buy power from their local utility at cost-based rates as part of that utility's provider-of-last-resort obligation are not considered

has no captive customers. MAIT will provide a single service – transmission service pursuant to the PJM Tariff – and thus is not a franchised public utility with "captive customers." The Commission has concluded that there is no potential harm for consumers when, as here, there are no captive customers involved in the transaction.[78]

Moreover, the Transaction does not involve any "'non-regulated' associate companies, i.e., companies that are not subject to traditional cost-based regulation."[79] The Commission regulates the rates for transmission service on the FirstEnergy East Operating Companies' transmission assets, and the Commission will continue to regulate those rates after the Transaction is consummated. In addition, the PaPUC regulates and will continue to regulate after the Transaction the retail and distribution operations of Penelec and Met-Ed, and the NJBPU regulates and will continue to regulate after the Transaction the retail and distribution operations of JCP&L.

Finally, the Transaction does not involve any new issuance of securities or any new pledge or encumbrance of assets by a traditional public utility associate company that owns or provides transmission service over jurisdictional transmission assets for the benefit of an associate company. As noted above, MAIT intends to file an application pursuant to FPA Section 204 to issue long- and short-term debt and equity securities to fund its activities. Those financial transactions are to fund MAIT's operation and maintenance of existing transmission facilities, and to fund the development, construction, and operation of new transmission

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captive customers because, although they may choose not to do so, they have the ability to take service from a different supplier whose rates are set by the marketplace.'") (footnote omitted); *see also Pa. Power Co.*, Docket No. ER07-434-000 (Mar. 21, 2007) (unpublished letter order) (determining that there are "no captive customers" for franchised utilities in Pennsylvania and New Jersey because of retail choice); *FirstEnergy Corp.*, 94 FERC ¶ 61,182 (2001) (same).

[78] *Supplemental Policy Statement* at P 17.

[79] Order No. 669 at P 91.

facilities, and are not for the benefit of an associate company. Moreover, all affiliate contracts and transactions between MAIT and its affiliates will be subject to the Commission's inter-affiliate rules and pricing policies.[80]

Therefore, based on facts and circumstances known to Applicants or those that are reasonably foreseeable, the Transaction will not result in, at the time of the Transaction or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.

## VI. THE TRANSACTION WILL FACILITATE THE DEVELOPMENT OF TRANSMISSION INFRASTRUCTURE.

FirstEnergy is in the midst of a major investment cycle in transmission infrastructure. In 2014, FirstEnergy commenced its EtF initiative, which is intended to identify the need for, and facilitate the investment in, improvements to the security, resiliency, efficiency, and operational flexibility of its transmission systems.[81] EtF projects include building and re-conductoring transmission lines; building and enhancing substations; modernizing transmission communication infrastructure; and installing dynamic reactive resources to regulate system voltage.[82] In all, FirstEnergy plans to invest approximately $2.5 to $3 billion in the FirstEnergy East Operating Companies' service territories through this program over the next five to ten years.[83]

FET formed MAIT in preparation for this significant planned investment. As Mr. Staub explains in his testimony, utilities face significant challenges in their efforts to simultaneously meet the service requirements of retail customers while also making sustained investments in

[80] 18 C.F.R. §§ 35.43, 35.44; *see also Cross-Subsidization Restrictions on Affiliate Transactions*, Order No. 707, 122 FERC ¶ 61,155 (2008); *order on rehearing*, Order No. 707-A, 124 FERC ¶ 61,047 (2008).

[81] Mackauer Testimony at 7-11.

[82] *Id.*

[83] *Id.* at 11.

their transmission assets.[84] A utility's investment in transmission infrastructure competes with other business lines of the utility for capital, and transmission investments "can be deferred in favor of more immediate or emergency investments in distribution" facilities.[85] The single-minded focus as a transmission-only entity will enable MAIT to commit to addressing the significant investment needs of the transmission system.

This stand-alone structure also will allow MAIT to attract capital on more commercially reasonable terms. Mr. Staub explains that lenders view stand-alone transmission companies favorably due to their transparent and easy-to-assess risk profile.[86] The Commission has also observed that stand-alone transmission companies typically enjoy an enhanced ability to respond to transmission needs[87] and have a superior track record of investing in new infrastructure.[88] MAIT's improved access to capital will increase the likelihood that the planned investments are carried out and completed in a timely fashion and at a lower cost.

Moreover, MAIT will incur debt in its own name, without a parent guarantee. Any debt MAIT incurs to finance new transmission projects, therefore, will not affect the financial condition and credit ratings of the FirstEnergy East Operating Companies. Hence, the migration to a stand-alone transmission model not only better supports the sustained level of transmission

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[84] Staub Testimony at 7-8.

[85] *Id.* at 11.

[86] *Id.* at 8-11.

[87] *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, 116 FERC ¶ 61,057, at P 224 (2006) ("Order No. 679"), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007) ("By eliminating competition for capital between generation and transmission functions and thereby maintaining a singular focus on transmission investment, the Transco model responds more rapidly and precisely to market signals indicating when and where transmission investment is needed.").

[88] Order No. 679 at PP 221-22, 224 ("[W]e adopt in this Final Rule the proposal from the [Notice of Proposed Rulemaking] to provide to Transcos a ROE that both encourages Transco formation and is sufficient to attract investment after the Transco is formed. . . . This decision is based on the proven and encouraging track record of Transco investment in transmission infrastructure. . . . "[T]he Commission believes that this positive record of Transco investment in transmission facilities is related to the stand-alone nature of these entities.").

investment needed at MAIT but also preserves and enhances the FirstEnergy East Operating Companies' capacity to issue debt for their respective retail and distribution needs.[89]

## VII. REQUEST FOR CONFIDENTIAL TREATMENT

Pursuant to Section 388.112 of the Commission's regulations,[90] Applicants request CEII protection for the maps provided in Exhibit K identifying the location of, and providing other sensitive information about, jurisdictional transmission assets that the FirstEnergy East Operating Companies will contribute to MAIT as part of the Transaction. The maps qualify as CEII under Section 388.113 of the Commission's regulations because they are "detailed design information" regarding the transmission of energy. Accordingly, Applicants are filing a redacted, public copy of this Application with the CEII information in Exhibit K removed, and a copy of the unredacted Exhibit K, which has been marked.

## VIII. INFORMATION REQUIRED UNDER PART 33

### A. Section 33.2(a) – Exact Name of the Applicants and their Principal Business Addresses

FirstEnergy Transmission, LLC
76 South Main Street
Akron, OH 44308-1890

Mid-Atlantic Interstate Transmission, LLC
76 South Main Street
Akron, OH 44308-1890

Pennsylvania Electric Company
76 South Main Street
Akron, OH 44308-1890

Metropolitan Edison Company
76 South Main Street
Akron, OH 44308-1890

Jersey Central Power & Light Company
300 Madison Avenue
Morristown, NJ 07962

[89] Staub Testimony at 12.

[90] 18 C.F.R. § 388.112 (2015).

### B. Section 33.2(b) – The Names and Addresses of Persons Authorized to Receive Notices and Communications Regarding the Application

The following persons are designated to receive notices and communications with respect to this Application:[91]

| | |
|---|---|
| Morgan E. Parke*<br>Associate General Counsel<br>First Energy Service Company<br>76 South Main Street<br>Akron, OH 44308-1890<br>Tel: (330) 384-4595<br>mparke@firstenergycorp.com | Karen A. Sealy*<br>Attorney<br>FirstEnergy Service Company<br>76 South Main Street<br>Akron, OH 44308-1890<br>Tel: (330) 761-7869<br>ksealy@firstenergycorp.com |
| George D. (Chip) Cannon, Jr.*<br>John M. White*<br>Akin Gump Strauss Hauer & Feld LLP<br>1333 New Hampshire Avenue, NW<br>Washington, DC 20036-1564<br>Tel: (202) 887-4000<br>ccannon@akingump.com<br>whitej@akingump.com | |

* The persons marked with asterisks are designated for service.

### C. Section 33.2(c) – Description of the Applicants (Exhibits A-F)

#### 1. Business Activities (Exhibit A)

A description of Applicants' respective business activities is provided in Section III. Applicants request waiver of Section 33.2(c)(1) of the Commission's regulations[92] to the extent it would require the submission of additional information in Exhibit A.

#### 2. Energy Subsidiaries and Affiliates (Exhibit B)

A list of Applicants' energy subsidiaries and affiliates is provided in Exhibit B.

[91] Applicants request waiver of 18 C.F.R. § 385.203(b)(3) to permit the designation of more than two persons upon whom service is to be made in this proceeding.

[92] *Id.* § 33.2(c)(1).

### 3. Organizational Charts (Exhibit C)

Exhibit C-1 illustrates the current ownership structure of Applicants, and Exhibit C-2 illustrates the post-Transaction ownership structure of Applicants.

### 4. Joint Ventures, Strategic Alliances, Tolling Arrangements or Other Business Arrangements (Exhibit D)

The Transaction will have no effect on any joint ventures, strategic alliances, or other business arrangements of Applicants other than as described herein. To the extent necessary, Applicants request waiver of the requirement of Section 33.2(c)(4) of the Commission's regulations to file Exhibit D.

### 5. Common Officers or Directors (Exhibit E)

Exhibit E identifies the common officers and directors among the FirstEnergy East Operating Companies and FET. MAIT does not currently have any officers or directors.

### 6. Wholesale Power Sales Customers and Unbundled Transmission Services Customers (Exhibit F)

The only wholesale power sales made by the FirstEnergy East Operating Companies are made pursuant to those companies' market-based rate tariffs. Because those sales will not be impacted by the Transaction, Applicants request waiver of the requirement to identify those customers in Exhibit F.

FET, as the holding company of transmission-only companies (i.e., ATSI, TrAILCo, PATH, and MAIT), does not have wholesale power sales customers. As a transmission-only company, MAIT also will not have wholesale power sales customers.

The FirstEnergy East Operating Companies are members of PJM, which provides transmission service to customers using transmission assets within its footprint. As a result, the FirstEnergy East Operating Companies have no unbundled transmission services customers. FET, the parent company of ATSI, TrAILCo, PATH and MAIT, does not itself have transmission

service customers. Applicants request waiver of the Commission's regulations to the extent that it would require additional information in a separate Exhibit F.

#### 7. Section 33.2(d) – Jurisdictional Facilities Owned, Operated, or Controlled by the Applicants or Their Affiliates (Exhibit G)

The jurisdictional transmission assets that the FirstEnergy East Operating Companies will contribute to MAIT as part of the Transaction are described in Section IV and listed in Exhibit A of the Contribution Agreement, which is provided in Exhibit I to this Application. In addition, the FirstEnergy East Operating Companies will assign related interconnection agreements, construction service agreements, and pre-Order No. 888 agreements related to transmission service to MAIT as part of the Transaction. Those agreements are identified in Exhibit G.[93]

The Transaction will not impact any other jurisdictional facilities. Applicants request waiver of Section 33.2(d) to the extent it would require the identification of the other jurisdictional facilities of Applicants, or the jurisdictional facilities of their affiliates, none of which are impacted by the Transaction.

### D. Section 33.2(e) – Narrative Description of the Transaction (Exhibit H)

A description of the Transaction is provided in Section IV.A. Applicants request waiver of Section 33.2(e) of the Commission's regulations to the extent that it would require submission of additional information in a separate Exhibit H.

### E. Section 33.2(f) – Contracts Related to the Transaction (Exhibit I)

Exhibit I contains the following Transaction Documents:

- Exhibit I-1 is the Amended LLC Agreement;
- Exhibit I-2 is the Contribution Agreement;

[93] Applicants intend to assign all of the FirstEnergy East Operating Companies' FERC-jurisdictional agreements to MAIT. While Applicants believe that Exhibit G includes a comprehensive list of all the agreements that will be assigned, Applicants request Commission authorization to assign all relevant jurisdictional agreements, whether or not specifically identified in Exhibit G.

