

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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July 5, 2018

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

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 Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Prehearing Memorandum in the above-referenced proceeding.

Letter to Secretary

July 5, 2018

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Copies have been served per the attached Certificate of Service.

Respectfully Submitted,

/s/Darryl A. Lawrence

Darryl A. Lawrence

Senior Assistant Consumer Advocate

PA Attorney I.D. # 93682

E-Mail: DLawrence@paoca.org

Enclosure

cc: Honorable Elizabeth H. Barnes, ALJ
Honorable Andrew M. Calvelli, ALJ
Certificate of Service

CERTIFICATE OF SERVICE

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 : P-2018-3001878
at the Rice Substation in Franklin County, 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, : 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, : A-2018-3001881,
Pennsylvania for the siting and construction of the 230 kV : *et al.*
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 Prehearing Memorandum, 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 5th day of July.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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.

A-2018-3001881,
et al.

SECOND PREHEARING MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to the Second Prehearing Conference Order of June 5, 2018, the Third Prehearing Order of June 26, 2018 and Section 333 of the Public Utility Code, 66 Pa.C.S. Section 333, the Office of Consumer Advocate (OCA) provides the following:

I. INTRODUCTION

In the interest of brevity, the OCA will not repeat the extensive procedural history and background set forth in its initial Prehearing Conference Memoranda, submitted March 8, 2018. Pursuant to 52 Pa. Code Section 333, the OCA incorporates those sections by reference. OCA Prehearing Memoranda of March 8, 2018, Docket Nos. A-2017-2640200 and A-2017-2640195, at 1-7. The OCA supplements those sections as follows.

Since the initial Prehearing Conference on March 13, 2018, the ALJs issued a Procedural Order on March 28, 2018 and an Amended Order on March 28, 2018. A total of eight Public Input hearings were convened, four in York County on May 9 and 14 and four in Franklin County on May 22 and 23. A total of 250 witnesses testified at those public input hearings. Subsequently, on May 29 and 30, on-site hearings were held in Franklin County and on June 1,

on-site hearings were convened in York County for the purpose of receiving sworn testimony for all of those affected landowners who requested a site visit. During the Franklin County on-site hearings, 52 witnesses offered sworn testimony relevant to the impacts on the use and enjoyment of their land, the loss of agricultural productivity, negative impacts on businesses, impacts on the viewsheds, the well water quality, detrimental effects upon protected waterways and historic sites, among other adverse effects. In York County, many witnesses also testified relevant to the same range of issues.¹

On May 15, 2018, Transource submitted 133 Eminent Domain Applications against all but three of the affected landowners named in the Company's Application, Attachment 5. On that same date, two petitions were filed seeking Commission approval of buildings to shelter control equipment at the proposed Rice and Furnace Run Substations and assigned Docket Nos. P-2018-3001878 and P-2018-2001883, respectively. On June 1, 2018, the OCA filed Notices of Intervention in those dockets as well as a Motion to Amend the Procedural Schedule. Through that Motion, the OCA sought at least a sixty-day extension of the deadline for the service of written intervenor direct testimony due to the extensive delays in Transource's service of responses to OCA's interrogatories. As the initial schedule called for written direct testimony by intervenors to be served on July 25, 2018, it was clear at that juncture that OCA would not have sufficient time to adequately prepare and present its direct case. Transource filed and served an Answer to that Motion.

On June 6, 2018, the ALJs issued a Second Prehearing Conference Order in accordance with 66 Pa.C.S. Section 333, scheduling the conference for July 9, 2018 at 10:00 am. This Order was published in the Pennsylvania Bulletin on June 16, 2018. 48 Pa. B. 3679. At the OCA's

¹ As OCA has not yet received the York County transcripts of the site view hearings, OCA cannot provide a precise number of witnesses testifying.

request, the ALJs scheduled an informal conference call on June 15 to discuss the OCA's Motion and the ongoing discovery delays. During that conference, Stop Transource Franklin County, Citizens to Stop Transource York County and the York County Planning Commission all expressed support for the OCA's Motion.

On June 26, the ALJs issued the Third Prehearing Order which granted the OCA's Motion for an extension of the time allowed for intervenor direct testimony from July 25 to September 25, 2018.

Transource had submitted Objections to OCA Set XX, Nos. 2-6 on June 22, 2018, asserting that Set XX-2 was "overly broad, unduly burdensome and irrelevant" to the siting applications and that the information requested "is not readily maintained." Objections at 1-2. Similarly, Transource argued that Set XX, Nos. 3-6, would require "considerable time and effort, estimated to be months of dedicated work." Objections at 4-5.

