

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
Richmond, Virginia

JOINT APPLICATION OF)
)
VIRGINIA ELECTRIC AND POWER COMPANY)
D/B/A DOMINION VIRGINIA POWER,)
and)
TRANS-ALLEGHENY INTERSTATE LINE)
COMPANY)
)
For certificates of public convenience)
and necessity to construct facilities:)
500 kV Transmission Line from Transmission)
Line # 580 to Loudoun Substation)

Case No. PUE-2007-00031

**COMMENTS IN OPPOSITION TO
THE HEARING EXAMINER'S REPORT BY RESPONDENT, BOARD OF
SUPERVISORS OF CULPEPER COUNTY, VIRGINIA**

Respondent, Culpeper County, Virginia, Board of Supervisors ("Culpeper") hereby files, by counsel, its comments in opposition to the Report of Alexander F. Skirpan, Jr., Hearing Examiner, dated July 28, 2008.

Although Culpeper actively participated in the evidentiary hearing only on the limited issue of routing, Culpeper, since it filed its notice of participation, has always objected to the Application in this case on both the grounds of (1) need, and (2) routing. It is specifically the position of Culpeper that the Hearing Examiner erred in finding that Applicant Dominion Virginia Power, carried its burden of proof in establishing (1) the "need" for the proposed 500kV Transmission line, and (2) that the proposed routing

along the Southern Route, through Culpeper County was preferable to the Alternate Route, along United States Route I-66.

In support of these Comments, Culpeper incorporates by reference, attaches, and adopts (1) Objection and Motion, (2) Brief in Support of its Objection and Motion, and (3) Declaration of John D. Maddox (less certificate of service pages). These documents objected and moved to strike, on "Due Process" grounds under both the United States Virginia Constitutions, the appearance and testimony of VDOT witness Emmett R. Heltzel, and the Exhibits introduced through him, especially Exhibit 144, the belated 13 page memorandum of VDOT Commissioner, David S. Eker, P.E., opposing the Alternate Route.

At the Hearing, Culpeper narrowed its Motion and Objections solely to Exhibit 144, and the testimony of VDOT witness Mr. Emmett R. Heltzel.

The County also incorporates herein by reference as though fully rewritten herein the arguments and comments and objections both individually and collectively, as appearing in opposition to the Application in this case, filed by Respondents

1. Fauquier County, Virginia
2. Virginia's Commitment
3. Piedmont Environmental Council

and on both the issues of (1) need and (2) routing as filed by Respondent Powerline Landowners' Alliance.

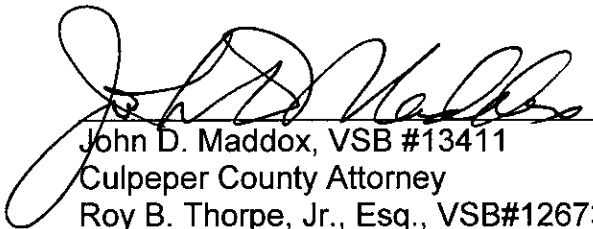
CONCLUSION

For the foregoing reasons, the Commission should not accept and adopt the recommendations of the Hearing Examiner. The Commission should find that the

Applicant, Dominion Virginia Power, has failed to carry its burden of proof on the issues of (1) need and (2) routing and should deny the Application. Should the Commission find that Applicant has established need, the Commission should find that the Alternative Route along United States Route I-66 is the preferable route for the transmission line.

