

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REBUTTAL TESTIMONY OF JAY RUBERTO

Re: Right-Of-Way and Damage Release Agreement Issues

December 10, 2007

REBUTTAL TESTIMONY OF JAY RUBERTO

1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A. My name is Jay Ruberto and my business address is Allegheny Energy, Inc.,
3 Fairmont Corporate Center, 1310 Fairmont Avenue, P.O. Box 1392, Fairmont,
4 WV 26555-1392.

5 DUTIES AND RESPONSIBILITIES

6 Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

7 A. I am employed by Trans-Allegheny Interstate Line Company ("TrAILCo") as
8 Director, Transmission Siting. In this capacity I am responsible for directing the
9 activities associated with the siting of transmission lines, real estate and rights of
10 way, drafting documents and records, permitting and surveying.

11

12 EDUCATION AND EXPERIENCE

13 Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AND
14 EDUCATIONAL BACKGROUND.

15 A. I graduated from Pennsylvania State University in 1983 with a Bachelor of
16 Science in Electrical Engineering. My resume, which is attached to this testimony
17 as TrAILCo Rebuttal Exhibit JR-1, describes in greater detail my educational
18 background and prior work experience.

1 PURPOSE OF REBUTTAL TESTIMONY

2 Q. PLEASE DESCRIBE THE PURPOSE OF YOUR REBUTTAL TESTIMONY.

3 A. The purpose of this rebuttal testimony is to address (i) the concerns raised by
4 several witnesses at the public input hearings about the conduct of TrAILCo's
5 right-of-way ("ROW") agents, and review some new protocols we have
6 implemented to address those concerns and (ii) the nature and purpose of the
7 Damage Release Agreements being utilized as part of the ROW process for
8 TrAIL.

9
10 Q. WILL THE USE OF VARIOUS TERMS IN YOUR REBUTTAL TESTIMONY
11 BE CONSISTENT WITH THE DEFINITIONS ASSIGNED TO THOSE TERMS
12 IN THE TABLE OF NOMENCLATURE ATTACHED TO TRAILCO
13 WITNESS FLITMAN'S DIRECT TESTIMONY AS TRAILCO EXHIBIT DEF-
14 1?

15 A. Yes. In addition, I may define other terms in my rebuttal testimony.

16
17 EXHIBITS

18 Q. PLEASE IDENTIFY THE EXHIBITS TO YOUR REBUTTAL TESTIMONY.

19 A. I am sponsoring two exhibits with my rebuttal testimony, in addition to my
20 resume. TrAILCo Rebuttal Exhibits JR-2 and JR-3 are described and discussed
21 later in this rebuttal testimony.

1 RIGHT-OF-WAY ISSUES

2 Q. WHO HAS BEEN PROVIDING ROW SERVICES FOR TRAILCO IN
3 CONNECTION WITH THE TRAIL PROJECT?

4 A. ROW procurement and related services in connection with the TrAIL project have
5 been provided to TrAILCo in Pennsylvania by a subcontractor to the project's
6 general contractor. The subcontractor has been responsible for hiring, supervising
7 and compensating its ROW agents operating in Pennsylvania. In addition,
8 supplemental ROW activities have been provided by ROW agents who are
9 employees of Allegheny Energy Service Corporation (“AESC”) assigned to the
10 TrAIL project.

11

12 Q. IS TRAILCO AWARE OF THE ALLEGATIONS MADE AT THE PUBLIC
13 INPUT HEARINGS REGARDING THE CONDUCT OF ITS ROW AGENTS?

14 A. Yes. As an active participant in all of the public input hearings and site visits
15 conducted previously in these proceedings, TrAILCo is aware of the allegations
16 of improper conduct by the ROW agents. We are concerned about such
17 allegations – whether substantiated or not. We strive to make our interactions
18 with actual or potentially affected property owners as reasonable and non-
19 threatening as possible, recognizing the substantial emotions that naturally
20 surround a major electric transmission line project crossing some local property.
21 TrAILCo takes seriously any adverse perceptions that property owners may have
22 with respect to any aspect of the TrAIL project and related conduct, including
23 conduct of contractors and subcontractors.

