

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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December 7, 2013

Honorable Elizabeth H. Barnes
Honorable Andrew M. Calvelli
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Application 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.

Docket Nos. A-2017-2640195 and A-2017-2640200

Petition of Transource Pennsylvania, LLC for a finding that a building to shelter control equipment at the Rice Substation in Franklin County, Pennsylvania is reasonably necessary for the convenience or welfare of the public.

Docket No. P-2018-3001878

Petition of Transource Pennsylvania, LLC for a finding that a building to shelter control equipment at the Furnace Run Substation in York County, Pennsylvania is reasonably necessary for the convenience or welfare of the public.

Docket No. P-2018-3001883

Application of Transource Pennsylvania, LLC for approval to acquire a certain portion of the lands 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.

Docket No. A-2018-3001881, *et al.*

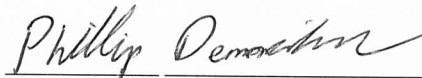
Dear Judge Barnes and Judge Calvelli:

Enclosed please find the Office of Consumer Advocate's Motion to Amend the Procedural Schedule in the above referenced proceeding.

OCA Motion to Amend
December 7, 2018
Pg. 2

Copies have been served as shown on the Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Phillip D. Demanchick", written over a horizontal line.

Phillip D. Demanchick
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Enclosures:

cc: Rosemary Chiavetta, Secretary
Certificate of Service
*263450

CERTIFICATE OF SERVICE

Application 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.

A-2017-2640195
A-2017-2640200

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P-2018-3001878

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P-2018-3001883

Application of Transource Pennsylvania, LLC
for approval to acquire a certain portion of the lands of
various landowners in York and Franklin Counties, Pennsylvania
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associated with the Independence Energy Connection –
East and West Projects as necessary or proper for the service,
accommodation, convenience or safety of the public.

A-2018-3001881,
et al.

I hereby certify that I have this day served a true copy of the foregoing document, the Office of
Consumer Advocate's Motion to Amend the Procedural Schedule, upon parties of record in this
proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a
participant), in the manner and upon the persons listed below:

Dated this 7th day of December 2018.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Transource Pennsylvania LLC	:	
for Approval of the Siting and Construction	:	
of the 230 kV Transmission Line Associated	:	Docket Nos. A-2017-2640195
with the Independence Energy Connection -	:	A-2017-2640200
East and West Project in Portions of York and	:	
Franklin Counties, Pennsylvania	:	

Petition of Transource Pennsylvania, LLC for	:	
a Finding that a Building to Shelter Control	:	
Equipment at the Rice Substation in Franklin	:	Docket No. P-2018-3001878
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	:	
Equipment at the Furnace Run Substation in	:	Docket No. P-2018-3001883
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 of Various Landowners in York and	:	
Franklin Counties, Pennsylvania for the Siting	:	
and Construction of the 230 kV Transmission	:	Docket No. A-2018-3001881,
Line Associated with the Independence Energy	:	<i>et al.</i>
Connection – East and West Projects as	:	
Necessary or Proper for the Service,	:	
Accommodation, Convenience or safety of the	:	
Public	:	

MOTION OF THE OFFICE OF CONSUMER ADVOCATE
TO AMEND THE PROCEDURAL SCHEDULE PURSUANT TO
52 PA. CODE SECTIONS 1.15, 5.103

Pursuant to 52 Pa. Code Sections 1.15 and 5.103, the Pennsylvania Office of Consumer Advocate (OCA) hereby respectfully requests that Administrative Law Judge Elizabeth H. Barnes

(ALJ Barnes) and Administrative Law Judge Andrew M. Calvelli (ALJ Calvelli) amend the procedural schedule by allowing, at a minimum, ninety (90) additional days for the preparation of the Interveners' surrebuttal testimony. Additionally, if this Motion is granted, the OCA requests that the remaining procedural schedule be adjusted accordingly.

In support of its Motion, the OCA sets forth the following.

