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File #: 166570

July 5, 2018

***VIA ELECTRONIC FILING***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**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 & 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 reasonable 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 reasonable 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 Nos. A-2018-3001881, et al.**

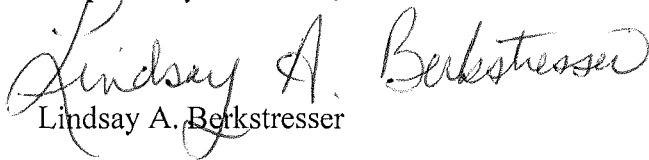
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Dear Secretary Chiavetta:

Rosemary Chiavetta, Secretary  
July 5, 2018  
Page 2

Enclosed is the Second Prehearing Memorandum of Transource Pennsylvania, LLC for filing in the above-referenced proceedings. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

  
Lindsay A. Berkstresser

LAB/jl  
Enclosures

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

**CERTIFICATE OF SERVICE**  
**Docket Nos. A-2017-2640195 & A-2017-2640200**

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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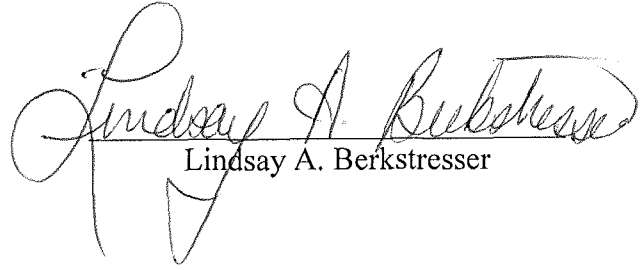
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Date: July 5, 2018



Lindsay A. Berkstresser

**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  
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  
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of various landowners in York and Franklin Counties,  
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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  
TRANSOURCE PENNSYLVANIA, LLC**

**TO ADMINISTRATIVE LAW JUDGES ELIZABETH H. BARNES AND ANDREW M. CALVELLI:**

Transource Pennsylvania, LLC (“Transource PA” or the “Company”), pursuant to 52 Pa. Code § 5.222(d), and in compliance with the Second Prehearing Order issued by Administrative Law Judges Elizabeth H. Barnes and Andrew M. Calvelli (the “ALJs”) on June 5, 2018, hereby files this Second Prehearing Memorandum in the above-captioned proceedings, and states as follows:

## **I. PROCEDURAL HISTORY**

1. On December 27, 2017, Transource PA filed Applications for Approval of the Siting and Construction of 230 kV Transmission Lines in Portions of York County at Docket No. A-2017-2640195 (“IEC-East Project”) and in portions of Franklin County at Docket No. A-2017-2640200 (“IEC-West Project”) (collectively, the “Independence Energy Connection Project” or “IEC Project”).

2. After a Prehearing Conference on March 13, 2018, a Procedural Order was entered on March 28, 2018, and amended on April 2, 2018. Public Input hearings were held on May 9 and 14, 2018 in York County and on May 22 and 23, 2018 in Franklin County.

3. On May 15, 2018, Transource PA filed 133 Condemnation Applications and two Zoning Shelter Petitions, one in Franklin County at Docket No. P-2018-3001878, and one in York County at Docket No. P-2018-3001883.

4. On May 29 and 30, 2018, site views took place in Franklin County and on June 1, 2018, site views took place in York County.

5. On June 1, 2018, the Office of Consumer Advocate (“OCA”) filed Notices of Intervention at Docket Nos. P-2018-3001878 and P-2018-3001883.

6. Also on June 1, 2018, the OCA filed a Motion to Amend the Procedural Schedule. Transource PA filed an Answer to the OCA’s Motion on June 6, 2018.

7. On June 26, 2018, the ALJs issued a Third Prehearing Order. The Third Prehearing Order granted the OCA’s request to extend the deadline for filing Intervenor Direct Testimony until September 25, 2018 and consolidated the Condemnation Applications and Zoning Shelter Petitions with the Siting Applications.

8. A Second Prehearing Conference is scheduled for July 9, 2018.

## II. ACT 45 ISSUES

9. On June 24, 2018, Act 45 of 2018 (“Act 45”) was signed into law. Act 45 amends Title 26 (Eminent Domain) of the Pennsylvania Consolidated Statutes. Section 208 provides for eminent domain of land subject to conservation easement.

10. Act 45 provides:

“§208. Eminent domain of land subject to conservation to read:

(a) Approval required. Except as provided in subsection (g), no political subdivision, authority, public utility or other body having or exercising powers of eminent domain shall condemn any land subject to a conservation easement for any purpose, unless prior approval has been obtained from the orphans’ court of the county in which the land is located. The condemnation approval specified by this subsection shall not be required for an underground public utility facility that does not permanently impact the open space benefits protected by the conservation easement. 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 proprietary 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.

(b) Determination of blight. The exercise of eminent domain powers based on a condition of land subject to a conservation easement shall not be authorized under section 205 (relating to blight) unless the orphans’ court determines the exercise is necessary to protect the health and safety of the community.

(c) Notice. Any condemnor wishing to condemn property, the approval for which is required under this section, shall at least 30 days prior to taking such action, notify the orphans’ court that the action is contemplated.

(d) Review. The orphans’ court shall review the proposed condemnation and approve the proposed condemnation only 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.



(e) Findings and decisions. The orphans' court shall render findings and decision of the court's review under subsection (d) and shall report the findings and decisions to the proposed condemnor.

(f) Injunctions. The orphans' court may request the Attorney General to bring an action to enjoin a condemnor from violating any provision of this section."

