

103 Pa.P.U.C. 554, 2008 WL 5786507 (Pa.P.U.C.)

Re Trans-Allegheny Interstate Line Company

Application 110172 et al.

Pennsylvania Public Utility Commission

November 13, 2008; entered December 12, 2008

ORDER granting a certificate of public convenience for the construction of a 1.2-mile portion of a high-voltage electric transmission line. Authorization also is given for ancillary facilities, including a new substation. The transmission line and substation together are known as the 'Pennsylvania 502 Junction Segment' and are but one part of a much larger multistate venture, the Trans-Allegheny Interstate Line (TrAIL). The TrAIL project as proposed would be a 500-kilovolt (kV) line and would be routed through Pennsylvania, West Virginia, and Virginia. The Pennsylvania portion of the TrAIL project is composed of two distinct sections, with the approved 502 Junction facilities being one and with the so-called Prexy facilities being the other. The Prexy project incorporates an additional substation, a 500-kV line to connect the Prexy and 502 Junction substations, and three 138-kV transmission lines to connect to other existing transmission lines. Commission declines to approve the Prexy portion at the present time. Instead, it encourages a collaborative process by which to consider alternative sites, routes, and connections for the Prexy lines, which would be significantly longer than the 502 Junction line.

Two administrative law judges (ALJs), in a joint initial decision, had recommended against approval of any portion of the TrAIL project. According to the ALJs, (1) the need for TrAIL had not been established, (2) the company charged with constructing the line had not proven its technical fitness, (3) there was no showing that the routing and siting process comported with commission regulations, and (4) the project did not sufficiently demonstrate environmental mitigation efforts. Commission disagrees with the ALJs with respect to the 502 Junction segment. Commission stresses the short distance involved with the 502 line. Stating that alternative routing is often not possible for such a brief segment, the commission says that it saw no violations of its siting regulations. Additionally, the commission determines that there would be few environmental impacts to mitigate because of the small size of the project. Nevertheless, it finds that the line would affirmatively contribute to greater system reliability in an area that has been identified by federal agencies as chronically suffering from transmission congestion. Consequently, the commission holds that the need for the facilities has been shown, and it allows that part of the TrAIL project to go forward.

Given that the Prexy facilities do involve greater distances, however, the commission defers a final decision on that proposal. Observing that the Prexy project does raise issues of siting, environmental impacts, and cost allocation, the commission urges interested parties to meet and develop possible alternatives as to the remainder of the TrAIL initiative.

P.U.R. Headnote and Classification

1. EVIDENCE

s1

Pa.P.U.C. 2008

[PA.] Presumptions and burden of proof - As resting with the proponent of a particular rule or action - Certificate proceeding - Applicant as bearing burden of proof - Preponderance of the evidence standard.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

2. CERTIFICATES

s68

Pa.P.U.C. 2008

[PA.] Procedure - Evidence - Burden of proof - As resting with the applicant - Preponderance of the evidence standard.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

3. PROCEDURE

s1

Pa.P.U.C. 2008

[PA.] Disposal of issues - Settlements - Commission policy of encouraging - Adoption of partial settlement - Reasonableness of terms agreed upon - Stay or deferral of issues not agreed upon - Voluntary collaborative through which to address - Electric transmission line proceeding.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

4. PROCEDURE

s2

Pa.P.U.C. 2008

[PA.] Stay or deferral - Of issues not agreed upon in partial settlement - Endorsement of terms agreed upon in partial settlement - Voluntary collaborative through which to address nonsettled matters - Electric transmission line proceeding.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

5. ELECTRICITY

s

Pa.P.U.C. 2008

[PA.] Transmission line project proposal - Two-part venture - Partial settlement as to first segment - Voluntary collaborative process for addressing second segment.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

6. CERTIFICATES

s8

Pa.P.U.C. 2008

[PA.] Factors affecting grant or denial - Public need for proposed service or facilities - Electric transmission line proceeding - Authorization for the 502 Junction segment of the Trans-Allegheny Interstate Line.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

7. CERTIFICATES

s7

Pa.P.U.C. 2008

[PA.] Factors affecting grant or denial - Ability and fitness of applicant - Technical support from affiliate as a consideration - Electric transmission line proceeding - Authorization for the 502 Junction segment of the Trans-Allegheny Interstate Line.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

