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December 10, 2018

Via Electronic Filing

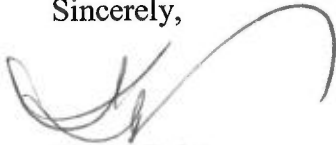
Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Applications 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, et al., Docket Nos. A-2017-2640195 and A-2017-2640200, *et al.*

Dear Secretary Chiavetta:

Enclosed for filing is the Motion to Amend Procedural Schedule of Citizens to Strop Transource, York County, and Maple Lawn Farms, Inc. in the above-referenced matters Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Karen O. Moury

KOM/lww
Enclosure

cc: Cert. of Service
Elizabeth Barnes, Administrative Law Judge
Andrew Calvelli, Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Petition to Intervene upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Karen O. Moury, Esq.

Dated: December 10, 2018

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Transource Pennsylvania, LLC	:	
for approval of the Siting and Construction of the	:	Docket No. A-2017-2640195
230 kV Transmission Line Associated with the	:	Docket No. A-2017-2640200
Independence Energy Connection - East and West	:	
Projects in portions of York and Franklin Counties,	:	
Pennsylvania.	:	
Petition of Transource Pennsylvania, LLC	:	
for a finding that a building to shelter control	:	Docket No. P-2018-3001878
equipment at the Rice Substation in Franklin	:	
County, Pennsylvania is reasonably necessary for	:	
the convenience or welfare of the public.	:	
Petition of Transource Pennsylvania, LLC	:	
for a finding that a building to shelter control	:	Docket No. P-2018-3001883
equipment at the Furnace Run Substation in York	:	
County, Pennsylvania is reasonably necessary for	:	
the convenience or welfare of the public.	:	
Application of Transource Pennsylvania, LLC	:	
for approval to acquire a certain portion of the lands	:	Docket No. A-2018-3001881, <i>et al.</i>
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.	:	

**MOTION TO AMEND PROCEDURAL SCHEDULE OF CITIZENS TO STOP
TRANSOURCE, YORK COUNTY, AND MAPLE LAWN FARMS, INC.**

TO THE HONORABLE ELIZABETH BARNES AND ANDREW CALVELLI:

Pursuant to 52 Pa. Code §§ 1.15, 5.103, 5.202, 5.483, Citizens to Stop Transource-York County (“York County Citizens”) and Maple Lawn Farms, Inc. (“Maple Lawn Farms”) file this Motion to Amend Procedural Schedule (“Motion”) in the above-captioned proceedings by an

additional five months to allow sufficient opportunity for the intervenors to review and respond to the Rebuttal Testimony of Transource Pennsylvania, LLC (“Transource PA”) served on November 27, 2018. Additionally, if this Motion is granted, York County Citizens and Maple Lawn Farms request that the remaining procedural schedule be adjusted accordingly.

The key reasons supporting this Motion are as follows: (i) Transource PA has raised significant new and complex issues in Rebuttal Testimony that should have been set forth in Direct Testimony, including potential reliability violations and alleged economic benefits; (ii) Transource PA has expanded from six to sixteen witnesses; (iii) fundamental principles of due process dictate that the parties need sufficient time to review this extensive Rebuttal Testimony, conduct discovery, review discovery responses and prepare Surrebuttal Testimony; (iv) affected landowners should have an opportunity to respond to Transource PA’s Rebuttal Testimony, either through additional public input hearings or written testimony, regardless of whether they have previously testified; and (v) Transource PA will not be prejudiced by an extension of the procedural schedule since it has voluntarily extended the in-service date by a period of five months. Additional support for this Motion is set forth below.

I. BACKGROUND

Transource Pennsylvania, LLC (“Transource PA”) filed an Application on December 27, 2017 seeking approval for the siting and construction of 230 kV transmission lines associated with the Independence Energy Connection-East Project (“IEC-East”) in York County, Pennsylvania and the Independence Energy Connection-West Project (“IEC-West”) in Franklin County (“Siting Application”) with the Pennsylvania Public Utility Commission. Together, IEC-East and IEC-West are also referred to as the “Siting Applications” and Project 9A.

