

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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July 9, 2018

The Honorable Elizabeth H. Barnes
The Honorable Andrew M. Calvelli
Administrative Law Judges
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

Re: Application of Transource Pennsylvania, LLC for approval of the Siting and Construction of the 230 kV Transmission Line Associated with the Independence Energy Connection - East and West Projects in portions of York and Franklin Counties, Pennsylvania.

Docket Nos. A-2017-2640195 and A-2017-2640200

Petition of Transource Pennsylvania, LLC for a finding that a building to shelter control equipment at the Rice Substation in Franklin County, Pennsylvania is reasonably necessary for the convenience or welfare of the public.

Docket No. P-2018-3001878

Petition of Transource Pennsylvania, LLC for a finding that a building to shelter control equipment at the Furnace Run Substation in York County, Pennsylvania is reasonably necessary for the convenience or welfare of the public.

Docket No. P-2018-3001883

Application of Transource Pennsylvania, LLC for approval to acquire a certain portion of the lands of various landowners in York and Franklin Counties, Pennsylvania for the siting and construction of the 230 kV Transmission Line associated with the Independence Energy Connection – East and West Projects as necessary or proper for the service, accommodation, convenience or safety of the public.

Docket No. A-2018-3001881, *et al.*

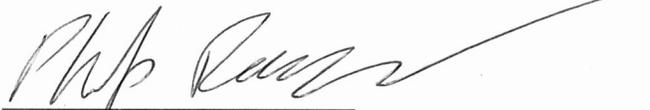
Dear Judge Barnes and Judge Calvelli:

Enclosed please find copies of the Office of Consumer Advocate's Motion to Compel Transource Pennsylvania, LLC (Transource or Company) to demonstrate that documents responsive to OCA Set XX qualify as Critical Energy Infrastructure Information (CEII) and provide full and complete answers to OCA Set XX, Questions 3(a) and 4 (a), in the above-referenced proceeding.

Motion to Compel
July 9, 2018
Page 2

The original has been electronically filed with the Secretary's Office and copies have been served upon the parties as evidenced by the attached Certificate of Service.

Respectfully submitted,



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Enclosures:

cc: Rosemary Chiavetta, Secretary
Certificate of Service
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CERTIFICATE OF SERVICE

Application of Transource Pennsylvania, LLC for :
approval of the Siting and Construction of the 230 : Docket Nos. A-2017-2640195
kV Transmission Line Associated with the : A-2017-2640200
Independence Energy Connection - East and West :
Projects in portions of York and Franklin Counties, :
Pennsylvania. :

Petition of Transource Pennsylvania, LLC for a :
finding that a building to shelter control equipment :
at the Rice Substation in Franklin County, : Docket No. P-2018-3001878
Pennsylvania is reasonably necessary for the :
convenience or welfare of the public. :

Petition of Transource Pennsylvania, LLC for a :
finding that a building to shelter control equipment :
at the Furnace Run Substation in York County, : Docket No. P-2018-3001883
Pennsylvania is reasonably necessary for the :
convenience or welfare of the public. :

Application of Transource Pennsylvania, LLC for :
approval to acquire a certain portion of the lands of :
various landowners in York and Franklin Counties, :
Pennsylvania for the siting and construction of the : Docket No. A-2018-3001881, *et al.*
230 kV Transmission Line associated with the :
Independence Energy Connection – East and West :
Projects as necessary or proper for the service, :
accommodation, convenience or safety of the public. :

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate’s Motion to Compel, upon 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 9th day of July.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Transource Pennsylvania, LLC :
for approval of the Siting and Construction of the : A-2017-2640195
230 kV Transmission Line Associated with the : A-2017-2640200
Independence Energy Connection - East and West Projects :
in portions of York and Franklin Counties, Pennsylvania. :

Petition of Transource Pennsylvania, LLC :
for a finding that a building to shelter control equipment :
at the Rice Substation in Franklin County, Pennsylvania : P-2018-3001878
is reasonably necessary for the convenience or welfare of :
the public. :

Petition of Transource Pennsylvania, LLC :
for a finding that a building to shelter control equipment :
at the Furnace Run Substation in York County, : P-2018-3001883
Pennsylvania is reasonably necessary for the convenience :
or welfare of the public. :

Application of Transource Pennsylvania, LLC :
for approval to acquire a certain portion of the lands of :
various landowners in York and Franklin Counties, :
Pennsylvania for the siting and construction of the 230 Kv : A-2018-3001881,
Transmission Line associated with the Independence Energy : *et al.*
Connection – East and West Projects as necessary or proper :
for the service, accommodation, convenience or safety of :
the public. :

MOTION OF THE OFFICE OF CONSUMER ADVOCATE TO
COMPEL TRANSOURCE PENNSYLVANIA LLC TO DEMONSTRATE DOCUMENTS
RESPONSIVE TO OCA SET XX QUALIFY AS CRITICAL ENERGY INFRASTRUCTURE
INFORMATION AND COMPEL ANSWERS PURSUANT TO 52 PA. CODE SECTION
5.342(g)

The Pennsylvania Office of Consumer Advocate (OCA) hereby respectfully requests that Administrative Law Judge Elizabeth H. Barnes (ALJ Barnes) and Administrative Law Judge Andrew M. Calvelli (ALJ Calvelli) compel Transource Pennsylvania, LLC (Transource or Company) to demonstrate that its documents responsive to OCA Set XX qualify as Critical Energy Infrastructure Information (CEII) and provide full and complete answers to questions 3(a) and 4(a) of OCA Set XX pursuant to 52 Pa. Code § 5.342(g).¹ The OCA states in support as follows:

