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February 19, 2019

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Application of Transource Pennsylvania, LLC Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, 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 Franklin and York Counties, Pennsylvania Docket No. A-2017-2640195 & A-2017-2640200

Petitions of Transource Pennsylvania, LLC for a finding that a building to shelter control equipment at the Rice Substation in Franklin County, Pennsylvania and the Furnace Run Substation in York County, Pennsylvania are reasonably necessary for the convenience or welfare of the public Docket Nos. P-2018-3001878 & P-2018-3001883

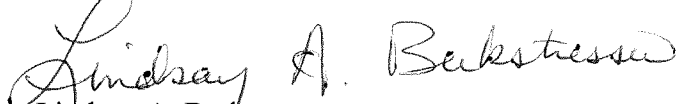
Application of Transource Pennsylvania, LLC for approval to acquire a certain portion of the lands of various landowners in York and Franklin Counties, Pennsylvania for the siting and construction of the 230 kV Transmission Lines associated with the Independence Energy Connection - East and West Projects as necessary or proper for the service, accommodation, convenience or safety of the public - Docket Nos. A-2018-3001881, et al.

Dear Secretary Chiavetta:

Enclosed for filing is the Answer of Transource Pennsylvania, LLC to the Motions of the Office of Consumer Advocate and Stop Transource Franklin County to Strike Portions of Transource Pennsylvania, LLC's Rejoinder Testimony in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Rosemary Chiavetta, Secretary
February 19, 2019
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Respectfully submitted,


Lindsay A. Berkstresser

LAB/jl
Enclosures

cc: Honorable Elizabeth Barnes
Honorable Andrew M. Calvelli
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Transource Pennsylvania, LLC	:	
for approval of the Siting and Construction of	:	Docket No. A-2017-2640195
the 230 kV Transmission Lines Associated	:	Docket No. A-2017-2640200
with the Independence Energy Connection –	:	
East and West Projects in portions of Franklin	:	
and York 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	:	Docket No. A-2018-3001881, <i>et al.</i>
lands of various landowners in York and	:	
Franklin Counties, Pennsylvania for the siting	:	
and construction of the 230 kV Transmission	:	
Lines associated with the Independence Energy	:	
Connection – East and West Projects as	:	
necessary or proper for the service,	:	
accommodation, convenience or safety of the	:	
public	:	

**ANSWER OF TRANSOURCE PENNSYLVANIA, LLC.
TO THE MOTIONS OF THE OFFICE OF CONSUMER ADVOCATE
AND STOP TRANSOURCE FRANKLIN COUNTY TO STRIKE PORTIONS OF
TRANSOURCE PENNSYLVANIA, LLC’S
REJOINDER TESTIMONY**

I. INTRODUCTION

Transource Pennsylvania, LLC (“Transource PA or the “Company”), hereby submits this Answer to the Office of Consumer Advocate’s (“OCA”) Motion to Strike Portions of Transource

PA's Rejoinder Testimony and Stop Transource Franklin County's ("STFC") Motion Joining in the Motion of the OCA to Strike Portions of the Rejoinder Testimony of Transource PA Motion ("Motions to Strike"). This Answer also responds to Citizens to Stop Transource York County ("Citizens STYC") Letter in support of the OCA's Motion to Strike. As explained herein, OCA's, STFC's, and Citizens STYC's request to strike the portions of Transource PA's rejoinder testimony as identified in "Exhibit A" of the OCA's Motion and STFC's request for sanctions, including attorney's fees and costs, should be denied.

The Motions to Strike allege that portions of Transource PA's rejoinder testimony violate Administrative Law Judges Elizabeth Barnes' and Andrew Calvelli's (the "ALJs") Sixth and Seventh Prehearing Orders. The Sixth and Seventh Prehearing Orders struck portions of the Company's rebuttal testimony regarding reliability benefits to the extent they should have been presented in direct testimony.¹ The Seventh Prehearing Order was issued on January 24, 2019. Despite the rulings in the Sixth and Seventh Prehearing Orders, Citizens STYC presented surrebuttal testimony on January 30, 2019 alleging that the Project is not needed to ensure reliable electric service. Although Citizens STYC submitted revised surrebuttal testimony on February 18, 2019, which removed one of the references to reliability, the revised testimony still claims that the Project is not needed for reliability. This testimony is factually inaccurate as it is directly contrary to the latest re-evaluation of Project 9A conducted by PJM Interconnection, LLC ("PJM") in September 2018, a fact well known to other parties.

