

May 25, 2017

***Via Electronic Filing***

The Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

**Re: American Transmission System, Inc. and Mid-Atlantic Interstate  
Transmission, LLC – Filing of New Service Agreements in Docket No. ER17-1683-  
000**

Dear Secretary Bose:

Pursuant to section 205 of the Federal Power Act (“FPA”)<sup>1</sup> and Part 35 of the Federal Energy Regulatory Commission’s (“Commission’s”) Rules of Practice and Procedure,<sup>2</sup> American Transmission System, Inc. (“ATSI”) and Mid-Atlantic Interstate Transmission, LLC (“MAIT”), each a transmission owning member of the PJM Interconnection, L.L.C. (“PJM”) (collectively, the “Applicants”), hereby submit for filing three new Engineering and Construction Services Agreements<sup>3</sup> (the “Service Agreements”) described in more detail herein.<sup>4</sup>

**I. Description of the Applicants and Background**

ATSI is a transmission-only public utility, which owns, operates, and maintains transmission facilities in Ohio and western Pennsylvania. MAIT is a stand-alone transmission

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<sup>1</sup> 16 U.S.C. § 824d.

<sup>2</sup> 18 C.F.R. Part 35.

<sup>3</sup> Consistent with Commission precedent, PJM is a signatory to the Interconnection Agreement for the limited purpose of acknowledging that a representative officer of PJM has read the Interconnection Agreement. *See Am. Elec. Power. Serv. Corp.*, 110 FERC ¶ 61,276, *order on reh’g* 112 FERC ¶ 61,128 (2005).

<sup>4</sup> Pursuant to Order No. 714, this filing is submitted by PJM on behalf of the Applicants as part of an XML filing package that conforms to the Commission’s regulations. PJM has agreed to make all filings on behalf of the PJM Transmission Owners in order to retain administrative control over the PJM Tariff. Thus, the Applicants requested that PJM submit the Service Agreements in the eTariff system as part of PJM’s electronic Service Agreement Tariff.

company and a wholly-owned subsidiary of FirstEnergy Transmission, LLC. Each of the Applicants is a transmission-owning member of PJM, and each of their respective transmission facilities are subject to the functional control of PJM, which provides transmission service to customers pursuant to the PJM Open Access Transmission Tariff (“PJM Tariff”).

## **II. Description of the Service Agreement**

### *Service Agreement No. 4560*

Service Agreement No. 4560 (“SA No. 4560”) is an Engineering and Construction Services Agreement Multiple Relay Replacement Project by and between ATSI and the Cleveland Electric Illuminating Company (“CEI”) and is dated April 27, 2017. Under SA No. 4560, ATSI will be performing work on the ATSI Transmission System, which will require modifications to certain CEI facilities. As of the date of this filing, no Contribution in Aid of Construction payments has been made pursuant to this agreement.

### *Service Agreement No. 4561*

Service Agreement No. 4561 (“SA No. 4561”) is an Engineering and Construction Services Agreement for the Lisbon Substation 69kV Circuit Breaker Replacement Project by and between ATSI and Ohio Edison Company (“OE”) and is dated April 27, 2017. Under SA No. 4561, ATSI will be performing work on the ATSI Transmission System, which will require modifications to certain OE facilities. As of the date of this filing, no Contribution in Aid of Construction payments has been made pursuant to this agreement.

### *Service Agreement No. 4683*

Service Agreement No. 4683 (“SA No. 4683”) is an Engineering and Construction Services Agreement for the Switch and Breaker Replacement Project by and between ATSI and Pennsylvania Electric Company (“PN”) and is dated April 27, 2017. Under SA No. 4683, ATSI will be performing work on the ATSI Transmission System, which will require modifications to certain PN facilities. As of the date of this filing, no Contribution in Aid of Construction payments has been made pursuant to this agreement.

## **III. Request for Effective Date and Waiver**

Applicants respectfully request that the Commission grant an effective date of May 26, 2017, the day after this filing, for each of the Service Agreements to allow the project facilities to enter into service as soon as possible. As indicated above, no payments have been made under any of the Service Agreements and none have yet entered into service. The Commission has

granted waiver of the notice requirement where, as here, no rates or charges have been imposed under the agreement and service has not yet commenced.<sup>5</sup>

#### **IV. Communications**

Please direct any communications regarding this filing to the following individuals:

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#### **V. Documents Submitted With This Filing**

In accordance with the Commission's eTariff regulations, PJM, on behalf of the Applicants, is submitting an eTariff XML filing package containing the following materials:

- this transmittal letter;
- SA No. 4560, SA No. 4561 and SA No. 4683 in eTariff format;
- A clean copy of SA No. 4560, SA No. 4561 and SA No. 4683 in PDF format for publishing in eLibrary; and
- a PDF document with the signatures pages of the parties to SA No. 4560, SA No. 4561 and SA No. 4683 for publishing in eLibrary.

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<sup>5</sup> See, e.g., Central Hudson Gas & Electric Corp., et al., 60 FERC ¶ 61,106 (1992), reh'g denied, 61 FERC ¶ 61,089 (1992) (holding that waiver of the 60-day prior notice requirement will generally be granted for uncontested filings that do not change rates); PJM Interconnection, L.L.C., 142 F.E.R.C. ¶ 61067 (2013) (granting waiver of the Commission's 60-day prior notice requirement of 18 C.F.R. § 35.3(a)(1) by accepting PJM's requested effective date of December 1, 2012 for proposed tariff revisions submitted on November 30, 2012).

**VI. Conclusion**

The Applicants hereby respectfully request that the Commission accept for filing the Service Agreements, each with an effective date of May 26, 2017. The Applicants further request and waivers that may be required. Please direct any questions regarding the instant filing to the undersigned.

Respectfully submitted,

/s/ Carlos E. Gutierrez

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**Engineering and Construction Services Agreement**  
**between**  
**American Transmission Systems Inc.**  
**and**  
**The Cleveland Electric Illuminating Company**  
**for**  
**Multiple Relay Replacement Projects**

This Engineering and Construction Services Agreement (the “Agreement”) regarding Engineering and Construction Services (the “E & C Services”), effective April 27, 2017 is entered into by and between American Transmission Systems Inc. (“ATSI”), and The Cleveland Electric Illuminating Company (“CEI”) (ATSI and CEI, each a “Party” and collectively the “Parties”).

**WHEREAS**, PJM Interconnection, L.L.C. (“PJM”) has functional control of the transmission system (the “Transmission System”) owned by each party;

**WHEREAS**, ATSI is engaged in the transmission of electric energy, and CEI is engaged in the distribution of electric energy;

**WHEREAS**, ATSI and CEI are members of PJM;

**WHEREAS**, CEI is currently interconnected to ATSI at a number of transmission system interconnection points, pursuant to that certain Interconnection Agreement entered into by the Parties on November 5<sup>th</sup>, 2015 and accepted for filing by the Federal Energy Regulatory Commission (“FERC”) in Docket No. ER16-271-000 (“Interconnection Agreement”);

**WHEREAS**, ATSI is engaged in the “Energizing the Future” transmission initiative, whereby ATSI will be performing work on the ATSI Transmission System, which will require modifications to certain CEI facilities (the “Project”); and

**WHEREAS**, the Parties wish to definitively agree on the respective rights and obligations of each Party relating to E & C Services related to the Project (defined below) by entering into this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

**1. Definitions.** The following definitions shall apply:

- a.** “Affiliate” means with respect to a corporation, partnership or other entity, each other corporation, partnership, or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.
- b.** “Contractor(s)” means the person(s) or entity(s) designated by a Party to provide or perform all or a portion of the E & C Services, including the supply of any work, services, labor, supervision, equipment, data, materials or any other item.
- c.** “E & C Services” means the work, services, goods, materials, equipment, labor, supervision, oversight, actions, and items performed or provided by each Party in connection with the construction and engineering required to complete the Project as described in this Agreement.
- d.** “Equipment and Materials” means all materials and components necessary to construct ATSI and CEI interconnection facilities necessary to complete the Project.
- e.** “Force Majeure” means any occurrence beyond the reasonable control of a Party which affects or prevents performance of this Agreement, including, but not limited to, fire; flood; drought; earthquake; storm; lightning; explosion; strikes; labor disputes; labor or material shortage; war; terrorism; epidemic; sabotage; acts of public enemy; riot; civil disturbance or disobedience; damage to or failure of major equipment, plants, piping, or appurtenances; unavailability of transportation facilities; emergency or safety related circumstances; acts of God; acts or failure to act by governmental authority; regulatory requirements, regulations, or orders; failure to obtain permits or property rights; acts or omissions of third parties; court orders or other events whether or not the same or similar to the occurrences listed herein. Force Majeure does not include: (i) a failure of performance that is due to an affected Party’s own negligence or intentional wrongdoing; (ii) any removable or remediable causes (other than settlement of a strike or labor dispute) which an affected Party fails to remove or remedy within a reasonable time; or (iii) economic hardship of an affected Party.
- f.** “Good Utility Practice” means, unless otherwise expressly provided for in this Agreement, those practices, methods and acts with respect to the design, construction, installation, operation, maintenance, repair, replacement, reinforcement, rearrangement, purchase, selection, examination, review, inspection or acceptance of any facility or equipment engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts, which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

- g. “Hazardous Substances” means any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “hazardous constituents,” “restricted hazardous materials,” “extremely hazardous substances,” “toxic substances,” “radioactive substances,” “contaminants,” “pollutants,” “toxic pollutants” or words of similar meaning and regulatory effect under any applicable environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by applicable Law.
- h. “Law” means all applicable federal, state, county and municipal laws, statutes, ordinances, resolutions, rules and regulations as well as the requirements of all commissions, boards, bodies and agencies having jurisdiction over ATSI, CEI, or the E & C Services or over any persons or entities performing or providing any portion of the E & C Services.
- i. “CEI” means The Cleveland Electric Illuminating Company.
- j. “CEI Project Facilities” means the CEI owned facilities that are to be constructed, modified and/or relocated in connection with the completion of the Project as described in this Agreement and in Schedule 2.
- k. “ATSI” means American Transmission Systems Inc.
- l. “ATSI Project Facilities” means the ATSI owned facilities that are to be constructed, modified and/or relocated in connection with the completion of the Project as described in this Agreement and in Schedule 1.
- m. “Project Facilities” means either the “ATSI Project Facilities” or the “CEI Project Facilities,” or both, as the context warrants.
- n. “Schedule of Work” means the schedule for performing the E & C Services as set forth in Schedule 3.
- o. “Written Notice” means a writing delivered via personal delivery or upon receipt by fax, e-mail (with confirmation of receipt) registered or certified U.S. mail or courier service to the individuals specified in Article 13 of this Agreement.

2. **Roles and Responsibilities.** This Agreement addresses how costs, reimbursement and other responsibilities and obligations are allocated between the Parties.

3. **Scope of E & C Services.** The E & C Services to be performed by ATSI and its Contractor(s) are described in the attached Schedule 1, “Scope of Work”. All E & C Services to be performed by ATSI shall meet the requirements of each of the National Electrical Safety Code (“NESC”), Good Utility Practice, pertinent PJM design criteria, ATSI and/or Contractor standards and specifications, and Law.

The E & C Services to be performed by CEI and its Contractor(s) are described in the attached Schedule 2, “Scope of Work”. All E & C Services to be performed by CEI shall meet the requirements of each of the NESC, Good Utility Practice, pertinent PJM design criteria, and Law.

4. **Location of E & C Services.** To the extent necessary for the performance of the E & C Services, each Party shall arrange to have the appropriate easement or other necessary access right granted to the other Parties. Each Party will obtain any and all new rights-

of-way, or other necessary access right, deemed necessary by such Party for the relocation/modification of its Project Facilities.

