In The
Supreme Court of Virginia

Record Nos. 250494 & 250495

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-2024-00032

BRIEF OF APPELLEE VIRGINIA ELECTRIC AND POWER COMPANY

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INTRODUCTION

This appeal from an order of the Virginia State Corporation Commission ("Commission") concerns whether part of the Commission-approved Aspen-Golden transmission line should be constructed above or below ground. As a Transmission Owner within a larger regional transmission organization, Virginia Electric and Power Company ("Company") constructs electric transmission infrastructure needed to support the electric grid, the costs of which are recovered from customers systemwide.

The Commission's certification proceedings evaluated the line's need, proposed routing, and method of construction. The Commission determined that the Aspen-Golden Project is needed to respond to documented threats to the continued reliability of electric service; in the Senior Hearing Examiner's words, "it is not optional." JA 2546. The Company proposed an overhead route, considering such factors as the feasibility of undergrounding some or all of the line. Appellants Loudoun County ("County") and Lansdowne Conservancy ("Conservancy") preferred a partial underground route for aesthetic reasons.

The Commission fully considered their partial underground alternative, which faced enormous feasibility and timing challenges, besides costing many times more than an overhead route. The Commission ultimately approved the overhead route on a fully developed record. This Court should affirm the

Commission's Final Order, which "adopt[ed] the Senior Hearing Examiner's findings and recommendations." JA 2722.

FACTUAL AND PROCEDURAL BACKGROUND

On March 7, 2024, the Company applied for a certificate of public convenience and necessity ("CPCN") under Code §§ 56-46.1 and 56-265.1 *et seq*., to construct the Aspen-Golden Project in Loudoun County, consisting of a 500-230 kilovolt ("kV") Aspen Substation, a roughly 0.2-mile 500 kV line between the Company's proposed Aspen Substation and existing Goose Creek Substation, a roughly 9.4-mile overhead 500 kV single circuit transmission line and a new 230 kV single circuit transmission line ("Aspen-Golden Lines"), a new 500-230 kV Golden Substation, and a new transmission line loop of the existing Paragon Park-Sterling Park Line #2081 and Paragon Park-Sterling Park Line #2150 into and out of the new future Golden Substation. JA 1-1667.

The Aspen-Golden Project is needed to maintain and improve electric service to customers in the eastern Loudoun load area, address significant load growth in that area, and resolve identified North American Electric Reliability Corporation ("NERC") reliability violations. The target in-service date is June 1, 2028. JA 9-10, 24, 29-188, 8877-890.

The Commission set a procedural schedule for the Aspen-Golden Project and combined that project for procedural and hearing purposes with the partially collocated Apollo-Twin Creeks Project. JA 1691-1715. Eleven parties filed notices of participation.

The County challenged the Company's evaluation of an underground route for the Aspen-Golden Lines and proposed its own partial underground route ("Updated Hybrid Proposal") instead. JA 8253-307; *see also* JA 7979-8139 (Conservancy testimony supporting the Updated Hybrid Proposal).

Commission Staff investigated and concluded that "the Company has reasonably demonstrated the need for the proposed Project" and did "not oppose the Company's preference for the Aspen-Golden Proposed Route (Route 1AA)." JA 8819. As to undergrounding, Staff concluded in the Staff Report that "an all-underground option is not practical for the proposed Project" and "serious issues would still persist" with a hybrid option. JA 8816-817. During the hearing, Staff Witness Jeff Dobson explained that the County's Updated Hybrid Proposal "continues to be based on many fundamental assumptions and, therefore, does not represent a viable option at this time." JA 3113. More specifically, Staff noted concerns with meeting the in-service date of June 1, 2028, which at that time was just "about 45 months away," JA 3113-114, and explained that if the Company did not meet that date, "it could result in major damage to the system," JA 3115-116. Staff also expressed concerns about the constructability of the Updated Hybrid Proposal. JA 3116-118. Staff ultimately concluded that "the overhead route remains the only feasible and economical option for the Aspen-Golden lines to address the need identified in the Company's application." JA 3124-125.

The Company filed rebuttal testimony of ten witnesses. On the viability and prudence of the Updated Hybrid Proposal, Company Witness Kunal S. Amare reiterated the critical need for the Project and explained that "from a transmission planning perspective, the Company's proposed overhead route alternatives . . . are the only robust and reliable long-term solution to meet the identified need for the Aspen-Golden Project, and they also are able to be constructed by the in-service date." JA 8888. Company Witness Kamlesh A. Joshi contrasted the Updated Hybrid Proposal's failure to meaningfully account for potential transition stations to serve known new developments in the area of the proposed underground segment, and the limited space available on the new developments' properties for such transition stations. JA 8567-580. Company Witness James P. Young focused on environmental issues raised in the Department of Environmental Quality ("DEQ") Report, environmental impacts of undergrounding the Aspen-Golden Lines, and permitting concerns associated with the Updated Hybrid Proposal. JA 8936-943. Mr. Young explained several aspects of the Updated Hybrid Proposal that led him to believe it is "likely not permittable" by other resource agencies like the U.S. Army Corps of Engineers, which in turn renders it "not a viable solution." JA 8940-943.

Company Witness Shane A. Moulton discussed the Updated Hybrid Proposal from an engineering perspective. That testimony addressed the insufficiency of the Updated Hybrid Proposal's proposed right-of-way and number of cables per phase for the 500 kV circuit, trenchless construction allowance, rock estimate, construction timeline, cost estimate, and difficulties with myriad existing utilities in the area. JA 9021-568. Mr. Moulton's rebuttal also distinguished the Aspen-Golden Project from the entirely different Chino Hills 500 kV underground project in California, and rebutted the perceived reliability benefits of underground lines. JA 9040-041, 9043-047.

Besides addressing routing challenges to the Company's proposed overhead route for the Aspen-Golden Lines, Company Witness Jacob M. Rosenberg rebutted the Updated Hybrid Proposal from a routing perspective. JA 9572-679. Mr. Rosenberg explained that the complex network of existing utilities (like water, sewer, gas, and fiber) in the area and the certainty of encountering shallow bedrock during construction challenged construction of the Updated Hybrid Proposal. *Id.* He added that the Updated Hybrid Proposal ignored the overlap of the proposed underground line and transition station locations with existing, approved development and encroachments on other properties along the route. *Id.*

Company Witness Lawrence J. Colorito, Jr. challenged the property valuation study conducted by County witnesses and explained why that study was unreliable. He also addressed public comments about property value effects from overhead transmission lines. JA 8947-9020.

