



CHRISTIAN | BARTON, LLP

Attorneys At Law

Direct Dial: (804) 697-4140

Fax: 804-697-4140

E-mail: crobb@cblaw.com

September 18, 2006

BY HAND

Mr. Joel H. Peck, Clerk
State Corporation Commission
Document Control Center, First Floor
1300 East Main Street
Richmond, VA 23219

**Re: Application of Virginia Electric and Power Company
For a certificate of public convenience and necessity
for facilities in Loudoun County: Pleasant View – Hamilton
230 kV Transmission Line and 230 kV-34 .5 kV
Case No. PUE-2005-00018**

Dear Mr. Peck:

Enclosed for filing are an original and fifteen copies of the *Post Hearing Brief of Northern Virginia Regional Park Authority* in the above matter.

I have also enclosed an additional copy. I would appreciate it if you would indicate the fact and date of filing by affixing your file stamp to the additional copy and returning it to my courier.

Thank you for your assistance.

Sincerely,

Cliona Mary Robb

CMR/nh

Enclosures

cc: Service list
Todd Hafner
Kate Rudacille
Charles Simmons

04061.00003/779135.1

**COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION**

Application of)
)
Virginia Electric and Power Company)
)
) **Case No. PUE-2005-00018**
For a certificate of public convenience and)
necessity for facilities in Loudoun County:)
Pleasant View-Hamilton 230 kV Transmission Line)
and 239 kV-34.5 kV Hamilton Substation)

POST HEARING BRIEF

OF

NORTHERN VIRGINIA REGIONAL PARK AUTHORITY

September 18, 2006

Table of Contents

I.	Background	1
II.	Legal Standards	4
	A. Pertinent Legal Standards	4
	B. Application of Legal Standards to Costs and Rights-of-Way.....	5
	C. Parameters for Commission Implementation of Legal Standards	7
III.	Summary of Argument	13
IV.	Argument	15
	A. Need for the Line	15
	B. Existing Rights of Way.....	15
	1. Changes in the Area Justify Not Using Easement	15
	(a) No Notice of Easement.....	16
	(b) Changes Since Easement Acquired.....	18
	(c) Nature of Opposition to Use of Easement.....	20
	2. Changes that Hamilton Line Would Cause.....	22
	3. Conclusions Regarding Existing Rights of Way	24
	C. Environmental Impacts	25
	1. Overall Comparison of Northern Routes and Southern Routes	25
	2. Arguments for Northern Routes Actually Support Southern Routes	26
	(a) Costs	27
	(i) Impact on Property Values.....	27
	(ii) Proper Assessment of Factors Impacting Costs.....	30
	(a) Towers	31
	(b) Danger Trees	33
	(c) Terrain	34
	(d) FERC Guidelines.....	38
	(b) Existing Transmission Lines	39
	(c) Visual Impact.....	43
	(d) Historic Assets.....	46
	(e) Natural Environment	48

3.	Impact on Human Environment	51
4.	Impact on Public Resources	52
5.	Modified D.....	55
	(a) Overall Assessment	55
	(b) Impacts as Compared to Other Routes.....	57
	(c) Measures to Mitigate Harm to Park.....	58
6.	Conclusions Regarding Environmental Impacts	62
D.	Reliability	64
1.	Evidence Concerning Physical Attributes of Hamilton Line	64
2.	Evidence Concerning Hamilton Line and Transmission Planning.....	64
	a. Authority to Consider Future Planning.....	64
	b. Support in Record for Consideration of Future Planning.....	65
	c. Implications of Considering Future Planning	67
3.	Conclusions Regarding Reliability	68
E.	Economic Development	69
1.	Evidence Regarding Economic Development	69
2.	Conclusions Regarding Economic Development	70
F.	Undergrounding	71
G.	Minimizing Park Impact	71
V.	Relief Sought	71

**POST HEARING BRIEF
OF
NORTHERN VIRGINIA REGIONAL PARK AUTHORITY**

The Northern Virginia Regional Park Authority (“Park Authority”), by counsel, hereby submits its post-hearing brief (“Brief”) pursuant to the July 13, 2006 ruling of Hearing Examiner Howard Anderson (“Hearing Examiner”) in this proceeding.

I. Background

On April 14, 2005, Virginia Electric and Power Company d/b/a Dominion Virginia Power (“Virginia Power”) filed an application (“Application”) for approval and certification of electric facilities in western Loudoun County (“Study Area”) concerning the Pleasant View-Hamilton 230 kV Transmission Line (“Hamilton Line”).

The Application described a proposed route designated as E7 in the southern portion of the Study Area and described alternate routes in southern portions of the Study Area (collectively, E7 and the alternate southern routes are referred to herein as the “Southern Routes”). The Application also described alternate routes in the northern portion of the Study Area and described, but did not include as a proposed or alternate route, an 11 mile portion in the western section of the W&OD Park (collectively, the alternate northern routes and the W&OD Park routes are referred to herein as the “Northern Routes.”)

The respondents in this proceeding can basically be divided into two camps: (1) those located along the Southern Routes (“Southern Respondents”), and (2) those located along the Northern Routes (“Northern Respondents”).

The Southern Respondents include Scenic Loudoun Legal Defense, Inc. (“Scenic Loudoun”); Leesburg Luxury Homes, L.L.C. (“Leesburg Luxury Homes”); Orme Farms, LLC & Cammack Brothers Partnership, LP (“Orme Farm Respondents”); Centex Homes, WCI Mid-

Atlantic U.S. Region, Inc., and The Reserve at Rokeby Farm Property Owners Association (“Centex Respondents”); Dwayne B. Davenport (“Davenport”); Oatlands, Inc. and the National Trust for Historic Preservation (“Oatlands”).

The Northern Respondents include Kincaid Forest Homeowners Association (“Kincaid Forest”), Save the Trail, Inc. (“Save the Trail”), Town of Leesburg (“Town”), Beauregard Estate Homeowners Association (“Beauregard Estates”), Northern Virginia Regional Park Authority (“Park Authority”), Loudoun County, Estates at Shenstone Farms Homeowner’s Association and Dry Mill Respondents (“Shenstone”).

This proceeding has been a moving target for the Northern Respondents. The Application did not include the W&OD Park among the routes to be considered by the Commission. On September 12, 2005, the Hearing Examiner denied Scenic Loudoun’s Motion to Dismiss or Amend, which meant that Virginia Power was not required to include the W&OD Park as a proposed route in the Application. On October 12, 2005, the Hearing Examiner ruled, 46 days before the initial respondents’ testimony was submitted, that (a) Virginia Power had to provide public notice of the W&OD Park as a route being considered in the proceeding, and (b) additional respondents could file a notice of participation by November 30, 2005 and could file testimony by December 16, 2005. On December 16, 2005, two additional Southern Respondents, with interests substantially similar to other Southern Respondents, submitted testimony in this proceeding, 45 days after all initial respondents had submitted their testimony. On March 22, 2006, five days prior to the initial evidentiary hearing, the Hearing Examiner issued a ruling that a modified D route (“Modified D Route”) would be considered at the initial evidentiary hearing. On March 31, 2006, the Hearing Examiner issued a ruling that required public notice of the Modified D Route and that permitted additional respondents to file testimony

by June 9, 2006. During the course of the evidentiary hearing that was re-convened on June 19, 2006, Virginia Power presented new evidence that addressed changes to the Modified D Route.

There was much debate during the evidentiary hearing as to the introduction of additional testimony and whether such testimony was simply responding to other parties' testimony (which is permitted) or was new evidence that should have been submitted initially (and therefore should not be permitted). Regarding Park Authority testimony, all additional testimony submitted during the evidentiary hearing was directly responsive to other parties' testimony. In addition, with the exception of one cost estimate exhibit, parties had already seen exhibits submitted by the Park Authority *months in advance* of the evidentiary hearing as the Park Authority's responses to interrogatory requests. This was not the case with additional testimony submitted by other parties. Virginia Power submitted major, complicated revisions regarding the Modified D Route *after* the evidentiary hearing had commenced, and Ms. King and Mr. Rinker provided new exhibits for the first time *after* the evidentiary hearing had commenced. The bottom line is that parties who submit new evidence themselves should not be heard to complain about the introduction of new evidence by other parties. Southern Respondents, Northern Respondents, and Virginia Power have introduced what could be characterized as new evidence during the evidentiary hearing, and, in fairness, should not be permitted to argue that other parties' testimony should be rejected while theirs should be considered.

