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January 7, 2008

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INDEPENDENT REGULATORY
PUBLIC COMMISSION

James J. McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Re: ADVANCE NOTICE OF PROPOSED RULEMAKING
REGARDING IMPLEMENTATION OF THE PUBLIC
UTILITY CONFIDENTIAL SECURITY INFORMATION
DISCLOSURE PROTECTION ACT
Docket Nos. L-00070185 and M-00072014

Dear Secretary McNulty:

Enclosed for filing are an original and fifteen (15) copies of the Office of Consumer Advocate's Comments on the Pennsylvania Public Utility Commission's December 8, 2007 notice in the *Pennsylvania Bulletin*.

Sincerely,

Shaun A. Sparks
Assistant Consumer Advocate
PA Attorney I.D. # 87372

SAS:slk
Enclosures
97009

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ADVANCE NOTICE OF PROPOSED	:	
RULEMAKING REGARDING	:	
IMPLEMENTATION OF THE PUBLIC	:	Docket Nos. L-00070185
UTILITY CONFIDENTIAL SECURITY	:	M-00072014
INFORMATION DISCLOSURE	:	
PROTECTION ACT	:	

COMMENTS OF THE OFFICE OF CONSUMER ADVOCATE

On December 8, 2007, the Pennsylvania Public Utility Commission published a notice in the *Pennsylvania Bulletin* requesting comments on its Proposed Rulemaking in the above-referenced docket. The Office of Consumer Advocate (OCA) now files these Comments on the Notice of Proposed Rulemaking Regarding Implementation of the Public Utility Confidential Security Information Disclosure Protection Act, (NPRM) as docketed above. The OCA filed Comments on June 19, 2007 and Reply Comments on July 19, 2007 in response to the Commission's Advance Notice of Proposed Rulemaking in this docket.

I. Introduction

The purpose of the NPRM is to gather comments on the processes and procedures the Commission has developed to implement the Public Utility Confidential Security Information Disclosure Protection Act (Act).¹ The purpose of the Act is to prevent the public release by State agencies of highly sensitive documents that may adversely impact utility facilities or jeopardize

1. 35 P.S. § 2141.1 *et seq.*

public safety.² The means by which State agencies are to implement the Act is by restricting the public release of certain information regarding utility security that has been properly designated as Confidential Security Information.³

Specifically, the Act provides the Commission with guidance as to the protection of documents on file with the Commission where the intentional or inadvertent public release of such documents could jeopardize the security of utility infrastructure. Most important, the OCA would note that documents that contain confidential security information are not subject to Pennsylvania's Right-to-Know Law. The focus of the Act is on how State agencies are to handle records maintained by those agencies when the agency has deemed that the records contain confidential security information (CSI).⁴ The OCA would note, however, that the Act does not impose limitations or restrictions on public utilities themselves regarding the release of such information in any context. Rather, the Act is expressly limited to information maintained by State agencies and subject to Pennsylvania's Right-to-Know Law. Such information includes the following:

"Confidential security information." Information contained within a record maintained by an agency in any form, the disclosure of which would compromise security against sabotage or criminal or terrorist acts and the nondisclosure of which is necessary for the protection of life, safety, public property or public utility facilities, including, but not limited to, all of the following:

- (1) A vulnerability assessment which is submitted to the Environmental Protection Agency or any other Federal, State or local agency.
- (2) Portions of emergency response plans that are submitted to the Department of Environmental Protection, the Pennsylvania Public Utility Commission or any other Federal, State or local agency dealing with response procedures or plans prepared to prevent or respond to emergency situations, except those portions intended for public disclosure, the disclosure of which would reveal vulnerability

2. *Id.*
3. *Id.*
4. 35 P.S. §2141.3.

assessments, specific tactics, specific emergency procedures or specific security procedures. Nothing in this term shall be construed to relieve a public utility from its public notification obligations under other applicable Federal and State laws.

(3) A plan, map or other drawing or data which shows the location or reveals location data on community drinking water wells and surface water intakes.

(4) A security plan, security procedure or risk assessment prepared specifically for the purpose of preventing or for protection against sabotage or criminal or terrorist acts.

(5) (i) Specific information, including portions of financial statements, about security devices or personnel, designed to protect against sabotage or criminal or terrorist acts.

(ii) Nothing in this definition shall be construed to prevent the disclosure of monetary amounts.

