

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In Re: Application of Trans-Allegheny	:	
Interstate Line Company (TrAILCo)	:	
For approval: 1) for a certificate of public	:	
convenience to offer, render, furnish or	:	
supply transmission service in the	:	A-110172
Commonwealth of Pennsylvania;	:	A-110172F0002
2) authorization and to locate, construct,	:	A-110172F0003
operate and maintain certain high-voltage	:	A-110172F0004
electric substation facilities; 3) authority	:	G-00071229
to exercise the power of eminent domain	:	
for the construction and installation of	:	
aerial electric transmission facilities along	:	
the proposed transmission line routes in	:	
Pennsylvania; 4) approval of an exemption	:	
from municipal zoning regulation with respect	:	
to the construction of buildings; and	:	
5) approval of certain related affiliated	:	
interest arrangements	:	

RECOMMENDED DECISION

Before
Mark A. Hoyer
Administrative Law Judge

and

Michael A. Nemec
Administrative Law Judge

TABLE OF CONTENTS

I. HISTORY OF THE PROCEEDING..... 1

II. INTRODUCTION..... 6

 A. Project Background..... 7

 B. Description of the Proposed Facilities 9

III. FINDINGS OF FACT 11

 A. Certificate of Public Convenience 11

 1. Fitness..... 14

 2. Need..... 16

 a. The Need for the 502 Junction to Loudoun Segment 16

 b. The Need for the Prexy Segment..... 22

 3. Route Selection and Siting..... 32

 4. Environmental Impacts..... 39

 5. Health and Safety 41

 a. Electromagnetic and Electric Fields 41

 b. Herbicides..... 45

 c. Gas Line Safety..... 47

 d. Other Safety Issues 49

 B. Eminent Domain 49

 C. Exemption from Local Zoning 50

 D. Affiliated Interest Agreements 53

IV. DISCUSSION..... 57

 A. Certificate of Public Convenience 57

1.	Burden of Proof.....	57
2.	Legal Standard	58
3.	Definition of ‘Public Utility’ Applies to TrAILCo	60
4.	Fitness.....	60
5.	Technical Capacity	63
6.	Financial Ability.....	67
7.	Legal Fitness	68
8.	Concerns	72
B.	Authorization and Certification to Locate, Construct, Operate and Maintain Certain HV Electrical Transmission Lines.....	78
1.	Need for the Proposed Facilities	78
a.	Legal Standards	78
b.	502 Junction – Need.....	81
i.	The Positions of the Parties	82
(a)	TrAILCo’s Position	82
(b)	ECC’s Position	89
(c)	OCA’s Position.....	100
(d)	West Penn Power Industrial Intervenors’ Position.....	105
(e)	OTS’ Position	109
ii.	Discussion	110
(a)	Introduction	110
(b)	Economics, Not Public Need.....	112
(c)	Effect of TrAIL on Generation in Eastern PJM.....	116

c.	Prexy Facilities – Need	118
i.	The Positions of the Parties	118
(a)	TrAILCo’s Position	118
(b)	OCA’s Position.....	121
(c)	ECC’s Position	133
(d)	TrAILCo’s Response	141
(e)	OCA’s Response.....	146
(f)	ECC’s Response	148
ii.	Discussion.....	149
2.	Route Evaluation and Siting	152
a.	The Positions of the Parties	152
i.	TrAILCo’s Position.....	152
ii.	ECC’s Position.....	157
iii.	TrAILCo’s Response.....	162
iv.	ECC’s Response.....	166
b.	Discussion	169
3.	Environmental Impact	177
a.	The Positions of the Parties	178
i.	TrAILCo’s Position.....	178
ii.	ECC’s Position.....	182
iii.	OTS’ Position.....	182
b.	Discussion and Conclusions.....	189
4.	Health and Safety	190

a.	Introduction	190
b.	The Positions of the Parties – in General	191
	i. TrAILCo’s Position.....	191
	ii. OTS’ Position.....	191
c.	The Positions of the Parties – Electric and Magnetic Fields (“EMF”).....	192
	i. TrAILCo’s Position.....	192
	ii. OCA’s Position	193
	iii. ECC’s Position.....	193
	iv. OTS’ Position.....	193
	v. TrAILCo’s Reply	195
	vi. OCA’s Reply.....	196
	vii. ECC’s Reply	196
d.	Discussion	196
e.	The Positions of the Parties – Herbicides and Pesticides.....	197
	i. TrAILCo’s Position.....	197
	ii. OTS’ Position.....	198
	iii. OCA’s Position	198
	iv. ECC’s Position.....	200
	v. TrAILCo’s Reply	200
f.	Discussion, Conclusions and Recommendations	201
g.	Gas Line Safety.....	202
	i. Discussion, Recommendations and Conclusions.....	202
h.	Other Safety Issues	203

C.	Eminent Domain	203
1.	TrAILCo’s Position	203
2.	OTS’ Position.....	205
3.	Discussion, Recommendation and Conclusion.....	205
D.	Exemption from Local Zoning Regulation	206
1.	Legal Standard	208
2.	Analysis of TrAILCo’s Request for Exemption from Local Zoning Regulation.....	209
E.	Affiliated Interest Agreements	215
1.	Legal Standard	216
2.	Analysis of Affiliated Contracts or Arrangements.....	217
a.	Memorandum of Understanding (TrAILCo Exhibit MAM-1)....	218
b.	Service Agreement (TrAILCo Exhibit MAM-2).....	221
c.	Capital Contribution Agreement (TrAILCo Exhibit MAM-3) ...	227
d.	Tax Allocation Agreement (TrAILCo Exhibit MAM-4).....	229
V.	CONCLUSIONS OF LAW	231
VI.	CONCLUSIONS AND RECOMMENDATIONS.....	234
VII.	RECOMMENDED ORDER.....	238
APPENDIX A	Glossary of Terms	
APPENDIX B	Summary of the Public Input Hearings and Site Visits	
APPENDIX C	Interim Order Establishing Guidelines for Litigation of the Case	
APPENDIX D	Rulings on Various Motions	

I. HISTORY OF THE PROCEEDING

On April 13, 2007, Trans-Allegheny Interstate Line Company (“TrAILCo” or “Company”) filed with the Pennsylvania Public Utility Commission (“Commission”) five separate Applications including (1) an Application for a Certificate of Public Convenience to offer, render, furnish or supply electrical transmission service in the Commonwealth of Pennsylvania, (2) an Application for authorization to locate, construct, operate and maintain certain high-voltage electric substation facilities, (3) an Application for authority to exercise the power of eminent domain for the construction and installation of aerial electrical transmission facilities along the proposed transmission line routes in Pennsylvania, (4) an Application for approval of an exemption from municipal zoning regulations with respect to the construction of buildings, and (5) an Application for approval of certain related affiliated interest arrangements. As set forth further in the Applications, the proposed project consists of approximately 52.6 miles of transmission lines, two 500 Kv and three 138 Kv lines, and includes a substation in Washington County and one in Greene County.

Specifically, the Applications request the Commission, *inter alia*, to permit it to locate, construct, operate and maintain a new 500/138 kV substation in Washington County, Pennsylvania (“Prexy Substation”), a new 500 kV substation in Greene County, Pennsylvania (“502 Junction Substation”), a new 500 kV transmission line to connect the Prexy Substation and the 502 Junction Substation (“Prexy Segment”), and three new 138 kV transmission lines with double circuit construction from the Prexy Substation (“Prexy 138 kV Lines”) to connect with existing transmission lines of Allegheny Power (collectively referred to as the “Prexy Facilities”). TrAILCo also proposes to construct a new 500 kV transmission line in Pennsylvania from the 502 Junction Substation to the Pennsylvania-West Virginia state line

(“Pennsylvania 502 Junction Segment”).¹ To summarize, TrAILCo requests that the Commission issue a Certificate of Public Convenience to allow it to be recognized as a Pennsylvania public utility; requests exemption from local zoning regulations; requests authorization to exercise the power of eminent domain in connection with the siting, construction and maintenance of the proposed transmission facilities; and requests approval of certain affiliated interest transactions.²

In response to the filing of the TrAILCo Applications, the Office of Trial Staff (“OTS”) on May 24, 2007, filed a Petition to Intervene and Request for Expedious Commission Action and Notice of Appearance to represent the public interest in the proceeding. By Opinion and Order entered May 30, 2007, the Commission granted the OTS Petition.

The Initial Prehearing Conference was conducted as scheduled by the presiding Administrative Law Judges (“ALJs”) on Tuesday, June 19, 2007, in the State Office Building in Pittsburgh. In addition to the OTS, parties participating and represented by counsel were TrAILCo, the Office of Consumer Advocate (“OCA”), the Energy Conservation Council of Pennsylvania (“ECC”), the West Penn Power Industrial Intervenors (“WPPII”), Columbia Gas Transmission Corporation, Columbia Gas of Pennsylvania, Inc., (“Columbia Gas”), the Greene County Commissioners, the Washington County Commissioners and multiple landowners. Also present were thirty-three additional, interested individuals.

¹ A fuller description of the proposed facilities is found in the Company’s Application at Paragraphs 10 through 25. Essentially, the proposed project includes the siting and construction of two distinct transmission line segments; those comprising the “Prexy Facilities” (the 500/138 kV Prexy Substation in Washington County, the 500 kV transmission line to connect the Prexy Substation with the 502 Junction Substation, and three new 138 kV double circuit transmission lines extending from the new Prexy Substation to other existing 138 kV lines in Washington County) and the “Pennsylvania 502 Junction Segment,” which is proposed to be a 500 kV transmission line which runs southeast from the 502 Junction Substation to the Pennsylvania-West Virginia state line and the 500 kV 502 Junction Substation in Greene County (an approximately 1.2 mile segment of the larger proposed 502 Junction – Loudon transmission line which extends through West Virginia and Virginia).

² TrAILCo has included a concurrent Application for a Certificate of Public Convenience to be recognized as a Public Utility in its comprehensive filing rather than seeking such authorization prior to the request to locate and construct high-voltage transmission lines. As a procedural matter, the authority to operate as a jurisdictional public utility must be granted prior to consideration of TrAILCo’s request to locate and construct its transmission line facilities; otherwise TrAILCo’s election to combine all requests in one filing creates a regulatory paradox in that the Commission’s authority extends to certificated public utilities.

At the request of counsel for TrAILCo, and with the assent of counsel attending the Prehearing Conference, a Protective Order was issued on July 19, 2007. The Protective Order provided a mechanism for the parties to access information that the Applicant considered confidential.

A Prehearing Order was issued on July 26, 2007, setting forth the agreed to schedule for proceeding with the Applications. The Prehearing Order formally consolidated the five Applications for the purposes of discovery, litigation and decision. The Prehearing Order granted several petitions to intervene but denied a petition by CPV Warren LLC. Counsel for CPV Warren LLC remained on the service list for receipt of notices and orders. Provision was made for the initial service of documents, and for providing an opportunity to receive all documents if a protestant/property owner wished to do so. The Prehearing Order summarized the issues raised by the Applications. It also established a procedure for property owners to request views of their property, and detailed the procedure to follow for discovery in the proceeding.

A Second Prehearing Order was issued on August 23, 2007, that provided for a full service list and a limited service list. The order also established a tentative schedule for the viewing of individual properties.

Twelve public input sessions (two each day) were held on August 29 and 30, and September 5, 6, 19 and 20, 2007, in Washington and Greene Counties and site visits were conducted on August 31, and September 7 and 18, 2007. All together, the public input hearings and site visits are recorded in over 2100 pages of transcript. A summary of the testimony presented at the public input hearings and site visits is provided in Appendix B to this Recommended Decision.

A Third Prehearing Order was issued on October 15, 2007, to correct language contained in a hearing notice and to provide an opportunity for parties to object to exhibits presented at the public input hearings. It also covered two other “housekeeping” matters. Rulings on various discovery matters were issued on November 9, 2007 and November 16, 2007.

On December 5, 2007, an interim order captioned Rulings on Various Motions was issued that dealt with a motion of the OCA for injunctive relief, a motion of TrAILCo for certain relief, and a motion of the OCA that would require TrAILCo to cure certain alleged due process and regulatory violations. The first OCA motion was held in abeyance, the motion of TrAILCo was denied, as was the second OCA motion. The complete interim order captioned Rulings on Various Motions is included in Appendix D to this Recommended Decision both for completeness and ease of reference as it will be referred to later.

On January 2, 2008, a Fourth Prehearing Order was issued setting forth the revised litigation schedule as agreed to by the parties. A further ruling on discovery matters was issued on January 8, 2008. An Interim Order Establishing Guidelines for the Litigation of the Case was issued on February 7, 2008. The Interim Order included rulings on objection to statements and exhibits presented at the public input hearings and site visits. It also included a set of requirements to be met prior to the evidentiary hearings. The complete Interim Order is attached to this Recommended Decision as Appendix C, both for completeness and for ease of reference as it will be referred to later.

Evidentiary hearings were subsequently held in the Pittsburgh State Office Building on March 24-28, 2008 and continued on March 31, April 1, and April 3, 2008. The evidentiary hearing record includes in excess of 1400 pages of transcript, and many hundreds of pages of statements and exhibits. On April 28, 2008, TrAILCo, OCA and ECC entered into a Stipulation to remove a portion of TrAILCo Redirect Examination Exhibit No. 4 and transcript pages 2860-2874 and 2882-2908 from the “confidential and proprietary” record. The redacted Exhibit 4 is attached as Attachment A to the Stipulation.

On April 17, 2008, the ECC filed with the Secretary transcript corrections. On April 24, TrAILCo filed with the Secretary its transcript corrections. No objections to either set of corrections have been received. Both sets of corrections are granted by operation of 52 Pa. Code §5.253(f)(2).

Main briefs have been filed by TrAILCo, OTS, OCA, ECC, WPPII, and Columbia Gas. Columbia Gas and TrAILCo entered into a private settlement agreement that does not contemplate the need for the approval of this Commission. The settlement agreement is attached to the main brief of Columbia Gas as Appendix H. Reply briefs have been filed by all of the above but Columbia Gas. In a statement dated April 24, 2007, former Chairman Holland addressed a series of questions to the parties in this proceeding. TrAILCo, OCA, OTS, ECC and WPPII all provided their answers to the Chairman's questions in Appendix F to their respective main briefs. The record in this consolidated proceeding closed on May 30, 2008, in accordance with the provisions of the Fourth Prehearing Order.

II. INTRODUCTION

In order to achieve the Commission's objectives of assuring an adequate, reliable and reasonably-priced supply of energy, reducing greenhouse gas emissions, . . . it is essential to reduce the barriers that now hamper the siting of new, needed energy infrastructure. Such siting reforms include implementing, across the nation, the best practices (that) currently exist in some states' siting processes, including:

- Providing clear and accessible agency rules, time lines, siting criteria, other policies, and case precedents to facilitate the filing and administration of complete and viable siting proposals.
- Requiring up-front, pre-filing efforts by developers in the local affected communities, including contact with political and public interest groups, community education and flagging of key issues, to identify fatal flaws as well as information and educational needs, and to reduce the time and cost of regulatory and administrative siting procedures.
- Focusing the siting approval process on the question of whether a specific infrastructure proposal at a particular place is acceptable. Applicants should provide information demonstrating not only environmental impacts, but also the process used to identify and consider other sites, as well as project configuration and technology choices that satisfy similar needs. . . . The siting of electricity transmission infrastructure, in particular, *should* include a comprehensive system-wide review of alternatives, although once that review process has validated the need for new transmission lines, the siting process for a specific line segment should not allow for a re-opening of broader system planning issues. . . . (emphasis in original).

Report of the National Commission on Energy Policy, December 2004, p. 87.
(www.energycommission.org).

The issues presented seem to represent a microcosm of the critical issues facing our nation today. On the one hand, opponents cite environmental and health concerns, toxins released by coal, and the exacerbation of global warming.

On the other hand, supporters cite the need to address our aging infrastructure and to plan for energy needs in the future. All of these issues are critical and valid, but why do they have to be mutually exclusive?

Tr. 354-355. The quote is from the testimony of Ms. Carole McLaughlin, a psychotherapist, at the second public input hearing held on August 29, 2007, in Washington County.

Ms. McLaughlin is clearly correct that all of the issues she identified are critical and valid, they are most certainly not mutually exclusive and need to be openly and fully addressed. We have endeavored to do so in this proceeding.

The burden of proof in this proceeding is on the Applicant Trans-Allegheny Interstate Line Company (“TrAILCo” or “Applicant” or “Company”). TrAILCo must show its compliance with the applicable provisions of the Pennsylvania Public Utility Code, this Commission’s regulations and applicable Commission and appellate court decisions in its filings, by a preponderance of the substantial evidence of record. 66 Pa. C.S. §332(a).

In the recommended decision that follows we will present our analysis of the five consolidated filings including our recommendations. The subjects will be addressed in the order presented in the caption: certificate of public convenience; authorization and certification to locate, construct, operate and maintain certain high-voltage electric transmission lines; authority to exercise the power of eminent domain; approval of an exemption from zoning regulations respect to buildings; and approval of certain related affiliated interest “arrangements” or agreements.

A. Project Background

In June 2006, PJM Interconnection, L.L.C. (PJM) approved its five-year regional transmission expansion plan (RTEP).³ The RTEP is designed to maintain the reliability of the electric transmission grid in the PJM transmission system region. Application, p. 3.

³ PJM is the Regional Transmission Operator (RTO) that manages the transmission systems of electric utilities, in all or part of thirteen states including utilities in Pennsylvania, West Virginia and Virginia. Application, p. 3.

As a participant in the RTEP process, Allegheny Power is the transmission owner responsible for addressing the reliability needs in the Allegheny transmission zones in Pennsylvania, West Virginia and Virginia. Application, pp. 4-5. The PJM Operating Agreement allows an assigned transmission owner to “make arrangements with another entity to fulfill those obligations.” TrAILCo St. 1, p. 10. Allegheny Power has designated TrAILCo as the entity responsible for the TrAIL Project. Application, p. 4.

TrAILCo witness Lawrence Hozempa described in his direct testimony how the TrAIL Project was created. In May 2005, at a FERC technical conference, PJM announced the development of the Project Mountaineer transmission line concept. TrAILCo witness Hozempa described Project Mountaineer as “an approach through which PJM’s independent regional planning combined with its stakeholder process could identify a comprehensive transmission plan to increase transfer capability from west to east” in the PJM region. In October 2005, Allegheny Power began a review of possible system upgrades within the Allegheny Power Zone in response to Project Mountaineer. In November 2005, Allegheny Power, American Electric Power Corporation (AEP), FirstEnergy Corp. (FirstEnergy) and Dominion Virginia Power consolidated their efforts into a joint report. The Joint Report was submitted to PJM in February 2006 and, later in February 2006, Allegheny Power submitted its TrAIL proposal as a possible solution to Project Mountaineer objectives. The original TrAIL Project was 330 miles of 500 kV transmission line from the Wylie Ridge Substation to the Kemptown, Maryland Substation. In March 2006, Allegheny Power recommended the proposal as a solution to reliability issues on the Pruntytown-Mt. Storm 500 kV line and the Mt. Storm-Doubs 500 kV line. PJM notified Allegheny Power and Dominion Virginia Power that PJM’s recommended solution was the 502 Junction Segments and the Loudon Segments with no tie to the Meadow Brook Substation. According to TrAILCo witness Hozempa, the Company asked PJM to consider including the Meadow Brook Substation as a response to potential Category C3 violations, which is the loss of two lines, and PJM agreed. In May 2006, at the PJM Transmission Expansion Advisory Committee, PJM proposed the RTEP that included the TrAIL Project. TrAILCo St. 2, p. 15-17.

B. Description of the Proposed Facilities

TrAILCo has proposed two distinct 500 kV transmission lines, two new 500 kV substations and new 500 kV equipment in existing substations. OCA St. 1, p. 6, Figure 1. This project would include two segments: (1) the proposed “Prexy Segment” located entirely within Pennsylvania, and (2) the “502 Junction Segment” which would only occupy 1.2 miles of Pennsylvania, and stretch 240 miles across West Virginia and Virginia. OCA St. 1, pp. 6-7; Application, p. 6. With the exception that both of these segments tie to the 502 Junction Substation, these two segments are independent of each other and would not depend on the existence of the other to operate. OCA St. 1-SR, p. 2.

The first new 500 kV transmission line, or the “Prexy Segment,” would run north approximately thirty-six (36) miles from the proposed 502 Junction Substation to the proposed Prexy 500-to-138 kV Substation. Application, p. 6; *see also*, OCA St. 1, p. 7, Figure 2. The Prexy 500-to-138-kV Substation and the three 138 kV transmission lines would interconnect the Prexy Substation into the 138 kV system in Washington County. Two of these three 138 kV transmission lines would be double circuits. The third, which would run along the 500 kV line to Prexy, would be constructed as a double circuit but is only proposed to be run as a single 138 kV circuit at this time. OCA St. 1, p. 7; *see also*, OCA St. 1, p. 7, Figure 2. This Prexy Segment would have a capacity of 4,161 MVA (megavolt ampere). OCA St. 1-SR, p. 7; ECC St. 1, pp. 9-10, footnote 2. The total 2009 electric load in Washington and Greene Counties directly related to the Prexy Facilities is about 608 MVA. OCA St. 1-SR, p. 7.

The Company’s proposed transmission line network would be built within the existing 138 kV network in Washington County and feed out of the Wylie Ridge Substation to the northwest, the Windsor Substation to the southwest and the Charleroi Substation to the southeast. The existing 138 kV network includes: (1) a 138 kV line from the Wylie Ridge Substation; (2) a pair of 138 kV circuits that run from Charleroi to Windsor; (3) a 138 kV line from Charleroi to the Cecil Substation; (4) a 138 kV line from the Cecil Substation to the Gordon Substation; and (5) a 138 kV line from the Windsor Substation to the Cecil Substation. OCA St. 1, p. 9-10.

The second 500 kV transmission line, or the “Pennsylvania 502 Junction Segment,” would run southeast from the 502 Junction to the West Virginia state line for about 1.2 miles. As noted above, this line continues on approximately 240 miles through West Virginia and Virginia. OCA St. 1, p. 7. As the Application describes, after the Meadowbrook Substation at the boundary of the National Park Service’s Appalachian National Scenic Trail in Virginia, ownership of the proposed line will change to Dominion Virginia Power through the National Scenic Trail. Thereafter, TrAILCo and Dominion Virginia Power will jointly own approximately thirty (30) miles and then Dominion Power solely will own the remainder of the line through to the Loudon Substation. Application, p. 4.

If approved, the Company’s Application estimates in-service dates of November 2009 to June 2011 for the Prexy Facilities, 502 Junction Substation and the Pennsylvania 502 Junction Segment.

The undersigned ALJs wish to clearly state at the outset that we are not physicians, physicists, biologists, chemists, registered professional engineers of any type nor professional geographers or archeologists. We do possess a modicum of knowledge regarding economics, the science dealing with the efficient use of resources. Our most precious resource is time, and we will endeavor to use it sparingly in outlining our recommendations regarding the five pending Applications. We initially want to note that we have no authority or responsibility for the siting, construction, operation or maintenance of power production facilities. As a result, we have no authority or responsibility for the choice of fuel used in such facilities or the effect of the operation of such facilities, which could include water and air pollution.

III. FINDINGS OF FACT

A. Certificate of Public Convenience

1. The Trans-Allegheny Interstate Line Company (“TrAILCo”) intends to own and operate equipment and facilities for transmitting electricity in Pennsylvania. TrAILCo St. 1, pp. 7-10.

2. TrAILCo intends to offer transmission service to all load serving entities in the PJM transmission zone. TrAILCo St. 1, pp. 6, 11-13; TrAILCo St. 10, p. 2.

3. TrAILCo intends to transmit electricity for compensation. It has sought and received approval from the Federal Energy Regulatory Commission (“FERC”) for financial incentives. FERC authorized the financial incentives by Order on June 20, 2006 at Docket No. EL06-54-000. FERC approved a 12.7% incentive rate of return settlement for the TrAIL. TrAILCo St. 1, p. 6; Tr. 3018.

4. Allegheny Energy, Inc. (“Allegheny”) is the parent company of three public utility operating companies, West Penn Power Company (“West Penn Power”), Potomac Edison Company (“Potomac Edison”) and Monongahela Power Company (“Monongahela Power”). Application, p. 2, footnote 1.

5. Allegheny Power is the trade name under which West Penn Power, Potomac Edison and Monongahela Power do business. TrAILCo St. 1, p. 1.

6. West Penn Power, Potomac Edison and Monongahela Power joined PJM Interconnection, L.L.C. (“PJM”) in April 2002 and transferred functional control of their transmission systems to PJM at that time. TrAILCo St. 1, p. 5.

7. Each of the three Allegheny Power operating companies is considered a “Transmission Owner” under the Amended and Restated Operating Agreement of PJM, Interconnection, L.L.C. (the “Operating Agreement”). TrAILCo St. 3, p. 5.

8. In May 2005, PJM unveiled the “Project Mountaineer” concept to construct one or more transmission system projects to facilitate the west-to-east transfer of generation capacity in the PJM transmission system. TrAILCo St. 1, p. 5; ECC Cross Exam. Ex. 53-Confidential.

9. On February 28, 2006, Allegheny Power proposed a TrAIL project to PJM in response to Project Mountaineer. TrAILCo St. 1, p. 5.

10. In June 2006, the PJM Board of Managers approved a *modified* version of the TrAIL project proposed by Allegheny Power in PJM’s five-year Regional Transmission Expansion Plan (“RTEP”). TrAILCo St. 1, p. 6.

11. Allegheny and Allegheny Power sought FERC approval of financial incentives for their TrAIL proposal. TrAILCo St. 1, p. 6.

12. FERC authorized the financial incentives by Order on June 20, 2006 at Docket No. EL06-54-000. TrAILCo St. 1, p. 6.

13. PJM designated Allegheny Power as the “Transmission Owner” responsible for the majority of the construction of the TrAIL project approved by PJM in June 2006. TrAILCo St. 3, pp. 18, 21.

14. According to TrAILCo witness Herling, a transmission owner “means a PJM member that owns Transmission Facilities or leases Transmission Facilities with rights equivalent to ownership.” TrAILCo St. 3, p. 5.

15. In October 2006, months after Allegheny Power was designated by PJM to construct the majority of the TrAIL project, TrAILCo was incorporated. TrAILCo St. 1, p. 1.
16. TrAILCo is a Maryland and Virginia corporation. TrAILCo St. 1, p. 7.
17. TrAILCo is a direct subsidiary of Allegheny Energy Transmission, L.L.C. (“AET”), a Delaware limited liability company. TrAILCo St. 1, p. 7.
18. AET, in turn, is a direct subsidiary of Allegheny. TrAILCo St. 1, p. 7.
19. AET is a holding company. AET owns and holds all of the existing and outstanding shares of TrAILCo. TrAILCo St. 1, pp. 7, 9; TrAILCo Exhibit MAM-3.
20. AET authorized the creation of TrAILCo to construct the TrAIL project. TrAILCo Exhibit MAM-3.
21. In the future, TrAILCo plans to undertake all of Allegheny Power’s RTEP responsibilities if the cost of the future project exceeds \$2,000,000. TrAILCo St. 3, p. 9.
22. On March 28, 2007, TrAILCo became a PJM member and “is considered a Transmission Owner” by PJM. TrAILCo St. 3, p. 5.
23. The Operating Agreement permits a Transmission Owner or other entity designated to construct, own and/or finance a recommended transmission enhancement or expansion to agree to undertake its designated responsibilities jointly with other Transmission Owners or other entities. TrAILCo St. 3, p. 20.
24. Other than by assignment of PJM Transmission Owner obligations to TrAILCo from Allegheny Power, no evidence was presented regarding why TrAILCo is considered a “Transmission Owner” by PJM.

1. Fitness

25. Although TrAILCo is a corporate subsidiary of Allegheny, it is not yet engaged in the interstate transmission of electricity in Pennsylvania or any other jurisdiction.

26. There was no evidence presented by TrAILCo that it intends to employ staff to perform the services necessary to operate and function as a certified public utility.

27. On October 31, 2006, Allegheny Energy Service Corporation (“AESC”), which is a subsidiary of Allegheny, and TrAILCo entered into a “Service Agreement” wherein AESC agreed to perform certain advisory, supervisory and other services for TrAILCo. TrAILCo Exhibit MAM-2.

28. The Service Agreement provides that “[t]his Service Agreement shall continue in full force and effect from year to year but may be terminated by either party upon 60 days’ prior notice, and the Company (TrAILCo) may terminate such contract at any time with or without notice for any cause deemed by it to be sufficient.” TrAILCo Exhibit MAM-2.

29. TrAILCo failed to present evidence that it is capable of maintaining or operating the TrAIL.

30. If the TrAIL project is constructed, TrAILCo will own the TrAIL assets. It may also own, operate and maintain the Static VAR (volt-ampere reactive) Compensator proposed to be installed at the Black Oak Substation in Maryland and two additional transformers to be installed at the Wylie Ridge Substation located in the northern panhandle of West Virginia. TrAILCo St. 1, p. 11.

31. The total project cost for the Pennsylvania, West Virginia and Virginia segments, excluding the Dominion Virginia Power portion of the TrAIL, is estimated to be \$877 million. This total cost figure includes engineering, construction, administrative and legal costs. Tr. 3035-3036; MAM Supp. Ex. 2.

32. TrAILCo's financing program is expected to have three components: (i) a loan agreement and related documents that will permit borrowing up to \$550 million; (ii) interest rate hedges to hedge TrAILCo's interest rate exposure on the loan agreement; and (iii) issuing up to \$550 million of common stock to finance all portions of the TrAIL. TrAILCo Main Brief, p. 67; TrAILCo St. 1, p. 12.

33. On February 15, 2007, AET and TrAILCo entered into a Capital Contribution Agreement, effective January 31, 2007, wherein AET agreed to contribute additional capital of up to \$550 million in one or more payments of cash on or before the completion of the TrAIL and other transmission related projects to TrAILCo. Upon completion of the transfers of capital, AET will continue to own 100% of TrAILCo. TrAILCo Exhibit MAM-3.

34. Property owners have concerns about TrAILCo's land agents telling people that the transmission lines were "a done deal" and that they already had a certification of public convenience. Tr. 392, 446, 1164, 1524, 1526, 1920.

35. Property owners have concerns about TrAILCo's land agents misinforming people about who had signed the damages release contracts and the scope of the rights released under the damages release contracts. Tr. 359, 1538-1540, 1699-1700, 1780-1781, 1919-1922, 1970, 1975.

36. TrAILCo's land agents incorrectly represented to property owners that TrAILCo owned the rights-of-way, when it was West Penn who owned the rights-of-way. Tr. 3347-3348.

37. Allegheny Energy's Ms. Cynthia Menhorn testified that she suggested changes to former Commissioner Bill Shane for the testimony he presented at a public input hearing. Tr. 2925-2926.

38. Former Commissioner Bill Shane appeared in an ad campaign for TrAILCo. Tr. 200; 203-204; 431.

2. Need

a. The Need for the 502 Junction to Loudoun Segment

39. TrAILCo's reliability analysis does not account for the significant amount of generation planned in eastern PJM, nor does it account for demand reductions brought about by demand-side management or removal of rate caps in portions of PJM. ECC St. 1, pp. 20-21; Tr. 2712, 2754-2755.

40. The reliability criteria drivers for the 502-Loudoun line are set forth in the chart prepared by Scott Gass as TrAILCo Exhibit SWG-1. Tr. 2238.

41. The reliability issues related to 502 Junction to Loudoun, as well as 502 Junction to Mount Storm and Meadow Brook, can be resolved by decreasing generation in western PJM and/or increasing generation and/or demand-side management in eastern PJM. ECC St. 1, p. 21.

42. Justification for the proposed 502-Loudoun line comes from the 2006 RTEP process. Tr. 2237-2238.

43. At least 2,125 megawatts of generation in Dominion's territory, with signed interconnection agreements with Dominion, was not counted in the 2006 RTEP modeling process. Tr. 2624.

44. At the same time, some western generation was included, and contributed to the alleged problems, despite not having signed interconnection agreements. ECC St. SR-1, p. 11.

45. The 2598 MVA emergency rating of the Mt. Storm-Doubs 500 kV line is based on ground clearance limitations, not the thermal capabilities of the conductor itself. ECC St. SR-1, p. 11.

46. Fixing the ground clearance issue on the Mt. Storm-Doubs 500 kV line would eliminate 8 of TrAILCo's 12 alleged reliability problems. ECC St. SR-1, p. 11.f.

47. If the Mt. Storm-Doubs 500 kV line rating is raised by six or eight percent, there are no overloads. Tr. 2577.

48. The worst overloads of the Mt. Storm-Doubs line under any of the contingencies in TrAILCo Exhibit SWG-1 was 156 MVA above the 2,598 MVA line rating. TrAILCo St. 4-RJ, pp. 4-5.

49. The line rating of the Mt. Storm-Doubs line can be raised to 2,910 MVA by resolving ground clearance issues. Tr. 2428-2429; TrAILCo St. 20-RJ, pp. 3-4.

50. There are at least three ways to raise the line rating of the Mt. Storm-Doubs line – reconductoring, retensioning, or raising the towers at some locations and performing grading work at other locations.

51. In the 2006 RTEP process, there was consideration of, but no study of, one option to deal with the line rating issue – reconductoring. Tr. 2351.

52. The Mt. Storm-Doubs line can be retensioned, with a 30-week outage, to raise the rating to 2,910 MVA. Tr. 2273.

53. Grading and raising of the towers can also increase the emergency rating to 2,910 MVA with 17 weeks of outage time. TrAILCo 20-RJ, p. 5.

54. Electrical occurrence 9 involves an alleged overload of the Pruntytown-Mt. Storm 500 kV line in 2014, and cannot justify construction of the 502-Loudoun line by 2011. Tr. 2580.

55. Electrical occurrences 10-12 in TrAILCo Exhibit SWG-1 are voltage issues in the Meadow Brook area. Tr. 2301-2302.

56. If electrical occurrences 1-9 did not exist, a 500 kV line would not be needed to deal with the voltage issues at Meadow Brook. Tr. 2583.

57. A static var compensator at Meadow Brook would fix the voltage issues alleged in occurrences 10-12. Tr. 2322-2326.

58. Electrical occurrences 10-12 will also be resolved if the planned CPV Warren gas-fired generating facility near Meadow Brook is installed by 2011. Tr. 2583-2584.

59. TrAILCo's alleged infractions can be corrected by use of: 1) shunt capacitors; 2) appropriate manual system adjustments when applying NERC Category C3 contingencies; 3) transmission constrained dispatch in base cases, and manual system adjustments for C3 analyses; and 4) encouraging new generating capacity in eastern PJM. ECC St. SR-1, p. 16.

60. The use of out-of-merit generation, or transmission constrained dispatch, can solve TrAILCo's alleged reliability problems without the need to build the 502 Junction-Doubs 500 kV line. ECC St. SR-1, p. 20.

61. Project Mountaineer's goal was to transmit 5,000 megawatts of new coal-fired generation from western to eastern PJM. Tr. 2290.

62. The concept to develop backbone transmission facilities was initiated in response to a FERC 2005 technical conference on fuel diversity and expanded use of coal-fired

resources, and FERC questions related to the issues surrounding the development of new clean coal generating resources and the transmission planning activities that would be required to deliver such resources in the West Virginia, Ohio and Kentucky region to load centers in eastern PJM. ECC Cross Ex. 18.

63. In the process of identifying the Project Mountaineer paths, PJM expected that two 500 kV or 765 kV transmission circuits would be needed to facilitate the delivery of 5,000 MW of new coal-fired generation to eastern load centers. ECC Cross Ex. 18.

64. The installation of the 502-Loudoun line will allow for the construction of 2,700 MW of new coal-fired generation in West Virginia. Tr. 2823-2824.

65. If the 502-Loudoun portion of the TrAIL project is approved, west-to-east transfer capability will increase by 5,300 megawatts. Tr. 2849.

66. The western PJM regions modeled as increasing MWh output are heavily dominated by coal-fired resources, and potential new generation in the western regions is also dominated by coal-fired facilities. OCA St. 2, p. 21.

67. The first fuels cut or eliminated in the eastern PJM would logically be those associated with more expensive power production, for example, natural gas or oil. OCA St. 2, p. 21.

68. Any shift to lower production cost coal-fired generation would affect wholesale market prices by generally increasing prices in the western regions and decreasing prices in the eastern and southern region. OCA St. 2, p. 22; OCA Exhibit RMF-2, p. 10.

69. Many bills dealing with greenhouse gas emissions are currently before the U.S. Congress including bills presented by Lieberman-Warner; McCain-Lieberman; Kerry-Snowe; Oliver-Gilchrest; and Sanders-Boxer-Waxman which all show a need to reduce 2050 carbon emissions significantly below current levels. OCA St. 2, pp. 23-24.

70. The greenhouse gas emissions bills currently before the U.S. Congress all envision a national “cap and trade” program. OCA St. 2, pp. 23-24.

71. A cap and trade program would increase the production costs for coal-fired facilities relative to the production costs for oil and especially natural gas fired facilities (i.e., a “carbon adder” is attached to fossil-fueled facilities) which essentially means that prices in western PJM (coal dominated) would increase in proportion to the “carbon adder” associated with coal; and prices in eastern PJM (natural gas generation “on the margin”) would increase in proportion to the “carbon adder” associated with natural gas. OCA St. 2, pp. 23-24.

72. Allegheny Energy has recognized that potential carbon legislation and changes in weather patterns due to global warming could have an adverse effect on Allegheny’s business. *See, e.g.* Tr. 2946-2947; OCA Cross Exam Ex. 7.

73. West Penn customers would be responsible for approximately \$14.5 million in an annual revenue requirement: TrAIL 138 kV lines (which are in Pennsylvania) – \$8.9 million; TrAIL 500 kV line within Pennsylvania – \$1.0 million; and TrAIL 500 kV line outside of Pennsylvania – \$4.5 million. TrAILCo Exhibit MAM-5.

74. West Penn customers are being asked to pay an additional \$5.9 million annually for a project that, under a beneficiary pays approach, TrAILCo had proclaimed, and PJM Interconnection, LLC, confirmed, had no discernable benefit (or cost) for West Penn customers. TrAILCo St. 10, p. 5.

75. PJM had initially determined that the loads causing the need to construct the 502 Junction Substation in Pennsylvania, the 502 Junction Segments (including the portion in Pennsylvania), the expansion of the Mt. Storm and Meadow Brook Substations, and the Loudoun Segment are located in the transmission zones in the mid-Atlantic area of PJM. Therefore, PJM originally allocated 100% of the cost responsibility for these segments to loads outside of the Allegheny Power Zone. TrAILCo St. 10, p. 5.

76. A reasonable projected in service date for the 502 to Loudon facilities is 2011. *See* TrAILCo St. 2, p. 7.

77. The expiration of West Penn's generation rate cap is December 31, 2010. Tr. 2913.

78. TrAILCo requested a return on equity (ROE) of 13.9%, but recently submitted a settlement agreeing to 12.7%. Trans-Allegheny Interstate Line Company Settlement Agreement and Offer of Settlement, Docket No. ER07-562-004, (filed March 14, 2008); Tr. 3002.

79. TrAILCo is guaranteed the ability to recover construction work in progress (“CWIP”) costs, pre-construction/pre-operating (pre-commercial) costs, as well as all development and construction costs if the proposed project is abandoned. *See* Allegheny Energy, Inc., 116 FERC ¶ 61,058 (2006) (July 20 Order), *order on reh'g*, 118 FERC ¶ 61,042 (2007); Tr. 2999-3000.

80. Allegheny Energy has referred to the TrAIL project as a “growth driver” for the company as the construction of TrAIL will all but guarantee the Company's recovery of all of the capital it has invested plus an incentive return. *See* ECC Cross-Examination Ex. 52.

81. PJM's own Market Efficiency Analysis Progress Report indicates that generators in the western PJM zones can expect to see increased revenues of \$1.8 billion per year by 2013. OCA St. 2, p. 21; *see also* OCA Exhibit RMF-2, “PJM Market Efficiency Analysis Progress Report.”

82. PJM has found that 29.6% of the projected increased generation in western PJM, approximately 3.2 million megawatt hours per year, would be from the Allegheny Power system. Tr. 2944.

83. A primary driver for the 502 to Loudon portion of TrAIL is the increased load projections in the already generation deficient mid-Atlantic and northern Virginia areas of PJM. TrAILCo St. 4, p. 17.

84. The construction of the 502 to Loudon line will create “*a noticeable price drop* ... in the east.” Tr. 2331 (emphasis added).

85. The 502 to Loudon TrAIL line is likely to drive up the wholesale price for energy in the West Penn service territory. OCA St. 2, pp. 18-19; *see also* OCA Exhibit RMF-2, “PJM Market Efficiency Analysis Progress Report,” p. 10.

b. The Need for the Prexy Segment

86. The 502-Loudoun portion of TrAIL, and the Prexy Facilities, are two completely separate and independent projects, each of which is proposed for independent alleged reliability-based reasons and each of which can be separately constructed. Tr. 2710-2711.

87. TrAILCo’s rationale for the Prexy Facilities is derived from modeling and load forecasts developed for PJM’s 2006 Regional Transmission Expansion Program (“RTEP”) process. Tr. 2237-2238, 2258.

88. There are four potential reliability problems that may occur in 2009 if the Prexy Facilities are not constructed. TrAILCo St. 2, p. 5; TrAILCo Exhibit LAH-3 and OCA St. 1, p. 10.

89. These potential reliability problems include four different double contingencies on the 138kV network in Washington County, PA. TrAILCo Exhibit LAH-3 and OCA St. 1, pp. 10-11.

90. Contingencies are electric system occurrences where one or more individual elements of the system, such as individual transmission lines, substation transformers,

or generating units, are assumed, for planning purposes, to suffer forced outages. OCA St. 1, p. 10.

91. In order to provide reliable transmission service, transmission planners have to plan, at a minimum, for a system that will deliver regular service even if any individual component of that system suffers an unplanned outage. OCA St. 1, p. 10.

92. A “first contingency” or a “single contingency” planning standard is when an individual component of the transmission infrastructure suffers an unplanned outage. OCA St. 1, p. 10.

93. All four of the potential reliability problems listed in TrAILCo Exhibit LAH-3 are the result of “double contingency” events. OCA St. 1, pp. 10-11.

94. TrAILCo’s asserted reliability issues with the Prexy area’s existing transmission capability depend on the application of NERC Reliability Standard TPL-003-0 Category C3 (hereinafter “Category C3 standards”) set forth in TrAILCo Exhibit LAH-4. ECC St. 1, pp. 10-11.

95. All four of the electrical occurrences cited in TrAILCo Exhibit LAH-3 are alleged infractions of the NERC Category C3 standards. Tr. 2240, 2599-2600.

96. The four double contingency events listed in TrAILCo Exhibit LAH-3 result in no 138kV transformer overloads. OCA St. 1, p. 12.

97. Category C3 standards involve the loss of one system element, followed by manual system adjustments, and the loss of a second system element. It does not involve simultaneous unrelated contingencies. ECC St. 1, p. 11; Tr. 2240-2241, 2522.

98. TrAILCo witness Stephen Herling testified that Category C3 is not based on two simultaneous contingencies, but provides for manual system adjustments between contingencies. ECC St. 1, p. 11.

99. Manual system adjustments that may be implemented between two contingencies under the Category C3 standards include: changing outputs of generating units, modifying schedules, switching transmission lines, changing transformer and phase angle regulator taps, activating generating reserves, and other actions which can be accomplished within an allowable time frame (usually at least 10 minutes). ECC St. 1, pp. 12-13.

100. TrAILCo admits that it did not perform any manual system adjustments. Tr. 2794.

101. Either Buffalo Junction or Union Junction are involved in every one of the four double contingency events listed in TrAILCo Exhibit LAH-3. OCA St. 1, p. 12.

102. Buffalo Junction and Union Junction are points on the transmission system where one transmission line hooks into another transmission line with a “T” type of connection or “junction” – with no breakers or other protective devices between the two lines. OCA St. 1, p. 13.

103. The use of T connections results in a situation where, when one of the transmission lines has a fault, both lines are forced out of service because of the lack of protective devices between the two lines. OCA St. 1, p. 13.

104. TrAILCo’s analysis treats the electrical occurrences cited in TrAILCo Exhibit LAH-3 as simultaneous double contingencies. ECC St. 1, pp. 11-13; *See also* TrAILCo Exhibit LAH-3; TrAILCo St. 2, p. 7.

105. TrAILCo's application of simultaneous contingencies to NERC C3 reliability standards is more stringent than required by NERC, indicates a reliability infraction where none exists, and implies the need for unnecessary reinforcements. ECC St. 1, pp. 11-13.

106. The likelihood of two unrelated contingencies occurring on a transmission system at the same time is very small. ECC St. 1, p. 14.

107. TrAILCo has not analyzed the statistical probability of a double contingency, or any of the contingencies set forth in TrAILCo Exhibit LAH-3. Tr. 2602-2603.

108. Controlled load shedding is a NERC-approved solution that can be used to resolve Category C3 contingencies. TrAILCo Exhibit LAH-4.

109. TrAILCo did not model potential load shedding. Tr. 2798.

110. Load flow studies are performed by computer model to examine the performance of the transmission system with regard to loading of facilities and the voltage level of facilities, under various configurations of facilities, at various load levels, and under various types of contingencies. OCA St. 1, p. 16.

111. OCA witness Lanzalotta used the potential reliability problems listed by the Company in TrAILCo Exhibit LAH-3 when performing his analyses of load flow data. OCA St. 1, p. 14.

112. OCA witness Lanzalotta ran contingency load flow studies against the unreinforced 2009 system to study the potential reliability problems listed in TrAILCo Exhibit LAH-3 and then added reinforcements to the 138 kV system and re-ran the same contingencies to determine if the problems had been eliminated. OCA St. 1, pp. 16-19.

113. OCA witness Lanzalotta found that all of the voltage concerns listed in TrAILCo Exhibit LAH-3 could be resolved without building a new 500 kV substation and without building any new 500 kV transmission lines. OCA St. 1, p. 15.

114. OCA witness Lanzalotta's load flow studies and analyses indicate that it is possible to eliminate all of the potential reliability problems listed in TrAILCo Exhibit LAH-3 by adding four 138kV transmission lines on existing rights-of-way to the 138 kV network in Washington County and by adding two 138 kV substation capacitors to the existing system in Washington County. OCA St. 1, pp. 15, 19-21; Tr. 3175-3178.

115. It is possible to reduce the current impact of a fault affecting the 138 kV transmission lines that make up Buffalo Junction and Union Junction by reconfiguring the system to eliminate the T connections—so one fault will no longer take out two transmission lines. OCA St. 1, p. 15.

116. In order to eliminate the T connections, a small substation could be put at the junction connection point or a new circuit could be placed in an existing substation to connect to one of the transmission lines at the junction point. OCA St. 1, p. 15.

117. T-junctions can also be eliminated by installing circuit breakers at the T-junction. ECC St. 1, pp. 16-17.

118. TrAILCo considered only one alternative to its proposed Prexy Facilities—a 500-to-138 kV substation in western Washington County along the Wylie Ridge-to-Harrison 500 kV line. OCA St. 1, p. 14; ECC Cross Exam. Ex. 71.

119. Allegheny Power can address the reliability concerns raised in TrAILCo's Application, in a manner consistent with NERC requirements, through controlled load shedding. ECC St. 1, p. 17.

120. TrAILCo's analysis of the contingencies on TrAILCo Exhibit LAH-3 did not apply manual system adjustments. ECC St. SR-1, p. 2.

121. TrAILCo's modeling and analysis did not, but should have, included re-dispatch of generation, a common manual system adjustment. ECC St. SR-1, p. 4; Tr. 2797-2798.

122. There are three power stations containing nine generating units in Washington and Greene Counties, with a total output in excess of 2,300 megawatts in the base case used for the 2006 RTEP. ECC St. SR-1, p. 4.

123. The Elrama and Mitchell power stations, which are located on the 138 kV system, have a combined dispatch of 799.4 megawatts in the 2001 base case and their output exceeds the total load TrAILCo forecasts for the Prexy area in 2009 by 200 megawatts. ECC St. SR-1, p. 4; Tr. 2770-2771; TrAILCo St. 2-R, p. 7.

124. The Hatfield's Ferry power plant is located in Greene County. It has a summer capacity of 1,590 megawatts, and a winter capacity of 1,710 megawatts. Tr. 2771-2772.

125. A new 272 megawatt generating facility, known as Beech Hollow, is being constructed in the Prexy Area, near the Smith Substation. Tr. 2772.

126. The Beech Hollow generating facility will connect to an existing 138 kV line running between the Smith and North Fayette Substations. It will be connected into a new substation that will be constructed to interconnect the Beech Hollow plant. Tr. 2772-2774.

127. The Beech Hollow power plant will connect to the 138 kV lines in the Prexy area. Tr. 2741-2743, 2772.

128. The Prexy area is not an electrical island, nor does it become one for any of the contingencies in TrAILCo Exhibit LAH-3 that TrAILCo studied. ECC St. SR-1, pp. 4-5, 17-22.

129. The Mitchell generating plant is connected to the 138 kV system. TrAILCo Exhibit LAH-5; ECC St. SR-1, pp. 4; Tr. 2746.

130. At the Mitchell Substation, there is a 138 kV transformer that feeds electricity into the 25 kV subtransmission network in the Prexy area. Tr. 2779.

131. The first contingencies in all of TrAILCo's alleged reliability infractions are effectively triple contingences, not single contingencies, since they remove three line elements from the system. ECC St. SR-1, p. 6.

132. TrAILCo did not study the effect of removing the T-junctions. No case, study, or modeling was used to evaluate whether the removal of the T-junctions would have a positive effect in reducing or eliminating infractions. Tr. 2794, 2875.

133. TrAILCo's alleged voltage problems could be solved by installing six 138 kV circuit breakers and eliminating the three terminal 138 kV junctions at Buffalo Junction and Union Junction. ECC St. SR-1, p. 7.

134. There are a number of different ways to deal with voltage issues, including installation of capacitors or various dynamic reactive support devices (such as static var compensators). Tr. 2246-2247.

135. Shunt capacitor banks could be utilized to effectively address Allegheny Power's alleged low voltage problems since they are sources of reactive power. ECC St. 1, p. 18.

136. Shunt capacitor banks would be a lower cost and less intrusive solution to the alleged low voltage problems than TrAILCo's proposed 500 kV line. ECC St. 1, p. 18.

137. The shortage of reactive power (VARs) is the cause of low voltage problems. ECC St. 1, p. 18.

138. TrAILCo has not evaluated whether additional reactive reinforcement, or other reinforcements, could reduce or eliminate the voltage issues allegedly requiring the Prexy Facilities. Tr. 2901-2902.

139. Failure to make any changes to the transmission facilities from Prexy to 502 Junction would not cause a widespread blackout. At worst, it may result in some local loss of load to customers served from a few substations in Washington and Greene Counties. ECC St. 1, p. 20.

140. PJM annually develops a Regional Transmission Expansion Plan (RTEP) to meet system enhancement requirements for transmission service, load growth, interconnection requests and other system enhancement drivers. Tr. 2481-2482.

141. To begin its development of the annual RTEP, PJM performs a "baseline" analysis of system adequacy and security. Tr. 2481-2482.

142. PJM uses the baseline analysis, and the expansion plans they yield, as a foundation upon which to conduct its feasibility studies for all proposed generation and/or merchant transmission facility interconnection projects and subsequent System Impact Studies for those projects to go forward. Tr. 2481-2482.

143. In the case of TrAIL, there were no planning criteria violations identified prior to the original TrAIL proposal being made by Allegheny in 2006. Tr. 2289.

144. The original TrAIL proposal was Allegheny's response to PJM's desire to transmit 5,000 megawatts of coal-fired electricity from western PJM to eastern PJM—a project known as “Project Mountaineer.” Tr. 2291.

145. Project Mountaineer was designed to utilize the regional transmission planning process to explore ways to further develop an efficient transmission “super-highway” to bring low cost coal resources to the market. ECC Cross Exam. Ex. 11. (The exhibit includes the 2005 testimony of Mr. Karl Pfirrmann, president of PJM Western Region PJM Interconnection, LLC). Specifically see pages 1-2 and 4-5 of Mr. Pfirrmann's testimony.

146. Allegheny's TrAIL was specifically proposed in response to Project Mountaineer. Tr. 2291; TrAILCo St. 2, p. 16.

147. After Allegheny proposed TrAIL, the Company suggested PJM consider TrAIL as a possible solution to reliability problems—problems that also arose at a later date. Tr. 2335; *see also*, TrAILCo St. 2, p. 16.

148. During the 2006 RTEP process, PJM did not require the examination of other alternatives, including any alternatives that might be less intrusive. Tr. 2336-2337, 2539-2540.

149. PJM did not independently look at whether other alternatives would address the alleged reliability issues. Tr. 2540-2542.

150. In its response to interrogatory OCA-I-17-A, TrAILCo admits that the only cost analysis it performed was for the Prexy Facilities. See ECC Cross Ex. 71.

151. PJM did not review any alternatives to the Prexy Facilities, and did not study the cost effectiveness of different solutions. Tr. 2339, 2540-2542, 2704.

152. The Wylie Ridge-Harrison 500 kV line, which crosses the Prexy area, has not historically operated near its capacity, even under certain contingencies. Tr. 2746-2749.

153. The Yukon-Hatsfield's Ferry 500 kV line is very close to the Prexy electrical area—within ten miles. Tr. 2744.

154. TrAILCo did not examine any alternatives involving tying into the Yukon-Hatsfield's Ferry 500 kV line.

155. Non-transmission solutions to the alleged reliability issues, such as conservation, demand-side management, the effect of potential carbon caps on demand, and distributed generation, were not studied by TrAILCo. Tr. 2258-2259.

156. No TrAILCo witness testified about the preparation of load forecasts or their accuracy. Tr. 2341-2342, 2551-2553, 2563, 2754-2756.

157. The load forecasts do not reflect reductions in demand due to the removal of rate caps in Pennsylvania in January 2011. Tr. 2712.

158. There are discrepancies in the load forecasts for the Prexy area. TrAILCo Redirect Exhibit 4 dated April 16, 2007 projects the 2009 load near Prexy at 499.6 megawatts. TrAILCo witness Larre Hozempa claims that the 2009 projected summer load near Prexy is 576.9 megawatts. Tr. 2787-2790.

159. Any “obligation to build” imposed by PJM is subject to the requirements of applicable law, governmental regulations and approvals, and local siting requirements. Tr. 2707.

160. The “obligation to build” imposed by PJM is subject to the availability of financing for the project, and is subject to the right to recover all costs plus a reasonable return on the investment. Tr. 2708.

161. The “obligation to build” imposed by PJM is subject to the procurement of rights-of-way to do the project. Tr. 2708.

162. The capacity of the 500 kV line proposed as part of the Prexy Facilities is 4,161 MVA – more than seven times the entire projected 2009 load in the Prexy area. Tr. 2222.

163. Even assuming a 3% growth rate, which is greater than TrAILCo’s forecasted growth, by 2021 the capacity of the proposed 502 Junction-Prexy 500 kV line would still be more than five times the total projected load. ECC St. SR-1, p. 8.

164. Although the proposed Prexy-502 Junction 500 kV line can accommodate an average load of 4,161 MVA, it is only expected to carry an average load of 260 MVA and a peak load of 440 MVA. Tr. 2759-2760, 2849-2851, 2859-2860.

165. The estimated cost for the proposed Prexy Facilities, including administrative and legal fees, is \$273 million. TrAILCo Exhibit MAM 6, revised 3/27/2008.

166. OCA witness Lanzalotta’s proposed 138 kV solution for the Prexy area is estimated to cost \$55 million, based on Company-supplied data. OCA St. 1, p. 20; OCA Supp. Ex. 1 and Tr. 3168-3169.

167. Mr. Lanzalotta’s proposed 138 kV solution is capable of providing over three times the capacity required to serve the projected 2009 electrical demand in the Prexy area. OCA St. 1-SR, p. 7.

3. Route Selection and Siting

168. The stated goal of the line siting process was to select the most suitable route for a 500 kV electrical transmission line between the West Virginia state border and the

proposed 502 Junction Substation site, and north from the 502 Junction Substation site to the proposed Prexy Substation site. TrAILCo Ex. JH-1, p. 15.

169. The stated goal of the line siting process was to select the most suitable route for a 500 kV electrical transmission line between the West Virginia state border and the proposed 502 Junction Substation site, and north from the 502 Junction Substation site to the proposed Prexy Substation site. TrAILCo Ex. JH-1, p. 15.

170. The TrAILCo routing team was told to assess all reasonable routes to connect the two substation endpoints, Prexy Substation and 502 Junction Substation, and also to identify routes for three 138 kV lines. TrAILCo Ex. JH-1, p. 16; Tr. 3221.

171. Good routing techniques include the utilization of existing corridors as much as possible. TrAILCo St. 6, p. 9.

172. The preferred routes selected for the Prexy Segment and the Prexy 138 kV lines utilize pre-existing ROW from seventy-six percent (76%) to one hundred percent (100%) of the selected routes. TrAILCo St. 5, pp. 16-17.

173. TrAILCo employed The Louis Berger Group (“Louis Berger”) to prepare the April 10, 2007 Line Route Evaluation and Environmental Report (the “LRE”). Tr. 3213. (The LRE is in this record as TrAILCo Exhibit JH-1.)

174. The LRE discusses five (5) HV transmission lines: (a) a 500 kV line from the proposed 502 Junction Substation to the West Virginia state line (the “502 Junction Segment”), (b) a 500 kV line from the proposed 502 Junction Substation to the proposed Prexy Substation (the “Prexy Segment”), (c) the double circuit Prexy Manifold 138 kV line, (d) the double circuit Prexy Union 138 kV line, and (e) the single circuit Prexy Washington-Charleroi 138 kV line. TrAILCo Ex. JH-1, pp. 6-10; Tr. 3220-3223.

175. For each of these proposed HV lines, Louis Berger collected Geographic Information Systems (GIS) data as the initial step in developing the potential routes. Tr. 3220.

176. Using that GIS data, Louis Berger developed potential routes. Tr. 3220-3221.

177. Louis Berger also considered large area and point specific constraints in developing the lines. Tr. 3220-3221.

178. Large area constraints include urban areas (cities, towns, small villages and other built-up areas), state wildlife management lands, airports, historic districts, large recreational sites and large wetlands. TrAILCo Ex. JH-1, p. 20; Tr. 3221.

179. Point specific constraints include individual residences, other buildings, small wetlands and communication towers. TrAILCo Ex. JH-1, p. 22; Tr. 3222.

180. TrAILCo then culled the potential routes down to “alternative routes” for further study and evaluation. Tr. 3220-3221.

181. TrAILCo concluded by “selecting” a preferred route from the alternative routes. Tr. 3220-3221.

182. The provisions of 52 Pa. Code §57.72(c)(10), require an applicant to submit an analysis of the following elements for each HV line: 1) a general description of each alternative route; 2) a description of the methodology for developing the alternative routes; 3) a comparison of the relative merits of each route; and 4) a statement of the reasons underlying the selection of the preferred route.

183. TrAILCo’s submission of the LRE represents its total efforts to comply with 52 Pa. Code §57.72(c)(10). Tr. 3274-3275.

184. Section 2.11.1 of the LRE sets forth TrAILCo's 52 Pa. Code §57.72(c)(10) analysis concerning the selection of route H for the 502 Junction Segment. TrAILCo Ex. JH-1, pp. 27-28; Tr. 3230-3231.

185. The 502 Junction Segment forms a portion of the overall 37.3 mile, 500 kV HV line in Southwestern Pennsylvania. The 502 Junction Segment also forms a proposed portion of a 68 mile, 500 kV HV line linking the proposed 502 Junction Substation and the Mount Storm Substation in West Virginia. TrAILCo Ex. JH-1, p. 3.

186. The preferred route – Route H – for the 502 Junction Segment extends south from the 502 Junction Substation until it crosses the West Virginia-Pennsylvania border west of Morgantown. TrAILCo Ex. JH-1, p. 42.

187. TrAILCo selected Route H from eight (8) alternative routes – Routes A through H. TrAILCo Ex. JH-1, p. 27.

188. TrAILCo provides general descriptions for Routes A, B, and C. TrAILCo Ex. JH-1, pp. 37-40.

189. TrAILCo does not provide descriptions to understand and distinguish between Routes D through H. Tr. 3258.

190. TrAILCo did not include a discussion of the comparative merits of the Routes A through H. Tr. 3258.

191. Section 2.11.2 of the LRE sets forth TrAILCo's 52 Pa. Code §57.72(c)(10) analysis of the Prexy Segment. Tr. 3231.

192. For the Prexy Segment, TrAILCo considered four alternative routes, designated A through D.

193. Louis Berger developed Routes A, B, and D. TrAILCo Ex. JH-1, pp. 37-41.

194. TrAILCo provided the fourth route – Route C – to Louis Berger prior to the commencement of Louis Berger’s work on the project. Tr. 3246-3247.

195. Louis Berger’s primary discussion of the comparative merits for the Prexy Segment relies on information provided in Tables 2-2 and 2-3. Tr. 3231; TrAILCo Ex. JH-1, pp. 37-41.

196. Table 2-3 compares the potential impacts of the alternative routes over a variety of categories. TrAILCo Ex. JH-1, pp. 34-37.

197. Table 2-3 derives from the source information identified in Table 2-2. Tr. 3231-3232.

198. TrAILCo states four justifications for selecting preferred Route C:

- (i) crosses the least amount of state game lands;
- (ii) crosses the least amount of forest land;
- (iii) is comparatively moderate in steep soils, cultivated cropland, and developed land; and
- (iv) utilizes approximately 96% of the allegedly pre-existing rights-of-way.

TrAILCo Ex. JH-1, p. 42.

199. In developing the Prexy Segment, Louis Berger used numbered links (intersections of the potential routes) shown in figures 2-1 through 2-3 to develop three of the four alternative routes. TrAILCo Ex. JH-1; *See generally* Tr. 3225-3226.

200. Louis Berger states that Route B crosses the most state game lands. TrAILCo Ex. JH-1, p. 35.

201. Louis Berger drew Route C using link 2, and Route B using link 3. TrAILCo Ex. JH-1; Figure 2-3.

202. Other than links 2 and 3, Routes B and C do not cross any other state game lands. TrAILCo Ex. JH-1, Figure 2-3.

203. Louis Berger could have drawn both Routes B and C utilizing link 2. Tr. 3245-3245.

204. If that had been done, both Routes B and C would cross the same amount of game lands. Tr. 3246.

205. Louis Berger designed the alternative routes to arrive at a distinction that favored Route C. Tr. 3225-3226.

206. According to Louis Berger's calculations utilizing the data from National Land Cover Database, Route C requires the clearance of 448 acres of forest, or approximately one acre less than the next closest reasonable alternative route. Tr. 3239-3240.

207. The phrase "comparatively moderate impacts" means that Route C was not the best nor the worst of the four alternative routes. Tr. 3247-3248.

208. TrAILCo stated in a presentation given to a conference at the Edison Electric Institute in 2007 that the reason for the selection of Route C was the existence of previously-purchased rights-of-way. Tr. 3252-3253; ECC Cross Ex. 55.

209. Affected property owners in Washington and Greene Counties have filed lawsuits, challenging the validity of the rights-of-way. Tr. 3200.

210. The selected Route C contains the second highest amount of residences (21) within 250 feet of the center line. Tr. 3248.

211. The selected Route C contains the highest amount of residences (100) within 500 feet of the center line. Tr. 3248.

212. The selected Route C contains the highest amount of residences and other buildings (157) within 500 feet of the center line. TrAILCo Ex. JH-1, p. 35.

213. The selected Route C crosses the highest amount of pasture land. Tr. 3248.

214. The selected Route C crosses the second highest amount of cultivated crops. Tr. 3248.

215. The selected Route C crosses the second highest amount of agricultural and conservation district land in Greene County. Tr. 3248.

216. The selected Route C fails to minimize the visual impact of the 500 Kv line. E.g. see TrAILCo Exhibits TG-5, TG-13, TG-15, TG-16, TG-24, TG-26, TG-28, TG-36, TG-38, TG-39, TG-46, TG-48, TG-50, TG-52, and TG-60.

217. The LRE contains no discussion of the use of the existing corridors created by Interstate Route 70, east and west, and Interstate Route 79, north and south. TrAILCo Ex. JH-1.

218. The LRE contains no or little discussion regarding the utilization of the corridors created by the two existing 500 Kv lines that run north and south, and parallel to the proposed Prexy Segment. TrAILCo Ex. JH-1.

219. The LRE is only a rough estimate of the exact cultural, environmental and natural phenomena encountered along the listed transmission line routes and does not represent a complete list. TrAILCo Ex. JH-1; TrAILCo Rebuttal St. 5-R.

220. TrAILCo must still consult with various state and federal agencies having primary jurisdiction with regard to the cultural and environmental resources encountered along the proposed transmission line routes. Tr. 3272-3274.

221. TrAILCo has not complied with all applicable statutes and regulations providing for the protection of natural resources in Pennsylvania. Tr. 3272-3277.

222. The selection of Route C does not comport with good routing principles.

4. Environmental Impacts

223. TrAILCo failed to conduct a true environmental impact analysis that addresses (1) construction impacts, (2) maintenance impacts, (3) cumulative impacts, and (4) secondary impacts for each environmental factor identified in the Report. ECC St. 3, p. 11.

224. Potential impacts on groundwater from all phases of activity are significant and should be assessed. ECC St. 3, pp. 10-11.

225. Geographic Information Systems (GIS) data pertaining to locations of certain registered wells and springs is available from the Pennsylvania Topographic and Geologic Survey. ECC St. 3, p. 11.

226. Neither the LRE nor any other presentation by TrAILCo details the impact of the project on groundwater. TrAILCo Ex. JH-1, pp. 56-58.

227. The LRE contains a general discussion on impacts of the proposed project on surface waters and mentions the need for “an approved Sediment and Erosion Control Plan.” TrAILCo Ex. JH-1, pp. 56-58.

228. Numerous property owners testified to the use of springs and wells for both domestic use and for their animals. Tr. 132, 235, 237, 244, 257, 301, 322, 340, 341, 370, 432, 444, 457, 464, 482, 506, 514, 519, 527, 542, 549, 558, 585, 588, 665, 700, 751, 794, 798, 976, 1145, 1153, 1265, 1273, 1288, 1395, 1448, 1464, 1470, 1499, 1521, 1625, 1770, 1787, 1880, 1901, 1908, 1922, 1927, 1967, 2138, 2153, and 2180.

229. Potential impacts to recreation trails were not sufficiently analyzed in that a dataset produced for West Virginia was utilized when the Southwestern Pennsylvania Commission maintains a GIS dataset for this entire area. ECC St. 3, p. 11.

230. The GIS analysis used by TrAILCo in presenting the LRE and Environmental Reports does not provide precise measures and does not include any metadata about the GIS datasets used for analysis. ECC St. 3, p. 4; ECC St. SR-3, pp. 6-7; TrAILCo Ex. JH-1.

231. The LRE and Environmental Reports do not fully disclose the known limitations of the datasets, the intended purpose of the datasets, or the inherent amount of known error in the datasets. ECC St. 3, p. 5; TrAILCo Ex. JH-1.

232. The National Hydrography Dataset (“NHD”) utilized for the LRE and Environmental Reports does not contain streams that are less than one mile in length and does not contain lakes or ponds less than 6 acres in size. ECC St. 3, p. 6; ECC St. SR-3, pp. 8-9; TrAILCo Ex. JH-1.

233. Complete field inspections are necessary to determine the number of stream crossings, and there is no indication in this record that such inspections were done. ECC St. SR-3, p. 9.

234. The scale and accuracy of the National Wetlands Inventory dataset utilized for the LRE and Environmental Reports is extremely volatile, based on its reliance on aerial photography of differing quality and varying with the conditions in which the photographs were

taken, and does not show all wetlands, including many forested or emergent wetlands. Boundaries are generalized in most cases. ECC St. 1, pp. 7-8; TrAILCo Ex. RJH-3; ECC St. SR-3, pp. 8-9; TrAILCo Ex. JH-1.

235. The National Land Cover Dataset (“NLCD”) requires careful use and interpretation because the spatial resolution (30 meters square) means that data is generalized and interpolated. ECC St. 3, pp. 9-10; ECC St. SR-3, p. 9.

236. The Southwestern Pennsylvania Commission has detailed land cover data, but it was not obtained by TrAILCo in performing its land cover assessment. ECC St. 3, p. 10; Tr. 2024-2037.

237. The LRE and Environmental Reports prepared by TrAILCo, while providing a list of environmental phenomena, do not provide a true impact analysis, as they lack specificity. ECC St. 3, p. 10; TrAILCo Ex. JH-1.

238. The LRE and Environmental Reports should identify, study and consider (1) construction impact, (2) maintenance impact, (3) cumulative impact, and (4) secondary impact as they relate to each environmental topic. ECC St. 3, p. 10.

239. An extensive analysis of the road network associated with construction of the power lines should be documented, as it is likely that many more miles of access roads will be needed than the actual mileage of power lines. ECC St. 3, p. 10.

5. Health and Safety

a. Electromagnetic and Electric Fields

240. TrAILCo has committed to adhering to the design parameters in the National Electric Safety Code (“NESC”), including the requirements for structural loading, structural strength and electrical clearances. TrAILCo St. 7, pp. 21-22; TrAILCo Ex. JRB-1.

241. TrAILCo has committed to building all tower structures to meet or exceed the design parameters in the NESC, and all conductors for TrAIL will be installed in accordance with the NESC. TrAILCo St. 7, pp. 13-14, 15-19; TrAILCo Ex. JRB-1.

242. TrAILCo has committed that all right-of-way (“ROW”) widths for the TrAIL project will meet NESC safety requirements, including clearance criteria. TrAILCo St. 7, pp. 22-23.

243. EMF refers to the electric and magnetic fields associated with the operation of alternating current (“AC”) power lines or devices supplied with AC electricity. TrAILCo St. 9, p. 4.

244. Magnetic fields caused by alternating current power lines have been suspected of having undesirable health effects. OCA St. 1, p. 37.

245. The TrAIL project, if built, will be a source of magnetic and electrical fields because alternating electric current in electric lines and devices produces magnetic fields that vary in synch with the current and that increase or decrease proportional to current flow. OCA St. 1, p. 37.

246. Magnetic field intensity decreases as you move away from the source. OCA St. 1, p. 37.

247. Magnetic fields from the three-phases of a three-phase electric line tend to cancel each other as the distance away from them increases, or the closer the three phases are brought to each other, as the three currents in a balanced three-phase circuit add up to zero on a vector basis. OCA St. 1, pp. 37-38.

248. The paralleling of transmission lines reduces exposure to EMFs. TrAILCo St. 8, pp. 8-9.

249. Neither the federal government nor the Commonwealth of Pennsylvania have set design limits for magnetic field exposure from electric transmission lines. OCA St. 1, p. 38; TrAILCo St. 8, pp. 7-8.

250. TrAILCo indicates that the proposed 500 kV circuit would have a magnetic field of 63 mG at the edge of the right-of-way at maximum loading, while the 138 kV lines would have a magnetic field of about 12 mG at the edge of the right-of-way at maximum loading. The abbreviation “mG” refers to milligauss, a measure of magnetic field intensity. OCA St. 1, p. 38.

251. Florida has set standards for maximum magnetic fields at the edge of electric transmission rights-of-way at maximum load ranging from 150 mG to 250 mG depending on the voltage of the line and its vintage. OCA St. 1, p. 38.

252. New York has a standard for maximum magnetic field at the edge of rights-of-way of 200 mG. OCA St. 1, p. 38.

253. Trees, shrubs, and other conductors such as buildings serve to provide some shielding from electrical fields created by HV lines. Tr. 3462.

254. Trees, shrubs, and other conductors or obstructions do not shield magnetic fields. Tr. 3462.

255. In 2002, the International Agency for Research on Cancer (“IARC”) published findings on magnetic fields, designating magnetic fields as a possible human carcinogen with regard to childhood leukemia. Tr. 3457-3458.

256. The IARC arrived at the designation of magnetic fields as a possible human carcinogen using a consensus-based model, involving voting input from 21 panelists, including TrAILCo’s EMF expert Dr. Bailey. Tr. 3458.

257. The IARC based the designation on the multiple epidemiological studies that find a statistical association between magnetic fields and increased cases of childhood leukemia. Tr. 3458-3459.

258. Under the IARC criteria, IARC gives greater weight to epidemiological studies than animal studies or experimental studies. Tr. 3459.

259. The author of TrAILCo's study on the human health effects from the proposed facilities – William Bailey, Ph.D. – is not an epidemiologist, but a neuropsychologist, and thus, is not trained in the study of the causes of diseases. ECC St. 2, p. 9.

260. Contrary to TrAILCo witness Dr. Bailey's statements, many residences are located very near the proposed transmission lines and, therefore, many residents will be forced to live, play or work next to or under the proposed transmission facilities. ECC St. 2, p. 9; ECC St. SR-2, p. 10.

261. Contrary to TrAILCo witness Dr. Bailey's statements that "the evidence is insufficient to conclude that EMFs are a cause of any long-term health effect," EMFs are considered to be possible carcinogens by both the IARC and the National Institutes of Environmental Health Sciences (NIEHS) with respect to childhood leukemia. ECC St. 2, pp. 9-10.

262. Property owners have concerns about the possible effects, such as leukemia, that EMFs could have on the health of their children. Tr. 99, 118, 132, 185, 240, 246, 467, 498, 652, 855, 895, 1061, 1124, 1127, 1152, 1295, 1631, 1689, 1788, 1856.

263. Property owners have concerns about the possible effects that EMFs could have on their own health. Tr. 99, 118, 132, 185, 237, 240, 246, 327, 340, 394, 397, 443-444, 467, 480-481, 498, 616, 646, 677, 746, 750-751, 808, 827, 945, 989, 1355, 1478, 1688.

264. Property owners have concerns about the effects that EMFs could have on the health of wild, farm and domestic animals. Tr. 118, 750-751, 828, 971, 1154, 1348, 1786.

265. Property owners have concerns about the effect the EMFs can have on pacemakers. Tr. 1376, 1466, 1528.

266. Property owners have concerns that the general public perception that EMFs are harmful will have an adverse effect on their property values. Tr. 1128.

267. At an Allegheny Power open house in Jefferson, Mrs. Pam Snyder asked Allegheny's health expert about the risk of childhood leukemia related to living next to the line. Allegheny Power's own health expert answered, "Childhood leukemia affects four in 1,000 children. Living next to these lines could increase that to six in 1,000." Tr. 652.

268. The proposed route places the power line close to the Tunney family at 233 Rainey Road, Eighty Four, whose daughter has a shunt in her brain that can be interfered with by magnetic fields. Tr. 689.

269. Edward Petsonk, a medical doctor specializing in internal medicine, respiratory diseases and occupational medicine, referred to a number of studies in his testimony that highlighted the relationship of living near transmission lines and the occurrence of cancer and childhood leukemia. He testified that he is an epidemiologist and has articles published in occupational and environmental journals. Tr. 834-842.

b. Herbicides

270. TrAILCo represents that herbicide applications for TrAIL will be done in accordance with EPA-approved pesticide labels, which are the law concerning application of the substance, and in accordance with Allegheny Power's extensive guidelines and practices for applying herbicides. TrAILCo St. 18, pp. 12-13, 17-19.

271. TrAILCo will use herbicides in a selective fashion: (i) only to control targeted plants, (ii) only in suitable portions of its rights-of-way and (iii) only on an infrequent basis (with the time in between treatments measured in years). TrAILCo St. 7, pp. 36-37; TrAILCo St. 18, p. 22.

272. TrAILCo will utilize trained professionals for herbicide applications and will provide ongoing training to ensure proper application. TrAILCo St. 7, pp. 37-38.

273. TrAILCo represents that any aerial spraying of herbicides is very “precise,” limited in nature to foliar vegetation (i.e., leaves) (Tr. 3501), and will be performed under a strict and comprehensive set of specifications. TrAILCo St. 18, pp. 20-21.

274. TrAILCo represents that combinations of herbicides will be mixed and applied only where allowed and according to the instructions of the manufacturer's label. TrAILCo St. 18, pp. 18-19.

275. TrAILCo represents that because of initial clear cutting of ROW, it is unlikely that herbicides will be applied at all the first 4-6 years after construction of the lines. Tr. 3498.

276. A majority of the herbicides TrAILCo intends to use, including Garlon 3A, Garlon 4, Tordon 101, Tordon K, Krenite S, etc., should not be applied near or on either standing or running water, per the manufacturers’ labeling. OCA St. 1, p. 34.

277. According to TrAILCo’s standard contract for aerial spraying vendors, aerial spraying vendors shall leave 100-foot buffer zones adjacent to ponds. OCA St. 1, p. 35.

278. According to TrAILCo’s standard contract for aerial spraying vendors, aerial spraying vendors shall leave 200-foot buffer zones adjacent to year-round flowing water, including wells and springs. OCA St. 1, p. 35.

279. According to TrAILCo's standard contract for aerial spraying vendors, aerial spraying vendors shall leave 100-foot buffer zones adjacent to pasture land. OCA St. 1, p. 35.

280. According to TrAILCo's standard contract for aerial spraying vendors, aerial spray pilots will receive penalties for infractions to buffer zone lengths. OCA St. 1, p. 35.

281. An aerial spray pilot can make an error and spray herbicide into a pond, a stream, a planted field, or anywhere else on one occasion and not suffer a suspension. OCA St. 1, p. 36.

282. Many of the families living along the proposed transmission lines do not have access to a public water supply, and rely on springs or wells, or both, for their water supply. OCA St. 1, p. 29; Tr. 132, 235, 237, 244, 257, 301, 322, 340-341, 370, 432, 444, 457, 464, 482, 506, 514, 519, 527, 542, 549, 558, 585, 588, 665, 700, 751, 794, 798, 976, 1145, 1153, 1265, 1273, 1288, 1395, 1448, 1464, 1470, 1499, 1521, 1625, 1770, 1787, 1880, 1901, 1908, 1922, 1927, 1967, 2138, 2153, 2180.

283. On January 7, 2008, TrAILCo and the West Virginia Consumer Advocate Division of the Public Service Commission agreed in a Stipulation that TrAILCo would not use aerial spraying of herbicides for vegetation management in West Virginia along the TrAIL transmission line. OCA St. 1-SR, p. 20; OCA Cross Exam Ex. 8 at ¶20(b); Tr. 2948.

c. Gas Line Safety

284. Property owners have concerns about the danger of active gas lines and wells beneath the proposed transmission lines. Tr. 161, 497, 557, 676, 1454, 1468, 1685-1686, 1901.

285. Mr. Kenyon Nicholl has a gas transmission line on his farm that parallels the proposed route. Tr. 154, 161, 597.

286. Mr. George Goroncy is concerned because the proposed line will be 300 feet from a gas transmission line on his property that has developed leaks that have had to be fixed several times. Tr. 479, 482-483.

287. Mr. Robert Morris is concerned about the safety of siting the power lines so close to two gas lines beneath his property that leak frequently. Tr. 556-557.

288. Mr. Arthur Brogley is concerned about the safety of siting the proposed lines directly above natural gas lines that are located near his house. Tr. 671, 676.

289. John Hildebrand has 2,000 feet of gas line on his property that leaks frequently and he is concerned about the 500 kV lines igniting the leaked gas. Tr. 1153-1154.

290. Ms. Juliann Cernuska has gas transmission lines on her property and is concerned about the proposed lines' effect if there is a gas leak, or if the gas pipes erode. Tr. 1168, 1170.

