IN THE

Supreme Court of Virginia

AT RICHMOND

Record Nos. 250494
and 250495

LOUDOUN COUNTY, VIRGINIA,

Appellant,

– v. –

STATE CORPORATION COMMISSION, THERESA GHIORZI
and VIRGINIA ELECTRIC AND POWER COMPANY,

Appellees.

(For Continuation of Caption See Inside Cover)

ON APPEAL FROM THE ORDER OF THE VIRGINIA STATE CORPORATION
COMMISSION FOR THE COMMONWEALTH OF VIRGINIA

APPELLANTS' CONSOLIDATED OPENING BRIEF

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LANSDOWNE CONSERVANCY,

Appellant,

– v. –

STATE CORPORATION COMMISSION, THERESA GHIORZI
and VIRGINIA ELECTRIC AND POWER COMPANY,

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STATEMENT OF THE CASE

In this appeal, Loudoun County, Virginia (the "County"), and Lansdowne Conservancy ("Lansdowne" or the "Conservancy", collectively, the "Appellants") challenge a Final Order entered by the State Corporation Commission (the "Commission") on February 6, 2025 (the "Final Order" or the "Aspen-Golden Final Order") in Case No. PUR-2024-00032 (the "Aspen-Golden Case"), approving a Certificate of Public Convenience and Necessity ("CPCN") for construction of the Aspen-Golden transmission line project (the "Aspen-Golden Project" or "Aspen-Golden"), located in the County. Appellants contend that the Commission's decision not to require underground placement of part of the Aspen-Golden Project was based on the application of erroneous legal principles in the Report of Senior Hearing Examiner M. Renae Carter (the "Report" or the "Hearing Examiner's Report") and the Aspen-Golden Final Order and is therefore void. Appellants thus request that this Court vacate the Final Order and remand this case for further proceedings consistent with controlling legal standards and any opinion issued by the Court.

The County is a political subdivision of the Commonwealth of Virginia. The Conservancy is a property owners' association whose membership includes all who own property in the Conservancy, many of whom are also members of sub-associations, including Lansdowne Resort; Inova Loudoun Hospital; National Conference Center; Saul Shopping Center; numerous office and medical buildings; condominium owners; and various homeowners' associations ("HOAs"), including Lansdowne on the Potomac HOA, Lansdowne Village Green HOA, and the Lansdowne Woods Condo Associations. JA 2441–42.

ASSIGNMENTS OF ERROR

1. The Commission erred in the Final Order when it granted the Certificate for Public Convenience and Necessity ("CPCN") for Aspen-Golden, but failed to order underground placement of that portion of the Aspen-Golden line proposed to be undergrounded by the County, because the Commission failed, as a matter of law, to "verify the applicant's load flow modeling, contingency analyses, and reliability needs presented to justify the new line and its proposed method of installation," as required by Code § 56-46.1(B). (**Issue Preserved at:** JA 2610–11, 2623–25, 4182–85).

2. The Commission erred in the Final Order when it granted the CPCN for Aspen-Golden, but failed to order underground placement of that portion of the Aspen-Golden line proposed to be undergrounded by the County, because the Commission failed, as a matter of law, to properly "consider, upon the request of the governing body of any county or municipality in which the line is proposed to be constructed, (a) the costs and economic benefits likely to result from requiring the underground placement of the line and (b) any potential impediments to timely construction of the line," as required by Code § 56-46.1(B). (**Issue Preserved at:** JA 2606, 2612, 2623–29).

3. The Commission erred in the Final Order when it granted the CPCN for Aspen-Golden, but failed to order underground placement of that portion of the Aspen-Golden line proposed to be undergrounded by the County, because the Senior Hearing Examiner's Report and the Final Order erroneously and unreasonably placed the burden of designing a complete and deployable underground hybrid route on the locality, rather than the applicant, as required by Code § 56-46.1(B). (**Issue Preserved at:** JA 2603, 2610–11; 4196–97).

4. The Commission erred in the Final Order when it granted the CPCN for Aspen-Golden, but failed to order underground placement of that portion of the Aspen-Golden line proposed to be undergrounded by the County, because the all-overhead route approved by the Commission violates the Belmont Scenic Viewshed Easement at least twice, and thus does not minimize, to the extent reasonably practicable, the adverse impacts to scenic, cultural, and historic assets along the route, as required by Code § 56-46.1(B) (**Issue Preserved at:** JA 2605–06, 2620–22; 4180).

5. The Commission erred in the Final Order when it granted the CPCN for Aspen-Golden, but failed to order underground placement of that portion of the Aspen-Golden line proposed to be undergrounded by the County, because the Commission failed, as a matter of law, to "receive and give consideration" to the "local comprehensive plan[] that ha[s] been adopted pursuant to Article 3 (§ 15.2-2223 *et seq.*) of Chapter 22 of Title 15.2," as required by Code § 56-46.1(A), because the Commission did not perform a "substantial accord" analysis and the all-overhead route does not accord with the County's 2019 General Plan. (**Issue Preserved at:** JA 2613–20).

6. The Commission erred in the Final Order when it granted the CPCN for Aspen-Golden, but failed to order underground placement of that portion of the Aspen-Golden line proposed to be undergrounded by the County, because the all-overhead route approved by the Commission failed, as a matter of law, to satisfy the necessary precondition to approval that the "corridor or route chosen for the line will avoid or reasonably minimize adverse impact to the greatest extent reasonably practicable on the scenic assets . . . and environment of the area concerned." Code § 56-46.1(B). (**Issue Preserved at:** JA 2602–29, 2632–33; 4166–99).

7. The Commission erred in the Final Order when it granted the CPCN for Aspen-Golden, but failed as a matter of law to order additional restrictions or conditions to help minimize the visual impacts of 190 foot towers and massive above-ground power lines to scenic assets, historic designations and property values along particularly sensitive portions of the Aspen to Golden route, which the to satisfy the necessary precondition to approval that the "corridor or route chosen for the [above ground] line will avoid or reasonably minimize adverse impact to the greatest extent reasonably practicable on the scenic assets . . . and environment of the area concerned" as is required by Code § 56-46.1(B); and (2) the Commission failed to establish conditions that are "desirable or necessary to minimize adverse environmental impacts" of above ground lines as required by Code § 56-46.1(A).[1] (**Issue Preserved at:** JA 2651–55).

STATEMENT OF FACTS AND MATERIAL PROCEEDINGS BELOW

On March 7, 2024, Virginia Electric and Power Company ("Dominion") filed with the Commission an application (the "Aspen-Golden Application" or the "Application") for approval and certification of electric transmission facilities in the County. JA 2409. The Application sought approval to construct a new, approximately 9.4-mile overhead 500 kV single circuit transmission line and a new 230 kV single circuit transmission line almost entirely on new right-of-way ("ROW"), and associated facilities. JA 2409–10. The entirety of the Aspen-Golden Project is planned to be located in the County. JA 2409. Dominion requested a final order approving a desired in-

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[1] Assignment of Error 7 was only included in the Petition for Appeal filed by Lansdowne Conservancy. As such, the argument and authorities asserted in this opening brief as to A/E 7 are submitted herein by Lansdowne Conservancy alone.

service target date of June 1, 2028, and a sunset date for the CPCN of June 1, 2029, to "accommodate adjustments to the Aspen-Golden Project schedule that could require up to a 12-month delay in the targeted in-service date." JA 2410.