I. INTRODUCTION

A. Background

On December 27, 2017, Transource Pennsylvania, LLC filed two Applications with the Commission seeking approval of the siting and construction of two 230 kV transmission lines in York and Franklin Counties at Docket Nos. A-2017-2640195 and A-2017-2640200, respectively, also known as the Independence Energy Connection project (IEC Project or Project). The Project also involves the construction of two new substations in Pennsylvania, the Furnace Run Substation in York County and the Rice Substation in Franklin County. The Furnace Run Substation and the Furnace Run-Conastone 230 kV Transmission Line is referred to as the IEC-East Project. The Rice substation and the Rice-Ringgold 230 kV Transmission Line is referred to as the IEC-West Project.

On January 10, 2018, the OCA filed two Protests against Transource's Applications to build the IEC Project. Since then, the OCA has initiated an extensive review process to ensure that the Commission approves the Applications only if it meets all requirements of the Public Utility Code, applicable Commission Rules and Regulations, and Pennsylvania law, as well as to protect the interests of Pennsylvania ratepayers in this proceeding. Specifically, the OCA is

¹ The OCA Motion is limited to challenging the CEII designation of the UNT and TRN files, along with the accompanying information. At this time, the OCA will not object to marking these files as confidential pursuant to the Protective Order. The OCA, however, reserves the right to challenge any confidential designations in the future.

investigating whether there is a need for the IEC Project pursuant to 52 Pa. Code Section 57.76(a) (1).

In its Applications, the Company claims that need for this project was determined by PJM Interconnection, LLC (PJM), a Regional Transmission Operator, charged by the Federal Energy Regulatory Commission (FERC) with ensuring the reliable and efficient operation of the electric transmission system that spans all or parts of thirteen states. Application at 6. PJM selected this Project as part of its Market Efficiency Analysis to alleviate congestion constraints across the AP South Reactive Interface, a set of four 500 kV lines which originate in West Virginia and terminate in Maryland.² Application at 8-9, Transource St. 2 at 7. According to the Company, this congestion is causing higher prices for electric service in parts of the PJM region – primarily to the South and East of the Pennsylvania border. Transource St. 3 at 25.

Under its Operating Agreement, PJM can approve transmission system enhancements designed to address congestion issues so long as it meets the following criteria:

If new facilities can lower costs to customers, and benefits of the project exceeds its costs by or above a certain required ratio, then PJM has the authority to require new transmission to be built.³

Specifically, the relative benefits and costs of the economic-based enhancement or expansion must meet or exceed a benefit/cost ratio (B/C Ratio) of at least 1.25:1.⁴ If a proposal fails to meet this threshold, PJM does not consider the project economically viable or necessary. The purpose of

² PJM's Market Efficiency Analysis is part of its Regional Transmission Expansion Plan (RTEP) detailing a series of analyses to ensure reliable flow of electricity to its customers. Notably, the market efficiency analysis deals solely with economic considerations, not reliability concerns.

³ PJM Interconnection, LLC, Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., Schedule 6, Section 1.5.7(d) (Aug. 20, 2016).

⁴ Id.

this threshold prevents PJM from approving a project that has net benefits of zero over a 15-year period. Transource St. 3 at 19.

To perform the cost/benefit analysis, PJM utilizes a third-party software owned and licensed to PJM by ABB, a company that specializes in electrification products, robotics and motion, industrial automation, and power grids.⁵ The ABB software suite that PJM utilizes is referred to as ‘ProMod,’ which is an electric network simulation tool that “incorporates extensive details in generating unit operating characteristics, transmission grid topology and constraints, and market system operations to support economic transmission planning.”⁶ Using this information, the model provides PJM “nodal locational marginal pricing (LMP) forecasting and transmission analysis by producing algorithms that align with the decision focus of management.”⁷

Based on this information, the OCA is investigating and analyzing: (1) the historic and current congestion levels of the AP South Reactive Interface; (2) whether the current level of congestion is such that measures should be taken to alleviate it; (3) whether the IEC Project is a correct and reasonable response considering what other transmission and non-transmission (non-wires) alternatives may be available, and (4) even if the IEC Project appears reasonable from a technical transmission planning perspective, is its approval consistent with the Public Utility Code, applicable Commission Rules and Regulations, Pennsylvania law and in the best interest of

⁵ ABB, *About ABB*, <https://new.abb.com/about> (last visited June 27, 2018).

⁶ ABB, *ProMod: Fundamental electric market simulation tool*, <https://new.abb.com/enterprise-software/energy-portfolio-management/market-analysis/promod> (last visited June 27, 2018).

⁷ *Id.* Locational Marginal Pricing (LMP) is the basis by which PJM calculates the cost of moving electricity from one location to another. LMP is comprised of three components, the system marginal price, which is the same across all locations, the congestion component, which varies based on constraint, and the marginal loss component.