8. CERTIFICATES

s02

Pa.P.U.C. 2008

[PA.] Electric - Transmission line proposal - Construction authorization - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Factors considered - Regional reliability needs - Technical fitness of applicant - Conditions accepted by applicant.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

9. CERTIFICATES

s3

Pa.P.U.C. 2008

[PA.] Restrictions and conditions - As to construction of a high-voltage transmission line - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Necessity of applicant revising service agreement with affiliate - Commission approval of other affiliate contracts.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

10. ELECTRICITY

s

Pa.P.U.C. 2008

[PA.] Authorization for transmission line - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Factors affecting approval - Regional reliability needs - Technical fitness of applicant - Applicant's agreement to amend service arrangements with affiliates.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

11. INTERCORPORATE RELATIONS

s5

Pa.P.U.C. 2008

[PA.] Interaffiliate contracts - For the provision of support services - Necessity of amendments thereto - As a condition for receipt of a construction certificate - For a high-voltage transmission line - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Necessity of commission approval of other affiliate contracts.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

12. ELECTRICITY

s.1

Pa.P.U.C. 2008

[PA.] Jurisdiction and powers - Interstate connections - Transmission lines - System reliability standards as set by federal agencies and the North American Electric Reliability Corporation - Regional administration via regional transmission organizations (RTOs) - RTO identification of congestion points.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

13. ELECTRICITY

s

Pa.P.U.C. 2008

[PA.] Authorization for transmission lines - Factors considered - System reliability needs - Standards for as set by federal agencies and the North American Electric Reliability Corporation - Regional administration via regional transmission organizations (RTOs) - RTO identification of congestion points - New transmission as relief measure.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

14. SERVICE

s86

Pa.P.U.C. 2008

[PA.] Electric connections and facilities - Transmission lines - Factors affecting authorization for new lines - System reliability needs - Standards for as set by federal agencies and the North American Electric Reliability Corporation - Regional administration via regional transmission organizations (RTOs) - RTO identification of congestion points - New transmission as relief measure.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

15. ELECTRICITY

s

Pa.P.U.C. 2008

[PA.] Authorization for transmission lines - Appropriate scope of analysis - Federal versus state policy - Reliability versus economics - Need for new infrastructure versus alternatives for reducing demand - Potential for energy efficiency improvements and demand-side management - Emissions regulations.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

16. SERVICE

s86

Pa.P.U.C. 2008

[PA.] Electric connections and facilities - Proposals for new transmission lines - Appropriate scope of analysis - Federal versus state policy - Reliability versus economics - Need for new infrastructure versus alternatives for reducing demand - Potential for energy efficiency improvements and demand-side management - Emissions regulations.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

17. CERTIFICATES

s02

Pa.P.U.C. 2008

[PA.] Electric - Proposals for new transmission lines - Appropriate scope of analysis - Federal versus state policy - Reliability versus economics - Need for new infrastructure versus alternatives for reducing demand - Potential for energy efficiency improvements and demand-side management - Emissions regulations.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

18. CERTIFICATES

s6

Pa.P.U.C. 2008

[PA.] Factors affecting grant or denial - As to proposals for new electric transmission lines - Appropriate scope of analysis - Federal versus state policy - Reliability versus economics - Need for new infrastructure versus alternatives for reducing demand - Potential for energy efficiency improvements and demand-side management - Emissions regulations.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

19. CERTIFICATES

s8

Pa.P.U.C. 2008

[PA.] Factors affecting grant or denial - Public need for proposed service or facilities - Electric transmission line proceeding - Authorization for the 502 Junction segment of the Trans-Allegheny Interstate Line - Evidence of need - Results of federally conducted system stress models - Ongoing regional congestion - Requirements for enhanced regional reliability.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

20. CERTIFICATES

s02

Pa.P.U.C. 2008

[PA.] Electric - Transmission line proposal - Construction authorization - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Factors considered - Need for project - Evidence of need - Results of federally conducted system stress models - Ongoing regional congestion - Requirements for enhanced regional reliability.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

21. ELECTRICITY

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Pa.P.U.C. 2008

[PA.] Authorization for transmission line - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Factors affecting approval - Need for project - Evidence of need - Results of federally conducted system stress models - Ongoing regional congestion - Requirements for enhanced regional reliability.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

