

August 11, 2020

VIA EFILING

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17101

**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**

**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 230kV 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.***

Dear Secretary Chiavetta:

Please find enclosed for filing the Main Brief of Intervenor the County of Franklin. If you have any questions or concerns, please feel free to contact me at the address listed above.

Very Truly Yours,

SALZMANN HUGHES, P.C.

/s/ Scott T. Wyland
Scott T. Wyland

STW/nas

Enclosure

Cc: The Honorable Elizabeth Barnes
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Transource Pennsylvania, LLC	:	
for approval of the Siting and Construction of the	:	A-2017-2640195
230 kV Transmission Line Associated with the	:	A-2017-2640200
Independence Energy Connection - East and West Projects	:	
in portions of York and Franklin Counties, Pennsylvania.	:	
	:	
Petition of Transource Pennsylvania, LLC	:	
for a finding that a building to shelter control equipment	:	
at the Rice Substation in Franklin County, Pennsylvania	:	P-2018-3001878
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 York County,	:	P-2018-3001883
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	:	A-2018-3001881,
Transmission Line associated with the Independence Energy	:	<i>et al.</i>
Connection – East and West Projects as necessary or proper	:	
for the service, accommodation, convenience or safety of	:	
the public.	:	

MAIN BRIEF OF INTERVENOR THE COUNTY OF FRANKLIN

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. STATEMENT OF THE CASE.....1

III. SUMMARY OF THE ARGUMENT.....3

IV. BURDEN OF PROOF.....5

V. APPLICABLE LEGAL STANDARD.....5

VI. ARGUMENT.....9

 A. Introduction.....9

 B. Need for the Project.....10

 1. The IEC Project is not needed to address congestion.....10

 2. The IEC Project is not needed to resolve the identified projected reliability violations.....15

 C. Risks to Health and Safety of the Public.....19

 D. Environmental Impacts.....19

 1. Protection of Natural Resources.....19

 a. Rare, Threatened and Endangered Species.....22

 b. Trout fishing.....22

 c. Wetlands.....23

 d. Tree Trimming and vegetation management.....23

 e. Springs, creeks, wells, soil, and sedimentation.....23

 f. Plant and wildlife habitats.....23

 g. Other Natural Resources.....23

 h. Terrain.....23

 i. Hydrology.....23

j.	Landscape.....	23
k.	Archeologic areas.....	23
l.	Geologic areas.....	23
m.	Historic Areas.....	23
n.	Viewshed of Scenic Areas and Rivers.....	23
2.	Land subject to conservation easement.....	23
3.	Properties within an Agricultural Security Area.....	29
4.	Tourism.....	32
5.	Real Estate Property Values.....	32
6.	Impact on schools, local government municipalities and businesses.....	32
7.	Construction Issues.....	32
E.	Availability of Reasonable Alternatives.....	32
F.	Economic Impacts.....	32
1.	The IEC Project is detrimental to Pennsylvania electric ratepayers.....	33
2.	PJM’s benefit-cost analysis fails to account for the actual costs of the IEC Project, and is detrimental t the entire public within PJM’s region.....	34
G.	Eminent Domain.....	38
H.	Zoning Exemptions.....	39
VII.	Other Relevant Issues.....	40
VIII.	Conclusion.....	40
Appendix A:	Procedural History.....	41
Appendix B:	Proposed Findings of Fact.....	43
Appendix C:	Proposed Conclusions of Law & Ordering Paragraphs.....	46

TABLE OF AUTHORITIES

Cases

Com., Dep't of Env'tl. Res. v. Com., Pub. Util. Comm'n, 335 A.2d 860 (Pa. Cmw'lth. 1975) ...4, 8, 28, 31, 39

Duquesne Light Company v. Upper St. Clair Township, 105 A.2d 287 (Pa. 1954)..... 4, 8, 28, 31, 39

Hess v. Pennsylvania Pub. Util. Comm'n, 107 A.3d 246 (Pa. Cmw'lth. 2014)..... 7, 10, 32

In re Condemnation of Springboro Area Water Auth. of Prop. of Gillette, 898 A.2d 6 (Pa. Cmw'lth. 2006)..... 27, 31

Pa. Env'tl. Def. Foundation v. Com., 161 A.3d 911 (Pa. 2017) 8, 19, 20

Pa. Power & Light Co. v. Pa. Pub. Util. Comm'n, 696 A.2d 248 (Pa. Cmw'lth. 1997) 7

Payne v. Kassab, 312 A.2d 86 (1973) 20

Robinson Twp., Washington Cty. v. Com., 83 A.3d 901 (Pa. 2013)..... 8

Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa. Cmw'lth. 1990) 5

Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950)..... 5

Statutes

15 Pa.C.S.A. § 1511 7, 26, 30, 39

26 Pa.C.S.A. § 208 24, 25, 26

3 P.S. § 913 29, 30

3 P.S. § 901 23

3 P.S. § 902 24, 29

3 P.S. § 912 24

3 P.S. § 913 30, 31

3 P.S. § 914.1 24

52 Pa. Code § 57.71 5

52 Pa. Code § 57.72 1

52 Pa. Code § 57.76 3, 6, 7

66 Pa.C.S. § 1501 7, 9

66 Pa.C.S. § 332 5

71 P.S. § 106 29

Constitutional Provisions

Pa. Const. art. I, § 27 8, 19, 22

I. INTRODUCTION

Transource Pennsylvania, LLC (“Transource”) seeks approval to site and construct the Pennsylvania portion of two new high voltage 230 kV interstate transmission lines associated with the Independent Energy Connection Project (the “IEC Project” or “Project”) in portions of York and Franklin Counties, Pennsylvania, as well as the construction of two new related substations. Transource also seeks the Commission’s approval to exercise eminent domain in York and Franklin Counties for the construction of the transmission lines associated with the IEC Project. PJM Interconnection, L.L.C. (“PJM”) approved the IEC Project as a market efficiency project as part of its Regional Transmission Expansion Plan (“RTEP”). Transource and PJM claim that the IEC Project is needed to alleviate transmission congestion constraints in Maryland, West Virginia, and Virginia on transmission facilities referred to as the AP South Reactive Interface (“APSRI”). By alleviating this transmission congestion, they argue, the IEC Project is supposed to provide a significant decrease in the cost of electricity for customers outside Pennsylvania.

Intervenor, the County of Franklin (“Franklin County”) has filed a Petition to Intervene in this matter to oppose the IEC Project. Simply put, Franklin County submits that the IEC Project is not needed, the IEC Project does not benefit and will be detrimental to Pennsylvania electric ratepayers, and the IEC Project will have a significant adverse environmental impact on Franklin County, including on the County’s agricultural lands and other natural resources. Franklin County, therefore, files this brief in opposition to Transource’s Applications.

II. STATEMENT OF THE CASE

On December 27, 2017, Transource filed two Applications pursuant to 52 Pa. Code § 57.72 with the Pennsylvania Public Utility Commission (“Commission”) for approval to site and

construct the Pennsylvania portion of two new overhead double-circuit 230 kV interstate transmission lines associated with the IEC Project in portions of York and Franklin Counties, Pennsylvania as follows: (1) Application 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 (the “IEC East Portion”); and (2) Application 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 (the “IEC West Portion”) (collectively, the “Siting Applications”). The Siting Applications seek Commission approval for the siting and construction of two high voltage (“HV”) 230 kV transmission lines, the Furnace Run-Conastone Line in York County and the Rice-Ringgold Line in Franklin County.

On May 15, 2018, Transource filed 133 applications to exercise eminent domain over portions of several properties for the siting and construction of the transmission lines (“Eminent Domain Applications”), and two Petitions for findings that buildings to shelter control equipment at the proposed Furnace Run Substation and Rice Substation were reasonably necessary for the convenience or welfare of the public (“Zoning Shelter Petitions”). Pursuant to the Third Prehearing Order dated June 26, 2018, the Siting Applications, Eminent Domain Applications, and Zoning Shelter Petitions were consolidated.

On January 29, 2020, Transource and PPL Electric Utilities Corporation (“PPL Electric”) filed a Joint Amended Application, proposing an alternative route for the IEC East Portion transmission line in York County (the “Amended Siting Application”). Pursuant to the Amended Siting Application, Transource seeks approval for the IEC West Portion transmission line located in Franklin County as initially proposed in its original Siting Application. On February 28, 2020,

Franklin County filed a Petition to Intervene and Protest in the above-captioned matter to protect the interests of the County and its citizens. Franklin County was granted Intervenor status by the Fifteenth Prehearing Order dated April 16, 2020.

Franklin County primarily contends that there is no need for this Project, and the County submits that the Project does not benefit residents of Franklin County based on multiple factors, including economic, land use, and environmental considerations. Through this brief, Franklin County will present the record evidence as to the absence of need for and negative impacts of the IEC Project.

III. SUMMARY OF THE ARGUMENT

The Commission is required to find and determine that Transource has established the following factors to approve the proposed transmission lines: (1) that the transmission lines are needed; (2) that the transmission lines will not create an unreasonable risk of danger to the health and safety of the public; (3) that the transmission lines are in compliance with statutory and regulatory requirements for the protection of Pennsylvania's natural resources; and (4) that the transmission lines will have a minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology, and the available alternatives. *See* 52 Pa. Code § 57.76(a)(1)-(4).

Transource has failed to establish that the transmission lines are needed. Transource asserts the IEC Project is needed to resolve purported congestion to economically benefit electric customers chiefly in areas to the South and East of Pennsylvania. The record demonstrates that this congestion no longer exists and, therefore, there is no need for the Project. Transource also claims that the IEC Project is needed to resolve projected reliability issues. But the record demonstrates that the IEC Project is not intended nor is it needed to resolve the reliability issues.

Franklin County, for its part, submitted the testimony of expert witness Edward G. McGavran. Mr. McGavran credibly testified that the IEC Project is not needed to resolve congestion or reliability issues and would be economically determinantal to the public, including Pennsylvania electric ratepayers.