In its Siting Application associated IEC-East filed nearly one year ago, Transource PA described the project as involving the siting and construction of the new Furnace Run-Conastone 230 kV Transmission Line that will extend approximately 15.8 miles to connect the existing Conastone Substation located near Norrisville, Harford County, Maryland, and the new Furnace Run Substation to be located in York County Pennsylvania. Approximately 12.7 miles of IEC-East will be located in Pennsylvania. Siting Application ¶ 6. The Siting Application was accompanied by six statements of witnesses, including Peggy I. Simmons, Kamran Ali, Paul F. McGlynn, Barry A. Baker, Kent Herzog and Thomas Schaffer, pre-marked as Transource PA St. Nos. 1-6. Siting Application ¶ 8.

On February 20, 2018, York County Citizens filed a Petition to Intervene and Maple Lawn Farms filed a Protest to the Siting Application for IEC-East. A Prehearing Conference was held on March 13, 2018. York County Citizens' Petition to Intervene was granted by a Prehearing Order issued on March 28, 2018. Public Input Hearings on the Siting Application were held in Airville, Pennsylvania on May 9, 2018 and May 14, 2018. Site Visits were conducted in York County on June 1, 2018.

On May 15, 2018, Transource filed 133 Applications for Approval to Exercise Eminent Domain Power ("Eminent Domain Applications") related to the projects proposed by the Siting Applications. On the same date, Transource PA filed two petitions for findings that buildings to shelter control equipment at the proposed Rice Substation and Furnace Run Substation. Pursuant to Notice published in the *Pennsylvania Bulletin* on June 16, 2018, protests are due to be filed to the Eminent Domain Applications by July 6, 2018. Maple Lawn Farms filed a Protest to the relevant Eminent Domain Application at Docket No. A-2018-3001985 on July 3, 2018.

The Office of Consumer Advocate (“OCA”) filed a Motion to Amend the Procedural Schedule on June 1, 2018. By its Motion, OCA requested an extension of the timeframe for Intervenor submitting Direct Testimony by no less than sixty days.

By a Third Prehearing Order dated June 26, 2018, ALJ Barnes and Calvelli consolidated the Siting Applications and Eminent Domain Applications. The Third Prehearing Order also granted a Motion to Extend the Procedural Schedule filed by the Office of Consumer Advocate, extending the due date for the service of Direct Testimony by other parties to September 25, 2018. The remaining schedule was addressed at the Second Prehearing Conference on July 9, 2018.

Following the Second Prehearing Conference, ALJ Barnes and Calvelli issued a Fourth Prehearing Order, and an Errata, modifying the procedural schedule as follows:

Event	Date
Public Input Hearings	September 18 & 20, 2018
Other Parties Direct Testimony Due	September 25, 2018
Rebuttal Testimony	November 27, 2018
Surrebuttal Testimony	January 16, 2019
Written Rejoinder	January 30, 2019
Evidentiary Hearings	February 21-22, February 25-March 1, 2019
Briefs	March 28, 2019
Reply Briefs	April 17, 2019

The additional Public Input Hearings scheduled for September 18 and 20, 2018, in York County and Franklin County, respectively, were for the purpose of affording landowners and other interested parties an opportunity to provide testimony on the Eminent Domain Applications.

Intervenor served Direct Testimony on September 25, 2018. Transource PA served Rebuttal Testimony on November 27, 2018, consisting of sixteen separate statements which were marked as Transource Statement Nos. 1-R, 2-R, and 3-R through 17-R.

II. ARGUMENT

A. Applicable Legal Standards

Section 5.103 of the Commission's regulations provides that a request may be made for desired relief at any time. The motion must set forth the ruling or relief sought, and state the grounds therefor and the statutory or other authority upon which it relies. 52 Pa. Code § 5.103. In addition, Section 1.15 of the Commission's regulations authorizes presiding officers to extend time periods for good cause upon motion, which is made in writing before the expiration of the period originally prescribed and states the facts upon which the request relies. 52 Pa. Code § 1.15(b). Under Section 5.202, presiding officers may postpone proceedings, for cause, with notice to the parties. 52 Pa. Code § 5.202. Also, Section 5.483 of the Commission's regulations authorizes presiding officers to "regulate the course of the proceeding." 52 Pa. Code § 5.483.

