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February 11, 2019

Via Electronic Filing

Rosemary Chiavetta, Secretary PA Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265

Re: Application of Transource Pennsylvania, LLC Filed Pursuant to 52 Pa. Code Chapter 57 Subchapter G, for Approval of the Siting and Construction of the 230kV Project in Portions of Franklin County, Pennsylvania Docket No. A-2017-2640200

Application of Transource Pennsylvania, LLC filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the 230kV Transmission Line Associated with the Independence Energy Connection-East Project in Portions of York County, Pennsylvania Docket No. A-2017-2640195

Dear Secretary Chiavetta:

Attached for filing is the Answer to Transource Pennsylvania LLC's Petition and a Brief of Stop Transource Franklin County in Opposition to the Petition for Interlocutory Review and Answer to a Material Question to be filed in the above-referenced matter. Copies will be provided as indicated on the Certificate of Service.

Thank you.

JAW/cvp Enc.

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Counsel for Stop Transource Franklin County

cc: Per Certificate of Service

Honorable Gladys M. Brown (via Overnight Delivery)

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Honorable Andrew G. Place (via Overnight Delivery) Honorable John F. Coleman (via Overnight Delivery)

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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 with the 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 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 equipment at the Furnace Run Substation in York County, Pennsylvania P-2018-3001883 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 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.

BRIEF OF STOP TRANSOURCE FRANKLIN COUNTY IN OPPOSITION TO THE PETITION FOR INTERLOCUTORY REVIEW AND ANSWER OF MATERIAL QUESTION

Stop Transource Franklin County ("STFC"), by and through its attorneys, respectfully files this Brief in Opposition to the Petition for Interlocutory Review and Answer of a Material Question filed by Transource Pennsylvania, LLC ("Transource").

The Petition should not be granted. There are no circumstances here that require the Commission to authorize an extraordinary remedy by granting Transource's petition for interlocutory review and deviating from the normal proceedings. Transource will not suffer

irreparable harm if the hearings occur, and, the Public Utility Commission ("Commission") reviews the Recommended Decisions in its entirety, and any exceptions.

As set forth below in Part III, interlocutory review is not warranted. Subpart A explains that Transource offers no compelling reason why the Commission should deviate from the normal review process because: 1) routine evidentiary rulings are not subject to interlocutory review; 2) Transource's desire to avoid the delay of remand is not a compelling reason. Subpart B argues that Interlocutory Review would not serve to expedite the proceedings, but rather risks unfair prejudice. Part IV argues that if the Commission does grant interlocutory review, the Commission should answer the questions in the negative because A) Transource failed to offer the testimony on direct; and B) granting interlocutory review would cause, not avoid, substantial prejudice.

Transource caused the instant situation, not the routine evidentiary ruling of the presiding officers in this proceeding. Transource could have avoided the need to petition the Commission for the extraordinary remedy of interlocutory appeal, and the further unprecedented remedy of seeking the Commission to approve bifurcated hearings instead of allowing the approval process to proceed in the normal fashion. Transource, however, chose delay. Transource's Petition would be unnecessary had Transource included reliability as a basis for need in its Application or on direct at some point before the rebuttal phase. Or, Transource at the very least could have timely sought the interlocutory review after the ALJs December 2018 Sixth Prehearing Order, rather than wait an additional month. Transource's delay gives rise to Transource's suggestion of a bifurcated hearing process, which would be confusing, inefficient and prejudicial.

If the Commission does grant the petition, the Commission must answer Transource's questions in the negative because the Sixth Prehearing Order and the Seventh Prehearing Order

serve only to maintain the scope of the proceedings as set forth by Transource. The Sixth Prehearing Order struck the reliability testimony one month after Transource offered it, yet Transource waited more than another month to file this Petition. Transource's delay has caused substantial and irreparable harm to those citizens forced to answer their petition just 3 weeks before the hearings.

The Commission's regulations prohibit the introduction of rebuttal testimony that should have been included in a party's case-in-chief, and rebuttal testimony that substantially varies from the case-in-chief. The Sixth Prehearing Order struck the challenged testimony to avoid trial by ambush. Transource: raised several completely new issues on the alleged need and benefits of the IEC Project, including newly-identified reliability violations, which should have been provided as direct.

Should the Commission grant Transource's petition, the Commission should answer the question the negative and likewise deny Transource's to create a confusing bifurcated hearing process. Transource should not be rewarded for waiting until less than 30-days from the hearing dates to seek interlocutory review of a question. If the Commission reverses the evidentiary ruling, a stay must be granted along with a remand so that due process is afforded in a new procedural schedule.

I. BACKGROUND

On December 27, 2017, Transource Pennsylvania, LLC ("Transource" or the "Company") filed two Applications for siting electric transmission lines, one proposed line for Franklin County, which is the subject of Transource's Application filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the 230 kV Transmission Line Associated with the Independence Energy Connection West Project in

Portions of Franklin County, Pennsylvania, docketed at A-2018-2640200 and one proposed line in York County, which is the subject of the Application filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the 230 kV Transmission Line Associated with the Independence Energy Connection East Project in Portions of York County, Pennsylvania, docketed at A-2018-2640195 (hereinafter, collectively, "Siting Applications"). Transource filed six (6) witness statements in its case-in-chief to support its Applications.

Prior to Transource filing its Siting Applications, on December 23, 2017, the Commission approved a settlement of Transource's application for certification under Docket Nos. A-2017-2587821 and G-2017-2587822, recognizing that Transource was "a new type of entity in this Commonwealth" that was formed solely to carry out a particular market efficiency project. Transource is a "new type of entity" whose Application for approval of the siting of the Project is limited as reflected in the certificate of public convenience to the identified service area(s) and to the market efficiency Project 9A, for the purpose of relieving congestion, not for the purpose of resolving reliability violations¹.