I. BACKGROUND AND SUMMARY

The OCA notes that the procedural history of this proceeding is lengthy and will continue to grow as the case progresses towards its conclusion. For a detailed summation of the procedural history, see prior documents that the OCA has filed. For the purposes of this Motion, the OCA will discuss the procedural history relevant to the disposition of this Motion.

On December 27, 2017, Transource Pennsylvania, LLC (Transource or the Company) filed two Applications seeking approval from the Pennsylvania Public Utility Commission (Commission) to construct the Independence Energy Connection Project (IEC Project).¹ Per the Commission's Regulations, the Company must show that the IEC Project, among other things, is needed. 52 Pa. Code § 57.76. In its case-in-chief, through the testimony of its six witnesses, the Company asserted that this project was a market efficiency project needed to mitigate electric congestion south of the Pennsylvania-Maryland border.

Over the following nine months, the OCA investigated, analyzed, and issued numerous discovery sets regarding the Company's alleged justification for this project. The length of the OCA's initial investigation was primarily due to the technical analysis offered by the Company as evidence, *i.e.* the ProMod analysis and the assumptions incorporated into that analysis. After

¹ See Application 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, Docket No. A-2017-2640195, et al. (Applications).

completing its initial investigation and considering public input, the OCA filed its direct testimony on September 25, 2018, responding to the Company's case-in-chief and issuing its recommendations.

On November 27, 2018, the Company filed its rebuttal testimony responding to the recommendations of the OCA and other Parties. Upon receiving the rebuttal testimony, the OCA discovered that the Company has added twelve (12) new witnesses to address the arguments of the opposing Parties and to further justify the need for this project. This includes replacing witnesses that have previously testified in this proceeding. In addition, the Company now claims that the IEC Project would also address several potential future reliability violations. As support for this claim, the Company has submitted an entirely new analysis, *i.e.* a generation deliverability test, which also incorporates many assumptions. Such information was not included in the Company's case-in-chief, and this introduction of new evidence at this stage of the proceeding is inconsistent with Section 5.243(e) of the Commission's Regulations. 52 Pa. Code § 5.243(e). Further, as stated in its rebuttal testimony, the Company has voluntarily delayed the in-service date of the IEC project by five months, from June 1, 2020, to November 1, 2020.

For these reasons, the OCA now submits this Motion to Amend the Procedural Schedule (Motion) to allow for additional time to conduct discovery, analyze the new generation deliverability analysis performed by PJM Interconnection, LLC (PJM), and file its surrebuttal testimony. Reviewing the information of the additional twelve witnesses and the new generation deliverability analysis will require substantial resources and time in order to develop a full and complete record. Secondly, the Company's new claims will need to be investigated with potentially several rounds of discovery. Lastly, granting this Motion will not impede or delay the

in-service date of the IEC Project due to the Company's voluntary five-month delay. Accordingly, the OCA's requested remedy is reasonable.

II. ARGUMENT

A. Legal Standard

Pursuant to Commission Regulations, a party may seek an extension of time where good cause is shown. As stated in Section 1.15 of the Commission's Regulations:

§ 1.15 Extensions of time and continuances.

(a) Extensions of time shall be governed by the following:

(1) Except as otherwise provided by statute, whenever under this title or by order of the Commission, or notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Commission, the presiding officer or other authorized person, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended. Upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act.

52 Pa. Code § 1.15(a)(1). A motion for extension of time shall be (1) in writing, (2) made before the expiration of the period originally prescribed, and (3) state the facts upon which the request relies. 52 Pa. Code § 1.15(b).

In addition, under Commission Regulations a party is not permitted to introduce evidence at the rebuttal phase of testimony if it substantially varies from the party's case-in-chief. As stated in Section 5.243(e) of the Commission's Regulations:

§ 5.243. Presentation by parties.

* * *

(e) A party will not be permitted to introduce evidence during a rebuttal phase which:

- (1) Is repetitive.
- (2) Should have been included in the party's case-in-chief.
- (3) Substantially varies from the party's case-in-chief.

