

September 25, 2020

VIA EFILE

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

**Re: Application of Transource Pennsylvania, LLC Filed Pursuant to 52 Pa. Code Chapter 57 Subchapter G, for Approval of the Siting and Construction of the 230kV Project in Portions of Franklin County, Pennsylvania
Docket No. 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 reasonable and necessary for the convenience or welfare of the public
Docket No. P-2018-3001883**

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

**Application of Transource Pennsylvania, LLC for approval to acquire a certain portion of lands of various landowners in York and Franklin Counties, Pennsylvania for the siting and construction of the 230 Kv Transmission Line associated with the Independence Energy Connection – East and West Projects as necessary or proper for the service, accommodation, convenience or safety of the public
Docket No. A-2018-3001881, et al.**

Dear Secretary Chiavetta:

Enclosed for filing on behalf of Stop Transource Franklin County, please find the Reply Brief of Intervenor, Stop Transource Franklin County in the above-referenced matter. Copies will be served as indicated on the Certificate of Service.

Rosemary Chiavetta, Secretary
PA Public Utility Commission
September 25, 2020
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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Joanna A. Waldron', with a long horizontal flourish extending to the right.

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

JAW:alr
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
230 kV Transmission Line Associated with the
Independence Energy Connection - East and West Projects
in portions of York and Franklin Counties, Pennsylvania. 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 P-2018-3001878
is reasonably necessary for the convenience or welfare of the public.

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

REPLY BRIEF
OF STOP TRANSOURCE
FRANKLIN COUNTY

Curtin & Heefner LLP



By: _____
JOANNA A. WALDRON
Attorney for Stop Transource
Franklin County

Date: September 25, 2020

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I. INTRODUCTION

These proceedings are consolidated applications of Transource Pennsylvania, LLC and PPL Electric Utilities Corporation (collectively, “Transource” or “Applicant”) for approval of siting of the Pennsylvania portions of its extremely high voltage transmission lines as part of what it refers to as the Independence Energy Connection Project (“IEC Project”). The proposed IEC Project would build two separate lines from Maryland to two substations in Pennsylvania, with one line in York County and one line in Franklin County. The two new transmission lines are referred to as IEC West in Franklin County, and IEC East, in York County. The IEC West line, as proposed, would build a greenfield line across 24 miles of Franklin County farmland. Intervenor Stop Transource Franklin County (“STFC”) opposes the applications. Transource seeks approval of a Settlement with respect to the IEC East line, where it has agreed to reconfigure the 15-mile greenfield high transmission line that it had proposed for York County, and jointly submitted the Amended Application in January 29, 2020 seeking approval of a transmission line that would utilize existing high transmission line structures in the County and require far less greenfield construction in Pennsylvania. This is referred to as the Settlement 9A and the Settlement IEC East Project. The IEC Project for which Transource seeks Commission approval, therefore, is an amended version of the Market Efficiency Project 9A that PJM identified in 2015 as part of its Long-Term Regional Transmission Expansion Plan.

Transource first sought approval from the Commission in 2017 of part of the Regional Transmission Expansion Plan, when it filed an Application for a certificate of public convenience with the Commission for the authority to operate as a public utility in Pennsylvania. *Application of Transource Pennsylvania LLC for all of the Necessary Authority, Approvals, and Certificates of Public Convenience (1) to Begin to Furnish and Supply Electric Transmission Service in Franklin and York Counties, Pennsylvania; (2) for Certain Affiliated*

Interest Agreements; and (3) for any other approvals necessary to Complete the Contemplated Transactions, Docket No. A-2017-2587821. The Commission entered an Order in January of 2018, approving a settlement granting Transource a limited CPC, specific to the Project 9A, as identified in the Application, and “without a determination of need” as to IEC Project.