The Commission's regulations also prohibit parties from introducing evidence at the rebuttal phase of testimony if it substantially varies from the party's case-in-chief. As stated in Section 5.243(e) of the regulations, a party is not permitted to introduce evidence during a rebuttal phase which is repetitive, should have been included in the party's case-in-chief, or substantially varies from the party's case-in-chief. 52 Pa. Code § 5.243(e).

Further, as an administrative body, the Commission is bound by the due process provisions or constitutional law and by fundamental principles of fairness. *Pittsburgh v. Pa. P.U.C.*, 171 Pa. Super. 391, 395, 90 A.2d 850 (1952). It is well-settled that administrative agencies, such as the Commission are required to provide due process to the parties appearing before them. Due process entitles parties in administrative proceedings to notice and an opportunity to appear and be heard. *Schneider v. Pa. P.U.C.*, 83 Pa. Cmwlt. 306, 479 A.2d 10 (1984).

Importantly, due process requires a meaningful opportunity to be heard prior to the deprivation of a property interest. This opportunity entails a full hearing, including the development of a record and a decision by the Commission based on that hearing with full findings. *See Popowsky v. P.U.C.*, 805 A.2d 637, 643 (Pa. Cmwlth. 2002), *appeals denied*, 820 A.2d 163 (Pa. 2003) and 847 A.2d 60 (Pa. 2004). In short, having a meaningful opportunity to be heard entails the ability to present evidence on an issue. *Scott Paper Company v. Pa. P.U.C.*, 126 Pa. Cmwlth. 111, 558 A.2d 914 (1989).

Indeed, in a recent proceeding where a customer raised issues at a hearing that were not set forth in the complaint, the Commission found that the utility had not been afforded a meaningful opportunity to respond. Finding that the utility was entitled to a “full and fair opportunity” to address the new information, even if it requires additional hearings, the Commission remanded the matter to the Office of Administrative Law Judge. *Mandeville v. PPL Electric Utilities Corporation*, Docket No. C-2015-2512838 (Order entered June 1, 2017), at 12. In the Motion that was adopted by the Commission in the *Mandeville* proceeding on May 4, 2017, Commissioner Sweet explained that the utility was entitled to “an opportunity to present an informed response to the testimony provided” by the customer. *Mandeville* Motion at 2.

B. Due Process Requires an Amendment of the Procedural Schedule

For the intervening parties to have a meaningful opportunity to respond to the new information presented by Transource PA in the rebuttal phase of this proceeding, it is imperative that the procedural schedule be modified. Particularly given the reliance by Transource PA on the “potential reliability violations” that would be addressed by Project 9A, intervenors must be afforded adequate time to review the extensive Rebuttal Testimony, conduct discovery, review discovery responses and prepare Surrebuttal Testimony. The time available between November

27, 2018 and January 16, 2018 for the effective and thorough completion of those tasks is simply insufficient.

(a) Congestion v. Reliability

PJM is a Regional Transmission Organization (“RTO”) charged with ensuring the reliable and efficient operation of the electric transmission system under its functional control, and coordinating the transmission of electricity in all or parts of thirteen states, including Pennsylvania, and the District of Columbia. As the RTO, PJM prepares an annual Regional Transmission Expansion Plan (“RTEP”). Siting Application ¶¶ 10-11.

From Transource PA’s own description of the RTEP, it includes two separate and distinct components. One is reliability and the other is market efficiency. As explained by Transource PA, “PJM’s RTEP includes a Market Efficiency Analysis to identify congestion on electric transmission facilities that has economic or wholesale market effects, as well as potential improvements to electric transmission economic efficiencies.” Siting Application ¶ 12. Transource PA further noted that the “electric transmission infrastructure needs identified by the PJM Market Efficiency Analysis are addressed by market efficiency transmission projects, which are aimed specifically at improving electric transmission economic efficiencies and alleviating electric transmission constraints that have an economic impact on PJM’s wholesale energy or capacity markets.” Siting Application ¶ 13.

