

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>IN RE: APPLICATION OF TRANS-ALLEGHENY INTERSTATE</b>	:	
<b>LINE COMPANY FOR (I) A CERTIFICATE OF PUBLIC</b>	:	
<b>CONVENIENCE TO OFFER, RENDER, FURNISH AND/OR</b>	:	
<b>SUPPLY TRANSMISSION SERVICE IN THE COMMONWEALTH:</b>	:	
<b>OF PENNSYLVANIA; (II) AUTHORIZATION AND TO LOCATE,</b>	:	
<b>CONSTRUCT, OPERATE AND MAINTAIN CERTAIN HIGH</b>	:	<b>Docket Nos. A-110172</b>
<b>VOLTAGE ELECTRIC TRANSMISSION LINES AND RELATED</b>	:	<b>A-110172F0002</b>
<b>ELECTRIC SUBSTATION FACILITIES; (III) AUTHORITY TO</b>	:	<b>A-110172F0003</b>
<b>EXERCISE THE POWER OF EMINENT DOMAIN FOR THE</b>	:	<b>A-110172F0004</b>
<b>CONSTRUCTION AND INSTALLATION OF AERIAL ELECTRIC</b>	:	<b>G-00071229</b>
<b>TRANSMISSION FACILITIES ALONG THE PROPOSED</b>	:	
<b>TRANSMISSION LINE ROUTES IN PENNSYLVANIA; (IV)</b>	:	
<b>APPROVAL OF AN EXEMPTION FROM MUNICIPAL ZONING</b>	:	
<b>REGULATION WITH RESPECT TO THE CONSTRUCTION OF</b>	:	
<b>BUILDINGS; AND (V) APPROVAL OF CERTAIN RELATED</b>	:	
<b>AFFILIATED INTEREST ARRANGEMENTS</b>	:	

**APPLICATION**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to Commission regulations set forth at 52 Pa. Code § 1.34 (permitting the filing of a single pleading with respect to one or more related transactions), 52 Pa. Code § 57.1 and §§ 57.71 – 57.77 (governing the siting and construction of High Voltage ("HV") transmission lines), Pennsylvania Municipalities Planning Code Section 619, 53 P.S. § 10619 (governing the exemption of public utilities from municipal zoning regulation with respect to the construction of buildings), Pennsylvania Public Utility Code § 1102(a)(1), 66 Pa.C.S. § 1102(a)(1) (governing the issuance of certificates of public convenience for public utilities to begin to render service in territories in which they do not possess such authorization), Pennsylvania Business Corporation Law Section 1511(c) (governing Commission authorization to exercise certain eminent domain authority in Pennsylvania) and Pennsylvania Public Utility Code §§ 2101 and 2102, 66 Pa.C.S. §§ 2101, 2102 (governing Commission

approval of certain arrangements and transactions among affiliates), Trans-Allegheny Interstate Line Company ("Applicant" or "TrAILCo") respectfully sets forth the following averments in support of the relief requested herein:

## **I. INTRODUCTION**

1. TrAILCo is a Maryland and Virginia corporation having its principal office at 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601. TrAILCo was incorporated pursuant to the laws of the State of Maryland on October 10, 2006 to engage in all lawful business for which corporations may be incorporated under the laws of the State of Maryland. TrAILCo was incorporated pursuant to the laws of the Commonwealth of Virginia on October 27, 2006 to engage in only such business as is permitted to be conducted by a public service company under the laws of the Commonwealth of Virginia.

2. TrAILCo is a direct subsidiary of Allegheny Energy Transmission, LLC ("AET"), a Delaware limited liability company that is a direct subsidiary of Allegheny Energy, Inc. ("Allegheny").<sup>1</sup>

3. Notices, correspondence, or other communications with respect to this Application should be addressed to the undersigned counsel of record, W. Edwin Ogden, Alan Michael Seltzer and Ryan, Russell, Ogden & Seltzer P.C., 1150 Berkshire Blvd. Suite 210 Wyomissing, PA 19610-1208 and Randall B. Palmer, Senior Attorney, Allegheny Energy, Inc., 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601-1689.

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<sup>1</sup> Allegheny, headquartered in Greensburg, Pennsylvania, is the parent company of three public utility operating companies, West Penn Power Company ("West Penn"), Monongahela Power Company ("Mon Power") and The Potomac Edison Company ("Potomac Edison"). Allegheny is a holding company under the Public Utility Holding Company Act of 2005.

## **II. PROJECT BACKGROUND**

4. In June 2006, PJM Interconnection L.L.C. ("PJM")<sup>2</sup> approved a five-year regional transmission expansion plan ("RTEP") designed to maintain the reliability of the electric transmission grid in the region served by the PJM transmission system ("PJM Region").

5. As part of the RTEP, PJM designated Allegheny Power<sup>3</sup> as the transmission owner responsible for constructing a new 500/138 kV substation in Washington County, Pennsylvania ("Prexy Substation"), a new 500 kV substation in Greene County, Pennsylvania ("502 Junction Substation"), a new 500 kV transmission line to connect the Prexy Substation and the 502 Junction Substation ("Prexy Segment"), and three new 138 kV transmission lines with double circuit construction from the Prexy Substation ("Prexy 138 kV Lines") to connect with existing transmission lines of Allegheny Power. Together, the Prexy Segment and the Prexy 138 kV Lines will traverse approximately 52 miles in Pennsylvania with approximately five miles of the Prexy 138 kV Lines located on the same right-of-way as the Prexy Segment.

