
IN THE
Supreme Court of Virginia
AT RICHMOND

Record Nos. 250494 and 250495

LOUDOUN COUNTY, VIRGINIA,

Appellant,

— v. —

STATE CORPORATION COMMISSION, et al.,

Appellees.

LANSLOWNE CONSERVANCY,

Appellant,

— v. —

STATE CORPORATION COMMISSION, et al.,

Appellees

FROM THE STATE CORPORATION COMMISSION, CASE NO. PUR-2024-00032

BRIEF OF APPELLEE STATE CORPORATION COMMISSION

JOHN F. DUDLEY (VSB #38280)
COUNSEL TO THE COMMISSION & SOLICITOR
ALISSON P. KLAIBER (VSB #77206)
LEGAL ADVISOR TO THE COMMISSION & DEPUTY SOLICITOR
STATE CORPORATION COMMISSION
P.O. Box 1197
RICHMOND, VIRGINIA 23218-1197
804-371-9608 (TELEPHONE)
804-371-9376 (FACSIMILE)
JOHN.DUDLEY@SCC.VIRGINIA.GOV
ALISSON.KLAIBER@SCC.VIRGINIA.GOV



TABLE OF CONTENTS

	Page:
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
STATEMENT OF FACTS	3
STANDARD OF REVIEW	4
ARGUMENT.....	5
I. Jeff Dodson, Senior Utilities Engineer, testified that the Commission's Staff verified Dominion's load flow modeling, contingency analyses, and reliability needs presented to justify the new line and its proposed method of installation. There is no error of law. (AE 1).....	5
II. The Commission considered (a) the costs and economic benefits likely to result from requiring underground placement of the line, and (b) any potential impediments to timely construction of the line. There is no error of law. (AE 2)	10
III. The Commission's approval of an overhead route is supported by evidence on need, reliability, feasibility, and cost. This decision was not the result of burden shifting. (AE 3)	11
IV. The Commission took the actions required by Code §§ 56-46.1(A) and (B) regarding adverse impacts, and those actions are supported by the record. (AE 4, 6, 7)	16
Assignment of Error 4	17
Assignment of Error 6	19
Assignment of Error 7	21

V.	The plain language of the statute and the Court's precedent do not require the Commission to find that the approved route is in substantial accord with a locality's comprehensive plan. (AE 5)	22
CONCLUSION		26
CERTIFICATE		27

TABLE OF AUTHORITIES

Page(s):

Cases:

<i>BASF Corp. v. State Corp. Comm’n</i> , 289 Va. 375 (2015)	<i>passim</i>
<i>Board of Supervisors of Campbell Cty. v. Appalachian Power Co.</i> , 216 Va. 93 (1975)	11
<i>Campbell v. Dep’t of Forestry</i> , 46 Va. App. 91 (2005)	24
<i>Piedmont Env’tl. Council v. Virginia Elec. and Power Co.</i> , 278 Va. 553 (2009)	9, 15
<i>West Virginia & Appalachian Laborers’ Dist. Council v. State Corp. Comm’n</i> , 913 S.E.2d 513 (2025)	10, 11, 24, 25

Statutes:

Va. Code § 15.2-2223 <i>et seq.</i>	23
Va. Code § 15.2-2232	23
Va. Code § 15.2-2232(A)	25
Va. Code § 56-46.1	22, 23, 25
Va. Code § 56-46.1(A)	16, 23, 24
Va. Code § 56-46.1(B)	<i>passim</i>
Va. Code § 56-46.1(F)	19, 23

Other Authorities:

Black's Law Dictionary (10th ed. 2014).....	17
Webster's Third New International Dictionary (1993).....	10
Webster's Third New International Dictionary (2002).....	8, 24

STATEMENT OF THE CASE

This appeal is about the State Corporation Commission's ("Commission") approval of a 500 kilovolt ("kV") transmission line and a 230 kV transmission line, both extending 9.4 miles in the same right-of-way. The Commission approved Virginia Electric and Power Company's ("Dominion") application to construct the lines above ground. The Court is being asked to overturn that decision.

The Commission adopted the findings and recommendations in the Report of its Senior Hearing Examiner ("Report"), concluding that such were supported by law and evidence and had a rational basis. The Commission's Staff ("Staff") likewise investigated the requests in this case. The Report itself observed that this matter was considered "at length." JA 2566. That is an understatement; it's hard to imagine a more thorough evidentiary process for, and analysis of, a proposed transmission line than that reflected in the Report.

Within that Report, the Senior Hearing Examiner: discussed and analyzed the competing assertions in this extensive record; took all actions and made all findings required by statute; and explained the bases for those findings. As a result, refutations of alleged errors are precisely found within the Report.

