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*In the*  
**Supreme Court of Virginia**  
*At Richmond*

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**Record Nos. 250494 and 250495**

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LOUDOUN COUNTY, VIRGINIA AND  
LANSDOWNE CONSERVANCY,

*Appellants,*

— v. —

STATE CORPORATION COMMISSION,  
THERESA GHIORZI, et. al,

*Appellees.*

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**CONSOLIDATED RESPONSE BRIEF  
FOR APPELLEE THERESA GHIORZI**

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COMES NOW, Appellee Theresa Ghiorzi (“Ghiorzi”), by counsel, and states the following as her Brief in Response to the Consolidated Appeal (the “Appeal”) filed by Loudoun County, Virginia, and Lansdowne Conservancy (collectively, “Appellants”) (Record Nos. 250494 and 250495) concerning the Final Orders issued by the Virginia State Corporation Commission (“SCC” or “the Commission”) in Case No. PUR-2024-00032 and Case No. PUR-2024-00044.

### **STATEMENT OF THE CASE**

The Appeal rests on a fundamental misinterpretation of the legal framework governing public utility regulation in Virginia. In essence, it seeks to introduce local zoning and planning approvals in a manner that improperly intrudes upon the exclusive regulatory authority of the SCC.

The SCC, as a constitutionally independent agency under Article IX of the Virginia Constitution (*Va Const. art. IX, § 1*), is responsible for ensuring the adequacy of public utility infrastructure. Localities— i.e. Loudoun County (“the County”) – do not have authority to compel the SCC to condition its issuance of a Certificate of Public Convenience and Necessity (CPCN) on local zoning laws. In this case, the County had sought to inhibit the construction of the Aspen-Golden project (Case No. PUR-2024-00032) and Apollo-Twin Creek Lines (Case No. PUR-2024-00044) based on conformance with the County’s 2019 Comprehensive Plan (“2019 General Plan”), as enacted under Virginia Code § 15.2-2232.

Here, the two SCC-approved overhead transmission line installations – namely, the Aspen-Golden line (or “Route 1AA”) and Apollo-Twin Creeks line– as well as the Appellants’ proposed alternative: the underground hybrid project (or “UHP”)— are not conventional infrastructure upgrades serving existing residential communities. Rather, they are a response to the extraordinary demand surge<sup>1</sup> created by large-scale data center construction in the Loudoun County, concentrated in the area known as “Data Center Alley.”<sup>2</sup>

In contrast, the County’s proposed UHP would place a portion of the transmission line underground along Route 7. This alternative would result in an excess cost of at least \$443 million (Joint Appendix (“JA”) 2529, 2453), a cost that the Commission was statutorily entitled to rejected under Va. Code § 56-46.1.

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<sup>1</sup> “...significant load growth in the Eastern Loudoun Load Area; and to resolve identified NERC reliability violations.” The Company explained that the 2023 PJM Load Forecast for the DOM Zone was adjusted to account for substantial data center growth, meaning that the 2023 forecast for the 2027/2028 time period was 2,440MW higher than the 2022 forecast. Among other things, Dominion explained that “[o]n July 28, 2023, Dominion Energy Virginia set a new system summer peak of 21,993 MW,” and that the 27 substations serving the Eastern Loudoun Load Area alone served 2,325 MW (approximately 10.57%) of that peak.” JA 2512.

<sup>2</sup> Commercial data center facilities consume massive amounts of electricity for cooling, computing, and server operations. Their growth has outpaced prior projections, requiring timely infrastructure expansions to avoid reliability issues and grid failure. The primary purpose of constructing the transmission lines here is designed to serve and provide solutions to a commercial demand that address surging electricity needs by data center operations.

At the hearing before the SCC, the County failed to provide sufficient evidence demonstrating that the UHP was technically, financially, or legally feasible: a further defect under Va. Code § 56-46.1. The proposal lacks engineering plans, cost-sharing mechanisms, and most importantly, the landowner consents. JA 2798, 2909.