On March 27, 2024, Dominion filed an application (the "Apollo-Twin Creeks Application") for approval and certification of additional electric transmission facilities in the County, including construction of a new, approximately 1.9-mile double circuit overhead 230 kV transmission line and associated facilities. JA 2411. Approximately 48% of the length of the Apollo-Twin Creeks line—0.9 miles—collocates with the proposed Aspen-Golden Project. JA 2411. Dominion requested a final order approving a desired in-target date of September 30, 2028, and a sunset date for the CPCN of September 30, 2029, to accommodate adjustments to the Apollo-Twin Creeks schedule that could require up to a 12-month delay in the targeted in-service date. JA 2411.

Also on March 27, 2024, Dominion filed a Motion to Consolidate, for Procedural and Hearing Purposes Only, Case Nos. PUR-2024-00032 and PUR-2024-00044 ("Dominion's Motion to Consolidate"). JA 2411.

On April 17, 2024, the Commission issued an Order for Notice and Hearing, establishing a procedural schedule, granting Dominion's Motion to

Consolidate, and appointing a Hearing Examiner to conduct all further proceedings in PUR-2024-00032 and PUR-2024-00044 (the "Combined Cases"). JA 2412.

Eleven parties filed notices of participation in the Combined Cases, including Appellants; Theresa Ghiorzi, who joins this appeal on the side of Dominion and the Commission (collectively, the "Appellees"); and Leesburg Pike Community Church ("Community Church"). JA 2412.

In the Aspen-Golden Application, Dominion selected Route 1AA as its preferred route ("Route 1AA"). JA 2423. Dominion estimated the total cost of the Aspen-Golden Project (assuming Route 1AA) at $700.1 million, including $176.9 million for transmission work and $523.2 million for substation work. JA 2424. Dominion submitted that the Aspen-Golden Project is needed to maintain the reliability of the grid; to improve service to customers, "including those in the Eastern Loudoun Load Area, an area generally north and west of the Dulles International Airport that includes Data Center Alley"; to address load growth in the Eastern Loudoun Load Area; and to resolve violations of mandatory North American Electric Reliability Corporation ("NERC") reliability standards beginning in summer of 2028. JA 2424.

The County and Conservancy joined the Combined Cases to advocate for underground placement of part of the Aspen-Golden Project, in order to minimize adverse impacts to the scenic, historic, and cultural assets, and the environment, of the area along a part of Route 7 in the County set to be impacted by Dominion's preferred route. JA 2421, 4167–69. The Conservancy and then the County contracted with RLC Engineering PLLC ("RLC") to develop first an initial (the "Initial Hybrid Proposal"), then an updated hybrid proposal (the "Updated Hybrid Proposal" or "UHP") for Dominion's and the Commission's consideration. JA 2424. The UHP proposed to place underground an approximately three-mile stretch of the Aspen-Golden Project, running generally from the proposed Sycolin Creek Substation to just past Community Church on Route 7. JA 2424–25.

In support of its case, the County specifically invoked its statutory right under Code § 56-46.1(B) to request the Commission consider the economic benefits likely to result from requiring the underground placement of part of the Aspen-Golden Project. JA 1728, 1732. The County also invoked its right under Code § 56-46.1(A), to request the Commission consider the County's comprehensive plan (the "2019 General Plan") adopted pursuant to Code §§ 15.2-2223 *et seq.* JA 1728, 1732.

Dominion opted not to propose an underground option for the Aspen-Golden Project, despite retaining a consultant, Black & Veatch Corporation ("Black & Veatch"), to study the feasibility of the same. JA 2424.

On or before August 14, 2024, the County, the Conservancy, Ms. Ghiorzi, and the Community Church—along with other respondents—prefiled direct testimony. JA 2412. On August 21, 2024, Commission Staff ("Staff") pre-filed its testimony along with a Staff Report for each of the Combined Cases. JA 2412. On September 4, 2024, Dominion pre-filed its rebuttal testimony. JA 2412.

On August 6, 2024, eight public witnesses offered testimony by phone on the Combined Cases. JA 2414, 2739–2804. On September 5, 2024, a local public hearing was held in the County, at which 41 public witnesses provided live testimony on the Combined Cases. JA 2414, 4790–5016.

Written comments were also submitted for the Commission's review in the Combined Cases. Many public officials—including members of Congress, members of the General Assembly, and local elected officials—submitted comments urging the Commission to consider the economic benefits of underground placement of the line, in addition to the potential data that could be developed from pioneering such a project. JA 2415–16.

Additionally, the Commission received around 290 comments from the public in the Combined Cases, which "almost uniformly protested the overhead lines and/or advocated for undergrounding part or all of the transmission lines." JA 2417. Their reasoning included the protection of scenic and historic assets and the economic benefits to local businesses of underground placement of the line. JA 2418.

An evidentiary hearing on the Combined Cases was held on September 18, 19, 20, 23, and 26, 2024, before the Hearing Examiner. JA 2414. In its Applications for the Combined Cases, Dominion offered direct testimony from five (5) witnesses. JA 2428.

Dominion Direct Witness Rosenberg addressed flaws perceived by Dominion in the Initial Hybrid Proposal, which were discussed in a February 2024 meeting between representatives of the County, the Conservancy, and Dominion. JA 2432. He stated that the flaws included ROW width, cables per phase, and the need for workspace when passing underneath roadways, bodies of water, or wetlands. JA 2432–33. Mr. Rosenberg acknowledged that Dominion estimated a 44-month construction timeline for Route 1AA, while Black & Veatch estimated a 47-month construction timeline for an all-underground Aspen-Golden route. JA 2433.

Tom Jeavons, President of the Conservancy, testified on its behalf. JA 2441, 7979–8139. Mr. Jeavons emphasized the scale of the economic interests at stake in the Combined Cases, estimating the combined real estate assets of the Conservancy to have an assessed value of more than $3.3 billion. JA 2442. He asserted that data center peak demand and energy usage are largely to blame for the need for the projects in the Combined Cases, citing to Dominion's 2023 Integrated Resource Plan ("IRP"). He urged the Commission to balance the need to mitigate the adverse impacts of overhead transmission on the local community, with the coming demand needs. JA 2442. Mr. Jeavons testified to the negative economic impacts of overhead lines, including property devaluation and public backlash to data centers and associated transmission lines, which consumes public resources and has spillover economic consequences. JA 2442. According to Mr. Jeavons, undergrounding Aspen-Golden is the only appropriate solution. JA 2442.

Lead Pastor Charles Whitlow testified on behalf of Community Church. JA 8140–68. He declared Community Church's support of underground placement of the line, asserting that undergrounding Aspen-Golden would resolve adverse impacts to planned upgrades to its sports facilities along

Route 7, as well as to Community Church's iconic steeple, the view of which would be marred by 196-foot towers. JA 2444.

The County offered testimony from four (4) witnesses: William Patrick Giglio, Senior Planner in the Community Planning Division of the Loudoun County Department of Planning and Zoning (JA 8308–65); Buddy Rizer, Executive Director of Economic Development for the County (JA 8366–79); Brian A. Conroy, P.E., Manager of Power System Studies for RLC (JA 8253–8301); and Richard N. Olsen, MAI (JA 8380–8564). JA 2444–54.

