
In The
Supreme Court of Virginia

Record Nos. 250492 & 250493

LANSDOWNE CONSERVANCY,
Appellant,

v.

STATE CORPORATION COMMISSION, *et al.*,
Appellees.

LOUDOUN COUNTY, VIRGINIA,
Appellant,

v.

STATE CORPORATION COMMISSION *et al.*,
Appellees.

From the State Corporation Commission, Case No. PUR-2024-00044

BRIEF OF APPELLEE VIRGINIA ELECTRIC AND POWER COMPANY

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INTRODUCTION

This appeal presents no assignment of error about the final order at issue, let alone a preserved assignment of error. Appellants' lone assignment insists that the Virginia State Corporation Commission (the "Commission") erred in approving the disputed Aspen-Golden transmission line (at issue in Record Nos. 250494 and 250495), and therefore erred in approving the undisputed Apollo-Twin Creeks line at issue here. Yet that assignment identifies nothing the Commission should have done differently in approving the Apollo-Twin Creeks line, leaving this Court with nothing to review.

In any event, Appellants Loudoun County and the Lansdowne Conservancy never told the Commission what it should have done differently in approving the undisputed Apollo-Twin Creeks line. To the contrary, they supported approval of that line. So even if they had assigned error to that approval, Appellants did not preserve any error before the Commission. And in any event, the Commission's approval of the Apollo-Twin Creeks line is supported amply by the uncontested facts and is consistent with settled law.

FACTUAL AND PROCEDURAL BACKGROUND

On March 27, 2024, Virginia Electric and Power Company ("Company") applied for a certificate of public convenience and necessity ("CPCN") under Code §§ 56-46.1 and 56-265.1, *et seq.* to construct a new 1.9-mile double circuit 230 kV

transmission line (“Apollo-Twin Creeks”) and five new 230-34.5 kV substations (the Twin Creeks, Sycolin Creek, Starlight, Lunar, and Apollo Substations) in Loudoun County (“Apollo-Twin Creeks Project”). JA 846. That Project is needed to ensure that the Company can provide service requested by three data center customers and maintain reliable electric service consistent with mandatory North American Electric Reliability Corporation Reliability Standards for the overall growth in the load area. JA 12, 23, 26-101.

The Commission issued an order setting the procedural schedule for the Apollo-Twin Creeks Project and combined the Apollo-Twin Creeks Project with the partially collocated Aspen-Golden Project for procedural and hearing purposes. JA 866-90. While partially collocated with the Aspen-Golden Project, each project is independently built and operated as its own series of transmission line structures. JA 1924-925, 1933-935. Eleven parties filed notices of participation in the combined matters, but none of them challenged the need or route for the Apollo-Twin Creeks Project—not even the portions collocated with the Aspen-Golden Project.

Commission Staff then filed its Staff Report, concluding that the Company had reasonably demonstrated the need for the Project and agreeing that the Company’s Proposed Route for the Apollo-Twin Creeks line was the optimal route. JA 1369-407. Following public witness and evidentiary hearings, the Senior

Hearing Examiner issued a comprehensive 175-page Report summarizing the history of the case, the record, and the applicable law, and outlining her findings and recommendations. JA 1618-799. The Report concluded that the evidence supported issuance of a CPCN for the Apollo-Twin Creeks Project, and the Commission issued a Final Order adopting the Report's recommendations. JA 1618-799, 1924-932.

STANDARD OF REVIEW

“Under the Constitution of Virginia and in statutes enacted by the General Assembly, the Commission is given broad authority over the control and regulation of public service corporations.” *Piedmont Env’t Council v. Va. Elec. & Power Co.*, 278 Va. 553, 562 (2009) (citing *Bd. of Supervisors of Campbell Cnty. v. Appalachian Power Co.*, 216 Va. 93, 105 (1975)). In exercising the broad authority granted to it, the Commission is charged with responsibility of construing statutes it is charged with enforcing, finding the facts, and rendering a judgment. This Court “is neither at liberty to substitute its judgment in matters within the province of the Commission nor to overrule the Commission’s finding of fact unless [this Court] can say its determination is contrary to the evidence or without evidence to support it.” *Campbell Cnty.*, 216 Va. at 105. As to “evidentiary findings of the Commission,” this is a “highly deferential standard.” *BASF Corp. v. State Corp. Comm’n*, 289 Va. 375, 391 (2015). The Commission’s findings come to this Court with a “presumption of correctness.” *Northern Va. Elec. Coop. v. Va. Elec. & Power Co.*,