- Exhibit I-3 is the Ground Leases; and
- Exhibit I-4 is the Operating and Interconnection Agreements, including the Agency Agreement at Appendix A.

### F. Section 33.2(g) – Facts Relied upon To Show that the Transaction Is Consistent with the Public Interest (Exhibit J)

The facts relied upon by Applicants to demonstrate that the Transaction is consistent with the public interest are provided in Section V. Because such information is provided in the body of this Application, Applicants request waiver of Section 33.2(g) of the Commission's regulations to the extent that it would require additional information in a separate Exhibit J.

### G. Section 33.2(h) – Key Map Showing Properties of Each Party to the Transaction (Exhibit K)

Maps identifying the locations of the transmission assets of each FirstEnergy East Operating Company are attached as Exhibit K. For the reasons described above,[94] Applicants request CEII protection for these maps.

### H. Section 33.2(i) – Other Regulatory Approvals (Exhibit L)

Concurrent with the filing of this Application, Applicants are filing corresponding applications with the PaPUC and the NJBPU. To the extent necessary, Applicants request waiver of the requirement to provide this information in Exhibit L.

### I. Section 33.2(j) – Cross-Subsidizations, Pledges or Encumbrances of Utility Assets (Exhibit M)

Applicants demonstrate in Section V.D above that there are no potential cross-subsidy issues associated with the Transaction. Nevertheless, Applicants are providing this information in Exhibit M.

[94] *Supra*, Section VII.

### J. Section 33.5 – Proposed Accounting Entries

The FirstEnergy East Operating Companies and MAIT are subject to the Commission's Uniform System of Accounts ("USofA").[95] Pursuant to Section 33.5 of the Commission's regulations, Exhibit N provides proposed accounting entries for the FirstEnergy East Operating Companies and MAIT that show the effect of the Transaction with sufficient detail to indicate the effects on all account balances (including amounts transferred on an interim basis), the effect on the income statements, and the effects on other relevant financial statements.

In his testimony, Mr. Taylor explains the proposed accounting entries for the FirstEnergy East Operating Companies and MAIT. In particular, Mr. Taylor explains the accounting treatment required to accomplish both the separation of the transmission assets from the FirstEnergy East Operating Companies and the contribution of those assets to MAIT, as well as how that accounting treatment will be captured and reflected on the FirstEnergy East Operating Companies' financial statements.

The proposed accounting entries in this filing are based on account balances as of December 31, 2014. While these balances reasonably represent the expected assets, liabilities and total capitalization to be transferred, the actual account balances at the time of Transaction will be different and the methods employed will be more detailed and precise.

### K. Section 33.7 – Verifications

Attachment 1 includes the signed verifications required by Section 33.7 of the Commission's regulations.

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[95] FET is not subject to the USofA.

## IX. CONCLUSION

For the reasons set forth in this Application, Applicants request that the Commission: (i) issue an order approving the Transaction by December 19, 2015; (ii) grant the waivers of the Commission's Part 33 requirements requested herein; and (iii) grant CEII protection for the documents described herein.

Respectfully submitted,

*/s/ George D. Cannon, Jr.*
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June 19, 2015

Enclosure B
TMI-15-065

Joint Application of Mid-Atlantic Interstate Transmission LLC,
Metropolitan Edison Company, and Pennsylvania Electric Company
[Pennsylvania Public Utility Commission]
(31 pages follow)

# BEFORE THE
# PENNSYLVANIA PUBLIC UTILITY COMMISSION

| | | |
|---|---|---|
| JOINT APPLICATION OF MID-ATLANTIC INTERSTATE TRANSMISSION LLC ("MAIT"); METROPOLITAN EDISON COMPANY ("MET-ED") AND PENNSYLVANIA ELECTRIC COMPANY ("PENELEC") FOR: (1) A CERTIFICATE OF PUBLIC CONVENIENCE UNDER 66 PA.C.S. §1102(A)(3) AUTHORIZING THE TRANSFER OF CERTAIN TRANSMISSION ASSETS FROM MET-ED AND PENELEC TO MAIT; (2) A CERTIFICATE OF PUBLIC CONVENIENCE CONFERRING UPON MAIT THE STATUS OF A PENNSYLVANIA PUBLIC UTILITY UNDER 66 PA.C.S. §102; AND (3) APPROVAL OF CERTAIN AFFILIATE INTEREST AGREEMENTS UNDER 66 PA.C.S. §2102 | : | DOCKET NO. A-2015-<br>DOCKET NO. A-2015-<br>DOCKET NO. A-2015-<br>DOCKET NO(S). M-2015- |

# JOINT APPLICATION OF
# MID-ATLANTIC INTERSTATE TRANSMISSION LLC, METROPOLITAN EDISON COMPANY AND PENNSYLVANIA ELECTRIC COMPANY

## PUBLIC VERSION

**June 19, 2015**

## TABLE OF CONTENTS



[1] This exhibit contains Confidential Security Information (*See* 52 Pa. Code §§ 102.1 – 102.4) and therefore is being filed with the Pennsylvania Public Utility Commission on a confidential basis and should not be publicly disclosed.

**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|---|---|---|
| **JOINT APPLICATION OF MID-ATLANTIC INTERSTATE TRANSMISSION, LLC ("MAIT"); METROPOLITAN EDISON COMPANY ("MET-ED") AND PENNSYLVANIA ELECTRIC COMPANY ("PENELEC") FOR: (1) A CERTIFICATE OF PUBLIC CONVENIENCE UNDER 66 PA.C.S. §1102(A)(3) AUTHORIZING THE TRANSFER OF CERTAIN TRANSMISSION ASSETS FROM MET-ED AND PENELEC TO MAIT; (2) A CERTIFICATE OF PUBLIC CONVENIENCE CONFERRING UPON MAIT THE STATUS OF A PENNSYLVANIA PUBLIC UTILITY UNDER 66 PA.C.S. §102; AND (3) APPROVAL OF CERTAIN AFFILIATE INTEREST AGREEMENTS UNDER 66 PA.C.S. §2102** | : | **DOCKET NO. A-2015-**<br>**DOCKET NO. A-2015-**<br>**DOCKET NO. A-2015-**<br>**DOCKET NO(S). M-2015-** |

**JOINT APPLICATION OF MID-ATLANTIC INTERSTATE TRANSMISSION, LLC, METROPOLITAN EDISON COMPANY AND PENNSYLVANIA ELECTRIC COMPANY**


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Counsel for Mid-Atlantic Interstate Transmission, LLC,
Metropolitan Edison Company
and Pennsylvania Electric Company


Date: June 19, 2015

## I. INTRODUCTION AND OVERVIEW

1. Mid-Atlantic Interstate Transmission, LLC ("MAIT"), Metropolitan Edison Company ("Met-Ed") and Pennsylvania Electric Company ("Penelec") (together, the "Joint Applicants") are filing this Joint Application to obtain the approval of the Pennsylvania Public Utility Commission (the "Commission") under Chapters 11, 21 and 28 of the Public Utility Code: (1) for Met-Ed and Penelec to contribute their existing transmission assets to MAIT; (2) for MAIT to be a certificated Pennsylvania public utility; and (3) for approval of certain affiliated interest agreements. Contemporaneously, Jersey Central Power & Light Company ("JCP&L"), an affiliate of the Joint Applicants that provides electric distribution service in the State of New Jersey, is seeking the approval of the New Jersey Board of Public Utilities ("NJBPU") to contribute its transmission assets to MAIT; for MAIT to be granted public utility status in New Jersey; and for approval of certain affiliated interest agreements (Met-Ed, Penelec and JCP&L are hereafter referred to collectively as the "Operating Companies").

2. MAIT is a newly-formed limited liability company to be jointly owned by the Operating Companies and FirstEnergy Transmission, LLC ("FET") that will provide interstate electric transmission service subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC"). Upon obtaining the necessary approvals from the Commission, the NJBPU and the FERC,[1] the Operating Companies will contribute their transmission assets to MAIT in exchange for membership interests in MAIT pursuant to certain agreements among the Operating Companies, FET and MAIT (the "Transaction"). As previously noted, MAIT is also

[1] Contemporaneously, Met-Ed, Penelec, JCP&L, FET and MAIT are filing at the FERC an *Application for Authorization Pursuant to Sections 203(a)(1)(A) and 203(a)(2) of the Federal Power Act and Request for Waivers of Certain Filing Requirements for approval of the transfer of the Operating Companies' Transmission Assets to MAIT.*

seeking a certificate of public convenience conferring the status of a public utility under Section 102 of the Public Utility Code. Finally, in addition to approvals under Chapters 11 and 28, the Joint Applicants request that the Commission grant the approvals necessary under Chapter 21 of the Public Utility Code for the agreements that are necessary to consummate the Transaction and provide for the subsequent operation of MAIT, including revisions to existing affiliated interest arrangements that will facilitate the provision of shared services between MAIT and the Operating Companies, as more fully set forth hereafter.

3. The creation of MAIT and the contribution to it of the Operating Companies' transmission assets will establish a transparent, stand-alone transmission entity that is expected to have better credit metrics than any one of the Operating Companies standing alone. As explained in Section V, *infra*, consolidating all of the Operating Companies' transmission assets in a stand-alone transmission company can reduce investors' perception of financial risk, strengthen the credit profile of the transmission function and, in that way, provide improved access to capital at reasonable rates. Better credit metrics and improved access to capital is particularly important at this time because FirstEnergy has recently established the Energizing the Future ("EtF") program designed to increase the reliability of the transmission system, improve the condition of equipment on the system, enhance system performance, and improve operational flexibility. Although the EtF program initially focused on reliability enhancement projects in the transmission zone of American Transmission Systems, Inc. ("ATSI") located in Ohio and western Pennsylvania, FirstEnergy now proposes to expand the program to include reliability enhancement investments in the Met-Ed, Penelec and JCP&L zones. Based on a preliminary assessment, increased transmission system capital investments in the Operating Companies' transmission zones could total as much as $2.5 to $3.0 billion over the next five to ten years to

maintain reliability in the face of evolving conditions on the transmission system that are detailed in Section V, *supra*, and in the direct testimony of Jeffrey J. Mackauer (Joint Applicants' Statement No. 2). The expansion of the EtF program is the comprehensive plan for guiding these transmission investments, which will enhance reliability and improve the resiliency and capacity of the transmission system for the benefit of the Operating Companies' existing and new customers.

4. The stronger credit metrics of MAIT and the cost savings that will be realized by having one company issue all of the debt needed to finance future transmission investments, rather than separate issuances by each Operating Company, will contribute significantly to successfully implementing the expansion of the EtF program. As explained in the direct testimony of Steven R. Staub (Joint Applicants' Statement No. 3), completing the proposed Transaction is reasonably projected to produce $135 million in debt cost savings over the thirty-year life of approximately $1.5 billion of debt-financed transmission-related plant additions. Thus, the Transaction will place MAIT in a better position than Met-Ed or Penelec to make substantial new transmission investments designed to enhance the resilience, reliability and load-carrying capacity of their transmission systems in Pennsylvania. Moreover, the Transaction will relieve Met-Ed and Penelec of the need to issue debt to finance transmission investments and, in that way, will strengthen their capacity to fund investments in their Pennsylvania jurisdictional distribution systems. Finally, the increased and accelerated levels of investment that the Transaction will enable will have a beneficial economic impact on Pennsylvania, including spurring increased job creation, as also explained by Mr. Mackauer.

