

COMMONWEALTH OF PENNSYLVANIA



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October 8, 2026

Via Electronic Filing

Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Transource PA's Certificate of Public
Convenience Application for Franklin
County; Docket No. A-2026-3062675;

Transource PA's Siting Application for
Franklin County; Docket No. A-2026-
3062686; and,

Transource PA's Zoning Exemption
Petition in Greene Township, Franklin
County; Docket No. P-2026-3062687

Dear Secretary Homsher:

For electronic filing, enclosed please find the Answer of the Office of Consumer Advocate
Opposing Transource PA's Motion in *Limine*.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Jacob Guthrie

Jacob Guthrie, PA Attorney I.D. # 334367
Assistant Consumer Advocate

Enclosures

cc: Administrative Law Judge Emily A. Farren (Via Email Only: efarren@pa.gov)
Administrative Law Judge Steven K. Haas (Via Email Only: sthaas@pa.gov)
Certificate of Service

CERTIFICATE OF SERVICE

Application of Transource Pennsylvania, :
LLC for All of the Necessary Authority, :
Approvals and Certificate of Public :
Convenience to Begin to Offer, Render, : Docket No. A-2026-3062675
Furnish and/or Supply Transmission Service :
in portions of Franklin County, Pennsylvania :
Necessary to Operate Transmission Facilities :
for Project 9A West; and for any Other :
Approvals Necessary :

Application of Transource Pennsylvania, :
LLC filed Pursuant to 52 Pa. Code Chapter :
57, Subchapter G, for Approval of the Siting :
and Construction of the 230 kV Transmission : Docket No. A-2026-3062686
Line known as Project 9A West in a Portion :
of Franklin County, Pennsylvania :

Petition of Transource Pennsylvania, LLC for :
Confirmation of an Exemption from Local :
Zoning Regulation and for the Construction :
of Buildings in connection with the : Docket No. P-2026-3062687
Construction of a Proposed Electric :
Substation in Greene Township, Franklin :
County, Pennsylvania :

I hereby certify that I have this day filed electronically on the Commission's electronic filing system and served a true copy of the following documents, the Answer of the Office of Consumer Advocate Opposing Transource PA's Motion in *Limine*, upon parties of record in this proceeding who have elected to receive electronic service, in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), and Interim Order #2, in the manner and upon the persons listed below.

Dated this 8th day of October 2026.

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Dated: October 8, 2026

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Transource Pennsylvania, :
LLC for All of the Necessary Authority, :
Approvals and Certificate of Public :
Convenience to Begin to Offer, Render, : Docket No. A-2026-3062675
Furnish and/or Supply Transmission Service :
in portions of Franklin County, Pennsylvania :
Necessary to Operate Transmission Facilities :
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Approvals Necessary :

Application of Transource Pennsylvania, :
LLC filed Pursuant to 52 Pa. Code Chapter :
57, Subchapter G, for Approval of the Siting :
and Construction of the 230 kV Transmission : Docket No. A-2026-3062686
Line known as Project 9A West in a Portion :
of Franklin County, Pennsylvania :

Petition of Transource Pennsylvania, LLC for :
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Construction of a Proposed Electric :
Substation in Greene Township, Franklin :
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ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
OPPOSING TRANSOURCE PA'S
MOTION IN *LIMINE*

AND NOW, before Administrative Law Judges (ALJs) Emily A. Farren and Steven K. Haas, the Pennsylvania Office of Consumer Advocate (OCA) files this Answer, pursuant to 52 Pa. Code Sections 5.61 and 5.103, to the Motion *in Limine* Requesting Confirmation That Certain Issues Are Not Relevant In These Proceedings (Motion) of Transource Pennsylvania, LLC (Transource PA or Company)¹ of the above-captioned proceedings.

¹ 52 Pa. Code §§ 5.61, 5.103.