35 P.S. § 2141.2. The express language of the Act limits information to be accorded these special protections to “[i]nformation contained within a record maintained by an agency in any form.” *Id.* Thus, to be CSI, the information must be maintained by an agency such as the Commission and be one of the protected types listed above. By definition, information maintained by utilities is not CSI under the terms of the Act unless and until it is filed or otherwise maintained by a State agency. This is not to say that information maintained by public utilities is not deserving of significant protection. The OCA recognizes that information maintained by the public utility must receive the appropriate protection. The critical distinction, however, that the OCA will elaborate on below, is that the Act applies to records maintained by State agencies such as the Commission.

The Commission can come into possession of records containing CSI through a variety of means, such as annual filings or reports, or such material may be included in files of litigated cases when the material is admitted into the record of a litigated proceeding. The Act, however,

does not cover the multitude of documents that may be exchanged between parties in litigated cases as part of the discovery process that do not become a part of the Commission record of the proceeding. The Commission must separate the issue of public release of records containing CSI that it maintains in its files that would otherwise be subject to Right-to-Know requests by the public versus the separate protections required for information that is contained in litigation material that is sought from *public utilities* directly.

Access to materials from public utilities that is sought in the process of litigation discovery must remain subject to the due process rights of the parties to the proceedings and the process established in those proceedings for the protection of information. In this regard the OCA would direct the attention of the Commission to the Commission's rules regarding protective orders, 52 Pa. Code § 5.423, and in particular to the recent Protective Order in the current TrAILCo proceeding, Application of Trans-Allegheny Interstate line Company, Docket Nos. A-110172, A-110172F0002-4, G-00071229 (July 19, 2007) (attached hereto) which addresses the issue of sensitive infrastructure information in a litigated proceeding as part of the discovery process. This Protective Order is an example of a reasonable and workable approach to the issues raised by sensitive infrastructure information in the context of litigation.

II. Comments

A. Introduction

After review of the Commission's proposed regulations, the OCA has concerns regarding how the proposed regulations approach CSI subject to the Right to Know Act, the release of CSI to statutory advocates, and how designations of sensitive infrastructure information by public

utilities in the context of litigation are to be addressed. In summary, the OCA will address the following issues in these Comments on the Commission's proposed CSI regulations.

- The Commission should expressly provide for prior review of CSI material submitted to it for Commission files in the same manner as has been proposed by the Department of Environmental Protection (DEP). This type of review would ensure that CSI designations approved by the Commission fall squarely within the definition of CSI provided within the statute.
- The Commission's proposed rules should require that a redacted document be filed along with any document for which CSI protection is requested. Again, this procedure would be consistent with the rules proposed by the DEP.
- The Commission should amend subsection 102.4(f) to allow employees of the statutory advocates to participate in the same certification program used by Commission employees to become "authorized individuals."
- The Commission should amend subsection 102.4(f) to clarify the protocols under which statutory advocates may examine documents on file at the Commission containing CSI.
- The Commission should expressly provide that while CSI designations control how the Commission may release information to members of the public upon request, these regulations do not affect how information is to be provided by public utilities to other parties in the context of litigation. These issues should be controlled instead by the use of protective orders issued pursuant to the Commission's discovery rules.

The OCA will address each of these points in detail below.

B. Documents filed with the Commission and subject to Pennsylvania's Right-to-Know Law.

In accordance with Pennsylvania's Right-to-Know Law, it is the policy of Pennsylvania to ensure that information used by State agencies to serve the public interest remain free, open, and transparent. However, the General Assembly has now recognized that there is a category of information provided to State agencies, such as the Commission, that require additional special protections given the nature of the information and the potential for such information to impact

the safety of the public. Given this concern, the General Assembly has directed that specific types of utility information maintained by State agencies be protected from improper and unwarranted public disclosure.

The Act is intended to address documents contained in official Commission files. These documents may come to the Commission in different manners for retention in official files. No matter how this information arrives at the Commission, the definition of CSI provides that these special protections are reserved exclusively for information that is maintained by the Commission and meets specific statutory definitions. That is to say, under the Act, information must be filed with a State agency, in this case the Commission, before it may become CSI and receive specific protection under the Act. In comparing the requirements of the Act to the proposed regulations, the OCA has identified a number of areas in the proposed regulations where clarification and revision are required.