11. Portions of the land encompassed by the 133 Condemnation Applications filed by Transource PA are subject to conservation easements. However, Act 45 specifically excludes "public utility facilities" from the required approval. The proposed IEC Project is a public utility facility subject to review by the Pennsylvania Public Utility Commission ("Commission"). Therefore, the approval required under Act 45 does not apply to the Siting Applications and Condemnation Applications filed by Transource PA and has no effect on this proceeding. Act 45's exclusion of public utility facilities from the required approval mirrors the exclusion for public utility facilities in the Agricultural Area Security Law. *See* 3 P.S. § 913(b). *See, e.g., In re Condemnation of Springboro Area Water Auth.*, 898 A.2d 6 (Pa. Cmwlth. Ct. 2006).

12. Further, the Commission does not have authority to make a determination pursuant to the Eminent Domain Code. The Condemnation Applications filed with Commission request that the Commission find that the service to be furnished through the proposed exercise of eminent domain is necessary or proper for the service, accommodation, convenience, or safety of the public. Separate Applications seeking to exercise eminent domain over the required properties will be made in the courts with jurisdiction where the properties are located. In the event a determination under Act 45 is needed, the Act expressly provides that the determination under the statute will be made by the orphans' court of the county in which the land is located.

### **III. FEASIBILITY OF ALTERNATIVE SITING ROUTES**

13. Transource PA has provided an analysis of three siting alternatives in each of its Siting Applications. Other parties have offered other siting proposals. Transource PA is

addressing these alternative proposals in discovery and will address them in its Rebuttal Testimony in this proceeding.

**IV. DISCOVERY ISSUES AND TECHNICAL CONFERENCE**

14. As of the date of this filing, Transource has responded to all outstanding discovery requests. Transource PA notes that Stop Transource has requested that Transource PA provide additional information to Stop Transource Set I discovery, and Transource PA is evaluating this request.

15. Transource will continue to work with the parties in answering discovery.

16. A telephone conference was held with the parties and ALJs on June 15, 2018, during which time issues related to OCA's access of the PROMOD model were discussed. Transource PA has offered the OCA free access to the PROMOD model, subject to the terms and conditions of the software licensor, ABB. To date, the OCA has been unwilling to accept the license terms for accessing PROMOD. Transource PA remains willing to work with the OCA regarding the terms and conditions of the PROMOD license.

17. A technical conference with representatives from Transource PA, PJM and OCA was held on June 8, 2018. The parties have engaged in follow-up discovery regarding the technical conference.

**V. AMENDED PROCEDURAL SCHEDULE**

18. In the Second Prehearing Order, the ALJs granted the OCA's request to extend the deadline for filing Inventor Direct Testimony by 60 days, until September 25, 2018.

19. Transource PA notes that the remainder of the schedule should be modified. However, the revised schedule should retain the Reply Brief date of February 28, 2019, which is 14 months after the filing. Similar siting applications have proceeded under a much shorter

procedural schedule, i.e. 9 months after the filing.<sup>1</sup> There is sufficient time remaining in the existing procedural schedule without extending the Reply Brief date. Further, retaining the existing Reply Brief date is critical to allow Transource to meet the milestones provided for in the Designated Entity Agreement with PJM Interconnection, LLC.

20. The procedural schedule in the related proceeding before the Maryland Public Service Commission does not justify delaying the schedule in Pennsylvania. The period between hearings and a decision in the Maryland case may be significantly shorter than in Pennsylvania for several reasons. The length of the proposed transmission facilities in Maryland are much shorter than the proposed facilities in Pennsylvania. The period between briefing and a Commission decision in Maryland may also involve fewer procedural steps than in Pennsylvania. Transource has requested a decision in the Maryland proceeding by June 1, 2019. In addition, sufficient time between the hearings in Maryland and the hearings in Pennsylvania is necessary for adequate preparation given that the same witnesses are involved in both proceedings. A modification of the procedural schedule in Pennsylvania that would not allow for a decision on the merits from the Pennsylvania Public Utility Commission by approximately June 1, 2019 (which the current schedule supports) would materially prejudice Transource PA.

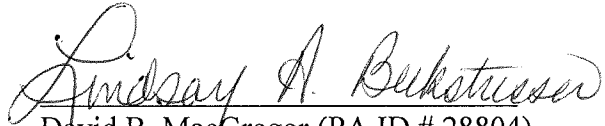
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<sup>1</sup> See *Application of PPL Electric Utilities Corporation filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for approval of the siting and construction of transmission lines associated with the Northeast-Pocono Reliability Project in Portions of Luzerne, Lackawanna, Monroe, and Wayne Counties, Pennsylvania*, Docket No. A-2012-2340872 (Order entered January 9, 2014); *Application of PPL Electric Utilities Corporation Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the Pennsylvania Portion of The Proposed Susquehanna-Roseland 500 kV Transmission Line in Portions of Lackawanna, Luzerne, Monroe, Pike and Wayne Counties, Pennsylvania*, Docket No. A-2009-2082653 (Order entered February 12, 2010).

21. Transource PA proposes the following revised procedural schedule:

Filing	December 27, 2017
Other Parties Direct Testimony	September 25, 2018
Rebuttal Testimony	November 8, 2018
Surrebuttal Testimony	December 13, 2018
Written Rejoinder	January 3, 2019
Hearings	January 7-11, 2019
Main Brief	February 7, 2019
Reply Brief	February 28, 2019

Respectfully submitted,



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Date: July 5, 2018

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