I. INTRODUCTION

Transource PA requests that the ALJs preclude discovery on, and exclude evidence regarding: (1) whether Pennsylvania Public Utility Commission (Commission) issuance of a certificate of public convenience to Transource PA to provide additional transmission service in Franklin County, Pennsylvania is necessary or proper for the service, accommodation, convenience, or safety of the public²; and (2) “(i) whether the benefits of the 9A West Project are inside Pennsylvania or outside Pennsylvania, (ii) whether the costs of the 9A West Project are reasonable, (iii) retail costs and retail rate impacts; (iv) federally-regulated transmission costs and wholesale rate impacts (v) challenges to PJM’s planning and decision-making process associated with the 9A West Project; and (vi) the weighing of alleged costs and benefits of the 9A West Project.”³ The issue identified in item (1) are related to Transource PA’s application for a certificate of public convenience⁴ and the issues identified in item (2) are related to Transource PA’s application for transmission line siting approvals and related zoning exemptions.⁵

The OCA respectfully requests that the ALJs deny Transource PA’s Motion because the Motion is premature and is inconsistent with the Commission’s determination in the *MARL Interlocutory Order*.⁶ Namely, limitation of discovery rights and development of the evidentiary

² Motion ¶¶ 1, 36-56.

³ Motion ¶ 55.

⁴ *Application of Transource Pennsylvania, LLC for All of the Necessary Authority, Approvals and Certificate of Public Convenience to Begin to Offer, Render, Furnish and/or Supply Transmission Service in portions of Franklin County, Pennsylvania Necessary to Operate Transmission Facilities for Project 9A West; and for any Other Approvals Necessary*, Docket No. A-2026-3062675 (CPC Application).

⁵ *Application of Transource Pennsylvania, LLC filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the 230 kV Transmission Line known as Project 9A West in a Portion of Franklin County, Pennsylvania*, Docket No. A-2026-3062686 (Siting Application); *Petition of Transource Pennsylvania, LLC for Confirmation of an Exemption from Local Zoning Regulation and for the Construction of Buildings in connection with the Construction of a Proposed Electric Substation in Greene Township, Franklin County, Pennsylvania*, Docket No. P-2026-3062687 (Zoning Exemption Petition).

⁶ *Application of NextEra Energy Transmission MidAtlantic, Inc., filed pursuant to 52 Pa. Code Chapter 57 Subchapter G, for approval to site and construct a 500 kV transmission line associated with the MidAtlantic Resiliency Link Project located in portions of Greene County and Fayette County, Pennsylvania*, Docket No. A-2026-3060856, *Interlocutory Order* (June 1, 2026) (*MARL Interlocutory Order*).

record before parties have had the opportunity to issue discovery or develop the record would prevent the Commission from conducting a full factual investigation into the CPC Application, Siting Application, and/or Zoning Exemption Petition; the limitation of discovery and exclusion of evidence is better handled when the need arises, through objections to discovery requests or at the evidentiary hearings for these matters. Further, in the *MARL Interlocutory Order*, the Commission stated that it was premature to determine the scope of the factual investigation in a transmission line siting proceeding until after the utility applicant had received a certificate of public convenience, in the interests of due process. Finally, Transource PA's interpretation of the "necessary or proper" standard under Section 1103 of the Public Utility Code is inconsistent with the Commission's decision in the *MARL Interlocutory Order*, and the portions of its Motion reliant on the same should be denied.

II. LEGAL STANDARDS

Parties before the Commission can make requests in motions for relief desired, and "must set forth the ruling or relief sought, and state the grounds therefor and the statutory or other authority upon which it relies."⁷ Section 331(d) of the Public Utility Code and Section 5.483 of the Commission's regulations empower presiding officers to control the receipt of evidence,⁸ "to exclude irrelevant, immaterial or unduly repetitive evidence...and to otherwise regulate the course of the proceeding."⁹ Presiding officers "have all necessary authority to control the receipt of evidence, including" ruling on the admissibility of evidence and limiting the production of further

⁷ 52 Pa. Code § 5.103.

⁸ 66 Pa. C.S. § 331(d).