- 1. The proposed regulations should provide for Commission review of whether materials filed with Commission and designated as CSI by public utilities conform to the requirements of the Act.**

The Commission's proposed filing requirements under Section 102.3, and the challenge and review requirements in Section 102.4, appear to provide that after-the-fact challenges to CSI designations are the only CSI-designation review process provided by the Commission. The OCA submits, however, that the Commission must review documents marked as CSI by utilities before the Commission accepts a designation for purposes of the Act. This review is necessary to ensure that only material that falls squarely within the definition of CSI will be subject to the restrictions of the Act. This type of prior review will also avoid unnecessary problems when handling material alleged by a utility to be CSI. The OCA respectfully submits that establishing a CSI designation should not be a mere ministerial act whereby the public utility simply marks a

document as CSI. The Commission must review these designations to ensure that Pennsylvania's Right to Know protections are not subsumed by the limited exemptions contained in the Act.

The OCA points out that the DEP recognized this and has developed a proposed protocol for the examination and approval of CSI by an authorized person within DEP. It is the OCA's understanding that every document marked as CSI by a utility and provided to DEP is reviewed in accordance with the protocol described below to ensure that it has been properly designated. The DEP explanation of this protocol provides:

1. The unopened envelope will be given to the person authorized to review that information.
2. The reviewer will determine whether the information has been submitted by an entity defined as a public utility under the Act.
3. The reviewer will determine whether the information has been properly designated in accordance with the definition of confidential security information under the Act.
4. If information has been improperly designated, the reviewer will give the submitter an opportunity to resubmit the information without the improper designation. Upon resubmission of improperly designated information, the reviewer will notify the submitter of its right to challenge the Department's initial determination in accordance with Section 3 of the Act (35 P.S. § 2141.3).
5. The reviewer will place properly and improperly designated information in a file that is accessible only to authorized persons. Improperly designated information will be returned to the public file unless a challenge is filed within 30 days of the initial determination.
6. Any authorized person accessing the confidential security information will sign a log recording the time and date during which the person had access to the information.

Department of Environmental Protection, Draft Policy, Department of Environmental Protection procedures and protocol for the handling of confidential security information under Act 156,

May 8, 2007 (DEP Policy). The OCA submits that this is a reasonable approach. The OCA believes that the review discussed in Paragraph 3 above should be a thorough review to avoid allowing non-conforming information to receive CSI classification. The OCA would also point out that Paragraph 6 contemplates that multiple persons may be "authorized individuals," and also provides for records to track those that have accessed the materials in compliance with section 2141.3(d)(5).

As can be seen in Paragraph 4 of the DEP policy, it is contemplated that some CSI requests may be in error either as to form or to substantive information. To provide a full opportunity for the submitting party to respond to a rejected CSI request DEP proposes the following procedure:

1. The challenge will be sent to the reviewer that made the initial determination on behalf of the Department. The challenge will be set forth in a letter that provides the basis for the designation and any supporting documentation that the submitter would like the agency to consider.
2. The Department will provide a written notification of the agency's final determination within 60 days of receipt of the challenge. The written notification will include a finding of whether the disclosure of the challenged information would compromise the public utility's security against sabotage or criminal or terrorist acts.
3. Within 30 days of the written notification, the submitter may file an appeal in Commonwealth Court in accordance with Section 3 of the Act (35 P.S. § 2141.3).

Id. The OCA submits that this too is a reasonable approach for information being filed with the Commission.

The OCA submits that the Commission should adopt procedure similar to that used by the DEP to examine CSI claims. This would require the replacement of subsection 102.(b) of the proposed regulation with language similar to that described above.

2. The Commission should require public utilities to file a redacted copy of the document for which CSI protection is requested.

The OCA notes that the Commission's proposed CSI regulations do not require that public utilities submit a redacted version of a document to the Commission along with any document for which it seeks CSI protection. Without a redacted document in the public file indicating that CSI exists, the public will have no way of knowing that a document has ever been filed with the Commission. The OCA submits that the Act provides for the *protection* of documents containing materials defined as CSI. The Act does not provide for *secrecy as to the existence* of documents. Indeed, the challenge requirements in the Act would be mere surplusage if the intent of the Act were to conceal the existence of the information. Therefore, secrecy as to the existence of documents containing CSI cannot be the intent or purpose of the Act.

In this regard, the Department of Environmental Protection (DEP) requires public utilities submitting CSI to it "[t]o include, in a separate envelope, a copy of the submittal from which the confidential security information has been redacted. This redacted copy will be placed in the public file." DEP Policy. The OCA submits that a requirement for a redacted version of the CSI to be placed into the public file is reasonable. Part of the requirement of a public access protocol and process is that the public be aware that documents are available that may address an issue of public importance. The OCA submits that this is the purpose of Pennsylvania's Right-to-Know Law. The public would not know of the existence of a document in any particular instance if it

were not for such a redacted copy in the public file. As such, requiring a redacted copy of the public file is reasonable and consistent with the Act and the Right-to-Know Law.