The Hearing Examiner has gone to considerable lengths to ensure a complete record for the Commission's consideration. The hearing examiner and respondents participated in three viewings of potential routes, and extensive testimony was presented before and during the hearing. Although numerous objections were presented during the course of the hearing by all participants, the Staff probably put it best when it noted that the trend has been to be more liberal

in admitting testimony, and ultimately permit the presentation of such testimony to create a more complete record.¹ The Park Authority believes that the Hearing Examiner is to be commended for his endless patience and his attempt to provide all parties with a full opportunity to present their case.

II. Legal Standards

The Commission clearly has authority to reject all routes for the Hamilton Line that would place transmission facilities within the W&OD Park.

A. Pertinent Legal Standards

Various legal standards have been cited by parties in this proceeding as being relevant to the Commission's consideration of the Hamilton Line. When reviewing these legal standards, pertinent excerpts of which are set forth below,² it is important to recognize and distinguish between mandatory requirements and items merely regulatory "consideration" (emphasis added):

Va. Con. Art. XI, § 1 Natural resources and historical sites of the Commonwealth. To the end that the people have clear air, pure water, and the *use and enjoyment for recreation* of adequate *public lands*, waters, and other natural resources, it shall be the policy of the Commonwealth to *conserve*, develop, and utilize its natural resources, *its public lands*, and its historical sites and buildings. Further, it shall be the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destructions, for the benefit, enjoyment, and *general welfare* of the people of the Commonwealth.

¹ Smith, Tr. at 4408-4409:

"Over the last few years, the common practice has been allowing witnesses to comment on subsequent filed information. I believe you will agree with me that that has been extremely helpful in fleshing out the record. It's part of the practice. . . And I think the long-term public value of allowing comments [means] but there's certainly an advantage to the Commission to have a full and complete record."

² In their Post-Hearing Memorandum filed on September 1, 2006, the Centex Homes Respondents cited Article IX, § 2 of the Constitution of Virginia regarding the Commission's duty to ensure that the interest of the consumers of the Commonwealth are represented, unless the General Assembly otherwise provides for representation of such interests (Centex Homes Respondents Brief at 2-3). Article IX, § 2 is not included in the list of pertinent legal standards because the General Assembly has otherwise provided for representation of such interests pursuant to Va. Code § 2.2-517, which creates the Division of Consumer Counsel within the Office of Attorney General, whose duties include "appear[ing] before . . . the State Corporation Commission, to represent and be heard on behalf of consumers' interests." See also Rule 30 of the SCC's Rules of Practice and Procedure, 5 VAC 5-20-30, which says that in all appropriate proceedings, the Division of Consumer Counsel in the Office of Attorney General may appear and represent and be heard on behalf of consumers' interests. The Division of Consumer Counsel has received all pleadings in this proceeding.

- Va. Code § 56-265.2.A: The certificate for overhead electrical transmission lines of 150 kV or more **shall** be issued by the Commission **only after compliance** with the provisions of § 56-46.1.
- Va. Code § 56-46.1. A: Whenever the Commission is required to approve the construction of any electrical utility facility, it **shall give consideration** to the effect of that facility on the environment and **establish such conditions** as may be desirable or necessary to **minimize adverse environmental impact**.
- Va. Code § 56-46.1. A: Additionally, the Commission (i) shall **consider** the effect of the proposed facility on economic development within the Commonwealth and (ii) shall **consider any** improvements in service reliability that may result from construction of such facility.
- Va. Code § 56-46.1. B: **As a condition to approval** the Commission **shall determine** that the line is needed and that the corridor or route the line is to follow **will** reasonably minimize adverse impact on the scenic assets, historic districts and environment of the area concerned
- Va. Code § 56-46.1. C: In any hearing the public service company **shall provide** adequate evidence that existing rights-of-way cannot adequately serve the needs of the company.
- Va. Code § 56-46.1.D: ‘environment’ or ‘environmental’ shall be deemed to include in meaning ‘historic,’ as well as a consideration of the probably effects of the line on the health and safety of the persons in the area concerned.
- Va. Code § 56-259. C: “Prior to acquiring any easement of right-of-way, public service corporations will **consider** the feasibility of locating such facilities on, over, or under existing rights of way.”
- Va. Code § 56-235.1 **Conservation** of energy and capital resources. “It **shall** be the duty of the Commission to investigate from time to time the acts, practices, rates or charges of public utilities so as to determine whether such acts, practices, rates or charges are reasonably calculated to promote the maximum effective **conservation** and use of energy and capital resources used by public utilities in rendering utility service. Where the Commission finds that the public interest would be served, it **may** order any public utility to eliminate, alter, or adopt a substitute for any act, practice, rate or charge which is not reasonably calculated to promote the **maximum effective conservation** and use of energy and capital resources used by public utilities in providing utility service and it may further provide for the dissemination of information to the public, either through the Commission staff or through a public utility, in order to promote public understanding and cooperation in achieving effective **conservation** of such resources.”

B. Legal Standards Applicable to Costs and Rights-of-Way

None of the statutory requirements pertinent to transmission line siting require the selection of the least costly routes. The Commission is not required to select a route that minimizes a utility’s costs. Instead, the statutory requirements governing transmission line approvals mandate that environmental impacts be reasonably minimized. The only statute cited

by parties in this proceeding that directly addresses a utility's costs is Va. Code § 56-235.1, which has been cited for the proposition that "it is the duty of the Commission to assure that utilities make the maximum effective use of capital resources in rendering utility service."³ However, this statute appears to have little bearing on transmission line siting because it deals with the Commission's "duty . . . to investigate . . . practices . . . of public utilities so as to determine whether such . . . practices . . . are reasonably calculated to promote the maximum effective conservation and use of energy and capital resources used by public utilities in rendering utility service." This statute concerns the Commission's overall investigation and review of the conservation practices of all public utilities, not the Commission's examination of costs associated with transmission line siting.⁴ Furthermore, while the duty to investigate under the statute is mandatory, the remedy is permissive: the Commission may, if it finds it in the public interest, order a public utility to alter an act which is not reasonably calculated to promote the maximum effective conservation and use of capital resources. In essence, Virginia law does not require that cost be the overriding consideration in siting transmission lines.

Likewise, none of the statutory preferences require the use of existing rights-of-way. A utility seeking approval for a transmission line is required under Va. Code § 56-46.1.C to provide adequate evidence that existing rights of way cannot adequately serve the utility's needs. However, it is well established law in Virginia that this does not "preclude Commission review of construction of transmission facilities whenever the Company decides to use an existing corridor."⁵ When a utility addresses the adequacy of existing rights-of-way pursuant to Va. Code

³ Staff Report at 7.

⁴ See, e.g. *Survey of Administrative Law for 1975-1976*, 62 Va. L. Rev. [1357] (1976), at 1361-1362 and n. 35 (noting that "the General Assembly both directed the Commission to *study* the acts, practices, rates, and charges of *public utilities* . . . and authorized the Commission to *order any changes* necessary to promote these goals . . . and also disseminate information to foster public understanding of and cooperation in this *conservation effort*") (emphasis added).

⁵ *Safe Power* at 614-615.

§ 56-46.1.C, it will also satisfy its more generic obligation under Va. Code § 56-259.C to “consider” the feasibility of locating its facilities in existing rights of way.

If existing rights-of-way are available, the Commission must consider whether using them will reasonably minimize environmental impacts in order to determine whether they would adequately serve the utility “needs.” The utility’s needs would logically include the need to satisfy the requirement of Va. Code § 56-46.1.B that the route will reasonably minimize such impacts on the utility will not be granted a certificate to build the line. If the existing rights-of-way are not adequate for this reason, then nothing in Virginia law requires that they be used.

C. Parameters for Commission’s Implementation of Legal Standards

Rather than focusing on cost or requiring the use of existing rights-of-way, the Commission’s statutory obligations are more accurately summarized as follows:

- (1) determine the need for the line,
- (2) determine that the utility considered the use of existing rights-of-way,
- (3) determine that the line reasonably minimizes environmental impact,
- (4) consider improvements in service reliability, and
- (5) consider the effect on economic development within the Commonwealth.

The parameters for implementing these statutory obligations in accordance with Virginia law are described below.

