

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUE-2015-00107

For approval and certification of electric transmission facilities: Haymarket 230 kV Double Circuit Transmission Line and 230-34.5 kV Haymarket Substation

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HEARING EXAMINER'S RULING

March 21, 2016

On November 6, 2015, Virginia Electric and Power Company ("Dominion Virginia Power" or the "Company") filed an application ("Application") with the State Corporation Commission ("Commission") for a certificate of public convenience and necessity authorizing the construction and operation of electric facilities in Prince William and Loudoun Counties, Virginia, and the Town of Haymarket, Virginia. The Company proposes to (i) convert its existing 115 kilovolt ("kV") Gainesville-Loudoun Line #124, located in Prince William and Loudoun Counties, to 230 kV operation; (ii) construct in Prince William County and the Town of Haymarket a new 230 kV double circuit overhead transmission line, approximately 5.1 miles in length, from a tap point approximately 0.5 mile north of the Company's existing Gainesville Substation on converted Line #124 to a new 230-34.5 kV Haymarket Substation; and (iii) construct a 230-34.5 kV Haymarket Substation on land in Prince William County to be owned by the Company.

On December 11, 2015, the Commission issued an Order for Notice and Hearing that, among other things, docketed the Application, assigned the matter to a hearing examiner, and established a procedural schedule for the case ("Scheduling Order").

On March 8, 2016, Heritage Hunt HT, LLC, Heritage Hunt Commercial, LLC, Heritage Hunt Retail, LLC, Heritage Hunt Office Condominium, LLC, Heritage Sport & Health, LLC, RBS Holdings, LLC, and BKM at Heritage Hunt, LLC (collectively, "Heritage"), by counsel, and Somerset Crossing Home Owners Association, Inc. ("Somerset"), by counsel, filed a Joint Motion of Somerset Crossing Home Owners Association and Heritage for Expedited Consideration and Extension of Procedural Dates ("Joint Motion"). The Joint Motion requests that the dates established by the Scheduling Order for the filing of notices of participation, written public comments, the testimony of respondents and Commission Staff, the Company's rebuttal testimony, and the May 10, 2016, evidentiary hearing date be continued for approximately 90 days, with the May 10, 2016, hearing retained on the Commission's docket for the receipt of testimony from public witnesses.<sup>1</sup>

<sup>1</sup> Heritage and Somerset request that the filing dates be extended as follows: notices of participation from March 1, 2016, to June 1, 2016; written public comments from May 3, 2016, to August 3, 2016; respondent testimony from March 22, 2016, to June 22, 2016; Staff testimony from April 12, 2016, to July 12, 2016; Company rebuttal from April 26, 2016, to July 26, 2016; and the hearing extended from May 10, 2016, to August 10, 2016, while keeping the May 10, 2016, hearing on the Commission's docket for the receipt of testimony from public witnesses.



Since respondent testimony is due March 22, 2016, Heritage and Somerset requested expedited consideration of their Joint Motion.

On March 9, 2016, a Ruling was entered giving the parties and Staff an opportunity to file responses to the Joint Motion on or before March 15, 2016, and giving Heritage and Somerset an opportunity to file a reply, on or before March 17, 2016.

On March 15, 2016, Dominion Virginia Power filed its Opposition of Virginia Electric and Power Company to Joint Motion for Extension. In its Response, the Company argues that Heritage and Somerset have not provided any legitimate reason that warrants a three-month delay in the procedural schedule. The Company asserts that the procedural schedule established in this case allows for approximately four and a half months between the filing of the Application and the filing of respondent testimony. This time frame, according to the Company, “is in-line with the scheduling orders issued in other recent proceedings.”<sup>8</sup>

The Company next argues that the cases cited by Heritage and Somerset in which extensions were granted, including the Company’s Warrenton-Wheeler, Poland Road, and Yardley Ridge cases had “facts and circumstances ... [that] are not present here and there is no analogous circumstance alleged in the Joint Motion.”<sup>9</sup>

The Company also argues that there is nothing overly complex or unduly burdensome about the two issues referenced by Heritage and Somerset in support of their Joint Motion for an extension. The proposed I-66 Hybrid overhead/underground alternative, according to the Company, “has been analyzed by the Company in detail in the Application and Routing Study, and the cost recovery question appears to be a legal issue that could be subject to briefing by the parties after the evidentiary hearing.”<sup>10</sup>

The Company also disagrees with the assertion that it has been non-responsive to requests for information from Somerset. It points out that the Commission’s Scheduling Order provides that responses to discovery requests must be answered within seven days and that Heritage and Somerset served their first set of discovery after filing their Joint Motion. The Company therefore states that “it is a blatant misrepresentation to assert that the Company has somehow been nonresponsive to requests for information in this proceeding.”<sup>11</sup>

Finally, the Company states that “[n]eedlessly delaying this proceeding by three months will jeopardize the Company’s ability to receive a timely Commission order” and construct and operate the new facilities in a timely manner. According to the Company, it needs a decision by early 2017 to construct and operate the project on schedule.<sup>12</sup>

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<sup>8</sup> Dominion Virginia Power Response at 3.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 4.

