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November 8, 2018

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Application of Transource Pennsylvania, LLC Filed Pursuant to 52 Pa. Code Chapter 57 Subchapter G, for Approval of the Siting and Construction of the 230kV Project in Portions of Franklin County, Pennsylvania
Docket No. A-2017-2640200**

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

Dear Secretary Chiavetta:

Attached for filing is an Answer of Stop Transource Franklin County to Motion of Transource Pennsylvania, LLC to Compel Answers to Interrogatories and Document Requests, Sets I and II to be filed in the above-referenced matter. Thank you.

CURTIN & HEEFNER LLP



BY: _____

Joanna A. Waldron (Pa. I.D. No. 84768)
Counsel for Stop Transource Franklin County

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

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Application of Transource Pennsylvania, LLC :
Filed Pursuant to 52 Pa. Code Chapter 57, : Docket No. A-2017-2640200
Subchapter G, for Approval of the Siting and :
Construction of the 230 kV Transmission Line :
Associated with the Independence Energy :
Connection-West Project in Portions of :
Franklin County, Pennsylvania :

**ANSWER OF STOP TRANSOURCE FRANKLIN COUNTY TO MOTION OF
TRANSOURCE PENNSYLVANIA, LLC TO COMPEL ANSWERS TO
INTERROGATORIES AND DOCUMENT REQUESTS, SETS I and II**

Stop Transource Franklin County (“STFC”), by and through its attorneys, respectfully files this Answer to the Motion to Compel of Transource Pennsylvania, LLC (“Transource”) regarding Set I, Questions 5 and 6 and Set II, Questions 7 and 8.

I. FACTS

On October 16, 2018, Transource served Set I and II of its Interrogatories and Requests for Production of Documents on STFC. STFC and Transource informally communicated about the discovery requests on October 22, 2018, but were unable to reach agreement. STFC filed Objections on October 23, 2018. Subsequent to STFC’s Objections, the parties reached agreement on several of the requests. Further, STFC served responses to certain interrogatories in Set I and Set II, on November 2 and November 8, 2018. On November 5, Transource filed a

motion with respect to a limited number of requests, namely Set I, Questions 5 and 6 and Set II, Questions 7 and 8.

Transource Interrogatories and Document Request Nos. 5, 6 from Set I, concerning the testimony of Dr. Sasowsky and Nos. 7 and 8 from Set II concerning the testimony of Mr. Dague, are requests for documents. The document requests from Set I seek the following:

5. Identify every case within the past 5 years in which Dr. Sasowsky has provided testimony and provide copies or transcripts of the testimony.
6. Re pp. 15-16 of Dr. Sasowsky's Direct Testimony. Provide copies of the referenced sources.

The Requests from Set II, directed at Dr. Sasowsky seek the following:

7. Identify every case within the past 5 years in which Mr. Dague has provided testimony and provide copies or transcripts of the testimony.
8. Re pp. 6-7 of Mr. Dague's Direct Testimony. Provide copies of the referenced sources.

STFC agreed to provide a response to Set II, No. 7, pursuant to an agreement with counsel for Transource and, therefore, does not address Set II, Question No. 7 herein.

II. LEGAL STANDARD AND ARGUMENT

The Commission's discovery rules prohibit discovery that would cause an unreasonable burden, or an unreasonable expense, or require the answering party to undertake an unreasonable investigation. Title 52 Pa. Code § 5.361 limits the scope of discovery:

- (a) Discovery is not permitted which:
 - (1) is sought in bad faith.
 - (2) *would cause unreasonable annoyance, embarrassment, oppression, burden, or expense to the deponent, a person or party.*
 - (3) Relates to a matter which is privileged.
 - (4) *Would require the making of an unreasonable investigation by the deponent, a party or witness.*

- (b) In rate proceedings, discovery is not limited under subsection (a) solely because the discovery request requires the compilation of data or information which the answering party does not maintain in the format requested, in the normal course of business, or because the discovery request require that the answering party make a special study or analysis, if the study or analysis cannot reasonably be conducted by the party making the request.

52 Pa. Code § 5.361(b) (emphasis added). Therefore, in a non-rate case proceeding, therefore, discovery is subject to the limitation of subsection (a) where it requires the answering party to compile information in a specific format. Further, 52 Pa. Code § 5.349(a)(1)(b), limits document requests to only those documents that are within the possession, custody or control of the party upon whom the request is served. With respect to Set I, No. 5, Transource’s request would require Dr. Sasowsky to obtain, at considerable expense and investigation, copies of transcripts that Dr. Sasowsky does not have in his possession, custody or control. Simply because Dr. Sasowsky has testified in a matter does not mean that he maintains a copy of a transcript of the testimony. STFC and Dr. Sasowsky should not be required to pay to obtain copies of transcripts that Transource could obtain on its own.

With the requests in Set I, No 6 and Set II, No. 8, Transource would require Dr. Sasowsky and Mr. Dague to make copies of entire reference textbooks and atlases at considerable expense, where those textbooks and atlases are readily available to Transource in the public domain. “It is not a purpose of discovery for a party to supply, at its own expense, information already under the control or readily available to the opposing party. *Boyle v. Steiman*, 631 A.2d 1025, 1031 (Pa. Super. 1993), *appeal denied*, 649 A.2d 666 (Pa. 1994). Further, “[a]n answering party] will not be compelled to answer a [requesting party’s] interrogatories when the matters contained in the interrogatories are at least equally within the

defendant's knowledge.” *Id.* Accordingly, the textbooks and atlases are readily available to Transource.

It would be both an unreasonable expense and an unreasonable burden for STFC, Dr. Sasowsky and Mr. Dague to produce or make copies of entire textbooks. Most of the referenced sources are available online, and in some instances, Dr. Sasowsky has already indicated where those documents can be located online. Other sources referenced, such as Root, S.I. (1968), *Geology and mineral resources of southeastern Franklin County, Pennsylvania*, Atlas 119cv, 118p., are likewise available online from the United State Geological Survey. Reproducing textbooks and atlases in their entirety for Transource would be a considerable, unreasonable burden to the witnesses for STFC. For example, Mr. Dague cites to 7 references in their entirety, and Dr. Sasowsky cites 5 references in their entirety, which together would require the copying of hundreds of pages. Even were Transource to agree to pay for the copies 52 Pa. Code § 5.349(b) –which Transource has not offered to do—it would still be an unreasonable burden for Dr. Sasowksy and Mr. Dauge to engage in copying entire academic references.

Lastly, while Transource indicates in its Motion that it is willing to limit the requests to the relevant portion of the source relied on, this limitation does not remove the unreasonable burden and expense. Discovery requests under 52 Pa. § 349 are not intended to require answering parties to have to limit reliance on certain textbooks or limit testimony to avoid the unreasonable burden or expense of copying an entire textbook.

III. CONCLUSION

For all the foregoing reasons, STFC respectfully that requests that Transource's Motion to Compel be denied.

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Dated: November 8, 2018

CERTIFICATE OF SERVICE

Consolidated Docket Nos. A-2017-2640200 and A-2017-2640195

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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