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May 29, 2019

**VIA EMAIL & US MAIL**

Honorable Elizabeth Barnes  
Honorable Andrew M. Calvelli  
Administrative Law Judges  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[ebarnes@pa.gov](mailto:ebarnes@pa.gov)  
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**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 or 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 conveniences 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 Nos. A-2018-3001881, *et al.***

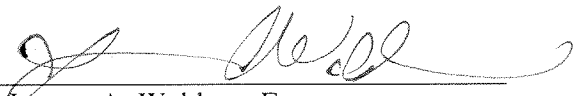
Honorable Elizabeth Barnes  
Honorable Andrew M. Calvelli  
May 29, 2019  
Page 2



Dear Judge Barnes and Judge Calvelli:

Attached for filing is a Motion of Stop Transource Franklin County for an Extension of Time to Submit Surrebuttal Testimony that was filed in the above-referenced matter. Thank you.

CURTIN & HEEFNER LLP

BY:   
Joanna A. Waldron, Esq.  
*Counsel for: Stop Transource Franklin County*

Cc: Per Certificate of Service  
Rosemary Chiavetta, Secretary

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Transource Pennsylvania, LLC :  
Filed Pursuant to 52 Pa. Code Chapter 57, : Docket No. A-2017-2640195  
Subchapter G, for Approval of the Siting and : Docket No. A-2017-2640200  
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 :

Petition of Transource Pennsylvania, LLC :  
for a finding that a building to shelter control : 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 : 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 : A-2018-3001881,  
of various landowners in York and Franklin : *et al.*  
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. :

**MOTION OF INTERVENOR, STOP TRANSOURCE FRANKLIN COUNTY FOR AN  
EXTENSION OF TIME TO SUBMIT SURREBUTTAL TESTIMONY**

Intervenor, Stop Transource Franklin County (“STFC”), by and through its attorneys, respectfully requests an extension of fourteen (14) additional days in which to file surrebuttal written testimony under the governing Tenth Prehearing Order which did not contemplate additional Supplemental Testimony from Transource Pennsylvania, LLC (“Transource”). Good

cause for an extension exists because Transource filed two supplemental statements from witnesses only two weeks ago, introducing another conceptual alternative and another market efficiency analysis, and Transource has only provided any underlying documents related yesterday. In support of this motion for an extension, STFC states as follows:

## **I. BACKGROUND**

On December 27, 2018, Transource filed its Siting Application pursuant to 52 Pa. Code Chapter 57, Subchapter G. for Approval of the 230 kV Transmission Line Associated with the Independence Energy Connection-West Project in Portions of Franklin County. On February 21, 22, 25-27, 2019, evidentiary hearings were held regarding the above-captioned matter. On March 20, 2019, the Public Utility Commission (“Commission”) entered an Opinion and Order answering two pending questions on interlocutory review in the affirmative and returning the case “for such further proceedings deemed necessary,” including permitting the parties to respond to previously-stricken newly-reintroduced testimony. The Tenth Prehearing Order in this case was issued on April 2, 2019, setting forth a schedule to allow for surrebuttal testimony. A true and correct copy of that Order is attached hereto as **Exhibit A**. Pursuant to that Order, written surrebuttal testimony from parties other than Transource is to be filed on May 29, 2019.

On May 14, 2019, however, Transource served additional Supplemental Testimony not contemplated in the Tenth Prehearing Order; one statement from Vice President of PJM, Steve Herling, and one from Director of Energy Market Operations at PJM, Timothy Horger. The statements introduced a new conceptual alternative, and a new market efficiency analysis. Counsel for Transource emailed Administrative Law Judges Barnes and Calvelli and the parties, but did not provide any of the referenced technical data or underlying documents on which the

new testimony is based. A true and correct copy of the email communication is attached hereto as **Exhibit B**.