52 Pa. Code § 5.243(e).

Traditionally, the remedy for violating this regulation is to strike the evidence from the record, thereby preventing its inclusion. See Pennsylvania Public Utilities Commission v. UGI Utilities, Inc. (Electric Division), Docket No. R-00932862, 1994 Pa. PUC LEXIS 137 at *133-34 (Pa. PUC July 27, 1994) (“The clear purpose of it is to avoid trial by ambush and the prevention of surprise can only be achieved if the parties are confined to the scope of their direct case.”); see also Application of LP Water & Sewer Company for Approval to Begin to Offer, Render, Furnish, of Supply Water Service to the Public in Portions of Middle Smithfield Township, Monroe County and Lehman Township, Pike County, et al., Docket No. A-211770, et al., 1993 Pa. PUC LEXIS 117 at *26 (Pa. PUC July 7, 1993), Pennsylvania Public Utility Commission v. Total Environmental Solutions, Inc. -- Treasure Lake Water Division, et al., Docket No. R-00072493, 2008 Pa. PUC LEXIS 42 at *114-116 (Pa PUC May 23, 2008) (“Also, the information provided in these attachments substantially varies from TESI's case-in-chief and it is not equitable to permit TESI to take a second bite at direct testimony, or to allow it to shore-up inadequate direct at the rebuttal phase of this case.”) aff'd Opinion and Order at 89 (July 30, 2008).

B. Factual Background

On December 27, 2017, the Company filed its Applications with the Commission seeking approval to construct the IEC Project, consisting of two 230 kilovolt transmission lines and two new substations in portions of York and Franklin Counties, Pennsylvania. To obtain approval from the Commission, Transource must show, using substantial evidence, the following:

- (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.

52 Pa. Code § 57.76(a)(1-4).

In the Company's case-in-chief, Transource submitted the testimonies of six witnesses to address the requirements of Section 57.76 of the Commission's Regulations. In its testimony, Transource witnesses testified that the purpose of this project was to address market efficiency, specifically, electric congestion on the AP South Reactive Interface, a set of four 500 kV lines which originate in West Virginia and terminate in Maryland. In other words, this project would aim to decrease wholesale power prices to the east and south of the Pennsylvania border, which may be otherwise inflated due to these congested power lines. Transource also claimed that the IEC Project needed to be completed by June 1, 2020, to remain in compliance with its Designated Entity Agreement.

As this proceeding has progressed, the OCA has spent significant resources and time to conduct an investigation into the claims of Transource, particularly concerning the ProMod analysis used to calculate the benefits of the IEC Project and the assumptions used. To that end, the OCA has propounded twenty-six (26) sets of discovery to obtain, among other things, results of the ProMod analysis showing a detailed breakdown of the hourly dispatched generator output and purchases with and without the IEC Project, the type, resource, and capacity of each generator included in the model, and the specific hours that the congestion constraint occurred. Additionally, the OCA participated in twelve (12) public input hearings, three (3) site visits, and convened several informal discovery conferences. Pursuant to the procedural schedule, the Office of Consumer Advocate filed its direct testimony on September 25, 2018, which consisted of three Statements, recommending that the IEC Project be denied because Transource has failed to meet its burden to show that its proposed Market Efficiency Project is needed.

On November 27, 2018, Transource filed its rebuttal testimony, responding to the claims of the OCA and other Parties opposed to this project. The Company's rebuttal testimony includes twelve (12) new witnesses, some of whom are replacing witnesses that previously testified in this proceeding, as follows:

<u>Statement</u>	<u>New Witness</u>	<u>Witness Replaced</u>
1-R	Brian D. Weber	Peggy L. Simmons
7-R	Steven R. Herling	Paul McGlynn
8-R	Timothy Horger	Paul McGlynn
9-R	James H. Cawley	
10-R	Judy Chang	
11-R	Stephen P. Stein	
12-R	Keith Yamatani	
13-R	William F. Rothman	
14-R	David Ray Dominy	
15-R	J. Michael Silva, P.E.	
16-R	Nancy C. Lee, MD	
17-R	H. Dwight Mercer, PHD, DVM	

