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August 15, 2008

**VIA FEDERAL EXPRESS**

Joel H. Peck, Clerk  
State Corporation Commission  
Attn: Document Control Center  
1300 E. Main Street, 1<sup>st</sup> Floor  
Richmond, Virginia 23219

2008 AUG 18 A 11:01

RE: Joint Application of Virginia Electric and Power Company d/b/a Dominion  
Virginia Power and Trans-Allegheny Interstate Power Company for  
Certificates of Public Convenience and Necessity to Construct Facilities: 500  
kV Transmission Line From Transmission Line #580 to Loudoun Station  
Case No. PUE-2007-00031

Application of Trans-Allegheny Interstate Power Company for Certificates of  
Public Convenience and Necessity to Construct Facilities: 500 kV  
Transmission Line From Virginia-West Virginia Boundary to Virginia Electric  
and Power Company Transmission Line #580  
Case No. PUE-2007-00033

Dear Mr. Peck:

I enclose an original and sixteen (16) copies of the *Comments in Opposition to Report of Alexander F. Skirpan, Jr., Hearing Examiner, By Board of Supervisors of Fauquier County* for filing in the referenced matters.

Please date-stamp one of the copies and return it to my office in the envelope provided. Please contact me should you need additional information or have any questions regarding the above.

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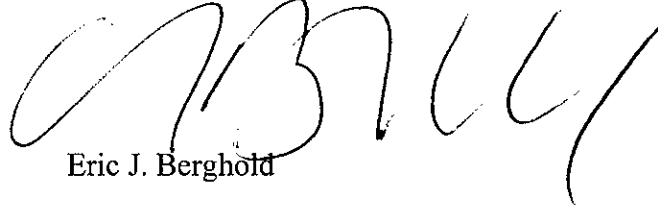
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Mr. Peck  
August 15, 2008  
Page 2

Thank you for your cooperation and assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'EBL', written over a large, faint watermark of the same initials.

Eric J. Berghold

EJB/wr  
Enclosures

cc: Service List  
Wayne N. Smith, SCC  
Arlen K. Bolstad, SCC  
Frederick D. Ochsenhirt, SCC  
William H. Chambliss, SCC

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JOINT APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY D/B/A  
DOMINION VIRGINIA POWER,  
and  
TRANS-ALLEGHENY INTERSTATE LINE COMPANY

CASE NO. PUE-2007-00031

For certificates of public convenience  
And necessity to construct facilities:  
500 kV Transmission Line from Transmission  
Line #580 to Loudoun Substation

APPLICATION OF

TRANS-ALLEGHENY INTERSTATE  
LINE COMPANY

CASE NO. PUE-2007-00033

For certificates of public convenience  
And necessity to construct facilities:  
500 kV Transmission Line from Virginia-West Virginia  
Boundary to Virginia Electric and Power Company  
Transmission Line #580

**COMMENTS IN OPPOSITION TO REPORT OF**  
**ALEXANDER F. SKIRPAN, JR., HEARING EXAMINER**  
**BY BOARD OF SUPERVISORS OF FAUQUIER COUNTY**

The Board of Supervisors of Fauquier, by counsel, respectfully file their comments to the Report of Alexander F. Skirpan, Jr., Hearing Examiner ("Hearing Examiner") dated and filed with the Clerk of the State Corporation Commission (the "Commission") on July 28, 2008 (the "Report"). The cases before the Commission and the subject of the Report contain issues of first impression for the Commission, as regulation of electric utilities in Virginia is at a crossroads.

