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June 1, 2015

Joel H. Peck
Clerk
State Corporation Commission
Office of the Clerk
c/o Document Control Center
1300 East Main Street
Tyler Building – First Floor
Richmond, VA 23219

RE: Case No. PUE 2015-00049, Baumann Farm, LLC and Kristopher Baumann v. Dominion

Mr. Peck:

Enclosed for filing is Petitioner's Opposition to Defendant's Motion to Dismiss in Case No. PUE 2015-00049.

Thank you for your assistance.

Sincerely,

Kristopher Baumann

Kristopher Baumann
Petitioner

Enc.

STATE CORPORATION COMMISSION

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BAUMANN FARM, LLC, and)
KRISTOPHER K. BAUMANN,)
)
	Petitioners,)
)
	v.) Case No. PUE 2015-00049
)
VIRGINIA ELECTRIC AND POWER)
COMPANY)
(d/b/a "DOMINION VIRGINIA POWER") ,)
)
	Defendant.)
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OPPOSITION TO DEFENDANT’S MOTION TO DISMISS

I. Introduction

In its Response and Motion to Dismiss (Response), Dominion admits that it engaged in numerous misrepresentations in its efforts to gain approval to rebuild the transmission line at issue. Despite those admissions, Dominion has requested that the State Corporation Commission (SCC) dismiss Petitioners’ complaint without a hearing and without Dominion having to address the admitted misrepresentations. In requesting dismissal, Dominion has asked the SCC to determine that, as a matter of law, a utility can meet the statutory notice and approval requirements by providing inaccurate information and misrepresenting the size and scope of a project to the public, localities, state agencies, the SCC, and other interested parties. Dominion has further asked that the SCC determine that henceforth, a utility owning an existing right-of-way has unfettered authority to build anything within that right-of-way without regard to mitigation requirements, because the use of an existing right-of-way is apparently sufficient mitigation to override all other mitigation requirements.

Dominion's actions, and the concerns raised in Petitioners' lawsuit, affect thousands of people in Rockbridge and Augusta counties. Pastoral views from family homes and farms have been destroyed. Small businesses that rely on tourism have encountered disappointed customers who did not expect a countryside dominated by enormous transmission towers. Both counties are facing reduced tax revenue, as property values are decreased. The impact is so significant that the Rockbridge County Board of Supervisors voted unanimously to write a letter to the SCC in support of Petitioners' lawsuit, which was submitted on May 12, 2015. (*See Ex. 1.*) As demonstrated in the Response filed by Dominion, none of these issues or people matter to Dominion. What matters to Dominion is avoiding a public review of its conduct.

Remarkably, Dominion's employee in charge of the project, Rusty Meadows, recently told Staunton's *News Leader* newspaper that Petitioners' assertions about the inadequate notice to affected counties and the public are correct, and that he "regrets" the way in which this transmission line is being built. (*See Ex. 2.*) Despite these admissions by the supervisor of the project, Dominion calls Petitioners' claims "unfounded."

Dominion's submission to the SCC reveals its complete indifference to its legal obligations, and to all whose lives have been affected by this project. In its filing, Dominion:

1. calls its misleading website, which for several years advised people to expect 115-foot tall towers instead of towers reaching 176 feet, an "administrative oversight" (compounded by yet another "administrative oversight" when even the correction made by the company was not correct);
2. continues to maintain that the current appearance of the towers "will not represent a substantial change from the original transmission line's impacts," despite significant public protest to the contrary, as reported in numerous local publications in Rockbridge and Augusta counties;
3. characterizes the misrepresentations by the company's lawyer as immaterial, because her statements were "not a part of the formal Commission application";

4. admits that its viewshed analysis was done based on tower heights of only 133 feet, when nearly one-third of the towers are between 150-174 feet in height (not counting the concrete pylon bases, which the company now admits were not included in its disclosed tower heights);
5. confirms that it has ignored virtually all of the FERC Guidelines regarding how to build transmission lines with aesthetics in mind (such as not placing towers directly atop crests of hills), because in Dominion's view, those are just guidelines, not rules;
6. fails to address the question of why Dominion has refused to make any effort to darken the finish of its towers, even when another Virginia power company has done so on a similar replacement project, in order to blend the towers more effectively in a rural environment; and
7. claims that building in an existing right of way was all it needed to do to mitigate the effect of the new, much larger towers on the scenic area. (According to this logic, once Dominion obtains a right of way, it has free reign to put anything new in that route, with no further obligation to minimize the impact on scenic, historical, or environmental assets.)

Under Virginia law, there is no valid basis upon which to dismiss Petitioners' complaint. The complaint properly states the legal standards applicable to Dominion, and alleges abundant facts that, when proved, will demonstrate numerous violations by the company and warrant remedial action. In fact, Dominion, through its Response, has acknowledged that there are factual disputes. Under Virginia law, at this stage of the proceedings, the SCC must take Petitioners' allegations as true, and deny Dominion's motion to dismiss. The company must not be allowed to escape the discovery process, and an evidentiary hearing on the merits, with an opportunity for interested parties to be heard by the agency that is empowered to enjoin improper projects, and order mitigation where appropriate.

II. The SCC's Role in the Process and the Statements of its Spokesperson

Virginia law empowers the SCC to act as a court, hearing disputes regarding electric transmission lines, among other subjects:

In all matters within the jurisdiction of the Commission, it shall have the powers of a court of record to administer oaths, to compel the attendance of witnesses and the production of documents, to punish for contempt, and to enforce compliance with its lawful orders or requirements by adjudging and enforcing by its own appropriate process such fines or other penalties as may be prescribed or authorized by law.

Va. Code § 12.1-13.

Moreover, under the SCC's own published "Chief Goals," the SCC has committed to "ensure that all parties and persons who appear before the Commission receive due process of law."

Unfortunately, the public actions of the SCC's spokesperson in this matter to date do not reflect the impartiality expected of an agency acting in the capacity of a court. On May 20, 2015, Andy Farmer, identified as the "SCC spokesman," was quoted regarding the merits of this suit in the *Staunton News Leader*. Before Petitioners had any opportunity to respond to Dominion's motion to dismiss, Farmer stated to a news reporter that "Notice of the project was provided to the public," and that "The information about the tower heights was provided in the application, and the company had a website with information about the project." (Farmer apparently was unaware that the website he touted contained inaccurate information for several years, as Dominion has now admitted.) The newspaper also states that "Dominion's SCC filings provided the proper notice, according to Farmer."

"Notice" is a term of art under the statute and SCC rules. One of the issues in this case is whether Dominion provided proper notice. No Virginia court (or any court, for that matter) would permit its personnel to pre-judge a proceeding in this manner, or to make public

commentary regarding an ongoing lawsuit. The comments by Farmer suggest a lack of impartiality, and a rush to judgment before any evidence has been presented, which is not in the best interests of Virginia residents, nor consistent with the SCC's duties to the people it serves.