To meet this requirement, the OCA submits that the Commission should add the following language to 102.3(b) as 102.3(b)(4):

Include, in a separate envelope marked "Redacted Version," a copy of the document containing material from which the confidential security information has been redacted for the purpose of placing this redacted copy in the public file.

This would provide adequate public notice that a document containing CSI has been included in the file, and would also assist a member of the public in making a more specific request for challenge or review under Section 102.4 should they deem that necessary.

3. The Commission should clarify the protocols used to provide statutory advocates with access to documents containing CSI.

The OCA believes there may be instances in which it may need to examine documents – subject to appropriate protections – that are on file with the Commission. To this end, the OCA is willing to be bound by the CSI disclosure prohibitions of the Act and the Commission's regulations and to limit its review of this material to on-site review at the Commission for materials maintained in the Commission's files. The OCA appreciates the Commission's recognition of the special role of the statutory advocates, but respectfully requests that the Commission amend its regulations regarding statutory advocates' access to CSI in two respects.

a. Statutory advocates should demonstrate their need for access to documents containing CSI to the Commission and not to the public utility.

The OCA would request that the Commission amend section 102.4(f) to remove the requirement that a statutory advocate justify to a public utility why it may need access to CSI information that is maintained by the Commission. While the OCA acknowledges and

appreciates the reduced burden created by section 102.4(f), the OCA submits that utility review of this type of request may not be appropriate. Instead, the OCA submits that the Commission is the appropriate entity to review such a request and to determine its validity -- with notice provided to the utility. To this end, the OCA submits that section 102.4(f) should be amended as follows:

(f) Access for statutory advocates. Authorized individuals, as provided for in Act 156, employed by the statutory advocates shall be provided with access to confidential security information on file with the Commission when they provide the Commission ~~public utility~~ with a justification for the need of the information. The Commission shall provide notice to the affected utility. The statutory advocate requesting access shall and execute access agreements with the Commission that summarize responsibilities and personal liabilities when confidential security information is knowingly or recklessly released, published or otherwise disclosed.

The OCA submits these amendments support the goals of the Act and clarify the roles of the parties to such a request.

- b. The OCA would respectfully request that the Commission permit persons employed by the statutory advocates to be bound by the same rules and attend the same training provided to employees of the Commission.**

Section 102.4(f) provides that "authorized individuals" employed by the statutory advocates may have access to CSI on file with the Commission. While the OCA understands that under the Act State agencies may self-certify their employees as "authorized individuals," the OCA submits that in this instance, the Commission may wish to certify the employees of statutory advocates who seek information from the Commission files as it does its own employees. Allowing employees of the statutory advocates to participate in the Commission's certification program would have numerous benefits. A key benefit would be that the Commission and public utilities could be assured that some uniform standards and interpretations were being applied in the certification process. In addition, this would assist in a uniformity of

understanding obligations for those employees that must handle CSI as a part of their employment. The OCA recognizes that the Commission has primary responsibility for protecting CSI documents within its files. The OCA therefore is willing to submit to the requirements that the Commission imposes on its own employees to ensure protection of these documents.

To address this, the OCA recommends that the Commission amend Section 102.4(f) to include the following language in Section 102.4(f):

Access for statutory advocates. Authorized individuals, as provided for in Act 156 and certified by the Commission, employed by the statutory advocates shall be provided with access to confidential security information.

This addition would clarify that the statutory advocates who seek access to CSI information from the Commission are subject to the Commission's certification process.

c. Documents and information maintained by utilities and sought by parties in the context of litigation discovery.

As the OCA discussed above, the Act applies only to information maintained by the Commission. Utilities are not State agencies; they are not bound by the Right-to-Know Law, and they are generally not required to open their files to the public. Utilities do, however, participate in litigation before the Commission and security-related information that is contained in a utility's files may also be relevant, and indeed vital to a utility's ability to meet its burden of proof in a proceeding, or alternatively for a party to challenge a utility claim in such a proceeding. Information in the utility's possession is entitled to protection under the Commission's discovery regulations, but it is not covered by the provisions of the Act. The Commission's proposed regulations should recognize that records must be maintained by a State agency to receive the special protections provided for in the Act. The Act does not apply to the documents maintained by the public utility that are the proper subject of discovery. In light of

this, the OCA requests that the Commission make clear that the proposed regulations do not create a new category of privilege or basis for objection in the context of litigation discovery.