5. **Schedule of E & C Services.** Each Party shall use reasonable commercial efforts in order to perform its respective E & C Services in accordance with Schedule 3, "Schedule of Work." The "Preliminary Outage Schedule" is attached hereto as Schedule 4. The Schedule of Work and Preliminary Outage Schedule shall be revised as required by mutual agreement of the Parties, which agreement shall not be unreasonably withheld, conditioned or delayed.
6. **Changes to the Scope of E & C Services.** Any material change, modification, increase or reduction to the Scope of Work contained in Schedule 1 or Schedule 2, the ATSI Project Facilities, or the CEI Project Facilities, shall be subject to the prior mutual agreement of the Parties and no such material change, modification, increase or reduction shall be effective unless Schedule 6, "Scope of Work Amendment or Modification Form," is entered into by the Parties and executed by their duly authorized representatives.
7. **Safety.**
  - a. General. Each Party agrees that all work performed on Project Facilities by a Party that may reasonably be expected to affect the other Party shall be performed in accordance with Good Utility Practice and all Law pertaining to the safety of persons or property. A Party performing E & C Services within the boundaries of the other Party's facilities must abide by the safety rules applicable to the site. Notwithstanding the foregoing, when E & C Services are being performed in an area controlled by the other Party, the Party performing the E & C Services will abide by the safety, security and work rules applicable to that area.
  - b. Environmental Releases. Each Party shall notify the other Parties, first orally and then in writing, of the release of Hazardous Substances, such as any asbestos, Polychlorinated Biphenyls (PCBs), mercury or lead abatement activities, or any type of remediation activities, each of which may reasonably be expected to affect the other Party, as soon as possible but not later than twenty four (24) hours (unless a shorter period is required by Law) after the Party becomes aware of the occurrence, and shall promptly furnish to the other Party copies of any reports filed with any governmental agencies addressing such events.
8. **General Payment Responsibilities.**
  - a. ATSI's responsibility to reimburse CEI for the E & C Services to be performed by CEI and/or its Contractor(s) shall include, but not be limited to, the following related to the work described in Schedule 2:
    - i. Actual quantities of labor and material expended and the sum due for the E & C Services, including, but not limited to Contractor costs as well as the costs of restoring, protecting, temporarily or permanently relocating, and rearranging CEI property or other property or facilities;



- ii. Cost of surveying, verifying and locating existing facilities, including but not limited to, test pits, correspondence, meetings, and exchanges of information;
- iii. Cost of engineering, supervision, equipment of and for the E & C Services and for the cost of pensions, insurance and taxes and other indirect costs for CEI and/or Contractor employees performing E & C Services;
- iv. Cost of additional right of way acquisition and permitting costs as applicable. Said costs may include, but are not limited to, any and all permits required under Federal, State or local laws or regulations for CEI and/or its Contractor(s) to perform the E & C Services described herein and the costs of negotiations and acquisition of additional right of way;
- v. Costs associated with any soil removal and/or use of Hazwoper-trained workers required for provision of the E & C Services; and
- vi. Tax Gross-Up.
  - 1. CEI will treat payments made by ATSI to CEI pursuant to this Agreement as taxable contributions to capital for compliance purposes under the Internal Revenue Code and any applicable state tax laws. ATSI will initially pay any gross-up for income taxes in connection with its payments required by this Agreement. ATSI may, at its own expense, or CEI shall, upon the timely written request by ATSI and at ATSI's expense, seek final determination by the Internal Revenue Service of the tax status of payments made pursuant to this Agreement. If ATSI requests CEI to obtain such final determination, ATSI shall advance to CEI on a periodic basis as requested by CEI the estimated costs of obtaining such determination. In the event a final determination is made by the Internal Revenue Service that any payment by ATSI to CEI pursuant to this Agreement constitutes a non-taxable contribution in aid of construction, within thirty (30) days from receipt of such final determination, CEI shall refund to ATSI any payment(s) attributable to the amount determined to be non-taxable, plus interest received by, or credited to, CEI in connection with the treatment of its tax returns and the ultimate refund by taxing authorities related to such final determination.
  - 2. The Parties acknowledge that, with respect to any other services that may be performed by one Party hereunder for the other Party under this Agreement or otherwise: (A) ATSI's agreement to make any tax gross-up under this Article 8(a) (vi) for E & C Services shall not be deemed to establish any precedent; and (B) the Party seeking a tax gross-up for such other services shall provide written notice of the gross-up to the other Party.

**9. Invoices and Payment.**

- a.** Upon execution of this Agreement by the Parties, ATSI shall furnish to CEI a payment in the amount provided for in Schedule 5 to this Agreement, which represents the estimated costs and expenses for CEI's completion of the E & C Services relating to the work set forth in Schedule 2.
- b.** Within one hundred and twenty (120) days after CEI's completion of the E & C Services as set forth in Schedule 2, CEI shall furnish to ATSI a final reconciliation statement (the "Final Reconciliation Statement") specifying the nature and amount of the costs actually incurred by CEI in connection with the E & C Services relating to the work set forth in Schedule 2, including the installation, testing and commissioning related to the CEI Project Facilities, compared with the amount collected under the payment provisions of Schedule 5.

  - i. In the event that the Final Reconciliation Statement contains total costs and expenses that exceed the amount collected under the payment provisions of Schedule 5, CEI will issue to ATSI a final reconciliation invoice (the "Final Reconciliation Invoice") contemporaneously with the Final Reconciliation Statement. ATSI shall furnish to CEI a payment for such difference within 30 days after ATSI's receipt of the Final Reconciliation Invoice.
  - ii. In the event that the Final Reconciliation Statement contains total costs and expenses that are less than the amount collected under the payment provisions of Schedule 5, CEI shall furnish to ATSI a refund payment in the amount of such difference within 30 days after ATSI's receipt of the Final Reconciliation Statement.
- c.** In connection with the reconciliation, ATSI shall have the right to review, after a timely request therefore, ATSI's documentation of its costs and expenses for providing the E & C Services necessary to enable ATSI to verify the accuracy of the Final Reconciliation Statement. However, such review shall not extend the due date of, or extend, postpone or otherwise affect ATSI's obligation to pay within thirty (30) days any amounts due as described in the Final Reconciliation Statement.
- d.** In the event that ATSI disputes the correctness of any portion of the Final Reconciliation Statement, it shall pay the portion that is not in dispute. The Parties agree to negotiate in good faith to resolve the disputed amount. If a resolution of such dispute is not achieved thereby, then the Parties agree to resolve such dispute in accordance with Article 26 of this Agreement. Upon resolution of such dispute, the Parties will adjust the payment amount to reflect the resolution and any overpayment or underpayment will be reconciled in accordance with this Article 9 of this Agreement.

10. **Inspection and Testing.** Each Party shall perform routine inspection and testing of its Project Facilities in accordance with Good Utility Practice. Each Party shall have the right, upon reasonable advance written notice, at its own expense, to inspect the other Party's Project Facilities.
11. **Other Considerations.**
- a. All transmission outages in connection with the provision of E & C Services will or have already been scheduled by CEI in accordance with Schedule 4, "Preliminary Outage Schedule," will or have been approved by PJM, and are or will be reflected in the PJM Outage Schedule. No generating unit outages will be required to complete the scope of work related to the E & C Services for the Parties.
  - b. The cancellation or change of any transmission outage(s) scheduled by CEI in the performance of this Agreement will be subject to PJM requirements and approved by PJM.
  - c. All structure loading and electrical clearances will be designed to meet the requirements of each of the NESC, Good Utility Practice, pertinent PJM design criteria and CEI and/or FirstEnergy standards and specifications.
  - d. In the event there are any ATSI Project Facilities constructed under the terms of this Agreement, they shall be the sole property of the appropriate ATSI Party, and the appropriate ATSI Party shall be solely responsible for their operation, repair and maintenance. The CEI Project Facilities constructed under the terms of this Agreement shall be the sole property of CEI, and CEI shall be solely responsible for their operation, repair and maintenance.
  - e. Schedules 1 through 5, inclusive, are incorporated by reference into this Agreement in their entirety, and any modification to the Scope of Work for E & C Services effected through the use of Schedule 6 will likewise be incorporated by reference into this Agreement.
12. **Contractors.** Nothing in this Agreement shall prevent each Party from utilizing the services of a Contractor(s) as it deems appropriate to perform its obligations under this Agreement, provided, however, that each Party shall require its Contractor to comply with all applicable terms and conditions of this Agreement in performing such obligations.

**13. Written Notice.** All notices pertaining to this Agreement shall be in writing and directed to the following individuals for their respective organizations, provided however that any Party may change the individuals designated to receive Written Notice by providing Written Notice of such change to the other Party:

a. For ATSI:		With a copy to :	
Name:	Michael J. Thorn FERC & Wholesale Connection Support, Manager	Name:	Legal Department Attn: Attorney for FERC & Wholesale Connection Support
Address:	<u>FirstEnergy Service Company</u> 76 South Main Street Akron, OH 44308	Address:	<u>FirstEnergy Service Company</u> 76 South Main Street Akron, OH 44308
Phone:	<u>(330) 384-3889</u>	Phone:	<u>(330) 761-4307</u>
Fax:	<u>(330) 761-4388</u>	Fax:	<u>(330) 777-6521</u>
Email	<u></u>	Email	<u></u>

b. For CEI:		With a copy to:	
Name:	Michael J. Thorn FERC & Wholesale Connection Support, Manager	Name:	Legal Department Attn: Attorney for FERC & Wholesale Connection Support
Address:	<u>FirstEnergy Service Company</u> 76 South Main Street Akron, OH 44308	Address:	<u>FirstEnergy Service Company</u> 76 South Main Street Akron, OH 44308
Phone:	<u>(330) 384-3889</u>	Phone:	<u>(330) 761-4307</u>
Fax:	<u>(330) 761-4388</u>	Fax:	<u>(330) 777-6521</u>
Email	<u></u>	Email	<u></u>

**14. Assignment.** Neither this Agreement nor any interest therein shall be assigned by any Party without the prior written consent of the other Party; provided, however, that any Party may assign this Agreement, in whole or in part, to an Affiliate or successor of such Party that owns and operates all or any portion of such Party’s transmission system (meaning those facilities of such Party that are classified as transmission facilities in the PJM Open Access Transmission Tariff), including a regional transmission organization, an independent system operator or an independent transmission company. Notwithstanding the foregoing, any Party may assign this Agreement to a successor to all or substantially all of the assets of such Party by way of merger, consolidation, sale or otherwise, provided that such successor assumes and becomes liable for all of such Party’s duties and obligations hereunder. No assignment of rights or obligations under this Agreement by a Party will relieve such Party from liability and financial responsibility for the performance thereof after such assignment unless and until the assignee agrees in writing to assume the obligations and duties of that Party under this Agreement and the non-assigning Party have consented in writing to such assumptions and to a release of the assigning Party from such liability, said consent not to be unreasonably withheld or delayed.

**15. No Waiver.** A Party’s failure to insist in any one or more instances upon strict performance of any provision of the Agreement, or failure or delay to take advantage of any of its rights or remedies hereunder, violation, or default, shall not be construed as a waiver by the Party of any such performance, provision, right, breach, violation, or

default, either then or for the future. Any waiver shall be effective only if in writing and signed by each Party's authorized representative, and only with respect to the particular case expressly covered therein.

16. **Law and Venue.** This Agreement shall be governed by, construed, and enforced in accordance with the law of the State of Ohio. Any legal claim, suit, proceeding, or action brought by a Party shall be brought in an Ohio state court or a federal court located in Ohio.
17. **Headings.** The headings assigned to the Articles of this Agreement are for convenience only and shall not limit the scope and applicability of the Articles.
18. **Survival.** All provisions providing for limitation of or protection against loss or liability of the Parties, including all protections and indemnities, shall survive termination, suspension, cancellation or expiration of this Agreement.
19. **Force Majeure.** The Parties acknowledge that Force Majeure events may affect the performance of this Agreement and agree as follows:
  - a. The Parties shall not be liable to each other for any breach or failure to perform under this Agreement caused by Force Majeure, provided that Force Majeure shall not excuse ATSI from its obligations to pay CEI under this Agreement for all costs and expenses for E & C Services, whether such costs and expenses were incurred before or after the Force Majeure event.
  - b. Where Force Majeure continues for more than ninety (90) days, any Party may, at its option, terminate this Agreement upon thirty (30) calendar days advance Written Notice. In the event of termination in accordance with this Article of the Agreement, no Party shall have any further responsibility or liability to the other, except for the payment for all costs and expenses for E & C Services relating to the Radial Modifications, whether such costs and expenses were incurred before or after the Force Majeure event performed on or before the date of termination.
20. **Environmental.** In the event that Hazardous Substances are encountered in the course of E & C Services, the following shall apply:
  - a. No Party shall be responsible for the handling, removal, disposal or remediation of the Hazardous Substances, unless the presence of said Hazardous Substances was caused or likely to have been caused by that Party, or its Contractor(s). Such Party shall be responsible for satisfying reporting requirements required by Law.
  - b. In the event Hazardous Substances are found on ATSI property, or on property occupied by ATSI pursuant to easement, license or other such right, and were not caused by CEI or its Contractor(s), ATSI shall be responsible for bearing the costs and expenses associated with the handling, removal, disposal or remediation of said Hazardous Substances. ATSI shall be responsible for satisfying reporting requirements required by Law.
  - c. In the event Hazardous Substances are found on CEI property, or on property occupied by CEI pursuant to easement, license or other such right, and were not caused by ATSI or its Contractor(s), CEI shall be responsible for bearing the costs and expenses associated with the handling, removal, disposal or

remediation of said Hazardous Substances. CEI shall be responsible for satisfying reporting requirements required by Law.

**21. Limitations of Liability.** The following limitations of liability shall apply:

- a.** No Party shall be liable for any delays in performing the E & C Services, provided that a Party, its Contractor(s) or suppliers do not willfully act to delay the Project.
- b.** The liability of a Party under this Agreement shall be limited to direct actual damages.
- c.** Except as provided in Section 22, no Party shall be liable for any special, indirect, incidental, punitive, or consequential losses, damages, judgments, fines, penalties, costs or expenses whatsoever including, but not limited to: (i) delayed, lost or reduced profits, revenues, efficiency, productivity, bonding capacity, business opportunities; or (ii) increased or extended overheads, operating, maintenance, depreciation, financing costs or expenses arising out of, related to, or in connection with the performance or breach of this Agreement whether based upon contract, tort (including negligence), warranty, strict liability or under any other legal or equitable theory.

**22. Indemnification.**

**a. General.**

Each Party (an "Indemnifying Party") shall indemnify and hold harmless the other Party (the "Indemnified Party"), and the Indemnified Party's officers, agents, servants, employees, shareholders, Contractors, subcontractors, suppliers, successors, and assigns, from and against any and all liabilities, losses, liens, damages, judgments, fines, penalties, fees or expenses (including reasonable attorneys' fees) due to personal injury, death, or occupational disease of any person, including, but not limited to, the Indemnified Party's employees or agents; or due to loss or damage to any real or personal property; which in whole or in part arise out of, relate to, result from, or are connected with the Indemnifying Party's negligence or intentional misconduct in the performance of this Agreement, except to the extent caused by the Indemnified Party's intentional misconduct or negligence.

