

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

FAX (717) 783-7152
consumer@paoca.org

February 15, 2019

Honorable Elizabeth Barnes
Honorable Andrew M. Calvelli
Administrative Law Judges
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

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 and 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 reasonably 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 reasonably 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 No. A-2018-3001881, *et al.*

Dear Judge Barnes and Judge Calvelli:

Enclosed please find The Office of Consumer Advocate's Motion to Strike Portions of The Rejoinder Testimony of Transource Pennsylvania, LLC in the above-referenced proceeding.

OCA Motion to Strike
February 15, 2019
Page 2

Copies have been served per the attached Certificate of Service.

Respectfully Submitted,

/s/Darryl A. Lawrence
Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Enclosure

cc: Rosemary Chiavetta, Secretary
Certificate of Service
*266674

CERTIFICATE OF SERVICE

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
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for a finding that a building to shelter control equipment
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Application of Transource Pennsylvania, LLC
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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.

I hereby certify that I have this day served a true copy of the foregoing document, The Office of Consumer Advocate’s Motion to Strike Portions of The Rejoinder Testimony of Transource Pennsylvania, LLC, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 15th day of February 2019.

SERVICE BY E-MAIL and FIRST CLASS MAIL

Anthony D. Kanagy, Esq.
Lindsay Berkstresser, Esq.
David B. MacGregor, Esq.
Post & Schell PC
17 North Second Street
12th Floor
Harrisburg, PA 17101-1601

Amanda Riggs Conner, Esq.
Antonio Smyth, Esq.
Hector Garcia, Esq.
American Electric Power Service
1 Riverside Plaza
29th Floor
Columbus, OH 43215

Thomas J. Sniscak
Whitney E. Snyder
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101

Teresa K. Harrold, Esq.
Tori L. Giesler, Esq.
First Energy
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612

Linus E. Fenicle, Esq.
Reager & Adler, P.C.
2331 Market Street
Camp Hill, PA 17011

Jordan B. Yeager, Esq.
Mark L. Freed, Esq.
Joanna A. Waldron, Esq.
Curtain & Heefner LLP
2005 S. Easton Road
Suite 100
Doylestown, PA 18901

Karen O. Maury
Eckert, Seamans, Cherin, & Mellott, LLC
213 8th Floor
Harrisburg, PA 17101

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

Kimberly A. Klock, Esq.
Michael J. Shafer, Esq.
PPL Electric Utilities Corporation
Two North Ninth Street
Allentown, PA 18101

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

J. Ross McGinnis, Esq.
41 W. Main Street
Fawn Grove, PA 17321

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

SERVICE BY FIRST CLASS MAIL

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

Fred Byers
1863 Coldsmith Rd
Shippensburg, PA 17257

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

Derek Dettinger
24 Chanceford Rd
Brogue, PA 17309

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

Hugh McPherson
2885 New Park Road
New Park, PA 17352

Michael Cordell
4219 Altenwald Rd
Waynesboro, PA 17268

Darwyn Benedict
410 N. Grant Street
Waynesboro, PA 17268

Jan & Georgina Horst
826 New Franklin Road
Chambersburg, PA 17202

Dolores Krick
S. J. Krick & Co. Inc.
Krick's Apartments
Muddy Creek Meadows Riding Stable
699 Frosty Hill Rd
Airville PA 17302

/s/ Darryl A. Lawrence
Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Phillip D. Demanchick
Assistant Consumer Advocate
PA Attorney I.D. # 324761
E-Mail: PDemanchick@paoca.org

David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870
E-Mail: DEvrard@paoca.org

Dianne E. Dusman
Senior Assistant Consumer Advocate
PA Attorney I.D. #38308
E-Mail: DDusman@paoca.org

Counsel for:
the Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
*266670

**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 : Docket Nos. A-2017-2640195
with the Independence Energy Connection - : A-2017-2640200
East and West Project in Portions of York and :
Franklin Counties, Pennsylvania :

Petition of Transource Pennsylvania, LLC for :
a Finding that a Building to Shelter Control :
Equipment at the Rice Substation in Franklin : Docket No. P-2018-3001878
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 :
Equipment at the Furnace Run Substation in : Docket No. P-2018-3001883
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 of Various Landowners in York and :
Franklin Counties, Pennsylvania for the Siting :
and Construction of the 230 kV Transmission : Docket No. A-2018-3001881,
Line Associated with the Independence Energy : *et al.*
Connection – East and West Projects as :
Necessary or Proper for the Service, :
Accommodation, Convenience or safety of the :
Public :

THE OFFICE OF CONSUMER ADVOCATE’S MOTION TO STRIKE
PORTIONS OF THE REJOINDER TESTIMONY OF
TRANSOURCE PENNSYLVANIA, LLC

I. INTRODUCTION

Pursuant to Section 5.103 of the Pennsylvania Public Utility Commission's (Commission) Regulations, the Office of Consumer Advocate (OCA) submits this Motion to Strike Portions of the Rejoinder Testimony of Transource Pennsylvania, LLC (Transource, or Transource PA or Company) in the above-captioned proceeding (Motion).

