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July 5, 2018

Via Electronic Filing

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.**

**A-2017-2640195
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.**

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.**

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.**

**A-2018-3001881,
*et al.***

Dear Secretary Chiavetta:

Attached for electronic filing please find the Second Prehearing Memorandum of Stop Transource Franklin County in connection with the above-referenced proceeding.

Rosemary Chiavetta, Secretary
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July 5, 2018

Copies have been served per the attached Certificate of Service.

Respectfully Submitted,

CURTIN & HEEFNER LLP



BY: _____

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Enclosure

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

CERTIFICATE OF SERVICE

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. A-2017-2640195
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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. 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. A-2018-3001881,
et al.

I hereby certify that I have this day served a true copy of the foregoing Second Prehearing Memorandum in the manner and upon the persons listed below.

Dated: July 5, 2018

CURTIN & HEEFNER LLP



By: _____

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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. A-2017-2640195
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et al.

SECOND PREHEARING MEMORANDUM

Pursuant to the Prehearing Conference Order dated June 5, 2018 and Section 333 of the Public Utility Code, Stop Transource Franklin County (“Stop Transource” or “STFC”), by counsel, respectfully submits this Second Prehearing Memorandum.

I. BACKGROUND

On May 15, 2018, Transource Pennsylvania, LLC (“Transource” or “Company”) filed

133 eminent domain applications (“Eminent Domain Applications”), and two Petitions for findings that building to shelter control equipment at the proposed Rice Substation in Franklin County (Docket No. 2018-3001878, hereinafter “Franklin County Shelter Petition”), and for the Furnace Run Substation in York County (Docket No. 2018-3001883, hereinafter “York County Shelter Petition”) (collectively, “Shelter Petitions”). The deadline for filing protests and/or interventions in the Eminent Domain Applications and Shelter Petitions is July 6, 2018.

Transource’s additional filings prompted the Commission to issue the Second Prehearing Order in the ongoing case of Transource’s two siting applications to construct and operate the Pennsylvania portions of proposed new extra high-voltage (“EHV”) transmission lines and two new substations, including one in Franklin County, filed December 27, 2017 and docketed at the Commission under A-2017-2640195, and A-2017-2640200 (hereinafter “Siting Applications”).

On December 23, 2017, the Public Utility Commission (“Commission”) approved a settlement of Transource’s application for certification under Docket Nos. A-2017-2587821 and G-2017-2587822. Transource sought approval of the settlement and certification prior to filing the Siting Applications so that it could “avoid potential environmental and engineering/constructability issues, to the extent possible, when developing and evaluating alternative transmission line routes.” See Transource Pennsylvania LLC Statement in Support of Joint Petition for Stipulation and Settlement of All Issues at 6; see also, Initial Decision on Application of Transource Pennsylvania, LLC for all of the Necessary Authority, Approval and Certificates of Public Convenience: (1) to Begin to Furnish and Supply Electric Transmission Service in Franklin and York Counties, Pennsylvania; (2) for Approval of Certain Affiliated Interest Agreements; and (3) for Any Other Approvals Necessary to Complete the Contemplated Transactions, (Docket No. A-2017-2587821 and G-2017-2587822) (August 3, 2017) p. 16.

In the instant Siting Applications proceeding, on February 20, 2018, Stop Transource Franklin County filed its Petition to Intervene and Protest opposing the Company's above-referenced Application in Franklin County, after which the proceeding was consolidated. Stop Transource Franklin County is an association of Franklin County residents and business owners whose purpose is to stop the Transource Independence Energy Connection Project ("IEC Project") in Franklin County. Stop Transource Franklin County represents its members' property rights, consumer rights, and environmental rights, and seeks to preserve the agricultural character of Franklin County, and the County's other local natural, scenic, and historic resources. The siting and construction of the proposed extra-high voltage ("EHV") transmission lines and substations and the taking of lands threatens these interests.

