

June 29, 2020

**VIA EFILING**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg.  
400 North Street  
Harrisburg, PA 17120

**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**

**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 and necessary for the convenience or welfare of the public  
Docket No. P-2018-3001883**

**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**

**Application of Transource Pennsylvania, LLC for approval to acquire a certain portion of 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 Secretary Chiavetta:

Enclosed for filing on behalf of Stop Transource Franklin County, please find Motion of Intervenor, Stop Transource Franklin County for In-Person Evidentiary Hearing Dates after the Lifting of Pandemic Restrictions. Copies will be served as indicated on the Certificate of Service.

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
June 29, 2020  
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Sincerely,

A handwritten signature in black ink, appearing to read 'Joanna A. Waldron', with a long horizontal flourish extending to the right.

Joanna A. Waldron, Esq.  
CURTIN & HEEFNER LLP  
*Counsel for Stop Transource Franklin County*

JAW:alr  
Enclosure  
cc: The Honorable Elizabeth Barnes  
Certificate of Service

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Transource Pennsylvania, LLC	:	
Filed Pursuant to 52 Pa. Code Chapter 57,	:	Docket No. A-2017-2640195
Subchapter G, for Approval of the Siting and	:	Docket No. A-2017-2640200
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	:	P-2018-3001878
equipment at the Rice Substation in Franklin	:	
County, Pennsylvania is reasonably necessary for	:	
the convenience or welfare of the public.	:	

Petition of Transource Pennsylvania, LLC	:	
for a finding that a building to shelter control	:	P-2018-3001883
equipment at the Furnace Run Substation in York	:	
County, Pennsylvania is reasonably necessary for	:	
the convenience or welfare of the public.	:	

Application of Transource Pennsylvania, LLC	:	
for approval to acquire a certain portion of the lands	:	A-2018-3001881,
of various landowners in York and Franklin	:	<i>et al.</i>
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.	:	

**MOTION OF INTERVENOR, STOP TRANSOURCE FRANKLIN COUNTY, FOR IN-  
PERSON EVIDENTIARY HEARING DATES AFTER THE LIFTING OF PANDEMIC  
RESTRICTIONS**

Intervenor, Stop Transource Franklin County (“STFC”), by and through its attorneys, respectfully requests that the Commission provide an in-person hearing with respect to the Joint Amended Application of Transource Pennsylvania, LLC (“Transource”) and PPL Electric and

for the evidentiary hearing. The current pandemic conditions restricting gatherings, and the closure of the Commission building, have led to the scheduling of hearings on the proposed settlement agreements and the Joint Amended Application as online video hearings with the option to participate solely by telephone. The Intervenor and non-settling parties are entitled to in-person access to oppose the settlement and participate in evidentiary hearings after the lifting of the pandemic restrictions. In support of this motion for an extension, STFC states as follows:

## **I. INTRODUCTION**

On December 27, 2018, Transource filed its Siting Application pursuant to 52 Pa. Code Chapter 57, Subchapter G. for Approval of the 230 kV Transmission Line Associated with the Independence Energy Connection-West Project in Portions of Franklin County. On February 21, 22, 25-27, 2019, evidentiary hearings were held regarding the above-captioned matter. On March 20, 2019, the Public Utility Commission (“Commission”) entered an Opinion and Order answering two pending questions on interlocutory review in the affirmative and returning the case “for such further proceedings deemed necessary,” including permitting the parties to respond to previously-stricken newly-reintroduced testimony. Evidentiary Hearings were held in person in February 2019, with some later-raised reliability issues not completed at the time of the initial evidentiary hearings. The Tenth Prehearing Order in this case was issued on April 2, 2019, setting forth a schedule to allow for surrebuttal testimony and further hearings.

The further hearings were delayed in light of settlement discussions. On or about October 17, 2019, Transource filed partial settlement agreements with respect to York County (East) line with PPL Electric (“PPL”), York County Planning Commission, Maple Lawn Farms, Barron Shaw & Shaw Orchards.

On or about January 29, 2020, Transource and PPL filed the Joint Amended Application, along with 8 supporting witness statements and accompanying documents.

