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James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265

DOCUMENT
FOLDER

Re: Application of Trans-Allegheny Interstate Line Company for (i) A Certificate of Public Convenience to Offer, Render, Furnish and/or Supply Transmission Service in the Commonwealth of Pennsylvania; (ii) Authorization and Certification to Locate, Construct, Operate and Maintain Certain High Voltage Electric Transmission Lines and Related Electric Substation Facilities; (iii) Authority to Exercise the Power of Eminent Domain for the Construction and Installation of Aerial Electric Transmission Facilities Along the Proposed Transmission Line Routes in Pennsylvania; (iv) Approval of an Exemption from Municipal Zoning Regulation with Respect to the Construction of Buildings; and (v) Approval of Certain Related Affiliated Interest Arrangements: Docket Nos. A-110172, A-110172F0002, A-110172F0003, A-110172F0004 and G-00071229

Dear Secretary McNulty:

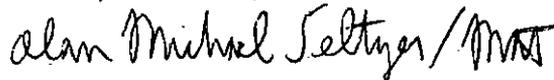
Enclosed for filing on behalf of Trans-Allegheny Interstate Line Company are an original and three (3) copies of the Motion for Partial Stay of Proceedings and Request for Expedited Consideration in the above-captioned proceeding.

Copies of this document are being served upon all parties of record, in accordance with the enclosed Certificate of Service.

 ORIGINAL

Very truly yours,

RYAN, RUSSELL, OGDEN & SELTZER P.C.



Alan Michael Seltzer

Enclosures

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IN RE: APPLICATION OF TRANS-ALLEGHENY	:	
INTERSTATE LINE COMPANY FOR	:	
(I) A CERTIFICATE OF PUBLIC CONVENIENCE	:	
TO OFFER, RENDER, FURNISH AND/OR	:	
SUPPLY TRANSMISSION SERVICE IN THE	:	
COMMONWEALTH OF PENNSYLVANIA;	:	
(II) AUTHORIZATION AND CERTIFICATION	:	
TO LOCATE, CONSTRUCT, OPERATE AND	:	Docket Nos. A-110172
MAINTAIN CERTAIN HIGH VOLTAGE ELECTRIC	:	A-110172F0002
TRANSMISSION LINES AND RELATED ELECTRIC	:	A-110172F0003
SUBSTATION FACILITIES; (III) AUTHORITY	:	A-110172F0004
TO EXERCISE THE POWER OF EMINENT	:	G-00071229
DOMAIN FOR THE CONSTRUCTION AND	:	
INSTALLATION OF AERIAL ELECTRIC	:	
TRANSMISSION FACILITIES ALONG THE	:	
PROPOSED TRANSMISSION LINE ROUTES	:	
IN PENNSYLVANIA; (IV) APPROVAL OF AN	:	
EXEMPTION FROM MUNICIPAL ZONING	:	
REGULATION WITH RESPECT TO THE	:	
CONSTRUCTION OF BUILDINGS; AND	:	
(V) APPROVAL OF CERTAIN RELATED	:	
AFFILIATED INTEREST ARRANGEMENTS	:	

**MOTION FOR PARTIAL STAY OF PROCEEDINGS AND REQUEST FOR
EXPEDITED CONSIDERATION**

Trans-Allegheny Interstate Line Company ("TrAILCo") respectfully files this Motion pursuant to this Commission's regulations at 52 Pa. Code § 5.103, to request a stay of the proceedings (including any Commission action) and for expedited consideration of this Motion in connection with a *portion* of TrAILCo's pending omnibus Application, and in connection therewith represents as follows:

I. Introduction

1. On April 13, 2007, TrAILCo filed an omnibus application with the Commission seeking, among other things, authority from the Commission for TrAILCo (i) to become a certificated and jurisdictional public utility, (ii) to locate, construct and site high voltage electric transmission lines and related facilities in portions of

Washington County and Greene County, Pennsylvania, (iii) to exercise the power of eminent domain along the proposed routes of the high voltage electric transmission lines, (iv) to obtain an exemption from municipal zoning in connection with the construction of various buildings associated with new proposed substations, and (iv) enter into various agreements with affiliates ("Application").

2. The Application addresses two separate and distinct electric transmission line projects, both of which are encompassed under the name Trans-Allegheny Interstate Line ("TrAIL").

3. The first project (the "Pennsylvania 502 Junction Facilities") addresses critical reliability concerns within the mid-Atlantic region that if not addressed will adversely impact the region as well as Pennsylvania electric consumers. The Pennsylvania 502 Junction Facilities include a new substation and the "Pennsylvania 502 Junction Segment", a 500 kV line extending from the substation across 1.2 miles of Greene County to the West Virginia border. This line then continues through West Virginia and into Virginia (collectively, the "502 Junction Segments"). The second project (the "Prexy Facilities") addresses specific reliability needs of southwestern Pennsylvania, and crosses portions of Greene and Washington Counties. The Prexy Facilities include the Prexy Substation, a 500 kV line and three 138 kV lines that would connect to the Allegheny Power transmission system in Washington County. The Prexy Facilities created most of the property owner opposition in this case.

4. Evidentiary and public input hearings have been conducted, the active parties have filed main and reply briefs and, on August 21, 2008, the presiding

Administrative Law Judges issued a Recommended Decision ("RD") denying all of the material relief requested in the Application.

5. Exceptions to the RD are due on September 10, 2008. This Motion is being filed contemporaneously with TrAILCo's Exceptions. This Motion and the Exceptions are intended to be integrated, and we respectfully request that they be considered together.

6. The partial stay requested in this Motion relates solely to the Prexy Facilities, which were the subject of most of the controversy in this proceeding, and which are intended to address local needs in part of southwestern Pennsylvania as discussed above. TrAILCo does *not* request a stay, but rather urges the Commission to consider and timely resolve its Exceptions in connection with the substation and 1.2 miles of line that constitute the Pennsylvania 502 Junction Facilities. Reversing the RD on these latter facilities, which received less opposition from Pennsylvania landowners but which are crucial to the construction of the rest of the interstate line through West Virginia and into Virginia, will allow the substantial intra-state and interstate benefits of that portion of TrAIL to be realized by retail electric consumers in Pennsylvania and other portions of the Mid-Atlantic region.¹ More specifically, the Commission should approve, all elements of the Application with respect to the 502 Junction Substation and the Pennsylvania 502 Junction Segment, including TrAILCo's requested certificate of public convenience and necessity to provide transmission service in Pennsylvania, authorization to locate and construct the Pennsylvania 502 Junction Segment and to

¹ The short 1.2 mile Pennsylvania 502 Junction Segment crosses over only five tax parcels of real property. The property owners of two of the parcels have already voluntarily signed options for easements in favor of TrAILCo, and TrAILCo has an agreement in principle with the other two property owners for easements across the remaining three parcels.

exercise the power of eminent domain if necessary, approval of an exemption from municipal zoning regulation with respect to the 502 Junction Substation and related buildings, and approval of associated affiliated interest agreements.

II. Specific Relief Requested

7. The siting of the Prexy Facilities in this proceeding has been controversial and contentious, as evidenced by the opposition of certain federal, state and local officials, local property owners and others. As such, TrAILCo believes it is in the best interest of the parties to this proceeding -- including potentially affected property owners, electricity consumers and the general public -- that the litigation of this proceeding with respect to the Prexy Facilities be stayed and that a collaborative process be commenced to explore whether there are possible new and creative alternatives to the Prexy Facilities.

8. Any new and creative alternatives to the Prexy Facilities must be put in place timely to address the reliability violations anticipated to incur in the near future (i.e., 2009) in Washington County, Pennsylvania. To address these critical reliability issues in an expedited manner, TrAILCo recognizes that the active parties in this case and others (such as PJM and this Commission) must work together in a cooperative, comprehensive and good faith manner to develop a solution to the anticipated reliability violations in Washington County as soon as reasonably possible, while preserving the Commission's ability to approve any such solutions that are within its jurisdiction.

9. To achieve these goals, TrAILCo requests that the Commission stay its consideration of the portion of the Application with respect to the Prexy Facilities, and direct the following:

(a) TrAILCo and the other active parties in this proceeding shall establish a collaborative process to discuss, review, analyze and develop new alternatives to the Prexy Facilities to address the reliability concerns in Washington County, Pennsylvania.

(b) The alternatives to the Prexy Facilities to be considered shall include, but not be limited to, demand side management and energy efficiency programs, enhancements and improvements to existing transmission lines, substations and related equipment, and new transmission infrastructure, etc.

(c) The express intent of the collaborative shall be to assist TrAILCo in proposing for ultimate Commission approval new alternatives to the Prexy Facilities.

(d) The collaborative shall be conducted by TrAILCo in good faith and in a commercially reasonable time frame with the cooperation and active participation of all those active parties in this proceeding who advise TrAILCo in writing of their intention to participate.

(e) TrAILCo shall schedule meetings of the collaborative at such times and locations as are reasonable for all participants and provide reasonable advance notice of such meetings to all active participants.

(f) Given the need to address the anticipated reliability violations in Washington County, Pennsylvania by 2009, the collaborative shall be completed no later than ninety (90) days after the date of any final order entered by the Commission in this proceeding directing the formation of a collaborative.

(g) To facilitate the work of the collaborative, representatives of the Commission shall be invited to participate in one or more collaborative meetings and sessions at their discretion.

(h) The collaborative participants shall conduct the business of the collaborative in good faith and in an expedited manner so as to address the anticipated reliability violations in Washington County, Pennsylvania with new alternatives to the Prexy Facilities that can be installed and/or implemented in sufficient lead time to allow the reliability violations to be satisfactorily addressed without compromising service to customers in Washington County and beyond.

(i) PJM shall be a participant in the collaborative depending upon the alternatives being considered, and may be invited to participate in the work of the collaborative upon the request of any active participant. All active collaborative participants shall provide PJM with sufficient information to timely consider, review and approve any such alternatives to the Prexy Facilities should such alternatives be within PJM's jurisdiction and purview.

(j) Upon completion of the collaborative and subject to the results thereof, TrAILCo shall amend its stayed Application with respect to the Prexy Facilities as appropriate and request Commission resumption of its review process with respect to any and all new alternatives to the Prexy Facilities as may be proposed.

(k) Because TrAILCo's affiliate, West Penn, bears the ultimate responsibility for providing safe, adequate and reasonable retail electric service, TrAILCo shall have the final decision regarding the nature and extent of new alternatives to the Prexy Facilities that may be proposed as an amendment to the Application. Review of that proposal shall be conducted consistent with the Commission's rules and procedures that are in effect at that time.

10. TrAILCo believes that the collaborate process and procedures described above are a reasonable and appropriate way to resolve the issues currently in dispute in this proceeding with respect to the siting of the proposed Prexy Facilities.

11. Granting this Motion and staying this proceeding with respect to the Prexy Facilities will not only remove a large set of particularly divisive issues from this proceeding, it will allow the Commission to focus on the Pennsylvania 502 Junction Facilities, which are an integral component of the 500 kV TrAIL intending to extend from Pennsylvania, through West Virginia and into Virginia. This is especially important because the portions of TrAIL in West Virginia have already been approved for siting and construction purposes, subject to similar action by this Commission.²

12. The Pennsylvania 502 Junction Facilities are a critical component of TrAIL that needs to be approved in order for this major interstate transmission line to be sited and constructed, and for the reliability benefits to be realized by Pennsylvania and the surrounding region.

13. Granting this Motion and the related stay with respect to the Prexy Facilities will allow the Commission to focus separately on these two distinct portions of TrAIL and will maximize the likelihood of the Commission reaching a result on each portion that truly is in the public interest.

III. Expedited Consideration

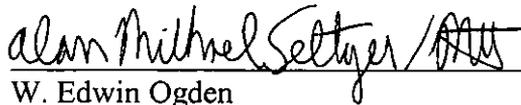
14. TrAILCo specifically requests that the Commission consider and grant the relief requested in this Motion expeditiously in order to ensure that the collaborative

² *Trans-Allegheny Interstate Line Company – Application for a Certificate of Convenience and Necessity authorizing the construction and operation of the West Virginia segments of a 500 kV electric transmission line and related facilities in Monongalia, Preston, Tucker, Grant, Hardy, and Hampshire Counties, and for related relief*, Case No. 07-0508-E-CN (Order dated August 1, 2008). In Virginia, the Hearing Examiner has recommended approval to site the portion of TrAIL proposed to be built in that state.

process and other efforts to explore alternatives to the Prexy Facilities can be commenced as soon as possible. With reliability violations anticipated to occur in Washington County as early as 2009, it is imperative that the Commission allow TrAILCo and the parties to organize and begin the collaborative in sufficient time for alternatives to the Prexy Facilities to be discussed, reviewed and ultimately brought back to this Commission for approval so they can be implemented timely in Washington County. It is neither necessary nor appropriate for the granting of this Motion to be impacted by the Commission's treatment of the Pennsylvania 502 Junction Facilities.

WHEREFORE, TrAILCo respectfully requests that the Commission issue an order staying the portion of Trans-Allegheny Interstate Line Company's Application with respect to the Prexy Facilities pending the outcome of the proposed collaborative process described above, and grant TrAILCo such other relief as is just and reasonable under the circumstances.

Respectfully submitted,



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Matthew A. Totino

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Attorneys for TrAILCo

September 10, 2008

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IN RE: APPLICATION OF TRANS-ALLEGHENY	:	
INTERSTATE LINE COMPANY FOR	:	
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EXEMPTION FROM MUNICIPAL ZONING	:	
REGULATION WITH RESPECT TO THE	:	
CONSTRUCTION OF BUILDINGS; AND	:	
(V) APPROVAL OF CERTAIN RELATED	:	
AFFILIATED INTEREST ARRANGEMENTS	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of TrAILCo's Motion for Partial Stay upon the persons listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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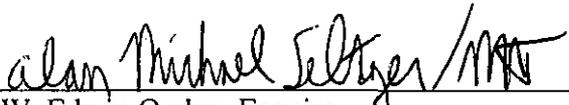
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Dated: September 10, 2008


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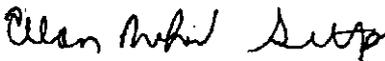
Dear Secretary McNulty:

In accordance with this Commission's letter of August 21, 2008 and its regulations at 52 Pa. Code § 5.533, enclosed herewith for filing on behalf of Trans-Allegheny Interstate Line Company are an original and nine (9) copies of Exceptions to the Recommended Decision of Administrative Law Judges Mark A. Hoyer and Michael A. Nemec dated August 21, 2008.

Copies of these Exceptions are being served upon all parties of record, in accordance with the enclosed Certificate of Service.

Very truly yours,

RYAN, RUSSELL, OGDEN & SELTZER P.C.


Alan Michael Seltzer

Enclosures

RECEIVED

2008 SEP 15 AM 10:39

PA PUBLIC
SECRETARY'S BUREAU

BN-19266

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IN RE: APPLICATION OF TRANS-ALLEGHENY	:	
INTERSTATE LINE COMPANY FOR	:	
(I) A CERTIFICATE OF PUBLIC CONVENIENCE	:	
TO OFFER, RENDER, FURNISH AND/OR	:	
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(V) APPROVAL OF CERTAIN RELATED	:	
AFFILIATED INTEREST ARRANGEMENTS	:	

**EXCEPTIONS OF
TRANS-ALLEGHENY INTERSTATE LINE COMPANY**

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Date: September 10, 2008

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I. INTRODUCTION

Trans-Allegheny Interstate Line Company ("TrAILCo") files these Exceptions to the Recommended Decision dated August 21, 2008 ("RD"), rejecting TrAILCo's omnibus applications filed with the Commission on April 13, 2007 (collectively, the "Application"). The Application addresses two separate and distinct TrAILCo projects, both of which are encompassed under the overall name of Trans-Allegheny Interstate Line ("TrAIL"). The first project (the "Pennsylvania 502 Junction Facilities") addresses critical reliability concerns within the Mid-Atlantic region that, if not addressed, will adversely impact the region including Pennsylvania electric consumers. The Pennsylvania 502 Junction Facilities include a new substation and the "Pennsylvania 502 Junction Segment", a 500 kV line extending from the substation across 1.2 miles of Greene County to the West Virginia border.¹ This line then continues through West Virginia and into Virginia (collectively, the "502 Junction Segments").² The second project (the "Prexy Facilities") addresses specific reliability needs of southwestern Pennsylvania, and crosses portions of Greene and Washington Counties. The Prexy Facilities created most of the property owner opposition in this case.

The RD issued by the presiding Administrative Law Judges ("ALJs") does not withstand scrutiny under any reasonable legal or evidentiary standard. At a broad level:

- The RD disregards the critical regional "public need" for the planned transmission system improvements, which under Pennsylvania law *must be* considered.
- The RD confuses the "public interest" with narrower affected property owner interests, including many who (either themselves or through their predecessors in title) actually granted

¹ The short 1.2 mile Pennsylvania 502 Junction Segment crosses over only five tax parcels of real property. The property owners of two of the parcels have already voluntarily signed options for easements in favor of TrAILCo, and TrAILCo has an agreement in principle with the other two property owners for easements across the remaining three parcels.

² RD, p. 10.

³ The Prexy Facilities include the Prexy Substation, a 500 kV line and three 138 kV lines that would connect to the Allegheny Power transmission system in Washington County.

rights-of-way that can, and should, provide the siting backbone for the proposed TrAILCo transmission facilities in Pennsylvania.

- The RD's repeated resistance to the Commission's existing regulatory framework for siting transmission lines ignores critical portions of current law and regulations and, rather than apply the current law and regulations, constructs a wholly different (and inapplicable) set of standards to apply to the analysis of TrAILCo's transmission projects.
- The required burden of proof in this case has become a proverbial "moving target" in view of the RD's adoption of extraneous "requirements" that are either inconsistent with the law or existing regulations, or outside of the Commission's jurisdiction. When coupled with the minimalist approach to analyzing the evidence, the RD has violated TrAILCo's substantive and procedural due process rights. At literally every turn in the RD, TrAILCo's evidence was either rejected with little or no analysis by the ALJs or, even worse, not even considered. Similarly, most of the RD's Findings of Fact ("F/F") are not analyzed or even addressed in the analysis portion of the RD.

In stark contrast to the RD, the Public Service Commission of West Virginia ("WVaPSC") and a Hearing Examiner for the State Corporation Commission of Virginia ("VaSCC") have concluded (in companion cases to the pending Application before this Commission) that constructing their respective (and much larger) portions of the 502 Junction Segments in their states *is* in the public interest.⁴ The importance of considering regional transmission reliability, as opposed to focusing solely on reliability within the state, was aptly observed by the WVaPSC, which pointed out that *the electric grid has no state borders*.⁵

As these neighboring regulatory agencies have recognized, the Mid-Atlantic region *needs* new electric transmission line infrastructure, and TrAIL will be the first such project to have been offered in several years. In this case, TrAILCo has demonstrated by substantial evidence that construction of the Pennsylvania 502 Junction Facilities and the balance of the TrAIL

⁴ *Application of Trans-Allegheny Interstate Line Company for certificates of public convenience and necessity to construct facilities: 500 kV Transmission Line from Virginia-West Virginia Boundary to Virginia Electric and Power Company Transmission Line #580, Case No. PUE-2007-00033 (July 28, 2008); Application for a Certificate of Convenience and Necessity authorizing the construction and operation of the West Virginia segments of a 500 kV electric transmission line and related facilities in Monongalia, Preston, Tucker, Grant, Hardy, and Hampshire Counties, and for related relief, West Virginia Case No. 07-0508-E-CN (Order dated August 1, 2008). Links to these cases are as follows:*

<http://docket.scc.virginia.gov/vaproduct/main.asp>; <http://www.psc.state.wv.us/orders/default.htm>

⁵ *WVaPSC Order, p. 11*

through West Virginia and Virginia is needed, and has documented the risks to electric customers both within and outside Pennsylvania if this project is not timely completed.⁶ Moreover, the route for the Pennsylvania 502 Junction Facilities crosses *only 1.2 miles* in rural Greene County, thereby evidencing a minimum land impact on Pennsylvania.

Fortunately, the Commission is the ultimate fact-finder in this case and is not bound by the RD. The Commission as the ultimate fact-finder can disregard the RD as long as the Commission's decision is supported by substantial evidence.⁷ Furthermore, the Commission may impose reasonable conditions on its approval of TrAIL. The imposition of conditions is routine. Attached to these Exceptions as Appendix A are conditions that TrAILCo believes will address several concerns raised by the RD in a manner much more consistent with the public interest than the RD's entire rejection of TrAIL.

TrAILCo respectfully requests that the following Exceptions be granted and the RD be reversed as described more fully below.

II. EXCEPTIONS

A. The RD Exceeded the ALJs' Lawful Scope of Authority

TrAILCo Exception No. 1: The ALJs exceeded their lawful scope of authority in their findings supporting denial of the Application⁸.

The ALJs acknowledged the applicability of the existing siting regulations. They also acknowledged that they have "no authority or responsibility for the siting, construction, operation or maintenance of power production facilities", or "the choice of fuels used in such

⁶ TrAILCo Main Brief ("MB"), pp. 22-24.

⁷ *Pennsylvania Elec. Co. v. Pa. Pub. Util. Comm'n*, 473 A.2d 704, 705 (Pa. Cmwlth. 1984).

⁸ RD, pp. 6-7, 10, 112-116, 166-168; F/F Nos. 69, 144, 145, 150. The ALJs also erred in failing to adopt TrAILCo's requested F/F and Conclusions of Law ("C/L"). See TrAILCo MB, Appendices C and D.

facilities or the effect of the operation of such facilities"⁹. Yet, they erroneously permitted such factors to influence the RD:

- The RD erroneously adopted, as "critical and valid" considerations, broad national public policy discussions that are not part of existing Pennsylvania regulations and extend beyond the Commission's jurisdiction.¹⁰ The ALJs also have tried to make the consideration of "alternatives" much broader in scope than are actually permitted under the Commission's siting regulations; and, furthermore, have failed to acknowledge the extent to which, even if considered, the several "alternatives" they accept are not *available* alternatives.¹¹
- The RD erroneously adopted, as fact, purely speculative outcomes of various proposals concerning greenhouse gas and emissions policies that are currently pending at a national level and have not been resolved.¹²
- The RD generally concluded that pollution and waste from coal mines, coal-fired power plants, smokestacks, slag dumps, coal patches and shanties of unspecified location, extent, or import, is a basis for recommending that local rural land owners in Greene County should not be subjected to TrAILCo's facilities¹³. This conclusion is unsupported and, moreover, is contrary to the ALJs' acknowledgment of the limitations on their authority to consider such matters.
- The RD's conclusions are based on what the ALJs apparently fear will be future transmission "super-highways" that will transport cheap and dirty coal-fired generation east.¹⁴ This mindset erroneously presumes that Pennsylvania has a public policy discouraging the development of coal-fired generation. There is no evidentiary support for such a proposition. Furthermore, substantial evidence from TrAILCo's expert witnesses dispels the assertion that TrAILCo and PJM Interconnection, L.L.C. ("PJM") are intent on promoting coal-fired generation. The RD ignores the expert testimony that the current TrAILCo and PJM efforts to improve transmission capability are guided solely by their obligation to meet the requirements of mandatory reliability standards developed by the North American Electric Reliability Corporation ("NERC") and approved by the Federal Energy Regulatory

⁹ RD, p. 10.

¹⁰ RD, pp. 6-7 and 237, quotes from and adopts the scope of objectives recited in the 2004 Report of the National Commission on Energy Policy, which include consideration of environmental and public policy issues well beyond the scope of the Commission's siting regulations, as well as its overall jurisdiction.

¹¹ Consideration of such matters as proposed but unimplemented energy initiatives, proposed but uncompleted generation, a broad range of environmental impacts and project costs/benefits is contrary to the plain language of the Commission's siting regulations that limit consideration of "alternatives" to whether there is an alternative to the HV line that has less of an impact on the environment. Moreover, alternatives to the line *were* considered and evaluated by TrAILCo and PJM, although the regulations really provide discretion to management to elect the preferred alternative by requiring consideration of them only in the context of environmental impacts. See TrAILCo Reply Brief ("RB"), pp. 2-3, 14-15. Thus, TrAILCo has gone well beyond what is lawfully required in this case to establish its need for the proposed facilities. Considering this extensive additional effort by TrAILCo to develop the record, it is particularly disturbing that the RD has ignored essentially all of TrAILCo's expert testimony.

¹² RD, p. 19, F/F Nos. 69-71.

¹³ RD, p. 111.

¹⁴ F/F Nos. 144, 145; RD, pp. 111-116.

Commission ("FERC"), and that improving transmission infrastructure will encourage and support all types of new generation, not just coal-fired generation.¹⁵

B. Pennsylvania 502 Junction Facilities

TrAILCo Exception No. 2: The RD erroneously ignored regional reliability requirements in concluding that there is no need for the Pennsylvania 502 Junction Facilities.¹⁶

Established and well-accepted Pennsylvania law *requires* the consideration of *interstate* benefits when evaluating the siting of electric transmission lines.¹⁷ The RD completely ignores this clear Pennsylvania mandate that out-of-state benefits can satisfy "need" for siting approval.¹⁸ This is a critical shortcoming in the RD, particularly when considering the regional perspective required to be considered under Public Utility Code ("Code") Chapter 28 following restructuring and the deregulation of electric generation.¹⁹

¹⁵ TrAILCo MB, pp. 9, 36. Mr. Herling reviewed the active queued generation projects proposed since the approval of TrAIL by the PJM Board. There are approximately 7,700 MW of coal projects active in the queue, approximately 19,200 MW of natural gas projects and 25,600 MW of wind projects proposed in PJM since July 2006. See TrAILCo MB, p. 36, TrAILCo St. 3-R, pp. 14-15.

¹⁶ RD, pp. 78-81, 110-112, 116; C/L No. 2; F/F Nos. 39, 41. The ALJs also erred in failing to adopt TrAILCo's requested F/F and C/L. See TrAILCo MB, Appendices C and D.

¹⁷ See TrAILCo MB, pp. 6-7, citing *Dunk v. Pa. Pub. Util. Comm'n*, 232 A.2d 231 (1967), *affirmed*, 434 Pa. 41, 252 A.2d 589 (1969); *Stone v. Pa. Pub. Util. Comm'n*, 162 A.2d 18 (Pa. Super. 1960) and *Application of PPL for authorization to locate and construct a 138,000 volt transmission line and associated facilities between its existing Tinker 138/69 kV tap line located in Clifford Township and the proposed Elk Mountain substation site in Herrick Township, both in Susquehanna County, Pennsylvania*, 1991 Pa. PUC LEXIS 86.

¹⁸ This mandate is evident with the Commission's holding in the aforementioned PPL Application case that the "need" requirements are the same for both eminent domain and siting. As noted by the Commission, "The required showing of need for a proposed transmission line is identical to that for the eminent domain application. To hold otherwise would lead to absurd and conflicting results in situations where eminent domain and siting applications for the same line are not considered in consolidated proceedings." Consequently, regional need that is sufficient to satisfy the need requirement for eminent domain as per *Dunk* and *Stone* is also sufficient to satisfy the need requirement for siting purposes.

¹⁹ See, e.g., 66 Pa.C.S. § 2805 ("The commission shall take all necessary and appropriate steps to encourage interstate power pools to enhance competition and to complement industry restructuring on a regional basis. The Commonwealth, the commission and Pennsylvania electric utilities shall work with the Federal Government, other states in the region and interstate power pools to accomplish the goals of restructuring and to establish independent system operators or their functional equivalents to operate the transmission system and interstate power pools. The commission, Pennsylvania electric utilities and all electricity suppliers shall work with the Federal Government, other states in the region, the North American Electric Reliability Council and its regional coordinating councils or their successors, interstate power pools, and with the independent system operator or its functional equivalent to ensure the continued provision of adequate, safe and reliable electric service to the citizens and businesses of this Commonwealth.")

The Pennsylvania 502 Junction Facilities and the balance of the 502 Junction Segments are based on a prudent planning process and carefully designed measures that address demonstrated violations of federally-mandated NERC reliability criteria. PJM, as a FERC-designated RTO, is charged with maintaining the reliability of the bulk power transmission system in a thirteen-state region that includes Pennsylvania. In this case, substantial evidence demonstrated that serious reliability issues exist that affect major transmission lines in the region, and must be addressed by 2011. As authorized by federal law, PJM has directed the construction of the Pennsylvania 502 Junction Facilities and the balance of the 502 Junction Segments, and this "obligation to build" cannot be ignored.²⁰

Both the WVAPSC and a Hearing Examiner for the VaSCC have fulfilled their public service obligations by recognizing the importance of these transmission improvements to regional reliability, and this Commission should do the same.

TrAILCo Exception No. 3: The ALJs erred in concluding that the Pennsylvania 502 Junction Facilities and 502 Junction Segments are motivated by economics and not reliability violations.²¹

The ALJs failed to give the proper weight to the substantial and credible record evidence that the Pennsylvania 502 Junction Facilities and the 502 Junction Segments are in direct response to documented violations of reliability standards that would occur without the proposed facilities.²² The ALJs also fail to give (i) the proper deference to the PJM Regional Transmission Expansion Plan ("RTEP") process that determined that these facilities should be built²³ and (ii) the proper weight to the reliability violations (explained in detail by TrAILCo's expert

²⁰ TrAILCo MB, pp. 9, 14-16, 23-24.

²¹ RD, pp. 110-116, 234; C/L No. 2; F/F Nos. 144, 146. The ALJs also erred in failing to adopt TrAILCo's requested F/F and C/L. See TrAILCo MB, Appendices C and D.

²² See TrAILCo RB, pp. 22-24.

²³ See TrAILCo MB, pp. 7-37.

witnesses) that are the impetus for this TrAILCo project.²⁴ The ALJs rejected literally *all* of TrAILCo's substantial and credible evidence concerning the issue of need for these facilities from three expert witnesses in the case: a consulting engineer for TrAILCo/Allegheny Power, PJM's Vice President of Planning and former Vice Chair of the NERC Planning Committee, and an expert independent consultant who formerly was PJM's Manager of Transmission Planning.²⁵ All of such expert testimony provided detailed explanations of the NERC reliability violations and related shortfalls being addressed by these facilities, and consistently demonstrated a clear and present need for reinforcement of the regional transmission system in this manner. The ALJs failed to give proper consideration to TrAILCo's substantial and credible evidence and, instead, adopted essentially verbatim the positions asserted by the Energy Conservation Council of Pennsylvania ("ECC") on behalf of impacted property owners, no matter how lacking they were in evidentiary support and analysis.²⁶

Documented Reliability Violations That Were Ignored in the RD

TrAILCo's testimony showed that "load pockets"²⁷ exist in the Mid-Atlantic and northern Virginia areas that must be addressed. Load pockets exist because it is very difficult to site and build new generation within urban areas. As a result, transmission lines delivering electricity into a load pocket from distant generating plants will often experience reliability problems. The lines become "overloaded" and do not have the capacity to deliver to the load pocket as much electricity as is needed to meet consumer demand, and reliability problems occur. Frequently, these problems then can adversely affect the areas surrounding the transmission facilities needed

²⁴ See TrAILCo MB, pp. 19-24.

²⁵ See TrAILCo MB, pp. 9-16 for a detailed explanation of the application of NERC reliability standards and PJM's RTEP.

²⁶ See TrAILCo RB, p. 9.

²⁷ "Load pockets" are created when a major electric load center (*i.e.*, an area where there is a highly concentrated use of electricity) has too little local generation of electricity relative to its electric load and must import much of its electricity via transmission lines from neighboring regions.

to carry that generation to the load pockets. To avoid such problems, new or upgraded transmission lines must be constructed.²⁸

The studies conducted by TrAILCo's experts indicate that by 2011, electric reliability to these areas will be significantly jeopardized absent these TrAIL facilities. The Mid-Atlantic and northern Virginia areas were identified by the U. S. DOE in its *National Electric Transmission Congestion Study* issued in August 2006 as parts of a "Critical Congestion Area" and in need of immediate attention. The Pennsylvania 502 Junction Facilities, along with the remainder of the 502 Junction Facilities in West Virginia and Virginia, have been identified by PJM as the most viable solution to this problem.²⁹ PJM selected these facilities for construction because they resolve all of the overloads in a cost-effective and timely manner.³⁰ It should be emphasized that the overload conditions were identified under *three* separate planning tests.³¹

The consequences of not constructing these facilities could severely affect Allegheny Power customers in Pennsylvania as well as large numbers of other customers regionally. Besides causing electric reliability problems in the load pockets themselves, the effect of peak demand can be manifested as an electric reliability problem in areas quite remote from the load pockets.³² Customers within and outside of the Mid-Atlantic area will be at risk and affected if these TrAIL facilities are not constructed, including the retail customers served by Allegheny Power in south central Pennsylvania. This type of event can spread rapidly, including to other areas of Pennsylvania. Further, the interconnected power grid encompasses central Canada

²⁸ TrAILCo St. 4, pp. 9-10; TrAILCo MB, p. 19.

²⁹ TrAILCo St. 4, pp. 16-17.

³⁰ TrAILCo St. 4, pp. 17-21; TrAILCo MB, p. 21.

³¹ TrAILCo St. 4-RJ, p. 4; TrAILCo MB, p. 23.

³² TrAILCo St 4, pp. 20-21.

eastward to the Atlantic coast, south to Florida, and west to the foot of the Rockies, excluding most of Texas and Quebec. A reliability failure thus could have far-reaching effects.³³

As the WVaPSC observed, from an operational perspective many of the transmission reliability issues that PJM projects to occur as early as 2011 are actually present today. Existing corridors over the Allegheny Mountains are operated near their limits at present. In other words, the transmission system is already at risk.³⁴ The need to apply emergency procedures is not a sign of a healthy transmission system.³⁵ TrAILCo also presented precisely this type of testimony in the current proceeding in Pennsylvania, but the ALJs either rejected it or ignored it.³⁶

Alleged Economic Motives

Instead of adopting the extensive evidence submitted by TrAILCo's and PJM's experts supporting the reliability need for the Pennsylvania 502 Junction Facilities and the 502 Junction Segments, the ALJs erroneously conclude that economics led to the creation of these facilities. *The ALJs' conclusion results from a mixing of "apples and oranges" and is based on a complete misunderstanding of a prior PJM concept called Project Mountaineer and Allegheny Power's proposal in response thereto (also named "Trans-Allegheny Interstate Line" and referred to hereinafter as the "Original TrAIL Proposal").* This erroneous conclusion was reached despite extensive testimony that appropriately clarified the differences among these very different proposals.³⁷

The substantial and credible record evidence shows that Project Mountaineer was only a concept proposed by PJM to address west-to-east transfer capability, not reliability. Specific

³³ TrAILCo St. 2, pp. 9-10.

³⁴ WVaPSC Order, pp. 37-38.

³⁵ WVaPSC Order, p. 38.

³⁶ See e.g., TrAILCo MB, pp. 21-24; RB, pp. 25-26.

³⁷ RD, pp. 112-13.

routes or lines were not even proposed.³⁸ The Original TrAIL Proposal was submitted by Allegheny Power to PJM in response to the Project Mountaineer concept, but was never authorized by PJM, has never been proposed to this Commission and certainly is not before the Commission in this case. Moreover, some portions of the Original TrAIL Proposal would not have connected the same electrical points as those sought to be connected by the Pennsylvania 502 Junction Segment and the remaining portions of the 502 Junction to Loudoun line. The ALJs note that Allegheny Power proposed the Original TrAIL Proposal before any reliability violations were identified, thus implying the reliability violations were not the driver for the Pennsylvania 502 Junction Facilities and the remainder of the 502 Junction to Loudoun line. To the contrary, the evidence clearly shows that PJM's approval of the current TrAIL projects was based on reliability concerns, not economics, and was vetted through its established RTEP process in 2006.

The ALJs further ignore that the 2007 RTEP again consistently demonstrated the need for these facilities, along with the remainder of the 502 Junction Segments in West Virginia and Virginia; and, updated recent analysis further corroborated the need for these facilities.³⁹

The ALJs hypothesize that the Pennsylvania 502 Junction Facilities and the remainder of the 502 Junction Segments were intended, not for reliability, but solely to facilitate the transmission of coal-fired generation eastward.⁴⁰ There is no valid basis for that view. Indeed, PJM's expert witness explained in detail how PJM transmission planning is accomplished, including the fact that the RTEP process is driven by eliminating reliability concerns, not to enhance any particular generation resources.⁴¹ Quite apart from having no basis for this

³⁸ See TrAILCo RB, pp. 33-34.

³⁹ TrAIL St. 3-RJ, pp. 6-7; TrAILCo MB, p. 24.

⁴⁰ RD, p. 116.

⁴¹ There are many factors that impact the decisions of developers as to what fuel type generation to build. Transmission is only one factor. The RTEP process cannot dictate the types of resources to be built or the

“economics-only” theory, the ALJs also ignore the fact, as reported by PJM’s expert, that numerous generation facilities that are not coal-fired (and some of which are renewable resource facilities) are in various stages of planning.⁴²

Similarly, none of the rate or generation price impacts addressed by the ALJs support any adverse findings with respect to TrAIL.⁴³ FERC has jurisdiction over the transmission rates to be charged by TrAILCo.⁴⁴ And, issues relating to retail recovery are not before the Commission at this time and speculative impacts on wholesale electric prices and revenues for unregulated generation suppliers are well outside the Commission’s jurisdiction.

The ALJs’ findings regarding retail price impacts also lack evidentiary support. The RD mistakenly leaves the impression that West Penn retail customers will experience large rate increases if TrAIL is sited and built. However, the ALJs ignore the substantial evidence that the overall rate impact of TrAIL on West Penn customers will be minimal.⁴⁵ Only 7.2% of the revenue requirement related to TrAIL will be allocated by PJM (pursuant to the methodologies approved by FERC) to Allegheny Power’s Pennsylvania jurisdiction, and the overall impact to Allegheny Power’s West Penn customers in Pennsylvania (measured in terms of impact on each rate schedule as a percentage of their 2006 billing revenues) *is presently estimated to be less than 1%*.⁴⁶ Each West Penn residential customer would pay a modest amount of approximately \$0.68 per month for the period July 1, 2011 through May 30, 2012 based on 2006 single coincident peaks as their estimated share of the cost of meeting imminent and critical reliability needs that

location of resources. These are decided by developers in the market based on a wide range of factors. Transmission facilities identified as needed to satisfy baseline reliability criteria violations are not developed to deliver individual resources or certain types of resources. They are identified to restore the ability of the transmission system to deliver the aggregate of all resources in accordance with criteria. *See, e.g., TrAILCo St. 3-R, pp. 13-14.*

⁴² *See TrAILCo MB, p. 36.*

⁴³ RD, pp. 105-109, 118; F/F Nos. 73-74, 81, 82, 85.

⁴⁴ TrAILCo MB, p. 67.

⁴⁵ *See, for example, F/F No. 4; RD, p. 20.*

⁴⁶ TrAILCo St. 10-R, pp. 2-4; TrAILCo Exh. MAM-3.

those customers share with large numbers of residents and businesses throughout the PJM region.⁴⁷

The ALJs also erroneously rely upon total speculation offered by the Office of Consumer Advocate ("OCA") and the West Penn Power Industrial Intervenors ("WPPII") with respect to TrAIL's impacts on wholesale generation prices and revenues to western PJM generators. The only probative evidence on these issues was offered by TrAILCo's PJM expert who described the potential for wholesale market price changes resulting from the 502 Junction-Loudoun line, testifying that (i) initially wholesale prices in the east are expected to go down and wholesale prices in the west are expected to increase slightly as a result of the initial resolution of congestion, (ii) western price increases are more likely to be of a noticeable magnitude in the Ohio area than in western Pennsylvania, and (iii) ultimately, wholesale pricing will be dependent on the types of generation that are built. He further testified that the only thing clear at this point is that over the long-term the reduction in congestion from completion of the Pennsylvania 502 Junction Facilities and the balance of the 502 Junction Segments will allow for cheaper generation to be delivered to customers.⁴⁸

Unwarranted Rejection of the RTEP Process

The ALJs conclude that PJM's RTEP process is "an overly conservative, belt-and-suspenders approach to transmission system planning." They further assert that the RTEP process is not predictable and inherently designed to yield only transmission solutions.⁴⁹ What this type of superficial analysis ignores is the reality of transmission facilities planning in this period of dynamic changes, as explained at length by TrAILCo's experts, including PJM's Vice President of Planning. The RTEP process is a dynamic process of necessity because planning

⁴⁷ Tr. 3622; TrAILCo Exh. MAM-3.

⁴⁸ See TrAILCo RB, pp. 34-35.

⁴⁹ RD, p. 115.

and constructing generation assets and initiating other energy measures is itself increasingly dynamic, especially following generation "deregulation" in Pennsylvania and elsewhere. The ALJs were too quick to second-guess PJM planning and to criticize its modeling of generation, ignoring the inherent process difficulties involved with electricity production and delivery. The predictability and usefulness of the RTEP process would not be improved by allowing generation projects that are never completed to be counted for purposes of determining how, if, and where transmission facilities are to be planned to resolve a NERC reliability violations. Yet that is precisely what the ALJs find reasonable and acceptable, in contrast to the more reasonable approach taken by PJM in its role as the institution responsible for assuring reliable delivery of electricity throughout the region.

The ALJs also erroneously assume that PJM planning, including the basis for the 502 Junction Segments, was predicated on an "economic dispatch" theory of generation, when PJM's expert repeatedly explained it is *not* so predicated. PJM does *not* use economic dispatch for purposes of its studies of compliance with reliability criteria. PJM's expert witness was very clear in identifying how PJM evaluates generation patterns to determine NERC compliance.⁵⁰ This was one among many fallacious conclusions drawn by ECC's need witness on which the ALJs erroneously relied.

The WVAPSC concluded that the RTEP process incorporates reasonable procedures for determining compliance with NERC reliability criteria and that the RTEP process "was reasonable and reliable in the identification of projected violations of NERC criteria."⁵¹ The

⁵⁰ See TrAILCo RB, p. 24; TrAILCo St. 3-RJ, pp. 13-14; Tr. 2265-66.

⁵¹ WVAPSC Order, pp. 16-18, 25.

WVaPSC based its conclusion on precisely the same type of evidence that TrAILCo provided in the current proceeding before this Commission.⁵²

Rejection of NERC Criteria

The RD erroneously rejected the *correct* application of operating and testing criteria that have been applied consistently in PJM system for many years and adopted an incorrect application of those criteria.⁵³ As PJM Vice President Herling testified, ECC's suggestion (which the RD adopted) that no criteria violation exists so long as there is some combination of redispatch available anywhere within PJM only invites a whole host of operational conditions that would not be controllable without load shedding.⁵⁴ Load shedding is a polite term for rolling blackouts, which the ALJs steadfastly underplay as a consequence of their "do nothing" recommendations. The Commission, PJM, Allegheny Power and TrAILCo have an obligation to provide reliable electric service and act on that basis, rather than not acting on a theoretical possibility that the Pennsylvania 502 Junction Facilities might not be needed.

Furthermore, the ALJs erroneously concluded that NERC reliability violations are not "likely" to occur (based solely on a totally unsupported conclusion expressed by ECC's lone need witness) and criticized TrAILCo and PJM for not applying a "statistical probability" analysis to the NERC standards, inferring that such a result would show little or no likelihood of the reliability problems that violate NERC standards. Neither ECC nor any other party placed into evidence any such "statistical analysis" that the ALJs could have relied on for such a finding. Rather, the ALJs totally rejected the NERC analysis that was placed of record (from TrAILCo

⁵² See e.g., TrAILCo MB, pp. 9-16; RB, pp. 10-13.

⁵³ See TrAILCo MB, p. 29; TrAILCo RB, p. 24.

⁵⁴ TrAILCo MB, p. 29; TrAILCo St. 3-RJ, pp. 13-14.

and PJM), and instead relied on pure supposition expressed by ECC's witness.⁵⁵ As TrAILCo pointed out several times on the record, analyzing the "probability" of a NERC reliability violation contingency occurring is not appropriate or proper in the context of today's NERC mandated planning criteria.⁵⁶ In the companion proceeding pending in Virginia, the presiding Hearing Examiner addressed the issue of statistical probability as follows:

First, Virginia's Commitment frames the "statistical probabilities" question, or the purpose of transmission planning, incorrectly. The electrical grid is made up of many generators, transmission lines, and customers. The amount of electric energy generated and transmitted must constantly match varying customer demand. This large complicated engine has many interdependent parts that must function properly to avoid collapse or failure. Transmission planning focuses on the workings of all of the interdependent parts and how random acts and specific contingencies impact the system, in order to develop overall system reliability. That is, the focus is not on the probabilities of a specific series of events occurring, but on the cumulative impacts of random events across the entire system on the system's reliability.

Second, and more importantly, the probability assessment of Virginia's Commitment appears to ignore NERC's mandatory requirements. NERC standards require the transmission system to be stressed and tested under a host of contingencies. Consequently, probability calculations that include mandated-test conditions as if those conditions occurred randomly are meaningless in evaluating test results.⁵⁷

The RD has adopted a wholly erroneous view of PJM's RTEP process and the application of NERC criteria, and ignores the substantial and credible record evidence demonstrating that the Pennsylvania 502 Junction Facilities are driven by reliability violations that PJM has required the transmission owners to remedy.⁵⁸

⁵⁵ Unlike OCA expert witness, ECC's need witness Loehr did not support any of his opinions by analysis or studies of any sort pertaining to the facts of this case. He relied solely on generalizations about the "industry" and his experiences. In fact, he finally admitted he had not done any analysis of the underlying specifics of this case.

⁵⁶ See TrAILCo RB, pp. 10-12.

⁵⁷ *Application of Trans-Allegheny Interstate Line Company for certificates of public convenience and necessity to construct facilities: 500 kV Transmission Line from Virginia-West Virginia Boundary to Virginia Electric and Power Company Transmission Line #580*, Case No. PUE-2007-00033 (July 28, 2008) p. 171.

⁵⁸ See TrAILCo St. 2-R, pp. 22-23; TrAILCo St. 4-R, p. 3; TrAILCo St. 4-RJ, pp. 6-9; MB, pp. 35-36.

TrAILCo Exception No. 4: The ALJs erred in finding that "alternatives" were not considered.⁵⁹

Overview

The RD asserts that TrAILCo and PJM failed to explore alternatives to TrAIL.⁶⁰ The record is to the contrary. Notwithstanding TrAILCo's legal position as to the properly limited scope of a siting proceeding, it did produce substantial and credible record evidence showing that other alternatives to the 502 Junction Segments *were* considered as part of the PJM process, but were found to be inadequate solutions to the demonstrated reliability problems.⁶¹ Moreover, other suggested alternatives were evaluated by TrAILCo, even those offered by ECC without any analysis or probative support. These alternatives were thoroughly refuted by TrAILCo's expert witnesses.⁶² The credible record evidence is that feasible alternatives do not exist.⁶³

And indeed, the RD does not claim that any alternatives will be the answer, only that TrAILCo has not established that they cannot be the answer. That conclusion is flat out wrong. Although proving a negative is extremely difficult, TrAILCo conclusively established that the various alternatives discussed do not relieve the present reliability shortfalls that are required to be addressed within the permissible scope of authority that exists for the Commission, the transmission owners and PJM.

The ALJs' analysis is flawed in part because it is based on an incorrect and overly broad use of "alternatives" as being applicable without regard to whether they actually are "available." Existence in theory does not mean existence in reality. For example, just because generation theoretically can be constructed does not mean that such generation is "available" to TrAILCo

⁵⁹ RD, pp. 115-116; F/F Nos. 39, 41, 43, 45, 46, 49, 57-60, 68, 148, 149, 151. The ALJs also erred in failing to adopt TrAILCo's requested F/F and C/L. See TrAILCo MB, Appendices C and D.

⁶⁰ RD, p. 115-116.

⁶¹ See TrAILCo MB, pp. 7-37.

⁶² See TrAILCo MB, p. 30; TrAILCo RB, pp. 23-24.

⁶³ See TrAILCo MB, pp. 29-31; TrAILCo RB, pp. 24-29.

and PJM as a timely solution to the reliability violations identified in this proceeding and required by PJM to be pursued. The same is true of various energy conservation initiatives that may be helpful in the future.

New Generation

Substantial evidence demonstrated in detail how difficult it is to plan for a reliable transmission system in the face of uncertainty in the current generation marketplace. Yet the ALJs gave no weight to the number of generation projects that signal to PJM their intention to go into service, but then never do. The ALJs simply brush aside the real time dilemma in planning at PJM when the number of generation projects that eventually get completed is a very small percentage of those that are proposed.⁶⁴ The readily apparent dynamic nature of PJM's planning process is a direct result of the uncertainties in the competitive markets, not anything inherently flawed about PJM's process, which has been vetted through a transparent stakeholder process involving members from all sectors of the industry.

By contrast, the WVaPSC recognized that PJM has a limited ability to require new generation construction, and that its only meaningful authority to resolve transmission reliability problems is to direct the construction of transmission facilities.⁶⁵

The Commission should not allow the reliability of the regional transmission system to fall victim to the economic whims of the competitive generation marketplace. Generation solutions are not truly "available" when neither TrAILCo, PJM nor the Commission can dictate when, where, and what type of generation resources are to be constructed. If such solutions were available, PJM's clearly defined rules governing the planning process would have required them to be modeled as part of the analysis. PJM did, and does, rely on new generation when it gets

⁶⁴ See TrAILCo MB, pp. 27-28.

⁶⁵ WVaPSC Order, p. 42.

close enough to completion.⁶⁶ Moreover, even if such solutions were viewed to be generally "available", no consideration whatsoever was given by the ALJs to the *timing* of such solutions. No evidence was produced that sufficient generation will be available in time to address the reliability concerns that led to the TrAILCo projects. Indeed, the evidence of record was to the contrary. There is no credible evidence that PJM excluded any proposed generator under the RTEP process that should have been included.⁶⁷

DSM

The RD relies on purely speculative and prospective demand-side management ("DSM") initiatives, or other measures not within the control of transmission owners or the Commission, to provide answers to federally-mandated reliability requirements.⁶⁸ Neither the transmission owners, nor PJM, nor the Commission can lawfully rely on such speculation. Neither DSM nor other energy efficiency⁶⁹ programs are reasonable alternatives to TrAIL. TrAILCo witness Dr. Jay Zarnikau accurately summarized these unchallenged conclusions with respect to the Pennsylvania and non-Pennsylvania components of TrAIL.⁷⁰ While increased DSM and energy efficiency programs are laudable goals,⁷¹ experts from both TrAILCo and the OCA agreed that it is not reasonably likely that sufficient levels of these types of programs can obviate the need for the TrAIL facilities in the time period required.⁷²

⁶⁶ TrAILCo MB, p. 27.

