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March 8, 2018

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor (filing room)
Harrisburg, PA 17120

Re: Application of Transource Pennsylvania, LLC filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the 230 kV Transmission Line Associated with the Independence Energy Connection-East Project in Portions of York County, Pennsylvania; Docket No. A-2017-2640195;
PREHEARING CONFERENCE MEMORANDUM OF YORK COUNTY PLANNING COMMISSION

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission the Prehearing Conference Memorandum of York County Planning Commission in the above-captioned docket. Copies have been served in accordance with the attached Certificate of Service.

Should you have any questions or comments, please feel free to contact me directly.

Very truly yours,

Thomas J. Sniscak
Whitney E. Snyder

Counsel for York County Planning Commission

TJS/WES/das
Enclosures

cc: Honorable Elizabeth H. Barnes (email and first-class mail)
Honorable Andres M. Calvelli (email and first-class mail)
Per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Transource Pennsylvania, :
LLC filed Pursuant to 52 Pa. Code Chapter :
57, Subchapter G, for Approval of the :
Siting and Construction of the 230 kV : Docket No. A-2017-2640195
Transmission Line Associated with the :
Independence Energy Connection-East :
Project in Portions of York County, :
Pennsylvania :

**PREHEARING CONFERENCE MEMORANDUM
OF YORK COUNTY PLANNING COMMISSION**

**TO: THE HONORABLE ELIZABETH H. BARNES
THE HONORABLE ANDREW M. CALVELLI**

Pursuant to Presiding Administrative Law Judges Elizabeth H. Barnes and Andrew M. Calvelli's February 26, 2018 Prehearing Conference Order and 52 Pa. Code § 5.222(d), York County Planning Commission ("YCPC"), by and through its attorneys, Hawke McKeon & Sniscak, LLP, respectfully submits this Prehearing Conference Memorandum in the above-captioned proceeding before the Pennsylvania Public Utility Commission (the "Commission").

I. CONSOLIDATION OF CASES IS INAPPROPRIATE

YCPC opposes consolidation of Transource's Applications at Docket Nos. A-2017-2640195 ("East Proceeding") and A-2017-2640200 ("West Proceeding") because it will create inefficiency for all parties and unnecessary costs for parties only interested in one application. Consolidation may only be ordered "in proceedings involving a common question of law or fact" and the purpose of consolidation is to "avoid unnecessary costs or delay." *See* 52 Pa. Code § 5.81 (a). Those circumstances are not present here.

First, the applications do not involve a common question of law or fact. The East and West Proceedings are different proposals for different geographic regions that will affect different localities and parties, and thus do not present the same facts. Regardless of whether the same legal standard is applicable to each application, that does not mean the proceedings will necessarily involve a common question of law, especially given the standard here is multi-part, *see* 52 Pa. Code §§ 57.76(a), 57.75(e), and the facts of each application differ.

Second, consolidating the proceedings will create, not avoid, unnecessary costs and delay. It appears there will be a very significant amount of evidence in each proceeding. Consolidation of the cases will not make these proceedings more efficient. Instead, consolidation will create one enormous record in which it will be very difficult for all parties to keep track of which discovery, issues, and evidence pertain to which application. It will also waste the time and money of parties only interested in one of the applications to attend hearings or other conferences where the other application is at issue. Moreover, to the extent confidential, highly confidential, or confidential security information is involved, consolidating the cases will result in distributing these materials to more parties than are strictly necessary. Further, a significant number of parties have protested and/or intervened in each application. Consolidation of the applications will also create additional burden and expense of serving hard copy documents.

II. EMINENT DOMAIN OR SHELTER APPLICATIONS

Any forthcoming eminent domain or shelter applications related to the East Proceeding should be consolidated with this proceeding.

III. PETITIONS TO INTERVENE

YCPC takes no position on the petitions to intervene.

IV. SERVICE

Service of paper documents in this proceeding shall be accepted on behalf of YCPC by:

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Counsel for YCPC also requests that any electronic service list utilized by the parties in this proceeding include Thomas J. Sniscak (tjsniscak@hmslegal.com), and Whitney E. Snyder (wesnyder@hmslegal.com). YCPC will do the same for any party making such request.

