

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

**In Re: Application of Trans-Allegheny
Interstate Line Company (TrAILCo)**

Public Meeting – November 13, 2008
1204960-OSA-0016
**Docket Nos. A-110172; A-1110172F002-
F004; and G-00071229**

DISSENTING STATEMENT OF VICE CHAIRMAN TYRONE J. CHRISTY

BACKGROUND

Before the Commission are: (1) five separate applications filed by Trans-Allegheny Interstate Line Company (TrAILCo)¹ on April 13, 2007; (2) the 239-page Recommended Decision (R.D.) of Administrative Law Judges (ALJs) Mark A. Hoyer and Michael A. Nemecek issued on August 15, 2008; (3) the Exceptions to the R.D. filed by TrAILCO on September 10, 2008; and (4) the Reply Exceptions filed on or about September 22, 2008 by the active parties to this proceeding – the Office of Consumer Advocate (OCA), the Office of Trial Staff (OTS), the Energy Conservation Council of Pennsylvania (ECC), Majority Leader Bill DeWeese of the Pennsylvania House of Representatives (Majority Leader DeWeese), and Mr. Brogley.

Also before the Commission is a Motion for Partial Stay of Proceedings and Request for Expedited Consideration (Motion) filed by TrAILCo on September 10, 2008. Comments in response to the Motion were filed by OCA, OTS, ECC and Majority Leader DeWeese.

Finally, before the Commission is a Settlement between TrAILCo, its affiliate West Penn Power Company (West Penn), and the Greene County Board of Commissioners (TrAILCo/Greene County Settlement) that was filed on September 25, 2008. Comments in response to the TrAILCO/Greene County Settlement were filed by OCA, OTS, ECC and the West Penn Power Industrial Interveners (WPPII) on or about October 10, 2008.

The applications filed by TrAILCo are for the following: a certificate of public convenience to offer, render, furnish or supply electric transmission service in the Commonwealth of Pennsylvania; authority to locate, construct, operate and maintain certain high-voltage electric substation facilities; 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; approval of an exemption from municipal zoning regulations with respect to the construction of buildings; and approval of certain affiliated

¹ TrAILCo is a direct subsidiary of Allegheny Energy Transmission, L.L.C., which, in turn, is a direct subsidiary of Allegheny Energy, Inc. Allegheny Energy, Inc. is the parent company of three public utility operating companies, West Penn Power Company, Potomac Edison Company and Monongahela Power Company. Allegheny Power is the trade name under which these three operating companies do business.

interest agreements. The facilities proposed to be constructed include (1) a new 500/138 kv substation in Washington County (Prexy Substation); (2) a new 500 kv substation in Greene County (502 Junction Substation); (3) a new 500 kv transmission line to connect the two new substations; (4) three new 138 kv transmission lines to connect Allegheny Power's existing lines to the Prexy Substation; and (5) a new 500 kv transmission line from the 502 Junction Substation to the Pennsylvania-West Virginia state line.

TrAILCo's total project cost, which includes expenditures in Pennsylvania, West Virginia and Virginia, is estimated to be \$877 million. In addition, Dominion Virginia Power is expected to spend \$196 million in Virginia and West Virginia. The Federal Energy Regulatory Commission already has approved a 12.7 percent incentive rate of return for the TrAILCo project. The total billings to all Pennsylvania utilities within the PJM zone are estimated at over \$52 million per year. R.D. at 74. TrAILCo Supplemental Ex. MAM-2.

ALJs Hoyer and Nemeck presided over twelve public input sessions in Washington and Greene Counties, and conducted site visits on three separate days in August and September 2007. Altogether, the public input sessions and three site visits resulted in over 2,100 pages of transcript. The ALJs subsequently presided over eight days of evidentiary hearings in March and April 2008, which added in excess of 1,400 pages of transcript and many hundreds of pages of statements and exhibits to the record. Main Briefs and Reply Briefs were filed by TrAILCo, OCA, OTS, ECC, and WPPH. The record closed on May 30, 2008. Following the development of this exhaustive record, ALJs Hoyer and Nemeck issued a well-reasoned and thorough 239-page R.D. on August 15, 2008, denying all of TrAILCo's five applications.

SUMMARY

I wholeheartedly agree with the ALJs' denial of TrAILCo's five applications. The ALJs' description of the applications is thorough, the positions of the parties are accurately summarized in detail, the findings of fact and conclusions of law are comprehensive, and, most importantly, the ALJs' rationale is well reasoned and powerfully persuasive. Review of the Exceptions and Reply Exceptions reinforces my confidence in the findings and the recommendations of the ALJs in this proceeding. In my view, the Commission should adopt the ALJs' Recommended Decision and deny the Exceptions filed by TrAILCo.