291. Mr. Patrick Knight has a high-pressure gas line on his property that has leaked in the past, and he is concerned about the electricity eroding the pipes. Tr. 1327-1328, 1330.

292. Ms. Cheryl Piroch has an active gas well on her property that supplies gas to her home and is concerned that a gas explosion could result if the electric lines are built. Tr. 1453-1454.

293. Ms. Mary Luciano has a gas well and a gas line on her property and is concerned about the close proximity of the gas line, and a propane pipeline, to the proposed electric lines. Tr. 1463, 1468-1469, 2182-2187.

294. Mr. Joe Sullivan testified that he has a gas line owned by Columbia Gas running across his property and the Prexy Substation. Tr. 1501, 1513.

295. On March 17, 2008, TrAILCo and Columbia Gas Transmission Corporation and Columbia Gas of Pennsylvania, Inc., entered into a Settlement Agreement that provides specific terms for the hiring of a mitigation expert and the conduct of a mitigation study designed to mitigate the construction and operation of the proposed TrAIL facilities on the gas lines and facilities of Columbia Gas Transmission Corporation and Columbia Gas of Pennsylvania, Inc. Appendix H to TrAILCo Main Brief; Appendix H to Columbia's Main Brief.

d. Other Safety Issues

296. Mr. Kenyon Nicholl is concerned about the safety of operating his metal hay wagons, which are over 12 feet tall, under the proposed electric transmission lines. Tr. 154, 156.

297. Mr. Albert Thomas is concerned because his house has 50 squares of metal roofing that would need major grounding to be safe. Tr. 453, 457-458.

B. Eminent Domain

298. Many witnesses at the public input hearings and site visits objected to TrAILCo being granted the authority to exercise the power of eminent domain. E.g. see Tr. 187, 374-375, 886, 893.

299. Property owners in Washington and Greene Counties have filed lawsuits in their respective county Court of Common Pleas challenging existing rights-of-way agreements entered into with West Penn Power Company. TrAILCo Main Brief, p. 64.

300. In the review of the recorded easements in Greene County conducted by the Greene County Planning Commission, it appears that five of the easements recorded in

Greene County are for ROW widths that are less than the 200 feet required by the proposed project. ALJ Exhibit 1.

C. Exemption from Local Zoning

301. The following is the description of the Prexy Substation provided by TrAILCo in its Application:

Prexy Substation will be a fenced area of approximately 17 acres. The fence will be 6' high aluminum coated steel chain link fence, with three strands of barbed wire installed on top to act as a climbing deterrent. The overall height of the fence with the barbed wire is 7'-0". The substation yard will be covered with 6" of ASTM 57 2B limestone for yard cover. This stone will extend a minimum of 3' outside the substation fenced area. A 40' x 120' (estimated size) Metal Control building will be installed to house the substation electrical controls, metering, and communications equipment. This building will also house the 125VDC storage battery, and battery charger. The building will be climate controlled and will be complete with well and septic facilities. The control building will be erected on a monolithically poured concrete footer/slab. Steel columns and framework will be installed on approximately 20' centers to support the roof and walls. Painted steel panels will be installed as the exterior surface of the building. The building will be insulated and painted steel panels will be installed on the interior walls of the building.

A 52' x 32' x 14.6' eave (sic) height, maintenance building will be installed. This building will be used for performing maintenance on electrical equipment. The maintenance building will be a metal self framing, insulated building. The exterior surfaces will be raised rib, interlocking, painted metal panels. The interior walls and ceiling will be smooth surface interlocking, painted metal panels. The building will be installed on a monolithically poured concrete footer/slab. Two overhead garage doors will be installed for vehicle and equipment access.

An AC emergency generator installation will be installed in a separate 16' x 24' building (estimated size). The building will be an insulated metal building with a painted exterior surface. This building will be installed on a monolithically poured concrete footer/slab. A 1000 gallon concrete above ground diesel fuel storage tank will be installed near the emergency generator building. Application, TrAILCo Appendix D.

302. No additional or more specific information regarding the planning, construction or development of the Prexy Substation was submitted into evidence.

303. TrAILCo failed to submit evidence specifying where the buildings and structures proposed for the Prexy Substation and generally described in Appendix D to the Application are to be located on the selected site.

304. TrAILCo failed to submit a legal description of the Prexy Subdivision site.

305. TrAILCo failed to describe the location or approximate location of the 17-acre fenced Prexy Substation within the approximately 202 acre Prexy site.

306. No preliminary or final site plan or subdivision plan was submitted into evidence for the Prexy Substation development.

307. TrAILCo did not submit evidence of any testing for either an on-lot sewage disposal system or for a well with respect to the Prexy site.

308. TrAILCo did not submit any evidence specifically identifying or describing the location of the driveway or driveways for accessing the Prexy Substation.

309. The following is the description of the 502 Junction Substation provided by TrAILCo in its Application:

502 Junction Substation will be a fenced area of approximately 21 acres. The fence will be 6' high aluminum coated steel chain link fence, with three strands of barbed wire installed on top to act as a climbing deterrent. The overall height of the fence with the barbed wire is 7'-0". The substation yard will be covered with 6" of ASTM 57 2B limestone for yard cover. This stone will extend a minimum of 3' outside the substation fenced area. A 40' x 120' (estimated size) Metal Control building will be installed to house the substation electrical controls, metering, and communications equipment. This building will also house the 125VDC storage battery, and battery charger. The building will be climate controlled and will be complete with well and septic facilities. The

control building will be erected on a monolithically poured concrete footer/slab. Steel columns and framework will be installed on approximately 20' centers to support the roof and walls. Painted steel panels will be installed as the exterior surface of the building. The building will be insulated and painted steel panels will be installed on the interior walls of the building.

A 52' x 32' x 14.6' eave (sic) height, maintenance building will be installed. This building will be used for performing maintenance on electrical equipment. The maintenance building will be a metal self framing, insulated building. The exterior surfaces will be raised rib, interlocking, painted metal panels. The interior walls and ceiling will be smooth surface interlocking, painted metal panels. The building will be installed on a monolithically poured concrete footer/slab. Two overhead garage doors will be installed for vehicle and equipment access.

An AC emergency generator installation will be installed in a separate 16' x 24' building (estimated size). The building will be an insulated metal building with a painted exterior surface. This building will be installed on a monolithically poured concrete footer/slab. A 1000 gallon concrete above ground diesel fuel storage tank will be installed near the emergency generator building. Application, TrAILCo Appendix E.

310. No additional or more specific information regarding the planning, construction or development of the 502 Junction Substation was submitted into evidence.

311. TrAILCo failed to submit evidence specifying where the buildings and structures proposed for the 502 Junction Substation and generally described in Appendix E to the Application are to be located on the selected site.

312. TrAILCo failed to submit a legal description of the 502 Junction Subdivision site.

313. TrAILCo failed to describe the location or approximate location of the 21-acre fenced 502 Junction Substation within the 502 Junction site.

314. No preliminary or final site plan or subdivision plan was submitted into evidence for the 502 Junction Substation development.

315. TrAILCo did not submit evidence of any testing for either an on-lot sewage disposal system or for a well with respect to the 502 Junction site.

316. TrAILCo did not submit any evidence specifically identifying or describing the location of the driveway or driveways for accessing the 502 Junction Substation.

317. TrAILCo failed to submit into evidence any zoning ordinance or land and subdivision ordinance enacted by local counties or local municipalities and applicable to either the Prexy or the 502 Junction Subdivision site.

D. Affiliated Interest Agreements

318. TrAILCo is not a certified public utility in the Commonwealth of Pennsylvania.

319. West Penn and TrAILCo entered into a Memorandum of Understanding (“MOU”) on April 9, 2007. West Penn and TrAILCo agreed that the MOU is made subject to and conditioned upon the approval of the Commission. In the MOU, West Penn agrees to transfer all of its right, title and interest in and to certain easements or rights-of-way, and certain tracts or parcels of land to TrAILCo in order for TrAILCo to site and construct the Prexy Segment, the Prexy 138 kV lines and the Prexy Substation. TrAILCo Exhibit MAM-1; and Application, p. 20, paragraph nos. 57 and 58.

320. In exchange for the easements or rights-of-way, which are identified in the eight-page table attached and made a part of the MOU as “Schedule A,” TrAILCo agrees to pay consideration in the amount of \$4,480,373.35 to West Penn. TrAILCo Exhibit MAM-1.

321. In exchange for the conveyance by special warranty deed of the tracts or parcels of land identified in “Schedule B” of the MOU, TrAILCo agrees to pay consideration in the amount of \$661,185.87 to West Penn. TrAILCo Exhibit MAM-1.

322. No supporting documentation evidencing the cost of the rights-of-ways, easements or real estate included in the MOU was offered into the record.

323. The parcels of land TrAILCo intends to acquire from West Penn for \$661,185.87 were originally acquired by West Penn from December 1973 through February 1975 for a project similar to the one now consisting of the Prexy Facilities. TrAILCo intends to construct the 17-acre Prexy Substation somewhere on these parcels, which comprise slightly less than 202 acres. TrAILCo St. 10, p. 12; Application, TrAILCo Appendix D; and TrAILCo Exhibit MAM-1, Schedule B; Application, p. 20, paragraph no. 58.

324. The parcels of land are recorded in West Penn's books in FERC Account 105 Plant Held for Future Use. Application, p. 20, paragraph no. 58.

325. There appear to be only seven parcels listed in Schedule B, according to the tax map parcel numbers in the second column from the right under the column heading, "Tax Map/Parcel." No supporting documentation of Schedule B was provided. TrAILCo Exhibit MAM-1, Schedule B.

326. On October 31, 2006, Allegheny Energy Service Corporation ("AES"), which is a subsidiary of Allegheny, and TrAILCo entered into a "Service Agreement" wherein AES agreed to perform certain advisory, supervisory and other services for TrAILCo. TrAILCo Exhibit MAM-2.

327. The Service Agreement provides that "[t]his Service Agreement shall continue in full force and effect from year to year but may be terminated by either party upon 60 days' prior notice, and the Company (TrAILCo) may terminate such contract at any time with or without notice for any cause deemed by it to be sufficient." TrAILCo Exhibit MAM-2.

328. In the Service Agreement, TrAILCo agreed to pay the cost for all services rendered to it by AES but no schedule of costs was attached to, made a part of, or incorporated

into the agreement. TrAILCo also agreed that for services rendered to one or more Allegheny companies, “the applicable approved allocation factor will be used.” No evidence regarding an applicable approved allocation factor was submitted into the record. TrAILCo Exhibit MAM-2, paragraph no. 2.

329. The Service Agreement permits termination of the agreement without requiring Commission review and approval, or Commission Order. TrAILCo Exhibit MAM-2.

330. On February 15, 2007, AET and TrAILCo entered into a Capital Contribution Agreement (“CCA”), effective as of January 31, 2007. TrAILCo Exhibit MAM-3.

331. In the CCA, AET agreed to contribute additional capital of up to \$550 million in one or more payments of cash on or before the completion of the TrAIL and other transmission related projects. TrAILCo Exhibit MAM-3.

332. Upon completion of the transfers of capital, AET will continue to own 100% of TrAILCo. TrAILCo Exhibit MAM-3.

333. On October 31, 2006, the Tax Allocation Agreement (“TAA”) between Allegheny Energy, Inc. and its subsidiaries, dated July 31, 2003, was purportedly amended (Amendment No. 5) to add three newly formed subsidiary companies, including TrAILCo and AET. The third subsidiary was purposefully not identified. TrAILCo Exhibit MAM-4.

334. In the TAA, the three subsidiary companies purportedly joined the consolidated group for federal income tax purposes, according to Amendment No. 5. The TAA does not contain specific information regarding the method for allocating federal tax. TrAILCo Exhibit MAM-4.

335. The second page of the amendment contains the signatures of corporate officers on behalf of Allegheny, AET and TrAILCo. This page provides above the signatures,

“IN WITNESS HEREOF, the parties hereto have caused this Amendment No. 4 to Tax Allocation Agreement to be duly executed . . .” TrAILCo Exhibit MAM-4 (emphasis added).

336. The signature page attached to Amendment No. 5 lists Amendment No. 4 as the amendment to the TAA being executed and not Amendment No. 5. TrAILCo Exhibit MAM-4 (emphasis added).

IV. DISCUSSION

A. Certificate of Public Convenience

The portion of TrAILCo's Application requesting a certificate of public convenience to offer, render, furnish and/or supply transmission service in the Commonwealth of Pennsylvania docketed at Docket No. A-110172 must, out of necessity, and for purposes of clarity, be discussed first. It is the first domino, if you will. It must be acted on before the other docketed matters can be considered and decided.

In the discussion below, TrAILCo's Application and the evidence admitted into the hearing record shall be examined to answer this question: has TrAILCo met its burden of proving that its Application for a certificate of public convenience is necessary or proper for the service, accommodation, convenience or safety of the public? To begin, the burden of proof and legal standards that must be met shall be explained. A brief discussion of why TrAILCo must apply for a certificate of public convenience will be presented. This discussion will be followed by detailed analyses of the claimed public need/inadequacy of service for both the Prexy Facilities and the 502 Junction Facilities. These analyses shall be presented separately, referring to the briefing parties' various positions as well as to the testimony adduced at the technical evidentiary hearings and public input hearings. Our purpose in presenting these analyses separately is to organize the discussion in a useful, coherent manner. The next and final subheading for discussion purposes under the Certificate of Public Convenience topic shall be the "fitness" of TrAILCo. The fitness analysis will be further subdivided into three parts, technical capacity, financial ability and legal fitness.⁴ Lastly, our conclusions, recommendation and concerns will be presented.

1. Burden of Proof

As the Applicant, TrAILCo has the burden of proof here. 66 Pa. C.S. §332(a). Section 332(a) of the Public Utility Code (hereinafter "the Code"), 66 Pa. C.S. §101 *et seq.*,

⁴ See subsection "B. Legal Standard."

requires the proponent of a rule or order to bear the ultimate burden of persuading the Commission that the relief sought is proper and justified. Such a showing must be by a “preponderance of the evidence.” Samuel J. Lansberry, Inc. v. Pa. P.U.C., 134 Pa. Cmwlt. 218, 578 A.2d 600 (1990). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence. Mill v. Pa. P.U.C., 67 Pa. Cmwlt. 597, 447 A.2d 1100 (1982). “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. P.U.C., 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Commonwealth Ct. 23, 480 A.2d 382 (1984).

A *prima facie* case “shifts” the secondary burden to the opponent. McDonald v. Pennsylvania Railroad Company, 348 Pa. 558, 36 A.2d 492, 495-496 (1940). Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. In re: Fink's Estate, 343 Pa. 65, 74, 21 A.2d 883, 888-889 (1941); Rogers v. United States, 66 F. Supp. 663, 667, relying, in relevant part, on Roseberry v. Home Life Insurance Company, 120 Pa. Superior Ct. 450, 454, 183 A. 121, 95 A.L.R. 749 (1936). If a respondent has presented co-equal evidence in response to the applicant’s case, the burden of proof cannot be deemed to be satisfied unless the party bearing the burden presents additional evidence causing its position to be supported by a preponderance of the evidence. Motheral, Inc. v. Duquesne Light Company, 2001 Pa. PUC LEXIS 4.

2. Legal Standard

Section 1101 of the Code provides, in pertinent part, as follows:

Upon the application of any proposed public utility and the approval of such application by the commission evidenced by its

certificate of public convenience, first had and obtained, it shall be lawful for any such proposed public utility to offer, render, furnish, or supply service within this Commonwealth. . . .

66 Pa. C.S. §1101.

Section 1102 of the Code requires the issuance of a certificate of public convenience as a legal prerequisite to, *inter alia*, offering service. 66 Pa. C.S. §1102(a). Section 1103 of the Code provides that a certificate of public convenience will be issued if the Commission “shall find and determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.” 66 Pa. C.S. §1103. The above mandate requires an applicant to demonstrate: (a) a public need or demand for the proposed service; (b) the inadequacy of existing facilities for service; and (c) the applicant's fitness to provide service. Application of Newtown Artesian Water Company, 2003 Pa. PUC LEXIS 40 (July 1, 2003). In turn, “fitness” involves three factors: (i) the technical capacity to meet the need in a satisfactory fashion; (ii) the financial ability to give reliable and responsible service to the public; and (iii) “legal fitness” – the ability to operate safely and legally. *See, Re: O'Connor*, 54 Pa PUC 547 (1980); Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm'n, 138 A.2d 240 (Pa. Super. 1958).

The Commission published guidelines on the subject of public utility status in the Implementation of Alternative Energy Portfolio Standards Act of 2004, Docket No. M-00051865, codified at 52 Pa. Code §69.1401 (Policy Statement). Public utility status is a fact-based determination and includes examination of the following criteria regarding whether an entity seeking public utility status is providing service “to or for the public”: (1) whether the facility is designed and constructed to serve a specific group and (2) whether service will be provided to a single customer or to a defined, privileged and limited group as opposed to the public at large. 52 Pa. Code §691401(c)(2) and (3). As stated in the Implementation Order, the legal basis for the guidance provided in the Policy Statement is settled case law on the jurisdictional status of different types of utility service providers, and accordingly, will be followed in all Commission proceedings in which jurisdictional status is at issue.

3. Definition of ‘Public Utility’ Applies to TrAILCo

The Trans-Allegheny Interstate Line Company (“TrAILCo”) must apply for and obtain Commission certification to offer transmission services in Pennsylvania. *See* 66 Pa. C.S. §1102. The term “public utility” is defined in the Code to include any corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for transmitting electricity to or for the public for compensation. *See* 66 Pa. C.S. §102; *See also* 52 Pa. Code §57.1.

Counsel for TrAILCo correctly asserts that, “[a]s a threshold matter, TrAILCo meets all three parts of the definition of ‘public utility’ under Code Section 102 and related law.” TrAILCo Main Brief, p. 66. TrAILCo intends to own and operate equipment and facilities for transmitting electricity in Pennsylvania and seeks Commission approval to do so. TrAILCo St. 1, pp. 7-10.⁵ TrAILCo seeks approval to transmit electricity “for the public.” TrAILCo will offer transmission service to all load serving entities in the PJM transmission zone but it will not be offering transmission service directly “to the public,” in other words, distributing electricity to end users. TrAILCo St. 1, pp. 6, 11-13; TrAILCo St. 10, p. 2. TrAILCo intends to transmit electricity for compensation. It has sought and received approval from the Federal Energy Regulatory Commission (“FERC”) for financial incentives.⁶ FERC approved a 12.7% incentive rate of return settlement for the TrAIL. Tr. 3018.

4. Fitness

An applicant for a certificate of public convenience must demonstrate that it has the technical capacity to meet the “need” in a satisfactory fashion, the financial ability to give reliable and responsible service to the public, and the ability to operate both legally and safely. As stated above, this fitness discussion shall be divided into three subheadings: technical

⁵ In addition to the TrAIL assets, Allegheny Energy, Inc. has designated TrAILCo to undertake Allegheny Power’s responsibility to finance, construct, own, operate and maintain the Black Oak Substation in Maryland and more conventional transmission upgrades, such as the two additional transformers at the Wylie Ridge Substation located in the northern panhandle of West Virginia. TrAILCo St. 1, p. 10.

⁶ FERC authorized the financial incentives by Order on June 20, 2006 at Docket No. EL06-54-000. TrAILCo St. 1, p. 6.

capacity, financial ability and legal fitness. But first, before beginning the discussion, it is necessary to describe TrAILCo, the operating company, and its relationship to Allegheny Energy, Inc. (“Allegheny”) and Allegheny Energy Transmission, L.L.C. (“AET”).

Allegheny is the parent company of three public utility operating companies, West Penn Power Company (“West Penn Power”), Potomac Edison Company (“Potomac Edison”) and Monongahela Power Company (“Monongahela Power”). Application, p. 2, footnote 1. Allegheny Power is the trade name under which West Penn Power, Potomac Edison and Monongahela Power do business. TrAILCo St. 1, p. 1. Of these three operating companies, only West Penn Power is located in Pennsylvania and subject to the Commission’s jurisdiction. These three operating companies joined PJM Interconnection, L.L.C. (“PJM”) in April 2002 and transferred functional control of their transmission systems to PJM at that time. TrAILCo St. 1, p. 5.

In May 2005, PJM unveiled the “Project Mountaineer” concept to construct one or more transmission system projects to facilitate the west-to-east transfer of generation capacity in the PJM transmission system. TrAILCo St. 1, p. 5; ECC Cross Exam. Ex. 53-Confidential. On February 28, 2006, Allegheny Power proposed a TrAIL project to PJM in response to Project Mountaineer. TrAILCo St. 1, p. 5. Allegheny and Allegheny Power sought FERC approval of financial incentives for their TrAIL proposal. TrAILCo St. 1, p. 6. In June 2006, the PJM Board of Managers approved a *modified* version of the TrAIL project proposed by Allegheny Power in PJM’s five-year Regional Transmission Expansion Plan (“RTEP”). TrAILCo St. 1, p. 6. This modified version is the one under consideration here.

PJM designated Allegheny Power as the “Transmission Owner” responsible for the majority of the construction of the TrAIL project. TrAILCo St. 3, pp. 18, 21.⁷ According to TrAILCo witness Herling, a transmission owner “means a PJM member that owns Transmission

⁷ Each of the three Allegheny Power operating companies is a member of PJM and is considered a “Transmission Owner” under the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. TrAILCo St. 3, p. 5.

Facilities or leases Transmission Facilities with rights equivalent to ownership.” TrAILCo St. 3, p. 5.⁸

In October 2006, months after Allegheny Power was designated by PJM to construct the majority of the TrAIL project, TrAILCo was incorporated. TrAILCo is a Maryland and Virginia corporation. TrAILCo is a direct subsidiary of Allegheny Energy Transmission, L.L.C. (“AET”), a Delaware limited liability company. AET, in turn, is a direct subsidiary of Allegheny. TrAILCo St. 1, p. 7.

AET is a holding company. AET owns and holds all of the existing and outstanding shares of TrAILCo. TrAILCo St. 1, p. 7, 9; TrAILCo Exhibit MAM-3. AET authorized the creation of TrAILCo to construct the TrAIL project. TrAILCo Exhibit MAM-3. In the future, TrAILCo plans to undertake all of Allegheny Power’s RTEP responsibilities if the cost of the future project exceeds \$2,000,000. TrAILCo St. 3, p. 9.

On March 28, 2007, TrAILCo became a PJM member and “is considered a Transmission Owner” by PJM. TrAILCo St. 3, p. 5. Other than by assignment of PJM Transmission Owner obligations to TrAILCo from Allegheny Power, no evidence was presented regarding why TrAILCo is considered a “Transmission Owner” by PJM.⁹ To our knowledge, TrAILCo does not yet own or lease Transmission Facilities.¹⁰ If there was a vetting process or an examination of TrAILCo’s fitness done prior to March 28, 2007 by PJM, the

⁸ The term “Transmission Facilities” is defined by Herling to mean facilities that (i) are within the PJM region, (ii) meet the definition of transmission facilities pursuant to FERC’s Uniform System of Accounts or have been classified as transmission facilities in a ruling by FERC addressing such facilities, and (iii) have been demonstrated to the satisfaction of PJM to be integrated with the PJM transmission system and integrated into the planning and operation of the PJM transmission system to serve all of the power and transmission customers within the PJM region. TrAILCo St. 3, pp. 5-6.

⁹ In TrAILCo St. 3 at page 20, witness Herling was asked the following question:

Q. Does the PJM Operating Agreement permit Allegheny Power to designate TrAILCo to finance, construct, own, operate and maintain TrAIL?

He responded as follows:

A. Yes. The Operating Agreement permits a Transmission Owner or other entity designated to construct, own and/or finance a recommended transmission enhancement or expansion to agree to undertake its designated responsibilities jointly with other Transmission Owners or other entities. TrAILCo St. 3, p. 20, lines 7-13.

¹⁰ See footnote 6 above.

undersigned are not aware of the process or evidentiary basis for the conclusion that TrAILCo is a qualified PJM member and Transmission Owner.

5. Technical Capacity

In the event the Commission finds, contrary to our recommendation, that there is a public need for the transmission service TrAILCo proposes to provide, TrAILCo must demonstrate that it possesses the technical capacity to meet the need in a satisfactory fashion. Although TrAILCo is a corporate subsidiary of Allegheny, as discussed above, it is not yet engaged in the interstate transmission of electricity in Pennsylvania or any other jurisdiction. TrAILCo is not entitled to a presumption as to its technical fitness to render electric transmission service on the basis of its affiliation with Allegheny Energy, Inc. (“Allegheny”) and Allegheny’s subsidiaries. *See Application of Armstrong Communications, Inc.*, 1998 Pa. PUC LEXIS 175 (September 9, 1998).¹¹

TrAILCo has the burden of proving it is technically capable. It must produce credible evidence that it either has sufficient staff and facilities or that it has sufficient operating skills to be regarded as technically capable. *See Application of Armstrong Communications, Inc.*, 1998 Pa. PUC LEXIS 175 (September 9, 1998); *Re: O'Connor*, 54 Pa PUC 547 (1980). In its main brief, TrAILCo asserts that it “has unquestionable technical capacity to provide transmission service within the PJM Region” and cites to the Direct Testimony of David E. Flitman and the Direct Testimony of John R. Bodenschatz, P.E. as proof of this assertion.¹² TrAILCo Main Brief, p. 67. The other parties to this proceeding did not brief the issue of technical capacity.

¹¹ *Armstrong Communications, Inc.*, a cable provider, was found not to be entitled to a presumption as to its technical fitness to render telephone service, though affiliated with certificated local exchange carriers in the Commonwealth of Pennsylvania.

¹² In footnote no. 242 on page 67 of TrAILCo’s Main Brief, TrAILCo specifically cites to TrAILCo St. 1, p. 12 and TrAILCo St. 7, p. 38 for this assertion.

TrAILCo witness Mr. Flitman testified that,

... through the Allegheny corporate family, which includes longstanding experience in the siting, construction, ownership and operation of electric transmission facilities, TrAILCo has unquestionable access to the technical capacity to provide finance, construct, own, operate, and maintain transmission facilities within the PJM Region. Allegheny will provide all of the resources necessary to site, construct and maintain TrAIL consistent with the manner in which West Penn and Allegheny's other operating utilities have for decades.

TrAILCo St. 1, p. 11.

Mr. Bodenschatz testified that through and with the resources of Allegheny Power, TrAILCo will follow the existing engineering, construction, and post-commercial service operations practices that Allegheny Power already has in place to construct, operate and maintain its transmission system. TrAILCo St. 7, p. 38. Mr. Bodenschatz further testified that the new facilities under the TrAIL project will be incorporated into Allegheny Power's operations in a seamless fashion. TrAILCo St. 1, p. 11.

There was no evidence presented by TrAILCo that it intends to employ staff to perform the services necessary to operate and function as a certified public utility. From the testimonies of Mr. Flitman and Mr. Bodenschatz, it appears to the undersigned that TrAILCo is relying exclusively on the Allegheny corporate family and outside contractors for the provision of all direct and ancillary services necessary for TrAILCo to function. Toward that end, on October 31, 2006, Allegheny Energy Service Corporation ("AESC"), which is a subsidiary of Allegheny, and TrAILCo entered into a Service Agreement wherein AESC agreed to perform the following services for TrAILCo:

1. Provide technical support as needed to evaluate, implement, and develop unregulated opportunities related to Allegheny's electric business (including, but not limited to, any engineering, construction, management and/or operating activities associated with the development of bulk power supply opportunities).

2. Planning and implementation of financial programs to raise the funds required for TrAILCo, including handling arrangements for bank borrowings and sales of securities and relationships with investors and analysts.
3. Counsel on corporate, legal and regulatory matters and on important contractual relationships.
4. Provide general and administrative services including, but not limited to, the following:
 - a. Purchasing.
 - b. Customer billing and accounting.
 - c. Information services, including computer applications and programming and electronic data processing.
 - d. Preparation of consolidated financial statements and cost, statistical, and financial data, as required.
 - e. Assistance with respect to certain personnel matters, including, but not limited to, employee benefit matters.
 - f. Preparation and filing of consolidated income tax returns and following developments in federal and state taxation regulations.
 - g. Administration of insurance.
 - h. Internal auditing.
 - i. Corporate security.
5. Certain other services in addition to the above as AESC may be able to provide and TrAILCo may require or request.

TrAILCo Exhibit MAM-2, “Ex. I” attached thereto.

“To the extent required,” in this Application TrAILCo seeks approval of the Service Agreement as an affiliated interest agreement pursuant to Chapter 21 of the Code, 66 Pa. C.S. §2101 *et seq.* TrAILCo Main Brief, p. 71. The undersigned recommended, in the alternative, that the Commission deny TrAILCo’s request for approval of the Service Agreement

because it permits AESC to terminate the Service Agreement upon 60-days' prior notice.¹³ TrAILCo Exhibit MAM-2, paragraph no. 6. TrAILCo must be technically fit and able to function and operate as a public utility, not only at the time of this Application, but also thereafter. Pursuant to the Service Agreement as written, it is conceivable that AESC could terminate the Service Agreement and TrAILCo would not be able to operate and function as a public utility in the future. Any contracts between TrAILCo and affiliated interests in which affiliated interests agree to perform vital services for TrAILCo should only be terminated by order after Commission review and approval.

The Service Agreement, even if approved by the Commission, would not be enough to establish that TrAILCo is technically capable. Interestingly, TrAILCo recognizes that more is required to be “technically capable” than what has been provided in this proceeding. On page 71 of its main brief, in footnote 264, TrAILCo states as follows:

Although no other affiliated interest approvals are being sought in this Application, TrAILCo, West Penn and/or other Allegheny affiliates may seek future approvals from this Commission under Code Chapters 11 and 21 for such matters as operation and maintenance services for the Prexy Segment, the Prexy 138 kV Lines and the Pennsylvania 502 Junction Segment, and the related substations, interconnection agreements, etc.

TrAILCo Main Brief, p. 71, note 264 (emphasis added).

TrAILCo is requesting that the Commission find that it has the technical capacity to provide electric transmission service in this Commonwealth without providing credible evidence that it has the ability to *operate and maintain* the TrAIL. TrAILCo is under the mistaken impression that technical capacity is established by the fact that TrAILCo, if granted a certificate of public convenience, will be an operating company within the Allegheny system. More is required. Other corporations within the Allegheny system are under no enforceable duty or obligation to provide services to TrAILCo, absent a contract. More importantly, this Commission cannot force companies within the Allegheny system to perform services for TrAILCo. TrAILCo is a separate legal entity.

¹³ See “E. Affiliated Interest Agreements,” a. “Service Agreement (TrAILCo Exhibit MAM-2),” p. 215 of this Recommended Decision for a full discussion of the Service Agreement.

TrAILCo must either possess sufficient staff and operating skills to function as a public utility or contract with service providers to obtain them. The service providers may be affiliates of TrAILCo, in which case the contracts must be approved by the Commission. If TrAILCo enters into contracts for the services required to be “technically capable,” it must establish that the services will be satisfactorily, reliably and safely performed *before* a certificate of public convenience can be granted. The Commission cannot permit TrAILCo to offer, render, furnish or supply electric transmission service in this Commonwealth based upon the record here. Accordingly, the undersigned recommend that the Commission deny TrAILCo’s Application for a certificate of public convenience because TrAILCo failed to provide credible evidence that it is technically capable.

6. Financial Ability

An applicant for a certificate of public convenience should possess the financial ability to give reliable and responsive service to the public. An applicant should own or have sufficient financial resources to obtain the equipment needed to perform the proposed service. Re: O'Connor, 54 Pa PUC 547 (1980).

If the TrAIL project comes to fruition, TrAILCo will own the TrAIL assets. It may also own, operate and maintain the Static VAR Compensator proposed to be installed at the Black Oak Substation in Maryland and two additional transformers to be installed at the Wylie Ridge Substation located in the northern panhandle of West Virginia. TrAILCo St. 1, p. 11.

The total project cost for the Pennsylvania, West Virginia and Virginia segments, excluding the Dominion Virginia Power portion of the TrAIL, is estimated to be \$877 million. Tr. 3035-3036; MAM Supp. Ex. No. 2. This total cost figure includes engineering construction, administrative and legal costs. Tr. 3035-3036. According to the testimony of Mr. Flitman, TrAILCo’s financing program is expected to have three components: (i) a loan agreement and related documents that will permit borrowing up to \$550 million; (ii) interest rate hedges to hedge TrAILCo’s interest rate exposure on the loan agreement; and (iii) issuing up to \$550

million of common stock to finance all portions of the TrAIL.¹⁴ TrAILCo Main Brief, p. 67; TrAILCo St. 1, p. 12.

In its main brief, TrAILCo asserts that its financing program currently on file with FERC will provide it with capital in amounts sufficient for it to provide reliable and responsible transmission service to the public. The other parties did not address the issue of TrAILCo's financial fitness in their briefs.

The undersigned conclude that TrAILCo has the financial capacity to provide reliable and responsive service to the public based upon the cost estimates for the TrAIL project and the aforementioned financing program. In the event the Commission finds, contrary to our recommendation, that there is a public need for the transmission service TrAILCo proposes to provide, then the undersigned recommend that the Commission determine that TrAILCo has the financial capacity to provide reliable and responsive service to the public.

7. Legal Fitness

An applicant for a certificate of public convenience must have a propensity to operate safely and legally. Re: O'Connor, 54 Pa PUC 547 (1980); Application of Penn Access Corporation and Digital Direct of Pittsburgh, Inc., 1992 Pa. PUC LEXIS 45 (May 1, 1992). In Re: O'Connor, the Commission stated as follows:

. . . lack of fitness is demonstrated by persistent disregard for, flouting, or defiance of the Public Utility Law and the commission's orders and regulations. Hubert v. Pennsylvania Pub. Service Commission (1935) 118 Pa. Super. Ct. 128; and by violations in matters affecting the safety of operations. Schuylkill Valley Lines v. Pennsylvania Pub. Utility Commission (1939) 137 Pa. Super. Ct. 101, 31 PUR NS 502, 8 A.2d 487.

Re: O'Connor, 54 Pa PUC at 549.

¹⁴ Pursuant to the terms and conditions set forth in a Capital Contribution Agreement ("CCA") dated February 15, 2007 but effective as of January 31, 2007, AET agrees to transfer up to \$550 million to TrAILCo on or before the completion of the transmission projects set forth in the CCA. TrAILCo Exhibit MAM-3.

If an applicant, like TrAILCo, does not possess operating authority, the Commission may consider any evidence which would bear upon the applicant's propensity to operate safely and legally. *Id.*, at 549-550.

An applicant seeking authority from the Commission does not have the burden of proof that it will operate legally and safely. Rather, it is presumed that applicants will operate legally and safely. However, it is the duty of the presiding Administrative Law Judge to monitor the record as a whole, in the public interest and in the interest of maintaining the integrity of the regulatory process, to discern whether an applicant lacks such a propensity. Once the record fairly suggests that an applicant lacks a propensity to operate legally or safely, then the applicant does have the burden of proof to show that such is not the case. When the record, as a whole, affirmatively demonstrates that an applicant lacks a propensity to operate legally, administrative discretion must be exercised to determine whether, and to what extent, the application should be granted.

Application of Penn Access Corporation, 1992 Pa. PUC LEXIS 45 at *15-16.

The ECC contends that TrAILCo's conduct during the application process demonstrates that it is unfit to be a public utility. According to the ECC, TrAILCo has violated its duties of good faith and fair dealing, and failed to provide reasonable services to individuals that it anticipates would be its "patrons" *See* 52 Pa. Code §56.1; 66 Pa. C.S. §102. ECC Main Brief, p. 72. The ECC further contends that TrAILCo has "persistently flouted and defied the Public Utility laws" and is unfit to be a public utility. ECC Main Brief, p. 73. Both the ECC and the OCA take issue with the conduct of land agents and representations made by land agents who contacted affected property owners during the application process.

The OCA filed a Motion of the Office of Consumer Advocate for Injunctive Relief. The motion alleges that agents of TrAILCo made misrepresentations and engaged in harassing behavior in the course of contacting property owners. The allegations are based on

testimony presented at the various public input hearings and site visits.¹⁵ The OCA requested that TrAILCo be enjoined from continuing to engage in the alleged misconduct. Further, the OCA requested that those property owners who executed damage release contracts with TrAILCo be permitted to request, and have the Commission grant, that the contracts be declared null and void. OCA's requests were based on this Commission's authority to supervise the conduct of public utilities under the provisions of Sections 1501 and 508 of the Public Utility Code, 66 Pa. Code §§1501, 508.

TrAILCo filed its detailed answer to the motion under date of November 7, 2007. In its answer, TrAILCo noted that it did not have an opportunity to respond with testimony to the allegations. Secondly, TrAILCo pointed out that it is not yet a Pennsylvania public utility. Further, TrAILCo submitted that the motion was moot in that, based on the testimony at the public input hearings and site visits, it severely restricted the activity of its contractors and sub-contractors pending a further review and contracting with a new right-of-way subcontractor. TrAILCo appended a code of conduct to its answer that it pledged to enforce with its representatives. TrAILCo also appended an affidavit from Mr. Jay Roberto, director of transmission siting for TrAILCo that, in essence, deplored the ill will expressed by witnesses at the public input hearings and site visits regarding the alleged misconduct of the right-of-way procurement agents. The undersigned issued a "Rulings on Various Motions" dated December 5, 2007 wherein it was ordered that the Motion of the Office of Consumer Advocate for Injunctive Relief is held in abeyance and may be renewed if circumstances warrant.

In its reply brief, TrAILCo asserts that, regardless of whether the allegations of various property owners were true, TrAILCo gave them the utmost attention. TrAILCo cites the testimony of its witness, Jay Ruberto, who stated as follows:

¹⁵ At the public input hearings, property owners expressed concerns about TrAILCo's land agents telling people that the transmission lines were "a done deal" and that they already had a certification of public convenience. Tr. 392, 446, 1164, 1524, 1526, 1920. Property owners also expressed concerns about TrAILCo's land agents allegedly misinforming people about who had signed the damages release contracts and the scope of the rights released under the damages release contracts. Tr. 359, 1538-1540, 1699-1700, 1780-1781, 1919-1922, 1970, 1975.

We are concerned about such allegations – whether substantiated or not. We strive to make our interactions with actual or potentially affected property owners as reasonable and non-threatening as possible, recognizing the substantial emotions that naturally surround a major electric transmission line project crossing some local property.¹⁶

TrAILCo contends that it took the allegations regarding land agent conduct very seriously, while remaining acutely aware of the emotionally-charged environment in which the TrAILCo right-of-way (“ROW”) agents were operating. TrAILCo Reply Brief, p. 48. According to TrAILCo, ROW subcontractor Universal Field Services was removed from landowner negotiations in Pennsylvania in a good faith effort to address the allegations.¹⁷ Tr. 3344-3345. Also, TrAILCo promulgated a Code of Conduct for the purpose of clarifying how ROW agents should behave in dealing with property owners in response to the allegations. TrAILCo asserts that its remedial measures were made in good faith in response to the *perceptions* that TrAILCo’s land agents were acting inappropriately and do not represent a concession of any wrongdoing. TrAILCo Reply Brief, p. 48.

None of the land agents of Universal Field Services, AESC or any other contractor or subcontractor testified in this proceeding to rebut the property owners’ allegations made at the public input hearings. TrAILCo relied on Mr. Ruberto’s testimony alone. Mr. Ruberto was asked the following questions during cross-examination by counsel for the ECC, Willard R. Burns, Esquire, and provided the following answers:

Q. Now, did you investigate any of these allegations of improper conduct?

A. . . . what we found was it’s difficult to see how you could resolve – what people heard and what might have been said might have been vastly different. What we found is we couldn’t really figure out for sure what may have or may have not happened . . .

Q. Did you determine whether those allegations were true about trespass or pressure tactics or any of the other alleged improper conduct?

¹⁶ TrAILCo Rebuttal St. 11, p. 3.

¹⁷ Universal Field Services does, however, continue to negotiate with other landowners in states outside of Pennsylvania. Tr. 3345.

A. Most things it was difficult to pinpoint whether it occurred or not . . .

Q. Did you determine that there had been occasions of trespass?

A. I don't recall any. I don't recall any occasions of trespass.

Tr. 3346-3347.

The undersigned found the testimony of the property owners at the public input hearings regarding interactions with land agents or ROW agents to be credible. The issue here is whether the conduct of the land agents and representations made by land agents prior to the public input hearings amounts to persistent flouting and defiance of the Public Utility Code by TrAILCo. The undersigned conclude that they do not. TrAILCo rightly assumed the allegations were true, removed Universal Field Services as a land agent in Pennsylvania and implemented a written Code of Conduct for land agents. These remedial measures, if anything, demonstrate that TrAILCo intends to comply with the law. Accordingly, in the event the Commission finds, contrary to our recommendation, that there is a public need for the transmission service TrAILCo proposes to provide, the undersigned recommend that the Commission determine that TrAILCo has a propensity to operate safely and legally.

8. Concerns

In its main brief, the OCA explained TrAILCo's rate recovery in a concise, coherent fashion. The proposed Prexy 500 kV segment would be allocated to all of PJM while the proposed Prexy Facilities, comprised of the Prexy Substation and the five 138 kV lines, would be allocated just to the Allegheny Power Zone.¹⁸ TrAILCo Exhibit MAM-5. TrAILCo has sought recovery of the nearly \$1 billion in estimated costs of both the Prexy Facilities and the 502 to Loudoun Facilities through a "205 filing," also known as a "formula rate filing" made in February 2007. Trans-Allegheny Interstate Line Co., Docket No. ER07-562-000; Tr. 3000.

¹⁸ As Mr. Mader testified, the FERC denied a petition for rehearing of the Order in Docket No. EL05-121-000 allowing for "postage-stamp" rate treatment of 500 kV lines and above and the "beneficiary pays" methodology for lines carrying less than 500 kV; however, an appeal of that Order is now pending. Tr. 3004-3005.

Through that filing, rates related to the two TrAIL projects went into effect on June 1, 2007. Tr. 3001; OCA Main Brief, pp. 63-64.

The FERC appointed a settlement judge to guide the interested parties' negotiation of the final rate structure and the final return on equity to apply to the projects. Tr. 3002-3003. Once FERC set the rates for recovery of proposed project costs, PJM began to bill the load-serving entities (LSE) for their share of the costs pursuant to the relevant methodology. Tr. 3009-3010, 3012. It is then up to the LSE to request approval of a rate recovery mechanism by its state regulatory agency. Tr. 3010. In the case of West Penn Power customers, the utility intends to seek approximately \$14.5 million annually under current estimates for their share of the allocated revenue requirement associated with the two TrAILCo projects. Tr. 3007-3008; OCA Main Brief, p. 64.

On March 14, 2008, TrAILCo submitted a proposed settlement of the 205 filing to the FERC. Trans-Allegheny Interstate Line Co., Docket No. ER07-562-004.¹⁹ Allegheny Power has not yet submitted a filing to this Commission to collect the costs associated with the two TrAIL projects from its ratepayers. Tr. 3011; OCA Main Brief, p. 64.

The formula rates²⁰ currently billed by PJM to the LSEs are based upon estimated costs for the year ahead. Tr. 3013. Those estimated costs are subject to annual true-up at year's end. Tr. 3012-3013. The intention is that the Company recover its actual costs expended, no more and no less. Tr. 3014. This dollar-for-dollar recovery applies to interest and the cost of debt as well. Tr. 3014-3015. The cost of equity is the only fixed element in the formula. Tr. 3015. No matter what the level of transmission service sales, TrAILCo will receive its authorized rate of return on the capital investments associated with the projects, unless such rate of return is successfully challenged through a complaint to the FERC. Tr. 3015-3016. The incentive rate of return associated with TrAIL is 12.7%. Tr. 3018. The incentive rates of return

¹⁹ The Presiding Officers accepted this March 14, 2008 FERC filing in its entirety as part of the evidentiary record pursuant to 52 Pa. Code §5.406.

²⁰ The settlement specifies that no element within it is to be considered precedential or settled practice. Trans-Allegheny Interstate Line Co., Docket No. ER07-562-004, at 14, ¶7.4; Public Service Comm'n of New York, 642 F.2d 1335 (D.C. Cir. 1980).

include “adders” that take into consideration such factors as the length of the line and the level of difficulty involved in construction. Tr. 3019. TrAILCo will also receive a 50 basis point “adder” for joining and remaining a member of a regional transmission organization. Tr. 3019. The FERC ratemaking described differs substantially from state ratemaking in that pre-commercial costs are recoverable; in other words, the Company will amortize and expense over four years any pre-commercial costs for the TrAIL project that were incurred prior to January 1, 2007. Tr. 3021-3022. The FERC granted guaranteed cost recovery for the TrAIL project, in that if for some reason the project is never completed, TrAILCo can apply to the FERC for full recovery of these abandonment costs. Tr. 3021-3022. TrAILCo is also permitted by the FERC to include 100% of “Construction Work In Progress” (“CWIP”) in its rate base prior to the in-service date of the plant. TrAILCo St. 10A, p. 7; Tr. 3022. Inclusion of CWIP in rate base is not generally permitted under state ratemaking. 66 Pa. C.S. §1311(b) (rate base is the original cost of the plant when first devoted to public service, less applicable depreciation); 66 Pa. C.S. §1315 (electric plant must be used and useful). OCA Main Brief, pp. 65-66.

The total annual billings to all Pennsylvania utilities within the PJM zone²¹ are estimated at over \$52 million per year.²² MAM Supp. Ex. 2. TrAILCo’s total annual revenue requirement for both projects would gradually increase from \$6.2 million in 2007 to approximately \$192 million by 2011 as the facilities near completion. TrAILCo St. 10A at 7, OCA Main Brief, p. 66.

As discussed above, TrAILCo’s rate structure and return on equity are not subject to the Commission’s jurisdiction. Even though the Commission does not set TrAILCo’s rates, Pennsylvania ratepayers will ultimately pay a significant portion of the TrAIL project costs after the Pennsylvania LSEs seek and obtain Commission approval of rate recovery mechanisms . . .

²¹ The Pennsylvania utilities include West Penn, Duquesne, Met-Ed, Penelec, PECO and PPL. MAM Supp. Ex. 2. Penn Power is excluded as it is part of the MISO Regional Transmission Organization. *Id.*; Tr. 3618. If Duquesne withdrew from PJM, its allocated amount will be collected from remaining members. Tr. 3618-3619.

²² The OCA notes that MAM Supp. Ex. 2 appears to be using numbers from the original TrAILCo Exhibit MAM-6, filed with Mr. Mader’s Supplemental Direct Testimony, in July 2007. For example, Supplemental Ex. 2 provides the 138 kV facilities in Pennsylvania have a cost of approximately \$94.14 million, the same number as TrAILCo Exhibit MAM-6. Revised TrAILCo Exhibit MAM-6 shows these same costs as \$100.19 million. This is a minor discrepancy that the OCA points out only for the sake of clarity.

even if the TrAIL project is never completed. Regardless of whether the Commission sets TrAILCo's rates, the Commission has an obligation to ensure that every rate demanded or received shall be just and reasonable. *See generally* 66 Pa. C.S. §1301. The Commission may not set TrAILCo's rates but the Commission must certainly review TrAILCo's FERC rates and rate requests, its contracts, its costs, cost allocations, taxes, and tax allocations, among other things, to be in a position to *challenge* TrAILCo's rates, rate requests and cost recovery in a proceeding before FERC. A ratepayer or party can challenge TrAILCo's FERC approved rates through a "section 206 filing" with FERC. Tr. 3016. As a practical matter, if the Commission does not critically review or evaluate TrAILCo's rates, rate requests and costs submitted to FERC or approved by FERC, what party will ever do so? TrAILCo's rates are not charged directly to Pennsylvania ratepayers but they will nonetheless be collected from Pennsylvania ratepayers eventually.

The provisions of Chapter 21 of the Code, 66 Pa. C.S. §2101 *et seq.*, entitled, "Relations with Affiliated Interests," do not apply to the rates and related terms and conditions for the interstate transmission of electricity which have been submitted to and approved by a Federal regulatory agency having jurisdiction thereof. 66 Pa. C.S. §2107. Certain contracts between TrAILCo and affiliated interests within the Allegheny corporate family, or certain terms and conditions within contracts between TrAILCo and affiliated interests, are not subject to Commission approval.

TrAILCo has entered into contracts with affiliated interests and other contractors in order to provide electric transmission service to the public in Pennsylvania. TrAILCo intends to enter into additional contracts as well. TrAILCo does not have the in-house personnel, operating skill or facilities to provide service on its own without such contracts. In the event the Commission decides to grant TrAILCo a certificate of public convenience, it is critically important for the Commission to ensure that any contractual relationships between TrAILCo and affiliated interests or others enable TrAILCo to furnish and maintain adequate, efficient, safe and reasonable transmission service and transmission-related facilities. *See* 66 Pa. C.S. §1501. TrAILCo's contracts with affiliated interests and others must be worded to ensure that adequate, efficient, safe and reasonable transmission service and transmission-related facilities are

furnished and maintained at the time of application and thereafter. Affiliate interests should not be permitted to terminate contracts with TrAILCo without first seeking and obtaining Commission approval.

Section 2104 of the Code entitled, “Contracts to be in writing; cost data,” provides that the Commission may, by regulation or order, require that any contract with an affiliated interest contain a provision whereby the affiliated interest agrees to furnish to the public utility, at the time of billing such public utility for any service, property, security, right, or thing, under such contract, a detailed statement of the cost to the affiliated interest of such service, property, security, right, or thing. 66 Pa. C.S. §2104. If the Commission grants TrAILCo’s application for a certificate of public convenience, the Commission should require affiliated interests to provide detailed cost statements to TrAILCo pursuant to 66 Pa. C.S. §2104. This will better enable the Commission to review and evaluate TrAILCo’s costs annually.

If the Commission grants TrAILCo’s application for a certificate of public convenience, the Commission should require that any agreements with affiliates must include a schedule of costs and the formula or method for allocating costs among various entities within the Allegheny corporate family when a service, property, security, right, or thing is provided to or for TrAILCo and one or more affiliates. The Commission should require that agreements regarding tax allocations to which TrAILCo is a party with other affiliated interests include the formula or method for tax allocation. This will better enable the Commission to review and evaluate TrAILCo’s costs annually as well.

If the Commission grants TrAILCo a certificate of public convenience, the Commission must examine and continue to review the books and records of TrAILCo to ensure that TrAILCo’s rates are just and reasonable. Title 16 entitled “Conservation,” of the United States Code, Chapter 12, “Federal Regulation and Development of Power Regulation of Electric Utility Companies Engaged in Interstate Commerce,” Section 824, provides in pertinent part as follows:

(g) Books and records.

(1) Upon written order of a State commission, a State commission may

examine the books, accounts, memoranda, contracts, and records of--

(A) an electric utility company subject to its regulatory authority under State law,

(B) any exempt wholesale generator selling energy at wholesale to such electric utility, and

(C) any electric utility company, or holding company thereof, which is an associate company or affiliate of an exempt wholesale generator which sells electric energy to an electric utility company referred to in subparagraph (A),

wherever located, if such examination is required for the effective discharge of the State commission's regulatory responsibilities affecting the provision of electric service.

(2) Where a State commission issues an order pursuant to paragraph (1), the State commission shall not publicly disclose trade secrets or sensitive commercial information.

(3) Any United States district court located in the State in which the State commission referred to in paragraph (1) is located shall have jurisdiction to enforce compliance with this subsection.

(4) Nothing in this section shall--

(A) preempt applicable State law concerning the provision of records and other information; or

(B) in any way limit rights to obtain records and other information under Federal law, contracts, or otherwise.

(5) As used in this subsection the terms "affiliate", "associate company", "electric utility company", "holding company", "subsidiary company", and "exempt wholesale generator" shall have the same meaning as when used in the Public Utility Holding Company Act of 2005.

16 U.S.C.S. §824 (emphasis added).

Section 504 of the Code, 66 Pa. C.S. §504, provides that,

The commission may require any public utility to file periodical reports, at such times, and in such form, and of such content, as the commission may prescribe, and special reports concerning any matter whatsoever about which the commission is authorized to inquire, or to keep itself informed, or which it is required to enforce. The commission may require any public utility to file with it a copy of any report filed by such public utility with any Federal department or regulatory body. All reports shall be under oath or affirmation when required by the commission.

Pursuant to 66 Pa. C.S. §504, if TrAILCo's Application is granted by the Commission, the Commission should require that TrAILCo contemporaneously file with the Commission copies of all present and future pre-filings and filings made with FERC including

but not limited to all rate requests and FERC Form 1 annual financial reports. The Commission should also issue an appropriate order directing TrAILCo and any affiliate subsidiaries or affiliate holding companies the Commission deems proper to permit the Commission to examine books, records, accounts, contracts, memoranda, etc. in some manner pursuant to 16 U.S.C.S. §824. Section 505 of the Code requires Pennsylvania public utilities to furnish information to the Commission from time to time as the Commission may require. *See* 66 Pa. C.S. §505.

Given the Allegheny corporate organizational structure discussed above under the heading, “Fitness,” it would be difficult to regulate TrAILCo as a practical matter. *See generally* Paul J. Garfield & Wallace F. Lovejoy, Public Utility Economics , 434-469 (1964). TrAILCo was incorporated out of state. The holding company that owns TrAILCo was also incorporated out of state. FERC has jurisdiction over TrAILCo’s rate structure, return on equity and annual cost “true-up” proceedings. The above recommendations regarding the provision of information and affiliated interest contracts are necessary for this Commission to properly regulate TrAILCo in the event a certificate of public convenience is approved.

To summarize, TrAILCo’s application for a certificate of public convenience should be denied because TrAILCo has failed to prove that a certificate of public convenience is necessary or proper for the service, accommodation, convenience or safety of the public. As will be discussed later, TrAILCo failed to establish a public need for either the Prexy Facilities or the 502 Junction Facilities. Finally, TrAILCo did not meet its burden of proof with respect to “technical capacity.”

B. Authorization and Certification to Locate, Construct, Operate and Maintain Certain HV Electrical Transmission Lines

1. Need for the Proposed Facilities

a. Legal Standards

The regulations dealing with the Commission review of the siting and construction of electric transmission lines are found in Subchapter G to Chapter 57 of 52 Pa.

Code, 52 Pa. Code §§57.71, *et seq.* Section 57.72, 52 Pa. Code §57.72, specifies the content of an application to site and construct a transmission line. Section 57.74, 52 Pa. Code §57.74, sets the procedure for filing, serving and providing notice of the filing of an application. Section 57.75, 52 Pa. Code §57.75, provides the procedure for setting a hearing or hearings on an application and the subject matter to be covered in the proceeding. Section 57.76, 52 Pa. Code §57.76, provides the required content for any Commission order issued relative to a filed application. It reads as follows:

§57.76. Determination and order.

(a) The Commission will issue its order, with its opinion, if any, either granting or denying the application, in whole or in part, as filed or upon the terms, conditions or modifications, of the location, construction, operation or maintenance of the line as the Commission may deem appropriate. **The Commission will not grant the application, either as proposed or as modified, unless it finds and determines as to the proposed HV line:**

(1) **That there is a need for it.**

(2) That it will not create an unreasonable risk of danger to the health and safety of the public.

(3) That it is in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth.

(4) That it will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives.

(b) A Commission order granting a siting application will be deemed to include a grant of authority, subject to the provisions of law, to locate and construct the proposed HV transmission line within a corridor consisting of the area of 500 feet on each side of the centerline of the proposed HV transmission line unless the applicant requests and the Commission approves a corridor of a different size. A proposed HV transmission line may not be constructed outside the corridor, except upon petition to and approval by the Commission.

52 Pa. Code §57.76. (Emphasis supplied.)

Section 57.75, dealing with hearing and notice, provides in part for the acceptance of evidence on the present and future necessity of the proposed high-voltage transmission line in furnishing service to the public. 52 Pa. Code §57.75(e) (1). The terms “HV transmission line”

or “HV line” are defined as an overhead electric supply line with a designed voltage in excess of 100,000 volts, or 100 kV. 52 Pa. Code §57.1.

Interestingly, the Commission Order adopting the transmission line regulations referred to above provides no explanation or definition of the term “need.” Re Overhead Electric Transmission Lines, 51 Pa. PUC 682 (1978). In a case decided after the adoption of the siting regulations, this Commission examined the five justifications for the proposed transmission lines in detail, and concluded that the record did not support the alleged justifications of need. The Commission concluded that the Applicant had failed to carry its burden of proof. Re West Penn Power Company, Application Docket Nos. 100200, *et al.*, 54 Pa. PUC 319 (1980).

In a relatively recent case, the Commonwealth Court rejected basing the denial of an application to site an HV transmission line on a failure to show an “engineering need.” The Commonwealth Court vacated the Commission’s Order and remanded the case for consideration of the “statutory standards specified in the Code and the regulations promulgated thereunder.” Penna. Power & Light Co. v. Pa. PUC, 696 A.2d 248 (Pa. Cmwlth. 1997). In its opinion, the Commonwealth Court placed emphasis on the provisions of Section 1501 of the Public Utility Code that requires, in pertinent part, every utility to make improvements “as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public.” 66 Pa. C.S. §1501; Penna. Power & Light Co., above, at 250. The Commonwealth Court also emphasized language in 52 Pa. Code §57.76(a)(4) that requires that the Commission, prior to granting approval of an application, consider that the proposed transmission line will have a minimum environmental impact “*considering the electric power needs of the public, the state of the available technology and the available alternatives.*” Penna. Power & Light Co., above, at 250 (emphasis in original).

In assessing the public need for the Pennsylvania 502 Junction Facilities and the Prexy Facilities, it has become abundantly clear to us that “public need” is an amorphous concept. The inquiry to determine whether a public need for a transmission project exists depends on the specific facts presented regarding each project and upon the future impacts or consequences within a broad context. The impacts and consequences of approving the project

and the impacts and consequences of not approving the project, both beneficial and adverse, must be weighed. The Commission must determine, for planning and policy purposes, whether a proposed transmission project is ultimately necessary or proper for the accommodation, convenience and safety of patrons, employees and the public.

b. 502 Junction – Need

TrAILCo proposes to construct a substation, specifically the 502 Junction Substation, in southern Greene County and either acquire, or take by eminent domain, a 1.2 mile corridor to construct a 500 kV transmission line from the substation in a southerly direction to the West Virginia border.

In the case of the 502 Junction Facilities, it is not enough for the Commission to simply consider and decide whether the project will sufficiently address modeled reliability problems and enhance the country's bulk electric transmission system. If the inquiry were so limited, it would be difficult to conceive of a new 500 kV line transmission project that would not be "in the public interest" or "needed." If the inquiry were so limited, virtually all transmission projects proposed would be approved and constructed. Such a narrow inquiry would obviate the need for long-term transmission planning. As reliability problems are periodically modeled, based upon load forecasts, generation retirements, etc., transmission projects would be built and the country's bulk electric transmission system would be enhanced in increments. If the Commission does not step back and look at this project outside of the narrow confines of the transmission planning process, in a broader context, it cannot truly determine whether there is a "need." The Commission must examine the transmission planning process and the modeled reliability problems along with the generation planning process, alternative energy initiatives, demand side management (DSM), environmental impacts, and the costs and benefits (both monetary and non-monetary) of the project in order to effectively assess the "need."

i. The Positions of the Parties

(a) TrAILCo's Position

Under the Federal Power Act, the FERC designated PJM as the Regional Transmission Organization (“RTO”) charged with maintaining the reliability of the bulk transmission system in a thirteen state region that includes Pennsylvania. *See* ECC Cross Exam. Exs. 2 and 3. The Energy Policy Act of 2005 (“EPAAct of 2005”) designated the North American Electric Reliability Corporation (“NERC”) as the Electric Reliability Organization for the United States. The FERC has since adopted many of the NERC’s reliability standards²³ making them mandatory for RTOs, such as PJM, and transmission owners.²⁴ TrAILCo Main Brief, p. 9. In April 2002, the three operating companies comprising Allegheny Power joined PJM as “Transmission Owners” and transferred functional control of their transmission systems to PJM at that time. TrAILCo St. 1, p. 5. Pursuant to the PJM Operating Agreement’s “obligation to build” provisions, PJM directed Allegheny Power to construct, own and/or finance the portion of the TrAIL within the Allegheny Power transmission zone of PJM. TrAILCo Main Brief, p. 24.

The NERC reliability standards require PJM to establish procedures to stress the transmission system as part of the application of NERC Category B contingencies. TrAILCo Main Brief, p. 11. Each year, PJM develops a Regional Transmission Expansion Plan (“RTEP”). TrAILCo Main Brief, p. 13. The RTEP process incorporates transmission planning on five-year and fifteen-year planning horizons. TrAILCo Main Brief, p. 14. PJM uses load deliverability

²³ NERC Category A criteria require that, for all facilities in service, equipment thermal ratings and system voltage limits are respected and that the system is stable. NERC Category B criteria impose similar requirements with one facility removed from service, referred to as the “n-1” criterion. NERC Category B criteria are intended to ensure that the transmission system continues to remain reliable upon the instantaneous outage of a transmission element. PJM ensures compliance with NERC Category A and B through the more rigorous deliverability criteria used in testing the PJM system. NERC Category C criteria require the system to be stable, and equipment thermal ratings and system voltage limits to be respected, for less probable system events. Such events include second contingencies, which involve the loss of one system element followed by system readjustments and then the loss of a second system element. This is referred to alternatively as the “n-2” or “n-1-1.” TrAILCo St. 3, pp. 11-12; TrAILCo St. 3-R, p. 4.

²⁴ *See*, Order No. 693, Mandatory Reliability Standards for the Bulk-Power System, Docket No. RM06-16-000, 118 FERC ¶61,218 (March 16, 2007) (FERC approval of 83 of 107 proposed reliability standards, including all “TPL” series transmission planning standards relevant here). TrAILCo St. 3-R, p. 2.

and generator deliverability tests in power flow modeling to stress the transmission system to assure reliability within PJM's control area. TrAILCo Main Brief, pp. 10, 13.

The load deliverability test evaluates the capability of the transmission system to deliver energy from the remainder of the PJM region to a portion of the PJM region experiencing higher than normal unavailability of generating capacity. This test examines defined load zones within the PJM region and considers the ability of the transmission system to deliver adequate power to those zones during a generation capacity emergency. The generator deliverability test evaluates the capability of the transmission system to deliver energy from a grouping of generators experiencing higher than normal availability to the remainder of the PJM region experiencing lower than normal generator availability. This test shows the extent to which capacity resources can be delivered to the remainder of the system at peak load. TrAILCo St. 3, p. 11; TrAILCo Main Brief, p. 10, footnote 22. Both tests are conducted by simulating the transmission system as it is expected to exist during future time periods. TrAILCo claims that the simulation includes expected load growth (for the load deliverability test this includes the anticipated benefits of DSM and conservation activities), the addition of new generating plants and the retirement of existing generation plants, and planned transmission construction projects. TrAILCo St. 4, pp. 11-12; TrAILCo Main Brief, p. 10, footnote 23. TrAILCo asserts that these tests have been consistently applied for over seven years to RTEP baseline studies, generation interconnection studies and merchant transmission interconnection studies. TrAILCo Main Brief, p. 11.

According to TrAILCo, “[p]eak demand in the mid-Atlantic and northern Virginia areas is the primary factor causing the need for the Pennsylvania 502 Junction Facilities.” TrAILCo Main Brief, p. 19. TrAILCo witness Scott W. Gass testified that “load pockets,” which are load centers that do not have sufficient local generation of electricity relative to the load center's electric load, exist in these areas. In the 2006 RTEP, PJM identified the following twelve violations of NERC reliability criteria using PJM's load deliverability and generator deliverability tests and Dominion Virginia Power's planning criteria:

TrAILCo Exhibit SWG-1

Electrical Occurrence	Electrical Result
1 Outage of Mount Storm – Greenland Gap Line #572A.	
2 Outage of Meadow Brook – Greenland Gap Line #572B.	
3 Outage of Hatfield – Black Oak 500 kV line #542.	
4 Outage of Bedington – Black Oak 500 kV line #544.	
5 Outage of Mount Storm – Greenland Gap 500 kV line #572A while Possum Point Unit #5 is unavailable.	Mount Storm – Doubs 500 kV line #512 exceeds its emergency rating and overloads.
6 Outage of Meadow Brook – Greenland Gap line #572B while Possum Point Unit #5 is unavailable.	
7 Outage of Hatfield – Black Oak 500 kV line #542 while Possum Point Unit #5 is unavailable.	
8 Outage of Bedington – Black Oak 500 kV line #544 while Possum Point Unit #5 is unavailable.	
9 Outage of Hatfield – Black Oak 500 kV line #542.	Mount Storm – Pruntytown 500 kV line #510 exceeds its emergency rating and overloads. The 138 kV system voltage level around Meadow Brook Substation drops below acceptable limits and could lead to a voltage collapse in the area.
10 Outage of Morrisville – Meadow Brook 500 kV line #580 and the Meadow Brook – Greenland Gap line #572B.	
11 Outage of the Hatfield – Black Oak 500 kV line #542 and Mount Storm – Doubs line #512.	The 500 kV and 138 kV system voltage levels around Meadow Brook Substation drops below acceptable limits.
12 Outage of the Black Oak – Bedington 500 kV line #544 and Mount Storm – Doubs line #512.	

TrAILCo contends that the above table, TrAILCo Exhibit SWG-1, which was attached to TrAILCo St. 4, identifies electrical occurrences or contingencies and the electrical result of each occurrence if it happens any time after June 2011. TrAILCo Main Brief, p. 20. TrAILCo witness Lawrence A. Hozempa testified that customers outside the mid-Atlantic area, including south central Pennsylvania, will be affected if the 502 Junction Facilities are not constructed to meet the modeled reliability violations. He further testified that the reliability problems or

electrical results modeled could have far-reaching effects. TrAILCo Main Brief, p. 22. TrAILCo argues that the 502 Junction Facilities, combined with the remaining portions of the TrAIL project, provide a reasonable and viable solution to the modeled reliability violations. TrAILCo Main Brief, pp. 20-21. According to TrAILCo, PJM selected these facilities for construction, along with the remainder of the 502 Junction Segments, the Mt. Storm Expansion, the Meadow Brook Expansion, the Loudoun Segment and the Loudoun Expansion because all of the modeled overloads in the southern portion of the Allegheny Power transmission zone, set forth in the table above, were resolved with this alternative in a cost effective and timely manner. TrAILCo Main Brief, p. 21.

According to TrAILCo, ECC's argument that electrical occurrences 1-8 in TrAILCo Exhibit SWG-1 can be resolved by re-tensioning, re-grading and/or re-conductoring efforts to increase the Mt. Storms-Doubs line rating is not supported by the evidence. TrAILCo Reply Brief, pp. 22-23, 26-27. TrAILCo contends that these solutions are impractical and unworkable, and that a marginal increase in the line rating and resolution of ground clearance issues will not eliminate the reliability issues identified. TrAILCo Reply Brief, p. 27. TrAILCo points to the rejoinder testimony of Mark S. Allen. TrAILCo contends that,

Re-tensioning of the Mt. Storm-Doubs line would necessitate the replacement of 14 towers due to the deterioration and corrosion of the corten steel towers, and would also require a minimum of 30 weeks of outage time, which is unacceptable on a line which is nearly fully loaded year round. TrAILCo St. 2-RJ, p. 4. Dominion also identified 90 different locations with ground clearance violations and determined that re-grading the ground surface to increase ground clearance at 40 locations, raising 49 structures, and installing one lift structure would take 70 weeks to complete and require 17 weeks of outage time. TrAILCo St. 2-RJ, p. 5. Finally, rebuilding the Mt. Storm-Doubs line with new conductor would require still longer outages. TrAILCo St. 2-RJ, p. 5.

TrAILCo Reply Brief, p. 27 (footnotes omitted).

TrAILCo refutes the ECC's argument that electrical occurrences 5-8 above were not properly validated. According to TrAILCo, the results of PJM's validation test in which generation was increased proportionally throughout PJM to make up for the loss of a Dominion

generator and Dominion's validation test in which generation was increased within Dominion's territory only were the same. TrAILCo Reply Brief, p. 23.

TrAILCo readily concedes that occurrence 9 above is a 2014 issue, not a 2011 issue, but it contends that occurrence 9 should not be viewed in isolation. Since occurrence 9 is in the same corridor as the TrAIL project, TrAILCo argues that observing this occurrence now, along with occurrences 1-8, assists in evaluating and ruling out options. TrAILCo Main Brief, p. 20; TrAILCo Reply Brief, p. 23.

TrAILCo disagrees with the ECC's contention that occurrences 10-12 above can be resolved without a new transmission line by installing a static VAR compensator at Meadow Brook. TrAILCo asserts that it is more cost effective to construct the TrAIL line than to separately install a static VAR compensator. Also, TrAILCo points out that the former CPV Warren power plant is not scheduled to come on line until 2014 and, therefore, it cannot resolve violations modeled to occur in 2011. TrAILCo Reply Brief, pp. 23-24.

According to TrAILCo, alternatives to the TrAIL were considered by Allegheny Power and PJM. TrAILCo Reply Brief, p. 24. TrAILCo disputes OCA's contention that more study is needed to address the impacts of potential carbon legislation on the pricing of generation resources and wholesale prices for four reasons. In its Reply Brief, TrAILCo provides as follows:

First, it is impossible to model greenhouse gas emissions, cap and trade legislation, etc. since it is all so variable and speculative at the present time. Second, TrAILCo does not have the luxury to stand by and do nothing in the face of documented near-term reliability violations in the Mid-Atlantic and Northern Virginia areas that require the siting, construction and operation of the 502 Junction Segments. TrAILCo St. 3-RJ, pp. 2-3. Third, anything impacting generation, like carbon legislation, cap and trade, etc., must be addressed in the de-regulated generation market, which is outside the control of PJM, TrAILCo or Allegheny Power ... Fourth, generation owners will need to comply with all future laws and regulations applicable to their facilities, and the impact of such

rules and legislation on costs and electricity production will be a function of a variety of factors outside of PJM's control.

TrAILCo Reply Brief, pp. 25-26.

TrAILCo argues that no cost/benefit analysis or examination of relative cost is necessary to establish need for the TrAIL, despite the ECC's claim to the contrary. TrAILCo claims the ECC's position is "a gross overstatement of Pennsylvania law." TrAILCo Reply Brief, p. 31. TrAILCo goes on to argue that there is nothing in the Commission's regulations requiring the Commission to accept evidence of costs. Estimated project costs and rate impacts are germane in a ratemaking process at the Commission when a jurisdictional utility seeks to include transmission costs it incurs in retail rates, according to TrAILCo, but they are not germane to siting applications or necessary to establish need. TrAILCo Reply Brief, pp. 31-32.

TrAILCo contends that neither demand-side management ("DSM") nor other energy efficiency programs are reasonable alternatives to the TrAIL because it is not reasonably likely that sufficient levels of these types of programs can obviate the need for the TrAIL facilities in the time period required pursuant to the 2006 RTEP conclusions. TrAILCo Main Brief, p. 26. TrAILCo further asserts that these programs cannot be implemented by a local utility on its own. Rather, these programs need a multi-tiered commitment from customers, utilities, regulators, legislators, regional transmission organizations, etc., to ensure that the most cost-effective programs will be implemented and that appropriate ratemaking is in place to keep utilities whole for the implementation and operating costs. TrAILCo asserts that DSM must be a defined and enforceable commitment before it can be of use to defer or eliminate the need for new transmission. TrAILCo further contends that voluntary DSM programs are not going to displace transmission, even if they do exist, because they cannot be counted on to ensure reliability. TrAILCo Reply Brief, p. 21.

With respect to generation, TrAILCo asserts that there is no evidence in this proceeding that PJM excluded any proposed generator under its RTEP process that should have been included pursuant to the RTEP protocol, or that the construction of any proposed generators identified in this proceeding would delay or defer the need for the PA TrAIL Projects. TrAILCo

argues it would be imprudent to include generation projects at earlier stages in the interconnection process for planning purposes when, statistically, they are more likely to be withdrawn than placed in service. TrAILCo claims there is no evidence that construction of the PA TrAIL projects will worsen the problem of inadequate generation in eastern PJM. TrAILCo Main Brief, p. 27. According to TrAILCo witness Herling's Rejoinder Statement:

If we look at the four queues spanning the two years preceding the development of the 2006 RTEP, only nine generators of greater than 100 MW were entered into the queue across Maryland, New Jersey and Delaware. Of these, eight withdrew from the queue after their Feasibility Study results and one is under construction. *There was no eastern generation omitted from consideration. There was no eastern generation, period.*

TrAILCo St. 3-RJ, p. 3 (emphasis added); See TrAILCo Main Brief, p. 28.

TrAILCo refutes claims by the ECC, specifically witness George C. Loehr, that economic congestion and not a reliability need is the reason justifying the construction of the proposed facilities. According to TrAILCo, PJM operates on a non-profit basis and will not financially benefit from the construction of the PA TrAIL projects. PJM is only concerned that the transmission facilities are built so the transmission system continues to be reliable. TrAILCo goes on to assert that, “[n]either economic benefits to customers or generation owners nor the existence of a regulated rate of return associated with construction of the PA TrAIL Projects were parts of the justification for them.” TrAILCo Main Brief, pp. 35-36.

In its reply brief, TrAILCo refutes the ECC's claim that the 502 Junction-Loudoun line (502 Junction Segments) is being “driven” by Project Mountaineer that PJM brought to FERC in 2005 as a response to a question regarding ways to address west to east transfers in PJM. TrAILCo claims the ECC's assertion is a red herring because Project Mountaineer was a concept only and did not reflect a specific line or route. TrAILCo Reply Brief, pp. 33-34.

(b) ECC's Position

The ECC contends that the twelve alleged electrical occurrences in TrAILCo Exhibit SWG-1, which is set forth above, do not support construction of the proposed 502 Junction to Loudoun Segment of the TrAIL. According to the ECC, all twelve electrical occurrences can be resolved without constructing the 502 Junction to Loudoun Segment of the TrAIL. ECC Main Brief, p. 41.

The ECC asserts that electrical occurrences 1-8 can be eliminated by raising the line rating of the Mt. Storm to Doubs line to 2,754 MVA or higher. ECC Main Brief, p. 45. The emergency rating of the Mt. Storm-Doubs line (2,598 MVA) is primarily limited by ground clearance. Tr. 2331.²⁵ According to the ECC, prior to 2006, a need to increase the rating of the Mt. Storm-Doubs line was identified, and Dominion performed some limited work to increase the emergency rating to 2,598 MVA. Tr. 2425. The ECC claims that, in the 2006 RTEP process, there was no investigation regarding whether additional measures could be taken to improve the ground clearance and raise the conductor's emergency rating. Tr. 2425-2426. There was no attempt to increase the line rating during, or after, the 2006 RTEP process. Tr. 2579-2580. However, as set forth in the testimony of Dominion's Mark S. Allen, the line rating can be raised to 2,910 MVA by resolving certain of the ground clearance issues. Tr. 2428-2429; TrAILCo 20-RJ at 3:18-20 and 4:19-21. ECC Main Brief, pp. 43-44.

The ECC claims there are three feasible ways to raise the line rating of the Mt. Storm-Doubs line that PJM failed to study or explore in the 2006 RTEP. The three possibilities are reconductoring, retensioning, or raising the towers at some locations and performing grading work at other locations. Reconductoring, according to the ECC, is feasible but there would be congestion costs. The Mt. Storm-Doubs line can be retensioned, with a 30-week outage, to raise the rating to 2,910 MVA. TrAILCo 20-RJ at 4:9. Grading and raising of the towers can also

²⁵ The ECC points out the fact that there are two different line ratings for the Mt. Storm to Doubs line. For the portion of the line owned by Dominion, the summer emergency rating is only 2,598 MVA. For the portion of the line owned by Allegheny Power, the summer emergency line rating is much higher – 3,300 MVA. PJM and TrAILCo use the lower of the two numbers (2,598 MVA) as the not-to-exceed emergency rating number. Tr. 2432.

increase the emergency rating to 2,910 MVA with only 17 weeks of outage time. TrAILCo 20-RJ at 5:18. ECC Main Brief, p. 44.

The ECC asserts that electrical occurrences 5-8 cannot be relied upon to support construction of the 502-Loudoun line. The ECC further asserts that electrical occurrences 5-8 were not properly validated by PJM's testing because PJM proportionally increased generation throughout PJM after shutting off the 700 MW Possum Point No. 5 generating unit in Dominion's territory, whereas the Dominion transmission planning test requires a proportional increase of generation within Dominion's territory after shutting off the generating facility. In addition, the ECC quotes the testimony of its witness, George Loehr, who testified that a proportional increase of generation to make up for the shutting-down of the Dominion generator at Possum Point is inappropriate. ECC St. SR-1, p. 23; ECC Main Brief, p. 45.

The ECC quotes its witness, George C. Loehr, as follows:

If you have a problem with overloads on west-to-east transmission, and you are studying the outage of a large eastern generator, you do not increase generation proportionally across the entire system, *including in the west* – obviously, that will only make things worse. The correct approach would be to use transmission constrained dispatch, and increase generation only in the east. In my opinion, such an approach would have prevented all of the violations alleged.

ECC St. SR-1, p. 23; ECC Main Brief, p. 45.

The ECC succinctly addresses occurrence 9 above in its main brief. The ECC argues that because electrical occurrence 9 involves an alleged overload of the Pruntytown-Mt. Storm 500 kV line in 2014, it cannot justify construction of the 502-Loudoun line by 2011. Tr. 2580. The ECC then goes on to argue that TrAILCo has offered no testimony that electrical occurrence 9, in and of itself, requires the construction of the 502-Loudoun line. Tr. 2581. The ECC points out that another proposed extra high-voltage line, the PATH 765 kV line, is intended, among other things, to resolve an overload on the Pruntytown-Mt. Storm line. Tr. 2353; ECC Cross Ex. 21 at 3 and Ex. 23. Thus, the ECC concludes that alleged electrical occurrence 9 cannot be relied upon to support construction of the 502-Loudon line. ECC Main Brief, p. 46.

The ECC contends that if electrical occurrences 1-9 did not exist, the 502-Loudoun line would not be needed to address electrical occurrences 10-12, the voltage issues at Meadow Brook, because a static VAR compensator can be installed there. Tr. 2322, 2582-2583. ECC Main Brief, p. 46. The ECC also argues that if the planned CPV Warren gas-fired generating facility under construction near Meadow Brook is installed by 2011, electrical occurrences 10-12 will be resolved. ECC Main Brief, p. 47. According to the ECC, NERC standards do not prohibit manual system adjustments. The ECC goes on to contend that NERC category C-3 requires manual system adjustments after the loss of the single power system element and before the loss of the second system element. Tr. 2240-2241, 2522, TPL-003-000, TrAILCo Exhibit LAH-4. According to the ECC, electrical occurrences 10-12 on TrAILCo Exhibit SWG-1 are double contingencies under NERC category C-3. *See* TrAILCo Exhibit SWG-1. The ECC claims there is no evidence on the record that TrAILCo performed, or even considered, any manual system adjustments between electrical occurrences 10-12 on TrAILCo Exhibit SWG-1, and, as a result, the alleged conclusions that there is a need to build a 500 kV line, or any other type of electrical transmission facility, based on occurrences 10-12, has not been established. ECC Reply Brief, pp. 8, 14.