¹ Transource PA notes that it has requested Commission review of the rulings in the Sixth and Seventh Prehearing Orders for the reasons explained in its pleadings in this proceeding. Transource PA incorporates by reference its December 17, 2018 Answer to STFC's Motion to Amend the Procedural Schedule and Strike Certain Testimony; January 17, 2019 Answer to STFC's Motion to Designate Stricken Testimony; February 1, 2019 Petition for Interlocutory Review and Answer to Material Questions; and February 11, 2019 Brief in Support of Petition for Interlocutory Review. Transource PA has preserved all rights to challenge the Sixth and Seventh Prehearing Orders.

Pennsylvania law is clear that the testimony submitted by Citizens STYC has opened the door for Transource PA to fully respond to Citizens STYC's inaccurate claims. It would be contrary to fundamental notions of fairness to extend the Sixth and Seventh Prehearing Orders to preclude Transource PA from responding to testimony addressing reliability issues, particularly when that testimony has been submitted in surrebuttal *after* the issue was decided by the ALJs in the Sixth and Seventh Prehearing Orders.

Transource PA has not violated the Sixth and Seventh Prehearing Orders by responding to adverse and inaccurate claims made after those Orders. By alleging in surrebuttal testimony that the Project is not needed to ensure reliability, Citizens STYC has opened the door to Transource PA's responsive rejoinder testimony, which explains that the Project (which remains a market efficiency project) will, in fact, result in reliability benefits. Other parties cannot submit surrebuttal testimony addressing reliability issues without allowing Transource PA an opportunity to respond. This would result in an inaccurate and misleading record in this proceeding and would clearly violate Transource PA's statutory right to respond and due process rights.

The OCA's Motion to Strike also alleges that Transource PA's rejoinder testimony regarding reliability benefits would result in "surprise" and "trial by ambush." OCA Motion to Strike, p. 6. Transource PA's rejoinder testimony regarding the Project's reliability benefits is far from a "surprise." The OCA, STFC and Citizens STYC were all aware that PJM has determined that the Project will resolve specific reliability violations as explained in the Company's rebuttal testimony. Evidence regarding the Project's reliability benefits was the subject of several motions and the ALJs' Sixth and Seventh Prehearing Orders, which ultimately struck the Company's rebuttal testimony regarding reliability benefits. Other parties cannot now

claim “surprise” by the fact that they have opened the door to additional responsive testimony regarding the Project’s reliability benefits by presenting surrebuttal testimony on the issue.²

Instead of addressing the issue of reliability benefits, the OCA, STFC and Citizens STYC have chosen to act as if they have ignored the results of the reanalysis, seeking to strike relevant evidence that is adverse to their positions.

II. BACKGROUND

The procedural history in this case is lengthy. This background is limited to only the portions of the procedural history that are relevant to the Motions to Strike.

On December 27, 2017, Transource PA filed the “Application of Transource Pennsylvania, LLC filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the 230 kV Transmission Line Associated with the Independence Energy Connection-East Project in Portions of York County, Pennsylvania.” Also on December 27, 2017, Transource PA filed the “Application of Transource Pennsylvania, LLC filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the 230 kV Transmission Line Associated with the Independence Energy Connection-West Project in Portions of Franklin County, Pennsylvania,” (collectively, the “IEC Project”). Along with the Siting Applications, Transource PA filed the supporting direct testimony.

² Allowing the Company’s rejoinder testimony regarding reliability benefits to be introduced at the hearing would not prejudice other parties because they have had ample time to review and evaluate this issue. Not only did Transource PA identify the Project’s ability to provide reliability benefits in its direct case, the Company also explained that the Project would be reanalyzed and the Project’s costs and benefits updated throughout the course of this proceeding. Transource PA specifically made other parties aware of the upcoming September 2018 TEAC and cost/benefit reanalysis at the Second Prehearing Conference on July 9, 2018. The ALJs reiterated notice of the upcoming reevaluation in the Fourth Prehearing Order. Fourth Prehearing Order, p. 13. The OCA was indeed aware of the results of the updated TEAC as evidenced by the fact that the OCA specifically referenced the update in its direct testimony. OCA St. No. 2, p. 21, fn. 11. Thus, parties have been aware of the Project’s ability to resolve reliability violations for approximately five months and cannot legitimately claim “trial by ambush.”

