209 VA 418

Return to
Supreme Court of Appeals
Richmond, Va.

Record No. 6765

In the Supreme Court of Appeals of Virginia at Richmond

VIRGINIA ELECTRIC AND POWER CO.

v.

ROBERT F. SHAFFER, et al., t/a, etc., et al.

FROM THE CIRCUIT COURT OF FAUQUIER COUNTY

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a.m.; Adjourns at 1:00 p.m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6765

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 3rd day of October, 1967.

VIRGINIA ELECTRIC AND POWER COMPANY, Appellant,

against

ROBERT F. SHAFFER AND CHARLES D. SHAFFER, PARTNERS, TRADING AS PANDORA FARMS, RICHARD C. PEYTON, TRUSTEE, JAMES E. EDEN, TRUSTEE, THOMAS G. MARTIN, TRUSTEE, WALLACE N. TIFFANY, TRUSTEE AND EDWIN M. TRENIS AND MARY C. TRENIS, Appellees.

From the Circuit Court of Fauquier County
Rayner V. Snead, Judge

Upon the petition of Virginia Electric and Power Company an appeal is awarded it from a decree entered by the Circuit Court of Fauquier County on the 16th day of January, 1967, in a certain proceeding then therein depending, wherein the said petitioner was plaintiff and Robert F. Shaffer and another, t/a, etc., and others were defendants; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of $300, with condition as the law directs.

RECORD

* * * * *

page 1 }

* * * * *

PETITION FOR CONDEMNATION OF ELECTRIC TRANSMISSION LINE EASEMENTS

CHANCERY NO. 3147

TO THE HONORABLE RAYNER V. SNEAD, JUDGE OF THE CIRCUIT COURT OF FAUQUIER COUNTY, VIRGINIA:

Your Petitioner, Virginia Electric and Power Company (the Company), a public service corporation organized and doing business under the laws of the Commonwealth of Virginia, respectfully represents:

(1) That it is a public service corporation engaged in the manufacture, distribution and sale of electricity to the public of the Commonwealth and, as such, is authorized by Title 56, Chapter 2 and Title 25, Chapter 1.1 of the Code of Virginia, 1950, as amended, and the laws of the Commonwealth to acquire by the exercise of eminent domain any lands or estates or interests therein, rights of way, easements or other interests in lands, for its use in serving the public.

(2) That the work or improvements to be made by the Company, as described herein, are necessary to meet the increasing demands for electricity throughout the entire system of the Company, particularly in Fauquier County, Virginia.

(3) That the public uses for which the perpetual rights, privileges and easements of right of way described page 2 } herein are to be acquired are the construction, operation and maintenance of the Company's Loudoun-Elmont Transmission Line beginning at the Loudoun Substation, Loudoun County, Virginia, and extending south through, among others, Fauquier County to the Company's proposed Elmont Substation, Hanover County, Virginia, in order to furnish electric service to the public.

(4) That a description of the work or improvements to be made upon the easements of right of way described herein is the construction, operation and maintenance of one or more lines of poles, towers or structures as the Company may from

time to time deem expedient or advisable for the purpose of transmitting electric power by one or more circuits, including all wires, poles, towers, structures, attachments, ground connections, equipment, accessories and appurtenances desirable in connection therewith (the facilities). Plats disclosing the nature of such work or improvements, including the maximum dimensions of typical poles, towers and structures, are attached hereto as exhibits.

All conductors shall be strung at a distance above the ground of not less than that specified by the National Electrical Safety Code in effect at the time of construction. There are no cuts, fills, trestles or bridges to be made in connection with the use by the Company of the easements at any time and the contour of the land will remain as at present with the exception of planting the poles, towers and structures herein provided for.

(5) That as to each separate piece of property to be taken or damaged, the names and residences of the defendants who are joined as owners thereof, or of some interest therein (the Owners), are the following:

PARCEL NO. 75: Robert F. Shaffer, Partner, Cumberland, Maryland, and Charles D. Shaffer, Partner, Cumberland, Maryland, Trading as Pandora Farms; Richard C. Peyton, Trustee, 4900 Fitzhugh Avenue, Richmond, Virginia; James E. Eden, Trustee, 4900 Fitzhugh Avenue, Richmond, Virginia; Thomas G. Martin, Trustee, 108 Culpeper Street, Warrenton, Virginia; and Wallace N. Tiffany, Trustee, 209 Culpeper Street, Warrenton, Virginia.

page 3 } PARCEL NO. 76: Edwin M. Trenis and Mary C. Trenis, his wife, Catlett, Virginia.

PARCEL NO. 92A&B: Stanley M. Heflin and Sue F. Heflin, his wife, Route One, Catlett, Virginia; Charles G. Stone, Trustee, 435 Winchester Street, Warrenton, Virginia; and Leonard S. Lynch, Trustee, c/o Federal *Lank* Bank Association, Warrenton, Virginia.

PARCEL NO. 105: Arthur Grove, Sommerville, Virginia; and Walter Grove and Elva Goff Grove, his wife, Sommerville, Virginia.

PARCEL NO. 106: Willard A. Driggers, also known as Williard A. Driggers, and Agnes Driggers, his wife, 1530 Olive Street, Northeast, Washington, D. C.

PARCEL NO. 110A&B: Jack J. Torregrossa, Trustee, 5800 Lansing Court, McLean, Virginia; E. L. Bain, Trustee, 171 Culpeper Street, Warrenton, Virginia; Bernard M. Fagel-

son, Trustee, 124-6 South Royal Street, Alexandria, Virginia; George M. Giammittorio, Trustee, City Hall, Alexandria, Virginia; Ralph M. Grant, Trustee, 100 Francis Hammond Parkway, Alexandria, Virginia; and Al Golden, Trustee, 1315 Mount Vernon Avenue, Alexandria, Virginia.