265 Va. 363, 368 (2003); *see also* *Piedmont*, 278 Va. at 563 (noting the “findings of the Commission are presumed to be just, reasonable, and correct”). This Court reviews questions of law de novo. *Wal-Mart Stores East, LP v. State Corp. Comm’n*, 299 Va. 57, 72 (2020). This includes questions regarding the Commission’s interpretation and application of the Code of Virginia. *Id.*

ARGUMENT AND AUTHORITIES

I. Appellants assigned no error to the order at issue.

This appeal should be summarily dismissed because Appellants assigned no error to the Commission order at issue. *See* Rule 5:21(a)(7). Instead, the sole assignment collaterally attacks a different order as a vehicle to incorporate the same (meritless) arguments in Record Nos. 250494 and 250495 here.¹

That assignment criticizes the Commission’s order approving the overhead Aspen-Golden transmission line. *See* Opening Br. 2 (addressing the “fail[ure] to

¹ The assignment of error states:

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).

order underground placement of that portion of the Aspen-Golden line”). But this appeal is about *only* the separate order approving the distinct Apollo-Twin Creeks line.

The assignment of error does not contend that any portion of the Apollo-Twin Creeks line should be undergrounded. Nor does it contend that the Commission’s analysis of the Apollo-Twin Creeks line erred in any respect. Instead, the assignment asserts only that it was error to approve the Apollo-Twin Creeks line because it was error to approve the Aspen-Golden line overhead in the areas where it is proposed to be collocated with the Apollo-Twin Creeks line. That is at most a *non sequitur*—not a valid assignment of error pertinent to the Apollo-Twin Creeks approval.

The Commission’s consolidation of the two applications for procedural and hearing purposes only (JA 1623) is irrelevant to the defective assignment, and certainly does not provide a remedy. *Contra* Opening Br. 18-19. Consolidation “for trial only does not operate as a merger of the different cases into one, but merely permits them to be tried together . . . to avoid unnecessary delay and expense in the administration of justice.” *Clark v. Kimnach*, 198 Va. 737, 745 (1957). So even if there were error in the Aspen-Golden approval, Appellants are wrong that it would “necessarily mar[] the Commission’s analysis of the Apollo-Twin Creeks Application.” Opening Br. 19. To the contrary, the assignment of error identifies

nothing in the Apollo-Twin Creeks order that would change even if the Aspen-Golden order were reversed.

Appellants’ brief nevertheless “take[s] issue with the Apollo-Twin Creeks Final Order’s failure to include any conditions that would permit the underground placement” of the Aspen-Golden line. Opening Br. 1; *see also id.* at 17, 19-20, 22-23 (all referencing the absence in the Apollo-Twin Creeks order of “conditions” or “provisions” regarding the undergrounding of the Aspen-Golden line). That critique is beyond the assignment of error, which addresses no such conditions. Parties remain bound by their assignments, so Appellants’ brief cannot cure the absence of appropriately assigned error. *See, e.g., Amazon Logistics, Inc. v. Va. Emp. Comm’n*, __ Va. __, 912 S.E.2d 290, 294-95 (2025); *Commonwealth v. Carolino*, 303 Va. 399, 909 S.E.2d 413, 420-21 (2024); *Martin v. Lahti*, 295 Va. 77, 88-89 (2018).

II. Appellants did not preserve any error either.

Even if Appellants had assigned error to the lack of conditions on undergrounding Aspen-Golden in the Apollo-Twin Creeks Final Order, they did not preserve such error before the Commission, let alone with the “reasonable certainty” required by Rule 5:21(a)(7). Appellants *never requested* such conditions, and none of their purported preservation cites show that they did. To the contrary, Appellants agreed that the Apollo-Twin Creeks line could be approved as submitted.