These cases represent the first large transmission line proposed to traverse the Commonwealth in a new regulatory environment: 1) after the passage of the Virginia Electric Utility Restructuring Act of 1999 in which generation of electricity was

deregulated and incumbent electric utilities were required to join or create Regional Transmission Entities (“RTEs”) which resulted in VEPCO joining PJM Interconnection (“PJM”);<sup>1</sup> 2) after passage in 2007 of legislation revising Sections of the Code of Virginia re-regulating the generation of electricity in Virginia with a ratepayer guarantee of a rate of return to utilities for new generation based on the cost of building new capacity in the southeastern United States, outside the PJM RTE zone;<sup>2</sup> 3) after implementation of the Reliability Pricing Model (“RPM”) and related auctions designed to encourage new generation in 2008;<sup>3</sup> and 4) after passage (albeit before implementation in 2009) of Sections of the Code of Virginia restoring the concept of the Integrated Resource Plan (“IRP”) to electricity regulation in the Commonwealth, in which electric utilities forecast load obligations and produce plans to meet said obligations using all supply and demand side resources (generation and transmission on the supply side and DSM and conservation on the demand side).<sup>4</sup> These changes created a new environment for regulation of electricity in the Commonwealth instigated by the passage of numerous new pieces of legislation in the area by the General Assembly in the last ten years. This legislation affected the regulated utilities, VEPCO and ALLEGHENY as well as VEPCO’s parent, Dominion Resources, Inc. (“Dominion”), a publicly traded company. Throughout the period, however, the economics affecting the regulated utilities and Dominion have played an enormous role in motivating decision making on the part of the

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<sup>1</sup> Va. Code Ann. § 56-579.

<sup>2</sup> Va. Code Ann. § 56-577 and 56-585.1.

<sup>3</sup> RPM Order, PJM Interconnection, LLC, *Proposal for New Reliability Pricing Model*.

<sup>4</sup> Va. Code Ann. §§ 56-597 and 56-598. Docket Nos. ER05-1410 and EL05-148, 115 FERC § 61,079 (April 20, 2006).

Applicants, something that must be appreciated by the Commission and critically analyzed as part of the Application process.

In this new, complicated environment, the Report misstates the relevant legal test for determining the need for the proposed transmission line by narrowly reading portions of the Virginia Code and ignoring the Commissions' Constitutional mandate to protect the interests of Virginia consumers. The correct test, especially in this evolving environment, derives from an analysis of both the Virginia Constitution and the Virginia Code, as interpreted in part by the Commission's Order of January 29, 2008. The Report's error results in a misguided recommendation of the proposed line, should it be approved elsewhere. Fauquier County requests an independent determination by the Commission and ultimate denial of the Application.

### **Comments**

- I. The Report Misstates the Legal Test for Need for the Proposed Transmission Line as One Concerned Only with Reliability and In So Doing, Abdicates the Constitutional Responsibility for Protecting the Interests of Virginia Consumers.

The Hearing Examiner's Report applies a very narrow reading of Section 56-46.1 (B) of the Virginia Code limiting the Commission's role to verification of the Applicant's load flow modeling, contingency analyses and reliability needs presented to justify the new line and establish need.<sup>5</sup> Arguments about profit motives and untoward influence over the process in the current regulatory environment and how these factors affect the information and studies provided by the Applicants were effectively found to be

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<sup>5</sup> Report of Alexander F. Skirpan, Jr., Hearing Examiner, July 28, 2008 ("Report") at 167 and 197.

irrelevant to the determination of need by the Report.<sup>6</sup> Moreover, any overriding responsibility of the Commission to protect the interests of Virginia consumers by looking beyond mere mechanical application of data inputs to determine reliability is disregarded, even though the regulatory framework in this area is, at best, in a state of flux, suggesting a need for heightened scrutiny on the part of the Commission to protect Virginia's interests.

Multiple Respondents argued and provided evidence of control by the Applicants over the articulation of the reliability test used to meet federal NERC standards, control over the timing, inputs, and display of tests results, and the sheer market ability of one Applicant to buy-out a generation competitor and to suspend its own planned generation effectively shaping the outcome of the reliability testing, and in the process eliminating generation that would have worked to alleviate need and reliability concerns in Virginia.<sup>7</sup> Given the Applicant's influence in this instance, the Commission should embrace a review that scrutinizes what the Applicant can do to manipulate the information provided to the Commission when arguing need and why it fits their profit motives to do so.