5. The names and addresses of the Joint Applicants are as follows:

| | | |
|---|---|---|
| Metropolitan Edison<br>Company<br>2800 Pottsville Pike<br>P.O. Box 16001<br>Reading, PA 19612-6001 | Pennsylvania Electric<br>Company<br>2800 Pottsville Pike<br>P.O. Box 16001<br>Reading, PA 19612-6001 | Mid-Atlantic Interstate<br>Transmission, LLC<br>76 South Main Street<br>Akron, OH 44308 |

6. The names and addresses of the Joint Applicants' attorneys are as follows:

| | |
|---|---|
| Lauren M. Lepkoski<br>FirstEnergy Service Company<br>2800 Pottsville Pike<br>P.O. Box 16001<br>Reading, PA 19612-6001 | Thomas P. Gadsden<br>Kenneth M. Kulak<br>Anthony C. DeCusatis<br>Catherine Vasudevan<br>Morgan, Lewis & Bockius LLP<br>1701 Market Street<br>Philadelphia, PA 19103-2921 |

## II. DESCRIPTION OF THE JOINT APPLICANTS AND THE OTHER COMPANIES INVOLVED IN THE PROPOSED TRANSACTION

7. Met-Ed is a wholly-owned subsidiary of FirstEnergy Corp. ("FirstEnergy"). Met-Ed provides service to about 553,000 electric utility customers in eastern Pennsylvania. Met-Ed had a summer peak load in 2014 of about 2,817 MW, with about two-thirds of that load attributable to residential and small commercial customers. In addition to owning, operating and maintaining 11,292 circuit miles of distribution lines, Met-Ed currently owns 1,406 miles of transmission lines and related facilities within its service territory, which are under the operational control of the PJM Interconnection, LLC ("PJM") as the regional transmission organization ("RTO").

8. Penelec is a wholly-owned subsidiary of FirstEnergy. Penelec provides service to about 591,000 electric utility customers in central and western Pennsylvania. Penelec had a summer peak load in 2014 of about 2,788 MW, with about two-thirds of that load attributable to

residential and small commercial customers. In addition to owning, operating and maintaining 16,853 circuit miles of distribution lines, Penelec currently owns 2,877 miles of transmission lines and related facilities within its service territory, which are under the operational control of PJM as the RTO.

9. JCP&L is also a wholly-owned subsidiary of FirstEnergy that provides service to about 1.1 million electric utility customers in New Jersey. In addition to its distribution facilities, JCP&L currently owns 2,569 circuit miles of transmission lines and related facilities within its service territory, which are under the operational control of PJM as the RTO.

10. FET is a subsidiary of FirstEnergy. FET's subsidiaries include ATSI and Trans-Allegheny Interstate Line Company ("TrAILCo"). ATSI is a transmission-only company or "transco" that provides transmission services in the western portion of Pennsylvania and in the state of Ohio. Currently, ATSI owns and maintains over 8,100 circuit-miles of transmission lines, substations and other transmission facilities that are located solely in the ATSI Zone of PJM and are under the operational control of PJM as the RTO. ATSI is comprised in large part of the transmission assets formerly owned by FirstEnergy's operating utilities in western Pennsylvania and Ohio (*i.e.*, Pennsylvania Power Company ("Penn Power") in western Pennsylvania, Toledo Edison Company, Ohio Edison Company, and the Cleveland Electric Illuminating Company in Ohio).[2] TrAILCo owns and maintains over 180 circuit-miles of transmission lines, substations and other transmission facilities, including the Trans-Allegheny Interstate Line and

[2] Pennsylvania Power Company ("Penn Power") a public utility subsidiary of Ohio Edison Company, which is in turn a subsidiary of FirstEnergy that provides electric distribution service in western Pennsylvania, transferred its transmission assets to ATSI pursuant to the Commission's approval as evidenced by a certificate of public convenience issued in 2000. *Application Of Pennsylvania Power Co. For (1) A Certificate Of Public Convenience Authorizing The Transfer Of Certain Transmission Assets To American Transmission Systems, Inc., And (2) Approval Of Certain Affiliated Interest Agreements Necessary To Effect The Transfer*, Docket No. A-110450F0016 (July 14, 2000).

the Black Oak Static Var Compensator, with other projects under construction.[3] TrAILCo's operating assets are primarily located in Pennsylvania, West Virginia and northern Virginia and are under the operational control of PJM as the RTO.

11. As previously explained, MAIT is a newly formed limited liability company that will be jointly owned by the Operating Companies and FET and, following the contribution of transmission assets for which approval is requested, will furnish interstate transmission service. From and after the closing on the Transaction, MAIT will construct, own and maintain new transmission facilities in the Operating Companies' service areas, including those projects currently in the planning or construction phase.

## III. OVERVIEW OF THE PROPOSED TRANSACTION

12. The principal elements of the Transaction provide that the Operating Companies will make a one-time contribution of their existing transmission assets to MAIT as a tax-free transfer in exchange for Class B membership interests in MAIT. As owners of Class B membership interests, the Operating Companies will have voting rights over various fundamental structural matters, namely, the filing of a voluntary petition in bankruptcy, a merger or the sale of substantially all the assets of MAIT. FET, in turn, will make a cash contribution to MAIT in exchange for Class A membership interests, which will give FET operating and management control of MAIT. For financial reporting purposes, MAIT will be treated as a consolidated subsidiary of FET. The Operating Companies will record their investment in MAIT as an

[3] *See Application of Trans-Allegheny 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 Certification 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 *et al.* (December 13, 2008).

investment in subsidiary companies, as explained by Mr. Taylor (Joint Applicants' Statement No. 4). MAIT will be an affiliate of FirstEnergy Service Company ("FESC"), which will provide various administrative and management services to MAIT.

13. As a result of the Transaction, the Operating Companies will no longer own any facilities serving a transmission function. All transmission services over the transmission facilities will be provided by MAIT pursuant to the terms of PJM's Open Access Transmission Tariff ("OATT"), consistent with the current operation of these facilities by Met-Ed and Penelec. The transmission facilities will remain subject to the terms of the PJM OATT at all times before, during and after the Transaction. Rates for transmission service will remain subject to the jurisdiction of the FERC and administered by PJM through the OATT. The Operating Companies will continue to own and operate all distribution facilities they presently own and will continue to provide retail electric service within their existing service territories as they do today.

14. The existing transmission assets of the Operating Companies, including transmission-related regulatory assets, will be contributed to MAIT at book value (original cost less depreciation reserve). The goodwill associated with those transmission assets, as recorded on the Operating Companies' books of account, will also be transferred to MAIT. In exchange, the Operating Companies will receive the Class B membership interests in MAIT previously described. Because the Transaction will be structured to be a tax-free exchange of assets for ownership interests in a new limited liability company, the Operating Companies will not recognize taxable gain or loss on the Transaction. Moreover, because the Transaction is a tax-free exchange, the Accumulated Deferred Income Taxes ("ADIT") associated with transmission assets recorded on Met-Ed's and Penelec's books of account will transfer to MAIT's books. Because the ADIT are associated with transmission assets, they are not taken into account in determining

the electric distribution rate base of Met-Ed and Penelec for Pennsylvania ratemaking purposes. However, transferring the ADIT to MAIT will assure that MAIT's FERC-jurisdictional rate base, like the existing FERC-jurisdictional rate bases of Met-Ed and Penelec, reflects the credit balance of ADIT. Consequently, the Transaction will not result in any cost shifting between transmission and distribution customers nor will the FERC-jurisdictional rate base attributable to the transmission assets increase solely as a result of the Transaction.

15. The Operating Companies will not transfer a fee interest in land and other real estate to MAIT in connection with the contribution of transmission assets, and such fee interests will remain on Met-Ed's and Penelec's books. However, MAIT will need certain real estate interests and access rights in order to operate and maintain the transmission facilities going forward. Accordingly, MAIT will enter into a ground lease with each of the Operating Companies to govern those interactions. The fee interest in land and other real estate used for furnishing transmission service, as well as the ground lease payments from MAIT to the Operating Companies, would be excluded in determining the distribution revenue requirement in future distribution base rate cases.

16. The Operating Companies will have no continuing obligation to contribute equity to MAIT after the initial contribution of transmission assets occurs. MAIT will pay dividends at regular intervals to the Operating Companies and FET in proportion to each company's ownership interest in MAIT at the time the dividend distribution is made. The capital structure of each Operating Company will remain unchanged as a result of the Transaction, and the Operating Companies and FET will not provide parent guarantees for MAIT's debt.

## IV. REQUESTED COMMISSION APPROVALS

### A. Transfer of Property

17. Section 1102(a)(3) of the Code requires the issuance by the Commission of a certificate of public convenience, upon application, evidencing its approval for a "public utility or an affiliated interest of a public utility" to "acquire from, or transfer to [any other entity by any means whatsoever] the title to, or the possession or use of, any tangible or intangible property used or useful in the public service." 66 Pa. C. S. § 1102(a)(3).

18. The Commission may issue a certificate of public convenience upon a finding that "the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa.C.S. § 1103(a). This standard requires the Commission to find that the elements of a proposed transaction will "affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way." *City of York v. Pa. Pub, Util. Comm'n*, 449 Pa. 136, 151,295 A.2d 825, 828 (1972). The "substantial public interest" standard is satisfied by a preponderance of the evidence that the requisite benefit will accrue from the transaction, and such burden can be met by showing a likelihood or probability of public benefits that need not be quantified or guaranteed. *Popowsky v. Pa. Pub. Util. Comm'n*, 594 Pa. 583, 617, 937 A.2d 1040, 1057 (2007). Further, the public benefit test does not require that every customer receive a benefit from a proposed transaction. *Popowsky*, at 617-18, 937 A.2d at 1061. As explained in Section V, *infra*, and in the testimony accompanying this Joint Application, the Transaction will produce substantial affirmative benefits that satisfy the *York* test.

19. Chapter 28 of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801 *et seq.*, requires that, in the exercise of authority the Commission may

otherwise have with respect to the disposition of assets of an electric distribution company, the Commission shall consider the potential anti-competitive effects or discriminatory conduct of the disposition and whether it will prevent retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market.

### B. Public Utility Status

20. Subject to necessary state and FERC approvals of the Transaction, MAIT will furnish only interstate transmission service. Consequently, MAIT will be a "public utility" for purposes of the Federal Power Act ("FPA"), which grants the FERC "exclusive authority to regulate the transmission and sale at wholesale of electric energy in interstate commerce."[4]

21. Because the FERC has exclusive jurisdiction over the interstate transmission of electric energy and the public utilities that provide interstate transmission service and because MAIT will not provide any Pennsylvania intrastate public utility service, the Commission will not have jurisdiction over MAIT's rates, terms or conditions of transmission service, as the Commission has previously recognized:[5]

> Transmission services are FERC jurisdictional and, as such, the terms and conditions under which unbundled transmission services are to be provided to customers will be controlled by the FERC-approved PJM Open Access Tariff for the transmission services procured by PECO or a competitive supplier . . . . The terms and conditions for transmission services for each separate rate classification are those established by FERC.

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[4] *New England Power Co. v. New Hampshire*, 455 U.S. 331, 340 (1982). *Accord New York v. FERC*, 535 U.S. 1, 18-19 (2002) ("the [Federal Power Act] gave FERC jurisdiction over the transmission of electric energy in interstate commerce").

[5] *Pa. P.U.C. v. PECO Energy Co.*, Docket No. R-00973953, 1998 Pa. PUC LEXIS 2 at *12-14 (Feb. 5, 1998).

22. Notwithstanding the exclusivity of FERC's jurisdiction over MAIT's transmission rates and service, MAIT is requesting that the Commission issue it a certificate of public convenience under Section 1101 of the Public Utility Code conferring public utility status under Section 102. Although a certificate of public convenience is not necessary for MAIT to exercise the power of eminent domain in Pennsylvania,[6] the issuance of a certificate of public convenience will subject MAIT to the Commission's regulations pertaining to the siting of high voltage (i.e., greater than 100 kV) transmission lines. As a consequence of MAIT's submission to the Commission's siting regulations, MAIT will also be assured that its siting, location, construction and operation of transmission facilities in Pennsylvania, including the existing transmission facilities of Met-Ed and Penelec, will not be subject to municipal zoning and land use regulations.[7]

23. MAIT further requests that the certificate of public convenience to be issued by the Commission: (1) demarcate a service area for MAIT that is coextensive with the combined authorized service territories of Met-Ed and Penelec; and (2) expressly state that MAIT is not thereby authorized to furnish any intrastate public utility service within Pennsylvania.