(6) That the estate, interest or rights sought to be acquired are the perpetual rights, privileges and easements of right of way 240 feet in width, except as to otherwise hereinafter set forth, as hereinabove and hereinafter more particularly described, over, upon and across the lands described herein situated in Fauquier County, Virginia.

The facilities erected on said easements of right of way shall remain the property of the Company and the Company shall have the right to inspect, rebuild, remove, repair, improve, relocate on said rights of way, and make such changes, alterations, substitutions, additions to or extensions of its facilities as the Company may from time to time deem advisable.

The Company shall at all times have the right to keep the rights of way clear of all buildings or structures (except fences), trees and undergrowth, and shall have the further right to trim or fell any tree outside the rights of way which, in the opinion of the Company, constitutes a hazard to, or may endanger the safe and proper operation of its facilities. Such a tree shall be any tree which in falling or being felled could come within ten feet of any conductor. All trees and limbs cut, felled or which fall within the rights of way during the initial clearing of the rights of way by the Company may be removed or disposed of by the Company within six (6) months after such trees and limbs are cut or felled. After such six (6)-month period, all such trees and limbs shall be and remain the property of Owners and shall be placed by the Company in piles on the rights of way where they will not block streams or drainage ditches. All trees and undergrowth thereafter cut by the Company on the rights of way shall be and remain the property of Owners. All trees and limbs cut, felled or which fall outside the rights of way at any time shall in general be left where they are felled or fall, but so as not to block streams or drainage ditches, and shall be and remain the property of Owners. All trees felled outside the rights of way six months or more after the Company has completed the initial construction of facilities on the rights of way shall be paid for by the Company at their then local market value.

page 4

For the purpose of constructing, inspecting, maintaining

or operating its facilities, the Company shall have the right of ingress and egress from the rights of way over such private roads as may now or hereafter exist on the property of Owners. Any damages resulting to such private roads from such use shall be repaired by the Company at its expense. The right, however, is reserved to Owners to shift, relocate, close or abandon such private roads at any time. If there are no public or private roads reasonably convenient to the rights of way, the Company shall have such right of ingress and egress over the property of Owners adjacent to the rights of way and lying between public or private roads and the rights of way, which right is to be exercised in such manner as shall occasion the least practicable damage and inconvenience to Owners. The Company shall be liable for all damages resulting from its exercise of the right of ingress and egress.

page 5 } The Company shall repair damage to roads, fences or other improvements and shall pay for any damage to crops, either inside or outside the rights of way, when such damage results from the construction, inspection or maintenance of the Company's facilities, provided written notice thereof is given to the Company within thirty days after such damage occurs.

Owners shall have the right to use the easements of right of way for any purpose not inconsistent with the rights hereby sought to be condemned including, but not limited to, the construction, maintenance and operation of underground sewer, gas, water or other underground utility pipe or conduit lines, septic tanks and drainage fields, provided, however, such use complies with the requirements of the National Electrical Safety Code and does not interfere with or endanger the construction, operation or maintenance of the Company's facilities, and, provided further, that any roads, streets or railroad tracks hereafter constructed on said rights of way shall cross the rights of way in such manner that the angle between the center line thereof and the center line of the rights of way shall be not less than forty-five degrees. The Company may at any time require the relocation on the rights of way of such underground sewer and other utility pipe or conduit lines, septic tanks and drainage fields, provided, however, the expense of such relocation is paid by the Company. Owners may construct and maintain fences upon the rights of way, but no buildings or other structures may be constructed thereon above ground except roads, streets and railroad tracks as hereinabove provided.

Three types of structures may be erected on said rights of way, namely, single poles with or without cross arms and self supporting or guyed metal towers. The height of single poles will not exceed 65 feet. Metal towers will not exceed a height of 150 feet. The maximum measurement of the distance between masts of the guyed structures will not exceed 35 feet center to center. The measurement of the
page 6 } base of metal towers will not exceed 50 feet square.
The minimum height of all conductors above ground level for voltages of 110,000 volts or greater and overhead ground wires will not be less than 30 feet to points of support at the poles or tower to which they are attached. The minimum height above ground level of all conductors of lower voltage than 110,000 volts and overhead ground wires will be not less than 20 feet at points of support at the pole or tower to which they are attached. The maximum height of conductors above ground level and overhead ground wires will be the height of the pole or tower to which they may be attached. In no case will clearances of conductors be less than that specified for the voltages concerned by the National Electrical Safety Code in effect at the time of construction. The maximum voltage of lines constructed on said rights of way will in no case exceed 750,000 volts. No buildings or substations will be erected on the rights of way herein sought to be condemned. Low voltage transformers may, however, be mounted no poles.

(7) That the easements sought to be acquired over, upon and across the lands of Owners, the location and bounds thereof, and the quantity of land included within said easements are shown by plats of survey of the said easements of right of way attached hereto as exhibits, and are described as follows:

page 7 } The easement of right of way 240 feet in width over the parcel of land hereinabove described as Parcel No. 75 is described by reference to a center line which is shown on the plat attached hereto and is described as follows:

PARCEL NO. 75: (Robert F. Shaffer, Partner, et als.)

Beginning at Station 970 plus 30, more or less, in the property line dividing property of Owners and that of H. Lynn Calvin and Virginia S. Calvin, which point is northeastwardly approximately 320 feet along said property line, following the center line of Cedar Run, from a property

corner; thence S. 5° 52′ W. 1620 feet, more or less, to Station 986 plus 50; thence S. 3° 34′ W. 1784 feet to Station 1004 plus 34 in the property line dividing property of Owners and that of Edwin M. Trenis, which point is S. 52° 04′ E. 422 feet along said property line from a property corner. It being the intention of the Company to condemn, by the foregoing description, an easement over all property of Owners lying within the outer boundaries of a right of way 240 feet in width, as shown on said attached plat.

