



17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
717-731-1970 Main
717-731-1985 Main Fax
www.postschell.com

Anthony D. Kanagy

akanagy@postschell.com
717-612-6034 Direct
717-720-5387 Direct Fax
File #: 166570

July 16, 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.

Dear Secretary Chiavetta:

Rosemary Chiavetta, Secretary

July 16, 2018

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Enclosed for filing is the Answer of Transource Pennsylvania, LLC to the Preliminary Objections of Stop Transource Franklin County in the above-referenced proceedings. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Anthony D. Kanagy". The signature is written in black ink and is positioned above the printed name.

Anthony D. Kanagy

ADJ/jl

Enclosures

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

CERTIFICATE OF SERVICE

Docket Nos. A-2017-2640195 & A-2017-2640200, *et al.*

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).

VIA E-MAIL & FIRST CLASS MAIL

Dianne E. Dusman, Esquire
Darryl Lawrence, Esquire
Phillip D. Demanchick, Esquire
David T. Evrard, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923

Sharon E. Webb, Esquire
Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101

Romulo L. Diaz, Jr., Esquire
Jack R. Garfinkle, Esquire
Jennedy S. Johnson, Esquire
PECO Energy Company
2301 Market Street
Philadelphia, PA 19103
PECO

Jordan B. Yeager, Esquire
Mark L. Freed, Esquire
Joanna A. Waldron, Esquire
Curtin & Heefner LLP
2005 S. Easton Road, Suite 100
Doylestown, PA 18901
Stop Transource Franklin County

Teresa K. Harrold, Esquire
FirstEnergy Service Company
2800 Pottsville, Pike, PO Box 16001
Reading, PA 19612-6001
MAIT

Kimberly A. Klock, Esquire
Amy E. Hirakis, Esquire
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
PPL Electric Utilities Corporation

Karen O. Moury, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
*Maple Lawn Farms, Inc., Rose Tree-Blue
Mountain Hunt Club, Inc. &
Citizens to STOP Transource*

Thomas J. Sniscak, Esquire
Whitney E. Snyder, Esquire
100 North Tenth Street
Harrisburg, PA 17101
York County Planning Commission

Linus E. Fenicle, Esquire
Reager & Adler, PC
2331 Market Street
Camp Hill, PA 17011
Quincy Township

Barron Shaw
Jana Shaw
445 Salt Lake Rd
Fawn Grove, PA 17321

John L. Munsch, Esquire
800 Cabin Hill Drive
Greensburg, PA 15601
MAIT & West Penn Power

VIA FIRST CLASS MAIL

Byron Jess Boyd
831 New Park Road
New Park, PA 17352

Hugh McPherson
2885 New Park Road
New Park, PA 17352

J Ross McGinnis, Esquire
41 West Main Street
Fawn Grove, PA 17321

Fred Byers
1863 Coldsmith Rd
Shippensburg, PA 17257

Michael Cordell
4219 Altenwald Rd
Waynesboro, PA 17268

Roy Cordell
Emma Cordell
4690 Fetterhoff Chapel Road
Chambersburg, PA 17202

Aaron Kauffman
Melinda Kauffman
4220 Old Scotland Rd
Chambersburg, PA 17202

Colt Martin
Kristyn Martin
8020 Hidden Valley Rd
Waynesboro, PA 17268

Leonard Kauffman
Mary Kauffman
4297 Olde Scotland Rd
Chambersburg, PA 17202

Allen Rice
Lori Rice
1430 Henry Lane
Chambersburg, PA 17202

Lois White
1406 Walker Road
Chambersburg, PA 17202

Willa Weller Kaal
67 Summer Breeze Lane
Chambersburg, PA 17202

Allan Stine
Heather Stine
867 Cider Press Road
Chambersburg, PA 17202

Karen Benedict
Rodney Myer
5413 Manheim Rd
Waynesboro, PA 17268

Lantz Sourbier
Laura Sourbier
64 Edgewood Cir
Chambersburg, PA 17202

Ashley Hospelhorn
8010 Hidden Valley Ln
Waynesboro, PA 17268

Ashley Hospelhorn
116 West 3rd Street
Waynesboro, PA 17268

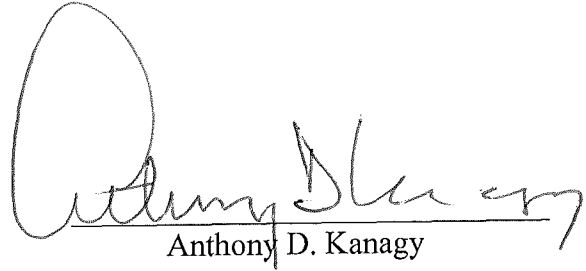
Danielle Bernecker
1827 Wood Duck Dr E
Chambersburg, PA 17202