1 Q. HAS TRAILCO FOLLOWED UP ON THE ALLEGATIONS CONCERNING
2 ROW AGENTS' CONDUCT AS EXPRESSED BY VARIOUS PUBLIC INPUT
3 WITNESSES?

4 A. Yes. TrAILCo never instructed the ROW agents to conduct themselves in such a
5 manner as alleged in the public input testimony. TrAILCo sees no place for high
6 pressure tactics, misrepresentation or other similar conduct in the ROW
7 negotiation process for TrAIL or any other transmission line project. It is
8 important to recognize, however, that in any emotionally charged situation, it is
9 very possible for the participants to have vastly different perceptions of an event
10 based on the same set of facts. I offer this observation, not to provide any
11 particular excuses or to justify anyone's conduct, but to emphasize how difficult it
12 has been to follow up on these allegations without getting into a protracted debate
13 over who may have said what, and to whom, and how such exchanges were
14 interpreted by each side. Rather than to further strain what obviously have been
15 frustrating experiences for all parties, we decided to take further pro-active steps
16 to emphasize our ROW negotiation practices.

17

18 .Q. WHAT HAS TRAILCO DONE TO MINIMIZE THE LIKELIHOOD OF THE
19 TYPES OF ROW AGENT CONDUCT COMPLAINED OF BY CERTAIN
20 MEMBERS OF THE PUBLIC?

21 A. TrAILCo understands the ill-will perceived by property owners based on the
22 alleged conduct of some of the ROW agents, and is committed to taking, has
23 taken and will continue to take action in the future – in the exercise of good faith

1 and fair dealing – to prevent such perceptions of ill-will from occurring in the
2 future. To address the alleged conduct of ROW agents TrAILCo has
3 implemented a transition period during which limited ROW activities will be
4 conducted in Pennsylvania in connection with the TrAIL project. The transition
5 period will end and all ROW activities will resume when another ROW
6 subcontractor has been retained. Continuing with the same subcontractor for
7 ROW activities after the expressions at the public input hearings did not seem
8 realistic or appropriate in the context of continuing negotiations. TrAILCo
9 expects that the other ROW subcontractor will be retained in early 2008.

10
11 During the transition period, TrAILCo will continue limited ROW activities in
12 Pennsylvania for the TrAIL project as follows:

- 13 a. All ROW agents, whether employees of AESC or a ROW
14 subcontractor, will be directed to comply with the code of conduct
15 which is set forth in TrAILCo Rebuttal Exhibit JR-2. The code of
16 conduct describes appropriate and permissible methods for
17 engaging in ROW activities and addressing property owners;
- 18 b. ROW agents who are employees of AESC will continue easement
19 acquisition and damage release negotiations with property owners
20 only where the negotiations have been ongoing and amicable or
21 when a property owner has requested TrAILCo to enter into
22 negotiations for easement acquisition and damage release. ROW
23 agents will promptly discontinue negotiations when a property

1 owner unequivocally indicates his or her desire not to continue
2 such negotiations;

3 c. TrAILCo's surveying, soil boring and environmental assessment
4 subcontractors will continue activities on the property of property
5 owners who have given their unequivocal permission for such
6 activities. These subcontractors will promptly discontinue their
7 activities when a property owner unequivocally withdraws his or
8 her permission. ROW agents employed by AESC or a
9 subcontractor will make good faith efforts to provide telephonic
10 notification to property owners who have given unequivocal
11 permission for such activities before representatives of the
12 surveying, soil boring and environmental assessment
13 subcontractors arrive at the property;

14 d. Subcontractors responsible for the placement of access roads, fly
15 yards and material storage yard will continue negotiations with
16 property owners only where the negotiations have been initiated
17 previously and are amicable or when a property owner has
18 requested TrAILCo to enter into such negotiations. These
19 subcontractors will promptly discontinue such negotiations when a
20 property owner unequivocally indicates his or her desire not to
21 continue such negotiations;

22 e. ROW agents and TrAILCo subcontractors will not initiate,
23 continue or attempt to continue any easement acquisition (for the

1 transmission line, access roads, fly yards and/or material storage
2 yards) or damage release negotiations, surveying, soil boring or
3 environmental assessments with regard to property owned by
4 property owners who have unequivocally indicated their desire not
5 to engage in easement acquisition or damage release negotiations
6 or have unequivocally denied permission for surveying, soil boring
7 and environmental assessments;

8 f. If a property owner asks not to be contacted by a ROW agent, that
9 request will be honored without further follow-up.

