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STATE CORPORATION COMMISSION

160810170

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Hon. Joel H. Peck, Clerk
State Corporation Commission
c/o Document Control Center
Tyler Building, First Floor
1300 East Main Street
Richmond, Virginia 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,* Case No. PUE-2015-00107

Dear Mr. Peck:

Please file the enclosed original and fifteen (15) copies of the attached "Brief of The Commission Staff" with the other papers in this proceeding.

Thank you for your assistance in this regard.

Sincerely yours,

William H. Chambliss
General Counsel

WHC:jpr

cc: Service List

160810170

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

BRIEF OF THE COMMISSION STAFF

Introduction

On November 6, 2015, Virginia Electric and Power Company ("Dominion Virginia Power," "DVP" or "Company") filed with the State Corporation Commission ("Commission") an application ("Application") for a certificate of public convenience and necessity for the proposed Haymarket 230 kilovolt ("kV") double circuit transmission line and 230-34.5 kV Haymarket Substation. Dominion Virginia Power filed the Application pursuant to § 56-46.1 of the Code of Virginia ("Code") and the Utility Facilities Act, § 56-265.1 *et seq.*

According to the Application, the Company proposes to construct in Prince William County a new 230-34.5 kV Haymarket Substation; convert its existing 115 kV Gainesville-Loudoun Line #124, located in Prince William and Loudoun Counties, to 230 kV operation ("Line #124 conversion"); and construct in Prince William County and the Town of Haymarket a new approximately 5.1 mile overhead 230 kV double circuit transmission line from a tap point approximately 0.5 mile north of the Company's existing Gainesville Substation on the Line #124 conversion ("Haymarket Junction") to the new Haymarket Substation (the "Haymarket Loop").[1] The Line #124 conversion, the Haymarket Loop and Haymarket Substation are referred to herein as the "Project."

[1] Exhibit ("Exh.") 3 (Application) at 2.

The Project is necessary to provide additional service to an existing data center campus in Prince William County and will enable the Company to maintain reliable electric service to other customers in the area in accordance with the Company's transmission planning criteria.[2] The proposed in-service date for the Project is June 1, 2018.

The Commission entered its order for Notice and Hearing on December 11, 2015, establishing a procedural schedule that culminated in a public hearing to receive evidence on the Application at the Commission's courtroom in Richmond, Virginia, on June 21-22, 2016. A number of Respondents participated in this hearing, which followed three public hearings held in Prince William County at various dates during spring 2016.

The Company proposed a number of alternatives to its preferred route ("I-66 Overhead") but, as the public hearings were conducted and Respondents entered the case, it became apparent that all the alternatives other than I-66 Overhead and a variant that would install a portion of the line underground ("I-66 Hybrid") raised disqualifying objections from one or more parties or were for various reasons otherwise unfeasible. Thus, by the time of the June evidentiary hearing, the focus of the proceeding was essentially limited to which of the I-66 alternatives should be built and how the Project should be paid for. For reasons that will be developed in this Brief, the case presents an unusual set of legal and policy issues for the Examiner and the Commission to resolve.

Overview of Staff Positions

The Staff is not opposed to the issuance of a certificate of public convenience and necessity ("CPCN") for the Project. Staff supports construction using one or the other of the I-66 alternatives, recognizing that the I-66 Hybrid alternative is much more expensive and will likely

[2] *Id.*

take longer to complete. This alternative, though, presents fewer environmental impacts and far fewer visual impacts than the I-66 Overhead alternative, and appears to be the alternative most favored by Respondents and the public witnesses, including numerous state and local elected officials, who provided testimony and comments during the proceeding. In Staff's view, construction of either alternative is feasible. The Commission should, in Staff's view, consider whether the cost differential between the alternatives may or should be mitigated through application of the Company's Line Extension policy or through other means since the need for the Project is entirely due to the request for additional service by a single customer that remained anonymous throughout the proceedings ("Customer").[3] Were it not for Customer's request, the Project would not be needed at all for the foreseeable future.

Environmental Impacts of the Project

As stated, Staff supports construction using one or the other of the I-66 alternatives. Staff recognizes that "the selection of the appropriate route requires a balancing of the impacts and costs."[4] Although the estimated impacts to wetlands by the I-66 alternatives are roughly comparable, the potential impact on historic resources by the I-66 Hybrid is less than the I-66 Overhead.[5] Moreover, as described below, the post-construction visual impacts of the I-66 Hybrid along the underground portion of the route are negligible in comparison to the I-66 Overhead.[6] Accordingly, the I-66 Hybrid has the least overall impact to the project area.

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[3] Transcript ("Tr.") at 110; Exh. 5.

[4] Exh. 19 (Joshipura Direct) at 23.

[5] Exh. 17 (McCoy Direct), MAE Report at 11, 14.