With respect to generation, the ECC asserts that some existing and planned generation was not counted in the 2006 RTEP modeling process. According to the ECC, if this existing and planned generation were counted in the modeling, it would eliminate the need for the 502-Loudoun line. The ECC contends that more than 2,800 MW of existing capacity in eastern PJM was not dispatched in the 2006 RTEP modeling process, that tens of thousands of megawatts of generation in the queues in the general area of need was not considered to resolve the alleged reliability issues, and that six or seven generators that had signed interconnection agreements with Dominion were not counted in the 2006 RTEP modeling to resolve reliability issues. ECC Main Brief, pp. 48-49; ECC St. SR-1, p. 10; Tr. 2319, 2414; ECC Cross Ex. 7.

The ECC explained how generators proceed through the transmission planning process and eventually connect to the PJM system. According to the ECC, new generators must perform a feasibility study, an impact study, sign a facilities study agreement, complete a facilities study, have a signed interconnection services agreement, and then, finally, execute a

construction services agreement before construction can start. Tr. 2211-2213. Normally, it takes 18 months to get through PJM's queue to the point where there is an executed interconnection services agreement. Tr. 2296-2297. After that, construction can begin, and a gas-fired generating facility can be constructed in 18 months (optimistically), and certainly within 2 to 3 years. *Id.* Until a generator has a signed facilities study agreement, it is not included in the modeling at all. Tr. 2484-2486; ECC Cross Ex. 8A. Once it has a signed facilities study agreement, new generators are allowed to contribute to problems but not solutions. *Id.* Once a generator has a signed interconnection services agreement, it is included in the modeling for purposes of contributing to the problems and providing solutions. Tr. 2484-2486. The ECC points out that generation is not counted in the modeling until it is 98% certain, but transmission projects, such as TrAIL, are counted once PJM approves them. ECC Main Brief, pp. 47-48. The ECC claims that if existing generation reserves plus a small fraction of generation in the queue that does not yet have a signed interconnection service agreement were used in the modeling to resolve reliability problems, there would be sufficient power to resolve the potential reliability problems modeled by PJM. ECC Main Brief, p. 49.

As stated above, the ECC claims that more than 2,800 MW of existing capacity in eastern PJM was not dispatched in the 2006 RTEP modeling process. The ECC argues that dispatching just a portion of the unused capacity, and reducing western generation by an equal amount, would remove the reliability infractions alleged. ECC St. SR-1, p. 10; ECC Main Brief, p. 48.

Dominion joined PJM in May 2005. Tr. 2320, 2367. The ECC points out what it perceives to be an inconsistency in PJM's inclusion of generation in the 2006 RTEP modeling. According to the ECC, PJM did not count six or seven generators that had signed interconnection agreements with Dominion in the 2006 RTEP modeling to resolve reliability problems. Tr. 2319; ECC Cross Ex. 7. In the same 2006 RTEP, PJM included some western generation that did not have signed interconnection agreements with PJM for the purpose of contributing to problems. ECC St. SR-1, p. 11. The ECC states that at least 2,125 MW of generation in Dominion's territory, and possibly 2,465 MW, with signed interconnection agreements with Dominion, was not counted. Tr. 2624. The ECC asserts that if the aforementioned generation in

the Dominion system were included in the modeling for the purpose of resolving alleged reliability problems, there would be no need to import power from west of Doubs and potential overloading of the Mt. Storm-Doubs line could be avoided. ECC Main Brief, pp. 49-50.

The ECC asserts that TrAILCo failed to consider or explore alternatives to the 502-Loudoun line for the purpose of resolving the alleged reliability violations, such as the 765 kV PATH line, transmission constrained dispatch, high-voltage direct current (HVDC) lines, upgrades or repairs to existing transmission facilities, or any non-transmission solutions. The ECC states that TrAILCo and PJM will only look for alternatives if the 502-Loudoun line is not approved. Tr. 2286. According to the ECC, TrAILCo and PJM did not look for individual solutions to alleged reliability violations but instead settled on a global solution, the TrAIL. The ECC argues that the only solutions considered for the alleged reliability issues set forth in TrAILCo Exhibit SWG-1 were transmission solutions. ECC Main Brief, pp. 50-53; ECC Reply Brief, p. 22.

In the 2007 RTEP, the TrAIL was included in modeling by PJM. Despite its inclusion, additional reliability issues allegedly surfaced causing PJM to approve the 765 kV PATH line that will run through Virginia and Maryland. Tr. 2468-2469. PJM then looked at the 2007 model with the PATH line in service and the 502-Loudoun line removed from service. Tr. 2469. The ECC points out that no separate documentation was developed or retained for the simulations involving the alleged removal from service of the 502-Loudoun line with the PATH line in service. Tr. 2469. The ECC argues that there was no study in 2007 to determine if the addition of voltage support or some other minor changes to the PATH line could have been made to eliminate the need for the 502-Loudoun line. The ECC further argues that even if the PATH line could not adequately correct all twelve of the alleged reliability problems set forth in TrAILCo Exhibit SWG-1 it at least should be studied to see if any modifications could be made that would solve them. ECC St. SR-1, p. 15. ECC Main Brief, pp. 50-51.

According to the ECC, the PATH line should resolve electrical occurrence 9 in TrAILCo Exhibit SWG-1 because it will resolve a potential overload on the Pruntytown-Mt. Storm line. Tr. 2352-2353, 2460. Because the PATH line resolves this overload, the ECC

argues that it makes two alternatives to the 502-Loudoun line previously rejected in the 2006 RTEP viable. If the PATH line is installed, a second Mt. Storm-Doubs 500 kV line or a Mt. Storm-Loudoun 500 kV line could resolve the reliability criteria infractions, according to the ECC. ECC Main Brief, pp. 51-52.

The ECC claims that using “transmission constrained dispatch” or “out of merit” generation will result in a system without reliability infractions. ECC St. SR-1, pp. 11-12. If there is a reliability problem involving transmission lines from one part of a system to another, you increase the output of generating resources in the “downstream” part of the system, and decrease it in the “upstream” portion, according to the ECC. *Id.* The ECC argues that there is nothing in the NERC standards that prohibits using transmission constrained dispatch to solve reliability infractions. The use of “transmission constrained dispatch,” it argues, is a perfectly acceptable method of solving reliability problems. ECC St. SR-1, p. 23. The ECC claims that TrAILCo’s witness, Steven R. Herling, admitted that transmission constrained dispatch can be used to prevent the electrical occurrences that are driving the alleged need for the 502-Loudoun line.

Mr. Herling argues that “congestion” limitations are so common that it’s impossible to take major 500 kV lines like Mt. Storm-Doubs out of service for something like reconductoring – PJM, he says, would have to run “out of merit” generation at a cost of about a billion dollars over the five years it would take. But this case is supposed to be about reliability, not economics. Nevertheless, what Mr. Herling inadvertently admits is that *there is sufficient generation in the east to displace western generation* and reduce the flow on the west-to-east bulk power transmission system. His statement actually supports our contention that the use of out of merit generation, or transmission constrained dispatch, can solve the alleged reliability problems without the need to build the 502 Junction-Loudoun 500 kV line.

ECC St. SR-1 at 20; Tr. 3129:14-17. ECC Reply Brief, p. 21.

The ECC believes a three-terminal HVDC line running from western PJM to eastern PJM would be not only possible but practical for resolving alleged reliability issues. The ECC claims that,

the HVDC line would be much less environmentally destructive (smaller towers, shorter insulator strings, two conductors rather than three). It would even be feasible to place it underground. In addition, there may be less I^2R losses (electricity lost as heat) than with the proposed 500 kV lines. Perhaps most importantly, the lines would be safer because HVDC lines do not generate magnetic fields.

ECC St. SR-1, p. 40; ECC Main Brief, p. 53.

The ECC argues that the load forecasts driving the need for the 502-Loudoun line are unreliable and, since no one in this proceeding testified to the validity, assumptions, and/or accuracy of the load forecasts, TrAILCo's application must be denied. ECC Main Brief, p. 55. The ECC claims the original load forecast in TrAILCo Exhibit SWG-2 indicates that, in northern Virginia, Allegheny Power's summer peak forecast will decline by 10.4% in 2008. *See* ECC Cross Ex. 27. In TrAILCo's answers to interrogatories, this drop in demand was explained as an expected reduction in demand after rate caps were removed in Virginia in 2008. Tr. 2555-2556, 2559; ECC Cross Ex. 25. However, according to the ECC, revised TrAILCo Exhibit SWG-2 shows no decrease in demand in Virginia in 2008. ECC Cross Ex. 28. Although TrAILCo's load forecasting department believes the removal of rate caps in Virginia will reduce demand beginning in 2008, according to the ECC, there is no drop in demand in 2008. Thus, the ECC contends that the revised load forecasts in TrAILCo Exhibit SWG-2 are still wrong. ECC Main Brief, p. 54.

The ECC contends that the 502-Loudoun line is really driven by Project Mountaineer and economic concerns and not by the alleged reliability issues identified. The ECC points out that Project Mountaineer was unveiled by PJM's Karl Pfirrmann at a FERC technical conference in May 2005. Project Mountaineer's goal was to transmit 5,000 megawatts of new coal-fired generation from western to eastern PJM. Tr. 2290. At least two extra high-voltage transmission lines were required to support the delivery of this much electricity. Tr. 2292. Allegheny Power proposed the original TrAIL project to PJM on February 28, 2006 as a response to Project Mountaineer. Tr. 2289; ECC Cross Ex. 34, attachment A at 2. The original TrAIL project was proposed before any reliability criteria infractions were identified. Tr. 2288-

2289. *See also* ECC Cross Ex. 34 at attachment A. The transfer capability of the original TrAIL project was 3,800 megawatts. Tr. 2807, 2809, 2810-2812. According to the ECC, TrAILCo requested that PJM include its original TrAIL project in the 2006 RTEP process. ECC Cross Ex. 34, attachment A at 2. ECC Main Brief, pp. 55-56. The ECC further points out that when the 2006 RTEP was developed, PJM could only approve transmission lines that resolve reliability infractions. Tr. 2447. PJM could not use the RTEP process to approve an economically-driven project like Project Mountaineer. Tr. 2447-2448; ECC Main Brief, p. 56, footnote no. 37.

The ECC points out that Project Mountaineer is also discussed in the 2006 RTEP report, in a description of how the 15 year planning horizon evolved:

The concept to develop backbone transmission facilities was initiated in response to a FERC 2005 technical conference on fuel diversity and expanded use of coal-fired resources . . . related to the issues surrounding the development of new clean coal generating resources and the transmission planning activities that would be required to deliver such resources in the West Virginia, Ohio, and Kentucky region to load centers in eastern PJM.

ECC Cross Ex. 18. In addition, the ECC points out that PJM's initially-proposed Project Mountaineer pathways are shown in the 2006 RTEP report. *See* ECC Cross Ex. 18. The 2006 RTEP report also states:

At the time, in the process of identifying the Project Mountaineer paths, PJM expected that two 500 kV or 765 kV transmission circuits would be needed to facilitate the delivery of 5,000 MW of new coal-fired generation to eastern load centers.

Id.

According to the ECC, PJM sends signals to the market regarding where new generation should be built through its reliability pricing model (RPM). The RPM sends a capacity-based price signal to the market for the development of generation or demand response solutions. Tr. 2250. The ECC argues that the new reliability pricing model and auctions can be used to procure generation, and provide incentives for construction of new generation where it is needed – and thus eliminate the need for the 502-Loudoun line. ECC Cross Ex. 14 at 2. ECC Main Brief, p. 58.

In its reply brief, the ECC goes on to assert that PJM influences where generation is built. The ECC quotes the testimony of its witness, George Loehr, who testified that,

Allegheny, TrAILCo and PJM, by their policies, significantly affect developers' decisions vis-à-vis where and what type of generation will be built. By constructing a major west to east 500 kV line, which will be paid for by the customers and not by the generation owners, they would provide a major incentive – in effect a subsidy – for potential developers to plan and construct coal fired generation in the west rather than other types of resources in the east, where they're needed.

ECC St. SR-1, p. 13. *See also* ECC St. SR-1, p. 9.

The ECC goes on to assert that the policies of the planning authority clearly affect decisions regarding the siting of new generation:

Since the developers of the remote generating units do not have to pay for the transmission costs, they can compete directly with more local resources which do not have anywhere near equivalent transmission costs . . . Thus the “market” would discriminate against local generation – it would, in effect, subsidize remote development.

ECC St. 1 at 29. *See also* ECC St. 1 at 21-22 and 28-30.

The ECC argues that instead of encouraging the development of generating resources in the west, PJM should encourage new generation in eastern PJM – such as CPV Warren and CPV Maryland. CPV Warren is a 590 MW combined-cycle natural gas-fired generating station in Warren County, Virginia – approximately seven miles from the Meadowbrook Substation. CPV Maryland is a 640 MW combined-cycle natural gas-fired generating station in Charles County, Maryland. ECC St. SR-1, p. 9; ECC Reply Brief, p. 28. The ECC further argues that if western generation is subsidized by projects such as the 502-Loudoun line, clean generation closer to the demand (such as CPV Warren or CPV Maryland) will be at an economic disadvantage – and will not likely be built. ECC St. SR-1, p. 9; ECC Reply Brief, p. 29. The ECC goes on to contend that,

[d]eregulation was premised on the notion that costs to customers would be reduced if competition were introduced. But competition does not exist when some entities are effectively subsidized at the expense of competing entities. The increase in transfer capability which would come from the subsidized TrAILCo facilities would benefit western generators and others who want to move power across the PJM system for their own economic reasons.

ECC Reply Brief, p. 29.

The ECC claims that its witness, George Loehr, is a world renowned expert on the subject of blackouts. The ECC refers to TrAILCo's discussion of the effects on service to customers if the 502-Loudoun line is not constructed as "scare tactics." ECC Main Brief, p. 58; *See* TrAILCo Main Brief, p. 22. The ECC quotes testimony from its witness, Mr. Loehr:

Unfortunately, a lot of scare tactics have been used by TrAILCo witnesses – citations of the August 14, 2003 blackout, for example, and even the California rotating blackouts of the 2000-2001 period. These incidents have no bearing on the TrAILCo situation. The causes of those incidents differ completely from the alleged criteria violations cited by the TrAILCo witnesses.

The 2003 blackout was the result of too many control areas in too small an area – control areas (now known as "balancing authorities") which were small – so small, in fact, that no one was able to see that a series of contingencies across a wide area over a four hour period was leading to a major interruption.

In California in 2000-2001, poor state regulations, unscrupulous market manipulation, and unethical (sometimes illegal) activities by companies like Enron, all combined to manufacture an apparent shortage of generating capacity. The "shortage" did not really exist – nor was there a "blackout" *per se*. Brownouts and rotating feeder outages were necessary because of the market manipulation, but no widespread cascading outage occurred.

Let's think about how, with today's real-life system, competent system operators (including PJM's) would deal with the situations TrAILCo hypothesizes. The PJM control center acts as balancing authority for a very large electrical area, so any unusual events with the potential to cause widespread problems would be recognized. More important, responsible system operators would never operate the system in a mode where a first contingency would bring about overloads, low voltages, cascading

outages, instability, system separation, or loss of firm customer load. That is the “prime directive” of every system operator. The bulk power system must always be operated such that, if any contingency specified in the applicable standards or criteria were to occur (e.g., a fault or short-circuit on a high voltage transmission line), the system would experience no overloads, low voltages, cascading outages, instability, system separations, or loss of firm customer load. In fact, to operate in any other way would be a violation of NERC’s Operating Standards, subject to fines of up to \$1 million per day.

ECC St. 1, pp. 32-33; ECC Main Brief, pp. 58-59.

The ECC, again relying on the testimony of Mr. Loehr, claims that the 502-Loudoun line will make the system less reliable and, if anything, increases the likelihood of blackouts. With respect to potential blackouts, Mr. Loehr states,

To summarize: when systems build more transmission to accommodate higher levels of transfer, they push the system harder. They are more likely to suffer a blackout if an unforeseen contingency occurs, and the blackout is likely to be larger and more damaging. In PJM’s case, a better and more reliable alternative to the 502 Junction-Loudoun line would be to build additional generating capacity in the East, close to the load it will serve.

ECC St. SR-1 at 15:5-8. Mr. Loehr opines that the proposed 502-Loudoun line would make the system less reliable. The ECC quotes the following additional testimony:

In fact, by locating generation far from the load centers, and building more transmission to provide the increased transmission capacity necessary to accommodate the heavier power flows, TrAILCo and PJM could actually make their system – and the entire Eastern Interconnection – less reliable. With the increased transmission, the apparent impedance across the system would be lower, so a major disturbance could black out a much larger area. It would be far better, from a reliability standpoint, to encourage and use resources (generation and demand side management) closer to the load.

There is another factor to consider. If more generation is built in the west, and less in the east, then load centers on the East Coast would be more dependent on generating capacity hundreds of miles away. Cities like Newark, Philadelphia, Wilmington, Baltimore, Washington and Richmond would be more subject to power outages and blackouts due to any major contingencies or other unforeseen problems on the transmission system.

Those cities would also be more at risk from terrorist attacks on transmission facilities.

ECC St. 1, pp. 35-36; ECC Main Brief, p. 60.

(c) OCA's Position

The OCA did not make a determination regarding the alleged reliability need for the Pennsylvania 502 Junction Facilities. OCA Main Brief, p. 54. Put another way, the OCA did not assess the validity of the twelve “electrical occurrences” projected by Mr. Gass in the event that all of the 502 Junction Segments of TrAIL are not approved and constructed. OCA Reply Brief, pp. 30-31. The OCA argues that further analysis and examination of the 502 Junction Segments is required. The OCA asserts that, according to TrAILCo, the potential reliability concerns that would be addressed by the 502 Junction Facilities are primarily in Virginia and West Virginia. TrAILCo St. 3, pp. 21-22. The OCA presented testimony that calls for further study of the potential economic effects of the 502 Junction Facilities. The OCA contends that TrAILCo has not adequately addressed the proposed impact of potential carbon legislation on the 502 Junction Segments, if placed in operation. OCA Main Brief, p. 47.

The OCA claims that the underlying PJM analysis of moving lower cost coal-fired generation east fails to consider any cost impacts of potential legislation regarding carbon dioxide emissions. According to the OCA, PJM has acknowledged that it has not estimated any greenhouse gas emission effects associated with the change in generation dispatch facilities. The OCA asserts that several bills dealing with greenhouse gas emissions are currently before the U.S. Congress that envision a national cap and trade program. A “cap and trade” program, the OCA explains, is one where the “regulation” (i.e., the federal law) caps the total amount of CO₂ that can be emitted nationwide, and then utilities “trade” their “allowances”—their permission to pollute—such that total emissions remain below the cap and the “cheapest” CO₂ reductions are obtained first. OCA Main Brief, pp. 50-51.

The OCA points out that its witness, Robert M. Fagan, discussed the practical implications of such legislation for the underlying analysis of the 502 to Loudoun Segment of TrAIL:

In particular, a cap and trade program would increase the production costs for coal-fired facilities relative to the production costs for oil and especially natural gas fired facilities (i.e., a “carbon adder” is attached to fossil-fueled facilities). This essentially means that prices in western PJM (coal dominated) would increase in proportion to the “carbon adder” associated with coal; and prices in eastern PJM (natural gas generation “on the margin”) would increase in proportion to the “carbon adder” associated with natural gas.

OCA St. 2, pp. 23-24; OCA Main Brief, p. 51.

The OCA goes on to explain that because coal is a more “carbon-intensive” fuel than natural gas, the “carbon adders” will be substantially higher for coal plants than for natural gas plants. The result would be a decline in the marginal price differential between coal plants in western PJM and natural gas plants in eastern PJM, thus potentially changing the amount of power expected to flow from west to east. *Id.* Put another way, the economic incentive to transmit electricity from western to eastern PJM will decline. This is especially true given that the economic effects of any carbon regulation would be felt more heavily in more coal-dominated regions, such as the AEP and AP zones of PJM. *Id.* at 25.

The OCA contends that PJM conducted only a minimal “carbon adder” sensitivity analysis which did not go beyond the year 2013 – even though the 502-Loudoun line is expected to come into service in 2011. OCA St. 2, p. 26. The OCA sums up its position with respect to the need for more analysis by requesting that,

the Commission take into account this change in the overall production cost economics of the 502 to Loudoun line when assessing the economic need for this portion of TrAIL. This billion dollar project, which will take many years to construct, should be rigorously assessed for all economic impacts—including the expected effects of carbon dioxide regulation—

especially given that this examination has not been performed by PJM, TrAILCo, or Allegheny Power.

OCA Main Brief, p. 53.

The OCA also argues that the traditional RTEP process was not followed in the case of the TrAIL project. According to the OCA, TrAILCo's assertion that the TrAIL facilities are merely "needed to assure the electric reliability of Allegheny Power's transmission facilities" fails to consider the economic basis upon which the project was founded. TrAILCo St. 2, p. 15; OCA Main Brief, p. 54. The OCA cites the testimony of TrAILCo witness Herling who testified that there were no planning criteria violations identified prior to the original TrAIL proposal being made by Allegheny in 2006. Tr. 2289. The OCA argues the TrAIL was proposed to PJM in response to Project Mountaineer before any reliability problems were identified. Tr. 2291, 2335; *see also* TrAILCo St. 2, p. 15; OCA Main Brief, pp. 53-54.

In its main brief, the OCA explains that the original TrAIL proposal was, in fact, Allegheny's response to PJM's desire to transmit 5,000 megawatts of coal-fired electricity from western PJM to eastern PJM. Tr. 2291. The OCA further explains that this goal of transferring 5,000 MWs, and the facilities proposed to achieve this goal, became known as "Project Mountaineer." *Id.* As described by Karl Pfirrmann, President of PJM Western Region:

. . . PJM is also setting out by way of example, a new initiative, which we have labeled "Project Mountaineer", to utilize our regional transmission planning process to explore ways to further develop an efficient transmission "super-highway" to bring low cost coal resources to the market.

. . . The goal is to focus on all aspects of harnessing the existing and planned generation in this region to meet the needs of the broader PJM market. And because the process is undertaken by PJM in the context of its approved independent regional transmission planning process, we view this effort as one where facts and figures will prevail so as to limit claims that the data represents just the economic interest of a particular group of stakeholders.

OCA Main Brief, p. 54; ECC Cross Exam Ex. 11 at *1,*5 (Testimony of Karl Pfirrmann).

In its reply brief, the OCA raised two additional arguments in response to TrAILCo's main brief. First, the OCA argues that reliability for Pennsylvania customers would not be jeopardized without construction of the 502 Junction Segments. OCA Reply Brief, pp. 32-34; *see also* TrAILCo Main Brief, p. 22. And secondly, the OCA asserts that TrAILCo misstates the United States Department of Energy's ("DOE") NIETC Study in an attempt to support the need for the 502 Junction Facilities. OCA Reply Brief, pp. 34-36; *see also* TrAILCo Main Brief, p. 21. With respect to the first argument, the OCA explains in its reply brief that,

to conclude that the 502 Junction Segments would impact Pennsylvania reliability, TrAILCo has to postulate at least three major outages in rapid sequence resulting in the total collapse of the regional transmission grid. Mr. Hozempa first asserts that an overload of the Mount Storm-Doubs line "could have" far-reaching effects "similar to those experienced in the August 2003 blackout that affected over 50 million people." TrAILCo St. 2 at 9. The series of events described begins with an outage of the Greenland Gap-Meadowbrook line; leading to the overload of Mount Storm-Doubs, resulting in its disconnection from the system; leading to the "very likely" overload and disconnection of other (unspecified) west-to-east pathways, causing the underlying transmission system serving load in south central Pennsylvania to begin to collapse. TrAILCo St. 2 at 10. According to Mr. Hozempa, these events would precede south central Pennsylvania generation units tripping off, causing more lines to overload and disconnect; the cascade that he describes could continue throughout the Eastern Interconnection that encompasses central Canada to the Atlantic coast, south to Florida and even west to the foot of the Rocky Mountains. *Id.*

OCA Reply Brief, pp. 32-33.

The OCA requests that the Commission give no weight to Mr. Hozempa's testimony drawing a connection between the 502 Junction-Loudoun Segment and south central Pennsylvania reliability and to TrAILCo's arguments based upon that testimony. According to the OCA's witness, Mr. Lanzalotta, Mr. Hozempa's comparison to the August 2003 blackout is not valid. OCA St. 1, pp. 26-28. The August 2003 blackout was driven in part by the failure of control room systems and personnel and by a lack of available operating procedures needed to maintain the system during an emergency, according to Mr. Lanzalotta. *Id.* at 26.

Mr. Lanzalotta, refuted the testimony of Mr. Hozempa. Mr. Lanzalotta testified that,

. . . to base the need for new transmission on the ability to be able to survive the effects of the shortcomings chronicled [in the Final NERC Report] goes beyond what is reasonable. The scenario described by Mr. Hozempa where an outage of one 500 kV line causes other 500 kV lines to overload and trip out, with the potential for cascading failure could happen even with a new 500 kV transmission line, if the control systems and control personnel today perform like those for MISO and FE did back in 2003.

OCA St. 1, p. 28 (emphasis added).

The OCA also asserts that TrAILCo misstates the DOE NIETC Study in an attempt to support the need for the 502 Junction Facilities. OCA Reply Brief, pp. 34-36. In its main brief, TrAILCo states as follows:

The mid-Atlantic and northern Virginia areas were identified by the U.S. DOE in its *National Electric Transmission Congestion Study* issued in August 2006 as part of a “Critical Congestion Area” and in need of immediate attention through the construction of new transmission facilities.

TrAILCo Main Brief, p. 21. The OCA explains that the second part of this statement concerning an immediate need for new transmission facilities to alleviate the identified congestion areas is incorrect, as exemplified by the following statement from the October 2, 2007 Order regarding the DOE Study referenced in the above-quoted text:

[t]ransmission expansion is but one possible solution to a congestion or constraint problem. Other potential solutions include increased demand response; improved energy efficiency; deployment of advanced technology; and siting of additional generation, including distributed generation, close to load centers.

National Electric Transmission Congestion Report, 72 Fed. Reg. 56992, 56993-56994 (October 5, 2007) (DOE Order).²⁶ OCA Reply Brief, p. 34. The OCA goes on to assert that, far from concluding that the identified congestion areas are in need of immediate construction of new

²⁶ Notice of the NIETC Study (DOE Study) was published in the Federal Register. 71 Fed. Reg. 45047 (August 8, 2006). After comments, the DOE issued an Order which can be accessed at: http://nietc.anl.gov/documents/docs/FR_Notice_of_5_Oct_07.pdf. The undersigned approved the use of this link, in lieu of paper reproduction, for purposes of reference in this proceeding. Tr. 2547-2548.

west-to-east transmission facilities, the DOE stated that a “National Interest Corridor designation is not a determination that transmission must, or even should be, built.” *Id.* The OCA further provides that the DOE Order also states that the National Interest Corridor “is not a decision about the best solution to a congestion or constraint problem.” *Id.* at 56994-56995. The OCA quotes the DOE order, which states as follows:

Not only would a National Corridor designation not prejudice State or Federal siting processes against non-transmission solutions, it should also not discourage market participants from pursuing such solutions. Implementation of one solution to a congestion or constraint problem can reduce, and in some cases, eliminate, the need for, and thus the viability of, competing solutions.

Id. at 56994. The OCA points out that the DOE Order thus specifically states that the NIETC designations do not authorize the siting of a particular transmission line project and should not discourage other non-transmission solutions to congestion problems. OCA Reply Brief, pp. 34-35.

The OCA requests that the Commission disregard TrAILCo’s statement that the DOE study calls for the immediate construction of transmission lines to alleviate congestion. OCA Reply Brief, p. 36. The OCA points out that a representative of PJM who testified in this proceeding on behalf of TrAILCo was emphatic in his testimony that PJM cannot order generation or DSM solutions to congestion. TrAILCo. St. 3-R, p. 14.

(d) West Penn Power Industrial Intervenors’ Position

According to the West Penn Industrial Intervenors (WPPII), TrAILCo has the burden to prove that the 502-Loudoun line is required for reliability and it has failed to carry that burden. WPPII Main Brief, p. 6. The WPPII first argue that, contrary to TrAILCo’s assertions regarding reliability, economic issues appear to be the primary driver for the 502-Loudoun portion of the TrAIL project. The WPPII explain that the TrAIL was initially proposed as an economic project in 2005. The WPPII add that Allegheny Energy first proposed the TrAIL to address a request by PJM to increase west to east transfer capability within the PJM system for

the purpose of moving less expensive coal-fired generation east. Tr. 2292; WPPII Main Brief, pp. 4-5.

According to the WPPII, TrAILCo witness Herling explained that a key factor in the reliability issues that the TrAIL is proposed to address is “congestion.” TrAILCo St. 3, p. 14. The WPPII point to the testimony of Mr. Herling who cited findings in the DOE's National Electric Transmission Congestion Study (August 2006) that northern Virginia is a critical congestion area as a reason supporting approval of TrAIL. *Id.* at 14-16. The problem, however, according to the WPPII, is that “congestion,” even as explained by Mr. Herling during cross-examination, is an economic concept. The WPPII cite to the following answer regarding transmission congestion provided by Mr. Herling:

A. [Mr. Herling] Congestion is the quantification of the fact that we are unable to run the cheapest generation at all times to serve all of the customers in PJM by virtue of transmission limitations on the system. Tr. 2505.

In other words, the WPPII continue, congestion occurs when the cheapest, most economic power cannot be delivered to a portion of the load because of transmission constraints. In order to avoid an operational constraint on the system (*a.k.a.* a reliability concern) resulting from the congestion, the operator is required to schedule more expensive generation that is closer to the load, thus the solution has an **economic** impact. ECC St. SR-1, pp. 8-9. (Emphasis in original).

The WPPII next argue that there is nothing in the NERC Standards that requires a system to use economic dispatch in its planning studies, or prohibits it from departing from economic dispatch in order to solve reliability violations. *Id.* at 13. WPPII Main Brief, p. 6.

The WPPII contend that the cost impact of the TrAIL proposal must be a factor in the Commission's consideration of TrAILCo's application for a certificate of public convenience. The WPPII claim that the Commission has been given explicit authority to consider estimates of cost in enabling it to reach a finding or determination pursuant to Section 1103(b) of the Code, 66 Pa. C.S. §1103(b). WPPII Main Brief, p. 7.

The WPPII explain that on July 26, 2007, TrAILCo submitted the supplemental direct testimony of Mr. Mark Mader, which included testimony regarding certain cost allocation changes resulting from an April 19, 2007, Federal Energy Regulatory Commission (“FERC”) Order. The Order changed TrAILCo's proposed beneficiary pays allocation to a postage stamp allocation for portions of TrAIL at or above 500 kV. TrAILCo St. 10a, pp. 3-4. Since West Penn did not benefit from the proposed 502-Loudoun line, under the replaced beneficiary pays allocation, West Penn customers would not have been allocated any percentage of the cost for the 502-Loudoun line. TrAILCo St. 10, p. 5. But, as a result of the newly implemented postage stamp allocation or socialization of costs across all LSEs in PJM, West Penn customers would now be responsible for approximately \$14.5 million in annual revenue requirement: TrAIL 138 kV lines (which are in Pennsylvania) – \$8.9 million; TrAIL 500 kV line within Pennsylvania – \$1.0 million; and TrAIL 500 kV line outside of Pennsylvania – \$4.5 million. TrAILCo Exhibit MAM-5. In short, according to the WPPII, West Penn customers are now being asked to pay an additional \$5.9 million annually for a project that, under the replaced beneficiary pays approach, TrAILCo had proclaimed, and PJM confirmed, had no discernable benefit (or cost) for West Penn customers. WPPII Main Brief, pp. 7-8.

The WPPII request that the Commission consider the fact that the projected in service date for the 502-Loudoun facilities is 2011 and West Penn’s generation rate cap expires December 31, 2010. TrAILCo St. 2, p. 7; *see* Tr. 2913. According to the WPPII, given the potential for even greater rate shock in the West Penn service territory, the Commission must remain cognizant of approving any additional surcharges to customers' bills unless they are just, reasonable, and in the public interest. WPPII Main Brief, pp. 8-9.

The WPPII contend that the actual beneficiaries of the TrAIL are the Allegheny Energy, Inc. family and the eastern PJM region at the expense of West Penn customers. According to the WPPII, “Allegheny Energy's unregulated generation affiliate, Allegheny Energy Supply (“AES”), also stands to significantly benefit from the construction of TrAIL.” WPPII Main Brief, p. 9. The WPPII contend that Allegheny Energy has professed to the financial world that it views TrAIL as a “growth driver.” *Id.*

The WPPII explain that TrAILCo requested a return on equity of 13.9%, but recently submitted a settlement agreeing to 12.7%.²⁷ In addition, the WPPII point out, TrAILCo received approval for guaranteed recovery of various costs irrespective of the operating condition of the line. For instance, TrAILCo is guaranteed the ability to recover construction work in progress (“CWIP”) costs, pre-construction/pre-operating (pre-commercial) costs, as well as all development and construction costs if the proposed project is abandoned.²⁸ According to the WPPII, these incentives serve not only to make the project more profitable for Allegheny Energy’s subsidiary, TrAILCo, but also shift the risk of the project from TrAILCo to ratepayers. WPPII Main Brief, p. 10.

The WPPII assert that construction of the TrAIL will enable Allegheny Energy’s unregulated generation affiliate, AES, to serve customers in Maryland and Virginia at higher market prices. The WPPII explain that PJM’s own Market Efficiency Analysis Progress Report indicates that generators in the western PJM zones can expect to see increased revenues of \$1.8 billion per year by 2013. OCA St. 2, p. 21; *see also* OCA Exhibit RMF-2; WPPII Main Brief, p. 11. The WPPII also point out that PJM has found that 29.6% of the projected increased generation in western PJM, approximately 3.2 million megawatt hours per year, would be from the Allegheny Power system. Tr. 2944; WPPII Main Brief, p. 11.

Construction of the TrAIL, the WPPII further contend, will increase the wholesale price of power in the West Penn service territory. OCA St. 2, p. 21; WPPII Main Brief, p. 11. The constrained eastern PJM region would receive increased access to less expensive “western PJM” coal-fired generation, while the cost of generation in western PJM increases. OCA St. 2, p. 21; Tr. 2331; WPPII Main Brief, p. 12. With respect to the price drop in eastern PJM, the WPPII cite Mr. Herling’s testimony that “I would say there will be *a noticeable price drop*. I’m not sure how much it will be on a per megawatt-hour basis and over what time periods, but it will certainly be a price drop in the east.” Tr. 2331. According to the

²⁷ Trans-Allegheny Interstate Line Company Settlement Agreement and Offer of Settlement, Docket No. ER07-562-004, (filed March 14, 2008); *see* Tr. 3002.

²⁸ *See Allegheny Energy, Inc.*, 116 FERC ¶ 61,058 (2006) (July 20 Order), *order on reh’g*, 118 FERC ¶ 61,042 (2007); *see also* Tr. 2999-3000.

WPPII, Mr. Herling goes on to note that the largest price drops would be “directly east of Doubs in the areas, northern Virginia, Washington, Baltimore, propagating into Philadelphia and Jersey I would expect to see the impacts to be the most significant.” *Id.* WPPII Main Brief, pp. 12-13.

The WPPII conclude by asserting that West Penn customers are being asked to fund a project that provides a reduction in energy prices only outside of the West Penn service territory. The project, the WPPII claim, will likely serve to increase prices within the West Penn service territory. WPPII Main Brief, pp. 13-14.

In its reply brief, the WPPII assert that, despite TrAILCo's recommendation to the contrary, the full cost impact of TrAIL on West Penn ratepayers should not be ignored by the Commission in assessing the public interest. The WPPII further assert that TrAILCo's continued incitation of catastrophic events such as rolling blackouts is unsubstantiated and should not be countenanced by the Commission. WPPII Reply Brief, pp. 2-6.

(e) OTS' Position

According to the OTS, the foundation for inquiry in evaluating a siting application request is whether there is a present and future need for the proposed service; or in this case, whether there is a present and future need for the proposed TrAIL facilities. 52 Pa. Code §§57.75(e), 57.76. The OTS asserts that, at a minimum, this inquiry has centered upon whether the proposed line and related facilities are necessary from an engineering and operational perspective, i.e. are needed to sustain reliability in the operation of the Applicant's bulk power system. *See, Application of Pennsylvania Power & Light Company*, 1996 Pa. PUC LEXIS 102, *5 (September 9, 1996). Also factored into this determination, the OTS states, is the relative cost of the Applicant's proposal and other reasonably available alternatives. *Id.* OTS Main Brief, p. 13.

The OTS did not offer expert testimony regarding the need for the Prexy-502 Junction Facilities or the 502 Junction-Loudoun line. The OTS deferred to the other parties who offered testimony regarding whether there is a specific need for the facilities proposed by

TrAILCo, specifically the OCA and the ECC and, assuming that such a need exists, whether the facilities proposed by TrAILCo offer the best, reasonable alternative solution to address that need. *See* OCA St. 1; OCA St. 2; ECC St. 1. OTS Main Brief, p. 13.

ii. Discussion

(a) Introduction

TrAILCo proposes to construct a substation, specifically the 502 Junction Substation, in southern Greene County and either acquire, or take by eminent domain, a 1.2 mile corridor to construct a 500 kV transmission line from the substation in a southerly direction to the West Virginia border. Make no mistake about it, there is no public need *within* Greene County, Pennsylvania for the 502 Junction Facilities TrAILCo proposes to construct there. No such need, within Greene County, is claimed by TrAILCo.

Greene County is a broad, 567 square-mile county located in the southwestern corner of Pennsylvania. It is bounded on the east by the Monongahela River and by West Virginia on its southern and western borders. Sixteen percent of the counties' population lives below the national poverty level. By per capita income, Greene County is the second poorest county in Pennsylvania. By household income, Greene County is the fourth poorest county in the state. The median household income in Greene County is 28% below the national average. Twenty-two percent of the county population has a disability of some type. The median value of owner-occupied homes in Greene County, \$57,000, is less than half of the national median. Tr. 1178-1179.

In discussing the ECC's arguments in opposition to the 502 Junction Facilities and its attempts to prevent the facilities from being constructed, TrAILCo stated that, "[s]uch inconsistent and irrational thinking is the hallmark of self-interested NIMBYs who are fully prepared to scuttle any consideration of the public interest in a heartbeat." TrAILCo Reply Brief, p. 29. We take issue with this statement and, quite frankly, are offended by it. By

implication, TrAILCo is saying that those in Greene County who oppose the 502 Junction Facilities are or think like “self-interested NIMBYs.”

The people and property owners of Greene County who testified at public input hearings and site views last year are not “self-interested NIMBYs.” These people have done and will continue to do their part for the “public need.” They just object to having *everything* in their backyards. They know all about coal-fired power plants, coal mines, smokestacks, slag dumps, coal patches and shanties. These people live with the pollution and waste generated by coal mining and coal-fired electric power generation. Needless to say, we do not condone baseless *ad hominem* assertions in this proceeding. The inquiry here is focused on need.

We reiterate what we stated at the outset of this section. The inquiry to determine whether public need for a transmission project exists depends on the specific facts presented regarding each project and upon the future impacts or consequences within a broad context. The impacts and consequences of approving the project and the impacts and consequences of not approving the project, both beneficial and adverse, must be weighed. The Commission must determine, for planning and policy purposes, whether a proposed transmission project is ultimately necessary or proper for the accommodation, convenience and safety of patrons, employees and the public.

With respect to the 502-Loudoun portion of the TrAIL project, TrAILCo has failed to meet its burden of proof. TrAILCo has failed to present substantial evidence to justify the need for the 502-Loudoun portion of the TrAIL. As with the Prexy Facilities, our conclusion is based on our understanding of “need” as interpreted by the Commonwealth Court in Penna. Power & Light Co. v. Pa. PUC, 696 A.2d 248 (Pa. Cmwlth. 1997). In its opinion, the Commonwealth Court placed emphasis on the provisions of Section 1501 of the Public Utility Code that requires, in pertinent part, every utility to make improvements “as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public.” 66 Pa. C.S. §1501; Penna. Power & Light Co., above, at 250. The Commonwealth Court also emphasized language in 52 Pa. Code §57.76(a)(4) that requires that the Commission, prior to granting approval of an application, consider that the proposed transmission line will

have a minimum environmental impact “*considering the electric power needs of the public, the state of the available technology and the available alternatives.*” Penna. Power & Light Co., above, at 250 (emphasis in original). We do not believe that the present proposal is necessary or proper for the accommodation of the public, and we do not believe that the present proposal has a minimal environmental impact.

The costs and adverse impacts of the TrAIL project clearly outweigh the benefits of it. We are convinced that the project is driven by economics and not by reliability violations modeled by PJM after the original TrAIL proposal was made. We are further convinced that the TrAIL project will negatively affect distributed generation. The TrAIL project will have an adverse impact on generation projects already in the queue in eastern PJM and negatively affect future investment in generation in eastern PJM. The TrAIL will encourage the construction of new generation, predominantly coal-fired generation, in Ohio, Kentucky, West Virginia and southwestern Pennsylvania to provide electricity to load centers in eastern PJM where there is a lack of capacity. Over time, additional high-voltage transmission lines may potentially be proposed to transport power across Pennsylvania from western PJM to load centers in eastern PJM if the global, “backbone” transmission solution proposed by TrAILCo is adopted.

Pennsylvania is the Keystone State. Because of its geographic location, adopting the transmission policy solution proposed here will make Pennsylvania a future corridor state for transmission “super-highways” to transmit electricity across Pennsylvania from western generation to load centers in eastern coastal states. Pennsylvania’s citizens, ratepayers, and property owners, as well as Penn’s Woods, will be adversely impacted by the TrAIL transmission solution.

(b) Economics, Not Public Need

As stated above, we believe that economics led to the creation of the TrAIL proposal. Economics, not reliability, is the impetus for both the original request for transmission proposals from PJM and the TrAIL proposal itself.

. . . PJM is also setting out by way of example, a new initiative, which we have labeled “Project Mountaineer”, to utilize our regional transmission planning process to explore ways to further develop an efficient transmission “super-highway” to bring low cost coal resources to the market.

. . . The goal is to focus on all aspects of harnessing the existing and planned generation in this region to meet the needs of the broader PJM market. And because the process is undertaken by PJM in the context of its approved independent regional transmission planning process, we view this effort as one where facts and figures will prevail so as to limit claims that the data represents just the economic interest of a particular group of stakeholders.

OCA Main Brief, p. 54; ECC Cross Exam Ex. 11 at *1,*5 (Testimony of Karl Pfirrmann) (emphasis added). Project Mountaineer was discussed in the 2006 RTEP prepared by PJM.

The concept to develop backbone transmission facilities was initiated in response to a FERC 2005 technical conference on fuel diversity and expanded use of coal-fired resources . . . related to the issues surrounding the development of new clean coal generating resources and the transmission planning activities that would be required to deliver such resources in the West Virginia, Ohio, and Kentucky region to load centers in eastern PJM.

ECC Main Brief, p. 57; ECC Cross Ex. 18, p. 119. Project Mountaineer was unveiled by PJM’s Karl Pfirrmann at a FERC technical conference in May 2005. Project Mountaineer’s goal was to transmit 5,000 megawatts of new coal-fired generation from western to eastern PJM. Tr. 2290. According to Mr. Pfirrmann, at least two extra high-voltage transmission lines were required to support the delivery of this much electricity. Tr. 2292. Allegheny Power proposed the original TrAIL project to PJM on February 28, 2006 as a response to Project Mountaineer. Tr. 2289; ECC Cross Ex. 34, attachment A at 2. The original TrAIL project was proposed before any reliability criteria infractions were identified. ECC Main Brief, p. 57; Tr. 2288-2289. *See also* ECC Cross Ex. 34 at attachment A.

The 2006 RTEP provided that,

At the time, in the process of identifying the Project Mountaineer paths, PJM expected that two 500 kV or 765 kV transmission circuits would be needed to facilitate the delivery of 5,000 MW of new coal-fired generation to eastern load centers.

ECC Main Brief, p. 57; ECC Cross Exam. Ex. 18.

The TrAIL was included in the 2006 RTEP. PJM determined that it sufficiently addressed the modeled reliability problems identified in TrAILCo Exhibit SWG-1. In the very next year's RTEP, the 2007 RTEP, the TrAIL was included in modeling by PJM. Despite its inclusion, additional reliability issues allegedly surfaced causing PJM to approve the 765 kV PATH line that will run through Virginia and Maryland. Tr. 2468-2469. PJM then looked at the 2007 model with the PATH line in service and the 502-Loudoun line removed from service. Tr. 2469. PJM concluded that both lines were needed. Mr. Herling testified that, "the Loudoun line and the PATH line are required to satisfy the reliability needs of the region." Tr. 2355.

The 2006 RTEP was the first RTEP in which PJM looked forward 15 years for planning purposes, instead of just five years, as was done in previous years. Tr. 2355-2356. Looking forward 15 years, in 2006, PJM approved the TrAIL line allegedly for reliability reasons. The very next year, looking forward 15 years plus one, PJM approved the 765 kV PATH line, which runs generally parallel to the TrAIL project, . . . again for alleged reliability reasons. Tr. 2354, 2355-2356. Counsel for the ECC questioned Mr. Herling as to how this could possibly be.

Q. And why the change? Why was your prediction in 2006 so off that you missed the fact that in 2012, you were going to need a 500 kV line in two separate locations and a 765 kV PATH line?

A. Well, fundamentally, I think we've described this in our testimony. The planning process is extremely dynamic. . . .

Tr. 2356.

It seems to us that any planning process that is supposed to be useful and offer at least a modicum of predictability over a 15-year period should not be described as “extremely dynamic.” What value does a long-term planning process marked by continuous, extreme change really have? We decline to ascribe an axiomatic quality to the results of PJM’s RTEP process and the results of the underlying tests performed. The RTEP process is designed to yield transmission solutions. Mr. Herling testified that “PJM is not authorized to direct the development of generation solutions or demand response solutions. . . .” Tr. 2259. According to Mr. Herling, PJM’s stakeholders were “very clear that they wanted us to facilitate the connection of these (generation) projects, but not to point out where projects should be built, how big they should be or in any way solicit projects in particular locations.” Tr. 2321-2322. PJM does not look for non-transmission solutions to potential electric reliability problems. Tr. 2258-2259.

In layman’s terms, the RTEP modeling process used by PJM is an overly conservative, belt-and-suspenders approach to transmission system planning. There is nothing in the NERC standards that prohibits using transmission constrained dispatch to solve reliability infractions. We agree with the ECC that using “transmission constrained dispatch” or “out of merit” generation will result in a system without reliability infractions. ECC St. SR-1, pp. 11-12. If there is a reliability problem involving transmission lines from one part of a system to another, you increase the output of generating resources in the “downstream” part of the system, and decrease it in the “upstream” portion. *Id.* In PJM’s modeling, once generation has a signed facilities study agreement, it is included in modeling for the purpose of contributing to problems but not for the purpose of providing solutions. Tr. 2484-2486. Generation projects must proceed further through the queue to the point of having a signed interconnection service agreement with PJM before they are included in PJM’s modeling for the purpose of solving reliability problems. Dominion joined PJM in May 2005. Tr. 2320, 2367. PJM did not count generators in the Dominion territory in its modeling that have interconnection service agreements with Dominion for the purpose of solving reliability problems because the generators do not have executed interconnection service agreements with PJM. We conclude that the RTEP process is designed to yield transmission solutions.

We agree with the ECC that PJM and TrAILCo failed to consider or explore alternatives to the 502-Loudoun line for the purpose of resolving the alleged reliability violations, such as facility upgrades or tweaks to the 765 kV PATH line, transmission constrained dispatch, high-voltage direct current (HVDC) lines, upgrades or repairs to existing transmission facilities, or any non-transmission solutions. The ECC also correctly asserted that TrAILCo and PJM will only look for alternatives if the 502-Loudoun line is not approved. Tr. 2286. TrAILCo and PJM did not look for individual solutions to alleged reliability violations but instead settled on a global solution, the TrAIL. ECC Main Brief, pp. 50-53; ECC Reply Brief, p. 22. As stated above, we believe PJM and TrAILCo settled on the TrAIL for economic reasons. PJM seeks to facilitate the transmission of coal-fired generation eastward. TrAILCo seeks an economic gain, as does Allegheny.

When the 2006 RTEP was developed, PJM could only approve transmission lines that resolve reliability infractions. Tr. 2447. PJM could not use the RTEP process to approve an economically-driven project like Project Mountaineer. Tr. 2447-2448; ECC Main Brief, p. 56, footnote 37. We believe the record is clear that the TrAIL was proposed for economic reasons and those reasons remain the underlying impetus for it. The TrAIL project is intended to transport cheaper coal-fired generation from western PJM to eastern PJM and to encourage new coal-fired generation in western PJM, where such generation projects may be more palatable.

As stated above, the RTEP modeling process used by PJM is overly conservative. Construction of the 502-Loudoun segment of the TrAIL will cause the atrophy of eastern PJM generation projects in the queue and deter future investment in generation there. In the next subsection we will discuss the adverse impact the proposed TrAIL will have on generation in eastern PJM.

(c) Effect of TrAIL on Generation in Eastern PJM

We found the testimony of the ECC's witness, George C. Loehr, regarding the consequences and impacts of the TrAIL project on generation to be credible. He testified that,

Allegheny, TrAILCo and PJM, by their policies, significantly affect developers' decisions vis-à-vis where and what type of generation will be built. By constructing a major west to east 500 kV line, which will be paid for by the customers and not by the generation owners, they would provide a major incentive – in effect a subsidy – for potential developers to plan and construct coal fired generation in the west rather than other types of resources in the east, where they're needed.

ECC St. SR-1, p. 13. *See also* ECC St. SR-1, p. 9. He further testified that,

Since the developers of the remote generating units do not have to pay for the transmission costs, they can compete directly with more local resources which do not have anywhere near equivalent transmission costs . . . Thus the “market” would discriminate against local generation – it would, in effect, subsidize remote development.

ECC St. 1, p. 29. *See also* ECC St. 1, pp. 21-22 and 28-30.

PJM generally tries to run an economic dispatch of generation. Tr. 2265. In other words, PJM attempts to get the lowest cost generation to a customer unless doing so will cause reliability issues. Mr. Herling testified that PJM always runs the most economic generation as limited by security constraints on the transmission system. *Id.* Coal-fired generation in western PJM is cheaper than generation in eastern PJM such as natural gas, oil, and diesel. Tr. 2280. Consequently, if constraints are removed from the transmission system, PJM's economic dispatch approach dictates that coal-fired generation will be dispatched first. This will adversely impact generation projects in eastern PJM. It will conversely benefit existing coal-fired generators in western PJM, increase new coal-fired generation in western PJM, and potentially necessitate the construction of even more high-voltage transmission lines to carry electricity from western PJM to eastern PJM. According to the ECC,

[d]eregulation was premised on the notion that costs to customers would be reduced if competition were introduced. But competition does not exist when some entities are effectively subsidized at the expense of competing entities. The increase in transfer capability which would come from the subsidized TrAILCo facilities would benefit western generators and others who want to move power across the PJM system for their own economic reasons.

ECC Reply Brief, p. 29.

PJM's own Market Efficiency Analysis Progress Report indicates that generators in the western PJM zones can expect to see increased revenues of \$1.8 billion per year by 2013. OCA St. 2, p. 21; *see also* OCA Exhibit RMF-2; WPPH Main Brief, p. 11. PJM has found that 29.6% of the projected increased generation in western PJM, approximately 3.2 million megawatt hours per year, would be from the Allegheny Power system. WPPH Main Brief, p. 11; Tr. 2944.

For the foregoing reasons, with respect to the 502-Loudoun portion of the TrAIL project, TrAILCo has failed to meet its burden of proof. TrAILCo has failed to present substantial evidence to justify the need for the 502-Loudoun portion of the TrAIL. We do not believe that the present proposal is necessary or proper for the accommodation of the public, and we do not believe that the present proposal has a minimal environmental impact.

c. Prexy Facilities – Need

i. The Positions of the Parties

(a) TrAILCo's Position

As noted in the foregoing section on the 502 Junction to Loudoun segment, TrAILCo asserts that violations of the NERC reliability standards have driven the need for both portions of the PA TrAIL Projects – the Prexy Facilities and the Pennsylvania 502 Junction Facilities. TrAILCo relates that historically, compliance with NERC reliability standards was considered voluntary. Because those standards set an industry standard for good utility practice, compliance was generally universal by transmission owners and generation owners. However, TrAILCo contends that the EPAct of 2005 created a mandatory compliance and enforcement regime for reliability standards under the oversight of the Federal Energy Regulatory Commission (“FERC”). Pursuant to EPAct of 2005, the FERC designated NERC as the “Electric Reliability Organization” for the United States. The FERC has since adopted many of

the NERC standards, making them mandatory for Regional Transmission Organizations (“RTO”) and transmission owners. TrAILCo Main Brief, p. 9.

As noted above, the proposed Prexy Facilities consist of a 500 kV line from the proposed Prexy substation to the 502 Junction, and the three associated 138 kV lines, two of which are double circuits. TrAILCo states that Allegheny Power's identification of NERC Category C3 violations in the Prexy area on its 138 kV system, and its concern about the increased risk of load shedding in this area, led to the proposed construction of the Prexy Facilities as the solution. TrAILCo relates that PJM considered Allegheny Power's recommended solution and after a review incorporated this solution into 2006 Regional Transmission Expansion Plan (“RTEP”) to address the reliability violations. TrAILCo states that PJM's application of the NERC reliability standards, using PJM's own system-stressing procedures as well as those designed by transmission owners, has driven the need. TrAILCo Main Brief, pp. 9-10.

TrAILCo asserts that the Prexy Facilities are needed to address electric reliability problems that will begin in 2009 if the Prexy Facilities are not constructed. Initially, new 138 kV lines will be terminated at the new Prexy Substation and a 138 kV capacitor installed at the Prexy Substation by November 2009 to mitigate the immediate short-term reliability concerns. Then, a new 500 kV line and a 500/138 kV transformer at the Prexy Substation will be completed by November 2010. The prevailing flow of power on the Prexy Facilities will be from the 502 Junction Substation north to the Prexy Substation and out into the surrounding 138 kV network. TrAILCo Main Brief, p. 17.

TrAILCo asserts that the record shows that both Allegheny Power and PJM reviewed the studies that identified the reliability violations in the Prexy area and worked closely together to corroborate that the Prexy Facilities will address the identified reliability problems. Both Allegheny Power and PJM corroborated the analyses and recommendations regarding the need for the Prexy Facilities and concur that system reliability for the Allegheny Power transmission zone in PJM will benefit from the construction of these facilities. TrAILCo Main Brief, p. 17

TrAILCo states that the Prexy Facilities provide a cost-effective solution to the reliability problems identified on Mr. Hozempa's TrAILCo Exhibit LAH-3 that are expected to begin in 2009 if these facilities are not constructed. The overloads that are projected to occur and the risk of voltage collapse, brown-out or low voltage conditions on the 138 kV system indicate the 500/138 kV Prexy Substation is necessary. The 500 kV Prexy Segment will run to the Prexy Substation where its voltage will be transformed to 138 kV. The proposed 138 kV lines that will tie into the surrounding 138 kV system will provide the needed support for retail customers served by Allegheny Power in southwestern Pennsylvania, particularly the southern Allegheny, Washington and northern Greene Counties. TrAILCo Main Brief, pp. 17-18.

TrAILCo contends that the Prexy Facilities were not planned in a vacuum. Portions of Washington County, in particular, are experiencing above-average growth and development, which is projected to continue into the foreseeable future. Obvious examples of this growth include the commercial development along the I-79 corridor such as Strabane Square, Trinity Point and The Foundry as well as the residential development in Peters and South Strabane Townships. TrAILCo argues that although certain public input witnesses cited generic population statistics for areas encompassing Washington and Greene Counties to question TrAILCo's claims of local electric reliability problems, there is no direct link between population and electrical demand. Moreover, such general statistics are not a reliable resource for purposes of maintaining system reliability because they do not capture demand characteristics for the use of electricity in the area, which can include increases in commercial development as well as increases in the general population and new residential developments. For example, several projects that are causing increases in demand without increases in population are the expansions at Southpointe and The Meadows, growth at the California Technology Park and the new Tanger Outlets. TrAILCo Main Brief, p. 18.

TrAILCo asserts further that, in addition to protecting reliability in the face of prospective growth, Allegheny Power already has experienced actual reliability problems that the Prexy Facilities would address. Low voltages on the transmission system have already occurred in Greene, Washington, and southern Allegheny Counties during the high load periods of the past three summers, even with all of the transmission facilities in service. The transmission system voltages will be much worse if a transmission line contingency were to occur during these same periods in the

future without the proposed facilities. The Prexy Facilities were planned over five years ago in December 2001, with an in-service date of June 2011. TrAILCo states that the load in the area to be served by the Prexy Facilities has increased faster than anticipated, so the project has been advanced to insure reliable service in the area. TrAILCo Main Brief, pp. 18-19.

(b) OCA's Position

The OCA begins its analysis of the proposal for the Prexy Segment by noting that the NERC has set out defined standards for the types of contingency testing that transmission owners must use when assessing the integrity of their systems, citing TrAILCo St. 3, pp. 9-10. The NERC standards embody this idea of “contingency” testing, as OCA witness Peter Lanzalotta explained:

“Contingencies” refer to electric system occurrences when one or more individual elements of the system, such as individual transmission lines, substation transformers, or generating units, are assumed, for planning purposes, to suffer forced outages. Typically, when elements of the transmission system are forced out of service, the rest of the system becomes more heavily loaded. In order to provide reliable electric service, transmission system planners have to plan, at a minimum, for a system that will deliver reliable service even if any individual component of that system suffers an unplanned outage. This is commonly referred to as a “first contingency” or a “single contingency” planning standard.

OCA St. 1, p. 10. In addition to testing for the single contingency standard, as explained by Mr. Lanzalotta above, the NERC standards also require transmission owners to perform testing for “double contingency” events. Double contingency testing has been described by many of the witnesses in this proceeding as being an “N-1-1” standard, which means that the transmission grid is assessed starting at its normal (N) state. Tr. 2522-2523. Then, through computer modeling, one system component is taken out of service, which stresses the rest of the grid. At this point, the system operator may make manual adjustments, such as re-dispatching generation, to stabilize the grid. After such adjustments, a second component is taken out of service. The grid is evaluated at this time, and if any voltage concerns are present, either too low or

overloaded, a NERC Category C-3 occurrence could occur at some point in the future. Tr. 2522-2523; OCA Main Brief, pp. 13-14.

The OCA noted that TrAILCo witness Lawrence Hozempa testified that four separate NERC Category C-3 “electrical occurrences” in the Prexy area 138 kV system could be anticipated in 2009 based on the current state of the transmission grid and considering projected load growth. TrAILCo St. 2, p. 5. These four potential C-3 occurrences are listed in TrAILCo Exhibit LAH-3 and represent potential reliability concerns that must be addressed. OCA Main Brief, p. 14.

OCA witness Lanzalotta individually described the potential C-3 occurrences listed in TrAILCo Exhibit LAH-3, as follows:

The first double contingency is an outage of the Buffalo Junction 138 kV transmission interconnection and an outage of the Wylie Ridge to Smith 138 kV line. This results in an overload on the Union Junction 138 kV transmission interconnection.

The second set of contingencies, the simultaneous outage of both the Buffalo Junction and the Union Junction 138 kV lines, results in an overload of the Wylie Ridge to Smith 138 kV line and in low voltage at a large number of local 138 kV substations. In similar fashion, the third and fourth sets of contingencies, both are combinations of an outage of Union Junction and an outage of another 138 kV transmission line also result in widespread low voltage and in limited 138 kV line overloads.

OCA St. 1, pp. 11-12. As a result of these findings, the Company has proposed to build the “Prexy Facilities,” consisting of three main components: a 500 kV substation, a 37-mile 500 kV line from the 502 Junction substation to the Prexy Substation and five 138 kV lines connecting the Prexy Substation to the surrounding network. OCA St. 1, pp. 6-7; OCA Main Brief, pp. 14-15.

The OCA has not challenged TrAILCo’s assertion that some upgrade of the local transmission system in the Prexy area would be needed within the next few years. The OCA stated that it started its evaluation from the premise that TrAILCo’s contingency and other testing assumptions are correct. The OCA stated that the record, however, shows that, even with the TrAILCo’s conservative testing assumptions, more reasonable, more efficient and less

invasive upgrades can be done that would ensure safe, reliable and reasonably continuous electric service for customers in Washington and Greene Counties. A project of the magnitude of the Company's proposed Prexy Facilities is simply not needed to address the TrAILCo-identified reliability concerns. ECC witness George Loehr captured the essence of this issue when he stated that "[t]o construct a 500 kV line to satisfy this presumed low voltage problem would be like using a pile-driver to hammer tacks." ECC St. 1, p. 18; OCA Main Brief, p. 16. (Emphasis supplied.)

The OCA has proposed upgrades to the Allegheny Power's existing 138 kV system that would address all of the potential reliability concerns that the Company has cited as the drivers for its proposed Prexy Facilities. OCA witness Peter J. Lanzalotta, a registered professional engineer with 30 years of experience in electric utility system planning and operations, has proposed an upgrade to the Prexy area 138 kV system that would include building four new 138 kV lines routed primarily on currently used utility rights-of-way that would solve all of the Company's identified reliability concerns. The alternative identified by OCA witness Lanzalotta would *not* require the building of a new Prexy area 500 kV substation or any 500 kV transmission lines. OCA witness Robert Fagan, an energy economics analyst and mechanical engineer with 20 years of experience in the energy industry, has identified demand response and energy efficiency initiatives that Allegheny Power could undertake in order to mitigate future load growth in the Prexy area, providing further assurance that Mr. Lanzalotta's alternative would be sufficiently robust in future years. OCA Main Brief, pp. 16-17; OCA St. 1, Exs. PJJ1 and PJJ 2; OCA St. 2, Ex. RMF-1. (Emphasis in original.)

The OCA stresses that it is important to understand that Mr. Lanzalotta did not challenge the Allegheny Power or PJM testing procedures, but rather used all PJM and Allegheny Power reliability standards and contingency assumptions as the starting point for his analysis. In his direct testimony, Mr. Lanzalotta explained:

Under the minimum NERC standards for multiple contingencies, the controlled interruption of customer demand (dropping of customer loads), the planned removal of generators, and the curtailment of firm power transfers are accepted methods to keep the system stable. See TrAILCo Exhibit LAH-4, pg. 1, Part B Requirements, Section R-1, Category C of

Table 1. PJM and TrAILCo are using a more conservative reliability standard in this instance that calls for bringing the system to a stable state without dropping customer load. I have utilized this more conservative requirement in my analyses as well.

OCA St. 1, p. 17, footnote 1.

The OCA explained that as part of his investigation, Mr. Lanzalotta worked with computer simulations and “load flow studies” that facilitate examination of the performance of the transmission system with regard to loading of facilities and voltage levels under various configurations, load levels and types of contingencies. OCA St. 1, p. 16. Mr. Lanzalotta explained in more detail how the load flow studies are used in an investigation of this type:

Load flow studies are performed on what is a commercially available computer model. Data files that describe the configuration of the electric system, its loads and its resources are loaded in and the model attempts to find a convergent solution, which can then be saved, as a “saved case.” These saved cases include both the system description, and also the solution set of loads, flows and settings that produced the convergent solution. These saved cases can be reviewed directly, without the need to produce a successful convergence of the system data with a run of the model. Modifications can be made to the saved case to reflect various system reinforcements and then it is solved to convergence again to produce a new saved case.

OCA St. 1, p. 16; OCA Main Brief, pp. 18-19.

The OCA further explained that, based on the potential reliability issues identified in TrAILCo Exhibit LAH-3, Mr. Lanzalotta designed reinforcements to the existing 138 kV system. As he explained:

I ran contingency load flow studies against the unreinforced 2009 system to study the problems listed in TrAILCo Exhibit LAH-3. Then, I added reinforcements to the 138 kV system and ran the same contingencies against my reinforced system to determine whether the problems had been eliminated. Consistent with the Company’s study assumptions, I assumed that no customer loads would be dropped due to these contingencies.

OCA St. 1, pp. 16-17 (footnote omitted); OCA Main Brief, p. 19.

As a result of testing design reinforcements and further analysis as described above, Mr. Lanzalotta concluded that it is possible to eliminate all of the potential problems identified by TrAILCo by adding four new 138 kV lines on existing use rights-of-way and two 138 kV substation capacitors to the existing system in Washington County. OCA St. 1, pp. 18-19. In light of this alternative enhancement to the 138 kV system that would resolve TrAILCo's reliability concerns, the OCA argues that the massive TrAILCo-proposed Prexy Facilities are manifestly unreasonable, unnecessary and inefficient. Mr. Lanzalotta explained the alternative that he developed in detail:

I modeled the addition of the following new 138 kV transmission lines: Wylie Ridge to Cecil; Charleroi to Peters; Peters to Cecil; [and] Cecil to Gordon. These lines all follow the paths of existing 138 kV transmission lines. In some places, there may be existing transmission poles with space available for a new 138 kV circuit, especially near existing substations. Otherwise, a new set of poles would be needed. The addition of these lines eliminates most of the problems presented by the Company in TrAILCo Exhibit LAH-3, however, some borderline voltage concerns still remain.

OCA St. 1, p. 17; OCA Main Brief, p. 19.

Mr. Lanzalotta explained his plan to deal with the slight voltage concerns that would need to be rectified in conjunction with the addition of the four new transmission lines, was to add 44 MVAR (mega-volt amperes reactive) of capacitors at the Smith Substation and at the Bethel Park Substation. This, in conjunction with the addition of the lines described above, achieved the goal of reducing the voltage drops to less than 5% in the event of a double contingency. OCA St. 1, p. 18; OCA Main Brief, pp. 19-20.

The OCA states that Mr. Lanzalotta's proposed 138 kV solution for the Prexy area would eliminate all of the identified reliability issues that Company witness Hozempa listed in TrAILCo Exhibit LAH-3, and without building the new 500 kV Prexy Substation or any 500 kV transmission lines over presently unused rights-of-way. Mr. Hozempa agreed that the 138 kV solution presented by OCA witness Lanzalotta would resolve the local reliability issues in TrAILCo Exhibit LAH-3, stating that it was "acceptable." TrAILCo Rebuttal St. 2-R-1, p. 4. During cross-examination, Mr. Hozempa confirmed his earlier testimony, stating that the OCA's

alternative proposal would resolve the primary drivers in TrAILCo Exhibit LAH-3; Tr. 2721; OCA Main Brief, p. 20.

The OCA noted also that Mr. Lanzalotta identified other ways in which the local 138 kV system in the Prexy area could be reconfigured to avoid some of the potential reliability issues in TrAILCo Exhibit LAH-3. During his investigation and analysis of the 138 kV system in the Prexy area, Mr. Lanzalotta observed that several of the 138 kV transmission lines were configured as “T” connections. Mr. Lanzalotta explained:

The two “junctions,” Buffalo Junction and Union Junction, are obviously critical points on the transmission system, as they are part of every one of the four sets of contingencies in TrAILCo Exhibit LAH-3. These junctions are points on the transmission system where one transmission line hooks into another transmission line with a “T” type of connection, with no breakers or other protective devices between the two lines. When one of the lines has a fault, both are forced out of service because of the lack of protective devices between the two lines.

OCA St. 1, p. 13; OCA Main Brief, p. 20.

The OCA notes that the “T” junctions are located at critical points on the transmission system, but can be reconfigured to help avoid the potential reliability issues listed in TrAILCo Exhibit LAH-3, as Mr. Lanzalotta explained:

[I]t is possible to reduce the current impact of a fault affecting the 138 kV transmission lines that make up Buffalo Junction or Union Junction by reconfiguring the system to eliminate these “T” connections so that one fault will no longer take out two transmission lines. This could be as simple as placing a small substation at the junction connection point with circuit breakers for one or more of the transmission lines. Or it could be something more substantial, such as a new circuit out of an existing substation to connect to one of the transmission lines at the junction point, thus eliminating the “T” connection. I have not seen any indication that this approach was considered by the Company, either.

OCA St. 1, p. 15; OCA Main Brief, pp. 20-21.

The OCA states that after his investigation and analysis of the transmission system in the Prexy area, Mr. Lanzalotta concluded that:

There is no need to build a new 500 kV line from 502 Junction to Prexy or the new Prexy substation, in order to reinforce the 138 kV transmission system in Pennsylvania and address the problems described in TrAILCo Exhibit LAH-3. My initial studies indicate that the addition of four new 138 kV lines along the routes of existing 138 kV transmission lines, and the addition of capacitors at two existing substations, would eliminate all the problems. . . .

OCA St. 1, pp. 19-20.

The OCA explained that the proposed 138 kV solution to the potential Prexy reliability issues is one reasonable way to proceed. As Mr. Lanzalotta testified on redirect:

Q. Mr. Lanzalotta...in response to Mr. Ogden's questions, I believe that you made the statement that the alternative that we present may not be optimal and I'd like you to explain that a little further.

A. **...What I meant by that was, my alternative was really the first set of reinforcements that I came up with that solved all of the reliability violations. When I got to that point, I stopped considering alternatives and I tried to refine the solution, but my experience in running the load flow and doing system planning is that the more time and the more thought and the more alternatives you can try, the greater the probability that you could come up with an alternative that would solve the violations with fewer system additions than what I proposed in my alternative.**

Tr. 3186; OCA Main Brief, p. 21. (Emphasis supplied.)

The OCA argues that its alternative may be just one set of reasonable system enhancements that would resolve the reliability concerns in 2009—and it is possible that other alternatives exist that would require even fewer, less costly system additions. Mr. Lanzalotta's Prexy solution, or possibly other 138 kV system enhancements, would allow for the safe, reliable and reasonably continuous provision of electric service to customers in that area for years to come. The proposed 500 kV solution, including the building of a new 500 kV substation and 37

miles of 500 kV transmission line on virgin rights-of-way is not needed and is inefficient; accordingly, the Commission should reject TrAILCo's proposal. OCA Main Brief, pp. 21-22.

The OCA discusses at some length in its Main Brief the criticisms leveled by TrAILCo at the proposals of Mr. Lanzalotta and Mr. Fagan. The OCA notes that TrAILCo's witness, Mr. Hozempa, testified that the Prexy Facilities were "more robust," and, for the first time, alleged that the Prexy Facilities were needed to address reliability issues beyond 2009 and outside the Prexy area. The OCA notes that in TrAILCo's Application the only reasons stated for the need for the Prexy Facilities were the potential reliability matters identified in TrAILCo Exhibit LAH-3. OCA Main Brief, pp. 22-25.

The OCA also provides a detailed discussion of the comparison of its cost estimate for Mr. Lanzalotta's proposal versus TrAILCo's estimate of the cost of its proposed Prexy Facilities. The OCA states that its estimates were based on Company supplied data and detailed items in TrAILCo's counter calculation that the OCA contends should not be included. OCA Main Brief, pp. 25-26.

The OCA presented the direct and surrebuttal testimony of Robert Fagan. OCA St. 2, 2-SR. Mr. Fagan provided testimony as to Energy Efficiency ("EE") and Demand Response ("DR") initiatives that Allegheny Power could take on behalf of its customers. As TrAILCo indicates that the Prexy Facilities are needed due to load growth in and around the Prexy area, Mr. Fagan's testimony showed that Allegheny Power can take proactive initiatives to help control this load growth. Mr. Fagan supported Mr. Lanzalotta's proposed 138 kV solution for the Prexy area, which in and of itself resolves the identified potential reliability problems. Mr. Fagan further provided that Mr. Lanzalotta's 138 kV option for the Prexy area can be made even more robust and long-lasting with some reasonable EE and DR initiatives. OCA St. 2, p. 3; OCA Main Brief, p. 27.

The OCA's Mr. Fagan explained his use of the terms EE and DR, as follows:

Energy efficiency ("EE") resources can be generally defined as improvements to the technical efficiency of end use devices or systems – e.g., lighting, air conditioning, industrial process systems, refrigeration,

hot water, building shell, and heating systems – that results in reduced energy usage for the same end use service, and can also result in reduced peak period consumption rates. They are different from “conservation” resources, which imply reduced end use services and usually imply a requirement for behavioral change on the part of end users.

Demand response (“DR”) resources are those resources that allow for load to “shift” from on-peak to off-peak periods, or allow loads to be cycled off during on-peak periods. For example, cycling air conditioning systems or producing products during off-peak shifts instead of on-peak shifts are two types of demand response resources. Sometimes, demand response resources are used to refer to customer “behind-the-meter” generation that mimics the interruption or shifting of load. Demand response resources can be as simple as an automatic increase in a thermostat’s air conditioning set point, or as complex as varying the on/off cycles of an office facilities’ set of rooftop heating, ventilation and air conditioning systems.

OCA St. 2, pp. 5-6.

The OCA states that Mr. Fagan explained how these initiatives can directly reduce peak period end user loads and, if effectively targeted, can result in permanent reduced peak load on the most vulnerable parts of the system. As Mr. Fagan further discussed in his direct testimony, EE and DR can be considered as reliable resources to serve load. OCA St. 2, pp. 6-7; OCA Main Brief, p. 28.

In response to discovery, West Penn provided actual energy usage from 1992 to the present and projected load growth numbers through 2026. OCA St. 2, p. 8. Mr. Fagan commented on how EE and DR initiatives could affect this projected load growth, as follows:

If the Company took energy efficiency and demand response resource peak load reduction steps, such that compound annual growth rate of demand between 2006 and 2026 was reduced from the projected level of 0.91% to just under half that level, or 0.40%, West Penn Power would see a peak load reduction of 451 MW relative to their forecast. If the Company took more aggressive steps, to essentially slow the net growth of demand to zero after five years, the cumulative effect would be to reduce the load by approximately 750 MW by 2026.

OCA St. 2, pp. 8-9 (footnote omitted); OCA Main Brief, p. 28.

Mr. Fagan cited a national study to show that, in fact, the reductions that he cited above are achievable and are possible for the Prexy area. *Id.* at 10-11. As to program costs, AP has already recognized the benefits in other jurisdictions, as Mr. Fagan explained:

Allegheny Power's recent filing of a report before the Maryland Public Service Commission indicated that eight of its proposed demand-side management programs passed all the cost-effectiveness tests set out by the Maryland Public Service Commission and on that basis, Allegheny Power has recommended implementation of those programs in its Maryland service territory. Cost-effectiveness tests essentially are used to determine if the value of energy efficiency – i.e., the avoided costs of the energy and capacity that would otherwise be used and the additional value of avoided or deferred transmission and distribution investment - is greater than the costs. Allegheny reports that its programs will save 141 MW of demand and 270 GWh of energy in 2015 at a cost of \$23.69 million over a period of eight years.

OCA St. 2, p. 12 (footnotes omitted.); OCA Main Brief, p. 28.

The OCA asserts that West Penn could take actions in southwestern Pennsylvania similar to those Allegheny Power is taking in Maryland, as Mr. Fagan discussed:

West Penn Power currently does not directly procure any energy efficiency or demand response resources. In a manner similar to that undertaken by many utilities around the nation, or similar to its sister Company's efforts in Maryland, West Penn Power could implement or contract for the implementation of a "suite" of demand management programs.

OCA St. 2, p. 13; OCA Main Brief, p. 29.

At the present time Allegheny does not take possible contributions from EE or DR measures into account when projecting its load forecasts. OCA St. 2, pp. 14-15. Mr. Fagan concluded, however, that the area around Prexy could see lower projected load growth and thus less loading on the 138 kV system if EE and DR initiatives were employed in that area by West Penn. The effect, if targeted properly, would be to make Mr. Lanzalotta's proposed alternative even more robust. OCA St. 2, pp. 16-17; OCA Main Brief, p. 29.

The OCA argues that TrAILCo mischaracterizes Mr. Fagan's testimony by stating that it is offered as a complete answer to the alleged reliability issues in the Prexy area. To the contrary, the OCA states that Mr. Fagan's proposals are in addition to and not in place of Mr. Lanzalotta's proposals. Further, adoption of Mr. Fagan's proposals would serve to enhance the reliability of service in the Prexy area. In fact, the OCA points out that there are no energy savings related to the historical demand side management programs testified to by TrAILCo witness Ms. Cynthia Menhorn. OCA Main Brief, pp. 16-32.

In support of this conclusion, Mr. Fagan stated:

The US DOE EIA collects information on the extent of energy savings associated with utility-sponsored DSM and energy efficiency programs. The data reveal *zero* energy efficiency program savings for West Penn Power over at least the past three years (2004, 2005, and 2006). Also, West Penn Power confirms the thrust of this information in response to discovery request XII-2 from the PA OCA, included as part of Exhibit RMF-1.

OCA St. 2, p. 12 (footnotes omitted) (emphasis in original); OCA Main Brief, p. 32.

The OCA relates that the Company has proposed the Prexy Facilities as a means to address potential reliability problems that might occur in the Prexy area within the next several years. TrAILCo St. 2, p. 5; TrAILCo Exhibit LAH-3. The proposed Prexy Facilities would tie in to an existing 138 kV system, as OCA witness Lanzalotta described:

As shown in Figure 2, the proposed Prexy substation would be located in the middle of an existing 138 kV network (the thin black lines) located in Washington County, PA, and fed out of the Wylie Ridge substation to the northwest, the Windsor substation to the southwest, and the Charleroi substation to the southeast.

OCA St. 1, p. 9.

The OCA witness Lanzalotta further described the Prexy Facilities as including the building of a new 500 kV Prexy Substation, approximately 36 miles of 500 kV transmission

line from the Prexy Substation to the 502 Substation, and five new 138 kV lines emanating out from the Prexy Substation. OCA St. 1, pp. 6-7; OCA Main Brief, pp. 33-34.

The OCA notes that throughout this proceeding, many of the parties and the public have questioned the size and capacity of the 500 kV infrastructure that the Company is proposing to build to serve local needs. In his surrebuttal testimony, OCA witness Lanzalotta discussed the issue of what is actually needed to serve local needs compared with the magnitude of the Company's 500 kV proposal, as follows:

The Prexy facilities proposed by the Company provide far more system capacity than is needed to address the reliability concerns identified by the Company as the reason for building the Prexy facilities. To illustrate just how much system capacity is being proposed, the 500 kV transmission line proposed to run from 502 Junction to Prexy will have a capacity of 4,161 MVA. In contrast, the total 2009 electric load in Washington and Greene Counties directly related to the Prexy facilities is about 608 MVA. In other words, the 500 kV transmission line proposed to run from 502 Junction to Prexy will have almost *seven* times as much capacity as there is load in the Prexy area.

OCA St. 1-SR, p. 7 (footnotes omitted); OCA Main Brief, p. 34. (Emphasis in original.)

Mr. Lanzalotta went on to explain, in comparison to what the Company is proposing, the current load-carrying capabilities of the 138 kV transmission system in the Prexy area and the effect on that load-carrying capability of adding Mr. Lanzalotta's proposed 138 kV Prexy solution:

Currently, the Prexy area in Washington and Greene Counties [is] being served by seven 138kV transmission lines which have a capacity of more than 1,500 MVA. By comparison, the new 138 kV transmission lines proposed in my Direct Testimony would have a normal capacity of about 240 MVA each. Two of these lines provide additional supply to the Prexy area which results in a total supply capacity of more than 2,000 MVA to serve the Prexy area of Washington and Greene Counties.

OCA St. 1-SR, p. 7 (footnote omitted); OCA Main Brief, pp. 34-35.

The OCA relates that the total projected electrical load for 2009 related to the current Prexy area facilities is 608 MVA. As Mr. Lanzalotta explained, his 138 kV proposal would enable a total supply capacity of over 2000 MVA, or over three times the projected load. OCA Main Brief, p. 35.