6. As part of the RTEP, PJM also designated Allegheny Power as the transmission owner responsible for constructing a new 500 kV transmission line in Pennsylvania from the 502 Junction Substation to the Pennsylvania-West Virginia state line ("Pennsylvania 502 Junction Segment"). The length of the proposed route for the Pennsylvania 502 Junction Segment is approximately one and two-tenths miles. From the state line, the 500 kV line will continue into West Virginia to the existing Mt. Storm

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<sup>2</sup> PJM is a Regional Transmission Organization that manages electricity transmission services for a region that includes approximately 51 million people in all or parts of 13 states and the District of Columbia ("PJM Transmission System"). PJM coordinates the movement of electricity, ensures the reliability of the transmission grid, and plans transmission enhancement and expansion of the PJM Transmission System.

<sup>3</sup> Allegheny Power is the trade name under which West Penn, Mon Power and Potomac Edison conduct business.

Substation in Grant County, West Virginia (“Mt. Storm Substation”) owned by Virginia Electric and Power Company (“Dominion Virginia Power”). From the Mt. Storm Substation, the line will continue eastward in West Virginia and then cross the state line into Virginia and continue to Allegheny Power’s existing Meadow Brook Substation in Frederick County, Virginia (“Meadow Brook Substation”). From the Meadow Brook Substation, the line will continue east to a point near the western boundary of the National Park Service’s Appalachian National Scenic Trail property in Virginia, where ownership of the line will change to Dominion Virginia Power through the Appalachian National Scenic Trail property, then to TrAILCo and Dominion Virginia Power jointly for approximately 30 miles and then to Dominion Virginia Power solely for the remainder of the line to Dominion Virginia Power’s Loudoun Substation in Loudoun County, Virginia.

7. Allegheny has designated TrAILCo as the entity within the Allegheny holding company system responsible for constructing the new transmission facilities described in paragraphs 5 and 6, above. These new transmission facilities and the expansion of the Meadow Brook Substation will constitute the Trans-Allegheny Interstate Line (“TrAIL”). The TrAIL does not include any related transmission facilities to be owned by Dominion Virginia Power, including any modifications or expansions to be constructed at the Mt. Storm Substation.

8. The facilities described in paragraph 5, above, are needed to prevent anticipated electric reliability problems caused by conditions that may occur solely within the Allegheny Power Zone of PJM if the facilities are not constructed and constitute approximately 98% of the line miles that TrAILCo seeks authorization to

construct in this Application.<sup>4</sup> The Pennsylvania 502 Junction Segment and the related facilities in West Virginia and Virginia described in paragraph 6, above, are needed to prevent anticipated electric reliability problems caused by conditions that may occur outside of the Allegheny Power Zone, and constitute approximately 2% of the line miles that TrAILCo seeks authorization to construct in this Application.

9. As described more fully in the balance of this Application and in the supporting testimony and exhibits filed herewith, TrAILCo's proposed transmission line and related facilities are expected to address and significantly improve the identified transmission limitations inside and outside the Allegheny Power Zone, and provide greater reliability within PJM generally.

### **III. THE NEW HV TRANSMISSION LINE AND RELATED SUBSTATION FACILITIES**

10. Subject to the Commission approvals requested in this Application, TrAILCo intends to design, construct, own, operate and maintain the Prexy Segment, the Prexy 138 kV Lines and the Prexy Substation (collectively, the “Prexy Facilities”) and the 502 Junction Substation and the Pennsylvania 502 Junction Segment. For ease of reference, attached to this Application as Attachment 1 is a list of the Commission's requirements for siting applications, along with cross-references to the testimony and exhibits being submitted with this Application that satisfy those requirements.

11. The design and construction costs of the Prexy Facilities, 502 Junction Substation and the Pennsylvania 502 Junction Segment, and ongoing operation and maintenance expenses, will be borne by TrAILCo. The TrAILCo revenue

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<sup>4</sup> PJM transmission zones are shown on Attachment J to the PJM Open Access Transmission Tariff, FERC Electric Tariff, Sixth Revised Volume No. 1, filed with the Federal Energy Regulatory Commission. See [www.pjm.com/documents/downloads/agreements/tariff.pdf](http://www.pjm.com/documents/downloads/agreements/tariff.pdf). The Allegheny Power Zone is identified as the “APS Zone.”

requirement will be collected by PJM from customers in its transmission zones that have been assigned the responsibility for paying the costs associated with these projects.

12. The Prexy Facilities, 502 Junction Substation and the Pennsylvania 502 Junction Segment have estimated in-service dates from November 2009 to June 2011.

13. The Prexy Facilities, 502 Junction Substation and the Pennsylvania 502 Junction Segment are currently estimated to cost \$208 million to construct. Further details about the estimated cost and completion date of these facilities are contained in the direct testimony and exhibits of TrAILCo witness Bodenschatz.

14. TrAILCo will be required to raise capital funds for the purpose of financing the construction of all TrAIL facilities described in paragraphs 5 and 6. Subject to final approval by the Federal Energy Regulatory Commission ("FERC"), TrAILCo presently anticipates a financing program consisting of three components: (a) executing a loan agreement and related documents ("Loan Agreement") to borrow up to \$550 million, (b) entering into one or more Interest Rate Hedges for the purpose of hedging TrAILCo's interest rate exposure under the Loan Agreement and (c) issuing up to \$550 million of common stock. TrAILCo's proposed financing program is described in detail in an application filed with the FERC at Docket No. ES07-24-000 on February 22, 2007. Further details of TrAILCo's proposed financing program are addressed later in this Application and in the written testimony and exhibits of TrAILCo witness Flitman, which are attached hereto and made a part hereof.