(1) determine the need for the line

The need for the line is a threshold issue when the Commission considers a transmission line application. Virginia Power must establish a need for the line prior to the Commission’s approval of such line.⁶

(2) determine that the utility considered the use of existing rights-of-way

Regarding existing rights-of-way, the utility is required to “provide adequate evidence that existing rights-of-way cannot adequately serve the needs of the company.”⁷ It is well established law that this provision does not mandate the use of existing rights-of-way. Instead, this provision simply places the burden of proof on the utility to address the use of existing rights-of-way.⁸ When the evidence shows that the utility “did in fact consider, and reject, the use of existing rights-of-way as alternative routes,” this provision has been satisfied.⁹ The reasons for rejecting the use of existing rights-of-way can include environmental considerations.¹⁰

The Virginia Supreme Court has squarely rejected the argument that Va. Code § 56-46.1.C “means a new corridor should not be approved for a transmission line if an existing corridor is adequate to serve the needs of the utility.”¹¹ Interpreting Va. Code § 56-46.1 to mandate use of existing rights-of-way is inappropriate because it “would preclude Commission review of construction of transmission facilities whenever the Company decides to use an existing corridor, . . . irrespective of the changes the company proposes and irrespective of changes in the area that may have occurred since the corridor was first established.”¹² The purpose of Va. Code § 56-46.1.C is to “place[] the burden on the utility to show that an existing right of way cannot be used . . . where a utility’s application to clear a new right-of-way is contested.”¹³ The court noted that “in most cases upgrading an existing corridor would be less damaging than clearing a new one” but “[t]here is nothing in the statute . . . that indicates this

⁶ Va. Code § 56-46.1.B.

⁷ Va. Code § 56-46.1. C

⁸ Rappahannock League vs. Virginia Electric & Power Company, 222 S.E.2d 802 at 807 (Virginia 1976).

⁹ Rappahannock at 807-808 (Virginia 1976).

¹⁰ See, e.g., Rappahannock at 806 (reasons for rejecting existing rights-of-way included such use being “more detrimental to the environment than the use of new corridors”); Floyd County at 804 (reasons for rejecting the use of existing rights-of-way included “environmental reasons”).

¹¹ Virginia Electric and Power Company v. Citizens for Safe Power, 284 S.E.2d 613 at 614 (Virginia 1981).

¹² Safe Power at 614-615.

¹³ Safe Power at 615.

will always be the case.”¹⁴ Consequently, “the Commission had the power to review the environmental impact of upgrading the existing . . . corridor.”¹⁵

Significantly, even when the Virginia Supreme Court determined that Va. Code § 56-46.1 does not require the use of existing rights-of-way, it was considering rights-of-way that were already impacted by existing transmission lines.¹⁶ The SCC Guidelines make a similar distinction: they state that “existing rights-of-way should be given priority as the location for additions to **existing** transmission facilities.”¹⁷ The preference for existing rights-of-way under Virginia law is most relevant when such rights-of-way already contain transmission lines.

(3) determine that the line reasonably minimizes environmental impact

Next, the Commission must determine that the line reasonably minimizes environmental impacts. This includes minimizing adverse impact on scenic assets, historic districts, and “environment” of the area concerned.¹⁸ Environment encompasses both the natural environment as well as the human environment: it “includes ‘historic,’ as well as a consideration of the probable effects of the line on the health and safety of the persons in the area involved.”¹⁹

Unlike its determination that existing rights-of-way will be considered, this determination is that the route “will reasonably minimize adverse impact” – is “a condition to approval” of the project.

¹⁴ Safe Power at 615.

¹⁵ Safe Power at 615.

¹⁶ See, e.g. Safe Power at 614 (upgrade would have involved replacing a single 115 kV circuit on a 55 foot pole with two 230 kV circuits on 90 foot poles).

¹⁷ Guidelines of Minimum Requirements for Transmission Line Applications Filed Under Virginia Code Section 56-46.1 and the Utility Facilities Act, Commonwealth of Virginia State Corporation Commission Division of Energy Regulation (May 10, 1991), *Guidelines for Protection of Natural, Historic, Scenic, and Recreational Values in the Design and Location of Rights of Way and Transmission Facilities*, at 1, item 1 (emphasis added).

¹⁸ Va. Code § 56-46.1.B.

¹⁹ Va. Code § 56-46.1.D.

There are several sources that provide guidance on how this environmental standard should be applied.

The first source is the Constitution of Virginia. The 1971 revision of the Constitution of Virginia established the policy of the Commonwealth to “conserve. . . its public lands. . . and protect the Commonwealth’s . . . lands . . . from impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth.”²⁰ Following this constitutional revision, the General Assembly enacted Va. Code § 56-46.1 in 1972,²¹ directing the Commission for the first time “to effect a balance between environmental factors and economic and other traditional considerations where the construction and location of electrical transmission lines were involved.”²² Va. Code §56-46.1 “represented an increased emphasis in environmental concerns by the legislature.”²³ Significantly, the constitutional inspiration for Va. Code §56-46.1 stresses the conservation of public lands and the protection of lands for the general welfare. This confirms that preservation of park resources from impairment, so that they can be enjoyed by the general public, is entirely consistent with the objectives of Va. Code § 56-46.1.

The SCC Guidelines provide another source for determining how this environmental standard should be applied. The Commission has satisfied its obligation to “establish criteria for evaluating scenic and environmental assets” that “provide a rational framework for decision-making” by adopting guidelines promulgated by the Federal Power Commission.²⁴ These guidelines are satisfactory because they “have as their purpose to provide the most acceptable

²⁰ Va. Con. Art. XI, §1.

²¹ Va. Acts of Assembly 1976, ch. 652, codified at Va. Code § 56-46.1.

²² Board of Supervisors of Campbell County vs. Appalachian Power Company, 215 S.E.2d 918 (Virginia 1975) at 923-924.

²³ Campbell County at 924.

²⁴ Citizens for the Preservation of Floyd County, Inc. vs. Appalachian Power Company, 248 S.E.2d 797 (Virginia 1978) at 801.

answers from an environmental standpoint for the design and location of rights-of-way and transmission facilities.”²⁵ *The Guidelines of Minimum Requirements for Transmission Line Applications filed under Virginia Code Section 56-46.1 and the Utility Facilities Act* are available from the website for the Commission’s Division of Energy Regulation.²⁶

The SCC Guidelines state that, “[w]here practical, rights-of-way should avoid the national historic places listed in the National Register of Historic Places . . . and parks, scenic, wildlife, and recreational lands, officially designated by duly constituted public authorities.”²⁷

In addition to focusing on the impact on parks and recreational lands, the SCC Guidelines also focus on the impact the line will have on homes. Regarding the impact of the line on scenic, environmental, and historic features, the Guidelines ask the utility to “provide the number of dwellings with 500 feet for each route considered.”²⁸

Virginia case law provides yet another source for determining how the environmental standard should be applied. Virginia Supreme Court decisions indicate that cost is not an overriding consideration in siting transmission lines. Instead, it may be appropriate for the Commission to approve a longer, more expensive line after considering the “total public interest, giving proper weight to economic and environmental factors, reliability of electric service, land use, safety and engineering feasibility.”²⁹

(4) consider improvements in service reliability

²⁵ *Floyd County* at 801.

²⁶ <http://www.scc.virginia.gov/division/pue/docs/trans.pdf>; Tr. Exhibit 118.

²⁷ *SCC Guidelines, Guidelines for Protection of Natural, Historic, Scenic, and Recreational Values in the Design and Location of Rights of Way and Transmission Facilities* at 1, item 2.

²⁸ *SCC Guidelines*, Section III.A. at 6.

²⁹ *Campbell* at 926.

Pursuant to statutory guidelines concerning Commission approval of the construction of any electrical utility facility,³⁰ the Commission “shall consider any improvements in service reliability that may result from construction of such facility.”³¹ When making this determination, the Commission does not have to look at the proposed line in isolation. In fact, the Commission has recently determined that Virginia Power “should work more closely with the Staff on long-term planning in areas such as Northern Virginia, where the load growth is significant.”³²

Likewise, the Virginia Supreme Court has found it appropriate for the Commission to consider future interconnections when assessing the impact that a proposed line will have on reliability. In determining that the Commission had properly exercised its statutory obligations in ruling on a transmission line application, the Court found support for the Commission’s action in the fact that the Commission had considered how the placement of the substation based on the approved transmission line route “will permit future interconnection with the VEPCO system at the appropriate time, and that with such a substation Appalachian can more readily construct its proposed future 765 kV line to the Danville area.”³³

(5) consider the effect on economic development within the Commonwealth

Pursuant to statutory guidelines concerning Commission approval of the construction of any electrical utility facility, the Commission “shall consider the effect of the proposed facility on economic development within the Commonwealth.”³⁴ This statutory provision was amended

³⁰ Section A. of Va. Code § 56-41.1 concerns “any electrical utility facility,” which encompasses both electrical generating facilities and electrical transmission lines. See, e.g. Staff Report at 6 (“The Commission must consider the effect of the project upon service reliability and economic development”); Rappahannock at 804, note 1 (citing portions of Section A. of Va. Code § 56-41.1 as being pertinent to the Commission’s consideration of an application to construct an electrical transmission line).