Respectfully Submitted,

Board of Supervisors of
Culpeper County, Virginia
A body corporate and politic
By Counsel



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**OBJECTION, AND MOTION OF RESPONDENT CULPEPER COUNTY TO STRIKE:
(1) THE TESTIMONY OF "PUBLIC WITNESS – VDOT" (BELIEVED TO BE EMMETT
R. HELTZEL) TAKEN ON THURSDAY, MARCH 13, 2008, AND (2) ANY EXHIBITS
INTRODUCED INTO EVIDENCE THROUGH THAT WITNESS**


After 6:30 p.m. on Thursday, March 13, 2008, Counsel for Respondent, Culpeper County, Virginia ("Culpeper"), was notified that during that day a VDOT witness testified and offered exhibits into evidence. As shown by the attached e-mail to Wayne Smith, SCC Staff counsel, at approximately 9:13 a.m., counsel for Culpeper requested the identity of the witness and a copy of the exhibits. Counsel for Culpeper believes that because of Mr. Smith's obligations to participate in these proceedings, he has been unable to respond to these requests before he called me at approximately 4:00 p.m., Friday, March 14, 2008. Counsel for Culpeper understands that this witness is not sponsored by the SCC Staff.

In summary, (1) Culpeper believes that it was not given adequate notice of the time of appearance of this particular witness and certain exhibits, not previously filed, and (2) that the appearance of this particular witness, is a conflict of agency proceedings, both of which deficiencies are arbitrary and capricious, deny Culpeper due process under the Virginia and federal constitutions, and has unduly prejudiced Culpeper in its ability to promote and protect its position in these proceedings.

A brief in support of this motion will be filed on Monday, March 17, 2008. This objection is made and this motion is filed as promptly as possible in the circumstances.

Wherefore, Respondent, Culpeper County objects to and respectfully moves the Hearing Examiner to duly consider this motion and to strike the testimony of the "Public Witness – VDOT" and any exhibits introduced through this witness.

Board of Supervisors of
Culpeper County, Virginia
A body corporate and politic
By Counsel



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**BRIEF IN SUPPORT OF
OBJECTION, AND MOTION OF RESPONDENT CULPEPER COUNTY TO STRIKE:
(1) THE TESTIMONY OF "PUBLIC WITNESS – VDOT" (BELIEVED TO BE EMMETT
R. HELTZEL) TAKEN ON THURSDAY, MARCH 13, 2008, AND (2) ANY EXHIBITS
INTRODUCED INTO EVIDENCE THROUGH THAT WITNESS**

By Notice of Participation of Respondent Board of Supervisors of Culpeper County, Virginia, served July 26, 2007 on behalf of Culpeper County, Virginia ("Culpeper"), by its County Attorney John D. Maddox, the County objected to "need" and the "proposed route" through Culpeper County. Culpeper filed no witness testimony or exhibits, but, through its counsel, did monitor proceedings, particularly the schedule of witnesses being negotiated by the parties. ¹

¹ The last Revised list of witness order was an e-mail dated February 21, 2008, attached as Exhibit A to the attached Declaration of John D. Maddox.

On February 20, 2008, Mr. Maddox served, on behalf of Culpeper, a Notice of Waiver of Oral Opening Statement, incorporated Culpeper's written Response, and expressly preserved the right to otherwise participate in the hearing proceedings.

On March 11, 2008, Mr. Maddox was at the hearing for the start of the Routing Phase. The first listed witness, "Public witness-VDOT" did not appear. Dominion witnesses John Bailey and Cyril Welter were cross-examined by Mr. Maddox.

By the end of that hearing day, no mention was made or written notice provided to Mr. Maddox that the "Public witness-VDOT" would testify on Thursday, March 13, 2008, the identity of that witness, or that witness' exhibits.²

At approximately 6:30 p.m. on Thursday, March 13, 2008, Mr. Maddox received an e-mail stating that a VDOT witness (misidentified) had testified and that his testimony and exhibits were harmful to Culpeper's case. Had Mr. Maddox known the identity of the witness and his exhibits, Mr. Maddox would have been present to cross-examine the witness and to object, as appropriate to the testimony and exhibits.

ARGUMENTS

A. THE TESTIMONY OF THE WITNESS AND THE EXHIBITS HE INTRODUCED WERE, AT LEAST, IN PART, INADMISSIBLE, GROSSLY PREJUDICIAL, DENIED RESPONDENT CULPEPER DUE PROCESS, AND THE ADMISSION OF THAT EVIDENCE WAS ARBITRARY AND CAPRICIOUS.