Pennsylvania ratepayers. These areas of inquiry are consistent with the Commission's Order regarding Transource's Application for a Certificate of Public Convenience.⁸

More specifically, the OCA's investigation of this matter involves details as to where the alleged AP South congestion occurs, the frequency of the congestion, and the duration of the congestion. Obtaining this information is critical to the analysis being performed by OCA witnesses, as it will allow them to determine whether and what type of alternatives exist that may alleviate the need to build new, greenfield transmission infrastructure.⁹

In pursuit of this information, the OCA, the Company, and PJM held a technical conference, lasting three hours, on June 8, 2018.¹⁰ The technical conference provided the OCA and its experts with information on how the ProMod software works, as well as other information on the nature of the AP South Interface congestion.

On June 12, 2018, the OCA issued Set XX, a list of ten interrogatories aimed at developing formal responses to the discussion at the June 8, 2018 technical conference. The OCA requested the following information relevant to this Motion: (1) the UNT and TRN files produced from the

⁸ "The Intervenor reserve all rights to challenge the need for the Independence Project when Transource PA files a Siting Application with the Commission or to challenge any other project proposed by Transource PA." Application of Transource Pennsylvania, LLC for all of the Necessary Authority, Approvals, and Certificates of Public Convenience: (1) to Begin to Furnish and Supply Electric Transmission Service in Franklin and York Counties, Pennsylvania; (2) for Approval of Certain Affiliated Interest Agreements; and (3) for Any Other Approvals Necessary to Complete the Contemplated Transactions, A-2017-2587821, G-2017-2587822, Order at 6 (Jan. 23, 2018).

⁹ For example, hourly data that indicates congestion levels ramp up during peak hours of sunlight could indicate that the further deployment of solar resources in the congested areas (South and East of the Pennsylvania border) could tend to lessen or even eliminate the need for the Project. Numerous other non-wires alternatives such as increased energy efficiency or demand response could also be considered depending on the hours and duration of congestion levels.

¹⁰ The OCA proposed having a technical conference as a means, in part, to overcome some of the Company's objections to OCA Sets VI and VIII. It was the OCA's intention that having the OCA's consultants speak directly with Company and PJM personnel might lead to a better understanding of the IEC Project and the underlying analyses performed by PJM that led to the Project being proposed. As a further benefit, the informal exchange of information would enable the OCA to distill its discovery questions down and negate the need to continue propounding numerous sets of discovery in order to effectively drill down on important issues. In the OCA's view, the technical conference was productive and resulted in OCA Set XX.

ProMod analysis, (2) the names of the resources within the PJM footprint listed in the UNT and TRN files, and (3) a list of generators and purchased power resources that experienced an increase or decrease in generation output because of the IEC Project, along with identifying information.¹¹

The relevant interrogatories are set forth below:

1. During the Technical Conference Call with OCA on June 8, PJM indicated that the UNT and TRN PROMOD output files provided hourly detail regarding dispatched generator output and dispatched purchases (including solar and wind generation).
 - a. Please provide the UNT files for the PJM system including Project 9A for each year PJM analyzed.
 - b. Please provide the UNT files for the PJM system without Project 9A for each year PJM analyzed.
 - c. Please provide the TRN files for the PJM system including Project 9A for each year PJM analyzed.
 - d. Please provide the TRN files for the PJM system without Project 9A for each year PJM analyzed.
2. It is OCA's recollection of the June 8 Technical conference call that the UNT and TRN files use abbreviated "PROMOD names" to identify resources.
 - a. Please provide a list of PROMOD names correlated to actual resource names for the PJM footprint.
 - b. If there are other resources outside PJM whose dispatch changes between the "with Project 9A" and "without Project 9A" runs, please provide the "PROMOD names" correlated to the actual resource names.
3. Please compare the UNT files with and without Project 9A, and for each hour, provide:
 - a. The actual name of each unit whose output increased with the inclusion of Project 9A.
 - b. The location, size and fuel type of each unit.
 - c. The number of MWs the output of each unit increased.
 - d. The marginal production cost of each unit whose output increased with the inclusion of Project 9A.
4. Please compare the UNT files with and without Project 9A, and for each hour, provide:
 - a. The actual name of each unit whose output decreased with the inclusion of Project 9A.
 - b. The location, size and fuel type of each unit.
 - c. The number of MWs the output of each resource decreased.
 - d. The marginal production cost of each unit whose output decreased with the inclusion of Project 9A.

¹¹ Specifically, the OCA requested the location, size, and fuel type, as well as the change in megawatt (MW) output and the marginal production cost of each affected resource.

On June 22, 2018, the Company served the OCA with written Objections to several questions in Set XX, specifically questions two through six. It asserted that these questions were irrelevant, burdensome, and overly broad. On June 29, 2018, however, OCA Counsel was informed by Company Counsel that they would be providing responses to all questions in Set XX on the due date, July 2. After further discussions with the Company and ALJ Barnes, the OCA was provided with a one-week extension for filing any Motion to Compel (now due on July 9) in the event that the responses to Set XX were not full, complete and responsive.

On July 2, 2018, Transource served the OCA with responses to Set XX, and marked the responses to Questions 1 and 2 as being subject to Highly Confidential – CEII protection. The Company, however, did not state reasons why this designation was necessary, nor did it seek similar protection under Pennsylvania law. Additionally, with respect to questions 3(a) and 4(a), the Company noted its previous objection, referred the OCA to the CEII files provided, and did not perform the analysis requested.¹²

Accordingly, the OCA files this Motion to Compel respectfully requesting that ALJ Barnes and ALJ Calvelli compel Transource to demonstrate that the UNT and TRN files, along with the accompanying information, qualify as CEII and answer questions 3(a) and 4(a).