³¹ Va. Code § 56-46.1. A.

³² Final Order dated October 8, 2004, Application of Virginia Electric and Power Company for a certificate of public need and necessity for facilities in Loudoun County: Brambleton-Greenway 230 KV Transmission Line, PUE-2002-00702 (“Phase II Proceeding”) (adopting Hearing Examiner’s finding).

³³ Campbell at 926.

³⁴ Va. Code § 56-46.1. A.

in 2002 to make the Commission's consideration of economic development mandatory rather than permissive.³⁵ Still, what is mandatory is merely that impact on economic development be considered, not that adverse impact be minimized or beneficial impact be maximized as a condition to approval.

III. Summary of Argument

Southern Respondents urge the Commission to choose a route that uses, in whole or in part, the W&OD Park. The basic arguments advanced in favor of using the W&OD Park are that such a route (a) is less costly and (b) uses existing rights-of-way. According to Southern Respondents, these factors are so compelling that the Commission has no choice but to put the transmission line in the W&OD Park.

Under Virginia law, the Commission is not limited to considering the least costly route or the route that uses existing rights-of-way. Instead, the Commission must determine that the Hamilton Line is needed, must determine that the route for the Hamilton Line will reasonably minimize adverse impact of the scenic assets, historic districts and environment of Loudoun County, and must consider the Hamilton Line's impact on reliability and economic development. Using these parameters, the record overwhelmingly supports a finding that the Southern Routes are a far better choice for routing the Hamilton Line for the following reasons:

- (1) **Need:** new development in western Loudoun County is driving the need for the Hamilton Line. The potential for new development along the Southern Routes is clear, and it is equitable to locate the Hamilton Line within a region causing demand growth.

³⁵ S.B. 554, Va. Acts of Assembly 2002, ch. 483, codified at Va. Code § 56-46.1 (changing language in Va. Code § 56-46.1 that previously provided the Commission "may" consider the effect of a proposed facility on economic development to language requiring that the Commission "shall" consider economic development).

- (2) **Rights-of-Way:** the area surrounding the existing rights-of way acquired by Virginia Power has changed so drastically over the past 38 years since the corridor was acquired, and the changes required by the installation of transmission lines would be so drastic, that the advantages of using the existing easement are far outweighed by the disadvantages of using the existing easement. This assessment is confirmed by the intense focus on Modified Route D, which removed three-quarters of the W&OD Park from serious consideration. Moreover, when long-term planning is considered, then the Southern Routes are clearly a far better choice for maximizing the use of existing rights-of-way.
- (3) **Environmental Impacts:** no matter what yardstick is used—preservation of scenic assets, preservation of trees, preservation of historic assets, preservation of recreational assets, preservation of park land, costs imposed by the Hamilton Line, impact on residential homeowners, safety and engineering feasibility—the public interest is not served by using a Northern Route. Even when Modified D is considered, which removes three-quarters of the W&OD Park route from consideration, the environmental impacts of the Northern Route far outweigh the environmental impacts of the Southern Route.
- (4) **Reliability:** using a Southern Route will increase improvements in service reliability as compared to using a Northern Route.
- (5) **Economic Development:** economic development is most improved by using a Southern Route rather than a Northern Route.

IV. Argument

A. Need for the Line

Loudoun County raised issues during the evidentiary hearing concerning the need for a transmission solution to address load growth issues at this time. This Brief will not address those issues: the Park Authority expects them to be thoroughly briefed by other parties.

If the Commission does determine that there is a need for a new transmission line, that determination would be based on load growth in western Loudoun County.³⁶ It is undisputed that new development has been and will continue to be occurring in the southern portion of the Study Area.³⁷ It is equitable to locate the Hamilton Line along the Southern Routes where the load growth is now occurring and will continue to occur in the future.

B. Existing Rights of Way

1. Changes in the Area Justify Not Using Existing Easement

Virginia Power purchased the W&OD railroad corridor in 1968. The Park Authority acquired the W&OD railroad corridor in fee from Virginia Power starting in 1978, with Virginia

³⁶ See, e.g. Tr. Exhibit 20, Application at 1-2:

The growth in the demand for electric service is being caused by extraordinary load growth associated with continued increased development in this area due to local growth primarily from residential and commercial development.

³⁷ See Tr. Exhibit 20, Appendix. at 2:

Extraordinary load growth in this region is not limited to the Purcellville Load Area. The Western Loudoun County Load Area, which encompasses the geographical area in the County generally west of Route 15 and the Town of Leesburg, had an annual electric growth rate of 10% from 1998 to 2004. The West of Route 15 Load Area, which encompasses the geographical area west of Route 15 in Loudoun, Prince William, and Fauquier Counties, had an annual electric load growth of 9% from 1998 to 2004.

See Notice of Participation as a Party Respondent of Centex Homes, dated June 16, 2005, at 2 (describing development in Loudoun County located along the Southern Routes).

See Notice of Participation of Leesburg Luxury Homes, L.L.C, dated May 3, 2005, at 2 (describing preparation of land for residential construction located along the Southern Routes).

See Tr. Exhibit 41, Direct Testimony of Cyril Welter on behalf of Virginia Electric and Power Company, at 2-6: Large areas of open space in the project area that were once used for agriculture have now been subdivided for new and future residential subdivisions. While there are still some active farms within the project area, much of this land has been subdivided by landowners into smaller lots, possible for future development.

Power retaining an easement.³⁸ The record overwhelmingly supports a finding that changes occurring since Virginia Power acquired the easement justify not using the easement. This finding is appropriate because (a) nearby property owners did not have notice of the easement, and even if they did have notice, Commission review would still be required; (b) the character of the property has changed since the easement was acquired; and (c) the vigor and nature of the public outcry support the conclusion that the changes to the property are too great to justify use of the easement.

(a) No Notice of Easement

The rights under Virginia Power's easement are not absolute, nor does the existence of this easement justify a claim that homeowners adjacent to the W&OD Park were on notice that transmission lines could be built along this unspoiled portion of the W&OD Trail Park. Unlike other portions of the W&OD Park, which have had 230kV transmission lines since 1962,³⁹ the 11 mile section of the W&OD Park at issue in this proceeding has never had transmission lines.

Park Authority witness Rudacille repudiated these claims that Virginia Power's easement should have put homeowners adjacent to the W&OD Park on notice that a transmission line could be built on portions of the Park:

I think, first of all, it's a bit of a stretch to say that when people are buying their houses that they ought to look at easements not only on their own properties but on properties that are adjacent to the land they are buying.

Even Mr. Davenport, when he testified, who was kind of a leading advocate, I think, of that view, admitted that he only did a title search on the parcels that he was purchasing.

And Mr. Cox, I believe, testified that there are no danger tree easements on properties next to the W&OD Trail, so I think there's even less of a reason for folks next to the trail to look or to have that hint that there might be an easement on the property next door.

But if you were unusually diligent and you did run title on property next to the W&OD and you found the easement, you would see in the easement there's

³⁸ Tr. Exhibit 145, Staff Report at 34.

³⁹ Staff Report, Phase II Proceeding, dated August 6, 2003 at 14.

language—I think it's on page 249 in the Loudoun County deed section that says that Virginia Power's rights are subject to regulatory authority of governmental bodies like the Commission.

So the deed doesn't in any way make the park purposes secondary and the Virginia Power's use primary. I think the Park Authority spent a lot of effort and certainly a lot of money negotiating to buy the property in fee.