Being a part of the same real estate conveyed to Robert F. Shaffer and Charles D. Shaffer, trading as Pandora Farms, a Co-partnership, by deed from Harry J. Wilson and Elizabeth A. Wilson, his wife, dated January 26, 1962, recorded January 31, 1962, in Deed Book 215, page 410, in the Clerk's Office of the Circuit Court of Fauquier County, Virginia.

page 8 } The easement of right of way 240 feet in width over the parcel of land hereinabove described as Parcel No. 76 is described by reference to a center line which is shown on the plat attached hereto and is described as follows:

PARCEL NO. 76: (Edwin M. Trenis and Mary C. Trenis, his wife.)

Beginning at Station 1004 plus 34 in the property line dividing property of Owners and that of Robert F. Shaffer and Charles D. Shaffer, which point is S. 52° 05′ E. 442 feet along said property line from a property corner; thence S. 3° 34′ W. 2990 feet to Station 1034 plus 24 in the center line of State Highway Route No. 640, which point is N. 74° 24′ E. 3030 feet along the center line of said Highway from its intersection with the property line dividing Owners' property and other property. It being the intention of the Company to condemn by the foregoing description, an easement over all property of Owners lying within the outer boundaries of a right of way 240 feet in width, as shown on said attached plat.

Being a part of the same real estate conveyed to Edwin M. Trenis by deed from L. W. Trenis and Hattie M. Trenis, his wife, dated August 19, 1946, recorded October 11, 1946, in Deed Book 160, page 232, in the Clerk's Office of the Circuit Court of Fauquier County, Virginia.

page 9 } The easement of right of way 240 feet in width over the parcel of land hereinabove described as

Parcel No. 92A&B is described by reference to a center line which is shown on the plat attached hereto and is described as follows:

PARCEL NO. 92A&B: (Stanley M. Heflin, et als.)

Parcel No. 92A: Beginning at Station 1167 plus 98 in the center line of State Highway Route No. 609, which point is S. 64° 32′ W. 25 feet along the center line of said Highway from its intersection with the center line of Town Run; thence S. 0° 01′ W. 621 feet to Station 1174 plus 19 in the property line dividing property of Owners and that of Edward Taylor, et al, which point is southwardly approximately 800 feet along said property line, following the center line of Town Run from its intersection with the center line of said Highway.

Parcel No. 92B: Beginning at Station 1179 plus 89 in the property line dividing property of Owners and that of Edward Taylor, et al, which point is northwestwardly approximately 980 feet along said property line from a property corner; thence S. 0° 01′ W. 3712 feet to Station 1217 plus 01 in the property line dividing property of Owners and that of Jessee R. Ruffner and Alvin L. Ruffner, which point is N. 53° 39′ W. 472.6 feet along said property line from a property corner, marked by a stone.

It being the intention of the Company to condemn, by the foregoing descriptions, an easement over all property of Owners lying within the outer boundaries of a right of way 240 feet in width, as shown on said attached plat.

Being a part of the same real estate conveyed to Stanley M. Heflin and Sue F. Heflin, his wife, as joint tenants with right of survivorship as at common law, by two deeds, one from Essa L. Heflin, widow, and others, dated August 27, 1964, recorded August 27, 1964, in Deed Book 227, page 40, and one from Charles G. Stone, Special Commissioner, dated August 27, 1964, recorded August 27, 1964, in Deed Book 227, page 41, both in the Clerk's Office of the Circuit Court of Fauquier County, Virginia.

page 10 } The easement of right of way 240 feet in width over the parcel of land hereinabove described as Parcel No. 105 is described by reference to a center line which is shown on the plat attached hereto and is described as follows:

PARCEL NO. 105: (Arthur Grove, et als.)

Beginning at Station 1396 plus 89 in the center line of State Highway Route No. 10, which point is N. 6° 25′ W. 72 feet along the center line of said Highway from a property corner; thence S. 4° 56′ W. 782 feet to Station 1404 plus 72 in the property line dividing property of Owners and that of Willard A. Driggers and Agnes M. Driggers, which point is S. 45° 01′ W. 690 feet along said property line from its intersection with the center line of an old road. It being the intention of the Company to condemn, by the foregoing description, an easement over all property of Owners lying within the outer boundaries of a right of way 240 feet in width, as shown on said attached plat.

Being a part of the same real estate conveyed to Arthur Grove and Walter Grove by deed from Lloyd H. Grove and Lillie Grove, his wife, dated November 14, 1958, recorded November 28, 1958, in Deed Book 204, page 6, in the Clerk's Office of the Circuit Court of Fauquier County, Virginia.

page 11 } The easement of right of way 240 feet in width over the parcel of land hereinabove described as Parcel No. 106 is described by reference to a center line which is shown on the plat attached hereto and is described as follows:

PARCEL NO. 106: (Willard A. Driggers, et als.)

Beginning at Station 1404 plus 72 in the property line dividing property of Owners and that of Arthur Grove and Walter Grove, which point is S. 45° 01′ W. 690 feet along said property line from its intersection with the center line of a road; thence S. 4° 56′ W. 1597 feet to Station 1420 plus 69 in the property line dividing property of Owners and that of Donald E. Albrecht, which point is S. 61° 06′ E. 1071 feet along said property line from a property corner, marked by an 18-inch box oak tree. It being the intention of the Company to condemn, by the foregoing description, an easement over all property of Owners lying within the outer boundaries of a right of way 240 feet in width, as shown on said attached plat.