As set forth in STFC's Second Petition to Intervene and Protest, if the Commission grants the Shelter Petitions, the Eminent Domain Applications, and the Siting Application for the IEC Project, it will be contrary to the Commission's trustee obligations and violate the members' individual environmental rights, including the "right to clean air, pure water, and to the preservation of the natural, scenic, historic and aesthetic values of the environment." Pa. Const. art. 1, § 27.

II. ITEMS FOR DISCUSSION PER JUNE 5, 2018 ORDER

1. Consolidation of Cases

STFC supports consolidation of the cases at this time under the Commission's regulations. 52 Pa. Code § 57.75(i). Transource failed to follow the Commission's Guidelines on Siting by failing to file the Eminent Domain Applications and the Shelter Petition, as well as the certification application, together with the Siting Applications. See 52 Pa. Code § 69.3103. As such, STFC believes it is appropriate to consider all of the Applications and the Petitions

together.

2. Issues

STFC identified seven potential issues in its First Prehearing Memorandum, and repeats those issues as if set forth below. Importantly, Transource must address a number of issues related to impacts on environmental resources in order for the Commission to make a determination that the Project complies with the residents' constitutionally protected environmental rights and all statutory and regulatory requirements, including those under 52 Pa. Code § 57.76. STFC reserves its right to raise additional issues. In addition to the substantive issues already identified in STFC's First Prehearing Memorandum, STFC identifies and discusses the following new issues, all of which relate to due process concerns of the members of STFC: A) Proof of Notice of Public Input Hearings; B) Additional Public Input Hearings Are Required Now That the Shelter Petitions and Eminent Domain Applications Have Been Filed; C) Transource Cannot Condemn Properties Within An Agricultural Security Area Without Pre-Approval by the Agricultural Lands Condemnation Approval Board and Local Agencies and Without Proof of No Reasonable and Prudent Alternative, and No Unreasonable Adverse Effect Upon the Preservation and Enhancement of Agricultural and Municipal Resources; D) Transource is Required to Seek Orphan's Court Approval for Condemnation of All Lands Subject to a Conservation Easement; and E) The Commission Has Not Approved The Necessity, The Propriety or The Environmental Effect of Transource's IEC Project. We address each due process issue below.

A. Proof of Notice of Public Input Hearings

Transource has not produced the proof of advertising for the Public Input Hearings in Franklin and York Counties that occurred in May 2018. The Order dated March 28, 2018, and

amended April 2, 2018, required Transource to arrange for publication of advertisements of all eight (8) of the public input hearings once per week for two consecutive weeks prior to the dates of the public input hearings. Proofs of publication were to be filed with the Secretary of the Commission, with copies to the presiding officers. On May 18, 2018, STFC requested copies of the proof of advertisement from Transource but have yet to receive copies. STFC respectfully requests an update on the status of the proofs and inclusion of those proofs on the docket.

B. Additional Public Input Hearings Are Required Now That the Shelter Petitions and Eminent Domain Applications Have Been Filed

There is significant public interest in the Shelter Petitions and the Eminent Domain Applications and the parties and public are entitled to hearings. 52 Pa. Code § 57.91. The Eminent Domain Applications were filed on May 15, 2018, one day after the final Public Input Hearings in York County, and just seven (7) days before the Public Input Hearings that were held in Franklin County on May 22 and May 23rd, 2018, with many parties not receiving service at the time the Franklin County hearings were held. It is our understanding that there is further public interest in the Petitions and the Eminent Domain Applications, such that additional public input hearings should be held. The list of property owners in the proposed Right-of-Way in the Siting Application is not identical to the current list of property owners in the proposed Right-of-Way.

