

**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 OF THE BOARD OF SUPERVISORS FOR RAPPAHANNOCK COUNTY,  
VIRGINIA TO THE HEARING EXAMINER'S REPORT, DATED JULY 28,  
2008**

The Board of Supervisors of Rappahannock County, Virginia (herein referred to as "the Board"), a Respondent in Case Number PUE-2007-00031, makes the following comments with regard to paragraph 10 of the Hearing Examiner's Findings and Recommendations (Report p. 222), which paragraph reads as follows:

10. Where existing Dominion right-of-way crosses land that is now subject to open space easements, Dominion has agreed to locate the proposed new line within the existing easement or provide landowners with an option of shorter transmission towers in exchange for an additional 60-foot easement into the open space land by providing written confirmation that the open space easement has been released within a month of the final order in this case. Dominion should be required to provide this option to such landowners.

1. While the Board feels this option should be given to affected landowners, the one-month period in which to provide ". . .written confirmation that the open space easement has been released . . ." is not practical.

It will not be up to the landowner whether the easement will be released, but rather to the holder of the easement. In many cases this will be the Virginia Outdoors Foundation (VOF), or a similar entity, which might not even meet within one month of receiving the request to release an easement.

The Board of Trustees of the VOF only meets quarterly.

Also, there are a number of complex and interrelated issues which the landowner, the easement holder and Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion") must address in order to satisfy legitimate concerns and legal requirements raised by the release of an open-space easement.

For example, an easement provision which restricts the number of dwellings that can be built based on the number of acres under easement would have to be reevaluated. With less land under easement, the easement holder might want to reduce the number of allowed dwellings on the remaining property. This decision will likely require the easement holder to conduct a site-by-site analysis before committing itself, and the landowners knowing precisely what the easement holder is proposing before committing themselves.

From the landowner's perspective, the tax ramifications of such a release would have to be considered since there may have been a Federal charitable donation deduction and a Virginia income tax credit taken when the easement was donated. The prudent landowner will want to know the tax effects of such a release before agreeing to it.

Open-space easements granted under the authority of the Virginia Open-Space Land Act, §10.1-1700 *et seq.* of the Code of Virginia, are subject to the requirements of §10.1-1704 when the land subject to the easement is converted or diverted to some other use, as is proposed here. This section requires two things to occur: first, certain findings must be made by the easement holder; and, second, other property must be substituted for the property converted or diverted. The Hearing Examiner's recommendation in paragraph 10, does not specify whose responsibility it will be to provide the property to be substituted. Since Dominion is to receive the 60' easement for free, it should have to provide the substituted property unless it can reach a different agreement with the landowner. However, these arrangements

will take time to make and surely cannot be accomplished within the proposed thirty days.

A possible way to avoid the issue of substituting property would be to structure an arrangement so that the land under open-space easement would not be deemed to be "converted or diverted" to a non-qualifying use when the additional 60' is used for new towers. This might be accomplished by amending the open-space easement to allow the 60' expansion of Dominion's existing right-of-way, or by subordinating the open-space easement, or some portions thereof, to a new Dominion easement. Even assuming the legal and tax hurdles to such an approach can be resolved, it is doubtful the necessary parties could do so within thirty days.

If "written confirmation" that the easement "has been released" means proof of actual recordation of the release document, then the release document should be reviewed by Dominion prior to recordation to insure it accomplishes the desired purpose, requiring even more time.

Presumably, Dominion will want any lienholders on the property over which the 60' easement will be granted to subordinate their interests to the interests of Dominion created by the new easement thereby requiring such lienholder to review and agree to the new 60' easement.

The above points are meant to show the release of an open-space easement is not a simple matter likely to be accomplished in thirty days. Some of the necessary acts are beyond the control of the landowner. It is asking too much to require from the landowner written confirmation that the open space easement has been released within the one month period proposed.

For landowners to make an informed decision they will have to know the type, height, location and number of the towers under each option. It is of no value to simply present landowners with the choice: "Which would you rather have, taller towers or shorter towers?" Landowners will be

dependent on Dominion to give them the specifics as to each alternative before they can make an informed decision whether to request the easement holder to grant a release. The easement holder may want to see the same information so that it will know what it is consenting to have happen before releasing the easement. Therefore, the date from which the landowner's option begins to run should be the date Dominion provides the landowner with a plat showing the tower type (monopole, lattice, etc.), height, number and location for both alternatives.

In summary, the Hearing Examiner's recommendation contained in his paragraph 10 should be amended to:

- clarify what is meant by "written confirmation" that the easement has been released;
- give landowners 180 days in which to make the written confirmation;
- begin the 180 day period when Dominion provides the landowner with a plat showing the size, type, number and location of the towers for each alternative;
- require Dominion to provide the substitute property if the landowner seeks a release, unless the landowner agrees otherwise.

2. Since the proposed option is designed to minimize adverse visual impact by allowing the individual landowners affected to decide which of the two alternatives best suits their property, why is the option restricted to landowners whose land is encumbered by an open-space easement? What about the visual impact to landowners whose property is not so encumbered? What is the basis for discriminating between the two? If this proposal by the Hearing Examiner has merit, and the Board believes it does, it should be extended to all landowners. Obviously, Dominion has the ability to place its towers entirely within the existing 150' right of way because it proposes to do so where the line passes through easement encumbered property. But the Dominion plan is to purchase or

condemn another 100 feet of right-of-way width where the line crosses unencumbered property. The owners of such unencumbered land should be given the options of either: a) the proposed Dominion plan, whereby Dominion will have to acquire another 100 feet by purchase or condemnation; or, b) the placement of the taller towers entirely within the existing 150' right-of-way, which will eliminate right-of-way acquisition costs for Dominion. This will place the other landowners on more equal footing with the owners of easement encumbered property.

For the reasons stated above, Dominion needs to provide such landowners with a plat showing, the type, height, location and number of towers for each option. Since approval by an easement holder will not be involved, the landowner should have 30 days from the time Dominion provides them with the plat in which to advise Dominion, in writing, that they elect to keep the towers within the existing 150'. Otherwise, Dominion may proceed with the acquisition of the extra 100' of right-of-way.

Respectfully submitted this 15<sup>th</sup> day of August, 2008.

**BOARD OF SUPERVISORS FOR RAPPAHANNOCK COUNTY, VIRGINIA**

By: 

Peter H. Luke, Esq., Co-Counsel  
County Attorney for Rappahannock County, Virginia  
P.O. Box 399  
Washington, VA 22747  
540-675-5338  
Facsimile: 540-675-3698  
rappcom@earthlink.net

and

JoAnne L. Nolte, Esq., Co-Counsel  
The Conrad Firm  
1520 West Main Street, Suite 204  
Richmond, VA 23220  
804-359-6062 x208  
Facsimile: 804-359-6064  
j nolte@theconradfirm.com