

**IN THE SUPREME COURT OF VIRGINIA**

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**RECORD NOS. 140462, 141009 and 141201**  
(SCC Case No. PUE-2012-00029)

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BASF CORPORATION,  
*Appellant,*

v.

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

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**RECORD NOS. 140470 and 141010**  
(SCC Case No. PUE-2012-00029)

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JAMES CITY COUNTY, *et al.*,  
*Appellants,*

v.

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

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**VIRGINIA ELECTRIC AND POWER COMPANY'S  
PETITION FOR REHEARING**

Lisa S. Booth (VSB No. 48112)  
Charlotte McAfee (VSB No. 68412)  
Dominion Resources Services, Inc.  
120 Tredegar Street  
Richmond, Virginia 23219  
(804) 819-2288 (telephone)  
(804) 819-2183 (facsimile)  
[lisa.s.booth@dom.com](mailto:lisa.s.booth@dom.com)  
[charlotte.p.mcafee@dom.com](mailto:charlotte.p.mcafee@dom.com)  
*Counsel for Appellee Virginia Electric and Power  
Company*

Joseph K. Reid, III (VSB No. 35724)  
Stephen H. Watts, II (VSB No. 12802)  
Vishwa B. Link (VSB No. 36316)  
Robert W. Loftin (VSB No. 68377)  
McGuireWoods LLP  
One James Center, 901 East Cary Street  
Richmond, Virginia 23219  
(804) 775-1198 (telephone)  
(804) 698-2146 (facsimile)  
[jreid@mcquirewoods.com](mailto:jreid@mcquirewoods.com)  
[swatts@mcquirewoods.com](mailto:swatts@mcquirewoods.com)  
[vlink@mcquirewoods.com](mailto:vlink@mcquirewoods.com)  
[rloftin@mcquirewoods.com](mailto:rloftin@mcquirewoods.com)  
*Counsel for Appellee Virginia Electric and Power Company*

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**VIRGINIA ELECTRIC AND POWER COMPANY'S**  
**PETITION FOR REHEARING**

Pursuant to Rule 5:37 and Code § 8.01-675.2, Virginia Electric and Power Company, d/b/a Dominion Virginia Power (“Dominion”), hereby petitions for rehearing of the April 16, 2015 opinion (“Slip Op.”) of the Court in these proceedings insofar as the majority concludes that the Skiffes Creek transmission switching station components are not properly included within the definition of a transmission line under Code § 56-46.1(F), see Slip Op. 38-43. For the reasons stated in its Motion for Expedited Consideration, filed the same day as this Petition, Dominion also respectfully requests expedited consideration of this Petition.

**I. INTRODUCTION**

The majority opinion holds that the term “transmission line” is capable of lay person interpretation and that “a station” is “distinguishable from and more intrusive to its surrounding environment than transmission lines.” Slip Op. at 40. The majority rejects the SCC’s factual determination that the transmission switching station components are an indispensable part of the two transmission lines approved by the SCC, finding that the Court is “not inextricably bound” to the SCC’s practical construction of the statute. And it holds that the controlling precedent requires a “manifest intention” to include transmission switching station components within the express

language of Code § 56-46.1(F) in order for particular components of the line to be exempt from local zoning authority. On this basis, the majority's opinion finds that localities, and not the SCC, must approve the siting of transmission switching stations.

As discussed below, the majority's opinion:

1. Misapplies the holding of *City of Norfolk v. Tiny House*, 222 Va. 414 (1981), to the provisions of Code § 56-46.1(F);
2. Erroneously finds that the "manifest intent" rule of construction should apply with respect to an issue involving the SCC's practical construction of a statute within its direct purview;
3. Contravenes every prior analogous decision of this Court with respect to the SCC's authority to interpret undefined statutory terms, including recent opinions such as *Office of the Attorney General, Div. of Consumer Counsel v. SCC*, \_\_\_ Va. \_\_\_, 762 S.E.2d 774 (2014) ("*OAG v. SCC*"), and *VEPCO v. SCC*, 284 Va. 726 (2012);
4. Improperly relies on a legislative commission (the Joint Legislative Audit and Review Commission or "JLARC") staff report as evidence of the General Assembly's intent or definition of a "transmission line";
5. To the extent relied on as evidence of legislative intent or definition, fails to cite key provisions in the JLARC report which confirm that the