Being a part of the same real estate conveyed to Willard A. Driggers, also known as Williard A. Driggers, and Agnes M. Driggers, his wife, as joint tenants with right of survivorship as at common law, by deed from Harrell H. Heflin and

Edra G. Heflin, also known as Edna G. Heflin, his wife, dated September 12, 1959, recorded September 12, 1959, in Deed Book 206, page 653, in the Clerk's Office of the Circuit Court of Fauquier County, Virginia.

page 12 } The easement of right of way 240 feet in width over the parcel of land hereinabove described as Parcel No. 110A is described by reference to a center line which is shown on the plat attached hereto and is described as follows:

PARCEL NO. 110A: (Jack J. Torregrossa, Trustee, et als.)

A strip of land 240 feet in width, the location of the center line of said strip of land being shown on said plat and being described as follows: Beginning at Station 1468 plus 19 in the property line dividing property of Owners and that of Oray M. Davis, Jr. and Irene S. Davis, which point is N. 49° 56′ E. 1408 feet along said property line from its intersection with the center line of State Highway Route No. 616; thence S. 7° 19′ E. 2008 feet to Station 1488 plus 27 in the property line dividing property of Owners and that of Allen Richard Dodd, which point is N. 64° 59′ E. 372 feet along said property line from a property corner, marked by a stone. It being the intention of the Company to condemn, by the foregoing description, an easement over all property of Owners lying within the outer boundaries of a right of way 240 feet in width, as shown on said attached plat.

Being a part of the same real estate conveyed to Jack J. Torregrossa, Trustee, with full power to sell and convey by deed from George Giammittorio, Ralph M. Grant, and Al Golden, Trustees, dated April 21, 1964, recorded April 22, 1964, in Deed Book 225, page 315, in the Clerk's Office of the Circuit Court of Fauquier County, Virginia.

page 13 } The easement of right of way 240 feet in width over the parcel of land hereinabove described as Parcel No. 110B is described by metes and bounds which are shown on the plat attached hereto, and is described as follows:

PARCEL NO. 110B: (Jack J. Torregrossa, Trustee, et als.)

A triangular shaped parcel of land, the outer boundaries of said parcel of land being shown on said plat and being de-

scribed as follows: Beginning at a common corner of Owners' property, property of Elwyn Brewer Bobbitt and Laura June Bobbitt, property of Gaylord H. Streeter and William E. Brisben, and property of Allen Richard Dodd, which point is marked by a cedar stake and stone and is S. 47° 05′ W. 10.5 feet from Survey Station 1493 plus 23; thence S. 47° 05′ W. 137.1 feet along the property line dividing property of Owners and said Elwyn Brewer Bobbitt and Laura June Bobbitt to a point; thence N. 7° 19′ W. 205.4 feet to a point in the property line dividing Owners' property and property of said Allen Richard Dodd; thence S. 48° 55′ E. 167.9 feet along said property line to the point of beginning.

Being a part of the same real estate conveyed to Jack J. Torregrossa, Trustee, with full power to sell and convey, by deed from George Giammittorio, Ralph M. Grant, and Al Golden, Trustees, dated April 21, 1964, recorded April 22, 1964, in Deed Book 225, page 315, in the Clerk's Office of the Circuit Court of Fauquier County, Virginia.

page 14 } (8) That there has been compliance with the provisions of Section 25-46.5 of the Code of Virginia, 1950, as amended, in that the Company, through its officers and agents, has made *bona fide* but ineffectual efforts to acquire the said easements of right of way by purchase from Owners, but said efforts have failed because Company and some of said Owners have been unable to agree upon the price of the same, or such effort has not been made because some of said Owners cannot with reasonable diligence be found within the Commonwealth.

(9) That the awards of the commissioners are to be in full and total payment for the rights of way; for all trees, undergrowth, or other obstructions within the rights of way; for all trees outside the rights of way trimmed or felled during the initial construction of the Company's facilities and within six months thereafter; for all the rights and privileges hereinabove set forth; and for any damages to the residue of Owners' lands.

(10) That a public necessity or an essential public convenience requires that Company enter upon the hereinabove described property to be condemned prior to the determination and deposit of the award of just compensation, for the purpose of constructing its electric transmission line in the manner proposed in this petition, and that an emergency exists justifying such entry, and, further, that the interests of the Owners will be adequately protected by the payment

into court for the benefit of Owners of the amount of the offer made by Company in accordance with Section 25-46.5 of the Code of Virginia, 1950, as amended, and in the discretion of the Court, by the giving of a surety bond in an amount and with such surety as the Court may determine in accordance with Section 25-46.8 of the Code of Virginia, 1950, as amended.

(11) That authority has been obtained from the Company's Board of Directors for the acquisition of the rights, privileges and easements of right of way herein described.

page 15 } WHEREFORE, your Petitioner prays for judgment that the estates, interests, or rights hereinabove described be condemned and that the titles thereto be vested in your Petitioner; that just compensation for such rights of way to be taken and the damages, if any, to any other property, as a result of the taking and use by your Petitioner, beyond the peculiar benefits, if any, by reason of such taking and use by your Petitioner, be ascertained and awarded; that distribution of such awards be made by the Court in the manner prescribed by law; that an order be entered by the Court permitting the Petitioner to enter upon said lands and construct its facilities prior to the determination of such awards as hereinbefore set out; and for such other relief as may be lawful and proper.

VIRGINIA ELECTRIC AND
POWER COMPANY
By MILES CARY
Vice President

EDWIN L. BAIN
171 Culpeper Street
Warrenton, Virginia

E. MILTON FARLEY, III
WILLIAM A. PUSEY
HUNTON, WILLIAMS, GAY,
POWELL & GIBSON
1003 Electric Building
Richmond, Virginia 23212

Of Counsel

Filed June 11 1965.