[6] *See id.* at 4, 6-7, 9, 13; Exh. 48 (Berkin Rebuttal) at 22.

The estimated total wetland impacts of the I-66 alternatives are fairly similar, based on Table 4-1 of the Environmental Routing Study and the Company's rebuttal testimony.[7] Although the I-66 Overhead would have more ability to span over wetlands compared to the I-66 Hybrid, both would require the clearing of forested wetlands,[8] which would be converted to scrub shrub habitat.[9]

Portions of the I-66 alternative routes are adjacent to densely populated residential areas.[10] However, with the I-66 Overhead, approximately 286 residences and 13 commercial properties would have either a direct view or abut the towers and conductors of the I-66 Overhead along I-66.[11] Moreover, due to the height of the towers (an average of 112-120 feet along most of the route), their visual impacts would extend further than just to those adjacent properties.[12] The I-66 Overhead would also be visible to the Town of Haymarket, which has

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[7] The Company's estimates of wetland impacts are based on a desktop study. To date, no field delineation of wetlands has been performed by the Company; the estimates in the Company's Application only represent potential wetlands. *See* Tr. at 633-5. The Company initially estimated total wetland impact by the I-66 Hybrid at 5.1 acres, versus 5.9 acres for the I-66 Overhead. *See* Exh. 3 (Application), Appendix – Environmental Routing Study at 62 (Table 4-1). However, the Company revealed in its rebuttal testimony, filed June 9, 2016, that it had omitted from its Environmental Routing Study an estimated 0.8 acres of wetland impacts at the proposed site of the transition station for the I-66 Hybrid. *See* Exh. 48 (Berkin Rebuttal) at 4-5. Again, the estimated addition was based on a map review and not a field delineation. Tr. at 635.

[8] *See, e.g.* Exh. 3 (Application), Appendix at 45; Environmental Routing Study at 62 (Table 4-1); Exh. 17 (McCoy Direct), MAE Report at 10; Tr. at 190, 631-2.

[9] *See, e.g.* Exh. 3 (Application), Appendix - Wetland Probability Study at 9; Exh. 17 (McCoy Direct), MAE Report at 14.

[10] *See, e.g.* Exh. 3 (Application), Environmental Routing Study at 61 (Table 4-1); Exh. 17 (McCoy Direct), MAE Report at 13.

[11] Exh. 17 (McCoy Direct), MAE report at 4; Company Response to Staff 4-41, attached to MAE report in Appendix V.

[12] Exh. 3 (Application), Appendix at 40-42; Exh. 17 (McCoy Direct), MAE Report at 4.

declared itself to be a Historic District, and which has made an effort to maintain its historic character through architectural controls.[13]

Table 4-1 of the Environmental Routing Study shows a higher number of residences within 100-200 feet of the I-66 Hybrid,[14] but visual impacts to those residences would be mitigated by putting the line underground.[15] Accordingly, while actual construction of the I-66 Hybrid would be disruptive, once construction is complete, it would not have the same long term visual impact as the I-66 Overhead.[16]

Company witness Berkin stated in his pre-filed rebuttal testimony that, given the fact that the I-66 Hybrid would be buried when near residences, it "would be considered a negligible visual impact,"[17] but not devoid of visual impacts, as it "would require permanent clearing of shrub and forestlands, the placement of manholes every 2,000 feet, the development of permanent access roads to access the manholes, and the construction of a switching station that would encompass 5 to 7 acres at the intersection of U.S. Route 29 and I-66."[18] As stated previously, however, both I-66 alternatives would require the permanent clearing of "shrub and forestlands," which would be converted to scrub shrub habitat or, in the case of the switching station, may require the Company to purchase or establish wetlands elsewhere.[19] Furthermore,

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[13] Exh. 17 (McCoy Direct), MAE Report at 4, 11.

[14] Exh. 3 (Application), Environmental Routing Study at 61 (Table 4-1).

[15] Exh. 17 (McCoy Direct), MAE Report at 7.

[16] *Id.* at 7, 9, 13.

[17] Exh. 48 (Berkin Rebuttal) at 22.

[18] *Id.* at 19.