Transource offered the supplemental testimony of the two witnesses, and did not update any of the discovery responses of any party. The Office of Consumer Advocate issued discovery requests on May 15, 2019. Transource responded to those requests on May 28, 2019. A true and correct copy of the transmittal letter is attached hereto as **Exhibit C**. On May 28, 2019, having not received any responses to the OCA's discovery request, nor any supplemental documents, STFC served discovery requests on Transource. A true and correct copy of the cover letter is attached hereto as **Exhibit D**.

## **II. LEGAL STANDARD**

Extensions of time are governed under 52 Pa. Code § 1.15, which provides that Commission may extend that time period “for good cause be extended upon motion made before the expiration of the period originally prescribed or previously extended...” 52 Pa. Code § 1.15. Good cause exists here because STFC cannot file surrebuttal testimony when Transource has introduced new Supplemental Testimony only two weeks earlier, and provided discovery responses one day ago. Transource's failure to provide the updated supplemental testimony until May 14, 2019 and to provide that information without voluntarily providing underlying documentation necessitates STFC's request for an extension of time. STFC respectfully suggests that it can complete its review in fourteen (14) days as a reasonable, limited extension of time under 52 Pa. Code § 1.15.

Here, Transource voluntarily provided supplemental testimony from two witnesses, but did not offer documents on which it relied to complete those out-of-time updates; nor did supplement any responses on discovery requests. Existing discovery requests already served carry with them a duty to update those requests, and expert witnesses are required to amend

incorrect or incomplete responses. 52 Pa. Code § 5.322 (1), (2). Discovery is permitted of “any matter, not privileged, which is relevant to the subject matter involved in the pending action.” 52 Pa. Code § 5.321(c). Transource is required to answer discovery requests fully and completely, in the absence of an objection, and to answer those parts or subparts of interrogatories to which it has no objection. 52 Pa. Code § 5.342(a)(4).

### **III. LEGAL ARGUMENT**

Transource’s late-filed and selective updates in the form of two different Supplemental witness statements do not provide the other parties with enough information to respond within the existing limited time frame. First, STFC needs additional time to review the newly produced Supplemental Statements before offering written surrebuttal testimony. Second, as a matter of due process and fairness, STFC needs additional time to determine what evidence Transource has failed to update. Transource’s decision to provide only minimal information within the testimony about what documents on which this testimony is based, delayed STFC’s ability to respond. Without full information, the parties, as well as the Commission will not have enough information to meet its fiduciary obligations and satisfy its Constitutionally-mandated pre-action analysis. Transource has failed to meet the minimum requirements for discovery supplementation under the Commission’s rules.

Transource’s introduction of these new statements is Transource’s effort to bolster its pending Application with favorable information without updating any other discovery requests for which it is required to provide updates. In the Supplemental Testimony, Transource offers a new conceptual alternative, relying on newly data, and conducts an new market efficiency analysis, based in part on discovery conducted in the Maryland Proceedings. Transource produced all of this outside of the procedural schedule set forth in the Tenth Prehearing Order. The Tenth Prehearing Order did not contemplate supplements. Accordingly, STFC requires

additional time for surrebuttal and to determine what discovery responses Transource has failed to update in its selective supplemental offerings.

Further, while Transource saw fit to update Mr. Horger and Mr. Herling’s testimony on Conceptual Model 3A, introducing new conceptual alternatives and market efficiency analyses, Transource did not update any of its responses to discovery requests.<sup>1</sup> The discovery requests served by STFC last year in April 18, 2018, contain an ongoing duty to Transource to update those requests. Transource cannot be permitted to selectively update in one area solely to bolster the Applications, and to ignore updates in other areas, or fail to provide underlying documents on which it relies.

