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December 6, 2016

By Electronic Filing

Mr. Joel H. Peck, Clerk
State Corporation Commission
Document Control Center
Tyler Building, First Floor
1300 East Main Street
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:

Please see the attached Comments and Objections to the Hearing Examiner's Report and Recommendation, filed on behalf of the Coalition to Protect Prince William County in the above-referenced proceeding.

Thank you for your assistance in this matter.

Sincerely,

/s/ William T. Reisinger

William T. Reisinger

Enclosure

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	)	

COMMENTS AND OBJECTIONS OF
THE COALITION TO PROTECT PRINCE WILLIAM COUNTY

Pursuant to Rule 120 C of the Commission's Rules of Practice and Procedure, the Coalition to Protect Prince William County (the "Coalition"), by counsel, submits the following Comments and Objections to the Hearing Examiner's Report and Recommendation ("Report") issued in this matter on November 15, 2016.

INTRODUCTION AND SUMMARY OF ARGUMENT

Virginia Electric and Power Company, d/b/a Dominion Virginia Power ("Dominion" or "Company"), 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."[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 grid reliability.[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 it is determined to be necessary; and (2) the appropriate means for the Company to recover the costs of the Project, if it is determined to be necessary. 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. The Hybrid Alternative is also the only route that would be consistent with Prince William County's Comprehensive Plan – which the Commission is required by law to consider – and it is the only route that has the support of the scores of state and local elected officials representing Prince William County who have made their voices heard in this matter.

[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.

Finally, the Hybrid Alternative is the only route that has the support of the hundreds of businesses and individuals who have provided public comment in this matter. The Hearing Examiner, however, rejected the Hybrid Alternative route based on cost considerations and based on his erroneous conclusion that the Customer should not contribute funds towards the construction of the Haymarket line.

The Hearing Examiner correctly determined that the I-66 Overhead route, Dominion's preferred route, is not viable because of its numerous impacts to homes and businesses in the I-66 corridor. But the Hearing Examiner's decision to recommend approval of the Carver Road route instead – a route that was dismissed by both Staff and Dominion and barely referenced at the evidentiary hearing – is arbitrary, capricious, and unsupported by the current record. The Hearing Examiner, for example, did not even reference any of the public testimony describing the adverse impacts of the Carver Road route or mention the two elementary schools which would be perilously close to this route. The Hearing Examiner admits that his recommendation was made by "simple process of elimination"[6] after he determined that the other routes were either too expensive or too burdensome to residents in the I-66 corridor. But transmission planning by "process of elimination" – like an uncertain student guessing among answers on a multiple choice test – is not an acceptable way to choose the route of a high-voltage power line that will have significant impacts on the community and the environment. The citizens of Prince William County deserve better than the Commission's "best guess" on this matter.

Finally, if the Project is deemed necessary, and regardless of the route chosen, 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 the plain

[6] Report at 75.

language of Dominion's line extension policy contained in Section 22 of the Company's Terms and Conditions ("Section 22"). The Hearing Examiner finds that Section 22 is "ambiguous," but nonetheless recommends that the line extension policy should be construed in favor of Dominion and against ratepayers based on un-cited administrative "history" that is not in the record in this case. The Coalition disagrees. The Haymarket line, which is being constructed solely to serve the needs of one retail customer requesting electric service, qualifies as an "approach line" for which the Customer should bear cost responsibility pursuant to the plain language of Dominion's tariff.

The Hearing Examiner's Report and Recommendation ("Report"), unfortunately, contains significant factual and legal errors and should be rejected. Instead, if the Commission finds that the line is needed, the only route that satisfies the statutory standard and Commission precedent is the Hybrid Alternative route, and Section 22 requires that the Customer pay for it.