In the circumstances, the failure to adhere to the witness list, to identify the witness (Emmett R. Heltzel) and his exhibits, or to provide adequate notice to counsel for Culpeper of when the witness would appear, denied that counsel the right to cross-examine the witness, to object to testimony of the witnesses and exhibits presented,

² Other facts and circumstances relevant to this motion appear in the attached Declaration of John D. Maddox, with attached Exhibits A and B.

and to move to strike objectionable parts of that testimony and the exhibits.³ Denial of these rights violates due process under Va. Const. art. I, § 11. Burts v. Burts, 227 Va. 618, 619, 316 S.E.2d 745, 746 (1984); and, U.S. Const., Amend. XIV, § 1.

B. ADMISSION OF EXHIBIT 144 AND TESTIMONY RELATED THERETO WAS ERROR, GROSSLY PREJUDICIAL TO CULPEPER, AND DENIED CULPEPER DUE PROCESS UNDER BOTH THE VIRGINIA AND UNITED STATES CONSTITUTION AND WAS ARBITRARY AND CAPRICIOUS

In his memorandum of March 12, 2008, Exhibit 144 (attached as Exhibit C and cited herein as "Mem"), Mr. Ekern describes the VDOT regulations which may be applicable should, sometime in the future, Dominion apply for one or more permits to use rights of way controlled by VDOT. Examples of VDOT permitting regulations include 24 VAC 30-150-60 through 24 VAC 30-150-110 (attached as Exhibit D). He does not mention 24 VAC-150-490, Waiver of requirements, by the "central office" (attached as Exhibit E).

Since VDOT has promulgated regulations pursuant to which the permits or waivers required by Dominion may be denied, most likely with the participation of Mr. Ekern or his surrogate, Mr. Heltzel, these witnesses are either in the chain or assist those in the chain in adjudicating permits and waivers of regulatory requirements, and internal VDOT appeals of those decisions.

This, in fact, and in law makes them part of the administrative adjudication process within VDOT.

³ Respondent Culpeper does not object to Exhibit 145, the letter of Mr. Ekern, dated December 14, 2007. For additional reasons stated below, Culpeper does object to Exhibit 144, the thirteen page memorandum of Mr. Ekern, dated March 12, 2008, still not posted on the SCC website, and testimony related to that Exhibit. Culpeper preserves its objections and motions to strike to any other exhibits offered by this witness, and related testimony, until they are reviewed by Counsel for Culpeper.

This is especially so with regard to the potential Dominion application which has not been filed with VDOT, as evidenced by Mr. Ekern's participation to date, and as represented by (Exhibit 144) his memorandum dated March 12, 2008.

That memorandum represents a "pre-judgment" by an administrative adjudicator on an admittedly incomplete record. On page (1) he states that "no detailed engineering has been developed by the utility to determine exact pole placement, spans, and their related impacts." He relies on Dominion's Application and Appendix and the "Burns and McDonnell Study (1-10-07)." Mem. at 8. He does not cite consideration of any of the contrary evidence in this case.

Although there is no requirement that the Alternate Route be wholly within the VDOT right-of-way, he makes statements such as (1) "These random areas [on I-66], however, in general do not appear to be sufficiently contentious to effect a reasonable routing" (Mem. at 2); "The co-location of the utility within [I-66] limited right of way would have a significant negative impact on the [VDOT] ability to make improvements" (Mem. at 2); and "many of the same impacts to sensitive environmental resources currently found along the [I-66] corridor appear to persist even though public rights of way might be extensively used." (Mem. at 2). The evidence in the hearing to date, has established, at least, that there are problems which need to be addressed and mitigated along both the proposed and alternate routes. Clearly, the admitted 112 million dollar "savings" of the alternate route would help address these issues. Mr. Ekern fails to consider this fact.

