

Karen O. Moury  
717.237.6036  
kmoury@eckertseamans.com

July 5, 2018

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

Re: Applications of Transource Pennsylvania, LLC for approval of the Siting and Construction of the 230 kV Transmission Line Associated with the Independence Energy Connection – East and West Projects in portions of York and Franklin Counties, Pennsylvania, et al., Docket Nos. A-2017-2640195 and A-2017-2640200, *et al.*

Dear Secretary Chiavetta:

Enclosed for filing is the Prehearing Memo of Citizens to Stop Transource, York County, and Maple Lawn Farms, Inc. in the above-referenced matters. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Karen O. Moury

KOM/lww  
Enclosure

cc: Cert. of Service  
Elizabeth Barnes, Administrative Law Judge  
Andrew Calvelli, Administrative Law Judge

## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the Citizens to Stop Transource, York County, and Maple Lawn Farms' Prehearing Memo upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

### Via First Class Mail and/or Electronic Mail

Anthony D. Kanagy, Esq.  
David B. MacGregor, Esq.  
Lindsay A. Berkstresser, Esq.  
17<sup>th</sup> N. Second St., 12<sup>th</sup> Fl.  
Harrisburg, PA 17101-1601  
[akanagy@postschell.com](mailto:akanagy@postschell.com)  
[dmacgregor@postschell.com](mailto:dmacgregor@postschell.com)  
[lberkstersser@postschell.com](mailto:lberkstersser@postschell.com)

Amanda Riggs Conner, Esq.  
Hector Garcia, Esq.  
American Electric Power Service Corp.  
1 Riverside Plaza, 29<sup>th</sup> Fl.  
Columbus, OH 43215  
[arconner@aep.com](mailto:arconner@aep.com)  
[hgarcia1@aep.com](mailto:hgarcia1@aep.com)

Hon. Elizabeth Barnes  
Hon. Andrew Calvelli  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[ebarnes@pa.gov](mailto:ebarnes@pa.gov)  
[acalvelli@pa.gov](mailto:acalvelli@pa.gov)

Thomas J. Sniscak, Esquire  
Whitney E. Snyder, Esquire  
Hawke McKeon and Sniscak, LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
[tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)  
[wesnyder@hmslegal.com](mailto:wesnyder@hmslegal.com)

Jack Garfinkle, Esquire  
Jennedy S. Johnson, Esquire  
Romulo L. Diaz, Jr., Esquire  
PECO Energy Com, PA, NY  
2301 Market Street  
Legal Dept. S23-1  
Philadelphia, PA 19103  
[Jack.garfinkle@exeloncorp.com](mailto:Jack.garfinkle@exeloncorp.com)  
[Jennedy.johnson@exeloncorp.com](mailto:Jennedy.johnson@exeloncorp.com)  
[Romulo.diaz@exeloncorp.com](mailto:Romulo.diaz@exeloncorp.com)

Amy E. Hirakis, Esquire  
Kimberly A. Klock, Esquire  
PPL Electric Utilities  
Two North Ninth Street  
Allentown, PA 18101  
[aehirakis@pplweb.com](mailto:aehirakis@pplweb.com)  
[kklock@pplweb.com](mailto:kklock@pplweb.com)

Darryl A. Lawrence, Esq.  
Dianne E. Dusman, Esq.  
Phillip D. Demanchick, Esq.  
David T. Evrard, Esq.  
Office of Consumer Advocate  
55 Walnut Street, 5th Floor Forum Place  
5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
[dlawrence@paoca.org](mailto:dlawrence@paoca.org)  
[ddusman@paoca.org](mailto:ddusman@paoca.org)  
[pdemanchick@paoca.org](mailto:pdemanchick@paoca.org)  
[devrard@paoca.org](mailto:devrard@paoca.org)

Linus E. Fenicle, Esquire  
Reager and Adler, PC  
2331 Market Street  
Camp Hill, PA 17011  
[lfenicle@reageradlerpc.com](mailto:lfenicle@reageradlerpc.com)

Margaret A. Morris, Esquire  
Reger Rizzo and Darnall  
2929 Arch Street, 13th Floor  
Philadelphia, PA 19104  
[mmorris@rrkdllaw.com](mailto:mmorris@rrkdllaw.com)