24. MAIT acknowledges that, as the holder of a certificate of public convenience, it will be required to comply with the Public Utility Code and the Commission's regulations and orders, excluding those provisions that expressly or by reasonable implication apply only to a public utility that furnishes intrastate service within Pennsylvania or that are preempted by the

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[6] *Application Of New York State Elec. & Gas Corp.: Request For Approval Of Abandonment Of Elec. Serv.*, Docket Nos. A-93538, A-110001 F.200, P-900488 (January 17, 1991) ("*NYSEG*").

[7] *York Water Co. v. York*, 250 Pa. 115, 118, 95 A. 396, 397 (1915). *Accord Duquesne Light Co. v. Monroeville Borough*, 449 Pa. 573, 298 A.2d 256 (1972) (local zoning ordinances preempted); *County of Chester v. Philadelphia Electric Co.*, 420 Pa. 422, 218 A.2d 331 (1966) (local land development planning requirements preempted); *Duquesne Light Co. v. Upper St. Clair Twp.*, 377 Pa. 323, 105 A.2d 287 (1954) (local zoning and building permit requirements preempted).

FERC's exclusive jurisdiction over transmission service and rates. Additionally, MAIT reserves the right to hereafter petition the Commission to be relieved of requirements that, given MAIT's provision of only interstate transmission service subject to the exclusive jurisdiction of the FERC, would not serve a reasonable regulatory purpose to impose on MAIT.

### C. Affiliated Interest Transactions

25. Section 2102(a) of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 2102(a), requires the filing of contracts with affiliates that provide for the "furnishing of …construction, engineering…or similar services [or] …purchase, sale, lease or exchange of any property, right or thing…." for approval by the Commission.

26. The Joint Applicants are requesting that the Commission approve as affiliated interest agreements the ground leases between MAIT and each Joint Applicant. Forms of the ground leases are provided as Joint Applicants' Exhibit KJT-2 accompanying Joint Applicants' Statement No. 4. Pursuant to the ground leases, each Joint Applicant will lease the real estate rights associated with the transmission assets being contributed to MAIT by that Joint Applicant.

27. The Joint Applicants are also requesting Commission approval of modifications to four existing affiliated interest agreements to include MAIT in order to facilitate its transmission-related activities and business operations. The first is the FirstEnergy Service Agreement, under which MAIT will be entitled to receive administrative, management, and other services from FESC. A copy of this agreement, as amended, is provided as Joint Applicants' Exhibit KJT-5 and is addressed in Joint Applicants' Statement No. 4. The second is the Mutual Assistance Agreement ("MAA"), a copy of which is provided as Joint Applicants' Exhibit KJT-6 and is also addressed in Joint Applicants' Statement No. 4. Under the amended MAA, MAIT will be able to request and receive non-power goods and services from any of the FirstEnergy operating

companies, including the Joint Applicants, consistent with the terms and conditions of the MAA (e.g., technical support services and workers to assist MAIT in the performance of its operations as a stand-alone transmission asset owner). The third is the Intercompany Income Tax Allocation Agreement, under which MAIT will be able to participate in FirstEnergy's filing of a consolidated tax return. A copy of this agreement is being provided as Joint Applicants' Exhibit KJT-7 and is discussed in Joint Applicants' Statement No. 4. The fourth is the FirstEnergy Regulated Money Pool Agreement, under which MAIT will become a member of FirstEnergy Regulated Money Pool Agreement and will be able to borrow from, or lend to, other regulated companies to manage its working capital requirements. A copy of this agreement is being provided as Joint Applicants' Exhibit SRS-4 and is discussed in Joint Applicants' Statement No. 3.

## V. BENEFITS OF THE TRANSACTION

28. FirstEnergy has recently established the Energizing the Future ("EtF") program, which will increase the reliability of the transmission system, improve the condition of equipment, enhance system performance, and improve operational flexibility. The EtF program initially focused on reliability enhancement investments in the ATSI transmission zone. FirstEnergy now proposes to expand the EtF program to include reliability enhancement investments in the Met-Ed, Penelec and JCP&L zones.

29. Based on a preliminary assessment, increased transmission system capital investments in the service territories of the Operating Companies are needed that could total as much as $2.5 to $3.0 billion over the next five to ten years. FirstEnergy has determined that significant investment in the transmission facilities within the Operating Companies' respective service areas is needed to maintain reliability stemming from various changes on those transmission systems, including, among other factors, generation changes (i.e. the retirement of

existing generation units and the addition of, new fossil fueled and renewable generating facilities); changes in load; the imposition of the North American Electric Reliability Corporation ("NERC") and ReliabilityFirst ("RF") reliability standards; increased reliance on demand-side resources; heightened concerns with cyber and physical security; the aging and deterioration of existing infrastructure; system conditions that FirstEnergy's periodic assessments have uncovered; and the need for additional operational flexibility. (*See* Joint Applicants' Statement No. 2.) The expansion of the EtF program is the comprehensive plan for guiding these transmission investments. The expansion of the EtF program will improve the resilience, reliability, and capacity of the transmission system for the Operating Companies' existing and new customers.

30. Because of the levels of investment that will be needed to enhance the transmission grid, it will be increasingly challenging for utilities that have the obligation to meet the service requirements of retail electric distribution customers to implement sustained transmission expansion and enhancement initiatives while maintaining investment grade credit ratings to support an adequate supply of investor capital. Companies that are focused solely on the delivery of safe and reliable transmission service offer several advantages, which can result in enhanced reliability and lower overall costs for customers:

**Reduced Cost of Capital**. A transmission-only company improves transparency for investors, which can reduce perceived investor risk and improve the overall credit profile of the business. Higher credit ratings generally translate into greater access to capital at a lower cost and provide a direct benefit to transmission customers and to the customers of public utilities that need transmission service to furnish retail distribution service. Stand-alone transmission companies with a singular focus and transparent cost recovery mechanisms can be an attractive

investment for a wider spectrum of investors and, therefore, provide added flexibility in raising equity capital through multiple avenues, whether public or private, at lower cost.

**Reduced Competition for Capital.** Investment by each Operating Company in transmission facilities competes with other necessary investments and can be deferred in favor of more immediate or emergency investments in distribution facilities. Without such competing interests, MAIT will be able to pursue investment in necessary transmission facilities on which a reasonable return can be earned.

Furthermore, MAIT's operational flexibility and access to capital will provide greater flexibility to respond promptly, efficiently, and cost-effectively to PJM and NERC reliability requirements. This is especially important because, under the existing structure where the Operating Companies own the transmission assets, PJM requirements to construct new transmission projects increasingly commit a significant portion of the Operating Companies' available capital to such projects, which is then unavailable for distribution system investment. Consequently, the capital demands of more transmission projects could limit the amount of available capital for needed distribution plant investments, and the associated increase in debt burden could adversely affect the financial condition and credit profiles of the Operating Companies.

Because MAIT will issue debt in its own name without a parent guarantee, any debt incurred by MAIT to finance new transmission will not affect the financial condition and credit ratings of the Operating Companies. This will allow the Operating Companies to have greater control over their annual expenditures dedicated to the distribution business and similarly reduce the range of business lines that must be evaluated for purposes of assessing risks by investors.

Hence, the migration to a transmission-only model not only better supports the sustained level of transmission investment needed at MAIT, but at the same time preserves the Operating Companies' capacity to issue debt for their own distribution system needs.

**Efficiency**. MAIT will be a much larger transmission owner than any of the Operating Companies would ever be individually. Because MAIT would be a larger company with a larger asset pool, it would be better equipped from a financial perspective to secure the debt required to make substantial investments in the transmission system on reasonable terms. Rather than issuing debt at each of the Operating Companies for needed investment, the debt only needs to be issued at the MAIT level. This makes the process more cost effective, efficient and less time consuming.

**Operational Benefits and Job Creation**. The creation of MAIT will facilitate and accelerate the realization of the numerous operational benefits described by Mr. Mackauer (Joint Applicants' Statement No. 2), which will increase reliability and harden the transmission system against physical and cyber-attacks. Specifically, the formation of MAIT and completion of the proposed Transaction will enable increased and accelerated investment in projects such as constructing new and upgrading existing transmission lines and substations; enhancing the communications infrastructure; and modernizing the transmission system by, among other initiatives, enhancing physical and cyber security. As described in detail in Mr. Mackauer's direct testimony, the projects to be undertaken can be grouped into one or more of five general categories, each of which will provide the direct benefits to system reliability, resilience and customer service summarized below:

(i) **System Condition Projects** are designed principally to enhance system

reliability. Consequently, most of the projects in this category will reduce the frequency and/or duration of customer outages, although certain projects are designed to reduce maintenance costs, increase safety, generally modernize the transmission system and address environmental concerns.

(ii) **System Performance Projects** will help to increase real time operational "visibility" into the status of the transmission system and conditions existing on the system and, thereby, improve situational awareness, which, in turn, will enable quicker analysis of, and response to, system events. The addition of breakers and automatic sectionalizing switches at tapped substations will enhance reliability and improve service to customers by increasing the speed of system restoration and reducing the frequency and duration of outages.

(iii) **Operational Flexibility Projects** will provide more flexibility in dealing with both scheduled and unscheduled outages and, in that way, enhance reliability. Such projects will also add load-serving capability, increase the transmission system's operating margin to better respond to future unexpected shifts in generation and system loading, and, in general, establish a more robust transmission system.

(iv) **Transmission Communications Infrastructure, Physical Security Enabling and Cyber Security Projects** will enhance the reliability, security and general capability of the communications systems that are required to monitor, control, and protect the transmission system. These projects will also help to reduce maintenance costs, employee overtime expenses and equipment failures.

(v) **Physical Security Projects** will enhance reliability and increase situational awareness by providing the means for earlier identification of potential threats to

critical substation assets. These measures, which include installing or enhancing security systems, will also safeguard the public from electrical hazards and deter criminal activity through faster detection of unusual events, thus enabling appropriate responses to be initiated sooner. These projects will also harden the transmission system through additional or enhanced physical security measures and monitoring.

In addition to the numerous operational benefits outlined above, increasing and accelerating investment in the transmission system will create benefits for the economy. In that regard, based upon initial assessments of the scope and nature of the work encompassed by the proposed expansion of the EtF, it is estimated that the increased investments MAIT will facilitate will have a material, positive effect on job creation in the states covered by the Operating Companies' transmission zones.

## VI. IMPACT ON COMPETITION

31. The Joint Applicants seek to separate their transmission facilities from their distribution facilities in order to pave the way for a more efficient vehicle to finance significant investment in transmission assets. MAIT does not currently own any generation, distribution or transmission facilities and will not own or control any generation or any distribution assets upon completion of the proposed Transaction. When the contribution of the Operating Companies' transmission assets to MAIT is completed, Met-Ed and Penelec will no longer own any facilities serving a transmission function. Consequently, the proposed contribution will have no effect on the concentration of generation or transmission assets or upon market power. Moreover, the proposed Transaction will leave the transmission facilities under the operational control of an RTO and, therefore, it will have no adverse effect on competition in the wholesale power market.