Next, Company Witness Matthew B. Vinson's rebuttal testimony outlined the Company's coordination with another party (Leesburg Pike Community Church) on an overhead alignment across that property, and the Company's proposed variation across another property owner and party's property (JKLH Land Holdings, LLC, or "JKLH"). JA 8891-897. In turn, Company Witness Robert E. Richardson's rebuttal testimony addressed public comments specific to the pre-filing community outreach process. JA 8704-719. And Company Witness Dr. Gabor Mezei responded to comments on electric and magnetic field exposure and testified to the wealth of scientific studies finding no evidence connecting those fields to various health concerns. JA 2232-258.

After public witness and evidentiary hearings, the Senior Hearing Examiner issued a 175-page Report summarizing the history of the case, record, and applicable law, and outlining her findings and recommendations. JA 2407-588. That Report considered and weighed all the evidence, concluded that the need for the Aspen-Golden Project was established, and recommended approval of Route 1AA as the route that will avoid or reasonably minimize adverse impact. *Id.* And the Senior Hearing Examiner devoted over 20 pages of analysis to weighing the evidence and ultimately rejecting the Updated Hybrid Proposal. JA 2528-554.

The Commission issued a Final Order adopting the Report's recommendations. JA 2713-723.

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 [the Court] can say [the Commission's] 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). They come to this Court with a "presumption of correctness," *Northern Va. Elec. Coop. v. Va. Elec. & Power Co*., 265 Va. 363, 368 (2003), because the "findings of the Commission are presumed to be just, reasonable, and correct," *Piedmont*, 278 Va. at 563. 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. The Commission properly considered undergrounding the Aspen-Golden Lines.

Appellants' main objection is that part of the Aspen-Golden Lines should be constructed underground. But the Code does not guarantee that the Commission will require underground construction—only that the Commission will *consider* it. Here, the Commission's thorough undergrounding analysis on an extensive record easily satisfies that procedural requirement.

A. The Commission satisfied its Code § 56-46.1(B) obligation to consider underground placement of the line by reflecting on the costs, benefits, and potential impediments to timely construction of an underground route.

Code § 56-46.1(B) requires the Commission to "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 Commission more than fulfilled that duty here by examining those statutory undergrounding factors at length.

This Court's analysis in *West Virginia & Appalachian Laborers' District Council v. State Corporation Commission* explains the Commission's duty to "consider" similar statutory factors. 913 S.E.2d 513 (Va. 2025). The statute at issue there required the Commission to "consider" whether and how certain facilities and programs benefited local workers, historically economically disadvantaged communities, veterans, and others. *Id.* at 517 (citing 2020 Va. Acts chs. 1193, 1194). The Court explained that "'consider' means 'to reflect on: think about with a degree of care or caution,'" and concluded that the statutory language providing that the Commission shall "consider" "merely requires the Commission to 'reflect on.'" *Id.* at 518 (citing Webster's Third New International Dictionary 483 (1993)). No "particular showing or evidentiary presentation" is required, as that is left to the "discretion of the Commission." *Id.* Indeed, the Commission need not even "make specific written findings" in its consideration. *Id.*

Here, the Commission went far beyond its statutory duty to "reflect on" those § 56-46.1(B) underground placement considerations. The Commission considered three varieties of undergrounding: (1) the Company's pre-Application underground feasibility study (the "Black & Veatch Report"); (2) the County's pre-Application, partial-underground "Initial Hybrid Proposal"; and (3) the Updated Hybrid Proposal. JA 2515-519, 2528-552. During the proceedings, the Company presented evidence addressing each.

First, as to the Black & Veatch Report, the Company explained that after considering the report, it declined to pursue an underground route based on cost, timing constraints, and flexibility concerns. JA 2515-518, 1006-009, 9021-559, 9572-679. Costs, for example, "of an underground option would be unprecedented"—"over $1 billion for buried 500-230 kV XLPE lines based on preliminary estimates," with an "assume[d] [] +/- 50 percent margin of error, meaning transmission costs exceeding $1.5 billion are possible," even before accounting for "right-of-way acquisitions or the increased costs of transition station facilities." JA 1007. Meeting the in-service date for a critical reliability project to avoid NERC violations, like the Aspen-Golden Project, was also a significant factor. JA 8877-890, 9298-299. And as the Company explained with respect to both the Initial Hybrid Proposal and the Updated Hybrid Proposal, this area is fraught with underground construction constraints like diabase rock. JA 9021-701.

The Company also outlined the defects in the County's Initial Hybrid Proposal, as the Senior Hearing Examiner recognized. JA 2517-519. The Initial Hybrid Proposal included "many and significantly flawed factual and engineering assumptions," which, the Company showed, rendered it "not viable." JA 9025-026, 9271-281. These flaws included: insufficient cables to meet the Company's loading requirements, incorrect spacing and size of duct banks, inadequate area for required transition stations, and failure to account for existing obstacles, such as relocating utilities in the area, just to name a few. JA 227-28, 1006-009, 9021-559, 9572-679. Again, a continued problem was the proposal's inability to meet the required in-service date. JA 9027.

For the Updated Hybrid Proposal, the Company again analyzed its feasibility and ability to meet the needed in-service date. JA 9021-559, 9572-679, 8902-946, 8877-890, 8567-580, 2529-530. The answer was "no" on all accounts. For example, that proposal overlooked transition station costs as part of its cost estimate. JA 5275-276, 5283-286, 5317-318. It failed to consider environmental and permitting risks, account for environmental resources, or factor in potential disruption of burials near the African American Cemetery for the Enslaved at Belmont ("African American Cemetery"). JA 3183-388, 3214-216, 3202-209, 3215, 3220-222, 8936-943, 3198-200. From an engineering perspective, the proposal would not meet project needs because it relied on a narrower right-of-way than the Company would have allowed, incorporated no additional right-of-way at micro-tunneling or horizontal drilling locations, and used only four (instead of five) cables per phase for the 500 kV line. JA 3288-291, 3308-311, 9030-035, 9287-288. From a routing perspective, the Company showed that the Updated Hybrid Proposal failed to sufficiently account for existing utilities that would need to be relocated, diabase rock in the area that will impede trenching and tunneling, transition station locations, and existing and planned developments in the area. JA 9574-107, 7961-978; Supp. App. 6-18, 35-36. Of utmost concern, however, was the implausible 20-month construction timeline that—when corrected—would not have met the critical in-service date. JA 9027, 9036-038, 3164-165, 3167-168, 3041, 3044-047, 3296-300, 9036-037, 3275-276, 3337-338, 3123-124, 3150-151, 8877-890.