In its Applications and direct testimony, Transource PA stated that the IEC Project was approved by the PJM Interconnection, L.L.C. (“PJM”) Board in August 2016 to alleviate transmission congestion constraints in Pennsylvania, Maryland, West Virginia, and Virginia. Transource PA St. No. 7-R, p. 4, adopting the direct testimony of Paul McGlynn at p. 33. Transource PA explained that although the primary benefits from the IEC Project relate to market efficiency and the reduction of congestion costs, the new transmission facilities associated with the IEC Project will also enhance the electrical strength and reliability of the transmission system. Transource PA Application ¶ 19; Transource PA St. No. 2.

In its direct testimony, Transource PA also explained that PJM undertakes an annual planning process. The annual planning process includes periodic review of market efficiency projects for changes in the substantive costs and/or benefits of the project, including reliability. Transource PA St. No. 3, pp. 11 (adopted by Herling), p. 23 (adopted by Horger). The PJM planning process covers all aspects of the Project, including reliability, and the Company has alerted other parties to the fact that there would be ongoing analysis of the Project and updates to address system changes.³

Following the submission of the Company’s direct testimony, PJM has re-evaluated the IEC Project two times, once in February 2018 and once in September 2018. The results of the most recent re-evaluation were presented at the September 13, 2018 TEAC meeting and made publically available. The September 2018 re-evaluation revealed that, while Project 9A is a market efficiency project, it also will now resolve reliability violations. PJM has determined that, if the Project were not to go forward, reliability violations will occur on parts of the system in Pennsylvania. Transource PA St. No. 7-R, pp. 16-18.

³ Specifically, counsel for Transource PA notified the ALJ and other parties via email on August 2, 2018 that PJM would be conducting an update and presenting it at the September TEAC.

On September 25, 2018, other parties, except STFC, submitted their direct testimony. Among the many issues raised by the OCA and individuals who testified at the public input hearings were allegations that the proposed Project is not needed because it does not address reliability violations. See, e.g., OCA St. No. 2, p. 12, lines 3-4. Of note, OCA's testimony included extensive references to PJM's September 2018 re-evaluation, including a reference to the September 2018 TEAC presentation containing PJM's report that in addition to the strengthening of the Project's benefits to costs ratio, the project has also now been determined to resolve reliability violations that would arise if the project is not constructed.⁴ OCA St. No. 2, p. 21, fn. 11.

The Company submitted its rebuttal testimony on November 27, 2018, which responded to the many issues raised in other parties' direct testimony and by the public at the input hearings and site visits, including allegations that the Project has no reliability benefits.

On December 13, 2018, STFC filed a Motion to Amend the Procedural Schedule and Strike Certain Testimony.⁵ In its Motion, STFC requested, among other things, that the ALJs strike certain portions of Transource PA's rebuttal testimony regarding reliability benefits to the extent they introduce direct testimony as rebuttal testimony.

On December 31, 2018, the ALJs issued a Sixth Prehearing Order, which, among other things, granted in part and denied in part STFC's Motion to Strike portions of the Company's rebuttal testimony to extent the rebuttal testimony introduces information that should have been presented in direct testimony.

⁴ On the same day that other parties' direct testimony was due, STFC filed a motion for thirty additional days to submit direct testimony. Transource PA opposed STFC's request. STFC was given until October 11, 2018 to submit its direct testimony (Fifth Prehearing Order, p. 4).

⁵ On December 7, 2018, the OCA filed a Motion to Amend the Procedural Schedule and therein requested a 90-day extension of time to submit surrebuttal testimony. On December 10, 2018, Citizens to Stop Transource, York County and Maple Lawn Farms, Inc. filed a Motion to Amend the Procedural Schedule and therein requested a five-month extension of time to submit surrebuttal testimony.

On January 10, 2019, STFC filed a Motion to designate specific portions of Transource PA's rebuttal testimony as stricken. Transource PA filed a response on January 17, 2019.