And so I think that the only impact that the easement has—it would impact the cost of the route, but it doesn't establish any kind of authority for Virginia Power to build a 230kV line.⁴⁰

As Ms. Rudacille noted, even when Virginia Power owns the right-of-way outright and simply wants to string an extra conductor along facilities that are already built, Commission approval is required:

And I think Staff said in their staff report that---well, in their testimony that Virginia Power may acquire right-of-way and install double circuit poles that it could use for a future line to Middleburg, but it would still have to go through Commission approval in order to do that.⁴¹

In addition, Ms. Rudacille repudiated claims that signage along the W&OD Park would have put park users on notice of Virginia Power's easement:

I think that photo [from the information sign] relates to some claims of the parties that everyone was on notice that Virginia Power was going to build new lines on the trail, but I think the excerpt says that in 1968 Virginia Power buys the property to protect its existing easements and for future expansion. And then it goes on to say that in 1978 the Park Authority purchased the right-of-way from Shirlington to Purcellville for use as a multiuse trail, which was completed in 1988.

And if I were a casual observer reading one of those signs, I wouldn't conclude that Virginia Power retained any right to build new lines. I think—the 1968 reference would make me aware of the existing lines, but the 1978 reference would show that the Park Authority purchased the property and there is no discussion on that sign about any kind of retained rights.

And I think a normal result of purchase is that, you know, the property is yours for your purposes. I don't think that most folks would read that and draw any other—you know, draw a conclusion otherwise.⁴²

⁴⁰ Tr. at 4295-4296.

⁴¹ Tr. at 4286.

⁴² Tr. at 4334-4335.

(b) Changes Since Easement Acquired

The changes in the area since Virginia Power purchased the W&OD railroad corridor have been significant.⁴³ Over the years, the cleared area maintained for the W&OD railroad has returned to its natural state.⁴⁴ A nationally recognized recreational park has been established.⁴⁵ The historical aspects of the W&OD railroad have been maintained and preserved to the extent that the W&OD Park is eligible for a National Historic Register designation.⁴⁶ Houses have been built up to the edge of the W&OD Park on either side in many instances.⁴⁷ A trail user quoted in the Park Authority's pre-filed testimony perfectly captures how the changing nature of the area justifies selecting a route that spares the W&OD Park:

As you well know, publicly available open space is a precious and dwindling resource in northern Virginia and indeed the entire metropolitan region. The W&OD Trail is heavily used and highly valued by residents of northern Virginia. This applies both to sections that are close to where we live and work (I live within ¼ mile of the trail and use it several times a week in the Vienna area), but also to those sections we visit less frequently.

In particular, the section of the trail near the terminus in Purcellville (and especially the area around Paeonian Springs) is one of the most beautiful places to ride a bicycle I have ever seen. It is shaded, quiet, cool, and damp in the heat of the summer, and the views and scenery are pure heaven — Loudoun County and northern Virginia at its best.

⁴³ See Virginia Power witness Bailey, Tr. at 2508 (indicating that the corridor was originally an open railroad corridor and changes to the corridor include more wooded vegetation, removal of the rails, and residential growth).

⁴⁴ Tr. Exhibit 98, Pre-filed Direct Testimony of Paul E. McCray on behalf of Northern Virginia Regional Park Authority, at 6 (discussing how the trail is left in its natural state to preserve green space and provide wildlife habitat, which includes approximately 450 wildflowers, more than 100 species of birds including hawks and owls, and foxes, river otters, beaver, turtles, and snakes).

⁴⁵ Tr. Exhibit 98, Pre-filed Direct Testimony of Paul E. McCray on behalf of Northern Virginia Regional Park Authority, at 6-7 (noting that the W&OD Park is a National Recreation Trail with the distinction of being on the Department of Interior's national register of trails and is recognized by the National Recreation Trails Program, which features trails of local and regional significance that exemplify an important part of America's landscape for recreation, conservation, health, and transportation).

⁴⁶ Tr. Exhibit 98, Pre-filed Direct Testimony of Paul E. McCray on behalf of Northern Virginia Regional Park Authority, at 5 (noting that the history of one of the oldest railroads in the nation's history, which hauled the materials that built Northern Virginia, has been preserved and maintained to the extent that it has been declared eligible by the Commonwealth of Virginia to be National Register of Historic Places eligible and is in the process of being nominated to that register).

⁴⁷ See Tr. Exhibit 20, Appendix at 104 (stating that the W&OD Trail has 828 homes within 500 feet of the route, 53 of which are within 100 feet). See generally Tr. Exhibits 130 to 143 (testimony of Shenstone and Dry Mill homeowners). See generally Tr. Exhibits 57 and 62 (testimony of Kincaid Forest homeowners).

Dominion Power proposes to locate a high tension line along this beautiful stretch of our public parkland. *I am a planner, and understand fully that many rails-to-trails projects were funded with the condition that they may be re-converted to transportation or power line use, and I understand that Dominion owns rights of way on the section they propose to use.* And, working in the environmental field, I know all too well that NIMBY-ism is, and how it can be used to stop important projects—like new power access for the region.

That is all well and good, but those decisions were made 30 years or so ago, and things have changed. It is simply not acceptable to ask the residents of northern Virginia to trade off an irreplaceable resources in order to meet the important public need for power. There simply MUST be alternative that—although they may cost more (and as a Dominion Power customers, I am willing to pay a bit extra)—do not result in the destruction of something that cannot be rebuilt. We would not run the lines through a cemetery, or a church, nor would we run it through someone's property without compensating them. The public cannot be compensated for the loss of this resource, and Dominion should not be able to use this location simply because it is a less-costly route.⁴⁸

This portion of the W&OD Park is far different from other sections of the park, where transmission lines pre-date the creation of the park.⁴⁹ It was precisely the unique nature of this section of the Park that led to Virginia Power taking the unprecedented step of not including the W&OD Park in its Application, as John Bailey noted in his direct testimony:

In direct response to the public's request, the Company agreed to avoid utilizing a major portion of the 11-mile length of the W&OD Trail at issue due to the impacts on the scenic, recreational, and historical aspects of the W&OD Trail. Utilizing the W&OD Trail through Leesburg and west to the Hamilton Substation site would cross through portions of the Leesburg Historical District and the Village of Paeonian Springs Historical District. It would pass directly through the Town of Leesburg and the Village of Paeonian Springs. It would remove much of the vegetation that has grown up on the W&OD Trail in areas that have extensive canopies. Although the W&OD Trail could still be utilized for recreation after the line was installed, as it is in Arlington, Fairfax, and Loudoun Counties where the transmission lines presently exist, *the character of this portion of the W&OD Trail would be changed* as a result of the removal of trees.⁵⁰

⁴⁸ Tr. Exhibit 106 at 7 (quoting Robin O'Malley of Vienna, Virginia from an email sent on June 6, 2004 to the Fairfax County Board of Supervisors Chairman Connolly at Supervisor Smyth).

⁴⁹ Staff Report, Phase II Proceeding, dated August 6, 2003 at 14 (noting the existence of a 230 kV transmission line since 1962).

⁵⁰ Tr. Exhibit 43, Direct Testimony of John B. Bailey, at 6.

(c) Nature of Opposition to Use of Easement

The “popular, political, and public pressure” dismissed so readily by Southern Respondents⁵¹ is more accurately described as the only pure expression of public interest regarding the Hamilton Route in this proceeding. Opponents to transmission line routing cases can typically be described as representing “NIMBY” interests—not in my backyard. Those opposing the Southern Routes fall into this category: they are all property owners adjacent to the Southern Routes. Those opposing the Northern Routes, particularly any route along the W&OD Park, extend well beyond NIMBY interests. They include numerous public bodies in the Northern Virginia region:

Arlington County
Fairfax County
Town of Hamilton
Town of Herndon
Town of Hillsboro
Town of Leesburg
Loudoun County
Town of Purcellville
Town of Vienna
Northern Virginia Regional Commission⁵²

They include state agencies like the Department of Environmental Quality,⁵³ the Department of Historic Resources,⁵⁴ and the Department of Conservation and Recreation’s Division of Planning and Recreation Resources.⁵⁵

⁵¹ See, e.g. Post-Hearing Memorandum of Centex Respondents at 5: “The casual observer might conclude that the rejection of the Trail route . . . was merely the result of Dominion giving into popular and political pressure.”

⁵² Tr. Exhibit 145, Staff Report, at 37.