Petitioners and all those who support the fair hearing of this lawsuit expect the SCC to fulfill its duties in accordance with the law. To do so, the SCC must order full discovery, including interrogatories, document requests, and depositions; hold an evidentiary hearing; and provide a legitimate opportunity for Petitioners and other interested parties to be heard, rather than pre-judging the outcome of this case based on an incomplete review of the merits.

III. Matters Related to Virginia Code Section 56-265.6

In its Response, Dominion argues that all of Petitioners' claims must be dismissed by the SCC, including claims arising under Virginia Code section 56-265.6. The merits of these arguments are addressed below, count by count, but the subject of claims under section 56-265.6 warrants separate attention, as it arises in a different way than the others.

By the express terms of the statute, the SCC is without authority to dismiss a sufficiently-pleaded complaint under Virginia Code section 56-265.6 prior to a hearing and a final determination on the merits. Virginia Code section 56-265.6 provides:

The Commission may, by its order duly entered after hearing, held after due notice to the holder of any such certificate and an opportunity to such holder to be heard, **at which hearing it shall be proved that such holder has willfully made a misrepresentation of a material fact in obtaining such certificate** or has willfully violated or refused to observe the laws of this State touching such certificate or any of the terms of the certificate, or any of the Commission's proper orders, rules or regulations, impose a penalty not exceeding \$1,000, which may be collected by the process of the Commission as provided by law; or the Commission may **suspend, revoke, alter or amend any such certificate** for any of the causes set forth above. But no such certificate shall be revoked, altered or amended (except upon application of the holder thereof) unless the holder thereof shall

willfully fail to comply, within a reasonable time to be fixed by the Commission, with the lawful order of the Commission or with the lawful rule or regulation of the Commission, or with the term, condition or limitation of such certificate, found by the Commission to have been violated by such holder. No such certificate shall be suspended, revoked, altered or amended for any cause not stated in this section. **Proceedings looking to the imposition of any penalty provided for in this section may be commenced upon the complaint of any person** or upon the Commission's own initiative
(emphasis added)

The SCC defines such proceedings as adjudicatory proceedings (5 VAC 5-20-90 of the SCC Rules of Practice and Procedure). Discovery, including depositions, are available to the parties in such proceedings. *See* 5 VAC 5-20-280. Depositions and other discovery tools are necessary because under the statute, “willfulness” must be shown, and a dispute regarding motivation warrants full discovery. The statute unambiguously vests individuals with the right to commence such proceedings, which are to be decided upon a hearing, according to the explicit language of the statute. As a result, a motion to dismiss is not valid as it applies to adequately-pleaded claims under Virginia Code section 56-265.6. (Even if a motion to dismiss were allowed for such claims, Defendant has failed to meet the standard for a motion to dismiss, as discussed later in this Opposition.)

In considering the viability of Petitioners’ claim under section 56-265.6, it is important to recognize that Dominion already has admitted to many material misrepresentations. Dominion has made the following admissions, either expressly or by failing to deny the assertions made in Petitioners’ complaint:

a. Dominion misrepresented the type of towers being built to all parties and the SCC.

Dominion confirmed that it told the SCC through the application process that it would be making a “structure for structure replacement” and that it had “designed the line to resemble the facilities being replaced, with replacement towers similar in design to the towers being replaced.” (Resp. ¶ 13.)

Despite this representation, Dominion has now admitted that the triple-tower structures, or angle structures, were never noticed, never revealed in advance to anyone, and do not resemble and are not similar to the towers they are replacing. In fact, Dominion states, “The angle structures are not typical structures for any section of the line.” (Resp. ¶ 17).

b. Dominion misrepresented to the SCC and all other parties the actual height of the towers being built.

The towers built by Dominion do not have an average height of 115 feet, as Dominion told the public and other interested parties through its website until March 2015. The towers also do not have an average height of 133 feet, as Dominion told government agencies and county governments. The towers do not have an average height of 142 feet, as Dominion has claimed to the SCC.

Instead, Dominion now admits that the actual average height of the towers is at least 148.5 feet.¹ This includes 1.5 feet for the concrete pylons that form the base of each tower, which Dominion admits has never been included in its count of tower heights as provided to the SCC during the application process or to any other parties. (Resp. ¶ 26.)

Dominion continues to misrepresent the actual average height of the towers on both its website and to the SCC. (See Resp. ¶ 29, in which Dominion claims that “the structure comparison is now accurate.”)

Moreover, Dominion has used the “average” height measurement to disguise the enormous increases in the height of individual towers. For example, according to Dominion, Tower 105 was originally 99 feet tall, and Dominion proposed that its height be increased to 118 feet as part of the 2012 project – an increase of 19 feet. Dominion then proposed its height be increased to 119 feet as part of the 2013 project – an increase of only 1 foot from the 2012 project. How tall is Tower 105 now? 144 feet tall – a 45-foot increase that Dominion disclosed to no one.

As discussed below, Dominion assured state agencies when it was seeking to gain approval of the 2013 project that no tower would be increased in height by more than 14 feet from the proposed 2012 tower height. Not 14 feet on average, but 14 feet as the largest increase for any tower. This was inaccurate. Examples abound – for instance, Dominion told the SCC that Tower 181 would increase from 94 feet to 113 feet (in 2012) and then to 119 feet (in 2013). Tower 181 is now 144 feet tall.

¹ Despite the fact that Dominion provided Petitioners and the SCC documentation showing the actual average tower height, as built, is 148.5 feet, Dominion refused to address the allegation that the actual average tower height, as built, is 148.5 feet (See Petitioners’ Complaint, ¶ 27 and Dominion’s Response, ¶ 27). As a result, the allegation is deemed admitted (See Va. Sup. Ct. R. 1:4.(e): “An allegation of fact in a pleading that is not denied by the adverse party’s pleading, when the adverse party is required by these Rules to file such pleading, is deemed to be admitted.”).

c. Dominion misrepresented the impact of the project on scenic byways.

As part of its practice of misrepresentation, Dominion denied telling the SCC that the project would not cross any scenic byways. (See Resp. ¶ 67.) The following is taken from the Direct Testimony of John Bailey on behalf of Dominion. It is part of the application for PUE-2012-00134.

Q. Please discuss the resources in the project area and the activities that have been and will be undertaken to reasonably minimize adverse impacts of the proposed lines on the environment.