**“SCC Interprets Terms Not Defined in Statute[s]”** such as Code § 56-46.1(F);

6. Divorces the discussion of a “transmission line” in that legislative study from its context;
7. Improperly ignores the functional definition of a transmission line, which is well-grounded in the Code and accepted in the industry, in favor of a lay person definition; and
8. Upends the legislative intent of Code § 56-46.1(F) by giving James City County preemptive authority over the SCC, when the clear purpose of the provision is to facilitate the construction of high voltage transmission lines to benefit all users of the system, and to prevent local interests from blocking them.

As a result of the Court’s decision, absent approval of the switching station by James City County, the only alternative will be a switching station in another jurisdiction necessitating more miles of 500 kilovolt transmission line at much greater expense to customers. However, the overhead crossing of the James River, as approved by the SCC and affirmed by the Court, will be unchanged. If left uncorrected, the majority’s decision to allow a locality, both in this case and in the future, to dictate the siting, timing, and cost of necessary high voltage electric transmission lines, to the

exclusion of the SCC's authority, presents grave risks to the continued provision of reliable and cost-effective electric service in the Commonwealth and to the integrity of the interstate transmission grid. Dominion respectfully submits that this result should be reconsidered, and that time is of the essence.

## **II. GROUNDS FOR REHEARING**

### **A. The Majority Misapplied the Standard of Review**

The SCC made a factual finding, based on “extensive engineering evidence,” that “the Skiffes Creek Switching Station will be an electrically, physically, and operationally inseparable part of several high voltage transmission lines.” App. 3579-80. In particular, the SCC found that the “very purpose and function of the Skiffes Creek Switching Station is to assemble numerous electrical transmission elements, including conductors, circuit breakers, switches, coupling capacitor voltage transformers, wave traps, transformers, and arresters.” App. 3580. Informed and compelled by that factual finding, the SCC as a matter of practical construction held that the transmission switching station “will be a critical part of several high voltage transmission lines . . . for purposes of Code § 56-46.1 F.” *Id.*

In two respects the majority applied the wrong standard of review in rejecting the SCC's practical construction of the statute. First, by

disavowing any “analysis ‘[f]rom an engineering standpoint” and substituting a “layperson” understanding, Slip Op. at 40, the majority made an unprecedented departure from this Court’s well-established deferential standard applicable when the SCC applies law to fact to engage in a practical construction of a statute it administers. See, e.g., *OAG v. SCC*, 762 S.E.2d at 778 (“[A]lthough questions of law are reviewed de novo, the practical construction given by the Commission to a statute it is charged with enforcing is entitled to great weight by the courts and in doubtful cases will be regarded as decisive.”); *Piedmont Env’tl Council v. VEPCO*, 278 Va. 553, 563 (2009) (same).

Second, the majority adopted a novel clear statement rule that requires a “manifest intention on the part of the legislature” before the SCC can construe the meaning of a term in Code § 56-46.1, which it has the duty to implement. Slip Op. at 39 (quoting *Tiny House*, 222 Va. at 422-23). By its own terms, *Tiny House* has no application to the SCC. That case held that the ABC laws did not preempt a local zoning law because “[t]here is no language in the ABC Act which takes from local governments the powers conferred upon them by zoning statutes to regulate land use.” 222 Va. at 422; see also *id.* (finding no “manifest intention” to give the ABC power to preempt local zoning ordinances). Here there can be no question



that the General Assembly demonstrated a “manifest intention” to exclude from local zoning authority the power over siting of “transmission lines.” Code § 56-46.1(F) (“Approval of a transmission line pursuant to this section shall be deemed to satisfy the requirements of § 14.2-2232 and local zoning ordinances with respect to the transmission line.”). The determinative question before the Court in this appeal is the meaning of the term “transmission line,” and, on this subject, *Tiny House* has nothing to say. By contrast, in *Board of Supervisors of Fairfax County v. Virginia Electric and Power Company*, the Court affirmed the SCC’s construction of another term in § 56-46.1 and confirmed the jurisdiction of the SCC, and not the locality, to approve construction of a transmission line. 222 Va. 870, 873-74 (1981).