On February 11, 2019, Transource filed its rejoinder testimony wherein it made numerous references to future potential reliability violations that were struck as a result of the Sixth and Seventh Prehearing Orders (collectively Prehearing Orders). The Company has ignored ALJ Barnes' and ALJ Calvelli's direction as set out in the Prehearing Orders by introducing this evidence ten (10) days prior to the evidentiary hearings for a second time after it had already been stricken from its rebuttal testimony.

The issue here as to whether "potential reliability violations" have been properly raised by the Company in its Rebuttal Testimonies is already before the Commission for review, as the Company submitted a Petition for Interlocutory Review and Answer to a Material Question on February 1, 2019 and the OCA and other Parties submitted briefs on that issue on February 11, 2019. The Parties are currently awaiting a Commission decision on this issue. In the meantime, however, the Company has decided to disregard the clear direction set forth in the ALJs Prehearing Orders and reintroduce the issue of potential future reliability violations through its Rejoinder Testimonies.

In an off-the-record prehearing conference call between the ALJs and the parties held on February 12, 2019, the Company orally agreed to try to come to a mutual agreement as to those portions of the rejoinder testimony that did not comply with the Prehearing Orders. That same day, the OCA, Citizens to Stop Transource – York County (Citizens), and Stop Transource Franklin

County (STFC) sent a joint offer with page numbers and line-by-line designations indicating the portions of the Rejoinder Testimony that should not be admitted as part of the evidentiary record during the upcoming hearings, as the Prehearing Orders have made clear that “potential reliability violations” are not a part of the issues to be litigated in this case at this time. On February 14, 2019, the Company indicated that the joint offer was too broad and that the Company will not be able to reach agreement on this issue. The Company did not offer a counter-proposal, nor did the Company indicate which of the designations were overly broad. The OCA has since reviewed the original line-by-line designations and a revised version is attached here as Exhibit A.

The OCA files this Motion seeking to strike the portions of the Company’s rejoinder testimony as outlined in Exhibit A. To be clear, the OCA finds no reasonable justification for the Company’s actions in this regard. Further, the very issue that was the subject of numerous pleadings and the expenditure of critical resources has now been brought back to the fore in violation of the Commission’s regulations and procedures and the ALJs Prehearing Order. Allowing the Company to engage in this type of activity at this stage of the proceeding only serves to disadvantage the OCA and the other Parties here, compromising a fair hearing process.

II. MOTION TO STRIKE

A. Procedural Background

The OCA notes that the procedural history of this proceeding is lengthy and will continue to grow as the case progresses toward its conclusion. For a detailed summation of the procedural history, see prior documents that the OCA has filed. For the purposes of this Motion, the OCA will discuss the procedural history relevant to its disposition.

On December 27, 2017, Transource filed two applications, along with supporting information and direct testimony, seeking approval from the Commission to construct the

Independence Energy Connection Project (IEC Project or Project), a set of two 230-kilovolt (kV) transmission lines in portions of York and Franklin Counties. On May 15, 2018, the Company filed two additional shelter petitions to site and construct two new substations in portions of York and Franklin Counties as part of the IEC Project, and 133 eminent domain applications to acquire portions of Pennsylvania land to site and construct the two transmission lines.

In its direct testimony, the Company, by and through its witnesses, asserted that the IEC Project is a market efficiency project approved by PJM Interconnection, LLC (PJM) to resolve congestion constraints on the AP South Reactive Interface, a set of four 500 kV lines that originate in West Virginia and terminate in Maryland. In other words, the Company attempted to justify the need for the IEC Project, as is required by Section 57.76 of the Commission's Regulations, 52 Pa. Code Section 57.76(a), based on the economic benefits of the project.

On November 27, 2018, almost one year after filing its direct testimony, the Company served its rebuttal testimony identifying potential future reliability violations on the bulk electric system that may result in the absence of the IEC Project.