On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency proclaiming the existence of a disaster emergency related to the COVID-19. In light of the disaster declaration and the “unique circumstances presented by the COVID-19 pandemic” the Commission on March 13, 2020, issued an Emergency Order in Docket No. M-2020-3019244, which established a moratorium on the terminations of utility services, including all electric, natural gas, water, wastewater, telecommunications, and steam utilities, and ordering any utilities to “restore service to customers whose service has been terminated.” A true and correct copy of the order Docket, is attached hereto as Exhibit “A”.

On March 16, 2020, the Commission issued a cancellation notice for the previously-scheduled March 18, 2020 Prehearing Conference.

On April 16, 2020, the Fifteenth Prehearing Order scheduled the Prehearing Conference for May 20, 2020, and granted the Franklin County Board of Commissioner’s Petition to Intervene. The parties held the Prehearing Conference on May 20, 2020 via telephone. On June 16, 2020, the Commission sent notice of a Telephonic Evidentiary Hearing (using Skype videoconferencing) for July 9-10, 2020. For the hearing, interested parties are instructed to email Judge Barnes at [ebarnes@pa.gov](mailto:ebarnes@pa.gov) by July 2, 2020 for emailed access instructions. A true and correct copy of the Notice of Further Telephonic Evidentiary Hearing is attached hereto as Exhibit “B”.

Like most entities across the Commonwealth, the Commission is performing functions remotely and the physical location in Harrisburg is closed. Many other businesses are operating with modified schedules or routines; places offering services are closed.

The Franklin County public libraries are not available for internet access. The library branches are not opening until July 13, and at that point, will be open for limited hours for

curbside pickup. See, <http://www.fclspa.org/moving-into-the-next-phase/> (accessed June 26, 2020).

Evidentiary hearings using an online advanced communication technology was discussed at the Prehearing Conference. The Office of Consumer Advocate expressed concerns about the format in light of some critical energy infrastructure information in the proceeding. N.T., *Lawrence, D.*, May 20, 2020, *Transcript* at 2776:19-25. The OCA noted that it is under restrictions in terms of the amount of time and number of people who could go into the office at one time and for limited purposes, (“to pick up work supplies or use the printer or scanner”). *Id.* at 2778:1-5. In addition, the counsel for the OCA noted that the then-current AG procedures prevented the OCA attorneys from meeting physically in the office together in the conference room. *Id.* Counsel for Transource suggested that it would stipulate to getting documents on the record or “making admissions that could avoid the need for cross examination.” N.T. Kanagy, A, May 20, 2020, *Transcript* at 2779:13-18.

Participants in the proposed hearing will need to have computer access to see the exhibits, and telephone access to hear the proceedings. N.T., Barnes, J., May 20, 2020, *Transcript* at 2801:2-5. The Sixteenth Prehearing Order was issued on May 29, 2020, and provided that any provision of the Order may be modified upon motion and good cause shown by any party in interest in accordance with 52 Pa.Code § 5.223(a).

## **II. LEGAL STANDARD**

Under 52 Pa. Code § 5.223(a), the Sixteenth Order scheduling the online and telephonic hearing may be modified upon good cause shown. “A presumption of openness inheres in civil trials as in criminal trials.” *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1070 (3d Cir. 1984)(citing *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 at 606, (1982). A civil trial, “plays a particularly significant role in the functioning of the judicial process and the government

as a whole.” *Id.* The Third Circuit concluded that the “First Amendment embraces a right of access to [civil] trials ... to ensure that this constitutionally protected ‘discussion of governmental affairs’ is an informed one.” *Id.* at 604–05, based on the identification of the following functions of public access: It “*enhances the quality and safeguards the integrity of the factfinding process*,” “fosters an appearance of fairness,” and heightens “public respect for the judicial process.” and “permits the public to participate in and serve as a check upon the judicial process—an essential component in our structure of self-government.” *Publicker* at 1070 (emphasis added) (internal citations omitted).

As discussed at the Prehearing Conference on May 20, 2020, the parties anticipated revisiting whether Courts may only conduct court proceedings through the use of advanced communication technology, if constitutional requirements are satisfied. *See, e.g., In re: General Statewide Judicial Emergency*, Judicial Administration Docket Nos. 531 and 532, at 4. The Pennsylvania Constitution provides for open access to the courts:

All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct.

Pa. Const. Art. 1, Sec. 11. In addition, the instant proceedings involve Transource’s request for eminent domain power. Property rights are fundamental rights. The right of parties in this case facing eminent domain to be secure in their home and on their land is a sacrosanct, inviolate, and fundamental. These individual have the right to protect the property on which the home is situated, and should be permitted to do so in-person and not solely via telephone due to circumstances outside of their control.