A. By using the existing right of way for the entire length of the proposed rebuild, the Rebuild Project is expected to have minimal impact on area resources. . . . **The Rebuild Project will not cross any scenic byways. . . .**

Dominion, later in the application process, acknowledged that the project would cross a scenic byway, but when Dominion was specifically asked to address the impact on all scenic byways that were “in close proximity to, or will be crossed by, the proposed transmission line,” Dominion addressed only Route 39 and never provided information on the impact to Route 252 where it is a scenic byway. (Dominion argues that it identified Route 252 in its maps, but it only identified Route 252 being crossed at a portion where it is not a scenic byway. Identifying the crossing of Route 252 on a map is an entirely different issue, and a different portion of the application, than identifying the impact on all scenic byways when specifically directed to do so.) In fact, more than 20 towers are visible along the scenic byway portion of Route 252, and the character of this scenic route has been dramatically altered.

d. Dominion misrepresented the existence of important farmlands in Augusta County.

As part of the application process, Dominion is required to respond to specific questions from the SCC. One of those questions involves designated “important farmlands.” When asked if it had determined whether Augusta and Rockbridge counties had designated important farmlands within their jurisdictions, Dominion asserted that “Augusta and Rockbridge Counties have not designated any such important farmland.”

In fact, the National Resource Conservation Service lists designated important farmland in Augusta County that will be impacted by the project. It even provides a map of those farmlands. Rather than acknowledge it had misrepresented the existence of important farmlands and failed to address required mitigation during the SCC application process, Dominion simply denied that it provided inaccurate information. (Resp. ¶ 71.)

e. Dominion repeatedly misrepresented the size of the towers to the public.

Defendant admits that from 2012 through March 2015, Dominion's website contained a Structure Comparison document indicating that the new towers would be an average of 115 feet tall. (Resp. ¶ 23.) Dominion admits that information was inaccurate. *Id.*

Dominion admits that after removing the 115 feet tower height document from its website in March 2015 and until at least April 27, 2015, it replaced the document on its website with another document indicating that the average height of the towers would be 133 feet tall. (Resp. ¶ 29.) Dominion admits that information was inaccurate also. *Id.*

Dominion admits that after removing the second inaccurate document from its website after April 27, 2015, it replaced that document with a document indicating that the average height of the towers would be 142 feet. (Resp. ¶ 29.) Dominion currently asserts that the average height of 142 feet is accurate, and that information remains currently on its website. *Id.* However, in documents provided to the SCC and Petitioners as part of the complaint process, Dominion admits that the height of 142 feet is inaccurate and the actual average height of the towers is 148.5 feet. (See footnote 1.) Thus, what Dominion is currently representing to the public on its website remains inaccurate.

f. Dominion misrepresented the impact on historic and scenic assets to state agencies.

Dominion admits that the required pre-application analysis to identify the impacts on historic resources was completed and submitted based on a tower height of 133 feet tall, with a maximum tower height of 139 feet. (Resp. ¶ 42.) These tower heights were used to determine the impact on viewsheds.

Dominion further admits that it is building 51 towers that are 150 feet tall or higher, and 22 of those towers are between 161 and 170 feet tall. (Resp. ¶ 24.) Dominion admits that at least an additional 1.5 feet has been added to the height of each tower by the use of concrete pylons. (Resp. ¶ 26.) Therefore, Dominion has admitted that all of the viewshed analyses performed for this project were completed at a tower height that was more than 40 feet shorter than the tallest towers.

g. Dominion misrepresented the increase in tower height from the 2012 to 2013 project to state agencies.

On September 24, 2013, Dominion lawyer Charlotte McAfee (who, despite being a witness in this matter, is apparently still representing Dominion in this case) wrote to the Department of Environmental Quality (DEQ) and told DEQ that the changes to the towers from the 2012 project to the 2013 project would "result in an additional structure height between 2 and 14 feet."

Dominion's assurances that no tower would be increased in height by more than 14 feet (not on average, but by 14 feet total) was demonstrably false. For example, Dominion originally planned to increase Tower 80 from 99 feet (original) to 123 feet (in 2012), but

in 2013 Dominion planned to increase Tower 80 to 164 feet. This was a 41-foot increase from 2012 to 2013, despite Ms. McAfee specifically telling government agencies no tower would be increased by more than 14 feet.

In its Response Dominion attempts to argue that because no application had yet been submitted for approval, Ms. McAfee's representation of facts cannot be actionable because it was not part of any formal process. (Resp. ¶ 14.) What Dominion failed to disclose, and what the record will reflect, is that Ms. McAfee was actually trying to prevent DEQ and other agencies from conducting any review of the 2013 project. Her communication was an attempt to circumvent the formal process.

h. Dominion misrepresented the need for the current tower heights.

In Paragraph 83 of its Response, Dominion asserts that it "has used the lowest tower heights possible to maintain adequate NESC clearances for the Projects." This position does not make sense, given that Dominion has been seeking approval for a transmission line that would hold both 500kV and 230kV lines since its first application in 2012, when the tower heights were much lower than those under construction today. (See Resp. ¶ 8.)

Even in 2013, when Dominion proposed increased tower heights specifically to support the 230kV line, the proposed heights were lower than those it is actually building. If Dominion's 2012 and 2013 applications were in compliance with all relevant laws, as Dominion has claimed, then it cannot be true that NESC clearances require the tower heights that Dominion is constructing, as they do not match what was proposed. Moreover, Dominion has failed to explain why, when asked during the application process to explain the tower design, Dominion's employee cited ease of maintenance, and the desire to make an economical choice, without mention of any NESC clearance requirements.

Again, these are misrepresentations already in the record or admitted to by the Defendant.

These misrepresentations cannot be dismissed as mistakes or administrative errors, as each and every misrepresentation was made in a way that advantaged Dominion. In fact, each of these misrepresentations was made in an effort to aid Dominion in gaining approval of the project without proper scrutiny or required review.

A single willful misrepresentation is actionable under the statute. In this case, the scope and consistency of Dominion's misrepresentations requires, by statute and regulation, full discovery and a hearing to determine if the misrepresentations were willful.

IV. Legal Standard for the Motion to Dismiss

Dominion has filed a motion to dismiss without articulating (or acknowledging) the legal standard for dismissal. Under Virginia law, a motion to dismiss, or demurrer, tests whether a complaint states a cause of action upon which the requested relief may be granted. *Dunn, McCormack & MacPherson v. Connolly*, 281 Va. 553, 557, 708 S.E.2d 867, 869 (2011); Va. Code § 8.01-273.

A demurrer “does not allow the court to evaluate and decide the merits of a claim.” *Fun v. Virginia Military Institute*, 245 Va. 249, 252, 427 S.E.2d 181, 183 (1993). When judging the sufficiency of a complaint, a court must “consider as true all the material facts alleged in the . . . complaint, all facts impliedly alleged, and all reasonable inferences that may be drawn from such facts.” *Concerned Taxpayers v. County of Brunswick*, 249 Va. 320, 323, 455 S.E.2d 712, 713 (1995).