The Commission agreed with the Senior Hearing Examiner, Staff, and Dominion that no portion of these 500 kV and 230 kV transmission lines should be installed underground. The reasons for that are acute and clear, including:

- the cost to construct the lines overhead is \$171 million, whereas the cost for the proposed underground portion is \$830 million;
- attempting to underground any portion of these lines would be an unprecedented project in a class by itself;
- these transmission lines must be operational by summer 2028 to avoid critical reliability violations, extended outages, and major system damage; and
- the feasibility of such an undertaking, and the multiple risks attendant thereto, would seriously jeopardize electric reliability over a much larger area.

These reasons (expounded on in Sections I. and III.) exist for any proposed underground installation of this project, whether fully developed or not.

Finally, Assignment of Error 5 presents the Court with a fundamental question of law. The statute requires the Commission to give “consideration” to a locality’s comprehensive plan. The Court, however, is being asked to rule that the Commission – as a matter of law – must do more. The Appellants assert that the Commission must not only consider such plans but must also find that proposed transmission lines are in

substantial accord with those plans. This is contrary to both the plain language of the statute and the Court's precedent. It would also fundamentally alter the statutory and jurisdictional scheme expressly manifested by the General Assembly for siting transmission lines in the Commonwealth.

STATEMENT OF FACTS

Dominion filed two transmission line applications. The first application included a 500 kV line and a 230 kV line to be constructed within the same right-of-way and extending 9.4 miles (Case No. PUR-2024-00032). The second application was for a 1.9-mile, 230 kV line (Case No. PUR-2024-00044). Because about half of the latter would be collocated with the former, the Commission combined the two cases for hearing purposes, without the cases or case numbers being consolidated. JA 1700.

As ordered by the Commission, M. Renae Carter, Senior Hearing Examiner, convened a full evidentiary proceeding for the combined cases. This included both local and telephonic public hearings, through which the Commission received testimony from 49 public witnesses. JA 2414, 2499-2508. The Senior Hearing Examiner also presided over a five-day evidentiary hearing comprised of 11 parties, Staff, and 24 witnesses. JA 2414, 2428-99.

The Senior Hearing Examiner then issued a detailed 175-page Report, which analyzed the extensive issues and evidence in these two cases. JA 2407. As ordered by the Commission, the Report included findings and recommendations, in each separate docket, for the Commission's consideration. Parties subsequently filed comments on the Report.

After considering the record, the Commission issued a separate final order in each of these cases. The Commission's Final Order for the first application (Case No. PUR-2024-00032) is the subject of the instant appeal. JA 2713. In that order, the Commission adopted the Senior Hearing Examiner's findings and recommendations, concluding that such "are supported by law and evidence [and] have a rational basis." JA 2721-22.

STANDARD OF REVIEW

The most recent transmission line appeal, like the instant one, raised questions of both law and fact. In that appeal, the Court set forth the following standard of review:

We are guided by well-settled principles in our review of the Commission's decision. The Constitution of Virginia and statutes enacted by the General Assembly give the Commission broad, general and extensive powers in regulating public utilities. This authority influences our standards of review in this case.

In considering evidentiary findings of the Commission, this Court is bound to a highly deferential standard. The Commission is charged with the responsibility of finding the facts and making a judgment, and its decision comes to this Court with a presumption of correctness. This means we will not substitute our judgment in matters within the province of the Commission and will not overrule the Commission's findings of fact unless they are contrary to the evidence or without evidentiary support.

This Court reviews matters of law de novo. However, the Commission's decision is entitled to the respect due judgments of a tribunal informed by experience, and we will not disturb the Commission's analysis when it is based upon the application of correct principles of law. Keeping these principles in mind, we proceed to the merits.

BASF Corp. v. State Corp. Comm'n, 289 Va. 375, 391 (2015) (citations, internal quotation marks, and edits omitted).

ARGUMENT

- I. Jeff Dodson, Senior Utilities Engineer, testified that the Commission's Staff verified Dominion's load flow modeling, contingency analyses, and reliability needs presented to justify the new line and its proposed method of installation. There is no error of law. (AE 1)

Code § 56-46.1(B) prescribes the following for transmission line cases: "In making the determinations about need, corridor or route, and method of installation, the Commission shall verify the applicant's load flow modeling, contingency analyses, and reliability needs presented to justify the new line and its proposed method of installation." The Senior Hearing Examiner confirmed that Staff complied with this requirement. JA 2461, 2512-13, 2546.

Staff prepared a report on its investigation. JA 8766. Staff witness Jeff Dodson, Senior Utilities Engineer, adopted the portions applicable hereto (including need and underground installation) as his direct testimony. JA 3112. Mr. Dodson also provided additional testimony on underground installation at the hearing. JA 3113-25. All parties had an opportunity to cross-examine Mr. Dodson on all of his testimony. JA 3125-46.

