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**E-Filing**

February 15, 2019

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
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 & A-2017-2640200**

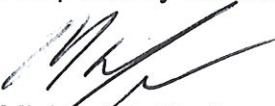
Dear Ms. Chiavetta:

Attached for filing on behalf of PPL Electric Utilities Corporation ("PPL Electric") is an Answer to the Motion to Compel Answers to Interrogatories and Requests for Production of Documents by Transource PA, Set II in the above referenced consolidated proceedings.

Pursuant to 52 Pa. Code § 1.11, the attached document is to be deemed filed on February 15, 2019, which is the date it was filed electronically using the Commission's E-filing system.

If you have any questions please do not hesitate to contact me.

Respectfully submitted,



Michael J. Shafer

Enclosure

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

CERTIFICATE OF SERVICE

(Docket Nos. A-2017-2640195 and A-2017-2640200)

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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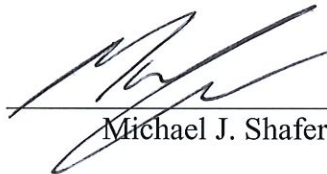
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Date: February 15, 2019



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Michael J. Shafer

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Transource Pennsylvania :  
LLC Filed Pursuant to 52 Pa. Code :  
Chapter 57, Subchapter G, for Approval of : Docket No. A-2017-2640195  
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, Subchapter G, for Approval of : Docket No. A-2017-2640200  
the Siting and Construction of the 230 kV :  
Transmission Line Associated With the :  
Independence Energy Connection-East :  
Project in Portions of Franklin County, :  
Pennsylvania :

**ANSWER OF PPL ELECTRIC UTILITIES TO MOTION OF TRANSOURCE  
PENNSYLVANIA, LLC TO COMPEL ANSWERS TO INTERROGATORIES AND  
DOCUMENT REQUESTS, SET II**

PPL Electric Utilities Corporation (“PPL”), by and through its undersigned attorneys, respectfully files this Answer to Motion to Compel Answer to Interrogatories and Requests for Production of Documents Propounded by Transource Pennsylvania, LLC (“Transource”) – Set II to PPL.

**I. FACTS**

PPL filed a Nunc Pro Tunc Petition to Intervene in the above captioned proceeding on March 9, 2018. PPL had received inquiries from interested parties, including state legislators, regarding PPL facilities in the vicinity of the proposed Transource IEC line. Additionally, PPL may own

property on the proposed IEC route. For these significant reasons, PPL has intervened to monitor Transource's application.

PPL did not have any need to submit direct testimony to protect its interests in this matter. However, Steven Herling submitted rebuttal testimony on November 27, 2018, which potentially incompletely or inaccurately described PPL's facilities and potential capabilities. In order to correct and rebut Herling's testimony PPL submitted surrebuttal testimony from Shadab Ali on January 30, 2019. PPL could not have filed this testimony any earlier in the case because Herling had not yet provided his testimony. As Transource admits, PPL filed Shadab Ali's surrebuttal testimony in a timely fashion.

Transource served its Set II of Interrogatories on PPL on February 1, 2019, to which PPL timely provided responses on February 11, 2019. PPL responded to Questions 1, 5, 10 and 11 that it had limited responsive information, but that the information contains CEII and competitively sensitive material. PPL would provide the requested information when Transource complied with certain non-disclosure protections consistent with the March 14, 2018 Protective Order ("Protective Order"). PPL is not refusing, and has never refused to make the requested information available to Transource, provided that Transource complies with the Protective Order.

Counsel for Transource did call undersigned counsel on February 12, 2019, at which time it was explained that PPL would provide the requested information when Transource complied with the terms of the Protective Order. Transource sent PPL Non-Disclosure Certificates on February 13, 2019 at 3:30 PM. Undersigned counsel was traveling on the afternoon of February 13, but responded to Transource and promised to respond the following morning in order to

review the Non-Disclosure Certificates to confirm compliance with the Protective Order. Transource responded by filing its Motion to Compel two hours after providing the Non-Disclosure Certificates to PPL. As will be explained below, Transource has still not complied with the Protective Order.