ARGUMENT

The Hearing Examiner's Report lacks any cogent analysis to support either the Report's recommended route or its legal interpretation of Dominion's line extension policy. After correctly finding Dominion's preferred route to be impractical, the Hearing Examiner chose another route by "process of elimination" and without an adequate evidentiary basis to do so. The Hearing Examiner's decision was also apparently influenced by his conclusions that the Hybrid Alternative route was too costly and that the Customer should bear no financial responsibility for the Project. The Hearing Examiner's factual and legal findings are erroneous and should be rejected.

A. The Hearing Examiner's selection – by "process of elimination" – of the Carver Road route should be rejected.

The Hearing Examiner admits that his selection of the Carver Road route was made by "process of elimination." Indeed, he apparently chose the Carver Road route at random. Almost every public official representing Prince William County, and nearly every citizen who testified in this case, supported the Hybrid Alternative route only. Neither Dominion, Staff, nor any other party recommended approval of the Carver Road route, and there was very little, if any, substantive discussion of this route at the evidentiary hearing. While the Carver Road route was not discussed by the parties at the hearing, numerous public witnesses *did* provide comments regarding the adverse impacts that this route would have on two public elementary schools. The Hearing Examiner did not consider these adverse impacts associated with the Carver Road route. The Hearing Examiner is correct that Dominion's preferred route is not viable for a number of reasons, but the Coalition continues to believe that the only acceptable route for the affected community is the Hybrid Alternative route.

1. 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 Hybrid Alternative is the only viable routing option. This is the only route that was supported by the scores of state and local officials and thousands of community members who have provided comment in this case.

The Hybrid Alternative route is also the only route that would "reasonably minimize" adverse impacts of the transmission line according to the county officials who testified in this case. 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.[7]

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, all of whom expressed support for the Hybrid Alternative only. The Staff 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."[8] Dominion admitted at the hearing that the views of the Blue Ridge Mountains, which could be obscured by towers if the proposed route is

[7] Emphasis added.
[8] Ex. 17 (McCoy) at 13.

approved, could be considered a scenic asset for the residents of Prince William County.[9] Mr. McCoy also noted that the Hybrid Alternative is the only route that is consistent with Prince William County's comprehensive plan.[10]

The Hybrid Alternative route 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, among others, all filed comments expressing their support for the 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."[11] The archaeologist for the County, Justin S. Patton, testified that the Company's proposed route would directly impact historic assets, including Civil War battlefields and other historical sites.[12] The Department of Environmental Quality found that the Hybrid Alternative would have the least impact on wetlands.[13] And the five legislators who represent Prince William County in the General Assembly have all supported the Hybrid Alternative route only.[14]

[9] Tr. 626.
[10] Ex. 17 (McCoy) at 20.
[11] See June 17 Comments of Prince William County Board of Supervisors at Attachment A.
[12] Id. at Attachment B.
[13] DEQ June 2, 2016, Letter Regarding Wetland Impact Consultation.
[14] 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.

Finally, contrary to Dominion's assertions, the Commission may – and should – consider the concerns of respondents, County officials, legislators, 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."[15] 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."[16] 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. The statute also requires the Commission to ensure that localities and given notice of any proposed transmission lines of1 138 kV or greater. It would be illogical for the statute to require public hearings and notice, and allow public input, yet not allow the Commission to consider the concerns of the community in its decision.

But the Hearing Examiner, as Dominion requested, gives little if any weight to Prince William County's comprehensive plan or to the comments of the numerous County officials who supported the Hybrid Alternative only. The Hearing Examiner stated that he is "not aware of a single Commission case that has approved the underground construction of a transmission line based solely on a locality's comprehensive plan."[17] But the Hearing Examiner, like Dominion,

[15] Ex. 19 (Joshipura) at 16.
[16] Tr. 72.
[17] Report at 74.

also ignores the fact that the General Assembly has amended Virginia Code Section 56-46.1 multiple 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 2007 the statute was amended for the purpose of giving localities greater say in transmission line siting.[18] In 2011, the statute was amended again 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."[19] And in 2016, the statute was amended 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.[20]

2. The Hearing Examiner's arbitrary decision to support the Carver Road route – by "process of elimination" – should be rejected.