(c) ECC's Position

The Energy Conservation Council ("ECC") takes a different tack in opposing the TrAILCo proposal for the Prexy Segment. The ECC argues that TrAILCo has failed to show the existence of any reliability issues.

The ECC begins by noting that TrAILCo's alleged justification for the Prexy Facilities comes from PJM's 2006 Regional Transmission Expansion Program ("RTEP") process. Tr. 2237-2238. The alleged need for the Prexy Facilities was – and still is – based on the modeling and load forecasts from PJM's 2006 RTEP process. Tr. 2258; ECC Main Brief, p. 18. (footnotes omitted.)

The ECC then reprints a summary of the TrAILCo Exhibit LAH-3 that sets forth all of the electrical occurrences and electrical results that allegedly require building of the Prexy Facilities. Tr. 2237-2238, 2268, 2801.

LAH-3

	Electrical Occurrence	Electrical Result
1	Outage of Buffalo Junction and Wylie Ridge-Smith 138 kV lines.	The Union Junction 138 kV line exceeds its emergency rating and overloads.
2	Outage of Buffalo Junction and Union Junction 138 kV lines.	The Wylie Ridge-Smith 138 kV line exceeds its emergency rating and overloads. Also, the 138 kV voltage at 11 substations drops below acceptable limits and could lead to a voltage collapse in the area.
3	Outage of Union Junction and Wylie Ridge-Smith 138 kV lines.	The Gordon-Manifold 138 kV line exceeds its emergency rating and overloads. Also, the 138 kV voltage at 15 substations drops below acceptable limits and could lead to a voltage collapse in the area.
4	Outage of Union Junction and Gordon-Manifold 138 kV lines.	The 138 kV voltage at 10 substations drops below acceptable limits and could lead to a voltage collapse in the area.

ECC Main Brief, pp. 18-19.

The ECC asserts that to get the Prexy Facilities approved, TrAILCo must prove that the electric reliability issues set forth in TrAILCo Exhibit LAH-3 are valid, *and* that the solution they propose – the building of the proposed new 500 kV line from the proposed new 502 Junction Substation to Prexy, five new 138 kV lines, and new substations at Prexy and 502 Junction – is required to solve the alleged reliability issues. ECC Main Brief, p. 19.

The main brief of ECC then examines in some detail the NERC standards and presents arguments to the effect that TrAILCo went beyond any of the standards in its efforts to support its Prexy project. As the chart above shows, TrAILCo performed load flow studies based on double contingencies, or the outage of two different electrical supply lines. The ECC faults the studies for a failure to perform manual system adjustments after the first outage or contingency. Secondly, the studies failed to model controlled load shedding. Thirdly, the studies failed to model the re-dispatch of generation, or in other words, consider dispatching any available generation, regardless of the price of that generation. Fourthly, and finally, TrAILCo

and/or Allegheny Power failed to include generation from generators outside the “Prexy area.”
ECC Main Brief, pp. 20-22.

The ECC witness Mr. George Loehr’s analysis of TrAILCo’s claims regarding the unavailability of any manual system adjustments concludes with the following opinions:

In my more than 45 years of conducting load flow and transient stability studies of bulk power systems, I have never encountered a situation where “there are no manual system adjustments available.” Mr. Hozempa’s statement is unconvincing – especially in light of his failure to mention in his direct testimony, or in TrAILCo Exhibit LAH-3, that they were even considered.

* * *

After being involved in many hundreds of studies and having run literally thousands of load flow cases in my career, without ever encountering even one example of a Category C3 contingency where no manual system adjustments were possible – and then, in this one study, finding not one but *four* Category C3 contingencies in which no manual system adjustments are possible, and no other reliability problems – goes well beyond my threshold of credibility.

ECC St. SR-1, pp. 3-4; ECC Main Brief, p. 23.

The ECC in its main brief refers with approval to Mr. Lanzalotta’s proposed alternative to the Prexy Facilities noting that his proposal is, at least arguably, cheaper, and “it works.” To validate that Mr. Lanzalotta’s proposed fix would work, TrAILCo removed the Prexy Facilities from the models used to determine the alleged need for the Prexy Facilities, and inserted Mr. Lanzalotta’s proposed alternative facilities. This resolved the four infractions set forth in TrAILCo Exhibit LAH-3, the very reasons that TrAILCo claims it needs the Prexy Facilities. Tr. 2268, 2237-2238, 2721-2722, 2801; ECC Main Brief, pp. 23-24.

The ECC argues that TrAILCo’s proposed Prexy Facilities will require the construction of a second 500 kV line. In fact, Allegheny Power has apparently always considered connecting two 500 kV lines to the proposed Prexy Substation. The original Allegheny Power proposal submitted on February 28, 2006 to PJM showed a second “future” 500 kV line running east. Tr. 2869. The 2006 RTEP report also shows another new 500 kV line

crossing Pennsylvania through the proposed Prexy Substation. *See* ECC Cross Ex. 19, Tr. 2454-2455 and Fig. 1; ECC Main Brief, p. 24.

The ECC asserts that in fact, TrAILCo plans on turning Prexy into a 500 and 138 kV hub. TrAILCo's Larre Hozempa testified that *in addition to* the proposed Prexy Facilities, TrAILCo also has plans for *five* new 138 kV lines and *three* additional new 500 kV lines connecting to the Prexy Substation. Tr. 2864-2868. In addition to the proposed 500 kV line running south to the new 502 Junction Substation (as part of the proposed Prexy Facilities), TrAILCo's current plan calls for a *second* 500 kV line running east, a *third* 500 kV line running north, and a *fourth* 500 kV line running west from the Prexy Substation. Tr. 2864-2868; ECC Main Brief, p. 25.

The ECC asserts further that, if the Commission approves the proposed 500 kV line to Prexy, TrAILCo will be back requesting *another* 500 kV line in the immediate future. In the next contingency analysis that TrAILCo performs, one of the contingencies will be the loss of the new 500 kV line leading to Prexy. TrAILCo then expects it will need to come back to the Commission to get another 500 kV line approved. Tr. 2870-2871; ECC Main Brief, pp. 25-26.

The ECC notes that TrAILCo admits that the proposed Prexy Facilities are "larger than the immediate need requires." But TrAILCo has not evaluated or determined *how much* larger the Prexy Facilities are than required. Tr. 2750. Since TrAILCo has performed no studies or evaluations to determine how much larger the Prexy Facilities are than the immediate need requires, the ECC contends that TrAILCo has not proven that the Prexy Facilities are needed to address the projected demand. The ECC then observes, as did Mr. Lanzalotta, that TrAILCo acknowledges the capacity of the 500 kV line proposed as part of the Prexy Facilities is 4,161 MVA – more than seven times the *entire* projected 2009 load in the Prexy area. Tr. 2222; ECC Main Brief, p. 26.

The ECC then addresses in some detail the availability of an adequate amount of generation in or near the Prexy area, as well as projected new generation. Some or all of the local generation would, in the view of the ECC, serve to obviate the need for the proposed Prexy

Facilities. Perhaps anticipating a TrAILCo counter-argument, the ECC notes that if there is a problem moving generation from the Mitchell power plant through the 138 kV system, the ECC suggests that TrAILCo study how to fix that problem instead of a “work-around” that will cost hundreds of millions of dollars. ECC Main Brief, pp. 27-31.

The ECC also faults TrAILCo for not adequately studying alternatives to its Prexy Facilities proposal. The ECC paraphrases the testimony of PJM’s Steven Herling that he believes that TrAILCo may have studied lower voltage alternatives, and found they were not as effective over the long term. Tr. 2339. The ECC asserts that TrAILCo did not study any lower voltage alternatives before proposing the Prexy Facilities. In discovery, TrAILCo was asked to “list the alternatives to the Prexy Facilities that were considered,” and TrAILCo responded as follows:

The study examined at (sic) two alternatives to serve the load center around the original Prexy Substation site. The present distribution load, within a 10 mile radius of the original Prexy Substation location, will exceed 500 MVA in 2009. The alternates studied were to serve the load from within the load center or from outside the load center. The first alternative involved tapping the Wylie Ridge-Harrison 500 kV line and installing a 500/138 kV substation in western Washington County. The second alternative involved building the center portion of the Harrison-Yukon 500 kV line (502 Junction-Prexy) and installing a 500/138 kV line substation in northern Washington County (Prexy).

ECC Cross Ex. 71 (emphasis supplied), Tr. 3590; ECC Main Brief, p. 31.

The ECC notes that the “first alternative” TrAILCo allegedly considered is not a lower voltage alternative. It involves tapping into the Wylie Ridge to Harrison 500 kV line, installing a new 500 kV/138 kV substation in western Washington County, and running four or five new 138 kV lines from a new substation to connect to the existing 138 kV system. *See* TrAILCo Redirect Ex. 4 at TrP-ECC-973191. The “second alternative” mentioned in ECC Cross Exhibit 71 is the proposed Prexy Facilities. TrAILCo did not study any alternatives without 500 kV lines and new substations. ECC Main Brief, pp. 31-32. It should be noted that TrAILCo Redirect Ex. 4 is marked confidential, highly sensitive. A redacted version is attached to the Stipulation between TrAILCo, ECC and OCA regarding moving portions of the confidential record into the public record. TrAILCo Redirect Ex. 4, redacted, is Appendix A to

the Stipulation. The Stipulation also moves transcript pages 2860-2874 and 2882-2908 into the public record.

The ECC asserts that an examination of the record shows that TrAILCo did not adequately analyze any alternatives – not even the “first alternative.” Although TrAILCo points out in its Prexy Study that in its first alternative, four or five new 138 kV lines were required to connect the new substation to the 138 kV system, TrAILCo only ran the modeling with a single 138 kV line tied into one substation – the Lagonda Substation, on the outskirts of the Prexy area. TrAILCo Redirect Ex. 4 at TrP-ECC-973191. ECC Main Brief, p. 32.

The ECC notes that TrAILCo claims that the “first alternative” did not resolve the alleged reliability issues. TrAILCo Redirect Ex. 4 at TrP-ECC-973971. The ECC stated that in modeling the first alternative TrAILCo only used one 138 kV line. The ECC argues that if four or five 138 kV lines were required to connect the proposed upgrade to the existing 138 kV lines, but if one 138 kV line is used in the modeling, of course it is not going to work. The ECC concludes that TrAILCo has not properly analyzed a single alternative to the proposed Prexy Facilities. ECC Main Brief, p. 32.

The ECC states that there are numerous other alternatives that Allegheny Power and TrAILCo could have studied, but did not. There are already two existing 500 kV lines near the Prexy area. One, the Wylie Ridge-Harrison 500 kV line, actually *crosses* the Prexy area. The Wylie Ridge-Harrison 500 kV line has not historically operated near its capacity, even under certain contingencies. Tr. 2746-2747, 2748-2749. The ECC asks if there is a need to tie into a 500 kV line, why didn’t TrAILCo study whether it was effective to tie into the Wylie Ridge-Harrison 500 kV line? The Yukon-Hatfield Ferry 500 kV line is also very close – it is within ten miles of the Prexy area. Tr. 2744. TrAILCo did not examine *any* alternatives involving tying into the Yukon-Hatfield Ferry 500 kV line. TrAILCo Exhibit LAH-5; ECC Main Brief, pp. 32-33.

The ECC asserts that TrAILCo also should have looked at lower voltage options. The fact that TrAILCo did not study low voltage alternatives violates normal planning practice:

Normal planning practice includes review of reactive reinforcements as a solution to voltage and loading problems, as well as other reinforcements such as reconductoring or construction of new facilities, during system planning analyses.

Tr. 2758.

The ECC notes that TrAILCo's Larre Hozempa admits it is good planning practice to maximize to the extent reasonable and economical the transmission capabilities of existing towers and structures. Tr. 2733. However, the ECC asserts that neither Allegheny Power nor TrAILCo studied reactive reinforcement, reconductoring, or constructing new lower voltage lines without new substations or 500 kV lines. ECC Main Brief, p. 33.

The ECC states that TrAILCo admits that lower voltage solutions exist, such as Peter Lanzalotta's 138 kV alternative. TrAILCo witnesses have also testified that, if the Prexy Facilities are not installed, eventually there will be a significant number of 138 kV lines in the area. Tr. 2751-2752; TrAILCo St. 2-R, p. 18. The ECC concludes that means there are alternatives to the proposed Prexy Facilities – 138 kV alternatives. But, TrAILCo has not performed any studies or evaluations to determine when, how many, where, or why these 138 kV lines will be needed. Tr. 2752; ECC Main Brief, p. 33.

The ECC notes that all of the alleged reliability issues justifying the Prexy Facilities involve T-junctions. Electrical occurrences 1 and 2 involve the Buffalo Junction T-junction, and electrical occurrences 2, 3 and 4 involve the Union Junction T-junction. *See* TrAILCo Exhibit LAH-3. A "T-junction" or "three terminal" line is created when an existing transmission line between two substations or terminals is tapped somewhere along its route by a line from another substation or terminal. *See* ECC Ex. GCL-1a. The contingencies described in TrAILCo Figure LAH-3 that involve T-junctions are effectively triple contingencies, not single contingencies, since they remove three line elements from the system. ECC St. SR-1, p. 6. Mr. Hozempa's second contingency then removes a fourth. In fact, electrical occurrence number 2 on TrAILCo Figure LAH-3, which includes both of the three terminal lines, actually removes *six* line elements. The ECC asserts that for the cost of installing three circuit breakers in each of

the Buffalo Junction and Union Junction 138 kV lines, all four reliability infractions can be eliminated. ECC Main Brief, p. 34.

The ECC notes that despite the fact that the Buffalo Junction and Union Junction T-junctions are part of every single infraction allegedly requiring the construction of the Prexy Facilities, TrAILCo claims that these T-junctions are too far outside the area to resolve the reliability infractions. Tr. 2722-2724. The ECC asks how can contingencies that involve the T-junctions be too far removed from the area to affect the reliability infractions when they cause every one of the alleged reliability infractions? The ECC asserts that TrAILCo has not studied the effect of removing the T-junctions. No case, study, or modeling was used to evaluate whether the removal of the T-junctions would have a positive effect in reducing or eliminating infractions. Tr. 2794, 2875. Because TrAILCo has not studied whether the elimination of the T-junctions, with or without some other tweaks to the existing system, could eliminate the need for the Prexy Facilities, the ECC argues that TrAILCo cannot prove that the Prexy Facilities are needed. ECC Main Brief, pp. 34-35.

The ECC criticizes TrAILCo for not studying the addition of reactive reinforcements near the alleged voltage and loading problems in the Prexy area, citing the testimony of its witness, Mr. Loehr at ECC St. SR-1, p. 7. The ECC also faults TrAILCo for not studying the effects of conservation, demand side management or distributed generation. The ECC notes that TrAILCo/Allegheny Energy did not submit any alternatives to its Prexy Facilities proposal to PJM. Neither TrAILCo nor PJM have a plan B. Tr. 2227-2228, 2524-2525. Finally, the ECC faults TrAILCo for not doing a cost benefit analysis. Tr. 2339, 2540-2542, 2704, 2719-2720; ECC Main Brief, pp. 35-37.

Neither the OTS nor the WPPII took a position on the need for the Prexy Facilities. OTS Main Brief, pp. 13-14; WPPII Main Brief, pp. 2-4. The OTS did present its view on the burden of proof on TrAILCo, which will be a topic in the discussion section.

(d) TrAILCo's Response

TrAILCo's reply brief responds in some detail to the positions taken by the ECC and by the OCA. TrAILCo argues that the NERC criteria were properly applied, and that the ECC ignored TrAILCo testimony regarding manual adjustments and controlled load shedding. TrAILCo particularly attacked the ECC's contention regarding re-dispatch of generation in the Prexy area. The reply brief points out that the Mitchell and Elrama power plants are close to each other, and that they both support the Prexy area using the Union Junction 138 kV line. However, for three of the outages modeled that show a need for electrical support in the Prexy area, the Union Junction line is out of service. Unanswered is the point made by the ECC in its main brief that, given the above scenario, why not consider another route for the generation from Mitchell and Elrama to "solve" the problem. ECC Main Brief, pp. 29-30. Also unanswered is whether dispatch of generation from nearby plants not part of the Allegheny Power system would "solve the problem." TrAILCo Reply Brief, pp. 10-11; Appendix A to TrAILCo Reply Brief.

TrAILCo also attacks the ECC for questioning the probability of a double contingency occurring. First of all, TrAILCo asserts that the so-called NERC C3, n-1-1, scenario is sequential and not simultaneous. We believe that TrAILCo mischaracterizes the ECC position, at least as we understand it. Our understanding is that ECC proposed manual adjustments and/or re-dispatch of generation after the first event or contingency, and prior to the second contingency. As a result, we fail to see how the ECC is viewing the two events or contingencies as being simultaneous. Also TrAILCo asserts that transmission line planning has "become much more sophisticated . . ." and that ". . . a probability calculation is not applicable." TrAILCo Reply Brief, p. 12.

TrAILCo notes that both OCA and ECC argue that the capacity of the Prexy Segment is excessive and unnecessary, referencing the load in the Prexy area in 2009. TrAILCo asserts that these arguments ignore that the expected life of the Prexy Facilities is over 40 years. It is further asserted that the Prexy Segment is an effective, long-term reinforcement that is

suitable to address all of the identified reliability violations and to provide capacity suitable for the expected life of the facilities. TrAILCo Reply Brief, p. 12.

TrAILCo states that the OCA mischaracterizes (as a “late in the game” expansion of TrAILCo’s need case) TrAILCo’s testimony pointing out that the Prexy Facilities will also address reliability violations occurring beyond 2009 and outside of the Prexy area. TrAILCo asserts that the OCA characterization is incorrect as to the purpose and context of the additional testimony provided by Mr. Hozempa, as well as its timing. TrAILCo states that Mr. Hozempa never testified that TrAILCo's need case for the Prexy Facilities depends on the additional project attributes he described. What he did say is that:

The current version of the Prexy Facilities proposal was planned in 2001, with an in-service date of July 2011. Since 2001, the Prexy Facilities have been incorporated into our long-range planning model. As we perform our transmission assessments, sensitivity analyses are also conducted on planned solutions to determine if the in-service date is acceptable, needs advanced, or can be delayed as the planning model is updated from year-to-year.

As more analyses were conducted, it became apparent that the Prexy Facilities will provide significant reliability improvements not only to the transmission system in the Prexy area but also to the surrounding area in future years. However, that does not change or invalidate that the primary reason for the Prexy Facilities is the thermal and voltage reliability violations in the Prexy area. While the proposed solution has reliability benefits beyond the Prexy area, they are secondary benefits and not the primary driver.

TrAILCo St. 2-RJ, pp. 2-3; TrAILCo Reply Brief, 12-13.

TrAILCo asserts that Mr. Hozempa’s testimony concerning the secondary benefits of the Prexy Facilities for years beyond 2009 and for reliability concerns outside the Prexy area was a direct result of his analysis of OCA witness Lanzalotta's alternative proposal contained in OCA's direct testimony, using data that previously had been provided to the parties in response to discovery. TrAILCo Reply Brief, p. 13.

TrAILCo asserts that OCA witness Lanzalotta acknowledged that additional transmission support would likely be required in future years if his proposal were to be adopted, citing pages 3178 and 3179 of the transcript. TrAILCo then asserts that his answer was to add capacitors to try to cure low voltage violations, add additional transformer capacity and, then, let the future take care of itself, citing OCA St. 1-SR, pp. 14-17. Then TrAILCo quoted from OCA St. 1-SR, p. 17, to the effect that Mr. Lanzalotta also testified that:

If it were possible to add just enough reinforcements each year to meet forecast needs, then system reliability needs would be met, while rate and facilities impacts could be minimized. Sometimes, it may make sense to install more capacity than is currently needed. (Emphasis supplied)

TrAILCo Reply Brief, p. 14, citing OCA St. 1-SR, p. 17.

We would contrast the TrAILCo assertion with the complete question and answer:

Q. HOW FAR INTO THE FUTURE SHOULD THE REINFORCEMENTS TO THE COMPANY'S ELECTRIC SYSTEM MEET PROJECTED OPERATIONAL NEEDS?

A. Electric planning is an ongoing iterative process where facilities are added as needed to meet yearly peak load forecasts under normal and contingency conditions. If it were possible to add just enough reinforcements each year to meet forecast needs, then system reliability needs would be met, while rate and facilities' impacts could be minimized. Sometimes it makes sense to install more capacity than is currently needed. But in this instance, the Company's proposed Prexy facilities appear to go well beyond a sensible amount of capacity, given the loads in the Prexy area and the reliability problems presented.

OCA St. 1-SR, pp. 17-18. (Emphasis supplied.)

Regarding TrAILCo's comment that Mr. Lanzalotta suggested the addition of capacitors, it is important to note that he was addressing the testimony of Mr. Hozempa regarding the benefits of the proposed Prexy Facilities beyond the Prexy area, and further into the future beyond 2009. Specifically he was addressing the benefits accrued to two substations in West Virginia south of the 502 Junction. Mr. Lanzalotta posited less expensive ways of

correcting the problems that included the use of switchable capacitors. His specific comment was:

There are far less expensive and more effective ways of correcting the voltage problems at two 138 kV substations located physically south of the 502 Junction substation than to build a 500 kV line running 36 miles north from the 502 Junction substation *and* building the new 500-138 kV Prexy substation. This is particularly true because TrAILCo has repeatedly stated that the power will be running south to north, not north to south.

OCA St. 1-SR, pp. 14-15. (Emphasis in the original.)

TrAILCo asserts that Allegheny Power and PJM considered alternatives to the proposed Prexy Facilities. In its reply brief, it states:

First, as noted above, the Commission's siting regulations require the consideration of alternatives to a proposed HV line only in the limited context of the minimization of environmental impacts. There is no regulatory requirement to consider and evaluate alternatives outside of this limited context. Thus, OCA and ECC are attempting to make the consideration of "alternatives" much broader in scope than required.

Second, the Prexy Facilities address all of the well-documented reliability goals in this case, not just some. The Prexy Facilities will correct the identified NERC reliability violations in a manner that will provide a longer term solution rather than simply address the immediate needs, thereby helping to avoid further near-term incremental transmission upgrades (and related regulatory approvals) and providing longer term support for the transmission system.

Third, TrAILCo did in fact review and consider a number of alternatives to the Prexy Facilities beyond the 500/138 kV substation along the Wylie Ridge-Harrison 500 kV line, including locating a 500/138 kV substation in the western part of Washington County, constructing a line or substation on the Wylie Ridge-Harrison line and building a 500 kV line into the Prexy area from the west, and rebuilding of the existing 138 kV lines in the Prexy area, similar to OCA's proposal. (Citation omitted.)

TrAILCo Reply Brief, p. 15, citing Tr. 2890.

TrAILCo asserts that no suitable alternatives were proposed by other parties. TrAILCo insists that replacing the two “T” junctions with substations and the installation of capacitors or other reactive devices do not address the “totality of reliability issues driving the need for the Prexy Facilities.” TrAILCo Reply Brief, pp. 15-16.

TrAILCo characterizes the OCA proposal presented by Mr. Lanzalotta as a marginal and inadequate solution for the posited reliability issues in the Prexy area. It challenges Mr. Lanzalotta’s cost estimate. It also notes that his proposal would involve the construction of 63 miles of 138 kV lines, as opposed to the 15 miles of 138 kV lines proposed under TrAILCo’s proposal. TrAILCo Reply Brief, pp. 17-20. (Emphasis supplied.)

TrAILCo asserts that neither demand side management (“DSM”) nor conservation can obviate the need for the proposed Prexy Facilities in the time period that they are projected to be needed. TrAILCo states that DSM and energy efficiency programs cannot be implemented by the local utility on its own. TrAILCo insists that DSM must be a defined and enforceable commitment before it can begin to displace transmission and/or generation. TrAILCo Reply Brief, pp. 20-21.

TrAILCo asserts that the ECC engages in overstatement and mischaracterization when it argues that an additional 500 kV line will be required, that other 138 and 500 kV lines are under current planning as well, and that at a minimum if TrAILCo's current project is approved it will be back in the immediate future requesting another 500 kV line, citing the ECC Main Brief, pp. 24-25. TrAILCo states that a review of the testimony relied upon by the ECC for these positions does not support these extreme views, which place the future planning of transmission lines in an improper context, citing the transcript at pages 2868 through 2872. TrAILCo Reply Brief, p. 22.

TrAILCo also asserts that the ECC engages in pure speculation as to the ability of existing or new generation in Greene and Washington Counties to solve the reliability problems addressed by the Prexy Facilities, citing the main brief of ECC at pages

27 through 31. Moreover, TrAILCo states that the ECC's speculation about the ability of the planned Beech Hollow facility to solve reliability problems ignores that the facility, even if completed, will not be available in time to even help avoid the 2009 problems, citing the transcript at page 2772. And, finally, TrAILCo asserts that there is no evidence that it would solve the identified reliability problems driving the need for the Prexy Facilities. TrAILCo Reply Brief, p. 22.

(e) OCA's Response

The OCA's reply brief responds to TrAILCo arguments in its main brief to the effect that the proposals of Mr. Lanzalotta are a "band-aid" approach, "weaker" and "less robust" than the Company's proposal. The reply brief recounts that the OCA proposal results in a total electrical supply to the Prexy area in excess of three times the forecasted 2009 demand, and it will resolve the four contingencies that TrAILCo gave as the basis for the whole project. OCA Reply Brief, pp. 9-10.

The OCA reply brief argues that its 138 kV proposal, coupled with DSM and conservation programs, constitutes a cost effective approach for dealing with the contingencies relied on by TrAILCo for the Prexy Segment. The OCA notes that TrAILCo has consistently stated that the Prexy Segment proposal is intended to address local reliability needs, citing TrAILCo's main brief at page 34. That being the case under consideration, the OCA provides a detailed analysis of the costs of the TrAILCo proposal versus its proposal and concludes that its proposal is, at the least, tens of millions of dollars less expensive. The OCA stresses that its proposal solves the contingencies with three 138 kV lines while the TrAILCo proposal calls for one 500 kV line and five 138 kV lines, plus two new substations. (The proposal is for two double circuit 138 kV lines, one single circuit 138 kV line, and the 500 kV lines located in three corridors. TrAILCo St. 2, p. 4.) Further, while the TrAILCo proposal involves construction on land not presently used for utility right-of-way purposes, or "Greenfield," the OCA proposal optimizes the use of existing rights-of-way. OCA Reply Brief, pp. 9-18.

The OCA reply brief recounts in detail its position that TrAILCo has failed to adequately investigate possible alternatives to its proposal. The OCA also questions the assertion by TrAILCo that its proposal represents a comprehensive and long-term solution to the potential reliability concerns in the Prexy area. Part of the questioning, the OCA asserts, lies in TrAILCo's failure to adequately explain why a 500kV line is needed to serve the local electrical demand in the Prexy area. The OCA opines that it thinks it knows the reason for the 500 kV line. It quotes the testimony of Mr. Hozempa on cross-examination as follows:

Q. So if the Public Utility Commission approves this 500 kV line it's approving a situation where you will be doing a contingency analysis in the future that knocks out that 500 kV line and requires another 500 kV line. Is that what you're saying?

A. I'm expecting that that will be the case, yes.

Tr. 2870-2871; OCA Reply Brief, p. 26.

The OCA also notes that in his rejoinder testimony, Company witness Hozempa provided further information on this issue, as follows:

It is likely that the 500 kV line from 502 Junction to Prexy will be extended some time in the future. Once the line is extended, it will become part of the EHV backbone of the transmission system and will require the same capacity as other EHV backbone facilities.

TrAILCo St. 2-RJ, p. 7; OCA Reply Brief, p. 26, footnote 16.

The OCA states that this statement was the first indication that the proposed 500 kV Prexy Segment may not be solely to address the local need, but rather is likely to be extended at some future time.

The OCA recounts that Company witness Gass testified in regard to the testing done on the transmission system that Mr. Hozempa referenced, as follows:

Okay. So, the N-1-1 designation, and just so I understand this, it means we take the grid as it is, as it stands right now, and then we apply a stressor to the grid by perhaps removing a component, taking a component out of service, and then in between the time of that first component failure or removal from service, if you will, then whatever adjustments can be made are made in that interim period, and then we apply the second contingency?

A. That is correct.

Q. Which is the second part of the N-1-1. And then after that, do we then reevaluate the condition of the grid at that point in time to see if there are any potential reliability issues?

A. Yes.

Tr. 2522; OCA Reply Brief, pp. 26-27.

The OCA asserts that with the testing process as just described, together with Mr. Hozempa's testimony above, shows that if the proposed 500 kV Prexy Segment is built, the first round of N-1-1 testing would remove the 500 kV Prexy Segment, as the "critical system condition." In other words, in order to resolve the potential reliability concerns listed in TrAILCo Exhibit LAH-3, once the next round of N-1-1 testing is done, another 500 kV line will be required. Despite TrAILCo's assertions that its proposal is longer-lasting, as Mr. Hozempa testified, the evidence supports the conclusion that even more large facilities would be needed in the near-term. Tr. 2728; OCA Reply Brief, p. 27.

(f) ECC's Response

The ECC reply brief details its argument that the failure of TrAILCo to consider manual adjustments in its load flow studies of the contingencies that it uses to support its Prexy Segment proposal in and of itself should result in a denial of the proposal. The ECC asserts the NERC standards call for manual adjustments after a first contingency. Those manual adjustments could include controlled load shedding and re-dispatch of available generation. In its footnote 11, page 10, of its reply brief, the ECC states that PJM allows the "consequential loss of

load of 300 MW,” and that amount of load shedding would eliminate the alleged problems. ECC Reply Brief, pp. 9-10.

The ECC notes that TrAILCo states in its main brief that no generation re-dispatch would mitigate the problems in the Prexy area. TrAILCo Main Brief, p. 28. The ECC notes the generation capacity of the Mitchell and Elrama power plants as being more than sufficient to meet the entire Prexy electrical load. **As noted above, TrAILCo asserts in its reply brief that one of the contingencies would cut out the two power plants from providing generation to the Prexy area. Why this was not clearly articulated early on in this case is not explained. Also as noted above, the ECC in its main brief, stated that if deliverability from the two power plants was a problem, said problem could be solved economically by providing another route for the power to flow.** ECC Reply Brief, pp. 11-13; ECC Main Brief, pp. 27-31. (Emphasis supplied.)

ii. Discussion

As noted in the introduction to this section, we are addressing only the “need” aspect of the TrAILCo proposal for the Prexy Segment. Based on review and evaluation of the record we conclude that TrAILCo has failed to carry its burden of proof regarding “need.” Our conclusion is based on our understanding of “need” as interpreted by the Commonwealth Court in Penna. Power & Light Co. v. Pa. PUC, 696 A.2d 248 (Pa. Cmwlth. 1997). In its opinion the Commonwealth Court placed emphasis on the provisions of Section 1501 of the Public Utility Code that requires, in pertinent part, every utility to make improvements “as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public.” 66 Pa. C.S. §1501; Penna. Power & Light Co., above, at 250. The Commonwealth Court also emphasized language in 52 Pa. Code §57.76(a)(4) that requires that the Commission, prior to granting approval of an application, consider that the proposed transmission line will have a minimum environmental impact “*considering the electric power needs of the public, the state of the available technology and the available alternatives.*” Penna. Power & Light Co., above, at 250 (emphasis in original).

TrAILCo has proposed a grandiose plan involving a 500kV “backbone,” a new substation with lots of room for expansion, and, in essence, five 138 kV lines. The proposal calls for two double circuit 138 kV lines, and one single circuit 138 kV line. Virtually all of the proposed construction would occur on property not currently burdened by electrical facilities. Much of that property is more suitable for other types of development, or is already being productively utilized. The problems cited as a basis for this proposal can be solved by three 138 kV lines on or paralleling existing lines. Other additions involve improvements or modifications to existing substations and the “T” junctions.

Much speculation has made of the proposal for the 500 kV line, and the prior proposals that called for a 500 kV line to be constructed from Ohio to the Prexy area. That speculation certainly seems to be rooted in some solid ground as recounted by the opposing parties’ citations to testimony from TrAILCo witnesses. Regardless, the present application is based on the premise that the project is needed for an intrastate, local electrical need. In fact, the whole case for the Prexy Segment is premised on a presumed “electrical” or “engineering” need. TrAILCo has argued it is not required to show an “engineering need” and that a cost comparison analysis is not required. See TrAILCo Reply Brief, p. 6. We do not read the Penna. Power & Light case, above, as does TrAILCo. We do not believe that the present proposal is necessary or proper for the accommodation of the public, and we do not believe that the present proposal has a minimal environmental impact, especially when compared to available alternatives.

As the OCA noted, TrAILCo witness Hozempa confirmed during cross-examination that the reliability drivers for the Prexy Facilities are those initially set forth in TrAILCo Exhibit LAH-3 and not any conditions outside of the Allegheny Power zone. Tr. 2695; *see also* Tr. 2703; OCA Main Brief, p. 35.

The OCA also notes that it and other parties have diligently and thoroughly investigated and analyzed the Company’s proposed Prexy Facilities. TrAILCo has served many pages of documents in response to discovery in this case. Yet, after all of this searching analysis and investigation, the Company has not provided any plausible explanation for why a project of

the magnitude of the Prexy Facilities must be constructed to serve the local needs of customers in and around the Prexy area. OCA Main Brief, p. 35.

The Commission has found that an applicant for a certificate of public convenience must show that the proposed new facilities are reasonably responsive to the need that exists. Re West Penn Power Co., 54 Pa. PUC 319, 327 (1980). The OCA asserts that the Company has failed to make that showing here, and we agree.

Both the OCA and the ECC have effectively demonstrated that the contingencies relied on by TrAILCo to support its Application can be dealt with in a number of different ways, without the expense and environmental impact of another 500 kV line. OCA's Mr. Lanzalotta's proposal involves using or paralleling existing 138 kV lines with three additional 138 kV lines. He stopped his analysis, due to time and monetary constraints, with the first set of solutions that "solved" the contingencies raised by TrAILCo. As he noted, other equally less expensive and intrusive options likely exist. An additional benefit of Mr. Lanzalotta's proposal can be gained by adjusting the phasing of the parallel lines to reduce the resulting EMF's.

The ECC has effectively refuted the likelihood of the contingencies relied on by TrAILCo even occurring. In the event the n-1-1 contingency did occur, the ECC points out that Allegheny Power would have options available to limit the extent of outages that may occur. Further, with more than adequate generation available in the area, it may be questioned why Allegheny Power has not considered an alternate route for the generation available from the Mitchell and Elrama power plants.

As a result of our review of the record, we conclude that TrAILCo has not carried its burden of proof with regard to the need for the Prexy Facilities.

2. Route Evaluation and Siting

a. The Positions of the Parties

i. TrAILCo's Position

As stated in its main brief, TrAILCo's route selection process for the TrAIL project was intended to result in a route that followed sound routing principles and all applicable law, including the Commission's siting regulations. TrAILCo retained The Louis Berger Group ("Berger") to perform the route selection studies for the Pennsylvania Segments, the West Virginia Segments and the State Line to Meadow Brook Segment in Virginia. As described by TrAILCo witness Fleissner, Berger was assisted by Commonwealth Associates, Inc., an engineering firm specializing in power delivery projects like substations and transmission lines. The agreed upon approach involved collecting environmental, cultural, and land use information sources for the study area, which included information derived from consultations with federal, state and local agencies. Those information sources that were mappable were used to develop detailed aerial photography-based constraint maps of the study area. TrAILCo asserts that an array of initial potential routes was identified using this information, and subsequently, reviewed in the field, modified, and analyzed. Alternative routes were then developed using the best of the field reviewed and analyzed potential routes and thereafter, analyzed. Finally, the preferred route was identified following analysis of the alternative routes and presented for consideration by TrAILCo. This data collection and the line route evaluation ("LRE") process included a public input process primarily implemented by a series of open houses held in the study area before the final LRE was issued. Information derived from the public input process was subsequently reviewed in field reconnaissance efforts. The entire siting process was documented in the LRE, a written report Berger prepared for TrAILCo and later placed into evidence as TrAILCo Ex. JH-1. As stated in Section 2.1 of the LRE, the goal of the process was to select the most suitable route for a 500 kV electrical transmission line between the West Virginia state border and the proposed 502 Junction Substation site, and north from the 502 Junction Substation site to the proposed Prexy Substation site. Suitable routes for three 138 kV lines were also developed to link the Prexy Substation with the surrounding 138 kV transmission system.

The most suitable route was defined as “the route minimizing the effect of the transmission line on all factors of the natural and cultural environment, while avoiding an unreasonably circuitous route, extreme costs, and non-standard design requirements.” Thus, from the beginning of the TrAIL process, TrAILCo states that it was acutely aware of the need to minimize the impact of the route on surrounding resources and communities. TrAILCo Main Brief, pp. 38-41.

TrAILCo asserted that, while its siting process was much maligned in the public input hearings by lay people largely unskilled in transmission line siting processes and by ECC witnesses with no demonstrative transmission line siting experience, the route selection process used by TrAILCo and its expert consultants – as reflected in TrAILCo Ex. JH-1 (the LRE) – was conducted consistent with current siting methods and Pennsylvania law. TrAILCo St. 5, p. 18; TrAILCo Main Brief, p. 39.

TrAILCo stated that, as part of its route selection process, the routing team was essentially told to assess all reasonable routes to connect the two substation endpoints, Prexy Substation and 502 Junction Substation, and also to identify routes for three 138 kV lines. TrAILCo Ex. JH-1, p. 16; Tr. 3221. The alternative routes developed were evaluated in connection with the Prexy Segment, the Pennsylvania 502 Junction Segment and the Prexy 138 kV lines. TrAILCo explained that because the Pennsylvania 502 Junction Segment of 1.2 miles was evaluated as part of the routing effort in West Virginia and Virginia, which in part needed to avoid extensive developments immediately south of Pennsylvania in the area of Morgantown, West Virginia, the alignment for this short 500 kV line was driven by siting considerations outside of Pennsylvania. After the preferred alternative (Alternative Route H) was selected for the 502 Junction Segments (i.e., the portions of the 500 kV line outside of Pennsylvania), the actual alignment for this segment was based on it being the shortest of the Pennsylvania 502 Junction Segment alternatives. In accordance with standard siting practice, TrAILCo asserted that the alternative routes were assessed in a rigorous and systematic manner, based upon public workshops, routing team meetings and the review by the routing team of comparative data, aerial photographs and mapped information. TrAILCo Main Brief, pp. 39-40.

TrAILCo asserts that the preferred routes were selected to a large degree based on impact minimization. As TrAILCo witness Fleissner testified, the preferred route for the Prexy 138 kV lines, Prexy Segment and the Pennsylvania 502 Junction Segment “follows generally accepted good routing philosophies of minimizing impacts to the environmental, cultural and social features of the study areas.” The witness also emphasized that good techniques, such as utilizing existing corridors, were incorporated into the routing process. TrAILCo Main Brief, p. 40.

TrAILCo states that the role pre-existing ROW or corridors played in the line site selection process cannot be underestimated. As TrAILCo witness Halpern explained, the TrAILCo routing team considered a range of potential routing links, and from those links assembled four alternatives for what became the Prexy Segment and seven alternatives for what became the Prexy 138 kV lines. These various alternatives were then evaluated in the context of the route selection criteria identified in Section 2.4 of the LRE and the Environmental Inventory contained in Table 2-3 of the LRE. While existing ROW was not weighted any differently than other criteria in the site selection process, its value is still significant. First, the ability to use existing ROW minimizes disruption to land uses since the existing ROW is already a known land use. Second, the greater the ability to use existing ROW for line siting purposes, the less need there is to exercise eminent domain authority or otherwise acquire new ROW. TrAILCo asserts that the value of pre-existing ROW is demonstrated by the fact that the preferred routes selected for the Prexy Segment and the Prexy 138 kV lines utilize such ROW for seventy-six percent (76%) to one hundred percent (100%) of the selected routes. TrAILCo Main Brief, pp. 40-41.

TrAILCo states that it has taken reasonable steps to minimize the impact of TrAIL on Pennsylvania historic/cultural resources, archeological resources and wilderness/recreational trails. One of the key criteria used in the route selection process was maximizing the separation distances from residences, schools, cemeteries, historical resources, recreation sites, and other important cultural sites. TrAILCo asserts that the LRE shows TrAILCo’s efforts to inventory these resources, apply them in the evaluation of the alternative routes in the study area and re-study them in the context of the preferred routes for the Prexy Segment and the Prexy 138 kV lines. TrAILCo Main Brief, p. 41.

TrAILCo recounts that at public input hearings, several witnesses alleged that TrAILCo's LRE failed to identify all of the relevant historic/cultural resources and archeological sites. At public input hearings (Tr. 1601-1602), several witnesses criticized TrAILCo for failing to contact local historical societies, as directed by an October 2006 letter from the PAHMC. While the letter directs these contacts, it does not specify when the contacts are to be made. And, as demonstrated by TrAILCo's commitment to comply fully with the PAHMC requirements, TrAILCo asserts that local historic societies will be contacted as part of TrAILCo's post-LRE process field work. However, TrAILCo contends that these witnesses did not consider the full and complete picture or recognize that the LRE represents only part of the process used to identify these resources. As part of TrAILCo's "phased approach," additional field work will be performed later in the process to further identify historic/cultural sites and how they may be impacted by TrAIL. TrAILCo Main Brief, p. 42.

TrAILCo recounts that these same public input witnesses alleged that TrAILCo's identification of historic/cultural properties is under-inclusive due to TrAILCo limiting the distance of its study to properties located within ¼ mile of the proposed route. Tr. 1598-1599. TrAILCo contends that these witnesses misunderstood TrAILCo's evaluation. Although TrAILCo tallied historic resources within ¼ mile of each alternative for comparison purposes in the LRE, it asserts that it identified, mapped, and considered historic resources across the entire approximately 644 square mile study area as part of the route selection process. It states that architectural resources were mapped for the entire study area, which varies in width from 11 to 26 miles between 502 Junction Substation and the Prexy Substation sites, citing TrAILCo St. 5-R, pp. 14-15. TrAILCo Main Brief, p. 42; Tr. 1612-1613.

Other public input witnesses chastised TrAILCo for failing to mention archeological activity, citing Tr. 1612-1613. TrAILCo states that it did not provide the identity and location of archeological sites, consistent with the industry practice which calls for the protection of these sites from potential robbers. **(We note at this juncture that a Protective Order was entered early on in this proceeding. The procedure outlined in the Protective Order could have been utilized by TrAILCo to provide more detail that may have**

reassured the representatives of the public that in fact archeological activity was noted and considered.) Moreover, TrAILCo states that as part of its “phased approach,” detailed site assessments with respect to archeological sites typically occur later in the process **after route selection**. (Emphasis supplied.) TrAILCo Main Brief, pp. 42-43.

TrAILCo notes that OTS witness Yocca observes that there are no references to scenic rivers in the LRE and no information in the LRE about wilderness areas. TrAILCo asserts that this is not surprising since no designated scenic rivers or wilderness areas are located in the proposed ROW or study area. Recreation trails were identified within two miles of the proposed line, as summarized in Table 4-4 of the LRE. There is one identified formal trail, the Warrior Trail, which is crossed by the proposed route. This trail stretches in an east-west direction across all of Greene County. As a result, it was unavoidable without consideration of circuitous routes, and therefore, this trail was crossed by all of the alternatives considered. TrAILCo Main Brief, p. 43.

TrAILCo notes that certain witnesses at the public input hearings, OTS witness Gary Yocca and ECC witness Richard Hoch raised potential issues about the impact of prior mining activities in southwestern Pennsylvania on the safety and construction of TrAIL. TrAILCo asserts that substantial evidence of record demonstrates no need for concern. From the line design and maintenance perspective, TrAILCo witness Bodenschatz testified that a proper design and maintenance plan “will virtually eliminate any risk associated with deep mine activities that may be encountered along the preferred TrAIL route.” TrAILCo Main Brief, p. 43.

TrAILCo witness Halpern testified unequivocally that Berger was not aware of any transmission towers collapsing due to subsidence. OTS witness Yocca on cross-examination was not aware of (i) any systematic electric transmission line tower failures in western Pennsylvania due to natural or manmade occurrences, like underground mining operations, (ii) any HV electric transmission lines failing due to subsidence in Pennsylvania, or (iii) the types of engineering solutions generally available to mitigate the occurrences that might affect the integrity of transmission towers. TrAILCo Main Brief, p. 44.

ii. ECC's Position

The ECC recounts in its main brief that TrAILCo initially developed potential routes using large area and point specific constraints for each of these proposed HV lines. Large area constraints include urban areas (cities, towns, small villages and other built-up areas), state wildlife management lands, airports, historic districts, large recreational sites and large wetlands. TrAILCo Ex. JH-1, p. 20; Tr. 3221. Point specific constraints include individual residences, other buildings, small wetlands and communication towers. TrAILCo Ex. JH-1, p. 22; Tr. 3222. TrAILCo then culled the potential routes down to “alternative routes” for further evaluation. Tr. 3220-3222. TrAILCo concluded by “selecting” a preferred route from the alternative routes. ECC Main Brief, p. 61.

The ECC then goes on to state that the LRE identifies information TrAILCo reviewed to make value judgments in developing the alternative routes and selecting the preferred routes for each HV line. Tr. 3220-3221; 3224; 3231-3232. The LRE contains specific descriptions of the selected routes and general discussions of environmental impacts that the construction and operation of the proposed lines will have in Greene and Washington Counties. Tr. 3259-3260; ECC Main Brief, p. 61.

The ECC analysis first considered the so-called 502 Junction Segment. The 502 Junction Segment forms a portion of a 68 mile 500 kV line linking the proposed 502 Junction Substation and the Mount Storm Substation in West Virginia. As set forth in TrAILCo's Application, the preferred route – Route H – for the 502 Junction Segment extends south from the 502 Junction Substation until it crosses the West Virginia-Pennsylvania border west of Morgantown. TrAILCo Ex. JH-1, p. 42. TrAILCo selected Route H from eight (8) alternative routes – Routes A through H. TrAILCo Ex. JH-1, p. 27. The Commission requires an analysis of the following elements for each HV line: 1) a general description of each alternative route, 2) a description of the methodology for developing the alternative routes, 3) a comparison of the relative merits of each route, and 4) a statement of the reasons underlying the selection of the preferred route, citing 52 Pa. Code §57.72(c)(10). ECC Main Brief, p. 68.

The ECC notes that Section 2.11.1 of the LRE – approximately a single page of the 193-page Report – sets forth TrAILCo’s 52 Pa. Code §57.72(c)(10) “analysis,” justifying the selection of Route H. Report (JH-1), pp. 27-28; Tr. 3230-3231. The ECC asserts that the analysis does not comply with 52 Pa. Code §57.72(c)(10). First, TrAILCo inadequately describes Routes D through H, failing to provide information sufficient for the Commission to understand and distinguish between each route. Tr. 3258. Second, no analysis of the comparative merits of the routes exists – a point TrAILCo concedes. Tr. 3258. Finally, TrAILCo fails to disclose the precise reasons for the selection of Route H, stating only that undisclosed factors in West Virginia drove the selection. Tr. 3259. With respect to the 502 Junction Segment, the ECC asserts that TrAILCo’s Application does not comply with 52 Pa. Code §57.72(c)(10) and, accordingly, the Commission must deny that portion of TrAILCo’s Application. ECC Main Brief, pp. 62-63.

The ECC main brief recounts that Section 2.11.2 of the LRE sets forth TrAILCo’s 52 Pa. Code §57.72(c)(10) analysis of the Prexy Segment. Tr. 3231. For the Prexy Segment, TrAILCo considered four alternative routes, designated A through D. Louis Berger developed Routes A, B and D. TrAILCo provided the fourth route – Route C – to Louis Berger prior to the commencement of Louis Berger’s work on the project. Tr. 3231. Louis Berger’s primary discussion of the comparative merits for the Prexy Segment relies on information provided in Tables 2-2 and 2-3. Tr. 3231; TrAILCo Ex. JH-1, pp. 37-41. Table 2-3 compares the potential impacts of the alternative routes over a variety of categories. TrAILCo Ex. JH-1, pp. 34-37. Table 2-3 derives from the source information identified in Table 2-2. Tr. 3231; ECC Main Brief, p. 63.

The ECC main brief then discusses TrAILCo’s four justifications for selecting preferred Route C:

- (1) crosses the least amount of state game lands;
- (2) crosses the least amount of forest land;
- (3) is comparatively moderate in steep soils, cultivated cropland, and developed land; and

- (4) utilizes approximately 96% of the allegedly pre-existing rights-of-way.

TrAILCo Ex. JH-1, p. 42. The ECC asserts that these “justifications” fail to sustain TrAILCo’s selection. ECC Main Brief, p. 63.

The ECC notes that its witness, Dr. Richard Hoch, a professor specializing in Geographic Information Systems (“GIS”), reviewed the LRE and criticized Louis Berger’s use of GIS data in the development of reasonable alternatives and the selection of the preferred route. ECC St. 3. Dr. Hoch opined that GIS information derived from the National Wetlands, the National Hydrography, and the National Land Cover Databases was too coarse to make route selection evaluations. ECC St. 3, p. 4. TrAILCo does not dispute his legitimate criticisms of the GIS databases. ECC Main Brief, pp. 63-64.

The ECC asserts that Tables 2-2 and 2-3 clearly show that TrAILCo made value judgments by relying exclusively on GIS data, citing TrAILCo Ex. JH-1 at Tables 2-2 and 2-3; *see also* Tr. 3231-3233, 3237. Due to TrAILCo’s reliance on allegedly flawed or coarse data in the development and selection of the potential routes, the ECC states that the validity of TrAILCo’s evaluation is questionable. ECC Main Brief, p. 64.

The ECC recounts that Louis Berger, in developing the Prexy Segment, used numbered links (intersections of the potential routes) shown in Figures 2-1 through 2-3 to develop each of the four alternative routes. Tr. 3225-3226. Louis Berger claims that preferred Route C crosses the least amount of state game lands, and Route B crosses the most. LRE (JH-1), p. 35. Louis Berger drew Route C using link 2, and Route B using link 3. Other than links 2 and 3, those routes do not cross any other state game lands. Louis Berger could have drawn both routes utilizing link 2. Tr. 3245-3246. If that was done, both routes would cross the same amount of game lands. Tr. 3246. The ECC asserts that justification 1 is thus invalid. ECC Main Brief, p. 64.

The ECC asserts that insufficient data eliminates the second justification. According to Louis Berger’s calculations, utilizing the coarse data from the National Land Cover Database, Route C requires the clearance of 448 acres of forest . . . approximately one acre less than the next closest reasonable alternative route. Tr. 3239-3240. TrAILCo conceded its inability to quantify the actual number of trees that would need to be cleared. TrAILCo admitted that sole reliance on GIS data diminishes the value of this justification. Tr. 3241-3244. ECC Main Brief, p. 64.

The ECC asserts that the third justification – “comparatively moderate impacts” – is no justification at all. The phrase “comparatively moderate impacts” simply means that Route C was not the best nor the worst of the four alternative routes. Tr. 3247-3248. This leaves the alleged existence of rights-of-way as the only plausible justification for the selection of Route C. Indeed, TrAILCo admitted as much in a presentation given to a conference at the Edison Electric Institute in 2007. Tr. 3252-3253; ECC Cross Ex. 55; ECC Main Brief, pp. 64-65.

The ECC states that the legitimacy of the fourth justification turns on the validity of the rights-of-way. Louis Berger acknowledges that the LRE assumes the validity of those rights-of-way allegedly purchased by West Penn Power in the 1970s. Subsequent to the issuance of the Report, a group of affected property owners in Washington County filed a lawsuit, challenging the validity of certain rights-of-way. The ECC notes that a group of Greene County property owners have filed a similar suit. When queried about the impact of challenges to the rights-of-way, Louis Berger’s Project Director testified:

Q: But my question is: if it is found that a large majority of these rights-of-way do not exist, would that change the evaluations, the value judgments you made on these four alternative selections?

WITNESS HALPREN: I don’t think I can make a judgment at this point in time. That was a factor in our consideration. I think we would have to go back and take a look at all the information and do an evaluation.

Tr. 3254-3255 (discussion of counsel and Judge omitted).

The ECC concludes that the indeterminate legal status of the rights-of-way negates this fourth and final alleged justification for the selection of Route C. ECC Main Brief, p. 65.

The ECC notes that TrAILCo represents to this Commission that “[t]he preferred route follows generally accepted good routing philosophies of minimizing impacts to the environmental, cultural and social features of the study areas. Impacts to such features as residences were factored in and were minimized to the extent possible.” TrAILCo St. 6, p. 9 (direct testimony of Alan J. Fleissner). The ECC asserts that this representation is without merit, and it contends that the LRE demonstrates that TrAILCo failed to follow “good routing philosophies.” The ECC contends that TrAILCo selected a route that maximizes impacts on residents of Washington and Greene Counties. If built, Route C impacts, crosses, or contains:

- The highest amount of residences (100) within 500 feet of the center line (Tr. 3248);
- The highest amount of residences and other buildings (157) within 500 feet of the center line (TrAILCo Ex. JH-1, p. 35);
- The highest amount of pasture land (Tr. 3248);
- The second highest amount of residences (21) within 250 feet of the center line (Tr. 3248);
- The second highest amount of cultivated crops (Tr. 3248); and
- The second highest amount of agricultural and conservation district land in Greene County (Tr. 3248).

ECC Main Brief, pp. 65-66.

The ECC notes that the Commission’s regulations for siting and the legal standard for approving an application require an applicant to address the impacts that construction and operation of an HV line will have on environmental, socioeconomic, and cultural aspects of the impacted area, citing 52 Pa. Code §57.72(e)(7)(8). In his direct testimony, Dr. Hoch outlines TrAILCo’s failure to conduct a true environmental impact analysis that addresses (1) construction impacts, (2) maintenance impacts, (3) cumulative impacts, and (4) secondary

impacts for each environmental factor identified in the Report, citing ECC St. 3, p. 11; ECC Main Brief, p. 66.

The ECC contends that TrAILCo fails to address several crucial impacts:

- The Report makes no mention of potential impacts on groundwater. Affected property owners testified to the use of wells and springs. *See e.g.* Tr. 3264-3266; (Testimony of John Myers); 444 (Testimony of Carl Burkhardt); 237 (Testimony of Robert Cameron).
- The Report mentions generally the risk of landslides associated with the construction and operation of access roads. The Report lacks critical detail defining the scope of the risk, including the number and location of the required access roads. Tr. 3261-3264.
- TrAILCo completely fails to address cumulative impacts that the overall project will have on pollution, including air pollution. Tr. 3264-3266. But TrAILCo admits that the project can result in the construction and operation of four (4) new power plants capable of generating an additional 2700 megawatts. Tr. 2823-2825.
- TrAILCo did not conduct an environmental justice analysis of the route despite utilizing criteria in both their large area and point specific constraints which value residents in urban areas over residents in rural areas. Tr. 3322-3323.
- The Report contains no discussion of potential environmental impacts posed by the construction and operation of the substations. Tr. 3269-3270.

The ECC contends that, simply stated, the Commission requires more information than TrAILCo has provided to assess the environmental impacts of the proposed project on chosen routes. ECC Main Brief, pp. 66-67.

iii. TrAILCo's Response

In its reply brief, TrAILCo asserts that in evaluating the route selection process, the Commission should not isolate or over-emphasize any single criterion among the inventory

utilized because it is professional judgment, applied to all of the criteria, that drives the ultimate result. While the ECC in particular has challenged the route selection process by focusing on certain criteria, TrAILCo contends that it offered no expert testimony suggesting that the preferred route(s) for the PA TrAIL Projects were unreasonable. TrAILCo Reply Brief, p. 35.

TrAILCo notes that the ECC alleges that TrAILCo's route analysis for the Pennsylvania 502 Junction Segment does not comply with the Commission's siting regulations. It asserts that the ECC completely misconstrues the evaluation of the 68 mile line from the 502 Junction Substation to Mt. Storm and the selection of Route H. Alternative routes were developed and evaluated in connection with the 502 Junction Segment. The selection of Route H was driven primarily by the detailed routing in Virginia and West Virginia where the majority of the line traverses. However, because it has the shortest route in Pennsylvania, it is clearly beneficial to the Commonwealth and all its residents. To say that the justification for the 502 Junction Segment is not in accordance with the Commission's siting regulations ignores the record evidence, especially the practical reality presented in the LRE. TrAILCo Reply Brief, pp. 35-36.

TrAILCo further notes that the ECC contends that TrAILCo's four justifications in the LRE for Route C are inadequate to sustain TrAILCo's route selection. TrAILCo asserts that the ECC's contention is based on numerous false premises and shows a basic lack of understanding of line routing. The ECC does not grasp the core concept that the selection of Route C was not based on just one variable, but rather, upon consideration of all relevant variables. TrAILCo Reply Brief, p. 36.

TrAILCo notes that the ECC faults TrAILCo for failing to combine links to avoid impacts on state game lands despite the fact that Route C crosses the least amount of game lands when compared to the alternative routes considered. TrAILCo asserts that using the same link for multiple routes is arbitrary, inconsistent with standard routing practice and violates the principle of evaluating routes independently. TrAILCo Reply Brief, p. 36.

TrAILCo then notes that the ECC alleges there is insufficient data to support that Route C crosses the least amount of forest lands (the second justification). Again, the ECC ignores the facts. Route C does cross the least amount of forest lands, and TrAILCo never claimed that Route C was substantially less; only that it was slightly less than the next closest alternative. TrAILCo contends that the record could not be any clearer that GIS data was not the “sole tool” used in TrAILCo’s line route evaluation. TrAILCo also disputes that GIS data from the National Land Cover Databases (“NLCD”) used to approximate forest acreage is flawed. The NLCD is a common and appropriate tool used in environmental planning studies of the scale involved in this proceeding. TrAILCo Reply Brief, pp. 36-37.

TrAILCo asserts that the ECC simply dismisses TrAILCo's third justification that Route C has a “comparatively moderate impact” on crop land, etc. TrAILCo states that once again, ECC shows a basic misunderstanding of the LRE process. This phrase “obviously” means that the preferred route has moderate impacts on the environment when compared to the other routes under consideration, which is precisely the goal of a line route evaluation study (i.e., compare and assess the relative merits of all the routes under investigation). TrAILCo Reply Brief, p. 37.

TrAILCo notes that the ECC argues that questions surrounding the validity of ROW undermine the fourth justification, the use of pre-existing ROW. The ECC’s suggestion that the existing ROW have “indeterminate legal status” is not supported by the record. The record supports that relatively few of the existing West Penn ROWs are involved in litigation, even when considering the Greene County lawsuit recently filed. Thus, the number of ROWs at issue is hardly “large majority invalidation.” In addition, TrAILCo witness Ruberto specifically testified that the company is confident that the validity of the ROWs being challenged will be upheld. That the existing ROW is a known pre-existing land use is supported by the fact that: (i) little, if any, construction has occurred on the existing ROW though much has occurred in the areas around it, (ii) many property owners have fully acknowledged the presence of the existing ROW on their properties, and (iii) of the 212 affected property owners, only a small percentage have challenged the validity of these ROWs. TrAILCo contends that the ECC’s questioning of

the validity of the existing ROWs gives the mistaken impression that far more people are challenging them than are actually doing so. TrAILCo Reply Brief, pp. 37-38.

We question the relevancy of the number of easements being disputed in the litigation. Given the large number of agreements that do not define the path across the property in question, invalidation on that basis would presumably invalidate all of them.

TrAILCo notes that the ECC argues that Route C will have a maximum impact on nearby residences/buildings, pasture land, crop land and agricultural conservation land. Again, TrAILCo argues that the ECC both ignores the facts and the interaction of all the criteria. The impact on the lands and nearby structures will be minimal. The impacted land uses (i.e., pasture land and crops) are fully compatible with an HV line. It is asserted that the PA TrAIL Projects will have little to no impact on agricultural and conservation districts. The number of residences/buildings located near Route C was considered less significant for routing purposes, given that they were constructed with full knowledge of being adjacent to an existing ROW and that the existing ROW represents a known pre-existing land use that reduces the impact of the line on those affected residences compared to creating new ROW elsewhere. TrAILCo Reply Brief, p. 38.

TrAILCo notes that the OTS also criticizes TrAILCo for over-reliance on existing ROW. TrAILCo contends that, just as ECC does, OTS ignores that the pre-existing ROW is a known and accounted for land use and, as such, serves to mitigate the impact of the line on nearby residences/buildings. TrAILCo Reply Brief, p. 38.

We would note that a review of the public input and site visits summary will disclose a large number of property owners concerned about the impact on agricultural and conservation districts. Also, TrAILCo does not disclose what it would do about the structures that do intrude upon its claimed ROW.

iv. ECC's Response

In its reply brief the ECC notes that TrAILCo argues that “the selection of the route and the proposed right-of-way is a matter for the public utility in the first instance and will not be set aside unless the utility’s exercise of its discretionary power is wanton, capricious or arbitrary.” TrAILCo Main Brief, at page 64, cites Pa. Dep’t of Env’tl. Res. v. Pa. P.U.C., 335 A.2d 860 (Pa. Commw. Ct. 1975). The ECC states that it should be emphasized that TrAILCo’s cited case law preceded the Commission’s 1978 siting regulations and was discussed in the context of Commonwealth Court’s review of a Commission decision upholding the proposed exercise of eminent domain. In reaching that decision, moreover, Commonwealth Court noted the extent to which the utility (Potomac Edison) had assessed alternatives in making its site selection:

The record discloses that prior to final route selection Potomac studied the area’s topography, evaluated terrain and contours, considered vegetation and land use, considered alternative routes, evaluated each proposed route for compliance with federal government guidelines, analyzed each route’s compatibility with system reliability, considered impact of proposed routes upon the environment, made safety and economic evaluations, calculated construction and maintenance costs, and conducted a detailed survey of the area to be affected by the route selected. There is simply no evidence in this record sufficient to support a conclusion that Potomac’s final route selection was wanton, capricious, or made in palpable bad faith. Rather, it was based on a consideration of relevant and germane factors.

335 A.2d at 863-864; ECC Reply Brief, p. 42.

The ECC notes that the “wanton, capricious, and arbitrary” standard was clearly the appellate review standard – in place prior to adoption of the current siting regulations. It does not depict the intended burden of proof in the context of siting or eminent domain cases, and it should not be applied here. The ECC comments that TrAILCo correctly asserts in its main brief that the April 10, 2007 LRE contains TrAILCo’s only assessment of the evaluation of the alternative routes and the selection of the preferred routes. TrAILCo’s Main Brief, p. 41. The ECC states that the LRE shows that TrAILCo preordained the “preferred route,” rendering the “assessment” of the alternatives meaningless, and that the LRE also shows TrAILCo’s failure to

comply with any semblance of “good routing philosophies.” The ECC states that, additionally, TrAILCo ignored legitimate criticisms of the environmental inventory and material deficiencies in the datasets used to develop and compare the reasonable alternatives. Taken together, the ECC concludes that these facts demonstrate TrAILCo’s non-compliance with the Commission’s siting requirements, particularly 52 Pa. Code §57.72(c)(10). ECC Reply Brief, p. 43.

The ECC asserts that TrAILCo provided the preferred routes for each of the proposed HV lines, prior to commencement of Louis Berger’s work on the Report. All of these preferred routes follow allegedly pre-existing rights-of-way (ROW) owned by West Penn Power. ECC Reply Brief, p. 43.

Then the ECC asserts that TrAILCo misleads this Commission by representing that the “existing ROW was not weighted any differently than other criteria in the site selection process.” TrAILCo Main Brief, p. 41. Tables 2-3, 5-1, 6-1, and 7-1 confirm that the percentage of ROW provides the only consistent and dispositive factor in each selected route. TrAILCo Ex. JH-1, p. 36 (Route C 94%); 96 (PHM-A 76%); 128 (PUJP-C 83.2%); 158 (PWC-A 100%). Additionally, by preselecting the routes, TrAILCo implicitly limited Louis Berger’s role to justifying those routes. The ECC asserts that handcuffed by TrAILCo’s determinations, Louis Berger attempted and failed to develop other legitimate justifications. ECC Reply Brief, p. 44. We note that the sentence quoted by the ECC at the start of this paragraph reads, in its entirety, as follows: “While existing ROW was not weighted any differently than other criteria in the site selection process, its value is still significant.”

The ECC presented its critique of the TrAILCo evaluation of the Prexy Segment in its reply brief as it did in its main brief. ECC Main Brief, pp. 65-66; Reply Brief, p. 45. The ECC then discussed each of 138 kV proposed routes.

The ECC evaluated the Prexy-Manifold Segment as follows. The preferred route – PMH-A – impacts, crosses, or contains:

- The highest amount of streams (5) and wetlands. LRE pp. 95-96, Table 5-1;
- The highest amount of cultivated crops and pasture land. LRE p. 96;
- The highest amount of residences within 250 feet of the center line. LRE p. 96;
- The highest amount of residences within 500 feet of the center line. LRE p. 96; and
- The highest amount of cultural resource sites within ¼ mile of the center line. LRE p. 97.

ECC Reply Brief, p. 45.

The ECC evaluated the Prexy-Union Junction/Peters Segment as follows. The preferred route – PUJP-C – impacts, crosses, or contains:

- The most miles in length of the three alternatives. LRE p. 127, Table 6-1;
- The highest amount of streams, water bodies, and wetlands. LRE p. 127, Table 6-1.;
- The highest amount of cultivated crops and pasture land. LRE p. 127, Table 6-1; and
- The highest amount of forest. LRE p. 127, Table 6-1.

ECC Reply Brief, p. 45.

The ECC evaluated the Prexy-Washington-Charleroi 138 Kv lines as follows. The preferred route – PWC-A – impacts, crosses or contains:

- The most miles of the two alternatives. LRE p. 157, Table 7-1;
- The highest amount of steep soils. LRE p. 157, Table 7-1;
- The highest amount of cultivated crops and pasture land. LRE p. 158; and
- The highest amount of forest. LRE p. 158;
- The highest amount of residences within 250 feet of the center line; and
- The highest amount of residences within 500 feet of the center line. LRE p. 158.

ECC Reply Brief, pp. 45-46.

The ECC notes that with the exception of PUJP-C where the alleged ROW crosses the least amount of residences, the preferred routes maximize the impacts on

residents of Washington and Greene Counties. The ECC concludes that TrAILCo's process does not comport with "good routing philosophies." ECC Reply Brief, p. 46.

b. Discussion

The route selection process was complete by the time of the preparation of the route evaluation report in April 2007. The route selection process has had no benefit from the large amount of information gathered from the subsequent public input sessions and site visits. For that reason alone the process is flawed and should be rejected. Perhaps Mr. John Yesenosky summed up the situation best:

Current transmission lines were sited and certified on the basis that the benefits and costs of the facility, economic and social, would be balanced within the same jurisdiction. Approval of TrAILCo's application would reverse this. . . .

The only siting option under consideration is one that was hatched 40 years ago, and sold to local farmers for a far different purpose, that of sustaining jobs in the impacted communities. Documentation of this siting option is evidenced by the easement agreements which were recorded in Greene County in the 1970's and are included for your edification. (Mr. Yesenosky provided photocopies of every easement granted to West Penn Power Company in Greene County that applied to the original Harrison-Prexy project.)

Tr. 2169.

The very best that can be said for the TrAILCo siting process that is detailed in this record is that it is incomplete. It does not meet the requirements of this Commission's siting regulations and cannot support a finding that it is a reasonable route for the proposed project. The failure to incorporate, or at the very least, respond to the concerns expressed during the public input and siting hearings is fatal. For example, the Greene County Planning Commission has outlined how the routing potentially interferes with its economic development plan. Tr. 1061-1066, 1180-1184. The Marianna community park is on hold because of the potentially damaging routing through the park. Tr. 2143-2152. Planned development in North Strabane Township is in limbo because of the routing. Tr. 1576-1582. The response of TrAILCo is found in the rebuttal testimony of Mr. Jack Halpern:

Once the basic route is finalized and engineering information has been developed showing the types and locations of the structures TrAILCo representatives will be able to respond more specifically to concerns expressed by county and township officials and by property owners.

TrAILCo St. 5-R, p. 10.

The LRE has not had the benefit of the Coleman-O'Donnell study of cultural and historic sites. Tr. 1596-1620. If the present route selection process is approved by this Commission, how will the Commission or the interested parties ever know if the diligent work of these two women was ever considered? Likewise, the LRE had no benefit, at least on this record, of the information gathered by Mr. Kenneth Gayman about Native American burial and other cultural sites. Tr. 2037-2045.

It is incredible to us that TrAILCo, having the advantage of the prior proceeding back in 1979 and 1980, and the Initial Decision in that case, as well as the Commission Order, has not substantially wavered from positions that West Penn took then and were rejected. The Initial Decision in the Harrison-Prexy-Yukon ("H-P-Y") case may be found in Appendix G to the OCA's main brief. Application of West Penn Power Company, A-100200, Initial Decision, January 16, 1980. The discussion of the proposed route across the Thomas Scott property is found on pages 26 through 29. Mr. Scott is the prior owner of the property now owned by Ms. Rebecca Foley, one of the most active opponents of this project. From the photo of Ms. Foley's property that appears at TrAILCo Exhibit TG-26, attached to TrAILCo St. 19, it does not appear that TrAILCo has wavered from its predecessor West Penn's intention to place one of its towers on one of the highest points in Greene County. Another example is found at pages 33 and 34 of the H-P-Y Initial Decision where the abandoned and apparently never used Monongahela Railroad right-of-way is discussed. At the very first stop on the first site visit this same right-of-way was discussed.

... Mr. Goroncy stated that what appears to be an abandoned rail road right of way was used by the railroad that he identified as the Monongahela Railroad Company. The right-of-way is very visible along the valley floor, generally paralleling the TrAILCo proposed right-of-way that traverses the ridge above the Goroncy property and the adjoining

Richard and Susan Foster-Blank properties and the property of Joan Blank.

Tr. 479-498.

Moving the route to the railroad line would have defused much of the vociferous and effective protests of the property owners who have property on and along Daniels Run Road. It would also serve to mitigate the effect on the view shed from Route 40.

Another example is the Bandel airport. Mr. Arthur Brogley expressed concern that the proposed lines would cross a Federal Aviation Administration (“FAA”) notification area at the Bandel Airport. Mr. Brogley stated he is a pilot and that the Bandel Airport is a public use facility that hosts general aviation, ultra lights, gliders and sailplanes. He is especially concerned about the safety of the unpowered aircraft attempting to land and needing to clear the power lines. He testified that he notified TrAILCo of his concerns and suggested the use of an alternate route, N-16, as being more remote and affecting fewer homes. The response he received from TrAILCo did not directly address his concerns. He has also written to the FAA and to the Pennsylvania Department of Transportation. Tr. 686-689.

TrAILCo’s response is that it will contact and deal with the FAA, and will notify the Commission of its results, but that its routing should be “conditionally” approved. E.g. see TrAILCo St. 5-R, p. 5. Contrast this response with the situation described in a 1998 case involving an application by West Penn Power for authority to construct a 1.8 mile 138 kV line in Penn Township, Westmoreland County. West Penn considered eight different routes. The route selected had the fewest road and stream crossings, was the shortest and had the shortest distance across agricultural security areas. Importantly, also, the route was formally approved by the FAA. In order to meet concerns of the Pennsylvania Department of Transportation’s Bureau of Aviation, West Penn agreed to underground its line for 400 feet where it crossed the glide path to the major runway. This was all done prior to any Commission approval of the project. Application of West Penn Power Company, A-111250F0062, 1998 Pa. LEXIS 12, March 30, 1998.

One of the matters often mentioned at the public input hearings involved “view sheds,” or the effect of having the proposed towers visible from various locations. We are aware that various materials are available for tower construction that have the effect of causing the towers to blend into the surrounding scene. Also, different types of towers can be used that are more visibly attractive than the steel lattice favored by Allegheny Power. The fact that TrAILCo has not seen fit to at least attempt to mollify the concerns of the public with offering the use of different materials and/or tower designs bespeaks a lack of consideration for the concerns of the general public. E.g. see TrAILCo Ex. JRB-1, pp. 6-7.

Although TrAILCo asserts that it considered the use of existing corridors, the LRE totally ignores the potential of routing along I-70 east and west, and I-79 north and south. Likewise, it ignores the potential routing of the proposed 500 kV line along at least a portion of the two existing Allegheny Power 500 kV lines that run north and south parallel to the proposed Prexy-502 Junction segment. Mr. Halpern responded to the I-79 proposal in his rebuttal testimony with a page and a half of generalities. TrAILCo St. 5-R, pp. 19-20.

It is crystal clear to the undersigned that the siting of this project was driven by the easements obtained by West Penn Power in the 1970’s. One of the rationalizations is cost savings. However, considering the testimony in this record regarding cash offers made to property owners who have recorded easements on their properties, it seems problematical that any savings would occur should the Company’s siting proposal be approved. Also, by, in essence, preordaining that the route would maximize the use of existing easements, the record here forces the legal conclusion that TrAILCo has been arbitrary in selecting its preferred route.

Ms. Robbie Matesic is Executive Director of Economic Development for Greene County. She has a degree in civil engineering and has worked with the Pennsylvania Department of Transportation and with consulting firms. Prior to taking her present position she had nearly 25 years experience as a transportation and site development manager. Tr. 1177-1179. Ms. Matesic stated the siting of the TrAILCo project has been justified by TrAILCo by the rights-of-way acquired 30 years ago. When representatives of Allegheny Power met with the County commissioners and her department a year ago, they stated that 80 percent of the rights-

of-way had been acquired. To verify the representation, her staff pulled the deeds. Only about 20 percent have detailed descriptions of the right-of-way. The TrAILCo Application lists over 250 Greene County landowners. The landowners without detailed descriptions had no way of knowing where the right-of-way would go on their property. One property owner told her that a TrAILCo representative told him he was trespassing by walking out his front door. Ms. Matesic submitted two maps that detail the locations of the impacted landowners, the defined right-of-way information collected from the deeds, the Clean and Green parcels, State Game Lands and other Greene County Geographic Information Systems (“GIS”) data. Tr. 1180-1184.

Ms. Matesic testified that all civil engineering projects should evaluate the benefits of good service, safety, function and the least disruption and most consistency in local planning. She stated her belief that prudently reasonable alternatives had not been evaluated. She provided as an example her experience in evaluating the route for a portion to the Mon Valley Expressway. It took many careful professionals and a few years. They worked with every impacted landowner, stakeholder and every elected official, and never was the ownership of existing right-of-way given the kind of weight that Allegheny Power is giving it here. Rather, the quality of all life and respect for existing treasures of prior generations guided the decisions to the alignments that were considered. It took over five years to evaluate four alignments, and a no-build alternative, before the recommendation of the preferred route was made. Tr. 1182-1184. **We note that the LRE performed here consumed all of five months. TrAILCo St. 5, pp. 17-18.**

Ms. Matesic stated that it was her understanding that corridors for new high-voltage transmission lines have not been presented to the PUC for consideration for decades. It was her understanding that the latest proposed transmission project was withdrawn nearly fifteen years ago. With that in mind she stated the following:

With all due respect, and I do not want to offend you in any way, yet given my professional experience and my personal beliefs, I submit to you that other agencies and commissions in this Commonwealth have established a process and have significant experience in complex siting issues, and to fairly conduct such a process requires a careful multi-disciplined, detailed and properly sequenced evaluation of multiple alternatives, including a no-

build alternative, with a completely open, fair and honest public input process.

I ask that the Pennsylvania PUC expect nothing less from TrAILCo and that you require the significant slow-down or halting of this project. We deserve nothing less than your very best. . . . I am completely opposed to this project because the evaluation of alternatives was conducted without an evaluation of a no-build. A no-build means no new transmission line. It is the evaluation of rebuilding, rehabilitation, upgrading of existing facilities with the application of today's technology.

Tr. 1184-1185.

Ms. Matesic recounted the numerous instances that property owners were told by TrAILCo representatives that the project was “a done deal” or “99 percent sure that it is going to be approved.” She stated that either the project is approved or it is not. It is her understanding that it is not, and she questioned why anyone would be told otherwise.

But why and when would it become the responsibility of the media, of volunteers, of a grass roots organization, of the County Commissioners and staff and everyone not on your payroll to disseminate the truth, to work so hard to offset the misrepresentations, to help the landowners understand this process, to interpret the documentation they received, to assure them that this is a fair process, assure them that the Pennsylvania PUC is protecting their rights and that neither Allegheny Power nor TrAILCo (has) corrupted (the) process.

Tr. 1185-1186.

Ms. Matesic stated further that, “the conflicting information and fact that there is no officially designated information site in the hands of responsible parties has created a network of chaos, to say nothing of the fact that the representatives of TrAILCo are not conveying accurate information.” Tr. 1186.

We have quoted Ms. Matesic's testimony at length because we believe it summarizes the situation this Commission faces with this case. We believe that this Commission adopted its policy statement at 52 Pa. Code §69.1101 to emphasize the need to coordinate projects such as this one with all applicable state and local governments and agencies.

§ 69.1101. Local land-use plans and ordinances in issuing certificates of public convenience.

To further the State's goal of making State agency actions consistent with sound land-use planning, and under the act of June 22, 2000 (P.L. 483, No. 67) and the act of June 23, 2000 (P.L. 495, No. 68), the Commission will consider the impact of its decisions upon local comprehensive plans and zoning ordinances. This will include reviewing applications for:

- (1) Certificates of public convenience.
- (2) Siting electric transmission lines.
- (3) Siting a public utility "building" under section 619 of the Municipalities Planning Code (53 P.S. §10619).
- (4) Other Commission decisions.

The universal opposition to this project as presently configured, voiced by all governmental entities, bespeaks the offensiveness of the Company's planning process. We anticipate exceptions being filed by the Company claiming that the rules have been changed for them and that their due process rights have been violated. The above-referenced policy statement became effective on February 17, 2001. The Initial Decision and the Commission's decision in the H-P-Y case date from 1980. To paraphrase a familiar quote, failing to learn from history can result in repeating it.

Many property owners, at the public input hearings and at the site visits, asked how or when they might have an opportunity to respond if or when a final definitive route is chosen. The issue thus raised is how to protect the due process rights of the affected property owners. With a leeway of 600 to 1000 feet on either side of the preferred route, it is not possible or acceptable to insist a property owner determine his or her position on the routing. While one can dispute the amount of reserves of oil, coal or natural gas, it is certain that the amount of land surface available, at least for the near term future, is a fixed quantity. That being the case, a swing of 600 feet, two football fields, could make a considerable difference in how a property owner views this project. We urge the Commission to reconsider its siting regulations in the light of the dilemma faced by property owners facing a project of this size. It may be well to accept the suggestion in Ms. Robbie Matesic's testimony to consider the siting procedures in place in other state agencies, particularly PennDOT. The concern expressed here is not new.

The matter was addressed at length in the H-P-Y initial decision at pages 4-9. Application of West Penn Power Company, A-100200, Initial Decision, January 16, 1980, Slip op. pp. 4-9.

We would point out that litigation is still pending in both Washington and Greene Counties over the validity of at least some of the 30 year old easements. We also note that several property owners testified that they inquired of West Penn regarding the use of the easements prior to building or undertaking other actions on or near the easements. Uniformly they were told that the easements had been abandoned. Based on that representation they testified that they believed they could proceed to use the land as they wished. E.g. see Tr. 1235-1236, 1522, 1542-1543. Claims that the property owner relied on representations by West Penn/Allegheny Power to his or her detriment may be an additional impediment to using the old easements. Furthermore, the majority of the easements we have reviewed are not specific about the path across the property. Even if declared valid ultimately, adjoining landowners who may be subject to an eminent domain proceeding have no way of knowing how or where their property would be affected based on the present record. As noted above, TrAILCo has not indicated what action, if any, it would take regarding structures that intrude on its ROW should its preferred routes be approved by this Commission.