Transource has also failed to establish that the transmission lines are in compliance with statutory and regulatory requirements for the protection of Pennsylvania's natural resources. The proposed transmission line in Franklin County would cross lands within an agricultural security area and lands subject to conservation easements. In violation of the Agricultural Security Area Law and the Eminent Domain Code, Transource's Eminent Domain Applications seek to condemn the same without obtaining prior approval from the Orphans' Court, the Agricultural Lands Condemnation Approval Board, and local agencies. Additionally, the Pennsylvania Supreme Court has explained that the Commission's approval of eminent domain is subject to legislative restrictions enacted by the General Assembly. *Duquesne Light Company v. Upper St. Clair Township*, 105 A.2d 287, 294 n. 1 (Pa. 1954) (emphasis added); *see also Com., Dep't of Envtl. Res. v. Com., Pub. Util. Comm'n*, 335 A.2d 860, 863 (Pa. Cmwlth. 1975). Transource has failed to comply with these statutory requirements for the protection of these natural resources and, therefore, its Applications must be denied.

Finally, Transource has failed to establish that that the proposed transmission line has a minimum adverse environmental impact on Franklin County, especially considering that the IEC Project is not needed. The transmission line would cross prime farmlands in Franklin County and adversely impact the County's streams, wetlands, floodplains and other natural resources.

Transource's Applications fail to meet the standards required for approval and should be denied by the Commission. Franklin County respectfully submits that the Commission should

deny Transource's Applications because the evidence fails to satisfy the legal standards required for approval.

IV. BURDEN OF PROOF

As the proponent of its Applications, Transource has the burden of proof to establish that it is entitled to the relief it is seeking in this proceeding. 66 Pa.C.S. § 332(a). Transource must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). To meet its burden of proof, Transource must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

V. APPLICABLE LEGAL STANDARDS

1. Standards for Approval of the Siting and Construction of High Voltage Transmission Lines

The Commission's regulations regarding the siting and construction of high voltage transmission lines at 52 Pa. Code §§ 57.71-57.77 require that Transource obtain the Commission's approval to locate and construct the high voltage transmission lines. 52 Pa. Code § 57.71. The Commission's regulations specifically provide that the Commission will consider the following matters in reaching its decision:

- (1) The present and future necessity of the proposed HV line in furnishing service to the public.
- (2) The safety of the proposed HV line.
- (3) The impact and the efforts which have been and will be made to minimize the impact, if any, of the proposed HV line upon the following:
 - (i) Land use
 - (ii) Soil and sedimentation
 - (iii) Plant and wildlife habitats

- (iv) Terrain
- (v) Hydrology
- (vi) Landscape
- (vii) Archeologic areas
- (viii) Geologic areas
- (ix) Historic areas
- (x) Scenic areas
- (xi) Wilderness areas
- (xii) Scenic rivers

- (4) The availability of reasonable alternative routes.

52 Pa. Code § 57.76(a) authorizes the Commission to impose terms, conditions, or modifications, of the location, construction, or maintenance of the proposed HV line as the Commission deems appropriate. Further, Section 57.76(a) requires that the Commission find and determine that the following four elements must be established in order for the Commission to approve the transmission line:

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

52 Pa. Code § 57.76(a)(1)-(4).

For purposes of this case, Franklin County has challenged three of the criteria set forth in Section 57.76(a): the need for the proposed transmission lines, compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth, and the environmental impact of the lines considering the need.

2. Standards for Determining Need for a Transmission line

The Commonwealth Court has determined that the Commission should not approve a transmission line unless the electric utility demonstrates that the line is necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public, pursuant to 66 Pa.C.S. § 1501. *Pa. Power & Light Co. v. Pa. Pub. Util. Comm'n*, 696 A.2d 248, 250 (Pa. Cmwlth. 1997). In applying this standard, the Commonwealth Court held that the Commission should consider the electric power needs of the public, the state of the available technology and the available alternatives, pursuant to 52 Pa.Code § 57.76.

Additionally, the Commonwealth Court has determined that a proposed transmission line was needed where “the project resulted in a benefit to the public, such as an improvement to the reliability of service or lower prices.” *Hess v. Pennsylvania Pub. Util. Comm'n*, 107 A.3d 246, 260 (Pa. Cmwlth. 2014).

3. Standards for Approval to Exercise the Power of Eminent Domain and Environmental Review Standards

The Commission’s approval of the Siting Applications would include a grant of authority to use the power of eminent domain “to locate and construct the proposed HV transmission line within a corridor consisting of the area of 500 feet on each side of the centerline of the proposed HV transmission line.” 52 Pa. Code § 57.76(b). Before a public utility may exercise the power of eminent domain to condemn property for the purpose of constructing transmission lines, it must obtain approval from the Commission under Section 1511(c) of the Business Corporations Law. Section 1511(c) requires Transource to prove that “the service to be furnished. . . is necessary or proper for the service, accommodation, convenience or safety of the public.” 15 Pa.C.S.A. § 1511(c).

In addition, the Pennsylvania Supreme Court has explained that the Commission's approval of eminent domain is subject to legislative restrictions enacted by the General Assembly, stating:

“[u]nder a delegation of the power of eminent domain the grantee of the power, *in the absence of legislative restriction*, may determine the location of the land (to be) acquired, and such determination will not be interfered with by the courts if it is made in good faith and is not capricious or wantonly injurious, or in some respect beyond the privilege conferred by the charter or statute.

Duquesne Light Company v. Upper St. Clair Township, 105 A.2d 287, 294 n. 1 (Pa. 1954) (emphasis added); *see also Com., Dep't of Env'tl. Res. v. Com., Pub. Util. Comm'n*, 335 A.2d 860, 863 (Pa. Cmwlth. 1975) (stating the same).

For purposes of this case, Franklin County submits that Transource has failed to comply with the Agricultural Security Area Law and the Eminent Domain Code, which constitute two legislative restrictions enacted by the General Assembly on its proposed exercise of eminent domain over lands within an agricultural security area and lands subject to conservation easements in Pennsylvania.

The Pennsylvania Constitution establishes the right of Pennsylvanians to “clean air, pure water, and to the preservation of the natural, scenic, historic and aesthetic values of the environment.” Pa. Const. art. I, § 27. The Pennsylvania Supreme Court has held that the Commission has a constitutional affirmative duty to the public natural resources of the Commonwealth. *Pa. Env'tl. Def. Foundation v. Com.*, 161 A.3d 911 (Pa. 2017). The Constitution does not require that the Commonwealth landscape remain stagnant. *Robinson Twp., Washington Cty. v. Com.*, 83 A.3d 901, 953 (Pa. 2013). “But when government acts, the action must, on balance, reasonably account for the environmental features of the affected locale.” *Id.*

In summary, Transource must demonstrate by a preponderance of the evidence that its proposed facilities are needed for the public and that it has met all the requirements of the Commission's siting regulations, as stated above. Additionally, Transource must show that the benefits to the public outweigh the burdens of its proposed facilities.

VI. ARGUMENT

A. INTRODUCTION

The proposed Project purposely creates a new "highway" for Pennsylvania-generated power to leave the Commonwealth and be consumed by customers outside the Commonwealth, to the detriment of Pennsylvania ratepayers. It was not needed when it was designed, is not needed now, and will not be needed for the foreseeable future. The Commission should view the proposed Project from the viewpoint of the Pennsylvania customers whose interests are to be protected and deny the Applications.

Franklin County cannot fathom why the Commission would consider approving a project deliberately designed to export Pennsylvania's cheaper power to customers outside the Commonwealth and allow the forcible condemnation of Pennsylvanian's cherished land to build it. Nothing about this Project offers the least benefit to Franklin County residents, or Pennsylvania electric customers more generally. The Franklin County Commissioners urge the Commission, in the strongest terms, to stay true to the interests of Pennsylvania citizens and deny the Applications.

Transource has failed to meet its burden under the applicable regulatory and statutory standards. Transource has failed to meet its burden of proving that the IEC Project is necessary or proper for the service, accommodation, convenience or safety of the public. 66 Pa.C.S. § 1501. Transource's exclusive justification for "needing" the IEC Project was to alleviate congestion on the APRSI to lower electric prices to consumers. The substantial evidence of the record

demonstrates, however, that congestion on the APRSI no longer exists. Or at the very least, since Transource filed its Applications, any such purported congestion has substantially decreased to the extent that the Project is no longer justified. Additionally, the IEC Project will undoubtedly be economically detrimental to Pennsylvania electric ratepayers and customers of the PJM region as a whole; it was designed to be so. Consequently, Transource has failed to demonstrate that its proposed facilities are needed because the IEC Project does not result in the purported benefit to the public of lower prices. *See Hess*, 107 A.3d at 260 (Pa. Cmwlth. 2014) (finding that a project is needed where the project results in a benefit to the public, such as an improvement to the reliability of service or lower prices). The ability to sell cheaper power to those in other states at the expense of Pennsylvanians does not make this project “needed.”

Finally, the record establishes that Transource’s proposed facilities fail to comply with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth and that IEC Project will also have a significant adverse environmental impact on Franklin County.

B. NEED FOR THE PROJECT

1. The IEC Project is not needed to address congestion

The Record shows that Transource’s purported justification for the IEC Project, congestion relief, vanished after the Applications were filed. Transource hurriedly cobbled together a second purported justification, reliability improvement, where no reliability needs even animated the Applications and have been proven not to have materialized in any event.

“Congestion occurs when available, least-cost energy cannot be delivered to all load because transmission facilities are not adequate to deliver that energy to one or more areas, and higher cost units in the constrained area(s) must be dispatched to meet the load.” OCA Hearing

Exhibit No. 6 at p. 525. Congestion typically results in increased generation costs and customer payments for electricity. OCA St. 2, p. 12, lines 17-18.

In summary, Transource's exclusive justification for "needing" the IEC Project is to alleviate congestion on the APRSI to lower electric prices to consumers. PJM solicited and approved the IEC Project for the specific purpose of addressing congestion on the APSRI. TPA St. 2-West, p. 7, lines 15-16; TPA St. 3-West, p. 24, lines 21-22. The APSRI consists of "four 500 kV lines which originate in West Virginia and terminate in Maryland and Virginia." TPA St. 2-West, p. 7, lines 15-16. The IEC Project is intended to decrease the alleged congestion and allow lower-cost energy to be delivered from other parts of the PJM region, including central and eastern Pennsylvania, to the higher-cost energy areas of Maryland, the District of Columbia, and Virginia. OCA St. 1, p. 18, lines 15-18, and p. 19, lines 5-9.