B. Summary

Under State and Federal law, a utility may claim special confidential protections for information that may facilitate large-scale terrorist attacks on critical infrastructure. CEII is the Federal designation used by the Federal Energy Regulatory Commission (FERC) and Confidential Security Information is the Pennsylvania State Designation. See 18 CFR § 388.113(c); see also 35

¹² As noted, the Company also filed written objections to Set XX, questions 5 and 6 but supplied a limited response to both on July 2. After considering that response, the OCA has decided to not seek any additional responses to questions 5 or 6 through this Motion to Compel.

P.S. § 2141.2. In both instances, the Company must affirmatively demonstrate that the information qualifies for such designation. In this instance, the Company did not state why the information qualifies for CEII protection, nor did it seek protection under the Confidential Security Information designation. Additionally, without such demonstration, the OCA has questions about whether the information qualifies for such highly confidential protection as CEII, which could limit its use in considering this proposal.

With respect to questions 3(a) and 4(a), the Company objected to these questions on the basis that the request is overly broad, irrelevant and unduly burdensome. The OCA submits that these questions are narrowly tailored and directly relevant to this matter. The Company has consistently stated that congestion occurs when cheaper generation is not dispatched due to constrained power flow on the system and higher-cost generation replaces it causing customers to pay more. Accordingly, the OCA request is limited to a list of generators that experienced a decrease or increase in generation output due to the installation of the IEC project. Obtaining this information will allow the OCA to understand the nature of the congestion on the AP South Reactive Interface and determine if there are available alternatives to the IEC Project. Additionally, the OCA submits that the request is not unduly burdensome because the Company has access to the ProMod software and can directly analyze the changes amongst the resources. The OCA is also willing to work with the Company to establish a mutually convenient date for when this information can be provided. Lastly, the Company raised its objection while also answering the interrogatory. The Company, however, did not state clearly whether it was answering fully and completely. This practice is confusing and inconsistent with the Commission Regulations regarding discovery matters.

For the reasons above, and in more detail below, the OCA submits this Motion.

II. LEGAL STANDARD

The Commonwealth Court of Pennsylvania has stated that “[d]iscovery itself is designed to promote free sharing of information so as to narrow the issues and limit unfair surprise. It is a tool which serves each litigant and promotes judicial economy.” See Pittsburgh Bd. of Public Educ. v. M.J.N. by N.J., 105 Pa. Cmwlth. Ct. 397, 403, 524 A.2d 1385, 1388 (Pa. Commw. Ct. 1987).

Under the Commission’s regulations, the scope of discovery is broad. Section 5.321 outlines the scope of discovery as follows:

- (c) *Scope.* Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. ***It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.***

52 Pa. Code § 5.321(c) (emphasis added). Additionally, information is relevant if it tends to establish a material fact, tends to make a fact at issue more or less probable, or supports a reasonable inference or presumption regarding a material fact. Smith v. Morrison, 47 A.3d 131 (Pa. Super. 2012), app. denied, 57 A.3d 71 (Pa. 2012). Relevancy in discovery is broader than the standard used for admission of evidence at a hearing. Com. v. TAP Pharmaceutical Products, Inc., 904 A.2d 986 (Pa. Cmwlth. 2006). As stated above, the information requested must appear reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321. The party objecting to discovery has the burden to establish that the requested information is not relevant or discoverable. Koken v. One Beacon Insurance Co., 911 A.2d 1021 (Pa. Cmwlth. 2006). Any doubts regarding relevancy should be resolved in favor of discovery. The information being

sought here is directly relevant to the issue that gave rise to this Project, *i.e.* alleged congestion levels.

III. MOTION TO COMPEL

A. **Transource Has Not Affirmatively Demonstrated the Materials Requested Require Special Confidential Protections Under Federal and State Law**

The Company asserts the CEII designation for its responses to questions one and two of OCA Set XX.¹³ The OCA submits that the Company has not met the standard for properly designating those responses as CEII pursuant to 18 CFR 388.113(d)(1)(i). Furthermore, these responses do not appear to meet the requirements under 35 P.S. Section 2141.3. The OCA will deal with each in turn.

- i. Federal and State Law Require Public Utilities to Affirmatively Demonstrate That the Documents Qualify for Protection.

Under federal law, CEII is defined in 18 CFR § 388.113(c) (emphasis added), which states:

(2) Critical energy infrastructure information means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that:

- (i) Relates details about the production, generation, transportation, transmission, or distribution of energy;
- (ii) Could be useful to a person in planning an attack on critical infrastructure;
- (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; *and*
- (iv) Does not simply give the general location of the critical infrastructure.

FERC explained the purpose of the CEII regulations:

The CEII regulations were designed to restrict unfettered general public access to critical energy infrastructure information, but still permit those with a need for the information to obtain it in an efficient manner. In other words, CEII reflects a

¹³ The Company's response to question 2(a), which requested a list of resource names correlating to those simulated in the ProMod software, referred to a previous attachment to OCA VI-1(d)(i-iv). The Company also designated this document as CEII. That attachment contains the generating unit name and short name of each ProMod resource, the technology type, the state of location, and the transmission zone of location. For this reason, the OCA is extending its CEII request to this response for the reasons provided in this section.

delicate balance between the due process rights of interested persons to participate fully in Commission proceedings and the Commission's responsibility to protect public safety by ensuring that access to CEII does not facilitate acts of terrorism. Although CEII was intended only to protect detailed information that would aid a terrorist attack, many submitters over utilize the designation.