[19] Tr. at 638-9. This assumes that there are wetlands in the area contemplated for the switching station, but that has not been definitively established.

the visibility of the manholes would be significantly less than that of 112-foot towers and conductors, as one would have to be standing almost on top of the manholes or directly adjacent to the corridor to see them.[20] Moreover, the Company would also be required to construct and maintain access roads within the right of way of overhead transmission lines.[21]

A significant number of public witnesses and comments filed with the Commission expressed concern regarding the potential loss of property values as a result of the I-66 Overhead. While such impacts are uncertain, any potential loss in home value would be avoided or reduced with the I-66 Hybrid.[22]

Lastly, Staff notes that visual impacts to residences and commercial properties in the area are also a significant factor in the Company's routing determination, as evidenced by Company witness Berkin's testimony that the Railroad Alternative would have been his preferred route if Prince William County's open space easement was not an issue, as that route "would minimize that visual impact on homeowners that were immediately adjacent to the route."[23] Mr. Berkin testified that the fact that there are no residences within 200 feet of the edge of the right-of-way of the Railroad Alternative would offset the greater environmental impacts from that route.[24]

Need for the Project

The Application requested issuance of a CPCN pursuant to Code §§ 56-46.1 and 56-265.2. Certificates sought under these Code provisions generally are for construction projects necessary and convenient to the public at large, but such is not the case here. The general public

[20] Tr. at 638.

[21] *See, e.g.* Exh. 3 (Application), Appendix at 45.

[22] Exh. 17 (McCoy Direct), MAE Report at 13.

[23] Tr. at 601.

[24] Tr. at 619-21.

does not require the issuance of the sought for certificate.[25] Indeed, the general public largely opposes the certificate's issuance.[26] Nevertheless, because DVP has an obligation to "furnish reasonably adequate service and facilities at reasonable and just rates to any person, firm or corporation along its lines" that requests such service,[27] and because here that service can only adequately be provided by the construction of the Project, including a new 230 kV transmission line, the Commission should grant the CPCN.

Further, because of the quantum of service requested by the Customer and the size and nature of the facilities necessary to provide such "reasonably adequate service" to the Customer, service cannot be supplied without the issuance of a CPCN. The Project is, in essence, a normal service extension that, due to the size of the facilities necessary to serve, requires issuance of a CPCN before it can be built out to the Customer's premises.[28]

Further still, because the Company has adopted transmission planning criteria, and had these criteria approved by the Federal Energy Regulatory Commission ("FERC"), every such service request similar in magnitude to that requested by the Customer here will result in the construction of new transmission facilities.[29] Accordingly, the Commission may wish to give consideration to applying provisions of the Company's Line Extension policy, or conditioning

[25] Approximately 97% of the power flowing through the Project will be consumed by the Customer. (Tr. at 234).

[26] See, generally, public witness comments from local hearings and the public comments filed herein.

[27] Code § 56-234 A.

[28] Indeed, Dominion Virginia Power itself characterized the Project in its recent Integrated Resource Plan filing (Case No. PUE-2016-00049) as the "230 kV Line Extension to new Haymarket Substation." (Exh. 26, page 3). The Company in this exhibit similarly identified two other projects also pending before the Commission as "Line Extension(s)"— the Yardley Ridge project and the Poland Road project, Case Nos. PUE-2015-00054 and PUE-2015-00053, respectively. Each of these three transmission projects will provide service largely to the Customer.

[29] Tr. at 114.

the issuance of the CPCN in other ways, to ameliorate the impact on the general public of such projects that are necessitated only by an individual customer's new or additional *projected* loads. The record developed herein reveals that the Company has already constructed at least two transmission projects to extend service to new data center loads, similar to that requested by the Customer in this application, which have not developed as expected or at all.[30] Thus, in viewing these "line extensions" to large contingent loads, the Commission may wish to require the customer requiring such project to put some of its own skin into the game. Otherwise, the general public, already burdened by the environmental and aesthetic impacts of otherwise unneeded transmission projects, is not also burdened with 100% of the otherwise unnecessary costs.

Line Extension Policy

One way to ensure that prospective developers of large block loads who request service that can only be provided through development and construction of new transmission products bear the costs of such construction would be the application of DVP's Line Extension policy, although as the policy is currently worded, any strict application of the policy to the Project would not seem to result in a reasonably fair outcome. As reflected in the record, if the Commission were to determine that the I-66 Overhead should be built, then the Customer would acquire no additional cost responsibility for the Project, while garnering almost the entirety of its benefits. Alternatively, should the Commission issue a certificate for the I-66 Hybrid project, then the Customer could be responsible for paying the considerable incremental costs of the underground part of the Project, while garnering very little of the environmental and esthetic benefits of such construction, which would flow almost entirely to the general public in the area.

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[30] Exh. 23 C.