Moreover, the Company stated for the first time in its rebuttal that, in addition to the market efficiency benefits, this project would also resolve potential future reliability violations. As evidence of this, the Company discussed an entirely new analysis performed by PJM known as a generation deliverability test, which analyzes whether or not the transmission system can deliver the entire system generating capacity at peak load with all firm transmission modeled. Lastly, the Company stated that it voluntarily delayed the in-service date of the IEC project by five months, from June 1, 2020 to November 1, 2020.

At present, surrebuttal testimony for the OCA and the other intervening Parties is due on January 16, 2019, or in forty (40) days.

C. The OCA seeks an extension of time to investigate the testimony of the additional witnesses and examine the Company's new generation deliverability analysis.

The OCA now seeks an extension of time to file its surrebuttal testimony by an additional ninety (90) days, at minimum, in accordance with Section 1.15 of the Commission's Regulations. The OCA also requests that if this Motion is granted, the remaining procedural schedule be adjusted accordingly. This motion is timely as the current due date for surrebuttal testimony is January 16, 2018. The OCA sets forth the following reasons for good cause.

As stated above, the Company included the testimony of six witnesses in its direct case addressing the need for this project. The OCA has responded to the claims of these six witnesses and performed a detailed and extensive investigation into the market efficiency analysis provided by the Company. In rebuttal, however, the Company has added twelve additional witnesses providing new facts evidenced by new analyses. Additionally, these witnesses have replaced others that originally testified in the Company's direct. Accordingly, more time will be needed to address the additional concerns raised.

Moreover, in the Company's case-in-chief, the Company did not identify that this Project could address any potential future reliability issues. It was not until the Company's rebuttal testimony that this new information was identified and formally submitted, almost a year after the Company filed its direct case. While traditionally the remedy for this type of activity is to exclude such information from the record after the filing and disposition of a proper motion, here the OCA only seeks additional time to review and investigate these new claims. Because the OCA has to now investigate a new PJM analysis, developing our position will likely take numerous sets of interrogatories and possibly several informal discovery conferences due to the complex and technical aspects of the generation deliverability test. This analysis must also occur in tandem with our ongoing review of the Company's market efficiency analysis.

Lastly, the projected in-service date of the IEC Project had been June 1, 2020. Now that the Company has delayed this date by five months, an additional extension of time will not prevent the Company from remaining in compliance with its Designated Entity Agreement. Whereas, if an extension of time to submit surrebuttal testimony is not granted for the other Parties, this will prevent the OCA and others from fully investigating and analyzing the new claims set forth in Transource's rebuttal testimony. It is imperative that a full and complete record be developed for the Commission to decide this matter.

For these reasons, the OCA's requested relief is reasonable and will allow the OCA and other affected Parties to adequately respond to Transource's rebuttal testimony assuming timely responses to discovery are forthcoming. The OCA respectfully requests an additional ninety (90) days, at a minimum, be incorporated into the procedural schedule for this matter.

III. CONCLUSION

The Company has added a substantial amount of information in its rebuttal. This includes the addition of twelve (12) witnesses, a new claim that the proposed project would also address potential future reliability violations not previously raised in direct, and a delayed in-service date for the IEC Project to November 1, 2020. Accordingly, the OCA needs additional time to investigate this information. Such extension, however, will not prevent the Company from meeting its in-service date if the project is approved. The OCA respectfully requests that ALJ Barnes and ALJ Calvelli grant this Motion and issue an Order modifying the current procedural schedule postponing the surrebuttal due date by an additional ninety (90) days at a minimum and the remainder of the procedural schedule be adjusted accordingly.

Respectfully Submitted,



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Dated: December 7, 2018
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