The Greene County Department of Economic Development prepared two detailed maps of Greene County overlaid in coded colors and markings to indicate the proposed route of the TrAIL, and the documented status of the presence or absence of easements on each of the affected parcels. The maps disclose nine parcels without any easements and five with easements of less than the 200 feet required for the 500 kV line. TrAILCo had not disputed the accuracy of the maps, or the information contained on them. While much of the proposed route is covered by filed easements, a significant portion is not.

Even if this Commission should conclude that TrAILCo should be granted a certificate of public convenience, and that it has established a need for some or all of the proposed power lines and substations, we recommend that it find that the record for the routing is insufficient to support a finding that the chosen routing complies with this Commission's

requirements. Our conclusion is the route selection process was arbitrary, incomplete and, as a result, unreasonable.

3. Environmental Impact

The starting point for evaluating the case for the environmental impact of the TrAIL projects is found in 52 Pa. Code §57.75(e)(3), subsections (i) through and including (xii). The pertinent parts of Subsection (e) are as follows:

(e) At hearings held under this section, the Commission will accept evidence upon, and in its determination of the application will consider, *inter alia*, the following matters:

(3) The impact and the efforts which have been made and will be made to minimize the impact, if any, of the proposed HV line upon the following:

- (i) Land use.
- (ii) Soil and sedimentation.
- (iii) Plant and wildlife habitats.
- (iv) Terrain.
- (v) Hydrology.
- (vi) Landscape.
- (vii) Archeologic areas.
- (viii) Geologic areas.
- (ix) Historic areas.
- (x) Scenic areas.
- (xi) Wilderness areas.
- (xii) Scenic rivers.

52 Pa. Code §57.75(e)(3).

Many of the above matters have been mentioned in the section on Route Selection and Siting.

a. The Positions of the Parties

i. TrAILCo's Position

In its main brief, TrAILCo properly states that it is impossible for the construction of the proposed TrAILCo transmission line facilities in Pennsylvania to have no impact on environmental, cultural, historic and other resources. The sheer size and scope of the project requires that such impacts be first identified and later mitigated to the extent possible. TrAILCo argues that the Commission's siting regulations do not impose a "no impact" standard. Rather, TrAILCo must show that it has taken reasonable steps to minimize the impact of TrAIL on the environment. TrAILCo opines that what has been ignored in the emotional debate at the public input hearings about environmental impacts is the extent to which TrAILCo has already evaluated and will continue to evaluate the impact of TrAIL, and the extent to which efforts have been and will continue to be under way throughout construction to minimize those impacts. (Emphasis supplied.) TrAILCo Main Brief, p. 54.

TrAILCo notes that one of the general themes expressed in the public input hearings and by some of the ECC's witnesses is that TrAILCo has simply not done enough in its siting analyses and that its evaluation is incomplete. However, TrAILCo argues that its expert routing team conducted a detailed environmental analysis of the preferred route and reported the results of those analyses in the LRE. And, TrAILCo asserts that the claim that TrAILCo's environmental analysis is "incomplete" is grounded on an inaccurate view of the Commission's siting regulations and how standard line siting studies are conducted. (Citation omitted.) TrAILCo Main Brief, p. 55.

TrAILCo contends that the Commission's own siting regulations fully recognize the dynamic and ongoing nature of the studies used to support the recommendation of a preferred route for a transmission line. For example, the portion of 52 Pa. Code §57.75(e) that addresses impacts states as follows:

At the hearings held under this section, the Commission will accept evidence upon, and in its determination of the application will consider, *inter alia*, the following matters:

(3) The impact and the efforts which have been made and *will be made* to minimize the impact, if any, of the proposed HV line upon the following . . .

(Emphasis added in original). (Citation omitted.) TrAILCo Main Brief, pp. 55-56.

TrAILCo contends that 52 Pa. Code §57.75(e)(3) expressly recognizes that the various mitigation efforts are likely to be ongoing after the siting application is filed with the Commission and even after the approval has been given. The typical way for the Commission to address conditions that might exist after its deliberations are complete is to enter an order approving an application with "conditions." This potential approach has been completely ignored by those opponents, who claim that TrAILCo's siting application and impact studies are incomplete. (Citations omitted.) TrAILCo Main Brief, p. 56.

TrAILCo states that during the course of route selection for TrAIL in Pennsylvania, TrAILCo has attempted to minimize environmental impacts on wetlands and watercourses. TrAILCo contends that effective implementation of a suitable Erosion and Sedimentation Control Plan will serve to minimize impacts to both wetlands and watercourses. For surface watercourses, TrAILCo will minimize any potential impacts through a variety of means, including crossing streams at right angles and thereby avoiding paralleling stream courses or bodies of water, and retaining shade cover around streams where possible and practical. (Citations omitted.) TrAILCo Main Brief, pp. 57-58.

TrAILCo contends that it has taken reasonable measures to minimize the effect of construction and operation of TrAIL on habitat and wildlife. It states that during construction, any mobile species that are temporarily displaced during construction will have ample suitable habitat in the area following construction. Bird collision and electrocution hazards on the preferred route are expected to be minimal due to the spacing of the conductors. TrAILCo minimized the effect of TrAIL on waterfowl through its avoidance of wetlands and, more

specifically, avoiding the wetland and waterfowl area on lands owned by the Pennsylvania Game Commission (“PGC”). (Citations omitted.) TrAILCo Main Brief, p. 57.

TrAILCo states that it is currently investigating whether TrAIL crosses a special natural community, a mixed mesophytic forest located somewhere within the Osage USGS topographic quad. While OTS witness Yocca asserted that it is not known whether TrAIL will cross a special natural community, TrAILCo asserts that the Pennsylvania Department of Conservation and Natural Resources (“PADCNR”) does not provide detailed information with respect to exact locations of these areas. As with other areas of TrAIL's development, TrAILCo asserts that this is a dynamic process where detailed field studies concerning impacts, if any, to this special natural area will be conducted upon Commission approval of TrAIL's siting and route selection. (Citations omitted.) TrAILCo Main Brief, pp. 57-58.

TrAILCo contends that it has complied fully with its responsibilities regarding endangered species. TrAILCo states that based on the review of the Pennsylvania Fish and Boat Commission (PFBC) and PADCNR, no Pennsylvania rare, threatened, or endangered species will be impacted by TrAIL. TrAILCo also states that it expects to continue a plant review later along the potential route in Pennsylvania in accordance with the directives of the PADCNR. The U.S. Fish and Wildlife Service identified the Indiana Bat as the only federally-listed endangered species that could occur within the TrAIL Project area. TrAILCo has agreed to conduct net surveys beginning approximately May 15, 2008, provide results of those surveys to the U.S. Fish & Wildlife Service, and continue consultation to determine if TrAIL would affect the Indiana Bat and identify any necessary protection or mitigation measures. (Citations omitted.) TrAILCo Main Brief, pp. 57-58.

TrAILCo states that it has sought to minimize the effects of TrAIL on the public by utilizing existing ROWs to the maximum extent practicable. These ROWs were obtained approximately 30 years ago for the purpose of constructing transmission line facilities, and were recorded within the respective counties. Therefore, county planners and members of the public who granted ROWs or who purchased or inherited properties subject to ROWs had actual or constructive notice and knowledge a transmission line could be built in this area for

approximately 30 years. TrAILCo contends that very few encroachments of these ROWs have occurred over the last 30 years, and argues this further supports the view that local landowners were aware of them and the limitations on the use of their properties. Thus, these ROWs are a known, pre-existing land use and, utilization of such ROWs, in and of itself, represents TrAILCo's intent to minimize impacts. (Citations omitted.) TrAILCo Main Brief, pp. 58-59.

TrAILCo contends that its proposed project will have minimal impact on agricultural land use. Transmission line towers typically are not considered incompatible with farming and/or ranching operations. TrAILCo states that generally, any reduced land use impacts associated with transmission infrastructure are limited to the "footprint" at the base of the tower. However, the cumulative area of those tower footprints on a single landowner's farm is typically very small compared to the entire acreage, and the landowner's existing agricultural operations, whether tilling crops or pasturing livestock, can continue unabated on the balance of his or her land. (Citations omitted.) TrAILCo Main Brief, p. 59.

TrAILCo recounts that OTS witness Yocca alleges that TrAILCo failed to consider the impact of TrAIL under the Clean and Green Act (72 P.S. §§5490.1, *et seq.*) and the Agriculture Conservative Easement Purchase Program that exists under the AASL, 3 P.S. §§901, *et seq.* TrAILCo argues that neither witness Yocca nor any other witness or party to this proceeding has explained with any specificity how TrAIL interferes with any rights or duties under these statutes. The LRE concludes "that these farmland conservation programs will not hinder the installation of the transmission line." TrAILCo contends that TrAIL will not have a materially adverse impact on property owner rights under the above laws. (Citations omitted.) TrAILCo Main Brief, pp. 59-60.

TrAILCo defends its use of Geographic Information Systems ("GIS") technology in preparing its routing analysis. It acknowledges that GIS has limitations, but contends that the record shows the value of GIS in general used for the purposes of siting transmission lines. (Citations omitted.) TrAILCo Main Brief, pp. 60-61.

TrAILCo contends that assertions that it relied solely on GIS data are incorrect. It also asserts that other data sources suggested by ECC witness Hoch would not have been of assistance to its experts. Finally, TrAILCo refutes claims by ECC witness Hoch that it should be required to complete a formal National Environmental Policy Act Environmental Impact Statement by stating that it is under no legal requirement to do so. (Citations omitted.) TrAILCo Main Brief, pp. 61-63.

ii. ECC's Position

The ECC states that its witness Dr. Hoch has outlined the deficiencies of TrAILCo's case in his direct testimony by noting his opinion that TrAILCo has failed to address construction impacts, maintenance impacts, cumulative impacts and secondary impacts for each environmental factor identified in its LRE. More specifically, TrAILCo's presentation is faulted for failing to address the impact of the project on groundwater, landslides, and cumulative impacts of the construction, including access roads, on water and air pollution. Further, TrAILCo is faulted for not providing any information on the potential impacts of the construction and operation of the two proposed substations. ECC Main Brief, pp. 66-67.

iii. OTS' Position

The most extensive briefing of TrAILCo compliance with the requirement to minimize the environmental impact of its proposed project was presented by OTS. The OTS states that a review of the history of this Commission's siting regulation, 52 Pa. Code §67.75(e), reveals that the requirement for a consideration of environmental impacts was borne out of the concept of an increased environmental awareness and assessment mandated by Article I, Section 27 of the Pennsylvania Constitution and the effects of that constitutional mandate upon the decision-making process of Commonwealth departments and agencies in a test enunciated by the Commonwealth Court in Payne v. Kassab, 312 A.2d 86 (Pa. Cmwlth. 1973). The case is referred to in Re Proposed Electric Regulations, 49 Pa. PUC 709 at 712 (March 2, 1976). Specifically, the OTS states that the Payne test requires an agency to employ in its decision-making process a consideration of whether: (1) there was compliance with all applicable statutes

and regulations relevant to the protection of the Commonwealth's public natural resources; (2) whether the record demonstrates a reasonable effort to reduce the environmental incursion to a minimum and; (3) whether the environmental harm which will result from the challenged decision clearly outweighs the benefits to be derived therefrom. Payne, supra, at 94. OTS Main Brief, pp. 22-23.

The OTS agrees with TrAILCo that in considering its own regulations, the Commission has declined to require the filing of the equivalent of the environmental impact statement mandated by federal law under the National Environmental Policy Act of 1969, 42 USC §§4231, et seq., but has determined that “. . . in every siting proceeding, the environmental impact of the proposed line will be an issue which the applicant must address affirmatively and completely in order to be granted a siting certificate.” Re Overhead Electric Transmission Lines, 51 Pa. PUC 682, 687 (March 1, 1978). The OTS states that the Commission explained that its fundamental concern in requiring an environmental impact assessment was to ensure that utilities undertake “. . . reasonable, conscientious studies surveys, and searches to determine whether the proposed line will destroy or adversely affect [archaeologic, geologic, historic, scenic or wilderness areas], whether or not the areas were previously known.” *Id.* at 687-688. OTS Main Brief, pp. 23-24.

The OTS notes that TrAILCo submitted with its Application a “Route Evaluation Report and Environmental Report” (“LRE”) prepared by The Louis Berger Group, Inc. (“Berger”), a consultant retained by TrAILCo to perform route selection, and sponsored by TrAILCo witness Jack Halpern into the record. TrAILCo St. 5. As explained by Mr. Halpern, Berger, in alliance with Commonwealth Associates, Inc. (collectively referred to as the “Berger Team”), was retained by TrAILCo to perform route selection studies and assess the potential environmental impacts of the routes selected for the transmission line segments of TrAIL. Specifically, the Berger Team's route selection study analyzed the potential impact of the proposed line upon the factors as delineated in Section 57.75(e) of the Commission's regulations. Ultimately, based upon the results of the route evaluation and environmental assessment, the Berger Team recommended the final route presented in the LRE, also known as TrAILCo Ex. JH-1. As presented in Chapter 4 and Sections 5.4, 6.4 and 7.4 of the LRE, the Berger Team

assessed the potential environmental impacts of the construction of the Pennsylvania segments of TrAIL along the recommended final route and included information compiled in that regard. TrAILCo St. 5, pp. 3-4; OTS Main Brief, p. 24.

The OTS states that its witness Gary L. Yocca concluded that, based upon his review of TrAILCo's Application and attendant LRE, TrAILCo failed to adequately and properly address the various cultural and environmental impacts as required by the Commission's regulations. OTS St. 1. Specifically, Mr. Yocca noted that, *inter alia*, it did not appear that TrAILCo properly assessed the impact of the proposed project on plant and wildlife habitats, archeological areas, historic areas, land use, wetlands, farmlands, and wildlife and plant habitats. *Id.* at pp. 50-51. Moreover, Mr. Yocca was of the opinion that a proposed project of this magnitude minimally requires consultation and cooperation with various local, state and federal agencies that have particular knowledge regarding the effects upon the environment surrounding or affected by the project, but it does not appear that TrAILCo sought any such consultation or cooperation. *Id.* at p. 31. As a result, Mr. Yocca concluded that without full information relating to adverse cultural and environmental effects, the Commission would be unable to make a factual determination that the Application sufficiently describes the environmental impact the project will have and, that the project will not unreasonably affect the environment adversely. *Id.* at pp. 52-53. OTS Main Brief, p. 25.

The OTS notes that following upon Mr. Yocca's generalized assessment, ECC witness Hoch criticized the Berger Team's sole utilization of Geographic Information Systems ("GIS") in analyzing and compiling environmental and cultural data relevant to the proposed corridor. ECC St. 3. Professor Hoch testified that there is a general and inherent limitation of using GIS and its associated data sets as the primary method for environmental assessment and calculation; a limitation which was acknowledged by the Berger Team in its LRE. The OTS notes that Professor Hoch also testified that TrAILCo's LRE fails to set forth any true environmental impact analysis and, instead, merely provides a list of environmental phenomena encountered along the corridor. OTS notes that Professor Hoch testified that nowhere in the LRE is there an analysis or explanation of the project's construction, maintenance, cumulative

and secondary impacts upon the cultural and environmental considerations set forth in the Commission's regulations. ECC St. 3, pp. 2, 10-11; OTS Main Brief, pp. 25-26.

The OTS notes that in rebuttal, TrAILCo witness Jack Halpern acknowledged the concerns noted by Mr. Yocca and Professor Hoch in their respective testimonies and also acknowledged many of the concerns noted by participants in the Public Input Hearings held in Greene and Washington Counties in the fall of 2007. TrAILCo Rebuttal St. 5-R. The OTS contends that Mr. Halpern admitted that the LRE is only a "rough estimate" of the exact cultural and environmental resources that may be impacted by the proposed project and specifically noted that further detailed studies, including site visits and further cataloging would be conducted upon Commission approval of the siting for TrAIL. TrAILCo Rebuttal St. 5-R, pp. 5, 6, 7, 8, 10, 12, 16. Indeed, on cross-examination, Mr. Halpern specifically acknowledged that the LRE was prepared based upon the information available at the time (April 10, 2007) and that specific details regarding affected lands (e.g., how many trees would need to be cut and access road installation) had not been factored into the LRE. Tr. 3244; OTS Main Brief, p. 27.

The OTS also notes that TrAILCo rebuttal witness Gaul testified that the LRE was prepared utilizing GIS, as well as other identification methods, including aerial and satellite imagery, field inspections, hard copy maps and data developed by federal, state and local agencies. TrAILCo Rebuttal St. 19. Yet, with all this information, even Mr. Gaul acknowledged that the LRE was limited to reporting information that was known at the time of its preparation and certain details were not included because they were not known. Tr. 3265-3266; OTS Main Brief, p. 27.

Finally, the OTS notes that TrAILCo offered the rebuttal testimony of Alan J. Fleissner that was offered to demonstrate to the Commission the efforts that TrAILCo intends to undertake with regard to corridor evaluation after the project has been approved by the Commission. TrAILCo Rebuttal St. 6-R. Specifically, Mr. Fleissner stated that the impacts upon airports, wetlands, wildlife, historical and archaeological sites all relate to activities to be completed **after** the Commission grants approval of the project. TrAILCo Rebuttal St. 6-R, p. 1. Consequently, Mr. Fleissner, as well as Mr. Halpern, are of the belief that the evaluation of the

impact and the efforts which can and will be made to minimize the impacts upon cultural, natural and environmental resources of the corridor can only fully be undertaken after the Commission has granted approval of TrAILCo's Application. OTS Main Brief, p. 28. (Emphasis supplied.)

The OTS contends that the above review highlights perhaps the most disconcerting point elucidated in this proceeding. As evidenced by the uncontroverted testimony, and repeated often, TrAILCo apparently is operating under the misconception that much of the "real" work to be done in this proceeding will occur after the Commission grants approval of the siting for the TrAIL project. As indicated above, Mr. Halpern, Mr. Gaul and Mr. Fleissner in particular, noted that much of the ultimate environmental cataloging and impact assessment for the transmission lines themselves will occur as the plan for the project proceeds. Tr. 3272-3274; OTS Main Brief, p. 28.

The OTS recounts that TrAILCo witness Fleissner acknowledged that no environmental impact whatsoever has been undertaken with respect to the actual siting and construction of the Prexy and 502 Junction Substations, and it is his belief that no such assessment must be undertaken by the Commission with regard to these facilities. Tr. 3267-3270; 3334-3335. In his own words, Mr. Fleissner believes that the Commission's role is to merely "... support the route that we've chosen . . . we think we've completed [the regulatory requirements]. Have we done all the work that's required to build the line? The answer is no." Tr. 3274. As Mr. Fleissner testified, TrAILCo still needs to consult with the Pennsylvania Historic and Museum Commission, still needs to complete studies associated with endangered species, location of access roads, permitting for soil erosion and sedimentation control, consultation with "fish and wildlife," DEP, and "Army Corps" for permitting associated with wetlands. Tr. 3277-3278; OTS Main Brief, pp. 28-29.

The OTS contends that such a perplexing viewpoint seems to completely misconstrue the mandate of the Commission to consider the proposed impacts of the project on the natural, cultural and environmental resources set forth in Section 57.75(e) and completely ignores the requirement that the Commission must make an affirmative finding, based upon the competent, reliable and substantial evidence that the proposed project will be in compliance with

applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth, and that the project will have minimal adverse environmental impacts. Without a full, complete record of the environmental and cultural phenomena encountered along the line corridor, and an accompanying evaluation of the impact of the proposed project on those phenomena, the Commission cannot make such an affirmative finding. OTS Main Brief, pp. 29-30.

As to the location and construction of the related substations, OTS points out that TrAILCo's Mr. Fleissner admits that no environmental assessment whatsoever has been done based upon his belief that the location and construction of those facilities is outside the regulatory purview of this Commission. Yet, neither Mr. Fleissner nor TrAILCo provides any support for these statements and the OTS argued that even if the Commission's siting regulations do not apply to substation facilities, at a minimum the Commission is still obligated to assess the environmental impacts of the location and construction of those substations in accordance with the Payne principles set forth above. Yet, by TrAILCo's own admission, it failed to provide any factual support whatsoever to allow the Commission to make any such determinations with regard to the proposed substation facilities. OTS Main Brief, p. 30.

The OTS states that the Company has admittedly failed to produce on this record, specific, substantial evidence which tends to show reasonable efforts to reduce environmental incursion to a minimum. TrAILCo's suggestion that the regulatory approval "cart" be placed before the factual basis "horse" not only asks that the Commission shirk its constitutional and statutory mandate to ensure that the cultural and environmental resources of this Commonwealth are adequately protected against unreasonable incursions, but also is in direct contradiction to the Commission's regulatory requirement to the contrary. Moreover, it tends to display a certain level of indifference towards mitigating adverse impacts of the project. On this basis alone, the OTS argues that TrAILCo's Application should be denied. OTS Main Brief, pp. 30-31.

But, the OTS states that this argument is made even more astounding when it is considered that perhaps the main reason that the current route for the 502 Junction-Prexy line, at least, was selected was because it simply traversed a route that consisted of approximately 94%

of existing West Penn Power Rights-of-Way that were purchased by West Penn during the 1970's. Mr. Gaul and Mr. Halpern testified at the hearing that the currently selected route for the 502-Prexy line, or "Alternative Route C," was not developed by the Berger Team, but rather was provided to the Berger Team at the inception of this project. Tr. 3246-3247. Indeed, as the LRE states, and Mr. Halpern confirms, "Alternative Route C" is "comparatively moderate" in its impacts or, in other words, it is not the best or the worst of the alternatives with respect to length of route on steep soils, cultivated crops and developed land. Tr. 3247-3248. Also, Alternative Route C crosses the second most amount of residences within 250 feet (21) and the most residences within 500 feet of the center line (100). Tr. 3248 (footnote omitted); OTS Main Brief, p. 31.

The OTS then reviews the respective impacts of the proposed 138kV lines. The OTS concludes that taken together, the facts in this case seem to indicate a certain level of indifference towards producing a record that tends to show that reasonable efforts to reduce environmental incursion were employed. The OTS states that one must wonder whether the ultimate transmission line routes chosen by the Berger Team, and ultimately, TrAILCo, were done so solely to mitigate the time and expense of acquiring new rights-of-way and less out of the need to reduce adverse environmental, cultural and natural impacts. At the very least, TrAILCo's route selection for the various transmission lines proposed has managed to inconvenience and trouble more residences along its path than any of the other options available to it. OTS Main Brief, pp. 32-33.

The OTS anticipates that, in reply, it is likely that TrAILCo will insist that its route selection efforts constitute a reasonable effort to comply with applicable statutes and regulations pertaining to the protection of Commonwealth natural resources and that the record demonstrates a reasonable effort to reduce the environmental impact of the project to a minimum. Indeed, TrAILCo will likely argue that a "reasonable effort" is all that is required to satisfy the Commission's inquiry and an intrusive NEPA style Environmental Impact Statement is not required by the Commission. Furthermore, TrAILCo will likely implore the Commission to recognize that its ongoing cataloging efforts and consultation with applicable federal and state agencies is entirely permissible under the Commission's regulations or, at the very least,

represents the best available alternative in complying with the Commission's mandate. OTS Main Brief, p. 33.

b. Discussion and Conclusions

We concur with the analysis of the OTS with regard to TrAILCo's efforts to minimize the environmental impact of its proposed projects. As the OTS states, the fallacies inherent in TrAILCo's arguments in this regard are grounded in the Company's conception of what constitutes "reasonable efforts." Certainly, this Commission never intended that a NEPA style Environmental Impact Statement be prepared in support of a siting application, but it is abundantly clear that the Commission does require an affirmative and complete environmental impact. Re Overhead Electric Transmission Lines, supra, at 687. While the level of this requirement may vary depending upon the proposed project, it only stands to reason that a project of the magnitude proposed by TrAILCo in this proceeding would require a more in-depth analysis and review. Merely providing a listing of natural, cultural and environmental phenomena encountered along a preferred transmission line route, albeit, an incomplete cataloging apparently, clearly cannot be constituted as a "reasonable effort" to "affirmatively and completely" address environmental impacts. Indeed, as made clear by the testimony produced in this proceeding, even for those areas where environmental phenomena are encountered, the LRE does not even analyze or explain the project's construction, maintenance, cumulative and secondary impacts upon those considerations. OTS Main Brief, pp. 33-34.

The argument made by TrAILCo would have more weight if, for example, it had (1) presented a soil and sedimentation plan, (2) identified and provided locations for the needed access roads, (3) detailed how it would act to protect ground and surface water sources from pollution, (4) presented a detailed plan on how it would minimize water and air pollution from the construction of the project and, very significantly, (5) presented a credible account of how it seriously considered alternate routes that had less environmental impacts than its preordained route for the Prexy Segment that was so obviously chosen because of the prior West Penn Power easements. The TrAILCo presentation would also be helped by, at the minimum, providing documentation of contacts with the appropriate state and federal agencies that will need to pass

on various parts of the application. In essence, TrAILCo is asking this Commission to trust it to do all of the right things after approving what is basically a concept of a project rather than one that is fully developed. We suggest that this Commission would be shirking its oversight review duty were it to do so. If, as it has stated so often in its briefs, TrAILCo viewed its filing as an initial application that would be subject to Commission-imposed conditions, we believe that it should have clearly stated and proposed what it would consider to be appropriate conditions in its filing, in its prepared statements and exhibits. Doing so would have provided the interested parties an opportunity to evaluate and respond.

We conclude that TrAILCo has failed to carry its burden of proof to show that it has acted responsibly and reasonably to mitigate the environmental impacts of its proposed project. In reaching this conclusion we obviously also rely on our review and discussion of the route selection and siting contained elsewhere in this recommended decision.

4. Health and Safety

a. Introduction

The Commission's regulations require that impacts upon health and safety be considered in deciding the Company's Application. Section 57.76 states that the Commission must determine that the proposed line "will not create an unreasonable risk of danger to the health and safety of the public" and "that it will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives." 52 Pa. Code §57.76(a)(2),(4); *see also* 52 Pa. Code §57.75(e)(2),(3). The health and safety issues that were raised by the parties and at the public hearings are the health effects of the electric and magnetic fields ("EMF") created by the transmission lines, the use and application of herbicides and pesticides on the proposed rights-of-way, gas line safety and miscellaneous issues including farm equipment under the lines, steel roofed buildings near or under the lines, and the safety of towers erected on undermined land.

b. The Positions of the Parties – in General

i. TrAILCo's Position

TrAILCo asserts that its TrAIL proposal will not create an unreasonable risk of danger to the health and safety of the public because it will be constructed in compliance with the provisions of the National Electric Safety Code (“NESC”). TrAILCo correctly states that this Commission has held that construction which meets or exceeds the requirements in the NESC is a sufficient basis for finding that a line does not create an unreasonable risk of danger to the public. *See e.g., Application of PPL for Authority to Locate and Construct its Hamline 138 kV Electric Transmission Line*, Docket No. A-00101826 (Order Adopted April 3, 1981). TrAILCo states that the unrebutted record evidence indicates that TrAIL has been designed to meet or exceed NESC safety requirements. Once in operation, TrAILCo asserts that the TrAIL will adhere to the design parameters in the NESC, including the requirements for structural loading, structural strength and electrical clearances. TrAILCo St. 7, pp. 21-22; TrAILCo Ex. JRB-1. All tower structures will meet or exceed the design parameters in the NESC, and all conductors for TrAIL will be installed in accordance with the NESC. TrAILCo St. 7, pp. 13-19; TrAILCo Ex. JRB-1. TrAILCo Main Brief, p. 44.

TrAILCo states that right-of-way (“ROW”) widths for TrAIL also will reflect NESC safety requirements, including clearance criteria. For the 500 kV line segments, a standard ROW width of 200 feet has been established. For the 138 kV line segments, standard ROW width will be 140 feet, and a 290 foot ROW will be required in those instances where 500 kV and 138 kV facilities will be constructed within a single ROW. TrAIL will be constructed, operated and maintained in accordance with the applicable industry safety standards. TrAILCo St. 7, pp. 22-23; TrAILCo Main Brief, pp. 44-45.

ii. OTS' Position

The OTS states that the Commission has consistently held that the construction of an HV line that either meets or exceeds National Electric Safety Code (“NESC”) requirements is

a sufficient basis for a finding that the proposed project does not create an unreasonable risk of danger to the health and safety of the public, citing Larkin v. Philadelphia Electric Company, 39 Pa. PUC 777 (1961); Certification Application of Pennsylvania Power & Light Company Filed Pursuant to 52 Pa. Code Chapter 57, 1994 Pa. PUC LEXIS 65, *41-42 (October 21, 1994). The OTS notes that in this proceeding the unrebutted testimony of Mr. John R. Bodenshcatz and Gary B. Johnson, Ph.D., state that the entire TrAILCo project was properly designed and will be constructed in accordance with the NESC standards. Accordingly, to the extent that the project is designed and constructed in accordance with NESC standards, OTS believes that TrAILCo has sufficiently shown that, strictly from an engineering and design perspective, the proposed project does not pose an unreasonable risk to human health and safety. OTS Main Brief, pp. 15-16.

c. The Positions of the Parties – Electric and Magnetic Fields (“EMF”)

i. TrAILCo’s Position

EMF refers to the electric and magnetic fields associated with the operation of alternating current (“AC”) power lines or devices supplied with AC electricity. TrAILCo St. 9, p. 4. TrAILCo states that the health effects from exposure to EMFs were addressed via the expert testimony of Dr. William Bailey, an internationally known and respected expert who has testified all over the world, including Pennsylvania. TrAILCo St. 9. TrAILCo asserts that exposure to EMFs from TrAIL will not create an unreasonable risk of danger to the health and safety of the public. TrAILCo notes that as recently as 2007, the Commission held that public exposure to EMFs from HV transmission lines did not represent an unreasonable public health or safety risk. The Commission based its decision in that 2007 case on the same body of scientific evidence and evaluations by national and international agencies referenced by Dr. Bailey here; namely, that there is no conclusive evidence of adverse health effects from EMF exposure. As further noted by the Commission, “the state of scientific thought regarding the health effects associated with EMFs from electric transmission lines has become no more illuminating in the intervening years,” i.e. since 1991. Amended Application of Duquesne Light Co. for the Siting and Construction of a 138 kV Transmission Line in Hampton, McCandless and Ross Townships, Allegheny County, Docket No. A-110150F003, Order entered 02/05/2007 adopting the

Recommended Decision. TrAILCo states that although TrAIL includes a higher voltage 500 kV line, the voltage of the line is not material to the expected level of the magnetic field at the edge of the ROW. TrAILCo St. 9, p. 8; TrAILCo Main Brief, p. 45.

ii. OCA's Position

The OCA notes in its main brief that many members of the public expressed considerable concern about the EMFs. The OCA argues that adoption of its alternate proposal for the Prexy Segment, as set forth by Mr. Lanzalotta, would greatly reduce the potential exposure of the public to EMFs. Mr. Lanzalotta explained how reverse phasing can reduce or eliminate EMFs. He also noted that his proposal would eliminate the 500 kV portion of the Prexy Segment as well as the Prexy Substation. OCA Main Brief, pp. 55-58.

iii. ECC's Position

The ECC main brief concisely reviews the medical studies to date on EMF effects. The ECC concludes by stating:

Although no firm consensus exists as to the *degree* of the risk, the medical community currently finds that EMFs pose a possible risk of childhood leukemia. Without a legitimate need for the line, no rationale exists to subject citizens of Washington and Green (sic) Counties to the risk. (Emphasis in the original.)

ECC Main Brief, pp. 68-69.

iv. OTS' Position

The OTS notes correctly in its main brief that a vexing inquiry is presented when the issue of the effect of EMFs on human health is presented. Indeed, in many ways, no issue in a proceeding to locate and construct high-voltage transmission lines is more controversial or fraught with more conflicting information than the alleged effect of exposure to electromagnetic fields. OTS Main Brief, p. 16.

The OTS also correctly notes that in the most recent cases concerning high-voltage transmission lines, the Commission has found that there is no conclusive evidence that EMFs present a known hazard to human health. Application of West Penn Power Company for Authority to Locate and Construct the Harrison City Loop, 138 kV Transmission Line Located in Westmoreland County, Pennsylvania; 1998 Pa. PUC LEXIS 12 (March 30, 1998). No known proposed transmission line project has ever been denied by the Commission for its adverse effects on human health resulting from exposure to increased electromagnetic fields. Yet, the argument persists and further studies to examine electromagnetic effects occur frequently. OTS Main Brief, pp. 16-17.

The OTS reviews the testimony presented by the parties on EMFs and concludes that:

At best, the testimony produced by the parties in this proceeding have (sic) illustrated that the question of whether EMFs emitted by high voltage transmission lines is (sic) harmful to public health is still being questioned by researchers, and that many of those who may be affected by the proposed project harbor subjective concerns about the perceived risk associated with living close to transmission lines. However, it appears that the scientific evidence available today seems to indicate that high voltage transmission lines do not pose a risk to public health or safety. At the very least, not one party has produced any evidence to provide conclusive evidence that exposure to EMFs emitted by the proposed project will have an unreasonable risk on human health. Again, as noted above, based upon the available evidence at hand, the Commission has typically comported with this conclusion and it does not appear that any party has offered new or novel evidence to the contrary.

OTS Main Brief, pp. 18-19.

The OTS notes that, in order to additionally address the public perception, several jurisdictions have adopted a “low cost/no cost” or “prudent avoidance” policy in constructing new and rebuilt facilities to address EMF mitigation. The OTS cites several decisions from other jurisdictions. It notes that these policies typically look to minimize EMF exposure where doing

so can be done in a reasonably cost effective manner and may involve examination of the following:

1. Design alternatives considering the spatial arrangement of phasing of conductors (e.g., reverse phasing of double circuit lines);
2. Whether the line may be routed to limit exposure to areas of concentrated population areas;
3. Whether construction and utilization of higher structures is feasible, and;
4. Widening of right-of-way corridors.

OTS Main Brief, pp. 19-20.

OTS states that, given the minimally unobtrusive manner in which such polices could be implemented, and also considering that the Commission has previously recognized that the adoption of an EMF management program constitutes sound public policy, OTS argues that TrAILCo's failure to adopt such a policy represents a failure to minimize the health and safety effects of its proposed project on the public. The OTS urges the Commission to instruct TrAILCo to investigate whether the measures detailed above, as well as any others, are feasible and could be implemented to mitigate EMF emanation in the event that the Commission does approve the TrAIL proposal. OTS Main Brief, pp. 20-21.

v. TrAILCo's Reply

In its reply brief, TrAILCo takes issue with the OTS statement that this Commission has taken a position on the so-called "no cost/low cost" or "prudent avoidance" policy. TrAILCo notes that the decision cited, Certification Application of Pennsylvania Power & Light Company Filed Pursuant to 52 Pa. Code Chapter 57, 1994 Pa. PUC LEXIS 65 (October 21, 1994), is a recommended decision, and not a final Commission Order. It asserts that it has already taken many of the steps proposed by OTS. TrAILCo Reply Brief, pp. 39-40.

vi. OCA's Reply

In its reply brief, the OCA reiterates the potential benefit that could result from reverse phasing of parallel 138 kV lines, i.e. a reduction in EMFs. It also notes that some states have formally recognized the importance of mitigating EMFs. OCA Reply Brief, pp. 36-38.

vii. ECC's Reply

The ECC summarized its prior argument that where the need for the proposed line is de-minimus or non-existent, any risk from EMFs is unreasonable. Because EMFs pose a possible risk to human health, and because, in the ECC's view, TrAILCo has failed to carry its burden of proof for the TrAIL project, the project should be rejected. ECC Reply Brief, pp. 49-50.

d. Discussion

The findings of fact applicable to this discussion are numbers 240 through 269. We are in agreement with the OTS analysis of the issues related to EMFs. The current state of the law regarding the siting of HV transmission lines in Pennsylvania is as stated by OTS and TrAILCo: compliance with the requirements of the NESC is the accepted standard. Should this Commission disagree with our overall recommendations in this matter and approve the Applications, compliance with the NESC would be the standard that would apply to TrAILCo.

In any event, we join the OTS in urging the Commission to consider requiring future HV power line filings to comply with a policy requiring the mitigation of exposures to EMFs. The fact that PP&L voluntarily adopted a mitigation program shows a considered response to a very sensitive subject. We quote briefly from the Recommended Decision in Certification Application of Pennsylvania Power & Light Company Filed Pursuant to 52 Pa. Code Chapter 57, 1994 Pa. PUC LEXIS 65 (October 21, 1994):

Based on the extensive scientific evidence developed to date, which has been discussed in the preceding section, it is clear that EMF should not be regarded as a health hazard. However, the Company believes that it makes sense, as a matter of policy, to deal with customer concerns about EMF by reducing electric and magnetic fields in new and rebuilt facilities where that can be done with no-cost or low-cost design changes. Consequently, with that goal in mind, PP&L initiated its Magnetic Field Management Program in March 1991. PP&L Stmt. 2, p. 5.

Magnetic fields from overhead power lines and human exposure to those fields can be reduced by a number of methods including increasing ground clearance; balancing phase currents and circuit loads; using low reactance (reverse) phasing; adopting line configurations that reduce the space between phase conductors; increasing right-of-way widths; and, in general, locating lines in less densely populated areas. PP&L Stmt. 5, pp. 4-5. Based upon a detailed investigation of these factors, including their environmental impact, costs and benefits, PP&L developed the guidelines incorporated in its Magnetic Field Management Program, as described in detail in Appendix I of PP&L Exhibit 1. PP&L Stmt. 5, p. 5.

Certification Application of Pennsylvania Power & Light Company Filed Pursuant to 52 Pa. Code Chapter 57, 1994 Pa. PUC LEXIS 65 (October 21, 1994), pp. *67-*69.

e. The Positions of the Parties – Herbicides and Pesticides

i. TrAILCo's Position

TrAILCo asserts that it has the proper protections in place to ensure safe application of herbicides. Herbicide applications for TrAIL will be done in accordance with EPA-approved pesticide labels, which are the law concerning application of the substance, and in accordance with Allegheny Power's extensive guidelines and practices for applying herbicides. Specifically, TrAILCo will use herbicides in a selective fashion: (i) only to control targeted plants, (ii) only in suitable portions of its rights-of-way and (iii) only on an infrequent basis (with the time in between treatments measured in years). Further ensuring the safety of their use, TrAILCo will utilize trained professionals for herbicide applications and will provide ongoing training to ensure proper application. TrAILCo Main Brief, pp. 50-51.

TrAILCo presented the testimony of Mr. Kevin T. McLoughlin, an acknowledged expert in electrical transmission line right-of-way vegetation management. He provided detailed testimony on the proper use of herbicides and pesticides in maintaining transmission line corridors. TrAILCo Rebuttal St. 18.

ii. OTS' Position

In its main brief, the OTS states that, similar to the inquiry regarding EMFs, the question related to a utility's proposed route maintenance program, including the application of herbicides and route clearing is also typically met with a great deal of public opposition and speculation regarding adverse health affects associated therewith. In Pennsylvania proceedings, to date, no known project has ever been denied or modified pursuant to concerns related to vegetation management. In fact, it appears that as long as the company has proposed a reasonable vegetation management program utilizing herbicides approved by the Environmental Protection Agency and the Commonwealth's Department of Agriculture, such a showing is a sufficient basis upon which to make a finding that route maintenance issues do not pose an unreasonable risk to public health and safety. *See, e.g., Application of West Penn Power*, 1997 Pa. PUC LEXIS 65 (November 6, 1997). OTS Main Brief, p. 21.

iii. OCA's Position

The OCA's contribution to the issue of the use of herbicides and pesticides in its main brief was to assert that aerial spraying should not be permitted in Pennsylvania if the TrAIL proposal is permitted. The OCA notes that TrAILCo witness John Bodenschatz's direct testimony states that the Company proposed to spray herbicides using helicopters in order to maintain the rights-of-way for the proposed transmission lines. The Company proposed certain policy limitations regarding the aerial spraying of herbicides in Pennsylvania, stating that only specific areas could be sprayed using helicopters, such as areas with medium to heavy brush density. Aerial spraying would not be used for example, where the ground is more than 150 feet below the conductor, such as where sections of transmission conductors span a valley or ravine. Aerial spraying would also not be used over open, standing or running waters. The Company's

standard contract for aerial spraying would also require adjacent buffers to certain items, such as 100 foot buffer zones around pasture land and ponds and 200 foot buffer zones adjacent to flowing water. Pilots would receive penalty points for violations of these buffer zones. Such penalty points would be cumulative from one spray season to the next. TrAILCo St. 7; OCA St. 1, pp. 29-36; OCA Main Brief, p. 59.

The OCA notes that on January 7, 2008, TrAILCo announced an agreement with the Consumer Advocate Division of the Public Service Commission in West Virginia on issues relating to its Application to construct the proposed West Virginia segments of the 500 kV transmission line in that state. TrAILCo agreed to a Stipulation that states “[t]he aerial spraying of herbicides will not be utilized on the West Virginia Segments of TrAIL.” OCA Cross Exam Ex. 8 at ¶20(b) (West Virginia Stipulation); *See also* Tr. 2948, OCA St. 1-SR, p. 20.

In consideration of this agreement, in his surrebuttal testimony, OCA witness Lanzalotta recommended that no aerial spraying of herbicides be permitted on the Pennsylvania segments of the TrAIL as well. OCA St. 1-SR, p. 20. TrAILCo’s Stipulation recognized that the Company can completely avoid the use of aerial herbicides in West Virginia, a state with terrain that is even more mountainous than Washington and Greene counties. As OCA witness Lanzalotta testified in surrebuttal testimony:

This represents one of the most rigid mandatory policies possible. It follows that the Company must agree that it is feasible to maintain its transmission rights-of-way without the use of aerial spraying of herbicides. Therefore, I propose that, if the proposed TrAIL facilities in Pennsylvania were to be approved, the Commission impose the condition that the Company not use aerial spraying of herbicides to clear or maintain the TrAILCo transmission rights-of-way in Pennsylvania.

OCA St. 1-SR, p. 20; OCA Main Brief, pp. 60-61.

The OCA argues that, as is demonstrated by the pertinent terms of the West Virginia Stipulation, the Company is capable of implementing a much more stringent environmental policy than the one that it proposed in Pennsylvania concerning aerial spraying. Under the Commission’s regulations, the Company must minimize the environmental impact of

the proposed transmission line. 52 Pa. Code §§57.75(e)(3), 57.76. As the Company is capable of operating the proposed transmission line without the use of aerial spraying of herbicides in West Virginia, the OCA asserts that the Company should also be required to adopt a policy that would minimize the impact of aerial spraying of herbicides in Pennsylvania. OCA Main Brief, p. 61.

iv. ECC's Position

In its main brief, the ECC notes the numerous concerns expressed by landowners with regard to the use of herbicides and pesticides on the proposed rights-of-way. The major concerns were effects on water supplies and the resulting potential negative impact on both human and animal health. The ECC notes that despite the known threats of the herbicides and pesticides to water supplies, TrAILCo has not conducted any survey of domestic and commercial water wells in the conduct of this proceeding. Tr. 3513; ECC Main Brief, p. 70.

v. TrAILCo's Reply

In its reply brief, TrAILCo maintains that a ban on aerial spraying is unnecessary as it has, or will have, proper safeguards in place. It also contends that the ban on aerial spraying in West Virginia was part of a negotiated settlement that provided benefits or inducements to the settling parties. TrAILCo Reply Brief, pp. 40-41.

TrAILCo also responded to the ECC as follows:

ECC criticizes TrAILCo for failing to conduct any survey of domestic and commercial water wells, even though TrAILCo's own witness testified that herbicide application can result in ground water contamination. However, ECC has not cited to any law, regulation or Commission decision requiring TrAILCo to conduct a water well survey. Once again, ECC is attempting to impose regulatory requirements that do not exist and are beyond those contained in the Commission's siting regulations. (Footnote omitted.)

TrAILCo Reply Brief, p. 41.

f. Discussion, Conclusions and Recommendations

The findings of fact that pertain to this section are found in findings of fact number 270 to 283. In general we were very favorably impressed with the testimony of Mr. McLoughlin. In the event the TrAIL proposal is approved, TrAILCo should be directed to strictly comply with the requirements he outlined in his testimony in TrAILCo Rebuttal Statement 18. In particular we strongly believe that prior effective notice to property owners of both the properties that carry the ROW and adjacent property owners should be required. TrAILCo Rebuttal St. 18, pp. 14, 19-20.

Further, TrAILCo should be required to provide prior effective notice to property owners of both the properties that carry the ROW and adjacent property owners of the opportunity to negotiate a Landowner Maintenance Agreement. TrAILCo Rebuttal St., p. 20. We recommend that as part of the notification process each affected landowner be given specific contact information so that the landowner can have questions and concerns dealt with in an expedited and satisfactory manner.

Having toured the entire lengths of all of the proposed power line corridors we can state unequivocally that they cross a rolling but relatively gentle countryside. We cannot imagine any critical need for aerial spraying as none of the terrain is particularly difficult to negotiate. The only plausible reason for aerial spraying would be that it is less expensive. Given the great public concern over the spraying issue, and given TrAILCo's position, as stated at pages 50-51 of its main brief, that spraying would be a relatively rare activity, we believe that this Commission should prohibit aerial spraying in the event the TrAIL project is approved.

Finally, we find offensive the remarks in TrAILCo's Reply Brief, quoted above, that it has no requirement to consider and safeguard domestic and commercial water wells and sources. We consider TrAILCo's failure on this record to account for the effects of its project on surface and subsurface water to be a serious failure of its burden of proof in this matter.

g. Gas Line Safety

The only parties to address gas line safety in their briefs were Columbia Gas and TrAILCo, the former in detail to explain the settlement it entered into with TrAILCo, and the latter, briefly, to acknowledge the settlement. The findings of fact proposed by Columbia Gas are adopted and may be found at Appendix C of Columbia's Main Brief. Columbia Gas also proposes conclusions of law and an ordering paragraph. The Settlement Agreement is attached to the main brief of Columbia Gas as Appendix H. Columbia Gas Main Brief; TrAILCo Main Brief, p. 75.

The gist of the agreement requires Columbia Gas to hire an independent "Mitigation Expert" to conduct a study and prepare a report outlining the impact, if any, of the construction and operation of the TrAIL project on Columbia Gas facilities and pipelines. Settlement, p. 4. The Settlement requires TrAILCo to comply with certain "Minimum Guidelines" that are set forth as Appendix A to the Settlement. Settlement, p. 6. However, Appendix A was not included in Columbia Gas' Main Brief, or in TrAILCo's Main Brief.

In the event the TrAIL project is built, the Settlement requires the Mitigation Expert to conduct a review to assure that all of the mitigation actions were taken by TrAILCo. Settlement, pp. 6-7.

i. Discussion, Recommendations and Conclusions

Many property owners expressed concern over the safety issue raised by having a high-voltage power line pass over a gas well or a gas transmission or distribution line, particularly where there is a history of gas leaks. *See* Findings of Fact 284 through 295. Other than general comments regarding constructing the project in a safe manner and pledging to comply with all governmental and industry requirements, the Company has not addressed the issue of safety for gas wells and gas lines. In the event this Commission approves the pending Applications, we recommend that, first of all, TrAILCo be required to disclose the "Minimum Requirements" of the Settlement. Secondly, that TrAILCo be required to comply with the

“Minimum Requirements” with regard to all gas wells and gas transmission and distribution lines, not just those owned by Columbia Gas.

h. Other Safety Issues

Some public witnesses expressed concerns related to metal roofed structures and farm equipment that was higher (12 feet) than usual for vehicles that would be operated on highways. E.g. *see* Tr. 156, 457-458; Findings of Fact 296 and 297. The concern is related to the potential for induction of an electrical current into the building or the farm equipment. TrAILCo has addressed those concerns only generally by stressing its compliance with the National Electric Safety Code. TrAILCo Main Brief, pp. 44-45. Given the largely rural proposed route that traverses many farms, we would have appreciated a more detailed response to the concerns voiced at the public input hearings. In the event this Commission concludes that the Applications here should be approved, we recommend that TrAILCo be required to specifically address the safety concerns of the owners of metal roofed structures and tall farm equipment.

C. Eminent Domain

1. TrAILCo’s Position

In its main brief, TrAILCo states that it has requested eminent domain authority in connection with the aerial HV electric transmission facilities it proposes to construct in Pennsylvania. TrAILCo properly notes that it must obtain a determination from the Commission that the exercise of eminent domain for aerial electric facilities is “necessary or proper for the service, accommodation, convenience or safety for the public,” citing 15 Pa. C.S. §1511(c). TrAILCo also notes that it must show that the selection of the proposed route for the transmission line was not an abuse of discretion and that it must first obtain certification as a public utility. TrAILCo Main Brief, pp. 63-64.

TrAILCo goes on to argue that there is a clear need for the proposed facilities, that TrAILCo's route selection was not an abuse of discretion and that TrAILCo has met the requirements for Commission certification. To further support the reasonableness of granting eminent domain, TrAILCo states that it is committed to the proposition that the use of such authority will be limited in scope. TrAILCo states that eminent domain authority will be exercised only as a last resort for those properties for which TrAILCo is unable to obtain ROW, and TrAILCo does not expect to make extensive use of this authority. In support of its commitment statement, TrAILCo notes the following:

Because TrAILCo presently has ROW for approximately 44 of the 52 line miles in Pennsylvania, there are relatively few property owners with whom TrAILCo will need to negotiate ROW rights. TrAILCo is hoping to successfully negotiate private ROW arrangements with all of these affected property owners and will need to exercise eminent domain only to the extent that ROWs cannot be negotiated in a timely manner. According to its most recent count, TrAILCo may need to exercise the authority of eminent domain for 44 properties. Of the 44 properties, 27 identified properties/property owners are the subject of a pending lawsuit in Washington County, Pennsylvania challenging the validity of the existing ROWs held by TrAILCo's affiliate, West Penn Power Company. Additional properties are subject to a similar lawsuit recently filed in Greene County, Pennsylvania. If TrAILCo is successful in these lawsuits – which it expects to be – few of these properties/property owners involved in the litigation will be subject to condemnation proceedings. TrAILCo St. 11A, p. 4.

TrAILCo Main Brief, p. 64, footnote 231.

Finally, TrAILCo argues that its request for eminent domain authority, which has not been specifically contested by any party in this proceeding, should be granted. TrAILCo Main Brief, p. 64.

2. OTS' Position

The only other party to provide any briefing on eminent domain is the OTS. After summarizing the legal requirements, the OTS states that: “At the very least, there are grave doubts as to whether TrAILCo has acted in a reasonable manner in the selection of the preferred route.” OTS concludes that TrAILCo has failed to meet the standards for the issuance of a certificate of public convenience, and its request for authority to use eminent domain powers should be denied. OTS Main Brief, pp. 35-36.

3. Discussion, Recommendation and Conclusion

First of all, it is disingenuous to state that no party contests the grant of eminent domain authority when all other parties object to the proposed projects. Many persons testifying at the public input hearings expressed opposition to the use of eminent domain authority.

Secondly, in order to understand the footnote quoted above from the TrAILCo Main Brief, it is necessary to go to Mr. Ruberto's testimony in Statement 11A and his Exhibit JR-4. In essence, TrAILCo does not have an easement of any kind for 17 of the properties crossed by its preferred routes. In Washington County, litigation is pending on an additional 27 properties where the present property owners are contesting the filed easements. The 17 and 27 make up potentially 44 properties where TrAILCo notes that it may need to seek eminent domain authority. The testimony does not include the number of properties that are currently in litigation in Greene County simply because the litigation commenced after the filing of the testimony. Further, in the presentation by the Greene County Planning Commission regarding their review of the recorded easements in Greene County, it appears that five of the easements are for ROW widths that are less than the 200 feet required by the proposed project. See the Route Evaluation and Siting section of this Recommended Decision, and the Greene County Planning Commission siting maps, ALJ Exhibit 1, in this record.

In its Application, TrAILCo certifies that it provided all potentially affected landowners with the eminent domain notice required by 52 Pa. Code §57.91. The notice would

have been included in the “six pounds of paper” frequently referred to by witnesses at the public input hearings. We question the effectiveness of notice being provided in such a manner to lay persons.

Our evaluation of the route selection and siting material submitted by TrAILCo, and the record of the cross-examination of TrAILCo’s witnesses indicate that TrAILCo does not yet have definitive and final proposed routes for any of the proposed lines. And, it is asking for the leeway to move its ROW as much as 600 feet on either side of its proposed center line. The uncertainty is enough to cause any reasonable property owner concern.

In the event this Commission agrees with TrAILCo regarding all of its Applications, and permits the projects to go forward as filed, we urge this Commission to require TrAILCo to file a separate application for eminent domain authority for each parcel. The affected property owners are entitled to nothing less than a clear and definitive notice of the specific portions of their property to be burdened with the proposed project.

We conclude that in any event, this Commission should not, at this juncture, authorize TrAILCo to exercise the power of eminent domain.

D. Exemption from Local Zoning Regulation

TrAILCo requests that the Commission grant it an exemption from local zoning regulation for the Prexy Substation, the 502 Junction Substation and related buildings and facilities.²⁹ As the Applicant, TrAILCo has the burden of proof here.³⁰ 66 Pa. C.S. §332(a). TrAILCo plans that both substations will be unmanned. The Prexy Substation is described in TrAILCo Appendix D attached to the Application and referenced therein as follows:

²⁹ The request is set forth in the Application on pp. 16-17, under the subheading “Requested Exemption from Local Zoning Regulation,” numbered paragraphs 46 through 49.

³⁰ For a complete discussion of the burden of proof see the subsection entitled, “Burden of Proof,” under the heading “Certificate of Public Convenience.”

Prexy Substation will be a fenced area of approximately 17 acres. The fence will be 6' high aluminum coated steel chain link fence, with three strands of barbed wire installed on top to act as a climbing deterrent. The overall height of the fence with the barbed wire is 7'-0". The substation yard will be covered with 6" of ASTM 57 2B limestone for yard cover. This stone will extend a minimum of 3' outside the substation fenced area. A 40' x 120' (estimated size) Metal Control building will be installed to house the substation electrical controls, metering, and communications equipment. This building will also house the 125VDC storage battery, and battery charger. The building will be climate controlled and will be complete with well and septic facilities. The control building will be erected on a monolithically poured concrete footer/slab. Steel columns and framework will be installed on approximately 20' centers to support the roof and walls. Painted steel panels will be installed as the exterior surface of the building. The building will be insulated and painted steel panels will be installed on the interior walls of the building.

A 52' x 32' x 14.6' eave (sic) height, maintenance building will be installed. This building will be used for performing maintenance on electrical equipment. The maintenance building will be a metal self framing, insulated building. The exterior surfaces will be raised rib, interlocking, painted metal panels. The interior walls and ceiling will be smooth surface interlocking, painted metal panels. The building will be installed on a monolithically poured concrete footer/slab. Two overhead garage doors will be installed for vehicle and equipment access.

An AC emergency generator installation will be installed in a separate 16' x 24' building (estimated size). The building will be an insulated metal building with a painted exterior surface. This building will be installed on a monolithically poured concrete footer/slab. A 1000 gallon concrete above ground diesel fuel storage tank will be installed near the emergency generator building.

Application, TrAILCo Appendix D.

The 502 Junction Substation is described essentially the same as the Prexy Substation, with the exception of the acreage enclosed by fencing. The 502 Junction Substation is described in TrAILCo Appendix E attached to the Application and referenced therein as follows:

502 Junction Substation will be a fenced area of approximately 21 acres. The fence will be 6' high aluminum coated steel chain link fence, with three strands of barbed wire installed on top to act as a climbing deterrent.

The overall height of the fence with the barbed wire is 7'-0". The substation yard will be covered with 6" of ASTM 57 2B limestone for yard cover. This stone will extend a minimum of 3' outside the substation fenced area. A 40' x 120' (estimated size) Metal Control building will be installed to house the substation electrical controls, metering, and communications equipment. This building will also house the 125VDC storage battery, and battery charger. The building will be climate controlled and will be complete with well and septic facilities. The control building will be erected on a monolithically poured concrete footer/slab. Steel columns and framework will be installed on approximately 20' centers to support the roof and walls. Painted steel panels will be installed as the exterior surface of the building. The building will be insulated and painted steel panels will be installed on the interior walls of the building.

A 52' x 32' x 14.6' eave (sic) height, maintenance building will be installed. This building will be used for performing maintenance on electrical equipment. The maintenance building will be a metal self framing, insulated building. The exterior surfaces will be raised rib, interlocking, painted metal panels. The interior walls and ceiling will be smooth surface interlocking, painted metal panels. The building will be installed on a monolithically poured concrete footer/slab. Two overhead garage doors will be installed for vehicle and equipment access. An AC emergency generator installation will be installed in a separate 16' x 24' building (estimated size). The building will be an insulated metal building with a painted exterior surface. This building will be installed on a monolithically poured concrete footer/slab. A 1000 gallon concrete above ground diesel fuel storage tank will be installed near the emergency generator building.

Application, TrAILCo Appendix E.

1. Legal Standard

Article VI of the Pennsylvania Municipalities Planning Code ("MPC"), 53 P.S. §10101 *et seq.*, provides that "[T]he governing body of each municipality . . . , may enact, amend and repeal zoning ordinances to implement comprehensive plans . . ." 53 P.S. §10601. Article VI, "Zoning," does not apply to a proposed building to be used by a public utility corporation if, after notice to the municipality and corporation and public hearing, the Commission decides ". . . *that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public.*" 53 P.S. §10619 (emphasis

added). Section 619 of the MPC, 53 P.S. §10619, does not require a utility to prove that the site it has selected is absolutely necessary or that it is the best possible site. O'Connor v. Pa. P.U.C., 136 Pa. Commw. 119, 582 A.2d 427 (1990).

On January 11, 2001, the Commission adopted a final policy statement order intending to further the State's goal of making State agency actions consistent with sound land use planning by considering the impact of its decisions upon local comprehensive plans and zoning ordinances. *See* 31 Pa. Bull. 951 (February 17, 2001). The policy statement provides that the Commission will consider the impacts of its decisions upon local comprehensive plans and zoning ordinances when reviewing applications for the following:

- (1) Certificates of public convenience.
- (2) Siting electric transmission lines.
- (3) Siting a public utility "building" under section 619 of the Municipalities Planning Code (53 P.S. §10619).
- (4) Other Commission decisions.

52 Pa. Code §69.1101.

2. Analysis of TrAILCo's Request for Exemption from Local Zoning Regulation

TrAILCo's request for exemption from local zoning regulation is deficient and, therefore, must be denied. There are three primary reasons for this deficiency. First, TrAILCo did not provide evidence regarding where the substation buildings and facilities described above are to be *situated* within the fenced areas at the 502 Junction Substation and Prexy Substation. Second, although the Application specifically identified North Strabane Township, Washington County, Pennsylvania and Drunkard Township, Greene County, Pennsylvania as the local townships/counties where the substations are proposed to be constructed, and further provides that these townships and counties have enacted regulations pertaining to zoning, no evidence of these regulations was submitted into evidence. Lastly, in addition to failing to submit the regulations into the record, TrAILCo failed to identify what specific provisions in the regulations

affect its ability to use, construct and develop the Prexy Substation site and 502 Junction Substation site.

TrAILCo is under the mistaken impression that it can request and obtain a blanket exemption from any and all unidentified local zoning regulations and then plan the development of each substation site and obtain necessary permits. This is not so. Section 619 of the MPC specifically requires the Commission to decide whether “. . . *the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public.*” 53 P.S. §10619 (emphasis added). Section 619 of the MPC, 53 P.S. §10619.

“Situation” is defined in Webster’s II New College Dictionary 1032 (2001) in pertinent part, as follows:

1. a. The way in which something is positioned with regard to its surroundings. b. The place in which something is situated: LOCATION.
2. Position with regard to surrounding conditions and attendant circumstances: STATUS.
3. A combination of circumstances at a given moment: STATE OF AFFAIRS . . .

The term is defined in Black’s Law Dictionary, 1421 (8th ed. 1999), as follows:

1. Condition; position in reference to circumstances <dangerous situation>.
2. The place where someone or something is occupied; a location <near the border>.

The only plausible interpretation of Section 619 of the MPC is that the Commission must first know *where* a proposed building is to be *situated* on a tract of land before determining that said building is reasonably necessary for the convenience or welfare of the public and, therefore, exempt from local zoning regulation. If the Commission were to determine whether a proposed building is reasonably necessary and grant an exemption from local zoning regulation without first ascertaining where the building is to be positioned on a tract of land, the Commission would not be able to assess the impacts of the building and land

development or properly determine whether conditions should be placed on construction, development and use.³¹

While the Application specifies what buildings and facilities TrAILCo plans to construct at each substation site, it does not provide the detail necessary. The substation buildings and facilities TrAILCo desires to construct at each location are very similar. These buildings and facilities are proposed to be constructed within large, fenced areas. The area of the fenced 502 Junction Substation site is approximately 21 acres. The area of the fenced Prexy Substation site is approximately 17 acres. The application and evidence of record does not contain information necessary to properly evaluate the request. The following necessary information was not provided:

1. Legal description of the Prexy property.³²
2. Legal description of the 502 Junction property.
3. Legal description of the 17-acre fenced Prexy Substation site within the Prexy property.
4. Legal description of the 21-acre fenced 502 Junction Substation site within the 502 Junction property.
5. Location or approximate location of proposed buildings and facilities within the 17-acre Prexy Substation site.
6. Location or approximate location of proposed buildings and facilities within the 21-acre 502 Junction Substation site.

TrAILCo indicated that the townships and counties where the proposed substations are to be located have enacted zoning regulations pursuant to Article VI, “Zoning,”

³¹ In O’Connor v. Pa. P.U.C., 136 Pa. Commw. 119, 582 A.2d 427 (1990), the PUC approved an application to obtain exemption from local zoning laws for a proposed electric utility substation and control building. *Id.*, 582 A.2d at 428. The PUC adopted the administrative law judge’s initial decision approving the application subject to the conditions that PECO landscape the site in accordance with landscaping plans submitted by the Township and that noise levels at the property line not exceed levels set forth in the Township Ordinance. *Id.*, at 430. The Commonwealth Court declined to disturb the PUC’s conclusion regarding these conditions. *Id.*, at 433.

³² The Prexy property to be purchased by TrAILCo consists of slightly less than 202 acres. TrAILCo proposes to locate the 17-acre Prexy Substation somewhere on this acreage. TrAILCo Exhibit MAM-1, Schedule B.

of the MPC, 53 P.S. §10601. *See* Application, p. 16, ¶47. TrAILCo did not, however, place any applicable zoning ordinances or land use and subdivision ordinances into the record, or cite to any ordinances. It goes without saying that TrAILCo also failed to identify specific provisions within zoning regulations or land use and subdivision regulations that impact upon its development plans for either substation. The local governmental units that have enacted zoning regulations pursuant to Article VI, “Zoning,” of the MPC, 53 P.S. §10601, cannot properly evaluate TrAILCo’s exemption request for either substation without knowing where TrAILCo intends to place the buildings and facilities within the enclosed 17-acre site (Prexy Substation) or the enclosed 21-acre site (502 Junction Substation). Likewise, neither the undersigned nor the Commission can do so.

Without information regarding the zoning regulations and land use and subdivision regulations, the undersigned cannot determine, among other things, whether the use proposed by TrAILCo for the substation sites is a permitted use, a use permitted by special exception or a prohibited use. What are the permitted uses for adjacent properties and for the zoning areas or zoning districts where substations are proposed to be located? Are properties adjacent to the substation sites within the same zoning area or district as the substation properties? How are properties adjacent to the substation properties currently being used?

The undersigned do not know whether there are any setback requirements in the zoning regulations. If there are setback requirements, the undersigned cannot ascertain whether TrAILCo’s plans encroach on said setbacks. Do the zoning regulations require buffer yards between TrAILCo’s proposed use and adjacent properties or uses? Are there regulations regarding the development of sloped property?³³ Are there regulations regarding controlling storm water run off on site? Are there zoning regulations regarding noise or decibel levels?

³³ TrAILCo witness John R. Bodenschatz, P.E., testified that “[F]or the Pennsylvania line segments, much of the right-of-way will be located in mountainous and hilly terrain that is typical of southwestern Pennsylvania, which means that in some cases the slope of the right-of-way will exceed twenty degrees.” TrAILCo St. 7, p. 24. It necessarily follows that slope may be an issue in the development of one or both of the proposed substation sites, which are located within the same mountainous and hilly terrain.

TrAILCo seeks exemption from all zoning regulation before planning the sites.³⁴ Yet, TrAILCo plans that the building at each substation site “will be climate controlled and will be complete with well and septic facilities.” Application, TrAILCo Appendix D and Appendix E (emphasis added). Well and septic facilities can present unique development issues. There are detailed regulations governing the site location, investigation and testing necessary for on-lot sewage treatment facilities. *See* 25 Pa. Code §73.11 *et seq.* Section 73.13 sets forth minimum horizontal isolation distances which apply when siting a septic system. 25 Pa. Code §73.13. Obviously, TrAILCo must first test to determine potential sites on each substation property for wells and septic systems before determining where the buildings can potentially be located. The record in this case does not contain evidence that site testing for well and septic facilities has been conducted at either of the proposed substations.

Although the proposed substation facilities will be unmanned, the substations will require means of ingress and egress to and from public roads. The undersigned conclude that specific information regarding ingress and egress to and from the substations is necessary to properly and thoroughly evaluate a request for exemption from zoning regulation. Similar to the discussion regarding wells and septic systems above, the substation buildings and facilities cannot be situated on the sites without first determining a safe means of access to the properties.

Section 619 of MPC, in essence, takes the power to regulate a piece of property, through zoning regulation, away from local governing bodies and places that responsibility with the Commission. It is an awesome responsibility that must not be taken lightly. In some respects, when the Commission considers an application to site a public utility “building” under Section 619 of the MPC, the Commission is standing in the local governing body’s stead.

TrAILCo requests that the Commission wield the power bestowed by Section 619 of the MPC to exempt the substation sites from all zoning regulation, even though no such regulations have been specifically identified. After receiving the requested exemption, TrAILCo intends to plan the development of the substation properties, site the buildings and obtain any

³⁴ “By this Application, TrAILCo plans to design, construct, own and operate the Prexy Substation in Washington County, and the 502 Junction Substation in Greene County, Pennsylvania.” TrAILCo St. 7, p. 39.

required permits. Such an interpretation, in addition to being contrary to the clear language of Section 619 of MPC, also runs contrary to the Commission's policy statement regarding local land use plans and ordinances. The Commission has explicitly stated that it "will consider the impact of its decisions upon local comprehensive plans and zoning ordinances." 52 Pa. Code §69.1101.

TrAILCo's interpretation of Section 619 of MPC does not make sense. Under its interpretation, the local governing bodies' authority to regulate site development and construction would be taken away by the Commission and there would be no oversight whatsoever. TrAILCo's interpretation of Section 619 of MPC would give TrAILCo exclusive, unfettered control to develop the substations properties as it sees fit, subject to permit requirements and testing for well and septic facilities.

To reiterate, TrAILCo's request for exemption from local zoning regulation is deficient and, therefore, must be denied. There are three primary reasons for this deficiency. First, TrAILCo did not provide evidence regarding where the substation buildings and facilities described above are to be *situated*. Second, although the Application specifically identified North Strabane Township, Washington County, Pennsylvania and Drunkard Township, Greene County, Pennsylvania as the local townships/counties where the substations are proposed to be constructed, and further provides that these townships and counties have enacted regulations pertaining to zoning, no evidence of these regulations was submitted into evidence. Lastly, in addition to failing to submit the regulations into the record, TrAILCo failed to identify what specific provisions in the regulations affect its ability to use, construct and develop the Prexy Substation site and 502 Junction Substation site.

Ideally, TrAILCo should have prepared and submitted a site development plan, drawn to scale, for each substation property depicting the site of all buildings and facilities, along with copies of all applicable zoning regulations. TrAILCo should have also specified which provisions in the respective zoning ordinances affect or impact the substation plans. Such requirements are far from onerous. Given the potential dangers substations can pose, the

Commission must insure that they are constructed properly and safely, and that impacts are minimized.³⁵

Accordingly, the undersigned recommend that the request for exemption from local zoning regulation contained in the Application be denied because there is no need for the substations and because TrAILCo's request is deficient. *See* 66 Pa. C.S. §332(a). Alternatively, if the Commission determines that there is a need for either the Prexy Substation or the 502 Junction Substation, the undersigned recommend that the Commission deny the request for exemption from local zoning regulation because the request is deficient. In either case, the undersigned recommend that the Commission find that TrAILCo has not met its burden of proof.³⁶

E. Affiliated Interest Agreements

To the extent required, TrAILCo seeks Commission approval of four affiliated interest contracts or arrangements which it deems necessary for the construction and operation of the TrAIL.³⁷ The contracts or arrangements were attached to the direct testimony of TrAILCo witness Mark A. Mader as exhibits marked TrAILCo Exhibit MAM-1, TrAILCo Exhibit MAM-2, TrAILCo Exhibit MAM-3 and TrAILCo Exhibit MAM-4. Each contract or arrangement will be discussed separately below. As the Applicant, TrAILCo has the burden of proof here. 66 Pa. C.S. §332(a).³⁸

³⁵ Both the Prexy Substation and the 502 Junction Substation are to be enclosed by fences. The fences will be 6' high aluminum coated steel chain link fence, with three strands of barbed wire installed on top to act as a climbing deterrent. Application, TrAILCo Appendix D and Appendix E.

³⁶ *See* burden of proof discussion under heading "Certificate of Public Convenience."

³⁷ The request is set forth in the Application on pp. 19-25, under the subheading "Affiliated Interest Transactions," numbered paragraphs 55 through 67.

³⁸ For a complete discussion of the burden of proof see the subsection entitled, "Burden of Proof," under the heading "Certificate of Public Convenience."

1. Legal Standard

Section 2102 of the Code, 66 Pa. C.S. §2102, provides that,

[N]o contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing or for the furnishing of any service, property, right or thing other than those above enumerated, made or entered into after the effective date of this section between a public utility and any affiliated interest shall be valid or effective unless and until such contract or arrangement has received the written approval of the commission...

66 Pa. C.S. §2102(a).³⁹

³⁹ Section 2102 also provides, in pertinent part, as follows:

(b) FILING AND ACTION ON CONTRACT.-- It shall be the duty of every public utility to file with the commission a verified copy of any such contract or arrangement, or a verified summary as described in subsection (a) of any such unwritten contract or arrangement. All such contracts and arrangements, whether written or unwritten, entered into prior to the effective date of this section and required to be on file with the commission by prior act and in full force and effect at the effective date of this section shall be subject to the provisions of the sections regarding affiliated interests. The commission shall approve such contract or arrangement made or entered into after the effective date of this section only if it shall clearly appear and be established upon investigation that it is *reasonable and consistent with the public interest*. If at the end of 30 days after the filing of a contract or arrangement, no order of rejection has been entered, such contract or arrangement, whether written or unwritten, shall be deemed, in fact and law, to have been approved. The commission may, by written order, giving reasons therefor, extend the 30-day consideration period. *No such contract or arrangement shall receive the commission's approval unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service described herein to the public utility.* No proof shall be satisfactory within the meaning of the foregoing sentence unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or such abstract thereof or summary taken therefrom as the commission may deem adequate, properly identified and duly authenticated. The commission may, where reasonable, approve or disapprove such contracts or arrangements without the submission of such cost records or accounts.

(c) DISALLOWANCE OF EXCESSIVE AMOUNTS.-- If the commission shall determine that the amounts paid or payable under a contract or arrangement filed in accordance with this section are in excess of the reasonable price for furnishing the services provided for in the contract, or that such services are not reasonably necessary and proper, it shall disallow such amounts, insofar as found excessive, in any proceeding involving the rates or practices of the public utility. In any proceeding involving such amounts, the burden of proof to show that such amounts are not in excess of the reasonable price for furnishing such services, and that such services are reasonable and proper, shall be on the public utility.

66 Pa. C.S. §2102(b) & (c) (emphasis added).

The Commission may require that any contract with an affiliated interest contain a provision whereby the affiliated interest agrees to furnish to the public utility, at the time of billing, a detailed statement of the cost to the affiliated interest of the service, property, security, right or thing provided. 66 Pa. C.S. §2104.

The provisions of Chapter 21 of the Code, 66 Pa. C.S. §2101 *et seq.*, entitled, “Relations with Affiliated Interests,” do not apply to the rates and related terms and conditions for the interstate transmission of electricity which have been submitted to and approved by a Federal regulatory agency having jurisdiction thereof. 66 Pa. C.S. §2107.

2. Analysis of Affiliated Contracts or Arrangements

The undersigned have recommended that this Commission deny TrAILCo’s request within the application for a certificate of public convenience for the reasons stated in the discussion under the heading, “Certificate of Public Convenience.” Without reiterating that discussion here, suffice it to say that the undersigned determined that TrAILCo failed to meet its burden of proof because it failed to establish that the Pennsylvania segments of the TrAIL are necessary or proper for the service, accommodation, convenience or safety of the public.

Chapter 21 of the Code, “Relations with Affiliated Interests,” governs contracts between *a public utility and an affiliated interest*. See 66 Pa. C.S. §2101(a) and §2102(a). The undersigned have recommended that TrAILCo’s request for a certificate of public convenience be denied. If the Commission follows this recommendation, then TrAILCo is not a public utility in Pennsylvania and Chapter 21 of the Code does not apply. There is no need for the Commission to consider TrAILCo’s request with respect to the four contracts or arrangements identified above if TrAILCo is not a public utility. Accordingly, the undersigned recommend that TrAILCo’s request for the approval of four contracts and arrangements (TrAILCo Exhibit MAM-1, TrAILCo Exhibit MAM-2, TrAILCo Exhibit MAM-3 and TrAILCo Exhibit MAM-4) be denied because TrAILCo is not a public utility.

In the event the Commission approves TrAILCo's Application and grants TrAILCo a certificate of public convenience, the undersigned have made four alternate recommendations, one with respect to each contract or arrangement presented by TrAILCo. These recommendations are made at the conclusion of each subsection below. There is a separate subsection for each of the four affiliated interest contracts or arrangements for which TrAILCo seeks Commission approval.

a. Memorandum of Understanding (TrAILCo Exhibit MAM-1)⁴⁰

West Penn and TrAILCo entered into a Memorandum of Understanding ("MOU") on April 9, 2007. West Penn and TrAILCo agreed that the MOU is made subject to and conditioned upon the approval of the Commission. In the MOU, West Penn agrees to transfer all of its right, title and interest in and to certain easements or rights-of-way, and certain tracts or parcels of land to TrAILCo in order for TrAILCo to site and construct the Prexy Segment, the Prexy 138 kV lines and the Prexy Substation. TrAILCo Exhibit MAM-1; and Application, p. 20, paragraph nos. 57 and 58. In exchange for the easements or rights-of-way, which are identified in the eight-page table attached and made a part of the MOU as "Schedule A," TrAILCo agrees to pay consideration in the amount of \$4,480,373.35 to West Penn. In exchange for the conveyance by special warranty deed of the tracts or parcels of land identified in "Schedule B" of the MOU, TrAILCo agrees to pay consideration in the amount of \$661,185.87 to West Penn. TrAILCo Exhibit MAM-1.

TrAILCo witness, Mark A. Mader testified that TrAILCo has agreed to acquire the easements or rights-of-way listed in Schedule A at cost, which according to his testimony is \$4,480,373.35. TrAILCo St. 10, p. 12. Likewise, Mr. Mader testified that TrAILCo has agreed to acquire the tracts or parcels of real estate listed in Schedule B at cost, which according to his testimony is \$661,185.87. TrAILCo St. 10, p. 12. No supporting documentation evidencing the cost of the rights-of-ways, easements or real estate was offered into the record.

⁴⁰ The full title of the contract attached to the direct testimony of Mark A. Mader as TrAILCo Exhibit MAM-1 is, "Memorandum of Understanding between West Penn Power Company, doing business as Allegheny Power and Trans-Allegheny Interstate Line Company."

According to Mr. Mader, the easements or rights-of-way have not been paid for by West Penn customers and are recorded on West Penn's books as "non utility property." He further testified that these assets are not used and useful, are not currently used for public utility service for compensation, and therefore are not included in the rate base of West Penn. TrAILCo St. 10, p. 12. In the Application, TrAILCo avers that the amounts paid by West Penn for the easements were expensed in January 1996. Application, p. 20, paragraph no. 57.

The parcels of land TrAILCo intends to acquire from West Penn for \$661,185.87 were originally acquired by West Penn from December 1973 through February 1975 for a project similar to the one now consisting of the Prexy Facilities. Application, p. 20, paragraph no. 58. TrAILCo intends to construct the 17-acre Prexy Substation somewhere on these parcels, which comprise slightly less than 202 acres. TrAILCo St. 10, p. 12; Application, TrAILCo Appendix D; and TrAILCo Exhibit MAM-1, Schedule B. According to the Application, the parcels of land are recorded in West Penn's books in FERC Account 105 Plant Held for Future Use. Application, p. 20, paragraph no. 58. Mr. Mader testified that the parcels of land, like the easements and rights-of-way, are not reflected in existing rates charged to West Penn customers. He further testified that the transfer of the rights-of-way, easements and parcels of land, which are not used or useful assets, will have no impact on the rates that West Penn customers are charged for service. TrAILCo St. 10, p. 13.

The undersigned reviewed Schedule B attached to the MOU, which lists the parcels of land to be acquired by TrAILCo in table format. As stated above, the total acreage is slightly less than 202 acres. However, there appear to be only seven parcels listed in Schedule B, according to the tax map parcel numbers in the second column from the right under the column heading, "Tax Map/Parcel." TrAILCo Exhibit MAM-1, Schedule B. TrAILCo offered testimony that there are nine tracts or parcels but no supporting documentation of Schedule B was provided.

Section 2102 of the Code, 66 Pa. C.S. §2102, provides, in pertinent part, as follows:

“[N]o contract or arrangement ... for the purchase, sale, lease, or exchange of any property, right, or thing ... made or entered into after the effective date of this section between a public utility and any affiliated interest shall be valid or effective unless and until such contract or arrangement has received the written approval of the commission...”

66 Pa. C.S. §2102(a).

The Commission shall approve such contract or arrangement only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest. 66 Pa. C.S. §2102(b).

In its main brief, TrAILCo asserts that the acquisitions of the rights-of-way, easements and parcels of land are necessary to site and construct the proposed facilities and will have no impact on West Penn’s rates charged to customers. Therefore, TrAILCo concludes the MOU is reasonable and in the public interest. None of the other parties who submitted briefs addressed this affiliated interest contract.

After consideration, the undersigned determined that the Prexy Segment, the Prexy 138 kV lines and the Prexy Substation are not necessary or proper for the service, accommodation, convenience or safety of the public. *See* Certificate of Public Convenience Discussion. As a result, the undersigned find that the Memorandum of Understanding is not reasonable and consistent with the public interest. There is no public need. Therefore, in the event the Commission grants TrAILCo’s request for a certificate of public convenience, thereby making the provisions of Chapter 21 of the Code applicable here, the undersigned recommend that the Commission deny TrAILCo’s request for approval of the Memorandum of Understanding.

b. Service Agreement (TrAILCo Exhibit MAM-2)⁴¹

Allegheny Energy, Inc. (“Allegheny”) created the Allegheny Energy Service Corporation (“AESC”) to perform certain management duties on behalf of Allegheny, its utility subsidiary companies and its non-utility subsidiary companies. TrAILCo Exhibit MAM-2. AESC is a corporation formed under the laws of Maryland.

