
IN THE
Supreme Court of Virginia
AT RICHMOND

Record Nos. 250492 and 250493

LANSLOWNE CONSERVANCY,

Appellant,

— v. —

STATE CORPORATION COMMISSION, et al.,

Appellees.

LOUDOUN COUNTY, VIRGINIA,

Appellant,

— v. —

STATE CORPORATION COMMISSION, et al.,

Appellees

FROM THE STATE CORPORATION COMMISSION, CASE NO. PUR-2024-00044

BRIEF OF APPELLEE STATE CORPORATION COMMISSION

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TABLE OF CONTENTS

	Page:
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
STATEMENT OF FACTS	1
STANDARD OF REVIEW	2
ARGUMENT.....	3
I. The Assignment of Error violates Rule 5:21(a)(7) because it fails to assign error to any ruling made by the Commission in the Final Order that is on appeal.....	3
II. The Opening Brief asserts a new alleged error that: (1) is different than the Assignment of Error; and (2) was not requested in the proceedings below	5
III. If the Court reaches the new request contained in the Opening Brief, the Commission was not required to include conditions in the Apollo Final Order related to the Aspen lines	7
CONCLUSION	7
CERTIFICATE	9

TABLE OF AUTHORITIES

Page(s):

Cases:

<i>AlBritton v. Commonwealth</i> , 299 Va. 392 (2021)	5
<i>Amazon Logistics, Inc. v. Va. Emp. Comm'n</i> , 912 S.E.2d 290 (2025).....	5
<i>Appalachian Voices v. State Corp. Comm'n</i> , 277 Va. 509, 675 S.E.2d 458 (2009).....	2
<i>Board of Supervisors of Loudoun County v. State Corp. Comm'n</i> , 292 Va. 444 (2016)	6
<i>Center for Pub. Integrity v. TitleMax of Virginia, Inc.</i> , Record No. 161108, 2017 WL 2871693 (Va. July 6, 2017).....	4
<i>Forest Lakes Cmty. Ass'n v. United Land Corp. of Am.</i> , 293 Va. 113 (2017).....	4
<i>Level 3 Commc'ns of Va., Inc. v. State Corp. Comm'n</i> , 268 Va. 471, 604 S.E.2d 71 (2004).....	2
<i>Syed v. ZH Techs., Inc.</i> , 280 Va. 58, 694 S.E.2d 625 (2010).....	2
<i>Toll Rd. Investors P'ship, L.P. v. State Corp. Comm'n</i> , 918 S.E.2d 33 (2025).....	2

Rules:

Va. Sup. Ct. R. 5:21(a)(7).....	3, 4, 5
Va. Sup. Ct. R. 5:21(a)(10).....	6
Va. Sup. Ct. R. 5:25	6

STATEMENT OF THE CASE

This transmission line appeal is an improper tether to the pending appeal of the State Corporation Commission's ("Commission") separate approval of different transmission lines.

No error is assigned to any ruling from the Final Order that is on appeal in this case.

The Opening Brief, however, asserts a new alleged error; *i.e.*, that the Commission should have included conditions in the instant Final Order related to the other transmission lines that are on appeal.

In addition to being different than the sole Assignment of Error, the newly requested conditions: (1) were not requested in the proceedings below; and (2) are not needed.

The Court should dismiss this appeal or affirm the Final Order.

STATEMENT OF FACTS

Virginia Electric and Power Company ("Dominion") filed two transmission line applications. The first application included a 500 kilovolt ("kV") line and a 230 kV line to be constructed within the same right-of-way and extending 9.4 miles (Case No. PUR-2024-00032) (the "Aspen" case). The second application was for a 1.9-mile, 230 kV line (Case No. PUR-2024-00044) (the "Apollo" case). Because about half of the latter would be

collocated with the former, the Commission combined the two cases for hearing purposes, without the cases or case numbers being consolidated. JA 875.

As ordered by the Commission, its Senior Hearing Examiner convened a full evidentiary proceeding for the combined cases. At the conclusion of the proceedings, the Commission issued a separate final order for each application. The Apollo Final Order is on appeal in this case. JA 1924. The Aspen Final Order is on appeal in Record Nos. 250494 and 250495.

STANDARD OF REVIEW

From the Court's most recent decision in an appeal of a Commission order:

This Court reviews matters of law de novo. *Syed v. ZH Techs., Inc.*, 280 Va. 58, 69, 694 S.E.2d 625 (2010). However, "the Commission's decision is entitled to the respect due judgments of a tribunal informed by experience, and we will not disturb the Commission's analysis when it is based upon the application of correct principles of law." *Appalachian Voices v. State Corp. Comm'n*, 277 Va. 509, 516, 675 S.E.2d 458 (2009). The Commission's findings of fact will not be disturbed "unless they are contrary to the evidence or without evidentiary support." *Level 3 Commc'ns of Va., Inc. v. State Corp. Comm'n*, 268 Va. 471, 474, 604 S.E.2d 71 (2004).

Toll Rd. Investors P'ship, L.P. v. State Corp. Comm'n, 918 S.E.2d 33, 40 (2025).

ARGUMENT

- I. The Assignment of Error violates Rule 5:21(a)(7) because it fails to assign error to any ruling made by the Commission in the Final Order that is on appeal.

The sole Assignment of Error states in full:

The Commission erred in the Final Order when it granted the Certificate for Public Convenience and Necessity (“CPCN”) for Apollo-Twin Creeks, but failed to order underground placement of that portion of the Aspen-Golden line collocated with the Apollo-Twin Creeks line and proposed to be undergrounded by the County, because the Commission thereby failed to minimize, to the extent reasonably practicable, adverse impacts to the scenic assets and environment of the area, as required by Code § 56-46.1(B). (Issue Preserved at: JA 3386, 3750, 4271).

