

**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** ) **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 Station** )

)  
 )  
**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 OF THE VIRGINIA OUTDOORS FOUNDATION TO THE**  
**HEARING EXAMINER'S REPORT**

The Virginia Outdoors Foundation ("VOF"), an agency of the Commonwealth of Virginia, as a Respondent in Case Number PUE-2007-00031 and PUE 2007-00033, makes the following comments with respect to Paragraph 10 of the Hearing Examiner's Findings and Recommendations (the "Report"), which provides:

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 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.

A decision to “release” an easement from open-space protection is governed by the Open-Space Land Act, Section 10.1-1700 *et seq.* of the Code of Virginia (1950), as amended (the “Act”). Section 10.1-1704 of the Act requires, in pertinent part, that no open-space land be diverted (*i.e.*, released) unless the public body determines that such diversion is essential to the public and other like-kind property is available as replacement open-space land. By law, these determinations belong to the public body, such as VOF, or any other agencies or political subdivisions of the Commonwealth authorized to hold open-space land. As such, the question of “releasing” the easement is not a subjective determination to be made by the landowner. Rather it is the province of the public body to make such a determination and only in accordance with the mandates of Section 10.1-1704.

A landowner is therefore without the power to “confirm” the “release” of an open-space easement. At the same time, the public body that is the holder of the open-space easement may not at its pleasure “release” the easement. Only after a finding of essentiality and suitable replacement land may that public body permit the diversion of the open-space to another use. For that reason, VOF itself cannot perfunctorily “confirm” the release of its easement interests in any timeframe without having first considered the law of Section 10.1-1704 governing the diversion of open-space land.

There is no set timeframe to process applications for diversion and for the VOF Board to make a finding; however, past experience shows that a period of thirty days is wholly insufficient to allow the proponent enough time to put together a suitable case to

carry its burden of proving essentiality and secure offers of replacement land. These applications take considerable time and effort not only for the proponent but also for VOF staff and the VOF Board of Trustees. And while VOF currently takes no position on the propriety of the two-tower option for certain landowners, it feels compelled to ask for an extension of the thirty-day time allotted for potential diversion cases in order to ensure full compliance with Virginia law and to ensure the dignity of the open-space lands that may be affected by the proposed transmission line. Therefore, VOF hereby requests that the Hearing Examiner's recommendation in Paragraph 10 be amended to allow those landowners who seek a diversion of open-space for purposes of electing the two-tower option no less than 180 days from the date of the final order in this case to obtain approval for diversion of open-space in accordance with Section 10.1-1704 of the Code of Virginia.

Respectfully submitted,

VIRGINIA OUTDOORS FOUNDATION

By:   
Counsel

Dated: August 18, 2008

BRETT ELLSWORTH (VSB. No. 68127)  
Assistant Attorney General

FREDERICK S. FISHER  
Special Assistant Attorney General

900 East Main Street  
Richmond, Virginia 23219  
(804) 371-0978 (phone)  
(804) 371-2086 (facsimile)