On June 29, OCA orally withdrew one subpart of the Set XX Interrogatories, No. 2(b) and informed counsel for Transource of the intention to file a Motion to Compel on July 2, 2018. Subsequent to that conversation, Transource counsel orally indicated that it would timely submit "full and complete answers" to the OCA's Set XX. Upon this representation, counsel for Transource and OCA stipulated that the deadline for the submission of a motion to compel answers to Set XX would be extended by seven days or to July 9, 2018; this agreement was approved by ALJ Barnes. Also on June 29, the Commission served a Notice of the Second Prehearing Conference upon all of the parties to the consolidated proceedings.

II. SERVICE LIST

The OCA is represented in this proceeding by Senior Assistant Consumer Advocates Darryl A. Lawrence and Dianne E. Dusman, as well as Assistant Consumer Advocates David T.

Evrard and Phillip D. Demanchick. One hard copy of all documents should continue to be served on the OCA as follows:

Phillip Demanchick
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Telephone: (717) 783-5048
Fax: (717) 783-7152
Email: Transource@paoca.org

Additionally, the OCA will continue to accept e-service of all documents at the following e-mail address: Transource@paoca.org.

As to the Service List going forward, the OCA respectfully requests the ALJs to inquire of the current parties (the OCA has 294 Parties on its service list at present) whether hard copies of all documents are required. The OCA is willing to serve any number of parties through electronic means, but serving this extensive service list with hard copies of all documents being exchanged in this matter is becoming increasingly difficult and costly.

III. ISSUES

A. Introduction

Through the Second Prehearing Conference Order, the ALJs instructed the parties to be prepared to discuss the following:

1. Consolidation of cases
2. Issues
3. Feasibility of alternative siting routes including the use of existing transmission lines owned by PPL Electric Corporation, Mid-Atlantic Interstate Transmission, LLC, FirstEnergy Company and/or PECO Energy Company
4. Discovery issues including OCA's access to PROMOD, a software model used by PJM as part of its Market Efficiency analysis
5. Status of technical conference with representatives from Transource and/or PJM.
6. Amendments to the Procedural Schedule

Second Prehearing Conference Order at 3. Regarding consolidation, through the ALJs' Third Prehearing Order of June 26, 2018, all of the 133 eminent domain applications, as well as the petitions for approval of buildings at Docket Nos. P-2018-2001878 and P-2018-2001883, were consolidated with the application proceedings. The OCA is aware of no other consolidation issues that remain unresolved.

As to the range of issues, the OCA will be prepared to discuss any of the issues relevant to transmission line applications pursuant to the Commission regulations at 52 Pa. Code Section 57.71-57.77, as set forth in its Initial Prehearing Conference Memorandum, at 8-10, and incorporated by reference herein pursuant to 52 Pa. Code Section 33.3. The scope of the issues required to be addressed pursuant to the Commission's regulations remains unchanged, except to the extent expanded by the consolidation of the eminent domain applications (EDAs). The OCA will therefore be prepared to discuss such additional issues within the scope of the Commission's regulations or interim guidelines codified at 52 Pa. Code Section 69.3103 and 52 Pa. Code Section 57.91

In addition to the above list of topics, through an email on June 29, 2018, ALJ Barnes requested that the parties submitting prehearing memoranda address whether a new statute, House Bill 2468, which was signed into law by Governor Tom Wolf on June 24, 2018, impacts the instant proceeding. This issue and the others listed by the ALJs in the Second Prehearing Conference Memorandum are addressed below.

B. Feasibility of Alternative Siting Routes

Initially, the OCA would note that the Commission's regulations address the issue of reasonable alternative routes. As part of its initial application, Transource was required to provide:

A general description of reasonable alternative routes to the proposed HV line, including a description of corridor planning methodology, a comparison of the merits and detriments of each route, and a statement of the reasons for selecting the proposed HV line route;...

52 Pa. Code Section 57.72(c)(10); *see also* 52 Pa. Code Section 57.75(e)(4). In its Applications, Transource has included some alternatives to its proposed route.

As part of its investigation of this matter, the OCA is actively analyzing alternatives to the proposed project, both wires and non-wires, and is also investigating the existence and relevance of numerous underutilized transmission infrastructure and rights-of-way within the proposed project area. These analyses will be included in the OCA's Direct Testimony.

To the extent that Transource decides to modify or alter its current project in an attempt to access existing infrastructure or rights-of-way, such a scenario could raise a host of concerns. As discussed previously in this matter, FERC Order 1000 has opened up transmission projects to a market-based platform. PJM accepted over 40 separate proposals during its "open window" process from numerous market participants wherein projects were proposed to address the alleged AP South Interface congestion. Should Transource seek to materially deviate from its filed Application, it is not known whether PJM would reassess the Project and conduct a new open window process. Moreover, any material deviations from the current preferred routes would likely require further notice to additional impacted landowners, and, in fact, may require Transource to submit a new application.

To the extent that the ALJs wish to discuss this matter further, or would like more information, the OCA is willing to engage in such further discussions as the ALJs so require.