On October 31, 2006, AESC and TrAILCo entered into a Service Agreement wherein AESC agreed to perform the following services for TrAILCo:

1. Provide technical support as needed to evaluate, implement, and develop unregulated opportunities related to Allegheny’s electric business (including, but not limited to, any engineering, construction, management and/or operating activities associated with the development of bulk power supply opportunities).
2. Planning and implementation of financial programs to raise the funds required for TrAILCo, including handling arrangements for bank borrowings and sales of securities and relationships with investors and analysts.
3. Counsel on corporate, legal and regulatory matters and on important contractual relationships.
4. Provide general and administrative services including, but not limited to, the following:
 - a. Purchasing.
 - b. Customer billing and accounting.
 - c. Information services, including computer applications and programming and electronic data processing.
 - d. Preparation of consolidated financial statements and cost, statistical, and financial data, as required.

⁴¹ The full title of the contract attached to the direct testimony of Mark A. Mader as TrAILCo Exhibit MAM-2 is, “Service Agreement Between Allegheny Energy Service Corporation and Trans-Allegheny Interstate Line Company.”

- e. Assistance with respect to certain personnel matters, including, but not limited to, employee benefit matters.
 - f. Preparation and filing of consolidated income tax returns and following developments in federal and state taxation regulations.
 - g. Administration of insurance.
 - h. Internal auditing.
 - i. Corporate security.
5. Certain other services in addition to the above as AESC may be able to provide and TrAILCo may require or request.

TrAILCo Exhibit MAM-2, “Exhibit I” attached thereto.

For its part, TrAILCo agreed to pay the cost for all services rendered to it by AESC. TrAILCo also agreed that for services rendered to one or more Allegheny companies, “the applicable approved allocation factor will be used.”⁴² TrAILCo Exhibit MAM-2, paragraph no. 2. TrAILCo and AESC agreed that the Service Agreement will continue in full force and effect from year to year but may be terminated by either party upon 60 days’ prior notice, and that TrAILCo may terminate the Service Agreement at any time with or without notice for any cause deemed by it to be sufficient. TrAILCo Exhibit MAM-2, paragraph no. 6.

TrAILCo requests that the Commission recognize the existence of the Service Agreement and either determine that: (i) TrAILCo is not required to obtain Commission approval of the Service Agreement in order to perform its obligations thereunder, or (ii) the terms of the Service Agreement are reasonable, that no party is given an undue advantage over the other party and the Service Agreement does not adversely affect the public. Application, pp. 22-23.

In its main brief, TrAILCo argues that “[t]o the extent Commission approval, *nunc pro tunc*, is deemed to be required,” the Service Agreement should be approved. TrAILCo Main Brief, pp. 72-73. According to TrAILCo, the Service Agreement is reasonable and in the public interest because it provides TrAILCo with essential services and no party to the Service

⁴² No evidence regarding an applicable approved allocation factor was submitted into the record.

Agreement is given an undue advantage over the other party. TrAILCo Main Brief, pp. 72-73. Unfortunately, none of the other parties who submitted briefs addressed this affiliated interest contract.

According to Mr. Mader, the Service Agreement is an existing agreement that is in place and the respective parties will have commenced performance of their respective obligations under it. TrAILCo St. 10, pp. 13-14. He further testified that the Service Agreement is “being provided to the Commission for informational purposes rather than for approval.” TrAILCo St. 10, pp. 13-14.

The provisions of Chapter 21 of the Code, 66 Pa. C.S. §2101 *et seq.*, entitled, “Relations with Affiliated Interests,” do not apply to the rates and related terms and conditions for the interstate transmission of electricity which have been submitted to and approved by a Federal regulatory agency having jurisdiction thereof. 66 Pa. C.S. §2107.

The parties will have commenced performance of their respective contractual obligations under the Service Agreement prior to the issuance of this Recommended Decision. TrAILCo is not a public utility. Despite these facts, if the Commission approves TrAILCo’s Application for a certificate of public convenience, this Service Agreement must be reviewed by the Commission to determine if it is reasonable and consistent with the public interest pursuant to Chapter 21, 66 Pa. C.S. §2101 *et seq.* Not all of the terms and conditions of the Service Agreement concern rates and related terms and conditions. Section 2107 of the Code provides that Chapter 21 does not apply to rates and related terms and conditions approved by a Federal regulatory agency having jurisdiction thereof. It does not go so far as to exempt affiliated interest contracts for the interstate transmission of electricity in their entirety from Chapter 21 of the Code.

The paragraph in the Service Agreement providing that the Service Agreement will continue in full force and effect from year to year but may be terminated by either party upon 60 days’ prior notice raises concern. TrAILCo Exhibit MAM-2, paragraph no. 6. TrAILCo must be technically capable of functioning and operating as a public utility, not only at

the time of this Application, but also thereafter. This paragraph would permit AESC to terminate the contract with TrAILCo with 60-days' notice. TrAILCo has not presented the undersigned with evidence that it has the resources, personnel and assets necessary to provide the services AESC has agreed to perform, which are set forth above. The Service Agreement must contain a term or terms that expressly state that the Service Agreement can only be terminated by Commission order approving the termination. The Commission should only approve such a termination if TrAILCo proves that it is capable of performing the services or that it has secured the capability to provide the services listed in Schedule I. Otherwise, it is conceivable that AESC could terminate the Service Agreement and TrAILCo would not be able to operate and function as a public utility.

TrAILCo agrees to pay the cost for all services rendered to it by AESC. No schedule of costs or other information regarding how these costs are calculated was contained in the Service Agreement. TrAILCo also agrees that for services rendered to one or more Allegheny companies, "the applicable approved allocation factor will be used." TrAILCo Exhibit MAM-2, paragraph no. 2. The undersigned are not aware of this "allocation factor" or of how the addition of TrAILCo to the Allegheny system affects this factor, or the relevant calculations used to allocate costs where services are for the benefit of more than one company.

Section 2107 of the Code provides that Chapter 21 does not apply to rates and related terms and conditions for the interstate transmission of electricity which have been submitted to and approved by a Federal regulatory agency having jurisdiction thereof. 66 Pa. C.S. §2107. However, in considering whether the Service Agreement is reasonable and consistent with the public interest the Commission can certainly require that detailed statements regarding costs be provided by AESC to TrAILCo without changing rates. Requiring that detailed statements of the costs charged by AESC be provided to TrAILCo does not affect TrAILCo's FERC approved rates and is, therefore, not the type of term which is exempt from the application of Chapter 21 of the Code pursuant to 66 Pa. C.S. §2107.

TrAILCo has sought recovery of the nearly \$1 billion in estimated costs of both the Prexy Facilities and the 502 to Loudoun Facilities through a "205 filing," with FERC, also

known as a “formula rate filing” made in February 2007. Trans-Allegheny Interstate Line Co., Docket No. ER07-562-000; Tr. 3000. Through that filing, rates related to the two TrAIL projects went into effect on June 1, 2007. Tr. 3001. Once FERC set the rates for recovery of the proposed TrAIL project costs, PJM began to bill the load-serving entities (LSE) for their share of the costs pursuant to the relevant methodology. Tr. 3009-3010, 3012. It is up to the LSE in Pennsylvania to request approval of a rate recovery mechanism by the Commission. If an LSE obtains Commission approval of a rate recovery mechanism to recover costs associated with the TrAIL from ratepayers, ultimately Pennsylvania ratepayers will bear the costs of a portion of the project. OCA Main Brief, pp. 64-65. On March 14, 2008, TrAILCo submitted a proposed settlement of the 205 filing to the FERC. Trans-Allegheny Interstate Line Co., Docket No. ER07-562-004.⁴³

The Commission must examine costs, even though the Commission does not set TrAILCo’s rates. The Commission cannot adequately examine the costs of the services provided by AESC to TrAILCo without detailed cost statements. If TrAILCo is not required, by Commission order, to obtain detailed cost statements from AESC, the Commission will not be able to get such statements from TrAILCo.

Section 2104 of the Code entitled, “Contracts to be in writing; cost data,” provides that the Commission may, by regulation or order, require that any contract with an affiliated interest contain a provision whereby the affiliated interest agrees to furnish to the public utility, at the time of billing such public utility for any service, property, security, right, or thing, under such contract, a detailed statement of the cost to the affiliated interest of such service, property, security, right, or thing. 66 Pa. C.S. §2104.

⁴³ We accepted this March 14, 2008 FERC filing in its entirety as part of the evidentiary record pursuant to 52 Pa. Code §5.406.

The formula rates⁴⁴ currently billed by PJM to the LSEs are based upon estimated costs for the year ahead. Tr. 3013; OCA Main Brief, pp. 64-65. Those estimated costs are subject to annual true-up at year's end when TrAILCo must file a FERC Form 1, which is an annual financial report. Tr. 3012-3013. FERC's formula rate essentially guarantees TrAILCo a certain level of annual return, barring a natural disaster or successful rate challenge by a ratepayer or other party. Tr. 3015-3016.

A ratepayer or party can challenge TrAILCo's FERC approved rates through a "section 206 filing" with FERC. Tr. 3016. TrAILCo's rates are currently billed to Pennsylvania LSEs and will ultimately be passed on to Pennsylvania ratepayers. The Commission must require that detailed cost information be provided by AESC to TrAILCo at the time of billing so that the Commission can obtain this information from TrAILCo for the purpose of determining whether to challenge TrAILCo's FERC approved rates on behalf of Pennsylvania ratepayers with a section 206 FERC filing or in some other proceeding before FERC. Based upon the record, if TrAILCo is granted a certificate of public convenience by the Commission, the services required to function and operate as a public utility will be performed on behalf of TrAILCo by affiliated interests and other contractors. The Commission should require, as part of the approval of any affiliated interest contract, that the affiliated interest provide detailed cost data, including cost allocation calculations, to TrAILCo.

In the event the Commission grants TrAILCo's request for a certificate of public convenience, thereby making the provisions of Chapter 21 of the Code applicable here, the undersigned recommend that the Commission deny TrAILCo's request for approval of the Service Agreement because of the termination provision discussed above. As a result of the termination provision contained in paragraph no. 6, the Service Agreement is not reasonable or consistent with the public interest. TrAILCo Exhibit MAM-2, paragraph no. 6; *See* 66 Pa. C.S. §2102. Alternatively, if the Commission approves the Service Agreement, the undersigned recommend that the Commission require AESC to provide TrAILCo with detailed statements of

⁴⁴ The settlement specifies that no element within it is to be considered precedential or settled practice. Trans-Allegheny Interstate Line Co., Docket No. ER07-562-004, at 14, ¶7.4; Public Service Comm'n of New York, 642 F.2d 1335 (D.C. Cir. 1980).

the cost of providing the services listed in TrAILCo Exhibit MAM-2, Exhibit I, at the time of billing for said services. 66 Pa. C.S. §2104.

c. Capital Contribution Agreement (TrAILCo Exhibit MAM-3)

Allegheny Energy Transmission, LLC (“AET”), a Delaware limited liability company, is the parent of TrAILCo.⁴⁵ On February 15, 2007, AET and TrAILCo entered into a Capital Contribution Agreement (“CCA”), effective as of January 31, 2007, which is attached to the direct testimony of Mark A. Mader as TrAILCo Exhibit MAM-3. The CCA is governed by and interpreted and enforced in accordance with Delaware law.

AET is the record owner and holder of all outstanding shares of TrAILCo. In the CCA, AET agreed to contribute additional capital of up to \$550 million in one or more payments of cash on or before the completion of the TrAIL and other transmission related projects. TrAILCo Exhibit MAM-3. Upon completion of the transfers of capital, AET will continue to own 100% of TrAILCo. TrAILCo Exhibit MAM-3, §2.

The provisions of Chapter 21 of the Code, 66 Pa. C.S. §2101 *et seq.*, entitled, “Relations with Affiliated Interests,” do not apply to the rates and related terms and conditions for the interstate transmission of electricity which have been submitted to and approved by a Federal regulatory agency having jurisdiction thereof. 66 Pa. C.S. §2107.

In its main brief, TrAILCo first argues that the CCA, like the Service Agreement, is an existing agreement. TrAILCo Main Brief, pp. 72-73. According to TrAILCo, to the extent Commission approval, *munc pro tunc*, is required, the CCA should be approved by the Commission as reasonable and in the public interest because it provides TrAILCo with necessary capital and neither party to the CCA is given an undue advantage over the other party. TrAILCo Main Brief, pp. 72-73.

⁴⁵ See “Certification of Public Convenience” for a detailed discussion of the corporate relationships in the Allegheny system.

TrAILCo further asserts that Commission approval of the CCA should not be required because the affiliated interest provisions of Code Chapter 21 are inapplicable where FERC has lawful jurisdiction, because the FERC has approved TrAILCo's issuance of common stock⁴⁶ and because TrAILCo will have issued some or all of that common stock to AET prior to the conclusion of these proceedings. TrAILCo Main Brief, p. 73. None of the other parties addressed the CCA in their briefs.

With the future issuance of any common stock under the CCA, TrAILCo requests that the Commission should determine either that: (i) TrAILCo is not required to obtain Commission approval, in view of the FERC's continuing regulatory authority over TrAILCo's issuance of debt and equity securities or, in the alternative, (ii) the issuance of stock to AET is reasonable and necessary to construct the proposed facilities, will not have any adverse impact on Pennsylvania ratepayers or any other utility operating in this Commonwealth and is otherwise in the public interest. TrAILCo Main Brief, p. 73. TrAILCo argues that it should be exempt from any requirement to obtain Commission approval of any capital contribution transactions it may enter into prospectively with any of its affiliates because of FERC's exclusive jurisdiction over TrAILCo's rates and financing. TrAILCo Main Brief, p. 73.

Pursuant to Section 2107 of Chapter 21, the undersigned conclude that Commission approval of the CCA is not required because the terms and conditions of the CCA are terms and conditions related to rates. FERC has approved TrAILCo's issuance of common stock and has continuing regulatory authority over TrAILCo's issuance of debt and equity securities. The undersigned recommend that the Commission determine that approval of the CCA is not required and simply decline to make a finding that the CCA is reasonable and in the public interest.

⁴⁶

See, FERC Docket No. ES07-24-000 (order entered April 18, 2007).

d. Tax Allocation Agreement (TrAILCo Exhibit MAM-4)⁴⁷

In its main brief, TrAILCo argues that the Tax Allocation Agreement (“TAA”), like the Service Agreement and CCA, is an existing agreement. TrAILCo Main Brief, pp. 72-73. According to TrAILCo, to the extent Commission approval, *nunc pro tunc*, is required, the TAA should be approved by the Commission as reasonable and in the public interest. TrAILCo Main Brief, pp. 72-73. None of the other parties addressed the TAA in their briefs.

On October 31, 2006, the TAA between Allegheny Energy, Inc. and its subsidiaries, dated July 31, 2003, was purportedly amended to add three newly formed subsidiary companies. The three subsidiary companies purportedly joined the consolidated group for federal income tax purposes, according to Amendment No. 5. TrAILCo Exhibit MAM-4. Amendment No. 5 lists AET and TrAILCo as two of the newly formed subsidiaries being added but the third subsidiary is not listed or otherwise identified for some unknown reason. In fact, the remainder of the first page of Amendment No. 5 is intentionally left blank. TrAILCo Exhibit MAM-4.

The second page of the amendment contains the signatures of corporate officers on behalf of Allegheny, AET and TrAILCo. This page provides above the signatures, “IN WITNESS HEREOF, the parties hereto have caused this Amendment No. 4 to Tax Allocation Agreement to be duly executed . . .” TrAILCo Exhibit MAM-4, p. 2 (emphasis added). Based upon the record, Amendment No. 5, which purportedly adds TrAILCo to an existing Tax Allocation Agreement, has not been properly executed. The signature page attached to Amendment No. 5 incorrectly lists Amendment No. 4 as the contract being executed.

The undersigned must make our recommendations to the Commission based upon evidence of record. The undersigned cannot conclude that the TAA, specifically Amendment No. 5 thereto, is an “existing agreement” as TrAILCo claims in the Application and testimony. *See* Application, pp. 21-23, paragraph nos. 61-63 and TrAILCo Main Brief, pp. 72-73; *See also*

⁴⁷ The full title of the agreement is “Amendment No. 5 To Tax Allocation Agreement By and Between Allegheny Energy, Inc. and its Subsidiaries Dated as of July 31, 2003.”

TrAILCo St. 10, pp. 13-14. The undersigned do not know when or if Amendment No. 5 to the TAA was executed by the parties identified in it.

In the event the Commission grants TrAILCo's request for a certificate of public convenience, thereby making the provisions of Chapter 21 of the Code applicable here, the undersigned recommend that the Commission decline TrAILCo's request for approval of the TAA for two reasons. First, any tax allocation agreement involving TrAILCo and affiliated interests would affect TrAILCo's rates. As previously discussed above, the provisions of Chapter 21 of the Code, 66 Pa. C.S. §2101 *et seq.*, entitled, "Relations with Affiliated Interests," do not apply to the rates and related terms and conditions for the interstate transmission of electricity which have been submitted to and approved by a Federal regulatory agency having jurisdiction thereof. 66 Pa. C.S. §2107. The Commission may wish to challenge the allocation of federal taxes to TrAILCo before FERC in a "section 206 filing" or other proceeding in the future. Second, the TAA TrAILCo has offered into evidence, specifically Amendment No. 5 thereto, was not executed by the parties. As such, it is not a "contract" with an affiliated interest that is ripe for consideration by the Commission. *See* 66 Pa. C.S. §2102.

The TAA dated July 31, 2003 and included in TrAILCo Exhibit MAM-4 provides that the allocation of "Consolidated Tax" shall be made in compliance with the provisions of Rule 45(c)(5) promulgated under the Public Utility Holding Company Act of 1935 ("PUHCA"). TrAILCo Exhibit MAM-4, pp. 1-2; *see* 15 U.S.C. §79 *et seq.* The PUHCA was repealed by Act of August 8, 2005, P.L. 109-58, Title XII, Subtitle F, §1263, 119 Stat. 974, effective 6 months after enactment, as provided by §1274(a) of such Act, which appears at 42 U.S.C. §16451 note. The undersigned do not know what effect this has on the terms and conditions contained in the TAA dated July 31, 2003.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding by virtue of Chapter 11 of the Public Utility Code, 66 Pa. C.S. §§1101, *et seq.*, and 15 Pa. C.S. §1511(c).

2. The Applicant, Trans-Allegheny Interstate Line Company, has not met its burden of proving that the Application for a Certificate of Public Convenience and authority to exercise the power of eminent domain for the construction and installation of aerial electric high-voltage transmission lines and associated electric substation facilities known as the “502-Loudoun portion of TrAIL” is necessary or proper for the service, accommodation, convenience or safety of the public.

3. The Applicant, Trans-Allegheny Interstate Line Company, has not met its burden of proving that the Application for a Certificate of Public Convenience and authority to exercise the power of eminent domain for the construction and installation of aerial electric high-voltage transmission lines and associated electric substation facilities known as the “Prexy Facilities” is necessary or proper for the service, accommodation, convenience or safety of the public.

4. The Applicant, Trans-Allegheny Interstate Line Company, has not met its burden of proving that the proposed facilities known as the “Prexy Facilities” would not create an unreasonable risk of danger to the health and safety of the public.

5. The Applicant, Trans-Allegheny Interstate Line Company, has not met its burden of proving that the proposed facilities known as the “502-Loudoun portion of TrAIL” would not create an unreasonable risk of danger to the health and safety of the public.

6. The Applicant, Trans-Allegheny Interstate Line Company, has not met its burden of proving that the proposed facilities known as the “Prexy Facilities” are in compliance

with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth.

7. The Applicant, Trans-Allegheny Interstate Line Company, has not met its burden of proving that the proposed facilities known as the “502-Loudoun portion of TrAIL” are in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth.

8. The Applicant, Trans-Allegheny Interstate Line Company, has not met its burden of proving that the proposed facilities known as the “Prexy Facilities” would have a minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives.

9. The Applicant, Trans-Allegheny Interstate Line Company, has not met its burden of proving that the proposed facilities known as the “502-Loudoun portion of TrAIL” would have a minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives.

10. The Applicant, Trans-Allegheny Interstate Line Company, has not met its burden of proving that the proposed facilities known as the “Prexy Facilities” are in compliance with the Commission’s siting regulations.

11. The Applicant, Trans-Allegheny Interstate Line Company, has not met its burden of proving that the proposed facilities known as the “502-Loudoun portion of TrAIL” are in compliance with the Commission’s siting regulations.

12. The Applicant, Trans-Allegheny Interstate Line Company, has not met its burden of proving that the proposed substation buildings at either the proposed Prexy Substation or the proposed 502 Junction Substation are reasonably necessary for the convenience or welfare of the public.

13. Chapter 21 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §2101, et seq., entitled “Relations with Affiliated Interests,” only applies to relations involving a public utility.

VI. CONCLUSIONS AND RECOMMENDATIONS

The primary conclusion we have reached after reviewing the entire record of this proceeding is that the present applications are incomplete, and that, in general, TrAILCo has failed to carry its burden of proof. We have attempted to identify the issues presented by these Applications and to present our opinion regarding the resolution of those issues. The primary issue presented by these Applications is whether the proposed projects are needed as defined by Pennsylvania law and precedent. We use the plural advisedly as the Applications present two separate projects, the Prexy to 502 Junction segment and the 502 Junction to Loudon, Virginia, segment.

Based on our review of the entire record we have concluded that little or no need for reinforcement in the Prexy service area presently exists, and that relatively inexpensive and/or non-intrusive options are available, and probably should have been put in place before now. The proposed Prexy Segment project is a grandiose answer to a minor or even non-existent problem. Likewise on the present record we conclude that the case has not been made for the immediate need for the 502 Junction to Loudoun segment. The problems presented as supporting the project result directly from a lack of proper and timely maintenance of the existing infrastructure. Granting approval of the 502 Junction to Loudoun segment at this juncture rewards a lack of foresight and proper maintenance, and has policy implications for the location of future generation that should be carefully considered before any further action is taken. Non-transmission alternatives were not considered. PJM and TrAILCo settled on a global transmission solution because, as we have discussed, the true impetus for the 502-Loudoun segment is to transport cheaper coal-fired generation from western PJM to eastern PJM and to encourage the siting of new generation in western PJM where it may be more palatable. Transmission constrained dispatch was not considered. We question the modeling that was done to support the alleged need for the 502 Junction to Loudoun segment. Thus we conclude that TrAILCo has failed to carry its burden of proof regarding need.

We also reject the TrAILCo filing and evidence regarding route selection and siting of the proposed power lines. We conclude that the routing and siting decisions were

mandated by the preexisting right-of-way agreements obtained by West Penn Power Company some 30 years ago. We conclude that TrAILCo has not complied with this Commission's requirements for route selection and siting.

We identified numerous issues regarding the environmental impact of the proposed projects, to include potential impacts on health and safety. One glaring area neglected by TrAILCo in this proceeding is the impact on surface and subsurface water. The population of much of the area traversed by the proposed project relies on springs and well water. Approvals needed from other regulatory agencies have not been obtained, or even, to the best of our knowledge, applied for by TrAILCo. We conclude that TrAILCo's presentation on the environmental impact of its projects is inadequate.

We raise and address issues regarding the certification of an out-of-state corporation, owned by an out-of-state holding company, as a public utility. TrAILCo's rates are set by the Federal Electric Regulatory Commission. Its operations are controlled by PJM. TrAILCo has few or no full time employees, no discernable assets and no independent ability to provide the proposed service. We conclude that these matters have not been adequately addressed, and should be, prior to the granting of a certificate of public convenience to TrAILCo.

Because of the great leeway sought by TrAILCo regarding siting of its proposed projects, affected property owners cannot reach an informed judgment until a final, definite route is selected. Further, many property owners have joined together to litigate the validity of easements granted decades ago. Most of the easement agreements we have reviewed do not specify a route across the affected property. The Greene County Planning Commission has identified several easement agreements in Greene County that provide for less than the 200 feet wide easement required for the project in Greene County. For all of these reasons we recommend that authority to exercise the power of eminent domain not be granted, but if and when this project is approved, TrAILCo should be required to file a separate application for each property.

We raise and address issues related to the application for exemption from local zoning provisions. We conclude that this record lacks important information that would be needed to decide whether to grant the exemption and whether certain conditions on the grant of an exemption should be imposed. We recommend denial of the Application.

Likewise, we raise and address issues related to the approval of certain affiliated interest agreements. We recommend that the agreements not be approved because we have recommended that TrAILCo's request for a certificate of public convenience be denied. Since TrAILCo is not a public utility, the provisions of Chapter 21 of the Public Utility Code, 66 Pa. C.S. §2101 *et seq.*, do not apply. The Service Agreement (TrAILCo Exhibit MAM-2) is not in the public interest because of the termination provision contained in paragraph no. 6 thereof. The Service Agreement does not contain a schedule of costs or a method for cost allocations. The Amendment to the Tax Allocation Agreement (TrAILCo Exhibit MAM-4) was not executed by the corporate parties thereto. In addition, the Tax Allocation Agreement requires compliance with the provisions of Rule 45(c)(5) promulgated under the Public Utility Holding Company Act of 1935 ("PUHCA"). TrAILCo Exhibit MAM-4, pp. 1-2; *see* 15 U.S.C. §79 *et seq.* The PUHCA was repealed by Act of August 8, 2005, P.L. 109-58, Title XII, Subtitle F, §1263, 119 Stat. 974, effective 6 months after enactment, as provided by §1274(a) of such Act, which appears at 42 U.S.C. §16451 note. The undersigned do not know what effect this has on the terms and conditions contained in the Tax Allocation Agreement.

Significantly, we recommend that this Commission consider undertaking a study, or instituting an investigation, to review the current route selection and siting regulations along with considering the site selection process used by other Pennsylvania state agencies, and even perhaps other state utility commissions. In our introduction we quoted the conclusions of the National Commission on Energy Policy. We believe that consideration of the conclusions and implementation of the recommendations would aid in dealing with future cases of this type. For example clear statements of the requirements and the delineation of a time line for meeting those requirements would aid both applicants and affected parties in considering their respective options. While TrAILCo asserts that it considered comments it received at the prehearing public meetings, the comments we received at the public input hearings indicate that effective

communications did not occur. The universal opposition of elected officials in the affected communities and jurisdictions confirms our view that effective communication did not occur.

Perhaps the greatest failure of TrAILCo on this record was to comply with the last recommendation of the National Commission quoted in the Introduction:

- Focusing the siting approval process on the question of whether a specific infrastructure proposal at a particular place is acceptable. Applicants should provide information demonstrating not only environmental impacts, but also the process used to identify and consider other sites, as well as project configuration and technology choices that satisfy similar needs. . . . The siting of electricity transmission infrastructure, in particular, *should* include a comprehensive system-wide review of alternatives, although once that review process has validated the need for new transmission lines, the siting process for a specific line segment should not allow for a re-opening of broader system planning issues. . . . (emphasis in original).

We are unaware of any comprehensive system-wide review of alternatives that was presented on this record. While TrAILCo, Allegheny Energy, Allegheny Power, PJM or whom or whatever may have conducted such a review, the presentation of that review for consideration of the affected parties could only have better informed the present process. The way the consideration of these Applications has proceeded has resulted in the widespread expression of distrust of the intentions of Allegheny Energy and its affiliates, and serious questioning by serious people of both the integrity and competence of this Commission. We are convinced that there are answers for the concerns expressed by the property owners in this proceeding. The answers do not include name calling or the provision of generalized statements that do not address specific concerns.

We recommend the denial of all five pending Applications based on our conclusion that TrAILCo has failed to carry its burden of proof with regard to all.

VII. RECOMMENDED ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the stipulation between the Office of Consumer Advocate and Trans-Allegheny Interstate Line Company entered into on March 13, 2008, regarding the removal of the proprietary designation of certain information, is approved.

2. That the Proposed Powerline Property Parcels maps dated September 1, 2007, prepared by the Greene County Department of Economic Development for Northern and Southern Greene County, are admitted and identified in this record as ALJ Exhibit 1.

3. That the Application of Trans-Allegheny Interstate Line Company for the grant of a certificate of public convenience to offer, render, furnish and/or supply transmission service in the Commonwealth of Pennsylvania, docketed at A-110172, is denied.

4. That the Application of Trans-Allegheny Interstate Line Company for authorization and certification to locate, construct, operate and maintain certain high-voltage electric transmission lines and related electric substation facilities, docketed at A-110172F0002, is denied.

5. That the Application of Trans-Allegheny Interstate Line Company for authority to exercise the power of eminent domain for the construction and installation of aerial electric transmission facilities along the proposed transmission routes in Pennsylvania, docketed at A-110172F0003, is denied.

6. That the Application of Trans-Allegheny Interstate Line Company for approval of an exemption from municipal zoning regulation with respect to the construction of buildings, docketed at A-110172F0004, is denied.

7. That the Application of Trans-Allegheny Interstate Line Company for approval of certain related affiliated interest arrangements, docketed at G-00071229, is denied.

Date: August 15, 2008

Mark A. Hoyer
Administrative Law Judge

Michael A. Nemec
Administrative Law Judge

GLOSSARY OF TERMS

Term	Definition
502 Junction Segments	The portion of TrAIL extending from 502 Junction Substation to the TrAIL End Point.
502 Junction Substation	The new substation to be constructed at 502 Junction and owned by TrAILCo.
AET	Allegheny Energy Transmission, LLC, the parent of TrAILCo and a direct subsidiary of Allegheny
Allegheny	Allegheny Energy, Inc.
Allegheny Power	Monongahela Power Company, The Potomac Edison Company and West Penn Power Company, collectively
Appalachian Trail	National Park Service's Appalachian National Scenic Trail property.
Dominion Virginia Power	Virginia Electric and Power Company
FERC	Federal Energy Regulatory Commission
Loudoun Expansion	The expansion of Loudoun Substation to accommodate the Loudoun Segment. Dominion Virginia Power will own the expansion.
Loudoun Segment	The line to be constructed by Dominion Virginia Power from the TrAIL End Point to the Loudoun Substation. Portions of the Loudoun Segment will be owned either jointly by TrAILCo and Dominion Virginia Power or solely by Dominion Virginia Power. This term does not include Loudoun Substation.
Loudoun Substation	The existing and expanded substation in Loudoun County owned by Dominion Virginia Power.
Meadow Brook Expansion	The expansion of Meadow Brook Substation to accommodate TrAIL. TrAILCo will own the expansion.
Meadow Brook Segment	The portion of TrAIL extending from Meadow Brook Substation to the TrAIL End Point.
Meadow Brook Substation	The existing substation at Meadow Brook
Mon Power	Monongahela Power Company

Term	Definition
Mt. Storm Substation Expansion	The expansion of Mt. Storm Substation to accommodate TrAIL. Dominion Virginia Power will own the expansion.
Mt. Storm Substation	The existing substation at Mt. Storm, including any expansion by Dominion Virginia Power to accommodate TrAIL.
Pennsylvania 502 Junction Segment	The portion of the 502 Junction Segments in Pennsylvania.
Pennsylvania 502 Junction Facilities	502 Junction Substation and Pennsylvania 502 Junction Segment
PJM	PJM Interconnection, L.L.C.
Potomac Edison	The Potomac Edison Company
Prexy 138 kV Lines	The three 138 kV lines originating at Prexy Substation and connecting to the Allegheny Power transmission system.
Prexy Facilities	The Prexy Segment, the Prexy 138 kV Lines and the Prexy Substation
Prexy Segment	The portion of TrAIL extending from Prexy Substation to 502 Junction Substation. This term does not include the Prexy Substation, the 502 Junction Substation or the three 138 kV lines originating at Prexy Substation and connecting to the Allegheny Power system.
Prexy Substation	The new substation to be constructed at Prexy and owned by TrAILCo
RTEP	PJM's Regional Transmission Expansion Plan
State Line to Meadow Brook Segment	The portion of TrAIL from the VA-WV state line to Meadow Brook Substation.

Term	Definition
TrAIL	The 500 kV transmission line to be constructed by TrAILCo from Prexy Substation to the TrAIL End Point and the portion of the Loudoun Segment owned by TrAILCo jointly with Dominion Virginia Power. This term includes the new Prexy and 502 Junction Substations and Meadow Brook Substation and the three 138 kV lines originating at a Prexy Substation and connecting to the Allegheny Power transmission system. This term does not include expansion of the Mt. Storm Substation or portions of the Loudoun Segment owned by Dominion Virginia Power either solely or jointly with TrAILCo
TrAIL End Point	The point in Virginia where TrAILCo's sole ownership ends and the remainder of the line is owned either jointly by TrAILCo and Dominion Virginia Power or solely by Dominion Virginia Power.
TrAILCo	Trans-Allegheny Interstate Line Company
Virginia Segments	The portions of the 502 Junction Segments in Virginia
West Penn	West Penn Power Company
West Virginia Segments	The portions of the 502 Junction Segments in West Virginia

PUBLIC INPUT AND SITE VISITS SUMMARY

Altogether twelve public input hearings and three days of site visits were conducted in the course of the litigation of the TrAILCo filings. The record of the hearings and site visits includes 2118 pages of transcript. At appropriate places in our recommended decision we will reference relevant portions of the testimony and the exhibits provided by the individuals who participated. In general the testimony was very well organized, thoughtful and relevant to the issues in the case. Some of the testimony addressed concerns that are beyond the scope of the present proceeding and perhaps beyond the authority of this Commission to resolve. Also some of the testimony was very general and not focused on the issues in this case, or was repetitive and not based on personal knowledge. As a result not everyone who testified is identified in this summary.

Our **first public input hearing** convened at 1:00 pm on **August 29, 2007**, in Building 2 of the Washington County Fairgrounds. Twenty-three individuals presented sworn testimony. Nine of the witnesses spoke in favor of the project. Interestingly, only one lived anywhere near the proposed lines. Also, only one of the proponents was not employed in some capacity in the electric generation and transmission business. That sole supporter was former Commissioner **William Shane**. His testimony and the objections of the ECC were discussed in our Interim Order Establishing Guidelines for Litigation of the Case dated February 7, 2008, at pages 4-6. The remaining fourteen witnesses spoke in opposition. The hearing adjourned at 4:30 pm.

The proponents spoke in general terms about the need to reinforce the electric distribution grid as well as to deal with the aging infrastructure that comprises the grid. Those who spoke in opposition included **Washington County Commissioners Larry Maggi and Bracken Burns** as well as **State Senator J. Barry Stout**. Commissioner Maggi's comments included noting the intrusion of the project on Greenways and Open Spaces as well as areas targeted for investment under the Washington County Comprehensive Plan of November 2005, and the Washington County Greenways Plan of January 2007. He also noted that the active agricultural land within the County is a vital component of the County's economy. The intrusion

of the projected lines will cause a loss of tax revenue to the County and adversely affect development plans. Tr. 85-92.

Washington County Commissioner Bracken Burns spoke in his capacity as Chairman of the Southwestern Pennsylvania Commission (“SPC”). The SPC is charged with establishing regional economic development priorities for the ten-county southwestern Pennsylvania district. The sixty-five member board of the SPC adopted Resolution 15-07 on June 28, 2007, opposing the creation of a national interest electric transmission corridor by the federal government through southwestern Pennsylvania. The resolution also questions the need for the TrAILCo project. Tr. 100-106.

State Senator J. Barry Stout expressed skepticism regarding the need for the TrAILCo project. He stated that “. . . in the 21st century, there are more innovative and responsible ways for meeting our energy demands . . .” than . . . “a long-distance high-voltage line that mars our landscape, lowers our property values and endangers the health and safety of our public.” Tr. 94-95. Senator Stout expressed support for looking at “decoupling” utility earnings from sales volumes and rewarding those utilities that promote energy efficiency. Tr. 96. Senator Stout surveyed developments in the electric industry and expressed the opinion that Allegheny Energy had not carried its burden of demonstrating both the need for and appropriateness of its plan to use its alleged existing rights-of-way acquired nearly 40 years earlier. Tr. 96-99.

Several of the witnesses expressed concerns about the safety of the proposed lines. Included were the electric and electromagnetic field effects on people, animals and equipment. **Mr. Kenyon Nicholl** expressed his concern regarding operating his 12-foot-high metal hay wagon under the proposed lines. He also expressed concerns about line clearing, the use of herbicides and the effect of herbicide use on groundwater. Mr. Nicholl also found substantial discrepancies in locations for the proposed lines both on his property and on neighboring properties. Tr. 154-162.

Mr. Michael Love testified that he is currently the President of the Energy Association of Pennsylvania, a non-profit trade group representing the electric and gas industry. He stated that he is not a customer of Allegheny Power. He also stated that he had served as chairman of the New Hampshire Public Utility Commission and chairman of the New Hampshire Site Council. The latter entity oversaw the process of siting projects such as power plants and electric transmission lines. He related he was involved in the siting of a major electric transmission line that crossed the state to connect New England to hydro plants in Quebec Province. That project, completed in the early 1980's, was the last major electric transmission line built in the eastern United States. He observed that our electric infrastructure has not kept pace with our electrical usage. He opined that we remain vulnerable to the limitations of our infrastructure. He supports the TrAIL project because it will strengthen the national infrastructure. He also noted that construction of the TrAIL would not diminish the need to move toward renewable energy sources and the use of demand meters to control and reduce consumption. Tr. 162-166. On cross-examination Mr. Love was adamant that undergrounding a 500 Kv line was impracticable and uneconomical. Tr. 170-171.

Mr. James Blockinger, a property owner whose property would be crossed by the proposed lines, raised many serious questions regarding safety both from radiation and the use of herbicides and the resulting effect on farm animals and groundwater. He made a very interesting point about the use of eminent domain in this proceeding. He opined that if Pennsylvania allows the taking of private property for the purposes of interstate commerce, that it should require the payment of royalties rather than a one-time price. In general he opposed the use by TrAILCo of eminent domain authority and felt that any property acquired should be through free market negotiations. Tr. 184-192.

Mr. Bill Pollock testified that he is both a residential and commercial customer of Allegheny Power. He expressed a number of concerns including the need for the line(s), the cost of the project and the projected increases in the cost of electricity. He also related that West Penn Power purchased a 200 foot right-of-way from his family in 1982 after protracted negotiations. The ROW extends some 3000 feet through the 150 acres of their certified

Pennsylvania Century farm. He related that an Allegheny Power real estate agent offered his family \$100,000 if they would agree not to contest the current project. Tr. 204-216.

The **second public input hearing** commenced at 7:00 pm on August 29, 2007, again in Building 2 of the Washington County Fairgrounds. Fourteen individuals presented sworn testimony. Thirteen of the witnesses opposed the project on several grounds and one spoke in favor. The hearing adjourned at 8:08 pm.

The first witness **Mr. Karl Kirschner** expressed common concerns regarding the safety of the project. His house is 25 feet from the edge of the proposed right-of-way for the 500 Kv line. His wife already has leukemia, and he is fearful that the power line could affect her. His water well is in the watershed downslope of the proposed line, and he is concerned about runoff of herbicides and pesticides. He does not want to hear any noise from the proposed line, which he described as crackling. Finally, he was incensed that TrAILCo would, in his words, attempt to bribe him not to testify. He testified that he and his wife were offered \$40,000 not to testify. He believed that the agreement they were offered required them to forever refrain from any comment or action against TrAILCo. Tr. 234-239.

Mr. John Myers, a farm owner whose property abuts Route 40, the National Pike, objected to the visual effect of the proposed project and voiced concern over possible contamination of his only water source, a spring development. Tr. 244-245.

Mr. Steve Kayatin, a resident of North Strabane Township, expressed his support for the project by noting the extensive development in his area. He has witnessed the growth of Southpointe, and the creation of the new casino. He also listed other new construction of shopping outlets, hotels and other commercial buildings. Tr. 251.

Mr. Harold W. Lowe, a retired public utility employee, questioned the need for the proposed project. He voiced a common opinion that more than ample generation already exists in the area to meet all future needs. He opined the purpose of the project was to allow West Penn Power to sell electricity, not to bring it into the area. Tr. 254-255.

Our **third public input hearing** commenced at 1:00 pm on August 30, 2007, at Building No. 2 of the Washington County Fairgrounds. Seventeen individuals presented sworn testimony. Fourteen opposed the proposed project and three supported it. The hearing adjourned at 4:18 pm.

Ms. Nancy Shannon, a certified financial planner and investment broker, and director of an animal shelter, directed her comments to the need for large corporations to acknowledge and act in a socially-responsible manner. Tr. 280-285.

Mr. Jack Siroch, a manufacturers' representative for corporations that produce utility and industrial products, stressed the need for an ample transmission grid regardless of how the electric energy was produced. Tr. 291-306.

Ms. Randa Tunney, a bus driver, testified that one of the proposed power lines will pass about 200 feet from her home. Her 34 year old daughter lives with her and her husband. The daughter has a programmable shunt in her brain following brain surgery. Ms. Tunney expressed concern that the power line would adversely affect her daughter's shunt. Tr. 323-324.

Ms. Margaret Passmore, an employee of the United States Environmental Protection Agency, testified on her evaluation of the TrAILCo filing. She testified that she owns two adjoining parcels, one of which is crossed by a proposed TrAILCo power line. She noted that about 9.2 acres of her land will be occupied by the proposed right-of-way. She stressed that while her neighbors might live at some distance from her, they still had a community that was as deserving of preservation as any suburban or urban community. She focused her presentation on the portion of the project from the 502 junction north to the proposed Prexy substation, and includes the 500 Kv line and three associated 138 Kv lines. She referred to that portion as the Prexy facilities, a term also used in the TrAILCo application.

First of all, Ms. Passmore related that she could find no information about the amount of demand for electricity in Greene or Washington Counties. She expressed an opinion that the TrAILCo reliance on alleging reliability problems for showing need without providing details on the demand for electric service raised in question the contention regarding reliability. She stated that she could find demand information for the 502 Junction to the Loudoun, VA, portion of the line. She also faulted the lack of probability information as relates to the two outage scenario that causes reliability concerns in the application.

Secondly, Ms. Passmore expressed skepticism over representations by TrAILCo that the Prexy facilities were being built for south to north transmission of electricity only. She cited a PJM 2006 regional transmission expansion plan as the basis for her skepticism. She stated that she was not opposed to a utility making a profit; she stated that she wanted TrAILCo to prove the demand, discuss alternative solutions, prove the massive line is the best solution and, then, perhaps some of those opposed to the project would change their position.

Thirdly, Ms. Passmore discussed both regional and local negative impacts of the proposed project. She stated that the regional air quality is already poor. She attributed the poor air quality to the coal-fired generation plants in the region. She also addressed a number of other issues relating to the electric and electromagnetic fields, contamination of groundwater by herbicides and pesticides, property values, and the impact of the project on cultural, historical and archaeological sites. Ms. Passmore is married to Attorney Willard Burns, counsel for the ECC. Tr. 329-348.

Ms. Carole McLaughlin, a psychotherapist, summed up the situation presented by the TrAILCo application as follows:

The issues presented seem to represent a microcosm of the critical issues facing our nation today. On the one hand, opponents cite environmental and health concerns, toxins released by coal, and the exacerbation of global warming.

On the other hand, supporters cite the need to address our aging infrastructure and to plan for energy needs in the future. All of

these issues are critical and valid, but why do they have to be mutually exclusive?

Tr. 354-355.

She expressed the concern the TrAILCo project was being rushed into construction without a through review of alternatives. She expressed the belief that the TrAILCo project constituted the preservation of questionable or sub par technology for the purpose of realizing immediate profit. Tr. 354-358.

Ms. Faith Bjalobok testified that she has obtained dual master's degrees in criminology and philosophy and a Ph.D. in philosophy. She is employed as a professor at West Virginia University, part-time as an adjunct professor at Duquesne University, Chatham University and Waynesburg University, as well as at three hospitals. Her area of expertise is applied ethics.

Ms. Bjalobok testified that she is an Allegheny Power ratepayer and leases two farms that are affected by the TrAILCo project. She specifically identified three individuals who she believed engaged in unethical business practices while representing Allegheny Power in right-of-way negotiations. She testified that she listened in on one conversation between an Allegheny Power representative and a landowner where the representative stated that if the landowner did not grant access to the property, that the access would be obtained through eminent domain. She expressed the opinion that Allegheny Power was treating landowners as means to obtaining property rights rather than dealing openly and in a non-threatening manner. Tr. 371-375.

Ms. Bjalobok also spoke at length regarding her research into the effects of herbicides and pesticides on farm animals, specifically horses. She, in essence, urged extreme caution in the use of herbicides and pesticides. She was especially concerned with the potential spraying of hay fields. Tr. 375-382.

The **fourth public input hearing** was held on August 30, 2007, starting at 7:00 pm in the Washington County Fair & Expo Center, Building No. 2. Nineteen individuals

testified; all who testified were opposed to the TrAILCo project. The hearing adjourned at 8:55 pm.

Mr. Carl Burkhardt testified that he purchased property at 138 Roberts Road about a year prior. In the course of negotiating the purchase he was made aware of a West Penn Power easement across part of the property. Two months after purchasing the property he received a call from an Allegheny Power representative who stated that surveyors would be coming onto his property to survey for siting a 500 Kv power line. He was contacted numerous times thereafter regarding access to the property. He denied access until he received proof of insurance and a permit. One representative stated to him that it was 99% a sure thing the line would be built and that he should negotiate over a price now. He was also told that a court order would be obtained to gain access. Apparently that has not been done. Surveyors, taking a sighting along the road, found that the Burkhardt house intruded five to ten feet into the easement. Mr. Burkhardt testified that three springs on the property feed into his water well. Tr. 441-448.

Mr. Albert Thomas testified that he and his wife own three adjoining parcels totaling about 100 acres. A right-of-way "supposedly" purchased in 1974 crosses 22 acres. He testified that his house is 90% complete. When he first began building the house in 2004, an Allegheny Power field engineer had no problem providing an electrical hookup to his foundation. Nothing was said about a right-of-way at that time; if something had been said, Mr. Thomas stated he would have stopped the construction. His house has a metal roof, and he has been told it is in the right-of-way and will have to be moved. His address is 190 Hoge Summit Road. Tr. 453-459.

Ms. Karen Isreal expressed concern over the safety of her water source on her property. Tr. 459-460.

Mr. Jeff Maimone testified that he lives at 936 Daniels Run Road and that he was initially told his property would not be affected by the project. He believes that to be a falsehood and that his property will be affected on two sides. Tr. 463-466.

The **first site visits** were conducted on August 31, 2007, in Washington County. Approximately seventeen properties were viewed, at the request of and with the permission of the landowners. The viewing commenced at 9:00 am and concluded at 4:45 pm.

The first stop was at the property of **Mr. George Goroncy**, 974 Daniels Run Road. Mr. Goroncy pointed out a number of matters of concern on his 83-plus acres. His cattle graze in fields downhill from the proposed right-of-way. As he uses herbicides in his farming activities, he is aware of the need to apply them in a safe manner. Runoff from his property goes into a ten-mile watershed. His water source is from springs on the property. Clearing and access road construction could result in erosion and slumping of some steep slopes, and could adversely affect at least one of his springs. His property is crossed by a high pressure Equitable Gas transmission line, and because his home is in a valley, he is concerned that a gas leak coupled by the presence of a high-voltage electric transmission line could create a dangerous situation. Mr. Goroncy stated that no representative from TrAILCo had been to his property to discuss his concerns. In response to a question from ALJ Nemeec, Mr. Goroncy stated that what appears to be an abandoned railroad right-of-way was used by the railroad that he identified as the Monongahela Railroad Company. The right-of-way is very visible along the valley floor, generally paralleling the TrAILCo proposed right-of-way that traverses the ridge above the Goroncy property and the adjoining **Richard and Susan Foster Blank** properties and the property of **Joan Blank**. Tr. 479-498.

The second stop was next door at the property of **Richard and Susan Foster Blank**. The Blanks own two adjoining properties, 1008 and 1047 Daniels Run Road. The Blanks expressed concern with the effect on their viewing of their property. They had similar concerns to Mr. Goroncy regarding runoff from the construction and access roads uphill from their home and most of their property. Their water sources are a well and springs, and that water is used for both their domestic uses and for their livestock. Because of deep coal mining the Blanks expressed concern for the safety of constructing power towers. They also expressed concern for wetlands downhill from the proposed right-of-way. Tr. 498-511.

Both **Jamie Watson** and **Joan Blank** live in the same valley as Richard and Susan Blank and George Goroncy. Both expressed similar concerns. Both stressed that their present water supply is excellent. Tr. 511-522.

Mr. Barron P. McCune and his wife, **Dr. Ann McCune**, reside on 161 acres at 45 Chesterfield Lane. The farm is in a natural bowl. The proposed right-of-way crosses the hillside opposite their home and would dominate their view from their home. The ROW would cross over springs that are the source of Pigeon Creek. There is no public water available to the McCunes. All of the water used on the property comes from wells or springs. The McCunes have horses and cattle on their property. Tr. 522-539.

Both **Mr. Arthur Brogley**, 28 Leatherman Bridge Road, and **Mr. Carl R. Burkhardt**, 138 Roberts Road, have concerns over the precise location of the proposed power lines, as in both cases their homes and outbuildings either abut or are in the proposed right-of-way. Both also draw their water from either wells or springs on their property. Tr. 540-556.

Mr. Robert L. Morris, 210 Roberts Road, lives on 20 acres and has two gas lines crossing the property. While the view was occurring, a crew was present on the property repairing a leaking gas line. Mr. Morris believes that his property is within 600 feet of the center line of the proposed right-of-way. The line will be at or near the top of the hill that is the upper edge of his property. The property slopes downward to a level area where the gas lines are located and then slopes slightly upward to the Morris home. His water source is a well located near his home. His property includes a natural basin where leaking natural gas could accumulate, and he is concerned about the potential for ignition from the proposed power line. Tr. 556-559.

Mr. Bill Pollock, 27 Pollock Road, and **Mr. Dennis Tunney**, a neighbor, are concerned about the location of the proposed lines on their respective properties. Mr. Pollock already has one 138 Kv line on his property. Mr. Tunney is concerned for the safety of his adult daughter who has a brain shunt that may be affected by the proposed line's electric and electromagnetic fields. Tr. 558-579.

Mr. Robert Cameron, 293 Lively Road, draws all his water from a spring on his property. He also has two stocked fish ponds on the property. The proposed right-of-way crosses along a ridge uphill from the Cameron property. Mr. Cameron is very concerned about potential pollution from the construction and maintenance of the power lines. Tr. 579-582.

Mr. Gary Hollier, 78 Hoge-Summit Road, testified that he was mainly concerned with the disruption the proposed lines would cause to the view from his home that overlooks a valley the lines will traverse. He was able to point out other affected property owners from his vantage point. They included **Mr. Albert Thomas**, **Mr. Karl Kirschner**, and the **Nicholl** farm. He stated that TrAILCo offered him \$21,500 for a release of liability. Tr. 582-587.

Mr. Karl Kirschner, 53 Young Road, testified the proposed lines would be within 25 feet of his house. His well for his water supply is next to his house. His house was built in 1921. Tr. 587-591.

Mr. Albert Thomas, 52 Young Road, lives across Young Road from Mr. Kirschner. He testified at the previous public input hearing to the effect that TrAILCo proposes to move his new house. The house is large, some 3300 square feet and of all oak construction. He has a three-car garage in the back. Tr. 591-596.

Mr. Kenyon Nicholl, 90 Young Road, described the path of the proposed lines across his property and across that of his neighbors. He described the area as a bowl and expressed concern about contamination of his water supply and interference with the farming operations. Tr. 597-604.

Mr. James R. Blockinger, 112 West Patterson Road, had previously testified at a public input hearing. His ranch style house is, to his understanding, within the proposed right-of-way. The house was built in the early 1980's. The well that provides water to the Blockinger residence is also within the right-of-way. The right-of-way would cover his driveway. He was in the process of leasing a portion of his 20 acres to a person who wants a pasture for his horses,

but now is uncertain whether that arrangement will come to fruition as the proposed lines would either cross or come very close to the pasture. Tr. 605-612.

Mr. Terry Simmons, 1033 Thomas-Eighty Four Road, owns three contiguous properties located south of a line of railroad that separates his properties from the site of the proposed Prexy Substation. If the power lines are built as proposed, his properties will have the substation on one side and high-voltage lines on two other sides. He expressed concerns over his perception that his properties will diminish in value if the project is built. He also expressed concerns over the adverse health effect of so many power lines in one area. Allegheny Power owns all of the property on three sides of his properties. His sister-in-law, **Ms. Gina M. Simmons**, who with her husband, are co-owners with Mr. Terry Simmons of rental property on one of the three parcels, expressed concerns over herbicides, pesticides and the effect on the water supply of the proposed project. However, on questioning by Mr. Burns, she stated that the house was served by "city water." Tr. 612-626.

The **fifth public input hearing** was held on September 5, 2007, at 1:00 pm, in the Greensboro Volunteer Fire Department, Greene County. Seventeen persons presented sworn testimony, and all were opposed to the proposed project. The hearing adjourned at 4:15 pm.

The first witness, **State Representative William DeWeese**, stated that he believed that the proposed project was not in the best interests of his constituents. He stated rather than build more power lines, generation should be sited closer to the need. He also spoke in favor of demand side management and conservation as means to lessening the load on the transmission and distribution system. Tr. 642-647.

Ms. Pam Snyder, Chairman of the Greene County Board of Commissioners, described Greene County as a rural county with beautiful rolling hills and countryside. The County's plan is to attract new home construction. The County has invested millions of dollars in water and sewage facilities and the creation of recreational opportunities that she believes will be wasted if the proposed project is approved and constructed. Her husband operates their

fourth-generation family farm. She asserted that running the right-of-way through the farm will ruin their horse and farming operation. Tr. 647-655.

Ms. Snyder testified that she and her husband tried to purchase back the right-of-way from West Penn Power, but were told not to worry about it and that the plans to use it had been scrapped. Tr. 650. She related that the magazine *Martha Stewart Living* had listed Greene County as one of the two best places to view fall foliage in the Mid-Atlantic region. Tr. 653.

Mr. Arthur Brogley presented his opinions regarding the proposed project in detail. He reiterated and enlarged on his comments regarding the location of the proposed right-of-way and the fact that it crosses either a portion of his garage or a portion of his house. Tr. 681-685. Mr. Brogley also expressed concern that the proposed lines would cross a Federal Aviation Administration ("FAA") notification area at the Bandel Airport. Mr. Brogley stated he is a pilot and that the Bandel Airport is a public use facility that hosts general aviation, ultralights, gliders and sailplanes. He is especially concerned about the safety of the unpowered aircraft attempting to land and needing to clear the power lines. He testified that he notified TrAILCo of his concerns and suggested the use of alternate N-16 as being more remote and affecting fewer homes. The response he received from TrAILCo did not directly address his concerns. He has also written to the FAA and to the Pennsylvania Department of Transportation. Tr. 685-689. Mr. Brogley also voiced several other concerns in general terms. Tr. 689-698.

Mr. James Cowell, 1214 Garards Fort Road, expressed concern that the proposed project would endanger his cattle business. He also stated that he had asked Allegheny Power to provide him with a precise location of the proposed lines, but he has not received a response. All of the water used on the farms he either owns or leases, comes from springs. Tr. 699-705.

Mr. Frank Behm, 1565 Jefferson Road, testified that he lives on a 52-acre historically significant farm. His understanding is that the proposed project will cross a portion of his property, and will involve the placement of two towers on his property. Because of a brain aneurism, he has a metal clip in his brain, and is concerned that the power line could adversely affect it. Tr. 705-707; also see Tr. 1338.

Mr. Alan Butcher, 1062 Garards Fort Road, expressed concern over not knowing the location of the project with regard to his home. He also testified that he asked a TrAILCo representative why the 500 Kv towers could not be constructed of a non-reflective steel and was told that cost was a factor. He testified to an Allegheny Power 765 Kv line in West Virginia known as the Wyoming to Jackson's Ferry line that was constructed of a dark, non-reflective steel. Tr. 710-715.

Mr. Patsy Morrow, 1130 Garards Fort Road, testified that he and his wife and their three children live on a 470-acre farm in a farmhouse constructed in 1856. His property directly borders State Game Lands 223 and a portion of the Catawba Trail. He described the Catawba Trail as an Indian trail running north and south that intersects with the more famous Warrior Trail. The proposed project will cut through the middle of their property. Mr. Morrow expressed concern that the proposed project will greatly reduce the value of his property for future development. Tr. 722-730.

Ms. Barbara Zalar, 1296 Garards Fort Road, testified that she lives on a 300-acre farm and conducts a school bus business from her farm. She testified that some 30 years ago West Penn Power approached her family to purchase a right-of-way across their property. Under threat of the use of eminent domain the right-of-way was sold. Ten years ago she called the power company because she wanted to add on to her bus garage. She was told that the project had been scrapped and that she need not worry about it. She called again five years ago because she wanted to expand her parking lot, and was again told she could go ahead. Tr. 730-734.

Mr. Duane G. Nichols, a resident of West Virginia, testified that he was appearing on behalf of the Mon-Valley Clean Air Coalition. He testified that he is a retired chemical engineer with a Ph.D. in chemical engineering. He has taught at the college level and worked in the research and development department of Consolidated Coal Company for 20 years. In that capacity he had involvement in dealing with coal, its combustion, liquefaction, gasification and its various environmental impacts. He testified that he is a stockholder of

Allegheny Energy. He expressed his opinion that building the TrAILCo project will give a very long life to old power plants in Ohio, Western Pennsylvania and West Virginia. Those power plants generate a large portion of carbon dioxide that goes into the atmosphere. As a chemical engineer, he stated that it is impractical to capture the carbon dioxide and sequester it. The practical approach to capturing the carbon dioxide involves coal gasification and producing electricity by a process known as integrated gasification combined cycle power generation ("IGCC"). He stated that IGCC plants are clean and can be built close to the load centers where the power is needed. He characterized long distance electrical transmission lines as unreliable as compared to local generation and distribution of power. Tr. 735-743.

Ms. Allison Hanham, 157 Crees Road, testified that her occupation is community development. In evaluating the TrAILCo project, Ms. Hanham stated that three questions should be answered. The first is whether the project is equitable, that is, does the project improve the position of the worst-off members of our community? Her answer was in the negative based on her view of the costs of the project, reduced tax base resulting from lower property values and the permanent scarring of the landscape. The second question is whether the project will enhance the sustainability of the communities it will cross. She noted that the project is supposed to aid Washington County, and no discernable benefit is projected for Greene County. The third question is whether the project is acceptable to the community, and she felt the answer to that question was obviously in the negative. Tr. 743-749.

Ms. Hanham related that she and her husband live on a 130-acre horse farm. When they were negotiating the purchase of the property, the owner informed them of a right-of-way across the property. The owner had contacted Allegheny Power and was told not to worry, the project had been scrapped. She related that they have an incredible view from their top field. She stated that they spent a great deal of money renovating the old house on the property and would not have done so had they known of the proposed project. The proposed project cuts through their pastures. They do not have municipal water and rely on groundwater both for their horses and themselves. Finally, she related that she suffers from a rare form of cancer and is concerned that her health could be adversely affected by the construction of the proposed project. Tr. 749-755.

The **sixth public input hearing** was held the evening of September 5, 2007, at 7 pm, in the Carmichaels High School auditorium. Twenty-six persons presented testimony in opposition to the proposed project. The hearing adjourned at 9:49 pm.

Ms. Donna Furnier, Superintendent of the Jefferson-Morgan School District, presented a resolution of the school board in opposition to the proposed project. Tr. 776-778.

Ms. Cheryl Clark presented a statement from the White Covered Bridge Association. The preferred route for the proposed project will provide visitors to the Bridge with a view of transmission towers and sagging high-voltage lines obstructing a once beautiful view of the valley below. The Association is opposed to the project. Tr. 778-779.

Mr. Duane Bentz expressed concern for the safety of a spring on his property that he acquired as a retirement location in 1999. He believes the proposed power line will pass within 200 yards of the spring. Tr. 793-797.

Mr. Scott Donaldson and his wife, **Beverly Donaldson**, reside at 521 South Branch Muddy Creek Road, and are concerned about the safety of their water well. Tr. 797-798.

Ms. Janie Ricciuti, 140 Blaker Ridge Road, testified that she is concerned for the health of her husband who suffers from cutaneous T-cell lymphoma. She also stated that they were scheduled for a site visit. Tr. 823-824.

Dr. Edward Petsonk, 1272 Buckeye Road, testified that he is a medical doctor specializing in internal medicine, respiratory diseases and occupational medicine. He practices medicine in Morgantown, and does research and teaches at the University of West Virginia. He is a customer of Allegheny Power at his home in Mount Morris, PA. On cross-examination he testified that he is an epidemiologist and has articles published in journals of occupational and environmental journals. Tr. 834, 840.

Dr. Petsonk related recent epidemiological studies that, he believes, show a definite link between long-term exposure to the electric fields of high-voltage power lines and childhood leukemia. He stated that even the Electric Power Research Institute has acknowledged the linkage. He also stated that other studies point to problems not yet fully understood regarding endocrine disorders and immunological problems. He acknowledged that these studies are speculative. He stated that he wanted to add a scientific component to the public testimony regarding concern about electric and electromagnetic fields surrounding the proposed power lines. While he stated that he had talked to TrAILCo's witness, Dr. Bailey, Dr. Petsonk had not read Dr. Bailey's prepared testimony presented in this case. Tr. 834-842.

Mr. John Blair spoke at length about his love for Greene County and the adverse effects he believes will follow construction of the proposed project. He sees no benefit for Greene County or Pennsylvania from the project, and sees it as an adverse intrusion into his chosen lifestyle. Tr. 843-851.

Ms. Joy Eggleston discussed her joyful memories of growing up on her family's farm. She also related that her grandfather had reluctantly agreed to grant an easement to the power company years ago to place a few poles on the farm. Last year she and her husband built their new home on the family farm. Now that home is threatened by that undefined easement granted some 30 years ago. Tr. 851-857.

Mr. Richard Thistlethwaite testified he lives on a farm purchased by his great-grandfather in 1892. He is the fourth generation, while his son is the fifth and his granddaughters the sixth generation on the property. They planted a vineyard in 2000, and have applied for and received a home winery license. The proposed project comes near their farm and crosses three adjoining farms. They had hoped to expand the vineyards onto the adjoining farms, but that proposal is on hold pending the outcome of this case. They are concerned with the adverse affect on the view from their farm and the potential harm of any pesticide and/or herbicide spraying. Tr. 860-862.

Dr. Richard Asarian, 23 Crescent Street, Scenery Hill, testified that he is a licensed psychologist and also a farmer with two farms in Greene County. He grew up in California, and came to this area to pursue his doctorate. He stated that he “. . . was totally blown away when I came to Pennsylvania and I saw the farmland and considered it sacred ground.” One acre of Pennsylvania farmland can support a thousand pound horse or ten sheep. In California ten acres are required to do the same thing, and in Texas it takes forty acres. Tr. 862-864.

Dr. Asarian related that Route 40, the National Pike, was built at the direction of Thomas Jefferson and is the first national road. He discussed the history of the area and noted that the proposed project would result in a power line over a pond near the home where he resides. He discussed the stress that results from people having to deal with changes in their environment. He opined that constructing the proposed lines would create incredible amounts of psychological pain for the citizens of Greene County. He felt it would be greater there than Washington County because the Greene County residents have fewer economic resources. Tr. 864-867.

The **seventh public input hearing** was held in the Alumni Hall of Waynesburg College on September 6, 2007, and commenced at 1:00 pm. Thirteen persons testified; four were in favor of the project and nine were opposed. The hearing adjourned at 4:15 pm.

Mr. Joseph R. John, 104 Hunting Hills Road, testified that the proposed project does not affect his residence but does impact other property that he owns. He expressed his agreement with others opposed to the project but wanted to emphasize his objection to the granting of the power of eminent domain. He detailed his experiences with trespassers on one of his properties with an existing right-of-way. He felt that TrAILCo should be required to purchase any property required by open negotiations. Further, he believes that TrAILCo should be required to fence it and to patrol it. Tr. 885-889.

Ms. Rebecca Foley, 127 Valley View Road, testified that the proposed project passes through her property, TrAILCo does not have an easement and none is available from her

at any price. She testified that her home was built in 1891. She has beautiful views of the valley below from her porch. She has suffered the loss of her gas well and damage to the foundation of her house from underground coal mining. When she told an Allegheny Power representative that she would not grant an easement, she was told it would be taken by eminent domain. Tr. 889-899.

Mr. James Kenneth Willison, 422 Sugar Run Road, identified himself as a realtor by trade and an appraiser by specialization. He received his realtor license in 1962 and his certification as an appraiser in 1975. He testified that any time the amount of ownership in real estate is diminished, an accompanying decrease in the value of the property occurs. In other words, if he does not own a fee simple estate in the real estate, he owns something less, and that diminishes the value of his holding. Tr. 899-901.

Mr. Thomas Leach, 1102 Brook Drive, Royersford, PA, stated that he is business manager and financial secretary for Local Union 126 of the International Brotherhood of Electrical Workers. He represents over 1800 workers. He also stated that he is a journeyman lineman and has been one for almost 45 years. He testified that the United States is on the brink of a crisis in the electrical transmission and delivery system. The electrical transmission infrastructure is fragile, aged and overloaded. The American Society of Civil Engineers has given the electric transmission system a D grade. On traveling to the hearing he noted he passed under several transmission lines. He stated that they should not be considered to be a scar but an example of progressive engineering that is important to our standard of living. He compared the TrAILCo project to the Pennsylvania Turnpike. He presumed that there were considerable objections to the building of the Turnpike, but stated his opinion that it is of unbelievable value to Pennsylvania and the northeastern United States. He noted that modern high-voltage transmission structures are often built on steel poles that use less right-of-way than the older steel towers and wood pole structures. Tr. 901-905.

On cross-examination Mr. Leach stated that he was not offering an expert opinion as to whether the proposed project was needed. He noted that while many new highways have been built and many new buildings constructed, but there have been very few new power lines.

He also opined that deregulation that resulted in utilities selling off generation also resulted in a greater emphasis on maximizing profits and that resulted in a reduction in the number of new transmission lines being built. Further on cross-examination, he stated that he is responsible to his union to protect its jurisdiction and to seek employment for its members. Tr. 905-918.

Ms. Susan Endersbe, 839 Main Street, Latrobe, PA, testified she has a manufacturing business in southwestern Pennsylvania that employs 42 people. A stable power supply is critical to her business. She believes that the electric grid is in need of bolstering. On cross-examination she testified that her company manufactures transformers and that Allegheny Energy is one of her customers. She stated that she was asked to attend and testify by Allegheny Energy. She stated that she was not offering any expert testimony as to whether the project is needed. Tr. 918-921.

Mr. Robert Hanham, Winstable Farm, 157 Crees Road, stated that he is a geography professor at the University of West Virginia. The proposed project will cross his farm that he described as consisting of 130 acres. He and his wife purchased the property 20 years ago for three reasons: peace and quiet, an unspoiled view and horse facilities. The proposed project, if built, will destroy his peace of mind because of his fear of the impact on his wife's health, as she testified to at Greensboro. The project will also destroy the view from the house and will destroy the natural sound of the place. It will also have a negative impact on their business of breeding and boarding horses. Tr. 921-924.

Mr. Hanham then began a discussion of uneven economic development. He stated that the theory developed in geography about 25 years ago argues that in a profit-driven economy, if you develop one place, or increase the value of one place, of necessity you must devalue another place or places. He feels the present example is a perfect example in that the value of Greene and Washington Counties will be reduced so that the value of communities on the east coast can be raised. He has elaborated on this theme in written direct testimony that was admitted in the technical evidentiary hearings. He continued by discussing air pollution and toxic solid wastes from generating plants. He also emphasized his view that distributed generation was the wave of the future, empowering local communities to manage their own

energy needs. He then launched into a criticism of TrAILCo's use of a geographic information system ("GIS") in route selection for its project. He noted that the loading of different types of data into a GIS can and will result in a degradation of the accuracy of the overall data. That is, the accuracy of the original separate data is lessened by being combined with the other types. Another issue has to do with where the data comes from, which he defined as either top down or bottom up. He described the process used by TrAILCo as top down while some prefer to take information from local persons, which he described as bottom up. He gave a concrete example by stating that he would bet that his neighbor who has worked his farm for most of his life has more knowledge about his property than any satellite image, aerial photo, map or field study done by strangers. The entity that performed the GIS for TrAILCo only solicited feedback from landowners after the route for the project had been selected. Tr. 941-926.

After a break to allow others to testify, Mr. Hanham returned to wrap up the hearing. He undertook a detailed critique of the testimony of TrAILCo's medical witness Dr. Bailey. Primarily he found comments about the rural nature of the right-of-way and the shielding provided by cars and trees and shrubs to be unsubstantiated. Further, he felt that Dr. Bailey placed too great a reliance on animal studies, and cited examples of drugs having been initially approved by animal studies that subsequently had to be withdrawn because of deleterious effects on human health. Tr. 987-999.

Mr. Todd Rittenhouse, 290 Morrell Road, Dunbar, PA, testified that he is a mechanical engineer employed by Seimans Power, and that he supports the TrAIL project. He discussed the decay of the electrical transmission and distribution infrastructure. On cross-examination he stated he was not offering an opinion as to the need of the TrAILCo project. Tr. 946-953.

Mr. Bryan Snyder, 160 Rocky Ridge Road, testified that he has built a new house and had now learned that the proposed project will pass within 60 feet of the house. He felt that Allegheny Power had "dropped the ball" in failing to notify his neighbors and himself of their plans. Tr. 953-958.

Ms. Amy Switalski, 121 Park Avenue, Carmichaels, stated that she was concerned about property she owns at 1094 Garrards Fort Road. In essence, she has been notified that the property is within 600 feet of the proposed right-of-way, but does not know if the actual route will pass through her property. She asked to be informed in writing regarding the actual, final route. Counsel for TrAILCo agreed to have someone contact her regarding her concerns. Tr. 969-965.

Mr. Michael LePore, 1819 Rialto Street, Pittsburgh, testified that he is project manager for uniformed security for Allegheny Power. He is employed by U.S. Security Associates, Inc. He stated he supports the proposed project because he believes we need a reliable, strong electrical system. He pointed to the Cheat Lake Park and Trail property owned and managed by Allegheny Power as an example of the Company's consciousness of their customers. Tr. 965-966.

Ms. Susan Foster Blank, 1008 Daniel's Run Road, Scenery Hill, testified that she was appearing at the public input hearing as a business owner; she and her husband participated as property owners in a site viewing. She stated that she and her husband own a manufacturing company in Elizabeth that employs 35 people and uses electricity primarily for welding machines. Reliability has not been an issue, but rates are. In order to get the lowest rates from Allegheny Power, they would have to schedule their employees during off-hours for electrical usage, and their employees would rather not do that. She stated that she sees no need for the proposed project for business owners. Tr. 967-969.

Ms. Foster Blank also testified that she and her husband have a for-profit cattle business. Their product is beef on the hoof, and their beef sells because they use no hormones or antibiotics or steroids. To keep costs down her cows consume grass and hay that is grown on the property. Any adverse event such as contaminated water could adversely affect her ability to market her beef. All water used is from wells and springs. The proposed project would affect 12 acres of her property that produces a lot of hay and grass. Access roads may take more of her property. She and her husband attempted to calculate the loss just in hay production that would result from the construction of the line on the ridge along the higher elevation of their property.

The current price for a one-ton bale of hay is roughly \$25, and they calculated a loss of 64 bales. Also the fields would have to be reseeded, and she estimated it would be three years before the fields would return to their present productivity. Tr. 969-977.

Ms. Foster Blank expressed concern over what appeared to her to be contradictions in where the proposed lines would be located. She also expressed concern that neighbors whose property was in the path of the project had received no official notice of the project. Tr. 977-979.

Finally, Ms. Foster Blank recounted an experience where she reported a tree in a power line at about 5:00 pm to Allegheny Power, and service was not restored until noon the next day. She related the delay to a cutback in service personnel. Tr. 979-981.

The **eighth public input hearing** was also held in the Alumni Hall of Waynesburg University on September 6, 2007, and was convened at 7:00 pm. Thirty-two individuals presented testimony; none of them were in favor of the TrAILCo project. The hearing adjourned at 11:40 pm.

Mr. Richard Phillip Nicoloff, 102 Santucci Lane, testified that he is a senior special agent for the Department of Homeland Security. He provided comments on his concerns about the security and the proposed project. His questions to Allegheny Power about security went unanswered. He related that he attended an open house sponsored by Allegheny Power on April 4, 2007. He asked for and was promised a map showing where the proposed project would cross his property. He has never received it. He related asking Mr. Alan Fleissner how the proposed project would benefit the people of Pennsylvania. Mr. Fleissner's answer was Allegheny Power was going to buy coal mined in Greene County. When pressed on what benefit would be derived from the power lines, Mr. Fleissner responded that there would be no direct benefit to Pennsylvanians, but would benefit Washington, D.C. and northern Virginia. Mr. Fleissner also told Mr. Nicoloff that property owners would be generously compensated for their land, to which Mr. Nicoloff responded that he wanted no compensation. Mr. Fleissner responded that TrAILCo would then use eminent domain. If the Public Utility Commission

refused permission, then TrAILCo would seek authority from the federal Department of Energy. Tr. 1018-1028.

Mr. Nicoloff related that he received a call from a neighbor, Jack Snyder, who stated that three persons from Kimball and Allegheny Power were on his property. He later confirmed the information with the individuals themselves, who said they were told by an Allegheny Power official that Mr. Nicoloff had granted permission to TrAILCo to come onto the property. He asserted that he never gave permission and was never contacted in advance by anyone on behalf of TrAILCo or Allegheny Power. Tr. 1028-1034.

Mr. Christopher L. Hardie, 220 South Oakview Drive, Waynesburg, testified that he is a county planner for the Greene County Department of Economic Development. His emphasis is in long-term planning for recreational opportunities in Greene County through study and research. He is involved in the formulation of the Greene County Comprehensive Recreation, Parks and Trails and Greenways Plan. He specifically addressed the impact of the proposed TrAILCo project on the Warrior Trail. He described the Warrior Trail as a 5000 year old passage trail used by Native Americans as part of a network of trails to conduct trade, hunt and conduct warfare. The Pennsylvania Department of Conservation and Natural Resources ("DCNR") characterizes the Warrior Trail as a "Major Greenway Corridor." The Warrior Trail begins east of Greene County and runs east to west for 45 miles to a point near Zanesville, Ohio. The Trail is maintained by the Warrior Trail Association that meets once a month to conduct trail maintenance. Three shelters have been erected on the trail to provide hikers with shelters. The proposed power lines will cross the Warrior Trail just over 500 feet from one of the shelters, the Zavora Shelter. Mr. Hardie believes that the presence of the power lines will very adversely affect the attractiveness of the Warrior Trail. The Catawba Trail, a north-south trail stretching from New York State to the Carolinas, runs 17 miles through Greene County. The Catawba Trail joins the Warrior Trail in the area where the proposed power lines cross both. Tr. 1055-1061.

Ms. Darlene Urban Garrett, 135 Main Street, Rice's Landing, testified that she is the Community Development Manager for Greene County. She is also a member of the

Tourist Promotion Board for Greene County. The County adopted a comprehensive plan named "A Strategy for a Green Tomorrow." The northeastern corner of the County has been designated as the County's future growth area. The proposed TrAIL project will run directly through the designated growth areas. This is the area with the most reliable water and sewage infrastructure. A majority of the County does not have water and sewage infrastructure; much of the western part of the County in particular is not suitable for development. Current economic strategies are focused on outdoor tourism, agri-tourism, hunting, fishing, hiking and biking trails, a rural green and pristine countryside, lush rolling hills, beautiful view sheds, fall foliage and a natural environment. Tr. 1061-1066.

Ms. Garrett testified that Greene County has the second lowest per capita income in Pennsylvania. The tax base is "compromised" by low income residents, inadequate housing stock and the fact that 46% of the County has a Clean and Green designation that qualifies the property for tax abatement. The population is a little over 40,000, and no population growth is projected for 15 years or more. Based on the data she has reviewed, she foresees no surge in demand for electric energy in the County. Tr. 1066-1067.

Ms. Garrett pointed out that Greene County has given over its subsurface to extractive industries, primarily coal, with natural gas second and coal bed methane third. Approximately 37 million tons of coal leave Greene County annually. She pointed out that much of the proposed route of the TrAIL project is over undermined surfaces. She pointed out that the Department of Environmental Protection ("DEP") has specific regulations dealing with surface development over areas where long wall mining has occurred. She saw no mention of any contact with the DEP by TrAILCo. She ended her testimony with a question: where is the win for Greene County in the TrAILCo project? Tr. 1067-1069.

Ms. Barbara Gall, 292 Havers Hill Road, testified that the proposed project will cross six of their 46 acres. The power line will go next to their barn and over two "water holes" used by their horses. She asked rhetorically why the line could not cross their property at a different location. She related that she was offered \$58,000 for a right-of-way over her property,

but opined that the money would not last very long and the power line would be there forever.
Tr. 1083-1086.

Ms. Cynthia Ridout, 166 Rocky Ridge Road, testified that she and her husband bought their five-acre lot eleven years ago, and built their house in a manner such as to retain as much of the existing vegetation as possible. Last spring they learned that the preferred route would pass 150 feet from their front door. (It is noted that the preferred route has changed to a point some distance behind their house. See Tr. 1232-1233). She testified that the easement on their property was purchased 30 years and three owners ago. The right-of-way is not specified, but simply provides for a swath across a 500-acre tract. Tr. 1086-1089.

Ms. Mary Ann Douglas, 1116 Garards Fort Road, testified that she and her husband are landowners in the path of the project. She stated that just the day before she learned of a shift in the preferred route, and wanted confirmation of the change. She noted that with the public input hearings ending this evening in Greene County, persons affected by the line shift would not have an opportunity to comment on it. She opined that the mission of a public utility should be to serve the public and their ratepayers first and their shareholders second. Tr. 1095-1101.

Mr. Richard Douglas, 1116 Garards Fort Road, followed his wife and testified that all of the elected officials who have appeared in the hearing have voiced opposition to the project. The majority of the people testifying have voiced opposition. He opined that every shred of evidence presented has made it glaringly apparent that the proposed project does not benefit Greene County, and only benefits the shareholders of the company. However, even some shareholders oppose the project. He also commented that the project would provide cheap power for multitudes on the eastern seaboard at the expense of the health and welfare of the rural hicks of western Pennsylvania. Finally, he stated that it is important to acknowledge the 800 pound gorilla in the room, the federal government with the apparent power to overrule a negative state decision on the project. Tr. 1101-1107.

Ms. Karen Lyons, 459 Herod Run Road, New Freeport, PA, testified that the current project does not directly affect her. However, she appeared to testify to her dissatisfaction with Allegheny Power's maintenance of the 500 Kv right-of-way that crosses her property. She stated that she does not have any confidence in TrAILCo being able to do a better job of line maintenance than West Penn Power has on her property. Tr. 1107-1109.