WALLACE T. BROWN, Dep. Clerk

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page 23 }

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AFFIDAVIT

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This day C. M. Wilkinson, Agent for the above named Petitioner, personally appeared before me, Ellen M. Clark, a Notary Public in and for the City and Commonwealth aforesaid, and made oath that the following named Defendants in the above styled condemnation proceeding cannot be personally served because after diligent inquiry within the Commonwealth of Virginia, the residences of said Defendants were determined not to be within this Commonwealth, and their last known post office addresses are as follows:

Robert F. Shaffer, Partner, Cumberland, Maryland
Willard A. Driggers, also known as Williard A. Driggers, and Agnes Driggers, his wife 1530 Olive Street, Northeast, Washington, D. C.
Charles D. Shaffer, Partner, Cumberland, Maryland
Given under my hand this 12th day of May, 1965.

C. M. WILKINSON

Filed Jun 11, 1965.

WALLACE T. BROWN, Dep. Clerk

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page 144 }

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REPORT OF CONDEMNATION COMMISSIONERS

* * * * *

We, the undersigned, were summoned, appointed and sworn on the 20th day of September, 1966, to fix the value to be

paid to the defendant Owners for the perpetual rights, privileges and easements proposed to be taken by said Virginia Electric and Power Company and to fix the damages, if any, to any other property of the said Owners, beyond the peculiar benefits, if any, to such other property by reason of the taking and use thereof by the Petitioner, which rights, privileges and easements of right of way are more particularly described in the Petition For Condemnation of Electric Transmission Line Easements filed herein and the exhibits attached thereto, over, upon and across the lands of Owners situated in Fauquier County, Virginia.

Upon the completion of our view of the location of said line with the rights, privileges and easements aforesaid, and after hearing the testimony in open court and in accordance with the Court's instructions, we have concluded and hereby report that the value of all the rights, privileges
page 145 } and easements, as described in the Petition in and to the property therein described, and the damages, if any, to any other property beyond the peculiar benefits, if any, to such other property by reason of such taking and use by the Petitioner, are:

	Value of property to be taken	*Damages, if any, to any other Property*	*Total Award of just compensation*
PARCEL NO. 75: Robert F. Shaffer, Partner, and Charles D. Shaffer, Partner, trading as Pandora Farms; Richard C. Peyton, Trustee; James E. Eden, Trustee; Thomas G. Martin, Trustee; and Wallace N. Tiffany, Trustee.	$7,520.00	$36,360.00	$43,880.00
PARCEL NO. 76: Edwin M. Trenis and Mary C. Trenis, his wife.	$7,425.00	$30,881.00	$38,306.00

The foregoing total awards include full and total payment for the rights of way; for all trees, undergrowth or other obstructions within said rights of way; for all
page 146 } trees outside the rights of way trimmed or felled during the initial construction of the Company's

facilities and within six months thereafter; for all the rights and privileges hereinabove set forth; and for any damages to the residue of Owners' lands.

Given under our hands this 21st day of September, 1966.

Respectfully submitted,
R. FOREST PERSONS
HAMILTON RICK
* * * HUNT
JOHN G. HEYL
E. WAYMAN CARTER
Commissioners

Filed Sep 21, 1966.

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page 147 }

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EXCEPTIONS TO THE REPORT OF CONDEMNATION COMMISSIONERS AND MOTION FOR A NEW TRIAL

The condemnor, Virginia Electric and Power Company, by counsel, respectfully excepts to the Report of Condemnation Commissioners filed in this cause on the 21st day of September, 1966, and moves the Court to set aside said Report wherein the following awards were made:

	Value of property to be taken	*Damages, if any, to any other property*	*Total Award of just compensation*
PARCEL NO. 75: Robert F. Shaffer, Partner, and Charles D. Shaffer, Partner, trading as Pandora Farms; Richard C. Peyton, Trustee; James E. Eden, Trustee; Thomas G. Martin, Trustee; and Wallace N. Tiffany, Trustee.	$7,520.00	$36,360.00	$43,880.00

page 148 } PARCEL NO. 76:

Edwin M. Trenis and Mary C. Trenis, his wife.	$7,425.00	$30,881.00	$38,306.00

The grounds for the condemnor's exceptions to the aforesaid awards for the aforementioned property are as follows:

(1) The aforesaid awards for damages, if any, to any other property are grossly excessive;

(2) The aforesaid awards for damages, if any, to any other property are speculative, are based upon surmise and conjecture and not upon considerations of fair market value;

(3) The aforesaid awards for damages, if any, to any other property are based upon erroneous principles;

(4) The aforesaid awards so far exceed the difference in the fair market value of the land affected, before and after the taking and construction of the condemnor's works, as to indicate improper conduct on the part of the commissioners in that:

(a) The commissioners, or some of them, were motivated by bias and prejudice in favor of the Owners of Parcels Nos. 75 and 76 in reaching the awards made in their Report;

(b) The commissioners, or some of them, improperly based their award upon their bias or prejudice against the condemnor, because as a public service corporation, it was undertaking to acquire property rights owned by the condemnees without consent of the condemnees;

page 149 } (c) That the commissioners, in arriving at their awards, misunderstood the instructions of the Court and proceeded upon erroneous principles;

(d) Such other improper conduct as may appear from an examination before the Court of the condemnation commissioners in this cause.

(5) The Court improperly refused to grant an instruction offered by the Power Company which reads "The Court instructs the Commissioners that you cannot consider the damages, if any, because of the unsightliness of the line or lines and the supporting poles, towers or structures", to which ruling of the Court the condemnor excepted.

WHEREFORE, Virginia Electric and Power Company moves the Court to require each of the condemnation commissioners to appear, as soon as a hearing date can be fixed, for the purpose of explaining their Report and advising the Court as to the manner in which their Report was determined

as provided in §25-46.21 of the Code of Virginia, 1950, as amended; and the condemnor further moves that the aforesaid Report be set aside and a new trial granted before a new condemnation commission to be appointed by the Court to assess, in accordance with proper instructions, the damages, if any, to any other property of the Owners of Parcels Nos. 75 and 76.