**A. General Description of the Proposed Route for the Prexy Segment**

15. The Prexy Segment will extend a total distance of approximately 36.1 miles from the 502 Junction Substation to the Prexy Substation. Approximately

34.3 miles of the Prexy Segment route will be located within rights-of-way previously purchased by West Penn from private landowners for transmission line purposes. As further explained in this Application, TrAILCo proposes to acquire these rights-of-way from West Penn. TrAILCo will be required to obtain rights-of-way for the remaining approximate one and eight-tenth miles of this line from private landowners or acquire the rights-of-way via the exercise of eminent domain. The first approximate 4.9 miles of the line from the Prexy Substation south towards the 502 Junction Substation will be located on the existing 430-foot wide right-of-way to be transferred from West Penn. The remaining approximate 31.2 miles of the line will be located on a 200-foot wide right-of-way to be either transferred from West Penn or acquired by TrAILCo from current property owners.

16. The first Prexy 138 kV Line will be constructed as a double-circuit transmission line but operated as a single-circuit line. The line will extend generally south from the Prexy Substation for approximately 4.9 miles and interconnect with Allegheny Power's existing Washington – Charleroi 138 kV Line between the Vanceville Tap and Washington Substation. This line will be located within the same 430-foot wide right-of-way used for the Prexy Segment.

17. The second Prexy 138 kV Line will be constructed as double-circuit transmission line extending generally northeast from the Prexy Substation for approximately 5.5 miles and interconnect with Allegheny Power's existing Union Junction – Peters 138 kV Line between the Union Junction Substation and Peters Substation. Approximately 4.7 miles of this line will be located on a 290-foot wide right-of-way previously purchased by West Penn from private landowners for transmission line

purposes. As further explained in this Application, TrAILCo proposes to acquire these easements from West Penn. TrAILCo will be required to obtain easements for the remaining approximate 0.8 miles of this line from private landowners or acquire the easements via the exercise of eminent domain. The remaining easements will be 100 feet wide.

18. The third Prexy 138 kV Line will be constructed as a double-circuit transmission line extending generally west from the Prexy Substation for approximately 4.9 miles and interconnect with Allegheny Power's existing Manifold – Houston 138 kV line between the Manifold Substation and the Houston Substation. Approximately 3.6 miles of this line will be located within 100-foot wide easements previously purchased by West Penn from private landowners for transmission line purposes. As further explained in this Application, TrAILCo proposes to acquire these easements from West Penn. TrAILCo will be required to obtain easements for the remaining approximate 1.3 miles of this line from private landowners or acquire the easements via the exercise of eminent domain. The remaining easements will be 100 feet wide.

19. Attached to this Application as Appendix A, and made a part hereof, is a series of maps showing generally the proposed locations and the specific nominal operating voltages of the Prexy Facilities.

20. A more detailed description of the proposed routes for the Prexy Segment and each of the Prexy 138 kV Lines, including the municipalities that the proposed routes cross, is contained in the testimony and exhibits of TrAILCo witness Halpern. The total length of the Prexy Segment and the Prexy 138 kV lines is about 51.4

miles in Pennsylvania, comprised of approximately 36.1 miles for the Prexy Segment and approximately 15.3 miles for the Prexy 138 kV lines.

21. A depiction of the proposed route on aerial photographs and topographic maps, a drawing of a cross-section of the proposed right-of-way with typical structures, and a technical description of the components of the Prexy Segment and the Prexy 138 kV Lines are contained in the testimony and exhibits of TrAILCo witnesses Halpern, Fleissner and Bodenschatz, which are attached hereto and made a part hereof.

**B. General Description of the Proposed Route for the Pennsylvania 502 Junction Segment**

22. The Pennsylvania 502 Junction Segment will be located within a proposed 200-foot wide right-of-way, extending a total distance of approximately 1.2 miles from the 502 Junction Substation to the Pennsylvania-West Virginia state line. TrAILCo will be required to obtain right-of-way from private landowners for this entire segment or acquire right-of-way via the exercise of eminent domain.

23. Attached to this Application as Appendix B, and made a part hereof, is a series of maps showing generally the proposed locations and the specific nominal operating voltages of the 502 Junction Substation and the Pennsylvania 502 Junction Segment.

24. A more detailed description of the proposed route for the Pennsylvania 502 Junction Segment, including the municipalities that the proposed routes cross, is contained in the testimony and exhibits of TrAILCo witness Halpern, which are attached hereto and made a part hereof.

25. A depiction of the proposed route on aerial photographs and topographic maps, a drawing of a cross-section of the proposed right-of-way with typical

structures, and a technical description of the components of the Pennsylvania 502 Junction Segment are contained in the testimony and exhibits of TrAILCo witnesses Halpern, Fleissner and Bodenschatz, which are attached hereto and made a part hereof. A system map, as required by 52 Pa. Code § 57.72(c)(13)(iv), is attached as an exhibit to the testimony of TrAILCo witness Hozempa.

**C. Identification of Property Owners Along the Proposed Route**

26. The names and addresses of known record owners of property within the right-of-way for the Prexy Segment, each of the Prexy 138 kV lines and the Pennsylvania 502 Junction Segment, as well as outside of the right-of-way but within 600 feet of the centerlines thereof, are contained in Appendix C that is attached hereto, and made a part hereof.

**D. The Need for the Proposed New HV Transmission Line Facilities**

27. The detailed explanation of the need and engineering justification for the Prexy Segment, Prexy 138 kV Lines and Pennsylvania 502 Junction Segment is set forth in the testimony and exhibits of TrAILCo witnesses Hozempa, Herling and Gass, which are attached hereto and made a part hereof.

**E. Safety Considerations**

28. The Prexy Segment, the Prexy 138 kV Lines and the Pennsylvania 502 Junction Segment will be designed, constructed, operated, and maintained in accordance with standards that equal or exceed those set forth in the National Electrical Safety Code. Further details of the safety considerations incorporated into such planning are set forth in the testimony and exhibits of TrAILCo witness Bodenschatz, which are attached hereto and made a part hereof.