The public in attendance at the Public Input Hearings was not instructed as to the existence of eminent domain, and were only not instructed as to any applications for shelter petitions and requests for exemption from local regulations. There are now additional parties to the proceeding based on the 133 eminent domain applications. The due process rights of the parties and all individuals who may wish to testify about the newly filed Shelter Petitions and the Eminent Domain Applications at a hearing must be honored. STFC respectfully requests that the

Commission make every effort to hold public input hearings in the parties' respective counties, and not solely in Harrisburg.

C. Transource Cannot Condemn Properties Within An Agricultural Security Area Without Pre-Approval by the Agricultural Lands Condemnation Approval Board and Local Agencies and Without Proof of No Reasonable and Prudent Alternative, and No Unreasonable Adverse Effect Upon the Preservation and Enhancement of Agricultural and Municipal Resources

Transource is required to obtain approval from the Agricultural Lands Condemnation Approval Board (“ALCAB”) and additional local entities before seeking to condemn properties that are part of an Agricultural Security Area (“ASA”). The Agricultural Area Security Law protects properties that are “unique and irreplaceable land resources of Statewide importance” by placing them in an ASA to prevent “urban pressure,” “scattered development” and “incompatible nonfarm land uses that may render farming impracticable.” 3 P.S. § 902. Properties within an ASA may only be taken by eminent domain upon a showing that there is “no reasonable and prudent alternative to the utilization of lands within the agricultural security area for the project” or that the project would not have an unreasonably adverse effect upon: 1) the preservation and enhancement of agriculture or municipal resources within the area; 2) or upon the county, municipality and the Commonwealth’s environmental and comprehensive plans, goals, resource plans, policies or objectives. 3 P.S. § 913(d). In addition to the protection from eminent domain, the Agricultural Area Security Law protects lands within an ASA are protected from any local laws or ordinances that would “restrict farm structures or farm practices within the area,” unless the restriction “bears a direct relationship to the public health or safety” and required Commonwealth agencies to modify all regulations to consistent with the Agricultural Area Security Law and “the maintenance of viable farming.” 3 P.S. §§ 911(a), 912; 7 Pa. Code § 138l.4

Section 913 of the Agricultural Area Security Law protects agricultural security areas against the adverse impacts from condemnation. All parties that intend to condemn land within an ASA must receive approval by ALCAB, and the governing bodies of the county, municipality and agricultural committees in which the proposed condemnation is to occur. 3 P.S. § 913(b).¹ ALCAB and the other governing bodies “have a duty to reject all applications for condemnation in which the applicable basis for approval is not demonstrated by the evidence presented.” *Maryland and Pennsylvania R.R. Preservation Auth. v. Agricultural Lands Condemnation Approval Bd.*, 704 A.2d 1149 (Pa. Commw. Ct. 1998)(affirming ALCAB’s denial of application to condemn lands within the agricultural security area because the Authority did not meet its burden to show that the agricultural security area will not be substantially impacted). The Agricultural Area Security Law declares that it is the policy of the Pennsylvania “to conserve and protect agricultural lands.” 3 P.S. § 902.

Transource’s Siting Applications indicate that the proposed ROW crosses lands within ASAs in both Franklin and York Counties. More recently, Transource filed eminent domain applications with the Commission, including those that seek to condemn land contained within ASAs.² As such, Transource must seek ALCAB pre-approval, and provide 30-day notice to

¹ Section 913(b) provides:

No political subdivision, authority, public utility or other body having or exercising power of eminent domain shall condemn any land within any agricultural security area for any purpose *unless prior approval has been obtained* from the Agricultural Lands Condemnation Approval Board and from each of the following bodies: the governing bodies of the local government unites encompassing the agricultural security area, the county governing body, and the Agricultural Security Area Advisory Committee. Review by the Agricultural Lands Condemnation Approval Board and the other indicated bodies shall be in accordance with the criteria and procedure established in this section.

3 P.S. § 913(b) (emphasis added).

² Transource did not serve counsel of record in the consolidated proceedings with copies of Eminent Domain Applications.