### **III. LEGAL ARGUMENT**

The Joint Amended Application proposes a \$561.68 million transmission line project that would span the length of Franklin County for more than 20 miles. TPA Ex. SRH AA2 p. 12. Dozens of landowners remain opposed to the proposed IEC Project. Weber, AA2, p. 11:3-5; Application (West) Attachment 3. The Joint Amended Application claims the reconfigured route is in the public interest. PPL AA-1, Grossman at 7:8-10. Previous evidentiary hearings were open to the public, and multiple public input hearings have occurred in both Franklin and York Counties with sustained public opposition to this proposed IEC Project. The remaining evidentiary hearings should be conducted in-person, and should resume only when the entirety of the parties and public can attend. Participation is unreasonable for many of the parties in light of the restrictions arising out of the COVID-19 restrictions on access to public sources of advanced communication technology. Good cause exists here because members of intervenor STFC, as well as other parties to the proceeding, would be unable to meaningfully participate virtually due to technological obstacles. Members of STFC and members of the public have limited access to smart phones, computers and internet connectivity. STFC respectfully requests that the hearings be rescheduled when the interested parties are able to conduct in-person hearings safely, in accordance with constitutional protections.

#### **A. The Intervenors, Protestants, Landowners Subject to Eminent Domain and Public are Entitled to Attend the Evidentiary Hearings In Person**

The public right of access to civil trials “is inherent in the nature of our democratic form of government.” *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1069–70 (3d Cir. 1984)(citing *United States v. Mitchell*, 551 F.2d 1252, 1258 (D.C.Cir.1976), *rev'd on other grounds sub nom. Nixon v. Warner Communications, Inc.*, *supra*, 435 U.S. 589 (1978)). Fundamental property rights as well as the public access to the proceedings are at play here. The parties, include landowners who are facing condemnation. They, along with the intervenors, entitled to



conduct an in-person hearing, and cross examine witnesses. The requirement that individual citizen who wishes to access to justice at the Public Utility Commission must have a computer and email upends the notion of public utilities that are for the convenience, accommodation, of the public. In this case, many Franklin County citizens filed protest letters with the Commission and submitted or made statements at the public input hearings.

The public input is crucial to this case, especially where the Commission is reviewing whether a settlement is in the public interest, and there are dozens of parties facing eminent domain who are not part of the settlement. Justice Oliver Wendell Holmes, as justice on the Massachusetts Supreme Court, declared that public access to civil judicial proceedings was “of vast importance” because of “the security which publicity gives for the proper administration of justice.” *Cowley v. Pulsifer*, 137 Mass. at 394.

The importance of the public “seeing with its own eyes” the administration of justice in controversies between citizens is paramount. Justice Holmes continued:

It is desirable that the trial of [civil] causes should take place under the public eye ...not because the controversies of one citizen with another are of public concern, but because it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed.

*Publicker Indus., Inc.*, 733 F.2d at 1069.

A teleconference does not permit the same experience or non-verbal information without live, in-person witnesses. Further, a teleconference in which certain participants can see evidence and others cannot due to technological restrictions, is not equitable.

Counsel have presented that there may some difficulties in cross examining witnesses and certain pre-hearing admissions may be made “to avoid cross examination.” Some parties and individuals will have no access to the online hearing. Although STFC is not seeking any

application to the Commission with reference to this project, STFC as the Intervenor is forced to ask for consideration of the public access rights of citizens facing eminent domain over their property and affected citizens facing the construction and permanent addition of miles of transmission lines to their homes and investments.

**B. Lack of Access, Exacerbated by the Current Pandemic Restrictions, Such as Closed Libraries, Prevents Meaningful Participation**

A number of individuals involved in the proceedings as landowners, or members of STFC, do not have access to computers or internet connectivity, or smart phones. Moreover, the local public libraries in Franklin County remain closed for other than curbside pickup. Accordingly, citizens facing eminent domain and the installation of a high voltage transmission line project quite literally in their backyard, will not be able to participate meaningfully in the evidentiary hearings virtually due to technological obstacles, including lack of computers or smart phones, and unavailability of high-speed internet. In Franklin County, internet service providers are limited compared to more densely populated part of the state; for example, Verizon Fios service is not available in any of the following Franklin County locations: Chambersburg 17201, 17202, Scotland (17254) or Greencastle (17225) or Waynesboro (17268).<sup>1</sup> Public input testimony already received in this case indicates an economic divide and hardship in this case; e.g., N.T., Engle, E. *May 22, 2018 Transcript* at p. 811, l.22 – p.813. Further, Franklin County’s Kerry Bumbaugh, Quincy Township Supervisor, and the President of the Franklin County Township Association of Township Supervisors, confirmed the large population of “German

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<sup>1</sup> Verizon Fios website, <https://www.verizon.com/inhome/qualification>, accessed June 25, 2020.