During the course of these proceedings, Loudoun County proposed the UHP as an alternative that would require Dominion to construct additional substations on private properties. The UHP requires more land for substations than the original overhead transmission proposal, which implies additional takings of private property at the County's request. JA 2675 – 2676. However, the affected landowners have not received notice of Loudoun County's UHP proposal, nor have they been made parties to the proceedings. JA 3421 – 3422. This proposal would benefit one group of landowners to the detriment of another. In addition, the significantly higher costs associated with undergrounding would ultimately be borne by ratepayers. JA 2880.

Appellants misapply Virginia Code § 56-46.1 by treating the 2019 General Plan as binding law, rather than what it is: a non-binding policy document, which is intended to govern land use applications as submitted to the County Board of Supervisors. *See* Va. Code § 15.2-2232. Nothing in that law requires SCC to comply with the County's General Plan. The SCC fulfilled its statutory duty by giving



consideration to the County’s plan, as required. There was no duty to be in “substantial accord.”

Loudoun County is currently pursuing a Comprehensive Plan Amendment (CPAM-2024-0005) intended to identify and designate high-voltage transmission corridors as a “feature shown” in its 2019 General Plan. The stated objective of this amendment is to better align local electric infrastructure policies with community preferences, including minimizing visual and environmental impacts and encouraging underground placement “where practical.” However, the County appears to be proceeding under the mistaken belief that such amendments will empower it to control how and where the SCC approves transmission line applications. Indeed, the County’s proposed CPAM explicitly states that it is not tied to any current applications before the Commission—including the Aspen-Golden line (or and Apollo-Twin Creeks line in this appeal)<sup>3</sup>. Nevertheless, the effort underscores the County’s intent to assert control over matters reserved to the SCC under Code § 56-46.1. While local preferences and planning documents are among the many factors the SCC must consider, they cannot dictate the outcome of a routing decision or impose binding infrastructure requirements on regulated utilities.

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<sup>3</sup> Loudoun Seeks Community Input on Proposed Electrical Infrastructure Comprehensive Plan Amendment:  
<https://www.loudoun.gov/CivicAlerts.aspx?AID=9945>

This intent of the CPAM was also reflected in the testimony of Mr. Giglio, who stated that Loudoun County is undertaking “a process to identify high-voltage transmission corridors as a feature shown of our comprehensive plan.” JA 3907:4–7. During direct examination, when asked what it would mean if a transmission line were designated as a “feature shown” on the comprehensive plan, Mr. Giglio confirmed that “it would not have to go through the legislative process for review.” JA 3910:12–16. Further, Appellants’ legal counsel – Mr. McRoberts – explained that Mr. Giglio’s testimony was grounded in “what’s going on right now as a local planning effort to go to the Transportation and Land Use Committee of the Board of Supervisors in Loudoun to try to place routes on the comprehensive plan in order to assist their approval.” JA 3934:24–3935:4. Yet, under Virginia law, the SCC is not bound by local comprehensive plan designations, including those identifying transmission corridors or encouraging underground placement.

If localities were allowed to bind SCC’s approval of projects based on their own planning preferences, it would (i) politicize the utility approval process, (ii) undermine statewide reliability and cost-efficiency, and (iii) disrupt the uniform application of utility standards across the state. Chaos would ensue.

The Commission properly exercised its authority and approved the only viable projects before it. Therefore, Appellee respectfully requests that this Court uphold Final Orders in Case Nos. PUR-2024-00044 and PUR-2024-00032.

## **STATEMENT OF FACTS**

This supplemental Statement of Facts is to expand upon those already presented in the Appellant's appeal.

### **A. SCC's Approval of Aspen-Golden Line and Apollo-Twin Creeks**

In March 2024, the Virginia Electric and Power Company ("VEPCO" or "Dominion") filed an application with the SCC for CPCN approval of the Aspen-Golden line and the Apollo-Twin Creeks line. JA 968 – 1310. SCC granted the CPCNs to these routes based on its technical feasibility, alignment with existing corridors, cost-effectiveness, and impact assessments. JA 2713 – 2723.

Following public notice, the SCC conducted an evidentiary hearing in August 2024 where Dominion, Loudoun County, and various stakeholders submitted testimony. The County actively participated as an intervenor and, as such, proposed UHP, which would have avoided the use of above-ground transmission lines bordering the Route 7 corridor. JA 2652. The SCC considered the full evidentiary record, including the County's proposal, and Dominion tasked Black and Veatch with conducting an independent feasibility study of the UHP. That study concluded that the County's underground option was significantly more expensive, technically complex, and would introduce potential construction delays and long-term property complications. JA 2515 – 2581.