Mr. Giglio testified that the 2019 General Plan's electrical policies require electrical providers to consider high-voltage corridors that minimize impacts on roadways and cultural resources, and insists on undergrounding where possible. JA 2445. He also explained that residential and mixed-use place types—area designations—in the 2019 General Plan call for consultations between the County and electrical providers to identify opportunities to underground high-voltage power lines. JA 2445. Mr. Giglio continued that while such consultations do occur, they are "perfunctory" in practice and do not lead to undergrounding. JA 2445.

Mr. Giglio further testified that the County supported undergrounding an approximately three-mile portion of Aspen-Golden adjoining Route 7 from near the intersection of Ashburn Village Boulevard and Belmont Ridge Road.

JA 2446. The properties likely to benefit from the UHP include two master-planned residential communities, Inova Loudoun Hospital, Howard Hughes Medical Institute Janelia Research Campus, Community Church, the African American Cemetery, Belmont Historic Manor, Belmont Chapel and Cemetery, office space and commercial properties. JA 2446. He further informed the Hearing Examiner that the Board of Supervisors of the County (the "Board") holds a Viewshed Easement over the Belmont Historic Manor property (the "Viewshed Easement"), purposed to "maintain both the viewshed of the home and views to the north toward Route 7." JA 2446. According to Mr. Giglio, Dominion failed to minimize adverse impacts to the Belmont Historic Manor and its Viewshed Easement, which is a regrettable outgrowth of the ineffective "process involving informal discussions between a locality and a public utility about undergrounding options." JA 2446.

Regarding the Applications' accordance with the 2019 General Plan, Mr. Giglio stated that Route 1AA bisects suburban mixed use and suburban neighborhood place types, and would be the first such greenfield touched by a high-voltage powerline in the County. JA 2536, 5065–67.

Mr. Rizer testified about energy needs, the data center industry, and demand growth in the County. He asserted that the County has "been clear and Dominion has been aware for 15 years that not having power lines along Route 7 was a County priority." JA 2450.

Mr. Conroy discussed the UHP in detail in his testimony. JA 2451. He shared that RLC met with Dominion and shared the Initial Hybrid Proposal in February 2024. JA 2451. After receiving Dominion's feedback, RLC modified its proposal, developing the UHP. JA 2451. Mr. Conroy showed how the UHP addressed each one of Dominion's comments on and criticisms of the UHP. 2452. Mr. Conroy emphasized that environmental and geological details would need to be fleshed out by Dominion engineers or third parties, in a more detailed design. JA 2452. He also confirmed that all regulatory and permitting risks were inputs into the conceptual estimated timeline for construction. JA 2452. One-by-one, Mr. Conroy explained why each of Dominion's theoretical concerns with undergrounding were fabricated, while many benefits of undergrounding were being dismissed or ignored. JA 2452.

Mr. Conroy estimated the cost of the UHP to be $423 million more than Dominion's estimate for Route 1AA. JA 2453. He estimated the underground portion of the UHP would cost $478 million. JA 2453. Mr. Conroy maintained that while Route 1AA is technically feasible, it does not minimize adverse impacts to scenic or historic assets along Route 7. JA 2453.

Mr. Conroy also addressed the undergrounding feasibility study conducted by Black & Veatch, confirming that both that study and the UHP were “conceptual studies” that confirmed the feasibility of undergrounding Aspen-Golden. JA 2454.

Mr. Olsen testified to the negative impacts of Route 1AA on residential property values of residential properties that would benefit from approval of the UHP. JA 2454–55. Using the sales comparison approach to value in his mass appraisal, Mr. Olsen found that the economic benefit, in the form of preserved residential property values, from requiring underground placement like the UHP, would be “not less than $133,025,000.” JA 2456.

Staff offered the Staff Reports for the Combined Cases and the testimony of two witnesses. Staff Witness Dodson expressed concerns with the UHP that included timing constraints, constructability, and cost. JA 2459. Mr. Dodson stated that the UHP was not “complete enough for an actual project.” JA 2460. Mr. Dodson acknowledged on cross-examination that important data could be acquired from undergrounding a 500 kV line, including data related to permitting, cable cost and installation, lead times to procure items, construction, soil impacts, and line operation and maintenance. JA 2460–61. In the Staff Report, Staff stated that they verified

PJM's power flow models and confirmed the projected violations absent Aspen-Golden. JA 2461.

On rebuttal, Dominion Rebuttal Witness Amare admitted that delaying customer connections if the Aspen-Golden Project does not meet its in-service date is one planned contingency, but "not the only one." JA 2472–73, 3153.

Dominion Rebuttal Witness Moulton, a Supervisor in Dominion's Electric Underground Transmission Line Engineering Department, provided additional concerns with the UHP related to ROW width, cable phase, trenchless excavation allowance, rock, timeline, cost, future development, and dissimilarity with comparable projects. JA 2487–89.

Dominion Rebuttal Witness Rosenberg added more new concerns, including the lack of inspection or estimate for relocating existing utilities; the 30% rock estimate in the UHP; issues with start- and end-point transition stations; encroachments on other properties; future delivery points for power; and even with the very notion that undergrounding minimizes visual impacts on the target area versus overhead placement. JA 2493–95. Mr. Rosenberg acknowledged that the Viewshed Easement's purpose is to "provide someone driving on Route 7 a view of that historic structure" and that "Route

1AA would place two structures along the Belmont Viewshed Easement." JA 2496.

In their closing arguments, Appellants emphasized the unanimous public support for the UHP; the fact that both Black & Veatch and RLC found underground placement of Aspen-Golden to be feasible and constructible; and the planned contingency to delay new data center connections if there is an unexpected delay, whether related to undergrounding or not. The economic benefits of requiring underground placement of Aspen-Golden in a manner similar to the UHP should be considered, Appellants argued, and undergrounding required, in order to minimize the adverse impacts to scenic and cultural assets along Route 7, including Belmont Historic Manor. JA 4166–71.

On November 1, 2024, the Hearing Examiner issued the Hearing Examiner's Report for the Combined Cases. Based on Staff's statement in the Staff Report that Staff verified PJM's power flow models and confirmed violations of NERC standards would occur without Aspen-Golden, the Report found that the Aspen-Golden Project is needed. JA 2512–13.

Regarding underground placement of Aspen-Golden, the Report found the UHP "better preserves the view protected by the Belmont Viewshed Easement than Route 1AA would." JA 2539. Regarding Route 1AA's accordance with the 2019 General Plan, the Report stated that "[w]hether undergrounding would preserve the context of the Suburban Mixed Use and Suburban Residential place types in the 2019 General Plan may depend on where a person lives and how they experience Route 7 in relation to the underground portion of the Aspen-Golden Lines." JA 2539. It continued that "[t]he Updated Hybrid Proposal also may better comply with Action B and the undergrounding part of Action C in Fiscal Policy 6 of the 2019 General Plan, depending on one's interpretation of this section of the plan." JA 2539.

The Report found that the UHP and the Aspen-Golden Application "are not equally developed," even though Mr. Conroy testified that the UHP was designed "to prove feasibility and to provide an estimate of cost." JA 2540. The Report ultimately found that "[t]he proposed Aspen-Golden Project, with overhead Route 1AA, in contrast, is a fully developed proposal ready for Commission approval." The Report emphasized that Route 1AA was the only feasible option because "[e]very structure has been plotted, subject to final engineering. The environmental, cultural, and scenic impacts have been considered. Environmental justice has been analyzed. Impacts to historic resources and protected species have been considered." JA 2553.