Baptists, plain people” in his area who would not be inclined to participate in an advanced communication technology hearing. Bumbaugh, K., *May 22, 2018 Transcript* at 868: 23-25.

The PUC recognized that the coronavirus pandemic imposes a unique hardship on citizens. The Commission issued an order suspending all essential utilities from terminating services due to the “current challenges resulted from the in the Proclamation of a pandemic emergency.” Emergency Order, Docket No. M- 2020-3019244.<sup>2</sup> Franklin County residents are weighed down and overwhelmed by the condition that COVID-19 imposes on all Pennsylvania residents, and will not have the ability or resources to navigate a virtual appearance.

Transource has the burden under Commission’s existing regulations applicable to transmission line siting to provide a complete application that allows the Commission to make a determination as to whether the application meets the four subsections of Section 57.76: (1) there is a need for it; (2) it will not cause an unreasonable risk of danger to the health and safety of the public; (3) it is in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth; (4) it will have minimum adverse environmental impact considering the electric power needs of the public, the state of available technology and the available alternatives. Now, Transource and PPL have submitted the Joint Amended Application which also asks the Commission to determine whether the proposed settlement and reconfigured line is in the public interest. The evidentiary hearing designed to

Concerns over any delay caused by waiting until in-person hearings can be conducted are certainly outweighed by the concern that parties and the public will not be able to participate in the evidentiary hearing involving the request to approve a transmission line across Franklin and York Counties. Transource will not suffer any undue prejudice as the original 2020 in-service

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<sup>2</sup> Some of the internet service providers offering services that might be necessary to access the proposed hearing are not offered by Commission-certificated utilities.

date for the IEC Project will not be met, and new dates, as indicated in the Joint Amended Application are anticipated for May 2021 (West) and February 2022 (East). Weber Testimony, AA-1, at 9:19-21.

#### **IV. CONCLUSION**

For the foregoing reasons, STFC respectfully requests that Administrative Law Judge Elizabeth H. Barnes grant STFC's request for a modification of the Sixteenth Prehearing Order, and provide that the remaining evidentiary hearing occur in person after the existing pandemic restrictions are lifted.

CURTIN & HEEFNER LLP



By: \_\_\_\_\_

Mark L. Freed (Pa. I.D. No.63860)  
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Dated: June 29, 2020

## CERTIFICATE OF SERVICE

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

I hereby certify that a true and correct copy of Intervenor, Stop Transource Franklin County for In-Person Evidentiary Hearing Dates after the Lifting of Pandemic Restrictions 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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By: \_\_\_\_\_  
JOANNA A. WALDRON

Date: June 29, 2020

***EXHIBIT "A"***

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

**Re: Public Utility Service Termination Moratorium  
Proclamation of Disaster Emergency – COVID-19**

**EMERGENCY ORDER  
DOCKET No: M-2020-3019244**

On March 6, 2020, pursuant to subsection 7301(c) of the Emergency Management Services Code, 35 Pa. C.S. §§ 7101, *et seq.*, Governor Tom Wolf issued a Proclamation of Disaster Emergency proclaiming the existence of a disaster emergency throughout the Commonwealth for a period of up to ninety (90) days, unless renewed by the Governor. Shortly thereafter, on March 11, 2020, the World Health Organization declared COVID-19 – the coronavirus – a pandemic.

The Proclamation of Disaster Emergency authorizes and directs the suspension of “the provisions of any regulatory statute prescribing the procedures for conduct of Commonwealth business, or the orders, rules or regulations of any Commonwealth agency, if strict compliance with the provisions . . . would in any way prevent, hinder, or delay necessary action in coping with this emergency.”

