

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
**Harrisburg, Pennsylvania 17105-3265**

**Re: PA PUC, et al. vs. Trans-Allegheny Interstate Line Company**

**Public Meeting: November 13, 2008**  
**1204960-OSA-0016**  
**Docket A-110172, et al., G-00071229**

**MOTION OF CHAIRMAN CAWLEY**

Before this Commission are five separate Applications of Trans-Allegheny Interstate Line Company (“TrAILCo” or “Company”), including (1) an Application for a Certificate of Public Convenience to offer, render, furnish and/or supply transmission service in the Commonwealth of Pennsylvania; (2) an Application for authorization to locate, construct, operate, and maintain certain high-voltage electric substation facilities; (3) an Application for authority to exercise the power of eminent domain along the proposed transmission line routes in Pennsylvania; (4) an Application for approval of an exemption from municipal zoning regulation with respect to the construction of buildings; and (5) an Application for approval of certain related affiliated interest agreements. Evidentiary hearings were held on March 24-28, 2008, and on March 31, April 1, and April 3, 2008. On August 21, 2008, the Administrative Law Judges (“ALJs”) issued a Recommend Decision (“R.D.”) denying the Applications. TrAILCo filed Exceptions to the R.D. on September 10, 2008. On September 25, 2008, TrAILCo and the Greene County Board of Commissioners filed a Settlement Agreement (“Settlement Agreement”) proposing a collaborative for the purposes of discussing alternatives to the TrAILCo’s Prexy Facilities, and providing for other terms and conditions.

This motion eliminates the need to conduct a binding poll on each of the substantive issues raised in Exceptions, and addresses the 1.2 mile Pennsylvania Segment of the proposed 502 Substation to Loudoun line (“502 Junction Facilities”).

Based on the substantial record before us, the 502 Junction Facilities should be approved.

With regard to the 502 Junction Facilities, the Commission takes seriously its obligations to enhance regional reliability and mitigate transmission constraints in order to reduce congestion for rate payers in Pennsylvania and adjacent jurisdictions. The record is clear that the Mount Storm to Doubs line is heavily congested, and that alternatives such as reconductoring, retensioning, or otherwise raising the height or grade of the right-of-way (“ROW”) to improve clearance are likely to impose heavy congestion costs on consumers. Additionally, these alternatives would take considerable time to complete, have already been completed, or will result in only marginal improvements in capacity.

As to the environmental, health, and safety effects on Pennsylvania consumers, the 502 Junction Facilities will have minimal impact – only 1.2 miles of

new ROW are involved. The applicants established that the main consideration for this shortened ROW was siting conditions in West Virginia and Virginia, where the majority of this project is to be constructed, and that this was the shortest route consistent with this consideration. Witnesses further testified that congestion costs in Eastern PJM would be reduced, including in the PECO service area. Lastly, witnesses testified that production costs in western Pennsylvania would increase, but this increase was not likely to be substantial (rather, it would be more substantial in Ohio). Decreases in energy prices in Eastern PJM were projected to be larger than increases in energy prices in western Pennsylvania, resulting in a net increase in transmission efficiency across Pennsylvania and adjacent markets.

In rendering this decision, the Commission does not disagree with the ALJs' consideration of factors such as whether or not this project was built to facilitate the transmission of coal-fired generation eastward, or whether or not Green House Gases ("GHG") or costs of emissions should be considered in any decision. In fact, the Settlement Agreement acknowledges that the Company will consider alternatives such as Demand Side Management, Energy Efficiency, and improvements to existing facilities. In reviewing alternatives such as these, the issue of costs is an important driver, as it should be. GHG and emissions are relevant to cost relative to alternatives. However, such arguments do not have sufficient cost certainty to outweigh the benefits of the 502 Junction Facilities at this time. Moreover, the transfer of generation from west to east in the distant future could just as easily be wind generation rather than coal generation.<sup>1</sup>

