

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCUMENT
FOLDER

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 : A-110172
Commonwealth of Pennsylvania; : A-110172F0002
2) authorization and to locate, construct, : A-110172F0003
operate and maintain certain high-voltage : A-110172F0004
electric substation facilities; 3) authority : G-00071229
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 :

ORDER

- 1) REOPENING THE RECORD, PERMITTING TRAILCO TO FILE AN AMENDMENT TO ITS APPLICATION(S) AND SERVE THE AMENDMENT ON ALL PARTIES WITH A NOTICE TO PLEAD ATTACHED TO THE FRONT THEREOF;
- 2) DIRECTING THAT THE JOINT PETITION FOR SETTLEMENT AND ATTACHMENTS, TOGETHER WITH THE STATEMENTS IN SUPPORT OF THE JOINT PETITION FOR SETTLEMENT AND THE COLLABORATIVE PARTICIPANT STATEMENTS IN SUPPORT OF JOINT PETITION FOR SETTLEMENT BE SERVED ON ALL PARTIES BY TRAILCO
- 3) REQUIRING TRAILCO TO JOIN DUQUESNE LIGHT COMPANY AS A NECESSARY PARTY IN THE EVENT AN AMENDMENT IS FILED

KJR

On August 21, 2008, the undersigned and Administrative Law Judge Michael A. Nemeč issued a Recommended Decision recommending that all five of the above-docketed applications filed by TrAILCo be denied by the Commission.¹ On September 10, 2008, TrAILCo filed Exceptions to the Recommended Decision. Replies to TrAILCo's Exceptions were filed by several parties. A Motion for Partial Stay of Proceedings and Request for Expedited Consideration (Motion for Partial Stay) was also filed by TrAILCo on September 10, 2008. Answers to the Motion for Partial Stay were filed and some parties commented on the Motion for Partial Stay in their respective Replies to Exceptions. On September 25, 2008, the Agreement among TrAILCo, West Penn Power Company, and the Greene County Board of Commissioners ("Partial Settlement Agreement") was filed by TrAILCo. Comments to the Partial Settlement Agreement were subsequently filed.

At the public meeting held on November 13, 2008 the Commission adopted an Opinion and Order that was entered on December 12, 2008. The Commission's Order included the following:

1. That the Partial Settlement Agreement among Trans-Allegheny Interstate Line Company, West Penn Power Company, and the Greene County Board of Commissioners, is approved. Consideration of the Applications with regard to the Prexy Facilities is stayed pending the outcome of the voluntary collaborative set forth in the Partial Settlement.
2. That Trans-Allegheny Interstate Line Company shall convene a voluntary collaborative with all interested persons (regardless of participation in this proceeding) to explore alternatives to the proposal for the Prexy Facilities consistent with this Opinion and Order and the Partial Settlement Agreement approved in Ordering Paragraph 1, above.

¹ ALJ Nemeč has retired and is no longer presiding over this case. All communications and correspondence regarding this case should be sent to the undersigned.

3. That the Motion for Partial Stay of Proceedings and Request for Expedited Consideration, filed by Trans-Allegheny Interstate Line Company, is deemed moot, consistent with this Opinion and Order.

4. That the Exceptions filed by Trans-Allegheny Interstate Line Company regarding the Pennsylvania 502 Junction Facilities are granted in part and denied in part, consistent with this Opinion and Order.

5. That the Exceptions filed by Trans-Allegheny Interstate Line Company regarding the Prexy Facilities are stayed, consistent with this Opinion and Order.

6. That the Recommended Decision of Administrative Law Judges Mark A. Hoyer and Michael A. Nemeec, issued on August 21, 2008, is modified, consistent with this Opinion and Order.

7. That Trans-Allegheny Interstate Line Company's Application for a Certificate of Public Convenience is granted with respect to the Pennsylvania 502 Junction Facilities, subject to the conditions set forth in Section III.C. of this Opinion and Order and contained in the Exceptions of Trans-Allegheny Interstate Line Company, Appendix A, Items 1, 2 and 4.

8. That Trans-Allegheny Interstate Line Company's Application for authorization and certification to locate, construct, operate and maintain certain high voltage electric transmission lines and associated substation facilities is granted with respect to the Pennsylvania 502 Junction Facilities, subject to the conditions set forth in this Opinion and Order and contained in the Exceptions of Trans-Allegheny Interstate Line Company, Appendix A, Items 6 and 11.