C. Status of Discovery

To summarize, discovery issues regarding OCA Interrogatories Sets I-XIX have been substantially resolved. Transource served Responses to Set XX on July 2, 2018, so the OCA and

its team of consultants are in the process of evaluating those responses. As noted earlier, the OCA and the Company agreed that the deadline for a motion to compel in the event the answers are insufficient may be postponed to July 9, 2019; ALJ Barnes orally approved this stipulation. The OCA served its Set XXI on July 3, 2018; responses are due on July 24, 2018.

As noted earlier, the technical conference with OCA consultants and representatives of PJM and Transource was held on June 8, 2018, prior to service of OCA Set XX. Discussions regarding access to the PROMOD license were mutually agreed to be discontinued due to substantial legal barriers and unacceptable conditions on the OCA consultants' access.

In its Objections to OCA's Interrogatories, Set XX-2-6, Transource asserts that an analysis to reevaluate Project 9A is underway and is expected to be presented at the October TEAC meeting. Transource Objections at 3. The OCA would note that, in light of this information, the schedule proposed below must be subject to follow-up discovery on any such reevaluation. The OCA would also reserve the right to supplement its testimony based on new information received after service of direct testimony relevant to the reevaluation of Project 9A by PJM.

In addition, Transource should serve any reevaluation analysis on the parties as soon as it is available, pursuant to its continuing obligation to supplement discovery responses under the Commission's Rules of Procedure, specifically 52 Pa. Code Section 5.332. Such a reevaluation analysis would be responsive to OCA Interrogatories Set XI-10(a)-(e). The OCA specifically requests that the ALJs incorporate a specific provision in their order following this Prehearing Conference pursuant to 52 Pa. Code Section 5.332(3), which specifically states that "[a] duty to supplement responses may be imposed by order of the presiding officer." Such an order should be broad enough to encompass all responses to OCA Set XI-10(a)-(e), even if such updates are not specifically part of the TEAC presentation.

Finally, as to discovery modifications, the OCA proposes only that the post-rebuttal modifications contained in the ALJs' Amended Procedural Order be made effective following November 27, 2018, the date for the submission of Rebuttal Testimony, if the OCA's proposed schedule is adopted. That Order reads, in pertinent part:

That the discovery rules for this proceeding, from October 3, 2018 forward are modified as follows:

- a. Answers to written interrogatories, requests for production, and requests for admissions shall be served in-hand within ten (10) calendar days of service.
- b. Objections to written interrogatories, requests for production, and requests for admission shall be communicated orally within three (3) calendar days of service of the interrogatories; unresolved objections shall be served upon the ALJ within five (5) business days of service of the interrogatories.

The OCA respectfully requests that these modifications be made effective from the final date for the submission of rebuttal testimony.

D. Impacts of House Bill 2468

As noted earlier, ALJ Barnes requested via email that the parties address whether a new statute, House Bill 2468, which was signed into law by Governor Tom Wolf on June 24, 2018, impacts the instant proceeding. That Act amends Chapter 2, entitled "Limitations on Use of Eminent Domain," codified at 26 Pa. C.S. Section 202, 208. The new Act imposes additional protections upon "conservation easements," as defined by the Conservation and Preservation Easements Act (CPEA), codified at 32 Pa. C.S. Section 5051-5059:

"Conservation easement." A nonpossessory interest of a holder in real property, whether appurtenant or in gross, imposing limitations or affirmative obligations, the purposes of which include, but are not limited to, retaining or protecting for the public and economic benefit the natural, scenic, or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; protecting, conserving or managing the use of natural resources; protecting wildlife; maintaining or enhancing land, architectural, archaeological or cultural aspects of real property.

32 P.S. Section 5053. Many of the landowners who testified during the May hearings asserted that the land that they owned was subject to this type of easement or agricultural security easements under Pennsylvania law.² ALJ Barnes also drew the parties' attention to another section of the CPEA entitled "Limitation on certain governmental actions" which reads, in pertinent part, as follows:

(a) APPROVAL REQUIRED FOR CONDEMNATION AND FOR CERTAIN OTHER ACTIONS BY AN AGENCY OF THE COMMONWEALTH.—No agency of the Commonwealth having or exercising powers of eminent domain shall condemn for any purpose any land within any agricultural security area which land is being used for productive agricultural purposes (not including the growing of timber) unless prior approval has been obtained in accordance with the criteria and procedure established in this section from the Agricultural Lands Condemnation Approval Board ... *The condemnation approval specified by this subsection shall not be required for an underground public utility facility or for any facility of an electric cooperative corporation or for any public utility facility the necessity for and the propriety and environmental effects of which has been reviewed and ratified or approved by the Pennsylvania Public Utility Commission or the Federal Energy Regulatory Commission.*