The Commission also does not disagree that economics was a consideration of the applicant in proposing TrAILCo. The record is well established that Project Mountaineer, as well as an earlier version of TrAILCo, were discussed and proposed within the context of a response to west-to-east transfer enhancements and in response to the National Interest Electric Transmission Corridor ("NIETC"). These projects were very similar to the April 13, 2007, filing that initiated this proceeding. However, one cannot easily distinguish between transmission efficiency projects and reliability projects within a congested region. Removing congestion resolves reliability violations, and vice versa. There is nothing inherently wrong with removing reliability violations on a heavily congested line through construction of a new transmission line. But a new transmission line may not be an optimal cost solution for a less congested line. .

As to technical capacity, the Commission agrees with TrAILCo that it has met its burden of proof for the 502 Junction Facilities in this regard. This decision, however, is predicated on adoption of Conditions 1 and 2 of Appendix A of Exceptions filed by TrAILCo on September 10, 2008, which is consistent with the recommendations of the ALJs to the extent this Commission approves TrAILCo's Application.<sup>2</sup>

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<sup>1</sup> New transmission is, of course, a necessary byproduct of Pennsylvania's advancement towards being a national leader in renewable generation.

<sup>2</sup> R.D. at 66, 76, 224-226.

As to route selection, the 502 Junction Facilities in Pennsylvania comprise only 1.2 miles of a 68-mile, 500kV HV line linking the proposed 502 Junction Substation and the Mount Storm Substation in West Virginia. TrAILCo's assertions that route selection was driven by routing criteria in adjacent jurisdictions have considerable merit. TrAILCo further asserts that this is the shortest route given this circumstance. The Commission is concerned about the lack of alternative route descriptions and lack of discussion of the comparative merits of alternatives in general. However, these deficiencies do not carry sufficient weight in light of other factors discussed above.

Consistent with the R.D., in the future, TrAILCo is instructed to provide better alternative route descriptions and discussion of comparative merits of alternative routes. TrAILCo is also directed to consult with various state and federal agencies having primary jurisdiction with regard to the cultural and environmental resources encountered along the proposed transmission line routes, and to comply with all applicable statutes and regulations providing for the protection of natural resources in Pennsylvania. TrAILCo should identify any economic development plans that are compromised by any proposed facilities, and consider the impact of its route selection upon local comprehensive plans and zoning ordinances.<sup>3</sup> This impact should be documented and served on such local governmental bodies so that this Commission can adequately ensure that local land use plans and ordinances are being respected to the extent practicable. The Commission also notes that allegations of false representations by TrAILCo officials regarding abandonment or uncertain location of easements are largely resolved by the Settlement Agreement.<sup>4</sup> To the extent practicable, TrAILCo is to identify sources of drinking water, historical and archeological sites, and endangered species, including the impact on subsurface and surface waters, and to present detailed environmental soil and sedimentation studies. Lastly, the Commission encourages TrAILCo to implement Items 9-11 of Appendix A proposed in Exceptions to the R.D., or other reasonable measures, to minimize the impact of the 502 Junction Facilities on landowners.

As identified above, the Commission takes its environmental obligations seriously and is very concerned about the lack of information presented in this application. However, given the route characteristics of this very small segment of line, the Commission determines that TrAILCo has met its environmental burden of proof, subject to compliance with additional commitments under Items 13-15 of Appendix A to TrAILCo's Exceptions.

As to health and safety, the Commission agrees with TrAILCo and OTS regarding issues related to Electric and Magnetic Fields ("EMFs"). TrAILCo is expected to comply with the National Electric Safety Code. TrAILCo has also proposed adequate measures to ensure that herbicides and pesticides do not impose an unreasonable risk to public health and safety. These measures include: (1) use of only EPA-approved herbicides, (2) adherence to application instructions, (3)

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<sup>3</sup> See 52 Pa. Code § 69.1101 (relating to local land-use plans and ordinances in issuing certificates of public convenience). R.D. at 175.