PJM’s Long-Term Regional Transmission Expansion Plan involves soliciting proposals to address various congestion issues, to mitigate constraints on existing electric facilities within PJM wholesale energy markets. FERC Order 1000 authorized regional transmission organizations, such as PJM, to conduct regional planning, and specifically recognized that nothing in the Order was “intended to limit, preempt, or otherwise affect state or local laws or regulations” (FERC 1000 Order at ¶ 227) and that the order was not meant to be an exercise in authority over “specific substantive matters traditionally reserved to the states, including...authority over siting” (FERC 1000 Order at ¶ 156) and that the Order did not “involve an exercise in siting, permitting, and construction” (FERC 1000 Order at ¶ 107) interfering with a state’s authority over siting of transmission lines. Transource asks this Commission to grant it the right to exercise eminent domain across dozens of property owners in Franklin County.

II. ARGUMENT

STFC submits this Reply Brief in opposition to Transource’s Applications for approval of IEC Project.

A. Transource Does Not Satisfy The Commission’s Standard Or The Pennsylvania Constitution By Demonstrating Compliance With FERC Or PJM.

Transource relies on a false equivalence to make the argument that the Commission should approve its application. STFC’s argument does not fail because it does not allege that

Transource didn't meet FERC or PJM's requirement. The Commission's standards for approval of an application involve more than determining whether Transource complied with the FERC tariff and PJM process that ultimately selected the IEC Project

1. STFC Is Not Required to Create an Alternative Route in Franklin County.

On P. 21 of its Brief, Transource argues that “no party has proposed an alternative route for the IEC West Portion or presented any study or analysis that an alternative route in Franklin County would have less environmental impacts.” No alternative route is required where Transource has not demonstrated a need for the greenfield IEC West transmission line. Further, the PJM's planning process itself already generated over 40 alternatives to Project 9A, and additional iterations of related projects which were proposed as other potential solutions to the same alleged congestion problem. It is completely consistent with PJM's Regional Transmission Expansion Planning, in which not part of the planning directly deals with state specific and siting issues pursuant to the FERC 1000 requirement that it not interfere with the state's siting process, that certain projects created in the absence of state-specific siting regulations, would ultimately be determined unacceptable to a state regulatory agency, due to location factors. This potential outcome is more likely where, as here, the proposed HV transmission line is a greenfield line, proposed by a newly-certificated entity created only to construction this IEC Project, and limited to provision of service in this area.

The TrAILCo decision likewise supports the idea that an applicant can be instructed to explore alternatives to the its proposed project. Application of Trans-Allegheny Interstate Line Company (“TrAILCo”), Docket No. A-11072, (December 12, 2008) (Order ¶ No. 2 and Partial Settlement Agreement). Transource, and not STFC, should be responsible for proposing alternative routes.

2. *PJM's Selection of Project 9A does not establish per se need for Project 9A*

PJM selected the Project 9A from among several transmission expansion project submitted in the Long-Term 2014/2015 Window. This selection was made entirely without regard to Pennsylvania's siting factors or constitutional requirements; rather, Project 9A was designed to tie into the existing east-west transmission line, and building a new substation in the vicinity.

Transource voluntarily chose to bifurcate the certification and approval process as described more fully in Section C. This choice does not imbue Project 9A, and the IEC West transmission line slated to cut across the center of the valley, with per se need determination for a transmission line in Franklin County.

Furthermore, in transmissions siting cases in Pennsylvania, the Applicant, not the Intervenors, bear the burden of proof. An applicant needs to meet the statutory standard to prove that it is entitled to the relief request. Here, that means that Transource must demonstrate with evidence, more than a "mere trace of evidence" or a "suspicion of the existence of a fact sought to be established, that it is entitled to Commission approval. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950); *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980). Transource seeks approval of its transmission line siting applications, its petitions requesting zoning exemptions for construction of new substations in York and Franklin County, its request for eminent domain power for dozens of properties in Franklin County and approval of the settlement agreement related to the IEC East with certain York County parties.