The assertions by Mr. Ekern constitute "findings" by an administrative adjudicator in a matter not filed in his agency and on an admittedly incomplete record.

These "findings" are not offered in the spirit of help and cooperation, but to prejudice the Hearing Examiner in this case by speculative findings on an inadequate and non-existent VDOT record.

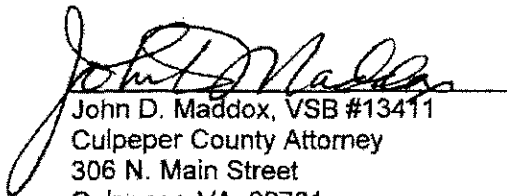
If a judge, in potential proceeding B, attempts to influence the judge in existing proceeding A, to rule in a way to eliminate proceeding B so that the judge in potential proceeding B does not have to consider the matter, that is not help. That is an attempt at improperly influencing the Hearing Examiner in this case and a denial of due process, not only to Culpeper, but to all other parties in this case. Exhibit 144 and all related testimony should be stricken from the record and disregarded by the Hearing Examiner.

CONCLUSION

Culpeper's objection to Exhibit 144 and all related testimony by Mr. Heltzel should be sustained, Exhibit 144 and all related testimony stricken from the record, and disregarded by the Hearing Examiner. Culpeper retains its right to supplement this objection and motion when its counsel obtains and reviews the other exhibits entered under Mr. Heltzel's testimony.

Respectfully submitted,

Board of Supervisors of
Culpeper County, Virginia
A body corporate and politic
By Counsel


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**DECLARATION OF JOHN D. MADDOX, CULPEPER COUNTY ATTORNEY, AND
COUNSEL FOR RESPONDENT, CULPEPER COUNTY, VIRGINIA**

I, JOHN D. MADDOX, a member of the Virginia bar, pursuant to VA. Code § 8.01-4.3 (Cum. Supp. 2007), hereby declare as follows:

1. I am County Attorney for Respondent Culpeper County, Virginia, a full-time County employee position, which I have held for more than six years. I am the only County Attorney, and have one other staff member in my office, a Legal Assistant who also serves as office manager and secretary.

2. Like the Commonwealth and many other counties in Virginia, during FY 2008, tax revenues have precipitously declined (an estimated four million dollars) from the estimated revenues when the FY 2008 budget was adopted in late FY 2007. Because two new County schools are scheduled to open in the Fall of calendar 2008 (there are presently eight County public schools) which would potentially add additional millions in

County budget costs, the County Board of Supervisors (the "County") authorized me to represent the County as a respondent in these proceedings, but did not authorize additional funds to hire outside counsel, consultants, or expert witnesses.

3. This budget crunch in the County has resulted in a hiring freeze, reduction in existing FY 2008 department budgets, and delay of major capital expenditures, such as the needed Emergency Operations Center annex building.

4. Because I am the only County attorney, I was unable to leave my other County duties for multiple weeks (the hearing is now in its fourth week). Therefore, I consulted with other Respondent's counsel, some experienced in State Corporation Commission practice, and was advised that it was not necessary to be at the hearing at all times and that a schedule of witnesses had been (or would be prepared). Attached as Exhibit A is the last e-mail, dated February 21, 2008, with the REVISED WITNESS schedule which I received. "Public witness-VDOT" is the first "identified" witness on this schedule in the "Routing and Impact" phase.

5. I have been a member of the Virginia bar for 35 years; but, as I placed on the record at the start of the Routing Phase, on Tuesday, March 11, 2008, this was my first appearance at an SCC hearing; but, that I had read the SCC Rules. Nothing I have found in the SCC Rules, which I have again read prior to preparing this Declaration, addresses "public witnesses."

6. I was notified by multiple Respondent's counsel of the impending start of the Routing Phase. I was present at the start of that phase, at 9:00 a.m., Tuesday, March 11, 2008. The unidentified, at least to me, "Public witness-VDOT" did not appear as the first witness. In fact, at the start of the hearing, the attorney for Respondent Piedmont

Environmental Council requested the Hearing Examiner to put on a listed witness out of order. The Hearing Examiner denied the request saying (as best I recall) that he wanted to stick to the scheduled order of witnesses.