22. SERVICE

s86

Pa.P.U.C. 2008

[PA.] Electric connections and facilities - Authorization for transmission line - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Factors affecting approval - Need for project - Evidence of need - Results of federally conducted system stress models - Ongoing regional congestion - Requirements for enhanced regional reliability.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

23. CERTIFICATES

s02

Pa.P.U.C. 2008

[PA.] Electric - Transmission line proposal - Construction authorization - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Considerations - Routing and siting process - As driven by routing requirements in adjacent jurisdictions - Reasonableness - Short length of Pennsylvania segment as a factor.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

24. ELECTRICITY

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Pa.P.U.C. 2008

[PA.] Authorization for transmission line - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Considerations - Routing and siting process - As driven by routing requirements in adjacent jurisdictions - Reasonableness - Short length of Pennsylvania segment as a factor.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

25. SERVICE

s86

Pa.P.U.C. 2008

[PA.] Electric connections and facilities - Authorization for transmission line - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Considerations - Routing and siting process - As driven by routing requirements in adjacent jurisdictions - Reasonableness - Short length of Pennsylvania segment as a factor.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

26. CERTIFICATES

s3

Pa.P.U.C. 2008

[PA.] Restrictions and conditions - As to construction of a high-voltage transmission line - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Necessity of plan for identifying and avoiding impacts on groundwater sources - Necessity of securing all requisite environmental permits from local governmental agencies.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

27. CERTIFICATES

s02

Pa.P.U.C. 2008

[PA.] Electric - Transmission line proposal - Construction authorization - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Considerations - Environmental impacts - Effect of lack of formal environmental

mitigation plan - As nonfatal given line's short length - But need for specific plan for identifying and avoiding impacts on groundwater sources.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

28. ELECTRICITY

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Pa.P.U.C. 2008

[PA.] Authorization for transmission line - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Considerations - Environmental impacts - Effect of lack of formal environmental mitigation plan - As nonfatal given line's short length - But need for specific plan for identifying and avoiding impacts on groundwater sources.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

29. SERVICE

s86

Pa.P.U.C. 2008

[PA.] Electric connections and facilities - Authorization for transmission line - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Considerations - Environmental impacts - Effect of lack of formal environmental mitigation plan - As nonfatal given line's short length - But need for specific plan for identifying and avoiding impacts on groundwater sources.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

30. ELECTRICITY

s

Pa.P.U.C. 2008

[PA.] Transmission lines - Dangerous proximity - Health and safety concerns related to electromagnetic fields (EMF) - EMF as not a bar to construction of a short high-voltage line - Provided it complies with standards set in the National Electric Safety Code.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

31. ELECTRICITY

s

Pa.P.U.C. 2008

[PA.] Authorization for transmission line - Factors considered - Health and safety concerns related to electromagnetic fields (EMF) - EMF as not a bar to construction of a short high-voltage line - Provided it complies with standards set in the National Electric Safety Code.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

32. CERTIFICATES

s02

Pa.P.U.C. 2008

[PA.] Electric - Transmission line proposal - Factors considered - Health and safety concerns related to electromagnetic fields (EMF) - EMF as not a bar to construction of a short high-voltage line - Provided it complies with standards set in the National Electric Safety Code.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

33. SERVICE

s86

Pa.P.U.C. 2008

[PA.] Electric connections and facilities - Authorization for transmission line - Factors considered - Health and safety concerns related to electromagnetic fields (EMF) - EMF as not a bar to construction of a short high-voltage line - Provided it complies with standards set in the National Electric Safety Code.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

34. CERTIFICATES

s3

Pa.P.U.C. 2008

[PA.] Restrictions and conditions - As to construction of a high-voltage transmission line - Limited use of herbicides and pesticides - Avoidance of aerial spraying - Adherence to particular buffer zones - Use of only federally approved herbicides.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

35. CERTIFICATES

s02

Pa.P.U.C. 2008

[PA.] Electric - Transmission line proposal - Construction authorization - Attachment of conditions - Limited use of herbicides and pesticides - Avoidance of aerial spraying - Adherence to particular buffer zones - Use of only federally approved herbicides.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

36. ELECTRICITY

s

Pa.P.U.C. 2008

[PA.] Authorization for transmission line - Attachment of conditions - Limited use of herbicides and pesticides - Avoidance of aerial spraying - Adherence to particular buffer zones - Use of only federally approved herbicides.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