Op.Br. 2; JA 8918.

The above does not assign error to any ruling in the Apollo Final Order or to anything related to the Apollo line. The only action alleged as error is that the Commission “failed to order underground placement of that portion of the [Aspen] line collocated with the [Apollo] line.” The Aspen and Apollo cases were not consolidated. They are two separate applications, with two separate case numbers, and two separate final orders. The ruling identified as an alleged error occurred in the Aspen Final Order, not the Apollo Final Order that is on appeal herein.

Without an error assigned to a ruling (or lack thereof) in the Final Order that is on appeal, there can be no appeal. As held by the Court, the Assignment of Error is the core of the appeal:

An assignment of error is not a mere procedural hurdle an appellant must clear in order to proceed with the merits of an appeal. Assignments of error are the *core* of the appeal. With the assignment of error, an appellant should lay his finger on the alleged misjudgment of the court below. A properly aimed assignment of error must point out the targeted error and not simply take a shot into the flock of issues that cluster around the litigation. ... Like a well-crafted pleading, assignments of error set analytical boundaries for the arguments on appeal, provide a contextual backdrop for our ultimate ruling, and demark the stare decisis border between holdings and dicta.

Forest Lakes Cmty. Ass'n v. United Land Corp. of Am., 293 Va. 113, 122-123 (2017) (emphasis in original) (citations and internal quotation marks omitted).

Rule 5:21(a)(7) requires an assignment of error to “clearly and concisely ... identify the specific errors in the rulings below upon which the party intends to rely.” The Assignment of Error violates this rule because it does not identify any specific error in any ruling from the Final Order that is on appeal in this case. *See also Center for Pub. Integrity v. TitleMax of Virginia, Inc.*, Record No. 161108, 2017 WL 2871693, at *2 (Va. July 6, 2017) (unpublished) (“In short, the assignments of error fail to identify the ruling made by the [State Corporation] Commission and thus fail to identify

any specific error in that ruling. Therefore, they do not comply with Rule 5:21(a)(7).”).

- II. The Opening Brief asserts a new alleged error that: (1) is different than the Assignment of Error; and (2) was not requested in the proceedings below.

The Opening Brief argues that “the Commission’s decision not to require conditions allowing for the underground placement of [Aspen] on those properties where it will be collocated with [Apollo] *in the CPCN for [Apollo] was error*, based on the application of erroneous legal principles.” Op.Br. 23 (emphases added).

First, this alleged error is not contained within the Assignment of Error and, likewise, does not relate to the error actually assigned. See, e.g., *Amazon Logistics, Inc. v. Va. Emp. Comm’n*, 912 S.E.2d 290, 294 (2025) (Bad-brief “waiver also ‘applies when the argument on brief, even if carefully crafted and legally persuasive, nonetheless has little, if anything, to do with the assignment of error.’”) (quoting *AlBritton v. Commonwealth*, 299 Va. 392, 412 n.12 (2021)).

Second, this alleged error was not preserved. Only one cite from the alleged preservation requests action from the Commission. It asks “the Commission to approve a [CPCN] for [Aspen] and [Apollo] high-voltage transmission lines as filed in Case Nos. PUR-2024-00032 and PUR-2024-

00044, but which orders [Dominion] to place a portion of the [Aspen] line underground in substantial accordance with the route proposed in the County's underground hybrid proposal." JA 3386.

This statement, which was part of closing argument to the Senior Hearing Examiner, does not ask the Commission to place conditions on the Apollo line in the Apollo Final Order. Furthermore, the preservations in the Assignment of Error do not cite to the Appellants' comments on the Senior Hearing Examiner's Report, because those comments also did not include the now sought-for conditions. JA 1812, 1904. Indeed, the Opening Brief includes no cites to where this specific request was made to the Commission. *Board of Supervisors of Loudoun County v. State Corp. Comm'n*, 292 Va. 444, 455 n.11 (2016) ("Appellants, however, did not preserve this alleged error for appeal because they never argued this point to the Commission, thus failing to provide the Commission with an opportunity to rule intelligently on the same substantive argument that Appellants advance here. ... See Rule 5:21(a)(10) (incorporating Rule 5:25 for appeals from the Commission).") (citation, internal quotation marks, and edits omitted).

- III. If the Court reaches the new request contained in the Opening Brief, the Commission was not required to include conditions in the Apollo Final Order related to the Aspen lines.

The Opening Brief asserts that the Commission needed “to include provisions in the [Apollo] CPCN permitting and accommodating underground placement of the [Aspen] line wherever it is collocated with [Apollo].” Op.Br. 19-20. According to the Opening Brief, this is apparently needed to “allow the synchronization of mandated construction timelines for the two projects and would allow for the realistic coordination of targeted in-service dates, in addition to any other overlapping conditions that may need to be addressed.” Op.Br. 19.

The Opening Brief includes no cites to testimony or other facts in the record supporting the necessity of including these specific conditions in the Apollo Final Order. To be sure, Dominion will have to coordinate construction of the collocated portion of these lines. This will be necessary, however, whether Aspen is overhead or underground. The Apollo Final Order stands on its own, and there is no error therein.

CONCLUSION

The Commission respectfully requests that the Court dismiss this appeal or affirm the Final Order.

Respectfully submitted,

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CERTIFICATE

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Pursuant to Rule 5:26(g), I do further HEREBY CERTIFY that this
Brief does not exceed the word limit, containing 1,491 words.

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