In the August 21, 2024 Commission Staff Report, Staff concluded that “the Company [Dominion] has reasonably demonstrated the need for the proposed project” and concluded that “an all-underground option is not practice or the proposed project” and there are serious issues would still persist with a hybrid option.” JA 2666.

On November 1, 2024, after considering all the evidence, the SCC’s Hearing Examiner issued a detailed report of 175 pages, single-spaced, recommending approval of Dominion’s proposed overhead route. JA 2407 – 2581. That report *inter alia* referenced the County’s 2019 General Plan, e.g. on pages 114-116, and discussed how the approved route married up with the stated objectives. JA 2520 – 2522. It did not (nor was it required to) make any findings that the approved route was “substantially in accordance” with the 2019 General Plan.

The SCC adopted the recommendation and entered its Final Order, finding that the Dominion’s applications were fully developed, feasible, and cost-effective option presented for review. The issuance of the Final Order incorporated SCC’s consideration of the County’s General Plan and confirmed compliance with the requirements of Virginia Code § 56-46.1. In its Final Order, SCC adopted the Hearing Examiner’s Report and approved Route 1AA. JA 2713 – 2723.

## **B. Appellants' Underground Hybrid Proposal**

The Appellants reassert the UHP and argue in substance that the transmission line should be placed underground to reduce visual and environmental impacts on the Route 7 corridor. JA 2133. While the UHP may appear more aesthetically favorable from the Appellants' perspective, the SCC's review showed that underground hybrid alternative can cost about eight times more than overhead alternatives and involve complex engineering challenges for the Aspen-Golden project alone. JA 3121.

According to the Hearing Examiner's Report and the testimony of Mr. Brian A. Conroy, Manager of Power System Studies for RLC Engineering, the County's proposed UHP would cost an *additional* \$423 million, which exceeds Dominion's estimate for the approved Aspen-Golden project. JA 2529; JA 8262: 193-195. Moreover, the Hearing Examiner's Report noted that the \$478 million estimate for the underground hybrid alternative did not include any costs associated with real estate acquisition. JA 2488. Similarly, the Black and Veatch feasibility study further determined that undergrounding the transmission lines would cost approximately \$1 billion, compared to \$171 million for the SCC-approved Route 1AA. JA 2517. On the other hand, the total estimated cost for Apollo-Twin Creeks Project is approximately \$299 million. JA 2569. In other words, the cost alone of the UHP made it unfeasible to the Commission.

In its Final Order, SCC found that “the cost estimate for the Updated Hybrid Proposal is not reasonable based on the record.” JA 2580. Again, the idea that local land use principles can *require* the SCC to implement undergrounding of transmission lines or the placement of high-voltage transmission lines to accommodate a local comprehensive plan is not grounded in practice, precedent, or policy.

**C. Loudoun County’s 2019 Comprehensive Plan is Not A Regulatory Mandate**

The Loudoun County 2019 General Plan<sup>4</sup> explicitly states that it is a “policy document that provides guidance”—not a binding regulatory instrument. It also notes that zoning ordinances, not the Plan, are the County’s actual legal tools for regulating land use (General Plan, Chapter 1-11). The General Plan further acknowledges that the implementation of the Plan must occur “subject to the requirements and limitations of state law.” (General Plan, Chapter 1-10) These admissions within the General Plan directly undercut the Appellants’ core argument. In his testimony, Mr. Giglio confirmed that “[The Comprehensive Plan and the 2019 General Plan]...is a policy document that provides guidance for elected officials....” JA 2127:85 – JA 2127:88. Yet he describes the County's intent is to add transmission

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<sup>4</sup> Loudoun County 2019 General Plan,  
<https://www.loudoun.gov/DocumentCenter/View/152285/General-Plan---Combined-with-small-maps-bookmarked>

corridors to the comprehensive plan for the purpose of routing HVAC transmission lines, i.e. to "identify routes in advance so we could more proactively plan where some of these transmission line corridors may go, working with the electric providers in our area." JA 3948:8 – JA 3948:12.

