

**COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION**

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

AND

Joint Hearing

APPLICATION OF)
TRANS-ALLEGHENY)
INTERSTATE LINE 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

**COMMENTS IN OPPOSITION TO HEARING EXAMINER ALEXANDER F.
SKIRPAN, JR's FINAL REPORT TO THE COMMISSION BY RESPONDENT
PRINCE WILLIAM COUNTY BOARD OF COUNTY SUPERVISORS**

Respondent Prince William County Board of County Supervisors ("Prince William County"), by counsel, pursuant to Rule 5 VAC 5-20-120c, hereby respectfully files its comments to the Final Report issued by Hearing Examiner Alexander F. Skirpan, Jr. ("Hearing Examiner") on July 28, 2008.

Prince William County opposes the Report and advocates that the State Corporation Commission (“Commission”) ignore the Hearing Examiner’s recommendation for approval of the Mount Storm – Doubs line.

Prince William County contends that the Hearing Examiner made an error in law by improperly excluding, as irrelevant, evidence which should have been considered when determining need. Additionally, Prince William County submits that the Hearing Examiner improperly applied Virginia Code §§ 56-46.1 and 56-265.2A, by employing a narrow interpretation of the statutes in his analysis to assess need, while ignoring the remainder of the comprehensive regulatory scheme for utilities that exists in the Commonwealth. Moreover, Prince William County contends that evidence throughout this proceeding clearly demonstrated that the line recommended by the Hearing Examiner as the “best alternative”¹ is in fact an inferior solution.

Given the enormous costs to Virginians of the proposal, Prince William County requests that the Commission uphold its ultimate duty to serve and represent Virginia rate-payers by denying the proposed line.

I. The Regulatory Landscape Governing This Matter Includes, but Reaches Beyond, Virginia Code §§ 56-46.1 and 56-265.2A

The Commission is a *state* body, designed to serve the people of the Commonwealth and derives all of its powers from the Virginia Constitution² and the Code of Virginia.³ Accordingly, “[t]he Commission shall in the proceedings before it insure that the *interests of the consumers* of the Commonwealth are

¹ Hearing Examiner’s Final Report to the Commission; Finding and Recommendation #5, at pg. 222.

² Va. Const. Article IX §1.

³ Va. Code Ann. § 12.1-12 et seq.

represented.”⁴(emphasis added). With respect to these proceedings, the Commission does so pursuant to Virginia Code § 56-265.2A by determining that “public convenience and necessity require” approval of the subject transmission line under its review. In making that assessment, aside from considering any improvements in service reliability that may result from the construction of such facility, Virginia Code § 56-46.1 also *requires* that the Commission consider “the effect of that facility on the environment” *and must* consider “the effect of the proposed facility on economic development within the Commonwealth.”

In addition to the Virginia Constitution and Virginia Code §§ 56-265.2 and 56-46.1, there have been recent developments in energy policy and in regulating utilities in the Commonwealth. Virginia Code § 56-585.1, et seq. (2008), otherwise known as the re-regulation law, focuses on incentivizing construction of new utility-owned generation and expanding demand side management programs. Virginia Code §56-597 et seq. requires Virginia’s electrical utilities to provide an Integrated Resource Plan (“IRP”) by September 1, 2009. In part these IRPs should contemplate “reducing load growth and peak demand growth through *cost-effective* demand reduction programs”⁵ (emphasis added), “provide reliable service at *reasonable prices*”⁶ (emphasis added), and “[r]eflect a diversity of electric generation supply and *cost-effective* demand reduction contracts and services so as to reduce the risks associated with an over-reliance on any particular fuel or type of generation demand and supply resources and be consistent with the Commonwealth’s energy policies”⁷ (emphasis added). Furthermore, the Virginia

⁴ Va. Code Ann. § 12.1-12, Va. Const. Article IX, § 2.

⁵ Va. Code Ann. § 56-598.1C.

⁶ Va. Code Ann. § 56-598.2A.

⁷ Va. Code Ann. § 56-598.3.

Energy Plan sets out goals for all arms of the Commonwealth to “chart a path forward that will provide for reliable energy supplies at *reasonable rates* and increase the use of conservation and efficiency measures in Virginia.”⁸ (emphasis added).

II. Hearing Examiner’s Determination That Economics is Irrelevant in Determining Need is an Error of Law and Violates Virginia Policy.

Prince William County provided the testimony of economist Mr. Jeffery Brown to demonstrate the fact that the proposed line, when compared to local generation using open cycle gas-fired turbine engines, is not the most economically efficient or cost-effective solution to meet peak demand. In conducting his analysis, Mr. Brown applied cost data from the Department of Energy as inputs for his model. Further, Mr. Brown tested three scenarios: i) one using the proposed transmission line to transmit coal-fired generation, ii) one using the proposed transmission line to transmit gas-fired generation, and iii) the last excluding the proposed line but using *local* gas-fired turbine engines operating in open-cycle as the generation source. Mr. Brown utilized Applicants’ own historical data and forecasts for peak demand for the three time periods (2006, 2011, and 2016) in his study. Giving Applicants the maximum benefit of the doubt, Mr. Brown conservatively conducted his analysis with shortfalls of 250MW, 500MW, and 1200MW for the respective time periods. His test revealed that local generation using gas-fired turbine engines operating in open cycle were significantly more cost effective than Applicants’ proposed line transmitting coal-fired power from the Midwest.