B. Transource Relies On The Wrong Standard For Demonstration Of Need Because It Completely Ignores The Pennsylvania Supreme Court's Rejection Of The Commonwealth Court's Non-Textual *Payne v. Kassab* Standard.

The Pennsylvania Supreme Court in rejected the *Payne v. Kassab* test. *Pennsylvania Environmental Defense Foundation, v. Commonwealth*, 161 A.3d 911, 930 (Pa. 2017) (“PEDF”). The *Payne* test is “ill-fitted” to the language of Article I, Section 27 and has “frustrate[ed] the development of a coherent environmental rights jurisprudence.” *Id.* at 930. citing Foundation’s Reply brief and Robinson Township, 83 A.3d at 964.) In rejecting the test, the *PEDF* Court explained that Article I, Section 27 requires a constitutional analysis beyond the three-part test, and requires application of the trust jurisprudence. Transource fails to acknowledge the impact of the Article I, Section 27’s articulation of the people’s rights and the government’s duties on its application to the Commission.

Transource correctly recites the current Commission’s regulations for the grant of an siting application for a high transmission line:

The PUC cannot grant the approval unless it finds affirmatively:

- (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 the minimum adverse environmental impact, considering the electric power needs of the public, and the state of the available technology and available alternatives.

52 Pa. Code § 57.76. The regulations do not include any definition of “need,” as Transource indicates in its Main Brief at 19. Transource asks the Commission to consider caselaw that predates the adoption of Article I, Section 27. The regulations themselves track the now-rejected *Payne v. Kassab* standard, and the

caselaw Transource relies on are of limited value because they incorporate the rejected standard¹.

1. The adoption of Article I, Section 27 in 1970.

Article I, Section 27 was unanimously adopted by the General Assembly in the 1969-1970 and the 1971-1972 legislative sessions, and was ratified by the citizens of Pennsylvania by a 4-to-1 margin on May 18, 1971. As the PEDF Court rightly noted, “the decision to affirm the people’s environmental rights in a Declaration or Bill of Rights, alongside political rights, is **relatively rare** in American constitutional law. In addition to Pennsylvania, Montana and Rhode Island are the only other states of the Union to do so.” *PEDF*, 161 A.3d at 918 (emphasis added); *See Pa. Const. Art. I, §27 (1971); Mt. Const., Art. II, § 3 (1889); R.I. Const. Art I, § 17 (1970)*.

The Environmental Rights Amendment articulates the people’s rights and the government’s duties:

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. 1, § 27. This express statement of rights and obligations in the Environmental Rights Amendment is “with respect to the conservation and maintenance of our public natural

¹ The evidence in the hearings from PJM witnesses suggests that PJM does not identify only a minimum amount of transmission projects in its Regional Transmission Expansion Plan process. PJM has no authority over siting approvals at the state level, and knows that there is a possibility that some projects will not be approved. Accordingly, as discussed at July 8, 2020 hearing PJM continually identifies new projects to address congestion. This redundancy suggests that, for regional planning, the needs of the public and available alternatives are moving targets. Subsection (4) of the regulations ask this Commission to balance the “minimum adverse environmental impact” against a moving target. The Environmental Rights Amendment jurisprudence rejects the balancing test embodied in (4) as no based in the constitutional text.

resources.” *PEDF*, 161 A.3d at 916. The adoption and ratification of the Environmental Rights Amendment was borne out of bitter experience in Pennsylvania with failure to conserve and maintain public natural resources. *PEDF* court recited the history detailed by the Robinson Township v. Commonwealth, 83 A.3d 901 (Pa. 2013) case, and it bears repeating here:

It is not a historical accident that the Pennsylvania Constitution now places citizens’ environmental rights on par with their political rights. Approximately three and a half centuries ago, white pine, Eastern hemlock, and mixed hardwood forests covered about 90 percent of the Commonwealth’s surface of over 20 million acres. Two centuries later, **the state experienced a lumber harvesting industry boom that, by 1920, had left much of Pennsylvania barren.** ...