In its Findings and Recommendations, the Report found that, "[g]iven the concerns about the [UHP's] route, constructability, and cost and given the lack of environmental analysis and environmental justice analysis, I do not find the [UHP] meets the statutory criteria for CPCN issuance, nor do I find that the total public interest is best served by the UHP." JA 2579. It also found that "[t]he record establishes that Aspen-Golden Route 1AA and the Apollo-Twin Creeks Route both avoid or reasonably minimize adverse impacts to the greatest extent reasonably practicable to environmental, historic, and scenic resources." JA 2579.

On November 22, 2024, Appellants filed Comments and Exceptions on the Report arguing against its recommendations regarding underground placement. JA 2601–36, 2693–2702. The County argued that the Report failed to adequately verify load flow modeling, contingency analyses, and reliability needs used to justify overhead method of installation; that Route 1AA violates the Viewshed Easement and is therefore illegal; and that the Report's consideration of the 2019 General Plan applied the incorrect legal standard. JA 2601–36. The County maintained its position that underground placement along Route 7 is the only way to minimize adverse impacts to scenic and cultural assets, as required by statute.

The Conservancy in its Comments emphasized the overwhelming public support for undergrounding, and that such public interest should carry great weight in the Commission's considerations. JA 2697. The

Conservancy requested the Commission underground Aspen-Golden "to the greatest extent possible." JA 2697. The Conservancy also requested, in the alternative, that the Commission include specific enumerated conditions in the CPCN designed to "limit to the greatest extent possible any further detrimental visual impacts within the ROW needed for the Project." JA 2697–98.

On February 6, 2025, the Commission entered its Final Order in the Aspen-Golden Case, which found that the Report's findings and recommendations were "supported by law and evidence, have a rational basis, and should be adopted subject to the modifications herein." JA 2722. The Commission "considered and adopted" the Reports summary and analysis of the UHP and other hybrid routes. JA 2722. The Commission then ordered the Report's recommendations and dismissed the case.

On March 7, 2025, the County and the Conservancy filed notices of appeal in the Commission from the Aspen-Golden Final Order and the Final Order approving Apollo-Twin Creeks. JA 2726–37.

On June 5, 2025, the County and Conservancy each filed Petitions for Appeal in this Court from the Aspen-Golden Final Order. The County assigned six (6) assignments of error. The Conservancy assigned the same six (6) assignments of error, plus an additional seventh (7) assignment of error.

For the reasons stated herein, this Court should assign error to the Commission as to all A/Es, vacate the Final Order, and remand the case to the Commission for further proceedings consistent with proper legal standards and any opinion to issue from this Court.

STANDARD OF REVIEW

"In considering the appropriate standard of review to be applied when reviewing a Commission decision, [this Court] begin[s] by giving a decision in which the Commission has exercised its expertise a presumption of correctness." *Appalachian Power Co. v. State Corp. Comm'n*, 284 Va. 695, 703 (2012).

"[The Court's] standard of review, however, will depend on the nature of the decision under review." *Id.* Where the decision under review is "the Commission's construction and application" of a statute or regulation, the issue "is a question of law reviewed by this Court de novo." *Id.* Where the decision under review is a finding of fact by the Commission, such finding "will not be reversed unless it is 'contrary to the evidence or without evidence to support it.'" *Id.* at 709 (quoting *Mutual Sav. & Loan Ass'n v. Commonwealth*, 212 Va. 557, 559 (1972)).

Where the Commission's analysis is based on incorrect principles of law, or where it acts outside its constitutional and statutory authority, this Court will overturn the Commission's decision. *See BASF Corp. v. State Corp. Comm'n*, 289 Va. 375, 391 (2015).

ARGUMENT

I. The Commission erred as to A/E 1 because the Commission failed to "verify the applicant's load flow modeling, contingency analyses, and reliability needs presented to justify the new line and its proposed method of installation."

Code § 56-46.1(B) states, in pertinent part, "In making the determinations about need, corridor or route, *and method of installation*, the Commission shall verify the applicant's load flow modeling, contingency analyses, and reliability needs presented to justify the new line *and its proposed method of installation*" (the "Verification Requirement"). (Emphasis added.)

The Commission erred as to A/E 1 because it did not satisfy the Verification Requirement in that it did not "verify" any of the required elements according to that term's plain meaning. Even if this Court were to find that the Commission satisfied the Verification Requirement as to its finding of "need" for the line, such verification was not performed at all as part of the Commission's determinations regarding the new line's "proposed method of installation," as required by law. Therefore, the Commission's Final Order is *ultra vires* and should be vacated and the case remanded to the Commission for further proceedings consistent with statutory obligations. *See Commonwealth ex rel. Town of Appalachia v. Old Dominion Power Co.*, 184 Va. 6, 11–12 (1945) ("The commission is the creation of the Constitution and has no inherent power. All of its jurisdiction is conferred either by the Constitution or is derived from statutes which do not contravene the Constitution.").

A. Legal Standard

"Under well-established principles, an issue of statutory interpretation is a pure question of law which [this Court] review[s] de novo." *Conyers v. Martial Arts World of Richmond, Inc.*, 273 Va. 96, 104 (2007). "In interpreting a statute, courts apply the plain meaning unless the terms are ambiguous or applying the plain language would lead to an absurd result." *JSR Mechanical, Inc. v. Aireco Supply, Inc.*, 291 Va. 377, 383 (2016) (cleaned up).

The wisdom of the decisions made in the choice of statutory language "is a question for the legislature and not for the courts." *Carter v. Nelms*, 204 Va. 338, 346 (1963). "[T]he interpretive principle that precedes all others is that 'courts must presume that a legislature says in a statute what it means and means in a statute what it says there[.]'" *Appalachian Power Co.v. State*

Corp. Comm'n, 301 Va. 257, 279 (2022) (quoting *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006)).

In ascertaining the plain meaning of statutory language, courts will consult technical dictionaries if the word or phrase being interpreted is treated "as a technical term of art that must be understood 'according to the acceptation of the learned in the pertinent art, trade, and science.'" *Tomlin v. Commonwealth*, 302 Va. 356, 372 (2023) (quoting 1 William Blackstone, Commentaries *60). "To discover the plain and ordinary meaning of everyday language, [this Court] consult[s] general-purpose dictionaries." *Id.*

The word "verify" means "to prove to be true; to confirm or establish the truth or truthfulness of; to authenticate." Verify, Black's Law Dictionary (12th ed. 2024). Thus, under the plain language of the statute, the Commission's duty to determine need, corridor or route, and method of installation, included an obligation to prove to be true, confirm or establish the truthfulness, and to authenticate the load flow modeling, contingency analyses, and reliability needs presented to justify the new line and its proposed method of installation.

This Court applied these principles in its interpretation of the Verification Requirement in *Piedmont Environmental Council v. Virginia Electric and Power Co.*, 278 Va. 553 (2009). In that case, the Court held that while the Commission does not necessarily need to "obtain new data from an independent source," it must "analyze the reliability data originally used by PJM and VEPCO that showed the projected violation of NERC standards." 278 Va. at 570. The Court held that where "the Commission, aided by its staff and the employment of a skilled, independent consultant," had analyzed the reliability data and found it reasonable, that it had "properly verified the utilities' load flow modeling, contingency analyses, and reliability needs presented to justify the new line." *Id.* The *Piedmont* Court did not address the separate statutory requirement, that the Commission verify the same data's justification of the "method of installation" for the new line, rendering the same an issue of first impression for this Court.