The evolution of the Company's Line Extension policy and its own understanding of that policy received considerable attention during this case largely because Dominion Virginia Power proposed, as an alternative to its preferred overhead construction, the I-66 Hybrid alternative, with just over half the line being installed underground. When applied to standard distribution installations,[31] the Line Extension policy imposes a Transitional Cost on a customer that requests, or is required, to take service from undergrounded installations instead of an overhead installation preferred by the Company. This cost is defined in the Line Extension policy to be the "amount by which the estimated cost of providing underground facilities exceeds the estimated cost of providing comparable overhead facilities[.]"[32] If applied in like manner here to the customer requiring installation of new and, in the current proceeding, partially undergrounded facilities, the Company has estimated that the Transitional Cost could be as much as $115 million.[33]

The first provision of the Line Extension policy is a definition of the term "Adequate" and states that facilities "are considered inadequate when their capacity is not sufficient to serve the load at the existing service characteristics." Both the Company and Staff agree that the load cannot be adequately served using distribution facilities alone; hence by definition the only

[31] Staff agrees that the Line Extension policy applies primarily to the extension of distribution grade facilities.

[32] The Line Extension policy, Section XXII of the Company's Terms and Conditions, can be found as Attachment 11 to Exh. 19, the testimony of Staff witness Neil Joshipura.

[33] Exh. 3 (Application) at 16-18 of Appendix. Interestingly, the Company submitted rebuttal testimony from former employee Donald E. Koonce apparently to suggest that the actual costs to construct the I-66 Hybrid might be much greater than the Company had initially estimated. (Exh. 46 (Koonce Rebuttal) at 3-7). In any event, the Transitional Cost is defined as the difference between *estimated* project costs.

"adequate" facility to extend service to Customer is a new transmission line and associated substation facilities.[34]

Two other defined terms also appear to envision (or at least do not eliminate) application of the Line Extension policy to transmission grade installations. "Approach Lines" are defined as all facilities "installed from an existing source to the property of the customer or developer requesting Electric Delivery Service." In this proceeding, the existing source is the Gainesville-Loudon #124 line. The new 230 kV line from there into the new Haymarket substation, the new substation itself and the distributions circuits running from the substation to Customer's meters would appear to comprise the "Approach Lines" here. Further, "Branch Feeders" are facilities "installed on the property of the Customer....requesting Electric Delivery Service."[35] A later section of the policy specifically contemplates that Branch Feeder facilities may have "a rated voltage greater than 50 kV."[36] Lines having a voltage greater than 50 kV are transmission facilities.

The record developed at the hearing depicts ambiguity over the application of the Line Extension policy to transmission facilities. In the Poland Road project case referenced above, the Company responded to a Staff interrogatory in November 2015 that the Line Extension policy would apply to that project, but the expected revenues from that project would cover any potential costs.[37]

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[34] Tr. at 228-29. (Ms. Link—"...you would say from the Staff's perspective that the Company has shown need for a transmission solution?" Mr. Joshipura—"Correct").

[35] Note that in both definitions "Electric Delivery Service" relates not to what the Company is offering to provide, but to what the customer is requesting. The customer is presumably indifferent as to the type of facilities needed by the Company to supply it with electric service.

[36] Section XXII D.6.a. of the Company's Terms and Conditions.

[37] Attachment 15 to Exh. 19 (Joshipura Direct).

Specifically, in responding to Staff's interrogatory asking the extent to which the customer would contribute to the cost of the Poland Road transmission line, the Company stated:

> In accordance with Section XXII Paragraph D of the Company's filed Term and Conditions, the customer will pay the amount by which the estimated cost of extending overhead facilities required to serve the customer exceeds four times the continuing annual non-fuel revenue that can reasonably be expected from the extension. The overhead facilities would include all overhead transmission line, substation and overhead distribution circuit costs.[38]
>
> ....
>
> ....in this case the Customer has not requested underground installation of the Project. If applicable, the Customer's contribution for an underground installation would be provided in accordance with Section XXII of the Company's filed Terms and Conditions.

On March 10, 2016, Staff posed a similar inquiry to the Company in the instant proceeding.[39] The response was quite different. As shown in Attachment 12 to Mr. Joshipura's testimony, the Company offered an entirely new reading of its Terms and Conditions:

> The Haymarket Transmission Facilities will be constructed as a "Supplemental Project pursuant to Schedule 6 of the PJM Operating Agreement (which is a component of the PJM Tariff). The Haymarket Transmission Facilities have been designated as Project S0918 by PJM, and they will be integrated into PJM's transmission system.
>
> If the Haymarket Transmission Facilities are constructed overhead — consistent with the Company's proposal — then the Company will handle them consistent with other routine Supplemental Projects that are integrated into PJM's transmission system.... Assessing transmission line extension charges to the Customer under the Company's Virginia-jurisdictional tariff as to the Haymarket Transmission Facilities is not appropriate because

[38] In the Poland Road project case, no underground or hybrid alternative was proposed.

[39] Exh. 25, Item (14): "To what extent is the customer contributing toward the cost of the proposed transmission line, substation, and distribution circuits."

> the cost for those facilities is broadly recovered in charges for NITS.[40]
>
> . . . .
>
> If all or a portion of the Haymarket Transmission Facilities are ordered by the Commission to be constructed underground, then, absent any order or ruling to the contrary by FERC, the Company will use the same cost recovery method under the PJM Tariff as described … above without Customer cost responsibility for these facilities.