In short, the Aspen-Golden Project would be an "unprecedented" underground line. JA 2546; *see also* JA 9569-571, 3323-328. The "most comparable" underground 500 kV line in the United States is the Chino Hills line, constructed in California entirely on an existing right-of-way. JA 2546, 9040-041, 9610-611, 9659. The Chino Hills line, however, involved only one 500 kV line, with two cables per phase and 2,300 amps. In contrast, the Updated Hybrid Proposal would have significantly higher standards, with both a 500 kV line at five cables per phase and a 230 kV line at four cables per phase being undergrounded (a total of 9,000 amps). JA 9610-611, 9040-041. For perspective, a project this size "approach[es] a quarter of the peak load of all of New England's electricity demand in the capacity of this line." JA 3855.

The Commission then considered that ample record of undergrounding's "costs," "economic benefits," and "impediments to timely construction of the line." Code § 56-46.1(B). Starting with costs, the Senior Hearing Examiner committed three entire pages of single-spaced analysis to "costs." JA 2559-561; *see also* JA 2539 (concluding that "[u]nderground lines [] have higher routine and corrective maintenance costs"). She further reflected on the costs associated with undergrounding in the Black & Veatch Report (JA 2516-517); the Updated Hybrid Proposal, specifically, JA 2529-530, 2476, 2482, 2488-491; and as outlined in public comments, generally. JA 2415-418, 2501-508.

The Report also reflected at length on potential economic benefits. JA 2513-514. It considered the testimony of County Witness Rizer and Conservancy Witness Jeavons, both of whom addressed economic development in relation to undergrounding the line, as well as evidence from a property owner along the route (Sentinel) providing that undergrounding would cause "irrevocable economic harm and result in a substantial loss in revenue to Loudoun County." JA 2441-442, 2449-451, 2542. The Report addressed County Witness Olsen's estimate of the "economic benefit likely to result from the 500kV/230kV transmission lines and structures if the lines were placed underground along the approximately 2.0-mile segment." JA 2456. The Report even committed an entire section to the "Strongest Reasons for Undergrounding," including a reflection on the economic benefits (if any) of undergrounding. JA 2530-539.

The same is true for potential impediments to timely construction. The Report considered "multiple opportunities for schedule delays" from underground construction. JA 2549. Those threats included rock, limited crew and equipment availability, and coordination challenges with existing underground infrastructure.

JA 2549-552. The Commission thus easily discharged its duty to consider the statutory undergrounding factors.

B. The Commission shifted no burden to Appellants.

Appellants nevertheless assert that because the County "offered the [Updated Hybrid Proposal] as proof of concept that an underground hybrid was constructible and feasible," Opening Br. 37, the Commission somehow must have "placed the burden of offering a CPCN-compliant application on the County in order for the Commission to consider requiring underground placement," *id.* at 38. But the Commission shifted no burden to Appellants. Their argument fails for three reasons.

First, the Commission *did* "consider requiring underground placement." It considered the Updated Hybrid Proposal in great detail, across 26 pages of the Report. JA 2528-554; Section I.A *supra*. It analyzed the "Strongest Reasons for Undergrounding." JA 2530. And it considered a variety of routing, environmental, and "Other Concerns" weighing against the Updated Hybrid Proposal. JA 2539-552. The Commission imposed no condition precedent to all that consideration of Appellants' position. To the contrary, the Commission's finding "that the total public interest is [not] best served by the Updated Hybrid Proposal was based on that elaborate consideration. JA 2407.

Second, Appellants misstate that they succeeded in "offer[ing] the [Updated Hybrid Proposal] as a proof of concept." Opening Br. 37. To the contrary, the Company presented extensive evidence that the Updated Hybrid Proposal was *not* constructible and *not* feasible on the necessary schedule. *Supra* at 11-12. And the Commission did *not* find that the Updated Hybrid Proposal was proof of concept, let alone on the timetable necessary to address "identified reliability thermal violations expected to occur by summer 2028." JA 2546; *see also* JA 2553 ("The record of this case illustrates numerous concerns about the viability of the Updated Hybrid Proposal."). To the contrary, the Commission found, "based on the record in this case, that the total public interest is [not] best served by a project that . . . would jeopardize electric reliability for a swath of people across a much wider area." JA 2553. It is Appellants' burden on appeal to show that those Commission findings are "contrary to the evidence or without evidence." *Campbell Cnty.*, 216 Va. at 105. Appellants cannot make that showing, and do not even try.

Third, there is no error in considering "the applicable statutory criteria for CPCN issuance" in weighing an alternative route that Appellants asked the Commission to *approve*—not just consider. JA 2553, 3997-998, 4005-006. The Commission could not have approved the Updated Hybrid Proposal as Appellants requested without considering those statutory criteria, so there was no error in considering them. So even if the Commission's decision were not independently justified by its "total public interest" finding, there would be no grounds to reverse based on the Updated Hybrid Proposal's inability to qualify for a CPCN.

II. The Commission properly found that Route 1AA reasonably minimizes adverse impact under Code § 56-46.1(B).

Code § 56-46.1(B) requires both a need analysis and an adverse impact analysis: "As a condition to approval the Commission shall determine that [1] the line is needed *and* that [2] 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 resource recorded in the Department of Historic Resources, and environment of the area concerned." (emphasis added). Two of Appellants' Assignments of Error ("AOE") relate to the Commission's adverse impact analysis. AOE 6 criticizes the Commission's overall finding that Route 1AA reasonably minimizes adverse impacts. And AOE 4 asserts that because Route 1AA crosses the Belmont Viewshed easement, that Route somehow cannot reasonably minimize adverse impacts. But neither AOE shows any error of law or factual finding that is "contrary to the evidence or without evidence to support it." *Campbell Cnty.*, 216 Va. at 105.