Dominion has ignored this legal standard, and instead argues that Petitioners’ complaint should be dismissed because it “does not prove” the allegations made therein. (Resp. at 4, 37.) This point by Dominion demonstrates a misunderstanding of motions to dismiss. Of course the complaint does not “prove” the underlying assertions – it is a complaint. The question at this stage is not whether Petitioners have proved their allegations, but rather, whether the allegations, if proved, would establish a valid claim. In this case, Petitioners’ complaint alleges sufficient facts to state numerous claims upon which relief may be granted, if such facts are ultimately proved at a hearing.

Among other allegations, Petitioners have alleged that:

- Dominion repeatedly provided false and misleading information to the public, local governments, and the SCC, regarding the tower heights, tower types, appearance, and overall impact on the affected area, in order to avoid public protest and any requirement

that steps were taken to minimize the impact of the structures on the scenic, historic, and environmental areas affected;

- Dominion did not disclose that the scenic byway portion of route 252 would be impacted, and falsely claimed that there would be no substantial impact on scenic Route 39;
- Dominion falsely represented that no designated important farmland would be affected, when the route impacts such farmland in Augusta County;
- The visual impact tests conducted by a consultant hired by Dominion were performed at the wrong tower height (133 feet), which is more than 40 feet shorter than the tallest towers, leading to a faulty approval process, as no state agency, local government, or the public had an accurate understanding of the expected visual impact;
- Dominion’s continued reporting to the public of inaccurate tower heights – always shorter in height than the towers actually are – was a willful attempt to mislead the public;
- The line that Dominion is building is not what was disclosed in advance, and includes structure types and tower heights that are not what the SCC approved; and
- Numerous area residents, including Petitioners, have had dramatic alterations to the viewsheds from their properties, due to tower heights and structures that were never disclosed in advance, and have suffered harm to their property values and enjoyment of their properties caused by the improper actions and misrepresentations of Dominion.

Each of these assertions, if proved, would state a claim upon which relief could be granted, as set forth in the Petition. The time for Dominion to dispute these assertions is after discovery is conducted, at a hearing. There is no basis upon which to dismiss Petitioners’ complaint at this stage. The validity of each count is further addressed below.

V. Timeliness and Jurisdiction

Dominion argues, without citation, that “Petitioner comes now out-of-time objecting to an efficient use of existing transmission right-of-way that reasonably minimizes adverse impact and solves identified reliability needs.” (Resp. 8.) There is no timeliness issue in this matter. At issue in this case is: 1) Dominion’s misrepresentations in gaining the certificates; and 2) whether the SCC had jurisdiction to issue the certificates given Dominion’s failure to meet the statutory

requirements for the issuance of the certificates. The law does not permit Dominion to run out the clock while hiding facts from the public, and misrepresenting to the SCC what would be built and what statutory requirements had been met as part of the application process.

As the SCC recognized in *Commonwealth of Virginia ex rel. Stacy A. Snyder v. Virginia Gas Pipeline Co.*, Case No. PUE 000586, 2000 Va. PUC LEXIS 1431 (November 14, 2000), the 21-day deadline to object to issuance of a certificate applies in cases in which the SCC's jurisdiction to have issued a certificate is clear. *Id.* at *19. In this case, the SCC's jurisdiction to have issued the certificates is in question, as the statutory pre-requisites to issuance were not satisfied in myriad ways. Petitioners' case also is premised on allegations of misrepresentation and deception in the application process, which misled affected parties and deterred them from recognizing the need to object. Accepting Dominion's position that no time is left to reconsider the validity of the certificates, and/or whether mitigation efforts must be required, would allow the company to take advantage of its improper actions earlier in the process, and create an incentive for utility companies to engage in such conduct. In addition, such a position would render the statutory provisions of Virginia Code section 56-265.6 moot. (Dominion's argument would only allow 21 days to discover a utility's misrepresentations in the application process before being time barred from raising a claim under Virginia Code section 56-265.6.)

Indeed, the reaction in both counties to the transmission line project that is currently under construction confirms that, if not for Dominion's misleading approach to its website and otherwise, the public would have demanded mitigation at a minimum. To date, two county Board of Supervisors meetings in Rockbridge County were packed with people opposed to the appearance of the new transmission lines. These residents took to the microphone one after another, to tell the Supervisors that they had not been previously informed of the scope of the

project, and to describe the destruction caused to their homes, farms, and businesses. A meeting in Augusta County similarly drew many distraught residents, who gave their own testimony to their county leaders. Upon consideration of the issues, and reviewing county files regarding what information was provided previously by Dominion, the Rockbridge County Board of Supervisors voted unanimously to write to the SCC in support of this Petition. (Ex. 1.) Augusta County is currently considering what actions it may take. (See Ex. 2.) These developments underscore that the only reason there was not a public outcry at the time of the applications is that the facts were hidden by Dominion from those who would be affected. Dominion's repeated point in its response that Petitioners and others did not object at the time of the application filings does not support Dominion's position; rather, it demonstrates that Dominion's attempt to mislead the public into thinking this project would not be a significant departure from the existing transmission line worked. People were misled, and now that they know the facts, they are making the effort to be heard.

VI. Argument

Petitioners respond to Dominion's motion to dismiss by count, as set forth below.

COUNT I Failure to Seek Approval for Triple Structures Prior to Construction (Violation of Va. Code 56-265.2)

Petitioners allege in Count I that Dominion entirely failed to disclose its plans to build triple tower structures. In its response, Dominion admitted that (a) it never disclosed that triple-tower angle structures would be built along the transmission line; and (b) there are 16 sets of triple towers along the 39.1-mile transmission line.

Dominion contends that it was unnecessary for the company to disclose or obtain specific approval of the triple-tower angle structures “because they are not the typical structure for any of the line sections.” (Resp. at 33.) Dominion argues that it needed only to depict the type of towers that predominate the line.

Dominion’s position ignores the very statutory language it quotes, which reflects that the utility is expected to provide a description of the “types of structures” (plural) it proposed to build. The utility also is expected to provide “[a] schematic drawing of each typical structure,” not just the one that predominates. *See id.* (emphasis added).

It is worth noting that in response to Petitioners’ allegation that the triple-tower structures have substantially impacted Rockbridge County residents due to their height, placement, and appearance, Dominion did not deny Petitioners’ assertion:

Petition, Paragraph 60: Numerous Rockbridge County residents have had dramatic alterations to the viewsheds from their properties, not only due to the change in tower heights, but also due to the sudden appearance of new triple towers, which are even taller than the single-tower structures, and which have been placed in locations where no towers existed previously.

Response by Dominion: The allegations in Paragraph 60 relate to the thoughts and actions of parties other than Dominion Virginia Power and, therefore, Dominion Virginia Power is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 60.

Petitioners have stated a valid claim in Count I, based on facts that Dominion has not denied. Dominion asks the SCC to dismiss Petitioners’ Count I, and rule that, as a matter of law, public utilities need not disclose plans to build structures that are a significant departure from what is depicted to the public and the SCC as a “typical” structure.