In short, in this response the Company now vaguely asserts the Commission lacks jurisdiction to apply the retail Terms and Conditions in any respect, because the Project costs will be charged to the Company, at the wholesale level, by PJM. Staff disagrees with this argument of law. If the Company's Terms and Conditions require the Customer to pay a contribution in aid of construction of the Project, that amount will be a deduction from the cost of the Project that will be entered into the Company's formula that establishes the rate for the NITS service it receives from PJM.[41] Federal law essentially precludes a state commission from "trapping" any prudently incurred wholesale costs incurred by a utility,[42] or re-allocating any costs found by FERC to be reasonable in a way that relieves retail customers from paying those costs through retail rates.[43]

In this case, as explained by Company witness Payne, the federally approved rate is that charged to DOM-LSE, the "load-serving entity," for the NITS service it receives from PJM and

[40] "NITS" stands for network integration transmission service, which PJM provides to Dominion Virginia Power due to the Company's status as a member of PJM.

[41] See, for instance, the Commission's Final Order in Case No. PUE-2016-00072, which approved the Company's acquisition of transmission facilities contributed to it from Panda Stonewall LLC at no cost. A copy of that order is attached.

[42] *Nantahala Power & Light v. Thornburg*, 476 U.S. 953, 90 L.Ed. 2d 943 (1986).

[43] *Mississippi Power & Light v. Mississippi ex rel. Moore*, 487 U.S. 354, 101 L.Ed. 2d 322 (1988).

"the costs of the Haymarket Transmission Facilities are to be recovered from NITS customers in the Dominion Zone of PJM ('Dom Zone')..."[44] DOM-LSE, however, is only one of several NITS customers in the Dom Zone. It is the largest customer and so is responsible for about 85% of the PJM bill for such service. Under the precedents cited in the margin, the Commission may not conclude that this 85% figure should be reduced to 75%, for instance, and reallocate the difference to other Dom Zone customers, such as those in North Carolina or the electric cooperatives to which Dominion provides transmission service. Nor, by way of further example, may the Commission alter the return on equity allowed by FERC in the formula rate to lower DOM-LSE's total wholesale bill. Either action would trap a federally approved cost.

But federal law is not offended when a state commission limits the total amount of recoverable cost a utility incurs in the first instance by, for instance, permitting the construction of a facility only of a certain size or a certain length, consistent with the need that state commission finds must be met. FERC has little to no siting or permitting authority of its own and certainly none that comes into play in this proceeding.[45] FERC cannot grant a certificate to build this line, nor impose conditions on the manner of construction found reasonable by the Commission. Dominion Virginia Power may as well argue that, should the Commission grant its request to build a 5-mile line in this proceeding, the Company can unilaterally decide to extend that line another 15 or 20 miles and simply recoup all the additional costs through its federal tariffs. Requiring a customer contribution, if applicable under either the retail tariffs or as a

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[44] Exh. 47 (Payne Rebuttal), at 2-3.

[45] Nor, of course, does FERC have <u>any</u> authority over the setting of retail rates. Thus, FERC cannot require a contribution or deposit from a retail customer. Staff agrees that FERC may, as it has in current Docket No. EL10-49 preclude certain costs from being allocated to certain *wholesale* NITS customers. In that case, FERC has ruled that the incremental costs of installing some transmission projects, including the Garrisonville line, underground would not be passed to North Carolina wholesale customers in the Dom Zone. (Tr. at 574. FERC found "it is not just and reasonable to allocate costs to the undergrounding to wholesale transmission customers beyond those NITS customers with Virginia loads in the Dominion Zone").

condition of the CPCN, simply limits the costs the Company incurs, just as granting a certificate to construct a 5 mile, rather than a 15 or 20 mile, line limits the costs the Company incurs.

So long as the Company recoups its legitimately incurred wholesale costs,[46] federal law is indifferent as to how a state commission allocates that cost recovery responsibility among retail customers in those rates. In 2008, for instance, Dominion Virginia Power's recovery of costs it incurred in attempting to start up the Alliance RTO and then in ultimately joining PJM was challenged at FERC, which ruled that "Dominion's costs, as filed, are properly recoverable wholesale costs. *We leave for the Virginia Commission,* or the State of Virginia, *the issue of whether, or under what circumstances, these costs may be recovered in retail rates* by the Dominion load serving entity."[47] Thus, FERC explicitly recognizes and declares that retail recovery of wholesale costs is entirely a matter of State jurisdiction.