10 g. TrAILCo may continue surveying along public roads and other
11 public lands, and where permission for access has been granted.

12

13 CODE OF CONDUCT

14 Q. PLEASE DESCRIBE TRAILCO REBUTTAL EXHIBIT JR- 2 .

15 A. TrAILCo Co Rebuttal Exhibit JR-2 is a Code of Conduct that addresses the
16 methods for engaging in ROW activities and interacting with property owners.

17 When the new ROW subcontractor is retained to provide ROW services for the
18 TrAIL project in Pennsylvania, the subcontractor's ROW agents will be directed

19 to comply with this Code of Conduct. In addition, this Code of Conduct will
20 continue to apply to ROW agents who are employed by AESC and assigned to the

21 TrAIL project. We think this more formalized set of "do's and don'ts" will clearly
22 communicate to all those involved in the ROW negotiation process TrAILCo's

23 expectations of how the process should proceed and, more importantly, how

1 property owners and others should be treated. We believe this Code of Conduct
2 addresses the types of conduct of the ROW agents that is alleged to have taken
3 place.

4

5 DAMAGE RELEASE AGREEMENTS

6 Q. WHAT ARE THE DAMAGE RELEASE AGREEMENTS?

7 A. The Damage Release Agreements ("Agreements") are negotiated arrangements
8 voluntarily entered into by TrAILCo and willing land owners whose properties
9 are subject to pre-existing easements in favor of West Penn Power Company
10 ("West Penn").

11

12 Q. WHAT IS THE PURPOSE OF THE AGREEMENTS?

13 A. The Agreements are intended to compensate property owners, in advance, for any
14 damages, losses, or charges that arise out of the easement holder's (ultimately,
15 TrAILCo's) exercise of its right to use the property. In exchange for this
16 additional consideration (which includes a non-refundable initial amount followed
17 by a further payment if the siting application is approved), each property owner is
18 required to forego any continuing challenge to the transmission line siting process
19 in Pennsylvania.

1 Q. ARE PROPERTY OWNERS REQUIRED TO SIGN THE AGREEMENTS?

2 A. No, not at all. If a property owner elects not to enter into an Agreement, they will
3 not be paid the additional consideration. TrAILCo will proceed to exercise its
4 rights under the existing easements or ROWs.

5

6 Q. ARE THE AGREEMENTS INTENDED TO "BRIBE" TO PROPERTY
7 OWNERS FOR THEIR SILENCE IN THIS PROCEEDING?

8 A. Absolutely not. We understand that some property owners in their public input
9 hearing testimony characterized the Agreements as a form of "bribe", but I can
10 assure you that was never TrAILCo's intention. In recognition of the fact that
11 many of the existing rights of way in favor of West Penn were entered into in the
12 1970's, TrAILCo decided early in the development of the TrAIL project that as a
13 good-will gesture it might be appreciated by property owners if TrAILCo
14 provided some additional compensation to them in advance for the work to be
15 performed on the easement across their property, in addition to the amount paid
16 previously paid to the affected property owners or their predecessor in title. The
17 arrangement was intended to be entirely voluntary between each affected property
18 owner and TrAILCo. The offer to pay additional compensation was in no way
19 intended to suggest that West Penn or TrAILCo believed that their existing
20 easements are not proper or in full force and effect. On the contrary, the program
21 was predicated upon a desire to provide a good-will additional payment to those
22 property owners willing to enter into such arrangements. We truly believed that
23 this additional compensation program would reflect positively on TrAILCo and

1 its ROW process. We may have misjudged the impression that the program
2 would make on property owners, but our motives have been and continue to be
3 sincere.