⁹ 52 Pa. Code § 5.483.

evidence, where appropriate.¹⁰ Importantly, “[t]he presiding officer will actively employ these powers to direct and focus the proceedings *consistent with due process*.”¹¹

All “[r]elevant and material evidence is admissible subject to objections on other grounds” in proceedings before the Commission.¹² The Commission requires that evidence be excluded from the record “[i]f it is repetitious or cumulative,” or if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or considerations of undue delay or waste of time.¹³ As an administrative agency with quasi-judicial functions, the Commission is not constrained by strict rules governing admissibility of evidence; however, essential legal principles must be observed when ruling on evidentiary issues.¹⁴

However, the Commission has historically determined that motions *in limine* are not appropriate in matters before it, stating: “we are of the general opinion that a *Motion in Limine* is an inappropriate vehicle to challenge the introduction of evidence in an administrative proceeding. Rather, upon the attempted introduction of the evidence, a *Motion to Strike* will be entertained.”¹⁵

The Commission further stated that:

While it is true that the traditional use of a *Motion in Limine* is to prevent prejudice that might occur merely by offering the evidence to a jury, as the proceeding before us is an administrative proceeding, the possibility of prejudicing the trier of fact by the mere offering of the evidence is remote. Further, we find that to eliminate all evidence of a particular witness prior to its being offered is inappropriate in this proceeding. Rather, we are confident that the Administrative Law Judge is capable of ruling on the relevance and/or materiality of each piece of proffered evidence.¹⁶

¹⁰ 52 Pa. Code § 5.403(a).

¹¹ 52 Pa. Code § 5.403(b) (emphasis added).

¹² 52 Pa. Code § 5.401(a).

¹³ 52 Pa. Code § 5.401(b).

¹⁴ *Pittsburgh and Lake Erie R.R. Co. v. Pa. Pub. Util. Comm’n*, 85 A.2d 646, 653 (Pa. Super 1952).

¹⁵ *Re Duquesne Light Co.*, 1983 Pa. PUC LEXIS 60, *6 (Apr. 29, 1983).

¹⁶ *Id.* at *10-11 (citations and footnotes omitted); see also *Application of Apollo Gas Company for approval to offer, render, furnish or supply natural gas service to the general public in Allegheny, Armstrong, Clarion, Indiana, Jefferson and Westmoreland Counties*, 1991 Pa. PUC LEXIS 61, *3 (Aug. 2, 1991) (“The Commission has previously stated that a Motion in Limine is an inappropriate device for narrowing evidence to be presented in a proceeding. *Re: Duquesne Light Company*, 57 Pa. P.U.C. 313 (1983). The appropriate procedure for raising an objection to the

In *Re: Duquesne Light Co.*, the Commission did determine that the motion *in limine* was appropriate to the extent that it sought to limit the issues in dispute in that proceeding.¹⁷ One of the Commission's more recent approvals of a motion *in limine* was consistent with the *Re: Duquesne Light Co.* decision, limiting the taking of evidence only on issues that the Commission had determined, in that proceeding, were outside of its jurisdiction.¹⁸

III. ANSWER TO THE MOTION *IN LIMINE*

A. **Transource PA's Motion is premature because parties have not yet had the opportunity to conduct discovery or develop written testimony.**

Transource PA asserts that the Motion "is necessary now in the early stage of these proceedings to avoid later legal challenges to the issues that not properly within the Commission's jurisdiction" and would prevent the ALJs from addressing issues regarding relevance in a piecemeal fashion.¹⁹ The OCA disagrees that it is proper or in the public interest to limit the matters on which the parties can produce evidence and seek discovery regarding at this early stage in the proceedings and, therefore, respectfully requests that the ALJs deny the Motion.

At the outset, the Third Circuit's decision in *Transource Pa., LLC v. DeFrank*, 156 F.4th 351 (3d Cir. 2025) *aff'g* *Transource Pa., LLC v. DeFrank*, 705 F. Supp. 3d 266 (M.D. Pa. 2023) (*Transource*) did not find that transmission line siting proceedings regarding transmission projects that were selected through the Regional Transmission Expansion Plan (RTEP) process of PJM Interconnection, LLC (PJM)²⁰ are outside the scope of the Commission's jurisdiction. Rather, the Third Circuit stated that "when an RTO has selected a project for inclusion in a regional

admissibility of evidence has been to raise the objection at the time the evidence was offered for admission at a hearing.").