He further stated that "it is the County's hope that this sort of strategic planning *will* create the administrative framework for preplanned underground projects to be approved directly by localities." JA 2141: 398 – 2141: 389. Of course, there is no such process now.

### **STANDARD OF REVIEW**

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

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

## **ARGUMENT**

Appellee Theresa Ghiorzi is only presenting Argument as to Assignment of Error No. 5 by the Appellants. Ms. Ghiorzi takes no position as to the remaining assignments of error other than to affirm the correctness of the SCC's consideration of Loudoun County's local comprehensive plan in its decision not to require the underground placement of the Aspen-Golden Transmission lines.

### **I. The Commission Properly Considered the County's Comprehensive Plan to the Extent Required Under § 56-46.1**

Appellants argue that the SCC erred in approving the Aspen-Golden transmission line because it failed to make a formal finding that the project was in “substantial accord” with Loudoun County's 2019 General Plan. This argument mischaracterizes both the language and purpose of the governing statute, Virginia Code § 56-46.1, and disregards longstanding precedent confirming the SCC's exclusive jurisdiction over electric transmission infrastructure.

The SCC's authority over the siting and approval of electric transmission lines—particularly those of 200 kilovolts or more—was affirmed in *Virginia Electric and Power Co. v. Board of County Supervisors of Prince William County*, 226 Va. 382, 309 S.E.2d 308 (1983). There, the Supreme Court of Virginia upheld the SCC's jurisdiction to conduct environmental impact reviews under Virginia Code § 56-46.1, even when the proposed transmission line was to be located within an existing corridor. 226 Va. at 388-89



To recap, the SCC is vested with constitutional and statutory authority to regulate public utilities. Under Va. Code § 56-46.1, the SCC is uniquely responsible for approving the siting and construction of electric transmission lines based on the criteria of public convenience and necessity. Under Subpart A of Va. Code § 56-46.1, for the construction of any electric utility facility, “the Commission *shall receive and give consideration* to ... 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 ... § 15.2-2223.” (emphasis added). In other words, the SCC must “consider” the 2019 General Plan; it is not bound to follow it.

In *Virginia Electric and Power Company v. Citizens for Safe Power*, 222 Va. 866, 284 S.E.2d 613 (1981), the Court addressed Va. Code § 56-46.1, specifically the requirement for a public service company to provide "adequate evidence that existing rights-of-way cannot adequately serve the needs of said company" when seeking approval for a new transmission line. 222 Va. at 869. The Court emphasized that while the SCC must justify deviations from existing corridors when contested, the statute does not eliminate the Commission’s judgment or discretion in making that determination. This case affirms the SCC’s authority to make routing decisions based on a broader balancing of public need, feasibility, cost, and environmental impact—not merely alignment with local planning goals.

Virginia Code § 56-46.1(F) also states that: “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.” This means that once the SCC approves a transmission project under § 56-46.1, it has effectively fulfilled any obligation that might otherwise exist under § 15.2-2232, including any requirement to determine “substantial accord.”

In *Board of Supervisors of Fairfax County v. Virginia Electric and Power Company*, the Court affirmed the jurisdiction of the SCC, and not the locality, to approve the construction of a transmission line. 222 Va. 870, 873-73 (1981). Likewise, in *BASF Corp. v. State Corporation Commission*, 289 Va. 375 (2015), the Supreme Court upheld the Commission’s approval of a substation project over objections from a locality. The Court confirmed that a substation is part of the transmission system and therefore falls within SCC’s regulatory domain—not the County’s. 289 Va. at 405. In fact, the intent of § 56-46.1(F) is to ensure statewide uniform regulation of high voltage transmission lines that benefit all users of the transmission grid. *See Fairfax County*, 222 Va. at 873-74.

This principle is firmly established in *Mt. Crawford v. Virginia Electric and Power Co.*, 220 Va. 645 (1980), where the Supreme Court of Virginia upheld the SCC’s approval of a transmission line over the objections of a town that proposed an alternate route aligned with its development preferences. 220 Va. at

650. The Court emphasized that the SCC, not localities, is the body “authorized by the Constitution of Virginia and the applicable statutes to make a judgment” on such matters. It reaffirmed that the SCC’s factual determinations and route selection—based on considerations like cost, timing, environmental impact, and system reliability—are entitled to judicial deference and will not be overturned if supported by the record. In *Mt. Crawford*, the Town’s objections and preferred underground hybrid route may reflect local planning goals or aesthetic preferences, but they do not override SCC’s independent authority. 220 Va. at 650.