ALCAB and the local governing bodies, including the counties, and the respective agricultural securities committees. 3 P.S. § 913(c). ALCAB is an independent administrative board made up of the Director of the Office of Policy and Planning, the Secretary of Agriculture, the Secretary of Environmental Resources, the Secretary of Transportation, or their respective designees, and two active farmers appointed by the Governor. ASAs exist in both Franklin County, and York County, and are overseen by the Franklin County Land Preservation Board, and by the York County Agricultural Land Preservation Board. 71 P.S. § 106. ALCAB and the other reviewing parties are to reject applications for condemnation unless it is determined that:

(A) the proposed condemnation would not have an unreasonable adverse effect upon the preservation and enhancement of agriculture or municipal resources within the area or upon the environmental and comprehensive plans of the county, municipality and the Commonwealth, or upon the goal, resource plans, policies or objectives thereof; or

(B) there is no reasonable and prudent alternative to the utilization of lands within the agricultural security area for the project.

3 P.S. § 913(d). The party seeking condemnation has the burden of proving that the condemnation does not adversely affect the entire agricultural area, not solely evidence regarding the impact on the sole property sought to be condemned. *See, Northwestern Lehigh School District v. Agricultural Lands Condemnation Bd.*, 559 A.2d 978 (Pa. Commw. Ct. 1989) (affirming ALCAB’s denial of the where the party seeking condemnation made no study of the effect of the proposed condemnation on the entire agricultural security area). At a minimum, Transource faces a 60-day wait time before it may claim a “deemed approval” for those lands. 3 P.S. § 913 (f).

1) *The Agricultural Area Security Law Exemptions Do Not Apply*

Transource’s Siting Applications do not reference any pre-approval or applications for approval, which suggests that Transource might be seeking to assert that the Agricultural Area

Security Law exempts all public utilities from seeking the required review. Any such assertion would be incorrect. The Agricultural Area Security Law limited exemption for certain public utilities does not apply here, because the Commission has not already approved the IEC Project and the proposed transmission lines.

In certain circumstances involving certain public utilities, the pre-approval of each of those bodies is not required, as set forth in the statute. The limited exemption for certain public utility facilities in the Agricultural Area Security Law states:

The condemnation of this section shall not be required for an underground public utility facility that does not permanently impact the tilling of soil 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, 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.

3 P.S. § 913(b). First, pre-approval for eminent domain applications is not required in the case of “an underground public utility facility that does not permanently impact the tilling of soil.”

Id. Second, pre-approval for eminent domain applications involving ASA lands is not required “for any facility of an electric cooperative corporation.” *Id.* The remainder of the exemption when condemning ASA lands is “for any public utility facility the necessity for and the propriety and environmental effects of which has been reviewed or ratified or approved by the Pennsylvania Public Utility Commission.” *Id.*

If the General Assembly intended to exempt all public utilities from the requirement of seeking pre-approval from the ALCAB and the local governing body and other relevant entities, it would have so stated plainly. The Statutory Construction Act of 1972 provides that, “Every statute shall be construed, if possible, to give effect to *all* its provisions.” 1 Pa.C.S. § 1921(a)

(emphasis added). Subsection (b) of Section 913 begins “No political subdivision, authority, *public utility* or other body having or exercising powers of eminent domain shall condemn any land within any agricultural security area...” 3 P.S. § 913(b)(emphasis added). Subsection (b) is clear that merely receiving a certificate from the Commission as a public utility does not meet the terms of the exemption and remove the requirement for pre-approval. To read the exemption from pre-approval from ALCAB and the other boards so broadly as to exempt all public utilities from pre-approval, simply because they are a certificate holder, is improper, because it fails to give effect to the restrictive language. The remaining language after “public utility facility” becomes surplusage, which is contrary to the statutory requirement on its face. See, *Patrick Media Group, Inc. v. Com., Dept. of Transp.*, 620 A.2d 1125, 1128,(Pa. 1993)(reversing the Commonwealth Court’s decision that “clearly undermined [the] legislative intent” where the court had “so broadly construed the exception” and “erroneously deemed a major portion of the restrictive language in the exception to be mere surplusage.”). Failing to give meaning to the phrase “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” is contrary to the Statutory Construction Act. In addition, the use of the term “public utility facility” as opposed to simply “public utility” suggests that it is all of the plant and equipment of a public utility³ that would have to be reviewed and ratified or approved. In the case of transmission lines, facilities include the transmission lines and the associated equipment. Transource has no approval of the IEC Project and its transmission lines.⁴