When PJM’s Market Efficiency Analysis identifies a need to relieve congestion on electric transmission facilities, PJM opens a Long Term Proposal Window to solicit the submittal of potential solutions (i.e., market efficiency projects) to address those needs. Potential solutions are evaluated on the basis of whether they address the congestion identified in the Market Efficiency Analysis and whether the project benefits exceed the costs by at least 25 percent. In addition, the project must meet PJM’s congestion criteria and not create additional unacceptable congestion

elsewhere on the system. Siting Application ¶ 14. According to Transource PA, PJM selected Project 9A “because it provided the highest benefit-to-cost ratio, the most total congestion savings, and the most production cost savings” – without any reference to addressing potential reliability violations. Siting Application ¶ 18.

From PJM’s early planning stages in 2014 of what is now IEC-East, the project has been described as being necessary to relieve transmission congestion constraints. Siting Application ¶ 17. This theme carried through to the Siting Application where Project 9A was repeatedly and consistently presented as a “market efficiency” transmission project and being needed to address transmission congestion constraints, which are economic in nature. Siting Application ¶¶ 12, 13, 14, 15, 17, 18, 19 and 23. While vague allegations were made about Project 9A generally enhancing reliability of the transmission system, no references were included to suggest that the project is necessary to resolve potential reliability violations or to provide specific reliability benefits. Siting Application ¶ 19.

Also, the Direct Testimony of Transource PA accompanying the Siting Application reiterated the alleged need for the project to address market efficiency and resolve congestion constraints. For example, witness Kamran Ali testified that the “IEC Project is needed to alleviate transmission congestion constraints in Pennsylvania, Maryland, West Virginia, and Virginia.” Transource PA Statement No. 2 at 6. Witness Ali also provided testimony addressing the specific transmission congestion constraints that the project was intended to alleviate. Transource PA Statement No. 2 at 7, 11. He further noted that the Transource PA proposal was selected by PJM as “a market efficiency project.” Statement No. 2 at 8. Similarly, Transource PA witness Paul F. McGlynn described the project as addressing “significant economic congestion” identified by PJM. Transource PA Statement No. 3 at 3. Witness McGlynn further testified that Project 9A

“was selected as the appropriate means to address the market efficiency needs through the RTEP process.” Transource PA Statement No. 3 at 5.

For the first time on November 27, 2018, with the service of Rebuttal Testimony, Transource PA is seeking to justify the construction of Project 9A because it would resolve “specific reliability violations.” Transource PA Statement No. 2-R at 2. Witness Ali refers to alleged “significant North American Electric Reliability Corporation (“NERC”) reliability violations if Project 9A” is not built. He states that “in other words, Project 9A does address specific local reliability needs.” Transource PA Statement No. 2-R at 2-3.

Similarly, witness Steven Herling, who adopted portions of witness McGlynn’s Direct Testimony, testified that PJM has now “identified potential reliability violations that would be resolved by this Project.” Transource PA Statement No. 7-R at 6. Witness Herling further sought to justify the construction of Project A on the basis that there would otherwise be “significant reliability violations,” which he identified. Transource PA Statement No. 7-R at 20-22. He also referred to penalties as high as \$1 million per day for the violation of reliability standards developed by NERC and approved by the Federal Energy Regulatory Commission (“FERC”). Transource PA Statement No. 7-R at 23. Notably, while witness Herling reiterated the original theme of reducing congestion, he testified that Project 9A is suddenly even more important to address the pressing “reliability criteria violations” that seem to have magically appeared. Transource PA Statement No. 7-R at 24-25. Witness Herling even went so far as to suggest that if the reliability issues that have been identified are not addressed, “PJM may need to take action, including system operations such as potential load shedding to address” them. Transource PA Statement No. 7-R at 26. Witness Timothy Horger also testified that “[w]ithout the inclusion of Project 9A into the PJM RTEP,..additional transmission upgrades would be necessary to ensure

the reliability of the PJM region.” Transource PA Statement No. 8-R at 4. Despite these claims, witness Herling testified that PJM has not estimated the costs to resolve these reliability issues without Project 9A. Transource PA Statement No. 7-R at 25.