Transource's written and oral testimony provided in support of its initial Siting Applications claim that the IEC Project's primary purpose is to alleviate congestion on the APRSI. Throughout these proceedings, Transource has touted the IEC Project as the solution needed to remedy alleged persistent historical congestion on the APSRI to drive down customer electricity costs due to the same.

According to the direct testimony of Transource witnesses Ali and McGlynn, "the primary goal [of PJM's solicitation of the IEC Project] *was to reduce congestion on the AP South Reactive Interface*, which is one of the most historically congested flowgates in PJM." TPA St. 2-West, p. 7, lines 15-16, TPA St. 3-West, p. 24, lines 21-22 (emphasis added). Mr. McGlynn explained that while there were 93 proposals submitted in response to PJM's 2014/2015 Long-Term Proposal Window, 41 of these proposed projects, including the IEC Project, "were submitted specifically to address congestion on" the APSRI." TPA St. 3-West, p. 26, lines 4-6 and 10-13.

Transource witnesses Horger and Weber testified similarly. TPA St. 8-R, p. 7, lines 17-18; TPA St. 1-R, p. 21, lines 17-19.

PJM's 2018 re-evaluation of the IEC Project confirms that the IEC Project was solicited and approved by PJM to specifically address congestion on the transmission lines compromising the APSRI. *See* TPA Exhibit No. SRH-8RJ. This re-evaluation reiterates that PJM's 2014/2015 widow solicited solutions to alleviate congestion on the APSRI and PJM recommended the IEC Project to alleviate this congestion. TPA Exhibit No. SRH-8RJ at p. 2, 4, and 7.

But, the data and substantial record evidence undermine the conclusions of Transource's witnesses. In fact, the substantial record evidence demonstrates that the purported need for the IEC Project to address congestion on the APSRI no longer exists. Transource asserts that there have been persistent significant historical congestion costs due to the APSRI. *See* TPA St. 3-West, p. 24, lines 21-22 and p. 25, line 1. Transource witnesses McGlynn and Ali state that based on PJM's State of Market Reports, the congestion costs for the APSRI totaled approximately \$800 million from 2012 through 2016. TPA St. 2-West, p. 7, lines 19-20; TPA St. 3-West, p. 25, lines 1-3. In fact, and to the contrary, PJM's State of the Market Reports actually reflect that congestion costs due to the APSRI peaked in 2014 when PJM solicited the IEC Project but since then have drastically decreased and consistently remained low to the present. OCA St. 2, p. 17, lines 10-25 and p. 18, lines 1-3; Monitoring Analytics, LLC, *2019 State of the Market Report for PJM* at p. 543; OCA Hearing Exhibit No. 6 at p. 560.

In 2014, congestion costs for the APSRI were \$486 million, accounting for 25.2% of PJM's total congestion costs. OCA St. 2, p. 17, lines 10-25 and p. 18, lines 1-3. In 2015, congestion costs for the APSRI decreased to \$56.2 million, only 4.1% of PJM's total congestion costs. *Id.* As explained by the testimony of OCA witness Peter Lanzalotta, in 2017, annual congestion costs

due to the APSRI decreased by more than 95% from 2014 with total congestion on PJM's transmission system decreasing by more than 60%. *Id.* In summary, "the annual congestion costs due to the AP South Interface have been sharply declining since 2014 both in absolute terms and as a percentage of PJM total congestion costs." *Id.*

According to PJM's State of the Market Reports for 2019 and the first quarter of 2020, the trend of decreased annual congestion costs due to the APSRI has continued to decrease to the present. In 2019, congestion costs due to the APSRI were \$14.5 million, 2.5% of PJM's total congestion costs. Monitoring Analytics, LLC, *2019 State of the Market Report for PJM* at p. 543. APSRI congestion costs in 2019 decreased by \$471.5 million, more than 96%, since 2014. Additionally, for the first three months of 2020, APSRI congestion costs were identical to the first three months of 2019 at \$13.3 million, 8.1% of PJM's total congestion costs. OCA Hearing Exhibit No. 6 at p. 560.

Transource has not disputed the fact that APSRI congestion has decreased. Instead, at the eleventh hour, Transource added the congestion costs of "related facilities" to APSRI's congestion levels in a transparent attempt to inflate the congestion costs that could purportedly be relieved by this Project and justify the continued claimed need for this Project. Like an auctioneer throwing several undesired objects into a box to create a saleable lot, Transource pieced together functionally unrelated facilities to try to enhance its justification for the Project. It was not until Transource's rejoinder testimony served in support of the Amended Application on July 8, 2020, that Transource's witnesses first reported that the IEC Project is supposed to resolve congestion on the ASPRI as well as "related facilities." TPA St. 3AA-RJ, p. 8-11. Transource witness Mr. Horger identified these related facilities as the Safe Harbor-Graceton, Conastone-Peachbottom, and the AEP-DOM Interactive Interface. TPA St. 3AA-RJ, p. 9, lines

166-168. Mr. Horger conceded that congestion costs on the APSRI have decreased since 2014, but attempted to justify the need for this Project due to the congestion on these related facilities stating, “while historical congestion on the AP South Interface has decreased somewhat since the approval of Project 9A inclusive of the IEC Project, the other related congestion resolved by the Project has not.” TPA Statement No 3AA-RJ, p. 8, lines 145-148. Respectfully, the Commission should not allow Transource to manufacture a basis to justify an application for which there is no longer support.

Regardless, the addition of PJM’s projected congestion costs from these related facilities still fails to justify a need for the Project in any event. Specifically, the available data demonstrate that PJM’s projections are inaccurate in the first instance. PJM’s solicitation of the IEC Project was based on PJM’s 15-year forward-looking studies that “identified persistent congestion on the AP-South Interface.” TPA Ex. No. TH-5R at p. 2. Transource witness Mr. Horger claims that based on the data from PJM’s State of the Market Reports, “it is obvious that congestion continues to persist” on the APSRI and these related facilities. TPA St. 3AA-RJ, p. 10, lines 176-178. Mr. Horger also reports that “PJM’s 15-year forward-looking studies show that congestion continues on” these related facilities and the APSRI. TPA St. 3AA-RJ, p. 10, lines 184-185.

Contrary to Mr. Horger’s assertion and PJM’s forward-looking studies, as explained above, the data are clear that the annual congestion costs due to the APSRI peaked in 2014 but have significantly decreased and remained low thereafter to the present. OCA St. 2, p. 17, lines 10-25 and p. 18, lines 1-3; Monitoring Analytics, LLC, *2019 State of the Market Report for PJM* at p. 543; OCA Hearing Exhibit No. 6 at p. 560. The findings of PJM’s forward-looking studies are represented by the “simulated congestion” values provided in Mr. Horger’s testimony. TPA St. 3AA-RJ, p. 10, lines 184-186. During the evidentiary hearing, Mr. Horger testified that the

simulated congestion costs due to the APSRI in 2015 were \$85 million. Tr. at p. 2937. But the data shows the actual 2015 congestions costs due to the APSRI were only \$56.2 million. OCA St. 2, p. 17, Table 3. Similarly, Mr. Horger testified that the simulated congestion costs due to the APSRI in 2019 was \$110 million. Tr. at p. 2936. But according to the State of the Market Report, the actual congestion costs due to the APSRI in 2019 were only \$14.5 million. Monitoring Analytics, LLC, *2019 State of the Market Report for PJM* at p. 543.

In summary, the entire justification of the need for the IEC Project to relieve congestion is based upon historical data and PJM's forward-looking studies. The evidence is clear, however, that the congestion on the APSRI no longer exists and that PJM's forward-looking studies projecting congestion on the APSRI and related facilities in the future is inaccurate and cannot be relied upon for approval of this Project.

2. The IEC Project is not needed to resolve the identified projected reliability violations

As an initial matter, the IEC Project was solicited and approved as a market efficiency project by PJM for the strategic purpose of relieving congestion on the APSRI. The IEC Project was not solicited to resolve any existing reliability violations. TPA St. 7-RJ-SUPP, p. 5, line 23 and p. 6, lines 1-2. Transource witness Mr. Ali testified in his direct testimony that the IEC Project will enhance the reliability of the transmission system. TPA St. 2, p. 11, lines 21-23 and p. 12, lines 1-2. But, as explained by the direct testimony of OCA witness Lanzalotta, “any major new piece of transmission line infrastructure will provide additional paths for power to flow, and thus could potentially improve reliability.” OCA St. 2, p. 11, lines 7-12 (emphasis added).

After Transource submitted its direct testimony, PJM re-evaluated the IEC Project and presented the results at the September 13, 2018 Transmission Expansion Advisory Committee (“TEAC”) meeting. TPA St. 7-R, p. 20, lines 16-17 and p. 21, lines 3-5; TPA Exhibit No. SRH-

2R. In its re-evaluation, PJM identified potential future reliability violations that PJM now claimed the IEC Project would resolve. TPA St. 7-R, p. 21, lines 3-5. Thereafter, on November 27, 2018, almost one year after Transource filed its original Siting Applications and direct testimony, Transource filed rebuttal testimony claiming that the IEC Project would resolve the reliability criteria violations identified by PJM. *See* TPA St. 2-R, 7-R, 8-R.

In their filed testimony, Transource and PJM do not dispute that their basis for seeking approval of the IEC Project remains as a market efficiency project to address congestion. *See* TPA St. 7-RJ-SUPP, p. 5, line 23 and p. 6, lines 1-2, 13-14. With the congestion costs identified by Transource and PJM as the original basis for the need for the IEC Project clearly disproven by the data, it is anticipated that Transource will attempt to use the potential reliability violations the Project is projected to resolve for the entire basis or to support approval of the Project. For example, in his supplemental rejoinder testimony, Transource witness Mr. Herling states that the IEC Project was not approved to solve reliability criteria violations but that the Project resolving projected reliability issues provides “a significant additional benefit of the project and further supports PJM’s selection of the project.” TPA St. 7-RJ-SUPP, p. 5, line 23, p. 6, lines 1-2, 4-6, 13-14. This specious “reliability” reasoning, an insincere form of post-hoc justification, does not show “need” for the IEC Project. Nearly any project can arguably confer some reliability enhancement; that does not mean the project is needed. Pennsylvania law requires more. Reliability failures must actually create the need for the project, not feebly prop it up because the original need for the project vanished.