On April 4, 2016, nearly 6 months after stating that its Line Extension policy would be applied in the Poland Road project case, DVP filed a "corrected" response[48] to Staff's interrogatory in that case consistent with the new position articulated in response to the Staff's March 10, 2016, inquiry here.[49] The Line Extension policy is, the Company now contends, outside the Commission's authority to apply to the transmission line components of the project under development in that proceeding. The Examiner and the Commission should reject this

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[46] *Kentucky West Virginia Gas Co. v. Pennsylvania Public Service Commission*, 862 F.2d 69 (..."so long as the utility is able to recover completely these unavoidable FERC-approved costs—they need not be immediately passed through....If a state wants to use such an adjustment mechanism the preemptive force of FERC jurisdiction does not prevent it[.]"

[47] *Virginia Electric and Power Company*, Docket No. ER08-1540, 125 F.E.R.C. ¶61,391, 62845. (Emphasis added).

[48] Exh. 24C. Or, as counsel for the Company put it: "Fair to say the Company might have been confused for a little bit there?" (Tr. at 273).

[49] As noted earlier, on April 29, the Company filed its Integrated Resource Planning case in which it continues to refer to the Project as a Line Extension. Maybe the confusion continues.

jurisdictional argument. The Commission may decide the Line Extension policy is inapplicable here, but it should not find that federal law ties its hands on this point. The Commission may limit the costs incurred by a utility in the performance of its public duties[50] and a cost that is not incurred at all can never be trapped between jurisdictions.

The foregoing discussion illustrates some of the ambiguities in the Line Extension policy and its application to these cases where new transmission facilities are neither needed by, nor convenient to, the public but are instead needed for the utility to be able to reliably meet a large customer's block load request. The following discussion highlights additional grounds for the Commission to consider requiring block loads that require new transmission facilities for service extensions to put up some part of facility costs, as a condition to the issuance of any CPCN needed to construct facilities that extend service to such customer.

On February 7, 2011, the Company filed an application to build a 2.3-mile long, 230 kV transmission line from a location in the City of Manassas into Prince William County to a new substation to be built there on land "owned by Unicorn Interests, LLC." That project "would provide service to Unicorn's proposed data center campus[.]" The application was docketed as Case No. PUE-2011-00011, and the Commission entered its Final Order in the case on December 21, 2011.[51] The Final Order recites that the Company represented that the project was "needed to meet Unicorn's requirements for service to its data center campus by July 2013 and to maintain reliable service for the overall growth in the area. The estimated cost to construct the

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[50] The Code provides the Commission with broad authority to investigate utility construction and capital projects and "to approve, disapprove, or alter the utility's program in a manner consistent with the best interest of the citizens of the Commonwealth." Code §56-234.3.

[51] *Application of Virginia Electric and Power Company d/b/a Dominion Virginia Power, For approval and certification of electric transmission facilities in Prince William County and the City of Manassas: Cannon Branch-Cloverhill 230 kV Transmission Line and Cloverhill Substation*, Case No. PUE-2011-00011, 2011 SCC Ann. Rept. 428, Final Order (Dec. 21, 2011).

[p]roject is approximately $42 million[.]"[52] During the instant hearing, this case was referred to as the Cannon Branch line.

One week after the entry of the Final Order referred to above, the Company filed another application docketed as Case No. PUE-2011-00129, in which DVP sought approval to build "two new overhead 230 kV double circuit transmission lines extending approximately 1.5 miles" to a new Waxpool substation " to be constructed on land in Loudon County owned by Intergate.Ashburn I, LLC."[53] The project was designed to provide service to Intergate's planned data center campus.[54] The Final Order in this case states that the estimated cost of this project, referred to during the hearing herein as the Waxpool case was $48.9 million.

Both these projects were constructed.[55] Yet, as of November 2015, as reflected in Confidential Exhibit 23C, the loads anticipated from the Unicorn or Intergate's "planned data center campuses," for which the projects were designed and built, had not been realized.[56]

With regard to the current Haymarket project application, the Company is confident that the unidentified in the record Customer will follow through and provide the load requested in its

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[52] *Id.* at 429.

[53] At numerous points during the hearing, the Company sought to emphasize that it would build the Haymarket substation on land it would eventually acquire. That land is presently owned by the Customer. As the Waxpool and Cannon Branch cases illustrate, there is no particular reason that the Customer could not own the land on which the substation that provides its service resides. The Company's acquisition of the substation land in this case, but not in the Waxpool or Cannon Branch cases, may reasonably be inferred to be another attempt to avoid application of the Line Extension policy, i.e., circumventing the definitions of Approach Line and Branch Feeder discussed above by having these facilities terminate not on the Customer's property, but on DVP owned property. The record seems to indicate, however, that transmission lines will be built onto or over Customer's property, whether it conveys a parcel for the substation to the Company or not, in that Customer will continue to own property surrounding the substation.