A. Ample evidence supports the Commission's adverse impact analysis finding.

Appellants offer only conclusory assertions that "the Commission failed to adequately consider overwhelming evidence that only undergrounding can satisfy the statutory requirement for impact minimization," and that the Order was therefore "contrary to the evidence." Opening Br. 49. That evidentiary argument is not preserved by AOE 6, which asserts a violation of § 56-46.1(B) only "as a matter of law." *Id.* at 3. In any event, ample evidence supports the Commission's finding that "Aspen-Golden Route 1AA avoids or reasonably minimizes adverse impacts to the greatest extent reasonably practicable." JA 2555.

At the outset, Appellants' suggestion that only an underground route can satisfy the adverse impact analysis defies this Court's holding that "'[m]inimize' does not require no impact." *BASF*, 289 Va. at 399. A route like Route 1AA can impact scenic assets, historic resources recorded in the Department of Historic Resources, and the environment of the area concerned, yet still satisfy the adverse impact analysis so long as it is preferable in the balance to alternatives like the Updated Hybrid Proposal—which creates adverse impacts of its own. JA 2540-545.

There is ample evidence supporting the Commission's adverse impact analysis. The Company's Application included an Environmental Routing Study of each route's impacts on scenic assets, historic resources, and the environment of the area concerned. JA 968-1667. And the DEQ and the Commonwealth's other expert resource agencies addressed the Aspen-Golden Project's potential impacts on natural and cultural resources, and suggested conditions, mitigation, and permitting requirements to address the same. JA 8642-703. The Commission weighed all of this—and more—in its reasoned adverse impact analysis. JA 2554.

For Route 1AA, the Commission noted the Company's efforts to minimize impacts to the local area by "prioritiz[ing] avoiding existing residences and . . . work[ing] with developers . . . to minimize impacts to an approved residential development." JA 2554. The Commission also considered the work between the Company and other landowners (and parties to the case) along the route. *Id.* Specifically, the Company, JKLH, and Pastor Thomas worked to minimize impacts to a property owned by JKLH, which would in turn allow JKLH to donate land for the creation of Loudoun Freedom Center and preservation of the adjacent African American Cemetery. *Id.* In that regard, the Company, JKLH, and Pastor Thomas worked together to develop a variation of Route 1AA across the JKLH property to minimize impacts to that area. *Id.*; *see also* JA 2572-9701, 8891-897. As with JKLH, the Company also worked to "modify its transmission structures to minimize adverse impacts to Community Church's property." JA 2554. Those structure changes proposed by the Company—and approved by the Commission—preserved the "church's visibility to the community and Virginia Academy's plans to develop an athletic field in the transmission line right-of-way." *Id.*; *see also* JA 2572-9701, 8891-897.

In addition, the Commission noted how the Company "strategized the . . . crossing of Goose Creek with that of the Apollo-Twin Creeks Project to minimize impacts to this resource as much as possible." JA 2554; *see also* JA 230-32. It added that Route 1AA "limits" impacts to homes north of Route 7 and to the Inova Loudoun Hospital helipad, as well as "impacts the lesser amount of wetlands in the Broad Run portion of the route." JA 2554; *see also* JA 1025-029. As for the two easements at issue in the case, the Lansdowne Scenic Easement and the Belmont Viewshed easement, the Commission noted that Route 1AA does not physically impact the former and minimizes impacts to the latter with "only two transmission structures." JA 2554, 1055, 7969, 9572-701.

The Commission's well-supported balancing thus is not contrary to or unsupported by the evidence.

B. The Commission properly considered the Belmont viewshed easement.

AOE 4 seeks to trump the Commission's adverse impact determination based on Route 1AA's two crossings of the Belmont Viewshed easement. As a factual challenge, that argument cannot overcome the "presumption of correctness" that attaches to the Commission's § 56-46.1(B) impact analysis. *Northern Va. Elec. Coop.*, 265 Va. at 368 (citing *Campbell Cnty.*, 216 Va. at 105). Now, as

AOE 4 has shapeshifted to a legal challenge in the Opening Brief, it is unpreserved and meritless in any event.

1. Appellants' legal argument that the easement trumps the Commission's adverse impact finding is unpreserved and meritless.

Appellants now argue that the Commission's finding "constituted legal error, because the violations of the Viewshed Easement render Route 1AA nonviable as a matter of law." Opening Br. 42. But Appellants never asked the Commission to make a legal holding that the viewshed crossings themselves were per se violations of § 56-46.1(B). Their comments to the Report never argued that an easement crossing without more renders the route nonviable as a matter of law.[1] And they cited no authority that would have put the Commission on notice that it needed to make such a holding. So Appellants' assertion of legal error through AOE 4 is forfeited. *See, e.g.*, *Martin v. Ziherl*, 269 Va. 35, 39 (2005) ("A basic principle of appellate review is that, with few exceptions not relevant here, arguments made for the first time on appeal will not be considered.").

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[1] On appeal, Appellants prudently abandon the distinct legal argument asserted below that the easement is the "functional equivalent of an amendment to the zoning ordinance" that has "the force of law." JA 2620-622. That argument is a nonstarter because even if the easement were a zoning ordinance, "[u]nder the plain language of Code § 56-46.1(F)," transmission lines like Aspen-Golden are "expressly exempt from local zoning ordinances." *BASF*, 289 Va. at 403.

Even if that legal argument were preserved, it is meritless. Appellants cite no support for the notion that an easement crossing without more violates Code § 56-46.1(B). To the contrary, an easement crossing is just one factor in the Commission's "balanc[ing] [of] adverse impacts along with other factors and traditional considerations" to determine "within the parameters of the statute what best serves the total public interest." *BASF*, 289 Va. at 395 (citation modified). So Appellants identify no legal error in the Commission's balancing.

2. A factual argument that the easement trumps the Commission's adverse impact analysis and overall multi-factorial balancing is meritless too.

Appellants identify no factual error either, let alone under the deferential standard of review for the Commission's factual findings. Route 1AA's two crossings of the Belmont Viewshed easement do not impeach the Commission's multi-factorial balancing analysis.