Transource has asked this Commission to approve its Siting Application for the construction of a new transmission line over 29 miles of greenfield in Pennsylvania. Under the Pennsylvania Constitution Art. 1, Section 27 (“the Environmental Rights Amendment”), and Pennsylvania Env’tl. Def. Found. v. Com., 161 A.3d 911 (Pa. 2017) (“PEDEF”), the Commission serves as a fiduciary, has an obligation to act within its constitutional requirements to consider the rights of the citizens of Franklin County in advance of acting, and has a duty to refrain from infringing on the environmental rights of those citizens. As the Pennsylvania Supreme Court stated in PEDEF, the Environmental Rights Amendment “places a limitation on the state’ power to act contrary to this right.” PEDEF, 161 A.3d at 931 (citing Robinson Twp., Delaware Riverkeeper Network, et al. v. Com., 623 Pa. 564, 83 A.3d 901, 951 (2013) (Robinson II)).

Transource has the burden under Commission’s existing regulations applicable to transmission line siting to provide a complete application that allows the Commission to make a determination as to whether the application meets the four subsections of Section 57.76: (1) there

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<sup>1</sup> For example, STFC has requested in its Second Request for Production of documents “any and all updated documents from the results of the Karst field work that was completed, as testified to by Mr. Yamatani on February 26, 2019 and as set forth in the transcript of Evidentiary Hearing February 26, 2019, at No 2579, lines 18-19.”

is a need for it; (2) it will not cause an unreasonable risk of danger to the health and safety of the public; (3) it is in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth; (4) it will have minimum adverse environmental impact considering the electric power needs of the public, the state of available technology and the available alternatives.

Here, Transource introduced new supplemental testimony involving available alternatives and analysis, and left the parties only days to respond. Transource will not suffer any undue prejudice if the parties are permitted more days to respond. Transource provided Supplemental Testimony not contemplated. Transource failed to provide underlying basis for the Supplemental Testimonies along with the testimony itself, and did not supplement existing discovery requests voluntarily pursuant to its ongoing duty under 52. Pa. Code § 5.332. Transource could have provided additional information with its Supplemental Testimony. It did not. Any short delay in receiving surrebuttal testimony from STFC arising from Transource's decision to limit its response will not prejudice Transource. It is reasonable to permit STFC additional time up to fourteen (14) days to file surrebuttal testimony responding to all of Transource's new testimony.

#### **IV. CONCLUSION**

For the foregoing reasons, STFC respectfully requests that Administrative Law Judge Elizabeth H. Barnes and Administrative Law Judge Andrew M. Calvelli grant STFC an extension of time within which to file written surrebuttal testimony in this proceeding.

CURTIN & HEEFNER LLP



By: \_\_\_\_\_

Jordan B. Yeager (Pa. I.D. No. 72947)  
Mark L. Freed (Pa. I.D. No. 63860)  
Joanna A. Waldron (Pa. I.D. No. 84768)  
2005 South Easton Road, Suite 100  
Doylestown, PA 18901

Dated: May 29, 2019



## CERTIFICATE OF SERVICE

**Consolidated Docket Nos. A-2017-2640200 and A-2017-2640195**

I hereby certify that a true and correct copy of the Motion of Intervenor Stop Transource Franklin County For An Extension of Time to Submit Surrebuttal Testimony 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).

### VIA E-MAIL & FIRST CLASS MAIL

Honorable Elizabeth Barnes  
Honorable Andrew M. Calvelli  
Administrative Law Judges  
PA Public Utility Commission  
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Jan & Georgiana Horst  
826 New Franklin Road  
Chambersburg, PA 17202

Curtin & Heefner LLP



By: \_\_\_\_\_  
JOANNA A. WALDRON

Date: 5/29/19

# Exhibit A



Corporation; MAIT, West Penn Power Company Citizens to Stop Transource, York County; and Stop Transource, Franklin County present.

THEREFORE,

IT IS ORDERED:

1. That Transource Pennsylvania, LLC is directed to file within ten (10) days from the date of issuance of this Order, unredacted rebuttal and rejoinder statements as well as exhibits that were previously admitted into the record in redacted versions.