The majority’s opinion effectively reverses the standard of review for SCC decisions. Code § 56-46.1 concerns transmission line siting – a subject matter expressly delegated to the SCC for determination. It is not a local zoning statute. When reviewing a decision by the SCC, this Court has presumed in every other case regarding matters of the SCC’s constitutional and legislatively delegated authority that the General Assembly confers upon the Commission the authority to act within its discretion as an expert tribunal informed by experience absent an express limitation on this

authority. See, e.g., *VEPCO v. SCC*, 284 Va. at 741 (“[W]e presume that where the General Assembly has not placed an express limitation in a statutory grant of authority, it intended for the Commission, as an expert body, to exercise sound discretion.”). This is the opposite – the mirror image – of the *Tiny House* standard. Contrary to longstanding precedent, the majority’s clear statement rule deprives the SCC’s findings of any legal significance and accords no deference to its expertise.

**B. The Majority Misapprehended and Incompletely Considered the JLARC Report, as JLARC Itself Confirms**

The majority opinion relies on the conclusion that “the General Assembly has previously employed a similar definition” to the majority’s understanding of “transmission line.” Slip Op. at 41 (discussing the JLARC staff report). The majority’s understanding is incorrect.

First, JLARC is not the General Assembly, and cannot act in any legislative capacity. As the Chairman of JLARC confirms, JLARC reports are written by members of the JLARC staff and do not represent the views of either the legislative members of JLARC or the General Assembly. See Attachments A and B.

Second, the JLARC report at page 42 recognizes, through a subchapter title, that the “**SCC Interprets Terms Not Defined in Statute**,” and notes that there are terms in Section 56-46.1 without “definitions or

legislative instruction” (bold in original). See *a/so* Attachment B. Dominion agrees that “Title 56 of the Code of Virginia, governing public utilities, does not define the term ‘transmission line’ as used in Code § 56-46.1(F).” Slip Op. at 39-40. In that situation, the JLARC report is in harmony with this Court’s longstanding precedent which reflects deference to the SCC’s expertise in construing legislatively undefined terms such as “transmission line” in statutes implemented by the Commission.

Furthermore, the report did not attempt a comprehensive definition of “transmission line,” and does not support the majority’s understanding of the term in any event. The JLARC report described transmission lines “as the conductors (wires or cables) which carry power at a high voltage level from the plants to local substations some distance away.” Slip Op. at 41. Treating this as a “definition” would lead to the exclusion of the towers, as well as the transmission switching station and other necessary components, from the definition of transmission line. The majority itself implicitly recognizes that such a restrictive definition must be incorrect because it *sua sponte* revised the JLARC description to add “the structures necessary to physically support those wires.” Slip. Op. at 40. The majority’s reliance on the JLARC Report, therefore, is misplaced.

### **C. The Majority Inverted the Purpose of the Statute**

The clear intent of Code § 56-46.1(F) is to ensure statewide uniform regulation of high voltage transmission lines that benefit all users of the transmission grid, facilitating their construction and preventing local authorities from blocking them. See *Fairfax County*, 222 Va. at 873-74. Accordingly, the exemption from Code § 15.2-2232 and local zoning ordinances provided by Code § 56-46.1(F) to approved transmission lines of 138 kilovolts or more must logically include any transmission switching station components that are “electrically, physically, and operationally” part of any such transmission line, as found by the SCC.