Mr. Dodson testified to the following:

- the load flow modeling, contingency analyses, and reliability needs were prepared by Dominion and the regional transmission operator, PJM Interconnection, LLC (“PJM”) (JA 8775-8778);
- those studies predict multiple contingency scenarios resulting in violations of mandatory reliability standards established by the North American Electric Reliability Corporation (“NERC”) (JA 8776, 8778);
- failing to address those 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 has verified the power flow models provided by PJM and confirmed the projected violations absent the proposed Project” (JA 8778); and
- “Staff has also verified through power flow models that the proposed Project resolves the projected reliability standards violations cited by [Dominion]” (JA 8778).

Mr. Dodson concluded as follows: “Staff concurs with the Company that the proposed Project will address projected violations of mandatory NERC Reliability Standards starting in the summer of 2028 and will ensure the structural integrity and reliability of the transmission system to accommodate overall load growth in the area.” JA 8778.

Staff also investigated underground installation and concluded that any underground proposal for these specific lines should be rejected. JA 3113-25, 8813-17. As to this, Mr. Dodson’s testimony includes the following:

- “constructability, timing, and cost are critical in determining [the] feasibility” of underground installation (JA 3113, 3123-24);
- “[d]ue to the innovative nature of undergrounding a 500 kV circuit with a desired ampacity of 5,000 amps, there appears to be no readily available underground conductor for this purpose” (JA 3114);
- “the project area contains shallow diabase bedrock” that, if encountered, “would require specialized excavation techniques, including drilling and blasting” (JA 3117-18);
- “extra width would likely be required for adequate spacing between underground cables to dissipate heat and prevent thermal interference” (JA 3117);
- there are additional constructability, timing, and cost issues related to the required right-of-ways, as well as to “relocating existing utilities, acquiring property rights, and securing permits” (JA 3116-18);

- “similar challenges would exist for any” underground proposal for this particular project (JA 8816);
- “undergrounding a 500 kV line remains a highly novel undertaking with limited precedent” (JA 3124);
- the overhead route is the only “feasible” option “to address the need identified in [Dominion’s] application” (JA 3124-25); and
- the overhead route is the only “economical” option for meeting such need (JA 3124-25).

Next, it was not legal error for Staff to verify the load flow modeling, contingency analyses, and reliability needs presented by Dominion and PJM based on the data comprising such analyses. Specifically, there is no legal requirement for Staff to consider or give weight to: (a) facts attendant to prior Commission cases; or (b) individual contracts between Dominion and data center customers currently awaiting service. Op.Br. 26-29.

The definition of “verify” is “5: to confirm or establish the authenticity or existence of by examination, investigation, or competent evidence.”

Webster’s Third New International Dictionary 2543 (2002). The Court has already held that “[a] plain reading of the statute does not support the conclusion, apparently urged by [appellant], that to accomplish this verification the Commission is required to obtain new data from an independent source, rather than giving any weight to the data provided by

the applicant.” *Piedmont Env'tl. Council v. Virginia Elec. and Power Co.*, 278 Va. 553, 570 (2009).

Staff may verify as reasonable – as it did here based on its own professional judgment – the data built into Dominion’s and PJM’s analyses and testify that it has “confirmed the projected violations absent the proposed Project.” JA 8778. Based on those verified analyses, Staff witness Dodson concluded that if the line is not built by summer 2028, then (among other things) “it could result in major damage to the system [and] cause extended outages and affect thousands of customers in the Loudoun County area and beyond due to the 500 kV system serving most of Virginia.” JA 3115-16.

The Senior Hearing Examiner agreed: “[T]he overarching reason for [this project] is not to provide electric service to a few data centers whose needs can be postponed. Rather, the project is needed to address identified NERC violations, and their potential consequences to electric service for a large segment of customers, by June 1, 2028.” JA 2548.

In sum, the record shows that the Commission verified the applicant’s load flow modeling, contingency analyses, and reliability needs presented to justify the new line and its proposed method of installation. There is no error of law.

- II. The Commission considered (a) the costs and economic benefits likely to result from requiring underground placement of the line, and (b) any potential impediments to timely construction of the line. There is no error of law. (AE 2)

Code § 56-46.1(B) also prescribes that the “Commission shall *consider*, upon the request of the governing body of any county or municipality in which the line is proposed to be constructed, (a) the costs and economic benefits likely to result from requiring the underground placement of the line and (b) any potential impediments to timely construction of the line” (emphasis added).