Profit motives are neither evil nor sinister; they are a fact when dealing with a publicly traded company. Dominion, as a publicly traded company, acts predictably when it moves to maximize profit for its shareholders. Its profit motives, rather than VEPCO's public service obligations, are reflected in certain "business decisions" in this case, including de-activation or deferred activation of generation solutions under Applicants' control so that reliability testing failures would point to need for the proposed

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<sup>6</sup> *Id.*

<sup>7</sup> Report at 178 (*citing* Piedmont Brief at 50-51; Virginia Commitment's Brief at 80-83; and Fauquier County's Brief at 27-28).

transmission line. Their control of the inputs and data affects the results of the very studies the Report seeks to verify in application of Section 56-46.1 (B). Dominion has merchant electricity generated in the West for which they are seeking a market in the East.<sup>8</sup> Proposing a large transmission line through the Commonwealth to bring this product to the market is the predictable decision of a publicly traded company, but it is not best for Virginia consumers. Moreover, it passes through to Fauquier County residents not only consequences as ratepayers but extraordinary uncompensated external costs caused by the severe damage the line will cause to the environmental, historical and cultural resources and the fair market value of properties in the vicinity of the proposed transmission line.

VEPCO, as a regulated utility, acts predictably when it seeks approval of transmission and generation enhancements that it feels will increase reliability of supply. To test reliability, VEPCO uses what has been labeled the “Dominion Test” which is more stringent in many regards than that required by the federal government or its RTE, PJM, and one that has been criticized by multiple Respondents.<sup>9</sup> Employing the test most likely to achieve results, even when the test may be outdated or inflexible, may suit VEPCO’s motives, but it is contrary to what is best for Virginia consumers.

The Commission’s task in this environment is to ensure that the actions of these entities best serve the interests of Virginia consumers, as ratepayers and energy users. The Commission must recognize the environment in which they now regulate and how the motives of these entities affect the analysis they present especially because the

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<sup>8</sup> Report at 134, citing testimony of Dr. Alfred Garcia.

<sup>9</sup> Report at 170 and 171.

Applicants now exhibit substantial level of control over the data that is input and the tests that are run. The Commission risks industry capture if it does not examine all aspects of the Application critically; the failure to do so could irreparably harm Virginia consumers by saddling them with a transmission line that while beneficial to Dominion, the Applicants, and Mid-Atlantic load centers, is not needed to serve the Commonwealth of Virginia.

The Commission does have a higher directive than rote application of portions of Section 56-46.1 when determining the appropriateness of issuing a certificate for public convenience and necessity. Article IX, Section 2 of the Virginia Constitution states that: “[s]ubject to such criteria and other requirements as may be prescribed by law, the Commission shall have the power and be charged with the duty of regulating the rates, charges, and services and, except as may be otherwise authorized by this Constitution or by general law, the facilities of ... electric companies [text omitted].”<sup>10</sup> Paramount to this activity is the protection of the Virginia consumer, in this case the ratepayer, as Section 2 goes on to add, “[t]he Commission shall in proceedings before it ensure that the interests of the consumers of the Commonwealth are represented, unless the General Assembly otherwise provides for representation of such interests.”<sup>11</sup> A proper analysis of the need for the proposed transmission line would not ignore these principals or narrow them to include only concerns about the reliable supply of electricity, especially in the current environment, where re-regulation after de-regulation and introduction of the RTE may

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<sup>10</sup> Va. Const. Art. IX, § 2.

<sup>11</sup> *Id.*

have presented short-term loopholes upon which the Applicant, given its ability to control the timing, attempts to capitalize.

The General Assembly has been actively passing new legislation in the area of electricity supply regulation over the last ten years. The General Assembly first modernized the legal environment for electricity regulation by being in the forefront of deregulating generation, believing the market would offer Virginia consumers more reliability at a lower price.<sup>12</sup> Market forces outside the Commonwealth precluded this occurrence, however, requiring re-regulation of generation last year and implementation of the RPM.<sup>13</sup> Recognizing that electricity operations do not follow state boundaries, the General Assembly ordered VEPCO to either create or join an RTE resulting in VEPCO's membership in PJM.<sup>14</sup> PJM regionally handles operations such as re-dispatch once handled on the state level.<sup>15</sup> The General Assembly this year directed utilities to fully integrate their planning operations using all demand and supply side sources by requiring implementation of IRP.<sup>16</sup> Through all of these changes, the General Assembly has reacted to and redirected market forces through regulatory revisions in the Virginia Code. In this fast moving environment, it remains the responsibility and Constitutional mandate of the Commission to provide protection for the interests of Virginia consumers. The Report's narrow reading of the needs test within Section 56-46.1 is static and fails this mission.