Transource filed five Statements to support its Applications. Eight public hearings were held in Franklin and York Counties in May of 2018. After Transource filed the late-added eminent domain applications, Administrative Law Judges Barnes and Calvelli issued a Third Procedural Order dated June 26, 2018, which permitted additional public input hearings in September of 2018 in Franklin and York Counties, and extended the due date for Direct Testimony to September 25, 2018. On November 27, 2018, after all of the public input hearings

¹ As the Commission stated in the December 21, 2017 Order: "Transource Energy bid on and won the right to carry out its proposal with PJM Interconnection, LLC (PJM) to reduce congestion across the Pennsylvania and Maryland border." December 21, 2017 Order at 7.

were conducted, and the other parties' Direct Testimony was served, Transource filed its Rebuttal Testimony, which consisted of sixteen (16) statements.

After receiving the voluminous Rebuttal Testimony, the Office of Consumer Advocate ("OCA") filed a Motion to Amend the Procedural Schedule on December 7, 2018 and the Citizens to Stop Transource York County and Maple Lawns Farms, Inc. filed a Motion to Amend the Procedural Schedule on December 10, 2018. Citizens to Stop Transource, York County sought to amend the procedural schedule, and argued in the alternative to strike testimony. Sixth Prehearing Order at 3. STFC filed its Motion to Amend the Procedural Schedule and to Strike Certain Testimony on December 13, 2018. On December 28, 2018, upon consideration of the three motions² regarding the procedural schedule, and the requests to strike, the ALJ's struck testimony that Transource should have offered on direct, and that "effectively altered the scope and complexity of the proceedings." Sixth Prehearing Order at 5. Sixth Prehearing Order attached hereto as Exhibit A. The Sixth Prehearing Order also granted a two week extension on the submission of Surrebuttal Testimony, but no other extension of the hearing schedule.

Transource did not file a petition for interlocutory review of the Sixth Prehearing Order. On January 10, 2019, STFC filed a Motion to Designate Certain Testimony Stricken Pursuant to the Sixth Prehearing Order. Transource answered that Motion, and the ALJ issued the Seventh Prehearing Order on January 24, 2019, confirming the particular page and line designations of the inadmissible testimony. Out of the 21 statements offered by Transource, only six of them contain any stricken portions. Transource filed this Petition a week later, on February 1, 2019.

² The ALJs also considered and granted Transource's Motion to Withdraw certain pending eminent domain cases in the Sixth Prehearing Order.

II. LEGAL STANDARDS

Interlocutory review is available only when "necessary prevent substantial prejudice or expedite conduct of proceeding." To warrant interlocutory review, the petitioner must "state ... the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding." The "pertinent consideration" for the Commission is "whether interlocutory review is necessary in order to prevent substantial prejudice — that is, the error and any prejudice flowing therefrom could not be satisfactorily cured during the normal Commission review process." *Joint Application of Bell Atlantic Corp. and GTE Corp.*, Docket No. A-310200F0002, *et al.* (Order entered June 10, 1999); *Pa. PUC v. Frontier Communications of Pa. Inc.*, Docket No. R-00984411 (Order entered February 11, 1999); *In re: Knights Limousine Service, Inc.*, 59 Pa. P.U.C. 538 (1985). In response to the petition for interlocutory review, and pursuant to 52 Pa. Code § 5.303, the Commission may take one of the following courses of action on requests for interlocutory review and answer to a material question:

- (1) Continue, revoke or grant a stay of proceedings if necessary to protect the substantial rights of the parties.
- (2) Determine that the petition was improper and return the matter to the presiding officer.
- (3) Decline to answer the question.
- (4) Answer the question.

52 Pa. Code § 5.303. Generally, Petitions for Interlocutory Review are not favored. The preferred approach is to permit proceedings to move forward in the normal course in order to provide all parties, the presiding officer, and the Commission with a full opportunity to develop the record, brief issues, and present arguments at each stage. *James Quigley & Teresa Mendez-Quigley*, No. C-2017-2617558, 2018 WL 4636892, at *2–3 (Sept. 20, 2018) (*citing Re: Philadelphia Gas Works Universal Service and Energy Conservation Plan*, Docket No. M-00072021 (Order entered October 23, 2009).

Under the Commission's regulations, the presiding officer has "the power to exclude irrelevant, immaterial or unduly repetitive evidence...to schedule...and to otherwise regulate the course of the proceeding." 52 Pa. Code § 5.483. Decisions to limit testimony are routine evidentiary determinations to be made by the presiding offer. The presiding officer "shall have all necessary authority to control the receipt of evidence including the following: (1) Ruling on the admissibility of evidence. (2) Confining the evidence to the issues in the proceeding and impose, where appropriate:

- (i) Limitations on the number of witnesses to be heard.
- (ii) Limitations of time and scope for direct and crossexaminations
- (iii) Limitations on the production of further evidence;
- (iv) Other necessary limitations.

52 Pa. Code § 5.401. Further the ALJ's are charged with directing and focusing the proceeding. 52. Pa. Code § 5.402.

Moreover, an applicant for approval of a siting application has the burden to present evidence to support its application following the Commission's procedures, and affording all parties due process. Under the Commission's regulations, a party is prohibited from introducing evidence at the rebuttal phase that "should have been included in the party's case-in-chief" and that "substantially varies from the party's case-in-chief." 52 Pa. Code § 5.243(e). *See also, City of Lancaster (Sewer Fund) v. Pa. P.U.C.*, 793 A.2d 978 (Commw. Ct. 2005) (rejecting direct evidence of a wage increase proffered in the rebuttal phase, and remanding the case for further proceedings).

III. LEGAL ARGUMENT

Transource offers no compelling reasons why the extraordinary remedy of interlocutory review is warranted here. Transource will not suffer prejudice were it to seek review after a Recommended Decision is made. Transource relies solely timing crises of its own making, from

failing to include testimony on direct to waiting to file this Petition until less than thirty (30) days before the hearings.