This Court recently held that “[c]onsider’ means ‘to reflect on: think about with a degree of care or caution.’” *West Virginia & Appalachian Laborers’ Dist. Council v. State Corp. Comm’n*, 913 S.E.2d 513, 518 (2025) (quoting Webster’s Third New International Dictionary 483 (1993)). The Court further held that a directive to consider a factor does *not* require “the Commission to make specific written findings about” that factor. *Id.* “Thus, [the statute] merely requires the Commission to ‘reflect on’” the factors identified in subparts (a) and (b) of Code § 56-46.1(B). *Id.* (citations omitted).

The Senior Hearing Examiner did just that. The Report expressly considers and cites to evidence in the record on (a) costs and economic benefits likely to result from underground placement, as well as

(b) potential impediments to timely construction of the line. JA 2515, 2517, 2529-30 (costs); JA 2531, 2539, 2542 (economic benefits); JA 2516-17, 2519, 2547-51 (timely construction).

As found by the Court in *West Virginia & Appalachian Laborers' Dist. Council*, “[b]ecause the Commission stated that it ‘considered’ the [statutory factors] and cited to evidence in the record regarding those [factors], the Commission complied with the [statute].” 913 S.E.2d at 519. The fact that such consideration did not result in the Commission making findings requested by any particular party does not create an error of law.

III. The Commission’s approval of an overhead route is supported by evidence on need, reliability, feasibility, and cost. This decision was not the result of burden shifting. (AE 3)

The Senior Hearing Examiner found that overhead Route 1AA satisfied the statutory requirements for approval. JA 2579-2581. The Senior Hearing Examiner also found that the proposed underground alternative does *not* “best serve” the “total public interest.” JA 2553, 2579. See *BASF Corp.*, 289 Va. at 394-95 (“When presented with an application for transmission line construction, the Commission ... must decide within the parameters of the statute what best serves the ‘total public interest.’”) (quoting *Board of Supervisors of Campbell Cty. v. Appalachian Power Co.*, 216 Va. 93, 104 (1975)).

The Commission adopted the Senior Hearing Examiner's findings, concluding that such were supported by the evidence. JA 2721-22. As discussed in the Report, the overwhelming amount of evidence that underground installation of these lines does not best serve the total public interest includes the following:

- Any non-overhead route would require “undergrounding a 500 kV line with five cables per phase, plus undergrounding a 230 kV line with four cables per phase, and a total maximum current of 9,000 amps.” JA 2546, 9040.
- Attempting to underground “even a portion” of these lines would be an “unprecedented undergrounding project,” putting such project “in a class by itself.” JA 2546.
- The specific transmission conductor necessary for underground installation of this project is not readily available. JA 3114.
- This is a “critical baseline reliability project” that needs to be operational by June 1, 2028, in order to avoid reliability violations, extended outages, and major system damage. JA 2473, 2512-13, 2547-48.
- The feasibility of underground installation for this project is threatened by multiple risks that “jeopardize[] electric reliability for a swath of people across a much wider area.” JA 2549-53.
- Risks include the presence of hard rock previously encountered by Dominion in this area (JA 2460, 2549-50), as well as the need to procure special equipment and qualified contractors specifically required for such a “very unique installation” (JA 2459, 2550-51).

- Additional risks caused by attempting to underground a portion of these lines include: the time necessary to complete detailed engineering activities required for such an endeavor (JA 2551); obtaining new or larger rights-of-way necessary for construction (JA 2459-60, 2529, 2542, 2548-49); acquiring property rights for and constructing two seven-acre transition stations (JA 2452, 2460, 2542, 2545); and the existence of, and potential need to relocate, current underground utilities in the area (JA 2459, 2551).
- The underground project that this was compared to (in Chino Hills, California): was not driven by reliability concerns that could result in outages and thermal violations; was constructed entirely within utility-owned right-of-way; had a lower required capacity; and took over twice as long to construct than was projected. JA 2460, 2489, 2530, 2551-52, 3123, 9040-41.
- “Given the complexities and size of [this project], the specific topography and constraints of the area, and lack of existing Company-owned right-of-way, this is not the type of project that should be used as a pilot.” JA 9610.

In addition to the above, the significant cost increase – standing alone – required to underground a portion of this line supports the Commission’s decision:

- The cost of the 9.4-mile overhead route is \$171 million. JA 2474, 2517, 2528, 2559.
- The proponents’ low-end estimate to underground three miles of this line is \$478 million, with a -50% to +200% margin of error. JA 2453.
- Dominion estimates the cost to underground these three miles at \$830 million (with the same tolerance range). JA 2560, 3313-3321.

- The Senior Hearing Examiner, persuaded by Dominion's evidence, rejected the \$478 million estimate. JA 2560.
- Staff witness Dodson further testified that given the minimal precedent for undergrounding 500 kV lines and the uncertainties surrounding construction, "the potential for significant cost increases remains high." JA 2460, 3119.