¹⁷ *Re: Duquesne Light Co.* at *11.

¹⁸ See, e.g., *Susan K. Pickford et al v. Pa.-American Water Co.*, 2008 Pa. PUC LEXIS 1040, *19-20 (Sep. 15, 2008) (*Pickford*).

¹⁹ Motion ¶¶ 26-34.

²⁰ PJM is the regional transmission organization (RTO) which operates the vast majority of Pennsylvania transmission infrastructure.

transmission plan as part of its federal mandate, a state regulator cannot, consistent with the Supremacy Clause, reject the project based on a lack of ‘need.’”²¹ The Third Circuit’s concern was that Commission evaluation of the need for an RTEP project where PJM has already assessed whether a project should be built pursuant to PJM’s approved methods – like the market efficiency project at issue in the *Transource* decision – “would substitute [the state commission’s] determination for that of FERC on an issue that federal law places squarely in FERC’s hands: identifying regional planning needs and selecting projects to relieve congestion.”²² The Court concluded by stating:

Our opinion therefore cannot reasonably be read to suggest that the PUC is required to rubber-stamp either a siting application or an eminent-domain application related to a project that PJM has approved. It thus does not undermine the value of Pennsylvania’s “robust process for public involvement” in siting and eminent-domain applications.²³

The Third Circuit’s decision in *Transource* provides that, when the Commission conducts its Pennsylvania-jurisdictional determination for approval of the siting of a transmission line, consistent with the Public Utility Code and its regulations, evidence that PJM assessed and determined whether the transmission line should be built according to PJM-approved methods is evidence the Commission can and must accept regarding its determination of whether there is a need for the project.²⁴ In other words, the Commission cannot “second guess” PJM by making a finding based on evidence of record in the state proceeding that an application of PJM’s FERC-approved methods would have resulted in a different project selection or that PJM’s FERC-approved methods are themselves in error.²⁵ However, the Third Circuit did not render the question

²¹ *Transource*, 156 F.4th at 379.

²² *Id.* at 377.

²³ *Transource*, 156 F.4th at 382.

²⁴ 66 Pa. C.S. § 1501; 52 Pa. Code §§ 57.75(e), 57.76(a)(1).

²⁵ *See Transource*, 156 F.4th at 378.

of need as being beyond the scope of the Commission’s jurisdiction and did not preclude the Commission from taking evidence of the same, including evidence of benefits and harms of the proposed project consistent with state law.²⁶

For example, in the *Transource* decision, the Commission considered evidence of increased consumer prices and weighed the competing cost impacts of the project to determine the necessity of that PJM-selected market efficiency project.²⁷ However, PJM’s approved method for market efficiency projects required PJM to disregard information showing increased consumer prices to burdened zones and required PJM only to consider the information of decreased consumer prices for benefiting zones. Given that this type of benefit and harm was either expressly considered or disregarded pursuant to PJM’s approved method for project selection, the Commission was precluded from doing a separate and different analysis based on evidence of record.²⁸ However, on the question of the need for the proposed facilities, the *Transource* decision did not preclude the Commission from taking evidence as to PJM’s determination or taking additional evidence as to benefits and harms that are not expressly considered or disregarded in PJM’s FERC-approved methods, such as, for example, safety hazards and environmental risks associated with the construction of the facilities.²⁹

²⁶ See *Id.* at 379 (“To be clear, the PUC may, consistent with our opinion today, ‘grant[] or deny[]’ a siting application for reasons other than a disagreement with PJM’s FERC-approved basis for selecting the project.”).

²⁷ *Transource Pa., LLC v. Pa. PUC*, 278 A.3d 942, 966 (Pa. Cmwlth. 2022) (citing *Hess v. Pa. PUC*, 107 A.3d 246, 260 (Pa. Cmwlth. 2014)).