Sharon E. Webb, Esquire  
Office of Small Business Advocate  
300 North Second Street, Suite 202  
Harrisburg, PA 17101  
[swebb@pa.gov](mailto:swebb@pa.gov)

Joanna A. Waldron, Esquire  
Jordan B. Yeager, Esquire  
Mark L. Freed, Esquire  
Curtin and Heefner, LLP  
Doylestown Commerce Center  
2005 South Easton Road, Ste. 100  
Doylestown, PA 18901  
[jaw@curtinheefner.com](mailto:jaw@curtinheefner.com)  
[jby@curtinheefner.com](mailto:jby@curtinheefner.com)  
[MLF@curtinheefner.com](mailto:MLF@curtinheefner.com)

J. Ross McGinnis, Esquire  
41 West Main Street  
Fawn Grove, PA 17321

Teresa Harrold, Esquire  
Tori L. Giesler, Esquire  
FirstEnergy  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, PA 19612-6001  
[tharrold@firstenergycorp.com](mailto:tharrold@firstenergycorp.com)  
[tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)

Dated: July 5, 2018



---

Karen O. Moury, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Transource Pennsylvania, LLC	:	
for approval of the Siting and Construction of the	:	Docket No. A-2017-2640195
230 kV Transmission Line Associated with the	:	Docket No. A-2017-2640200
Independence Energy Connection - East and West	:	
Projects in portions of York and Franklin Counties,	:	
Pennsylvania.	:	
Petition of Transource Pennsylvania, LLC	:	
for a finding that a building to shelter control	:	Docket No. P-2018-3001878
equipment at the Rice Substation in Franklin	:	
County, Pennsylvania is reasonably necessary for	:	
the convenience or welfare of the public.	:	
Petition of Transource Pennsylvania, LLC	:	
for a finding that a building to shelter control	:	Docket No. P-2018-3001883
equipment at the Furnace Run Substation in York	:	
County, Pennsylvania is reasonably necessary for	:	
the convenience or welfare of the public.	:	
Application of Transource Pennsylvania, LLC	:	
for approval to acquire a certain portion of the lands	:	Docket No. A-2018-3001881, <i>et al.</i>
of various landowners in York and Franklin	:	
Counties, Pennsylvania for the siting and	:	
construction of the 230 kV Transmission Line	:	
associated with the Independence Energy	:	
Connection – East and West Projects as necessary or	:	
proper for the service, accommodation, convenience	:	
or safety of the public.	:	

---

**PREHEARING MEMO OF CITIZENS TO STOP TRANSOURCE, YORK COUNTY,  
AND MAPLE LAWN FARMS, INC.**

---

TO THE HONORABLE ELIZABETH BARNES AND ANDREW CALVELLI:

Citizens to Stop Transource-York County (“York County Citizens”) and Maple Lawn Farms, Inc. (“Maple Lawn Farms”) file this Prehearing Memorandum in the above-captioned

proceedings, pursuant to the Second Prehearing Order issued by Administrative Law Judges (“ALJs”) Elizabeth Barnes and Andrew Calvelli on June 5, 2018.

**I. BACKGROUND**

Transource Pennsylvania, LLC (“Transource PA”) filed Applications on December 27, 2017 seeking approval for the siting and construction of 230 kV transmission lines associated with the Independence Energy Connection-East Project in York County, Pennsylvania and the Independence Energy Connection-West Project in Franklin County (“Siting Applications”) with the Pennsylvania Public Utility Commission.

On February 20, 2018, York County Citizens filed a Petition to Intervene and Maple Lawn Farms filed a Protest to the Siting Application for the East Project. A Prehearing Conference was held on March 13, 2018. York County Citizens’ Petition to Intervene was granted by a Prehearing Order issued on March 28, 2018. Since the Prehearing Conference, parties have participated in discovery and attending public input hearings and site visits in Franklin County and York County.