<sup>11</sup> *Id.* at 4-5.

<sup>12</sup> *Id.* at 5.

Staff also filed a Response opposing the extension. Staff notes that the Application was filed over four months ago and that the Company published notice of the Application more than two months, giving the respondents ample time to file their notices of participation, conduct discovery, investigate the Application, and file their testimony. Staff further argues that the Commission considered the complexity of this case when it established a procedural schedule and an additional three-month extension is not necessary. The Commission’s Scheduling Order, according to Staff, permitted respondents a reasonable amount of time for filing notices of participation, and Heritage and Somerset have provided no reason why the filing date for notices of participation should be extended one month beyond the May 10, 2016, evidentiary hearing scheduled by the Commission.

Staff also argues that the cases cited by Heritage and Somerset in support of an extension are distinguishable from this case, and “[t]he circumstances that may have justified an extension to the procedural schedule in those cases do not exist here.”<sup>13</sup> The Warrenton – Wheeler and Poland Road transmission line cases, for example, had additional alternative routes that were proposed by the Staff or respondents after the applications were filed, requiring additional time to analyze and investigate the alternatives before the filing of testimony. The procedural schedule for the Yardley Road proceeding, according to Staff, was extended because there was a possibility of collocating the line with an alternative route proposed in the Poland Road proceeding. Staff argues these cases are different factually from this case at hand and do not support the extension. Staff also notes that the extension requests in the Poland Road and Yardley Ridge cases were unopposed.

Finally, Staff argues that a three-month extension would materially and detrimentally affect the Staff’s ability to represent its position in this case, given its current work load. Staff’s response states that the “Staff is managing 10 active transmission line cases and is expecting utilities, including Dominion Virginia Power, to file several more in the upcoming months.”<sup>14</sup> According to Staff, granting an extension “could jeopardize Staff’s ability to represent its position in ... transmission line cases.”<sup>15</sup> Staff also asserts that its “attorneys are largely unavailable for the August 10 hearing date requested by ... [Somerset] and Heritage.”<sup>16</sup>

In concluding its response, Staff states that it is agreeable to a one-week extension for the filing of respondent testimony if a similar extension were granted for the filing date of Staff’s testimony.

On March 17, 2016, Heritage and Somerset filed its Reply, arguing that “[n]either the Staff Response nor the Dominion [Virginia Power] Response provide adequate grounds for denying the Joint Motion.”<sup>17</sup>

Heritage and Somerset first dispute the Staff’s argument that the Commission recognized the complexity of this case when it established a procedural schedule, noting that Staff has not provided any support for its assertion. They also argue that the Company’s claim that the procedural schedule in this case is “in-line” with the Company’s recent transmission line cases fails to

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<sup>13</sup> Staff Response at 4.

<sup>14</sup> *Id.* at 6.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 7.

<sup>17</sup> Reply of Heritage and Somerset at 2.

recognize the complexity of this case compared to other transmission line cases before the Commission.

Heritage and Somerset also dispute Staff's claim that no additional complexities have arisen in this case that justify an extension. They argue the cost recovery issue appears to be an issue of first impression in Virginia, and state they are "puzzled" why the Staff believes an issue of this magnitude can be addressed in the time allotted. They further argue the Company's claim that the cost recovery issue is a legal issue that can be briefed after the evidentiary hearing fails to consider that facts must be developed on the record "for any legal theory to succeed."<sup>18</sup>

Heritage and Somerset further argue the Staff fails to acknowledge or address that the I-66 Hybrid overhead/underground route, which is supported by the respondents in this proceeding, adds considerable cost and complexity to this case compared to overhead routing proposals. They also point out that unlike the Company's previous transmission line cases, the Company has not provided any cost data for the any of the alternative routes, including the I-66 Hybrid route, causing Heritage and Somerset, as well as the Staff, to have to develop this information through discovery, which takes additional time.