The OCA notes that litigated proceedings provide a different context in which to consider the protections of confidential information among the parties, in comparison to public requests to access information maintained by the Commission under the Right-to-Know Law. In litigation, thousands of documents may be exchanged between parties without ever being filed with the Commission. In litigation, it is only those few documents admitted to the record that would be placed into Commission files and become subject to the Right-to-Know Law. The OCA submits that it is important to recognize that Pennsylvania's Right-to-Know Laws, which are the subject of the Act, are very different from discovery requests in litigation before the Commission. The OCA submits that the Commission's regulations implementing the Act should recognize this distinction for the benefit of the public, utilities, private practitioners, and the statutory advocates.

The OCA submits that the Act is aimed at dealing with public requests for information directed to the Commission as a State agency. The Act, however, does not apply to how parties to a litigated proceeding are to exchange information that may contain sensitive security information. The OCA submits that the Act was not meant to limit or otherwise circumscribe the legitimate due process discovery rights of parties. As the OCA has previously pointed out, the Act does not prevent a utility from providing documents containing confidential information to litigants as a part of a litigated proceeding as long as appropriate protections are provided.⁵

Various mechanisms already exist in litigated proceedings to protect the disclosure of sensitive information. Protective agreements both voluntary and via Order can adequately

⁵ The OCA fully recognizes that some information requires protection and this protection must be provided in the context of litigation.

address the need to protect any sensitive information. The OCA submits that these mechanisms are both adequate and appropriate in the context of litigation.

As an example of this, the OCA would point to the Protective Order in the TrailCo proceeding that is currently pending before the Commission.⁶ The parties to that proceeding proposed a Protective Order that the Administrative Law Judges approved, to address the exchange documents containing "Critical Energy Infrastructure" information. This information is available for inspection in electronic form, but may not be printed or copied by any party with access without express permission. Also, only parties and consultants who have expressly agreed to abide by the terms of the ALJs' Order may access the electronic version. The OCA submits that this is an appropriate manner in which to handle exchanges of this type of discoverable information in the context of litigation.

The Commission must make clear that the procedures it proposes in the regulation do not apply to exchanges of documents among parties to litigation. The OCA submits that the Commission should add a new subsection to Section 102.4 to address this point. This clarification should establish that utility information is subject to discovery, with appropriate protective orders, even if it may contain information that would be protected under the Act if the information were on file with the Commission. The Act does not alter existing rights and obligations in litigation before the Commission, and therefore, the Commission should not create any ambiguity on this point. The Commission should be clear that its implementation of the Act does not work to diminish the due process of rights of parties in litigation before it.

⁶ Application of Trans-Allegheny Interstate Line Company, Docket Nos. A-110172, A-110172F0002-4, G-00071229, Protective Order (July 19, 2007) (copy attached).

As such, the OCA requests that the Commission create a new subsection 102.4(h) to exclude the issue of exchange of CSI information through discovery in litigation before the Commission. The OCA submits that this section should read as follows:

(h) *Discovery in litigation.* Parties issuing discovery or responding to discovery requests shall move for protective orders that allow for access to information that may include CSI . The challenge procedures contained in this section shall not be employed in the context of litigation discovery.

This language will allow for necessary flexibility, fairness, and appropriate protection of sensitive information in each case and will provide the parties and the Commission with certainty as to how this information is to be treated in litigation before the Commission.

III. Conclusion

The OCA respectfully submits that the Commission should promulgate CSI regulations that are in clear accord with the Act and that do not create ambiguity as to their application.

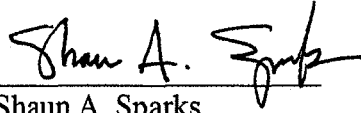
To achieve this, the OCA respectfully requests that the Commission provide for a review of documents that are alleged to contain CSI prior to providing CSI protections. The OCA also requests that the Commission require utilities submitting documents containing CSI to the Commission to provide a redacted copy of those documents that can be made available to the public.

Regarding statutory advocate access to documents containing CSI maintained in Commission files, the OCA respectfully requests that the Commission clarify that the statutory advocates apply to the Commission for access to this material, and not to the public utility that supplied it to the Commission. In addition, the OCA would request that the Commission permit the employees of the statutory advocates to become certified as "authorized individuals" by attending Commission programs for the certification of its own employees.