The record shows that the Hearing Examiner's Report as adopted in the Commission's Final Order failed to verify the statutory elements at all if that term is to retain any substantive meaning, and even the Commission's attempted verification did not extend to the justifications offered for the overhead placement of the line.

B. <u>The Commission's finding of "need" did not satisfy the Verification Requirement.</u>

As part of the Hearing Examiner's finding that Aspen-Golden was needed, the Report cited the Verification Requirement and recited from the record its basis for verifying Dominion's justification for the new line. JA

2512. It found that Staff "verified PJM's power flow models and confirmed the projected violations would occur without the project," and "through load flow modeling that the Aspen-Golden Project resolves the violations of NERC Reliability Standards that otherwise would occur." JA 2512–13. Finally, the Report found that demand-side management programs cannot meet the needs identified by PJM. JA 2513. "Based on the above, [the Report found] there is sufficient evidence that the Aspen-Golden Project is needed." *Id.*

The Report relies for its verification of the need for Aspen-Golden on one short excerpt from the Staff Report, which contains the conclusory statement that "Staff has verified the power flow models provided by PJM and confirmed the projected violations absent the proposed Project." JA 8772. It goes on to state that Staff verified "through power flow models that the proposed Project resolves the projected reliability standards violations cited by the Company." JA 8772.

The record in this case falls woefully short of the plain language of the Verification Requirement as elaborated upon by this Court in *Piedmont Environmental Council*. Firstly, there is no evidence in the record that Staff had the benefit of a skilled, independent consultant's analysis of the reliability data for Aspen-Golden, as the Commission had in *Piedmont Environmental Council*. In fact, the record does not explain at all how Staff verified PJM's projected violations absent the proposed project, merely stating conclusively that they did. The power flow models used by Staff to confirm that the proposed project resolves the projected violations were not entered into evidence or substantively cited. In short, the verification of the load flow modeling in the Commission's finding of "need" in this case is based entirely on a statement by Staff confirming that the numbers were verified. This falls short of the "proper verification" found in *Piedmont* and should not be held by this Court to satisfy the Commission's burden to verify load flow modeling in its finding of "need."

This is especially true where, as here, the Company's load forecasts in its previous two (2) integrated resource plan ("IRP") filings prior to the Final Order failed to obtain approval from, the Commission.[2] Part of the purpose of the IRP is for the utility to provide its projected demand forecast for the planning period, and its role in a transmission line case under Code

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[2] In *Piedmont Environmental Council*, IRPs were new to the Virginia statutory framework. The Court there stated that "while the Commission will have access to current IRPs in considering future applications for additional transmission and generation infrastructure, we express no view in this opinion as to the role that IRPs should or will play in the evaluation of such applications." 278 Va. at 575 n.7. Appellants aver that the instant case represents an appropriate place to express such a view, where two consecutive IRPs failed to obtain Commission approval of Dominion's load forecast, and the verification of reliability data is so poorly supported in the record.

§ 56-46.1 is an issue of first impression for this Court. *See* Code § 56-598(1); *Piedmont Environmental Council*, 278 Va. at 575 n.7. The Court should determine that where, as here, the Commission had not blessed a utility's load forecast in an IRP for at least seven (7) years, the Verification Requirement cannot be satisfied by a mere statement of verification from Staff, without more.

In 2020, the Commission found[3] the record insufficiently developed to rule on the adjustments made by Dominion to its load forecast in Dominion's IRP filing.[4] In 2023, the Commission failed to reach a majority decision on Dominion's IRP.[5] This means that at least seven (7) years had passed since the Commission had accepted a demand forecast from Dominion when the Commission held that the need for Aspen-Golden was so urgent that it must be placed overhead. Against this backdrop, a conclusory affirmation by Staff

[3] This Court may take judicial notice of orders entered by the Commission.

[4] *Commonwealth, ex rel. State Corp. Comm'n, In re: Virginia Electric and Power Company's Integrated Resource Plan filing pursuant to Va. Code § 56-597 et seq.*, Case No. PUR-2020-00035, Final Order at 11 (Feb. 1, 2021).

[5] *Commonwealth, ex rel. State Corp. Comm'n, In re: Virginia Electric and Power Company's Integrated Resource Plan filing pursuant to Va. Code § 56-597 et seq.*, Case No. PUR-2023-00066, Notification (Feb. 1, 2024).

that they verified the load flow modeling does not satisfy the Verification Requirement, rendering the Final Order *ultra vires*.

C. The Commission did not verify the contingency analyses or reliability needs as they relate to the proposed underground method of installation.

Even if the Court determines that Staff's assertions alone suffice to satisfy the Verification Requirement as to the Commission's finding that the line was "needed," no such verification took place regarding the proposed method of installation of the line, as required by the plain language of the Verification Requirement.

The record shows that an overwhelming majority of Dominion's forecasted load is expected to come from new data center connections to the grid. JA 5097. Because of this, the record shows, Dominion has entered into Electric Service Agreements ("ESA") with these new customers, which ESAs contain contingency provisions for delays in connection for any reason, including unexpected delays in transmission construction. JA 5101–03.

Appellants insisted at the hearing that the Commission analyze these contingencies as part of its verification of the contingency analyses and reliability needs related specifically to the proposed method of installation, i.e., underground installation. The argument held that the ability to delay connections on a short-term basis in the event of a construction delay must go into any verification of the reliability needs applied to the method of installation.

In response to this argument, the Report stated that such contingencies—which Dominion admitted to incorporating in its suite of contingencies for delays—did not warrant consideration because “[t]he Aspen-Golden Project is a reliability project that impacts far more customers than a few data centers whose service can be postponed.” JA 2536. The Report thus did not consider contingencies permitting delayed connections for new large loads, contingencies that Dominion itself stated were part of its plans for what to do in the event of delayed transmission construction. JA 3153.

The record shows unequivocally that new data center connections can be massive, which is why Dominion considers provisions delaying connection to be a potential solution to unforeseen construction delays. JA 5099–5101. There is no basis in law or fact for the Report and the Commission’s refusal to include these delayed-service provisions in their verification of the contingency analyses and reliability needs for the proposed method of installation. To do so rendered the verification deficient because it did not capture the truth of the contingency analyses or reliability needs used to justify the overhead installation of the line, as the plain meaning of "verify" requires.

For these reasons, the Commission erred as to A/E 1 because it did not satisfy the Verification Requirement, rendering the Final Order *ultra vires*. Appellants thus respectfully request this Court vacate the Final Order and remand this case to the Commission for further proceedings.

II. <u>The Commission erred as to A/Es 2 and 3 because the Commission's consideration of requiring underground placement of applied an erroneous legal standard.</u>

In pertinent part, Code § 56-46.1(B) states (the "Underground Consideration Provision"):

> [T]he Commission shall consider, upon the request of the governing body of any county or municipality in which the line is proposed to be constructed, (a) the costs and economic benefits likely to result from requiring the underground placement of the line and (b) any potential impediments to timely construction of the line.

The County made such a request by motion, asking the Commission to consider such costs and likely benefits to requiring underground placement of the line and any potential impediments to timely construction of the line.