By now seeking to obtain approval of the Siting Application through reliance on potential reliability violations that would occur without the construction of IEC-East, Transource PA has significantly altered the scope and complexity of issues that must be addressed by the intervening parties. As a matter of fundamental fairness, issues relating to reliability should have been set forth in the Siting Application and the Direct Testimony of Transource PA. Indeed, PJM’s planning process and its solicitation of proposals should have considered these reliability issues. The failure of Transource PA to previously raise potential reliability violations warrants an amendment of the procedural schedule in this proceeding to afford intervenors with a meaningful opportunity to be heard and present evidence to refute these new claims.¹

Given the fact that the entire focus of PJM and Transource PA on Project 9A from 2014 until service of the Rebuttal Testimony on November 27, 2018 has been on its alleged value as a market efficiency project to relieve congestion on electric transmission facilities, the shift during the rebuttal phase of this proceeding to a reliance on Project 9A to resolve alleged reliability violations warrants a modification of the procedural schedule. Absent an extension of the time for intervenors to prepare and serve Surrebuttal Testimony, their due process rights will be violated.

¹ Alternatively, Transource PA’s testimony concerning the need for the project to address potential reliability violations or to provide specific reliability benefits should be stricken. The York County Citizens and Maple Lawn Farms reserve the right to seek such relief. *See Pa. P.U.C. v. UGI Utilities, Inc. (Electric Division)*, Docket No. R-00932862, 1994 Pa. PUC LEXIS 137 at *133-34 (Pa. PUC July 27, 1994) (“The clear purpose of it is to avoid trial by ambush and the prevention of surprise can only be achieved if the parties are confined to the scope of their direct case”). *See also Pa. P.U.C. v. Total Environmental Solutions, Inc.—Treasure Lake Water Division, et al.*, Docket No. R-00072493, 2008 Pa. PUC LEXIS 42 at *114-116 (Pa PUC May 23, 2008) (“Also, the information provided in these attachments substantially varies from TESI’s case-in-chief and it is not equitable to permit TESI to take a second bite at direct testimony, or to allow it to shore-up inadequate direct at the rebuttal phase of this case.”) *aff’d* Opinion and Order at 89 (July 30, 2008).

(b) Alleged Economic Benefits

The same argument is true for other issues presented for the first time in Rebuttal Testimony of Transource PA. For example, Transource PA served the Rebuttal Testimony of witness Judy Chang, which contains extensive information about the alleged economic benefits of Project 9A. Transource PA Statement No. 10-R. Specifically, witness Chang identifies alleged benefits that she says have not been previously considered. To the extent other benefits may accrue to customers as a result of the project, York County Citizens and Maple Lawn Farms submit that they should have been identified as part of Transource PA's case-in-chief. Nothing in witness Chang's Rebuttal Testimony about other alleged benefits, such the value of transmission investments, employment or economic stimulus, was unavailable at the time when Transource PA served its Direct Testimony.

Due to the new information that Transource PA presented through the Rebuttal Testimony of witness Chang and other witnesses, it is critical that the intervenors have a meaningful opportunity to be heard and present evidence refuting these claims. A modification of the procedural schedule is necessary in order to protect the due process rights of the intervenors.²

(c) Expansion from Six to Sixteen Witnesses

Another factor justifying an amendment of the procedural schedule is the service of sixteen written statements by Transource PA in the rebuttal phase of this proceeding, as compared to the six written statements that accompanied the Siting Application. Whereas the Direct Testimony of Transource PA totaled approximately 100 pages, the Rebuttal Testimony consists of over 300 pages, not counting many voluminous exhibits. Given the extensive Rebuttal Testimony served by Transource PA, including issues that should have been raised in its case-in-chief, the period of

² Alternatively, witness Chang's Rebuttal Testimony should be stricken. See Footnote 1.

time from November 27, 2018 through January 16, 2019 is simply insufficient to allow the intervenors to thoroughly review this extensive Rebuttal Testimony, conduct necessary discovery, review discovery responses and prepare Surrebuttal Testimony. To the extent that the procedural schedule is not modified, the intervenors will not have a meaningful opportunity to be heard and present evidence refuting the Rebuttal Testimony served by Transource PA.