⁵³ Tr. Exhibit 145, Staff Report, Attachment 5, DEQ Coordinated Environmental Review, W&OD Trail Route, January 26, 2006 letter from DEQ to Mr. Peck, SCC Clerk regarding Supplemental Review of a 7th Alternative, Comments at 5-6: Summary of Recommendations: “Based on the information and analysis submitted by reviewing agencies on the Alternative long the W&OD Trail, we have several recommendations for consideration by the SCC as conditions of the Certificate of Public Convenience and Necessity under review by the Commission for this project . . . [recommendation no.] **9. Eliminate Potential Impact to the Washington and Old Dominion Trail.** Eliminate routes which locate the transmission line in the W&OD right-of-way to reduce the potential impacts on significant historical resources and the recreational and public commuting use of the trail.”

⁵⁴ See [Section IV.C. 2(d)] of this Brief for a discussion of the opposition of the Department of Historic Resources.

Opponents to using the W&OD Park also include trail users from all over Northern Virginia: by January 2006, the Commission had received 296 comments concerning this proceeding, and 282 of those opposed use of the W&OD Park.⁵⁶

The Park Authority's pre-filed testimony noted that "what got the W&OD Park largely excluded from the Application was a grass roots effort based on the attributes of the Park": "[t]here was no glitzy PR campaign or special studies."⁵⁷ During the hearing, Mr. McCray disagreed with characterizing the opposition to using the W&OD Park as simply a petition drive:

I don't think it was a petition drive. Many of the letters and e-mails I have seen in the record were not written as you might see somebody writing something in a petition drive where everyone is the same. A lot of the correspondence I received or that I saw in the record were people just saying what they thought. You know, it was coming from inside. It wasn't someone saying, copy this and paste this on and send it. People were saying how it was going to affect them if they were using that section of trail and it had been turned into a transmission line.⁵⁸

Perhaps the best example of how opposition to using the W&OD Park was "coming from inside" and addressed personal impacts are the sentiments expressed by Mr. Dennis Roth of Reston, Virginia:

From 1994 to 1997, I was a biker who spent most of his time on the W&OD Trail. Although I lived in Reston (and still do), rode a slow bike, and was in my early 50s, I would occasionally make the long roundtrip from Reston to Purcellville, the highlight of which was always the final 11 miles from Leesburg to Purcellville. I gave up biking in 1997 for a variety of reasons but would often think of the joy I had experienced on that stretch of trail. I retired in January 2004, and thanks to a relative who reconditioned my old bike, I began riding again in May. For several weeks I stayed close to home, but when I learned of the transmission line threat to

⁵⁵ Tr. Exhibit 145, Staff Report, Attachment 5, DEQ Coordinated Environmental Review, W&OD Trail Route, January 26, 2006 letter from DEQ to Mr. Peck, SCC Clerk regarding Supplemental Review of a 7th Alternative, Comments at 23: "With respect to the alignments proposed along and across the W&OD Trail, DCR is against any such alignment, unless it avoids removal of trees."

⁵⁶ Tr. Exhibit 145, Staff Report, at 38. See Park Authority witness McCray, Tr. at 4206 ("I was hearing from folks who use the trail out there but they lived all over Northern Virginia. And not just Northern Virginia. I heard of folks from Maryland, DC, Front Royal . . . Folks told me they were driving to Leesburg and parking, driving to Purcellville and parking . . . they were specifically coming to the area just to use that section because they had heard about it, they had experienced it, and it was a popular section for them.)

⁵⁷ Tr. Exhibit 106, Pre-filed Testimony of Hafner sponsored by Rudacille, at 12

⁵⁸ Park Authority witness McCray, Tr. at 4206-4207.

the W&OD from trail-side flyers and the www.savethetrail.com website, I pushed up my timetable to Purcellville. I set off on the morning of June 30. I had expected to see many changes because of the population growth and development in Loudoun County, but I was pleasantly surprised to find the trail looked mostly as I remembered it. After passing through Herndon and Sterling and crossing the Rt. 28 bridge, the spaces and scenery open and so does the mind. Approaching Leesburg, more trees are encountered on the sides of the trail, a refreshing harbinger of things to come. Soon after leaving Leesburg, one's eyes are filled with picturesque horse farms, switch-backs, a stone underpass and bank, and foothill vistas, but best of all are the tunnels and cathedrals of embowering trees through which one rides in shade and bliss. (I had forgotten about the extraordinary quarter mile of trail where very tall overarching trees give the traveler the feeling of being in a Gothic Cathedral.) Then as one approaches Purcellville, one's cyclical exertions are rewarded most gloriously. Breaking out of the closed canopy, one suddenly rides into a large rolling field of light. For those with eyes to see it, this is the best possible experience. My earthly eyes will never see a better heaven. But any diminution of the tree cover will impair it because it is the contrast between the tree darkened path and the big and open field that makes it possible. Others can talk quite rightly about the loss of tourist dollars and of a regional recreational treasure if the trees are cut, but for me and many others it will be about the loss of these sights. This is an enchanted trail. I cannot imagine it without all its trees.

The nature of the opposition to using the W&OD Park for the Hamilton Line proves that *the character of the property has significantly changed since Virginia Power originally acquired the easement and also proves that a new transmission line will radically change this portion of the Park, and impair the benefit and enjoyment of this public land by the people of the Commonwealth.*

2. Changes that Hamilton Line Would Cause

The changes caused by building the Hamilton Line on or adjacent to the W&OD Park far exceed the impact of the situation often encountered when the Commission considers using existing rights-of-way for siting transmission lines. Typically, a utility seeks to add *additional* transmission lines to a right-of-way that already contains *existing* transmission lines.⁵⁹ In sharp contrast, this case involves an easement where no transmission lines are present and where a

public park has been established, a recreational corridor has flourished, and hundreds of homes have been built immediately adjacent to the easement. The changes that would be caused by using the W&OD Park for the Hamilton Line are vividly demonstrated in simulations provided in Park Authority testimony and in Shenstone testimony. The Park Authority testimony contains a depiction of a scene showing the Park before and after the transmission line is built as trees are removed to accommodate the transmission line.⁶⁰ Shenstone testimony contains even more striking before and after scenes. Actual photos show existing scenes where bikers ride through a wooded landscape shaded by overhanging trees and walkers stroll along a tree lined path, screened from nearby development. Then photo simulations, using the most advanced simulation techniques,⁶¹ demonstrate how the scenic assets are dramatically altered by the installation of transmission lines five years after the lines have been installed: bikers ride through a more barren landscape, exposed to sun and wind, and walkers are completely exposed to nearby development with the park-like setting completely removed.⁶² This evidence is undisputed: there is simply no question that adding transmission lines to a narrow Park corridor drastically changes the nature of the Park and completely degrades the scenic assets that contribute most to the park-like setting. Significantly, even these photo simulations underestimate the full brunt of the impact on the W&OD Park because they show the Park five years after construction has been completed, when new, stunted vegetation covers the scars left by the construction.⁶³

⁵⁹ See, e.g. *Safe Power* at 614 (affirming the Commission's determination that rejected an upgrade in which a single 115 kV circuit on a 55 foot pole would have been replaced with two 230 kV circuits on 90 foot poles).

⁶⁰ Tr. Exhibit 98, Appendix Q.

⁶¹ See cross of Simmons by Mr. Wolf, Tr. 4533-4534 (noting that the University Studies Team has over 30 years prior experience and has worked on extensive projects involving an 110 mile study and a 90 mile study).

⁶² Tr. Exhibit 121, Tab Q, *Prefiled Direct Testimony of Charles Simmons on behalf of Shenstone Respondents*, Attachment 10 (Simulations related to Paeonian Springs) and Attachment 11 (Simulations related to Fox Ridge).

⁶³ Park Authority witness McCray, Tr. at 4201-4202 (noting that invasive, non-native vines move in and often overwhelm replacement trees).

3. Conclusions Regarding Existing Rights-of-Way

The standard arguments in favor of using existing rights-of-way to lessen the impact of new transmission lines simply do not apply for the portion of the W&OD Park at issue in this proceeding. Using the easement within the W&OD Park will exacerbate, not lessen, the impact of new transmission lines based on (a) the significant changes that have occurred within the W&OD Park and outside the W&OD Park in the almost 40 years since Virginia Power acquired the easement and (b) the narrow confines of the park itself, where the typical clearance requirements for transmission lines cannot accommodate the wooded setting enjoyed by many as a refuge from the ever increasing development in Loudoun County. Virginia law clearly permits the Commission, when considering the use of existing rights-of-way, to examine changes that have occurred since the right-of-way was acquired and changes that the new transmission lines would entail, and the Commission has rejected the use of existing rights-of-way even when the project involved upgrading transmission lines in a right-of-way already impacted by transmission lines. The rationale for rejecting the use of an existing easement is even more compelling here, when there are no existing transmission lines encumbering the right of way.

