

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

Public Meeting held December 21, 2017

Commissioners Present:

Gladys M. Brown, Chairman
Andrew G. Place, Vice Chairman
Norman J. Kennard
David W. Sweet
John F. Coleman, Jr.

Application of Transource Pennsylvania, LLC
for all of the Necessary Authority, Approvals, and
Certificates of Public Convenience: (1) to Begin
to Furnish and Supply Electric Transmission Service
in Franklin and York Counties, Pennsylvania; (2) for
Approval of Certain Affiliated Interest Agreements;
and (3) for Any Other Approvals Necessary to
Complete the Contemplated Transactions

A-2017-2587821
G-2017-2587822

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Elizabeth H. Barnes, issued on September 14, 2017, in the above-captioned proceeding. Exceptions have not been filed. However, we exercised our right to review the Initial Decision pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h).

History of the Proceeding

On February 7, 2017, Transource Pennsylvania, LLC (Transource PA or Company) filed an application for a certificate of public convenience (Certificate) to begin to furnish and supply electric transmission service in Franklin and York Counties, Pennsylvania and for the approval of affiliated interest agreements pursuant to Sections 1101 and 2102 of the Code, 66 Pa. C.S. §§ 1101 and 2102.

On February 27, 2017, Transource PA filed Proofs of Publication indicating that notice of the proceeding was published in various newspapers of general circulation. The Office of Consumer Advocate (the OCA) filed a Notice of Intervention, Protest and Public Statement on March 6, 2017. On March 6, 2017, and April 14, 2017, Mid-Atlantic Interstate Transmission, LLC (MAIT) and PECO Energy Company (PECO), respectively, filed individual Petitions to Intervene.

The ALJ convened a prehearing conference on May 22, 2017. Thereafter, Transource PA filed its Direct Testimony. After being notified that the Parties had reached a unanimous settlement in principle on all the issues, the ALJ issued an Order on July 3, 2017, suspending the litigation schedule pending the filing of a Joint Petition for Approval of Settlement. On July 10, 2017, the OCA and the Company (collectively, Joint Petitioners) filed a Joint Petition for Settlement with Statements in Support (Settlement). In response, MAIT and PECO submitted respective letters indicating that they did not oppose the Settlement. Also, on July 10, 2017, Transource PA filed the written direct testimony of witnesses Peggy I. Simmons and Kamran Ali. The Company later filed supplemental direct testimony of Ms. Simmons on August 14, 2017. No Parties objected to the admission of the supplemental testimony. The ALJ closed the record on August 14, 2017.

By Initial Decision issued on September 14, 2017, the ALJ approved the Application, as modified by the unopposed Settlement, as being in the public interest.¹ No Parties filed Exceptions to the Initial Decision.

Discussion

Initially, we note that any issue or argument that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The ALJ reached six Conclusions of Law. I.D. at 18. We shall adopt and incorporate herein by reference the ALJ's Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

Legal Standards

Because the Company has reached a settlement, it has the burden to prove that the Settlement is in the public interest. Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. Settlement terms often are preferable to those achieved at the conclusion of a fully litigated proceeding. In addition, a full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding. Settlements allow the

¹ On September 12, 2017, the Commission received a letter from Martha A. Pendleton, MD, who stated that she opposes the Company's proposed site location of a transformer; but Dr. Pendleton does not appear to oppose the Settlement itself.

parties to avoid the substantial costs of preparing and serving testimony, cross-examining witnesses in lengthy hearings, and preparing and serving briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yielding significant expense savings for the company's customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Pa. PUC v. C.S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985). In order to accept a settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C.S. Water and Sewer Assoc.*, *supra*. Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

Additionally, as Transource PA seeks public utility status from the Commission, this part of the transaction requires the issuance of a Certificate under Section 1102(a)(1) of the Code, 66 Pa. C.S. § 1102(a)(1). To grant a Certificate, the Commission must "find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa. C.S. § 1103(a). In granting a Certificate, the Commission may impose conditions that it deems are just and reasonable. *Id.* Further, the Commission will only approve contracts with affiliated interests, if such contracts are reasonable and consistent with the public interest. 66 Pa. C.S. § 2102.