²⁸ See *Transource*, 156 F.4th at 380 (“the PUC’s attempt to weigh in on the current need for the project by *recalculating congestion levels* is just another way of *redoing PJM’s benefit-cost evaluation*.”) (emphasis added).

²⁹ *Id.* at 375 (“The problem with the PUC’s denial is that it is the result of second-guessing the FERC-approved benefit-cost methodology. FERC’s methodology serves the broader purpose of reducing regional congestion to ensure just, reasonable, and nondiscriminatory rates. The PUC, however, disagreed with PJM’s evaluations of regional congestion and with FERC’s determination of how the consequences of that congestion should be weighed.”).

Given the above, the Third Circuit’s decision is distinguishable from other proceedings where an ALJ found that a motion *in limine* was appropriate.³⁰

At present, there is no evidentiary record in this proceeding. The Commission’s regulations provide that “a pleading, or any part thereof may not be considered as evidence of a fact other than that of filing thereof unless offered and received into evidence.”³¹ Because the OCA contested Transource PA’s CPC Application, Siting Application, and Zoning Petition, and stated that it intends to investigate the averments in Transource PA’s pleadings further, Transource PA’s averments are not evidence.³²

Furthermore, under the Commission’s regulations, it “*will* accept evidence upon, and in its determination of the application it *will* consider, *inter alia*, the following matters: (1) The present and future necessity of the proposed HV line in furnishing service to the public.”³³ The Commission’s regulations do not provide significant discretion on the taking of evidence regarding need, so long as such evidence is otherwise admissible.³⁴ If the evidence pertains to need, then it *will* be accepted.

³⁰ Compare with *Pickford*, *19-20 (affirming an ALJ’s exclusion *in limine* of “testimony and evidence concerning the public health determinations made in the context of the [Pennsylvania Department of Environmental Protections]’s permitting decisions at issue in this proceeding” but permitting related evidence on matters pertaining to quality of water service under Section 1501); *SBG Management Services, Inc. et al v. Phila. Gas Works*, Docket Nos. C-2012-2304183 *et al*, Order on Respondent’s Motion *in Limine* at 3-5 (Jan. 20, 2023) (granting a utility’s motion *in limine* to exclude the presentation of pre-served written testimony requesting monetary damages, a form of relief beyond the scope of the Commission’s jurisdiction); *Petition of UGI Penn Natural Gas Inc. for a Finding that Structures to Shelter Pipeline Facilities in the Borough of West Wyoming, Luzerne County, To the Extent Considered To be Buildings under Local Zoning Rules, Are Reasonably Necessary for The Convenience or Welfare of the Public*, Docket No. P-2013-2347105, Order at 22 (Dec. 19, 2013) (affirming the ALJ’s grant of a motion *in limine* to exclude the presentation of pre-served written testimony regarding matters beyond the Commission’s jurisdiction and/or not germane to the limited scope of the proceeding). The OCA emphasizes that the predominant circumstance regarding the granting of a motion *in limine* is that it precludes pre-served, written testimony or other evidence already developed in the course of the proceeding at the evidentiary hearings, and not to prevent parties from developing such evidence at the outset.

³¹ 52 Pa. Code § 5.405(b).

³² 52 Pa. Code § 5.405(c).

³³ 52 Pa. Code § 57.75(e) (emphasis added).

³⁴ See 52 Pa. Code § 5.401.

Finally, under the Commission's regulations, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.³⁵ It is not grounds for objection to discovery requests that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.³⁶ The Commission applies the relevance test liberally.³⁷ Relevance depends upon the nature and the facts of the individual case.³⁸ Any doubts are to be resolved in favor of relevance and permitting discovery.³⁹

Transource PA's Motion stands contrary to these standards. By proscribing the scope of discovery before discovery can begin, approval of the Motion would undermine the liberal application of the relevance test and expansive scope of discovery. This includes a full and complete, independent verification of the assertions made by Transource PA in its pleadings. Absent the ability to conduct discovery on need, only Transource PA will have the information necessary to inform the Commission of whether the requirements of the Public Utility Code and its regulations are satisfied.

