

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 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)

VIRGINIANS FOR SENSIBLE ENERGY POLICIES '
COMMENTS ON THE JULY 28, 2008 REPORT OF
ALEXANDER F. SKIRPAN, JR., HEARING EXAMINER

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**VIRGINIANS FOR SENSIBLE ENERGY POLICIES’
COMMENTS ON THE JULY 28, 2008 REPORT OF
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I. Introduction

On July 28, 2008, the Hearing Examiner issued his Report¹ in the above-captioned proceedings. He found, among other things, that Virginia Electric and Power Company d/b/a Dominion Virginia Power (“Dominion”) and Trans-Allegheny Interstate Line Company (“TrAILCo”)(collectively, “the applicants”) established the requisite need for the proposed 500 kV transmission line, and he recommends that the Commission award a conditional certificate of public convenience and necessity.

The Virginians for Sensible Energy Policies (“VSEP”),² by counsel, submits these comments on the Report pursuant to Rule 5 VAC 5-20-120 C of the Commission’s Rules of Practice and Procedure. VSEP takes aim at the analysis, or lack thereof, that the Hearing Examiner employed in arriving at his recommendation that the line is needed.³ As explained below, the Hearing Examiner’s analysis is, at best, narrow, incomplete and inconsistent with recent changes to Virginia law. Rather than assess the need for and feasible alternatives to the proposed transmission line, the Hearing Examiner accepted the applicants’ contention that they are under no obligation to offer solutions – other than the construction of a billion dollar transmission line – to simulated reliability violations. The

¹ See July 28, 2008 Report of Alexander F. Skirpan, Jr., Hearing Examiner (“Report”).

² Members of VSEP are electric customers of Dominion Virginia Power and Allegheny Power. See Notice of Participation (filed July 27, 2007).

³ In his Report, the Hearing Examiner mistakenly identifies five witnesses as testifying on behalf of VSEP. See Report at 135-38. VSEP, however, did not present evidence in the proceedings and takes no position on the Hearing Examiner’s routing recommendations. The five witnesses to which the Hearing Examiner refers presented evidence on their own behalves and not on behalf of VSEP.

Hearing Examiner's refusal to consider other, non-transmission solutions stands in stark contrast to Virginia law and policy.⁴

II. The Hearing Examiner Erred as a Matter of Law by Refusing to Consider Economic Issues and Integrated Resource Planning.

In assessing the need for the line, the Hearing Examiner refused to consider whether the proposed transmission line is an economical solution to an alleged reliability problem. He also concluded that the current market structure does not permit integrated resource planning ("IRP"). These conclusions are incorrect as a matter of law.

The Hearing Examiner rejected evidence relating to, among other things:

- Dominion's decision to delay until 2014, for "business reasons," two generation facilities totaling 1,200 MW;
- Dedicated demand response resources that would exceed 1,100 MW in eastern PJM by 2011 because of "uncertainty" of such resources makes projections "inappropriate for transmission system reliability planning;"⁵
- The significance of the Amos-Kempton line, which the Hearing Examiner acknowledges that, if in service by 2012, will eliminate anticipated NERC violations for 2012; the Examiner nonetheless recommends that the Commission forge ahead with the proposed billion dollar line to "bridge the gap" for one year during 2011;⁶

⁴ These Comments will focus primarily on the legal standard which the Commission should employ in analyzing the need for the proposed transmission line. VSEP incorporates the factual statements set forth in PEC's Comments, filed August 18, 2008. Applying the correct legal standard to these facts warrants rejection of the Hearing Examiner's recommendation.

⁵ Id. at 192.

⁶ Id. at 192-93.

- Economic issues such as profit to the applicants as a result of the line, potential cost savings to ratepayers by using localized generation, and whether the proposed line is economical in light of other alternatives; and
- Integrated resource planning, opining that “the current market structure” does not permit it.

The Hearing Examiner’s analysis rejecting these issues outright is inconsistent with Virginia’s statutory framework relating to energy issues and policies, which has undergone wholesale changes during the past two years, as well as with Commission precedent.