A. Interlocutory Review Should Not Be Granted Because Transource Fails to Offer a Compelling Reason Why the Commission Should Deviate from the Normal Proceeding.

Transource cannot satisfy the standards for obtaining interlocutory review. The "pertinent consideration" for interlocutory review is whether interlocutory review is necessary to prevent substantial prejudice, and whether "the error and any prejudice flowing therefrom, could not be satisfactorily cured during the normal Commission review process." *Saucon Creek Assocs., Inc.*, 69 Pa. P.U.C. 467 (Apr. 27, 1989). The Commission has explained:

In order that we make ourselves perfectly clear, the correctness or erroneousness of the ALJ's ruling on admissibility is not a relevant consideration, either initially in considering a request for certification of a question (except to the extent that such arguments might persuade the ALJ to reverse his or her ruling), or later in considering whether interlocutory review is warranted.

Id. at, 69 Pa. P.U.C. 467. Transource argues that the Commission would be "deprived of relevant updated information related to the overall benefits of the Project." Petition at ¶ 7. However, there is no evidence that Transource could not seek review under the normal review procedures. Transource's own requested relief in this Petition requires additional hearings that will occur at a later date on the challenged testimony. Accordingly, it appears that Transource simply wishes to avoid the normal course of proceedings, and obviate any remand.

1. Routine Decisions on Evidentiary Matters Are Not Subject to Interlocutory Review.

Decisions to exclude testimony are routine decisions to be made by the ALJ, and "generally are not subject to interlocutory review by the Commission." *Core Communications, Inc. v. Verizon Pennsylvania, Inc.*, Docket No. C-20078390, 2009 Pa. P.U.C. 873675 (2009).

Here, Transource submitted siting applications for the Project 9A, approved by PJM because it provided the highest benefit-cost ratio, the most total congestion savings, and the most production cost savings." Application at ¶ 18. Transource presented the Project as a Market Efficiency project. Only at the Rebuttal Phase, in November, did Transource offer testimony identifying reliability violations that may occur on other systems, as a basis for the "need" for the Project.

The Sixth Prehearing Order struck portions of testimony because Transource was "introducing direct testimony as rebuttal testimony" and where Transource was "effectively altering the scope and complexity of the issues that are to be addressed by intervening parties and landowners." Sixth Prehearing Order at 5. The presiding officers have the authority and the duty to make determinations on the admissibility of evidence.

The proper scope of the proceeding is the Siting Applications of Transource, and the associated eminent domain and shelter petitions, not how the Transource application interacts with the existing incumbent transmission transformers, conductions and transmission lines.

Transource stated that the need for Project 9A is the market efficiency, not reliability violations existing on the system. Transource's direct testimony made only passing "vague references" to reliability. Sixth Prehearing Order at 5. Transource did not raise reliability violations, which Transource characterizes as "reliability benefits" in its Siting Application. Only in hindsight, after hearing the public input and receiving the direct testimony of the other parties about market efficiency as a basis for need, Transource determined that additional information on reliability benefits, especially that with determined that the identification of alleged reliability violations may push their application over the top to approval.

2. Transource's desire to save time and money is not a compelling reasons to grant a petition for interlocutory review.

Transource seeks interlocutory review on this question because "it would cause substantial delay to remand the proceeding and follow the Commission's normal review process." Petition at ¶ 8. Instead, Transource wants the alleged material questions "expeditiously" handled "to avoid any delay in its ability to meet its contractual obligations regarding the Project's in-service date." Petition at ¶ 8. Simply put, Transource does not want to wait, and wants to eliminate normal review. Transource's desire to circumvent normal review is not a compelling reason for interlocutory review, expedited or otherwise. Transource's argument applies to any and all rulings by a presiding officer to exclude evidence. *Pa. P.U.C. v. The Peoples Natural Gas Company*, Docket Nos. R-870593 and R-870668 (Order, Sept. 1987) (Denying a petition for interlocutory review of stricken testimony and explaining: "This tautological argument would apply to any and all rulings by a presiding officer to exclude evidence, and it does not by itself justify interlocutory review").

Moreover, the Commission has repeatedly rejected that argument that obviating the need for remand alone justifies interlocutory review. *Petition of the Borough of Cornwall for a Declaratory Order*, Docket No. P-2015-25-5794, 2015 WL 7575479 (Pa. P.U.C.) (Order dated November 19, 2015)("ALJ's exclusion of a witnesses testimony is a routine evidentiary ruling which does not warranted interlocutory review"); *Core Communications*, at fn. 1. The argument would Transource's contractual liability to PJM does not eliminate the requirement to follow the Commission's normal proceedings.

Transource has not shown why at this late stage of the proceeding, the normal review process should be preempted. The normal review process allows the Commission to make any decisions with the benefit of the full ALJ's Initial Recommended Decision on the merits, to understand the decision in the context of the all of the evidence. Transource could file an

exception, if necessary, after the Recommended Decision, and the Commission "may see the weight the ALJ has given to the evidence presented by the Parties" and so that we can avoid prejudging the issues that will be before us on review." *James Quigley & Teresa Mendez-Ouigley*, No. C-2017-2617558, 2018 WL 4636892, at *6 (Sept. 20, 2018).

B. Interlocutory Review Should Not Be Granted Because The Requested Relief Would Not Expedite the Proceeding, and Risks Unfair Prejudice to Intervenors and OCA.