As a result, and as described *supra*, it is premature to prevent discovery or exclude presentation of evidence regarding the Commission's need determination when ruling on

³⁵ Section 5.321 outlines the scope of discovery as follows:

(c) *Scope.* Subject to this subchapter, a party may obtain discovery regarding **any matter**, not privileged, which is **relevant to the subject matter** involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the **claim or defense of another party**, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

52 Pa. Code § 5.321(c) (emphasis added).

³⁶ *Id.*

³⁷ See *Pa. Pub. Util. Comm'n v. The Peoples Natural Gas Co.*, 62 Pa. PUC 56 (Aug. 26, 1986).

³⁸ *Koken v. One Beacon Ins. Co.*, 911 A.2d 1021, 1025 (Pa. Cmwlth. 2006).

³⁹ *Petition of the Borough of Cornwall for a Declaratory Order*, Docket No. P-2015-2476211 (Order entered Sept. 11, 2015) (citing *Koken*, 911 A.2d at 1025).

Transource PA's Siting Application. Rather, the more appropriate method, consistent with prior Commission orders, is the submission of motions to strike in advance of hearings to preclude the introduction of evidence, not its development. The ALJs' determination in these proceedings will not be prejudiced by initial review of pre-served written testimony or other documents before such documents are admitted into the evidentiary record, demonstrating that a motion *in limine* is not necessary. Unless and until parties are permitted to conduct discovery and/or develop the evidentiary record further, it is impossible to determine whether and to what extent it is necessary to proscribe the scope of discovery or evidence that may be admissible.

B. Transource PA's Motion is premature because the Commission has not yet approved Transource PA's CPC Application.

Transource PA moved to consolidate the CPC Application, Siting Application, and Zoning Petition for purposes of adjudication and hearings.⁴⁰ The ALJs have not granted the request to consolidate these proceedings.⁴¹ Nevertheless, Transource PA's Motion is predicated upon approval of consolidation. Namely, in the *MARL Interlocutory Order*, the Commission found that it was premature to determine whether and to what extent parties could present evidence regarding "need" associated with the utility's transmission line siting application when the utility did not have a certificate of public convenience to apply for siting authority.⁴² Unless and until the ALJs enter an order consolidating the CPC Application, Siting Application, and Zoning Petition, it would be premature and potentially prejudicial to consider the Siting Application, including the scope of the proceeding and evidence to be presented.⁴³

⁴⁰ Motion ¶¶ 12, 27-28.

⁴¹ Interim Order #1, In-Person Prehearing Conference Notice ("The purpose of the Prehearing Conference is to discuss all relevant procedural issues, including *inter alia*, consolidation, development of a procedural schedule, and deadlines for discovery, related to these three proceedings.") (emphasis added).

⁴² *MARL Interlocutory Order* at 11-13.

⁴³ *Id.* at 13.

In the *MARL* case, NextEra Energy Transmission MidAtlantic, Inc. (NextEra) simultaneously submitted an application for certificate of public convenience authority to provide electric transmission service and a transmission line siting application.⁴⁴ On May 18, 2026, the ALJs in that proceeding granted NextEra’s request to consolidate its applications for all purposes.⁴⁵ The OCA submitted a Petition for Interlocutory Review requesting clarification on two substantive legal questions which applied specifically to NextEra’s transmission line siting application and not its application for a certificate of public convenience.⁴⁶ Those substantive legal questions were:

(1) Whether the Commission is preempted based on the Third Circuit’s recent decision in *Transource Pa., LLC v. DeFrank* from modifying or denying the Pennsylvania portions of the Mid-Atlantic Reliability Link Project (MARL Project or Project), which are the subject of these proceedings, on the basis of insufficient need for the Project given that PJM Interconnection, LLC (PJM) has made a determination that there is a reliability-based need for the MARL Project in the PJM region and has selected the MARL Project to address that need?

