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February 11, 2019

**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 Brief of Citizens to Stop Transource, York County, in Opposition to Petition for Interlocutory Review filed by Transource Pennsylvania, LLC 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 Citizens to Stop Transource York County's Brief in Opposition to Petition for Interlocutory Review 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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Dated: February 11, 2019

**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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**BRIEF OF CITIZENS TO STOP TRANSOURCE, YORK COUNTY, IN OPPOSITION  
TO PETITION FOR INTERLOCUTORY REVIEW FILED BY  
TRANSOURCE PENNSYLVANIA, LLC**

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TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code § 5.302 (b), Citizens to Stop Transource-York County (“York County Citizens”) file this Brief opposing the Petition for Interlocutory Review (“Petition”) filed

by Transource Pennsylvania, LLC (“Transource”) on February 1, 2019 in the above-captioned proceedings. Through the Petition, Transource seeks interlocutory review of the Seventh Prehearing Order dated January 24, 2019, which designated the specific testimony that was previously stricken by the Sixth Prehearing Order issued on December 31, 2018 by Administrative Law Judges (“ALJs”) Elizabeth H. Barnes and Andrew M. Calvelli. The Sixth Prehearing Order struck portions of Transource’s Rebuttal Testimony which addressed potential reliability violations -- issues that the ALJs properly concluded should have been set forth in its case-in-chief.

Importantly, the Petition raises no issues that cannot be satisfactorily cured by the Commission during the normal review process. On that basis alone, the Petition should be denied. Nonetheless, if the Commission determines to grant interlocutory review, it should not disturb the ALJs’ Sixth and Seventh Prehearing Orders. Transmission projects fall into two distinct categories – market efficiency and reliability. A project that is presented as being necessary to resolve reliability issues is viewed through an entirely different lens than one that is proposed to address economic congestion. From the outset of this proceeding, Transource has consistently described its proposed transmission line as a market efficiency project that is designed to reduce transmission congestion. However, in the rebuttal phase of the proceeding, nearly one year after the applications were filed, Transource shifted gears and claimed that construction of the proposed high voltage transmission line is necessary to resolve potential reliability violations. Through this shift in its strategy to support an alleged need for the proposed project, Transource has sought to significantly change the scope and complexity of this proceeding.

By waiting until the rebuttal phase of the proceeding to claim that the proposed project is needed to address potential reliability violations, Transource improperly engaged in trial by ambush. This practice should not be condoned by the Commission. However, if the Commission

reverses the Sixth and Seventh Prehearing Orders and allows this testimony to be admitted into the record, it is imperative that the Commission also direct the ALJs to establish a reasonable procedural schedule that affords intervenors a meaningful opportunity to review the new claims, conduct discovery, respond to the reliability testimony and participate in further hearings.

## **I. BACKGROUND**

As the procedural history for this proceeding is quite lengthy, York County Citizens are setting forth only those portions that are relevant for responding to the Petition. Transource 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 Applications”). Together, IEC-East and IEC-West are also referred to as Project 9A.

In its Siting Application associated with IEC-East, Transource 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.

On February 20, 2018, York County Citizens filed a Petition to Intervene. 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 filed two petitions for findings that buildings to shelter control equipment at the proposed Rice Substation and Furnace Run Substation.

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 OCA’s Motion to Extend the Procedural Schedule, 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 held 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 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. In the Rebuttal Testimony, Transource witnesses testified that construction of the 9A Project is necessary to address potential reliability violations that PJM identified in September 2018.

On December 7, 2018, OCA filed a Motion to Amend Procedural Schedule, requesting, at minimum, a 90-day extension to submit Surrebuttal Testimony in order to adequately address Transource's newly-raised claims regarding the need for the proposed transmission line to address potential reliability violations. On December 10, 2018, York County Citizens also filed a Motion to Amend Procedural Schedule, requesting a five-month extension of the procedural schedule on the same basis. Alternatively, York County Citizens argued that the testimony regarding potential reliability violations should be stricken and expressly reserved the right to seek such relief.<sup>1</sup> On December 13, 2018, Stop Transource Franklin County filed a Motion to Amend Procedural Schedule, and in the alternative, moved to strike portions of the Rebuttal Testimony.

By the Sixth Prehearing Order dated December 31, 2018, the ALJs agreed that portions of the Transource Rebuttal Testimony added new information identifying potential reliability violations that would be resolved by Project 9A. The Sixth Prehearing Order found that by introducing a new a reason approve the Siting Applications – i.e. because potential reliability violations would occur without the construction of Project 9A – Transource PA had effectively altered the scope and complexity of issues that are to be addressed by intervening parties. Therefore, the Sixth Prehearing Order struck Rebuttal Testimony addressing potential reliability violations that would be resolved by Project 9A. Additionally, the Sixth Prehearing Order

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<sup>1</sup> York County Citizens Motion at p. 10, footnote 1.

modified the procedural schedule to extend the due date for Intervenors' Surrebuttal Testimony from January 16, 2019 to January 30, 2019 and to extend the due date for Transource's Written Rejoinder from January 30, 2019 to February 11, 2019. No other changes to the procedural schedule were made by the Sixth Prehearing Order. The ALJs issued the Seventh Prehearing Order on January 24, 2019 to clarify which portions of the Rebuttal Testimony were stricken.