* * *

The CEII process was not intended as a mechanism for companies to withhold from public access information that does not pose a risk of attack on the energy infrastructure. Therefore, in an effort to achieve proper designation while avoiding misuse of the CEII designation, the Commission reiterates its requirement that submitters segregate public information from CEII and file as CEII only information which truly warrants being kept from ready public access.¹⁴

Accordingly, blanket designations are not reasonable or proper. As stated by Chief Administrative Law Judge of FERC, Curtis L. Wagner Jr.:

Counsel must ensure that any material(s) designated "Protected" or as containing Critical Energy Infrastructure Information (CEII) (as defined in Commission Order No. 630 or at 18 C.F.R. § 388.112) legitimately warrant those designations. Blanket "Protected" or "Contains CEII" designations shall not be used unless counsel has verified that all or substantially all of a document consists of such information.¹⁵

Based on the above, the OCA submits that in order for any information to be classified as CEII the producing party must make an affirmative showing that the information reasonably fits within the definition of CEII. Pursuant to 18 CFR § 388.113(d)(1)(i), the Company must state the following in its request for CEII protection:

A person requesting that information submitted to the Commission be treated as CEII must include with its submission a justification for such treatment in accordance with the filing procedures posted on the Commission's Web site at <http://www.ferc.gov>. The justification must provide how the information, or any portion of the information, qualifies as CEII, as the terms are defined in paragraphs (c)(1) and (2) of this section. The submission must also include a clear statement of

¹⁴ Critical Energy Infrastructure Information, RM06-24-000, Order No. 683 at 4-5 (FERC Sept. 21, 2006) (emphasis added), <https://www.ferc.gov/whats-new/comm-meet/092106/M-2.pdf>.

¹⁵ Notice to the Public: Protected and Critical Energy Infrastructure Material, Federal Energy Regulatory Commission (Apr. 19, 2013)

the date the information was submitted to the Commission, how long the CEII designation should apply to the information and support for the period proposed. Failure to provide the justification or other required information could result in denial of the designation and release of the information to the public.

Similarly, under Pennsylvania State Law, the General Assembly enacted into law provisions to safeguard confidential information filed with the Commission by public utilities from disclosure that may compromise security against sabotage or criminal or terrorist acts. 35 P. S.

§§ 2141.1--2141.6. Confidential Security Information means:

Information contained within a record maintained by an agency in any form, the disclosure of which would compromise security against sabotage or criminal or terrorist acts and the nondisclosure of which is necessary for the protection of life, safety, public property or public utility facilities...

35 P.S. § 2141.2.

Similar to the requirements of CEII, the burden of determining what constitutes Confidential Security Information is on the public utility.

The public utility is responsible for determining whether a record or portion thereof contains confidential security information. When a public utility identifies a record as containing confidential security information, it must clearly state in its transmittal letter, upon submission to an agency, that the record contains confidential security information and explain why the information should be treated as such.

35 P.S. § 2141.3(a).

In this proceeding, upon submission of the documents responsive to OCA Set XX, the Company marked the documents as CEII, but did not include a justification. The Company also did not mark the documents as Confidential Security Information pursuant to 35 P.S. § 2141.3(a) upon submission to the OCA. For these reasons, the Company did provide any necessary justification for marking the documents as CEII. Accordingly, the OCA requests that the Company demonstrate that the UNT and TRN files qualify for CEII protection.¹⁶

¹⁶ The OCA would also extend this request to future responses to OCA interrogatories.

ii. The Company Has Not Demonstrated that the Information Requested Constitutes CEII or Confidential Security Information.

In its responses to OCA Set XX, the Company failed to provide a justification for CEII protection. Accordingly, the OCA questions whether the information qualifies for such treatment. While the documents may qualify for designation as confidential information pursuant to the Protective Order, additional justification is required for the CEII designation, which would significantly limit the use of the information.¹⁷

As provided for in 18 CFR § 388.113, to qualify for CEII protection all four elements must be met before such information is considered as such. See pg. 10, supra. In other words, information that solely relates to production, generation, transmission, or distribution of energy is insufficient. The information must also be useful to a person in planning an attack on critical infrastructure, be exempt from production under the Freedom of Information Act, and does not simply give a general location.¹⁸ To clarify this distinction, FERC has further provided guidance on the limitations of CEII. As elaborated by FERC in Order No. 683:

CEII is clarified as *specific engineering, vulnerability, or detailed design information* about proposed or existing critical infrastructure.

* * *

¹⁷ At this juncture, the OCA is not challenging a Confidential designation, but reserves its rights under the Protective Order to do so if further review of the material warrants such a request.

¹⁸ 18 CFR § 388.113(c)(2)(iv); see e.g. 18 CFR Part 388 Critical Energy Infrastructure Information, 116 F.E.R.C. P61,265, 62062, 2006 FERC LEXIS 2122, at *13-14 (Sept. 21, 2006) (“By way of background, in Order No. 630, the Commission explained that it considers the following types of gas and hydropower location information outside the definition of CEII: (1) USGS 7.5-minute topographic maps showing the location of pipelines, dams, or other aboveground facilities; (2) alignment sheets showing the location of pipeline and aboveground facilities, right of way dimensions, and extra work areas; (3) drawings showing site or project boundaries, footprints, building locations and reservoir extent; and (4) general location maps.”).