Mr. Rick Layton, 140 Rocky Ridge Road, presented a thorough, well-articulated summary of the views of those who oppose the TrAILCo project. His major points included amazement at the number of elected public officials who are opposed to the project. He also demonstrated the discrepancy in Allegheny Power's support for its proposed project in 2006 versus its current position. He pointed out that Allegheny Power was risking virtually nothing while attempting to discredit those who oppose the project. His comment was to the effect that here we are holding bake sales to defend ourselves while Allegheny Power pays thousands of dollars to take reporters on helicopter rides hoping that the reporters will not talk to the people on the ground. He noted that while there is no conclusive evidence of adverse health effects for electromagnetic fields, there is no conclusive evidence that there are no adverse health effects. He listed 14 countries that have legislated on the subject of high-voltage power lines, and five countries that now prohibit such lines within 300 feet of homes. He also related his review of the available literature on the effect on property values of a high-voltage power line, and concluded that the studies point to loss of value in the range of 20 to 50 percent. He supported his comments with reference to Federal Housing Administration guidelines for appraising properties and approving insured loans for their purchase. He detailed five steps he would like to see taken that would eliminate the need for the TrAILCo project. Briefly, the five steps are conservation efforts by all levels of users, increase the energy efficiency of all appliances, implement demand side management techniques, maintain and upgrade the existing transmission infrastructure and build generation plants at or near the need for the generation. He asked that this Commission require Allegheny Power to demonstrate the extent and success or failure rate of its conservation efforts. Tr. 1112-1140.

Ms. Michele Pickur, 1144 Morningside Avenue, Pittsburgh, testified that she is a registered financial planner, but that it was her second occupation that brought her to the hearing.

She is the owner of the Douglas Greenhouse Company. Customers travel from Pennsylvania and surrounding states to buy the Company's products. The Company supplies the City of Morgantown with flowers for its gardens, and has begun supplying the Pittsburgh Parks Conservatory. In the nine months after purchasing the business she has expanded the facilities, spending \$45,000 on gravel alone. She also renovated an abandoned building that now houses three businesses that she owns. She estimated she has spent several hundred thousand dollars to date. TrAILCo's proposed route would go through timbered land at a higher elevation than her Company's buildings. The three water wells that are the only source of water for the Company are downhill from the proposed line, and she is concerned that any herbicide spraying will contaminate her well water. She has 24 employees and is concerned about potential liability issues regarding their working in the vicinity of the power line. Construction of the line will also prevent her from building a house on the ridge top. Tr. 1142-1148.

Mr. Jon Hildebrand, 220 Bowser Road, Clarksville, testified that he and his family board and breed horses on the farm they bought in 1987. He testified that the deed to his property makes no mention of a right-of-way for a power line. It does show a right-of-way for a gas transmission line. He has been contacted by a coal company that may be mining under his property in the near future. Every time someone from the coal company wants to come onto the property, they receive a call and a description of the person and vehicle. When they arrive, they always come to the house and identify themselves. Not Allegheny Power. No calls. You just find little blue and orange spikes all over the place. He asked for a lot of information and received no answers. He noted at least three fairly-new homes that are in close proximity to the proposed right-of-way. Tr. 1151-1168.

Ms. Robbie Matesic, 49 South Washington Street, is Executive Director of Economic Development for Greene County. She has a degree in civil engineering and has worked with the Department of Transportation and consulting firms. Prior to taking her present position she had nearly 25 years experience as a transportation and site development manager. She related that sixteen percent of the population of Greene County lives below the national poverty level. By per capita income, Greene is the second poorest county in the state; by household income, the fourth poorest. The median household income is 28 percent below the

national average, and twenty-two percent of the population has a disability of some type. The median value of owner-occupied housing is \$57,000, less than half of the national median. Next to the people, the most important asset of the County is its landscape. Tr. 1177-1179.

Ms. Matesic discussed a 525 megawatt power plant that will burn waste coal. Construction of the plant, to be located at Nemaocolin, will start this year. The power generated by the plant will be sold to Allegheny Power, and will be sent elsewhere; it is not needed in Greene County. Tr. 1179-1180.

Ms. Matesic stated the siting of the TrAILCo project has been justified by TrAILCo by the rights-of-way acquired 30 years ago. When representatives of Allegheny Power met with the County Commissioner and her department a year ago, they stated that 80 percent of the right-of-way had been acquired. To verify the representation, her staff pulled the deeds. Only about 20 percent have detailed descriptions of the right-of-way. The TrAILCo application lists over 250 Greene County landowners. The landowners without detailed descriptions had no way of knowing where the right-of-way would go on their property. One property owner told her that a TrAILCo representative told him he was trespassing by walking out his front door. She submitted two maps that detail the locations of the impacted landowners, the defined right-of-way information collected from the deeds, the Clean and Green parcels, State Game Lands and other Greene County geographic information system ("GIS") data. Tr. 1180-1184.

Ms. Matesic testified that all civil engineering projects have a cost. The benefits of good service, safety, function and least disruption and consistency in local planning all need to be weighed. She stated her belief that prudently reasonable alternatives had not been evaluated. She provided as an example her experience in evaluating the route for a portion of the Mon Valley Expressway. It took many careful professionals and a few years. They worked with every impacted landowner, stakeholder and every elected official, and never was the ownership of existing right-of-way given the kind of weight that Allegheny Power is giving it here. Rather, the quality of all life and respect for existing treasures of prior generations guided the decisions to the alignments that were considered. It took over five years to evaluate four alignments, and a

no-build alternative, before the recommendation of the preferred route was made. Tr. 1182-1184.

Ms. Matesic stated that it was her understanding that corridors for new high-voltage transmission lines have not been presented to the PUC for consideration for decades. It was her understanding that the latest proposed transmission project was withdrawn nearly fifteen years ago. With that in mind she stated the following:

With all due respect, and I do not want to offend you in any way, yet given my professional experience and my personal beliefs, I submit to you that other agencies and commissions in this Commonwealth have established a process and have significant experience in complex siting issues, and to fairly conduct such a process requires a careful multi-disciplined detailed and properly sequenced evaluation of multiple alternatives, including a no-build alternative, with a completely open, fair and honest public input process.

I ask that the Pennsylvania PUC expect nothing less from TrAILCo and that you require the significant slow-down or halting of this project. We deserve nothing less than your very best. . . . I am completely opposed to this project because the evaluation of alternatives was conducted without an evaluation of a no-build. A no-build means no new transmission line. It is the evaluation of rebuilding, rehabilitation, upgrading of existing facilities with the application of today's technology.

Tr. 1184-1185.

Ms. Matesic recounted the numerous instances that property owners were told by TrAILCo representatives that the project was "a done deal" or "99 percent sure that it is going to be approved." She stated that either the project is approved or it's not. It is her understanding that it is not, and why would anyone be told anything differently.

But why and when would it become the responsibility of the media, of volunteers, of a grass roots organization, of the County Commissioners and staff and everyone not on your payroll to disseminate the truth, to work so hard to offset the

misrepresentations, to help the landowners understand this process, to interpret the documentation they received, to assure them that this is a fair process, assure them that the Pennsylvania PUC is protecting their rights and that neither Allegheny Power nor TrAILCo (has) corrupted (the) process.

Tr. 1185-1186.

Ms. Matesic stated further that, “The conflicting information and fact that there is no officially designated information site in the hands of responsible parties has created a network of chaos, to say nothing of the fact that the representatives of TrAILCo are not conveying accurate information.” Tr. 1186.

Ms. Matesic had more questions than answers. She indirectly questioned the validity of valuing the 30 year old rights-of-way at \$4 million. Is this project justified by electric reliability or is it justified by economic reliability? Is the taking of land justified by a need to transmit electricity outside of Pennsylvania? Tr. 1186-1188.

Ms. Matesic recounted a personal story regarding losses she suffered due to cancer and related it to the concern in the community over the effects of electric radiation, electromagnetic fields, herbicides and pesticides. She concluded by asking that this Commission hold TrAILCo accountable and deny the application. If resubmitted, it should be processed in a manner consistent with project development processes used by other agencies of the Commonwealth. Tr. 1188-1192.

The second day of site visits, in Greene County, was held on September 7, 2007. Approximately 20 sites were viewed and twenty-three individuals testified. The viewing began at 9:00 am and concluded at 4:30 pm.

Our first stop was near the southern terminus of the TrAILCo project, just outside the town of Mount Morris and just north of the West Virginia border. **Mr. Garret Albert Phillips, 162 Bald Hill Road**, met us and pointed out the approximate location of the 502 Junction. The property where we were standing is owned by his mother, **Carol Ann Phillips**.

He stated that they had two concerns. The first was the location of the 500 Kv line that he believed would come within 200 feet of his mother's home. He used a map from Allegheny Energy, Map Sheet G, dated July 8, 2007, to explain the configuration of the two existing 500 Kv lines that come together presently and the revised route for the 502 Junction to Prexy proposed 500 Kv line. Mr. Phillips owns some of the property where the 502 Junction Substation is proposed to be built. His understanding is that some of the property has been obtained by TrAILCo and some additional amount is needed but not yet purchased. We then moved from his mother's property, **406 Bald Hill Road**, to property he owns at **237 Bald Hill Road**. Mr. Phillips stated that his concern was that currently two 500 Kv lines come together on his farm with, in essence, three spokes. The proposed line will add a fourth and a fifth spoke. His understanding was that the proposed substation will consume 39 acres. He wanted to know how many more lines would be located in the area and connected to the substation. He stated that his mother's primary concern was for her grandchildren. He proposed an alternate route for the 502-Prexy line that would join the Harrison-502 line at a point further from his mother's house and then parallel the Harrison-502 line to the 502 Junction and proposed substation. Presumably that realignment would satisfy his mother's concerns. He also stated that to his knowledge the land involved in his proposed relocation is landlocked and owned by persons who have not been on it for 40 or 50 years. Counsel and Mr. Phillips also discussed in detail the location and land ownership of the ground where the 502 Substation is proposed to be located. To his knowledge, two other property owners are affected by the proposed substation. He stated his opposition to the proposed substation because of the potential for noise and his concerns for the children living in the vicinity. He also was concerned about the future expansion of the substation. Tr. 1199-1217.

Mr. Earl W. Sponaule also weighed in on the 502 Junction. He stated that he is a disabled coal miner suffering from nerve damage in his arms and legs. He expressed the belief that the proposed Prexy-502 Junction 500 Kv line was going to pass close to his house. He also stated his understanding that the new line would be "bigger" than the other 500 Kv lines in the area. He is concerned about health issues, and his understanding that the new line will reduce the value of his real estate. He also stated that he heard that "it is a done deal anyway. It's going to go through, no matter what." **Mr. Alan Fleissner**, an Allegheny Power engineer, attempted to

explain to Mr. Sonaugle the revised route for the proposed line. Mr. Fleissner estimated the distance of the proposed line to Mr. Sponaugle's home as 500 to 600 feet. Mr. Albert Phillips disagreed and asserted that the distance would be more like 200 feet. Mr. Sponaugle's sister, **Ms. Darlette Sonaugle-Brown**, testified that she lives with her brother and suffers from numerous conditions, the worst being lung cancer. Mr. Sponaugle, his sister, and Ms. Carol Ann Phillips receive their water from the East Dunkard Water Association. Tr. 1207, 1217-1227.

The next stop was at the home of **Mr. William Ridout**, 166 Rocky Ridge Road. As originally planned the proposed Prexy-502 Junction 500 Kv line was projected to be about 150 to 200 feet in front of the Ridout residence, a log home Mr. Ridout built. As explained by **Mr. Fleissner** of Allegheny Power, a revision had been filed and the new proposed route was moved to a point some distance to the east of the Ridout residence. Mr. Ridout had not seen a map of the revision nor been notified of the proposed revision until the date of the site visit. Tr. 1227-1234.

Our next stop was at the Zalar Farm in Fordyce. **Ms. Barbara Zalar** stated that we were standing by the farm pond that is depicted on TrAILCo maps. She stated that no one from TrAILCo or Allegheny Energy has contacted her regarding the current project, and that her last contact was 30 years ago. Ms. Zalar testified that 30 years ago they were contacted concerning right-of-way across the farm. The family consulted a lawyer who told them that they should take the money being offered. Apparently the family did take the money but specified in the right-of-way agreement that no line was to cross the pond. (The transcript at page 1235 omits "not," but it is clear from the context that it should be there.) Ms. Zalar reiterated testimony that she gave at a prior public input hearing to the effect that ten years ago she contacted Allegheny Power or West Penn to say she wanted to expand her bus garage and what about this power line. She was told not to worry about it. A few years later she wanted to expand her parking area, and was again told not to worry about it. As of the site visit Ms. Zalar did not know where the proposed route would be across her property. From the maps she has seen she has concluded that the proposed route is right across the pond. With regard to the pond she stated that her children and grandchildren swim in the pond and fish in the pond. She was concerned that power lines crossing the pond would make those activities unsafe. Also she

asserted that her right-of-way agreement prohibited crossing the pond. Finally she expressed concern over the line's proximity to her buses and garage. Tr. 1234-1241.

Mr. Richard Douglas, 1116 Garards Fort Road, testified that he was originally told the proposed power line barely touched his property. However he has seen a map given to a neighbor that shows a much greater encroachment on his property. Also he saw a map at the public input hearing in Greensboro that also was different from what he had been told by TrAILCo. He has not received any notification from TrAILCo and is concerned that he will not be able to address his concerns if there has been a change in the route. The map at the Greensboro public input hearing was provided by the Greene County Department of Economic Development. Tr. 1241-1246.

Mr. James Cowell, 1214 Garards Fort Road, had testified at the Greensboro public input hearing that he had found a surveyor's stake with a "C" and a line through the "C" on it. His understanding is that such a marking indicates a center line. He pointed out the approximate location of the stake and noted that there were buildings in the vicinity. He also explained that his farm is enrolled in a federal program designed to insure that the beef from his cattle is disease and drug free. His property is marked with warning signs that state no trespassing, this is a bio-security area. Anyone entering his property has to have their shoes disinfected. He also grazes his cows on a portion of the Zalar property and the pond she referred to is a water source for his cattle. He has not been notified that the proposed project will cross his property and he is concerned that in fact it will. Tr. 1246-1253.

Mr. Alan Fleissner, TrAILCo engineer, responded to Mr. Cowell. He stated that the stake was probably placed by a geodetic survey team that was setting up control points with good views of the sky to be able to use global positioning satellite ("GPS") technology for the next surveying team that ". . . will actually try to replace the line and put the center line on the ground where it was originally done, when the easements were done 30 years ago." He went on to state that he knew that the center line survey had not yet begun, and that was why they did not have a lot of detailed aerial maps, but only approximate locations. Tr. 1258-1263.

Mr. Richard Douglas responded to **Mr. Fleissner's** testimony with the following comments:

One last comment. Where is the venue going to be when we can have the final determination of where that line goes, and as landowners, how are we to make public comments when the public comment period is soon to end?

Small shifts of this line have dramatic (effects) on our property, our property values, our way of life, our industry, our livestock and many, many other considerations.

Tr. 1263.

Ms. Kathleen Miller, 1306 Garards Fort Road, provided historical background on the original owner of both her farm and the Zalar farm. She testified that she has cattle on her farm also, and that **Mr. Cowell** grazes his cattle on her farm also. The water sources for her farm are four springs that are located near or under where she understands that the proposed power lines will be built. Tr. 1254-1258.

The next viewing occurred at the home of **Mrs. Janie and Mr. James Ricciutti**, 140 Blaker Ridge Road. **Mrs. Ricciutti** pointed out her understanding of where the proposed power line would be located, in a wood line down the hill from their home, and from their water well. She stated that she was not sure where the line was supposed to go and stated that Allegheny Power had been ignoring them. She stated that if the line is built they will have to leave because her husband's health will not tolerate exposure to herbicides. She described his condition as cutaneous T-cell lymphoma due to Agent Orange exposure. **Mr. Fleissner** stated, after reviewing an aerial photo map, that no routing change had occurred in the area and the lower right-hand corner of the Ricciutti property might be within 600 feet of the proposed right-of-way. Tr. 1265-1271.

Mr. Ken Knetzer, 260 Blaker Ridge Road, stated his objection to the proposed line was that it would adversely affect the view from his home. His well is located next to his house. His understanding is that the proposed line will not be on any part of his property. He had also testified at a prior public input hearing. Tr. 1271-1273.

Ms. Beverly Donaldson, 521 South Branch Muddy Creek Road, described how she and her husband have been improving their property. **Mr. Scott Donaldson** accompanied the viewing party up a hill to property owned by a **Mr. Dwayne Benson**. Mr. Donaldson stated that the area was the source for their water, and that the proposed power line would go across Mr. Benson's property. They also mentioned that they sometimes smell natural gas at night, but do not know the source of the smell. Both Donaldsons testified at a prior public input hearing. Tr. 1277-1284.

Our next stop was at the home of **Mrs. Pam Snyder** and **Mr. Jack Snyder**, 286 Center School Road, Jefferson, PA. They own about 55 acres, and recently deeded one acre to their daughter who has built a house on the property. They are not sure where the proposed power line is to be built, but believe that it is within 300 feet of their house and even closer to their daughter's house. Their deed does not have a detailed description of the easement granted some 30 years prior. While they now have "city" water, they also rely on a stream, cistern and a well for water for their horses. All of the on site water sources are downhill from where they understand the proposed power line is proposed to go. Finally, they related that the **Thistlewaites** had asked them to consider growing grapevines on their property. Tr. 1285-1293.

Mr. Kevin Eggleston, 280 Center School Road, testified to his understanding that the proposed power line would be 300 feet from his four-year-old son's bedroom. Because of his concerns regarding electromagnetic fields he believes that if the line is built, he and his family will move. He presented testimony at a prior public input hearing. His wife, Joy Eggleston, echoed his concerns. Tr. 1294-1295, 1306-1308.

Mrs. Pam Snyder and **Mr. Jack Snyder** pointed out the home of Mr. Snyder's 94-year-old mother and his two twin sisters at 270 Center School Road. Behind the home is a stream that provides water to the Snyders' horses. Both the home and the stream are downhill from the proposed power line. Tr. 1296-1297.

Mr. Charles B. Snyder, 232 Center School Road, lives in the Center School House. In 1870 his great-grandfather gave the property for the school. When the school was closed the property returned to the family and was turned into a house. He shares the work of raising cattle with his father, **Mr. Charles N. Snyder**. His concern involves the view from his house and any adverse effect on the stream, springs and wells. He has not received any notification that his property is within 600 feet of the proposed power line. Tr. 1297-3000.

Mr. Charles N. Snyder, 244 Center School Road, testified to the presence of two springs on his property. He and his son raise beef cattle that are watered from the stream and the springs that flow into it. He pointed out rocks that he related as having been used by Native Americans in the distant past. He also pointed out an area that had been a public park, also in the past. All are downhill from the presumed location of the proposed power line. He testified that he worked as a lineman around high-voltage lines for 40 some years. He also related that he had contracted a skin cancer for which he was receiving treatment. Tr. 1300-1304.

Mrs. Pam Snyder testified additionally that all of the Snyder properties are enrolled in the state's Clean and Green program. The benefit is a real estate tax break. The undertaking is to maintain the use of the property for agricultural purposes. Tr. 1304-1306.

Ms. Duann Vanderslice, 148 Thistlewaite Lane, took the viewing party to the northeastern corner of the vineyard that was planted in 2000. Her husband is James Thistlewaite who testified at a prior public input hearing. She testified that she and her husband share a vision for the property to become a place where visitors can tour an agri business. They have begun to put in walking trails and will have a winery. In their winery they can only have Pennsylvania products. They have discussed planting additional vineyards on their neighbors' properties. She stated that the proposed power line would be about 200 yards from their property line. However, because of their hilltop location the line will be very visible from their property. Further, they are concerned about the possibility of herbicides blowing from the power line to their property and contaminating their grapes and their well water. Finally, they are afraid that the power line will adversely affect their ability to expand their vineyard. The fall foliage brings in tourists to the area, and she is afraid the power line will adversely affect the viewing. They use oak barrels

produced by a cooperage business just three miles away. Their wines will be German style wines because of similarities in latitude and the land in general. Tr. 1308-1322.

Ms. Pam Snyder, in her capacity as Greene County Commissioner, testified that the Thistlewaite vineyard was the kind of business the County is trying to promote. Because of the vineyard and its related businesses, local representatives were able to obtain a grant to pay for the extension of water service from the local water authority. Tr. 1322-1323.

Mr. Frank J. Behm, 1565 Jefferson Road, testified that he and his wife live on the 52-Acre John Rex farm that they purchased in 1989. The farmhouse was built by the great-grandson of King George III of England. It was placed on both the state and federal historical registry in 1990. The proposed power line will bisect their property, crossing Route 188 (Jefferson Road) and crossing a field with the edge of the right-of-way some 600 feet from their home. Their primary concern is with the reduction in the value of their property that they believe will occur if the project is built. Tr. 1323-1327.

Mr. Behm showed the viewing party the approximate locations of two towers that would be located on his property. The line will come closer to a pond and cleared area in another part of the property, but Mr. Behm could not be certain how close. He had planned to use the land where the line is proposed to develop a cemetery, and has registered the name. When he learned about the right-of-way, he approached West Penn Power about buying it back, and was told it was not for sale. To his knowledge a cemetery cannot be developed under a power line. He is a retired funeral home operator. Mr. Behm stated that they have "city" water, but rely on two wells for water for their greenhouse and garden. His pond is spring fed and stocked with fish. Tr. 1332-1339.

Mr. Patrick Knight, owner of land across Route 188 (Jefferson Road) from Mr. and Mrs. Behm, testified that he owns 84 acres. He has a beef cattle operation, and relies on the springs and ponds on the property to water the animals. He is also concerned about the safety of a high-voltage power line crossing the 20-inch natural gas transmission line that parallels Route 188 across the road frontage of his property. He has smelled gas leaking from

the line. He also has a 24-inch water transmission line crossing his property. He had planned to build a retirement home on the property, but that is on hold for now. Tr. 1327-1331.

Ms. Juliann Cernuka owns land next to that of Mr. Knight. Her understanding is that the proposed power line will more or less parallel their property lines and cross Route 188 (Jefferson Road) to cross the Behm property. Her concern is that the right-of way will be about 300 feet from their home. Tr. 1331-1332.

The **third and final site visits to points in Greene and Washington Counties** occurred on Tuesday, September 18, 2007. Altogether thirty-nine individuals presented testimony on their concerns with the proposed project. The viewing commenced at 9:00 am and concluded at 6:56 pm.

Our first stop was at the home of **Ms. Linda D. Arnold**, 887 Garards Fort Road, Greene Township, Greene County. Ms. Arnold stated that she was initially told the proposed power line would be on the opposite side of the ridge that her home faces. She learned recently of a proposed relocation that would place the line on top of the ridge, apparently viewable from her property. Her property is on the opposite side of Garards Fort Road from the side where the line will be located. While she would not estimate the distance from her home to the ridge top, it was probably in excess of 400 yards. She stated her opposition to be able to see the line, but stated that her biggest concern had to do with disruption of the habitat for wildlife, especially quail that she and her neighbor were trying to reintroduce into the area. Tr. 1346-1351.

Ms. Deborah L. Parker-Purdy, Ms. Arnold's neighbor at 887 Garards Fort Road, stated that she felt that allowing the project to go forward would set a precedent for future lines. Further, she stated that her mother lived next to her, and has a pacemaker with a defibrillator. If the line is built, she stated it would force her mother to move into a home. She stated that any kind of magnetic field will stop the pacemaker. She also stated that the runoff of pesticides would be detrimental. She stated that she does eat store bought meat, but takes what she needs from the land. She said that their water source is "city supply." Her concern about the runoff from spraying was concern for the wildlife that would drink the water and the effect on

the health of the wildlife and whether the wildlife would be fit for human consumption. Tr. 1351-1359.

Mr. Alan Butcher, 102 Garards Fort Road, is a neighbor of Ms. Parker-Purdy and Ms. Arnold. His property extends to the ridge top on both sides of Garards Fort Road, and the rerouted power line would cross a portion of his property. That portion directly abuts State Game Lands Number 223. He complained that TrAILCo initially asked for a 600 foot corridor and now was seeking a 1200 foot corridor. He asked if he will ever be officially notified of the change. He objected to a tower being on the ridge line, and stated that it would be visible from both the Warrior Trail and the Catawba Trail. He was shown a map of the proposed rerouting labeled Exhibits AJF 4 and 5 by a Mr. Jim Taylor. He was also offered \$44,000 for a right-of-way across his property. He raises hay on his property; one hay field is downhill from the proposed reroute. Tr. 1359-1365.

Mr. Michael Mawhinney, 408 Blaker Hill Road, testified from a hilltop above the road. He stated that his wife was a Blaker and the family cemetery was a short distance from where we were standing. The farm where we were standing came into the Blaker family in 1815. It has been used to raise livestock ever since. He stated that what they do is grow grass, and harvest the hay. They also pasture sheep in the fields, and the sheep harvest the grass, and the sheep provide wool and mutton. He stated that his understanding was the proposed line was initially proposed to cross the hilltop where we were standing, with a tower on the top. He stated that to do so would ruin his most productive field not to mention obstructing the view and interfering with the cemetery. His current understanding is the line was rerouted to the east perhaps a mile away. He still was unhappy with what would be an unacceptable interference with the view from the hilltop. From the hilltop we could see the South Branch Muddy Creek Road, and could see a good portion of the Donaldson property, a family we visited on the last view. A tower from a power plant on the Monongahela was visible from the hilltop. Chestnut Ridge and a portion of Laurel Ridge were also visible from the hilltop. Mr. Mawhinney emphasized that in taking a 360 degree view from the hilltop, what you see are predominately well-established farms that have been here since the 1800's. The grass and trees are productive and renewable resources that will remain so as long as it's not destroyed by external forces. He

spoke about arrangements made to pass on the property to future generations. Tr. 1365-1373. He also noted that their farm is a centennial farm, and will be a bicentennial farm in 2015. Tr. 1375.

His wife, **Janet Mawhinney**, testified that the farm where we stood had come down through several generations and was where their daughters were raised. The visible smokestack was the Hatfield Power Plant that she estimated to be two miles away. The Plant has been a source of pollution in the past, and she noted that the installation of scrubbers may reduce it. Tr. 1374-1375. Ms. Mawhinney added comments about the number of her neighbors who have contracted various forms of cancer. Tr. 1383-1384.

Dr. John R. McGrath testified that he had just received a construction loan to build a house next to his parents, **John and Carolyn McGrath**. He stated his concern was about the evidence of interference with unipolar pacemakers. He stated his understanding that the unipolar pacemakers were an earlier type, and the new bi-ventricular pacemakers were less likely to be affected. He stated that his doctorate was in pharmacy. Tr. 1376-1377.

Mr. John McGrath testified that he is a candidate for a pacemaker, and that his father-in-law has one. He stated that he lives about 500 feet from the proposed power line, and that if it is built, he does not believe it would be safe for his father-in-law to visit. His wife, **Carolyn McGrath**, concurred with all of the comments she had heard on the Mawhinney hilltop. Tr. 1388-1390.

Mrs. Kimberly Peters and her husband, **Mr. Jeff Peters**, pointed out various matters concerning their property, at 443 Muddy Creek Road, as viewed from the Mawhinney hilltop. They have both cattle and horses on their farm and are building an indoor riding arena. The proposed power line crosses at a distance of 625 feet from their property line. Their farm is in the Clean and Green program. Tr. 1377-1382.

Our next stop was at the farm of **Ms. Rebecca Foley**, 127 Valley View Road. Ms. Foley testified that her home was built by Benjamin Craft in 1891. The farm is composed of

from 132 to 137 acres, depending on the deed. She pointed out the some \$200,000 worth of damage to her home caused by coal mine subsidence. She lost her gas well and lost her water for awhile. From the location of her house the viewing party moved to a hilltop that Ms. Foley described as one of the higher elevations on her property, and indeed, of the entire surrounding area. She stated her understanding, based on a map she obtained from the Greene County website, that the proposed power line will bisect her property. She stated that she has family gatherings at her home and has programs for instructing children about nature. She has developed several miles of trails on her property. Her water source is a well. She has about 55 acres in hay, and believes that the power line will destroy her hay field. Her concerns include interfering with the view from her high points, interference with her land use and the potential for polluting her well and springs on the property with runoff from the construction and spraying of chemicals. Tr. 1390-1400.

A neighbor of **Ms. Foley, Mr. Terry Broadwater** testified that he cuts the hay on the Foley farm for his 76 head of beef cattle. Tr. 1401-1402.

Ms. Barbara Gall, a neighbor of Ms. Foley, pointed out her property generally to the south of Ms. Foley's and down the hill, on the other side of Valley View Road. She exhibited a map given to her by Ms. Bonita Rockwell, a real estate representative from TrAILCo. Ms. Rockwell offered her \$58,000 for a right-of-way agreement. Her barn would be a guesstimated 150 feet from the proposed right-of-way. Ms. Rockwell told Ms. Gall that the right-of-way would cover six acres of their property, for a length of 1301 feet. She pointed out a stream and water holes for her horses. She stated that she will not allow TrAILCo personnel on her property, and will not talk to them. She and Ms. Foley maintain a bird sanctuary. They have a den of red fox and bear have been seen in the area. She asked what would become of these creatures if the line is constructed. She provided considerable detail regarding the birds and mammals she has seen on and around her property. She detailed the struggles she and her husband endured to buy their farm. She has named her farm Hope's Meadows after her deceased mother. Tr. 1403-1411.

Ms. Sherry Wright presented testimony concerning 230 Havershill Road, the home of her brother and her mother. Her brother contacted Allegheny Power before building a house on the property, and was told everything was fine. After the house was built, Allegheny Power representatives initially told him that the proposed power line would be at least 200 feet from the house. Then it would 150 feet. Then a Bonnie Rockwell came to visit and stated that the distance was down to 70 feet, and offered a payment of \$25,000. One map indicates the line may be as close as 20 feet. The house is in a valley below the Foley property. Ms. Wright believes that she and her family have been lied to and cheated by Allegheny Power. Tr. 1414-1416.

Mr. Richard P. Nicoloff, 102 Santucci Lane, Clarksville, previously testified at a public input hearing at Waynesburg University. At the first viewing site, he pointed out markers placed presumably by Allegheny Power surveyors along a hillside approximately 200 to 300 yards from his house. His concern was the effect of construction and spraying on the stream downhill from the presumed right-of-way. His property includes the stream bed and about 20 feet up the other side. His hope and plan is to use the area to graze cattle. There is a transmission or sub-transmission line already on the property. That line in all likelihood was built to provide service to a drag line that was used to strip mine the property of coal. Mr. Nicoloff pointed out a right-of way for the existing line that passed through a wooded area. While he expressed concern with the brush under the line, it was noted that there was at least 20 feet of clearance between the line and the brush. Mr. Nicoloff has established a trail under the line. He stated that he has never been contacted by Allegheny Power regarding any clearing or maintenance on the existing right-of-way. He stated in response to a question from counsel for TrAILCo that he was aware of a 200 foot right-of-way across his property, but assumed that it was for the existing line. He also stated that his home receives water service from a municipal authority. His cows are watered from a well downhill from his house but uphill from the presumed route of the proposed power line. Tr. 1418-1425, 1430-1440.

Mr. David Bell, 197 Pollock Mill Road, testified that he is a neighbor of Mr. Nicoloff, and that after the proposed line leaves the **Nicoloff** property it will cross Mr. Bell's property and then take a swing towards **Mr. Frank Behm's** property. The line will cross within

400 feet of Mr. Bell's house. Its construction will cause the loss of eight acres of forest. His Grandfather, **Mr. Ralph Bell**, age 92, has cultivated the timber and not allowed any logging or timbering. The property is, in essence, a bird sanctuary. Mr. Ralph Bell is a registered bird bander, and the concern is construction of the line will cause the birds to leave. Tr. 1426-1427.

Ms. Angelique Hoge, 119 Santucci Lane, testified that she is a neighbor of Mr. Nicoloff, and that her concerns are health related and the effects on her neighbors. Her husband has a heart stint, and they have 13-year-old child. They do not want to have to move again, and are afraid, apparently, that their friends and neighbors will move because of the proposed power line. Tr. 1427-1428.

Ms. Tammy Teagarden, 270 Chartiers Road, lives across a small valley from **Mr. Nicoloff** with her four-year-old daughter and her husband on their four-acre property. Their home is visible from the Nicoloff home, and Ms. Teagarden assumed that she would be able to see the proposed power line across the Nicoloff property. In addition to spoiling the view, she expressed concerns over adverse health effects on her family and their animals. They plant a large garden every year. They have water service from a municipal authority but use well water for their animals. The proposed power line apparently does not cross their property. Tr. 1440-1442.

Ms. Brigitte Simmons, 151 Goslin Road, testified that her home is visible from part of Mr. Nicoloff's property. She stated that the proposed line would come within 500 feet of her property line and 800 feet from her house. She and her husband have five acres in their lot. They are concerned with health effects on their two children, ages 6 and 12. They are also concerned with the effect on the value of their property. Tr. 1442-1444.

Mr. Dave Piroch, 648 Barr Run Road, expressed concern over not knowing exactly where the proposed power line will cross his property. He and his wife and their four children have seven head of cattle and a flock of chickens on their property that covers sixty-three acres. A representative of Allegheny Power told him the proposed right-of-way goes from a corner of his house, where his daughter's bedroom is, past a corner of his barn. He had

planned on building another barn and adding additional cows to his herd, but those plans are on hold pending the developments with the power line. He related instances of persons coming onto his property without permission and placing stakes and ribbons at various places. Both their domestic use water and water for their animals comes from two wells on the property. They are concerned with runoff from construction and any spraying of herbicides and pesticides contaminating their water supply. Having obtained the Environmental Protection Agency mandated label for Picloram, he is concerned that the herbicide will accumulate in the fat of wildlife on the property, and perhaps be consumed by humans should they harvest the wildlife. He found Picloram listed as one of the herbicides used by Allegheny Power in maintaining its rights-of-way. He also is concerned regarding the location and use of access roads during and after construction. He is concerned with erosion resulting from construction. Tr. 1444-1453.

Mrs. Cheryl Piroch testified that her concerns are the safety of her family. The gas well that supplies their home is near their home. The two wells that supply them with water are near their home. Her husband, **Mr. Dave Piroch**, has Parkinson's disease. An Allegheny Power representative, Bonita Rockwell, gave them a map of the proposed power line across their property, and also a copy of an easement granted to West Penn Power by a prior owner. Ms. Piroch stated that last month when Ms. Rockwell provided a copy of the easement was the first time they had heard of any easement across their property. She could not determine from the document where the easement was located. They were told that even though an easement had been granted that Allegheny Power would pay them in excess of \$54,000 to stop opposing the project. Tr. 1453-1460.

Mr. Scott Weaver, 597 Barr Run Road, testified that he is a neighbor of the Pirochs. His concern is with the project taking a majority of the woods on the Piroch property and the resulting effect on hunting. The deer feed on the acorns from the white oak trees. The trees would presumably be cut for the power line. Tr. 1460-1462.

Ms. Mary Luciano, 20 Luciano Lane, Marianna, testified her concerns regarding her 112-acre farm. She stated that the farm has been in existence since the 1700's, and has been continually farmed. To her left she pointed out the Aliquippa Spring named after Queen

Aliquippa, a Native American. A log cabin nearby was built by one Jacob Horne in 1776. In 1833 his son John built the house where Ms. Luciano lives. Originally the Spring was the water source for the property. A well was drilled and is the current water source. She related her understanding of the proposed route of the line, and that the line would cross portions of her property at two points. See the transcript at 1475. Apparently it will come close to the cemetery. She is very concerned about the health of her grandson who apparently visits her often. He has a vagus nerve stimulator implanted in his brain. He is prone to seizures. The implant that she described as a pacemaker for the brain is used to stop the seizure when a magnet is applied to it. She has no idea what the magnetic field from the power line will do to her grandson. She stated that she cannot use a hair dryer on him. She is also concerned about the effect of the construction and maintenance of the proposed line on their water supply. She has a gas well and lines on her property. Apparently there is a liquid propane pipeline in the vicinity of the proposed power line. She also discussed a Native American burial ground somewhere on a hillside above her property. She has spoken with an Allegheny Power land agent who provided a map that appeared to be identical to a 1977 aerial photo map. She also allowed surveyors on her property because she wanted to see where the line was proposed to go. Tr. 1463-1476.

Mr. Clinton Roule, 163 Oak Spring Road, Marianna, is a neighbor of Ms. Luciano. He stated that he is a high-voltage electrician. He also stated that no right-of-way agreement was found or noted in the title search conducted before he purchased his present home. However he has been notified by Allegheny Power that the house is directly in a right-of-way of the proposed power line granted by a prior owner. He has had two contacts regarding the power line with Allegheny Power, one was earlier in the year and the other was the night before the view. Mr. Roule stated that his wife is in remission from Hodgkin's Lymphoma. Even if the line is rerouted, he wants Allegheny Power to buy his property because he does not want to live anywhere near a high-voltage power line. Tr. 1476-1479.

Mr. John A. Juracko, P.O. Box 123, Marianna, PA 15345, testified that just recently he became the sole owner of property that includes three-quarters of the intersection of Oak Springs Road and Warry School Road. The property had been owned by his grandmother and his great-grandmother. He stated that he lives in Marianna and had planned on building a

house on the property until he heard about the proposed power line. He had initially granted permission for surveying but has since withdrawn permission pending the outcome of this case. As he understands the routing across his property, it will entail cutting down a number of trees. He is a forester by trade and is concerned that the plan to stack the wood off the right-of-way and on his property could cause a fire hazard. He is also concerned about possible contamination of the groundwater and the two springs on the property. Finally, he has been unable to learn of any provisions on the part of Allegheny Power or TrAILCo to secure the right-of-way from trespassers. Tr. 1479-1484.

Our next stop was at the hilltop location of the **Cross Family**, just off Route 40 near Scenery Hill. **Ms. Stacy Cross** testified that we were standing between number 32 and number 80 Cross Lane. She described 32 Cross Lane as a mobile home. Number 80 is her new house. The proposed right-of-way crosses between the two homes, with the mobile home actually in the right-of-way. The Cross property was subdivided in 2004, and consists of three lots. The surveyor of the property tried to talk to Allegheny Power about the easement across the property, but received no response. On their deed of 2004 the right-of-way is marked. Subsequent maps provided by land agents for Allegheny Power have differed from the deed and from survey markers placed by Allegheny Power surveyors. The Crosses have requested copies of the Allegheny Power maps but none had been provided as of the date of the view. A team of surveyors trespassed on the Cross property on September 7, 2007, placing markers on a third different right-of-way. They were asked to leave and did. The third right-of-way is closer to 80 Cross Lane than the prior two. She has a lot of unanswered questions. Her water source is a well located within at least one of the TrAILCo proposed rights-of-way. Tr. 1485-1495, 1499.

Ms. Barbara Lemley, 32 Cross Lane, testified that she lives in the mobile home pointed out by her sister, Stacy Cross. She testified that in her first meeting with TrAILCo land agents she was told her mobile home was in the right-of-way and could be moved. She responded that she had a sand mound sewage system approved by some sewage authority and she could not move the mobile home. Her property abuts her parents' lot and the rest of her lot is on a hillside. She was told to obtain prices for a new modular home, a new well, sewage system, driveway, permits and so forth. She was told she had to be out of the mobile home by

October because construction would begin on the power line in April, and they wanted all of the rights-of-way cleared by then. She started packing and rented a storage unit. She gathered the prices and presented the information to the land agents. At that time she was told that only a corner of her front deck was in the right-of-way. She was told that the prices she obtained were higher than expected, and that she should obtain prices for a double wide. She did so, and also told the land agents that the property where she would move to was still available but a decision had to be made within two weeks. That was in July. She has heard nothing further. Her well is located in her front yard. Tr. 1496-1501.

Mr. Joe Sullivan and Mrs. Rebecca Sullivan live at 931 Thomas-Eighty Four Road, Eighty Four, PA. A 25 Kv subtransmission line crosses their property at present. None of the proposed TrAIL crosses their property, but their property abuts Allegheny Power's property that, apparently, was acquired some time ago for the Prexy Substation. Two segments of the 25 Kv line have fallen during storms near their home. Because of those occurrences, they would require more information on the facilities that will be near their home, which sits on a little over three acres. Mrs. Sullivan has traded emails with a Jeff Peterson, and an Adam Holcomb came to their home with a small map but not much detail. They are concerned that they will be able to see power lines and may be uncomfortably close to the substation. Tr. 1503-1519.

Ms. Jerri Dire, 147 Lindley Road, Canonsburg, PA, stood in the right rear corner of her property that is one acre in size. One map provided by Allegheny Power shows the edge of the proposed 138 Kv right-of-way crossing her picnic bench that, in turn, is no more than 100 to 150 feet from her home. She has met with Allegheny Power representatives twice. They have not been able to tell her where towers would be located. They have told her the line could be moved 30 to 40 feet in either direction. She relies on a spring-fed well for her water and has a septic system. She testified that she bought the lot in 1992. Before building, she contacted West Penn Power to ask about the right-of-way. She was told there were no plans to use the right-of-way, and because of the amount of time that had passed since acquiring it, she felt safe in going ahead to build her dream house. In April 2007 she was contacted by Allegheny Power and told that her property was on the proposed line of the TrAILCo project. A few days or weeks later she received her six pounds of paper from Reading, PA. (This would be the TrAILCo filing.)

Ms. Dire testified that when surveyors have entered onto neighboring properties, the police have been called and the surveyors have left. One land agent, John Carter, has made two offers of money for her to sign an agreement to release TrAILCo from any claim for damages. She told him she went to the first round of PUC hearings, and he responded that the protestors should be embarrassed and are a joke. He told her she should take the money because it is a done deal. For the second meeting, John Carter brought his supervisor, Jim Taylor. John Carter told her she should sue the persons who sold her the lot because it was not worth what she paid for it with the easement on it. In the course of the two meetings with John Carter he was unable to provide to her West Penn Power drawing 304-101, page 9 of 16 that is referenced in her easement agreement. She spoke with Jim Taylor on September 16, 2007, and he stated that he could not locate the drawing. He again told her the project was going through, no matter what. He left a message for her today, September 17, 2007, at 12:20 pm, to the effect that the drawing is just that, a drawing. It is a blanket easement that gives TrAILCo the right to go anywhere on her property. She asked rhetorically whether we thought that right-of-way agents telling landowners that this project is a done deal is somehow corrupting the entire process. She expressed concern over the effect the power line could have on a neighbor who has a pacemaker and defibrillator implanted. Finally, she recounted telling John Carter that she was afraid that every tree in her yard would be cut down. His response was to say if you sign the agreement we will try to save the trees. If you don't, we are going to cut down every tree in your yard. She responded, in front of his supervisor, by asking whether that was a threat. Tr. 1519-1529.

Ms. Mary Lynn Spilak testified that she is the eldest daughter of Paul and Jessica Spilak who have lived on the land abutting Ms. Dire's property for 50 years. She stated that her father has a pacemaker and defibrillator implanted. She also stated that her family has horses and ride throughout their property, and they are all opposed to the lines. Tr. 1530-1533.

Ms. Jessica Spilak, 173 Lindley Road, testified that in 1978 a representative of the power company (West Penn Power) visited her elderly mother-in-law and told her that an easement was needed to build a power line to provide power to Washington Steel. So her mother-in-law signed the agreement to save jobs at the steel business. Washington Steel no

longer exists. She related instances of persons from TrAILCo coming on to their property and placing stakes, without their knowledge or permission. Tr. 1533-1537.

Ms. Laura McPeake, 157 McBride Road, testified she lives across the street from Ms. Dire. She stated that she had serious health concerns related to the proposed power line. She also testified that she has never spoken to anyone from TrAILCo. However, she learned from Ms. Dire that a TrAILCo representative stated that she had spoken with them and implied she was in favor of the line. She felt it was an effort to divide the neighbors, but stated that the neighborhood was united in its opposition to the line. Ms. Dire confirmed that when John Carter and his supervisor met with her, he was flipping through a stack of damage releases, and mentioned Ms. McPeake's name, and said she is a very nice person. She wondered why Ms. McPeake's name would be mentioned as she does not have an easement on her property. Tr. 1537-1541.

Mr. Harry Barringer and Mrs. Joan Barringer, 133 Lindley Road, testified they received their six-pound package of papers. Mr. Barringer pointed out where unauthorized persons had placed stakes that he presumed marked the right-of-way. He stated that the property has been owned by his family since 1914. He testified that his grandparents sold a right-of-way in the late 1970's for a power line to provide power to a mill. They were told that if the line was not finished by the 1980's that the easement was null and void. Mr. Barringer related that about seven or eight years ago Allegheny Power personnel were working on the local distribution line. He asked an employee if he could have a copy of any right-of-way across the property. He was told that the only right-of-way was for the local distribution line. Mr. Barringer stated that he was offered \$17,000, which he thought was a ridiculous amount. He stated that the land was his retirement and he was opposed to the line. Tr. 1541-1545.

The **ninth public input hearing** was held on **September 19, 2007**, back again to Building No. 2 of the Washington County Fair & Expo Center. The hearing started at 1:00 pm. Twenty-eight persons presented testimony. Two persons spoke in favor of the TrAILCo project and twenty-six spoke in opposition. The hearing was adjourned at 5:11 pm.

The first witness was **Ms. Diana Irey, Washington County Commissioner** and Allegheny Power customer. Ms. Irey testified that she has been a County Commissioner for twelve years, and that the opposition to the TrAILCo project has generated more volume than anything else she has experienced. Her opposition is based on her need to represent her constituents, and her perception that the project will result in higher electric rates, a marring of the rural landscape and unwarranted interference with the number one industry in Washington County, agriculture. Tr. 1565-1568.

Ms. Patricia Milioto, executive assistant to **State Representative Tim Solobay**, read a letter from the Representative addressed to the Public Utility Commission. The letter expressed the Representative's concerns with the TrAILCo project. She also read a second letter addressed to the Pennsylvania federal delegation in the U.S. Senate and House of Representatives that expressed concerns with the project and the impact of the Federal Energy Act of 2005. The third letter she read was again addressed to the Public Utility Commission that reiterated the Representative's concerns. Tr. 1568-1576.

Mr. Frank Siffrinn, Manager of North Strabane Township, testified that the Township is the host municipality for the Prexy Substation. He noted that the North Strabane Board of Supervisors voted unanimously to oppose the TrAILCo project. He provided details on how the proposed project will interfere with Township property and the Township's land use planning program. He objected to environmental, cultural and land use factors being omitted from the public discussion of the proposed project. Tr. 1576-1582.

Mr. Brian Spicer, Chairman of the Board of Supervisors of North Strabane Township, stated that he was in complete agreement with the comments of Mr. Siffrinn. Tr. 1582-1583.

Mr. Dan Holland, founder and chairman of **The Young Preservationists Association of Pittsburgh**, testified that his Association's mission is to encourage the participation of young persons in the preservation of historic resources. He discussed the historical significance of Washington and Greene Counties. He catalogued historic sites in the

two counties including the National Pike, Route 40, a national scenic byway, the villages of Marianna and Fordyce, the Morris Farm and Homestead near Fordyce, the Warrior Trail, and the Catawba Trail. He noted that there are a number of unofficial historic places and cultural resources not listed on the "National Registry of Historical Places." He expressed the opinion that the TrAILCo project will have negative impact on historic, cultural and scenic resources in Washington and Greene Counties. Tr. 1583-1588.

Mr. Mark Evanoka, 1417 Lexington Drive, Lawrence, PA 15055, presented his analysis of the financial effect of the approval of the TrAILCo project across several properties in North Strabane Township, two of which he has an ownership interest. On one of the properties for which he had negotiated a development agreement, the value of the 60 acres fell from \$25,000/acre to \$2,500/acre with the advent of a 138 Kv line crossing the property. He also calculated the loss to the township, the county and the school district of \$1.7 million annually in tax revenues as a result of the approval of TrAILCo. Tr. 1588-1596.

Ms. Barrie Coleman, 2188 East National Pike, Scenery Hill, testified that when she read the TrAILCo analysis of cultural resources, she was horrified that only five previously recorded sites were found in the vicinity of the proposed line. She partnered with **Ms. Kim McCoy-O'Donnell**, and conducted a four-month study. The methodology they used began with a letter and a brief survey mailed to each of the 750 affected property owners. They received a 15% response rate from their mailing. After reviewing the responses, they then conducted on-site interviews and tours of the various sites. To complement their survey, they used the Cultural Resource Graphic Information System provided by the Pennsylvania History and Museum Commission that was also used by TrAILCo. She thought it significant that TrAILCo only mentioned five of the "countless properties" listed on the System. Tr. 1596-1598.

Secondly, Ms. Coleman discussed the breadth of their study and the associated view shed. Faced with time constraints they limited their inquiry to those properties within one mile of the center line of the proposed and ever shifting right-of-way of the 500 Kv line. They simply did not have the time to review the properties affected by the three 138 Kv lines. She quoted Mr. Jack Halpern of the Louis Berger Group as stating that line route evaluation included

information on historic sites within two miles of the nearest limit of the proposed right-of-way. But in the TrAILCo report she referenced, on page 83, TrAILCo only referenced those sites within a quarter mile of the center line of the projected line(s). She concluded that there was either a deliberate attempt to ignore numerous sites, or the entire study was an example of a slipshod execution of a study. Tr. 1598-1599.

Ms. Coleman related that they discussed their study with researchers and engineers on the Mon-Fayette Expressway, and learned that no mileage constraint was applied to the view shed from historic properties. Instead, the horizon was the limit for eliminating or mitigating the contamination of the view shed of historic properties. She pointed out that 175 feet tall towers constructed on hilltops and ridges have a greater visual impact than just 500 feet. Tr. 1599-1600.

We take issue with the arrogant and insensitive statement on page 78 of their report, quote, "These impacts, however, would diminish as people become accustomed to the lines over time", end quote. All of us will forevermore notice the change in the view shed in southern Manhattan, for example.

Tr. 1600.

Ms. Coleman testified that the third prong of their study encompassed the application of acts, codes, and laws. She cited principle number seven of the Pennsylvania Keystone Principles for Growth, Investment and Resource Conservation that provides for maintaining and improving heritage assets, historic sites and cultural opportunities. She cites and quotes a September 6, 2006 letter from Douglas C. McLearn, Chief of the Division of Archeological Protection of the Pennsylvania History and Museum Commission that advises J.A. Ruberto of Allegheny Power to make provision for identifying archeological resources listed or eligible for listing in the National Register of Historic Places, and to make assessments as to the effects on these resources. It was suggested that Allegheny Power contact local historical societies and consult tax and deed records. Ms. Coleman recounted that they could find no evidence that TrAILCo had contacted any historic preservation agency of any description. Tr. 1600-1602.

Ms. Coleman then discussed their findings after following the foregoing methodology. They found 12 properties currently on the National Register, five deemed eligible, one on the Washington History Landmarks Register, 12 Centennial Farms, one Bicentennial Farm, two farms eligible for Bicentennial Farm designation, one federal Scenic Byway and two archeological sites, compared to the five found by Allegheny Power. She stated that **Ms. O'Donnell** would elaborate on the findings. She urged the Commission to recognize that we are all the sum of our past, and that we learn from our past, and that we should cherish it. Once the evidence of our past is destroyed, polluted or compromised, it cannot be restored. Tr. 1602-1609.

Ms. Kimberly McCoy-O'Donnell, 484 Highland Ridge Road, Topsail Farm, Marianna, PA, testified that she opposes the proposed project. Much of her opposition is based on the proposed route through a mostly rural, visually unspoiled and historically rich area. She listed the sites identified by the TrAILCo route evaluation, and stated that these are but a few of the examples of the affected sites in Washington and Greene Counties. She found most disappointing the TrAILCo listing of only five architectural resources. One, the John Rex Farm, owned by Mr. Frank Behm, was admitted into the National Registry after the right-of-way was purchased. Its omission from the TrAILCo list indicated to her that only properties registered prior to right-of-way grants were considered in the TrAILCo study. She noted that she and **Ms. Coleman** catalogued a total of 70 sites and properties. Tr. 1609-1614.

Ms. O'Donnell presented the results of the study performed by Ms. Coleman and herself in a green-colored three-ring binder with a cover reading: Report of Historic and Cultural Research Committee, TrAILCo Transmission Line Project, Washington and Greene Counties, Pennsylvania, September 19, 2007. The first tab contains the written testimony of Ms. Coleman as well as portions of material from TrAILCo, the survey form and cover letter mentioned in Ms. Coleman's testimony, and a report from the Southwestern Pennsylvania Heritage Preservation Commission, 1988-2000. The second tab contains the written testimony of Ms. O'Donnell along with excerpts of a ten-year plan of the Public Service Commission of Maryland dealing with generation and transmission, and a Land use and growth management profile for Washington County. The third tab contains a chart listing the 70 affected sites. The

listing is followed by a map showing the location of a portion of the sites in relation to the proposed route of the 500 Kv line. Following the map are a series of photos and written descriptions of the properties shown on the map. The fourth tab contains the chart listing the 70 affected sites, followed by a map showing the locations of those sites not covered by the map at tab 3, and again followed by photos and narratives regarding each site. Tr. 1609-1620.

Ms. Heather Sage, Director of Outreach for Citizens for Pennsylvania's Future, or PennFuture, testified that PennFuture is a statewide public interest organization working to create a just future where nature, communities and the economy thrive. Her testimony dealt with the increased need for new generation and transmission facilities that will occur if the current rate of increase in electrical consumption continues. She submitted a report that she represented as showing that robust efficiency programs could preclude all of the growth in demand for electricity. She concluded that Pennsylvania must aggressively pursue demand side management strategies. Tr. 1620-1624.

Ms. Joan Blank, 1162 Daniels Run Road, Scenery Hill, testified to the anxiety she has felt since learning that the TrAILCo project proposed to place a high-voltage power line at the top of her 57-acre property. Her concerns are both health-related and aesthetic. Her property was one of many that was viewed. Tr. 1624-1627.

Ms. Terry Brogley, 28 Letherman Bridge Road, testified that she agreed with the comments of her husband, **Mr. Art Brogley**. She confirmed that he built their home, which now is said by TrAILCo to be within 15 feet of the right-of-way. She stated that they have everything invested in the home, and that her life will be ruined if the project goes ahead. She also questioned the value of site visits when TrAILCo cannot precisely identify where it proposes to build. Tr. 1627-1629.

Mr. Wade Smith, 229 Oak Spring Road, Marianna, testified that he and his wife live in a house they designed, and he and his father-in-law built themselves. The house sits on land that has been in his wife's family for five generations. The proposed TrAILCo right-of-way is 300 feet from the house. He asked rhetorically how they could be expected to tuck their

daughter into bed each night knowing that she was being subjected to an increased risk of cancer, especially when they make her brush her teeth and wear a bike helmet. He criticized TrAILCo for giving scant consideration to alternatives to the present project. He noted that in a congestion analysis performed by CRA International in 2006 a list of each past or anticipated transmission event for the mid-Atlantic region was created. Nowhere on that list is an indication of need for a northward movement of electricity in Southwestern Pennsylvania. He postulated that Allegheny Energy's alleged need for moving energy northward is an artifice to gain the use of eminent domain authority to build the lines necessary to transmit power to the east through Maryland to Virginia. Tr. 1629-1636.

Mr. Smith, a financial analyst, then discussed the financial aspects of the project. He noted that from 2004 through 2006 Allegheny Energy had a net income of \$71 million that equated to less than a one percent return on its assets, or less than one penny on every dollar of assets. In contrast, FERC has granted Allegheny Energy a return of over 13 percent on its investment in the TrAILCo project, citing 119 FERC Section 62,219. His point is that TrAILCo would earn a return 400 percent above the industry average. He concluded that Allegheny Energy has been "disincentivised" from seeking a more cost-effective, less invasive alternative to a 500 Kv line to solve a potential problem for a few strip malls along the Route 19 corridor in Southwestern Pennsylvania. He concluded by asking this Commission to require Allegheny Energy to prove that its project is in the best interest of Pennsylvania, and not just its shareholders. Tr. 1636-1639.

Ms. Sandi Mansmann, 62 Petticoat Lane, Eighty Four, testified that she is the coordinator for the Washington County History & Landmarks Foundation. She testified that Washington County is steeped in history that is written and visual. Her organization has never been contacted by TrAILCo or anybody representing Allegheny Energy. The Foundation began a comprehensive survey of the historic resources in the County in 1996. Compared to the book presented by Ms. McCoy-O'Donnell, the Foundation has 30 to 40 times the material. So far the Foundation has only covered about half of the townships in the County. It is now participating in a survey commissioned by the Pennsylvania Historical Museum Commission. She described Southwestern Pennsylvania as an area of byways and vistas, an area of families and tradition.

She noted that Washington County's population was 217,000 thirty years ago when West Penn Power was acquiring rights-of-way but, as of 2006, had declined by 9,000 to 206,000. She read a quote as follows: "When urban-headquartered companies come to the country with a big plan, whether their game is coal, timber, or industrial agriculture, the plan is to take out the good stuff, ship it to the population centers, make a fortune and leave behind a mess." Tr. 1639-1645.

Mr. Charles Yetsonish testified to the negative experiences he has had with Allegheny Power over its right-of-way across his farm where he raises beef cattle. Tr. 1645-1649.

Mr. Robert Rischka, 109 Castile Ridge, Marianna, testified that he is employed by Lighthouse Electric, an electrical contractor, and that his property is affected by the proposed project. He received his seven-pound package of documents, which he stated he has reviewed. He testified that he has failed to find any statistical data in the filing documents to illustrate the need for the project and the benefit of it for residents of Washington County. He noted that one 550 megawatt unit of the Hatfield Power Generating Station was out of service from November 2003 to June 2004 without creating any problems. He suggested that TrAILCo has failed to prove a need for the project. Tr. 1649-1651.

Ms. Paula Tishok, One Sunedecker Road, Amity, testified to the origins and nature of the Energy Conservation Council of Pennsylvania. Tr. 1652-1657.

Mr. Greg Bandel, 37 Bandel Road, Eighty Four, related his story of his family and how they came to live where they do. His father created the Bandel Airport on a neighboring farm that he purchased. The airport today is a licensed public use airport and is the home of the Pittsburgh Soaring Club, several ultralight aircraft plus a number of light aircraft. It has 15,000 square feet of commercial building space that is filled with no vacancies. He reiterated his prior testimony presented during a site visit that he was concerned with the height of the proposed towers, and their proximity, some 6000 to 7000 feet from the airport. He opined that the distance was not so great as to not constitute a danger to an aircraft with engine trouble. He noted that an application to build a single cell phone tower even further from the airport was

denied several years ago because of its proximity to the airport. He stated that the proposed project would create a fence on the northwest, west and southwest sides of the airport. He also expressed concerns over the use of herbicides and their effect on the ground and spring water that ends up in farm ponds. Tr. 1657-1666.

Mr. Donald C. Siegel, 103 Marble Drive, McMurray, identified himself as the international vice president for the Third District of the International Brotherhood of Electrical Workers. He testified that he represents 130,000 members of the IBEW in New York, Pennsylvania, New Jersey and Delaware. He stated that he was no expert in transmission line construction or environmental issues, but he has worked for the last 36 years in and around the electrical construction and utility industry. Early in his career he saw a tremendous expansion in the construction of generation plants and transmission lines that had subsided by the early 1980's. He noted a growth in demand while there has not been a comparable growth in generation and transmission capacity. He stated that the TrAILCo project deserved serious consideration because of the need to create more transmission capability. On cross-examination he stated that he had not studied nor had an opinion on the need for the lines under consideration here. Tr. 1666-1676.

Mr. Mike Welsh, 544 Circle Drive, McMurray, introduced himself as an international representative for the International Brotherhood of Electrical Workers and co-chair of the AFL-CIO Utility Caucus. Prior to accepting his present position he worked for the Pennsylvania Electric Company in its electrical equipment department. He said he has witnessed many changes in the electric industry over the last thirty years, and a common theme was a lack of enough investment in upgrading the delivery system. On cross-examination he stated he was not offering an opinion regarding the need for the TrAILCo project. Tr. 1676-1680.

Ms. Barbara Morton Campbell, 386 Lusk Road, Bentleyville, stated that her opposition to the proposed project was based on her environmental concerns. While the proposed lines do not come close to Lusk Road, she is an owner of land over which the proposed project would pass. Tr. 1680-1682.

Mr. George Goroncy, 974 Daniels Run Road, Scenery Hill, reiterated his concerns first expressed at a site viewing on August 31, 2007. He referenced TrAILCo's route evaluation report at page 83, Table 4-5, Resource Number 087044, the Carr House log cabin on his property. It was built in 1810, and would be within 400 feet of the proposed power line. He referenced the subsurface coal mining that has occurred at his property and his opinion that building a tower on undermined land was tempting a tower collapse. He related the amount of electricity that was used by the now defunct Washington Steel, and Allegheny Ludlum who purchased the business in 1998 and closed it in 2001. He contended that the loss of the steel mill load more than offset the load created by the new construction along the I-79 and Route 19 corridors. He also presented pictures of power lines where lines were visible on only one side of the poles, and stated that it indicated to him the lines were not being used to their full capacity. Tr. 1682-1693.

Ms. Virginia Goroncy, 974 Daniels Run Road, related the history of her family and her farm. She related that she felt the proposed project would interfere with her keeping her promise to her father to preserve the farm. She expressed her concern with needless spraying of herbicides. She expressed her opinion that new technologies should be used to avoid building the proposed project. Tr. 1694-1698.

Ms. Judy Kirschner, 53 Young Road, Eighty Four, testified to her dissatisfaction with a meeting she had with a TrAILCo land agent, Mr. Jeff Peterson. She stated that her home has been in the family since the 1800's. She asked that something be done to keep her peaceful valley from being invaded by a power line. Tr. 1698-1701.

Ms. Jerri Dire, 147 Lindley Road, appeared and testified to enter her testimony and exhibits that she discussed at her site visit the day before. Tr. 1701.

Ms. Randi Ross Marodi, 112 Warren Street, Bentleyville, testified that she was appearing as president of the Bentleyville Historical Society that has the purpose of preserving the history of Bentleyville, Ellsworth and Cokeburg Boroughs and the townships of North Bethlehem and Somerset. She expressed her concern that the proposed project would have a

long-term detrimental effect on the integrity of the rural communities she listed. The views from vantage points in the communities are essentially the same as those enjoyed by those who settled the country, and it would be a shame to obstruct the views for future generations. She can trace her family tree back to the 1700's in Greene County, and is upset at the thought of the power lines crossing the ridge tops of her community. Tr. 1701-1705.

Ms. Lisa Stout-Bashioum, 658 Lincoln Avenue, Bentleyville, testified that she was appearing as vice president and founding member of the Bentleyville Historical Society. She discussed the history of Bentleyville and the surrounding countryside. She noted that many residents have a long history of their families residing in the area. She asked how the proposed project would help the residents maintain their chosen rural lifestyle, and opined that it would not help. From her understanding of the project, it would not improve reliability, would not reduce rates for electricity, but would impose health risks from electromagnetic fields and herbicides. She further opined that Allegheny Power was using outdated technology instead of conservation, energy efficiency and advanced metering. She quoted John Adams, who in turn quoted Cicero: "The good of the people is the highest law." Tr. 1705-1708.

Mr. Ralph Gatten, 20 Haw-Bottom Lane, Scenery Hill, testified that he understood both the positions of the power companies and those of the landowners. What is needed, in his opinion, is a viable compromise acceptable to both sides. He dismissed both the idea that no line would be a long-term answer to electric needs as well as the power companies' approach of continuing to use alternating current ("AC") technology. He asserted that transmission by high-voltage direct current ("HVDC"), whether underground or above ground would result in a more acceptable alternative to the current AC method. He cited several benefits of HVDC transmission including smaller conductors and resulting smaller towers or poles. He closed with his opinion that the proposed project was not necessary, but if it is deemed to be so, it should be modified to reduce its impact on the area traversed. Tr. 1705-1712.

The **tenth public input hearing** commenced at 7:00 pm on September 19, 2007, in Building 2 of the Washington County Fair & Expo Center. Thirty-four individuals presented testimony, all in opposition to the proposed project. The hearing was adjourned at 9:44 pm.

Mr. Christopher Rosselot, a constituent advocate with Senator Robert Casey's office, 425 Sixth Avenue, Pittsburgh, expressed his opposition to the proposed project. While he supports the goal of providing reliable electric service to consumers, he remains concerned that the benefits of TrAIL do not go to Pennsylvania but to other states. Pennsylvania already provides a service to other states without adequate generation and should not be forced to provide further means of reliability to those states. Further, he voiced the opinion that any effort to increase reliability in Pennsylvania should complement the goal of Pennsylvania to increase the use of renewable power sources and reduce air pollution. Tr. 1731-1734.

Ms. Melissa Packard, 215 Hutchinson Avenue, Canonsburg, spoke at length about why she and her husband chose to live in Washington County. She also detailed the threats to the attractiveness of Washington County posed by the proposed power line project. She also expressed the concern that has been voiced by so many over perceived health issues and perhaps the need to move. Tr. 1734-1740.

Ms. Tanya Kassler, 2053 East National Pike, Scenery Hill, testified that she lives and has her business in Scenery Hill. She voiced concern that building the power line project will adversely affect the flow of people coming to Scenery Hill to enjoy the views, and thus adversely affect her business. Tr. 1741.

Ms. Chaelyn Cross, 80 Cross Lane, presented the view of a high school student whose family may relocate if the proposed project is constructed. Tr. 1742-1743.

Mr. Terry Simmons, 1033 Thomas-Eighty Four Road, Eighty Four, testified in detail to the impact of the TrAIL project on the three adjacent properties he owns along with several siblings. In essence, the three properties will be surrounded by high-voltage power lines and the Prexy Substation. Three properties are bounded on three sides by land owned by Allegheny Power. The 500 Kv line and one 138 Kv line will cross a portion of one of the properties and enter the substation, and another 138 Kv line will come within several hundred feet of the property line of another property. He expressed concern over possible adverse health

effects, but he is most concerned over the loss of value of the properties. He has already lost the sale of one of the properties that is rented. The would-be purchasers backed out after learning of the proposed project. Tr. 1743-1753. His brother, **Mr. Tim Simmons**, agreed with all of his testimony. Tr. 1754.

Ms. Penny Wright, 370 Lively Road, testified that she did not think her property was involved in the TrAIL project until she received a package of papers "probably as big as an encyclopedia." She is uncertain of the impact on her property, but she is very concerned that the value of her property will be reduced, perhaps as much as 20%, if the project is built. Tr. 1754-1762.

Mr. George Bruckner, 220 Valley View Road, Jefferson, testified that he negotiated with TrAILCo and got an agreement to move the proposed right-of-way 550 feet to avoid his house that was in the original path. He stated his uncertainty as to whether the project was needed, given the low population in Washington and Greene Counties, and the prospect of the shutdown of a major coal plant. Tr. 1762-1767.

Mr. Chuck Wonsettler, 478 Wonsettler Road, Scenery Hill, testified that his family owns Wonsettler Farms. It is a working farm producing beef, sheep, hay and grain crops. It has been in the family since the late 1700's. His father refused to sign an agreement with West Penn Power thirty years ago, and so there is no right-of-way across the property. He is opposed to the project because of its potential adverse effect on their use of their land and because of its adverse effect on the aesthetic qualities of the area. Tr. 1767-1768.

Ms. Lisa Eimer, 44 Nixon Street, Cokeburg, testified to her many concerns with the TrAIL project that were similar to those expressed by previous witnesses. Tr. 1768-1771.

Ms. Brenda Lemley, 32 Cross Lane, Scenery Hill, reiterated many of the points that she made during a site visit. She presented copies of deed maps to the Cross family properties. She wanted to know why, since presumably February 2006, when she was first notified of the project, the proposed right-of-way was moved three times. She stated her belief

that if Allegheny Power had returned the calls of their surveyor when they purchased the property, she would not be in the predicament she is in now. 1772-1775.

Ms. Clara Kay Keen, 396 Lively Road, Eighty Four, testified that a tower will be built on top of a hill by her house. She had refused to allow a cell phone tower to be built on that hill in the past. In her opinion the construction of the TrAIL project will ruin her view and her enjoyment of her property. She has lost several family members to cancer and has cancer herself. Thus she has health concerns with the power line project. Tr. 1776-1777.

Ms. Nicole Thomas, 190 Hoge Summit Road, related that after she married her husband they purchased the house where they presently live. After saving their money they purchased another 92 acres adjacent to their present home. They then began to build their dream house, a log home, three years ago with her husband doing the contracting. They are 90 percent finished and plan on moving in by the end of the year. They were contacted by TrAILCo and told their new house is partially on the right-of-way for a 500 Kv line, and their present house is within 600 feet of the right-of-way. Initially the TrAILCo representatives were pleasant and interested in moving the new house. They were asked to collect bids for moving the house, and spent two weeks doing so. When they presented the itemized bid to the representatives, Mr. Peterson and Ms. Morrison, they expressed surprise at the amount and said they would get back to them. At the next meeting Mr. Petersen accused them of talking to the media about their situation. He went through the bid and crossed out items he said would be paid. Then they were told that the offer then made was final and would expire in 24 hours. The very next day a neighbor who had refused an initial final offer received a second offer even though they had been told that there would not be any further offers. She stated that she had no basis to trust TrAILCo. Tr. 1777-1782.

Mr. Richard Maize, 901 Thomas-Eighty Four Road, Eighty Four, voiced his opinion that Allegheny Power wants the lines built in time for the rate caps to expire, and their sole goal is to sell and transport power to areas that are deficient in generation. He would not object to paying for the lines if they were needed in his area, but they are not. He is being asked

to bear the burden of paying for the lines and their resulting intrusion into his community with no discernable benefit. Tr. 1782-1784.

Ms. Jennifer Hixon, 901 Thomas-Eighty Four Road, Eighty Four, testified to many of the concerns previously expressed by other witnesses. Tr. 1784-1791.

Mr. Wycliffe Walker, 173 Mulberry Hill Road, Washington, testified that he is not directly affected by the project, but has carefully read Allegheny Power's justification for the project, and found it vague and unpersuasive. He urged rejection of the project. Tr. 1791-1792.

Ms. Pat Maize, 35 Blair Road, Eighty Four, testified that she is not directly affected by the project, but asked for consideration of her son, Richard Maize, who had testified earlier. He has suffered from childhood diabetes from age 10, and recently received a kidney from his brother. He will be on immunosuppressant drugs for the rest of his life and is susceptible to other illnesses. She believes he will have to move if the project is built. Tr. 1792-1796.

Ms. Joan Barringer, 133 Lindley Road, Canonsburg, testified that her grandparents signed an agreement with West Penn Power Company because they were told that people at the "Mill" would suffer if they did not sign. Tr. 1796-1797.

Ms. Betty O'Brien, 110 Wilson Road, Eighty Four, testified to many of the same concerns as prior witnesses. Tr. 1797.

Ms. Linda Neill, 128 Wilson Road, Eighty Four, testified that she, her husband, Kurt Neill, and his brother Keith, own a hundred acre farm that has been in the family for 82 years. She described surveyors sneaking onto their property after being told to stay off, and then asserting that they had a right to be there. She is concerned with the effect of the project on their farm and water supply. Tr. 1798-1800.

Dr. Mike Faust, 305 Quarry Road, Washington, testified that he has a general pediatric practice. He was alerted to the TrAIL project by a friend. He began pulling articles off the internet and ended with one by Gerard Draper that involved the study of 9,700 cases of childhood leukemia. He found an association with proximity to power lines, and a higher incidence of the disease closer to the lines. Dr. Faust reached the conclusion that it is a bad idea to put power lines near populated areas, and a bad idea for your backyard. Tr. 1800-1804.

Ms. Rose Friend, 199 Jefferson Avenue, Marianna, testified that she opposes the TrAIL project because it will adversely affect the landscape and view from property she owns on Highland Ridge Road and, thus, adversely affect the value of the property. Tr. 1807-1810.

Mr. Robert Simmons, 170 Simmons Road, Peters Township, testified that he is a fifth generation fruit and vegetable grower. His property currently has two large power lines converging on it. He has attempted unsuccessfully to learn whether the TrAIL project will affect his property. He related difficulties he has experienced in irrigating his fields that are under the power lines. His family was successful in requiring higher towers across their property. He also related that cell phone antennae can be placed on top of the electric line towers, and that can affect land use also. Tr. 1810-1812.

Mr. Chuck Grese, One Kings Lane, Venetia, testified that he and his wife searched for a year for the five-acre lot they now live on. Six months ago he learned that Allegheny Power claims to have a right-of-way over his property, and that they plan to clear a large portion of his lot for a 138 Kv line. He has asked for proof of the easement, but has not received any. He has refused access to the property, but trespassers have come anyway. A week before the hearing a TrAILCo representative called his wife and stated that he had talked to Mr. Grese, had made him a cash offer for the right-of-way and asked for access on the property. She refused, but surveyors were there within an hour. She yelled and they ran, leaving wooden stakes behind. They were seen on the property two times afterwards. He also stated that he had requested a site visit on either a weekday evening or weekend, but was told that no "off-hour" site visits were available. He asked the Commission for help to stop the unwanted intrusions from TrAIL personnel. Tr. 1814-1817.

Mrs. Sharon Kramer, pastor of the Living Epistles of Christ Ministries, and her husband, **Mr. George Kramer**, 88 Wilson Road, Eighty Four, approached the issues in this case from a Biblical perspective. She asked that Allegheny Power carefully consider the testimonies of the persons appearing at the public input hearings and the impact on them caused by disrupting lifestyles generations long. He stated his opinion that the property owner were being lied to and cheated out of their inheritances. Tr. 1817-1820.

Mr. Christopher Seymour, 2702 Burham Street, Pittsburgh, testified that he is group chair of the Allegheny Group of the Sierra Club that represents a 13-county region in Southwestern Pennsylvania. He asserted that the TrAIL project was all about the use of coal-fired generation to generate profits for Allegheny Energy. The coal-fired generation also emits pollutants into the air and water, and creates toxic wastes. He stated that his group's greatest concern was the cause of environmental injustice that results from valuing corporations more than people. Increasing rates and intruding on private property where the persons paying the rates and owning the property receive no benefit is unjust. He asked that the PUC consider humans over corporations. Tr. 1822-1825.

The **eleventh public input hearing** was held on September 20, 2007, starting at 1:00 pm in Building Number 2 of the Washington County Fair and Expo Center. Twenty-six individuals testified with twenty-four opposing and two in favor of the TrAILCo project. The hearing adjourned at 5:14 pm.

Mr. Mark Critz, 647 Main Street, 4th Floor, Johnstown, PA 15901, testified that he is district director for Congressman John P. Murtha. He stated that the Congressman is opposed to the TrAIL project. The bulk of the statement addressed efforts by the Congressman to repeal portions of the 2005 Energy Policy Act that deals with designations of National Interest Electrical Transmission Corridors ("NIETC"). He stated that the Congressman remains opposed to the FERC usurping the authority of state regulatory bodies to decide power line siting cases. Tr. 1845-1849.

Ms. Norene Halvonik, 206 Social Street, Perryopolis, testified that she is the chairperson of the Board of Directors of the National Road Heritage Corridor of Pennsylvania. The National Road, Route 40, is America's first interstate highway and the "road that built the nation." Because of the historic significance of the National Road, the corridor in Pennsylvania is a state-designated Heritage Area. She testified that the National Road Heritage Corridor of Pennsylvania is a 501(c)(3) corporation established in 1995 to preserve, protect and interpret the historic corridor for current and future generations of Americans. The corridor includes the roadway and its adjacent historic structures as well as its view shed or visual context area. She expressed the opinion of her organization that towers of the scale of the proposed project as well as cell phone towers and wind turbines have no place on the historic landscapes. She asserted that tourism is the number one industry in Pennsylvania, and the proposed intrusion of the TrAIL project along a 400 foot swath will continue the degradation of the scenic nature of the National Road. Tr. 1849-1853.

Dr. Ann McCune, 45 Chesterfield Lane, testified that she graduated from the University of Colorado with a degree in molecular, cellular and developmental biology. She received her Doctor of Medicine degree from the University of Colorado, did an internship in internal medicine at the University of Colorado and a residency in dermatology at the University of Pittsburgh. She stated that she is a physician, mother, wife and affected property owner. She lives with her family on a 161-acre farm that will be bisected by the TrAIL project. The proposed line will come within 300 feet of a Revolutionary War cabin that they use for entertaining. It will come within 300 yards of their house, and approximately 200 yards from an occupied tenant house. Two-thirds of their fields will have a line through them, and she would not be comfortable passing near or under the lines. While the power company asserts that the lines will not pose a health hazard, her review of the literature causes her concern for the safety of their child and the child of their tenants. As a result of her study, she is convinced that if the project goes ahead, they will move. Tr. 1853-1860.

Mr. Barron T. McCune, Jr., 45 Chesterfield Lane, testified to the improvements he and his wife have made to their property. He related that his father, who granted an easement to West Penn Power in 1978 had no idea of the size of the line that would be proposed to be

built, or the potential adverse health effects. He concluded by stating that they had made their improvements to their property not realizing the potential disruption that could be caused by a 30 year old easement. Tr. 1860-1863.

Ms. Susan Pool, 72 West Franklin Street, Waynesburg, testified that she is a geologist and GIS specialist, and is employed by the West Virginia Geological and Economic Survey. Her first concern was health related because of her belief that if the project is built, it will ensure the future of coal mining and coal-fired electrical generation in the region. Both industries have fouled the air and water of the region. Also she was concerned about the potential for increased use of pesticides and herbicides. Her second concern was the potential interference with established land use. Her third concern centered on historic sites, especially the Warrior Trail. Her fourth and final concern related to the burden imposed on the residents of Greene County with little or no reciprocal benefit. Tr. 1872-1877.

Mr. David Piroch, 648 Barr Run Road, Marianna, testified that he is on permanent disability from Cargill, Inc. He testified he graduated from Penn State University with a degree in animal bio-science and dairy production. He suffers from Parkinson's disease, seizure disorder and panic attacks. From 1985 to 1994 he worked for Agway Inc. as a feed and crop specialist. His responsibility included making herbicide recommendations to a client base of over a hundred clients. From 1994 to 2002 he was a dairy specialist for Agway and was certified as an American Registry of Professional Animal Scientist. After Cargill acquired Agway, Mr. Piroch was a dairy feed consultant from 1994 to 2006 when he went on disability. One of his concerns is with stray voltage. He stated that cattle can detect a very low voltage that can lead to a refusal to eat and drink, with additional undesirable results. Then he moved on to herbicides and stated that only the active ingredients are tested for safety. He noted studies that show inert ingredients, which are not identified on labels, can be biologically or chemically active and interact to create an unintended toxic compound. He noted that some popular herbicides can drift with a breeze. Many should not be used around streams or ponds. He expressed concern over the identity and competency of anyone applying herbicides. Tr. 1877-1892.

Ms. Cheryl Piroch, 648 Barr Run Road, complained that public officials were unaware of Allegheny Power's plans to build the TrAIL project when they applied for a building permit for their home. She testified that she and her husband spotted surveyors on their property on August 21, 2007. It took four requests and a call to their lawyer to get them to leave. She also recounted her dealing with Ms. Bonita Rockwell, land agent for Allegheny Power. They waited for answers to their questions for 66 days after their first meeting with Ms. Rockwell. Then, Ms. Rockwell called them three days after the surveyors were persuaded to leave. She stated that surveyors would be in Greene County and asked for permission for them to come on the Piroch property to stake the proposed right-of-way. Ms. Piroch informed her they were in Washington County and that no one was permitted on the property until the plan was approved by the proper authorities or they had a court order. Ms. Rockwell insisted it would be of benefit to them to know where the line would go, and she was authorized to make an offer for the easement although they already had an easement. Ms. Rockwell arrived at their home on September 10, 2007 along with a gentleman named Jim. They presented an offer to the Pirochs of \$54,486. If they signed they would receive 10% immediately and the rest if the line was built. The agreement required them to withdraw any protest and to cease opposing the line. They would also have to agree to forego any claim for damages resulting from the construction of the line. Ms. Piroch stated that the offer was declined. Ms. Piroch has reviewed the right-of-way agreement granted by the previous owner of the property and can find no indication of where the right-of-way would be located on the property. Then the Pirochs learned that the surveyors were back on their property on either September 13 or 14, 2007, and marked out a right-of-way. Ms. Piroch called Ms. Rockwell who responded that the surveyors do not know where the property lines are. Ms. Piroch declared the actions she has witnessed to be, at the least, unethical and unprofessional. She related how she came to own the property with her first husband and the work they did to improve the property. Her first husband died of a brain tumor in 1992. She remarried in 1998, and in 2001 they began to build on the land again. While they were aware of the West Penn easement, because no effort was made to use it in the 20 years she had owned the land, she believed it had been abandoned. While their house is apparently not on the proposed right-of-way, it is right beside it. She stated that Allegheny Power would not agree to move the house, and they cannot afford to move it. Tr. 1893-1902.