(d) Additional Landowner Testimony

Moreover, because the Rebuttal Testimony raises new issues and responds to the testimony offered by landowners during the Public Input Hearings and Site Visits, it is imperative that landowners be afforded another opportunity to provide responsive testimony. This factor also supports a modification of the procedural schedule.

Earlier in the proceeding, the presiding officers directed the landowners to choose between providing testimony during Public Input Hearing/Site Visits and providing written testimony, subject to cross-examination during the Evidentiary Hearings, now scheduled to begin on February 21, 2019. York County Citizens and Maple Lawn Farms viewed this directive as fair and appropriate, and the landowners have cooperated with it. However, given the Rebuttal Testimony presented by several Transource PA witnesses, including testimony that addresses new issues and claims that should have been in the case-in-chief, fundamental principles of due process dictate that the landowners have another opportunity during the surrebuttal phase of the proceeding to meaningfully respond. York County Citizens and Maple Lawn Farms propose that the opportunity should be presented to landowners to choose between testifying at an additional Public Input Hearing that is scheduled in York County or submitting written Surrebuttal Testimony, subject to cross-examination during the Evidentiary Hearings.

Extensive portions of the Transource PA Rebuttal Testimony warrant a modification of the procedural schedule so to allow landowners a meaningful opportunity to provide additional

testimony. One example is the testimony offered regarding Transource PA's interactions with the public since landowners have had ongoing experiences in that regard. Transource PA Statement No. 6-R. Also, the landowners should have the opportunity to respond to Rebuttal Testimony concerning the effect on property values and real estate prices (Transource PA Statement Nos. 13-R and 14-R), the production of EMF/audible noise levels (Transource PA Statement No. 15-R), and health concerns for people and animals (Transource PA Statement No. 16-R and 17-R).

(e) No Prejudice to Transource PA

Transource PA originally indicated a requirement to complete Project 9A by June 1, 2020. Siting Application ¶ 22. It has revised the project timeline, with an expected in-service date of November 1, 2020. Transource PA Statement No. 11-R.

Given this five-month extension in the project timeline, York County Citizens and Maple Lawn Farms submit that extending the procedural schedule in this proceeding by five months would not result in any prejudice to Transource PA. In view of the importance of ensuring that intervenors have a meaningful opportunity to be heard and present evidence refuting the new claims set forth for the first time in Rebuttal Testimony and responding to Rebuttal Testimony that seeks to discount the testimony of landowners offered at the Public Input Hearings and Site Visits, this additional five months should be used in a way that protects the intervenors' due process rights.

III. CONCLUSION

Transource PA has raised significant new and complex issues in Rebuttal Testimony that should have been set forth in Direct Testimony, including potential reliability violations and alleged economic benefits and expanded from six to sixteen witnesses. Under fundamental principles of due process, the intervening parties are entitled to sufficient time to meaningfully respond to this Rebuttal Testimony. Moreover, affected landowners should have an opportunity to respond to Transource PA's Rebuttal Testimony, either through additional public input hearings

or written testimony, regardless of whether they have previously testified. As Transource PA has voluntarily extended the in-service date by a period of five months, it will not be prejudiced by an extension of the procedural schedule of the same length.

WHEREFORE, on the basis of the foregoing, Citizens to Stop Transource-York County and Maple Lawn Farms, Inc. respectfully request that Administrative Law Judges Barnes and Calvelli grant this Motion to Amend Procedural Schedule modifying the current procedural schedule to postpone the surrebuttal due date by an additional five months and ordering that the remainder of the procedural schedule will be adjusted accordingly.

Respectfully submitted,



December 10, 2018

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