**b. Obligation to Defend.**

An Indemnifying Party shall, at the Indemnified Party's option and at the Indemnifying Party's own cost and expense, defend the Indemnified Party, and the Indemnified Party's officers, agents, servants, employees, shareholders, Contractors, subcontractors, suppliers, successors, and assigns, from and against any and all liabilities, losses, liens, damages, judgments, fines, penalties, fees or expenses (including reasonable attorneys' fees) due to personal injury, death, or occupational disease of any person, including, but not limited to, the Indemnified Party's employees or agents; or due to loss or damage to any real or personal property; which in whole or in part arise out of, relate to, result from, or are connected with the indemnifying Party's negligence or intentional misconduct in the performance of this Agreement, except to the extent caused by the indemnified Party's intentional misconduct or negligence. Without the

consent of the applicable Indemnified Party, which shall not be unreasonably withheld, an Indemnifying Party may not settle any such claim for any relief (including monetary damages) or any claim in the nature of regulatory or similar legal enforcement action by a governmental authority. For purposes of fulfilling its duties to defend, indemnify and hold harmless, each Party waives its immunities, rights, or defenses that may be available under applicable Worker's Compensation Laws.

**23. Insurance.**

- a.** Prior to the start of E & C Services, each Party performing E & C Services will at its own expense, procure and maintain in effect during performance and until final completion and acceptance of any E & C Services under this Agreement the following minimum insurance coverages with carriers acceptable to the other Party, including:
- i. Workers' Compensation insurance in accordance with statutory limits, as required by the State of Ohio, and Employer's Liability insurance with limits of not less than one million dollars (\$1,000,000) per occurrence.
  - ii. Commercial General Liability insurance providing coverage for premises, bodily injury, property damage, personal injury, advertising liability, blanket contractual liability covering a Party's obligations under this Agreement, products and completed operations for not less than three (3) years from the date that Party completes the E & C Services, coverage for independent contractors and broad form property damage coverage with limits of not less than one million dollars (\$1,000,000) for each occurrence with an annual aggregate of three million dollars (\$3,000,000) per location where E & C Services are performed.
  - iii. Commercial Automobile Liability insurance providing coverage for all owned, non-owned, and hired vehicles, trailers or semi-trailers designed for travel on public roads used by each Party in the connection with the E & C Services with a combined single limit of not less than one million dollars (\$1,000,000) for each occurrence of bodily injury, including death, and property damage.
  - iv. Excess or Umbrella Liability insurance with a limit of not less than five million dollars (\$5,000,000) for each occurrence with an annual aggregate of five million dollars (\$5,000,000) per location where the E & C Services are performed. This limit applies in excess of each of the coverages set forth above in Article 23(a)(i) (Employer's Liability), Article 23(a)(ii) (Commercial General Liability insurance) and Article 23(a)(iii) (Commercial Automobile Liability insurance), which are scheduled as primary. Any of the above per-occurrence limits may be satisfied by a combination of primary and excess liability coverage.
  - v. Pollution/Environmental Liability insurance with a minimum limit of five million dollars (\$5,000,000) each occurrence where the work involves or includes a Party handling, transporting, disposing, or performing work or operations with Hazardous Substances. For

insurance purposes, the terms and definitions relating to Pollution Liability as utilized in the AEGIS Excess Liability policy will be used.

vi. The insurance coverages provided under this Agreement shall not contain any restrictions or limitations that are inconsistent with each Party's rights under this Agreement.

vii. All above-mentioned insurance policies shall provide the following: be primary to any other insurance carried by each Party with respect to such Party's negligence; contain standard cross-liability provisions; and provide for a waiver of all rights of subrogation against each Party or its insurers.

- b.** Additional Insured Requirement: The Commercial General Liability and Excess or Umbrella Liability insurance policies shall name the other Party and their successors and assigns, as additional insureds and each Party shall maintain the required coverages for a period of not less than three (3) years from the date a Party completes the E & C Services.
- c.** Evidence of Insurance: Prior to the start of any E & C Services by and subsequently upon request of a Party, such Party shall deliver to the other Party's contracting representatives, evidence of the required insurance coverage in the form of Certificates of Insurance. Each Party shall provide at least thirty (30) days prior written notice to the other Party in the event the minimum insurance coverages outlined in this Section 23 are canceled or non-renewed.
- d.** Ratings: All insurance coverages required under this Agreement shall be provided by insurance companies having ratings of A-/VII or better in the Best's Key Rating Insurance Guide (latest edition in effect at the latest date stated in the Certificates of Insurance referred to in Article 23(d) above (Evidence of Insurance)).
- e.** Failure to Obtain and Maintain Insurance: Failure to obtain and maintain the insurance required under this Agreement shall constitute a material breach of this Agreement and the breaching Party will be liable for any and all costs, liabilities, and damages (including attorney's fees, court costs, and settlement expenses) resulting to the other Party from such breach.
- f.** Each Party's Obligations Not Limited: The insurance requirements set forth above are to protect each Party from any and all claims by third parties, including employees of each Party, its agents, Contractor(s) and invitees. Said insurance, however, is in no manner to relieve or release a Party, its agents, Contractor(s) and invitees from, or limit their liability as to, any and all obligations assumed under this Agreement.

## **24. Breach.**

- a.** A breach of this Agreement shall occur upon: (a) the failure of a Party to pay any amount when due; (b) the failure of a Party to comply with any material term or condition of this Agreement, including any material breach of a representation, warranty or covenant; (c) any assignment of this Agreement in a manner inconsistent with its terms; or (d) the failure of a Party to provide access



rights, or a Party's attempt to revoke or terminate access rights, that are required by the other Party to perform E & C Services under this Agreement.

**25. Termination.**

- a.** This Agreement shall automatically terminate upon the completion of the E & C Services and payment in full pursuant to the Final Reconciliation Statement.
- b.** This Agreement may be terminated by mutual consent of the Parties.
- c.** This Agreement may be terminated by a Party in the event that a Party breaches this Agreement and the breach has not been cured within sixty (60) calendar days after the affected Party provides Written Notice of such breach to the breaching Party in accordance with the notification provisions of Article 13. During the sixty (60) calendar days following the Party's delivery of notice of breach pursuant to Article 13 to the breaching Party, the non-breaching Party may at its sole discretion suspend its performance under this Agreement.
- d.** Upon the termination of this Agreement for reasons other than pursuant to Article 25(a), each Party shall be obligated, if directed by the other Party, to remove its equipment, facilities, and debris related to the E & C Services from the directing Party's property and restore such property, as close as practicable, to its condition prior to the commencement of the E & Services. The access and other property rights granted to each Party under this Agreement shall survive such termination to the extent needed by each Party to perform its obligations under this Article 25(d).

**26. Dispute Resolution.**

- a.** Notice of any claim or dispute, which any Party may have against any other, arising out of this Agreement, shall be submitted in writing to the other Party in accordance with the notification provisions of Article 13, not later than sixty (60) days after the circumstance which gave rise to the claim or dispute was to have taken place. If agreed by each Party, the Parties may submit a dispute to mediation and the following provisions shall apply.
- b.** In the mediation process, the Parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the Parties as soon as practical after the Parties have agreed to submit the matter to the mediation process. Each Party shall provide the other with a list of no less than three (3) and no more than five (5) mediators, and the other Party or Parties may strike as many names as it chooses. If the Parties cannot agree on a mediator, a mediator will be selected by the American Arbitration Association ("AAA") at the request of a Party.
- c.** The Parties agree that any and all mediation will be conducted in the AAA offices in or nearest to Akron, Ohio, and in the manner specified by the mediator and agreed upon by the Parties. The Parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.
- d.** Unless otherwise agreed to, the mediation process shall be concluded not later than six (6) months after the date that it is initiated. The decision must be in

writing and contain the reasons for the decision. The mediator shall have the authority only to recommend interpretations of the terms and conditions of this Agreement and shall have no power to modify any term or condition of this Agreement.

- e. If any dispute is not settled by mediation, then any Party may pursue any and all rights and remedies available to it under this Agreement, in law or in equity. Notwithstanding the mediation hereunder, the Parties have the right to proceed directly to court to seek relief in law or in equity.
- f. The submission of a dispute to mediation shall not limit or in any way affect the applicable Party's right to effect remedies or limit such Party's rights under this Agreement or otherwise.

**27. Audit of Records.**

- a. Maintenance of Records. For any E & C Services performed hereunder, each Party shall keep a detailed account of all costs necessary for proper financial management with a system in accordance with Generally Accepted Accounting Principles, consistently applied. Maintaining proper records shall not relieve a Party of its responsibility to document properly all invoices submitted for payment.
  - i. Each Party, including its agents or employees, shall have access to the other Party's books, vouchers, memoranda, records, data, and other documents relative to the E & C Services, for inspection, audit, or reproduction. Each Party shall preserve all of the above records for two years after final payment, during which time a Party shall have the right to perform any audit, inspection, or reproduction it may desire. If discrepancies or questions arise, the records shall be preserved until an agreement is reached between the Parties. Each Party reserves the right to recover any overcharges or incorrect charges from the other Party.
  - ii. Any audit conducted by a Party shall be at its expense; provided, however, that if it is determined that a Party incorrectly charged the auditing Party, the former shall be liable to the other for all charges, including the amount of the overcharge or incorrect charge and cost of audit or other investigation.
  - iii. Time of Audit. Audits shall take place at times and places to be mutually agreed upon.

**28. Conflicts.** In the event of any conflict between a provision in this Agreement and that of a Schedule, such conflict shall be resolved in favor of the terms set forth in such Schedule.

**29. Entire Agreement.** This Agreement constitutes the full, complete and only agreement between the Parties at this time with respect to the E & C Services and supersedes all prior communications, agreements, and understandings, whether written or oral, concerning such matters. This Agreement cannot be modified or amended verbally and can only be changed via a formal written agreement between the Parties, executed by both their duly authorized representatives.

30. **Existing Arrangements.** Nothing in this Agreement shall supersede, nullify or otherwise modify any pre-existing policies, programs, procedures or arrangements between the Parties. In the event of any conflict between a term or condition of this Agreement and any such pre-existing policy, program, procedure or arrangement, the latter shall control.

**[Signatures on the next page]**

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as of the date first above written by their duly authorized representatives.

Service Agreement No. 4560

AMERICAN TRANSMISSION SYSTEMS INC.

By: \_\_\_\_\_ */s/ Richard A. Ziegler* \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_ Richard A. Ziegler \_\_\_\_\_  
(Print)

Title: Director, FERC & RTO Technical Support

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

By: \_\_\_\_\_ */s/ Thomas R. Pryatel* \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_ Thomas R. Pryatel \_\_\_\_\_  
(Print)

Title: Director, Ed Operations Services

## **Schedule 1**

### **Scope of Work for ATSI**

- **Grant:** Replace and own relay panel(s) and associated equipment
- **LTV East:** Replace and own relay panel(s) and associated equipment
- **Mayfield:** Replace and own relay panel(s) and associated equipment
- **Northfield:** Replace and own relay panel(s) and associated equipment

## **Schedule 2**

### **Scope of Work for CEI**

- **Grant:** Remove relay panel(s) and associated equipment
- **LTV East:** Remove relay panel(s) and associated equipment
- **Mayfield:** Remove relay panel(s) and associated equipment
- **Northfield:** Remove relay panel(s) and associated equipment

### **Schedule 3**

#### **Schedule of Work**

ATSI and CEI will work collaboratively to develop timely schedules and milestone dates for the work to be completed on the projects to complete the Scope of Work described in Schedules 1 and 2 prior to June 1, 2017.

## **Schedule 4**

### **Preliminary Outage Schedule**

- May 2017



## Schedule 5

### Payment Schedule

Actual costs incurred by CEI estimated as defined below and will be charged to ATSI as they are incurred.

- **Grant:** \$5,000
- **LTV East:** \$5,000
- **Mayfield:** \$5,000
- **Northfield:** \$5,000

## **Schedule 6**

### **SCOPE OF WORK AMENDMENT OR MODIFICATION FORM**

This SCOPE OF WORK AMENDMENT OR MODIFICATION FORM, dated as of \_\_\_\_\_, is by and between American Transmission System Inc. (“ATSI”) and The Cleveland Electric Illuminating Company (“CEI”). ATSI and CEI may each be referred to herein individually as a “Party,” and together as the “Parties.”

#### **WITNESSETH**

**WHEREAS**, ATSI and CEI are parties to an Engineering and Construction Services Agreement dated [ \_\_\_\_\_ ]; and

**WHEREAS**, the Engineering and Construction Services Agreement between ATSI and CEI contemplates that the Parties may from time to time agree to certain modifications in the Scope of Work; and

**WHEREAS**, by execution of this Scope of Work Amendment or Modification Form the Parties intend to alter the Scope of Work provided in the Engineering and Construction Services Agreement; and

**WHEREAS**, but for the modifications specifically described below, the Parties intend for all other terms and provisions of the Engineering and Construction Services Agreement to be applicable and take precedence over this Scope of Work Amendment or Modification Form.

**NOW, THEREFORE**, in consideration of the foregoing, the Parties hereby agree as follows:

1.1 Additional Work to be Performed by ATSI:

1.2 Additional Work to be Performed by CEI:

2.1 Cost Responsibilities for the Additional Work contemplated in Sections 1.1 and 1.2:

**IN WITNESS WHEREOF**, ATSI and CEI have caused this Scope of Work Amendment or Modification Form to be duly executed and delivered by their respective duly authorized officers as of the date first above written.