The information Transource has requested is classified under the Protective Order as Highly Confidential CEII, and competitively sensitive. PPL and Transource are in potential competition over discrete transmission projects subject to Order 1000 competitive bidding. Transource provided Non-Disclosure Certificates for four individuals, purportedly designating them as Reviewing Representatives under the Protective Order. The individuals were: 1) Hector Garcia, Esq. - American Electric Power Services Corporation; 2) Christopher Gunderson, Esq. – Transource outside counsel; 3) Craig Lockwood - American Electric Power Services Corporation; and 4) Nicolas Koehler - American Electric Power Services Corporation. Upon information and belief, American Electric Power Services Corporation is an affiliate of Transource. While each of the aforementioned individuals provided PPL a Non-Disclosure Certificate, none of them provided an executed CEII Non-Disclosure Agreement in the form posted on the PJM website as required by the Protective Order.

## **II. LEGAL STANDARD AND ARGUMENT**

The disclosure of CEII and competitively sensitive information during discovery in the above captioned matter is governed by the Protective Order. “[T]he Parties may designate materials as Containing Critical Energy Infrastructure Information, as defined in 18 C.F.R. § 388.113(c)(1).” Protective Order, § 3. CEII and confidential information is defined as “Proprietary Information” by the Protective Order in Section 2. “Proprietary Information shall be made available to a Reviewing Representative for a party, subject to the terms of this Protective Order. Such

Reviewing Representative shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, cross examination or argument in this proceeding.” Protective Order, § 4.

In order to obtain Highly Confidential CEII, the person must first sign a Non-Disclosure Certificate and qualify as a Reviewing Representative who is not a Restricted Person under the Protective Order. Protective Order, § 4. Additionally, the Reviewing Representative must execute a CEII Non-Disclosure Agreement in the form posted on the PJM website in accordance with Section 6 of the Protective Order, and the form Non-Disclosure Certificate attached to the Protective Order.

The Reviewing Representative cannot be someone who is a Restricted Person under the Protective Order.

A “Restricted Person” shall mean: (a) an officer, director, stockholder, partner, or owner of any competitor of the parties or an employee of such an entity; (b) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of the parties (including any association of competitors of the parties) or an employee of such an entity...

Protective Order, § 7. PPL and Transource are both transmission owners competing for projects in the PJM territory and elsewhere. Therefore, Transource employees, and employees of Transource affiliates cannot be Transource’s designated Reviewing Representative under the Protective Order.



### **A. Designation of Reviewing Representatives**

Transource has attempted to designate three employees of American Electric Power Services Corporation, an affiliate of Transource, as Reviewing Representatives.<sup>1</sup> As mentioned previously, Transource and PPL are potential competitors for transmission projects in the PJM territory and elsewhere. The purpose of excluding Restricted Persons from being a Reviewing Representative is to prevent a party from being at a commercial disadvantage to a competitor as a result of responding to a discovery request. Section 7 specifically seeks to prevent, an “unfair advantage in negotiations and dealings” between the parties. The Protective Order goes on to provide that “Reviewing Representatives may not use information contained in any Proprietary Information obtained through this proceeding to give any party or any competitor of any party a commercial advantage.” Protective Order, § 10.

Transource attempts to minimize the commercial value of the information it has requested from PPL. In its Motion to Compel, Transource argues that because PPL generally referred to project proposals in Mr. Ali’s surrebuttal testimony, it has waived confidentiality protections under the Protective Order. PPL is not seeking to protect the existence of potential project proposals. Rather, PPL is guarding the analyses and studies used to evaluate those potential proposals. The information Transource is seeking gives it a window into PPL’s planning and design process. Transource would have access to high level system designs and more discrete engineering details related to PPL’s facilities. These were created at great cost using PPL shareholder resources and are protected trade secrets. Allowing this information to fall into the hands of a potential competitor would irreversibly harm PPL’s ability to compete on a

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<sup>1</sup> Transource has also identified its outside counsel, Christopher Gunderson, Esq., as a Reviewing Representative. PPL does not contend that Mr. Gunderson is a Restricted Person. However, Mr. Gunderson must comply with all terms of the Protective Order, including executing a PJM form CEII Non-Disclosure Agreement, prior to receiving Proprietary Information as defined by the Protective Order.

level playing field in the Order 1000 competitive bidding process. Monetary damages would be insufficient to compensate PPL for this harm.

