

September 25, 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 Reply 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.	:	

REPLY BRIEF OF INTERVENOR THE COUNTY OF FRANKLIN

I. INTRODUCTION

Intervenor, the County of Franklin (“Franklin County”), submits this Reply Brief in response to the arguments raised in the Main Brief of Transource Pennsylvania, LLC (“Transource”) and PPL Electric Utilities Corporation (“PPL Electric”). The arguments in Transource and PPL Electric’s Main Brief do nothing to alter Franklin County’s position that Transource’s Applications fail to meet the standards required for approval and should be denied by the Commission. Substantial record evidence establishes that Transource has failed to meet its burden of proving that the proposed Project is necessary or proper for the service, accommodation, convenience or safety of the public. Rather, 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 the proposed Project will also have a significant adverse environmental impact on Franklin County. Franklin County urges the Commission to protect the interests of its residents and all Pennsylvanians and deny the Applications.

II. REPLY ARGUMENT

A. APPLICABLE LEGAL STANDARDS

Transource argues that the Pennsylvania appellate courts have held that the need to address congestion on the interstate transmission system is alone sufficient for the Commission to find that there is a need for an HV transmission line under the Commission’s regulations, citing *Energy Conservation Council of Pennsylvania v. Pub. Util. Comm’n*, 995 A.2d 465 (Pa. Cmwlth. 2010). (Transource Main Brief at p. 21). In *Energy Conservation Council of Pennsylvania*, however, the Commonwealth Court did not hold that the need to reduce congestion by itself was sufficient to establish need. In that case, the Commission had relied on *both* reliability and congestion issues

in finding a public need for the proposed facilities, including a new HV transmission line and substation. On appeal, the Commonwealth Court affirmed the Commission's finding of public need *based on reliability grounds that were supported by substantial evidence in the record*. *Id.* at 486-87. The Commonwealth Court expressly declined to address the issue of congestion. Accordingly, Transource's reliance on *Energy Conservation Council of Pennsylvania* to contend that congestion relief alone can support the Project is unsupported.

Transource also argues that need includes the electric power needs of the region as a whole and is not limited only to Pennsylvania. (Main Brief at p. 21-24). The Commission's purpose is to protect Pennsylvanians and ensure enforcement of Pennsylvania regulations and statutes. The Public Utility Code specifically requires the Commission to "work with the Federal Government, other states in the region, the North American Electric Reliability Council and its regional coordinating councils or their successors, interstate power pools, and with the independent system operator or its functional equivalent *to ensure the continued provision of adequate, safe and reliable electric service to the citizens and businesses of this Commonwealth.*" 66 Pa.C.S. § 2805(a) (emphasis added). The proposed Project will *harm* Pennsylvanians and Pennsylvania businesses economically and should be opposed by the Commission on that fundamental basis alone. Franklin County submits that the Commission must not place the interests of other states and the regional transmission system above the interests of Pennsylvanians.

Notwithstanding the above, the record establishes that there is no need for the Project because it was designed and intended to address alleged congestion that no longer exists. The record also establishes that the IEC Project is not needed to address speculative reliability violations, which the IEC Project was not designed or intended to address. The record further establishes that the Project would be detrimental not only to Pennsylvania, both economically and

environmentally, but also to the entire PJM region. Accordingly, Transource has failed to meet its burden establishing a need for the Project and the Commission must deny its Applications.

B. NEED FOR THE PROJECT

Transource argues that because FERC has ordered PJM to identify and resolve congestion on the transmission system, transmission projects, like the IEC Project, that are approved by PJM pursuant to a FERC-approved planning process, automatically meet the “need” requirements under the Commission’s regulations governing HV transmission lines. But simply because the IEC Project, or any transmission project, is approved by PJM does not establish that the Project meets the statutory and regulatory need requirements justifying Commission approval.

Transource admits that while FERC has jurisdiction over transmission planning, this Commission has jurisdiction over the siting of Transource’s proposed HV transmission lines pursuant to 52 Pa. Code § 57.71. Although FERC Order 1000 permits PJM to solicit proposals to alleviate congestion on the bulk transmission system, Transource recognizes that FERC Order 1000 is not intended to preempt or conflict with the Commission’s authority over siting, permitting and construction of transmission facilities, including the instant Project. In essence, Transource argues that there is no need for these very proceedings because the Commission is automatically required to approve the Project based upon PJM’s determination. Transource’s argument must fail because it is contrary to Pennsylvania law. PJM’s determination of a purported need for the IEC Project does not absolve the Commission of its obligation to conduct its own independent analysis. And it also does not excuse Transource from its burden to meet Pennsylvania’s statutory and regulatory need requirements.