On May 15, 2018, Transource filed 133 Applications for Approval to Exercise Eminent Domain Power (“Eminent Domain Applications”) related to the projects proposed by the Siting Applications. On the same date, Transource PA filed two petitions for findings that buildings to shelter control equipment at the proposed Rice Substation and Furnace Run Substation. Pursuant to Notice published in the *Pennsylvania Bulletin* on June 16, 2018, protests are due to be filed to the Eminent Domain Applications by July 6, 2018. Maple Lawn Farms filed a Protest to the relevant Eminent Domain Application at Docket No. A-2018-3001985 on July 3, 2018.

The Office of Consumer Advocate (“OCA”) filed a Motion to Amend the Procedural Schedule on June 1, 2018. By its Motion, OCA requested an extension of the procedural schedule of no less than sixty days.

By a Third Prehearing Order dated June 26, 2018, ALJ Barnes and Calvelli consolidated the Siting Applications and Eminent Domain Applications. The Third Prehearing Order also granted a Motion to Extend the Procedural Schedule filed by the Office of Consumer Advocate, extending the due date for the service of Direct Testimony by other parties to September 25, 2018. The remaining schedule will be addressed at the Prehearing Conference on July 9, 2018.

This Prehearing Memorandum is submitted in accordance with the Second Prehearing Order dated June 5, 2018, through which ALJs Barnes and Calvelli scheduled a second prehearing conference for July 9, 2018. The Second Prehearing Order requests the submission of prehearing memoranda by July 5, 2018 addressing various issues, including consolidation, feasibility of alternative siting routes, discovery issues, and amendments to the procedural schedule. Also, via electronic mail on June 29, 2018, the ALJs requested the parties to include in their prehearing memoranda a discussion regarding the impact of Act 45 signed into law on June 24, 2018 on this proceeding.

## **II. ISSUES**

### **A. Consolidation**

As the Commission's regulations at 52 Pa. Code § 57.75 contemplate the consolidation of the Siting Applications and Eminent Domain Applications and the Third Prehearing Order consolidated them consistent with the regulations, York County Citizens and Maple Lawn Farms have no objection to such consolidation. However, York County Citizens and Maple Lawn Farms request that a discussion occur during the Second Prehearing Conference regarding the service list that should be used by the parties for communications during the proceeding, including the service of discovery, testimony and briefs. The service list is very voluminous and service for hard copies of documents on nearly 300 parties would be extremely costly, adversely affecting the ability of

York County Citizens and Maple Lawn Farms to participate in this proceeding. As an alternative, York County Citizens and Maple Lawn Farms propose that a shortened service list be developed that includes only those persons who desire to receive hard copies of all documents.

**B. Feasibility of Alternative Siting Routes**

It is the position of York County Citizens and Maple Lawn Farms that other reasonable alternatives exist, including the use of nearby transmission lines that are underutilized. Particularly given the fact that the Transource PA proposal is described as a market efficiency project that will reduce congestion costs (rather than being needed for reliability reasons), York County Citizens and Maple Lawn Farms believe that it is critical for these other alternatives to be fully explored before any decision is made on the Siting Applications and Eminent Domain Applications.

**C. Discovery**

York County Citizens and Maple Lawn Farms are reviewing discovery responses served by Transource PA and have no particular issues to raise, except to note ongoing support for OCA's Motion for Extension of Procedural Schedule due to discovery delays and the continued unavailability of key information about the benefit-to-cost ratio at this time.

**D. Procedural Schedule**

York County Citizens and Maple Lawn Farms support the procedural schedule proposed by OCA's Prehearing Memorandum. These modifications would allow for the scheduling of public hearings on the Eminent Domain Applications, as contemplated by the Commission's regulations at 52 Pa. Code § 57.91. Further, York County Citizens and Maple Lawn Farms submit that landowners who have previously offered testimony on the Siting Applications should be permitted to now offer testimony on the Eminent Doman Applications.

Also, regarding the procedural schedule, York County Citizens and Maple Lawn Farms request that a discussion be held at the Second Prehearing Conference concerning the service of written testimony by other parties on September 25, 2018. Specifically, York County Citizens and Maple Lawn Farms seek clarification as to whether affected landowners, including residents and businesses of York County, are expected to pre-serve written “lay person” testimony on that date or if they will be permitted to offer verbal testimony during the evidentiary hearings scheduled in this proceeding.