³ The Public Utility Code broadly defines the term “Facilities” as follows: “All the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with, the business of any public utility.” 66 P.S. §102.

⁴ The certificate of public convenience granted to Transource approves only the “service”:

Transource does not seek to install any underground facilities, nor is Transource an electric cooperative. For Transource’s Eminent Domain Applications involving ASA lands to qualify for exemption from the pre-approval from ALCAB and the other reviewing bodies, Transource would have to show that the Public Utility Commission has *reviewed* and *ratified* or *approved* the necessity for and the propriety and environmental effects of” the IEC Project. By the clear terms of the statute, the review, ratification or approval by either the Commission or FERC has to *have already occurred*, because the statute uses past tense for the words “reviewed or ratified” and “approved.” Therefore, exemption for the entity seeking to condemn lands within an ASA is available only when the Commission has already conducted its review.

Here, the Commission is in the process of reviewing the need for Transource’s IEC Project in the instant Siting Applications. In addition, the Commission has not considered the “environmental effects” of the IEC Project yet. The review of the Siting Applications before the Commission is the opportunity for the Commission to understand the environmental effects of the IEC Project, and to weigh the various factors against the constitutionally protected environmental interests of citizens, and its own duties to the trust of public natural resources under Art. I, Section 27 of the Pennsylvania Constitution.

The Agricultural Area Security Law is clear. Approval by ALCAB, the local government and the other boards is required unless the condemnation falls within one of the limited exceptions. The IEC Project is neither an underground facility nor is it an electric cooperative. Transource’s IEC Project has not been “reviewed or ratified”, nor has it been approved. The

A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.

66 P.S. § 1103.

Commission can only approve Eminent Domain Applications involving ASA lands where Transource has met the evidentiary standard required in an ALCAB hearing.

- 2) *ASA Lands Can Only be Taken By Eminent Domain Where There is No Reasonable and Prudent Alternative Or No Unreasonably Adverse Effect Upon the Preservation and Enhancement of Agriculture or Municipal Resources.*

In order for Transource to qualify for the limited exemption from ALCAB and the other reviewing bodies' approval, the Commission must conduct the review of the proposed condemnation of the ASA lands using the factors that the ALCAB and the local municipality, county governing body and Agricultural Security Area Advisory Committee would use to evaluate requests for condemnation. Otherwise, there is no reason to allow an exemption.⁵ ALCAB and the other reviewing bodies may only approve the proposed condemnation if it determined that:

(A) the proposed condemnation would not have an unreasonably adverse affect upon the preservation and enhancement of agriculture or municipal resources within the area or upon the environmental and comprehensive plants of the county, municipality and the Commonwealth, or upon the goal, resource plans, policies or objectives thereof; or

(B) there is no reasonable and prudent alternative to the utilization of lands within the agricultural security area for the project.

3 P.S. § 913(d). The General Assembly set forth a clear purpose for the Agricultural Area Security Law in its Statement of legislative findings:

It is declared the policy of this Commonwealth to *conserve and protect* and to encourage the development and improvement of its agricultural lands for the production of food and other agricultural products. It is also declared the policy of the Commonwealth to *conserve and protect agricultural lands as valued natural and ecological resources* which provide needed open spaces for clean air, as well as for aesthetic purposes....Many of the agricultural lands in the Commonwealth are in jeopardy of being lost for any agricultural purposes.

