**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Transource Pennsylvania, LLC :

for approval of the Siting and Construction of the : A-2017-2640195

230 kV Transmission Line Associated with the : 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 equipment :

at the Rice Substation in Franklin County, Pennsylvania : P-2018-3001878

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, : P-2018-3001883

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 : A-2018-3001881,

Transmission Line associated with the Independence Energy : *et al.*

Connection – East and West Projects as necessary or proper :

for the service, accommodation, convenience or safety of :

the public. :

**ORDER GRANTING MOTION OF TRANSOURCE PENNSYLVANIA, LLC**

**TO COMPEL ANSWERS TO DISCOVERY REQUESTS**

**Introduction**

Before us is the Motion to Compel Answers to Discovery Requests (Motion) filed by Transource Pennsylvania, LLC (Transource) on July 9, 2019. Initially, we note that these consolidated cases have a lengthy procedural history which will likely grow as the cases progress towards their conclusion. Therefore, for purposes of Transource’s Motion, we will not discuss the procedural history of these cases but will instead focus on the procedural history directly relevant to disposing of the Motion.

**Procedural Background**

On July 9, 2019, Transource filed its Motion to compel discovery. Pursuant to the Procedural Ordered entered on March 18, 2018, Stop Transource Franklin County (STFC) was required to respond to the Motion within three (3) days. STFC has not filed any response to Transource’s Motion. On this basis alone, we are inclined to grant the Motion. However, we shall also discuss the merits of the Motion and grant on that basis as well.

On June 7, 2019, Transource served its Set IV Interrogatories on STFC. On June 13, 2019, STFC served Objections to many of the Interrogatories, which in turn led to Transource filing the instant Motion to Compel. The Interrogatories concern land owned by Lori Rice and Allen Rice. Mrs. Rice and Mr. Rice are active litigants in the Transource proceedings, and Mrs. Rice has submitted testimony in those indicating that the Rices will suffer damages if the Transource Applications are approved by the Commission. (Motion at Page 5). It should also be noted that Transource has filed, as part of this consolidated proceeding, an Eminent Domain Application affecting the property owned by Mrs. Rice and Mr. Rice (*see* Docket No. A-2018-3002128).

**Legal Standard**

Under the Commission’s regulations, the scope of discovery is broad. Section 5.321 outlines the scope of discovery as follows:

(c) *Scope*. Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

52 Pa. Code § 5.321(c). Although the scope of discovery is broad, there are certain significant limitations thereon, as follows:

**§ 5.361. Limitation of scope of discovery and deposition.**

  (a)  Discovery or deposition is not permitted which:

    (1)  Is sought in bad faith.

    (2)  Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.

    (3)  Relates to matter which is privileged.

    (4)  Would require the making of an unreasonable investigation by the deponent, a party or witness.

52 Pa. Code § 5.361.

**Transource’s Set IV Interrogatories, Questions 1, 2 and 3**

Transource contends that STFC has improperly objected to the following discovery requests:

1. How many acres of land do Mrs. Rice and her husband (including all companies owned by them) farm in Pennsylvania? Include all land that is owned and/or leased by Mrs. and Mr. Rice.

2. Is all of the land that is farmed by Mrs. and Mr. Rice identified above subject to bio-secure and organic farming practices? If not, how many acres are subject to bio-secure and organic farming practices?

3. Fully explain all farming methods that Mrs. and Mr. Rice employ to ensure that crops grown on their land qualify to be bio-secure and organic.

STFC filed various Objections to the above Interrogatories. None of the Objections have merit. The Rices are active litigants in this consolidated proceeding, they have submitted testimony in this proceeding, and they are active litigants in their individual eminent domain matter which forms part of this consolidated proceeding. Given these facts, the information sought by Transource is well within the permissible boundaries of discovery before the Commission, as the Interrogatories in question directly relate to claims raised by the Rices and issues raised by the Rices in this proceeding. Therefore, full and complete answers to the Interrogatories are required and an appropriate Order shall be entered below in that regard.

