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Mr. Joel H. Peck, Clerk
State Corporation Commission
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Richmond, VA 23219

RE: ***Application of Virginia Electric and Power Company For approval and certification of electric transmission facilities: Haymarket 230 kV Double Circuit Transmission Line and 230-34.5 kV Haymarket Substation***
SCC Case No. PUE-2015-00107

Dear Mr. Peck:

Pursuant to the Hearing Examiner's directive at the end of the evidentiary hearing in this case, please see the attached Post-Hearing Brief electronically filed on behalf of the Coalition to Protect Prince William County.

Thank you for your assistance in this matter.

Sincerely,

/s/ William T. Reisinger

William T. Reisinger

cc: Service List

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

APPLICATION OF	)	
	)	
VIRGINIA ELECTRIC AND POWER COMPANY	)	Case No. PUE-2015-00107
	)	
For approval and certification of electric transmission facilities: Haymarket 230 kV Double Circuit Transmission Line and 230-34.5 kV Haymarket Substation	)	

POST-HEARING BRIEF OF
THE COALITION TO PROTECT PRINCE WILLIAM COUNTY

Pursuant to the Hearing Examiner's directive at the conclusion of the evidentiary hearing in this matter, the Coalition to Protect Prince William County (the "Coalition"), by counsel, submits the following Post-Hearing Brief.

INTRODUCTION

Virginia Electric and Power Company, d/b/a Dominion Virginia Power ("Dominion"), is seeking a certificate of public convenience and necessity ("CPCN") pursuant to Va. Code § 56-46.1 in order to construct certain electric transmission and distribution facilities to serve the needs of an existing retail customer (the "Customer") in Prince William County, Virginia. The Customer, while currently receiving adequate service from the Company, desires to receive new service for a proposed data center campus near the Town of Haymarket. Dominion's application states that the facilities "are necessary so that [the Company] can provide service requested by a retail electric service customer ... for a new data center campus in Prince William County,

Virginia and maintain reliable electric service to its customers in the area."[1] Dominion has stated that the Project would not be needed, and would not have been proposed, absent the request for new service by the Customer.[2] Dominion also admits that the Project has been designated as a "Supplemental Project" by PJM, meaning that it is not needed for reliability reasons.[3]

The Project would entail, among other things, converting an existing 115 kV line to 230 kV operation and constructing a new 230 kV line to run approximately 5.1 miles from a point near the existing Gainesville Substation to a new 230-34.5 kV Haymarket Substation.[4] The Haymarket Substation would be located on land currently owned by the Customer. The Company states that "the new facilities must be in service by summer (commencing June 1) of 2018 to serve the Customer's development at the Haymarket Campus."[5]

The Coalition is primarily concerned with two issues in this case: (1) the appropriate route of the Project, if approved, and (2) the appropriate means for the Company to recover the costs of the Project. For the reasons discussed below, if the Commission is inclined to approve the project, the Coalition supports the I-66 Hybrid Alternative ("Hybrid Alternative") route only. The Hybrid Alternative route is the only route that would reasonably minimize adverse impacts of the Project, consistent with Va. Code § 56-46.1. And if the Project is approved, the Coalition believes that the Customer for whom the Project is being constructed should be required to pay a significant portion of the construction costs in accordance with Section 22 of the Company's terms and conditions.

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[1] Application at 2.
[2] See Ex. 5.
[3] See, e.g., Tr. 110-111, 469, 569-570.
[4] Application at 2.
[5] Application at 2.

ARGUMENT

A. The I-66 Hybrid Alternative route is the only proposed route that would reasonably minimize adverse impacts to historical and ecological sites and comport with Prince William County's comprehensive plan.