V. ISSUES

YCPC may address the following issues:

- A. Whether “there is a need for” the Furnace Run-Conastone 230 kV Transmission Line (“Line”), 52 Pa. Code § 57.76(a)(1).
- B. Whether the Line (including siting, construction, operation, and maintenance, and/or rights-of-way) “creates an unreasonable risk of danger to the health and safety of the public,” 52 Pa. Code § 57.76(a)(2), including the property in York County which, upon information and belief, will be directly affected within the 130’ right-of-way and consists of:
 - 53 parcels of land in York County, most of which are farms;
 - 11 wetland sites comprised of 2 acres;
 - 64 acres of forested lands;
 - 13 properties with conservation easements comprised of 67 acres;
 - 43 properties with agricultural security areas comprised of 163 acres;
 - 149 acres of prime agricultural soils (Class 1, 2, 3 and Statewide Significance);

- A natural area site, the North Branch Muddy Creek Natural Area;
 - 8 High Quality Cold Water Fishery stream crossings; and
 - 3 Trout Stocked Fishery stream crossings.
- C. Whether the Line (including siting, construction, operation, and maintenance, and/or rights-of-way) is “in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth,” 52 Pa. Code § 57.76(a)(3), including the York County Comprehensive Plan and the York County Subdivision and Land Development Ordinance.
- D. Whether the Line (including siting, construction, operation, and maintenance, and/or rights-of-way) will have “minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives,” 52 Pa. Code § 57.76(a)(4), including the areas discussed in Issue B above.
- E. “The impact and the efforts which have been and will be made to minimize the impact” of the Line (including siting, construction, operation, and maintenance, and/or rights-of-way) “on: Land use, Soil and sedimentation, Plant and wildlife habitats, Terrain, Hydrology, Landscape, Archeologic areas, Geologic areas, Historic areas, Scenic areas, Wilderness areas, and/or Scenic rivers” in York County, 52 Pa. Code § 57.75(e)(3)(i)-(xii), including the following:
- fragmentation of habitat corridors;
 - fragmentation of agricultural land;
 - impacts on high quality soils (Class 1, 2, 3 and Statewide Significance) and crop production;
 - impacts on and degradation of wetlands and high-quality streams, including wild trout streams and exceptional value wetlands;
 - impacts to floodplains;
 - stormwater runoff impacts that could lead to additional sedimentation in York County streams;
 - impacts on preserved farms and conservation easements;
 - impacts on agri-tourism, including viewsheds;
 - permanent obstacles to crop production in farm fields;
 - limitations on locations available for livestock;
 - limitation of expansion of farm buildings;
 - impacts of stray voltage on livestock and farm equipment;
 - impacts on tree farms, including orchards such as the Shaw Orchards;

- impacts of the vegetation management plan, including the use of herbicides;
 - impacts on the North Branch Muddy Creek Natural Area site;
 - impacts on traffic and local roadway and bridge infrastructure during construction;
 - impacts on soil erosion during construction and post construction; and
 - opportunities for invasive species with deforestation.
- F. The availability of reasonable alternative routes, 52 Pa. Code § 57.75(e)(4).
- G. “The terms, conditions or modifications, of the location, construction, operation or maintenance of the [L]ine” the Commission should impose, if the Application is approved. 52 Pa. Code § 57.76(a).
- H. Whether the Line (including siting, construction, operation, and maintenance, and/or rights-of-way) ensures the protection of the environment pursuant to Pa. Const. of 1986, Art. I, § 27 and *Pa. Env'tl. Def. Foundation v. Commonwealth*, 161 A.3d 911 (Pa. 2017), including the areas and impacts discussed in Issues E and B.

YCPC reserves its right to raise or address other issues as they arise during the course of this proceeding.

VI. NO STATUTORY DEADLINE APPLIES

The federal “backstop” authority does not apply here. Specifically, it is incorrect to set the schedule in this proceeding on the belief the Federal Energy Regulatory Commission (“FERC”) jurisdiction over an application to approve the siting of transmission facilities in a National Interest Electric Transmission Corridor will occur if the PUC does not issue a decision within one year of the utility’s application to the state, 16 U.S.C. § 824p(b)(1)(C). It clearly does not apply here because there are currently no designated National Interest Electric Transmission Corridors (“NIETC”).

FERC has limited jurisdiction over the siting of transmission facilities, and may only intercede on the states' jurisdiction in this area when expressly authorized to do so under 16 U.S.C.