Transource should not be permitted to claim that the IEC Project is needed for reinforcement of the transmission system. As detailed below, based on the incomplete reliability analysis performed on the Project, there is no substantial record evidence to support a conclusion

that such a disruptive and locally harmful Project is “needed” for system reliability. Additionally, Transource admits that the IEC Project is not intended to be the best or most economical solution to resolve the projected reliability violations and none of the projected reliability violations have occurred yet. Franklin County respectfully finds it outrageous that the Commission could contemplate finding “need” for a project that offers no more than token reliability improvement, and even then not the best or most economical solution. Incidental reliability improvements are not “need,” as clearly required by Commonwealth law.

In Table 1 of Mr. Herling’s rebuttal testimony, he identifies the five potential reliability violations that PJM projects will occur in 2023 if the IEC Project is not constructed. TPA St. 7, p. 21. Specifically, PJM projects reliability violations on the following five facilities: (1) Three Mile Island 500/230 kV Transformer; (2) Peach Bottom-Conastone 500 kV Line; (3) Hunterstown-Lincoln 115 kV Line; (4) Lincoln Tap-Lincoln 115 kV Line; and (5) Lincoln-Straban 115 kV Line. *Id.*

If Transource truly wanted to justify its proposed project by reliability enhancement, there is a correct way to do that. As explained by the unchallenged testimony of Franklin County witness Mr. McGavran, in order to determine the most cost-effective way to resolve reliability issues, it is necessary to first identify the specific reliability problems. FC-Statement 1, p. 13, lines 6-19. Because no actual reliability violations were identified that the IEC Project was intended to resolve, Mr. McGavran rightly determined that “he cannot conclude that the Project is needed for system reliability.” FC-Statement 1, p. 14, lines 2-4. Transource witness Mr. Herling concedes that the IEC Project is not intended to be the “best option” to resolve the reliability criteria violations identified after the Project was proposed. TPA St. 7R-RJ-SUPP, p. 5, lines 22-23.

Additionally, Transource and PJM admit that PJM has not performed a complete reliability

analysis on the IEC Project. As explained by OCA witness Mr. Lanzalotta, PJM did not perform “the more detailed and varied testing methods that would normally be used by PJM in a pure reliability matter.” OCA St. 2SSR, p. 16, line 33 and p. 17, lines 1-16. Instead, PJM only performed a *preliminary* study of projected reliability violations that *may* occur without the IEC Project. *Id.* This preliminary study consisted of “only a subset of tests that PJM conducts to ensure compliance with reliability criteria.” *Id.*; Transource’s response to OCA Set XXV-05 (d).

Further, Transource witness Mr. Herling confirms that PJM has not performed a reliability analysis for the years 2022 and earlier to determine when the potential reliability violations would occur. TPA St. 7-RJ-SUPP, p. 5, lines 14-18. Instead, PJM has only identified projected reliability violations that *might* occur in 2023. *Id.* Mr. Herling claims that even without performing a complete reliability analysis, “[i]t is clear that a number of reliability criteria violations will arise in the absence of” the Project. TPA St. 7-RJ-SUPP, p. 3, lines 13-15. Under cross-examination, however, Mr. Herling testified that as of July 9, 2020, none of the reliability violations projected to occur in 2023 had yet occurred. Tr. at p. 2962. Speculation does not prove need.

Transource and PJM claim that because the IEC Project is a market efficiency project, and not a reliability project, they do not need to perform a complete reliability analysis or conduct further investigation. TPA St. 7-RJ-SUPP, p. 3, lines 10-14; Transource’s response to OCA Set XXV-05 (a) and (d). Further, Transource witness Mr. Herling states that “there is no requirement that a market efficiency project also resolve reliability criteria violations as a condition of further evaluation or ultimate approval.” TPA St. 7-RJ-SUPP, p. 3, lines 17-20. If Transource and PJM justify the incomplete reliability investigation and testing of the Project on the basis that the Project is not actually intended to resolve the projected reliability violations, then they should not be permitted to rely on the Project’s potential reliability enhancements for approval of the Project.

In summary, it is clear that further reliability analysis of the IEC Project should have been performed to determine the actual reliability benefits from the Project. Moreover, the testimony of Transource and PJM's witnesses make clear that the IEC Project is not necessary or intended to resolve the projected reliability violations, nor do Transource or PJM intend for the Project to be the best option to resolve these projected violations. As such, the Commission should not approve the IEC Project on the pretext that the Project is necessary to resolve the projected reliability violations.

C. RISKS TO HEALTH AND SAFETY OF THE PUBLIC

Franklin County joins the other parties' briefs in opposing Transource's applications on this basis.

D. ENVIRONMENTAL IMPACTS

Transource has failed to establish that that the proposed transmission line has a minimum adverse environmental impact on Franklin County considering that there is no need for the IEC Project. Transource has also failed to establish that the transmission lines are compliant with statutory and regulatory requirements for the protection of Pennsylvania's natural resources.

1. Protection of Natural Resources

The Environmental Rights Amendment, Article I, Section 27 of the Pennsylvania Constitution (the "ERA" or "Section 27") provides:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

Pa. Const. art. I, § 27.

Recently, in *Pennsylvania Env'tl. Def. Found. v. Commonwealth*, 161 A.3d 911, 930 (Pa. 2017) ("PEDF"), the Pennsylvania Supreme Court rejected the three-part balancing test created in *Payne v. Kassab*, 312 A.2d 86 (1973) as the standard for determining whether government

actions violate the ERA. The Pennsylvania Supreme Court established that the ERA grants the people of Pennsylvania two separate constitutional rights. “The first right is . . . the right of citizens to clean air and pure water, and to the preservation of natural, scenic, historic and esthetic values of the environment.” The court explained that the first right “places a limitation on the state’s power to act contrary to this right, and while the subject of this right may be amenable to regulation, any laws that unreasonably impair the right are unconstitutional.” *Id.* at 931. (internal citations omitted).

The second right “is the common ownership by the people, including future generations, of Pennsylvania’s public natural resources.” *Id.* Additionally, “[t]he third clause of Section 27 establishes a public trust, pursuant to which the natural resources are the corpus of the trust, the Commonwealth is the trustee, and the people are the named beneficiaries.” *Id.* at 931–32 (2017). The court concluded that as trustee, Pennsylvania has two duties. *Id.* at 933 (internal citations omitted). First, “the Commonwealth has a duty to prohibit the degradation, diminution, and depletion of our public natural resources, whether these harms might result from direct state action or from the actions of private parties.” *Id.* “Second, the Commonwealth must act affirmatively via legislative action to protect the environment.” *Id.* Importantly, the court explained that these trustee obligations are imposed upon “all agencies and entities of the Commonwealth government, both statewide and local.” *Id.* at 931 n. 23. Commonwealth agencies, including the Commission, “have a fiduciary duty to act toward the corpus with prudence, loyalty, and impartiality.” *Id.*

Transource’s Siting Study demonstrates that the proposed IEC Project will negatively impact natural resources in Franklin County. Transource identified streams, wetlands, and floodplains within the Project Study Area. TPA Ex. No. 1-West Application, Attachment 3 at p.

36, 39, and Figure 8a at p. 40. Transource cannot guarantee that the proposed Project will not negatively impact streams, wetlands, and floodplains in Franklin County. *Id.* at p. 43. Instead, Transource claims that “[w]etland and floodplain impacts will be minimized to the best extent practicable by spanning these resources where feasible.” *Id.* Additionally, Transource acknowledges that stream crossings “may be required for permanent or temporary access roads.” *Id.* Transource also identified numerous important natural areas in Franklin County located within the Project study area. *Id.* at p. 46-47, Table 5. Three of these natural areas will be crossed by the proposed route for the IEC West Portion of the Project. *Id.*

Additionally, the Siting Study confirms that the proposed transmission line will cross prime farmlands in Franklin County, including land subject to conservation easements and contained within agricultural security areas. *Id.* at Figures 7b and 11. Accordingly, Transource’s Applications seek the Commission’s approval for the siting and construction of the proposed HV transmission line as well as the intrusive and drastic exercise of eminent domain that will condemn and/or impact agricultural lands, including conservation easements and agricultural security areas in Franklin County. *See id.* at Figure 11. Transource witness Barry Baker acknowledges that “preserved farmland is ubiquitous across the study area” for the IEC West Project and that agricultural land is the dominant land use type in the study area. TPA St. 4-R, p. 8, lines 21-22 and p. 27, lines 5-6. Mr. Baker claims that Transource has mitigated the Project’s negative impacts on agricultural land, preserved farms, and conservation easements. TPA St. 4-R, p. 27-28. Even with these attempts to minimize the adverse impact to agricultural land, preserved farms, and conservation easements, the IEC Project will still have significant and negative impacts on these resources in Franklin County. These negative impacts have been made clear by the citizens of Franklin County during the public input hearings and site views. Mr.

Baker's testimony that the proposed route will cross the least number of conserved farmlands compared to the other routes does not justify construction of the IEC Project. TPA St. 4-R, p. 28, lines 15-18. The fact remains that protected farmlands will still be crossed and significantly adversely affected by the Project.

Transource claims that it will attempt to minimize impacts to the public resources in the Project Study Area. TPA St. 4-R, p. 10, lines 14-17. But again, regardless of any measures that Transource takes to minimize the impacts to the natural resources in Franklin County, many of these natural resources will still be significantly adversely affected by the Project as stated by Franklin County residents at the public input hearings and site views.

As stated in Section VI.B. above, Transource has failed to demonstrate a need for the Project. Transource has also failed to establish that the IEC Project will have minimum adverse environmental impacts, especially considering that there is no need for this Project. If the Commission approves the IEC Project, the citizens of Franklin County will be deprived of their constitutionally protected right to clean air and pure water, and to the preservation of natural, scenic, historic and esthetic values of the environment. Pa. Const. art. I, § 27. Moreover, the Commission will violate its constitutional duty to prohibit the degradation, diminution, and depletion of Pennsylvania's public natural resources if it approves the applications. Respectfully, the Commission must adjust its evaluation of the IEC Project to address these newly emphasized environmental equities.