**Transource’s Set IV Interrogatories, Question 4**

Transource contends that STFC has improperly objected to the following discovery request:

4. Re Rice Exhibit A. Please provide the name and contact information for the photographer who took the photos.

STFC responded by stating in pertinent part “the photos are personal photos taken with a cellphone. Transource is already in possession of the contact information for the Rices.” Transource correctly notes that the above answer does not directly identify the photographer by name. However, a fair reading of the answer indicates that the Rices are the photographers. To the extent that this remains unclear, and given that STFC did not file any answer to the Motion to Compel, a full and complete answer to the Interrogatory is required and an appropriate Order shall be entered below in that regard.[[1]](#footnote-1)

**Transource’s Set IV Interrogatories, Questions 5 and 6**

Transource contends that STFC has improperly objected to the following discovery requests:

5. Fully explain all fencing, signing and other security that Mrs. and Mr. Rice have installed to protect the areas they claim are bio-secure.

6. Are there any signs on Mrs. and Mr. Rice’s property indicating that a particular area is bio-secure? If yes:

a) identify the area in which each sign is located;

b) describe the contents of each sign; and

c) provide the date on which the sign was posted

STFC filed various Objections to the above Interrogatories. None of the Objections have merit. The Rices are active litigants in this consolidated proceeding, they have submitted testimony in this proceeding, and they are active litigants in their individual eminent domain matter which forms part of this consolidated proceeding. Given these facts, the information sought by Transource is well within the permissible boundaries of discovery before the Commission, as the Interrogatories in question directly relate to claims raised by the Rices and issues raised by the Rices in this proceeding. Therefore, full and complete answers to the Interrogatories are required and an appropriate Order shall be entered below in that regard.

**Transource’s Set IV Interrogatories, Questions 9 and 10**

Transource contends that STFC has improperly objected to the following discovery requests:

9. Please describe any actions that Mr. and Mrs. Rice or their representatives took to prevent the alleged trespass.

10. Please describe any actions that Mr. and Mrs. Rice or their representatives took to minimize the alleged damages.

STFC filed various Objections to the above Interrogatories. None of the Objections have merit. The Rices are active litigants in this consolidated proceeding, they have submitted testimony in this proceeding, and they are active litigants in their individual eminent domain matter which forms part of this consolidated proceeding. Given these facts, the information sought by Transource is well within the permissible boundaries of discovery before the Commission, as the Interrogatories in question directly relate to claims raised by the Rices and issues raised by the Rices in this proceeding. Therefore, full and complete answers to the Interrogatories are required and an appropriate Order shall be entered below in that regard.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Transource Pennsylvania, LLC to Compel Answers to Discovery Requests is granted, as follows:

a) Within three (3) days of the date of this Order, Stop Transource Franklin County shall provide full and complete answers to Transource’s Set IV Interrogatories, Questions 1 through 6, Question 9 and Question 10.

Date: July 23, 2019 /s/

Elizabeth H. Barnes

Administrative Law Judge

/s/

Andrew M. Calvelli

Administrative Law Judge

**A-2017-2640195 & A-2017-2640200 ET AL- APPLICATION OF TRANSOURCE PENNSLYVANIA, LLC. FOR APPROVAL OF THE SITING AND CONSTRUCTION OF THE 230KV TRANSMISSION LINE ASSOCIATED WITH THE INDEPENDENCE ENERGY CONNECTION-EAST & WEST PROJECTS IN PORTIONS OF YORK & FRANKLIN COUNTIES.**

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1. We note that under the Pennsylvania Rules of Evidence, it is not necessary for a person offering a photograph into evidence to be the actual photographer. It is only required that the person offering the photograph be able to sufficiently identify the subject matter depicted in the photograph. Therefore, we are uncertain of the reason behind this particular discovery request. However, as stated above, no answer to the Motion to Compel was filed by STFC and therefore at this point there seems to be no reason to deny the Motion in this regard especially where, as here, the answer appears to have already been provided. [↑](#footnote-ref-1)