37. SERVICE

s86

Pa.P.U.C. 2008

[PA.] Electric connections and facilities - Authorization for transmission line - Attachment of conditions - Limited use of herbicides and pesticides - Avoidance of aerial spraying - Adherence to particular buffer zones - Use of only federally approved herbicides.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

38. CERTIFICATES

s3

Pa.P.U.C. 2008

[PA.] Restrictions and conditions - As to construction of a high-voltage transmission line - Minimization of impacts on nearby gas wells and lines - Development of guidelines by mitigation expert.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

39. CERTIFICATES

s02

Pa.P.U.C. 2008

[PA.] Electric - Transmission line proposal - Construction authorization - Attachment of conditions - Minimization of impacts on nearby gas wells and lines - Development of guidelines by mitigation expert.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

40. ELECTRICITY

s

Pa.P.U.C. 2008

[PA.] Authorization for transmission line - Attachment of conditions - Minimization of impacts on nearby gas wells and lines - Development of guidelines by mitigation expert.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

41. SERVICE

s86

Pa.P.U.C. 2008

[PA.] Electric connections and facilities - Authorization for transmission line - Attachment of conditions - Minimization of impacts on nearby gas wells and lines - Development of guidelines by mitigation expert.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

42. GAS

s.1

Pa.P.U.C. 2008

[PA.] Safety matters - As potentially affected by construction of electric transmission line - Attachment of conditions thereto - Minimization of impacts on nearby gas wells and lines - Development of guidelines by mitigation expert.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

43. EMINENT DOMAIN

s

Pa.P.U.C. 2008

[PA.] Necessity as a factor - As to construction of electric transmission line - Demonstration of need for the project - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Reasonableness of routing and siting - Propriety of associated eminent domain authority.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

44.

EASEMENTS

Pa.P.U.C. 2008

[PA.] Eminent domain and easement requests - Necessity as a factor - As to construction of electric transmission line - Demonstration of need for the project - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Reasonableness of routing and siting - Propriety of associated eminent domain authority.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

45. ELECTRICITY

s

Pa.P.U.C. 2008

[PA.] Authorization for transmission line - Eminent domain and easement requests thereto - Factors considered - Necessity of project - Demonstration of need for the project - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Reasonableness of routing and siting - Propriety of associated eminent domain authority.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

46. SERVICE

s86

Pa.P.U.C. 2008

[PA.] Electric connections and facilities - Authorization for transmission line - Eminent domain and easement requests thereto - Factors considered - Necessity of project - Demonstration of need for the project - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Reasonableness of routing and siting - Propriety of associated eminent domain authority.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

47. CERTIFICATES

s02

Pa.P.U.C. 2008

[PA.] Electric - Transmission line proposal - Construction authorization - Eminent domain and easement requests thereto - Factors considered - Necessity of project - Demonstration of need for the project - As limited to the 502 Junction segment of

the Trans-Allegheny Interstate Line - Reasonableness of routing and siting - Propriety of associated eminent domain authority.
Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

48. CERTIFICATES

s3

Pa.P.U.C. 2008

[PA.] Restrictions and conditions - As to construction of a high-voltage transmission line - As to exercise of associated rights of eminent domain - Standards for the purchase and valuation of nearby residential real property.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

49.

ZONING

Pa.P.U.C. 2008

[PA.] Requests for exemptions - As to construction of electric transmission line - Considerations - Necessity and scope of project - Demonstration of need for the project - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Short distance of line as a factor - Granting of exemptions.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

50. ORDINANCES

s

Pa.P.U.C. 2008

[PA.] Requests for exemptions from zoning regulations - As to construction of electric transmission line - Considerations - Necessity and scope of project - Demonstration of need for the project - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Short distance of line as a factor - Granting of exemptions.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

51. CERTIFICATES

s6

Pa.P.U.C. 2008

[PA.] Local governmental actions - Zoning ordinances - Requests for exemptions from - As to construction of electric transmission line - Considerations - Necessity and scope of project - Demonstration of need for the project - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Short distance of line as a factor - Granting of exemptions.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

52. CERTIFICATES

s02

Pa.P.U.C. 2008

[PA.] Electric - Transmission line proposal - Construction authorization - Requests for exemptions from zoning ordinances

thereto - Considerations - Necessity and scope of project - Demonstration of need for the project - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Short distance of line as a factor - Granting of exemptions.
Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