Accordingly, and contrary to allegations in the Opening Brief, the Commission did not fail "to consider requiring underground placement of a transmission line," nor "erroneously place[] the burden of offering a [certificate of public convenience and necessity]-compliant application" on its proponents. Op.Br. 38. As cited above, the Report is replete with consideration of underground placement. And the evidence supporting its rejection exists for any underground alternative for these lines, whether fully developed or not.

Further in this regard, the Report's consideration also includes an analysis of Dominion's reasons for rejecting underground installation, including the Senior Hearing Examiner's agreement that the proposed alternative was not fully developed. JA 2515-19, 2529-30, 2540-45, 2553. This action was not error.

First, such a review is not uncommon and not new to this Court. In the most recent transmission line appeal, the Court noted that the Commission considered and rejected "numerous alternatives." *BASF*

Corp., 289 Va. at 401. In affirming, the Court explained that Dominion “offered testimony that the other proposed alternatives were inconclusive, insufficient in terms of capacity and time of completion, and/or cost prohibitive by comparison.” *Id.*

Second, the Appellants focus on isolated statements from the Senior Hearing Examiner’s Report on how the underground alternative was not fully developed and did not meet statutory requirements. Such focus, however, disregards the finding – supported by the evidence listed above – that underground installation for these lines does *not* best serve the total public interest. Indeed, focusing on isolated statements in the Report discounts the overwhelming weight of evidence in the record that supports such finding. *See Piedmont Env’tl. Council*, 278 Va. at 570 (“By focusing on isolated statements in the hearing examiner’s report ... to support its contention ..., [appellant has] discounted the overwhelming weight of evidence in the record that is plainly contrary” thereto.).

In sum, the Commission’s decision in this matter was not the result of burden shifting. Dominion explained how it considered, and why it rejected, both full and partial underground installation. Staff similarly concluded that an overhead route was the only feasible and economical option for these lines. The Commission found such evidence and argument persuasive,

deciding that no portion of these transmission lines should be installed underground. The acute reasons for that are clear and in the record. And those reasons exist for any proposed underground installation of these lines, whether fully developed or not.

The Commission did not err in finding that the proposed underground alternative does not best serve the total public interest.

IV. The Commission took the actions required by Code §§ 56-46.1(A) and (B) regarding adverse impacts, and those actions are supported by the record. (AE 4, 6, 7)

Code § 56-46.1(A) directs that the Commission “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.”

Code § 56-46.1(B) prescribes that the Commission “shall determine that the line is needed and that the corridor or route chosen for the line will avoid or reasonably minimize adverse impact to the greatest extent reasonably practicable on the scenic assets, historic and cultural resources recorded with the Department of Historic Resources, ... and environment of the area concerned.”

The Commission complied with these statutory requirements. There is neither an error of fact nor of law.

Assignment of Error 4

The Senior Hearing Examiner considered the Belmont Viewshed Easement, along with consideration of the other scenic assets, historic resources, and environment of the area concerned under Code § 56-46.1(B). This consideration included the impact of alternative overhead routes, as well as how an underground option would lessen the impact on the Belmont Viewshed Easement. JA 2496, 2526-27, 2534-35, 2539, 2554.

The overhead route “reasonably minimize[s]” adverse impact on the Belmont Viewshed Easement “to the greatest extent reasonably practicable” under Code § 56-46.1(B). In this regard, the Court has held that Code § 56-46.1(B) “merely states that adverse impact should be ‘reasonably minimize[d].’ Something is ‘reasonable’ when it is ‘[f]air, proper, or moderate under the circumstances; sensible.’ Black’s Law Dictionary 1456 (10th ed. 2014).” *BASF Corp.*, 289 Va. at 394.

The Court further explained (as also discussed in Assignment 6, below) that such circumstances necessarily include the Commission’s balancing of “adverse impacts *along with* other factors and traditional considerations [in deciding] within the parameters of the statute what best serves the total public interest.” *Id.* at 395 (emphases added) (citations and

internal quotation marks omitted). The instant circumstances include that the Commission, when balancing adverse impacts along with other factors and traditional considerations, found that underground installation of these lines does not best serve the total public interest.

Thus, the evidence discussed above in support thereof similarly supports the finding that overhead Route 1AA *reasonably* minimizes adverse impact on the Belmont Viewshed Easement to the greatest extent *reasonably* practicable. Based thereon, the impact of an overhead – as opposed to an underground – route on the Belmont Viewshed Easement is proper and sensible under the circumstances.

The Opening Brief, however, also alleges that the Commission committed “*legal error*, because the violations of the Viewshed Easement *render Route 1AA nonviable as a matter of law.*” Op.Br. 42 (emphases added). This claim is both improper and incorrect.