The Settlement

Transource PA seeks public utility status from the Commission and a Certificate under the Code: (1) to begin to furnish and supply electric transmission service to or for the public within a transmission service area from the new Rice Substation in Franklin County, Pennsylvania to the Pennsylvania/Maryland border; and (2) to begin to furnish and supply electric transmission service to or for the public within a transmission service area from the new Furnace Run Substation in York County, Pennsylvania to the Pennsylvania/Maryland border. Settlement at 7.

Additionally, Transource PA requests approval of the affiliated interest agreements, attached to the Application as Appendices 5, 6, 11, 12 and 13, and any approvals necessary to carry out the transactions contemplated in the Application. *Id.*

The Settlement terms and conditions are as follows:

The above-captioned Application of Transource PA for a Certificate of Public Convenience under Section 1101 of the Public Utility Code, 66 Pa. C.S. § 1101, should be approved subject to the conditions stated herein:

a. The certificate of public convenience issued to Transource PA under Section 1101 should demarcate a service area of Franklin and York Counties, Pennsylvania. The Commission's issuance of a certificate of public convenience and demarcation of a service area does not constitute approval of any project proposed for the service area, including the Independence Project.

b. The Joint Petitioners agree that the affiliated interest agreements filed by Transource PA at Docket No. G-2017-2587822 and attached to the above-captioned Application should be approved. Transource PA will seek

Commission approval prior to modifying these affiliate agreements or entering into new affiliate agreements.

c. The Intervenors reserve all rights to challenge the need for the Independence Project when Transource PA files a Siting Application with the Commission or to challenge any other project proposed by Transource PA.

d. The Company acknowledges that if this Application is granted it will be subject to the jurisdiction and oversight of the Commission as is consistent with the Public Utility Code and the Commission's Regulations.

Settlement at 3.

The Joint Petitioners stipulate that Transource PA has the requisite technical, managerial, and financial fitness to operate a public utility in Pennsylvania. Additionally, the Joint Petitioners stipulate to the admission of the filed Application and attached appendices, as well as various statements and exhibits into the record. *Id.* at 3-4.

The Settlement provides that it is conditioned on the Commission's approval of the terms and conditions without modification. If the Commission modifies the Settlement, any Joint Petitioner may elect to withdraw from the Settlement and proceed with litigation which would render the Settlement void and of no effect. The Settlement requires that any election to withdraw must be filed with the Commission and served on the Joint Petitioners within five business days following the entry of an Order modifying the Settlement. *Id.* at 4.

Disposition

We find that the Settlement reflects a carefully balanced compromise of the interests of the Joint Petitioners and is in the public interest. Additionally, the affiliated

interest agreements filed by the Company are reasonable and consistent with the public interest. Thus, we agree with the ALJ's decision to approve the Application as modified by the Settlement. However, we shall modify the Initial Decision to ensure consistency with the Settlement.

Transource PA is a wholly-owned direct subsidiary of Transource Energy, LLC, and was formed to construct, own, operate, and maintain electric transmission facilities and equipment in Pennsylvania. Prior to filing this Application, 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.² According to the Application, the Company's winning proposal was chosen as the project which provided the highest benefit-to-cost ratio and the greatest total congestion savings. Transource PA is now responsible for the Pennsylvania portion of the Independence Energy Connection Project (Independence Project) which includes two new electric substations in Pennsylvania and two new 230 kV interstate transmission lines between Maryland and Pennsylvania identified by PJM as Project 9A or the Independence Project. The entire Independence Project is expected to save customers approximately \$620 million in congestion costs over a fifteen-year period. The Company is bound to complete the project by June 1, 2020.

The Application brings a new type of entity to the Commonwealth, as electric facilities have been owned and operated by the electric distribution companies or their transmission affiliates. Here, we are asked to grant a certificate to a company as a public utility as a necessary step to consideration of the siting and construction of the project this company was formed to carry out. The parties to this case have reached the

² Congestion occurs when there is heavy use of the transmission system in a specified area, which limits lower-priced energy from flowing freely and generally raises the locational marginal price for electricity in congested areas. Transource PA St. No. 2 at 6.