**F. Environmental Impact Studies**

29. A description of the studies that have been made with respect to the environmental impact of the Prexy Segment, the Prexy 138 kV Lines and the Pennsylvania 502 Junction Segment and the efforts that have been made, and that will be made, to minimize the impact of such facilities upon the environment and upon scenic and historic areas, are contained in the testimony and exhibits of TrAILCo witness Halpern, which are attached hereto and made a part hereof.

30. The locations of all known archaeological, geologic, historic, scenic and wilderness areas of significance, and airports, identified by the Applicant as being within two miles of the proposed routes, are set forth in the testimony and exhibits of TrAILCo witness Halpern that are attached hereto and made a part hereof.

**G. Examination of Alternative Routes**

31. A description of the route selection methodology utilized in selecting the proposed route, and a description and comparison of alternative routes, are set forth in the testimony and exhibits of TrAILCo witness Halpern that are attached hereto and made a part hereof.

**H. Requirements of Other Governmental Agencies**

32. The identification of local, state and federal governmental agencies that have requirements in connection with the construction and maintenance of the Prexy Segment, the Prexy 138 kV Lines and the Pennsylvania 502 Junction Segment, and filings that either have been made or will be made with such agencies with respect thereto, are contained in the testimony and exhibits of TrAILCo witness Fleissner, which are attached hereto and made a part hereof.

**I. Notice**

33. The Applicant is serving copies of this Application upon those individuals and entities designated in the Commission’s regulations at 52 Pa. Code § 57.74 (b), as evidenced by the Certificate of Service filed herewith.

34. The Applicant is also serving copies of this Application upon all known record owners of property located within 600 feet of the centerlines of the Prexy Segment, each of the Prexy 138 kV lines and the Pennsylvania 502 Junction Segment as evidenced by the Certificate of Service filed herewith.

35. The Applicant is also serving a notice of filing, and a map showing the proposed route, upon those individuals and entities designated in the Commission’s regulations at 52 Pa. Code § 57.74 (c), as evidenced by the Certificate of Service filed herewith.

**J. Corridor Notification**

36. Due to the immediate need to construct the Prexy Segment, the Prexy 138 kV Lines and the Pennsylvania 502 Junction Segment to address the current and anticipated reliability concerns identified in this Application, TrAILCo believes it is necessary and in the public interest for the Commission to accord a reasonable level of flexibility to accommodate circumstances and concerns that may arise during the certification process before this Commission. Accordingly, TrAILCo is providing written notice of this Application to all known owners of land within a corridor consisting of an area of 600 feet from the centerlines of the Prexy Segment, each of the Prexy 138 kV lines and the Pennsylvania 502 Junction Segment (the “Corridor”). However, TrAILCo is not requesting the Commission to authorize construction of the Prexy Segment, the Prexy 138 kV Lines and the Pennsylvania 502 Junction Segment at

unspecified locations within the Corridor. Instead, TrAILCo requests, in accordance with 52 Pa. Code § 57.76(b), the Commission to adjust the centerlines of the proposed routes of these lines while maintaining the requisite right-of-way width in any area within the Corridor during the certification process if reasonably necessary and feasible to accommodate circumstances and concerns that may arise or become apparent during the siting approval process before the Commission.

**K. Coordination With West Virginia Authorization**

37. In addition to the siting authorization sought from the Commission in this Application, TrAILCo will be required to obtain a similar siting authorization from the West Virginia Public Service Commission (“WV PSC”) for the continuation of the TrAIL into West Virginia from the Pennsylvania-West Virginia state line. The WV PSC will be conducting a parallel proceeding for the purpose of considering TrAILCo’s West Virginia application for approval of the construction and location of the portions of TrAIL located within West Virginia. TrAILCo is requesting that the Commission and the WV PSC, with the assistance of TrAILCo, coordinate the approvals of connecting route locations across the state boundary between Pennsylvania and West Virginia to avoid the approval of non-connecting routes.

WHEREFORE, TrAILCo respectfully requests that the Commission enter an order granting approval for the location, construction, operation, and maintenance of the Prexy Segment, the Prexy 138 kV Lines and the Pennsylvania 502 Junction Segment.

**IV. CERTIFICATE OF PUBLIC CONVENIENCE**

38. TrAILCo requests (i) Commission authorization, pursuant to Pennsylvania Public Utility Code Sections 1101, *et seq.*, 66 Pa.C.S. §§ 1101, *et seq.* (“Code”) to be a public utility in the Commonwealth of Pennsylvania and (ii) that the

Commission issue a certificate of public convenience to TrAILCo in furtherance of its intention to engage in the interstate transmission of electricity in Pennsylvania, Virginia, and West Virginia.

39. Code Section 1103 provides that a certificate of public convenience will be issued only if the Commission "shall find and determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa.C.S. § 1103.

40. The Commission has interpreted the above mandate as requiring an applicant for a certificate of public convenience to demonstrate a public need or demand for the proposed service, the inadequacy of existing facilities for service and the applicant's fitness to provide service.<sup>5</sup> In turn, the Commission has held that an applicant's "fitness" involves three factors: (i) the technical capacity to meet the need in a satisfactory fashion; (ii) the financial ability to give reliable and responsible service to the public; and (iii) "legal fitness" -- the ability to operate safely and legally.<sup>6</sup>

41. As demonstrated in the testimony and exhibits accompanying this Application, TrAILCo satisfies all of the applicable criteria necessary to become a certificated public utility in the Commonwealth of Pennsylvania. There is no question about the need for the Prexy Facilities, 502 Junction Substation and Pennsylvania 502 Junction Segment to be owned and operated by TrAILCo. The fact that PJM has directed the construction of these facilities as part of its independent regional planning process underscores the inadequacy of existing facilities to meet future electric reliability needs and the public need for additional transmission facilities to enable West Penn, as a load

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<sup>5</sup> *Application of Newtown Artesian Water Company*, 2003 Pa. PUC LEXIS 40 (July 1, 2003).