These new claims introduced in rebuttal were the subject of various Motions submitted by the OCA, Citizens to Stop Transource – York County (Citizens), and Stop Transource – Franklin County (STFC) (collectively Movants). In particular, STFC requested that portions of the Company's rebuttal testimony be struck to the extent it introduces direct as rebuttal in violation of Section 5.243(e).

On December 31, 2018, the ALJs issued the Sixth Prehearing Order wherein the ALJs agreed with the Movants that the introduction of this evidence by the Company was improper:

By introducing as a reason to approve the siting applications potential reliability violations that would occur without the construction of Project 9A, Transource PA has effectively altered the scope and complexity of issues that are to be addressed by intervening parties and landowners subject to the Applications for eminent

domain. The IEC project was initially described as being necessary to relieve transmission congestion constraints, which are economic in nature. While vague references were made about Project 9A generally enhancing reliability of the transmission system, no references were specified to suggest the project is necessary to resolve potential reliability violations or to provide reliability benefits. Many Intervenors have already testified at the public input hearings and site views already held in this case in response to siting applications and eminent domain applications regarding a market efficiency project, not a reliability project.

Sixth Prehearing Order at 4-5. Accordingly, the ALJs ordered that the portions of the Company's Rebuttal Testimony identified in STFC's Motion should be struck from the Company's rebuttal testimony to the extent it introduced direct as rebuttal. Id., at 8.

Shortly after the disposition of the Movants' Motions, STFC filed an additional Motion to further clarify the portions of the rebuttal testimony that were stricken as a result of the Sixth Prehearing Order. On January 24, 2019, the Seventh Prehearing Order was issued setting forth the exact portions of the rebuttal testimony to be struck as a result of the Sixth Prehearing Order. Namely, all portions of the Company's testimony that references these potential future reliability violations are to be stricken from Transource's rebuttal testimony. Seventh Prehearing Order at 2. The Company was ordered to re-serve its rebuttal testimony in accordance with the line-by-line designation provided in the Seventh Prehearing Order. Id., at 3-4.

Transource then filed a Petition for Interlocutory Review and Answer to a Material Question on February 1, 2019, seeking to overturn the Presiding Officers' decision. The OCA, Citizens, and STFC each filed a Brief in Opposition and the Company filed a Brief in Support, all served on February 11, 2019. The matter is currently pending before the Commission.

On February 11, 2019, the Company filed its rejoinder testimony where it included substantial testimony discussing the potential future reliability violations that, in some cases, was nearly duplicative of the Company's rebuttal testimony. On February 12, 2019, the ALJs and the Parties convened an off-the-record prehearing conference call to discuss, among other things, the

re-introduction of potential future reliability violations in rejoinder. The Company stated that it was willing to discuss some agreement with the other Parties as to the disposition of those portions of its Rejoinder Testimonies, as opposed to all Parties seeking relief from the Presiding Officers.

Later on the afternoon of February 12, 2019, the OCA, Citizens, and STFC jointly sent a line-by-line designation of the Company's rejoinder testimony that was objectionable, and not in compliance with the Prehearing Orders. The Company responded on February 14, 2019, indicating that the designation was too broad and that an agreement cannot be reached. The Company did not supply a counterproposal.

The OCA now seeks to strike the portions of Transource's rejoinder testimony as outlined in Exhibit A in accordance with the Prehearing Orders.

B. The Company's Testimony violates the Presiding Officer's Sixth and Seventh Prehearing Orders

The Sixth Prehearing Order entered on December 31, 2018 explicitly states:

By introducing as a reason to approve the siting applications potential reliability violations that would occur without the construction of Project 9A, Transource PA has effectively altered the scope and complexity of issues that are to be addressed...

Sixth Prehearing Order at 4-5. Accordingly, the Presiding Officers determined that this violated Section 5.243(e) of the Commission's Regulations by introducing direct as rebuttal. Id. at 8.

The Company once again attempts to re-introduce this issue into its rejoinder testimony. The Company should not have the opportunity to introduce this testimony once again, especially considering that evidentiary hearings are six days away at present. The action directly violates Section 5.243(e) of the Commission's Regulations, which is to "avoid trial by ambush and the prevention of surprise." Pa. Pub. Util. Comm'n v. UGI Utilities, Inc. (Electric Division), Docket No. R-00932862, 1994 Pa. PUC LEXIS 137 at *133 (Pa. PUC Jul. 27, 1994) (UGI 1994).