53. ELECTRICITY

s

Pa.P.U.C. 2008

[PA.] Authorization for transmission line - Requests for exemptions from zoning ordinances thereto - Considerations - Necessity and scope of project - Demonstration of need for the project - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Short distance of line as a factor - Granting of exemptions.
Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

54. SERVICE

s86

Pa.P.U.C. 2008

[PA.] Electric connections and facilities - Authorization for transmission line - Requests for exemptions from zoning ordinances thereto - Considerations - Necessity and scope of project - Demonstration of need for the project - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line - Short distance of line as a factor - Granting of exemptions.
Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

55. CONSOLIDATION, MERGER, AND SALE

s3

Pa.P.U.C. 2008

[PA.] Factors considered - Intercorporate relations - Proposed interaffiliate sale of land and rights-of-way - In conjunction with the Prexy transmission line project proposal - Deferral of review and decision - Given the stay of the Prexy proceeding.
Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

56. CONTRACTS

s3

Pa.P.U.C. 2008

[PA.] Necessity of commission authorization - Over interaffiliate contracts for capital contribution arrangements - Approval of a capital contribution agreement as to a high-voltage transmission line project - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line.
Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

57. INTERCORPORATE RELATIONS

s2

Pa.P.U.C. 2008

[PA.] Commission jurisdiction - Over affiliate contracts - Necessity of commission authorization of capital contribution

arrangements - Approval of a capital contribution agreement as to a high-voltage transmission line project - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line.
Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

58. INTERCORPORATE RELATIONS

s8.3

Pa.P.U.C. 2008

[PA.] Intercorporate arrangements - Contributions to affiliates - Necessity of commission authorization - Approval of a capital contribution agreement as to a high-voltage transmission line project - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line.
Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

59. CONSTRUCTION AND EQUIPMENT

s

Pa.P.U.C. 2008

[PA.] Project costs - Financing arrangements - Via contributions to affiliates - Necessity of commission authorization - Approval of a capital contribution agreement as to a high-voltage transmission line project - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line.
Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

60. INTERCORPORATE RELATIONS

s2

Pa.P.U.C. 2008

[PA.] Commission jurisdiction - Over affiliate agreements - Necessity of commission authorization of contracts for accounting or financial services - Consolidated tax return arrangements - Approval of with respect to a high-voltage transmission line project - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line.
Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

61. INTERCORPORATE RELATIONS

s4.2

Pa.P.U.C. 2008

[PA.] Intercorporate arrangements - For accounting or financial services - Necessity of commission authorization - Approval of consolidated tax return arrangements - As to a high-voltage transmission line project - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line.
Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

62. CONTRACTS

s3

Pa.P.U.C. 2008

[PA.] Necessity of commission authorization - Over interaffiliate contracts for accounting or financial services - Approval of consolidated tax return arrangements - As to a high-voltage transmission line project - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

63. EXPENSES

s17

Pa.P.U.C. 2008

[PA.] Income taxes - For underlying companies - Interaffiliate contract for - Necessity of commission authorization - Approval of consolidated tax return arrangements - As to a high-voltage transmission line project - As limited to the 502 Junction segment of the Trans-Allegheny Interstate Line.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

64. CERTIFICATES

s02

Pa.P.U.C. 2008

[PA.] Electric - Transmission line proposal - For the Trans-Allegheny Interstate Line (TrAIL) - Factors militating against construction authorization - Failure to prove need for project - Any benefits as going to other jurisdictions - Inequitable cost allocations - Disincentive to construction of new generation capacity closer to actual demand centers - Propriety of rejecting outright the entire TrAIL proposal - Dissenting opinion.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

65. ELECTRICITY

s

Pa.P.U.C. 2008

[PA.] Transmission line proposal - For the Trans-Allegheny Interstate Line (TrAIL) - Factors militating against construction authorization - Failure to prove need for project - Any benefits as going to other jurisdictions - Inequitable cost allocations - Disincentive to construction of new generation capacity closer to actual demand centers - Propriety of rejecting outright the entire TrAIL proposal - Dissenting opinion.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

66. SERVICE

s86

Pa.P.U.C. 2008

[PA.] Electric connections and facilities - Transmission line proposal - For the Trans-Allegheny Interstate Line (TrAIL) - Factors militating against construction authorization - Failure to prove need for project - Any benefits as going to other jurisdictions - Inequitable cost allocations - Disincentive to construction of new generation capacity closer to actual demand centers - Propriety of rejecting outright the entire TrAIL proposal - Dissenting opinion.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