Respectfully submitted,

VIRGINIA ELECTRIC AND
POWER COMPANY

By JOSEPH M. SPIVEY, III
Counsel

page 150 } EDWIN L. BAIN
BAIN & TRUNDLE
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Filed Sep 29, 1966.

H. L. PEARSON, Clerk

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page 155 }

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SUPPLEMENTAL EXCEPTIONS TO
THE REPORT OF CONDEMNATION
COMMISSIONERS

The condemnor, Virginia Electric and Power Company, by counsel, pursuant to an Order of this Court granting it leave to file such amended exceptions as it may be so advised,

hereby assigns the following as grounds for its exceptions to the Report of Condemnation Commissioners filed in this cause on the 21st day of September, 1966, for Parcels Nos. 75 and 76:

(1) The condemnor reasserts and realleges all of the grounds of its exceptions contained in the Exceptions to the Report of Condemnation Commissioners and Motion for a New Trial filed herein on September 29, 1966.

(2) Improper conduct entered into the Report of Condemnation Commissioners, as follows:

(a) That the commissioners, at arriving at their awards, misunderstood certain instructions of the Court with respect to what property properly constituted the residue and proceeded upon erroneous principles in determining damages to the residue.

page 156

(b) That the commissioners, in determining damages to the residue, improperly considered that the land within the easements of right of way constituted a portion of the residue.

WHEREFORE, Virginia Electric and Power Company moves the Court to require each of the condemnation commissioners to appear, as soon as a hearing date can be fixed, for the purpose of explaining their Report and advising the Court as to the manner in which their Report was determined as provided in §25-46.21 of the Code of Virginia, 1950, as amended; and the condemnor further moves that the aforesaid Report be set aside and a new trial granted before a new condemnation commission to be appointed by the Court to assess, in accordance with proper instructions, the damages, if any, to any other property of the Owners of Parcels Nos. 75 and 76.

Respectfully submitted,

VIRGINIA ELECTRIC AND
POWER COMPANY

By JOSEPH M. SPIVEY, III
Counsel

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Filed Nov 25, 1966.

H. L. PEARSON, Clerk

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page 158 }

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This cause came on to be heard upon the Exceptions to the Report of Condemnation Commissioners for Parcels Nos. 75 and 76 filed herein by Virginia Electric and Power Company and upon the objections of the Owners of Parcels Nos. 75 and 76 to the recall and questioning of the commissioners as to the manner in which their Report was determined.

Upon consideration whereof, and after hearing argument of counsel for the Virginia Electric and Power Company and the Owners of Parcels Nos. 75 and 76, the Court is of the opinion and doth hereby

ADJUDGE, ORDER and DECREE that the allegations that improper conduct entered into the aforesaid Report as contained in the aforesaid Exceptions are not sufficient in law to warrant recalling and questioning the commissioners as to the manner in which they formulated their Report, to which ruling of the Court the Virginia Electric and Power Company, by counsel, objected and excepted.

page 159 } The Court doth further ADJUDGE, ORDER and DECREE that Virginia Electric and Power Company be granted leave to file, within 10 days after November 18, 1966, such amended Exceptions as it may be so advised to factually enumerate those actions of the condemnation commissioners which it contends constitute improper conduct within the meaning of §25-46.21 of the Code of Virginia, 1950, as amended, and that the Owners of Parcels Nos. 75 and 76 have 10 days thereafter within which to file any objections to the recall and questioning of the condemnation commissioners upon such grounds, to which ruling of the Court the Owners of Parcels Nos. 75 and 76, by counsel, noted their exception on the grounds that the original Exceptions were insufficient in law to warrant a summons and interrogation of the com-

missioners under the provisions of §25-46.21, Code of Virginia, 1950, as amended, and that in allowing the petitioner to state further grounds of exception after the expiration of 10 days from the rendering of the Report of the Condemnation Commissioners is in direct controvention of the provisions of said statute, and upon the further ground that counsel for the petitioner stated in open Court that it was not the intention of the petitioner to imply moral turpitude or conscious wrongdoing on the part of the commissioners, but that it was the position of the petitioner that the commissioners had misunderstood the instructions or proceeded upon erroneous principles and that allegations of this

page 160 } nature do not constitute allegations of improper conduct upon which petitioner asserts its said Exceptions.

Dated:

Enter this: Nov. 28, 1966.

RAYNER V. SNEAD, Judge

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page 162 }

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FINAL DECREE

This cause came on to be heard again upon the papers formerly filed and upon the Exceptions to the Report of Condemnation Commissioners and Motion for a New Trial filed herein by Virginia Electric and Power Company, by counsel, on the day of September, 1966, upon the *Memornadum* in Support of Exceptions to the Report of Condemnation Commissioners and Motion for a New Trial filed herein by Virginia Electric and Power Company, by counsel, upon the Supplemental Exceptions to the Report of Condemnation Commissioners filed herein pursuant to decree entered herein on the 25th day of November, 1966, upon the Memorandum in Opposition to the Exceptions to the Commissioners' Award and Motion for a New Trial Filed by the Petitioner filed herein by the defendants, by counsel, and upon argument of counsel;

UPON CONSIDERATION WHEREOF, and

page 163 } after fully hearing argument of counsel for the Virginia Electric and Power Company and the Owners of Parcels Nos. 75 and 76, the Court, being of the opinion that no proper allegations have been made by the Virginia Electric and Power Company to constitute improper conduct within the meaning of Section 25-46.21 of the Code of Virginia, 1950, as amended, and no evidence in support of its contention, other than the representation to the Court by counsel for the Power Company that his conversation with at least one of the commissioner's after the condemnation commissioners had been discharged from their duties formed the foundation of the Power Company's belief in the merit of its allegations of improper conduct, or in support of the Exceptions and Supplemental Exceptions filed by it having been produced by Virginia Electric and Power Company after ample opportunity afforded it to produce such evidence, and being of the further opinion that the Exceptions and Supplemental Exceptions to the Report of the Condemnation Commissioners filed herein by the Virginia Electric and Power Company are without merit and are not well taken, the Court doth, therefore

ADJUDGE, ORDER and DECREE that the aforesaid Exceptions and Supplemental Exceptions filed herein by Virginia Electric and Power Company be, and the same hereby are, overruled, to which rulings of the Court counsel for Virginia Electric and Power Company excepted.