Contrary to Appellants’ overreaching claim, the SCC was not required at any point to issue a finding that the route was in “substantial accord” with the County’s General Plan. The SCC’s interpretation—that it need only “consider” local plans and is not bound by them—follows the plain text of the statute.

As authorized by Article IX of the Virginia Constitution, SCC has a unique role as an independent department of state government with its own administrative, legislative, and judicial powers. Va Const. art. IX, § 1. It is not bound by local zoning laws, especially those which are merely advisory, when making decisions regarding the regulation of public utilities and the certification of certain infrastructure

projects.<sup>5</sup> Here, its responsibility under § 56-46.1(A) was to consider the plan, not to fully comply with it. That is what happened.

For the reasons stated above, the Assignment of Error 5 should be rejected. The Commission’s decision was legally sound and supported by the record and should therefore be affirmed.

## **II. SCC Exercised Discretion to Weight Competing Factors in Accordance With Virginia Law**

In their appeal, Appellants argue that the Hearing Examiner and the Commission applied an “impossibly high standard” to the County’s underground hybrid proposal—one allegedly not found in Virginia Code § 56-46.1(B). That is not accurate or relevant, as the UHP did not qualify under any relevant standard.

The SCC conducted a full evidentiary hearing, considered public input and expert submissions, reviewed Loudoun County’s 2019 General Plan, and evaluated the County’s proposed UHP. JA 2713 – 2723. While the Hearing Examiner acknowledged the County’s concerns about visual and cultural impacts, the report—adopted by the Commission—ultimately found that the UHP was not a fully

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<sup>5</sup> The Virginia Constitution created the SCC and vested it with executive power to “administer[] the laws,” legislative power to “regulat[e] rates . . . and services,” and judicial power to act as “a court of record” “[i]n all matters within the jurisdiction of the Commission.” 22 Va. Const. art. IX §§ 1-3; *see Prentis v. Atl. Coast Line Co.*, 211 U.S. 210, 224, 226, 29 S. Ct. 67, 53 L. Ed. 150 (1908) (*citing Norfolk & P. Belt Line R. Co. v. Com.*, 103 Va. 289, 49 S.E. 39, 41 (Va. 1904)) (acknowledging that the SCC is “clothed with legislative, judicial, and executive powers”).

developed proposal that *inter alia* lacked sufficient technical and cost detail to justify selection. Specifically, the Report stated that:

“The record of this case illustrates numerous concerns about the viability of the Updated Hybrid Proposal, as discussed above. Given the concerns about the Updated Hybrid Proposal’s route, constructability, and cost (as discussed below), and given the lack of environmental analysis and environmental justice analysis, I do not find that this proposal meets the applicable statutory criteria for CPCN issuance.” JA 2553.

After weighing all factors, including feasibility, reliability, environmental effects, and cost, the Commission concluded that the overhead Route 1AA corridor was the most appropriate option for issuance of the CPCN.<sup>6</sup>

The plain language of Va. Code § 56-46.1(B) provides that “the Commission shall consider... the costs and economic benefits likely to result from requiring the underground placement of the line.” Va. Code § 56-46.1(B). It further requires that “as part of the application, the applicant shall summarize its efforts to avoid or reasonably minimize adverse impact... on scenic assets, historic resources, and the

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<sup>6</sup> “The proposed Aspen-Golden Project, with overhead Route 1AA, in contrast, is a fully developed proposal ready for Commission approval. There is a start and an end to these lines. Every structure has been plotted, subject to final engineering. The environmental, cultural, and scenic impacts have been considered. Environmental justice has been analyzed. Impacts to historic resources and protected species have been considered. There is evidence this project is achievable in the time allotted to prevent projected violations of NERC Reliability Criteria. In Staffs words, “[T]he overhead route remains the only feasible and economical option for the Aspen-Golden lines to address the need identified in the Company’s [Aspen-Golden Application].” JA 2553.

environment.” *Id.* This provision establishes that the burden of production lies with the Appellants fulfilling the evidentiary threshold required for meaningful Commission review—which the County fails to do.