The Commission further clarifies that narratives such as the descriptions of facilities and processes are generally not CEII unless they describe specific engineering and design details of critical infrastructure.¹⁹

Moreover, the CEII Coordinator at FERC has authority to determine what information qualifies as CEII. The following cases provide further elaboration on the nature of CEII. See e.g. David Graf, CE08-38-000, 122 F.E.R.C. P62,026, at *64062 (Jan. 16, 2008) (“These documents contain detailed maps and information about two separate hydroelectric projects.”), Vu Nguyen, CE08-27-000, 122 F.E.R.C. P62,019, at *64045 (Jan. 11, 2008) (“FERC Form No. 715 contains information about the electric transmission system that constitutes CEII. Part 2 requires power flow data; Part 3 requires system maps and diagrams; Parts 4 and 5 require transmission planning data; and Part 6 requires system performance data.”)²⁰, Paul V. Nolan, et al., CE08-22-000, 122

¹⁹ Critical Energy Infrastructure Information, RM06-24-000, Order No. 683 at 4-5 (FERC Sept. 21, 2006) (emphasis added), <https://www.ferc.gov/whats-new/comm-meet/092106/M-2.pdf>

²⁰ Each transmitting utility that operates integrated transmission system facilities that are rated at or above 100 kilovolts (kV), must annually submit this information [to FERC].

Through FERC-715, the Commission requires each Respondent to:

- Identify a contact person [FERC-715, Part 1];
- Submit in electronic format, its base case power flow data if it does not participate in the development and use of regional power flow data. A Respondent that participates in the development and use of regional power flow studies must either submit in electronic format the regional or sub regional base case power flow data or designate any regional or sub regional organization, or any other single entity to submit in electronic format the regional or sub regional base case power flow data [FERC-715, Part 2];
- Submit transmission system maps and diagrams used by the Respondent for transmission planning [FERC-715, Part 3], preferably in an electronic format; regardless if changes have taken place during the past year; file these each year;
- Submit a detailed description of the transmission planning reliability criteria used to evaluate system performance for time frames and planning horizons used in regional and corporate planning [FERC-715, Part 4];
- Submit a detailed description of the Respondent's transmission planning assessment practices (including, but not limited to, how reliability criteria are applied and the steps taken in performing transmission planning studies) [FERC-715, Part 5]; and
- Submit a detailed evaluation of the Respondent's anticipated system performance as measured against its stated reliability criteria using its stated assessment practices [FERC-715, Part 6]

F.E.R.C. P62,014, at *64023 (Jan. 8, 2008) (“The documents requested qualify as CEII because they contain sensitive materials relating to the Tacoma-Ames Project, inspection reports and inundation maps.”).

With respect to Confidential Security Information, the following is a non-exhaustive list of information that qualifies for protection:

A vulnerability assessment which is submitted to the Environmental Protection Agency or any other Federal, State or local agency.

Portions of emergency response plans that are submitted to the Department of Environmental Protection, the Pennsylvania Public Utility Commission or any other Federal, State or local agency dealing with response procedures or plans prepared to prevent or respond to emergency situations, except those portions intended for public disclosure, the disclosure of which would reveal vulnerability assessments, specific tactics, specific emergency procedures or specific security procedures. Nothing in this term shall be construed to relieve a public utility from its public notification obligations under other applicable Federal and State laws.

A plan, map or other drawing or data which shows the location or reveals location data on community drinking water wells and surface water intakes.

A security plan, security procedure or risk assessment prepared specifically for the purpose of preventing or for protection against sabotage or criminal or terrorist acts.

Specific information, including portions of financial statements, about security devices or personnel, designed to protect against sabotage or criminal or terrorist acts.

35 P.S. § 2141.2. Similarly, the Commission has recognized Distribution Integrity Management and Integrity Management Plans (DIMP/IMP Plans) as Confidential Security Information because the documents contain details about specific vulnerabilities of natural gas infrastructure.²¹

FERC, *Form No. 715 – Annual Transmission Planning and Evaluation Report*, <https://www.ferc.gov/docs-filing/forms/form-715/overview.asp> (last visited July 2, 2018).

²¹ *Natural Gas Pipeline and Performance Plans*, M-2011-2271982, 2011 Pa. PUC LEXIS 621, at *69 (Dec. 22, 2011) (“The utility information requests addressed in the Tentative Order and Secretarial Letter [DIMP/IMP Plans] meet the definition of confidential security information because they contain important information such as maps of utility systems and potential vulnerabilities in the system.”).

As stated above, the information requested by the OCA in Set XX details changes in simulated generation dispatch, along with the accompanying information identified above, as the result of constructing a transmission line for economic benefit. Moreover, the OCA wishes to distill general information made public by Transource, *i.e.* congestion savings because of the IEC Project, into its specific distinct parts to further understand the AP South Congestion. For these reasons, without further justification from the Company, the OCA questions whether the information requested falls within the criteria listed above.

B. The Company Must Provide Full and Complete Answers to OCA Set XX, Questions 3(a) and 4(a).

The OCA requested in Questions 3(a) and 4(a) that the Company compare the UNT and TRN files, with and without the IEC Project, and provide specific information with respect to generators and purchased power resources directly affected by the IEC Project. The questions are set forth below:

3. Please compare the UNT files with and without Project 9A, and for each hour, provide:
 - a. The actual name of each unit whose output increased with the inclusion of Project 9A.
4. Please compare the UNT files with and without Project 9A, and for each hour, provide:
 - a. The actual name of each unit whose output decreased with the inclusion of Project 9A.