In *BASF*, this Court acknowledged that the statute "does not state the factors to be considered in addressing the listed adverse impacts[;]" instead, it "merely states that adverse impact should be 'reasonably minimize[d].'" 289 Va. at 394. *BASF* thus held that the "adverse impacts of a proposed project are not to be considered in a vacuum." *Id.* Instead, "the Commission must 'balance' adverse impacts along with other 'factors' and 'traditional considerations.'" *Id.* at 395 (citing *Campbell Cnty.*, 216 Va. at 100). In conducting this "multifactorial balancing," the Commission ultimately decides "what best serves the 'total public interest.'" *Id.* at 395 (citing *Campbell Cnty.*, 216 Va. at 104). A party's challenge to evidentiary support for the Commission's adverse impact analysis, like the factual version of AOE 4, is reviewed under the "highly deferential standard of review," meaning this Court finds "fault with the Commission only if its findings are 'contrary to the evidence or without evidentiary support.'" *BASF*, 289 Va. at 395.

Appellants ignore the holding of *BASF* in trying to pin the entire weight of the multifactorial balancing on one factor—Route 1AA's two crossings of the Belmont Viewshed easement. But *BASF* rejects considering such single factors "in a vacuum." *Id*. at 394. An easement crossing is properly balanced along with other factors in the Commission's determination of what best serves the total public interest. *Id.* As explained in Section II.A *supra*, the Commission did just that. JA 2554-555 (recognizing minimization of adverse impact where Route 1AA "limits its impact on the Belmont Viewshed Easement to only two transmission structures"); *see also* JA 2526 (identifying Belmont Viewshed as an "easement of concern" along with Board of Supervisors open space easements and the Lansdowne Scenic easement).

Appellants' argument (at 42-44) that the approved crossings conflict with the terms of the easement thus offers no basis for reversal under § 56-46.1(B).

This Court need not even reach that argument because the proceeding before the Commission was for issuance of a CPCN, not a dispute between landowners regarding the terms of an easement. *See, e.g.*, *Verizon Va. LLC v. State Corp. Comm'n*, 302 Va. 467, 474 (2023) (affirming dismissal of a declaratory judgment claim that required interpretation of contracts because "[c]ontract actions generally are heard in trial courts of the Commonwealth"). There was no need for the Commission itself to reach that argument, and so it reached no holding on what public utility infrastructure the easement allowed. *See* JA 2526 n.594 (simply "not[ing]" that paragraph 2 of the easement "allows multiple activities and structures within the easement area, including 'public utilities/stormwater management facilities'").

At any rate, the plain meaning of the easement exempting "public utilities/stormwater management facilities" allows public utility infrastructure like Route 1AA. Appellants are wrong that the slash (or virgule) requires "public utilities" and "stormwater management" to be "read together as a joint term." Opening Br. 43. "[A] virgule normally is used to separate alternatives," meaning it "connotes the disjunctive or the alternative." *Dynalectron Corp. v. Equitable Tr. Co.*, 704 F.2d 737, 739 (4th Cir. 1983). Giving the virgule its customary meaning, the easement provides that there shall be no development other than public utilities *or* stormwater management facilities. And the later exception for certain "permanent structures" does not limit the "public utilities" exemption. *Contra* Opening Br. 43. Reading the later prohibition on "permanent structures" (as Appellants wrongly do) to encompass "public utilities," which are expressly allowed earlier in the same paragraph, would render the grant of permission meaningless. *See Hubbard v. Henrico Ltd. P'ship*, 255 Va. 335, 340-41 (1998) (rejecting an interpretation that would "render meaningless the statutory language"); *McCarthy Holdings LLC v. Burgher*, 282 Va. 267, 272 (2011) (applying that canon to easements). So even if the proper interpretation of the Belmont Viewshed easement were significant in a vacuum here, this Court should still affirm.

III. The Commission performed all necessary verification of load flow modeling, contingency analyses, and reliability needs under Code § 56-46.1(B).

Appellants also contend that the Commission failed to verify the load flow modeling, contingency analyses, and reliability needs presented to justify the new line and its proposed method of installation (i.e., the statutory need factors), under Code § 56-46.1(B). But the Commission, through its Staff, verified those statutory need factors, and Appellants have not met their burden to overcome the "presumption of correctness" that comes with the Commission's finding. *Northern Va. Elec. Coop.*, 265 Va. at 368. Nor do Appellants identify any legal error in the Commission's verification.

A. The Commission, through Staff, verified the Company'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) requires the Commission 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." The plain and ordinary meaning of "verify" is "[t]o prove to be true; to confirm or establish the truth or truthfulness of; to authenticate." *Verify*, Black's Law Dictionary (12th ed. 2024). The Commission, thus, must establish the truth or truthfulness of, or authenticate, the applicant's evidence to justify the new line and the applicant's proposed method of installation. There is no evidence that the Commission failed to perform that verification.

First, the Company provided ample data for the Commission to verify. The Company's appendix included discussion and attachments related to load flow modeling, contingency analyses, and reliability needs that justified the new line and its proposed method of installation. As to load flow modeling, the Company presented evidence of load flow studies, explaining that the "Company, working with PJM[2] . . . through the [Regional Transmission Expansion Plan ("RTEP")]

[2] PJM refers to PJM Interconnection LLC, a regional transmission organization responsible for ensuring the reliability and coordinating the movement of

process, [] identified both regional and local NERC reliability violations," and that "PJM's load flow studies were validated by independent load flow studies performed" by the Company. JA 32-33, 83-184. The Company also included information about baseline contingency analyses. JA 83-184. And as to reliability needs, the Company included 159 pages specific to reliability needs justifying the new line and the proposed overhead solution's ability to meet the in-service date provided by PJM of June 1, 2028. JA 29-188.

The entirety of the Company's evidence supporting the statutory need factors was presented as to the Aspen-Golden *Project*, which was defined to include the Aspen-Golden *Lines*. JA 9, 24. The Aspen-Golden *Lines* were, in turn, defined as "overhead" 500 kV and 230 kV single circuit transmission lines. JA 21-23. Thus, the Company submitted its evidence on the statutory need factors to both "justify the new line" and the Company's "proposed method of installation"—overhead. Code § 56-46.1(B).