3 Pa.C.S. Section 913(emphasis added). The new Act adds to the definition in the CPEA by specifying the meaning of "open space benefits" to include, *inter alia*, the protection and conservation of water resources and watersheds, the protection and conservation of farmland and the protection of natural, scenic and historic aspects of the environment. 26 Pa.C.S. Section 202 (Definitions). Further, the Act imposes a new procedural step upon an entity exercising eminent domain power, in that any such entity must seek prior approval from the orphans' court of the county in which the protected land and is located. 26 Pa.C.S. Section 208(a). While the

² The OCA would note that the specific phrase "agricultural conservation easement" is defined in the Agricultural Area Security Law, as follows:

An interest in land, less than fee simple, which interest represents the right to prevent the development or improvement of a parcel for any purpose other than agricultural production. The easement may be granted to any third party or to the Commonwealth, to a county governing body or to a unit of local government. It shall be granted in perpetuity as the equivalent of covenants running with the land.

meaning of this part of the amendment seems clear, the following sentence creates an exception for certain public utility projects. That provision states:

The condemnation approval specified by this subsection shall not be required for *any public utility facility or other project that is subject to approval by a federal agency, the necessity for the propriety (sic) and environmental effects of which has been reviewed and ratified or approved by the Pennsylvania Public Utility Commission or the Federal Energy Regulatory Commission*, regardless of whether the right to establish and maintain such underground or other public utility facility is obtained by condemnation or by agreement with the owner.

26 Pa. C.S. Section 208(emphasis added). The language of this sentence, while close to that of the CPEA is not an exact replication of the language of the CPEA (italicized in Section 913(a) quoted above). At this juncture, the OCA is unsure whether this difference is significant.

Despite the ambiguity in the statutory language, as a general matter, through the expansive new definition of “open spaces” mentioned above, the new law underscores the Commonwealth’s continuing commitment as a trustee of our natural resources to protect and preserve such resources, pursuant to Article 1, Section 27 of the Pennsylvania Constitution. Pennsylvania Environmental Defense Foundation, 161 A.3d 911 (2017).

IV. EXPERT WITNESSES

The OCA has made no changes to its roster of expert consultants since the submission of the initial Prehearing Memorandum. To repeat, the OCA intends to present direct, rebuttal, and surrebuttal testimony of the following expert witnesses, as may be necessary.

Name:	Peter Lanzalotta
Subject Matter:	Technical and Engineering Issues
Mailing Address:	Lanzalotta & Associates LLC 14250 Royal Harbour Court #914 Fort Myers FL 33908 Phone: 239-433-1428 Fax: 239-267-0087 petelanz@lanzalotta.com

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Name: Geoffrey Crandall
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Subject Matter: Non-Transmission Alternatives
Mailing Address: MSB Energy Associates, Inc.
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Middleton, WI 53562
mendl@msbnrg.com

The OCA specifically reserves the right to call additional witnesses, as necessary. If the OCA determines that any additional witness may be necessary for any portion of its presentation, Your Honors and all parties of record will be promptly notified.

V. PROCEDURAL SCHEDULE

As the ALJs granted the OCA's Motion to Amend the Procedural Schedule, Intervenor Direct Testimony is now due on September 25, 2018. Third Prehearing Order at 10. The OCA proposes the following dates for the remainder of the procedural schedule:

Intervenor Direct Testimony	September 25, 2018
Rebuttal Testimony	November 27, 2018
Surrebuttal Testimony	January 16, 2019
Written Rejoinder	January 30, 2019
Hearings	February 12-15, 18-22, 2019
Main Briefs	March 27, 2019
Reply Briefs	April 17, 2019

The OCA's proposed schedule will provide a reasonable time frame for investigation and analysis of this matter, such that all parties will be able to fully participate and present their

cases. It is clear from the attendance and participation at the eight public input hearings already convened that this matter has generated substantial public interest and the Commission's decision will significantly affect the lives of the residents of York and Franklin Counties in many ways.

The OCA would also note that the Commission's regulations address landowners' rights to public hearings on any eminent domain applications. *See* 52 Pa. Code Section 57.91 (the PUC-required notice advises property owners that they have a right to a public hearing when the utility seeks to condemn their property.). With the consolidation of the 133 Eminent Domain Applications, additional hearings specific to those applications are required.

The OCA is willing to work with the other parties to propose a mutually agreeable schedule for these additional hearings in York and Franklin Counties.

VI. TRANSCRIPTS

Relative to transcripts, the OCA proposes that transcripts continue to be expedited such that they are received within seven to ten days of the hearing dates. Following the evidentiary hearings, the OCA proposes that the transcripts be due five to seven days following the hearing dates.

VII. CONCLUSION

WHEREFORE, the Office of Consumer Advocate respectfully submits this Second Prehearing Conference Memorandum.

Respectfully submitted,

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DATED: July 5, 2018
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