(2) Whether the Commission can consider evidence of the costs and benefits of the MARL Project in rendering a determination to approve, reject, modify, or condition the Applications, notwithstanding an affirmative answer to the first Material Question?⁴⁷

The OCA notes that the second material question is similar to the question that the ALJs would answer when ruling on Transource PA’s Motion.

The Commission found that “[b]ecause the Petition [for Interlocutory Review] before us raises substantive legal questions pertaining to the disposition of the Siting Application, it would be improper, as a procedural matter for us to address substantive legal matters for the Siting Application where a CPC has not been granted.”⁴⁸ The Commission further determined that “ruling on any substantive legal issues in the Siting Application prior to the determination whether to grant

⁴⁴ *Id.* at 3-4.

⁴⁵ *Id.* at 5.

⁴⁶ *Id.* at 8-9.

⁴⁷ *Id.* at 2-3.

⁴⁸ *Id.* at 11.

NextEra's CPC Application would violate the due process rights of the ultimate parties to the Siting Application."⁴⁹

The Commission squarely addressed the question of whether or not, in advance of the issuance of a certificate of public convenience, the scope of a transmission line siting application proceeding could be addressed: it cannot. Yet, in Paragraph 55 of the Motion, Transource PA specifically requested that the issues to be addressed in the Siting Application be limited at the threshold.⁵⁰ As a result, unless the ALJs (1) consolidate the CPC Application, Siting Application, and Zoning Petition or (2) the CPC Application is approved, it is premature to grant the relief requested in the Motion pertaining to the Siting Application. The OCA respectfully requests that the Motion be denied with respect to preclusion of any discovery or evidentiary development for the Siting Application.

C. Transource PA's Motion articulates a legal standard for approvals of a certificate of public convenience that is inconsistent with the one that the Commission confirmed in the *MARL Interlocutory Order*.

Transource PA argues in the Motion that, because PJM found that there was a need for the proposed transmission line facilities in the Siting Application, the Third Circuit's decision in *Transource* precludes the Commission from finding that it is not "necessary or proper for the service, accommodation, convenience, or safety of the public" to approve the CPC Application.⁵¹ While Transource PA points to correct authority regarding the applicable legal standard for ruling on the CPC Application in this proceeding,⁵² Transource PA disagrees with the Commission's legal conclusion in the *MARL Interlocutory Order* that the "necessary or proper" for the CPC Application differs from the "need" determination under the Commission's transmission line siting

⁴⁹ *Id.* at 14.

⁵⁰ Motion ¶ 55.

⁵¹ Motion ¶¶ 36-53.

⁵² 66 Pa. C.S. § 1103(a); *Elite Indus. v. Pa. Pub. Util. Comm'n*, 832 A.2d 428 (Pa. 2003).

regulations.⁵³ The ALJs should not reach a different conclusion from the Commission in this proceeding because the two legal standards are distinct.

Specifically, in the *MARL Interlocutory Order*, the Commission clarified:

We note also that the “necessary or proper” or “need test” under Section 1103 is not the same as the “present and future necessity of the proposed HV line in furnishing service to the public” or “need test” under 52 Pa. Code § 57.75(e)(1). The former determines need for additional transmission service within the proposed service territory of Greene and Fayette Counties, and the latter is the first factor to be considered in the permitting and siting of the construction of a specific high-voltage transmission line project within the certificated service territory of the utility within the borders of the Commonwealth.⁵⁴

Following the Third Circuit’s unprecedented determination that the Commission lacks authority to reject a transmission line siting application for lack of “need” if the regional grid operator selected the project as part of its regional transmission planning process, the distinction in the legal standards between Section 1103(a) of the Public Utility Code and Section 57.76(a)(1) of the Commission’s regulations is critical.⁵⁵ In *Transource*, the Third Circuit did not consider or alter the applicable legal standard for the Commission’s determination regarding whether to grant or deny a proposed public utility’s application for a certificate of public convenience.⁵⁶

Though Pennsylvania courts have found that “necessity” and “need” for a proposed transmission line are corollaries, this determination was limited to comparing Section 1501 of the Public Utility Code and the Commission’s transmission line siting regulations.⁵⁷ The Commission’s transmission line siting regulations are issued pursuant to Section 1501.⁵⁸ As a result, the meaning of “need” for purposes of siting high voltage transmission lines by necessity

⁵³ *MARL Interlocutory Order* at 12-13.