In addition to Franklin County's arguments above, Franklin County joins the other parties' briefs in opposing Transource's Applications on the basis of sections a through n below.

- 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

The Agricultural Security Area Law (“AASL”), 3 P.S. § 901, *et seq.*, was enacted to protect agricultural land within the Commonwealth. 3 P.S. § 901. The Pennsylvania General Assembly has declared that the specific policy for the enactment of the AASL is to conserve and protect agricultural lands, stating:

It is the declared policy of the Commonwealth to conserve and protect and to encourage the development and improvement of its agricultural lands for the production of food and other agricultural products. It is also the declared policy of the Commonwealth to conserve and protect agricultural lands as valued natural and ecological resources which provide needed open spaces for clean air, as well as for aesthetic purposes. Article VIII, section 2 of the Constitution of Pennsylvania provides that the General Assembly may, by law, establish standards and qualifications for agricultural reserves. . . . Many of the agricultural lands in the Commonwealth are in jeopardy of being lost for any agricultural purposes. Certain of these lands constitute unique and irreplaceable land resources of Statewide importance. It is the purpose of this act to provide means by which agricultural land

may be protected and enhanced as a viable segment of the Commonwealth's economy and as an economic and environmental resource of major importance.

3 P.S. § 902.

The General Assembly has further declared that “[i]t shall be the policy of all Commonwealth agencies to encourage the maintenance of viable farming in agricultural security areas and their administrative regulations and procedures shall be modified to this end.” 3 P.S. § 912. As such, the Commission has an obligation to encourage the maintenance of viable farming in ASAs when deciding whether to approve Transource’s Applications.

Section 914.1 of the Act created the Pennsylvania Agricultural Easement Purchase Program to allow state and county governments to purchase conservation easements from farms to protect farmland by stopping the loss of prime farmland to non-agricultural uses and strengthen Pennsylvania’s agricultural economy. 3 P.S. § 914.1. As explained by OCA witness Scott Rubin, the effect of a conservation easement gives an interest in the land to the state or county preventing the development of land for non-agricultural uses. In exchange, landowners are compensated for the loss of value due to non-development of the property. OCA St. 1, p. 14, lines 16-21.

On June 24, 2018, the Pennsylvania Legislature promulgated Act 45 amending the Eminent Domain Code to provide additional protections for land subject to a conservation easement. 26 Pa.C.S.A. § 208. Under Act 45, eminent domain of land subject to a conservation easement is prohibited without prior approval from the orphans’ court of the county in which the land is located. 26 Pa.C.S.A. § 208(a). Act 45 provides a limited exemption for public utility facilities that have been approved by the Commission, stating:

The condemnation approval specified by this subsection shall not be required for any public utility facility or other project that is subject to approval by a Federal agency, the necessity for the propriety and environmental effects of which has been reviewed and ratified or approved by the Pennsylvania Public Utility Commission or the Federal Energy Regulatory Commission, regardless of whether the right to

establish and maintain such underground or other public utility facility is obtained by condemnation or by agreement with the owner.

26 Pa.C.S.A. § 208(a).

Here, the Commission approved a settlement and granted a certificate of public convenience to Transource. But the Commission did not determine the need for this Project, the siting of the transmission lines, or the environmental impact, including on conserved agricultural land, of the Project. *See* Opinion and Order, Docket No. A-2017-2587821, January 23, 2018. Instead, the current proceeding is for the Commission to determine if there is a need for the Project and, *inter alia*, the Project's impact on agricultural land and conservation easements.

In its November 29, 2017 correspondence, the Pennsylvania Department of Agriculture expressed concerns to Transource of negative impacts that the project may have on agricultural land including agricultural conservation easements in both Franklin and York counties. TPA Ex. No. 1, West Application, Attachment 3, Appendix B. As the Department explained, Pennsylvania is the leader of farmland preservation through the purchase of agricultural conservation easements. Further, Franklin County has one of the most comprehensive agricultural conservation easements in Pennsylvania.

Transource's Siting Applications confirm that the proposed transmission line right-of-way will cross agricultural conservation easements. *See* TPA Ex. No. 1-West Application, Attachment 3, Figure 11. Additionally, portions of the land encompassed by the 133 Condemnation Applications filed by Transource are agricultural and subject to conservation easements. Although the alternative route for the IEC Portion of the Project eliminates the need for the eminent domain applications filed in York County, the IEC West Portion of the Project remains the same and will still require eminent domain of lands subject to conservation easements in Franklin County.

In the Fourth Prehearing Order, issues pertaining to Act 45 were reviewed, including whether Transource was required to seek approval from the orphans' court of the counties where land subject to conservation easements are located. The Administrative Law Judges ("ALJ") found that the Commission does not have the authority to make a determination as to the condemnation of agricultural conservation easements under Act 45. Instead, these determinations must be made by the orphans' courts. As such, the ALJs concluded that it is the responsibility of the orphans' courts to determine whether the legislature intended for Act 45 to require Transource to obtain their prior approval for condemnation of conservation easements, or whether the IEC Project falls under an exception. The ALJs held that this case would not be stayed case pending pre-approval from the orphans' courts. But if Transource did file for approval from the orphans' courts, then "separate litigation paths may run concurrent to the instant case."

In the Fourth Prehearing Order, the ALJs noted that the scope of the Commission's review is different from that of the orphans' court review under Act 45. The scope of the Commission's review is pursuant to Section 1511 of the Business Corporation Law, 15 Pa.C.S.A. § 1511(c), and applies to public utility corporations. Under the Business Corporation Law, the Commission must determine whether Transource has met its burden of showing that the exercise of eminent domain for land subject to conservation easements is "necessary or proper for the service, accommodation, convenience or safety of the public" to support the taking. Conversely, under Act 45 the orphans' court must deny condemnation of a land subject to a conservation easement *unless there is no reasonable and prudent alternative*. 26 Pa.C.S.A. § 208(d) (emphasis added).

Franklin County respectfully submits that it was legal error for the ALJs not to stay the case for the orphans' courts to make a determination as to whether Transource was required to obtain prior approval of the condemnation of land subject to conservation easements under Act 45,

and if so, whether there was no reasonable and prudent alternative in order to effectuate the purpose of Act 45. Transource acknowledges that Franklin County’s comprehensive plan provides an “overall guide for development, land use, economic progress and the preservation of the quality of life” in Franklin County. TPA Ex. No. 1, West Application, Attachment 3, p. 102-103. The residents of Franklin County value the County’s agricultural lands. The comprehensive plan is intended to, *inter alia*, protect the County’s natural resources, promote economic opportunities while retaining agriculture and community character, and foster the continued livability and success of communities embedded in the rural landscape. Franklin County has developed land use controls to promote conservation of prime agricultural lands. The proposed transmission line will cross prime farmland in Franklin County as well as land subject to agricultural conservation easements. The proposed HV line is clearly contrary to the goals of the County and its citizens in preserving these important resources. These goals are not subordinate to the commercial interests of the Applicant or the ambit of the Commission’s review.

While the exemptions in section 208(a) of Act 45 may be to prevent repetitive review of the same condemnation by multiple regulatory agencies, the condemnation must be reviewed using the standard set forth in Act 45. If not, then Act 45’s purpose will be frustrated to the extent there will be nothing to ensure that there is no reasonable and prudent alternative to the condemnation of these protected lands. *See In re Condemnation of Springboro Area Water Auth. of Prop. of Gillette*, 898 A.2d 6, 11 (Pa. Cmwlth. 2006).

In addition, the Pennsylvania Supreme Court has explained that the Commission’s approval of eminent domain is subject to legislative restrictions enacted by the General Assembly, stating:

“[u]nder a delegation of the power of eminent domain the grantee of the power, *in the absence of legislative restriction*, may determine the location of the land (to be)

acquired, and such determination will not be interfered with by the courts if it is made in good faith and is not capricious or wantonly injurious, or in some respect beyond the privilege conferred by the charter or statute.

Duquesne Light Company v. Upper St. Clair Township, 105 A.2d 287, 294 n. 1 (Pa. 1954) (emphasis added); *see also Com., Dep't of Env'tl. Res. v. Com., Pub. Util. Comm'n*, 335 A.2d 860, 863 (Pa. Cmwlth. 1975) (stating the same).

By the ALJs' determining that it is up to the orphans' courts to decide if pre-approval is required but not staying the case and allowing the orphans' courts to make this determination, Transource may ultimately be permitted to evade the purview of Act 45. If the Commission approves the Project, it is anticipated that Transource will argue that it falls under Act 45's exception and not seek orphans' court review. Additionally, the ALJs acknowledged that the Commission will not prohibit the condemnation of conservation easements under the standards of Act 45, i.e. if there is a reasonable and prudent alternative, as the orphans' court is required to. Accordingly, the standard required to meet condemnation under Act 45 would never be addressed. There are legislative restrictions, and, respectfully, the law *requires* the Commission to apply them.

The ALJs' decision to not require Transource to seek prior approval from the orphans' courts to condemn conservation easements is contrary to the General Assembly's express policy and the Commission's duty under the AASL and Pennsylvania Constitution to conserve and protect agricultural lands within the Commonwealth, the purpose and requirements of Act 45, and the values and goals of Franklin County and its residents.

Alternatively, if Transource does seek the orphans' court approval and it is determined that Transource has not met its burden under Act 45, Transource will be prevented from condemning all or some of the lands subject to conservation easements. This determination will interfere with the siting and construction of the proposed transmission lines in an essential way and necessitate

proposed alternative routes and further litigation. This is the reason these legislative restrictions should be applied now, within the context of this case.

Franklin County, therefore, respectfully submits that this case should be stayed for Transource to seek approval for condemnation from the orphans' courts for lands subject to conservation easements.