If the Commission is inclined to grant the application, the Coalition would only support the Hybrid Alternative. Dominion's application is brought under Va. Code § 56-46.1 A, which requires the Commission to consider, among other factors, environmental impacts, impacts on scenic and historic assets, and county comprehensive plans:

> [The Commission] shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact ... [and shall determine that] the corridor or route the line is to follow will *reasonably minimize adverse impact on the scenic assets, historic districts and environment of the area concerned* ... and if requested by any county or municipality in which the facility is proposed to be built, to local comprehensive plans
>
> ...
>
> Additionally, the Commission shall consider, upon the request of the governing body of any county or municipality in which the line is proposed to be constructed, (a) the costs and economic benefits likely to result from requiring the underground placement of the line and (b) any potential impediments to timely construction of the line.[6]

If the Commission is inclined to grant the Company's application, the Coalition supports the Hybrid Alternative route only. The Commission heard overwhelming evidence regarding the adverse impacts to "the scenic assets, historic districts and environment of the area" that would occur if any route *other than* the Hybrid Alternative were approved. The Commission received public testimony and comments from thousands of public witnesses and from numerous Prince William County officials, who all expressed support for the Hybrid Alternative only. The Staff

[6] Emphasis added.

report filed by Mr. Wayne McCoy found that the Hybrid Alternative would minimize the visual impacts to the Town of Haymarket and Prince William County and utilize existing rights of way held by the Virginia Department of Transportation. As Staff witness McCoy testified, "the visual impact in the intensely developed area adjacent to I-66 would be significantly less for the I-66 Alternative Route and thus, home value loss would be reduced."[7] Dominion also admitted at the hearing that the views of the Blue Ridge Mountains, which could be obscured by towers if the proposed route is approved, could be considered a scenic asset for the residents of Prince William County.[8] Mr. McCoy also noted that the Hybrid Alternative is the only route that is consistent with Prince William County's comprehensive plan.[9]

The Hybrid Alternative route has received overwhelming support from state and local officials representing Prince William County. The Haymarket Town Council and the Mayor of Haymarket, the Board of Supervisors of Prince William County, the Prince William County Planning Commission, and the Prince William County Historical Commission have all filed comments expressing their support for Hybrid Alternative only. Chris Price, the Director of Planning for Prince William County, filed comments with the Commission stating that "undergrounding [of utility lines] is not only a community preference, but also a crucial goal of the Plan [and that] the only alternative consistent with the Comprehensive Plan is the I-66 Hybrid Alternative."[10] The archaeologist for the County, Justin S. Patton, also testified that the Company's proposed route would directly impact historic assets, including Civil War battlefields and other historical sites.[11] The Department of Environmental Quality found that the Hybrid

[7] Ex. 17 (McCoy) at 13.
[8] Tr. 626.
[9] Ex. 17 (McCoy) at 20.
[10] See June 17 Comments of Prince William County Board of Supervisors at Attachment A.
[11] Id. at Attachment B.

Alternative would have the least impact on wetlands.[12] The five legislators who represent Prince William County in the General Assembly have all supported the Hybrid Alternative route only.[13]

Finally, contrary to Dominion's assertions, the Commission may – and should – consider the concerns of respondents, impacted property owners, and members of the community in its decision. In recognition of the significant public interest in the Project, Staff's testimony noted that "Staff gives considerable weight to the concerns of the respondents and impacted property owners in addition to just looking at costs alone."[14] Dominion seemed to take offense to the suggestion that the Commission might consider public testimony and the concerns of the community in its decision. Dominion's counsel argued that this "appears to be a new standard created by the Staff that does not appear in any applicable statutes or in any Commission ruling."[15] This is not the case. Virginia Code Section 56-46.1 specifically states that the Commission may consider "local comprehensive plans," such as the Comprehensive Plan of Prince William County, and provides that the Commission must hold local public hearings upon the request of interested parties or local governments. It would be illogical for the statute to require public hearings and allow public input, yet not allow the Commission to consider the concerns of the community in its decision.