<sup>6</sup> See, *Re: O'Connor*, 54 Pa.P.U.C. 547 (1980); *Warminster Twp. Municipal Auth. v Pa. PUC*, 138 A.2d 240 (Pa. Superior Ct. 1958).

serving entity, to continue to reliably serve its retail electric customers in Pennsylvania and to enable PJM to continue to provide reliable electric transmission service to other retail load serving entities in other transmission zones of the PJM Region.

42. TrAILCo also satisfies all three factors necessary to support a finding of fitness. First, as part of the Allegheny system and its longstanding experience in the siting, construction, ownership and operation of electric transmission facilities, TrAILCo has unquestionable technical capacity to provide transmission service within the PJM Region. Second, TrAILCo's expansive financing program currently on file with FERC will provide it capital in amounts sufficient for it to provide reliable and responsible transmission service to the public. Third, because of both the technical resources and the availability of substantial sources of capital, TrAILCo will be able to safely and legally provide transmission service to the public.

43. Although ratemaking for the Prexy Facilities, 502 Junction Substation and Pennsylvania 502 Junction Segment will be governed by FERC, the Commission nevertheless has important public policy interests to protect by maintaining jurisdiction over electric transmission facilities located within the Commonwealth. Granting a certificate of public convenience to TrAILCo to function as a public utility in Pennsylvania will facilitate that continuing oversight.

44. Permitting TrAILCo to operate as a Pennsylvania public utility will enhance, not adversely affect, service to retail electric customers in West Penn's service area as well as adjoining areas, and will promote the public interest.

45. Notice of this request for issuance of a certificate of public convenience has been provided in accordance with Commission regulations.

WHEREFORE, TrAILCo respectfully requests that the Commission enter an order issuing a certificate of public convenience to it in order to conduct its business operations as a public utility in the Commonwealth of Pennsylvania.

**V. REQUESTED EXEMPTION FROM LOCAL ZONING REGULATION**

46. For purposes of the project described in this Application, TrAILCo plans to design, construct, own, and operate the Prexy Substation in Washington County, and the 502 Junction Substation in Greene County, Pennsylvania. Attached hereto and made part hereof as Appendix D and Appendix E, respectively, are detailed descriptions of the substations to be constructed in North Strabane Township, Washington County and Drunkard Township, Greene County, Pennsylvania, and the various proposed substation facilities to be installed thereon. Each substation site will have both a control building to house substation electric controls, metering and communications equipment and a maintenance building that will be used for performing maintenance on the electric equipment.

47. The proposed substation buildings will be located within the townships and counties identified in paragraph 46, each of which has enacted regulations pertaining to zoning, pursuant to Article VI of the Pennsylvania Municipalities Planning Code (as reenacted and amended December 21, 1988, P.L. 1329, 53 P.S. §§ 10601-10619.1) ("MPC").

48. Section 619 of the MPC, 53 P.S. § 10619, provides an exemption from municipal zoning regulation for “any existing or proposed building, or extension thereof” of a public utility (*i.e.*, the limited extent to which municipal zoning regulation by law applies to the placement of public utility facilities), upon a finding and

determination by the Commission “that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public.”

49. TrAILCo will provide such further notice (*i.e.*, notice in addition to that otherwise provided with respect to this Application) as the Commission may direct with respect to the filing of this request for exemption from such local zoning regulation for the construction on the subject tracts of the proposed new substation buildings.

WHEREFORE, TrAILCo respectfully requests that the Commission enter an order granting it an exemption from local zoning regulation for the Prexy Substation, the 502 Junction Substation and related buildings and facilities, as requested in this Application.

**VI. REQUEST FOR AUTHORIZATION TO EXERCISE THE POWER OF EMINENT DOMAIN IN PENNSYLVANIA IN CONNECTION WITH THE PENNSYLVANIA TRAILCO FACILITIES**

50. As a prerequisite to lawfully exercising the power of eminent domain in Pennsylvania, Section 1511(c) of the Pennsylvania Business Corporation Law ("BCL"), 15 Pa.C.S. § 1511(c), obligates a public utility corporation to obtain a finding and determination from the Commission that the exercise of eminent domain for aerial electric facilities is "necessary or proper for the service, accommodation, convenience or safety for the public."

51. In turn, Code Section 1104 provides as follows:

**§ 1104. Certain appropriations by right of eminent domain prohibited.**

Unless its power of eminent domain existed under prior law, no domestic public utility or foreign public utility authorized to do business in this Commonwealth shall exercise any power of eminent domain within this Commonwealth until it shall have received the certificate of public convenience required by section 1101 (relating to organization of public utilities and beginning of service).

52. Because it may not be possible to site, construct and/or operate portions of the Prexy Segment, the Prexy 138 kV Lines and the Pennsylvania 502 Junction Segment without the need to exercise some condemnation authority to acquire necessary real property rights, TrAILCo requests that the Commission authorize the use of condemnation, consistent with Section 1511(c) of the BCL and with the Commission's regulations at 52 Pa.Code § 57.75(i) permitting consolidation of eminent domain applications with the related siting application.

53. TrAILCo has identified those property owners from whom it may need to acquire private right-of-way for the Prexy Segment, the Prexy 138 kV Lines and the Pennsylvania 502 Junction Segment, and the related substations. Since TrAILCo presently has right-of-way for approximately 48 line miles of the approximately 53 line miles in Pennsylvania, there are relatively few property owners with whom TrAILCo should need to attempt to negotiate terms for easement rights. Indeed, TrAILCo is hopeful that it will be able to successfully negotiate private right-of-way arrangements with all of these affected property owners. However, if mutually acceptable private right-of-way arrangements cannot be negotiated timely, TrAILCo will need the authority to exercise the right of eminent domain. Granting such authority as requested in this Application will facilitate the timely completion of the Prexy Segment, the Prexy 138 kV

Lines and the Pennsylvania 502 Junction Segment, and the related substations by avoiding subsequent requests to this Commission on a piecemeal basis for the necessary condemnation approvals.