67. CERTIFICATES

s02

Pa.P.U.C. 2008

[PA.] Electric - Transmission line proposal - For the Trans-Allegheny Interstate Line (TrAIL) - Prexy portion of TrAIL - Impropriety of staying consideration of - Propriety of rejecting the Prexy project outright - Factors - Serious concerns as to siting - Failure of applicant to adequately study alternative routes - Partially dissenting opinion.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

68. ELECTRICITY

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Pa.P.U.C. 2008

[PA.] Transmission line proposal - For the Trans-Allegheny Interstate Line (TrAIL) - Prexy portion of TrAIL - Impropriety of staying consideration of - Propriety of rejecting the Prexy project outright - Factors - Serious concerns as to siting - Failure of applicant to adequately study alternative routes - Partially dissenting opinion.

Re Trans-Allegheny Interstate Line Company

P.U.R. Headnote and Classification

69. SERVICE

s86

Pa.P.U.C. 2008

[PA.] Electric connections and facilities - Transmission line proposal - For the Trans-Allegheny Interstate Line (TrAIL) - Prexy portion of TrAIL - Impropriety of staying consideration of - Propriety of rejecting the Prexy project outright - Factors - Serious concerns as to siting - Failure of applicant to adequately study alternative routes - Partially dissenting opinion.

Re Trans-Allegheny Interstate Line Company

**1* James H. Cawley, Chairman, Statement attached Tyrone J. Christy, Vice Chairman, Dissenting Statement attached Robert F. Powelson, Statement attached Kim Pizzigrilli Wayne E. Gardner, Concurring in part, Dissenting in part, and Statement attached

BY THE COMMISSION:

1 OPINION AND ORDER

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the following:

(a) The Recommended Decision of Administrative Law Judges (ALJs) Mark A. Hoyer and Michael A. Nemecek issued August 21, 2008;

(b) The Exceptions filed by Trans-Allegheny Interstate Line Company (TrAILCo) on September 10, 2008, to the Recommended Decision (R.D.) of ALJs Mark A. Hoyer and Michael A. Nemecek;

(c) The Motion for Partial Stay of Proceedings and Request for Expedited Consideration (Motion for Partial Stay) filed by TrAILCo on September 10, 2008; and

(d) The Agreement among TrAILCo, West Penn Power Company, and the Greene County Board of Commissioners (Partial Settlement Agreement), which TrAILCo filed with this Commission on September 25, 2008.

1 I. Background

TrAILCo is a direct subsidiary of Allegheny Energy Transmission, LLC (AET), which is, in turn, a direct subsidiary of Allegheny Energy, Inc. (Allegheny). Application at ¶ 2. Allegheny has designated TrAILCo as the entity in the Allegheny holding company system responsible for constructing certain transmission facilities. According to TrAILCo, the Pennsylvania portion of this project constitutes ‘two separate and distinct TrAILCo projects, both of which are encompassed under the overall name of Trans-Allegheny Interstate Line (‘TrAIL’).’ TrAILCo Exc. at 1.

The first project (the ‘Pennsylvania 502 Junction Facilities’) ...include[s] a new substation and the ‘Pennsylvania 502 Junction Segment,’ a 500-kV line extending from the substation across 1.2 miles of Greene County to the West Virginia Border. This line then continues through West Virginia and into Virginia (collectively, the ‘502 Junction Segments’).

Id. The second project is the ‘Prexy Facilities,’ which includes a new substation (the Prexy Substation), a 500-kV line to connect the Prexy Substation and the 502 Junction Substation, and three new 138-kV lines that would connect the Prexy Substation to the existing transmission lines of Allegheny Power. *Id.*

II. History of the Proceeding

The history of this proceeding is described in detail in the Recommended Decision. As such, this section will briefly summarize the procedural history of this case.

On April 13, 2007, TrAILCo filed five applications with the Commission:

- (a) an Application for a Certificate of Public Convenience to offer, render, furnish or supply electrical transmission service in the Commonwealth of Pennsylvania;
- (b) an Application for authorization to locate, construct, operate and maintain certain high-voltage (HV) electric substation facilities;
- (c) an Application for authority to exercise the power of eminent domain for the construction and installation of aerial electrical transmission facilities along the proposed transmission line routes in Pennsylvania;
- *2 (d) an Application for approval of an exemption from municipal zoning regulations with respect to the construction of buildings; and
- (e) an Application for approval of certain related affiliated interest agreements.