## VII. ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE TO MAIT

32. MAIT requests the issuance of certificate of public convenience conferring upon it public utility status on the terms and conditions set forth in Section IV.B., *supra*, pursuant to Section 1101 of the Public Utility Code, which provides, in relevant part, as follows:

> Upon the application of any proposed public utility and the approval of such application by the commission evidenced by its certificate of public convenience first had and obtained, it shall be lawful for any such proposed public utility to begin to offer, render, furnish, or supply service within this Commonwealth. The commission's certificate of public convenience granted under the authority of this section shall include a description of the nature of the service and of the territory in which it may be offered, rendered, furnished or supplied.

33. Section 1103 of the Public Utility Code provides that a certificate of public convenience should be issued if the Commission "shall find and determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public."[8]

34. In applying Sections 1101 and 1103, the Commission has held that a certificate of public convenience conferring public utility status will be issued where there is a need for the proposed service and the applicant had demonstrated its fitness to provide that service.[9]

35. When the assets and service territory of an existing utility are being transferred to another utility, there is a rebuttable presumption that need for the transferor's service continues

[8] 66 Pa.C.S. §1103.

[9] *See Application of Newtown Artesian Water Company*, 2003 Pa. PUC LEXIS 40 (July 1, 2003).

and satisfies the applicable legal standard.[10] Moreover, as explained in Section V, *supra*, and in the direct testimony accompanying the Joint Application, after the consummation of the proposed Transaction, MAIT will provide financial and operational benefits that would not be achieved by the Operating Companies' continuing to own the transmission assets being contributed to MAIT. Specifically, MAIT will be an entity singularly focused on furnishing transmission service that will have improved financial metrics and enhanced access to capital at reasonable costs. This, in turn, will enable MAIT to increase and accelerate investments in the transmission projects identified by Mr. Mackauer in Joint Applicants' Statement No. 2. The significant benefits to customers and to the Commonwealth of Pennsylvania from those projects are also described in Mr. Mackauer's direct testimony. Consequently, in addition to the legal presumption of continued need to which MAIT is entitled as the transferee of Met-Ed's and Penelec's transmission assets, substantial evidence supports an independent finding that the formation of MAIT and completion of the Transaction will satisfy the "need" requirement for the issuance of certificate of public convenience conferring public utility status on MAIT.

36. The Commission has held that "fitness" encompasses: (1) the technical capacity to fulfill the identified service need in a satisfactory fashion; (2) the financial capacity to obtain the plant and equipment needed to perform the proposed service in a reliable and responsible fashion; and (3) a propensity to operate safely and legally.[11] As explained by Mr. Fullem in Joint Applicants' Statement No. 1, MAIT satisfies each of the components of the fitness requirement:

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[10] *Applications of Pennsylvania-American Water Company*, Docket Nos. A-212285F019; A-212285F020; A-212285F021, 1995 Pa. PUC LEXIS 197 at *6-7 (October 26, 1995).

[11] *Re William O'Connor*. 54 Pa. P.U.C. 547, 549 (1980).

(i) **Technical Capacity**. Like the Operating Companies, MAIT will be a member of the FirstEnergy holding company system and, as such, will have access to the resources and expertise available from FESC. MAIT will also be able to call upon and use the existing well-trained complement of Operating Companies' employees, which has extensive experience in operating and maintaining the Operating Companies' transmission systems.

(ii) **Financial Capacity**. MAIT will have adequate short-term borrowing capacity through its participation in the FirstEnergy Money Pool Agreement and FET's $1.0 billion credit facility to meet all of the obligations of its day-to-day operations. Additionally, MAIT's strengthened financial metrics will facilitate obtaining long-term debt at reasonable rates. MAIT's access to debt capital and the opportunity for FET to make additional equity contributions will be sufficient to maintain and, as necessary, expand MAIT's transmission system.

(iii) **Propensity To Operate Safely And Legally**. MAIT will operate safely and in full compliance with applicable legal requirements and, as the successor to the Operating Companies' transmission functions, MAIT will continue the Operating Companies' track record of satisfying all applicable legal and regulatory obligations and consistently furnishing safe and reliable transmission service.

For all of the reasons set forth above, MAIT fully satisfies all three components of the fitness requirement for issuance of a certificate of public convenience as a Pennsylvania public utility.

## VIII. SUPPORTING TESTIMONY

37. With this Joint Application, the Joint Applicants are submitting the written direct testimony and supporting exhibits of four witnesses, which, subject to possible supplementation in response to positions, inquiries and issues set forth in the filings by other parties or in interim orders of the Commission, will comprise the Joint Applicants' case-in-chief:

**Charles V. Fullem** (Joint Applicants' Statement No. 1) is Director, Rates and Regulatory Affairs-Pennsylvania. Mr. Fullem provides an overview of the Transaction. He also describes how MAIT will be operated, the affiliated interest agreements it will utilize, the classification of its transmission assets, and the public benefits of the Transaction. Additionally, Mr. Fullem explains why MAIT satisfies all of the requirements for issuance of a certificate of public convenience conferring public utility status under Pennsylvania law, including its financial, technical and legal fitness to furnish transmission service in Pennsylvania as a successor to the Operating Companies.

**Jeffery J. Mackauer** (Joint Applicants' Statement No. 2) is Director of Transmission Planning & Protection. Mr. Mackauer describes the transmission planning process at FirstEnergy and discusses the benefits and capital requirements associated with expanding FirstEnergy's EtF program to cover the transmission systems currently owned and operated by the Operating Companies.

**Steven R. Staub** (Joint Applicants' Statement No. 3) is Vice President and Treasurer at FESC and, in that role, is responsible for treasury activities for each of the FirstEnergy companies. Mr. Staub describes the financial aspects of the proposed transaction and the associated agreements, and also discusses the benefits of the Transaction.

**K. Jon Taylor** (Joint Applicants' Statement No. 4) is Vice President, Controller, and Chief Accounting Officer of FirstEnergy. Mr. Taylor discusses the various tax and accounting aspects of the Transaction.

## IX. ADDITIONAL SUPPORTING EXHIBITS

38. The following exhibits, containing additional information in support of this Joint Application, accompany, and are discussed in, the direct testimony of the Joint Applicants' witnesses:

| **Witness** | **Exhibit** | **Description** |
|---|---|---|
| Charles V. Fullem | CVF-1 | Organizational chart of the post-Transaction corporate structure |
| Steven R. Staub | SRS-1 | Amended and Restated Limited Liability Company Operating Agreement |
| Steven R. Staub | SRS-2 | Corporate Bond Spreads |
| Steven R. Staub | SRS-3 | FirstEnergy Regulated Money Pool Agreement |
| K. Jon Taylor | KJT-1 | Capital Contribution Agreement |
| K. Jon Taylor | KJT-2 | Met-Ed Ground Lease<br>Penelec Ground Lease |
| K. Jon Taylor | KJT-3 | List of real property associated with each substation that is part of transfer |
| K. Jon Taylor | KJT-4 | Transmission facility maps |
| K. Jon Taylor | KJT-5 | FirstEnergy Service Agreement |
| K. Jon Taylor | KJT-6 | Revised and Amended Restated Mutual Assistance Agreement |

| Witness | Exhibit | Description |
|---|---|---|
| K. Jon Taylor | KJT-7 | Intercompany Income Tax Allocation Agreement |
| K. Jon Taylor | KJT-8 | Proposed accounting entries |

## X. OTHER REQUIRED APPROVALS

39. In addition to approval from the Commission, other regulatory approvals will be required before the Transaction can be concluded. Notably, approval by the FERC under Section 203 of the Federal Power Act (16 U.S.C. § 824b) is required for the contribution of electric transmission assets to MAIT by the Operating Companies. Also, as previously noted, approval by the NJBPU is required for JCP&L to contribute its transmission assets to MAIT. The Joint Applicants will provide the Commission, under separate cover, with copies of the FERC filing and the Verified Petition submitted by JCP&L to the NJBPU.

## XI. REQUEST FOR FORMAL CONSOLIDATION AND CONDUCT OF CONSOLDIATED PROCEEDINGS

40. The Commission's regulations provide as follows concerning the formal consolidation of proceedings[12]:

> § 5.81. Consolidation.
>
> (a) The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.

[12] 52 Pa. Code §5.81.

41. The requests for Commission approvals set forth herein, namely, for the issuance of certificates of public convenience under Sections 1101 and 1103 and the approval of affiliated interest agreements, as described in Section IV, *supra*, involve a common nucleus of operative facts centering on the contribution of Met-Ed's and Penelec's transmission assets to MAIT, as a proposed certificated Pennsylvania public utility. Moreover, substantially similar set of legal standards exist for issuance of the requested certificates which, in large measure, center on whether the proposed Transaction will provide affirmative benefits and is in the public interest. Therefore, formal consolidation, into a single proceeding, of all of the requests for approval set forth in the Joint Application will help to develop a more complete, understandable and meaningful evidentiary record than would exist if each request were assigned to a separate proceeding. Moreover, formal consolidation will avoid duplication and repetition in the submission of testimony, the conduct of discovery and evidentiary proceedings, briefing, the issuance of an initial decision, and the preparation and filing of exceptions and reply exceptions. Accordingly, consolidation will conserve administrative time, resources and money as well as reduce the costs of the Joint Applicants and other parties.

42. Formal consolidation will ensure that each request for approval in the Joint Application and any subsidiary issues would be treated procedurally in the same fashion as the individual issues in a single base rate proceeding. As a consequence, witnesses would be permitted to address any issue or group of issues in a single statement of direct, rebuttal, surrebuttal or rejoinder testimony (as applicable); a single set of consolidated evidentiary hearings would be conducted; witnesses, when presented, would be subject to cross-examination with regard to all of the testimony they submitted in the consolidated proceeding; one main and one reply brief would be filed by each party in which all of the issues in the consolidated proceeding

could be addressed; a single initial decision would be issued covering all contested issues; and each party would be permitted to file exceptions and reply exceptions addressing all of the issues in the initial decision.

43. For all of the foregoing reasons, the formal consolidation of the requests for approval set forth in the Joint Application in the manner delineated above is fully justified, in the public interest and should be granted.

## XII. PROPOSED PROCEDURAL SCHEDULE

44. The Joint Applicants desire to complete the Transaction as expeditiously as possible consistent with the legitimate review rights of interested parties. With that in mind, the Joint Applicants suggest that holding an initial Prehearing Conference early in the process will assist the parties in identifying and resolving issues. A litigation schedule can be developed after any active parties have been identified, with the assistance of the presiding Administrative Law Judge.

## XIII. NOTICE

45. The Joint Applicants are serving copies of this filing on the Office of Consumer Advocate, the Office of Small Business Advocate, the Commission's Bureau of Investigation and Enforcement, the Met-Ed Industrial Users Group and the Penelec Industrial Customer Alliance. A service list is attached to the transmittal letter that accompanies this Joint Application. The Joint Applicants respectfully request that the Commission publish notice of this filing in the Pennsylvania Bulletin, with a reasonable deadline for intervention in this proceeding. The Joint Applicants will provide such additional forms of notice as the Commission may hereafter direct.

## XIV. CONCLUSION

46. For all of the reasons set forth in, and supported by, this Joint Application, the Transaction satisfies the legal requirements for the approvals necessary to consummate the Transaction as described previously, and the Joint Applicants, therefore, request that the Commission: (1) issue certificates of public convenience evidencing approval under 66 Pa.C.S. §1102(a)(3) for the of the Joint Applicants' transmission assets to MAIT in the manner previously described in this Joint Application; (2) find and determine, pursuant to 66 Pa.C.S. §2810(e), that the Transaction will not result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which would prevent retail electricity customers in the Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market; (3) issue a certificate of public convenience under 66 Pa.C.S. §1101 conferring on MAIT the status of a public utility as defined in 66 Pa.C.S. §102; (4) find and determine that the affiliated agreements submitted with this Joint Application satisfy the legal standard for approval under Chapter 21 of the Public Utility Code; and (5) grant such additional approvals as may be necessary to consummate the Transaction.

