**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. :

**FIFTEENTH PREHEARING ORDER**

A prehearing conference in this case scheduled for Wednesday, March 18, 2020, was cancelled due to management directives that all hearings and prehearing conferences from March 17, 2020 – March 30, 2020 be cancelled. Although the Commission has not officially reopened its doors to the public and most of its employees are teleworking, the Commission has decided to begin rescheduling hearings and conferences. Therefore, the prehearing conference previously scheduled for March 18, 2020 will be held as a Telephonic Call-In Conference on Wednesday, May 20, 2020. The purpose of this conference is to discuss the Joint Amended Application of Transource Pennsylvania, LLC (Transource PA) and PPL Electric Utilities Corporation (PPL) filed on January 29, 2020. Notice of the Joint Amended Application was published in the *Pennsylvania Bulletin* (<https://www.pacodeandbulletin.gov>) on February 8, 2020 with a protest deadline of February 28, 2020. In this Amended Application, Transource PA and PPL request Commission authority for siting an alternative route for the East Portion ("Alternative IEC East Portion") of the Independence Energy Connection ("IEC Project"). An appropriate procedural schedule related to that filing will also be discussed at the prehearing conference.

On February 28, 2020, the Franklin County Board of Commissioners (Franklin County) filed a Petition to Intervene and Protest in this proceeding. Franklin County argues its Petition is timely within the deadline of February 28, 2020. However, in the event the Petition is deemed untimely, Franklin County requests it be granted *Nunc Pro Tunc* for good cause.

On March 19, 2020, Applicant Transource PA filed an Answer objecting the Protest. This Petition is ripe for a decision.

DISPOSITION

This Order is issued pursuant to the provisions of 52 Pa. Code § 5.483(a), which set forth the authority of a Presiding Officer with respect to conducting proceedings. 52 Pa.Code § 5.72(a)(1)-(3). Commission regulations also govern the form, content, and timing of Petitions to Intervene.

In particular, Section 5.74 provides deadlines by which Petitions to Intervene shall be filed. This includes filing the Petition no later than the date fixed for the filing of responsive pleadings in an order or notice with respect to the proceedings and no later than the date fixed for filing protests as published in the Pennsylvania Bulletin. 52 Pa.Code § 5.74(b)(1)-(2). Both of these provisions, however, include “absent good cause shown” provisions that allow for exceptions to the regulations under certain circumstances. Id.; see also, 52 Pa.Code § 5.74(c) (“intervention will not be permitted once an evidentiary hearing has concluded absent extraordinary circumstances.”)

*Nunc pro tunc* is "[a] phrase applied to acts allowed to be done after the time when they should be done, with a retroactive effect, i.e., with the same effect as if regularly done." Black's Law Dictionary 1218 (4th ed. 1968).

In proceedings before Commission administrative law judges (ALJs), Petitioners must set forth a reason to justify the allowance of a *nunc pro tunc* filing. See *Re Dela Cab Company*, Docket No. A- 99875F.1, 50 Pa. PUC 451 (December 9, 1976). In the case of *Joan Dumas v. PECO Energy Company*, Docket No. C-2010-2175472 (May 19, 2011), ALJ Colwell allowed PECO to file an Answer to a complaint *nunc pro tunc* where PECO argued that its computer tracking system showed the Answer as filed when, in fact, the Answer had not been filed. In *Adamthwaite v. PECO Energy Company*, Docket No. C-2008-2029752 (January 23, 2009), Chief ALJ Veronica Smith treated an attorney’s statement of a medical illness as a Motion *nunc pro tunc* and granted the late filing of an Answer and New Matter and Preliminary Objection.

The Commission’s regulations give ALJs discretion as to whether to accept a filing as *nunc pro tunc*. 52 Pa. Code §§ 5.403 and 5.483.

**§ 5.403. Control of receipt of evidence.**

 (a)  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 cross examinations.

      (iii)   Limitations on the production of further evidence.

      (iv)   Other necessary limitations.

 (b)  The presiding officer will actively employ these powers to direct and focus the proceedings consistent with due process.

Section 5.72 of the Commission’s regulations governs intervention. This Section provides that “a petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought.” 52 Pa.Code § 5.72(a). Section 5.72 also provides that the right or interest supporting intervention may be one of the following:

(1) A right conferred by statute of the United States or of the Commonwealth.

(2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

(3) Another interest of such nature that participation of the petitioner may be in the public interest.

52 Pa.Code § 5.72.

I have considered Franklin County’s explanation for filing its Petition to Intervene and Protest on February 28, 2020, and determine that it is timely as it was filed on the deadline date for protests published in the *Pennsylvania Bulletin*. Even if I were to find it untimely, Franklin County has a direct and substantial interest as a governmental body in the outcome of this consolidated proceeding. No other party can represent its interests. This weighs in favor of granting the Petition *nunc pro tunc*. Additionally, I find no delay in the administration of the consolidated Applications even though Transource PA objects to the Petition. Transource PA already served Franklin County with a copy of the Application. Franklin County avers that it will not significantly broaden the issues. The hearings have not yet concluded in this proceeding. No extraordinary circumstances need to be shown for intervention. In granting intervention, however, Franklin County will be required to take the case as it currently stands. Transource PA is correct that intervenors generally take the record as they find it at the time of intervention.

**THEREFORE,**

**IT IS ORDERED:**

1. That the Franklin County Board of Commissioners’ Petition to Intervene and Protest filed on February 28, 2020 is granted.
2. That the Franklin County Board of Commissioners is granted Intervenor status.

Dated: April 16, 2020 /s/

Elizabeth H. Barnes

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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