54. The evidence TrAILCo has submitted in this Application in support of its Chapter 11 certificate to commence operations and authorization to site lines and facilities meets and exceeds the support it would be required to submit as part of a specific request to exercise condemnation authority on the requested route. TrAILCo has provided the potentially affected property owners with the specific form of notice required by the Commission regulations at 52 Pa. Code § 57.91 and will serve these property owners with this Application prior to any hearing, as required by the Commission's regulations at 52 Pa. Code § 57.75(i)(2).

WHEREFORE, TrAILCo respectfully requests that the Commission issue an order authorizing it to exercise the power of eminent domain as necessary or appropriate in connection with the siting, construction, operation and/or maintenance of the Prexy Segment, the Prexy 138 kV Lines and the Pennsylvania 502 Junction Segment, and the related facilities in accordance with Code § 1104.

## **VII. AFFILIATED INTEREST TRANSACTIONS**

55. The siting, construction and operation of the Prexy Segment, the Prexy 138 kV Lines and the Pennsylvania 502 Junction Segment, and the related substations will require TrAILCo and one or more affiliates to enter into certain agreements or arrangements, as described below.

56. Code § 2102(a) requires that before any contract or other arrangement for, among other things, "the purchase, sale, lease or exchange of any property, right or thing ... between a public utility and any affiliated interest ..." becomes

valid or effective, it must be approved by the Commission. Code § 2102(b) imposes on each public utility to file a verified copy of such contract or arrangement with the Commission prior to its effective date.

57. As described above, in order to site and construct the Prexy Segment and the Prexy 138 kV Lines, TrAILCo intends to acquire the easements held by its affiliate West Penn for \$4,480,373.35, which is the total amount paid by West Penn for the easements. These easements were acquired by West Penn from various property owners for a project similar to the one now consisting of the Prexy Facilities. When the project was abandoned the amounts paid for the easements were expensed in January 1996. No cost associated with these easements is currently reflected in West Penn's retail rates. These easements are not used and useful to West Penn and are not currently utilized by West Penn for any public utility service to the public for compensation.

58. In order to site and construct the Prexy Substation, TrAILCo intends to acquire the fee ownership of nine parcels of land consisting of a total of 202 acres held by West Penn for \$661,185.87, which is the amount paid by West Penn for the land. These parcels were acquired by West Penn from December 1973 through February 1975 for a project similar to the one now consisting of the Prexy Facilities. These parcels are recorded on West Penn's books in FERC Account 105 Plant Held for Future Use. No cost associated with these parcels is currently reflected in West Penn's retail rates. These parcels are not used and useful to West Penn and are not currently utilized by West Penn for any public utility service to the public for compensation.

59. Pursuant to a written memorandum of understanding between TrAILCo and West Penn ("MOU"), TrAILCo will be assigned all right, title and interest

in and to the easements and parcels owned by West Penn. The easements and parcels to be transferred to TrAILCo are identified in the MOU, which is an exhibit to the testimony of Mark A. Mader, attached hereto and made a part hereof. The MOU is expressly conditioned upon the Commission's approval of this "arrangement" under Code § 2102(a). Because the transfer of these easements and parcels to TrAILCo is a necessary condition for the siting and construction of the Prexy Segment, the Prexy 138 kV lines and the Prexy Substation, the approval of this affiliated interest arrangement between West Penn and TrAILCo is clearly in the public interest.

60. Since the subject easements and parcels are not utility assets and the costs of which are not reflected in existing rates charged to West Penn's customers, the transfer of these non-used or useful assets to TrAILCo will have no rate impact on West Penn's customers.

61. TrAILCo currently has in place three existing agreements with affiliated companies. The first agreement is a service agreement between TrAILCo and Allegheny Energy Service Company ("AESC") pursuant to which AESC is providing to TrAILCo certain services, including technical support, planning and implementation of financial programs, counsel on corporate, legal and regulatory matters, and general and administrative services ("Service Agreement"). The second agreement is a Capital Contribution Agreement between AET and TrAILCo pursuant to which AET will provide equity capital to TrAILCo to assist TrAILCo in funding a portion of the construction costs of TrAIL and other transmission projects TrAILCo may undertake ("Capital Contribution Agreement"). The third agreement is an amendment that adds TrAILCo as a party to the tax allocation agreement among Allegheny and its direct and

indirect subsidiaries (“Tax Allocation Amendment” and together with the Service Agreement and the Capital Contribution Agreement, the “Existing Agreements”). The Capital Contribution Agreement (which is the subject of FERC approval as a component of the FERC docket identified hereinabove), the Service Agreement and the Tax Allocation Amendment are exhibits to the testimony of TrAILCo witness Mark A. Mader, which is attached hereto and made a part hereof.

62. The Existing Agreements are in place and the respective parties will have commenced performance of their respective obligations under them prior to the Commission’s completion of these proceedings and its determination that TrAILCo is a public utility under Pennsylvania law. TrAILCo recognizes, however, that on and after the date it is granted a certificate of public convenience as a public utility in Pennsylvania, TrAILCo will be subject to the various provisions of Code Chapter 21 and the Commission’s rules and regulations to the extent they apply. However, because the Existing Agreements are currently in place and the parties are performing their respective obligations under them, no requirement of Commission approval currently exists or should be deemed to exist. Moreover, it is recognized in Code Section 2107 that Chapter 21 is not applicable to matters involving the interstate transmission of electricity over which FERC has jurisdiction.