A. The Legal Standard Obligates the Commission to Consider Economic Issues and Integrated Resource Planning

1. 2007 Amendments to the 1999 Virginia Electric Utility Restructuring Act

The Virginia General Assembly in 2007 substantially re-wrote Virginia’s energy regulatory framework by introducing a new, detailed form of regulation for Virginia’s electric utilities.⁷ The 2007 amendments to the 1999 Virginia Electric Utility Restructuring Act (“2007 amendments”) return Virginia’s investor-owned utilities, such as Dominion, to cost-of-service rates and add new provisions relating to the calculation of the utility’s return on equity. At the same time, the amendments encourage investor-owned utilities to construct new generation facilities by offering enhanced rates of return. The obvious goal of the amendments is to encourage Virginia’s utilities – not the competitive market – to construct generation as approved by the Commission.

The 2007 amendments also address conservation and energy efficiency issues. It is now in Virginia’s public interest to promote cost-effective conservation through fair

⁷ See SB 1416, Ch. 933 of the 2007 Acts of Assembly.

and effective demand side management, conservation, energy efficiency, and load management programs. The 2007 amendments create a “stated goal” for Virginia to implement such programs in order to reduce electricity usage by the year 2022 by an amount equal to 10 percent below 2006 consumption levels.⁸ The return to a regulated structure, with its biennial rate cases, will allow Dominion to fund new generation and demand side programs for the first time in over a decade.⁹ Dominion’s customers will now have an incentive to conserve electricity, which they have not had in years.¹⁰

2. 2008 IRP Legislation

The 2008 General Assembly established a “mandatory [IRP] requirement for Virginia’s jurisdictional electric utilities.”¹¹ Under the new § 56-597 of the Code, IRPs are to provide forecasts of the electric utility’s expected load obligations (projected over a 15 year period), and the utility’s plan to meet these load obligations over that period through supply side and demand side resources. IRPs are intended to “promote reasonable prices, reliable service, energy independence and environmental responsibility.”¹²

The new IRP legislation also speaks to demand side management. Under § 56-598, an IRP should address “[r]educing load growth and peak demand growth through cost-effective demand reduction programs.” In preparing an IRP, the utility shall evaluate, and may propose, “[m]aking investment in demand-side resources, including

⁸ See Enactment Clause 3, Acts 2007, cc. 888 and 933 (2007).

⁹ Tr. 2724-28.

¹⁰ Exh. 117 at p. 7.

¹¹ See *Ex Parte: In the matter of revising the rules of the State Corporation Commission governing applications to construct and operate electric generating facilities*, Case No. PUE-2008-00066, Order for Notice and Comment at 4 (July 25, 2008).

¹² Va. Code § 56-597; see also § 56-598 (“An IRP should integrate, over the planning period, the electric utility’s forecast of demand for electricity generation supply with recommended plans to meet that forecasted demand and assure adequate and sufficient reliability of service....”).

energy efficiency and demand-side management services.”¹³ Thus, the Hearing Examiner’s refusal to consider demand response programs in assessing need for the transmission line does not comport with the new Virginia IRP legislation.

3. The Virginia Energy Plan

The objectives set forth in the Virginia Energy Plan, which the Hearing Examiner fails to consider, are consistent with the statutory emphasis on conservation, energy efficiency, and demand side management. While the Virginia Energy Plan does not bind the Commission’s rulings in any particular matter, it does mandate that the Commission, “in taking discretionary action with regard to energy issues, shall recognize the elements of the Commonwealth Energy Policy and where appropriate, shall act in a manner consistent therewith.”¹⁴ The Plan’s objectives, set forth in § 67-101 of the Code, include:

- Ensuring the availability of reliable energy at costs that are reasonable and in quantities that will support the commonwealth’s economy;
- Optimizing intrastate and interstate use of energy supply and delivery to maximize energy availability, reliability, and price opportunities to the benefit of all user classes and the Commonwealth’s economy;
- Using energy resources more efficiently; and
- Facilitating conservation.

The Plan calls on Virginia to “initiate an aggressive set of actions to expand use of energy efficiency, conservation, and demand management to affect electric demand and use.”¹⁵

¹³ Va. Code § 56-599.D.5.