The Hearing Examiner, by a "process of elimination," determined that the Carver Road alternative – which was not discussed at the evidentiary hearing – should be chosen. The Hearing Examiner first determined that the Haymarket line should not be undergrounded due to its additional cost.[21] And, the Hearing Examiner determined, "after [h]aving found that the proposed Haymarket transmission line should not be undergrounded, the central question becomes which of the remaining four overhead routes best reasonably minimize adverse impacts on the environment, scenic assets, and historic districts in the area."

No party to this case supported the Carver Road route. Staff witness McCoy found "no justification" for the Carver Road route.[22] Mr. McCoy testified that the Carver Road route was not "desirable [because] shorter, more direct and less impacting alternatives have been

[18] 2007 Acts of Assembly, Ch. 761.
[19] 2011 Acts of Assembly, Ch. 243.
[20] 2016 Acts of Assembly, Ch. 276.
[21] Report at 75.
[22] Ex. 17 (McCoy Direct) at 1.

identified." Mr. McCoy also noted that the Carver alternative is longer than the I-66 routes and crosses "generally, double the private lands and triple the private parcels and impact[s] significantly greater wetlands as compared to the I-66 alignments."[23] Dominion, likewise, found that the Carver Road option would require "significant clearing of forest land and [would] have substantial wetland impacts [and] would also cross more waterbodies" than the I-66 routes.[24]

The Hearing Examiner cited extensive data regarding numbers of houses and customers who would be impacted by the I-66 overhead route, but he does not cite any figures to support his finding that the Carver Road route would have fewer impacts. While the Hearing Examiner notes that residents living near the proposed I-66 overhead route could "walk out their back door and look up and see 112-foot towers in very close proximity to their homes," he provides no similar analysis of homes along the Carver Road route. The Report simply asserts, without support, that the Carver Road route would affect "fewer" residences.[25] The Hearing Examiner also provides no analysis of the impacts and close proximity to homes, schools, and businesses that would occur if the Carver Road route was chosen. Moreover, neither the Hearing Examiner, Staff, nor the Company addressed the fact that approving the Carver Road route would allow a high-voltage power line in close proximity to two elementary schools, Haymarket Elementary and Buckland Mills Elementary, or several natural preservation areas and residential developments.[26]

[23] Ex. 17 (McCoy Direct), MAE Report at 21.
[24] Berkin Rebuttal at 21.
[25] Report at 77.
[26] See, e.g., Comments of Peter Menard, May 4, 2014; see also March 14, 2016 Public Hearing, Testimony of Rhonda Ressee and Matthew Cooke, Transcript Pages 202-205; see also Comments of Susan Caudle, May 2, 2016 (referencing impacts to the Leopold's nature preserve, "493 acres … uniquely situated at the midsection of the Journey Through Hallowed Ground National Heritage Area and Scenic Byway, a corridor long valued by conservationists and historians.")

The Coalition reviewed the record in this case and found numerous examples of testimony opposing the Carver Road route. None of this testimony, or the adverse impacts referenced by the witnesses, was cited in the Hearing Examiner's analysis:

Public Hearing testimony referencing Carver Road route impacts:

2/24/16 hearing:

- Richard Cole – Page 91

3/14/16 hearing:

- Liebrecht Rudolph Venter – Pages 300-305
- Peter Martin – Page 390

5/2/16 hearing:

- Delegate Bob Marshall – Page 46
- Peter Martin – Page 146

5/10/16 hearing:

- Justin Patton – Page 15 – 25
- Jeanine Lawson – Page 27 – 31

Online submissions referencing Carver Road route impacts:

- 6/7/16 – Quentin Lawler
- 6/3/16 – Deanna Willis
- 5/4/16 – Edith Brownstein
- 5/3/16 – Peter Menard
- 4/19/16 – Jeff Deitrich
- 3/15/16 – Eric Ivancic
- 3/14/16 – Leilani Mitchell