In addition, I believe that the Commission should deny TrAILCo's Motion to "stay" the portion of their applications concerning the Prexy Facilities and "direct" the parties to participate in a process to identify alternatives. This seems to me to be a desperate effort to use the Commission's offices to keep the Prexy Facilities in play after TrAILCo completely failed to meet its burden of proving that the Prexy Facilities are needed. Although the other parties to this proceeding are free to enter into voluntary discussions with TrAILCo if they elect to do so, I do not believe that it is appropriate for this Commission to convene a Commission-mandated collaborative regarding alternatives to a proposal that has been exhaustively examined and that must, based on an objective review of the record, be denied. The parties and the protestants in this proceeding already have incurred substantial expense to fight TrAILCo's various applications. By all objective measures they have won their case. However, their "reward" is

not to be a well-earned victory, but rather a continuing collaborative to help West Penn examine the alternatives that West Penn should have considered at the beginning.

For similar reasons, I do not believe that the Commission should approve the TrAILCo/Greene County Settlement, which reflects the failure of the Prexy application and similarly attempts to use the Commission to keep the Prexy ball in the air through a forced collaborative to devise an alternative. Although I welcome TrAILCo's decision to abandon Prexy and consider alternatives, the consideration of alternatives is an outcome that would be reached simply by denying the Prexy applications as OCA urges. I agree with the OCA that there is no benefit in "this Commission making some abstract finding that 'something needs to be done' to maintain reliability on Washington County and charging an ad hoc group of parties to figure out what that is." OCA Comments at 8. In addition, I do not believe that the "side bar" agreement with Greene County to approve the 502 Junction Facilities should be allowed to "trump" the extensive evidentiary record that leads to the ALJs' conclusion that the applications pertaining to the 502 Junction Facilities should be denied. Also, as OCA points out, TrAILCo seeks Commission approval of language that any abandonment of Prexy was "beyond TrAILCo's control", which appears to be designed to allow TrAILCo to seek recovery of costs associated with the failed Prexy application from FERC. OCA Comments on TrAILCo/Greene County Agreement at 5. In my view, the request for approval of this language should be denied explicitly. Companies should not be permitted to recover costs that they assumed voluntarily in application proceedings where they subsequently fail to meet their burden of proof. The filing of an application and subsequent failure to provide required evidentiary support for that application is a matter that is within the control of the applicant. Finally, while TrAILCo's proposed payment of \$750,000 to Greene County somewhat explains the genesis of the TrAILCo/Greene County Settlement, it is a payment that does not require the approval of the Commission. Such a payment does nothing to assist the concerned citizens who raised funds through bake sales and private donations in a grass roots effort to oppose these applications.

DISCUSSION

The majority today is approving the TrAILCo/Greene County Settlement and mandating that parties participate in a collaborative to consider alternatives to Prexy. My views concerning this Commission mandate are expressed above.

The majority also is approving the 502 Junction to Loudon segment. In my view, TrAILCo proposed this project for the wrong reasons. This proposal is not being driven by the need to ensure the reliability of the electric transmission network or by the public need. Rather, it is being driven by economics, specifically the lure of increased profits from Allegheny Power's generating units. The 502 Junction to Loudon segment will increase west-to-east transfer capability by 5,300 MW. R.D. at 10; Tr. at 2849. This will allow the transmission of relatively inexpensive power owned by, *inter alia*, Allegheny Energy, from PJM west to PJM east, where it will command higher prices. PJM's analysis indicates that generators in western PJM zones can expect to see increased revenues of \$1.8 billion per year by 2013. R.D. at 21; OCA St. 2. Approximately 29.6% of the projected increased generation in western PJM will come from the Allegheny Power system. R.D. at 21; Tr. at 2944. While the construction of the

502 Junction to Loudon line will create a price drop in the east, it will drive up the cost of energy in West Penn's service territory. R.D. at 22; OCA St. 2, pp. 18-19; Tr. at 2331.

In addition to the increased prices that West Penn's customers will have to pay for generation after the 502 Junction to Loudon line is built, they will be required to pay increased transmission costs. West Penn customers alone would be responsible for \$14.5 million per year in additional costs for the various TrAILCo lines, including approximately \$10.0 million for the portions of the lines that would be located in Pennsylvania. R.D. at 20; TrAILCo Exhibit MAM-5.

Accordingly, the 502 Junction to Loudon segment will provide no discernable benefit to West Penn customers. R.D. at 20. In contrast, the West Virginia (WV) customers fared much better. The settlement between Allegheny Power and the West Virginia Consumer Advocate Division (CAD) included the following conditions:

1. TrAILCo and the CAD agreed that the fair market value that TrAILCo will offer as compensation for the right of way for facilities over the property should include a commitment by TrAILCo to pay to the utility providing retail service to the property owner a defined amount representing the fees, charges and taxes representing the value of electric service to the property owner for the time period the facilities are on the affected property. This payment will take the form of a transmission credit on the property-owner's bill. Basically, all of the property-owners along the right of way will get free electric service during the time the facilities are on the affected property.
2. TrAILCo made concessions on right of way clearance. Areas of more than 100 feet of conductor to ground clearance will not be cleared. TrAILCo will not use aerial spraying for right of way clearing.