Moreover, Virginia Code Section 56-46.1 has been amended several times in recent years *for this very purpose* – that is, to give local governments and affected property owners a greater say in the approval and siting of transmission facilities. In 2011, for example, the statute was

[12] DEQ June 2, 2016, Letter Regarding Wetland Impact Consultation.
[13] See June 16, 2016, Letter from Del. Robert G. Marshall, et al. While the Commission has received comments from certain legislators who do not represent Prince William County, the Coalition urges the Commission to place greater emphasis on the recommendations of those public officials who do represent Prince William County.
[14] Ex. 19 (Joshipura) at 16.
[15] Tr. 72.

amended to require an applicant to demonstrate, in its filing, its efforts to "reasonably minimize adverse impact on the scenic assets, historic districts, and environment of the area concerned."[16] In 2007 the statute was amended for the purpose of giving localities greater say in transmission line siting.[17] And in 2016, the statute was amended again to provide that "the governing body of any county or municipality through which the line is proposed to be built" may petition the Commission to hold a public hearing in the affected area.[18]

B. If the Project is approved, the Customer should bear the costs of construction in accordance with Dominion's terms and conditions.

1. Section 22 of Dominion's terms and conditions applies to the Project.

The Coalition did not take a position regarding whether the proposed transmission and distribution facilities are needed to reliably serve the Customer. The evidence is clear, however, that the Project is being constructed solely to serve one existing retail customer and would not be needed without that customer. For that reason, the Coalition argued that the Customer for whom the Project is being constructed should bear the costs of the Project in accordance with Section 22 D of Dominion's terms and conditions. As the Commission Staff explained in opening statements, "what this case boils down to" is:

> [C]an a retail customer, currently receiving perfectly adequate service at distribution levels, demand an increase in its service so significant that it requires construction of new transmission facilities without incurring any financial responsibility for its request?

As a monopoly electric utility, Dominion has the obligation to serve any new customer in its service territory on a non-discriminatory basis. But while Dominion is required to serve all new customers regardless of their location, Dominion also has a Commission-approved line

[16] 2011 Acts of Assembly, Ch. 243.
[17] 2007 Acts of Assembly, Ch. 761.
[18] 2016 Acts of Assembly, Ch. 276.

extension policy that requires customers, in certain circumstances, to bear a portion of the costs necessary to serve them. Section 22 of Dominion's Commission-approved terms and conditions states that,

> The Company will provide Electric Service, to individually metered permanent non-residential units (including garages, tool sheds, swimming pool pumps, well pumps, etc.), or individually metered three-phase detached single-family residential homes *not previously provided* with Electric Service ... in accordance with the provisions stated herein.[19]

Section 22 subsequently provides that "[t]he Customer will pay the Company the amount, if any, by which the cost [for the installation of primary approach lines] exceeds four times the continuing estimated annual revenue – less fuel charge revenue – that can be reasonably expected."

It is not disputed that the Customer is requesting electric service to a facility "not previously provided with Electric Service." Under Section 22, new facilities necessary to serve a customer "not previously provided with Electric Service" would either fall within the category of an "approach line" or "branch feeder." "Approach Lines" are defined as "facilities installed from an existing source to the property or developer requesting electric service." The facilities that would be constructed here – including the new 230 kV line – plainly fall within the definition of "approach line." The new 230 kV line, for example, would run "from an existing source to the property requesting electric service." Staff testified that the "existing source" in this case is Line 124, which is connected to the Gainesville Substation and that the 230 kV line would extend from Line 124 to Haymarket Substation. The substation will be located on land currently owned by "the customer requesting Electric Delivery Service."[20] Therefore, Staff

[19] Emphasis added.
[20] See, e.g., Tr. 495-496, 542.

correctly found that the new 230 kV line serving the Customer could be characterized as an "approach line."[21]

Staff also correctly noted that the definition of "approach line" is not limited to distribution-level facilities.[22] Section 22 does not state that the cost allocation formula applies only to distribution facilities, nor does it state that the formula is inapplicable to facilities above a certain voltage threshold. As Staff argued, "nothing in the actual Commission-approved language of Section XXII, or any part therein, explicitly states that these terms and conditions apply to distribution facilities only."[23] Staff also noted that Dominion had previously "represented to Staff that Section XXII applied to transmission facilities." In the Poland Road transmission proceeding, Case No. PUE-2015-00053, the Company originally represented to Staff that the Section 22 cost allocation formula *does* apply to transmission-level facilities.[24] Finally, Dominion has also previously characterized the Project as a "line extension." Dominion's 2016 IRP, which has been filed with the Commission in docket number PUE-2016-00049, includes a section titled "Planned Transmission Additions."[25] Dominion's IRP identifies 41 planned transmission projects; the Project is one of only four entries described as a "line extension."