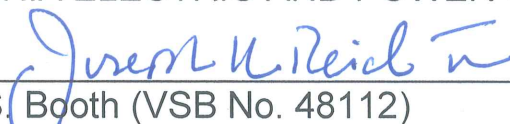
The definition of transmission lines adopted by the majority upends that statutory purpose. It gives James City County and all other localities preemptive authority over the SCC, over Dominion’s reliability obligations as a public utility, and over all of its ratepayers who will bear the burden of whatever exactions and costs may result from local opposition to the transmission components needed for reliable statewide electricity. That local veto is contrary to the holding in *Fairfax County* and to the fundamental purpose of § 56-46.1(F).

### III. CONCLUSION

In light of these considerations, Dominion respectfully requests that the Court grant rehearing and affirm the SCC's factual findings and practical construction that the Skiffes Creek Switching Station components are part of a "transmission line" for which siting decisions are removed from local control by Code § 56-46.1(F).

Dated: April 30, 2015 Respectfully submitted,

VIRGINIA ELECTRIC AND POWER COMPANY



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Lisa S. Booth (VSB No. 48112)  
Charlotte McAfee (VSB No. 68412)  
Dominion Resources Services, Inc.  
120 Tredegar Street  
Richmond, Virginia 23219  
(804) 819-2288 (telephone)  
(804) 819-2183 (facsimile)  
[lisa.s.booth@dom.com](mailto:lisa.s.booth@dom.com)  
[charlotte.p.mcafee@dom.com](mailto:charlotte.p.mcafee@dom.com)

Joseph K. Reid, III (VSB No. 35724)  
Stephen H. Watts, II (VSB No. 12802)  
Vishwa B. Link (VSB No. 36316)  
Robert W. Loftin (VSB No. 68377)  
McGuireWoods LLP  
One James Center, 901 East Cary Street  
Richmond, Virginia 23219  
(804) 775-1198 (telephone)  
(804) 698-2146 (facsimile)  
[jreid@mcguirewoods.com](mailto:jreid@mcguirewoods.com)  
[swatts@mcguirewoods.com](mailto:swatts@mcguirewoods.com)  
[vlink@mcguirewoods.com](mailto:vlink@mcguirewoods.com)  
[rloftin@mcguirewoods.com](mailto:rloftin@mcguirewoods.com)

# **Attachment A**

Mark O. Webb  
Vice President, General Counsel & Chief Risk Officer  
Dominion Resources, Inc.  
120 Tredegar Street, Richmond, VA 23219  
dom.com



April 27, 2015

The Honorable John Watkins  
Chairman  
Joint Legislative Audit and Review Commission  
11<sup>th</sup> Floor  
General Assembly Building, Capitol Square  
Richmond, VA 23219

Dear Senator Watkins:

I am writing to you as chairman of the Joint Legislative Audit and Review Commission (JLARC) on behalf of the Virginia Electric and Power Company, doing business as Dominion Virginia Power. The Virginia Supreme Court recently released an opinion, *BASF Corp. v. State Corp. Comm'n*, \_\_ S.E.2d \_\_, 2015 WL 1727294 (Va. Apr. 16, 2015, that cites a 2006 Joint Legislative Audit and Review Commission (JLARC) report on undergrounding of transmission lines (House Document 87, 2006). Specifically, page 41 of the majority opinion characterizes a description of a transmission line on page 4 in the report as the General Assembly establishing and employing the definition of a transmission line.

In reviewing the report, and other information about JLARC, I have two questions I would like to ask. First, does a JLARC staff report represent the views of either JLARC's legislative members or the General Assembly itself? Second, does the report address the role of the SCC regarding the interpretation of terms such as "transmission line" which are not defined in the Virginia Code?

Thank you for taking the time to respond to these questions and for your leadership of JLARC

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Webb", written over a white background.