WHEREFORE, the Joint Applicants respectfully urge the Commission to grant the approvals and authorizations requested herein and more specifically delineated in Paragraph 46, above, and grant formal consolidation as requested in Section XI, *supra*.

Respectfully submitted,


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Date: June 19, 2015

Enclosure C
TMI-15-065

Verified Petition of Jersey Central Power & Light Company
[State of New Jersey Board of Public Utilities]
(23 pages follow)

**STATE OF NEW JERSEY**
**BOARD OF PUBLIC UTILITIES**

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| In the Matter of the Verified Petition of **Jersey Central Power & Light Company ("JCP&L") and Mid-Atlantic Interstate Transmission, LLC ("MAIT")** for: (1) Approval of the Transfer of JCP&L's Transmission Assets to MAIT Pursuant to N.J.S.A. 48:3-7; (2) Approval of a Lease of JCP&L's Real Property and Real Property Rights Associated with its Transmission Assets to MAIT Pursuant to N.J.S.A. 48:3-7; (3) Approval of a Mutual Assistance Agreement Pursuant to N.J.S.A. 48:3-7.1; and (4) a Declaration that MAIT Will be Deemed a Public Utility for, *inter alia*, the Purposes of Siting Authority under N.J.S.A. 40:55D-19 and Eminent Domain Authority Pursuant to N.J.S.A. 48:3-17.6 *et seq.* | : | **VERIFIED PETITION**<br><br>BPU Docket No. |
| -and- | : | |
| In the Matter of the Verified Petition of **Jersey Central Power & Light Company** for Authorization Pursuant to N.J.S.A. 48:3-7.2 for Approval to Participate in the FirstEnergy Corp. Intrasystem Money Pool | : | BPU Docket No. EF02030185<br>**Amendment No. 8** |

**TO THE HONORABLE BOARD OF PUBLIC UTILITIES:**

Petitioners, Jersey Central Power & Light Company ("JCP&L"), an electric public utility company of the State of New Jersey subject to the regulatory jurisdiction of the Board of Public Utilities (the "Board"), and maintaining offices at 300 Madison Avenue, Morristown, New Jersey 07962-1911 and at 331 Newman Springs Road, Suite 325, Red Bank, New Jersey 07701, and Mid-Atlantic Interstate Transmission, LLC ("MAIT"), a Delaware

Limited Liability Company with offices at 76 South Main Street, Akron, Ohio 44308, in support of their above-captioned Verified Petition, respectfully show:

1. JCP&L is a New Jersey electric public utility primarily engaged in the purchase, transmission, distribution and sale of electric energy and related utility services to approximately 1.1 million residential, commercial and industrial customers located within 13 counties and 236 municipalities of the State of New Jersey.

2. MAIT is a newly-formed subsidiary of FirstEnergy Transmission, LLC ("FET"). MAIT's business functions and activities, as well as its relationship to JCP&L and other subsidiaries of FirstEnergy Corp. ("FirstEnergy") are discussed and explained in the remainder of this Petition.

## I. PURPOSE OF FILING

3. The purpose of this filing is to request and receive various Board approvals related to FirstEnergy's formation of a new entity, the aforementioned MAIT, which will own and operate the transmission assets of JCP&L. MAIT will also own and operate the transmission assets of Metropolitan Edison Company ("Met-Ed") and Pennsylvania Electric Company ("Penelec"), which are FirstEnergy electric distribution companies in Pennsylvania.[1] As explained in greater detail in Section III, *infra*, the creation of MAIT and the contribution of the Operating Companies' transmission assets to MAIT will establish a transparent, stand-alone transmission company that is expected to have better credit metrics than any one of the Operating Companies. Consolidating all of the Operating Companies' transmission assets in a stand-alone transmission company can reduce investors' perception of financial risk, strengthen the credit profile of the transmission function and, in that way, provide improved access to capital at

[1] In this Petition, JCP&L, Met-Ed and Penelec are referred to collectively as the "Operating Companies."

reasonable rates. Better credit metrics and improved access to capital is particularly important at this time because FirstEnergy has recently established the Energizing the Future ("EtF") program designed to increase the reliability of the transmission system, improve the condition of equipment on the system, enhance system performance, and improve operational flexibility. FirstEnergy plans to expand the program to include significant reliability enhancement investments in the JCP&L, Met-Ed, and Penelec zones. Based on a preliminary assessment, increased transmission system capital investments in the Operating Companies' transmission zones could total as much as $2.5 to $3.0 billion over the next five to ten years to maintain reliability in the face of evolving conditions on the transmission system that are detailed in the Direct Testimony of Jeffrey J. Mackauer (Exhibit P-5). The expansion of the EtF program is the comprehensive plan for enabling the successful implementation of these transmission investments, which will enhance reliability and improve the resiliency and capacity of the transmission system for the benefit of the Operating Companies' existing and new customers.

4. Given the capital intensive-nature of the transmission business and the need for significant additional investment in transmission assets, the proposed Transaction will be in the public interest by providing access to the capital markets at lower cost. MAIT's higher credit rating and the cost savings that will be achieved from one company issuing all of the debt needed to finance future transmission investments, rather than separate issuances by each Operating Company, are projected to produce approximately $135 million in interest cost savings over the thirty-year life of approximately $1.5 billion of debt-financed transmission-related plant additions. Thus, the Transaction will place MAIT in a better position than JCP&L to make substantial new transmission investments designed to improve the resilience, reliability and load-carrying capacity of their transmission systems in New Jersey, including the kinds of projects

described in detail in the Mr. Mackauer's testimony. Moreover, because the Transaction will relieve JCP&L of the need to issue debt to finance transmission investments, it will preserve the Company's capacity to fund investments in its distribution system. Finally, the increased and accelerated levels of investment that the Transaction will enable will have a beneficial economic impact in New Jersey, including spurring increased job creation.

## II. DESCRIPTION OF THE TRANSACTIONS, CORPORATE STRUCTURE, AND OPERATION OF MAIT

5. As part of the formation of MAIT, JCP&L will contribute all of its transmission assets to MAIT, which will thereafter own and operate those assets. JCP&L will also lease the real estate and real property rights associated with such transmission assets to MAIT. MAIT will, in the future, also construct, own, and operate new transmission facilities that will be constructed in JCP&L's service territory. With respect to any JCP&L transmission projects that are currently in the planning or construction phase, MAIT will complete, own, and operate such new transmission facilities.

6. JCP&L, along with Met-Ed and Penelec, will contribute its existing transmission assets to MAIT, which will be a subsidiary of FET and in which the Operating Companies will have membership interests. FET is a subsidiary of FirstEnergy, and its subsidiaries currently include American Transmission Systems, Inc. ("ATSI") and Trans-Allegheny Interstate Line Company ("TrAILCo"). More specifically, upon the receipt of all necessary regulatory approvals, the Operating Companies, FET, and MAIT will enter into the Capital Contribution Agreement ("Contribution Agreement") and the Amended and Restated Limited Liability Company Operating Agreement ("LLC Operating Agreement")(collectively, the actions contemplated under the Contribution Agreement and the LLC Operating Agreement are referred to herein as the "Transaction"). Under the Contribution Agreement, FET will provide

cash to MAIT in exchange for Class A membership interests. These Class A membership interests will provide FET operating control and management of MAIT. The Operating Companies will then contribute all of their existing transmission assets to MAIT in a tax-free transfer in exchange for Class B membership interests in MAIT. The Class B membership interests the Operating Companies will receive do not involve operating control and management of MAIT. However, the Operating Companies will maintain voting rights over such decisions as bankruptcy, mergers, and any sale of substantially all assets of MAIT.

7. MAIT's earnings will be distributed as dividends to FET and each of the Operating Companies. The earnings and dividends generated by MAIT will be allocated to FET and the Operating Companies based on each company's percentage of equity ownership interest in MAIT at the time of the dividend. Each of the Operating Companies' equity ownership percentage will be based on the value of its contributed assets.

8. As a result of the Transaction, JCP&L will no longer own any FERC-jurisdictional transmission facilities but will continue to own and operate distribution facilities and provide retail electric distribution service and basic generation service ("BGS") just as it does currently. Additional details concerning the asset transfer, Contribution Agreement, LLC Operating Agreement and related issues are set forth in the Direct Testimony of Mark A. Mader (Exhibit P-2), Steven R. Staub (Exhibit P-3), K. Jon Taylor (Exhibit P-4) and Jeffrey J. Mackauer (Exhibit P-5) that are being filed with this Petition.

9. JCP&L will transfer its FERC-jurisdictional transmission assets to MAIT. These assets include transmission lines, equipment and associated facilities that are operated from 500 kV to 34.5 kV delta, inclusive, as more specifically described in the Contribution Agreement. All of these transmission assets are currently classified and operated as transmission facilities

under the Federal Energy Regulatory Commission's ("FERC") seven-factor test. In addition, all of these transmission facilities are within the jurisdiction of FERC for ratemaking purposes. Therefore, the transfer of the facilities to MAIT will have no impact on JCP&L's distribution rates.

10. JCP&L's physical transmission assets, together with certain transmission-related regulatory assets, will be contributed to MAIT at their carrying value at the date of transfer (*i.e.*, at the assets' net book value). JCP&L will also transfer certain transmission-related goodwill and accumulated deferred income taxes to MAIT. The total net book value of these assets, as of December 31, 2014, is $750,603,723. A list of the assets to be transferred, along with certain additional information as required by the Board's regulations, is provided in Exhibit KJT-1 to the Direct Testimony of K. Jon Taylor (Exhibit P-4). . Mr. Taylor discusses these elements of the transaction in his Direct Testimony.

11. JCP&L currently owns real property assets, in fee simple, in easements, and in various other forms of ownership (*e.g.*, access rights) that are directly associated with its transmission facilities (referred to herein as "real property assets"). As part of the formation of MAIT, JCP&L will enter into a lease with MAIT that will govern all real property assets ("Ground Lease"). Given the nature and scope of the Transaction, the Ground Lease is an administratively more efficient way to execute the transfer. In other words, the use of a Ground Lease with MAIT provides for an efficient transfer of property rights, including avoidance of surveys, deed recordings, and easement negotiations, which will result in lower startup costs for MAIT.[2] The Ground Lease will have an initial term of 25 years starting on its effective date and thereafter may be renewed. The base rent that MAIT will pay to JCP&L will be based on a

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[2] Petitioners will not pass through any Transaction-related costs associated with the formation of MAIT to customers. *See* Testimony of K. John Taylor (Exhibit P-4).

formula that is provided with the draft version of the Ground Lease. Mr. Taylor discusses issues related to the Ground Lease in greater detail in his Direct Testimony, and a copy of the Ground Lease is provided as Exhibit KJT-5.

12. The net book value of the real property transmission assets that are the subject of the Ground Lease is $23,195,776 as of December 31, 2014. A list of the real property assets (associated with each of the substations and transmission lines) that are subject to the Ground Lease is provided in Exhibit KJT-6 to Mr. Taylor's testimony.

13. JCP&L has approximately 2,569 circuit miles of transmission lines. As a result, there are tens of thousands of discrete real property assets (including property owned in fee simple, easements, rights-of-way, rights-of-entry, vegetation management rights, etc.) associated with JCP&L's transmission lines and it would be prohibitively time consuming to list them individually. Therefore, in addition to the above-described Exhibit KJT-6, petitioners are also providing maps of the transmission facilities in Exhibit KJT-7 to Mr. Taylor's testimony. Upon Board approval of this Petition and closing of the Transaction, JCP&L will enter into the Ground Lease with MAIT with respect to all of the real property assets associated with the transmission facilities depicted on Exhibit KJT-7.