4
5 As can be seen on the sample Agreement attached to this rebuttal testimony as
6 TrAILCo Rebuttal Exhibit JR-3, in consideration of the additional payment
7 TrAILCo is making to property owners who elect to participate in this
8 arrangement, we have in fact required property owners to withdraw any pending
9 complaints and cease opposition to TrAILCo's siting Application. This approach
10 is quite common, especially where a party is voluntarily agreeing to compensate a
11 party. The mischaracterizations of this approach in the public input testimony
12 should not undermine the fact that this program is neither improper nor nefarious.
13 Property owners were advised of the terms of the compensation program and have
14 remained, and remain, free at all times to participate voluntarily or not.

15

16 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

17 A. Yes. However, I reserve the right to file such additional testimony as may be
18 necessary or appropriate.

**RESUME OF
JAY RUBERTO**

I am Director, Transmission Siting, for Trans-Allegheny Interstate Line Company. My business address is Allegheny Energy, Inc., Fairmont Corporate Center, 1310 Fairmont Avenue, P.O. Box 1392, Fairmont, WV 26555-1392. I have been in my current position since April 2006, where my responsibilities include management of transmission siting, real estate, right of way acquisition, surveying, and drafting. Prior to that time I was named Director, Customer Service in 1999, General Manager, Customer Service Center (CSC) in 1998, Team Leader, CSC Support in 1996, Supervisor, Division Customer Services and Accounting in 1989, and various engineering positions since 1984, all of which were with Allegheny Power (or West Penn Power Company). I graduated from Pennsylvania State University in 1983 with a Bachelor of Science in Electrical Engineering.

**Trans-Allegheny Interstate Line Company
TrAIL Project**

**Code of Conduct
for
Right-of-Way Agents and Subcontractor Employees in Pennsylvania**

This Code of Conduct applies to all communications and interactions with property owners and occupants of property by all right-of-way agents and subcontractor employees representing Trans-Allegheny Interstate Line Company (“TrAILCo”) in Pennsylvania in the negotiation of right-of-way and the performance of surveying, environmental assessments and other activities for the Trans-Allegheny Interstate Line (“TrAIL”) Project in Pennsylvania on property not owned by TrAILCo or any of its affiliates.

- 1. All communications with property owners and occupants of property must be factually correct and made in good faith.**
 - a. Do not make false or misleading statements.
 - b. Do not misrepresent any fact.
 - c. If you do not know the answer to a question, do not speculate about the answer. Advise the property owner that you will investigate the question and provide an answer later.
 - d. Follow-up in a timely manner on all commitments to provide additional information.
 - e. Until TrAILCo has been authorized by the Pennsylvania Public Utility Commission (“PUC”) to construct the TrAIL Project, do not suggest that the TrAIL Project is a “done deal” or is “99 percent sure” or make any similar statement suggesting that the PUC has authorized construction of the project.
 - f. Do not suggest that the project is required for national or homeland security reasons or has been authorized by the federal government.
 - g. Do not send written communications suggesting an agreement has been reached when, in fact, an agreement has not been reached.

- 2. All communications and interactions with property owners and occupants of property must be respectful and reflect fair dealing.**
 - a. When contacting a property owner in person, promptly identify yourself as representing TrAILCo and display your TrAILCo photo ID badge.
 - b. When contacting a property owner by telephone, promptly identify yourself as representing TrAILCo.
 - c. Do not engage in behavior that may be considered harassing, coercive, manipulative, intimidating or causing undue pressure.