Dominion’s motion must be denied, and this issue should be evaluated based on further evidence of (a) whether Dominion’s construction of triple towers is consistent with its

representation that there would be a “structure-for-structure” replacement, when Dominion has admitted that triple-tower structures did not exist in the prior line, and (b) the impact of the triple towers on affected residents and counties, which had no opportunity to comment on a type of tower that was not disclosed in advance.

COUNT II
Failure to Seek Approval for Additional Structures Prior to Construction
(Violation of Va. Code § 56-265.2)

Dominion contends that Count II should be dismissed because the original number of structures was 184, and the Company will construct 184 replacement structures. The accuracy of Dominion’s representation is a factual question that warrants discovery, especially given the fact that the transmission line is still under construction and the accuracy of Dominion’s statement cannot be known. Dominion’s statement in its motion should not be accepted as true, under the legal standard that governs motions to dismiss, as Dominion is not the petitioner.

Moreover, Dominion’s statement in its application, repeated in its motion, that it is conducting a “structure-for-structure replacement” is impossible to square with its admission that the triple-tower structures did not exist in the prior line. With 16 new triple-tower structures, there simply cannot be a “structure for structure” replacement as Dominion repeatedly asserted to the SCC, state agencies, and other interested parties. Dominion’s motion to dismiss Count II should be denied.

COUNT III
Failure to Minimize Impact on Scenic Assets, Historic Districts,
and Environment of the Area Concerned
(Violation of Va. Code § 56-265.2)

In Count III, Petitioners have alleged that Dominion has failed to meet its statutory requirement to minimize the impact of the transmission line on the scenic beauty, historical sites, and environment of Rockbridge and Augusta counties. Petitioners allege that Dominion:

- failed to do what other power companies in Virginia have done: kept tower heights as low as possible, and used a darkened finish to blend more effectively in a rural area.
- failed to accurately disclose the impact its new transmission line would have on scenic Virginia byways, important farmland, and historic sites, which deprived all affected parties of the opportunity to accurately assess what mitigation measures were needed;
- failed to follow FERC Guidelines regarding how to build transmission lines in a manner that considers aesthetics.

Dominion responded by admitting, indirectly, that it did not accurately disclose the impacts on scenic byways and historic sites (Resp. ¶¶ 42, 65, 66, 69) admitting that it did not follow FERC Guidelines other than with regard to route selection (Resp. ¶¶ 81, 83) and contending that, as a matter of law, it had no further duty to mitigate, because its project would follow an existing right of way, and the new towers also would be a lattice style (even though the size was nearly doubling and the color would be dramatically different). In paragraph 72 of its Response, Dominion stated:

Through the use of an existing 500kV electric transmission corridor, Dominion Virginia Power has mitigated the visual impacts of the Projects in comparison to new structures along a new right of way. In addition, the replacement structures are lattice towers- entirely consistent with the lattice towers originally constructed in 1966 but constructed with a more durable material with superior mechanical strength. (Resp. at 22.)²

² Dominion’s response raises a factual question that has not been addressed anywhere in the record, but is indeed relevant: does the use of the existing right-of-way truly mitigate the visual impact, as compared to “new structures along a new right of way”? Did Dominion ever make that assessment prior to embarking upon the project, and if so,

The SCC should not accept Dominion’s argument that, as a matter of law, a power company that fails to accurately disclose the effects of its project on the scenic and historic areas, disregards FERC guidelines other than with regard to route selection, and misrepresents the degree to which its new towers would differ from the prior line³ has adequately complied with Va. Code section 56-265.2, Dominion’s motion to dismiss Count III must be denied.

COUNT IV
Failure to Provide Due Notice to Interested Parties
(Violation of Va. Code § 56-265.2)

Dominion’s arguments regarding Count IV are, again, factual arguments that fail to support dismissal of the claims articulated by Petitioners. Dominion states that it conducted outreach efforts with community officials and residents, and sent letters to area residents. (Resp. at 37.) These statements are irrelevant to the issues before the SCC. The question is not whether such efforts were conducted; it is whether the company’s outreach efforts were misleading, and whether accurate information was provided by Dominion to those affected by the project.

Dominion already has admitted that its website contained inaccurate information – telling the public that the new towers would average 115 feet in height. The company contends this was an “administrative oversight.” (Resp. at 13, ¶ 23.) It further admitted that even when the Structure Comparison sheet with the 115-foot height was removed from the website, it was replaced with another incorrect Structure Comparison sheet, which reflected 133 feet. Again, the company says this was “an administrative oversight.” (Resp. at 15, ¶ 29.) Despite these “administrative oversights,” the company criticizes Petitioners and others who did not seek a

where are such considerations reflected in the record? What new rights-of-way were considered and rejected? And if no such considerations were evaluated at the time, on what basis does Dominion make that assertion now?

³ Whether the new towers, which average more than 40 feet taller, are wider, and glint in the sun, are “entirely consistent” with the prior towers is a factual question.

public hearing previously. The company should not be permitted to simultaneously mislead the public about the scope of the project, yet take advantage of the fact that no objections were made until the towers were – surprise – much larger than anyone expected.

Dominion’s supervisor in charge of the project has been quoted in the *Staunton News Leader*, confirming that the affected counties were never told to expect towers that exceeded 150, 160, or even 170 feet in height, and were never told to expect triple towers – something he “regrets.” Rockbridge County’s Board of Supervisors has submitted a letter to the SCC, stating its concern regarding the towers – a concern that would not exist if the county had been sufficiently advised in advance of the scope of the project.

Finally, the SCC should not accept Dominion’s argument that, as a matter of law, a power company that admittedly misrepresents the size and scope of the project to all required and interested parties still meets the statutory and regulatory requirements of notice, the motion to dismiss must be denied.

In the face of these facts, all of which support the allegations in Petitioners’ complaint, there is no valid basis upon which to dismiss Count IV, and Dominion’s motion should be denied.

COUNT V
Misrepresentation and Deceptive Practices
(Violation of Va. Code § 56-593(A))

Dominion argues that Petitioners’ claim under Virginia Code section 56-593(A) must be dismissed because it “has no application whatsoever to this proceeding.” (Resp. at 38.) Dominion contends that the statute only allows recovery by a person who is aggrieved by a power company’s marketing practices, which is not claimed here. *Id.*

Dominion is apparently disregarding the portions of the law that apply to practices other than marketing. As quoted by Dominion, Virginia Code section 56-593(B)(1) reads as follows; but Dominion seems to have ignored the language that is shown in bold:

Any person who suffers loss (i) as the result of marketing practices, including telemarketing practices, engaged in by any public service company, licensed supplier, aggregator or any other provider of any service made competitive under this chapter, and in violation of subsection C of § 56-592, including any rule or regulation adopted by the Commission pursuant thereto, **or (ii) as the result of any violation of subsection A**, shall be entitled to initiate an action to recover actual damages, or \$500, whichever is greater. If the trier of fact finds that the violation was willful, it may increase damages to an amount not exceeding three times the actual damages sustained, or \$1,000, whichever is greater.
(emphasis added)

Subsection A reads as follows, and is not limited to marketing practices:

No entity subject to this chapter shall use any deception, fraud, false pretense, misrepresentation, or any deceptive or unfair practices **in providing, distributing or marketing** electric service.
(emphasis added)

In fact, the SCC already has considered the merits of a dispute that also had nothing to do with marketing, but rather, related to the adequacy of notice for a new gas pipeline. *See Snyder*, 2000 Va. PUC LEXIS 1431 at * 19-20.