¹⁴ Va. Code § 67-201.C. Under § 67-102.D., the Virginia Energy Plan “is intended to provide guidance to the Agencies . . . in taking discretionary action with regard to energy issues, and shall not be construed to amend, repeal, or override any contrary provision of applicable law. . . .”

¹⁵ Virginia Energy Plan at 9 (Sept. 12, 2007).

4. Commission Precedent

Commission precedent with respect to cost is simple and straightforward: the Commission has, in prior transmission line cases, assessed the cost of alternative and whether a proposed line makes sense. In this regard, the Commission has ruled:

We acknowledge that cost is, and should be, a factor; it is not, however, the sole consideration. We should not require the Company to take action that is not economically prudent for the Company or the Commonwealth, and might not be beneficial for its customers.¹⁶

B. The Hearing Examiner failed to adhere to Virginia law, policies, and Commission precedent in assessing the need for the proposed transmission line.

1. The IRP legislation underscores the need for the Hearing Examiner to consider need-related information such as economic issues.

The Hearing Examiner's analysis diverges from these statutes, policies and precedent by refusing to consider economic issues and alternatives, by rejecting outright Respondents' calls for an economic analysis and an IRP-type analysis, and by dismissing readily available demand side resources.

That the IRP statute applies in assessing the need for a transmission line is evident given the Commission's recent Order for Notice and Comment initiating Case No. PUE-2008-00066.¹⁷ There, the Commission seeks input as to whether economic studies and alternatives should be considered in assessing the need for a new generation facility. This suggestion from the Commission regarding the type of need-related information for

¹⁶ *Application of Appalachian Power Co.*, Case No. PUE-1997-00766, Order Granting Authority to Construct Transmission Facilities at 29-30 (May 31, 2001).

¹⁷ See *Ex Parte: In the matter of revising the rules of the State Corporation Commission governing applications to construct and operate electric generating facilities*, Case No. PUE-2008-00066, Order for Notice and Comment (July 25, 2008).

new generation facilities provides guidance as to what information the Commission can, and should, consider when assessing the need for a transmission line.

To build new generation, the 2007 amendments require the utility to once again establish “convenience and necessity,” or “need,” as a prerequisite to Commission approval of the facility.¹⁸ In July 2008, the Commission established Case No. PUE-2008-00066 to consider revising existing rules governing applications to construct and operate electric generating facilities in light of the 2007 amendments. In its Order for Notice and Comment, the Commission offered proposed rules to reflect the 2007 amendments’ restoration of this need-based determination. Some of the proposed rules address the type of information that would assist the Commission in determining the need for the new facility. The Commission stated that “[t]he necessity of such [need-related] information is further underscored by the 2008 Virginia General Assembly’s enactment of [the 2008 IRP legislation].”¹⁹ The need-related information proposed by the Commission includes:

[E]conomic studies that compare the selected alternative with other options considered, including sensitivity analyses and production costing simulations of the applicant’s overall generating resources that demonstrate that the selected option is the best alternative.²⁰

The Commission should employ the same or similar standard in assessing the need for a transmission project. That is, in considering whether a new line is needed, the Commission should consider economic issues and other need-related information. In fact, it has done so in the past. First, there is no dispute that the applicants are required to

¹⁸ The General Assembly eliminated this prerequisite when it adopted the 1999 Virginia Electric Utility Restructuring Act with the intent that the competitive market would construct generation in response to market signals.

¹⁹ Case No. PUE-2008-00066, Order for Notice and Comment at 4.

²⁰ Id. at 4 and Proposed Rule 20 VAC 5-302-35.4.

establish “convenience and necessity” as a prerequisite to Commission approval of a new transmission facility.²¹ Second, the assessment of the need for a transmission line should be made in accordance with not only § 56-46.1 of the Code, but also the goals of the IRP legislation to “promote reasonable prices, reliable service, energy independence, and environmental responsibility.” These issues are as prevalent in a transmission case as they are in a generation case; there is no reason why the Commission should consider the new IRP legislation when assessing the need for a generation facility but should ignore the IRP legislation when assessing the need for a transmission line. The Commission’s review of new transmission facilities should be no different with respect to the scope of the need analysis as is the review of the need for new generation facilities.