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<sup>12</sup> See SB 1269, Electric Utility Restructuring Act, 1999 Session.

<sup>13</sup> See SB 1416, Electric Utility Regulation, 2007 Session.

<sup>14</sup> Va. Code § 56-569.

<sup>15</sup> Transcript at 5442, 5449 and 5437.

<sup>16</sup> See SB 311, Electric Utility Planning, 2008 Session; Va. Code §§ 56-585.1, 56-597, 56-598 and 56-599.

The Commission has already expressed its concerns for Virginia consumers in this Case and addressed the interplay of the various Virginia Code Sections with the new regulatory framework. In its January 29, 2008 Order (“January 29<sup>th</sup> Order”), the Commission determined that regional, multi-state need for a proposed line – and regional, multi-state benefits projected therefrom – are factors that the Commission may properly consider in reviewing an application to build the line.<sup>17</sup> The Order quotes the Commission Staff’s finding that the “Commission has, however, uniformly granted its approval of lines on finding that Virginia consumers benefit from construction of the facility.”<sup>18</sup> This benefit is not limited to reliability concerns by either the Constitution or past precedent. The Virginia consumer as a ratepayer is never marginalized. With benefit to Virginia consumers as the prime objective, the Commission articulated a balancing test in the Order were it “may properly consider regional, multi-state need and benefits as part of [its]... evaluation under Virginia statutes; the weight accorded evidence of regional, multi-state need and benefits logically would increase to the extent that such need and benefits are related to, or affect, need and benefits in Virginia.”<sup>19</sup> If the regulatory framework is flexible enough to incorporate aspects of regional need and benefits into a Virginia analysis, it is flexible enough to include in this process analysis of underlying supply economics which dramatically affect ratepayers within the Commonwealth.

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<sup>17</sup> January 29 Order at 3.

<sup>18</sup> *Id.*, citing Staff’s September 4, 2007 Memorandum at 4.

<sup>19</sup> *Id.*

II. Federal Preemption of Aspects of the Energy Regulatory Process Does Not Require A Finding That the Testing Standard Employed by Applicant to Meet a Federal Mandate is Necessarily Appropriate in The Commonwealth.

The Report finds that the NERC transmission planning standards are mandatory, that the federal law pre-empts this area of the law and that the NERC standards are now the law in Virginia.<sup>20</sup> Although multiple Respondents were critical of the tests and procedures used by PJM and Dominion to apply these standards, the Report found that both were proper because they meet or exceed the federal standards.<sup>21</sup> In Virginia, however, the test is not whether some federal agency is satisfied but whether the Dominion test is appropriate for determining need in Virginia, under Virginia law. A Federal mandate of a standard to be employed does not require a finding that the testing employed by Dominion to meet that federal standard is necessarily appropriate for a determination of need in the Commonwealth, particularly when the proposed line was planned by PJM to serve the Mid-Atlantic zone, which does not include Virginia. The federal government has no constitutionally directed mission to protect the interest of Virginia consumers.

Despite the testimony of Applicants' witness James R. Bailey, it is not entirely clear that compliance with the Dominion Test is required for NERC compliance.<sup>22</sup> FERC Order 693 which establishes the *Mandatory Reliability Standards for the Bulk-Power System* directs that "if the load model representations used in simulations do not mirror the actual performance of loads, especially during dynamic simulations, but also when

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<sup>20</sup> Report at 167, 171-2.

<sup>21</sup> *Id.* at 167-171.

<sup>22</sup> Transcript at 5253.

carrying out voltage stability studies, the simulation results will not be accurate.”<sup>23</sup> (Note 1789). Multiple Respondents have argued that the Dominion Test is now a poor mirror for the actual performance of loads because the test assumes VEPCO handles its own re-dispatch, as it did before entering PJM but does no longer.<sup>24</sup> PJM now performs this function region-wide. Given that FERC has recognized how crucial manual system adjustments to return the system to a normal operating state after the first contingency can be, it seems unlikely that FERC could find the Dominion Test’s portrayal reflective of actual performance.