On January 24, 2019, the ALJs issued a Seventh Prehearing Order striking the specific portions of the Company's rebuttal testimony regarding reliability benefits.

On January 30, 2019, other parties submitted surrebuttal testimony addressing a variety of issues. Once again, the issue of reliability benefits was raised by other parties. Specifically, Citizens STYC witness Krick stated that the IEC Project is not necessary for reliable electric service. Citizens St. No. 1, pp. 14-15.

On February 1, 2019, Transource PA filed a Petition for Interlocutory Review and Answer to Material Question requesting that the Commission reverse the ALJ's evidentiary ruling. On February 11, 2019, parties submitted briefs on the Petition for Interlocutory Review, which is currently pending before the Commission.

On February 11, 2019, Transource PA submitted rejoinder testimony in response to the issues raised in other parties' surrebuttal testimony, including the claim that the Project is not needed for reliable service.

An off-the-record conference call with the ALJs was held on February 12, 2019 at which time other parties expressed their view that Transource PA's rejoinder testimony regarding reliability benefits was improper. Transource PA explained that the rejoinder testimony concerning the Project's reliability benefits is proper because it directly responds to Citizens STYC witness Krick's surrebuttal testimony claiming that the project is not needed for reliability. The parties indicated that they would attempt to reach an agreement following the conference call but were unable to do so.

On February 15, 2019, the OCA and STFC filed Motions to Strike portions of Transource PA's rejoinder testimony. Citizens STYC filed a letter in support of the OCA's Motion.

On February 18, 2019, Citizens STYC submitted the revised rejoinder testimony of witness Krick in which Citizens STYC removed the following reference to reliability benefits: "[the Project] is not needed for reliability in Pennsylvania or in the region." Citizens St. No. 1, p. 15. However, Citizens STYC failed to remove several other references to reliability benefits in the rejoinder testimony, and the revised testimony still claims that the project is not needed for reliability. Specifically, the following statements remain in the revised rejoinder testimony of witness Krick:

Given that Transource has advanced no need for the project to provide adequate, safe and reliable electric service to the citizens and businesses of this Commonwealth, Mr. Cawley's reliance on this statutory provision appears to be misplaced. Citizens St. No. 1, p. 14, ln. 4-10.

However, it is important to emphasize that the project has been proposed to enhance market efficiency and is not necessary – in Transource's own words – to ensure that the region enjoys adequate, safe and reliable electric service. Citizens St. No. 1, p. 14, ln. 16-18.

Landowners from York County have repeatedly testified that if the project was needed for reliability reasons and no other reasonable alternatives existed, they would not be in this proceeding . . . Citizens St. No. 1, p. 15, ln. 10-12.

As explained in this Answer to the Motions to Strike, the Company's rejoinder testimony does not violate the Sixth and Seventh Prehearing Orders. Citizens STYC opened the door in its surrebuttal testimony for Transource PA to fully respond in rejoinder testimony and explain the reliability violations that will be resolved by the Project. Transource PA must be permitted to respond to clearly inaccurate and misleading testimony.

III. ARGUMENT

A. The Sixth and Seventh Prehearing Orders do not preclude Transource PA's rejoinder testimony regarding reliability benefits.

The OCA and STFC allege that Transource PA's rejoinder testimony violates the Sixth and Seventh Prehearing Orders. The Sixth and Seventh Prehearing Orders address STFC's request to strike portions of Transource PA's rebuttal testimony regarding reliability benefits. The Sixth and Seventh Prehearing Orders are limited to striking rebuttal testimony to the extent it introduces direct testimony as rebuttal. Nothing in these Orders bars Transource PA from responding in rejoinder testimony to allegations presented by other parties in their surrebuttal testimony simply because the allegations involve reliability benefits.

Throughout this proceeding, other parties have continually alleged that the Project provides no reliability benefits despite being aware of evidence that the Project will resolve identified reliability violations. Even after the Sixth and Seventh Prehearing Orders addressing this issue, Citizens STYC has made additional inaccurate and misleading factual statements regarding the Project's reliability benefits by submitting surrebuttal testimony that the Project will provide no reliability benefits. At the same time, Citizens STYC, STFC and the OCA are attempting to deprive Transource PA of an opportunity to respond to these inaccurate and misleading claims.