First, Assignment of Error 4 does not state that the Commission committed legal error, nor does it contain this specific alleged error of law. JA 9721. To be sure, both the Assignment and the cites to its preservation assert that an overhead route violates the easement. But nowhere in there does it allege that the overhead route is “nonviable as a matter of law.”

Second, if the Court reaches this claim, the overhead route is viable as a matter of law. The cited preservation in Assignment of Error 4 declares that the Belmont Viewshed Easement “is the functional equivalent of an amendment to the zoning ordinance.” JA 2620-21. As explained in Section V., below, transmission lines are exempted from and not subject to local zoning ordinances. Code § 56-46.1(F).

Assignment of Error 6

As required by Code § 56-46.1(B), the Senior Hearing Examiner found that overhead “Route 1AA avoids or reasonably minimizes adverse impacts to the greatest extent reasonably practicable to environmental, historic, and scenic resources.” JA 2555. The instant Assignment, however, alleges that an overhead route fails – “as a matter of law” – to satisfy this statutory requirement. JA 9721.

The Court’s precedent confirms that there is no error of law here. In applying this statutory requirement, the Court held that the “essence of reasonableness under the law is prudent action in context; there can be no error in linking a reasonability standard to the circumstances at large.” *BASF Corp.*, 289 Va. at 394. Here again, the circumstances at large include the Commission’s record-supported decision – based on need, reliability, feasibility, and cost – that no portion of these lines should be undergrounded.

Indeed, the Court has explained how considering such circumstances is not an error of law. In *BASF Corp.*, the appellant alleged that it was an error of law for the Commission to consider factors such as need and construction schedule in weighing adverse impacts under this statute. *Id.* at 393-395. The Court disagreed. In discussing the process of weighing adverse impact under this statutory requirement, the Court held as follows:

The adverse impacts of a proposed project are not to be considered in a vacuum. When presented with an application for transmission line construction, the Commission must balance adverse impacts along with other factors and traditional considerations. Then the Commission, as a tribunal informed by experience, must decide within the parameters of the statute what best serves the total public interest.

Id. at 394-95 (citations and internal quotation marks omitted).

Next, the Opening Brief also alleges that the Commission failed to consider evidence and that the Commission's finding was "contrary to the evidence." Op.Br. 49. This claim is both improper and incorrect. First, Assignment of Error 6 only alleges an error of law; it does not state that the Commission's finding was contrary to the evidence. Second, if the Court reaches this claim: (1) the Senior Hearing Examiner's Report undeniably discusses and considers the evidence in this matter (conflicting or otherwise); (2) the Final Order expressly confirms that the Commission "fully considered the evidence and arguments in the record" (JA 2722

n.18); and (3) Sections I. and III., above, establish that the Commission's finding was supported by the evidence.

The Commission did not err in considering evidence in the record on traditional factors such as need, reliability, feasibility, and cost in finding that an overhead route satisfies this statutory requirement. The Court's finding in *BASF Corp.* applies equally here: "We conclude that the use of the word 'reasonably' demonstrates the General Assembly's recognition of the multifactorial balancing that goes into such an investigation, and we find that the Commission did not err." 289 Va. at 395.

Assignment of Error 7

In its comments on the Senior Hearing Examiner's Report, Lansdowne Conservancy ("Lansdowne") asked that four conditions be included in the Final Order. Three of those would have placed specific requirements on Dominion, and the fourth would have kept the "case open to enforce such requirements." JA 2698.

Lansdowne's comments on the Report, however, did not identify where its witness (or any party to the case) requested and factually supported these conditions during the extensive proceedings before the Senior Hearing Examiner. JA 2697-98. The cited preservation of this alleged error, as well as the Opening Brief, also contain no cites to the

record or any claim that Lansdowne's request was part of those proceedings. JA 9722; Op.Br. 49-50. While recognizing that Lansdowne has the obligation to identify where its requests were made and supported, the Commission likewise is not aware that these four specific conditions were established in the litigation before the Senior Hearing Examiner.

Furthermore, there is nothing in the statute that requires the Commission – as a matter of law – to impose the requested conditions; the Opening Brief does not assert otherwise. The Commission acted within its discretion in not ordering them on Dominion, as well as in deciding to close this case.

V. The plain language of the statute and the Court's precedent do not require the Commission to find that the approved route is in substantial accord with a locality's comprehensive plan. (AE 5)

The Appellants allege that the Commission erred "because it failed to make a finding that Route 1AA is in substantial accord with" the locality's comprehensive plan. Op.Br. 45. This is the second time the Court has been asked to delineate between locality and Commission jurisdiction regarding the approval of transmission lines.

In the first case, the Court found that "the intention to exempt *switching stations* from local zoning ordinances is not manifest within Code § 56-46.1." *BASF Corp.*, 289 Va. at 403 (emphases added). The Court

reached that decision, however, because it concluded: (1) the General Assembly’s intent to exempt “transmission lines” from local zoning ordinances is manifest in Code § 56-46.1; but (2) a “switching station” is not a transmission line. *Id.* at 403-404.