IT IS FURTHER ADJUDGED, ORDERED and DECREED that the aforesaid Report of Condemnation Commissioners filed herein on the 21st day of September, 1966, be, and the same hereby is, confirmed and approved as to the total award of just compensation of $43,880.00 page 164 } made therein to Robert F. Shaffer, Partner, and Charles D. Shaffer, Partner, trading as Pandora Farms; Richard C. Peyton, Trustee; James E. Eden, Trustee; Thomas G. Martin, Trustee; and Wallace N. Tiffany, Trustee, Owners of Parcel No. 75, to which ruling of the Court counsel for Virginia Electric and Power Company excepted, and further, that the said Report be, and the same hereby is, confirmed and approved as to the total award of just compensation in the amount of $38,306.00 made therein to Edwin M. Trenis and Mary C. Trenis, his wife, Owners of Parcel No. 76, to which ruling of the Court counsel for Virginia Electric and Power Company excepted.

And it further appearing to the Court that Virginia Electric and Power Company has heretofore paid into Court the sum

of $6,000.00 for Parcel No. 75, pursuant to an Order heretofore entered on the 29th day of July, 1965, which sum was subsequently withdrawn upon the petition of the Owners of Parcel No. 75 and has heretofore paid into Court the additional sum of $37,880.00 for Parcel No. 75, which sums are equivalent to the total award of just compensation awarded by the condemnation commissioners as shown by the Report of Condemnation Commissioners filed herein on September 21, 1966, the Court doth

FURTHER ADJUDGE, ORDER AND DECREE that the title to the rights, privileges and easement in and to the property, all of which are more particularly described in the Petition for Condemnation and the exhibit attached thereto for Parcel No. 76, filed herein, is hereby vested in Virginia Electric and Power Company.

page 165 } And it further appearing to the Court that Virginia Electric and Power Company has heretofore paid into Court the sum of $5,000.00 for Parcel No. 76, pursuant to an Order heretofore entered on the 29th day of July, 1965, which sum was subsequently withdrawn upon the petition of the Owners of Parcel No. 76, and has heretofore paid into Court the additional sum of $33,306.00 for Parcel No. 76, which sums are equivalent to the total award of just compensation awarded by the Condemnation Commissioners as shown by the Report of Condemnation Commissioners filed herein on September 21, 1966, the Court doth

FURTHER ADJUDGE, ORDER and DECREE that the title to the rights, privileges and easement in and to the property, all of which are more particular described in the Petition for Condemnation, and the exhibit attached thereto for Parcel No. 76, filed herein, is hereby vested in Virginia Electric and Power Company.

It is further ORDERED that the Clerk of this Court make, certify and record in the current Deed Book in his office, pursuant to Section 25-46.27 of the Code of Virginia, 1950, as amended, a copy of the Petition for Condemnation, the exhibits attached thereto for Parcels Nos. 75 and 76, and a copy of this Final Decree, and duly index the same in the name of Virginia Electric and Power Company as Grantee, and in the names of the respective Owners whose lands are affected by this proceeding as shown in the aforesaid Report, as Grantors. The Clerk of this Court shall also release the *lis pendens* affecting the lands described in this proceeding as Parcels Nos. 75 and 76.

page 166 } John Alexander, Esquire, of counsel for the defendant Owners of Parcels Nos. 75 and 76, having this day filed by leave of Court, his certificate set-

ting forth that he is familiar with the title to the property acquired from Robert F. Shaffer, Partner, et al, by Virginia Electric and Power Company, and that there are no tax or other liens against the said real estate with the exception of the following:

(1) Deed of Trust dated January 26, 1962, of record in Deed Book 215, page 410, exceuted by Robert F. Shaffer and Charles D. Shaffer, trading as Pandora Farms, a co-partnership, to Thomas G. Martin and Wallace N. Tiffany, Trustees, securing the payment of $30,000.00 and interest.

(2) Deed of Trust dated February 2, 1965, of record in Deed Book 229, page 164, executed by Robert F. Shaffer and Charles D. Shaffer, trading as Pandora Farms, a co-partnership, to Richard C. Peyton and James E. Eden, Trustees, securing the payment of $93,000.00 and interest.

and that the aforesaid Robert F. Shaffer, Partner, and Charles D. Shaffer, Partner, trading as Pandora Farms, Richard C. Peyton, Trustee, James E. Eden, Trustee, Thomas G. Martin, Trustee, and Wallace B. Tiffany, Trustee, are the only persons having an interest in said award, and that the entire award may properly be paid to them, the Court doth therefore direct that the Clerk of this Court pay unto the said Robert F. Shaffer, Partner, and Charles D. Shaffer, Partner, trading as Pandora Farms, Richard C. Peyton, Trustee, James E. Eden, Trustee, Thomas G. Martin, Trustee, Wallace B. Tiffany, Trustee and John Alexander, their attorney, the sum of $37,880.00, together with interest thereon which shall be paid by Virginia Electric and Power Company pursuant to the provisions of Section 25-46.31 of the Code of
page 167 } Virginia, 1950, as amended, from the 29th day of July, 1965, until the date of the payment of the said interest into the hands of the Clerk of this Court.