63. Accordingly, TrAILCo requests that the Commission recognize the existence of the Existing Agreements and either determine that (i) TrAILCo is not required to obtain Commission approval of the Existing Agreements in order to perform its obligations thereunder or (ii) the terms of the Existing Agreements are reasonable, that no party to either of the Existing Agreements is given an undue advantage over the other

party, and that the Existing Agreements do not adversely affect the public in this Commonwealth.

64. In order to finance the construction of TrAIL and other transmission projects, TrAILCo proposes to issue up to \$550 million of shares of common stock directly to AET pursuant to the Capital Contribution Agreement. The FERC has jurisdiction to approve TrAILCo's issuance of debt and equity securities under Section 204 of the Federal Power Act. On February 22, 2007, TrAILCo filed with the FERC an application seeking certain financing authorizations, including an authorization to issue up to \$550 million of shares of common stock to AET ("FERC Section 204 Financing Filing").<sup>7</sup> TrAILCo expects FERC to enter an order granting its application in the FERC Section 204 Financing Filing on or before April 23, 2007, which would allow TrAILCo to finance the construction of the TrAIL and begin acquisition of negotiated easements during 2007 while this proceeding is pending before the Commission.

65. TrAILCo is expected to issue some or all of the capital stock identified in the Capital Contribution Agreement to AET prior to the Certification Date pursuant the authority granted in the FERC Section 204 Financing Filing. Because the FERC will have approved TrAILCo's issuance of common stock in the FERC Section 204 Financing Filing and TrAILCo will have issued some or all of that common stock to AET prior to the conclusion of these proceedings, no requirement of Commission approval currently exists or should be deemed to exist.

66. Accordingly, TrAILCo requests that the Commission recognize the FERC's authorization to TrAILCo to issue common stock to AET under the Capital

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<sup>7</sup> See FERC Docket No. ES07-24-000 (application currently pending).

Contribution Agreement, as well as the FERC's continuing regulatory authority and jurisdiction over TrAILCo's issuance of debt and equity securities, and, with respect to TrAILCo's issuance of any amount of common stock specified in the Capital Contribution Agreement that TrAILCo has not yet issued, either determine that (i) TrAILCo is not required to obtain Commission approval, in view of the FERC's continuing regulatory authority over TrAILCo's issuance of debt and equity securities; or, in the alternative, (ii) its issuance of stock to AET is reasonable and necessary for the legitimate purposes described in this Application and will not have any adverse impact on Pennsylvania ratepayers or any other utility operating in this Commonwealth, and that the issuance of up to \$550 million of shares of TrAILCo common stock directly to AET is authorized. In recognition of FERC's exclusive authority and jurisdiction over TrAILCo's rates and financing and, consistent with the provisions of Code § 2107 (which make the affiliated interest provisions of Code Chapter 21 inapplicable where FERC has lawful jurisdiction), TrAILCo requests the Commission find that TrAILCo is exempt from any requirement to obtain Commission approval of any capital contribution transactions it may enter into prospectively with any of its affiliates.

67. Although no other affiliated interest approvals are being sought in this Application, TrAILCo, West Penn and/or other Allegheny affiliates may seek future approvals from this Commission under Code Chapters 11 and 21 for such matters as operation and maintenance services for the Prexy Segment, the Prexy 138 kV Lines and the Pennsylvania 502 Junction Segment, and the related substations, interconnection agreements, etc.

WHEREFORE, TrAILCo respectfully requests that the Commission issue an order approving the foregoing affiliated interest transactions and arrangements.

**VIII. PROCEDURAL SCHEDULE, WITNESSES AND REQUEST FOR EXPEDITED CONSIDERATION**

68. In order for the Prexy Segment, the Prexy 138 kV Lines and the Pennsylvania 502 Junction Segment, and the related substations to be completed on a timely basis, it is imperative that the required Commission and other approvals be issued promptly. Toward that end, TrAILCo has filed with this Application the following written testimony that fully supports the requested relief:

- TrAILCo Statement No. 1 - David E. Flitman, President of TrAILCo and Allegheny Power – Introduction of witnesses, description of TrAILCo, Allegheny’s interest in transmission development, support for TrAILCo’s request for certification as a public utility and sponsorship of the Table of Nomenclature referred to in the direct testimony of TrAILCo witnesses;
- TrAILCo Statement No. 2 - Lawrence A. Hozempa, Senior Engineer for TrAILCo and Allegheny Power – Description of TrAIL, the electrical need for TrAIL, Allegheny Power’s involvement in the PJM planning process, and the relationship of Allegheny Power transmission facilities to the PJM Transmission System;
- TrAILCo Statement No. 3 - Steven R. Herling, Vice President of Planning for PJM – PJM planning process, the relationship of

TrAIL to PJM's regional transmission plan and the electrical need for TrAIL;

- TrAILCo Statement No. 4 - Scott Gass, Principal Consultant for PowerGEM – The electrical need for TrAIL;
- TrAILCo Statement No. 5 - Jack Halpern, Senior Consultant with The Louis Berger Group, Inc. – The Route Evaluation Report and Environmental Report;
- TrAILCo Statement No. 6 - Alan Fleissner, Senior Consulting Engineer for TrAILCo and Allegheny Power – Process for selecting the proposed routes for TrAIL, relationship of the route to existing transmission line right-of-way, and the process for acquiring additional right-of-way;
- TrAILCo Statement No. 7 - John Bodenschatz, Senior Engineer for TrAILCo and Allegheny Power - Design, engineering, construction, operation and maintenance of TrAIL;
- TrAILCo Statement No. 8 - Dr. William Bailey, Principal Scientist for Exponent – Effects of electric and magnetic fields from TrAIL;
- TrAILCo Statement No. 9 - Dr. Gary Johnson, Senior Managing Engineer of Exponent – Effects of electric and magnetic fields and audible noise from TrAIL; and
- TrAILCo Statement No. 10 - Mark Mader, Director, Rates, for TrAILCo and Allegheny Power - Impact of TrAIL on retail rates of West Penn, and affiliated interest arrangements.