⁶⁷ See TrAILCo MB, pp. 27-28.

⁶⁸ RD, pp. 81, 104-105.

⁶⁹ According to Dr. Zarnikau, DSM encompasses the concepts of "energy efficiency" and "demand response," as OCA witness Fagan uses those phrases. Mr. Fagan defines "energy efficiency" as improvements in the technical efficiency of end use devices or systems, and defines "demand response" as resources allowing for the shifting or cycling of loads. TrAILCo St. 13, p. 6.

⁷⁰ TrAILCo St. 13, pp. 4-5.

⁷¹ While DSM may not be an alternative to TrAIL, Allegheny Power is nonetheless committed to developing and implementing DSM programs – and has demonstrated that commitment repeatedly – in the jurisdictions in which it provides retail service. Allegheny Power has been and expects to continue to be an active supporter of DSM and energy efficiency for its customers. TrAILCo St. 12-R, pp. 4-14, 22.

⁷² TrAILCo St. 13-RJ, p. 2. Dr. Zarnikau characterized this situation clearly by saying "[i]n his surrebuttal testimony, Mr. Fagan clarifies that he is not advocating that DSM programs be *solely* relied upon to meet the

As the Hearing Examiner in the companion Virginia proceeding succinctly concluded, uncertainty eliminated DSM as a viable alternative to the proposed transmission line.⁷³

Other Transmission Solutions

TrAILCo also addressed various other transmission solutions proposed in this proceeding, none of which are reasonable substitutes for the proposed TrAILCo facilities.⁷⁴ The installation of capacitor equipment is a band-aid that is not a credible substitute for TrAIL. Similarly, TrAILCo's expert testimony dispelled the notion that retensioning, regrading or re-conductoring of the Mt. Storm-Doubs line in West Virginia and Virginia is practical and would serve as a suitable alternative. TrAILCo testimony also described why the proposed PATH line is not a substitute for TrAIL.⁷⁵

Conclusion

The WVAPSC wisely determined that both PJM and state regulatory bodies have limited jurisdiction and capability to require non-transmission solutions to transmission problems.⁷⁶ The record in these Pennsylvania proceedings compels a similar conclusion.

TrAILCo Exception No. 5: The ALJs erred in concluding that the Pennsylvania 502 Junction Facilities will have an adverse impact on generation projects in Eastern PJM.⁷⁷

The ALJs adopt the totality of the unsubstantiated, speculative, and biased testimony of ECC's need witness that construction of the 502 Junction Segments will have an adverse impact

reliability need which the proposed transmission line is designed to address. See, OCA St. 2-SR, p. 4, lines 11-12, lines 19-20; OCA St. 2-SR, p. 2, lines 5-6.

⁷³ VaSCC Hearing Examiner Report, p. 192.

⁷⁴ TrAILCo MB, pp. 28-31.

⁷⁵ See TrAILCo MB, pp. 30-31; RB, pp. 26-28.

⁷⁶ WVAPSC Order, p. 44.

⁷⁷ RD, pp. 110-112, 116-118; F/F Nos. 66-68. The ALJs also erred in failing to adopt TrAILCo's requested F/F and C/L. See TrAILCo MB, Appendices C and D.

on the development of generation in Eastern PJM,⁷⁸ testimony that the record shows is not credible and is speculative at best.⁷⁹

If the ALJs' analysis were to prevail, no transmission project could ever be planned or sited, because generation markets and construction, load growth and mitigation, and transmission planning are (and must always be) dynamic. As the record shows, there is absolutely no credible evidence that the 502 Junction Segments will worsen the problem of inadequate generation in eastern PJM. As PJM's expert pointed out, PJM's dispatch of generation will continue to drive the utilization of the most cost-effective resources while respecting any transmission constraints.⁸⁰ Additional transmission capability will allow resources outside of eastern load centers to help serve the reliability needs of the eastern load, but will not obviate the need for additional eastern resources in the future or eliminate all causes of the transmission congestion faced by load customers in eastern PJM.⁸¹

TrAILCo Exception No. 6: The ALJs erred in failing to find that the route selection for the Pennsylvania 502 Junction Segment was reasonable.⁸²

Not a single party in this proceeding raised any issue concerning this short 1.2 mile route. Given the dearth of clear opposition, the RD's summary dismissal of the siting of the Pennsylvania 502 Junction Segment is erroneous.⁸³ The law is well settled that the selection of the route and the proposed ROW is a matter for the public utility in the first instance and will not be set aside unless the utility's exercise of its discretionary power is wanton, capricious or

⁷⁸ RD, p. 116.

⁷⁹ See TrAILCo MB, pp. 27-28.

⁸⁰ TrAILCo MB, p. 27.

⁸¹ See TrAILCo MB, pp. 27-28.

⁸² RD, pp. 169-177; F/F Nos. 189, 190. The ALJs also erred in failing to adopt TrAILCo's requested F/F and C/L. See TrAILCo MB, Appendices C and D.

⁸³ The analysis of the 502 Junction Segment – in the context of the remainder of the line through West Virginia and Virginia – is documented in the LRE at Sections 2.10 and 2.11; Table 2-2, and Sections 3.1 and 3.2.1, among others. RD, p. 177.

arbitrary.⁸⁴ As the substantial and credible record evidence demonstrates, the route selection process for the Pennsylvania 502 Junction Segment was eminently reasonable.⁸⁵

The route selection was driven by the necessity of linking the Pennsylvania 502 Junction Segment with the 502 Junction Segment in West Virginia where the majority of the line traverses.⁸⁶ The Line Route Evaluation ("LRE") describes the analysis of the eight alternative 500 kV transmission line routes that were evaluated.⁸⁷ These eight routes utilized three different alignments in Pennsylvania, primarily to avoid developments immediately south of Pennsylvania.⁸⁸ Because of widely varying lengths and effects in Pennsylvania, the very short line segments in Pennsylvania were not considered in isolation, but rather, were evaluated in the context of the complete route for this project. Thus, alternative routes were developed and evaluated. And, because the selected route is the shortest and most direct route from the 502 Junction Substation to West Virginia, it is clearly beneficial to the Commonwealth and all its residents.

The RD's rejection of the short 1.2 mile Pennsylvania 502 Junction Segment is unreasonable and needlessly parochial. The WVPSC fully understood the interstate dimension of the TRAIL siting process, something this Commission needs to be cognizant of as well:

*The proposed line is a multi-state project that begins in Pennsylvania, passes through West Virginia and ends in Northern Virginia. It is obvious that none of the states can take a provincial approach to routing the line by selecting the entry and exit point that the particular state desires – otherwise, the line does not connect and fails as a project.*⁸⁹

TRAILCo Exception No. 7: The ALJs erred in finding that TRAILCo's siting process was incomplete and that TRAILCo did not act reasonably to mitigate the environmental

⁸⁴ *Pa. Dep't of Env'tl. Res. v. Pa. Pub. Util. Comm'n*, 335 A.2d 860 (Pa. Cmwlth. 1975).

⁸⁵ The approach used in siting the transmission line and the selection of the route was described in TRAILCo's Main Brief and in testimony. See TRAILCo RB, pp. 35-36, citing TRAILCo St. 5; see also TRAILCo Exh. JH-1.

⁸⁶ TRAILCo Exh. JH-1, pp. 23, 27-33, 42, 43.

⁸⁷ TRAILCo Exh. JH-1, p. 27.

⁸⁸ *Id.*

⁸⁹ *Id.*, p. 67.

impacts (including the impact on natural resources) of the Pennsylvania 502 Junction Segment.⁹⁰

The RD does not distinguish between the Pennsylvania 502 Junction Segment and the Prexy Segment in the treatment of siting, routing and environmental impact issues. This failure to distinguish between the Prexy Facilities and the Pennsylvania 502 Junction Facilities is a critical flaw because it is entirely possible for the Commission to approve the Pennsylvania 502 Junction Facilities regardless of its finding as to the Prexy Facilities.

The ALJs' fail to acknowledge that no party to the proceeding challenged with any specificity or provided any specific evidence to refute TrAILCo's record evidence – evidence that showed that the 1.2 mile Pennsylvania 502 Junction Segment was the shortest and most direct of the alternatives, and thus has the least impact on Pennsylvania environment and resources.⁹¹

The balance of the issues raised in the RD with respect to the TrAILCo's siting efforts and measures to mitigate environmental impacts will be addressed later in these Exceptions, and are incorporated by reference herein.

C. TrAILCo's Technical Fitness

TrAILCo Exception No. 8: The ALJs erred in concluding that TrAILCo is not technically fit to operate as a public utility in Pennsylvania.⁹²

The RD improperly recommends that the Commission deny TrAILCo's request to be a public utility. Of the three traditional components of "fitness" required to become a certificated

⁹⁰ RD, pp. 169-177, 189-190; F/F Nos. 205, 208, 216, 217, 218, 221, 222; C/L Nos. 7, 9-11. The ALJs also erred in failing to adopt TrAILCo's requested F/F and C/L. See TrAILCo MB, Appendices C and D.

⁹¹ For example, only one small stream is crossed by the preferred route extending southward from the 502 Junction Substation site to the West Virginia border (TrAILCo Exh. JH-1, p. 54), and the National Wetlands Inventory shows no wetlands south of the 502 Junction Substation site. TrAILCo Exh. JH-1, p. 58.

⁹² RD, pp. 65-67, 78; F/F Nos. 24, 26, 29. The ALJs also erred in failing to adopt TrAILCo's requested F/F and C/L. See TrAILCo MB, Appendices C and D.

public utility,⁹³ the only one questioned by the ALJs is technical capacity. TrAILCo convincingly demonstrated that it has the required technical fitness, although the ALJs refused to recognize that evidence⁹⁴ and accord it the proper weight.

First, the ALJs inject into the fitness analysis a legal standard that does not apply. The RD claims that TrAILCo is not entitled to a "presumption as to its technical fitness"⁹⁵, even though TrAILCo has never claimed any such presumption. By evaluating this issue in terms of a "presumption," the RD distorts TrAILCo's actual claim to technical capacity.

Second, the ALJs' reliance on *Armstrong* is misplaced and erroneous. In *Armstrong*, the entity attempting to prove technical fitness was a cable company not previously certificated as a public utility that was seeking authority to render telephone service. Under those facts, *Armstrong* held that the *cable company* could not receive the benefit of a presumption as to technical fitness to provide *telephone service*. In contrast, the transmission service proposed to be rendered by TrAILCo has, in fact, been provided for decades by TrAILCo's affiliate and certificated public utility, West Penn, with assistance from Allegheny Energy Service Company ("AESC"). Thus, West Penn has the prior Commission certification and technical expertise that was lacking in *Armstrong*.

Third, not a single party in this proceeding challenged TrAILCo's technical capacity.⁹⁶ There is no record evidence to support this purely speculative concern. If anything, this conclusion flies in the face of the substantial record evidence regarding the very clear arrangements reflected in the October 31, 2006 Service Agreement between TrAILCo and AESC ("Service Agreement"). As the RD recognizes, the Service Agreement contains unequivocal

⁹³ The three traditional fitness requirements are: (i) the technical capacity to meet the need in a satisfactory fashion; (ii) the financial ability to give reliable and responsible service to the public; and (iii) "legal fitness," which is the ability to operate safely and legally.

⁹⁴ TrAILCo MB, p. 67; citing TrAILCo St. 1, p. 12; TrAILCo St. 7, p. 38.

⁹⁵ *Application of Armstrong Communication, Inc.*, 1998 Pa.PUC LEXIS 175 (September 9, 1998). RD, p. 63.

⁹⁶ RD, p. 63.

commitments by AESC to perform a litany of services for TrAILCo including, without limitation, "any engineering, construction, management and/or operating activities associated with the development of bulk power supply opportunities."⁹⁷

The RD's concern appears to be AESC's ability to terminate the Service Agreement upon sixty (60) days notice to TrAILCo.⁹⁸ However, this concern is not material, is based on pure conjecture and thus, is not a valid ground for disapproval. First, this notice period is standard, as it appears in the Commission-approved master service agreement between AESC and various Allegheny Energy affiliates, including jurisdictional utility West Penn.⁹⁹ Second, the very fact that TrAILCo is seeking to become a public utility demonstrates its willingness and intent to operate in good faith and adhere to all statutes, rules and regulations of the Commission pertaining to jurisdictional utilities. Third, given Allegheny Energy's longstanding relationship with the Commission and the extensive jurisdiction exercised by the Commission over West Penn, there is no evidentiary basis to conclude that AESC would terminate the Service Agreement prematurely, precipitously or in a manner that could jeopardize TrAILCo's public utility service obligations.

Finally, if there were legitimate concerns about possible premature termination of the Service Agreement, the proportionate response and fair remedy would have been to condition an order granting TrAILCo public utility status on either some modification of the termination provisions of the Service Agreement or to require AESC to seek Commission approval prior to terminating that agreement. The RD ignores this fair and sensible approach.

⁹⁷ RD, p. 64.

⁹⁸ RD, p. 66.

⁹⁹ In a Secretarial Letter dated August 14, 2003 at Commission Docket No. G-00031023, the Commission approved an affiliated interest agreement dated July 1, 2003 between West Penn and Allegheny Energy, Inc. and its subsidiaries that provides, among other things, the various services AESC is performing for West Penn and other Allegheny Energy, Inc. subsidiaries. Section 5 of this July 1, 2003 service agreement expressly provides that it "may be terminated by any party upon 60 days' prior notice ..."

D. Eminent Domain Authority

TrAILCo Exception No. 9: The ALJs erred in finding that TrAILCo has not met its burden of proof for the requested eminent domain authority.¹⁰⁰

The ALJs deny TrAILCo's request for eminent domain authority because there is not yet a definitive and final route for TrAIL. However, there is no such requirement under Pennsylvania law as a pre-requisite to eminent domain authority. Indeed, the Commission's siting regulations automatically afford the utility a *corridor* within which to construct an approved line, clearly de-emphasizing the location of the final route as essential to obtaining eminent domain authority. Moreover, the ALJs' assertion that a more definitive notice is required is unsupported, when TrAILCo provided early and proper notice as required by the Commission's regulations.¹⁰¹

Since the requisite "need" showing for the siting of the Pennsylvania 502 Junction Facilities and the Prexy Facilities is identical to the need for eminent domain, the overwhelming record evidence of the need for TrAIL discussed in these Exceptions also supports TrAILCo's corresponding authority to exercise eminent domain necessary to site these facilities.

E. Affiliated Interest Agreements¹⁰²

TrAILCo Exception No. 10: The ALJs erred in recommending a denial of certain affiliated interest agreements.¹⁰³

The ALJs denied TrAILCo's easement and parcel agreements for the construction and operation of the proposed TrAILCo projects in Pennsylvania, also referred to as the Memorandum of Understanding ("MOU"),¹⁰⁴ because, in their view, those projects are not

¹⁰⁰ RD, pp. 205-206; C/L Nos. 2, 3. The ALJs also erred in failing to adopt TrAILCo's requested F/F and C/L. See TrAILCo MB, Appendices C and D.

¹⁰¹ See TrAILCo MB, p. 52.

¹⁰² Exception No. 8 is incorporated herein by reference.

¹⁰³ RD, pp. 220, 226-227. The ALJs also erred in failing to adopt TrAILCo's requested F/F and C/L. See TrAILCo MB, Appendices C and D.

¹⁰⁴ RD, p. 220; TrAILCo intends to acquire the ROWs held by its affiliate West Penn for \$4,480,373.35, which is the total amount paid by West Penn for the ROWs. TrAILCo also intends to acquire the fee ownership of nine

needed.¹⁰⁵ However, as discussed above, the record evidence shows that the projects are needed. And, no party to the proceeding challenged the requested approval of the MOU which, by its terms, is reasonable.¹⁰⁶ Therefore, the MOU is in the public interest and should be approved.

The ALJs also denied approval of the Service Agreement¹⁰⁷ between TrAILCo and AESC because of the termination provision. For the reasons previously discussed in TrAILCo Exception No. 8, this standard and previously approved termination provision is reasonable, in the public interest and should not be the basis for rejecting the entire agreement.¹⁰⁸

At page 230 of the RD, the ALJs recommend that the Commission decline TrAILCo's request for approval of the Tax Allocation Agreement ("TAA") on two bases: (i) the TAA is not jurisdictional under Code Section 2107 (it is FERC-jurisdictional instead)¹⁰⁹ and (ii) the TAA is not ripe for review because TrAILCo did not offer into evidence a properly executed copy of the amendment incorporating TrAILCo as a party to the agreement.¹¹⁰ The ripeness issue was not raised by any other party in the proceedings. To the extent that the Commission disagrees with the ALJs' finding on jurisdiction, the TAA is ripe for review because the ALJs' finding is based on what appears to be a ministerial/typographical error (i.e., the amendment incorporating TrAILCo into the agreement is identified on the "terms" page as Amendment No. 5, while the

parcels of land consisting of a total of 202 acres held by West Penn for \$661,185.87, which is the amount paid by West Penn for the land.

¹⁰⁵ Under Code Section 2102, a contract or arrangement entered into with an affiliate must be reasonable and in the public interest.

¹⁰⁶ The easement and parcel acquisitions are necessary to site and construct the proposed facilities and will have no impact on West Penn's rates charged to customers. *See*, TrAILCo's MB, p. 72; TrAILCo St. 10, pp. 12-13.

¹⁰⁷ RD, pp. 226-227; Under the agreement, AESC provides to TrAILCo certain services, including technical support, planning and implementation of financial programs, counsel on corporate, legal and regulatory matters, and general and administrative services. TrAILCo St. 10, p. 13; TrAILCo Exh. MAM-2.

¹⁰⁸ Rather, any legitimate concerns about possible premature termination of the Service Agreement can easily be addressed by conditioning its approval on either: (1) some modification of the termination provision or (2) AESC seeking Commission approval prior to terminating that agreement.

¹⁰⁹ Code Section 2107 specifies that the Chapter 21 requirements are not applicable to matters involving the interstate transmission of electricity over which FERC has jurisdiction.

¹¹⁰ An amendment is currently in place, which adds TrAILCo as a party to the tax allocation agreement among Allegheny and its direct and indirect subsidiaries. TrAILCo St. 10, p. 14; TrAILCo Exh. MAM-4.

signature page identifies it as Amendment No. 4). In light of the nature of the error, the appropriate cure is to conditionally approve the TAA, pending receipt of a corrected amendment.

F. Exemption from Local Zoning

TrAILCo Exception No. 11: The ALJs erred in recommending a denial of TrAILCo's requested exemption from local zoning regulations for the buildings associated with TrAIL's substation facilities.¹¹¹

TrAILCo requested an exemption from local zoning regulation for the buildings to be constructed as part of the projects' substation facilities¹¹² under Section 619 of the Pennsylvania Municipalities Planning Code ("MPC").¹¹³ Because the Code preempts local municipal ordinances with respect to regulation of public utility facilities,¹¹⁴ the *only* limited circumstance to which local municipal zoning may apply at all is to the situation of a "building" on a property located within a municipality.¹¹⁵ Thus, it is clear that TrAILCo's request for an exemption from local zoning affects a limited set of public utility facilities – i.e., buildings – and such exemption should be granted if the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public, which is the finding required under MPC Section 619.

The RD has misconstrued the context of and requirements for TrAILCo's request for an exemption from local zoning by claiming that TrAILCo failed (1) to provide detailed specific measurements of the location of buildings within the substation properties; and (2) to identify

¹¹¹ RD, pp. 209-215; C/L No. 12; F/F Nos. 302-308, 310-317. The ALJs also erred in failing to adopt TrAILCo's requested F/F and C/L. See TrAILCo MB, Appendices C and D.

¹¹² TrAILCo MB, p. 74.

¹¹³ 53 P.S. § 10619. That section provides an exemption from municipal zoning regulation for "any existing or proposed *building*, or extension thereof" of a public utility upon a finding and determination by the Commission "that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public."

¹¹⁴ All the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licenses, used, controlled, furnished, or supplied for, or in connection with, the business of any public utility. 66 Pa.C.S. § 102.

¹¹⁵ *South Coventry Township v. Philadelphia Electric Company*, 94 Pa. Commonwealth Ct. 289, 504 A. 2d 368 (1986).

what specific provisions in local regulations affect its ability to use, construct, and develop the substation sites.¹¹⁶

There is no requirement under Pennsylvania law for examining local ordinances in the context of MPC Section 619.¹¹⁷ Indeed, requiring such level of specificity could defeat the very purpose of the exemption, by tying relief to specific zoning regulations. A municipality could then enact a new zoning ordinance *after* the exemption was granted by the Commission and claim that such exemption does not apply since it was not specifically mentioned by the Commission. Such a result would be inconsistent with the broad zoning exemption permitted if the reasonable necessity standard of MPC Section 619 is satisfied.

The ALJs insist that Pennsylvania law requires that the specific location of the building be identified to obtain the exemption. But, MPC Section 619 imposes no such "specific location" or "metes and bounds" requirement. While the ALJs point out that both Webster's and Black's Law dictionaries define the term "situation" to mean the "location", the "situation" or "location" could be general or specific. All that is needed under the MPC is a showing that the situation is reasonably necessary for the convenience or welfare of the public.¹¹⁸ Thus, the detailed litany of claimed "necessary information" specified in the RD as a prerequisite to granting this exemption¹¹⁹ is not required.

Contrary to the RD's assertion, TrAILCo's interpretation of MPC Section 619 would not give it unfettered control to develop its facilities without sufficient local oversight.¹²⁰ On the contrary, TrAILCo would still have to comply with the relevant regulatory permitting

¹¹⁶ RD, pp. 209-210.

¹¹⁷ The RD cites no authority for the proposition that the terms of specific local zoning ordinances must be provided as a prerequisite to granting the exemption.

¹¹⁸ In this case, reasonable necessity for the site comes from the need the Prexy Segment and the Pennsylvania 502 Junction Segment.

¹¹⁹ RD, p. 211.

¹²⁰ RD, p. 214.

requirements, such as those of the DEP, etc. Thus, the RD's denial of TrAILCo's zoning exemption request is premised upon the unnecessary requirement to provide details relating to local conditions that are not specified in the MPC.

G. Prexy Facilities

In an effort to address the vexatious issues associated with TrAILCo's request for approval to site and construct the Prexy Facilities, TrAILCo is filing contemporaneously with these Exceptions a Motion for Partial Stay of Proceedings ("Motion"), which is intended to provide a new and creative framework for dealing with the demonstrated reliability needs in portions of southwestern Pennsylvania.

The Motion provides a vehicle through which this Commission can avoid addressing in this proceeding the particularly contentious issues associated with the siting and need for the Prexy Facilities as a solution for the reliability needs of Washington County. The Motion requests that the Commission establish a collaborative process among interested parties in this proceeding, along with representatives from this Commission and PJM, for the purpose of developing potential *new* alternatives to the Prexy Facilities that TrAILCo could eventually bring to this Commission for consideration and ultimate approval.

Granting the Motion will obviate the need for the Commission to consider and rule on the following Exceptions related to the Prexy Facilities. In the event that the Motion is not granted, TrAILCo submits the following exceptions relating to Prexy issues.

TrAILCo Exception No. 12: The ALJs erred in concluding that the Prexy Facilities address "a minor or even non-existent problem" and that "little or no need for reinforcement in the Prexy service area presently exists."¹²¹

¹²¹ RD, pp. 141-151, 234; C/L No. 3; F/F Nos. 100, 104-109, 113-119, 120, 121, 123-130, 132 136-139, 144, 145, 150, 154-158, 162, 163, 166. The ALJs also erred in failing to adopt TrAILCo's requested F/F and C/L. See TrAILCo MB, Appendices C and D.

In arriving at the above conclusions the ALJs rejected literally *all* of TrAILCo's substantial and credible evidence concerning the issue of need from three expert witnesses: a consulting engineer for TrAILCo/Allegheny Power, PJM's Vice President of Planning and former Vice Chair of the NERC Planning Committee, and an expert independent consultant who formerly was PJM's Manager of Transmission Planning.¹²² All of such expert testimony provided detailed explanations of the NERC reliability violations being addressed by the Prexy Facilities, and consistently demonstrated a clear and present need for reinforcement of the Allegheny Power transmission system in the Prexy area. The ALJs failed to give proper consideration to TrAILCo's substantial and credible evidence and, instead, adopted essentially verbatim each and every position asserted by ECC on behalf of impacted property owners, no matter how lacking it was in evidentiary support and analysis. Neither the Office of Trial Staff ("OTS") nor OCA, while they were opposed to TrAILCo's proposal, so readily adopted ECC's extreme and unsupported views.

Furthermore, despite detailed expert TrAILCo testimony refuting the various alternatives to the Prexy Facilities that other parties offered without any supporting analysis (except by OCA, whose expert did conduct an analysis of the system), the RD relies on such largely unsupported solutions as a basis for rejection of TrAILCo's proposal.¹²³ Even with the OCA's proposed 138 kV solution, the ALJs find that it would cost \$55 million, which conflicts with the credible record evidence suggesting that the actual cost would be substantially higher, making it no bargain compared to the estimated costs of the Prexy Facilities.¹²⁴ The ALJs conclude that

¹²² See TrAILCo MB, pp. 9-16 for a detailed explanation of the application of NERC reliability standards and PJM's RTEP.

¹²³ See TrAILCo MB, pp. 30-31; RB, pp. 15-22.

¹²⁴ See TrAILCo RB, p. 17.

"relatively inexpensive and/or non-intrusive options are available, and probably should have been put in place before now."¹²⁵ The record simply does not support such a finding.¹²⁶

The fundamental conclusion of the RD is that a worst case result for doing nothing to reinforce the Prexy area is simply a local loss of load.¹²⁷ In the ALJs' view, controlled load shedding (more descriptively called "rolling blackouts") is an acceptable solution. The RD also hypothesizes the re-dispatch of generation that is not now available to assist in the Prexy area,¹²⁸ even though any redispatch of generation would require additional facilities which the ECC as the proponent of such a "solution" never analyzed. The generation the ALJs rely upon as relief for the NERC violations comes from plants that either would be unavailable for Prexy area support without additional facilities being sited and built, or have not yet been completed. No analysis was placed of record supporting any of these alleged viable solutions to reliability problems beginning 2009 in the Prexy area. This is symptomatic of the faulty analysis employed by the RD. The ALJs readily adopted any and all suggestions thrown into the case by property owner opponents without requiring so much as a scintilla of evidence supporting their reasonableness, and ignored or rejected the explanations by TrAILCo's experts as to why they would not work.¹²⁹

The ALJs readily accept rolling blackouts as a solution to any need for Prexy area reinforcement. Again, TrAILCo testified about how and why such rolling blackouts are not an acceptable solution to the needed Prexy area reinforcement.¹³⁰ The ALJs summarily rejected such explanations.

¹²⁵ RD, p. 234.

¹²⁶ Also see RB, p. 14 describing that steps have been taken over the years to apply incremental lesser solutions of various sorts to existing problems in the Prexy area.

¹²⁷ F/F No. 139.

¹²⁸ See TrAILCo RB, pp. 10-11 for explanations of why such solutions are not reasonable.

¹²⁹ See TrAILCo RB, pp. 15-22.

¹³⁰ See TrAILCo RB, pp. 10-11.

TrAILCo Exception No. 13: The ALJs erred finding that TrAILCo's siting process for the Prexy Facilities was incomplete.¹³¹

The RD finds that the route selection process for TrAILCo's Prexy project was arbitrary and unreasonable¹³² and that TrAILCo's siting effort was "incomplete."¹³³ In reaching these conclusions, the ALJs never even address the appropriate legal standard for route selection that remains in place even after the Commission's siting regulations were adopted – i.e., the selection of the route and the proposed right of way is a matter for the public utility in the first instance and will not be set aside unless the utility's exercise of its discretionary power is wanton, capricious or arbitrary.¹³⁴

TrAILCo established and utilized a detailed and reasonable process for routing and site selection lead by a team of experts, all of which was explained in detail in TrAILCo's MB.¹³⁵ The ALJs apparently believe that every conceivable aspect of siting and route selection should have been completed *prior* to seeking Commission approval. That clearly is not the law, since the Commission's own siting regulations contemplate a "phased approach" to siting that TrAILCo has taken. The siting regulations establish that the Commission will accept evidence on efforts that "have been made or will be made" regarding impact minimization.¹³⁶ By using the future tense "will be made," Section 57.75(e)(3) expressly recognizes that the various mitigation efforts are likely to be on-going *after* the siting application is filed with the Commission and even after the approval has been given.

¹³¹ RD, pp. 169-177; F/F Nos. 205, 208, 216, 217, 218, 221, 222; C/L No. 10. The ALJs also erred in failing to adopt TrAILCo's requested F/F and C/L. See TrAILCo MB, Appendices C and D.

¹³² RD, pp. 169-177.

¹³³ RD, p. 169.

¹³⁴ *Paxtown v. Pa. Pub. Util. Comm'n*, 398 A.2d 254 (Pa. Cmwlth. 254). The ALJs' tacit endorsement at page 166 of the RD of the ECC's argument that the "abuse of discretion" standard is no longer applicable is flat out wrong.

¹³⁵ TrAILCo MB, pp. 38-44.

¹³⁶ 52 Pa. Code § 57.75(e)(3).

Nor is the ALJ's' position workable. Various TrAILCo witnesses confirmed that the phased approach to siting is necessary to reflect the dynamic and fluid nature of TrAILCo's impact studies.¹³⁷ TrAILCo's identification of these resources does not end with the LRE, but in fact, contains critical additional field components that come later in the process.¹³⁸ Many details such as the engineering of structures and other specific mitigation measures cannot be finalized until the line route is approved. The RD puts "the cart before the horse" by essentially requiring, *before siting approval*, the types of information that can only be obtained *after siting approval*. This is not how transmission lines are approved and built in Pennsylvania or elsewhere, and is not how the Commission's siting regulations are intended to operate.

The typical way for the Commission to address factors/circumstances that might exist after its deliberations are complete is to enter an order approving an application with "conditions."¹³⁹ TrAILCo specifically invited the ALJs to condition any siting approval upon "TrAILCo obtaining all applicable local, state and federal permits and authorizations to site and construct TrAIL."¹⁴⁰ This practical and often-used approach was ignored completely in the RD.

To support their erroneous view that TrAILCo's siting process is incomplete, the ALJs claim that the LRE did not incorporate the Coleman-O'Donnell study regarding cultural/historic resources and the testimony of Kenneth Gayman on archeological resources. However, they are simply wrong, as a reading of TrAILCo's MB demonstrates.¹⁴¹ Similarly, with respect to the Bandel Airport, TrAILCo repeatedly advised that it would obtain the necessary FAA approvals

¹³⁷ TrAILCo St. 6-R, p. 3.

¹³⁸ TrAILCo St. 5-R, citing 36 CFR § 800.4(b)(2).

¹³⁹ See e.g., *Application of Exton Water Works, Inc.*, 1971 Pa. PUC LEXIS 5, 45 Pa. PUC 670 (1971) (certification approved subject to procurement of the requisite permitting, etc.).

¹⁴⁰ TrAILCo MB, p. 54.

¹⁴¹ TrAILCo MB, pp. 41-43.

as part of its phased approach to siting that is consistent with the industry practice and the Commission's regulations.¹⁴²

To further support their erroneous claim that siting is incomplete, the RD criticizes TrAILCo for failing to address the concerns voiced at public input hearings regarding the impact the Prexy Segment may have on local comprehensive plans/economic development.¹⁴³ In making this criticism, the ALJs, rely on the Commission's Policy Statement at 52 Pa. Code § 69.1101 indicating that the Commission "will consider" the impact of its decisions upon local comprehensive plans and zoning ordinances. In this case, TrAILCo did provide substantial and credible evidence that such impacts were considered. TrAILCo specifically testified concerning its meetings with various local agencies, and as part of the dynamic and phased process will continue to do so.¹⁴⁴

The RD also criticizes TrAILCo for relying too heavily on existing ROW and suggests that TrAIL was driven by easements acquired by West Penn in the 1970s.¹⁴⁵ The ALJs cannot have it both ways. On one hand, they claim over-reliance on pre-existing ROW, while, on the other hand, they find that "good routing techniques include the utilization of existing corridors as much as possible."¹⁴⁶ Clearly, use of existing ROW where practicable was a good aspect of the

¹⁴² TrAILCo MB, p. 53. Moreover, the ALJs' reference to *Application of West Penn Power Company*, Docket No. A-111250F0062, 1998 Pa. LEXIS 12 (March 30, 1998) is completely distinguishable from this case. In that decision, West Penn was seeking authority to site a 138 kV transmission line, which was ultimately built underground, as the proposed route in that case crossed a Runway Protection Zone. With the Prexy Segment, there is no such corresponding impact on the Bandel Airport. And, more importantly, there is no such FAA pre-approval required by the Commission's siting regulations and none is cited by the RD.

¹⁴³ RD, pp. 169-170, 175.

¹⁴⁴ For example, TrAILCo witness Halpern specifically indicated in the LRE that "[t]he routing team contacted numerous federal, state, and local agencies to gather information for the route planning process," which specifically included the Greene County Department of Economic Development, Greene County Information Technology Department and the Washington County Planning Commission. TrAILCo Exh. JH-1, p. 20.

¹⁴⁵ RD, pp. 172-173.

¹⁴⁶ F/F No. 171.

TrAIL planning process, not a basis for criticism. It is clear that the RD reflects no real understanding of the role existing ROW played in the siting process.¹⁴⁷

The ALJs' direct challenge to the "corridor" approach reflected in the Commission's existing regulations and used for decades is not only unlawful and unrealistic, but clear evidence that the RD imposes a wholly new requirement to have all answers to every possible siting and impact question known at the outset of a siting proceeding. Moreover, this attempt to change the regulatory standards applicable to an applicant in the middle of an on-going proceeding violates TrAILCo's due process rights. Procedural due process rights, which attach to a party seeking relief from the Commission under the Code, entitle TrAILCo to meaningful notice and opportunity to be heard regarding its Application prior to adjudication.¹⁴⁸ The RD's attempt to modify the corridor approach by urging the Commission to "reconsider its siting regulations"¹⁴⁹ mid-way through the process deprives TrAILCo of meaningful notice and opportunity to be heard on the standards applicable to its Application and also violates its substantive due process rights.¹⁵⁰ This proceeding is not the time for the ALJs to question or re-write the Commission's existing siting rules, let alone try to impose new standards on TrAILCo under the guise of applying them in this case.¹⁵¹

TrAIL Co Exception No. 14: The ALJs erred in failing to conclude that TrAILCo acted reasonably to mitigate the environmental impacts (including the impact on natural resources) of the Prexy Facilities.¹⁵²

¹⁴⁷ See TrAILCo MB, pp. 40, 58-59; TrAILCo RB, pp. 38, 44.

¹⁴⁸ *Cresco, Inc. v. Pa. Pub. Util. Comm'n*, 622 A.2d 997 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 504.

¹⁴⁹ RD, p. 175.

¹⁵⁰ The essence of these rights protects TrAILCo from a deprivation by the government of its property interest in seeking Commission approvals of its Application and against arbitrary and unreasonable government action like changing the rules of the game, mid-stream. See, *Levine v. Cmwlth. Dep't of Educ.*, 468 A.2d 1216 (Pa. Cmwlth. 1984).

¹⁵¹ Transmission line siting and routing is an imperfect art (not science), which is why the utility has significant latitude and discretion in the process, and why its final siting decision need only be reasonable – not perfect. See, *Re: Philadelphia Suburban Water Co.*, 54 Pa. P.U.C. 127 (1980).

¹⁵² RD, pp. 189-190; C/L Nos. 6, 8, 10; F/F Nos. 223, 224, 226, 229, 230, 231, 233, 237, 238, 239. The ALJs also erred in failing to adopt TrAILCo's requested F/F and C/L. See TrAILCo MB, Appendices C and D.

The ALJs conclude that TrAILCo did not act responsibly and reasonably in mitigating the environmental impacts of TrAIL.¹⁵³ In reaching this conclusion, the ALJs again ignore Section 57.75(e) of the Commission's siting regulations, which allows the Commission to assess environmental impacts and efforts that "have been made and *will be made ...*".¹⁵⁴ Essentially, they ask the impossible: come in with all of the information/approvals as if the line has already been sited and constructed.

The RD criticizes TrAILCo's phased approach¹⁵⁵ for lacking sufficient details regarding certain environmental impacts relating to (1) a soil and sedimentation plan; (2) the location of access roads; (3) information on the protection of ground and surface water; (4) a detailed plan to impact air and water pollution; and (5) a credible account of alternative routes. The ALJs' criticisms are baseless.

Regarding alternative routes and their environmental impacts, the record could not more clearly document the detailed approach TrAILCo and its expert siting team used in the route selection process.¹⁵⁶ That process looked at alternative line routes in relation to a whole host of environmental impacts, consistent with standard siting practice and the Commission's siting regulations.¹⁵⁷

Regarding access roads, the ALJs fail to mention that it is premature to address this resource during the line route evaluation and the siting application stages, prior to the actual construction phase.¹⁵⁸ In any event, TrAILCo provided substantial record evidence that all access

¹⁵³ RD, pp. 189-190.

¹⁵⁴ The ALJs also ignore TrAILCo's credible and substantial evidence that the phased approach is necessary, given the practical issues associated with the siting, development and construction of a major transmission line facility. See TrAILCo MB, pp. 42-43, 53.

¹⁵⁵ RD, pp. 189-190.

¹⁵⁶ TrAILCo MB, pp. 38-44; TrAILCo Exh. JH-1.

¹⁵⁷ TrAILCo MB, pp. 38-39.

¹⁵⁸ The LRE generally addresses factors related to the construction of access roads and the standard techniques used in the industry to mitigate the potential of any adverse impacts on the environment, like landslides. See, TrAILCo Exh. JH-1, pp. 52-53; Tr. 3261.

roads will be selected to minimize the impact on the environment and will be constructed in accordance with the best management practices to further minimize any environmental impact.¹⁵⁹

With respect to ground and surface water contamination, TrAILCo witness McLoughlin provided detailed testimony regarding the precautions that will be taken to prevent herbicide contamination of waterways.¹⁶⁰ Moreover, in the LRE, all relevant water issues were addressed. Once again, the ALJs chose to ignore the overwhelming evidence.

The RD's claim that "TrAILCo failed to conduct a *true* environmental impact analysis"¹⁶¹ is also incorrect. TrAILCo extensively evaluated environmental impacts, as described in the LRE.¹⁶² The same type of environmental impact analysis conducted by TrAILCo and reflected in the LRE was conducted in the other states where TrAILCo is seeking siting approval. Contrast the different perspective on environmental impacts described by the WVAPSC in its order August 1, 2008 with that reflected in the RD:

As a general matter, the Commission concludes that TrAILCo has made a good faith attempt to minimize impacts to the natural and cultural environment. Furthermore, construction, operation, and maintenance of TrAIL along the Preferred Route and the GAR [Grafton Area Route] will not cause significant impacts to the natural and cultural resources of the State because TrAILCo will conduct surveys for cultural resources, wetland, and other biological resources as required by state and federal agencies; will locate structures and access roads so as to minimize impacts to residences and other resources, including any significant unknown resources which are uncovered during the surveys ...¹⁶³

This Commission is urged to follow its own regulations and past practice, and find similarly to the WVAPSC in connection with TrAIL.

¹⁵⁹ TrAILCo St. No. 7, pp. 24, 29; TrAILCo Exh. JH-1, p. 53; Tr. 3262-63.

¹⁶⁰ TrAILCo MB, pp. 50-51; TrAILCo RB, pp. 40-41.

¹⁶¹ F/F No. 222; RD, p. 39.

¹⁶² See TrAILCo RB, p. 45.

¹⁶³ *Application of Trans-Allegheny Interstate Line Company, Application for a Certificate of Convenience and Necessity*, Case No. 07-0503-E-CN (Order entered August 1, 2008), p. 56.

TrAILCo Exception No. 15: The ALJs erred in failing to conclude that the Prexy Facilities will not pose an unreasonable health and safety risk to the public.¹⁶⁴

The ALJs conclude that TrAILCo has not met its burden of proving that the proposed TrAIL facilities would not create an unreasonable risk of danger to the health and safety of the public.¹⁶⁵ This conclusion is completely unsubstantiated by the record, as the ALJs never specify exactly how the proposed facilities pose an unreasonable risk of danger to the health and safety of the public. There is no record evidence that TrAIL will create an unreasonable risk of danger to the health and safety of the public. Rather, the substantial and credible record demonstrates the opposite.¹⁶⁶ The substantial evidence from TrAILCo's world-recognized EMF expert concluded that TrAIL will not significantly increase the public exposure to EMF, and that electric and magnetic fields are not harmful at the levels people are exposed to under transmission lines.¹⁶⁷ Inasmuch as the Commission has never denied the siting of a transmission line due to adverse health effects on humans regarding EMFs, and that TrAILCo has already undertaken to minimize EMF exposure in the design and lay out of the line (including ROW widths and line location), the ALJs erred in suggesting that EMFs have any adverse impacts on human health with respect to TrAIL.¹⁶⁸

III. CONCLUSION

The failure to reverse the RD and permit the siting of the Pennsylvania 502 Junction Facilities would be a serious mistake that is inconsistent with sound public policy and existing Pennsylvania law. The regional and interstate electric grid requires the siting and related approvals associated with these facilities. The need for these TrAILCo facilities have been

¹⁶⁴ C/L Nos. 4, 5. The ALJs also erred in failing to adopt TrAILCo's requested F/F and C/L. See TrAILCo MB, Appendices C and D.

¹⁶⁵ C/L Nos. 4, 5.

¹⁶⁶ See TrAILCo MB, pp. 44-51; TrAILCo RB, pp. 38-41.

¹⁶⁷ TrAILCo MB, p. 46.

¹⁶⁸ TrAILCo RB, p. 39; TrAILCo St. 8, pp. 6-7; TrAILCo Exh. WHB-3.

approved in West Virginia and recommended for approval in Virginia by state regulators who looked at similar evidence to that presented in Pennsylvania and made substantially different findings than the RD with respect to need, siting and environmental impacts. Those jurisdictions were able to appropriately analyze the importance of transmission infrastructure to the regional public interest, but the RD's narrow analysis fails to even consider or address these interstate and intrastate benefits.

This Commission has the clear power and authority to reverse the RD in all respects. The record evidence presented by numerous TrAILCo experts is overwhelming, yet was ignored and trivialized by ALJs who essentially created new siting standards to reach a result that is neither lawful nor credible.

TrAILCo fully understands and appreciates the controversy surrounding this proceeding, particularly with respect to the Prexy Facilities in Pennsylvania that are distinct from the rest of the multi-state TrAIL project, and in recognition of that fact has proposed a creative collaborate process to remove all consideration of the Prexy Facilities from this proceeding and allow the Commission to focus solely on the Pennsylvania 502 Junction Facilities and the related TrAILCo approvals. This represents a fair and balanced approach the Commission is urged to adopt so the intrastate and interstate benefits of the Pennsylvania 502 Junction Facilities can be realized as so clearly demonstrated by substantial evidence in this proceeding regardless of when or how the needs addressed by the Prexy Facilities are resolved.

For the reasons specified herein, the RD should be reversed in its entirety and the relief requested by TrAILCo in these Exceptions granted.¹⁶⁹

¹⁶⁹ If the Motion is granted, TrAILCo requests that the Commission address in its final order TrAILCo's request for certificated public utility status, siting approval for the Pennsylvania 502 Junction Facilities, exemptions from local zoning limited to the Pennsylvania 502 Junction Facilities and related buildings, and the approval of the various affiliated interest agreements that are essential to TrAILCo conducting its business and meeting its obligations as a Pennsylvania public utility.

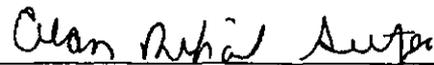
WHEREFORE, Trans-Allegheny Interstate Pipeline Company respectfully requests that these Exceptions be granted and the Recommended Decision be reversed as specified herein.

Dated: September 10, 2008

Respectfully submitted,

Randall B. Palmer, Esquire
Allegheny Energy, Inc.
800 Cabin Hill Drive
Greensburg, PA 15601-1689

Attorneys for TrAILCo



W. Edwin Ogden, Esquire
Alan Michael Seltzer, Esquire
RYAN, RUSSELL, OGDEN & SELTZER P.C.
1150 Berkshire Boulevard, Suite 210
Wyomissing, Pennsylvania 19610-1208

TrAILCo ACCEPTABLE CONDITIONS

CONDITIONS TO ADDRESS RD CONCERNS REGARDING CERTIFICATION OF TRAILCO AS A PUBLIC UTILITY AND AFFILIATE TRANSACTIONS

1. Within 90 days after the issuance of a final order by the Commission not subject to appeal or other challenge approving the siting of the Pennsylvania 502 Junction Facilities and/or the Prexy Facilities, TrAILCo shall submit to the Commission for its approval an amendment to the Service Agreement with AESC that requires Commission approval prior to the termination of the Service Agreement, which amendment shall also be filed for approval with TrAILCo's lenders, the Public Service Commission of West Virginia and the Commonwealth of Virginia State Corporation Commission [RD pp. 66, 224-226]
2. All contracts entered into by TrAILCo with affiliates requiring approval by the Commission and providing for services to TrAILCo essential to TrAILCo's ability to furnish and maintain adequate, efficient, safe and reasonable transmission service and transmission related-facilities shall include a provision that the contract may not be terminated without prior approval by the Commission. [RD p. 76]
3. On or before May 31 of each year for the preceding calendar year, TrAILCo shall submit an informational filing to the Commission that demonstrates the method of allocating the costs including, but not limited to, tax allocations, among various entities within the Allegheny Energy corporate family of any service, property, security, right or thing provided to or for TrAILCo pursuant to a contract entered into by TrAILCo with one or more affiliates that requires approval by the Commission. [RD p. 76, 226]
4. TrAILCo shall serve a copy on the Commission of any filing made with the Federal Energy Regulatory Commission (FERC) that initiates a new proceeding before FERC and a copy of TrAILCo's FERC Form 1. Service on the Commission shall be made contemporaneously with the filing with FERC. [RD pp. 76-77]
5. Within 90 days after the issuance of a final order by the Commission not subject to appeal or other legal challenge authorizing the construction of the Pennsylvania 502 Junction Facilities and/or the Prexy Facilities, TrAILCo shall submit a compliance filing with the Commission that includes a revised Amendment No. 5 to the Tax Allocation Agreement that clearly indicates that two (not three) affiliates are added and the Amendment being signed is No. 5. [RD pp. 229-230]

CONDITIONS TO ADDRESS RD CONCERNS REGARDING SITING

6. Within 90 days after the issuance of a final order by the Commission not subject to appeal or other legal challenge, authorizing the construction of the Pennsylvania 502 Junction Facilities and/or the Prexy Facilities, TrAILCo shall submit a compliance filing to the Commission that discloses the Minimum Guidelines set forth in Appendix A to the Settlement Agreement entered into by Columbia Gas and TrAILCo. [RD pp. 202]
7. TrAILCo shall comply with such Minimum Guidelines to the extent applicable with regard to all gas wells and gas transmission and distribution lines owned by persons other than Columbia Gas to the extent such persons enter into an agreement with TrAILCo setting forth terms and conditions comparable to the Settlement Agreement. [RD pp. 202-203]
8. TrAILCo shall address the safety concerns of the owners of metal roofed structures and tall farm equipment on or near the right-of-way of the Pennsylvania 502 Junction Facilities and/or the Prexy Facilities, by grounding all existing buildings within 50 feet of the edge of the ROW, if that building requires grounding and is not currently grounded. [RD pp. 203]
9. TrAILCo shall purchase any real property containing residences that are within 400 feet of the centerline of the Pennsylvania 502 Junction Segment if the owner desires to sell his or her real property, provided that in each case the real property owner shall have until the first anniversary of the in-service date of the Pennsylvania 502 Junction Segment to notify TrAILCo in writing that the real property owner has elected to exercise the option to require TrAILCo to purchase the real property at a fair market value based on the median of three appraisals. One appraisal shall be prepared by a qualified appraiser selected by the real property owner, another appraisal shall be prepared by a qualified appraiser selected by TrAILCo and a third appraisal shall be prepared by a qualified appraiser selected by agreement of the two other appraisers. TrAILCo shall pay the reasonable costs of all three appraisals. [RD p.196-197]
10. TrAILCo shall continue to work with landowners whose property will be crossed by the Pennsylvania 502 Junction Facilities and/or the Prexy Facilities, to address in a reasonable manner the reasonable concerns of those landowners. Not later than 90 days after the Commission approves the siting of the Pennsylvania 502 Junction Segment in a final order not subject to appeal or other challenge, TrAILCo shall report in writing to the Commission on the results of its efforts pursuant to this provision.
11. TrAILCo shall set up a phone number for the public to be able to contact TrAILCo about complaints concerning the 502 Junction Facilities and/or the Prexy Facilities,. [RD discussion of route generally]

ORIGINAL

DOCUMENT
FOLDER

September 19, 2008

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg PA 17120

RE: Application of Trans-Allegheny Interstate Line Company for (i) A Certificate of Public Convenience to Offer, Render, Furnish and/or Supply Transmission Service in the Commonwealth of Pennsylvania; (ii) Authorization and Certification to Locate, Construct, Operate and Maintain Certain High Voltage Electric Transmission Lines and Related Electric Substation Facilities; (iii) Authority to Exercise the Power of Eminent Domain for the Construction and Installation of Aerial Electric Transmission Facilities Along the Proposed Transmission Line Routes in Pennsylvania; (iv) Approval of an Exemption from Municipal Zoning Regulation with Respect to the Construction of Buildings; and (v) Approval of Certain Related Affiliated Interest Arrangements: Docket Nos. A-110172; A-110172F0002; A-110172F0003; A-110172F0004; G-00071229

Dear Secretary McNulty:

Enclosed find for filing the original and nine(9) copies of the following individuals Replies to Trans-Allegheny Interstate Line Company's Exceptions to the Recommended Decision of Administrative Law Judges Mark A. Hoyer and Michael A. Nemec dated August 21, 2008.

