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December 10, 2018

**Via Electronic Filing**

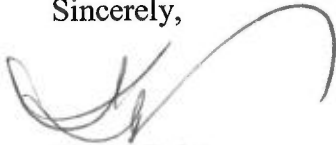
Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

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.	:	

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

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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 Intervenors 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:

<b>Event</b>	<b>Date</b>
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.

Intervenors 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