



Green Amendment Victories

How Green Amendments Are Recognizing & Protecting Environmental Rights in PA & MT



GREEN AMENDMENTS
FOR THE GENERATIONS
Pure Water, Clean Air, Healthy Environment.

Pennsylvania and Montana are the only two states in the U.S. that currently promise, protect and respect constitutional environmental rights protected on par with other fundamental human, civil and political rights we hold as inviolate inherent, inalienable and indefeasible rights protected from government infringement and transgression. In this series we share the varied ways that constitutional recognition is providing meaningful and transformative protection in these two states, thereby making the case for constitutional Green Amendments in states across our nation and ultimately at the federal level.

Transource Pennsylvania Transmission Line Before Pennsylvania PUC (Dec. 22, 2020)

Outcome: Citing applicable regulations and the Pennsylvania Environmental Rights Amendment, due to detrimental economic and environmental impacts on farming, natural springs, trout fishing, property values, an elementary school, tourism, businesses and local government, compounded by a failure to demonstrate need for the project within the meaning of regulation and law, a Pennsylvania Public Utility Commission (PAPUC) Administrative Law Judge recommended that siting applications for an electric transmission utility and a partial settlement agreement proposing high voltage transmission lines in York and Franklin Counties be denied and that the company should be required to show cause why the certificate of public convenience previously issued should not be rescinded.

In February 2017 Transource Pennsylvania, LLC (Transource) filed applications for authorization to construct two new 230 kV transmission powerlines known as

the East Project in York County and the West Project in Franklin County. The overall project involved various elements and iterations including Shelter Control Equipment at Substations in the two counties. An initial decision was issued granting Transource's application as well as a decision to issue a certificate of public convenience conferring upon Transco status as a public utility. Among the benefits of public utility status is eminent domain authority and relief from aspects of local zoning. Thereafter, forty eminent domain applications were filed by Transource in York County and 93 in Franklin County as part of the project. The project proponents asserted it was needed to alleviate congestion and associated cost issues. Multiple protests were filed during a protest period that ended February 20, 2018. An Administrative Law Judge (ALJ) was assigned to preside over the proceedings and make a recommended outcome.

During the pendency of the project there were various changes in energy issues, demand, costs, benefit-cost projections, and need, including due to an increasing demand and opportunity for green energy options such as solar, wind, and efficiency.

Public testimony and comments raised a number of community and environmental concerns about the project including, but not limited to:

- ⇒ Adverse impacts to wetlands, springs and waterways from project construction;
- ⇒ Harm to wild trout;
- ⇒ Distruption and harm to wildlife and habitat;
- ⇒ Loss of woodlands important to impacted landowners and the environment;
- ⇒ Harm to agricultural vegetable/produce fields causing economic harm to farms that would be cut by the project;
- ⇒ Economic and environmental harm to certified organic farms including from herbicide spraying associated with powerline maintenance, and the potential loss of organic certification;
- ⇒ Lost tourism resulting from harm to community tourist attraction features such as agriculture, wildlife recreation, scenery, animal habitats and historical features;
- ⇒ Harm to historical properties and artifacts, decline in the tourism value of historic properties, and loss of tourism interest and income;
- ⇒ Lost trees, viewsheds, and free use of property for residential homeowners;

- ⇒ Property owner safety concerns regarding the use of tools around the power lines;
- ⇒ Property owner concerns regarding use of herbicides to maintain the powerline right of way;
- ⇒ Decline in residential property values as high as 44.9% for properties adjacent to powerlines and 17.9% for non-adjacent properties up to 1,000 feet away;
- ⇒ Harm to community property tax income due to lower tax assessments for properties adversely impacted by the powerlines.

PAPUC regulations require a finding of project “need”; that it “will not create an unreasonable risk of danger to the health and safety of the public;” that it will comply with” applicable statutes and regulations providing for the protection of the natural resources” of the state; and that “it will have minimum adverse environmental impact, considering the electric power needs of the public and the available alternatives.”

Recognizing that the inquiry into “need” was broad and “must give weight to the impacts incurred by Pennsylvania, both economic and environmental”, the PAPUC ALJ determined that the demonstration of need did not meet the applicable preponderance of the evidence threshold. Instead, the PAPUC ALJ found that the project was “primarily designed to address a congestion issue that no longer exists” and would be detrimental “economically and environmentally to Pennsylvania interests, thus, negating a need for the project.”

The PAPUC ALJ specifically noted that economic benefits to workers in terms of jobs and income is “irrelevant to showing whether the [] Project is needed” to address the energy issue asserted. The PAPUC ALJ went on to observe “[j]obs in Pennsylvania and tax revenues are a benefit to a transmission construction project, but any benefits concerning additional employment, increased tax revenues, and economic activity are temporary in nature due to the temporary nature of the construction of the lines. ... Once this Project is constructed, there will be long-lasting, permanent consequences to the landscape of Pennsylvania”

Notably Transource asserted that it selected the version of its project that had “less of an environmental impact,” including “the least amount of tree clearing”, as well as less forest fragmentation and less impacts to threatened and endangered species. But this was not enough to overcome the regulatory, statutory and constitutional obligations to protect natural resources and environmental rights for this project where there was such an imbalance in terms of demonstrated need versus environmental and community impact.

Demonstrating the important role the legislative branch has in helping, in the first instance, to define the meaning of constitutional environmental rights, and how the constitutional obligation can and should be used to help in the interpretation and application of existing law by agencies and the judiciary, the PAPUC ALJ determined that proper application of existing regulation ensured that it would fulfill its duties as trustee under the state’s Environmental Rights Amendment. In making this assertion the PAPUC ALJ specifically cited the regulatory requirement that the transmission line project have a “minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives” including its obligation to “consider the impact and the efforts that have been and will be made to minimize the impact” on land use, soil and sedimentation, plant and wildlife habitats, terrain, hydrology, landscape, geologic areas, historic areas, scenic areas, wilderness areas, and scenic rivers; as well as its consideration of reasonable alternative routes as part of this minimum adverse environmental impact assessment. The PAPUC ALJ noted that project applicants did not have to demonstrate “no adverse impact” to the environment but did have to meet the requirements of applicable regulations.

While Transource was able to demonstrate minimized environmental impacts for a portion of the project, it failed to mitigate impacts for other portions and similarly failed to demonstrate a need for the project as a whole. Citing to both regulation and the Pennsylvania Environmental Rights Amendment (Article 1 Section 27) the PAPUC ALJ ruled that Transource had not met its burden of proving the project is “in compliance with applicable statutes and regulations providing for the protection of the natural resources of the Commonwealth or that the proposed [] Project would have a minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives.” As a result of these findings, the

PAPUC ALJ opined that the applications, petitions for zoning exemptions and eminent domain applications should all be denied.

Notably, the Maryland Public Service Commission approved the project within its state, a state where there is currently no comparable environmental rights amendment.