Settlement which is either signed by or not opposed by all parties, and there is no more opposition to the grant of the Certificate for Transource PA.

The Settlement contains an express statement that the parties reserve the right to challenge the need for the Independence Project or any other project that Transource PA may seek to construct in the future. We emphasize that the granting of the Certificate authorized in this Opinion and Order results in giving Transource PA the right to file siting applications in the future and does not grant the approval of any project, including the Independence Project. However, the Initial Decision contains a discussion of public need for the electric transmission service as follows:

I find there is a public need for additional electric transmission service in Franklin and York Counties, Pennsylvania. Transource PA's witness, Mr. Ali, explained that in October 2014, PJM opened a Long-Term Proposal Window ("2014/15 RTEP Long Term Proposal Window") to solicit proposals to address congestion,¹⁷ including constraints in Pennsylvania and Maryland. (Transource PA St. No. 2, p. 7.) In response, Transource Energy, the parent of Transource PA, submitted several proposals to address the congestion issues, including a proposal referred to as "Project 9A." (Transource PA St. No. 2, p. 7.)

I.D. at 14. In order to prevent any possible predetermination of need as to the filing of future projects, we shall modify the Initial Decision by striking the above-quoted language.

In addition, we shall clarify the ordering paragraph pertaining to the issuance of the Certificate by adding PJM's references to the proposed transmission services. Specifically, we shall add the citation "PJM Project 9A, baseline upgrade

numbers b2743 and b2752” to the ordering paragraph references of the proposed transmission service areas.³

Conclusion

For the reasons set forth herein, we shall adopt the ALJ’s Initial Decision, as modified, and approve the Settlement, consistent with this Opinion and Order;

THEREFORE,

IT IS ORDERED:

1. That the Initial Decision of Administrative Law Judge Elizabeth H. Barnes, issued on September 14, 2017, is adopted, as modified, consistent with this Opinion and Order.

2. That the Joint Petition for Settlement with Statements in Support, filed by the Office of Consumer Advocate and Transource Pennsylvania, LLC, on July 10, 2017, is granted, and the Settlement is thereby approved, consistent with this Opinion and Order.

3. That the Application of Transource Pennsylvania, LLC, for All of the Necessary Authority, Approvals, and Certificates of Public Convenience (1) to Begin to Furnish and Supply Electric Transmission Service in Franklin and York Counties, Pennsylvania; (2) for Certain Affiliated Interest Agreements; and (3) for any Other Approvals Necessary to Complete the Contemplated Transactions filed on February 2,

³ The changes in our Opinion and Order are not modifications to the Settlement and should not be viewed as such. Rather, they simply correct the Initial Decision to conform to the terms of the Settlement.

2017, as modified by the Joint Petition for Settlement filed on July 10, 2017, is granted, consistent with this Opinion and Order.

4. That a Certificate of Public Convenience shall be issued to Transource Pennsylvania, LLC, under Sections 1101 and 1102(a)(1) of the Public Utility Code, 66 Pa. C.S. §§ 1101 and 1102(a)(1), conferring upon it the status of a Pennsylvania public utility as defined in Section 102 of the Public Utility Code, 66 Pa. C.S. § 102, to:

a. Begin to furnish and supply electric transmission service to or for the public within a transmission service area from the new Rice Substation in Franklin County, Pennsylvania to the Pennsylvania/Maryland border for PJM Project 9A, baseline upgrade numbers b2743 and b2752; and

b. Begin to furnish and supply electric transmission service to or for the public within a transmission service area from the new Furnace Run Substation in York County, Pennsylvania to the Pennsylvania/Maryland border for PJM Project 9A, baseline upgrade numbers b2743 and b2752.

5. That nothing herein shall be construed to exempt Transource Pennsylvania, LLC, from obtaining all necessary permits and approvals from other state, federal, and local government agencies having jurisdiction.