Dominion's current interpretation of its line extension policy – that Section 22 only applies to distribution assets – can only be accomplished by adding limiting terms to the plain language of Section 22, an act which is disfavored by Virginia courts.[26] When interpreting

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[21] See Tr. 309-310.
[22] Tr. 310.
[23] Ex. 19 (Joshipura) at 16.
[24] See Ex. 19 (Joshipura) at 19.
[25] DVP 2016 IRP at 162; Tr. 312.
[26] See, e.g., *Appalachian Power Co. v. State Corp. Comm'n,* 284 Va. 695, 706 (2012) ("Rules of statutory construction prohibit adding language to or deleting language from a statute.")

statutes, Virginia courts "apply the plain meaning of the words unless they are ambiguous or would lead to an absurd result."[27] In this case, applying the Company's line extension policy to the facilities at issue would not lead to an absurd result. The result would simply be the following: this particular retail customer would be subject to the same rules as other Dominion customers requesting new electric service.

2. The Project is being constructed solely to serve one customer.

It is also appropriate to apply the cost allocation formula described in Section 22 because the facilities are not being constructed to serve any other present need. The Commission Staff has argued that the Company could not "justify the need for this Project without the Customer's request for service" and "[a]s such, the Project may also be viewed as a line extension for electric service to a new customer, and thus, may be subject to cost allocation in accordance with Section XXII "Electric Line Extensions and Installations ... of the Company's Commission-approved terms and conditions." While Dominion claims that the Haymarket Substation may serve other customers in the future, 97 percent of the projected load from the proposed substation would be directed to the Customer.[28]

Dominion also argues, in part, that the line extension policy does not apply to the Project because the substation would be located on Company-owned land, and thus the facilities would not qualify as "approach lines" under Section 22.[29] The land is currently owned by the Customer, not Dominion.[30] Dominion claims that the land, at some point in the future, will be transferred from the Customer to the Company. This may be true. But a subsequent land transfer – which has not yet occurred – should not defeat the application of the Company's line

[27] *Wright v. Commonwealth*, 278 Va. 754, 759 (2009).
[28] Tr. 234, 434.
[29] See Tr. 417.
[30] See, e.g., Tr. 309-310, 495-496, 542.

extension policy based on the facts of this case. The Commission should interpret and apply Section 22 based on the facts as they exist now, not based on facts as they may exist in the future.

Dominion did not argue that the Project would be needed absent the Customer's load. Dominion *did* argue that it was likely that the new infrastructure would be needed in the future and suggested that the Project would be ready to serve new growth in the Haymarket area, if that growth "comes to fruition."[31] Dominion suggests that the Project would be needed, at some point in the future, even without the load attributable to the Customer. But this argument would require some measure of evidentiary support. Dominion presented none. There were no studies provided by Dominion to support the proposition that the Project would be needed in the future even without the demand of the Customer. Dominion did not provide any studies showing *when* such demand would materialize absent the demands of the Customer. Dominion, however, did admit that the area west of Route 15 – which Dominion says would be served by the new substation – is designated as a Rural Area by Prince William County and is unlikely to experience significant load growth.[32] Dominion also admitted that the potential large block load in the area that was discussed at the hearing would be served by the existing Gainesville Substation, not the Haymarket Substation.[33] Dominion did not provide evidence of significant additional load growth for the Haymarket Substation, with the exception of the Customer's load. But, in any case, hypothetical load growth is not relevant to the Commission's decision in this case. The evidence presented in this case is that the Project is needed to serve a single retail customer, and for no other reason.

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[31] Tr. 64.
[32] Tr. 444-446.
[33] See Tr. 502-503.