[54] *Application of Virginia Electric and Power Company d/b/a Dominion Virginia Power, For approval and certification of electric facilities: Waxpool 230 kV Double Circuit Transmission Line, Brambleton – BECO 230 kV Transmission Line and 230-34.5 kV Waxpool Substation*, Case No. PUE-2011-00129, 2012 SCC Ann. Rept. 353, Final Order (Dec. 28, 2012). A third 230 kV line was also part of this project.

[55] *See*, discussion at Tr. 296-298 and 314. In neither of those cases was an underground alternative proposed.

[56] On rebuttal, the Company indicated that one facility was under development by another party. *See* Tr. 489-90.

Load Letter as scheduled. The Company was likewise confident that the anticipated loads of Unicorn and Intergate would develop. In neither case did the Company receive any sort of upfront payment from the data center campus customer.[57] The entire $90 million in project costs, as well as any resulting environmental or viewshed degradation, for these transmission lines has been borne by the general body of ratepayers. If, as the record in this proceeding seems to indicate, the data center campuses do get built out, then the primary benefits of the Cannon Branch and Waxpool lines will flow to those customers at no incremental cost to them.

In Staff's view, this proceeding presents the perfect opportunity for the Commission to give consideration to whether it is just and reasonable to permit the continuance of the Company's current Line Extension policy. As developed herein, that policy requires the general public to bear almost all environmental and construction costs of projects that are otherwise unneeded to maintain adequate service to them.

The intended beneficiaries of these expensive projects, i.e., those requesting service to new block loads, cause these costs to be incurred by the Company, but bear little to none of those costs. If such customers walk away from their commitment letters, as appears to have happened in the Cannon Branch and Waxpool cases, they bear zero costs.[58] If the load does develop, as the Company feels confident will happen at the Haymarket campus, the customer receives an overwhelmingly disproportionate amount of the benefits of the Project, while the general public bears an overwhelmingly disproportionate amount of the costs.

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[57] Tr. at 314. Because only overhead service was proposed for these earlier projects, the Line Extension policy would not have required such contributions or deposits by the relevant customer, since anticipated revenues from the data centers would have covered the customer's liability.

[58] The record is replete with references to the competition between localities, states and even nations for acquiring such block loads as represented by data centers. It is not difficult at all to envision situations where load letters are submitted to a utility and such customers being granted incentives to relocate *after* construction on projects undertaken to meet the promised load has commenced.

The Commission has a number of useful options to address this misallocation of costs. As discussed above, a strict application of the current Line Extension policy does not seem to produce any entirely fair result. Thus, the Commission could amend the Line Extension policy to (i) eliminate any ambiguity regarding its application to line extensions requiring new transmission facilities, and (ii) establish a fairer allocation mechanism of the costs of such projects, including the Haymarket project, whether built overhead or underground.

The Commission could issue the CPCN for either the I-66 Overhead or the I-66 Hybrid route on the condition that the Customer step forward and agree to contribute in an appropriate manner to the construction of the Project that it alone at this time needs built. The Commission could even make such a contribution refundable over time (as has at times been the practice with the extension of natural gas facilities) as other, non-customer load dependent on the facilities to be built develops. Either of these options would establish a contribution in aid of construction on the part of the particular customer and reduce costs of the project allocable to other ratepayers.

Finally, because as even FERC acknowledges "*the issue of whether, or under what circumstances, these costs may be recovered in retail rates*" is left to the state commissions, the Commission could establish a new rate category as part of the Company's Rider T, in which DVP recovers from its retail customers the wholesale costs of the NITS service it receives from PJM. The Commission could assign some portion of capital cost recovery or the on-going revenue requirements for the Project to the Customer in a marginally higher Rider T rate to be paid by Customer and thereby recover from Customer, throughout the life of the Project, an appropriate amount of the costs of the Project which Customer's load alone has caused to be constructed.

Conclusion

Staff recommends that the Examiner find that the Project is needed for the reasons set out above; that the Project should be constructed along the I-66 route; that the Commission should weigh the costs and benefits of the I-66 Overhead route against those of the I-66 Hybrid route and select the manner of construction it finds best meets the public interest; that the Commission give consideration to the appropriateness of the Company's current Line Extension policy as it applies to projects of this nature and whether such policy should be amended; and, lastly, that the Commission also give consideration to assignment of an appropriate amount of the costs of the Project to the Customer to be recovered either as i) an up-front contribution in aid of construction under the Line Extension policy as it currently exists or as amended or ii) over the life of the Project through appropriate cost assignment to the Customer's Rider T rates.

Respectfully submitted,

STAFF OF THE STATE CORPORATION COMMISSION

By ______________________
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Dated: August 5, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of August, 2016, a true copy of the foregoing "Brief of The Commission Staff" was mailed electronically and/or first class, postage prepaid, to all persons on the official Service List attached in this matter.

