

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
**Docket Nos. A-110172, A-110172F0002-
0004 and G-00071229**

STATEMENT OF COMMISSIONER GARDNER

I agree that the 1.2 mile segment of the proposed 502 Substation to Loudoun Line should be approved. The record demonstrates that this transmission line will reduce west/east congestion and ensure future regional reliability.

However, I respectfully dissent from the majority's vote approving the September 25, 2008 Settlement between TrAILCo and the Greene County Board of Commissioners. The Parties to the Settlement "agree that the serious concerns that have been raised with respect to the siting of the Prexy Facilities as proposed by TrAILCo in this proceeding require TrAILCo to consider other potential alternatives to address the reliability concerns raised by TrAILCo's Application with respect to the Washington County area." Settlement at 4.

In the Settlement, TrAILCo requests an 180-day stay of consideration of its Application for the Prexy Facilities¹ and agrees, *inter alia*, to the following terms: TrAILCo will quitclaim any rights of way or easements associated with the proposed Prexy Facilities; cease its pursuit of eminent domain authority with respect to the siting of the Prexy Facilities as proposed in TrAILCo's April 13, 2007 Application;² forego pursuing Federal Energy Regulatory Commission approval to construct the Prexy Facilities based on the April 13, 2007 Application in this proceeding pursuant to its National Interest Electric Transmission Corridor (NIETC) backstop authority;³ convene and complete, within 180 days, a collaborative to identify alternatives to the Prexy Facilities that would address Washington County reliability issues;⁴ pay \$750,000 to Greene County; and, TrAILCo seeks acknowledgement that to the extent that it is deemed to have abandoned the Prexy Facilities, such abandonment was beyond its control as it relates to TrAILCo's request for rate recovery.

¹ The Prexy Facilities consist of a 500/138 kV substation in Washington County, a new 500 kV transmission line to connect the Prexy Substation with the 502 Junction Substation in Greene County, and 3 new 138 kV transmission lines for the Prexy Substation. Settlement at 1-2.

² TrAILCo reserves the right to pursue eminent domain authority in connection with any new alternative that may result from the collaborative process described in the Settlement. Settlement at 3.

³ TrAILCo reserves the right to pursue NIETC backstop authority in connection with any amended or new application that might result from the collaborative process described in the Settlement. Settlement at 3.

⁴ Alternative could include demand side management and energy efficiency programs, improvements to existing transmission lines, construction of up to 10 miles of new 500 kV transmission lines in Washington County. Settlement at 4.

First, I am loath to approve a Settlement between only two of the Parties of a multi-party proceeding such as this, especially when one of the Parties (Greene County Board of Commissioners) was not an active participant in the litigation. Second, I disagree that TrAILCo should have the opportunity to pursue rate recovery⁵ for any work it may have undertaken on the Prexy Facilities (at a 12.7% rate of return) when need for the facilities has not been established.

I believe that TrAILCo should withdraw its Application with regard to the Prexy Facilities. The Settlement indicates that TrAILCo no longer intends to build the proposed Prexy Facilities; and, instead, will pursue consideration of alternative remedies to the Washington County reliability concerns which were the basis of the Prexy proposal. Settlement at 4. The fact that the Settlement proposes investigating alternative remedies to the Prexy Facilities is an implicit admission that TrAILCo did not consider alternative remedies to the Prexy Substation, the Prexy 138 kV Lines and the Prexy Segment prior to filing the instant Applications.

I agree with the ALJs that TrAILCo has not proven that need exists sufficient to justify the Prexy Facilities. R.D. at 23-25, 149-151. Because TrAILCo has not met its burden of proving need for the Prexy Facilities, I am not inclined to give it a 180-day extension in the form of a stay of proceedings to achieve this end. Should TrAILCo perfect its filing at some future date, it should then file a new application with this Commission. Doing so would afford any affected landowners or otherwise interested parties with proper notice and prevent the due process infringements which are likely to surface as a result of the amorphous collaborative process proposed in the Settlement.

Accordingly, I would approve the Applications filed by TrAILCo pertaining to the 502 Junction Substation and the Pennsylvania 502 Junction Segment, as amended by the safeguards included in Appendix A to TrAILCo's Exceptions. I believe that the Applications filed by TrAILCo pertaining to the Prexy Facilities as well as the Settlement between TrAILCo and the Green County Board of Commissioners should be denied as TrAILCo has failed to meet its burden of proving need for that segment of the project.

Date: November 13, 2008

Wayne E. Gardner, Commissioner

⁵ Transmission rates that would ultimately be paid by Pennsylvania ratepayers.