Transource PA has not violated the Sixth and Seventh Prehearing Orders by simply exercising its right to respond to these allegations raised by Citizens STYC. The Sixth and Seventh Prehearing Orders could not possibly have addressed Transource's right to respond to allegations made by other parties in surrebuttal testimony when the surrebuttal testimony was not submitted until after the Sixth and Seventh Prehearing Order were issued.

The Motions to Strike are simply another attempt by the OCA, STFC and Citizens STYC to deprive the record of relevant evidence regarding the Project's reliability benefits that should be reviewed by the ALJs and the Commission when deciding this case. The Motions to Strike

should be denied because Transource PA has not violated the Sixth and Seventh Prehearing Orders by submitting rejoinder testimony that responds to allegations made by Citizens STYC in its surrebuttal testimony.

B. Citizens STYC opened the door for Transource PA to address reliability violation issues in its rejoinder testimony.

Transource PA's rejoinder testimony regarding reliability violations is proper because it directly responds to Citizens STYC witness Krick's claims in surrebuttal that the Project is not necessary for reliable service. Citizens St. No. 1, pp. 14-15. Citizens STYC has "opened the door" to testimony regarding the Project's reliability benefits. Thus, Transource PA is entitled to present responsive testimony. "A litigant opens the door to inadmissible evidence by presenting proof that creates a false impression refuted by the otherwise prohibited evidence." *Commonwealth v. Nypaver*, 69 A.3d 708, 716-17 (Pa. Super. 2013) (citations omitted). Opening the door to present otherwise objectionable testimony is a well-established principle in the Commonwealth. In general, "one who induces a trial court to let down the bars to a field of inquiry that is not competent or relevant to the issues cannot complain if his adversary is also allowed to avail himself of the opening." *Burkholz v. Dep't of Transp.*, 667 A.2d 513, 518 (Pa. Cmwlth. 1995) (quoting *Commonwealth v. Hoyman*, 561 A.2d 756, 761 (Pa. Super. 1989) and McCormick on Evidence § 57 (3d ed. 1984)). ("Having 'opened the door' to the fact of an altercation, Appellant cannot complain that the Commonwealth chose to explore further what was behind that door.") (citations omitted); *Commonwealth v. Stakley*, 365 A.2d 1298, 1300 (Pa. Super. 1976) ("The phrase 'opening the door' or 'opening the gate' by cross-examination involves a waiver. If defendant delves into what would be objectionable testimony on the part of the Commonwealth, then the Commonwealth can probe further into the objectionable area.").

The Commission has applied a similar rule in administrative proceedings. *See Pa. PUC v. Western Utilities, Inc.*, 1998 Pa. PUC LEXIS 145, at *21-23 (Order entered Jan. 28, 1998), in which the Commission addressed the ALJ's striking of portions of the utility's rebuttal testimony dealing with "issues of a fair rate of return" and "the associated cost rates for debt and common equity capital." The utility argued in its Exceptions that such testimony was improperly stricken because it "was submitted solely in response to the arguments made by the [OTS' witnesses] in their direct testimony." *Id.* at *23. OTS argued, among other things, that such testimony should have been included in the Company's direct testimony, which only stated that the utility's "required overall rate of return on rate base is 7.23 percent." *Id.* at *21-22. The Commission agreed with the utility and found that "presentation of this evidence is proper under the requirements of *Standard Pennsylvania Practice 2d*, Section 48.25, regarding a party's right to submit rebuttal testimony with respect to evidence submitted by an adverse party in opposition to the first party's initial presentation of evidence." *Id.* at *23. Therefore, the Commission granted the utility's Exception regarding the admissibility of its rebuttal testimony. *Id.*

Here, Citizens STYC has opened the door to Transource PA reintroducing the stricken testimony about the reliability reasons for the Project. By claiming that the Project is not needed for reliability in Pennsylvania or in the region, Citizens STYC has "create[d] a false impression refuted by the otherwise prohibited evidence," namely, Transource PA's testimony about the NERC reliability violations. *Nypaver*, 69 A.3d at 716-17. If its evidence were allowed to be unrebutted, Citizens STYC will have successfully distorted the record and created an inaccurate and misleading portrayal of the facts to its advantage. Thus, Transource PA should be permitted to reintroduce its testimony about the reliability reasons for the Project to respond to Citizens STYC inaccurate claim.