3. Properties within an Agricultural Security Area

As stated above, the AASL was promulgated by the Pennsylvania Legislature to effectuate the declared policy of the Commonwealth to conserve, protect, and encourage the development and improvement of agricultural lands within the Commonwealth. 3 P.S. § 902. To accomplish the purpose of this Act, properties established as an Agricultural Security Area (“ASA”) are entitled to special consideration from local and state government agencies if proposed for condemnation. In order to condemn land within an ASA, the Act requires prior approval required from the Agricultural Lands Condemnation Approval Board (ALCAB) and the governing bodies of the county, municipality, and agricultural committees in which the proposed condemnation is to occur. 3 P.S. § 913(b). ALCAB is an independent administrative board consisting of the Director of the Office of Policy and Planning, the Secretary of Agriculture, the Secretary of Environmental Resources, the Secretary of Transportation, or their respective designees, and two active farmers appointed by the Governor, with the advice and consent of a majority of the Senate. 71 P.S. § 106. ASAs in Franklin County is are overseen by the Franklin County Land Preservation Board. 71 P.S. § 106.

Similar to Act 45, the ASA has an exemption of the pre-approval requirement limited to the following underground public utility facilities that have been reviewed by the Commission:

The condemnation approvals specified by this subsection shall not be required for an underground public utility facility that does not permanently impact the tilling

of soil or for any facility of an electric cooperative corporation or for any public utility facility the necessity for and the propriety and environmental effects of which has been reviewed and ratified or approved by the Pennsylvania Public Utility Commission or the Federal Energy Regulatory Commission, regardless of whether the right to establish and maintain such underground or other public utility facility is obtained by condemnation, or by agreement with the owner.

3 P.S. § 913(b).

Transource's Siting Applications indicate that the proposed HV transmission line will cross ASAs in Franklin County. TPA Ex. No. 1, West Application, Attachment 3, Figure 11. As stated above, the Commission has not yet ratified or approved the necessity for and the propriety and environmental effects of the IEC Project. Accordingly, Transource is required to seek prior approval from ALCAB, the Franklin County Land Preservation Board and other local governing bodies to condemn lands in Franklin County established as an ASA.

The Fourth Prehearing Order also pertained to Transource obtaining prior approval from ALCAB to condemn ASAs. As with the conservation easements, the ALJs held that the case would not be stayed pending Transource obtaining pre-approval from the ALCAB or other local bodies. But, if Transource does seek pre-approval from the ALCAB and local agencies, then separate litigation for this pre-approval "may run concurrent to the instant case."

The Commission's scope of review for Transource's Eminent Domain Applications of ASAs in this proceeding requires Transource to show that the exercise of eminent domain is "necessary or proper for the service, accommodation, convenience or safety of the public." 15 Pa.C.S.A. § 1511(c). This scope of review is different than that required by the AASL. Under the AASL, ASAs may be condemned if the ALCAB and other local governing bodies determine that:

(A) the proposed condemnation would not have an unreasonably adverse affect upon the preservation and enhancement of agriculture or municipal resources within the area or upon the environmental and comprehensive plans of the county, municipality and the Commonwealth, or upon the goals, resource plans, policies or objectives thereof; or

(B) there is no reasonable and prudent alternative to the utilization of the lands within the agricultural security area for the project.

3 P. S. § 913(d)(ii).

Additionally, as stated above, the Pennsylvania Supreme Court has explained that the Commission's approval of eminent domain is subject to legislative restrictions enacted by the General Assembly. *Duquesne Light Company v. Upper St. Clair Township*, 105 A.2d 287, 294 n. 1 (Pa. 1954) (emphasis added); *see also Com., Dep't of Env'tl. Res. v. Com., Pub. Util. Comm'n*, 335 A.2d 860, 863 (Pa. Cmwlth. 1975).

By the Commission failing to stay the case to require Transource seek approval from ALCAB and local government bodies, Transource will likely be permitted to evade the purview of the AASL. If the Commission approves this Project, it is anticipated that Transource will argue that it falls under the AASL's exception and not seek ALCAB review and approval. Accordingly, because the Commission will not review Transource's condemnation of ASAs in accordance with the factors required under the AASL, the stated purpose of the AASL will not be served by ensuring that the factors set forth by the AASL are met. *See Springboro*, 898 A.2d at 11.

Alternatively, if the ALCAB and local government bodies determine that Transource has not met its burden under the AASL, Transource will be prevented from condemning all or some of the lands subject to conservation easements. This determination will interfere with the siting and construction of the proposed transmission lines in an essential way and necessitate proposed alternative routes and further litigation.

Franklin County, therefore, respectfully submits that this case should be stayed for Transource to seek prior approval from the ALCAB and local governing bodies for the condemnation of lands within ASAs.

4. Tourism

Franklin County joins the other parties' briefs for the opposition of Transource's Applications on this basis.

5. Real Estate Property Values

Franklin County joins the other parties' briefs for the opposition of Transource's Applications on this basis.

6. Impact on schools, local government municipalities and businesses

Franklin County joins the other parties' briefs for the opposition of Transource's Applications on this basis.

7. Construction Issues

Franklin County joins the other parties' briefs for the opposition of Transource's Applications on this basis.

E. AVAILABILITY OF REASONABLE ALTERNATIVES

Franklin County joins the other parties' briefs for the opposition of Transource's Applications on this basis.

F. ECONOMIC IMPACTS

Transource asserts the IEC Project is needed to economically benefit the public by resolving congestion and thereby lowering electricity prices to customers. The substantial evidence of the record demonstrates that contrary to Transource's assertion, the IEC Project will be economically determinantal to the public, with Pennsylvania electric ratepayers the most significantly adversely impacted from the Project. As such, Transource's Applications must be denied. *See Hess*, 107 A.3d at 260 (Pa. Cmwlth. 2014) (finding that a project is needed where the project results in a benefit to the public, such as an improvement to the reliability of service or

lower prices). The Franklin County Commissioners urge the Commission to protect Pennsylvanians.

1. The IEC Project is detrimental to Pennsylvania electric ratepayers

The Commission’s purpose is, *inter alia*, to protect the interests of the public, including Pennsylvania ratepayers, and further economic development.¹ The IEC Project is an interstate project designed to create a new and larger pathway for Pennsylvania-generated power to exit Pennsylvania and to be consumed in neighboring states that have higher demand and less neighboring generation. The Commission should be focused on its essential mission of considering the interests of the Pennsylvania electric ratepayers, who receive no benefit from the IEC Project. In fact, if the IEC Project works as it is intended, it will result in the deliberate transportation of less costly generation to neighboring states and, therefore, higher electricity costs to Pennsylvania electric ratepayers.

As stated by Mr. McGavran’s unchallenged and unrebutted testimony, the IEC Project “relies upon easing the path of Pennsylvania-generated power to be transmitted into the out-of-state area of higher demand.” FC-Statement 1, p. 10, lines 21-23. Mr. McGavran concludes that “no apparent benefit is conferred upon Pennsylvania electric ratepayers by allowing the movement of Pennsylvania-generated power out of Pennsylvania.” FC-Statement 1, p. 7, lines 13-14.

Similarly, OCA witness Mr. Rubin concluded that “the IEC Project would result in significant net harm to the Commonwealth, its residents, and its electricity consumers” and “is not necessary or proper for the service, accommodation, safety, or convenience of the public.” OCA St. 1, p. 5, lines 14-16. Mr. Rubin found that:

¹ See the Commission’s Mission Statement.

Pennsylvania consumers would receive almost none of the IEC Project's benefits savings of just \$2 million in total for the first 15 years of the IEC Project (a present value of about \$0.1 million per year) for customers of West Penn Power. But energy consumers in the rest of the Commonwealth would pay increased costs of \$350 million – \$23 million per year (present value for 15 years). Thus, construction and operation of the IEC Project would produce a net economic harm for Pennsylvania of approximately \$348 million. This would result in higher electricity costs within the Commonwealth of \$23 million per year on a present value basis for 15 years.

OCA St. 1, p. 45, lines 16-21 and p.46, lines 1-2.

As discussed above, Transource's baseless assumption of increased congestion costs and incidental speculative reliability benefits purportedly resolved by the IEC Project is inadequate to justify this significant economic detriment to Pennsylvania electric ratepayers.

2. PJM's benefit-cost analysis fails to account for the actual costs of the IEC Project, and is detrimental to the entire public within PJM's region

The IEC Project is intended to reduce electric costs to the public, specifically PJM's customers. Transource and PJM's conclusion that this Project will be beneficial to customers by lowering electricity costs is flawed because PJM failed to accurately account for the benefits and costs of the Project. When actual costs and benefits are used, there is no economic benefit from the IEC Project.

To determine whether a market efficiency project, such as the IEC Project, will be included in PJM's RTEP, PJM conducts a benefit/cost ratio test.² To be included in PJM's RTEP, the benefit/cost ratio of a project must meet a benefit/cost ratio threshold of at least 1.25:1. The benefit/cost ratio for a project compares the net present values ("NPV") of the total annual benefits of a proposed market efficiency project to the annual total costs of the project for the first 15 years of the life of the enhancement or expansion. The benefit/cost ratio is expressed as

² PJM Manual 14B: PJM Region Transmission Planning Process. See PJM. "PJM Manual 14B: PJM Region Transmission Planning Process," Rev. 46 (August, 28, 2019).

follows:

Benefit/Cost Ratio = [Present value of the Total Annual Enhancement Benefit for each of the first 15 years of the life of the enhancement or expansion] ÷ [Present value of the Total Enhancement Cost for each of the first 15 years of the life of the enhancement or expansion].

While PJM has determined that the IEC Project, as originally proposed, and the IEC Project inclusive of the Alternative East Project meet the 1.25 cost/benefit threshold, PJM's cost/benefit analysis is flawed and fails to account for all of the actual costs and benefits of the IEC Project.

The economic justification for this Project has been discredited by not only the testimony of parties in this proceeding, but also by the Independent Market Monitor for PJM ("IMM"). The IMM is responsible for objectively monitoring compliance with the rules, standards, procedures, and practices of PJM markets. The IMM also recommends changes to PJM's Market Rules, which are included in the Quarterly Market Reports and the Annual State of the Market Reports.