John Alexander, Esquire, of counsel for the defendant Owners of Parcel No. 76, having further this day filed by leave of Court his certificate that he is familiar with the title to the property acquired from Edwin M. Trenis and Mary C. Trenis, his wife, by Virginia Electric and Power Company in this proceeding, and that there are no tax or other liens against the said real estate and that the entire award may properly be paid to the said Edwin M. Trenis and Mary C. Trenis, his wife, the Court doth therefore direct that the Clerk of this Court pay unto the said Edwin M. Trenis and Mary C. Trenis, his wife, and John Alexander, their attorney, the sum

of $33,306.00 together with interest thereon which shall be paid by Virginia Electric and Power Company pursuant to the provisions of Section 25-46.31 of the Code of Virginia, 1950, as amended, from the 29th day of July 1965, until the date of the payment of the said interest into the hands of the Clerk of this Court. The Clerk shall refund or pay to the petitioner any interest accrued on said funds since deposit by him of said funds in the Fauquier Savings & Loan Assoc.

The Final Decree in this cause is suspended, on motion by counsel for Virginia Electric and Power Company, in order that an appeal may be presented to the Supreme Court of Appeals of Virginia, it it be so advised, and provided Notice of Appeal and Assignment of Errors are given within sixty (60) days from the date of the entry of this Final Decree, and

page 168 } provided that the condemnor execute a Bond in the penalty of One Thousand Dollars ($1000.00) condition as the law directs within sixty (60) days from the date of the entry of this Final Decree and that such appeal is perfected in the manner provided by law.

Dated: Jan. 16th, 1967.

Enter this: RAYNER V. SNEAD, Judge

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page 173 }

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR BY VIRGINIA ELECTRIC AND POWER COMPANY

Virginia Electric and Power Company, by counsel, hereby gives notice of its intention to appeal from that certain Final Decree entered in this cause on the 16th day of January, 1967, wherein the award of just compensation to the defendants, Robert F. Shaffer, Partner, and Charles D. Shaffer, Partner, trading as Pandora Farms; Richard C. Peyton, Trustee; James E. Eden, Trustee; Thomas G. Martin, Trustee; and Wallace N. Tiffany, Trustee, Owners of Parcel No. 75 in the amount of $43,880.00 and the award of just compensation to the defendants Edwin M. Trenis and Mary C. Trenis, his wife,

Owners of Parcel No. 76 in the amount of $38,306.00 were confirmed by the Circuit Court of Fauquier County.

page 174 } Virginia Electric and Power Company assigns as errors the following:

(1) The Circuit Court erred in refusing to summon the condemnation commissioners for the purpose of having such condemnation commissioners explain their Report and advise the Court as to the manner in which said Report was determined.

(2) The Circuit Court erred in overruling the Exceptions filed herein by Virginia Electric and Power Company on September 29, 1966, to the Report of Condemnation Commissioners for Parcels Nos. 75 and 76 filed herein on September 21, 1966, and confirming said Report as to the aforesaid awards made by the said condemnation commissioners to the defendant landowners of Parcels Nos. 75 and 76 upon the grounds:

(a) That the aforesaid awards for damages, if any, to any other property, are grossly excessive;

(b) That the aforesaid awards for damages, if any, to any other property, are speculative, are based upon surmise and conjecture and not upon consideration of fair market value;

(c) That the aforesaid awards for damages, if any, to any other property, are based upon erroneous principles;

(d) That the aforesaid awards so far exceed the difference in fair market value of the land affected, before and after the taking and construction of the condemnor's works, as to indicate improper conduct on the part of the commissioners;

page 175 } (e) That the Court improperly refused to grant an instruction offered by the Power Company which reads "The Court instructs the Commissioners that you cannot consider the damages, if any, because of the unsightliness of the line or lines and the supporting poles, towers and structures."

(f) That the Court improperly refused to grant an instruction offered by the Power Company which reads "The Court instructs the Commissioners that the burden of proving the damages, if any, to any other property resulting from the taking and use of the rights, privileges and easement of right of way is upon the landowners; and unless you believe from the evidence, including your view of the land, that such damages will result, then you must not include such damages in your award."

(3) The Circuit Court erred in failing to appoint new condemnation commissioners since improper conduct entered into the aforesaid awards of damages in that they were based upon erroneous principles and should have been set aside.

(4) The Circuit Court erred in confirming the Report of Condemnation Commissioners filed herein on September 21, 1966, as to the award of just compensation made by the said commissioners to Robert F. Shaffer, Partner, and Charles D. Shaffer, Partner, trading as Pandora Farms; page 176 } Richard C. Peyton, Trustee; James E. Eden, Trustee; Thomas G. Martin, Trustee; and Wallace N. Tiffany, Trustee, Owners of Parcel No. 75 in the amount of $43,880.00 and as to the award of just compensation made by the said commissioners to Edwin M. Trenis and Mary C. Trenis, his wife, Owners of Parcel No. 76, in the amount of $38,306.00.

Respectfully submitted,

VIRGINIA ELECTRIC AND
POWER COMPANY

By JOSEPH M. SPIVEY, III
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Filed Mar 13, 1967.

B. B. BEACH, D.C.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

INDEX TO RECORD

	Page
Appeal awarded	1
Record	2
Petition for Condemnation, etc.	2
Affidavit	13
Report of Condemnation Commissioners	13
Exceptions to the Report of Condemnation Commissioners and Motion for a New Trial	15
Supplemental Exceptions to the Report of Condemnation Commissioners	17
Order—November 28, 1966	19
Final Decree—January 16, 1967	20
Notice of Appeal and Assignments of error	24