Courtney & Derek Dettinger
24 Chanceford Rd
Brogue Pa 17309

James McGinnis, Jr.
290 Woolen Mill Road
New Park, PA 17352

Darwyn Benedict
410 N. Grant Street
Waynesboro, PA 17268

Date: July 16, 2018



Anthony D. Kanagy

**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
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the convenience or welfare of the public.

P-2018-3001878

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for a finding that a building to shelter control
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County, Pennsylvania is reasonably necessary for
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P-2018-3001883

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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.

**ANSWER OF TRANSOURCE PENNSYLVANIA, LLC TO THE PRELIMINARY
OBJECTIONS OF
STOP TRANSOURCE FRANKLIN COUNTY**

I. INTRODUCTION

On February 7, 2017, Transource Pennsylvania, LLC (“Transource PA”) filed an Application for a Certificate of Public Convenience to begin providing utility service in Franklin and York Counties, Pennsylvania.

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”).

The Commission issued an Order granting Transource PA a Certificate of Public Convenience on January 23, 2018.

On May 15, 2018, Transource PA filed 133 Condemnation Applications and two Zoning Petitions, one in Franklin County at Docket No. P-2018-3001878 and one in York County at Docket No. P-2018-3001883, which were consolidated with the Siting Applications. The Zoning Petitions request that the Commission find pursuant to 52 Pa. Code § 5.41 and 53 P.S. § 10619, buildings to shelter control equipment at the proposed Rice Substation in Franklin County, Pennsylvania and the proposed Furnace Run Substation in York County, Pennsylvania are reasonably necessary for the convenience or welfare of the public and, therefore, exempt from any local zoning ordinance.

On July 6, 2018, Stop Transource Franklin County (“STFC”) filed Preliminary Objections requesting that the Pennsylvania Public Utility Commission (“Commission”) dismiss Transource PA’s Zoning Petitions.

Pursuant to 52 Pa Code § 5.101(f), Transource PA hereby files this Answer to STFC’s Preliminary Objections and requests that the Preliminary Objections be denied because Transource PA is entitled to the relief requested in its Zoning Petitions.

II. STANDARD OF REVIEW

In ruling on preliminary objections, the Commission must determine whether, based on the well-pleaded factual averments of the non-moving party, recovery or relief is possible. *Dept. of Auditor General v. SERS*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003). The Presiding Officer must accept as true all well-pleaded allegations of material facts as well as all inferences reasonably deducible therefrom. *Stilp v. Cmwlth.*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (citing *Dep't of Gen. Serv. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005); accord *Complaint of Nat'l Fuel Gas Distrib. Corp. and Petition for an Order to Show Cause*, Docket No. P-00072343 (December 26, 2007). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007). For preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery, and any doubt must be resolved in favor of the non-moving party (i.e., Transource PA). *Stilp*, at 781.

III. RESPONSE TO PRELIMINARY OBJECTIONS

1. Transource PA admits that it filed the referenced Zoning Petitions on May 15, 2018.

2. Transource PA admits that the Zoning Petitions request an exemption from Section 619 of the Municipalities Planning Code ("MPC"). In its Zoning Petitions, Transource PA requests that the Commission find that the Control Equipment Building at the proposed new Substations in York and in Franklin Counties are reasonably necessary for the convenience or welfare of the public and are, therefore, exempt from the requirements of the local Zoning Ordinances that may impose any restrictions, conditions, or regulations on the construction of the

Control Equipment Buildings. The primary purpose of Section 619 is to allow the Commission to regulate public utility related facilities to avoid different and potentially conflicting regulation by municipalities across the Commonwealth.