In this regard, Code § 56-46.1(F) states in full: “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.” There is no ambiguity in this directive.

Transmission lines are expressly exempt from local zoning ordinances. *BASF Corp.*, 289 Va. at 403 (“Under the plain language of Code § 56-46.1(F) the only structures or uses expressly exempt from local zoning ordinances are *transmission lines*.”) (emphases added).

Next, Code § 56-46.1(A) directs that the “Commission shall receive and give *consideration* ... if requested by any county or municipality in which the facility is proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 3 (§ 15.2-2223 *et seq.*) of Chapter 22 of Title 15.2” (emphasis added). There is no ambiguity in this directive either. The statutory plain language does not require the Commission to make any findings on the comprehensive plan based on such “consideration.” Nor does it require the Commission to find that the proposed transmission line is in substantial accord with that plan.

As discussed above, the Court recently addressed statutory directives requiring the Commission to “consider” certain factors.¹ Such a directive requires the Commission to reflect on the factor with a degree of care, and it does *not* require the Commission to make any findings on that factor. *West Virginia & Appalachian Laborers' Dist. Council*, 913 S.E.2d at 518. The Court further elaborated as follows: “A statutory command to consider decisionmaking factors *does not mean the factfinder must assign measurable weight* in the decisional process to each factor or somehow quantify its impact on the final decision.... It means merely the factfinder cannot deem legally insignificant what the statute declares to be significant.” *Id.* (emphases added) (quoting *Campbell v. Dep’t of Forestry*, 46 Va. App. 91, 103 (2005)) (citation and internal quotation marks omitted).

Accordingly, the General Assembly’s directive to give “consideration” to a comprehensive plan is not a directive to make any specific findings attendant to that plan. And that plain language directive is in no manner a statutory mandate requiring the Commission to comply with obligations placed on local planning commissions to determine whether proposed

¹ “Consideration” in Code § 56-46.1(A) likewise means “2: continuous and careful thought : DELIBERATION, ATTENTION.” Webster’s Third New International Dictionary 484 (2002).

facilities are “substantially in accord with the adopted comprehensive plan.”

Code § 15.2-2232(A); Op.Br. 45-46.

In the proceedings below and citing *BASF Corp.*, the Appellants herein further claimed that “the Supreme Court of Virginia has already determined that, in the context of local zoning ordinances, transmission towers are not public utilities facilities.” JA 2621, 2695. That is not so. The General Assembly exempted transmission lines from local zoning ordinances and delegated to the Commission the authority and discretion for approval thereof under Code § 56-46.1. The Court not only confirmed this in *BASF Corp.* but also described its obvious purpose: “[C]ontinuous transmission lines are exempt [from local zoning] because of the onerous nature of navigating local zoning ordinances for all the acreage over which transmission lines cross.” 289 Va. at 404.

In sum, the statutory directive to give “consideration” to comprehensive plans does not require the Commission to find that proposed transmission lines are in “substantial accord” with those plans. Nor does it reverse the General Assembly’s manifest intent for siting transmission lines in the Commonwealth. Rather, as in *West Virginia & Appalachian Laborers’ Dist. Council*, “[t]he Commission complied with the plain language of the statute.” 913 S.E.2d at 518. The Senior Hearing

Examiner did not deem legally insignificant, and expressly gave consideration to, the locality's comprehensive plan. JA 2445-49, 2496, 2508-09, 2520-21, 2535-38. There is no error of law.

CONCLUSION

The Commission respectfully requests that the Court affirm the Final Order.

Respectfully submitted,

VIRGINIA STATE CORPORATION COMMISSION

By: /s/ John F. Dudley
Counsel

John F. Dudley (#38280)
Counsel to the Commission & Solicitor
Alisson P. Klaiber (#77206)
Legal Advisor to the Commission & Deputy Solicitor
State Corporation Commission
P.O. Box 1197
Richmond, Virginia 23218-1197
804-371-9608 (Telephone)
804-371-9376 (Facsimile)
John.Dudley@scc.virginia.gov
Alisson.Klaiber@scc.virginia.gov

CERTIFICATE

I certify that on August 29, 2025, this document was filed electronically with the Court via VACES and that copies were transmitted by email to:

David J. DePippo, VSB No. 48226
DOMINION ENERGY SERVICES, INC.
600 East Canal Street
Richmond, Virginia 23219
david.j.depippo@dominionenergy.com