Dominion also admits that the Project has been classified as a "Supplemental Project" by PJM.[34] This means that the project is not needed for reliability purposes. The PJM Operating Agreement defines a supplemental project as:

> [A] transmission expansion or enhancement that is not required for compliance with the following PJM criteria: system reliability, operational performance or economic criteria, pursuant to a determination by the Office of the Interconnection and is not a state public policy project pursuant to section 1.5.9(a)(ii) of Schedule 6 of this Agreement.[35]

As the Coalition stated at the hearing, if a new residential customer chose to build a house in a location that lacked access to electric infrastructure, that customer very likely would have to bear some of the costs necessary for the Company to provide electric service. The Customer in this case chose to locate its data center campus in a location without access to existing infrastructure for electric delivery. Dominion has a data center "pre-certification" process for determining optimal locations for data centers. The Customer's location did not satisfy this pre-certification criteria.[36]

3. Even if Dominion's line extension policy is determined to be "ambiguous," as Staff suggests, it must be construed in favor of the Coalition's position.

Staff witness Joshipura suggested that Dominion's line extension policy may be "ambiguous with respect to its application to transmission facilities." Mr. Joshipura testified that "for purposes of cost allocation and recovery, Section XXII *may be* applicable to certain transmission lines which may be viewed as line extensions for service to an individual customer."[37] Mr. Joshipura's position that Section 22 "may be" applicable to transmission infrastructure was informed by the Company's previous representations. But even if Section 22

[34] See, e.g., Tr. 110-111, 469, 569-570.
[35] PJM Operating Agreement, Definitions.
[36] Tr. 455-456.
[37] Ex. 19 (Joshipura) at 20 (emphasis added).

were ambiguous with respect to its application to transmission infrastructure – which the Coalition maintains it is not – the terms must be construed in favor of the Coalition's position. As discussed below, both the Commission and the Supreme Court of Virginia have held that ambiguous language in utility tariffs must be construed against the drafter – in this case Dominion.

When ruling on a declaratory judgment petition of Atmos Energy Corporation regarding whether Atmos's tariff allowed it to recover certain demand costs, the Commission held that "the Virginia tariff must be construed according to its language and, in cases of doubt, the tariff language must be construed most strongly against those who framed it, i.e., Atmos."[38] And in 2004 the Commission enjoined the Northern Virginia Electric Cooperative from implementing a building initiative that would have required builders to install all new electrical facilities in an underground conduit system. The Commission found that "[NOVEC's] tariff, at best, is ambiguous as to whether the all conduit program contemplated by NOVEC is permitted under the terms thereof."[39] The Commission held that "[t]o the extent the tariff is not clear and unambiguous, it should be interpreted against the drafter – which in this case is NOVEC."[40] In both cases, the Commission cited to a Virginia Supreme Court decision, *Smokeless Fuel Company v. Chesapeake and Ohio Railway Company*, in which the Court held that "the intention of the framers is entitled to little, if any, consideration" and that "in cases of doubt, the language of the tariff is to be construed most strongly against those who frame it."[41]

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[38] *Petition of Atmos Energy Corporation, For a Declaratory Judgment*, SCC Case No. PUE-2007-00019, Final Order at 7-8.

[39] *Petition of Northern Virginia Building Industry Association v. Northern Virginia Electric Cooperative, For an Order enjoining NOVEC from implementation of a policy requiring builders and developers to install electric facilities in an underground conduit system*, SCC Case No. PUE-2004-00117, Final Order (Jan. 28, 2005).

[40] *Id.*

[41] *Smokeless Fuel Co. v. Chesapeake & Ohio Railroad Company*, 142 Va. 355, 371 (Va. 1925).

Based on the clear precedent of the Commission and the Supreme Court of Virginia, therefore, any ambiguous terms in Dominion's terms and conditions must be construed against Dominion, and in favor of the Coalition's position.

CONCLUSION

For the foregoing reasons, the Coalition requests that the Commission, if it is inclined to grant the Company's application, authorize construction of the Hybrid Alternative only and direct that Section 22 of the Company's line extension policy applies to the costs of the Project.

Respectfully submitted,

THE COALITION TO PROTECT PRINCE WILLIAM COUNTY

By Counsel

/s/ William T. Reisinger

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Dated: August 5, 2016

CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2016, I served a copy of the foregoing on the following persons:

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