9. That Trans-Allegheny Interstate Line Company's Application for eminent domain authority is granted with respect to the Pennsylvania 502 Junction Facilities, consistent with this Opinion

and Order, subject to the conditions set forth in this Opinion and Order.

10. That Trans-Allegheny Interstate Line Company's Application for exemption from local zoning regulation is granted with respect to the Pennsylvania 502 Junction Facilities, consistent with this Opinion and Order.

11. That the four affiliated interest agreements submitted for Commission approval by Trans-Allegheny Interstate Line Company are approved, subject to the conditions set forth in this Opinion and Order.

Consistent with the Commission's Order, specifically ordering paragraph no. 2 listed above, a voluntary collaborative was convened that included some of the active parties to this proceeding as well as some non-active parties and other collaborative participants.² The following parties entered into a Joint Petition for Settlement as a result of the collaborative: TrAILCo, the Office of Consumer Advocate ("OCA"), the Office of Trial Staff ("OTS"), the Energy Conservation Counsel of Pennsylvania ("ECC"), the Washington County Board of Commissioners, the Greene County Board of Commissioners, Susan Foster Blank, Arthur L. Brogley and James R. Blockinger. According to the Joint Petition for Settlement, the Petitioners "reached agreement for the purposes of settling the issues in this proceeding relating to the proposed Prexy Facilities."³ Joint Petition for Settlement, p. 3. Statements in Support of the Joint Petition for Settlement were filed by the OTS, the OCA, the ECC, TrAILCo, Susan Foster Blank, and Representative H. William DeWeese. Collaborative Statements in Support of the Joint Petition for Settlement were filed by Senator J. Barry Stoudt and West Penn Power Company d/b/a Allegheny Power and served on the active parties to

² Other participants in the collaborative who were not active parties in the litigation of these applications include Senator J. Barry Stout, Representative Tim Solobay, West Penn Power Company, and Duquesne Light Company. Representatives from PJM Interconnection, L.L.C. ("PJM") also participated in some fashion in the collaborative process. Joint Petition for Settlement, p. 3, footnote 3.

³ The "Prexy Facilities" referred to in the Recommended Decision included a new 500/138 kV substation in Washington County, Pennsylvania ("Prexy Substation"), a new 500 kV 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. Recommended Decision, p. 1.

this proceeding. The Joint Petition for Settlement provides as “Terms and Conditions of Settlement” that the Settlement “avoids construction of the Prexy Facilities.” Joint Petition for Settlement, p. 6, ¶8(a).

The Commission’s Opinion and Order did not specifically state that TrAILCo is permitted thereby to amend its application(s) with respect to the Prexy Facilities after engaging in the collaborative process; however, to find otherwise would not make logical sense. If the Commission’s Order does not permit TrAILCo to amend its application(s) regarding the proposed Prexy Facilities, the collaborative process would have been a futile endeavor, not only for TrAILCo, but for all the other participants as well. The undersigned concludes that the Commission’s Order permits TrAILCo to amend its application(s) with respect to the *Prexy Facilities*. Therefore, the undersigned is bound, and does order below, that TrAILCo be permitted to file an amendment to its application(s).

Since the Commission’s Order stayed consideration of TrAILCo’s applications with respect to the Prexy Facilities pending the outcome of the collaborative and, by necessary implication, permitted TrAILCo to amend the applications, it is now necessary to grant TrAILCo permission to amend the applications and reopen the record for this purpose as well as to allow all parties to present evidence, in some fashion, with respect to any amendment filed.

The Commission’s siting regulations are clear. *See* 52 Pa. Code §57.71 *et seq.* Section 57.75, entitled, “Hearing and notice,” provides that,

Upon the Order of the Commission or the presiding officer, the applicant may amend its application prior to the closing of the record, if every party, utility, agency or municipality affected by the amendment is given reasonable notice thereof and an opportunity to present evidence with respect to the amendment.

52 Pa. Code §57.75(f).

- The Joint Petition for Settlement provides that,

Consistent with any approval by the Commission of this Settlement as submitted, TrAILCo shall have been deemed to have amended its application in this proceeding by the substitution of solution S5 for the proposed Prexy Facilities. TrAILCo will make necessary changes to the application as directed by the Commission to the extent consistent with this Joint Petition.

Joint Petition for Settlement, p. 5, ¶7e.