AMERICAN TRANSMISSION SYSTEMS INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

THE CLEVELAND ELECTRIC ILLUMINATING  
COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Engineering and Construction Services Agreement**  
**between**  
**American Transmission Systems, Incorporated**  
**and**  
**Ohio Edison Company**  
**for the**  
**Lisbon 69kV Breaker Replacement**

This Engineering and Construction Services Agreement (the “Agreement”) regarding Engineering and Construction Services (the “E & C Services”), effective April 27, 2017 is entered into by and between American Transmission Systems, Incorporated (“ATSI”), and Ohio Edison Company (“OE”) (ATSI and OE, each a “Party” and collectively the “Parties”).

**WHEREAS**, PJM Interconnection, L.L.C. (“PJM”) has functional control of the transmission system (the “Transmission System”) owned by each Party;

**WHEREAS**, ATSI is engaged in the transmission of electric energy, and OE is engaged in the distribution of electric energy;

**WHEREAS**, ATSI and OE are members of PJM;

**WHEREAS**, OE is currently interconnected to ATSI at a number of transmission system interconnection points, pursuant to that certain Interconnection Agreement entered into by the Parties on January 5, 2016 and accepted for filing by the Federal Energy Regulatory Commission (“FERC”) in Docket No. ER16-906-000 (“Interconnection Agreement”);

**WHEREAS**, ATSI is engaged in the “Energizing the Future” transmission initiative, whereby ATSI will be performing work on the ATSI Transmission System, which will require modifications to certain OE facilities (the “Project”); and

**WHEREAS**, the Parties wish to definitively agree on the respective rights and obligations of each Party relating to E & C Services related to the Project (defined below) by entering into this Agreement.

**NOW, THEREFORE,** in consideration of the mutual promises contained herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. **Definitions.** The following definitions shall apply:
  - a. “Affiliate” means with respect to a corporation, partnership or other entity, each other corporation, partnership, or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.
  - b. “Contractor(s)” means the person(s) or entity(s) designated by a Party to provide or perform all or a portion of the E & C Services, including the supply of any work, services, labor, supervision, equipment, data, materials or any other item.
  - c. “E & C Services” means the work, services, goods, materials, equipment, labor, supervision, oversight, actions, and items performed or provided by each Party in connection with the construction and engineering required to complete the Project as described in this Agreement.
  - d. “Equipment and Materials” means all materials and components necessary to construct ATSI and OE interconnection facilities necessary to complete the Project.
  - e. “Force Majeure” means any occurrence beyond the reasonable control of a Party which affects or prevents performance of this Agreement, including, but not limited to, fire; flood; drought; earthquake; storm; lightning; explosion; strikes; labor disputes; labor or material shortage; war; terrorism; epidemic; sabotage; acts of public enemy; riot; civil disturbance or disobedience; damage to or failure of major equipment, plants, piping, or appurtenances; unavailability of transportation facilities; emergency or safety related circumstances; acts of God; acts or failure to act by governmental authority; regulatory requirements, regulations, or orders; failure to obtain permits or property rights; acts or omissions of third parties; court orders or other events whether or not the same or similar to the occurrences listed herein. Force Majeure does not include: (i) a failure of performance that is due to an affected Party’s own negligence or intentional wrongdoing; (ii) any removable or remediable causes (other than settlement of a strike or labor dispute) which an affected Party fails to remove or remedy within a reasonable time; or (iii) economic hardship of an affected Party.
  - f. “Good Utility Practice” means, unless otherwise expressly provided for in this Agreement, those practices, methods and acts with respect to the design, construction, installation, operation, maintenance, repair, replacement, reinforcement, rearrangement, purchase, selection, examination, review, inspection or acceptance of any facility or equipment engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts, which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice,

method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

- g. “Hazardous Substances” means any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “hazardous constituents,” “restricted hazardous materials,” “extremely hazardous substances,” “toxic substances,” “radioactive substances,” “contaminants,” “pollutants,” “toxic pollutants” or words of similar meaning and regulatory effect under any applicable environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by applicable Law.
  - h. “Law” means all applicable federal, state, county and municipal laws, statutes, ordinances, resolutions, rules and regulations as well as the requirements of all commissions, boards, bodies and agencies having jurisdiction over ATSI, OE, or the E & C Services or over any persons or entities performing or providing any portion of the E & C Services.
  - i. “OE” means The OE Power Company.
  - j. “OE Project Facilities” means the OE owned facilities that are to be constructed, modified and/or relocated in connection with the completion of the Project as described in this Agreement and in Schedule 2.
  - k. “ATSI” means Trans-Allegheny Interstate Transmission Company.
  - l. “ATSI Project Facilities” means the ATSI owned facilities that are to be constructed, modified and/or relocated in connection with the completion of the Project as described in this Agreement and in Schedule 1.
  - m. “Project Facilities” means either the “ATSI Project Facilities” or the “OE Project Facilities,” or both, as the context warrants.
  - n. “Schedule of Work” means the schedule for performing the E & C Services as set forth in Schedule 3.
  - o. “Written Notice” means a writing delivered via personal delivery or upon receipt by fax, e-mail (with confirmation of receipt) registered or certified U.S. mail or courier service to the individuals specified in Article 13 of this Agreement.
2. **Roles and Responsibilities.** This Agreement addresses how costs, reimbursement and other responsibilities and obligations are allocated between the Parties.
3. **Scope of E & C Services.** The E & C Services to be performed by ATSI and its Contractor(s) are described in the attached Schedule 1, “Scope of Work”. All E & C Services to be performed by ATSI shall meet the requirements of each of the National Electrical Safety Code (“NESC”), Good Utility Practice, pertinent PJM design criteria, ATSI and/or Contractor standards and specifications, and Law.
- The E & C Services to be performed by OE and its Contractor(s) are described in the attached Schedule 2, “Scope of Work”. All E & C Services to be performed by OE shall meet the requirements of each of the NESC, Good Utility Practice, pertinent PJM design criteria, and Law.
4. **Location of E & C Services.** To the extent necessary for the performance of the E & C Services, each Party shall arrange to have the appropriate easement or other

necessary access right granted to the other Parties. Each Party will obtain any and all new rights-of-way, or other necessary access right, deemed necessary by such Party for the relocation/modification of its Project Facilities.

5. **Schedule of E & C Services.** Each Party shall use reasonable commercial efforts in order to perform its respective E & C Services in accordance with Schedule 3, "Schedule of Work." The "Preliminary Outage Schedule" is attached hereto as Schedule 4. The Schedule of Work and Preliminary Outage Schedule shall be revised as required by mutual agreement of the Parties, which agreement shall not be unreasonably withheld, conditioned or delayed.
6. **Changes to the Scope of E & C Services.** Any material change, modification, increase or reduction to the Scope of Work contained in Schedule 1 or Schedule 2, the ATSI Project Facilities, or the OE Project Facilities, shall be subject to the prior mutual agreement of the Parties and no such material change, modification, increase or reduction shall be effective unless Schedule 6, "Scope of Work Amendment or Modification Form," is entered into by the Parties and executed by their duly authorized representatives.
7. **Safety.**
  - a. General. Each Party agrees that all work performed on Project Facilities by a Party that may reasonably be expected to affect the other Party shall be performed in accordance with Good Utility Practice and all Law pertaining to the safety of persons or property. A Party performing E & C Services within the boundaries of the other Party's facilities must abide by the safety rules applicable to the site. Notwithstanding the foregoing, when E & C Services are being performed in an area controlled by the other Party, the Party performing the E & C Services will abide by the safety, security and work rules applicable to that area.
  - b. Environmental Releases. Each Party shall notify the other Parties, first orally and then in writing, of the release of Hazardous Substances, such as any asbestos, Polychlorinated Biphenyls (PCBs), mercury or lead abatement activities, or any type of remediation activities, each of which may reasonably be expected to affect the other Party, as soon as possible but not later than twenty four (24) hours (unless a shorter period is required by Law) after the Party becomes aware of the occurrence, and shall promptly furnish to the other Party copies of any reports filed with any governmental agencies addressing such events.
8. **General Payment Responsibilities.**
  - a. OE's responsibility to reimburse ATSI for the E & C Services to be performed by ATSI and/or its Contractor(s) shall include, but not be limited to, the following related to the Project described in Schedule 1:
    - i. Actual quantities of labor and material expended and the sum due for the E & C Services, including, but not limited to Contractor costs as well as the costs of restoring, protecting, temporarily or permanently relocating, and rearranging ATSI property or other property or facilities;

- ii. Cost of surveying, verifying and locating existing facilities, including but not limited to, test pits, correspondence, meetings, and exchanges of information;
- iii. Cost of engineering, supervision, equipment of and for the E & C Services and for the cost of pensions, insurance and taxes and other indirect costs for ATSI and/or Contractor employees performing E & C Services;
- iv. Cost of additional right of way acquisition and permitting costs as applicable. Said costs may include, but are not limited to, any and all permits required under Federal, State or local laws or regulations for ATSI and/or its Contractor(s) to perform the E & C Services described herein and the costs of negotiations and acquisition of additional right of way;
- v. Costs associated with any soil removal and/or use of Hazwoper-trained workers required for provision of the E & C Services; and
- vi. Tax Gross-Up.
  - 1. ATSI will treat payments made by OE to ATSI pursuant to this Agreement as taxable contributions to capital for compliance purposes under the Internal Revenue Code and any applicable state tax laws. OE will initially pay any gross-up for income taxes in connection with its payments required by this Agreement. OE may, at its own expense, or ATSI shall, upon the timely written request by OE and at OE's expense, seek final determination by the Internal Revenue Service of the tax status of payments made pursuant to this Agreement. If OE requests ATSI to obtain such final determination, OE shall advance to ATSI on a periodic basis as requested by ATSI the estimated costs of obtaining such determination. In the event a final determination is made by the Internal Revenue Service that any payment by OE to ATSI pursuant to this Agreement constitutes a non-taxable contribution in aid of construction, within thirty (30) days from receipt of such final determination, ATSI shall refund to OE any payment(s) attributable to the amount determined to be non-taxable, plus interest received by, or credited to, ATSI in connection with the treatment of its tax returns and the ultimate refund by taxing authorities related to such final determination.
  - 2. The Parties acknowledge that, with respect to any other services that may be performed by one Party hereunder for the other Party under this Agreement or otherwise: (A) OE's agreement to make any tax gross-up under this Article 8(a)(vi) for E & C Services shall not be deemed to establish any precedent; and (B) the Party seeking a tax gross-up for such other services shall provide written notice of the gross-up to the other Party.



**9. Invoices and Payment.**

- a. Upon execution and FERC filing of this Agreement by the Parties, OE shall furnish to ATSI a payment in the amount provided for in Schedule 5 to this Agreement, which represents the estimated costs and expenses for ATSI's completion of the E & C Services relating to the Substation Modifications as set forth in Schedule 1.
- b. Within one hundred and twenty (120) days after ATSI's completion of the E & C Services as set forth in Schedule 1, ATSI shall furnish to OE a final reconciliation statement (the "Final Reconciliation Statement") specifying the nature and amount of the costs actually incurred by OE in connection with the E & C Services relating to the Radial Modifications, as set forth in Schedule 1, including the installation, testing and commissioning related to the ATSI Project Facilities, compared with the amount collected under the payment provisions of Schedule 5.
  - i. In the event that the Final Reconciliation Statement contains total costs and expenses that exceed the amount collected under the payment provisions of Schedule 5, ATSI will issue to OE a final reconciliation invoice (the "Final Reconciliation Invoice") contemporaneously with the Final Reconciliation Statement. OE shall furnish to ATSI a payment for such difference within 30 days after OE's receipt of the Final Reconciliation Invoice.
  - ii. In the event that the Final Reconciliation Statement contains total costs and expenses that are less than the amount collected under the payment provisions of Schedule 5, ATSI shall furnish to OE a refund payment in the amount of such difference within 30 days after OE's receipt of the Final Reconciliation Statement.
- c. In connection with the reconciliation, OE shall have the right to review, after a timely request therefore, ATSI's documentation of its costs and expenses for providing the E & C Services necessary to enable OE to verify the accuracy of the Final Reconciliation Statement. However, such review shall not extend the due date of, or extend, postpone or otherwise affect OE's obligation to pay within thirty (30) days any amounts due as described in the Final Reconciliation Statement.
- d. In the event that OE disputes the correctness of any portion of the Final Reconciliation Statement, it shall pay the portion that is not in dispute. The Parties agree to negotiate in good faith to resolve the disputed amount. If a resolution of such dispute is not achieved thereby, then the Parties agree to resolve such dispute in accordance with Article 26 of this Agreement. Upon resolution of such dispute, the Parties will adjust the payment amount to reflect the resolution and any overpayment or underpayment will be reconciled in accordance with this Article 9 of this Agreement.

**10. Inspection and Testing.** Each Party shall perform routine inspection and testing of its Project Facilities in accordance with Good Utility Practice. Each Party shall have

the right, upon reasonable advance written notice, at its own expense, to inspect the other Party's Project Facilities.