- Victoria M. Goroncy
- Margaret M. Moran
- George D. Goroncy
- Joan A. Blank
- Dan and Tina Martin
- Faith Bjalobok PhD
- Greg A. Bandel
- Arthur A. Brogley
- Michelle Minnick
- Dave Piroch and Cheryl Piroch
- Rich Layton
- Debra K. Bandel
- James R. Blockinger
- Frances M. Cooley
- Jack Minnick

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU.

BN-19210

Secretary McNulty
September 19, 2008
Page 2

- Christine A. Robker
- Henrietta Goodwin
- Laurie Nicholl
- Mark J. O'Donnell
- Richard J. Blank and Susan Foster Blank

Copies of these Replies are being served upon all parties of record in accordance with the enclosed Certificate of Service.

Very truly yours,



Susan Foster Blank

Enclosures

September 15, 2008

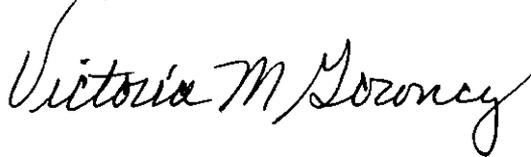
Dear Sirs:

I have filed a protest against Allegheny power/ TrAILCos application of the Trans-Allegheny interstate line. This is my response to Allegheny/TrAILcos' exceptions of ALJs' decision.

I strongly agree with the ALJs' decision that this line is not in the best interest of Pennsylvania rate payers, land owners, and our environment. This project will only benefit the power company and contribute to health risks by the pollution of our air, water and global warming to just name a few. We will be going backwards by embracing old ideas on power generation.

The ALJs' took a long and objective look at both sides and came up with the right decision, and I hope and trust you will strongly consider upholding that decision.

Sincerely,

A handwritten signature in black ink that reads "Victoria M. Goroncy". The signature is written in a cursive, flowing style.

Victoria M. Goroncy

974 Daniels Run Rd

Scenery Hill PA 15360

RECEIVED
SEP 19 2008
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

September 15, 2008

RE: REPLY TO TRAILCO'S EXCEPTIONS TO THE RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGES MICHAEL NEMEC AND MARK HOYER, DATED 8/21/08.

Dear Secretary McNulty,

On September 10, 2008, TrAILCO filed exceptions to the 364-page Recommended Decision of PUC Administrative Law Judges NemeC and Hoyer. I would like to state here, that I wholly support the conclusions arrived at by the judges in their well researched and extensive decision. The fact that the concerns of the Pennsylvanians most likely to be negatively affected by TrAILCO's ill conceived proposal were considered, along with the judges willingness to look long and hard at TrAILCO's proposal, left me with great faith in the process itself. Many of those affected were really doubtful that the PUC would even consider their concerns in the face of having to deal with big business. This decision proves that government does indeed work. While as I said, I wholly support the judges conclusions and disagree in total with TrAILCO's exceptions, there are a few points that are truly troubling to me, that I would like to discuss, in brief.

- TrAILCO consistently sites case law, which claims that the ALJ's have overstepped their bounds on ruling in this case. I believe, and indeed the Pennsylvania constitution guarantees that Pennsylvanians have the right to clean air and water and hand-in-hand with that, the right to be sure that for-profit businesses are not infringing on those rights for their financial gain. This case is a perfect example of exactly what the PUC is mandated to do.
- On Page 4, Footnote #11, TrAILCO's states that "alternatives to the line were considered and evaluated by TrAILCO and PJM". This is contrary to a statement made by Mr. Steven Herling, Vice President of Planning for PJM, who admitted under cross-examination, during the first session of the Technical Evidentiary Hearings that no other alternative to this transmission line was considered and that it is not their responsibility to consider health and human safety or the environment in their conclusions.

- On Page 20, TrAILCO states that not a single party objected to the 1.2 mile section of the 502 to Loudon portion of their proposal. I do not consider this portion to be any less important in my overall objection to the proposal than the Prexy portion. There are still people living on that segment of the line with the same concerns and fears as the other families who are affected. Moreover, in it's Main Brief, West Penn Power Industrial Intervenors, a party in this proceeding, stated unequivocally that the 502 to Loudon segment is "unreasonable" in it's cost burden on Pennsylvania businesses. Their point is very clear.
- The continued assertion of reliability issues signals to me that TrAILCo is the one who is choosing to ignore the obvious. There are hundreds of pages of well thought out research and conclusions in evidence, that prove that this so called reliability issue is non-existent. This proof just does not fit in with TrAILCo's grand plan.
- Last, but not the least of my concerns is Appendix A - "TrAILCo Acceptable Conditions". This whole document proves to be an exercise in making sure that the company's agenda remains intact. There are concessions here and there as in the agreement not to aerial spray, but all in all, they strive even in concession, to accomplish their goals, with no consideration for the affected parties.

By encouraging compromise now, after all of the insistence for the last 1-1/2 years that they "must" build this transmission line, I believe that TrAILCO has admitted that they are wrong and that the intention for this line is very different from what is stated in their application. By way of conclusion, I believe that this fact alone negates the whole application, and the application must be denied and the conclusions of the ALJ's must be supported.

Thank you for your time and consideration,



MARGARET M. MORAN
352 URQUHART ROAD
SCENERY HILL, PA 15360

September 15, 2008

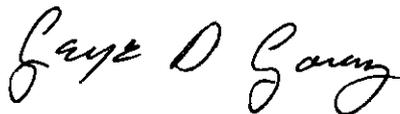
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The ALJs' took a long and objective look at both sides and came up with the right decision, and I hope and trust you will strongly consider upholding that decision.

Sincerely,

A handwritten signature in black ink that reads "George D. Goroncy". The signature is written in a cursive, flowing style.

George D. Goroncy

974 Daniels Run Rd

Scenery Hill PA 15360

Secretary James J. McNulty
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

“Reply to TrAIL Co. Exceptions”

Dear Secretary McNulty,

I am writing to let you know that I strongly support the “Recommendation” issued by the ALJs and strongly oppose the “exceptions” filed by TrAIL Co.

There is absolutely no “need” for this line and should there be a “need” in the future, we must look for alternatives that do not create more pollution. The whole nation is going “green”, yet TrAIL Co seems to be opposing this national concept. Profit, not need, is what is driving the original request for transmission proposals from PJM and the TrAIL proposal itself. Any and all non-transmission solutions must be addressed and explored.

I strongly agree with the judges that “a grandiose answer to a minor or even a non-existent problem” and, in the other case, “granting approval...at this juncture rewards a lack of foresight and proper maintenance, and has policy implications for the location of future generation that should be carefully considered before any further action is taken.”

Please agree with the judges’ recommendations, as they represent us, your constituents, and deny the “exceptions” filed by TrAIL Co.

Your constituent,

A handwritten signature in cursive script that reads "Joan A. Blank".

Joan A. Blank
1162 Daniels Run Road
Scenery Hill, PA 15360

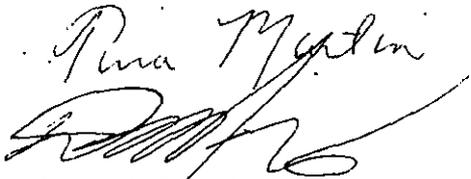
September 15, 2008

RE: Reply to TrAIL Co Exceptions

Dear James J. McNulty, Secretary of the PUC:

On September 10, 2008, Allegheny Power/TrAILCo filed Exceptions and a Motion to Stay related to the Initial Decision by the Administrative Law Judges. These exceptions serve to discredit the findings recommended by the judges to the Public Utility Commissioners. We would like to go on record to say we support the recommended decision the Administrative Law Judges made. It was the correct decision as these high voltage power lines are not needed in Pennsylvania. Our hope is that the Pennsylvania Utility Commission will follow the Judges recommendation and not make compromises with TrAILCo/ Allegheny Power. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dan and Tina Martin". The signature is written in black ink and is positioned above the typed name and address.

Dan and Tina Martin
124 Breezewood Drive
Venetia, PA 15367

September 15, 2008

REPLY TO TrAIL CO EXCEPTIONS

Mr. James J. McNulty
Secretary of the PUC

It is my contention that the exceptions filed by Trail CO are without merit. In general the exceptions are based on the false assertion that the issue of "reliability" is a self-evident proposition. This claim is counter-factual to the evidence presented at the hearings and the recommendations of the Administrative Law judges. Because the issue of "reliability" is a necessary pre-condition of their exceptions, it is my position, that absent substantiation of that claim, their exceptions lack merit.

More specifically, in reply to TrAIL CO's request for an extension regarding the Prexy Facilities, I respectfully request that the request be denied. If TrAIL Co were in fact, as they have so often claimed, concerned about the residents of Pennsylvania, they would have addressed all viable alternatives prior to submitting their proposal. Their failure to study the impact on the area and alternate solutions only further supports the claim advanced by area residents and the ALJ that the driving force behind their proposal is profit.

Finally, in response to their request for an immediate approval at Mt. Morris, I respectfully request that you follow the advice of the Administrative Law Judges and deny approval for Mt. Morris. In furtherance of their request for immediate approval, TrAIL CO again threatens "reliability." They also seem to suggest that because the line would only cross 1.2 miles of Pennsylvania and involve 4 properties it is a private matter. That is certainly not the case. Allowing TrAIL CO to proceed in essence is allowing them to set national energy policy which is a public not a private matter. This would of course give them a foot in the door to develop Prexy and other facilities in Pennsylvania. Finally, they argue that construction has begun in West Virginia. That is of course irrelevant to any decision made by Pennsylvania authorities.

In light of the above, I respectfully request that the PUC follow the recommendations of the Administrative Law Judges and deny TrAIL CO all five of their applications.

Sincerely,


Faith Bjalobok, Ph.D.

110 Robinhood Lane
McMurray, Pa. 15317

57 Bandel Road
Eighty Four, PA 15330

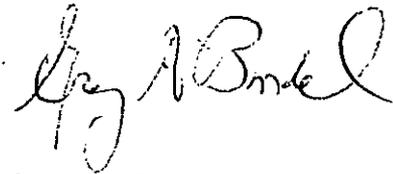
Dear Secretary James J. McNulty,

Subject: Reply to the TrAILCo Exceptions

I have read through the exceptions filed by TrAILCo and I am in full opposition to each exception.

I am sure that the Administrative Law Judges had an extreme number of pages of documentation supporting the fact that this line is not needed. My request is that you honor the recommended decision of the Administrative Law Judges and deny this line.

Respectfully,

A handwritten signature in cursive script, appearing to read "Greg A. Bandel". The signature is written in dark ink and is positioned above the printed name.

Greg A. Bandel

Arthur L Brogley
28 Letherman Bridge Road
Scenery Hill, Pa. 15360

September 15, 2008

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265

Re: Application of Trans-Allegheny Interstate Line Company for (i) A Certificate of Public Convenience to Offer, Render, Furnish and/or Supply Transmission Service in the Commonwealth of Pennsylvania; (ii) Authorization and Certification to Locate, Construct, Operate and Maintain Certain High Voltage Electric Transmission Lines and Related Electric Substation Facilities; (iii) Authority to Exercise the Power of Eminent Domain for the Construction and Installation of Aerial Electric Transmission Facilities Along the Proposed Transmission Line Routes in Pennsylvania; (iv) Approval of an Exemption from Municipal Zoning Regulation with Respect to the Construction of Buildings; and (v) Approval of Certain Related Affiliated Interest Arrangements; Docket Nos. A-110172, A-110172F0002, A-110172F0003, A-110172F0004 and G-00071229

Dear Secretary McNulty:

In accordance with this Commission's letter of August 21, 2008 and its regulations at 52 Pa. Code 5.533, enclosed herewith for filing on behalf of myself, Arthur L Brogley, are an original and nine (9) copies of my Replies to Exceptions of Trans-Allegheny Interstate Line Company, dated September 10, 2008.

Copies of these Exceptions are being served upon all parties of record, in accordance with the enclosed Certificate of Service.

Very truly yours,



Arthur L Brogley

Abbreviations

ALJs – Administrative Law Judges
TrailCo – Trans-Allegheny Line Company
PUC – Public Utility Commission
OCA – Office of Consumer Advocates
NIETC – National Interest Electric Transmission
Corridor
ECC – Energy Conservation Council of Penna.
PSC – Public Service Commission
DSM-Demand Side Management
ROW-Right of Way

DOE – Department of Energy
DEP – Department of Environmental
Protection
FAA – Federal Aviation Administration
DOT – Department of Transportation
NIMBY-Not in My Back Yard
RD – Recommended Decision
SCC-State Corporate Commission
PIH- Public Input Hearing
mG- milligauss

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re: Application of Trans-Allegheny Interstate Line Company (TrailCo); Docket Nos. A-110172, A-110172F0002, A-110172F0003, A-110172F0004, and G-00071228

Reply to Exceptions of Trans-Allegheny Interstate Line Company, dated September 10, 2008, by Arthur L Brogley. TrailCo filed these Exceptions in response to the Administrative Law Judges (ALJs) Recommended Decision (RD), dated August 21, 2008, in regards to the Application and Docket Nos. referenced above. Following is my Reply to TrailCo's Exceptions.

Arthur L Brogley
28 Letherman Bridge Road
Scenery Hill, Pa. 15360

Date: September 15, 2008

Dear Secretary McNulty:

Enclosed is my Reply to Exceptions of TrailCo in this matter. Following will be an Introduction, some General Comments, Specific Comments on TrailCo's Exceptions, Comments on TrailCo's Motion for Partial Stay, and a Conclusion. Thank you for your consideration of this important matter.

INTRODUCTION:

Early in the year of 2007, through conversations with my neighbors, I learned of a large electric transmission line that was possibly being proposed in our area, and could be sited very close to us. I was informed by a neighbor that a local community informational meeting was scheduled at a nearby Church. I attended that meeting, and information was provided by some knowledgeable local citizens. This was the start of my interest in this project, and the long and tiring journey that was to follow, and continues to this day. Many more similar meetings were to follow, and I attended every one I became aware of, in both Washington and Greene Counties. I'm pretty certain I attended all of them. In May of 2007, I was officially informed by TrailCo that the proposed line route passed through my property. I later learned from TrailCo that the edge of the 200 ft right of way of the proposed 500 kv line was approximately only 15 ft. from the corner of my home. Following is a list portraying my involvement in these proceedings to date: I attended all community meetings and workshops I became aware of, some included presentations from elected officials, representatives of the Pa. PUC, the OCA, attorneys, and experts in the electric transmission fields; I attended all of TrailCo's Open Houses in Washington and Greene Counties, and talked with their representatives; I filed a Formal Protest with the Pa. PUC; I attended the PUC Pre-Hearing Conference in Pittsburgh; I attended all the Public Input Hearings in both Washington and Greene Counties, and was present from the start through adjournment; provided oral and written testimony at the Greensboro Public Input Hearing; I was present at most of the Site Visits conducted by the ALJs, in both Washington and Greene Counties, missing one afternoon due to a prior appointment; I provided oral testimony at

the site visit at my home; I provided a written response to TrailCo's Objections to Exhibits I submitted at the Public Input Hearings and was successful in retaining them in the record; I attended all the Evidentiary Hearings held by the PUC at the State Office Building in Pittsburgh; and I read through TrailCo's complete Application, all correspondence from the PUC, Trial Staff, OCA, TrailCo, etc., plus all the Testimony available to me from parties on both sides of the argument. I also attended grassroot meetings of concerned citizens in West Virginia and Maryland; attended 2 Public Input Hearings in West Virginia and provided oral and written Testimony in Grafton; attended and provided oral and written testimony at two Department of Energy meetings concerning the Designation of National Interest Electric Transmission Corridors (NIETC) in both Arlington, Virginia and Pittsburgh, Pa; joined and am active in a grassroot organization called Stop the Towers, in opposition to this huge and unneeded project; joined and am active in the Energy Conservation Council of Pennsylvania; and have joined and am a Plaintiff in the civil suit contesting the validity of the alleged West Penn Power easements. I have written and sent numerous letters and E-mails to Elected Officials, the DOE, the DEP, the FAA, the Pa. DOT, etc. My wife and I have also spent countless hours on fund-raising projects, to assist in the legal effort of challenging a huge corporation with unlimited resources. We spent numerous hours manning booths and knocking on doors, to educate our community.

As you can see, this proposed project has consumed my life and my wife's life, for the past 17 some months. We have been forced to endure extreme emotional stress and financial burden. Countless hours have been spent attempting to reveal the truth, analyze both sides of the argument, and sort out the exaggerations, misinformation, and half truths. These countless hours have altered our daily lives, cost us lost sleep, interfered with family functions, prevented vacations, and prevented us from spending time on hobbies, trips with the grandchildren, and projects that got put on hold. That time lost can never be recovered, and the stress and anxiety continues. I am sure you can appreciate the huge negative affect that this proposed project has had on our lives, along with all the other families in the path of, or in close proximity to the proposed 500kv line, the 138kv lines, and the proposed substations.

GENERAL COMMENTS:

As is apparent from my Introduction, I have made every effort to educate myself on this matter. I have taken an objective view of both sides of the argument. Though it is true that if this project were to be approved, as presented, my home and family would be severely impacted in a negative manner. However, I understand that our modern society demands an adequate electrical grid system, so that we all can enjoy the modern conveniences that reliable electricity service can provide us. TrailCo proposed the Prexy facilities to address alleged reliability issues In Washington County. Had TrailCo adequately proven that reliability issues existed, and the proposed 500kv transmission line was the correct, best, and most cost-effective means of addressing these concerns, I would have accepted the fact, albeit reluctantly, that a power line in my backyard would have to be tolerated. I was offended, as were the ALJs, and I'm sure everyone else impacted by this monstrous project, that TrailCo would stoop to the level of name calling, and refer to us as "self-interested NIMBYs". However, this did not surprise me, since I closely followed this whole process, and witnessed the arrogant and intimidating attitude that TrailCo portrayed throughout this process, along with the unethical actions of their land agents, as revealed during the Public Input Hearings. In reality, TrailCo's "self-interest" has been at the forefront of their drive to get this project approved.

After reviewing the Recommended Decision, I unequivocally agree with all the ALJs conclusions. The most important issue is the proof of "need". The burden of proof is on TrailCo, and the ALJs correctly concluded that TrailCo failed to prove a need for the Prexy Segment, and failed to prove a need for the 502 Junction Segment. On page 112 (b) of the RD, "As stated above, we believe that economics led to the creation of the Trail proposal. Economics, not reliability, is the impetus for both the original request for transmission proposals from PJM and the TrAIL proposal itself." On page 234 of the RD, the ALJs correctly describe the proposed Prexy Segment project as a grandiose answer to a minor or even non-existent problem. As to the 502 Junction to Loudoun segment, the ALJs state that granting approval rewards a lack of foresight and proper maintenance, and go on to question the modeling that was done to support the alleged need. TrailCo repeatedly criticizes and attempts to discredit the conclusions of ECC's need witness, Mr. Loehr. (Exemptions pgs 13, 14, 15, 19, 20) Of note is the fact that TrailCo declined to put Mr. Loehr on the stand at the Evidentiary Hearings for cross-examination. The only conclusion to be drawn from this is that TrailCo had completely accepted everything that Mr. Loehr had entered into the record. The ALJs questioned: the route selection and siting of the proposed lines; issues regarding the environmental impact; issues regarding the certification of an out-of-state corporation with few or no full time employees, no discernable assets, and no independent ability to provide the proposed service, as a public utility; issues related to exemptions from local zoning provisions; issues related to the approval of certain affiliated interest agreements; and lack of alternatives in the record. On page 237 of the RD, the ALJs state " We recommend the denial of all five pending Applications based on our conclusion that TrailCo has failed to carry its burden of proof with regard to all." After my review of the facts in this case, I must conclude that this is the only conclusion the ALJs could reach. Again, I fully support the complete RD.

I must admit that prior to this RD, I questioned whether this system in place within the Pa. PUC would truly consider the concerns of the average citizen, and make decisions that truly are in the best interests of the public. I believed that the chance of getting the "right" decision with the best interests of the public in mind, was slim to none. I believed that a large corporation with the power and influence they possess, along with their unlimited resources, would ultimately win out, even if the facts in the case proved their arguments wrong. The "correct" conclusions reached by the ALJs in this matter have renewed my faith in the system. It truly is possible to stand up to the interests of the big boys, and do what's in the best interests of the people of this great Commonwealth. The ALJs had the daunting task of sifting through the mountains of paper created from this process, politely enduring the tedious processes of the Public Input Hearings, the Site Visits, and the Evidentiary Hearings, and doing the necessary research. I commend them on a job well done. The final decision rests in the hands of this Commission. I have faith that after a thorough review of the facts in this case, and a review of the excellent work done by the ALJs, this Commission will agree with the Recommended Decision and deny all sections of TrailCo's Application.

I am not on the full service list, but to the best of my knowledge, TrailCo is the only party in this proceeding to have filed Exceptions to the ALJs Recommended Decision. The only conclusion that can be drawn from this is that TrailCo stands alone, and all other parties involved in these proceedings; all those that participated in the Public Input Hearings, including those who spoke in support of the project, Elected Officials, those that filed Protests, those that filed to Intervene, and all the parties that participated in the Evidentiary Hearings, fully agree with the Recommended Decision of the ALJs.

SPECIFIC COMMENTS ON TRAILCO'S EXCEPTIONS

INTRODUCTION: On page 1, TrailCo states, "The RD confuses the "public interest" with narrower affected property owner interests." A review of the ALJs discussions clearly indicate a broad overall view of the pluses and negatives this project will have on all the citizens, ratepayers, and the environment, across the region. (RD pg 81,b and pg 111-112)

On page 2, TrailCo states that the Public Service Commission of West Virginia and a Hearing Examiner for the State Corporation Commission of Virginia have concluded that constructing their portions of the 502 Junction Segments is in the public interest, and further states the Mid-Atlantic region "needs" new electric transmission line infrastructure, and that Pa. 502 Junction Facilities and the balance of the TrAIL through West Virginia and Virginia is needed. It must be noted that TrailCo failed to prove a "need" during the W. V. Evidentiary Hearings, as evidenced by the Proposed Order of the W.V. PSC Staff, whose recommendation to the Commission was to deny the Application due to TrailCo's failure to prove a "need." Their questioning of TrailCo's modeling and proof of need arguments essentially mirrors the conclusions of the Pa. ALJs. (PSC Staff, Proposed Order, 2-29-2008, case no. 07-0508-E-CN) It was only after closed door "deals" were made, money was promised in the right places, and other concessions were offered by TrailCo to mitigate some of the adverse affects of the line, did the Commission approve the Application. As to Virginia, it comes as no surprise that the Hearing Examiner would recommend approval of this project. Virginia is the one state that stands to benefit from this line. Getting less costly electricity, no need to build local generation, no dirty pollution in their backyard, and no requirement to employ demand side management, conservation policies, or alternative generation, are some of the benefits. Note also that there was extensive opposition to this project from many in Virginia; Dominion Power conveniently bought the CPV Warren Facility under construction, and moved ahead it's projected start up date; and to date, the VaSCC has yet to render a final decision.

TRAILCO EXCEPTION NO 1: The ALJs must assume an overall view of the positives and negatives associated with a project of this magnitude. They have identified critical matters that must be considered. To do less would not be in the public interest. Not having the "authority" does not diminish their responsibility to "consider" these concerns, and the Commission will weigh this information, as they will TrailCo's arguments. As to greenhouse gas and emissions, it is a known fact that burning fossil fuels for electric generation do pollute the air and water and contribute to global warming. The claim by TrailCo that the description of the lingering adverse effects from mining and electric generation in Greene County is unsupported, is ridiculous. One only needs to drive through Washington and Greene Counties to see evidence of this. The term "super-highways" and the initiative to bring low cost coal resources to the market, comes directly from PJM. (RD 113)

TRAILCO EXCEPTION NO 2: It is obvious that the ALJs did completely consider the regional or interstate benefits when evaluating this proposal. (RD 111-112) TrailCo was unable to prove a need for this line. The Pa. ALJs, along with the West Virginia PSC Staff, both questioned the modeling that was done to support the alleged need for the 502 Junction to Loudon segment. (RD 234-W.V.PSC Staff Proposed Order). Economics, not public need or reliability, is the driver for the Trail Project. (RD 112)

TRAILCO EXCEPTION NO. 3: Allegheny Energy has referred to the Trail Project as a “growth driver”. The projected increased generation in western PJM, approximately 3.2 million megawatt hours per year, would be from the Allegheny Power system. Generators in western PJM zones can expect to see increased revenues of 1.8 billion per year by 2013. TrailCo will receive a return on equity of 12.7%. TrailCo is guaranteed the ability to recover all costs if the project is abandoned. (RD-21, lines 78-82) As you can see, this is a win-win for TrailCo. If “load pockets” truly exist in the Mid-Atlantic area, it is the responsibility of the states and utilities that serve these area to address the shortcomings of their grid. Proposing to run a huge extension cord from SW Pa. to deal with these load pockets is totally absurd. TrailCo has correctly stated that the DOE has identified much of the Mid-Atlantic region as a “Critical Congestion Area”. Unfortunately, the proposed Trail project does not meet the criteria identified by the DOE, as an acceptable solution to resolving issues in a Critical Congestion Area. The DOE has adapted a “source-and-sink approach”, where the source is an area of existing or potential future generation, and sink refers to the area of consumer demand or “load.”(DOE Docket no. 2007-0E-01, vol. 72, pg 56995) TrailCo made the decision to construct the 502 Junction at an arbitrary point along an existing, and by their own admission, heavily loaded east-west 500kv transmission line. A substation generates no power. The proposed line will terminate in an area where multiple 500kv lines already exist and run parallel. Had this proposed line actually originated at a source of generation, and terminated at an identified “load pocket”, it would pass the test. Unfortunately it doesn’t. Note also that there are numerous legal challenges to the NIETC Designations, and suits pending against the DOE. As to the original Trail project being only a concept, without a specific route or lines, I would disagree. The document entitled, The Trans-Allegheny Interstate Line Project, dated Feb. 28, 2006, was presented to PJM, and a map on page 5 clearly shows the route of the line with substation connections and text on page 9, identifies the line as a 500kv transmission line, built to 765kv standards if so directed by PJM.

At TrailCo’s Exceptions, page 13, TrailCo states that PJM does not use economic dispatch for purposes of its studies of compliance with reliability criteria. However, economics played a role in developing the Project Mountaineer plan, where PJM discusses how to bring low cost coal resources to the market. (RD 30, 145) On page 14, TrailCo mischaracterizes the ALJs views on load shedding. They infer that the ALJs accept an inferior system, where load shedding is required because of the limitations of the system. I believe the record shows that the ALJs only discuss load shedding as an acceptable manual adjustment after a contingency, in other words, a failure on a segment of the system.(RD 25, line 108) TrailCo states, “Load shedding is a polite term for rolling blackouts,”(Exceptions pg14) TrailCo has repeatedly used the term “blackouts” in their Testimony before the Commissions of all 3 states, on their website, press releases, and editorials. They consistently compare the Prexy area, and the Mid-eastern area, to situations in the past that lead to a blackout. There is no comparison, and ECC expert, George Loehr, correctly discusses the differences, and correctly concludes that TrailCo is simply employing “scare tactics.”(RD 98)

TRAILCO EXCEPTION NO 4: The ALJs correctly conclude that TrailCo never seriously considered “any alternative” to the Trail project. I’ve reviewed the record, and was present at the Evidentiary meetings, and I find nothing to support their claim. Mr. Lanzalotta had no problem designing a fix for the Prexy area, assuming that there actually are reliability issues, in a short time period. Clearly, TrailCo never made any attempt to discover a less costly, more reasonable,

and more environmentally friendly alternative to either Trail project. If they had, the record would show it. On page 18, Allegheny Power claims to be committed to implementing DSM programs, however in the Prexy area, where they claim to have recognized reliability issues, dating years back, no DSM programs have been developed or implemented.

TRAILCO EXCEPTION NO 5: If the Trail Project would truly solve all the reliability issues that TrailCo claims exist in eastern PJM, and they claim that they will, then common sense would indicate that new generation in the east WOULD NOT be necessary.

TRAILCO EXCEPTION NO.6: The Siting regulations are clear. Alternatives must be presented, and a complete analysis of each must be done, and the best route is then decided, based on criteria spelled out in the regulations. TrailCo failed to do this. Another issue not addressed is the arbitrary location of the proposed 502 substation. This substation could have been positioned anywhere along the existing 500kv line, possibly even out of Pa. Clearly, this spot was chosen because of it's alignment with the 30 year old West Penn alleged ROWs. Along with questions about the route selection, questions should be raised about the substation location.

TRAILCO EXCEPTION NO 7: It is clear that the ALJs found TrailCo's siting process was incomplete and that TrailCo did not act reasonably to mitigate the environmental impacts in relation to the whole project. The mere fact that the 502 segment is 1.2 miles long, doesn't excuse TrailCo from abiding with the regulations. Without a complete study and analysis of alternatives, TrailCo cannot claim that since they chose the shortest route, it automatically qualifies as the route with the least impact on the environment and resources.

TRAILCO EXCEPTION NO 8: On page 23, TrailCo claims that not a single party in this proceeding challenged TrailCo's technical capacity. I am a party in this proceeding, and I did challenge TrailCo's technical capacity in my Testimony presented at the Public Input Hearings. (Testimony of Arthur L Brogley page 11) I expressed similar concerns to the ones expressed by the ALJs. My opinion of TrailCo is that this company, merely consists of a piece of paper. Nothing in this record convinces me otherwise. This Commission must seriously consider who should or should not be considered a "Public Utility", in Pa. The ALJs concerns are valid.

TRAILCO EXCEPTION NO. 9: Since it is clear that there is no "need" for this project, there is no need for the power of eminent domain. I agree with the conclusions reached by the ALJs.(RD-pg 235) I also touched on this matter in my Testimony at the Public Input Hearings.(pg 11)

TRAILCO EXCEPTION NO. 10: I agree with the ALJs denial of certain affiliated interest agreements, since there is no need for this project. I also requested this denial in my Testimony.

TRAILCO EXCEPTION NO. 11: I agree with the ALJs that TrailCo provided no information about the facilities other than a general description of the buildings and contents. No zoning ordinances were sited, no specific locations were given, and the request is deficient. (RD 209-215) I expressed my concerns about the septic system and diesel tank. (My Testimony-PIH pg 11) On page 29 of TrailCo's Exceptions, under G. Prexy Facilities, TrailCo asks this Commission to grant a Motion for Partial Stay of Proceedings in regards to the Prexy Facilities.

It is clearly evident that TrailCo was unable to prove a need for the Prexy segment. I would ask that this Commission not grant this Motion, and based on the facts in this matter, deny all of TrailCo's Applications as recommended by the ALJs. If West Penn Power (or Allegheny Power) believes that some upgrades are necessary, in the Prexy area, it is their responsibility to test, analyze, and present a reasonable solution to the PUC, at a future date, for consideration.

EXCEPTION No. 12: The burden of proof is on TrailCo. In regards to the Prexy Facilities, TrailCo has failed miserably, from the misapplication of NERC Reliability Standard TPL-003-0 Category C3 to simultaneous double contingency events (RD pg 23), up to proposing a huge and expensive transmission line with an average load rating more than 7 times the entire projected 2009 load in the Prexy area. Although this line can accommodate an average load of 4161 MVA, it is expected to carry an average load of 260 MVA. (RD pg32) Talk about overkill?

In 1980, this Commission denied an Application by West Penn Power that proposed a similar project to the current Prexy proposal, essentially following the same general route of the current proposal, referred to as the Harrison-Prexy-Yucon project. Incredibly, TrailCo is essentially using the same arguments and load tests, and simultaneous double contingencies, as West Penn did back in 1980.(RD pg170) West Penn argued back then, that if this line was not approved, reliability issues would surface. Sound familiar? Fortunately, the Commission saw through this smoke screen, and correctly denied the Application. Interestingly, 28 years have passed, and the grid has done just fine. TrailCo has argued that the development along the I-79 corridor such as Strabane Square, Trinity Point and The Foundry, (actually these are all along Route 19) and the expansions at Southpointe, the Meadows, growth at the California Technology Park and the Tanger Outlets, are drivers for the Prexy Facilities.(RD pg 120) I've been to all these sites, and I've noticed minimal growth at Southpointe and California Technology Park; Strabane Square, Trinity Point, and the Tanger Outlets are there, completed, operational, and the lights are on and the air conditioners are running. At the Meadows, the lights are on, the air conditioners are running, and the slots are on. At the Foundry, all the stores have closed, and there's just empty buildings. What TrailCo neglects to mention is all the heavy industry that has left the area in the past 30 some years. In the city of Washington: Jessop Steel's Electric Arc furnace Melt shop, Foundry, Bar Mill, and Specialties; Washington Steel; Brockway Glass-2 plants; Findley Clay; Molycorp; Hazel Atlas Glass-2 plants; National Annealing Box; TriState Engineering; Plasteel; and others whose names have been lost to memory. In Canonsburg: Fort Pitt Bridge; McGraw Edison; Haws Refractory; Crile Metalizing; Atlas Railroad; Westinghouse Brake; and others. In Houston: Washington Steel's Electric Arc Furnace Melt Shop. In Scenery Hill and Eighty-Four: Afsc; Kelly Industries; Robinson Pipe Company; and soon; 84 Mine. In Meadowlands: RCA, just to mention a few, along with the many stores that have closed. The Washington Mall is essentially empty, note all the empty storefronts in Washington, Brownsville, and many of the towns along the Monongahela River. Not claiming to be an expert, but it's my belief that one 20 Ton Electric Arc Furnace would consume more electricity in a day, than all the new shopping centers mentioned by TrailCo, in a week.

TRAILCO EXCEPTION NO. 13: I agree with the ALJs conclusion that the siting process for the Prexy Facilities was incomplete. TrailCo had ample time from when issues were raised at the Public Input Hearings, until the present to start addressing them. TrailCo choose a do nothing attitude. A good faith effort may have influenced a more favorable recommendation by the ALJs. Many of these issues need to be addressed before the Commission can make an informed

decision on the siting of these lines. I find nothing in the record that the ALJs believe that every conceivable aspect of siting and route selection should have been completed prior to seeking Commission approval. (Exceptions pg 32) What is clear is that very little was done. For example, way back in March of 2007, I sent a letter to Allegheny Power expressing my concern that the proposed 500kv line was close to Bandel Airport. You would think that TrailCo would have notified the FAA and the PaDOT at the time, but even as recently as their filed Exceptions, they keep saying they will get the necessary FAA approvals.(Exceptions pg33) Had they just done the right thing, maybe they wouldn't be in the situation they're in now. I suspect they haven't done so, because of the possibility that the FAA may not give them the answer they're looking for. This may also be true of other approvals they need to acquire. Commission approval up front would make it much easier to forge ahead. TrailCo has a hard time understanding the difference between an easement that has infrastructure on it, and one that has never had any structures on it. (Exceptions pg34) An easement with existing infrastructure should be the preferred choice for updating or paralleling, if possible, before placing new structures where they've never been before. Also, there is a question as to the validity of the 1970's ROW.(RD pg37) By TrailCo preselecting the route they wanted to use, (the alleged West Penn easements) and presenting this choice to Louis Berger, they in essence "hand cuffed" them into picking the route TrailCo wanted, and disregarded any analysis of the other alternatives.(RD pg167) TrailCo infers that the ALJs are directly challenging the "corridor" approach to siting, and this violates TrailCo's due process rights(Exceptions pg35) I disagree with TrailCo's assessment. This Commission can decide what level of specific information it needs to reach an informed decision, and must equally consider the due process rights of the affected property owners. (RD pg 175)

TRAILCO EXCEPTION NO. 14: I believe that the ALJs do recognize that some solutions to reasonably mitigate the environmental impacts can occur after an approval. But what TrailCo has provided is so lacking, that the ALJs had no choice but to come to the conclusion they did. I find no where in the record where the ALJs request TrailCo to "come in with all the information/ approvals as if the line has already been sited and constructed."(Exceptions pg36) What is clear is that TrailCo fell way short of providing enough information for anyone to draw an informed conclusion. The suggestions provided by the ALJs as to what TrailCo could have provided are completely reasonable.(RD pgs 189-190) A good faith effort after the Public Input Hearings, would have helped their case.

TRAILCO EXCEPTION NO. 15: The exposure of my family and visitors at my home, to continuous excessive amounts of electric and magnetic fields has been one of my greatest concerns. TrailCo has indicated a magnetic field of 63 mG at the edge of the 500kv circuit.(RD pg43) Since TrailCo has placed the edge of the ROW at approx 15 feet from the corner of my home, how much continuous exposure of the magnetic fields will my family endure while sitting in our living room? TrailCo doesn't indicate what the exposure would be directly under the lines. Any time my family is in our backyard, or my grand children are playing there, we will be under these lines. I purchased my own Gauss Meter and took readings under the 500kv lines in the Mount Morris, Pa. area, and got readings as high as 150 mG. The fact that TrailCO's proposed 500kv line is designed to carry more current than any existing 500kv line in the area, and more current directly increases the EMF's, and therefore the levels under the wires in my backyard could be significantly higher. Major studies have shown that a continuous exposure of 4 mG is the threshold level for health concerns.(PIH- My Testimony, Exhibits H,I) Many other

homes along the path of these proposed lines are also very close. The possibility of a tower collapse or wire falling due to mine subsidence, natural disaster, terrorist attack, or some other situation, could drop a tower or wire onto my house. I have concerns about Herbicides entering my well, and spring, 3 large natural gas transmission lines very close to my home that will be directly under the proposed lines, and other concerns. (PIH-My Testimony, pg 2-6) I conclude that the Prexy Facilities, WILL pose an unreasonable health and safety risk to many of us.

TRAILCO'S CONCLUSION: TrailCo claims that the record evidence presented by numerous TrailCo experts is overwhelming, yet was ignored and trivialized by the ALJs. (Exceptions pg39) Nothing could be farther than the truth. The ALJs did analyze what TrailCo provided, and unfortunately for TrailCO, their evidence was severely lacking. Considering what was provided to them, the ALJs came to the only conclusion that was possible, to recommend denial of the complete Application.

TRAILCO'S REQUEST FOR MOTION FOR PARTIAL STAY: I am totally opposed to TrailCo's proposition to establish a collaborative process to discuss, review, analyze and develop new alternatives to the Prexy Facilities. To agree to participate in this collaborative process would be an admission on my part that I agree with TrailCo's claim that there are real reliability issues that need to be addressed in the Prexy area. In actuality, I agree with the ALJs conclusion that little or no need for reinforcement in the Prexy service area presently exists, and that the proposed Prexy Segment project is a grandiose answer to a minor or even non-existent problem.(RD pg. 234) "All active collaborative participants shall provide PJM with sufficient information to timely consider, review and approve any such alternatives to the Prexy Facilities should such alternatives be within PJM's jurisdiction and purview"(Motion for Partial Stay pg6) My take on this is that TrailCo wants the participants, in my case, a property owner, to fund an expert to do the load flow analyses necessary to create another alternative to their proposed Prexy Facilities. Since the majority of us do not have the technical fitness to conduct such an analysis, or the financial means to hire an expert to do so, TrailCo knows we cannot come up with the needed information to provide to PJM. Their conclusion, after the 90 day period, will be that the collaborative group was unable to come up with a feasible solution, and therefore, this Commission should approve the proposed Prexy Facilities as presented in this Application. This "late in the game" proposition goes way beyond absurd. The facts of the matter are: 1. TrailCo is not recognized as a public utility in Pa. 2. TrailCo has stated that West Penn is responsible for providing adequate electric service in this area. 3. Those parties that TrailCo has identified to be included in the collaborative group are not responsible for resolving potential reliability issues in this electric service area, nor do they have the technical or financial means to do so. 4. The ALJs have correctly determined that little or no need for reinforcement presently exists in the Prexy area. 5. TrailCo has failed to prove a need for any reinforcements. 6. If West Penn believes enhancements in the Prexy area are necessary, it is their responsibility to identify, prove they exist, propose a reasonable solution, and seek approval from this Commission at a later date. I would ask that the Commission deny this Motion for Partial Stay.

MY CONCLUSIONS:

1. I would ask this Commission to disregard the TRAILCO ACCEPTABLE CONDITIONS and CONDITIONS TO ADDRESS RD CONCERNS REGARDING SITING as found in Appendix A of TrailCo's EXCEPTIONS. An acceptance of these conditions does not justify an approval of this Application. The record shows that TrailCo fell way short of providing adequate information and proving their claims, to permit this Commission to approve this Application.

2. TrailCo has repeatedly urged this Commission to adapt the findings of the West Virginia Public Service Commission in their Final Decision relating to the Trail project in their state. As stated earlier, the PSC Staff recommended denying the Application upon commencement of their Evidentiary Hearings. It is only after "deals" were made that the Commission caved in and granted an Approval. It is important to consider that we are talking about a state that permits private companies to literally blast the top of mountains off, bull doze the debris into the valleys and streams below, with a total disregard for the environment, a total disregard for the pollution of those streams, and a total disregard for the people, communities, and schools in the area. This is done to access the coal to feed power plants and these very lines. Unfortunately, in West Virginia, the bottom line is the bottom line, and money for a certain few is the top priority. Fortunately, Pennsylvania holds itself to much higher standards. I would ask this Commission to seriously consider the weight they give to the West Virginia ruling.

3. I would ask this Commission to recognize the diligent efforts of the Administrative Law Judges in accurately weighing all the evidence, and agree with their Recommended Decision, and Deny the complete Application.

4. I would ask this Commission to Deny TrailCo's request of a Motion for Partial Stay of Proceedings and Request for Expedited Consideration. This request is unreasonable, serves no purpose, is unworkable, and certainly is not a logical solution to anything. As TrailCo has stated, West Penn bears the responsibility of addressing any issues with their system.

Before the Commission could even consider approving such a request, they would have to do many other things. They would have to grant a Certificate of Public Convenience and recognize TrailCo as a Public Utility, Grant them authorization to construct transmission lines and substations, Grant them the Power of Eminent Domain, Grant them exemptions from zoning regulations, and approve the Affiliated Interest Arrangements. As the ALJs have clearly demonstrated, TrailCo has failed on their burden of proof on all. There is no justification for approving this request, and the mere fact that TrailCo has even proposed it, is an admission of their failure.

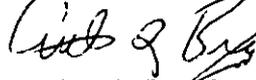
5. TrailCo is willing to put the Prexy Facilities on hold, and are urging this Commission to expedite an approval on the 502 Junction segment. Before this could happen, the Commission would have to first approve all the items above. Again, the ALJs have concluded that TrailCo has failed on their burden of proof on all. They are attempting to down-play the negative effects of this segment, since it's only 1.2 miles long, and in their opinion, has generated less opposition. In reality, this is the most important segment of the entire project for them. Approval of this 1.2 mile segment gets their foot in the door, and grants them recognition as a "Public Utility" in Pa.

As stated previously, a substation generates no power. This project will only add more load to a line that is currently heavily loaded. If approved and built, TrailCo will immediately be back before this Commission seeking to add another line into the 502 substation. They will do load flow analyses, take this new line out of service, and prove that reinforcements are needed. Permitting TrailCo to build this substation, and/or the Prexy substation, gives TrailCo exactly what they want, a central hub to add numerous hv lines, into and out of, in the future. PJM has already created maps depicting this very thing, indicating possible future "enhancements" of the grid system. These maps were entered into the record during the hearings. Permitting this 1.2 mile segment, opens the door for severe exploitation of Pennsylvania, it's residents, property owners, rate payers, and the environment in the very near future. Now is the time to stop this insanity. Once something like this is approved, the door is open, and then it WILL be too late.

6. I would ask this Commission to completely disregard and not consider the Exceptions that have been filed in these proceedings. On the final page of the Exceptions, the signature of a Mr. Alan Michael Seltzer appears. Directly above his signature it states: "WHEREFORE, Trans-Allegheny Interstate Pipeline Company respectfully requests that these Exceptions be granted and the Recommended Decision be reversed as specified herein." I do not recognize an entity with the title of "Trans-Allegheny Interstate Pipeline Company" as being a party in these proceedings.

Dated: September 15, 2008

Respectfully submitted,



Arthur L. Brogley
28 Letherman Bridge Road
Scenery Hill, Pa. 15360

Frances M. Cooley
324 Oak Spring Road
Marianna, Pa 15345

September 12, 2008

Secretary James J. McNulty
2nd Floor, Keystone Building
400 North Street
Harrisburg, PA

Subject: Reply to TrAIL Co Exceptions

Dear Secretary McNulty;

I am writing to you as someone who has previously filed a protest to Allegheny Power's TrAILCO project. I am writing to oppose AP's filing of exceptions and request for a stay of the Administrative Law Judges' recommendations. I fully support the ALJs' recommendations and oppose AP's filing. The judges listened to days upon days of testimony from regular citizens as well as experts. They waded through mountains of exhibits. They took weeks and weeks to evaluate all this information and testimony in order to come to as fair a decision as possible. I believe they did not reach their decision lightly. This decision has consequences not only for Washington and Greene Counties and Pennsylvania but also for the rest of the country. The ALJs got this right.

Thank you very much for your consideration.

Very truly yours,



Frances M. Cooley

James & Patricia Blockinger
112 W.Patterson Rd.
Eighty Four, PA 15330

September 17, 2008

Mr. James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, Pa 17120-3265

Re: Application of Trans-Allegheny Interstate Line Company
Docket Nos. A-110172, A-110172F0002, F0003, F0004 & G-00071229

Dear Secretary McNulty:

First I must commend the honorable Administrative Law Judges for the decision rendered on August 21, 2008 to deny approval for the TrAILCo. project.

Secondly, I have reviewed Allegheny Powers Exceptions and a Motion for Partial Staying of the proceedings dated September 10, 2008 and it is quite apparent they not only are trying to discredit the findings of the ALJ'S but it is my belief they are trying to deceive the PUC with their blatant attempt to portray the ALJ'S as being indecisive and erroneous in their decisions.

Being involved in this process from the beginning and reviewing the transcripts from the trial I believe the ALJ'S made a fair assessment of all of the facts that were presented and rendered the proper decision for same.

As to the Motion for a Partial Stay, I believe this should be denied and that the PUC accept the decision handed down by the ALJ'S. Further, it is my belief that Allegheny Power/TrAILCo. has not provided all of the information regarding the Prexy facility.

As a resident of western Pennsylvania for the majority of my life and as a sales engineer for a large industrial concern, I have witnessed both the growth and the decline of the industrial market in the Washington area.

Allegheny Power/TrAILCo has gone to great efforts to define the future needs of Washington County and the surrounding area but they have neglected to note the major decline of the industrial base over the past twenty (20) to thirty (30) years.

Partial list of closings is as follows:

- Washington Steel - Both Washington & Houston Plants
- Molybdenum Corp. - Washington
- Finlay Refractories - Washington
- Falcon Plastics - Washington

- Western Center - Canonsburg
- J & L Vesta Shannonpin Coal Processing Facility - Labelle
- City of Brownsville-Brownsville
- Wheeling Pittsburgh Steel – Monessen, Donora & Belle Vernon
- Mathies Mine - Finleyville
- 84 Mine - Monongahela
- Stauffer Chemicals - Monongahela
- Champion Coal - Imperial (Future site of new power plant)
- Weirton Steel - Weirton, WV

Many of the plants listed above were very high consumers of energy and would show a significant decline in generation upon their closure yet Allegheny Power/TrAILCo has elected to make no reference of these reductions.

Also, there is a future waste to energy Power Plant that has been approved for the Champion Coal site and a similar type plant to be located in Green County which I have not see referenced in any of the data submitted by Allegheny Power/ TrAILCo.

Allegheny Power/TrAILCo proclaims the need for generation in Washington County and have made a concentrated effort to portray a reliability need by noting an above average growth and development pattern along the 1-70 corridor such as South Strabane, Trinity Point and The Foundry along with some residential developments in Peters and South Strabane. Further TrAILCo claims there will an increased demand due to the expansion at South Point, The Meadows, California Technology Park and the New Tanger Outlet stores. They have yet to note or make allowance for the excess capacity due to the plant closings.

Allegheny Power/TrAILCo throughout these hearings has portrayed nothing but gloom and doom (blackouts & brownouts) and they want everyone to believe it is the growth and expansion and load restrictions in Washington and Green Counties that will cause these conditions, when in fact the blackouts that have been noted were all caused by storms and/or maintenance problems. Now picture another hurricane or a tornado coming back through this area and you with a 500 KV line routed over your home.

Allegheny Power/TrAILCo's has gone to great efforts to make derogatory remarks directed at the property owners for trying to save what is rightfully theirs and for the careless remarks and accusations directed at he ALJ'S. This type of innuendo shows how truly unprofessional Allegheny Power/TrAILCo has become. These actions are uncalled for and reflect a complete disregard of the legal process.

I completely endorse the Initial Decision of the ALJ'S dated August 21, 2008 and strongly urge the PUC to accept their findings as documented.

Sincerely,

 James R. Blockinger

57 Bandel Road
Eighty Four, PA 15330

Dear Secretary James J. McNulty,

Subject: Reply to the TrAILCo Exceptions

This line is not needed! The whole Trail Project is not needed!

Allegheny Power, TrAILCo what ever their name doesn't like it when the citizens of Pennsylvania fight for what is right and adamantly oppose what we see is wrong. Those of us in opposition to this atrocity have collected 6000+ signatures of others that also oppose this power line.

With the push for "GREEN" living, why on earth would a public utility not also want to go green with Geothermal, Solar, or Wind? (Where the power is needed!) Germany is doing it. TrAILCo wants to decrease our air quality even more than it already is. They want to do what is easiest for them. They want to do what will make them quick millions. They want to destroy our health, increase our chances of asthma, cancer, and what ever else for big profits. I just can't seem to understand why we should have to live with increased dirty air. Pittsburgh got the recognition of the #1 dirtiest city this last year.