Beginning in 2018, the IMM has recommended that PJM change its market efficiency benefit/cost ratio analysis to properly evaluate proposed transmission projects, including the IEC Project, without success. The IMM has concluded that PJM's current analysis fails to properly account for the costs and benefits of market efficiency transmission projects, stating:

There are significant issues with PJM's benefit/cost analysis. The current rules governing benefit/cost analysis of competing transmission projects do not accurately measure the relative costs and benefits of transmission projects. The current rules do not account for the fact that the benefits of projects are uncertain and highly sensitive to the modeling assumptions used. The current rules explicitly ignore the increased zonal load costs that a project may create. The current rules do not account for the fact that the project costs are nonbinding estimates, are not subject to cost caps and may significantly exceed the estimated costs. These flaws have contributed to PJM approving market efficiency projects with forecasted benefits that do not exceed the forecasted costs.

OCA Hearing Ex. No. 6 at p. 611-12.

Further, the IMM has concluded that PJM should not have approved the IEC Project

because of the inaccurate benefit/cost analysis. OCA Hearing Ex. No. 6 at p. 611-12. When the costs for the IEC Project are properly calculated, the IMM found that the Project's costs are more than the benefits and fail PJM's benefit/cost threshold of 1.25. PJM's initial cost/benefit ratio of the IEC Project performed in 2016 was 2.48, with a capital cost of \$340.6 million.³ The IMM found, however, that the actual benefits of the IEC Project were only \$336.40 million and not \$1,188.07 million used by PJM. The IMM concluded that when using the actual costs and benefits of the IEC Project, the initial cost/benefit ratio was only 0.70, not 2.48. As such the IEC Project failed the 1.25 threshold and should not have been approved. Further, the IMM notes that the benefit/cost ratio of the IEC Project has decreased since PJM's the initial evaluation of the Project due to decreased congestion on the APSRI since 2014 and a reduction in peak load forecasts since 2015. As further explained by Franklin County witness Mr. McGavran, PJM's benefit/cost analysis of the IEC Project is inaccurate. *See* FC-St. 1. PJM has failed to account for "many costs that will impact electric ratepayers." FC-St. 1, p. 11, lines 4-6. Notably, "PJM did not account for the cost impact of negative energy effects that result from this Project" which include, but are not limited to, significant studies and upgrades related to the IEC Project's impact on fault levels and lead time considerations. FC-St. 1, p. 11-12. In order to properly and completely assess the benefit/cost ratio of the IEC Project, these costs must be accounted for. FC-St. 1, p. 12, lines 17-19. Mr. McGavran concluded that when the actual costs and benefits of the Project are used, the Project "does not provide cost-effective congestion relief" and "is not justified even by PJM's generous standards." FC-St. 1, p. 9, lines 10-12 and p. 10, lines 10-12.

Similarly, OCA witness Mr. Rubin testified that PJM's benefit/cost analysis

³ PJM White Paper, "Transource Independence Energy Connection Market Efficiency Project," (November 15, 2018), available at <https://www.pjm.com/-/media/committeesgroups/committees/teac/20181108/20181108-transource-white-paper.ashx>.

“fails to capture all of the benefits and costs associated with the IEC Project.” OCA St. 1, p. 24, lines 4-7. Mr. Rubin explains that PJM’s analysis “ignores the negative consequences to utilities (and their customers) outside the region to be benefited.” OCA St. 1, p. 24, lines 12-18. In other words, PJM’s analysis only included the benefits that regions would experience due to reduced costs from the IEC Project but did not include the costs of the regions that would experience increased costs as a result of the Project. OCA St. 1, p. 24, lines 12-18. Mr. Rubin concluded that “Transource has failed to demonstrate an economic need for the IEC Project,” finding that within the whole PJM region, the “IEC Project’s costs will greatly exceed its benefits.” OCA St. 1, p. 44 lines 19-22 and p. 45, lines 1-5.

Transource and PJM have also failed to provide updated cost information in order to more accurately determine the benefits from the IEC Project. For example, PJM witness Matthew Baranoski testified that estimated costs for the siting and construction of the transmission lines associated with the Alternative IEC East Portion of the Project were provided in January of 2020. But these costs have not been updated to reflect the field investigation that started in February and was nearly complete at the time of the hearing on July 9, 2020. Tr. at p. 28854-55. Mr. Baranoski conceded that it was possible that the total estimated costs for the Project could increase after the field results are complete. *Id.* at p. 2857.

Transource and PJM also failed to account for the increased costs of the Project due to a later in-service date and lead time. As explained by Franklin County witness Mr. McGavran, costs for transmission projects increase overtime and are “subject to sensitives such as lead time and actual versus projected in-service dates, which increase costs as projects accumulate overheads, other soft costs and land costs that cannot be monetized until the project is in service.” FC-St. 1, p. 8, lines 18-21. Mr. McGavran notes that the IEC Project’s original in-service date was June

2020, which was obviously not met, “and it is doubtful that in-service time will be less than 2 to 3 years from now.” FC-St. 1, p. 8, lines 21-22. Transource witness Mr. Weber confirmed that the projected in-service date for the IEC Project is two to three years. TPA St. 1AA-RJ, p. 5, lines 2-6. Despite three years since its initial Siting Application and a later projected in-service date, during the July 9, 2020, hearing, Mr. Weber testified that the \$132 million cost for the IEC-West Project remains unchanged. Tr. at p. 2877.

Even failing to account for the actual costs of the Project, Transource’s estimated cost is significant. In its Siting Applications filed in 2017, Transource estimated the cost of the IEC Project as originally proposed to be approximately \$230 million. TPA Ex. No. 1, West-Application, p. 21 ¶ 65. Transource’s most recent estimated costs for the construction of the IEC Project inclusive of the Alternative IEC East Portion is approximately \$196 million. TPA Exhibit BDW-AA1. In addition, as Mr. McGavran explained, the high cost of the IEC Project will increase further once the Project is actually constructed and placed in service, causing even more of a detriment to the public interest.

In summary, Transource has failed to demonstrate that the IEC Project will be economically beneficial to the public. Instead, Franklin County submits that based on the record evidence, the IEC Project will be against the public interest and harmful to electric ratepayers within this Commonwealth.

G. EMINENT DOMAIN

Before a public utility may exercise the power of eminent domain to condemn property for the purpose of constructing transmission lines, it must obtain approval from the Commission under Section 1511(c) of the Business Corporations Law. Section 1511(c) requires Transource to prove that “the service to be furnished. . . is necessary or proper for the service, accommodation,

convenience or safety of the public.” 15 Pa.C.S.A. § 1511(c). As stated above, Transource has failed to demonstrate that the IEC Project is necessary and, therefore, its Eminent Domain Applications should be denied on that basis.

In addition, the Pennsylvania Supreme Court has explained that the Commission’s approval of eminent domain is subject to legislative restrictions enacted by the General Assembly, stating:

“[u]nder a delegation of the power of eminent domain the grantee of the power, *in the absence of legislative restriction*, may determine the location of the land (to be) acquired, and such determination will not be interfered with by the courts if it is made in good faith and is not capricious or wantonly injurious, or in some respect beyond the privilege conferred by the charter or statute.

Duquesne Light Company v. Upper St. Clair Township, 105 A.2d 287, 294 n. 1 (Pa. 1954) (emphasis added); *see also Com., Dep’t of Env’tl. Res. v. Com., Pub. Util. Comm’n*, 335 A.2d 860, 863 (Pa. Cmwlth. 1975) (stating the same).

As explained in sections VI.D2. and VI.D3 above, Transource has failed to comply with the Agricultural Security Area Law and the Eminent Domain Code by not obtaining approval from the appropriate judicial and local bodies for the condemnation of properties subject to conservation easements and within agricultural security areas. These statutes constitute two legislative restrictions enacted by the General Assembly on Transource’s proposed exercise of eminent domain over these lands in Pennsylvania. Accordingly, the Commission is required to deny Transource’s Eminent Domain Applications for land subject to conservation easements and within agricultural security areas.

H. ZONING EXEMPTIONS

Franklin County joins the other parties’ briefs for the opposition of Transource’s Applications on this basis.

VII. OTHER RELEVANT ISSUES

Franklin County joins the other parties' briefs for the opposition of Transource's Applications on this basis.

VIII. CONCLUSION

The IEC Project is clearly unnecessary, economically detrimental to the public in this Commonwealth, not in compliance with statutory and regulatory requirements for the protection of Pennsylvania's natural resources, and harmful to the environment, natural resources, and agricultural lands of Franklin County specifically. The lack of need for this Project in conjunction with the significant economic and environmental impacts requires that the Commission deny Transource's Applications.

For the reasons set forth above, Franklin County respectfully requests that the Applications of Transource be denied in its entirety.

Respectfully submitted,
SALZMANN HUGHES, P.C.

Dated: August 11, 2020

/s/ Scott T. Wyland
Scott T. Wyland

Appendix A

PROCEDURAL HISTORY

On December 27, 2017, Transource filed two Applications pursuant to 52 Pa. Code § 57.72 with the Pennsylvania Public Utility Commission (“Commission”) for approval to site and construct the Pennsylvania portion of two new overhead double-circuit 230 kV interstate transmission lines associated with the IEC Project in portions of York and Franklin Counties, Pennsylvania as follows: (1) Application 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 (the “IEC East Portion”); and (2) Application 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 (the “IEC West Portion”) (collectively, the “Siting Applications”). The Siting Applications seek Commission approval for the siting and construction of two high voltage (“HV”) 230 kV transmission lines, the Furnace Run-Conastone Line in York County and the Rice-Ringgold Line in Franklin County.

On May 15, 2018, Transource filed 133 applications to exercise eminent domain over portions of several properties for the siting and construction of the transmission lines (“Eminent Domain Applications”), and two Petitions for findings that buildings to shelter control equipment at the proposed Furnace Run Substation and Rice Substation were reasonably necessary for the convenience or welfare of the public (“Zoning Shelter Petitions”). Pursuant to the Third Prehearing Order dated June 26, 2018, the Siting Applications, Eminent Domain Applications, and Zoning Shelter Petitions were consolidated. Thereafter, public hearings, site visits of properties that would be affected by the IEC Project, discovery, filed witness testimony, and evidentiary hearings were conducted.