§ 824p(b)(1), which states:

Except as provided in subsection (i), the Commission may, after notice and an opportunity for hearing, issue one or more permits for the construction or modification of electric transmission *facilities in a national interest electric transmission corridor designated by the Secretary* under subsection (a) if the Commission finds that—

(1)

(A) a State in which the transmission facilities are to be constructed or modified does not have authority to—

(i) approve the siting of the facilities; or

(ii) consider the interstate benefits expected to be achieved by the proposed construction or modification of transmission facilities in the State;

(B) the applicant for a permit is a transmitting utility under this chapter but does not qualify to apply for a permit or siting approval for the proposed project in a State because the applicant does not serve end-use customers in the State;

or

(C) a State commission or other entity that has authority to approve the siting of the facilities has—

(i) *withheld approval for more than 1 year after the filing of an application seeking approval pursuant to applicable law or 1 year after the designation of the relevant national interest electric transmission corridor, whichever is later;*

or

(ii) conditioned its approval in such a manner that the proposed construction or modification will not significantly reduce transmission congestion in interstate commerce or is not economically feasible;

(2) the facilities to be authorized by the permit will be used for the transmission of electric energy in interstate commerce;

(3) the proposed construction or modification is consistent with the public interest;

(4) the proposed construction or modification will significantly reduce transmission congestion in interstate commerce and protects or benefits consumers;

(5) the proposed construction or modification is consistent with sound national energy policy and will enhance energy independence; and

(6) the proposed modification will maximize, to the extent reasonable and economical, the transmission capabilities of existing towers or structures.

Id. (emphasis added).

Currently, the Secretary of the Department of Energy (Secretary) has not validly designated any NIETCs. The Secretary must conduct a study every three years and based on that study decide whether to designate NIETCs. The most recent study, which was conducted in 2015 did not designate any NIETCs.¹ The Secretary previously conducted two studies (in 2006 and 2009), and designated NIETCs in 2007, one in the Mid-Atlantic and one in Southern California and western Arizona. The NIETCs were to remain in place for 12 years. The Secretary did not designate NIETCs in 2009. In 2001, the Ninth Circuit vacated the 2007 NIETC designations in *California Wilderness Coalition v. U.S. Dept. of Energy*, 631 F.3d 1072 (9th Cir. 2011). Thus, there are currently no validly designated NIETCs and therefore no FERC jurisdiction exists over the Application.

VII. WITNESSES

YCPC's witnesses in this matter at this time will be Felicia Dell and Wade Gobrecht. YCPC reserves the right to add other witnesses and they will be designated in pre-submitted testimony. YCPC's business address, telephone number, and e-mail address are:

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¹ Available at <https://www.energy.gov/sites/prod/files/2015/09/f26/2015%20Report%20on%20Designation%20of%20National%20Corridors.pdf>

YCPC reserves its right to adopt any testimony of other witnesses, in whole or in part, and to offer additional witnesses and exhibits as may be necessary to address the testimony, exhibits, or evidence that may be presented by any party in this proceeding.

VIII. PROCEDURAL SCHEDULE

YCPC supports the schedule OCA has proposed in this proceeding and believes the application must be thoroughly vetted. Transource had a very large amount of time to file its application and to submit its testimony and exhibits. Simply put, Transource should not benefit by its delay in filing and now claim it has impending time constraints when such constraints are self-induced.

YCPC believes, at a minimum, two public input sessions are necessary for each day of public input sessions scheduled, one in the morning and one in the evening. There should be at least two public input session days held in York County. YCPC requests that at a minimum there should be two public input sessions held in southern York County, one in the morning or early afternoon and one in the evening. The public has clearly shown a significant interest in Transource's application, as the voluminous number of intervenors and protestants demonstrates. Transource's proposed route through York County will affect many residents, home owners, businesses, and other entities, and the Commission should ensure adequate provision for public input in this proceeding.

IX. OTHER MATTERS

A. Exchange Of Exhibits

YCPC will work with all parties to this proceeding to develop a mutually-agreeable plan for the exchange of exhibits.

B. Admissions And Stipulations

YCPC is willing to make admissions as appropriate and work with the other parties as to developing mutually-agreeable stipulations.

C. Transcripts

YCPC will work with all parties to this proceeding to develop a mutually-agreeable plan for transcript turnaround.

D. Discovery

YCPC will work with the parties to this proceeding to develop a mutually-agreeable discovery plan and schedule, including but not limited to modifications to regulations or procedures.

E. Briefing Outline

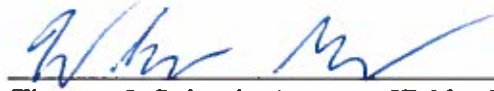
YCPC will work with the parties to this proceeding to develop a mutually-agreeable briefing outline. YCPC believes at this stage of the case it is too early to develop a briefing outline as the parties have not had sufficient time to fully develop the issues in this case.

F. Settlement

There have been no settlement discussions to date, but YCPC is willing to participate in settlement discussions with the other parties.

WHEREFORE, the York County Planning Commission respectfully submits this
Prehearing Conference Memorandum.

Respectfully submitted,



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Date: March 8, 2018

Counsel for York County Planning Commission

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Thomas J. Sniscak
Whitney E. Snyder

Dated this 8th day of March, 2018.