69. TrAILCo respectfully requests that this matter be referred to the Office of Administrative Law Judge promptly, and that any proceedings that may be required or appropriate be completed in a time frame sufficient to permit the Commission to issue the required authorizations sought herein on or before April 13, 2008. Such expedited consideration is authorized by the Commission's regulations at 52 Pa. Code § 57.75(g). The testimony of the TrAILCo witnesses supports such prompt consideration and approval.

#### **IX. RATES AND RATE RECOVERY**

70. TrAILCo's rates are subject to the jurisdiction of FERC for rate recovery purposes. The recovery of all costs associated with the financing, construction, ownership, and operation of TrAIL will be charged to PJM transmission customers (not directly to West Penn's Pennsylvania customers) and will be determined by the FERC.

71. PJM allocates the cost of reliability-based transmission upgrades, including TrAIL, on a cost-causation basis in accordance with Schedule 12 of the PJM Open Access Transmission Tariff and Schedule 6 of the PJM Amended and Restated Operating Agreement. PJM performs an analysis of applicable reliability criteria, identifies the entities that cause the reliability violation, and designates these entities as responsible for the cost of the transmission upgrade. The cost allocation filed by PJM with FERC in Docket No. ER06-1271-000 allocated 100% of the revenue requirement for the Prexy Facilities to load in the Allegheny Power Zone of PJM.

72. Accordingly, assuming that this initial cost allocation is upheld by the FERC,<sup>8</sup> West Penn's Pennsylvania customers will be responsible for the largest

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<sup>8</sup> These allocations are in effect subject to hearing and refund. The proceeding to resolve these allocations is not expected to conclude until 2008.

portion of TrAILCo's revenue requirement associated with the Prexy Facilities. The direct testimony and exhibits of TrAILCo witness Mark Mader, which are attached hereto and made a part hereof, describe the cost allocation and recovery process and the status of the allocation proceeding before FERC.

#### **X. MOTION TO CONSOLIDATE PROCEEDINGS**

73. This Application seeks relief in various areas subject to the Commission's jurisdiction that are related to TrAILCo's proposed siting and construction of the TrAIL and related facilities. While the relief requested in this Application varies (*e.g.*, siting approval, affiliated interest approvals, exemption from local zoning requirements, authority to exercise the power or eminent domain, etc.), they are critically linked to the proposed TrAIL.

74. The regulations at 52 Pa. Code § 5.81 allow this Commission or the presiding officer to order the consolidation of proceedings "involving a common question of law or fact." This Application, although containing several docket numbers, involves common issues of law and fact that, in order to further judicial economy and avoid needless duplication of litigation and resources, justify consolidation.

75. This Commission has significant discretion in deciding a Motion to Consolidate Proceedings. Consolidation of these proceedings will avoid the need for separate Administrative Law Judges, separate hearings, and duplication of witnesses, discovery, testimony and cross-examination. Moreover, consolidation of these proceedings will avoid potentially inconsistent decisions being reached as a result of their separate treatment in different proceedings, which ultimately may require Commission resolution.

76. The consolidation of hearings, briefing and the decision on all issues raised in this Application will provide a common and appropriate foundation for record development, review and litigation of the relevant issues. Attempting to undertake multiple, separate efforts to develop and review individual records in multiple proceedings, and to litigate these cases based on separate records, poses substantial procedural and substantive difficulties which may be avoided if consolidation is granted.

77. In addition, consolidation of all the matters raised in this Application for purposes of hearing, briefing and the decision promotes administrative efficiency. The Commission typically exercises its consolidation authority if, as in the instant case, it can avoid creating an additional, unnecessary and expensive hurdle. *Derek Suggs & Beverly Marell v. The Bell Telephone Company*, 1993 Pa. PUC LEXIS 86, citing *Duquesne Interruptible Complainants v. Duquesne Light Company*, P.U.C. Docket No. C-913424, (Order entered May 14, 1993); *Big Apple Dinner Theater, Inc. v. Bell of Pennsylvania*, P.U.C. Docket No. C-00934817, (Order entered on April 30, 1993).

78. The consolidation approach requested by TrAILCo is entirely consistent with Pennsylvania law on consolidation and is within the Commission's discretionary authority. See *Pennsylvania Public Utility Commission v. Dauphin Consolidated Water Supply Co. & General Waterworks of Pa., Inc.*, 1993 Pa. PUC LEXIS 87.

79. For the foregoing reasons, TrAILCo requests this Commission to consolidate the above-referenced proceedings before one Administrative Law Judge for hearing and recommended decision in accordance with § 5.81 of the Pennsylvania Code. 52 Pa.Code § 5.81.

WHEREFORE, TrAILCo respectfully requests the timely issuance of the approvals requested in this Application, and such further relief as the Commission may deem necessary or appropriate.



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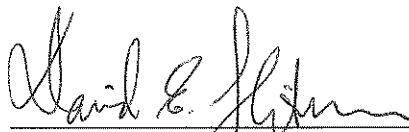
Attorneys for Applicant

Dated: April 13, 2007

**VERIFICATION**

I, David E. Flitman, President, Trans-Allegheny Interstate Line Company, hereby state that the facts above set forth in the attached Application are true and correct and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsifications to authorities).

Dated: April 13, 2007



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David E. Flitman, President

Trans-Allegheny Interstate Line Company