
IN THE
Supreme Court of Virginia

AT RICHMOND

Record Nos. 250492
and 250493

LANSDOWNE CONSERVANCY,

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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LOUDOUN COUNTY, VIRGINIA,

Appellant,

— v. —

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

Appellees.

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE CASE	1
ASSIGNMENT OF ERROR	2
STATEMENT OF FACTS AND MATERIAL PROCEEDINGS BELOW	2
STANDARD OF REVIEW	17
ARGUMENT.....	18
I. The Commission erred as to A/E 1 because its legally deficient analysis of the County’s request for underground placement of Aspen-Golden at the consolidated proceedings led the Commission to deny Appellants’ request that the CPCN for Apollo-Twin Creeks allow for underground placement of the collocated sections of Aspen-Golden.....	18
CONCLUSION	24
CERTIFICATE.....	26

TABLE OF AUTHORITIES

	Page(s)
Cases:	
<i>Alexandria City Pub. Schs. v. Handel</i> , 299 Va. 191 (2020)	22
<i>Appalachian Power Co. v. State Corp. Comm’n</i> , 284 Va. 695 (2012)	18
<i>BASF Corp. v. State Corp. Comm’n</i> , 289 Va. 375 (2015)	18, 23
<i>Mutual Sav. & Loan Ass’n v. Commonwealth</i> , 212 Va. 557 (1972)	18
<i>Piedmont Environmental Council v. Virginia Electric and Power Co.</i> , 278 Va. 553 (2009)	20, 21
<i>Thomas v. Commonwealth</i> , 263 Va. 216 (2002)	22
<i>Virginia Elec. and Power Co. v. Northern Va. Reg’l Park Auth.</i> , 270 Va. 309 (2005)	23
<i>Wetlands Am. Tr., Inc. v. White Cloud Nine Ventures, L.P.</i> , 291 Va. 153 (2016)	23
Statutes & Other Authorities:	
Code § 15.2-2223	5
Code § 56-46.1	1
Code § 56-46.1(A).....	5
Code § 56-46.1(B).....	<i>passim</i>

STATEMENT OF THE CASE

In this appeal, Appellants Loudoun County, Virginia (the “County”) and Lansdowne Conservancy (the “Conservancy,” collectively, the “Appellants”), challenge a Final Order of the State Corporation Commission (the “Commission”) entered February 5, 2025 (the “Apollo-Twin Creeks Final Order”), approving a Certificate for Public Convenience and Necessity (“CPCN”) in Case No. PUR-2024-00044 (the “Apollo-Twin Creeks Case”), certifying the Apollo-Twin Creeks transmission line project (the “Apollo-Twin Creeks Project” or “Apollo-Twin Creeks”) pursuant to Code § 56-46.1. Appellants take issue with the Apollo-Twin Creeks Final Order’s failure to include any conditions that would permit the underground placement of a transmission line approved in another Final Order, entered by the Commission on February 6, 2025 (the “Aspen-Golden Final Order”), in Case No. PUR-2024-00032 (the “Aspen-Golden Case”). The Apollo-Twin Creeks Case and the Aspen-Golden Case were consolidated below for procedural and hearing purposes. Appellants appealed the Aspen-Golden Final Order in Record Nos. 250494 and 250495 (the “Companion Case”).

ASSIGNMENT OF ERROR

1. 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).

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 1620. 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 1620–21. The entirety of the Aspen-Golden Project is planned to be located in the County. JA 1620. Dominion requested a final order approving a desired in-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 1621.

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 1622. Approximately 48% of the length of the Apollo-Twin Creeks line—0.9 miles—collocates with the proposed Aspen-Golden Project. JA 1622. 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 1622.

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 1622.

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 1623.

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 1623.

In the Aspen-Golden Application, Dominion selected Route 1AA as its preferred route (“Route 1AA”). JA 1634. 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 1635. 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 1635.

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 1632, 3386–88. 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 1635. 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 1635–36.

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 902–07. 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 902–07.

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 1635

On or before August 14, 2024, the County, the Conservancy, Ms. Ghiorzi, and the Community Church—along with other respondents—

prefiled direct testimony. JA 1623. On August 21, 2024, Commission Staff (“Staff”) pre-filed its testimony along with a Staff Report for each of the Combined Cases. JA 1623. On September 4, 2024, Dominion pre-filed its rebuttal testimony. JA 1623.

On August 6, 2024, eight public witnesses offered testimony by phone on the Combined Cases. JA 1625. 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 1625.

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 1626–27.

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 1628. Their reasoning included the protection of scenic and historic assets and the economic benefits to local businesses of underground placement of the line. JA 1629.

An evidentiary hearing on the Combined Cases was held on September 18, 19, 20, 23, and 26, 2024, before the Hearing Examiner. JA 1625. In its Applications for the Combined Cases, Dominion offered direct testimony from five (5) witnesses. JA 1639.