Additionally, the substantial evidence of record establishes that the congestion Transource intends to resolve with the IEC Project no longer exists. And, therefore, PJM no longer has the

need or responsibility to resolve the non-existent congestion. In its Main Brief, Transource claims its stated purpose for the IEC Project is to resolve congestion not only on the AP South Reactive Interface (“APSRI”), but also on “related constraints.” But Transource has made it clear throughout these proceedings in the written and oral testimony of its witnesses that Transource’s exclusive justification for “needing” the IEC Project is to alleviate congestion on the APSRI to lower electric prices to consumers. Indeed, Transource’s witnesses testified that PJM solicited the IEC Project to specifically address congestion on the APSRI. TPA St. 1-R, p. 21, lines 17-19; TPA St. 2-West, p. 7, lines 15-16; TPA St. 3-West, p. 24, lines 21-22, p. 26, lines 4-6 and 10-13; TPA St. 8-R, p. 7, lines 17-18. To that end, Transource ignores the significant congestion data after 2016 because the data undermines Transource’s entire reason that the IEC Project is needed. (Transource Main Brief and p. 44-45).

The APSRI was the facility with the highest congestion costs in the PJM region in 2014. But PJM’s most recent State of the Market Report demonstrates that the APSRI does not even make it into the top 25 most congested facilities in the PJM region. OCA Hearing Ex. 6 at p. 559. Since 2014, annual congestion costs for the APSRI has decreased by more than \$450 million. The data is clear that since the solicitation of the IEC Project in 2014, actual congestion on the APSRI has drastically declined and remained consistently low to the present. OCA St. 3 at p. 12; Monitoring Analytics, LLC, *2019 State of the Market Report for PJM* at p. 543; OCA Hearing Exhibit No. 6 at p. 560.

Transource argues that despite the decrease of congestion on the APSRI, the IEC Project is still needed to address congestion on the APSRI and “related constraints” based on PJM’s forecasted congestion from on its forward-looking models. Transource witness Mr. Horger’s figure showing actual congestion clearly demonstrates that congestion on the APSRI and related

constraints has drastically decreased and remained low since 2014. TPA St. 3AA-RJ at p. 11. In an attempt to obtain approval of the IEC Project, Transource ignores the accurate historical data and misrepresents the accuracy of PJM's forward-looking models. (Transource Main Brief at p. 68). According to Mr. Horger's testimony, PJM's forward-looking models forecasted congestion costs due to the APSRI to be \$85 million in 2015 and \$110 million in 2019. Tr. at p. 2936-2937. The actual congestion costs due to the APSRI, however, were significantly less at \$56.2 million in 2015 and \$14.5 million in 2019. OCA St. 2, p. 17, Table 3; Monitoring Analytics, LLC, *2019 State of the Market Report for PJM* at p. 543. Transource misstates the accuracy of PJM's forecasted congestion by combining the congestion of the APSRI interface with the purported "related constraints" and ignores the true inaccuracy of PJM's forecasted congestion. In short, Transource misconstrues the accurate historical data to establish need where there is none. Franklin County urges the Commission to rely on the actual historical data which establishes that Transource's intended and identified need for the IEC Project to address congestion on the APSRI has significantly decreased and also establishes that PJM's forecasted projections of congestion on the APSRI and related constraints is inaccurate. It must not be used as a basis for establishing need for the IEC Project now or in the future. The true and accurate data establishes that the IEC Project is not necessary pursuant to 66 Pa.C.S. § 1501.

Franklin County urges the Commission to determine whether the IEC Project is needed for its intended and stated purpose of alleviating congestion on the APSRI and disregard Transource's last minute attempt to save this Project by claiming the Project is needed to resolve purported reliability violations. In its Main Brief, Transource does not dispute that reliability "is not a driver" of the Project. (Transource Main Brief at p. 51). Instead, Transource attempts to blur the line between market reliability projects to alleviate congestion, like the instant Project,

and reliability projects, arguing that the Commission has recognized “[r]emoving congestion resolves reliability violations.” (Transource Main Brief at p. 51-51). But there is no longer any congestion for the IEC Project to resolve and, therefore, Transource’s argument fails.

In addition, reliability projects and market efficiency projects are undoubtedly different. PJM runs specific testing and analyses for reliability projects. It is undisputed that PJM did not perform its full set of reliability tests on the IEC Project to confirm that the identified potential reliability violations will actually occur in 2023. The reliability violations are only *potential* reliability violations that might occur if the IEC Project is not constructed.