Attachment

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EXHIBIT . COMMONWEALTH OF VIRGINIA **160750015**

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 29, 2016

PETITION OF

VIRGINIA ELECTRIC AND POWER COMPANY CASE NO. PUE-2016-00072

For authority to transfer utility assets
pursuant to Chapter 5 of Title 56 of the
Code of Virginia and for expedited consideration

ORDER GRANTING APPROVAL

On June 27, 2016, Virginia Electric and Power Company ("DVP" or "Petitioner") filed a petition ("Petition") with the State Corporation Commission ("Commission") pursuant to Chapter 5 of Title 56 of the Code of Virginia ("Code")[1] requesting authority for a transfer from Panda Stonewall LLC ("Panda Stonewall") to DVP of certain interconnection facilities ("Interconnection Facilities")[2] associated with Panda Stonewall's generating facility[3] ("Panda Plant") located in Loudoun County, Virginia ("Transfer"). DVP asked for expedited consideration of the Transfer in order for Panda Stonewall to commence energized testing of the Panda Plant by the end of July 2016.

Pursuant to an Interconnection Construction Service Agreement[4] between DVP, Panda Stonewall, and PJM Interconnection, L.C.C., Panda Stonewall financed the Interconnection Facilities construction costs of $7,231,536 and will transfer the Interconnection Facilities without

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[1] Va. Code § 56-88 *et seq.*

[2] An itemized list of the Interconnection Facilities being transferred is attached as Attachment E to the Petition.

[3] *Application of Green Energy Partners/Stonewall LLC, For a certificate of public convenience and necessity for a 750 MW electric generating facility in Loudoun County*, Case No. PUE-2013-00104, 2014 S.C.C. Ann. Rept. 309, Final Order (May 13, 2014).

[4] Attachment C to the Petition.

consideration to DVP, which will operate the facilities on Panda Stonewall's behalf.[5] DVP will record the Interconnection Facilities as "contributed plant," with a "contribution in aid of construction" credit entry to offset the plant costs on its books.

The Petition represents that DVP ratepayers in Virginia will not be adversely affected by the Transfer. DVP states that any rate impacts will be reflected in its Code § 56-585.1 A 4 rate adjustment clause ("A 4 RAC") filings. Since DVP will book Interconnection Facilities as "contributed plant," the only costs that will initially flow through the A 4 RAC will be operating and maintenance expenses and property taxes. The Petition represents that any future capital costs associated with replacements or upgrades to the Interconnection Facilities will be booked to "plant," included in rate base, impact the Petitioner's federally approved wholesale Formula Rate, and flow through the A 4 RAC.

NOW THE COMMISSION, upon consideration of the Petition and the Petitioner's response to Staff's draft action brief, and having been advised by its Staff, is of the opinion and finds that the proposed Transfer will not impair or jeopardize the provision of adequate service to the public at just and reasonable rates and, therefore, should be approved subject to certain requirements listed in the Appendix attached hereto, which are necessary to protect the public interest.

Accordingly, IT IS ORDERED THAT:

(1) The Transfer as described herein is approved, subject to the requirements contained in the Appendix attached hereto.

(2) This case is hereby dismissed.

[5] Attachment D to the Petition.

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AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Charlotte P. McAfee, Esquire, Dominion Resources Services, Inc., 120 Tredegar Street, Riverside 2, Richmond, Virginia 23219 and Elaine S. Ryan, Esquire, McGuireWoods LLP, Gateway Plaza, 800 East Canal Street, Richmond, Virginia 23219. A copy hereof also shall be delivered to the Commission's Office of General Counsel and Divisions of Utility Accounting and Finance, Public Service Taxation, and Energy Regulation.

A True Copy
Teste: Joel H. Peck
Clerk of the
State Corporation Commission

APPENDIX

1) The Commission's approval shall have no ratemaking implications. In particular, it shall not guarantee the recovery of any costs directly or indirectly related to the Transfer.

2) Within sixty (60) days of completing the Transfer, DVP shall file a Report of Action ("Report") with the Commission. Included in the Report shall be: (1) the effective date of the Transfer; (2) an executed copy of the Bill of Transfer and Assignment; (3) the actual accounting entries on DVP's books to record the Transfer; and (4) a reconciliation schedule to reconcile any differences between the accounting entries provided in the Chapter 5 application and the accounting entries actually made at closing to record the Transfer. Such accounting entries shall be in accordance with the Uniform System of Accounts ("USOA") for electric utilities.

3) DVP shall be directed to obtain all records, including any source documentation supporting the original cost of the Interconnection Facilities, at closing, and henceforth shall be directed to maintain them in accordance with the USOA.