2. The Hearing Examiner incorrectly rejected demand response resources despite Virginia statutes and polices that encourage them.

Rather than consider Virginia’s new statutory and policy goals relating to conservation and demand response, the Hearing Examiner simply ignored them. He labeled demand response as too uncertain and refused to consider it as a viable alternative to the proposed transmission line.²² That conclusion is incorrect for several reasons.

First, the applicants’ own expert testified that well-designed demand response programs such as the Connecticut demand response auction produce demand reductions that are more reliable than emergency generation resource as a means to moderate peak demand.²³

Second, the Hearing Examiner agreed with Virginia’s Commitment witness Dr. Oren that “demand response should be restructured to be more effective in transmission

²¹ See Va. Code §§ 56-265.2 and 56-46.1.

²² Report at 192.

²³ Exh. 121 at 14-16.

system planning to ensure full or efficient utilization of such resources.”²⁴ Dr. Oren had testified that demand response contracts can be designed to eliminate overloads on transmission systems.²⁵ Thus, if there is any lack of reliability in RPM demand response contracts, then it is incumbent upon PJM and its members to restructure the contracts. Lack of contract reliability created by PJM should not be a reason on which this Commission refuses to consider demand response programs with respect to the need for a transmission line.

Third, over 1,100 MW in eastern PJM cleared PJM’s RPM auction for 2011. As a result, these are contractually-obligated resources procured by PJM and are every bit as reliable as generation that cleared RPM.²⁶ Yet, PJM ignores demand response.

Fourth, as the record reflects, it makes little sense for PJM to procure demand response resources and then not include them in the tests.²⁷ It is telling that PJM’s tests were created before the evolution of the demand response market and, as stated above, demand response contracts can be designed to eliminate overloads on the transmission system.²⁸ The Hearing Examiner’s refusal to consider demand response resources in the simulations is inconsistent with the Virginia law and policy.

III. Conclusion

One year. One billion dollars. That is what construction of the proposed transmission line will accomplish assuming the PATH line is built as scheduled by 2012.

²⁴ Report at 181.

²⁵ Id.

²⁶ The FERC has recently stated, “our goal is for RTOs and ISOs to develop rules to ensure the treatment of supply and demand resources on a comparable basis to the extent each is technically capable of providing the service.” *Wholesale Competition in Regions with Organized Electric Markets*, 72 Fed. Reg. 36,276 (July 2, 2007), FERC Stats. & Regs. ¶ 32,617, P 35 (2007) (Competition ANOPR). Here, there is no reason to believe that the demand response resources procured through RPM are not capable of living up to their contractual obligations.

²⁷ Report at 181 (citing T. 5347).

²⁸ Id. (Citing Tr. at 534-49).

“When the proposed [PATH line] is built by 2012,” according to Bates White, “there is no reliability violation in 2012” *even without the Loudoun line*.²⁹ The Hearing Examiner agreed with this contention.³⁰ Thus, even assuming that the Hearing Examiner’s analysis is correct – which it is not – the Commission would be authorizing an enormously expensive project that would remain beneficial for all of one year. This is the very type of situation that begs for an IRP-type analysis. As it now stands, however, the Hearing Examiner has recommended the line while rejecting, or refusing outright, facts relating to economic issues, integrated resource planning, and demand response, among other issues.

WHEREFORE, for the foregoing reasons, the Virginians for Sensible Energy Policies respectfully requests that the Commission reject the Hearing Examiner’s recommendation and remand the applications for further hearing on the issues raised in these Comments.

²⁹ Exh. 92. at ¶¶ 169, 170; *see* July Tr. at 154 (citing Exh. 94 at 16-17).

³⁰ Report at 192.

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CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing Post-Hearing Brief was mailed, first-class postage prepaid, this 18th day of August, 2008, to each person listed on the service lists for Case Nos. PUE-2007-00031 and PUE-2007-00033.



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SG00043817