In addition, Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501, provides that every public utility has a duty to furnish and maintain adequate, efficient, safe, and reasonable service as is necessary for the accommodation, convenience, and safety of its patrons, employees, and the public. Section 1501 explicitly requires such service to be “reasonably continuous and without unreasonable interruptions.” 66 Pa. C.S. § 1501.

Under the unique circumstances presented by the COVID-19 pandemic, establishing a termination moratorium for utility services –including electric, natural gas, water, wastewater, telecommunications, and steam – is consistent with the Governor’s Proclamation of Disaster Emergency and the requirements of Section 1501.

Pursuant to the Commission’s regulations governing emergency relief, an Emergency Order will be issued only when there exists a clear and present danger to life or property or when the relief requested is uncontested and action is required prior to the next scheduled public meeting. 52 Pa. Code §3.1.



Additionally, Commission regulations at 52 Pa. Code §3.2 provide that, in addition to the existence of an emergency, an emergency order is appropriate where the need for relief is immediate, there would be irreparable injury if relief is not granted, and the relief is not injurious to the public interest.

I believe that issuance of an emergency order is appropriate under the unique circumstances. It is beyond argument that the provision of public utility service is necessary for the safety of the public. This is especially the case under the current challenges that resulted in the Proclamation of a pandemic emergency. Irreparable injury to the public is likely to occur with disruption of service, creating a clear and present danger to life.

Therefore, all electric, natural gas, water, wastewater, telecommunications, and steam utilities subject to the Commission's jurisdiction are prohibited from terminating service during the pendency of the Proclamation of Disaster Emergency, unless to ameliorate a safety emergency, or unless otherwise determined by the Commission.

Finally, we encourage utilities to restore service to customers whose service has been terminated, to the extent they can do so safely.

**THEREFORE, IT IS ORDERED:**

That all electric, natural gas, water, wastewater, telecommunications, and steam utilities subject to the Commission's jurisdiction are prohibited from terminating service during the pendency of the Proclamation of Disaster Emergency consistent with this Emergency Order.

Date: March 13, 2020

  
Gladys Brown Dutrieuille, Chairman

***EXHIBIT "B"***



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

June 16, 2020

In Re: A-2017-2640195  
A-2017-2640200  
P-2018-3001883  
A-2018-3001881 et al.

**Applications of Transource Pennsylvania, LLC**

For Approval of the Siting and Construction of the 230 kV Transmission Lines Associated  
with the Independence Energy Connection East and West Projects in Portions of  
York and Franklin Counties, Pennsylvania

**Further Telephonic Evidentiary Hearing**

This is to inform you that a further evidentiary hearing by telephone  
(videoconferencing) on the above-captioned case will be held as follows:

Type:           **Telephonic Evidentiary Hearing (using Skype videoconferencing)**

Date:           **July 9-10, 2020**

Times:          **10:00 a.m. - 4:30 p.m.**

Presiding:     **Administrative Law Judge Elizabeth H. Barnes**

All parties on the email distribution list will receive an e-mailed Skype invitation with log-in and access instructions to participate in the evidentiary hearing. Interested members of the public wishing to listen to the hearing should contact the presiding officer at [ebarnes@pa.gov](mailto:ebarnes@pa.gov) by July 2, 2020 for emailed access instructions.

All exhibits for the hearing must be pre-marked and emailed to the presiding officer and all parties on the service list no later than **July 2, 2020 by 5:00 p.m.** except that exhibits intended to be used solely for adversarial cross examination purposes must be provided to the presiding officer and all parties on the service list no later than **7:00 p.m.** on the day prior to when the particular witness will testify.

Any exhibit that is subject to the pre-existing confidentiality order in this case will only be sent to and shared with the counsel who have executed the non-disclosure agreement.

Any additional exhibits not previously identified or exchanged will be dealt with on a case by case basis; however, all parties should endeavor to identify and exchange exhibits - other than those to be used solely for adversarial cross examination purposes - by the July 2, 2020 deadline.

**You must email the Administrative Law Judge with a copy of ANY document you file in this case.**

If a witness requires an interpreter to participate in the hearings, we will make every reasonable effort to have an interpreter present telephonically. Please email ALJ Barnes at [ebarnes@pa.gov](mailto:ebarnes@pa.gov) at least ten days before the hearing with any requests.

Cc:

**A-2017-2640195 & A-2017-2640200 ET AL- APPLICATION OF TRANSOURCE PENNSYLVANIA, 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.**

*(Combined Parties List-Revised 1/9/20)*

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