Heritage and Somerset next claim that Dominion Virginia Power's assertion that it has provided all information through discovery fails to recognize that its transmission line applications usually contain cost information on its various routing proposals. Here, however, the Company did not provide any cost information on any of the alternative routing proposals in this case. They argue the parties and Staff should not have to develop this information through discovery.

Heritage and Somerset further argue the Staff's assertion that the extensions granted in the Company's other transmission line cases cited in the Joint Motion are distinguishable from this case is not controlling. They maintain the extensions granted in the other transmission line cases are analogous to this case because Dominion Virginia Power has not provided any cost information on its alternative routing proposals, including the I-66 Hybrid overhead/underground route supported by the respondents. Additional time is therefore needed to investigate fully all the routing proposals in this case. Moreover, they argue whether motions for extensions are opposed or unopposed should have no impact on the Commission's decision on their Joint Motion.

Next, Heritage and Somerset address Staff's claim that the requested extension could materially and detrimentally affect the Staff's ability to represent its position in this case given its current work load, and thereby jeopardize the Commission's ability to render a decision in a timely manner. In their view, "it is of paramount importance ... to have a thorough assessment of the transmission line options, including costs in this proceeding [and] conducting "that assessment supersedes having respondents' testimony due at a time that is most suitable for Staff's schedule."<sup>19</sup> If the Joint Motion is granted, Heritage and Somerset state their proposed schedule can be adjusted to eliminate any conflicts with Staff, including the proposed evidentiary hearing date when "Staff's attorneys are largely unavailable."<sup>20</sup>

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<sup>18</sup> *Id.* at 3.

<sup>19</sup> *Id.* at 6.

<sup>20</sup> *Id.*, citing Staff Response at 7.

Heritage and Somerset next assert they should not be penalized for taking the time to review the Application and voluminous supporting materials before making a decision to participate in this case and filing a notice of participation. They point out they are not on equal footing with the Company and Staff because they do not have the resources and information necessary to analyze and investigate a transmission line application as promptly and as thoroughly as the Company and Staff.

Heritage and Somerset emphasize they are not experienced participants in such cases and did not recognize the need to intervene promptly and gain access to information to support their case. Moreover, they assert their Joint Motion should not be denied due to the Company's need for a decision by early 2017. They point out that the Company controls the filing dates for its applications, and the filing of the Company's current Application "created a tight time frame" for a final decision.<sup>21</sup> Accordingly, the Company-created tight time frame is not sufficient grounds to deny the Joint Motion.

Having considered the Joint Motion, the Responses filed thereto by Dominion Virginia Power and Staff, and the Reply of Heritage and Somerset, I find the Joint Motion should be granted, subject to the following conditions. First, I find that a full three-month extension is not warranted given the facts, issues, and circumstances presented by this case. Rather, I will grant an extension of approximately seven weeks for the filing of written and electronic comments, respondent and Staff testimony, the Company's rebuttal testimony, and the evidentiary hearing on the Company's Application. The May 10, 2016, hearing date will be retained on the Commission's docket for the purpose of receiving testimony from public witnesses. This revised procedural schedule should allow Heritage and Somerset, as well as Staff and all other parties, sufficient time to fully develop the contested issues in this case, including the cost recovery issue and the costs of the various routing proposals in this case while, at the same time, accommodating Dominion Virginia Power's need for a Commission decision by early 2017.

I further find the request to extend the filing date for notices of participation should be denied. Potential participants in this case have had more than ample time and opportunity to file notices of participation. Notices of participation, unlike prefiled testimony, are simple legal documents that are easy to draft and file, and are usually less than five pages in length. Heritage's Notice of Participation, for example, is barely over two pages in length. There is absolutely no need to give some as yet unknown and unnamed potential participants additional time to file such a short and simple legal document. Accordingly,

**IT IS DIRECTED THAT:**

- (1) The filing date for respondent testimony is extended from March 22, 2016, to May 10, 2016;
- (2) The filing date for Staff testimony is extended from April 12, 2016, to June 2, 2016;
- (3) The filing date for Company rebuttal testimony is extended from April 26, 2016, to June 9, 2016;

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<sup>21</sup> *Id.* at 8.

(4) The evidentiary hearing on the Application is continued from May 10, 2016, to June 21, 2016; however, the May 10, 2016 hearing date will be retained on the Commission's docket for the purpose of receiving testimony from public witnesses; and

(5) The date established for the filing of written or electronic comments is extended from May 3, 2016, to June 17, 2016.



Glenn P. Richardson  
Hearing Examiner

Document Control Center is requested to mail a copy of the above Ruling to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, Tyler Building, First Floor, Richmond, VA 23219.