Respondent testimony referencing Carver Road route impacts:

- Southview direct testimony – 5/10/16
- Somerset amended written testimony – 5/12/16 – pages 8-19

Notices of Participation referencing Carver Road route impacts:

- Somerset Notice of Participation – 2/24/16 – pages 3 – 9

While the Commission has broad discretion to make findings of fact in cases such as this one, all such findings must be based on *some measure* of evidence in the record. A Commission decision may not be "contrary to the evidence" or "without evidence to support it."[27] The Hearing Examiner cited substantial evidence for why the I-66 overhead route is not viable. But the Hearing Examiner's decision – by "process of elimination" – to support the Carver Road route is arbitrary and not adequately supported.

B. The Hearing Examiner incorrectly determined that the Customer should *not* bear the costs of construction in accordance with Dominion's terms and conditions.

The Hearing Examiner's decision to choose an overhead routing option by "simple process of elimination" was based in part on his finding that the Customer should bear no cost responsibility for its requested electric service. For example, it was only after finding that the Customer should not be required to pay to underground the Haymarket line that the Hearing Examiner turned to overhead routing options.[28] For the reasons described below, however, Dominion's line extension policy applies to the Project based on the plain language of the tariff. Moreover, even if Section 22 is determined to be ambiguous, the terms of Dominion's tariff should be construed against the Company and in favor of the hundreds of ratepayers and elected

[27] *See Board of Supervisors v. Appalachian Power Company*, 216 Va. 93, 105 (1975).
[28] Report at 75.

officials who have argued that the Customer should bear the cost responsibility for its requested electrical facilities.

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

It was not disputed by any party 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 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.[29]

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

[29] Emphasis added.

continuing estimated annual revenue – less fuel charge revenue – that can be reasonably expected."

It is not disputed that the Customer is requesting electric service for 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 Haymarket 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 new 230 kV line would extend from Line 124 to the Haymarket Substation. The substation will be located on land currently owned by "the customer requesting Electric Delivery Service."[30] Therefore, Staff correctly found that the new 230 kV line serving the Customer could be characterized as an "approach line."[31]

The Hearing Examiner was apparently persuaded that the Haymarket line cannot be categorized as an "approach line" because the line will terminate at the Haymarket Substation and on property that Dominion represents *will be* transferred from the Customer to the Company at some point in the future.[32] The Coalition asserts, however, that a future land transfer cannot defeat the proper application of Section 22 today. In any case, the reality is that the Haymarket line will run from an "existing source" – Line 124 – to serve a retail customer requesting new

[30] See, e.g., Tr. 495-496, 542.
[31] See Tr. 309-310.
[32] Report at 71.

service. This is precisely the scenario – a customer requesting new service – to which Section 22 was intended to apply.

The Hearing Examiner also suggested that Section 22 only applies to distribution facilities and not to lines of transmission voltage. The Hearing Examiner noted that he is "unaware of any case where the Commission has applied Dominion's line extension policy … to a transmission line."[33] The Hearing Examiner then discussed – without citations – what he describes as "the history of Section 22 before the Commission."[34] This uncited "history," however, is simply selected statements that Dominion witnesses apparently made regarding Section 22 in the 2009 and 2013 Biennial Review proceedings. The Hearing Examiner apparently recalls that Dominion witnesses suggested that revisions to Section 22 "targeted distribution facilities."[35] These statements by Dominion were not in the record in this case and should have no bearing on the interpretation of the plain language of Section 22.

Moreover, as Staff correctly noted, the definition of "approach line" is not limited to distribution-level facilities.[36] Section 22 does not contain any such limitation. Despite Company testimony that the Hearing Examiner may recall from prior cases, 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 correctly argued, "nothing in the actual Commission-approved language of Section 22, or any part therein, explicitly states that these terms and conditions apply to distribution facilities only."[37] And while the Hearing Examiner recalls some statements Dominion witnesses apparently made in the 2009 and 2013

[33] Report at 72.
[34] Report at 73.
[35] Report at 73.
[36] Tr. 310.
[37] Ex. 19 (Joshipura) at 16.