By providing these answers, the OCA's experts will be able to more fully understand the extent of the resources affected by the AP South Reactive Interface congestion and partially relieved by the IEC Project.

In responding to questions 3(a) and 4(a), the Company noted that it objected to the questions on the basis that the request was irrelevant, overly broad and unduly burdensome. The Company, however, answered the questions by directing the OCA to the UNT and TRN files

without any additional comparison by the Company. This was not what the OCA requested. The OCA asked that the Company provide a list of all generating units that experienced an increase or decrease in generation output simulated through the ProMod analysis. The OCA submits that this is a non-responsive answer and the form of the objection is improper.

i. The Information Requested is Relevant and Critical to the OCA's Analysis

The analysis that the OCA requested is directly relevant to this proceeding. In Transource's testimony, the Company's expert and employee of PJM, Paul McGlynn, defines congestion:

Congestion occurs when the least costly resources that are available to serve load in a given region cannot be dispatched because transmission facility limits constrain power flow on the system. This is particularly true in PJM where power often flows from lower-priced generating resources in western zones to load centers in the East. The lowest-priced energy is often constrained from flowing freely to those load centers. When this occurs, PJM's system operator must dispatch higher cost resources to serve load. This results in LMP differences and congestion on the system. The congestion generally increases system production costs, LMPs, and results in increased customer payments for electric energy.

Transource St. 3 at 24. In addition, Paul McGlynn explains in more detail the nature of the congestion the IEC Project attempts to resolve:

The primary goal of the proposal window was to solicit proposals to reduce congestion on the AP South Reactive Interface, which is one of the most historically congested flowgates in PJM. According to State of the Market Reports by PJM's monitoring unit, Monitoring Analytics, the congestion cost on the AP South Reactive Interface totaled approximately \$800 million from 2012 through 2016.

Transource St. 3 at 24-25. These statements set forth the necessity and basis for the IEC Project, which the OCA has a right to investigate pursuant to 52 Pa. Code Sections 57.75(e) and 57.76(a).

It is critical, therefore, that Transource respond fully to these questions. Doing so will allow the OCA to better determine the nature of the AP South congestion, including where the congestion is occurring, the extent of the congestion, the frequency of congestion, and the duration of congestion. Secondly, the OCA will be able to determine, based on the hourly changes in dispatch, the hours that the congestion occurs such that OCA witnesses will be able to assess whether and

what type of alternatives to the IEC Project may exist. As stated by the Commission, such considerations are proper:

TrAILCo's first Exception is denied. The ALJs applied the appropriate statutory and regulatory standards in their consideration of this matter. In doing so, it was entirely appropriate for the ALJs to examine federal policy and national issues revolving around the transmission grid. Similarly, we find that the ALJs properly examined issues such as the potential costs of green house emissions, DSM and energy efficiency alternatives and whether the proposal was built to facilitate west-to-east transfers of generation.²²

Moreover, the OCA is requesting the inputs, outputs, and a limited analysis of data obtained from the proprietary ProMod software. The OCA is entitled to such information. By way of example, ALJ Chestnut denied the OCA's Motion to Compel filed in PECO Energy Company – Gas Division's general rate proceeding concerning a proprietary model. The OCA sought to obtain the proprietary cost of service software used by the Company's expert witness. As stated by ALJ Chestnut, while not entitled to the proprietary software, the OCA is entitled to information pertaining to the program and its results:

While the cost of service study, and the process used to develop it, are appropriate subjects for discovery, there is no requirement that the actual computer program (intellectual property of a non-party) itself be provided to any party. To put it simply, OCA is entitled to conduct discovery and have questions (whether in the form of interrogatories or at a deposition) about the program and its results, but is not entitled to have the program itself provided.²³

²² In re: Application of Trans-Allegheny Interstate Line Company (TrAILCo) For approval: 1) for a certificate of public convenience to offer, render, furnish or supply transmission service in the Commonwealth of Pennsylvania; 2) authorization and certification to locate, construct, operate and maintain certain high-voltage electric substation facilities; 3) authority to exercise the power of eminent domain for the construction and installation of aerial electric transmission facilities along the proposed transmission line routes in Pennsylvania; 4) approval of an exemption from municipal zoning regulation with respect to the construction of buildings; and 5) approval of certain related affiliated interest arrangements, A-110172, Opinion and Order at 29 (Nov. 13, 2008); see also 52 Pa. Code §57.76(a)(4).

²³ Pa. PUC v. PECO Energy Company – Gas Division, R-2008-2028394, Prehearing Order #1 at 5 (June 16, 2008).

Obtaining this information is significant because the OCA does not have access to the ProMod model.²⁴ With this analysis the OCA will be better able to understand where congestion is occurring and will be in a better position to determine whether alternatives may be a potential solution to whatever levels of congestion are actually occurring on the system.

For these reasons, the OCA's Set XX, Questions 3(a) and 4(a) are relevant and critical to the OCA's analysis and the OCA is entitled to such information.

ii. The Information Requested is Not Overly Broad or Unduly Burdensome.

The OCA submits that the information requested in this Motion to Compel is not overly broad or unduly burdensome. The OCA's request in this Motion is limited to a list of resources that experienced an increase or decrease in generation output within the ProMod software because of constructing the IEC Project. Moreover, this Motion is further limited to the UNT files produced by ProMod.²⁵ The OCA also has additional time to submit its Direct Testimony, as granted by the Third Prehearing Order, and is willing to work with the Company to establish a mutually convenient time for providing these responses.