In this case, the SCC fulfilled its statutory role in reviewing and approving the application for CPCN. The SCC conducted a full analysis of both the UHP proposed by the Appellants and Route 1AA developed by Dominion. *See Generally* JA 2407 – 2588. Virginia courts have emphasized that the SCC's decisions must rest on a full and substantiated evidentiary record. In *Appalachian Voices v. State Corporation Commission, et al.*, 277 Va. 509, 675 S.E. 2d 458 (2009), the Supreme Court reaffirmed that the Commission operates under a “presumption of correctness” and is entrusted with “finding the facts and making a judgment.” 277 Va. at 516. The Court made clear that the Commission must base its determinations on the evidentiary record presented by the applicant and other parties, not by independently developing or repairing deficient proposals.

Particularly in complex and costly matters such as underground transmission lines in this case, the Commission is not expected to fill evidentiary gaps or make assumptions beyond what the record supports. *Id.* at 515–16 (emphasis added). Here, the SCC is not required to delay or reject a lawful infrastructure project in favor of an incomplete or aspirational alternative, even if that alternative aligns with local planning preferences. Rather, the SCC determines whether a proposed project, based

on the full record, satisfies the legal requirements of necessity, feasibility, and public interest. Va. Code § 56-46.1(A). In its 25-page analysis, specifically designated to the UHP, the Commission comprehensively reviewed the UHP option and made its decision based on all the required factors. JA 2528-2554.

As the Virginia Supreme Court has explained, the SCC is vested with “broad, general and extensive powers” over public service corporations and is charged with “finding the facts and making a judgment.” Its decisions will not be disturbed unless they are contrary to the evidence or unsupported by the record. *See Va. Elec. & Power Co. v. State Corp. Comm’n*, 300 Va. 153, 169, 861 S.E.2d 47, 59 (2021).

In doing so, the SCC did not disregard the 2019 General Plan. Rather, the SCC considered recommendations from the Hearing Examiner’s Report, which expressly evaluated the plan, giving due consideration to the County’s proposed underground hybrid alternative. JA 2520, 2536. While Dominion did not propose an underground option, it retained the consultant, Black and Veatch Corporation, to conduct the feasibility study of that option. JA 2424. The key distinction lies not in whether the SCC considered the General Plan—it did—but in the feasibility, completeness, and readiness of the competing proposals. JA 2552-2553.

Here, the Commission reviewed evidence, considered opposing expert testimony, and addressed competing engineering opinions. The decisions contested by Appellant’s Assignment of Error 5 should be affirmed.

### **III. SCC Lacks Jurisdiction to Adjudicate Private Property Rights And Lacks Eminent Domain Authority**

While the SCC has authority under Virginia Code § 56-46.1 to issue a CPCN for both overhead and underground transmission lines, that authority is limited to public utility regulation. The SCC may evaluate the technical feasibility, environmental impacts, cost, and routing of such projects, but it does not have jurisdiction to resolve private property disputes, interpret or enforce easement agreements, or exercise the power of eminent domain. *See Helms v. Manspile*, 277 Va. 1, 6, 671 S.E.2d 127, 130 (2009) (holding that disputes involving the scope or enforcement of easement rights are reserved for circuit courts).

The County's proposed UHP would require permanent subsurface easements, which often impact existing and future uses of private property. JA 2544. These easements are broader and more intrusive than those associated with approved Aspen-Golden and Apollo-Twin Creeks lines. JA 2479.

The Virginia Constitution and Code also limit condemnation authority to designated public bodies or public utilities. The SCC is not a condemning authority under Va. Code §§ 25.1-102 and 25.1-200 and thus lacks any legal authority to compel the taking of private property for utility infrastructure.<sup>7</sup> Moreover, it cannot

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<sup>7</sup> Under Article I, Section 11 of the Virginia Constitution, any such intrusion on private property is a "taking" and requires just compensation through a formal condemnation process. In this case, the SCC has no authority to exercise eminent



issue a ruling to “protect” a property right. A viewshed easement, such as the one asserted here<sup>8</sup>, is a private property interest—typically recorded by deed and enforceable under real property law. *See* Va. Code §§ 55.1-300 et seq., 55.1-306. Va. Code § 55.1-306 does not authorize administrative agencies—such as the SCC—to adjudicate easement disputes. Whether proposed utility installation violates the terms of that easement is a legal question reserved exclusively for the courts.