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 1634. 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 1643–44. 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 1644.

Tom Jeavons, President of the Conservancy, testified on its behalf. JA 1652. 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 1653. 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 1653. 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 1653. According to Mr. Jeavons, undergrounding Aspen-Golden is the only appropriate solution. JA 1653.

Lead Pastor Charles Whitlow testified on behalf of Community Church. JA 7366–94. 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 1655.

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 7534–91); Buddy Rizer, Executive Director of Economic Development for the County (JA 7592–7605); Brian A. Conroy, P.E., Manager of Power System Studies for RLC (JA 7479–7527); and Richard N. Olsen, MAI (JA 7606–7790). JA 1655–65.

Mr. Giglio testified that the 2019 General Plan's electrical policies require electrical providers consider high-voltage corridors that minimize impacts on roadways and cultural resources and should consider undergrounding where possible. JA 1656. 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 1656. Mr. Giglio continued that while such consultations do occur, they are “perfunctory” in practice and do not lead to undergrounding. JA 1656.

Mr. Giglio further testified that the County supported underground an approximately three-mile portion of Aspen-Golden adjoining Route 7 from near the intersection of Ashburn Village Boulevard and Belmont Ridge Road. JA 1657. 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 1657. He further informed the Hearing Examiner that the Board of Supervisors of the County 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 1657. 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 1657.

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 route touched by a high-voltage powerline in the County. JA 1817.

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 1661.

Mr. Conroy discussed the UHP in detail in his testimony. JA 1662. He shared that RLC met with Dominion and shared the Initial Hybrid Proposal in February 2024. JA 1662. After receiving Dominion’s feedback, RLC modified its proposal, developing the UHP. JA 1662. Mr. Conroy showed how the UHP addressed each one of Dominion’s comments on and criticisms of the UHP. JA 1663. 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 1663. He also confirmed that all regulatory and permitting risks were inputs into the conceptual estimated timeline for construction. JA 1663. 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 1663.

Mr. Conroy estimated the cost of the UHP to be \$423 million more than Dominion's estimate for Route 1AA. JA 1664. He estimated the underground portion of the UHP would cost \$478 million. JA 1664. 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 1664.

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 1665.

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 1665–66. 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 1667.

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 1670. Mr. Dodson stated that the UHP was not “complete enough for an actual project.” JA 1671. 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 1671–72. In the Staff Report, Staff stated that they verified PJM’s power flow models and confirmed the projected violations absent Aspen-Golden. JA 1672.

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 1683–84.

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 1698–1700.

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 1704–06. 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 1707.

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 3386–91.

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 1723–24.

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 1750. 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 1750. 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 1750.

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 1751. 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 1764.

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 1790. 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 1790.

On November 22, 2024, Appellants filed Comments and Exceptions on the Report arguing against its recommendations regarding underground placement. JA 1812–47, 1904–13. 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 1812–47. 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 1908. The Conservancy requested the Commission underground Aspen-Golden "to the greatest extent possible." JA 1908. 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 1908–09.

On February 5, 2025, the Commission entered its Final Order in the Apollo-Twin Creeks Case (the "Final Order" or the "Apollo-Twin Creeks Final Order"). JA 1924. The Apollo-Twin Creeks Final Order 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 1930. The Commission then ordered the Report’s recommendations and dismissed the case, failing to include any provisions in the Apollo-Twin Creeks Final Order that would allow for underground placement of Aspen-Golden in those areas where it is collocated with Apollo-Twin Creeks. JA 1924–32.

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 1946–58.

On June 5, 2025, the County and Conservancy each filed Petitions for Appeal in this Court from the Apollo-Twin Creeks Final Order. Appellants assigned one assignment of error.

For the reasons stated herein, this Court should hold that the Commission erred as to A/E 1; 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 its legally deficient analysis of the County’s request for underground placement of Aspen-Golden at the consolidated proceedings led the Commission to deny Appellants’ request that the CPCN for Apollo-Twin Creeks allow for underground placement of the collocated sections of Aspen-Golden.

The proceedings for the Apollo-Twin Creeks and Aspen-Golden Applications were consolidated, in part, because so much of their proposed alignments are collocated. JA 1622. The record shows that all the

underground alignments mentioned are collocated, to some extent, with Aspen-Golden Route 1AA. JA. 1622. Recognizing that such collocation may necessitate the Commission including terms or provisions in the Apollo-Twin Creeks CPCN to allow for the requirement of underground placement of the Aspen-Golden line, Appellants requested that the Commission issue a CPCN in Case Nos. PUR-2024-00032 *and* PUR-2024-00044 that would allow for such mandatory underground placement of Aspen-Golden. JA 3386, 3750, 4271. This would 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.