Additionally, there is precedent for allowing the OCA to obtain information related to analytical data, even where the answering party perceives the request to be unduly burdensome. In the Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers

²⁴ The OCA negotiated with PJM to obtain a temporary license for ProMod from ABB. Both the OCA and PJM agreed, however, that there were differences on both sides that could not be bridged. Most recently, several e-mails were exchanged between the OCA, Transource and PJM over the terms that ABB was requiring the OCA and Mr. Lanzalotta to agree to in order for the OCA to have access to the PROMOD Model. On the morning of June 13, 2018, OCA Counsel received a call from Ms. Michelle Harhai from PJM as to the terms that ABB was requiring. It was mutually determined by PJM and OCA at that time that an accord as to the terms for access to PROMOD was not reasonably possible. Accordingly, it was agreed by PJM and OCA that continued efforts to provide OCA access to PROMOD should be discontinued. On that call Ms. Harhai also informed OCA Counsel that although there was an \$11,000 charge from ABB for the PROMOD license, PJM had not actually incurred that costs as the purchase order for same was put on hold by PJM until the terms were worked out.

²⁵ The OCA will not seek through this Motion a comparison from the Company regarding resources listed in the TRN files. See pg. 7, supra.

and the Pennsylvania Universal Service Fund, the OCA submitted a Motion to Compel requesting data and the individual elements used by two utilities to perform an economic cost study.²⁶ The OCA intended to use the data to formulate its own model in order to determine whether any service was being subsidized by residential ratepayers.²⁷ The utilities objected on the basis of burden, annoyance, and expense because the information was not maintained in the format requested and would require significant resources to obtain.²⁸ In granting the OCA's Motion to Compel, ALJ Colwell stated:

The customer-specific information in Interrogatories 1 and 2 were characterized by the Companies as the most burdensome. As each Company is capable of and required to bill each customer for the service provided, it is reasonable to assume that each Company can identify the locations of the facilities it provides, the nature of the facilities, and other information necessary to the provision and billing of service. The Companies and OCA are directed to work together to develop the least burdensome format for the provision of the information necessary for use in the OCA's cost study.²⁹

Similar to the above situation, the OCA requests an analysis limited to generator resources that experienced a decrease or increase in generation output because of the IEC Project. This information is data that is a part of the simulation that the Company is using to justify the necessity of this project. Moreover, the Company has access to the model to run such a comparison. Lastly, as stated above, the OCA is willing to work with the Company to establish a mutually convenient date and the least burdensome format for the information. Accordingly, although some effort may

²⁶ I-00040105, Order Disposing of the Motions to Compel Filed by the Office of Consumer Advocate and Verizon Against the Pennsylvania Telephone Association and Embarq at 7-8 (Aug. 20, 2008).

²⁷ Id.

²⁸ Id., at 10.

²⁹ Id., at 12.

be required in order to produce this information, it is not unduly burdensome given the importance of this information.

- iii. The Company Should be Precluded from Answering and Objecting unless the Response Identifies Whether the Answer is Full and Complete.

On June 22, 2018, the Company initially submitted its written Objections to questions two through six of OCA Set XX. Subsequent to this, after discussion with the OCA and ALJ Barnes, the Company agreed that it would provide responses to all questions in Set XX. In its responses, however, the Company once again noted its objections to Set XX, Questions two through six.

The OCA's primary concern is whether the Company's continued objection noted in its response means that the Company has not fully and completely responded to the interrogatories.

As stated by ALJ Jones, this situation can cause confusion:

We also agree with OCA concerning the PAWC's General Objection 9 and its implication that the Company is objecting to every single interrogatory, even the ones to which it is filing a response. PAWC's General Objection 9 creates a situation that is highly confusing to both the Parties and the ALJs in this case. Despite PAWC's statements to the contrary, we believe that the main purpose behind the Company's General Objections is to ensure that PAWC did not waive the opportunity to object to a specific interrogatory if the necessity to object became apparent during the process of answering the said interrogatory. As mentioned above, such a tactic causes confusion on the parties conducting discovery and is highly improper.³⁰

Similarly, in this situation the OCA does not know which responses are objected to and complete or objected to and incomplete.

The OCA respectfully submits, therefore, that the Company cannot be allowed to object to an interrogatory and provide an answer, if it does not also indicate whether it is responding fully and completely.

³⁰ Pa. PUC, et al. v. Pennsylvania American Water Co., R-2011-2232243, 2011 Pa. PUC LEXIS 1523, at *12 (July 21, 2011).

IV. CONCLUSION

The Company has classified some of its responses to OCA's Set XX as CEII and has not fully responded to Questions 3(a) and 4(a). The Company, however, must affirmatively prove that the CEII designation, and the corresponding Pennsylvania State designation, applies. Additionally, the OCA questions whether the information requested falls within either designation. Furthermore, failure to fully and completely respond to questions 3(a) and 4(a) would prevent the OCA's experts from using the information to understand the nature of the AP South Reactive Interface congestion and determine whether there are viable alternatives to the IEC Project. For the reasons discussed above, the OCA respectfully requests that ALJ Barnes and ALJ Calvelli grant this Motion to Compel.

Respectfully Submitted,



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