Similarly, by 1890, **‘game’ wildlife had dwindled ‘as a result of deforestation, pollution and unregulated hunting and trapping.’**... Over the following decades, the Game Commission sought to restore populations of wildlife, by managing and restocking species endangered or extinct in Pennsylvania, establishing game preserves in state forests, and purchasing state game lands. Sustained efforts of the Game Commission over more than a century (coupled with restoration of Pennsylvania’s forests) returned a bounty of wildlife to the Commonwealth.

The third environmental event of great note was **the industrial exploitation of Pennsylvania’s coalfields from the middle of the nineteenth well into the twentieth century.** During that time, the coal industry and the steel industry it powered were the keystone of Pennsylvania’s increasingly industrialized economy. The two industries provided employment for large numbers of people and delivered tremendous opportunities for small and large investors. “[W]hen coal was a reigning monarch,” the industry operated “virtually unrestricted” by either the state or federal government. The result, in the opinion of many, was devastating to the natural environment of the coal-rich regions of the Commonwealth, with long-lasting effects on human health and safety, and on the esthetic beauty of nature. These negative effects include banks of burning or non-burning soft sooty coal and refuse; underground mine fires; pollution of waters from acid mine drainage; subsidence of the soil; and landscapes scarred with strip mining pits and acid water impoundments. In the mid–1960s, the Commonwealth began a massive undertaking to reclaim over 250,000 acres of abandoned surface mines and about 2,400 miles of streams contaminated with acid mine drainage, which did not meet water quality standards. The

cost of projects to date has been in the hundreds of millions of dollars, and the Department of Environmental Protection has predicted that an estimated 15 billion dollars is in fact necessary to resolve the problem of abandoned mine reclamation alone. *Id.*

The overwhelming tasks of reclamation and regeneration of the Commonwealth's natural resources, along with localized environmental incidents (such as the 1948 Donora smog tragedy in which twenty persons died of asphyxiation and 7,000 persons were hospitalized because of corrosive industrial smoke; the 1959 Knox Mine disaster in which the Susquehanna River disappeared into the Pittston Coal Vein; the 1961 Glen Alden mine water discharge that killed more than 300,000 fish; and the Centralia mine fire that started in 1962, is still burning, and led to the relocation of all residents in 1984) has led to the gradual enactment of statutes protecting our environment. The drafters of the Environmental Rights Amendment recognized and acknowledged the shocks to our environment and quality of life:

We seared and scarred our once green and pleasant land with mining operations. We polluted our rivers and our streams with acid mine drainage, with industrial waste, with sewage. We poisoned our 'delicate, pleasant and wholesome' air with the smoke of steel mills and coke ovens and with the fumes of millions of automobiles. We smashed our highways through fertile fields and thriving city neighborhoods. We cut down our trees and erected eyesores along our roads. We uglified our land and we called it progress.

1970 Pa. Legislative Journal—House at 2270 (quoting anonymous 1698 description of Penn's Woods air).

PEDF, 161 A.3d at 917-918. Accordingly, the past experience of Pennsylvanians' in destroying environmental resources in the name of unsustainable development, which required decades of reclamation and expenditures for those resources that could be rehabilitated, led directly to the adoption of Art I, Section 27 and its unique in Article I, the Declaration of Rights, of the Pennsylvania Constitution. This unique placement of protection of the citizens' environmental rights on par with the most sacred rights of individuals in the state Constitution impacts "all branches and levels of government". *PEDF*, at 919.

2. The duties established in the Environmental Rights Amendment require more than simply the application of the Payne test.

The Commission’s own regulations require it to reject a siting application “unless is find and determines as to the proposed HV line: (1) That there is a need for it.” 52 Pa. Code 57.76(a). Contrary to Transource’s suggestion, a determination of need cannot be based entirely on a standard rejected by the Pennsylvania Supreme Court in 2017. Transource suggests that the need for “regional electric service” has been recognized, but that recognition is only in the context of caselaw decided prior to both of the pronouncement of the Pennsylvania Supreme Court in *Robinson Township* and *PEDF*. Transource’s reliance on *Energy Conservation Council of Pa. v. Pa. PUC*, 995 A.2d 465 is misplaced because, that case was in 2010, several years before the Pennsylvania Supreme Court rejected the Payne test, and clarified Art I, Section 27.