Dominion further argues that the SCC lacks the authority to grant attorneys' fees "when not expressly specified by the General Assembly." (Resp. at 39.) Here, the General Assembly has specified that attorney's fees are available as a remedy. Subsection C provides:

Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person, or any governmental agency initiating such action, also may be awarded reasonable attorney's fees and court costs.

Although Dominion certainly would rather not face a claim that carries the possibility of treble damages and attorney's fees, the company has invited this claim by its misrepresentations

and deceptive practices in providing and distributing electric service. Upon proof of the allegations made in the Petition, a claim under Virginia Code section 56-593(A) would be established. Dominion's motion to dismiss Count V must be denied.

COUNT VI
Misrepresentations in SCC Proceedings
(Violation of Va. 56-256.6)

As discussed above, Virginia Code section 56-256.6 requires consideration of misrepresentations claims in a hearing on the merits. Even if dismissal prior to a hearing were permitted, Dominion has failed to meet the basic standard for its motion to dismiss.

Petitioners have alleged in Count IV that Dominion made willful misrepresentations of material facts in the SCC proceedings. Dominion claims that Petitioners cannot prove such misrepresentations, despite the fact that, as noted above, Dominion already has admitted several of the misrepresentations that Petitioners allege. Dominion did not deny that:

- Dominion is building triple-tower structures where none existed previously, in contrast to its claim that there would be a “structure-for-structure replacement”;
- the triple-tower structures – of which there are 16 along the route – were never disclosed during the SCC proceedings;
- the viewshed analysis that was portrayed as applicable to the project was done at a tower height of 133, which is more than 30-40 feet shorter than many of the towers;
- the company's website contained inaccurate tower heights for several years - reflecting that the towers would average only 115 feet tall – and even when corrected in April 2015 after Petitioners raised a concern, the first corrected version was still incorrect (again smaller than the true tower heights);
- the company failed to disclose that the line would impact the portion of Route 252 that is a designated scenic byway;
- the company incorrectly stated that the line would not impact designated important farmland in Augusta County;
- the company failed to include the concrete pylons in the calculation of tower heights;

- the company promised that the new transmission line would “closely resemble” the prior line, and that it “will not substantially change the character” of the crossing of Route 39.

Each of these admissions raises the question of whether Dominion’s inaccuracies or omissions was willful – something that can only be discovered through a review of relevant documents and questions, under oath, of those involved. Moreover, the company has denied other allegations that, if proved, would further establish willful misrepresentation. There is no valid basis upon which to deny Count VI.

COUNT VII
Failure to Consider Input from VDOT Regarding Scenic Virginia Byways
(Violation of Va. Code § 56-46.1)

Petitioners’ Count VII relates to the inaccurate notice that Dominion provided to VDOT regarding scenic Virginia Byways. Dominion contends that Petitioners’ claim must be dismissed, as the company mentioned Routes 252 and 39 in its applications.

A more careful review of the record, and the allegations by Petitioners and that were not (and cannot be) denied by Dominion, reflects that Dominion did not mention Route 252 in connection with any discussion of scenic byways, and misrepresented the impact on Route 39.

When Dominion was asked what scenic byways would be impacted by the new transmission line, one response was as follows:

Q. Please discuss the resources in the project area and the activities that have been and will be undertaken to reasonably minimize adverse impacts of the proposed lines on the environment.

A. By using the existing right of way for the entire length of the proposed rebuild, the Rebuild Project is expected to have minimal impact on area resources. . . . **The Rebuild Project will not cross any scenic byways.** . . .

Direct Testimony of John Bailey on behalf of Dominion, PUE-2012-00134.

Elsewhere in the application, where Dominion was specifically asked to address the impact on any scenic byway that was “in close proximity to, or will be crossed by, the proposed

transmission line,” Dominion addressed only Route 39 – not Route 252 – and stated that “[t]he proposed new facilities in this area will not substantially change the existing character of the current crossing of the Appalachian Waters Scenic Byway.” As Petitioners have alleged, this statement is not true; the river crossing has been substantially changed, as the new, enormous towers rise above the trees and flash in the sun. (*See* Petitioners’ Complaint ¶¶ 65-68.)

Thus, as Petitioners have alleged, Dominion failed to address the impact on the scenic byway portion of Route 252, and misrepresented the impact on Route 39 – both of which can be proved at a hearing. Dominion has not presented any valid basis for dismissal of Count VII, and the motion to dismiss must be denied.

COUNT VIII
Failure to Consider Input from the Virginia Department of Agricultural and Consumer Services Regarding Important Farmland
(Violation of Va. Code § 56-46.1)

In Count VIII, Petitioners have alleged that Dominion misrepresented the impact on important farmland, and therefore misled the Virginia Department of Agricultural and Consumer Services, which has a right to comment on projects that impact such farmland. The record reflects the following question by the SCC and response by Dominion:

Q. Has the Company determined from the governing bodies of each county, city and town in which the proposed facilities will be located whether those bodies have designated the important farmlands within their jurisdictions, as required by Va. Code § 3.1-18.5.37?

If so, and if any portion of the proposed facilities will be located on any such important farmland, please:

- a. Include maps and other evidence showing the nature and extent of the impact on such farmlands.
- b. Describe what alternatives exist to locating the proposed facilities on the affected farmlands, and why those alternatives are not suitable.

c. Describe the applicant's proposals to minimize the impact of the facilities on the affected farmland.

Response: The comprehensive plans for Augusta and Rockbridge Counties were reviewed to evaluate the potential effect the Project could have on future development. The placement and construction of electric transmission lines is not addressed in these comprehensive plans. The comprehensive plans instead address organized development of the counties, including existing and future plans, and the preservation of important features such as farmland and environmentally sensitive areas. The Project will not impact future development plans in the Counties because the Project is included in a rebuild of an existing transmission line. **Augusta and Rockbridge Counties have not designated any such important farmland. . . .**

Although Dominion supposedly could not locate the important farmland designation, according to the National Resource Conservation Service Augusta County has in fact designated important farmland that will be impacted by the project.