On June 18, 2019, Transource filed a Motion to Suspend the Procedural Schedule to engage in settlement negotiations, which resulted in Transource executing Joint Partial Settlement Agreements with PPL Electric Utilities Corporation (“PPL Electric”), York County Planning Commission, Citizens to Stop Transource York County, Maple Lawn Farms, Barron Shaw and Shaw Orchards. The Joint Partial Settlements were filed on October 17, 2019. Pursuant to the partial settlements, Transource agreed to file an amended application for with the Commission seeking approval of an alternative route for the East Portion of the IEC Project.

On January 29, 2020, Transource and PPL Electric filed a Joint Amended Application, proposing an alternative route for the IEC East Portion of the Project in York County (the “Amended Siting Application”). Pursuant to the Amended Siting Application, Transource seeks approval for the IEC West Portion transmission line located in Franklin County as initially proposed in its original Siting Application.

The Amended Siting Application was noticed in the Pennsylvania Bulletin indicating that Protests and Petitions to Intervene should be filed on or before February 28, 2020. Accordingly, on February 28, 2020, Franklin County filed a Petition to Intervene and Protest in the above-captioned matter to protect the interests of the County and its citizens. Franklin County was granted Intervenor status by the Fifteenth Prehearing Order dated April 16, 2020. The final evidentiary hearing was held on June 9, 2020, via Business Skype and the evidentiary record was closed.

APPENDIX B

PROPOSED FINDINGS OF FACT⁴

I. Background

1. Transource is a Delaware limited liability company formed to construct, own, operate, and maintain electric transmission facilities and equipment within Pennsylvania. TPA Ex. 1, West Application, p. 3 ¶¶ 3-4.

2. PJM is a FERC-approved Regional Transmission Organization charged with ensuring the reliable and efficient operation of the electric transmission system under its functional control, and coordinating the transmission of electricity in all or parts of thirteen states, including Pennsylvania, and the District of Columbia. TPA Ex. 1, West Application, p. 6 ¶ 10.

1. PJM solicited and approved Transource’s Independence Energy Connection Project (“IEC Project” or “Project”) as a market efficiency project for the primary goal to reduce congestion on the AP South Reactive Interface (“APSRI”). TPA St. 2-West, p. 7, lines 15-16 and p. 8, line 11.

3. The IEC Project involves the construction of two new overhead double-circuit 230 kV interstate transmission lines in Pennsylvania: (1) the Rice-Ringgold 230 kV Transmission Line located in Franklin County (“IEC-West Portion”); and (2) the Furnace Run-Conastone 230 kV Transmission Line located in York County (“IEC-East Portion”). TPA Ex. 1, West Application at p. 1 and p. 9 ¶ 20; TPA Ex. 2, East Application at p. 1 and p. 9 ¶ 20.

4. The IEC Project also involves the construction of two new substations in Pennsylvania, the Rice Substation located in Franklin County and the Furnace Run Substation located in York County. TPA Ex. 1, West Application at p. 10-11 ¶¶ 24-25; TPA Ex. 1, East Application at p. at p. 10-11 ¶¶ 24-25.

5. The IEC-West Portion of the Project will extend approximately 24.4 miles from the new Rice Substation to the Pennsylvania-Maryland border, and the Maryland portion of the IEC-West Portion will extend approximately 4.4 miles from the Pennsylvania-Maryland border to the existing Ringgold Substation. TPA Ex. 1, West Application at p. 11 ¶ 26.

6. As proposed in Transource’s initial Siting Application related to the IEC-East Portion of the Project, the IEC-East Portion will extend approximately 12.7 miles from the new Furnace Run Substation to the Pennsylvania-Maryland border, and the Maryland portion of the IEC-East Portion will extend approximately 3.1 miles from the Pennsylvania-Maryland border to the existing Conastone Substation. TPA Ex. 1, East Application at p. 11 ¶ 26.

⁴ By way of the Fifteenth Prehearing Order dated April 16, 2020, Franklin County was granted Intervenor status. As intervenors, Franklin County was mandated to take the case as it found it. For the purposes of completeness, Franklin County hereby adopts the proposed findings of fact of the Office of Consumer Advocate and Stop Transource Franklin County.

7. Transource and PPL Electric Utilities Corporation (“PPL Electric”) have filed a Joint Amended Siting Application, which proposes a reconfigured route for the IEC East Portion (“Alternative IEC East Portion”). TPA Ex. AA-1, Amended Application at p. 7 at ¶ 32.

8. The proposed IEC-West Portion of the Project remains unchanged from the original Application. TPA Ex. AA-1, Amended Application at p. 13 at ¶ 13.

II. Need for the Project

9. Transource and PJM’s asserted primary need for the IEC Project is to reduce congestion on the APSRI to reduce transmission costs for electric customers. TPA St. 2-West, p. 7, lines 15-16; TPA St. 3-West, p. 7, lines 10-17 and p. 24, lines 21-22; TPA Exhibit No. SRH-8RJ, p. 2, 4, and 7.

10. PJM’s State of the Market Reports indicate that congestion costs due to the APSRI peaked in 2014 when PJM solicited the IEC Project but since then has drastically decreased and consistently remained low to the present. OCA St. 2, p. 17, Table 3; Monitoring Analytics, LLC, 2019 State of the Market Report for PJM at p. 543; OCA Hearing Exhibit No. 6 at p. 560.

11. The IEC Project was not solicited to resolve any existing reliability violations. TPA St. 7-RJ-SUPP, p. 5, lines 22-23, and p. 6, lines 1-2.

12. The IEC Project is not intended to be the “best option” to resolve the reliability criteria violations identified after the Project was proposed. TPA St. 7-RJ-SUPP, p. 5, lines 22-23.

13. The IEC Project was and remains a market efficiency project, not a reliability project. TPA St. 7-RJ-SUPP, p. 6, lines 1-2 and 13-14.

III. Costs

14. The estimated cost of the IEC Project as originally proposed are approximately \$230 million. TPA Ex. 1, West Application at p. 21 ¶ 65.

15. The most current estimated cost for the IEC Project inclusive of the Alternative IEC East Portion is approximately \$196 million. TPA Exhibit BDW-AA1.

IV. Environmental Factors

16. The IEC Project will negatively impact streams, wetlands, and floodplains in Franklin County. TPA Ex. No. 1, West-Application, Attachment 3 at p. 36, 39, Figure 8a at p. 40, and p. 43.

17. The proposed route for the IEC Project will cross three natural areas in Franklin County. TPA Ex. No. 1, West-Application, Attachment 3 at p. 46-47, Table 5.

18. The proposed route for the IEC Project will cross prime farmlands in Franklin County. TPA Ex. No. 1, West-Application, Attachment 3, Figure 7b.

19. The proposed route for the IEC Project will cross lands protected from development through agricultural easements in Franklin County. TPA Ex. No. 1, West-Application, Attachment 3, p. 55 and Figure 11.

20. The IEC Project will negatively impact agricultural land in Franklin County, including lands protected from development through agricultural easements. TPA Ex. No. 1, West-Application, Attachment 3, p. 46-47 Table 5, p. 55, and Figure 11.

APPENDIX C

PROPOSED CONCLUSIONS OF LAW

1. As the Applicant in these proceedings, Transource has the burden of proof to establish that it is entitled to the relief it is seeking in this proceeding. 66 Pa.C.S. § 332(a).

2. Transource must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlt. 1990), alloc. den., 602 A.2d 863 (Pa. 1992).

3. To meet its burden of proof, Transource must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

4. The Commission will grant an application for approval of the siting and construction of a high voltage transmission line if it finds and determines, pursuant to 52 Pa.Code § 57.76(a), the following:

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

5. Transource has the burden of proving that the IEC Project is necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public, pursuant to 66 Pa.C.S. § 1501.

6. A proposed transmission line is needed where “the project result[s] in a benefit to the public, such as an improvement to the reliability of service or lower prices.” *Hess v. Pennsylvania Pub. Util. Comm'n*, 107 A.3d 246, 260 (Pa. Cmwlt. 2014).

7. The record evidence demonstrates that the IEC Project is not necessary because the Project does not result in a benefit to the public and, therefore, Transource has not satisfied the standard required for approval set forth in 52 Pa.Code § 57.76(a)(1).

8. Transource has the burden of proving that the IEC Project is in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth pursuant to 52 Pa.Code § 57.76(a)(3).

9. The record evidence demonstrates that Transource has failed to comply with the Agricultural Security Area Law, 3 P.S. § 901, *et seq.*, and the Eminent Domain Code, 26 Pa.C.S.A. § 208, which provide protection for lands within an agricultural security area and lands subject to conservation easements and, therefore, Transource has not satisfied the standard required for approval set forth in 52 Pa.Code § 57.76(a)(3).

10. Transource has the burden of proving that the IEC Project will have a minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives. pursuant to 52 Pa.Code § 57.76(a)(4).

11. The record evidence demonstrates that Transource has failed to demonstrate that the IEC Project will have a minimum adverse environmental impact considering there is no need for the Project and, therefore, Transource has not satisfied the standard required for approval set forth in 52 Pa.Code § 57.76(a)(4).

12. Transource has the burden of proving that the exercise of the power of eminent domain for the IEC Project “is necessary or proper for the service, accommodation, convenience or safety of the public.” 15 Pa.C.S.A. § 1511 (c).

13. Transource has failed to demonstrate that the IEC Project is necessary and, therefore, Transource has not satisfied its burden to exercise the power of eminent domain over the properties described in its pending Eminent Domain Applications, pursuant to 15 Pa.C.S.A. § 1511 (c).

14. Transource has not obtained approval from the appropriate judicial, administrative, and local bodies in violation of the Agricultural Security Area Law, 3 P.S. § 901, *et seq.*, and the Eminent Domain Code, 26 Pa.C.S.A. § 208.

15. Transource has, therefore, failed to demonstrate that the exercise of the power of eminent domain over properties subject to conservation easements and within agricultural security areas satisfied the requirements of the Agricultural Security Area Law and Eminent Domain Code to acquire such properties.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Main Brief of Intervenor the County of Franklin 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:

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Dated: August 11, 2020

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