The Commission's analysis never got that far, however, because of the myriad legal errors committed in the Report and Final Orders. The record shows numerous legal errors inherent in the Commission's analysis of Appellants' request to underground a portion of Aspen-Golden. Because the records and evidentiary proceedings were consolidated by the Commission, those errors necessarily marred the Commission's analysis of the Apollo-Twin Creeks Application and the Commission's determination that it did not need to include provisions in the Apollo-Twin Creeks CPCN permitting and

accommodating underground placement of the Aspen-Golden line wherever it is collocated with Apollo-Twin Creeks.

The record shows, for example, that the Hearing Examiner's Report, in recommending Aspen-Golden Route 1AA, failed to verify the load flow modeling, contingency analyses, and reliability needs used to justify overhead placement of the Aspen-Golden line, as required by Code § 56-46.1(B). Beyond a cursory statement that Staff had verified the load flow modeling, no other evidence exists in the record that any verification of Dominion's justification of need and overhead placement occurred.

This attempted verification does not satisfy the plain language of Code § 56-46.1(B) or the standard for "verification" of the necessary data as interpreted 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.* This argument is more fully developed in Appellants’ Consolidated Opening Brief in the Companion Case, which argument is incorporated herein by reference. This legal error necessarily implicates the Commission’s decision not to provide for underground placement of the collocated portions of Aspen-Golden in the CPCN for Apollo-Twin Creeks.

In a second legal error, the Report utilized an erroneous legal standard in its consideration of the economic benefits of requiring underground placement of Aspen-Golden, including those portions of Aspen-Golden that are collocated with Apollo-Twin Creeks. The legal standard applied in the Report required that the County submit an underground proposal that fully complied with all statutory CPCN requirements, as well as an environmental analysis and environmental justice analysis, none of which is required by Code § 56-46.1(B). JA 1790.

Application of this erroneous legal standard rendered the Commission’s decision not to require underground placement of Aspen-Golden void, including as it applies to those portions of Aspen-Golden collocated with Apollo-Twin Creeks. 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). This argument is more fully developed in Appellants’ Consolidated Opening Brief in the Companion Case. Such error necessarily implicates the Commission’s decision not to include conditions to accommodate the underground placement of those same portions in the CPCN in Apollo-Twin Creeks.

The Report also erroneously recommended Aspen-Golden Route 1AA, despite the fact that it violates the plain language—and totally defeats the purpose—of the Viewshed Easement held by the Board of Supervisors of Loudoun County for the purpose of protecting the view of Belmont Historic Manor from Route 7. The record shows that Aspen-Golden Route 1AA will perforate the Viewshed Easement area at least twice and will clutter the view of the Belmont Historic Manor. JA. 1745–55, 8910–17. These arguments are more fully developed in Appellants’ Consolidated Opening Brief filed in the Companion Case, which arguments are incorporated herein by reference.

These violations of the easement render Aspen-Golden Route 1AA nonviable, because the Board’s easement in gross over the Belmont Historic

Manor gives it exclusive rights to enforce the restrictive covenants. See *Wetlands Am. Tr., Inc. v. White Cloud Nine Ventures, L.P.*, 291 Va. 153, 160 (2016); *Virginia Elec. and Power Co. v. Northern Va. Reg'l Park Auth.*, 270 Va. 309, 316–17 (2005). However, the Report's failure to register that violation of the Viewshed Easement rendered Route 1AA nonviable led it to the erroneous determination that it was viable. This mistake obviously impacted the Commission's decision not to require underground placement in the Companion Case; however, it also trickled down to the Commission's Final Order in this case, tainting its decision not to include any conditions in the CPCN for Apollo-Twin Creeks that would accommodate underground placement of those portions of Aspen-Golden collocated with Apollo-Twin Creeks. Decisions of the Commission based on erroneous legal principles are reversible in this Court. See *BASF Corp.*, 289 Va. at 391.

For these reasons, the Commission's decision not to require conditions allowing for the underground placement of Aspen-Golden on those properties where it will be collocated with Apollo-Twin Creeks in the CPCN for Apollo-Twin Creeks was error, based on the application of erroneous legal principles. As such, the Commission erred as to A/E 1, because its CPCN in Apollo-Twin Creeks, without such conditions, failed to mitigate the adverse

impacts to scenic, cultural, and historic assets to the extent reasonably practicable, as required by Code § 56-46.1(B).

CONCLUSION

For the reasons stated herein, Appellants respectfully request this Court VACATE the Final Order entered by the Commission on February 5, 2025, in Case No. PUR-2025-00044, and REMAND these proceedings, along with the proceedings in the Companion Case Record Nos. 250494 and 250495, to the Commission for further proceedings consistent with this Court's opinion.

Date: August 7, 2025

Respectfully submitted,

**LOUDOUN COUNTY, VIRGINIA
and
LANDSDOWNE CONSERVANCY
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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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