3. Transource cannot rely caselaw predating the adoption of the Environmental Rights Amendment for the definition of “need.”

Acknowledging that there is no definition of “need” for siting applications, Transource cites to a 1960 Pennsylvania Superior Court case for support that public convenience and necessity considerations includes a “regional element” and that the “need for integration of the bulk power transmission system of Philadelphia and Baltimore.” Transource Main Brief at p. 19, citing *Stone v. Pa. PUC*, 162 A.2d 18 (Pa. Super. 1960). Likewise, *Dunk v. Pa. PUC*, 232 A.2d 231 (Pa. Super 1967), predates the adoption of the Environmental Rights Amendment.

4. It’s unreasonable to elevate the regional electric needs above the environmental rights of Pennsylvania citizens where region’s “need” arises from implementation of state-level environmental regulations.

Transource’s witness Cawley suggests that “reciprocal altruism” must play a part in any functioning grid system. Tr. at 2443. To avoid states operating as “silos” at the wholesale level, Witness Cawley suggests that “[a]t any given time Pennsylvania may benefit a little bit; it may

be harmed a little bit with the expectation if there is harm that, if Pennsylvania is in the same position at a future date, the other states will act the same way.” Tr. 2443: 4-8. While Witness Cawley’s altruism may apply in some regional planning contexts, as applied to the Transource Application for the IEC Project, and its proposed installation of a greenfield transmission line in Franklin County, it’s of little use.

Transource Witness Horger testified that Pennsylvania will benefit from the IEC Project because it will foster the hydraulic fracturing and development of the Marcellus Shale resources, a lower cost natural gas resource. Tr. at 2635. At the same time, Maryland, the state that benefits from congestion relief, already acted to ban hydraulic fracturing and the development of a lower cost resource, the Marcellus Shale gas. Even though Maryland banned hydraulic fracturing, and the development of a shall gas industry in the state in 2017 – the same year that the Pennsylvania Supreme Court confirmed Art I, Section 27 jurisprudence in *PEDF*. See MD Code, Environment § 14-107.1. Maryland banned the industrial activity that Transorouce Witness Horger alleges will increase as a result of the proposed IEC Proejct, because of the removal of the “inefficiencies...which is the congestion.” Tr. at 2636.

C. Transource Is Not Properly Certificated

Whereas here, a two-step process is invoked for approval of a transmission line siting application, the applicant utility is improperly relieved of the burden of proving the need for a certificate of public convenience in the first step of the process. Transource filed its applications in December 2017, after it had reached a settlement agreement on the certification docket, Docket No. A-2017-2587821. The decision specifically noted that the Application “brings a new type of entity to the Commonwealth” and that the Commission is being asked to “certificate a company as a public utility as a necessary step prior to consideration of the siting and construction of the project this company was formed to carry out.” Removing Transource’s

burden to demonstrate need for approval of the CPC shifts the burden from the applicant seeking approval of a new transmission line. The applicant utility bears the burden of proof in proving a need for the certificate of public convenience.

Transource should not be permitted to do piecemeal that which should properly be considered together by the Commission. The original Settlement approved by the Commission in late 2017 on the certification application is invalid or irrelevant, because no need was ever demonstrated for the IEC Project for which Transource was certificated. Now, the IEC Project, and the Application has changed with the Amended Application, and while the problem of no specific determination of need persists, now the Applicant Transource lacks a proper certificate, to conform to the Amended Applications.

To allow the application to be completed after the certification of public convenience is granted is problematic for two reasons. First, it suggests that the adjudication is not a final order within the meaning of the Administrative Agency Law. The Commission essentially retained jurisdiction to make this determination of need, and Commission's approval of the CPC is interlocutory because the Commission retained jurisdiction on the project.