The SCC should not accept Dominion's position that questions in the application process are immaterial, and that Dominion's inaccurate response are acceptable as a matter of law. There is no valid basis upon which to dismiss Count VIII.

COUNT IX Failure to Comply with House Bill 1319, Section 10

Dominion asks the SCC to dismiss Count IX of the Petition on the basis that the SCC already approved its mitigation efforts, which were nothing more than siting the rebuild project in an existing right of way, and choosing lattice-style structures. The problem with this argument is that it assumes that the SCC was operating upon full and accurate information from Dominion, which it was not.

Given all of the misrepresentations and omissions by Dominion, as alleged throughout the Petition, many of which have been admitted by Dominion already (*see discussion of Count VI, infra*), the SCC's approval to date was inherently flawed. For instance, what aesthetic consideration could have been given to the effect of triple-towers structures that Dominion

admits were never disclosed in the application? What aesthetic consideration could have been given to 160 and 174-foot towers, when Dominion has admitted that not a single visual impact test was conducted at heights anywhere near that tall? What aesthetic consideration was given to the reflective surface of the towers, when it is an accepted fact in the industry that darker towers blend better in rural environments, and galvanized steel can be darkened?

When Dominion states in its Response that the new structures were designed “to resemble the facilities being replaced, with replacement towers similar in design to the existing structures,” can that be considered a truthful statement by anyone who sees the new towers and compares them with the old? (*See Resp.* at 43). If that statement was made in testimony supporting the applications – and Dominion admits it was – can it be said that the SCC or anyone else was accurately informed of how dramatically different the new towers would look, and how much they would impact the scenic beauty of the area?

The question of whether Dominion truly made adequate efforts to “improve the aesthetics” of its new transmission line, as required by House Bill 1319, is a factual question that requires review. Petitioners have made sufficient allegations to sustain a claim under Count IX, and Dominion’s motion to dismiss must be denied.

COUNT X
Failure to Provide Accurate Information to State Agencies
(Violation of Va. Code § 56-46.1)

In Count X, Petitioners have alleged that the viewshed analysis that Dominion hired an outside consultant to perform was flawed, because all of the analyses were done based on a tower height of 133 feet, when even Dominion has admitted that the tower heights averaged nearly 10 feet taller, and that nearly a third of the line was 150 feet or taller, ranging up above 175 feet tall.

In its response, Dominion admitted the tower heights alleged by Petitioners, and confirmed that the viewshed analysis was done at the wrong height. (See ¶ 42.)

Still, Dominion states in its motion to dismiss Count X that “Petitioner’s alleged support for Count X simply has no basis in law whatsoever” and states that it is inappropriate for Petitioners to object to the fact that the viewshed analysis was conducted at a leaf-on time of year. This assertion by Dominion is ironic, because it is Dominion’s own words upon which Petitioners relied.

In Petitioners’ informal complaint to the SCC, Petitioners included a photo taken in winter of the tower view in the northern part of Rockbridge County. Dominion’s Director of Electronic Transmission Project Development and Execution, Bob McGuire wrote to the SCC, calling Petitioners’ photo “misleading” because it was taken when there were no leaves on the trees. Director McGuire stated that the appearance of the towers is “very different” at leaf-off and leaf-on times of year. Based on this statement by Dominion’s own representative, Petitioners have alleged that a viewshed analysis conducted at a “leaf-on” time of year is “misleading” – the same word used by Dominion – if used to determine the appearance of the transmission line year-round. Petitioners’ allegations are fully consistent with the statements of Dominion’s own representative to the SCC.

Given the allegations made by Petitioners that Dominion submitted a viewshed analysis to various state agencies that was based on the wrong tower height (which Dominion has admitted) and that it failed to consider the view in all seasons (which Dominion claims is “misleading”), there is no valid basis upon which to dismiss Count X. Dominion’s motion must be denied.

COUNT XI
Failure to Notify and Consult with Augusta and Rockbridge Counties
(Violation of Va. Code § 15.2-2202)

In Count XI, Petitioners have alleged that Dominion failed to meet its statutory obligations to consult with local governments and provide accurate information both before and during the application process. The fact that this did not occur is evidenced by the fact that the Rockbridge County Board of Supervisors voted unanimously to send a letter to the SCC in “unequivocal” support of this Petition, as the Supervisors did not believe they were provided adequate information regarding the scope of the project in advance. The letter was sent to the SCC on May 12, 2015.

In addition, Dominion’s own representative told the media that Petitioners’ assertion that the counties were never told to expect towers in excess of 150, 160, or 170 feet, and were never told to expect triple-tower structures where none stood before, “isn’t wrong.” Indeed, the supervisor of the project told the media that he “regrets” the manner in which the project was conducted.

Petitioners’ allegations, as supported by Rockbridge County, and as confirmed publicly by Dominion’s own supervisor in charge of the project, state a valid claim for review by the SCC. Dominion’s motion to dismiss Count XI must be denied.

V. Conclusion

Dominion seeks to avoid public accountability for the tremendous harm it has caused to Rockbridge and Augusta counties. These two counties have been counted among the most beautiful parts of the country for hundreds of years, and the damage Dominion has done is devastating. Once scenic vistas that attracted tourists and new residents now look like an industrial corridor. At recent county meetings, person after person has stood to address county

leaders and plea for help, as their small businesses that rely on tourism have been hurt, property values have been decreased, and enjoyment of their properties has been shattered. Their once-pastoral views now include gleaming towers and triple-towers of bright steel that hulk over the trees, barns, and silos. People are angry, and they feel deceived, as they were not given a fair opportunity to object to this project before it began.

Despite its expected annual profits of more than \$2 billion, Dominion will not voluntarily fix the harm it has caused, by burying or reducing the size of these towers, and darkening their finish. For this reason, the residents of Rockbridge and Augusta counties have only the adversarial process on which to rely.

Dominion has filed a 48-page document seeking to persuade the SCC not to allow an evidentiary hearing in this case. Dominion's motion to dismiss must be denied, however, as the applicable legal standard does not permit dismissal. Petitioners have specifically pled valid claims under Virginia law, and the law requires those allegations to be taken as true at this stage, with Petitioners and all those who support this cause given a fair chance to prove these claims, and seek an appropriate remedy.