The evidence and the timing under which Transource seeks to introduce the evidence risks unfair prejudice to STFC, other intervenors and the OCA. Transource waited to petition the Commission for Interlocutory Review for weeks, and only filed the Petition once the parties were less than 30 days from the first hearing date. The ALJ's issued the Sixth Prehearing Order on December 28, 2018, striking testimony, but Transource never sought interlocutory review under February 1, 2019. Further, even after the Seventh Prehearing Order on the designation of particular lines of testimony stricken was issued on January 24, 2019, Transource waiting a week before filing this Petition. Transource should not now be rewarded for failing to timely seek interlocutory review with a special bifurcated hearing process that allows Transource a second set of hearings, conducted at the expense of Intervenors and OCA and the citizens of the Commonwealth. Requests for interlocutory review at a late stage in the proceeding lack merit. *Petition of the Borough of Cornwall* at *13.

In a further affront to the participants in this proceeding, Transource wants the Commission to authorize two sets of hearings. Transource filed this Petition less than 30 days before the first day of the hearings. However, instead of seeking a stay of the proceedings so that hearings could proceed in an efficient and coherent matter, Transource requests that the Commission bifurcate the proceeding, and order hearing at a later date on the challenged

testimony. Transource's proposed "solution" to the timing problem of its own making does not expedite the conduct of the proceeding. A stay of the current proceedings is appropriate³ in any event because of the lateness of Transource's offer of testimony and this Petition.

IV. IF THE COMMISSION GRANTS THE PETITION, IT MUST ANSWER THE QUESTIONS IN THE NEGATIVE.

The Commission should answer Transource's questions in the negative because Transource failed to offer the challenged testimony on direct, and Transource's manipulation of the schedule threatens to prejudice and deny due process to other parties. Transource seeks a determination that the ALJ's erred in striking the challenged testimony, and denied Transource due process of law. Second, Transource alleges that ALJ's evidentiary ruling prevents the Commission from receiving a full and complete record on need.

A. Transource Failed to Offer the Challenged Testimony On Direct.

The ALJ's did not err; Transource never offered testimony on reliability violation.

Transource expanded the scope of the proceeding by introducing reliability testimony. The Seventh Prehearing Order was necessary to "avoid trial by ambush and the prevention of surprise". The ALJ's determined that the "new reliability issues should have been set forth in the siting applications and direct testimonies." *Id. at 2*. Transource never provided any direct testimony from witnesses on reliability violations on existing incumbent transmission transformers, conductors and transmission lines without Project 9A until it offered Rebuttal Testimony. Resolution of alleged reliability violation, therefore, was an entirely new reasons for approving the siting applications. The Sixth Prehearing Order, properly limits Transource PA to

³ Transource has agreed to a six (6) week delay in the proceedings in Maryland, proposing to push back the evidentiary hearings back from their scheduled date of April 8 until June 3, 2019. See Exhibit B.

the scope if its direct case. These new reliability issues should have been set forth in the siting applications and direct testimonies of Transource PA.

The Commission should preclude testimony an applicant overlooked in filing its direct case, and should prohibit its insertion on rebuttal, to avoid "trial by ambush." See *Pa. P.U.C. v. UGI Util.*, (*Elec. Div.*), 1994 WL 843074 (Docket No. R-00932862). Transource has improperly attempted to "shore up inadequate direct at the rebuttal phase of this case." *Id.* Transource could have filed additional direct testimony at any point after the prehearing conferences in this proceeding. Transource concedes that reliability could have been a basis for need, (See Petition at ¶ 6) but Transource never raised the argument on direct.

For example, Transource offers two statements by PJM employees, Mr. Herling and Mr. Horger, both of which introduce reliability violations as the basis for the "need" of the project, as well as the Rebuttal Testimony of Mr. Ali, who now asserts for the first time that the IEC Project would remove "specific reliability violations" and addresses "local reliability needs." Mr. Herling's rebuttal statement should have been introduced on direct. Mr. Herling introduces the prohibited topic of the "specific issues relating to reliability," as explained in the summary of his testimony: "While Project 9A was originally approved as a market efficiency project, it is now expected to provide specific reliability benefits because PJM has identified potential reliability violations that would be resolved by this Project." Statement No. 7-R. p. 6. Ms. Chang's statement, discusses "several benefits of the IEC Project that are not considered in PJM's estimate of the benefits from the Project." Chang, Transource Statement 10-R at 3. The statement offers no reason why the benefits discussed were not offered on direct.

Second, Transource could have Amended the Application at any point. Transource is permitted to amend its application with new direct testimony only if "every party, utility, agency

or municipality affected by the amendment is given reasonable notice thereof and an opportunity to present evidence with respect to the amendment." 52 Pa. Code 57.75(f).

B. Permitting testimony on the alleged reliability violations would cause substantial prejudice and deny other parties due process of law.

As discussed in Part III, the Sixth Prehearing Order and Seventh Prehearing Order struck testimony that changed the scope of the proceedings. If the Commission were to allow the testimony, substantial prejudice could occur because the testimony has been stricken from the proceedings since December 2018. STFC is entitled to a "reasonable notice and opportunity to present evidence" about the reliability violations. Further, no experts have had a chance to analyze the newly-identified alleged reliability violations that allegedly will occur on other transmission lines if the IEC Project is not constructed.

As evidenced by volume of opposition to the IEC project, the impact of this project is potentially catastrophic to the citizens and lands of Franklin County. Based on the potential impact of this proceeding, the Commission must afford the highest level of due process to the public in resolving the proceedings.

Transource suggests that the Commission must "expeditiously" consider and reverse the ALJs decision to strike testimony so that the Commission has the most up-to-date information about the Applications. The evidence was stricken, not because it is emergent or late-developing, but because "it alters the scope and complexity of the issues to be addressed" and because Transource failed to introduce it earlier. It would be prejudicial to permit Transource to add potential reliability violations that would occur without Project 9A "as a reason to approve the siting applications." Sixth Prehearing Order at 4-5.