Staff then completed its independent review of the Company's evidence and verified the results. JA 8766-876. The resulting Staff Report further outlined the Company's evidence supporting the need, including the result of its and PJM's

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electricity through much of the mid-Atlantic region. JA 29. The Company is part of PJM.

load flow studies and contingency scenarios. JA 8775-778. Separately, Staff included its analysis of the need for the Project, recognizing that "failing to address the NERC violations would critically impair the transmission system's capacity to deliver reliable service to the area, perpetuating an already energy-constrained environment." JA 8778. Staff's analysis specifically confirmed it "*verified* the power flow models provided by PJM and confirmed the projected violations absent the proposed Project," as well as "*verified* through power flow models that the proposed Project resolves the projected reliability standards violations cited by the Company." *Id.* (emphases added). Like the Company, Staff defined the "Project" to include the Aspen-Golden Lines in an *overhead* configuration. JA 8773. Thus, Staff's analysis and independent review of the statutory need factors included the Company's "proposed method of installation." Code § 56-46.1(B).

The Senior Hearing Examiner's Report fully outlined the Company's submissions and Staff's review and verification before concluding there is sufficient evidence that the Aspen-Golden Project is needed. JA 2511-513. The Report recognized the Commission's obligation to "verify" the statutory need factors under Code § 56-46.1(B) and explained that "Staff verified PJM's power flow models and confirmed the projected violations would occur" and "verified through load flow modeling that the Aspen-Golden Project resolves the violations of NERC Reliability Standards that otherwise would occur." JA 2512-513. The

Commission adopted that analysis, JA 2713-723, thus discharging its duty of verification for the Company's proposed overhead lines.

B. Appellants' proposed additional verification requirements are meritless.

Appellants seek to write several more verification requirements into the statute. None have merit.

1. No third-party consultant is required.

First, Appellants contend that the Commission must retain a third-party consultant to review the applicant's evidence of the statutory need factors. Opening Br. 25-27 (citing *Piedmont*, 278 Va. at 553, 557). But there was no error in forgoing a third-party consultation here. Commission Staff customarily completes an independent review of the data submitted by an applicant, submits its findings in the Staff Report, and the Commission looks to both the applicant's data and the Staff Report to "verify" the statutory need factors. The *Piedmont* ruling did not change that custom.

In *Piedmont*, the applicants sought approval of two interstate 500 kV transmission line segments, which (before the Commission proceeding) were subject to the RTEP process that made a federal determination of need. 278 Va. at 558-60. The applicants submitted data underlying that federal need determination to support the need verification requirement in Code § 56-46.1(B). The Commission found need satisfied and granted the CPCN. *Id.* at 561.

Those appellants contended that the Commission erred by limiting its consideration of need to a review of that federal determination. *Id.* at 569-70. But this Court rejected that contention and blessed the Commission's approach: "A plain reading of the statute does not support the conclusion . . . [that] the Commission is required to obtain new data from an independent source, rather than giving any weight to the data provided by the applicant." *Id.* at 570. Further, the "record amply demonstrate[d] that the Commission, through its staff," utilized the data submitted by the applicant to verify the need for the line. *Id.* While Staff there retained a third-party consultant to analyze the data "originally used by PJM" and submitted by the applicant, it was enough to affirm in *Piedmont* that Staff's review of the applicant's assumptions was "independent[]." *Id.*

Appellants would turn *Piedmont* on its head by requiring the Commission to retain a third-party consultant to verify the applicant's data. There is no basis to reject Staff's competency to verify that data here. Instead, when (as here) the "Commission, aided by its staff," independently "verified the utilities' load flow modeling, contingency analyses, and reliability needs presented to justify the new line," then the Commission meets its duty. *Id.*

2. The Commission had no duty to inject the Integrated Resource Planning ("IRP") process and Electric Service Agreements ("ESAs") into its verification.

Appellants also contend (at 26-30) that the Commission failed to account for the IRP process and customer-specific terms in ESAs. Neither contention undermines the Commission's verification.

Neither the Company's IRPs nor the terms of its ESAs with customers are relevant to need verification. To understand why, a brief background of the Company's transmission system as it relates to the need for this Project is useful. The Company's transmission system is part of PJM, which provides service to a large portion of the eastern United States. NERC is the electric reliability organization for the United States, and it develops reliability standards that constitute the minimum criteria with which all public utilities, like the Company, must comply. PJM, in turn, has a RTEP that analyzes the electric transmission system to determine whether improvements to the system are needed based on those NERC standards. JA 29-44.

Here, the RTEP process discovered system reliability criteria violations set to occur by summer 2028, if no changes were made to the system.[3] The Company

[3] For this case, these reliability criteria violations take the form of "multiple contingency conditions that would cause thermal overloads in several parts of the system." JA 31.

submitted its proposed solution, which included the Aspen-Golden Project, to PJM to address the violations. PJM later recommended the Company's solution, determining it was the "most comprehensive, robust solution for resolving the projected NERC reliability violations by summer 2028[.]" JA 32. The Aspen-Golden Project, then, is needed to resolve several transmission *system reliability* criteria violations. JA 84-184. Simply stated, "[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 2546. "[I]t is not optional." *Id.*

Those system reliability criteria violations—and the proposed solution's ability to timely resolve them—are what the Commission must verify through the "applicant's load flow modeling, contingency analyses, and reliability needs." Code § 56-46.1(B).

In fact, Appellants conceded below that need had been demonstrated. Appellants criticize that "[t]he power flow models used by Staff to confirm that the proposed project resolves the projected violations were not entered into evidence or substantively cited." Opening Br. 26. But the County agreed below that "[t]he need for Aspen-Golden is there." JA 4197, 5103 ("I don't doubt that there's [a] resiliency part of it, but I think it's a capacity issue as well."). And there was no need to place Staff's verification models in evidence because no party challenged the Staff Report's confirmation that Staff "verified the power flow models provided by PJM and confirmed the projected violations absent the proposed Project," and "also verified through power flow models that the proposed Project resolves the projected reliability standards violations cited by the Company." JA 8778.

At any rate, neither the load forecasts utilized as part of the Company's IRPs nor the contractual terms in unspecified customers' ESAs are mechanisms by which the Commission verifies the statutory need factors for a transmission system reliability project. *See* JA 8775-778 (summarizing its review of PJM and Company load flow modeling and transmission system contingencies).