Give us truly clean ENERGY!

We the American people are no longer asking.

Give us 100% clean energy.

There are whole housing communities that are building net zero homes. They make the amount of energy that they use... either by sun or wind. What is wrong with Allegheny Powers antiquated way of thinking. They are soooo behind the times! They are not looking out for the best interest of the people of Pennsylvania!!! They are not looking out for the best interest of the "grid". They are only looking out for the best interest of their pocketbooks.

Allegheny Power, TrAILCo or who ever they are have been sneaky and deceptive from day one. They have trespassed on properties when asked to stay off. I don't trust them. They have been nasty to the citizens of Pennsylvania. I don't trust them. Even though this line is not needed, it looks as though Allegheny Power is fighting for the 1.2 miles of Pennsylvania for the 502 Junction. I don't trust them. What good reason does the 502 Junction need to even be placed in the exact spot that they have picked... if this line is erroneously pushed through West Virginia and Virginia. IF this line IS pushed through

West Virginia, did Allegheny Power “get to” the WVaPSC? Did the seven years of relief to Allegheny Power customers in West Virginia look too good! If they steamroll this unneeded project through the state of West Virginia, move the 502 Junction to that state. I don’t trust them.

The Administrative Law Judges listened to many, many hours of public testimony, expert testimony, sight visits, and pages and pages of testimonies and material. They could see the passion in the eyes of those that would loose everything they have worked all their lives for. It sure looked to me that Allegheny Power went out on a hunt for people to get up and speak “for” the power line at the public input hearings. There were no tears from the small number of those that were “for” the line. They didn’t cry because they would be out of work if this didn’t go through. During the evidentiary hearings they didn’t let our expert Mr. George Loehr even get on the stand because I think they knew that if they started asking him ANY questions that he would have blown them out of the water. They didn’t want him to be able to speak more because they knew he was right in his testimony that he submitted

TrAILCo is the only entity that has filed exceptions to the Administrative Law Judges Recommended Decision. That tells me that TrAILCo stands alone in seeing that there is a need for the Trail Project.

On signature page, page 40, of TrAILCo’s Exception, Mr. Alan Michael Seltzer, Esquire signed his name to the statement:

Wherefore, Trans-Allegheny Interstate Pipeline Company respectfully requests that these Exceptions be granted and the Recommended Decision be reversed as specified herein.

Who on earth is Trans-Allegheny Interstate Pipeline Company? Did Mr. Seltzer even read any of the Exception? Does he even know what is in the Exception? He apparently didn’t read the page that he put his signature on.

The ALJ’s are intelligent men and have made an intelligent decision by seeing through the smoke and mirrors that Allegheny Power tried to put before them. They have made an intelligent decision by not allowing Allegheny Power to bully them. We request that the Commission uphold the findings of the Administrative Law Judges and oppose the exceptions that Allegheny Power filed. It is just another case of “smoke and mirrors”! I am not for taking ANY deals from Allegheny Power!

Respectfully,

A handwritten signature in black ink that reads "Debra K. Bandel". The signature is written in a cursive, flowing style.

Debra K. Bandel

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265

Re: Reply to Exceptions by TrAIL Co

Dear Secretary McNulty,

I am writing to ask that you and the other Commissioners uphold the well documented, thorough Recommended Decision (RD) offered by Administrative Law Judges Nemecek and Hoyer in the AP TrAIL proceedings. Both of these men did an outstanding job of listening to all the expert and public input testimony and came to the correct, logical and legal conclusions; deny all applications by TrAIL Co! Most of my Reply will focus on Exceptions #1-3 by TrAIL Co, but also addresses the overall proceedings as a whole.

Many residents, landowners, business owners, elected officials and service groups have been involved in this process from the beginning. Why has the opposition to this project been so staunch? Because of the very same facts that are listed in the RD! Facts such as 1) there is no "need," 2) the "reliability" issue was created to make it appear that the project was needed, 3) the legitimate concerns relating to impacts on the environment, and 4) the ratepayers in our state receive no benefits, but do end up with higher rates.

Rather, this was a plan hatched two years ago to move cheap, coal-fired generation to the east because of **economics**. The ALJs did a great job of seeing through this smoke screen. They agree that the Prexy facility and related high-voltage lines are a solution to a problem that doesn't exist. They agree that the TrAIL was proposed before any alleged reliability issues were raised by either PJM or Allegheny Power. They recognize the fact that, assuming there really is a reliability issue, no other alternatives were even considered. I find it appalling, on pages 9-10 of the Exceptions, TrAIL Co's explanation that an "original" proposal named "TrAIL" has nothing to do with the current proposed "TrAIL," even though they travel the same basic path and accomplish the same objective of delivering cheap, coal-fired generation to the east, yet are completely unrelated!

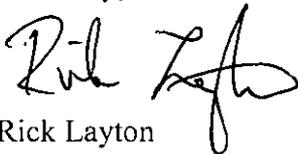
Also, it amazes me that on Pg. 4, footnote #11, TrAIL Co claims that "Alternatives to the line were considered by TrAIL Co and PJM...." Yet during the Technical Evidentiary Hearings, expert witnesses from PJM, as well as TrAIL Co, admitted that they do not consider other alternatives. In fact, PJM went on to explain that transmission is the only solution they can or do consider in meeting any alleged reliability issues.

On pages 7-8 of the Exceptions document, while discussing "load pockets", TrAIL Co notes that "it is very difficult to site and build new generation plants in urban areas." They also state that "transmission lines delivering electricity into a "load pocket" from distant generation plants will often experience reliability problems." Thus, to avoid such problems, "new or upgraded transmission lines must be constructed." So to use this rationale, we can assume that the only way to meet demand in the Northern Virginia or other eastern areas is to sacrifice rural landscapes, such as southwestern Pennsylvania and

West Virginia, by building high voltage transmission lines. But, how many years down the road will it be before the demand in these "load pockets" outgrows the new transmission system, thus creating another alleged reliability issue, so that more transmission lines will need to be built. What will the landscape of our region look like in 50 or 100 years? We will become nothing more than a super highway of transmission lines while the urban centers to the east maintain their scenic beauty and clean air, only because it is "difficult" to site and construct generation plants in those areas.

With this Reply, I leave my trust and expectation that the Commissioners of the Public Utility Commission will put forth the same legal and technical evaluations as the Judges Nemeck and Hoyer, concluding that all five applications of TrAIL Co be denied! All Pennsylvania citizens deserve the full protection of the statutes that govern the siting of high voltage transmission lines. TrAIL Co has failed miserably in meeting those requirements with their sloppy, incomplete approach to everything in this case! Need more proof, look at their name in their Exceptions on Pg. 40, first paragraph. Just like the rest of their case, one big mistake!

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Layton". The signature is fluid and cursive, with the first name "Rick" and last name "Layton" clearly distinguishable.

Rick Layton
140 Rocky Ridge Road
Waynesburg, PA 15370

David and Cheryl Piroch
Piroch Beef Enterprises
648 Barr Run Road
Marianna, Pa 15345

September 18, 2008

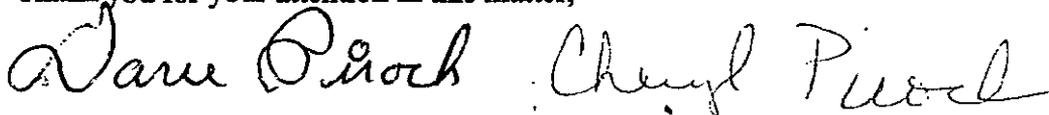
James McNully, Secretary
Commonwealth of Pennsylvania
Public Utility Commission
Post Office Box 3265
Harrisburg, Pa 17105-3265

Subject: Trans-Allegheny Interstate-Line Company

Dear Secretary McNully:

On behalf of myself, my wife and four children, we would like to go on record that we agree wholehearted with the Public Utility Commission Administrative Law Judges decisions regarding their assessment of this whole interstate line situation. We then in turn DO NOT agree with any of the exceptions filed by Trail Co.

Thank you for your attention in this matter,

Handwritten signatures of Dave Piroch and Cheryl Piroch in cursive script.

Dave and Cheryl Piroch and Family

1610 East National Pike
Scenery Hill, PA 15360
September 16, 2008

Secretary James J. McNulty
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Subject: Reply to TrailCo Exceptions

Dear Secretary James J. McNulty:

I strongly urge you to support the Recommended Decision offered by PUC Administrative Law Judges Mark A. Hoyer and Michael A. Nemecek which deny all five pending applications submitted by Trans-Allegheny Interstate Line Company. On September 10, 2008 TrAILCo filed an Exceptions and Motion to Stay that I also feel should be denied.

There are numerous reasons that I believe that the Recommended Decision should be accepted. First and foremost being that TrAILCo has failed to prove that there is any real need for the Prexy segment of the project or that any true reliability problems even exist. In regard to both the Prexy and 502 Junction to Loudoun segments, the fact that TrAILCo failed to investigate any non-transmission alternatives is blatant evidence that TrAILCo's genuine motivation is to transport its inexpensive coal-fired generation to eastern PJM, hence increasing profits for Allegheny Energy.

The environmental impacts regarding this proposed project are enormous and TrAILCo's lack of environmental awareness or concern is appalling. TrAILCo failed to conduct any real environmental impact analysis regarding construction and maintenance of the line. A project of this magnitude has the potential of having devastating impacts on the health and safety of the residents of Pennsylvania. If TrAILCo is granted approval our already poor air quality will further diminish, herbicides will alter the quality of surface and subsurface water, and there will be an upsurge of pollution and waste from increased coal-fire generation. However, most importantly, thousands of people will be needlessly exposed to dangerous electromagnetic fields that medical experts have linked with increased risks of childhood leukemia and numerous other health dangers.

For these reasons I implore that you rule in favor of the Recommended Decision and deny the Exceptions and Motion to Stay by TrAILCo. Thank you for your careful consideration regarding this very important matter.

Sincerely,



Michelle Minnick

1610 East National Pike
Scenery Hill, PA 15360
September 18, 2008

Pennsylvania Public Utility Commission
Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Reply to TrAILCo Exceptions

Dear Secretary James J. McNulty:

As a concerned citizen directly effected by the proposed line, I am writing to express my appreciation to the Administrative Law Judges for listening to the people as well as the facts that were presented before them. It was clear that they saw no need for the line and their displeasure with TrAILCo's tactics in the proceedings.

I am expressing my opposition with the Exceptions and Motion to Stay filed by TrAILCo based on the outcome of the proceedings and well documented Recommended Decision issued by the Administrative Law Judges. I believe that the tactics of TrAILCo are typical of how they handled the entire process and believe the Exceptions and Motion to Stay should not even be considered.

During the proceeding TrAILCo claimed there was reliability issues creating the need for the line. Now that the recommendation from the ALJ's is not supporting their position, they are willing to make concessions. It is obvious that these transparent attempts are driven by pure greed.

I urge you to uphold the Recommended Decision of the Administrative Law Judges and deny the Exceptions and Motion to Stay by TrAILCo. I thank you for your time and consideration in this matter.

Sincerely,


Jack Minnick

September 18, 2008

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Reply to TrAIL Co Exceptions

Dear Secretary McNulty,

I have filed a formal protest against Allegheny Energy/TrAIL Co. and their plan to build a 500 kV line through Washington and Greene Counties.

I do not believe that the line is in the best interest of PA rate payers, land owners or the environment.

I strongly support the recommendations issued by the Administrative Law Judges and strongly oppose the exceptions filed by Allegheny Energy/Trailco.

Thank you for your time.

Sincerely,



Christine A. Robker

*1103 Daniels Run Rd.
Scenery Hill, PA 15360*

September 18, 2008

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Reply to TrAIL Co Exceptions

Dear Secretary McNulty,

I have filed a formal protest against Allegheny Energy/TrAIL Co. and their plan to build a 500 kV line through Washington and Greene Counties.

I strongly support the recommendations issued by the ALJ's and strongly oppose the exceptions filed by Allegheny Energy/TrAIL Co.

Sincerely,

A handwritten signature in cursive script that reads "Henrietta Goodwin".

Henrietta Goodwin

1103 Daniels Run Rd.
Scenery Hill, PA 15360

September 19, 2008

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Reply to TrAILCo's Exceptions to the Recommended Decision of Administrative Law Judges Michael Nemec and Mark Hoyer, dated 8/21/08

Dear Secretary McNulty:

As you know, on September 10, 2008, TrAILCo filed exceptions to the 364-page Recommended Decision of PUC Administrative Law Judges Nemec and Hoyer. I would like to be a part of the record stating that I wholly support the conclusions of the judges in their thorough decision.

I shouldn't be surprised at this point that TrAILCo continues to behave like an arrogant bully in these proceedings. Their exceptions are a thinly veiled attempt to force their agenda upon parties who have seen through a contrived crisis that will result in a for-profit company making a lot of money.

Even in their half-hearted recognition of the problems with the Prexy portion of their application, TrAILCo wants to reserve ultimate power to make any final decisions for themselves. This is a company with zero credibility and trust in the community. To allow them a final decision in anything is absurd.

TrAILCo holds out West Virginia and Virginia as doing the right thing. Please know that West Virginians are experiencing that even without a final order, TrAILCo is moving forward aggressively and threatening residents with eminent domain, even at this early stage in the negotiating process.

Please send a message to TrAILCo. It is not acceptable to attempt to look like a good corporate citizen to the people who hold their project's fate in their hands (PUC)—only to go behind their backs and threaten residents who have very little power to stop them.

Thank you for your time and consideration.



Laurie Nicholl
189 Hoge Summit Road
Eighty Four, PA 15330

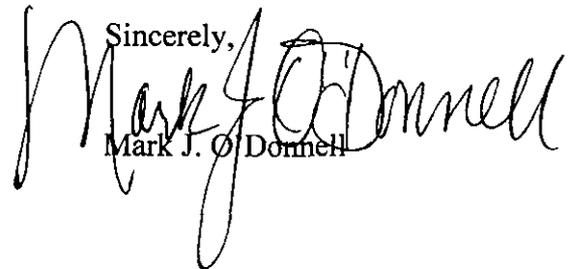
18 September, 2008

Dear PUC Commissioners;

I live in Marianna, PA and would like to go on record as supporting the recent decision of the Administrative Law Judges regarding TrailCo's application. I strongly urge you to uphold their well-reasoned and correct decision, and to deny the exceptions submitted by TrailCo. The ALJ's obviously carefully reviewed all of the evidence and testimony presented, as well as researched the applicable laws and came to the only reasonable and legal decision.

Please uphold their recommendation and decision. Thank you for your kind consideration of my request.

Sincerely,

A handwritten signature in cursive script that reads "Mark J. O'Donnell". The signature is written in black ink and is positioned to the right of the typed name.

Mark J. O'Donnell

Mark J. O'Donnell
484 Highland Ridge Rd.
Marianna, PA 15345

Richard J. Blank & Susan Foster Blank
1008 Daniels Run Road
Scenery Hill, Pennsylvania
15360

September 19, 2008

Mr. James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120-3265

Dear Mr McNulty:

Please accept this correspondence as our Reply to Trans-Allegheny Interstate Line Company's (TrAILCo) Exceptions to Recommended Decision of Administrative Law Judges Mark A. Hoyer and Michael A. Nemec dated August 21, 2008.

After careful consideration of all of the voluminous evidence, the ALJs properly concluded that TrAILCo did not meet its burden of proof for the approval of its omnibus application before the Commission. TrAILCo has responded by offering additional evidence at such a late date - an admission of their omission.

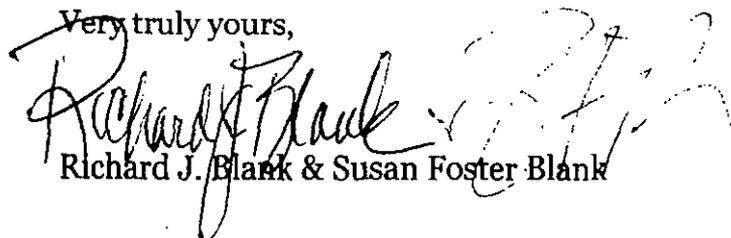
An overwhelming theme throughout the public testimony was the public's established mistrust of TrAILCo employees and/or agents and the strong-arm tactics used by TrAILCo. On the basis of this corporate history, we implore the Commission to deny TrAILCo's application for a certificate of public convenience

TrAILCo's Exceptions are flawed in many ways. The Exceptions fail to identify how the ALJs misapplied applicable regulatory standards and base their position on the recommendations or conclusions made in other states. The ALJs properly considered the public interest of Pennsylvania and Pennsylvanians. The Recommended Decision is correct, logical and based on legal conclusion. We trust that you, the Commission, will put forth the same legal and technical analysis as Judges Hoyer and Nemec and concluded that TrAILCo's omnibus applications be denied..

We totally support the Recommended Decision and respectfully request that the Commission follow the recommendations of the Administrative Law Judges and deny TrAILCo's applications and their Exceptions.

Thank you for your consideration.

Very truly yours,



Richard J. Blank & Susan Foster Blank

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of
Trans-Allegheny Interstate Line Company

Docket Nos. A-110172,
A-110172F0002-F0004 and
G-00071229

A-110172F0003

ENERGY CONSERVATION COUNCIL
REPLIES TO TrAILCo's EXCEPTIONS

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of
Trans-Allegheny Interstate Line Company

Docket Nos. A-110172,
A-110172F0002-F0004 and G-00071229

**ENERGY CONSERVATION COUNCIL
REPLIES TO TrAILCo's EXCEPTIONS**

The Energy Conservation Council of Pennsylvania ("ECC") hereby submits the following Replies to the Exceptions of Trans-Allegheny Interstate Line Company ("TrAILCo").

I. INTRODUCTION

Without really explaining *why*, TrAILCo asks this Commission to disregard Judge Nemec and Hoyer's 364-page Recommended Decision ("RD") *in its entirety*. But, TrAILCo's Exceptions ignore the fact that TrAILCo has not met its burden of proof on at least five critical issues:

- TrAILCo has not proven that reliability issues exist to justify any transmission facilities.
- TrAILCo has not properly considered alternatives to the proposed facilities.
- TrAILCo has not proven that its proposed transmission facilities will have minimum adverse environmental impact considering the electric power needs of the public, the state of available technology, and the available alternatives.
- TrAILCo did not comply with Pennsylvania's line siting regulations.
- TrAILCo has not satisfied its burden of proof for a certificate of public necessity.

The record in this proceeding is immense. ALJs Nemec and Hoyer presided over every minute of proceedings in this matter, including numerous public input hearings, site visits, and attendance at evidentiary hearings where expert witnesses were cross-examined and their credibility was evaluated. After scouring the record, they properly concluded that the fundamental principles and assumptions underlying TrAILCo's analyses are flawed. Thus, the analyses themselves are flawed, and the results

and conclusions based on those analyses are equally flawed. TrAILCo has erred in building its house on sand.

II. REPLIES TO EXCEPTIONS:

A. Reply to Exception No. 1: TrAILCo's attempts to distort the ALJs' sound application of Pennsylvania legal principles should be rejected.

1. The ALJs Carefully Applied Established Legal and Regulatory Standards.

TrAILCo, in its Exceptions, asserts that the ALJs have exceeded the lawful scope of their authority and, in doing so, have applied a new set of standards to the review of siting applications. TrAILCo Exc. at 2. But TrAILCo's Exceptions fail to meaningfully identify how the ALJs misapplied the applicable standards. Rather, TrAILCo points to information sources quoted by witnesses¹ and recommendations the ALJs made to the Commission to facilitate and enhance review in future proceedings, as "exceeding their authority." TrAILCo Exc. at 4, n.10, citing RD at 237. Similarly, TrAILCo attempts to undermine the ALJs' sound evaluation by misrepresenting their findings of fact, and misconstruing or misstating their carefully considered statements.²

TrAILCo would have this Commission reject the 364-page Recommended Decision of two experienced administrative law judges and, instead, adopt the preliminary conclusions of a hearing examiner of the Virginia State Corporation Commission or the West Virginia Public Utility

¹ The ALJs quote information sources of many witnesses, including TrAILCo, in discussing the issues in this proceeding. However, the mere recitation of information from a witness, a party, or another source does not signify that the ALJs adopt the position as recited. For example, although the ALJs cited the Report of the National Commission on Energy Policy discussing the scope and integral nature of transmission line siting issues, the ALJs' decision was *not* based on the quoted Report. *See, e.g.*, RD at 6, 57-59, 78-81, 111-112, 149-151, 166-167, 174-175, 177, 182-183, 189-190, 208-209, 216-217, and 231-232. And there is nothing inconsistent between the ALJs' concerns that the relevant issues be viewed in an integral fashion and the legal mandates set forth in the Commission's regulations.

² For example, in several Findings of Fact, the ALJs note recent Congressional consideration of bills pertaining to reducing carbon emissions and expected economic results if such actions were to be taken. TrAILCo Exc. at 4 and n.13 & 14. *Instead of recognizing that the ALJs are merely noting Congressional action on matters that bear upon the issues, TrAILCo asserts that the ALJs adopted these bills, as if they were law. Id.* However, the ALJ's did not rely on these bills to deny TrAILCo's application. Likewise, TrAILCo asserts that the ALJs' "mindset erroneously presumes that Pennsylvania has a public policy discouraging the development of coal-fired generation." *Id.* Nowhere in their RD can such a statement be found or implied. Another example is TrAILCo's statement, at p. 14 of its Exceptions, that the ALJs erroneously criticized TrAILCo and PJM for not applying a "statistical probability" analysis to the NERC standards. But the ALJ's did not reject TrAILCo's application for failing to include a statistical probability analysis.

Commission – despite the fact that those proceedings applied different legal and regulatory standards, and had a completely different evidentiary record.³

The Commission has long recognized that it must rely on record evidence from the proceeding in front of it and not look blindly at decisions in other jurisdictions. *See, e.g., Pa. PUC v. United Water Pa., Inc.*, R-00973947, 184 PUR 4th 172, 88 Pa.PUC 181, 1998 WL 191239 (1998).⁴

As it should be, the ALJs focused on the Pennsylvania record and Pennsylvania law. The ALJs properly noted that the burden of proof in this proceeding is upon the applicant, TrAILCo, and that TrAILCo must show, by a preponderance of the substantial evidence of record, its compliance with the applicable provisions of the Pennsylvania Public Utility Code, the applicable regulations, and relevant commission and appellate court decisions in its filings. RD at 7, *citing* 66 Pa. C.S.A. § 332(a).

The ALJs' conclusions that TrAILCo did not demonstrate a need for any new transmission facilities was based on "need" as interpreted by the Commonwealth Court in *Penna. Power & Light Co. v. Pa. PUC*, 696 A.2d 248 (Pa. Commw. Ct. 1997). In its opinion, the Commonwealth Court placed emphasis on the provisions of Section 1501 of the Public Utility Code that requires, in pertinent part, every utility to make improvements "as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public." 66 Pa. C.S. § 1501; *Penna. Power & Light Co.*, 696 A.2d at 250; RD at 111. The Commonwealth Court also emphasized language in 52 Pa. Code § 57.76(a)(4) that requires that the Commission, prior to approving an application, find that the proposed transmission line will have a minimum environmental impact "*considering the electric power*

³ For example, the Virginia hearing examiner found irrelevant questions regarding whether the proposed 502-Loudoun line is the optimal choice between other alternatives such as generation, demand side management, distributed generation, transmission, or combinations of each. *See* Virginia Final Report at 197. Likewise, the hearing examiner deemed superfluous the environmental impact of the proposed line. *Id.* at 198. But Pennsylvania law requires an examination of alternatives, and requires an applicant prove its proposed transmission facilities will have minimum adverse environmental impact considering the electric power needs of the public, the state of available technology, and the available alternatives. The Virginia *recommended* decision, and the West Virginia decision, are *completely irrelevant* to this proceeding.

⁴ Especially where a decision is highly fact-intensive and not primarily a matter of policy, the review of decisions from other jurisdictions may serve only to confuse the complexity of issues addressed in a case such as this. *Id.*

needs of the public, the state of the available technology and the available alternatives.” *Id.* at 250 (emphasis in original); RD at 111-112. Judges Nemec and Hoyer applied the proper standards, and concluded: “We do not believe that the present proposal is necessary or proper for the accommodation of the public, and we do not believe that the present proposal has a minimal environmental impact.”⁵

2. The ALJs Appropriately Considered Alternatives.

TrAILCo’s broad brush strokes do little other than take the ALJs thorough evaluation out of context. This is apparent in a review of TrAILCo’s position with respect to “alternatives”. In particular, TrAILCo argues that the ALJs have “tried to make the consideration of ‘alternatives’ much broader in scope than permitted under the Commission’s siting regulations” and the regulations limit the Commission’s consideration of “alternatives” to “whether there is an alternative to the HV line that has less of an impact on the environment.” TrAILCo Exc. at 4. But TrAILCo does not specifically identify how, or why, the ALJs’ discussion of alternatives is incorrect.

The regulations require that an HV transmission line will have “minimum adverse environmental impact considering the electric power needs of the public, the state of available technology and the available alternatives.” 52 Pa. Code § 56.76. An applicant has “an intensified burden to show on the record that the environment has been considered in its planning and that every reasonable effort has been made to reduce the environmental incursion to a minimum.” *Re: Overhead Electric Transmission Lines*, 51 Pa.P.U.C. 682, 687 (1978). In addition, the Commission has found that an applicant’s proposal must be reasonably responsive to the need. *Re: Pennsylvania Power & Light Co.*, 50 Pa.P.U.C. 480, 484 (1977); *Re West Penn Power Co.*, 54 Pa.P.U.C. 319, 327 (1980).

⁵ RD at 112. The ALJs also properly applied Pennsylvania law before concluding that TrAILCo’s application did not comply with Pennsylvania’s siting regulations; TrAILCo did not meet its burden of proof regarding its application for a certificate of public convenience, TrAILCo did not properly evaluate alternatives to the proposed facilities, and TrAILCo did not prove that the alleged facilities were reasonable in scope when compared to the alleged need, etc. *See, e.g.*, RD at 6, 57-59, 78-81, 111-112, 149-151, 166-167, 174-175, 177, 182-183, 189-190, 208-209, 216-217, and 231-232.

A critical element of TrAILCo's burden of proof is to establish that the proposed solution will have minimum adverse environmental impact, considering the available alternatives. Do the "electric power needs of the public" require the proposed solution, or will a smaller, less environmentally-damaging solution fix the alleged problem? Under Pennsylvania law, the proposed solution that has minimum adverse environmental impact, and is proportionate to the need, must be chosen. Every case in which the Commission has evaluated the "need" for a line has necessarily looked at customer load and electrical alternatives, as was quite apparent in the rejection of West Penn's siting application in 1980, as discussed at length in ECC's Main Brief.⁶

3. Consideration of Regional/Interstate Benefits of Transmission.

TrAILCo's Exceptions emphasize the importance of interstate/regional benefits for electric transmission. TrAILCo Exc. at 5-6. Although interstate/regional benefits are no doubt an important consideration, the 1960 *Dunk* and 1967 *Stone* cases cited pre-date the Commission's regulations and the importance placed on comprehensive load study analysis, application of meaningful reliability standards, consideration of alternatives, and the weighing of the broader health, safety and environmental issues that reflect the balance to be effected by the Commission in its assessment. The fact is, as the ALJs concluded, the evidence does not support a conclusion that the TrAILCo line is necessary, either from a regional standpoint or from a local need standpoint.⁷

4. The Role of the Public Utility Commission in Transmission Siting

What is most egregious about TrAILCo's Exceptions is that they suggest that Commission's review is inappropriate after a FERC-designated Required Transmission Organization (like PJM)

⁶ ECC Main Brief at 11-18. TrAILCo also claims that the alternatives must be "available" alternatives. TrAILCo Exc. at 4. However, as discussed below, the alternatives TrAILCo did not consider are all available – such as capacitors, lower voltage lines, or adding nothing at all. A "no build" alternative is certainly an "available" alternative. And a line that is not built because it's unnecessary will certainly have no adverse environmental effects.

⁷ Furthermore, the 1991 *PPL case* cited by TrAILCo (*Re: Pennsylvania Power and Light Company, A-110500F040 et al., 74 Pa.P.U.C. 676, 1991 WL 476346 (1991)*, cited at TrAILCo Exc. at 5, n.17 & 18) is simply not applicable as it did not even address an interstate or regional need, and no expert was offered in that case to challenge the Company's claim of need or the proposed siting of the transmission line.

determines that a particular transmission line or facility is needed. TrAILCo Exc. at 6-7. Indeed, TrAILCo suggests that it was the “public service obligation” of the West Virginia Public Service Commission and the Hearing Examiner from the Virginia State Corporation Commission to “recognize the importance of these transmission improvements to regional reliability,” and “this Commission should do the same.” TrAILCo Exc. at 6. TrAILCo states that “proper deference” should be given to the PJM Regional Transmission Expansion Plan, and “proper weight” to TrAILCo’s witnesses’ determinations of “reliability violations.” Finally, TrAILCo claims that once PJM has directed the construction of a transmission project, this “obligation to build” cannot be ignored.⁸

The ALJs, however, properly refused to defer *entirely* to PJM. “We decline to ascribe an axiomatic quality to the results of PJM’s RTEP process and the results of the underlying tests performed. The RTEP process is designed to yield transmission solutions.” RD at 16, 115; *see also* Findings of Fact 42-44 and RD at 111-118. In fact, the ALJs found PJM’s regional transmission planning process unreliable: “It seems to us that any planning process that is supposed to be useful and offer at least a modicum of predictability over a 15-year period should not be described as ‘extremely dynamic.’ What value does a long-term planning process marked by continuous, extreme change really have?” RD at 115.

It is not this Commission’s public service obligation to act as a rubber stamp on the actions of a FERC-designated RTO, or regulated public utility. To act in such a manner would be to undermine the

⁸ *Id.* TrAILCo claims that PJM directed them to build the TrAIL line, and, as a result, they have no choice but to build it. However, PJM merely approved TrAILCo’s proposed plan; PJM did not direct the project in the first instance. And, the “obligation to build” is subject to the requirements of applicable law, governmental regulations and approvals, local siting requirements, the availability of financing, the ability to recover all costs plus a reasonable return on the investment, and the procurement of rights of way. Tr. 2708. The alleged obligation to build is subject to many conditions – it is not absolute. Tr. 2707-2708. Most importantly, it does not relieve TrAILCo of its burden of proof in this proceeding. ECC Reply Brief at 39.

oversight obligations of the Commission and the mandates of the Public Utility Code to protect the public interest.⁹

B. Reply to TrAILCo Exceptions Nos. 2 and 3: The RD did not ignore regional reliability requirements in concluding that there is no need for the 502-Loudoun Line, and the ALJs properly concluded that the 502-Loudoun Line was motivated by economics and not reliability violations.

1. TrAILCo Did Not Satisfy its Burden of Proof That Any Reliability Issues Exist That Justify the 502-Loudoun Line.

As with the proposed Prexy Facilities, TrAILCo bases its Application for the 502-Loudoun line on alleged electrical or engineering needs, claiming that its 2006 modeling established infractions of NERC standards. Tr. 2238. But TrAILCo did not establish any NERC infractions – or prove that any regional, interstate or intrastate reliability issues exist – to justify the 502-Loudoun line.

In its 2006 modeling studies, which served as the basis for the alleged need for TrAIL, PJM and TrAILCo ignored existing generation that could eliminate the alleged overloads. More than 2,800 MW of existing capacity in eastern PJM was not dispatched in the 2006 RTEP modeling process. ECC St. SR-1 at 10; ECC Main Brief at 48-49; Tr. 2391, 2414; ECC Cross Ex. 7. Dispatching just a portion of the unused capacity, and reducing western generation by an equal amount, would remove the alleged reliability infractions. *Id.*

The simple expedient of transmission constrained dispatch (a.k.a. using “out of merit order” generation) – increasing eastern generation to displace western generation in sufficient amounts – will eliminate the alleged overloads.¹⁰ There is nothing in the NERC standards that prohibits using transmission constrained dispatch to solve reliability infractions. It is a perfectly acceptable method of solving reliability problems. ECC St. SR-1 at 23; RD at 94.

⁹ While the public interest is appropriately interpreted as one that considers the regional and interstate implications of a particular utility’s plan, it is not one that accepts that plan at face value. TrAILCo’s suggestion to the contrary is one that incredibly discounts the importance of the Commission’s review process and the due process rights of parties to challenge, with appropriate evidence, the simply incredulous and unsound information upon which TrAILCo’s proposal is based.

¹⁰ECC St. SR-1 at 20; Tr. 3129:14-17; ECC Reply Brief at 21; RD at 18, 59-60, 90, 93-94 and 115.

In addition to not fully dispatching 2,800 MW of existing generation, PJM and TrAILCo also excluded some existing and planned generation from the 2006 modeling. PJM and TrAILCo did not include six or seven generators in eastern PJM to resolve reliability problems, despite the fact that they had signed interconnection agreements with Dominion.¹¹ If the aforementioned generation in the Dominion system were included in the modeling for the purpose of resolving alleged reliability problems, there would be no need to import power from west of Doubs, and overloading of the Mt. Storm-Doubs line would be avoided.¹² By eliminating the overloads, the need for the line vanishes.

In addition, the way PJM's deliverability tests have been applied to justify the 502-Loudoun line is not mandated by the NERC standards – in fact, TrAILCo witness Steven Herling testified that PJM's tests are “more rigorous” than NERC requires. RD at 82, n.23. OCA's expert witness Peter Lanzalotta agrees – PJM's tests are more stringent than NERC requires.¹³

2. TrAILCo Can Repair the Mt. Storm-Doubs 500 kV Line to Eliminate the Need for the Entire 502-Loudoun Line.

TrAILCo's Larre Hozempa admits it is good planning practice to maximize, to the extent reasonable and economical, the transmission capabilities of existing towers and structures. Tr. 2733; RD at 139. But TrAILCo did not do this.

¹¹ RD at 92; Tr. 2319; ECC Cross Ex. 7. At least 2,125 MW of generation in Dominion's territory, and possibly 2,465 MW, with signed interconnection agreements with Dominion, was not counted. Tr. 2624. In the same 2006 modeling process, PJM included some western generation that did not have signed interconnection agreements for the purpose of contributing to problems. ECC St. SR-1 at 11.

¹² ECC Main Brief at 49-50; RD at 92-3. The driver for TrAILCo's desire to construct the 502-Loudoun line by 2011 involves alleged overloads of the Mt. Storm-Doubs 500 kV line, which is located outside of Pennsylvania. ECC Main Brief at 42. Interestingly, in its Exceptions TrAILCo does not discuss the alleged overload of the Mt. Storm – Doubs line. Instead, TrAILCo makes anecdotal statements (without citations to the record) such as “load pockets’ exist in the Mid-Atlantic and northern Virginia areas that must be addressed” and “[e]xisting corridors over the Allegheny Mountains are operated near their limits at present.” TrAILCo Exc. At 7 and 9. These anecdotal and unsupported assertions do not establish a need for anything.

¹³ OCA St. 1 at 17, fn. 1. ECC's expert, George Loehr, opined that TrAILCo and PJM seem to want to build a transmission system capable of delivering every MW from any generator anywhere on the system to any load point in PJM – regardless of a reliability need or system conditions. But that isn't necessary for a reliable, or even an economically optimum, system. ECC St. 1 at 23.

The Mt. Storm - Doubs 500 kV line is driving the alleged need to construct the 502-Loudoun line by 2011. *See* fn. 12, *supra*. This line is thermally limited by a line rating issue, caused by inadequate ground clearance. RD at 17, ¶¶45; and 17-18. The first thing that TrAILCo should do is *repair* that existing line, thereby increasing its emergency rating and eliminating the alleged overloads. TrAILCo could repair the Mt. Storm-Doubs line and eliminate the overloads (thus eliminating the alleged need for the proposed 502-Loudoun line) by reconductoring, retensioning, or performing some grading work and raising the height of some towers. *See* RD at 17-18, ¶¶ 45-58; ECC Main Brief at 44.

3. Economics, Not Reliability, Are Behind the 502-Loudoun Line.

TrAILCo claims that the DOE has called for the construction of new transmission lines:

The Mid-Atlantic and northern Virginia areas were identified by the U.S. DOE in its *National Electric Transmission Congestion Study* issued in August, 2006 as parts of a “Critical Congestion Area” and in need of immediate attention. The [502-Loudoun line has] been identified by PJM as the most viable solution to this problem.

TrAILCo Exc. at 8. However, TrAILCo witness Herling testified that “congestion” always means *economic* transmission congestion.¹⁴ The fact that PJM identified the 502-Loudoun as a viable solution to economic congestion is an *admission* that the line is desired for economics, not reliability.

In addition, a statement in a DOE study about a desire to add transmission lines *at unspecified locations and for economic reasons* (to relieve congestion in the mid-Atlantic and northern Virginia areas) has no bearing on the proposed TrAIL project in western Pennsylvania that is allegedly needed for *reliability* reasons.¹⁵

¹⁴Tr. 2378, 2505. Congestion costs occur when higher-cost generation (“out of merit” generation) must be run – *i.e.*, when the cheapest generated power cannot get to a portion of load because of transmission constraints. It does not cause reliability problems. The solution is to schedule more costly existing generation closer to the demand. ECC SR-1 at 8.

¹⁵ The OCA also correctly asserts that TrAILCo misstates the DOE Study in an attempt to support the need for the 502 Junction Facilities. OCA Reply Brief at 34-36. The DOE, in its study, does not recommend any specific transmission lines (including the 502-Loudoun line) to relieve congestion. The DOE also recognizes that transmission expansion is but one possible solution to a congestion or constraint problem. Other potential solutions include increased demand response,

(continued...)

Clearly, TrAILCo's justifications for the 502-Loudoun line are based on a desire to increase the capability of moving power from western PJM to eastern load centers. The underlying motive is economics – not reliability. PJM has consistently argued for an increase in west-to-east transmission transfer capability to allow existing *and new* coal fired generation in the west to be sold to customers in the east. 5,000 MW of increased transfer capability has often been mentioned. That's economics, not reliability. If this power line is being proposed due to PJM's or TrAILCo's policy decision to shift generation from the east to the west, it is obviously not needed to address reliability issues.¹⁶

The ALJs properly found that economics, not reliability, was the impetus for both the original request for transmission proposals from PJM *and* the current TrAIL proposal.¹⁷

PJM is also setting out by way of example, a new initiative, which we have labeled "Project Mountaineer", to utilize our regional transmission planning process to explore ways to further develop an efficient transmission "**super-highway**" to bring low cost coal resources to the market

RD at 113 (*emphasis in original*); OCA Main Brief at 54; ECC Cross Ex. 11 at *1, *5 (Testimony of PJM's Karl Pfirrmann). Project Mountaineer's goal was to transmit 5,000 MW of new coal-fired generation to eastern PJM. RD at 18, ¶61; Tr. 2290. TrAILCo admits that construction of the 502-Loudoun line will allow construction of 2,700 MW of *new* coal-fired generation in West Virginia. Tr. 2823-2824.

After consideration of all the evidence presented, the ALJs properly concluded that the TrAIL project is driven by economics, not reliability. However, the motivation behind the TrAIL proposal is

(continued...)

improved energy efficiency, deployment of advanced technology, and siting of additional generation, including distributed generation, close to load centers. National Electric Transmission Congestion Report, 72 Fed. Reg. 56992, 56993-56994 (October 5, 2007) (DOE Order). OCA Reply Brief at 34; RD at 104-105.

¹⁶ If PJM or TrAILCo wish to provide transmission capability for new coal fired generation in the west, let them acknowledge it, and let that issue be decided on its merits. They should not camouflage that wish as a reliability "need."

¹⁷ See discussion of Project Mountaineer in the RD at 8, 12, 18-19, 30, 61, 95-96, 102, 112-116 and footnote 25 *infra*.

not critical. What *is* important is the ALJs' conclusion that TrAILCo has not met its burden of proof that the TrAIL project is needed to address reliability concerns.¹⁸

4. The Lights Will *Not* Go Out if the 502-Loudoun Line is Not Constructed.

ECC expert witness, George Loehr, is a world-renowned expert on the subject of blackouts.¹⁹ TrAILCo's discussions of potential outages are just "scare tactics." RD at 98-100; ECC Main Brief at 58-59; *See* TrAILCo Main Brief at 22; ECC St. 1 at 32-33.²⁰ In fact, the 502-Loudoun line will make the system less reliable and *increase* the likelihood of large-scale blackouts:

In fact, by locating generation far from the load centers, and building more transmission to provide the increased transmission capacity necessary to accommodate the heavier power flows, TrAILCo and PJM could actually make their system – and the entire Eastern Interconnection – less reliable. With the increased transmission, the apparent impedance across the system would be lower, so a major disturbance could black out a much larger area. It would be far better, from a reliability standpoint, to encourage and use resources (generation and demand side management) closer to the load.

There is another factor to consider. If more generation is built in the west, and less in the east, then load centers on the East Coast would be more dependent on generating capacity hundreds of miles away. Cities like Newark, Philadelphia, Wilmington, Baltimore, Washington and Richmond would be more subject to power outages and blackouts due to any major contingencies or other unforeseen problems on the transmission system. Those cities would also be more at risk from terrorist attacks on transmission facilities.

ECC St. 1 at 35-36; ECC Main Brief at 60; RD at 99-100. *See also* ECC St. SR-1 at 15:5-8; RD at 99.

¹⁸ Tr. 2823-2824. TrAILCO also claims that "none of the rate or generation price impacts addressed by the ALJs support any adverse findings with respect to TrAIL". TrAILCo Exc. at 11. Apparently, TrAILCo believes that the rate impacts of its proposed facilities are unimportant, and should not be considered by this Commission. But rate impacts are important, and should be considered by this Commission. They are relevant to, among other things, whether an applicant's proposal is reasonably responsive to the need. *Re: Pennsylvania Power & Light Co.*, 50 Pa.P.U.C. 480, 484 (1977); *Re West Penn Power Co.*, 54 Pa. PUC 319, 327 (1980). In addition, the ALJs did not reject TrAILCo's application because of the adverse rate impacts.

¹⁹ *See* ECC Reply Brief at 34; ECC SR-1 at 4. Through his studies of major blackouts over the years, Mr. Loehr has determined that failure to make manual system adjustments following key contingencies was an important contributing element in the July 13, 1977 New York City blackout, the August 10, 1996 blackout in the Canadian and US systems of the Western Interconnection, and the August 14, 2003 blackout in the Midwest and Middle Atlantic states. *Id.*

²⁰ The OCA and WPII also request that the Commission give no weight to TrAILCo's assertions regarding potential outages, or comparisons to the August 2003 blackout, because such comparisons are unsubstantiated and invalid. OCA St. 1 at 26-28; RD at 103-104, 109.

C. Reply to TrAILCo Exception No. 4: The ALJs properly concluded that available “alternatives” were not considered.

PJM does not look for non-transmission solutions to potential electric reliability problems and, in the 2006 RTEP process, the only solutions considered for any of the alleged reliability issues were transmission solutions.²¹ Nothing else was studied – conservation, demand side management, the effect of potential carbon caps on demand, distributed generation, etc.²² In fact, TrAILCo and PJM will only look for alternatives if the 502-Loudoun line is not approved.²³

The ALJs properly concluded that numerous alternatives exist that would correct the alleged infractions, and prevent the need for the 502-Loudoun line:

59. TrAILCo’s alleged infractions can be corrected by use of: 1) shunt capacitors, 2) appropriate manual system adjustments when applying NERC Category C3 contingencies, 3) transmission constrained dispatch in base cases, and manual system adjustments for C3 analyses, and 4) encouraging new generating capacity in eastern PJM.²⁴

D. Reply to TrAILCo Exception No. 5: The ALJs properly concluded that the Pennsylvania 502 Junction Facilities will have an adverse impact on generation projects in Eastern PJM.

PJM influences where generation will be built. The TrAIL project will have an adverse impact on generation projects already in the queue in eastern PJM, and negatively affect future investment in generation in eastern PJM. The TrAIL will encourage the construction of new, predominantly coal-

²¹ Tr. 2258-2259; RD at 114-115. PJM claims it is not required to study, identify, or recommend non-transmission solutions. *Id.*

²² TrAILCo’s Brief at page 26 mentions demand side management (“DSM”). However, DSM was not studied in the 2006 RTEP process. Tr. 2258-2259. TrAILCo has also not looked at the effect of DSM programs outside of the Allegheny Power zone, including those in Dominion’s territory. Tr. 2792:20-21; 2793:5-9.

²³ Tr. 2286. TrAILCo and PJM did not look for individual solutions to alleged reliability violations, but instead sought a global solution. ECC Main Brief at 50-53 and Reply Brief at 22. PJM and TrAILCo failed to consider or explore alternatives to the 502-Loudoun line to resolve the alleged reliability violations, such as facility upgrades or tweaks to the 765 kV PATH line, transmission constrained dispatch, high-voltage direct current (HVDC) lines; upgrades or repairs to existing transmission facilities, or any non-transmission solutions. RD at 116.

²⁴ ECC St. SR-1, at 16; RD at 18. Reactive support for voltage issues was not studied. ECC Reply Brief at 16. Mr. Loehr has also suggested considering high voltage direct current (“HVDC”) technology, operating in parallel with the existing AC systems, as an alternative to the 502-Loudoun line. There are hundreds of such applications world-wide – Mr. Loehr’s surrebuttal testimony cites several in North America, one of which is actually in service in PJM (the Neptune Project, between northern New Jersey and Long Island). In addition, all 12 of the alleged electrical occurrences purporting to support TrAILCo’s application for the 502-Loudoun line have less environmentally intrusive, and much less costly, fixes. See RD at 6-18, ¶¶40-60.

fired generation, in Ohio, Kentucky, West Virginia and southwestern Pennsylvania to provide electricity to load centers in eastern PJM where there is a lack of generating capacity.²⁵

Allegheny, TrAILCo, and PJM, by their policies, significantly affect developers' decisions vis-à-vis where and what type of generation will be built. By constructing a major west to east 500 kV line, which will be paid for by the customers and not by the generation owners, they will provide a major incentive – in effect a subsidy – for potential developers to plan and construct coal fired generation in the west rather than other types of resources in the east, where they are needed. ECC St. SR-1 at 13; see *also* ECC St. SR-1 at 9; RD at 116-118.²⁶ Since the developers of the remote generating units do not have to pay for the transmission costs, they can compete directly with more local resources which do not have anywhere near equivalent transmission costs. Thus, the “market” would discriminate against local generation or distribution and would, in effect, subsidize remote development. ECC St. 1, at 29. See *also* ECC St. 1 at 21-22 and 28-30; RD at 116-118.²⁷

²⁵ RD at 116-118. As the ALJs recognized, over time, additional high-voltage transmission lines may potentially be proposed to transport power across Pennsylvania from western PJM to load centers in eastern PJM if the global, “backbone” transmission solution proposed by TrAILCo is adopted. Pennsylvania is the Keystone State. Because of its geographic location, adopting the transmission policy solution proposed here will make Pennsylvania a future corridor state for transmission “super-highways” to transmit electricity across Pennsylvania from western generation to load centers in eastern coastal states. Pennsylvania’s citizens, ratepayers, and property owners, as well as Penn’s Woods, will be adversely impacted by the TrAIL transmission solution. RD at 112. And that is exactly what TrAILCo plans to do – turn Pennsylvania into a *super-highway* of transmission lines just as envisioned by *Project Mountaineer* – all to serve demand outside of the Commonwealth. TrAILCo witnesses have admitted that if this Commission approves the proposed 500 kV line that runs to Prexy, TrAILCo then expects it will need to come back to the Commission to get another 500 kV line approved. Tr. 2870-2871; ECC Main Brief at 25-26. In fact, TrAILCo plans on turning Prexy into a 500 kV and 138 kV hub. TrAILCo’s Larre Hozempa testified that *in addition* to the proposed Prexy Facilities, TrAILCo also has plans for *five* new 138 kV lines and *three* additional new 500 kV lines connecting to the Prexy Substation. Tr. 2864-2868. ECC Main Brief at 25. Certainly, this is not necessary to address the Prexy area’s peak annual demand of 500-600 MW!

²⁶ *Deregulation* was premised on the notion that costs to customers would be reduced if competition were introduced. But competition does not exist when some entities are effectively subsidized at the expense of competing entities. The increase in transfer capability which would come from the subsidized TrAILCo facilities would benefit western generators and others who want to move power across the PJM system for their own economic reasons. ECC Reply Brief at 29; RD at 98.

²⁷ PJM also sends signals to the market regarding where new generation should be built through its reliability pricing model (RPM). The RPM sends a capacity-based price signal to the market for the development of generation or demand response solutions. Tr. 2250. The new reliability pricing model, and auctions, can be used to procure generation, and provide incentives for construction of new generation where it is needed – and thus eliminate the need for the 502-Loudoun line. ECC Cross Ex. 14 at 2; ECC Main Brief at 58, 96.

Instead of encouraging the development of generating resources in the west, PJM should encourage new generation in eastern PJM – such as CPV Warren and CPV Maryland.²⁸ If western generation is subsidized by projects such as the 502-Loudoun line, clean generation closer to the demand (such as CPV Warren or CPV Maryland) will be at an economic disadvantage – and will not likely be built. ECC St. SR-1 at 9; ECC Reply Brief at 29.

E. Reply to TrAILCo Exceptions Nos. 6 and 7: The ALJs properly held that the route selection for the Pennsylvania 502 Junction Segment was unreasonable, TrAILCo’s siting process was incomplete, and TrAILCo did not mitigate environmental impacts.