2. That the procedural schedule at Docket No. A-2017-2640195 *et al.* is amended as follows.

Other Parties' Surrebuttal Testimony	May 29, 2019
Transource PA's Written Supplemental Rejoinder Testimony	June 17, 2019
Further Evidentiary Hearings Regarding Reliability	June 27-28, 2019
Main Briefs	July 24, 2019
Reply Briefs	August 23, 2019

3. That there is a three-day transcript turnaround for the hearings.

4. That the parties are given leave to file main briefs on or before July 24, 2019 and reply briefs on or before August 23, 2019.

5. That proposed findings of fact, conclusions of law, and ordering paragraphs should be included in the main briefs.

6. That briefs shall comply with the requirements of 52 Pa. Code §§ 5.501 and 5.502. The 60-page limitation appearing in Section 5.501(e) is specifically waived to permit

## APPENDIX A

### TRANSOURCE PENNSYLVANIA, LLC SITING APPLICATIONS A-2017-2640195 and A-2017-2640200 ET AL.

#### OUTLINE FOR MAIN BRIEF

- I. INTRODUCTION
- II. STATEMENT OF THE CASE
- III. SUMMARY OF ARGUMENT
- IV. BURDEN OF PROOF
- V. LEGAL STANDARDS
- VI. ARGUMENT
  - A. INTRODUCTION
  - B. NEED FOR THE INDEPENDENCE ENERGY CONNECTION PROJECTS
  - C. RISKS TO HEALTH AND SAFETY OF THE PUBLIC
  - D. ENVIRONMENTAL IMPACTS
    - 1. Protection of Natural Resources
      - a. Rare, Threatened and Endangered Species
      - b. Trout Fishing
      - c. Wetlands
      - d. Tree Trimming and vegetation management
      - e. Springs, creeks, wells, soil and sedimentation
      - f. Plant and wildlife habitats
      - g. Other Natural Resources
      - h. Terrain
      - i. Hydrology
      - j. Landscape

- k. Archeologic Areas
- l. Geologic Areas
- m. Historic Areas
- n. Viewshed of Scenic Areas and Rivers

- 2. Land Subject to Conservation Easement
- 3. Properties within an Agricultural Security Area
- 4. Tourism
- 5. Real Estate Property Values
- 6. Impact on schools, local government municipalities and businesses
- 7. Construction Issues

- E. AVAILABILITY OF REASONABLE ALTERNATIVES
- F. ECONOMIC IMPACTS
- G. EMINENT DOMAIN
- H. ZONING EXEMPTION
- I. OTHER RELEVANT ISSUES

## VII. CONCLUSION

- Appendix A: Procedural History
- Appendix B: Proposed Findings of Fact (with transcript/exhibit citations)
- Appendix C: Proposed Conclusions of Law & Ordering Paragraphs
- Appendix D: Glossary/List of Abbreviations

# Exhibit B



## Waldron, Joanna A.

---

**From:** Berkstresser, Lindsay <LBerkstresser@PostSchell.com>  
**Sent:** Monday, May 13, 2019 5:07 PM  
**To:** Barnes, Elizabeth; Calvelli, Andrew; Barron & Jana Shaw (barron@shaworchards.com); Darryl Lawrence (dlawrence@paoca.org); David Evrard (devrard@paoca.org); Dianne E. Dusman (ddusman@paoca.org); Hector Garcia (hgarcia1@aep.com); Jack R. Garfinkle (jack.garfinkle@exeloncorp.com); Jennedy S. Johnson (jennedy.johnson@exeloncorp.com); Waldron, Joanna A.; John L. Munsch (jmunsch@firstenergycorp.com); Yeager, Jordan B.; Kanagy, Anthony; Karen O. Moury (kmoury@eckertseamans.com); Kimberly Klock (kklock@pplweb.com); Laurie M. Spears (lmspears@aep.com); Linus E. Fenicle (lfenicle@reagerAdlerPC.com); Freed, Mark L.; Michael J. Shafer (mjshafer@pplweb.com); Phillip D. Demanchick (PDemanchick@paoca.org); Romulo L. Diaz, Jr. (Romulo.Diaz@Exeloncorp.com); Webb, Sharon; Teresa Harrold (tharrold@firstenergycorp.com); Thomas J. Sniscak (tjsniscak@hmslegal.com); Whitney Snyder (wesnyder@hmslegal.com)  
**Subject:** Application of Transource Pennsylvania, LLC - Docket Nos. A-2017-2640195, et al