⁵ See *In re: Condemnation of Springboro Area Water Authority*, 898 A.2d 6 (Pa. Commw. Ct. 2006) (The “general idea of the exemptions in section 13(b) is to prevent repetitive review of the same condemnation by multiple agencies.”).

Certain of these lands constitute *unique and irreplaceable land resources* of Statewide importance.

3 P.S. § 902 (emphasis added). An additional particularly relevant purpose included in the Agricultural Area Security Law is to “protect farming operations in agricultural security areas from incompatible nonfarm land uses that may render farming impracticable.” 3 P.S. § 902. The IEC Project is a land use that threatens viable farms, and may render farming impracticable. *See, e.g.,* N.T. May 29, 2018, at 1162 -1163 (Kauffmann); 1179-81 (Benedict).

The Commission, has a duty under the Agricultural Area Security Law, as a Commonwealth agency, to encourage and maintain farming in established ASAs: “It shall be the policy for all Commonwealth agencies to encourage the maintenance of viable farming in agricultural security areas and their administrative regulations and procedures shall be modified to this end insofar as it is consistent with promotion of public health and safety.” 3 P.S. § 912.

Because Transource is seeking to condemn lands within an ASA, Transource must meet the heightened standard of ALCAB approval. “In cases involving challenges to a utility's siting of HV lines for eminent domain or zoning exemption purposes, our courts have held that it is settled law that the designation of the route for [a HV] line [is] a matter for determination by [a utility's] management in the first instance, and [the utility's] conclusion will be upheld unless shown to be wanton or capricious.” *Energy Conservation Council of Pennsylvania v. Pennsylvania Public Utility Com’n*, 995 A.2d 465, 479–80 (Pa. Commw. Ct. 2010) (citing *Stone v. Pennsylvania Public Utility Com’n*, 162 A.2d 18, 21 (Pa. Super. 1960)). Where the route involves lands within a protected ASA, the utility has the burden of proving that there is no reasonable alternative route that does not use ASA lands.

As such, if the Commission is substituting its approval for the pre-approval of ALCAB and the reviewing bodies, the Commission may only approve Eminent Domain Applications

within the ASA if Transource establishes that there is no reasonable and prudent alternative route that avoids condemning the preserved farms, and that the use of the lands within the ASA would not have an unreasonably adverse effect upon the preservation and enhancement of agriculture within the ASA or upon the environment.

D. Transource is Required to Seek Orphan’s Court Approval for Condemnation of All Lands Subject to a Conservation Easement

The General Assembly enacted additional protection for lands subject to conservation easements, protecting them from eminent domain with the recent passage of Act 45. The Act, amending the Eminent Domain Code, was signed into law on June 26, 2018. Under the new law, no eminent domain of lands subject to a conservation easement can occur without Orphan’s Court approval that there “is no reasonable and prudent alternative” to using land subject to a conservation easement. 26 P.S. § 208(d). Any entity seeking to condemn lands subject to conservation easements must obtain approval from the Orphan’s Court at least 30 day prior to taking such action. 26 P.S. § 208(c). The language of Act 45 has a similar, although not identical limited exemption for public utility facilities, like the exemption contained in the Agricultural Area Security Law. Under Act 45:

condemnation approval is not required for any public utility facility *or other project that is subject to approval by a federal agency*, the necessity for 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.

Section 208(a) (*emphasis added*). Again, the exemption is limited to “public utility facilities,” and to those that the Commission has already reviewed and ratified or approved, considering whether the placement is necessary and advisable, given the environmental effects. The Commission has neither reviewed or ratified, nor approved the IEC Project or the placement of new transmission lines. Again, condemnation of lands subject to conservation easements must

be approved by the Orphan's Court in the respective county.