TrAILCo claims that the selection of the route is a matter for the public utility in the first instance, and will not be set aside unless the utility’s exercise of its discretionary power is wanton, capricious or arbitrary. TrAILCo Exc. at 20-21. TrAILCo’s alleged authority for this assertion, however, comes from case law preceding the Commission’s 1978 siting regulations. *Id.* Moreover, this standard only applies to appellate review. *Pa. Dep’t of Env’tl. Res. V. Pa. P.U.C.*, 335 A.2d 860, 863-64 (Pa. Commw. Ct. 1975). See discussion in ECC Reply Brief at 42-43.²⁹

Under the current regulations, TrAILCo must prove that it has complied with the Commission’s siting regulations and prove that its route selection was reasonable.³⁰

The siting regulations codify the Commission’s obligations, under Article I, Section 27 of the Pennsylvania Constitution, to consider and minimize environmental impacts on the Commonwealth. *Re: Proposed Elec. Regs.*, 49 Pa.P.U.C. 709, 712 (1976). The siting regulations require an applicant to provide specific information including, but not limited to, the process for route selection, and an

²⁸ CPV Warren is a 590 MW combined-cycle natural gas-fired generating station in Warren County, Virginia – approximately seven miles from the Meadowbrook Substation (to which the proposed 502-Loudoun line connects). CPV Maryland is a 640 MW combined-cycle natural gas-fired generating station in Charles County, Maryland. ECC St. SR-1 at 9; RD at 97; ECC Reply Brief at 28.

²⁹ Even if “wanton, capricious or arbitrary” was the applicable standard, TrAILCo’s route selection should still be set aside because it was just based on old right of ways, and the ALJs found TrAILCo’s selection “arbitrary”. RD at 172, 177.

³⁰ 52 Pa. Code §§ 57.71 -57.77; see *Certificate Application of Pennsylvania Power & Light Company*, 1994 WL 932261, 33 (Pa. PUC 1994) (holding route selection must be reasonable).

evaluation of environmental, historical and other impacts, and safety considerations. 52 Pa. Code § 57.72(c). The law is well settled – the Commission determines whether *the application as submitted* meets its criteria. See ECC Reply Brief at 42-43.

The ALJs painstakingly detailed the reasons why TrAILCo's route selection fails to comply with the current siting regulations. RD at 169-77.³¹ The RD concludes that TrAILCo's route evaluation was "incomplete and therefore unreasonable." RD at 177.

Contrary to TrAILCo's assertion, the ECC and the OTS directly challenged and opposed TrAILCo's compliance with the siting regulations for the 502 Junction Segment, asserting, among other things, TrAILCo's noncompliance with 52 Pa Code § 57.72(c)(10). See RD at 157-58. That code section provides that an application *shall* contain: 1) *a general description of each alternative route*; 2) a description of methodology for developing the alternative routes; 3) *a comparison of the relative merits of each route*; and (4) a statement of the reasons underlying the selection of the preferred route for each HV line. *Id.*; RD at 34, ¶182.

Section 2.11.1 of TrAILCo's Line Route Evaluation Report ("LRE") fully sets forth TrAILCo's analysis under § 57.72(c)(10) for the 502 Junction Segment. RD at 35, ¶184. TrAILCo "selected" the preferred route, Route H, from eight (8) alternative routes – Routes A through H. *Id.* at ¶187. While general descriptions were provided for Routes A through C, no descriptions were provided to "understand and distinguish" Routes D-H. *Id.* at ¶89. More importantly, the LRE fails to discuss the comparative merits of the Routes A through H.³²

³¹ TrAILCo's proposed conditions 13 and 15, attached to its Exceptions at appendix A, are also an *admission* that TrAILCo failed to comply with the siting regulations, including a failure to identify sources of drinking water, historical and archeological sites, and endangered species.

³² *Id.* at ¶190. Significantly, TrAILCo did not address the routes' impact on surface or subsurface waters despite the fact that the majority of the impacted communities draw their potable water from such sources. RD at 169; fn. 54, *infra*. TrAILCo's experts also confirmed that the selection of Route H was *solely* driven by considerations outside this Commonwealth. ECC Main Brief at 62. But, *after* the close of the record, TrAILCo now claims that Route H was the "shortest." ECC Reply Brief at 44, n.40. There is no evidence in the record confirming this statement, and the LRE expressly states that Routes D-H are all 1.2 miles. ECC Reply Brief at 44, n.46; TrAILCo JH-1 at 28.

Because TrAILCo's application does not contain any discussion of the routes' comparative merits, nor does it provide general descriptions of Routes D-H, TrAILCo's application on the 502 Junction Segment fails to meet the mandatory minimum requirements of 52 Pa. Code § 57.72(c)(10).³³ Thus, TrAILCo "has not met its burden of proving that the proposed facilities known as the '502-Loudoun portion of TrAIL' are in compliance with the Commission's siting regulations." RD at 232.³⁴

TrAILCo further failed to address the environmental criteria set forth in §§ 57.72(c) and (e) in both its discussion of the Prexy Facilities and 502 Junction Segments. Indeed, TrAILCo made no effort in its siting process to (1) incorporate and address the data gathered from the public input sessions and site visits; (2) *address the impact on surface and subsurface waters*, despite knowing that the majority of communities in the surrounding area draw their potable water supplies from such sources; (3) address acknowledged deficiencies in GIS data, and (4) present detailed soil environmental data such as a soil and sedimentation plan or any plan addressing air and water pollution. RD at 169.³⁵

F. **Reply to TrAILCo Exceptions Nos. 8, 9, 10, and 11.**³⁶

G. **Reply to TrAILCo Exception No. 12: The ALJs properly concluded that the Prexy Facilities address "a minor or even non-existent problem" and that "little or no need for reinforcement in the Prexy service area presently exists."**

1. **TrAILCo Did Not Satisfy its Burden of Proof that Reliability Issues Exist that Require Building the Prexy Facilities.**

³³ See *Re Alternative Energy Portfolio Standards Act of 2004*, 101 Pa.P.U.C. 94, 2006 WL 316834 (2006) (citing *Lake Naomi Club, Inc. v. Monroe Cty. Bd. of Assessment Appeals*, 782 A.2d 1121 (Pa. Commw. Ct. 2001) (holding that the proper construction of the word "shall" is "mandatory," which does not permit room to overlook the plain language in an effort to reach a different result).

³⁴ In footnote 1 to its Exceptions, TrAILCo claims that the 502-Loudoun line crosses only five parcels in Pennsylvania, and that it has options for easements with two owners and a "an agreement in principle with the other two property owners for easements across the remaining parcels." TrAILCo Exc. at 1, ft. 1. This is not evidence of record, and cannot be considered by this Commission. In addition, counsel for two of the property owners, Carol and Albert Phillips, has indicated that the Phillips do not have an agreement with Allegheny Power or TrAILCo. Most importantly, however, the record evidence indicates that TrAILCo did no real assessment of impacts of the 502 Junction Segments. See JH-1 at 28.

³⁵ These failures apply to both segments, and moot the argument that the ALJ should have addressed each segment separately.

³⁶ See RD.

Judges Nemeec and Hoyer held that “little or no need for reinforcement in the Prexy service area presently exists,” and the “proposed Prexy Segment project is a grandiose answer to a minor or even non-existent problem.” This shows that TrAILCo failed in its most basic task – to prove that *something* has to be done. RD at 234.

TrAILCo’s request for approval of the Prexy Facilities was properly denied because (1) TrAILCo did not prove a reliability issue that requires the construction of any additional transmission facilities; (2) TrAILCo did not properly evaluate available alternatives; and (3) TrAILCo did not prove that the proposed new facilities are reasonably responsive to the alleged problem. RD at 150-151.

Judges Nemeec and Hoyer correctly note that TrAILCo’s whole case for the Prexy Segment is premised on a presumed “electrical” or “engineering” need, based on TrAILCo’s load flow modeling. RD at 150. All four of the electrical occurrences that TrAILCo relies upon to support its application for the Prexy Facilities involve alleged infractions of a specific NERC Standard: TPL-003 (Category C-3).³⁷ ***But TrAILCo did not prove the existence of the alleged NERC infractions.***³⁸

TrAILCO’s modeling studies did not establish NERC infractions, or that any reliability issues exist, because (1) TrAILCo did not perform “manual system adjustments” after the first electrical outage (or contingency), (2) the studies did not model “controlled load shedding,” and (3) the studies did not model “re-dispatch of generation.” *Id.*; ECC Main Brief at 20-22; RD 134-135.

NERC Category C-3 contingencies call for the loss of a single power system element, *followed by manual system adjustments*, and then the loss of a second system element.³⁹ But, TrAILCo did not study or model *any* manual system adjustments. Thus, TrAILCo has not proven a NERC infraction, or a reliability issue, requiring *any* new facilities.

³⁷ RD at 133; Tr. 2237-2238, 2268, 2801, 2695; *see also* Tr. 2703; OCA Main Brief at 35.

³⁸ *See, e.g.*, RD at 23-25, 94-109, 150-151. “The ECC has effectively refuted the likelihood of the contingencies relied on by TrAILCo even occurring.” *Id.*

³⁹ The probability of two unrelated contingencies occurring at the same time is very small. ECC St. 1 at 14; RD 25, ¶106. Thus, NERC C-3 provides for manual system adjustments between unrelated contingencies. RD at 23-25, ¶95-100, 106.

NERC allows controlled load shedding between C-3 contingencies to resolve reliability issues. RD at 25, ¶108; TrAILCo Ex. LAH-4. Thus, to prove a NERC violation, one must model load shedding to see if it resolves reliability issues. TrAILCo admits as much: “NERC standards allow for controlled loss of load in order to mitigate the effects of a NERC C3 contingency.” TrAILCo Main Brief at 28. But, TrAILCo did not model load shedding. RD at 25, ¶109; Tr. 2798. As a result, TrAILCo did not prove a NERC infraction.⁴⁰

Generation re-dispatch is one type of manual system adjustment permitted by NERC between C-3 contingencies. RD at 24, ¶¶95-99. “Generation re-dispatch” means that various generators’ outputs are increased (or decreased) to try and resolve potential issues. *Id.*; ECC St. 1 at 12-13. But TrAILCo did not model generation re-dispatch. *Id.* at ¶¶100, 120; Tr. 2794. Instead, TrAILCo claims that it could not re-dispatch generation because “there is no generation redispatch ... that will mitigate the problems in the Prexy area ...” - despite the fact that they admit that the Mitchell and Elrama power plants support the Prexy area using the Union Junction 138 kV line. ECC St. 1 at 12-13.

The generation capacity of the Mitchell and Elrama power plants in Washington County, Pennsylvania is more than sufficient to meet the *entire* Prexy electrical load.⁴¹ “[I]f deliverability from the two power plants was a problem, said problem could be solved economically by providing another route for the power to flow.” RD at 149; ECC Main Brief at 27-31; ECC Reply Brief at 11-13; *see also* RD at 141.

2. TrAILCo Did Not Properly Study Available Alternatives to the Prexy Facilities.

TrAILCO has admitted that alternatives to its proposal for the Prexy Facilities exist, as the Company has proposed a ninety-day “collaborative” *to analyze new alternatives* in its recently filed

⁴⁰ Allegheny Power can address the reliability concerns raised in TrAILCo’s Application in a manner consistent with NERC requirements through controlled load shedding. RD at 26, ¶119; ECC St. 1 at 17.

⁴¹ *Elrama and Mitchell’s combined output exceeds the total load TrAILCo forecasts for the Prexy area in 2009 by at least 200 MW.* ECC St. SR-1 at 4; Tr. 2770-2771; TrAILCo St. 2-R at 7; RD at 27.

Motion for Partial Stay of Proceedings and Request for Expedited Consideration (“Motion”). TrAILCo Exc. at 29. The “new” alternatives TrAILCo proposes to study include “demand side management and energy efficiency programs, enhancements and improvements to existing transmission lines, substations, and related equipment ...”. Motion at 5. Because TrAILCo has not yet considered these alternatives, its proposal for the Prexy Facilities must be denied.⁴²

Both the OCA and the ECC have effectively demonstrated that the contingencies relied on by TrAILCo to support its Application can be dealt with in a number of different ways – *without* the expense and environmental impact of another 500 kV line. RD at 150-151. Thus, even if TrAILCo *could* prove that reliability issues existed, a 500 kV line is not necessary.

The OCA’s transmission planning expert, Peter Lanzalotta, was able to solve all of the alleged reliability issues, *using* all of TrAILCo’s modeling assumptions and contingencies, without adding any new 500 kV lines or substations. Mr. Lanzalotta’s proposal involves paralleling existing 138 kV lines with three additional 138 kV lines.⁴³

Mr. Lanzalotta’s alternative is cheaper than TrAILCo’s proposed Prexy Facilities, and TrAILCo admits that “it works.” To validate that Mr. Lanzalotta’s proposed fix would work,

⁴² The proposed ninety-day collaborative process is also flawed and unworkable; it is simply an attempt to circumvent the PUC’s siting regulations, as will be more fully explained in the ECC’s opposition to TrAILCo’s Motion, which will be filed by September 30th. Rather than *withdraw* its application to consider the alternatives that should have been considered before submitting its application, TrAILCo proposes the Commission direct, among other things, the following:

Because TrAILCo’s affiliate, West Penn, bears the ultimate responsibility for providing safe, adequate and reasonable retail electric service, TrAILCo shall have the final decision regarding the nature and extent of new alternatives to the Prexy Facilities that may be proposed as an amendment to the Application. Review of that proposal shall be conducted with the Commission’s rules and procedures that are in effect at that time.

Motion at 6. In other words, after a ninety-day “collaboration” on a *new* solution to the alleged Washington County reliability issues, the Company will have the final say on what to propose! That is not a collaboration. In addition, if anything changes from the current Prexy Facilities proposal, TrAILCo will need to re-submit its application anyway – not just amend the current application. Most importantly, the ALJs properly held that TrAILCo has not proven that any reliability issues exist to justify any additional transmission facilities. There is no way to order a “collaborative” on potential new solutions to problems that have *not* been established.

⁴³ RD at 125-126; OCA Main Brief at 19-24. Mr. Lanzalotta stopped his analysis, due to time and monetary constraints, with the first set of solutions that “solved” the TrAILCo contingencies. As he noted, other equally less expensive and intrusive options likely exist. OCA Main Brief at 20-21.

TrAILCo's Larre Hozempa removed the Prexy Facilities from the model TrAILCo used to determine the alleged need for the Prexy Facilities, and inserted Mr. Lanzalotta's proposed alternative facilities. This resolved all four of the reliability issues TrAILCo relies upon for the Prexy Facilities.⁴⁴

In addition, all of the reliability issues alleged justifying the Prexy Facilities involve T-junctions.⁴⁵ TrAILCo has not studied the effect of removing the T-junctions. No case, study, or modeling was done to evaluate whether the removal of the T-junctions would have a positive effect in reducing or eliminating infractions. Tr. 2794, 2875. Because TrAILCo has not studied whether the elimination of the T-junctions, with or without some other tweaks to the existing system, could eliminate the need for the Prexy Facilities, TrAILCo cannot prove that the Prexy Facilities are needed. ECC Main Brief at 34-35.⁴⁶

TrAILCo's transmission planning engineering expert, Larre Hozempa, testified that:

Normal planning practice includes review of reactive reinforcements as a solution to voltage and loading problems, as well as other reinforcements such as reconductoring or construction of new facilities, during system planning analyses.

Tr. 2758; ECC Main Brief at 31-32. But, Allegheny Power and TrAILCo did not study reactive reinforcement, reconductoring, or constructing new lower voltage lines without new substations or 500 kV lines. Tr. 2901-2902; ECC Main Brief at 33; ECC Reply Brief at 35.⁴⁷

⁴⁴ TrAILCo Rebuttal St. 2-R-1 at 4; Tr. 2721, 2268, 2237-2238, 2721-2722, 2801; ECC Main Brief at 23-24.

⁴⁵ A "T-junction" or "three terminal" line is created when an existing transmission line is tapped somewhere along its route by a line from another substation or terminal. See ECC Ex. GCL-1a. With a T-junction, the failure of one line causes the failure of the other line. Electrical occurrences 1 and 2 involve the Buffalo Junction T-junction, and electrical occurrences 2, 3 and 4 involve the Union Junction T-junction. See TrAILCo Exhibit LAH-3.

⁴⁶ ECC's expert concluded that for the cost of installing three circuit breakers in each of the Buffalo Junction and Union Junction 138 kV lines, all four reliability infractions can be eliminated. ECC Main Brief at 34; Tr. at 139-140.

⁴⁷ There are a number of different ways to deal with voltage issues, including installation of capacitors or various dynamic reactive support devices such as static VAR compensators (SVCs). *Id.* Low voltages are caused by shortages of reactive power (VARs). Shunt capacitors are sources of reactive power. Therefore, shunt capacitors can solve low voltage problems by providing VARs. TrAILCo did not examine adding reactive power (VAR) support to address the alleged voltage violations, even though TrAILCo witness Herling admitted that capacitors and other types of reactive devices can support voltage. Tr. 2246. If voltage problems really did exist, they could be more effectively dealt with by installing shunt capacitor banks at the substations in question than by adding a 500 kV line. Such an approach would be far less expensive, and far less intrusive on the environment. ECC St. SR-1 at 7.

TrAILCo admits that lower voltage solutions exist, and will work – such as Peter Lanzalotta’s 138 kV alternative. TrAILCo witnesses have also testified that, if the Prexy Facilities are not installed, eventually there will be a significant number of 138 kV lines in the area. Tr. 2751-2752; TrAILCo St. 2-R at 18. That means there *are alternatives* to the proposed Prexy Facilities – 138 kV alternatives. But, TrAILCo has not performed any studies or evaluations to determine when, how many, where, or why these 138.kV lines will be needed. Tr. 2752; ECC Main Brief at 33.

Interestingly, neither TrAILCo nor Allegheny Energy submitted any alternatives to the proposed Prexy Facilities to PJM – and neither have a “plan B.” Tr. 2227-2228, 2524-2525.

TrAILCo did not study the effects of conservation, demand side management, or distributed generation.⁴⁸ Finally, TrAILCo did not evaluate any combinations of proposed fixes to address the alleged reliability issues.⁴⁹

3. The Proposed Prexy Facilities Are *Not* Reasonable in Size

The Commission has found that an applicant for a certificate of public convenience must show that the proposed new facilities are reasonably responsive to the need that exists. *Re West Penn Power Co.*, 54 Pa.P.U.C. at 327. TrAILCo acknowledges the capacity of the 500 kV line proposed as part of the Prexy Facilities is 4,161 MVA – more than seven times the *entire* projected 2009 load in the Prexy area. Tr. 2222; ECC Main Brief at 26-27; RD at 132. TrAILCo has not proven why it needs to build a

⁴⁸ Tr. 2258-2259. Other experts in this proceeding have also focused on TrAILCo’s failure to consider alternatives to the proposed Prexy Facilities. For example, OTS expert Gary Yocca testified that he was concerned that TrAILCo provided “no discussion of whether reasonable alternatives exist (such as load shedding or other NERC approved remedies),” and he questioned “whether different facilities, such as smaller capacity lines” could adequately address the identified issues. ECC Reply Brief at 19.

⁴⁹ ECC Reply Brief at 18. For example, TrAILCo should first eliminate the T-junction lines. Then TrAILCo should re-run the contingency studies. If Category C-3 contingencies still cause reliability issues, TrAILCo should do the manual system adjustments they ignored earlier – first, by re-dispatching generation (noting especially Elrama and Mitchell). If re-dispatch isn’t enough, then TrAILCo should try controlled load shedding as a “manual system adjustment.” That would reduce the amount of reactive reinforcement needed to satisfy the standards. If any low voltages still remain, they could add reactive support (shunt capacitors or SVCs at the substation, or capacitors along the subtransmission and/or distribution system) as required.

500 kV line with such excess capacity – a line that will only be loaded at 6.2% of its capacity on average, and 10.6% at peak flows. ECC Reply Brief at 22-23.

In fact, TrAILCo admits that the proposed Prexy Facilities are “larger than the immediate need requires.” But TrAILCo has not evaluated or determined *how much* larger the Prexy Facilities are than required. *Id.* Tr. 2750. Since TrAILCo has performed no studies or evaluations to determine how much larger the Prexy Facilities are than the immediate need requires, TrAILCo has not proven that the Prexy Facilities are needed to address the projected demand.⁵⁰ A project of the magnitude of the Company’s proposed Prexy Facilities is simply not needed to address the TrAILCo-identified reliability concerns. RD at 123. ECC witness George Loehr captured the essence of this issue when he stated that “[t]o construct a 500 kV line to satisfy this presumed low voltage problem would be like using a pile-driver to hammer tacks.” *Id.*; ECC St. 1 at 18; OCA Main Brief at 16⁵¹.

4. The Lights Will Not Go Out if the Prexy Facilities Are Not Constructed.

As ECC expert, George Loehr testified:

Do you believe that a blackout could occur if the Prexy- facilities are not constructed?

Absolutely not. Mr. Hozempa has not proven any reliability issues at all. His description of a potential blackout on pages 9-11 is totally unsupported and lacks credibility. The reliability violations Mr. Hozempa mentions, even if they were valid, would not cause a widespread blackout – or instability, cascading outages, or widespread loss of load. The conditions are totally different from the past incidents he cites. The worst thing that could happen would be some local loss of load served from a few substations in Washington and Greene Counties.

⁵⁰ The OCA also notes that it and other parties have diligently and thoroughly investigated and analyzed TrAILCo’s proposed Prexy Facilities. TrAILCo has served many pages of documents in response to discovery in this case. Yet, after all of this searching analysis and investigation, TrAILCo has not provided any plausible explanation for why a project of the magnitude of the Prexy Facilities must be constructed to serve the local needs of customers in and around the Prexy area. RD at 150-151; OCA Main Brief at 35.

⁵¹ Without any citations to the record, TrAILCO claims, in its Exceptions at footnote 55, that “[u]nlike OCA [sic] expert witness, ECC’s need witness Loehr did not support any of his opinions by analysis or studies of any sort pertaining to the facts of this case” and he has “not done any analysis of the underlying specifics of this case”. These allegations are absurd. *See* ECC Reply Brief at 33 – 34. In addition, a number of PJM’s own members have criticized the very same procedures and analyses that ECC and Mr. Loehr have criticized. *See* ECC Main Brief at 40-41.

ECC Reply Brief at 34; ECC 1 at 18-19.

H. Reply to TrAILCo Exception No. 13: The ALJs were correct in finding that TrAILCo's siting process for the Prexy Facilities was incomplete.

The RD finds that TrAILCo did not engage in good routing philosophies for the Prexy Segment. That finding is fully supported by the record. TrAILCo selected each of the preferred routes based on judgments made thirty (30) years ago when West Penn Power obtained rights of way ("ROWs") during a failed attempt to construct similar facilities. RD at 172. At the inception of its siting process, TrAILCo provided these "easements" to its hired "experts" as the preferred route. The experts created databases for assessing the alternative routes, and attempted to justify the preordained route using flawed GIS data. *Id.* at ¶¶ 229-31, and at 37, ¶¶ 201-05. In doing so, the experts ignored that the preferred route: 1) impacts the most residences and buildings within 500 feet of the power line; 2) crosses the most amount of pasture and the second highest amount of cultivated crops; and 3) crosses the second highest amount of agricultural and conservation district lands in Greene County. *Id.* at ¶¶ 211-15. The routing choices made on the Prexy Segment actually *maximize* the impacts on citizens of Greene and Washington Counties. *Id.* at 166-169; ECC Reply Brief at 43-46.

In its main brief, TrAILCo states that "the existing ROW was not weighted any differently than other criteria in the site selection process." TrAILCo Main Brief at 41. But TrAILCo's experts do not agree. They readily acknowledged that if the easements are invalid, then the process would have to be re-evaluated. RD at 160 (testimony of Jack Halpern).⁵²

Additionally, there is no credible evidence that TrAILCo gave reasoned consideration to using alternative and existing corridors such as I-70 or I-79. RD at 172. In fact, TrAILCo rushed through its process, solidifying value judgments before listening to the public input from impacted persons on

⁵² The ROWs are currently being challenged by litigation pending in Greene and Washington Counties. RD at 176. In fact, just today, September 22, 2008, the Greene County Commissioners announced that they had reached a settlement with TrAILCo that included, among other things, a complete abandonment of all the ROWs.

topics such as archaeological, cultural, and historic sites, and economic development plans. *Id.* at 169-71. TrAILCo then ignored the public input. *Id.* Because TrAILCo designed its process to reach a preordained result based on 30-year-old, and potentially invalid, “easements,” the ALJs correctly found that the process was arbitrary and capricious at its inception.⁵³

I. Reply to TrAILCo Exception No. 14: The ALJs properly concluded that TrAILCo acted unreasonably regarding mitigation of the environmental impacts (including the impact on natural resources) of the Prexy Facilities.

The Prexy Segment does not adhere to good environmental stewardship required under 52 Pa. Code §§ 57.72(c) and (e). TrAILCo specified the preferred route before the evaluation commenced. TrAILCo relied principally on flawed GIS data to create environmental justifications for its route selection that simply do not exist. RD at 37 & 40, ¶¶ 206-07, 229-31. To date, TrAILCo has not submitted “a credible account of how it seriously considered alternate routes that had less environmental impacts than its preordained route for the Prexy Segment.” *Id.* at 189.

Since “preordaining” the preferred routes, TrAILCo has also failed to address several critical environmental impacts, most notably the impact on *surface and subsurface waters*. *Id.* at 201. That alone is a critical error because *the majority of the impacted communities draw their potable water supplies from such sources*. RD at 169.⁵⁴ Given this Commission’s constitutional obligations to assess these impacts *before approving the application*, the Commission cannot overlook the lack of hard *information on environmental impacts in the LRE, and TrAILCo’s application, for the Prexy Segment.*

⁵³ RD at 172, 177. TrAILCo’s due process arguments are also without merit. Here, TrAILCo had a full opportunity to submit its application and present evidence. TrAILCo has not identified any property interest at stake, and cannot have a property interest in an interpretation of the siting regulations. *Cresco, Inc. v. P.U.C.*, 622 A.2d 997, 1000 (Pa. Commw. Ct. 1993). 52 Pa. Code §§ 57.72(c) and (e) prescribe what an application must address, and the evidence this Commission will consider in evaluating a transmission line siting application.

⁵⁴ The ALJs are also correct that TrAILCo’s superficial attempts to address selected environmental considerations do not provide enough information to assess impacts. *Id.* at 201. Indeed, TrAILCo has not provided the detailed impact analysis – such as a soil and sedimentation plan, locations for access roads, and plans to minimize water and other pollution generated by the project – necessary for this Commission to make an adequate evaluation. *Id.*

J. Reply to TrAILCo Exception No. 15: The ALJs properly concluded that the Prexy Facilities will pose an unreasonable health and safety risk to the public.

The ALJs held that TrAILCo failed to meet its burden of proving that the proposed facilities would not create an unreasonable risk of danger to human health. The principal basis for this holding is found on page 201 of the RD:

Finally, we find offensive the remarks in TrAILCo's Reply Brief, quoted above, that it has no requirement to consider and safeguard domestic and commercial water wells and sources. *We consider TrAILCo's failure on this record to account for the effects of its project on surface and subsurface water to be a serious failure of its burden of proof in this matter.*

Id. (emphasis added). Additionally, the ALJs cite TrAILCo's failures to address safety issues with gas lines, and public concerns over electric current induction into building or farm equipment. *Id.* at 202-3.

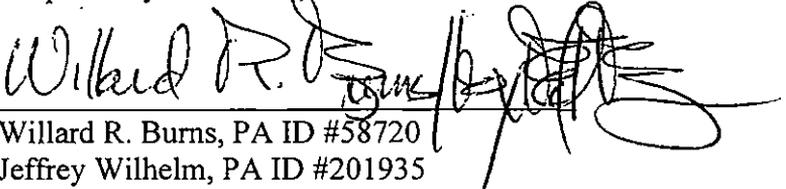
Because the ALJs' conclusion that the Prexy Facilities will pose an unreasonable health and safety risk is based on TrAILCo's failure to address issues other than EMFs, TrAILCo's Exception 15 is immaterial and misplaced.⁵⁵

III. CONCLUSION

Based on the written and oral testimony in this matter, and for the foregoing reasons, The Energy Conservation Council of Pennsylvania respectfully requests that the Applications, and Exceptions, of Trans-Allegheny Interstate Line Company be denied.

Dated: September 22, 2008

Respectfully Submitted,


Willard R. Burns, PA ID #58720
Jeffrey Wilhelm, PA ID #201935
Robert Gallagher, PA ID #205700

⁵⁵ Although the ALJs held, as TrAILCo's experts conceded, that certain agencies list Electric and Magnetic Forces (EMFs) emitted from transmission lines as a possible human carcinogen (*Id.* at 44), the ALJs did not recommend denying TrAILCo's application based on the risks posed by EMFs. *Id.* at 196-97. Rather, the ALJs urged the Commission to adopt OTS' proposal that requires TrAILCo, if the application is approved over the ALJs' objections, to take affirmative steps to minimize EMF exposure to residents. *Id.*

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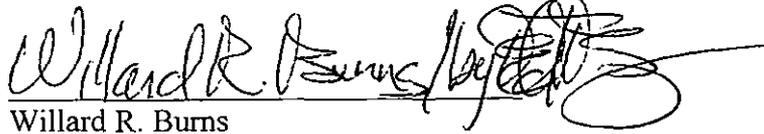
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CERTIFICATE OF SERVICE

In Re: Application of Trans-Allegheny Interstate Line Co. (TrAILCo) Docket No. A-110172, A-110172F002, A-110172F003, A-110172F0004, G-00071229

I hereby certify that I have this day served a true copy of the foregoing ENERGY CONSERVATION COUNCIL REPLIES TO TrAILCo's EXCEPTIONS upon parties of record in this proceeding via electronic mail and U.S. Mail, First Class, postage prepaid, upon the persons listed below:

Dated: September 22, 2008


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September 22, 2008

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**DOCUMENT
FOLDER**

Re: Application of Trans-Allegheny Interstate
Line Company *A-110172F0003*
Docket Nos. A-110172, A-110172F0002-F0004
and G-00071229

Dear Secretary McNulty:

Enclosed for filing are an original and nine (9) copies of the Reply Exceptions of the Office of Consumer Advocate, in the above-referenced proceeding.

Copies have been served on the parties of record as indicated on the enclosed Certificate of Service.

Very truly yours,

A handwritten signature in cursive script that reads "Dianne E. Dusman".

Dianne E. Dusman
Senior Assistant Consumer Advocate
PA Attorney I.D. # 38308

cc: Honorable Michael Nemec
Honorable Mark A. Hoyer
Office of Special Assistants
Certificate of Service

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SEP 22 2008

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

IN RE: APPLICATION OF TRANS-ALLEGHENY :
INTERSTATE LINE COMPANY FOR (I) A :
CERTIFICATE OF PUBLIC CONVENIENCE TO :
OFFER, RENDER, FURNISH AND/OR SUPPLY :
TRANSMISSION SERVICE IN THE :
COMMONWEALTH OF PENNSYLVANIA; (II) :
AUTHORIZATION AND CERTIFICATION TO :
LOCATE, CONSTRUCT, OPERATE AND MAINTAIN :
CERTAIN HIGH VOLTAGE ELECTRIC :
TRANSMISSION LINES AND RELATED ELECTRIC :
SUBSTATION FACILITIES; (III) AUTHORITY TO :
EXERCISE THE POWER OF EMINENT DOMAIN FOR :
THE CONSTRUCTION AND INSTALLATION OF :
AERIAL ELECTRIC TRANSMISSION FACILITIES :
ALONG THE PROPOSED TRANSMISSION LINE :
ROUTES IN PENNSYLVANIA; (IV) APPROVAL OF :
AN EXEMPTION FROM MUNICIPAL ZONING :
REGULATION WITH RESPECT TO THE :
CONSTRUCTION OF BUILDINGS; AND (V) :
APPROVAL OF CERTAIN RELATED AFFILIATED :
INTEREST ARRANGEMENTS :

Docket Nos. A-110172
A-110172F0002
A-110172F0003
A-110172F0004
G-00071229

DOCUMENT
FOLDER

REPLY EXCEPTIONS OF THE OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

On August 15, 2008, the Office of Administrative Law Judge issued the Recommended Decision (R.D.) of Administrative Law Judges (ALJs) Michael A. Nemecek and Mark A. Hoyer in this matter. In the Recommended Decision, the ALJs ruled on the five requests within the omnibus Trans-Allegheny Interstate Line Company (TrAILCo or Company) Application, recommending denial of all of them, for various reasons. On September 10, 2008, the Company filed Exceptions to the Recommended Decision.

First, whether or not a party agrees with the Findings of Fact and Conclusions of Law within the Recommended Decision, it cannot be denied that the ALJs performed a monumental task in a manner that brings tremendous credit to the Office of Administrative Law Judge and to the Pennsylvania Public Utility Commission (Commission) as a whole. The ALJs presided over eight days of highly complex technical hearings and twelve public hearings and site visits along the length of the proposed right-of-way, treating every witness with fairness and respect. It is evident that the ALJs pored through thousands of pages of testimony and exhibits in the course of determining the outcome in this matter and their conscientious and thorough efforts should be applauded.

The OCA would also note that the ALJs properly reject in the strongest terms the belittling characterization of those with concerns about the line as "self-interested NIMBYs." As the ALJs noted:

In discussing the ECC's arguments in opposition to the 502 Junction Facilities and its attempts to prevent the facilities from being constructed, TrAILCo stated that, "[s]uch inconsistent and irrational thinking is the hallmark of self-interested NIMBYs who are fully prepared to scuttle any consideration of the public interest in a heartbeat." We take issue with this statement and, quite frankly, are offended by it. By implication, TrAILCo is saying that those in Greene County who oppose the 502 Junction Facilities are or think like "self-interested NIMBYs." The people and property owners of

Greene County who testified at public input hearings and site views last year are not "self-interested NIMBYs." These people have done and will continue to do their part for the "public need." They just object to having *everything* in their backyards. ... These people live with the pollution and waste generated by coal mining and coal-fired electric power generation. Needless to say, we do not condone baseless *ad hominem* assertions in this proceeding. The inquiry here is focused on need.

R.D. at 110-111 (emphasis in original). This is not to say, however, that the ALJs looked only at local landowner concerns, as TrAILCo asserts. TrAILCo Exc. at 1-2. Pennsylvania law does permit the Commission to consider regional and national interests and, here, the ALJs did so. R.D. at 6-7, 236-237.

The OCA's primary concern in this case has been the massive and unnecessary intrusion on the communities and citizens of Greene and Washington Counties of the Prexy Facilities proposed to address alleged local reliability concerns in Washington County. The ALJs correctly found that the Company's proposed Prexy Facilities were not needed, were ill-planned and should be rejected. In the ALJs' words, the TrAILCo-proposed Prexy Segment project is "a grandiose answer to a minor or even non-existent problem." R.D. at 234. Even TrAILCo now seems to recognize that viable alternatives to its proposal exist, as the Company has proposed a ninety-day collaborative to seek "creative" alternatives to the Prexy Facilities. Unfortunately, the ninety-day collaborative process as proposed by the Company is unworkable and insufficient.¹ The OCA would note that, in its Motion, TrAILCo proposes that the Commission direct, among other things, the following:

Because TrAILCo's affiliate, West Penn, bears the ultimate responsibility for providing safe, adequate and reasonable retail electric service, TrAILCo shall have the final decision regarding

¹ The OCA intends to submit an answer to the TrAILCo Motion for Partial Stay of Proceedings and Request for Expedited Consideration (Motion) in a separate filing on or before September 30, pursuant to 52 Pa. Code § 5.61.

the nature and extent of new alternatives to the Prexy Facilities that may be proposed as an amendment to the Application. Review of that proposal shall be conducted with the Commission's rules and procedures that are in effect at that time.

Motion at 6. In other words, after a ninety-day "collaboration" on a solution to the alleged Washington County reliability problems, the Company would have the final say on what to propose, anyway. Under the proposal in its Motion, the Company would retain the disputed easements over the land on which the Prexy Facilities would be built and would ostensibly retain the right to invoke Federal Energy Regulatory Commission "back-stop" authority, if the Commission does not adopt a solution that the Company finds satisfactory. At the end of three months, the Company could simply resubmit its plan for Prexy Facilities, if it still concludes that it is the best alternative.

As set forth more fully below, the OCA submits that the Prexy Facilities as proposed in the TrAILCo Application should be rejected by the Commission at this time. The Commission should direct the Company to perform a bona fide and thorough review of *all* least cost and least environmentally intrusive alternatives, including all non-transmission alternatives, proportionate to any reliability concerns it can presently demonstrate.

With regard to the proposed 1.2-mile portion of the 502 Junction-to-Loudoun line, the OCA has taken no position in this proceeding on the alleged reliability violations in Virginia and that position remains unchanged. To the extent that the line is being built for economic purposes, however, as the ALJs concluded, the OCA contends that further economic analysis is needed to reflect the likely cost of carbon emissions in any future climate change law or regulation before that segment of the line is approved. Moreover, if the Commission approves the 1.2 mile Pennsylvania segment of the 502 Junction-to-Loudoun line, it should make clear that

any certificate of public convenience, eminent domain authority or zoning exemption granted to TrAILCo applies only to that limited line.

II. REPLY EXCEPTIONS

- A. OCA Reply to TrAILCo Exceptions Regarding the Need for the Prexy Facilities: The ALJs Correctly Concluded That There Is No Need for the Proposed Prexy Facilities. (TrAILCo Exc. at 29-31; R.D. at 118-151; OCA M.B. at 12-46; OCA R.B. at 7-30).

1. Introduction.

In its Exceptions, the Company noted that “[t]he Application addresses two *separate* and *distinct* TrAILCo projects, both of which are encompassed under the overall name of Trans-Allegheny Interstate Line (“TrAIL”).” TrAILCo Exc. at 1 (emphasis added). These two separate and distinct portions of TrAIL are the Pennsylvania 502 Junction Facilities (that would run from west to east to Loudoun, Virginia) and the Prexy Facilities (of which the 500 kV Prexy Segment would run south to north into Greene and Washington Counties). The fact that TrAIL is comprised of two different, distinct projects, and that either part of the TrAIL line could be built without the other part is not in dispute. OCA R.B. at 28; Tr. at 2209-2210, 2237. The “Prexy Facilities” consist of the Prexy 500 kV substation, a 37-mile 500 kV line from the Prexy substation to the 502 Junction substation and five 138 kV lines connecting the Prexy substation to the surrounding network. OCA St. 1 at 6-7. As to the Prexy Facilities, the ALJs found that “[b]ased on review and evaluation of the record we conclude that TrAILCo has failed to carry its burden of proof regarding ‘need.’” R.D. at 149.

In its Exceptions, TrAILCo argued that the ALJs erred by not finding that there is a need for reinforcement to the transmission system in the Prexy area. TrAILCo Exc. at 29-31.² Regardless of the ultimate determination as to whether a need exists for Prexy area reinforcement, the evidence is overwhelming that the proposed Prexy Facilities are not needed to address such local concerns. The record provides the following facts, *which are undisputed*:

- The potential reliability concerns listed in Exhibit LAH-3 can all be resolved without building any new 500 kV infrastructure (OCA St. 1 at 14; Tr. at 2702-2703, 2721);
- OCA witness Lanzalotta did not challenge the Company's findings as to the potential reliability concerns listed in Exhibit LAH-3 (OCA St. 1 at 17, fn. 1; OCA M.B. at 8, fn 3); and,
- TrAILCo's only proposed solution to any possible reinforcement needs in the Prexy area is to build the 500 kV Prexy Facilities; the Company offered no alternatives for this Commission to consider (Tr. at 2710).

Exhibit LAH-3 provided the basis for the Company's position that the 500 kV Prexy Facilities are needed.³ Mr. Lanzalotta, however, proposed a 138 kV solution that effectively resolved all of the listed concerns found in LAH-3. The Company, however, offered no "Plan B," that is, no alternative to offer for this Commission's consideration. The record here is clear that the Prexy Facilities are not needed to resolve the alleged reliability concerns identified by the Company. Accordingly, TrAILCo's Application seeking the authorization to build the Prexy Facilities must be denied.

² It is noteworthy that in TrAILCo's Exceptions it no longer argues that its proposed 500 kV Prexy Facilities are needed to resolve potential local reliability issues, but instead, has now advanced the need for "Prexy area reinforcement." TrAILCo Exc. at 31.

³ For a complete description of the potential reliability concerns listed in Exhibit LAH-3, see OCA Statement 1 at 10-13.

2. The Prexy Facilities Are Not Needed to Address Any Potential Reliability Concerns in the Prexy Area.

This Commission has held that an Applicant seeking to construct new transmission facilities must show that the proposed new facilities are reasonably responsive to the need that exists. Re West Penn Power Co., 54 Pa. PUC 319, 320-327 (1980). The Commission's regulations require a determination of the following factors for the approval of a proposed transmission line: (1) *that the line is needed*; (2) that it will not create an "unreasonable risk of danger to the health and safety of the public"; (3) that it is in compliance with statutory and regulatory requirements for the protection of Pennsylvania's natural resources and (4) that it will "have a minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives." 52 Pa. Code §57.76(a)(1)-(4) (emphasis added). As the substantial record evidence indicates, and the following further illustrates, TrAILCo has failed to show that its proposed 500 kV Prexy Facilities are needed.

Company witness Lawrence Hozempa stated in his direct testimony that the Prexy Facilities are needed in order to avoid four potential system reliability concerns in the Prexy area. TrAILCo St. 2 at 5 and Exh. LAH-3. During cross-examination, Company witness Hozempa confirmed that the Prexy Facilities were being proposed by TrAILCo to resolve the potential reliability concerns as initially set forth in TrAILCo Exhibit LAH-3. Tr. at 2695; *see also* Tr. at 2703. The potential reliability concerns listed in Exhibit LAH-3 are all local, intrastate concerns, as described by Mr. Lanzalotta in his direct testimony. OCA St. 1 at 11-12. Mr. Lanzalotta's 138 kV Prexy solution effectively resolved all of the local concerns listed in Exhibit LAH-3 – a fact which Company witness Hozempa acknowledged. TrAILCo Rebuttal St. 2-R-1 at 4; Tr. at 2721.

The substantial record evidence is clear that TrAILCo's Application as to the Prexy Facilities rests on the need to resolve the potential reliability concerns listed in Exhibit LAH-3. As evidenced above, the Prexy Facilities are not needed to resolve the occurrences listed in Exhibit LAH-3. In the R.D., the ALJs evaluated the evidence and correctly concluded that:

TrAILCo has proposed a grandiose plan involving a 500kV "backbone," a new substation with lots of room for expansion, and, in essence, five 138 kV lines. The proposal calls for two double circuit 138 kV lines, and one single circuit 138 kV line. Virtually all of the proposed construction would occur on property not currently burdened by electrical facilities. Much of that property is more suitable for other types of development, or is already being productively utilized. *The problems cited as a basis for this proposal can be solved by three 138 kV lines on or paralleling existing lines. Other additions involve improvements or modifications to existing substations and the "T" junctions.*

R.D. at 150 (emphasis added).

In its Exceptions, the Company advanced one substantive argument in support of its proposed Prexy Facilities. TrAILCo alleged that the \$55 million estimate to construct the OCA's 138 kV Prexy solution is in error and that "the actual cost would be substantially higher, making it no bargain compared to the estimated costs of the Prexy Facilities." TrAILCo Exc. at 30. The Company's argument on this issue should be rejected for several reasons.

First, the OCA based its cost estimates for a 138 kV upgrade on Company-supplied data, which indicated the OCA's 138 kV Prexy solution would cost approximately \$55 million as compared to the \$213 million cost of the Company's proposed Prexy Facilities. OCA St. 1 at 20; R.D. at 32, Findings of Fact (F.F.) 165-166; *see also* OCA M.B. at 25-26; OCA R.B. at 12-15; OCA Supp. Direct Exh. 1. Second, as discussed in more detail below, the OCA's proposed 138 kV Prexy solution is but one possible option to resolve the potential reliability concerns listed in Exhibit LAH-3. Tr. at 3186. Third, the cost of the Company's Prexy Facilities is not

determinative of the question at hand. The project must be reasonably responsive to the need that exists,⁴ and the evidence of record demonstrates that no 500 kV facilities need to be constructed to resolve the Prexy area reliability concerns listed in Exhibit LAH-3. OCA St. 1 at 14; Tr. at 2702-2703, 2721. The record substantiates the magnitude of the Company's proposed Prexy Facilities: the 500 kV line would provide over seven times the capacity needed to supply the local Prexy area load. OCA St. 1-SR at 7.

In reaching their decision on the Prexy Facilities, the ALJs concluded that:

the present application is based on the premise that the project is needed for an intrastate, local electrical need. ... We do not believe that the present proposal is necessary or proper for the accommodation of the public, and we do not believe that the present proposal has a minimal environmental impact, especially when compared to available alternatives.

R.D. at 150. Substantial record evidence supports the ALJs' conclusions. Accordingly, the Commission should affirm the Recommended Decision and deny the application as to TrAILCo's proposed Prexy Facilities.

3. OCA Witness Lanzalotta Accepted the Results Found in Exhibit LAH-3 as the Starting Point for His Investigation and Analysis.

OCA witness Lanzalotta was retained by the OCA specifically to assess the Company's proposed Prexy Facilities in relation to the identified need in the Prexy area as found in Exhibit LAH-3 and to ascertain whether the need could be met with more cost effective, less intrusive options. In his direct testimony, Mr. Lanzalotta stated his conclusions, as follows:

There is no need to build a new 500 kV line from 502 Junction to Prexy or the new Prexy substation, in order to reinforce the 138 kV transmission system in Pennsylvania and address the problems described in TrAILCo Exhibit LAH-3. My initial studies indicate that the addition of four new 138 kV lines along the routes of existing 138 kV transmission lines, and the addition of capacitors at two existing substations, would eliminate all the problems....

⁴ Re West Penn Power Co., 54 Pa. PUC 319, 320-327 (1980).

OCA St. 1 at 19-20. Mr. Lanzalotta also explained the basis, or starting point for his investigation and analysis, as follows:

Under the minimum NERC standards for multiple contingencies, the controlled interruption of customer demand (dropping of customer loads), the planned removal of generators, and the curtailment of firm power transfers are accepted methods to keep the system stable. See TrAILCo Exhibit LAH-4, pg. 1, Part B Requirements, Section R-1, Category C of Table 1. PJM and TrAILCo are using a more conservative reliability standard in this instance that calls for bringing the system to a stable state without dropping customer load. I have utilized this more conservative requirement in my analyses as well.

OCA St. 1 at 17, fn. 1. As there has been some possible mischaracterization or confusion as to the OCA's position in regards to the Company's use and application of the NERC standards in this proceeding, the OCA wishes to clarify its position again here.

Mr. Lanzalotta accepted the results of the Company's testing procedures, which produced the potential reliability concerns listed in Exhibit LAH-3, as the starting point for his analysis of the transmission system in the Prexy area. The OCA took no position in this proceeding on the Company's use and application of the NERC standards as to the transmission system in the Prexy area, with one caveat. Mr. Lanzalotta explained that the Company was using a more conservative form of testing than the minimum NERC standards call for. OCA St. 1 at 17, fn. 1. Other parties in this proceeding, however, did challenge the Company's application of the NERC standards.

The ECC directly challenged the Company's testing procedures and methods that lead to the alleged reliability concerns listed in Exhibit LAH-3. *See* R.D. at 133-140, 148-149. After consideration of the voluminous record on this issue, the ALJs agreed with ECC that TrAILCo failed to carry its burden on the issue of major reinforcements being needed for the

Prexy area. R.D. at 151. Even applying the more conservative interpretation proposed by the Company, however, OCA witness Lanzalotta conclusively demonstrated that the Company's Prexy Facilities are not needed.

4. The Company's Only Proposal to Address the Potential Prexy Area Reliability Concerns Must Be Rejected.

TrAILCo's only proposal to address the potential, local reliability concerns in the Prexy area, on this record, was to build the Prexy Facilities. In his direct testimony, OCA witness Lanzalotta discussed the only alternative the Company considered, as follows:

The Company was asked about alternatives to the Prexy Facilities that were considered in OCA-I-17(a). In response, the Company answered that the only alternative to its proposed plan that it considered was a 500-to-138 kV substation in western Washington County along the Wylie Ridge-to-Harrison 500 kV line.

OCA St. 1 at 14. As to why this one alternative was not pursued, Mr. Lanzalotta explained that:

In response to OCA-VII-4(b), the Company stated that the first alternative, the new 500-to-138 kV substation along the Wylie Ridge-to-Harrison 500 kV line, did not raise voltages in northern Washington County to an acceptable level.

Id. As the Recommended Decision provided, however, additional evidence as to this possible alternative surfaced later in the proceeding. R.D. at 138.

In its "Prexy Study," the western Washington County 500 kV substation required *four to five* new 138 kV lines to connect that substation to the rest of the 138 kV network. R.D. at 138; ECC M.B. at 32. When the Company tested this alternative, it only used *one* 138 kV line to tie the 500 kV substation to the rest of the 138 kV network. R.D. at 138; ECC M.B. at 32. As discussed above, the Company dismissed this possible alternative because it did not sufficiently raise voltages in the Prexy area. In his direct testimony, Mr. Lanzalotta also explained the

apparent disconnect between the Company's stated need for Prexy area reinforcement and its chosen 500 kV solution, as follows:

It is curious to me that all of the Company's alternatives include the addition of new 500-to-138 kV substation with new 500-to-138 kV substation transformer capacity. As I mentioned above, not one of the double contingencies presented in support of the need for the Prexy Facilities, in TrAILCo Exhibit LAH-3 (Figure 4 above), results in any reported overloads of the existing transformers feeding the Company's 138 kV system. In other words, there is no apparent need to add new 500-to-138 kV substation transformers to the system. My analyses indicate that the voltage problems that are reflected in TrAILCo Exhibit LAH-3 can be corrected without the need for a new 500-to-138 kV substation or a new 500 kV transmission line.

OCA St. 1 at 14-15.

As to the legal issue of alternatives, the Recommended Decision provided the following:

The Commonwealth Court also emphasized language in 52 Pa. Code §57.76(a)(4) that requires that the Commission, prior to granting approval of an application, consider that the proposed transmission line will have a minimum environmental impact "*considering the electric power needs of the public, the state of the available technology and the available alternatives.*" Penna. Power & Light Co. v. Pa. PUC, 696 A.2d 248 (Pa. Cmwlth. 1997) (emphasis in original).