Moreover, the Presiding Officers ultimately determine what evidence is allowed to be presented in the proceeding. Section 5.403 of the Commission's Regulations contains in relevant part:

§ 5.403. Control of receipt of evidence.

(a) The presiding officer shall have all necessary authority to control the receipt of evidence, including the following:

(1) Ruling on the admissibility of evidence

(2) Confining the evidence to the issues in the proceeding and impose, where appropriate:

(i) Limitations on the number of witnesses to be heard.

(ii) Limitations of time and scope for direct and cross examinations.

(iii) Limitations on the production of further evidence.

(iv) Other necessary limitations.

(b) The presiding officer will actively employ these powers to direct and focus the proceedings consistent with due process.

52 Pa. Code § 5.403.

The Presiding Officers properly concluded, pursuant to their authority, that the introduction of potential future reliability violations in the rebuttal phase of testimony was not in accordance with the Commission's Regulations and should not be a part of the record. The Company's inclusion of duplicative rebuttal testimony in its rejoinder that was previously struck defies the Prehearing Orders and should not be allowed. Doing so would substantially infringe upon the OCA's ability to prepare for evidentiary hearings.

III. CONCLUSION

The OCA requests that the Presiding Officers grant the OCA's Motion ordering the Company to strike from its rejoinder testimony all references to potential future reliability violations as outlined in exhibit A to this Motion. The Company has violated the Sixth and Seventh Prehearing Order and its inclusion was improper.

Respectfully Submitted,

/s/Darryl A. Lawrence

Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870
E-Mail: DEvrard@paoca.org

Dianne E. Dusman
Senior Assistant Consumer Advocate
PA Attorney I.D. # 38308
E-Mail: DDusman@paoca.org

Phillip D. Demanchick
Assistant Consumer Advocate
PA Attorney I.D. # 324761
E-Mail: PDemanchick@paoca.org

Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

February 15, 2019

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Exhibit A

**Transource Rejoinder that includes “Reliability Violation” Issues:
Weber, Herling, Ali, Cawley, and Horger**

Weber St. No. 1-RJ

Page 5, starting at line 2, strike “the reliability violations or”

Herling St. No. 7-RJ

Page 14, starting at line 16, strike “PJM’s analysis has identified reliability violations that will exist if Project 9A is not constructed and placed in-service.”

Page 14, line 19, starting with “In addition” and proceeding to page 16, line 9, including the word “constructed”.

Page 17, line 4, starting with “More importantly” and continuing through the end of line 16 including the word “cost”.

Exhibit SRH-7RJ, page 3 in its entirety

Exhibit SRH-7RJ, page 4, bullet point #3, “There are significant reliability violations with Transource 9A removed from model”

Exhibit SRH-8RJ, page 1, bullet point 1, strike “and resolves burgeoning reliability issues.”

Exhibit SRH-8RJ, page 1, strike Bullet #4 in its entirety

Exhibit SRH-8RJ, Page 4, first paragraph, strike “Power flow results have confirmed that the Transource project does indeed solve identified 2023 overloads on a 500 kV line, a 500/230 kV transformer and other transmission facilities.”

Exhibit SRH-8RJ, page 4, third paragraph, strike “addresses emerging reliability issues and, as mentioned later,”

Exhibit SRH-8RJ, page 5, starting with “III. Reliability Benefits” and continuing to page 6 up to but not including “***CETL Improvement Provides RPM Benefit***”

Exhibit SRH-8RJ, page 5, strike “Map 2” in its entirety

Exhibit SRH-8RJ, page 11, strike “Today, such re-evaluations have also shown that the Transource project will address five identified reliability criteria violations that, if not addressed, could cause overloads on the transmission system as early as 2023.”

TPA Exhibit No. SRH-10RJ, page 3, strike part “d.” in its entirety.

TPA Exhibit No. SRH-10RJ, page 5, strike part “d.” in its entirety.

TPA Exhibit No. SRH-10RJ, page 8, strike part “d.” in its entirety.

Ali – St. No. 2-RJ

Page 4, starting near the end of line 8 and all of line 9. “and, as further demonstrated by PJM during the most recent analysis and described by witnesses Horger & Herling, will provide tangible reliability benefits to Pennsylvania.”

Cawley – St. No. 9-RJ

Page 9, line 7. “To ensure safety and reliable service”

Page 9, line 9 “(which secondarily eliminates significant reliability concerns).”

Horger – St. No. 8-RJ

Page 6, lines 20-21. “This sensitivity demonstrated that absent Project 9A reliability violations exist.”