The OCA, STFC and Citizens STYC cannot have it “both ways” by submitting testimony alleging that the Project will have no reliability benefits but seeking to strike Transource PA’s directly responsive testimony, which explains that the Project will result in reliability benefits.

C. Transource PA’s rejoinder testimony does not amount to “trial by ambush” in violation of Section 5.243(e).

The OCA claims that Transource PA’s rejoinder testimony violates 52 Pa. Code § 5.243. Section 5.243 of the Commission’s regulations prohibits a party from introducing evidence at a later stage of the proceeding that should have been introduced in the party’s direct case. The parties cannot in good faith claim that they are “surprised” that Transource PA submitted rejoinder testimony explaining that the Project will resolve reliability violations when this very issue was the subject of several prior motions, which resulted in the ALJs issuing the Sixth and Seventh Prehearing Orders striking the Company’s rebuttal testimony regarding reliability benefits. It is clear that by once again introducing inaccurate factual allegations regarding the Project’s reliability benefits, Citizens STYC has opened the door to Transource PA presenting responsive testimony on the subject.

As evidenced by the several prior motions, procedural orders and Petition for Interlocutory Review, other parties were well aware that Transource PA disputes claims that the Project is not needed for reliability. It cannot be viewed as a “surprise” that Transource PA would continue to dispute these factually inaccurate claims if other parties presented them again.⁶ The Sixth and Seventh Prehearing Orders have effectively eliminated any excuse that

⁶ Moreover, the fact that the Project will have reliability benefits is far from a “late” claim in this proceeding. Parties have been aware since the Company submitted its Applications and direct testimony that the Project would have reliability benefits. Transource PA once again advised the ALJs and the parties that PJM was updating its re-evaluation of Project 9A at the Second Prehearing Conference held on July 9, 2018. Information regarding the specific reliability violations that the Project will resolve was made publicly available following the September 2018 TEAC, approximately five months ago. Other parties have had ample opportunity to investigate the reliability benefits of the Projects and prepare a response. Rather, they have chosen to ignore this evidence and continue to present inaccurate evidence

other parties could use to claim that they were unaware of the Company's evidence that the Project will resolve specific reliability violations. The Sixth and Seventh Prehearing Orders cannot be interpreted as permanently preventing the Company from responding to other parties' continual presentation of inaccurate and misleading allegations regarding the Project's benefits.

D. Denying Transource PA an opportunity to respond to the claims made by Citizens STYC in its surrebuttal testimony would violate 66 Pa. C.S. § 332(c) and Transource PA's due process rights.

Citizens STYC cannot be allowed to submit testimony alleging that the proposed Project has no reliability benefits without permitting Transource PA an opportunity to present responsive testimony. Striking Transource PA's rejoinder testimony regarding reliability benefits in response to Citizens STYC witness Krick would prevent the Company from responding to Citizens STYC's allegations in violation of Section 332(c) of the Public Utility Code, which sets forth Transource PA's fundamental right to offer evidence in explanation or rebuttal.

Moreover, due process requires that a party be afforded a fair opportunity to respond to adverse claims. *Smith v. Pa. P.U.C.*, 162 A.2d 80, 83 (Pa. Super. Ct. 1960). "The Commission . . . is bound by the due process provisions of constitutional law and by the principles of common fairness. (citation omitted) Among the requirements of due process are notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, . . . and to offer evidence in explanation or rebuttal." *Smith*, 162 A.2d at 83. The Commission has described this as a "fundamental right." *Hartnett v. Bell Atlantic-Pennsylvania, Inc.*, 1994 Pa. PUC LEXIS 57, at *5 (Oct. 19, 1994) (citations omitted). Pursuant to Section 332(c) of the Public Utility Code,

while attempting to prevent Transource PA from introducing responsive testimony. Citizens STYC can hardly claim that it did not have sufficient time to respond to the reliability issues when it did not ask a single discovery question regarding need for the Project. Parties were clearly aware that there would be updated information provided in this proceeding and have been given more than adequate opportunity to address the evidence concerning specific reliability violations. Moreover, the Project's status as a market efficiency project has not changed simply because additional reliability benefits of the Project were discovered through the normal PJM reevaluation process.