– and –

Joseph K. Reid, III, VSB No. 35724
Vishwa B. Link, VSB No. 36316
Brian D. Schmalzbach, VSB No. 88544
McGUIREWOODS LLP
Gateway Plaza
800 East Canal Street
Richmond, Virginia 23219
(804) 775-1000
jreid@mcguirewoods.com
vlink@mcguirewoods.com
bschmalzbach@mcguirewoods.com

*Counsel for Appellee Virginia Electric
and Power Company*

Cassidy Galindo
WILLIAMS MULLEN
200 South 10th Street, Suite 1600
Richmond, Virginia 23219
(804) 420-6027
cgalindo@williamsmullen.com

Counsel for JK Landholdings, Inc.
J. Chapman Petersen, VSB No. 37225
Federico J. Zablah, VSB No. 96031
CHAP PETERSEN & ASSOCIATES, PLLC
3970 Chain Bridge Road

Brian R. Greene, VSB No. 38215
Claire M. Gardner
GREENEHURLOCKER, PLC
4908 Monument Avenue, 2nd Fl.
Richmond, Virginia 23219
(804) 672-4542

bgreene@greenehurlocker.com
cgardner@greenehurlocker.com

*Counsel for Lansdowne
Conservancy and Leesburg Pike
Community Church*

Timothy McCormick, VSB No. 95493
Christian F. Tucker, VSB No. 92571
CHRISTIAN & BARTON, L.L.P.
901 East Cary Street, Suite 1800
Richmond, Virginia 23219
(804) 697-4105
tmccormick@cblaw.com
ctucker@cblaw.com

*Counsel for NA Dulles Real Estate
Investor, LLC (“Kincora”)*

William T. Reisinger, VSB No. 78971
REISINGER GOOCH PLC
1108 East Main Street, Suite 1102
Richmond, Virginia 23219
(804) 223-6391
will@reisingergooch.com

*Counsel for Piedmont Environmental
Council*

Fairfax, Virginia 22030
(571) 459-2512
jcp@petersenfirm.com
fjz@petersenfirm.com

Counsel for Appellee Theresa Ghiorzi

Michael J. Coughlin, VSB No. 70915
Brooke N. West, VSB No. 99595
WALSH, COLUCCI, LUBELEY & WALSH, P.C.
4310 Prince William Parkway, Suite 300
Woodbridge, Virginia 22192
(703) 680-4664
mcoughlin@thelandlawyers.com
bwest@thelandlawyers.com

Counsel for Allan Myers Va, Inc.

Jeffrey S. Poretz, VSB No. 38529
Shane M. Murphy, VSB No. 76068
Matthew L. Devendorf, VSB No. 90670
MILES & STOCKBRIDGE P.C.
1751 Pinnacle Drive, Suite 1500
Tysons Corner, Virginia 22102
(703) 610-8650
jporetz@milesstockbridge.com
smurphy@milesstockbridge.com
mdevendorf@milesstockbridge.com

*Counsel for Loudoun County Sanitation
Authority*

Leo P. Rogers, VSB No. 28906
LOUDOUN COUNTY ATTORNEY
1 Harrison Street, S.E.
Leesburg, Virginia 20177
(703) 777-0307
leo.rogers@loudoun.gov

*Counsel for Loudoun County,
Virginia*

Gregory Habeeb, VSB No. 46926
Katherine Pollard, VSB No. 99506
GENTRY LOCKE
919 E. Main Street, Suite 1130
Richmond, Virginia 23219
(804) 297-3702
habeeb@gentrylocke.com
kpollard@gentrylocke.com

Counsel for VISA U.S.A. INC.

Brian J. Petruska, VSB No. 7980
General Counsel
LIUNA MID-ATLANTIC REGIONAL
ORGANIZING COALITION
LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA
11951 Freedom Drive, Rm. 310
Reston, Virginia 20190
bpetruska@maliuna.org

*Counsel for Philadelphia-Baltimore-
Washington Laborers' District
Council ("PBWDL")*

Andrew R. McRoberts (VSB No. 31882)
Adam B. Winston (VSB No. 97293)
SANDS ANDERSON PC
919 East Main Street, Suite 2300
P.O. Box 1998
Richmond, Virginia 23218-1998
Telephone: (804) 783-7211
Facsimile: (804) 783-7291
amcroberts@sandsanderson.com
awinston@sandsanderson.com

Bryan S. Turner (VSB No. 95430)
TURNER, HOLDEN & TURNER, PLLC
20 West Market Street
Leesburg, Virginia 20176
Telephone: (703) 669-9090
Facsimile: (703) 771-4991
bturner@thtlawfirm.com

Counsel for Lansdowne Conservancy

Pursuant to Rule 5:26(g), I do further HEREBY CERTIFY that this
Brief does not exceed the word limit, containing 5,267 words.

/s/ John F. Dudley
JOHN F. DUDLEY (#38280)

Counsel for Appellee
Virginia State Corporation Commission