In *Helms*, the Court confirmed that adjudication of easement rights—including any claims that a utility structure obstructs an easement—falls squarely within the jurisdiction of Virginia’s circuit courts. Accordingly, even if a party claims that transmission poles interfere with an existing easement, such a claim must be brought through a property action in court—not before the SCC. *Helms v. Manspile*, 277 Va. 1, 8, 671 S.E.2d 127, 131 (2009).

The Virginia Court of Appeals’ recent decision in *Darlene S. Smith v. Allen Creek Associates, LLC*, No. 0850-24-3 (Va. Ct. App. Aug. 19, 2025), underscores that disputes over the scope, relocation, or enforcement of easements present

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domain or determine just compensation for takings. *See* Va. Code § 25.1-102 (limiting the power of eminent domain to designated condemning authorities); *see* also Va. Code § 25.1-204 (requiring condemnation proceedings to be initiated in circuit court). That power rests with the Circuit Courts.

<sup>8</sup> See JA 2523 (noting that the County’s proposed undergrounding transmission lines does not fully eliminate their visual impacts).

justiciable issues reserved for the judiciary—not administrative agencies. In that case, the court affirmed the trial court’s application of Va. Code § 55.1-304, holding that the proposed relocation of private utility easements did not constitute a constitutional taking, as the easement holders’ rights were not materially diminished. *Slip op.* at 17-18. Critically, the decision reinforces that resolving such property disputes—including claims of interference or impairment—requires factual determinations and legal analysis that fall squarely within the jurisdiction of Virginia’s circuit courts.

Second, the SCC cannot grant, initiate, or oversee eminent domain proceedings. Under Virginia property law and Article I, Section 11 of the Virginia Constitution, any intrusion or permanent encumbrance on private property constitutes a “taking” and requires just compensation through formal condemnation. That power resides only with designated local governing bodies or public utilities granted such authority by law—not the SCC. Accordingly, the County’s UHP—which depends on access to private property—cannot be implemented without separate legal proceedings to acquire subsurface easements. The County has not addressed this issue in its proposal, nor has it identified any legal pathway for acquiring the necessary property rights.

Virginia Code § 1-219.1 limits the use of eminent domain to situations where the primary purpose is a bona fide public use—not private benefit. The statute

expressly prohibits takings where the purpose is to generate economic development, increase tax revenue, or promote private financial gain. The record indicates that the primary beneficiary of the proposed UHP would be a set of private owners who would not be subject to a transmission line in their viewshed, not the general public. As such, any use of eminent domain in this context would likely violate § 1-219.1 and Article I, § 11 of the Virginia Constitution.

### **CONCLUSION**

The County's argument rests on a misapplication of non-binding planning preferences and attempts to enforce a legal standard—"substantial accord"—that has no basis in § 56-46.1 or in controlling precedent. Their reliance on the 2019 Comprehensive Plan overlooks that SCC's statutory duty is to consider such documents, not to conform to them.

The County's arguments also ignore the jurisdictional limits of the SCC, which does not possess authority to resolve private property disputes or to compel the buyout of private easements. That power resides with the judiciary and, in limited cases, entities with eminent domain authority subject to constitutional and statutory restrictions. Here, Appellants improperly attempt to shift what is fundamentally a private property rights dispute involving a viewshed easement into a public utility certification proceeding. The Commission correctly declined to decide that issue,

staying within its lawful mandate to evaluate system reliability, environmental impacts, land use compatibility, and overall public necessity under § 56-46.1.

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Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

I certify that this Brief complies with the applicable word count limit and contains 5,048 words, exclusive of appendices, the cover page, table of contents, table of authorities, signature blocks, and certificates.

Counsel for the Appellants respectfully requests oral argument.

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## **CERTIFICATE OF SERVICE**

I certify that on September 2, 2025, an electronic copy of the Brief of Appellant was filed, via VACES, with the Court of Appeals of Virginia and, on the same day, I served a copy of the foregoing by email and first-class mail on:

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