14. MAIT will not have any employees. The employees of the Operating Companies, including JCP&L, will perform work on the transmission assets after the assets are transferred to MAIT, and on new transmission assets that MAIT will own, under certain affiliate agreements. The Mutual Assistance Agreement ("MAA") currently in place will be modified to include MAIT. MAIT will reimburse JCP&L for the work that its employees perform on the transmission assets in accordance with the cost allocation methods set forth in the MAA. A copy of the Revised Amended and Restated MAA is provided as Exhibit KJT-3 to the Direct

Testimony of K. Jon Taylor. Both Mr. Taylor and Mark A. Mader discuss the MAA in their respective testimony. JCP&L and MAIT request that the Board approve the MAA pursuant to N.J.S.A. 48:3-7.1.

15. JCP&L is currently a party to the FirstEnergy Service Agreement ("Service Agreement"). Upon the receipt of all required regulatory approvals and the closing of the transactions described herein, MAIT will become a party to the Service Agreement. There will be no change to the cost allocation methodology under the Service Agreement as a result of the Transaction. A copy of the revised Service Agreement is provided, for informational purposes, as Exhibit KJT-2 to the Direct Testimony of K. Jon Taylor.

## III. BENEFITS OF THE TRANSACTION

16. The formation of MAIT and the transfer and lease of JCP&L's transmission assets to it will have many benefits for JCP&L's customers. FirstEnergy has commenced a system-wide effort to modernize its transmission system. This initiative, known as "Energizing the Future", will require significant capital investment and deployment of resources, particularly in the service territories of the Operating Companies. The creation of MAIT will facilitate the expansion of the Energizing the Future initiative, from both an operational and financial viewpoint. Consolidating the transmission function of the Operating Companies in a single, transmission-only entity will create greater operational flexibility, and enhance compliance with reliability standards and planning/protection requirements set forth by the North American Electric Reliability Corporation. The creation of MAIT will also allow FirstEnergy to more quickly and efficiently construct transmission projects, including PJM-mandated reliability projects that are designed to meet future system demands and ensure economic and secure

performance of the grid. The benefits will serve to increase the resiliency of the transmission system, which in turn will enhance the provision of safe and reliable electric service to JCP&L's customers. Witness Jeffrey J. Mackauer (Exhibit P-5) discusses these benefits in his Direct Testimony.

17. The creation of MAIT will also allow FirstEnergy to finance the construction of transmission projects more cost-effectively. As described in witness Steven R. Staub's Direct Testimony (Exhibit P-3), MAIT is expected to have stronger credit metrics than JCP&L does, thereby ensuring access to the capital markets at a lower cost. Transmission projects are capital-intensive and accessing the capital markets at a lower cost will benefit JCP&L's customers by mitigating the rate impacts of significant new transmission investment. In addition, the formation of MAIT, which will be a single transmission owner, will make accessing the capital markets for new transmission projects more efficient. Rather than issuing debt at each of the Operating Companies for needed investment, the debt will only have to be issued at MAIT. Similarly, the migration to a transmission-only model will not only better support the sustained level of transmission investment needed at MAIT, but at the same time will preserve the Operating Companies' capacity to issue debt for their own distribution system needs.

18. There will be additional benefits from a regulatory perspective. A transmission-only company eliminates the need to separate common assets and costs for purposes of ratemaking review by federal and state regulators. The additional transparency of this separation of assets will facilitate review of the allocation of common assets and costs between transmission and distribution functions. *See* Direct Testimony of Mark A. Mader (Exhibit P-2).

## IV. REQUEST FOR APPROVAL OF THE ASSET TRANSFER, THE LEASE OF REAL PROPERTY, AND THE MAA

19. For all the reasons set forth in this Petition, Attachments, supporting Testimony and Exhibits, JCP&L requests that the Board approve the transfer of its existing transmission assets to MAIT, under the terms and conditions described herein.

20. For all the reasons set forth in this Petition, Attachments, supporting Testimony and Exhibits, JCP&L requests that the Board approve the Ground Lease with MAIT, under the terms and conditions described herein.

21. For all the reasons set forth in this Petition, Attachments, supporting Testimony and Exhibits, JCP&L requests that the Board approve the MAA.

## V. REQUEST FOR A WAIVER OF THE ADVERTISING REQUIREMENT OF N.J.A.C. 14:1-5.6(b)

22. By this Verified Petition, pursuant to N.J.A.C. 14:1-5.6(i), JCP&L is also hereby requesting a waiver of the advertising requirement set forth in N.J.A.C. 14:1-5.6(b). Waiver of this requirement will not adversely affect the public interest. Neither the transfer of JCP&L's transmission assets to MAIT, nor the lease of JCP&L's real property assets to MAIT, will affect JCP&L's ability to render safe, adequate and proper service. In fact, as discussed in the testimony of the Petitioners' witnesses in support of this Petition, the proposed transactions will enhance JCP&L's ability to do so. In addition, it is clear that the subject property involved is unique and the proposed formation of and transfer of JCP&L's transmission assets (and lease of the associated real property interests) to MAIT is a unique transaction. Due to the interconnected nature of JCP&L's distribution and transmission systems, a transfer of the transmission assets to an unaffiliated third party would not be feasible. Accordingly, a waiver of the advertising requirement is appropriate and necessary in this matter.

## VI. REQUEST FOR A DECLARATION THAT MAIT WILL BE DEEMED A NEW JERSEY PUBLIC UTILITY

23. Upon Board approval of the relief requested in this Petition, MAIT will own and operate, under the direction of PJM, all of the transmission facilities used to transmit power to JCP&L's distribution facilities for JCP&L to serve its retail customers. In addition, MAIT will construct all new transmission facilities in JCP&L's service territory. With respect to JCP&L transmission projects that are in the planning or construction phase, MAIT will complete the construction and own and operate the facilities. While the Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-49 *et seq.*, unbundled electric distribution, transmission and generation, the Board retains jurisdiction over certain, limited aspects of an electric distribution utility's transmission assets. N.J.S.A. 48:2-13(d). Accordingly, the Petitioners request that the Board declare that MAIT will be deemed a New Jersey public utility for certain, limited purposes.[3]

24. Specifically, the Petitioners requests that the Board find that MAIT will enjoy the following rights, and be subject to the Board's jurisdiction with respect thereto:

a. Petitions filed pursuant to N.J.S.A. 40:55D-19 relating to siting and construction of transmission projects;

b. Petitions filed pursuant to N.J.S.A. 48:3-16 and 48:3-17 regarding exercising the power of eminent domain; and

c. Compliance with the Board's transmission vegetation management regulations as currently set forth at N.J.A.C. 14:5-9.1 et *seq.*;

25. More generally, the Board will have the same jurisdiction over MAIT as a New Jersey public utility as the Board currently has with respect to JCP&L's transmission assets.

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[3] MAIT will also be a public utility subject to the jurisdiction of FERC for ratemaking purposes.

The FERC will have sole jurisdiction over MAIT's rates and terms of transmission service, much as FERC currently has sole jurisdiction over JCP&L's transmission rates and terms of service.

26. In addition, JCP&L requests that, for those transmission projects for which the Board has granted JCP&L siting approval pursuant to N.J.S.A. 40:55D-19 but which have not yet been placed in service, the Board specifically find that such authority will be transferred to MAIT upon the approval of this Petition.

27. Finally, MAIT requests permission to keep its books and records out of state, pursuant to N.J.S.A. 48:3-7.8 and N.J.A.C. 14:1-5.15. MAIT proposes to maintain its books and records at its offices in Akron, Ohio. Because MAIT will own transmission assets in more than one state, it will be administratively more efficient and cost-effective for it to maintain its books and records in a central location. The Board has previously approved JCP&L's request to maintain its books and records out of state. *See I/M/O the Petition of Jersey Central Power & Light Company to Keep Its Books and Records Outside of the State of New Jersey, Audit No. A-2853*, BPU Docket No. EE97010014 (May 28, 1997). MAIT will comply with all of the Board's requirements, as set forth in N.J.A.C. 14:1-5.15, concerning the availability of a utility's books and records for the Board's review.

## VII. REQUEST FOR APPROVAL OF MAIT'S PARTICIPATION IN THE UTILITY MONEY POOL

28. JCP&L also requests that the Board approve Amendment No. 8 to the Petition filed in Docket No. EF02030185 on March 19, 2002, as previously supplemented by Amendments Nos. 1, 2, 3, 4, 5, 6 and 7 to the Petition dated June 25, 2002, February 27, 2003, January 13, 2005, July 23, 2007, August 18, 2009, March 18, 2011, and January 20, 2013, respectively (collectively, the "Money Pool Petition").

29. By Order of the Board dated July 24, 2002, as amended by Orders Modifying Order Dated July 24, 2002, which modifying Orders were dated April 11, 2003, April 20, 2005, December 21, 2007, December 17, 2009, September 22, 2011, and March 20, 2013, respectively, (collectively, the "Money Pool Orders"), JCP&L was authorized, subject to certain conditions specified in the Orders, to participate in the FirstEnergy Intrasystem Utility Money Pool (the "Money Pool") maintained for the benefit of various public utility subsidiaries of FirstEnergy Corp. ("FirstEnergy"), including JCP&L. The current authorization, as set forth in the March 20, 2013 Order, runs through December 31, 2016. The Money Pool is made up of various FirstEnergy public utility subsidiaries investing available cash in the Money Pool, which may then be loaned by the Money Pool to other participating FirstEnergy public utility subsidiaries to meet their short-term operating needs.

30. By this Amendment No. 8, JCP&L hereby amends its Money Pool Petition and requests that the Board approve the participation in the Money Pool as a borrower and lender by MAIT. Other than allowing MAIT to participate in the Money Pool, JCP&L's requested authority would remain unchanged. Without in any way limiting the foregoing, the existing requirement in the Money Pool Orders that all borrowers in the Money Pool have, at a minimum, investment grade credit ratings from all applicable nationally-recognized statistical rating organizations ("NRSROs") from which ratings are obtained, would apply to participation by MAIT.

31. The Money Pool, as previously authorized in the Money Pool Orders and as proposed to be modified and extended by this Amendment No. 8, complies in all respects with rules applicable to money pools (N.J.A.C. 14:4-4.7(f), (g) and (h)), as follows:

a. Board approval is hereby being sought under N.J.S.A. 48:3-7.2 (N.J.A.C. 14:4-4.7(f)1);

b. Participation in the Money Pool is restricted to subsidiaries of FirstEnergy, including JCP&L, MAIT, and subsidiaries that are classified as public utilities under the laws of Pennsylvania, Ohio, West Virginia, Maryland, New York or Virginia (N.J.A.C. 14:4-4.7(f)2);

c. Any subsidiary that is not a public utility or an out-of-state utility is prohibited from borrowing from the Money Pool (N.J.A.C. 14:4-4.7(f)3);

d. All borrowers in the Money Pool are required to have, at a minimum, investment grade credit ratings from all applicable NRSROs (N.J.A.C. 14:4-4.7(f)4);

e. The Company's Amended and Restated Certificate of Incorporation effective February 14, 2008, does not include a limitation upon unsecured indebtedness. Therefore, JCP&L's Amended and Restated Certificate of Incorporation does not limit the amount of borrowings through the Money Pool (N.J.A.C. 14:4-4.7(f)5);

f. The fees for administering the Money Pool are cost-based, based on applicable rules of the Federal Energy Regulatory Commission under the Public Utility Holding Company Act of 2005, and subject to review by the Board for ratemaking purposes (N.J.A.C. 14:4-4.7(f)6);

g. The Company will not borrow any sum from the Money Pool for a period of greater than 364 days (N.J.A.C. 14:4-4.7(f)7);

h. The Company will record all Money Pool transactions in a separate general ledger account within its books of account, on an aggregate monthly basis (N.J.A.C. 14:4-4.7(g)1);

i. The Company will not borrow funds for the specific purpose of lending to the Money Pool (N.J.A.C. 14:4-4.7(g)2);

j. The Company will not borrow from the Money Pool if funds are available at lower cost through bank borrowings (N.J.A.C. 14:4-4.7(g)3);

k. The Company will file with the Board and/or Board staff quarterly statements comparing the Money Pool interest rates with the prevailing market interest rates for similarly situated public utilities (N.J.A.C. 14:4-4.7(g)4);

l. The Company will deposit cash in the Money Pool only if the cash is otherwise available for investment in short-term money markets or other short-term investments (N.J.A.C. 14:4-4.7(g)5); and

m. The Company's Treasurer or a designee thereof will render Money Pool-related decisions based on the best interests of JCP&L's ratepayers (N.J.A.C. 14:4-4.7(g)6).