“The Court ‘will not consider an argument that differs from the specific argument presented to the trial court even if it relates to the same general issue.’” *Palmer v. Atl. Coast Pipeline, LLC*, 293 Va. 573, 579 (2017) (quoting *Jones v. Commonwealth*, 293 Va. 29, 39 n.5 (2017)). Below, Appellants never asked the Commission to condition approval of Apollo-Twin Creeks on the undergrounding of Aspen-Golden, nor did they request any modification to Apollo-Twin Creeks to accommodate underground installation of Aspen-Golden.²

None of Appellants’ citations show preservation of this issue. First, JA 3386 is merely counsel’s closing arguments referencing that the cases were consolidated for hearing. Far from preserving error on the Apollo-Twin Creeks approval, JA 3386 confirms Appellants’ support for that approval, with no reference to any conditions on that approval. Second, JA 3750 again merely confirms that the two cases were being heard together, with exhibits admitted into both cases. *See Clark*, 198 Va. at 745. That cite identifies no conditions that Appellants asked the Commission to place on its approval of Apollo-Twin Creeks. Third, JA 4271 merely confirmed that overhead wires from the Apollo-Twin Creeks line will be visible for the collocated portion of the Aspen-Golden line even under Appellants’ proposal to underground

² Even now, Appellants’ Opening Brief fails to identify the particular “conditions” or “provisions” that they assert are necessary.

the latter line. JA 4271. Again, no request or objection was made concerning the Apollo-Twin Creeks line.

To the contrary, Appellants confirmed that they did not oppose the Apollo-Twin Creeks application in any respect. They had no “asks” and “no opinion” on that line. JA 3722 (“[Examiner]: So as far as your asks go, does the County have any ask related to the Apollo-Twin Creeks project? [County Counsel]: No, Your Honor.”); JA 3682 ([Examiner]: “Just as a point of clarification, do you have any opinion on the Apollo-Twin Creeks Line? [Lansdowne Counsel]: No, Your Honor.”).

Appellants themselves thus led the Senior Hearing Examiner to confirm that “[t]here is no controversy about the routing of the Apollo-Twin Creeks Lines.” JA 1781. Even then, their comments to the Hearing Examiner’s Report did not even mention that line. Because Appellants failed to inform the Commission that the Apollo-Twin Creeks approval should have been conditioned in some still-unknown way, this Court cannot—and should not—consider that argument now.

III. The Commission properly approved the Aspen-Golden line.

If there were any preserved assignment of error for this Court to consider on the Apollo-Twin Creeks line, it should affirm. The record contains ample factual support for the Commission’s findings that the line is needed, reasonably minimizes any adverse impacts, and satisfies all other statutory requirements. JA 1927-931

(adopting the Hearing Examiner’s Report, including its findings of fact and, in whole and approving the project). The Opening Brief takes no issue with any of those findings. Instead, Appellants offer conclusory assertions (at 20-24) that the overhead *Aspen-Golden* line should not have been approved. They rely on the arguments from their Opening Brief in Record Nos. 250494 and 250495, which Appellants repeatedly state is “incorporated herein by reference.” *See, e.g.*, Opening Br. 21. But again, those incorporated arguments are meritless for the reasons already explained in the Company’s Response Brief in Record Nos. 250494 and 250495. If this Court were to reach the merits of the assignment of error here, it should affirm just as in those companion cases.

CONCLUSION

This appeal should be dismissed because no error was assigned or preserved as to the Commission’s approval of the Apollo-Twin Creeks line. In the alternative, this Court should affirm the Commission’s decision granting a CPCN for that line.

Dated: August 29th, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE & COMPLIANCE

The undersigned certifies that on August 29th, 2025, Respondent's Brief of Appellee was filed electronically via the VACES system with the Virginia Court of Appeals and complies with Rule 5A:19 and Rule 5A:21. The undersigned further certifies as follows:

1. This brief contains 9 pages.
2. Appellees do not wish to waive oral argument.
3. On August 29th, 2025, a copy of the foregoing document was served on the following counsel of record via electronic mail:

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