**11. Other Considerations.**

- a. All transmission outages in connection with the provision of E & C Services will or have already been scheduled by ATSI in accordance with Schedule 4, "Preliminary Outage Schedule," will or have been approved by PJM, and are or will be reflected in the PJM Outage Schedule. No generating unit outages will be required to complete the scope of work related to the E & C Services for the Parties.
- b. The cancellation or change of any transmission outage(s) scheduled by ATSI in the performance of this Agreement will be subject to PJM requirements and approved by PJM.
- c. All structure loading and electrical clearances will be designed to meet the requirements of each of the NESC, Good Utility Practice, pertinent PJM design criteria and OE and/or FirstEnergy standards and specifications.
- d. In the event there are any ATSI Project Facilities constructed under the terms of this Agreement, they shall be the sole property of the appropriate ATSI Party, and the appropriate ATSI Party shall be solely responsible for their operation, repair and maintenance. The OE Project Facilities constructed under the terms of this Agreement shall be the sole property of OE, and OE shall be solely responsible for their operation, repair and maintenance.
- e. Schedules 1 through 5, inclusive, are incorporated by reference into this Agreement in their entirety, and any modification to the Scope of Work for E & C Services effected through the use of Schedule 6 will likewise be incorporated by reference into this Agreement.

- 12. Contractors.** Nothing in this Agreement shall prevent each Party from utilizing the services of a Contractor(s) as it deems appropriate to perform its obligations under this Agreement, provided, however, that each Party shall require its Contractor to comply with all applicable terms and conditions of this Agreement in performing such obligations.

13. **Written Notice.** All notices pertaining to this Agreement shall be in writing and directed to the following individuals for their respective organizations, provided however that any Party may change the individuals designated to receive Written Notice by providing Written Notice of such change to the other Party:

a. For ATSI:		With a copy to :	
Name:	Michael J. Thorn FERC & Wholesale Connection Support, Manager	Name:	Legal Department Attn: Attorney for FERC & Wholesale Connection Support
Address:	FirstEnergy Service Company 76 South Main Street Akron, OH 44308	Address:	FirstEnergy Service Company 76 South Main Street Akron, OH 44308
Phone:	(330) 384-3889	Phone:	(330) 761-4307
Fax:	(330) 761-4388	Fax:	(330) 777-6521
Email	_____	Email	_____

b. For OE:		With a copy to:	
Name:	Michael J. Thorn FERC & Wholesale Connection Support, Manager	Name:	Legal Department Attn: Attorney for FERC & Wholesale Connection Support
Address:	FirstEnergy Service Company 76 South Main Street Akron, OH 44308	Address:	FirstEnergy Service Company 76 South Main Street Akron, OH 44308
Phone:	(330) 384-3889	Phone:	(330) 761-4307
Fax:	(330) 761-4388	Fax:	(330) 777-6521
Email	_____	Email	_____

14. **Assignment.** Neither this Agreement nor any interest therein shall be assigned by any Party without the prior written consent of the other Party; provided, however, that any Party may assign this Agreement, in whole or in part, to an Affiliate or successor of such Party that owns and operates all or any portion of such Party's transmission system (meaning those facilities of such Party that are classified as transmission facilities in the PJM Open Access Transmission Tariff), including a regional transmission organization, an independent system operator or an independent transmission company. Notwithstanding the foregoing, any Party may assign this Agreement to a successor to all or substantially all of the assets of such Party by way of merger, consolidation, sale or otherwise, provided that such successor assumes and becomes liable for all of such Party's duties and obligations hereunder. No assignment of rights or obligations under this Agreement by a Party will relieve such Party from liability and financial responsibility for the performance thereof after such assignment unless and until the assignee agrees in writing to assume the obligations and duties of that Party under this Agreement and the non-assigning Party have consented in writing to such assumptions and to a release of the

assigning Party from such liability, said consent not to be unreasonably withheld or delayed.

15. **No Waiver**. A Party's failure to insist in any one or more instances upon strict performance of any provision of the Agreement, or failure or delay to take advantage of any of its rights or remedies hereunder, violation, or default, shall not be construed as a waiver by the Party of any such performance, provision, right, breach, violation, or default, either then or for the future. Any waiver shall be effective only if in writing and signed by each Party's authorized representative, and only with respect to the particular case expressly covered therein.
16. **Law and Venue**. This Agreement shall be governed by, construed, and enforced in accordance with the law of the State of Ohio. Any legal claim, suit, proceeding, or action brought by a Party shall be brought in an Ohio state court or a federal court located in Ohio.
17. **Headings**. The headings assigned to the Articles of this Agreement are for convenience only and shall not limit the scope and applicability of the Articles.
18. **Survival**. All provisions providing for limitation of or protection against loss or liability of the Parties, including all protections and indemnities, shall survive termination, suspension, cancellation or expiration of this Agreement.
19. **Force Majeure**. The Parties acknowledge that Force Majeure events may affect the performance of this Agreement and agree as follows:
  - a. The Parties shall not be liable to each other for any breach or failure to perform under this Agreement caused by Force Majeure, provided that Force Majeure shall not excuse OE from its obligations to pay ATSI under this Agreement for all costs and expenses for E & C Services, whether such costs and expenses were incurred before or after the Force Majeure event.
  - b. Where Force Majeure continues for more than ninety (90) days, any Party may, at its option, terminate this Agreement upon thirty (30) calendar days advance Written Notice. In the event of termination in accordance with this Article of the Agreement, no Party shall have any further responsibility or liability to the other, except for the payment for all costs and expenses for E & C Services relating to the project, whether such costs and expenses were incurred before or after the Force Majeure event performed on or before the date of termination.
20. **Environmental**. In the event that Hazardous Substances are encountered in the course of E & C Services, the following shall apply:
  - a. No Party shall be responsible for the handling, removal, disposal or remediation of the Hazardous Substances, unless the presence of said Hazardous Substances was caused or likely to have been caused by that Party, or its Contractor(s). Such Party shall be responsible for satisfying reporting requirements required by Law.
  - b. In the event Hazardous Substances are found on ATSI property, or on property occupied by ATSI pursuant to easement, license or other such right, and were not caused by OE or its Contractor(s), ATSI shall be responsible for bearing the costs and expenses associated with the handling, removal,

disposal or remediation of said Hazardous Substances. ATSI shall be responsible for satisfying reporting requirements required by Law.

- c. In the event Hazardous Substances are found on OE property, or on property occupied by OE pursuant to easement, license or other such right, and were not caused by ATSI or its Contractor(s), OE shall be responsible for bearing the costs and expenses associated with the handling, removal, disposal or remediation of said Hazardous Substances. OE shall be responsible for satisfying reporting requirements required by Law.

**21. Limitations of Liability.** The following limitations of liability shall apply:

- a. No Party shall be liable for any delays in performing the E & C Services, provided that a Party, its Contractor(s) or suppliers do not willfully act to delay the Project.
- b. The liability of a Party under this Agreement shall be limited to direct actual damages.
- c. Except as provided in Section 22, no Party shall be liable for any special, indirect, incidental, punitive, or consequential losses, damages, judgments, fines, penalties, costs or expenses whatsoever including, but not limited to: (i) delayed, lost or reduced profits, revenues, efficiency, productivity, bonding capacity, business opportunities; or (ii) increased or extended overheads, operating, maintenance, depreciation, financing costs or expenses arising out of, related to, or in connection with the performance or breach of this Agreement whether based upon contract, tort (including negligence), warranty, strict liability or under any other legal or equitable theory.

**22. Indemnification.**

- a. General.

Each Party (an "Indemnifying Party") shall indemnify and hold harmless the other Party (the "Indemnified Party"), and the Indemnified Party's officers, agents, servants, employees, shareholders, Contractors, subcontractors, suppliers, successors, and assigns, from and against any and all liabilities, losses, liens, damages, judgments, fines, penalties, fees or expenses (including reasonable attorneys' fees) due to personal injury, death, or occupational disease of any person, including, but not limited to, the Indemnified Party's employees or agents; or due to loss or damage to any real or personal property; which in whole or in part arise out of, relate to, result from, or are connected with the Indemnifying Party's negligence or intentional misconduct in the performance of this Agreement, except to the extent caused by the Indemnified Party's intentional misconduct or negligence.

- b. Obligation to Defend.

An Indemnifying Party shall, at the Indemnified Party's option and at the Indemnifying Party's own cost and expense, defend the Indemnified Party, and the Indemnified Party's officers, agents, servants, employees, shareholders, Contractors, subcontractors, suppliers, successors, and assigns, from and against any and all liabilities, losses, liens, damages, judgments,

fines, penalties, fees or expenses (including reasonable attorneys' fees) due to personal injury, death, or occupational disease of any person, including, but not limited to, the Indemnified Party's employees or agents; or due to loss or damage to any real or personal property; which in whole or in part arise out of, relate to, result from, or are connected with the indemnifying Party's negligence or intentional misconduct in the performance of this Agreement, except to the extent caused by the indemnified Party's intentional misconduct or negligence. Without the consent of the applicable Indemnified Party, which shall not be unreasonably withheld, an Indemnifying Party may not settle any such claim for any relief (including monetary damages) or any claim in the nature of regulatory or similar legal enforcement action by a governmental authority. For purposes of fulfilling its duties to defend, indemnify and hold harmless, each Party waives its immunities, rights, or defenses that may be available under applicable Worker's Compensation Laws.

**23. Insurance.**

- a. Prior to the start of E & C Services, each Party performing E & C Services will at its own expense, procure and maintain in effect during performance and until final completion and acceptance of any E & C Services under this Agreement the following minimum insurance coverages with carriers acceptable to the other Party, including:
  - i. Workers' Compensation insurance in accordance with statutory limits, as required by the State of Ohio, and Employer's Liability insurance with limits of not less than one million dollars (\$1,000,000) per occurrence.
  - ii. Commercial General Liability insurance providing coverage for premises, bodily injury, property damage, personal injury, advertising liability, blanket contractual liability covering a Party's obligations under this Agreement, products and completed operations for not less than three (3) years from the date that Party completes the E & C Services, coverage for independent contractors and broad form property damage coverage with limits of not less than one million dollars (\$1,000,000) for each occurrence with an annual aggregate of three million dollars (\$3,000,000) per location where E & C Services are performed.
  - iii. Commercial Automobile Liability insurance providing coverage for all owned, non-owned, and hired vehicles, trailers or semi-trailers designed for travel on public roads used by each Party in the connection with the E & C Services with a combined single limit of not less than one million dollars (\$1,000,000) for each occurrence of bodily injury, including death, and property damage.
  - iv. Excess or Umbrella Liability insurance with a limit of not less than five million dollars (\$5,000,000) for each occurrence with an annual aggregate of five million dollars (\$5,000,000) per location where the E & C Services are performed. This limit applies in excess of each of the coverages set forth above in Article 23(a)(i)

(Employer's Liability), Article 23(a)(ii) (Commercial General Liability insurance) and Article 23(a)(iii) (Commercial Automobile Liability insurance), which are scheduled as primary. Any of the above per-occurrence limits may be satisfied by a combination of primary and excess liability coverage.

- v. Pollution/Environmental Liability insurance with a minimum limit of five million dollars (\$5,000,000) each occurrence where the work involves or includes a Party handling, transporting, disposing, or performing work or operations with Hazardous Substances. For insurance purposes, the terms and definitions relating to Pollution Liability as utilized in the AEGIS Excess Liability policy will be used.
  - vi. The insurance coverages provided under this Agreement shall not contain any restrictions or limitations that are inconsistent with each Party's rights under this Agreement.
  - vii. All above-mentioned insurance policies shall provide the following: be primary to any other insurance carried by each Party with respect to such Party's negligence; contain standard cross-liability provisions; and provide for a waiver of all rights of subrogation against each Party or its insurers.
- b.** Additional Insured Requirement: The Commercial General Liability and Excess or Umbrella Liability insurance policies shall name the other Party and their successors and assigns, as additional insureds and each Party shall maintain the required coverages for a period of not less than three (3) years from the date a Party completes the E & C Services.
  - c.** Evidence of Insurance: Prior to the start of any E & C Services by and subsequently upon request of a Party, such Party shall deliver to the other Party's contracting representatives, evidence of the required insurance coverage in the form of Certificates of Insurance. Each Party shall provide at least thirty (30) days prior written notice to the other Party in the event the minimum insurance coverages outlined in this Section 23 are canceled or non-renewed.
  - d.** Ratings: All insurance coverages required under this Agreement shall be provided by insurance companies having ratings of A-/VII or better in the Best's Key Rating Insurance Guide (latest edition in effect at the latest date stated in the Certificates of Insurance referred to in Article 23(d) above (Evidence of Insurance)).
  - e.** Failure to Obtain and Maintain Insurance: Failure to obtain and maintain the insurance required under this Agreement shall constitute a material breach of this Agreement and the breaching Party will be liable for any and all costs, liabilities, and damages (including attorney's fees, court costs, and settlement expenses) resulting to the other Party from such breach.
  - f.** Each Party's Obligations Not Limited: The insurance requirements set forth above are to protect each Party from any and all claims by third parties, including employees of each Party, its agents, Contractor(s) and invitees.

Said insurance, however, is in no manner to relieve or release a Party, its agents, Contractor(s) and invitees from, or limit their liability as to, any and all obligations assumed under this Agreement.

**24. Breach.**

- a. A breach of this Agreement shall occur upon: (a) the failure of a Party to pay any amount when due; (b) the failure of a Party to comply with any material term or condition of this Agreement, including any material breach of a representation, warranty or covenant; (c) any assignment of this Agreement in a manner inconsistent with its terms; or (d) the failure of a Party to provide access rights, or a Party's attempt to revoke or terminate access rights, that are required by the other Party to perform E & C Services under this Agreement.