The OCA further respectfully requests that the Commission clarify that only those materials maintained by the Commission are subject to these regulations and that these regulations do not extend to the litigation discovery of material maintained by a public utility, and that appropriate protective agreements and orders are the methods that are to be used in litigation.

Efforts to restrict access to the information upon which the Commission bases its deliberations and decisions must be given careful consideration. The OCA acknowledges that this is a difficult balancing task and hopes that its Comments will assist the Commission as it develops fair and reasonable procedures and protocols under the Act.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Shaun A. Sparks". The signature is fluid and cursive, with the first name "Shaun" being more legible than the last name "Sparks".

Shaun A. Sparks
Assistant Consumer Advocate
Pa. I.D. #87372

Christine Maloni Hoover
Senior Assistant Consumer Advocate
Pa. I.D. #50026

Office of Consumer Advocate
555 Walnut Street 5th Floor Forum Place
Harrisburg PA 17101-1923

DATED: January 7, 2008
00096818

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In Re: Application of Trans-Allegheny	:	
Interstate Line Company (TRAILCo)	:	
For approval: 1) for a certificate of public	:	
convenience to offer, render, furnish or	:	
supply transmission service in the	:	A-110172
Commonwealth of Pennsylvania:	:	A-110172F0002
2) authorization and to locate, construct,	:	A-110172F0003
operate and maintain certain high-voltage	:	A-110172F0004
electric substation facilities; 3) authority	:	G-00071229
to exercise the power of eminent domain	:	
for the construction and installation of	:	
aerial electric transmission facilities along	:	
the proposed transmission line routes in	:	
Pennsylvania; 4) approval of an exemption	:	
from municipal zoning regulation with respect	:	
to the construction of buildings; and	:	
5) approval of certain related affiliated	:	
interest arrangements	:	

PROTECTIVE ORDER

IT IS HEREBY ORDERED THAT:

1. This Protective Order is granted with respect to all information identified at Ordering Paragraph No. 2, below, that are filed with the Pennsylvania Public Utility Commission ("Commission"), produced in discovery, or otherwise presented or provided during the course of the above-captioned proceedings. Anyone granted access to the information identified in Ordering Paragraph No. 2 shall use and disclose such information only in accordance with this Protective Order.

2. Information subject to this Protective Order includes all correspondence, documents, data, testimony, exhibits, studies, methodologies, and all other materials, that a party or an affiliate of a party (the "Producing Party") furnishes in these proceedings pursuant to filing, formal or informal discovery, any other evidentiary procedure, or otherwise may provide as a

courtesy to other parties in these proceedings, and which the Producing Party designates as "CONFIDENTIAL." The types of information that may be designated as "CONFIDENTIAL" by the Producing Party include, but are not limited to, (i) information that is either specified as confidential by its terms, or pertains to business practices, operations or financial matters that are commercially sensitive, or that is ordinarily considered and treated as proprietary or confidential by the Producing Party and, all information contained therein or derived therefrom, including but not limited to all copies, excerpts or summaries thereof; and/or (ii) any and all Critical Energy Infrastructure Information, as defined and described in 18 CFR § 388.113.

3. Information sought to be protected by this Order shall be specifically marked "CONFIDENTIAL" and shall be referred to in this Order as "Confidential information." Where only a part of data compilations or multi-page documents constitutes or contains such Confidential information, the Producing Party, insofar as reasonably practicable within discovery and other time constraints imposed in these proceedings, shall designate as "CONFIDENTIAL" only the specific data or pages which contain such Confidential information. Confidential information that is provided in electronic form need not be stamped "CONFIDENTIAL" or designated as "CONFIDENTIAL" in the text of the material provided, but a covering transmittal communication shall accompany such electronic material and shall call attention to such Confidential information in descriptive terms sufficient to enable reasonable identification thereof.

4. To the extent that the party receiving Confidential information is subject to the Pennsylvania Right-To-Know Act, that party shall consider and treat the Confidential information as within the exemptions from disclosure provided in the Pennsylvania Right-To-Know Act, as set forth in 65 P.S. Section 66.1(2), until such time as the information is found to

be non-confidential or non-proprietary. Confidential information shall be made available to the Commission and its duly designated and authorized advisory staff for use in these proceedings and for all internal Commission analyses, studies or investigations related to the same. For purposes of filing, to the extent that Confidential information is placed in the Commission's report folders or testimony or other document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Protective Order. Public inspection of the Confidential information shall be permitted only in accordance with this Protective Order.