R.D. at 1. A Prehearing Order dated July 26, 2007, consolidated these five Applications for purposes of discovery, litigation and decision. R.D. at 3.

During August and September 2007, twelve public input sessions were held in Washington and Greene Counties and site visits were conducted. Evidentiary hearings were held in March and April 2008. Briefs and Reply Briefs were filed, and the record closed on May 30, 2008. R.D. at 5.

In the Recommended Decision issued August 21, 2008, the ALJs recommended that all five Applications be denied. Specifically, the ALJs recommended that:

- (a) TrAILCo’s application for a Certificate of Public Convenience be denied because TrAILCo failed to prove a need for the facilities and failed to prove that TrAILCo is technically fit, R.D. at 78;
- (b) TrAILCo’s application for authorization to construct and operate the transmission lines be denied, *inter alia*, because TrAILCo failed to prove that (i) there is a need for the project, R.D. at 118 and 149, (ii) the route evaluation and selection process complies with Commission regulations, R.D. at 169, (iii) the project mitigates environmental impacts, R.D. at 190, and (iv) the project does not create an unreasonable risk of danger to the health and safety of the public, R.D. at 201-202;

(c) TrAILCo's application for authorization to exercise the power of eminent domain be denied at this time, in part, because TrAILCo does not yet have final proposed routes for any of the proposed lines, R.D. at 206;

(d) TrAILCo's application for exemption from local zoning regulations be denied, in part, because TrAILCo failed to introduce evidence concerning the proposed site of the buildings in question or the local zoning regulations that impact these buildings, R.D. at 209-210; and

(e) TrAILCo's application for approval of affiliated interest agreements be denied because TrAILCo is not a public utility, R.D. at 217.

On September 10, 2008, TrAILCo filed Exceptions to the Recommended Decision. Also on September 10, 2008, TrAILCo filed its Motion for Partial Stay, asking that the Commission (1) expeditiously review the Recommended Decision to the extent that it pertains to the Pennsylvania 502 Junction Facilities and (2) defer its review of the Recommended Decision to the extent that it pertains to the Prexy Facilities. With respect to the Prexy Facilities, the Motion for Partial Stay requested that this Commission institute a collaborative 'to explore whether there are possible new and creative alternatives' to that project. *Id.* at ¶ 7.

On or about September 22, 2008, Replies to TrAILCo's Exceptions were filed by: the Energy Conservation Council (ECC); the Office of Trial Staff (OTS); the Office of Consumer Advocate (OCA); Rep. H. William DeWeese, the Majority Leader of the Pennsylvania House of Representatives (Rep. DeWeese); Victoria M. Goroncy; Margaret M. Moran; George D. Goroncy; Joan A. Blank; Dan and Tina Martin; Faith Bjalobok, Ph.D.; Greg A. Bandel; Arthur A. Brogley; Michelle Minnick; Dave and Cheryl Piroch; Rich Layton; Debra K. Bandel; James R. Blockinger; Frances M. Cooley; Jack Minnick; Christine A. Robker; Henrietta Goodwin; Laurie Nicholl; Mark J. O'Donnell; Richard J. Blank; Susan Foster Blank; Rebecca E. Trigger; and Barbara J. Gall. The Greater Chambersburg Chamber of Commerce also submitted a letter regarding this case.¹

*3 Answers to the Motion for Partial Stay were filed on or about September 30, 2008 by ECC, OTS, OCA, and Rep. DeWeese. We note that several of the individuals named above also commented on the Motion for Partial Stay in their Replies to Exceptions.

On September 25, 2008, TrAILCo filed the Partial Settlement Agreement. By Secretarial Letter dated October 2, 2008, comments on the Partial Settlement Agreement were requested by October 10, 2008. Comments were submitted by ECC, PTS, OCA, the West Penn Power Industrial Intervenors (WPPII), James and Patricia Blockinger, Margaret Moran and Laurie Nicholl.