3. In Paragraph 3 of its Preliminary Objections, STFC cites to Section 619 of the MPC. Section 619 provides as follows:

This article shall not apply to any existing or proposed building, or extension thereof, used or to be used by a public utility corporation, if, upon petition of the corporation, the Pennsylvania Public Utility Commission shall, after a public hearing, decide that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public. It shall be the responsibility of the Pennsylvania Public Utility Commission to ensure that both the corporation and the municipality in which the building or proposed building is located have notice of the hearing and are granted an opportunity to appear, present witnesses, cross-examine witnesses presented by other parties and otherwise exercise the rights of a party to the proceedings.

53 P.S. § 10619.

4. As stated in Paragraph 4 of STFC's Preliminary Objections, the exception set forth in the MPC is available to a "public utility corporation" if the Commission finds that the present or proposed location of building is reasonably necessary for the convenience or welfare of the public.

5. STFC argues that Transource PA is not entitled to seek an exemption pursuant to 53 P.S. § 10619 because Transource PA "does not meet the legal standard for classification as a public utility." This argument is without merit. As explained below, Transource PA has been granted public utility status by the Commission. Moreover, if the Commission approves the Siting Application, Transource PA's transmission facilities will be subject to the Commission's jurisdiction.

6. As stated in Paragraph 6 of STFC’s Preliminary Objections, a “public utility corporation” is defined in Pennsylvania’s Business Corporation Law (“BCL”) as:

Any domestic or foreign corporation for profit that:

(1) is subject to regulation as a public utility by the Pennsylvania Public Utility Commission or an officer or agency of the United States; or

(2) was subject to such regulation on December 31, 1980, or would have been so subject if it had been then existing.

“Public utility” is also defined in the Public Utility Code. Section 102 of the Public Utility Code, 66 Pa. C.S. § 102 defines a public utility as:

(1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:

(i) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation.

* * *

Transource PA has been granted public utility status by the Commission. *See Application of Transource Pennsylvania, LLC for all Necessary Authority, Approvals, 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 (Order entered January 23, 2018). Moreover, if Transource PA’s Siting Application is approved, it will own transmission facilities that are subject to the Commission’s regulation. Further, the substation building for which Transource PA is seeking a zoning exemption will be used in connection with the transmission facilities.

7. STFC asserts that the rules of statutory construction require the Commission to interpret the term “public utility corporation” in the MPC consistent with the way in which the

term is defined in the BCL. Transource PA satisfies the definition of both a “public utility” as set forth in the Public Utility Code and a “public utility corporation” as set forth in the BCL.

8. According to STFC, Transource’s PA Zoning Petitions do not “specifically assert that it is a public utility corporation.” Transource PA notes that its Zoning Petitions do state that it is a public utility. See Zoning Petitions, ¶ 1. Public utilities regulated the Commission by definition are Public Utility Corporations under the BCL.

9. STFC asserts that Transource PA’s Zoning Petitions do not reference its status as a public utility corporation under the BCL or to certification by the Commission. However, the Zoning Petitions explain that Transource PA is a public utility that will “construct, own, operate, and maintain electric transmission facilities and equipment in Pennsylvania subject to the regulatory jurisdiction of the Commission.” See Zoning Petitions, ¶ 1. Transource PA is a public utility, having been granted public utility status by the Commission, and is subject to the Commission’s regulation. *See Application of Transource Pennsylvania, LLC for all Necessary Authority, Approvals, 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 (Order entered January 23, 2018) (attached hereto as Appendix “A”). Therefore, Transource PA is qualified to seek waiver of the local Zoning Ordinances pursuant to 53 P.S. § 10619.

10. As stated in Paragraph 10 of STFC’s Preliminary Objections, the Commission issued an Order approving as in the public interest a settlement of Transource’s Application at Docket No. A-2017-258782.

11. To the extent that Paragraph 11 of STFC's Preliminary Objections seeks to characterize the Initial Decision approving the Settlement at Docket No. A-2017-258782 and Transource PA's Statement in Support of the Joint Petition for Settlement, these are written documents part of the public record, the terms of which speak for themselves.

12. To the extent that Paragraph 12 of STFC's Preliminary Objections seeks to characterize the Initial Decision approving the Settlement at Docket No. A-2017-258782, this is a written document part of the public record, the terms of which speak for themselves. Transource PA disagrees with any assertion that it is not a public utility.

13. STFC alleges that Transource PA was "created, and only exists, for the purposes of the IEC Project." Transource PA denies this allegation. However, Transource PA admits that it did seek public utility status prior to constructing the IEC Project and that the Commission granted Transource a certificate of public convenience and necessity to provide service to the public in its specified service area, namely in York and Franklin Counties.