Biennial Review proceedings, Staff also noted that Dominion had previously represented that Section 22 *does* apply to transmission facilities. Dominion has been on both sides of this issue. In the Poland Road transmission proceeding, Case No. PUE-2015-00053, the Company represented to Staff that the Section 22 cost allocation formula *does* apply to transmission-level facilities.[38] Finally, Dominion has also previously characterized the Project as a "line extension" *per se*. Dominion's 2016 IRP, which has been filed with the Commission in docket number PUE-2016-00049, includes a section titled "Planned Transmission Additions."[39] Dominion's IRP identifies 41 planned facilities; 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 facilities below 50 kV – can only be accomplished by adding limiting terms to the plain language of Section 22, an act which is disfavored by Virginia courts.[40] When interpreting statutes, Virginia courts "apply the plain meaning of the words unless they are ambiguous or would lead to an absurd result."[41] 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 everyone else 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

[38] See Ex. 19 (Joshipura) at 19. The Company later reversed its opinion that Section 22 may apply to distribution-level facilities.
[39] DVP 2016 IRP at 162; Tr. 312.
[40] 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.")
[41] *Wright v. Commonwealth*, 278 Va. 754, 759 (2009).

appropriately argued that the Company could not "justify the need for this Project without the Customer's request for service" and that "[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 22 "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, the evidence in this case showed that 97 percent of the projected load from the proposed substation would be directed to the Customer.[42]

Dominion did not argue that this particular Project would be needed absent the Customer's load. Dominion *did* argue that it was likely that some 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."[43] 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 provided none. There were no studies provided by Dominion to support the proposition that this particular 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 requirements 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.[44] 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.[45] Dominion did not

[42] Tr. 234, 434.
[43] Tr. 64.
[44] Tr. 444-446.
[45] See Tr. 502-503.

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 should not factor into the Commission's decision in this case. The evidence presented in this case is that this particular Project would not be needed absent service to the Customer.

Dominion also admits that the Project has been classified as a "Supplemental Project" by PJM.[46] 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.[47]

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 knowingly 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.[48] The Company's line extension policy was intended to apply to situations such as this one where a customer requests new service at a location without existing electrical infrastructure.

[46] See, e.g., Tr. 110-111, 469, 569-570.
[47] PJM Operating Agreement, Definitions.
[48] Tr. 455-456.

3. Even if Dominion's line extension policy is determined to be "ambiguous," as Staff and the Hearing Examiner suggest, it should be construed in favor of the Coalition's position.

The Hearing Examiner found that Section 22 is "not a beacon of clarity when it comes to deciding this issue" and is "ambiguous with respect to whether it applies to transmission lines.[49] Staff's testimony also supported this conclusion, as 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 22 *may be* applicable to certain transmission lines which may be viewed as line extensions for service to an individual customer."[50] But even if Section 22 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."[51] 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

[49] Report at 72 (emphasis added).
[50] Ex. 19 (Joshipura) at 20 (emphasis added).
[51] *Petition of Atmos Energy Corporation, For a Declaratory Judgment*, SCC Case No. PUE-2007-00019, Final Order at 7-8.

the terms thereof."[52] 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."[53] 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."[54]

Based on the clear precedent of the Commission and the Supreme Court of Virginia, therefore, any ambiguous terms in Dominion's terms and conditions should be construed against Dominion, and in favor of the Coalition's position. The "intention of [Dominion] should be "entitled to little, if any, consideration."[55]