On October 8, 2008, counsel for TrAILCo filed an Order of the State Corporation Commission of the Commonwealth of Virginia, which TrAILCo stated

[F]ound that the proposed 500,000 volt electric transmission line from 502 Junction Substation proposed by TrAILCo to be located in Greene County, Pennsylvania to the existing Loudoun Substation owned by Dominion Virginia Power in Loudoun County, Virginia is needed in accordance with applicable Virginia statutes and authorized the construction of the portions of the line proposed to be sited in the Commonwealth of Virginia.

TrAILCo Correspondence dated October 8, 2008, at 1. TrAILCo asked the Commission to take official or judicial notice of this order, in accordance with [52 Pa. Code §5.408](#).

On October 20, 2008, TrAILCo filed correspondence concerning an October 16, 2008 site visit to one of the properties required for the Pennsylvania 502 Junction Facilities. TrAILCo stated that the property owner at that time advised TrAILCo that the proposed location for one of the structures may not be on his property. TrAILCo advised the Commission that it is in the process of verifying the owner of the property in question. If the property owner's information is accurate, 'TrAILCo will initiate negotiations with the owners of the adjacent property, who were provided with notice of the application filed in this proceeding in accordance with the Commission's rules and regulations. ' TrAILCo Correspondence dated October 20, 2008, at 2.

On October 31, 2008, ECC responded to the October 8 and October 20, 2008 correspondence of TrAILCo. ECC argued that this Commission should give no weight to the decision of the Virginia State Corporation Commission because it is based on different laws and a different record developed by different parties, as compared to the present proceeding. ECC argued that the record in this matter closed on May 30, 2008, and it should not be reopened to admit a decision that should be given no

weight in this proceeding. ECC Correspondence dated October 31, 2008, at 1.

In addition, ECC opined that TrAILCo's apparent misidentification of the owner of a parcel needed for the Pennsylvania 502 Junction Facilities supports ECC's contention that TrAILCo's applications should be denied. ECC contended that TrAILCo did not apply to the Commission for the power of eminent domain with respect to this property. ECC also expressed concerns about the due process rights of these property owners, claiming that they were led to believe that their property was not subject to eminent domain proceedings. ECC Correspondence dated October 31, 2008, at 2.

***4 1 III. Discussion**

[1, 2] As the proponent of a rule or order, TrAILCo bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a). It is axiomatic that '[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.' *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. *Se-Ling Hosiery v. Marquies*, 364 Pa. 45, 70 A.2d 854 (1950). 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).

We note that any issue that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corporation 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).

A. Partial Settlement Agreement

1. Positions of the Parties

TrAILCo and Greene County state that they have modified their litigation positions consistent with the Partial Settlement Agreement. They now agree that a Commission decision consistent with that Agreement is the 'preferred outcome' in this proceeding. Cover Letter to Partial Settlement Agreement at 1.

In the Partial Settlement Agreement, TrAILCo and Greene County agree that the Commission should approve the Pennsylvania 502 Junction Facilities without modification of the substation site and transmission line route proposed by TrAILCo. They also agree that this Commission should stay its consideration of the Prexy Facilities. They agree that TrAILCo should be permitted to convene a collaborative Advisory Panel including all interested active parties in the present proceedings to consider alternatives to the Prexy Facilities as proposed by TrAILCo. This collaborative would commence upon filing of the Partial Settlement Agreement and would be completed within 180 days, unless the parties agree to an extension. TrAILCo would have the final decision regarding the nature and extent of any new alternatives to the Prexy Facilities. TrAILCo would then amend its Application with respect to the Prexy Facilities and request resumption of the review process, subject to the Commission's rules and regulations. Partial Settlement Agreement at ¶¶ 3-4.

The Partial Settlement Agreement provides at Paragraph 1:

Not later than 14 days after all of the Parties execute this Agreement, West Penn or TrAILCo, as applicable, shall create, execute, and record such quit claim or similar documents that convey any and all of their title to rights-of-way or easements associated with the proposed Prexy Segment or the Prexy 138-kV Lines on any property on the route of the proposed Prexy Segment or the Prexy 138-kV Lines to each of the identifiable, current real property owners of such lands. The Parties acknowledge that the terms of this Agreement are expressly contingent upon West Penn's or TrAILCo's compliance with the provisions of this paragraph.

*5 All of TrAILCo's obligations under the Partial Settlement Agreement, except those in Paragraph 1, are conditioned on the Commission's acceptance and approval of the Partial Settlement Agreement and the granting of TrAILCo's Applications