IV. **CONCLUSION**

For all the foregoing reasons, STFC respectfully requests that Transource's Petition for

Interlocutory Review and Answer to Material Question be denied. Should the Petition be

granted, STFC respectfully suggests that the questions be answered in the negative. STFC

further requests that any determination to answer the question be accompanied by a stay of the

proceedings, and/or remand to the presiding officers for additional determination on the proper

procedural schedule for additional discovery and hearings, and to provide any and all relief that

the Commission deems appropriate to protect the due process interests of all parties involved.

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Dated: February 11, 2019

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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 with the Independence Energy Connection - East and West Projects in portions of York and Franklin Counties, Pennsylvania.

A-2017-2640195 A-2017-2640200

Petition of Transource Pennsylvania, LLC for a finding that a building to shelter control equipment P-2018-3001878 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 equipment at the Furnace Run Substation in York County, Pennsylvania P-2018-3001883 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 A-2018-3001881, 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.

STOP TRANSOURCE FRANKLIN COUNTY'S ANSWER TO TRANSOURCE PENNSYLVANIA, LLC'S PETITION FOR INTERLOCUTORY REVIEW AND ANSWER TO MATERIAL QUESTION

Stop Transource Franklin County ("STFC") hereby files this Answer to the Petition for Interlocutory Review and Answer to a Material Question filed by Transource Pennsylvania LLC ("Transource" or "Company"), as follows:

- 1. Admitted in part and denied in part. It is admitted that Transource filed rebuttal testimony on November 27, 2018. The testimonies are documents that speak for themselves.

 STFC denies the remaining averments. Further, it is specifically denied that STFC had over four months to address the reliability testimony of Transource in surrebuttal testimony offered.
- 2. Denied as stated. It is admitted only that on December 13, 2018, STFC filed a Motion to Amend the Procedural Schedule and to Strike Certain Testimony. By way of further response, the ALJ's issued a Sixth Prehearing Order on December 28, 2018, granting in part and denying in part the motions of STFC, Citizens to Stop Transource, and OCA, and striking the testimony of the Company. Sixth Prehearing Order, a copy of which is attached hereto as "Exhibit A." By way of further answer, the Office of Consumer Advocate ("OCA") had also filed a Motion to Amend the Procedural Schedule on December 7, 2018 and intervenor Citizens to Stop Transource York County and Maple Lawns Farms, Inc. had filed a Motion to Amend the Procedural Schedule on December 10, 2018, seeking to amend the schedule and/or strike improper testimony. Sixth Prehearing Order at 2.
- 3. Admitted. It is admitted that on January 24, 2019 that the ALJ's issued the Seventh Prehearing Order ("Seventh Prehearing Order"). By way of further answer, the Seventh Prehearing Order responded to STFC's January 10, 2019 Motion to Designate Testimony Stricken Pursuant to the Sixth Prehearing Order. Sixth Prehearing Order at ¶¶ 8, 9.

I. MATERIAL QUESTIONS

4. Denied. The averments of this paragraph constitute conclusion of law to which no response is required. By way of further answer, the STFC denies that the ALJ's erred, and that an evidentiary ruling striking particular portions of testimony offered on reliability for a market

efficiency project presents a material question. By way of further answer, the ALJ's determination was necessary and proper to confining the evidence to the issues in the proceeding, and limiting Transource to the scope if its direct testimony. Further, STFC denies that Transource has been denied due process of law. Transource elected to present reliability evidence as a basis for the Project need in Rebuttal Testimony without first establishing the issue on direct.

5. Denied. The averments of this paragraph constitute conclusions of law to which no response is required. By way of further answer, Transource misstates the legal standard, and casts blame on the Seventh Prehearing Order instead of its own failure to present the information on reliability benefits as a basis for the need for this transmission line Project. Transource faces a problem of its own making because it provided only vague references to reliability in its siting applications and direct testimony. Sixth Prehearing Order at 5.

II. TRANSOURCE'S ALLEGED COMPELLING REASONS FOR INTERLOCUTORY REVIEW

6. Denied as stated. The Order is a document that speaks for itself. Further, the remaining averments of the paragraph contain legal conclusions to which no response is required. By way of further answer, Transource's claim on submission of evidence mischaracterizes this proceeding, and misstates the timing, in an attempt to bifurcate the issues at the eleventh hour to give Transource a second set of hearings. By way of further answer, with respect to 1) and 2) Transource concedes that it knew that all projects, including the market efficiency projects, have reliability benefits but never raised those issues on direct. Transource now seeks to alter the scope and complexity of the issues on Rebuttal. By way of further answer, Transource's attempt to alter the scope of the proceedings just less than three (3) weeks before the hearings prolongs, rather than expedite the proceedings. Seventh Prehearing Order at 2 (indicating that hearings are to

begin on February 21, 2019). By way of further answer with respect to the timing:

- a. Transource could have sought the instant Petition in response to the Sixth Prehearing Order, some six weeks earlier, rather than filing on February 1, 2019. The Sixth Prehearing Order, issued on December 28, 2018 struck the testimony. The Sixth Prehearing Order correctly narrowed the issues for the proceeding and struck the reliability testimony on December 28, 2018, one month after Transource submitted the testimony in question. The Seventh Prehearing Order merely clarified the earlier Sixth Prehearing Order;
- b. Transource could have sought leave to amend its direct testimony to add the reliability information it suggests that intervenors had over the four months to probe;
- c. Either of the above options would have been consistent with judicial economy so that hearings could be conducted all at once, without creating the spectre of a second set of hearings;

By way of further answer, Transource did not pursue the above options, and now Transource seeks interlocutory review less than thirty (30) days before the hearings.