The conduct of the hearing reinforces this conclusion. A significant portion of the evidentiary hearing concerned the Modified D route presumably because the impacts of a route using the other portions of the W&OD Park were considered too drastic to merit serious consideration.⁶⁴ However, as discussed below, even using the Modified D route imposes unacceptably high impacts without any offsetting benefits.

⁶⁴ See, e.g. Hearing Examiner Anderson, Tr. at 2690 (“I don’t think anyone here is advocating that this transmission line be routed through downtown Leesburg on the W&OD Trail. I think that has clearly been shown to be unreasonable and not feasible.) See also Tr. Exhibit 145, Staff Report at 36 (suggesting consideration of certain portions of the W&OD Trail route but specifically excluding “the popular, heavily-canopied portion of the Trail west of Paonian Springs). See Hearing Examiner Anderson, Tr. at 4989 (clarifying that the routes receiving further scrutiny were limited to E7 and the Modified D route).

C. Environmental Impacts

1. Overall Comparison of Northern Routes and Southern Routes

The record shows that adverse environmental impacts are far greater on the Northern Routes based on the following undisputed facts:

- (1) only the Northern Routes impact a unique, nationally recognized park and recreational resource enjoyed by large numbers of visitors;
- (2) only the Northern Routes impact hundreds of residences;
- (3) only the Northern Routes require extensive consultation with VDOT;⁶⁵
- (4) only the Northern Routes pose a significant threat to historical assets;
- (5) only the Northern Routes require construction within a rigidly defined 100 foot corridor that is ill-suited for heavy construction equipment; and
- (6) only the Northern Routes force homeowners to bear the full brunt of transmission lines practically in their backyards while precluding them from receiving any compensation.

At the same time, the record shows the environmental impacts are considerably reduced on the Southern Routes based on the following undisputed facts:

- (1) a considerable portion of the Southern Routes is slated for development or contains private property posted with no trespassing signs, which means that existing scenic assets will either be disrupted or be off limits to the general public;
- (2) the Southern Routes impact far fewer residences, with many of the parcels being vacant land without a permanent resident;

- (3) the Southern Routes raise no concerns for VDOT;
- (4) mitigation measures are feasible to avoid physically impacting historical assets;
- (5) the terrain permits far greater opportunities for mitigation; and
- (6) all property owners truly impacted by the Southern Routes would receive full compensation for the use of their property.

The far greater impacts on the Northern Routes are best illustrated by the significant amount of time devoted at the evidentiary hearing to consideration of the Modified D route which impacts, at most, a quarter of the W&OD Park at issue in this proceeding. The attention devoted to the Modified D route was presumably based on the assumption that routing along the 11 mile length of the W&OD Park was too drastic to merit serious consideration.⁶⁶ However, the record demonstrates that even the Modified D route should be rejected because it has all of the disadvantages of routing on or near the W&OD Park (unacceptably high impacts on scenic assets, historical assets, recreational assets, park assets and residences) and none of the advantages (lower costs imposed on the utility).

2. Arguments for Northern Routes Actually Support Southern Routes

Arguments cited in support of selecting a Northern Route include costs, existing transmission lines on other sections of the W&OD Park, terrain, historic assets, and the natural

⁶⁵ This brief will not address the numerous issues with VDOT raised by the Northern Routes in anticipation that the Town's brief will thoroughly address these issues, but the Park Authority notes that the record supports a finding that VDOT issues by themselves create significant difficulties for the Northern Routes.

⁶⁶ See, e.g. Hearing Examiner Anderson, Tr. at 2690 ("I don't think anyone here is advocating that this transmission line be routed through downtown Leesburg on the W&OD Trail. I think that has clearly been shown to be unreasonable and not feasible.) See also Tr. Exhibit 145, Staff Report at 36 (suggesting consideration of certain portions of the W&OD Trail route but specifically excluding "the popular, heavily-canopied portion of the Trail west of Paonian Springs). See Hearing Examiner Anderson, Tr. at 4989 (clarifying that the routes receiving further scrutiny were limited to E7 and the Modified D route).

environment. Each of these arguments, when subjected to close scrutiny, actually supports the selection of a Southern Route for the Hamilton line.

(a) Costs

(i) Impact on Property Values

Southern Respondents claim that impact on property values along the Southern Route is a major reason the Commission should use a Northern Route for the Hamilton Line. However, they do not apply this same rule when considering impacts on the Northern Route.⁶⁷ When the logic of this premise is applied to the Northern Routes, it is clear that impact on property values favors selection of the Southern Routes for the Hamilton Line.

Scenic Loudoun submitted testimony by Mr. Ruffner concerning the impact of the Hamilton Line on property values. The gist of the testimony was that proximity to transmission lines adversely impacts property values for properties located along the Southern Routes,⁶⁸ with the average percentage impact for all the properties being 27.6%.⁶⁹ Kincaid Forest submitted testimony by Mr. Clauson, who came to essentially the same conclusion when examining the impact of the Hamilton Route for properties in Kincaid Forest adjacent to the W&OD Park and showed an impact of 6% to 12% for properties located within 300 feet of the W&OD Park. Both

⁶⁷ See, e.g. Park Authority witness Rudacille, Tr. at 4297: "In order for [Mr. Ruffner] to come up with a number that's as high as . . . [\$]23 million for acquisition of damages, he insists that you take into account not only the actual land that's occupied by easement but also the impact that the easement will have on the surrounding land. But then to arrive at a number as low as \$0 for the W&OD Trail, he completely ignores the impact that easement will have on the surrounding land."

⁶⁸ Tr. Exhibit 87, Prefiled Direct Testimony of James Ruffner for Scenic Loudoun, at 4 ("I would also note that the appearance of transmission lines that are not located directly on a property, but are near the property and can be seen from the property, may have a detrimental and negative impact on the property's values that cannot be recouped through the condemnation process. Even though the transmission line is not located on the property, it may nevertheless be considered an external factor that negatively impacts the value of the property.")

⁶⁹ See Exhibit A attached to this brief containing a chart summarizing Mr. Ruffner's values: 27.6% was obtained by adding the total percentage impact and dividing that total by 63, the total number of properties.

Mr. Ruffner⁷⁰ and Mr. Clauson⁷¹ confirmed under cross examination that their findings were not unique to the areas they studied: the proposition was generally true that proximity to transmission lines adversely impacts property values.

The Park Authority submitted testimony by Ms. Rudacille showing that the average tax assessed values for homes immediately adjacent to the W&OD Park was \$298,100,400.⁷² This provides a conservative figure for the value of properties that would be impacted by the Hamilton line because it uses tax assessed values, not market values, and because it only includes properties immediately adjacent to the W&OD Park, which would not capture all properties within 500 feet of the transmission line.⁷³

If the Commission considers Mr. Ruffner's or Mr. Clauson's testimony to be credible, the Commission should conclude that the impacts of the Northern Route on property values are far greater than the impacts of the Southern Route. Obtaining an order-of-magnitude sense of the impact does not require any expertise in appraising property: it simply requires common sense. Mr. Ruffner's findings show an average impact of 27.6%.⁷⁴ Mr. Clauson's findings show an average impact of 6% to 12% for houses in Kincaid Forest within 300 feet of the W&OD Trail, and Mr. Clauson indicated under cross examination that similarly situated properties adjacent to

⁷⁰ Scenic Loudoun witness Ruffner, Tr. at 3899 to 3900 (responding "Yes" to inquiry as to whether it was his testimony that proximity to power lines impacts residential property values and later stating "So I would say it definitely is affected by proximity.")

⁷¹ Kincaid Forest witness Clauson, Tr. at 4048: "I would say, without question, any residential property within close distance, close proximity to the power line and view of the power line will be negatively influenced."

⁷² Tr. Exhibit 107 at 22 (consisting of a chart originally distributed to all parties in the proceeding on March 24, 2006 as a response to a discovery request).

⁷³ Park Authority witness Rudacille, Tr. at 4303: "I think this number is very, very conservative because I only looked at properties that were immediately abutting the park property, and I didn't make any effort to scale out and hit all properties within 500 feet, so . . . I would say it would be underestimated."