The language of the limited public utility exemption in Act 45 is nearly the same as the exemption in the Agricultural Area Security Law, with a few differences. First, Act 45 adds the phrase "or other project that is subject to approval by a federal agency." The last antecedent rule suggests that the phrase "that is subject to approval" modifies only "other project." *Pennsylvania Dept. of Banking v. NCAS of Delaware, LLC*, 948 A.2d 752, 760–61 (Pa. 2008).

The last antecedent rule of statutory construction advises that a proviso usually is construed to apply only to the provision or clause immediately preceding it.

If the last antecedent rule is not applied, and the phrase "subject to approval by a federal agency" describes both "other project" and "public utility facility," there is no difference in effect on Transource's Applications. The IEC Project is not "subject to approval by a federal agency" so the exemption from Orphan's Court approval is inapplicable.

Act 45 is the General Assembly's most recent pronouncement on the importance of limitations on eminent domain for preserved land under the Conservation and Preservation Easements Act. Under the new Act, Orphan's Court may only approve the condemnation "if the court determines there is no reasonable and prudent alternative to the utilization of the land subject to a conservation easement for the project." 26 P.S. § 208(d). As the Agricultural Area Security Law protects lands within ASAs protected from eminent domain, the new Act 45 protects lands subject to conservation easements from eminent domain, by providing for heightened review by the local Orphan's Court. The Orphan's Court must deny any proposed condemnation of lands subject to conservation easements unless there is no reasonable and prudent alternative. Transource's request to condemn lands subject to conservation easements cannot be approved unless it shows that there is no reasonable and prudent alternative.

E. The Commission Has Not Approved The Necessity, The Propriety or The Environmental Effect of Transource’s IEC Project

Even under a narrow reading of the Agricultural Security Law and Act 45, Transource’s IEC Project is not exempt from seeking approval for condemning ASA land and lands subject to conservation easements. First, the Commission has made no determination of need for the IEC Project. The Commission approved a settlement agreement for issuance of the certificate of public convenience to Transource, but specifically did not find that there was need for the IEC Project. *See* PUC Opinion and Order, Docket A-2017-2587821, Jan. 23, 2018. The Commission specifically removed language from the Initial Order and Recommendation on Transource’s Application for Certificate of Public Convenience, to avoid any “predetermination of need.” *See* PUC Opinion and Order, Docket A-2017-2587821, Jan. 23, 2018. Second, Transource’s Application for Certification was a unique filing that represented “a new type of entity to the Commonwealth, as electric facilities have been owned and operated by the electric distribution companies or their transmission affiliates.” *Id.* With the Transource certification Application in 2017, the Commission was “asked to grant a certificate to a company as a public utility as a necessary step to consideration of the siting and construction of the project this company was formed to carry out,” meaning that Transource was created, and only exists, for the purpose of the IEC Project. *Id.* Third, the Commission never considered the environmental effects of the IEC Project in any way, nor did it consider the environmental effects of the route proposed in the Siting Application. The Commission considered only whether the settlement, as to the technical, financial and legal fitness of Transource was in the public interest. As such, the Commission has not considered any environmental effects related to the IEC Project.

3. Feasibility of Alternative Siting Routes Include the Use of Existing Transmission Lines Owned by PPL Electric Corporation, Mid-Atlantic Interstate Transmission, LLC, FirstEnergy Company and/or PECO Energy Company

The Prehearing Order suggests that the Prehearing Conference will address the feasibility of alternative siting routes, including the use of existing transmission lines owned by PPL Electric, Mid-Atlantic Interstate Transmission LLC, First Energy Company and PECO Energy Company. The feasibility of alternative siting routes is one of several matters appropriate for inquiry at the evidentiary hearing, under 52 Pa. Code § 57.75(e)(4). At this time, STFC does not expect to introduce expert testimony or evidence on the feasibility of alternative siting routes, in part because Transource must first demonstrate that there is a need for the IEC Project.