14. STFC notes correctly, but insufficiently, that the Commission's January 23, 2018 Order granting Transource PA a certificate did not make a determination regarding the need for the IEC Project. Such a determination was not before the Commission in that docket, and the fact that the Commission has not yet approved the IEC Project also does not mean that Transource PA is not a certificated public utility. The Commission's Order makes clear that Transource PA is a public utility. The Order specifically states that "a Certificate of Public Convenience is being issued to Transource Pennsylvania, LLC, under Sections 1101 and 1102(a)(1) of the Public Utility Code, 66 Pa. C.S. §§ 1101 and 1102(a)(1), *conferring upon it the status of a Pennsylvania public utility* as defined in Section 102 of the Public Utility Code. . . ." (emphasis added) (Order, p. 10). The Order goes on to authorize Transource PA to "begin to

furnish and supply electric transmission service to or for the public” within the area defined in its certificate. *Id.* Section 1101 of the Public Utility Code provides:

Upon the application of any proposed public utility and the approval of such application by the commission evidenced by its certificate of public convenience first had and obtained, it shall be lawful for any such proposed public utility to begin to offer, render, furnish, or supply service within this Commonwealth. The commission's certificate of public convenience granted under the authority of this section shall include a description of the nature of the service and of the territory in which it may be offered, rendered, furnished or supplied.

66 Pa. C.S. § 1101. STFC's Preliminary Objections are nothing more than a collateral attack on the Commission's Order granting Transource PA a Certificate of Public Convenience.

Moreover, Transource PA is seeking a determination of need for the IEC Project in the full Siting Applications, which were consolidated with the Shelter Petitions. The zoning exemption for the Shelter Petitions will only be necessary and ruled upon if and when the Commission determines that there is a need for the IEC Project.

15. STFC notes that the Commission's Order removed language from the Initial Decision to avoid a predetermination of need for the IEC Project. Regardless of whether that language would have been dicta if it had been included in the Commission's Order, its absence has no bearing on whether Transource PA is a public utility.

16. STFC also notes that the Commission emphasized that its decision to grant Transource PA a certificate was not meant to grant approval of a specific project, including the IEC Project. Given the obvious fact that Transource PA did not seek such grant of approval in that docket, this is a routine and unnecessary clarification. Again, this has no bearing on whether Transource PA is a public utility. Transource PA has a certificate as a public utility from the Commission. Moreover, Transource PA is seeking a need determination from the Commission in its Full Siting Applications.

17. To the extent that Paragraph 17 of STFC's Preliminary Objections seeks to characterize the Commission's certificate issued to Transource, this is a written document part of the public record, the terms of which speak for themselves. Further, the reference to the Rice Substation and Furnace Run Substation in the certificate simply define the certificated service territory which Transource PA will be permitted to serve if and when its Siting Applications are approved. Even if Transource PA were "limited" to providing service for the purpose of the IEC Project, Transource PA will be providing public utility service through these facilities upon approval of its Siting Application.

18. In Paragraph 18 of its Preliminary Objections, STFC alleges that the Commission has not yet determined that a need exists for the IEC Project. A determination of need will be made by the Commission at the time it issues a decision on Transource PA's Siting Applications.

19. In Paragraph 18 of its Preliminary Objections, STFC alleges that Transource PA would have to file for approval of siting for any other projects. This, again, is an obvious and unnecessary clarification. All high voltage transmission line siting projects are subject to review by the Commission. The Commission's review of any future project has no bearing on Transource PA's public utility status.

20. STFC alleges that "Transource is not otherwise operating as a public utility for any purpose in Pennsylvania." Transource PA is not precluded from seeking an exemption from the MPC until it actually operates public utility facilities in Pennsylvania, as STFC suggests. Transource PA is requesting that the Commission issue a decision on the zoning exemption at the same time that the Commission issues its decision on the need for the IEC project. STFC's argument that the Commission must first determine need for the IEC Project and then rule on the zoning exemption, in a later proceeding is circular and therefore nonsensical. It would be

administratively burdensome and create substantial delay to require two separate proceedings. Clearly, if and when Transource PA obtains approval to construct the IEC Project, it will be operating public utility facilities in Pennsylvania.