**25. Termination.**

- a. This Agreement shall automatically terminate upon the completion of the E & C Services and payment in full pursuant to the Final Reconciliation Statement.
- b. This Agreement may be terminated by mutual consent of the Parties.
- c. This Agreement may be terminated by a Party in the event that a Party breaches this Agreement and the breach has not been cured within sixty (60) calendar days after the affected Party provides Written Notice of such breach to the breaching Party in accordance with the notification provisions of Article 13. During the sixty (60) calendar days following the Party's delivery of notice of breach pursuant to Article 13 to the breaching Party, the non-breaching Party may at its sole discretion suspend its performance under this Agreement.
- d. Upon the termination of this Agreement for reasons other than pursuant to Article 25(a), each Party shall be obligated, if directed by the other Party, to remove its equipment, facilities, and debris related to the E & C Services from the directing Party's property and restore such property, as close as practicable, to its condition prior to the commencement of the E & Services. The access and other property rights granted to each Party under this Agreement shall survive such termination to the extent needed by each Party to perform its obligations under this Article 25(d).

**26. Dispute Resolution.**

- a. Notice of any claim or dispute, which any Party may have against any other, arising out of this Agreement, shall be submitted in writing to the other Party in accordance with the notification provisions of Article 13, not later than sixty (60) days after the circumstance which gave rise to the claim or dispute was to have taken place. If agreed by each Party, the Parties may submit a dispute to mediation and the following provisions shall apply.
- b. In the mediation process, the Parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the Parties as soon as practical after the Parties have agreed to submit the matter



to the mediation process. Each Party shall provide the other with a list of no less than three (3) and no more than five (5) mediators, and the other Party or Parties may strike as many names as it chooses. If the Parties cannot agree on a mediator, a mediator will be selected by the American Arbitration Association (“AAA”) at the request of a Party.

- c. The Parties agree that any and all mediation will be conducted in the AAA offices in or nearest to Akron, Ohio, and in the manner specified by the mediator and agreed upon by the Parties. The Parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.
- d. Unless otherwise agreed to, the mediation process shall be concluded not later than six (6) months after the date that it is initiated. The decision must be in writing and contain the reasons for the decision. The mediator shall have the authority only to recommend interpretations of the terms and conditions of this Agreement and shall have no power to modify any term or condition of this Agreement.
- e. If any dispute is not settled by mediation, then any Party may pursue any and all rights and remedies available to it under this Agreement, in law or in equity. Notwithstanding the mediation hereunder, the Parties have the right to proceed directly to court to seek relief in law or in equity.
- f. The submission of a dispute to mediation shall not limit or in any way affect the applicable Party’s right to effect remedies or limit such Party’s rights under this Agreement or otherwise.

**27. Audit of Records.**

- a. Maintenance of Records. For any E & C Services performed hereunder, each Party shall keep a detailed account of all costs necessary for proper financial management with a system in accordance with Generally Accepted Accounting Principles, consistently applied. Maintaining proper records shall not relieve a Party of its responsibility to document properly all invoices submitted for payment.
  - i. Each Party, including its agents or employees, shall have access to the other Party’s books, vouchers, memoranda, records, data, and other documents relative to the E & C Services, for inspection, audit, or reproduction. Each Party shall preserve all of the above records for two years after final payment, during which time a Party shall have the right to perform any audit, inspection, or reproduction it may desire. If discrepancies or questions arise, the records shall be preserved until an agreement is reached between the Parties. Each Party reserves the right to recover any overcharges or incorrect charges from the other Party.
  - ii. Any audit conducted by a Party shall be at its expense; provided, however, that if it is determined that a Party incorrectly charged the auditing Party, the former shall be liable to the other for all charges, including the amount of the overcharge or incorrect charge and cost of audit or other investigation.

- iii. Time of Audit. Audits shall take place at times and places to be mutually agreed upon.
- 28. **Conflicts**. In the event of any conflict between a provision in this Agreement and that of a Schedule, such conflict shall be resolved in favor of the terms set forth in such Schedule.
- 29. **Entire Agreement**. This Agreement constitutes the full, complete and only agreement between the Parties at this time with respect to the E & C Services and supersedes all prior communications, agreements, and understandings, whether written or oral, concerning such matters. This Agreement cannot be modified or amended verbally and can only be changed via a formal written agreement between the Parties, executed by both their duly authorized representatives.
- 30. **Existing Arrangements**. Nothing in this Agreement shall supersede, nullify or otherwise modify any pre-existing policies, programs, procedures or arrangements between the Parties. In the event of any conflict between a term or condition of this Agreement and any such pre-existing policy, program, procedure or arrangement, the latter shall control.

**[Signatures on the next page]**

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as of the date first above written by their duly authorized representatives.

Service Agreement No. 4561

AMERICAN TRANSMISSION SYSTEMS, INCORPORATED

By:           /s/ Richard A. Ziegler            
(Signature)

Name:                   Richard A. Ziegler                    
(Print)

Title:   Director, FERC & RTO Technical Support  

OHIO EDISON COMPANY

By:           /s/ Thomas R. Pryatel            
(Signature)

Name:                   Thomas R. Pryatel                    
(Print)

Title:           Director. Ed Operations Services

## **Schedule 1**

### **Scope of Work for ATSI**

- Install two 69kV breakers and associated equipment.

## **Schedule 2**

### **Scope of Work for OE**

- Remove two 69kV breakers and associated equipment.

### **Schedule 3**

#### **Schedule of Work**

ATSI and OE will work collaboratively to develop timely schedules and milestone dates for the Project to complete the Scope of Work described in Schedules 1 and 2 prior to May 26, 2017.

## **Schedule 4**

### **Preliminary Outage Schedule**

- May 2017

## **Schedule 5**

### **Payment Schedule**

Actual cost incurred by OE estimated at \$20,000 will be charged to ATSI as they are incurred.



## Schedule 6

### SCOPE OF WORK AMENDMENT OR MODIFICATION FORM

This SCOPE OF WORK AMENDMENT OR MODIFICATION FORM, dated as of \_\_\_\_\_, is by and between American Transmission Systems, Incorporated (“ATSI”) and The OE Power Company (“OE”). ATSI and OE may each be referred to herein individually as a “Party,” and together as the “Parties.”

#### W I T N E S S E T H

**WHEREAS**, ATSI and OE are parties to an Engineering and Construction Services Agreement dated [ \_\_\_\_\_ ]; and

**WHEREAS**, the Engineering and Construction Services Agreement between ATSI and OE contemplates that the Parties may from time to time agree to certain modifications in the Scope of Work; and

**WHEREAS**, by execution of this Scope of Work Amendment or Modification Form the Parties intend to alter the Scope of Work provided in the Engineering and Construction Services Agreement; and

**WHEREAS**, but for the modifications specifically described below, the Parties intend for all other terms and provisions of the Engineering and Construction Services Agreement to be applicable and take precedence over this Scope of Work Amendment or Modification Form.

**NOW, THEREFORE**, in consideration of the foregoing, the Parties hereby agree as follows:

1.1 Additional Work to be Performed by ATSI:

1.2 Additional Work to be Performed by OE:

2.1 Cost Responsibilities for the Additional Work contemplated in Sections 1.1 and 1.2:

**IN WITNESS WHEREOF**, ATSI and OE have caused this Scope of Work Amendment or Modification Form to be duly executed and delivered by their respective duly authorized officers as of the date first above written.

**AMERICAN TRANSMISSION SYSTEMS,  
INCORPORATED**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**OHIO EDISON COMPANY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Engineering and Construction Services Agreement**  
**between**  
**Mid-Atlantic Interstate Transmission, LLC**  
**and**  
**Pennsylvania Electric Company**  
**for the**  
**Switch and Breaker Replacements**

This Engineering and Construction Services Agreement (the “Agreement”) regarding Engineering and Construction Services (the “E & C Services”), dated as of April 27, 2017, is entered into by and between Mid-Atlantic Interstate Transmission, LLC (“MAIT”) and Pennsylvania Electric Company (“PN”) (MAIT and PN, each a “Party” and collectively the “Parties”).

**WHEREAS**, PJM Interconnection, L.L.C. (“PJM”) has functional control of MAIT’s transmission system (the “Transmission System”);

**WHEREAS**, MAIT is engaged in the transmission of electric energy, and PN is engaged in the distribution of electric energy;

**WHEREAS**, PN is electrically interconnected to MAIT at a number of transmission system interconnection points, pursuant to that certain Interconnection Agreement entered into by the Parties on February 1, 2017 and accepted for filing by the Federal Energy Regulatory Commission (“FERC”) in Docket No. ER17-1069-000, as may be amended from time to time (“Interconnection Agreement”);

**WHEREAS**, MAIT is engaged in the “Energizing the Future” transmission initiative, whereby MAIT will be performing work on the MAIT Transmission System, which will require modifications to certain PN facilities (the “Project”); and

**WHEREAS**, the Parties wish to definitively agree on the respective rights and obligations of each Party with respect the Project by entering into this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

- 1. Definitions.** The following definitions shall apply:

- a. "Affiliate" means with respect to a corporation, partnership or other entity, each other corporation, partnership, or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.
- b. "Contractor(s)" means the person(s) or entity(s) designated by a Party to provide or perform all or a portion of the E & C Services, including the supply of any work, services, labor, supervision, equipment, data, materials or any other item.
- c. "E & C Services" means the work, services, goods, materials, equipment, labor, supervision, oversight, actions, and items performed or provided by each Party in connection with the construction and engineering required to complete the Project as described in this Agreement.
- d. [Term not used in doc.]"Force Majeure" means any occurrence beyond the reasonable control of a Party which affects or prevents performance of this Agreement, including, but not limited to, fire; flood; drought; earthquake; storm; lightning; explosion; strikes; labor disputes; labor or material shortage; war; terrorism; epidemic; sabotage; acts of public enemy; riot; civil disturbance or disobedience; damage to or failure of major equipment, plants, piping, or appurtenances; unavailability of transportation facilities; emergency or safety related circumstances; acts of God; acts or failure to act by governmental authority; regulatory requirements, regulations, or orders; failure to obtain permits or property rights; acts or omissions of third parties; court orders or other events whether or not the same or similar to the occurrences listed herein. Force Majeure does not include: (i) a failure of performance that is due to an affected Party's own negligence or intentional wrongdoing; (ii) any removable or remediable causes (other than settlement of a strike or labor dispute) which an affected Party fails to remove or remedy within a reasonable time; or (iii) economic hardship of an affected Party.
- e. "Good Utility Practice" means, unless otherwise expressly provided for in this Agreement, those practices, methods and acts with respect to the design, construction, installation, operation, maintenance, repair, replacement, reinforcement, rearrangement, purchase, selection, examination, review, inspection or acceptance of any facility or equipment engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts, which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.
- f. "Hazardous Substances" means any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "radioactive substances," "contaminants," "pollutants," "toxic pollutants" or words of similar meaning and regulatory effect under any applicable environmental Law, or any

other chemical, material or substance, exposure to which is prohibited, limited or regulated by applicable Law.

- g. "Law" means all applicable federal, state, county and municipal laws, statutes, ordinances, resolutions, rules and regulations as well as the requirements of all commissions, boards, bodies and agencies having jurisdiction over MAIT, PN, or the E & C Services or over any persons or entities performing or providing any portion of the E & C Services.
- h. "PN" means Pennsylvania Electric Company.
- i. "PN Project Facilities" means the PN-owned facilities that are to be constructed, modified and/or relocated in connection with the completion of the Project as described in this Agreement and in Schedule 2.
- j. "MAIT" means Mid-Atlantic Interstate Transmission, LLC.
- k. "MAIT Project Facilities" means the MAIT owned facilities that are to be constructed, modified and/or relocated in connection with the completion of the Project as described in this Agreement and in Schedule 1.
- l. "Project Facilities" means either the "MAIT Project Facilities" or the "PN Project Facilities," or both, as the context warrants.
- m. "Schedule of Work" means the schedule for performing the E & C Services as set forth in Schedule 3.
- n. "Written Notice" means a writing delivered via personal delivery or upon receipt by fax, e-mail (with confirmation of receipt) registered or certified U.S. mail or courier service to the individuals specified in Article 13 of this Agreement.

2. **Roles and Responsibilities.** This Agreement addresses how costs, reimbursement and other responsibilities and obligations are allocated between the Parties.

3. **Scope of E & C Services.** The E & C Services to be performed by MAIT and its Contractor(s) are described in the attached Schedule 1, "Scope of Work". All E & C Services to be performed by MAIT shall meet the requirements of each of the National Electrical Safety Code ("NESC"), Good Utility Practice, pertinent PJM design criteria, MAIT and/or Contractor standards and specifications, and Law.

The E & C Services to be performed by PN and its Contractor(s) are described in the attached Schedule 2, "Scope of Work". All E & C Services to be performed by PN shall meet the requirements of each of the NESC, Good Utility Practice, pertinent PJM design criteria, and Law.

4. **Location of E & C Services.** To the extent necessary for the performance of the E & C Services, each Party shall arrange to have the appropriate easement or other necessary access right granted to the other Parties. Each Party will obtain any and all new rights-of-way, or other necessary access right, deemed necessary by such Party for the relocation/modification of its Project Facilities.

5. **Schedule of E & C Services.** Each Party shall use reasonable commercial efforts in order to perform its respective E & C Services in accordance with Schedule 3, "Schedule of Work." The "Preliminary Outage Schedule" is attached hereto as Schedule 4. The Schedule of Work and Preliminary Outage Schedule shall be

revised as required by mutual agreement of the Parties, which agreement shall not be unreasonably withheld, conditioned or delayed.