5. Certain Confidential information may be declared and treated as "highly sensitive" in accordance with the terms of this paragraph. For purposes of this Protective Order, highly sensitive Confidential Information shall be limited to any and all Critical Energy Infrastructure Information, as defined and described in 18 CFR § 388.113. Where Confidential information is asserted to be highly sensitive, it may be made available for inspection and review as provided for in this Protective Order and not copying, except as specified herein. Such specific prohibition from copying such Confidential information shall be clearly designated on the face of the information as "CONFIDENTIAL – Highly Sensitive – Not To Be Copied Without Express Permission" and shall be referred to in this Order as "highly sensitive" Confidential information. In such cases, the Producing Party shall permit other parties' counsel to take custody of such Confidential information, provided that it shall not be copied, except for counsel and independent consultants in accordance with the protocols set forth below, and shall be returned as provided for in this Protective Order. Such Confidential information may be provided by counsel to an independent consultant who is not a Restricted Person, as defined below, and who is assisting counsel with the preparation or presentation of the party's case in

these proceedings, provided that such consultant executes and returns the acknowledgement attached to this Protective Order to the Producing Party as specified in paragraph 9 below.

Notwithstanding the foregoing, for purposes of this paragraph, counsel for the Office of Trial Staff ("OTS") may afford access to Confidential information, including highly sensitive Confidential information, to OTS's experts who are identified in advance by name and business title in writing to the Producing Party, all of whom are full-time Commission employees of OTS, a statutory party granted express permission by the Commission to participate in this proceeding, and said OTS experts shall be bound by the terms of this Protective Order without separately executing the form of acknowledgement attached hereto

6. Confidential information shall be made available only as permitted by this Protective Order and only for purposes of reviewing, preparing or presenting evidence, cross-examination or argument in these proceedings. Confidential information shall not be disclosed to any person, including the officers, directors, employees, representatives or agents of a party receiving the Confidential information, except: (a) the party's counsel representing it in these proceedings; (b) a person employed or retained by that counsel as an attorney, independent expert, legal assistant, law clerk, or secretary whose duties include assisting that counsel in the preparation or presentation of the party's case in these proceedings; and (c) a limited number of client representatives. It is further ordered, however, that under no circumstances shall a "Restricted Person", as defined below, be entitled to receive Confidential information.

7. A "Restricted Person" shall mean: (a) an officer, director, stockholder, partner, owner or employee of any competitor, or of any affiliate of any competitor, or of any association of such competitors, of the Producing Party; (b) an officer, director, stockholder, owner or employee of a competitor of a customer, or of an affiliate of a competitor of a customer, of the

Producing Party if the Confidential Material concerns a specific identifiable customer; (c) a person whose scope of employment includes the marketing of energy, or the direct supervision of any employee(s) whose duties include the marketing of energy, or the provision of marketing consulting services to any person whose duties include the marketing of energy or the direct supervision of any employee(s) whose duties include the marketing of energy; or (d) an officer, director, stockholder, owner or employee of an entity, or of an affiliate of an entity, that has sold electricity or gas to the Producing Party in the last twenty-four (24) months. However, no independent expert shall be disqualified on account of being a stockholder, partner, or owner of an entity or business described in (a) – (d), above, unless that expert's interest in such entity or business would provide a significant motive for violation of the limitations of permissible use of the Confidential information; and, provided further that, as an exception to the definition of "Restricted Person", no more than one (1) internal counsel employed by a Restricted Person shall be permitted to receive Confidential information on the same basis as external counsel of the Restricted Person as set forth above. For purposes of this Protective Order, stocks, partnership or other ownership interests valued at more than \$10,000 or constituting more than a 1% interest in an entity or business establish a significant motive for violation.

8. If an independent expert for any of the parties, another member of the expert's firm or the expert's firm generally also serves as an expert for, or as a consultant or advisor to, an entity or business employing a Restricted Person, as listed above, said expert must: (a) identify, for the Producing Party, each such entity or business and each expert or consultant; (b) make reasonable attempts to segregate those personnel assisting in the expert's participation in these proceedings from those personnel working on behalf of such entity or business; and (c) if segregation of such personnel is impractical, the expert shall give written assurances that the lack

of segregation will in no way jeopardize the interests of the Producing Party, or its customers. The Producing Party retains the right to challenge the adequacy of the written assurances that its interests and the interests of its customers will not be jeopardized.