"Every party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts."

Striking Transource PA's rejoinder testimony regarding reliability violations violates Section 332(c) and the Company's due process rights.

E. The specific portions of Transource PA's rejoinder testimony that the OCA seeks to strike were properly presented as rejoinder testimony.

1. Witness Weber

The Motions to Strike improperly seek to strike any testimony that mentions the word "reliability." Specifically, the Motions to Strike seek to strike the phrase "reliability violations or" from the following portion of witness Weber's testimony:

Q. OCA Witness Lanzalotta states that he did not develop an alternative in his direct testimony (OCA St. No. 2, p. 4). Please respond.

A. Mr. Lanzalotta in his direct testimony testified that "Adding a new 230 kV circuit to each of the Otter Creek to Conastone and the Manor to Graceton PPL tower lines would duplicate to a great extent the two proposed new 230 kV circuits of the IEC – East Project" and that "using these existing PPL transmission lines towers to each carry an additional 230 kV circuit would eliminate the need" for the IEC – East facilities of Project 9A. (OCA St. No. 2, p. 21, ln. 1-11) Like with the testimony of Mr. Crandall, it is understandable Mr. Lanzalotta now claims that this is not his project alternative, as these were not supported by any credible analysis **regarding either the reliability violations or** the costs or the market efficiency effects that would result.

Transource PA St. No. 1-RJ, p. 5 (emphasis added). Mr. Weber's statement has nothing to do with characterizing the reliability benefits of the IEC Project. Rather, Mr. Weber is responding to Mr. Lanzalotta's claim that he did not develop an alternative in his direct testimony as it relates to adding a new circuit to the Otter Creek-Conastone Line. In his rejoinder testimony, Mr. Weber responds by explaining that the reason Mr. Lanzalotta claims he did not present that

option as an alternative is because it is not supported by any credible analysis regarding reliability, cost or market efficiency. The Sixth and Seventh Prehearing Orders do not even address testimony regarding reliability in the context of a potential “alternative” to the Project. Mr. Weber’s testimony is proper responsive testimony and does not violate the Sixth and Seventh Prehearing Orders.

2. Witnesses Herling, Horger and Ali

The Motions to Strike seek to strike several portions of witnesses Herling’s, Horger’s and Ali’s rejoinder testimonies and exhibits that discuss the Project’s ability to resolve reliability violations and provide tangible reliability benefits to Pennsylvania. The rejoinder testimony of these witnesses should not be stricken because it is proper responsive testimony. Citizens STYC witness Krick specifically claims in her surrebuttal testimony that the Project is not needed for reliable service. Citizens St. No. 1, pp. 14-15. Citizens STYC opened the door for Transource PA to respond. Transource PA must be permitted to fully respond pursuant to 66 Pa. C.S. § 332(c), due process and all rules of fairness and equity. Witnesses Herling, Horger and Ali all refute Citizens STYC’s inaccurate and misleading claim by explaining that reliability violations that the Project will resolve. As explained above, this is proper responsive testimony.

3. Witness Cawley

Finally, the Motions to Strike seek to strike the phrases “To ensure safety and reliable service” and “(which secondarily eliminates significant reliability concerns).” From the following portions of witness Cawley’s testimony:

Q. Witness Krick states the regional planning is important to ensure safe and reliable service, not market efficiency. Citizens St. No. 1, p. 14. Do you agree?

A. No, I do not agree as I partially explained at pages 14-15 of my rebuttal testimony. Mrs. Krick at page 14, lines 4-10, seems to argue that ensuring safe and reliable service and relieving transmission reliability and congestion problems

are not synonymous, and therefore there is no “need” for the project. If that is her argument, she is simply wrong. **To ensure safe and reliable service**, it is essential that the transmission system operate efficiently, including without congestion constraints that are cured by market efficiency projects like this one **(which secondarily eliminates significant reliability concerns)**.