6. **Changes to the Scope of E & C Services.** Any material change, modification, increase or reduction to the Scope of Work contained in Schedule 1 or Schedule 2, the MAIT Project Facilities, or the PN Project Facilities, shall be subject to the prior mutual agreement of the Parties and no such material change, modification, increase or reduction shall be effective unless Schedule 6, "Scope of Work Amendment or Modification Form," is entered into by the Parties and executed by their duly authorized representatives.

7. **Safety.**

- a. General. Each Party agrees that all work performed on Project Facilities by a Party that may reasonably be expected to affect the other Party shall be performed in accordance with Good Utility Practice and all Law pertaining to the safety of persons or property. A Party performing E & C Services within the boundaries of the other Party's facilities must abide by the safety rules applicable to the site. Notwithstanding the foregoing, when E & C Services are being performed in an area controlled by the other Party, the Party performing the E & C Services will abide by the safety, security and work rules applicable to that area.
- b. Environmental Releases. Each Party shall notify the other Parties, first orally and then in writing, of the release of Hazardous Substances, such as any asbestos, Polychlorinated Biphenyls (PCBs), mercury or lead abatement activities, or any type of remediation activities, each of which may reasonably be expected to affect the other Party, as soon as possible but not later than twenty four (24) hours (unless a shorter period is required by Law) after the Party becomes aware of the occurrence, and shall promptly furnish to the other Party copies of any reports filed with any governmental agencies addressing such events.

8. **General Payment Responsibilities.**

- a. MAIT's responsibility to reimburse PN for the E & C Services to be performed by PN and/or its Contractor(s) shall include, but not be limited to, the following related to the work described in Schedule 2:
- i. Actual quantities of labor and material expended and the sum due for the E & C Services, including, but not limited to Contractor costs as well as the costs of restoring, protecting, temporarily or permanently relocating, and rearranging PN property or other property or facilities;
- ii. Cost of surveying, verifying and locating existing facilities, including but not limited to, test pits, correspondence, meetings, and exchanges of information;
- iii. Cost of engineering, supervision, equipment of and for the E & C Services and for the cost of pensions, insurance and taxes and other indirect costs for PN and/or Contractor employees performing E & C Services;

- iv. Cost of additional right of way acquisition and permitting costs as applicable. Said costs may include, but are not limited to, any and all permits required under Federal, State or local laws or regulations for PN and/or its Contractor(s) to perform the E & C Services described herein and the costs of negotiations and acquisition of additional right of way;
- v. Costs associated with any soil removal and/or use of Hazwoper-trained workers required for provision of the E & C Services; and
- vi. Tax Gross-Up.
  - 1. PN will treat payments made by MAIT to PN pursuant to this Agreement as taxable contributions to capital for compliance purposes under the Internal Revenue Code and any applicable state tax laws. MAIT will initially pay any gross-up for income taxes in connection with its payments required by this Agreement. MAIT may, at its own expense, or PN shall, upon the timely written request by MAIT and at MAIT's expense, seek final determination by the Internal Revenue Service of the tax status of payments made pursuant to this Agreement. If MAIT requests PN to obtain such final determination, MAIT shall advance to PN on a periodic basis as requested by PN the estimated costs of obtaining such determination. In the event a final determination is made by the Internal Revenue Service that any payment by MAIT to PN pursuant to this Agreement constitutes a non-taxable contribution in aid of construction, within thirty (30) days from receipt of such final determination, PN shall refund to MAIT any payment(s) attributable to the amount determined to be non-taxable, plus interest received by, or credited to, PN in connection with the treatment of its tax returns and the ultimate refund by taxing authorities related to such final determination.
  - 2. The Parties acknowledge that, with respect to any other services that may be performed by one Party hereunder for the other Party under this Agreement or otherwise: (A) MAIT's agreement to make any tax gross-up under this Article 8(a) (vi) for E & C Services shall not be deemed to establish any precedent; and (B) the Party seeking a tax gross-up for such other services shall provide written notice of the gross-up to the other Party.

**9. Invoices and Payment.**

- a. Upon execution of this Agreement by the Parties, MAIT shall furnish to PN a payment in the amount provided for in Schedule 5 to this Agreement, which represents the estimated costs and expenses for PN's completion of the E & C Services relating to the work as set forth in Schedule 2.
- b. Within one hundred and twenty (120) days after PN's completion of the E & C Services as set forth in Schedule 2, PN shall furnish to MAIT a final





- b. The cancellation or change of any transmission outage(s) scheduled by PN in the performance of this Agreement will be subject to PJM requirements and approved by PJM.
  - c. All structure loading and electrical clearances will be designed to meet the requirements of each of the NESC, Good Utility Practice, pertinent PJM design criteria and PN and/or FirstEnergy standards and specifications.
  - d. In the event there are any MAIT Project Facilities constructed under the terms of this Agreement, they shall be the sole property of MAIT, and MAIT shall be solely responsible for their operation, repair and maintenance. The PN Project Facilities constructed under the terms of this Agreement shall be the sole property of PN, and PN shall be solely responsible for their operation, repair and maintenance.
  - e. Schedules 1 through 5, inclusive, are incorporated by reference into this Agreement in their entirety, and any modification to the Scope of Work for E & C Services effected through the use of Schedule 6 will likewise be incorporated by reference into this Agreement.
12. **Contractors**. Nothing in this Agreement shall prevent each Party from utilizing the services of a Contractor(s) as it deems appropriate to perform its obligations under this Agreement, provided, however, that each Party shall require its Contractor to comply with all applicable terms and conditions of this Agreement in performing such obligations.

13. **Written Notice.** All notices pertaining to this Agreement shall be in writing and directed to the following individuals for their respective organizations, provided however that any Party may change the individuals designated to receive Written Notice by providing Written Notice of such change to the other Party:

a. For MAIT:		With a copy to :	
Name:	Michael J. Thorn FERC & Wholesale Connection Support, Manager	Name:	Legal Department Attn: Attorney for FERC & Wholesale Connection Support
Address:	FirstEnergy Service Company 76 South Main Street Akron, OH 44308	Address:	FirstEnergy Service Company 76 South Main Street Akron, OH 44308
Phone:	(330) 384-3889	Phone:	(330) 761-4307
Fax:	(330) 761-4388	Fax:	(330) 777-6521
Email:	_____	Email:	_____

b. For PN:		With a copy to:	
Name:	Michael J. Thorn FERC & Wholesale Connection Support, Manager	Name:	Legal Department Attn: Attorney for FERC & Wholesale Connection Support
Address:	FirstEnergy Service Company 76 South Main Street Akron, OH 44308	Address:	FirstEnergy Service Company 76 South Main Street Akron, OH 44308
Phone:	(330) 384-3889	Phone:	(330) 761-4307
Fax:	(330) 761-4388	Fax:	(330) 777-6521
Email:	_____	Email:	_____

14. **Assignment.** Neither this Agreement nor any interest therein shall be assigned by any Party without the prior written consent of the other Party; provided, however, that any Party may assign this Agreement, in whole or in part, to an Affiliate or successor of such Party that owns and operates all or any portion of such Party's transmission system (meaning those facilities of such Party that are classified as transmission facilities in the PJM Open Access Transmission Tariff), including a regional transmission organization, an independent system operator or an independent transmission company. Notwithstanding the foregoing, any Party may assign this Agreement to a successor to all or substantially all of the assets of such Party by way of merger, consolidation, sale or otherwise, provided that such successor assumes and becomes liable for all of such Party's duties and obligations hereunder. No assignment of rights or obligations under this Agreement by a Party will relieve such Party from liability and financial responsibility for the performance thereof after such assignment unless and until the assignee agrees in writing to assume the obligations and duties of that Party under this Agreement and the non-assigning Party have consented in writing to such assumptions and to a release of the

assigning Party from such liability, said consent not to be unreasonably withheld or delayed.

15. **No Waiver**. A Party's failure to insist in any one or more instances upon strict performance of any provision of the Agreement, or failure or delay to take advantage of any of its rights or remedies hereunder, violation, or default, shall not be construed as a waiver by the Party of any such performance, provision, right, breach, violation, or default, either then or for the future. Any waiver shall be effective only if in writing and signed by each Party's authorized representative, and only with respect to the particular case expressly covered therein.
16. **Law and Venue**. This Agreement shall be governed by, construed, and enforced in accordance with the law of the Commonwealth of Pennsylvania. Any legal claim, suit, proceeding, or action brought by a Party shall be brought in a Pennsylvania state court or a federal court located in Pennsylvania.
17. **Headings**. The headings assigned to the Articles of this Agreement are for convenience only and shall not limit the scope and applicability of the Articles.
18. **Survival**. All provisions providing for limitation of or protection against loss or liability of the Parties, including all protections and indemnities, shall survive termination, suspension, cancellation or expiration of this Agreement.
19. **Force Majeure**. The Parties acknowledge that Force Majeure events may affect the performance of this Agreement and agree as follows:
  - a. The Parties shall not be liable to each other for any breach or failure to perform under this Agreement caused by Force Majeure, provided that Force Majeure shall not excuse MAIT from its obligations to pay PN under this Agreement for all costs and expenses for E & C Services, whether such costs and expenses were incurred before or after the Force Majeure event.
  - b. Where Force Majeure continues for more than ninety (90) days, any Party may, at its option, terminate this Agreement upon thirty (30) calendar days advance Written Notice. In the event of termination in accordance with this Article of the Agreement, no Party shall have any further responsibility or liability to the other, except for the payment for all costs and expenses for E & C Services relating to the Radial Modifications, whether such costs and expenses were incurred before or after the Force Majeure event performed on or before the date of termination.
20. **Environmental**. In the event that Hazardous Substances are encountered in the course of E & C Services, the following shall apply:
  - a. No Party shall be responsible for the handling, removal, disposal or remediation of the Hazardous Substances, unless the presence of said Hazardous Substances was caused or likely to have been caused by that Party, or its Contractor(s). Such Party shall be responsible for satisfying reporting requirements required by Law.
  - b. In the event Hazardous Substances are found on MAIT property, or on property occupied by MAIT pursuant to easement, license or other such right, and were not caused by PN or its Contractor(s), MAIT shall be responsible for bearing the costs and expenses associated with the handling, removal,

disposal or remediation of said Hazardous Substances. MAIT shall be responsible for satisfying reporting requirements required by Law.

- c. In the event Hazardous Substances are found on PN property, or on property occupied by PN pursuant to easement, license or other such right, and were not caused by MAIT or its Contractor(s), PN shall be responsible for bearing the costs and expenses associated with the handling, removal, disposal or remediation of said Hazardous Substances. PN shall be responsible for satisfying reporting requirements required by Law.

**21. Limitations of Liability.** The following limitations of liability shall apply:

- a. No Party shall be liable for any delays in performing the E & C Services, provided that a Party, its Contractor(s) or suppliers do not willfully act to delay the Project.
- b. The liability of a Party under this Agreement shall be limited to direct actual damages.
- c. Except as provided in Section 22, no Party shall be liable for any special, indirect, incidental, punitive, or consequential losses, damages, judgments, fines, penalties, costs or expenses whatsoever including, but not limited to: (i) delayed, lost or reduced profits, revenues, efficiency, productivity, bonding capacity, business opportunities; or (ii) increased or extended overheads, operating, maintenance, depreciation, financing costs or expenses arising out of, related to, or in connection with the performance or breach of this Agreement whether based upon contract, tort (including negligence), warranty, strict liability or under any other legal or equitable theory.

**22. Indemnification.**

- a. General.

Each Party (an "Indemnifying Party") shall indemnify and hold harmless the other Party (the "Indemnified Party"), and the Indemnified Party's officers, agents, servants, employees, shareholders, Contractors, subcontractors, suppliers, successors, and assigns, from and against any and all liabilities, losses, liens, damages, judgments, fines, penalties, fees or expenses (including reasonable attorneys' fees) due to personal injury, death, or occupational disease of any person, including, but not limited to, the Indemnified Party's employees or agents; or due to loss or damage to any real or personal property; which in whole or in part arise out of, relate to, result from, or are connected with the Indemnifying Party's negligence or intentional misconduct in the performance of this Agreement, except to the extent caused by the Indemnified Party's intentional misconduct or negligence.

- b. Obligation to Defend.

An Indemnifying Party shall, at the Indemnified Party's option and at the Indemnifying Party's own cost and expense, defend the Indemnified Party, and the Indemnified Party's officers, agents, servants, employees, shareholders, Contractors, subcontractors, suppliers, successors, and assigns, from and against any and all liabilities, losses, liens, damages, judgments,

finances, penalties, fees or expenses (including reasonable attorneys' fees) due to personal injury, death, or occupational disease of any person, including, but not limited to, the Indemnified Party's employees or agents; or due to loss or damage to any real or personal property; which in whole or in part arise out of, relate to, result from, or are connected with the indemnifying Party's negligence or intentional misconduct in the performance of this Agreement, except to the extent caused by the indemnified Party's intentional misconduct or negligence. Without the consent of the applicable Indemnified Party, which shall not be unreasonably withheld, an Indemnifying Party may not settle any such claim for any relief (including monetary damages) or any claim in the nature of regulatory or similar legal enforcement action by a governmental authority. For purposes of fulfilling its duties to defend, indemnify and hold harmless, each Party waives its immunities, rights, or defenses that may be available under applicable Worker's Compensation Laws.