Transource appears to suggest that because PPL voluntarily submitted testimony in this case it cannot avail itself to the full protections of the Protective Order. There is nothing in the Protective Order to support this position, and it does not capture the reason that PPL submitted testimony. Transource determined that it would submit testimony from Steven Herling describing PPL facilities. There was no obligation for Transource to offer testimony about PPL facilities. However, Mr. Herling's testimony was incomplete with respect to his testimony regarding PPL facilities, and PPL needed to correct the record. PPL has only offered testimony in this case in direct response to testimony offered by Transource.

Additionally, Transource has not made a compelling argument as to why there needs to be a deviation from the processes laid out in the Protective Order. PPL remains willing to disclose the requested information, provided that Transource complies with the Protective Order. If Transource's Reviewing Representative believes that the material is not commercially sensitive after viewing the information, the Reviewing Representative can request that the designation be lifted. However, this would be done prior to any disclosure to Restricted Persons, which would allow for judicial review while protecting PPL's rights under the Protective Order.

However, PPL cannot produce the requested information while Transource is challenging its commercial sensitivity. PPL is relying on Transource's Reviewing Representative's obligation under Section 10 of the Protective Order to not disclose information that would provide Transource a commercial advantage. Transource has disputed the commercial sensitivity of PPL's information, and argued that the Restricted Person rules are inapplicable to

its request. Until this disagreement is resolved PPL has no assurance that Transource, and its Reviewing Representatives will live up to their obligations under the Protective Order.

### **B. PJM CEII Non-Disclosure Agreement**

PPL has requested that Transource's appropriately designated Reviewing Representative execute a CEII Non-Disclosure Agreement in the form provided on the PJM website. This request is entirely consistent with the Protective Order. "No Reviewing Representative (including paralegals, secretarial and clerical personnel cited in Section 12(a)) shall be permitted access to CEII in this proceeding unless the Reviewing Representative first executes the CEII Non-Disclosure Agreement in the form posted on the PJM website." Protective Order, § 6. Additionally, the Non-Disclosure Certificate itself, which Transource argues satisfies its PJM Non-Disclosure Agreement obligation, explicitly requires that the PJM agreement be executed prior to the release of CEII. Specifically, the Certificate provides that "the undersigned will execute the CEII Non-Disclosure Agreement in the form posted on the PJM website before accessing CEII..." Protective Order, Appendix A. Despite the clear requirements of the Protective Order, Transource has refused to execute the PJM form Non-Disclosure Agreement.

As Transource can surely appreciate, PPL takes its obligations to protect CEII very seriously. The appropriate handling of CEII is vital to protecting the security of the nation's electric transmission grid. The PJM form Non-Disclosure Agreement provides important protections on how the CEII is to be stored, handled and used. The PJM Agreement elaborates and provides additional details as to the obligations of the recipient of CEII. PPL's CEII is only properly protected if it is subject to the obligations and requirements of the Protective Order, the Non-Disclosure Certificate, and the PJM Non-Disclosure Agreement. Transource has not

provided any compelling reason as to why it should not have its Reviewing Representatives execute the form PJM Non-Disclosure Agreement.

### III. CONCLUSION

PPL has never refused, and remains willing to provide Transource the information requested in its Interrogatories and Request for Production of Documents to PPL - Set II. However, PPL has reasonably requested that Transource comply with the Protective Order in this matter before competitively sensitive CEII is produced. PPL respectfully requests that Transource's Motion to Compel be denied and that Transource be ordered to comply with the Protective Order with respect to PPL's competitively sensitive CEII.

Respectfully submitted,



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Date: February 15, 2019

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