⁷⁴ Using the average 27.6% is a conservative approach to extrapolating from Mr. Ruffner's premise. Park Authority witness Simmons found that using a 40% impact figure would be more appropriate because houses adjacent to the W&OD Park were more comparable to the matched pair which Mr. Ruffner extrapolated from. Tr. at 4416.

the W&OD Trail Park would be impacted in that same range.⁷⁵ Applying these rough estimates to properties immediately adjacent to the W&OD Park show a possible impact of \$82,275,710 using Mr. Ruffner's average percentage and a possible impact of \$26,829,036 using Mr. Clauson's average percentage. This does not mean that Mr. Ruffner or Mr. Clauson would come up with that exact number. It does mean that if the Commission accepts their basic proposition—property values are impacted by proximity to transmission lines—then the Commission should logically conclude that routing the Hamilton Line along an 11 mile stretch of the W&OD Park will have an impact on property values that far exceeds the impact of the Southern Route on property values.

The key distinction between impacts on property owners along the Northern Routes and Southern Routes is that, under Virginia law, all property owners adjacent to the Southern Routes will be made whole for any damages they suffer, while property owners adjacent to any portion of a Northern Routes that is located within the W&OD Park will receive no compensation.⁷⁶ The Southern Respondents profess to protect property rights and to be deeply indignant at the prospect of Virginia Power exercising eminent domain to acquire an easement for a transmission line. In fact, the Southern Respondents seek to ensure that hundreds of homeowners, all of whom would be far more heavily impacted than property owners along the Southern Routes, would receive absolutely no compensation when a transmission line is routed practically in their backyards. The Southern Respondents would have the Commission essentially authorize the *confiscation of amenities enjoyed by homeowners adjacent to the W&OD Park—proximity to wooded parkland, higher property values based on that park land, peace of mind for their*

⁷⁵ Kincaid Forest witness Clauson, Tr. at 4049 (“I would say any residential property within the similar range would be influenced negatively in a similar percentage amount.”)

⁷⁶ See Park Authority witness Rudacille, Tr. at 4317 (indicating that property owners along the W&OD Park would not receive any compensation because the easement would be wholly encompassed on the park).

children growing up in an environment free from concerns regarding proximity to high voltage transmission lines—in a manner that ensures the homeowners will receive no compensation for losing these amenities. *The untenable nature of their position is demonstrated by a chart summarizing Mr. Ruffner’s findings concerning what damages to the residue should be paid to property owners along the Southern Route. Exhibit A to this brief summarizes information provided in Mr. Ruffner’s testimony. Items marked in bold are properties where the property owner does not live: no improvements were shown in Mr. Ruffner’s descriptions. Parcel 14, for example, has a total size of 26.05 acres and has .001 acres of property that would be crossed by the Hamilton Line: Mr. Ruffner finds that the easement costs would be \$30 but the damage to the residue would be \$781,470.⁷⁷ Thus, according to the Southern Respondents, the owner of property that does not have a permanent residence is entitled to \$781,470 for the Hamilton Line crossing a small fraction of the landowner’s property, while a young family that would have to play in the back yard of a home adjacent to the W&OD in the shadow of transmission lines which have wiped out the adjacent woods would receive nothing.*

(ii) Accurate Assessment of Costs

Staff claims that a route within the W&OD Park would “minimize construction and maintenance costs.”⁷⁸ Similarly, Southern Respondents claim that construction costs are another reason the Commission should use a Northern Route for the Hamilton Line. These claims are based on mistaken assumptions. When the construction constraints of the Northern Routes are properly analyzed and compared to the constraints imposed on the Southern Routes, and when danger tree rights are properly accounted for, it becomes clear that construction costs will be

⁷⁷ See Park Authority witness Rudacille, Tr. at 4318 (discussion parcel no. 14 in Mr. Ruffner’s testimony as an example of the disparity between property owners along the Southern Route and homeowners adjacent to the W&OD Park)

⁷⁸ Tr. Exhibit 145, Staff Report at 46.

higher, not lower, if the Northern Routes are selected and it also becomes evident that certain costs have been improperly excluded from estimates of construction along the W&OD Park. Mr. Simmons, whose testimony was not refuted and who has had more experience with the design, construction, maintenance, and operation of transmission lines than any other witness in this proceeding,⁷⁹ stated, “I think, frankly, the route along the W&OD would maximize construction and maintenance costs.”⁸⁰

(a) Towers

One basis for Mr. Simmons’ conclusion that construction costs would be higher along the W&OD concerned the number of transmission towers:

When you look at the routes—and you have to look and realize that a route along the W&OD for a number of reasons utilizes very short spans as compared to the overland route of E7. And to the extent the spans are shorter, *requiring more structures*, the cost is actually considerably more expensive to build on the W&OD.⁸¹

Mr. Simmons noted that one of the most important determination of costs was span length, which dictated the number of transmission towers. The Application provided span lengths based on E7: this was a cross country route that could take advantage of differences in elevation and utilize an average span length of 700 feet. In contrast, the W&OD had “a rather even slope [that] would require a lot more spans since there’s no difference in elevation that the design engineer can use to get longer spans.”⁸² Based on his expertise in transmission planning,

⁷⁹ See Tr. Exhibit 110, Direct Testimony of Charles Simmons, at 2 (indicating 50 years of experience—40 years of employment with Appalachian Power Company and subsequent 10 years consulting—which included serving as the executive responsible for the design, construction, maintenance, and operation of the transmission lines of Appalachian Power Company). See Tr. Exhibit 38, Direct Testimony of James Cox, at 1 (indicating 24 years of experience, including 18 years with the Transmission Engineering Group and a current position as an Engineer III). See Tr. at 4414, Park Authority witness Simmons (“Mr. Sylvester was quick to say that he did not have any experience in transmission line design or construction or project management. Looking at Mr. Srobl’s background, I don’t see any experience in there in any construction or project management associated with transmission line construction.”)

⁸⁰ Tr. at 4414.

⁸¹ Tr. at 4415 (emphasis added).

⁸² Tr. at 4418.

“it was no surprise” to Mr. Simmons that an alignment along the W&OD would require shorter spans in the neighborhood of 450 feet, such as those shown in the Application for transmission line routes along Route 7, where even slopes would be necessary to accommodate highway construction.⁸³

In response to the Staff Report and to testimony by Mr. Sylvester and Mr. Strobl claiming that construction costs along the W&OD would be less than construction costs on E7, Mr. Simmons prepared a construction cost estimate based upon Virginia Power’s responses to interrogatories.⁸⁴ Relying upon Virginia Power’s response to Staff interrogatory No. 21⁸⁵ and Virginia Power’s response to Leesburg’s interrogatory No. 11,⁸⁶ Mr. Simmons prepared a construction cost estimate⁸⁷ showing that construction within the W&OD Park would be \$5,270,005 more expensive than construction along E7. Several parties objected to the introduction of Mr. Simmons’ cost estimate on procedural grounds,⁸⁸ but no party refuted the accuracy of his cost estimate.⁸⁹ Mr. Simmons stressed that his cost estimate was not precise: his main point was that “to make the assumption that a cost per mile is going to be common when you have such tremendous variations in the work that will be required, you know, is simply not a good way to go about it.”⁹⁰

⁸³ Tr. at 4419. *See also* Tr. at 4558 (Watts cross of Simmons, establishing that the Appendix on page 46 showed a span length of 450 feet regarding the W&OD Trail).

⁸⁴ Tr. at 4421 (indicating that Mr. Simmons relied on the responses to interrogatories).

⁸⁵ Tr. Exhibit 111.

⁸⁶ Tr. Exhibit 113.

⁸⁷ Tr. Exhibit 112.

⁸⁸ *See, e.g.* Virginia Power counsel Watts, Tr. 9 (“I’m not objecting to the two discovery responses. I’m objecting to this document which has been produced by Mr. Simmons. It is clearly additional testimony, could have and should have been included in direct testimony, and I’m being surprised by it and I object to it).

⁸⁹ *See* Tr. at 175 (Mr. Watts indicating that Mr. Cox on rebuttal may respond to Simmons’ testimony: Mr. Cox did not address Mr. Simmons cost estimate). *See* Orme Farm Respondents witness Strobl, Tr. at 4624 to 4661 (Mr. Strobl testified a day later than Mr. Simmons but did not address Mr. Simmons’ cost estimate).

⁹⁰ Tr. at 4461.