**23. Insurance.**

- a. Prior to the start of E & C Services, each Party performing E & C Services will at its own expense, procure and maintain in effect during performance and until final completion and acceptance of any E & C Services under this Agreement the following minimum insurance coverages with carriers acceptable to the other Party, including:
- i. Workers' Compensation insurance in accordance with statutory limits, as required by the Commonwealth of Pennsylvania, and Employer's Liability insurance with limits of not less than one million dollars (\$1,000,000) per occurrence.
  - ii. Commercial General Liability insurance providing coverage for premises, bodily injury, property damage, personal injury, advertising liability, blanket contractual liability covering a Party's obligations under this Agreement, products and completed operations for not less than three (3) years from the date that Party completes the E & C Services, coverage for independent contractors and broad form property damage coverage with limits of not less than one million dollars (\$1,000,000) for each occurrence with an annual aggregate of three million dollars (\$3,000,000) per location where E & C Services are performed.
  - iii. Commercial Automobile Liability insurance providing coverage for all owned, non-owned, and hired vehicles, trailers or semi-trailers designed for travel on public roads used by each Party in the connection with the E & C Services with a combined single limit of not less than one million dollars (\$1,000,000) for each occurrence of bodily injury, including death, and property damage.
  - iv. Excess or Umbrella Liability insurance with a limit of not less than five million dollars (\$5,000,000) for each occurrence with an annual aggregate of five million dollars (\$5,000,000) per location where the E & C Services are performed. This limit applies in excess of each of the coverages set forth above in Article 23(a)(i)

(Employer's Liability), Article 23(a)(ii) (Commercial General Liability insurance) and Article 23(a)(iii) (Commercial Automobile Liability insurance), which are scheduled as primary. Any of the above per-occurrence limits may be satisfied by a combination of primary and excess liability coverage.

- v. Pollution/Environmental Liability insurance with a minimum limit of five million dollars (\$5,000,000) each occurrence where the work involves or includes a Party handling, transporting, disposing, or performing work or operations with Hazardous Substances. For insurance purposes, the terms and definitions relating to Pollution Liability as utilized in the AEGIS Excess Liability policy will be used.
  - vi. The insurance coverages provided under this Agreement shall not contain any restrictions or limitations that are inconsistent with each Party's rights under this Agreement.
  - vii. All above-mentioned insurance policies shall provide the following: be primary to any other insurance carried by each Party with respect to such Party's negligence; contain standard cross-liability provisions; and provide for a waiver of all rights of subrogation against each Party or its insurers.
- b.** Additional Insured Requirement: The Commercial General Liability and Excess or Umbrella Liability insurance policies shall name the other Party and their successors and assigns, as additional insureds and each Party shall maintain the required coverages for a period of not less than three (3) years from the date a Party completes the E & C Services.
  - c.** Evidence of Insurance: Prior to the start of any E & C Services by and subsequently upon request of a Party, such Party shall deliver to the other Party's contracting representatives, evidence of the required insurance coverage in the form of Certificates of Insurance. Each Party shall provide at least thirty (30) days prior written notice to the other Party in the event the minimum insurance coverages outlined in this Section 23 are canceled or non-renewed.
  - d.** Ratings: All insurance coverages required under this Agreement shall be provided by insurance companies having ratings of A-/VII or better in the Best's Key Rating Insurance Guide (latest edition in effect at the latest date stated in the Certificates of Insurance referred to in Article 23(d) above (Evidence of Insurance)).
  - e.** Failure to Obtain and Maintain Insurance: Failure to obtain and maintain the insurance required under this Agreement shall constitute a material breach of this Agreement and the breaching Party will be liable for any and all costs, liabilities, and damages (including attorney's fees, court costs, and settlement expenses) resulting to the other Party from such breach.
  - f.** Each Party's Obligations Not Limited: The insurance requirements set forth above are to protect each Party from any and all claims by third parties, including employees of each Party, its agents, Contractor(s) and invitees.

Said insurance, however, is in no manner to relieve or release a Party, its agents, Contractor(s) and invitees from, or limit their liability as to, any and all obligations assumed under this Agreement.

**24. Breach.**

- a. A breach of this Agreement shall occur upon: (a) the failure of a Party to pay any amount when due; (b) the failure of a Party to comply with any material term or condition of this Agreement, including any material breach of a representation, warranty or covenant; (c) any assignment of this Agreement in a manner inconsistent with its terms; or (d) the failure of a Party to provide access rights, or a Party's attempt to revoke or terminate access rights, that are required by the other Party to perform E & C Services under this Agreement.

**25. Termination.**

- a. This Agreement shall automatically terminate upon the completion of the E & C Services and payment in full pursuant to the Final Reconciliation Statement.
- b. This Agreement may be terminated by mutual consent of the Parties.
- c. This Agreement may be terminated by a Party in the event that a Party breaches this Agreement and the breach has not been cured within sixty (60) calendar days after the affected Party provides Written Notice of such breach to the breaching Party in accordance with the notification provisions of Article 13. During the sixty (60) calendar days following the Party's delivery of notice of breach pursuant to Article 13 to the breaching Party, the non-breaching Party may at its sole discretion suspend its performance under this Agreement.
- d. Upon the termination of this Agreement for reasons other than pursuant to Article 25(a), each Party shall be obligated, if directed by the other Party, to remove its equipment, facilities, and debris related to the E & C Services from the directing Party's property and restore such property, as close as practicable, to its condition prior to the commencement of the E & Services. The access and other property rights granted to each Party under this Agreement shall survive such termination to the extent needed by each Party to perform its obligations under this Article 25(d).

**26. Dispute Resolution.**

- a. Notice of any claim or dispute, which any Party may have against any other, arising out of this Agreement, shall be submitted in writing to the other Party in accordance with the notification provisions of Article 13, not later than sixty (60) days after the circumstance which gave rise to the claim or dispute was to have taken place. If agreed by each Party, the Parties may submit a dispute to mediation and the following provisions shall apply.
- b. In the mediation process, the Parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the Parties as soon as practical after the Parties have agreed to submit the matter

to the mediation process. Each Party shall provide the other with a list of no less than three (3) and no more than five (5) mediators, and the other Party or Parties may strike as many names as it chooses. If the Parties cannot agree on a mediator, a mediator will be selected by the American Arbitration Association (“AAA”) at the request of a Party.

- c. The Parties agree that any and all mediation will be conducted in the AAA offices in or nearest to Akron, Ohio, and in the manner specified by the mediator and agreed upon by the Parties. The Parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.
- d. Unless otherwise agreed to, the mediation process shall be concluded not later than six (6) months after the date that it is initiated. The decision must be in writing and contain the reasons for the decision. The mediator shall have the authority only to recommend interpretations of the terms and conditions of this Agreement and shall have no power to modify any term or condition of this Agreement.
- e. If any dispute is not settled by mediation, then any Party may pursue any and all rights and remedies available to it under this Agreement, in law or in equity. Notwithstanding the mediation hereunder, the Parties have the right to proceed directly to court to seek relief in law or in equity.
- f. The submission of a dispute to mediation shall not limit or in any way affect the applicable Party’s right to effect remedies or limit such Party’s rights under this Agreement or otherwise.

**27. Audit of Records.**

- a. Maintenance of Records. For any E & C Services performed hereunder, each Party shall keep a detailed account of all costs necessary for proper financial management with a system in accordance with Generally Accepted Accounting Principles, consistently applied. Maintaining proper records shall not relieve a Party of its responsibility to document properly all invoices submitted for payment.
  - i. Each Party, including its agents or employees, shall have access to the other Party’s books, vouchers, memoranda, records, data, and other documents relative to the E & C Services, for inspection, audit, or reproduction. Each Party shall preserve all of the above records for two years after final payment, during which time a Party shall have the right to perform any audit, inspection, or reproduction it may desire. If discrepancies or questions arise, the records shall be preserved until an agreement is reached between the Parties. Each Party reserves the right to recover any overcharges or incorrect charges from the other Party.
  - ii. Any audit conducted by a Party shall be at its expense; provided, however, that if it is determined that a Party incorrectly charged the auditing Party, the former shall be liable to the other for all charges, including the amount of the overcharge or incorrect charge and cost of audit or other investigation.



- iii. Time of Audit. Audits shall take place at times and places to be mutually agreed upon.
- 28. **Conflicts**. In the event of any conflict between a provision in this Agreement and that of a Schedule, such conflict shall be resolved in favor of the terms set forth in such Schedule.
- 29. **Entire Agreement**. This Agreement constitutes the full, complete and only agreement between the Parties at this time with respect to the E & C Services and supersedes all prior communications, agreements, and understandings, whether written or oral, concerning such matters. This Agreement cannot be modified or amended verbally and can only be changed via a formal written agreement between the Parties, executed by both their duly authorized representatives.
- 30. **Existing Arrangements**. Nothing in this Agreement shall supersede, nullify or otherwise modify any pre-existing policies, programs, procedures or arrangements between the Parties. In the event of any conflict between a term or condition of this Agreement and any such pre-existing policy, program, procedure or arrangement, the latter shall control.

**[Signatures on the next page]**

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as of the date first above written by their duly authorized representatives.

Service Agreement No. 4683

MID-ATLANTIC INTERSTATE TRANSMISSION, LLC

By:       /s/ Richard A. Ziegler        
(Signature)

Name:       Richard A. Ziegler        
(Print)

Title:       Director, FERC & RTO Technical Support      

PENNSYLVANIA ELECTRIC COMPANY

By:       /s/ Thomas R. Pryatel        
(Signature)

Name:       Thomas R. Pryatel        
(Print)

Title:       Director, Ed Operations Services

## Schedule 1

### Scope of Work for MAIT

- **Tiffany:** Install two capacitors, two cap switches, one 115kV breaker, and associated equipment.
- **S. Troy:** Install 115kV switch and associated equipment.

## **Schedule 2**

### **Scope of Work for PN**

- **Tiffany:** Remove and retire switches and associated equipment.
- **S. Troy:** Remove and retire switches and associated equipment.

### **Schedule 3**

#### **Schedule of Work**

MAIT and PN will work collaboratively to develop timely schedules and milestone dates for the Project to complete the Scope of Work described in Schedules 1 and 2 prior to July 1, 2017.

**Schedule 4**

**Preliminary Outage Schedule**

June, 2017

## Schedule 5

### Payment Schedule

Actual costs incurred by PN estimated below will be charged to MAIT as they are incurred.

- **Tiffany:** \$5,000
- **S. Troy:** \$5,000

## **Schedule 6**

### **SCOPE OF WORK AMENDMENT OR MODIFICATION FORM**

This SCOPE OF WORK AMENDMENT OR MODIFICATION FORM, dated as of \_\_\_\_\_, is by and between Mid-Atlantic Interstate Transmission, LLC (“MAIT”) and Pennsylvania Electric Company (“PN”). MAIT and PN may each be referred to herein individually as a “Party,” and together as the “Parties.”

#### **WITNESSETH**

**WHEREAS**, MAIT and PN are parties to an Engineering and Construction Services Agreement dated [ ]; and

**WHEREAS**, the Engineering and Construction Services Agreement between MAIT and PN contemplates that the Parties may from time to time agree to certain modifications in the Scope of Work; and

**WHEREAS**, by execution of this Scope of Work Amendment or Modification Form the Parties intend to alter the Scope of Work provided in the Engineering and Construction Services Agreement; and

**WHEREAS**, but for the modifications specifically described below, the Parties intend for all other terms and provisions of the Engineering and Construction Services Agreement to be applicable and take precedence over this Scope of Work Amendment or Modification Form.

**NOW, THEREFORE**, in consideration of the foregoing, the Parties hereby agree as follows:

1.1 Additional Work to be Performed by MAIT:

1.2 Additional Work to be Performed by PN:

2.1 Cost Responsibilities for the Additional Work contemplated in Sections 1.1 and 1.2:



**IN WITNESS WHEREOF**, MAIT and PN have caused this Scope of Work Amendment or Modification Form to be duly executed and delivered by their respective duly authorized officers as of the date first above written.

MID-ATLANTIC INTERSTATE TRANSMISSION, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

PENNSYLVANIA ELECTRIC COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as of the date first above written by their duly authorized representatives.

Service Agreement No. 4560

AMERICAN TRANSMISSION SYSTEMS INC.

By: Richard A. Ziegler  
(Signature)

Name: Richard A. Ziegler  
(Print)

Title: Director, FERC & RTO Technical Support

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

By: Thomas R. Pryatel  
(Signature)

Name: Thomas R. Pryatel  
(Print)

Title: Director, Ed Operations Services

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as of the date first above written by their duly authorized representatives.

Service Agreement No. 4561

AMERICAN TRANSMISSION SYSTEMS, INCORPORATED

By: Richard A. Ziegler  
(Signature)

Name: Richard A. Ziegler  
(Print)

Title: Director, FERC & RTO Technical Support

OHIO EDISON COMPANY

By: Thomas R. Pryatel  
(Signature)

Name: Thomas R. Pryatel  
(Print)

Title: Director, Ed Operations Services

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as of the date first above written by their duly authorized representatives.

Service Agreement No. 4683

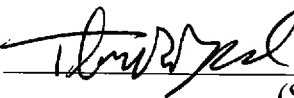
MID-ATLANTIC INTERSTATE TRANSMISSION, LLC

By:   
(Signature)

Name: Richard A. Ziegler  
(Print)

Title: Director, FERC & RTO Technical Support

PENNSYLVANIA ELECTRIC COMPANY

By:   
(Signature)

Name: Thomas R. Pryatel.  
(Print)

Title: Director, Ed Operations Services