The Hearing Examiner, however, chose not to apply the precedent cited by the Coalition despite finding the line extension policy to be ambiguous. The Hearing Examiner found that Section 22 is "not a beacon of clarity when it comes to deciding this issue" and "ambiguous with respect to whether it applies to transmission lines.[56] The Hearing Examiner also noted that this ambiguity is evidenced by "Dominion's initial belief that the line extension policy to the transmission line it proposed in the Poland Road case, before reversing its position several months later."[57] But instead of applying Commission and Supreme Court precedent and

[52] *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).
[53] Id.
[54] *Smokeless Fuel Co. v. Chesapeake & Ohio Railroad Company*, 142 Va. 355, 371 (1925).
[55] Id.
[56] Report at 72 (emphasis added).
[57] Report at 72.

construing the tariff language against the utility, the Hearing Examiner construed Section 22 in favor of Dominion and against the Company's ratepayers. That is improper.

In support of his decision construing Section 22 in favor of Dominion and against the Company's ratepayers, the Hearing Examiner cited two federal district court cases purportedly indicating that the principles repeatedly articulated by the Commission and the Virginia Supreme Court should only be applied "as a last resort."[58] The Hearing Examiner, however, does not cite any *Virginia* precedent in support of this proposition. After dismissing the precedent cited by the Coalition, the Hearing Examiner chose to follow what he calls "the rules of statutory construction" and analyzed what he describes as "the history of Section 22 before the Commission."[59] As explained above, this "history of Section 22 before the Commission" consists of un-cited statements apparently made by Dominion witnesses in the 2009 and 2013 Biennial Review proceedings. The Hearing Examiner determined that Section 22 cannot apply to facilities above 50 kV because a Dominion witness in the 2013 Biennial Review apparently testified that the "proposed revisions [to the Company's line extension policy] targeted distribution facilities."[60] This testimony is outside of the record in this case. The Hearing Examiner thus proposes to resolve tariff language he determined to be ambiguous based on Dominion's intent, apparently expressed in prior Commission cases, which is not in the record in this case. The Virginia Supreme Court has directed, however, that evidence of such intent is "entitled to little, if any, consideration."[61]

[58] Report at 72-73, note 542.
[59] Report at 73.
[60] Report at 73.
[61] Id.

The Hearing Examiner's conclusions were also apparently influenced by the fact that no party has yet volunteered to pay for the Project.[62] The Hearing Examiner stated that "[f]inally, no one has stepped forward and agreed to pay for undergrounding the Haymarket transmission line, neither the Customer building the new data center nor residents in the area." This statement is puzzling. Why, at this point, would any entity *volunteer* to pay for millions of dollars in undergrounding costs? The potential cost responsibility for this theoretical transmission line is subject to a pending legal dispute. The Prince William County Board of Supervisors and the Coalition, both representing citizens, have argued that the Customer should fund the infrastructure costs necessary to provide its requested service, consistent with Dominion's tariff. Dominion and (presumably) the Customer disagree. Thus, there is a contested issue.

The Hearing Examiner's strained legal interpretation of Section 22 ignores the plain language of the tariff as well as applicable Virginia precedent that would have supported the position advanced by the Coalition and the hundreds of public officials and community members who have spoken out in this case. The Hearing Examiner's flawed legal analysis, which contributed to his arbitrary decision to choose the Carver Road route, should be rejected.

CONCLUSION

The Hearing Examiner correctly determined that Dominion's preferred route – the I-66 overhead option – is not viable. But the Hearing Examiner's subsequent decision to support the Carver Road route, based on a "process of elimination," is unsupported and unacceptable. While the Carver Road alternative was dismissed by Staff and Dominion, and was barely referenced at the evidentiary hearing, there has been overwhelming support for the Hybrid Alternative route throughout this case. Hundreds of citizens, scores of public officials, as well as the Commission

[62] Report at 68.

Staff have all provided support for the Hybrid Alternative. Unfortunately, it appears that the Hearing Examiner's decision to reject an undergrounding option was based on his erroneous interpretation of Dominion's line extension policy, which would require a financial contribution from the Customer requesting service.

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

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