Although Commission Staff may be comfortably familiar with the Dominion Test, the test is outdated in the new regulatory framework which, as recently as the January 29<sup>th</sup> Order, the Commission has determined has new, regional aspects. This fundamental flaw requires that results of the Dominion Test be disregarded, especially when the failure is minimal for a given scenario and that scenario exceeds the alternative tests employed by PJM.

Scenario 3D was offered during the Supplemental Hearing and labeled “the most useful scenario” for 2011 by the Report.<sup>25</sup> Scenario 3D involves reliability results for 2011 involving specific inputs including generation resources that cleared the RPM auction, Mirant Potomac River units, and existing generation that bid but failed to clear that auction, but excluding the proposed 502 Junction-Loudoun Line.<sup>26</sup> This scenario deletes Applicants’ assumption that the proposed line will be approved. The Report found

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<sup>23</sup> Order 693, *Mandatory Reliability Standards for Bulk-Power System*, Docket No. RM06-16-00, 118 FERC ¶ 61,218 (March 16, 2007) at Note 1789.

<sup>24</sup> *Id.* at Note 1796.

<sup>25</sup> Report at 191.

<sup>26</sup> *Id.*

that Scenario 3D supports the need for the proposed line primarily because of its failure of the Dominion Test.<sup>27</sup> As noted above, the Dominion Test is fundamentally flawed and has been heavily criticized by Respondents. Fauquier County requests an independent determination by the Commission of whether the Dominion Test remains applicable under the FERC Order and an appropriate reading of Virginia law which of necessity includes the Commission's mandate to protect the interests of Virginia ratepayers.

### **Conclusion**

The Hearing Examiner's Report misapplies the law of the Commonwealth by narrowing the scope of the analysis of the transmission line proposed by Applicants to a question of reliability alone. In this case, Applicants have taken action based on "business decisions" to affect inputs that alter the results of reliability testing they use to justify need for the proposed transmission line. They have employed an outdated testing mechanism that results in certain system failures. The Report's refusal to entertain arguments concerning supply economics misapplies the law in Virginia where the Commission, through the Virginia Constitution, is directed to protect the interests of the Virginia consumer should the General Assembly fail to do so.

The future role of the Commission in the approval of multi-state transmission line applications, in or out of any recognized national corridor, is at stake in this proceeding. At issue is whether the Commission will be relegated to mere verification of testing over which the Applicants exhibit considerable control or whether the Commission will defend its higher mandate to protect the interests of the Virginia ratepayers by critically analyzing factors that affect this testing.

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<sup>27</sup> *Id.*

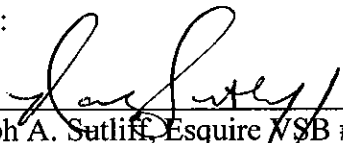
If the Applicants can succeed with arguments that a transmission line costing in excess of a billion dollars is appropriate to meet what is at most a minimal need for additional reliability on the Mount Storm to Doubs line caused by load centers in the Mid-Atlantic region during a one year time period, resulting from Applicant's own test that is more stringent than those used regionally and simulates an environment that no longer exists in the real world, then the Commission will have failed this higher mandate. The higher mandate requires appreciation of the testimony supplied by multiple Respondents that significantly less costly alternatives exist, in terms of money and environmental damage, to meet any perceived minimal need. The Virginia ratepayer is not well served by an Application process devoid of a critical look at economic motivations behind the Application and the economic effects of Application approval. The logical extension of the Report's analysis is the absurd conclusion that so long as the Applicant provides the most limited results showing need, even when the Applicants themselves engineer the testing formula, recommendation for approval will follow, regardless of the cost. Fauquier County requests the appropriate application of Virginia law by the Commission and ultimate denial of the Application.

Respectfully submitted,

BOARD OF SUPERVISORS OF  
FAUQUIER COUNTY, VIRGINIA  
A Body Corporate and Public

By Counsel

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