9. No counsel, expert, employee, officer or member (as applicable) of a party will be afforded access to Confidential information until a signed acknowledgement of this Protective Order in the form attached to this Protective Order, from each such individual, has been returned to the Producing Party; except, however, that trial counsel entering an appearance and actively participating in these proceedings shall be bound by the terms of this Protective Order without separately executing the form of acknowledgement attached hereto, provided however that OTS counsel may afford access to OTS experts identified in advance to the Producing Party in accordance with paragraph 5 above, without separately executing the form of acknowledgement attached hereto. All other persons shall sign such acknowledgement prior to receipt of any materials protected by this Protective Order. No other persons may have access to the Confidential information, except as specifically authorized by further order of the Commission or the Administrative Law Judge. No person may be entitled to receive, or who is afforded access to any Confidential information shall possess, use or disclose Confidential information for the purpose of business or competition, or any purpose other than the presentation for and conduct of these proceedings or any administrative or judicial review thereof.

10. Any public reference to Confidential information by the Commission or by counsel or persons afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Confidential information to understand the reference fully and not more. Confidential information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review. Part of any record of these

proceedings containing Confidential information, including but not limited to all exhibits, writings, direct testimony, cross-examination, argument, and responses to discovery, and including reference thereto, shall be sealed for all purposes, including administrative and judicial review, unless such Confidential information is released from the restrictions of this Protective Order, either through the agreement of the parties or pursuant to a further order of the Administrative Law Judge or the Commission.

11. The parties affected by the terms of this Protective Order shall retain the right to question or challenge the confidential nature of Confidential information; to question or challenge the admissibility of Confidential information; to refuse or object to the production of Confidential information on any proper ground, including but not limited to irrelevance, immateriality, or undue burden; and to seek additional measures of protection of Confidential information beyond those provided in this Protective Order. The Producing Party shall be provided with advance notice of any intended use of Confidential information in these proceedings, in sufficient time to permit the Producing Party's review and adjudication, if necessary, of any dispute as to the manner in which such Confidential information shall be referred to or introduced. If a challenge is made to the designation of a document or information as Confidential information, the party claiming that the information is proprietary or otherwise confidential retains the burden of demonstrating that the designation is necessary and appropriate.

12. Upon completion of these proceedings, including any administrative or judicial review, all copies of all documents and other materials, including notes, whether written or oral, which contain any Confidential information, shall be immediately returned to or destroyed upon written request made by the Producing Party furnishing such Confidential information. Any

party destroying Confidential Information in its possession shall certify timely and in writing the destruction thereof to the Producing Party. This provision, however, shall not apply to the Commission or its Staff, the Office of Trial Staff, the Office of Consumer Advocate, or any other party receiving the consent of the Producing Party; except, however, that highly sensitive Confidential information provided to any party pursuant to this Protective Order shall be returned to the Producing Party in all cases.

Date: July 19, 2007

Michael A. Nemec
Administrative Law Judge

Mark A. Hoyer
Administrative Law Judge

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In Re: Application of Trans-Allegheny	:	
Interstate Line Company (TRAILCo)	:	
For approval: 1) for a certificate of public	:	
convenience to offer, render, furnish or	:	
supply transmission service in the	:	A-110172
Commonwealth of Pennsylvania:	:	A-110172F0002
2) authorization and to locate, construct,	:	A-110172F0003
operate and maintain certain high-voltage	:	A-110172F0004
electric substation facilities; 3) authority	:	G-00071229
to exercise the power of eminent domain	:	
for the construction and installation of	:	
aerial electric transmission facilities along	:	
the proposed transmission line routes in	:	
Pennsylvania; 4) approval of an exemption	:	
from municipal zoning regulation with respect	:	
to the construction of buildings; and	:	
5) approval of certain related affiliated	:	
interest arrangements	:	

TO WHOM IT MAY CONCERN:

The undersigned is the expert, officer, member, employee or counsel of _____
_____.

The undersigned has read and understands the Protective Order issued in the above captioned proceedings, which Order deals with the treatment of information designated as "CONFIDENTIAL." The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order. The undersigned agrees that any Confidential information shall be used or disclosed only for purposes of preparation for, and conduct of the above captioned proceedings, and any administrative or judicial review thereof, and shall not be disclosed or used for any other purposes whatsoever.

Date: _____

SIGNATURE

PRINT NAME

EMPLOYER