Despite TrAILCo's desire to have its applications deemed amended by the Joint Petition for Settlement, the undersigned concludes that due process requires TrAILCo to amend its applications in a pleading and make any and all changes thereto on its own. Given the complexity of the applications in this case, neither the Commission nor I should have the responsibility of "making necessary changes" to the applications. If TrAILCo desires to amend its applications, it must do so in writing and serve a copy of the amendment on all parties of record, not just the active parties. All parties to the case, in accordance with the Commission's regulations, can file answers to any amended applications. If any party chooses to file an answer to any amended applications, the answer must be filed with the Commission within 20 days after the date of service in accordance with 52 Pa. Code §5.65.⁴

A Notice to Plead must be attached to the front of any amendment filed and served by TrAILCo. Given the great number of parties to this case and the need to preliminarily measure the level of interest parties may have in presenting evidence regarding any amendment, a Notice to Plead is necessary. This requirement will enable me, as the presiding officer, to determine how to manage this case moving forward so as to create a complete record and provide proper notice and an opportunity to present

⁴ "Date of service" is defined in 52 Pa. Code §1.56.

evidence, in some reasonable fashion, to all parties. This requirement is also consistent with the Commission Order which provides:

In approving the Partial Settlement Agreement, the Commission is mindful of the due process concerns of the Parties. The participation, or lack thereof, of any interested person in the collaborative or the instant proceeding will not affect that person's ability to participate in any continued, new or amended application proceeding related to the Prexy Facilities. To this end, the Office of Administrative Law Judge is encouraged to ensure that all interested Parties are provided the notice and opportunity to be heard as required under the law.

Opinion and Order entered November 13, 2008, pp. 11-12.

Duquesne Light Company is a Necessary Party

The term "indispensable party" has been held to include an interest of such a nature that a final decree cannot be made without affecting an interest of the "indispensable" party, or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. Kendig v. Dean, 97 U.S. 423, 1878 U.S. LEXIS 1471, 24 L. Ed. 1061 (1878).

A party is indispensable when his/her rights are so connected with the claim of the litigants that no decree can be made without impairing those rights. Tigue v. Basalyga, 451 Pa. 436, 304 A.2d 119 (1973).

The Supreme Court has defined necessary parties as:

[p]ersons having an interest in the controversy, and who ought to be made parties, in order that the court may act on that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it.

Illinois Brick Co. v. Illinois, 431 U.S. 720, 1977 U.S. LEXIS 105, 52 L. Ed. 2d 707 (1977) (quoting Shields v. Barrow, 17 How. 130, 139 (1855) and citing Notes of

Advisory Committee on 1966 Amendment to Rule 19 of the Federal Rules of Civil Procedure).

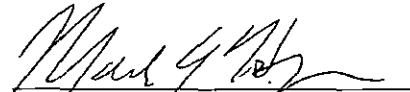
According to the Joint Petition for Settlement, the Duquesne Light Company ("Duquesne Light") participated in the collaborative, and the proposed replacement for the Prexy Facilities resulting from the collaborative process requires affirmative action by Duquesne Light. Duquesne Light must be joined as a necessary party in the event TrAILCo amends its applications in accordance with the Joint Petition for Settlement. Otherwise, the Commission may consider an amendment and ultimately rule on the amended application without any involvement here by Duquesne Light, even though a potential solution requires Duquesne Light to act.

In consideration of the foregoing, IT IS HEREBY ORDERED as follows:

1. That the records at Docket Nos. A-110172, A-110172F0002, A-110172F0003, A-110172F0004 and G-00071229 are reopened.
2. That the Trans-Allegheny Interstate Line Company is permitted to amend its application(s) filed at Docket Nos. A-110172, A-110172F0002, A-110172F0003, A-110172F0004 and G-00071229 by filing an amendment with the Commission's Secretary's Bureau and serving it on all parties of record; a Notice to Plead must be attached to the front of any amendment filed advising all parties that any answer must be filed with the Commission within 20 days after the date of service in accordance with 52 Pa. Code §5.65.
3. That the Trans-Allegheny Interstate Line Company must serve the Joint Petition for Settlement and Attachments dated June 13, 2009 together with all *Statements in Support of the Joint Petition for Settlement and Collaborative Participant Statements in Support of the Joint Petition for Settlement*, along with any amendment filed, on all parties of record.

4. That the Trans-Allegheny Interstate Line Company must join the Duquesne Light Company as a necessary party if an amendment to the applications is filed based on the Joint Petition for Settlement dated June 13, 2009.

Date: August 25, 2009


Mark A. Hoyer
Administrative Law Judge

APPLICATION OF TRANS-ALLEGHENY INTERSTATE LINE COMPANY
DOCKET NOS. A-110172, A-110172F0002-F0004 and G-00071229
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