

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In Re: Application of Trans-Allegheny	:	A-110172
Interstate Line Company (TrAILCo)	:	A-110172F0002
For approval: 1) for a certificate of public	:	A-110172F0003
convenience to offer, render, furnish or	:	A-110172F0004
supply transmission service in the	:	G-00071229
Commonwealth of Pennsylvania;	:	
2) authorization and 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	:	

**ORDER ADDING WEST PENN POWER COMPANY AS A NECESSARY  
PARTY AND SETTING A DEADLINE FOR WRITTEN RESPONSES  
REGARDING THE PRESENTATION OF EVIDENCE**

On July 13, 2009, the Trans-Allegheny Interstate Line Company (“TrAILCo”), the Office of Trial Staff (“OTS”), the Office of Consumer Advocate (“OCA”), the Energy Conservation Counsel of Pennsylvania (“ECC”), the Washington County Board of Commissioners, the Greene County Board of Commissioners, Susan Foster Blank, Debra Bandel, Arthur L. Brogley, James R. Blockinger and Representative H. William DeWeese submitted a Joint Petition for Settlement, proposing the settlement of all issues in this proceeding regarding the proposed Prexy Facilities<sup>1</sup> and describing in detail a transmission infrastructure

<sup>1</sup> 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.

alternative that would avoid construction of the Prexy Facilities. The Duquesne Light Company (“Duquesne Light”) was an active participant in the collaborative process that resulted in the creation of the Joint Petition for Settlement but, at the time, Duquesne Light was not a party to this proceeding.

On August 25, 2009, the undersigned Administrative Law Judge issued an Order (“Reopening Order”) which, *inter alia*, reopened the record in this proceeding to permit TrAILCo to file an amendment to its applications at the above-listed five docket numbers. The Reopening Order also added Duquesne Light as a party to this proceeding. On October 13, 2009, TrAILCo filed with the Commission’s Secretary’s Bureau an Amendment and served it, along with the Joint Petition for Settlement and related documents required to be served by the Reopening Order. The documents were served on Duquesne Light and on the “Limited Service Party List” which is, in effect, the total service list for this proceeding.<sup>2</sup> A Notice to Plead was attached to the Amendment. In the Amendment, TrAILCo avers that, pursuant to its obligations under the Joint Petition for Settlement, Duquesne Light will submit a Letter of Notification (“LON”) to the Commission requesting authorization to make transmission infrastructure improvements (i.e., reconductoring) as part of the transmission infrastructure alternative to the Prexy Facilities.<sup>3</sup> *See* 52 Pa. Code §57.72(d). TrAILCo requested that the Amendment, the related future Duquesne Light LON filing and the Joint Petition for Settlement be consolidated for hearing and final disposition in the Amendment it filed.

In the Reopening Order, the undersigned required TrAILCo to include a Notice to Plead with any Amendment filed in order to ascertain whether any parties who were not signatory parties to the Joint Petition for Settlement may have an interest in presenting evidence. Duquesne Light was the only party to file an answer to the Amendment. Duquesne Light filed

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<sup>2</sup> In the Second Prehearing Order issued on August 27, 2007, it was ordered that the parties on the “Full Service List” are those parties, represented by counsel, who appeared at the prehearing conference, and those parties who requested that they be added to the Full Service List by mail on or before August 15, 2007. The Full Service List was attached to the Second Prehearing Order as Appendix “A.” Those parties not electing to be included in the Full Service List were placed on the “Limited Service Party List.”

<sup>3</sup> In the Amendment, TrAILCo requested the joinder of West Penn Power Company as a necessary party to the TrAILCo proceeding. No parties served with the Amendment objected to the request. West Penn Power Company is joined as a party to this proceeding in the numbered ordering paragraphs to follow.

its Answer to Trans-Allegheny Interstate Line Company's Amendment on November 5, 2009. In its answer, Duquesne Light agreed to be joined in this proceeding as a party. Duquesne Light further agreed to file a Letter of Notification (LON) with the Commission regarding transmission infrastructure improvements. Duquesne Light averred that it supported the consolidation of its future LON proceeding with the TrAILCo proceeding.

In response to Duquesne Light's Answer, TrAILCo and West Penn Power Company filed a Reply of Trans-Allegheny Interstate Line Company and West Penn Power Company to Answer Containing Affirmative Relief or New Matter on November 13, 2009. *See* footnote 3 of this Order.

On January 8, 2010, Duquesne Light filed a LON with the Commission's Secretary's Bureau at Docket No. A-2010-2152048 and served it. The LON requested, *inter alia*, Commission approval to reconductor and increase the capacity of 2.21 miles of a double circuit 138 kilovolt ("kV") transmission line connecting the Duquesne Light Collier Substation to the Duquesne Light Woodville Substation. Duquesne Light requested that its LON proceeding be consolidated with the TrAILCo proceeding here. On January 18, 2010, TrAILCo and West Penn Power Company filed a letter reply to Duquesne Light's LON. In the letter reply, TrAILCo and West Penn Power Company indicated that they support both the relief requested by Duquesne Light in the LON and consolidation of the Duquesne Light LON proceeding with the TrAILCo proceeding. The undersigned ALJ accepted the assignment of Duquesne Light's LON proceeding on February 22, 2010. No other responses or protests were filed in Duquesne Light's LON proceeding, Docket No. A-2010-2152048. By letter dated February 26, 2010 and filed in the Duquesne Light LON proceeding, TrAILCo and West Penn Power Company requested that the Duquesne Light LON proceeding and this TrAILCo proceeding not be consolidated.<sup>4</sup> TrAILCo and West Penn Power Company claim in the letter that Duquesne Light joins in the request.