On February 1, 2019, Transource filed a Petition for Interlocutory Review. Although the Petition specifies the Seventh Prehearing Order as the one sought to be reviewed, it is actually the Sixth Prehearing Order that struck the reliability testimony. This Brief is filed by York County Citizens in opposition to the Petition for Interlocutory Review.

## **II. ARGUMENT**

### **A. Applicable Legal Standards**

The standards for interlocutory review are well established. "The pertinent consideration is whether interlocutory review is necessary in order to prevent substantial prejudice – that is the, the error and any prejudice flowing therefrom could not be satisfactorily cured during the normal Commission review process." *Evans v. FirstEnergy Solutions Corporation*, Docket No. P-2014-2421556 (Order entered January 26, 2015), at 6; *Joint Application of Bell Atlantic Corp. and GTE Corp.*, Docket No. A-310200F0002 (Order entered June 14, 1999). The correctness of the ALJs' ruling is not a determinative issue when the Commission sets out to examine whether a petitioner has fulfilled the regulatory requirements for interlocutory review and answer to a material question. *See Saucon Creek Assoc., Inc. v Borough of Hellertown*, 69 Pa. P.U.C. 467 (1989).

### **B. The Petition Does Not Meet The Applicable Standards**

Transource's Petition does not meet the requisite standards for interlocutory review. The only explanation offered by Transource for why interlocutory review is necessary relates to its

ability to meet contractual obligations regarding the in-service date for Project 9A. Facilitating Transource's ability to fulfill contractual obligations is not a reason for the Commission to grant interlocutory review. Any disagreement with the ALJs' ruling that the Commission may later have about the admissibility of testimony about potential reliability process can be satisfactorily cured through the normal review process by remanding the matter to the ALJs to have this testimony admitted into the record and to allow other parties ample opportunity to review and respond. Transource has not explained how this process would be any lengthier than reversing the Prehearing Orders on interlocutory review and establishing a procedural schedule that allows the intervenors a meaningful opportunity to respond to the reliability testimony.

To the extent that a remand jeopardizes Transource's ability to fulfill its contractual obligations, that outcome is irrelevant. Legal processes outside of the Commission's domain are available for Transource to utilize in order to address its contractual obligations. Indeed, even during the course of this proceeding, Transource has revised the in-service date for the project from June 2020 until November 2020.<sup>2</sup> Therefore, it is not appropriate for the Commission to grant interlocutory review to assist Transource in meeting its contractual obligations that are flexible and appear to be capable of being modified.

Moreover, it is noteworthy that this is a situation of Transource's own making. When it became aware of new evidence concerning potential reliability violations that could be cured by Project 9A in September 2018, Transource was free to amend the Siting Applications and to seek leave to submit Supplemental Direct Testimony. Yet, Transource did neither. It is also significant that while the reliability testimony was stricken by the ALJs on December 31, 2018, Transource waited until February 1, 2019 to seek interlocutory review. If Transource was that concerned

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<sup>2</sup> Transource PA Statement No. 11-R at 9.

about meeting its contractual obligations, it seems that it would have requested interlocutory review shortly after issuance of the Sixth Prehearing Order.

As to Transource's claims of delayed benefits to consumers as a result of a possible remand later in the proceeding, significant questions still exist as to whether Project 9A will generate any benefits. Indeed, OCA's witness Scott Rubin describes the hundreds of millions of dollars in higher electricity costs that would be paid by Pennsylvania consumers if Project 9A is constructed, as well as the real-world harm on Pennsylvania's energy consumers.<sup>3</sup> Therefore, it is not appropriate to consider alleged benefits that might be delayed in the context of whether to grant interlocutory review.

### **C. The Sixth and Seventh Prehearing Orders Properly Struck Testimony**

Under the Commission's regulations, a party is not permitted to introduce evidence during a rebuttal phase which should have been included in the party's case-in-chief, or which substantially varies from the party's case-in-chief. 52 Pa. Code § 5.243(e). The clear purpose of this rule 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." *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). It is not equitable to permit a party "to take a second bite at direct testimony, or to allow it to shore-up inadequate direct at the rebuttal phase" of a case. *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), *aff'd* Opinion and Order at 89 (July 30, 2008).

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 ¶

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<sup>3</sup> OCA Statement No. 1 and 1SR.

17. This theme carried through to the Siting Application where Project 9A was repeatedly and consistently presented as a “market efficiency” transmission project and 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.

During Transource’s case-in-chief, it explained that 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’s description of the RTEP, it includes two separate and distinct components. One is reliability and the other is market efficiency. As explained by Transource, 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.