In return:

1. CAD will not oppose the siting of the TrAILCo transmission line and that the TrAILCo proposed route is acceptable.

In the settlement entered into between TrAILCo, CAD, West Virginia Public Service Commission (WVPSC) staff and the industrial customers, the parties agreed:

1. TrAILCo will not seek recovery in WV of transmission charges billed by PJM to Allegheny Energy affiliates Mon

Power and Potomac Edison for all transmission facilities (both above and below 500kv) for the period of 1/1/07 through the latest of the following (1) 12/31/13, (2) the last day of the 30th month following the in-service date for the WV segments of TrAILCo or (3) the last day of the month during which the in-service date of the facility in which the additional jobs provided by TrAILCo occurs. The aggregate of the avoided transmission charges is \$31.2 million.

2. To include a rate credit of \$0.00065/kWh on the monthly bills of all ratepayers served under rate schedules K, P and PP for the period of 1/1/10 through 12/31/11 as an economic incentive credit amounting to \$5.7 million. These rate classes are primarily industrial customers.

3. TrAILCo will contribute \$500,000 to the WV Economic Development Office.

4. TrAILCo will contribute \$500,000 per year over 5 years (\$2,500,000) to low income energy assistance.

5. TrAILCo commits to adding 100-150 new jobs in WV associated with the transmission line. TrAILCo estimates that annual payroll and benefits of the new jobs to be \$12 million annually.

6. The parties agree to TrAILCo's Grafton Area Route (GAR) proposed in the direct testimony as modified to address environmental concerns.

7. The parties agree to a list of WVPSC staff conditions that require TrAILCo to comply with certain stringent standards on ROW maintenance and further agree to participate in a compliance hearing wherein TrAILCo must evidence meeting all of the requirements.

In return, the staff, CAD and industrials agree:

1. To support the TrAILCo line as economically, adequately and reliably contributing to meeting present and future needs for electric power and that the line is necessary and desirable to enhance reliability in the Allegheny Energy WV service area.

The two foregoing stipulations were included in and approved in the larger West Virginia Public Service Commission (WVPSC) Order in which the WVPSC largely ruled in favor of TrAILCo. Nothing similar has been offered to West Penn's customers here in Pennsylvania. At a bare minimum, the Commission should have allocated some benefits to West Penn's customers, commensurate with the costs that will be imposed upon them as a result of the construction of the 502 Junction line.

In addition to my concern that West Penn customers will pay increased costs while receiving no benefits from the 502 Junction line, granting these applications will reward inattention to needed upgrades to existing transmission facilities and overlook the failure to consider non-transmission alternatives such as increasing generation or reducing demand in eastern PJM. At least 2,125 MW of generation in Dominion's territory, with signed interconnection agreements with Dominion, was not counted in the modeling. R.D. at 16. The increased west-to-east flows will discourage the construction of generation that is critically needed in eastern PJM. Generation should be built close to the load centers, rather than in remote locations that requires the stringing of high voltage extension cords across the landscape, in this case Pennsylvania's landscape. Finally, FERC's cost recovery mechanism subsidizes generation owners in the west since new transmission will be paid for by customers and not by the generation owners. R.D. at 117.

CONCLUSION

I personally attended many of the public input and technical/evidentiary hearings held in this case so I could hear the testimony first hand. The public input hearings allowed members of the public the opportunity to present the case as they saw it. The testimony that was provided was emotional at times and heated at others. The area residents came prepared to make the case that the Prexy and Loudon lines were not needed and that the route, which consisted mainly of 30-year-old right-of-ways, was unacceptable. One thing was perfectly clear from the testimony and the record in this case - TrAILCo did a poor job of working with the members of the public to educate them about its perceived need for the lines, alternatives for siting, and the impact of the lines.

As a PUC Commissioner, balancing the interests of the public with that of our utilities is my primary responsibility. It is clear that customers in western Pennsylvania will receive little in return for the siting of these lines in their back yards except upward pressure on the price they will pay for generation and transmission. Only the stockholders, generation owners and perhaps customers in eastern PJM will benefit. I can not support a project that imposes all of the costs and none of the benefits on one segment of the public.

I would like to make it clear that my comments should not suggest that I am opposed to the construction of new, large, high-voltage electric transmission projects in the Commonwealth. Transmission line siting cases present two fundamental issues to this Commission - whether the need for the line exists; and, whether the proposed route is the best of all alternatives considered. It is painfully apparent from the record that TrAILCo did not come close to meeting its burden of proof in this case on either count. As a member of the Commission, I have an affirmative duty to ensure the statutes of this Commonwealth are enforced. Section 1103(a) of the Code requires

that “[a] certificate of public convenience shall be granted by order of the commission, only if the commission shall find or 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(a). The record is clear that TrAILCo has shown no affirmative benefit to the customers in western Pennsylvania for the project it has proposed.

Based upon the foregoing, I respectfully dissent from the majority’s decision in this proceeding.

DATE

TYRONE J. CHRISTY, VICE CHAIRMAN