- 7. Denied. The averments on this paragraph constitute conclusions of law to which no response is required. By way of further response, it is denied that the issues set forth herein properly characterize the applicable law and regulations and the ALJ's erred. Transource's last-ditch effort to introduce evidence regarding alleged reliability concerns at the Rebuttal stage altered the scope of the proceedings. Sixth Prehearing Order at 5. By way of further answer, the Sixth and Seventh Prehearing Orders are proper exercises of the presiding officer's authority to control the evidence and the proceedings.
- 8. Denied. The averments of this paragraph constitute conclusions of law to which no response is required. By way of further response, it is denied that Transource raises material questions, and that they must be answered expeditiously. Further, it is denied that following the normal course of Commission reivew would cause Transource to suffer "substantial delay" or "irreparable harm." Remand after Commission review of a Recommended Decision, does not

cause much more delay than that which Transource has already created by waiting to file this Petition. Because Transource waited to seek certification of this question, Transource is already seeking a second set of hearings on the reliability questions, suggesting that those could occur on or before March 31, 2019. By way of further answer still, Transource agreed to push back the hearings in Maryland proceedings, one business day *after* submitting its Petition for Interlocutory Review in Pennsylvania claiming substantial delay and irreparable harm. February 4, 2019 letter, a copy of which is attached hereto as "Exhibit B." (Proposing a 6-week delay in Maryland proceedings, and agreeing to push the evidentiary hearings back from their scheduled date of April 8 until June 3, 2019.)

9. Denied. The averments of this paragraph are conclusions of law to which no response is required. By way of further answer, Transource's decision to file this Petition less than thirty (30) days from the date of the hearings without requesting a stay, creates the potential for proceedings that are unfair, unnecessary and inefficient. Following the normal course of the proceedings, with the Commission reviewing the entire Recommended Decision is the best course. By way of further answer, Transource did not Petition the Commission after the December 28, 2018 Order striking the testimony, and instead waited until February 1, 2019 to demand "expeditious" handling of its Petition, and a bifurcated hearing. By way of further answer still, the request for a bifurcated hearing is directly contrary to the legal standard of expediting the conduct of the proceeding.

WHEREFORE, Stop Transource Franklin County respectfully requests that the Commission deny Transource's Petition for Interlocutory Appeal, and stay any the proceedings during the pendency of the Commission's decision on this Petition. Further, should the

Commission grant the Petition, STFC respectfully suggests that the questions should be

answered in the negative; and if not, respectfully suggests that additional time commensurate

with that time requested by STFC prior to testimony being stricken, or other such extensions of

the procedural schedule be granted, and that the Commission take such other actions as are found

to be appropriate under the circumstances.

Respectfully submitted,

CURTIN & HEEFNER LLP

By:

Jordan B. Yeager (Pa. I.D. No. 72947)

Mark L. Freed (Pa. I.D. No. 63860)

Joanna A. Waldron (Pa. I.D. No. 84768)

2005 South Easton Road, Suite 100

Doylestown, PA 18901

Dated: February 11, 2019

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CERTIFICATE OF SERVICE

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

I hereby certify that a true and correct copy of the Answer to Transource Pennsylvania LLC's Petition for Interlocutory Review and Answer to a Material Question has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL & FIRST CLASS MAIL

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Respectfully submitted, CURTIN & HEEFNER LLP

3y:_

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Doylestown, PA 18901

Dated: February 11, 2019

VERIFICATION

I, Lori Rice, am the President of Stop Transource Franklin County. I hereby state that the facts set forth herein are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements made herein are subject to the penalties of 18 Pa.C.S. Section 4904 concerning unsworn falsification to authorities.

DATED:

Exhibit A.

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 with the Independence Energy Connection - East and West Projects in portions of York and Franklin Counties, Pennsylvania.

A-2017-2640195 A-2017-2640200

Petition of Transource Pennsylvania, LLC for a finding that a building to shelter control equipment P-2018-3001878 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 equipment at the Furnace Run Substation in York County, Pennsylvania P-2018-3001883 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 A-2018-3001881, 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.

SIXTH PREHEARING ORDER

Order Granting Petitions for Leave to Withdraw Eminent Domain Applications, Striking Certain Witness Testimony, and Amending Procedural Schedule

Petitions for Leave to Withdraw Eminent Domain Applications

On November 20, 2018, Transource Pennsylvania, LLC (Transource PA) filed five Petitions for Leave to Withdraw the Applications of Transource PA to exercise the power of eminent domain to acquire easements and rights of way across properties in the above-captioned proceeding. To date, no objections have been filed to any of the

Petitions for Leave to Withdraw any of the eminent domain applications regarding the following cases:

A-2018-3001971	Carol K. Long
A-2018-3002204	Edwin W. Shank and Dawn L. Shank
A-2018-3002137	IESI PA Blue Ridge Landfill Corporation
A-2018-3002129	West Penn Power Company
A-2018-3001970	Jeffrey C. Neutzel

Accordingly, no objections having been filed, the Petitions for Leave to Withdraw shall be granted and these docket numbers shall be removed from the caption and their cases marked "closed." We note for the record that West Penn Power Company sent us a letter dated November 20, 2018 indicating it no longer sought to admit direct testimony in the instant proceeding because West Penn has negotiated an easement related to its property referenced at Docket No. A-2018-3002129.

OCA's, Stop Transource Franklin County's, and Citizens to Stop Transource, York County's Motions To Amend Procedural Schedule or Alternatively Strike Testimony

The current procedural schedule is as follows:

Surrebuttal Testimony	January 16, 2019	
Written Rejoinder	February 11, 2019	
Evidentiary Hearings	February 21-22 and February 25 - March 1, 2019	
Main Briefs	March 28, 2019	
Reply Briefs	April 17, 2019	

On December 7, 2018, the Office of Consumer Advocate (OCA) filed a Motion to Amend Procedural Schedule in the above-captioned proceeding. OCA requests a minimum of 90-day extension of time to submit Surrebuttal testimony. On December 10, 2018, Citizens to Stop Transource, York County (Citizens) and Maple Lawn Farms, Inc. (Maple Lawn) filed a Motion to Amend Procedural Schedule. They request a five-month extension for the deadline of Surrebuttal testimony, written rejoinder and the evidentiary hearings. On December 13, 2018, Stop Transource Franklin County filed a Motion to Amend Procedural Schedule and Strike Certain Testimony. It requests amending the schedule by 150 days or in the alternative moves to strike the

testimony of Transource witnesses Chang, Herling, Herzog and Stein to the extent they are introducing direct testimony as rebuttal testimony. Additionally, Stop Transource – Franklin County moves to strike the testimony of Transource witness Cawley, asserting that the testimony is a legal opinion offering conclusions of law.