In order to show feasibility, constructability, and a construction timeline—as well as to illustrate potential routing options for an underground hybrid—the County submitted the UHP and filed direct testimony in support thereof. The record shows that both the UHP and the Black & Veatch Report identified constructible underground options that could meet Dominion's target in-service date according to expert assessments. These showings should have paved the way for the Commission's consideration of the likely benefits of requiring underground placement of the line.

Instead, the Hearing Examiner's Report and the Commission held the UHP up to an impossibly high standard of review—one that does not appear anywhere in Code § 56-46.1(B)—that purports to require a locality seeking to take advantage of the Underground Consideration Provision to submit a fully-developed transmission line application before the Commission will consider underground placement of the line. This was an improper legal standard and constituted reversible error.

A. <u>Legal Standard</u>

Where a tribunal "used an improper legal standard in exercising its discretionary function, [a reviewing court is] unable to apply the appellate review standard of abuse of discretion" and the judgment must be vacated. *Thomas v. Commonwealth*, 263 Va. 216, 233 (2002). "Whether a lower court has correctly defined and applied a legal standard is a question of law reviewed de novo." *Alexandria City Pub. Schs. v. Handel*, 299 Va. 191, 196 (2020).

B. The Hearing Examiner and the Commission applied an improper legal standard in their consideration of requiring underground placement of the line.

The Underground Consideration Provision requires the Commission to "consider" the "costs and economic benefits likely to result from requiring the underground placement of the line," as well as "any potential impediments to timely construction of the line." Code § 56-46.1(B). It is true that where the Commission is required to "consider" a statutory factor, "the General Assembly did not intend for the Commission to make specific findings or otherwise act upon its consideration." *See West Va. & Appalachian Laborers' Dist. Council v. State Corp. Comm'n*, 913 S.E.2d 513, 518 (Va. 2025).

The Commission is required to "reflect on" the statutory factors it considers, including those in the Underground Consideration Provision. *See id.* In this case, however, the Report and the Final Order deployed an entirely different standard, exposing the UHP to seemingly to the same standard as Dominion's Application. This error removed the Commission's decision in the Final Order from the realm of the discretionary, and the Final Order should be vacated.

The Report, in its recommendation that the Commission refuse to require underground placement of the line, applied the following legal standard:

> Given the concerns about the Updated Hybrid Proposal's route, constructability, and cost and given the lack of environmental analysis and environmental justice analysis, I do not find the Updated Hybrid Proposal meets the statutory criteria for CPCN issuance, nor do I find that the total public interest is best served by the Updated Hybrid Proposal.

JA 2579.

The fatal defect in the Commission's analysis is that the County had no burden to file a UHP that met the statutory criteria for CPCN issuance. The legal standard the Commission should have applied was to consider the economic benefits likely to accrue from an order requiring underground placement of the line. The criteria for CPCN issuance, lack of environmental analysis, and environmental justice analysis are not mentioned in Code § 56-46.1(B), which by its plain language only requires the locality to "request" the Commission to consider requiring undergrounding the line. By its plain language, the Underground Consideration Provision does not even require the locality to notice its participation as a respondent in the proceedings in order to ask the Commission to consider undergrounding.

The County, of course, went far beyond a mere request for undergrounding consideration, participating in the hearing and filing direct testimony in favor of the UHP or another undergrounding option that would similarly minimize the adverse impacts of the line. The evidence offered by Appellants showed several additional, viable, constructable undergrounding options, over and above those identified in the Black & Veatch Report. Additional evidence entered by the County attempted to address each one of the potential constraints raised by Dominion, only to have new ones raised on rebuttal. However, a review of the Commission's application of its unjustified legal standard—demanding the County satisfy all the CPCN statutory requirements, and then some—shows that Appellants' case for undergrounding was extremely prejudiced by the Commission's mistake of law.

For example, the Report found that:

> [T]he Updated Hybrid Proposal and the Aspen-Golden Route proposed in the Application are not equally developed. For Route 1AA (and alternatives), the Aspen-Golden Application provided specific starting and ending points, including an explanation of where the 500kV and 230kV lines would individually begin and end at the proposed Aspen and Golden Substation sites. The Application also included routing markers at each 1/10 of a mile.

JA 2540. The problem with this analysis is that the County has no obligation to submit an underground proposal that is "equally developed" to Dominion's Application, and it was error for the Hearing Examiner to scrutinize the

County's request to consider requiring underground placement in this legal light.

Another example: the Report dinged the County's request for underground placement of the line because "[t]here is no indication who from the County established this route, including no indication of whether any engineer was involved in the route's selection." JA 2540. But once again, the County had no burden to engineer a fully dispatchable underground proposal under the statute—the plain language of the Underground Consideration Provision is silent as to any such requirement. The purpose of the UHP was to display conceptual feasibility and constructability, which it did, along with the Black & Veatch Report.

None of these factors appear in the Underground Consideration Provision; their invocation in the Report's articulations of its primary findings and recommendations demonstrates that the application of the wrong legal standard materially prejudiced Appellants' case.

The unworkability of the Commission's erroneous legal standard is only brought into full relief, however, when viewed in light of Dominion's position that it would have been "inappropriate . . . for the Company to propose an underground solution [for the Aspen-Golden Project] in the context of the study area because a viable, constructable overhead solution exists." JA 2515. If this is reflective of Dominion policy, then Dominion does not propose underground alternatives unless no viable overhead option exists. And under the Commission's legal standard—demanding that a locality requesting consideration of underground placement of a line satisfy the CPCN requirements—it will be wholly impracticable for a locality to ever successfully champion underground placement of a transmission line without Dominion's prior consent, because localities simply do not have access to the expertise, data, and other advantages possessed by Dominion when it comes to planning transmission lines and routes. This leaves the underground-placement prerogative with Dominion alone, in derogation of the County's statutory right to request underground placement in the Underground Consideration Provision.

Leaving the question of underground placement of transmission lines entirely within Dominion's routing discretion contradicts the plain language of the Underground Consideration Provision, which clearly contemplates the Commission requiring underground placement of a transmission line even in cases where, as here, the Applicant did not voluntarily proffer an underground alternative in its Application. The plain language of the Underground Consideration Provision does not require that an underground alternative be included in an Application before a locality may request consideration of underground placement of a transmission line, and to require the same would compel the Commission and the Court to read words into the statute that are not there, a power denied to courts in Virginia. *See VEPCO v. State Corp. Comm'n*, 300 Va. 153, 163 (2021) ("Courts cannot add language to a statute the General Assembly has not seen fit to include.").

The legislative intent behind the Underground Consideration Provision is to provide localities a statutory right to "request" that the Commission consider the economic benefits of "requiring the underground placement of the line." *See* Code § 56-46.1(B). Pursuant thereto, the County asked the Commission to consider requiring underground placement of Aspen-Golden, and offered the UHP as proof of concept that an underground hybrid was constructible and feasible. Appellants requested that the Commission order underground placement of Aspen-Golden, either in accordance with the UHP or in another manner that would similarly mitigate the adverse impacts of Route 1AA. Instead of considering the benefits of requiring underground placement, the Report and the Commission proceeded to measure the UHP against the CPCN statutory requirements, in a way that doomed the Commission's consideration of undergrounding from the outset. This negatived the legislative intent of the Underground Consideration Provision, was the incorrect legal standard, and rendered the Final Order void or voidable.