⁵⁴ *MARL Interlocutory Order* at 12-13.

⁵⁵ *See generally, Transource*.

⁵⁶ *Transource*, 156 F.4th at 380-82.

⁵⁷ *Transource Pa., LLC v. Pa. Pub. Util. Comm’n*, 278 A.3d 942, 960-61 (Pa. Cmwlth. 2022).

⁵⁸ 52 Pa. Code Chap. 57, Subchap. G (Authority “The provisions of this Subchapter G issued under the Public Utility Code, 66 Pa.C.S. §§ 331, 501, 504 and 1501, unless otherwise noted.”)

comes from the obligation of utilities to maintain service and facilities as are “necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.”⁵⁹ Though the same phrase, “necessary or proper,” appears in both Sections 1103(a) and 1501, the General Assembly utilized this phrase to govern two different legal standards: the Commission’s standard for approval of a certificate for public convenience and the character of utility service and facilities to be observed, respectively.⁶⁰

The Commission’s determination in the *MARL Interlocutory Order* respects this delineation, whereas Transource PA’s Motion conflates the two separate legal standards. PJM’s determination of the need for the proposed transmission line facilities could be evidence of the necessity and propriety of additional transmission service in Franklin County, Pennsylvania, but the Third Circuit’s decision in *Transource* did not grant such evidence preclusive effect.⁶¹ Otherwise, the Third Circuit would have stated as such, instead of finding that its decision in *Transource* still required a certificate of public convenience to be issued before a proposed utility could exercise eminent domain authority to site and construct PJM RTEP project facilities.⁶²

In sum, Transource PA inappropriately seeks to limit the ability of parties to conduct discovery and present evidence regarding the necessity and propriety of additional transmission service in Franklin County, Pennsylvania, in the CPC Application proceeding. The Commission’s recent implication in the *MARL Interlocutory Order* that the PJM need determination for an RTEP project is independent of the analysis the Commission conducts under Section 1103(a) for issuance of a certificate of public convenience indicates that Transource PA’s requested relief should not

⁵⁹ 66 Pa. C.S. § 1501.

⁶⁰ Compare 66 Pa. C.S. § 1103(a) with 66 Pa. C.S. § 1501.

⁶¹ *Transource*, 156 F.4th at 381.

⁶² *Id.*

be granted.⁶³ Rather, the parties should be permitted to conduct a robust investigation into the necessity and propriety of additional transmission service in Franklin County, in addition to addressing matters of Transource PA's fitness or other showings required under Section 1103(a). To the extent that Transource PA takes issue with discovery issued and/or evidence presented regarding such necessity and propriety, the appropriate avenue to address Transource PA's concerns is through objections raised at the appropriate time. Therefore, the OCA respectfully requests that the ALJs deny Transource PA's Motion.

⁶³ *MARL Interlocutory Order* at 12-13.

IV. CONCLUSION

For the reasons set forth above, the ALJs should deny the Motion *in Limine* because it is premature and applies legal standards that are inconsistent with the Commission's recent determination in *MARL Interlocutory Order*. The Motion would specifically contravene the *MARL Interlocutory Order* by (1) requesting the ALJs to rule on a substantive legal issue regarding the Siting Application before the CPC Application had been decided on and (2) conflating the legal standards for the issuance of a certificate of public convenience with that of the authority to site and construct high voltage transmission facilities. Therefore, the Office of Consumer Advocate respectfully requests that the Commission and the ALJs deny Transource PA's Motion.

Respectfully submitted,

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Dated: October 8, 2026

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