R.D. at 149. It is clear from the record that TrAILCo did not seriously pursue any 138 kV solutions to the potential reliability concerns in the Prexy area. It is equally clear from the record, however, that potential 138 kV solutions do exist. OCA St. 1 at 14; Tr. at 2702-2703, 2721. Mr. Lanzalotta explained some of these 138 kV alternatives, as follows:

My analyses indicate that it is possible to eliminate all of the problems listed in TrAILCo Exhibit LAH-3 by adding four 138 kV transmission lines on existing rights-of-way to the 138 kV network in Washington County, and by adding two 138 kV substation capacitors to the existing system in Washington County. These alternatives are described in greater detail later in my testimony. I haven't seen any indication that this approach was modeled or considered by the Company.

In addition, it is possible to reduce the current impact of a fault affecting the 138 kV transmission lines that make up Buffalo Junction or Union Junction by reconfiguring the system to eliminate these "T" connections so that one fault will no longer take out two transmission lines. This could be as simple as placing a small substation at the junction connection point with circuit breakers for one or more of the transmission lines. Or it could be something more substantial, such as a new circuit out of an existing substation to connect to one of the transmission lines at the junction point, thus eliminating the "T" connection. I have not seen any indication that this approach was considered by the Company, either.

OCA St. 1 at 15. In his surrebuttal testimony, Mr. Lanzalotta explained that the OCA's 138 kV Prexy solution would minimize the environmental impact, consistent with the Commonwealth Court's discussion above, as follows:

I have demonstrated that all of the 2009 reliability concerns addressed by the Company in its initial filing can be solved with no more than four new 138 kV lines, as set forth in my Direct Testimony. Mr. Hozempa fails to note that the Company's own proposed facilities provide for the construction of *five* new 138 kV lines running out of the proposed Prexy substation, compared to the *four* new lines in my proposal. Thus, if the mere number of 138 kV lines is of paramount consideration, my proposal is preferable. I would also point out that the new transmission lines in my proposal would follow the routes of existing transmission lines, while new 138 kV transmission lines in the Company's proposal would not. Additionally, with my alternative proposal, the Prexy Facilities in their entirety would not need to be built.

OCA St. 1-SR at 5. And, as the Recommended Decision provided, "[a]n additional benefit of Mr. Lanzalotta's proposal can be gained by adjusting the phasing of the parallel lines to reduce the resulting EMF's." R.D. at 151. Based on the substantial record evidence before this Commission, TrAILCo's proposal to erect a massive 500 kV infrastructure project, the Prexy Facilities, must be rejected. As to any possible 138 kV solutions to address the reliability concerns in the Prexy area, if any are found to be necessary, the OCA submits the following.

Mr. Lanzalotta, working with limited resources and time constraints,⁵ found an alternative that resolved each of the potential reliability problems listed by the Company in TrAILCo Exhibit LAH-3. During redirect examination, Mr. Lanzalotta further clarified how he arrived at the OCA's proposed 138 kV solution, as follows:

Q ...[E]arly on in response to Mr. Ogden's questions, I believe that you made the statement that the alternative that we present may not be optimal and I'd like you to explain that a little further.

A Okay. What I meant by that was...my alternative was really the first set of reinforcements that I came up with that solved all the reliability violations. When I got to that point, I stopped considering alternatives and I stopped trying to refine the solution, but my experience in running the load flow and doing system planning is that the more time and the more thought and the more alternatives you can try, the greater the probability that you could come up with an alternative that would solve the violations with fewer system additions than what I proposed in my alternative. That's pretty much what I meant by that statement.

Tr. at 3186. As Mr. Lanzalotta testified, with more time and greater resources it may be possible to find other comparable alternatives, even less costly or more efficient than what he proposed. The ALJs recognized the inherent constraints as to Mr. Lanzalotta's ability to proceed further along the path of developing reasonable alternative transmission system enhancements, as the Recommended Decision observed:

...Mr. Lanzalotta's proposal involves using or paralleling existing 138 kV lines with three additional 138 kV lines. He stopped his analysis, due to time and monetary constraints, with the first set of solutions that "solved" the contingencies raised by TrAILCo. As he noted, other equally less expensive and intrusive options likely exist.

R.D. at 151.

⁵ See Tr. at 3175-3176.

In summation, the OCA's proposed 138 kV Prexy solution is only one reasonable solution to any potential reliability concerns in the Prexy area. It should be clear, however, that with greater time and resources, even more efficient and possibly less intrusive alternatives could be found. As the record indicates, the Company has advanced no alternative for this Commission to consider other than its proposed Prexy Facilities. The Commission should affirm the ALJs' well-reasoned Recommended Decision on this issue and deny TrAILCo's Application as to the Prexy area. If the Commission finds that some type of Prexy area reinforcement is needed, then the certificated public utility responsible for providing reliable electric service to the Prexy area, West Penn Power Company, should come forward with a reasonable plan for such reinforcements.

5. Conclusion.

The ALJs correctly found that TrAILCo failed to carry its burden as to the need for its proposed Prexy Facilities. The OCA respectfully requests the Commission to affirm the Recommended Decision and to deny TrAILCo's Application as to the Prexy Facilities.

B. OCA Reply to TrAILCo Exceptions Regarding the Pennsylvania 502 Junction Facilities. (TrAILCo Exc. at 5-20).

With regard to the 502 Junction Facilities, the ALJs correctly noted that the OCA did not make a recommendation regarding the alleged reliability need for the project. R.D. at 100. The OCA did, however, point out its concerns regarding the Company's failure to consider any cost impacts of potential legislation regarding carbon dioxide and that the traditional RTEP process was not followed in the case of the TrAIL project. OCA M.B. at 47-51, 53-54; R.D. at 100-105. These points, coupled with the positions asserted by the other parties, were found to be persuasive by the ALJs who ultimately determined that economics led to the creation of the

TrAIL proposal. R.D. at 110-118. It is from this determination that the Company derives a large portion of its exceptions.

As a preliminary matter, the OCA would again note that TrAILCo acknowledges in its Exceptions that the Application addresses two separate and distinct projects. TrAILCo Exc. at 1. The OCA would also note that it has not taken a position on whether the 502 Junction Facilities are needed to meet reliability concerns in Virginia and surrounding areas. Instead, the OCA focused on whether the Company adequately addressed the impact of potential carbon legislation on the economic effects of this portion of TrAIL.

This section of the OCA's exceptions addresses only matters pertaining to the 502 Junction Facilities. The OCA expresses no position on TrAILCo's exceptions regarding the 502 Junction Facilities, *except for those described below.*

1. TrAILCo's Exception to the ALJs' Consideration of the Economics of the Pennsylvania 502 Junction Facilities Is Erroneous, Without Merit and Should Be Denied. (TrAILCo Exc. at 4-6, 9, 12; R.D. at 112-116; OCA M.B. at 48-50; OCA R.B. at 31-32).

At numerous places in its Exceptions, TrAILCo alleges that the ALJs erred in their consideration of the potential economic impacts of the 502 Junction Facilities. *See, e.g.* TrAILCo Exc. at 4, 6, 9, and 12. Specifically, TrAILCo excepts to the ALJs' reliance on the OCA's testimony regarding wholesale generation prices and asserts that the ALJs "fear" transmission superhighways "that will transport cheap and dirty coal-fired generation east." *Id.* at 4, 12. As has been previously explained—although not taking a position on the need for the 502 Junction Facilities—to the extent that the line is being built for economic purposes, the OCA contends that further analysis is needed to reflect the likely cost of carbon emissions in any future climate change regulation. This is not mere speculation, but an increasingly likely scenario that would certainly affect the relative value of the line.

In its Main and Reply Briefs, the OCA demonstrated that a practical effect of the construction of TrAIL will be an increase in cheaper, coal-fired generation in Western PJM and a decrease in more expensive, non-coal generation in Eastern PJM. OCA M.B. at 48-50; OCA R.B. at 31-32; R.D. at 18-19, F.F. 61-66. In fact, PJM itself recognized this “shift” in generation in its April 18, 2007 PJM Planning Committee’s “Market Efficiency Analysis Progress Report.” OCA St. 2, Exh. RMF-2 at 13; OCA M.B. at 48. In this report, PJM calculated an almost *11 million MWh* “shift” per year of generation from the eastern and southern zones of PJM to the western zones. OCA St. 2, Exh. RMF-2 at 13; OCA M.B. at 48; OCA R.B. at 31-32. This shift and its likely economic effects were properly considered by the ALJs, especially in light of the multitude of carbon dioxide reduction legislation pending before Congress.⁶ OCA M.B. at 50-51; R.D. at 19-20, F.F. 68-72.

It is for this reason that OCA witness Fagan recommended further analysis of the economics of the 502 Junction-to-Loudoun line and that the ALJs considered this likely scenario which would affect the relative economic value of the line. Accordingly, TrAILCo exceptions on this issue are without merit and must be denied.

2. TrAILCo’s Assertion that the ALJs Erroneously Considered Demand Side Management (DSM) Is Without Merit and Should Be Rejected. (TrAILCo Exc. at 18, R.D. at 104-105; OCA R.B. at 34).

The Company asserts that the Recommended Decision relies on “purely speculative and prospective [DSM] initiatives, or other measures not within the control of transmission operators or the Commission, to provide answers to federally-mandated reliability

⁶ See, e.g. Lieberman-Warner’s America’s Climate Security Act (S. 2191); Bingaman-Specter’s Low Carbon Economy Act (S. 1766); McCain-Lieberman Climate Stewardship and Innovation Act (S. 280); Kerry-Snow Global Warming Reduction Act (S. 485); Waxman Safe Climate Act (HR 1590); Sanders-Boxer Global Warming Pollution Reduction Act (S. 309); Feinstein-Carper Electric Utility Cap and Trade Act (S. 317); Alexander-Lieberman Clean Air/Climate Change Act (S. 1168); and Stark Save Our Climate Act (HR 2069).

requirements.” TrAILCo Exc. at 18. TrAILCo appears to be arguing that the ALJs’ well-reasoned consideration of the use of DSM in conjunction with other solutions to remedy the alleged reliability concerns is a reason to overturn their decision with regard to the 502 Junction Facilities. *Id.* (citing R.D. at 104-105). In arguing that the ALJs erroneously considered the use of DSM—not alone, but as a method to contribute to the reduction of alleged reliability problems—the Company fails to account for the Department of Energy (DOE) recommendation that DSM be considered. As was explained in the OCA’s Reply Brief, the October 5, 2007 DOE Order specifically stated:

[t]ransmission expansion is but one possible solution to a congestion or constraint problem. Other potential solutions include increased demand response; improved energy efficiency; deployment of advanced technology; and siting of additional generation, including distributed generation, close to load centers.

National Electric Transmission Congestion Report, 72 Fed. Reg. 56992, 56993-56994 (October 5, 2007); OCA R.B. at 34; R.D. at 16, F.F. 39. As the DOE itself recommended the consideration of multiple alternatives or solutions to transmission congestion, the ALJs properly accounted for the potential use of DSM to contribute to the reduction of alleged reliability problems.

Accordingly, as the ALJs correctly considered the use of DSM in making their determination regarding the 502 Junction Facilities, the Company’s exception must be denied.

3. TrAILCo’s Miscellaneous Sub-Exceptions are Contrary to Logic and the Evidence of Record and Must Be Denied. (TrAILCo Exc. at 6, 12-14; R.D. at 78-81, 110-112, 115-116; OCA M.B. at 52-53).

TrAILCo has submitted a variety of arguments that are, effectively, exceptions within exceptions—short subparts of an overarching exception. The OCA will address two of these miscellaneous exceptions in this section.

First, TrAILCo asserts that PJM has directed the construction of the Pennsylvania 502 Junction Facilities and this “obligation to build” cannot be ignored. TrAILCo Exc. at 6. TrAILCo’s argument appears to stem from the notion that as PJM was given authorization under federal law to consider potential solutions to reliability concerns, they are somehow able to mandate that a state allow construction of a proposed transmission line. *Id.* This argument flies in the face of reason because, if the Company’s argument were to be accepted, PJM—and not the individual states—would have siting authority. This is simply not the case. *See* 52 Pa. Code § 57.76 (listing the conditions required for *Commission* determination of transmission siting Applications). The Company’s argument must be rejected.

Second, TrAILCo excepts to the ALJs’ critique of PJM’s RTEP process stating that the ALJs made only a “superficial analysis.” TrAILCo. Exc. at 12-14. After their thorough discussion of PJM’s RTEP process, the ALJs arrived at the conclusion that the RTEP process is designed to yield transmission solutions and that economics were a driving factor in PJM’s support of the TrAIL facilities. R.D. at 12, F.F. 8-10; R.D. at 115-116; *see also* OCA M.B. at 52-53; ECC M.B. 55-58; WPPII M.B. at 4-5 (providing support for the ALJs’ determination that economics were a driving factor in TrAIL). These conclusions were the result of anything but a superficial analysis. The ALJs pored through thousands of pages of testimony and exhibits and conducted eight days of technical evidentiary hearings, at which representatives of PJM testified at length about the RTEP process. The Company assertion that the ALJs only “superficially” considered the RTEP is disingenuous and results from a decision with which the Company does not agree.

Both of these sub-exceptions are contrary to the evidence of record and fly in the face of simple logic. Accordingly, the OCA submits that these exceptions must be denied.

C. OCA Reply to TrAILCo Exception 1: The ALJs Acted Squarely Within the Scope of Their Lawful Authority. (TrAILCo Exc. at 3-5).

In every respect, the ALJs applied the relevant standards and law to the facts in this proceeding, after carefully reviewing pertinent parts of the record. They begin by noting that, as the Applicant, TrAILCo has the burden of proof pursuant to 66 Pa.C.S. § 332(a). R.D. at 57. The ALJs then discuss the significance of Chapter 11 of the Public Utility Code, noting that as a prerequisite to the granting of a certificate of public convenience and authority, the Commission “shall find and determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public,” citing 66 Pa.C.S. § 1103. R.D. at 59. As TrAILCo notes, the ALJs also correctly acknowledge the applicability of the Commission’s siting regulations at 52 Pa. Code §§ 57.71, *et seq.* R.D. at 78-81. TrAILCo’s critique centers on factors not in the siting regulations that, it argues, the ALJs “erroneously permitted ... to influence the RD.” TrAILCo Exc. at 3-4. These arguments are not valid.

First, TrAILCo argues that by referencing the 2004 Report of the National Commission on Energy Policy, the ALJs adopt “broad national public policy discussions” that are not part of existing regulations and extend beyond the Commission’s overall jurisdiction.” R.D. at 6-7; TrAILCo Exc. at 4. The Company asserts that the PUC is “without jurisdiction,” but fails to specify precisely what the PUC is without jurisdiction to do. And, if TrAILCo is suggesting that this Commission is “without jurisdiction” to consider any federal law, regulation or policy associated with electric transmission infrastructure, it is decidedly not in a strong position to do so. TrAILCo has repeatedly raised federal law, policy and regulation as factors that *must* be considered in deciding this case. Thus, TrAILCo itself has opened the door to consideration of federal law, policy and regulation in this area and it is disingenuous to argue

now that such considerations, because they are not specifically mentioned in the state siting regulations, are “outside the Commission’s jurisdiction” even to consider. Indeed, the Commission would be remiss not to be informed by the myriad federal activities in recent years surrounding electric transmission infrastructure. TrAILCo simply did not like the *part* of the national policy debate that the ALJs placed reliance on to reach their conclusions, which reads as follows:

In order to achieve the Commission's objectives of assuring an adequate, reliable and reasonably-priced supply of energy, reducing greenhouse gas emissions, . . . it is essential to reduce the barriers that now hamper the siting of new, needed energy infrastructure. Such siting reforms include implementing, across the nation, the best practices (that) currently exist in some states' siting processes, including:

- Providing clear and accessible agency rules, time lines, siting criteria, other policies, and case precedents to facilitate the filing and administration of complete and viable siting proposals.
- Requiring up-front, pre-filing efforts by developers in the local affected communities, including contact with political and public interest groups, community education and flagging of key issues, to identify fatal flaws as well as information and educational needs, and to reduce the time and cost of regulatory and administrative siting procedures.
- Focusing the siting approval process on the question of whether a specific infrastructure proposal at a particular place is acceptable. Applicants should provide information demonstrating not only environmental impacts, but also the process used to identify and consider other sites, as well as project configuration and technology choices that satisfy similar needs. . . . The siting of electricity transmission infrastructure, in particular, *should* include a comprehensive system-wide review of alternatives, although once that review process has validated the need for new transmission lines, the siting process for a specific line segment should not allow for are-opening of broader system planning issues. . . . (emphasis in original).

R.D. at 6 (citing Report of the National Commission on Energy Policy, December 2004, at 87, available at www.energycommission.org).

In further response to this point, the OCA would note that at the commencement of the proceeding, then-Chairman Wendell F. Holland himself asked, for example, what effect the designation of a National Infrastructure Electric Transmission Corridor would have on this application proceeding and directed the parties to respond to such questions on the record. OCA M.B., Appendix F. The notion that the ALJs and the Commission cannot even acknowledge or consider federal law and policy objectives in deciding applications, such as the instant one, must be disregarded.

Next, TrAILCo argues that the ALJs have tried to make the consideration of “alternatives” much broader in scope than is permitted. TrAILCo Exc. at 4, fn. 11. Specifically, TrAILCo attempts to portray the use of the word “alternatives” as limited to whether an alternative route for the chosen high-voltage line would have less of an environmental impact. Id. at fn. 11. In response, the OCA has fully set forth in briefs a discussion of the prior Commission orders and appellate cases that have interpreted the use of the word “alternatives” in the context of the siting regulations and has discussed in detail how those orders apply to the facts in the instant case. OCA M.B. at 35-43; OCA R.B. at 2-3, 5, 12-19. The OCA requests that these passages be incorporated by reference herein pursuant to 52 Pa. Code § 5.535. The Commission and the courts have interpreted the word “alternatives” in the broadest sense to include lesser cost, non-transmission alternatives to a given proposal. TrAILCo’s assertions that the siting regulations use the word “alternatives” in a narrow sense are simply incorrect.

Furthermore, PJM itself does not employ the word “alternatives” in such a narrow sense. Steven Herling, Vice President of Transmission Planning for PJM, when asked what would have to occur to recommend deferral of the Prexy Facilities, testified as follows:

If when we perform the analysis the reliability criteria violations are resolved, that would be a basis to potentially defer the Prexy Facilities. Alternative solutions, depending upon exactly how you’re posing your question, would have to be evaluated in the context of initial violations, as well as their ability to resolve longer-term violations. But, potentially, yes.

Tr. at 2205. And, in contexts other than transmission projects determined to be needed solely to meet reliability concerns, PJM itself requires consideration of alternatives to transmission that would reduce the need for new lines. One of the PJM “Business Rules for Economic Planning Process” reads as follows:

For each upgrade which is recommended for inclusion in the RTEP, PJM will provide the level of new generation or DSM per region that would eliminate the need for the transmission upgrade.

OCA Cross Exh. 2; Tr. at 2225-2226. Moreover, Mr. Herling testified to yet other alternatives that PJM would consider in the event the Prexy Facilities were not constructed:

Well, if the Prexy Facilities are not built by virtue of their not being approved, PJM would go back and look at the magnitude of the violations and in what year they are now projected to occur, recognizing that this is two years after when they were originally identified, and we would look at all available opportunities to resolve the problems both for the short term and the long term.

...[W]e would have to look at what we could do in such a short period to upgrade either lower voltage facilities in the area. If such upgrades were not able to be implemented in the time we have available, we would look at operating procedures to insure reliability for the short term. Whatever we do for the short term, we would be looking at what upgrades would be available for the long term. We might have to make an upgrade that simply bought us a year or two to resolve reliability problems in the area and then search for more extensive upgrades that would resolve the problem for the long term.

Tr. at 2227-2228. Thus, TrAILCo's argument that the "alternatives" to be considered under the siting regulations must be narrowly construed should be rejected out of hand.

Further, the Company argues that the ALJs "erroneously adopted, as fact, purely speculative outcomes of various proposals concerning greenhouse gas and emissions policies that are currently pending at a national level and have not been resolved." TrAILCo Exc. at 4, citing R.D. at 19, F.F. 69-71. On this topic, the OCA would refer the Commission to Allegheny Energy, Inc.'s SEC Form 10-K Annual Report (Report), dated February 27, 2008, which reads in pertinent part:

Global Climate Change... While there are many unknowns concerning the final regulation of greenhouse gases in the United States, federal and/or state legislation and implementing regulation addressing climate change likely will be adopted some time in the future, and may include limits on emissions of CO₂. Thus, CO₂ legislation and regulation, if not reasonably designed, could have a significant impact on Allegheny's operations. Current proposals range from cap-and-trade schemes with \$12 safety-valve allowance prices to direct taxation of tons emitted on the order of \$50 per ton.

OCA Cross-Exam Exh. 7 at 159. The Report goes on to discuss the gap between desired reduction levels and the lack of commercial scale technology to achieve some of the reduction levels being proposed. Id. The Report continues:

Allegheny supports federal legislation and believes that the United States must commit to a response to climate change that both encourages the development of technology and creates a workable control system. Regardless of the eventual mechanism for limiting CO₂ emissions, however, compliance will be a major and costly challenge for Allegheny, its customers and the region in which it operates. Most notable will be the potential impact on customer bills and disproportionate increases in energy cost in areas that have built their energy and industrial infrastructure over the past century based on coal-fired electric generation.

Id. at 160. This Commission should also take notice that several states, including Pennsylvania, have already acted to enact greenhouse gas reduction legislation. *See, e.g.*, Senate Bill 266, 2008 General Assembly, Session of 2007 (Pennsylvania Climate Change Act); N.J. Stat. Ann. § 26-2C-37, *et seq.* (Global Warming Response Act); Cal. Health & Safety Code § 38500, *et seq.* (California Global Warming Solutions Act of 2006). Thus, the Commission should reject TrAILCo's attempt to paint global warming and the impact of carbon emission reduction on the economic benefits of the TrAIL project as too speculative an economic and environmental concern for the ALJs and this Commission to consider.

III. CONCLUSION

The Office of Consumer Advocate respectfully requests that the Commission deny the Exceptions of TrAILCo, as set forth above.

Respectfully submitted,



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September 22, 2008

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CERTIFICATE OF SERVICE

In Re: Application of Trans-Allegheny Interstate Line Co. (TrAILCo)
Docket No. A-110172, A-110172F0002, A-110172F0003, A-110172F0004,
G-00071229

I hereby certify that I have this day served a true copy of the foregoing document, Reply Exceptions, upon the parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below. Dated this 22nd day of September 2008.

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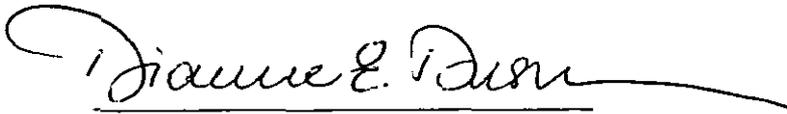
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HOUSE OF REPRESENTATIVES
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September 22, 2008

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RE: Application of Trans-Allegheny Interstate Line Company (TrAILCo)
Docket Nos. A-110172, A-110172 F0002, A-110172 F0003, A-110172 F0004
and G-00071229

Dear Secretary McNulty:

In accordance with your letter of August 21, 2008 and the requirements of 52 Pa. Code § 5.535, enclosed please find an original and nine (9) copies of Majority Leader H. William DeWeese's Reply to Trans-Allegheny Interstate Line Company's Exceptions to the Recommended Decision of Administrative Law Judges Mark A. Hoyer and Michael A. Nemeec in the above-referenced proceeding.

Copies are being served upon all parties of record, in accordance with the enclosed Certificate of Service.

Sincerely,

A handwritten signature in cursive script that reads "Tara L. Smith".

Tara L. Smith, Esquire
PA Attorney I.D. # 200659

Attorney for State Representative
H. William DeWeese
Majority Leader
Pennsylvania House of Representatives

Enclosures

cc: Certificate of Service

BN-19215

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

IN RE: APPLICATION OF TRANS-ALLEGHENY	:	
INTERSTATE LINE COMPANY FOR (I) A	:	
CERTIFICATE OF PUBLIC CONVENIENCE TO	:	
OFFER, RENDER, FURNISH AND/OR SUPPLY	:	Docket Nos. A-110172
TRANSMISSION SERVICE IN THE	:	A-110172 F0002
COMMONWEALTH OF PENNSYLVANIA; (II)	:	A-110172 F0003
AUTHORIZATION AND CERTIFICATION TO	:	A-110172 F0004
LOCATE, CONSTRUCT, OPERATE AND MAINTAIN	:	G-00071229
CERTAIN HIGH VOLTAGE ELECTRIC	:	
TRANSMISSION LINES AND RELATED ELECTRIC	:	
SUBSTATION FACILITIES; (III) AUTHORITY TO	:	
EXERCISE THE POWER OF EMINENT DOMAIN FOR	:	
THE CONSTRUCTION AND INSTALLATION OF	:	
AERIAL ELECTRIC TRANSMISSION FACILITIES	:	
ALONG THE PROPOSED TRANSMISSION LINE	:	
ROUTES IN PENNSYLVANIA; (IV) APPROVAL OF	:	
AN EXEMPTION FROM MUNICIPAL ZONING	:	
REGULATION WITH RESPECT TO THE	:	
CONSTRUCTION OF BUILDINGS; AND (V)	:	
APPROVAL OF CERTAIN RELATED AFFILIATED	:	
INTEREST ARRANGEMENTS	:	

**REPLY TO EXCEPTIONS OF
TRANS-ALLEGHENY INTERSTATE LINE COMPANY
FILED BY MAJORITY LEADER H.WILLIAM DeWEESE**

Tara L. Smith, Esquire
PA Attorney I.D. # 200659

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Dated: September 22, 2008

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I. INTRODUCTION

On August 21, 2008, Administrative Law Judges Mark A. Hoyer and Michael A. Nemeec (“ALJs”) issued the Recommended Decision (“R.D.”) in this proceeding. In the R.D., the ALJs rejected the Trans-Allegheny Interstate Line Company’s (“TrAILCo”) omnibus Applications based on the conclusion that TrAILCo failed to carry its burden of proof with regard to all five pending Applications. As a result, on September 10, 2008, TrAILCo filed Exceptions to the R.D. Majority Leader H. William DeWeese (“Majority Leader DeWeese”) supports the R.D. of the ALJs and therefore files this Reply to the Exceptions of TrAILCo.

As the duly elected State Representative of the 50th Legislative District, the Majority Leader of the Pennsylvania House of Representatives, and a life-long resident of Greene County, Majority Leader DeWeese has adamantly opposed the Trans-Allegheny Interstate Line (“TrAIL”), which includes both the “Pennsylvania 502 Junction Facilities”¹ and the “Prexy Facilities.”² Majority Leader DeWeese is steadfast in his opposition because of the unnecessary intrusion and significant negative effects that both projects would pose on the communities and citizens of Greene and Washington Counties. The ALJs correctly ruled that the Pennsylvania portion of the TrAIL is not needed, does not serve the public’s interest and the omnibus Applications of TrAILCo should be rejected.³

It is clear in the detailed two hundred and thirty- nine (239) page R.D. that the ALJs carefully and thoroughly considered all evidence presented and openly and fully vetted the issues

¹ The “Pennsylvania 502 Junction Facilities” include a new 500 kV “502 Junction Substation” in Greene County and a 500 kV transmission line extending from the 502 Junction substation to the Pennsylvania - West Virginia border, “Pennsylvania 502 Junction Segment”. *See* R.D., pp. 1-2.

² The “Prexy Facilities” include a 500/138 kV “Prexy Substation” in Washington County, a new 500 kV transmission line to connect the Prexy Substation to the 502 Junction Substation, “Prexy Segment” and three new 138 kV transmission lines from the Prexy Substation that would connect to existing Allegheny Power transmission lines in Washington County, “Prexy 138kV Lines”. *See* R.D., p. 1.

³ R.D., pp. 134-137.

presented in this matter *sub judice*. The ALJs are to be commended for their diligence. There is an abundance of testimony including testimony of expert witnesses to support the Findings of Fact and Conclusions of Law in the R.D. by the ALJs. However, broad generalizations within TrAILCo's Exceptions regarding the consideration of evidence by the ALJs, in addition to an unfounded allegation of predisposition in favor of the impacted property owners demean the hard work of the ALJs in this proceeding and the authority of the Office of the Administrative Law Judge and the Pennsylvania Public Utility Commission ("Commission").⁴ The ALJs, as presiding officers of the on-the-record proceeding, gauged the weight and creditability of the evidence presented and did so in a fair and impartial manner.

The complexity of this proceeding reinforces that the Commonwealth of Pennsylvania specifically the Pennsylvania Public Utility Commission is best suited to determine the appropriateness of siting and permitting of high voltage transmission facilities within Pennsylvania. As the regulatory agency responsible for the oversight of utilities, the Commission is most qualified to make decisions on transmission line siting issues that affect the residents of this Commonwealth. There is no doubt that land is an invaluable natural resource and the way it is used and developed (or not developed) has profound and long-lasting economic, environmental and aesthetic consequences on all of us. These are precisely the reasons why the Pennsylvania General Assembly saw fit to convey some of its authority to plan for and regulate land use to its political subdivisions through the Municipalities Planning Code.⁵ The Commonwealth of Pennsylvania and its political subdivisions have a most intimate and unique understanding and appreciation of their respective communities' needs. Therefore, they are in

⁴ See TrAILCo Exc. and specifically on p. 7 where TrAILCo asserts, "The ALJs failed to give proper consideration to TrAILCo's substantial and credible evidence and, instead, adopted essentially verbatim the positions asserted by the Energy Conservation Council of Pennsylvania ("ECC") on behalf of impacted property owners, no matter how lacking they were in evidentiary support and analysis."

⁵ 53 P.S. §10101 *et seq.*

the best position to determine how land should be used (or not used) to benefit both landowners and the general public. Majority Leader DeWeese has long asserted that the federal authority conveyed to electric utilities, which precipitated the TrAIL project and the resulted in the proliferation of interstate high voltage transmission line projects in other regions of this Commonwealth, is an unlawful encroachment into the sovereignty of the Commonwealth of Pennsylvania and its political subdivisions' rights to decide its own land use policy. The R.D. demonstrates the fundamental importance of the Commission's role in siting and permitting major high voltage transmission lines and deciding issues that affect this Commonwealth and its communities.

TrAILCo attempts to sway the decision of the Commission by focusing on the decisions of the Public Service Commission of West Virginia ("WVaPSC") and a Hearing Examiner for the State Corporation Commission of Virginia ("VaSCC"), which both approved the portions of the TrAIL within their respective states. The credence that TrAILCo gives the decisions of the WVaPSC and VaSCC in its Exceptions is inappropriate in this proceeding before the Pennsylvania Public Utility Commission.⁶ Furthermore, TrAILCo's use of the West Virginia proceedings is disingenuous and without precedential value. That is to say, the approval of the West Virginia segment of the TrAIL by the WVaPSC was the outcome of a Joint Stipulation and Agreement for Settlement between TrAILCo and several parties to the West Virginia case.⁷ The West Virginia case is an unfortunate example of how alleged benefits and interests, other than the public benefit and public interest, can be juxtaposed with the need for high voltage

⁶ See TrAILCo Exc., pp. 2, 6, 9, 15, 17, 19, 21 and 37.

⁷ See Appendix C of *Application for a Certificate for Convenience and Necessity authorizing the construction and operation of the West Virginia segments of a 500 kV electric transmission line and related facilities in Monongalia, Preston, Tucker, Grant, Hardy, and Hampshire Counties, and for related relief*, West Virginia Case No. 07-0508-E-CN (Order dated August 1, 2008). The Joint Stipulation and Agreement for Settlement was filed with the WVaPSC on April 15, 2008.

transmission facilities at the expense of the citizens impacted by those high voltage transmission facilities. Although Majority Leader DeWeese realizes that the Commonwealth of Pennsylvania does not exist in a vacuum, it is a sovereign commonwealth with issues independent to West Virginia and Virginia. In stark contrast to Virginia (Northern Virginia specifically), there is no need for the TrAIL in Pennsylvania and there is no economic or quality-of-life benefit to the residents of Pennsylvania. As such, the ALJs appropriately recommended that TrAILCo's omnibus Applications be denied.

Throughout its Exceptions, TrAILCo generally argues that there is a need for the Prexy Facilities and the Pennsylvania 502 Junction Facilities. After their careful consideration of all relevant evidence in this proceeding, the ALJs determined that no such need exists. Moreover, TrAILCo has failed to meet its burden of proof with regard to all five (5) Applications; thus the Commission should deny the omnibus Applications submitted by TrAILCo.⁸ TrAILCo's Exceptions are without merit and should be denied. Majority Leader DeWeese is in steadfast agreement with the ALJs' R.D. and urges the Commission to deny all five (5) of TrAILCo's Applications.

⁸ R.D., pp. 110-112, 234.

II. REPLY TO EXCEPTIONS⁹

A. Pennsylvania 502 Junction Facilities

Reply to TrAILCo Exceptions Nos. 2-7:¹⁰ The ALJs properly found that there is no need for the proposed Pennsylvania 502 Junction Facilities; thus the Commission should deny TrAILCo's meritless Exceptions and adopt the Recommended Decision of the ALJs to deny TrAILCo's Applications related to the Pennsylvania 502 Junction Facilities.

In order to approve a proposed high voltage transmission lines, the Commission's regulations require a finding and determination of the following factors: (1) there is a need for the transmission line; (2) the transmission line "will not create an unreasonable risk of danger to the health and safety of the public;" (3) the transmission line "is in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth"; and (4) the transmission line "will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives."¹¹ Applicants requesting approval to construct new transmission facilities must demonstrate not merely that some kind of additional transmission facilities are needed for continued reliability, but also that that the proposed facilities are reasonably response to an existing public need.¹²

⁹ Majority Leader DeWeese opposes TrAILCo's Motion for Partial Stay of Proceedings and Request for Expedited Consideration ("Motion"), but does not specifically address the Motion in this Reply to Exceptions. Majority Leader DeWeese reserves the right to file an answer to TrAILCo's Motion in a separate filing pursuant to 52 Pa. Code §5.61.

¹⁰ TrAILCo Exc. pp. 5-20.

¹¹ 52 Pa. Code §57.76(a)(1)-(4).

¹² *Re West Penn Power Co.*, 54 Pa. PUC 319, 320-327 (1980); *Re Pennsylvania Power & Light Co.*, 50 Pa PUC 480, 484 (1977).

The Pennsylvania 502 Junction Facilities include TrAILCo's proposal to construct a 500 kV substation in southern Greene County and acquire or take by eminent domain, a 1.2 mile corridor to construct a 500 kV transmission line from the substation south to the West Virginia border.¹³ The 500 kV transmission line is proposed to continue through West Virginia and into Virginia.¹⁴ Thousands of pages of transcripts from public input sessions and site visits demonstrate the great harm and unrest that would result to the communities in Greene County from the construction and operation of the Pennsylvania 502 Junction Facilities. Additionally, TrAILCo has failed to prove that any alleged benefit to the public from construction of the Pennsylvania 502 Junction Facilities would outweigh the myriad risks and harms that the proposed facilities would necessarily cause.¹⁵

As evidenced in the R.D., there are less intrusive alternatives to the Pennsylvania 502 Junction Facilities that would increase reliability without siting unnecessary transmission facilities and desecrating the land in Greene County. The ALJs discussed in great detail the alternatives that TrAILCo "failed to consider" such as "facility upgrades or tweaks to the 765 kV PATH line, transmission constrained dispatch, high-voltage direct current (HVDC) lines, upgrades or repairs to existing transmission facilities, or any non-transmission solutions" including Demand Side Management (DSM) initiatives.¹⁶ The ALJs appropriately considered the potential use of alternatives, including DSM, to contribute to the reduction of alleged reliability problems. Conversely, TrAILCo chose not examine such available alternatives as

¹³ R.D., pp. 9-10.

¹⁴ *Id.*

¹⁵ R.D., p. 111.

¹⁶ R.D., pp. 81, 104-105, 116.

required by Pennsylvania law and ultimately chose not to consider any non-transmission alternatives.¹⁷

In the R.D., the ALJs appropriately considered interstate interests related to the Pennsylvania 502 Junction Facilities, which is *permissible* under Pennsylvania law.¹⁸ However, contrary to the argument raised in TrAILCo's Exceptions, just because an alleged regional or national interest may exist does not mean, necessarily, that Pennsylvania residents should suffer the dire consequences of intrusive and destructive 500 kV high voltage transmission lines for the sole benefit of residents in other states especially when less-intrusive reasonable alternatives have not even been explored. As pointed out by the ALJs in the R.D., "[t]he impacts and consequences of approving the project and the impacts and consequences of not approving the project, both beneficial and adverse must be weighed."¹⁹

In Footnote 17 of TrAILCo's Exceptions, TrAILCo focuses on the *Application of PPL* case in which PPL requested authorization to locate and construct a *138 kV transmission line* and associated facilities between its existing Tinker *138/69 kV* tap line located in Clifford Township and the proposed Elk Mountain substation site in Herrick Township, both in Susquehanna County, Pennsylvania.²⁰

TrAILCo's Applications stand in stark contrast to the abovementioned *PPL Application* case in several important respects. First, related to the Pennsylvania 502 Junction Facilities, TrAILCo's Applications request approval by the Commission to locate, construct, operate and maintain a new 500 kV substation in Greene County referred to as the Pennsylvania 502 Junction

¹⁷ 52 Pa. Code §57.76(a)(4) ; *Penna. Power & Light Co. v. Pa. PUC*, 696 A.2d 248 at 250 (Pa. Cmwlth. 1997); R.D., p. 234.

¹⁸ R.D., pp. 81-88.

¹⁹ R.D., p. 81.

²⁰ *Application of PPL*, 1991 Pa. PUC LEXIS 86. *Emphasis added.* See TrAILCo Exc. FN 17.

Substation.²¹ TrAILCo also proposed to construct a new 500 kV transmission line in Pennsylvania from the 502 Junction Substation to the Pennsylvania –West Virginia state line. On the other hand, In the PPL Application case, PPL requested to site a less intrusive 138 kV transmission line and associated facilities.²² Second, in the *PPL Application* case, the Commission found that a public need and specifically a local need for the Elk Mountain area existed and approved PPL’s application for the construction of the 138 kV transmission line and associated facilities.²³ As the ALJs in this proceeding rightly concluded, no such need exists for the proposed Pennsylvania 502 Junction Facilities. Consequently, unlike in the *PPL Application* case, the Commission should deny TrAILCo’s Applications related to the Pennsylvania 502 Junction Facilities because the facilities are not needed and are a massive intrusion on the citizens of Greene County. In other words, the risks and harms greatly outweigh the alleged benefits.

The ALJs correctly conclude in the R.D. that “there is no public need within Greene County, Pennsylvania for the 502 Junction Facilities TrAILCo proposes to construct there.”²⁴ Additionally, the ALJs rightly admonished TrAILCo for its offensive generalization that the residents of Greene County who oppose the Pennsylvania 502 Junction Facilities are “self-interested NIMBYs”.²⁵ The ALJs noted:

In discussing the ECC’s arguments in opposition to the 502 Junction Facilities and its attempts to prevent the facilities from being constructed, TrAILCo states that, “[s]uch inconsistent and irrational thinking is the hallmark of self-interested NIMBYs who are fully prepared to scuttle any consideration of the public interest in a heartbeat.” We take issue with this statement and, quite frankly, are offended by it. By implication, TrAILCo is saying that those in Greene County who oppose the 502 Junction Facilities are or think like “self-interested NIMBYs.”

²¹ R.D., pp. 9-10

²² *Application of PPL*, 1991 Pa. PUC LEXIS 88, at 3.

²³ *Id.* at 6-10.

²⁴ R.D., p. 110.

²⁵ R.D., pp.110-11 referencing TrAILCo Reply Brief, p. 29.

The people and property owners of Greene County who testified at the public hearings and site views last year are not “self-interest NIMBYs.” These people have done and will continue to do their part for the “public need.”²⁶

The ALJs properly found that the Pennsylvania 502 Junction Facilities are not “necessary or proper for the accommodation of the public,” and do not have “a minimal environmental impact” as required for approval by the Commission.²⁷ The ALJs determined that economics, not public need, led to the creation of the TrAIL project.²⁸ “The primary object of the Public Utility (Code) was not to establish monopolies or to guarantee the security of investments in public service corporations but to *serve the interest of the public.*”²⁹ It is in the interest of the public for the Commission to deny TrAILCo’s omnibus Applications. Accordingly, TrAILCo’s exceptions are without merit and should be denied. Majority Leader DeWeese supports the conclusion of the ALJs and respectfully requests the Commission to deny TrAILCo’s Applications related to the Pennsylvania 502 Junction Facilities.

B. Prexy Facilities

Reply to TrAILCo Exceptions Nos. 12-15:³⁰ The ALJs correctly found that there is not a need for the proposed Prexy Facilities; thus the Commission should deny TrAILCo’s meritless Exceptions and adopt the R.D. of the ALJs to deny TrAILCo’s Applications related to the Prexy Facilities.

²⁶ *Id.* at p. 111.

²⁷ R.D., p. 112; 52 Pa. Code §57.76(a).

²⁸ R.D., pp. 110-118.

²⁹ *Highway Exp. Lines, Inc. v. Pennsylvania Public Utility Commission*, 169 A.2d 798, 195 Pa.Super. 92, 1961; *Posten Taxi Co. v. Pennsylvania Public Utility Commission*, 63 A.2d 424, 164 Pa.Super.13, 1949. *Emphasis added.*

³⁰ TrAILCo Exc. pp. 29-38.

In order to approve a proposed high voltage transmission line, the Commission's regulations require a finding and determination of the following factors: (1) there is a need for the transmission line; (2) the transmission line "will not create an unreasonable risk of danger to the health and safety of the public;" (3) the transmission line "is in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth; and (4) the transmission line "will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives."³¹ Applicants requesting approval to construct new transmission facilities must demonstrate not merely that *some kind* of additional transmission facilities are needed for continued reliability; but, also that that the proposed facilities are a reasonable response to an existing public need.³²

TrAILCo's Applications request approval by the Commission to locate, construct, operate and maintain a new 500/138 kV substation in Washington County referred to as the "Prexy Substation," a new 500 kV transmission line to connect the Prexy Substation and the Pennsylvania 502 Substation referred to as the "Prexy Segment", and three (3) new 138 kV transmission lines from the Prexy Substation to connect with existing transmission lines of Allegheny Power. Thousands of pages of transcripts from public input sessions and site visits demonstrate the harm that would result from construction and operation of the Prexy Facilities to the communities in Greene and Washington County.

TrAILco asserts that the Prexy Facilities are needed to address electric reliability problems that will begin in 2009 if the Prexy Facilities are not constructed.³³ Regardless of

³¹ 52 Pa. Code §57.76(a)(1)-(4).

³² *Re West Penn Power Co.*, 54 Pa. PUC 319, 320-327 (1980); *Re Pennsylvania Power & Light Co.*, 50 Pa PUC 480, 484 (1977).

³³ R.D., p. 119, TrAILCo Exc. P. 31.

TrAILCo's assertion of an alleged need, the ALJs considered the evidence presented in this proceeding and correctly found that:

TrAILCo has proposed a grandiose plan involving a 500 kV "backbone," a new substation with lots of room for expansion, and, in essence, five 138 kV lines. The proposal calls for two double circuit 138 kV lines and one single circuit 138kV line. Virtually all of the proposed construction would occur on property not currently suitable for other types of development, or is already being productively utilized. The problems cited as a basis for this proposal can be solved by three 138kV lines on or paralleling existing lines. Other additions involve improvements or modifications to existing substations and the "T" junctions.³⁴

The ALJs further concluded that based on their review and evaluation of the record "that TrAILCo failed to carry its burden of proof regarding 'need'".³⁵ In the Conclusions of Law section of the R.D. the ALJs wrote:

[L]ittle or no need for reinforcement in the Prexy service area presently exists, and that relatively inexpensive and/or non-intrusive options are available, and probably should have been put in place before now. The proposed Prexy Segment project is a grandiose answer to a minor or even non-existent problem.³⁶

Because TrAILCo has failed to show that the proposed 500 kV Prexy Facilities are needed, TrAILCo's Application requesting authorization to build the Prexy Facilities should be denied.

As was the case with the Pennsylvania 502 Junction Facilities, TrAILCo did not examine available alternatives as required by Pennsylvania law.³⁷ As evidenced in the R.D., there are less intrusive alternatives to the Prexy Facilities that would increase reliability without siting unnecessary 500 kV and 138kV transmission facilities and desecrating the land of Washington and Greene Counties. The ALJs discussed in great detail the alternatives that TrAILCo "failed to consider" such as construction of three 138 kV lines on or paralleling existing lines and other

³⁴ R.D., p. 150.

³⁵ R.D., p. 149.

³⁶ R.D., p. 234.

³⁷ 52 Pa. Code §57.76(a)(4); *Penna. Power & Light Co. v. Pa. PUC*, 696 A.2d 248 at 250 (Pa. Cmwlth. 1997).

improvements or modifications to existing substations and the “T” junctions.³⁸ The ALJs appropriately considered the potential use of alternatives to contribute to the reduction of alleged reliability problems. Unfortunately, TrAILCo’s only proposal to address the alleged local reliability problems is to construct the Prexy Facilities. The ALJs found based on the substantial record evidence that no major transmission system enhancements are needed in the Prexy Area.³⁹

Accordingly, TrAILCo’s exceptions are without merit and should be denied. Majority Leader DeWeese supports the conclusion of the ALJs and respectfully requests the Commission to deny TrAILCo’s Applications related to the Prexy Facilities.

C. Exemption from Local Zoning

Reply to TrAILCo Exception No. 11:⁴⁰ The ALJs correctly recommended that TrAILCo’s request for exemption from local zoning regulation be denied because there is no need for the substations for which the exemption is requested; thus the Commission should deny TrAILCo’s meritless exemptions and adopt the ALJs R.D.

Article VI of the Pennsylvania Municipalities Planning Code (“MPC”) allows local municipalities “to enact, amend and repeal zoning ordinances to implement comprehensive plans”.⁴¹ However, Article VI does not apply to a proposed building to be used by a public utility corporation if, the Commission decides “...that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public.”⁴²

³⁸ R.D., p. 150.

³⁹ R.D.; p. 234.

⁴⁰ TrAILCo Exc., p. 27.

⁴¹ 53 P.S. §10601. ; R.D. p. 208.

⁴² 53 P.S. §10619.; R.D. p. 208

TrAILCo requests an exemption from local zoning for substation buildings and facilities within the 502 Junction Substation and Prexy Substation.⁴³ As there is no need for the Pennsylvania 502 Junction Facilities or the Prexy Facilities, the Commission should deny TrAILCo's request for an exemption under Section 619 of the Pennsylvania Municipalities Planning Code for those facilities.

Majority Leader DeWeese agrees with this conclusion and recommended denial of TrAILCo's request for an exemption from local zoning for substation buildings and facilities by the ALJs because the record of this proceeding "lacks important information that would be needed to decide whether to grant the exemption and whether certain conditions on the grant of an exemption should be imposed."⁴⁴ Therefore, Majority Leader DeWeese supports the R.D. of the ALJs and requests that the Commission deny the request for exemption from local zoning regulation because there is no need for the substations and because TrAILCo's request for exemption is deficient.⁴⁵

⁴³ R.D., p. 209.

⁴⁴ R.D., p. 236.

⁴⁵ R.D., p. 215 *See* 66 Pa. C.S. §332(a).

III. CONCLUSION

WHEREFORE, Majority Leader H. William DeWeese submits that as a whole, TrAILCo's Exceptions are without merit and should be denied. Majority Leader DeWeese respectfully requests that the Commission accept the Findings of Fact and Conclusions of Law in the Recommended Decision by ALJs Mark A. Hoyer and Michael A. Nemecek and deny all five pending Applications of TrAILCo in this proceeding.

Respectfully submitted,



Tara L. Smith, Esquire
PA Attorney I.D. # 200659

Attorney for State Representative
H. William DeWeese
Majority Leader
Pennsylvania House of Representatives

110 Main Capitol Building
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Dated: September 22, 2008

CERTIFICATE OF SERVICE

**In Re: Application of Trans-Allegheny Interstate Line Company (TrAILCo)
Docket Nos. A-110172, A-110172 F0002, A-110172 F0003, A-110172 F0004 and
G-00071229**

I hereby certify that I have this day served a true copy of the foregoing document, Majority Leader H. William DeWeese's Reply to Trans-Allegheny Interstate Line Company's Exceptions to the Recommended Decision of Administrative Law Judges Mark A. Hoyer and Michael A. Nemeec, upon the parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below.

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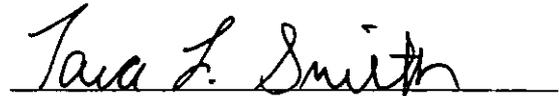
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Dated: September 22, 2008

A handwritten signature in cursive script that reads "Tara L. Smith". The signature is written in black ink and is positioned above a horizontal line.

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COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

ORIGINAL

IN REPLY PLEASE
REFER TO OUR FILE

September 22, 2008

DOCUMENT
FOLDER

James J. McNulty, Secretary
PA Public Utility Commission
400 North Street
PO Box 3265
Harrisburg, PA 17105-3265

Re: Application of Trans-Allegheny Interstate Line Company (TrAILCo) For Approval: 1) for a Certificate of Public Convenience to Offer, Render, Furnish or Supply Transmission Service in the Commonwealth of Pennsylvania; 2) Authorization and to Locate, Construct, Operate and Maintain Certain High-Voltage Electric Substation Facilities; 3) Authority to Exercise of Power of Eminent Domain for the Construction and Installation of Aerial Electric Transmission Facilities Along the Proposed Transmission Line Routes in Pennsylvania; 4) Approval of an Exemption From Municipal Zoning Regulation With Respect to the Construction of Building; and 5) Approval of Certain Related Affiliated Interest Arrangements

Docket Nos. A-110172, A-110172F0002, A-110172F0003, A-110172F0004 and G-00071229

Dear Mr. McNulty:

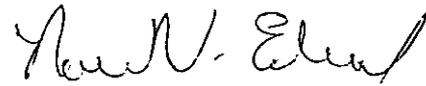
Enclosed for filing, please find an original and nine (9) copies of the **Reply Exceptions** of the Office of Trial Staff (OTS) in the above-captioned proceeding.