**E. Effect of Act No. 45 of 2018**

York County Citizens and Maple Lawn Farms are still evaluating the impact of Act No. 45 of 2018 (Senate Bill 2468) on the use of eminent domain as proposed by the Eminent Domain Applications and will continue to do so throughout this proceeding and as the Commission issues implementation orders. The preliminary views of York County Citizens and Maple Law Farms are that some of the Eminent Domain Applications concern lands that are subject to conservation easements and therefore may be entitled to the protections that are afforded by Act No. 45. During public input hearings in this proceeding, numerous landowners described their properties as being permanently preserved under the Pennsylvania Agricultural Conservation Easement Purchase Program, which was developed to strengthen Pennsylvania’s agricultural economy and protect prime farmland. The PACEPP enables counties to purchase agricultural conservation easements, which keep the land in the landowner’s ownership and control, while limiting the landowner’s use of farmland to activities compatible with agriculture.<sup>1</sup>

The purpose of Act No. 45, as explained in the Sponsorship Memo dated May 30, 2018 by Representative Warren Kampf, Representative Kate Harper and Representative Marcy Toepei, is

---

<sup>1</sup> <https://conservationtools.org/guides/47-agricultural-conservation-easement-purchase-program>. See 3 P.S. § 914.1.



to limit a government agency's ability to use the Eminent Domain Code to override the preservation of Pennsylvania's open space and parkland. The legislation was triggered by the efforts of two school districts to use eminent domain to condemn privately lawn land that had been permanently preserved by conservation easements held by local land trusts, over the objections of many residents of the communities. Notably, other suitable non-preserved land is available in each vicinity.<sup>2</sup>

Act No. 45 places limitations on the use of eminent domain when necessary to protect natural resources, farmlands, scenic areas, historic sites and open spaces. Specifically, it includes environmental protections in the meaning of "open space benefits" and requires entities to obtain approval for the condemnation of any land subject to a conservation easement from the orphans' court of the county in which the land is located. Similarly, the Agricultural Area Security Law 3 P.S. § 913 restricts certain governmental actions in connection with eminent domain powers that would result in the condemnation of land that is being used for productive agricultural purposes. 3 P.S. § 913.

The language in the new law is not clear as to whether Commission approval alone excludes such projects from its additional protections or if the projects also need to be subject to approval by a federal agency. Specifically, the language provides that the condemnation approval required by Act No. 45 is not necessary for "any public utility facility or other project that is subject to approval by a federal agency." The phrase "that is subject to approval by a federal agency" suggests that the only projects that are exempt from Act No. 45 are those that must be approved (and have been approved) by the federal government. In any event, the General Assembly's

---

2

<http://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20170&cosponId=25928>

commitment to the protection of natural resources, farmlands, scenic areas, historic sites and open spaces, as endorsed by Governor Wolf in signing the law, should be considered by the Commission in reviewing the Eminent Domain Applications. *See* Article 1, Section 27 of the Pennsylvania Constitution; *Pennsylvania Environmental Defense Foundation*, 161 A.3d 911 (2017).

Additionally, York County Citizens and Maple Lawn Farms question whether the proposed project would qualify as a “public utility facility” under Act No. 45 when Transource PA only recently obtained a certificate of public convenience and is not currently operating as a public utility. *Application of Transource Pennsylvania, LLC*, Docket No. A-2017-2587821 (Order entered January 23, 2018) (the Commission expressly declined to find that public need exists for the additional electric transmission services that are proposed for Franklin and York Counties). It is also noteworthy that the whole purpose of eminent domain power has been a public utility’s obligation to provide safe and reliable service to its customers, which is not applicable here. *See Hess v. Pa. P.U.C.* 107 A.3d 246 (2014), at \*249. Likewise, the exemption in the Agricultural Security Law for public utility facilities does not appear to apply to the proposed transmission lines since Transource PA is not providing public utility services.

Respectfully submitted,

July 5, 2018



---

Karen O. Moury  
PA Attorney ID #36879  
Eckert, Seamans, Cherin & Mellott LLC  
213 Market Street, 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
717.237.6036.  
komoury@eckertseamans.com