<sup>4</sup> R.D. at 176. See Settlement Agreement ¶ 1.

avoidance of aerial spraying,<sup>5</sup> (4) agreement not to spray over areas with high clearances or near water sources, and to observe 100 foot buffers around pasture land and ponds, and 200 feet around flowing water, including wells and springs, and (5) an agreement to identify ground sources of water.<sup>6</sup> TrAILCo is directed to strictly comply with the requirements outlined in TrAILCo Rebuttal Statement 18, to provide effective notice to property owners of both the properties that carry a ROW as well as adjacent property owners, and to provide an opportunity to negotiate Landowner Maintenance Agreements.<sup>7</sup> Additionally, TrAILCo's proposal to provide additional safety to metal roofed structures and tall farm equipment is adopted.<sup>8</sup>

Regarding the safety of gas wells and lines near the proposed high-voltage lines, the Commission agrees to the Columbia Gas Settlement, provided TrAILCo files and complies with the Minimum Guidelines of Appendix A to that settlement. The Columbia Gas Settlement requires a Mitigation Expert to conduct a review to assure that all mitigation actions are taken by TrAILCo. TrAILCo is also instructed to comply with these Minimum Guidelines for all gas wells and gas transmission and distribution lines, not just those owned by Columbia Gas.<sup>9</sup>

Consistent with approval of the 502 Junction Facilities, the Commission authorizes TrAILCo to exercise the power of eminent domain, to the extent necessary for the timely construction of these facilities, for the route proposed.

TrAILCo is further granted an exemption from local zoning regulations, to the extent permitted by law. However, TrAILCo is instructed to obtain copies of local land use plans and ordinances for any selected route, accommodate such restrictions to the extent reasonably practicable, file information on exemptions that will be exercised in this docket, and serve any exemptions proposed on local authorities. These actions should provide reasonable notice to such parties and assurances that TrAILCo is working with local authorities to reasonably accommodate local land use and development concerns.

The Memorandum of Understanding ("MOU") submitted by TrAILCo is rejected since the properties under the MOU applied only to the Prexy facilities. To the extent the MOU is required for any future Prexy proposals, the Commission will rule on this document at that time.

The Service Agreement with Allegheny Energy Services Corporation entered into October 31, 2006, as modified by Items 1 and 2 to Appendix A to TrAILCo Exceptions, is found to be just and reasonable, subject to receipt and acceptance by the Commission of a revised agreement within 90 days after the issuance of a final order, and on or before May 31 of each year, consistent with Item 3 of Appendix A to TrAILCo Exceptions. TrAILCo is instructed in subsequent compliance filings to

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<sup>5</sup> Appendix A of TrAILCo Exceptions, Item 12b.

<sup>6</sup> *Id.*, Item 13.

<sup>7</sup> *Id.*, Item 12.

<sup>8</sup> *Id.*, Item 9.

<sup>9</sup> *Id.*, Items 7 and 8.

provide a schedule of costs, to the extent practicable, and all applicable allocation factors.

The Capital Contribution Agreement is approved.

The Tax Allocation Agreement (“TA”) is approved subject to receipt and acceptance by the Commission of a compliance filing implementing Items 3 and 5 to Appendix A to TrAILCo Exceptions, within 90 days of the issuance of a final order by the Commission.

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.<sup>10</sup>

Lastly, the above findings of fact and conclusions of law are solely based upon the record before us and the issues presented. We have reached no conclusions of law regarding the ability of the applicant to recover all or any portion of the costs of this project through federal or state tariffs. Rate recovery is not an issue that is before us.

**THEREFORE, I move that:**

1. The Recommended Decision be reversed consistent with this motion.
2. The Office of Special Assistants draft an appropriate order consistent with this motion.

November 13, 2008  
**Date**

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**James H. Cawley, Chairman**

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<sup>10</sup> *Id.*, Item 4.