Therefore, the Commission erred as to A/Es 2 and 3 when it erroneously placed the burden of offering a CPCN-compliant application on the County in order for the Commission to consider requiring underground placement of a transmission line. This was the wrong legal standard, prejudiced Appellants' case-in-chief, violates the plain language of the Underground Consideration Provision, and constituted reversible error. This Court may therefore wish to vacate the Final Order and remand to the Commission for further proceedings.

III. The Commission erred as to A/E 4 because the line violates the Viewshed Easement and is thus not viable as ordered.

The Commission erred in granting the CPCN for Aspen-Golden but failing to order underground placement of the line because the overhead line approved in the Final Order is not viable because it violates the Viewshed Easement.

The record before the lower tribunal shows that the Viewshed Easement is an exclusive easement in gross over real property owned by the Board, as described in the Deed of Viewshed Easement (the "Deed"). JA 9703. The express purpose of the Viewshed Easement is "to preserve and to maintain an unobstructed view of the historic Belmont Manor House from Route 7." The record below also includes an admission by Dominion that the Aspen-Golden line, as ordered in the Final Order, will require at least two (2) 190-foot-tall poles to be placed on property subject to the protections of the Viewshed Easement. JA 2496. Dominion bases its entire Application and proposed overhead placement of the line on its legal determination that "transmission lines and utilities are exempt from restrictions within the easement; therefore, crossing this easement is allowed." Appellants disagree.

A. Legal Standard

"An easement in gross is an easement with a servient estate but no dominant estate." *Virginia Elec. and Power Co. v. Northern Va. Reg'l Park Auth.*, 270 Va. 309, 316 (2005) (internal quotations omitted). "An exclusive easement in gross is one which gives the owner the sole privilege of making the uses authorized by it." *Id.* at 317 (quoting 5 Restatement (First) of Property § 493 cmt. c (1944)).

A reviewing court's "function in construing a deed is to give effect to the parties' intention as expressed by them in the words they have used." *Wetlands Am. Tr., Inc. v. White Cloud Nine Ventures, L.P.*, 291 Va. 153, 160 (2016). "Effect should be given to every part of the instrument, if possible, and no part thereof should be discarded as superfluous or meaningless." *CNX Gas Co. v. Rasnake*, 287 Va. 163, 168 (2014).

"When the deed, so construed, is plain and unambiguous, [this Court is] 'not at liberty to search for its meaning beyond the instrument itself.'" *Wetlands Am. Tr., Inc.*, 291 Va. at 161 (citing *Northern Va. Reg'l Park Auth.*, 270 Va. at 316). "Conversely, a deed will be deemed ambiguous, and thus require judicial interpretation, if its language admits of being understood in more than one way or refers to two or more things at a time." *Id.* at 161–62 (cleaned up). "[T]he plaintiff, in seeking enforcement of the [easement] restrictions, has the burden to prove that they have been violated by the acts of the defendant." *Id.* at 162 (internal quotation marks omitted). "Still, when a court has resolved the meaning of such disputed restrictive covenants, the restrictions will be enforced when applicable." *Id.* (internal quotation marks omitted).

B. <u>Terms of the Viewshed Easement</u>

The following are the relevant terms in the Viewshed Easement for this Court's review:

- The stated purpose of the Viewshed Easement is "preserving and maintaining an unobstructed view of the historic Belmont Manor House from

Route 7, and as required by Proffer 26 of the Belmont Proffer Statement (ZMAP 1996-0003 and ZCPA 1996-0002)." JA 9703.

- "No development other than a private road sized in accordance with the Facilities Standards Manual (FSM) for access to the Manor House, the Russell Branch Parkway crossing, public utilities/stormwater management facilities, open space, fences and gates, and cultural and recreational uses, such as the Fairfax Hunt, golf driving range, and other community activities as set forth in the Proffers, shall occur within the easement area. No new permanent structures shall be constructed or placed within the easement except for structures provided as part of the Fairfax Hunt." JA 9704.

- "It is the intention of the parties hereto that this Easement, which is by nature and character negative in that the Grantors have restricted and limited their right to use the subject Property rather than granted any affirmative rights to the County except as set forth herein, be construed at all times and by all parties to effectuate its terms, conditions and purposes." JA 9705.

- "The County agrees to hold this Easement exclusively for purpose of maintaining unobstructed view of the Manor House, and will not transfer the Easement in exchange for money, other property, or services, except for the purpose of maintaining the unobstructed view of the Manor House." JA 9706.

C. The Hearing Examiner's Interpretation of the Deed

The Report acknowledges that underground placement of the line in accordance with Appellants' proposal "appears to better preserve the view protected by the Belmont Viewshed Easement." JA 2534. The Report also found that, "[g]iven the goal of the Belmont Viewshed Easement is to preserve the view of the Belmont Manor House from Route 7, Route 1AA would clutter the view with transmission lines while the Updated Hybrid Proposal would not incorporate above-ground transmission lines in the easement area." JA 2535. Finally, the Report found that Route 1AA "limits its impact on the Belmont Viewshed Easement to only two transmission structures," before ultimately finding that "Aspen-Golden Route 1AA avoids or reasonably minimizes adverse impacts to the greatest extent reasonably practicable to environmental, historic, and scenic resources." JA 2554–55. This finding constituted legal error, because the violations of the Viewshed Easement render Route 1AA nonviable as a matter of law.

D. The Deed, when read as a whole, is unambiguous that transmission poles violate the Viewshed Easement.

As the controlling caselaw makes clear, the governing principle in interpreting a deed is the intent of the contracting parties. In the case of the Deed, the purpose is plainly stated several times: to maintain an unobstructed view of the Belmont Manor House from Route 7. The Hearing

Examiner correctly found that Route 1AA will result in the cluttering of the view of Belmont Manor House from Route 7, a clear negation of the express purpose of the Deed and the Viewshed Easement.

Appellees will likely argue, as Dominion did in its Application, that the exception for the development of "public utilities/stormwater management facilities" applies to 190-foot-tall transmission poles. This interpretation should be rejected because the term "public utilities/stormwater management facilities," by dint of the "slash," is clearly meant to be read together as a joint term. Thus, according to the plain language of the Deed, only public utilities attendant to stormwater management are permitted under the Viewshed Easement.

Even if the Court determines that the term "public utilities/stormwater management" is ambiguous, and requires judicial interpretation, the Court should find that the general term's meaning is limited by the specific associated terms. *See Sainani v. Belmont Glen Homeowners Ass'n, Inc.*, 297 Va. 714, 724 (2019). The other exceptions listed in the Deed include "fences and gates," "open spaces," and recreational activities included in the proffered conditions that govern the use of the property. None of these uses are typically tall, nor do they require permanent structures. Dominion's interpretation ignores the fact that the same paragraph in the Deed states, without exception, that “[n]o new permanent structures shall be constructed or placed within the easement except for structures provided as part of the Fairfax Hunt.”

Finally, the common-law rule of strict construction of ambiguous restrictive covenants does not apply in this case. *Contra Wetlands Am. Tr., Inc.*, 291 Va. at 162. The parties to the Deed included an express provision that ambiguities should be interpreted in favor of satisfaction of the purposes of the Viewshed Easement.

Belmont Manor House is a national treasure, the home of James Madison, and the Board took steps to protect the view from Route 7, including the acceptance of proffers and the acquisition of the Deed and the Viewshed Easement. JA 5092, 9702. For the reasons stated, Route 1AA violates the Viewshed Easement and is thus not legally viable, as Dominion cannot construct the transmission poles in the easement area in contravention of the Board’s exclusive easement in gross.