6. That the Affiliated Interest Agreements of Transource Pennsylvania, LLC, attached to the Application as Appendices 5, 6, 11, 12, and 13 at Docket No. G-2017-2587822 are hereby approved under Section 2102 of the Public Utility Code, 66 Pa. C.S. § 2102.

7. That Transource Pennsylvania, LLC, shall file with the Commission an executed version of the Services Agreement by and between Transource Pennsylvania, LLC and Transource Energy, LLC as Provider within twenty (20) days of its execution at Docket Nos. A-2017-2587821 and G-2017-2587822.

8. That Transource Pennsylvania, LLC, shall file an executed version of the Notes and Capital Call Notices as depicted in Appendices 5 and 6 attached to the Application at Docket Nos. A-2017-2587821 and G-2017-2587822 within twenty (20) days of their execution.

9. That Transource Pennsylvania, LLC, shall seek Commission approval prior to modifying or terminating any Commission-approved agreement.

10. That Transource Pennsylvania, LLC, shall seek Commission approval prior to entering into any new affiliate agreements.

11. That in the event Transource Pennsylvania, LLC, files any siting applications or proposed projects for Commission-approval, Intervenors Office of Consumer Advocate, PECO Energy Company, and Mid-Atlantic Interstate Transmission, LLC, may intervene to challenge these in any future proceeding.

12. That Transource PA Statement No. 1 – Direct Testimony of Peggy I. Simmons is admitted into the record.

13. That Transource PA Statement No. 1-SD – Supplemental Direct Testimony of Peggy I. Simmons is admitted into the record.

14. That Transource PA Statement No. 2 – Direct Testimony of Kamaran Ali is admitted into the record.

15. That upon receipt of the executed versions of the documents set forth in Ordering Paragraph Nos. 7 and 8, these proceedings shall be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 21, 2017

ORDER ENTERED: January 23, 2018

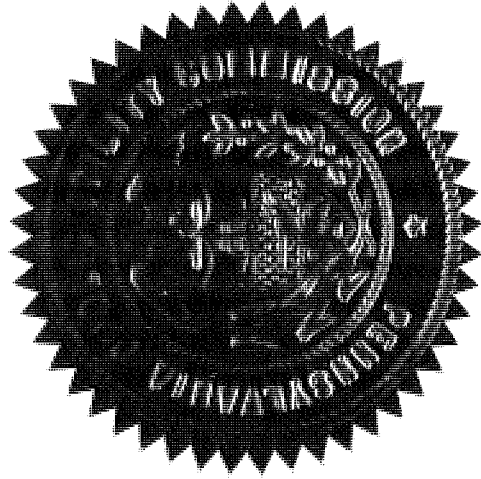
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN THE MATTER OF THE APPLICATION OF A-2017-2587821 & G-2017-2587822

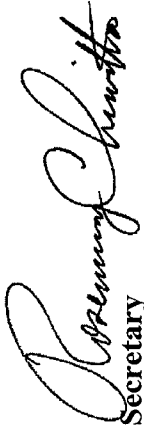
Application of Transource Pennsylvania, LLC for the right to a. Begin to furnish and supply electric transmission service to or for the public within a transmission service area from the new Rice Substation in Franklin County, Pennsylvania to the Pennsylvania/Maryland border for PJM Project 9A, baseline upgrade numbers b2743 and b2752; and
b. Begin to furnish and supply electric transmission service to or for the public within a transmission service area from the new Furnace Run Substation in York County, Pennsylvania to the Pennsylvania/Maryland border for PJM Project 9A, baseline upgrade numbers b2743 and b2752.

EFFECTIVE DATE: January 23, 2018

The Pennsylvania Public Utility Commission hereby certifies that after an investigation and/or hearing, it has, by its report and order made and entered, found and determined that the granting of the application is necessary or proper for the service, accommodation, convenience and safety of the public and hereby issues to the applicant this **CERTIFICATE OF PUBLIC CONVENIENCE** evidencing the Commission's approval.



In Witness Whereof, The PENNSYLVANIA PUBLIC UTILITY COMMISSION has caused these presents to be signed and sealed, and duly attested by its Secretary at its office in the city of Harrisburg this 23rd day, of January, 2018.


Secretary