21. In Paragraph 21 of its Preliminary Objections, STFC quotes the definition of “public utility” in Section 102 of the Public Utility Code. Transource PA notes that the definition of public utility includes “any person or corporations *now or hereafter* owning or operating in this Commonwealth equipment or facilities for: (i) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation. . .” 66 Pa. C.S. § 102 (emphasis added). Moreover, as indicated *supra*, the Commission has already determined that Transource PA is a public utility.

22. Paragraph 22 of STFC’s Preliminary Objections quotes the Commission’s Policy Statement regarding guidelines for determining public utility status. See 52 Pa. Code ¶ 69.1401. Under the Commission’s guidelines, the transmission service to be provided by Transource PA’s proposed IEC Project is clearly public utility service.

23. Paragraph 23 of STFC’s Preliminary Objections cites *Drexelbrook Associates v. Pennsylvania Public Utility Com.*, 212 A.2d 237 (1965). However, that case has nothing to do with the proposed IEC Project. In *Drexelbrook*, the Commission held that a landlord’s ownership and operation of gas, water and electric equipment was not public utility service because the service was being provided to only the landlord’s tenants. Transource PA will be providing transmission service to the public in the PJM Interconnection regional transmission grid. The transmission service provided will not be private service.

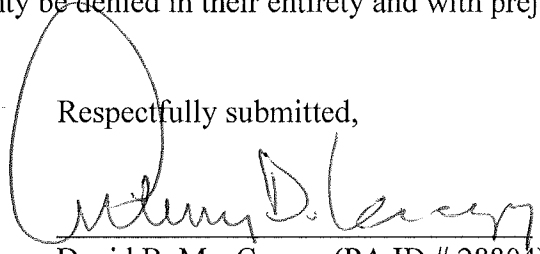
24. STFC argues that Transource is not a public utility because its certificate is limited to providing service via the facilities proposed in the IEC Project, which have not yet been approved by the Commission. This argument is without merit. Although Transource PA is bound to providing service within the limits set forth in its Certificate, Transource PA will be providing public utility service through these facilities upon approval of its Siting Application. As explained above, Transource PA is not required to wait to file its zoning petitions until after the Commission rules on the Siting Applications. It is appropriate for the Commission to rule on both issues at the same time. *See, e.g., 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) (simultaneously approving the Siting Application and related Zoning Petitions).

25. STFC concludes that Transource PA is not entitled to an exemption from Section 619 of the MPC because it does not meet the legal standard for a public utility. As explained herein, Transource PA's Certificate of Public Convenience demonstrates that the Commission has granted Transource PA public utility status and that Transource PA is authorized to furnish utility service to the public. Moreover, STFC's argument will clearly be moot when the Commission issues a decision on the Siting Applications.

IV. CONCLUSION

WHEREFORE, Transource Pennsylvania, LLC respectfully requests that the Preliminary Objections of Stop Transource Franklin County be denied in their entirety and with prejudice.

Respectfully submitted,



Amanda Riggs Conner (District of Columbia ID # 481740)
Hector Garcia (VA ID # 48304)
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
Phone: 614-716-3410
Fax: 614-716-1613
E-mail: arconner@aep.com
E-mail: hgarcia1@aep.com

David B. MacGregor (PA ID # 28804)
Anthony D. Kanagy (PA ID # 85522)
Lindsay A. Berkstresser (PA ID # 318370)
Post & Schell, P.C.
17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
Phone: 717-612-6034
Fax: 717-731-1985
E-mail: dmacgregor@postschell.com
E-mail: akanagy@postschell.com
E-mail: lberkstresser@postschell.com

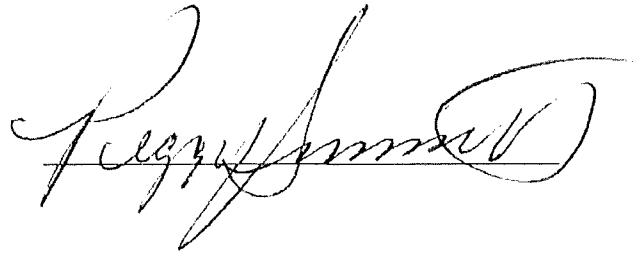
Date: July 16, 2018

Attorneys for Transource Pennsylvania, LLC

VERIFICATION

I, Peggy I. Simmons, being the Managing Director, Transmission Asset Strategy at American Electric Power hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 7/16/18


Peggy I. Simmons