Starting with the IRP, Appellants contend that the Commission cannot satisfy its duty to verify the statutory need factors without relying on more than the applicant's submitted data because the "Commission ha[s] not blessed [the] utility's load forecast in an IRP for at least seven (7) years." Opening Br. 26-27. Appellants are mixing apples and oranges. The IRP is addressed in its own proceeding, governed by different statutes, and relates to a different type of planning (i.e., generation and demand-side planning). CPCNs for new transmission facilities and lines, as here, are governed by Code § 56-46.1 and Code § 56-265.1 *et seq*. IRPs, in contrast, are governed by Code § 56-597 *et seq*. In other words, IRPs involve different standards and purposes, different "asks" by the applicant, and ultimately different outcomes.[4]

The IRP also focuses on *generation and demand-side* system planning. *See* Code § 56-597 ("'IRP' means a document developed by an electric utility that provides a forecast of its load obligations and a plan to meet those obligations by supply side and demand side resources over the ensuing 15 years"); *see also* Code

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[4] Under Code § 56-599(E), the Commission determines whether the IRP as a whole—not its individual subparts—is "reasonable and is in the public interest." The Commission's decision that it could not conclude that the Company's 2020 IRP was reasonable and in the public interest for purposes of a planning document followed a unique situation. In that case, the Virginia General Assembly had passed the Virginia Clean Economy Act ("VCEA"), which would influence the Company's modeling, when the Company filed its 2020 IRP. The VCEA was signed into law and became effective, however, while the 2020 IRP was pending. In reaching its conclusion, the Commission acknowledged that the Company "did not have an extended opportunity to confirm its 2020 IRP to address all the interrelated aspects of [the] recent legislation." *In re Virginia Electric & Power Company's Integrated Resource Plan filing pursuant to Code § 56-597 et seq.*, Case No. PUR-2020-00035, Final Order at 6 (Feb. 1, 2021). For the 2023 IRP, the Commission was unable to reach a majority decision within the mandatory statutory decision period of nine months, so there was no ruling at no fault of the Company. *In re Virginia Electric & Power Company's Integrated Resource Plan filing pursuant to Code § 56-597 et seq.*, Case No. PUR-2023-00066, Notification at 1 (Feb. 1, 2024). Though, Commissioner James C. Dimitri issued a statement that he "would have found that the 2023 [IRP] is reasonable and in the public interest." *Id*. The Commission has since found the Company's most recent IRP, the 2024 IRP, "legally sufficient under both Code § 56-597 *et seq.* and the Commission's Integrated Resource Planning Guidelines." *In re Virginia Electric & Power Company's Integrated Resource Plan filing pursuant to Code § 56-597 et seq.*, No. PUR-2024-00184, Final Order at 4 (July 15, 2025).

§ 56-598 (outlining contents of IRPs in relation to "electric generation supply," "generation facilities," "generation supply resources," "generation supply," "generation demand," and "electric generation service"). As just explained, there is a separate process for *transmission* system planning—PJM's RTEP. For purposes of determining the need for a baseline project to resolve *transmission system* reliability criteria violations, that is a transmission system planning function, not a generation function. *See In re Promoting Wholesale Competition by Pub. Util.*, Order No. 888, 75 FERC ¶ 61,080 (1996); *Open Access Same-Time Info. Sys.*, Order No. 889, 75 FERC ¶ 61,078 (1996). So whatever role IRPs may play in other CPCN applications, *Piedmont*, 278 Va. at 575 n.7, they play no role in determining the transmission system reliability needs presented here. And it remains true that "nothing within Code § 56-265.2 would permit the Commission to delay action on or deny approval of an otherwise proper application for a new transmission line under that statute *by asserting the need for a completed IRP*." *Id.* at 574-75 (emphasis added).

The Commission also did not have to incorporate the terms of the Company's ESAs into its verification of need. Appellants confuse "transmission *system* reliability concerns," *BASF*, 289 Va. at 392 (emphasis added)—which the Commission must "verify" under Code § 56-46.1(B)—with customer- and contract-specific "contingency provisions" that allow the utility to delay connections for that customer. But contractual "contingency provisions" are not part of the transmission system modeling, meaning they are not "verified" with load flow modeling or contingency analyses.[5] Just because the same word is used in two completely different situations does not mean the word carries the same meaning. In any event, the statutory need analysis does not depend on the need to interconnect those specific customers; Aspen-Golden "is a reliability project that impacts far more customers than a few data centers whose service can be postponed." JA 2546.

3. No verification of a non-applicant's proposed method of installation is required.

Finally, Appellants contend (at 28-29) that the Commission should have considered *their own* proposed underground method of installation as part of its verification.[6] This argument flouts the statutory text. Code § 56-46.1(B) requires

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[5] Staff's analysis, which is the same type of need analysis it performs for all transmission CPCN matters, demonstrates what is meant by contingency analysis. JA 8776 ("Load flow studies performed by [PJM], the Regional Transmission Operator for the area, and the Company, predict that the expected load growth will lead to multiple contingency scenarios causing NERC violations, which will affect the Eastern Loudoun Load Area by summer 2028. The identified contingency scenarios include N-l, N-1-1, and Generation Deliverability contingencies.").

[6] Appellants assert (at 28) that they "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," but they cite nothing in the record preserving that argument.

the Commission 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." (emphasis added). So the Commission need only verify what is presented *by the applicant*—here, the Company—to justify the proposed overhead lines. JA 21-44. Nothing required the Commission to separately verify the statutory need factors for *Appellants'* proposal.[7]

IV. The Commission received and gave consideration to the local comprehensive plan under Code § 56-46.1(A).

Next, Appellants contend (at 3) that the Commission "failed, as a matter of law, to 'receive and give consideration' to the 'local comprehensive plan . . .', 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." But the Commission's respectful reflection on that Plan easily satisfied the obligation to consider it, and Appellants have not shown that the Commission's consideration of the Plan is "contrary to the evidence or without evidence to support it." *Campbell Cnty.*, 216 Va. at 105. Appellants' legal argument fails because the Code requires nothing more than such receipt and

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[7] Though the Commission need not *verify* load flow modeling and other statutory need factors as to the underground route, it did consider the underground option at length and determined it was not viable. *See* Section I.A *supra*.

consideration, and otherwise excuses the Commission from determining "substantial accord" with that Plan.

A. The Commission satisfied its Code § 56-46.1(A) obligation by reflecting on the local comprehensive plan.

Code § 56-46.1(A) requires the Commission, upon request by a county in which the facility is proposed to be built, to (1) "receive" and (2) "give consideration to" a local comprehensive plan. The Commission easily satisfied both requirements.