In support of their request Citizens and Maple Lawn contend that Transource PA raised significant new and complex claims in its rebuttal testimony that should have been set forth in direct testimony including potential reliability violations and alleged economic benefits. Six witnesses provided direct testimony and sixteen witnesses are providing rebuttal testimony for the Company. Thus, fundamental principles of due process dictate the parties need sufficient time to review the extensive rebuttal testimony, conduct discovery, review discovery responses and prepare Surrebuttal testimony. Also, landowners should be given an opportunity to respond to Transource PA's rebuttal testimony through further public input hearings or written testimony. As Transource PA has voluntarily extended its in-service date by a period of five months, from June 2010 to November 2020, an extension of time to provide Surrebuttal testimony will not unduly prejudice Transource PA. Alternatively, Intervenors request witness Chang's rebuttal testimony should be stricken.

OCA claims it needs additional time to conduct discovery, analyze the new generation deliverability analysis performed by PJM Interconnection, LLC (PJM) and file Surrebuttal testimony. OCA anticipates needing several rounds of discovery.

Conversely, Transource PA argues it has complied with 52 Pa. Code § 5.243 regarding the scope of rebuttal testimony in that it served direct testimony that the project would have reliability benefits. Since OCA challenged this in its direct testimony, Transource PA responded in its rebuttal. This is not a new claim. Transource PA objects to a further delay in the litigation schedule.

Disposition

A party may seek an extension of time where good cause is shown. Section 1.15 provides as follows.

- § 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(b).

The Commission's regulations also prohibit parties from introducing 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, a party is not permitted to introduce evidence during a rebuttal phase which is repetitive, should have been included in the party's case-in-chief, or substantially varies from the party's case-in-chief. 52 Pa. Code § 5.243(e).

We agree with OCA, Citizens and Maple Lawn that although Steven Herling adopts portions of witness McGlynn's direct testimony, his testimony adds new information that PJM has identified potential reliability violations that would be resolved by Project 9A. Transource PA Statement No. 7-R at 6. Mr. Herling refers to penalties as high as \$1 million per day for the violation of reliability standards developed by NERC and approved by FERC. Transource PA Statement No. 7-R at 23. By introducing as a reason to approve the siting applications potential reliability violations that would occur

without the construction of Project 9A, Transource PA has effectively altered the scope and complexity of issues that are to be addressed by intervening parties and landowners subject to the Applications for eminent domain. The IEC project was initially described as being necessary to relieve transmission congestion constraints, which are economic in nature. While vague references were made about Project 9A generally enhancing reliability of the transmission system, no references were specified to suggest the project is necessary to resolve potential reliability violations or to provide reliability benefits. Many Intervenors have already testified at the public input hearings and site views already held in this case in response to siting applications and eminent domain applications regarding a market efficiency project, not a reliability project.

Also, the direct testimony of Transource PA's witness Kamran Ali indicated that there is a need for the project to address market efficiency and resolve congestion constraints. Transource PA Statement No. 2 at 6. As Transource PA still claims the primary purpose of the project is market efficiency and the approval requested has not changed, we are persuaded to grant Citizens and Stop Transource's alternative motion to strike Transource witnesses Chang, Herling, Herzog and Stein testimonies to the extent they are introducing direct testimony as rebuttal testimony. Witness Chang's testimony regarding employment and economic stimulus benefits will be permitted as it rebuts testimony of some intervenors. However, specific issues relating to reliability should have been set forth in the siting applications and direct testimonies of Transource PA. See Pa. Pub. Util. Cmm'n v. UGI Utilities, Inc. (Electric Division), Docket No. R-00932862, 1994 Pa. PUC LEXIS 137 at *133-34 (Pa. PUC July 27, 1994)(avoid trial by ambush and the prevention of surprise by confining the parties to the scope of their direct case).

There is a motion to strike the testimony of Transource Witness Cawley on the basis that it is a legal opinion offering conclusions of law. Some of Mr. Cawley's testimony rebuts the testimony of OCA witness Rubin regarding the PJM cost/benefit analysis. Additionally, we find Mr. Cawley's opinion is not objectionable just because it embraces an ultimate issue. Pa. Rule of Ev. 704. We also note that, to the extent some of

the proffered testimony may constitute a legal opinion, such testimony could not form the basis for any findings of fact in any recommended decision that we might issue in this proceeding. Therefore, we deny the motion to strike Witness Cawley's testimony.

The testimonies of Witnesses Silva, Lee and Mercer address issues related to electromagnetic fields, a topic raised in testimony during public input hearings and site views but not covered by the OCA in its direct testimony. The rebuttal testimonies of Transource PA Witnesses Dominy and Rothman discuss real estate value impacts, which were also addressed by many witnesses at the public input hearings. Witness Yamatini's testimony relates to karst issues raised by Stop Transource Franklin County. There is no motion to strike any other specific witness' rebuttal testimony.

Finally, we will give Intervenors an additional 14 days to submit written Surrebuttal testimony and will extend the written rejoinder deadline to February 11, 2019. Additionally, in the interest of fairness, landowners subject to applications for eminent domain who have already testified will be given an opportunity to submit written surrebuttal testimony by January 30, 2019 and written rejoinder testimony by February 11, 2019.