It is undisputed that none of the projected reliability violations has occurred yet and that the Project is not intended to be the best or most economical solution to resolve the potential reliability violations. Transource continues to argue without any justification that it is not required to perform complete reliability testing because “there is no dispute” the Project will solve reliability violations. But without complete testing, how is it in fact undisputed that the Project will actually solve any possible reliability violations? Transource’s unpersuasive and circular reasoning is simply a way for it to attempt to prop up the purported benefits of the IEC Project where the benefits are not supported by the substantial record evidence.

In summary, the Commission should not accept Transource’s argument that the Project is needed for reliability when it is undisputed the Project was designed and intended to resolve congestion. Regardless, Transource bases its potential reliability benefits of the Project on incomplete testing. Incomplete testing and speculation are inadequate to establish need under the standards set forth in the Public Utility Code. Transource has failed to meet its burden establishing that the Project is needed to resolve possible reliability violations.

C. LAND SUBJECT TO CONSERVATION EASEMENT AND AGRICULTURAL SECURITY AREAS

It is undisputed that Transource’s Eminent Domain Applications seek to condemn lands subject to conservation easements and within agricultural security areas in Franklin County. As anticipated, Transource argues that it is not required to seek orphans’ court approval for condemnation of land subject to conservation easements under Act 45 if the Commission approves the condemnation. (Transource Main Brief at p. 104-105). Likewise, Transource argues that it is not required to seek approval from the ALCAB and local bodies prior to condemning Agricultural Security Areas because it is exempt from the Agricultural Area Security Law (“AASL”). (Transource Main Brief at p. 106). In order to effectuate the purpose of Act 45 and the AASL and ensure that the condemnations are reviewed at the standard the General Assembly expressly set forth in these acts, Transource must obtain its approval for the condemnations from the Orphans Court, ALCAB, and local bodies prior to the Commission ruling on the need and environmental effects of the Project. Respectfully, the Commission should enforce these mandatory conditions precedent in advance of a final ruling on this Application.

D. ECONOMIC IMPACTS

Transource emphasizes the benefits to the regional transmission system as justification for this Project. Franklin County urges the Commission to comply with its regulatory and constitutional obligations and not place the interests of other states and the regional transmission system above the interests of Pennsylvanians. Simply put, this Project provides no benefit to Franklin County or Pennsylvania. To the contrary, substantial record evidence reveals that Pennsylvanians will experience a net increase in wholesale power prices of approximately \$402 million. OCA Hearing Ex. 3. The lack of economic benefits and the significant environmental impacts on Pennsylvania make clear that this Project is a bad deal for Pennsylvanians and cannot

meet the standards required for Commission approval.

Transource argues that because PJM's benefit-to-cost ratio has been approved by FERC and PJM is required to use this methodology, by the IEC Project meeting the cost-benefit-ratio threshold Transource has met its burden to establish that the Project is economically beneficial and necessary to address congestion. The mere fact that PJM's cost-benefit ratio has been approved by FERC neither confirms its accuracy, nor satisfies the Commission's obligations to determine whether the Project is necessary and beneficial under its own regulatory standards. The Commission is required to consider the power needs of the public. 66 Pa. C.S. § 1501; 52 Pa. Code § 57.76(a)(4). The Commission is not required to and must not rely on PJM's methodology but must consider all the record evidence when making its determination. Without any justification, Transource contends that the Commission must ignore the recommendations of the Independent Market Monitor for PJM, which concluded that PJM's cost-benefit ratio analysis is flawed and that, when the costs and benefits of the Project are accurately calculated, PJM should never have approved the IEC Project because the Project fails PJM's benefit-to-cost threshold of 1.25. (Transource Main Brief at p. 58). Simply put, just because PJM is required to follow its flawed benefit-to-cost ratio that has been approved by FERC does not mean that Transource has satisfied its burden under the Commission's regulations.

E. EMINENT DOMAIN

Transource currently has 46 Eminent Domain Applications for the condemnation of land in Franklin County. (Transource Main Brief at p. 122 and Appendix F). Nothing in Transource's Main Brief changes Franklin County's position that Transource has failed to demonstrate that the IEC Project is necessary and, therefore, the Commission should deny its Eminent Domain Applications.

III. CONCLUSION

Transource requests that the Commission approve the IEC Project for which there is no need and no benefit conferred on Pennsylvanians, and which will violate the constitutional environmental rights of Pennsylvanians. The substantial record evidence demonstrates that Transource has failed to satisfy 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 has also failed to establish that the transmission lines comply with statutory and regulatory requirements for the protection of Pennsylvania's natural resources.

For the reasons set forth above, Franklin County respectfully requests and urges that the Commission deny the Applications of Transource in their entirety.

Respectfully submitted,
SALZMANN HUGHES, P.C.

Dated: September 25, 2020

/s/ Scott T. Wyland

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Reply 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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