Starting with the term "receive," the Court explained the Commission's duty to "receive" information in the context of § 56-46.1(A) in *Citizens for the Preservation of Floyd County, Inc. v. Appalachian Power Co.*, 219 Va. 540, 553 (1978). The *Citizens* court held that "receive" means exactly what it says—the "Commission has the duty only to 'receive' information' . . . , not to seek it out, and to give it due consideration." *Id.* When the Commission there "received and gave due consideration to information gathered by others from numerous state and federal agencies concerned with, among other things, historical landmarks and critical environmental areas," there was no error. *Id.*

Turning to the phrase "give consideration to," *West Virginia & Appalachian Laborers' District Council* interpreted the equivalent term "consider" as discussed above. 913 S.E.2d at 517. So "give consideration" again merely "means 'to reflect on: think about with a degree of care or caution." *Id.* at 518. And by requiring the Commission to "give consideration to" the 2019 General Plan, the statute requires the Commission to "reflect on" that plan as part of its analysis. So long as the Commission "received" information about the 2019 General Plan and "reflect[ed] on it," it complied with its duty under Code § 56-46.1(A).

In this case, the Commission both received and gave consideration to, i.e., "reflected on," the 2019 General Plan. County Witness William Giglio's testimony was admitted during the proceeding, and it both described the 2019 General Plan and included relevant portions of it as attachments thereto. JA 2122-179. The Report outlined that testimony and the portions of the 2019 General Plan discussed by the parties. JA 2445-449, 2496-497, 2713-723. Under *Citizens*, by admitting the testimony and information related to the 2019 General Plan that was "gathered by others" and submitted to it, the Commission "received" the information as required by Code § 56-46.1(A). 219 Va. at 553.

The Commission also considered the 2019 General Plan. The Report explained that "[l]and use in Loudoun County is governed by the 2019 General Plan, part of the County's Comprehensive Plan." JA 2520-521, 2571. It also committed an entire section of analysis to the County's request under Code § 56-46.1(A), as well as addressed the 2019 General Plan in relation to economic development. JA 2536-539. Even Appellants acknowledge that the Senior

Hearing Examiner specifically recognized the County's "request for the Commission to consider its comprehensive plan per Code § 56-46.1(A)." Opening Br. 46 (citing JA 2536 n.658). As in *West Virginia & Appalachian Laborers District Council*, the Commission expressly acknowledged the request, "considered" the 2019 General Plan over three pages of the Report, and "cited to evidence in the record regarding" the plan. 913 S.E.2d at 519. That is more than enough to satisfy § 56-46.1(A).

B. The Code excuses transmission lines from "substantial accord" review.

Code § 56-46.1(F) excuses transmission lines from a "substantial accord" review, despite Appellants' suggestions to the contrary. Because Code § 56-46.1 A simply refers to a local comprehensive plan "adopted pursuant to Article 3 (§ 15.2-2223 *et seq*.) of Chapter 22 of Title 15.2," Appellants submit that the Commission must perform a "substantial accord" analysis when it "receives" and "gives consideration to" such plans. Text and precedent foreclose that argument.

First, § 56-46.1(F) refutes Appellants' contention. Subpart F provides: "*Approval* of a transmission line pursuant to this section *shall be deemed to satisfy the requirements of § 15.2-2232* and local zoning ordinances with respect to such transmission line." (emphases added). Code § 15.2-2232, as just noted, is the statute Appellants rely on for a "substantial accord" requirement. Opening Br. 45.

Nothing in § 56-46.1(F), however, suggests that local approval must take place "prior to CPCN approval," as Appellants suggest. *Id.* In fact, the plain language of Code § 56-46.1(F) provides the opposite—the grant of a CPCN by the Commission "shall be deemed to satisfy the requirements of § 15.2-2232." County Counsel even agreed to this interpretation during the proceedings. JA 4005 ("[O]nce that certificate is approved, that[] would comply with the requirements of 2232."). Therefore, once the Commission issues a CPCN, the requirements of § 15.2-2232, including any requirement that a transmission line be "substantially in accord with the adopted comprehensive plan," are "deemed" satisfied.[8]

BASF confirms this fundamental point. This Court explained that "[u]nder the plain language of Code § 56-46.1(F)[,]" transmission lines are "expressly exempt from local zoning ordinances." 289 Va. at 403. Thus, transmission lines are also expressly exempt from "the requirements of § 15.2-2232." Code § 56-46.1(F) ("Approval of a transmission line pursuant to this section shall be deemed to satisfy the requirements of § 15.2-2232 *and* local zoning ordinances with respect to such transmission line") (emphasis added). Transmission lines that

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[8] Under Code § 15.2-2232(A), substantial accord decisions are made by local planning commissions, not the State Corporation Commission. The mere cross-reference to local plans adopted under Chapter 22 of Title 15.2 does not create any new, unspoken obligation for the Commission regarding such plans.

are expressly exempt from the requirements of § 15.2-2232 thus have no need to be in "substantial accord" with those requirements.

V. The Commission did not abuse its discretion in declining the Conservancy's proposed conditions.

The final AOE (presented by only one Appellant) is meritless. The Conservancy asserts that the Commission erred in refusing to impose certain conditions on the approval of the overhead line. Opening Br. 49-50. But the Commission was well within its discretion not to impose such conditions here.

Code § 56-46.1(A) provides: "Whenever the Commission is required to approve the construction of any electrical utility facility, it shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact." But the Conservancy cites zero evidence that its proposed conditions were "desirable or necessary to minimize adverse environmental impact." Indeed, the Conservancy first requested those conditions in its comments to the Senior Hearing Examiner's report, after the opportunity to introduce any evidence supporting (or opposing) those conditions had expired. JA 2697-698.

In any event, the Commission's determination not to adopt the Conservancy's conditions cannot be disturbed unless "contrary to the evidence or without evidence to support it." *Campbell Cnty.*, 216 Va. at 105. The

Conservancy does not even try to meet that highly deferential standard. In contrast, the Commission "considered all comments filed in this proceeding" and "fully considered the evidence and arguments in the record," ultimately adopting the conditions the Report found desirable or necessary but not those presented by the Conservancy. JA 2713-723. The Conservancy's conclusory two-paragraph argument on appeal shows no abuse of discretion.

CONCLUSION

This Court should affirm the Commission's decision granting a CPCN for the Aspen-Golden 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 42 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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