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<sup>4</sup> The undersigned is issuing an order in the Duquesne Light LON proceeding at Docket No. A-2010-2152048 denying the request to consolidate Duquesne Light's LON proceeding with the instant proceeding and transferring the Duquesne Light LON proceeding to the Commission's Bureau of Fixed Utility Services ("FUS").

For purposes of this TrAILCo proceeding, the undersigned concludes that TrAILCo has effectively withdrawn its request for consolidation set forth in the Amendment at paragraph no. 20, even though the letter of February 26, 2010 was filed at Docket No. A-2010-2152048 and not in the TrAILCo proceeding. The undersigned's decision here not to require TrAILCo to file a motion to withdraw the consolidation request set forth in the Amendment in the TrAILCo proceeding is appropriate and does not adversely affect the substantive right of any party. *See* 52 Pa. Code §1.2.

It is appropriate for Duquesne Light's unprotested Letter of Notification to be reviewed first by the Commission's Bureau of Fixed Utility Services. After said review, the Commission can either grant approval of Duquesne Light's LON without the application process set forth in the Commission's siting regulations, 52 Pa. Code §57.71 *et seq.*, being followed or disapprove the LON and require Duquesne Light to follow the application process set forth in the regulations. At this time, there is no need for an evidentiary hearing on Duquesne Light's LON. There is no need to consolidate Duquesne Light's LON proceeding with the TrAILCo proceeding. *See* footnote 4.

#### 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.

TrAILCo's request set forth in the Amendment filed to add West Penn Power Company ("West Penn") as a necessary party for purposes of the Amendment is granted in the numbered ordering paragraphs that follow below. A Notice of Appearance should be filed on behalf of the West Penn Power Company. In addition, West Penn may choose to adopt pleadings made subsequent to the filing of the Amendment. In the event West Penn Power Company objects to its joinder, it must file a written objection with the Commission's Secretary's Bureau on or before Friday, March 26, 2010.

#### Presentation of Evidence

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).

Guided by Section 57.75(f), the undersigned ALJ required TrAILCo to serve the entire service list for this proceeding with its Amendment and the documents related thereto.

The undersigned ALJ viewed such a service requirement as 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.

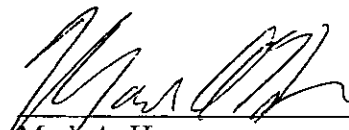
In the Reopening Order issued on August 25, 2009, the undersigned ALJ also required that TrAILCo attach a Notice to Plead to any amendment filed in order to determine how to manage this case moving forward. The undersigned wanted to insure that all parties were provided proper notice of TrAILCo's intention to abandon the plan for the Prexy Facilities and replace the Prexy Facilities with an alternate transmission solution, more particularly described in the Joint Petition for Settlement and Attachments, and give all a chance to become actively involved. As stated above, only Duquesne Light filed an answer to TrAILCo's Amendment. No parties on either the "Limited Service Party List" or the "Full Service List" filed an answer to the Amendment. *See* footnote 2 above. No parties on the Limited Service Party List have requested to be included on the Full Service List in response to the filing of the Amendment. Therefore, the undersigned ALJ requests and will order below that any party on the Full Service List who desires to present evidence regarding the Amendment must indicate an intention to present evidence on or before Monday, March 29, 2010. Such intention must be in written form, filed with the Commission's Secretary's Bureau and served on the undersigned ALJ and the parties on the Full Service List attached hereto. Such intention must also indicate in what form and manner the party desires to present evidence. In the event that no parties express an interest in presenting additional evidence related to the Amendment, the undersigned ALJ intends to close the record and issue a Recommended Decision on Remand which addresses the Joint Petition for Settlement filed in this proceeding.

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

1. That the West Penn Power Company is joined as a necessary party to this proceeding at Docket Nos. A-110172, A-110172F0002, A-110172F0003, A-110172F0004 and G-00071229 and may file an objection to joinder with the Commission's Secretary's Bureau on or before Friday, March 26, 2010. Any objection filed must be served on the undersigned ALJ and on the Full Service List attached to this Order.

2. That any party on the Full Service List who desires to present evidence regarding the Amendment and Joint Petition for Settlement must indicate an intention to present evidence as well as the form and manner in which the party desires to present said evidence on or before Monday, March 29, 2010. Such intention to present evidence must be in writing, filed with the Commission's Secretary's Bureau, and served on the undersigned ALJ and the parties on the Full Service List attached hereto.

Date: March 17, 2010

  
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Mark A. Hoyer  
Administrative Law Judge

**APPLICATION OF TRANS-ALLEGHENY INTERSTATE LINE COMPANY  
DOCKET NOS. A-110172; A-110172F0002; A-110172F0003; A-110172F0004 and  
G-00071229  
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