7. On that Tuesday, John Bailey and Cyril Welter both appeared, as the next witnesses listed on the witness schedule. I cross-examined both and was present all day at the hearing. The next day, I returned to Culpeper to perform my duties as Culpeper County Attorney. At no time prior to the appearance of Emmett R. Heltzel, a senior member (I am advised) of the Virginia Department of Transportation ("VDOT") home office staff, was I ever advised in writing, or verbally, of his identity, that he would appear to testify on Thursday, March 13, 2008, or that he would introduce exhibits, one an extensive memorandum, dated March 12, 2008 from David S. Ekern, P.E., Commissioner of VDOT, designated Exhibit 144. Had I been aware of the appearance of this witness or that exhibit, I would have been present to cross-examine him and to object to those portions of his testimony and exhibits which I believe to be improper, prejudicial evidence in these proceedings.

8. At approximately 6:31 p.m., Thursday, I received an e-mail from an interested individual stating that a VDOT witness had testified that day (the witness was misidentified) and had introduced exhibits potentially harmful to my Respondent. I immediately called a counsel for another Respondent who told me the gist of the testimony of the VDOT witness and some of the exhibits he introduced. The witness' name he provided was different from the name in the e-mail and so it was not clear to me who the witness was. I asked for copies of the exhibits and was told to call Wayne Smith, SCC counsel.

9. At approximately 8:30 a.m., Friday, March 14, 2008, I called Mr. Smith's office, but he was not available. Following another telephone call to Mr. Smith's office, I sent the e-mail (attached as Exhibit B) to Mr. Smith.

10. During Friday, March 14, 2008, I requested that my Legal Assistant listen, when she could, to the proceeding broadcast and to check postings at the SCC to see what we could learn about the VDOT witness and his exhibits. Nothing was learned.

11. At about 4:00 p.m., on Friday, Mr. Smith called me. He identified the witness as Emmett R. Heltzel, said that Mr. Smith's copies of the exhibits were marked-up, and, suggested that I obtain copies of the VDOT witness exhibits from the bailiff on Monday, March 17, 2008. I told him that I objected to the unscheduled VDOT witness and exhibits with no notice to me.

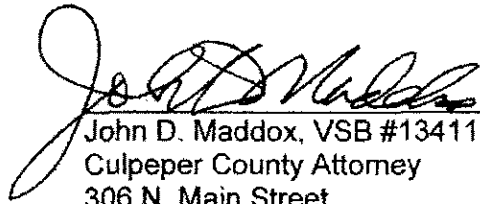
12. On Saturday, March 15, 2008, I spoke to a Respondent's counsel and asked him if he had the exhibits. He explained that Exhibit 144 was a thirteen page memorandum dated March 12, 2008, from David S. Ekern, P.E., Commissioner of VDOT to the Clerk of the SCC and that Exhibit 145, dated December 14, 2007, was a three page letter with two pages of exhibits, from Mr. Ekern to the Clerk. I was advised that there were three other letter exhibits written by someone else, but they either contained maps or were otherwise unsuitable to fax and that I should obtain them at the SCC on Monday, March 17, 2008. Exhibits 144 and 145 were faxed to my office where I reviewed them on Sunday, March 16, 2008.

13. In order to give notice to all parties of my objections, at about 4:30 p.m. on Friday, March 14, 2008, I e-mailed my objections and a motion to strike to the Honorable Joel H. Peck and all parties, to give notice of my intentions.

14. Copies of the Brief in support of the Motion were e-mailed to counsel for all parties in the late afternoon, Sunday, March 16, 2008, and it is my intention to file the motion and brief with the Clerk of the SCC on Monday, March 17, 2008.

Pursuant to VA. Code § 8.01-4.3, I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 16, 2008



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