Ms. Margaret Moran, 352 Urquhart Road, Scenery Hill, testified to her concerns about potential adverse impacts to her water supply. She also noted the purchase of property and the erection of a building by WRB Walbridge in Scenery Hill. She stated that WRB Walbridge is a construction company that serves the utility industry, including Allegheny Power. She noted the presence of heavy equipment on the site. Tr. 1903-1911.

Ms. Laurie Nicholl, 189 Hoge Summit Road, Eighty Four, testified she is a business owner of Nicholl Brandt Communications, Inc. She related her review of articles indicating that conservation and energy efficiency are cost effective and the least polluting methods available to reduce the demand for electricity. She testified that she has worked for or with non-profit organizations for 20 years. She expressed surprise at the amounts of money Allegheny Power was paying for advertising in local papers. She was particularly incensed at the ads that appeared on August 29, September 5 and September 11, 2007, featuring former chairman of the PUC Bill Shane. She expressed the opinion that the damage release agreements TrAILCo was offering to landowners gave it greater authority than it had with the original easement agreements. She believes that the new agreements are being used to correct back mistakes. Finally, she wanted to know how the public could continue to communicate with the Commission as the public comment period was coming to an end, even though it is anything but clear where the power lines would ultimately go if approved by this Commission. Tr. 1914-1926.

Mr. Charles Klein, 196 Hoge Summit Road, Eighty Four, testified that he and his wife live at the corner of Young and Hoge Summit Roads, and their lot ends about 150 feet from the proposed right-of-way on Young Road. He asked why they did not receive any notice from Allegheny Power or TrAILCo. They are concerned about the safety of their well water and the value of their property. Tr. 1927-1928.

Mr. Tom Wolper, 3959 Beechwood Blvd., Pittsburgh, testified that he is the conservation chair for the Pennsylvania Chapter of the Sierra Club. He was appearing to present the testimony of a Nancy Parks, clean air committee chair, who was not available because she was appearing before the Environmental Hearing Board. The statement deals with air pollution

resulting from the operation of fossil fuel power plants. In another statement he urged the PUC to consider improved standards in planning transmission facilities. Tr. 1928-1934.

Ms. Lisa Scherer, 217 Grable Road, Marianna, expressed concern for the loss of forested land resulting from the construction of the TrAIL project. She ended her presentation with a quote from Native American Chief Seattle: "Man did not weave the web of life; he is merely a strand in it. Whatever he does to the web, he does to himself." Tr. 1934-1941.

Mr. James Sanford, 10 Sugar Run Road, Eighty Four, testified that he is an electrical engineer with a degree from the United States Naval Academy. He is a licensed professional engineer in Florida and in Pennsylvania, and is a senior member of the Institute of Electrical and Electronic Engineers. He, his wife and his father, are all amateur radio operators. He stated at the outset that he supports improvements to the infrastructure and, specifically, improvements to the reliability of the electrical grid and the clean use of coal. However he concluded that the present project is the wrong answer to the stated problem. Tr. 1943-1945.

Mr. Sanford notes that the Applicant (TrAILCo) cites seven instances of the need to improve transmission capability to the Mid-Atlantic region. He cites Mr. Gass' testimony at page 19 for the proposition that the main need for the project is to enhance the deliverability of power from the west to the east. (TrAILCo St. 4, p. 19, lines 3-4.) He asked what the benefit was for southwest Pennsylvania. He also noted that need for the project was based on a need to improve service to the Route 19 corridor in Pennsylvania. The need was postulated on multiple simultaneous failures. In interrogatories to TrAILCo he asked what the backup was, and was told that the backup was rolling blackouts and voltage reductions. He concluded that there is no backup plan. He stated that he couldn't believe, as an engineer, that there is no plan B. Tr. 1945-1947, 1952.

Mr. Sanford noted that the Applicant referred to the 2003 blackout in the Midwest and East as justification for the present project. He testified that he reviewed the report of the task force that studied the event and found that the presence or absence of transmission lines had no effect on the event. The cause of the event was the lack of sufficient generation near the load

pocket of Cleveland. He noted that of particular concern was the lack of reactive power because it was a particularly hot day. The problem was exacerbated by the fact that banks of capacitors had been taken out of service for inspection. He explained that the capacitors are a temporary source of reactive power that could make up for a lack of generation near a load pocket. Based on his review of the Department of Energy ("DOE") documents he concluded that the proposed project would not have prevented the 2003 event. Tr. 1947-1949.

Mr. Sanford testified that the DOE reports noted that the long distance transmission with its attendant line losses increases the need for reactive power reserves. He noted he asked TrAILCo for the line loss per mile anticipated for the project lines, and was told it would be the same as for any 500 Kv line. He also noted that both the DOE 2003 blackout report and the 2002 Grid Study listed the best solution to load pocket problems was to locate generation near the load. Having driven through Virginia near the Loudon site he noted plenty of room to site additional generation. Tr. 1949-1051.

Mr. Sanford testified that in examining the description of the Prexy substation site he noted the presence of one 500 Kv line, one 500 Kv and two 138 Kv transformers and two 500 Kv breakers. He asked TrAILCo why there was a need for the second 500 Kv breaker, and has not received an answer. Tr. 1952-1953.

Mr. Sanford went on to express concerns that many others have raised regarding removal of trees, use of herbicides and the aesthetics of the project. He then discussed in detail the potential effect of the project lines on amateur radio operators. From the study he conducted he concluded that the amateur radio band he uses will be useless at his home if the line is built. He also stated that AM radio reception near the lines will be adversely affected. He asked the Applicant to provide a statement of the steps it would be taking to mitigate or prevent interference with radio reception around its lines and around the Prexy and the 502 Junction substations in order to comply with federal regulations. He was told he was asking for a legal opinion and no answer was provided. He asked this Commission to obtain the information. Tr. 1953-1958.

Mr. Sanford testified that if he had received answers to his initial questions he might not be testifying in the proceeding. He was told that his easement agreement specifies a 500 Kv line. He has examined the document and has found no mention of the size of the line. He also found no mention of any impact outside of the right-of-way. He noted that magnitude of the electrical interference falls off with a reduction in voltage. He referenced Mr. Fleissner's testimony to the effect TrAILCo tried to minimize the impact on residences. (TrAILCo St. 6, p. 6, lines 7-8.) He asked TrAILCo how, in light of the statement of Mr. Fleissner, it could reconcile the number of residences that are within 200 to 500 feet of the center line. He was told that residences built in the 30 years after the easements were obtained were weighted differently than the pre-existing residences. The Applicant refused to answer his request for the identification of those residences within 250 to 500 feet of the center line. Tr. 1958-1960.

Mr. Sanford noted that in his review of the DOE studies, undergrounding of high-voltage lines was considered feasible, but more expensive and effective for only 25 miles. He wondered why that alternative was not presented, especially considering the number of residences affected by the project. The most disturbing request in the application to him was the request to be able to move a line 600 feet from the center line. In his case, if the right-of-way agreement over his property is valid, the line could be moved over top of his house. He asked how the Commission would protect consumers if it should approve the project. Tr. 1960-1961.

Mr. Sanford asked that this Commission not grant the request to be exempt from local zoning laws. He noted he asked Applicant to explain its need for the power of eminent domain, and was told he was asking a legal question. He testified that every piece of correspondence or physical contact with a TrAILCo representative has been argumentative or in-your-face. When he asked for a written response to written correspondence he received a phone call from someone who yelled at him and told him he was unreasonable. He noted a letter from Mr. Seltzer stating that he was not a party in response to his question about electrical interference. He noted a discussion with TrAILCo land agent Mr. Peterson who became defensive when Mr. Sanford challenged his statement that the transmission lines were needed to improve local reliability. Mr. Peterson could not tell him where the lines were going, or where the towers would be. Because of his interest in where the line would be located he agreed to

allow surveyors on his property but asked for 24 hours notice of their arrival. Without notice the surveyors were on his property on September 3, 2007. They left stakes and ribbons, two of which were tied to tree leafs, not limbs. When his wife went to the local magistrate to lodge a complaint, she was told to expect it to get worse. He opined that the conduct he has experienced seriously negatively impacts the credibility of the whole application. He summed up his objections and requested that TrAILCo be required to escrow funds to dismantle any portion of the project that may be built should the eventuality occur that it cannot be completed. Tr. 1961-1966.

Mr. Eric Mark, 18 Sugar Run Road, Eighty Four, testified that he is a neighbor of Mr. Sanford. He detailed his conversations with land agent Mr. Peterson who assured him he was on the list of property owners who did not want surveyors on their property. He testified to seeing surveyors in the area on September 3, 2007, and detailed his conversation with them, reiterating that they were not to go on his property or Mr. Sanford's. He discovered later that in fact they did enter onto both properties. Tr. 1967-1970.

Ms. Lisa Palma testified to her negative experiences with TrAILCo land agents and surveyors. Tr. 1971-1977.

Mr. Ed Atman, 1718 Parkridge Road, Upper Saint Clair, testified that he is an engineer and supports the TrAILCo project. He stated that he believes that the 138 Kv lines and the 500 Kv line that supports load growth in western Pennsylvania are needed because of the construction along I-79. He also supported the construction of the 500 Kv line to provide transmission support to the east coast, and noted that it is not a simple matter to build a power plant. He noted that in making a major investment it is important to weigh the benefits to many against the detriments to a few. On cross-examination he stated that he works for a company that supplies products to electric power companies, including Allegheny Power. He acknowledged that Allegheny Power asked him to testify. He agreed that he was not offering expert testimony and that he had not done any reliability studies. He agreed that mills along the Monongahela Valley have closed, but noted considerable growth in the suburbs. The one detriment to the

proposed project that he would agree to was a potential for a decrease in property values. Tr. 1977-1984.

Mr. Michael V. Nixon testified that he is an environmental lawyer and consultant. He stated that he was appearing for the Center for Coal Field Justice. He stated that he was the primary author of a statement presented by the Sierra Club on August 29, 2007. Then he stated that he had brought “fully executed copies of the Part 1 testimony from August 19th . . .” that had been presented by Mr. Phil Coleman. He expressed his opinion that the anti-social behavior testified to by landowners under oath by representatives of Allegheny Power and its affiliates provides sufficient grounds to disqualify and dismiss and deny the present application. He expressed shock and dismay over several other matters, and asked for an investigation by the Attorney General and the Inspector General. Tr. 1986-1991.

The **twelfth and final public input hearing** convened at 7:00 pm on September 20, 2007, in Building 2 of the Washington County Fair & Expo Center. Thirty-nine individuals presented sworn testimony, all opposed to the TrAILCo project. The hearing adjourned at 12:05 am on September 21, 2007.

Ms. Frances Cooley, 324 Oak Spring Road, Marianna, testified that she is a mining engineer employed by Milltech Energy Services, Inc. She stated that she is an affected landowner and filed a protest. She noted in her protest that she already paid a high price to live in an area with poor air quality, referencing the need to have her vehicle undergo an additional emissions inspection. That allegation was denied in TrAILCo’s answer. As a result she offered a Pennsylvania Department of Transportation brochure detailing the additional tests required by vehicles based in Washington County, and her second exhibit was the receipt for the thirty dollars for the test that her truck passed. The second allegation of her protest that was denied by TrAILCo was that she is a beekeeper. She offered a photo of herself with beehives. She discussed the value of honey bees to agriculture and discussed studies that show negative effects on bees of magnetic fields. Other detrimental effects can occur to bees from herbicides brought back into the hives. Her hives and her garden are about 500 feet from where she understands the power line will go. She noted the high rate of return granted by FERC to Allegheny Power/

TrAILCo for all expenditures related to the project. She stated that if this were a break-even project she probably would not be objecting because she would assume it was probably needed. But the prospect of entities becoming rich by destroying other peoples lives has motivated her to protest. Tr. 2012-2022.

Mr. Richard J. Hoch, 1099 University Drive, Dunbar, testified that he is a small business owner and an assistant professor of geography and regional planning at Indiana University of Pennsylvania. He testified that he earned a master's degree in the application of geospatial data and methods in 1999 and a Ph.D. in planning and regional development in 2005, both from the West Virginia University. He is a member of various regional planning associations and is a Certified Flood Plain Manager. He stated that being a ratepayer of Allegheny Power, a concerned citizen and a professional land-use planner, he felt compelled to provide his view as to why the environmental impact documentation provided by TrAILCo was inadequate. First he discussed the limitations of using GIS and its associated data sets as the primary method for environmental assessment. He credited the authors of the TrAILCo Exhibit JH-1 as explicitly stating the data used was incomplete and insufficient for accurate calculations. As a result he concluded that the large majority of the report should be considered incomplete and insufficient. Secondly he pointed out what he considered to be the inappropriate use of data sets. Finally he identified environmental and topical components that are missing from the report. He noted that a more detailed data set was available from the Southwestern Pennsylvania Commission, but was not requested or used by TrAILCo. He faulted the report for having no comprehensive listing of the construction impacts, maintenance impacts, cumulative impacts and secondary impacts. Another matter not addressed is groundwater. He noted that data regarding registered wells and springs is available from the Pennsylvania Topographic and Geologic Survey, but it is not listed in the report. Agriculture security areas data is available from the Southwestern Pennsylvania Commission, but the report indicates that data for Washington County is not available. Underground mining data is available from the Pennsylvania Department of Environmental Protection, but apparently was not used. The only data source for recreational trails was one produced for West Virginia. The data is also available for Washington and Greene Counties from the Southwestern Pennsylvania Commission. He noted that no socioeconomic data was listed in the report. He concluded that GIS alone is not an

appropriate tool for determining environmental impacts, but should only be used as a precursor to detailed on-the-ground field survey work. Tr. 2024-2037.

Mr. Kenneth Gayman testified that he is a past president of the Mon-Yough Chapter 3 of the Amateur Archeologist of the Eastern State(s) Archeologist Federation. He listed various sites where the group worked. He identified two sites where the proposed power line(s) will cross. He also exhibited numerous artifacts that he had collected from various sites. He related some of the history of Native Americans in the area of the TrAIL project. He noted that he failed to find any mention of the hiring of an archeologist to examine any of the significant sites in the area of the project. He urged the PUC to reject the applications. Tr. 2037-2045.

Ms. Lenora Dingus testified that she is Haudenosaunee, Seneca. She stated that she is a professor of Native American history and anthropology at a local college. She is a co-founder of Echoes of the Four Directions, a Native American cultural information and reference source. She stated that she is a retired federal employee and current chairperson of the Pittsburgh Federal Executive Board Native American Heritage Committee. She discussed the organization of the Seneca Nation and the Iroquois Confederacy, and related it to the present organization of the federal government. She related that in the tribal organization, a simple rule, or belief system, rule the organization. The rule is that every decision that is made, whether small or great, must be thought through and understood and consideration given to how the decision will affect the next seven generations to come. Only after the matter is thought through and discussed as to its impact on the next seven generations is a decision finally made. She noted that most Native Americans have an affinity for the earth, and recognize that they are not owners but caretakers. She, in essence, urged the Commission to require TrAILCo to abide with and comply with the American Indian Religious Freedom Act, the Native American Graves Protection and Repatriation Act of 1990 and the Pennsylvania Historic Burial Preservation Act. Tr. 2046-2052.

Ms. Bonnie Lindley, 211 Lindley Road, Scenery Hill, testified to her review of several significant power blackouts in recent history. Her research revealed the primary cause

was human error, not a lack of transmission capacity. She stated that she does not believe that the TrAIL project's goal is to prevent future power failures, but rather it is a purely for-profit venture. She closed by stating that if the technology exists for landing on the moon and occupying a space station for decades, creating an artificial heart and implanting electrodes to adjust brain waves and the heart muscle, then "... Allegheny Energy and its affiliates can develop transmission alternatives other than 180-foot, ugly steel towers that dramatically diminish the value and beauty of our community and our home." Tr. 2055-2059.

Mr. Chad Brogley, 141 Hemlock Drive, Peters Township, testified that he is a police officer employed by Carnegie-Mellon University. He stated he has a bachelor's degree in Administration of Justice and graduated from the Pennsylvania Police Academy in 2003. He received a certification from the Pennsylvania Commission on Crime and Delinquency as a terrorism awareness instructor. He offered his observation that the electrical grid is decentralized and the loss of one small part does not adversely affect the operation of the whole system. He opined that the loss of a long 500 Kv line could, however, have a dramatic impact. Tr. 2059-2062.

Mr. Lou Reynolds, 219 Elm Road, Avella, testified that he is a fishery biologist employed by the U.S. Environmental Protection Agency. He is opposed to the line because it will simply encourage consumers to use more electricity. He related that he searched the website of the Interstate Renewable Energy Council in vain for any mention of any Allegheny Power or West Penn Power involvement in any conservation program. He also noted that the Duke Energy save-a-watt program is expected to produce 1700 megawatts of energy efficiency. Duke Energy's CEO is co-chair of the Energy Efficiency Leadership Council. He could not find any representative from Allegheny Energy or TrAILCo on the Leadership Council. He concluded that a decentralized or distributed generation system is more secure than a centralized grid that is in effect what the TrAIL project proposes. Tr. 2062-2066.

Mr. James Johnson, 162 McBride Road, North Strabane Township, testified that he is a retired school superintendent. He and his wife received a letter from Mr. Jay Ruberto on or about May 10, 2007, advising that their property was along the proposed line route. The letter

further stated that an agent would be contacting them and that access to their property would be required for the purpose of preliminary engineering. He immediately called Mr. Ruberto and told him no one would be allowed to access the property without a court order. A few weeks later a TrAILCo agent called to clarify and confirm his communication, which he did. The agent stated that he would not trouble them any further. On September 4, 2007, he discovered wooden stakes with blue ribbon attached placed on his property. He described his property as a partially wooden ten-acre tract. Following and measuring the staked-out right-of-way, he concluded that the power line would take about half of his property and make it unsuitable for further development. Tr. 2070-2073.

Mr. Jack Minnick, 1610 East National Pike, testified that his house, situated on twelve acres, was intentionally designed to capture the “remarkable grandeur of the landscape.” The proposed power line does not cross his property but cuts through his mother-in-law’s 70-acre farm. He stated that the power line will forever destroy the view on three sides from his house. He expressed grave concern over the potential loss of value for his property. He recalled the testimony of former PUC Chairman Bill Shane regarding having two 500 Kv lines in his backyard. He related that he called Mr. Shane and asked him about the two 500 Kv lines. Mr. Shane replied that he did not have a backyard, but lived in an apartment. He related that Mr. Shane told him the two lines were three to four miles away and that the power plant was five miles away. When asked about a newspaper article regarding his statement, Mr. Shane replied that he must have been misquoted. As an Allegheny Power customer, he stated he opposed the offers of money to landowners for rights that Allegheny Power allegedly already owns. Tr. 2078-2093.

Mr. John Balasko, 734 Halleck Road, Fairmont, West Virginia, testified that he and his wife are affected by the TrAIL project in West Virginia. He recounted some of their experiences with the West Virginia and Virginia proceedings. Tr. 2084-2090.

Ms. Billie Cowell, 1214 Garards Fort Road, Waynesburg, testified that she is a farmer and a bus driver. She and her husband, **James Cowell**, operate the Frosty Springs Farm. The Farm, which includes portions of two other properties that they lease, operates under

conservation programs from the "Soil Conservation" and the "NRCS." Qualification for these programs entails complying with certain requirements. One of the leased farms, the Morris farm, consists of 208 acres, and has received the status of a Bicentennial Farm as it has been farmed by the same family for over 200 years. The Frosty Springs Farm has been nominated for Grassland Farm of the Year. The farming operation is located in the historic village of Fordyce. The proposed 500 Kv power line crosses all of the farms near Fordyce, and she has great concerns with the adverse effects that the line will present. Tr. 2090-2093.

Ms. Brenna Cipoletti, 141 Sheidler Road, Amity, testified that she is a teacher in the Central Greene School District. She read a letter from the Teachers Union of Southwestern Pennsylvania State Education Association stating the Union's opposition to the TrAIL project. She also read a resolution of the Board of Directors of the Central Greene School District that opposed the project. Tr. 2096-2101.

Mr. Dan Martin, 124 Breezewood Drive, Venetia, testified that he is an executive vice president with the Dick Corporation, is very familiar with the power generation industry and has spent half of his 33 years in the construction of power generation facilities. He outlined many of the questions and concerns others have expressed, and noted that the power plants in and around Washington and Greene Counties have not been operating at their capacities. He concluded that they could not use the present capacity locally, and thus do not need any more. He noted that the existing plants are major contributors to local pollution problems, and that operating the plants at a higher capacity will only accelerate the pollution problems locally for the benefit of persons far away. Tr. 2114-2125.

Mr. Sean Dobich, 899 Ten Mile Road, Marianna, testified that he is an account executive with FedEx Services. He disputed Allegheny Power's claim that the line is for growth in Southwestern Pennsylvania. If the line is built, he stated it will scar some of the most scenic and historically important parts of this country. He concluded that the proposed line will be of little benefit to Pennsylvania and the negative effects on property values and the creation of health risks greatly outweigh any benefits. Tr. 2125-2127.

Mr. Alexander Levy, 63 Wilson Road, Scenery Hill, testified that he and his family moved to their present home twelve years ago, an event chronicled by his wife, Jean Marie Laskas, in a series of essays published in the *Washington Post*. He and his wife are both writers, and she is a professor at the University of Pittsburgh and he is a psychologist in private practice. In his practice he has contracts with the City of Pittsburgh to screen applicants for the Bureau of Police, to counsel troubled City employees and to be available to go to a site of a standoff to provide consultation to the police hostage negotiating team. As a consequence he has an interest in and has studied what goes on for hostages. He testified that the affected people of Washington County are hostages to the phrase people need power. He noted the effect of long wall mining on the community with houses sinking and wells going dry. The long wall mining was justified by the need for coal to produce power. Now come the high capacity power lines to mar the landscape and degrade property values because people need power. He noted growing feelings of helplessness, rage and loss of familiar routines in his community. He observed that he was seeing characteristics typical of people held hostage. He stated that people indeed need power, power over their lives, their property and their futures. Tr. 2128-2134.

Ms. Kathy Kennedy, 2 Kreiling Lane, Eighty Four, testified that she and her husband own a small mobile home park at the bottom of a hill on Lively Road where a tower is proposed to be located. They do not have public water or sewage. Anything sprayed uphill from their park will ultimately end up in their aquifer and in their well water. She stated that if the lines go through, their business is done; no one will rent from them. Tr. 2138-2139.

Ms. Connie Smith, 357 Highland Road, Marianna, testified that she has an auto body shop and is a notary. Her first subject involved a community park project in the town of Marianna funded by a federal grant to the local United Mine Workers Union. The forty-five acre site is an old mine dump. Parking lots were roughed in by December 2006, and twenty-two acres are ready to be finished. Apparently all is on hold because Allegheny Power proposes to place its power line through the middle of the site. Her second subject related to a propane gas line explosion and fire that occurred in 1977. She noted that the proposed project crosses several large propane and natural gas transmission pipelines. Her third subject covered the construction

of her present home and business, and her view of the negative impact the proposed project will have on her and on her neighbors and family members. Tr. 2143-2152.

Mr. John Milligan, 20 Carlton Drive, Eighty Four, testified that he is seventeen and a senior at Bentworth High School. His grandfather owns property on Patterson Road in North Strabane Township that is affected by the proposed project. Both of his grandfathers are farmers, and he is interested in farming also. He stated that the power line project was a very big deal for people his age because, if built, it will be a permanent presence on the landscape. He opined that if the line is built, the whole Eighty Four area will be devastated and the economy will go downhill. Many of his peers are expressing a desire to leave the area. He asked that the Commission consider the concerns of younger people in making its decision. Tr. 2155-2157.

Ms. Alvira Capone, 930 Thomas-Eighty Four Road, testified that her property is very close to the proposed Prexy substation site. When she and her husband retired they could have gone anywhere, but chose Washington County where he raised horses and she continues to raise Airedales. She gave up raising horses when her husband became ill and then he died four years ago. Her daughter has a brain tumor and now lives with her. She stated that if the power lines are built, she and her daughter will move. Tr. 2160-2163.

Mr. John Yesenosky, 238 Garards Fort Road, testified that he is a retired postal employee and a bus driver for Zalar Busing. He argued that need for the proposed project should be based entirely, or at least mostly, on need for the transmission capability in Pennsylvania. In consideration of the siting of the power lines he urged the Commission to sort out those who simply do not want the lines on their property from landowners who make legitimate points and have issues of real substance. He credited this Commission with doing a good job in managing electric deregulation in a way that provides Pennsylvanians with lower rates than neighboring states. However, he stated that approving the present applications will allow the export of more of Pennsylvania-produced power and Pennsylvania rates will go up, or be "levelized." He also noted that current transmission lines were sited and certified on the basis of benefits and costs balanced within the same jurisdiction. He stated that approving the TrAILCo applications would reverse this. He contended that the only option presented by TrAILCo is the one "hatched" 40

years ago. The lines proposed 40 years ago were "sold" to local property owners on the basis that they were needed for local industry to sustain local jobs. He presented copies of all of the easement agreements on file in Greene County. He stated that he agrees with the National Energy and Technology Laboratory ("NETL") that calls the current electrical grid the last century's grid. He noted that new clean production and smart grid regulations will take effect in 2014. He commented that being grandfathered in by 2011 has never been so potentially profitable. The NETL has described a modern grid as being more reliable, more secure, more economic and more efficient. He provided considerable detail regarding the NETL vision of a modern grid. He concluded by stating the challenges presented by the growth in demand for electricity are manageable through present technology. Through collaboration and cooperation the nation's power infrastructure can be renewed in a phased, affordable way. Tr. 2164-2177.

Ms. Rose Bigley, 90 Hallam Road, Washington, testified that she is a mining engineer, an Allegheny Energy customer, an Allegheny Energy stockholder, and an opponent of the present project. She cited health concerns and loss of property value as her reasons for objecting. She stated that she believed that if the project is approved Allegheny Energy should be required to buy any affected property at its market value before the power line was announced. Tr. 2178-2181.

Ms. Mary Luciano, 20 Luciano Lane, testified that she is retired from the U.S. Army Corps of Engineers. Her property was viewed on site visits conducted on September 18, 2007. She presented two aerial views of her property that had been provided to her by Allegheny Power or TrAILCo that show the proposed power line. She marked out where the propane transmission line is located and also the location of two gas lines, her gas well and an Indian burial ground. Tr. 2181-2182.

Mr. Demo Agoris, 153 West Pike Street, Houston, testified he objected to the proposed project because it is based on archaic technology and that better alternatives exist. He stated that he has been a member of the Institute of Electronic and Electrical Engineers for over 32 years, and transmitting electric energy over wires is very inefficient. Power should be generated where it is needed. Tr. 2182-2187.

Attorney Willard Burns read a comment from **Ms. Helen Jo Ann Fowler**, 182 Hoge Summit Road, Eighty Four, to the effect that she is disabled with chronic obstructive pulmonary disease. She stated that her house is within 600 feet of the proposed location of the power line. She stated that her physician has advised her to move if the line is built. She also expressed concern for the safety of her horses as the line would be placed in the field where the horses graze. Tr. 2188-2189.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In Re: Application of Trans-Allegheny	:	
Interstate Line Company (TrAILCo)	:	
For approval: 1) for a certificate of public	:	
convenience to offer, render, furnish or	:	
supply transmission service in the	:	A-110172
Commonwealth of Pennsylvania;	:	A-110172F0002
2) authorization and to locate, construct,	:	A-110172F0003
operate and maintain certain high-voltage	:	A-110172F0004
electric substation facilities; 3) authority	:	G-00071229
to exercise the power of eminent domain	:	
for the construction and installation of	:	
aerial electric transmission facilities along	:	
the proposed transmission line routes in	:	
Pennsylvania; 4) approval of an exemption	:	
from municipal zoning regulation with respect	:	
to the construction of buildings; and	:	
5) approval of certain related affiliated	:	
interest arrangements	:	

INTERIM ORDER ESTABLISHING GUIDELINES FOR LITIGATION OF THE CASE

This interim order establishes guidelines for the further litigation of this consolidated case. The first part of the order provides our rulings on objections to testimony and exhibits presented at the public input hearings. The second part outlines requirements for parties to meet prior to the formal evidentiary hearings.

Rulings on Objections to Public Input Statements and Exhibits

This part of the interim order provides rulings on outstanding objections to the testimony, statements and exhibits presented at the public input hearings and site visits. The first pleading discussed is the Energy Conservation Council of Pennsylvania's Objections to Written

Statements and Exhibits Offered by Witnesses at the Public Input Hearings. A letter response was provided by counsel for the Trans-Allegheny Interstate Line Company. The second pleading is the Trans-Allegheny Interstate Line Company's Objections to Written Statements and Exhibits Offered by Witnesses at the Public Input Hearings. Responses were received from the Energy Conservation Council of Pennsylvania, the Office of Consumer Advocate and individual witnesses.

TrAILCo has interspersed its view of the law applicable to the admissibility of exhibits and testimony presented at public input hearings before the Commission in its objections. TrAILCo notes that Pennsylvania courts have ruled that the general rule is that hearsay testimony or evidence is inadmissible in administrative agency proceedings. The primary reason being that hearsay is defined as an out of court statement offered in a court proceeding for the truth of the facts or opinions presented in the statement. If such statements are allowed into a record, the opposing party is denied the opportunity to confront, or question, the proponent of the fact or opinion.

The OCA, in response to TrAILCo's objections, has responded in detail to TrAILCo's comments on hearsay. The OCA recites the definition of hearsay from the Pennsylvania Rules of Evidence, Rule 801. Then OCA notes that the Pennsylvania Administrative Procedure Act has addressed the issue of hearsay evidence by stating that "Commonwealth agencies will not be bound by technical rules of evidence, and that all relevant evidence of reasonably probative value may be received." (Emphasis supplied) 2 Pa. C.S. §505.

The OCA references this Commission's statement regarding the role of hearsay testimony in the Zapatka v. Columbia Gas of Pa., Inc.:

In the application of the hearsay rule we are mindful that administrative proceedings are not generally subject to the strict application of the rules of evidence and that hearsay testimony may be admitted over objection. However, if the hearsay testimony is admitted over objection, that testimony, standing alone is insufficient to support a judgment.

Zapatka v. Columbia Gas of Pa, Inc., 82 Pa. P.U.C. 138, 144 (1994), citing Re: Duquesne Light Company, 57 Pa. P.U.C. 313, 317 (1983).

The ECC, in its response to the TrAILCo objections also argues for a relaxed standard on hearsay. It points out that a case cited by TrAILCo, Anderson v. Pa. Dept. of Welfare, 468 A. 2d 1167, 1169 (Pa. Cmwlth. 1973), acknowledges a relaxed standard in administrative proceedings. The ECC also points out that the hearsay rule is limited also by its exceptions. E.g. Pennsylvania Rules of Evidence, Rule 803. Hearsay offered for some purpose other than the truth of the matter asserted is admissible. Commonwealth v. Puskar, 559 Pa. 358, 368; 740 A. 2d 219, 225 (1999).

TrAILCo has objected to several of the proposed exhibits on the basis that the exhibits were not properly authenticated or offered. The OCA has responded that this Commission has taken the position that it is in the public interest that all litigants, particularly unrepresented litigants, be provided a meaningful opportunity to be heard. The ECC argues that strict adherence to rules on authentication is not required in administrative agency proceedings, citing Gasparro v. Pa. P.U.C., 814 A.2d 1282, 1284 n. 3 (Pa. Cmwlth. 2003), and Pennsylvania Rule of Evidence Rule 901.

TrAILCo has also discussed the requirements for qualifying as an expert under the applicable Pennsylvania law. In doing so, TrAILCo stated its opinion that no witness appearing at a public input hearing established any specialized knowledge or expertise to qualify as an expert.

We reject TrAILCo's proposed strict application of evidentiary rules intended to be applied to courtroom proceedings where all parties are represented by able counsel. We adopt as our understanding of this Commission's view of the application of the rules of evidence the outline presented by the OCA and the ECC. Further, we refuse to adopt TrAILCo's limited view of what knowledge, experience and education is necessary for a person to possess expertise in a subject area. We are fully aware that unsupported hearsay does not constitute substantial evidence, and that any finding or conclusion we reach must be supported by substantial evidence.

We also acknowledge a responsibility on our part to exclude duplicative material and to try to otherwise manage the size of the record.

Objections of the Energy Conservation Council of Pennsylvania

The objections of the Energy Conservation Council of Pennsylvania (“ECC”) are limited to the testimony presented by Mr. William Shane, former Chairman, Commissioner and Chief Administrative Law Judge of the Pennsylvania Public Utility Commission. He resigned from the Commission in September 2006. Mr. Shane appeared as a witness in support of the power line project at a public input hearing held on August 29, 2007, in Washington County. His image appeared in advertisements urging support for the power line project that appeared in newspapers published in the area affected by the project. ECC Objections, pp. 1-2.

ECC’s first objection to the testimony of Mr. Shane is that his appearance at the public input hearing constituted a violation of Section 301(b) of the Public Utility Code, 66 Pa. C.S. §301(b). Subsection b delineates qualifications and restrictions for commissioners. The portion of Section 301(b) relied on by ECC reads as follows:

Every commissioner . . . is prohibited from accepting employment with any public utility subject to the rules and regulations of the commission for a period of one year, and every commissioner is prohibited from appearing before the commission on behalf of any public utility subject to the rules and regulations of the commission for a period of three years, after terminating employment or service with the commission.

Section 301(b) of the Public Utility Code, 66 Pa. C.S. §301(b).

ECC argues that the Trans-Allegheny Interstate Line Company (“TrAILCo”) is arguably, at the least constructively, a public utility as defined in Section 102 of the Public Utility Code as it is the Applicant in the present proceeding. As a result the ECC asks that Mr. Shane’s testimony not be admitted into the present record.

ECC's second objection is that acceptance of Mr. Shane's testimony creates the appearance of impropriety. Mr. Shane met with representatives of Allegheny Energy and reviewed his testimony with them. TrAILCo and/or Allegheny Energy used his image in local newspaper advertisements. The ECC contends that TrAILCo is attempting to improperly influence present members of the Commission.

ECC's third objection is that Mr. Shane's testimony is unreliable, irrelevant and contains hearsay.

TrAILCo filed a letter response to ECC's objections.¹ TrAILCo contends that no violation of Section 301(b) occurred because Mr. Shane was not appearing on behalf of TrAILCo. TrAILCo cites a definition of "appearance" from Black's Law Dictionary. TrAILCo also notes that Mr. Shane is not a party, does not represent TrAILCo and that he made clear that the opinions expressed were his alone, citing the transcript at pages 135 and 139.

TrAILCo argues secondly that Mr. Shane's testimony should not be characterized as an attempt to impermissibly influence his former colleagues. He was not compensated for appearing and clearly stated that the opinions expressed were his own.

Thirdly, TrAILCo notes that ECC did not specify the portion of Mr. Shane's testimony that it considered to be hearsay. However, TrAILCo asserts that none of Mr. Shane's testimony was hearsay. It specifically references a portion of his answer on cross-examination that was in essence his recollection of his impression at a certain time. TrAILCo asserts that testimony regarding recollections/perceptions/understanding are not hearsay.

Mr. Shane testified that he was appearing because of his interest in improving the electrical distribution system, because of his familial ties to the area where the project is proposed to be located, and his experience with the Commission. Tr. 134-139. It is hoped that all parties accepted his homework assignment to review the report of the National Commission

¹ Although directed to do so in the Third Prehearing Order dated October 15, 2007, it does not appear that the ECC served its objections on Mr. Shane.

on Energy Policy that he cited as being available at www.energycommission.org. Tr. 38. The pages cited, 84 through 98, contain a very concise and clear discussion of the issues that need to be addressed in strengthening our country's energy infrastructure. Mr. Shane made clear that he supported the plan to construct new transmission lines in Southwestern Pennsylvania, but made no pretense of endorsing their size, location, or even the entity constructing the lines. Specifically, on cross-examination at pages 143 through 146, Mr. Shane elaborated on his opinions and the basis for his opinions without any specific endorsement of the TrAIL project beyond expressing the opinion that a high voltage (500 Kv) line would be required.

After our review of the objections of ECC and the transcript of Mr. Shane's testimony, we conclude that no violation of the Public Utility Code occurred and that ECC's objections should be overruled, and Mr. Shane's testimony remains in this record, subject to our determination as to the weight to be given to it. The public input hearings were exactly that, forums for private citizens to express their opinions regarding the proposed project. Mr. Shane is a private citizen, albeit one with some experience in dealing with the issues presented in this case.

TrAILCo's Objections to Written Statements and Exhibits Offered at Public Input Hearings

TrAILCo filed two objections to written statements presented at public input hearings, and thirty-four objections to exhibits, or portions of exhibits, offered at public input hearings. No objections were filed with regard to any oral testimony that was offered as the opinion and/or observation of any witness appearing at the public input hearings.² Initially TrAILCo did not serve the objections on the respective witnesses as required in our Third Prehearing Order. However, upon our admonition, TrAILCo did promptly serve the objections on the respective witnesses, an action the ECC failed to emulate.

In due course responses to TrAILCo's objections were received from the ECC, OCA, several of the individual witnesses and counsel for some of the property owners.

² This fact is noted given the concern raised by TrAILCo regarding an email sent to the ALJs and certain Commissioners by Richard and Linda Yanock who are neither parties nor witnesses in the matter.

Each of the objections is considered in the order presented in TrAILCo's pleading.

1. TrAILCo objected to the written statement prepared by Mr. Tom Wolper and presented by **Mr. Phillip Coleman** on the basis that it is hearsay. On cross-examination Mr. Coleman stated that the statement was prepared by Mr. Wolper based on information he gathered from a "committee of people more expert than I am." Tr. 125. Mr. Coleman did state at the beginning of his testimony that he was a customer of Allegheny Power, but he did not state at any point that he had any personal knowledge of the information that he was presenting. Instead he stated that he was presenting the statement on behalf of the Pennsylvania Chapter of the Sierra Club. The statement itself does cover many of the issues present in the case, but does so in a shotgun fashion such that some points may apply and others are very far afield. Some of the comments appear to be contradictory or are confusing. For example, at transcript page 136 the statement asserts that electric transmission lines pose deadly threats to raptors. In the very next paragraph, it is noted that raptors use "tall structures," e.g. power line towers, as perches that give them an advantage over their prey, "grassland birds." If the author appeared for cross-examination, confusion could be cleared and sources identified. In the example given, it would not be surprising to learn that the study referenced by the author was conducted in the Midwest where expanses of grasslands abound and "tall structures," e.g. trees, are scarce.

The statement asserts the proposed line may pose a threat to an endangered species, the Indiana bat. The statement quotes a supervisor of the United States Fish and Wildlife Service to the effect that the application does not comply with the Endangered Species Act. Tr. 119. If so, then that agency should intervene in the matter. The statement asserts that federal law mandates a project specific environmental impact statement. Tr. 120. It would seem appropriate for the federal government to enforce its mandate.

TrAILCo represents that it served its objection on both Mr. Wolper and Mr. Coleman. Neither has filed any response. However, the ECC filed comments in support of Mr. Coleman and Mr. Wolper. Mr. Wolper did appear at a later public input hearing, but offered

testimony on behalf of two other groups, the Clean Air Committee, presumably of the Sierra Club, and the Pennsylvania Land Trust Association. Tr. 1928-1934. The ECC contends that Mr. Wolper could have been cross-examined on the written statement offered by Mr. Coleman but authored by Mr. Wolper.

We do not believe that it is reasonable to expect counsel for TrAILCo to be prepared to cross-examine Mr. Wolper on an extensive report he prepared when counsel had no advance notice that Mr. Wolper would be appearing. Further, Mr. Wolper presented new or at least additional information on behalf of two other entities, and did not refer to or rely on the presentation of Mr. Coleman. We also note that **Mr. Robert Hanham** has appended the statement prepared by Mr. Wolper to his testimony and identified it as ECC Exhibit RQH-4. The objection of TrAILCo is noted and a ruling will be held in abeyance until Mr. Hanham appears and testifies.

2. TrAILCo objected to the presentation by **Ms. Robin Vaglia** of a statement prepared by **Mr. Michael Cross** on the basis of hearsay. In her presentation, Ms. Vaglia stated that she was presenting the statement that she and her brother, Michael Cross, prepared. The concerns expressed in the statement are similar to those expressed by many of the other witnesses in this case. TrAILCo's objection is overruled.

3. TrAILCo objected to three exhibits provided by **Mr. David Katch** as part of his testimony. The objections were that the exhibits were part of the original application and were, thus, unduly repetitious and, being incomplete, were not authentic. OCA replied that the exhibits were used by Mr. Katch to illustrate his concerns. Mr. Katch has filed, by way of counsel for ECC, his own reply. Significantly, he points to his Exhibit 3 as indicating that all of the material was not provided in the original filing and that he has requested a copy twice, without any response from TrAILCo. His testimony adequately explains why he presented the exhibits and how they supported his position. TrAILCo's objections are overruled and Katch Exhibits 1, 2 and 3 are admitted. We assume that TrAILCo meant AJF-2 rather than the ALJ-2 referenced in its objections.

4. TrAILCo objected to Exhibits 2 and 3 submitted by **Mr. James Blockinger** on the basis of hearsay and lack of qualifications to support the content of the exhibits. Specifically, TrAILCo objects to Exhibits 2 and 3 because Mr. Blockinger did not establish that he possessed any expertise in electromagnetic fields and associated health effects, or in the area of herbicides and their proper application.

Mr. Blockinger has, through counsel for the ECC, filed a response. First of all, his Exhibit 2 was presented in response to a TrAILCo newspaper advertisement. We note that the advertisement is not “evidence” in this case, and that neither is Mr. Blockinger’s Exhibit 2.

Mr. Blockinger’s Exhibit 3, however, is compiled from a list of herbicides on TrAILCo’s website along with Material Safety Data Sheets that are mandated to be provided to consumers.

We conclude that the TrAILCo objection to Blockinger Exhibit 2 should be sustained, but that its objection to Blockinger Exhibit 3 is overruled and it is admitted into the record subject to our consideration.

5. TrAILCo objects to an excerpt of a newspaper article submitted by **Mr. Bill Pollock** at transcript page 208. A review of the transcript will disclose that Mr. Pollock referenced the article to point out an apparent discrepancy other witnesses have noted in the rationale provided for the construction of the TrAILCo project. In general, newspaper articles, or portions of them, are not admissible as evidence without an authentication from the author and the person quoted being present either to authenticate, or dispute, the quote, and to be available for cross-examination. TrAILCo’s objection is sustained.

6. TrAILCo objects to an exhibit accompanying a proposal submitted by **Mr. Robert Cameron** regarding an alternative route for the transmission lines. Mr. Cameron’s testimony is found at pages 237-239 of the transcript. The objection notes that Mr. Cameron did not qualify himself as a transmission planning expert. However, we see no reason why he could not provide his view of an acceptable alternative. The TrAILCo objection is overruled, and

Mr. Cameron's exhibit setting forth his proposed change in the route is admitted as Cameron Exhibit 1.

7. TrAILCo objects to an exhibit offered by **Mr. Gary Hollier** regarding an EMF study done in England and referenced in his testimony at page 240. While he offered the exhibit he also stated that he had not read the whole report. Clearly he has not established any expertise in interpreting the information. Certainly the fact that he took the time to find the report reinforces his testimony that he is concerned about the subject matter. However, the report itself is hearsay and should not be admitted. The objection is sustained.

8. TrAILCo objects to an exhibit or exhibits from **Mr. Daniel Forney** (Transcript at pages 326-328) that contain his responses to TrAILCo's answer to his protest. The objection is that the exhibit(s) is/are procedurally defective as not "properly filed" or verified. As pointed out by the OCA in its response, Mr. Forney was present and under oath. Mr. Forney filed his own response by way of counsel for the ECC to the effect that he is not a lawyer and should not be held to the standard of one trained in legal procedure. We agree with the OCA and Mr. Forney. Further, as Mr. Forney stated he could have covered the material orally but chose to save everybody's time by presenting the material in written form. Tr. 326. The TrAILCo objection is overruled. Forney Exhibits A, B and C are admitted.

9. TrAILCo objects to two exhibits presented by **Ms. Debra Bandel** at the end of her direct testimony found at transcript pages 368. The first article is headed "New Information on EMF." The second article is entitled "What's Wrong With the Electric Grid" by Eric J. Lerner. Both articles were retrieved by Ms. Bandel from the internet. Tr. 369. Ms. Bandel has not developed on this record that she possesses any expertise to interpret and apply the information contained in the two articles to the present application proceeding. Certainly they exemplify the scope of her concern regarding the proposed project, and deal directly with issues presented in the case. However, we will leave the interpretation and application of the information from these and other studies to the individuals who will qualify as experts in this matter. TrAILCo's objection is sustained.

10. TrAILCo objects to four exhibits offered by **Ms. Faith Bjalobok** in the course of her testimony and cross-examination at transcript pages 371 through 378. The objections include hearsay, failure to qualify as a witness, and incompleteness as to one of the exhibits. Ms. Bjalobok addressed in some detail her research into the effects of herbicides on animals and humans. She leases two farms and manages a significant number and variety of livestock and other animals. In addition she is a college and university professor holding a Ph.D in philosophy who lectures on the philosophy of technology, science and experimental design. OCA filed a detailed response to the TrAILCo objections. Specifically, OCA noted that Ms. Bjalobok laid a foundation for her opinions. Further, the Material Safety Data Sheets relied on in her testimony are required to be provided to consumers by federal law. Two of the objected to documents are reports of government action and are exceptions to the hearsay rule. The OCA represented that it will be presenting expert testimony that corroborates Ms. Bjalobok's observations. Based on the foregoing, the objections of TrAILCo are overruled and the exhibits admitted subject to our further review and determination as to the weight, if any, to be given to the information.

11. TrAILCo objects to the offer of **Ms. Cynthia Maize** of an article entitled "What's Wrong with the Electric Grid" authored by Eric J. Lerner on the basis that the article is hearsay. Ms. Maize offered her own response to the objection through counsel for the ECC. In essence she offered the article as support for her concerns regarding the reason(s) being offered in support of the project. Likewise the OCA has filed a statement in support of her testimony and reference. The OCA points out that there will be expert testimony on the issues raised by the article. Certainly Ms. Maize's concerns are clearly expressed in her testimony at pages 466 through 470. However, it is our view that the content of the article should be the subject of expert testimony prior to its admission into this record. As with Ms. Bandel's offer of the same article, the TrAILCo objection is sustained.

12. TrAILCo objects to a press release offered by **Ms. Pam Snyder** regarding a National Institutes of Health report on the health effects of EMFs on the basis of hearsay. The OCA responded that a report of a government agency should be admitted as an exception to the hearsay rule. However, what was offered was a press release and not the report. Further, OCA

also states that its expert will address the issue in detail. Finally, Ms. Snyder has thoroughly explained her concern regarding the safety of the proposed project in her direct testimony at transcript pages 647 through 653. The TrAILCo objection is sustained.

13. TrAILCo objects to Exhibits E, F, G, H, I, S and T offered by **Mr. Arthur Brogley** in the course of his direct testimony found at pages 670 through 696 of the transcript. The objections to E, F, H and I are that they deal with EMFs, were not properly introduced, and lack a proper foundation. The objections to G, S and T are that they are part of proposed TrAILCo exhibits, and therefore are cumulative. On cross-examination Mr. Brogley stated that information in Exhibits E and F came from websites provided to him by a representative of TrAILCo. Tr. 696-698.

Mr. Brogley filed a detailed reply to the objections through the offices of counsel for the ECC. In essence, the exhibits either come from the TrAILCo filing or were suggested to him by TrAILCo representatives. He offers the exhibits as a basis for his opposition to the proposed project. The exhibits and testimony are admitted subject to our determination as to the weight, if any, to be given to both, and TrAILCo's objections are denied. The Brogley exhibits are admitted.

14. TrAILCo objects to the offer of **Mr. Alan Butcher** to provide copies of an article entitled "High Voltage Power Lines: Do They Affect Residential Property Values?" The objection is hearsay as well as a failure to properly introduce or provide a foundation for the article. Mr. Butcher's testimony is found at transcript pages 710 through 715. Mr. Butcher cited the article at transcript page 712 as support for his opinion that the visual impact of the proposed power lines would adversely affect residential property values.

OCA responded to the TrAILCo objections by noting that TrAILCo's witness Francis R. Chiapetta also refers to the article at page 15 of his Statement No. 17. As we conclude that Mr. Butcher is referring to the article to support and provide a basis for his opinion regarding the economic impact of the project on his property, we overrule TrAILCo's objections subject to our weighing of Mr. Butcher's testimony. Butcher Exhibit 1 is admitted.

15. TrAILCo objects to two newspaper articles offered by **Mr. Kevin Brogley** as part of his testimony found at transcript pages 807 to 815 on two bases, hearsay and relevancy. OCA has responded by noting that the articles supported Mr. Brogley's concern that the proposed project would encourage greater use of coal fired generation and the potential for increased air pollution. OCA also argues that the potential increase in air pollution resulting from the completion of the proposed project is an issue in the case, and thus the articles are relevant.

We conclude that the articles referred to by Mr. Brogley support and provide a basis for his opinions regarding the impact of the project. We overrule TrAILCo's objections subject to our weighing of Mr. Brogley's testimony. The Brogley Exhibits are admitted.

16. TrAILCo has objected to eight exhibits offered by **Mr. Robert Hanham** in the course of his extensive testimony at pages 921 through 946 and 988 through 999 of the transcript. Mr. Hanham has also been denominated as an expert witness on behalf of the ECC, and will be testifying at the hearing later this year. The first five exhibits deal with distributed generation issues, a popular topic at the public input hearings. A sixth article discussed an evaluation of the possible risks from electric and magnetic fields. A seventh article, which is also attached to his prepared written testimony, is a report on climate change. Finally, he referenced an inventory released by the federal Environmental Protection Agency containing data from power producers as to the amounts of toxic substances released into the environment. TrAILCo objects to the exhibits as hearsay. TrAILCo also contends that these exhibits were not properly introduced, and that Mr. Hanham did not sufficiently explain the connection between his testimony on the subject and the articles.

The ECC has filed a response to the objections. The ECC is offering Mr. Hanham as an expert on uneven economic development. He has arguably relied on all of the above-mentioned items in reaching the conclusions in his testimony. Included with his prepared testimony is an exhibit detailing his education and background to support his qualifications to appear as an expert.

We will hold in abeyance our ruling on TrAILCo's objections at least until Mr. Hanham appears and testifies.

17. TrAILCo objects to five exhibits presented by **Mr. Richard Nicoloff** in the course of his testimony at pages 1018 through 1043 of the transcript. The first three exhibits objected to are excerpts from the National Infrastructure Protection Plan. The excerpts are objected to as hearsay and because they are excerpts. An article on computer hacking was referred to by Mr. Nicoloff to demonstrate his concern with the safe operation of the proposed transmission lines. TrAILCo objects that the article is irrelevant to issues in this case. Finally he offered a copy of a patent for under grounding electric lines that he took from a website, Free Patents Online. Tr. 1036, 1039. Presumably he feels under grounding the lines would be a more acceptable way to pursue the present project. TrAILCo objects to the patent information as hearsay and lacking in foundation.

The ECC responded by asserting that the National Infrastructure Protection Plan was a government document as was the patent application, and that both should be exempt from a hearsay objection. The response is silent on the hacking article.

Mr. Nicoloff was very clear in his testimony as to his concerns and his objections to the present project as he presently conceives it. He used his exhibits to explain and amplify his concerns. The exhibits as offered were not presented as much for the truth of their contents as support for his concerns. They do not need to be in this record. To the extent that official government documents have a bearing on issues in the proceeding, and to the extent that those documents are readily available to the public, the parties may request that we take judicial notice of the documents, as suggested by the ECC in its response. However, for the present, the Nicoloff exhibits are not admitted because they are adequately described and discussed by Mr. Nicoloff in his direct testimony. The TrAILCo objections are sustained.

18. TrAILCo objects to two exhibits presented by **Mr. Rick Layton**, one a press release from CPV Warren and another entitled "Power Lines and Property Values: The

Good, the Bad and the Ugly.” The objections are that the exhibits are hearsay, that Mr. Layton only referred to parts of the exhibits and did not establish any expertise to address the subject matters.

The ECC responded that Mr. Layton was offering the exhibits to support his personal concerns, particularly regarding the effect on his property’s value. We agree with the assessment of the ECC but do not feel that the two exhibits need to be in this record. Mr. Layton has discussed at some length the conclusions he has drawn from both in his testimony. TrAILCo’s objections are sustained.

19. TrAILCo objects to an exhibit presented by **Mr. Eric Conklin** in the course of his testimony at pages 1149 and 1150 of the transcript. His very brief testimony dealt with the dangers power lines present to aircraft, particularly helicopters. The objected to article presents material that is tangential at best to the issues in this case. TrAILCo’s objection is sustained.

20. TrAILCo objects to the inclusion of a portion of the testimony of its witness Mr. Halpern on the basis that only an excerpt is included in the combined testimony and exhibits of **Ms. Barrie Coleman** and **Ms. Kimberly McCoy-O’Donnell** on the basis of hearsay. Ms. Coleman’s and Ms. McCoy-O’Donnell’s direct testimony may be found at pages 1596 through 1609 and 1609 through 1620, respectively. TrAILCo has also objected to other items. The other items include the “Pennsylvania Keystone Principles for Growth, Investment & Resource Conservation,” an internet article from the National Trust web site, a publication of the Southwestern Pennsylvania Heritage Preservation Commission, and a document entitled “Public Service Commission of Maryland 10 Year Plan.”

The ECC has filed a response that asserts that the Maryland Public Service Report is a government report entitled to be admitted, citing 42 Pa. C.S. §§6103-6104 and Federal Rules of Evidence 803(8). The ECC also argues that the remainder of the objected to exhibits are offered as a basis for the concern expressed by the witnesses that the filing has not adequately addressed the impact of the project on historically significant sites.

Ms. Coleman also filed her own response under the auspices of counsel for the ECC. She stated that the excerpt from Mr. Halpern's testimony was included to demonstrate a conflict between the application and the Route Evaluation Report. She also refuted as ludicrous the idea that she could not refer to the Keystone Principles if she were not involved in their drafting.

The ECC's citation of 42 Pa. C.S. §§6103-6104 is not helpful. Section 6103 provides that an official record, if admissible for any purpose, may be evidenced by an official publication (of which we could take judicial notice), or by a copy attested to by the officer having legal custody of the record. Further, Pennsylvania has declined to adopt Federal Rule of Evidence 803(8).

The objections of TrAILCo are overruled. The witnesses, in the first four pages of their report where they outline their methodology and the process used, have established that they possess the expertise to conduct a survey of historically and culturally significant sites. As they have qualified themselves as experts on the subject matter they present, they are entitled to rely on materials that may otherwise be objectionable if the materials are of a type reasonably relied on by experts in the field. Pa. Rule of Evidence 703. Their report with attachments is contained in a green binder captioned "Report of Historic and Cultural Research Committee." It is so identified and admitted into the record.

21. TrAILCo has objected to the one exhibit offered by **Ms. Heather Sage** on behalf of the organization she represented, Citizens for Pennsylvania's Future ("PENNFUTURE"). Her testimony may be found at pages 1620 through 1624 of the transcript. TrAILCo objects on the basis of hearsay to a report entitled "Building Pennsylvania's Energy Future," authored by Mr. John Plunkett.

The ECC has responded that as the report was prepared in the normal course of the business of PENNFUTURE, it is admissible under an exception to the hearsay rule, citing Pennsylvania Rule of Evidence 803(6).

TrAILCo's objection is sustained. The report prepared by Mr. Plunkett contains a large amount of factual material. Further, the report does not in any way refer to the present project, either directly or inferentially. The report is more in the nature of a policy argument aimed at the governor and the legislature and proposes a long-term approach to reducing demand for electricity by implementing numerous demand side management ("DSM") techniques. The ECC's reliance on Pa. Rule of Evidence 803(6) and the Business Records as Evidence Act are misplaced. Both apply to the recordation of facts or events AS THEY OCCUR in the course of the regularly-conducted activity of the entity at a time close to the occurrence. Meter readings by a utility would be an example of the type of activity encompassed by the rule. The report here is classic hearsay in that it is offered by someone other than the author for the truth of the facts contained in it. Finally, DSM will most likely be addressed by experts appearing as witnesses in the next set of hearings.

22. TrAILCo objects to four exhibits presented by **Mr. Greg Bandel** as part of his testimony found at pages 1657 through 1666 of the transcript. The items objected to include a report printed from the internet on electromagnetic fields, another on what's wrong with the electric grid, an article from USA Today on electric generation deregulation and an article from a local paper on fly ash.

The ECC responded by noting that the exhibits are offered as evidence supporting his concerns. Mr. Bandel also responded briefly in a handwritten comment to the effect that he felt it necessary to present information from credible publications that show the history of the danger of deregulation.

TrAILCo objections are sustained in that the objected to material is classic hearsay and, further, with the exception of the material on EMFs, addresses matters at best tangential to the issues in this case. The EMF issue, of course, will be addressed by expert witnesses in the upcoming hearings.

23. TrAILCo objects to several exhibits offered by **Mr. George Goroncy** in the course of his testimony found at pages 1682 through 1693 of the transcript. Mr. Goroncy filed a response to the objections through the offices of counsel for the ECC. The only exhibit Mr. Goroncy specifically mentions in his testimony is the 1995 Carbide Graphite Study of Washington Steel. The purpose of offering that study in his words was to demonstrate the amount of electricity required to operate an electric arc furnace. The melt shop where presumably, the furnace was used, closed in 2001. Mr. Goroncy contends that the electric load consumed by Washington Steel has not been replaced. However, nothing in his testimony supports that contention. Further, his testimony is very clear as to his concerns regarding the proposed project, and the other exhibits he has offered really add nothing more to his testimony. TrAILCo's objections are sustained.

24. TrAILCo objects to two exhibits presented by **Ms. Victoria Goroncy** in the course of her testimony found at pages 1694 through 1698 of the transcript. The first exhibit, an article concerned with toxic Chinese imports, is objected to as hearsay and irrelevant. She also offered two photographs that allegedly depicted power lines that had been sprayed by Allegheny Power. TrAILCo's objections are that the witness did not provide the specific location photographed, the date of the photograph and, we would note, that she did not specify who took the photos. Ms. Goroncy filed a response to the objections by way of the offices of counsel for the ECC. However, while she specified a road where the photos were taken, she did not provide a location on the road, a date when taken or who took the photos. Her concerns with the proposed project are made clear in her testimony and the exhibits are not necessary to understanding her objections. TrAILCo's objections are sustained.

25. TrAILCo objects to three exhibits offered by **Mr. Terry Simmons** in the course of his testimony at pages 1743 through 1753 of the transcript. The objection to all three exhibits is hearsay. The first exhibit is a notarized statement from two tenants of Mr. Simmons, Patricia and Edward Ross. The statement is to the effect that they had considered buying the house they presently rent, but have decided not to, based on the proximity of the proposed power lines to the property. The statement is clearly hearsay in that they did not appear as witnesses, but it does support Mr. Simmons's contention that he stands to lose the sale of the property

because of the proposed project. The objection to the affidavit is overruled. The other two exhibits deal with the effects of electromagnetic field exposure. ECC has filed a response noting that the articles support Mr. Simmons's concerns regarding the health effects of the proposed power lines. Regardless, Mr. Simmons's makes his concerns clear in his testimony, and the exhibits are not necessary to explaining his concerns. TrAILCo's objections to the two items from BioInitiative Working Group are sustained. The affidavit, Simmons Exhibit 1, is admitted.

26. TrAILCo objects to three exhibits offered by **Ms. Jennifer Hixson** in the course of her testimony found at pages 1784 through 1791. She does not specifically mention the three exhibits in her testimony. The exhibits themselves address emissions from coal fired electrical generating plants. TrAILCo's objection to all three is that they are not relevant to issues in this case. OCA filed a response that states in part that the concerns regarding increased emissions from coal fired power plants are shared by a number of the witnesses in the case, and that the OCA would be offering the testimony of a witness regarding the economic implications of an increase in coal fired production. Ms. Hixson concerns are well expressed in her testimony and the proposed exhibits really add nothing to her testimony. TrAILCo's objections are sustained.

27. TrAILCo objects to seven exhibits presented by **Ms. Ann McCune** in the course of her testimony found at pages 1853 through 1860 of the transcript. She testified that her educational background included an undergraduate degree in molecular, cellular and developmental biology and a doctor of medicine degree from the University of Colorado. She performed an internship in internal medicine at the University of Colorado and a residency in dermatology at the University of Pittsburgh. Dr. McCune used the objected to articles to reach the conclusions she testified to regarding the potential health effects of living in the vicinity of power lines as proposed here. She possesses the educational background to be able to assess the information included in her proposed exhibits. Granted she has a direct interest in the outcome of the present proceeding that will be considered when deciding what weight, if any, to be given her testimony. Further, the article dealing with increased exposure to aerosol pollutants presupposes the proximity of the power lines to highways. Regardless, her testimony is relevant

and supported by her educational background. TrAILCo's objections are overruled. The Ann McCune Exhibit, containing copies of six scientific articles in a black binder, is admitted.

28. TrAILCo has objected to an affidavit submitted by **Mr. Barron P. McCune Jr.** on behalf of his father, retired federal district court Judge Barron P. McCune. The witness submitted the affidavit with his protest and referred to it in his testimony found at pages 1860 through 1863 of the transcript. The objection is hearsay, and the portion of the affidavit that is addressed by the objection is the portion referring to the elder McCune's recollection of his understanding of and the implications of the easement agreement he and his wife signed with West Penn Power Company in 1978. TrAILCo states that the comment does not fall within the "present sense impression" exception to the hearsay rule, and that appears to be correct. In order to fall under that exception, the statement describing an event or condition needs to be made while the declarant is perceiving the event or condition or immediately after. The objection is sustained.

29. TrAILCo has objected to the "multiple exhibits" presented by **Mr. David Piroch** in the course of his testimony found at pages 1877 through 1892 of the transcript. TrAILCo is specifically not objecting to its newspaper article published in the Observer-Reporter pertaining to herbicide use or to the list of herbicides posted on the TrAILCo website. It is objecting to a press release regarding a settlement by DOW Chemical subsidiary regarding claims made for a pesticide, and to a two-page copy of part of a recommended decision made by or to the West Virginia Public Service Commission. The objections are that both documents are irrelevant and immaterial. The press release is clearly irrelevant as it relates to advertisements that allegedly do not accurately relate safety information. The partial recommended decision is offered presumably to show that electric utilities use contractors to spray power lines with herbicides. The excerpt presented by Mr. Piroch does not reveal the outcome of the case and, in any event, relates to issues in the present case that will be dealt with in detail by the parties. Thus it is irrelevant also.

Mr. Piroch testified to having a B.S. from Pennsylvania State University in animal bio-science and dairy production, and has extensive experience in working with herbicides in the

course of his employment with Agway and Cargill. As such he clearly qualifies as possessing the expertise to discuss the effects and proper application of herbicides.

He and his wife have filed a response to the TrAILCo objections through the auspices of counsel for the ECC. Their testimony is and will be in the record of this case. Mr. Piroch's testimony regarding the herbicides and pesticides is in the record, and the labels and associated material, although perhaps repetitive, are all in the record also. However, TrAILCo's objections to the press release and the partial recommended decision are sustained. The David Piroch Exhibit, contained in a manila envelope that includes his written testimony, a photocopy of an article by Caroline Cox and Michael Surgan, and multiple copies of labels from various herbicides and pesticides, is admitted.

30. TrAILCo has objected to three exhibits presented by **Ms. Cheryl Piroch** consisting of three newspaper articles that she did not refer to in the course of her testimony found at pages 1892 through 1903. As noted above the Pirochs filed a response through the offices of the ECC. They assert that much of their information comes from newspaper articles. One article deals with the value of efficiency as a means of reducing energy usage, a subject that will be addressed later by the various experts. The second article deals with the use of radiation to cause salt water to burn. The third deals with the health hazards of fly ash. The connection of the subject matter of the second and third articles to issues in this case is tenuous at best. TrAILCo's objections are sustained.

31. TrAILCo has objected to the offer of testimony of two persons who did not attend the public input hearings by **Mr. Tom Wolper**, who did attend and whose offer and the statements are found at pages 1928 through 1934. The testimony or statements is/are very general in nature and concerned policy considerations, not any specific factual situation in the present case. As such, the objections of TrAILCo are overruled and the testimony allowed subject to our consideration of the weight to be given the testimony.

32. TrAILCo has objected to the offer of **Ms. Laurie Nicholl** of the same article as offered by Cheryl Piroch, "Save or Sell: Why Energy Efficiency is the Fuel of the Future." For the same reasons as discussed above, TrAILCo's objection is sustained.

33. TrAILCo has objected to the offer of a number of articles by **Mr. Kenneth Gayman** in the course of his testimony at pages 2037 through 2046. Mr. Gayman demonstrated in his testimony that he possesses expertise in the field of archeology. The objected to articles are offered, we believe, as background material for the primary focus of his testimony, namely the sites that he believes will be adversely affected by this project. TrAILCo's objections are overruled subject to our weighing of both the testimony and the various articles and exhibits. Mr. Gayman's Exhibits and Attachments are contained in a white binder labeled "Archaeological Cultural Sites Near Marianna."

34. TrAILCo has objected to six exhibits offered by **Ms. Lenora Dingus** in the course of her testimony found at pages 2046 to 2052 of the transcript. She introduced herself as a Haudensoshaunee, Shawnee, native American. Further, she stated that she is a professor of Native American History and Anthropology for a local college. We believe that the purpose of her testimony was to bolster the testimony of Mr. Gayman regarding the need to protect sites of archeological and anthropological importance. As such, the objections of TrAILCo are overruled subject to our weighing the testimony. Ms. Dingus's exhibits are contained in a white binder labeled "The Six Nations."

35. TrAILCo objected to two exhibits offered by **Ms. Brenna Cipoletti** in the course of her testimony at pages 2096 through 2101. She read the two statements into the record, and the statements consist of general comments in opposition to the proposed project. We agree that she did not indicate that she was officially authorized to speak for the two organizations, but we assume that she was. TrAILCo's objections are overruled subject to our weighing the testimony.

36. TrAILCo objects to an exhibit offered by **Mr. Sean Dobich**, a document he identified as the Piedmont Environmental Council Report. His testimony is found at pages

2125 through 2127 of the transcript. His offer only included the comment that the Report addresses “the motives behind Allegheny’s decisions.” He did not state in any way that he was involved in the preparation of the report, or whether the report played any part in his opinions expressed in his testimony. TrAILCo’s objections, that the report was prepared by third parties, that no foundation was laid, and that there was no indication of any expertise on the part of the witness, are sustained.

Requirements to be Met Prior to the Scheduled Hearings

All parties on the full service list are required to confer regarding the dates their respective witnesses will be available for cross-examination. We would like to group witnesses, if at all possible, by the subject matter of their testimony. To facilitate doing that, we are providing a list of the issues that need to be addressed in this proceeding. The list is drawn largely from the prehearing memoranda submitted by the parties.

1. Certificate of public convenience. The statutory requirements are set forth in Chapter 11 of the Public Utility Code. We would also like the parties to consider and address the issues set forth in this Commission’s policy statement on Guidelines for determining public utility status found at 52 Pa. Code §69.1401.

2. Need for the proposed project. Encompassed in need are the issues of reliability, alternatives to the proposed project to meet the need, benefits of the proposed project to Pennsylvania ratepayers and benefits to non-jurisdictional entities. 52 Pa. Code §57.75(e)(1).

3. The cost of the construction and maintenance of the proposed project and the recovery of those costs. How much will it cost? How will the cost be recovered? Who will pay the cost? 66 Pa C.S. §1101; 52 Pa. Code §57.72(12), §57.75(e).

4. Siting of the proposed project. The siting requirements of this Commission form the outline of the issues to be considered here, to include consideration of reasonable route alternatives. 52 Pa. Code §57.75(e)(3)(4), §57.75(f).

5. Safety of the project as proposed. Safety is deemed to encompass issues arising from the construction, operation and maintenance of the proposed project. 52 Pa. Code §57.75(e)(2).

6. Why, how and where the Applicant proposes to exercise the power of eminent domain. Applicant should be prepared to show its compliance with the provisions of Chapter 11 of the Public Utility Code, 52 Pa. Code §57.91, 15 Pa. C.S. §1511 and 26 Pa. C.S. §§201 *et seq.*

7. Why, where and to what extent does the Applicant request a waiver of municipal zoning requirements.

8. Approval of certain affiliated interest agreements. What are they, what role do they play in the proposed project, and what effect, if any, do they have on the construction, maintenance and/or funding of the proposed project? Chapter 21 of the Public Utility Code.

9. An update regarding any litigation concluded or in progress that concerns property or any other matter relating to the proposed project to include the proposed right-of-way route or environmental matters. 52 Pa. Code §57.72 (c)(14).

10. Any other relevant issues.

We would likewise request the parties consider using the above outline of issues to organize their briefs. Further, it would be helpful to all if a common briefing outline could be agreed to by the parties.

We would prefer the parties reach an agreement on as many of the matters regarding the upcoming hearings as possible as opposed to our dictating the procedure. We ask

that the parties provide either their agreements or respective positions on the matters raised here on or before February 25, 2008. Electronic communication is sufficient.

We would stress the following: We will start the hearings on time, and will recess the hearings by 5 p.m. each day. As the examination of one witness is completed, we expect that another witness will be available to fill the available time. Although we have scheduled three weeks, 15 days of hearings, we are concerned with finishing within the scheduled time. We welcome any suggestions that would aid in accomplishing our task of creating a complete record.

We acknowledge the receipt of the email from counsel for TrAILCo regarding waiving the requirements regarding the length of briefs. We have some concern regarding whether forty pages for reply briefs is sufficient. We solicit comments on that matter also.

THEREFORE,

IT IS ORDERED:

1. That the testimony and exhibits identified in the Ruling on Objections section are admitted or objections sustained as determined in that section.
2. That all exhibits offered by the public witnesses at the public input hearings that were not objected to are admitted.
3. That the Full Service List parties are to confer and attempt to arrive at a schedule for the presentation of their respective witnesses, and to provide their agreements and/or positions regarding the scheduling of witnesses to the presiding Administrative Law Judges on or before February 25, 2008.

4. That the Full Service List parties are to confer and attempt to agree to a uniform outline for briefs, and to report the results of their conferring to the presiding Administrative Law Judges on or before February 25, 2008.

Date: February 7, 2008

Michael A. Nemec
Administrative Law Judge

Mark A. Hoyer
Administrative Law Judge

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In Re: Application of Trans-Allegheny	:	
Interstate Line Company (TrAILCo)	:	
For approval: 1) for a certificate of public	:	
convenience to offer, render, furnish or	:	
supply transmission service in the	:	A-110172
Commonwealth of Pennsylvania;	:	A-110172F0002
2) authorization and to locate, construct,	:	A-110172F0003
operate and maintain certain high-voltage	:	A-110172F0004
electric substation facilities; 3) authority	:	G-00071229
to exercise the power of eminent domain	:	
for the construction and installation of	:	
aerial electric transmission facilities along	:	
the proposed transmission line routes in	:	
Pennsylvania; 4) approval of an exemption	:	
from municipal zoning regulation with respect	:	
to the construction of buildings; and	:	
5) approval of certain related affiliated	:	
interest arrangements	:	

RULINGS ON VARIOUS MOTIONS

This interim order provides rulings on three outstanding motions. The first motion discussed is the Office of Consumer Advocate's motion for injunctive relief filed under date of October 18, 2007. The second motion is the Trans-Allegheny Interstate Line Company's request for relief filed on October 23, 2007. The third motion filed by the Office of Consumer Advocate also on October 23, 2007, seeks to compel Trans-Allegheny Interstate Line Company to cure due process and regulatory violations.

Motion of the Office of Consumer Advocate for Injunctive Relief

The motion of the Office of Consumer Advocate ("OCA") alleges that agents of the Trans-Allegheny Interstate Line Company ("TrAILCo") made misrepresentations and engaged in harassing behavior in the course of contacting property owners. The allegations are based on testimony presented at the various public input hearings and site visits. The OCA

requests that TrAILCo be enjoined from continuing to engage in the alleged misconduct. Further, OCA requests that those property owners who have executed damage release contracts with TrAILCo be permitted to request, and have the Commission grant, that the contracts be declared null and void. OCA's requests are based on this Commission's authority to supervise the conduct of public utilities under the provisions of Sections 1501 and 508 of the Public Utility Code, 66 Pa. Code §§ 1501, 508.

TrAILCo filed its detailed answer under date of November 7, 2007. In its answer TrAILCo notes that it has not had an opportunity to respond with testimony to the allegations. Secondly, TrAILCo points out that it is not yet a Pennsylvania public utility. Further, TrAILCo submits that the motion is moot in that, based on the testimony at the public input hearings and site visits, it has severely restricted the activity of its contractors and sub-contractors pending a further review and contracting with a new right-of-way subcontractor. TrAILCo appended a code of conduct to its answer that it pledges to enforce with its representatives. TrAILCo also appended an affidavit from Mr. Jay Roberto, director of transmission siting for TrAILCo that in essence deplors the ill will expressed by witnesses at the public input hearings and site visits regarding the alleged misconduct of the right-of-way procurement agents.

At this point in the process we conclude that the OCA motion is premature and may be moot. Clearly TrAILCo has not had a formal opportunity to present either rebuttal testimony and/or exhibits, or testimony and/or exhibits as new matter in response to the allegations received at the public input hearings and site visits.

Also, as TrAILCo is not a Pennsylvania public utility, the provisions of the public utility code pertaining to service and contracts simply are inapplicable. OCA's motion will be held in abeyance pending further development of the record.

Motion of Trans-Allegheny Interstate Line Company for Relief

Under date of October 23, 2007, the Trans-Allegheny Interstate Line Company ("TrAILCo") filed a motion seeking relief from an alleged violation by the Energy Conservation Council of Pennsylvania ("ECC") of a specific ruling by the presiding Administrative Law

Judges. The ruling relied on for the motion is a portion of the prehearing order dated July 26, 2007. ECC served its answer on or about November 12, 2007.

The event triggering the motion was the notification by ECC that it was calling two individuals, Richard Hoch and Robert Q. Hanham, as expert witnesses even though they presented testimony at a public input hearing.

The language relied on by TrAILCo is found on the fourth page of the prehearing order. The language is found in the section dealing with the service of documents and details a requirement that persons who wish to be served with all documents were required to so specify in writing by August 15, 2007. Those parties not so specifying were placed on the limited service list. The language relied on appears in the third full paragraph on the fourth page:

Parties included on the Limited Service List have the right to appear and testify at any Public Input Hearing scheduled in this case. The transcripts of the public input hearings and any views that are conducted will be important parts of the record made in this proceeding. *Persons testifying at a Public Input Hearing, however, will not be permitted to also testify at the technical evidentiary hearings.* The technical evidentiary hearings are held for the limited purpose of receiving into evidence prepared written testimony and associated exhibits, and the oral cross-examination of the sponsoring witnesses. (Emphasis supplied).

In our third prehearing order dated October 15, 2007, we noted the large number of witnesses at public input hearings who presented detailed statements and exhibits. In order to provide an opportunity for all parties to review and comment on the large amount of material in a considered manner, we established a procedure for all parties to present detailed objections.

It is our intention in this proceeding to present the Commission with a full and complete record. We recognize that both Mr. Hanham and Mr. Hoch presented extensive testimony at the public input hearings they attended. We rather welcome the opportunity to have their opinions tested by cross-examination in the technical evidentiary hearings rather than merely reviewing written objections. We believe that we are quite able to evaluate and exclude any unduly repetitious or cumulative testimony.

We believe that the language relied on by TrAILCo in its motion is clearly directed at avoiding the presentation of the opinions of individual property owners regarding their view of the impact on their individual interests. However, the two proposed witnesses in their respective testimony address matters that potentially impact central issues in the matter before us. The motion for relief filed by TrAILCo is denied.

Motion of the Office of Consumer Advocate to Require TrAILCo to Cure

The full title of OCA's motion is Motion to Require Applicant TrAILCo to Cure Due Process and Regulatory Violations. The alleged due process violations have to do with either a lack of notice or a lack of specificity in the notice as to the location of the proposed right-of-way(s). Appended to the motion are two lists. Exhibit A lists property owners with property within the 1200 foot corridor who did not receive notice. Exhibit B lists property owners "newly affected or affected in a different way" due to a proposed route change.

TrAILCo served its answer on or about November 13, 2007. The answer details TrAILCo's actions to review the allegations and where appropriate provide additional notice to property owners with property within the proposed corridor.

TrAILCo asserts that it takes due process seriously and, based on our contacts with the Company in the course of refining the service list for this case, we are convinced that the Company has been acting in good faith. It appears that some of the properties involved changed recorded ownership just prior to or after the filing of the various applications that make up this case. Rather than address each item in the motion, and TrAILCo's response, it is sufficient to note that due process is always an issue and may be raised at any point in the proceeding. At this juncture it does not appear that the applications here need to be refiled, and therefore the OCA motion is denied.

As noted in the discussion of OCA's motion for injunctive relief and TrAILCo's response, TrAILCo is not yet a Pennsylvania public utility. It will not be able to request this Commission's permission to exercise the power of eminent domain until such time as it receives its certificate of public convenience. If and when that occurs TrAILCo will be required to provide the notice specified in 52 Pa. Code § 57.91 to each and every owner of property over

which it seeks to exercise the power of eminent domain. At that juncture, it is our view that TrAILCo will have to provide very precise information, to include a legal description, of the right-of-way being sought.

We do not want to intrude in any fashion into any of the private negotiations between TrAILCo and property owners. But we can not help but observe that any property owner being approached by TrAILCo would want a very precise description of where the right-of-way is going and what will be placed on the right-of-way. The property owner also can insist on written conditions regarding the use of the right-of-way including specifications regarding how the right-of-way will be maintained. Cf. 52 Pa. Code § 57.91.

THEREFORE, IT IS ORDERED:

1. That the motion of the Office of Consumer Advocate for Injunctive Relief is held in abeyance and may be renewed if circumstances warrant.
2. That the motion of the Trans-Allegheny Interstate Line Company for Relief from Energy Conservation Council of Pennsylvania Violation of a Specific Ruling by the Administrative Law Judges is denied.
3. That the motion of the Office of Consumer Advocate to Require Applicant TrAILCo to Cure Due Process and Regulatory Violations is denied.

Date: December 5, 2007

Michael A. Nemec
Administrative Law Judge

Mark A. Hoyer
Administrative Law Judge