As evidenced by the enclosed Certificate of Service, copies are being served on all active parties of record.

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Sincerely,



Robert V. Eckenrod
Prosecutor
Office of Trial Staff
PA Attorney I.D. #84889

RVE:nhd

cc: Parties of Record
Chairman Cawley
Vice Chairman Christy
Commissioner Powelson
Commissioner Pizzingrilli
Commissioner Gardner
Chief Counsel Pankiw
Director Davis
PUC Press Office

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of Trans-Allegheny Interstate :
Line Company (TrAILCo) for Approval: :
1) for a Certificate of Public Convenience :
to Offer, Render, Furnish or Supply :
Transmission Service in the :
Commonwealth of Pennsylvania; 2) :
Authorization and to Locate, Construct, :
Operate and Maintain Certain High- : Docket Nos. A-110172,
Voltage Electric Substation Facilities; 3) : A-110172F2002,
Authority to Exercise of Power of Eminent : A-110172F2004,
Domain for the Construction and : G-00071229
Installation of Aerial Electric Transmission :
Facilities Along the Proposed Transmission :
Line Routes in Pennsylvania; 4) Approval :
Of an Exemption From Municipal Zoning :
Regulation with Respect to the :
Construction of Building; and 5) Approval :
Of Certain Related Affiliated Interest :
Arrangements :**

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**REPLY EXCEPTIONS
OF THE
OFFICE OF TRIAL STAFF**

Robert V. Eckenrod
Prosecutor
Attorney ID #84889

Office of Trial Staff
Pennsylvania Public Utility Commission
P.O. Box 3265
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(717) 787-1976

Dated: September 22, 2008

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I. INTRODUCTION

A. Procedural History

On April 13, 2007, Trans-Allegheny Interstate Line Company (“TrAILCo” or “Company”) filed with the Pennsylvania Public Utility Commission (“Commission”) an Application for Approval: 1) for a Certificate of Public Convenience to Offer, Render, Furnish or Supply Transmission Service in the Commonwealth of Pennsylvania 2) Authorization to Locate, Construct, Operate and Maintain Certain High Voltage Electric Substation Facilities; 3) Authority to Exercise Power of Eminent Domain for the Construction and Installation of Aerial Electric Transmission Facilities Along the Proposed Transmission Line Routes in Pennsylvania; 4) Approval of an Exemption from Municipal Zoning Regulation with Respect to the Construction of Buildings; and 5) Approval of Certain Related Affiliated Interest Arrangements (“Application”). Generally, TrAILCo’s Application sought Commission authority to locate and construct three 138 kV transmission lines and one 500 kV transmission lines, along with related facilities in portions of Washington and Green Counties.¹

Specifically, the Application requested that the Commission, *inter alia*, permit TrAILCo to locate, construct, operate and maintain a new 500/138 kV substation in Washington County, Pennsylvania (“Prexy Substation”), a new 500 kV substation in Greene County, Pennsylvania (“502 Junction Substation”), a new 500 kV transmission

¹ These lines represent the Pennsylvania segment of a larger projected, referred to collectively as the “TrAIL Project,” which consists of a 500 kV running from the proposed Prexy Substation in Washington County and terminating at a substation located in Loudon, Virginia. The total length of the three proposed 138 kV lines is approximately 15.1 miles and the approximate length of the 500 kV line is 37.3 miles, resulting in a total combined length of approximately 52.4 miles.

line to connect the Prexy Substation and the 502 Junction Substation (“Prexy Segment”), and three new 138 kV transmission lines with double circuit construction from the Prexy Substation (“Prexy 138 kV Lines”) to connect with existing transmission lines of Allegheny Power (collectively referred to as the “Prexy Facilities”). TrAILCo also proposes to construct a new 500 kV transmission line in Pennsylvania from the 502 Junction Substations to the Pennsylvania-West Virginia state line (“Pennsylvania 502 Junction Segment”).²

Additionally, by its Application, TrAILCo requested that the Commission issue a Certificate of Public Convenience to allow it to be recognized as a Pennsylvania public utility; requests exemption from local zoning regulations; requests authorization to exercise the power of eminent domain in connection with the siting, construction and maintenance of the proposed transmission facilities; and requests approval of certain affiliated interest transactions.

Evidentiary hearings were subsequently held in the Pittsburgh State Office Building on March 24, 2008 and continued through April 3, 2008. At the hearings, the parties conducted cross examination and offered and had admitted into the record the prepared testimony and exhibits of their respective expert witnesses.

² A fuller description of the proposed facilities are found in the Company’s Application at Paragraphs 10 through 25. Essentially, the proposed project includes the siting and construction of two distinct transmission line segments; those comprising the “Prexy Facilities” (the 500/138 kV Prexy Substation in Washington County, the 500 kV transmission line to connect the Prexy Substation with the 502 Junction Substation, and three new 138 kV double circuit transmission lines extending from the new Prexy Substation to other existing 138 kV lines in Washington County) and the “Pennsylvania 502 Junction Segment,” which is proposed to be a 500 kV transmission line which runs southeast from 502 Junction to the Pennsylvania-West Virginia state line and the 500 kV 502 Junction Substation in Greene County (an approximately 1.2 miles segment of the larger proposed 502 Junction – Loudon transmission line which extends through West Virginia and Virginia).

After consideration of the filing, supporting documentation and offered evidence, ALJs Michael Nemecek and Mark Hoyer issued a Recommended Decision on August 21, 2008, which recommended rejection of TrAILCo's omnibus applications. Among other things, the ALJs concluded that TrAILCo's Application was deficient and that the Company failed to meet the requisite burden of proof with respect to need and adherence to Commission regulations governing transmission line siting.

On September 10, 2008, TrAILCo filed Exceptions to the Recommended Decision. By correspondence of the same date the Office of Trial Staff ("OTS"), the Office of Consumer Advocate ("OCA"), the Energy Conservation Council of Pennsylvania ("ECC") and the West Penn Industrial Intervenors ("WPII") notified the Commission that it did not intend to file Exceptions. In addition to filing Exceptions, TrAILCo also filed a Motion for Partial Stay of Proceedings and Request for Expedited Consideration which seeks to stay the instant proceedings with respect to the Prexy Facilities only, and requests immediate approval of the 502 Junction Segment of the proposed project.³

In response to the Exceptions filed by TrAILCo, OTS submits Reply Exceptions and respectfully requests that the Commission adopt these recommendations, and the Recommended Decision of the ALJs, in its final Order resolving this proceeding.

B. Summary of Argument

In summary, OTS submits that the Company's Exceptions to the Recommended Decision are without merit and improperly attempt to confound the issues with broad,

³ A separate and distinct Answer addressing TrAILCo's Motion will be submitted by OTS.

sweeping statements that have little basis in law or fact. The fundamental failing of TrAILCo in this proceeding is the failure to substantiate its request to site, build and maintain the proposed high voltage transmission lines with substantial, credible evidence which demonstrates its adherence to the Commission's siting regulations. In an effort to divert the Commission's attention away from this failing, the Company repeatedly emphasizes that the public service commissions in West Virginia and Virginia have approved the project and, employing that rationale, this Commission should follow suit; even though the facts, circumstances, law and policy with respect to each of those proceedings is distinct.

Moreover, TrAILCo employs circular logic to bolster its Exceptions by arguing that this project is a "must build" based upon need and reliability but, in the first instance, it has been shown that the Company has failed to prove the requisite need for this specific, proposed project. Also, TrAILCo simply refuses to understand that its failure to adhere to Commission regulations, especially those pertaining to reasonable route selection and minimum adverse environmental impacts, ultimately weigh against approval of this project. TrAILCo's myopic insistence upon the poorly conceived and implemented TrAIL project has been frustrating, to say the least, and has had a polarizing effect on the participants and affected parties.

Additionally, TrAILCo faults the ALJs for concluding that it failed to act reasonably in route selection and mitigation of environmental impacts. However, as this record in this case bears out, TrAILCo has made an insufficient presentation of the facts and circumstances for the Commission to make a requisite finding that the proposed

location, siting and construction of the facilities is reasonable and will not unreasonably affect the environmental, cultural and natural resources of the Commonwealth.

Finally, TrAILCo's attachment of "acceptable conditions" to its Exceptions, highlighting terms it would be willing to accept, is wholly inappropriate at this stage in the proceeding and should be stricken in its entirety. It is a perversion of the process to attempt to introduce settlement terms during the Exceptions phase because it fails to allow the parties opportunity and notice to examine the stated "conditions."

In consideration of these shortcomings, OTS would urge the Commission to reject the Exceptions of TrAILCo and adopt the Recommended Decision in its entirety without modification.

II. REPLY EXCEPTIONS

A. The Findings of Fact and Conclusions of Law Set Forth in the Recommended Decision are Squarely Within the Commission's Scope of Authority.

At the outset, TrAILCo argues that the ALJs exceeded their lawful scope of authority in their findings supporting denial of the Application by adopting certain findings of fact and making recommendations based upon what it perceives as an improper focus on operating and maintenance of generation facilities and the choice of fuels used in such facilities.⁴ In support of this contention, TrAILCo cites to several Findings of Fact adopted by the ALJs and concludes that the Recommended Decision improperly relied upon such findings for its conclusions.

⁴ TrAILCo Exceptions, pp. 4-5.

Even a cursory review of the cited findings reveals that TrAILCo's characterization in its Exceptions is taken out of context and, in some cases, the cited Finding of Fact differ greatly from the perception TrAILCo attempts to create. For example, TrAILCo avers that "[t]he RD erroneously adopted, as fact, purely speculative outcomes of various proposals concerning greenhouse gas and emission policies that are currently pending at a national level and have not been resolved." Turning to the cited Findings of Fact Nos. 69-71 reveals that the ALJs have merely set forth the notion that various emission bills are pending before the U.S. Congress and that all of such pending bills envision a national "cap and trade" program.⁵ Finally, the last Finding of Fact contends that a "cap and trade" program would increase the production costs for coal-fired facilities.⁶ Clearly, the Recommended Decision sets forth such findings without any attendant judgment values, as TrAILCo would ascribe. Recognition that U.S. Congress is considering several "cap and trade" emissions bills, and the ramifications thereof, is a far cry from actually relying upon such representations in reaching a final conclusion.

Similarly, TrAILCo attacks the ALJs for generally concluding that pollution and waste from coal mines, coal-fired power plants, smokestacks, slag dumps, coal patches and shanties is a basis for recommending that local rural owners should not be subject to TrAILCo's facilities.⁷ However, upon further reflection of the cited passage, it would appear that the ALJs are not making any such conclusions.⁸ Instead, they are simply relating that the people and property owners of Greene County who testified are

⁵ Recommended Decision, pp. 19-20.

⁶ Recommended Decision, p. 20.

⁷ TrAILCo Excptions, p. 4.

⁸ Recommended Decision, p. 111, ¶ 1.

representatives of the “public need,” who, in fact, objected on the record to having “everything in their backyards.” No conclusions relative to the characterization of the Greene County residents’ testimony are made. In fact, as the ALJs clarify in that paragraph, “[t]he inquiry here is focused on need,” presumably to the exclusion of whether or not the denizens of Green County have shouldered their “burden” of public need as TrAILCo would suggest.

Likewise, TrAILCo’s representations with respect to the other findings cited to in their Exceptions are clearly erroneous and taken out of context in a veiled attempt to obfuscate the true issues in this proceeding; namely whether TrAILCo has met its requisite burden of proof necessitating the approval of its Application. As such, OTS would urge the Commission to dismiss TrAILCo’s Exceptions with regard to the ALJ’s findings.

B. The Recommended Decision Properly Finds that the Route Selection for the Pennsylvania 502 Junction Segment Was Unreasonable

In its Exceptions, TrAILCo avers that no “...single party in this proceeding raised any issue concerning the short 1.2 mile route [of the Pennsylvania 502 Junction Segment],” and, as such, the ALJ’s summary dismissal of the siting of this segment was erroneous.⁹ TrAILCo’s claim in this regard is, at best, misleading.

OTS has argued in this proceeding that the route selection process utilized by TrAILCo was flawed and the Route Evaluation Report and Environmental Report (“LRE”) failed to adequately consider alternative routes and the impacts of siting the

⁹ TrAILCo Exceptions, p. 20.

lines within those specified routes. This criticism extended to all aspects of the TrAIL proposal, including the Pennsylvania 502 Junction Segment. Indeed, this portion of the line was part of the LRE's analysis of "Alternative Route H," which OTS specifically criticized in its Reply Brief:

To begin with, TrAILCo rejected alternative Routes A through G for the 502 Junction Segment of the overall 37.3 mile, 500 kV line which extends from the 502 Junction Substation to the West Virginia border, instead opting to choose Route H. Despite Commission regulations requiring an analysis of the methodology for developing routes and alternative routes, a comparison of the relative merits of each route and a statement of reasons underlying the selection of the ultimate route, TrAILCo's LRE is devoid of any discussion on this issue with respect to Route H. Indeed, as the ECC noted in its Main Brief on this very point, approximately one page of an otherwise 193 page report sets forth TrAILCo's analysis justifying the selection of Route H. No analysis of the comparative routes is set forth in the LRE, nor is there any justification for the ultimate selection of Route H included in the LRE. Instead, TrAILCo maintains that factors in West Virginia ultimately led to the selection of Route H in Pennsylvania.

OTS Reply Brief, p. 5 (citations omitted).

Clearly, the siting of the Pennsylvania 502 Junction Segment was in controversy by the parties in this proceeding. While the parties may not have specifically identified the 1.2 mile segment of the Pennsylvania 502 Junction Segment in its criticism, it is clear that the Pennsylvania 502 Junction Segment is part of the larger 502 Junction Segment. Indeed, TrAILCo's insistence in bolstering its route selection for the Pennsylvania 502 Junction Segment in its Exceptions is a tacit acknowledgement of this controversy and its contrary statement should be dismissed.

Turning to the merits of TrAILCo's argument with respect to this portion of the project, the Company continues to argue that its ultimate route selection for this segment was reasonable because of the necessity of linking the Pennsylvania 502 Junction

Segment with the 502 Junction Segment in West Virginia where the majority of the line traverses.¹⁰ Yet, as stated by OTS in its Reply Brief, while it can be appreciated that factors in West Virginia relating to the siting of the rest of the line should be taken into consideration, such factors should not be the sole determinant in justifying the siting of a portion of the transmission line in Pennsylvania where Commission regulations clearly require more. Commission regulations require a comparative analysis of the proposed routes, which presumably would include an impact assessment, and a statement of the reasons underlying the selection of the preferred route; none of which TrAILCo included in this proceeding. In fact, in its Exceptions, TrAILCo continues to emphasize that siting factors in West Virginia were the ultimate determinant of the selection of Alternative Route H. Ultimately, the ALJ's weighed the available evidence and facts before them and concluded that the route selection process, as a whole, "...was arbitrary, incomplete and, as a result, unreasonable."¹¹

Nothing in TrAILCo's Exceptions represent new or novel arguments in this regard. As such, the Commission should adopt the ALJ's recommendations with regard to siting in their entirety.

C. The Recommended Decision Properly Finds that TrAILCo's Siting Process and Actions to Reasonably Mitigate Environmental Impacts for the Prexy Facilities was Incomplete

Similarly, based upon the available evidence and facts, the ALJ's concluded that TrAILCo's siting procedures for the balance of the proposed project was arbitrary,

¹⁰ TrAILCo Exceptions, p. 21.

¹¹ Recommended Decision, p. 177.

incomplete and, consequently, unreasonable. Here, TrAILCo argues that the ALJs failed to give weight to the applicable legal standard which gives deference to TrAILCo's route selection.¹² Continuing with this argument, TrAILCo maintains that with such deference, its route selection should not be set aside unless the exercise of its discretion is found to be capricious or arbitrary.¹³

With regard to the applicable legal standard to be applied, OTS submits that TrAILCo has attempted to misapply an appellate legal standard of review to these administrative proceedings. It certainly does not depict the intended burden of proof in the context of siting or eminent domain cases¹⁴ and the "arbitrary and capricious" standard would only be applied in the event that the Commission's ultimate determination with regard to route selection would be subject to appellate review. Thus, in the context of this proceeding, TrAILCo's ultimate route selection is not afforded any special deference and is subject to the Commission's usual burden of proof standards.

Turning to merits of route selection, TrAILCo further argues that it established and utilized a detailed and reasonable process for routing and site selection, and faults the ALJs for requiring that every aspect of siting and route selection be completed prior to seeking Commission approval.¹⁵ In this regard, TrAILCo contends that the Commission's siting regulations contemplate the "phased [siting] approach" that TrAILCo proposed in this proceeding, noting that Section 57.75(e)(3) states that the

¹² TrAILCo Exceptions, p. 32.

¹³ *Id.*

¹⁴ Indeed, 66 Pa. C.S. § 332(a) mandates that the proponent of a rule or order from the Commission has the burden of proof in advocating its position in a proceeding and any facts utilized to support this burden must be established by a preponderance of the evidence.

¹⁵ TrAILCo Exceptions, p. 32.

Commission will accept evidence on efforts that “have been made or will be made” regarding environmental, cultural and historic impacts.¹⁶ Focusing on this language, TrAILCo supports its “phased approach” by averring that this section expressly recognizes that various mitigation efforts are likely to be on-going after the siting application is filed with the Commission and even after approval has been given.¹⁷

TrAILCo’s sole reliance upon this language in the Commission’s regulations as justification for its flawed siting approach is completely misguided. Obviously, efforts to minimize the impact of siting high voltage transmission lines must continue after Commission approval of project. There are aspects of minimizing impacts that must be considered during the construction phase of the project and it is these efforts that must be undertaken after Commission approval. Moreover, plans for mitigation efforts must be employed during this phase as well; and this represents the distinction in argument.

TrAILCo’s argument falters because it fails to consider that the Commission’s regulations require that a conscientious and deliberate plan for minimizing these impacts be prepared and presented to the Commission as part of the Company’s *prima facie* case seeking approval for siting.¹⁸ Examining the Commission’s regulations again, they clearly require that the Commission accept evidence and consider the impact of the proposed project on the environment. But, in order to allow the Commission to make a proper determination based upon substantial evidence, it must have a clear plan of the

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See *Re Overhead Electric Transmission Lines*, 51 Pa. PUC 682, 687 (March 1, 1978) (“...in every siting proceeding, the environmental impact of the proposed line will be an issue which the applicant must address affirmatively and completely in order to be granted a siting certificate.”)

efforts the Company has taken and will take to reduce adverse impacts. As the Commission has previously explained, its fundamental concern in requiring an environmental impact is to ensure that utilities undertake "...reasonable, conscientious studies, surveys and searches to determine whether the proposed line will destroy or adversely affect [archaeologic, geologic, historic, scenic or wilderness areas], whether or not the areas were previously known."¹⁹

In this proceeding, TrAILCo has simply failed to live up to this mandate. As succinctly stated by the ALJs in the Recommended Decision, "[t]he very best that can be said for the TrAILCo siting process that is detailed in this record is that it is incomplete. It does not meet the requirements of this Commission's siting regulations and cannot support a finding that it is a reasonable route for the proposed project."²⁰ The LRE itself was prepared in April 2007 and the ultimate route selection did not have the benefit of including the large amounts of information gathered subsequent thereto. To be sure, by TrAILCo's own admission, the LRE is only a "rough estimate" of the exact cultural and environmental resources that may be impacted by the proposed project and that further detailed studies, including site visits and further cataloging would be conducted upon Commission approval of the siting for TrAIL.²¹ Clearly, the LRE, as relied upon by TrAILCo, does not even closely represent a "conscientious, reasonable study" as contemplated by the Commission.

¹⁹ *Id.* at 687-688.

²⁰ Recommended Decision, p. 169.

²¹ TrAILCo Rebuttal Statement No. 5-R, pp. 5, 6, 7, 8, 10, 12, 16.

A review of TrAILCo's arguments in this proceeding highlights the notion that TrAILCo is operating under the misconception that much of the "real" work to be done in this proceeding will occur after the Commission grants approval of the siting for the TrAIL project. However, this viewpoint misconstrues the mandate of the Commission to consider the proposed impacts of the project on the natural, cultural and environmental resources set forth in 52 Pa. Code § 57.75(e) and completely ignores the requirement that the Commission must make an affirmative finding, based upon the competent, reliable and substantial evidence of record that the proposed project will be in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth and that the project will have minimal adverse impacts. Without a full, complete record of the environmental and cultural phenomenon encountered along the proposed line corridor, and an accompanying evaluation of the impact of the proposed project on that phenomenon, the Commission cannot make such an affirmative finding.

Perhaps even more revealing, TrAILCo has continued to argue in this proceeding that the role of pre-existing right of ways ("ROW"), or corridors, should not be underestimated.²² In fact, TrAILCo emphasizes that its use of existing ROW where practicable is a good aspect of its planning process and should not be a basis for criticism.

OTS submits, and as the ALJs properly concluded, in some circumstances, the use of valid right of ways could be considered a factor in providing justification for the selection of one proposed route over another. But, it certainly should not be the sole factor and other considerations, including environmental and cultural impacts must be

²² TrAILCo Main Brief, p. 40, TrAILCo Exceptions, pp. 34-35.

assessed separately and should be considered equally. Moreover, in this case, the justification that the preferred routes utilize existing ROWs should be given less credence because not only are the validity of those supposed ROWs challenged by the various affected property owners, but the majority of the existing ROWs were purchased in the 1970s. Utilization of valid ROWs could be considered as a good aspect of the planning process if the various property owners actually would have conceded the validity of such ROWs.

In the 35-plus years since their purchase, the Commission has adopted the current regulations governing the location and construction of high voltage lines which, *inter alia*, mandate consideration of environmental factors in route selection. Additionally, changes in land use along the existing ROWs may have occurred and other environmental, natural and cultural phenomenon may have been discovered along the proposed routes. Much has changed since the 1970s and using the justification that there are existing ROWs purchased during that time to bolster the ultimate selection of line routing in this case is misguided. Taken to its logical extreme, TrAILCo's argument would allow the utilization of ROWs to diminish any harm that a proposed project may have upon the Commission's enumerated considerations by merely utilizing existing ROWs in the selection of future transmission line siting. Reviewing the totality of the circumstances, OTS maintains that utilization of questionable ROWs was given an inordinate amount of consideration by TrAILCo in the ultimate siting selection process, and the concerns of adverse impacts was given secondary, or even cursory, consideration.

The Recommended Decision does an outstanding job at highlighting many of the significant shortcomings of TrAILCo's submission, noting, in particular, that TrAILCo failed to incorporate any information gathered subsequent to the preparation of the LRE into consideration of ultimate route selection.²³ Moreover, the ALJs correctly highlighted the limitations of TrAILCo's LRE, in particular noting its lack of a soil and sedimentation plan, a plan to protect ground water and surface waters from pollution and, most significantly, a credible account of how it seriously considered alternate routes that had less environmental impacts than the preordained routes that were obviously chosen because of the existence of prior easements.²⁴ For these reasons, OTS would urge the Commission to dismiss TrAILCo's Exceptions in this regard and adopt the recommendations of the ALJ.

D. TrAILCo's Attachment of "Acceptable Conditions" it Would be Willing to Accept to Address Concerns Related to the Recommended Decision is Inappropriate and Must Be Stricken.

TrAILCo attached "Appendix A" to its filed Exceptions, entitled "TrAILCo Acceptable Conditions," which represent its "offer" to the Commission those terms that it would consider acceptable to rectify concerns relating to the Recommended Decision in this proceeding. Putting aside the obvious audaciousness in dictating to the Commission those terms that TrAILCo deems acceptable, the inclusion of such new terms in Exceptions is inappropriate and procedurally repugnant.

²³ Recommended Decision, pp. 169-177.

²⁴ Recommended Decision, p. 189.

To be sure, this argument is more than disingenuous. TrAILCo never raised these terms previously, during discovery, the hearing, or in the briefs to the ALJ, and arguably, has waived its right to raise them in Exceptions. The purpose of the hearing process established under the Public Utility Code is to permit the parties to assert their respective positions, in an orderly fashion, at a hearing.²⁵ Saving up any arguments or settlement terms a party may wish to assert for later violates the due process rights of the other parties and waives the party's right to assert that position or explore such terms further. Indeed, the Commission's regulations prohibit the reliance upon, or the inclusion of, additional matter in the record unless allowed for good cause shown by the presiding officer or the Commission upon motion.²⁶

Accordingly, OTS submits that the Commission should refuse to consider TrAILCo's "Acceptable Conditions" in the consideration of its final Order because the Company failed to bring these issues to the attention of the parties and the presiding officer in the proceeding below.

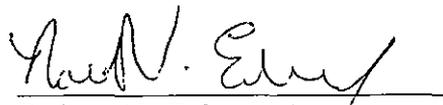
²⁵ 66 Pa. C.S. §§ 355, 703.

²⁶ 52 Pa. Code § 5.431. *See also*, 52 Pa. Code § 5.571 (pertaining to reopening the formal proceeding to accept new evidence).

III. CONCLUSION

For the reasons set forth in OTS' Main and Reply Briefs and the foregoing Reply Exceptions, OTS respectfully requests that the Commission deny the Exceptions of TrAILCo and adopt the Recommended Decision in this proceeding without modification.

Respectfully submitted,



Robert V. Eckenrod

Prosecutor

Attorney I.D. No. 84889

Office of Trial Staff
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg PA 17105-3265

Dated: September 22, 2008

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

	:	Docket Nos. A-110172
Application of Trans-Allegheny Interstate	:	A-110172F0002
Line Company (TrAILCo.)	:	A-110172F0003
	:	A-110172F0004
	:	G-00071229

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Exceptions**, dated September 22, 2008, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

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Dated: September 22, 2008
Docket No. A-110172; A-110172F0002,
A-110172F0003, A-110172F0004,
G-00071229

DOCUMENT FOLDER

ORIGINAL

PENNSYLVANIA PUBLIC UTILITY COMMISSION
MR. JAMES McNULTY, SECRETARY
REPLY TO TRAILCO EXCEPTIONS

In re: Application of Trans-Allegheny:
Interstate Line Company

:
: Docket Nos. A-110172
: A-110172F0002-4 and
: G-00071229
:

A-110172 F0003

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SEP 22 2008

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

REPLY TO TRAILCO EXCEPTIONS BY: Barbara J. Gall
(Name of person filing the reply)

INTEREST IN CASE: The proposed construction of the Trans-Allegheny Interstate Line (TrAILCo) through 38 miles of Pennsylvania includes the property/farm where I reside.

PREVIOUS FILINGS: public testimony at Waynesburg University and on-site testimony at the home of Rebecca Trigger (Foley).

Dear Mr. McNulty;

On September 10, 2008, Allegheny Power/TrAILCo filed Exceptions and a Motion to Stay related to the Initial Decision by the Administrative Law Judges.

I am adamantly opposed to the construction of these lines due to my concerns over the health risks to man and beast, the destruction and devaluation of our property, as well as the security risks to our state and country.

TrAILCo has proven over and over again they are a company that cannot be trusted. This is evident from their misconduct and total disregard for the property, homes and citizens of Pennsylvania.

I ask that you support the Administrative Law Judges' recommendations and that no compromises are made with Allegheny Power/Trailco as it is my belief that their "concessions" to withdrawal segments of these lines in Pennsylvania is a smokescreen to enable them to construct the lines through Virginia and West Virginia and that they will continually revisit constructing them through Pennsylvania in the future.

When is enough – enough ? We're going to have to start finding alternatives sometime so we might as well start now. They think they need to build them in our backyard because they think our power plants can produce electricity more cheaply than building

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power plants in Virginia. However, consider this.....the power plants in this area have to bring coal in by railroad from Powder River Basin (PRB coal) in order to make the coal in our area meet standards. As you know, the power plants in our area have had to build "scrubbers" in order to meet air quality standards at a cost of millions of dollars. What if Virginia would build a power plant and burn nothing but PRB coal ? The railroad can run over there as well as it does here. They wouldn't have to build scrubbers because PRB burns cleaner than our local coal. Wouldn't that save millions of dollars as well as the pain and suffering of all the thousands of property owners that have been put through all this grief. It would be better for the environment and for the health of man and beast.

It is my belief that Solar Power is the future. Allegheny Power should be looking into developing a line of manufacturing and maintaining home solar systems or something of the sort. I understand the demand for electricity but building more dirty coal fired plants and transporting the electricity over hundreds of miles of transmission lines is not the answer for it. There are other alternatives. Unless forced into considering the alternatives, nothing will change and the people and the environment will continue to suffer.

I ask that you keep the beauty of Pennsylvania and the health and welfare of it's citizens and wildlife foremost in your thoughts by upholding the recommendations of the Administrative Law Judges. For in the long run, this will benefit the health and welfare of every American as well as every inhabitant of the world.

Send a powerful message with just one word written across TrAILCo's Exception and Motion to Stay: Denied.

Respectfully submitted:

 September 20, 2008

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ORIGINAL DOCUMENT FOLDER

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION MR. JAMES MCNULTY, SECRETARY REPLY TO TRAILCO EXCEPTIONS

A-110172F0003

In re: Application of Trans-Allegheny: Docket Nos. A-110172 Interstate Line Company A-110172F0002-4 and G-00071229

REPLY TO TRAILCO EXCEPTIONS BY: Rebecca E. Trigger (formerly Foley), RN (Name of person filing the reply)

INTEREST IN CASE: The proposed construction of the Trans-Allegheny Interstate Line (TrAILCo) through 38 miles of Pennsylvania includes the property/farm where I reside. AP does NOT own a-right-of way on my land and I am adamantly opposed to these lines. I have grave concerns over the adverse health implications, the security risks and the manipulative process being utilized by Allegheny Power Company to establish the TrAILCo through Western Pennsylvania. Allegheny Power herein is synomous with TrAILCo.

PREVIOUS FILINGS: Written Protest in 2007, on Site Viewing in 2007, public testimony in 2007, and Amicus Brief in 2008.

Dear Mr. McNulty;

On September 10, 2008, Allegheny Power/TrAILCo filed Exceptions and a Motion to Stay related to the Initial Decision by the Administrative Law Judges. Both serve to discredit the well documented and thorough recommendations by the Judges to the Public Utility Commissioners.

RECEIVED 2008 SEP 23 SECRETARY'S OFFICE

I adamantly oppose the "exceptions" filed by TrAILCo along with thousands of other Pennsylvanians who have expressed their opposition to these high voltage lines by signing Petitions, testifying, writing protests, and so on. We are joined by the thousands of people across Virginia and West Virginia who have done the same.

TrAILCo has proven over and over again they are a company that cannot be trusted. This is evident by their egregious misconduct and total disregard towards the property, homes and citizens of the Great Commonwealth of Pennsylvania, which has been well documented.

I ask that you remain steadfast in support of the ALJ's Initial Decision to the fullest extent of their recommendations and ensure that no compromises are made with Allegheny Power. Please do not be deceived by TrAILCo's "concession" to withdrawal segments of these lines in Pennsylvania. This is a ploy to enable the construction of the lines through Virginia and West Virginia only to revisit constructing them through Pennsylvania in the future. Common sense tells us this has to be their objective because of the need to build over 200 dirty coal burning

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plants to produce the electricity to run on these lines. They cannot build these plants in Virginia because their air quality standards are too high. They need to build them in our backyard because, sadly, our air quality standards are low enough to allow them.

The consequences of these high voltage lines will be diseased lungs from the air pollution of dirty coal burning plants, the contamination of our crops and water from the aero-spraying of herbicides, the destruction of our beautiful scenery from the construction of Godzilla towers, the hazards to our health from the exposure of EMR's, the depreciation of land values and the increase of electrical rates to every business and individual in Pennsylvania. **We get all this devastation for high voltage lines that not one Pennsylvanian will benefit from but will have to pay for.**

Especially do not forget the terrorist tactics already used by agents of Allegheny Power to landowners such as trespassing and threatening to take land by use of eminent domain (I am one of these). TrAILCo's arrogance in trampling the rights and stifling the Freedom of speech of ordinary folks, which is well documented, is chilling. This behavior against human rights to forcibly bulldoze these lines across the states of Virginia, West Virginia and Pennsylvania should be the red flag to **STOP** them now.

I wish you could have personally seen the tears and heard the fear in the trembling voices of the hundreds of people that testified before the PUC of what they have and will endure if these high voltage lines are forced across their farms and land. As a registered nurse I know how much these individuals have suffered for I am one of them.

I was born in Virginia and have worked in DC and love both dearly. I bought my farm here in Pennsylvania to use for good purposes, which is my American Dream. Of my 132 acres nearly 35 acres are hayfields that I generously donate to area farmers to feed the cows that feed this nation. My home was built by Benjamin Craft in 1891 after he fought in the Civil War. I have generously opened my door for home tours whose proceeds benefit college scholarships for area youth. I have taught good land stewardship and community services to the youth of family and friends who have stayed here since 1994.

If these high voltage lines with their towers go forth my land will be cut in half. It will destroy my hayfields, my walking trails, contaminate my water, and I will live in the shadow of their crackling noise as a constant reminder of the harmful effect it is having on me and those who stay at my farm. I will be devastated and heartbroken.

Isn't the purposeful use of my land just as important to society as the benefit of electricity?

And if it's destroyed where will people get their uncontaminated food, their clean drinking water, their clean air to breath? These are the basic needs to sustain a human body to live.

I have already endured years of physical and psychological torment from the long wall coal mining beneath my land and structures in 1999. It has left my home in a ruinous state with over \$200,000 of damages yet to be repaired. I've told my story of this to an award winning investigative reporter, Kristen Lombardi. She has been examining the social and environmental

impacts of long wall coal mining in Southwestern Pennsylvania for a project for the Center For Public Integrity in Washington, D.C. This project will soon be released on their website:
www.publicintegrity.org/

Would you have me endure yet another horrific assault of my home, property and person?

I certainly would not stand idly by and let it to be done to you nor anyone else.

When is enough – enough?

I understand the desire for electricity but this is not the answer for it. There are other alternatives that are more environmental friendly and cost effective. Our Honorable Senator Stout has stated he will happily truck all the coal to Virginia they need. Let TrAILCo ask Virginia to lift their air quality standards and build these plants in their own backyard. TrAILCo wouldn't even waste their breath for they know Virginia would not allow their citizens to be exposed to such hazards.

I ask of you to keep the scenic beauty of Pennsylvania and the health and welfare of it's citizens foremost in your thoughts and insist the recommendation of the ALJ's, which they have justifiably concluded, is upheld to the fullest extent.

For in the long run, this will benefit the health and welfare of every American as well. A decision we can all live healthy with.

Send a powerful message with just one word written across TrAILCo's Exception and Motion to Stay: **DENIED**.

Respectfully submitted:



September 18, 2008

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SEP 25 2008

DOCUMENT
FOLDER

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Application of Trans-Allegheny Interstate Line Company for (i) A Certificate of Public Convenience to Offer, Render, Furnish and/or Supply Transmission Service in the Commonwealth of Pennsylvania; (ii) Authorization and Certification to Locate, Construct, Operate and Maintain Certain High Voltage Electric Transmission Lines and Related Electric Substation Facilities; (iii) Authority to Exercise the Power of Eminent Domain for the Construction and Installation of Aerial Electric Transmission Facilities Along the Proposed Transmission Line Routes in Pennsylvania; (iv) Approval of an Exemption from Municipal Zoning Regulation with Respect to the Construction of Buildings; and (v) Approval of Certain Related Affiliated Interest Arrangements: Docket Nos. A-110172, A-110172F0002, A-110172F0003, A-110172F0004 and G-00071229

Dear Secretary McNulty:

Trans-Allegheny Interstate Line Company ("TrAILCo") submits the attached Agreement for consideration by the Pennsylvania Public Utility Commission ("Commission") in its disposition of the above-captioned docket. The parties who have executed this Settlement Agreement, TrAILCo and Greene County (collectively, the "Parties") wish to advise the Commission that consistent with the Agreement they have modified their positions in this proceeding previously set forth in this proceeding. The Parties agree that a Commission adjudication consistent with the terms of the Agreement is the preferred outcome in this proceeding.

As the record evidence in this proceeding shows, TrAILCo has requested approval of the need for the siting of (1) a 500/138 kV substation in Washington County, Pennsylvania, (the "Prexy Substation"); (2) a 500 kV substation in Greene County, Pennsylvania (the "502 Junction Substation"); (3) a new 500 kV transmission line to connect the Prexy Substation and 502 Junction Substation (the "Prexy Segment"); (4) three new 138 kV transmission lines from the Prexy Substation (the "Prexy 138 kV Lines") to connect with existing transmission lines of West Penn; and (5) an approximately 1.2 mile 500 kV transmission line from the 502 Junction Substation to the Pennsylvania-West Virginia state line (the "Pennsylvania 502 Junction Segment"). The Prexy Substation, the Prexy 138 kV Lines and the Prexy Segment are collectively referred to as the "Prexy Facilities".

Regarding terms, the Agreement requests Commission approval of the 502 Junction Substation and Pennsylvania 502 Junction Segment, without modification of the substation site and transmission line route proposed by TrAILCo. The Agreement does not withdraw TrAILCo's proposals with respect to the Prexy Facilities or contradict TrAILCo's position that reliability concerns exist in the Washington County area that must be resolved in the near term future. However, the Parties request a stay of any adjudication of requests made with respect to the Prexy Facilities until completion of a collaborative that will consider alternatives to the TrAILCo Washington County area proposals made in this case including, but not limited to, use of demand side management, energy efficiency, enhancement and improvements to existing facilities and new transmission infrastructure. Upon completion of the collaborative, TrAILCo will amend its Applications as appropriate and the Commission may resume consideration of the issues relating to the Washington County area.

To reinforce its commitment to exploring new alternatives for the Washington County area reliability needs, TrAILCo has agreed, under the terms of the Agreement, to surrender all easements associated with the proposed Prexy Segment or the Prexy 138 kV Lines, and to no longer seek authorization from the Commission to exercise eminent domain authority with respect to the Prexy Segment as proposed in this case, although it reserves the right to request eminent domain authority with respect to any new alternative that emerges from the collaborative process or a new proposal submitted to the Commission. In addition, TrAILCO agrees not to submit an application to the Federal Energy Regulatory Commission pursuant to its National Interest Electric Transmission Corridor backstop siting authority under Federal Power Act Section 216 with respect to the construction and siting of the Prexy Segment as filed in its Application initiating this proceeding, but reserves its right to do so with respect to any new or amended application. TrAILCo would also be free to pursue such an application with respect to the 502 Junction Substation and the Pennsylvania 502 Junction Segment in the event the Commission's decision in this case is not consistent with the Agreement. The Agreement thus modifies TrAILCo's litigation position by no longer seeking approval of the Prexy Facilities as filed, but to adopt the approach to Washington County issues set forth in the Agreement.

As an agreement among a limited number of parties in the case, the Agreement *does not* obviate the need for the Commission to adjudicate issues related to the 502 Junction Substation and the Pennsylvania 502 Junction Segment in this proceeding including, TrAILCo's request for certification as a Pennsylvania public utility and to provide electric transmission service in Pennsylvania, approval of related affiliated interest agreements, and authorization to exercise the power of eminent domain with respect to the 502 Junction Substation and the Pennsylvania 502 Junction Segment, if necessary. The Commission must adopt findings and conclusions supported by evidence and the law, and a resolution of the issues in this case must be made that is consistent with the public interest. The Agreement represents an elimination of the differences between the Parties as to how this case should be decided with respect to the 502 Junction Substation and Pennsylvania 502 Junction Segment and the related approvals discussed above, and establishes benefits for certain of the Parties that will be available if a final order consistent with the terms of the Agreement is adopted. The Agreement represents modification of the Parties' litigation positions that results in an outcome which is in the public interest and should be considered by the Commission in its adjudication.

The Agreement does not introduce any requests for authorizations from the Commission beyond those of record when the evidentiary record was compiled in this case. The Agreement does not introduce any new facts with respect to the issues yet to be adjudicated in this proceeding. Therefore, there is no need for additional hearings as a result of the execution and filing of the Agreement with the Commission.

At this point, TrAILCo is continuing to discuss agreements with other parties to the proceeding, and will supplement the Agreement, or make other appropriate filings, if additional mutual understandings are reached. However, the Parties respectfully request that the Commission establish a due date for comments by parties to the case on the Agreement, so that all parties to the proceeding will have an opportunity to comment on the terms of the Agreement.

Thank you for your attention to this matter.

Very truly yours,

W. Edwin Ogden
W. Edwin Ogden 

WEO:ck

c. Certificate of Service

The Honorable James H. Cawley, Chairman
The Honorable Tyrone J. Christy, Commissioner
The Honorable Robert F. Powelson, Commissioner
The Honorable Kim Pizzingrilli, Commissioner
The Honorable Wayne E. Gardner, Commissioner

Cheryl Walker Davis, Director
Office of Special Assistants

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IN RE: APPLICATION OF TRANS-ALLEGHENY	:	
INTERSTATE LINE COMPANY FOR	:	
(I) A CERTIFICATE OF PUBLIC CONVENIENCE	:	
TO OFFER, RENDER, FURNISH AND/OR	:	
SUPPLY TRANSMISSION SERVICE IN THE	:	
COMMONWEALTH OF PENNSYLVANIA;	:	
(II) AUTHORIZATION AND CERTIFICATION	:	
TO LOCATE, CONSTRUCT, OPERATE AND	:	Docket Nos. A-110172
MAINTAIN CERTAIN HIGH VOLTAGE ELECTRIC	:	A-110172F0002
TRANSMISSION LINES AND RELATED ELECTRIC	:	A-110172F0003
SUBSTATION FACILITIES; (III) AUTHORITY	:	A-110172F0004
TO EXERCISE THE POWER OF EMINENT	:	G-00071229
DOMAIN FOR THE CONSTRUCTION AND	:	
INSTALLATION OF AERIAL ELECTRIC	:	
TRANSMISSION FACILITIES ALONG THE	:	
PROPOSED TRANSMISSION LINE ROUTES	:	
IN PENNSYLVANIA; (IV) APPROVAL OF AN	:	
EXEMPTION FROM MUNICIPAL ZONING	:	
REGULATION WITH RESPECT TO THE	:	
CONSTRUCTION OF BUILDINGS; AND	:	
(V) APPROVAL OF CERTAIN RELATED	:	
AFFILIATED INTEREST ARRANGEMENTS	:	

AGREEMENT

On August 21, 2008, a Recommended Decision ("RD") in the above-captioned proceeding was issued by Administrative Law Judges Mark A. Hoyer and Michael A. Nemeo. Following the issuance of the RD, the Trans-Allegheny Interstate Line Company ("TrAILCo") commenced discussions with the other parties to this proceeding aimed at resolving the issues litigated in this proceeding. The focus of these discussions has been the requested determinations of the need for, and the siting of (1) a 500/138kV substation in Washington County, Pennsylvania (the "Prexy Substation"); (2) a 500 kV substation in Greene County, Pennsylvania (the "502 Junction Substation"); (3) a new 500 kV transmission line to connect the Prexy Substation and 502 Junction Substation (the "Prexy Segment"); (4) three new 138 kV transmission lines from the Prexy Substation

(the "Prexy 138 kV Lines") to connect with existing transmission lines of Allegheny Power; and (5) an approximately 1.2 mile 500 kV transmission line from the 502 Junction Substation to the Pennsylvania-West Virginia state line (the "Pennsylvania 502 Junction Segment").¹ The Prexy Substation, the Prexy 138 kV Lines and the Prexy Segment are collectively referred to herein as the "Prexy Facilities." TrAILCo, West Penn Power Company ("West Penn") and the Greene County Board of Commissioners ("Greene County")² (collectively the "Parties") hereby agree to the following terms and conditions of settlement ("Agreement") for submission to, and consideration and adoption by, the Pennsylvania Public Utility Commission ("Commission"). The effective date of this Agreement shall be the date on which the Commission enters a final order in this proceeding approving this Agreement in accordance with the terms set forth herein ("Effective Date"). For purposes of this Agreement, a "final order" of the Commission shall be one that is not subject to a pending request for rehearing, reconsideration, rescission, amendment, re-argument, clarification, supersedeas or the like.

1. Not later than 14 days after all of the Parties execute this Agreement, West Penn or TrAILCo, as applicable, shall create, execute, and record such quit claim or similar documents that convey any and all of their title to rights-of-way or easements associated with the proposed Prexy Segment or the Prexy 138 kV Lines on any property on the route of the proposed Prexy Segment or the Prexy 138 kV Lines to each of the identifiable, current real property owners of such lands. The Parties acknowledge that the terms of

¹ To the extent capitalized terms are used in this Agreement, such terms are intended to have the same meaning as assigned to them in TrAILCo Exhibit DEF-I in this proceeding.

² Greene County is a sub-division of the Commonwealth of Pennsylvania, and represented by the Board of Commissioners, Pam Snyder, Chairman, Dave Coder and Archie Trader, having an office of Chief Clerk, at 93 East High Street, Waynesburg, PA 15370.

this Agreement are expressly contingent upon West Penn's or TrAILCo's compliance with the provisions of this paragraph.

2. TrAILCo agrees that it will no longer seek authorization from the Commission to exercise eminent domain authority with respect to siting the Prexy Segment as proposed in TrAILCo's April 13, 2007 omnibus application ("Application") filed in this proceeding, but reserves the right to do so in connection with any new alternative that may result from the collaborative process described below or with any new proposal that may be filed with the Commission to address reliability issues identified by TrAILCo in the Washington County area. TrAILCo further agrees that it will not submit an application to the Federal Energy Regulatory Commission ("FERC") requesting that it approve the construction and siting of the Prexy Segment, based on TrAILCo's April 13, 2007 Application in this proceeding, pursuant to its National Interest Electric Transmission Corridor ("NIETC") backstop siting authority under Federal Power Act Section 216. However, TrAILCo reserves its right to submit such a request to FERC to approve any amended or new application.

3. The Parties acknowledge that the siting of the Prexy Facilities in this proceeding has been controversial and contentious, as evidenced by the opposition of certain federal, state and local legislators, and the opposition of local property owners. Further, the Parties believe that it is in the public interest to work together to develop new and creative alternatives to the construction and/or siting of the Prexy Facilities that are reasonably expected to address the reliability issues that TrAILCo reasonably anticipates to occur in the near future in the Washington County area. In order to address TrAILCo's concerns with respect to these reliability issues in an expedited manner, the Parties agree to work together in a cooperative, comprehensive and good faith manner to develop and

identify practical options and/or solutions to such Washington County reliability issues. Such cooperation will begin as soon as reasonably possible, while preserving the Commission's ability to approve any such solutions that are within its jurisdiction. Therefore, in express recognition of the foregoing, the Parties request that the Commission stay its consideration of the portion of the Application with respect to the Prexy Facilities, subject to the following:

(a) The Parties agree that the serious concerns that have been raised with respect to the siting of the Prexy Facilities as proposed by TrAILCo in this proceeding require TrAILCo to consider other potential alternatives to address the reliability concerns raised by TrAILCo's Application with respect to the Washington County area.

(b) The alternatives to the Prexy Facilities that need to be considered may include, but not be limited to, demand side management and energy efficiency programs, enhancements and improvements to existing transmission lines, substations and related equipment, and new transmission infrastructure. The Parties agree that the new alternatives to the Prexy Facilities to be considered by the collaborative may include the construction of up to ten miles of new 500 kV transmission lines in Washington County, as needed, and will not include the construction of any 500 kV transmission lines in Greene County, unless otherwise agreed to by the Parties.

(c) To address TrAILCo's concerns with respect to the near-term anticipated reliability issues in the Washington County area, the Parties agree that TrAILCo shall convene a collaborative Advisory Panel with all interested active parties to the proceedings on the Application to discuss, review, analyze and develop new alternatives to the Prexy Facilities such as those identified in subparagraph (b) above that can be proposed in this proceeding.

(d) The express intent of the Parties is that this collaborative Advisory Panel will assist TrAILCo in its continuing Application proposal before the Commission with respect to the Prexy Facilities. The collaborative effort will attempt to identify potential new alternatives to the Prexy Facilities. The Parties agree that the various and individual participants, and the groups they represent, shall have reserved unto them their rights to support or oppose any such alternatives filed with the Commission.

(e) The collaborative effort shall be conducted by TrAILCo in good faith and in a commercially reasonable time frame, with the cooperation and active participation of all those active parties in this proceeding who advise TrAILCo in writing of their intention to participate on the Advisory Panel.

(f) TrAILCo shall schedule meetings of the collaborative Advisory Panel at such times and locations as are reasonable and provide reasonable advance notice of such meetings to all active participants. Meetings generally shall be held at locations within Greene, Washington, and Westmoreland Counties, or in such other locations as are reasonably scheduled by TrAILCo.

(g) The Parties agree that time is of the essence and that the collaborative process shall commence when this Agreement is filed with the Commission and shall be completed no later than one hundred eighty (180) days thereafter, unless TrAILCo and the collaborative participants each agree such time shall be extended.

(h) The collaborative participants shall conduct the business of the collaborative Advisory Panel in good faith and in an expedited manner so that reliability issues that TrAILCo anticipates in the Washington County area may be addressed with new alternatives to the Prexy Facilities that can be installed and/or implemented in

sufficient lead time, without compromising service to customers in the Washington County area and beyond.

(i) The Parties acknowledge that PJM's participation in the collaborative process may be essential depending upon the alternatives being considered, and PJM shall be permitted to participate in the work of the collaborative Advisory Panel. The Parties also agree and acknowledge that PJM may be required to approve certain alternatives to the Prexy Facilities. The Parties and all active collaborative participants agree to reasonably provide PJM with sufficient information to timely consider, review and approve any such alternatives to the Prexy Facilities should such alternatives be within PJM's jurisdiction and purview.

(j) The Parties agree that TrAILCo and West Penn may have certain information that is confidential, and that participants in the collaborative will be required to sign confidentiality agreements before obtaining such information. The Parties also acknowledge that TrAILCo and West Penn may have confidentiality obligations to third-parties that may prevent them from providing certain information to the collaborative participants.