- d. All communications by a property owner, whether in person, by telephone or in writing, in which the property owner indicates that he or she does not want to negotiate or does not want to give permission for surveying or other work on his or her property must be respected and politely accepted without argument. Unless specifically authorized by TrAILCo, do not contact the property owner again regarding negotiations or requests for permission.
- e. When asked to leave property, promptly leave and do not return unless specifically authorized by TrAILCo.
- f. If discussions with the property owner become acrimonious, politely discontinue the discussion and withdraw from the situation.
- g. Obtain unequivocal permission to enter property for purposes of surveying or conducting environmental assessments or other activities. Clearly explain to the property owner the scope of work to be conducted based on the permission given. Attempt to notify the occupant of the property each time you enter the property based on this permission.
- h. Do not represent that a relative, neighbor and/or friend has signed any document or reached any agreement with TrAILCo.
- i. Do not ask a relative, neighbor and/or friend of a property owner to convince the property owner to take any action.
- j. Do not represent that a relative, neighbor and/or friend supports or opposes the TrAIL Project.
- k. Do not suggest that any person should be ashamed of or embarrassed by his or her opposition to the TrAIL Project or that such opposition is inappropriate.
- l. Do not argue with property owners about the merits of the TrAIL Project.
- m. Do not suggest that an offer is "take it or leave it."
- n. Do not threaten to call law enforcement officers or obtain court orders.
- o. Do not threaten the use of eminent domain.
- p. Do not suggest that TrAILCo will seek federal authorization to construct the project.
- q. Avoid discussing a property owner's failure to note an existing easement when purchasing the property and other comments about the property owner's acquisition of the property.

3. All communications and interactions with property owners and occupants of property must respect the privacy of property owners and other persons.

- a. Do not discuss your negotiations or interactions with other property owners or other persons.
- b. Do not ask relatives, neighbors and/or friends to influence the property owner or any other person.
- c. Avoid discussions of personal matters about the property owner, others and yourself.

DAMAGE RELEASE-RIGHT OF WAY

WHEREAS, the Undersigned is the present owner of a tract or parcel of land containing _____ acres, more or less situate in _____ County, Pennsylvania (the "Property") more particularly described in a document of record in the Land Records of _____ County, Pennsylvania in _____;

WHEREAS, the Property is subject to a Right of Way for the construction of a transmission line (the "Transmission Line") and of record in the Land Records of said County in _____ dated _____ (the "Right of Way"); and

WHEREAS, Trans-Allegheny Interstate Line Company ("TrAILCo") intends to construct the Transmission Line provided for in the Right of Way.

WHEREFORE, for the mutual consideration and covenants, the receipt and sufficiency of which are hereby acknowledged, the Undersigned and TrAILCo have agreed as follows:

1. The Undersigned and TrAILCo each acknowledge that the Property is subject to the Right of Way which authorizes the construction of the Transmission Line.
2. The Undersigned, for and in consideration of the payment set forth below does release, discharge and forever quitclaim TrAILCo, its successors and assigns, from any and all damages, losses, costs, charges, claims or demands whatsoever, in any way or manner accruing to the undersigned or the legal representative of the Undersigned for the construction of the Transmission Line. TrAILCo shall repair all damages to fences, crops, and other property damage resulting from the construction of the Transmission line on the premises.
3. TrAILCo and the Undersigned agree that the total damage to the Property shall be _____.
4. TrAILCo shall pay the Undersigned _____ upon the execution of this Agreement (the "Initial Payment") and the remaining _____ upon the approval of the Transmission Line across the Property by all necessary governmental authorities (the "Final Payment").
5. The Undersigned shall retain the Initial Payment received from TrAILCo. If TrAILCo is unable to obtain approval of the Transmission Line route across the Property by all necessary governmental authorities, TrAILCo shall have no obligation to make the Final Payment to the Undersigned.
6. The Undersigned agrees not to oppose TrAILCo's construction of the Transmission line in any state or federal court, regulatory or administrative

proceeding and to withdraw within seven (7) days after the date hereof any opposition to the Transmission Line previously filed.

- 7. Prior to commencing construction of the Transmission Line on the Property, TrAILCo shall provide a plat drawing to the Undersigned showing the location of the Transmission Line and Right of Way on the Property and record the same in said County's land records.

IN WITNESS WHEREOF, _____
 with a mailing address of _____
 Has hereunto set hand and seal this _____ day of _____, 2007.

Commonwealth of Pennsylvania)
) SS:
 County of _____)

I, _____, a Notary Public in and for said
 County, hereby certify that _____

Who signed the foregoing instrument, have this day before me acknowledged the same to
 be their free act and deed.

Given under my hand this _____ day of _____
 (Month/Year)

My Commission expires _____

 Notary Public