Your Honors and Parties:

During the evidentiary hearing, Transource PA witness Steven Herling testified regarding PJM's preliminary evaluation of "Conceptual Alternative 3," an alternative to the east leg of the IEC Project proposed by the Maryland Power Plant Research Program ("PPRP"), as well as PJM's analysis of Conceptual Alternative 3 with certain modifications. Following the evidentiary hearing, PJM received updated technical data regarding facilities in the region. Using that updated data, PJM re-evaluated a version of Conceptual Alternative 3 with certain modifications. PJM determined that the modified version of Conceptual Alternative 3 passes the reliability screenings. PJM subsequently performed a market efficiency analysis for this modified version of Conceptual Alternative 3. Transource PA intends to file the limited supplemental testimony of Steven Herling and Timothy Horger on May 14, 2019 to address these updates.

**Lindsay A. Berkstresser**  
**Associate**  
**Post & Schell, P.C.**  
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# Exhibit C



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---

Lindsay A. Berkstresser

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File #: 166570

May 28, 2019

*VIA E-MAIL & REGULAR MAIL*

Dianne E. Dusman, Esquire  
Darryl Lawrence, Esquire  
Phillip D. Demanchick, Esquire  
David T. Evrard, Esquire  
Office of Consumer Advocate  
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Harrisburg, PA 17101-1923

**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 Project in Portions of York County, Pennsylvania  
Docket No. A-2017-2640195**

**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  
Docket No. A-2017-2640200**

---

Dear Counsel:

Enclosed please find the Responses of Transource Pennsylvania, LLC to the Interrogatories of the Office of Consumer Advocate – Set XLI, Questions 1 – 5 and 7 – 8, in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

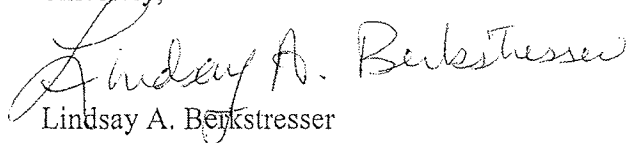
A CD containing copies of the **HIGHLY CONFIDENTIAL CRITICAL ENERGY INFRASTRUCTURE INFORMATION (“CEII”)** will be provided via separate letters.

Dianne E. Dusman, Esquire

May 28, 2019

Page 2

Sincerely,

A handwritten signature in cursive script that reads "Lindsay A. Berkstresser". The signature is written in black ink and is positioned above the printed name.

Lindsay A. Berkstresser

LAB/jl

Enclosures

cc: Certificate of Service

Rosemary Chiavatta, Secretary (*Letter & Certificate of Service Only*)

# Exhibit D

  
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May 28, 2019

**VIA EMAIL and FIRST CLASS MAIL**

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David B. Macgregor, Esquire  
Lindsay A. Berkstresser, Esquire  
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**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 or 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**

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Anthony Kanagy, Esquire  
David B. Macgregor, Esquire  
Lindsay A. Berkstresser, Esquire  
May 28, 2019  
Page 2



Counsel:

Enclosed please find the Second Request to Transource Pennsylvania, LLC for Production of Documents in the above referenced proceeding. Copies have been served on the parties as indicated on the attached Certificate of Service.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joanna A. Waldron". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Joanna A. Waldron, Esquire  
CURTIN & HEEFNER LLP  
*Counsel for Stop Transource Franklin County*

JAW/cvp  
Enclosure

Cc: Honorable Rosemary Chiavetta (letter and COS only)  
Per Certificate of Service