(k) Upon completion of and in light of the results of the collaborative process, TrAILCo shall amend its stayed Application with respect to the Prexy Facilities as appropriate and shall request Commission resumption of its review process with respect to new alternatives to the Prexy Facilities as may be proposed, if any.

(l) The Parties acknowledge and agree that, while the outcome of the collaborative process is uncertain and unknowable, they pledge to conduct themselves in good faith in an effort to develop, via consensus, viable new alternatives to the Prexy

Facilities to address TrAILCo's concerns with respect to the Washington County area reliability issues that have been examined in this proceeding.

(m) The Parties acknowledge that TrAILCo's affiliate, West Penn, bears the ultimate responsibility for providing safe, adequate and reasonable retail electric service. The Parties further acknowledge that, in furtherance of that obligation, TrAILCo will have the final decision regarding the nature and extent of new alternatives to the construction or siting of the Prexy Facilities that may be proposed as an amendment to the Application. The review of any amended proposal shall be conducted consistent with the Commission's rules and procedures that are in effect at that time.

4. With respect to the 502 Junction Substation and the Pennsylvania 502 Junction Segment, the Parties agree that the Commission should approve all elements of, and all of the relief requested in, the Application, including, but not limited to, authorization to locate and construct the 502 Junction Substation and the Pennsylvania 502 Junction Segment, TrAILCo's request for a certificate of public convenience to be a public utility and to provide transmission service in Pennsylvania with respect to the 502 Junction Substation and the Pennsylvania 502 Junction Segment, authorization to exercise the power of eminent domain with respect to those facilities, if necessary, and all other requests by TrAILCo as specified in the Application with respect to those facilities.

5. The Parties agree to reasonably support the siting and construction of the 502 Junction Substation and the Pennsylvania 502 Junction Segment, without imposition of conditions beyond those included in this Agreement or as otherwise agreed to by TrAILCo, before any Greene County authorities or agencies including, but not limited to, the Greene County Planning Commission ("GCPC"), that may claim or assert jurisdiction over the 502 Junction Substation and the Pennsylvania 502 Junction Segment facilities. TrAILCo

intends to pursue its pending permit application with respect to the 502 Junction Substation before the GCPC, as appropriate. In addition to the requirements of paragraph 9 below, the Parties acknowledge that TrAILCo's and West Penn's obligation to fulfill the terms specified in paragraphs 6 and 7 of this Agreement are expressly contingent upon the GCPC issuing all final permits requested by TrAILCo, without imposition of conditions that TrAILCo determines are unacceptable and unreasonable. The "Final Permit Date" is defined herein as the date on which the GCPC issues all final permits requested by TrAILCo, without imposition of conditions unacceptable to TrAILCo.

6. TrAILCo agrees to pay to Greene County, a contribution total of Seven Hundred Fifty Thousand Dollars (\$750,000.00), in three installments, as follows: payment of the first contribution of \$250,000.00 shall be made to Greene County not later than six months after the Final Permit Date; payment of the second contribution of \$250,000.00 shall be made to Greene County not later than eighteen months after the Final Permit Date; and payment of the third contribution of \$250,000.00 shall be made to Greene County not later than thirty months after the Final Permit Date. Greene County shall use such contributions for the support of educational, environmental, public health and community infrastructure projects located in Greene County, or for other costs incurred by Greene County, as determined in the discretion of Greene County. These sums shall not be requested for recovery in the rates of either TrAILCo or West Penn.

7. TrAILCo and West Penn, as applicable, agree to use their reasonable commercial efforts to obtain all state, federal and other authorizations needed to engineer, plan, site and construct electric facilities necessary to supply the reasonable build-out of the Meadow Ridge Industrial Park in Perry Township, Greene County. Greene County will

support, on the record, applications necessary to obtain the authorizations to engineer, plan, site, and construct such facilities.

8. The Parties agree that, to the extent that TrAILCo is deemed to have abandoned the Prexy Facilities, such abandonment was beyond TrAILCo's control. The Parties further agree that they will not, and will not cause a third party to, take any action in any forum in connection with TrAILCo's request for rate recovery associated with the Prexy Facilities that is inconsistent with such agreement that any claimed abandonment is beyond TrAILCo's control.

9. Other than with respect to TrAILCo's obligations in paragraph 1 above, TrAILCo's obligations under this Agreement are expressly contingent upon (i) the Commission accepting and approving by February 16, 2009 in a final order, all of the Agreement's terms and conditions, without imposition of any additional terms and conditions or any modifications of existing terms and conditions, that are unacceptable to TrAILCo, and (ii) the Commission entering by February 16, 2009 a final order granting all of the relief specified in paragraph 4 of this Agreement without modification. The Parties shall take no action or cause any third party to take action inconsistent with the terms of this Agreement before any regional, state, federal or local forum that may consider any of the matters or transmission line projects addressed herein.

10. The Parties shall make best efforts to support this Agreement and to secure its approval by the Commission.

11. In the event the Commission does not approve this Settlement as specified above, the Parties reserve their respective rights to proceed in any manner allowable under the law.

12. This Agreement is being made for the purpose of attempting to reasonably and fully settle the issues contained herein and is made without any admission by any party hereto

as to any matter of fact or law, is without prejudice to any position advanced by any party on the record in this proceeding or other proceedings, and is without prejudice to any position that might be adopted or advocated during subsequent applications, amendments, and/or litigation before the Commission or elsewhere in this or any other proceeding. Except as otherwise agreed to by the Parties, this Agreement is conditioned upon the Commission's approval in the manner stated above. In the event the Commission does not approve this Agreement and the proceeding continues before the Commission or elsewhere, the Parties reserve all of their respective rights.

13. The Parties may not cite this Agreement as precedent in any future proceeding, except to the extent required to implement its terms and conditions.

14. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

15. This Agreement may be circulated and executed in counterparts, and when all the Parties have each executed a counterpart, they shall be bound hereby as if all of said Parties had executed the same counterpart.

16. The Parties agree to cooperate with one another and do those things and execute such documents as are reasonably necessary to effectuate the terms and intent of this Agreement.

17. Each Party represents and warrants that it is authorized to enter into and execute this Agreement and that any person(s) executing this Agreement on behalf of such Party has the authority to do so.

18. The Parties agree that this Agreement represents a fair, just and reasonable resolution of the matters that have been at issue in the proceedings on the Application. The benefits reflected in this Agreement, and the related concessions and compromises agreed to by

each of the Parties, are the result of a considerable effort to achieve a reasonable negotiated resolution involving complex matters. In arriving at this Agreement, the Parties have balanced diverse interests in order to achieve a result that is reasonable and supportable. The Parties urge the Commission to approve the Agreement.

WHEREFORE, the Parties, intending to be legally bound, respectfully request that the Commission approve this Agreement.

Dated this 22nd day of September, 2008.

Trans-Allegheny Interstate Line Company

By: Philip L. Goulding

Name: PHILIP L. GOULDING

Title: VICE PRESIDENT

Date: 9-24-08

West Penn Power Company

By: Philip L. Goulding

Name: PHILIP L. GOULDING

Title: VICE PRESIDENT

Date: 9-24-08

Greene County, Pennsylvania

By: Pam Snyder

Name: PAM Snyder

Title: CHAIR, GREEN COUNTY COMMISSIONER

Date: 9-25-08

By: Dave Coder

Name: DAVE CODER

Title: GREENE COUNTY COMMISSIONER

Date: 9-25-08

By: Archie Trader

Name: ARCHIE TRADER

Title: COUNTY COMMISSIONER

Date: 9-24-08

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IN RE: APPLICATION OF TRANS-ALLEGHENY	:	
INTERSTATE LINE COMPANY FOR	:	
(I) A CERTIFICATE OF PUBLIC CONVENIENCE	:	
TO OFFER, RENDER, FURNISH AND/OR	:	
SUPPLY TRANSMISSION SERVICE IN THE	:	
COMMONWEALTH OF PENNSYLVANIA;	:	
(II) AUTHORIZATION AND CERTIFICATION	:	
TO LOCATE, CONSTRUCT, OPERATE AND	:	Docket Nos. A-110172
MAINTAIN CERTAIN HIGH VOLTAGE ELECTRIC	:	A-110172F0002
TRANSMISSION LINES AND RELATED ELECTRIC	:	A-110172F0003
SUBSTATION FACILITIES; (III) AUTHORITY	:	A-110172F0004
TO EXERCISE THE POWER OF EMINENT	:	G-00071229
DOMAIN FOR THE CONSTRUCTION AND	:	
INSTALLATION OF AERIAL ELECTRIC	:	
TRANSMISSION FACILITIES ALONG THE	:	
PROPOSED TRANSMISSION LINE ROUTES	:	
IN PENNSYLVANIA; (IV) APPROVAL OF AN	:	
EXEMPTION FROM MUNICIPAL ZONING	:	
REGULATION WITH RESPECT TO THE	:	
CONSTRUCTION OF BUILDINGS; AND	:	
(V) APPROVAL OF CERTAIN RELATED	:	
AFFILIATED INTEREST ARRANGEMENTS	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of TrAILCo's proposed transcript corrections upon the persons listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

Service via Electronic Mail & UPS Overnight Mail, postage prepaid, as follows:

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 Conservation Council of PA

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The Honorable Michael Nemeec
Administrative Law Judge
Pennsylvania Public Utility
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Dated: September 25, 2008


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717-236-7714

Attorneys for Trans-Allegheny Interstate
Line Company

DOCUMENT
FOLDER

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
SEP 8 0 2008
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

In re: Application of Trans-Allegheny Interstate
Line Company

Docket Nos. A-110172,
A-110172F0002-F0004 and
G-00071229

F0003

**ENERGY CONSERVATION COUNCIL'S ANSWER IN OPPOSITION TO TRAILCO'S
MOTION FOR PARTIAL STAY OF PROCEEDINGS AND REQUEST FOR
EXPEDITED CONSIDERATION**

The Energy Conservation Council ("ECC") files this Answer in Opposition to TrAILCo's Motion for Partial Stay of Proceedings and Request for Expedited Consideration (Motion).

In its Motion, TrAILCo asks the Commission to expedite its decision on the Exceptions associated with the 1.2-mile Pennsylvania Segment of the proposed 502 Substation to Loudoun line (the "502 - Loudoun line")¹. The ECC does not oppose expedited consideration of TrAILCo's application. In fact, an expedited decision on TrAILCo's *entire* application is warranted because (1) TrAILCo has admitted in the instant Motion and in a September 25, 2008

¹ TrAILCo's Motion for Partial Stay implies that there was little or no opposition to the 502 - Loudoun portion of the proposed Trail line. *See, e.g.*, TrAILCo's Motion at 3, ¶6. This implication is completely incorrect. It disregards the thousands of people, in addition to the ECC's 1,500 members, who staunchly oppose both the Prexy Facilities and the 502 Junction Segments. For example, TrAILCo ignores the opposition to all portions of the proposed Trail line by United States and Pennsylvania Senators and Representatives, County Commissioners, the Pennsylvania Chapter of the Sierra Club (on behalf of its 27,000 members), the Pennsylvania Land Trust Association (on behalf of its 80 member organizations and more than 89,000 contributors and members), the Center for Coal Field Justice, the National Road Heritage Corridor of Pennsylvania, Native American Heritage Committee, Bentleyville Area Historical Society, the White Covered Bridge Association, the Young Preservationists Association of Pittsburgh, and countless other individuals in southwestern Pennsylvania. *See* ECC Reply Brief at 1-4. Apparently, TrAILCo assumes that if this Commission (incorrectly) believes that few people oppose the 502 Junction Segments, that this Commission will overlook the total lack of need for the 502 Junction Segments, and TrAILCo's failure to comply with the Commission's regulations.

Agreement with Greene County (Exhibit “A”) that it is not going to build the proposed Prexy Facilities; and (2) if this Commission denies TrAILCo’s application on or before Friday October 3, 2008, TrAILCo may not be able to establish jurisdiction for federal “backstop authority” to appeal a portion of this Commission decision to FERC under the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005), §1221(b)-(C)².

In its Motion, TrAILCo also requests that the Commission *stay* the proceedings with respect to the Prexy Facilities and *order* that a collaborative process be commenced to explore whether there are “possible new and creative alternatives to the Prexy facilities.” TrAILCo Motion at 4. This “exploration” is proposed to be completed within ninety (90) days of a Commission order directing the formation of the collaborative. *Id.* at 5.

A fundamental flaw with TrAILCo’s Motion is that, as the ALJs properly held, TrAILCo has not proven that *any* reliability issues exist to justify *any* additional transmission facilities. There is no way to order a “collaborative” on potential new solutions to problems that have *not* been established.

In addition, on September 25, 2008, TrAILCo asked this Commission to approve a *different* type of “collaborative.” On that date, TrAILCo asked for Commission approval of a

² On August 8, 2005, President George W. Bush signed the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005) (EPAAct05). The EPAAct05 contains several provisions that relate to electric transmission facilities. The EPAAct05 authorizes the Federal Energy Regulatory Commission (FERC) to issue construction permits for transmission projects (“backstop authority”) if certain conditions are met, one being that a State commission has “(i) withheld approval for more than 1 year after the filing of an application seeking approval pursuant to applicable law or 1 year after the designation of the relevant national interest electric transmission corridor, whichever is later.” *Id.* at §1221(b)(1)(C)(i). TrAILCo filed its Application with this Commission on April 13, 2007. The DOE corridor designation was made on October 5, 2007. 72 Federal Register 56992 (October 5, 2007). Thus, if this Commission denies TrAILCo’s application before October 5, 2008, Trail Co will be unable to invoke jurisdiction under §1221(b)(1)(C)(i). [Nevertheless, we believe that any appeal of this Commission’s decision relating to the 502-Loudoun line (which is the only portion of this Commission’s decision that could potentially be appealed to FERC under the EPAAct05), would be unsuccessful.]

September 25, 2008 Agreement among TrAILCo, West Penn Power Company (West Penn) and one Protestant in the proceeding – Greene County.³

In the Greene County Agreement, TrAILCo and West Penn agreed that the “new and creative alternatives” to the Prexy Facilities would **not** include a 500 kV line in Greene County. Agreement at 4, ¶3(b) (Exhibit A at 4). This is a significant admission— if a 500 kV line is not built in Greene County, then the proposed Prexy Facilities *cannot* be built.

Because TrAILCo has admitted that the proposed Prexy Facilities *do not need to be built* to deal with any of the alleged reliability issues in Washington County, the ALJ’s recommended decision regarding the Prexy Facilities must be upheld, and the instant Motion for stay should be denied.

In addition, there are numerous other differences between the collaborative described in the September 25, 2008 agreement with Greene County and the collaborative sought in this Motion. For example, the Greene County Agreement calls for completion of its “collaborative” within 180 days of filing the agreement, instead of the ninety (90) days sought in this Motion. Agreement (Exhibit A) at 5, ¶3(g). Another difference involves the question of whether participants in the two different collaboratives TrAILCo proposes can protest the new project TrAILCo or West Penn ultimately proposes to the Commission.

Under the Agreement with Greene County, although TrAILCo and West Penn have the final decision regarding the nature and extent of the new alternatives to the Prexy Facilities that will be submitted to the PUC, the participants in the collaborative *may* have a right to object to the amended (or new) application filed with the Commission. The Greene County Agreement, at paragraph 3(d), provides that “[t]he Parties agree that the various individual

³ Interestingly, the sole Protestant that TrAILCo has settled with, Greene County, presented no expert testimony in this proceeding - and filed no briefs.

participants, and the groups they represent, shall have reserved unto them their rights to support or oppose any such alternatives filed with the Commission.” Agreement at 5. However, this quoted language does not appear in the instant Motion. Do the participants in the collaborative process sought in TrAILCo’s Motion have this same right?

An important question that remains unanswered is *which* collaborative is this Commission being asked to approve? The one requested in TrAILCo’s instant Motion, or the one in the September 25, 2008 Greene County Agreement?

As discussed in greater length below, TrAILCo’s Motion, and its proposed “collaborative,” must be denied because:

- a. It is not statutorily authorized;
- b. The Motion presupposes that TrAILCo has established that reliability issues exist in Washington County. But TrAILCo has not proven that *any* reliability issues exist;
- c. TrAILCo has not proven it is entitled to a certificate of public convenience;
- d. It is not practical or workable;
- e. The requested “collaborative” is anything but - TrAILCo has the right to make the final decision regarding what will be done; and
- f. It deprives affected individuals of their due process rights.

I. Legal Standards

It is well-established that in reviewing a Motion for Stay, the Commission considers the following standards:

1. whether the petitioner has made a strong showing that he is likely to prevail on the merits;
2. whether the petitioner has shown that without the requested relief, he will suffer irreparable injury;
3. that the issuance of a stay will not substantially harm other interested parties in the proceedings;

4. that the issuance of a stay will not adversely affect the public interest.

Pa. Public Utility Commission v. Process Gas Consumers Group, 467 A.2d 805, 808-809 (1983).

TrAILCo's Motion for Stay does not meet the criteria set forth in *Process Gas*. There is no basis for believing that Petitioner is likely to prevail on the merits, or that irreparable injury will result if the stay is not granted. In contrast, the issuance of the relief requested by TrAILCo will compromise and harm the interests of parties in this proceeding, and violate their due process rights by forcing parties to devote their economic resources to participate in an aggressive effort to re-engineer West Penn's facilities. Indeed, ECC submits that this would be a fundamental violation of its due process rights, and beyond the Commission's authority to require a non-public utility participant to perform an assessment of a public utility's facilities or alternatives thereto.

It is also unclear from TrAILCo's Motion for Stay exactly what is contemplated following conclusion of the collaborative. What is clear is that TrAILCo reserves for itself the right to propose alternatives in any form it wishes despite the conclusions of the collaborative, effectively throwing out the efforts of the collaborative and compelling the Commission to resume "its review process with respect to any and all new alternatives to the Prexy facilities as may be proposed." TrAILCo Motion for Stay at 6. Since the amended application might, of course, include alternatives not agreed upon, or even considered, through the collaborative, further discovery, testimony, hearings, and a Recommended Decision from the ALJs would be necessitated even before a final review by the Commission.⁴ In this light, it is unclear what time-saving benefits the collaborative process would accomplish.

⁴ It is, of course, possible that TrAILCo is suggesting foregoing further hearings on its amended application. This, of course, would be a gross violation of protestants' fundamental due process rights as it would

II. The Proposed Collaborative is not Statutorily Authorized.

In 1978, the Commission adopted regulations pertaining to the siting and construction of high voltage (“HV”) transmission lines, subsequently amended in 1983. The regulations are codified at 52 Pa. Code §§ 57.71 – 57.77. The regulations a) specify the data requirements for siting applications,⁵ b) specify notice requirements, c) set forth hearing

allow alternatives to be presented to the Commission which have not been specifically examined, tested, subjected to cross-examination, or challenged by opposing expert witnesses. ECC presumes that TrAILCo’s statement that the amended application will be reviewed consistent with the Commission’s rules and procedures in effect at the time of review (Motion at 6) is a reference to the rules applicable to formal hearings through which protestants’ points of view and evidence will be appropriately evaluated in addressing the merits of the amended application, just as the initial application was subjected to fair an appropriate scrutiny.

⁵Data requirements include, among other things, (5) A general statement of the need for the proposed HV line in meeting identified present and future demands for service, of how the proposed HV line will meet that need and of the engineering justifications for the proposed HV line; (6) A statement of the safety considerations which will be incorporated into the design, construction and maintenance of the proposed HV line; (7) A description of studies which had been made as to the projected environmental impact of the HV line as proposed and of the efforts which have been and which will be made to minimize the impact of the HV line upon the environment and upon scenic and historic areas, including but not limited to impacts, where applicable, upon land use, soil and sedimentation, plant and wildlife habitats, terrain, hydrology and landscape; (8) A description of the efforts of the applicant to locate and identify archaeological, geologic, historic, scenic or wilderness areas of significance within 2 miles of the proposed right-of-way and the location and identity of the areas discovered by the applicant; (9) The location and identity of airports within 2 miles of the nearest limit of the right-of-way of the proposed HV line; (10) A general description of reasonable alternative routes to the proposed HV line, including a description of the corridor planning methodology, a comparison of the merits and detriments of each route, and a statement of the reasons for selecting the proposed HV line route; (11) A list of the local, State and Federal governmental agencies which have requirements which shall be met in connection with the construction or maintenance of the proposed HV line and a list of documents which have been or are required to be filed with those agencies in connection with the siting and construction of the proposed HV line; (12) The estimated cost of construction of the proposed HV line, and the projected date for completion; and (13) The following exhibits: (i) A depiction of the proposed route on aerial photographs and topographic maps of suitable detail; (ii) A description of the proposed HV line, including the length of the line, the design voltage, the size, number and materials of the conductors, the design of the supporting structures and their height, configuration and materials of construction, the average distance between supporting structures, the number of supporting structures, the line to structure clearances and the minimum conductor to ground clearance at mid-span under normal load and average weather conditions and under predicted extreme load and weather conditions; (iii) A simple drawing of a cross section of the proposed right-of-way of the HV line and any adjoining rights-of-way showing the placement of the supporting structures at typical locations, with the height and width of the structures, the width of the right-of-way and the lateral distance between the conductors and the edge of the right-of-way indicated; (iv) A system map which shows in suitable detail the location and voltage of existing transmission lines and substations of the applicant and the location and voltage of the proposed HV line and associated substations; and (14) A statement identifying litigation concluded or in progress which concerns property or matter relating to the proposed HV line, right-of-way route or environmental matters.

procedures and the scope of evidence which will be considered; and d) establish the standards by which the Commission will evaluate applications.

The reason for this highly specific and thorough application process is to allow the Commission the opportunity to “ensure that the proposed facilities will have the least possible adverse impact on the environment and will present the least possible danger to the public health and safety.” *Re Proposed Electric Regulations*, 49 Pa.P.U.C. 709, 711 (1976).

TrAILCo apparently intends to avoid the statutory requirements stated above, including the data requirements for new applications, by seeking this Commission’s approval of a wholly distinct HV Transmission line project under the guise of an “amendment” to its current application for the Prexy Facilities. TrAILCo Motion at 4 and 6. Apparently, TrAILCo would have this commission ignore the current regulations for siting and constructing a HV transmission line – and the crucial due process requirements contained in the regulations. 52 Pa. Code §§ 57.71-57.77.

In this proceeding, there were twelve public hearings and site visits that generated thousands of pages of testimony. *See* RD, Appendix B, Public Input and Site Visits Summary. TrAILCo’s proposed collaborative would not create a similar evidentiary record or, in fact, any evidentiary record. It will not give the general public an opportunity to be heard, much less a full exploration of all of the factors that this Commission is constitutionally required to take into account in order to determine whether an alternative to the Prexy Facilities should be approved.

In addition, TrAILCo’s Motion is untimely, and lacks procedural authority. *See* OTS’ answer to TrAILCo’s Motion at 2-3. Thus, TrAILCo’s Motion for stay should be denied, and the ALJs’ Recommended Decision should be adopted by this Commission in its entirety.

III. This Commission Should Not Stay the ALJ's Recommended Decision Because TrAILCo Did Not Satisfy its Burden of Proof that Reliability Issues Exist.

TrAILCo's Motion presupposes that reliability issues actually exist in Washington County. But TrAILCo did not prove a reliability issue that requires the construction of any additional transmission facilities. *See, e.g.*, RD at 23-25, 94-109, 150-151. "The ECC has effectively refuted the likelihood of the contingencies relied on by TrAILCo even occurring." *Id.*

TrAILCo's modeling studies did not establish NERC infractions, or that any reliability issues exist, because (1) TrAILCo did not perform "manual system adjustments" after the first electrical outage (or contingency), (2) the studies did not model "controlled load shedding," and (3) the studies did not model "re-dispatch of generation." *Id.*; ECC Main Brief at 20-22; RD 134-135.

There is no way to order a "collaborative" on potential new solutions to problems that have *not* been established.

IV. This Commission Should Not Stay the ALJs' Recommended Decision Regarding the Prexy Facilities Because TrAILCo has Admitted That It Did Not Properly Study Alternatives

In its Motion, TrAILCo admits that alternatives to the proposed Prexy Facilities exist. In fact, they ask for a ninety-day collaborative *to analyze new alternatives*. Motion at 5; TrAILCo Exc. at 29. The "new" alternatives TrAILCo proposes to study include "demand side management and energy efficiency programs, enhancements and improvements to existing transmission lines, substations, and related equipment ...". Motion at 5. Significantly, the ALJs' denied TrAILCo's application because, among other things, TrAILCo did not properly investigate alternatives to the proposed Prexy Facilities. *See, e.g.*, RD at 150 – 151.

Because TrAILCo admits in its Motion, at page 5, that it has not yet considered alternatives, such as "demand site management," "enhancements and improvements to existing

transmission lines, substations and related equipment” or “new transmission infrastructure,” its proposal for the Prexy Facilities must be denied. It cannot be “morphed” into an “amended application” for a different project.

As the ALJs held, both the OCA and the ECC have effectively demonstrated that the contingencies relied on by TrAILCo to support its Application can be dealt with in a number of different ways – *without* the expense and environmental impact of another 500 kV line. RD at 150-151. Thus, even if TrAILCo *could* prove that reliability issues existed, a 500 kV line is not necessary⁶.

For example, the OCA’s transmission planning expert, Peter Lanzalotta, was able to solve all of the alleged reliability issues, using all of TrAILCo’s modeling assumptions and contingencies, without adding any new 500 kV lines or substations. Mr. Lanzalotta’s proposal involves paralleling existing 138 kV lines with three additional 138 kV lines.⁷ Mr. Lanzalotta’s alternative is cheaper than TrAILCo’s proposed Prexy Facilities, and TrAILCo admitted that “it works.” TrAILCo Rebuttal St. 2-R-1 at 4; Tr. 2721, 2268, 2237-2238, 2721-2722, 29801; ECC Main Brief at 23-24.

In addition, all of the reliability issues alleged justifying the Prexy Facilities involve T-junctions. *See* TrAILCo Exhibit LAH-3 and ECC’s Reply to Exceptions at 20. TrAILCo has not studied the effect of removing the T-junctions. Tr. 2794, 2875. Because TrAILCo has not studied whether the elimination of the T-junctions, with or without some other

⁶ TrAILCo has *finally* admitted that it does not need the 500 kV line it proposed as part of the Prexy Facilities to deal with the alleged reliability issues in the Prexy area. *See* Greene County Agreement (Exhibit A) at 4, ¶3(b).

⁷ RD at 125-126; OCA Main Brief at 19-24. Mr. Lanzalotta stopped his analysis, due to time and monetary constraints, with the first set of solutions that “solved” the TrAILCo contingencies. As he noted, other equally less expensive and intrusive options likely exist. OCA Main Brief at 20-21.

tweaks to the existing system, could eliminate the need for the Prexy Facilities, TrAILCo cannot prove that the Prexy Facilities are needed. ECC Main Brief at 34-35.

In addition, TrAILCo's transmission planning engineering expert, Larre Hozempa, testified that:

Normal planning practice includes review of reactive reinforcements as a solution to voltage and loading problems, as well as other reinforcements such as reconductoring or construction of new facilities, during system planning analyses.

Tr. 2758; ECC Main Brief at 31-32. But Allegheny Power and TrAILCo did not study reactive reinforcement, reconductoring, or constructing new lower voltage lines without new substations or 500 kV lines. Tr. 2901-2902; ECC Main Brief at 33; ECC Reply Brief at 35.

In fact, TrAILCo's Motion admits that these types of alternatives – “enhancements and improvements to existing transmission lines, substations and related equipment” – were not studied and will need to be studied in the “collaborative.” Motion at 5. This is an admission that the ALJs' Recommended Decision was correct and should be adopted by this Commission, and TrAILCo's Motion for stay should be denied.

V. The Proposed Collaborative is Unworkable

TrAILCo's proposal to stay these proceedings to enable the parties to engage in a collaborative for the purpose of exploring “new and creative alternatives” to the proposed Prexy facilities would serve no useful purpose. *Ninety days is simply too short a time frame to perform the type of assessment that should have been performed by TrAILCo before it initially proposed the Prexy facilities, and which TrAILCo can perform prior to a subsequent application.*

Furthermore, the participants to this proceeding cannot and should not be required, as TrAILCo proposes, to act as third-party consultants to TrAILCo or PJM. For example, TrAILCo asks that this Commission order that “all active collaborative participants

shall provide PJM with sufficient information to timely consider, review and approve any such alternatives to the Prexy Facilities should such alternatives be within PJM's jurisdiction and purview." *Id.* at 6.⁸

It is unprecedented, and there is no appropriate basis, for compelling participants in a proceeding to engage in engineering and design of alternative facilities simply because they have shown that the applicant has failed to establish any reliability issues, and the applicant has not given adequate consideration to alternative facilities.⁹

Under TrAILCo's proposal, not only would collaborative participants be required to devote their resources to developing solutions that TrAILCo had not appropriately devised, but they would have to do so without having full and free access to all sources of information necessary to do so, without the ability to test the facilities, without appropriate time and access to personnel to make appropriate inquiries, and without funding to compensate them for this financially-compelling task. It is quite obvious that this would be a taking of property without due process of law.

In addition, as set forth in the ECC's Main Brief, TrAILCo's alleged justification for the Prexy Facilities comes from PJM's 2006 Regional Transmission Expansion Program ("RTEP") process. Indeed, the entire proposal for the Prexy Facilities is based on the modeling and load forecasts from PJM's 2006 RTEP process. Tr. 2237-2238, 2258.

⁸ Pursuant to this proposal, the issues of "timeliness" and "sufficiency" of information would be ones that are completely within PJM's determination and, therefore, PJM presumably could say that collaborative participants failed to cooperate based on its evaluation of the input provided by participants.

⁹ ECC submits that it would be a fundamental violation of due process and beyond the Commission's authority to require participants to provide engineering services such as these as part of a collaborative. *Pa. Public Utility Commission v. Process Gas Consumers Group*, 467 A.2d 805 (1983). In addition, as TrAILCo admits, its affiliate West Penn Power has statutory responsibility to provide safe, adequate and reasonable retail electric service to the public. Motion at 6; Agreement at 7; see 66 Pa.C.S. §1501. If the Commission orders other parties to collaborate on alternatives to the Prexy Facilities, the costs of meeting West Penn's statutory obligation would be unfairly shifted to third parties.

But the new project TrAILCo apparently anticipates proposing for Washington County (after the “collaborative”) will use different data and projections. It will not be based on 2006 data and forecasts. How can a proposed project (the Prexy Facilities) that is based on 2006 data and forecasts be morphed into a completely different project based on 2008 data and forecasts? This is not an “amended” application. It is a new application, for a new project, based on new data.

VI. This Commission Should Deny TrAILCo’s Motion for Stay Because TrAILCo has Admitted That The Prexy Facilities Will Not Be Built

As described in TrAILCo’s application, the Prexy Facilities consist of a requested new 500/138 kV substation in Washington County, Pennsylvania (the “Prexy Substation”), a new 500 kV substation in Greene County, Pennsylvania (the “502 Junction Substation”), a new 500 kV transmission line to connect the Prexy Substation and the 502 Junction Substation (the “Prexy Segment”), and three new 138 kV transmission lines with double circuit construction from the Prexy Substation (“Prexy 138 kV Lines”). TrAILCo Application at 3.

Significantly, the proposed Prexy Facilities include a 500 kV transmission line from the Prexy Substation in Washington County to the 502 Junction Substation in Greene County. However, the September 25, 2008 agreement with Greene County, which was signed by West Penn Power Company and TrAILCo, admits that “the new alternatives to the Prexy Facilities to be considered by the collaborative ... will not include the construction of any 500 kV transmission lines in Greene County ...”. Greene County Agreement (Exhibit A) at 4 (emphasis supplied).

Thus, TrAILCo has admitted that the proposed Prexy Facilities do not need to be built to address alleged reliability issues in Washington County. It has admitted that its proposal

for the Prexy Facilities is dead. Thus, the ALJs' recommended decision was correct – the proposed Prexy Facilities, and TrAILCo's Motion for stay, should be denied.

VII. This Commission Should Not Stay the ALJs' Recommended Decision Because TrAILCo Does Not Have A Certificate of Public Authority

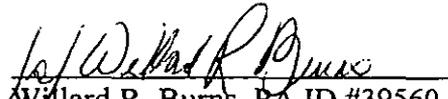
TrAILCo's requested relief assumes, without justification, that it possesses the requisite certificate of public convenience to serve as a public utility in Pennsylvania. See 66 Pa. C.S. § 1101. But TrAILCo's Motion overlooks the fact that it has not meet its burden of proof on this important issue. Specifically, TrAILCo failed to prove its fitness to provide service. RD at 66 and 78. According to the ALJs "TrAILCo is under the mistaken impression that technical capacity is established by the fact that TrAILCo, if granted a certificate of public convenience, will be an operating company within the Allegheny system. More is required." RD at 66. Because TrAILCo is not a public utility, its Motion should be denied.

VIII. Conclusion

For the above reasons, TrAILCo's Motion should be denied. As set forth in the ECC's Reply to TrAILCo's Exceptions, the ECC fully supports the recommended decision of the ALJs and urges this Commission to adopt their recommended findings in their entirety.

Dated: September 30, 2008

Respectfully Submitted,


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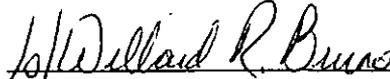
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CERTIFICATE OF SERVICE

In Re: Application of Trans-Allegheny Interstate Line Co. (TrAILCo) Docket No. A-110172, A-110172F002, A-110172F003, A-110172F0004, G-00071229

I hereby certify that I have this day served a true copy of the upon parties of record in this proceeding in accordance with the requirements of 52 Pa Code Section 1.54 (relating to service by a participant) in the manner and upon the persons listed below:

Dated: September 30, 2008



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IN RE: APPLICATION OF TRANS-ALLEGHENY	:	
INTERSTATE LINE COMPANY FOR	:	
(I) A CERTIFICATE OF PUBLIC CONVENIENCE	:	
TO OFFER, RENDER, FURNISH AND/OR	:	
SUPPLY TRANSMISSION SERVICE IN THE	:	
COMMONWEALTH OF PENNSYLVANIA;	:	
(II) AUTHORIZATION AND CERTIFICATION	:	
TO LOCATE, CONSTRUCT, OPERATE AND	:	Docket Nos. A-110172
MAINTAIN CERTAIN HIGH VOLTAGE ELECTRIC	:	A-110172F0002
TRANSMISSION LINES AND RELATED ELECTRIC	:	A-110172F0003
SUBSTATION FACILITIES; (III) AUTHORITY	:	A-110172F0004
TO EXERCISE THE POWER OF EMINENT	:	G-00071229
DOMAIN FOR THE CONSTRUCTION AND	:	
INSTALLATION OF AERIAL ELECTRIC	:	
TRANSMISSION FACILITIES ALONG THE	:	
PROPOSED TRANSMISSION LINE ROUTES	:	
IN PENNSYLVANIA; (IV) APPROVAL OF AN	:	
EXEMPTION FROM MUNICIPAL ZONING	:	
REGULATION WITH RESPECT TO THE	:	
CONSTRUCTION OF BUILDINGS; AND	:	
(V) APPROVAL OF CERTAIN RELATED	:	
AFFILIATED INTEREST ARRANGEMENTS	:	

AGREEMENT

On August 21, 2008, a Recommended Decision ("RD") in the above-captioned proceeding was issued by Administrative Law Judges Mark A. Hoyer and Michael A. Nemecek. Following the issuance of the RD, the Trans-Allegheny Interstate Line Company ("TrAILCo") commenced discussions with the other parties to this proceeding aimed at resolving the issues litigated in this proceeding. The focus of these discussions has been the requested determinations of the need for, and the siting of (1) a 500/138kV substation in Washington County, Pennsylvania (the "Prexy Substation"); (2) a 500 kV substation in Greene County, Pennsylvania (the "502 Junction Substation"); (3) a new 500 kV transmission line to connect the Prexy Substation and 502 Junction Substation (the "Prexy Segment"); (4) three new 138 kV transmission lines from the Prexy Substation

(the "Prexy 138 kV Lines") to connect with existing transmission lines of Allegheny Power; and (5) an approximately 1.2 mile 500 kV transmission line from the 502 Junction Substation to the Pennsylvania-West Virginia state line (the "Pennsylvania 502 Junction Segment").¹ The Prexy Substation, the Prexy 138 kV Lines and the Prexy Segment are collectively referred to herein as the "Prexy Facilities." TrAILCo, West Penn Power Company ("West Penn") and the Greene County Board of Commissioners ("Greene County")² (collectively the "Parties") hereby agree to the following terms and conditions of settlement ("Agreement") for submission to, and consideration and adoption by, the Pennsylvania Public Utility Commission ("Commission"). The effective date of this Agreement shall be the date on which the Commission enters a final order in this proceeding approving this Agreement in accordance with the terms set forth herein ("Effective Date"). For purposes of this Agreement, a "final order" of the Commission shall be one that is not subject to a pending request for rehearing, reconsideration, rescission, amendment, re-argument, clarification, supersedeas or the like.

1. Not later than 14 days after all of the Parties execute this Agreement, West Penn or TrAILCo, as applicable, shall create, execute, and record such quit claim or similar documents that convey any and all of their title to rights-of-way or easements associated with the proposed Prexy Segment or the Prexy 138 kV Lines on any property on the route of the proposed Prexy Segment or the Prexy 138 kV Lines to each of the identifiable, current real property owners of such lands. The Parties acknowledge that the terms of

¹ To the extent capitalized terms are used in this Agreement, such terms are intended to have the same meaning as assigned to them in TrAILCo Exhibit DEF-1 in this proceeding.

² Greene County is a sub-division of the Commonwealth of Pennsylvania, and represented by the Board of Commissioners, Pam Snyder, Chairman, Dave Coder and Archie Trader, having an office of Chief Clerk, at 93 East High Street, Waynesburg, PA 15370.

.....

this Agreement are expressly contingent upon West Penn's or TrAILCo's compliance with the provisions of this paragraph.

2. TrAILCo agrees that it will no longer seek authorization from the Commission to exercise eminent domain authority with respect to siting the Prexy Segment as proposed in TrAILCo's April 13, 2007 omnibus application ("Application") filed in this proceeding, but reserves the right to do so in connection with any new alternative that may result from the collaborative process described below or with any new proposal that may be filed with the Commission to address reliability issues identified by TrAILCo in the Washington County area. TrAILCo further agrees that it will not submit an application to the Federal Energy Regulatory Commission ("FERC") requesting that it approve the construction and siting of the Prexy Segment, based on TrAILCo's April 13, 2007 Application in this proceeding, pursuant to its National Interest Electric Transmission Corridor ("NIETC") backstop siting authority under Federal Power Act Section 216. However, TrAILCo reserves its right to submit such a request to FERC to approve any amended or new application.

3. The Parties acknowledge that the siting of the Prexy Facilities in this proceeding has been controversial and contentious, as evidenced by the opposition of certain federal, state and local legislators, and the opposition of local property owners. Further, the Parties believe that it is in the public interest to work together to develop new and creative alternatives to the construction and/or siting of the Prexy Facilities that are reasonably expected to address the reliability issues that TrAILCo reasonably anticipates to occur in the near future in the Washington County area. In order to address TrAILCo's concerns with respect to these reliability issues in an expedited manner, the Parties agree to work together in a cooperative, comprehensive and good faith manner to develop and

identify practical options and/or solutions to such Washington County reliability issues. Such cooperation will begin as soon as reasonably possible, while preserving the Commission's ability to approve any such solutions that are within its jurisdiction. Therefore, in express recognition of the foregoing, the Parties request that the Commission stay its consideration of the portion of the Application with respect to the Prexy Facilities, subject to the following:

(a) The Parties agree that the serious concerns that have been raised with respect to the siting of the Prexy Facilities as proposed by TrAILCo in this proceeding require TrAILCo to consider other potential alternatives to address the reliability concerns raised by TrAILCo's Application with respect to the Washington County area.

(b) The alternatives to the Prexy Facilities that need to be considered may include, but not be limited to, demand side management and energy efficiency programs, enhancements and improvements to existing transmission lines, substations and related equipment, and new transmission infrastructure. The Parties agree that the new alternatives to the Prexy Facilities to be considered by the collaborative may include the construction of up to ten miles of new 500 kV transmission lines in Washington County, as needed, and will not include the construction of any 500 kV transmission lines in Greene County, unless otherwise agreed to by the Parties.

(c) To address TrAILCo's concerns with respect to the near-term anticipated reliability issues in the Washington County area, the Parties agree that TrAILCo shall convene a collaborative Advisory Panel with all interested active parties to the proceedings on the Application to discuss, review, analyze and develop new alternatives to the Prexy Facilities such as those identified in subparagraph (b) above that can be proposed in this proceeding.

(d) The express intent of the Parties is that this collaborative Advisory Panel will assist TrAILCo in its continuing Application proposal before the Commission with respect to the Prexy Facilities. The collaborative effort will attempt to identify potential new alternatives to the Prexy Facilities. The Parties agree that the various and individual participants, and the groups they represent, shall have reserved unto them their rights to support or oppose any such alternatives filed with the Commission.

(e) The collaborative effort shall be conducted by TrAILCo in good faith and in a commercially reasonable time frame, with the cooperation and active participation of all those active parties in this proceeding who advise TrAILCo in writing of their intention to participate on the Advisory Panel.

(f) TrAILCo shall schedule meetings of the collaborative Advisory Panel at such times and locations as are reasonable and provide reasonable advance notice of such meetings to all active participants. Meetings generally shall be held at locations within Greene, Washington, and Westmoreland Counties, or in such other locations as are reasonably scheduled by TrAILCo.

(g) The Parties agree that time is of the essence and that the collaborative process shall commence when this Agreement is filed with the Commission and shall be completed no later than one hundred eighty (180) days thereafter, unless TrAILCo and the collaborative participants each agree such time shall be extended.

(h) The collaborative participants shall conduct the business of the collaborative Advisory Panel in good faith and in an expedited manner so that reliability issues that TrAILCo anticipates in the Washington County area may be addressed with new alternatives to the Prexy Facilities that can be installed and/or implemented in

sufficient lead time, without compromising service to customers in the Washington County area and beyond.

(i) The Parties acknowledge that PJM's participation in the collaborative process may be *essential* depending upon the alternatives being considered, and PJM shall be permitted to participate in the work of the collaborative Advisory Panel. The Parties also agree and acknowledge that PJM may be required to approve certain alternatives to the Prexy Facilities. The Parties and all active collaborative participants agree to reasonably provide PJM with sufficient information to timely consider, review and approve any such alternatives to the Prexy Facilities should such alternatives be within PJM's jurisdiction and purview.

(j) The Parties agree that TrAILCo and West Penn may have certain information that is confidential, and that participants in the collaborative will be required to sign confidentiality agreements before obtaining such information. The Parties also acknowledge that TrAILCo and West Penn may have confidentiality obligations to third-parties that may prevent them from providing certain information to the collaborative participants.

(k) Upon completion of and in light of the results of the collaborative process, TrAILCo shall amend its stayed Application with respect to the Prexy Facilities as appropriate and shall request Commission resumption of *its review* process with respect to new alternatives to the Prexy Facilities as may be proposed, if any.

(l) The Parties acknowledge and agree that, while the outcome of the collaborative process is uncertain and unknowable, they pledge to conduct themselves in good faith in an effort to develop, via consensus, viable new alternatives to the Prexy

Facilities to address TrAILCo's concerns with respect to the Washington County area reliability issues that have been examined in this proceeding.

(m) The Parties acknowledge that TrAILCo's affiliate, West Penn, bears the ultimate responsibility for providing safe, adequate and reasonable retail electric service. The Parties further acknowledge that, in furtherance of that obligation, TrAILCo will have the final decision regarding the nature and extent of new alternatives to the construction or siting of the Prexy Facilities that may be proposed as an amendment to the Application. The review of any amended proposal shall be conducted consistent with the Commission's rules and procedures that are in effect at that time.

4. With respect to the 502 Junction Substation and the Pennsylvania 502 Junction Segment, the Parties agree that the Commission should approve all elements of, and all of the relief requested in, the Application, including, but not limited to, authorization to locate and construct the 502 Junction Substation and the Pennsylvania 502 Junction Segment, TrAILCo's request for a certificate of public convenience to be a public utility and to provide transmission service in Pennsylvania with respect to the 502 Junction Substation and the Pennsylvania 502 Junction Segment, authorization to exercise the power of eminent domain with respect to those facilities, if necessary, and all other requests by TrAILCo as specified in the Application with respect to those facilities.

5. The Parties agree to reasonably support the siting and construction of the 502 Junction Substation and the Pennsylvania 502 Junction Segment, without imposition of conditions beyond those included in this Agreement or as otherwise agreed to by TrAILCo, before any Greene County authorities or agencies including, but not limited to, the Greene County Planning Commission ("GCPC"), that may claim or assert jurisdiction over the 502 Junction Substation and the Pennsylvania 502 Junction Segment facilities. TrAILCo

intends to pursue its pending permit application with respect to the 502 Junction Substation before the GCPC, as appropriate. In addition to the requirements of paragraph 9 below, the Parties acknowledge that TrAILCo's and West Penn's obligation to fulfill the terms specified in paragraphs 6 and 7 of this Agreement are expressly contingent upon the GCPC issuing all final permits requested by TrAILCo, without imposition of conditions that TrAILCo determines are unacceptable and unreasonable. The "Final Permit Date" is defined herein as the date on which the GCPC issues all final permits requested by TrAILCo, without imposition of conditions unacceptable to TrAILCo.

6. TrAILCo agrees to pay to Greene County, a contribution total of Seven Hundred Fifty Thousand Dollars (\$750,000.00), in three installments, as follows: payment of the first contribution of \$250,000.00 shall be made to Greene County not later than six months after the Final Permit Date; payment of the second contribution of \$250,000.00 shall be made to Greene County not later than eighteen months after the Final Permit Date; and payment of the third contribution of \$250,000.00 shall be made to Greene County not later than thirty months after the Final Permit Date. Greene County shall use such contributions for the support of educational, environmental, public health and community infrastructure projects located in Greene County, or for other costs incurred by Greene County, as determined in the discretion of Greene County. These sums shall not be requested for recovery in the rates of either TrAILCo or West Penn.

7. TrAILCo and West Penn, as applicable, agree to use their reasonable commercial efforts to obtain all state, federal and other authorizations needed to engineer, plan, site and construct electric facilities necessary to supply the reasonable build-out of the Meadow Ridge Industrial Park in Perry Township, Greene County. Greene County will

support, on the record, applications necessary to obtain the authorizations to engineer, plan, site, and construct such facilities.

8. The Parties agree that, to the extent that TrAILCo is deemed to have abandoned the Prexy Facilities, such abandonment was beyond TrAILCo's control. The Parties further agree that they will not, and will not cause a third party to, take any action in any forum in connection with TrAILCo's request for rate recovery associated with the Prexy Facilities that is inconsistent with such agreement that any claimed abandonment is beyond TrAILCo's control.

9. Other than with respect to TrAILCo's obligations in paragraph 1 above, TrAILCo's obligations under this Agreement are expressly contingent upon (i) the Commission accepting and approving by February 16, 2009 in a final order, all of the Agreement's terms and conditions, without imposition of any additional terms and conditions or any modifications of existing terms and conditions, that are unacceptable to TrAILCo, and (ii) the Commission entering by February 16, 2009 a final order granting all of the relief specified in paragraph 4 of this Agreement without modification. The Parties shall take no action or cause any third party to take action inconsistent with the terms of this Agreement before any regional, state, federal or local forum that may consider any of the matters or transmission line projects addressed herein.

10. The Parties shall make best efforts to support this Agreement and to secure its approval by the Commission.

11. In the event the Commission does not approve this Settlement as specified above, the Parties reserve their respective rights to proceed in any manner allowable under the law.

12. This Agreement is being made for the purpose of attempting to reasonably and fully settle the issues contained herein and is made without any admission by any party hereto

as to any matter of fact or law, is without prejudice to any position advanced by any party on the record in this proceeding or other proceedings, and is without prejudice to any position that might be adopted or advocated during subsequent applications, amendments, and/or litigation before the Commission or elsewhere in this or any other proceeding. Except as otherwise agreed to by the Parties, this Agreement is conditioned upon the Commission's approval in the manner stated above. In the event the Commission does not approve this Agreement and the proceeding continues before the Commission or elsewhere, the Parties reserve all of their respective rights.

13. The Parties may not cite this Agreement as precedent in any future proceeding, except to the extent required to implement its terms and conditions.

14. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

15. This Agreement may be circulated and executed in counterparts, and when all the Parties have each executed a counterpart, they shall be bound hereby as if all of said Parties had executed the same counterpart.

16. The Parties agree to cooperate with one another and do those things and execute such documents as are reasonably necessary to effectuate the terms and intent of this Agreement.

17. Each Party represents and warrants that it is authorized to enter into and execute this Agreement and that any person(s) executing this Agreement on behalf of such Party has the authority to do so.

18. The Parties agree that this Agreement represents a fair, just and reasonable resolution of the matters that have been at issue in the proceedings on the Application. The benefits reflected in this Agreement, and the related concessions and compromises agreed to by

each of the Parties, are the result of a considerable effort to achieve a reasonable negotiated resolution involving complex matters. In arriving at this Agreement, the Parties have balanced diverse interests in order to achieve a result that is reasonable and supportable. The Parties urge the Commission to approve the Agreement.

WHEREFORE, the Parties, intending to be legally bound, respectfully request that the Commission approve this Agreement.

Dated this 22nd day of September, 2008.

Trans-Allegheny Interstate Line Company

By: Philip L. Goulding

Name: PHILIP L. GOULDING

Title: VICE PRESIDENT

Date: 9-24-08

West Penn Power Company

By: Philip L. Goulding

Name: PHILIP L. GOULDING

Title: VICE PRESIDENT

Date: 9-24-08

Greene County, Pennsylvania

By: Pam Snyder

Name: PAM Snyder

Title: CHAIR, GREENE COUNTY COMMISSIONER

Date: 9-25-08

By: Dave Cover

Name: DAVE COVER

Title: GREENE COUNTY COMMISSIONER

Date: 9-25-08

By: Archie Trader

Name: ARCHIE TRADER

Title: COUNTY COMMISSIONER

Date: 9-24-08