In addition, if the senior secured credit rating of any borrower from the Money Pool that has a senior secured credit rating falls below any applicable NRSRO's investment grade rating, JCP&L shall demand repayment of any outstanding loans to such borrower within three business days and make no further loans to such borrower through the Money Pool until further notice by the Board or until such borrower's senior secured credit rating is again investment grade (N.J.A.C. 14:4-4.7(h)).

32. The following Exhibits related to the request for approval of Amendment No. 8 to the Money Pool Petition are included with this Petition:

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| Exhibit 1 | - | Copy of Petition filed March 19, 2002. |
| Exhibit 2 | - | Copy of Amendment No. 1 to Petition dated June 25, 2002. |

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| Exhibit 3 | - | Copy of Order of the Board dated July 24, 2002. |
| Exhibit 4 | - | Copy of Amendment No. 2 to Petition dated February 27, 2003. |
| Exhibit 5 | - | Copy of Order (dated April 11, 2003) Modifying Order Dated July 24, 2002. |
| Exhibit 6 | - | Copy of Amendment No. 3 to Petition dated January 13, 2005. |
| Exhibit 7 | - | Copy of Order (dated April 20, 2005) Modifying Order Dated July 24, 2002. |
| Exhibit 8 | - | Copy of Amendment No. 4 to Petition dated July 23, 2007. |
| Exhibit 9 | - | Copy of Order (dated December 21, 2007) Modifying Order Dated July 24, 2002. |
| Exhibit 10 | - | Copy of Amendment No. 5 to Petition dated August 18, 2009. |
| Exhibit 11 | - | Copy of Order (dated December 17, 2009) Modifying Order Dated July 24, 2002. |
| Exhibit 12 | - | Copy of Amendment No. 6 to Petition dated March 18, 2011. |
| Exhibit 13 | - | Copy of Order (dated September 22, 2011) Modifying Order Dated July 24, 2002. |
| Exhibit 14 | - | Copy of Amendment No. 7 to Petition dated January 29, 2013 |
| Exhibit 15 | - | Copy of Order (dated March 20, 2013) Modifying Order Dated July 24, 2002. |
| Exhibit SRS-3 | - | Copy of Revised and Restated Utility Money Pool Agreement (which is an Exhibit to the Testimony of Steven R. Staub). |

In addition, witness Steven R. Staub discusses issues related to the Utility Money Pool Agreement in his testimony, Exhibit P-3.

## VIII. <u>PRE-FILED TESTIMONY</u>

Attached hereto and made part hereof is the following pre-filed testimony:

| Exhibit No. | | Witness | Subject Matter of Testimony |
|---|---|---|---|
| P-2 | | Mark A. Mader | Overview of the Filing and Transaction, MAIT's Status as a New Jersey Public Utility, and Summary of Benefits for JCP&L's Customers |
| P-3 | | Steven R. Staub | Financial Aspects of the Transaction, Financial Benefits for JCP&L's Customers, and the Money Pool Agreement |
| P-4 | | K. Jon Taylor | Tax and Accounting Aspects of the Transaction and Description of the Assets to be Transferred or Leased |
| P-5 | | Jeffrey J. Mackauer | Operational Benefits of the Transaction for JCP&L's Customers |

## IX. INFORMATION REQUIRED BY N.J.A.C. 14:1-5.6(a)

33. The information required by N.J.A.C. 14:1-5.6(a), as applicable to this Petition, is included as follows:

A. Ten copies of a separate sheet or sheets designated Schedule "A" containing a description of the property;

   i. For real property, the location by municipality and county, a metes and bounds or other adequate description of the property, together with a description of the property and rights, if any, reserved by the utility shall be shown

   **Please see Exhibits KJT-1, -6, and -7 to the Direct Testimony of K. Jon Taylor (Exhibit P-4).**

B. The name of transferee or lessee, the consideration or rental and method of payment thereof, and rights reserved by the transferor or lessor;

   **This information is provided in the Petition, at ¶¶ 4 through 12.**

C. A copy of the written agreement, if any; if there is no written agreement, it shall be so stated;

   **See Exhibit SRS-1 to the Direct Testimony of Steven R. Staub (Exhibit P-3); Exhibits KJT-1, -2, and -3 to the Direct Testimony of K. Jon Taylor, (Exhibit P-4).**

D. A certified copy of the resolution of the board of directors or other authority authorizing the transfer or lease;

   **See Attachment A to the Petition.**

E. The purpose for which the property was originally acquired, the date of acquisition, the use made of the property for utility purposes, the date when and circumstances under which it ceased to be useful for such purposes, the present use, the possible prospective use and the identity of the official or officials who determined that the property is not now or prospectively required or useful for utility purposes.

**This property was acquired for the provision of utility service on numerous dates over many years. The property is and will continue to be used for utility purposes after the transfer to MAIT.**

F. The basis of the price or rental: assessed valuation, appraisal, comparable sales, or other basis; whether it is the best price or rental attainable; an appraisal, if any, shall be attached as exhibit;

**This information, as far as it is applicable, is discussed in the Direct Testimony of K. Jon Taylor (Exhibit P-4).**

G. Whether the proposed consideration or rental represent the fair market value of the property to be conveyed or leased;

**As discussed in the Testimony of K. Jon Taylor, Exhibit P-4, the transmission assets will be transferred at net book value. The real property interests will be leased at an annual rent that is based on the net book value of the assets and an appropriate regulatory return thereon, which constitutes an appropriate rental value for this transaction.**

H. What steps were taken to put this property on the market and accomplish its sale or lease; if bids were solicited, the names of bidders and the consideration or rental offered shall be included;

**Not applicable.**

I. Whether there is any relationship between the parties other than that of transferor and transferee, or lessor and lessee;

**This information is discussed throughout the Petition and supporting testimony.**

J. The actual cost at date of acquisition, and the cost and nature of any improvements;

**Please refer to the Direct Testimony of K. Jon Taylor (Exhibit P-4).**

K. The amount at which the property is now carried on the utility's books;

**Please refer to the Direct Testimony of K. Jon Taylor (Exhibit P-4).**

L. Copies of proposed journal entries to record the transaction when the consideration is more than $ 20,000;

**Please refer to Exhibit KJT-4 to the Direct Testimony of K. Jon Taylor, (Exhibit P-4).**

M. If property is income producing, details, such as carrying charges, taxes, and assessed valuation, shall be included;

**Not applicable.**

N. If the property is encumbered by any mortgage, describe the mortgage, the amount thereof, and the time required to obtain a release, shall be included

**Not applicable; none of the subject property is encumbered by a mortgage.**

## X. PUBLIC NOTICE AND SERVICE

34. Notice of this filing, which will be combined with notice of the dates, times and places of the public hearings to be scheduled thereon, will be served by mail upon the municipal clerks, the clerks of the Boards of Chosen Freeholders and, where appropriate, the County Executive Officers of all counties and municipalities located in JCP&L's service territory, in accordance with the regulations of the Board as set forth in N.J.A.C. 14:1-5.12(b)1. Such notice will be duly mailed following the scheduling of the dates, times and places of the hearings thereon, as discussed below. Listings of the aforementioned public officials are contained in Appendices A-1, A-2 and A-3, which are annexed hereto. Such notice will be substantially in the form of the notice annexed hereto as Appendix A.

35. Public notice of this filing, including a statement of the overall effect thereof on customers of JCP&L, and which will be combined with notice of the dates, times and places of the public hearings to be scheduled thereon, substantially in the form of the notice set forth in Appendix A annexed hereto, will also be published in daily and weekly newspapers published

and/or circulated in JCP&L's service areas, after the dates, times and places of all such public hearings thereon have been scheduled by the Board in compliance with N.J.A.C. 14:1-5.12(b)3, (c) and (d).

## XI. SERVICE OF PETITION

36. Copies of this Verified Petition, and of all supporting Testimony and Attachments thereto, have been or will be duly served by overnight express delivery at the time of the filing hereof upon the Director, Division of Rate Counsel, 140 East Front Street, 4th Floor, P.O. Box 003, Trenton, New Jersey 08625-0003, and upon the Department of Law & Public Safety, Division of Law, 124 Halsey Street, 5th Floor, P.O. Box 45029, Newark, New Jersey 07101.

37. Copies of all correspondence and other communications relating to this proceeding should be addressed to:

**Gregory Eisenstark, Esq.**
**Windels Marx Lane & Mittendorf, LLP**
**120 Albany Street Plaza**
**New Brunswick, New Jersey 08901**

**- and -**

**Michael J. Connolly, Esq.**
**Windels Marx Lane & Mittendorf, LLP**
**One Giralda Farms**
**Madison, New Jersey 07940**

**- and –**

**Lauren Lepkoski, Esq.**
**FirstEnergy Corp.**
**2800 Pottsville Pike**
**Reading, PA 19612-6001**

**- and –**

**Bradley A. Bingaman, Esq.**
**FirstEnergy Corp.**
**76 South Main Street**
**Akron, Ohio 44308**

**- and –**

**Mark A. Mader**
**Jersey Central Power & Light Company**
**300 Madison Avenue**
**Morristown, New Jersey 07962-1911**

## XII. CONCLUSION

**WHEREFORE,** the Petitioners, Jersey Central Power & Light Company and Mid-Atlantic Interstate Transmission, LLC, respectfully requests that the Board issue a final decision and order:

(1) approving the transfer of JCP&L's transmission assets to MAIT;

(2) approving the Ground Lease between JCP&L and MAIT;

(3) declaring that MAIT will be a New Jersey public utility subject to the Board's jurisdiction for certain, limited purposes and enjoying the rights and privileges of a public utility as set forth hereinabove, and approving MAIT's request to maintain its books and records out of state;

(4) declaring that, for those transmission projects for which the Board has granted JCP&L siting approval pursuant to N.J.S.A. 40:55D-19 but which have not yet been placed in service, such authority will be transferred to MAIT;

(5) approving the addition of MAIT to the Utility Money Pool Pursuant to N.J.S.A. 48:3-7.2;

(6) approving the Mutual Assistance Agreement; and

(7) granting such other and further relief as the Board shall deem just, lawful and proper.

Respectfully submitted,

Dated: June 19, 2015

WINDELS MARX LANE & MITTENDORF, LLP
Attorneys for Petitioner,
Jersey Central Power & Light Company

By: Gregory Eisenstark
120 Albany Street Plaza
New Brunswick, New Jersey 08901
(732) 448-2537

**AFFIDAVIT**
**OF**
**VERIFICATION**

**Mark A. Mader**, being duly sworn upon his oath, deposes and says:

1. I am employed by FirstEnergy Service Company as Director of Rates and Regulatory Affairs – New Jersey, and I am duly authorized to make this Affidavit of Verification on behalf of Petitioners Jersey Central Power & Light Company and Mid-Atlantic Interstate Transmission, LLC.

2. I have read the contents of the foregoing Verified Petition and I hereby verify that the statements of fact and other information contained therein are true and correct to the best of my knowledge, information and belief.

**Mark A. Mader**

Sworn to and subscribed before me
this 18 day of June, 2015.

(Notary Public)

**CHRISTINE R. BROWN**
**NOTARY PUBLIC OF NEW JERSEY**
**MY COMMISSION EXPIRES SEPTEMBER 11, 2015**

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