With respect to alternatives, Transource has the burden to demonstrate to the Commission through its Siting Application and evidence offered at the hearing that it considered and rejected alternatives, and that those alternatives considered and rejected were “reasonable.” See 52 Pa. Code § 57.72 (10) (requiring the application to include a “general description of reasonable alternative routes to the proposed HV lines, including a description of the 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.”).

4. Discovery Issues and Technical Conference

On April 18, 2018, STFC served Requests for Production of Documents and Interrogatories on Transource. On May 9, 2018, Transource provided initial responses, with additional responses received on June 11, 2018. While Transource has provided some responsive information, STFC has advised Transource of substantial deficiencies in Transource’s responses. STFC is in the process of attempting to resolve these disagreement without the Judge’s involvement.

We anticipate that additional discovery relative to the newly-filed York and Franklin County Shelter Petitions, as well as the eminent domain filings is likely required.

5. Amendments to the Procedural Schedule

STFC respectfully requests that the schedule for this matter be altered to allow more time for discovery and public participation. The addition of the 133 Eminent Domain Applications and the two Shelter Petitions in May, requires additional time on the procedural schedule. This is the first market efficiency case in the Commonwealth, with Transource's Application "bring[ing] a new type of entity to the Commonwealth" and with the Commission "asked to grant a certificate to a company as a public utility as a necessary step to consideration of the siting and construction of the project this *was formed to carry out.*" Pa. PUC Opinion and Order, Docket A-2017-2587821, Jan. 23, 2018.

The Commission's ultimate decisions on both applications will significantly affect the public. The possible impact of the IEC Project on the substantial rights, including constitutional environmental rights of the residents of this Commonwealth, demands that the Commission afford the highest level of due process to the public. The procedural schedule has already been amended as a result of dilatory tactics by the Transource in responding to discovery. In addition, Transource, through its own choosing, has added new parties and issues at this late stage in the procedural schedule, by filing the Eminent Domain Applications and the Shelter Petitions. As such, additional time for discovery is appropriate.

As previously explained in STFC's First Prehearing Memorandum, approximately 8 miles of transmission lines out of a proposed total of 60 miles are pending before the Public Service Commission of Maryland ("PSC"). The PSC has already adopted a longer schedule to make a determination on the relatively small portion of the Project. On February 22, 2018, the

PSC adopted a schedule for the proceedings, with evidentiary hearings to be held between February 5 and February 20, 2019. Because the PSC will not make a decision on the applications until well into 2019, extending the Commission’s schedule to accommodate the public interest in this Application and the East Application, will not delay the Project.⁶ Moreover, the Company indicated that it did not anticipate a decision before June of 2019. Transource PA. St. 1 (Simmons) at 14-15. STFC proposes the schedule attached hereto as Exhibit 1 for consideration. In light of the demonstrated significant public interest, STFC respectfully requests that more than one public input hearing be held in areas affected by the proposed Shelter Petitions and to address Eminent Domain Applications, and that these hearings include the opportunity to present evidence in the evening. To accommodate the upcoming requests for hearings, STFC is willing to participate in any required additional informal conferences to finalize the schedule and location pursuant to the proposed schedules.

Respectfully submitted,

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Dated: July 5, 2018

⁶ There is no statutory deadline applicable to the proceedings. *Piedmont Environmental Council v. FERC*, 558 F.3d 304 (4th Cir. 2009) (denial by state agency is not “withholding approval” and removes backstop siting authority).

EXHIBIT 1

Proposed Procedural Schedule

Intervenor Direct Testimony	September 25, 2018
Input Hearings on Shelter Petitions and Eminent Domain	October 15-19, 2018
Rebuttal Testimony	November 27, 2018
Surrebuttal Testimony	January 16, 2019
Written Rejoinder	January 30, 2019
Evidentiary Hearings	February 11-15, 2019
Overflow Hearing Days (if needed)	February 18-22, 2019
Main Briefs	April 1, 2019
Reply Briefs	May 6, 2019