The question of need was specifically deferred in 2018 on approval of the Order, and stucken from the original ALJ approval of the settlement (See December 21, 2017 Motion of Commissioner Sweet, at ¶ 2; striking portion of August 31, 2017 Approval at P. 14). The CPC was issued on for a specific project - need for the CPC is found to be ONLY for the specific project, but the Commission removed the determination on the Need for the project language from the order.

The CPC that Transource has allows it to furnish service on in the Area and only specific to the PJM Project 9A, which is not approved. Further, Commission's order specifically removed language from the ALJ's finding that there was a need for the Project.

Transource relies on the very same certificate for authority to that there is a need for it to have the power of eminent domain. Project 9A has not been approved by the Commission, and it is the only service that Transource if authorized to furnish. As such, Transource has a CPC that is limited and not effective because it refers to a project that has not been approved by the Commission. Neither the ALJ nor the Commission has made a finding as to the

The sequenced approach to approval in this novel instance has the effect of improperly shifts the burden to the intervenors or the Commission to show that there deficiencies in the application, when nothing in the Code or the regulations in 52 Pa Code authorizes the issuance of a certificate of public convenience without sufficient supporting information on the merits of the proposed application.

In January of 2019, a new Application was filed for a Reconfigured 9A project. The CPC that Transource has is issued specifically for "PJM Project 9A, baseline upgrade numbers b2743 and b2752, and for baseline upgrade number b2743 and b2752". Amended Application demonstrates that PJM has now applied different numbers to the Project., b2743.2-8 and b27521-9. (See TJH-AA2) Transource is asking the Commission to approve the first market efficiency project under FERC Order 1000. Transource's current situation is unusual; Transource holds a limited certificate of public convenience that does not allow it do anything other than file an application because Transource may only provide service one particular project, for which the Commission has yet to determine need.

D. The Commission Should Not Approve Transource's Applications Nor Allow Any Construction Before Environmental Permits Are Obtained.

Transource relies on outdated and overruled precedent for the proposition that environmental permits before construction of the proposed transmission line occurs. The Pennsylvania Supreme Court addressed this exact issue in the *Robinson Township* case, and citing the *Susquehanna-Roseland* case as an example of improperly applying the non-textual *Payne* test, and improperly ignoring the agency’s constitutional duties. Here, Transource alleges that it is not required to obtain all necessary [permits] before construction of the proposed line begins” and cites to *Susquehanna-Roseland*, 25 A.3d 452-53 (Pa. Cmwlth. Ct. 2011); Transource Brief at 91.

The Supreme Court specifically cited the *Susquehanna-Roseland* case that Transource relies on as an example of the Commonwealth Court’s “narrow understanding of an agency’s constitutional duties.” *Robinson II*, 83 A.3d at 966, and 967 fn. 53. The Supreme Court explained in *Robinson* that the Commonwealth Court’s application of the *Payne* test² fails as a test for Article I, Section 27 for three reasons: 1) because the *Payne* test defines the Commonwealth’s obligations “in much narrower terms than the constitutional provision” *Id.* at 967. Second, the *Payne* test is wrongly “contingent upon and constrained by legislative action in order for judicial relief to be available to Pennsylvanian’s; and 3) that “the Commonwealth Court's *Payne* decision and its progeny” minimize “the constitutional duties of executive agencies” and circumscribe the abilities of these entities to carry out their constitutional duties

² The test enunciated in *Payne* required consideration of the following factors: “(1) Was there compliance with all applicable statutes and regulations relevant to the protection of the Commonwealth's public natural resources? (2) Does the record demonstrate a reasonable effort to reduce the environmental incursion to a minimum? (3) Does the environmental harm which will result from the challenged decision or action so clearly outweigh the benefits to be derived therefrom that to proceed further would be an abuse of discretion?” *Payne*, 312 A.2d 86, 94 (Pa. Cmwlth. Ct. 1973)

independent of legislative control. Robinson II, at 966-67; see also, PEDF, 161 A.3d 911, 937 (confirming that the public trust provisions of Section 27 are self-executing.).