⁸ Virginia Energy Plan, pg. 3, available at: http://www.governor.virginia.gov/TempContent/2007_VA_Energy_Plan-Full_Document.pdf

Mr. Brown's testimony that there is a cheaper, more cost-effective way to address any perceived overload violations was never refuted by the Applicants. Nevertheless, the Hearing Examiner in his Final Report states very clearly that "the question of need will be answered in terms of reliability based on projected flow loads, and available generation, not in terms of economics."⁹ Presumably, the Hearing Examiner is applying Virginia Code 56-46.1B. However, he neglects the remainder of the current regulatory scheme. This is an error of law and disregards the current energy policy of the Commonwealth.

While the "public convenience and necessity" language in § 56-265.2 is arguably vague, logic dictates that if there is a workable, more cost-effective way to achieve reliable electricity, the proposed power line cannot be "necessary" for the "public convenience." Further, when placing these statutes in context along with the mandates given to the Commission in the Virginia Constitution and in Virginia Code 12.1-12 noted above, as well as, in congruence with the newly-passed IRP statute and the Virginia Energy Plan, it is clear that the existence of a more cost-effective solution is entirely relevant. The fact that the deadline for utilities to produce an integrated resource plan does not occur until 2009, has no bearing on the fact that the IRP statute *is* the current law in Virginia and should be heeded by the Hearing Examiner and the Commission. The IRP statute clearly demonstrates the legislature's move toward creating reasonable and cost-effective measures for providing energy through a comprehensive planning strategy, which includes not only transmission but generation and demand resources as well.

⁹ Hearing Examiner's Final Report to the Commission at pg. 197.

Hence, not only does considering the economics of the proposal make common sense, but it complies with stated requirements of Virginia's current comprehensive utility regulation (which includes the IRP statute) that seeks reasonable rates and cost-effective solutions to its energy issues while ultimately honoring the Commission's mandate of "insuring that the interest of the consumers of the Commonwealth are represented."

Thus, as noted, although the Hearing Examiner supplies his recommendation to the Commission utilizing § 56-46.1 and § 56-265.2A, he neglects his duties by ignoring the comprehensive regulatory framework mentioned supra. The Commission ultimately conducts its review process in response to the authority given to it by the Virginia Constitution and Virginia Code § 12.1 et seq. where the interest of Virginia consumers is paramount and should not, therefore, adopt a narrow and cursory review that completely neglected the fact that there is a more-cost effective approach to a roughly billion dollar expenditure largely borne by Virginia rate-payers.

III. The Proposed Line Recommended by the Hearing Examiner is Not the Best Solution for Meeting Projected Load Growth.

Despite the Hearing Examiner's error of law in failing to carefully and fully consider viable alternatives that are more economical than the proposed line, there was sufficient evidence throughout the hearing to demonstrate that the proposed line is not the best transmission solution to Applicants' projected overloads.

The hearing produced irrefutable evidence that building the proposed transmission line would only address overloads in 2011, a period of *one year*. Not only was this evidence brought to light via the May 9, 2007 TEAC Reliability Analysis, but

was confirmed by Bates White, the Applicants, and the Hearing Examiner himself. The Hearing Examiner concluded that “PJM and Dominion test results for 2012 based upon the various updated versions of the 2007 RTEP and reflecting the May RPM auction, indicate that if the Amos-Kempton line is in service by 2012 it will eliminate the anticipated NERC violations for 2012.”¹⁰ Moreover, there was no dispute over the fact that installing relatively inexpensive flow control devices at Mount Storm could completely alleviate the 2011 overloads.¹¹

Additionally, there was also uncontroverted evidence that the Amos-Kempton line would address NERC violations well into the future, while the proposed line recommended by the Hearing Examiner ceases to address overloads after 2011. Thus, the Hearing Examiner’s conclusion that the proposed line is superior to the Amos-Kempton line, or is even necessary given the flow control devices mentioned above, is contrary to the evidence presented to him and should be ignored.

Conclusion

The Hearing Examiner’s determination to exclude any evidence as to economics or more cost-effective alternatives was an error of law. It misapplied Virginia Code §§ 56-46.1, and 56-265.2A and completely ignored Virginia Code § 56.585.1 and Virginia Code § 56-597 et. esq. However, most importantly, the Hearing Examiner’s Report violates the Virginia Constitution and Virginia Code § 12.1-12 by failing “in the proceedings before it [to] insure that the interests of the consumers of the Commonwealth are represented.” Clearly, the Hearing Examiner’s recommendation of a one year fix that

¹⁰ Hearing Examiner’s Final Report to the Commission at pg. 192.

¹¹ See, Piedmont Environmental Council’s Comments on the Final Report at pg. 47 referencing the agreed testimony of Respondents’ and Applicants’ engineering experts.


will cost nearly a billion dollars cannot possibly be in the interests of Virginians. Nevertheless, he drew this conclusion while ignoring compelling evidence presented by *both sides* demonstrating that concerns about overloads for 2011 could easily and cost-effectively be addressed, as well as, by ignoring his own conclusion that a 2012 Amos-Kempton line would be a superior alternative. Thus, not only is the Amos-Kempton line solution better, but the evidence is clear that even the one year fix of the proposed line is technologically unnecessary and not economical.

For the foregoing reasons, Prince William County respectfully requests that the Commission ignore the Hearing Examiner's recommendation, heed the Virginia Constitution, the Virginia Code, and current Virginia Energy policy and deny the Applicants' application.

Respectfully submitted,

**PRINCE WILLIAM COUNTY
BOARD OF COUNTY SUPERVISORS**
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