THEREFORE,

IT IS ORDERED:

1. That Transource Pennsylvania, LLC's Petitions for Leave to Withdraw the Applications of Transource Pennsylvania, LLC to Exercise the Power of Eminent Domain to Acquire Easements and Rights-of-Way Across Properties of certain individuals and/or entities identified in Ordering Paragraph No. 2 shall be granted.

2. That the following applications for eminent domain are deemed withdrawn and that these dockets shall be removed from the caption and marked "closed":

A-2018-3001971 Carol K. Long
A-2018-3002204 Edwin W. Shank and Dawn L. Shank
A-2018-3002137 IESI PA Blue Ridge Landfill Corporation
A-2018-3002129 West Penn Power Company
A-2018-3001970 Jeffrey C. Neutzel

- 3. That the Office of Consumer Advocate's Motion to Amend Procedural Schedule is granted in part and denied in part.
- 4. That Stop Transource Franklin County's Motion to Amend Procedural Schedule is granted in part and denied in part.
- 5. That Citizens to Stop Transource, York County's Motion to Amend Procedural Schedule is granted in part and denied in part.
- 5. That the procedural schedule as amended by the Fourth Prehearing Order dated July 30, 2018 is amended as follows:

Surrebuttal Testimony January 30, 2019

Written Rejoinder February 11, 2019

Evidentiary Hearings February 21-22 and February 25 – March 1

Main Briefs March 28, 2019
Reply Briefs April 17, 2019

6. That landowners subject to applications for eminent domain who testified in person are given leave to serve written surrebuttal testimony on or before January 30, 2019 and written rejoinder testimony on or before February 11, 2019 to the parties and the presiding Administrative Law Judges.

- 7. That the motion to strike the rebuttal testimony of James Cawley is denied.
- 8. That the motion to strike the rebuttal testimony of Judy Chang is granted in part and denied in part consistent with the body of this Order.
- 9. That the motion to strike the rebuttal testimonies of Steven Herling, Kent Herzog and Stephen Stein is granted to the extent they are introducing direct testimony as rebuttal testimony consistent with the body of this Order.

Dated: December 28, 2018

| S | Elizabeth H. Barnes |
| Administrative Law Judge |
| Andrew Calvelli |
| Administrative Law Judge |

Exhibit B.

VENABLE LLP

VIA EFILE AND HAND DELIVERY

February 4, 2019

Terry Romine, Executive Secretary Maryland Public Service Commission William Donald Schaefer Tower 6 St. Paul Street, 16th Floor Baltimore, MD 21202 J. Joseph Curran, III

T 410-244-5466 F 410.244.7742 jcurran@venable.com

Re: Case No. 9471 - The Application of Transource Maryland, LLC for a Certificate of Public Convenience and Necessity to Construct Two New 230 KV Transmission Lines Associated with the Independence Energy Connection Project in Portions of Harford and Washington Counties, Maryland

Dear Executive Secretary Romine:

Please accept this letter¹ as Transource Maryland, LLC's ("Transource") response to the Department of Natural Resources, Power Plan Research Program's ("PPRP") request for adjustments to the procedural schedule in this matter. For the reasons discussed herein, Transource requests that the Commission adopt the proposed schedule set forth below, to which PPRP, Staff, OPC, and Harford County, Maryland have no objection.

On January 22, 2019, PPRP filed a letter request in response to Order No. 88999 for a modification to the procedural schedule. PPRP's request was for a 45-day extension of the surrebuttal period. See ML #223697. Since the time of PPRP's letter request, Transource and PJM have agreed to work with PPRP to provide additional analysis and evidence regarding PPRP's proposed alternatives (i.e., the "Conceptual Alternatives") in response to recently-issued discovery requests. See Exhibit A attached hereto. This additional analysis will be provided to PPRP and the other parties in the next 2-3 weeks. Transource looks forward to providing PPRP and the other parties with this additional information, which Transource believes will further demonstrate that its proposed project should be approved.

In light of the forthcoming additional analysis, Transource worked with PPRP to develop a proposed modification to the procedural schedule that would extend the dates for each round of testimony. Those discussions resulted in the following proposed schedule:

¹ Enclosed for filing is an original and seventeen (17) copies of this letter.



Terry Romine, Executive Secretary February 4, 2019 Page 2

	Current Schedule	Proposed New Dates
Staff, OPC, PPRP, Intervenor Direct Testimony	February 25	April 12
Rebuttal Testimony	March 18	May 8
Surrebuttal Testimony	April 1	May 22
Rejoinder Testimony	Live during hearings	Live during hearings
Evidentiary Hearings	Start April 8	June $3^2 - 13^3$ June 17 and 18 if needed

PPRP, Staff, OPC, and Harford County, Maryland have each indicated that they do not object to the above proposal.⁴ The proposed modifications provide PPRP and the other parties "additional time for discovery and analysis . . . to evaluate the two existing lines" (*see* Order No. 88999 at 8) before their direct testimony is filed. This will allow the parties to incorporate any response to the additional alternatives analyses Transource and PJM are currently undertaking into their direct testimony, which will result in a more orderly hearing process.

If you have any questions or concerns, please do not hesitate to contact me.

Respectfully submitted,

/s/

J. Joseph Curran, III Counsel to Transource Maryland, LLC

Enclosure

Copy to: Parties of record to Case No. 9471

² Counsel for Mary Beth and Daniel Scott has requested that the hearings begin on June 10. It is estimated that the hearings will take two weeks regardless of whether the hearings begin on June 3 or June 10.

³ Due to scheduling conflicts, PPRP and Transource request no hearings on June 14.

⁴ PPRP also shared the proposed new dates with counsel for STOP Transource Power Lines MD, Inc. who was checking with his client.