Transource PA St. No. 9-RJ, p. 9 (emphasis added). This portion of Mr. Cawley’s testimony is addressing the relationship between reliability and congestion. Witness Cawley’s rejoinder testimony states his opinion regarding the probability of congestion becoming a reliability problem. Mr. Cawley states that in his view, in order to operate safely and reliability, the transmission system must also operate efficiently. Witnesses Cawley’s testimony should not be stricken simply because it mentions the word “reliability.” Such an interpretation goes well beyond the type of testimony that was stricken by the Sixth and Seventh Prehearing Orders. In addition, Mr. Cawley’s statement that the Project secondarily eliminates significant reliability concerns is directly responsive to Citizens STYC’s surrebuttal testimony.

F. **STFC’s request for sanctions and attorney’s fees and expenses should be denied.**

STFC’s Motion to Strike requests that the ALJs impose sanctions on Transource PA in the form of attorney’s fees and costs. STFC Motion, p. 2. In support of its request, STFC cites to Section 5.371(a)(2) of the Commission’s regulations, which provides for sanctions where a “party refuses to obey an order of the presiding officer respecting discovery” and Pa. RCP 4019, which also addresses available sanctions for discovery violations. Specifically, Pa. RCP 4019 states:

- (a)(1) The court may, on motion, make an appropriate order if
 - (i) a party fails to serve answers, sufficient answers or objections to written interrogatories under Rule 4005;
 - (ii) a corporation or other entity fails to make a designation under Rule 4004(a)(2) or 4007.1(e) [related to depositions and transcripts];
 - (iii) a person, including a person designated under Rule 4004(a)(2) to be examined, fails to answer, answer sufficiently or object to written interrogatories under Rule 4004;

(iv) a party or an officer, or managing agent of a party or a person designated under Rule 4007.1(e) to be examined, after notice under Rule 4007.1, fails to appear before the person who is to take the deposition;

(v) a party or deponent, or an officer or managing agent of a party or deponent, induces a witness not to appear;

(vi) a party or an officer, or managing agent of a party refuses or induces a person to refuse to obey an order of court made under subdivision (b) of this rule requiring such party or person to be sworn or to answer designated questions or an order of court made under Rule 4010;

(vii) a party, in response to a request for production or inspection made under Rule 4009, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested;

(viii) a party or person otherwise fails to make discovery or to obey an order of court respecting discovery.

(2) A failure to act described in subdivision (a)(1) may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has filed an appropriate objection or has applied for a protective order.

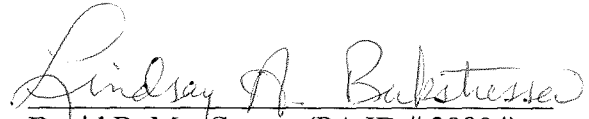
Transource PA notes that this is not a discovery matter. Neither 52 Pa. Code § 5.371(a)(2) nor Pa. RCP 4019 apply here. Moreover, as explained above, Transource PA has not violated the ALJs' Sixth and Seventh Prehearing Orders by preserving its right to respond to adverse claims that were presented after the Orders striking rebuttal testimony were issued.

The Company acted in good faith when it submitted rejoinder testimony concerning the issue of reliability benefits in direct response to Citizens STYC's claims in its surrebuttal testimony that the Project has no reliability benefits. Transource PA is entitled to preserve its right to respond to these claims by submitting responsive testimony in accordance with the procedural schedule. Transource PA's rejoinder testimony regarding reliability benefits is limited to responding to Citizens STYC witness Krick's surrebuttal testimony. Transource PA has not acted improperly and no sanctions are warranted. Therefore, STFC's request for sanctions, including attorney's fees and expenses, should be denied.

IV. CONCLUSION

WHEREFORE, Transource Pennsylvania, LLC respectfully requests that the Office of Consumer Advocate's and Stop Transource Franklin County's Motions to Strike be denied.

Respectfully submitted,



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Counsel for Transource Pennsylvania, LLC

CERTIFICATE OF SERVICE
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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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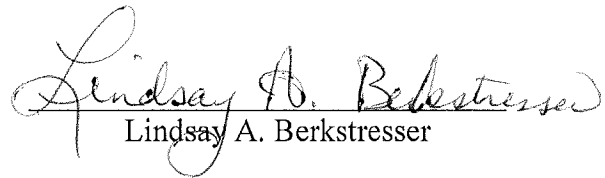
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