Mark Webb

cc. Mr. Hal E. Greer, Director

# **Attachment B**



# SENATE OF VIRGINIA

**JOHN C. WATKINS**  
10TH SENATORIAL DISTRICT  
ALL OF POWHATAN COUNTY;  
PART OF CHESTERFIELD COUNTY; AND  
PART OF THE CITY OF RICHMOND  
POST OFFICE BOX 159  
MIDLOTHIAN, VIRGINIA 23113



COMMITTEE ASSIGNMENTS:  
COMMERCE AND LABOR, CHAIR  
AGRICULTURE, CONSERVATION AND  
NATURAL RESOURCES  
FINANCE  
TRANSPORTATION  
RULES

April 28, 2015

Mark O. Webb  
Dominion Resources, Inc.  
129 Tredegar Street  
Richmond, VA 23219

Dear Mr. Webb:

I am responding to your letter of April 27, 2015, concerning the recently released opinion of the Virginia Supreme Court concerning *BASF Corp. v. State Corp. Comm'n*, \_\_S.E.2d\_\_, 2015 WL 1727294. You asked two questions of me as Chairman of the Joint Legislative and Audit Review Commission, specifically with regard to references in the opinion which were contained in House Document 87, 2006 entitled "Evaluation of Underground Electric Transmission Lines in Virginia."

Your first question asked if the JLARC staff report represents the views of either JLARC's legislative members or the General Assembly itself. My answer to that question would be in the negative. The reports are written by the members of the JLARC staff. They then are sent to the commission and the vote taken is merely to accept the report and to authorize its publication. The report is not a part of the Virginia code. Some of the recommendations for implementation may ultimately result in a code change only through introduction and approval through the normal legislative process.

Your second question asked if the report addresses the role of the State Corporation Commission regarding the interpretation of terms such as "transmission line" which are not defined in the Virginia code. My response would reference page 42 of House Document 87 which indicates by subtitle and comment that the SCC INTERPRETS TERMS NOT DEFINED IN STATUTE. The following paragraph elaborates on the fact the commissioners have asserted their authority to interpret some legislative terms not defined by statute.

I hope these responses are adequate with regard to the court's opinion and the JLARC report.

Sincerely,

A handwritten signature in blue ink, appearing to be "John C. Watkins", written over a horizontal line.

John C. Watkins

JCW/swa

## CERTIFICATE

The undersigned hereby certifies that the foregoing complies with Rule 5:6 and Rule 5:37, and further certifies that on this 30th day of April, 2015, an electronic copy of the foregoing was emailed to the Clerk's Office of the Supreme Court of Virginia at [scvpfr@courts.state.va.us](mailto:scvpfr@courts.state.va.us), and emailed to the following counsel of record:

*Counsel for Appellee State Corporation Commission*

John F. Dudley (VSB No. 38280)  
Alisson P. Klaiber (VSB No. 77206)  
State Corporation Commission  
Post Office Box 1197  
Richmond, Virginia 23218-1197  
Telephone: (804) 371-9608  
Facsimile: (804) 371-9240  
[john.dudley@scc.virginia.gov](mailto:john.dudley@scc.virginia.gov)  
[alisson.klaiber@scc.virginia.gov](mailto:alisson.klaiber@scc.virginia.gov)

*Counsel for Appellant BASF Corporation*

E. Ford Stephens (VSB No. 25959)  
Michael J. Quinan (VSB No. 29832)  
Christian & Barton, LLP  
909 East Main Street, Suite 1200  
Richmond, Virginia 23219  
Telephone: (804) 697-4100  
Facsimile: (804) 697-4112  
[estephens@cblaw.com](mailto:estephens@cblaw.com)  
[mquinan@cblaw.com](mailto:mquinan@cblaw.com)

*Counsel for Appellants James City County, Save the James Alliance Trust, and the James River Association*

Andrew R. McRoberts (VSB No. 31882)  
Sands Anderson, PC  
1111 E. Main Street, Suite 2400  
Post Office Box 1998  
Richmond, Virginia 23218-1998  
Telephone: (804) 783-7211  
Facsimile: (804) 783-7291  
amcroberts@sandsanderson.com

  
\_\_\_\_\_  
Counsel for Virginia Electric and Power Company