Transource lists on pages 92-96 of its Main Brief a number of regulatory requirements it plans to meet, if the Commission approves the application. The litany includes USFWS surveys for bald eagles, PFBC coordination regarding native wild trout population and Stormwater controls, wetland delineation and approval from USACOE, and PADEP, as well as Chapter 102 E& S permitting from PADEP. Transource should be required to demonstrate that it has received the required permits, so as to show, at a minimum, that the project can be completed within the statutory and regulatory requirements. Over and above meeting the statutory requirements, Transource

Transource lists a multitude of areas on which it “will comply” with the applicable regulations and permitting requirements. First, the application should not be approved prior to any of this demonstrated compliance. Second, if the Commission does approve the application, compliance with the applicable must be required.

Transource asks the Commission to apply the now-rejected *Payne v. Kassab* holding on the intent of the Environmental Rights Amendment, that to allow “controlled development of resources rather than no development.” The Commonwealth Court embraced this concept in *Payne v. Kassab*, and Transource repeats the same principle here. The Commonwealth Court in *Payne* held that Environmental Rights Amendment was intended to allow “controlled development of resources rather than no development.” *Payne v. Kassab*, 312 A.2d 86, 94 (Pa. Cmwlth. Ct. 1973) Where, as here, citizens allege that their environmental rights, and the rights of future generations are threatened by more than simply an alleged failure to comply with

statutory standards enacted to advance Section 27 interests, Payne and its progeny is inappropriate to determine matters. 83 A.3d at 967. Transource wants to turn open space of farmlands into transmission line rights-of-way. Transource does not mention the potential impacts on private wells, which are a source of drinking water as well as for operations in various businesses. Transource downplays the temporary and permanent impacts to the soils resulting from the placement of the steel monopoles along 23 miles in Franklin County.

E. Congestion on the AP South Did Not Materialize and Transource's Justifications Should be Rejected

Transource argues in the its Main Brief that the decrease in the congestion observed at the AP South since 2014. Witness Horger suggests that congestion “shifts” because of multiple constraints; however, the project was proposed and identified as a market efficiency project to relieve the congestion on the AP South. If congestion is continually “shifting,” and has now shifted away from the AP South Interface, PJM should reject the Project 9A because it no longer serves its purpose of relieve congestion on the AP South. Further, if congestion continually “shifts” it's not an efficacious exercise to solicit proposals to address congestion on the AP South. In the alternative, PJM's predictions about congestion were wrong.

To bolster its reliability argument raised after the fact, Transource claims that “reliability issues and market congestion issues are often intertwined and cannot be viewed in isolation.” Transource Main Brief at 71. Transource asked the Commission to approve these Applications, where the Project was identified as addressing one particular congestion constraints, which has now shifted; and certain reliability violations were identified late into the process, and not mentioned in the original Applications. Transource suggests that market efficiency projects and reliability projects cannot be differentiated.

III. CONCLUSION

For the foregoing reasons, Transource and PPL's Application for the approval of the IEC Project must be denied. At a very minimum, Transource and PPL must be prohibited from beginning any construction unless and until all approval from Pennsylvania agencies are secured. In the alternative, the Commission should approve on the agreed-upon settlement alternative in the form of the IEC East line only.

Curtin & Heefner LLP



By: _____

JOANNA A. WALDRON

Date: September 25, 2020

CERTIFICATE OF SERVICE

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

I hereby certify that a true and correct copy of the Reply Brief of Intervenor, Stop Transource Franklin County has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Note that due to our current staffing and resource limitations in response to COVID-19, we will be providing electronic service only today. Please do not hesitate to contact me with any questions regarding today's filing.

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Date: September 25, 2020