Baumann Farm, LLC

Kristopher Baumann

By: Kristopher K. Baumann

Kristopher Baumann

Kristopher K. Baumann
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EXHIBIT 1



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County Board of Supervisors

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RUSSELL S. FORD
Kerrs Creek
Magisterial District

DAVID W. HINTY, JR.
Natural Bridge
Magisterial District

RONNIE R. CAMPBELL
South River
Magisterial District

ALBERT W. LEWIS, JR.
Walkers Creek
Magisterial District

May 12, 2015

Mr. William F. Stephens
Director
State Corporation Commission
Division of Energy Regulation
PO Box 1197
Richmond, Virginia 23218-1197

Dear Mr. Stephens,

As you are aware, Dominion Virginia Power is in the process of upgrading the Dooms to Lexington transmission line, through the Counties of Rockbridge and Augusta. Recently, the SCC received a formal complaint, filed by Rockbridge County resident Kristopher Baumann, who resides in the Walkers Creek District. At the Rockbridge County Board of Supervisors regular April 24 and May 11 meetings, the Board received multiple comments from citizens concerned with the size and appearance of the towers and resultant negative impact on the County environment. More specifically, a primary concern voiced was that Dominion did not follow proper notification procedures in the SCC project pre-filing period.

Discussion following citizen comment on May 11th resulted in a vote to support Mr. Baumann's filing with the SCC. I wish to make clear that, by our vote, the Rockbridge County Board of Supervisors desires unequivocally to express significant concerns of our citizens and requests review and possible mitigation by the SCC in accordance with Mr. Baumann's formal complaint.

Sincerely,

John M. Higgins, Chairman
Rockbridge County Board of Supervisors

Cc: Members, Rockbridge County Board of Supervisors
Mr. Spencer Suter, Rockbridge County Administrator
Ms. Vickie Huffman, Rockbridge County Attorney
Mr. Emmett Toms, Dominion Power – Manager of State and Local Affairs

EXHIBIT 2

'Powerless' over county power line

Patricia Borns, pborns@newsleader.com 9:22 p.m. EDT May 14, 2015



(Photo: Photo courtesy Augusta County Alliance)

VERONA— Residents at Wednesday's Board of Supervisor's meeting described feeling powerless over the impact Dominion Virginia Power's new transmission line has made in their backyards.

They weren't the only ones feeling that way.

"I admit I didn't look at the initial proposal closely enough in 2012," said Larry Wills, the Middle River supervisor, acknowledging the dim chances of Dominion removing the oversized towers now that most of them have been built with the State Corporation Commission's approval.

Dominion spokesman Robert Richardson said the company informed the public and supervisors from the start that its replacement towers through Augusta County would be taller than before.

Kristopher Baumann, a Rockbridge farmer who petitioned the SCC in April for injunctive relief, disagrees.

"Records of what was provided to the counties, including the SCC filings and what was provided to county administrator Pat Coffield in Augusta County, reflect that the counties were told the towers would be smaller," Baumann wrote in a letter to the supervisors read for him by Faye Cooper on Wednesday night.

"At no point were counties told multiple towers would be taller than 150 feet, let alone over 160 feet tall, let alone 174 feet tall — which they are," Baumann claims. "At no point were counties told to expect triple towers, which we now have."

Baumann isn't wrong, according to Dominion project leader Rusty Meadows.

"The new line is handling two transmission lines," Meadows told The News Leader on Wednesday. While one line feeds the Lexington substation, another was needed to support Covington, he said.

Adding a 230kV line to the existing 500kV line saved Dominion the money, time and legal headaches of having to acquire land from property owners for a new right of way that would run 391.1 miles long by 120 feet wide,

But the savings to the utility company came at a cost to county residents, because it meant the existing line needed to be beefier — and taller.

"They are taller, yes, because they have a second line under them," Meadows said. "A triple-bundle wire that has to stand up to wind and an inch of ice on it, you have to have a really beefy structure."

Taller towers keep the heavy line from sagging too low, he explained.

"And I regret it," Meadows said. "Believe me, it has become it an issue."

Residents told supervisors they could now see towers where they hadn't before.

"There's nowhere we can go on our property where the view isn't dominated by the towers," Carter Douglas said.

That's because the towers used to be about 40 feet shorter, according to Meadows.

"People will definitely be seeing them, because they are taller," he said.

But there are not more towers than before, as some residents believe, according to the project leader. It may seem like there are more, because "at places where the line turns, we replaced the old single tower with a new type with three latticed poles, so you can see through them," Meadows said.



Dominion Project Leader Rusty Meadows stops at Mrs. Rowe's Wednesday to talk with The News Leader about the company's new power line through Augusta County. While he regrets the increased height of the towers, Meadows, who used to run TNT as a college student working the mines in West Virginia, is proud to have constructed the line without blasting. (Photo: Patricia Borns/The News Leader)

The project leader, who met with Baumann to discuss his concerns, said it's understandable that people are surprised by the new towers because Dominion only projected an average height of the eventual construction. Nor did it include information about the triple-tower design, because it hadn't been invented yet.

"Those get done after the SCC approves the project," Meadows said. "We don't buy anything until we have approval. So the real final design, we don't do the detail until we have a go."

That helps explain the mystification of some residents like Douglas who have properties under conservation easement. While she has to comply with strict development constraints, Dominion was able to get its project approved with only the sketchiest details, Douglas said.

"If we can't trust what's before us, how can we trust what we won't see for years to come?" said Drew Richardson of Riverheads, equating the transmission line with what could happen with another Dominion project, the Atlantic Coast Pipeline, proposed to run through Augusta County on its way from West Virginia to North Carolina.

Supervisor Tracy Pyles recalled the tower ordinances the county put in place 10 years ago "so we could have the cell towers we needed without intrusion and ugliness. The problem we have is there is no one protecting us," he said.

Asked if she felt the supervisors had let the public down by not paying more attention to Dominion's power line proposal in 2012, Augusta County Alliance activist Nancy Sorrells said no.

"Since I sat in their seat for eight years, I can tell you there's no way you can read everything that comes across your desk. It is an overwhelming burden of work," said Sorrells, a former supervisor.

Sorrells doesn't want to get rid of the towers, but thinks their appearance can and should be mitigated.

"Dominion says this [galvanized steel] is a structurally better type of metal, but there are lines a few miles away being built with the other stuff," she said, referring to Core-Ten, the earthtoned steel used to build the original line in 1966.

Meadows, though, didn't see a way to improve the line's appearance after the fact.

The supervisors agreed to look at the information Dominion sent them about the transmission line to see if they've strayed from it, and if so, complain to the SCC.

STATE CORPORATION COMMISSION

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BAUMANN FARM, LLC and)
KRISTOPHER K. BAUMANN,)
)
Petitioners,)
)
v.	Case No. PUE 2015-00049)
)
VIRGINIA ELECTRIC AND POWER)
COMPANY)
(d/b/a "DOMINION VIRGINIA POWER") ,)
)
Defendant.)
<hr/>)

CERTIFICATE OF SERVICE

Pursuant to 5 VAC 5-20-140 and 5 VAC 5-20-150, I certify that on Monday, June 1, 2015, a copy of the Opposition to Defendant’s Motion to Dismiss was sent by United States mail and by electronic mail to the following:

Charlotte McAfee
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Kristopher Baumann

Kristopher K. Baumann