Therefore, the Commission erred as to A/E 4 and the Court should vacate the Final Order and remand this case to the Commission for further proceedings.

IV. <u>The Commission erred as to A/E 5 because it failed to make a finding that Route 1AA is in substantial accord with the County's comprehensive plan.</u>

A. <u>"Substantial accord" review is the proper legal standard under which the Commission must "give consideration" to local comprehensive plans.</u>

As a threshold matter, all proposed new transmission lines—prior to CPCN approval—are subject to local approval certifying that such new feature is in "substantial accord" with the local comprehensive plan as adopted in Code §§ 15.2-2223 *et seq.* *See* Code § 15.2-2232(A). It is only upon "[a]pproval of a transmission line pursuant to [§ 56-46.1]" that such transmission line "shall be deemed to satisfy the requirements of § 15.2-2232 and local zoning ordinances." *See* Code § 56-46.1(F).

Therefore, when Code § 56-46.1(A) grants localities the right to request the Commission to give consideration "to local comprehensive plans that have been adopted pursuant to Article 3 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2" (the "Comprehensive Plan Provision"), such "consideration" should encompass the "substantial accord" review required under § 15.2-2232(A), which governs transmission line cases until a CPCN is granted.

This interpretation of the legal standard called for in the Comprehensive Plan Provision also accords with the plain language thereof, which incorporates Article 3 of Chapter 22 of Title 15.2 of the Virginia Code by reference. This incorporation includes the "substantial accord" review standard located in Code § 15.2-2232(A). Therefore, when the County requested the Commission to "give consideration" to the 2019 General Plan, it was required to determine whether Route 1AA was in "substantial accord" therewith.

B. Legal Standard

Where a tribunal "used an improper legal standard in exercising its discretionary function, [a reviewing court is] unable to apply the appellate review standard of abuse of discretion" and the judgment must be vacated. *Thomas v. Commonwealth*, 263 Va. 216, 233 (2002). "Whether a lower court has correctly defined and applied a legal standard is a question of law reviewed de novo." *Alexandria City Pub. Schs. v. Handel*, 299 Va. 191, 196 (2020).

C. The Commission applied an improper legal standard in satisfaction of its duty to "give consideration" to the 2019 General Plan.

The Report found that the County "made the request for the Commission to consider its comprehensive plan per Code § 56-46.1 A." JA 2536 n.658. Pursuant thereto, the County brought evidence that the County's electrical policies in the 2019 General Plan include a directive to "[w]ork with electrical providers to identify potential high voltage distribution lines and substation locations that minimize impacts on key travel corridors, sensitive cultural and historic resources, and existing residential communities, or to place high voltage distribution lines underground when approaching such areas." JA 8348–49; 2537–38. Uncontested testimony from County Witness Giglio demonstrated that Route 1AA is "the first and only greenfield route in eastern Loudoun that is proposed to bisect areas that are designated as the Suburban Mixed Use and Suburban Residential Place Types in the 2019 General Plan." JA 2536, 5065–67. Based on this, the County argued that Route 1AA does not substantially accord with the 2019 General Plan.

In its consideration of the 2019 General Plan, however, the Report did not make a finding as to whether Route 1AA was in substantial accord therewith. Instead, the Report noncommittally stated that "[w]hether undergrounding would preserve the context of the Suburban Mixed Use and Suburban Residential place types in the 2019 General Plan may depend on where a person lives and how they experience Route 7 in relation to the underground portion of the Aspen-Golden Lines." JA 2539. The Report further found that the UHP "also may better comply with Action B and the undergrounding part of Action C in Fiscal Policy 6 of the 2019 General Plan, depending on one's interpretation of this section of the plan."

These reflections alone did not satisfy the Commission's obligation to "give consideration" to the local comprehensive plan, which for the reasons stated *supra*, required the Commission to determine whether Route 1AA is in "substantial accord" with the 2019 General Plan. The application of an improper legal standard renders the Commission's order invalid. Under the proper standard, the evidence is uncontroverted that Route 1AA does not substantially accord with the 2019 General Plan, which calls for impacts to travel corridors like Route 7 to be mitigated through underground placement.

For these reasons, the Commission erred as to A/E 5 because it applied the wrong legal standard to its obligation to "give consideration" to the local comprehensive plan, pursuant to the County's lawful request that it do so.

V. <u>The Commission erred as to A/E 6.</u>

In light of the legal errors highlighted in A/Es 1 through 5, the Commission failed to satisfy its statutory requirement to "determine that . . . the corridor or route chosen for the line will avoid or reasonably minimize adverse impact to the greatest extent reasonably practicable on the scenic assets," historic and cultural assets, and environment of the area. *See* Code § 56-46.1(B). Thus, the Commission's decision in the Final Order is void.

Even if the Court determines that the Commission did not fail to make such a determination as a matter of law, the Commission failed to adequately consider overwhelming evidence that only undergrounding can satisfy the statutory requirement for impact minimization. The evidence of unanimous public support for undergrounding, as well as the benefits to the economy and property values thereof, render Route 1AA more adverse than the UHP or an analog. The outpouring from the public, HOAs, businesses and institutions, and elected officials, are all indicia of the public interest favoring undergrounding that the Commission did not adequately consider. *See* JA 2194–2225 (comments from Lansdowne Village Greens, Lansdowne on the Potomac HOA, Belmont Community Association, Waterford Foundation Inc., Coalition of Loudoun Towns, Lansdowne Resort, Lansdowne Woods, the General Assembly, and others). The Commission applied the wrong legal standard in its consideration of the 2019 General Plan. The Viewshed Easement was ignored by the Report and the Final Order. The fact that Black & Veatch and RLC both found undergrounding to be feasible was not considered. The Commission's Final Order was thus contrary to the evidence, and the Commission erred as to A/E 6.

VI. <u>The Commission erred as to A/E 7.</u>

Code § 56-46.1(A) empowers and requires the Commission to "impose such conditions as may be desirable or necessary to minimize adverse environmental impact.” Yet the Commission imposed no substantive mitigation measures, even though the Conservancy identified practical and reasonable conditions that could have reduced impacts. These included:

1. Prohibiting collocation of new above-ground infrastructure without County review and approval;
2. Mandating visual buffering through vegetation in cooperation with the County;
3. Restricting expansion of the ROW beyond what is necessary for stated public use;
4. Keeping the record open for continued oversight and enforcement.

JA 2651–55.

These are not extreme or burdensome measures—they reflect basic land use protections necessary and desirable in sensitive areas. The Commission’s refusal to adopt any of them represents a failure to fulfill its statutory obligations minimize adverse impacts. Therefore, the Commission erred as to A/E 7.

CONCLUSION

For these reasons, Appellants respectfully request this Court hold that the Commission erred as to A/Es 1 through 7; vacate the Final Order; and remand this case for further proceedings consistent with applicable law and any opinion to issue from this Court.

Date: August 7, 2025

Respectfully submitted,

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CERTIFICATE

I hereby certify that on this 7th day of August, 2025, pursuant to Rules 5:26 and 5:32 a copy of the Appellants' Consolidated Brief and Joint Appendix was filed with the Clerk of the Supreme Court of Virginia, via VACES. On this same day, the Brief and Appendix were served, via email, upon:

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